

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

NATIONAL BUILDERS & ACCEPTANCE CORP.,      CIVIL DIVISION

Plaintiff/  
Counterclaim-Defendant,

No: GD-21-007843

vs.

SOUTH SIDE SIN CITY, INC.,

**ANSWER, NEW MATTER AND  
COUNTERCLAIM TO COMPLAINT**

Defendant.

Filed on behalf of: South Side Sin City,  
Inc.

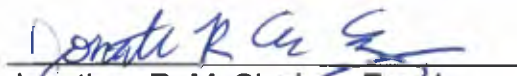
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NOTICE TO PLEAD TO PLAINTIFF  
NATIONAL BUILDERS & ACCEPTANCE CORP.:

You are hereby notified to file a written  
response to the within New Matter and  
Counterclaim within twenty (20) days  
from service hereof or judgment may be  
entered against you.

  
Jonathan R. McCloskey, Esquire  
Attorney for Defendant South Side Sin City Inc.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

NATIONAL BUILDERS & ACCEPTANCE  
CORP.,

Plaintiff/  
Counterclaim-Defendant,

vs.

SOUTH SIDE SIN CITY, INC.,

Defendant.

CIVIL DIVISION

No: GD-21-007843

**ANSWER, NEW MATTER AND COUNTERCLAIM TO COMPLAINT**

AND NOW, comes the defendant, SOUTH SIDE SIN CITY, INC. ("Tenant-Defendant"), by and through its attorneys, Paul Robinson, Esquire, Jonathan McCloskey, Esquire and Meyer, Darragh, Buckler, Bebenek & Eck, PLLC, and files the instant answer, new matter and counterclaim to complaint, averring as follows:

1. The allegations contained in paragraph 1 of the plaintiff's complaint are denied in that, at this point in time in the proceedings and after reasonable investigation, this defendant is without personal knowledge or information sufficient to form a belief as to the truth of the averments contained therein, and strict proof is demanded at the time of trial.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. The allegations contained in paragraph 9 of plaintiff's complaint, including subsections 9 a through c refers to a document which speaks for itself. To the extent that the averments contained in paragraph 9 misstate and/or misrepresent the document, said averments are specifically denied in their entirety and strict proof thereof is demanded at the time of trial.

10. Denied as stated. The initial ceiling collapse referenced in paragraph 10 of plaintiff's complaint occurred on March 28, 2021, not April 18, 2021. To the extent that paragraph 10 of plaintiff's complaint speculates as to the cause of the ceiling collapse, said averments are denied insomuch as said allegations set forth conclusion of law as opposed to averments of fact. In addition, after reasonable investigation, this defendant is without personal knowledge or information sufficient to form a belief as to the truth of the cause of the ceiling collapse as alleged in paragraph 10 of plaintiff's complaint and strict proof thereof is demanded at the time of trial.

11. The allegations contained in paragraph 11 of plaintiff's complaint refers to a document which speaks for itself. To the extent that the averments contained in paragraph 11 misstate and/or misrepresent the document, said averments are specifically denied in their entirety and strict proof is demanded at the time of trial. To the contrary, upon information and belief, plaintiff retained Cenkner Engineering as a means to conceal the extent of the deterioration and defects in the ceiling structure of the leased premises. Specifically, Engineer Michael Cenkner wrote a letter dated July

13, 2021, whereby he revised and withdrew the contents of his original engineering report. A true and correct copy of the withdrawal letter is attached hereto, marked as Exhibit "A" and made a part hereof. On July 16, 2021, Attorney Jonathan McCloskey, counsel to defendant emailed Attorney Marco Attisano, counsel to plaintiff, and attached the letter from Engineer Michael Cenkner whereby Mr. Cenkner withdrew his engineering report. Despite receiving this information, plaintiff has refused to amend and/or withdraw its complaint based on the now-defunct status of the Cenkner Engineering Report.

12. The allegations contained in paragraph 12 of the plaintiff's complaint are denied in that at this point in time in the proceedings and after reasonable investigation, this defendant is without personal knowledge or information sufficient to form a belief as to the truth of the averments contained therein, and strict proof is demanded at the time of trial. To the contrary, upon information and belief, plaintiff's building permit was obtained pursuant to the Cenkner Engineering Report which has since been withdrawn. Therefore, plaintiff's building permit is void on its face.

13. The allegation contained in paragraph 13 of plaintiff's complaint refers to a document which speaks for itself. To the extent that the averments contained in paragraph 13 misstate and/or misrepresent the document, said averments are specifically denied in their entirety and strict proof is demanded at the time of trial. To the contrary, upon information and belief, plaintiff retained Cenkner Engineering as a means to conceal the extent of the deterioration and defects in the ceiling structure of the leased premises. Specifically, Engineer Michael Cenkner wrote a letter dated July 13, 2021, whereby he revised and withdrew the contents of his original engineering

report. Plaintiff received the foregoing withdrawal letter authored by engineer Cenkner. On July 16, 2021, Attorney Jonathan McCloskey, counsel to defendant emailed Attorney Marco Attisano, counsel to plaintiff, and attached the letter from Engineer Michael Cenkner whereby Mr. Cenkner withdrew his engineering report. Despite receiving this information, plaintiff has refused to amend and/or withdraw its complaint based on the now-defunct status of the Cenkner Engineering Report.

14. Denied as stated. Specifically, paragraph 14 of plaintiff's complaint fails to identify the names of the "Vegely's workers," and this defendant is unable to respond due to the lack of specificity in the pleading. The allegation contained in paragraph 14 of plaintiff's complaint refers to a document which speaks for itself. To the extent that the averments contained in paragraph 14 misstate and/or misrepresent the document, said averments are specifically denied in their entirety and strict proof is demanded at the time of trial. To the contrary, upon information and belief, plaintiff retained Cenkner Engineering as a means to conceal the extent of the deterioration and defects in the ceiling structure of the leased premises. Specifically, Engineer Michael Cenkner wrote a letter dated July 13, 2021, whereby he revised and withdrew the contents of his original engineering report. In addition, the allegations contained in this paragraph of plaintiff's complaint are denied inasmuch as said allegations set forth conclusions of law as opposed to averments of fact.

15. It is admitted that National sent a letter to defendant on or around June 11, 2021. It is specifically denied that Vegely Welding was going to "perform the necessary repairs." To the contrary, upon information and belief, plaintiff retained Cenkner Engineering as a means to conceal the extent of the deterioration and defects in the

ceiling structure of the leased premises. Specifically, Engineer Michael Cenkner wrote a letter dated July 13, 2021, whereby he revised and withdrew the contents of his original engineering report. On July 16, 2021, Attorney Jonathan McCloskey, counsel to defendant emailed Attorney Marco Attisano, counsel to plaintiff, and attached the letter from Engineer Michael Cenkner whereby Mr. Cenkner withdrew his engineering report. Despite receiving this information, plaintiff has refused to amend and/or withdraw its complaint based on the now-defunct status of the Cenkner Engineering Report.

16. The allegation contained in paragraph 16 of plaintiff's complaint refers to a document which speaks for itself. To the extent that the averments contained in paragraph 16 misstate and/or misrepresent the document, said averments are specifically denied in their entirety and strict proof is demanded at the time of trial. To the contrary, upon information and belief, plaintiff retained Cenkner Engineering as a means to conceal the extent of the deterioration and defects in the ceiling structure of the leased premises.

17. It is admitted that Zukin Development Corporation is and was a prospective buyer to the property.

18. The allegations contained in paragraph 18 of plaintiff's complaint are denied.

19. The allegations contained in paragraph 19 of plaintiff's complaint are denied inasmuch as said allegations set forth conclusions of law as opposed to averments of fact and strict proof thereof is demanded at the time of trial. In addition, plaintiff has failed to comply with its contractual obligation to be responsible for repairs involving the roof and other structural defects. Specifically, plaintiff commenced the

instant litigation relying upon an engineering report authored by Mr. Cenkner that has been withdrawn and was designed to conceal the extent of the structural and ceiling deterioration that existed on the leased premises. Plaintiff is contractually prohibited from collecting rent during this time because of the plaintiff's failure to maintain the structural and roof integrity of the property directly and proximately caused defendant to be unable to operate its bar/tavern business on the property and violates the terms of the commercial lease.

20. The allegations contained in paragraph 20 of plaintiff's complaint are denied inasmuch as said allegations set forth conclusions of law as opposed to averments of facts.

COUNT I – BREACH OF CONTRACT  
REFUSAL TO ALLOW ACCESS TO PROPERTY

21. Paragraph 21 of plaintiff's complaint is an incorporation paragraph and as such, no response is required or provided.

22. The allegations contained in paragraph 22 of plaintiff's complaint refer to a document which speaks for itself. To the extent that the averments contained in paragraph 22 misstate and/or misrepresent the document, said averments are specifically denied in their entirety and strict proof thereof is demanded at the time of trial. In addition, the allegations contained in paragraph 22 of the plaintiff's complaint are denied inasmuch as said allegations set forth conclusions of law as opposed to averments of fact.

23. The allegations contained in paragraph 23 of plaintiff's complaint are denied. To the extent that the averments contained in paragraph 23 misstate and/or misrepresent the document, said averments are specifically denied in their entirety and

strict proof thereof is demanded at the time of trial. In addition, the allegations contained in paragraph 23 of the plaintiff's complaint are denied inasmuch as said allegations set forth conclusions of law as opposed to averments of fact.

24. The allegations contained in paragraph 24 of plaintiff's complaint refer to a document which speaks for itself. To the extent that the averments contained in paragraph 24 misstate and/or misrepresent the document, said averments are specifically denied in their entirety and strict proof thereof is demanded at the time of trial. In addition, the allegations contained in paragraph 24 of the plaintiff's complaint are denied inasmuch as said allegations set forth conclusions of law as opposed to averments of fact.

WHEREFORE, Defendant, South Side Sin City Inc., respectfully requests that judgement be entered in its favor for money damages on its counterclaim including interest, costs, attorney's fees and any other relief the court deems just and proper.

COUNT II – BREACH OF CONTRACT  
PAST RENT OWED

25. Paragraph 25 of plaintiff's complaint is an incorporation paragraph and as such, no response is required or provided.

26. The allegations contained in paragraph 26 of plaintiff's complaint are denied. In addition, the allegations contained in paragraph 26 of the plaintiff's complaint are denied inasmuch as said allegations set forth conclusions of law as opposed to averments of fact.

27. The allegations contained in paragraph 27 of plaintiff's complaint are denied. In addition, the allegations contained in paragraph 27 of plaintiff's complaint are denied inasmuch as said allegations set forth conclusions of law as opposed to



averments of fact and strict proof thereof is demanded at the time of trial. In addition, plaintiff has failed to comply with its contractual obligation to be responsible for repairs involving the roof and other structural defects. Specifically, plaintiff commenced the instant litigation relying upon an engineering report authored by Mr. Cenkner that was withdrawn and was designed to conceal the extent of the structural and ceiling deterioration that existed on the leased premises. Defendant avers that plaintiff is contractually prohibited from collecting rent during this time because of the plaintiff's failure to maintain the structural and roof integrity of the property directly and proximately caused defendant to be unable to operate its bar/tavern business on the property.

28. The allegations contained in paragraph 28 of plaintiff's complaint are denied insomuch as said allegations set forth conclusions of law as opposed to averments of fact and strict proof thereof is demanded at the time of trial. In addition, plaintiff has failed to comply with its contractual obligation to be responsible for repairs involving the roof and other structural defects. Specifically, plaintiff commenced the instant litigation relying upon an engineering report authored by Mr. Cenkner that was withdrawn and was designed to conceal the extent of the structural and ceiling deterioration that existed on the leased premises. Defendant avers that plaintiff is contractually prohibited from collecting rent during this time because of the plaintiff's failure to maintain the structural and roof integrity of the property directly and proximately caused defendant to be unable to operate its bar/tavern business on the property.

29. The allegations contained in paragraph 29 of plaintiff's complaint refer to a document which speaks for itself. To the extent that the averments contained in paragraph 29 misstate and/or misrepresent the document, said averments are specifically denied in their entirety and strict proof thereof is demanded at the time of trial. In addition, the allegations contained in paragraph 29 of the plaintiff's complaint are denied inasmuch as said allegations set forth conclusions of law as opposed to averments of fact.

34. [scrivener's error by plaintiff] The allegations contained in paragraph 34 of plaintiff's complaint refer to a document which speaks for itself. To the extent that the averments contained in paragraph 34 misstate and/or misrepresent the document, said averments are specifically denied in their entirety and strict proof thereof is demanded at the time of trial. In addition, the allegations contained in paragraph 34 of the plaintiff's complaint are denied inasmuch as said allegations set forth conclusions of law as opposed to averments of fact.

WHEREFORE, Defendant, South Side Sin City Inc., respectfully requests that plaintiff's complaint be dismissed and judgement be entered in defendant's favor for money damages on its counterclaim including interest, costs, attorney's fees and any other relief the court deems just and proper.

#### **NEW MATTER**

35. As a full and complete response to the plaintiff's causes of action, it is believed and therefore averred that the plaintiff's complaint fails to set forth a cause of action against the defendant upon which relief can be granted by this Court.

36. As a full and complete response to the plaintiff's cause of action, it is believed and therefore averred that individuals and/or entities other than the defendant may have caused or contributed to the injuries and/or damages which the plaintiff is seeking, and as such, the defendant cannot be found liable to the plaintiff.

37. As a full and complete response to the plaintiff's cause of action, it is believed and therefore averred that intervening and superseding events caused or contributed to the plaintiff's alleged injuries and damages, and as such, the defendant cannot be found liable to the plaintiff.

38. As a full and complete response to the plaintiff's cause of action, it is believed and therefore averred that Plaintiff was in prior material breach of the Lease by failing to perform required structural repairs to the Property. To the extent that rent might be owed by Defendant under the Lease, defendant avers that it is entitled to a setoff for its damages incurred due to plaintiff's failure to repair the Property.

39. As a full and complete response to the plaintiff's cause of action, it is believed and therefore averred that Plaintiff waived any cause of action against Plaintiff by failing or refusing to permit inspection of the Property by the City of Pittsburgh Department of Permits, Licenses, and Inspections (the "Department"), and by failing or refusing to inform the Department that the Cenkner report had been withdrawn.<sup>1</sup>

40. As a full and complete response to the plaintiff's cause of action, it is believed and therefore averred that the building permit attached to the complaint as Exhibit D is invalid and void due to the withdrawal of the Cenkner report used by Plaintiff

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<sup>1</sup> The Cenkner report provided the basis for issuance of the building permit attached to the complaint as Exhibit D.

in obtaining the building permit, thereby precluding Plaintiff from conducting work at the Property under the void permit.

WHEREFORE, Defendant, South Side Sin City Inc., respectfully requests that plaintiff's complaint be dismissed with prejudice and judgment be entered in defendant's favor for money damages on its counterclaim including interest, costs and any other relief the court deems just and proper.

### **COUNTERCLAIM**

#### **FACTS COMMON TO ALL COUNTS**

41. South Side Sin City Inc. ("Sin City") is a commercial tenant of the property located at 219-223 Atwood St., Pittsburgh, PA 15213 in the Oakland neighborhood in the City of Pittsburgh ("the Property")

42. National Builders & Acceptance Corp. ("National") is the owner of the Property.

43. National and Sin City entered into a commercial lease for the Property on or about October 1, 2010. (the "Lease") A true and correct copy of the Lease is appended hereto, marked as Exhibit "B" and made a part hereof.

44. On or about January 23, 2019, National and Sin City entered into a commercial lease amendment, (the "Lease Amendment") which extended the Lease term through 2025. A true and correct copy of the Lease Amendment is appended hereto, marked as Exhibit "C" and made a part hereof.

45. Sin City operates a bar/restaurant called the "Garage Door Saloon," which is located on the first floor of the Property.

46. The Lease states, in relevant part:

a) Lessor [National] shall be responsible only for repairs limited to the roof and structural repairs.

47. Mark Welshonse is the President and owner of Sin City.

48. Neal Scratow is the President and owner of National. During all times relevant hereto, Neal Scratow was and is acting on behalf of National.

49. On or about March 28, 2021, Sin City discovered potential structural problems with the Property.

50. On or about March 28, 2021, Mark Welshonse advised Neal Scratow about Sin City's concerns relating to deterioration of the roof structure and ceiling of Sin City's leased premises of the Property.

51. In response to the notice provided by Sin City, National retained Taylor Structural Engineers, Inc. ("TSE Inc.") to investigate the concerns raised by Sin City with regard to the apparent structural problems at the Property.

52. On April 5, 2021 and April 12, 2021, engineer Dirk A. Taylor of TSE Inc. inspected the Property and issued a written report with the following observations:

- There is significant deterioration of the roof structure. . . above the Garage Door Saloon tenant space.
- During the second visit [on April 12, 2021, ] I [Dirk Taylor] was able to determine that an 8' x 19' section of the roof structure was badly deteriorated above the center portion of the Saloon, and most of the roof structure was also badly deteriorated above the rear section of the saloon.
- Concrete has broken off and fallen away from the bottom surface of numerous sections of the concrete ribs throughout the center and rear sections of the Saloon, exposing moderately to severely corroded reinforcing steel bars in many locations. **In addition, many sections of hollow clay tile have also broken loose and have either fallen away from the structure or appear to be on the verge of doing so. [emphasis added]**

Engineer Taylor's report concluded in relevant part:

- While much of the concrete and tile have already fallen away, it appears that more sections are loose and will continue to fall away over time, posing a danger to occupants of the saloon.
- The deteriorated roof structure is in unsatisfactory condition at the present time and needs to be reinforced. **Because of the risk of falling pieces of concrete and tile, the rear two-thirds of the building should not be occupied until the repairs are completed. [emphasis added]**
- The roof [can be] repair[ed] by installing cold-formed metal joists beneath the badly deteriorated sections.

A true and correct copy of engineer Dirk A. Taylor's engineering report and photos are appended hereto, collectively marked as "Exhibit D" and made a part hereof.

53. The foregoing Taylor report was provided to National on or about April 19, 2021.

54. Despite being in receipt of Mr. Taylor's report described in Exhibit D, National did not, and has not implemented Mr. Taylor's recommended repairs.

55. Specifically, as of the date of filing of this Counterclaim, National has not installed any cold-formed metal joists beneath the badly deteriorated sections of the ceiling of the leased premises. On August 20, 2021, Neil Scratow mistakenly believed and testified that Mr. Cenkner's report recommended the installation of cold-formed metal joists. (when in fact Mr. Cenkner's report did not make the foregoing recommendation)

56. On or about March 28, 2021, a section of the ceiling in the portion of the Property rented by Sin City collapsed.

57. The defects described in Mr. Taylor's report in Counterclaim Exhibit D constitute "structural" and/or "roof" damage, which are National's sole responsibility to repair as per the Lease.

58. From March 18, 2021 through present, Sin City's leased portion of the Property was (and is) inoperable and a bar/tavern as a result of the structural and roof defects as described more fully in Taylor's report described in Exhibit D. National knew that Sin City would lose revenue from its customers by being forced to close its bar/tavern.

59. The structural and roof defects in the Property constitute a safety hazard to Sin City personnel and customers, rendering the Property unusable for the commercial purposes contemplated under the Lease.

60. Sin City has demanded that National repair the Property so that Sin City may resume operation of its business at the Property.

61. National knows or reasonably should know of the nature and approximate scope of Sin City's operations as a public bar/tavern at the Property.

62. Despite Sin City's repeated requests, National has failed to implement the required repairs to ceiling structure of the leased premises.

63. National hired Cenkner Engineering Associates, Inc. ("CEA Inc.") to prepare a second report on the Property on May 10, 2021.

64. Michael Cenkner, president of CEA Inc., visited the Property with Neal Scratow and Ken Vegely on May 7, 2021 for the purpose of observing the underside of the concrete joist roof structure of the leased premises to Sin City, and to recommend any repairs. (See, Exhibit "C" to plaintiff's complaint)

65. Upon information and belief, Neal Scratow rushed Mr. Cenkner through the Property and intentionally precluded and/or concealed Mr. Cenkner from observing

the severely corroded reinforcing steel bars which engineer Dirk Taylor had observed and disclosed to Mr. Scratow one month earlier.

66. In reliance on his incomplete inspection of the Property, Mr. Cenkner authored a report dated May 10, 2021 wherein CEA Inc. recommended “[a] polymer modified repair mortar should be applied to the bottom of the concrete joists.” Notably, Mr. Cenkner’s report did NOT recommend any reinforcement of steel bars. (see Exhibit C to plaintiff’s complaint)

67. National thereafter applied for and received a Building Permit from the City of Pittsburgh at BP-2021-09742. (the “Building Permit”) (See exhibit “D” to plaintiff’s complaint)

68. Upon information and belief, National submitted Mr. Cenkner’s incomplete engineering report to the City of Pittsburgh as the basis for the scope of work set forth in the Building Permit.

69. Neal Scratow and/or National intentionally concealed critical, material information about the nature and extent of the structural defects of the Property from Mr. Cenkner, thereby causing the resultant report to be inaccurate.

70. National then knowingly and intentionally submitted false and misleading information when it submitted Mr. Cenkner’s report to the City of Pittsburgh in support of the application for Building Permit No. BP-2021-09742.

71. Upon information and belief, the City of Pittsburgh has issued citation(s) to National for National’s failure to comply with the building code and/or false information provided in its Building Permit application materials. Landlord has failed to disclose to



the City of Pittsburgh that issued Building Permit No. BP-2021-09742 ought to be deemed moot and void due to the withdrawal of Mr. Cenkner's engineering report.

72. Upon learning that National and/or Neal Scratow withheld critical information about the extent of the structural defects of the Property, engineer Michael Cenkner authored a letter dated July 13, 2021 "withdrawing our [CEA Inc.'s] report and repair recommendations dated May 10, 2021." (See Exhibit "A")

73. National commenced the instant litigation in order to compel Sin City to allow Vegely Welding Inc. to perform the work consistent with Cenkner's Report and the resultant building permit and seeking to collect unpaid rent and other fees and costs.

**COUNTERCLAIM COUNT I. BREACH OF CONTRACT AGAINST NATIONAL BUILDERS & ACCEPTANCE CORP.**

74. Paragraphs 1 through 73 are incorporated herein.

75. Under the Lease, National is responsible for all structural and roof maintenance and repairs pertaining to the Property.

76. National has failed or refused to perform the structural repairs set forth in the TSE Inc. Report. Specifically, as of the date of filing of this Counterclaim, National has not installed any cold-formed metal joists beneath the badly deteriorated sections of the ceiling of the leased premises.

77. As a direct and proximate result of National's failure to make necessary structural repairs to the Property, Sin City's portion of the Property is inoperable and unsafe for Sin City to operate its bar/tavern business.

78. Sin City has incurred damages as a direct result of National's breach of the Lease.

79. National's failure to make structural repairs has forced Sin City to close its bar/tavern business at the Property from April 5, 2021 through present due to the unsafe condition (including the threat of falling concrete from the ceiling) of the Property caused by National's failure to make structural repairs.

80. Sin City has incurred lost profit damages in the amount of \$685,228.64 as of August 25, 2021 and continues to incur ongoing damages while being forced to close its bar/tavern due to the unsafe condition of the Property caused by National's failure to make structural repairs as required by the Lease and Lease Amendment.

81. Sin City has retained the undersigned firm to represent Sin City in this matter and is obligated to pay the firm a reasonable fee for its services.

82. As a result of the foregoing, and more particularly the implied covenant of good faith and fair dealings attendant to every contract in Pennsylvania, by engaging in the aforesaid conduct, Sin City has been injured, and suffered damages, including, *inter alia*, the following:

A. Lost profit damages that Sin City would have received had the bar/tavern business at the Property been able to remain open and ongoing lost profit damages until National complies with its contractual obligation to fully repair the ceiling structure on the Property.

B. Sin City has been deprived of the use of the Property consistent with the Lease and is therefore entitled to an abatement of rent.

C. Sin City has incurred substantial annoyance, inconvenience, anxiety, expense and the like.

WHEREFORE, Sin City respectfully requests a judgment in its favor and against National in an amount to be proved at trial but substantially in excess of the arbitration limits of Allegheny County, Pennsylvania, plus an abatement of rent, plus interest, costs, punitive damages and for such other relief as the Court deems just and proper.

**COUNTERCLAIM COUNT II – BREACH OF IMPLIED WARRANTY OF GOOD FAITH AND FAIR DEALING AGAINST NATIONAL BUILDERS & ACCEPTANCE CORP.**

83. Paragraphs 1 through 82 are incorporated herein.

84. National and Sin City entered into a commercial lease for the Property on or about October 1, 2010. (See, Counterclaim Exhibit “B”)

85. On or about January 23, 2019, National and Sin City entered into a commercial lease amendment, (the “Lease Amendment”) which extended the Lease term through 2025. (See, Counterclaim Exhibit “C”)

86. National has, at all relevant times hereto, a duty to act towards Sin City with good faith and fair dealing in its performance and enforcement of the Lease and Lease Amendment. (See, CMR D.N. Corp. v. City of Philadelphia, 803 F. Supp. 2d 328, 337 (E.D. Pa. 2011), quoting Donahue v. Fed. Exp. Corp., 753 A.2d 238, 242 (Pa. Super. 2000))

87. National breached the Lease and Lease Addendum, and more particularly the implied covenant of good faith and fair dealings by failing or refusing to make the structural repairs to the Property set forth in the TSE Inc. Report and also by attempting to conceal the extent of the damage to the ceiling structure in the Property.

88. On or around June 9, 2021, National entered into a written Purchase and Sale Agreement (the “Sales Agreement”) with buyer Zukin Development Corporation

("Buyer"). (A true and correct copy of the Purchase and Sale Agreement is appended hereto as Exhibit "E" and made a part hereof.)

89. In the Sales Agreement, National proposed to sell the real property commonly known as 219-223 Atwood Street, Pittsburgh PA 15213 to Buyer, which includes the real property subject to National's Lease with Sin City as set forth in Counterclaim Exhibits B and C.

90. Section 4(c) of the Sales Agreement states in relevant part:

As a Condition Precedent to closing, Seller [National] shall terminate the ground floor commercial lease with South Side Sin City, Inc., dated January 23, 2019 ("Bar Lease") and at Closing deliver the Real Property free and clear of the Bar Lease Tenant. . . Seller's commitment to terminate the Bar Lease is a material inducement to Buyer to enter into this Purchase and Sale Agreement.

91. The Lease and Lease Addendum do not authorize National to terminate its contractual obligations with Sin City in the event of a potential sale of the Property.

92. On June 30, 2021, Buyer and National signed an Addendum to the Sales Agreement, extending the due diligence period for the pending conveyance until August 12, 2021. (the Addendum to the Sales Agreement is attached hereto, marked as exhibit "F" and made a part hereof)

93. Landlord has not obtained any other final engineering reports other than those obtained from Mike Cenkner and Dirk Taylor as of the date of filing of this counterclaim.

94. Sin City believes, and therefore avers that this litigation was instituted by National in bad faith and without merit as a means to meet the condition precedent in the Sales Agreement set forth in Paragraph 90 of this Counterclaim.

95. National breached the Lease and Lease Addendum, and more particularly the implied covenant and good faith and fair dealings by entering into the Sales Agreement and Addendum thereto which required the termination of the Lease agreement as a condition precedent to the conveyance of the property to Buyer and also by commencing the instant litigation. National's aforesaid conduct constitutes bad faith, interferes with Sin City's ability to operate the bar/tavern on the leased premises, evidences its financial motive to breach the lease and evades the spirit of the bargained upon lease , namely Sin City's contractual right to operate the leased premises as a bar/tavern.

95. As a direct and proximate result of National's breach of the implied covenant of good faith and fair dealings, Sin City was injured and suffered the damages set forth in Counterclaim Paragraph 82 above.

96. The foregoing conduct of National was outrageous, willful, purposeful and shocking to the conscience, and fully supports the imposition of an award of punitive damages.

WHEREFORE, Sin City respectfully requests a judgment in its favor and against National in an amount to be proved at trial but substantially in excess of the arbitration limits of Allegheny County, Pennsylvania, plus an abatement of rent, plus interest, costs, punitive damages and for such other relief as the Court deems just and proper.

### **Count III – Fraudulent Misrepresentation and Nondisclosure**

97. The averments of Paragraphs 1 through 96 are incorporated herein by reference.

98. National knew that the structural and roof defects in the Property described in Counterclaim Exhibit C would cause Sin City to lose revenue from its customers by being forced to close and that said defects constitute a safety hazard to Sin City personnel and customers, rendering the Property unusable for the commercial purposes contemplated under the Lease. In other words, National, at all times relevant hereto, was aware of the extent of the structural and roof defects to the Property by viewing the report authored by Dirk Taylor.

99. Upon information and belief, Neal Scratow rushed Mr. Cenkner through the Property and intentionally precluded Mr. Cenkner from observing the severely corroded reinforcing steel bars which engineer Taylor had observed and disclosed to Mr. Scratow one month earlier.

100. National thereafter applied for and received a Building Permit from the City of Pittsburgh at BP-2021-09742. (the "Building Permit") (See exhibit "D" to plaintiff's complaint)

101. Upon information and belief, National submitted Mr. Cenkner's incomplete engineering report to the City of Pittsburgh as the basis for the scope of work set forth in the Building Permit.

102. Neal Scratow and/or National knowingly and intentionally concealed critical, material information about the nature and extent of the structural defects of the Property from Mr. Cenkner, thereby causing the resultant report to be inaccurate.

103. Upon information and belief, the City of Pittsburgh has issued citation(s) to National for National's failure to comply with the building code and/or false information provided in its Building Permit application materials.

104. Upon learning that National and/or Neal Scratow withheld critical information about the extent of the structural defects of the Property, engineer Michael Cenkner authored a letter dated July 13, 2021 “withdrawing our [CEA Inc.’s] report and repair recommendations dated May 10, 2021.” (See Counterclaim Exhibit “A”)

105. Despite National’s knowledge of the extent of the structural defects to the Property as described in Complaint Exhibit “A,” National willfully and purposefully maintained its silence and failed to disclose its knowledge of the aforesaid structural defects and its likely effect on the safety of Sin City’s bar patrons and employees and the financial implications of forcing the bar/tavern to close to Sin City, engineer Michael Cenkner, the City of Pittsburgh (on National’s building permit application) or this Court.

106. Moreover, at all times relevant hereto, National knew that its failure to disclose its knowledge the foregoing building defects and its efforts to conceal the same from Sin City would delay the repair efforts and have a catastrophic effect on Sin City’s financial condition and the safety of the leased premises.

107. Rather than disclose to Sin City and/or Mr. Cenkner and/or the City of Pittsburgh its knowledge of the extent of the structural defects on the Property and the grave risk of loss (both financial and safety hazards) if the defects were improperly remediated or not fixed at all, National instead maintained its silence, failed to warn or disclose the extent of the structural defects on the Property, submitted a building permit to the City of Pittsburgh premised upon Mr. Cenkner’s engineering report (which National knew was faulty), and entered into a Sales Agreement with a Buyer with a condition precedent to terminate Sin City’s Lease as per Counterclaim Exhibits E and F.

108. Had Sin City known of the foregoing information which National withheld, Sin City would not have permitted its bar/tavern business to be closed for this lengthy duration of time and/or effectuated self-help remedies and/or commenced litigation against National sooner.

109. At all times relevant hereto, Sin City was reasonable and justified in relying upon the honesty, integrity and professionalism of National such that National would disclose any fact known to them that would place Sin City, its employees and patrons in grave risk of economic loss and health/safety hazards.

110. As a direct and proximate result of the fraudulent misrepresentation and nondisclosure by National, as aforesaid, Sin City suffered the damages set forth in Counterclaim Paragraph 82 above plus recovery of Sin City's attorneys' fees and costs of suit.


111. The foregoing conduct of National was outrageous, willful, purposeful and shocking to the conscience, and fully supports the imposition of an award of punitive damages.

WHEREFORE, Sin City respectfully requests a judgment in its favor and against National in an amount to be proved at trial but substantially in excess of the arbitration limits of Allegheny County, Pennsylvania, plus an abatement of rent, plus interest, costs, punitive damages, attorneys' fees and for such other relief as the Court deems just and proper.



Respectfully submitted,

MEYER, DARRAGH, BUCKLER,  
BEBENEK & ECK, PLLC

By:   
\_\_\_\_\_  
PAUL R. ROBINSON, ESQUIRE  
JONATHAN McCLOSKEY, ESQUIRE  
Attorney for South Side Sin City, Inc.

### VERIFICATION

I, MARK WELSHONSE, have read and carefully reviewed the foregoing **ANSWER, NEW MATTER AND COUNTERCLAIM**. The statements therein are correct to the best of my personal knowledge, information, and belief.

This statement of verification is made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

I am authorized to execute this verification on behalf of the Defendant, South Side Sin City Inc., because of my position as owner of this company.

Date:

8/24/2021



MARK WELSHONSE

# Cenkner Engineering Associates, Inc.

Structural, HVAC, Plumbing, Fire Protection, and Electrical Systems

July 13, 2021, Rev00

Ken Vegely  
Vegely Welding, Inc.  
1100 Walnut St.  
McKeesport, PA 1513

Re: Garage Door Saloon  
Roof Joist Review & Repairs  
**Update Withdrawing the Previous Report**  
233 Atwood Street  
Pittsburgh, PA  
Project 21031

Ken,

Considering recent information revealed to us by Taylor Engineers, we are withdrawing our report and repair recommendations previously sent on May 10, 2021. The additional information presented to us revealed that the existing conditions are far worse than what was observed in the limited areas we examined in May. We understand from Taylor engineers that the proposed structure suggested by them was to entirely support the existing roof due to areas where the reinforcing was missing due to severe corrosion over an extended period.

Be aware that we have NOT performed additional observations, site visits, or exploratory demolitions to confirm Taylor's recommendations; we are only withdrawing our suggested repair method at this time due to the additional problem areas mentioned. If unforeseen conditions are discovered during future exploratory demolition or renovation work, the landlord may need to pursue additional repairs.

Extrapolation of opinions and conclusions beyond those stated above by others will be done under their own liability and in no way hold Cenkner Engineering Associates, Inc. responsible for such conclusions.

If you have any questions or need to discuss these items in more detail, please call.

Sincerely,



Michael E. Cenkner, PE, President  
Cenkner Engineering Associates, Inc.



## COMMERCIAL LEASE

Made this 1<sup>st</sup> day of October, 2010 between National Builders & Acceptance Corporation, a Pennsylvania corporation having its Principal place of business at 227 W. 8<sup>th</sup> Avenue, W. Homestead, Pa. 15120 hereinafter called "Lessor" and South Side Sin City, Inc. d/b/a Garage Door Saloon hereinafter called "Tenant."

All that certain first floor part of the building located at 219 1/2 Atwood Street - 223 Atwood Street, 4<sup>th</sup> Ward, City of Pittsburgh, Allegheny County, Pennsylvania.

The lease shall be for a term of FIVE (5) YEARS. The lease shall Begin on December 1, 2010 and shall end on November 30, 2015. the total rent shall be a minimum of \$492,360.00 per the paragraph on cost of living below.

Tenant may extend the term of this lease for an additional period of 5 years by notifying Lessor in writing at least 60 days before the lease expires on November 30, 2015. With the exception the renewal is subject to the sale or taking of the property by the University of Pittsburgh, or UPMC or a similar educational-medical corporation. In which case the lease shall Expire on November 30, 2015.  
Effective December 1, 2015 the rent will automatically increase by 5% if Tenant chooses to renew for another 5 years.

Rent in the amount of \$ 8,206.00 shall be due at the beginning of each month. A discount of \$ 588.00 may be taken on rent paid in full by the 10<sup>th</sup> day of each month. DATE OF POSTMARK  
CONSTITUTES DATE OF RECEIPT.

There shall be a charge of \$ 25 00 on any check returned NSF.

Tenant shall pay all gas & electric used thereon, all water charges or Assessments, all sewer charges or assessments, and all garbage Collection charges. FAILURE TO PAY ANY OF THE CHARGES SHALL CAUSE LESSOR TO ENFORCE PAYMENT THEREOF " IN THE SAME MANNER AS RENT IN ARREARS.

Tenant hereby agrees to maintain and keep the premises in good repair. Tenant agrees to keep the sidewalks free of rubbish. Tenant also agrees to keep all sidewalks free from ice and snow.

Lessor shall be responsible only for repairs limited to the roof and structural repairs. Lessor shall also be responsible for any repairs to apartments above the premises which may cause damage to the Tenant's premises.



Tenant understands that Lessor must have access to the premises between The hours of 9AM and 4PM when repairs are scheduled.  
Lessor will give the Tenant 12 hour advance notice of any scheduled repairs. However, in the event of an emergency Lessor may enter the premises without giving any notice.

Tenant must disarm the security alarm when repairs are scheduled. If Lessor enters the premises for an emergency the Tenant shall be responsible for any charges associated with the security alarm.

Tenant may not change the locks without providing Lessor with a key.

Tenant may not assign the lease or sublet the premises without written consent Of the Lessor.

Tenant agrees to keep the premises in good repair including all pipes and plumbing connections, all electric, heating and air conditioning.  
of the Tenant the cost shall be reimbursed to Lessor.

Tenant agrees to carry and pay for Liability Insurance with limits not less than \$1,000,000.00 for any injury or death of one person and not less than \$1,000,000.00 in respect to any one accident and not less than \$500,000.00 in respect to property damage.

Tenant must furnish certificates of insurance to Lessor naming Lessor as Additional insured.

Tenant waives right of notice before a complaint can be filed with the District Magistrate

The Cost of Living Index is published annually and shall be used as the Multiplier for the annual increases in rent starting December 1, 2011 And continuing each year thereafter until the expiration of the lease on November 30, 2015.

Signed this 1st day of October, 2010.

National Builders & Acceptance Corporation

Betty Scoratow  
By Betty Scoratow- President

South Side Sin City, Inc

By \_\_\_\_\_

## COMMERCIAL LEASE AMENDMENT

THIS COMMERCIAL LEASE AMENDMENT (this "Amendment") is made and entered into as of January 23, 2019, by and between National Builders & Acceptance Corporation, a Pennsylvania corporation (the "Landlord"), and South Side Sin City, Inc., a Pennsylvania corporation (the "Tenant"), as follows:

### RECITALS

A. Landlord and Tenant are parties to that certain Commercial Lease dated as of January 23, 2019 (the "Lease") for premises located at 218-223 Atwood Street, Pittsburgh, PA 15213, as more particularly described in the Lease, the "Premises".

B. The parties are desirous of amending the Lease as provided in this Amendment.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Landlord and Tenant hereby agree as follows:

1. Incorporation of Recitals; Definitions. The recitals set forth above are incorporated herein by reference as if set forth in full in this Amendment. Capitalized terms used but not otherwise defined in this Amendment shall have the respective meanings given to them in the Lease.

2. Term. The existing Term of the Lease which is scheduled to expire on October 31, 2020 is hereby extended for a period of five (5) additional years until October 31, 2025.

3. Renewal Options. Tenant shall have the right and options to extend the Term of the Lease for four (4) additional periods of five (5) years each. To exercise an extension option, Tenant must provide written notice to Landlord at least sixty (60) days prior to the expiration of the then current term.

4. Minimum Rent. On November 1, 2020, the Base Minimum Rent shall increase by three (3) percent over the Base Minimum Rent currently in effect. Thereafter, should Tenant exercise its extension options, Base Minimum Rent shall increase by three (3) percent at the beginning of each option term.

5. Real Estate Tax Increases. Tenant shall be responsible for its pro rata share (on a square footage basis) of increases in real estate taxes over a base year 2019. Tenant shall pay its pro rata share of real estate tax increases within thirty (30) days of Landlord presenting the actual tax bill for Tenant's review. Landlord shall notify Tenant in a timely manner of any increases in the real estate taxes or assessment and Landlord shall contest such increases if requested by Tenant.

6. Right of First Refusal. If Landlord receives an offer or letter of intent from any person or entity to purchase the Premises which Landlord intends to accept, Landlord shall send



Tenant a copy of the proposed letter of intent or offer. Tenant shall have the right to accept the terms of said letter of intent or offer by signing such letter of intent or offer (or one on the same terms and conditions) and delivering the same to Landlord within fifteen (15) days of the sending of the offer or letter of intent. Tenant shall have thirty (30) days from the time of delivery of its letter of intent or offer to enter into a definitive agreement of sale with Landlord to purchase the Premises and ninety (90) days within which to purchase the Premises on such terms and conditions.

Tenant's right of first refusal set forth herein is a two-time right with regard to the first potential buyer and, if applicable, second potential buyer which delivers an offer or letter of intent to Landlord (if any). If Tenant shall not accept the letter of intent or offer from the first buyer, then Tenant's rights as set forth in this section shall continue until Landlord receives an offer or letter of intent from a second buyer. If Tenant shall not accept the letter of intent or offer from such second buyer, then any of Tenant's rights as set forth in this section shall be void and of no further force and/or effect. Tenant may assign its right to purchase the Premises to an affiliate.

7. Subletting/Assignment. Tenant shall be permitted to sublease or assign the 219 Atwood Street portion of the Premises.

8. Effect of Amendment; Ratification. Landlord and Tenant hereby acknowledge and agree that, except as provided in this Amendment, the Lease has not been modified, amended, canceled, terminated, released, superseded or otherwise rendered of no force or effect. The Lease as hereby amended is hereby ratified and confirmed by the parties hereto, and every provision, covenant, condition, obligation, right, term and power contained in the Lease, as amended herein, shall continue in full force and effect, and each shall continue to be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of each party hereto. In the event of a conflict between the terms of the Lease and this Amendment, this Amendment shall control.

9. Authority. Each of Landlord and Tenant represents and warrants to the other that the individual executing this Amendment on such party's behalf is authorized to do so. In addition, each of Landlord and Tenant represents and warrants to the other that no consent by such representing party's lender(s) or any other third party is required for or as a condition precedent to the effective, non-contingent and fully binding execution of this Amendment by such representing party.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Amendment as of the date first above written.

TENANT:  
South Side Sin City, Inc., a Pennsylvania  
corporation

By:   
Name: Mark Welshonse, President

LANDLORD:  
National Builders & Acceptance Corporation,  
a Pennsylvania corporation

By:   
Name: Neil Chornow, President



**Taylor Structural Engineers, Inc.**  
2275 Swallow Hill Road, Bldg. 100, Pittsburgh, PA 15220  
Phone: 412.722.0880 | Fax: 412.722.0887  
TSEpgh.com

April 19, 2021

Mr. Neal Scratow  
National Builders  
4203 Murray Ave. Suite C  
Pittsburgh, PA 15217

**Subject:** Structural Assessment of Deteriorated Roof Deck above Garage Door Saloon  
223 Atwood Street, Pittsburgh, PA  
TSE Project No. 6655

Dear Neal,

At your request, I met you at your building on Atwood Street in Oakland on April 5<sup>th</sup> to assess the existing structural condition of roof structure above the Garage Door Saloon tenant space. At the time of that meeting, we were able to see significant deterioration of the roof structure, but most of the structure was generally inaccessible for thorough observation because of existing ceiling and utilities. I then requested that you have the ceiling removed to allow better access for the assessment.

Within the next several days you had the ceiling removed and I returned to the building on April 12<sup>th</sup> to complete the assessment. During that second visit I was able to determine that an 8' x 19' section of the roof structure was badly deteriorated above the center portion of the Saloon, and that most of the roof structure was also badly deteriorated above the rear section of the saloon. The following is a summary of the observations, conclusions, and recommendations that we discussed at that time.

**Observations:**

1. The rear section of the Saloon (where most of the severe deterioration has occurred) is a 1-story space. The middle third of the center section of the Saloon is also a 1-story space, but the two outer thirds of the center section of the Saloon are part of 3-story building space with two additional floors above. The front section of the Saloon is part of 4-story building space with three additional floors above.
2. The floor and roof decks above the Saloon consist of reinforced concrete "ribbed-slabs" with 5" wide by 4" deep reinforced concrete ribs spaced at 17" on center, supporting a concrete slab of unknown thickness. 12" wide strips of 4" thick hollow clay tile were included in the ribbed-slab design as permanent form-work to reduce the volume of concrete needed for the original building construction. The concrete ribbed-slabs are supported on a grid of steel beams and columns. (This was a very common construction method for building construction in Pittsburgh a century ago.)
3. Concrete has broken off and fallen away from the bottom surface of numerous sections of the concrete ribs throughout the center and rear sections of the Saloon, exposing moderately to severely corroded reinforcing steel bars in many locations. (See attached Photos 1 and 2.) In addition, many sections of hollow clay tile have also broken loose and have either fallen away from the structure or appear to be on the verge of doing so in the future.





4. Exposed portions of the steel beams that support the ribbed-slab are moderately corroded, but I observed no evidence of any severe corrosion of the steel beams.
5. During our initial (April 5<sup>th</sup>) meeting, it was brought to my attention that the center and rear sections of the Saloon had suffered years of significant stormwater leaking problems, but leaking problems were eventually repaired, and stormwater no longer leaks through the ceilings.

**Conclusions and Recommendations:**

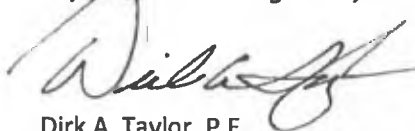
Based on my observations at the building on April 5<sup>th</sup> and 12<sup>th</sup>, it is my conclusion that the years of stormwater leaking problems caused the concrete ribbed-slabs to become saturated with water during wet weather periods, with the saturated condition causing corrosion (rusting) of the steel reinforcing bars within the concrete. When the reinforcing bars corroded, they also expanded, causing the concrete to break off and fall away from the bottom surface of the structure. As the concrete broke away, it caused the hollow clay tile to also break loose and fall away. While much of the concrete and tile have already fallen away, it appears that more sections are loose and will continue to fall away over time, posing a danger to occupants of the saloon. The deterioration appears to be limited to the roof structure and does not extend into portions of the building that have additional floors above the Saloon.

The deteriorated roof structure is in unsatisfactory condition at the present time and needs to be reinforced. Because of the risk of falling pieces of concrete and tile, the rear two-thirds of the building should not be occupied until the repairs are completed.

The attached structural calculation and detail package shows a relatively economical and less-invasive way to repair the roof by installing cold-formed metal joists beneath the badly deteriorated sections. The cold-formed framing shown on sketches SK-1 and SK-2 has been sized to carry the full load of the roof (including the dead load and live loads), thus the original deteriorated concrete structure will no longer be required for support. Other repair methods are also available, but this method should provide the quickest, least expensive, and least invasive way to restore the required structural load capacity to the roof structure.

I hope that this report provides what you need to move forward with the roof repairs, but please do not hesitate to contact me if you have any questions or desire the preparation of more complete, formal construction documents for bidding to multiple contractors. And thank you for giving Taylor Structural Engineers the opportunity to be of service.

Sincerely,  
Taylor Structural Engineers, Inc.



Dirk A. Taylor, P.E.  
President



**Attachments:** Photos 1 and 2  
PE-sealed Structural Calculations and Details

## **PURCHASE AND SALE AGREEMENT**

**THIS PURCHASE AND SALE AGREEMENT** (the "Agreement") is made this 9<sup>th</sup> day of June, 2021, by and among:

**BUYER:**  
Zukin Development Corporation  
1700 Sansom Street, Fourth Floor  
Philadelphia PA 19103

**SELLER:**  
National Builders & Acceptance Corporation  
219-223 Atwood Street  
Pittsburgh, PA. 15213

### **RECITALS**

A. Seller is the owner of certain real property commonly known as 219-223 Atwood Street, Pittsburgh, Pennsylvania, 15213 and as more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof (the "Real Property").

B. The Seller wishes to sell, and the Buyer wishes to buy the Real Property upon the terms, covenants and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, in hand paid each party by the other, the receipt and adequacy of which is hereby acknowledged, the parties covenant and agree as follows:

1. **Recitals.** The parties agree that the recitals (the "Recitals") are true and correct, and the Recitals are by this reference incorporated and made a part of this Agreement.

2. **Property to be Conveyed.** Seller shall sell, transfer and convey to Buyer on the Closing Date (as hereinafter defined) the Real Property defined as the Real Property described on Exhibit "A" attached hereto and previously incorporated herein, together with the permanent improvements and fixtures thereon, if any, and all easements, licenses, privileges, hereditaments, appurtenances, and rights to any land lying in the beds of any street, road or avenue, open or proposed, adjoining thereto, and inuring to the benefit of said land; and the Personal Property defined as all furniture, equipment, fixtures, machinery and personalty of every description attached to or used in connection with the Premises (and not owned by tenants under leases of the Premises). The Real Property and Personal Property are sometimes referred to herein as the "Property."

3. **Purchase Price.** The total purchase price of the Property shall be Two Million Four Hundred Fifty Thousand (\$2,450,000) Dollars (the "Purchase Price"). The Purchase Price shall be due and payable, and shall be paid as follows:

(a) **Deposit:** The sum of One Hundred Thousand (\$100,000) Dollars (the "Deposit") shall be delivered by Buyer to Seller within ten (10) days after notice that Buyer intends to move to settlement upon completion of the Inspection Period as set forth in Section 7 of this Agreement, such deposit to be held by Whitford Land Transfer Company ("Escrow Agent"). The Deposit shall be invested in a federally insured high-yield interest bearing account, readily accessible by Escrow Agent in accordance with the terms of this Agreement, said interest to accrue for the benefit of Buyer and to be paid to the Buyer at the time of Closing unless Buyer defaults hereunder.



(b) **Cash at Closing:** The balance of the Purchase Price, after allowing credit for the Deposit, shall be paid by Buyer to Seller in the form of cash, cashier's check or confirmed wire transfer drawn on a financial institution selected by Buyer, subject to adjustments and prorations, at the time of Closing.

(c) **U.S. Funds:** The monies referred to above or otherwise in this Agreement are in United States currency, and all payments to be made hereunder shall be in such lawful form.

(d) **Allocation:** The Purchase Price shall be allocated between the Real Property and Personal Property in a manner agreeable to Buyer and Seller in advance of Closing.

4. **Covenants.** In addition to the covenants contained elsewhere in this Agreement, Seller covenants that it shall:

(a) **Maintenance.** At all times prior to the Closing Date, maintain the Property in good condition and repair, reasonable wear and tear alone excepted, operate the Property with sound management practices and leasing standards, and pay timely, in the ordinary course of business prior to Closing, all sums due for work, materials, and/or services performed or otherwise incurred in the ownership and operation of the Property prior to Closing;

(b) **Alterations.** Not make or permit to be made any alterations, improvements or additions to the Property without the prior written consent of Buyer.

(c) **Lease.** Not enter into any new lease nor amend, modify or terminate any existing Lease without Buyer's consent. As a Condition Precedent to closing, Seller shall terminate the ground floor commercial lease with South Side Sin City, Inc., dated January 23, 2019 ("Bar Lease") and at Closing deliver the Real Property free and clear of the Bar Lease tenant. To the extent it is a stand-alone tenant (and not a subtenant under the Bar Lease) amend the Pizza Shop lease for a term not to exceed six (6) months after closing. Seller further warrants that as of the date of closing no residential lease in the Real Property shall expire later than July 31, 2022. All other leases, subleases, licenses or other occupancy agreements (including residential) on or arising out of the Real Property shall be terminated unless otherwise approved in writing by Buyer. Seller's obligation to terminate such leases shall not occur until Buyer has notified Seller of its election to move to Settlement upon completion of the Inspection Period. Seller's commitment to terminate the Bar Lease is a material inducement to Buyer to enter into this Purchase and Sale Agreement.

(d) **Notice to Buyer.** Notify Buyer promptly of the occurrence of any of the following:

(i) a fire or other casualty causing damage the Property, or any portion thereof;

(ii) receipt of notice of eminent domain proceedings or condemnation of or affecting the Property, or any portion thereof,

(iii) receipt of a notice from any governmental authority or insurance underwriter relating to the condition, use or occupancy of the Property, or any portion thereof, or any real property owned by Seller, or any related party, adjacent to any of the Property, or setting forth any requirements with respect thereto;

(iv) receipt or delivery of any default or termination notice or claim of offset or defense to the payment of rent from any tenant;

(v) receipt of any notice of default from the holder of any lien or security interest in or encumbering the Property, or any portion thereof; or,

(vi) the commencement of any strike, lock-out, boycott or other labor trouble affecting the Property, or any portion thereof;

(e) **No New Agreements.** Except for agreements which can be terminated with not more than thirty (30) days' notice, not enter into any other agreements which affect the Property or the transactions contemplated by this Agreement, without the prior written consent of Buyer; and, Seller, except upon Buyer' prior written consent, shall not create or permit the creation of any liability which shall bind Buyer, of the Property after Closing, other than real estate taxes, special assessments or utility charges.

(f) **Tax Disputes.** Notify Buyer of any tax assessment disputes (pending or threatened) prior to Closing, and not agree to any changes in the real estate tax assessment, nor settle, withdraw or to otherwise compromise any pending claims with respect to prior tax assessments, without Buyer's prior written consent. If any proceedings shall result in any reduction of assessment and/or tax for the tax year in which the Closing occurs, it is agreed that the amount of tax savings or refund for such tax year, less the reasonable fees and disbursements in connection with such proceedings, shall be apportioned between the parties as of the date real estate taxes are apportioned under this Agreement

(g) **No Removal of Personalty.** Not remove any Personal Property from the Real Property without replacing it with similar personal property of equal or better conditions and quality.

5. **Warranties and Representations.** In order to induce Buyer to enter into this Agreement, Seller hereby makes the following warranties and representations to Buyer, in addition to any other warranties and representations set forth in this Agreement, which warranties, representations and covenants shall survive the Closing:

(a) **Marketable Title.** Seller has good, marketable and insurable title to the Real Property, free and clear of all mortgages, liens, encumbrances, leases, tenancies, security interests, covenants, conditions, restrictions, rights-of-way, easements, reservations, judgments, lis pendens and other matters affecting title, except the Permitted Exceptions as hereinafter defined.

(b) **No Condemnation Pending or Threatened.** There is no pending or threatened condemnation or similar proceeding affecting any portion of the Real Property or any portion thereof, nor has Seller acknowledged that any such action is presently contemplated.

(c) **Adverse Information.** Seller has no information or knowledge of any change contemplated in any applicable laws, ordinances, or regulations, or natural or artificial conditions upon the Real Property which would prevent, limit, impede, or render more costly Buyer's contemplated use of the Real Property.

(d) **Compliance with Laws.** Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to and affecting the Real Property. Performance of this Agreement will not result in any breach of, or constitute any default under, or result in the imposition of, any lien or encumbrance upon the Real Property under any agreement or other instrument to which Seller is a party or by which Seller or the Real Property might be bound.

(e) **Pending Litigation.** There are no legal actions, suits or other legal or administrative proceedings, including condemnation cases and bankruptcy proceedings, pending or threatened, against the Real Property, and Seller is not aware of any facts which might result in any action, suit or other proceeding against the Real Property.

(f) **No Special Assessments.** No portion of the Real Property is affected by any special assessments, recorded or unrecorded, whether or not constituting a lien thereon.

(g) **Access to Highways and Roads.** The Real Property has full, free and adequate access to and from publicly dedicated roadways which are located contiguous and adjacent to the boundary line of the Real Property, and Seller has no knowledge of any fact or condition which would result in the termination or diminution of such access. The Real Property has sufficient frontage to allow for such entrances, accessways, curb cuts and median cuts as may be required by all governmental authorities having jurisdiction over the Real Property or, if such entrances, accessways, curb cuts and median cuts presently exist, the same comply in all respects with applicable laws, ordinances, approvals and permits and are sufficient to permit the development and operation of the Project.

(h) **Commitments to Governmental or Quasi-Governmental Authorities.** No commitments have been made to any governmental or quasi-governmental authority, utility company, school board, church or other religious body, or any homeowners association, or to any other organization, group, or individual, relating to the Real Property which would impose an obligation upon Buyer, or its successors or assigns, to make any contribution or dedications of money or land, or to construct, install, or maintain any improvements of a public or private nature on or off the Real Property, and no governmental or quasi-governmental authority has imposed any requirement that any owner and/or developer of the Real Property pay directly or indirectly any special fees or contributions, or incur any expenses or obligations in connection with the development of the Real Property or any part thereof. The provisions of this section shall not apply to any regular or nondiscriminatory local real estate taxes assessed against the Real Property.

(i) **Agreements with Government Entities.** Seller has not entered into any agreements which are not of record with any state, county or local governmental authority or agency or quasi-governmental authority other than those approved by Buyer and referenced in or attached to this Agreement.

(j) **Utilities.** All utilities necessary for development and utilization of the Real Property as described in this Agreement are available, contiguous and adjacent to the boundary line of the Real Property, and are adequate to fully service the proposed Project, including without limitation, potable water, electricity, cable communications systems, and telephone services.

(k) **Authority.** Seller is not aware of any facts which prohibit it from entering into this Agreement and closing this Agreement in accordance with the terms hereof. The execution and delivery of this Agreement, and the consummation of the transaction contemplated hereby will not result in any breach of the terms and conditions of, or constitute a default under, any instrument or obligation to which Seller is now or may become a party, or by which Seller may be bound or affected, or violate any order, writ, injunction or decree of any court in any litigation to which Seller is a party, or violate any law. Seller has the power and authority to enter into, deliver and perform this Agreement, to execute and deliver all documents required hereby, to convey all of its right, title and interest in and to the Real Property, and to otherwise take all steps necessary to the performance of the duties and obligations of Seller hereunder.

(l) **Other Obligations and Assessments.** There are no outstanding obligations or assessments for sewer, water, drainage, roadway or other improvements which presently impact or may impact upon the Real Property or any owner and/or developer thereof, by reason of any existing or future improvements on the Real Property, except as disclosed in this Agreement or any exhibit attached hereto.

(m) **Representations.** No representation or warranty by Seller in this Agreement, or in any instrument, certificate or statement furnished to Buyer pursuant hereto, or in connection with the transaction contemplated hereby, contains or will contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained herein or therein not misleading. Seller shall provide Buyer with access to books and records during due diligence to verify rents and expenses over the past few years.

(n) **Mechanic's Liens.** Any mechanic's or other type liens against the Real Property, except as expressly allowed hereunder, and further except for ad valorem taxes for the year of Closing set forth herein, shall be removed and satisfied of record by Seller prior to Closing. If subsequent to the closing, any mechanic's or other type liens (excepting the items set forth in the preceding sentence) shall be filed against the Real Property or against Buyer or its assigns, based upon any act or omission occurring prior to the closing (as hereinafter defined) on the Real Property (whether or not such lien shall be valid or enforceable as such), Seller shall, within thirty (30) days after receipt of written notice by the Buyer of the filing thereof, take such action, by bonding, deposit, payment or otherwise, as will remove, transfer or satisfy such lien of record which affects the Real Property.

(o) **Contracts.** The Seller warrants and represents to Buyer that as of the date of execution of this Agreement, there are no leases, options, contracts, or rights of any third parties affecting the Real Property in any manner whatsoever that have not been disclosed to Buyer, nor shall there be any such leases, options, contracts or rights of third parties granted during the term of this Agreement.

(p) **Encroachments.** There are no encroachments upon the Real Property, except as may be shown on the Survey required hereunder, and approved by Buyer in writing.

(q) **FIRPTA.** Seller is not a 'foreign person' as such term is defined in Section 1445(f)(3) of the Internal Revenue Code of 1954, as amended.

(r) **Parties in Possession.** The Seller warrants and represents to Buyer that as of the date of execution of this Agreement, there are no parties in possession of any portion of the Real Property except as approved by Buyer in writing.

(s) **Documents.** Where copies of any documents have been delivered by Seller to Buyer whether prior to or pursuant to this Agreement, such copies are (i) true correct and complete copies of the originals of said documents; (ii) constitute, in each case the entire agreement between the parties thereto with respect to the subject matter thereof, and the original instruments in the form delivered to Buyer are now in full force and effect, are valid and enforceable in accordance with their respective terms; and (iii) have not been changed or amended, except for amendments, if any, specifically referred to therein.

(t) **Acreage.** That the acreage contained within the Real Property is approximately five thousand (5,000) square feet (M.O.L.).

**Hazardous Wastes.** No Hazardous Substances (as defined below), and no Hazardous Wastes (as defined below) are present on the Property including, without limitation, asbestos, flammable substances, explosives, radioactive materials, hazardous wastes, toxic substances, pollutants, pollution, contaminant, polychlorinated byphenyls ("PCBs"), urea formaldehyde foam insulation, radon, corrosive, irritant, biologically infectious materials, petroleum product, garbage, refuse, sludge, hazardous or waste materials, and there has been no use of the Property that may under any federal, state or local environmental statute, ordinance or regulation, require, at any time, any closure or cessation of the use or occupancy of the Property and/or impose, at any time, upon the owner of the Property any remediation or other monetary obligation. Seller hereby further represents and warrants that it has not been identified in any litigation, administrative proceeding or investigation as a responsible party or potentially responsible party for any liability for remediations costs, natural resource damages or other damages or liability for prior disposal or release of Hazardous Substances, Hazardous Wastes or other environmental pollutants or contaminants, and that no lien or superlien has been recorded, filed or otherwise asserted against any real or personal property of Seller for any remediation or other responses costs incurred in connection with any environmental contamination that is attributable, in whole or in part, to Seller. Seller hereby indemnifies and holds Buyer harmless from any and all liability, loss or damage suffered or incurred as a result of a claim, demand, cost or judgment in favor of a third party, including, without limitation, any governmental authority, arising from the deposit, storage, disposal, burial, dumping, injecting, spilling, leaking, or other placement or release in or on the Property of Hazardous Substances or Hazardous Wastes by Seller, its agents, employees or contractors, or by any person or party for whose conduct Seller may be legally responsible. For purposes of this Agreement, "Hazardous Substances" means those elements and compound which are designated as such in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 USC 9601(14), as amended, all petroleum products and by-products, and any other hazardous substances as that term may be further defined in any applicable federal, state or local laws; and "Hazardous Wastes" means any hazardous waste, residential or household waste, solid waste, or other waste as defined in applicable federal, state or local laws. Seller has not received any summons, citations, directive, letter or other communication, written or oral, from any governmental or quasi-governmental authority concerning any intentional or unintentional action or omission of Seller's part which (resulted in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of Hazardous Substances or Hazardous Wastes, or (b) related in any way to the generation, storage, transport, treatment or disposal of Hazardous Substances or Hazardous Wastes. Seller represents and warrants that neither the Property nor any portion thereof, have been identified on the federal CERLIS, the National Priorities List (40 C.F.R. Part 300, Appl B) or any state or local list of potential hazardous waste disposal sites. Seller warrants and represents that there are no wet lands or fresh water wetlands on the Real Property as those terms are defined in applicable state and/or federal laws, nor are there any other environmental features present on the Property which would inhibit Buyer's intended development and use of the Property.

6. **Conditions Precedent.** The following are conditions precedent to the Buyer's obligation to close this transaction. The Buyer and only the Buyer may waive any or all of these conditions precedent. In the event that all of these conditions precedent are not fulfilled by Closing, the Buyer may elect not to close this transaction, whereupon Buyer shall have the right to terminate this Agreement and obtain a refund of the Deposit plus accrued interest, if any, promptly from Escrow Agent, and thereafter each party hereto shall have no further obligations under this Agreement.

(a) **Covenants, Warranties and Representations.** All of the covenants, warranties and representations set forth above are true and correct on the date of Closing.

(b) **Seller's Compliance.** Seller has fulfilled all of the terms and conditions required to be fulfilled by Seller prior to the Closing and Seller is not in default of this Agreement.

(c) **Seller's Termination of Leases.** Seller has fulfilled its obligation to modify and/or terminate Leases for the Real Property and deliver the Real Property free and clear of those tenants.

7. **Inspection Period.** Notwithstanding any other provision of this Agreement, Seller and Buyer hereby acknowledge and agree that, as a condition precedent to Closing, Buyer has a forty-five (45) day right of approval, commencing on the Effective Date (the "Inspection Period") during which time Buyer shall have the right to perform such due diligence inspections and evaluations as Buyer may reasonably require in connection with its evaluation of the Property, including, without limitation, environmental, soil, flood plain, legal, title, financial and engineering studies, all at Buyer's sole cost and expense. Seller shall provide Buyer reasonable access to the Real Property and its records, upon receipt by Seller of a detailed request by Buyer for specific documentation. If Buyer believes the results of its due diligence to be satisfactory, Buyer may elect to proceed to settlement under the terms and conditions of the Agreement by delivering written notice to Seller delivered no later than the last day of the Inspection Period and in the absence of such notice, the Agreement shall be deemed terminated, whereupon all rights and obligations of the parties hereto each to the other shall end.

8. **Title Insurance**

(a) **Commitment.** Buyer shall order, at Buyer's expense, a binder for a marketable title insurance policy, ALTA Form B (the "Commitment"), in the amount of the Purchase Price issued by a nationally recognized title insurance company ("Title Company") selected by Buyer agreeing to issue to Buyer, upon the recording of the Warranty Deed hereinafter mentioned, a title insurance policy as to marketable title in the amount of the Purchase Price, insuring Buyer's title to the Real Property subject only to the Permitted Exceptions, as defined below. At the Closing, all exceptions except the Permitted Exceptions shall be deleted. Seller shall deliver a copy of an Abstract or prior Owner's Title Insurance Policy for the Real Property within fifteen (15) days of the Effective Date. Upon the Effective Date, Seller shall provide to Buyer a copy of the most current title report of the Real Property.

(b) **Title Defects.** If the Commitment does not meet the requirements of this Agreement, the Buyer shall notify the Seller of the title defects prior to the last day of the Inspection Period. In the event that Buyer shall fail to object to any matter set forth in the Commitment (other than standard printed exceptions typically deleted at Closing) such matter shall be deemed to be a "Permitted Exception". The Seller shall have fifteen (15) days after receipt of such notice in which to cure such defects and furnish to the Buyer evidence that same have been cured, and if such defects are cured within that time, the sale and purchase shall be closed on the later of; ten (10) days after delivery to the Buyer of evidence that said defects have been cured, or the date of Closing set forth herein. If the Seller fails or is unable to cure said defects within the fifteen (15) day period provided above, the Buyer shall have the option, to be exercised in its sole discretion: to complete the purchase and accept title to the Real Property subject to such defects within the later of; ten (10) days after the expiration of said fifteen (15) day period, or the date of Closing set forth herein; or Buyer shall notify the Seller in writing within the said ten (10) day period that it elects to terminate this Agreement and not complete the purchase, in which event the Buyer shall be entitled to an immediate refund by the Escrow Agent of the Deposit plus accrued interest thereon, if any, whereupon all rights and liabilities of the parties hereto to each other shall end

9. **Survey.** Seller shall furnish to Buyer, within ten (10) days after the Effective Date the most current survey of the Real Property available to Seller.

10. **Closing.** Provided all Conditions Precedent have either been satisfied or waived, this transaction shall be closed on or before thirty (30) days after the conclusion of the Inspection Period (the "Closing Date").

11. **Closing Cost and Prorations.** Except as otherwise set forth in this Agreement, all taxes, insurance, interest, rents and other expenses and revenue of the Real Property shall be prorated as of the date of Closing. Taxes shall be prorated based upon the current year's tax without regard to discount. If the Closing takes place and the current year's taxes are not fixed and the current year's assessment is available, taxes shall be prorated based upon such assessment and the prior year's millage. If the current year's assessment is not available, then taxes shall be prorated on the prior year's tax. In the event the tax proration is incorrect on the date of Closing, Buyer or Seller shall be entitled to a reparation of such taxes upon written request to the other party. Seller or Buyer shall remit the reparation amount requested within thirty (30) days of request therefor. The Seller shall pay for the documentary stamps to be affixed to the Warranty Deed. The Buyer shall pay the recording fee for the Warranty Deed. The parties shall share equally the cost of all transfer taxes. Each party shall bear the cost of its own attorneys.

12. **Transaction Documents.** At the Closing, the Seller and, as applicable, the Buyer shall execute the following documents:

(a) Warranty Deed from Seller to Buyer conveying the Real Property free and clear of all encumbrances except for the Permitted Exceptions;

(b) Bill of Sale prepared by Buyer's counsel, duly executed by Seller, assigning, conveying and transferring to Buyer of the Personal Property;

(c) An assignment and assumption agreement assigning, conveying and transferring to Buyer the Leases;

(d) A FIRPTA Certificate as required under Section 1445 of the Internal Revenue Code;

(e) Title Insurance Certificates as may be reasonably required by Buyer's title insurer; and,

(f) Sale Settlement Statement by Seller and Buyer.

13. **Risk of Loss.** In the event that the Real Property is damaged by casualty prior to the date of Closing, Buyer shall have the option, in its sole discretion: to terminate this Agreement and obtain an immediate refund from Escrow Agent of the Deposit, (plus accrued interest, if any); or to complete the purchase and sale described herein, but the Purchase Price shall be reduced by the amount of such damage.

14. **Entry.** Buyer shall have the right during the term of this Agreement to enter upon the Real Property, or any part thereof, for the purposes of reasonable inspection, soil tests, surveys and tests and studies for engineering and related activities incident to due diligence of the Real Property, by the Buyer or its authorized agent.

15. **Condemnation.** If, prior to closing, all or any part of the Real Property is taken by any governmental authority under its power of eminent domain, Buyer shall have the option, to be exercised within fifteen (15) days after Buyer receives written notice from Seller of same:

(a) to take title to the Real Property at Closing with an equitable abatement or adjustment in the Purchase Price set forth herein, in which event Seller shall retain its rights in the condemnation award; or

(b) to take title to the Real Property at Closing without any abatement or adjustment in the Purchase Price, in which event Seller shall unconditionally assign its rights in the condemnation award to Buyer (or Buyer shall receive the condemnation award from Seller if it has already been paid prior to Closing); or



(c) to terminate this Agreement, whereupon the duties and obligations of each of the parties hereto shall end, and Buyer shall be entitled to an immediate refund from Escrow Agent of the Deposit, plus accrued interest, if any.

16. **Sales Commission.** Seller and Buyer warrant and represent to each other that they have no knowledge of any real estate broker or agent involved in this transaction or of any commission due or to become due as a result thereof, except for the commission due Cushman & Wakefield/Grant Street Associates which shall be the sole responsibility of Seller. Each party agrees to indemnify, defend and hold harmless the other party hereto from any and all loss, damage, cost or expense, including reasonable attorneys' fees which the other party may sustain or incur by reason of any claim for a commission by, through or under the indemnifying party.

17. **Default by Seller.** If, under the provisions hereunder, the Seller shall be obligated to complete the sale, but fails to do so within the applicable period provided for closing, or shall otherwise fail to perform any of the other obligations of Seller hereunder within the required time period, or if any of Seller's representations or warranties are not true and correct, Buyer shall have the option, to be exercised in its sole discretion, to: (i) seek specific performance under this Agreement including the right to recover damages suffered by Buyer by reason of the delay in the acquisition of the Real Property; or (ii) sue Seller for damages sustained by Buyer by reason of the default of Seller; or (iii) demand in writing that Escrow Agent forthwith return to Buyer the Escrow Money Deposit, plus accrued interest, if any. These remedies are not mutually exclusive and the exercise of one or more remedies shall not preclude the exercise of any other remedy.

18. **Default by Buyer.** If, under the provisions hereunder, the Buyer shall be obligated to complete the purchase but fails to do so within the applicable period provided for Closing, then, upon the expiration of such period, the Seller's sole right and exclusive remedy against Buyer shall be that the Deposit paid to Escrow Agent, plus accrued interest, if any, shall be paid by Escrow Agent to the Seller on written demand of Seller, whereupon such Deposit shall be retained by Seller: (i) as consideration for the execution of this Agreement; (ii) as agreed on liquidated damages sustained by Seller because of such default by Buyer (the parties hereto agreeing that the retention of such funds shall not be deemed a penalty, and recognizing the impossibility of precisely ascertaining the amount of damages to the Seller because of such default and hereby declaring and agreeing that the sums so retained is and represents the reasonable damages of Seller); (iii) in full settlement of any claims of damages and in lieu of a specific performance by Seller against Buyer; and (iv) in consideration for the full and absolute release of Buyer by Seller of any and all further obligations under this Agreement. The remedy of Seller for default by Buyer hereunder shall be limited solely to the retention of the then paid Deposit as described above. In the event Buyer defaults hereunder, the Buyer shall, forthwith on demand by Seller, return to Seller all title papers and other documents relating to the Real Property, including Buyer's copy of this Agreement, and thereupon, all rights of the parties hereto hereunder shall end.

19. **Escrow Agent.** The following provisions shall govern the duties and responsibilities and define the liabilities of the Escrow Agent hereunder:

(a) **Duties.** It is agreed that the duties of the Escrow Agent are only such as are herein specifically provided, being purely ministerial in nature, and that the Escrow Agent shall incur no liability whatever except for willful misconduct or gross negligence so long as the Escrow Agent has acted in good faith. The Seller and Buyer release Escrow Agent from any act done or omitted to be done by the Escrow Agent in good faith in the performance of the Escrow Agent's duties hereunder.

(b) **Responsibilities.** The Escrow Agent shall be under no responsibility in respect to the Deposit deposited with it other than faithfully to follow the instructions herein contained. The Escrow Agent may advise with counsel and shall be fully protected in any actions taken in good faith, in accordance with such advice. The Escrow Agent shall not be required to defend any legal proceedings which may be instituted against the Escrow Agent in respect to the subject matter of these instructions unless requested to do so by Seller and Buyer and indemnified to the satisfaction of the Escrow Agent against the cost and expense of such defense. The Escrow Agent shall not be required to institute legal proceedings of any kind; the Escrow Agent shall have no responsibility for the genuineness or validity of any document or other item deposited with the Escrow Agent, and shall be fully protected in acting in accordance with any written instructions given to the Escrow Agent hereunder and believed by the Escrow Agent to have been signed by the proper parties.

20. **Miscellaneous.**

(a) **Assignment.** This Agreement may be assigned by Buyer without the prior written consent of the Seller.

(b) **Attorneys' Fees and Costs.** In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all costs incurred, including reasonable attorneys' fees, including without limitation trial, appellate and bankruptcy proceedings.

(c) **Entire Agreement.** This Agreement sets forth all the promises, covenants, agreements, conditions and understandings between the parties hereto and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, expressed or implied, oral or written, except as herein contained. This Agreement may be modified only by an agreement in writing signed by the parties to this Agreement.

(d) **Agreement To Survive the Closing.** All warranties, representations and agreements contained herein shall survive the Closing of the transaction contemplated by this Agreement.

(e) **Contract Not Recordable.** This contract shall not be recorded.

(f) **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns and, as applicable, to heirs and legal representatives of the parties hereto.

(g) **Pennsylvania Contract.** This Agreement shall be deemed a Pennsylvania contract and construed according to the laws of such state, regardless whether this Agreement is being executed by any of the parties hereto in other states or otherwise. The proper venue for any action concerning this Agreement shall be Philadelphia County.

(h) **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original.

(i) **Effective Date.** This Agreement shall have an effective date on that date this Agreement is fully executed by all parties hereto.

(j) **Time.** Time is of the essence in this Agreement.

(k) **Construction.** The paragraph headings, captions or abbreviations are used for convenience only and shall not be resorted to for interpretation of this Agreement. Whenever the context so requires, the masculine shall refer to the feminine, the singular shall refer to the plural, and vice versa.

(l) **Severability.** In case any one or more provisions contained in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not effect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

(m) **Execution.** This Agreement shall have no force and effect whatsoever unless all of the parties hereto execute this Agreement on or before 5:00 P.M. on June 11, 2021.

(n) **Extension of Time Periods.** In the event that the last day of any period of time specified in this Agreement shall fall on a weekend or legal holiday, such period of time shall be extended through the end of the next work day following.

(o) **Confidentiality; Nondisclosure.** Until closing, neither party shall publicly disclose this Agreement or the content thereof.

(p) **Notices.** All notices or other communications required or permitted to be given under the terms of this Agreement shall be in writing, and shall be deemed effective when sent by nationally recognized overnight courier, facsimile with original following by regular mail, or deposited in the United States mail and sent by certified mail, postage prepaid, addressed as follows:

If to Buyer at the address set forth above with a copy to: N/A

If to Seller at the address set forth above with a copy to: N/A

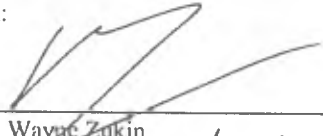
(q) **Waiver.** No waiver hereunder of any condition or breach shall be deemed to be a continuing waiver or a waiver of any subsequent breach.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

BUYER:

By:   
Wayne Zukin

Date of Execution: 6/9/21

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

SELLER:

DocuSigned by:  
  
By: D7ED3E44C6E4441  
National Builders & Acceptance Corporation

Its: \_\_\_\_\_

Date of Execution: 6/14/2021

**Exhibit A**

(Legal Description of Real Property)

**Exhibit B**

(Site Plan of Property)




Grant Street Associates, Inc.  
310 Grant Street  
The Grant Building  
Suite 1825  
Pittsburgh, PA 15219  
Tel 412 391 2600  
gsa-cw.com

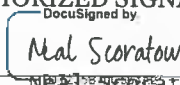
## Addendum

This addendum is for the Purchase and Sale Agreement executed June 14<sup>th</sup>, 2021 between Zukin Development Corporation and National Builders & Acceptance Corporation. Both parties agree to extend the due diligence period fourteen (14) days now ending on August 12<sup>th</sup>, 2021.

Zukin Development Corporation  
AUTHORIZED SIGNATORY

By:   
Name: Wayne Zukin  
Title: President  
Date: 6/30/2021

National Builders & Acceptance  
AUTHORIZED SIGNATORY

By:   
Name: Neal Scaratow  
Title: President  
Date: 6/30/2021



## PROOF OF SERVICE / CERTIFICATE OF COMPLIANCE

This is to certify that a true and correct copy of the foregoing document has been served upon all parties on the date and in the manner listed below and I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.


<u>          </u>	First Class Mail, Postage Prepaid
<u>          </u>	Certified Mail - Return Receipt Requested
<u>          </u>	Hand Delivery
<u>          </u>	Facsimile Transmission
<u>          </u>	Overnight Delivery
<u>  X  </u>	Electronic Mail
<u>          </u>	CM/ECF Filing

at the following address:

Marco S. Attisano, Esquire (marco@arlawpitt.com)  
429 Fourth Avenue, Suite 1705  
Pittsburgh, PA 15219  
(Counsel for plaintiff)

MEYER, DARRAGH, BUCKLER,  
BEBENEK & ECK, P.L.L.C.

Date: August 25, 2021

  
\_\_\_\_\_  
PAUL R. ROBINSON, ESQUIRE  
PA I.D. No. 65581  
JONATHAN McCLOSKEY, ESQUIRE  
PA I.D. No. 320574