IN THE SUPREME COURT OF THE STATE OF NEVADA

In the matter of:

JAY KVAM,

Appellant,

vs.

BRIAN MINEAU; and LEGION INVESTMENTS, LLC,

Respondents.

Electronically Filed
Jun 10 2022 04:40 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No. 84443

District Court Case No. CV18-00764

JOINT APPENDIX

VOLUME 11
Pages 1371 – 1495

MATUSKA LAW OFFICES, LTD.
Michael L. Matuska (SBN 5711)
2310 S. Carson Street, #6
Carson City, Nevada 89701
(775) 350-7220 (T) / (775) 350-7222 (F)

Attorney for Appellant
JAY KVAM

Docket 84443 Document 2022-18596

APPELLANT'S APPENDIX ALPHABETICAL INDEX				
	DOCUMENT	**DATE**	**VOL.**	**PAGE**
1.	Affidavit of Jay Kvam in Support of Reply to Opposition to Motion for Dissolution	08/01/18	1	94-99
2.	Affidavit of Jay Kvam in Support of Reply to Opposition to Motion to Dismiss and for Summary Judgment	11/19/18	2	205-213
3.	Answer and Counterclaim	06/05/18	1	10-23
4.	Answer to First Amended Verified Complaint	02/19/19	3	390-394
5.	Answer to Plaintiff's Motion to Disqualify Judge	04/14/20	13	1912-1919
6.	Answer to Second Amended Verified Complaint	09/25/19	5	769-773
7.	Application for Setting	08/25/21	14	2140
8.	Complaint (Verified)	04/11/18	1	1-9
9.	Declaration of Michael L. Matuska In Support of Plaintiff's First Motion to Compel	03/15/19	3	470-472
10.	Declaration of Michael L. Matuska in Support of Plaintiff's First Motion to Compel	03/27/19	4	522-527
11.	Declaration of Michael L. Matuska In Support of Plaintiff's Second Motion to Compel	11/26/19	6	974-977
12.	First Amended Counterclaim (Mineau & Legion Investments, LLC)	10/05/18	2	114-127
13.	First Amended Verified Complaint	01/31/19	3	379-389
14.	First Motion in Limine (Plaintiff)	02/14/20	12	1609-1642
15.	First Motion to Compel (Plaintiff)	03/15/19	3	395-469
16.	Minutes – Oral Arguments 01/04/22	01/12/22	14	2145-2146
17.	Minutes – Settlement Conference	02/24/20	12	1678
18.	Motion for Dissolution	07/11/18	1	44-51
19.	Motion for Leave to Exceed Page Limit	01/16/20	9	1248-1250

20.	Motion for Leave to File Amended Complaint	12/24/18	3	273-298
21.	Motion for Leave to File Second Amended Complaint	06/19/19	4	620-656
22.	Motion for Reconsideration of Order Affirming Discovery Commissioner's Recommendation, Entered May 16, 2019; For Discovery Sanctions; and For Other Relief (Plaintiff) Exhibit 1 – Brian Mineau and Legion Investments' Responses to Plaintiff Jay Kvam's First Set of Interrogatories Exhibit 2 – Declaration of Brian Mineau, Ex. 1 to Opposition to Motion for Leave to File Amended Complaint, Filed January 14, 2019 Exhibit 3 – Declaration of Brian Mineau, Ex. 1 to Reply in Support of Motion for Protective Order, Filed February 25, 2019 Exhibit 4 – Declaration of Brian Mineau, Ex. 1 to Motion for Summary Judgment, Filed January 6, 2020, Excerpts Exhibit 5 – Brian Mineau and Legion Investments' Responses to Plaintiff Jay Kvam's First Set of Requests for Production of Documents Exhibit 6 – Slack Messages Dated November 25, 2017 Between Jay Kvam and Bradley Tammen	01/24/20	12	1518-1564
23.	Motion for Summary Judgment Exhibit 1 – Declaration of Brian Mineau Exhibit 2 – Terms of Agreement between Legion Investments LLC (its Members) and Jay Kvam (Initial Funding Member of Same) RE: 7747 S. May Street, Chicago Illinois Exhibit 3 – February 13, 2017 Wire Transfer Confirmation in the amount of $44,000.00 Exhibit 4 – February 13, 2017 Wire Transfer Confirmation in the amount of $784.31 Exhibit 5 – March 6, 2017 Colleen Burke text message Exhibit 6 – March 19, 2017 email from Colleen Burke to Brian Mineau	01/06/20	7	1003-1136

	Exhibit 7 – Contractor Agreement with TNT dated March 23, 2017 Exhibit 8 – March 23, 2017 Wire Transfer Confirmation in the amount of $20,020.00 Exhibit 9 – Floor Plans Exhibit 10 – Email chain transmitting floor plans dated April 9, 2017 Exhibit 11 – Email chain dated April 14, 2017 Exhibit 12 – General Wire Transfer Request Exhibit 13 – Minutes Special Meeting Atlas Investors Southside, LLC, Friday, May 5, 2017 Exhibit 14 – Text chain between Brian Mineau, Jay Kvam and Michael Spinola with pictures of the property Exhibit 15 – Text chain dated May 15, 2017 with photos Exhibit 16 – "Slack" thread dated May 17, 2017			
23.	Motion for Summary Judgment – **continued** Exhibit 17 – Wire Transfer Receipt dated May 18, 2017 in the amount of $9,000.00 Exhibit 18 – "Slack" thread dated May 21, 2017 Exhibit 19 – Outgoing Domestic Wire Transfer Request dated May 26, 2017 Exhibit 20 – Text message dated May 27, 2017 to May 31, 2017 Exhibit 21 – Text messages dated May 31, 2017 Exhibit 22 – Text messages dated June 1, 2017 to June 20, 2017 Exhibit 23 – City of Chicago Department of Buildings records Exhibit 24 – Email chain between Jay Kvam and Brian Mineau Exhibit 25 – Jay Kvam letter to Brian Mineau dated December 31, 2017 Exhibit 26 – Michael Matuska letter to Brian Mineau dated February 16, 2018 Exhibit 27 – Michael Matuska letter to Austin Sweet dated September 19, 2018 Exhibit 28 – Exclusive Right to Sell Listing Agreement	01/06/20	8	1137-1225

	Exhibit 29 – Residential Real Estate Purchase and Sale Contract Exhibit 30 – Citywide Title Corporation ALTA Settlement Statement – Cash Exhibit 31 – Summary of the Annual Cash Flows relating to the Property for 2017 Exhibit 32 – Summary of the Annual Cash Flows relating to the Property for 2018			
24.	Motion for Partial Summary Judgment (Plaintiffs) Exhibit 1 – Declaration of Michael L. Matuska Exhibit 2 – Declaration of Jay Kvam Exhibit 3 – Letter dated February 16, 2018 from Michael L. Matuska to Brian Mineau Exhibit 4 – Letter dated March 8, 2018 from Austin K. Sweet to Michael L. Matuska Exhibit 5 – Closing Statement dated November 16, 2018	06/25/21	14	2049-2077
25.	Motion for Summary Judgment (Defendants)	07/02/21	14	2085-2091
26.	Motion for Temporary Restraining Order and Preliminary Injunction	11/30/18	2	214-250
27.	Motion to Dismiss Counterclaim, and for Summary Judgment	10/25/18	2	128-167
28.	Motion to Dismiss Counterclaim, or Alternatively, for a More Definite Statement	06/25/18	1	24-43
29.	Motion to Disqualify Judge	04/07/20	13	1726-1911
30.	Notice of Appeal	06/29/20	14	2043-2044
31.	Notice of Appeal	03/25/22	14	2172-2173
32.	Notice of Deposit of Property Proceeds by Brian Mineau and Legion Investments, LLC	12/13/18	3	267-272
33.	Notice of Entry of Order – (Motion to Dismiss Counterclaim, and for Summary Judgment)	01/10/19	3	313-330
34.	Notice of Entry of Order – (Motion for TRO)	12/12/18	3	259-266
35.	Notice of Entry of Order (Motion to Dismiss Counterclaim)	09/06/18	1	103-113
36.	Notice of Entry of Order (Order Denying Motion to Disqualify the Presiding Judge)	04/27/20	13	1936-1947

37.	Notice of Entry of Order (Order Granting Motion for Leave)	09/11/19	5	746-755
38.	Notice of Entry of Order (Order Granting, in Part, and Denying, in Part Defendant's Motion for Summary Judgment; Order Granting Summary Judgment in Claim Pursuant to Court's NRCP 56 Notice)	06/05/20	14	1993-2042
39.	Notice of Entry of Order (Order Granting Plaintiff's Motion for Partial Summary Judgment)	03/11/22	14	2157-2171
40.	Notice of Entry of Order (Order Modifying Scheduling Order)	08/05/19	5	740-745
41.	Notice of Trial and Pretrial Conference	06/12/19	4	605-608
42.	Notice of Transfer to Court of Appeals (Supreme Court)	04/08/21	14	2045
43.	Objection to Plaintiff's Amended Pretrial Disclosures Pursuant to NRCP 16.1 (Defendants)	02/17/20	12	1648-1659
44.	Objection to Recommendation for Order (Defendants)	01/13/20	9	1238-1242
45.	Objections to "Legion and Mineau's" 16.1 Pretrial Disclosures (Plaintiff)	02/14/20	12	1643-1647
46.	Objections to Report of Commissioner (Plaintiff)	04/16/19	4	552-574
47.	Opposition to Defendant's Motion For Summary Judgment; and Cross Motion for Partial Summary Judgment Exhibit 1 – Declaration of Jay Kvam Exhibit 2 – Text dated December 29, 2016 Exhibit 3 – Project costs breakdown Exhibit 4 – Text dated March 20, 2017 Exhibit 5 – January 2, 2017 email and Unsigned Triple "R" Construction Contract Exhibit 6 – Purchase Agreement dated January 3, 2017 Exhibit 7 – $44,000 Wire dated February 13, 2017 Exhibit 8 – $784.31 Wire dated February 13, 2017 Exhibit 9 – Settlement Statement dated February 13, 2017 Exhibit 10 – Warranty Deed dated January 30 2017	01/16/20	10	1251-1370

	Exhibit 11 – Terms of Agreement dated February 14, 2017 Exhibit 12 – Text dated February 17, 2017 Exhibit 13 – Text dated March 16, 2017 Exhibit 14 – Email dated March 20, 2017 Exhibit 15 – DocuSign Certificate March 20, 2017 Exhibit 16 – Text dated March 23, 2017 Exhibit 17 – Email dated March 23, 2017 Exhibit 18 – $20,000 Wire dated March 23, 2017 Exhibit 19 – Text dated April 13, 2017 Exhibit 20 – $20,000 Wire dated April 14, 2017 Exhibit 21 – $9,000 Wire dated May 18, 2017 Exhibit 22 – Email dated May 21, 2017 Exhibit 23 – Email dated June 5, 2017 Exhibit 24 – Email dated July 14, 2017 Exhibit 25 – Email dated June 26, 2017 Exhibit 26 - Email dated August 12, 2017 Exhibit 27 – Email dated August 16, 2017			
47.	Opposition to Defendant's Motion for Summary Judgment and Cross Motion for Partial Summary Judgment - **continued** Exhibit 28 – Email dated September 25, 2017 Exhibit 29 – Email dated October 12, 2017 Exhibit 30 – Email dated November 5, 2017 Exhibit 31 – Email chain November 19, 2017 – January 23, 2018 Exhibit 32 – Inspection #12270203 report of August 7, 2019 Exhibit 33 – Inspection #12274840 report of August 7, 2019 Exhibit 34 – Inspection #12288430 report of August 7, 2019 Exhibit 35 – Settlement Statement dated November 16, 2018 Exhibit 36 – Warranty Deed dated November 5, 2018 Exhibit 37 – Deposition of Michelle Salazar, Excerpt Exhibit 38 – Deposition of Colleen Burke, Excerpt Exhibit 39 – Declaration of Michael L. Matuska	01/16/20	11	1371-1495

	Exhibit 40 – Declaration of Benjamin Steele Exhibit 41 – Plaintiff's Expert Witness Disclosure (report of Benjamin Steele dated September 24, 2019) w/o exhibits Exhibits 42 – Amended Report of Expert Witness Benjamin Steele dated January 15, 2020 Exhibit 43 – Brian Mineau and Legion Investments' Responses to Plaintiff Jay Kvam's First Set of Interrogatories Exhibit 44 – Michael L. Matuska's letter to Austin Sweet dated September 19, 2018 Exhibit 45 – Austin Sweet letter to Michael Matuska dated March 26, 2018 Exhibit 46 – Real Estate Contract – Scotch and Soda Goldmine Company, Inc. acceptance date of May 22, 2018 Exhibit 47 – Real Estate Contract – Mutual Happiness LLC dated July 3, 2018 Exhibit 48 – Appendix A: Legal Authority: Restatement of the Law, Second – Contracts 2d Excerpts from Volumes 1 and 2			
48.	Opposition to Defendant's Motion for Summary Judgment	07/30/21	14	2098-2127
49.	Opposition to Motion for Dissolution	07/26/18	1	73-87
50.	Opposition to Motion for Leave to File Amended Complaint	01/14/19	3	331-339
51.	Opposition to Motion for Leave to File Second Amended Complaint	07/01/19	4	657-665
52.	Opposition to Motion for Partial Summary Judgment	07/02/21	14	2078-2084
53.	Opposition to Motion for Reconsideration of Order Affirming Discovery Commissioner's Recommendation, Entered May 16, 2019; For Discovery Sanctions; and For Other Relief	02/07/20	12	1591-1600
54.	Opposition to Motion to Dismiss Counterclaim, and for Summary Judgment	11/13/18	2	168-190
55.	Opposition to Motion to Dismiss Counterclaim, or Alternatively, For A More Definite Statement	07/12/18	1	52-62

56.	Opposition to Plaintiff's First Motion in Limine	02/28/20	13	1712-1715
57.	Opposition to Plaintiff's First Motion to Compel	03/25/19	4	473-512
58.	Opposition to Plaintiff's Second Motion to Compel	12/06/19	6	978-987
59.	Order (Motion for Dissolution)	09/04/18	1	100-102
60.	Order (Motion For Leave to File Amended Complaint)	01/29/19	3	376-378
61.	Order (Motion to Dismiss Counterclaim, and for Summary Judgment)	01/09/19	3	299-312
62.	Order (Notice of and Order for Audio/Visual Hearing)	10/29/21	14	2141-2411
63.	Order Accepting Case Reassignment	06/06/19	4	602-604
64.	Order Affirming Master's Recommendation	05/16/19	4	593-601
65.	Order of Affirmance	06/21/21	14	2046-2048
66.	Order After Pretrial Conference	01/15/20	9	1245-1247
67.	Order Denying Motion to Disqualify the Presiding Judge	04/23/20	13	1929-1935
68.	Order Granting Plaintiff's Motion for Partial Summary Judgment	03/10/22	14	2147-2156
69.	Order Granting Temporary Restraining Order	12/03/18	3	251-255
70.	Order Granting, in Part, and Denying, in Part Defendants' Motion for Summary Judgment; Order Granting Summary Judgment on Claim Pursuant to Court's NRCP 56 Notice	06/05/20	14	1948-1992
71.	Order Modifying Scheduling Order	08/05/19	5	738-739
72.	Order Referring Discovery Motion to Commissioner for Recommendation [Defendants' Second Motion to Compel]	12/18/19	6	1000-1002
73.	Order Scheduling Settlement Conference	01/30/20	10	1565-1569
74.	Order to Set Hearing on Motions for Summary Judgment	08/11/21	14	2137-2139

75.	Pre-Trial Conference Minutes	01/14/20	9	1243-1244
76.	Pretrial Disclosures (Defendants)	01/31/20	12	1570-1577
77.	Pretrial Disclosures (Plaintiff)	01/31/20	12	1578-1583
78.	Pretrial Disclosures, Amended (Plaintiff)	02/03/20	12	1584-1590
79.	Recommendation for Order	04/09/19	4	528-551
80.	Recommendation for Order	01/10/20	9	1226-1237
81.	Remittitur	07/19/21	14	2097
82.	Reply in Support of Motion for Reconsideration of Order Affirming Discovery Commissioner's Recommendation, entered May 16, 2019; For Discovery Sanctions and For Other Relief (Plaintiff)	02/09/20	12	1601-1608
83.	Reply in Support of Motion for Summary Judgment	01/23/20	12	1501-1517
84.	Reply in Support of Motion for Summary Judgment	08/09/21	14	2128-2136
85.	Reply to Answer to Motion to Disqualify Judge	04/22/20	13	1920-1928
86.	Reply to Defendants' Response to Objection to Report of Commissioner (Plaintiff)	04/30/19	4	588-592
87.	Reply to Opposition to First Motion in Limine (Plaintiff)	03/04/20	13	1716-1725
88.	Reply to Opposition to First Motion to Compel (Plaintiff)	03/27/19	4	513-521
89.	Reply to Opposition to Motion for Dissolution	08/01/18	1	88-93
90.	Reply to Opposition to Motion for Leave to File Amended Complaint	01/21/19	3	340-357
91.	Reply to Opposition to Motion for Leave to File Amended Complaint	01/22/19	3	358-375
92.	Reply to Opposition to Motion for Leave to File Second Amended Complaint	07/08/19	5	666-730
93.	Reply to Opposition to Motion to Dismiss Counterclaim, and for Summary Judgment	11/19/18	2	191-204

94.	Reply to Opposition to Motion to Dismiss Counterclaim, or Alternatively, for a More Definite Statement	07/17/18	1	63-72
95.	Reply to Opposition to Plaintiff's Second Motion to Compel (Plaintiff)	12/11/19	6	988-999
96.	Reply to Opposition to Plaintiff's Motion for Partial Summary Judgment	07/07/21	14	2092-2096
97.	Request for Submission – Order Granting Motion for Leave to File Second Amended Complaint	07/08/19	5	731-734
98.	Response to Objection to Recommendation for Order	01/21/20	12	1496-1500
99.	Response to Plaintiff's Objection to Report of Commissioner	04/25/19	4	575-587
100.	Second Amended Verified Complaint	09/11/19	5	756-768
101.	Second Motion to Compel (Plaintiff) Exhibit 1 – Letter to Austin Sweet of November 13, 2019 Exhibit 2 – Terms of Agreement Exhibit 3 – February 13, 2017 Wire Transfer Confirmation in the amount of $44,000.00 Exhibit 4 – February 13, 2017 Wire Transfer Confirmation in the amount of $784.31 Exhibit 5 – March 23, 2017 Wire Transfer Confirmation in the amount of $20,000.00 Exhibit 6 – April 14, 2017 Wire Transfer Request in the amount of $20,000.00 Exhibit 7 – Wire Transfer Receipt dated May 18, 2017 in the amount of $9,000.00 Exhibit 8 – Response to Interrogatory No. 6 Exhibit 9 – Contractor Agreement Exhibit 10 – Text Message dated March 23, 2017 Exhibit 11 – Text Message dated April 13, 2017 Exhibit 12 – Excerpt from Colleen Burke's Deposition Exhibit 13 – Closing Statement dated November 16, 2018 Exhibit 14 – Plaintiff's Expert Witness Disclosure – Report of Benjamin C. Steele, CPA, CGMA Exhibit 15 – Text Message dated February 17, 2017	11/26/19	6	774-973

	Exhibit 16 – TNT Complete Facility Care, Inc. – Chase Bank Statements Account #1855 Exhibit 17 – TNT Strategic Facility, Inc. Bank records Account #1220 Exhibit 18 – Plaintiff's First Set of Requests for Admission Exhibit 19 – Plaintiff's Fourth Set of Requests for Production of Documents Exhibit 20 – Responses to Plaintiff's First Set of Requests for Admission Exhibit 21 – Responses to Plaintiff's Fourth Set of Requests for Production of Documents Exhibit 22 – Attorney's Fees Ledger			
102.	Stipulation to Deposit Funds; Order	12/12/18	3	256-258
103.	Stipulation to Modify Scheduling Order	08/01/19	5	735-737
104.	Stipulation to Vacate Trial	02/27/20	11	1705-1707
105.	Supplement to Plaintiff's Motion for Reconsideration of Order Affirming Discovery Commissioner's Recommendation, Entered May 16, 2019; for Discovery Sanctions; and for Other Relief	02/27/20	13	1708-1711
106.	Supplemental Uniform Pretrial Order	06/12/19	4	609-619
107.	Transcript – Hearing December 17, 2018	12/17/18	15	2174-2231
108.	Transcript – Motions for Summary Judgment January 4, 2022	01/04/22	15	2372-2394
109.	Transcript – Oral Arguments (Motion for Summary Judgment) February 11, 2020	02/11/20	15	2276-2326
110.	Transcript - Pretrial Conference January 14, 2020 (w/correction page) [Note: page 6 line 21 was corrected to reflect that the speaker was Mr. Matuska]	01/14/20	15	2232-2275
111.	Transcript - Pretrial Conference & Pretrial Motions February 27, 2020	02/27/20	15	2327-2371
112.	Trial Statement (Defendants)	02/24/20	10	1660-1677
113.	Trial Statement (Plaintiff)	02/26/20	10	1679-1704

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

Exhibit 28

EMAIL DATED SEPTEMBER 25, 2017

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

Exhibit 28

EMAIL DATED SEPTEMBER 25, 2017

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

Bradley Tammen, Brian Mineau, Michael Spinola

Group message

Evenin', guys, Dario's eager to get his guy going demoing the vacated units. I like the idea but said that I should run it by you guys first. He went ahead and scheduled for Friday and Saturday anyway as he's chomping at the bit. Is that okay with you? His guy has a trailer, so it will be no additional expense beyond the demo, I presume.

Sep 25, 2017

B

Sounds good to me. Also spoke with Derek this morning and we are final about the cross the finish line, need two more inspections by the city (one this week) then the other and we are done.

Brian Mineau (other) • Sep 25, 2017

Thanks for the update, Brian. I'm looking forward to our achieving our first collective win together. Yes, Kings Beach is the promise land, but it's a work in progress. We'll be popping our cherry and the bubble with May.

Sep 25, 2017

I guess we should find out what Dario wants to bill us (if any) for such work. Have we decided what the split is for him? I'd like to have all of that crystal clear before he sinks his teeth into it. Thoughts?

Bradley Tammen (other) • Sep 25, 2017

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

Exhibit 29

EMAIL DATED OCTOBER 12, 2017

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

Exhibit 29

EMAIL DATED OCTOBER 12, 2017

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

Brian Mineau
(530) 251-3205

No word or update from Derek then, I take it?

Oct 12, 2017

B

Spoke with him this afternoon and he said they are doing the final touches then the occupancy inspection then it's completed. He is going to call me tomorrow with a date for the city. I told him we need to bargain with them cause this has taken too long with his medical stuff and he agreed and said he would do his best

Brian Mineau (other) • Oct 12, 2017

Good for you for making that ask! They should do something as we've borne the time cost for the medical situation. Thanks for keeping on this. I know that you do a whole lot more behind the scenes than I see.

Oct 12, 2017

Agreed, out of control. But coming to an end thank heaven. No problem, sorry it has taken so long.

Brian Mineau (other) • Oct 12, 2017

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

Exhibit 30

EMAIL DATED NOVEMBER 5, 2017

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

Exhibit 30

EMAIL DATED NOVEMBER 5, 2017

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

Bradley Tammen, Brian Mineau, Michael Spinola

Group message

B

Hello Jay, sorry I noticed this while I was packing for school Thursday but didn't have a chance to respond. I spoke to Derek on Friday morning while I was driving to sf for school and he said some of the plumbing work wasn't to the inspectors standard / preference and that he didn't pass. He is correcting the items now and asked if I could send him $1500 (of the 10k remaining budget on Monday to help correct these items and speed it up. I told him I would. Once they are completed and we have a new date I will let everyone know.

Brian Mineau (other) • Nov 5, 2017

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

Exhibit 31

EMAIL CHAIN NOVEMBER 19, 2017 – JANUARY 23, 2018

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

Exhibit 31

EMAIL CHAIN NOVEMBER 19, 2017 – JANUARY 23, 2018

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

May Street

Jay Kvam <kvam.jay@gmail.com> Tue, Jan 23, 2018 at 4:17 PM
To: Brian Mineau <Brian.t.mineau@hotmail.com>

Good afternoon, Brian,

Just checking in on the status of May Street. How was your trip over to Chicago? And what was the report of the second contractor?

I'm looking forward to hearing seeing the video as well as any other reports.

thank you,

Jay

On Mon, Jan 8, 2018 at 8:13 PM, Jay Kvam <kvam.jay@gmail.com> wrote:
Thank you, Brian! I look forward to seeing it and will pray for the best.

On Mon, Jan 8, 2018 at 8:12 PM, Brian Mineau <Brian.t.mineau@hotmail.com> wrote:
Good evening Jay,

When I get the other gentleman to go out there I will have him take a video and once they are in the property I will have him continue as such. Once I get out there next week, I will further inspect the property.

As for the itemized report, I will request one as well.

v/r

Brian Mineau

From: Jay Kvam <kvam.jay@gmail.com>
Sent: Sunday, January 7, 2018 6:58 PM
To: Brian Mineau
Subject: Re: May Street

Good evening, Brian,

Thank you for the response, truly.

I'm glad to hear that you're seeking confirmation of the work that Derek's claimed to have done as well as acknowledged the possibility that legal action may be necessary against him, if it comes to it; I think that verification is prudent. I also think that the second contractor is a good idea, yet I would like to add to the plan in a couple ways that I believe are reasonable, and I have to insist on the first at a minimum:

- We very much need video confirmation of the status of the property and work supposedly

done thus far. Such a video should be continuous without interruption, cutting, nor momentary obscuration and should originate from the curb of the property, clearly capturing not only the address of the property but also those of the adjacent houses as well. We all, and especially Brad and I as investors, should be able to call for and see this. The second contractor that you've asked to visit the property ought to be able to provide this; however, if he can't, or for any other reason, I can easily arrange to have another third-party attend the walk-through and take such a video. Worst case, I myself, would like to walk through the property and would make the necessary arrangements to do so. Again, though, a video as described ought to be acceptable and sufficient.

- Derek should be asked to produce an itemized list of what still needs to be done as well as a timeline for completing each remaining item.

Please let me know about the above plan additions, and I look forward to hearing from you.

I hope that all was well in Portland—many fires, many pokers.

kindly,

Jay

On Sun, Jan 7, 2018 at 5:59 PM, Brian Mineau <Brian.t.mineau@hotmail.com> wrote:

Good evening sir,

Thank you for the kind words Jay and to you as well!

I appreciate your response and thoughts on the matter. While as of date I wouldn't say the project has been a smashing success, I also wouldn't call it a failure. In real estate, projects more often than not, don't go according to "plan" and as of yet we haven't lost anything. If you do not want to assume the property, then I would say we are in this together and will see it to its end.

I am having another contractor visit the site when Derek is supposed to be there this week and will get a report first hand and then we can make an educated decision to continue or pursue legal action against Derek from there. If it comes to that or I don't like the report I will fly back there myself next week. I was going to go this week but other unforeseen events have drawn me to Portland as of Tuesday morning.

As always I will keep you apprised of any new information.

v/r

Brian Mineau

From: Jay Kvam <kvam.jay@gmail.com>
Sent: Sunday, December 31, 2017 9:58 AM
To: Brian Mineau
Subject: Fwd: May Street

Good morning, Brian,

Please see the letter attached. I look forward to hearing your response.

Until then, happy new year, Brian. May 2018 usher in positive changes for your and your family and be adorned by the realization of the goals that you've set for yourself.

sincerely,

Jay

---------- Forwarded message ----------
From: **Jay Kvam** <kvam.jay@gmail.com>
Date: Thu, Dec 28, 2017 at 11:17 AM
Subject: Re: May Street
To: Brian Mineau <brian.t.mineau@hotmail.com>
Cc: "Bradley T." <wisted@gmail.com>, Michael Spinola <imagemker@gmail.com>

Good morning, Brian,

Thanks for the reply; much appreciated.

I did see the link that you included, yet it was to the previous listing of the property and the photo taken before we acquired it; taken back in December of 2015 ... Did you mean to upload a different photo perhaps?

More importantly than the exterior in my mind is the interior. I strongly believe that Derek ought to provide photos of the entire interior of the property; we haven't seen anything since May or so. Really, I can't imagine that not having already been ongoing over the course of the entire project, but regardless, he should be able to do that promptly and without excuse. It couldn't possibly take more than an hour on site to photo-document the work that he claims to have done, so there really shouldn't be any reason for delay in his providing those today, by tomorrow, or, at the latest, Saturday.

thanks,

Jay

On Thu, Dec 28, 2017 at 10:56 AM, Brian Mineau <Brian.t.mineau@hotmail.com> wrote:

> Good morning Team,
>
> As you can see the windows and roof are brand new and they boarded up the inside windows like I explained. The back porch is not to code and is going to be removed at the end of the project because right now they are using it to cut material out of the snow/rain. All is well with me just been focusing on the bigger fish(Tahoe) as I have more control on that and I can't control the weather/city in Chicago. None the less it will be wrapped shortly, I can order Derek to remove the back porch for example regardless of what they are using it for and the boards from the windows if we would like. I promise I am okay with handing it over to you and Brad if you both feel more comfortable with complete control of that project and since you both of the majority of the capital in it its only fair. I will continue to ride Derek until I hear otherwise from either of you.
>
> v/r
>
> Brian Mineau
>
> **From:** Jay Kvam <kvam.jay@gmail.com>
> **Sent:** Tuesday, December 26, 2017 9:35 AM
> **To:** Brian Mineau
> **Cc:** Bradley T.; Michael Spinola
> **Subject:** Re: May Street

Good morning, Brian,

I hope that you and your family had a pleasant Christmas as well.

Thank you for the update, first and foremost! I really appreciate the reply, as I, at least, was wondering whether all was well with you.

As we hadn't heard from you for quite a while, I did take it upon myself to try to get some additional insight into the state of the property. I found someone who was able and willing to snap some photos of the exterior of the house. Despite Derek's latest assurances though, the property does not look good. To me, it looks clearly nowhere near being list-ready. Comparing Photo 2 to the second photo of the property on realtor.com—taken in December of 2015—shows that it's actually in much worse shape now than 2 years ago:
Find Real Estate, Homes for Sale, Apartments & Houses for Rent - realtor.com®

realtor.com

Search real estate property records, houses, condos, land and more on

realtor.com

®. Find property info from the most comprehensive source of home data online.

https://www.realtor.com/realestateandhomes-detail/7747-S-May-St_Chicago_IL_60620_M70264-19539#photo1

7747 S May St, Chicago, IL 60620 - realtor.com®

www.realtor.com

View 20 photos for

7747 S May St, Chicago, IL 60620

a bed, 2 bath, 1,056

Sq

. Ft. single_family built in 1915 that sold on 03/15/2017.

The same appears to be the case for the little room at the back of the house and the stairs into it.

I'm very glad that you've requested photos of the entire project from Derek; that's a good call. Nevertheless, judging from the photos that I've seen, the state of the property does not appear good. Based on them, I can only conclude that he has grossly exaggerated his progress.

sincerely,

Jay

On Tue, Dec 26, 2017 at 9:07 AM, Brian Mineau <Brian.t.mineau@hotmail.com> wrote:

> Good morning Gentleman,
>
> Hope everyone had a Merry Christmas. Good thinking Brad, I spoke with Derek about what your friend found and he said the place isn't condemned, he said it has new windows and a new room and everything is basically complete. He said they did take the appliances and a few items out of the house while they waited to ensure they didn't get stolen and they placed sheets and boards over the inside of some of the windows to stop people from peeking in as well. None the less i have requested updated photos and i have asked Harley (my attorney) to draft a letter in regards to Derek's continued delay.
>
> I understand both of your frustrations, I am frustrated as well. No one has lost any capital yet nor will they. I understand the frustration of having capital tied up longer than planned, believe me. If you both would like I can sign the property over to you two since you have the majority of the capital in May Street and you can go with a new contractor for the final items and then split the profit between the two of you.

v/r

Brian Mineau

From: Bradley T. <wisted@gmail.com>
Sent: Wednesday, December 20, 2017 11:35 AM
To: Jay Kvam; Brian Mineau; Michael Spinola
Subject: Re: May Street

Hey guys,

I realized I have quite a few contacts left in Chicago so I had an old college buddy drive by and take a peek at the S. May St. house. He didn't grab any pics for me as it was close to dusk when he drove by, but he said it's not looking good. Pretty bad actually. He described it as kind of "condemned looking". Perhaps we should have some actual photos of the property produced at this stage?

On Dec 17, 2017 12:49 PM, "Bradley T." <wisted@gmail.com> wrote:

> Do we know anyone in Chicago other than Derek right now who could supply us with actual photo evidence? That might be a good idea, as I have no faith whatsoever in Derek either. I know I only have $20,000 tied up over there, but I intend to get every cent of it back, and I'm quite concerned at this moment too. I definitely agree with Jay on this one.
>
> On Dec 17, 2017 9:34 AM, "Jay Kvam" <kvam.jay@gmail.com> wrote:
>
>> Good morning, Brian,
>>
>> I'm writing this morning with regard to May Street. As we haven't had any updates for a few weeks now, I can only assume that Derek has, yet again, failed to perform and deliver on time. To be perfectly honest, at this point, I'm quite concerned that Derek is and has been just leading us on with this project. He wouldn't be the first contractor to do so. And, to be frank, I, for one, had lost most of my confidence in him a number of months ago, after he completely abandoned the project to visit an "ailing grandfather", or so the story went, and then supposedly suffered a heart attack.
>>
>> Until now, I've deferred to your judgment in retaining him for the work on May Street, but at this point, I fear that he's defrauded us. The project is now *many* months past the original, estimated flip plan of about 5-6 months, and Derek seems to continue to fail to perform. Has he been providing you photos of the work at May that demonstrate progress to your satisfaction? Even though you're the lead for the project, it sure would be good to see those photos ourselves, so that we can all be reassured of the progress and the present state of the property.

If, however, Derek hasn't been providing photo evidence of his work but instead just providing you verbal updates, then I *really* think that it's time for you to firmly insist on photos of the entire project. And, then, if the photos do not reflect his description of the project, to hold him accountable. Holding him accountable could take the form of insisting that he return the funds that he received but for work not done, or, if necessary, even filing a claim against his contractor's insurance to recover them.

sincerely,

Jay

On Sun, Nov 19, 2017 at 8:22 PM, Bradley Tammen <bradley@atlas-investors-southside-llc.com> wrote:

> So good to hear! Thanks for the update Brian!
>
> On Nov 19, 2017 8:11 PM, "Jay Kvam" <kvam.jay@gmail.com> wrote:
>
>> Awesome, Brian; I'm so glad to hear this news which now really seems to be homing in on a listing. We even have a target date
>>
>> Kudos for all that you're doing to nudge this along and past the finish line; I truly appreciate it.
>>
>> Much thanks for the update, and have a good night!
>>
>> kindly,
>>
>> Jay Kvam
>>
>> : kvam.jay@gmail.com
>>
>> : +1 (775) 434-8230
>>
>> On Sun, Nov 19, 2017 at 8:07 PM, Brian Mineau <Brian.t.mineau@hotmail.com> wrote:
>>
>>> Good evening everyone,

I was waiting to speak with Derek after he met with the subs that have to fix the remaining items on Friday. We spoke this morning and he said they will be done in 14-17 days from tomorrow, they outlined everything and figured out the changes that need to be made it is going to cost an additional 2k however Derek is going to eat that cost because of the delay caused from him getting sick and not appointing someone to cover down. I told him that I plan on having an agent come to the property to list no later than the 8th of December and he said it would be done.

I am not going to use either of the last two agents I used on any of my other properties because they have all had issues with Derek and I think it would be wise to bring in an outside male agent to handle the listing of this property. I will send out weekly emails until we get on the market.

Thank you for everyone's patience's and we are almost out of Chicago and their

corruption and we
can focus on an
area were we will
have better control.
Have a good
evening everyone!

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 32

INSPECTION #12270203 REPORT OF AUGUST 7, 2019

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

Exhibit 32

INSPECTION #12270203 REPORT OF AUGUST 7, 2019

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

CITY OF CHICAGO

Building Inspection Detail

Report Date 08/07/2019 09:17 AM **Submitted By**

Inspection # 12270203 **A/P #** 100709900 **Insp Type** EL_PERMITELECTRICAL PERMIT INSPECTION **#** 1

Property Information

Address 7747 S MAY ST
CHICAGO IL 60620-
Location

Application Information

Type EL_PERM PERMIT - ELECTRIC WIRING **Priority** EL01 **Square Footage** 0.00
Type of Work **Dept of Commerce** **A/P Name**
Desc of Work INSTALL A 100 AMP 32 CIRCUIT PANEL ON EXISTING METER AND RISER NEW PIPING WITH WIRE THROUGHOUT HOUSE

Initial Inspection

Call Date/Time ☒ **System Generated** **Assigned To** UNASSIGNED
Schedule Date/Time **Order/Group** 0 **Preference**
☐ **Waived**
Location

Inspection Results

Inspected By 252716 **Same Trip as Insp #** 0 **Actual Time** 0.00
Start Date/Time 07/17/2017 00:00 **Odometer Start** 0 ☒ **Partial Inspection**
Completed Date/Time 07/17/2017 00:00 **Odometer Stop** 0 **Status** Partial Passed

Comments
Rough ok provide smoke detectors by the bedroom. Provide light and switch over the kitchen sinks, also grounding bushing on the service conduits.

Code Violations

No Code Violation

Conditions

No Conditions

History

Inspection # 12270203 **Inspection Type** EL_PERMIT ELECTRICAL PERMIT INSPECTION **#** 1 **Status** Partial Passed ☐ **Waived**
Inspected By 252716 **Order/Group** 0 **Scheduled** **Started** 07/17/2017 00:00 **Completed** 07/17/2017 00:00
Location
Comments
Rough ok provide smoke detectors by the bedroom. Provide light and switch over the kitchen sinks, also grounding bushing on the service conduits.

Inspection # 12291780 **Inspection Type** EL_PERMIT ELECTRICAL PERMIT INSPECTION **#** 2 **Status** No Action ☐ **Waived**
Inspected By **Order/Group** 0 **Scheduled** **Started** **Completed**
Location
Comments

Activity Review Details

Detail SUBMISSIONS RECORD **Modified By** WEB **Modified Date/Time** 06/08/2017 21:45
Comments
No Comments

Submitted Forms

Forms/Certificates/Schedules/Other Applications Received During the Review

Submissions

ID#	SUBMITTED ITEM	DATE	BY	COMMENTS
1	CERTIFICATE RESPONSIBILITY FORM	06/08/2017 21:45	WEB	CERTIFICATE RESPONSIBILITY FRM
2	CERTIFICATION STATEMENT	06/08/2017 21:45	WEB	CERTIFICATION STATEMENT

Inspection Details

Detail ADDITIONAL INSPECTORS **Modified By** **Modified Date/Time**
Comments
No Comments

Detail COMPLAINT INFO **Modified By** **Modified Date/Time**
Comments
No Comments

Detail EL_DEFECTS/RECOMMEND_AP **Modified By** **Modified Date/Time**
Comments
No Comments

Detail INSPECTION LIFE CYCLE **Modified By** BL00600 **Modified Date/Time** 07/18/2017 07:30
Comments
No Comments

Inspect Life Cycle

	Number	Dir	Street Name	Suffix	
Inspection Address	7747	S	MAY	ST	**Notice Type**

By Whom **HMS Inspection?** N

Inspection Created 06/08/2017 WEB **To Whom**

Assigned to Inspector

Inspected 07/17/2017 252716 **Change History Grid Count** 7

Received by Supervisor for Review ☐

Data Entered 07/18/2017 BL00600

Received by Production Management ☐

AH/CRT Case or Notice Printed **Print Error?**

Paper Inspection Located (non-HMS only) ☐

Proof of Service - Sent to AH/Court ☐

Received By AH/Court ☐

AH Date **Court Date**

AH or Court Status

Change History Grid

Date	By	Field	Old Value	New Value
07/18/2017	BL00600	INSPECT		17-JUL-17
07/18/2017	BL00600	WINSPECT		252716
07/18/2017	BL00600	DATAEN		18-JUL-17
07/18/2017	BL00600	WDATAEN		BL00600

Change History Grid

Date	By	Field	Old Value	New Value
06/08/2017	WEB	WINSPCR		WEB
06/08/2017	WEB	INSPCR		08-JUN-17
06/08/2017	WEB	HMS		N

Detail PORCH - DECK CHECKLIST **Modified By** **Modified Date/Time**

Comments

No Comments

Detail PORCH/DECK CHECKLIST **Modified By** **Modified Date/Time**

Comments

No Comments

Electrical Data

Building Info

Bldg Area 0

 # Stories 1

ConstType ELONLY

# of Dwelling Units 1

Office WEB

Insp District

Working On:

Ticket #

Prev ICN # 0

 # Rooms 4 **# Floors** 2

☐ Highrise
☐ Exit Lighting
☐ Fire Alarms
☐ EM System

Outlets on Existing Circuits

Lighting Type	Qty
INCAND	12
Receptacle	20

Branch Circuits

Amp	#1Ph	#3Ph
15A	0	0
20A	0	0
>20A	0	0

☐ Swimming Pool **# of Swimming Pools** 0

☐ Required Maint. ☐ Parking Lot **Size of Parking Lot** 0 **(Sq Ft)**

0 **# of Services Being Maintained**

Occupancy Type

ID	Occupancy Type
1	A1

Services

ID	Service Type	# Svcs	Volts/PH/W	Amps	Electric Heat ONLY (kw)

There are no items in this list

Power Equipment

ID#	Power Equip Type	# Units	Total HP/VA

There are no items in this list

Data/Comm/Low Voltage Systems

ID#	Data/Com/LV Type	# Data/Com/LV Units

There are no items in this list

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

Exhibit 33

INSPECTION #12274840 REPORT OF AUGUST 7, 2019

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

Exhibit 33

INSPECTION #12274840 REPORT OF AUGUST 7, 2019

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

CITY OF CHICAGO

Building Inspection Detail

Report Date 08/07/2019 09:19 AM Submitted By

Inspection # 12274840 A/P # 100707950 Insp Type EL_PERMITELECTRICAL PERMIT INSPECTION # 1

Property Information

Address 7747 S MAY ST
CHICAGO IL 60620-
Location

Application Information

Type RENO_PERM PERMIT - RENOVATION/ALTERATIONPriority Square Footage 0.00
Type of Work Dept of Commerce A/P Name
Desc of Work INTERIOR ALTERATION OF SINGLE FAMILY RESIDENCE. ARCHITECTURAL, MECHANICAL, PLUMBING AND ELECTRICAL INVOLVED

Initial Inspection

Call Date/Time ☒ System Generated Assigned To UNASSIGNED
Schedule Date/Time Order/Group 0 Preference
☐ Waived
Location

Inspection Results

Inspected By 252716 Same Trip as Insp # 0 Actual Time 0.00
Start Date/Time 07/17/2017 00:00 Odometer Start 0 ☒ Partial Inspection
Completed Date/Time 07/17/2017 00:00 Odometer Stop 0 Status Partial Passed

Comments
Change of electrical contractor refer to permit 100709900.

Code Violations

No Code Violation

Conditions

No Conditions

History

Inspection # 12274840 Inspection Type EL_PERMIT ELECTRICAL PERMIT INSPECTION # 1 Status Partial Passed ☒ Waived
Inspected By 252716 Order/Group 0 Scheduled Started 07/17/2017 00:00 Completed 07/17/2017 00:00
Location
Comments
Change of electrical contractor refer to permit 100709900.

Inspection # 12291785 Inspection Type EL_PERMIT ELECTRICAL PERMIT INSPECTION # 2 Status No Action ☐ Waived
Inspected By Order/Group 0 Scheduled Started Completed
Location
Comments

Inspection # 12274843 Inspection Type NC_PERMIT DOB NEW CONSTRUCTION INSP # 1 Status Closed ☐ Waived
Inspected By 371002 Order/Group 0 Scheduled Started 03/15/2019 00:00 Completed 03/15/2019 00:00
Location
Comments
SR191013329. REVOKED. WORK ABANDONED FOR 12 MONTHS. INSP.#371002 E.R.

Inspection # 12288430 Inspection Type PL_PERMIT DOB PLUMBING INSPECTION # 1 Status Partial Passed ☒ Waived
Inspected By 400200 Order/Group 0 Scheduled 07/11/2017 07:29 Started 07/11/2017 07:29 Completed 07/11/2017 07:29
Location
Comments
ug/rough w/w/v approved kr400200

History

Inspection # 12288432 Inspection Type PL_PERMIT DOB PLUMBING INSPECTION # 2 Status No Action ☐ Waived
Inspected By Order/Group 0 Scheduled Started Completed
Location
Comments

Inspection # 12274841 Inspection Type VT_PERMIT DOB VENT/FURNACE INSPECTION # 1 Status No Action ☐ Waived
Inspected By UNASSIGNED Order/Group 0 Scheduled Started Completed
Location
Comments

Inspection # 12274842 Inspection Type WT_PERMIT WATER DEPT PERMIT INSPECTION # 1 Status No Action ☐ Waived
Inspected By UNASSIGNED Order/Group 0 Scheduled Started Completed
Location
Comments

Activity Review Details

Detail APPL-STD SUBMISSION DTLS-RENO Modified By WEB Modified Date/Time 05/29/2017 23:11
Comments
No Comments

Appl Information

Permit Type RES Condo N Landmark GIS Impact Footprint #
Scope INTERIOR BUILDOUT Vacant Lot? ☐ Check Box Cust Project #
Const Class 3B Front/Rear Permanent N Cust Project Name
# of Units worked on: # Parking Spc 0 Planned Urban #
Dwelling 1 # Loading Spc 0 Capital Impr Proj #
Commercial 0 Parking Lot and/or Intergov Proj? N Agency
Stories 2 Garage Area 0 Finished Building Dimensions
Basements 0 Fence Length 0 Rectangular Length 0 Bsmnt Area 0
Wind Turbine? N
# of Fences/Trash Encl. 0 Excavation Req'd N Width 0 Bldg Area 2294
New/existing FoundationDepth Bldg Height (ft) 20 Bldg Vol 22940
Sprinkler System?
Partial Demolition Req'd?(Y/N) N
Wrecking permit applied for? Y
Wrecking permit # 100701458
Fire Loss N Residential De-Conversion N
% Fire Loss 0 Altering Structure, Elect or Fire Sep
Airport Construction
At: Area 0 sqft

Existing Legal Occup Code
Existing OccTypes

A1

New Occupancy Codes
New OccTypes

A1

Other Construction Types
Other Const Types # antenna/equip cabinets

There are no items in this list

Garage Information
Garage Info

There are no items in this list

Detail CERTIFICATE OF OCCUPANCY DETA **Modified By** WEB **Modified Date/Time** 05/29/2017 23:11

Comments

No Comments

Cert of Occupancy

Dept. of Construction and Permits section:

N **Is this the new construction of a multiple dwelling of four or more units; a non-residential building over 4,000 square feet; an Institutional occupancy; OR an Assembly occupancy?**

N **Is this work being done in an existing building resulting in a change of occupancy as defined by Municipal Code 13-56; a non-residential alteration exceeding $400,000 in estimated or actual cost; OR any work being done in an existing Institutional or Assembly occupancy?**

N **Is this the rehabilitation or enlargement of a multiple dwelling of four or more units that requires more one subcontractor?**

Dept. of Buildings section:

FULL

☐ Admin Required CofO ☐ Fire Ltr Rcv'd ☐ Child App Inspections Verified

Applied for date ☐ Zoning Ltr Rcvd **Certificate printed**

☐ Final Inspections Passed/Verified ☐ Back Flow Report **Approved By/Date**

PARTIAL

TEMPORARY

Partial Occupancy

Num	Applied Dt	Units	Floors	Fire Ltr Rcv'd	Zone Ltr Rcv'd	Approved By	Approved Dt	Comments

There are no items in this list

Temporary Occupancy

Num	Applied Dt	Begin Date/Time	End Date/Time	Location	Approved By	Approve Date

There are no items in this list

Detail ELECTRICAL SCHEDULE - RENO **Modified By** WEB **Modified Date/Time** 05/29/2017 23:11

Comments

No Comments

Electrical Data

Buiding Info

Bldg Area 0 **Office**

 # Stories 0 **Insp District**

Occ Type **Ticket #**

ConstType **Prev ICN #** 0

Working On:

 # Rooms 0 **# Floors** 0

☐ Highrise
☐ Req'd Maint.
☐ Exit Lighting
☐ Fire Alarms
☐ EM System
☐ Swimming Pool
☐ Tech Center

Outlets on Existing Circuits

Lighting Type	Qty
	0
Receptacle	0

Branch Circuits

Amp	#1Ph	#3Ph
15A	0	0
20A	0	0
>20A	0	0

Services

ID	Service Type	# Svcs	Volts/PH/W	Amps	Electric Heat ONLY (kw)

There are no items in this list

Power Equipment

ID#	Power Equip Type	# Units	Total HP/VA

There are no items in this list

Data/Comm/Low Voltage Systems

ID#	Data/Com/LV Type	# Data/Com/LV Units

There are no items in this list

Detail HEAT & MECH VENT SCHEDULE **Modified By** WEB **Modified Date/Time** 05/29/2017 23:11

Comments

No Comments

Heat/Vent Detail

☐ Exempt **Exempt Reason :**

Supply Equipment **Annual Y/N** **Priority**3 **Total CFM** 0

Exhaust Equipment

Heating Equipment ☐ Duct Extension Required?-Quantity: 0

Supply Vent Equipment

ID#	No Units	Unit/Fan tag#	Equipment Type	Manufacturer	Model #	RPM	Type of Heat
Air Condition Equipment		Location of Equipment					
Location Supplied							
Plan CFM	Ordinance Rated CFM	Rated BTU out/hr	Duct Size Out Air Intake	Unit of Measure for Duct			
Sq Ft of Loc Served	Equipment Status						

There are no items in this list

Exhaust Equipment

ID#	No Units	Unit/Fan tag#	Exhaust From Location	Manufacturer
Model #	Equipment Location	RPM	Fan Type	Type of Discharge	Plan CFM	Ordinance Rated CFM
Sq Feet Served	Termination Duct Loc	Area of Discharge Duct	Unit of Measure	Equipment Status

There are no items in this list

Furnace/Heater Equipment

ID#	No Units	Equipment Type	Manufacturer	Model #	Location of Units	Location Served	Use of Space
Fuel Burning Type	Calc BTU Heat Loss/Hr	BTU Input/hr	Rated BTU Output/Hr	Basis for Calculation			
Flue Efficiency	Flue Size	Flue Type	Flue New/Existing	Flue Location	Equipment Status		

1	1	RESIDENTIAL		BASEMENT		HOUSE	
			76000	0	93000	C OF CHIC	
		0					

Detail PLUMBING SCHEDULE **Modified By** WEB **Modified Date/Time** 05/29/2017 23:11

Comments

No Comments

Plumbing Schedule

Plumbing Fixture List

Water Heater List

N **Apply Drainage or Miscellaneous Fee or Removal of fixtures only ($70)?**

Plumbing Fixture Equipment

ID#	Fixture Type	Model #	# New Fixtures	# Replaced Fixtures	Install Location
1	WATER CLOSETS		1	1	BATHROOMS
2	BATHTUBS		1	1	BATHROOMS
3	LAVATORIES		1	1	BATHROOMS
4	KITCHEN SINK		0	1	KITCHEN

Water Heater Information

ID#	# of Units	Manufacturer	Model #	Tank Size In Gallons	Fuel Type	Location of Unit
1	1			40	NATURL	

Detail SUBMISSIONS RECORD **Modified By** WEB **Modified Date/Time** 05/29/2017 23:33

Comments

No Comments

Submitted Forms

Forms/Certificates/Schedules/Other Applications Received During the Review

Submissions

ID#	SUBMITTED ITEM	DATE	BY	COMMENTS
1	CERTIFICATION STATEMENT	05/29/2017 23:33	WEB	CERTIFICATION STATEMENT
2	ALDERMANIC ACKNOWLEDGEMENT LETTER	05/29/2017 23:33	WEB	ALDERMANIC ACKNOWLEDGEMENT
3	CERTIFICATE OF INSURANCE FOR QUALIFIED ARCHITECT	05/29/2017 23:33	WEB	CERT OF INS FOR QUAL ARCHITECT

Submissions

ID#	SUBMITTED ITEM	DATE	BY	COMMENTS
4	OWNER/TENANT CERTIFICATION STATEMENT	05/29/2017 23:33	WEB	OWNER/TENANT CERT STATEMENT
5	PROFESSIONAL OF RECORD SELF CERT STATEMENT	05/29/2017 23:33	WEB	PROF OF RCRD SC STATEMENT
6	HOLD HARMLESS LETTER	05/29/2017 23:33	WEB	HOLD HARMLESS LETTER
7	MOPD-IAC	05/29/2017 23:33	WEB	ILLINOIS ACCESSIBILITY CODE
8	PROPERTY PIN AGREEMENT	05/29/2017 23:33	WEB	PROPERTY PIN AGREEMENT

Inspection Details

Detail ADDITIONAL INSPECTORS **Modified By** **Modified Date/Time**
Comments
No Comments

Detail COMPLAINT INFO **Modified By** **Modified Date/Time**
Comments
No Comments

Detail INSPECTION LIFE CYCLE **Modified By** BL00600 **Modified Date/Time** 07/18/2017 07:32
Comments
No Comments

Inspect Life Cycle

	Number	Dir	Street Name	Suffix
Inspection Address	7747	S	MAY	ST

Notice Type

Inspection Created 06/16/2017 **By Whom** BULKSTAGE **HMS Inspection?** N

To Whom

Assigned to Inspector

Inspected 07/17/2017 252716 **Change History Grid Count** 7

Received by Supervisor for Review ☐

Data Entered 07/18/2017 BL00600

Received by Production Management ☐

AH/CRT Case or Notice Printed **Print Error?**

Paper Inspection Located (non-HMS only) ☐

Proof of Service - Sent to AH/Court ☐

Received By AH/Court ☐

AH Date **Court Date**

AH or Court Status

Change History Grid

Date	By	Field	Old Value	New Value
07/18/2017	BL00600	INSPECT		17-JUL-17
07/18/2017	BL00600	WINSPECT		252716
07/18/2017	BL00600	DATAEN		18-JUL-17

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

Exhibit 34

INSPECTION #12288430 REPORT OF AUGUST 7, 2019

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

Exhibit 34

INSPECTION #12288430 REPORT OF AUGUST 7, 2019

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

CITY OF CHICAGO

Building Inspection Detail

Report Date 08/07/2019 09:41 AM **Submitted By**

Inspection # 12288430 **A/P #** 100707950 **Insp Type** PL_PERMITDOB PLUMBING INSPECTION **#** 1

Property Information

Address 7747 S MAY ST
CHICAGO IL 60620-
Location

Application Information

Type RENO_PERM PERMIT - RENOVATION/ALTERATION **Priority** **Square Footage** 0.00
Type of Work **Dept of Commerce** **A/P Name**
Desc of Work INTERIOR ALTERATION OF SINGLE FAMILY RESIDENCE. ARCHITECTURAL, MECHANICAL, PLUMBING AND ELECTRICAL INVOLVED

Initial Inspection

Call Date/Time ☐ **System Generated** **Assigned To** 400200
Schedule Date/Time 07/11/2017 07:29 **Order/Group** 0 **Preference**
☐ **Waived**
Location

Inspection Results

Inspected By 400200 **Same Trip as Insp #** 0 **Actual Time** 0.00
Start Date/Time 07/11/2017 07:29 **Odometer Start** 0 ☒ **Partial Inspection**
Completed Date/Time 07/11/2017 07:29 **Odometer Stop** 0 **Status** Partial Passed

Comments
ug/rough w/w/v approved kr400200

Code Violations

No Code Violation

Conditions

No Conditions

History

Inspection # 12274840 **Inspection Type** EL_PERMIT ELECTRICAL PERMIT INSPECTION **#** 1 **Status** Partial Passed ☐ **Waived**
Inspected By 252716 **Order/Group** 0 **Scheduled** **Started** 07/17/2017 00:00 **Completed** 07/17/2017 00:00
Location
Comments
Change of electrical contractor refer to permit 100709900.

Inspection # 12291785 **Inspection Type** EL_PERMIT ELECTRICAL PERMIT INSPECTION **#** 2 **Status** No Action ☐ **Waived**
Inspected By **Order/Group** 0 **Scheduled** **Started** **Completed**
Location
Comments

Inspection # 12274843 **Inspection Type** NC_PERMIT DOB NEW CONSTRUCTION INSP **#** 1 **Status** Closed ☐ **Waived**
Inspected By 371002 **Order/Group** 0 **Scheduled** **Started** 03/15/2019 00:00 **Completed** 03/15/2019 00:00
Location
Comments
SR191013329. REVOKED. WORK ABANDONED FOR 12 MONTHS. INSP.#371002 E.R.

Inspection # 12288430 **Inspection Type** PL_PERMIT DOB PLUMBING INSPECTION **#** 1 **Status** Partial Passed ☐ **Waived**
Inspected By 400200 **Order/Group** 0 **Scheduled** 07/11/2017 07:29 **Started** 07/11/2017 07:29 **Completed** 07/11/2017 07:29
Location
Comments
ug/rough w/w/v approved kr400200

History

Inspection # 12288432 Inspection Type PL_PERMIT DOB PLUMBING INSPECTION # 2 Status No Action ☐ Waived
Inspected By Order/Group 0 Scheduled Started Completed
Location
Comments

Inspection # 12274841 Inspection Type VT_PERMIT DOB VENT/FURNACE INSPECTION # 1 Status No Action ☐ Waived
Inspected By UNASSIGNED Order/Group 0 Scheduled Started Completed
Location
Comments

Inspection # 12274842 Inspection Type WT_PERMIT WATER DEPT PERMIT INSPECTION # 1 Status No Action ☐ Waived
Inspected By UNASSIGNED Order/Group 0 Scheduled Started Completed
Location
Comments

Activity Review Details

Detail APPL-STD SUBMISSION DTLS-RENO Modified By WEB Modified Date/Time 05/29/2017 23:11
Comments
No Comments

Appl Information

Permit Type RES Condo N Landmark GIS Impact Footprint #
Scope INTERIOR BUILDOUT Vacant Lot? ☐ Check Box Cust Project #
Const Class 3B Front/Rear Permanent N Cust Project Name
# of Units worked on: # Parking Spc 0 Planned Urban #
Dwelling 1 # Loading Spc 0 Capital Impr Proj #
Commercial 0 Parking Lot and/or Intergov Proj? N Agency
Stories 2 Garage Area 0 Finished Building Dimensions
Basements 0 Fence Length 0 Rectangular Length 0 Bsmnt Area 0
Wind Turbine? N
# of Fences/Trash Encl. 0 Excavation Req'd N Width 0 Bldg Area 2294
New/existing FoundationDepth Bldg Height (ft) 20 Bldg Vol 22940
Sprinkler System?
Partial Demolition Req'd?(Y/N) N
Wrecking permit applied for? Y
Wrecking permit # 100701458
Fire Loss N Residential De-Conversion N
% Fire Loss 0 Altering Structure, Elect or Fire Sep
Airport Construction
At: Area 0 sqft

Existing Legal Occup Code / Existing OccTypes

A1

New Occupancy Codes / New OccTypes

A1

Other Construction Types / Other Const Types

antenna/equip cabinets

There are no items in this list

Garage Information
Garage Info

There are no items in this list

Detail CERTIFICATE OF OCCUPANCY DETA **Modified By** WEB **Modified Date/Time** 05/29/2017 23:11

Comments

No Comments

Cert of Occupancy

Dept. of Construction and Permits section:

N **Is this the new construction of a multiple dwelling of four or more units; a non-residential building over 4,000 square feet; an Institutional occupancy; OR an Assembly occupancy?**

N **Is this work being done in an existing building resulting in a change of occupancy as defined by Municipal Code 13-56; a non-residential alteration exceeding $400,000 in estimated or actual cost; OR any work being done in an existing Institutional or Assembly occupancy?**

N **Is this the rehabilitation or enlargement of a multiple dwelling of four or more units that requires ~~more~~ one subcontractor?**

Dept. of Buildings section:

FULL

☐ Admin Required CofO ☐ Fire Ltr Rcv'd ☐ Child App Inspections Verified

Applied for date ☐ Zoning Ltr Rcvd **Certificate printed**

☐ Final Inspections Passed/Verified ☐ Back Flow Report **Approved By/Date**

PARTIAL

TEMPORARY

Partial Occupancy

Num	Applied Dt	Units	Floors
Fire Ltr Rcv'd	Zone Ltr Rcv'd	Approved By	Approved Dt	Comments

There are no items in this list

Temporary Occupancy

Num	Applied Dt	Begin Date/Time	End Date/Time	Location	Approved By	Approve Date

There are no items in this list

Detail ELECTRICAL SCHEDULE - RENO **Modified By** WEB **Modified Date/Time** 05/29/2017 23:11

Comments

No Comments

Electrical Data

Buiding Info

Bldg Area 0 **Office**

 # Stories 0 **Insp District**

Occ Type **Ticket #**

ConstType **Prev ICN #** 0

Working On:

 # Rooms 0 **# Floors** 0

☐ Highrise
☐ Req'd Maint.
☐ Exit Lighting
☐ Fire Alarms
☐ EM System
☐ Swimming Pool
☐ Tech Center

Outlets on Existing Circuits

Lighting Type	Qty
	0
Receptacle	0

Branch Circuits

Amp	#1Ph	#3Ph
15A	0	0
20A	0	0
>20A	0	0

Services

ID	Service Type	# Svcs	Volts/PH/W	Amps	Electric Heat ONLY (kw)

There are no items in this list

Power Equipment

ID#	Power Equip Type	# Units	Total HP/VA

There are no items in this list

Data/Comm/Low Voltage Systems

ID#	Data/Com/LV Type	# Data/Com/LV Units

There are no items in this list

Detail HEAT & MECH VENT SCHEDULE **Modified By** WEB **Modified Date/Time** 05/29/2017 23:11

Comments

No Comments

Heat/Vent Detail

☐ Exempt **Exempt Reason :**

Supply Equipment **Annual Y/N** **Priority**3 **Total CFM** 0

Exhaust Equipment

Heating Equipment ☐ Duct Extension Required?-Quantity: 0

Supply Vent Equipment

ID#	No Units	Unit/Fan tag#	Equipment Type	Manufacturer	Model #	RPM	Type of Heat
Air Condition Equipment		Location of Equipment					
Location Supplied							
Plan CFM	Ordinance Rated CFM		Rated BTU out/hr		Duct Size Out Air Intake	Unit of Measure for Duct	
Sq Ft of Loc Served	Equipment Status						

There are no items in this list

Exhaust Equipment

ID#	No Units	Unit/Fan tag#	Exhaust From Location			Manufacturer
Model #	Equipment Location		RPM	Fan Type	Type of Discharge	Plan CFM	Ordinance Rated CFM
Sq Feet Served	Termination Duct Loc			Area of Discharge Duct	Unit of Measure	Equipment Status	

There are no items in this list

Furnace/Heater Equipment

ID#	No Units	Equipment Type	Manufacturer	Model #	Location of Units	Location Served	Use of Space
Fuel Burning Type		Calc BTU Heat Loss/Hr		BTU Input/hr	Rated BTU Output/Hr	Basis for Calculation	
Flue Efficiency		Flue Size	Flue Type	Flue New/Existing	Flue Location	Equipment Status	
1	1	RESIDENTIAL			BASEMENT	HOUSE	
			76000	0	93000	C OF CHIC	
		0					

Detail PLUMBING SCHEDULE **Modified By** WEB **Modified Date/Time** 05/29/2017 23:11

Comments

No Comments

Plumbing Schedule

Plumbing Fixture List

Water Heater List

N **Apply Drainage or Miscellaneous Fee or Removal of fixtures only ($70)?**

Plumbing Fixture Equipment

ID#	Fixture Type	Model #	# New Fixtures	# Replaced Fixtures	Install Location
1	WATER CLOSETS		1	1	BATHROOMS
2	BATHTUBS		1	1	BATHROOMS
3	LAVATORIES		1	1	BATHROOMS
4	KITCHEN SINK		0	1	KITCHEN

Water Heater Information

ID#	# of Units	Manufacturer	Model #	Tank Size in Gallons	Fuel Type	Location of Unit
1	1			40	NATURL	

Detail SUBMISSIONS RECORD **Modified By** WEB **Modified Date/Time** 05/29/2017 23:33

Comments

No Comments

Submitted Forms

Forms/Certificates/Schedules/Other Applications Received During the Review

Submissions

ID#	SUBMITTED ITEM	DATE	BY	COMMENTS
1	CERTIFICATION STATEMENT	05/29/2017 23:33	WEB	CERTIFICATION STATEMENT
2	ALDERMANIC ACKNOWLEDGEMENT LETTER	05/29/2017 23:33	WEB	ALDERMANIC ACKNOWLEDGEMENT
3	CERTIFICATE OF INSURANCE FOR QUALIFIED ARCHITECT	05/29/2017 23:33	WEB	CERT OF INS FOR QUAL ARCHITECT

Submissions

ID#	SUBMITTED ITEM	DATE	BY	COMMENTS
4	OWNER/TENANT CERTIFICATION STATEMENT	05/29/2017 23:33	WEB	OWNER/TENANT CERT STATEMENT
5	PROFESSIONAL OF RECORD SELF CERT STATEMENT	05/29/2017 23:33	WEB	PROF OF RCRD SC STATEMENT
6	HOLD HARMLESS LETTER	05/29/2017 23:33	WEB	HOLD HARMLESS LETTER
7	MOPD-IAC	05/29/2017 23:33	WEB	ILLINOIS ACCESSIBILITY CODE
8	PROPERTY PIN AGREEMENT	05/29/2017 23:33	WEB	PROPERTY PIN AGREEMENT

Inspection Details

Detail ADDITIONAL INSPECTORS **Modified By** **Modified Date/Time**
Comments
No Comments

Detail COMPLAINT INFO **Modified By** **Modified Date/Time**
Comments
No Comments

Detail INSPECTION LIFE CYCLE **Modified By** 400200 **Modified Date/Time** 07/12/2017 07:30
Comments
No Comments

Inspect Life Cycle

	Number	Dir	Street Name	Suffix
Inspection Address	7747	S	MAY	ST

Notice Type

		By Whom	To Whom
Inspection Created	07/12/2017	400200	
Assigned to Inspector	07/12/2017	400200	400200
Inspected	07/11/2017	400200	
Data Entered	07/12/2017	400200	

HMS Inspection? N

Change History Grid Count 10

Received by Supervisor for Review ☐

Received by Production Management ☐

AH/CRT Case or Notice Printed **Print Error?**

Paper Inspection Located (non-HMS only) ☐

Proof of Service - Sent to AH/Court ☐

Received By AH/Court ☐

AH Date **Court Date**

AH or Court Status

Change History Grid

Date	By	Field	Old Value	New Value
07/12/2017	400200	ASSNINSP		12-JUL-17
07/12/2017	400200	INSPECT		11-JUL-17
07/12/2017	400200	DATAEN		12-JUL-17

Change History Grid

Date	By	Field	Old Value	New Value
07/12/2017	400200	HMS		N
07/12/2017	400200	TWASSNINS		400200
07/12/2017	400200	WINSPECT		400200
07/12/2017	400200	WDATAEN		400200
07/12/2017	400200	INSPCR		12-JUL-17
07/12/2017	400200	WINSPCR		400200
07/12/2017	400200	WASSNINSP		400200

Detail PORCH - DECK CHECKLIST **Modified By** **Modified Date/Time**
Comments
No Comments

Detail PORCH/DECK CHECKLIST **Modified By** **Modified Date/Time**
Comments
No Comments

Detail RENO_PERM INSPCTR RECOMMENDTN **Modified By** **Modified Date/Time**
Comments
No Comments

Routing

Originating Office: WEB **Rv Prog:** ESCIA **Self Cert Res** ☐ Check Box **Green Prj**

Conditional Permit ☐ Small Project ☐ DS Direct

DCAP Reviews

- ☒ ARCH/FIRE
- ☒ ELECTRICAL
- ☐ FIRE
- ☒ FURNACE/VENT
- ☒ PLUMBING
- ☐ REFRIGERATION
- ☐ STRUCTURAL
- ☐ STRUCT PEER RPT
- ☐ ENVIRONMENT
- ☐ MOPD/ACCESS
- ☐ CIVIL/STORMWATER
- ☐ GEOTECH
- ☐ FLOODPLAIN (ENV)
- ☐ FOOD SERVICE (Health)
- ☐ DRIVEWAY

Z LUP

- ☒ ZONING
- ☐ LANDSCAPE
- ☐ LANDMARK
- ☐ PLANNING
- ☐ OPEN SPACE

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

Exhibit 35

SETTLEMENT STATEMENT DATED NOVEMBER 16, 2018

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

Exhibit 35

SETTLEMENT STATEMENT DATED NOVEMBER 16, 2018

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

American Land Title Association

ALTA Settlement Statement - Cash
Adopted 05-01-2015

File No./Escrow No.: 730323
Print Date & Time: 11/16/18 8:49 AM
Officer/Escrow Officer:
Settlement Location:
Citywide Title
850 W. Jackson Blvd., Ste. 320
Chicago, IL 60607

Citywide Title Corporation
ALTA Universal ID:
850 W. Jackson
Suite 320
Chicago, IL 60607

Property Address: 7747 S May St
Chicago, IL 60620
Borrower: Thousand Oaks Management, LLC

Seller: Legion Investments, LLC

Settlement Date: 11/16/2018
Disbursement Date: 11/16/2018
Additional dates per state requirements:

Seller		Description	Borrower/Buyer	
Debit	Credit		Debit	Credit
		Financial		
	$41,000.00	Sale Price of Property	$41,000.00	
		Deposit		$1,000.00
		Prorations/Adjustments		
$2,233.36		County PropertyTaxes from 01/01/2018 thru 11/14/2018		$2,233.36
		Other Loan Charges		
		Appraisal Fee		
		Credit Report Fee		
		Flood Certification Fee		
		Tax Service Fee		
		Title Charges & Escrow / Settlement Charges		
$50.00		Title - CPL Fee to First American	$25.00	
$3.00		Title - DFI Policy Fee to Citywide Title		
$1,660.00		Title - Owner's Policy to Chi-City Title Co.		
$250.00		Title - Search Fee to Citywide Title		
$687.50		Title - Settlement Fee to Citywide Title	$687.50	
$150.00		Title - Update Fee to Chi-City Title Co.	$150.00	
$40.00		Title - Wire Fee to Citywide Title	$40.00	
		Commission		
$700.00		Commission to Altura Realty		
$1,300.00		Commission to Miller Chicago, LLC		

Copyright 2015 American Land Title Association
All rights reserved.

Seller		Description	Borrower/Buyer	
Debit	Credit		Debit	Credit
		Government Recording and Transfer Charges		
		Recording Fee (Deed) to Cook County Recorder	$50.00	
$41.00		Transfer Tax to State of Illinois		
$123.00		City Transfer Tax to City of Chicago	$307.50	
$20.50		County Transfer Tax to Cook County		
		Miscellaneous		
		Buyer Attorney Fee to Whitacre & Stefanczuk LTD	$500.00	
$650.00		Seller Attorney fee to Rosenthal Law Group, LLC		
$1,000.00		Sold Tax TI to Citywide TI Account		
$4,547.87		Sold Taxes to Cook County Treasurer		
$400.00		Survey to Urchell & Associates		
$2,000.00		Water Bill TI to Citywide TI Account		
$320.00		Water/Zoning Certs to River North Clerking		
		Invoice to Altura Realty	$2,300.00	
$350.00		fees due prior files to Rosenthal Law Group, LLC		
Seller			Borrower/Buyer	
Debit	Credit		Debit	Credit
$16,526.23	$41,000.00	**Subtotals**	$45,060.00	$3,233.36
		Due From Borrower		$41,826.64
$24,473.77		Due To Seller		
$41,000.00	$41,000.00	**Totals**	$45,060.00	$45,060.00

Copyright 2015 American Land Title Association
All rights reserved.

File # 730323
Printed on: 11/16/18 8:49 AM

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:	
Willnetta D. Jones by David Stancale as Atty	11-16-18		11-16-18
THOUSAND OAKS MANAGEMENT LLC	Date	LEGION INVESTMENTS, LLC	Date

Escrow Officer Michael B Brown

11/16/2018
Date

Copyright 2015 American Land Title Association
All rights reserved.

File # 730323
Printed on: 11/16/18 8:49 AM

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

Exhibit 36

WARRANTY DEED DATED NOVEMBER 5, 2018

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

Exhibit 36

WARRANTY DEED DATED NOVEMBER 5, 2018

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

WARRANTY DEED (Illinois)

730323

THIS DEED is made as of the 5th day of November, 2018, by and between

LEGION INVESTMENTS, LLC

("Grantor," whether one or more),

and

THOUSAND OAKS MANAGEMENT LLC
9052 S. LOWE AVE., CHICAGO, IL 60620
("Grantee," whether one or more).

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

1833145042D

Doc# 1833145042 Fee $44.00

RHSP FEE:$9.00 RPRF FEE: $1.00
KAREN A.YARBROUGH
COOK COUNTY RECORDER OF DEEDS
DATE: 11/27/2018 02:39 PM PG: 1 OF 4

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 QUARTER OF SECTION 29, TOWNSHIP 38 NORTH, RANGE, 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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

PARCEL INDEX NUMBER (PIN): 20-29-417-015-0000 (VOL: 436)

S
P
S
SC
INT

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 2018 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 5th day of November, 2018.

LEGION INVESTMENTS, LLC BY BRIAN MINEAU

Prepared by: Rosenthal Law Group, LLC, 3700 W Devon Ave, Lincolnwood, IL 60712

MAIL TO: Whitacre & Stefanczuk
6841 W Belmont Chicago IL 60634

SEND SUBSEQUENT TAX BILLS TO: THOUSAND OAKS MANAGEMENT LLC
9052 S. LOWE AVE., CHICAGO, IL 60620

OR RECORDER'S OFFICE BOX NO._____

STATE OF Nevada)
) SS
COUNTY OF Washoe)

I, the undersigned, a Notary Public in and for said County and State, do hereby certify that BRIAN MINEAU 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 he signed, sealed and delivered said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal, this 5 day of November, 2018.

Notary Public

My Commission Expires: 04-20-2019

MARTIN LIM
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 04-20-19
Certificate No: 10-2312-2

730323.39
1412

Print

Check/Serial#:70382818 Account#:456460794 Amount: 1,864.14

Citywide Title Corporation
Chicago, Illinois 60607
312.492.6934

Chase Bank
Escrow Account
Chicago, Illinois 60603

70382818

File No. 730323

One Thousand Eight Hundred Sixty Four and 14/100

DATE 12/18/2018

AMOUNT $1,864.14

VOID AFTER 90 DAYS

Pay To The Order Of Legion Investments, LLC

Memo: Refund of TI's

⑈70382818⑈ ⑆071000013⑆ 456460794⑈

GREATER NEVADA CREDIT UNION
1600101968794
01/10/2019; 18:19:58
RENO 0004

ENDORSE HERE
Legion Investments, LLC

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
RESERVED FOR FINANCIAL INSTITUTION USE

730323.28

730323

WIRE TRANSFER AUTHORIZATION FOR OUTGOING WIRES

Specify the wiring instructions for your bank account.

The undersigned customer hereby authorizes and directs Citywide Title Corporation to transfer funds by wire to the Receiving Bank and Account identified below. Customer warrants that the information provided in the Authorization is complete and accurate.

WIRE TO (BANK) Greater Nevada Credit Union CITY Carson City ST NV

ABA NO. 321280143 ACCOUNT NAME Legion Investments

ACCOUNT NO. TO CREDIT 884112146

OTHER REFERENCE INFORMATION _____

Note: If the wire is to be routed through a domestic US intermediary Bank for credit to your bank (i.e. your bank is not "on line" with the Fed) enter such intermediary Bank information below.

INTERMEDIARY BANK _____ ABA NO. _____

INTERMEDIARY BANK ACCOUNT NO. _____

Note: If your bank is outside the United States, the wire must be directed to a bank with a correspondent relationshi in the United States. Contact your bank to obtain their Correspondent Bank information.

CORRESPONDENT BANK _____ ABA NO. _____

CORRESPONDENT BANK ACCOUNT NO. _____

Provided that funds are wire transferred in accordance with these instructions, Citywide Title Corporation shall not be liable for any act or omission of any financial institution or any other person, nor shall Citywide Title Corporatio have any liability for loss of funds or interest thereon. In no event will damages exceed interest at a rate equal to Fe Funds rate, adjusted daily, for the number of days that such funds are unavailable. The undersigned Customer shall indemnify and hold harmless, Citywide Title Corporation, its successors or assigns from any loss, liability and cost incurred as a result of any incorrect information supplied.

IN NO EVENT SHALL CITYWIDE TITLE CORPORATION TITLE BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT OR WHETHER THE LIKELIHOOD OF SUCH DAMAGE WAS KNOWN TO CITYWIDE TITLE CORPORATION.

Accepted and Agreed Legion Investments Brian Mineau Date 11-16-18

PRINT NAME OF CUSTOMER

BY: _____

AUTHORIZED SIGNATURE

ORDER NO.

$24,473

730323.53

1414

CHASE

November 01, 2018 through November 30, 2018
Account Number: [redacted]0794

ELECTRONIC WITHDRAWALS *(continued)*

DATE	DESCRIPTION	AMOUNT
11/19	Fedwire Debit Via: Grtr NV CU Cars Cy/321280143 A/C: Legion Investments LLC US Ref: 7747 S May Street Chicago IL 60620 Imad: 1119B1Qgc07C025278 Trn: 6421500323Jo	24,473.77

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

Exhibit 37

DEPOSITION OF MICHELLE SALAZAR, EXCERPT

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

Exhibit 37

DEPOSITION OF MICHELLE SALAZAR, EXCERPT

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

1

2

3

4

5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 -oOo-

9 JAY KVAM, : CASE NO. CV18-00764

10 Plaintiff, : DEPT. NO. 6

11 vs. :

12 BRIAN MINEAU; LEGION INVESTMENTS, LLC; et al., :

13 : Defendants.

14

15

16

17 DEPOSITION OF

18 MICHELLE L. SALAZAR

19 December 30, 2019

20 Reno, Nevada

21

22

23

24 REPORTED BY: LINDA B. SHAW, CCR #123, RPR, CSR

25 JOB NO. 591724

1 THE REPORTER: I'm fine.
2 THE WITNESS: No, thanks.
3 BY MR. MATUSKA:
4 Q Ms. Salazar, do you have a Terms of Agreement that we
5 just marked as Exhibit Number 8?
6 A Yes.
7 Q And I know you've already testified about this to me,
8 but it comes up again. You will agree with me, I think, that
9 what it says is all parties are entitled to 33.33 percent of
10 the net profit, after all expenses are accounted for, and to
11 include interest due on funds dispersed, and that initial
12 funder will be due 7 percent annual return on any funds
13 provided; is that all correct?
14 A Yes.
15 Q Okay. So doesn't there need to be an accounting of
16 all of the capital investment, meaning funding provided and
17 then expenses and interest paid in order to determine net
18 profits?
19 A The -- you would have to -- there has been an
20 accounting of the funding of the project by Mr. Steele. There
21 would also be an accounting of the funds provided to the
22 contractor TNT, and then how TNT spends those monies is a
23 burden of TNT's.
24 Q But there's more to that, accounting of expenses and
25 interest. Don't we need an accounting before profits can be

1 **divided here?**

2 A You would need to understand the net profits from the

3 project, if there are any, in order to split them 33.33

4 percent.

5 **Q How would you determine, and what records would you**

6 **need to determine the net profits?**

7 A You would need the records from TNT, the contractor,

8 you would need the records for the capital contributions, which

9 Mr. Steele has outlined, and then you would need the records of

10 the original purchase, and then also the sale.

11 **Q What about expenses?**

12 A That would be the records of TNT, the contractor.

13 **Q Would those be the only expenses?**

14 A It looks like there's minimal expenses that are

15 reported on those balance statements, but I would expect that

16 the expenses are paid by TNT, yes.

17 **Q Insurance costs would be paid by TNT?**

18 A There were --

19 **Q Real property taxes and such?**

20 A Those expenses are set forth in the balance statement

21 that Mr. Steele relied upon.

22 **Q Did he rely on the balance statements?**

23 A He talks about the balance statements --

24 **Q What does he actually say about the balance**

25 **statements?**

1 not.

2 **Q Why are these balance statements important?**

3 A The balance statements show the -- allegedly support

4 the amount of expenses paid by Legion Investments.

5 **Q Do you know if those balance statements were just**

6 **prepared as part of the litigation in this case?**

7 A I don't know.

8 **Q Do you know if Jay Kvam ever got a report on expenses**

9 **before this litigation started?**

10 A I do not know.

11 **Q But would you agree that he needs some sort of report**

12 **on expenses in order to know how the proceeds are supposed to**

13 **be distributed?**

14 A I think that the understanding of the expenses is

15 something that a business owner would want to know.

16 **Q Yeah. As you sit here today, do you have any way to**

17 **confirm that Brian Mineau invested 20,000 dollars in this**

18 **project?**

19 A I have the representation -- I have the e-mail that I

20 represented to you, and then I read somewhere else that it was

21 contributed on behalf of Brian Mineau, but I'm not -- that's

22 outside of the scope of what I've been asked to testify to.

23 **Q But you did testify twice that Brian Mineau was**

24 **supposed to provide funding, correct?**

25 A He was, yes.

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

Exhibit 38

DEPOSITION OF COLLEEN BURKE, EXCERPT

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

Exhibit 38

DEPOSITION OF COLLEEN BURKE, EXCERPT

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

1 IN THE SECOND JUDICIAL DISTRICT COURT OR NEVADA

2 IN AND FOR THE COUNTY OF WASHOE

3

4

JAY KVAM,)

5)

Plaintiff,)

6)

v.) Case No. CV18-00764

7)

BRIAN MINEAU; LEGION INVESTMENTS,)

8 LLC; 7747 S. May Street, an)

Unincorporated Joint Venture;)

9 and DOES I-X, inclusive,)

)

10 Defendants.)

11

12 Videotaped Deposition of COLLEEN BURKE, called

13 as a witness herein, pursuant to the applicable

14 provisions of the Nevada Rules of Civil Procedure,

15 before Belinda A. Harr, CSR No. 84-003215, taken on

16 October 17, 2019, at 3:30 p.m. at 1000 Essington

17 Road, Joliet, Illinois.

18

19

20

21

22

23

24

25

Page 22

1 going to cost, and then -- then Brian just put -- put
2 together, you know, the scope of work and how the
3 payments should -- should be disbursed.
4 **Q. Okay. But do you know who came up with**
5 **this contractor agreement in the first place the first**
6 **time it was used for Brian Mineau's properties?**
7 A. This is what he gave -- you know, when we
8 started with our first property, he had this same -- I
9 think it's a boilerplate that they -- that they used.
10 I'm not sure where they got it from or how that works,
11 but this is--
12 **Q. Okay.**
13 A. This is the agreement that they always --
14 **Q. Okay.**
15 A. That Brian always used.
16 **Q. What was your last involvement with --**
17 **with the South May Street property?**
18 A. That was it. Just walking through that
19 day once they did the demo. That was the last time I
20 was there. In, you know, April of 2017.
21 **Q. But I mean did your work come to an end**
22 **at some point?**
23 A. Yes. Well, Derek Cole had -- I -- I'm
24 trying to -- Brian called me up and said Derek Cole was
25 very upset, and I'm not exactly sure on all the

Page 23

1 particulars why Derek Cole was having a tantrum, but he
2 said that Derek Cole called the investor and Brian told
3 me, he said, the investor does not want you to go back
4 to the May Street property again. I said, oh, he
5 doesn't want me to go back? Well, okay. And that was
6 it.
7 **Q. Did they mention who the investor was?**
8 A. No. Brian never told me his name.
9 **Q. And that was your last involvement with**
10 **the May Street property?**
11 A. That was the last involvement, yes,
12 correct.
13 **Q. Did you -- were you paid for any services**
14 **in relation to the May Street property?**
15 A. No, I was not.
16 **Q. What's your incentive to take on this**
17 **role as -- well, to take on the role that you took on?**
18 A. The first three properties that we worked
19 on that we were successful with I was paid $1,500 for
20 the initial -- once the construction started I got paid
21 $1,500. And then once the construction was finished
22 and the property was ready to go to market I would be
23 paid an additional $1,500, so a total of $3,000 per
24 home. Then once the property was completed and we were
25 ready to go I would be paid my normal commission to

Page 24

1 sell and market the properties and close them.
2 **Q. Did you -- did you sell the South May**
3 **Street property?**
4 A. Oh, no. No. No involvement ever after
5 that.
6 **Q. Were -- were you asked to sell it?**
7 A. After that phone call from Brian saying
8 that the investor no longer wanted me to go there then
9 that was it. I had no involvement, nor did he and I
10 speak about that property, I don't think, ever again.
11 Because I think -- I believe --
12 **Q. Were you --**
13 A. Go ahead.
14 **Q. Okay.**
15 A. I'm sorry. Go ahead, Mike.
16 **Q. Were you even aware when the property was**
17 **being listed and sold?**
18 A. No. I -- I didn't -- after that point I
19 really wasn't interested so I didn't -- didn't look.
20 **Q. When the property -- when you saw the**
21 **property at that demo stage stripped down to the studs,**
22 **at least the first floor, do you have an estimate of**
23 **percentage of completion of the project at that point?**
24 A. An estimate, I don't really -- what do
25 you mean an estimate of completion? When it would

Page 25

1 totally be completed?
2 **Q. Well, I mean is that work in -- is the**
3 **demo work is that half of the scope of work or --**
4 A. Oh, no.
5 **Q. -- more or less --**
6 A. No, it's just the earliest stage of the
7 work, I mean. So do I have like a time frame when the
8 house should be finished, do you mean?
9 **Q. No. I'm asking -- I'm asking about the**
10 **-- about the percentage of work. I mean, in this -- I**
11 **can be more specific here. This contract agreement the**
12 **total price is $80,000.**
13 A. Uh-huh.
14 **Q. So is the demo stage stripping that down**
15 **to the studs $40,000 worth of work?**
16 A. Oh, no. No, no. Absolutely not.
17 **Q. Less?**
18 A. Oh, yes.
19 **Q. Okay. Who was -- who's -- who's really**
20 **in charge of that South May Street project?**
21 A. Well, I really -- it was between, I
22 believe, Brian and Derek Cole. You know, my
23 involvement ended after that phone call so I really
24 don't know what their agreement was.
25 **Q. And Brian's involved -- Brian's**

Page 26

1 responsible as the owner, of course, right?
2 A. Oh, yeah, of course.
3 Q. And Derek -- and Derek Cole is the
4 contractor, right?
5 A. Yes.
6 Q. But -- but I mean you're -- you're listed
7 on the contract as a point of contact. Brian Mineau is
8 listed on the contract. Todd Hartwell and Derek Cole
9 of TNT are listed on the contract.
10 A. Uh-huh.
11 Q. But my question is really who's
12 responsible for making sure that TNT is doing the work
13 and authorizing the payments?
14 A. That would be Brian because I had no more
15 involvement in that.
16 Q. Even -- even when you were involved, were
17 you responsible for authorizing the payments --
18 A. Never.
19 Q. -- to TNT?
20 A. I've never been responsible for any
21 payments. Just on the --
22 Q. Who is responsible --
23 A. I'm sorry, Mike. Go ahead. What?
24 Q. Who is -- who is responsible for
25 verifying the progress of work and authorizing

Page 27

1 payments?
2 MR. SWEET: Objection. She just said she
3 didn't know.
4 BY THE WITNESS:
5 A. Well, I would think that, you know, he --
6 he was having --
7 MR. SWEET: I'm going to object. If --
8 THE WITNESS: Okay.
9 MR. SWEET: If you know the answer, that's
10 perfectly fine, but if you don't know -- it sounded to
11 me like you were about to guess.
12 MR. MATUSKA: Please -- you've object. You
13 don't need to instruct the witness. You -- you can
14 answer the question please. Do -- do you remember the
15 question?
16 THE WITNESS: Please repeat it.
17 MR. MATUSKA: Can the court reporter read the
18 last question back, please?
19 (Record read as requested.)
20 BY THE WITNESS:
21 A. And that would be Brian.
22 BY MR. MATUSKA:
23 Q. Okay.
24 A. But, again, I don't know what his
25 agreement was, you know, with Derek Cole.

Page 28

1 MS. MATUSKA: I thank you for your time. I
2 don't have any further questions. Mr. Sweet might, and
3 then after he's done, I'll have the opportunity to
4 clarify with you any -- any issues that arise during
5 his questioning. Okay? Thank you.
6 THE WITNESS: Thank you.
7 EXAMINATION
8 BY MR. SWEET:
9 Q. Thank you, Ms. Burke. I just have a few
10 questions. First, can you hear me all right?
11 A. Yes, I can.
12 Q. Thank you. I would like to start with
13 asking just this big picture. You mentioned that three
14 projects had closed with Mr. Mineau prior to the May
15 Street project. Could you explain to me what you mean
16 by closed?
17 A. They were sold.
18 Q. And what was the -- generally speaking,
19 what was the scope of those projects?
20 A. What was the scope? I -- they were --
21 there were three homes that were rehabbed.
22 Q. Okay. So the property was purchased; a
23 contractor came in and -- and remodeled, rehabilitated
24 the property, and then they were sold?
25 A. Correct.

Page 29

1 Q. Do you know whether those were sold for a
2 profit?
3 A. I'm not exactly sure what their profit
4 was, but I do believe --
5 Q. I'm not asking that, but do you know if
6 there was --
7 A. Yes, there was a profit. Yes, of course.
8 Q. Okay.
9 A. But do I have those exact numbers right
10 in front of me? No, I don't. I would have to --
11 Q. That's fine. I'm not looking for that.
12 You also mentioned that at the time of May Street there
13 were a few other projects that were still in the works;
14 is that correct?
15 A. Correct.
16 Q. Okay. And do you know whether those
17 projects ultimately closed?
18 A. Yes. The Michigan Avenue property closed
19 last year, and then one of the properties is still
20 being marketed on Bishop and I do believe that Brian
21 sold his 9919 South Forest and I don't know the date on
22 that. I -- I would have to look it up on the MLS.
23 Q. You're not involved in those projects any
24 longer?
25 A. No, I -- I mean, I backed myself out of

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

Exhibit 39

DECLARATION OF MICHAEL L. MATUSKA

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

Exhibit 39

DECLARATION OF MICHAEL L. MATUSKA

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

CODE: 1520
Michael L. Matuska, Esq. SBN 5711
MATUSKA LAW OFFICES, LTD.
2310 South Carson Street, Suite 6
Carson City, NV 89701
mlm@matuskalawoffices.com

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 MICHAEL L. MATUSKA, ESQ.
IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I, MICHAEL L. MATUSKA, am the attorney of record for the Plaintiff, JAY KVAM, in the present case, and do hereby declare as follows:

1. Mineau's assertion at page 9-10 and again at page 18 of his Motion for Summary Judgment that he sold the Property in its unfinished state "in reliance" on demands from Mr. Kvam or me is false. The letters he points to (Mineau's Exs. "25"-"27") (were part of a longer set of negotiations beginning in December, 2017 that were identified as settlement offers that were intended to salvage Mr. Kvam's investment.

2. Even Mineau's Exhibit "27", which is a heavily redacted version of a letter that I sent on September 19, 2018, explains that it is a response to an offer from Mineau's attorney. The letter states inter alia that "Mr. Mineau is encouraged to sell the May Street property, the other

MATUSKA LAW OFFICES, LTD.
2310 South Carson Street, Suite 6
Carson City NV 89701
(775) 350-7220

unidentified property, and any other property he needs to sell in order to satisfy Mr. Kvam's claims" and that ". . . the opportunity remains for Mr. Mineau to settle this case with a secured promissory note." To the extent this court feels that any of these letters are relevant, it should have an unredacted copy of the letter, attached hereto as Ex. "44."

3. Furthermore, based on documents received from Citywide Title, Mineau was attempting to sell the Property prior to my settlement letter of September 19, 2018. On May 22, 2018, Mineau entered into contract with "Scotch and Soda Goldmine Company, Inc." to sell the property. (Ex. "46"). On July 3, 2018, Mineau entered into a new contract with "Mutual Happiness LLC" to sell the property (Ex. "47").

4. Attached hereto as Exs. "44" and "45" are true and correct copies of my letters to and from Austin Sweet.

5. The Exhibits attached to the concurrently filed Opposition to Motion for Summary Judgment are true and correct copies of such documents.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

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,

MATUSKA LAW OFFICES, LTD.

By: Michael L. Matuska

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

MATUSKA LAW OFFICES, LTD.
2310 South Carson Street, Suite 6
Carson City NV 89701
(775) 350-7220

I:\Client Files\Litigation\Kvam\v. Mineau\Pldgs\MSJ\Opp\Dec.MLM.doc

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

Exhibit 40

DECLARATION OF BENJAMIN STEELE

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

Exhibit 40

DECLARATION OF BENJAMIN STEELE

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

CODE: 1520
Michael L. Matuska, Esq. SBN 5711
MATUSKA LAW OFFICES, LTD.
2310 South Carson Street, Suite 6
Carson City, NV 89701
mlm@matuskalawoffices.com

Attorneys for Plaintiff

MATUSKA LAW OFFICES, LTD.
2310 South Carson Street, Suite 6
Carson City NV 89701
(775) 350-7220

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 BENJAMIN CHARLES STEELE, CPA, IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I, Benjamin Charles Steele, do hereby declare as follows:

1. That my initial report dated September 24, 2019, together with biographical information, is provided herewith as Exhibit "41" and my Amended Report dated January 15, 2020 is provided herewith as Exhibit "42". The Amended Report is provided to correct a mathematical error and to explain that my investigation in this case is more accurately described as an examination rather than an audit. My initial report and the Amended Report are hereby referred to as my "Report."

2. That the information, opinions and conclusions expressed in my Report were formed after the review and investigation identified therein, and are true and accurate to the best of my knowledge, information and belief.

3. That the information available to me in this case does not include information about the other projects that Brain Mineau was working at the same time as the 7747 S. May Street Project. As stated in my Report, I therefore reserve the right to amend my Report as more information becomes available.

4. I have reviewed Brian Mineau's January 6, 2020 declaration that was provided as Exhibit "1" to the Motion for Summary Judgment, wherein he testifies at Par. 25 that he borrowed $20,000 from Bradley Tammen to fund his share of the construction draws, and repaid $28,000. He did not identify the date of the repayment, and the records provided do not include evidence of this loan or the repayment. Lacking documentation for this loan and repayment, the only other evidence would be Legion Investments, LLC's tax return or Mr. Mineau tax return. The tax returns are necessary to determine how Mr. Mineau reported the transaction with Mr. Tammen related to the investment contribution and expenses paid toward the May Street Property. The returns should report the loan of $20,000 from Mr. Bradley Tammen and the repayment of the loan in the amount of $28,000.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

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:
BENJAMIN CHARLES STEELE

MATUSKA LAW OFFICES, LTD.
2310 South Carson Street, Suite 6
Carson City NV 89701
(775) 350-7220

I:\Client Files\Litigation\Kvam\v. Mineau\Pldgs\MSJ\Opp\Dec.BCS.doc

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

Exhibit 41

PLAINTIFF'S EXPERT WITNESS DISCLOSURE (REPORT OF BENJAMIN STEELE DATED SEPTEMBER 24, 2019) W/O EXHIBITS

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

Exhibit 41

PLAINTIFF'S EXPERT WITNESS DISCLOSURE (REPORT OF BENJAMIN STEELE DATED SEPTEMBER 24, 2019) W/O EXHIBITS

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

CODE:
Michael L. Matuska, Esq. SBN 5711
MATUSKA LAW OFFICES, LTD.
2310 South Carson Street, Suite 6
Carson City, NV 89701
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

PLAINTIFF'S EXPERT WITNESS DISCLOSURE

COMES NOW Plaintiff, JAY KVAM, by and through his counsel of record, Matuska Law Offices, Ltd., Michael L. Matuska, and hereby discloses the following witnesses pursuant to NRCP 16.1(a)(2):

1. BENJAMIN CHARLES STEELE, CPA, CGMA
   Steele & Associates LLC CPA's
   611 N. Nevada St.
   Carson City, NV 89703

Mr. Steele will testify regarding his audit of the investments and expenses of the project at 7747 May Street, Chicago, Illinois, the accounting controls for the project, and the characterization of the agreement between the parties. His report is attached hereto. This report may be supplemented as more information becomes available.

AFFIRMATION

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

MATUSKA LAW OFFICES, LTD.
2310 S. Carson Street, #6
Carson City NV 89701
(775) 350-7220

Dated this 30th day of September, 2019.

MATUSKA LAW OFFICES, LTD.

By: _____

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

MATUSKA LAW OFFICES, LTD.
2310 S. Carson Street, #6
Carson City NV 89701
(775) 350-7220

MATUSKA LAW OFFICES, LTD.
2310 S. Carson Street, #6
Carson City NV 89701
(775) 350-7220

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 30th day of September, 2019, I served a true and correct copy of the preceding document entitled **PLAINTIFF'S EXPERT WITNESS DISCLOSURE** 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.

[X] **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.

SUZETTE TURLEY

J:\Client Files\Litigation\Kvam\v. Minenu\Discovery\Expert Witness\Expert Witness Disclosure (Kvam).doc

Jonathan S. Steele, CPA CGMA

Steele
Certified Public Accountants

Vanessa L. Davis, CPA CGMA
Benjamin C. Steele, CPA CGMA Emeritus

September 24, 2019

Michael L. Matuska, Esq.
Matuska Law Offices, LTD.
2310 South Carson Street, Suite 6
Carson City, Nevada 89701

Kvam V. Mineau, Second Judicial District Court of the State of Nevada, Case No. CV 18-00764

Report on Accounting records submitted for the investment property, 7747 S. May St., Chicago Il. (The Project)

Purpose of Review:

I was engaged to review the records for the following goals:

A. Audit of the financial records to determine the construction costs and contributions attributed to the Project.
B. Provide an opinion on whether the Project had adequate accountings controls.
C. To provide an opinion on how to characterize the agreement between the parties for accounting and tax reporting purposes.

Documents Reviewed:

I reviewed the following documents prior to preparing this report.

First Amended Compliant
Second Amended Complaint
Texts
Building Permit History
Wire Transfer records
Chase Bank records for TNT Complete Facility Care, Inc.
Terms of Agreement February 13, 2017
ALTA Settlement Statement February 13, 2017
Legion Investment, LLC Operating Agreement July 24, 2014
Resolution July 22, 2014
Contractor Agreement TNT Complete Facility Care, Ind. March 22, 2017
Chase Bank Wire Transfer Records Acct# xxxx1855 (excerpts)
Chase Bank Statement Acct # xxxx1855
Mutual of Omaha Bank Wire Transfer Request May 26, 2017
ALTA Settlement State November 16, 2018
Balance Statements

611 N. Nevada Street
Carson City, Nevada 89703
Phone: (775) 882-7198
Fax: (775) 883-4346

Members of: CPA Connect
Nevada Society of Certified Public Accountants
American Institute of Certified Public Accountants
Affordable Housing Association of Certified Public Accountants

Investment Activity:

Mr. Kvam entered into an agreement with Brian Mineau and Michael J. Spinola, to purchase and renovate real property located at 7747 S. May St., Chicago Illinois. The property will be listed for sale after completion of the renovations.

The agreement listed Mr. Kvam as the funding member, and he was to provide the following funds.

A. Real property purchase.
B. Draw 1`
C. Draws 2 and 3 are silent as to who will contribute.

The agreement provided Mr. Kvam will be paid 7% annual interest on the initial funds.

The agreement also allocated 50% of the 1/3 profit of Michael Spinola for both initial funding to Jay Kvam.

The agreement is silent as to the return of capital after the sale of the property.

The business structure was not specified, and to my understanding the transactions have not been reported to the Internal Revenue Service. The entity does not have a federal identification number. However, it appears that legion Investments, LLC took title to the property and received the proceeds of sale for the benefit of the named project investors, including Jay Kvam, Michael Spinola and Brian Mineau.

Funding of the Project

Funding by Jay Kvam:

Purchase of Property 2/13/17		$ 43,781.34
Draw #1 3/23/17		20,000.00
Draw #2 4/14/17		20,000.00
Draw #3 5/18/17		9,000.00
	Total Kvam	93,784.31

Funding by Others

Draw #3 5/26/17	Criterion NV LLC	20,000.00
	Total Funds	$113,784.31

The so-called Balance Statement provided by Brian/Legion Investment claim credit for this last draw of $20,000 on May 26, 2017. The payment was made by a wire transfer by Michael Spinola under the name of Criterion NV LLC on May 26, 2017. I am unable to confirm how much of Kvam's funding was used on the 7747 May Street project, and whether the funding from Mineau/Criterion NV LLC was used on the project. Based on a text from Brian Mineau to Jay Kvam on February 7, 2017, TNT Complete Care Facility "was getting wiring info for a separate account so he could keep May Street funds separate from other projects." This did not happen, and the May Street project funds wound up in TNT's account 1855 along funds designated for other projects, including 8744 Bishop, 8754 S. Michigan, 9919 Forest and 1404, 1408 Wyoming.

OPERATION OF THE PROJECT:

A. The property was purchased by Legion Investments LLC on 2/13/17. Legion Investments, LLC. The LLC is owned by Brian Mineau and he is listed as the sole member.
B. Legion Investments LLC signed a contractor's agreement on 3/22/17 with TNT Complete Facility Care, Inc. to renovate the real property. The contractor agreement listed the completion date 6/1/17. Brian Mineau signed the contract.
C. The contract provided for a "turn key market ready property" for the price of $80,000. (See Contractor Agreement, Addendum "A" also specified the payment terms, including "Final payment of $8,000 due upon punch list completion and key turn over." In other words, the project should have been $3,000 from punch list completion based on the above listed draws in the amount of $69,000.
D. Paragraph 51 listed Colleen Burke as the project manager and Brian Mineau as contacts concerning this project.
E. I contacted Ms. Burke on July 16, 2019 to request records and discuss her duties as a project manager. Ms. Burke stated she had no record because her duties were very limited and for a short time. Ms. Burke visited the jobsite a couple of times and took pictures of the renovation progress, with no other responsibilities. Brian Mineau terminated her services.
F. Correspondence implied Brian Mineau acted as the manager of the project. He communicated with the contractor and the investors. The investors only transferred funds when Brian requested, and he gave them wiring instructions. He also gave the investors updates and pictures as to progress.
G. Legion Investments LLC sold the property on 11/16/18 for $41,000 and the net funds of $24,473.77 are being held in trust until the legal issues are settled.

RECORDS OF THE PROJECT:

A. The records supporting the project costs are limited or nonexistent. The recap of financial transactions furnished to Jay Kvam is a brief recap of draws sent to the contractor and expenses paid directly by Legon Investments, LLC. The reports were labeled Balance Statement, but it is actually a recap of checks written.

B. Paragraph 50 of the construction contract requires the contractor maintain a project checklist and the contractor was to update the list as construction progress. If there is an issue with the work, the contractor was to alert the developer. This checklist was unavailable at my review.
C. Paragraph 4 of the contract required the contractor and subcontractors to provide invoices furnish documents and pictures of the completed work. It appears Brian Mineau directed Kvam to make payments to TNT without requesting or receiving the required documents to verify the amount of work completed. To support the work completed, Mineau relied on the contractor's statements and request for additional funds. I did not locate any records to support the completed work as stated by the contractor.
D. The project did not maintain a formal set of accounting records.
    1. General Ledger
    2. Business checking account statements, cancelled checks etc.
    3. Reconciliation of capital contributions and equity accounts.
    4. Supporting documentation justifying the level of completed construction.
    5. Agreements as to terminating the business entity and distribution of assets or paying excess liabilities

Conclusion:

Brian Mineau managed the project and made all the decisions for the project without the input from the investors. It appears he relied on statements from the contractor as to the level of completion and never asked for additional documents to support the percentage. The investors relied on the communications from Brian to keep informed of the project. The accounting records are inadequate for proper control of the project finances.

Despite an exhaustive review of the TNT Complete Facility Care, Inc. bank statements and cancelled checks to trace the 7747 May St. transactions. I could not determine the expenses paid for the 7747 May Street Project. The funds were deposited in the general accounts that was used for TNT' multiple projects and checks issued. A separate checking account was not maintained for this project.

The accounting records are incomplete and cannot support the level of work completed.

I did not determine the type of business form this project operated as.

I reserve the right to supplement this report as more information becomes available.

My fee for investigating this matter and preparing this report was $205 per hour. My fee for testifying in depositions or trial is $275 per hour.

Benjamin C. Steele CPA, CGMA

Steele
Certified Public Accountants

Jonathan S. Steele, CPA CGMA
Vanessa L. Davis, CPA CGMA
Benjamin C. Steele, CPA CGMA Emeritus

Benjamin Charles Steele CPA, CGMA
Steele & Associates LLC CPA's
611 N. Nevada St.
Carson City, Nevada 89703

College Degree: University of Nevada -Reno: December 1972
Bachelor of Science in Business Administration

Professional License: Nevada State Board of Accountancy April 1979

Professional Association Member:
- American Institute of Certified Public Accounts
- Charter Global Management Accounts
- Nevada Society of Certified Public Accountants
- CPA Connect (Association of small CPA firms -nationwide)

Served on the following boards:
- Nevada State Board of Accountancy: November 2010 through October 2016
- National Association of State Board of Accountants: November 2014 through October 2016
- Nevada Society of Certified Public Accountants several offices throughout the years

Testified in the following Courts:
- Federal District Court -Reno Nevada
  (Tax Fraud Case) 10/11/07 US vs. Lisa Getas Case # 3:06-cr-00042- roes-ram)
  Testified as expert witness
- Carson City District Courts
  (Special Court Master for account The Buonamici Family Trust Case #18 PBT 00013 1 B)
  Provided a report to the Court
- Douglas County Courts
  (asset tracing for embezzlement suite, prepared report, case settled out of court
  Travelers Casualty and Surety Company of America vs. Stephen Filice Case no. 16-CV-0265)
- Lyon County Courts
- Washoe County Courts

Steele and Associates, LLC is a general practice which provides the following services.
- Accounting Services
- Bookkeeping and Payroll Services
- Audit Services
- Builders Control Services (limited to bookkeeping only)

611 N. Nevada Street
Carson City, Nevada 89703
Phone: (775) 882-7198
Fax: (775) 883-4346

Members of: CPA Connect
Nevada Society of Certified Public Accountants
American Institute of Certified Public Accountants
Affordable Housing Association of Certified Public Accountants

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

Exhibit 42

AMENDED REPORT OF EXPERT WITNESS BENJAMIN STEELE
DATED JANUARY 15, 2020

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

Exhibit 42

AMENDED REPORT OF EXPERT WITNESS BENJAMIN STEELE
DATED JANUARY 15, 2020

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

Jonathan S. Steele, CPA CGMA

Steele
Certified Public Accountants

Vanessa L. Davis, CPA CGMA
Benjamin C. Steele, CPA CGMA Emeritus

January 15, 2020

Amended Report

Michael L. Matuska, Esq.
Matuska Law Offices, LTD.
2310 South Carson Street, Suite 6
Carson City, Nevada 89701

Kvam V. Mineau, Second Judicial District Court of the State of Nevada, Case No. CV 18-00764

Report on Accounting records submitted for the investment property, 7747 S. May St., Chicago Il. (The Project)

Purpose of Review:

I was engaged to examine the records for the following goals:

A. Examine the financial records to determine the construction costs and contributions attributed to the Project.
B. Determine wether the Project had adequate accountings controls.
C. Determine how to characterize the agreement between the parties for accounting and tax reporting purposes.

Documents Reviewed:

I examined the following documents prior to preparing this report.

First Amended Compliant
Second Amended Complaint
Texts
Building Permit History
Wire Transfer records
Chase Bank records for TNT Complete Facility Care, Inc.
Terms of Agreement February 13, 2017
ALTA Settlement Statement February 13, 2017
Legion Investment, LLC Operating Agreement July 24, 2014
Resolution July 22, 2014
Contractor Agreement TNT Complete Facility Care, Ind. March 22, 2017
Chase Bank Wire Transfer Records Acct# xxxx1855 (excerpts)
Chase Bank Statement Acct # xxxx1855
Mutual of Omaha Bank Wire Transfer Request May 26, 2017
ALTA Settlement State November 16, 2018
Balance Statements

611 N. Nevada Street
Carson City, Nevada 89703
Phone: (775) 882-7198
Fax: (775) 883-4346

Members of: CPA Connect
Nevada Society of Certified Public Accountants
American Institute of Certified Public Accountants
Affordable Housing Association of Certified Public Accountants

Investment Activity:

Mr. Kvam entered into an agreement with Brian Mineau and Michael J. Spinola, to purchase and renovate real property located at 7747 S. May St., Chicago Illinois. The property will be listed for sale after completion of the renovations.

The agreement listed Mr. Kvam as the funding member, and he was to provide the following funds.

A. Real property purchase.
B. Draw 1`
C. Draws 2 and 3 are silent as to who will contribute.

The agreement provided Mr. Kvam will be paid 7% annual interest on the initial funds.

The agreement also allocated 50% of the 1/3 profit of Michael Spinola for both initial funding to Jay Kvam.

The agreement is silent as to the return of capital after the sale of the property.

The business structure was not specified, and to my understanding the transactions have not been reported to the Internal Revenue Service. The entity does not have a federal identification number. However, it appears that legion Investments, LLC took title to the property and received the proceeds of sale for the benefit of the named project investors, including Jay Kvam, Michael Spinola and Brian Mineau.

Funding of the Project

Funding by Jay Kvam:

Purchase of Property 2/13/17	$ 44,784.31
Draw #1 3/23/17	20,000.00
Draw #2 4/14/17	20,000.00
Draw #3 5/18/17	9,000.00
Total Kvam	93.784.31

Funding by Others

Draw #3 5/26/17 Criterion NV LLC	20,000.00
Total Funds	$113, 784.31

The so-called Balance Statement provided by Brian/Legion Investment claim credit for this last draw of $20,000 on May 26, 2017. The payment was made by a wire transfer by Michael Spinola under the name of Criterion NV LLC on May 26, 2017. I am unable to confirm how much of Kvam's funding was used on the 7747 May Street project, and whether the funding from Mineau/Criterion NV LLC was used on the project. Based on a text from Brian Mineau to Jay Kvam on February 7, 2017, TNT Complete Care Facility "was getting wiring info for a separate account so he could keep May Street funds separate from other projects." This did not happen, and the May Street project funds wound up in TNT's account 1855 along funds designated for other projects, including 8744 Bishop, 8754 S. Michigan, 9919 Forest and 1404, 1408 Wyoming.

OPERATION OF THE PROJECT:

A. The property was purchased by Legion Investments LLC on 2/13/17. Legion Investments, LLC. The LLC is owned by Brian Mineau and he is listed as the sole member.
B. Legion Investments LLC signed a contractor's agreement on 3/22/17 with TNT Complete Facility Care, Inc. to renovate the real property. The contractor agreement listed the completion date 6/1/17. Brian Mineau signed the contract.
C. The contract provided for a "turn key market ready property" for the price of $80,000. (See Contractor Agreement, Addendum "A" also specified the payment terms, including "Final payment of $8,000 due upon punch list completion and key turn over." In other words, the project should have been $3,000 from punch list completion based on the above listed draws in the amount of $69,000.
D. Paragraph 51 listed Colleen Burke as the project manager and Brian Mineau as contacts concerning this project.
E. I contacted Ms. Burke on July 16, 2019 to request records and discuss her duties as a project manager. Ms. Burke stated she had no record because her duties were very limited and for a short time. Ms. Burke visited the jobsite a couple of times and took pictures of the renovation progress, with no other responsibilities. Brian Mineau terminated her services.
F. Correspondence implied Brian Mineau acted as the manager of the project. He communicated with the contractor and the investors. The investors only transferred funds when Brian requested, and he gave them wiring instructions. He also gave the investors updates and pictures as to progress.
G. Legion Investments LLC sold the property on 11/16/18 for $41,000 and the net funds of $24,473.77 are being held in trust until the legal issues are settled.

RECORDS OF THE PROJECT:

A. The records supporting the project costs are limited or nonexistent. The recap of financial transactions furnished to Jay Kvam is a brief recap of draws sent to the contractor and expenses paid directly by Legon Investments, LLC. The reports were labeled Balance Statement, but it is actually a recap of checks written.

B. Paragraph 50 of the construction contract requires the contractor maintain a project checklist and the contractor was to update the list as construction progress. If there is an issue with the work, the contractor was to alert the developer. This checklist was unavailable at my review.
C. Paragraph 4 of the contract required the contractor and subcontractors to provide invoices furnish documents and pictures of the completed work. It appears Brian Mineau directed Kvam to make payments to TNT without requesting or receiving the required documents to verify the amount of work completed. To support the work completed, Mineau relied on the contractor's statements and request for additional funds. I did not locate any records to support the completed work as stated by the contractor.
D. The project did not maintain a formal set of accounting records:
    1. General Ledger
    2. Business checking account statements, cancelled checks etc.
    3. Reconciliation of capital contributions and equity accounts.
    4. Supporting documentation justifying the level of completed construction.
    5. Agreements as to terminating the business entity and distribution of assets or paying excess liabilities

Conclusion:

Brian Mineau managed the project and made all the decisions for the project without the input from the investors. It appears he relied on statements from the contractor as to the level of completion and never asked for additional documents to support the percentage. The investors relied on the communications from Brian to keep informed of the project. The accounting records are inadequate for proper control of the project finances.

Despite an exhaustive review of the TNT Complete Facility Care, Inc. bank statements and cancelled checks to trace the 7747 May St. transactions. I could not determine the expenses paid for the 7747 May Street Project. The funds were deposited in the general accounts that was used for TNT's multiple projects and checks issued. A separate checking account was not maintained for this project.

The accounting records are incomplete and cannot support the level of work completed.

I could not determine the type of business form this project operated as.

I reserve the right to supplement this report as more information becomes available.

My fee for investigating this matter and preparing this report was $205 per hour. My fee for testifying in depositions or trial is $275 per hour.

Benjamin C. Steele CPA, CGMA

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

Exhibit 43

BRIAN MINEAU AND LEGION INVESTMENTS' RESPONSES TO PLAINTIFF JAY KVAM'S FIRST SET OF INTERROGATORIES

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

Exhibit 43

BRIAN MINEAU AND LEGION INVESTMENTS' RESPONSES TO PLAINTIFF JAY KVAM'S FIRST SET OF INTERROGATORIES

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

DISC
GUNDERSON LAW FIRM
Austin K. Sweet, Esq.
Nevada State Bar No. 11725
Mark H. Gunderson, Esq.
Nevada State Bar No. 2134
3895 Warren Way
Reno, Nevada 89509
Telephone: 775.829.1222
Attorneys for Brian Mineau and Legion Investments

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

JAY KVAM,	Case No. CV18-00764
Plaintiff / Counterdefendant,	Dept. No. 3
vs.	
BRIAN MINEAU; LEGION INVESTMENTS, LLC; 7747 S. May Street, an Unincorporated Joint Venture; and DOES I-X, inclusive,	
Defendants / Counterclaimants.	

_____/

BRIAN MINEAU AND LEGION INVESTMENTS' RESPONSES TO
PLAINTIFF JAY KVAM'S FIRST SET OF INTERROGATORIES

PROPOUNDING PARTY: Jay Kvam

RESPONDING PARTY: Brian Mineau and Legion Investments, LLC

Pursuant to NRCP 16.1, Defendants / Counterclaimants BRIAN MINEAU ("Mineau") and LEGION INVESTMENTS, LLC ("Legion"), by and through their counsel of record, Austin K. Sweet, Esq., and Mark H. Gunderson, Esq., and pursuant to Rule 33 of the Nevada Rules of Civil Procedure, responds to Plaintiff / Counterdefendant JAY KVAM ("Kvam")'s First Set of Interrogatories to Mineau and Legion ("Requests") as follows:

///

///

///

INTERROGATORY NO. 1:

Describe when and how Mr. Kvam allegedly turned off power to the Property. Including the date and time.

RESPONSE TO INTERROGATORY NO. 1:

At some point between March 1, 2018, and March 24, 2018, electrical service to the Property ceased. On April 14, 2018, Mr. Kvam confirmed via email that he had cancelled electrical service to the Property. Further details concerning when and how Mr. Kvam completed this task, including the date and time, are presently unknown.

INTERROGATORY NO. 2:

State the date and approximate time on which the water pipes burst at the house on the Property.

RESPONSE TO INTERROGATORY NO. 2:

The water pipes burst at the house on the Property at some point between March 1, 2018, and March 24, 2018.

INTERROGATORY NO. 3:

State the date on which Legion Investments, LLC's improvements to the house at the Property were completed.

RESPONSE TO INTERROGATORY NO. 3:

Objection. Interrogatory No. 3 assumes incorrect facts and therefore cannot be directly answered. Specifically, Interrogatory No. 3 assumes that Legion Investments, LLC was the party making improvements to the house at the Property and that such improvements were completed.

Without waiving this objection, Legion Investments, LLC has not itself made improvements to the house at the Property and the improvements which were being made to the house at the Property by licensed contractors have not been completed.

INTERROGATORY NO. 4:

State the date and amount of each expenditure for improvements to the Property.

///

///

GUNDERSON LAW FIRM
A PROFESSIONAL
LAW CORPORATION
3895 Warren Way
RENO, NEVADA 89509
(775) 829-1222

RESPONSE TO INTERROGATORY NO. 4:

Legion Investments, LLC and Brian Mineau are aware of the following expenditures made for improvements to the Property:

March 23, 2017	$20,000.00
April 14, 2017	$20,000.00
May 18, 2017	$9,000.00
May 26, 2017	$20,000.00

INTERROGATORY NO. 5:

State date [sic] and amount of each capital call or funding request for the property.

RESPONSE TO INTERROGATORY NO. 5:

None.

INTERROGATORY NO. 6:

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

RESPONSE TO INTERROGATORY NO. 6:

Jay Kvam
7565 Michaela Dr.
Reno, NV 89511
Contributions: February 13, 2017 $44,000.00
March 23, 2017 $20,000.00
April 14, 2017 $20,000.00
May 18, 2017 $9,000.00

Criterion NV LLC
7560 Michaela Dr.
Reno, NV 89511
Contributions: March 26, 2017 $20,000.00

INTERROGATORY NO. 7:

Describe the heating system for the property, including the heater model and number, and whether it a [sic] gas or electric heater.

RESPONSE TO INTERROGATORY NO. 7:

The heating system on the property is electric. The heater model and number are unknown.

///

GUNDERSON LAW FIRM
A PROFESSIONAL
LAW CORPORATION
3895 Warren Way
RENO, NEVADA 89509
(775) 829-1222

INTERROGATORY NO. 8:

Identify all dates that Brian Mineau was present at the Property.

RESPONSE TO INTERROGATORY NO. 8:

Brian Mineau has never been present at the Property.

INTERROGATORY NO. 9:

Identify all prospective economic relationships alleged in your Fourth Claim for Relief. Include the name, address, phone numbers and describe any contracts and the dates and contents thereof.

RESPONSE TO INTERROGATORY NO. 9:

The earlier completion of the project and profitable sale of the Property. Although most potential buyers are not specifically known, Mutual Happiness LLC was in contract to purchase the Property but cancelled that contract. Documentation of this lost prospective economic relationship has been produced and identified as LEG0023 – LEG0036.

INTERROGATORY NO. 10:

Describe all acts of coercion, duress and intimidation identified in your Fifth claim for Relief (Deceptive Trade Practices). Include the date, time and manner of the alleged acts and any identify any [sic] witness thereto.

RESPONSE TO INTERROGATORY NO. 10:

Jay Kvam repeatedly demanded to be "reimbursed" for all funds he invested into the Property, despite the fact that the project was incomplete, no disbursements were yet due to anyone under the "Terms of Agreement," and the project had been severely set back by Mr. Kvam's own actions. Brian Mineau and Legion Investments, LLC nonetheless affirmed that they intended to complete the project and perform their obligations under the "Terms of Agreement." However, Mr. Kvam demanded that the "Terms of Agreement" be renegotiated to his benefit and threatened Mr. Mineau and Legion Investments, LLC with frivolous legal action if they refused to acquiesce to those demands. Mr. Kvam also wrongfully and fraudulently accessed Atlas Investors Southside LLC ("Atlas")'s bank accounts and fraudulently, and without authorization, used Atlas's operating funds to pay off an interest-free debt held by Atlas which would not come due for several more years, causing Atlas's

GUNDERSON LAW FIRM
A PROFESSIONAL
LAW CORPORATION
3895 Warren Way
RENO, NEVADA 89509
(775) 829-1222

operating account to be overdrawn and forcing Mr. Mineau and Legion Investments, LLC to liquidate other assets to provide Atlas with adequate operating funds and avoid drastic financial and business consequences. Mr. Kvam also demanded Legion Investments' historic financial records, without any legal or factual right to such information, again under threat of frivolous litigation. Mr. Kvam also demanded that Mr. Mineau and/or Legion Investments, LLC personally guaranty Mr. Kvam's return on his investment and provide separate collateral to protect his investment, again under threat of frivolous litigation. When Brian Mineau and Legion Investments, LLC refused, Mr. Kvam's agents harassed, threatened, and intimidated Mr. Mineau's family. Each of these acts constitutes acts of coercion, duress, and intimidation designed to compel Mr. Mineau and/or Legion Investments, LLC to buy Mr. Kvam out of the "Terms of Agreement," pay him more than he is entitled under the "Terms of Agreement," and/or pay him sooner than he is entitled under the "Terms of Agreement." The date, time, and manner of these acts is documented in correspondence between the parties' counsel and the pleadings of this action.

INTERROGATORY NO. 11:

Describe all chattels identified in your Eighth Claim for Relief (Trespass to Chattels).

RESPONSE TO INTERROGATORY NO. 11:

Drywall, insulation, and copper plumbing.

DATED this 1 day of October, 2018.

GUNDERSON LAW FIRM

By: _____

Austin K. Sweet, Esq.
Nevada State Bar No. 11725
Mark H. Gunderson, Esq.
Nevada State Bar No. 2134
3895 Warren Way
Reno, Nevada 89509
Telephone: 775.829.1222
Attorneys for Brian Mineau and Legion Investments

VERIFICATION

I, Brian Mineau, a Defendant and a Manger of Legion Investments, LLC in the above-entitled action, make this verification. I have read the foregoing *Brian Mineau and Legion Investments' Responses to Plaintiff Jay Kvam's First Set of Interrogatories* and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged upon information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Reno, NV.

DATED this 1st day of October, 2018.

Brian Mineau

STATE OF NEVADA
COUNTY OF WASHOE

This instrument was acknowledged before me on this 1st day of October, 2018 by Brian Mineau.

NOTARY PUBLIC for Nevada
Commission Expires: 9/14/2021

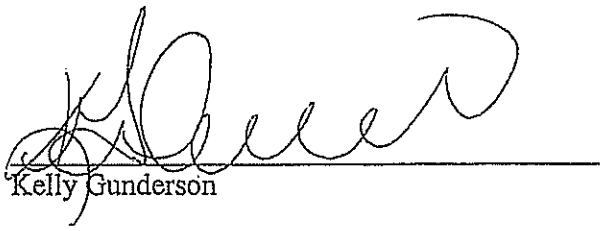
DEVAN GENNARO
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 09-14-2021
Certificate No: 17-3955-2

GUNDERSON LAW FIRM
A PROFESSIONAL LAW CORPORATION
3895 Warren Way
RENO, NEVADA 89509
(775) 829-1222

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Gunderson Law Firm, and that on the 1 day of October, 2018, I deposited for mailing in Reno, Nevada a true and correct copy of the **BRIAN MINEAU AND LEGION INVESTMENTS' RESPONSES TO PLAINTIFF JAY KVAM'S FIRST SET OF INTERROGATORIES**, to the following:

Michael Matuska, Esq.
Matuska Law Offices, Ltd.
2310 South Carson Street, Suite 6
Carson City, Nevada 89701
Attorneys for Jay Kvam



Kelly Gunderson

GUNDERSON LAW FIRM
A PROFESSIONAL
LAW CORPORATION
3895 Warren Way
RENO, NEVADA 89509
(775) 829-1222

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

Exhibit 44

MICHAEL L. MATUSKA'S SEPTEMBER 19, 2018 LETTER TO AUSTIN SWEET

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

Exhibit 44

MICHAEL L. MATUSKA'S SEPTEMBER 19, 2018 LETTER TO AUSTIN SWEET

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

MATUSKA
LAW OFFICES

Michael L. Matuska, Attorney at Law

September 19, 2018

Austin K. Sweet, Esq.
Gunderson Law Firm
3895 Warren Way
Reno NV 89509

Re: *Kvam v. Mineau, et al.*
Second Judicial District Court Case No. CV18-00764

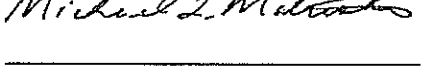
Dear Mr. Sweet:

Thank you for your letter of September 18, 2018 and the offer contained therein. Although the offer now involves a second unidentified property located in Chicago, I do not see that changes Mr. Kvam's prior considerations. Mr. Mineau is encouraged to sell the May Street property, the other unidentified property, and any other property he needs to sell in order to satisfy Mr. Kvam's claims. Mr. Mineau can also borrow money or sell other assets. I see no benefit to first transferring those properties to Mr. Kvam in order to have him sell the properties.

I informed you on April 18, 2018 that the opportunity remains for Mr. Mineau to settle this case with a secured promissory note. That has not changed. This will give Mr. Mineau time to sell the Chicago properties. However, the promissory note will have to be secured by good and adequate security in Nevada, will bear interest at the rate of 7% from the date(s) of the advance(s) as per the Terms of Agreement and the previous offer, and will have to have a firm maturity date. Court costs and attorney fees will also have to be added to the principal amount. The total amount to date is approximately $122,000. Mr. Mineau would be responsible for the lenders policy of title insurance, recording fees, and other costs incurred in connection with the deed of trust. This offer will expire on September 28, 2018.

Sincerely,

MATUSKA LAW OFFICES, LTD.



By: _____
MICHAEL L. MATUSKA, ESQ.
2310 South Carson Street, Suite 6
Carson City NV 89701

cc: Client

I:\Client Files\Litigation\Kvam\v. Mineau\Corr\Sent\Sweet 09.19.18.docx

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

Exhibit 45

AUSTIN SWEET'S LETTER TO MICHAEL MATUSKA
DATED MARCH 26, 2018

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

Exhibit 45

AUSTIN SWEET'S LETTER TO MICHAEL MATUSKA
DATED MARCH 26, 2018

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

Gunderson
Law Firm

From the Desk of:
Austin K. Sweet, Esq.
asweet@gundersonlaw.com

March 26, 2018

Via Email – mlm@matuskalawoffices.com
and U.S. Mail:

Michael L. Matuska, Esq.
2310 South Carson Street, # 6
Carson City, NV 89701

Re: ***7747 South May Street, Chicago, Illinois***

Dear Mr. Matuska:

We are in receipt of your letter dated March 14, 2018.

On March 15, 2018, we delivered to you a written settlement offer which expired at 5:00 p.m. on March 23, 2018. Having received no timely response to our settlement offer, we must assume your client is not interested in resolving this dispute. We therefore offer this response to your March 14, 2018 letter.

Mr. Kvam is not entitled to any "disclosures" or "an accounting" from Brian Mineau or Legion Investments and your letter offers no citation to the Agreement or Nevada law supporting this request. Your client's extensive request for documents is therefore denied.

As we have repeatedly stated, my clients have complied with the terms of the Agreement. Although we understand that you disagree, you have yet to explain why. Thus, my clients will continue to comply with the Agreement and, once the project is completed and the Property is sold, the proceeds will be disbursed in accordance with the Agreement.

Very truly yours,

GUNDERSON LAW FIRM

Austin K. Sweet, Esq.

AKS/kg

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

Exhibit 46

REAL ESTATE CONTRACT – SCOTCH AND SODA GOLDMINE COMPANY, INC. ACCEPTANCE DATE OF MAY 22, 2018

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

Exhibit 46

REAL ESTATE CONTRACT – SCOTCH AND SODA GOLDMINE COMPANY, INC. ACCEPTANCE DATE OF MAY 22, 2018

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

MULTI-BOARD RESIDENTIAL REAL ESTATE CONTRACT 6.1

1. THE PARTIES: Buyer and Seller are hereinafter referred to as the "Parties".

Buyer Name(s) *[please print]* **Scotch and Soda Goldmine Company, Inc.**

Seller Name(s) *[please print]* Brian Mineau

If Dual Agency Applies, Complete Optional Paragraph 31.

2. THE REAL ESTATE: Real Estate shall be defined as the property, all improvements, the fixtures and Personal Property included therein. Seller agrees to convey to Buyer or to Buyer's designated grantee, the Real Estate with approximate lot size or acreage of **25X125** commonly known as:

7747 S May ST, CHICAGO, IL 60620

Address City State Zip

Cook **20294170150000**

County Unit # (If applicable) Permanent Index Number(s) of Real Estate

If Condo/Coop/Townhome Parking is Included: # of spaces(s) _____; identified as Space(s) # _____;
[check type] ☐ deeded space, PIN: _____ ☐ limited common element ☐ assigned space.

3. PURCHASE PRICE: The Purchase Price shall be $ **55000**. After the payment of Earnest Money as provided below, the balance of the Purchase Price, as adjusted by prorations, shall be paid at Closing in "Good Funds" as defined by law.

4. EARNEST MONEY: Earnest Money shall be held in trust for the mutual benefit of the Parties by *[check one]*:
☑ ~~Seller's Brokerage;~~ ☐ Buyer's Brokerage; ☒ As otherwise agreed by the Parties, as "Escrowee". DS BM
Initial Earnest Money of $ **1000** shall be tendered to Escrowee on or before **5** day(s) after Date of Acceptance. Additional Earnest Money of $ **n/a** shall be tendered by **n/a**, 20 **n/a**.

5. FIXTURES AND PERSONAL PROPERTY AT NO ADDITIONAL COST: All of the fixtures and included Personal Property are owned by Seller and to Seller's knowledge are in operating condition on the Date of Acceptance, unless otherwise stated herein. Seller agrees to transfer to Buyer all fixtures, all heating, electrical, plumbing, and well systems together with the following items of Personal Property at no additional cost by Bill of Sale at Closing *[Check or enumerate applicable items]*:

☐ Refrigerator	☐ Central Air Conditioning	☐ Central Humidifier	☐ Light Fixtures, as they exist
☐ Oven/Range/Stove	☐ Window Air Conditioner(s)	☐ Water Softener (owned)	☐ Built-in or attached shelving
☐ Microwave	☐ Ceiling Fan(s)	☐ Sump Pump(s)	☐ All Window Treatments & Hardware
☐ Dishwasher	☐ Intercom System	☐ Electronic or Media Air Filter(s)	☐ Existing Storms and Screens
☐ Garbage Disposal	☐ Backup Generator System	☐ Central Vac & Equipment	☐ Fireplace Screens/Doors/Grates
☐ Trash Compactor	☐ Satellite Dish	☐ Security System(s) (owned)	☐ Fireplace Gas Log(s)
☐ Washer	☐ Outdoor Shed	☐ Garage Door Opener(s) with all Transmitters	☐ Invisible Fence System, Collar & Box
☐ Dryer	☐ Planted Vegetation		☐ Smoke Detectors
☐ Attached Gas Grill	☐ Outdoor Play Set(s)	☐ All Tacked Down Carpeting	☐ Carbon Monoxide Detectors

Other Items Included at No Additional Cost: _____

Items Not Included: _____

Seller warrants to Buyer that all fixtures, systems and Personal Property included in this Contract shall be in operating condition at Possession except: _____.
A system or item shall be deemed to be in operating condition if it performs the function for which it is intended, regardless of age, and does not constitute a threat to health or safety.
If Home Warranty will be provided, complete Optional Paragraph 34.

6. CLOSING: Closing shall be on July 2nd or sooner, 20 18 or at such time as mutually agreed by the Parties in writing. Closing shall take place at the escrow office of the title company (or its issuing agent) that will issue the Owner's Policy of Title Insurance, situated nearest the Real Estate or as shall be agreed mutually by the Parties.

7. POSSESSION: Unless otherwise provided in Paragraph 40, Seller shall deliver possession to Buyer at Closing. Possession shall be deemed to have been delivered when Seller has vacated the Real Estate and delivered keys to the Real Estate to Buyer or to the office of the Seller's Brokerage.

8. MORTGAGE CONTINGENCY: If this transaction is NOT CONTINGENT ON FINANCING, Optional Paragraph 36 a) OR Paragraph 36 b) MUST BE USED. If any portion of Paragraph 36 is used, the provisions of this Paragraph 8 are NOT APPLICABLE.

This Contract is contingent upon Buyer obtaining a *[check one]* ☐ fixed; ☐ adjustable; *[check one]* ☐ conventional; ☐ FHA/VA (if FHA/VA is chosen, complete Paragraph 37); ☐ other _____ loan for ____ % of the Purchase Price, plus private mortgage insurance (PMI), if required, with an interest rate (initial rate if an adjustable rate mortgage used) not to exceed _____% per annum, amortized over not less than _____ years. Buyer shall pay loan origination fee and/or discount points not to exceed _____ % of the loan amount. Buyer shall pay usual and customary processing fees and closing costs charged by lender. (Complete Paragraph 35 if closing cost credits apply).

Buyer shall make written loan application within five (5) Business Days after the Date of Acceptance; **failure to do so shall constitute an act of Default under this Contract.** *[Complete both a) and b)]*:

a) Not later than _____, 20 ____, (if no date is inserted, the date shall be twenty-one (21) days after the Date of Acceptance) Buyer shall provide written evidence from Buyer's licensed lending institution confirming that Buyer has provided to such lending institution an "Intent to Proceed" as that term is defined in the rules of the Consumer Financial Protection Bureau and has paid all lender application and appraisal fees. If Buyer is unable to provide such written evidence, Seller shall have the option of declaring this Contract terminated by giving Notice to the other Party not later than two (2) Business Days after the date specified herein or any extension date agreed to by the Parties in writing.

b) Not later than _____, 20 ____, (if no date is inserted, the date shall be sixty (60) days after the Date of Acceptance) Buyer shall provide written evidence from Buyer's licensed lending institution confirming that Buyer has received a written mortgage commitment for the loan referred to above. If Buyer is unable to provide such written evidence either Buyer or Seller shall have the option of declaring this Contract terminated by giving Notice to the other Party not later than two (2) Business Days after the date specified herein or any extension date agreed to by the Parties in writing.

A Party causing delay in the loan approval process shall not have the right to terminate under either of the preceding paragraphs. In the event neither Party elects to declare this Contract terminated as of the latter of the dates specified above (as may be amended from time to time), then this Contract shall continue in full force and effect without any loan contingencies.

Unless otherwise provided in Paragraph 32, this Contract shall not be contingent upon the sale and/or closing of Buyer's existing real estate. Buyer shall be deemed to have satisfied the financing conditions of this paragraph if Buyer obtains a loan commitment in accordance with the terms of this paragraph even though the loan is conditioned on the sale and/or closing of Buyer's existing real estate.

9. STATUTORY DISCLOSURES: If applicable, prior to signing this Contract, Buyer:

[check one] ☐ has ☑ has not received a completed Illinois Residential Real Property Disclosure;
[check one] ☐ has ☑ has not received the EPA Pamphlet, "Protect Your Family From Lead In Your Home";
[check one] ☐ has ☑ has not received a Lead-Based Paint Disclosure;
[check one] ☐ has ☑ has not received the IEMA, "Radon Testing Guidelines for Real Estate Transactions";

[check one] ☐ has ☑ has not received the Disclosure of Information on Radon Hazards.

10. PRORATIONS: Proratable items shall include without limitation, rents and deposits (if any) from tenants; Special Service Area or Special Assessment Area tax for the year of Closing only; utilities, water and sewer; and Homeowner or Condominium Association fees (and Master/Umbrella Association fees, if applicable). Accumulated reserves of a Homeowner/Condominium Association(s) are not a proratable item. Seller represents that as of the Date of Acceptance Homeowner/Condominium Association(s) fees are $ _____ per _____ (and, if applicable Master/Umbrella Association fees are $ _____ per _____). Seller agrees to pay prior to or at Closing any special assessments (by any association or governmental entity) confirmed prior to the Date of Acceptance. Special Assessment Area or Special Service Area installments due after the year of Closing shall not be proratable items and shall be paid by Buyer. The general Real Estate taxes shall be prorated as of the date of Closing based on 100 % of the most recent ascertainable full year tax bill. All prorations shall be final as of Closing, except as provided in Paragraph 22. If the amount of the most recent ascertainable full year tax bill reflects a homeowner, senior citizen or other exemption, a senior freeze or senior deferral, then Seller has submitted or will submit in a timely manner all necessary documentation to the appropriate governmental entity, before or after Closing, to preserve said exemption(s). The requirements of this Paragraph shall survive the Closing.

11. ATTORNEY REVIEW: Within five (5) Business Days after Date of Acceptance, the attorneys for the respective Parties, by Notice, may:

a) Approve this Contract; or
b) Disapprove this Contract, which disapproval shall not be based solely upon the Purchase Price; or
c) Propose modifications except for the Purchase Price. If within ten (10) Business Days after the Date of Acceptance written agreement is not reached by the Parties with respect to resolution of the proposed modifications, then either Party may terminate this Contract by serving Notice, whereupon this Contract shall be null and void; or
d) Propose suggested changes to this Contract. If such suggestions are not agreed upon, neither Party may declare this Contract null and void and this Contract shall remain in full force and effect.

Unless otherwise specified, all Notices shall be deemed made pursuant to Paragraph 11 c). If Notice is not served within the time specified herein, the provisions of this paragraph shall be deemed waived by the Parties and this Contract shall remain in full force and effect.

12. PROFESSIONAL INSPECTIONS AND INSPECTION NOTICES: Buyer may conduct at Buyer's expense (unless otherwise provided by governmental regulations) any or all of the following inspections of the Real Estate by one or more licensed or certified inspection services: home, radon, environmental, lead-based paint, lead-based paint hazards or wood-destroying insect infestation.

a) Buyer agrees that minor repairs and routine maintenance items of the Real Estate do not constitute defects and are not a part of this contingency. **The fact that a functioning major component may be at the end of its useful life shall not render such component defective for purposes of this paragraph.** Buyer shall indemnify Seller and hold Seller harmless from and against any loss or damage caused by the acts of negligence of Buyer or any person performing any inspection. The home inspection shall cover only the major components of the Real Estate, including but not limited to central heating system(s), central cooling system(s), plumbing and well system, electrical system, roof, walls, windows, doors, ceilings, floors, appliances and foundation. A major component shall be deemed to be in operating condition if it performs the function for which it is intended, regardless of age, and does not constitute a threat to health or safety. If radon mitigation is performed, Seller shall pay for any retest.

b) Buyer shall serve Notice upon Seller or Seller's attorney of any defects disclosed by any inspection for which Buyer requests resolution by Seller, together with a copy of the pertinent pages of the inspection reports within five (5) Business Days (ten (10) calendar days for a lead-based paint or lead-based paint hazard inspection) after the Date of Acceptance. If within ten (10) Business Days after the Date of Acceptance written agreement is not reached by the Parties with respect to resolution of all inspection issues, then either Party may terminate this Contract by serving Notice to the other Party, whereupon this Contract shall be null and void.

c) Notwithstanding anything to the contrary set forth above in this paragraph, in the event the inspection reveals that the condition of the Real Estate is unacceptable to Buyer and Buyer serves Notice to Seller within five (5) Business Days after the Date of Acceptance, this Contract shall be null and void. Said Notice shall not include any portion of the inspection reports unless requested by Seller.

d) Failure of Buyer to conduct said inspection(s) and notify Seller within the time specified operates as a waiver of Buyer's rights to terminate this Contract under this Paragraph 12 and this Contract shall remain in full force and effect.

13. HOMEOWNER INSURANCE: This Contract is contingent upon Buyer obtaining evidence of insurability for an Insurance Service Organization HO-3 or equivalent policy at standard premium rates within ten (10) Business Days after the Date of Acceptance. **If Buyer is unable to obtain evidence of insurability and serves Notice with proof of same to Seller within time specified, this Contract shall be null and void. If Notice is not served within the time specified, Buyer shall be deemed to have waived this contingency and this Contract shall remain in full force and effect.**

14. FLOOD INSURANCE: Buyer shall have the option to declare this Contract null and void if the Real Estate is located in a special flood hazard area. **If Notice of the option to declare contract null and void is not given to Seller within ten (10) Business Days after the Date of Acceptance or by the time specified in Paragraph 8 b), whichever is later, Buyer shall be deemed to have waived such option and this Contract shall remain in full force and effect.** Nothing herein shall be deemed to affect any rights afforded by the Residential Real Property Disclosure Act.

15. CONDOMINIUM/COMMON INTEREST ASSOCIATIONS: (If applicable) The Parties agree that the terms contained in this paragraph, which may be contrary to other terms of this Contract, shall supersede any conflicting terms.

a) Title when conveyed shall be good and merchantable, subject to terms, provisions, covenants and conditions of the Declaration of Condominium/Covenants, Conditions and Restrictions ("Declaration/CCRs") and all amendments; public and utility easements including any easements established by or implied from the Declaration/CCRs or amendments thereto; party wall rights and agreements; limitations and conditions imposed by the Condominium Property Act; installments due after the date of Closing of general assessments established pursuant to the Declaration/CCRs.

b) Seller shall be responsible for payment of all regular assessments due and levied prior to Closing and for all special assessments confirmed prior to the Date of Acceptance.

c) Seller shall notify Buyer of any proposed special assessment or increase in any regular assessment between the Date of Acceptance and Closing. The Parties shall have three (3) Business Days to reach agreement relative to payment thereof. Absent such agreement either Party may declare the Contract null and void.

d) Seller shall, within five (5) Business Days from the Date of Acceptance, apply for those items of disclosure upon sale as described in the Illinois Condominium Property Act, and provide same in a timely manner, but no later than the time period provided for by law. This Contract is subject to the condition that Seller be able

to procure and provide to Buyer a release or waiver of any right of first refusal or other pre-emptive rights to purchase created by the Declaration/CCRs. In the event the Condominium Association requires the personal appearance of Buyer or additional documentation, Buyer agrees to comply with same.

e) In the event the documents and information provided by Seller to Buyer disclose that the existing improvements are in violation of existing rules, regulations or other restrictions or that the terms and conditions contained within the documents would unreasonably restrict Buyer's use of the premises or would result in financial obligations unacceptable to Buyer in connection with owning the Real Estate, then Buyer may declare this Contract null and void by giving Seller Notice within five (5) Business Days after the receipt of the documents and information required by this Paragraph, listing those deficiencies which are unacceptable to Buyer. If Notice is not served within the time specified, Buyer shall be deemed to have waived this contingency, and this Contract shall remain in full force and effect.

f) Seller shall not be obligated to provide a condominium survey.

g) Seller shall provide a certificate of insurance showing Buyer and Buyer's mortgagee, if any, as an insured.

16. THE DEED: Seller shall convey or cause to be conveyed to Buyer or Buyer's Designated grantee good and merchantable title to the Real Estate by recordable Warranty Deed, with release of homestead rights, (or the appropriate deed if title is in trust or in an estate), and with real estate transfer stamps to be paid by Seller (unless otherwise designated by local ordinance). Title when conveyed will be good and merchantable, subject only to: covenants, conditions and restrictions of record and building lines and easements, if any, provided they do not interfere with the current use and enjoyment of the Real Estate; and general real estate taxes not due and payable at the time of Closing.

17. MUNICIPAL ORDINANCE, TRANSFER TAX, AND GOVERNMENTAL COMPLIANCE:

a) The Parties are cautioned that the Real Estate may be situated in a municipality that has adopted a pre-closing inspection requirement, municipal Transfer Tax or other similar ordinances. Transfer taxes required by municipal ordinance shall be paid by the Party designated in such ordinance.

b) The Parties agree to comply with the reporting requirements of the applicable sections of the Internal Revenue Code and the Real Estate Settlement Procedures Act of 1974, as amended.

18. TITLE: At Seller's expense, Seller will deliver or cause to be delivered to Buyer or Buyer's attorney within customary time limitations and sufficiently in advance of Closing, as evidence of title in Seller or Grantor, a title commitment for an ALTA title insurance policy in the amount of the Purchase Price with extended coverage by a title company licensed to operate in the State of Illinois, issued on or subsequent to the Date of Acceptance, subject only to items listed in Paragraph 16. The requirement to provide extended coverage shall not apply if the Real Estate is vacant land. The commitment for title insurance furnished by Seller will be presumptive evidence of good and merchantable title as therein shown, subject only to the exceptions therein stated. **If the title commitment discloses any unpermitted exceptions or if the Plat of Survey shows any encroachments or other survey matters that are not acceptable to Buyer, then Seller shall have said exceptions, survey matters or encroachments removed, or have the title insurer commit to either insure against loss or damage that may result from such exceptions or survey matters or insure against any court-ordered removal of the encroachments.** If Seller fails to have such exceptions waived or insured over prior to Closing, Buyer may elect to take title as it then is with the right to deduct from the Purchase Price prior encumbrances of a definite or ascertainable amount. Seller shall furnish Buyer at Closing an Affidavit of Title covering the date of Closing, and shall sign any other customary forms required for issuance of an ALTA Insurance Policy.

19. PLAT OF SURVEY: Not less than one (1) Business Day prior to Closing, except where the Real Estate is a condominium (see Paragraph 15) Seller shall, at Seller's expense, furnish to Buyer or Buyer's attorney a Plat of

Survey that conforms to the current Minimum Standard of Practice for boundary surveys, is dated not more than six (6) months prior to the date of Closing, and is prepared by a professional land surveyor licensed to practice land surveying under the laws of the State of Illinois. The Plat of Survey shall show visible evidence of improvements, rights of way, easements, use and measurements of all parcel lines. The land surveyor shall set monuments or witness corners at all accessible corners of the land. All such corners shall also be visibly staked or flagged. The Plat of Survey shall include the following statement placed near the professional land surveyor's seal and signature: "This professional service conforms to the current Illinois Minimum Standards for a boundary survey." A Mortgage Inspection, as defined, is not a boundary survey and is not acceptable.

20. DAMAGE TO REAL ESTATE OR CONDEMNATION PRIOR TO CLOSING: If prior to delivery of the deed the Real Estate shall be destroyed or materially damaged by fire or other casualty, or the Real Estate is taken by condemnation, then Buyer shall have the option of either terminating this Contract (and receiving a refund of earnest money) or accepting the Real Estate as damaged or destroyed, together with the proceeds of the condemnation award or any insurance payable as a result of the destruction or damage, which gross proceeds Seller agrees to assign to Buyer and deliver to Buyer at Closing. Seller shall not be obligated to repair or replace damaged improvements. The provisions of the Uniform Vendor and Purchaser Risk Act of the State of Illinois shall be applicable to this Contract, except as modified by this paragraph.

21. CONDITION OF REAL ESTATE AND INSPECTION: Seller agrees to leave the Real Estate in broom clean condition. All refuse and personal property that is not to be conveyed to Buyer shall be removed from the Real Estate at Seller's expense prior to delivery of Possession. Buyer shall have the right to inspect the Real Estate, fixtures and included Personal Property prior to Possession to verify that the Real Estate, improvements and included Personal Property are in substantially the same condition as of the Date of Acceptance, normal wear and tear excepted.

22. REAL ESTATE TAX ESCROW: In the event the Real Estate is improved, but has not been previously taxed for the entire year as currently improved, the sum of three percent (3%) of the Purchase Price shall be deposited in escrow with the title company with the cost of the escrow to be divided equally by Buyer and Seller and paid at Closing. When the exact amount of the taxes to be prorated under this Contract can be ascertained, the taxes shall be prorated by Seller's attorney at the request of either Party and Seller's share of such tax liability after proration shall be paid to Buyer from the escrow funds and the balance, if any, shall be paid to Seller. If Seller's obligation after such proration exceeds the amount of the escrow funds, Seller agrees to pay such excess promptly upon demand.

23. SELLER REPRESENTATIONS: Seller's representations contained in this paragraph shall survive the Closing. Seller represents that with respect to the Real Estate Seller has no knowledge of nor has Seller received any written notice from any association or governmental entity regarding:

a) zoning, building, fire or health code violations that have not been corrected;
b) any pending rezoning;
c) boundary line disputes;
d) any pending condemnation or Eminent Domain proceeding;
e) easements or claims of easements not shown on the public records;
f) any hazardous waste on the Real Estate;
g) any improvements to the Real Estate for which the required initial and final permits were not obtained;
h) any improvements to the Real Estate which are not included in full in the determination of the most recent tax assessment; or
i) any improvements to the Real Estate which are eligible for the home improvement tax exemption.

Seller further represents that:

[Initials] ___ ___ There *[check one]* ☐ is ☑ is not a pending or unconfirmed special assessment affecting the Real Estate by any association or governmental entity payable by Buyer after the date of Closing.

___ ___ The Real Estate *[check one]* ☐ is ☑ is not located within a Special Assessment Area or Special Service Area, payments for which will not be the obligation of Seller after the year in which the Closing occurs.

All Seller representations shall be deemed re-made as of Closing. If prior to Closing Seller becomes aware of matters that require modification of the representations previously made in this Paragraph 23, Seller shall promptly notify Buyer. If the matters specified in such Notice are not resolved prior to Closing, Buyer may terminate this Contract by Notice to Seller and this Contract shall be null and void.

24. BUSINESS DAYS/HOURS: Business Days are defined as Monday through Friday, excluding Federal holidays. Business Hours are defined as 8:00 A.M. to 6:00 P.M. Chicago time.

25. FACSIMILE OR DIGITAL SIGNATURES: Facsimile or digital signatures shall be sufficient for purposes of executing, negotiating, and finalizing this Contract, and delivery thereof by one of the following methods shall be deemed delivery of this Contract containing original signature(s). An acceptable facsimile signature may be produced by scanning an original, hand-signed document and transmitting same by facsimile. An acceptable digital signature may be produced by use of a qualified, established electronic security procedure mutually agreed upon by the Parties. Transmissions of a digitally signed copy hereof shall be by an established, mutually acceptable electronic method, such as creating a PDF ("Portable Document Format") document incorporating the digital signature and sending same by electronic mail.

26. DIRECTION TO ESCROWEE: In every instance where this Contract shall be deemed null and void or if this Contract may be terminated by either Party, the following shall be deemed incorporated: "and Earnest Money refunded upon the joint written direction by the Parties to Escrowee or upon an entry of an order by a court of competent jurisdiction."

In the event either Party has declared the Contract null and void or the transaction has failed to close as provided for in this Contract and if Escrowee has not received joint written direction by the Parties or such court order, the Escrowee may elect to proceed as follows:

a) Escrowee shall give written Notice to the Parties as provided for in this Contract at least fourteen (14) days prior to the date of intended disbursement of Earnest Money indicating the manner in which Escrowee intends to disburse in the absence of any written objection. If no written objection is received by the date indicated in the Notice then Escrowee shall distribute the Earnest Money as indicated in the written Notice to the Parties. **If any Party objects in writing** to the intended disbursement of Earnest Money then Earnest Money shall be held until receipt of joint written direction from all Parties or until receipt of an order of a court of competent jurisdiction.

b) Escrowee may file a Suit for Interpleader and deposit any funds held into the Court for distribution after resolution of the dispute between Seller and Buyer by the Court. Escrowee may retain from the funds deposited with the Court the amount necessary to reimburse Escrowee for court costs and reasonable attorney's fees incurred due to the filing of the Interpleader. If the amount held in escrow is inadequate to reimburse Escrowee for the costs and attorney's fees, Buyer and Seller shall jointly and severally indemnify Escrowee for additional costs and fees incurred in filing the Interpleader action.

27. NOTICE: Except as provided in Paragraph 32 c) 2) regarding the manner of service for "kick-out" Notices, all Notices shall be in writing and shall be served by one Party or attorney to the other Party or attorney. Notice to any one of the multiple person Party shall be sufficient Notice to all. Notice shall be given in the following manner:

a) By personal delivery; or

b) By mailing to the addresses recited herein by regular mail and by certified mail, return receipt requested. Except as otherwise provided herein, Notice served by certified mail shall be effective on the date of mailing; or

c) By facsimile transmission. Notice shall be effective as of date and time of the transmission, provided that the Notice transmitted shall be sent on Business Days during Business Hours. In the event Notice is transmitted during non-business hours, the effective date and time of Notice is the first hour of the next Business Day after transmission; or

d) By e-mail transmission if an e-mail address has been furnished by the recipient Party or the recipient Party's attorney to the sending Party or is shown in this Contract. Notice shall be effective as of date and time of e-mail transmission, provided that, in the event e-mail Notice is transmitted during non-business hours, the effective date and time of Notice is the first hour of the next Business Day after transmission. An attorney or Party may opt out of future e-mail Notice by any form of Notice provided by this Contract; or

e) By commercial overnight delivery (e.g., FedEx). Such Notice shall be effective on the next Business Day following deposit with the overnight delivery company.

28. PERFORMANCE: Time is of the essence of this Contract. In any action with respect to this Contract, the Parties are free to pursue any legal remedies at law or in equity and the prevailing party in litigation shall be entitled to collect reasonable attorney fees and costs from the non-prevailing party as ordered by a court of competent jurisdiction.

29. CHOICE OF LAW AND GOOD FAITH: All terms and provisions of this Contract including but not limited to the Attorney Review and Professional Inspection paragraphs shall be governed by the laws of the State of Illinois and are subject to the covenant of good faith and fair dealing implied in all Illinois contracts.

30. OTHER PROVISIONS: This Contract is also subject to those OPTIONAL PROVISIONS initialed by the Parties and the following additional attachments, if any: _____

_____.

OPTIONAL PROVISIONS (Applicable ONLY if initialed by all Parties)

[Initials] ____ ____ ____ ____ **31. CONFIRMATION OF DUAL AGENCY:** The Parties confirm that they have previously consented to _____ (Licensee) acting as a Dual Agent in providing brokerage services on their behalf and specifically consent to Licensee acting as a Dual Agent with regard to the transaction referred to in this Contract.

____ ____ ____ ____ **32. SALE OF BUYER'S REAL ESTATE:**

a) **REPRESENTATIONS ABOUT BUYER'S REAL ESTATE:** Buyer represents to Seller as follows:

1) Buyer owns real estate (hereinafter referred to as "Buyer's real estate") with the address of:

_____.

Address City State Zip

2) Buyer *[check one]* ☐ has ☐ has not entered into a contract to sell Buyer's real estate.

If Buyer has entered into a contract to sell Buyer's real estate, that contract:

a) *[check one]* ☐ is ☐ is not subject to a mortgage contingency.

b) *[check one]* ☐ is ☐ is not subject to a real estate sale contingency.

c) *[check one]* ☐ is ☐ is not subject to a real estate closing contingency.

3) Buyer *[check one]* ☐ has ☐ has not listed Buyer's real estate for sale with a licensed real estate broker and in a local multiple listing service.

4) If Buyer's real estate is not listed for sale with a licensed real estate broker and in a local multiple listing service, Buyer *[check one]*:

a) ☐ Shall list real estate for sale with a licensed real estate broker who will place it in a local multiple listing service within five (5) Business Days after Date of Acceptance.
[For information only] Broker: _____
Broker's Address: _____ Phone: _____

b) ☐ Does not intend to list said real estate for sale.

b) CONTINGENCIES BASED UPON SALE AND/OR CLOSING OF REAL ESTATE:

1) This Contract is contingent upon Buyer having entered into a contract for the sale of Buyer's real estate that is in full force and effect as of _____, 20 _____. Such contract should provide for a closing date not later than the Closing Date set forth in this Contract. **If Notice is served on or before the date set forth in this subparagraph that Buyer has not procured a contract for the sale of Buyer's real estate, this Contract shall be null and void. If Notice that Buyer has not procured a contract for the sale of Buyer's real estate is not served on or before the close of business on the date set forth in this subparagraph, Buyer shall be deemed to have waived all contingencies contained in this Paragraph 32, and this Contract shall remain in full force and effect.** (If this paragraph is used, then the following paragraph **must** be completed.)

2) In the event Buyer has entered into a contract for the sale of Buyer's real estate as set forth in Paragraph 32 b) 1) and that contract is in full force and effect, or has entered into a contract for the sale of Buyer's real estate prior to the execution of this Contract, this Contract is contingent upon Buyer closing the sale of Buyer's real estate on or before _____, 20 _____. **If Notice that Buyer has not closed the sale of Buyer's real estate is served before the close of business on the next Business Day after the date set forth in the preceding sentence, this Contract shall be null and void. If Notice is not served as described in the preceding sentence, Buyer shall have deemed to have waived all contingencies contained in this Paragraph 32, and this Contract shall remain in full force and effect.**

3) If the contract for the sale of Buyer's real estate is terminated for any reason after the date set forth in Paragraph 32 b) 1) (or after the date of this Contract if no date is set forth in Paragraph 32 b) 1)), Buyer shall, within three (3) Business Days of such termination, notify Seller of said termination. **Unless Buyer, as part of said Notice, waives all contingencies in Paragraph 32 and complies with Paragraph 32 d), this Contract shall be null and void as of the date of Notice. If Notice as required by this subparagraph is not served within the time specified, Buyer shall be in default under the terms of this Contract.**

c) SELLER'S RIGHT TO CONTINUE TO OFFER REAL ESTATE FOR SALE: During the time of this contingency, Seller has the right to continue to show the Real Estate and offer it for sale subject to the following:

1) If Seller accepts another bona fide offer to purchase the Real Estate while contingencies expressed in Paragraph 32 b) are in effect, Seller shall notify Buyer in writing of same. Buyer shall then have _____ hours after Seller gives such Notice to waive the contingencies set forth in Paragraph 32 b), subject to Paragraph 32 d).

2) Seller's Notice to Buyer (commonly referred to as a 'kick-out' Notice) shall be in writing and shall be served on Buyer, not Buyer's attorney or Buyer's real estate agent. Courtesy copies of such 'kick-out' Notice should be sent to Buyer's attorney and Buyer's real estate agent, if known. Failure to provide such courtesy copies shall not render Notice invalid. Notice to any one of a multiple-person Buyer shall be sufficient Notice to all Buyers. Notice for the purpose of this subparagraph only shall be served upon Buyer in the following manner:
   a) By personal delivery effective at the time and date of personal delivery; or
   b) By mailing to the address recited herein for Buyer by regular mail and by certified mail. Notice shall be effective at 10:00 A.M. on the morning of the second day following deposit of Notice in the U.S. Mail; or

c) By commercial delivery overnight (e.g., FedEx). Notice shall be effective upon delivery or at 4:00 P.M. Chicago time on the next delivery day following deposit with the overnight delivery company, whichever first occurs.

3) If Buyer complies with the provisions of Paragraph 32 d) then this Contract shall remain in full force and effect.

4) If the contingencies set forth in Paragraph 32 b) are NOT waived in writing, within said time period by Buyer, this Contract shall be null and void.

5) Except as provided in Paragraph 32 c) 2) above, all Notices shall be made in the manner provided by Paragraph 27 of this Contract.

6) Buyer waives any ethical objection to the delivery of Notice under this paragraph by Seller's attorney or representative.

d) **WAIVER OF PARAGRAPH 32 CONTINGENCIES:** Buyer shall be deemed to have waived the contingencies in Paragraph 32 b) when Buyer has delivered written waiver and deposited with the Escrowee additional earnest money in the amount of $ _____ in the form of a cashier's or certified check within the time specified. **If Buyer fails to deposit the additional earnest money within the time specified, the waiver shall be deemed ineffective and this Contract shall be null and void.**

e) **BUYER COOPERATION REQUIRED:** Buyer authorizes Seller or Seller's agent to verify representations contained in Paragraph 32 at any time, and Buyer agrees to cooperate in providing relevant information.

____ ____ ____ ____ **33. CANCELLATION OF PRIOR REAL ESTATE CONTRACT:** In the event either Party has entered into a prior real estate contract, this Contract shall be subject to written cancellation of the prior contract on or before _____, 20 ____. **In the event the prior contract is not cancelled within the time specified, this Contract shall be null and void. Seller's notice to the purchaser under the prior contract should not be served until after Attorney Review and Professional Inspections provisions of this Contract have expired, been satisfied or waived.**

____ ____ ____ ____ **34. HOME WARRANTY:** Seller shall provide at no expense to Buyer a Home Warranty at a cost of $ _____. Evidence of a fully pre-paid policy shall be delivered at Closing.

____ ____ ____ ____ **35. CREDIT AT CLOSING:** Provided Buyer's lender permits such credit to show on the HUD-1 Settlement Statement or Closing Disclosure, **and if not, such lesser amount as the lender permits**, Seller agrees to credit $ _____ to Buyer at Closing to be applied to prepaid expenses, closing costs or both.

____ ____ ____ ____ **36. TRANSACTIONS NOT CONTINGENT ON FINANCING: IF EITHER OF THE FOLLOWING ALTERNATIVE OPTIONS IS SELECTED, THE PROVISIONS OF THE MORTGAGE CONTINGENCY PARAGRAPH 8 SHALL NOT APPLY [*CHOOSE ONLY ONE*]:**

a) ____ ____ ____ ____ **Transaction With No Mortgage (All Cash):** If this selection is made, Buyer will pay at closing, in the form of "Good Funds" the difference (plus or minus prorations) between the Purchase Price and the amount of the Earnest Money deposited pursuant to Paragraph 4 above. Buyer represents to Seller, as of the Date of Offer, that Buyer has sufficient funds available to satisfy the provisions of this paragraph. Buyer agrees to verify the above representation upon the reasonable request of Seller and to authorize the disclosure of such financial information to Seller, Seller's attorney or Seller's broker that may be reasonably necessary to prove the availability of sufficient funds to close. Buyer understands and agrees that, so long as Seller has fully complied with Seller's obligations under this Contract, any act or omission outside of the control of Seller, whether intentional or not, that prevents Buyer from satisfying the balance due from Buyer at closing, shall constitute a material breach of this Contract by Buyer. The Parties shall share the title company escrow closing fee equally. **Unless otherwise provided in Paragraph 32, this Contract shall not be contingent upon the sale and/or closing of Buyer's existing real estate.**

b) ____ ____ ____ ____ **Transaction, Mortgage Allowed:** If this selection is made, Buyer will pay at closing, in the form of "Good Funds" the difference (plus or minus prorations) between the Purchase Price and the amount of the Earnest Money deposited pursuant to Paragraph 4 above. Buyer represents to Seller, as of the Date of Offer, that Buyer has sufficient funds available to satisfy the provisions of this paragraph. Buyer agrees to verify the above representation upon the reasonable request of Seller and to authorize the disclosure of such financial information to Seller, Seller's attorney or Seller's broker that may be reasonably necessary to prove the availability of sufficient funds to close. Notwithstanding such representation, Seller agrees to reasonably and promptly cooperate with Buyer so that Buyer may apply for and obtain a mortgage loan or loans including but not limited to providing access to the Real Estate to satisfy Buyer's obligations to pay the balance due (plus or minus prorations) to close this transaction. Such cooperation shall include the performance in a timely manner of all of Seller's pre-closing obligations under this Contract. **This Contract shall NOT be contingent upon Buyer obtaining financing.** Buyer understands and agrees that, so long as Seller has fully complied with Seller's obligations under this Contract, any act or omission outside of the control of Seller, whether intentional or not, that prevents Buyer from satisfying the balance due from Buyer at Closing shall constitute a material breach of this Contract by Buyer. Buyer shall pay the title company escrow closing fee. **Unless otherwise provided in Paragraph 32, this Contract shall not be contingent upon the sale and/or closing of Buyer's existing real estate.**

____ ____ ____ ____ **37. VA OR FHA FINANCING:** If Buyer is seeking VA or FHA financing, **required FHA or VA amendments and disclosures shall be attached to this Contract.** If VA, the Funding Fee, or if FHA, the Mortgage Insurance Premium (MIP) shall be paid by Buyer and *[check one]* ☐ shall ☐ shall not be added to the mortgage loan amount.

____ ____ ____ ____ **38. WELL OR SANITARY SYSTEM INSPECTIONS:** Seller shall obtain at Seller's expense a well water test stating that the well delivers not less than five (5) gallons of water per minute and including a bacteria and nitrate test and/or a septic report from the applicable County Health Department, a Licensed Environmental Health Practitioner, or a licensed well and septic inspector, each dated not more than ninety (90) days prior to Closing, stating that the well and water supply and the private sanitary system are in operating condition with no defects noted. Seller shall remedy any defect or deficiency disclosed by said report(s) prior to Closing, provided that if the cost of remedying a defect or deficiency and the cost of landscaping together exceed $3,000.00, and if the Parties cannot reach agreement regarding payment of such additional cost, this Contract may be terminated by either Party. Additional testing recommended by the report shall be obtained at the Seller's expense. If the report recommends additional testing after Closing, the Parties shall have the option of establishing an escrow with a mutual cost allocation for necessary repairs or replacements, or either Party may terminate this Contract prior to Closing. Seller shall deliver a copy of such evaluation(s) to Buyer not less than ten (10) Business Days prior to Closing.

____ ____ ____ ____ **39. WOOD DESTROYING INFESTATION:** Notwithstanding the provisions of Paragraph 12, within ten (10) Business Days after the Date of Acceptance, Seller at Seller's expense shall deliver to Buyer a written report, dated not more than six (6) months prior to the Date of Closing, by a licensed inspector certified by the appropriate state regulatory authority in the subcategory of termites, stating that there is no visible evidence of active infestation by termites or other wood destroying insects. Unless otherwise agreed between the Parties, if the report discloses evidence of active infestation or structural damage, Buyer has the option within five (5) Business Days of receipt of the report to proceed with the purchase or to declare this Contract null and void.

____ ____ ____ ____ **40. POST CLOSING POSSESSION:** Possession shall be delivered no later than 11:59 P.M. on the date that is _____ days after the date of Closing ("the Possession Date"). Seller shall be responsible for all utilities, contents and liability insurance, and home maintenance expenses until delivery of possession. Seller shall

deposit in escrow at Closing with _____, *[check one]* ☐ one percent (1%) of the Purchase Price or ☐ the sum of $ _____ to be paid by Escrowee as follows:

a) The sum of $ _____ per day for use and occupancy from and including the day after Closing to and including the day of delivery of Possession, if on or before the Possession Date;

b) The amount per day equal to three (3) times the daily amount set forth herein shall be paid for each day after the Possession Date specified in this paragraph that Seller remains in possession of the Real Estate; and

c) The balance, if any, to Seller after delivery of Possession and provided that the terms of Paragraph 21 have been satisfied. Seller's liability under this paragraph shall not be limited to the amount of the possession escrow deposit referred to above. Nothing herein shall be deemed to create a Landlord/Tenant relationship between the Parties.

DS BM ____ ____ ____ **41. "AS IS" CONDITION:** This Contract is for the sale and purchase of the Real Estate in its "As Is" condition as of the Date of Offer. Buyer acknowledges that no representations, warranties or guarantees with respect to the condition of the Real Estate have been made by Seller or Seller's Designated Agent other than those known defects, if any, disclosed by Seller. Buyer may conduct an inspection at Buyer's expense. In that event, Seller shall make the Real Estate available to Buyer's inspector at reasonable times. Buyer shall indemnify Seller and hold Seller harmless from and against any loss or damage caused by the acts of negligence of Buyer or any person performing any inspection. **In the event the inspection reveals that the condition of the Real Estate is unacceptable to Buyer and Buyer so notifies Seller within five (5) Business Days after the Date of Acceptance, this Contract shall be null and void. Buyer's notice SHALL NOT include a copy of the inspection report, and Buyer shall not be obligated to send the inspection report to Seller absent Seller's written request for same. Failure of Buyer to notify Seller or to conduct said inspection operates as a waiver of Buyer's right to terminate this Contract under this paragraph and this Contract shall remain in full force and effect.** Buyer acknowledges that the provisions of Paragraph 12 and the warranty provisions of Paragraph 5 do not apply to this Contract.

____ ____ ____ ____ **42. SPECIFIED PARTY APPROVAL:** This Contract is contingent upon the approval of the Real Estate by _____ Buyer's Specified Party, within five (5) Business Days after the Date of Acceptance. In the event Buyer's Specified Party does not approve of the Real Estate and Notice is given to Seller within the time specified, this Contract shall be null and void. If Notice is not served within the time specified, this provision shall be deemed waived by the Parties and this Contract shall remain in full force and effect.

____ ____ ____ ____ **43. INTEREST BEARING ACCOUNT:** Earnest money (with a completed W-9 and other required forms), shall be held in a federally insured interest bearing account at a financial institution designated by Escrowee. All interest earned on the earnest money shall accrue to the benefit of and be paid to Buyer. **Buyer shall be responsible for any administrative fee (not to exceed $100) charged for setting up the account.** In anticipation of Closing, the Parties direct Escrowee to close the account no sooner than ten (10) Business Days prior to the anticipated Closing date.

____ ____ ____ ____ **44. MISCELLANEOUS PROVISIONS:** Buyer's and Seller's obligations are contingent upon the Parties entering into a separate written agreement consistent with the terms and conditions set forth herein, and with such additional terms as either Party may deem necessary, providing for one or more of the following *[check applicable boxes]*:

☐ Articles of Agreement for Deed or Purchase Money Mortgage	☐ Assumption of Seller's Mortgage	☐ Commercial/Investment
	☐ Cooperative Apartment	☐ New Construction
☐ Short Sale	☐ Tax-Deferred Exchange	☐ Vacant Land

THIS DOCUMENT WILL BECOME A LEGALLY BINDING CONTRACT WHEN SIGNED BY ALL PARTIES AND DELIVERED TO THE PARTIES OR THEIR AGENTS.

THE PARTIES REPRESENT THAT THE TEXT OF THIS COPYRIGHTED FORM HAS NOT BEEN ALTERED AND IS IDENTICAL TO THE OFFICIAL MULTI-BOARD RESIDENTIAL REAL ESTATE CONTRACT 6.1.

5-20-18	5/22/2018 7:43:18 PM PDT
Date of Offer	DATE OF ACCEPTANCE
Jared densmore	DocuSigned by: Brian Mineau
Buyer Signature	Seller Signature 0576E2413722245D...
Buyer Signature	Seller Signature Brian Mineau
Scotch and Soda Goldmine Company, Inc.	
Print Buyer(s) Name(s) *[Required]*	Print Seller(s) Name(s) *[Required]*
Address	Address
City / State / Zip	City / State / Zip
(708) 737-3205 densmorej@dupage.edu	
Phone / E-mail	Phone / E-mail

FOR INFORMATION ONLY

HomeSmart Realty Group	25688	477013521	Art Property Management LLC	16941	
Buyer's Brokerage	MLS #	State License #	Seller's Brokerage	MLS #	State License #
18305 Distinctive Drive	Orland Park	60467	1507 E. 53rd St. #177	Chicago	60615
Address	City	Zip	Address	City	Zip
Mithil Patel	243232	475162182	Tiffany Watkins	153809	471014916
Buyer's Designated Agent	MLS #	State License #	Seller's Designated Agent	MLS #	State License #
(312) 218-8891	(708) 218-9918		(773) 568-1138	(773) 846-2383	
Phone	Fax		Phone	Fax	
mithilspatel@gmail.com;mjrealtyinc@gmail.com			tlwatkins@artpropertymgmt.com		
E-mail			E-mail		
Tom Rigby	Tom@therelawfirm.com		Harley B Rosenthal	harley@rosenthallawgroup.com	
Buyer's Attorney	E-mail		Seller's Attorney Harley Rosenthal	E-mail	
Address / City / State / Zip			Address 3700 W Devon Ave., Suite E Lincolnwood IL, 60712	City / State / Zip	
Phone	Fax		Phone	Fax	
LIMA ONE Capital					
Mortgage Company	Phone		Homeowner's/Condo Association (if any)	Phone	
DAVID JOHNSON	(864)672-9046				
Loan Officer	Phone/Fax		Management Co./Other Contact	Phone	
Info@LimaOneCapital.com					
Loan Officer E-mail			Management Co./Other Contact E-mail		

Illinois Real Estate License Law requires all offers be presented in a timely manner; Buyer requests verification that this offer was presented.

Seller rejection: This offer was presented to Seller on _____, 20 ____ at ___:___ A.M./P.M. and rejected on _____ _____, 20 ____ at ___:___ A.M./P.M. ____ ____ *[Seller Initials]*

© 2015, Illinois Real Estate Lawyers Association. All rights reserved. Unauthorized duplication or alteration of this form or any portion thereof is prohibited. Official form available at www.irela.org (website of Illinois Real Estate Lawyers Association). Approved by the following organizations, September 2015: Illinois Real Estate Lawyers Association · DuPage County Bar Association · McHenry County Bar Association · Northwest Suburban Bar Association · Will County Bar Association · Belvidere Board of REALTORS® · Chicago Association of REALTORS® · Heartland REALTOR® Organization · Hometown Association of REALTORS® · Illini Valley Association of REALTORS® · Kankakee-Iroquois-Ford County Association of REALTORS® · Mainstreet Organization of REALTORS® · North Shore-Barrington Association of REALTORS® · Oak Park Area Association of REALTORS® · REALTOR® Association of the Fox Valley, Inc. · Three Rivers Association of REALTORS®

Buyer Initial jd *Buyer Initial* _____ *Seller Initial* BM DS *Seller Initial* _____

Address: 7747 S May ST, CHICAGO, IL 60620

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

Exhibit 47

REAL ESTATE CONTRACT – MUTUAL HAPPINESS LLC
DATED JULY 3, 2018

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

Exhibit 47

REAL ESTATE CONTRACT – MUTUAL HAPPINESS LLC
DATED JULY 3, 2018

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

dotloop signature verification: www.dotloop.com/my/verification/Bu[illegible]0869-3 2431
DocuSign Envelope ID: 230EFD15-4DCE-495F-A79L[illegible]A2B15D7C94F

REALTOR

MULTI-BOARD RESIDENTIAL REAL ESTATE CONTRACT 6.1

EQUAL HOUSING OPPORTUNITY

1. THE PARTIES: Buyer and Seller are hereinafter referred to as the "Parties".

Buyer Name(s) *[please print]* Mutual Happiness LLC

Seller Name(s) *[please print]* _____

If Dual Agency Applies, Complete Optional Paragraph 31.

2. THE REAL ESTATE: Real Estate shall be defined as the property, all improvements, the fixtures and Personal Property included therein. Seller agrees to convey to Buyer or to Buyer's designated grantee, the Real Estate with approximate lot size or acreage of 25x125 commonly known as: 7747 S May st, CHICAGO, IL 60620

Address | City | State | Zip

Cook | 20294170150000

County | Unit # (If applicable) | Permanent Index Number(s) of Real Estate

If Condo/Coop/Townhome Parking is Included: # of spaces(s) n/a; identified as Space(s) # n/a; *[check type]* ☐ deeded space, PIN: n/a ☐ limited common element ☐ assigned space.

3. PURCHASE PRICE: The Purchase Price shall be $ 60,000.00. After the payment of Earnest Money as provided below, the balance of the Purchase Price, as adjusted by prorations, shall be paid at Closing in "Good Funds" as defined by law.

4. EARNEST MONEY: Earnest Money shall be held in trust for the mutual benefit of the Parties by *[check one]*: ☐ Seller's Brokerage; ☐ Buyer's Brokerage; ☑ As otherwise agreed by the Parties, as "Escrowee". Initial Earnest Money of $ 1,000.00 shall be tendered to Escrowee on or before 3 day(s) after Date of Acceptance. Additional Earnest Money of $ n/a shall be tendered by n/a

5. FIXTURES AND PERSONAL PROPERTY AT NO ADDITIONAL COST: All of the fixtures and included Personal Property are owned by Seller and to Seller's knowledge are in operating condition on the Date of Acceptance, unless otherwise stated herein. Seller agrees to transfer to Buyer all fixtures, all heating, electrical, plumbing, and well systems together with the following items of Personal Property at no additional cost by Bill of Sale at Closing *[Check or enumerate applicable items]*:

☐ Refrigerator	☐ Central Air Conditioning	☐ Central Humidifier	☐ Light Fixtures, as they exist
☐ Oven/Range/Stove	☐ Window Air Conditioner(s)	☐ Water Softener (owned)	☐ Built-in or attached shelving
☐ Microwave	☐ Ceiling Fan(s)	☐ Sump Pump(s)	☐ All Window Treatments & Hardware
☐ Dishwasher	☐ Intercom System	☐ Electronic or Media Air Filter(s)	☐ Existing Storms and Screens
☐ Garbage Disposal	☐ Backup Generator System	☐ Central Vac & Equipment	☐ Fireplace Screens/Doors/Grates
☐ Trash Compactor	☐ Satellite Dish	☐ Security System(s) (owned)	☐ Fireplace Gas Log(s)
☐ Washer	☐ Outdoor Shed	☐ Garage Door Opener(s) with all Transmitters	☐ Invisible Fence System, Collar & Box
☐ Dryer	☐ Planted Vegetation		☐ Smoke Detectors
☐ Attached Gas Grill	☐ Outdoor Play Set(s)	☐ All Tacked Down Carpeting	☐ Carbon Monoxide Detectors

Other Items Included at No Additional Cost: _____

Items Not Included: _____

Seller warrants to Buyer that all fixtures, systems and Personal Property included in this Contract shall be in operating condition at Possession except: _____

A system or item shall be deemed to be in operating condition if it performs the function for which it is intended, regardless of age, and does not constitute a threat to health or safety.

If Home Warranty will be provided, complete Optional Paragraph 34.

Buyer Initial [AR 07/03/18] *Buyer Initial* [ ] *Seller Initial* [BM] *Seller Initial* [ ]

6. CLOSING: Closing shall be on 08/08/2018 or at such time as mutually agreed by the Parties in writing. Closing shall take place at the escrow office of the title company (or its issuing agent) that will issue the Owner's Policy of Title Insurance, situated nearest the Real Estate or as shall be agreed mutually by the Parties.

7. POSSESSION: Unless otherwise provided in Paragraph 40, Seller shall deliver possession to Buyer at Closing. Possession shall be deemed to have been delivered when Seller has vacated the Real Estate and delivered keys to the Real Estate to Buyer or to the office of the Seller's Brokerage.

8. MORTGAGE CONTINGENCY: If this transaction is NOT CONTINGENT ON FINANCING, Optional Paragraph 36 a) OR Paragraph 36 b) MUST BE USED. If any portion of Paragraph 36 is used, the provisions of this Paragraph 8 are NOT APPLICABLE.

This Contract is contingent upon Buyer obtaining a *[check one]* ☐ fixed; ☐ adjustable; *[check one]* ☐ conventional; ☐ FHA/VA (if FHA/VA is chosen, complete Paragraph 37); ☑ other PRIVATE loan for ____ % of the Purchase Price, plus private mortgage insurance (PMI), if required, with an interest rate (initial rate if an adjustable rate mortgage used) not to exceed _____% per annum, amortized over not less than _____ years. Buyer shall pay loan origination fee and/or discount points not to exceed _____% of the loan amount. Buyer shall pay usual and customary processing fees and closing costs charged by lender. (Complete Paragraph 35 if closing cost credits apply).

Buyer shall make written loan application within five (5) Business Days after the Date of Acceptance; **failure to do so shall constitute an act of Default under this Contract.** ***[Complete both a) and b)]***:

a) Not later than_____, (if no date is inserted, the date shall be twenty-one (21) days after the Date of Acceptance) Buyer shall provide written evidence from Buyer's licensed lending institution confirming that Buyer has provided to such lending institution an "Intent to Proceed" as that term is defined in the rules of the Consumer Financial Protection Bureau and has paid all lender application and appraisal fees. If Buyer is unable to provide such written evidence, Seller shall have the option of declaring this Contract terminated by giving Notice to the other Party not later than two (2) Business Days after the date specified herein or any extension date agreed to by the Parties in writing.

b) Not later than_____, (if no date is inserted, the date shall be sixty (60) days after the Date of Acceptance) Buyer shall provide written evidence from Buyer's licensed lending institution confirming that Buyer has received a written mortgage commitment for the loan referred to above. If Buyer is unable to provide such written evidence either Buyer or Seller shall have the option of declaring this Contract terminated by giving Notice to the other Party not later than two (2) Business Days after the date specified herein or any extension date agreed to by the Parties in writing.

A Party causing delay in the loan approval process shall not have the right to terminate under either of the preceding paragraphs. In the event neither Party elects to declare this Contract terminated as of the latter of the dates specified above (as may be amended from time to time), then this Contract shall continue in full force and effect without any loan contingencies.

Unless otherwise provided in Paragraph 32, this Contract shall not be contingent upon the sale and/or closing of Buyer's existing real estate. Buyer shall be deemed to have satisfied the financing conditions of this paragraph if Buyer obtains a loan commitment in accordance with the terms of this paragraph even though the loan is conditioned on the sale and/or closing of Buyer's existing real estate.

9. STATUTORY DISCLOSURES: If applicable, prior to signing this Contract, Buyer:
[check one] ☐ has ☐ has not received a completed Illinois Residential Real Property Disclosure;
[check one] ☐ has ☐ has not received the EPA Pamphlet, "Protect Your Family From Lead In Your Home";
[check one] ☐ has ☐ has not received a Lead-Based Paint Disclosure;
[check one] ☐ has ☐ has not received the IEMA, "Radon Testing Guidelines for Real Estate Transactions";

[check one] ☐ has ☐ has not received the Disclosure of Information on Radon Hazards.

10. PRORATIONS: Proratable items shall include without limitation, rents and deposits (if any) from tenants; Special Service Area or Special Assessment Area tax for the year of Closing only; utilities, water and sewer; and Homeowner or Condominium Association fees (and Master/Umbrella Association fees, if applicable). Accumulated reserves of a Homeowner/Condominium Association(s) are not a proratable item. Seller represents that as of the Date of Acceptance Homeowner/Condominium Association(s) fees are $ N/A per N/A (and, if applicable Master/Umbrella Association fees are $ N/A per N/A). Seller agrees to pay prior to or at Closing any special assessments (by any association or governmental entity) confirmed prior to the Date of Acceptance. Special Assessment Area or Special Service Area installments due after the year of Closing shall not be proratable items and shall be paid by Buyer. The general Real Estate taxes shall be prorated as of the date of Closing based on 105 % of the most recent ascertainable full year tax bill. All prorations shall be final as of Closing, except as provided in Paragraph 22. If the amount of the most recent ascertainable full year tax bill reflects a homeowner, senior citizen or other exemption, a senior freeze or senior deferral, then Seller has submitted or will submit in a timely manner all necessary documentation to the appropriate governmental entity, before or after Closing, to preserve said exemption(s). The requirements of this Paragraph shall survive the Closing.

11. ATTORNEY REVIEW: Within five (5) Business Days after Date of Acceptance, the attorneys for the respective Parties, by Notice, may:

a) Approve this Contract; or
b) Disapprove this Contract, which disapproval shall not be based solely upon the Purchase Price; or
c) Propose modifications except for the Purchase Price. If within ten (10) Business Days after the Date of Acceptance written agreement is not reached by the Parties with respect to resolution of the proposed modifications, then either Party may terminate this Contract by serving Notice, whereupon this Contract shall be null and void; or
d) Propose suggested changes to this Contract. If such suggestions are not agreed upon, neither Party may declare this Contract null and void and this Contract shall remain in full force and effect.

Unless otherwise specified, all Notices shall be deemed made pursuant to Paragraph 11 c). If Notice is not served within the time specified herein, the provisions of this paragraph shall be deemed waived by the Parties and this Contract shall remain in full force and effect.

12. PROFESSIONAL INSPECTIONS AND INSPECTION NOTICES: Buyer may conduct at Buyer's expense (unless otherwise provided by governmental regulations) any or all of the following inspections of the Real Estate by one or more licensed or certified inspection services: home, radon, environmental, lead-based paint, lead-based paint hazards or wood-destroying insect infestation.

a) Buyer agrees that minor repairs and routine maintenance items of the Real Estate do not constitute defects and are not a part of this contingency. **The fact that a functioning major component may be at the end of its useful life shall not render such component defective for purposes of this paragraph.** Buyer shall indemnify Seller and hold Seller harmless from and against any loss or damage caused by the acts of negligence of Buyer or any person performing any inspection. The home inspection shall cover only the major components of the Real Estate, including but not limited to central heating system(s), central cooling system(s), plumbing and well system, electrical system, roof, walls, windows, doors, ceilings, floors, appliances and foundation. A major component shall be deemed to be in operating condition if it performs the function for which it is intended, regardless of age, and does not constitute a threat to health or safety. If radon mitigation is performed, Seller shall pay for any retest.

b) Buyer shall serve Notice upon Seller or Seller's attorney of any defects disclosed by any inspection for which Buyer requests resolution by Seller, together with a copy of the pertinent pages of the inspection reports within five (5) Business Days (ten (10) calendar days for a lead-based paint or lead-based paint hazard inspection) after the Date of Acceptance. If within ten (10) Business Days after the Date of Acceptance written agreement is not reached by the Parties with respect to resolution of all inspection issues, then either Party may terminate this Contract by serving Notice to the other Party, whereupon this Contract shall be null and void.

c) Notwithstanding anything to the contrary set forth above in this paragraph, in the event the inspection reveals that the condition of the Real Estate is unacceptable to Buyer and Buyer serves Notice to Seller within five (5) Business Days after the Date of Acceptance, this Contract shall be null and void. Said Notice shall not include any portion of the inspection reports unless requested by Seller.

d) Failure of Buyer to conduct said inspection(s) and notify Seller within the time specified operates as a waiver of Buyer's rights to terminate this Contract under this Paragraph 12 and this Contract shall remain in full force and effect.

13. HOMEOWNER INSURANCE: This Contract is contingent upon Buyer obtaining evidence of insurability for an Insurance Service Organization HO-3 or equivalent policy at standard premium rates within ten (10) Business Days after the Date of Acceptance. **If Buyer is unable to obtain evidence of insurability and serves Notice with proof of same to Seller within time specified, this Contract shall be null and void. If Notice is not served within the time specified, Buyer shall be deemed to have waived this contingency and this Contract shall remain in full force and effect.**

14. FLOOD INSURANCE: Buyer shall have the option to declare this Contract null and void if the Real Estate is located in a special flood hazard area. **If Notice of the option to declare contract null and void is not given to Seller within ten (10) Business Days after the Date of Acceptance or by the time specified in Paragraph 8 b), whichever is later, Buyer shall be deemed to have waived such option and this Contract shall remain in full force and effect.** Nothing herein shall be deemed to affect any rights afforded by the Residential Real Property Disclosure Act.

15. CONDOMINIUM/COMMON INTEREST ASSOCIATIONS: (If applicable) The Parties agree that the terms contained in this paragraph, which may be contrary to other terms of this Contract, shall supersede any conflicting terms.

a) Title when conveyed shall be good and merchantable, subject to terms, provisions, covenants and conditions of the Declaration of Condominium/Covenants, Conditions and Restrictions ("Declaration/CCRs") and all amendments; public and utility easements including any easements established by or implied from the Declaration/CCRs or amendments thereto; party wall rights and agreements; limitations and conditions imposed by the Condominium Property Act; installments due after the date of Closing of general assessments established pursuant to the Declaration/CCRs.

b) Seller shall be responsible for payment of all regular assessments due and levied prior to Closing and for all special assessments confirmed prior to the Date of Acceptance.

c) Seller shall notify Buyer of any proposed special assessment or increase in any regular assessment between the Date of Acceptance and Closing. The Parties shall have three (3) Business Days to reach agreement relative to payment thereof. Absent such agreement either Party may declare the Contract null and void.

d) Seller shall, within five (5) Business Days from the Date of Acceptance, apply for those items of disclosure upon sale as described in the Illinois Condominium Property Act, and provide same in a timely manner, but no later than the time period provided for by law. This Contract is subject to the condition that Seller be able

to procure and provide to Buyer a release or waiver of any right of first refusal or other pre-emptive rights to purchase created by the Declaration/CCRs. In the event the Condominium Association requires the personal appearance of Buyer or additional documentation, Buyer agrees to comply with same.

e) In the event the documents and information provided by Seller to Buyer disclose that the existing improvements are in violation of existing rules, regulations or other restrictions or that the terms and conditions contained within the documents would unreasonably restrict Buyer's use of the premises or would result in financial obligations unacceptable to Buyer in connection with owning the Real Estate, then Buyer may declare this Contract null and void by giving Seller Notice within five (5) Business Days after the receipt of the documents and information required by this Paragraph, listing those deficiencies which are unacceptable to Buyer. If Notice is not served within the time specified, Buyer shall be deemed to have waived this contingency, and this Contract shall remain in full force and effect.

f) Seller shall not be obligated to provide a condominium survey.

g) Seller shall provide a certificate of insurance showing Buyer and Buyer's mortgagee, if any, as an insured.

16. THE DEED: Seller shall convey or cause to be conveyed to Buyer or Buyer's Designated grantee good and merchantable title to the Real Estate by recordable Warranty Deed, with release of homestead rights, (or the appropriate deed if title is in trust or in an estate), and with real estate transfer stamps to be paid by Seller (unless otherwise designated by local ordinance). Title when conveyed will be good and merchantable, subject only to: covenants, conditions and restrictions of record and building lines and easements, if any, provided they do not interfere with the current use and enjoyment of the Real Estate; and general real estate taxes not due and payable at the time of Closing.

17. MUNICIPAL ORDINANCE, TRANSFER TAX, AND GOVERNMENTAL COMPLIANCE:

a) The Parties are cautioned that the Real Estate may be situated in a municipality that has adopted a pre-closing inspection requirement, municipal Transfer Tax or other similar ordinances. Transfer taxes required by municipal ordinance shall be paid by the Party designated in such ordinance.

b) The Parties agree to comply with the reporting requirements of the applicable sections of the Internal Revenue Code and the Real Estate Settlement Procedures Act of 1974, as amended.

18. TITLE: At Seller's expense, Seller will deliver or cause to be delivered to Buyer or Buyer's attorney within customary time limitations and sufficiently in advance of Closing, as evidence of title in Seller or Grantor, a title commitment for an ALTA title insurance policy in the amount of the Purchase Price with extended coverage by a title company licensed to operate in the State of Illinois, issued on or subsequent to the Date of Acceptance, subject only to items listed in Paragraph 16. The requirement to provide extended coverage shall not apply if the Real Estate is vacant land. The commitment for title insurance furnished by Seller will be presumptive evidence of good and merchantable title as therein shown, subject only to the exceptions therein stated. **If the title commitment discloses any unpermitted exceptions or if the Plat of Survey shows any encroachments or other survey matters that are not acceptable to Buyer, then Seller shall have said exceptions, survey matters or encroachments removed, or have the title insurer commit to either insure against loss or damage that may result from such exceptions or survey matters or insure against any court-ordered removal of the encroachments.** If Seller fails to have such exceptions waived or insured over prior to Closing, Buyer may elect to take title as it then is with the right to deduct from the Purchase Price prior encumbrances of a definite or ascertainable amount. Seller shall furnish Buyer at Closing an Affidavit of Title covering the date of Closing, and shall sign any other customary forms required for issuance of an ALTA Insurance Policy.

19. PLAT OF SURVEY: Not less than one (1) Business Day prior to Closing, except where the Real Estate is a condominium (see Paragraph 15) Seller shall, at Seller's expense, furnish to Buyer or Buyer's attorney a Plat of

Survey that conforms to the current Minimum Standard of Practice for boundary surveys, is dated not more than six (6) months prior to the date of Closing, and is prepared by a professional land surveyor licensed to practice land surveying under the laws of the State of Illinois. The Plat of Survey shall show visible evidence of improvements, rights of way, easements, use and measurements of all parcel lines. The land surveyor shall set monuments or witness corners at all accessible corners of the land. All such corners shall also be visibly staked or flagged. The Plat of Survey shall include the following statement placed near the professional land surveyor's seal and signature: "This professional service conforms to the current Illinois Minimum Standards for a boundary survey." A Mortgage Inspection, as defined, is not a boundary survey and is not acceptable.

20. DAMAGE TO REAL ESTATE OR CONDEMNATION PRIOR TO CLOSING: If prior to delivery of the deed the Real Estate shall be destroyed or materially damaged by fire or other casualty, or the Real Estate is taken by condemnation, then Buyer shall have the option of either terminating this Contract (and receiving a refund of earnest money) or accepting the Real Estate as damaged or destroyed, together with the proceeds of the condemnation award or any insurance payable as a result of the destruction or damage, which gross proceeds Seller agrees to assign to Buyer and deliver to Buyer at Closing. Seller shall not be obligated to repair or replace damaged improvements. The provisions of the Uniform Vendor and Purchaser Risk Act of the State of Illinois shall be applicable to this Contract, except as modified by this paragraph.

21. CONDITION OF REAL ESTATE AND INSPECTION: Seller agrees to leave the Real Estate in broom clean condition. All refuse and personal property that is not to be conveyed to Buyer shall be removed from the Real Estate at Seller's expense prior to delivery of Possession. Buyer shall have the right to inspect the Real Estate, fixtures and included Personal Property prior to Possession to verify that the Real Estate, improvements and included Personal Property are in substantially the same condition as of the Date of Acceptance, normal wear and tear excepted.

22. REAL ESTATE TAX ESCROW: In the event the Real Estate is improved, but has not been previously taxed for the entire year as currently improved, the sum of three percent (3%) of the Purchase Price shall be deposited in escrow with the title company with the cost of the escrow to be divided equally by Buyer and Seller and paid at Closing. When the exact amount of the taxes to be prorated under this Contract can be ascertained, the taxes shall be prorated by Seller's attorney at the request of either Party and Seller's share of such tax liability after proration shall be paid to Buyer from the escrow funds and the balance, if any, shall be paid to Seller. If Seller's obligation after such proration exceeds the amount of the escrow funds, Seller agrees to pay such excess promptly upon demand.

23. SELLER REPRESENTATIONS: Seller's representations contained in this paragraph shall survive the Closing. Seller represents that with respect to the Real Estate Seller has no knowledge of nor has Seller received any written notice from any association or governmental entity regarding:

a) zoning, building, fire or health code violations that have not been corrected;
b) any pending rezoning;
c) boundary line disputes;
d) any pending condemnation or Eminent Domain proceeding;
e) easements or claims of easements not shown on the public records;
f) any hazardous waste on the Real Estate;
g) any improvements to the Real Estate for which the required initial and final permits were not obtained;
h) any improvements to the Real Estate which are not included in full in the determination of the most recent tax assessment; or
i) any improvements to the Real Estate which are eligible for the home improvement tax exemption.

Seller further represents that:

(Initials) [ ] [ ] [AR 07/03/18 5:07PM EDT] [ ] There *[check one]* ☐ is ☑ is not a pending or unconfirmed special assessment affecting the Real Estate by any association or governmental entity payable by Buyer after the date of Closing.

[ ] [ ] [AR 07/03/18 5:07PM EDT] [ ] The Real Estate *[check one]* ☐ is ☑ is not located within a Special Assessment Area or Special Service Area, payments for which will not be the obligation of Seller after the year in which the Closing occurs.

All Seller representations shall be deemed re-made as of Closing. If prior to Closing Seller becomes aware of matters that require modification of the representations previously made in this Paragraph 23, Seller shall promptly notify Buyer. If the matters specified in such Notice are not resolved prior to Closing, Buyer may terminate this Contract by Notice to Seller and this Contract shall be null and void.

24. BUSINESS DAYS/HOURS: Business Days are defined as Monday through Friday, excluding Federal holidays. Business Hours are defined as 8:00 A.M. to 6:00 P.M. Chicago time.

25. FACSIMILE OR DIGITAL SIGNATURES: Facsimile or digital signatures shall be sufficient for purposes of executing, negotiating, and finalizing this Contract, and delivery thereof by one of the following methods shall be deemed delivery of this Contract containing original signature(s). An acceptable facsimile signature may be produced by scanning an original, hand-signed document and transmitting same by facsimile. An acceptable digital signature may be produced by use of a qualified, established electronic security procedure mutually agreed upon by the Parties. Transmissions of a digitally signed copy hereof shall be by an established, mutually acceptable electronic method, such as creating a PDF ("Portable Document Format") document incorporating the digital signature and sending same by electronic mail.

26. DIRECTION TO ESCROWEE: In every instance where this Contract shall be deemed null and void or if this Contract may be terminated by either Party, the following shall be deemed incorporated: "and Earnest Money refunded upon the joint written direction by the Parties to Escrowee or upon an entry of an order by a court of competent jurisdiction."

In the event either Party has declared the Contract null and void or the transaction has failed to close as provided for in this Contract and if Escrowee has not received joint written direction by the Parties or such court order, the Escrowee may elect to proceed as follows:

a) Escrowee shall give written Notice to the Parties as provided for in this Contract at least fourteen (14) days prior to the date of intended disbursement of Earnest Money indicating the manner in which Escrowee intends to disburse in the absence of any written objection. If no written objection is received by the date indicated in the Notice then Escrowee shall distribute the Earnest Money as indicated in the written Notice to the Parties. **If any Party objects in writing** to the intended disbursement of Earnest Money then Earnest Money shall be held until receipt of joint written direction from all Parties or until receipt of an order of a court of competent jurisdiction.

b) Escrowee may file a Suit for Interpleader and deposit any funds held into the Court for distribution after resolution of the dispute between Seller and Buyer by the Court. Escrowee may retain from the funds deposited with the Court the amount necessary to reimburse Escrowee for court costs and reasonable attorney's fees incurred due to the filing of the Interpleader. If the amount held in escrow is inadequate to reimburse Escrowee for the costs and attorney's fees, Buyer and Seller shall jointly and severally indemnify Escrowee for additional costs and fees incurred in filing the Interpleader action.

27. NOTICE: Except as provided in Paragraph 32 c) 2) regarding the manner of service for "kick-out" Notices, all Notices shall be in writing and shall be served by one Party or attorney to the other Party or attorney. Notice to any one of the multiple person Party shall be sufficient Notice to all. Notice shall be given in the following manner:

a) By personal delivery; or

b) By mailing to the addresses recited herein by regular mail and by certified mail, return receipt requested. Except as otherwise provided herein, Notice served by certified mail shall be effective on the date of mailing; or

c) By facsimile transmission. Notice shall be effective as of date and time of the transmission, provided that the Notice transmitted shall be sent on Business Days during Business Hours. In the event Notice is transmitted during non-business hours, the effective date and time of Notice is the first hour of the next Business Day after transmission; or

d) By e-mail transmission if an e-mail address has been furnished by the recipient Party or the recipient Party's attorney to the sending Party or is shown in this Contract. Notice shall be effective as of date and time of e-mail transmission, provided that, in the event e-mail Notice is transmitted during non-business hours, the effective date and time of Notice is the first hour of the next Business Day after transmission. An attorney or Party may opt out of future e-mail Notice by any form of Notice provided by this Contract; or

e) By commercial overnight delivery (e.g., FedEx). Such Notice shall be effective on the next Business Day following deposit with the overnight delivery company.

28. PERFORMANCE: Time is of the essence of this Contract. In any action with respect to this Contract, the Parties are free to pursue any legal remedies at law or in equity and the prevailing party in litigation shall be entitled to collect reasonable attorney fees and costs from the non-prevailing party as ordered by a court of competent jurisdiction.

29. CHOICE OF LAW AND GOOD FAITH: All terms and provisions of this Contract including but not limited to the Attorney Review and Professional Inspection paragraphs shall be governed by the laws of the State of Illinois and are subject to the covenant of good faith and fair dealing implied in all Illinois contracts.

30. OTHER PROVISIONS: This Contract is also subject to those OPTIONAL PROVISIONS initialed by the Parties and the following additional attachments, if any: _____

_____

OPTIONAL PROVISIONS (Applicable ONLY if initialed by all Parties)

[Initials] ☐ ☐ ☐ ☐ **31. CONFIRMATION OF DUAL AGENCY:** The Parties confirm that they have previously consented to _____ (Licensee) acting as a Dual Agent in providing brokerage services on their behalf and specifically consent to Licensee acting as a Dual Agent with regard to the transaction referred to in this Contract.

☐ ☐ ☐ ☐ **32. SALE OF BUYER'S REAL ESTATE:**

a) **REPRESENTATIONS ABOUT BUYER'S REAL ESTATE:** Buyer represents to Seller as follows:

1) Buyer owns real estate (hereinafter referred to as "Buyer's real estate") with the address of:

_____

Address City State Zip

2) Buyer *[check one]* ☐ has ☐ has not entered into a contract to sell Buyer's real estate.

If Buyer has entered into a contract to sell Buyer's real estate, that contract:

a) *[check one]* ☐ is ☐ is not subject to a mortgage contingency.

b) *[check one]* ☐ is ☐ is not subject to a real estate sale contingency.

c) *[check one]* ☐ is ☐ is not subject to a real estate closing contingency.

3) Buyer *[check one]* ☐ has ☐ has not listed Buyer's real estate for sale with a licensed real estate broker and in a local multiple listing service.

4) If Buyer's real estate is not listed for sale with a licensed real estate broker and in a local multiple listing service, Buyer *[check one]*:

a) ☐ Shall list real estate for sale with a licensed real estate broker who will place it in a local multiple listing service within five (5) Business Days after Date of Acceptance.
[For information only] Broker: _____
Broker's Address: _____ Phone: _____

b) ☐ Does not intend to list said real estate for sale.

b) CONTINGENCIES BASED UPON SALE AND/OR CLOSING OF REAL ESTATE:

1) This Contract is contingent upon Buyer having entered into a contract for the sale of Buyer's real estate that is in full force and effect as of _____ Such contract should provide for a closing date not later than the Closing Date set forth in this Contract. **If Notice is served on or before the date set forth in this subparagraph that Buyer has not procured a contract for the sale of Buyer's real estate, this Contract shall be null and void. If Notice that Buyer has not procured a contract for the sale of Buyer's real estate is not served on or before the close of business on the date set forth in this subparagraph, Buyer shall be deemed to have waived all contingencies contained in this Paragraph 32, and this Contract shall remain in full force and effect.** (If this paragraph is used, then the following paragraph **must** be completed.)

2) In the event Buyer has entered into a contract for the sale of Buyer's real estate as set forth in Paragraph 32 b) 1) and that contract is in full force and effect, or has entered into a contract for the sale of Buyer's real estate prior to the execution of this Contract, this Contract is contingent upon Buyer closing the sale of Buyer's real estate on or before _____ **If Notice that Buyer has not closed the sale of Buyer's real estate is served before the close of business on the next Business Day after the date set forth in the preceding sentence, this Contract shall be null and void. If Notice is not served as described in the preceding sentence, Buyer shall have deemed to have waived all contingencies contained in this Paragraph 32, and this Contract shall remain in full force and effect.**

3) If the contract for the sale of Buyer's real estate is terminated for any reason after the date set forth in Paragraph 32 b) 1) (or after the date of this Contract if no date is set forth in Paragraph 32 b) 1)), Buyer shall, within three (3) Business Days of such termination, notify Seller of said termination. **Unless Buyer, as part of said Notice, waives all contingencies in Paragraph 32 and complies with Paragraph 32 d), this Contract shall be null and void as of the date of Notice. If Notice as required by this subparagraph is not served within the time specified, Buyer shall be in default under the terms of this Contract.**

c) SELLER'S RIGHT TO CONTINUE TO OFFER REAL ESTATE FOR SALE: During the time of this contingency, Seller has the right to continue to show the Real Estate and offer it for sale subject to the following:

1) If Seller accepts another bona fide offer to purchase the Real Estate while contingencies expressed in Paragraph 32 b) are in effect, Seller shall notify Buyer in writing of same. Buyer shall then have _____ hours after Seller gives such Notice to waive the contingencies set forth in Paragraph 32 b), subject to Paragraph 32 d).

2) Seller's Notice to Buyer (commonly referred to as a 'kick-out' Notice) shall be in writing and shall be served on Buyer, not Buyer's attorney or Buyer's real estate agent. Courtesy copies of such 'kick-out' Notice should be sent to Buyer's attorney and Buyer's real estate agent, if known. Failure to provide such courtesy copies shall not render Notice invalid. Notice to any one of a multiple-person Buyer shall be sufficient Notice to all Buyers. Notice for the purpose of this subparagraph only shall be served upon Buyer in the following manner:
   a) By personal delivery effective at the time and date of personal delivery; or
   b) By mailing to the address recited herein for Buyer by regular mail and by certified mail. Notice shall be effective at 10:00 A.M. on the morning of the second day following deposit of Notice in the U.S. Mail; or

c) By commercial delivery overnight (e.g., FedEx). Notice shall be effective upon delivery or at 4:00 P.M. Chicago time on the next delivery day following deposit with the overnight delivery company, whichever first occurs.

3) If Buyer complies with the provisions of Paragraph 32 d) then this Contract shall remain in full force and effect.

4) If the contingencies set forth in Paragraph 32 b) are NOT waived in writing, within said time period by Buyer, this Contract shall be null and void.

5) Except as provided in Paragraph 32 c) 2) above, all Notices shall be made in the manner provided by Paragraph 27 of this Contract.

6) Buyer waives any ethical objection to the delivery of Notice under this paragraph by Seller's attorney or representative.

d) **WAIVER OF PARAGRAPH 32 CONTINGENCIES:** Buyer shall be deemed to have waived the contingencies in Paragraph 32 b) when Buyer has delivered written waiver and deposited with the Escrowee additional earnest money in the amount of $_____ in the form of a cashier's or certified check within the time specified. **If Buyer fails to deposit the additional earnest money within the time specified, the waiver shall be deemed ineffective and this Contract shall be null and void.**

e) **BUYER COOPERATION REQUIRED:** Buyer authorizes Seller or Seller's agent to verify representations contained in Paragraph 32 at any time, and Buyer agrees to cooperate in providing relevant information.

[ ][ ][ ][ ] **33. CANCELLATION OF PRIOR REAL ESTATE CONTRACT:** In the event either Party has entered into a prior real estate contract, this Contract shall be subject to written cancellation of the prior contract on or before _____. **In the event the prior contract is not cancelled within the time specified, this Contract shall be null and void. Seller's notice to the purchaser under the prior contract should not be served until after Attorney Review and Professional Inspections provisions of this Contract have expired, been satisfied or waived.**

[ ][ ][ ][ ] **34. HOME WARRANTY:** Seller shall provide at no expense to Buyer a Home Warranty at a cost of $_____ Evidence of a fully pre-paid policy shall be delivered at Closing.

[ ][ ][ ][ ] **35. CREDIT AT CLOSING:** Provided Buyer's lender permits such credit to show on the HUD-1 Settlement Statement or Closing Disclosure, **and if not, such lesser amount as the lender permits,** Seller agrees to credit $_____ to Buyer at Closing to be applied to prepaid expenses, closing costs or both.

[ ][ ][ ][ ] **36. TRANSACTIONS NOT CONTINGENT ON FINANCING: IF EITHER OF THE FOLLOWING ALTERNATIVE OPTIONS IS SELECTED, THE PROVISIONS OF THE MORTGAGE CONTINGENCY PARAGRAPH 8 SHALL NOT APPLY [*CHOOSE ONLY ONE*]:**

a) [ ][ ][ ][ ] **Transaction With No Mortgage (All Cash):** If this selection is made, Buyer will pay at closing, in the form of "Good Funds" the difference (plus or minus prorations) between the Purchase Price and the amount of the Earnest Money deposited pursuant to Paragraph 4 above. Buyer represents to Seller, as of the Date of Offer, that Buyer has sufficient funds available to satisfy the provisions of this paragraph. Buyer agrees to verify the above representation upon the reasonable request of Seller and to authorize the disclosure of such financial information to Seller, Seller's attorney or Seller's broker that may be reasonably necessary to prove the availability of sufficient funds to close. Buyer understands and agrees that, so long as Seller has fully complied with Seller's obligations under this Contract, any act or omission outside of the control of Seller, whether intentional or not, that prevents Buyer from satisfying the balance due from Buyer at closing, shall constitute a material breach of this Contract by Buyer. The Parties shall share the title company escrow closing fee equally. **Unless otherwise provided in Paragraph 32, this Contract shall not be contingent upon the sale and/or closing of Buyer's existing real estate.**

b) [ ][ ][ ][ ] **Transaction, Mortgage Allowed:** If this selection is made, Buyer will pay at closing, in the form of "Good Funds" the difference (plus or minus prorations) between the Purchase Price and the amount of the Earnest Money deposited pursuant to Paragraph 4 above. Buyer represents to Seller, as of the Date of Offer, that Buyer has sufficient funds available to satisfy the provisions of this paragraph. Buyer agrees to verify the above representation upon the reasonable request of Seller and to authorize the disclosure of such financial information to Seller, Seller's attorney or Seller's broker that may be reasonably necessary to prove the availability of sufficient funds to close. Notwithstanding such representation, Seller agrees to reasonably and promptly cooperate with Buyer so that Buyer may apply for and obtain a mortgage loan or loans including but not limited to providing access to the Real Estate to satisfy Buyer's obligations to pay the balance due (plus or minus prorations) to close this transaction. Such cooperation shall include the performance in a timely manner of all of Seller's pre-closing obligations under this Contract. **This Contract shall NOT be contingent upon Buyer obtaining financing.** Buyer understands and agrees that, so long as Seller has fully complied with Seller's obligations under this Contract, any act or omission outside of the control of Seller, whether intentional or not, that prevents Buyer from satisfying the balance due from Buyer at Closing shall constitute a material breach of this Contract by Buyer. Buyer shall pay the title company escrow closing fee. **Unless otherwise provided in Paragraph 32, this Contract shall not be contingent upon the sale and/or closing of Buyer's existing real estate.**

[ ][ ][ ][ ] **37. VA OR FHA FINANCING:** If Buyer is seeking VA or FHA financing, **required FHA or VA amendments and disclosures shall be attached to this Contract.** If VA, the Funding Fee, or if FHA, the Mortgage Insurance Premium (MIP) shall be paid by Buyer and *[check one]* ☐ shall ☐ shall not be added to the mortgage loan amount.

[ ][ ][ ][ ] **38. WELL OR SANITARY SYSTEM INSPECTIONS:** Seller shall obtain at Seller's expense a well water test stating that the well delivers not less than five (5) gallons of water per minute and including a bacteria and nitrate test and/or a septic report from the applicable County Health Department, a Licensed Environmental Health Practitioner, or a licensed well and septic inspector, each dated not more than ninety (90) days prior to Closing, stating that the well and water supply and the private sanitary system are in operating condition with no defects noted. Seller shall remedy any defect or deficiency disclosed by said report(s) prior to Closing, provided that if the cost of remedying a defect or deficiency and the cost of landscaping together exceed $3,000.00, and if the Parties cannot reach agreement regarding payment of such additional cost, this Contract may be terminated by either Party. Additional testing recommended by the report shall be obtained at the Seller's expense. If the report recommends additional testing after Closing, the Parties shall have the option of establishing an escrow with a mutual cost allocation for necessary repairs or replacements, or either Party may terminate this Contract prior to Closing. Seller shall deliver a copy of such evaluation(s) to Buyer not less than ten (10) Business Days prior to Closing.

[ ][ ][ ][ ] **39. WOOD DESTROYING INFESTATION:** Notwithstanding the provisions of Paragraph 12, within ten (10) Business Days after the Date of Acceptance, Seller at Seller's expense shall deliver to Buyer a written report, dated not more than six (6) months prior to the Date of Closing, by a licensed inspector certified by the appropriate state regulatory authority in the subcategory of termites, stating that there is no visible evidence of active infestation by termites or other wood destroying insects. Unless otherwise agreed between the Parties, if the report discloses evidence of active infestation or structural damage, Buyer has the option within five (5) Business Days of receipt of the report to proceed with the purchase or to declare this Contract null and void.

[ ][ ][ ][ ] **40. POST CLOSING POSSESSION:** Possession shall be delivered no later than 11:59 P.M. on the date that is _____ days after the date of Closing ("the Possession Date"). Seller shall be responsible for all utilities, contents and liability insurance, and home maintenance expenses until delivery of possession. Seller shall

deposit in escrow at Closing with _____, *[check one]* ☐ one percent (1%) of the Purchase Price or ☐ the sum of $_____ to be paid by Escrowee as follows:

a) The sum of $_____ per day for use and occupancy from and including the day after Closing to and including the day of delivery of Possession, if on or before the Possession Date;

b) The amount per day equal to three (3) times the daily amount set forth herein shall be paid for each day after the Possession Date specified in this paragraph that Seller remains in possession of the Real Estate; and

c) The balance, if any, to Seller after delivery of Possession and provided that the terms of Paragraph 21 have been satisfied. Seller's liability under this paragraph shall not be limited to the amount of the possession escrow deposit referred to above. Nothing herein shall be deemed to create a Landlord/Tenant relationship between the Parties.

[AR 07/03/18 5:07PM EDT] [DS BM] [ ] [ ] **41. "AS IS" CONDITION:** This Contract is for the sale and purchase of the Real Estate in its "As Is" condition as of the Date of Offer. Buyer acknowledges that no representations, warranties or guarantees with respect to the condition of the Real Estate have been made by Seller or Seller's Designated Agent other than those known defects, if any, disclosed by Seller. Buyer may conduct an inspection at Buyer's expense. In that event, Seller shall make the Real Estate available to Buyer's inspector at reasonable times. Buyer shall indemnify Seller and hold Seller harmless from and against any loss or damage caused by the acts of negligence of Buyer or any person performing any inspection. **In the event the inspection reveals that the condition of the Real Estate is unacceptable to Buyer and Buyer so notifies Seller within five (5) Business Days after the Date of Acceptance, this Contract shall be null and void. Buyer's notice SHALL NOT include a copy of the inspection report, and Buyer shall not be obligated to send the inspection report to Seller absent Seller's written request for same. Failure of Buyer to notify Seller or to conduct said inspection operates as a waiver of Buyer's right to terminate this Contract under this paragraph and this Contract shall remain in full force and effect.** Buyer acknowledges that the provisions of Paragraph 12 and the warranty provisions of Paragraph 5 do not apply to this Contract.

[ ] [ ] [ ] [ ] **42. SPECIFIED PARTY APPROVAL:** This Contract is contingent upon the approval of the Real Estate by _____ Buyer's Specified Party, within five (5) Business Days after the Date of Acceptance. In the event Buyer's Specified Party does not approve of the Real Estate and Notice is given to Seller within the time specified, this Contract shall be null and void. If Notice is not served within the time specified, this provision shall be deemed waived by the Parties and this Contract shall remain in full force and effect.

[ ] [ ] [ ] [ ] **43. INTEREST BEARING ACCOUNT:** Earnest money (with a completed W-9 and other required forms), shall be held in a federally insured interest bearing account at a financial institution designated by Escrowee. All interest earned on the earnest money shall accrue to the benefit of and be paid to Buyer. **Buyer shall be responsible for any administrative fee (not to exceed $100) charged for setting up the account.** In anticipation of Closing, the Parties direct Escrowee to close the account no sooner than ten (10) Business Days prior to the anticipated Closing date.

[ ] [ ] [ ] [ ] **44. MISCELLANEOUS PROVISIONS:** Buyer's and Seller's obligations are contingent upon the Parties entering into a separate written agreement consistent with the terms and conditions set forth herein, and with such additional terms as either Party may deem necessary, providing for one or more of the following *[check applicable boxes]*:

☐ Articles of Agreement for Deed or Purchase Money Mortgage	☐ Assumption of Seller's Mortgage	☐ Commercial/Investment
	☐ Cooperative Apartment	☐ New Construction
☐ Short Sale	☐ Tax-Deferred Exchange	☐ Vacant Land

THIS DOCUMENT WILL BECOME A LEGALLY BINDING CONTRACT WHEN SIGNED BY ALL PARTIES AND DELIVERED TO THE PARTIES OR THEIR AGENTS.

THE PARTIES REPRESENT THAT THE TEXT OF THIS COPYRIGHTED FORM HAS NOT BEEN ALTERED AND IS IDENTICAL TO THE OFFICIAL MULTI-BOARD RESIDENTIAL REAL ESTATE CONTRACT 6.1.

07/03/2018	7/3/2018 9:18:45 PM PDT
Date of Offer	DATE OF ACCEPTANCE
Candice Allen (dotloop verified 07/03/18 5:07PM EDT JGSP-PPAS-V5QN-BBA7)	DocuSigned by: Brian Mineau
Buyer Signature	Seller Signature
Buyer Signature	Seller Signature Brian Mineau
Mutual Happiness LLC	
Print Buyer(s) Name(s) *[Required]*	Print Seller(s) Name(s) *[Required]*
Address	Address
City State Zip	City State Zip
mutualhappinessllc@gmail.com	Bmineau@legioninvestgroup.com
Phone E-mail	Phone E-mail

FOR INFORMATION ONLY

Coldwell Banker Residential	60119	477.012459	Art Property Management LLC	16941	481.012327
Buyer's Brokerage	MLS #	State License #	Seller's Brokerage	MLS #	State License #
6232 W. 95th St., Oak Lawn, IL 60453			1507 E 53rd St., Chicago, IL 60615		
Address	City	Zip	Address	City	Zip
Katsiaryna Samra	250310	475.167781	Tiffany Watkins	153809	471.014916
Buyer's Designated Agent	MLS #	State License #	Seller's Designated Agent	MLS #	State License #
7084466173			312.999.0889		773.846.2383
Phone		Fax	Phone		Fax
katsiaryna.samra@cbexchange.com			tlwatkins@artpropertymgmt.com		
E-mail			E-mail		
Zachery Hamiltom			Harley Rosenthal		harley@rosenthallawgroup.
Buyer's Attorney		E-mail	Seller's Attorney		E-mail
Address City	State	Zip	Address City	State	Zip
7085144761			(847) 677-5100		
Phone		Fax	Phone		Fax
	18002840076				
Mortgage Company		Phone	Homeowner's/Condo Association (if any)		Phone
Ryan G Wright					
Loan Officer		Phone/Fax	Management Co./Other Contact		Phone
ryanw@dohardmoney.com					
Loan Officer E-mail			Management Co./Other Contact E-mail		

Illinois Real Estate License Law requires all offers be presented in a timely manner; Buyer requests verification that this offer was presented.

Seller rejection: This offer was presented to Seller on _____ at _____ A.M./P.M. and rejected on _____ at _____ A.M./P.M. [ ] [ ] *[Seller Initials]*

© 2015, Illinois Real Estate Lawyers Association. All rights reserved. Unauthorized duplication or alteration of this form or any portion thereof is prohibited. Official form available at www.irela.org (website of Illinois Real Estate Lawyers Association). Approved by the following organizations, September 2015: Illinois Real Estate Lawyers Association · DuPage County Bar Association · McHenry County Bar Association · Northwest Suburban Bar Association · Will County Bar Association · Belvidere Board of REALTORS® · Chicago Association of REALTORS® · Heartland REALTOR® Organization · Hometown Association of REALTORS® · Illini Valley Association of REALTORS® · Kankakee-Iroquois-Ford County Association of REALTORS® · Mainstreet Organization of REALTORS® · North Shore-Barrington Association of REALTORS® · Oak Park Area Association of REALTORS® · REALTOR® Association of the Fox Valley, Inc. · Three Rivers Association of REALTORS®

Buyer Initial [CA 07/03/18] *Buyer Initial* [ ] *Seller Initial* [DS BM] *Seller Initial* [ ]

Address: 7747 S May st, CHICAGO, IL 60620

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

Exhibit 48

APPENDIX A: LEGAL AUTHORITY: RESTATEMENT OF THE LAW, SECOND – CONTRACTS 2d EXCERPTS FROM VOLUMES 1 AND 2

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

Exhibit 48

APPENDIX A: LEGAL AUTHORITY: RESTATEMENT OF THE LAW, SECOND – CONTRACTS 2d EXCERPTS FROM VOLUMES 1 AND 2

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

RESTATEMENT OF THE LAW
SECOND

CONTRACTS 2d

SUPREME COURT LIBRARY
OCT 15 1981
SUPREME COURT BLDG.

Volume 1
§§ 1-177

As Adopted and Promulgated

BY

THE AMERICAN LAW INSTITUTE
AT WASHINGTON, D.C.

May 17, 1979

ST. PAUL, MINN.
AMERICAN LAW INSTITUTE PUBLISHERS
1981

P. 519 (1917). But cf. Bailey v. Lisle Mfg. Co., 238 F. 257 (8th Cir. 1916). Illustration 4 is supported by Sardo v. Fidelity & Deposit Co., 100 N.J. Eq. 332, 134 A. 774 (1926).

§ 158. Relief Including Restitution

(1) In any case governed by the rules stated in this Chapter, either party may have a claim for relief including restitution under the rules stated in §§ 240 and 376.

(2) In any case governed by the rules stated in this Chapter, if those rules together with the rules stated in Chapter 16 will not avoid injustice, the court may grant relief on such terms as justice requires including protection of the parties' reliance interests.

Comment:

a. Scope. A court may use several techniques to adjust the rights of the parties after discovery of a mistake. Subsection (1) speaks to claims for relief such as that provided by the rule on part performances as agreed equivalents stated in § 240 and those on restitution and other relief stated in Chapter 16. Subsection (2) speaks to supplying a term to avoid injustice. See the analogous rule stated in § 272.

b. Relief including restitution. Avoidance of a contract ideally involves a reversal of any steps that the parties may have taken by way of performance, so that each party returns such benefit as he may have received. This is not, however, possible in all cases. Occasionally a party who has performed may be entitled to recover on the contract for the part that he has performed under the rule on part performances as agreed equivalents (§ 240). Even where this is not so, it may be appropriate to permit avoidance coupled with a money claim for restitution to the extent that one party's performance has benefited the other. Such claims are governed by the rules stated in §§ 370–77. A party may also have a claim that goes beyond mere restitution and includes elements of reliance by the claimant. See, e.g., Illustration 8 to § 153.

c. Supplying a term to avoid injustice. Under the rule stated in § 204, when the parties have not agreed with respect to a term that is essential to a determination of their rights and duties, the court will supply a term that is reasonable in the circumstances. Ordinarily the rules stated in this Chapter, coupled with those stated in Chapter 16,

will be adequate to allow the court to arrive at a just result. See Subsection (1). If, however, these rules will not suffice to avoid injustice, the court may supply a term just as it may in cases of impracticability of performance and frustration of purpose. See § 272(2) and Comment *c* to that section. Here, as there, a particularly significant application occurs when the just solution is to "sever" the agreement and require that some unexecuted part of it be performed on both sides, rather than to relieve both parties of all their duties. The situation differs from that envisioned in § 240, under which the court merely allows recovery at the contract rate for performance that has already been rendered. The question under this Section is whether the court can salvage a part of the agreement that is still executory on both sides. See Illustration 1.

Sometimes the party who is not adversely affected by a mistake can, by assenting to a modification of the contract, eliminate the effect of the mistake on the agreed exchange. He should generally be allowed to do so and thereby to preclude avoidance by the party who would otherwise be adversely affected. A court may, under Subsection (2), grant the party who has not been adversely affected what is, in effect, an option to enforce the contract on new terms. See Illustration 2.

The Court may also exercise its discretion under Subsection (2) where both parties have been responsible for the mistake. It may do so, for example, where a mistake of one party resulted both from his failure to act in good faith and in accordance with reasonable standards of fair dealing (§ 157) and from the fault of the other party (§ 153(b)). See Comment *f* to § 153. Furthermore, for the sake of simplicity, the rules stated in this Chapter have been formulated in terms of the typical contract based on an exchange of consideration by two parties, and it does not, therefore, deal exhaustively with problems of mistake involving several parties (§ 9) including intended beneficiaries (§ 302), promises enforceable because of reliance (§ 90), promises enforceable because under seal (§ 95), and other less typical situations. In such cases, the court will apply rules analogous to those stated in this Chapter. See Comments *b*, *d*, and *e* to § 155. The situations dealt with in Subsection (2) are to be distinguished from those envisioned by § 155, where a writing is reformed to carry out the intentions of the parties.

Illustrations:

1. A contracts to sell and B to buy a tract of land, described in the contract as containing 100 acres, at a price of $100,000, calculated from the acreage at $1,000 an acre. In fact the tract

contains only 90 acres. Under the rule stated in § 152, the contract would be voidable by B. If, however, the court decides that this rule will not avoid injustice, it is within the discretion of the court to grant relief on such terms as justice requires. The contract is not then voidable by B. See Illustration 11 to § 152.

2. The facts being otherwise as stated in Illustration 1, the tract in fact contains 110 acres. Under the rule stated in § 152, the contract would be voidable by A. If, however, the court decides that this rule will not avoid injustice, it is within the discretion of the court to grant relief on such terms as justice requires. Compare Illustration 2 to § 152.

3. A sends B two different offers of a contract, one with an option for renewal by A and one without such an option. B signs the one with an option, believing that it is the other one. Under the rule stated in § 153, if the court found that enforcement of the contract would be unconscionable, the contract would be voidable by B. If, however, the court decides that this rule will not avoid injustice, it may supply a term, if reasonable, under which B is entitled to avoid the contract only if he accepts the other offer.

REPORTER'S NOTE

This Section is new. It is similar in form and in purpose to § 272. The statement of substantive rules governing claims under Subsection (1) is deferred to Chapter 16. Subsection (2) is a specific application of the more general rule stated in § 204. See 3 Corbin, Contracts § 604 (1960 & Supp. 1980); 13 Williston, Contracts § 1571 (3d ed. 1970).

Comment b. Examples of courts allowing money judgments in mistake cases include Brecht v. Schramm, 266 N.W.2d 514 (Minn. 1978) (contract to care for aging aunt rescinded; niece given restitutionary award for services already performed); Meyer v. Benko, 55 Cal. App.3d 937, 127 Cal. Rptr. 846 (1976) (sellers' defense rejected because of mistake; proper remedy is specific performance plus damages to buyers equal to rental value less interest on purchase price during period of delay); Atchison v. City of Englewood, 193 Colo. 367, 568 P.2d 13 (1977) (former owners of land found to have a right of first refusal despite mistaken inclusion of provision violating rule against perpetuities; contract reformed to strike offending provision; because specific performance would be impracticable, former owners entitled to difference between market price and option price).

Comment c. For a discussion of the court's power to shape the remedy according to the circumstances of the case, see National Presto Indus. v. United States, 167 Ct. Cl. 749, 338 F.2d 99 (1964), cert. denied, 380 U.S. 962 (1965). Illustration 1 is based on Illustration 10 to former § 502; cf. Maffet v. Schaar, 89 Kan. 403, 131 P. 589 (1913); Colvin v. Baskett, 407 S.W.2d 19 (Tex. Civ. App. 1966);

Dlug v. Wooldridge, 189 Colo. 164, 538 P.2d 883 (1975). Compare Hatcher v. Union Trust Co., 174 Minn. 241, 219 N.W. 76 (1928), with Brooks v. Towson Realty, 223 Md. 61, 162 A.2d 431 (1960). Illustration 2 is based on Illustration 9 to former § 504; Biren v. Kluver, 35 Ill. App.3d 692, 342 N.E.2d 325 (1976); Bartlett v. Department of Transp., 40 Md. App. 47, 388 A.2d 930 (1978); cf. Dvorak v. Kuhn, 175 N.W.2d 697 (N.D. 1970); Lawrence v. Staigg, 8 R.I. 256 (1866); Brown v. Lamphear, 35 Vt. 252 (1862); see also McMahan v. Terkhorn, 67 Ind. App. 501, 116 N.E. 327 (1917). For cases giving the purchaser the choice of paying for the excess or accepting a conveyance without the excess, see Miller v. Craig, 83 Ky. 623 (1886); O'Connell v. Duke, 29 Tex. 299 (1867). Illustration 3 is based on Miller v. Stanich, 202 Wis. 539, 230 N.W. 47 (1930), mod. on reh., 202 Wis. 539, 233 N.W. 753 (1930).

RESTATEMENT OF THE LAW SECOND

CONTRACTS 2d

Volume 2

§§ 178–315

SUPREME COURT LIBRARY
OCT 15 1981
SUPREME COURT BLDG.

As Adopted and Promulgated

BY

THE AMERICAN LAW INSTITUTE
AT WASHINGTON, D.C.

May 17, 1979

ST. PAUL, MINN.
AMERICAN LAW INSTITUTE PUBLISHERS
1981

the handwritten figures. See Uniform Commercial Code § 3–118(b), (c).

REPORTER'S NOTE

This Section is based on former § 236, but former Subsections (a) and (b) are transferred to § 202 and former Subsections (d) and (f) to §§ 206 and 207. The other Subsections are rearranged. Subsection (b) is new; it conforms to Uniform Commercial Code §§ 1–205, 2–208. See 4 Williston, Contracts §§ 615–26 (3d ed. 1961); 3 Corbin, Contracts §§ 546–52, 559 (1960 & Supp. 1980); Patterson, The Interpretation and Construction of Contracts, 64 Colum. L. Rev. 833 (1964).

Comment b. See Intertherm, Inc. v. Coronet Imperial Corp., 558 S.W.2d 344, 351–52 (Mo. Ct. App. 1977).

Comment c. Many courts have said that the construction process should seek a reading that leads to a reasonable result. See, e.g., Crestview Bowl, Inc. v. Womer Constr. Co., 225 Kan. 335, 592 P.2d 74 (1979); Goddard v. South Bay Union High School Dist., 79 Cal. App.3d 98, 144 Cal. Rptr. 701 (1978); Intertherm, Inc. v. Coronet Imperial Corp., supra. Nonetheless, the real question is one of the intentions of the parties. See Perry and Wallis, Inc. v. United States, 192 Ct. Cl. 310, 427 F.2d 722 (1970); Ludwig Honold Mfg. Co. v. Fletcher, 405 F.2d 1123 (3d Cir. 1969); compare the majority and dissenting opinions in Pokorny v. Pecsok, 50 Ohio St.2d 260, 364 N.E.2d 241 (1977) (dissent citing this Section in Tentative Draft). Illustration 1 is based on Illustration 1 to former § 236.

Comment d. For an example of express terms prevailing over custom of the trade, see Citizens Nat'l Bank v. L. L. Glascock, Inc., 243 So.2d 67 (Miss. 1971).

Comment e. On the general standard that specific clauses should prevail over general ones, see Western Oil Fields, Inc. v. Pennzoil United, Inc., 421 F.2d 387 (5th Cir. 1970). That this standard must yield when inappropriate under the particular circumstances, see Elliott Leases Cars, Inc. v. Quigley, 118 R.I. 321, 373 A.2d 810 (1977); contrast the reading of the dissenting opinion in that case, which cites § 202 and this Section in Tentative Draft.

Comment f. See Roylex, Inc. v. Avco Commun. Devs., Inc., 559 S.W.2d 833 (Tex. Civ. App. 1977), which finds the general rule that handwriting prevails over typewriting inapplicable under the circumstances shown by testimony. Illustrations 2 and 3 were Illustrations 4 and 5 to former § 236. Illustration 4 is based on United States Fidelity & Guar. Co. v. First Nat'l Bank, 244 S.C. 436, 137 S.E.2d 582 (1964).

§ 204. Supplying an Omitted Essential Term

When the parties to a bargain sufficiently defined to be a contract have not agreed with respect to a term which is essential to a determination of their rights

and duties, a term which is reasonable in the circumstances is supplied by the court.

Comment:

a. Scope; relation to other rules. This Section states a principle governing the legal effect of a binding agreement. The supplying of an omitted term is not technically interpretation, but the two are closely related; courts often speak of an "implied" term. In many common situations the principle has been elaborated in more detailed rules, applicable unless otherwise agreed. See the rules on the effect of failure of performance stated in §§ 231–49 and the rules on impossibility and frustration stated in Chapter 11, and compare §§ 158 and 272, regarding the supplying of terms in cases of mistake and impracticability or frustration. A similar principle is often applicable in determining whether the terms of an agreement are sufficiently certain to constitute a contract. See §§ 33, 34. In both situations the supplying of an omitted term may resemble or overlap interpretation (see § 200) or the effect given to usage (see §§ 219–23).

b. How omission occurs. The parties to an agreement may entirely fail to foresee the situation which later arises and gives rise to a dispute; they then have no expectations with respect to that situation, and a search for their meaning with respect to it is fruitless. Or they may have expectations but fail to manifest them, either because the expectation rests on an assumption which is unconscious or only partly conscious, or because the situation seems to be unimportant or unlikely, or because discussion of it might be unpleasant or might produce delay or impasse.

c. Interpretation and omission. Interpretation may be necessary to determine that the parties have not agreed with respect to a particular term, but the supplying of an omitted term is not within the definition of interpretation in § 200. Where there is tacit agreement or a common tacit assumption or where a term can be supplied by logical deduction from agreed terms and the circumstances, interpretation may be enough. But interpretation may result in the conclusion that there was in fact no agreement on a particular point, and that conclusion should be accepted even though the omitted term could be supplied by giving agreed language a meaning different from the meaning or meanings given it by the parties.

d. Supplying a term. The process of supplying an omitted term has sometimes been disguised as a literal or a purposive reading of contract language directed to a situation other than the situation that arises. Sometimes it is said that the search is for the term the parties

would have agreed to if the question had been brought to their attention. Both the meaning of the words used and the probability that a particular term would have been used if the question had been raised may be factors in determining what term is reasonable in the circumstances. But where there is in fact no agreement, the court should supply a term which comports with community standards of fairness and policy rather than analyze a hypothetical model of the bargaining process. Thus where a contract calls for a single performance such as the rendering of a service or the delivery of goods, the parties are most unlikely to agree explicitly that performance will be rendered within a "reasonable time;" but if no time is specified, a term calling for performance within a reasonable time is supplied. See Uniform Commercial Code §§ 1–204, 2–309(1). Similarly, where there is a contract for the sale of goods but nothing is said as to price the price is a reasonable price at the time for delivery. See Uniform Commercial Code § 2–305.

e. Effect of the parol evidence rule. The fact that an essential term is omitted may indicate that the agreement is not integrated or that there is partial rather than complete integration. In such cases the omitted term may be supplied by prior negotiations or a prior agreement. See § 216. But omission of a term does not show conclusively that integration was not complete and a completely integrated agreement, if binding, discharges prior agreements within its scope. See § 213. Where there is complete integration and interpretation of the writing discloses a failure to agree on an essential term, evidence of prior negotiations or agreements is not admissible to supply the omitted term, but such evidence may be admissible, if relevant, on the question of what is reasonable in the circumstances.

Illustration:

1. A and his wife convey their ranch to A's sister and her husband, reserving an option to repurchase. The parties agree orally that the property will be kept in the family, but the deed says nothing as to assignment of the option. If the deed is found to be a partial integration, the oral agreement is effective to show that the option is not assignable. If the deed is found to be a complete integration, the oral agreement is discharged and the option is assignable.

REPORTER'S NOTE

This Section is new. See 3 Corbin, Contracts §§ 561–72A (1960 & Supp. 1980); 4 Williston, Contracts §§ 600–610B, 614–15, 640 (3d ed. 1961); Farnsworth, Disputes Over Omissions in Contracts, 68 Colum. L. Rev. 860 (1968).

Comment a. For a discussion of the duty of good faith and fair dealing, see § 205. For its relation to the court's power to supply omitted terms, and application of these concepts to different parts of a contract with differing results, see Snyder v. Howard Johnson's Motor Lodges, Inc., 412 F. Supp. 724 (S.D. Ill. 1976). In Chemetron Corp. v. McLouth Steel Corp., 522 F.2d 469 (7th Cir. 1975), the court, from the ungrammatical language of a provision, concluded that the draftsman had inadvertently omitted either "and" or "or." Compare § 158.

Comment d. Examples of courts adding a reasonable time requirement to contracts silent on the point include Haines v. City of New York, 41 N.Y.2d 769, 396 N.Y.S.2d 155, 364 N.E.2d 820 (1977) (long-term maintenance of a sewer system; cites this Section in Tentative Draft); and Houston County v. Leo L. Landauer & Assoc., 424 S.W.2d 458 (Tex. Civ. App. 1968), ref. n.r.e. (time for performance under a contract). In Southern Bell Tel. & Tel. Co. v. Florida E. Coast Ry. Co., 399 F.2d 854 (5th Cir. 1968), 47 N.C. L. Rev. 710 (1969), a power to place telephone and telegraph lines over and under railroad tracks, duration of which was unspecified, was held subject to termination upon reasonable notice. The power had already been in existence for more than fifty years. As to a court's power to find an omitted term limiting restrictive employment agreements to a reasonable time or area, compare Toch v. Eric Schuster Corp., 490 S.W.2d 618 (Tex. Civ. App. 1972), ref. n.r.e., with Haines v. City of New York, supra (dictum). In Snyder v. Howard Johnson's Motor Lodges, Inc., supra, the court refused to find an implied covenant not to compete, but found an implied covenant that a restaurant would be operated in a manner consistent with others operated by the defendants. For an example of a court refusing to supply an allegedly omitted term, see Hinckley v. Bechtel Corp., 41 Cal. App.3d 206, 116 Cal. Rptr. 33 (1974).

Comment e. On the interplay with the parol evidence rule see Snyder v. Howard Johnson's Motor Lodges, Inc., supra. Illustration 1 is based on Masterson v. Sine, 68 Cal.2d 222, 65 Cal. Rptr. 545, 436 P.2d 561 (1968).

TOPIC 2. CONSIDERATIONS OF FAIRNESS AND THE PUBLIC INTEREST

§ 205. Duty of Good Faith and Fair Dealing

Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement.

Comment:

a. Meanings of "good faith." Good faith is defined in Uniform Commercial Code § 1–201(19) as "honesty in fact in the conduct or transaction concerned." "In the case of a merchant" Uniform Com-