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

154 E. 62 LLC, Plaintiff, -against- NORMANUS REALTY LLC, Defendant.	Index No. _____/21 **SUMMONS** Plaintiff designates New York County as the place of trial. The basis of venue is the location of plaintiff's and defendant's real property Jury Trial Demanded

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the verified complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service; or within thirty (30) days after completion of service made in any other manner then by personal delivery within the State. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the verified complaint.

Dated: New York, New York
November 12, 2021

ROSENBERG & ESTIS, P.C.
Attorneys for Plaintiff

By: s/ Brett B. Theis

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

154 E. 62 LLC,	:	Index No. _____/21
Plaintiff,	:	
-against-	:	**VERIFIED COMPLAINT**
NORMANUS REALTY LLC,	:	**Jury Trial Demanded**
Defendant.	:	

Plaintiff 154 E. 62 LLC ("Plaintiff"), by its attorneys, Rosenberg & Estis, P.C., for its Verified Complaint, alleges as follows:

A. The Parties

1. Plaintiff is a Delaware limited liability company, authorized in New York, with an address located at 154 East 62nd Street, New York, New York.

2. Defendant Normanus Realty LLC ("Defendant") is a New York limited liability company with an address located at 152 East 62nd Street, New York, New York.

B. The Facts

3. Plaintiff is the fee owner of the real property, including the townhouse situated thereon, located at 154 East 62nd Street, New York, New York (the "154 Townhouse").

4. The 154 Townhouse consists of a four-story building, containing a cellar, ground level (first floor) basement and three additional stories above the ground level.

5. The 154 Townhouse is located on a quiet residential street three blocks from Central Park on Manhattan's Upper East Side.

6. The 154 Townhouse is owner occupied by a family of five, including three school-aged children, as the family's permanent residence.

7. Defendant is the fee owner of the real property and improvements located at 152 East 62nd Street, New York, New York (the "Project Premises").

8. The Project Premises is adjacent to the 154 Townhouse and shares a party wall with the 154 Townhouse for a portion of the property line.

9. Defendant acquired the Project Premises in 2014 when the Project Premises contained a four-story building, including a below-ground cellar, a ground level basement (or first floor) and three additional stories above the (first floor) ground level basement.

10. In or about 2016, Defendant commenced a major construction/alteration project at the Project Premises to (i) change the use of the Project Premises permitting Defendant's principal, Michael Mass, DDS, to operate his dental practice (known as "Mass Dental Group") in the basement and cellar levels and (ii) horizontally extend and vertically enlarge the upper floors by adding two additional stories to the Project Premises to be used as a home for Dr. Michael Mass (the "Project").

11. As further set forth below, more than five years after commencing construction, Defendant still has not come close to completing the Project.

12. Rather, the Project Premises is a stalled and abandoned construction site, attracting homeless people, garbage, rodents, dirt and debris.

13. It is more reminiscent of Detroit circa the 1980s than Manhattan's Upper East Side today.

14. Indeed, New York City Department of Buildings ("DOB") records currently indicate that the Project Premises is "closed and padlocked," that it has received 20 complaints, 14 DOB/ECB violations and that the most recent DOB "Stop Work Order" has existed on the

Project Premises since February of 2021 (as a result of Defendant's architect having withdrawn from the Project).

15. DOB records further indicate that the DOB has issued numerous violations and stop-work orders to Defendant for its non-compliance with serious safety regulations during the on-going course of the Project including, without limitation: (i) performing work not approved by DOB; (ii) failing to monitor adjoining buildings during excavation activities; (iii) failing to provide adequate support of excavation; (iv) performing underpinning operations in an unsafe manner; (v) failing to comply with a stop work order issued by the DOB; and (vi) failing to provide guardrails around floor and perimeter openings.

16. It is beyond dispute that Defendant has performed the Project in a reckless, negligent and careless manner, with complete disregard for public safety and the property rights of Defendant's neighbors, including the 154 Townhouse, causing Plaintiff substantial property damage, trespass, an on-going nuisance and deprivation of use and enjoyment of real property.

17. Upon information and belief, the Project specifically consisted of: (i) an extension of the cellar depth by approximately 39 feet; (ii) a horizontal extension of the basement South by approximately 25 feet into the rear yard; (iii) a horizontal extension of the three existing above-ground stories South by approximately 14 feet; and (iv) a vertical enlargement or addition of two new stories above the existing three-story structure, including the addition of a new penthouse.

18. Since Defendant's planned vertical enlargement of the Project Premises would render the Project Premises two stories taller than the 154 Townhouse, the DOB required Defendant to obtain a license from Plaintiff to install protections on the roof of the 154 Townhouse and to extend and maintain the chimneys servicing the 154 Townhouse prior to proceeding with the vertical enlargement work.

19. As such, in or about May 2016, Defendant requested a license from Plaintiff for various accesses rights to the 154 Townhouse to enable Defendant to proceed with its planned vertical enlargement of the Project and the parties subsequently entered into negotiations.

20. At or around the time of the license negotiations, Defendant had already commenced work on its horizontal extension of the Project Premises (without a license from Plaintiff).

21. In addition, Plaintiff also learned at that time that Defendant had installed permanent underpinning beneath the foundation of the 154 Townhouse **without Plaintiff's knowledge or consent** in connection with Defendant's excavation activities.

22. As such, Plaintiff's attorneys sent a letter, dated May 23, 2016, to Defendant, stating:

> Our client and its agents have made numerous attempts to obtain relevant information regarding the elements of the Project which affect the Adjacent Premises, all to no avail. Your architect, Steven Kratchman, and his associates have continuously deflected and dismissed questions from our client's engineer and architect. They have been deliberately vague and continue to withhold the required information, particularly with respect to the underpinning you impermissible performed without providing our client proper notice regarding the work which was performed. Instead, you failed to notify our client of your plans, seek approval for access to our client's property, or implement safeguards to protect our client's property from damage as required by law. No precondition survey of the Adjacent Premises was performed to document conditions at the inception of your extensive excavation and underpinning work.
>
> From what we have gleaned from public records and inspections of our client's property, we have grave concerns about the ongoing work and the ensuing effects on the Adjacent Premises. This construction has already caused damage and is jeopardizing the structural integrity of the Adjacent Premises.
>
> Upon information and belief, the underpinning you have installed encroaches over the property line of the Adjacent Premises. Our review of the drawings filed with the Department of Buildings

("DOB") for this work indicates that at the onset, you failed to accurately depict the work which was actually performed. Upon information and belief, supplemental plans were submitted after the DOB. However, to date, your architect has refused to provide these updated underpinning drawings to our client.

Moreover, you have failed to request or obtain authorization from our client for the required permission to underpin the party wall shared by the Project Premises and the Adjacent Premises. Accordingly, upon information and belief, the underpinning you have installed is an impermissible encroachment onto the Adjacent Premises.

As a direct result of this unauthorized, encroaching work, the Adjacent Premises has been damaged. There has been significant vibration at the Adjacent Premises as a result of your unauthorized underpinning work and the hammering and drilling into the foundation for the installation of new concrete block exterior walls at the rear addition of Project Premises. An engineering inspection of the Adjacent Premises has revealed substantial damage caused by the work related to the Project. There is masonry step cracking and parapet damage at the southwest corner of the Adjacent Premises, which is directly adjacent to the excavation site. In addition, the work at the Project Premises has damaged the rear yard masonry walls and the rubble foundation on the west side of the Adjacent Premises.

It is clear the improper encroachment upon the Adjacent Premises is jeopardizing the structural integrity of the foundation of the Adjacent Premises. As far as we can tell, the Adjacent Premises was not monitored during excavation as required by the Building Code.

In addition, the engineering inspection, and a review of your DOB filings, revealed the construction on the foundation wall of the rear addition at the Project Premises, adjacent to Adjacent Premises' west façade, was performed without the required waterproofing between the walls or at the top of the finished wall. This action is in direct contravention of your obligation to take all necessary measures to maintain the weatherproofing integrity of the Adjacent Premises, with both temporary and permanent measures, since you have exposed an adjoining wall between the two properties.

Please be advised that we must be provided with detailed drawings and information regarding the nature and scope of the work already performed and planned, along with access to inspect the work ongoing at Project Premises as it pertains to the Adjacent Premises.

> Specifically, please provide information as to the proposed plans including the stages, the current status of the work, and estimated completion dates. In addition, please apprise as to the precautions which are being taken and/or have been taken to safeguard the Adjacent Premises, including any and all seismograph reports. If we do not receive all of the request documents and information by June 3, 2016, we will be constrained to take whatever steps are necessary to protect our client's property and rights.

23. The underpinning installed by Defendant under the 154 Townhouse foundation constituted a permanent encroachment and trespass by Defendant upon Plaintiff's real property at that time.

24. In addition, in performing the underpinning and other work on the Project, including excavation work, Defendant caused substantial interior property damage and other damage to the 154 Townhouse including, without limitation, breaking through a wall into the interior of the 154 Townhouse.

25. Upon information and belief, Defendant similarly installed underpinning and permanently encroached upon the real properly belonging to the Metropolitan Koryo United Methodist Church -- Defendant's other neighbor located to the West of the Project Premises - also without obtaining consent from the Methodist Church and also causing damage to the Methodist Church.

26. Notwithstanding the damages caused by Defendant and Defendant's illegal underpinning and trespass, Plaintiff continued to negotiate with Defendant in good faith over the terms of both a settlement of Plaintiff's property damage/trespass claims and a potential license to access the 154 Townhouse so that Defendant could (hopefully one day) complete its already substantially delayed Project, including its planned vertical enlargement.

27. Importantly, Plaintiff advised Defendant during negotiations that the horizontal extension and proposed vertical enlargement of the Project Premises negatively impacted the 154 Townhouse and infringed upon Plaintiff's rights in two significant ways.

28. First, since the horizontal extension and vertical enlargement of Project Premises effectively consists of constructing a new, larger Easterly wall abutting the rear terrace of the 154 Townhouse, it will eliminate the Westerly views from the terrace when completed.

29. In other words, instead of having Westerly views, the terrace would now abruptly face a large concrete wall two stories taller than the 154 Townhouse and that extends approximately 14 feet to the South, creating an urban tunnel-like condition on the 154 Townhouse terrace.

30. Therefore, Plaintiff advised Defendant that any license or settlement agreement would have to be conditioned upon, *inter alia*, (i) Defendant installing anchor points on the Easterly wall of the Project Premises and (ii) Plaintiff having an irrevocable right to install and maintain a decorative trellis affixed to the anchor points on Defendant's Easterly wall.

31. Second, Plaintiff had plans to perform improvements to the 154 Townhouse, including renovating the primary bedroom that leads onto the terrace and enclosing the terrace in a state-of-the-art glass conservatory.

32. However, Plaintiff could not proceed with its planned improvements until Defendant completed the horizontal extension and vertical enlargement of the Project Premises, including finishing the exterior of the newly expanded and enlarged Easterly wall abutting the 154 Townhouse terrace.

33. As such, Plaintiff had to wait until Defendant finished the horizontal extension and vertical enlargement of the Project Premises, including finishing the exterior of the newly

expanded and enlarged Easterly wall abutting the 154 Townhouse terrace and the installation of the anchor points thereon, before Plaintiff could proceed to install the trellis and commence work on its planned improvements for the 154 Townhouse.

34. Therefore, Plaintiff further advised Defendant that any license or settlement agreement would also have to include an acknowledgment by Defendant that delays in the completion of the Project would deprive Plaintiff of its use and enjoyment of the 154 Townhouse and an obligation for Defendant to compensate Plaintiff for such loss of use and enjoyment by making monthly and/or weekly payments to Plaintiff if the completion of construction did not occur with within certain periods of time.

35. After lengthy negotiations, Defendant agreed to these and other terms which were memorialized on March 21, 2019 when the parties entered into (i) a License, Access and Settlement Agreement (the "Agreement") and (ii) an Agreement Regarding Trellis and Chimney Maintenance and Underpinning (the "Trellis Agreement").

36. Pursuant to Section 2 of the Agreement, Defendant agreed to pay Plaintiff $115,094.33 in settlement of Plaintiff's then existing claims for property damage and for underpinning the 154 Townhouse without obtaining Plaintiff's consent.

37. In addition, pursuant to Section 8 of the Agreement and also pursuant to Section 1(b)(1) of the Trellis Agreement, Defendant expressly agreed to install anchor points on the Easterly wall of the Project Premises and consented to Plaintiff installing and maintaining a decorative trellis running the entire width and height of the Easterly wall, from the ground to the top of the vertical enlargement two stories higher than the 154 Townhouse.

38. Although the Agreement requires Defendant to perform the vertical enlargement as part of the Project, including finishing the Easterly wall with anchor points installed to

accommodate Plaintiff's trellis, Defendant did reserve the right to elect to either cancel the vertical enlargement or reduce the height of the vertical enlargement, but only upon certain terms and conditions, including notice to Plaintiff.

39. In order for Defendant to exercise its election to cancel the vertical enlargement, Defendant was required to send Plaintiff a "Cancellation" notice pursuant to Section 10 of the Agreement.

40. In the event Plaintiff received notice of Defendant's election to cancel the vertical enlargement, then certain of Defendant's obligations under the Agreement were to cease, including Defendant's obligation to perform the "License Work," which the parties defined in Section 1(II)(b) of the Agreement to include "…the construction of the exterior of the vertical enlargement of the Project Premises" or the "Vertical Enlargement Work."

41. However, Plaintiff nevertheless retained the right to install and maintain a trellis on the as-built condition of the Easterly wall as already horizontally extended and Defendant nevertheless remained obligated to provide anchor points to accommodate such installation.

42. Specifically, Section 10 of the Agreement provides, in relevant part, that:

> (I) Should Licensee so elect to not perform the Vertical Enlargement Work, then upon Licensee notifying Licensor of a Cancellation, then all rights and obligations with respect to the License, the Chimneys, the Protections, and the License Work as set forth herein shall cease, including, but not limited to, Licensee's requirement to install Protections and perform the License Work.
>
> (II) Notwithstanding the foregoing, if Licensee elects not to perform the Vertical Enlargement Work, Licensor shall still have the right to erect a Trellis in the location set forth in Exhibit B to the extent that such location exists despite such Vertical Enlargement Work not having been performed. Exhibit B will be modified to reflect such modified allowable location for the Trellis based on the actual conditions as they will exist without such Vertical Enlargement Work.

43. Further Section 1(b)(1) of the Trellis Agreement states: "The Trellis shall be affixed to the 152 Building utilizing the anchor points on the wall of the 152 Building which are to be installed by Normanus for such purpose."

44. To date, nearly three years after executing the Agreement and the Trellis Agreement, Defendant has neither finished the Easterly wall, installed anchor points for Plaintiff's trellis, nor exercised its election to cancel the vertical enlargement by sending the required "Cancellation" notice to Plaintiff pursuant to the terms of the Agreement.

45. Additionally, pursuant to Section 11 of the Agreement, Defendant similarly reserved the right to modify the scope of the vertical enlargement of the Easterly wall by reducing the height of the planned two-story enlargement.

46. In order to exercise its election to reduce the height of the vertical enlargement, Defendant was similarly required to notify Plaintiff of such election.

47. In such event, Section 11 of the Agreement also required Defendant to submit to Plaintiff signed, sealed and DOB approved plans detailing such height reduction and its impact to the planned extensions of the 154 Townhouse chimneys.

48. Section 11 of the Agreement and Section 1 of the Trellis Agreement further contemplated that Plaintiff would nevertheless retain the right to install the trellis on the entire width and height of the Easterly wall of the Project Premises and that the size of the trellis would be modified according to the reduction in the height of the Easterly wall.

49. Specifically, Section 11 of the Agreement provides, in relevant part, that:

> (I) Notwithstanding anything to the contrary in this Agreement, Licensee reserves the right to modify the scope of the Vertical Enlargement Work by reducing the height of the vertical enlargement (a "Reduction in Size")…Should the Licensee so elect to modify the scope of the Vertical Enlargement Work by a Reduction in Size, then upon Licensee notifying Licensor of a

> Reduction in Size, the Licensee shall submit signed, sealed and DOB approved plans to the Licensor for a modification of the Chimney Work in accordance with the Reduction in Size for approval, the consent for which plans the Licensor shall not unreasonably withhold or delay, as set forth in Paragraph 3(VII) above. All reasonable costs and expenses incurred by Licensor as a result of a Reduction in Size, including attorneys', architectural and engineering fees shall be reimbursed by Licensee in accordance with paragraph 2, above.
>
> (II) In the event of a Reduction in Size after the Licensor has submitted trellis plans to Licensee for approval, the Licensor shall submit to Licensee for approval modified trellis plans reflecting the Reduction in Size, which approval shall not be unreasonably withheld. The Trellis, Chimney, and Underpinning Agreement shall be modified to reflect such new trellis plans to the extent necessary.

50. To date, nearly three years after executing the Agreement, Defendant has neither sent the required notice to Plaintiff of its election to reduce the height of the vertical enlargement, submitted the signed, sealed and DOB approved plans required by Section 11 of the Agreement, finished the Easterly wall, nor installed anchor points for Plaintiff's trellis.

51. Section 1 of the Agreement granted Defendant the limited license it needed to access the 154 Townhouse, including for the purpose of installing the agreed upon anchor points to accommodate Plaintiff's trellis, extending the chimneys and installing roof protections that would permit Defendant to proceed with the vertical enlargement.

52. While the Agreement was signed in March of 2019, pursuant to Section 1(II)(a) the term of the license would not commence until 30 days after Defendant sent a Commencement Notice to Plaintiff establishing the Commencement Date.

53. Defendant had four months from signing the Agreement to commence the term of the license before incurring any monetary obligations to Plaintiff to compensate Plaintiff for its inability to proceed with Plaintiff's planned improvements and loss of use of the 154 Townhouse.

54. Pursuant to Section 1(III)(a) and (b), if Defendant did not commence the term of the license by July 15, 2019, Defendant would pay be required to pay Plaintiff $5,000 per month for the period July 15 through October 31, 2019, and if Defendant still had not commenced the license term by October 31, 2019, then the license granted pursuant to the Agreement would lapse and Defendant would waive its right to a license.

55. If Defendant commenced the license term prior to October 31, 2019, pursuant to Section 1(II)(b) of the Agreement, the license was to be in effect for up to six months, terminating upon the earlier to occur of (i) the completion of both the chimney work and construction of the exterior of the vertical enlargement (which the parties defined in the Agreement as the "License Work") and (ii) six months after the commencement date.

56. During this essentially six-month license term, Defendant was not required to make any payments to Plaintiff.

57. Under the Agreement, including Sections 3, 10 and 16 thereof, Defendant was, however, obligated to complete the License Work (*i.e.*, completion of both the exterior of the vertical enlargement of the Easterly wall of the Project Premises with anchor points installed and the chimney work), as well as any repair, clean up, and/or restoration work within such six-month period as the parties agreed and Plaintiff expected that Defendant would diligently prosecute its work after commencing the term of the license as required under the Agreement.

58. Indeed, Section 3 (III) of the Agreement, provides, *inter alia,* that Defendant's:

> Contractors shall: (a) perform the License Work promptly and in a safe, and efficient manner; (b) take all reasonable precautions to prevent damage to the Adjacent Premises or injury to persons or personal property; (c) periodically but no less than twice per week, inspect the Adjacent Premises for any damage to the Adjacent Premises arising from the Licensing Work ("Work Damage") (with the scope of the License being granted by this Agreement including the ability to access the Adjacent Premises for the

> purpose of such inspections), and, if any such Work Damage is found, repairs shall be made at the Contractors' and Licensee's expense and with Licensor's approval in accordance with the terms of this Agreement; (d) periodically, but no less than once per week, clean and remove debris from the roof and/or rear courtyard of the Adjacent Premises caused by the performance of the License Work; (e) upon completion of the License Work, restore the affected areas of the Adjacent Premises to the condition which existed prior to the commencement of such work…and (f) complete the License Work and restoration before the Termination Date, as same may be extended by the parties as set forth herein or as otherwise by the parties….

59. Pursuant to Section 3(VI) of the Agreement, Defendant "shall be solely responsible for the License Work."

60. Pursuant to Section 3(XI) of the Agreement, "[u]pon completion, or upon earlier Termination of this agreement, [Defendant] shall immediately repair, clean, and/or restore the Adjacent Premises, and pay any outstanding amounts due to Licensor hereunder.

61. If Defendant failed to complete the License Work (*i.e.*, completion of both the exterior of the vertical enlargement of the Easterly wall of the Project Premises with anchor points installed and the chimney work) within such six-month period (*i.e.*, by the Termination Date), the parties agreed that Defendant will pay a weekly license fee to Plaintiff until the License Work is completed, including all repair, clean-up and/or restoration work.

62. Specifically, Section 16 of Agreement provides, in relevant part, that:

> (I) In the event that the License Work continues beyond the Termination Date…Licensee shall pay Licensor use and occupancy in the amount of $1,500.00 per week for each week or portion of a week that any such work and/or repair, clean up, and/or restoration remains incomplete for up to the next six (6) months, and then $3,000 per week thereafter, until the License Work, repair, clean up, and/or restoration is completed. Payment shall be made on a weekly basis to Licensor without demand.

63. Plaintiff specifically negotiated and bargained for these monthly and weekly fees because, as a result of Defendant's on-going construction and substantial delays in completion of

construction, Plaintiff was being denied the ability to use and improve its terrace, including constructing the glass conservatory and installing the decorative trellis that it also specifically negotiated and bargained for the right to install on Defendant's Easterly wall after Defendant complied with its obligation to install the anchor points.

64. Indeed, Pursuant to Section 1(III)(b) of the Agreement, Defendant expressly acknowledged that Plaintiff is unable to commence work on its planned improvements to the 154 Townhouse until Defendant completes its Project, including finishing the vertical enlargement of the Easterly wall with anchor points installed, and that Plaintiff will suffer loss of use of the 154 Townhouse if completion of the Project is delayed.

65. Moreover, Pursuant to Section 20(XIV) of the Agreement, the parties agreed that "TIME IS OF THE ESSENCE with respect to the performance of every provision of this Agreement in which performance is a factor."

66. After signing the Agreement in March of 2019, Defendant utterly failed to take any steps to progress the Project, commence the license term, complete construction of the exterior of its Easterly wall or install anchor points on its Easterly wall for Plaintiff's trellis.

67. Thus, four months later, having failed to commence the term of the license Defendant began paying Plaintiff $5,000 per month as of July 15, 2019 under Section 1(III)(b) of the Agreement.

68. Five months after signing the Agreement, as of August 15, 2019, Defendant still had not commenced the license term or progressed the Project and tendered another $5,000 payment to Plaintiff under Section 1(III)(b) of the Agreement.

69. Six months after signing the Agreement, as of September 15, 2019, Defendant still had not commenced the license term or progressed the Project and tendered another $5,000 payment to Plaintiff under Section 1(III)(b) of the Agreement.

70. Upon information and belief, at or around this time, Defendant fired its original attorneys and hired Quinn McCabe LLP as replacement attorneys.

71. By letter dated September 27, 2019, Defendant's new attorneys notified Plaintiff that it was commencing the term of the license granted by the Agreement in 30 days and represented that it would be proceeding with the License Work.

72. Upon information and belief, Defendant did not have a good faith intention of proceeding with the License Work and only issued the commencement notice to maintain optionality and avoid waiving its right to the license, which would have occurred as of October 31, 2019 pursuant to Section 1(III)(a) of the Agreement but for the commencement of the license prior to such date.

73. Nevertheless, pursuant to Section 1(II)(a) and (b) of the Agreement, Defendant's commencement notice established the Commencement Date of the license as October 27, 2019 and the Termination Date of the license (but not the Agreement) as April 27, 2020 (*i.e.,* six-months after the Commencement Date).

74. Importantly, this also had the effect of obligating Defendant to perform and complete the License Work (as specifically defined in the Agreement to include the completion of construction of the exterior of the vertical enlargement of the Project Premises including the anchor points) within such six-month period *unless* Defendant exercised its election to cancel the vertical enlargement by issuing a Cancelation Notice to Plaintiff, which Defendant did not do.

75. In fact, as stated above, Section 10(I) expressly provided that: "Should Licensee so elect to not perform the Vertical Enlargement Work, then upon Licensee notifying Licensor of a Cancellation, then all rights and obligations with respect to the License, the Chimneys, the Protections, and the License Work as set forth herein shall cease, including, but not limited to, Licensee's requirement to install Protections and perform the License Work."

76. Not only did Defendant fail to exercise the election that would have relieved Defendant of its obligation to complete the License Work (*i.e.*, completion of construction of the exterior of the vertical enlargement) but, consistent with Defendant's pattern of incompetence, delay and disregard for the rights of others, after commencing the license term, Defendant utterly failed to respond and comply with requests from Plaintiff's attorneys first issued in November, 2019 for compliance with certain basic terms of the license, such as providing proof of insurance, scheduling a meeting with Plaintiff and Defendant's licensed construction superintendent, providing the means and methods for the construction and finish of the Easterly wall, and providing waterproofing detail.

77. Having not received cooperation or the required information from Defendant for a period of five months (November 2019 - March 2020), on March 25, 2020, Plaintiff reiterated its demands for compliance with these basic license terms, offered to meet with Defendant and its architect and requested reimbursement of certain attorneys' fees pursuant to Section 2(II) of the Agreement.

78. Defendant failed to respond.

79. As such, on April 21, 2020, Plaintiff's counsel emailed Defendant's counsel, stating:

> Chris: Please see below and attached [prior requests for compliance with the license]. What is going on here? It's not like

> your firm to simply ignore basic requests for compliance with license terms. Do you guys still represent Normanus? My client is really getting annoyed. Construction is on-going and we still don't have proof of insurance required by the license. Also, the fee reimbursement is due in a couple of days under Section 2(II). We also indicated that we are prepared to have the professionals meet on site and to review the chimney application. I would prefer not to issue a default notice. Please get back to [me] ASAP. Thank you and I hope you are safe and healthy. (material in bracket added).

80. Neither Defendant nor its counsel responded.

81. Therefore, on April 30, 2020, three days after the Termination Date of the license granted pursuant to the Agreement, Plaintiff's counsel emailed Defendant's counsel, this time stating:

> I deem your lack of response as an acknowledgement that you no longer represent Normanus. I will begin communicating with Normanus directly concerning its multiple breaches of the license.

82. Finally, on April 30, 2020, Defendant's counsel advised that his firm still represented Plaintiff and that they would be responding shortly to Plaintiff's requests for compliance with the license.

83. On May 5, 2020, having still not heard from Defendant's counsel, Plaintiff's counsel again emailed Defendant's counsel, this time stating:

> "The fee reimbursement is overdue, and beginning May 1 your client [was] obligated to pay $1,500 per week under [Section 16(I) of] the license agreement. If your client does not intend to comply with these and the other obligations we will be serving a default notice." (material in brackets added)

84. Indeed, because Defendant (i) failed to complete the License Work prior to the license Termination Date, which License Work included, *inter alia*, completion of construction of the vertical enlargement with anchor points installed and (ii) failed to exercise its election to cancel the vertical enlargement work, Defendant was required to begin paying $1,500 per week

"…until the License Work, repair, clean up, and/or restoration is completed" pursuant to Section 16(I) of the Agreement.

85. Again, these weekly fees were expressly negotiated and bargained for by Plaintiff and intended to apply to this very scenario where, as Defendant expressly acknowledged in Section 1(III)(b) of the Agreement, Plaintiff was continuing to be denied the ability to use and improve its terrace (including constructing the glass conservatory and affixing the decorative trellis to the anchor points Defendant was obligated to install on its Easterly wall) as a result of Defendant's on-going construction and substantial delays in completion of construction.

86. By letter dated May 7, 2020, Defendant's counsel finally responded substantively.

87. Defendant's May 7 letter acknowledged (and did not dispute) Defendant's obligation to pay the weekly fees due under Section 16 of the Agreement.

88. Instead, Defendant claimed that the Termination Date of the license had been tolled by a March 27, 2020 Executive Order of Governor Cuomo banning non-essential construction and that, as a result, the Termination Date was purportedly tolled as of March 27 and the weekly license fees according to Defendant "will not be due until at least thirty-one (31) days from the time construction recommences."

89. By letter dated May 12, 2020, Plaintiff rejected Defendant's assertion that the Termination Date was tolled and that the weekly fees due under Section 16 of the Agreement were not currently due, stating:

> We write in response to your May 7, 2020 letter in which you asserted that your client's construction has been halted due to the current ban on non-essential construction in New York and that, as a result, you claim that (i) the Termination Date of the License is tolled; and (ii) the weekly license fee due to Licensor (commencing on May 1, 2020) "will not be due until at least thirty-one (31) days from the time construction recommences."

> We assume that the entirely incorrect assertions contained in your letter are the result of a lack of communication with your client. If you confer with your client, you will learn that your client's construction is on-going and was never "halted" or effected by the ban on non-essential construction. In fact, as shown on the attached screen shot from the Department of Buildings' website, your client's project has been approved by the Department of Buildings as an "essential facility" and designated as "emergency construction" (likely at the request of your client). Thus, the ban on non-essential construction simply does not apply to your client's project. Moreover, as shown by the attached photographs taken by my client, your client's contractors have continuously been performing work in and to your client's property as is permitted due to its "essential facility" and "emergency construction" designations.
>
> Accordingly, your assertions that the Termination Date is tolled and that the license fee is not currently due are rejected. Demand is hereby made that your client immediately tender the weekly license fees due pursuant to Article 16(I) of the License to Licensor in accordance with the previously provided wiring instructions.

90. By letter dated May 28, 2020, Defendant responded, again acknowledging, and not disputing Defendant's obligation to pay the weekly fees due under Section 16 of the Agreement but claiming that such obligation had been tolled "through any period the work contemplated in the License Agreement is not allowed to be performed."

91. Plaintiff responded by letter dated June 10, 2020, rejecting Defendant's assertion that the weekly fees due under Section 16 of the Agreement were "tolled," offering to meet with Defendant's construction team to discuss the status of the Project and requesting reimbursement of certain professional fees due under the Agreement.

92. Specifically, Plaintiff's June 10, 2020 letter stated:

> Be advised that we disagree with your assertions that the Termination Date and that your client's obligation to tender the weekly amounts due under the License Agreement have been tolled or extended. As admitted in your letter, your client was permitted to proceed with its construction and was not delayed by the temporary ban on non-essential construction. As such, we

> continue to demand and are not waiving our right to insist upon payment of the weekly license fee due pursuant to Article 16(I) commencing as of May 1, 2020.
>
> Although we clearly have a dispute as to the foregoing, there can be no dispute that non-essential construction was permitted to resume in New York City as of June 8, 2020, and that your client's purported excuse for non-performance of its obligation to tender the license fee no longer exists. Accordingly, demand is also hereby made upon your client for payment of the license fee going forward. Any amounts tendered and received shall be deemed without prejudice and without waiving our clients' respective claims and defenses with regard to the time period in dispute as set forth above, and in each of our respective correspondence.
>
> Finally, as I have repeatedly advised, we are prepared to have our respective clients' construction teams meet to discuss the status of the project going forward, as well as the application for the Chimney extension project. In that regard, I am sending herewith an invoice that my client paid to its professional for review and consultation in connection the Chimney plans/application that you have requested my client to sign. Pursuant to Section 2 of the License, please have your client reimburse my client for these fees within 30 days in accordance with the previously provided wiring instructions.

93. Notwithstanding that there could be no dispute that non-essential construction was permitted to resume in New York City as of June 8, 2020 and that, even under Defendant's theory for temporarily avoiding liability, Defendant's obligation to pay the weekly fees would have resumed by June 8, 2020, Defendant remained in breach of its obligation to tender the weekly license fee due under Section 16 of the Agreement.

94. Again, Defendant ignored and did not respond to Plaintiff's June 10 letter, including Plaintiff's demand for reimbursement of professional fees, payment of the weekly fees and offer to meet to discuss the Project.

95. As such, by email dated September 2, 2020, Plaintiff's counsel wrote to Defendant's counsel, stating:

> I am attaching my prior letter/demand. My client is extremely upset that your client continues to be in breach…There are undisputed amounts due for reimbursement of professional fees and the [weekly] access fee. We are going to have to escalate this as the amounts due continue to increase." (material in brackets added).

96. Yet again, Defendant did not respond.

97. As of October 28, 2020, the fees due under Section 16 of the Agreement increased to $3,000 per week because Defendant still had not (i) completed the License Work, which License Work included, *inter alia*, completion of construction of the vertical enlargement or (ii) exercised its election to cancel the vertical enlargement work.

98. Moreover, Plaintiff was still being denied the actual and contractually agreed-upon ability to use and improve its terrace (including constructing the glass conservatory and installing the trellis on the anchor points that Defendant was obligated to install on its Easterly wall) as a result of Defendant's on-going construction and substantial delays in completion of construction.

99. Thus, by letter dated November 2, 2020, Plaintiff wrote to Defendant alerting Defendant to the fact that the weekly fee increased to $3,000 and demanding reimbursement of certain professional fees due under the Agreement, stating:

> We write in furtherance of our correspondence dated May 12, June 10 and September 2, 2020 concerning the outstanding weekly license fees due from Licensee pursuant to Article 16 of the License.
>
> Please be advised that the weekly license fee, which commenced April 28, 2020, has increased from $1,500 to $3,000 as of October 28, 2020 pursuant to Article 16(I) of the License and that your client remains in breach of its obligation to tender these weekly amounts. Licensor hereby reiterates its demand for payment of the weekly license fee plus all applicable interest.
>
> Please be further advised that your client has also breached Article 2 of the License by failing to reimburse Licensor for its

> professional fees in the amount of $2,500 incurred for reviewing the Chimney plans/application as demanded in our June 10 and September 2, 2020 correspondence. Licensor hereby reiterates its demand for reimbursement as required by the License.
>
> Finally, please be advised that demand is hereby made, pursuant to Article 2 of the License, for reimbursement of Licensor's attorneys' fees incurred for the period April 2020 through July 2020 in the $2,864.95. Copies of our invoices are sent therewith for your convenience.

100. Again, Defendant did not respond and failed to pay the weekly fees, professional fees and attorneys' fees due under the Agreement.

101. More than five months later, Defendant remained in breach and still had not complied with its obligations under the Agreement.

102. Thus, on April 30, 2021, Plaintiff sent another letter to Defendant with an invoice and calculation of the unpaid weekly fees due pursuant to the Agreement and reiterated its demands for payment of the weekly fees and reimbursement of the outstanding professional fees and attorneys' fees, stating:

> We write in furtherance of our correspondence dated May 12, June 10, September 2 and November 2, 2020 concerning the outstanding weekly license fees due from Licensee pursuant to Article 16 of the License.
>
> As previously advised, the weekly license fee due from Licensee to Licensor pursuant to Article 16(I) of the License increased from $1,500 to $3,000 as of October 28, 2020. Your client remains in breach of its obligation to tender these weekly amounts and currently owes $124,419 as set forth in detail in the attached invoice. Licensor hereby reiterates its demand for immediate payment of the weekly license fee plus all applicable interest.
>
> Please be further advised that your client has also breached Article 2 of the License by failing to reimburse Licensor for its professional fees in the amount of (i) $2,500 incurred for reviewing the Chimney plans/application as demanded in our June 10 and September 2 correspondence and (ii) $2,864.95 incurred for the period April 2020 through July 2020 as demanded in our November 2, 2020 letter.

> Please be advised that our firm has been authorized to commence an appropriate action to recover these past due amounts should your client continue to ignore its contractual obligations.

103. Again, Defendant failed to respond, failed comply with its obligations and remained in breach of the Agreement.

104. As such, by email dated July 20, 2021, Plaintiff's counsel wrote to Defendant's counsel, stating:

> Chris and Kevin: This situation continues to be outrageously unacceptable. It is also unlike your firm to completely ignore our multiple letters requesting compliance with the financial obligations under the license. I can only assume that you no longer represent Normanus. Can you confirm whether that is the case and if so that we may reach out to Normanus directly?
>
> Normanus' construction project has been going on for over three years now. It has been stalled for over a year and there is no end in sight. We would like and are hereby demanding an update as to the status of the project and a realistic completion schedule. In addition, we are reiterating our demand for all amounts due and past due under the license as set forth in my prior letters (attached). If we do not have this resolved by the end of the week, my client has authorized our firm to commence an action in Supreme Court for damages.

105. Defendant's counsel finally responded, but only to advise that Quinn McCabe LLP in fact no longer represented Plaintiff and that Plaintiff was on to its third set of lawyers for this Project and had hired Goetz Fitzpatrick LLP.

106. Accordingly, Plaintiff's attorneys contacted Goetz Fitzpatrick LLP on July 23, 2021.

107. On July 31, 2021, Plaintiff received a letter from Defendant's newest set of attorneys pursuant to which Defendant, *for the first time*, rejected its liability for the weekly fees due under the Agreement based on an absurd argument that is both belied by the express terms of

the Agreement and undisputed facts and which completely contradict the admissions contained in Defendant's letters dated May 7 and 28, 2020.

108. Defendant's July 31 letter also stated, for the first time since executing the Agreement over two and a half years ago, that Defendant "has abandoned its plans to vertically enlarge its project premises."

109. To date however, Defendant has not exercised its election to cancel the vertical enlargement by issuing a Cancelation Notice to Plaintiff pursuant to the terms of the Agreement.

110. As a result, while Defendant has been intentionally preserving optionality, Plaintiff has been waiting in limbo and being deprived of both the ability to proceed with its planned improvements and installation of the trellis, and the weekly payments that Plaintiff specifically bargained for as compensation for Plaintiff's loss of use of the 154 Townhouse and Defendant's substantial delays.

111. Finally, Defendant's July 31 letter also requested to review the invoices for the professional fees and attorneys' fees for which Plaintiff had been repeatedly demanding reimbursement under the Agreement even though Plaintiff had previously provided such invoices to Defendant on numerous occasions.

112. Plaintiff's attorneys provided the requested invoices yet again on September 8, 2021, but Defendant has failed to tender any payments and remains in breach of the Agreement.

113. In addition to all of the foregoing, Defendant also breached Section 14 of the Agreement, pursuant to which Defendant was required to provide, at its sole cost and expense, weekly pest control services to the roof and rear courtyard of the 154 Townhouse by a license and insured pest control and/or extermination company.

AS AND FOR A FIRST CAUSE OF ACTION
(Damages for Breach of Contract)

114. Plaintiff repeats all prior statements.

115. Plaintiff has fully performed all of its obligations under the Agreement.

116. Defendant has materially breached the terms of the Agreement and caused Plaintiff to suffer damages in that Defendant has (i) failed to tender the payments due under Section 16 of the Agreement (ii) failed to complete the License Work including, inter alia, completion of construction of the vertical enlargement (iii) failed to install anchors points on Defendant's Easterly wall to accommodate the installation and maintenance of Plaintiff's decorative trellis as required by the Agreement (iii) failed to reimburse Plaintiff for its professional fees and attorneys' fees in accordance with Sections 2 and 17 of the Agreement (iv) deprived and continues to deprive Plaintiff of the ability to use and improve its terrace without compensation; and (v) failed to provide weekly extermination/pest control services.

117. By virtue of Defendant's multiple material breaches of the Agreement, Plaintiff is entitled to judgment in its favor and against Defendant in an amount currently unknown, but believed to exceed $225,000, the full amount of which shall be determined at trial, plus statutory interest, and costs.

AS AND FOR A SECOND CAUSE OF ACTION
(Specific Performance for Breach of Contract)

118. Plaintiff repeats all prior statements.

119. Plaintiff has fulfilled all of its duties under the Agreement to date and remains ready, willing and able to continue to perform such duties.

120. Plaintiff has no adequate remedy at law.

121. By virtue of the foregoing, Plaintiff is entitled to judgment and a decree in its favor and against Defendant compelling Defendant to specifically perform its obligations under

the Agreement and the Trellis Agreement to complete construction and finish the exterior of the Easterly Wall of the Project Premises, including installation of the agreed upon anchor points upon which Plaintiff can affix the trellis and performing all required repairs, clean-up and restoration work.

AS AND FOR A THIRD CAUSE OF ACTION
(Attorneys' Fees)

122. Pursuant to Section 20 (XV) of the Agreement, Defendant is liable to Plaintiff for its actual attorneys' fees and costs incurred in connection with Defendant's breach of the Agreement.

123. Plaintiff has and will incur attorneys' fees in connection with Defendant's multiple material breaches of the Agreement.

124. Based on the foregoing, Plaintiff is entitled to judgment against Defendant in an amount currently unknown, but believed to exceed $25,000.

WHEREFORE, Plaintiff respectfully requests judgment against Defendant as follows:

(a) on the First Cause of Action, a money judgment in an amount currently unknown, but believed to exceed $225,000, the full amount of which shall be determined at trial, plus statutory interest and costs; and

(b) on the Second Cause of Action, a judgment and decree compelling Defendant to specifically perform its obligations under the Agreement and the Trellis Agreement to complete construction and finish the exterior of the Easterly Wall of the Project Premises, including installation of the agreed upon anchors points upon which Plaintiff can affix the trellis and performing all required repairs, clean-up and restoration work; and

(c) on the Third Cause of Action, a money judgment in an amount to be determined at trial, but believed to exceed $25,000, plus statutory interest and costs; and

(d) granting Plaintiff such other and further relief as the Court deems just and proper.

Dated: New York, New York
November 12, 2021

ROSENBERG & ESTIS, P.C.
Attorneys for Plaintiff

By: s/ Brett B. Theis

Brett B. Theis
733 Third Avenue
New York, New York 10017
(212) 867-6000

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

154 E. 62 LLC, being duly sworn, deposes and says:

1. I am an member of 154 E. 62 LLC, the plaintiff in this action.

2. I have read the foregoing Verified Complaint and know the contents thereof; and the same is true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true. The source of my information and belief is the books and records of plaintiff.

3. This Verification is made by deponent because plaintiff is a limited liability company and I am a member thereof.

154 E. 62 LLC

By: _____
Name: Harry Kargman
Title: Member

Sworn to before me this

12th day of November, 2021

_____
NOTARY PUBLIC

MERARI CHEVERE
Notary Public - State of New York
NO. 01CH6100972
Qualified in Kings County
My Commission Expires Nov 3, 2023