TESTIMONY TO THE EVANSTON LAND USE COMMISSION

RE: PROPOSED 1621 - 1631 CHICAGO AVENUE DEVELOPMENT – CASE NUMBER 21ZONA-0065

September 14, 2022

Bob Froetscher, Evanston Resident

EVANSTON CITY GOVERNMENT VISION STATEMENT

Creating the most livable city in America.

LAND USE COMMISSION MISSION STATEMENT

Ensuring the public health, safety, comfort, morals, convenience, general welfare, and the objectives and policies of the Comprehensive General Plan.

D4 DOWNTOWN TRANSITION DISTRICT PURPOSE STATEMENT

FROM SECTION 6-11-4 OF THE EVANSTON CITY CODE

- **“6-11-4. – D4 DOWNTOWN TRANSITION DISTRICT”**
- **“6-11-5-1. - PURPOSE STATEMENT.”**
- “The D4 downtown transition district is intended to provide for business infill development and redevelopment within downtown Evanston. The massing and scale of structures within the D4 district should be reflective of established uses and should provide suitable transition between downtown districts and those districts adjacent to the downtown. The district is also intended to encourage and sustain a mix of office, retail, and residential uses. Planned developments are encouraged as a special use in the D4 district. Where a lot zoned D4 is overlaid with an oRD redevelopment overlay district designation, a planned development is required in order to ensure that proposed development in these areas is consistent with the objectives and policies of the adopted plan for downtown Evanston.”

MAJOR CATEGORIES OF REASONS TO DENY APPROVAL OF THE PROPOSED 1621-1631 CHICAGO AVE DEVELOPMENT

- This development or one materially similar by same developer has been rejected multiple times by multiple Evanston review bodies, in multiple review processes, including at lesser height of 17 stories and 185 feet, vs current 18 stories and 195 feet.
- The proposed development violates and / or lacks compliance with the majority of Evanston's official plans, guidelines, and Standards of Approval for both Planned Developments and Special Use for the D4 Downtown Transition District.
- The proposed development materially violates five of the most critically relevant D4 Downtown Transition District zoning requirements.
- There are significant concerns including safety concerns for pedestrians, current residents, United Methodist Church members, Total Child Pre-school, and others due to high number of additional units (180) and residents (300) on a small site which will drive excessive additional congestion and traffic in an already very busy and congested block, street and intersection and due to the building's use of the narrow alley abutting the church for the proposed development's resident parking and access to building's two loading docks. The traffic study is fatally flawed conducting no analysis of the impact from vehicles serving this building for ride-sharing pick-up and drop off (UBER, Lyft, etc), food delivery (GrubHub, DoorDash, etc.) and package delivery (USP, FedEx, Amazon, etc.) all of which have increased dramatically in the 30 months since the start of the pandemic.
- The proposed development faces strong opposition from the community including the Board of Trustees of and 720 member congregation of United Methodist Church as well as multiple directly impacted condo associations, condo owners and residents on Church Street and Hinman Avenue plus many other residents in the 1st Ward and elsewhere throughout city. Hundreds have commented and written in opposition at multiple meetings and in front of multiple review bodies.
- Approval would be a terrible precedent. Approving this creates a "slippery slope" that guts the D4 Downtown Transition District zoning, guts the "standards of approval" and guts the specific recommendations of the City of Evanston 2009 Downtown Plan which stipulates buildings on this specific side of this specific block of downtown Evanston be no more than 6-10 stories in height. Future developers will use such an approval to essentially eliminate the D4 Downtown Transition District zoning requirements.

STANDARDS OF APPROVAL FOR PLANNED DEVELOPMENTS

CRITICAL STANDARDS OF APPROVAL FOR PLANNED DEVELOPMENT WHICH THE PROPOSED 1621-1631 CHICAGO AVENUE DEVELOPMENT FAILS TO MEET ARE HIGHLIGHTED IN YELLOW ON FOLLOWING SLIDES

THE PROPOSED DEVELOPMENT AT 1621 – 1631 CHICAGO AVENUE FAILS TO MEET THE "STANDARDS OF APPROVAL FOR PLANNED DEVELOPMENTS"

THESE STANDARDS ARE A SUBSET OF STANDARDS INCLUDED IN EVANSTON CITY ZONING CODE 6-11-1-10

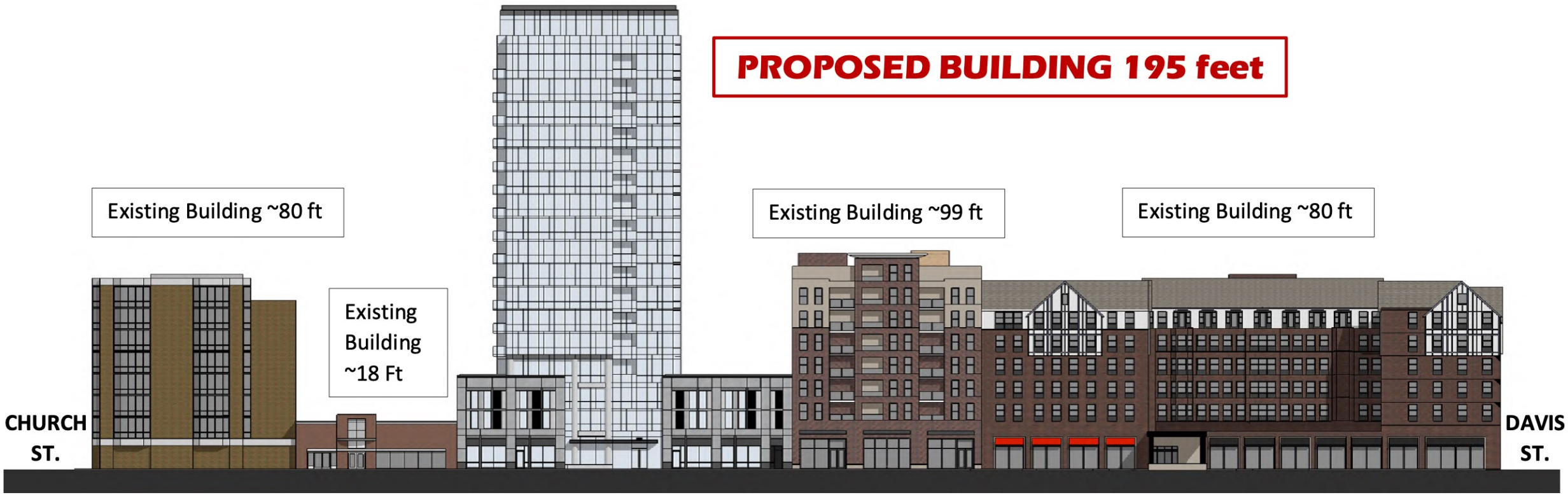
"….the Land Use Commission shall not recommend approval of, nor shall the City Council adopt a planned development in the downtown districts unless they shall determine, based on written findings of fact, that the planned development adheres to the following standards"

- "Each planned development shall be compatible with surrounding development and not be of such a nature in height, bulk, or scale as to exercise any influence contrary to the purpose and intent of the Zoning Ordinance as set forth in Section 6-1-2, "Purpose and Intent."

  - **NOTE: - SEE APPENDIX SLIDE 22 FOR D4 DOWNTOWN TRANSITION DISTRICT PURPOSE STATEMENT PER CITY CODE 6-11-5-1**

- "Each planned development shall enhance the identity and character of the downtown, by preserving where possible character-giving buildings, enhancing existing streetscape amenities, maintaining retail continuity in areas where it is prominent, strengthening pedestrian orientation and scale and contributing to the mixed use vitality of the area."

PROPOSED DEVELOPMENT IS NOT "COMPATIBLE WITH SURROUNDING DEVELOPMENT" AND DOES NOT "STRENGTHEN PEDESTRIAN ORIENTATION AND SCALE"



CHICAGO AVENUE (showing proposed building at 1621-31

1621-1631 CHICAGO AVENUE HEIGHT, BULK, SCALE IS “CONTRARY TO THE PURPOSE AND INTENT OF THE ZONING ORDINANCE”

SUMMARY OF MAJOR D4 DOWNTOWN TRANSITION DISTRICT PURPOSE & INTENT VIOLATIONS

SUMMARIZED FROM CITY OF EVANSTON ZONING ANALYSIS REVIEW SHEET DATED 3/29/22

*PERMITTED / REQUIRED BASED ON SITE SIZE, ZONING EXCLUDING IHO, SDA AND PARKING FLOOR CREDITS

ZONING CATEGORY	PERMITTED / REQUIRED*	PROPOSED
DWELLING UNITS	54	180
FLOOR AREA RATIO	5.4	7.8
HEIGHT	105	195
PARKING SPACES	130	57
LOADING DOCS	3	2

(CONTINUED) THE PROPOSED DEVELOPMENT AT 1621 – 1631 CHICAGO AVENUE FAILS TO MEET THE "STANDARDS OF APPROVAL FOR PLANNED DEVELOPMENTS"

THESE STANDARDS ARE A SUBSET OF STANDARDS INCLUDED IN EVANSTON CITY ZONING CODE 6-11-1-10

"….the Land Use Commission shall not recommend approval of, nor shall the City Council adopt a planned development in the downtown districts unless they shall determine, based on written findings of fact, that the planned development adheres to the following standards:"

- "Each planned development shall be compatible with and implement the adopted Comprehensive General Plan, as amended, the Plan for Downtown Evanston, any adopted land use or urban design plan specific to the area, this Zoning Ordinance, and any other pertinent City planning and development policies, particularly in terms of:"
  - LAND USE
  - HOUSING
  - ENVIRONMENT
  - TRAFFIC IMPACT & PARKING (SEE SLIDES 14-18)
  - LAND USE INTENSITY (180 UNITS vs PERMITTTED 54, EXCESSIVE FAR)
  - PRESERVATION
  - URBAN DESIGN
  - IMPACT ON SCHOOLS, PUBLIC SERVICES AND FACILITIES (CHURCH, PRE-SCHOOL SAFETY ISSUES DUE TO TRAFFIC, CONGESTION, ALLEY USE FOR LOADING)
  - ESSENTIAL CHARACTER OF THE DOWNTOWN DISTRICT, THE SURROUNDING RESIDENTIAL NEIGHBORHOODS AND THE ABUTTING RESIDENTIAL LOTS (SIGNIFICANT NEGATIVE IMPACT, MAJOR ADDITIONAL SAFETY RISKS TO NEIGHBORING HOMEOWNERS, CHURCH)
  - NEIGHBORHOOD PLANNING (TERRIBLE PRECENDENT, GUTS D4 "TRANSITION ZONE" ZONING, "STANDARDS OF APPROVAL", CITY OF EVANSTON 2009 DOWNTOWN PLAN)

CITY OF EVANSTON 2009 DOWNTOWN PLAN

RECOMMENDED HEIGHTS: 1621 – 1631 CHICAGO AVE IS IN EASTERN EDGE

- *"Eastern Edge:"*
- "The Eastern Edge extends mostly along Chicago Avenue to Northwestern University from Lake Street. Chicago Avenue is a main route leading into and through the area. Similar to the west, the Eastern Edge has a predominantly residential character, but also includes small shops, large churches, and abuts the large Raymond Park at Lake Street. The mixed-use character of downtown starts to become evident along Chicago Avenue, which provides transition to the dense residential uses east along Hinman Avenue."
- "Mixed-use development with residential and ground floor retail or office space is recommended for this zone in buildings of 66 to 110 feet in height (approximately 6 to 10 stories), similar to its existing context. A reorganization of the functional areas and landscaping of Raymond Park is also recommended to adapt this great open space to the current needs of downtown residents and visitors."

CITY OF EVANSTON 2009 DOWNTOWN PLAN

RECOMMENDED HEIGHTS AND FARS: 1621 – 1631 CHICAGO AVE IS IN EAST EDGE

Table 7A: Zoning for Urban Form

Character Districts	Maximum Height (feet)		Maximum Floor Area Ratio	
	Base	w/Bonuses	Base	w/Bonuses
North Edge	88	165	3.5	6
West Edge	66	110	3	5
East Edge	66	110	3	5
South Edge	66	110	3	5
University Link	66	88	2.75	4
West Link	66	88	2.75	4
West Core	165	198	5	6
East Core	165	198	5	6
Core	165	275	5	10
Central Core	275	385	7.5	12
West Traditional	42	88	3	4.5
South Traditional	38	60	3	4.5
North Traditional	38	60	3	4.5

STANDARDS OF APPROVAL FOR SPECIAL USE

CRITICAL STANDARDS OF APPROVAL FOR SPECIAL USE WHICH THE PROPOSED 1621-1631 CHICAGO AVENUE DEVELOPMENT FAILS TO MEET ARE HIGHLIGHTED IN YELLOW ON FOLLOWING SLIDES

THE PROPOSED DEVELOPMENT AT 1621 – 1631 CHICAGO AVENUE FAILS TO MEET EACH OF THE FOLLOWING "STANDARDS OF APPROVAL FOR SPECIAL USE"

THESE STANDARDS ARE A SUBSET OF STANDARDS INCLUDED IN EVANSTON CITY ZONING CODE 6-3-5-10

"The Land Use Commission shall only recommend approval, approval with conditions, or disapproval of a special use based upon written findings of fact with regard to each of the standards set forth below and, where applicable, any special standards for specific uses set forth in the provisions of a specific zoning district:"

- "It is in keeping with purposes and policies of the adopted comprehensive general plan and the zoning ordinance as amended from time to time" (see prior slides)
- "It will not cause a negative cumulative effect, when its effect is considered in conjunction with the cumulative effect of various special uses of all types on the immediate neighborhood and the effect of the proposed type of special use upon the City as a whole;"
- "It does not interfere with or diminish the value of property in the neighborhood;" (it does)
- "It does not cause undue traffic congestion;" (see following slides on congestion, Traffic Study flaws)
- "It preserves significant historical and architectural resources"

THE PROPOSED DEVELOPMENT WILL HAVE A NEGATIVE IMPACT ON TRAFFIC & PARKING, CAUSE UNDUE TRAFFIC CONGESTION AND MATERIAL SAFETY ISSUES

TRAFFIC STUDY CONDUCTED IS COMPLETELY FLAWED AS THERE IS NO ANALYSIS, DISCUSSION OR RECOMMENDATIONS REGARDING IMPACT OF VEHICLES SERVING BUILDING FOR RIDE SHARING, FOOD DELIVERY AND/OR PACKAGE DELIVERY

- Traffic patterns serving large residential buildings have changed dramatically over the last 30 months post-COVID due to rapid growth of ride-sharing services (UBER, Lyft, etc.), food delivery services (GrubHub, DoorDash, etc.) and explosion of packages being delivered to residences (FedEx, UPS, Amazon, etc.)
- These vehicles do not “flow” past the building, but instead stop, pull over in non-parking areas, block traffic, circle, make illegal “K” turns and park illegally. Often drivers temporarily abandon their vehicles to deliver food or a package.
- The KLOA traffic study provided by the developer did not consider in any way the impact of additional ride sharing, food delivery and package delivery vehicles and their unusual driving patterns from the proposed 1621-1631 Chicago Ave development and its additional roughly 300 residents. KLOA’s traffic study ignores the tremendous potential impact on congestion and safety on this already busy block:
  - Not a single comment on the impact this proposed building with 300 additional residents will have on ride-sharing, food delivery and package delivery traffic volumes, traffic characteristics and safety. The study is silent in this regard in its ”Traffic Analysis and Recommendations” and its “Discussion and Recommendations”.
  - KLOA study traffic analysis was done using methodologies in the Transportation Research Board’s 12 year old Highway Capacity Manual (2010), which doesn’t reflect the current impact of new, large, residential buildings on ride share, food delivery and package delivery traffic volumes, driving characteristics, congestion.

THE PROPOSED DEVELOPMENT WILL HAVE A NEGATIVE IMPACT ON TRAFFIC & PARKING, CAUSE UNDUE TRAFFIC CONGESTION AND MATERIAL SAFETY ISSUES (CONTINUED)

TRAFFIC STUDY CONDUCTED IS FATALLY FLAWED AS THERE IS NO ANALYSIS, DISCUSSION OR RECOMMENDATIONS REGARDING IMPACT OF VEHICLES SERVING BUILDING FOR RIDE SHARING, FOOD DELIVERY AND/OR PACKAGE DELIVERY

- The KLOA conducted traffic study has the following additional flaws (continued from prior page):
  - Trip generation rates were estimated based on the outdated ITE 10th Trip Generation Manual released in February, 2020, using data prior to current consumer behaviors, therefore don't reflect post-COVID impact of ride share, food delivery and package delivery traffic volumes and driving characteristics from the proposed 1621-1631 Chicago Ave. development.
  - Lisa Fontana, Traffic Engineering Senior Director at ITE indicates that the 11th edition of the Trip Generation Manual is most current, published in September, 2021.
  - KLOA did not reference, nor utilize any of the ITE resources available to understand increased ride-sharing, food delivery, package delivery traffic volume nor driving pattern changes post-COVID.
  - The KLOA traffic study vehicle trip generation rates used the following additional erroneous assumptions
    - Rates were based off of suburban rates which are inappropriate for a downtown environment like 1621 – 1631 Chicago Avenue
    - Additionally, KLOA further reduced vehicle trips due to the building by 50% because "US Census data in the area showed that only approximately 50 percent of residents in the areas drive a car to work". This is another clear error since even in suburban areas, not 100% of residents drive a car to work.
    - Census bureau data actually shows that city residents are only 12.2% less likely to drive to work than suburban residents (see following slide 16) (78.3% / 89.2% = 87.8%), so KLOA should have used a 12.2% discount
    - In summary, KLOA's traffic study is "garbage in = garbage out".

US CENSUS BUREAU, AMERICAN COMMUNITY SURVEY ON AUTOMOBILE COMMUTING CITY VS SUBURB SHOW THAT 78.3% OF CITY RESDENTS DRIVE TO WORK, WHILE 89.2% OF SUBURBAN RESIDENTS DRIVE TO WORK. KLOA TRAFFIC STUDY USED A 50% TRIP DISCOUNT VS PROPER 12.5%

Appendix Table 1.

Commuting by Automobile by Community Type and Travel Mode: 2006 and 2013

(For information on confidentiality protection, sampling error, and definitions, see *www.census.gov/programs-surveys/acs/guidance.html*)

Community type and travel mode	2006			2013		
	Workers (thousands)	Percentage of workers	Margin of error (±)	Workers (thousands)	Percentage of workers	Margin of error (±)
LIVED IN PRINCIPAL CITY, IN METRO AREA						
Total	**44,059**	**100.0**	**Z**	**47,074**	**100.0**	**Z**
Automobile	35,247	80.0	0.1	36,851	78.3	0.1
Drove alone	30,453	69.1	0.1	32,409	68.8	0.1
Carpooled	4,795	10.9	0.1	4,442	9.4	0.1
Other mode	8,812	20.0	0.1	10,223	21.7	0.1
LIVED OUTSIDE PRINCIPAL CITY, IN METRO AREA						
Total	**72,410**	**100.0**	**Z**	**76,827**	**100.0**	**Z**
Automobile	64,966	89.7	0.1	68,560	89.2	0.1
Drove alone	57,533	79.5	0.1	61,586	80.2	0.1
Carpooled	7,433	10.3	0.1	6,974	9.1	0.1
Other mode	7,444	10.3	0.1	8,267	10.8	0.1
LIVED OUTSIDE ANY METRO AREA						
Total	**21,796**	**100.0**	**Z**	**19,062**	**100.0**	**Z**
Automobile	19,685	90.3	0.1	17,253	90.5	0.1
Drove alone	17,060	78.3	0.1	15,283	80.2	0.1
Carpooled	2,624	12.0	0.1	1,970	10.3	0.1
Other mode	2,112	9.7	0.1	1,808	9.5	0.1

Z Rounds to zero.

Note: Universe: workers 16 years and older. Data are based on a sample and are subject to sampling variability. A margin of error is a measure of an estimate's variability. The larger the margin of error in relation to the size of the estimates, the less reliable the estimate. When added to and subtracted from the estimate, the margin of error forms the 90 percent confidence interval. This table corresponds to Figure 4.

Source: U.S. Census Bureau, 2006 and 2013 American Community Survey.

ILLEGALLY PARKED VEHICLES IN FRONT OF AND ACROSS THE STREET FROM 1621-1631 CHICAGO AVENUE, EVANSTON – SUNDAY, AUGUST 7th, 2:31 PM – PRIOR TO ADDITIONAL 300 RESIDENTS FROM PROPOSED 1621-1631 CHICAGO AVENUE DEVELOPMENT

ILLEGALLY PARKED VEHICLES IN FRONT OF AND ACROSS THE STREET FROM 1621-1631 CHICAGO AVENUE, EVANSTON – SUNDAY, AUGUST 7th, 2:45 PM – PRIOR TO ADDITIONAL 300 RESIDENTS FROM PROPOSED 1621 – 1631 CHICAGO AVENUE DEVELOPMENT

APPENDIX

PURPOSE AND INTENT OF THE CITY OF EVANSTON ZONING CODE

- **6-1-2. - PURPOSE AND INTENT.**

- This Ordinance is adopted, by the City of Evanston as a home rule unit of local government, for the purposes of:
- Promoting the public health, safety, comfort, morals, convenience, general welfare, and the objectives and policies of the comprehensive general plan, as adopted and amended, from time to time, by the City Council;
- Securing adequate light, pure air, and safety from fire and other dangers;
- Conserving and enhancing the taxable value of land and buildings throughout the City;
- Dividing the entire City into districts and restricting and regulating therein the location, construction, reconstruction, alteration, and use of buildings, structures, and land, whether for residential, university, business, industrial, or other specified uses;
- Minimizing or lessening congestion in the public streets;

(CONTINUED) PURPOSE AND INTENT OF THE CITY OF EVANSTON ZONING CODE

- Preventing the overcrowding of land by regulating and limiting the height and bulk of buildings hereafter erected, as said buildings relate to land area;
- Establishing, regulating, and limiting the building or setback lines on or along streets, alleys, and property lines;
- (Ord. No. 43-O-93)
- Regulating and limiting the intensity of the use of lot areas, and regulating and determining the area of open spaces between and among the surrounding buildings;
- (Ord. 47-0-09)
- Establishing standards to which buildings or structures shall conform;
- Prohibiting uses, buildings, or structures that are incompatible with the character of established zoning districts; and
- Encouraging the preservation and enhancement of natural resources, historic resources, natural features, and aesthetic amenities in the City.
- (Ord. No. 43-O-93)

D4 DOWNTOWN TRANSITION DISTRICT PURPOSE STATEMENT

FROM SECTION 6-11-4 OF THE EVANSTON CITY CODE

- **6-11-4. – D4 DOWNTOWN TRANSITION DISTRICT**
- **6-11-5-1. - PURPOSE STATEMENT.**
- The D4 downtown transition district is intended to provide for business infill development and redevelopment within downtown Evanston. The massing and scale of structures within the D4 district should be reflective of established uses and should provide suitable transition between downtown districts and those districts adjacent to the downtown. The district is also intended to encourage and sustain a mix of office, retail, and residential uses. Planned developments are encouraged as a special use in the D4 district. Where a lot zoned D4 is overlaid with an oRD redevelopment overlay district designation, a planned development is required in order to ensure that proposed development in these areas is consistent with the objectives and policies of the adopted plan for downtown Evanston.

City of Evanston

Meagan Jones <mmjones@cityofevanston.org>

Opposition 1621-1631 Chicago Ave Construction - Share with LUC members

1 message

Monty Adams <montyadams@me.com> Thu, Sep 8, 2022 at 8:37 PM
To: ckelly@cityofevanston.org, mmjones@cityofevanston.org
Cc: dbiss@cityofevanston.org

Hi Clare,

It has been a long time since I left teaching at ETHS and I appreciated all the support you gave me there. I hope to keep teaching a few more years before I move into politics or back into some form of law enforcement training.

My wife and I live at 1616 Hinman and **OPPOSE** the new construction at 1621-1631 Chicago Ave. for the following reasons:

- We are suspect about the owner. My wife worked for the Michael's at the Merion as a leasing assistant after she worked as the Social Director at the North Shore Hotel for five years. The Michael's did not understand nor care to understand the needs of seniors. For example, the slippery marble flooring, sharp counter top edges, and the fact that anyone could walk off the street to the lounge and jeopardize the security and personal safety of the elderly. In addition, the Michaels systematically got rid of their best employees, worked to bust the unions, and have countless horrible reviews of Horizon Realty Properties. In addition, when my wife worked there, most of the property was vacant, and may still be the case today.
- There are 3 landmark properties on the block that were built close to 1900 – the Methodist Church, the John Evans Building at the corner of Davis & Hinman, and The Merion, formerly the North Shore Hotel. We are extremely concerned that the structural integrity of the buildings in this block may be seriously compromised by aggressive construction work. After reflecting on

the collapse of the the condo building in Florida, we should all be greatly concerned about structural integrity.

1) Can these three buildings withstand several years of pounding, digging, and upheaval?

2) Can the alley, which cannot be widened, accommodate more traffic, and dumpster density?

3) Will the storm drains be able to tolerate the extra traffic when we already can see the original brick under the pavement and experience severe flooding when it rains?

- We are concerned that It will be even harder to access our parking space behind 1616 Hinman. There have been may times that trucks block both sides of the alley making it impossible to access the parking area we pay for.

- The First United Methodist Church has a pre-school. The playground is located right next to the proposed construction site. Will parents send their children to a preschool with such a compromised playground?

- Do we really have a need for more new apartments when we already have so many un-rentaed units available up and down Hinman Ave in our block? Do we need more empty buildings and empty commercial space?

- Finally, I was under the impression that zoning laws were placed to protect property owners and the historical aesthetics of the neighborhood. This high-rise building will not only be an obstruction and inconvience for us but, will obstruct the view of the residents of 1630 Chicago Ave. **Is this fair?**

Sincerely,
Monty Adams

To: Evanston City Council, Daniel Biss and Clare Kelly: Regarding the possible 18 story building....
I am totally opposed for the following reason:

1. 1) I worked for one year at the Merion as a leasing assistant after having been the Social Director of the former North Shore Retirement Hotel for almost 5 years. Mr. Michael was an awful person to work for: he did not understand his senior clientele nor did he care to. He treated the beloved employees (who had worked as wonderful employees for years at the North Shore Retirement Hotel terribly) and systematically got rid of the best of them as fast as he could by busting the union. This attitude can be confirmed in 99.9% of the reviews of his many Horizon Realty properties in Chicago on the Internet which are scathingly awful. At last count, there were about 55 units out of 200 rented. He has never been able to exceed this as far as I am aware.
2. 2) There are 3 properties on the block that were built close to 1900 – the First United Methodist Church, the John Evans Building at the corner of Davis &Hinman and The Merion. I am extremely concerned that the structural integrity of the buildings in this block may be seriously compromised. **I am afraid this may lead to a repeat performance of the collapse of that condo building in Florida:**

   1)Will the structural integrity of these three buildings withstand several years of pounding, digging, and heavy upheaval?

   2) Because of these historical buildings, the alley cannot be widened to accommodate more traffic and we can already see the original bricks under the pavement.

   3) Every time it rains, the storm drains are flooded which turn the alley into several lakes.

I am concerned that I will not be able to park in my parking space at 1616 Hinman. I resent having my western view ruined by an unnecessary building.

I am worried that the pre-school at the church will be forced out of business as they will have no outdoor playground since the current playground will be almost directly under the proposed construction site.

Last, but not least, is it fair that the 1630 Chicago Ave. building will have its eastern views obstructed by an even taller building that exceeds the zoning regulations set by the City of Evanston? And why do we need another “luxury apartment building” in a city that has many other such buildings that are not full. IS THIS FAIR TO EVANSTON?????

Sincerely,
Phyllis Adams
1616 Hinman Ave. 7A Evanston, IL 60201

City of Evanston

Meagan Jones <mmjones@cityofevanston.org>

Land Use Commission Public Comment

noreply@formstack.com <noreply@formstack.com> Thu, Sep 8, 2022 at 11:40 PM
Reply-To: noreply@formstack.com
To: mmjones@cityofevanston.org, kashbaugh@cityofevanston.org, mklotz@cityofevanston.org

formstack

Formstack Submission For: Land Use Commission Public Comment

Submitted at 09/09/22 12:40 AM

Name:	Terri Bernsohn
Address of Residence:	1508 Hinman Ave Unit
Phone:	(847) 271-3322
How would you like to make your public comment?:	Written (see below)
Provide Written Comment Here:	An 18 story building at an already congested intersection is a bad idea. This project will not benefit Evanston, only the builder and owner. It's too tall a building for that swath of land. It's already difficult to turn south onto Chicago from Church with people crossing the street. Adding a large number of pedestrians to the intersection will only make it worse. Pedestrian traffic in that section of Chicago Avenue is challenging already, with outdoor dining. Also, reducing parking to 57 spots, having only 1 parking space for every 3 residential units is short-sighted. Unless the building is inhabited by Northwestern students who walk to campus, people will have cars. As Evanston stores continue to close and street parking is metered, people will need cars drive to surrounding suburbs to shop and dine. I have heard that Horizon Bldg Group claimed the 18 stories were necessary to build enough low-income housing. The builder has no interest in increasing the number of low income units, otherwise they'd add more than the minimum number as determined by space.
Agenda Item (or	Site Development Allowances for 1621-31 Chicago Ave Case #22PLND0020

comment on item not on the agenda):	
Position on Agenda Item:	Opposed

[Quoted text hidden]

City of Evanston

Meagan Jones <mmjones@cityofevanston.org>

Land Use Commission Public Comment

noreply@formstack.com <noreply@formstack.com> Thu, Sep 8, 2022 at 1:29 PM
Reply-To: noreply@formstack.com
To: mmjones@cityofevanston.org, kashbaugh@cityofevanston.org, mklotz@cityofevanston.org

formstack

Formstack Submission For: Land Use Commission Public Comment

Submitted at 09/08/22 2:29 PM

Name:	Paul Breslin
Address of Residence:	1635 Hinman Avenue, # 1
Phone:	(312) 206-1306
How would you like to make your public comment?:	In-person
Provide Written Comment Here:	
Agenda Item (or comment on item not on the agenda):	1621-31 Chicago Avenue Proposal
Position on Agenda Item:	Opposed

[Quoted text hidden]

City of Evanston

Meagan Jones <mmjones@cityofevanston.org>

Development plan for 1621-31 Chicago Avenue by Horizon Realty Group

2 messages

Lin Clarke <lclarke4000@gmail.com> Sat, Sep 3, 2022 at 4:46 PM
To: Clare Kelly <ckelly@cityofevanston.org>, mmjones@cityofevanston.org

Dear Clare Kelly and Meagan Jones,

The initial development plan presented to the Plan Commission for the 1621-31 Chicago Avenue site by the Horizon Realty Group was rejected on many counts with specific change requirements spelled out. Since then over the intervening years, their successive plans have been an expression of these developers' continued disregard of the Evanston Plan Commission's and Council's requests for compliance to our zoning requirements (May 2018, Dec. 2018, Apr. 2020, Sept. 2020 and May 2022) for this downtown transition, east side of Chicago Avenue, to residential neighborhood. As the Plan and Development Committee and the Council members are well aware, this area requires a building to have a maximum of 54 units, a height of 105' and an FAR of 5.4. The latest plan requests three and a half times the number of units, almost doubles the height and bulk, reduces the parking to 1/2.5+ units, and puts two loading docks in an alley that currently is blocked by trucks servicing Horizon's existing buildings all hours of the day. This building further has no aesthetic relevance to any of the neighboring buildings of brick and stone, as currently designed with it's concrete slabs, metal and glass, which would concern an Evanston architectural review board.

Why would our community welcome further development from Horizon when they continue to flaunt our laws with yet another egregious plan? I request that you again reject this proposed development for its abject disregard of Evanston's zoning requirements and overreach in all aspects of development by deliberately misusing our affordable housing regulations to obtain extreme variances. It is again an attempt, as they tried to do previously, to bribe the city with temporary affordable units, to have their will at the detriment of our downtown well-being and safety and the city's planned development as a whole. Let our community welcome those developers who are not encumbered with law suits and bankruptcy and who wish to unit and work with us in making lives and living spaces better for all Evanston residents.

I have heard that there are developers with excellent ethical business records who would like to purchase and develop this property, including affordable housing, within the zoning requirements of Evanston's downtown to residential transition area. Please try to pursue these options as our elected and appointed city representatives. Thank you and the other concerned citizens who are our representatives on our City Council and in our Land Use Committee, for continuing to require observation of our zoning requirements of all developers, even as we continue to experience Covid-19 induced financial difficulty in our community. Please share my views with all Council and Committee members, as I am very proud that our community continues working together to solve its racial, educational and housing needs at this time. We must expect developers to contribute to those solutions, not exacerbate our problems for their own financial benefit.

Sincerely in good citizenship,

Linda Clarke, 522 Church Street, Evanston

Lin Clarke <lclarke4000@gmail.com> Wed, Sep 7, 2022 at 10:31 AM
To: mmjones@cityofevanston.org
Cc: Clare Kelly <ckelly@cityofevanston.org>

Dear Meagan Jones,

I request that you place my letter in the information that is you include for the Land Use Commission. Thank you for your consideration.

Kind regards,

Lin Clarke, 522 Church St., Evanston

[Quoted text hidden]

City of Evanston

Meagan Jones <mmjones@cityofevanston.org>

Comment on 1621-31 Chicago Avenue Proposal

1 message

Wade P Clarke <wclarke4000@gmail.com> Wed, Sep 7, 2022 at 12:03 PM
To: ">" <mmjones@cityofevanston.org>
Cc: ckelly@cityofevanston.org

Dear Ms. Jones,

I urge the LUC to vote against the latest proposal for 1621-31 Chicago Avenue. The proposal contains all the flaws that the earlier proposals had. The height, density, and layout for the proposed structure are simply incompatible with the site itself. Also, the current lower zoning height along Chicago Avenue that is meant to afford a gradual transition to the residential neighborhood to the east is completely ignored. The large number of proposed apartments, many of which are rather small, appear to be planned for student housing. However, because of the traffic issues on Chicago Avenue and the alley behind the proposed location, the site is better suited for a condominium or for business offices with many fewer units.

One of the most absurd aspects of the proposal involves the planned use of the narrow alley running behind the structure between Church St. and Davis Ave. That narrow alley is already so full of dumpsters and trucks serving the restaurants on Chicago Avenue that it very frequently is not passable during the daytime. Also, I understand that the city owns significant, aging sewer lines under the alley. It is unclear how those will be addressed. I suggest that city study this aspect of the proposal.

The proposal adds 10 years of additional low-income housing units as an incentive to gain approval from the Council. That fact is not sufficient to overcome the many problems referenced above.

Please include my comments in the information supplied to the LUC prior to the meeting.

Thank you for your consideration.

Wade Clarke

522 Church St, #3C

Evanston

City of Evanston

Meagan Jones <mmjones@cityofevanston.org>

1621-31 building

1 message

Maureen Conway <maureen.conway@sbcglobal.net> Mon, Sep 5, 2022 at 3:04 PM
To: mmjones@cityofevanston.org
Cc: Clare Kelly <ckelly@cityofevanston.org>

I strongly object to the proposed building at 1621-1631 Chicago. It is totally inappropriate for the area, does not comply with zoning and will cause parking and traffic problems.
It will look ridiculous on the block

Maureen Conway - Conway Executive Search

City of Evanston

Meagan Jones <mmjones@cityofevanston.org>

Land Use Commission Public Comment

noreply@formstack.com <noreply@formstack.com> Thu, Sep 8, 2022 at 10:03 AM
Reply-To: noreply@formstack.com
To: mmjones@cityofevanston.org, kashbaugh@cityofevanston.org, mklotz@cityofevanston.org

formstack

Formstack Submission For: Land Use Commission Public Comment

Submitted at 09/08/22 11:03 AM

Name:	Matt Feldman
Address of Residence:	522 Church Street
Phone:	(847) 859-6734
How would you like to make your public comment?:	Written (see below)
Provide Written Comment Here:	We are writing this comment in consideration of the proposal to develop 1621-31 Chicago Avenue. We own and reside in a condominium at 522 Church Street and our apartment faces south, directly on the site of the proposed development. We are submitting this comment in the event that we are unable to attend the meeting of the Land Use Commission and given that the developer has chosen to-date to not submit responses to staff questions in writing for the public to review. We believe that the Land Use Commission should not approve this development as currently proposed because it is unambiguously not in compliance with the Standards of Approval for Special Use which clearly state that " Each planned development shall be compatible with surrounding development and not be of such a nature in height, bulk, or scale as to exercise any influence contrary to the purpose and intent of the Zoning Ordinance as set forth in Section 6-1-2."

Our primary concern (which is shared by staff) is the height variance requested by the developer. As indicated by staff, " The proposal for 18 stories is noticeably out of scale with proximate development on the east side of Chicago Avenue. Recommend reducing the proposed height to between 8 and 10 stories to match the Downtown Plan's development framework."

We have observed as this developer has consistently ignored consideration of the character of the neighborhood in which this project is proposed to be constructed in each of the several proposals they have submitted. An 18 story building at this location is substantially larger than any other building on the east side of Chicago Avenue. The east side of the street begins a transition from the larger commercial and residential structures on the west side and the lower rise residential apartment buildings and private homes on Hinman Avenue.

We believe that the City should reject this substantial variance from the zoning requirements.

We are also concerned with the state of the alley that runs behind the proposed building and that is, according to this project plan, intended to provide access to both parking and the loading docks.

The alley, which was already in need of repair, was further damaged by the construction of the north building of the Merion (also a project of this developer). The likely damage to the alley as a result of this proposed construction would render it unusable.

Should this or any other proposal by this developer proceed, they should be expected to bring the alley to a state consistent with the traffic created by the increased density resulting from their project.

Sincerely,

Ellen and Matt Feldman
522 Church Street

Agenda Item (or comment on item not on the agenda):	Development Proposal for 1621-1631 Chicago Avenue
Position on Agenda Item:	Opposed

[Quoted text hidden]

City of Evanston

Meagan Jones <mmjones@cityofevanston.org>

Land Use Commission Public Comment

noreply@formstack.com <noreply@formstack.com> Thu, Sep 8, 2022 at 9:50 PM
Reply-To: noreply@formstack.com
To: mmjones@cityofevanston.org, kashbaugh@cityofevanston.org, mklotz@cityofevanston.org

formstack

Formstack Submission For: Land Use Commission Public Comment

Submitted at 09/08/22 10:50 PM

Name:	Bonnie Forkosh
Address of Residence:	425 Davis St., Apt.503
Phone:	(773) 368-6015
How would you like to make your public comment?:	Written (see below)
Provide Written Comment Here:	It is my opinion that the proposed development at 1621-31 Chicago Ave., is too big and too dense for the site and out of scale with the neighborhood. It would overwhelm adjacent properties and adversely impact the landmark First Methodist Church.
Agenda Item (or comment on item not on the agenda):	1621-31 Chicago Ave.
Position on Agenda Item:	Opposed

City of Evanston

Meagan Jones <mmjones@cityofevanston.org>

Land Use Commission Public Comment

1 message

noreply@formstack.com <noreply@formstack.com> Wed, Sep 7, 2022 at 12:41 PM
Reply-To: noreply@formstack.com
To: mmjones@cityofevanston.org, kashbaugh@cityofevanston.org, mklotz@cityofevanston.org

formstack

Formstack Submission For: Land Use Commission Public Comment

Submitted at 09/07/22 1:41 PM

Name:	Reginald Gibbons and Cornelia Spelman Gibbons / Spelman
Address of Residence:	1633 Hinman Ave. #1
Phone:	(847) 869-2558
How would you like to make your public comment?:	Written (see below)
Provide Written Comment Here:	Construction of the highrise in the 1600 block of Chicago Ave. will adversely affect the residential neighborhood to the east of Chicago Ave by generating more traffic, dense street parking, afternoon shadows on many homes and apartment buildings, alley congestion that will limit church parking, and thicken alley truck deliveries, and other negative effects. I am a strong supporter of affordable housing, but the proposed building at 1621-31 Chicago Ave cannot justify the paltry bad-faith number of affordable housing units unless it meets the existing building code for residential buildings (I.e., not as large as the proposed building) and unless it includes significantly more affordable housing units than it proposes to include. The builders are completely unpersuasive when they claim that 8 affordable housing units is as generous to the community of Evanston as they want us to think it is.
Agenda Item (or comment on item not	proposed construction of 1621-31 Chicago Ave.

on the agenda):	
Position on Agenda Item:	Other: This proposed building must be required to meet existing city building standards.

City of Evanston

Meagan Jones <mmjones@cityofevanston.org>

1621-31 Chicago Ave.

1 message

Reginald Gibbons <rgibbons@northwestern.edu> Wed, Sep 7, 2022 at 12:44 PM
To: "mmjones@cityofevanston.org" <mmjones@cityofevanston.org>

Construction of the highrise in the 1600 block of Chicago Ave. will adversely affect the residential neighborhood to the east of Chicago Ave by generating more traffic, dense street parking, afternoon shadows on many homes and apartment buildings, alley congestion that will limit church parking, and thicken alley truck deliveries, and other negative effects. I am a strong supporter of affordable housing, but the proposed building at 1621-31 Chicago Ave cannot justify the paltry bad-faith number of affordable housing units unless it meets the existing building code for residential buildings (I.e., not as large as the proposed building) and unless it includes significantly more affordable housing units than it proposes to include. The builders are completely unpersuasive when they claim that 8 affordable housing units is as generous to the community of Evanston as they want us to think it is. On top of that, the building will put pressure on existing home values in the neighborhood.

Reginald Gibbons & Cornelia Spelman

1633 Hinman Ave. #1

Evanston 60201

City of Evanston

Meagan Jones <mmjones@cityofevanston.org>

Comments to LUC in Opposition to Proposed Development at 1621-1631 Chicago Ave.

1 message

Rebecca Goldberg <goldbergr@me.com> Fri, Sep 9, 2022 at 12:12 AM
To: mmjones@cityofevanston.org
Cc: Clare Kelly <ckelly@cityofevanston.org>, dbiss@cityofevanston.org

Meagan, please share my following comments with the LUC and include them in the packet materials going to LUC members:

Dear Land Use Committee Members,

I live directly east of this proposed behemoth at 1635 Hinman Ave. and implore you to do your job and deny this third request by this developer, a request even more egregious than the previous two denied to them. This plan violates so many D4 zoning requirements: the number of dwelling units permitted would multiply by more than 3-fold, it would almost double the height allowable, it would provide less than half of the parking spaces required, and it only would provide 2 loading docks instead of the 3 that would meet the requirement. Really, what are zoning standards for? Please know that I would be fully in support of any development here that meets the parameters of the established zoning requirements.

The result of this added traffic and congestion would be to knowingly and willfully make the surrounding area more unsafe. This alley area is already an eyesore and is hazardous with unpredictable dangers due to it being so narrow and congested. I am categorized a Senior Citizen, and along with many other older folks living next door to this very site at the Merion and hundreds requiring supportive living on the next block at The Mather, I already have seen many close calls with cars and bikes almost hitting pedestrians; allowing this development will definitely compound this problem. Also, I often must find parking a block away from my home due to all the cars from sold-out Graduate Hotel and people seeking free parking that are shopping downtown or going to the lakefront for less than two hours.
I can understand that, but the approval of even more congestion with this tower with grossly insufficient parking spaces is unacceptable.

How could the Michael family even submit such an entitled request for special treatment, even more in violation of the standards than the first two failed ones, unless they felt confident that they already have your members “in their pocket?”
I am relying on you to abide by the City Plan Standards of Approval and the Plan for Downtown transitioning to residential neighborhood, standards put in place to protect us who live here and to keep Evanston distinctly different from larger Chicago. I repeat: we are not Chicago.

Please deny this proposal, sending a message to this and future developers that they cannot be bought under your watch. The other message you would convey in adhering to established guidelines is that you are here to represent Evanstonians best interests.
And for that, I thank you.

Best,
Becky Taveirne

City of Evanston™

Meagan Jones <mmjones@cityofevanston.org>

“Comments to LUC in Opposition to Proposed Development at 1621-1631 Chicago Avenue”.

1 message

Jane Grad <jbhgrad@gmail.com> Thu, Sep 8, 2022 at 2:25 PM
To: mmjones@cityofevanston.org
Cc: ckelly@cityofevanston.org

I am opposed to the proposed building at 1621-1631 Chicago Ave. There are several reasons for my opposition; the building does not meet quality standards.

Adequate parking - the building does not allow enough spaces for residences and the local area along Chicago Ave has become very busy and congested

Height and size of the building.- the building is way too high for the location. That block represents the long time atmosphere of Evanston, eg, lower store fronts that are engaging and approachable.

Property value - I have lived in Evanston for over 45 years. While progress and commerce is good, they cannot be at the expense of property values. This building will directly negatively impact my home at 807 Davis St. Views will be impacted as well as the charm and community feel of Evanston.

I sincerely want this construction proposal to be denied.

Jane Grad
807 Davis St. Unit 706
Evanston 60201
847-448-0636

City of Evanston™

Meagan Jones <mmjones@cityofevanston.org>

Chicago Avenue High Rise

1 message

Erica Granchalek <eggranchalek@gmail.com> Wed, Sep 7, 2022 at 5:00 PM
To: mmjones@cityofevanston.org

I'm concerned about the building, the fact that it's been problematic on so many fronts in the planning phase and the disruption it can cause to that part of Evanston.
At this point Chicago Ave. is like a parking lot 9 months out of the year. This building would add to that significantly.
The fact that the building is much higher than the recommended height nor are there sufficient parking spots in the design makes this extremely untenable.
I hope you will voice these concerns as well as the concerns of others when this is brought up.
Erica Granchalek
Evanston Resident since 1980.

City of Evanston

Meagan Jones <mmjones@cityofevanston.org>

1621-1631 Proposed New Residential Building

1 message

Stuart Green <arjuna674@gmail.com> Mon, Sep 5, 2022 at 9:06 AM
To: mmjones@cityofevanston.org
Cc: Clare Kelly <ckelly@cityofevanston.org>

Dear Committee Members:
As a resident of 807 Davis Street, I am deeply concerned about the proposed new structure at 1621-1631 Chicago Ave. The added congestion this would add to that already dense area is troubling. Moreover, many of us paid a premium to have a view of Lake Michigan. One of the reasons to live in Evanston is the aesthetic experience of our city. Please don't overcrowd it and diminish its beauty.

Stuart Green
807 Davis St, Evanston, IL 60201
Unit 807

City of Evanston

Meagan Jones <mmjones@cityofevanston.org>

My statement in OPPOSITION to the proposed development for 1621-1631 Chicago Avenue

1 message

Candy Heaphy <candyheaphy@gmail.com> Thu, Sep 8, 2022 at 6:27 PM
To: Meagan Jones <mmjones@cityofevanston.org>
Cc: ckelly@cityofevanston.org

PLEASE INCLUDE MY COMMENTS IN THE PACKET FOR THE LAND USE COMMISSION for their meeting on September 14, 2022

Hello:
My name is Candy Heaphy and I have lived at 1616 Hinman Avenue for five years. I park my car under my apartment building and depend on being able to exit and enter via the alley that runs between Church and Davis Streets.

I chose to live where I do because it is of a comfortable scale, officially a "transition area" from shopping on Church Street down to single family homes to the east.

I've attended all of the public meetings featuring Mr. Michael regarding this development. To the best of my recollection, he started out saying how proud he was that Horizon built the extension to the Merion and that the proposed Legacy development would be compatible. This has not turned out to be true. The Legacy is completely out of scale with buildings on the east side of Chicago Avenue. Whether Mr Michael was lying from the beginning or he didn't understand the Comprehensive General Plan recommended for downtown Evanston, I can only guess.

Hundreds of residents of Ward One do understand the intent of the Comprehensive General Plan and have spoken loud and clear that the Legacy doesn't fit. What would fit is a structure of similar height to the Merion.

I have first-hand knowledge of the dimensions and condition of the alley. Even with traffic related to current businesses, there are times when residents of my building and members of the Methodist Church are trapped while deliveries are made and moving trucks are at work. The needs of the proposed building would dominate the alley with deliveries and private parking. The alley is extremely narrow, as you must know. The idea of having large trucks maneuver their way into bays under the new building is ludicrous. There simply isn't space. They would have to turn around in the church parking lot, I would guess. That is not feasible.

I urge the LUC to reject the proposed development as being:

*incompatible with the existing Comprehensive General Plan for the neighborhood

*infeasible with the existing alley for parking and deliveries

*an eyesore in the existing neighborhood

*a bad fit and not well thought through.

Thank you,

Candy Heaphy

ROBERT HECKING
1630 CHICAGO AVENUE
EVANSTON, IL 60201

TO: Mayor Daniel Bliss
Jonathan Nieuwsma-Ward 4
Clare Kelly -Ward 1
Meaghan Joness-City Admin
CC:Matthew Rodger/Chairman Land Use Commission
Board Members

Sept 8,2022

I served as the Chairman of the Planning Board for 12 years in Rutherford New Jersey. Like Evanston it is an older town with fixed boundaries, fixed road capacities, tree lined streets and a vital Central Business District. We moved to Illinois because of an employment opportunity, but to Evanston to reside because of its excellent Central Business District with shopping, dining, entertainment, living style and parks.

I live in the high rise on Chicago Avenue across the street from the proposed structure. After living here almost two years, I know the this block well. I have reviewed the proposed project, and although the developer is a quality builder, I think it over densifies the block and recommend against it approval for the following reasons.

1. Parking. -the block has too few spaces now and the proposed building needs 22 spaces per unit (Planning Minimum-180 units- 360 spaces- not 57
2. High rise distribution. Currently Evanston high rise building distribution do not obscure views of other high rises- this one would block the view and solar warmth to 1630 Chicago Ave
3. Impervious Surface coverage without updated storm water retention plan
4. Traffic- Lack of parking on this block currently forces delivery services (USPS,UPS,Fedex , DHL,Uber, Lyft,Grub Hub, etc.), people picking up food or coffee at Peets, or phone services at ATT to block the driveway at 1630 Chicago Ave This would double with the proposed.
5. Emergency Services. Ambulances with accompanying firetrucks block the street at least once a week with serving The Merion. With 30% additional residents and cars with this project they would block emergency access
6. Safety- The on street parking lane provides a safe barrier for the bike lanes on the Chicago Avenue and it is in almost constant use by families, Northwestern students, seniors and kids would be jeopardized
7. High rise Wind Venturi affects on Chicago Ave, Church Preschool playground— Plan?
8. School impact?
9 Obliterating sun on Chicago Ave…most high rises in Evanston are on west side of block-this would shade most morning sun on Chicago Avenue

I appreciate your considering these facts in your review and denying this application for this location.

Robert Hecking

IMPACT OF A HIGH RISE AT 1621-1631 CHICAGO AVENUE

Evanston, Illinois is a well planned community with an excellent mix of housing types, shopping, entertainment and mass transit. Like any older community it takes excellent planning to maintain its character within:

fixed boundaries,
fixed open space,
fixed road capacities
established school system
older sewer and water systems.
town character

Some older communities don't have Evanston's residential mix of quality apartments, condos senior housing and single family homes. In some older established towns, older residents who sell their homes are forced to leave the town they love. This is not the case in Evanston. I met several neighbors that sold their homes and have moved into apartments and senior housing like The Merion or Mather, to stay in a town they love.

As a former Chairman of a Planning Board of an old established town in New Jersey I have faced these issues that Evanston is facing and participated updating and writing a new Master Plan., We had to consider several large multiple family condo projects and their impact on existing roads, school systems, sewer systems, and impact on neighborhoods.

With the rising cost of land, developers try to recover land expense by increasing number of residential units per property, which does not always benefit the town. High rise buildings pose additional concerns like street level Wind acceleration and vortexes, increasing demands on local roads which cannot be expanded, Shadows cast by the building- cooling streets in Winter delaying snow removal, and delivery issues, and additional costs to the school system.

POPULATION DENSITY

Evanston has a population density of 10,012.82 persons per square mile.

Or approximately
3 persons per 10,000 square feet (100 X 100)

Chicago Ave between Davis and Church Streets has approximately 900 residents making the population density to 24 people per 10,000 square feet or eight times the Evanston Average.

If the 18 floor proposed building adds 300 more the density would rise to 32 per 10,000 square feet or 30% increase.

This density does not include additional pedestrian traffic visiting to Peets coffee, Whole Foods, and other shops, deliveries by Fedex, UPS, USPS, DHL, Uber, Lyft, Grub Hub, and other delivery services not

10 times the Evanston Average,

As the street cannot be widened, can Chicago Avenue handle 30% more traffic?

DISTRIBUTION OF HIGH RISES IN EVANSTON

The map below shows existing high rises(12 stories or over) in Evanston Central Business District. (Dark Shaded) Earlier Planning Boards wisely placed most of them on them on the west side of the block so shadows would not fall on the streets in the morning, but bring cooling shade in the afternoon during hot weather.

Also note none of them sit in front of each other, giving each its own views of the lake.

The proposed building (marked by an X) would sit directly in from of 1630 Chicago Avenue blocking its views and obscuring morning sunlight that helps the older building get solar warmth, something stated in the Master Plan to be avoided

TALL BUILDING SHADOWS

On the map below are projected and actual shadows cast by the current high rise at 1630 Chicago Avenue and the proposed high rise at 1621-1631 Chicago Avenue. As mentioned earlier past Planning Boards have approved high rise buildings (12 stories and over) on the west side of the blocks they occupy, thus allowing morning sun to fill streets and afternoon shadows when the sun is its hottest.

Please note the the East - West guide on the map. I have extended lines from the corners of the high rise buildings to indicate morning and afternoon shadows, The proposed building would plunge Peet's coffee shop and sidewalk chairs into cold shadows in the morning and until about 11:00 a.m., until the sunlight comes from the south down the street briefly The shadow from The Park at Evanston afternoon shadow miss the "Found" Restaurant and most of the "Prairie Moon" These shadows affect snow and ice removal on sidewalks.

GROUD WATER-IMPERVIOUS SURFACE LOT COVERAGE

Zoning Boards across the nation are beginning to set limits for the impervious surface area on building lots. In New Jersey it is 45%-55% for new buildings. Evanston is 45% for R-1 zones

With record 100 year rains occurring with increasing regularity around the world we must plan for it. Just this year Louisiana, Texas, Arizona, New York, Kentucky, Tennessee, Mississippi, California received 6 to 10 inches of rain in one day! Water and sewer plants were overwhelmed, releasing untreated sewage into lakes and rivers. Evanston has to consider the safety of Lake Michigan. Cities have been working on separating storm water sewers and sanitary sewers. When they are not, odors of fecal emanate from storm sewers on corner curb collection units in central business districts. (like Cincinnati)

Evanston Zoning Code, section 6-8-2-10. - IMPERVIOUS SURFACE.

"(A)The maximum impervious surface ratio for the R1 district is forty-five percent (45%)."

In New Jersey and other states, where this is not possible, developers are **required** to capture storm water on site with storage fields or ponds. This is to keep storm water from going into sanitary sewers and overwhelming Sewage Treatment Plants during storms.

A development of 16 townhouses on 2 acres **required** a 250 foot trench with a 6 foot in diameter perforated concrete pipe in a 10 feet deep of blue stone, covered by fabric and finally soil with no outlets or connections to sewer system. All storm water from gutter downspouts were piped to the field..

The Existing Buildings on 1621-31 Chicago Ave cover 100% of the lot, but are grandfathered. .

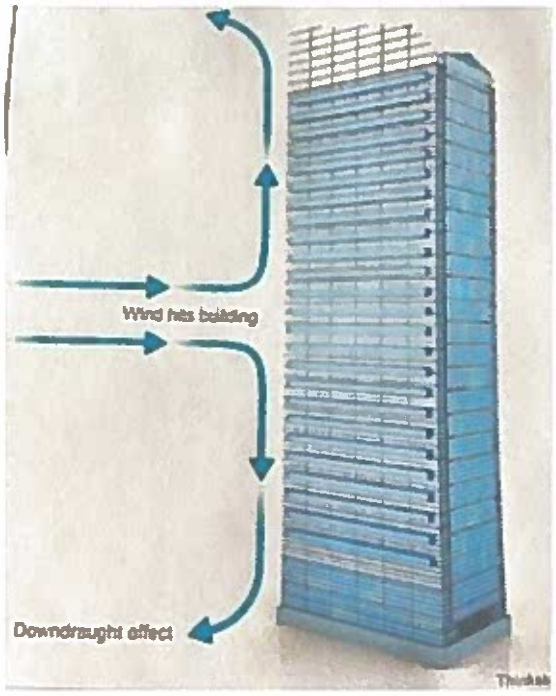
Is there a plan to provide storm water remediation for the proposed new building on this site and keep storm water out of Sanitary Sewers? Record rains are coming.

SEWER PIPE CAPACITIES

Are the sanitary sewers on Chicago Ave adequate for an 30% increase on this block? Is the Evanston Sewage Treatment facility on McCormick near capac

HIGH RISE SURFACE AREA WIND TURBULENCE

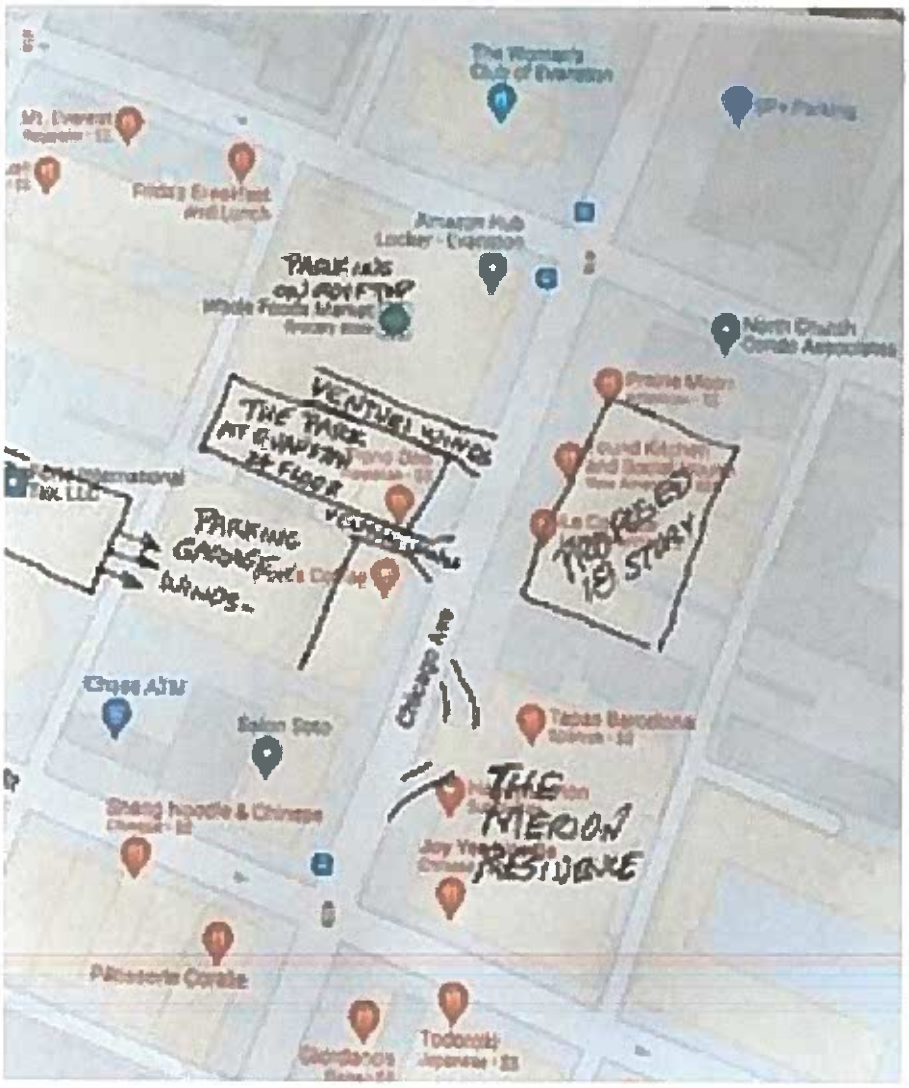
It is a fact that high rise building concentrate upper winds and distribute them to the base of the building. The City of London requires a "rigorous" assessment from developers on ground level wind acceleration following problems with the new building at 20 Fenchurch St. Toronto is developing zoning by-laws to limit high rise wind turbulence at ground level Below are two illustrations of wind currents re-directed by high rises



These dangerous by product winds can be experienced on Chicago Avenue in Evanston. The 24 story Park at Evanston sends a downdraft to the parking deck on top of the Whole Foods. The winds are then funneled down (a venturi effect) the sloped driveway. Start in front of The Park Evanston and walk toward Whole Foods. This past winter the venturi stopped citizens in their track. This is also evident on the roof of the Park's parking garage the Chase building sends the downwind across the 4th level of the parking lot. (See illustration on next page)

The proposed building will add to the wind affects on this block and may create a venturi effect in the alley between the Church and the building The down drafts in the back alley would affect the Church's daycare lot. Chicago's Zoning Section 1603.1.4 requires wind design data not only for building and siding integrity but ground turbulence

ACTUAL VENTURI EFFECT ON CHICAGO AVENUE



I would encourage Planning Board members walk past The Park at Evanston high rise towards Whole Foods. When you pass the driveway leading to the rooftop parking of the Whole Foods, there is a Venturi affect, accelerating the wind speed and concentrating direction because of the building. During the Winter these concentrated wind speeds literally stop pedestrians in their tracks. With a new building directly opposite of the Park at Evanston will create new ground level wind hazards

TRAFFIC

A cursory traffic study might assume that Chicago Avenue in front of the proposed site has free flowing traffic that only backs up occasionally and could handle the additional traffic of the proposed site. The Park at Evanston the high rise the picture is taken from directs all deliveries to be made through the rear alley and not in the 2.5 lane wide driveway in front of our building. But at least twice a week, we are unable to get in or out the driveway because USPS truck,UPS truck, Fedex Truck, DHL truck, Uber eats,Lyft, Grub Hub, people parking in the driveway to get Peets Coffee or other deliveries. The Ambulance and Fire Trucks use this portion of Chicago Avenue for their north/south travel in Evanston, and weekly block traffic with stops at The Merion.

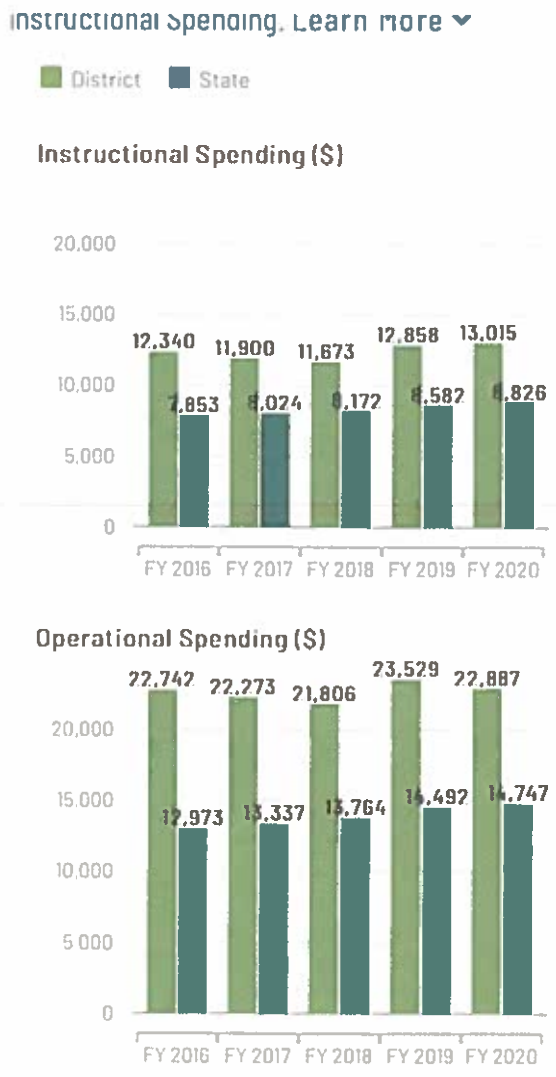
Evanston's great planning created this safe street scape.The mid-street parking not only provides a quick access to the cleaners and other retail services, but they create a protected bike lane (as shown in the picture below) **This bike lane is very active** with students all day, families and seniors. Seniors from the Merion and The Mather use their walkers on this side of the street. The proposed building may not have a Chicago Ave car entrance, but all the delivery services will need to double park and cross the protected bike lane. So a 30% increase in residents on this block would paralyze traffic and slow access for ambulances. **The developer is planning for 57 parking spots for 180 units is totally inadequate.**

The block almost works now, but cannot take a 30% increase
The proposed building

SCHOOL SYSTEM IMPACT

Many towns are learning that large residential developments and high rises look good on paper and tax contribution, but forget the impact on schools. Even when large developments claim they are focused on adult only communities, reality brings children. Below is the chart for school costs per student in Evanston (light green) versus the State of Illinois (dark green). In 2020, Evanston spent **$22,887 per student** for structures and teachers. So receiving tax per unit of $15,000 taxes per unit actually loses $7,000. per child, and more if they more than one child!

SCHOOL COSTS- Illinois and Evanston



FY 2021 Teacher Pension

Revenue Percentages

CENTRAL BUSINESS DISTRICT

Chicago Avenue between Church and Davis is a destination. Teenagers fill the streets daily on and more on weekends, meeting friends at Joyee Noodle and Happy Lemon. Peets Coffee attracts college students and adults. The sidewalk cafe's of Prairie Moon, Found, Tapas Barcelona, Peets and Pono Ono give the block its destination status.
Even though the developer wants to put Found restaurant back in the new building, how will a lobby and a sidewalk cafe work together. Structurally on paper they might, but in reality they wouldn't

Rutgers University in New Jersey has a program called "Downtown Manager" Successful business districts require merchants, services from the municipality and citizens, and a manager to coordinate activities of the three. Rutherford, New Jersey, a small suburb of New York hired Rutgers to create a Downtown committee and Downtown Manager. The vacancy percentage went from 30% to 6%. They identified services and stores needed and solicited corporations to open stores in Rutherford. **Too many Residential units interrupt the destination and make it a neighborhood and not a destination.**

This is one of the best functioning blocks in the Central Business District, and overcrowding and traffic jams won't help it

City of Evanston

Meagan Jones <mmjones@cityofevanston.org>

Land Use Commission Public Comment

noreply@formstack.com <noreply@formstack.com> Thu, Sep 8, 2022 at 8:44 PM
Reply-To: noreply@formstack.com
To: mmjones@cityofevanston.org, kashbaugh@cityofevanston.org, mklotz@cityofevanston.org

formstack

Formstack Submission For: Land Use Commission Public Comment

Submitted at 09/08/22 9:44 PM

Name:	Ezra Hilton
Address of Residence:	2211 Sherman
Phone:	(847) 274-9727
How would you like to make your public comment?:	In-person
Provide Written Comment Here:	
Agenda Item (or comment on item not on the agenda):	1621-31 Chicago Avenue
Position on Agenda Item:	In Favor

[Quoted text hidden]

City of Evanston

Meagan Jones <mmjones@cityofevanston.org>

LUC - opposition to proposed development at 1621-1631 Chicago Avenue

1 message

Barbara Kovel <bkovel@comcast.net> Tue, Sep 6, 2022 at 11:43 AM
To: "mmjones@cityofevanston.org" <mmjones@cityofevanston.org>
Cc: "ckelly@cityofevanston.org" <ckelly@cityofevanston.org>

As a former city planner for a medium size city in New York State, I have to say I was surprised (not in a good way) to see this proposal. Not only does it not comply with so many of the current zoning regulations, it is totally out of character with the surrounding area. There is a reason this area was intended to be transitional, and I can't think of any reason that should change. If this proposal is approved, I would worry about other structures being built along this corridor that would exacerbate existing traffic and parking problems. I already have friends who won't come to Evanston, because of the parking.

I now have an MBA and worked in the finance sector for many year. I'm very much in favor of economic development and more residences would definitely help the local economy. However, this development should be located elsewhere.

I have always been a person who values inclusivity and diversity and would love to see more affordable housing in Evanston. My suggestion is:

Scale back or locate elsewhere.

City of Evanston

Meagan Jones <mmjones@cityofevanston.org>

Land Use Commission Public Comment

noreply@formstack.com <noreply@formstack.com> Thu, Sep 8, 2022 at 1:29 PM
Reply-To: noreply@formstack.com
To: mmjones@cityofevanston.org, kashbaugh@cityofevanston.org, mklotz@cityofevanston.org

formstack

Formstack Submission For: Land Use Commission Public Comment

Submitted at 09/08/22 2:29 PM

Name:	Paul Breslin
Address of Residence:	1635 Hinman Avenue, # 1
Phone:	(312) 206-1306
How would you like to make your public comment?:	In-person
Provide Written Comment Here:	
Agenda Item (or comment on item not on the agenda):	1621-31 Chicago Avenue Proposal
Position on Agenda Item:	Opposed

[Quoted text hidden]

City of Evanston

Meagan Jones <mmjones@cityofevanston.org>

Comments to LUC in Opposition to Proposed Development at 1621-1631 Chicago Avenue

Susan Rifas <susanrifas@gmail.com> Mon, Sep 5, 2022 at 9:19 AM
To: mmjones@cityofevanston.org

Ms. Jones:

I am very much opposed to this development and would appreciate you including this email and my comments in the packet of information provided to the LUC.

The developers have repeatedly proposed a development that is not in keeping with existing ordinances or with The Standards of Approval for Planned Development. For example, the Standards say that "Each planned development shall be compatible with surrounding development and not be of such a nature in height, bulk, or scale as to exercise any influence contrary to the purpose and intent of the Zoning Ordinance as set forth in Section 6-1-2, "Purpose and Intent."

As you know, the building the developers are proposing is not at all in keeping with height, bulk or scale of the surrounding area.

The same Standards include: "… maintaining retail continuity in areas where it is prominent." The developers claim that retail will be maintained. They didn't accomplish that when the addition to The Merion was built and space remained vacant. The addition opened in 2016 and it was only earlier this summer, SIX YEARS later, that a restaurant opened in the retail space created in The Merion addition.

Yes they will be providing some affordable housing, and I am very much in favor of affordable housing, but they tout that as if they are doing something special or beyond what the Ordinance requires. They are not - they are doing only the bare minimum as required by the Ordinance. The number of parking spaces is not in keeping with Ordinance, the proposed docks for the building are not in keeping with Ordinance, the size and bulk of the building are not in keeping with Ordinance.

Others have submitted to you much more detail about how and why the proposed building is not in keeping with Ordinance nor the City's Downtown Evanston Plan. I concur with those comments. I also believe that the developers have demonstrated, through word and action, how disingenuous they are.

Thank you for you time and consideration. And again, please include my comments in the packet provided to the LUC members.

Susan Rifas
522 Church Street

City of Evanston

Meagan Jones <mmjones@cityofevanston.org>

Comments to LUC in Opposition to Proposed Development at 1621-1631 Chicago Avenue

Susan Rifas <susanrifas@gmail.com> Wed, Sep 7, 2022 at 11:00 AM
To: Meagan Jones <mmjones@cityofevanston.org>

Thank you.

I would add, if possible, that if the developers try to counter about the empty retail space by saying it is due to COVID I think the repose should be … yes, COVID has had an impact the last 2 1/2 years but they had 4 years before everything shut down due to COVID to fill the space and obviously were not successful.

Sue

Sent from my iPad

> On Sep 7, 2022, at 10:56 AM, Meagan Jones <mmjones@cityofevanston.org> wrote:
>
> [Quoted text hidden]

City of Evanston™

Meagan Jones <mmjones@cityofevanston.org>

Notice of public hearing re: Land Use Commission

1 message

Karin Ruetzel <karinruetzelphd@gmail.com> Thu, Sep 8, 2022 at 1:57 PM
To: mmjones@cityofevanston.org

Hello Ms.Jones,
I just received the postcard with the notice of a public hearing on Wednesday, September 14. I will be unable to attend that meeting but I would like to register that I am not being in favor of this particular development in my ward as far too many allowances are sought and I do not believe this would be the best use for this space in our downtown area.
Thank you,

Karin Ruetzel, PhD

City of Evanston

Meagan Jones <mmjones@cityofevanston.org>

Land Use Commission Public Comment

noreply@formstack.com <noreply@formstack.com> Thu, Sep 8, 2022 at 2:21 PM
Reply-To: noreply@formstack.com
To: mmjones@cityofevanston.org, kashbaugh@cityofevanston.org, mklotz@cityofevanston.org

formstack

Formstack Submission For: Land Use Commission Public Comment

Submitted at 09/08/22 3:21 PM

Name:	Mary Singh
Address of Residence:	1711 Hinman Ave
Phone:	(847) 864-1385
How would you like to make your public comment?:	Written (see below)
Provide Written Comment Here:	In re proposed planned development at 1621-1631 Chicago Avenue.That is in a D1 district and the “massing and scale should be reflective of established uses “ by the City’ s definition. The proposal does not meet that definition.
Agenda Item (or comment on item not on the agenda):	1621-1631 Chicago Avenue
Position on Agenda Item:	Opposed

[Quoted text hidden]

City of Evanston

Meagan Jones <mmjones@cityofevanston.org>

Opposed to Proposed Development at 1621-1631 Chicago Avenue

1 message

Karen Straus <kstraus827@gmail.com> Thu, Sep 8, 2022 at 11:08 AM
To: mmjones@cityofevanston.org, ckelly@cityofevanston.org

Please share my comments below with LLUC & include these comments in the packet of materials going to LUC members.

The proposed development is way taller and has many more units than the existing zoning permits. Exactly why is granting a variance in the best interests of Evanston & its residents?

There's no question that the larger structure will block the sun & strain existing city services. And for what?

Does Evanston need even more high-end rentals?

I live toward the back of 1616 Hinman. This proposed development will block what little afternoon sunlight makes its way to my windows -- as well as to the church playground, and the church lawn with its picnic tables which are often used for outings & picnics.

Zoning exists for a reason. Among other things, a zoning plan creates predictability & insures all are treated equitably & governed by the same rules. Variances should be granted sparingly and only when needed to further the best interests of the community.

How exactly does a much larger structure that blocks the sun & strains services further the community's best interests?

City of Evanston

Meagan Jones <mmjones@cityofevanston.org>

Land Use Commission Public Comment

noreply@formstack.com <noreply@formstack.com> Fri, Sep 9, 2022 at 12:16 AM
Reply-To: noreply@formstack.com
To: mmjones@cityofevanston.org, kashbaugh@cityofevanston.org, mklotz@cityofevanston.org

formstack

Formstack Submission For: Land Use Commission Public Comment

Submitted at 09/09/22 1:16 AM

Name:	Becky Taveirne
Address of Residence:	1635 Hinman Ave., Evanston
Phone:	(773) 349-6543
How would you like to make your public comment?:	In-person
Provide Written Comment Here:	
Agenda Item (or comment on item not on the agenda):	Proposed development 1621-31 Chicago
Position on Agenda Item:	Opposed

[Quoted text hidden]

City of Evanston

Meagan Jones <mmjones@cityofevanston.org>

RE: Disapprove -- Chicago Ave 18-story Tower Proposal (from Hinman-Church Condo owner)

E Taveirne <taveirne@att.net> Wed, Sep 7, 2022 at 6:19 PM
To: Clare Kelly <ckelly@cityofevanston.org>, "dbiss@cityofevanston.org" <dbiss@cityofevanston.org>, Meagan Jones <mmjones@cityofevanston.org>, "mwynne@cityofevanston.org" <mwynne@cityofevanston.org>, "jnieusma@cityofevanston.org" <jnieusma@cityofevanston.org>, "bburns@cityofevanston.org" <bburns@cityofevanston.org>, "tsuffredin@cityofevanston.org" <tsuffredin@cityofevanston.org>, "erevelle@cityofevanston.org" <erevelle@cityofevanston.org>, "dreid@cityofevanston.org" <dreid@cityofevanston.org>, "jgeracaris@cityofevanston.org" <jgeracaris@cityofevanston.org>

To Whom It May Concern;

Living on the corner of Church and Hinman, I have a vested interested in the proposed 18-story building on Chicago Avenue. Imagining living in its shadow, without ever seeing afternoon sun again, saddens me and, no doubt, so many that will have to live under its looming darkness.

That said, I would hope that those Evanston Commissions, Boards and elected officials will stand by the hard fact that this proposed building falls far short of Evanston's documented STANDARDS OF APPROVAL FOR SPECIAL USE.

More than an opinion, a neighborhood walk will reveal that such an edifice will cause massive traffic/parking congestion -- both on Chicago Ave and in the very narrow (always filled with garbage) alleyway. There is no question that this will spread into the surrounding residential neighborhood.

Please note, should a proposal fall within the existing codes and/or Special Use, I could absolutely support it -- and wouldn't have a choice. But this so egregiously falls outside the parameters of Evanston's Standard of Approval for Planned Developments that it is hardly believable that it could be entertained at all.

Among the key Standards of Approval for Special Use is that any given proposed development will not interfere nor diminish property values in a given neighborhood. There is no question a building this gargantuan size in this neighborhood it will undoubtedly have an adverse effect on our property values.

Thus, I urge Evanston's Land Use Commission and elected officials to vote it down, recognizing that building such a massive edifice --in these peculiar economic times-- may well be an albatross Evanston doesn't need hanging around its neck. The massive size reflects the massive risk taken to engage such a boondoggle.

E. Taveirne
1635 Hinman Ave #2
Evanston

City of Evanston

Meagan Jones <mmjones@cityofevanston.org>

Land Use Commission Public Comment

1 message

noreply@formstack.com <noreply@formstack.com> Thu, Sep 8, 2022 at 9:29 AM
Reply-To: noreply@formstack.com
To: mmjones@cityofevanston.org, kashbaugh@cityofevanston.org, mklotz@cityofevanston.org

formstack

Formstack Submission For: Land Use Commission Public Comment

Submitted at 09/08/22 10:29 AM

Name:	Jennifer Washburn
Address of Residence:	807 Davis Street, Unit 1803
Phone:	(847) 858-1218
How would you like to make your public comment?:	Written (see below)
Provide Written Comment Here:	Members of the LUC, My name is Jenny Washburn and I am an Evanston resident in the first ward. I am writing to express my vehement opposition to the egregious proposal of an 18-story building at 1621-1631 Chicago Avenue. As the LUC is guided in its decisions by the Standards of Approval for Special Use, I want to make note of the standards this proposal fails to meet. - It does not interfere with or diminish the value of property in the neighborhood - It does not cause undue traffic congestion More specifically, this proposal would not meet the standards in relation to: land use density; traffic impact and parking; impact on schools, public services, and facilities; essential character of the downtown district, the

surrounding residential neighborhoods, and the abutting residential lots; neighborhood planning.

This proposed 18-story building would promote traffic congestion, putting cyclists and pedestrians in danger on an already busy street. It would also impact schools and public services and facilities as we would see an overflow of students to promote crowded classrooms, and it would cause a strain on our resources like police and fire services and waste management.

Additionally, the building size is woefully out of character with the downtown district and would promote further high-rise development in an already-crowded downtown area, which would ruin the character of Evanston's downtown, now and in perpetuity.

The building would also create further and potentially debilitating congestion in the alleyway which is shared with the First Methodist United Church (an Evanston institution since the 1850s) and it would significantly diminish property values of the 3 surrounding property, with further traffic congestion, noise and disruptions from construction and thereafter, and diminished sunlight into surrounding buildings. This lowered property value will reduce the community's tax base and reputation.

I want to end my point with this: I am pro-development and this is not a 'NIMBY' situation. This property is simply wholly out of character for this area and would be a stain on Evanston's downtown and legacy.

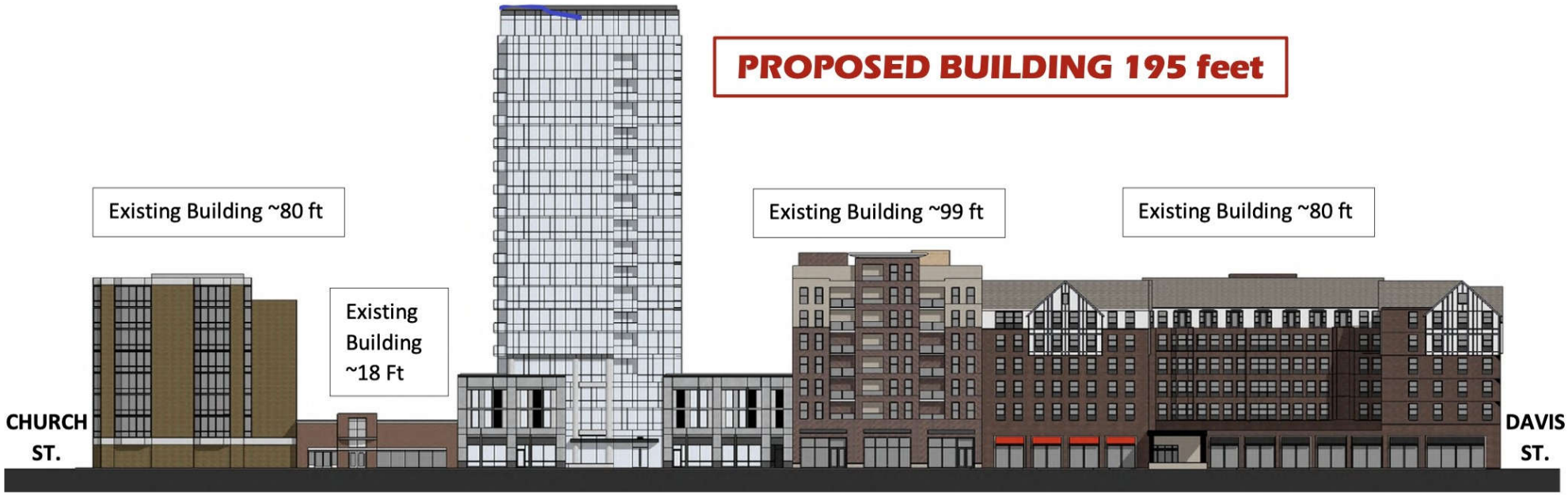
I would go so far as to say this proposal is not about adding retail and rental space to Evanston. Rather it is a money-grab by the developer and realty group, the latter of which is in the throes of bankruptcy and lawsuits, which they think can be resolved by renting out lake-view apartments at exorbitant prices.

Please oppose this proposal for the good of the community now and in perpetuity, so we set a precedent for the good of our downtown district.

Thank you,
Jenny Washburn

Agenda Item (or comment on item not on the agenda):	1621-1631 Chicago Ave Proposed Development
Position on Agenda Item:	Opposed

How Would You Like This in Our Neighborhood?



CHICAGO AVENUE (showing proposed building at 1621-31

EXTREME BUILDING HEIGHT & DENSITY

The proposed site is zoned D-4, a planned transition between business and residential areas. This building, at 195', 180 units, and 57 parking spaces, isn't even close to the basic D-4 zoning maximums of 105' and 54 units, with at least 119 parking spaces.

DANGEROUS CONGESTION

Vehicles stopping, circling, illegally parking, *in streets & alley,* to serve proposed building *(Uber, Lyft, GrubHub, DoorDash, FedEx, UPS, USPS, Amazon, etc.).*

DIRECTLY ACROSS NARROW ALLEY FROM FIRST UNITED METHODIST CHURCH and PLAYGROUND, 3 APARTMENT BUILDINGS & EXISTING PARKING

TOGETHER, WE CAN STOP IT!

To learn more, contact any of us for simple ways to oppose this development:

bobfroetscher@gmail.com
p-breslin@northwestern.edu goldbergr@me

PUBLIC HEARING ON THIS PROPOSAL

7 PM, SEPTEMBER 14

CIVIC CENTER 2100 RIDGE AVE

PLAN TO BE THERE!

Chicago Area Neighbors (CAN)

Land Use Committee Information Packet
HRG 1621-31 CHICAGO AVE PROPOSAL

A. HRG'S TROUBLING BUSINESS HISTORY, 2009 TO PRESENT

B. WHY THE PROPOSED BUILDING SHOULD NOT BE PERMITTED IN D-4

C. FLYER from Chicago Area Neighbors

What the Bankruptcy Trustee's Complaint Reveals: A Summary

(What follows is a summary of the Trustee's allegations; they are not, as a matter of law, proven facts, as no judgment has yet been issued. However, this is the Trustee's theory of the case. That he is an officer appointed by the court and has neither a stake in the outcome nor an animus toward Daniel and Jeffrey Michael lends credibility to his statements, which are also meticulously documented with reference to written evidence.)

In 2009, Horizon Group Management, a company owned and operated by Daniel and Jeffrey Michael, was sued in a class action case for multiple violations of Chicago's Landlord/tenant laws. The Michaels' own lawyers advised them that they were liable for millions of dollars and recommended that they settle the case and pay the money. Eventually the court ruled in favor of the tenants.

The Michaels then decided to cheat their tenants out of the court-ordered payment. First, they concealed from the court that their other 24 companies, not named in the suit, had also violated the same laws and should have been sued. Second, they had Horizon Management file for bankruptcy to scare the tenants into settling for a much smaller amount than the court had awarded them, rather than end up with nothing. Third, they began fraudulently moving assets out of Horizon Management and giving the money to themselves.

The Michaels falsely told the court that Horizon Management had the assets to pay the judgment, when in fact they had made sure that Horizon Management had only minimal assets and was essentially "judgment proof," meaning that there was not enough to pay the tenants what they had owed.

The bankruptcy court appointed a trustee, an impartial officer of the court, who investigated the situation. In 2016, as a result of that investigation, the trustee brought an action in federal court against the Michaels and their various companies, charging them with over 20 counts of fraud, breach of contract, violations of state and federal bankruptcy laws, self-dealing at their companies' expense, and dishonesty.

The trustee alleges that the Michaels looted Horizon Management to deprive the tenants of the money the court awarded them, and to enrich themselves; used their companies as empty shells to channel money to the family; and employed Jeffrey Michael as the lawyer for the companies, despite the fact that he was no longer licensed to practice law. The trustee asked the court to prevent the Michaels from hiding behind their shell companies and make them pay millions of dollars in damages out of the personal assets they had removed from Horizon Management. He also asked the court to award punitive damages, which are intended not to compensate creditors but to punish wrongdoers .

If the Trustee's allegations are true, it would certainly explain HRG's dogged pursuit of a large building: The Michaels, knowing their house of cards might collapse and leave them on the hook for millions of dollars, are desperately seeking another income stream. This time, they hope to inflict their schemes on the City of Evanston. Should we allow it?

THIRDIN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS — EASTERN DIVISION

In re:	)	
	)	Case No. 14-41230
HORIZON GROUP MANAGEMENT, LLC,	)	
	)	Chapter 7
Debtor.	)	
ANDREW J. MAXWELL, trustee for the estate of Horizon Group Management, LLC,	)	
	)	Hon. Timothy A. Barnes
Plaintiff,	)	
v.	)	Adv. Proc. No. 16-000394
	)	
DANIEL MICHAEL; DANIEL MICHAEL LIVING TRUST u/t/a/d March 4, 1998; MARTHA MICHAEL; JEFFREY MICHAEL; HORIZON GROUP I, LLC; HORIZON GROUP II, LLC; HORIZON GROUP III, LLC; HORIZON GROUP IV, LLC; HORIZON GROUP V, LLC; HORIZON GROUP VI, LLC; HORIZON GROUP VII, LLC; HORIZON GROUP VIII, LLC; HORIZON GROUP IX, LLC; HORIZON GROUP X, LLC; HORIZON GROUP XI, LLC; HORIZON GROUP XV, LLC; HORIZON GROUP XVI, LLC; HORIZON GROUP XVII, LLC; HORIZON GROUP XVIII, LLC; HORIZON GROUP XIX, LLC; HORIZON GROUP XX, LLC; HORIZON GROUP XXI, LLC; HORIZON GROUP XXII, LLC; HORIZON GROUP XXIII, LLC; HORIZON GROUP XXIV, LLC; AND HORIZON GROUP REALTY HOLDINGS, LLC,	)	
Defendants.	)	

THIRD AMENDED COMPLAINT

Andrew J. Maxwell ("Plaintiff" or "Trustee"), as Chapter 7 trustee for the estate of Horizon Group Management, LLC (the "Debtor" or "Horizon Management"), by and through his attorneys, BAUCH & MICHAELS, LLC, for his claims for relief

against Daniel Michael; Daniel Michael Living Trust u/t/a/d March 4, 1998; Martha Michael; Jeffrey Michael; Horizon Group I, LLC; Horizon Group II, LLC; Horizon Group III, LLC; Horizon Group IV, LLC; Horizon Group V, LLC; Horizon Group VI, LLC; Horizon Group VII, LLC; Horizon Group VIII, LLC; Horizon Group IX, LLC; Horizon Group X, LLC Horizon Group XI, LLC; Horizon Group XV, LLC; Horizon Group XVI, LLC; Horizon Group XVII, LLC; Horizon Group XVIII, LLC; Horizon Group XIX, LLC; Horizon Group XX, LLC; Horizon Group XXI, LLC Horizon Group XXII, LLC Horizon Group XXIII, LLC Horizon Group XXIV, LLC Horizon Group Realty Holdings, LLC (collectively, the "Defendants"):

I. NATURE OF ACTION

1. Daniel Michael ("Daniel") acquired, owned and managed a sizable portfolio of residential apartment buildings (the "Properties") through an enterprise of family trusts and affiliated management (the Debtor) and ownership entities (the "Horizon Group Companies"), commonly known as the "Horizon Realty Group" (hereafter described as the "Horizon Group Enterprise"). Prior to December 8, 2011, the Debtor and the Defendants did business as and held themselves out to the public as "Horizon Group Realty," an unregistered fictitious name. On December 8, 2011, Daniel caused the Debtor to adopt "Horizon Group Realty" as its legal assumed name. However, thereafter all other members of the Horizon Group Enterprise continued to do business as and held themselves out to the public as "Horizon Group Realty." The Debtor was an integral part of the Horizon Group Enterprise, serving as the exclusive managing agent for its business and properties. The Debtor was intended to, and did

in fact, function as a mere alter ego and instrumentality of Daniel and the Horizon Group Enterprise. Daniel was the Debtor's Manager and one of his trusts was the sole member. The Debtor employed Daniel's son, Jeffrey Michael ("Jeffrey"), as its chief operating officer ("COO") and general counsel. Although Daniel was the "manager" of the Debtor, he provided little or no services to the Debtor, was rarely on the Debtor's business premises, and spent approximately 6 months of the year at his Florida residence. Daniel delegated all his "responsibilities" as manager of the Debtor to Jeffrey. The Debtor paid Jeffrey salary and benefits that exceed the fair equivalent value of his services by at least 100% based on comparable market value of salaries and benefits of person performing comparable services for comparable companies. Although Jeffrey continued to hold himself as an attorney and general counsel of the Debtor, as of January 11, 2013, Jeffrey was not authorized to practice law in any jurisdiction.

2. Since most of the Properties were in the municipality of Chicago, Illinois, the ownership and management of the properties were subject to the Chicago Residential Landlord Tenant Ordinance ("RLTO"). During 2007-2009, the Horizon Group Enterprise committed multiple violations of the RLTO, which its own attorneys, Skadden, estimated as subjecting it to a liability of approximately $2.1 million. The Debtor and each of the Horizon Group Companies that owned one of the Properties at which a violation had occurred had joint and several liabilities for the RLTO statutory damages and attorneys' fees.

3. In June of 2009, a former tenant filed a "Class Action" against the Debtor relating to the RLTO violations. Daniel and Jeffrey believed that the Horizon Group Enterprise faced substantial liability in the Class Action. Rather than compromising the claims, as repeatedly recommended by its attorneys, the Horizon Group Enterprise pursued a "scorched earth" defense that dramatically increased the Debtor's liability for the tenants' attorneys' fees. Shortly after the filing of the Class Action, Daniel and Jeffrey commenced actions intended to prejudice the Debtor's creditors by, *inter alia*, attempting to limit the Debtor's recourse against other members of the Horizon Group Enterprise, failing to cause the Debtor to join the Horizon Group Companies as third-party defendants in the Class Action, and concealing and misrepresenting the financial condition of the Debtor and the Debtor's relationship with the Horizon Group Enterprise with the intent of inducing the class representative and Class Counsel not to join the Horizon Group Companies and Daniel as additional defendants in the Class Action.

4. After the Class Action court made a summary determination of liability against the Horizon Group Enterprise in July of 2011, Jeffrey aggressively sought the advice of numerous attorneys regarding a scheme to delay, hinder and defraud the Debtor's creditors by, *inter alia*, ultimately transferring over $2.5 million of the Debtor's assets to or for the benefit of insiders and filing a strategic Chapter 11 bankruptcy case. The Debtor did not receive reasonably equivalent value for these transfers to or for the benefit of insiders. The transfers were in fact and in law distributions to Daniel as an equity security holder of the Debtor and any services

that Daniel provided to the Debtor were not fair equivalent value equal for the distributions.

5. After suffering additional adverse rulings in the Class Action, including the certification of a class, the Horizon Group Enterprise entered a Settlement Agreement relating to the Class Action. In the Settlement Agreement, the Horizon Group Enterprise made representations regarding its financial ability to perform all its obligations under the Settlement Agreement, including its obligation to pay Class Counsel's attorneys' fee award and its obligation to pay the claims of Class Members. To cause the Class Action creditors to forbear from demanding the posting of the letter of credit required under the Settlement Agreement and to otherwise proceed with obtaining final approval of the Settlement Agreement by the Class Action court, the Horizon Group Enterprise procured from its bank a fraudulent written representation of the Debtor's financial ability to perform under the Settlement Agreement.

6. After Class Counsel filed fee applications seeking more than $870,000 in fees and costs on January 16, 2014, the Horizon Group Enterprise proceeded in seeking approval of the Settlement Agreement, while at the same time continuing to transfer the Debtor's assets to or for the benefit of insiders in transactions wherein the Debtor did not receive fair equivalent value and otherwise rendering it "judgment proof." After the Class Action court awarded substantial attorneys' fees, Daniel and Jeffrey caused the Debtor to continue to make additional transfers to or for the benefit of insiders in transactions in which the Debtor did not receive fair equivalent value.

7. For the express purpose of creating a "sabre" for use in settlement negotiations, Daniel and Jeffrey caused the Debtor to file a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The filing was in furtherance of a scheme to limit the liability of the Horizon Group Enterprise by selling the Debtor's assets and assigning its management agreements to an entity controlled by Jeffrey.

8. After the sale of the Debtor's nominal assets, the Court converted the Chapter 11 case to Chapter 7, and the Trustee was appointed. The Trustee pursued an investigation of the Debtor's affairs, which disclosed the factual basis for the claims asserted in this and related actions against the Horizon Group Enterprise and various initial transferees of the Debtor's assets.

9. The Trustee asserts that various members of the Horizon Group Enterprise are obligated by contract or otherwise for all the claims against the Debtor. The Trustee is also seeking to recover multiple fraudulent transfers and unlawful distributions. All the transfers and distributions were made with the actual intent to delay, hinder and defraud creditors and were also constructively fraudulent. The Trustee seeks to hold Daniel and Jeffrey liable for their extensive self-dealing and violations of law and seeks a forfeiture of all compensation that they received from the Debtor, including a forfeiture of all compensation paid to Jeffrey during the time he was not authorized to practice law in Illinois. The Trustee is also seeking a declaration that the members of the Horizon Group Enterprise were alter egos of the Debtor and that the corporate veil of the Debtor should otherwise be pierced to hold the members of the Horizon Group Enterprise liable for all claims against the Debtor

and the bankruptcy estate. Finally, the Trustee seeks to disallow, recharacterize and subordinate claims filed by the Horizon Group Enterprise against the estate because the claims are unenforceable against the Debtor under agreement and applicable law and the Horizon Group Enterprise engaged in inequitable conduct that was prejudicial to other creditors.

II. JURISDICTION

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 157 and 1334, because the proceeding arises under, arises in or is related to a case under the Bankruptcy Code. This is an action pursuant to 11 U.S.C. §§ 544, 548, 549 and 550, applicable non-bankruptcy law, including the Illinois Uniform Fraudulent Transfer Act, 740 ILCS 160/1 *et seq.,* and Illinois Limited Liability Company Act, 805 ILCS 180/1-1, *et seq.* (the "LLC Act"), and Fed. R. Bankr. P. 7001(1), (7), and (9) to recover property or money, to impose a constructive trust upon the property benefited with the proceeds of the Debtor's property; to obtain injunctive relief against certain transferees and benefited parties' dissipation of their property pending the resolution of this adversary proceeding; to determine that the corporate veil of the Debtor be pierced and that Daniel, the Daniel Trust, Jeffrey, Holdings and the Horizon Group Companies be held liable for all administrative expenses of and claims against the Debtor's estate as "alter egos" of the Debtor and members of a single "economic enterprise"; to disallow and subordinate certain claims against the estate pursuant to 11 U.S.C. §§ 502 and 510; and to obtain declaratory relief regarding the foregoing.

11. This is a statutory core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (C), (F), (H) and (O) with respect to Counts VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XIX, and XX.

12. This is a statutory non-core proceeding pursuant to 28 U.S.C. § 157(b) with respect to Counts I, III, IV, V, XVII, and XVIII.

13. To the extent that the bankruptcy court may not constitutionally or statutorily enter a final judgment on any counts of the complaint, the Trustee consents to the Bankruptcy Court's entry of final judgment on all counts. To the extent that any Defendant does not consent to the entry of final judgment on all or some counts of the complaint, the Trustee consents to the Bankruptcy Court entering proposed findings of fact and conclusions of law for transmittal to the United States District Court for the Northern District of Illinois, Eastern Division, on any counts upon which it is determined that the bankruptcy court may not enter final judgment.

14. Venue is proper in this district pursuant to 28 U.S.C. § 1409.

III. PARTIES AND SIGNIFICANT PERSONS

15. The Trustee is the duly appointed and acting trustee in this case under Chapter 7 of the United States Bankruptcy Code.

16. The Debtor is an Illinois limited liability company that was engaged in the residential real property management business as "sole and exclusive manager" for the hereinafter defined "Horizon Group Companies" and last maintained an office at 1946 West Lawrence Avenue, Chicago, Illinois.

17. Daniel is an individual and citizen of the state of Florida. Daniel is the sole manager of the Debtor and a person in control of the Debtor and the Horizon Group Enterprise.

18. Daniel is the trustee of the Daniel Michael Living Trust u/t/a/d March 4, 1998, an *inter vivos* Illinois trust (the "Daniel Trust"). The Daniel Trust is both the general and limited member of the Debtor. Notwithstanding the foregoing, Daniel holds himself out as the "owner" and "equity security holder" of the Debtor.

19. Martha Michael ("Martha") is an individual and a citizen of the state of Florida. Martha is Daniel's wife.

20. Jeffrey is an individual and a citizen of the state of Illinois. Jeffrey is the son of Daniel and Martha. Jeffrey was licensed as an attorney in Illinois and has a background in accounting and finance. He was employed as an associate attorney at several Chicago-based law firms, where he concentrated in corporate and real estate transactional law. As of May 2001, the Debtor employed Jeffrey as its COO and general counsel. Jeffrey was admitted to the Illinois bar on November 6, 1997. On January 11, 2013, the Illinois Supreme Court determined that Jeffrey was unauthorized to practice law in Illinois, and he was stricken from the Master Roll of Attorneys because he failed to comply with mandatory continuing legal education requirements. On February 28, 2013, Jeffrey elected, pursuant to Illinois Supreme Court Rule 756(a)(5), voluntary inactive status with the Illinois Attorney Registration and Disciplinary Commission ("ARDC"). After January 11, 2013, Jeffrey continued to act as general counsel of the Debtor before and during these bankruptcy proceedings

and was employed by the Debtor to provide legal services, notwithstanding his lack of authority to practice law in Illinois. Until the date of his Rule 2004 examination, Daniel did not know that Jeffrey was not authorized to practice law in Illinois after January 11, 2013. Notwithstanding, effective January of 2013, Daniel and Jeffrey caused the Debtor to effectively double Jeffrey's salary to $603,012.09 for 2013 and to $606,300.24 for 2014, exclusive of fully paid health insurance and other benefits, based in part because he was providing legal services to the Horizon Group Enterprise.

21. Horizon Group I, LLC is an Illinois limited liability company organized on or about November 26, 1997, that holds legal title to certain residential real property commonly known as 1938-50 West Lawrence, Chicago, Illinois.

22. Horizon Group II, LLC is an Illinois limited liability company organized on or about March 26, 1998, that holds legal title to certain residential real property commonly known as 901 West Argyle, Chicago, Illinois.

23. Horizon Group III, LLC is an Illinois limited liability company organized on or about March 26, 1998, that holds legal title to certain residential real property commonly known as 1901-09 West Wilson, Chicago, Illinois.

24. Horizon Group IV, LLC is an Illinois limited liability company organized on or about March 26, 1998, that holds legal title to certain residential real property commonly known as 722-726 West Barry, Chicago, Illinois.

25. Horizon Group V, LLC (formerly known as Lawrence Maplewood, LLC), Illinois Secretary of State file no. 03457532, is an Illinois limited liability company

organized on or about March 8, 2011, that may hold legal title to certain residential real property commonly known as 4759 North Maplewood, Chicago, Illinois. Horizon Group V, LLC is the successor to "Horizon Group V, LLC f/k/a Daniel Michael V, LLC," Illinois Secretary of State file no. 00179302, an Illinois limited liability company organized on March 26, 1998, which was involuntarily dissolved by the Illinois Secretary of State on September 10, 2010.

26. Horizon Group VI, LLC is an Illinois limited liability company organized on or about March 26, 1998, that holds legal title to certain residential real property commonly known as 5650 North Sheridan, Chicago, Illinois.

27. Horizon Group VII, LLC is an Illinois limited liability company organized on or about December 29, 1999, that holds legal title to certain residential real property commonly known as 910-18 West Dakin, Chicago, Illinois.

28. Horizon Group VIII, LLC is an Illinois limited liability company organized on or about November 9, 2000, that holds legal title to certain residential real property commonly known as 100 Fellows Court, Elmhurst, Illinois.

29. Horizon Group IX, LLC is an Illinois limited liability company organized on or about August 29, 2001, that holds legal title to certain residential real property commonly known as 525 West Oakdale, Chicago, Illinois.

30. Horizon Group X, LLC, f/k/a Horizon Development, LLC, is an Illinois limited liability company organized on or about March 8, 2000, that holds legal title to certain residential real property commonly known as 4242 North Sheridan, Chicago, Illinois.

31. Horizon Group XI, LLC is an Illinois limited liability company organized on or about December 12, 2003, that holds legal title to certain residential real property commonly known as 5017 North Wolcott, Chicago, Illinois.

32. Horizon Group XV, LLC is an Illinois limited liability company organized on or about December 17, 2003, that holds legal title to certain residential real property commonly known as 1828-38 West Lawrence, Chicago, Illinois.

33. Horizon Group XVI, LLC is an Illinois limited liability company organized on or about December 17, 2003, that holds legal title to certain residential real property commonly known as 1956-60 West Lawrence, Chicago, Illinois.

34. Horizon Group XVII, LLC is an Illinois limited liability company organized on or about October 7, 2004, that holds legal title to certain residential real property commonly known as 6401 North Sheridan, Chicago, Illinois.

35. Horizon Group XVIII, LLC is an Illinois limited liability company organized on or about March 2, 2005, that holds legal title to certain residential real property commonly known as 6040 North Sheridan, Chicago, Illinois.

36. Horizon Group XIX, LLC is an Illinois limited liability company organized on or about March 9, 2006, that holds legal title to certain residential real property commonly known as 6725 North Sheridan, Chicago, Illinois.

37. Horizon Group XX, LLC is an Illinois limited liability company organized on or about December 8, 2006, that holds legal title to certain residential real property commonly known as 4600 North Clarendon, Chicago, Illinois and 822 West Wilson, Chicago, Illinois.

38. Horizon Group XXI, LLC is an Illinois limited liability company organized on or about June 26, 2009, that holds legal title to certain residential real property commonly known as 4601-13 North Sheridan, Chicago, Illinois.

39. Horizon Group XXII, LLC is an Illinois limited liability company organized on or about May 3, 2011, that holds legal title to certain residential real property commonly known as 5050 North Sheridan, Chicago, Illinois.

40. Horizon Group XXIII, LLC is an Illinois limited liability company organized on or about July 9, 2012, that holds legal title to certain residential real property commonly known as 1605-31 Chicago Avenue, Evanston, Illinois.

41. Horizon Group XXIV, LLC is an Illinois limited liability company organized on or about November 22, 2013, that holds legal title to certain residential real property commonly known as 6119 North Kenmore, Chicago, Illinois.

42. The entities described in paragraphs 21 through 41 are hereinafter collectively referred to as the "Horizon Group Companies," and the residential real property they own are collectively referred to as the "Properties."

43. Horizon Group Realty Holdings, LLC ("Holdings") is an Illinois limited liability company organized on June 5, 2009. Daniel organized Holdings as part of an "estate plan" restructuring of the ownership of the Horizon Group Companies. Daniel is the sole manager of Holdings. On or about June 5, 2009, Daniel, as manager and on behalf of Holdings, and the original members of Holdings – the Daniel Trust (24.13%); Martha Michael ("Martha"), not individually, but solely as trustee of the Martha Michael Living Trust dated March 4, 1998 ("Martha Trust") (23.07%); Daniel

Michael, not individually but solely as trustee of David S. Michael Irrevocable Trust dated June 9, 2004 (16.60%); Jeffrey E. Michael, not individually but solely as trustee of the Jeffrey E. Michael Revocable Trust dated July 4, 2002 (16.60%); Daniel Michael, not individually, but solely as trustee of the Tracy H. Michael Irrevocable Trust dated June 9, 2004 (16.60%); David S. Michael, individually (1%); Jeffrey E. Michael, individually (1%); and Tracy H. Wolfe, individually (1%) – executed an operating agreement for Holdings. On or about February 15, 2010, Daniel, as manager of Holdings, executed an "Issuance of New Units in Horizon Realty Group Holdings, LLC and First Amendment to Horizon Realty Group Holdings, LLC Operating Agreement," pursuant to which the membership interests of Holdings were reallocated as follows: Daniel Michael & Martha Michael Irrevocable Trust dated December 1, 2009 (24.67%); Daniel S. Michael Irrevocable Trust dated June 9, 2004 (23.68%); Tracy H. Michael Irrevocable Trust dated June 9, 2004 (23.68%); Jeffrey E. Michael Revocable Trust dated July 4, 2002 (23.68%); David S. Michael (1.43%); Tracy H. Michael (1.43%); and Jeffrey E. Michael (1.43%). All the members of Holding are Daniel and Martha's trusts; Daniel and Martha's children; or Daniel and Martha's children's trusts. At or shortly after its organization, Holdings replaced Daniel as the manager of the then existing Horizon Group Companies and became the initial manager of all the Horizon Group Companies that were organized after Holdings' organization. At or shortly after its organization, Daniel transferred his membership interests in all the then-existing Horizon Group Companies to Holdings,

and Holdings became the initial member of all the Horizon Group Companies that were organized after Holdings' organization.

44. The Debtor, the Horizon Group Companies, and Holdings held themselves out to the public and did business under the assumed or fictitious names "Horizon Realty Group," "Horizon Group," and "Horizon."

45. The Debtor, Holdings, the Horizon Group Companies, Daniel, the Daniel Trust, and Jeffrey are hereinafter collectively referred to as the "Horizon Group Enterprise."

IV. HISTORICAL BACKGROUND

46. Daniel is an entrepreneur and real estate investor who began acquiring residential apartment buildings primarily in the municipality of Chicago, Illinois beginning in or about 1984. Daniel originally managed and held title to the apartment buildings individually or through land trusts. In 1987, Daniel started a "management arm" for his residential apartment building business. Prior to the organization of the Debtor and the Horizon Group Companies, Daniel did business individually under the fictitious names "Horizon Group" and "Horizon Realty" and filed actions relating to his residential real property business in the Circuit Court of Cook County under both his name and Horizon Realty.

47. Between 1997 and 2014, Daniel organized a separate limited liability company to be the fee owner of each of the Properties. Daniel transferred title of each of his individually owned Properties to a newly organized limited liability company and organized a new limited liability company to hold title to newly acquired

Properties. Over the course of three decades, the Horizon Group Enterprise acquired over 25 apartment buildings. In 2000, Daniel organized the Debtor to serve as the managing agent for the Horizon Group Companies and the Properties. After the organization of the Debtor and the Horizon Group Companies, the "Horizon Group Enterprise" did business under the "common law" trademark "Horizon Realty Group." Daniel and Jeffrey held the Debtor and Horizon Group Companies out to the public as a single integrated management and ownership enterprise that acquired, developed, managed and operated residential apartment buildings in Chicago and its suburbs under the Debtor's assumed name "Horizon Realty Group."

A. THE ORGANIZATION, OPERATING AGREEMENT, MANAGER, MEMBERS AND COO/GENERAL COUNSEL OF DEBTOR.

48. On November 9, 2000, Daniel organized the Debtor by filing the articles of organization with the Illinois Secretary of State. Thereafter, Daniel caused the Debtor to act as the exclusive agent and property manager for the Horizon Group Companies and the Properties from its inception in 2000 until the closing of the sale of its assets and the cessation of its operations on April 30, 2015.

49. On December 8, 2011, shortly after Jeffrey's consultation with a bankruptcy attorney regarding the Debtor, Daniel caused the Debtor to file an application to adopt the assumed name "Horizon Realty Group," pursuant to Section 1-20 of the Illinois LLC Act. The Debtor also later adopted the assumed name "The Merion." The Debtor, the Horizon Group Companies, and Holdings all operated under the "fictitious" name "Horizon Realty Group," which the Debtor formally adopted as

its assumed name on December 8, 2011. The Debtor and Horizon Group XXIII, LLC also operated under the assumed name, "the Merion."

50. On January 13, 2001, Daniel, as Manager of the Debtor, and Daniel as trustee of the Daniel Trust, as "General Member" of the Debtor, executed an "Operating Agreement" for the Debtor. A copy of the Operating Agreement is attached hereto and incorporated herein as Exhibit 1. The Debtor's Operating Agreement provides for two classes of membership: a general member and a limited member. On January 13, 2001, Daniel as trustee of the Daniel Trust, executed an "Acknowledgement and Consent" "to participating in and becoming a Limited Member of the Debtor" as defined in the Operating Agreement.

51. At all times relevant to this action, Daniel was the sole manager and was otherwise in control of Debtor. At all times relevant to this action, the Daniel Trust owned all the membership interests of the Debtor.

52. Beginning in May 2001, pursuant to Daniel's appointment and with Daniel's full authority and consent as Manager, the Debtor employed Jeffrey as its Chief Operating Officer and General Counsel. In this capacity, Jeffrey was responsible for and supervised day-to-day activities of the Debtor's agents, attorneys and employees relating to the operation of the Debtor's business and the Properties, including legal compliance and litigation. Daniel delegated all his duties and obligations as "Manager" of the Debtor and assumed an inactive role with respect to the management and operation of the Debtor. Since January 2013, the Debtor paid Jeffrey an annual salary of at least $600,000.00 for his services as COO and general

counsel, including the period after which Jeffrey was no longer authorized to practice law.

B. THE MANAGEMENT AGREEMENTS, OPERATING ACCOUNTS, AND FINANCIAL REPORTING.

53. The Debtor owned no real property and had no business other than providing financial and property management services to the Horizon Group Enterprise. At all times relevant to this action, the Debtor's assets were two motor vehicles, computer hardware and software, internet domain names, office equipment and furniture, the hereafter described Management Agreements, the assumed names "Horizon Realty Group" and "The Merion," and cash it held pending disbursement for payroll, office and overhead expenses and direct or indirect distributions to Daniel. The Debtor has represented to this Court that the fair value of all its assets has never been more than $75,000. The Debtor itself had no profit motive for its business, conducted no business for its own account, and solely conducted the business of the Horizon Group Enterprise. Daniel and Jeffrey intended that the Debtor would have "no real assets" and would be "judgment proof."

54. The Debtor functioned as a mere instrumentality for the Horizon Group Enterprise. The Debtor was the employer and paymaster for all employees of the Horizon Group Enterprise, including executive, accounting, maintenance, and onsite property management employees. The Debtor also leased office space from one of the Horizon Group Companies and paid the expenses of the central office that served as the principal place of business and record office of the Debtor, Holdings, the Horizon Group Companies, and the Horizon Group Enterprise. Conversely, the Horizon Group

Companies and Holdings had no employees, and all actions taken regarding the operation of their businesses were performed by the Debtor's employees.

55. On January 1, 2004, the Debtor and certain of the Horizon Group Companies entered the first of a series of written management agreements. On January 1, 2008, the Debtor and the then existing Horizon Group Companies, as "Owner," entered an *Amended & Restated Management Agreement*. A copy of the *Amended & Restated Management Agreement* is attached hereto and incorporated herein as Exhibit 2. On July 1, 2009, the Debtor and all the then existing Horizon Group Companies executed the *First Amendment to the Amended & Restated Management Agreement*, which added additional "Owner" entities as parties. A copy of the *First Amendment to the Amended & Restated Management Agreement* is attached hereto and incorporated herein as Exhibit 3.

56. The *Amended and Restated Management Agreement* and the *First and Second Amendments* (as described in ¶ 59 below) thereto were executed by Daniel as manager of the Debtor on behalf of the Debtor and Daniel as manager on behalf of each of the then existing Horizon Group Companies.

57. Pursuant to the *Amended & Restated Management Agreement*, the Horizon Group Companies, *inter alia*, appointed the Debtor as "sole and exclusive manager of Owner to manage the [Properties]," agreed to pay all reasonable expenses in connection with the Debtor's management services as approved by Owner, defined the relationship as that of "principal and agent," acknowledged that the Debtor was not required to "bear any portion of losses arising out of or connected with Owner or

the operation of the [Properties]," and agreed to pay the Debtor as compensation an amount equal to "any and all costs, expenses and fees incurred by [the Debtor] in connection with and allocable to the operation and management of the [Properties], including, without limitation, all labor, administrative and overhead costs and expenses incurred by [the Debtor]." Section 1.1, Article XII, and Article XIII.

58. On or about August 20, 2008, the Debtor established under its federal employer identification number a business checking account number XXX2969 (the "2969 Operating Account") at the Northern Trust Bank ("Northern Trust") as the primary operating account for the Horizon Group Enterprise. The Debtor deposited all rental income received from the Properties into the 2969 Operating Account and made disbursements to pay debt service, real estate taxes, and the operating expenses of the Properties; the operating expenses of the Debtor's management operation; and the personal expenses of Daniel and other Michael family members from the 2969 Operating Account. In the event of any deficiency, the Horizon Group Companies were obligated to advance a contingency reserve to the 2969 Operating Account in an amount sufficient to pay disbursements due and payable. *Amended & Restated Management Agreement,* Section 5.1.

59. On December 1, 2009, the Debtor and all the then existing Horizon Group Companies executed the *Second Amendment to the Amended & Restated Management Agreement*, which amended Article XIII, "Compensation and Expenses," and Article XVI, "Termination," of the *Amended & Restated Management Agreement*.

A copy of the *Second Amendment to the Amended & Restated Management Agreement* is attached hereto and incorporated herein as Exhibit 4.

60. On February 4, 2010, Holdings established a business checking account number XXXXXX4717 at the Northern Trust Bank (the "4717 Operating Account"). After an initial deposit and withdrawal of approximately $2.7 million, the 4717 Operating Account remained dormant with a nominal balance of less than $5,000 until November 2011.

61. The Debtor owned, operated, and managed the Horizon Group Enterprise's information technology systems, including the internet domain name www.horizonrealtygroup.com and accounting software programs. In 2010, Jeffrey was generally dissatisfied with the accounting system and financial reporting. On August 27, 2010, the Debtor executed an Application Hosting and Software License Agreement with Yardi Systems, Inc. ("Yardi"). On or about October 1, 2010, the Debtor implemented Yardi's proprietary "real property and asset management software," which offers modules for residential real property management and ownership enterprises (the "Yardi System"). The Yardi System records all transactions of the Horizon Group Enterprise in a single consolidated general ledger.

62. In September 2011, as described in more detail hereafter, Jeffrey determined that the Debtor and the Horizon Group Companies had substantial liability in the hereinafter described "Class Action." Jeffrey was considering bankruptcy for the Debtor and seeking legal opinions as to, *inter alia*, whether the Debtor's corporate veil could be pierced to hold Daniel liable for the claims asserted

in the Class Action and whether the Horizon Group Companies could be joined as additional defendants in the Class Action based on, *inter alia*, their statutory liability under the RLTO and as principal of the Debtor. In furtherance of a scheme to defraud creditors and to insulate the Horizon Group Enterprise from liability in the Class Action, Jeffrey caused the Debtor and the Horizon Group Companies to enter a *Second Amended & Restated Management Agreement* and adopted new accounting and cash management procedures to insulate the Horizon Group Enterprise from liability in the Class Action.

63. On or about October 25, 2011, shortly before the effective date of the *Second Amended & Restated Management Agreement* (*see* ¶ 64 below), Daniel and Jeffrey caused the 2969 Operating Account to be retitled in the name of Holdings and the 4717 Operating Account to be retitled in the name of the Debtor. Thereafter, the Debtor began using the 4717 Operating Account as its primary operating account for disbursements of Horizon Group Enterprise payroll, "management company" office expenses, and distributions to Daniel and Martha and the 2969 Operating Account as the Horizon Group Companies primary operating account for deposits of rental income from the Properties and direct Properties related disbursements such as mortgage and real estate tax payments. Notwithstanding the establishment of the two separate accounts, the Horizon Group Enterprise continued to use the 2969 Operating Account to pay certain of the Debtor's expenses and personal expenses of Daniel and his family members and the 4717 Operating Account to pay certain of the

Horizon Group Companies expenses and personal expenses of Daniel and his family members.

64. As of December 1, 2011, the Debtor and the Horizon Group Companies entered a *Second Amended & Restated Management Agreement*. A copy of the *Second Amended & Restated Management Agreement* is attached hereto and incorporated herein as Exhibit 5. The *Second Amended & Restated Management Agreement* was executed by Daniel as manager of the Debtor and Holdings as manager of each of the then existing Horizon Group Companies, by Daniel as manager of Holdings. In fact, Jeffrey was still consulting with a bankruptcy and creditors rights attorney regarding and reviewing drafts of the *Second Amended & Restated Management Agreement* as late as December 13, 2011, with the intent of limiting the Debtor's recourse against the Horizon Group Companies with respect to the Class Action. As of December 1, 2013, the *Second Amended & Restated Management Agreement* was amended solely to add additional Horizon Group Companies as parties. A copy of the *Amended & Restated Management Agreement* is attached hereto and incorporated herein as Exhibit 6.

65. Pursuant to the *Second Amended & Restated Management Agreement*, *inter alia*, each of the Horizon Group Companies, as "Owner," appointed the Debtor as their "sole and exclusive *operational* manager of the [Properties];" agreed to pay all reasonable expenses in connection with the Debtor's management services; defined the relationship as that of "principal and agent;" acknowledged that the Debtor was not required to "bear any portion of losses arising out of or connected with

Owner or the operation of the Properties;" and agreed to pay the Debtor as compensation for services provided "a fee in an amount equal to Owner's share of any and all costs, expenses (direct or indirect) and fees incurred by [the Debtor] on behalf of an Owner in connection with and allocable to the operation and management of the Properties owned by Owner and the operation of [the Debtor] that is not otherwise reimbursed to [the Debtor] as provided in this Agreement (the 'Component A Fee'). The Component A Fee shall include without limitation, (i) all cost, expenses, and fees, for material, labor and services rendered, (ii) administrative expense, labor and overhead costs incurred by [the Debtor] on behalf of an Owner, and (iii) those expenses incurred by [the Debtor] in relation to its own operation and the operation of each of the Properties owned by the Owners. . . ." Section 1.1, Article II and Article XI.

66. Pursuant to Section 3.1 of the *Second Amended & Restated Management Agreement*, the Debtor and the Horizon Group Companies agreed that the Horizon Group Companies shall establish a bank account for their own benefit in the name of Holdings under Holdings' federal tax identification number, which was described as the "Owner Account." The Debtor was authorized to act as agent with respect to "collecting gross rental receipts and other monies that shall be deposited into the Owner Account."

67. Pursuant to Section 3.1 of the *Second Amended & Restated Management Agreement*, the Debtor was authorized to establish bank accounts for its own benefit, provided that the Owner Account was to remain separate and distinct.

68. Pursuant to the *Second Amended & Restated Management Agreement*, the Horizon Group Companies were obligated to carry such insurance, including comprehensive general liability insurance, as the Debtor determined was necessary to protect the Horizon Group Companies interest in the Properties. Jeffrey was the individual employed by the Debtor who was responsible for determining the appropriate coverages and purchasing insurance on behalf of the Debtor and the Horizon Group Companies.

69. The Debtor's primary change in operating procedures under the *Second Amended & Restated Management Agreement* was the use of two operating accounts. The 2696 Operating Account and the 4717 Operating Account for the Horizon Group Enterprise. On or about November 15, 2011, the Debtor and the Horizon Group Companies began operating under the *Second Amended & Restated Management Agreement*. Pursuant to the new operating procedures, the Debtor deposited rents and disbursed debt service and direct property operating expenses for the Properties through the 2969 Operating Account. Pursuant to the new operating procedures, the Debtor paid payroll, management company overhead expenses, and the personal expenses of Daniel, Martha, and other family members through the 4717 Operating Account. The Debtor periodically transferred funds from the 2969 Operating Account to the 4717 Operating Account in amounts roughly equal to the disbursements from the 4717 Operating Account.

70. Notwithstanding the foregoing, the Debtor also directly paid what Jeffrey has characterized as "management company" expenses from the 2969

Operating Account, including the attorneys' fees and defense costs of the hereinafter described "Class Action." Regarding the Class Action defense attorneys' fees and costs, Jeffrey reviewed and approved payment of each of the law firm invoices from the 2969 Operating Account as an "Owner" expense. Jeffrey also approved the Debtor's payment of the $5,000 class representative incentive award and $40,000 of the Class Action settlement from the 2969 Operating Account. With respect to the attorneys' fees and the incentive award, the Debtor did not contemporaneously record any expenses in its ledgers or journals. With respect to the Class Action class settlement payment, the Debtor recorded the payment as a loan from owner to the Debtor and a litigation expense, the day after Daniel and Jeffrey first met with the Debtor's bankruptcy attorneys in September 2014. The Debtor also made direct disbursements from the 2969 Operating Account to third parties for personal expenses of Daniel and his family members, including but not limited to his grandchildren's summer camp expenses and the purchase of a new Lexus automobile for Martha.

71. The 4717 Operating Account was funded with transfers from the 2969 Operating Account on an as-needed basis. After November 2011, the Debtor was overdrawn periodically in its 4717 Operating Account and typically held cash only in amounts sufficient to satisfy outstanding payroll and payroll related obligations, such as health insurance and payroll taxes, and "distributions" to pay personal expenses of Daniel and his family members. Daniel intended that the Debtor's revenue and expenses would be roughly equal.

72. Daniel did not receive compensation from the Debtor. Daniel "basically, took whatever it is I needed to at the time. I didn't have a set salary." Daniel used the Debtor's assets to pay "day-to-day living expenses. My automobiles, my credit card payments." All of which were "personal expenses." Daniel did not review the Debtor's financial statements or make any other determination regarding whether it was appropriate to have the Debtor make distributions to him in the form of paying his personal expenses at the time of any such distributions. Daniel provided little or no services to the Debtor, was rarely at the Debtor's business premises, testified that he only spoke to Jeffrey about the Class Action less than once a year, and regarded himself as the "outside" man pursuing development opportunities for the Horizon Group Enterprise.

73. Sometime in 2011, the Horizon Group Enterprise retained the accounting firm of Kutchins Robbins & Diamond, Ltd ("KRD"), and its partner Mitchell Knopoff and associate Katie Demert, to act as tax return preparers for the Debtor, the Horizon Group Companies, Holdings, Daniel, Martha, and certain other members of the Michael family. Knopoff had a prior relationship with the Horizon Group Enterprise at a predecessor accounting firm. KRD's engagement with the Horizon Group Enterprise was limited to reviewing trial balances, making certain tax-based adjustments and preparing tax returns and schedules for Daniel, Martha, the Debtor, Holdings, and certain Michael family trusts.

74. KRD consolidated the Horizon Group Companies' income and expenses on Holdings' Form 1065, because after the 2009 restructuring of the Horizon Group Enterprise, Holdings was the sole common owner of the Horizon Group Companies.

75. For the tax year 2010, the Debtor's income and expenses were "erroneously" consolidated with those of the Horizon Group Companies and reported on Holdings' Form 1065. This error occurred because KRD assumed that the Debtor and the Horizon Group Companies were under the common ownership of Holdings and that the Debtor's income and expenses could be consolidated with the income and expenses of the Horizon Group Companies on Holdings' Form 1065. As reported to KRD, the Debtor's trial balance for 2010 reflected revenue of $3,071,383 and expenses of $3,071,383, or a net profit of zero.

76. In connection with the preparation of tax returns for the Horizon Group Enterprise, and in particular the Debtor and Daniel and Martha, KRD would remotely access the Yardi System and create trial balance reports of income and expenses. KRD reviewed the trial balances, made after the fact adjustments, which, *inter alia*, substantively treated nondeductible expenditures as distributions to Daniel and income to the Debtor. KRD allocated certain of the Debtor's "expenses" between "Schedule C," the Debtor's business income and expenses, and "Schedule A," the Debtor's payments of the real estate taxes on Daniel and Martha's personal residence, and their personal charitable contributions. KRD would then report the real estate taxes and charitable contributions on Daniel and Martha's individual Form 1040, Schedule A and the income or loss from the Debtor's operations on Daniel

and Martha's Form 1040, Schedule C. KRD also reviewed Daniel's draw account to determine whether any of the expenses were deductible, or whether they were required to be included as income or nondeductible expenses on Daniel and Martha's individual returns.

77. In reviewing the 2011 year-end financial statements (a year when the Debtor and the Horizon Group Enterprise primarily operated through the 2969 Operating Account while it was still in the name of the Debtor), Knopoff determined that distributions from the Horizon Group Enterprise to Daniel should be recorded as distributions from the Debtor, because of Daniel's sole ownership of the Debtor. In connection with the reconciliation of the Debtor's financial statements and the preparation of the Horizon Group Enterprises' tax returns for 2011, KRD reclassified expenditures for non–deductible personal expenses that were paid by the Debtor through the 2969 Operating Account, to Daniel's draw account with the Debtor:

- 11/22/2011: $379,598.67 Daniel loan owed to the Debtor reclassified as a distribution;
- 12/31/2011: $27,997.01 reclassify Daniel draws to the Debtor;
- 12/31/2011: $292,240.54 reclassify Daniel draws to the Debtor;
- 12/31/2011: $3,729.46 transfer Clark County taxes to Daniel's Debtor draw account;
- 12/31/2011: $2,979.63 transfer non-deductible expenses to Daniel's Debtor draw account; and

- 12/31/2011: $9,364.25 transfer Palm Beach taxes to Daniel's Debtor draw account.

78. For the tax years 2011 through 2014, the Debtor reported its income and expenses for federal income tax reporting purposes on Schedule C to Daniel and Martha's individual federal income tax return. The Debtor's gross income and net profit reported on the Schedule C for the tax years 2011 through 2015 were as follows:

Tax Year	2011	2012	2013	2014	2015
Gross Income	3,169,888	3,757,275	2,366,549	1,828,483	1,419,2266
Net Profit	370,298	481,560	836,862	(24,489)	(80,912)

79. With respect to the 2013 tax year, pursuant to Jeffrey's instructions, Knopoff added an additional $220,000 in management fees to the gross income of the Debtor that was not recorded in the Yardi system. Jeffrey provided Knopoff with no explanation for this increase in gross income. The Debtor's year-end 2013 and opening 2014 balance sheet reflected a "due from" asset in the amount of $220,000 that was not reflected on the 2014 year-end balance sheet.

80. All the net "profits" of the Debtor prior to the bankruptcy were paid out to or for the benefit of Daniel and Martha and treated as distributions to Daniel.

81. During the years 2012-2014, the 3717 Operating Account reflected the following deposits and withdrawals:

Year	2012	2013	2014
Deposits	3,687,938	4,703,335	5,216,897
Withdrawals	3,693,715	4,696,609	5,223,109

82. A comparison of reported Schedule C Income and Expenses to actual deposits and withdrawals reflects material discrepancies:

Tax Year	2012	2013	2014
Deposits per Bank Stmts	3,687,938.10	4,703,335.05	5,216,896.73
Schedule C Income	3,757,275.00	2,336,549.00	1,828,483.00
Difference	(69,336.90)	2,336,786.05	3,388,413.73

Tax Year	2012	2013	2014
Withdrawals per Bank Stmts	3,693,841.08	4,696,609.12	5,223,109.59
Schedule C Expenses	3,275,715.00	1,529,687.00	1,852,972.00
Difference	418,126.08	3,166,922.12	3,370,137.59

83. The discrepancies in reported taxable income and expenses to actual deposits and withdrawals relate to the Debtor and Horizon Group Enterprise's continuing commingling of funds by the Horizon Group Enterprise's use of the 4717 Operating Account to accept deposits of income and make disbursements for expenses that were reported on the books and records of other members of the Horizon Group Enterprise.

84. During the four years preceding the filing of the Debtor's bankruptcy petition, while the Class Action was pending, and while Jeffrey was actively seeking to insulate the Horizon Group Enterprise from the Class Action liability, Daniel used the Debtor, the 2969 Operating Account, and 4717 Operating Account as mere instrumentalities for the payment of his personal expenses in support of a lavish lifestyle, including, but not limited to, a monthly cash "allowance" for Martha; country club dues and expenses of himself and Martha; real estate taxes on his and Martha's Florida personal residences; summer camp fees for his grandchildren; legal

fees for personal estate planning services; personal expenses charged on Martha's credit cards, including jewelry, clothing, expensive restaurants, leisure travel, and other luxury items; insurance on his personal residences and personal assets; personal charitable and political contributions; and personal federal income tax liabilities to the Internal Revenue Service. Daniel also caused the Debtor to pay Jeffrey a salary, benefits and expense reimbursements far more than the fair market value of his services. Finally, Daniel caused the Debtor to pay the health insurance of Tracy Michael Wolfe (a/k/a Tracy H. Wolfe) ("Tracy"), Daniel's daughter, even though she had no relationship with the Debtor. A summary of the distributions and transfers to or for the benefit of Daniel, Martha, Jeffrey and other insiders is set forth on the attached Exhibit 7.

85. Daniel caused the Debtor to make such distributions while the Debtor was insolvent, in violation of the Operating Agreement and the Illinois LLC Act, with the actual intent to delay, hinder and defraud creditors of the Debtor, primarily the class representative and Class Counsel, and in violation of his fiduciary duties to the Debtor.

C. THE CLASS ACTION.

86. The management and operation of the Properties located in Chicago, Illinois was subject to the Chicago Residential Landlord and Tenant Ordinance ("RLTO"), Chicago Municipal Code, Title 5, chapter 12, *et seq*. The RLTO imposes certain obligations upon "managers" and "owners" of residential rental properties. The RLTO also provides statutory damages for violations of certain of its provisions, relating to the underpayment of interest on tenant security deposits and the failure

to provide certain safety disclosures to tenants – a refund of double the amount of the security deposit and $50 per notice violation. The RLTO also provides for awards of attorneys' fees to prevailing parties in cases involving violations of the RLTO. The owner, the Horizon Group Companies, and the managing agent, the Debtor, of the residential property are jointly and severally liable for violations of the RLTO without regard to fault.

87. Because of the potential liability on RLTO claims, prudent residential property owners and managers purchase professional liability insurance to protect themselves from potential damage claims for RLTO violations. Although such insurance was available in the marketplace at a reasonable cost, Jeffrey did not purchase such insurance for the Debtor and the Horizon Group Companies.

88. By the year 2007, the RLTO had survived constitutional challenges and a common practice evolved among more sophisticated Chicago residential rental property managers and owners to cease the practice of accepting security deposits on residential leases. Notwithstanding the foregoing, Daniel and Jeffrey continued to cause the Debtor and the Horizon Group Companies to require tenants to post security deposits in connection with residential leases.

89. Jeffrey was the individual responsible for supervising employees and procedures of the Debtor and the Horizon Group Companies and, in particular, compliance with the RLTO security deposit and porch safety disclosure obligations.

90. In 2007 through 2009, the RLTO required that interest be paid or credited on security deposits at a rate announced by the City Comptroller in the year

in which a particular lease commenced or was renewed. During the years 2007 through 2009, the Debtor and the Horizon Group Companies had a practice of paying or crediting interest in the year that the interest was paid or credited based upon the rate in effect at the time of payment or credit–not the rate in effect at the time of the commencement or renewal of the lease. In the years 2007 through 2009, this practice resulted in the underpayment of interest on the security deposits for more than 1,000 tenants, subjecting the Debtor and the Horizon Group Companies to joint and several liabilities in excess of $2.1 million, plus attorneys' fees and costs.

91. The RLTO also required that each tenant be provided with a written disclosure containing certain "porch safety" language specified in Section 5-12-170 of the RLTO. During the years 2007 through 2009, the Debtor and the Horizon Group Companies had a practice of using a master lease form that did not contain the required porch safety disclosure. This practice resulted in approximately 1,000 tenants not receiving the required disclosure, subjecting Horizon to a liability in excess of $60,000, plus attorneys' fees and costs.

92. Jeffrey failed to exercise reasonable care in overseeing the Debtor and the Horizon Group Companies' compliance with the RLTO, resulting in the underpayment of interest on certain tenant security deposits and the failure to deliver a compliant porch safety disclosure notice, which subjected the Debtor and the Horizon Group Companies to the RLTO liabilities.

93. On or about June 25, 2007, with an effective occupancy date of July 1, 2007, Amanda Bonnen ("Bonnen") entered into a residential lease agreement with

the Debtor for apartment 608 in a residential building located at 4242 North Sheridan Road, Chicago, Illinois 60613. At the time of the execution of the lease, Bonnen paid the Debtor a security deposit of $250.00. At the time of the execution of the lease, the Debtor failed to provide Bonnen with the required written "porch safety" disclosure.

94. The Debtor's lease form used in the Bonnen transaction contained a letter-head that stated, "Horizon Realty Group" "Real Estate Management Development." Bonnen's lease was executed by "Horizon Realty Group as managing agent for the legal owner. 7200."

95. The Debtor failed to calculate and credit interest due on Bonnen's security deposit at the correct rate, resulting in an underpayment of interest upon the first anniversary of Bonnen's lease.

96. On June 1, 2008, Bonnen renewed her lease for an additional year.

97. The Debtor failed to calculate and credit interest due on Bonnen's security deposit at the correct rate resulting in an underpayment of interest upon the second anniversary and termination of Bonnen's lease.

98. On June 24, 2009, Bonnen filed a class action complaint to recover damages for the Debtor's violations of the RLTO against "Horizon Realty Group, LLC" in the Circuit Court of Cook County, Illinois, case number 2009 CH 20365 (the "Class Action") and motion for class certification. Bonnen alleged claims under the RLTO and sought statutory damages and attorneys' fees. The Law Offices of Jeffrey S. Sobek, P.C. and Edward T. Joyce & Associates, P.C. (collectively, "Class Counsel") represented Bonnen and appeared for her in the Class Action. Class Counsel had

substantial experience and expertise in consumer and other class action litigation, including RLTO litigation.

99. On July 23, 2009, the Debtor filed a complaint against Bonnen, contending that Bonnen defamed the Horizon Group Enterprise in social media when she "tweeted" about concerns resulting from water-infiltration that occurred in her apartment at one of the Properties. *Horizon Group Management, LLC v Bonnen*, 2009 L 8675 (the "Twitter Lawsuit"). In its complaint, the Debtor admitted that it "conducts business under the name 'Horizon Realty Group,' 'Horizon Group' and 'Horizon' and is recognized as one of Chicago's premiere apartment leasing and management companies because it understands the importance of quality customer service and a well-maintained living environment." This Complaint attached a verification executed by "Jeff Michael" that states "Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that he is an authorized agent for *Horizon Realty Group, LLC*, the Plaintiff herein a limited liability company organized and doing business in the State of Illinois, that he had read the foregoing Verified Complaint and certifies that the statements set forth in this instrument are true and correct." (emphasis supplied).

100. On or about August 14, 2009, the Debtor retained Sanford Kahn & Associates, Ltd. ("Sanford Kahn") as legal counsel to defend the Class Action. Richard Christoff ("Christoff"), a litigation partner with Sanford Kahn was the attorney with primary responsibility for the case. Jeffrey caused the Debtor to retain Sanford Kahn,

because the firm was the Horizon Group Enterprise's counsel for eviction matters and because he believed it had expertise in landlord-tenant matters.

101. On September 22, 2009, the Debtor's insurance company denied coverage for the claims asserted in the Class Action. The Debtor did not contest the denial of coverage.

102. On October 13, 2009, Debtor filed a motion to dismiss the Class Action because "Horizon Group Realty, LLC" was not a legal entity and did not have the capacity to be sued.

103. On November 23, 2009, the state court granted the Debtor's motion to dismiss "without prejudice" and granted Bonnen leave to file an amended complaint.

104. On December 21, 2009, Bonnen filed her amended complaint naming "Horizon Realty Group, LLC, a misnomer for Horizon Group Management, LLC a/k/a Horizon Realty Group…." as defendant.

105. On January 27, 2010, the state court dismissed the Debtor's Twitter Lawsuit with prejudice.

106. On February 11, 2010, the Debtor filed a motion to dismiss the amended complaint in the Class Action contending that it was not a proper entity.

107. On May 17, 2010, Jeffrey prepared and submitted to the "Subcommittee Exploring RLTO Amendment" of the City Council of the City of Chicago a "statement concerning the RLTO abuses taking place in Chicago" (the "Statement"). In the Statement, Jeffrey represented that "Horizon Realty Group owns and manages approximately 1,300 apartment units in Chicago," thereby holding out the Debtor

and the Horizon Group Companies as a single enterprise. The Statement recites Jeffrey's version of the facts underlying the Class Action, including several vitriolic statements impugning the integrity of the plaintiff's consumer class action bar in general and Class Counsel. The Statement also contains Jeffrey's estimate of potential liability in the Class Action: "We estimate the case will linger in the judicial system for another 18-36 months and her attorney will generate $100k-$300k in attorney's fees…." "The plaintiff in this case stands to gain triple damages on her security deposit (approximately $750) plus a $100 fine for the alleged RLTO summary count, whereas her attorney stands to gain $100-$300k due to his ability to churn the case."

108. On July 30, 2010, the state court denied the Debtor's motion to dismiss the Class Action because the wrong entity had been joined and issued its opinion on the issue.

109. On August 26, 2010, the Debtor filed its answer and affirmative defenses to Bonnen's amended complaint.

110. On September 24, 2010, Class Counsel sent Christoff a settlement demand, including a demand to pay Class Counsel's reasonable attorneys' fees, as approved by the state court. Jeffrey rejected this offer because it did not fix the amount of Class Counsel's attorneys' fees.

111. As of November 14, 2010, Class Counsel had accrued fees and costs of more than $200,000, which were recoverable from the Debtor in the Class Action.

112. On November 23, 2010, the state court entered its order striking two of the three affirmative defenses asserted by the Debtor.

113. On December 17, 2010, the Debtor filed a motion for summary judgment in the Class Action.

114. On July 27, 2011, the state court entered its memorandum opinion and order denying the Debtor's motion for summary judgment, effectively holding that the Debtor and the Horizon Group Enterprise had violated the RLTO.

115. On August 17, 2011, Christoff sent a letter to Jeffrey advising him of the denial of the Debtor's motion for summary judgment, enclosing a copy of the state court's memorandum opinion, and advising that it was likely that the state court "will find in favor of plaintiff on the interest count as a matter of law because there is no dispute that interest on plaintiff's deposit was based on the rate in the year her leases ended." Christoff also advised Jeffrey that "[b]ased on the number of units managed by the company and the commonality of the legal questions involved, the judge may certify both of plaintiff's counts as class counts, upon which we will be obligated to respond to plaintiff's class interrogatories and requests for production of documents relating to all prospective class members."

116. On August 26, 2011, Jeffrey responded with a memorandum to Christoff enclosing an analysis of security deposit interest payments, and acknowledging the underpayment of interest on security deposits for various periods. Jeffrey concluded the memorandum by seeking "a conference call for next week with you, Sandy, Danny and myself to discuss our options and strategy."

117. On September 8, 2011, the state court entered its order granting Bonnen leave to file a second amended complaint.

D. JEFFREY ADMITS LIABILITY ON CLASS ACTION CLAIMS AND COMMENCES A SCHEME TO DELAY, HINDER, AND DEFRAUD CREDITORS.

118. By September of 2011, Daniel and Jeffrey believed that the Debtor and the Horizon Group Companies had substantial liability in the Class Action such that the fair value of the Debtor's liabilities exceeded the fair value of its assets. Jeffrey was also concerned that the Debtor's status as an agent and instrumentality of the Horizon Group Enterprise and the commingling of the Debtor and the Horizon Group Companies, Daniel and Martha's financial affairs could subject Daniel to personal liability in the Class Action under alter ego and veil piercing theories.

119. On or about September 19, 2011, Jeffrey contacted Mel Justak, a partner at the law firm of Reed Smith, LLP ("Reed Smith"). Reed Smith previously provided legal advice to the Horizon Group Enterprise in connection with the organization of Holdings and the 2009 ownership restructuring of the Horizon Group Enterprise. Jeffrey contacted Justak seeking legal advice on the defense of the Class Action and "asset protection," including a strategy of having the Debtor file for bankruptcy to insulate Daniel and the Horizon Group Companies from liability in the Class Action.

120. On September 19, 2011, Jeffrey had an email exchange with Justak and Christoff, wherein he sought to schedule a meeting between Jeffrey, Christoff and "B/K lawyer:" Stephen Bobo ("Bobo"), a Reed Smith bankruptcy partner.

121. On September 21, 2011, Jeffrey sent a follow up email to Bobo and Christoff attempting to firm up a meeting "to go over our options as it relates to Bonnen."

122. On September 23, 2011, Christoff sent a settlement offer to Class Counsel that offered Bonnen $5,000 and to have Class Counsel's fees submitted to the state court upon petition to which the Debtor could "respond," in consideration of Bonnen and Class Counsel withdrawing the motion for class certification.

123. On October 7, 2011, Jeffrey, Christoff and Bobo had a conference where they discussed the Class Action and bankruptcy options.

124. On October 10, 2011, Jeffrey forwarded the *Amended and Restated Management Agreement and Amendments* to Bobo to review and advise on "our potential asset exposure relating to the litigation."

125. On October 12, 2011, Bonnen and Class Counsel rejected the Debtor's September 23, 2011 settlement offer.

126. On October 13, 2011, Jeffrey had a telephone conference with Bobo wherein Bobo suggested that "in order to provide the best asset protection and isolation for [the Debtor], I should extricate the [Debtor] from my single fund operating account that I current [sic] use (the 'fund account')." Thereafter, Jeffrey and Reed Smith began implementing the change in operating procedures and the *Second Amended & Restated Management Agreement*, as more fully described in paragraphs 62-71.

127. On October 18, 2011, Jeffrey emailed Bobo with a copy to Daniel confirming that he had put in motion the creation of the two-account structure and requesting a referral for an experienced class action attorney to get an "honest assessment" of the probability of a class being certified. Jeffrey also requested a litigation recommendation whether to vigorously defend the Class Action, which Jeffrey would ultimately lose on the merits or "lay down" on the assumption that "our assets" are well protected and that the plaintiffs could not touch the fee owners' assets.

128. On October 21, 2011, Bobo sent an email to Jeffrey, with a copy to Daniel, confirming that the account separation was proceeding, acknowledging that the Debtor "has no real assets and operates on a break-even basis," suggesting that settlement overtures be made, advising of the insider preference risk of the asset protection plan, and recommending certain class action defense counsel within and outside of Reed Smith.

129. On October 26, 2011, Jeffrey had telephone conferences with Henry Pietrkowski ("Pietrkowski"), a Reed Smith litigation partner, regarding the Class Action, and Bobo, regarding bankruptcy options.

130. On October 27, 2011, Jeffrey sent an email to Pietrkowski confirming the prior day's telephone conference. Jeffrey copied Christoff and Bobo and attached Bonnen's amended complaint, Bonnen's September 24, 2010 settlement offer, Jeffrey's August 26, 2011 memorandum regarding security deposit interest calculations, and the Debtor's September 23, 2011 settlement offer.

131. In this email, Jeffrey admitted that "[o]ur preliminary review of our security deposit practice seems to indicate that there were multiple periods over the past 3 years where we were incorrectly calculating the interest…. We know that we erred on these two counts [incorrect security deposit calculation and outdated RLTO summary]. Jeffrey sought advice from Reed Smith on a legal strategy based on the hope that "we are 'judgement proof' [sic]" or that "there are no reachable assets." Jeffrey further admitted that the Debtor "has no assets." "[T]he management agreement [sic] merely has a checking account with little or no funds in it. It receives proceeds from the owners as the owners are billed for services rendered in order to cover expenses. We file an annual report for the LLC but that is about it." Jeffrey's "concern is whether the plaintiff would be able to pierce the corporate veil to reach its sole owner, Danny Michael." Jeffrey sought "an honest assessment of our likelihood of the veil not being pierced." Jeffrey concluded by seeking a meeting with Christoff, Pietrkowski, and Bobo.

132. On October 29, 2011, Pietrkowski sent an email to Bobo containing his preliminary analysis that "there is a high probability of a class being certified," and "they are unlikely to succeed" on the merits of their defense, and his conclusion "raises the stakes on the 'piercing the corporate veil' analysis…."

133. On or about November 1, 2011, Jeffrey and Christoff met with Pietrkowski and Bobo and provided advice, *inter alia*, regarding "asset protection" issues: the likelihood of the piercing of the corporate veil of the Debtor and the desirability of the Debtor filing a bankruptcy case, and "class action" issues:

probability of class certification and likelihood of success on the merits. Pietrkowski and Christoff advised Jeffrey that it was probable that a class would be certified and that plaintiff would prevail on the merits. Pietrkowski also identified an additional violation of the RLTO relating to the misuse of security deposits. Bobo advised Jeffrey that bankruptcy would not protect the Horizon Group Enterprise and that there was a risk of veil piercing based on, inter alia, common ownership and commingling of assets. Based upon this advice, Jeffrey did not pursue the "lie down" strategy or cause the Debtor to file a bankruptcy petition. Jeffrey caused the Debtor to continue to defend the Class Action aggressively.

134. On November 7, 2011, Bobo (in an email to Jeffrey) confirmed his prior opinion that bankruptcy would not help the Debtor and that it might lead to the appointment of a trustee and create a forum for the assertion of veil piercing claims.

135. On November 14, 2011, the Debtor filed a motion to certify the state court's summary judgment interpretation of the RLTO for interlocutory appeal.

136. On November 21, 2011, the state court entered its order striking the Debtor's first and second affirmative defenses.

137. On December 8, 2011, the Debtor filed an application to do business under the assumed name "Horizon Group Realty."

138. On December 9, 2011, the Debtor filed a motion to certify a second question for interlocutory appeal.

139. On December 9, 2011, Jeffrey and Justak had an email exchange regarding whether it was a problem that checks payable to Horizon Realty Group, the Debtor's dba, were being deposited into the 2969 Operating Account of Holdings.

140. On December 13, 2011, Reed Smith attorneys and Jeffrey were emailing revised drafts of the *Second Amended & Restated Management Agreement*, which Jeffrey later backdated to December 1, 2011.

141. On January 19, 2012, Jeffrey sent an email to Pietrkowski attaching Bonnen's Reply to the Debtor's motion to certify the summary judgment order for interlocutory appeal and requesting Pietrkowski' s thoughts on a footnote reference to Bonnen's discovery that the Horizon Group Enterprise had been soliciting releases from putative class members. In a reply email, Pietrkowski opined that "it is entirely possible that [the releases] will be considered void in light of the pendency of the class action." Pietrkowski also advised Jeffrey that "[g]iven how the judge has ruled against Horizon on the merits, you should seriously consider using a professional mediator to try and resolve the case on a class basis."

142. On January 19, 2012, the state court denied the Debtor's motions to certify questions for interlocutory appeal.

143. On January 23, 2012, Christoff sent a letter to Jeffrey advising him that the state court had denied the Debtor's motions to certify questions of law for interlocutory appeal and had set the matter for status on class certification. Christoff also advised Jeffrey that he had communicated Horizon's settlement offer to Class

Counsel, which included an offer to pay "either $75,000 as and for plaintiff's attorneys' fees or an amount set by the judge upon plaintiffs filing of a fee petition."

144. On February 8, 2012, Bonnen filed a motion to enjoin the Debtor's solicitation of releases from putative class members during the pendency of the class certification motion. Prior to this date, in an effort to "pick off" putative class members, the Horizon Group Enterprise began soliciting releases from putative class members by offering them an early refund of their security deposits, without disclosing accurate and complete information regarding the potential benefits of the Class Action.

145. On February 21, 2012, Christoff sent a letter to Jeffrey advising of the status on various of Bonnen's motions, Bonnen's non-binding settlement term sheet providing for payment to all identified class members and a *cy pres* for unclaimed funds; that the security deposit class has 1,500 members; that the porch disclosure class has at least 1,000 members; and Class Counsel's attorneys' fee demand of $350,000. Christoff concluded that based on the change in status, "it does not appear likely that this case will be settled." Christoff requested that Jeffrey advise him of his "intentions in this matter, as well as the status of the discussions with Reed Smith."

146. On February 27, 2012, Jeffrey sent an email to Christoff and Bobo, with a copy to Daniel, which updated Bobo on the status of the Class Action, including settlement discussions and requested an opinion on a strategy attributed to Ron E. Meisler ("Meisler"), an attorney at the law firm of Skadden Arps Slate Meagher & Flom LLP ("Skadden") and personal friend of Jeffrey, regarding sending payments of

interest shortages to tenants to eliminate the class claims and then having the Debtor file a bankruptcy petition in order to have the bankruptcy court determine Class Counsel's fees.

147. On February 27, 2012, Bobo emailed Pietrkowski and Justak requesting Pietrkowski's opinion on Meisler's mailing of checks to putative class members strategy and expressing concern that the proposed bankruptcy would be a two-party dispute subject to dismissal. Pietrkowski replied that same day to Bobo with research and opining that the mailing of checks to putative class members would not be an effective defense.

148. On or about February 28, 2012, Jeffrey and Bobo had a conference wherein Bobo advised that Meisler's buy-out and bankruptcy strategy would not be effective.

149. On February 28 and 29, 2012, Pietrkowski and Jeffrey had an email exchange in which Pietrkowski advised Jeffrey that the mailing of checks to putative class members was not a viable strategy and Jeffrey requested an opinion on whether the Horizon Group Companies could be joined as defendants in the Class Action. Jeffrey sought this latter opinion to decide whether to inform the plaintiff "that they are chasing a 0-asset entity."

150. On March 7, 2012, Justak sent an email to Jeffrey wherein he referenced prior emails between Pietrkowski and Jeffrey, and Michael Richman, another Reed Smith partner, "putting together a summary of his findings on the questions you posed in your recent call with [Bobo] and [Pietrkowski]." Jeffrey's questions related

to whether the Class Action complaint could be amended to join the Horizon Group Companies and Daniel as additional defendants.

151. On March 9, 2012, Jeffrey prepared and delivered a memorandum to Christoff reflecting the Debtor's analysis that up to 934 tenants with an average security deposit of $583 were underpaid during the class period.

152. On March 12, 2012, Justak, Jeffrey, and Christoff had an email exchange regarding Reed Smith's request for information regarding its opinion whether the complaint in the Class Action could be amended to join the Horizon Group Companies as additional defendants.

153. On or about April 11, 2012, the Debtor retained Skadden as substitute counsel to represent it in connection with the Class Action and other matters. The following Skadden attorneys provided services to the Debtor following the retention: David Pehlke ("Pehlke") (litigation associate); Albert Hogan III ("Hogan") (litigation partner); and Meisler (bankruptcy and restructuring partner).

154. On April 11, 2012, Skadden filed its Motion for Leave to Appear and appearance as additional defense counsel for the Debtor in the Class Action. After Skadden's appearance, Christoff had limited involvement and responsibility for the defense of the Class Action.

155. On April 19, 2012, Jeffrey sent Reed Smith an email instruction to stop work on the pending research project because "[w]e recently hired Skadden …. to help us fight the class action certification issue and they will be looking into this issues [sic] and the others." Pietrkowski advised the Reed Smith team that same day "I don't

think there's must [sic] Skadden can do to prevent class certification. The defense of the litigation can get very expensive…. My advice, which I have consistently given Jeff since our first meeting, is that they should mediate the dispute before a former judge and reach a compromise."

156. On April 20, 2016, Jeffrey as "principal" of the Debtor executed an engagement agreement with Skadden. The engagement agreement provided that the Debtor was the client and that the engagement was "limited to representing the [Debtor] and not its individual member or employees." The engagement agreement also provides that "Mr. Daniel Michael has agreed to pay the fees, charge and disbursements incurred in connection with the Engagement to the extent that the [Debtor] does not do so within 30 days after receipt of our invoices and Mr. Daniel Michael will countersign this engagement letter memorializing such agreement." Daniel signed an acknowledgement of the engagement letter.

157. On or about April 21, 2012, Reed Smith prepared and delivered to Jeffrey a research memorandum on the relation back issue which Jeffrey eventually forwarded to Skadden on March 6, 2013.

158. On May 9, 2012, the parties appeared before the state court on Bonnen's motion to compel discovery and to enjoin further solicitations of releases from putative class members. The state court granted Skadden leave to appear as additional counsel for the Debtor and continued Bonnen's motions for ruling on June 22, 2012.

159. On June 22, 2012, the state court enjoined the Horizon Group Enterprise from soliciting releases from putative class members.

160. On September 7, 2012, the state court approved an agreed class discovery sampling procedure.

161. On October 29, 2012, Jeffrey prepared and delivered a memorandum and analysis to Pehlke regarding the Debtor's random tenant sampling and findings of the underpayment of interest on security deposits.

162. On December 6, 2012, Jeffrey and Pehlke had an email exchange regarding Bonnen's memorandum in support of class certification. In these emails, Pehlke advised, *inter alia*, that "[a]ll in all the risk profile has not changed very much. We still have the fact that there are a number of violations and that the court may just decide to certify based on that, rather than apply the factors and see that the rate of individual distinctions and the need for case by case review and audit is too high to warrant class treatment." Jeffrey replied that he had reviewed the memo had comments and "cannot emphasize enough how much is riding on this motion and our defense to it."

163. On December 18, 2012, Jeffrey emailed Pehlke confirming a meeting of the same day and questioning, "how plaintiff's counsel can justify over $300,000 in attorney's fees…"

164. On January 31, 2013, the parties appeared before the state court for argument on class certification. The state court set the cause "for ruling on class certification" on February 22, 2013.

165. On February 22, 2013, the parties appeared before the state court for decision on the Motion for Class Certification. At this hearing, the state court orally announced that it would grant the Motion for Class Certification, ordered Bonnen to file a proposed amendment to the class definition time periods, and the "[parties]" to appear on March 13, 2013 . . . for status on the issuance of a written opinion, as requested by defendant."

166. On or before March 6, 2013, Jeffrey sought Skadden's opinion regarding whether the Horizon Group Companies could avoid liability in the Class Action by having the Debtor file a bankruptcy petition.

167. On March 6, 2013, Jeffrey emailed Pehlke copies of the *Amended & Restated Management Agreement* and the *First and Second Amendments* thereto, Holdings' Operating Agreement, and documents relating to Holdings ownership and valuation of the Horizon Group Enterprise, and provided a general description of the Horizon Group Enterprise.

168. On March 6, 2013, Jeffrey separately emailed a March 21, 2012 research memorandum from Reed Smith relating to whether Bonnen could amend her complaint to join the Horizon Group Companies as defendants in the Class Action. In this email, Jeffrey commented that "[i]t centered on relating-back and pulling in additional defendant after the fact, not BK as I originally thought. I would like to have a conversation with a BK attorney by next week so please let me know some referrals to speak to or people within Skadden to bounce the concept off of. . . ."

169. On March 12, 2013, at 1:11:02 CDT, Pehlke sent Jeffrey an email discussing the status of the state court's decision to certify a class, settlement discussions, Skadden's analysis of the Horizon Group Companies liability on the Class Action claims under the Management Agreements, and the bankruptcy option. With respect to the bankruptcy option, Pehlke concluded:

> I have also reviewed the various Horizon operating agreements [sic] to make an initial assessment of whether a bankruptcy of the management company could shield the ownership group from liability. I don't think that this strategy will work. I believe that under the Management Agreement the Owner . . . is liable for anything owed on these suits regardless of whether the management company is bankrupt. The Management Agreement establishes a principal-agent relationship with everything done for the benefit of the principal (the Owner). The principal is responsible for obtaining insurance to protect the Manager and must indemnify the Manager against claims for damages that results from the Manger's [sic] property management activities. Under this set up, the Owner does not appear to be shielded from any liability except to the usual extent provide by principal–agent law (e.g., principal can seek indemnity for any intentional torts the manager commits.). But even under the scenario, this would involve the Owner going after the Manager for indemnification, and not a passive shield between the Owner and the Agent. I also note that the signatory for both the Management Company and the Owner on the agreement is the same individual, Daniel Michael that fact might weigh against a court distinguishing between the Owner and the Agent in a meaningful way.

170. On May 12, 2013, Jeffrey forwarded the foregoing email to Daniel stating "Dad-read this and call me to discuss. I think we should consider settling. . .." Daniel replied to the email stating, "We need to create the impression that we're going the bankruptcy rout [sic]. He doesn't know about the management agreement; therefore, let David mention to him tomorrow that's where we're going. Unless he

comes up with a reasonable offer to settle this." Thereafter, Jeffrey and Daniel continued to exchange emails relating to scheduling a conference call with Pehlke. Pehlke later replied in an email to Jeffrey, copied to Meisler and Hogan, "Jeff, it might make sense for us to set up a day and time to talk with Danny where we on the Skadden side can walk through the various possible scenarios going forward and what the risks/costs associated with each scenario are. This would run from various settlement scenarios to running things out on appeal. We could also go over why we think the bankruptcy option, or even signally bankruptcy to the other side, will not generate any significant cover. . .." Upon information and belief, the Skadden attorneys subsequently had a conference call with Daniel and Jeffrey wherein they discussed their conclusions and recommendations as set forth in Pehlke's March 12, 2013 emails.

171. On March 13, 2013, the parties appeared before the state court for a status hearing on Bonnen's amended class definition and the issuance of a written decision on class certification. The state court set a hearing for April 12, 2013 for issuance of a written opinion on class certification.

172. On or before March 17, 2013, Jeffrey requested that Skadden perform an "exposure analysis" relating to the possible outcomes of the Class Action and the desirability of pursing a settlement of the Class Action.

173. On March 19, 2013, Pehlke emailed a memorandum to Jeffrey that "analyzes the exposure to Horizon from the remaining possible outcomes to the *Horizon* litigation." Pehlke suggested in his cover email that the memorandum could

"form the background for any conversation with you and your father regarding the current posture of the case." Based on the Debtor's own exposure analysis and information gathered during class discovery, Pehlke concluded that the maximum exposure to the Debtor was $1,160,000 on the interest class and $64,000 on the lease summary class, both without attorneys' fees. In the event that the Class Action was litigated to final judgment in favor of the plaintiff (Scenario 1), Pehlke estimated total exposure at $1,874,000, including an estimate of Plaintiff's legal fees of $500,000. In regard to attorneys' fees under this scenario, Pehlke advised that "the court would also likely grant plaintiff's counsel a high return on the claimed fees."

174. In the event that the Class Action were litigated to final judgment and the Debtor won on the class certification issue (Scenario 2), Pehlke estimated the total exposure at $401,260 including an estimate of Plaintiff's legal fees of $250,000. In regard to this scenario, Pehlke advised, "the primary remaining exposure in this scenario is legal fees. Judge Hall likely would award fairly significant attorney fees because she will view it as a close case litigated in good faith." Pehlke performed a risk adjustment on Scenarios 1 and 2 and estimated total exposure at $1,505,815, including an estimate of plaintiff's legal fees of $437,000.

175. Regarding a "Settlement Near Term" (Scenario 3), Pehlke advised the "[r]ecent discussions with Plaintiff's counsel indicates that a settlement may now be possible with several features that are beneficial to Horizon: . . . Attorney fees would be decided by the court." Pehlke estimated total exposure at $568,250, including plaintiff's attorneys' fees of $350,000. In conclusion, Pehlke advised that "[s]ettlement

in the near term offers good value when compared to the risks adjusted exposure of litigation to final judgment. At this point, fees for plaintiff's counsel are already essentially guaranteed at a significant amount (for the individual Bonnen claim alone) and will only continue to increase as litigation moves forward."

176. Skadden also generally advised Daniel and Jeffrey that the bankruptcy option was "high risk" and that they should settle the case promptly to avoid increasing liability for Class Counsel's attorneys' fees.

177. On April 12, 2013, the state court entered a decision and order granting Bonnen's request to certify two classes. Pehlke emailed a copy of the opinion to Jeffrey and explained the current schedule as keeping "the case on the slow track for right now."

178. On May 15, 2013, the Debtor filed a petition for leave to appeal the class certification order.

179. On July 12, 2013, the Illinois Appellate Court entered its order denying the Debtor's petition for leave to appeal the class certification order.

180. On August 30, 2013, the Illinois Appellate Court issued its mandate on its order.

E. SETTLEMENT OF THE CLASS ACTION

181. On August 26, 2013, Class Counsel sent a letter to Pehlke regarding the denial of the petition for interlocutory appeal of the class certification order, the "need to move the case forward by completing the class discovery process," and the potential for reopening settlement negotiations.

182. On August 16, 2013, Pehlke forwarded to Jeffrey Class Counsel's August 26, 2013 letter regarding the status of class discovery and settlement. Pehlke further observed that "[t]hey acknowledge that fees appear to be the primary sticking point but state that they would be willing to have the Court determine the fee amount. We have discussed this type of approach before and I still think it makes sense. The cost of settlement vs. a judgment are potentially significant and their attorneys' fees are only going to continue to escalate."

183. On September 26, 2013, Pehlke emailed Jeffrey regarding his discussion with Class Counsel and the current bid and ask on settlement. Pehlke concluded by stating: "All in all, I think this is a good deal given where the Court was likely headed with this case."

184. On September 30, 2013, Jeffrey emailed Pehlke with comments on the term sheet attached to the September 26, 2013, email and stated, *inter alia*, "Payment of Claims-I need at least 120 days. The amount is going to be significant. We do not have this kind of money sitting on hand. We need time to pay it out of operations." With respect to depositing the Class Award with the state court, Jeffrey proposed "a stand-by letter of credit for the balance from our bank." Finally, with respect to the attorney's fee payment, Jeffrey advised "[a]gain cash flow problem." At the time of these representations, Jeffrey knew that the Horizon Group Enterprise had no cash flow problems and could pay any awards in full immediately.

185. On October 14, 2013, Jeffrey forwarded to Daniel, with the instruction to "[r]ead this carefully and call me to discuss and review," Pehlke's email describing

an "acceptable frame work" for a settlement. In his email, Pehlke advised Jeffrey that "I think this is a favorable deal, especially given their success on class certification and how quickly they could get a merits ruling if they chose to go that route."

186. On October 24, 2013, Jeffrey sent an email to Daniel describing the "finalized settlement term sheet," wanting "to confirm it is acceptable to you before I have our attorney appear in court and tell the judge that the matter is settled," and advising that "[o]nce you approve, he will draft a formal settlement agreement that would need to be signed by both parties."

187. On November 8, 2013, Jeffrey forwarded Pehlke's email of November 7, 2013, to Daniel, attaching a draft settlement agreement, commenting on certain aspects of the settlement agreement, and, in particular, advising of the requirement of posting a letter of credit.

188. Pursuant to the Settlement Agreement, "Horizon" was required to post an irrevocable stand-by letter of credit for 75% of the possible class award, which the parties agreed was $845,000.

189. On or about November 15, 2013, Jeffrey contacted Martin Babbo ("Babbo") a vice president at Northern Trust, regarding obtaining the letter of credit.

190. On November 15, 2013, Babbo emailed Jeffrey a draft form of letter of credit and advised Jeffrey that he was "working on an approval of the $845,000 request."

191. On November 18, 2013, Babbo emailed Jeffrey and Daniel that Northern Trust would require Daniel to either post his personal cash or consent to a reduction

in his or other of the Horizon Group Companies' lines of credit as collateral for the Northern Trust's issuance of the letter of credit. Jeffrey replied to Babbo that he would discuss with Daniel.

192. On November 25, 2013, Pehlke sent an email to Class Counsel attaching Skadden's analysis that the Class Action members held potential claims totaling $1,050,244.56 with respect to the security deposit interest rate class, which was subject to doubling under the Chicago RLTO, or $2,100,489.12, and $77,100 which respect to the defective porch safety disclosure, or a total liability of $2,177,589.12, exclusive of liability for Class Counsel's attorneys' fees.

193. On November 25, 2013, Daniel executed a "Stipulation and Agreement to Settle Class Action," dated as of November 21, 2013, that resolved the Class Action (the "Settlement Agreement"). The Settlement Agreement was entered on behalf of "Horizon," which was defined as follows:

> b. Horizon: Horizon shall mean Horizon Group Management, LLC (a/k/a Horizon Realty Group), Horizon Realty Group, LLC, a misnomer for Horizon Group Management, LLC, a/k/a Horizon Realty Group, Horizon Group Realty Holdings, LLC, and any other name under which Horizon Group Management, LLC operates, and any affiliates, owners, officers, parents or subsidiaries thereof.

"Horizon" represented and warranted in the Settlement Agreement that "Horizon" "has the ability and funds necessary to perform all obligations required pursuant to this Agreement." *Id.* "Horizon" further acknowledged that this representation and warranty is "material to the Plaintiff and the Class' entering into this Agreement." *Id.* The Settlement Agreement required "Horizon" to pay the following: (a) to Bonnen, the class representative, an incentive award of $5,000; (b) to each eligible member of the Security Deposit Class a payment in the amount equal to their security deposit;

(c) to each eligible member of the Ordinance Summary Class $50; (d) the costs of settlement administration; and (e) the reasonable attorneys' fees and costs of Class Counsel in an amount to be determined by the state court, and payable in six monthly installments. The Settlement Agreement further provided that the attorneys' fees determined by the state court will not in any way reduce the settlement payments to class members. Finally, the Settlement Agreement provided that the state court's determination of the reasonableness of attorneys' fees and costs was binding on all parties, final, not subject to reconsideration, and not appealable. Daniel and Jeffrey made the representations regarding the Debtor's financial ability as part of their scheme to cause Bonnen and Class Counsel to forebear from joining the Horizon Group Companies and Daniel as defendants in the Class Action.

194. On November 25, 2013, the Debtor and Bonnen filed a Joint Motion for Preliminary Approval of Stipulation and Agreement to Settle Class Action, which attached and incorporated by reference the executed Settlement Agreement.

195. Because of perceived complexities in issuing the letter of credit, Babbo suggested that Jeffrey consider providing a "credit reference letter" in lieu of the letter of credit required by the terms of the Settlement Agreement. Babbo made this suggestion because he believed that the Horizon Group Enterprise had assets far more than the $845,000. Babbo had actual knowledge that the Debtor itself did not have sufficient liquid assets or lines of credit to satisfy an $845,000 obligation. Babbo had no actual knowledge of the assets of the Debtor, did not request a balance sheet

of the Debtor, and had never seen a balance sheet or a profit and loss statement for the Debtor.

196. On December 2, 2013, the state court entered an order granting preliminary approval of the Stipulation and Agreement to Settle Class Action.

197. On December 4, 2013, Babbo prepared a "draft" signed credit reference letter ("Credit Reference Letter"), which he emailed to Jeffrey. The Credit Reference Letter on its face was not qualified as a draft.

198. On December 4, 2013, Jeffrey forwarded the Credit Reference Letter to Pehlke for his "blessing."

199. The Credit Reference Letter concerning the "Judgments or Settlements involving Horizon Group Management, LLC" from the Northern Trust to the Clerk of the Circuit Court Cook County, Illinois provided in relevant part:

> Horizon Group Management, LLC is an established client of The Northern Trust Company. Please regard this letter as verification that Horizon Group Management, LLC has the means via liquid assets or lines of credit to quickly satisfy matters involving negotiated settlement or judgment equal to $845,000. Please feel free to provide this letter to those who would require the same verification.

Regarding this representation, Babbo assumed that the assets of the "Horizon Group/Michael family enterprise" were available to the Debtor to satisfy the settlement or judgment, but he did not disclose this assumption in the Credit Reference Letter. Babbo also believed that the Horizon Group Enterprise could pay "many times" the amount of the $845,000 negotiated settlement or judgment.

200. Jeffrey knew or should have known that the representations in the Credit Reference Letter that the Debtor itself had the means via liquid assets or lines

of credit to quickly satisfy matters involving a negotiated settlement or judgment equal to $845,000 were false. Jeffrey authorized Pehlke to deliver the Credit Reference Letter to the state court clerk and Class Counsel for the purposes of inducing Bonnen and Class Counsel to rely upon it and to forbear from demanding the posting of the irrevocable letter of credit as required under the Settlement Agreement.

201. On January 14, 2014, pursuant to Jeffrey's authorization, Pehlke forwarded the Credit Reference Letter to Class Counsel and the Clerk of the Circuit Court of Cook County.

202. Bonnen and Class Counsel relied upon the Credit Reference Letter in forbearing from demanding the posting of a letter of credit and proceeding with the state court's approval of the Settlement Agreement.

203. On January 16, 2014, Class Counsel filed fee petitions seeking an aggregate of approximately $870,000 in fees and expenses.

204. On February 4, 2014, Jeffrey sent an email to Pehlke, responding to Pehlke's email describing the fee petitions and the amounts sought, stating "Unreal. As expected I suppose."

205. On February 14, 2014, Jeffrey emailed Pehlke regarding the status of the fee opposition brief stating: "This concerns me as it can be extensive exposure. I want to fully understand our approach and ultimate goal and expectations."

206. On February 16, 2014, Pehlke sent an email to Jeffrey with an attached draft of the fee opposition brief and stated, *inter alia*, "The challenge here is that the

case has been litigated to the hilt throughout. Lot's [sic] of Motion practice and lots of billing opportunities." On February 17, 2014, Jeffrey forwarded Pehlke's email attaching the draft fee opposition brief to Daniel.

207. On or about February 21, 2014, Daniel had a conference with Pehlke to discuss "his options in the event that the ultimate decision on the fees is much higher than anticipated."

208. On February 26, 2014, Jeffrey and Pehlke had in email exchange in which Pehlke responded to Jeffrey's questions regarding arguments in opposition to the Class Counsel fee petition wherein Pehlke noted that most of Jeffrey's proposed arguments were not supported by law and that "it is generally accepted that it takes more time to prosecute than to defend a case," "the fact is that almost all of the motion practice is defense originated," and "[t]his type of argument only shines a light on Horizon's defense strategy as the source of all the work."

209. On or about February 28, 2014, Jeffrey advised Pehlke that he had spoken with Daniel regarding the attorneys' fees and that "we are fine with setting the upper limit in the brief at around $185k." Jeffrey and Daniel intended that this was the amount that the Horizon Group Enterprise would be willing to pay in attorneys' fees to settle Class Counsel's fees and expenses claim pursuant to the Settlement Agreement.

210. On March 6, 2014, Pehlke sent an email to Jeffrey regarding the draft order approving the settlement and advising Jeffrey, *inter alia*, that: "This does not affect the attorney fees-this is just to lock in the class resolution and release Horizon

from the pending claims and all future claims (the main point of all this). The attorney fee piece is reserved by this for final non-appealable adjudication by the judge at a separate hearing (set for April 10, but she may also continue it to another date as I noted). This final order looks fine but let me know if you have any issues or questions."

211. On March 13, 2014, the state court entered its final order approving the Settlement Agreement. At no time prior to the entry of the final order did the Debtor disclose to Bonnen, Class Counsel or the state court that it did not have the financial ability to perform under the Settlement Agreement.

212. On March 20, 2014, Jude Alagna, an accounting employee of the Debtor sent an email to Northern Trust requesting, subject to Jeffrey's approval, a wire transfer from "cash operating account ending in 2969" to Sobek's account to pay the Bonnen Incentive Award of $5,000. Jeffrey approved the transfer the same day from the 2969 Operating Account.

213. On or about June 10, 2014, the Debtor wired $40,000 to the Class Action claims administrator from the 2969 Operating Account. The Debtor did not contemporaneously record this transaction in its general ledger.

214. On or about June 10, 2014, Jeffrey began consulting with the law firm of Goldberg Kohn, Ltd ("Goldberg Kohn") regarding representation relating to "negotiation of your collective bargaining agreement with UNITE HERE, Local 450." On June 10, 2014, Michael Sullivan, a partner at Goldberg Kohn, sent "Jeffrey E. Michael, Horizon Group Management, LLC" a proposed "Agreement for Legal Representation." The proposed agreement provided that "Our client in this matter

will be Horizon Group Management, LLC, d/b/a North Shore Retirement Hotel ("Horizon")." Jeffrey executed the agreement as "COO" on behalf of the Debtor. On June 12, 2014, Sullivan agreed and accepted the agreement on behalf of Goldberg Kohn.

215. The services provided by Goldberg Kohn were solely for the benefit of Horizon Group XXIII, LLC, one of the Horizon Group Companies, which owns a senior living facility doing business as The Merion also known as North Shore Retirement Hotel at 1601 West Chicago Avenue, Evanston, Illinois. On August 8, 2014, the Debtor caused a check drawn on the 2969 Operating Account to be issued to Goldberg Kohn for $10,000. On August 15, 2014, Goldberg Kohn negotiated this check.

216. After its retention, Goldberg Kohn provided services in connection with the Merion/Unite Here matter. Commencing in October 2014 and continuing through at least March 2015, Goldberg Kohn sent monthly statements of its services and expenses to "Horizon Realty Group" "Attn: Jeffrey Michael, 1946 W Lawrence, Chicago, IL 60640." Neither the Debtor nor any other member of the Horizon Group Enterprise made any further payment to Goldberg Kohn.

217. Pursuant to the Settlement Agreement, Horizon was to pay class member awards by July 11, 2014. If Horizon had any objections to paying a class member's claim, the Settlement Agreement required it to make an objection to paying such claim by April 12, 2014. The Debtor interposed several objections to certain filed claims, which claims remain currently unresolved. As of the Petition Date, Class Action tenant claims in the amount of $36,725.27 remain outstanding. Claim No. 11.

218. On August 27, 2014, the state court entered its order on Class Counsel's fee petitions (the "Fee Order"). The state court granted Class Counsel's petitions in part, and awarded Class Counsel the requested fees, less a 15% discount to account for any inefficiencies by Class Counsel and the Debtor's other criticisms. The Fee Order is a judgment in favor of Class Counsel and against the Debtor in the amount of $818,472.72 in fees and $14,982.60 in costs, for a total award of $833,455.32. Of that amount, the state court awarded $482,228.77 to Edward T. Joyce & Associates, P.C., and $351,226.55 to the Law Offices of Jeffrey S. Sobek, P.C.

219. On August 28, 2014, Jeffrey forwarded a copy of the Fee Order to Daniel.

F. THE CHAPTER 11 BANKRUPTCY CASE, ASSET SALE, CONVERSION TO CHAPTER 7, AND TRUSTEE'S APPOINTMENT.

220. Despite at least two separate law firms advising him that the Debtor's bankruptcy filing was not an effective option for the Horizon Group Enterprise, Jeffrey sought a bankruptcy firm referral through Meisler. On the evening of August 28, 2014, one day after the state court adjudicated Class Counsel's fees, at approximately 7:00 p.m., Daniel, Jeffrey and Meisler attended a meeting with Robert Fishman ("Fishman"), a partner at Shaw Fishman Glantz & Towbin, LLC ("Shaw Fishman"), a law firm with substantial experience and expertise in bankruptcy matters.

221. After the August 28, 2014, meeting, at approximately 11:14 p.m., Meisler emailed Jeffrey advising that he was glad to have joined Jeffrey and Daniel that night and suggesting that in addition to the documents Fishman had requested at the meeting that Jeffrey consider sending Fishman, *inter alia*, any documents that

you think could "create a colorable claim (alter ego, assumption of liability/indemnification) against any other entity or person (e.g. your Dad). While there is some cost associated with his review, you are better off knowing about the problem in advance."

222. On August 28, 2014, Jeffrey sent emails to Fishman with a copy to Meisler, *inter alia*, attaching a copy of the Debtor and Horizon Group X, LLC's organizational documents and operating agreements, a master lease form, and the amended complaint in the Class Action. Jeffrey acknowledged that the Debtor acted as landlord and as agent for the fee owners of the Properties. Jeffrey promised to provide a copy of the Debtor's current management agreement as Fishman had requested at the meeting.

223. On August 28, 2014, Meisler sent an email to Fishman attaching the Fee Order and the Credit Reference Letter.

224. On August 29, 2014, Jeffrey sent an email to Fishman, with a copy to Knopoff, stating that "it appears that draws to Danny from 2012, 2013, and 2014, YTD were $617,717, $469,861 and $191,195." Jeffrey attached reports of Daniel's draw account to the email. These draw reports included distributions that Daniel had received from the Debtor and other members of the Horizon Group Enterprise, but were not an accurate or complete listing of all transfers from the Debtor and the Horizon Group Enterprise to or for the benefit of Daniel and other insiders.

225. On August 29, 2014, Jeffrey and Meisler had a further email exchange regarding the prior day's meeting where Jeffrey advised that he hoped that "the BK

can be enough of a sabre to make a difference." Meisler advised Jeffrey, *inter alia*, "don't make any further dividend/distribution to your Dad from the management company. . . ." Jeffrey also confirmed to Meisler that he had discussed "potential fraudulent conveyance risk to [Daniel]" with Fishman. Notwithstanding Meisler's advice, Daniel and Jeffrey continued to cause the Debtor to make additional dividend/distributions to Daniel and Martha.

226. On September 2, 2014, Jeffrey, Daniel, and Meisler attended a second meeting with Fishman to discuss the Debtor filing a petition under the Bankruptcy Code. Jeffrey and Daniel's intent in having the Debtor file a bankruptcy case was to delay, hinder, and defraud the unpaid class members and Class Counsel by imposing additional costs and expenses upon them and by delaying post-judgment collection proceedings against the Horizon Group Enterprise in the state court. Jeffrey and Daniel intended that the Debtor would sell its assets and assume and assign the Management Agreements to a related party for a nominal amount and assert that such transactions cut off any claims against the Horizon Group Companies and Daniel. Jeffrey and Daniel also intended to transfer all the Debtor's financial documents and records to the related party for the purposes of frustrating any investigation into the Debtor's financial affairs. Jeffrey and Daniel intended to use the bankruptcy case for the strategic purpose of negotiating a reduction to the Fee Order.

227. On September 3, 2014, the Debtor made an entry in its general journal recording the June 10, 2014, transfer of $40,000 from the 2969 Operating Account to

the class action claims agent as a "loan" from owner to the Debtor. On September 3, 2014, Jeffrey sent an email to Fishman with a copy to Daniel confirming that the Debtor made payment from the 2969 Operating account and that he had "booked" it as a loan from owner.

228. On September 3, 2014, Jeffrey, Daniel, Fishman, and Mark Radtke ("Radtke"), another attorney at Shaw Fishman, had a one hour telephone conference wherein they discussed "facts, issues and options" and, as reported in Jeffrey's email to Meisler the same day, "discussed the 4-5 'not so good facts' relating to BK efforts;" Daniel directing Fishman to call Joyce and "let him know that BK was coming to see what his response would be;" Daniel giving Fishman settlement authority up to $150,000; filing bankruptcy on Friday; and "the Northern Trust letter and the position it puts our banker in."

229. On September 4, 2014, Jeffrey emailed Meisler requesting thoughts on Fishman's request for a $100,000 retainer and stating, "I think it is a bit much, especially if we are just sabre rattling and given the small size of our debtor's assets, etc."

230. On September 5, 2014, Daniel or the Daniel Trust requested and obtained a $100,000 advance on Daniel's personal Northern Trust line of credit, loan account number XXXXXX5359, secured by Daniel's Illinois personal residence. The advance was deposited into the 4717 Operating Account and wired the same day to Shaw Fishman as its retainer for future services in connection with the Debtor's

bankruptcy. The $100,000 retainer that the Debtor paid Shaw Fishman exceeded the fair value of the Debtor's assets.

231. On September 5, 2015, Jeffrey emailed Radtke attaching a list of creditors and noting, *inter alia*, "I listed Daniel Michael and 2 Trusts. They are the borrowers on a credit line which we used to lend funds to the management company relating [to] the BK filing."

232. On September 5, 2014, Jeffrey emailed Radtke, falsely advising him that the 2969 Operating Account always was in the name of Holdings.

233. On September 6, 2014, pursuant to the Settlement Agreement, the first of the six Class Counsel fee installment payments was due.

234. On or about September 7, 2014, Fishman had a telephone conference with Edward T. Joyce ("Joyce"), one of Class Counsel, and advised that payment of the Fee Order presented a "problem" for the Debtor. Joyce and Fishman agreed to a standstill agreement during negotiations relating to the payment of the amounts due under the Fee Order. Fishman also advised Joyce that he did not believe that a Chapter 11 case would solve the Horizon Group Enterprise's problem with the Class Action, but that the clients were prepared to have the Debtor file a bankruptcy petition anyway.

235. On September 10, 2014, Joyce sent an email to Fishman scheduling a time to discuss settlement, but expressed concern that Daniel might engage in interim conduct designed to defeat enforcement of the Fee Order.

236. On September 11, 2014, Fishman had an email exchange with Daniel wherein Fishman sought to obtain settlement authority with respect to Fishman's anticipated settlement conference with Joyce. In response, Daniel advised Fishman that, "[m]y starting number is $300k below zero. Get his number." Fishman advised Daniel that such a "complete low ball offer" would not be helpful in resolving the matter and that Fishman would not accept such an offer if he were in Joyce's shoes. In response, Daniel replied "[t]his is my starting number, my next number is 11." Fishman replied that there would be no negotiation with such an approach and that Class Counsel would begin to attack the Horizon Group Companies and Daniel. Daniel replied:

> I respect your advise [sic] and ability as an attorney. However, if I'm going to play this hand, I'm going to be the only dealer. Mr. Joyce has to convince me not to file for bankruptcy, not the other way.
>
> * * *
>
> I'm already mentally ready to file, and fight the fight. It's your job to convince him to come up with a number that will stop me from filing. I'm dealing the cards!!!!!
>
> Daniel Michael
> Horizon realty group

237. On September 12, 2014, Fishman responded to Joyce's September 10, 2014 email advising Joyce that Fishman would not engage in such a "play of the type [Joyce] described."

238. On September 13, 2014, Joyce sent an email to Fishman advising that he was not worried about Fishman but that he was worried about Daniel, as Daniel had already misled Class Counsel.

239. Between the date of Joyce's September 10, 2014 email and the Petition Date, Daniel and Jeffrey transferred more than $170,000 from the Debtor to or for the benefit of insiders, including Daniel, Martha, and Jeffrey.

240. On September 15, 2014, Meisler and Fishman had a series of email exchanges in which Fishman requested Meisler's assistance in persuading Daniel to engage in realistic settlement negotiations. Meisler replied to Fishman that he had spoken with Jeffrey, that he had advised Jeffrey to have Daniel retain personal counsel to advise him on the risks, and that he had made no progress on settlement.

241. On September 16, 2014, Fishman had conferences with Jeffrey regarding the "situation and personal representation" and Daniel regarding the "situation."

242. On September 17, 2014, Fishman and Daniel Zazove ("Zazove"), a bankruptcy partner at the law firm of Perkins Coie, LLC, Daniel's personal attorney, had a telephone conference and discussed a conference between Zazove and Daniel regarding settlement.

243. On September 18, 2014, Fishman emailed Joyce advising that he had made some progress with the client and that he would call the following week after he returned from a trip.

244. On September 24, 2014, Fishman had a telephone conference with Joyce wherein he, on behalf of the Debtor, offered $150,000 to settle Class Counsel's claim under the Fee Order. Joyce, on behalf of Class Counsel, rejected the offer. Fishman

later advised Daniel and Jeffrey of the conference and the rejection of the settlement offer in an email of the same day.

245. On September 24, 2014, Class Counsel emailed Fishman a request for certain financial information of the Debtor, which Fishman forwarded to Daniel and Jeffrey, commenting that such a request was "expected and reasonable" and that Class Counsel would not agree to a sizable discount without due diligence.

246. On October 2, 2014, Fishman, Radtke, Class Counsel and Jeffrey had email exchanges regarding Jeffrey providing the financial information requested by Class Counsel.

247. On October 7, 2014, Radtke sent an email to Jeffrey inquiring on the status of the production of the financial information and expressing concern that the delay in production could precipitate action by Class Counsel. Jeffrey responded that he was waiting on his accountant for some information.

248. On October 14, 2014, Jeffrey emailed additional and revised financial information regarding the Debtor to Shaw Fishman.

249. On October 16, 2014, Jeffrey, Daniel, Fishman, and Radtke had a conference call to discuss the financial information.

250. On October 16, 2014, Radtke emailed Class Counsel attaching a draft form of management agreement and apologizing for the delay in producing the financial information.

251. On October 27, 2014, the Debtor made an entry in the general journal recording the September 5, 2014 transfer of $100,000 by Daniel or the Daniel Trust to 4717 Operating Account as a loan from "owner" to the Debtor.

252. On October 30, 2014, Radtke emailed the Debtor's balance sheet and income statement to Class Counsel.

253. On or about November 12, 2014, Class Counsel advised Fishman that it was terminating the standstill agreement because of, *inter alia*, the Debtor's disclosures that it had made substantial transfers to or for the benefit of Daniel and his family members during the pendency of the Class Action.

254. On November 13, 2014, Fishman had a "lengthy and detailed discussion with [Jeffrey and Daniel] re the pros and cons of filing Chapter 11."

255. On November 13, 2014, Jeffrey emailed Radtke advising him that: "Danny confirmed that he would like us to file."

256. On November 14, 2014 (the "Petition Date"), the Debtor filed its voluntary petition for relief under Chapter 11, Title 11 of the United States Code, in the United States Bankruptcy Court for the Northern District of Illinois.

257. The Debtor operated its business and managed its property as a debtor in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

258. On November 19, 2014, Krystyn Jaber ("Jaber"), an accounting employee of the Debtor, sent an email to Radtke asking: "Should we be worried that it is showing dba The Merion and dba Horizon Realty Group on the bankruptcy filing?"

259. On November 19, 2014, Jaber also sent an email to Radtke requesting instructions regarding, *inter alia*, "Country Club Payment for owner of company."

260. On November 19, 2014, Jeffrey exchanged emails with Radtke regarding a letter to vendors announcing the Chapter 11 filing and requesting instructions regarding managing vendors and employees and vendors that were paid directly from the 2969 Operating Account.

261. On November 20, 2014, Alagna emailed Marc Reiser ("Reiser"), another Shaw Fishman attorney, a memorandum relating to the Debtor's payroll and employee benefit plans, including health insurance. With respect to health insurance, the memorandum reflected employee contributions and an employer subsidy for non-insider employees. With respect to "Jeff Michael & Tracy Michael Wolfe," the memorandum provided "[t]he employer pays the full premium for both Jeff Michael and Tracy Michael Wolfe. Since the monthly premiums for Jeff and Tracy are $1,405.39 each, the annual premiums for both are $33,729.36. The cost per payroll is $1,297.28 ($33,729.36/26)." Tracy is Daniel's daughter and Jeffrey's sister. Tracy had no relationship with and, in particular, was not an "employee" of the Debtor.

262. On November 20, 2014, the Debtor filed motions with the Court requesting orders relating to the payment of prepetition wages and other administrative matters. In these and subsequent motions, the Debtor represented that the Fee Order was significantly higher than what it anticipated at the time it entered the Settlement Agreement, that it did not have the ability to pay the Fee Order, and that the Chapter 11 was filed for purposes of preserving its operations

and its value as a going concern. These representations were false and were known to be false by Daniel and Jeffrey. Daniel and Jeffrey were repeatedly advised by their legal counsel that the Fee Order was likely to be substantial because of their scorched earth defense tactics. Jeffrey admitted that the Fee Order award was "as expected." The Settlement Agreement required the posting of a letter of credit in an amount that the parties agreed was $845,000. The Horizon Group Enterprise had sufficient liquid assets on hand to pay the Fee Order in full. Daniel and Jeffrey knew that the Debtor's management business had no value and that the Chapter 11 was filed for the sole purpose of protecting the assets of the other members of the Horizon Group Enterprise by delaying and hindering the enforcement of the Fee Order against the Horizon Group Enterprise in order to negotiate a discount of the Fee Order through "sabre rattling." The motions did not disclose that the Debtor was paying Tracy's health insurance premiums, even though she not an employee of the Debtor and no legal justification existed for the Debtor to make such payments.

263. On November 20, 2014, Jeffrey exchanged a series of emails with the Shaw Fishman attorneys requesting that they "bless" a form of notice that Jeffrey wanted to send to vendors and other third parties who did business with the Horizon Group Enterprise. Jeffrey's notice contained the following provision:

> I want to emphasize that most vendors that "Horizon" does business with do business with our holding company Horizon Group Realty Holdings, LLC which is *not* a party to the bankruptcy matter and is not affected by the filing in any manner. As a point of distinction, the bankruptcy filing pertains only to the Horizon *management* company and not any of the separate and distinct companies that own the various Horizon properties or the holding

> company. Each of those companies are separately and adequately capitalized and will continue to do business unobstructed by the matter.

264. Both Shaw Fishman attorneys expressed concern regarding Jeffrey's choice of language in the notice. Radtke responded: "This notice looks OK to me, but I am wondering if we need to scale back the paragraph where he distinguishes the various entities. Thoughts?" Fishman responded: "I share your concern. While I understand the point he wants to make, this language adds to the notion that the lines between the entities are not well understood or appreciated."

265. On November 20, 2014, the Debtor identified Claudia Guzman-Lopez as an employee of the Debtor holding a priority wage claim and sought authority to pay such claim. On November 26, 2014, this Court authorized the Debtor to pay Guzman-Lopez's wage claim. As described hereafter, Horizon Group XXI, LLC later filed an action against Guzman-Lopez for alleged misconduct committed by Guzman-Lopez relating to her service as a property management for the Horizon Group Enterprise asserting that she was its employee.

266. On or about December 7, 2014, Daniel forwarded to Babbo a link to a December 6, 2014, Crain's Chicago Business article discussing the Debtor's bankruptcy filing. Several days earlier, Daniel telephoned Babbo and advised him, *inter alia,* that the Crain's article was forthcoming, that Daniel got caught up in a suit run by a sleazy lawyer who prevailed with a large judgment for attorneys' fees of nearly 990k, awarded by one of Cook County's finest; that the affected class of tenants only received $40k; that the tenant that started it all was only shorted $1.40; that the good news was that the attorney thought he was suing Holdings, but that he had sued

the management company, which is really only an office, no real assets; that judgment was structured so the attorney could not refile the case; Daniel threw the management company into bankruptcy; the lawyer has called seeking to settle for a lower amount and that once Daniel settles he will take the management company out of bankruptcy.

267. On December 7, 2014, Babbo prepared an email summarizing this conversation with Daniel, which he forwarded with the Crain's article link to several other Northern Trust officials.

268. On or about December 10, 2014, the Debtor's attorneys were instructed *not* to include in the schedules "the entities that paid for the legal services as creditors." Daniel and Jeffrey made a conscious decision not to list Daniel or the Daniel Trust as a creditor for any amount with respect to the September 5, 2014 $100,000 transfer to the Debtor.

269. On December 11, 2014, Patricia Fredericks, a legal assistant at Shaw Fishman, emailed Jeffrey and Alagna advising on the status of the preparation of the schedules and statement of financial affairs, *inter alia*: "[I]t has been determined that we do not need to list the entity who paid legal fees on behalf of Management."

270. On December 11, 2014, the Debtor filed its schedules and statement of financial affairs. The Debtor failed to schedule (a) Daniel or the Daniel Trust as holding a claim for the $100,000 fee advance; (b) any amounts for compensation due from the Horizon Group Companies under the Management Agreements; and (c) a liquor license issued to the Debtor relating to "The Merion."

271. Daniel and Jeffrey intentionally omitted the entity that "loaned" $100,000 to the Debtor to pay the attorneys' retainer for the bankruptcy case and any claim related thereto in order to conceal from the Court, the United States Trustee, and the creditors the source of the retainer and caused the Debtor's counsel to represent that the Debtor was the source of the retainer.

272. Daniel and Jeffrey intentionally omitted claims for compensation and reimbursement due to the Debtor under the Management Agreements from the Horizon Group Companies from the schedules, despite being advised by Skadden that the Debtor had such claims. Daniel and Jeffrey failed to disclose the Debtor's claims for compensation from the Horizon Group Companies to conceal from the Court, the United States Trustee, and creditors, valuable assets of the estate.

273. The Debtor affirmatively represented in its statement of financial affairs that it had made no gifts or other contributions in the year preceding the bankruptcy. In the year preceding the bankruptcy filing, the Debtor had made approximately $98,000 in charitable and political contributions, which were in satisfaction of personal pledges made by Daniel and Martha or which allowed Daniel or Jeffrey to attend political events. Daniel and Jeffrey intentionally omitted to disclose the Debtor's charitable contributions and political contributions.

274. Daniel and Jeffrey intentionally omitted the disclosure of the transfers to or the benefit of Tracy with respect to the Debtor's payment of her health insurance premiums.

275. On December 15, 2014, at 1:30 p.m., the United Trustee convened a Section 341 meeting of creditors. Jeffrey appeared and was examined under oath by the Assistant United States Trustee and Class Counsel. Jeffrey provided the following inaccurate and misleading testimony at the meeting: (1) Daniel had not made loans to the Debtor and was listed as a creditor solely for notice purposes; (2) the Debtor was surprised and only learned of the extent of the attorneys' fee exposure to Class Counsel after the fee petition was filed; (3) the Debtor had not sought to determine whether it had indemnification claims against the Horizon Group Companies under the Management Agreements; (4) Jeffrey's salary was $376,000 per annum; and (5) Jeffrey had not previously discussed to whom he would be selling the assets of the Debtor.

276. On December 15, 2014, at 2:55 p.m., (approximately 1.5 hours after the commencement of the 341 meeting) Jeffrey sent an email to Fishman requesting that he "reach out to Danny to pin down the sale price. I don't want to be the monkey in the middle. You can best explain how to derive and where that number should fall. We all understand the technical 0 value of the contracts. We now need a number, if any, associated with the name/goodwill/IT, etc. . . ."

277. On December 17, 2014, Terry Hamilton, an administrator at Shaw Fishman, had email exchanges with Fishman, Radtke, and David Horwith, ("Horwith") another Shaw Fishman partner, regarding a possible conflict of interest relating to Horwith's client "Horizon Realty Group."

278. On December 17, 2014, Radtke responded to Hamilton's conflict inquiry stating that "Horizon Group Management, LLC dba Horizon Realty Group is already a client as a chapter 11 debtor. What does this proposed engagement involve?" Horwith stated in a separate response that "Horizon Realty Group has been a client of mine on and off for 15 years. I am currently handling 2 commercial tenant evictions for them. It is my understanding that Horizon Management Group is a different entity of theirs."

279. Fishman separately replied that "I think I am correct that this entity is the Debtor. That means we need to consider whether it needs Court authority to hire ordinary course professionals to do leasing and similar work." Horwith later replied that "I spoke with [Radtke] about this and since the owner of the property is a different LLC, I will modify the engagement so that I am representing the actual LLC owner instead of Horizon Realty Group."

280. On December 22, 2014, Shaw Fishman filed an amended Rule 2014 declaration disclosing Horwith's representation of certain of the Horizon Group Companies in unrelated litigation matters.

281. On January 21, 2015, the Debtor filed a response and objection to Class Counsel's Rule 2004 subpoenas as they related to certain third parties. The Debtor objected to the subpoena on grounds that, *inter alia*, communications between the Debtor and Jeffrey in his capacity as general counsel for the Debtor were protected by the attorney client privilege. Jeffrey did not disclose to Shaw Fishman or the Court

that he was not authorized to practice law and could not act as the Debtor's general counsel.

282. On February 27, 2015, the Debtor filed its Motion to Authorize (1) Sale of Substantially all of its Assets Free and Clear of Liens, Claims, and Interests, (2) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and (3) Related Relief (the "Sale Motion"). In the Sale Motion, the Debtor represented that: (1) "the Sale pursuant to the Purchase Agreement provides [the] estate with a premium of at least 25% over the value that a sale of the Assets to any other purchaser would produce"; (2) the Debtor was a "family owned and operated apartment leasing and property management company…."; (3) the Debtor acted "as agent for the property owners"; (4) the Debtor's personal property assets were primarily comprised of two vehicles, with an estimated value of $31,200 and office equipment with a depreciated book value of $29,736.86, but "the actual realizable value of its office furniture and equipment is less than the depreciated book value"; and (5) "[t]he Debtor's management agreements with various property owners do not have much, if any value . . . ." and "there is no market for, or value to, the management contracts. . . ."

283. On March 12, 2015, Class Counsel filed a motion to dismiss the Chapter 11 bankruptcy case because Daniel and Jeffrey had filed the case in bad faith to protect non-debtors and as a litigation strategy to renegotiate the Settlement Agreement.

284. On March 31, 2015, Class Counsel made a demand upon the Debtor to bring an action to enforce its right to compensation in the form of the reimbursement of its expenses incurred in the operation of the Properties (including all amounts due under the Settlement Agreement) against the Horizon Group Companies. Daniel and Jeffrey failed to take any action to cause the Debtor to enforce its rights pursuant to this demand.

285. On April 2, 2015, the Court entered its Order (the "Sale Order") authorizing the sale of substantially all of Debtor's assets and the assumption and assignment of certain executory contracts, primarily the Management Agreement with the Horizon Group Companies to HRG Management, LLC, an Illinois limited liability company of which Jeffrey is the sole member and manager. Based on Class Counsel's objection, the Court modified the Debtor's proposed Sale Order to reserve all claims and all avoidance actions that the estate might assert against the Horizon Group Companies and the Debtor's insiders.

286. On April 24, 2015, Class Counsel sent an email to the attorney for Northern Trust requesting a supplemental production of documents pursuant to the outstanding subpoena relating to a $100,000 deposit to the 4717 Operating Account, which was described as "09-05 Note Proceeds Loan Account #XXXXXX5359" in the September 2014 account statement.

287. On April 28, 2015, Northern Trust's attorney sent an email to Zazove advising of the request, because "the loan account referenced is in the name of Daniel Michael." Daniel's personal attorneys forwarded Class Counsel and the Northern

Trust attorney's emails to Jeffrey who explained that the lines of credit were all Daniel's personal lines but were used for business purposes. Zazove advised, "Class Counsel will try to make a case for veil piercing based upon the use of personal funds to pay business obligations." Jeffrey admitted, "I see the optical problem with this…"

288. On April 30, 2015, Jeffrey's newly organized entity, HRG Management, LLC, closed on the purchase of the Debtor's assets and caused $75,000 to be deposited into the 4717 Operating Account.

289. On May 12, 2015, (the "Conversion Date") the Court entered its order converting the Chapter 11 case to a case under Chapter 7 of the Bankruptcy Code.

290. On May 12, 2015, the Trustee was appointed, qualified, and has continued to serve as trustee for the estate of the Debtor.

291. On the Conversion Date, the balance in the 4717 Operating Account was $50,841.63.

292. Subsequent to the Trustee's appointment, Jeffrey and Daniel delayed turning over the funds in and refused to provide the Trustee with access to the 4717 Operating Account.

293. Despite the Trustee's appointment and the termination of Daniel and Jeffrey's authority over the 4717 Operating Account, Daniel and Jeffrey caused approximately $190,000 to be disbursed from the 4717 Operating Account *after* the Conversion Date.

294. On July 10, 2015, the Debtor filed its final report and account. The final report and account reflects that, except for the $75,000 in sales proceeds, the Debtor's

revenues and expenses for the entire period of the Chapter 11 case were approximately equal. The final report failed to disclose the receipts and disbursements of approximately $190,000 through the 4717 Operating Account on May 27 and 28, 2014.

295. Although the Debtor listed Goldberg Kohn as an unsecured creditor holding a claim against the estate in its schedules, the Debtor did not list it on the creditor matrix and it did not receive actual notice of the Debtor's bankruptcy petition.

296. On August 14, 2015, after it indirectly learned of the bankruptcy, Goldberg Kohn filed a proof of claim for its prepetition services. On August 24, 2015, Goldberg Kohn filed a motion for relief from stay to set-off its prepetition claim against its retainer and a motion for the allowance of $17,700 of post-petition fees as an administrative expense. Goldberg Kohn's motion represented that the services provided were in the ordinary course of business of the Debtor, were unconnected to the administration of the bankruptcy estate, and that such services benefited the estate.

297. On August 20, 2015, Holdings filed two proofs of claim in the bankruptcy case: (1) relating to the $40,000 transfer to the Class Action claims administrator from the 2969 Operating Account and (2) relating to Daniel and the Daniel Trust's $100,000 transfer to the 4717 Operating Account that was subsequently transferred to Shaw Fishman as a retainer from the 4717 Operating Account.

298. On September 15, 2015, Attorneys for the Debtor, the Horizon Group Companies, and Jeffrey, Michael, and Martha, appeared at the hearing and did not object to either Goldberg Kohn motion. On September 15, 2015, this Court entered orders allowing Goldberg Kohn's prepetition claim and its post-petition claim as a Chapter 11 administrative expense.

299. Upon information and belief, Goldberg Kohn has continued to provide services to the Horizon Group Enterprise regarding the Unite Here matter.

300. The Horizon Group Enterprise and Horizon Group XXIII, LLC have failed and refused to reimburse the Trustee for the expense of Goldberg Kohn's representation.

301. On November 11, 2015, Horizon Group XXI, LLC (defined in the complaint as "Horizon") filed a complaint in the Circuit Court of Cook County against Claudia Guzman-Lopez relating to an embezzlement scheme. The Complaint alleges that "Guzman-Lopez was a property assistant working for Horizon [Group XXI, LLC] from July 2009 until her resignation in July 2015." "Guzman-Lopez confessed that while employed at Horizon [Group XXI, LLC], she had accepted cash and improperly signed and cashed checks for her own benefit."

302. Daniel and Jeffrey failed to respect the separate existence of the entities in the Horizon Group Enterprise and held the Debtor, Horizon Group Companies, and Holding out to its bank, creditors, Class Counsel, the Circuit Court of Cook County, the City of Chicago Council, the public in general, and tenants as a single integrated real estate management and ownership enterprise doing business under

the Debtor's assumed name "Horizon Realty Group." The Debtor had no independent business of its own but functioned as a mere alter ego and instrumentality of the Horizon Group Enterprise.

303. In furtherance of their scheme to delay, hinder, and defraud creditors, Daniel and Jeffrey engaged in vexatious conduct which multiplied the bankruptcy proceedings and imposed unnecessary costs upon the parties by filing a bad faith Chapter 11 case to obtain a tactical advantage in the Class Action, by failing to cooperate with the Trustee's investigation, by refusing to produce documents in electronic format, by destroying, delaying, or refusing the production of relevant documents under their control, by providing inaccurate and misleading testimony at Section 341 meetings and Rule 2004 examinations, and by filing false and misleading schedules and SOFA that, *inter alia*, failed to disclose substantial charitable and political contributions and the Debtor's payment of Tracy's health insurance.

COUNT I – BREACH OF MANAGEMENT AGREEMENTS – HORIZON GROUP COMPANIES

304. The Trustee repeats and realleges paragraphs 1, 9-14, 16, 21-42, 55-57, 59, 64, 169, 193, 214-16, 218, and 298-300 of this Complaint as though fully set forth herein.

305. As described in paragraphs 55 through 57, 59, and 64, the Debtor and the Horizon Group Companies were parties to Management Agreements, attached to the Complaint as Exhibits 2 through 6, that appointed the Debtor as agent for the Horizon Group Companies with respect to the leasing and management of the Properties. At all times relevant to this action, the Debtor acted as agent for and on

behalf of the Horizon Group Companies as principal and for the Horizon Group Companies account. Pursuant to the Management Agreements, the Debtor was not required to bear any portion of any losses arising out of or connected with the Horizon Group Companies or the operation of the Properties.

306. Section 1.1 of the *Amended & Restated Management Agreement*, a copy of which is attached as Exhibit 2, effective January 1, 2008, provided as follows:

> Section 1.1 – Appointment and Acceptance: Owner hereby appoints HGM [Debtor] as sole and exclusive manager of Owner to manage the properties described in Section 1.2 upon the terms and conditions provided herein. [Debtor] accepts the appointment and agrees to furnish the services of its organization for the leasing and management of the Property (as hereinafter defined) and Owner agrees to pay all reasonable expenses in connection with those services as approved by Owner or stated herein.

Section 1.1 of the *Second Amended & Restated Management Agreement*, a copy of which is attached as Exhibit 5, effective December 1, 2011, changed Section 1.1 to read: "

> Section 1.1 – Appointment and Acceptance: Owner hereby appoints HGM [Debtor] as sole and exclusive operational manager of ~~Owner to manage~~ the Properties ~~described in Section 1.2~~ (as hereinafter defined) for the sole benefit of Owner upon the terms and conditions provided herein. [Debtor] accepts the appointment and agrees to furnish the services of its organization for the leasing and management of the Properties ~~(as hereinafter defined)~~ and Owner agrees to pay all reasonable expenses in connection with those services as approved by Owner or stated herein.

307. Article XII of the *Amended & Restated Management Agreement* provided as follows:

> ARTICLE XII
> RELATIONSHIP OF THE PARTIES
>
> The relationship of the parties to this Agreement shall be that of principal and agent and all duties to be performed by [Debtor] under this Agreement shall be for and on behalf of Owner, in Owner' [sic] name, and for Owner' [sic] account. In taking any action under this Agreement, [Debtor] shall be acting only as agent for Owner and nothing in this Agreement shall be construed as creating a partnership, joint venture, or any other relationship between the parties to this Agreement except that of principal and agent, or as requiring [Debtor] to bear any portion of losses arising out of or connected with Owner or the operation of the Project. [Debtor] shall not at any time during the period of this Agreement be considered a direct employee of Owner. Neither party shall have the power to bind or obligate the other except as expressly set forth in this Agreement.

As follows, Article II of the *Second Amended & Restated Management Agreement* provided substantially the same language except it expressly described some of Debtor's fiduciary duties owed to the Horizon Group Companies:

> ARTICLE II
> RELATIONSHIP OF THE PARTIES
>
> The relationship of the parties to this Agreement shall be that of principal and agent and all duties to be performed by [Debtor], as agent, under this Agreement shall be for and on behalf of Owner, in Owner' [sic] name, and for Owner' [sic] account. In taking any action under this Agreement, [Debtor] shall be acting only as agent for Owner and nothing in this Agreement shall be construed as creating a partnership, joint venture, or any other relationship between the parties to this Agreement except that of principal and agent, or as requiring [Debtor] to bear any portion of losses arising out of or connected with Owner or the operation of the ~~Project~~ Properties. [Debtor] shall not at any time during the period of this Agreement be considered a direct employee of Owner. Neither party shall have the power to bind or obligate the other except as expressly set forth in this Agreement. In executing its duties as agent of Owner, [Debtor] shall act in good faith and shall use due care, competence and diligence.

308. Article XIII of the *Amended & Restated Management Agreement* provided as follows:

> ARTICLE XIII
> COMPENSATION AND EXPENSES
>
> As compensation for the services provided by [Debtor] under this Agreement (and exclusive of reimbursement of expenses to which [Debtor] is entitled hereunder), Owner shall pay [Debtor] an amount equal to such Owner's share of any and all costs, expenses and fees incurred by [Debtor] on behalf of Owner in connection with and allocable to the operation and management of the Property(ies) [sic] owned by Owner ("Compensation"). The Compensation shall include, without limitation, all labor, administrative and overhead costs and expenses incurred by [Debtor]. [Debtor] may withdraw said Compensation due from the Operating Account upon the close of the month then-ended.

Article XI of the *Second Amended & Restated Management Agreement* retained the cost-reimbursement component into Debtor's compensation, but further elaborated on what constituted the costs, expenses and fees, including Jeffrey's compensation, both so long as Daniel had an ownership interest in the Debtor and later when he would not. In comparison to the 2008 agreement the 2011 agreement states:

> ARTICLE XI~~I~~I
> COMPENSATION AND EXPENSES
>
> As compensation for the services provided by [Debtor] under this Agreement ~~(and exclusive of reimbursement of expenses to which [Debtor] is entitled hereunder)~~, Owner shall pay [Debtor] a fee in an amount equal to such Owner's share of any and all costs, expenses (direct and indirect) and fees incurred by [Debtor] on behalf of an Owner in connection with and allocable to the operation and management of the Propert~~y(~~ies~~)~~ owned by the Owner and the operation of [Debtor] that is not otherwise reimbursed to [Debtor] as provided in this Agreement (the "~~Compensation~~ Component A Fee"). ~~The Compensation shall include, without limitation, all labor, administrative~~

~~and overhead costs and expenses incurred by [Debtor]. [Debtor] may withdraw said Compensation due from the Operating Account upon the close of the month then ended.~~ The Component A Fee shall include, without limitation, (i) all costs, expenses, and fees, for materials, labor and services rendered, (ii) administrative expenses, labor and overhead costs incurred by HGM on behalf of an Owner, and (iii) those expenses incurred by HGM in relation to its own operations and the operations of each of the Properties owned by the Owners. The Component A Fee shall be due and payable monthly in arrears to HGM. Until the date that Daniel Michael ceases to act as Manager of HGM (the "Triggering Event"), the Component A Fee shall include compensation paid to Jeffrey Michael vis-à-vis his position as an owner, manager or employee, as the case may be, of HGM. Upon the occurrence of the Triggering Event, the Component A Fee shall not include compensation paid to Jeffrey Michael; provided, however, that in addition to the Component A Fee, HGM shall be paid a "Component B Fee" (hereinafter defined.) For purposes of this Agreement, the" Component B Fee" shall be an amount equal to Three and One Half Percent (3.5%) of the aggregate gross potential rents of the Properties then managed by HGM. The Component B Fee shall serve as compensation to Jeffrey Michael in consideration for his services rendered to Owner on behalf of HGM. HGM shall provide Owner a monthly summary of the expenses it incurs for the services it provides the Owner under this Agreement.

309. Both the *Amended & Restated Management Agreement* and *Second Amended & Restated Management Agreement* require the Horizon Group Properties to compensate Debtor for two distinct categories: (1) costs, expenses and fees incurred in connection with the operation and management of the Properties; and (2) costs, expenses and fees incurred in connection with the operation of the Debtor.

310. The Management Agreements were executed by the parties and are valid contracts enforceable against the Horizon Group Companies.

311. In 2013 and 2014, the Debtor incurred obligations and expenses; under the Settlement Agreement; for legal fees incurred in connection with the Class Action, its bankruptcy proceedings, and negotiations with the Unite Here union; FICA taxes; and for accounting software and other general business-related expenses, all as agent for the Horizon Group Companies and all relating to the operation of the Properties and Debtor's business. The Trustee seeks to recover compensation, as defined in the management agreements, from the Horizon Group Companies with respect to six categories of costs, expenses and fees incurred by the Debtor in connection with its operation of the Properties and its business: (a) obligations under the Settlement Agreement, Claim Numbers 11 and 12,, in the aggregate amount of ($1,215,907.33); (b) legal expenses relating to the defense of the Class Action, Claim Number 3, in the amount of ($12,912.00); (c) U.S. Trustee and legal expenses relating to the Chapter 11 phase of this bankruptcy case, ECF No. 133 ($12,739.04) and Claim Number 2 ($4,875.00), in the aggregate amount of ($17,614.04); (d) legal expenses relating to the Unite Here Union negotiations, ECF No. 135 ($17,770.00) and Claim Number 6 ($5,894.00), in the aggregate amount of ($23,664.00); (e) accounting software and other general business expenses, Claim Numbers 9 ($8,219.05) and 10 ($5,742.18), in the aggregate amount of ($13,961.23); and (f) Taxes and penalties, Claim number 14 in the aggregate amount of ($250,257.79). These costs, expenses and fees are allocable to the Horizon Group Companies as either Properties operation expenses or Debtor operation expenses.

312. The Yardi software expenses were incurred by the Debtor in the operation of its business and, in particular, its maintaining financial records for itself and the Horizon Group Companies. The Goldberg Kohn claims for legal fees and expenses and the FICA tax obligations are costs, expenses and fees that were indisputably incurred by the Debtor in connection with the operation of the North Shore Retirement Hotel and the Debtor's business on behalf of Horizon Group XXIII, LLC. The Debtor's Chapter 11 counsel fees and expenses were incurred by the Debtor in connection with the operation of the Properties and the Debtor's business. The Debtor's Class Action defense counsel fees and expenses were incurred by the Debtor in connection with the operation of the Properties and its business. The costs, expenses and fees incurred under the Settlement Agreement were incurred by the Debtor in connection with the operation of the Properties and the Debtor's business.

313. All of these expenses were incurred with the full knowledge, consent and authority of Daniel, the manager of Holdings and the Debtor; Jeffrey, the "Chief Operating Officer" and "general counsel" of the Debtor; and Holdings, the manager of each of the Horizon Group Companies.

314. The Debtor has performed all conditions precedent to the imposition of obligations upon the Horizon Group Companies under the Management Agreements.

315. Because of the Horizon Group Companies breach of the Management Agreements, the Debtor has been damaged in an amount not less than $1,500,000,000.

WHEREFORE, the Trustee prays that this Court enter judgment in his favor and against the Horizon Group Companies for compensatory and special damages in the amount equal to all administrative expenses and claims in an amount to be proven at trial of not less than $1,520,000, and that may be allowed in these bankruptcy proceedings, costs and attorneys' fees, prejudgment interest, and for such other relief as is appropriate.

COUNT II – EQUITABLE CONTRIBUTION – HORIZON GROUP COMPANIES

316. The Trustee is dismissing this claim as duplicative of other relief sought.

COUNT III – BREACH OF OPERATING AGREEMENT – DANIEL TRUST

317. The Trustee repeats and realleges paragraphs 1, 18-48, 50-54, 58, 63, 69, 71-72, 80, 84, 90-91, 111, 114, 132-133, 165, 169-170, 173-177, 193 and 218of this Complaint as though fully set forth herein.

318. As described in paragraph 50 above, Daniel as Manager of the Debtor and the Daniel Trust as general and limited member of the Debtor entered the Operating Agreement, a copy of which is attached as Exhibit 1. The Operating Agreement is a valid and enforceable contract. The Debtor is the intended third-party beneficiary of the Operating Agreement.

319. Section 1.01(v) of the Operating Agreement defines the "Majority Interest" as "one or more General Member Interests which in the aggregate exceed 50% of all Percentage Interests attributed to the General Members." The Debtor has one General Member, namely, the Daniel Trust

320. Section 9.02 of the Operating Agreement requires the "General Member" to make additional capital contributions to the Debtor "as shall be determined by a Majority Interest from time to time to be reasonably necessary to meet the expenses and obligations of the [Debtor]." Section 9.02 of the Debtor's Operating Agreement states in full:

> General Members shall be required to make such additional Capital Contributions as shall be determined by a Majority Interest from time to time to be reasonably necessary to meet the expenses and obligations of the Company. After the making of any such determination, the Managers shall give written notice to each General Member of the amount of required additional contribution, and each General Member shall deliver to the Company its pro rata share thereof (in proportion to the respective Percentage Interest of the General Member on the date such notice is given) no later than thirty days following the date such notice is given. None of the terms, covenants, obligation or rights contained in this Section 9.02 is or shall be deemed to be for the benefit of any Person or Entity other than the Members and the Company, and no such third person shall under any circumstances have any right to compel any actions or payments by the Managers and/or the Members.

321. Section 9.02 requires that the parties engage in a compulsory three-step process: Daniel (a) as the trustee of the Daniel Trust was obligated to determine, from time to time, sums "reasonably necessary to meet the expenses and obligations of the [Debtor;]" (b) to then, in his individual capacity as Manager of the Debtor, send written notice to the Daniel Trust of additional capital contributions needed; and (c) to then cause the Daniel Trust to pay such sums within 30 days to the Debtor. In additional to its expressed duties under § 9.02 of the Operating Agreement, the

Daniel Trust had an implied duty of good faith and fair dealing to perform its obligations under § 9.02 of the Operating Agreement.

322. Upon such determination, the Daniel Trust was obligated to make additional capital contributions to the Debtor to meet its expenses and obligations.

323. The Debtor incurred expenses and obligations under the Settlement Agreement, with respect to the defense of the Class Action, and the operation of its business, including but not limited to the obligations to Yardi, Skadden, Goldberg Kohn, and the Internal Revenue Service, which expenses and obligations could only be met by enforcing the capital contribution obligation of the General Member under the Operating Agreement and such expenses and obligation are readily determinable

324. The Daniel Trust breached § 9.02 of the Operating Agreement by both not making the determination of capital calls "reasonably necessary to meet the expenses and obligations of the Company" and then by not paying such amounts to the Debtor to fund the Debtor's expenses and obligations.

325. Daniel breached § 9.02 of the Operating Agreement by failing to give written notice of the additional capital contribution to the Daniel Trust.

326. If Daniel's obligation to provide notice of a capital call under § 9.02 of the Operating Agreement was a condition precedent to the Daniel Trust's obligation to make the additional capital call such conditions were excused, as a matter of law: "[w]here a party's breach by non-performance contributes materially to the non-occurrence of a condition of one of his duties, the non-occurrence is excused. *Restatement (2d) of Contracts*, § 245.

327. The Debtor has performed all conditions precedent to the imposition of obligations upon the Horizon Group Companies under the Management Agreements.

328. Because of the Daniel Trust's breach of § 9.02 of the Operating Agreement, the Debtor has been damaged in an amount not less than $1,520,000.

329. The Court may appoint a person to perform the Daniel Trust's obligation to determine the amount reasonably necessary to pay the expenses and obligations of the Debtor and Daniel's obligation to provide written notice of the additional capital call to the Daniel Trust.

WHEREFORE, the Trustee prays that this Court enter judgment in his favor and against Daniel and the Daniel Trust for compensatory and special damages in an amount of not less than $1,520,000, and in an amount sufficient to meet all of the expenses and obligations of the Debtor, prejudgment interest, and for such other relief as is appropriate.

COUNT IV – BREACH OF OPERATING AGREEMENT—DANIEL AND DANIEL TRUST

330. The Trustee repeats and realleges paragraphs 1 through 303 of this Complaint as though fully set forth herein.

331. As described in paragraph 50, the Daniel as Manager of the Debtor and the Daniel Trust as general and limited member of the Debtor entered the Operating Agreement. The Operating Agreement is a valid and enforceable contract. The Debtor is an intended third-party beneficiary of the Operating Agreements provision relating to additional capital contributions.

332. Section 10.05 of the Operating Agreement, *inter alia,* prohibits distributions while or which would render the Debtor insolvent.

333. The Debtor has been insolvent since at least June 22, 2009.

334. Daniel, as Manager of Horizon Management, authorized distributions by the Debtor to or for the benefit of himself and the Daniel Trust.

335. The Debtor has been damaged by Daniel's authorizing of such distributions.

336. The Debtor has generally performed all conditions precedent to the imposition of obligations on Daniel and the Daniel Trust.

WHEREFORE, the Trustee prays that this Court enter judgment in his favor and against Daniel and the Daniel Trust for compensatory and special damages in the amount equal to all distributions to or for the benefit of Daniel and the Daniel Trust, costs, and attorneys' fees, prejudgment interest, and for such other relief as is appropriate.

COUNT V– VIOLATION OF ILLINOIS LIMITED LIABILITY COMPANY ACT-UNAUTHORIZED DISTRIBUTIONS—DANIEL AND DANIEL TRUST

337. The Trustee repeats and realleges paragraphs 1 through 303 of this Complaint as though fully set forth herein.

338. Pursuant to Section 25-30(a) of the Illinois Limited Liability Company Act, 805 ILCS 180/25-30(a), the Debtor was prohibited from making any distribution, if at the time of the distribution, it would not be able to pay its debts as they become due in the ordinary course of business or its total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the company were to

be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those receiving the distribution.

339. Since at least June 22, 2009, the Debtor did not have the ability to pay its debts as they became due in the ordinary course, and the Debtor's total assets were less than the sum of its total liabilities plus the amount that would be needed, if the company were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those receiving the distribution.

340. Daniel and the Daniel Trust assented to the distributions or knew that such distributions were in violation of the Operating Agreement and Section 25-30 of the Illinois Limited Liability Company Act.

341. Pursuant to Section 25-35 of the Illinois Limited Liability Company Act, Daniel and the Daniel Trust are personally liable for the distributions.

WHEREFORE, the Trustee prays that this Court enter judgment in his favor and against Daniel and the Daniel Trust in the amount of all distributions the Debtor made to or for the benefit of Daniel and the Daniel Trust, prejudgment interest, and for such other relief as is appropriate.

COUNT VI – FRAUDULENT TRANSFER -
11 U.S.C. § 548(a)(1)(A)—DANIEL & MARTHA

342. The Trustee repeats and realleges paragraphs 1 through 303 of this Complaint as though fully set forth herein.

343. The Debtor made transfers of its property to or for the benefit of Daniel and Martha as described in paragraphs 4, 6, 58, 63, 69, 72, 76, 77, 80, 84, 85, 225 and 239 of this Complaint, which occurred on or within two years of the Petition Date, with the actual intent to hinder, delay, or defraud entities to which the Debtor was or became, on or after the dates such transfers were made, indebted.

344. With respect to the transfers:

(1) the transfers were to, or for the benefit of, insiders;

(2) the transfers were concealed in most instances by having the Debtor make the transfers to third party creditors of the insiders;

(3) before the transfers were made, the Debtor had been sued or threatened with suit;

(4) the transfers were of substantially all of the Debtor's assets;

(5) the Debtor removed or concealed assets;

(6) the value of the consideration received by the Debtor was not reasonably equivalent to the value of the assets transferred;

(7) the Debtor was insolvent or became insolvent shortly after the transfers were made; and

(8) the transfers occurred shortly before or shortly after a substantial debt was incurred.

WHEREFORE, the Trustee prays that this Court enter judgment:

A. Avoiding the transfers of property made by the Debtor to or for the benefit of Daniel and Martha and awarding the Trustee recovery of an amount equal

to the value of such property from Daniel and Martha pursuant to 11 U.S.C. §§ 548 and 550;

B. Attaching Daniel and Martha's property and enjoining them from encumbering or transferring their property and declaring any property acquired with the Debtor's property to be held in constructive trust, or, alternatively, appointing a receiver to take charge of the assets transferred and such other property of the transferees in amount equal to the value of the assets transferred;

C. Awarding prejudgment interest on such amounts and costs;

D. Awarding punitive damages; and

E. Awarding such other relief as is appropriate.

COUNT VII– FRAUDULENT TRANSFER -
11 U.S.C. § 548(a)(1)(B)—DANIEL & MARTHA

345. The Trustee repeats and realleges paragraphs 1 through 303 of this Complaint as though fully set forth herein.

346. The Debtor made certain of the transfers of property to or for the benefit of Daniel and Martha as described in paragraphs 4, 6, 58, 63, 69, 72, 76, 77, 80, 84, 85, 225, and 239 of this Complaint, which occurred on or within two years of the Petition Date.

347. The Debtor received less than a reasonably equivalent value in exchange for such transfers.

348. The Debtor was insolvent on the date that such transfers were made, or became insolvent as a result of such transfers; the Debtor was engaged in business or a transaction, or was about to engage in business or a transaction, for which any

property remaining with the Debtor was an unreasonably small capital; the Debtor intended to incur, or believed that the Debtor would incur, debts that would be beyond the Debtor's ability to pay as such debts matured; or made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

WHEREFORE, the Trustee prays that this Court enter judgment:

A. Avoiding the transfers of property made by the Debtor to or for the benefit of Daniel and Martha and awarding the Trustee recovery of an amount equal to the value of such property from Daniel and Martha pursuant to 11 U.S.C. §§ 548 and 550;

B. Attaching Daniel and Martha's property and enjoining them from encumbering or transferring their property and declaring any property acquired by Daniel and Martha with the Debtor's property to be held in constructive trust, or, alternatively, appointing a receiver to take charge of the assets transferred and such other property of the transferees in amount equal to the value of the assets transferred;

C. Awarding prejudgment interest on such amounts and costs;

D. Awarding punitive damages; and

E. Awarding such other relief as is appropriate.

COUNT VIII – FRAUDULENT TRANSFER-
740 ILCS § 160/5(a)(1)—DANIEL & MARTHA

349. The Trustee repeats and realleges paragraphs 1 through 303 of this Complaint as though fully set forth herein.

350. The Debtor made transfers of property, as described in paragraphs 4, 6, 58, 63, 69, 72, 76, 77, 80, 84, 85, 225, and 239 of this Complaint, to or for the benefit of Daniel and Martha, on or within four years of the Petition Date, with the actual intent to hinder, delay or defraud entities to which the Debtor was indebted or became indebted, on or after the dates such transfers were made.

351. There are creditors of the Debtor's estate whose claims arose before or after the transfers were made.

WHEREFORE, the Trustee prays that this Court enter judgment:

A. Avoiding the transfers of property made by the Debtor to or for the benefit of Daniel and Martha and awarding the Trustee recovery of an amount equal to the value of such property from Daniel and Martha pursuant to 11 U.S.C. §§ 544(b) and 550 and 740 ILCS § 160/5(a)(1);

B. Attaching Daniel and Martha's property and enjoining them from encumbering or transferring his property and declaring any property acquired with the Debtor's property to be held in constructive trust, or, alternatively, appointing a receiver to take charge of the assets transferred and such other property of the transferees in amount equal to the value of the assets transferred;

C. Awarding prejudgment interest on such amounts and costs;

D. Awarding punitive damages; and

E. Awarding such other relief as is appropriate.

COUNT IX – FRAUDULENT TRANSFER-
740 ILCS § 160/5(a)(2)—DANIEL & MARTHA

352. The Trustee repeats and realleges paragraphs 1 through 303 of this Complaint as though fully set forth herein.

353. The Debtor made transfers of property, as described in paragraphs 4, 6, 58, 63, 69, 72, 76, 77, 80, 84, 85, 225, and 239 of this Complaint, to or for the benefit of Daniel and Martha on or within four years of the Petition Date.

354. The Debtor received less than a reasonably equivalent value in exchange for such transfers.

355. The Debtor was insolvent on the date that such transfers were made, or became insolvent as a result of such transfers; the Debtor was engaged in business or a transaction, or was about to engage in business or a transaction for which any property remaining with the Debtor was an unreasonably small capital; or the Debtor intended to incur, or believed that the Debtor would incur, debts that would be beyond the Debtor's ability to pay as such debts matured.

356. There are creditors of the Debtor's estate whose claims arose before or after the transfers were made.

WHEREFORE, the Trustee prays that this court seek judgment:

A. Avoiding the transfers of property made by the Debtor to or for the benefit of Daniel and Martha and awarding the Trustee recovery of an amount equal to the value of such property from Daniel and Martha pursuant to 11 U.S.C. §§ 548 and 550 and 740 ILCS §160/5(a)(2);

B. Attaching Daniel and Martha's property and enjoining them from encumbering or transferring his property and declaring any property acquired with the Debtor's property to be held in constructive trust, or, alternatively, appointing a receiver to take charge of the assets transferred and such other property of the transferees in amount equal to the value of the assets transferred;

C. Awarding prejudgment interest on such amounts and costs;

D. Awarding punitive damages; and

E. Awarding such other relief as is appropriate.

COUNT X – FRAUDULENT TRANSFER –
740 ILCS § 160/6(a)—DANIEL & MARTHA

357. The Trustee repeats and realleges the allegations in paragraphs 1 through 303 of this Complaint as though fully set forth herein.

358. On or within four years of the Petition Date, the Debtor made transfers of property, as described in paragraphs 4, 6, 58, 63, 69, 72, 76, 77, 80, 84, 85, 225 and 239 of this Complaint, to or for the benefit of Daniel and Martha.

359. There are creditors of the Debtor's estate whose claims arose before the transfers were made.

360. The Debtor made the transfers without receiving a reasonably equivalent value in exchange for the transfers.

361. The Debtor was insolvent at the time of the transfers or became insolvent as a result of the transfers.

WHEREFORE, the Trustee prays that this Court enter judgment:

A. Avoiding the transfers of property made by the Debtor to or for the benefit of Daniel and Martha and awarding the Trustee recovery of an amount equal to the value of the property from Daniel and Martha pursuant to 11 U.S.C. §§ 544(b) and 550 and 740 ILCS § 160/6(a).

B. Attaching Daniel and Martha's property and enjoining them from encumbering or transferring his property and declaring any property acquired with the Debtor's property to be held in constructive trust, or, alternatively, appointing a receiver to take charge of the assets transferred and such other property of the transferees in amount equal to the value of the assets transferred;

C. Awarding prejudgment interest on such amounts and costs;

D. Awarding punitive damages; and

E. Awarding such other relief as is appropriate.

COUNT XI – POSTPETITION TRANSFER - 11 U.S.C. § 549(a)—DANIEL AND MARTHA

362. Count XI is dismissed pursuant to the Court's Order of February 3, 2017 [ECF No. 56].

COUNT XII – FRAUDULENT TRANSFER - 11 U.S.C. § 548(a)(1)(A) —JEFFREY

363. The Trustee repeats and realleges paragraphs 1 through 303 of this Complaint as though fully set forth herein.

364. The Debtor made transfers of its property to or for the benefit of Jeffrey as described in paragraphs 4, 6, 58, 63, 69, 84 and 239 of this Complaint, which occurred on or within two years of the Petition Date, with the actual intent to hinder,

delay, or defraud entities to which the Debtor was or became, on or after the dates such transfers were made, indebted.

365. With respect to the transfers:

(1) the transfers were to, or for the benefit of, insiders;

(2) the transfers were concealed by having the Debtor make them pursuant to an employment contract;

(3) before the transfers were made, the Debtor had been sued or threatened with suit;

(4) the transfers were of substantially all of the Debtor's assets;

(5) the Debtor removed or concealed assets;

(6) the value of the consideration received by the Debtor was not reasonably equivalent to the value of the assets transferred;

(7) the Debtor was insolvent or became insolvent shortly after the transfers were made; and

(8) the transfers occurred shortly before or shortly after a substantial debt was incurred.

WHEREFORE, the Trustee prays that this Court enter judgment:

A. Avoiding the transfers of property made by the Debtor to or for the benefit of Jeffrey and awarding the Trustee recovery of an amount equal to the value of such property from Jeffrey pursuant to 11 U.S.C. §§ 548 and 550;

B. Attaching Jeffrey's property and enjoining him from encumbering or transferring his property and declaring any property acquired with the Debtor's

property to be held in constructive trust, or, alternatively, appointing a receiver to take charge of the assets transferred and such other property of the transferee in amount equal to the value of the assets transferred;

C. Awarding prejudgment interest on such amounts and costs;

D. Awarding punitive damages; and

E. Awarding such other relief as is appropriate.

COUNT XIII–FRAUDULENT TRANSFER - 11 U.S.C. § 548(a)(1)(B) —JEFFREY

366. The Trustee repeats and realleges paragraphs 1 through 303 of this Complaint as though fully set forth herein.

367. The Debtor made certain of the transfers of property to or for the benefit of Jeffrey as described in paragraphs 4, 6, 58, 63, 69, 84 and 239 of this Complaint, which occurred on or within two years of the Petition Date.

368. The Debtor received less than a reasonably equivalent value in exchange for such transfers.

369. The Debtor was insolvent on the date that such transfers were made, or became insolvent as a result of such transfers; the Debtor was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the Debtor was an unreasonably small capital; the Debtor intended to incur, or believed that the Debtor would incur, debts that would be beyond the Debtor's ability to pay as such debts matured; or made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

WHEREFORE, the Trustee prays that this Court enter judgment:

A. Avoiding the transfers of property made by the Debtor to or for the benefit of Jeffrey and awarding the Trustee recovery of an amount equal to the value of such property from Jeffrey pursuant to 11 U.S.C. §§ 548 and 550;

B. Attaching Jeffrey's property and enjoining them from encumbering or transferring his property and declaring any property acquired by Jeffrey with the Debtor's property to be held in constructive trust, or, alternatively, appointing a receiver to take charge of the assets transferred and such other property of the transferee in amount equal to the value of the assets transferred;

C. Awarding prejudgment interest on such amounts and costs;

D. Awarding punitive damages; and

E. Awarding such other relief as is appropriate.

COUNT XIV – FRAUDULENT TRANSFER-740 ILCS § 160/5(a)(1) —JEFFREY

370. The Trustee repeats and realleges paragraphs 1 through 303 of this Complaint as though fully set forth herein.

371. The Debtor made transfers of property as described in paragraphs 4, 6, 58, 63, 69, 84 and 239of this Complaint to or for the benefit of Jeffrey, on or within four years of the Petition Date, with the actual intent to hinder, delay or defraud entities to which the Debtor was indebted or became indebted, on or after the dates such transfers were made.

372. There are creditors of the Debtor's estate whose claims arose before or after the transfers were made.

WHEREFORE, the Trustee prays that this Court enter judgment:

A. Avoiding the transfers of property made by the Debtor to or for the benefit of Jeffrey and awarding the Trustee recovery of an amount equal to the value of such property from Jeffrey pursuant to 11 U.S.C. §§ 544(b) and 550 and 740 ILCS § 160/5(a)(1);

B. Attaching Jeffrey's property and enjoining him from encumbering or transferring his property and declaring any property acquired with the Debtor's property to be held in constructive trust, or, alternatively, appointing a receiver to take charge of the assets transferred and such other property of the transferee in amount equal to the value of the assets transferred;

C. Awarding prejudgment interest on such amounts and costs;

D. Awarding punitive damages; and

E. Awarding such other relief as is appropriate.

COUNT XV – FRAUDULENT TRANSFER-740 ILCS § 160/5(a)(2) —JEFFREY

373. The Trustee repeats and realleges paragraphs 1 through 303 of this Complaint as though fully set forth herein.

374. The Debtor made transfers of property as described in paragraphs 4, 6, 58, 63, 69, 84 and 239of this Complaint to or for the benefit of Jeffrey on or within four years of the Petition Date.

375. The Debtor received less than a reasonably equivalent value in exchange for such transfers.

376. The Debtor was insolvent on the date that such transfers were made, or became insolvent as a result of such transfers; the Debtor was engaged in business or a transaction, or was about to engage in business or a transaction for which any property remaining with the Debtor was an unreasonably small capital; or, the Debtor intended to incur, or believed that the Debtor would incur, debts that would be beyond the Debtor's ability to pay as such debts matured.

377. There are creditors of the Debtor's estate whose claims arose before or after the transfers were made.

WHEREFORE, the Trustee prays that this court seek judgment:

A. Avoiding the transfers of property made by the Debtor to or for the benefit of Jeffrey and awarding the Trustee recovery of an amount equal to the value of such property from Daniel pursuant to 11 U.S.C. §§548 and 550 and 740 ILCS §160/5(a)(2);

B. Attaching Jeffrey's property and enjoining him from encumbering or transferring his property and declaring any property acquired with the Debtor's property to be held in constructive trust, or, alternatively, appointing a receiver to take charge of the assets transferred and such other property of the transferee in amount equal to the value of the assets transferred;

C. Awarding prejudgment interest on such amounts and costs;

D. Awarding punitive damages; and

E. Awarding such other relief as is appropriate.

COUNT XVI – FRAUDULENT TRANSFER – 740 ILCS § 160/6(a) —JEFFREY

378. The Trustee repeats and realleges the allegations in paragraphs 1 through 303 of this Complaint as though fully set forth herein.

379. On or within four years of the Petition Date, the Debtor made transfers of property as described in paragraphs 4, 6, 58, 63, 69, 84 and 239of this Complaint to or for the benefit of Jeffrey.

380. There are creditors of the Debtor's estate whose claims arose before the transfers were made.

381. The Debtor made the transfers without receiving a reasonably equivalent value in exchange for the transfers.

382. The Debtor was insolvent at the time of the transfers or became insolvent as a result of the transfers.

WHEREFORE, Trustee prays that this Court enter judgment:

A. Avoiding the transfers of property made by the Debtor to or for the benefit of Jeffrey and awarding the Trustee recovery of an amount equal to the value of the property from Jeffrey pursuant to 11 U.S.C. §§ 544(b) and 550 and 740 ILCS § 160/6(a).

B. Attaching Jeffrey's property and enjoining him from encumbering or transferring his property and declaring any property acquired with the Debtor's property to be held in constructive trust, or, alternatively, appointing a receiver to take charge of the assets transferred and such other property of the transferee in amount equal to the value of the assets transferred;

C. Awarding prejudgment interest on such amounts and costs;

D. Awarding punitive damages; and

E. Awarding such other relief as is appropriate.

COUNT XVII – BREACH OF FIDUCIARY DUTY—JEFFREY

383. The Trustee repeats and realleges paragraphs 1 through 303 of this Complaint as though fully set forth herein.

384. As "Chief Operating Officer" and "General Counsel" of the Debtor, Jeffrey owed fiduciary duties of care, loyalty, good conduct, and good faith and fair dealing to the Debtor, including a duty to avoid self-dealing and self-enrichment at the expense of the Debtor and its creditors. Jeffrey's fiduciary duties owed to the Debtor arose as a matter of common law upon his appointment as an officer and agent of the Debtor. As a matter of law, Jeffrey as "an agent is subject to a duty to his principal to act solely for the benefit of the principal in all matters connected with his agency." *Mullaney, Wells & Co. v. Savage*, 78 Ill. 2d 534, 546-47 (1980).

385. Jeffrey breached these duties by, *inter alia*, which proximately caused the damages set forth in each subparagraph and summarized in paragraph 387:

a. failing to supervise adequately and install controls relating to the calculation and payment of interest on security deposits (¶¶ 86, 88-97, 116, 131), which proximately caused damage to the Debtor by subjecting it to liability under the RLTO for statutory damages and attorney's fees and its costs of defense and settlement of the RLTO claims;

b. failing to obtain professional liability insurance to protect the Debtor from liability on RLTO claims (¶ 87), which proximately caused damage

to the Debtor by subjecting it to uninsured liability under the RLTO for statutory damages and attorney's fees and its costs of defense and defense of the RLTO claims;

c. failing to follow the advice of the Debtor's outside counsel to settle the Class Action prior to the Debtor incurring substantial liability for Class Counsel's attorneys' fees (¶¶ 131-33, 155) which proximately caused damage to the Debtor by increasing its liability exposure and litigation costs, as well as increasing adjudicated attorneys' fees awarded to Class Counsel;

d. failing to follow the advice of the Debtor's outside counsel to not file a strategic bankruptcy case (¶¶ 131-34, 148, 169), which proximately caused damage to the Debtor by causing the Debtor to pay legal fees incurred primarily for the benefit of the insiders, subjecting the Debtor and the estate to increased administration, dissolution, and liquidation costs, and failing to pursue remedies available to the Debtor that would result in the full payment of all claims against the Debtor;

e. conspiring with Daniel to delay, hinder and defraud creditors of the Debtor by, *inter alia*, isolating liabilities in the Debtor and transferring assets to insiders, which proximately caused damage to the Debtor by depriving the Debtor of assets that would have otherwise been available to pay creditor claims and increased administration, dissolution, and liquidation costs;

f. advising and supporting Daniel in making distributions to or for the benefit of insiders while the Debtor was insolvent (¶ 239), which proximately caused damage to the Debtor by depriving the Debtor of assets that would have otherwise been available to pay creditor claims and increased administration, dissolution, and liquidation costs;

g. ; failing to enforce the Debtor's claim to compensation under the Management Agreement, which proximately caused damage to the Debtor by failing to pursue remedies available to the Debtor that would result in the full payment of all claims against the Debtor and increased administration, dissolution, and liquidation costs;

h. submitting a knowingly false statement of the financial ability of the Debtor to the state court and Class Counsel for purposes of inducing reliance and forbearance with respect to the posting of a letter of credit and nonjoinder of the Horizon Group Companies and Daniel as additional Defendants in the Class Action (¶¶ 189-91 and 197-202), which proximately caused damage to the Debtor by subjecting it to liability for attorney's fees costs and increased administration, dissolution, and liquidation costs;

i. authorizing the filing of a bad faith Chapter 11 bankruptcy case, which proximately caused damage to the Debtor by subjecting it to liability for attorney's fees costs and increased administration, dissolution, and liquidation costs;

j. providing incomplete and inaccurate testimony at the Section 341 meeting of creditors and Rule 2004 examination (¶ 303), which proximately caused damage to the Debtor by causing the Debtor to pay legal fees incurred primarily for the benefit of the insiders and interfering with the Trustee's pursuit of remedies available to the estate that would result in the full payment of all claims against the Debtor and increased administration, dissolution, and liquidation costs;

k. attesting to incomplete and inaccurate schedules and statement of financial affairs for the Debtor (¶ 303), which proximately caused damage to the Debtor by causing the Debtor to pay legal fees incurred primarily for the benefit of the insiders and interfering with the Trustee's pursuit of remedies available to the estate that would result in the full payment of all claims against the Debtor and increased administration, dissolution, and liquidation costs;

l. withholding documents subject to subpoena and otherwise hindering the Trustee's investigation into the Debtor's financial affairs (¶ 303), which proximately caused damage to the Debtor by causing the Debtor to pay legal fees incurred primarily for the benefit of the insiders and interfering with the Trustee's pursuit of remedies available to the estate that would result in the full payment of all claims against the Debtor and increased administration, dissolution, and liquidation costs;

m. failing to cooperate with the Debtor's bankruptcy counsel in complying with subpoenas (¶ 303), which proximately caused damage to the Debtor by causing the Debtor to pay legal fees incurred primarily for the benefit of the insiders and interfering with the Trustee's pursuit of remedies available to the estate that would result in the full payment of all claims against the Debtor and increased administration, dissolution, and liquidation costs;

n. refusing to authorize the filing of actions against affiliates to enforce the Debtor's contractual rights, which proximately caused damage to the Debtor by failing to pursue remedies available to the Debtor that would result in the full payment of all claims against the Debtor and increased administration, dissolution, and liquidation costs;

o. failing to authorize the filing of third party complaints in the Class Action against the Horizon Group Companies, which proximately caused damage to the Debtor by failing to pursue remedies available to the Debtor that would result in the full payment of all claims against the Debtor and increased administration, dissolution, and liquidation costs;

p. failing to demand that the Majority Interest of the Debtor make additional capital contributions to the Debtor to enable the Debtor to meet it expenses and obligations, which proximately caused damage to the Debtor by failing to pursue remedies available to the Debtor that

would result in the full payment of all claims against the Debtor and increased administration, dissolution, and liquidation costs;

q. authorizing the Debtor's payment of health insurance premiums for Tracy, a non-employee of Debtor (¶ 261), which proximately caused damage to the Debtor by depriving the Debtor of assets that would have otherwise been available to pay creditor claims

r. aiding and abetting breaches of fiduciary duty by Daniel, which proximately caused damage to the Debtor as described in the fiduciary duty count against Daniel and increased administration, dissolution, and liquidation costs; and

s. authorizing and accepting salary and other benefits from the Debtor in excess of the fair market value of his services, including providing and accepting compensation for legal services while he was not authorized to accept the same, which proximately caused damage to the Debtor by depriving the Debtor of assets that would have otherwise been available to pay creditor claims and increased administration, dissolution, and liquidation costs.

386. Jeffrey's breach of his fiduciary duties to the Debtor arose from his grossly negligent, reckless, knowing misconduct, or intentional acts, which subjected the Debtor to substantial liabilities and its inability to its meets its liabilities.

387. Jeffrey's breach of his fiduciary duties to the Debtor proximately caused substantial damages to the Debtor, including, but not limited to the following claims

against the Debtor: (a) obligations under the Settlement Agreement, Claim Numbers 11 and 12,, in the aggregate amount of $1,215,907.33; (b) legal expenses relating to the defense of the Class Action, Claim Number 3, in the amount of $12,912.00; (c) U.S. Trustee and legal expenses relating to the Chapter 11 phase of this bankruptcy case, ECF No. 133 ($12,739.04) and Claim Number 2 ($4,875.00), in the aggregate amount of $17,614.04; (d) legal expenses relating to the Unite Here Union negotiations, ECF No. 135 ($17,770.00) and Claim Number 6 ($5,894.00), in the aggregate amount of $23,664.00;; and (e) taxes and penalties, Claim Number 14, in the aggregate amount of $250,257.79, for a total amount of not less than $1,500,000.00, plus all administrative expenses and fees in this case.

WHEREFORE, the Trustee prays that this Court enter judgment in his favor and against Jeffrey for compensatory and special damages of not less than $1,500,000.00, for an amount equal to the excess of the fair market value of his services, punitive damages, and prejudgment interest; ordering that Jeffrey forfeit all compensation and benefits paid to Jeffrey by the Debtor, and for such other relief as is appropriate.

COUNT XVIII – BREACH OF FIDUCIARY DUTY—DANIEL

388. Trustee repeats and realleges paragraphs 1 through 303 of this Complaint as though fully set forth herein.

389. As Manager of the Debtor, Daniel owed fiduciary duties of loyalty, care, and good faith and fair dealing to the Debtor pursuant to § 15-3 of the Illinois Limited Liability Company Act, 805 ILCS 180/15-3 ("LLC Act").

390. Pursuant to § 15-3(b)(1) and (2), which is imposed upon the Manager pursuant to § 15-3(g), Daniel owed Debtor a duty of loyalty (a) "to account to the [Debtor] and to hold as trustee for it any property, profit, or benefit derived by the [Manager] in the conduct or winding up of the [Debtor's] business or derived from use by the [Manager] of the [Debtor's] property, including the appropriation of a [Debtor's] opportunity[;]" and (b) "to act fairly when a [Manager] deals with the [Debtor] in the conduct or winding up of the [Debtor's] business as or on behalf of a party having an interest adverse to the [Debtor]."

391. Pursuant to § 15-3(c) of the LLC Act, Daniel owed Debtor a duty of care "in the conduct of and winding up of the [Debtor's] business [that] is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law."

392. Pursuant to § 15-3(d) of the LLC Act, Daniel was obligated to discharge his duties, as Manager, owed to the [Debtor] and Members, under the LLC Act and the Operating Agreement and to exercise any rights "consistent with the obligation of good faith and fair dealing."

393. Daniel's management of the Debtor was persistently an exercise in self-dealing along with a conscious and deliberate disregard for the rights of others, intentional misconduct, and knowing violation of law.

394. Daniel breached his fiduciary duty of loyalty owed to the Debtor by failing to account to the Debtor any property, profit, or benefit derived in the conduct of Debtor's business or derived from use of the Debtor's property; by failing to hold as

trustee for the Debtor any property, profit, or benefit derived in the conduct of Debtor's business or derived from use of the Debtor's property or misappropriated Debtor's opportunities by one or more of the following acts or omissions, which proximately caused the damages set forth in each subparagraph and summarized in paragraph 398:

a. conspiring to delay, hinder and defraud creditors of the Debtor by, *inter alia*, obtaining legal advice on whether creditors could pierce the corporate veil of the Debtor, which proximately caused damage to the Debtor by causing the Debtor to pay legal fees incurred primarily for the benefit of the insiders and failing to pursue remedies available to the Debtor that would result in the full payment of all claims against the Debtor and increased administration, dissolution, and liquidation costs;

b. making distributions to or for the benefit of insiders while the Debtor was insolvent (¶ 239), which proximately caused damage to the Debtor by depriving the Debtor of assets that would have otherwise been available to pay creditor claims and increased administration, dissolution, and liquidation costs;

c. failing to enforce the Debtor's claim to compensation under the Management Agreement, which proximately caused damage to the Debtor by failing to pursue remedies available to the Debtor that would result in the full payment of all claims against the Debtor and increased administration, dissolution, and liquidation costs;

d. submitting a knowingly false statement of the financial ability of the Debtor to the state court and Class Counsel for purposes of inducing reliance and forbearance with respect to the posting of a letter of credit (¶¶ 189-91 and 197-202), which proximately caused damage to the Debtor by causing the Debtor to pay legal fees incurred primarily for the benefit of the insiders and failing to pursue remedies available to the Debtor that would result in the full payment of all claims against the Debtor and increased administration, dissolution, and liquidation costs;

e. authorizing the filing of a bad faith Chapter 11 bankruptcy case (¶303), which proximately caused damage to the Debtor by causing the Debtor to pay legal fees incurred primarily for the benefit of the insiders, subjecting the Debtor and the estate to the payment of sanctions, and failing to pursue remedies available to the Debtor that would result in the full payment of all claims against the Debtor and increased administration, dissolution, and liquidation costs;

f. providing incomplete and inaccurate testimony at the Section 341 meeting of creditors and Rule 2004 examination (¶ 303), which proximately caused damage to the Debtor by causing the Debtor to pay legal fees incurred primarily for the benefit of the insiders and interfering with the Trustee's pursuit of remedies available to the estate that would result in the full payment of all claims against the Debtor and increased administration, dissolution, and liquidation costs;

g. withholding documents subject to subpoena and otherwise hindering the Trustee's investigation into the Debtor's financial affairs (¶ 303), which proximately caused damage to the Debtor by causing the Debtor to pay legal fees incurred primarily for the benefit of the insiders and interfering with the Trustee's pursuit of remedies available to the estate that would result in the full payment of all claims against the Debtor and increased administration, dissolution, and liquidation costs;

h. failing to demand that the Majority Interest make additional capital contributions to the Debtor to enable the Debtor to meet it expenses and obligations, which proximately caused damage to the Debtor by failing to pursue remedies available to the Debtor that would result in the full payment of all claims against the Debtor and increased administration, dissolution, and liquidation costs; and

i. authorizing and accepting distributions and other benefits from the Debtor in excess of the fair market value of his services, which proximately caused damage to the Debtor by depriving the Debtor of assets that would have otherwise been available to pay creditor claims and increased administration, dissolution, and liquidation costs.

395. Daniel acted with conscious and deliberate disregard for the rights of others and in a grossly negligent or reckless manner or intentionally or knowingly violated the law in breaching his fiduciary duty of care owed to the Debtor by one or

more of the following acts or omissions, which proximately caused the damages set forth in each subparagraph and summarized in paragraph 398:

a. failing to adequately supervise Jeffrey's implementation of controls relating to the calculation and payment of interest on security deposits (¶¶ 86, 88-97, 116, 131), which proximately caused damage to the Debtor by subjecting it to liability under the RLTO for statutory damages and attorney's fees and its costs of defense and settlement of the RLTO claims;

b. failing to obtain professional liability insurance to protect the Debtor from liability on RLTO claims (¶ 87), which proximately caused damage to the Debtor by subjecting it to uninsured liability under the RLTO for statutory damages and attorney's fees and its costs of defense and defense of the RLTO claims;

c. failing to follow the advice of the Debtor's outside counsel to settle the Class Action prior to the Debtor incurring substantial liability for Class Counsel's attorneys' fees (¶ 131-33, 155), which proximately caused damage to the Debtor by subjecting it to liability under the RLTO for statutory damages and attorney's fees and its costs of defense and settlement of the RLTO claims substantially in excess of the amounts that could have been negotiated as a settlement early on in the Class Action;

d. failing to follow the advice of the Debtor's outside counsel to not file a strategic bankruptcy case (¶131-34, 148, 169), which proximately caused damage to the Debtor by subjecting it to liability for attorney's fees and costs and increased administration, dissolution, and liquidation costs;

e. conspiring to delay, hinder and defraud creditors of the Debtor by, inter alia, obtaining legal advice on whether creditors could pierce the corporate veil of the Debtor, which proximately caused damage to the Debtor by subjecting it to liability for attorney's fees costs and increased administration, dissolution, and liquidation costs;

f. submitting a knowingly false statement of the financial ability of the Debtor to the state court and Class Counsel for purposes of inducing reliance and forbearance with respect to the posting of a letter of credit (¶¶ 189-91 and 197-202), which proximately caused damage to the Debtor by subjecting it to liability for attorney's fees costs and increased administration, dissolution, and liquidation costs;

g. authorizing the filing of a bad faith Chapter 11 bankruptcy case (¶ 303), which proximately caused damage to the Debtor by subjecting it to liability for attorney's fees costs and increased administration, dissolution, and liquidation costs;

h. providing incomplete and inaccurate testimony at the Section 341 meeting of creditors and Rule 2004 examination (¶ 303) which

proximately caused damage to the Debtor by subjecting it to liability for attorney's fees costs and increased administration, dissolution, and liquidation costs, and interfering with the Trustee's pursuit of remedies available to the estate that would result in the full payment of all claims against the Debtor;

i. approving Jeffrey's attesting to incomplete and inaccurate schedules and statement of financial affairs for the Debtor (¶ 303), which proximately caused damage to the Debtor by causing the Debtor to pay legal fees incurred primarily for the benefit of the insiders and interfering with the Trustee's pursuit of remedies available to the estate that would result in the full payment of all claims against the Debtor and increased administration, dissolution, and liquidation costs;

j. withholding documents subject to subpoena and otherwise hindering the Trustee's investigation into the Debtor's financial affairs (¶ 303), which proximately caused damage to the Debtor by causing the Debtor to pay legal fees incurred primarily for the benefit of the insiders and interfering with the Trustee's pursuit of remedies available to the estate that would result in the full payment of all claims against the Debtor and increased administration, dissolution, and liquidation costs;

k. failing to cooperate with the Debtor's bankruptcy counsel in complying with subpoenas (¶ 303), which proximately caused damage to the Debtor by causing the Debtor to pay legal fees incurred primarily for the benefit

of the insiders and interfering with the Trustee's pursuit of remedies available to the estate that would result in the full payment of all claims against the Debtor and increased administration, dissolution, and liquidation costs;

l. refusing to authorize the filing of actions against affiliates to enforce the Debtor's contractual rights, which proximately caused damage to the Debtor by failing to pursue remedies available to the Debtor that would result in the full payment of all claims against the Debtor and increased administration, dissolution, and liquidation costs;

m. failing to authorize the filing of third party complaints in the Class Action against the Horizon Group Companies, which proximately caused damage to the Debtor by failing to pursue remedies available to the Debtor that would result in the full payment of all claims against the Debtor and increased administration, dissolution, and liquidation costs;

n. authorizing the Debtor's payment of health insurance premiums for Tracy Michael Wolfe (¶ 261), which proximately caused damage to the Debtor by depriving the Debtor of assets that would have otherwise been available to pay creditor claims and increased administration, dissolution, and liquidation costs;

o. aiding and abetting breaches of fiduciary duty by Jeffrey, which proximately caused damage to the Debtor as described in the fiduciary

duty count against Jeffrey and increased administration, dissolution, and liquidation costs; and

p. authorizing and accepting distributions and other benefits from the Debtor in excess of the fair market value of his services), which proximately caused damage to the Debtor by depriving the Debtor of assets that would have otherwise been available to pay creditor claims and increased administration, dissolution, and liquidation costs.

396. Daniel's acts and omissions as Manager of the Debtor, as identified and described in the preceding two paragraphs, were not a discharge of his duties and obligations owed to the Debtor as set forth in the LLC and Operating Agreement consistent with Daniel's obligations of good faith and fair dealing.

397. Daniel's breach of his fiduciary duties to the Debtor proximately caused substantial damages to the Debtor, including, but not limited to the following unpaid administrative expenses and claims against the estate of the Debtor: (a) obligations under the Settlement Agreement, Claim Numbers 11 and 12,, in the aggregate amount of $1,215,907.33; (b) legal expenses relating to the defense of the Class Action, Claim Number 3, in the amount of $12,912.00; (c) U.S. Trustee and legal expenses relating to the Chapter 11 phase of this bankruptcy case, ECF No. 133 ($12,739.04) and Claim Number 2 ($4,875.00), in the aggregate amount of $17,614.04; (d) legal expenses relating to the Unite Here Union negotiations, ECF No. 135 ($17,770.00) and Claim Number 6 ($5,894.00), in the aggregate amount of $23,664.00;; and (e) taxes and penalties, Claim Number 14, in the aggregate amount

of $250,257.79, for a total amount of not less than $1,500,000.00, plus all administrative expenses and fees in this case.

WHEREFORE, the Trustee prays that this Court enter judgment in his favor and against Daniel for compensatory and special damages of not less than $1,500,000.00, and for punitive damages, and prejudgment interest; ordering that Daniel forfeit all compensation and benefits paid to Daniel by the Debtor, and for such other relief as is appropriate.

COUNT XIX – DISALLOWANCE, SUBORDINATION OF HOLDINGS' CLAIMS AND DECLARATORY RELIEF—HOLDINGS-11 U.S.C. §§ 502(B)(1) AND 510(C)

398. The Trustee repeats and realleges paragraphs 1 through 303 of this Complaint as though fully set forth herein.

399. As described in paragraph 297 of the Complaint, Holdings filed two claims against the Debtor's estate: (1) $40,000 relating to the transfer from the 2969 Operating Account to the Class Action claims administrator [Claim No. 7] and (2) $100,000 relating to the advance on Daniel and the Daniel Trust's line of credit that was deposited in the 3717 Operating Account and wired to Shaw Fishman as a retainer for the bankruptcy [Claim No. 8] (collectively "Holdings' Claims").

400. In Claim 7, Holdings asserts that the Debtor owes it $40,000 for an "unpaid prepetition loan" relating to a settlement in the Bonnen litigation. On or about June 10, 2014, the Debtor wired $40,000 to the Class Action claims administrator from the 2969 Operating Account. The Debtor did not contemporaneously record this transaction in its general ledger. Rather, on September 3, 2014, the Debtor made an entry in its general journal recording the

June 10, 2014 payment as a "loan" from owner to the Debtor and a litigation expense. This occurred the day after Daniel and Jeffrey first met with the Debtor's bankruptcy attorneys. On September 3, 2014, Jeffrey sent an email to Robert M. Fishman ("Fishman") (the Debtor's bankruptcy counsel) with a copy to Daniel confirming the Debtor's payment from the 2969 Operating account and that he had "booked" it as a loan from owner.

401. In Claim 8, Holdings asserts that the Debtor owes it $100,000 for an "unpaid prepetition loan" for the legal fees of Shaw Fishman, the Debtor's bankruptcy counsel. On September 5, 2014, Daniel or the Daniel Trust requested and obtained a $100,000 advance on Daniel's personal Northern Trust line of credit, loan account number XXXXXX5359, secured by Daniel's Illinois personal residence. The advance was deposited into the 4717 Operating Account and wired the same day to Shaw Fishman as its retainer for future services in connection with the Debtor's bankruptcy.

402. On September 5, 2014, Jeffrey emailed Mark Radtke (the Debtor's attorney at Shaw Fishman) attaching a list of creditors and noting, *inter alia*, "I listed Daniel Michael and 2 Trusts. They are the borrowers on a credit line which we used to lend funds to the management company relating [to] the BK filing." Also on September 5, 2014, Jeffrey emailed Radtke, falsely advising him that the 2969 Operating Account always was in the name of Holdings.

403. On December 4, 2014, the Debtor filed its Application for Authority to Employ Shaw Fishman as Bankruptcy Counsel and for Approval of the Compensation

Arrangement Related Thereto [ECF No. 17]. The Application disclosed the Debtor as the source of the $100,000 retainer paid to Shaw Fishman for its services in a Chapter 11 case. (Doc. 17-2).

404. On or about December 10, 2014, the Debtor instructed its attorneys *not to include in the schedules* "the entities that paid for the legal services as creditors." Daniel and Jeffrey made a conscious decision not to list Daniel or the Daniel Trust as a creditor for any amount with respect to the September 5, 2014 $100,000 transfer to the Debtor.

405. On December 11, 2014, Patricia Fredericks, a legal assistant at Shaw Fishman, emailed Jeffrey and Jude Alagna (an accounting employee of the Debtor) advising on the status of the preparation of the schedules and statement of financial affairs, *inter alia*: "[I]t has been determined that we do not need to list the entity who paid legal fees on behalf of Management."

406. On December 11, 2014, the Debtor filed its schedules and statement of financial affairs. The Debtor failed to schedule, Holdings, Daniel or the Daniel Trust as holding a claim for the $100,000 fee advance. Daniel and Jeffrey intentionally omitted the entity that "loaned" $100,000 to the Debtor to pay the attorneys' retainer for the bankruptcy case (in order to conceal the source of the retainer) and caused the Debtor's counsel to represent that the Debtor was the source of the retainer.

407. The Horizon Group Companies were obligated to pay the Debtor compensation in amounts equal to the expenses underlying the Claims, pursuant to the Management Agreement. The Claims are unenforceable against the Debtor under

the Management Agreement and applicable law and are not allowable under Section 502(b)(1).

408. The Horizon Group Companies were jointly and severally liable on the Class Action RLTO claims. The Management Agreement provides that the Debtor is not to be liable for any loss relating to the operation of the Properties. The Claims reflect losses relating to the operation of the Properties. Therefore, the Debtor is not liable to the Horizon Group Companies with respect to the Claims. The Claims are unenforceable against the Debtor under the Management Agreement and applicable law and not allowable under Section 502(b)(1).

409. The Claims should be characterized as equity contributions pursuant to the Debtor's operating agreement (the "Operating Agreement") and applicable law. The Claims are unenforceable against the Debtor under the Operating Agreement, because the General Member is obligated to make additional capital contributions to the Debtor to pay all creditor claims against the Debtor. The Claims (to the extent they assert an unsecured claim) are subject to recharacterization as capital contributions under applicable law: (1) the Claims are not evidenced by instruments, or any evidence of indebtedness; (2) there is no fixed maturity date or schedule of payments; (3) there is no agreed rate of interest and interest payments; (4) the source of repayments is dependent upon the Trustee's claims against insiders and initial transferees of transfers made for the insiders benefit; (5) the Debtor had inadequate or negative capitalization at the time of the contributions; (6) there is a complete identity of interest between the Debtor and the Horizon Group Enterprise; (7) there

is no security for the Claims; (8) the Debtor could not obtain financing from third party sources; (9) the claims are subordinated to all administrative expenses of the bankruptcy proceedings pursuant to Section 726 and should be subordinated to all other creditor claims pursuant to Section 510(c); (10) the advances were not used to acquire capital assets; (11) there was no sinking fund or reserve for repayment; (12) the ratio of shareholder loans to capital was excessive as the Debtor had no capital at the time of the "loans"; (13) Daniel exercised complete control over the Debtor, Holdings and the Horizon Group Enterprise; and (14) the transactions were not at arms-length. The Claims are therefore unenforceable against the Debtor under the Operating Agreement and applicable law and not allowable under Section 502(b)(1).

410. Holdings has no standing to assert Claim 8, because the underlying documents reflect that Daniel or the Daniel Michael Trust was the source of the $100,000 deposit to the Debtor's 4717 Operating Account for Shaw Fishman's attorneys' fees. There is no evidence that such claim was assigned to Holdings. The Claims are therefore unenforceable against the Debtor under applicable law and not allowable under Section 502(b)(1).

411. Holdings is estopped to assert Claim 8, because Daniel verified under oath that no such claim existed in the Debtor's schedules. Daniel knowingly failed to disclose any claim relating to the $100,000 deposit to the Debtor's 3717 Operating Account in order conceal the source of the retainer paid to the Debtor's bankruptcy attorneys. Claim 8 is therefore unenforceable against the Debtor under applicable law and not allowable under Section 502(b)(1).

412. In the event the Court determines that Holdings' Claims are not subject to disallowance pursuant to Section 502(b)(1), Trustee seeks a determination in this Count that such claims are subject to subordination to all other allowed claims against the estate under principles of equitable subordination.

413. As described in paragraphs 43, 44, 60, 63, 69, 70, 75-75, 193 & 213 of the Complaint, Holdings is a passive holding company that serves as the holder of a concentration account for the Horizon Group Companies and as consolidating vehicle for financial and tax reporting for the Horizon Group Companies and Holdings members. Holdings filed the claims as an agent for the Horizon Group Companies, Daniel, Martha, Jeffrey, and their respective trusts that hold the membership interests in Holdings.

414. The holders of the claims have engaged in inequitable conduct, the misconduct caused injury to the creditors and conferred an unfair advantage to the claim holder; and equitable subordination of the claim is consistent with Bankruptcy Code.

415. As described in paragraphs 406 through 424, Holdings is a member of the Horizon Group Enterprise and as such the Debtor is an alter ego and instrumentality of Holdings. Holdings claims are therefore subject to subordination to the claims of all other creditors of the Debtor pursuant to Section 510(c) of the Bankruptcy Code.

WHEREFORE, the Trustee prays that this Court enter judgment in his favor and against Daniel, Martha, Jeffrey, Holdings, and the Horizon Group Companies;

determining that they are the holders of the Claims filed by Holdings; disallowing the claims; or, alternatively, subordinating the Claims to the claims of all other creditors, and for such other relief as is appropriate.

COUNT XX – EQUITABLE RELIEF PIERCING THE VEIL OF THE DEBTOR AND DETERMINATION THAT THE HORIZON GROUP COMPANIES, HOLDINGS, DANIEL, THE DANIEL TRUST AND JEFFREY ARE ALTER EGOS OF THE DEBTOR

416. The Trustee repeats and realleges paragraphs 1 through 303 of this Complaint as though fully set forth herein.

417. Daniel, the Daniel Trust, Jeffrey, Holdings and the Horizon Group Companies used the Debtor as an instrumentality to conduct their business, such that the Debtor was a mere alter ego or conduit for the conduct of the business and personal affairs of Daniel, the Daniel Trust, Jeffrey, Holdings and the Horizon Group Companies. The Debtor and the Horizon Group Enterprise functioned as a single economic entity such that the Debtor had no independent legal or economic significance of its own.

418. The Debtor was so organized and controlled, and its affairs so conducted, by Daniel, the Daniel Trust, Jeffrey, Holdings and the Horizon Group Companies, and there is a unity of interest and ownership such that the separate personalities of the Debtor and Daniel, the Daniel Trust, Jeffrey, Holdings and the Horizon Group Companies no longer existed and circumstances are such that the adherence to the fiction of a separate entity would promote injustice or inequitable circumstances.

419. The Debtor operated as the exclusive agent and manager of the Horizon Group Companies, such that the Horizon Group Companies were vicariously liable

for all actions of the Debtor committed in the course and scope of its agency, including the RLTO liabilities asserted in the Class Action. The Debtor and the Horizon Group Companies were jointly and severally liable for all RLTO violations.

420. Under the Management Agreements, the Horizon Group Companies were obligated to reimburse the Debtor for all expenses it incurred in connection with the operation of the Properties and the Debtor's providing management services to the Horizon Group Companies and the Debtor was not to bear any portion of any loss incurred in connection with the operation of the Properties.

421. The Debtor provided property management services exclusively for the Horizon Group Companies, Holdings or entities owned by Daniel, Martha, their trusts, their children, and their children's trusts and had no business or purpose other than to provide services to Daniel, Martha, Jeffrey, Holdings and the Horizon Group Companies and had no independent business or profit motive. The Debtor had no contractual claim to compensation in excess of its expenses and could not contractually realize any net profit for its business.

422. The Debtor had inadequate capital and operated only to the extent that the Horizon Group Enterprise transferred assets to it equal to the amount of its expenses and distributions it made to other members of the Horizon Group Enterprise.

423. The Debtor and the Horizon Group Enterprise failed to observe corporate formalities by making distributions while insolvent, failing to exercise a capital call against its General Member; failing to document loans to Daniel that were

subsequently restated as distributions; failing to contemporaneously record transactions involving transfers relating to the Class Action and later characterizing the transactions as loans to the Debtor from owner; failing to document the terms of loans from owners; drawing on Daniel and the Daniel Trust's personal lines of credit to fund business operations; comingling funds of the Horizon Group Companies and the Debtor in the 2969 Operating Account and 3717 Operating Account; paying the expense obligations of the Horizon Group Companies and the Debtor from both the 2969 Operating Account and the 3717 Operating Account; paying the health insurance premiums of insiders that were not employees of the Debtor or otherwise entitled to such benefits; and arbitrarily paying the personal obligations of other members of the Horizon Group Enterprise.

424. Daniel and Jeffrey designed and intended that the Debtor would operate in the zone of insolvency, have no substantial assets, and be "judgment proof" as a means to defraud creditors.

425. Daniel exercised total control over the Debtor and other officers had no power to limit his violations of the Operating Agreement and breaches of fiduciary duty to the Debtor. Jeffrey aided and abetted Daniel's violations of the Operating Agreement and breaches of fiduciary duty. The other members of the Horizon Group Enterprise had no functioning officers, directors or employees.

426. There is an absence of corporate records, the Debtor's financial records prior to November of 2011 are not "accessible," the Debtor and the Horizon Companies did not contemporaneously record intercompany transfers, the Debtor's

recording of distributions and other transactions cannot be proved to its cash accounts, and Daniel and Jeffrey withheld corporate records and other documents from the Trustee.

427. The Horizon Group Enterprise commingled all of their cash assets first in the 2969 Operating Account when it was in the name of the Debtor prior to November of 2011. After November 2011, and increasingly as the bankruptcy approached, the Horizon Group Enterprise comingled cash in the 3717 Operating Account where the Debtor's actual deposits and withdrawals substantially exceeded its reported taxable income and expenses. Daniel paid personal expenses of himself and his family from the 2969 Operating Account and the 3717 Operating Account. Daniel and Martha used personal credit cards for personal expenses that were also paid from the 2969 Operating Account and the 3717 Operating Account.

428. There is no documentation of the terms of the loans from "Owner" to the Debtor relating to the $40,000 transfer to the Class Acton disbursing agent and the $100,000 transfer for the payment of the retainer to Shaw Fishman in connection with the bankruptcy; Daniel and Jeffrey characterized these transaction as "loans" on the eve of the Debtor's bankruptcy, after consulting with Shaw Fishman.

429. The Debtor diverted in excess of $2.5 million to pay Daniel and family members' personal expenses and excessive salaries to Jeffrey to the detriment of creditors.

430. The Debtor and the Horizon Group Enterprise failed to maintain arms-length relationships in that they failed to operate consistent with the terms of the

management agreements; the terms of the management agreement provided no profit opportunity for the Debtor; the Debtor operated as a de facto disbursing entity for Daniel and Martha's personal expenses; Daniel and Jeffrey failed to follow any corporate formalities, other than filing annual reports with the Illinois Secretary of State; and Daniel and Jeffrey structured transactions and agreements contrary to the best interests of the Debtor to advance their and their family members' personal interests at the expense of the Debtor and its creditors.

431. The Debtor is a mere façade for the operation of the Horizon Group Enterprise. The Debtor, Horizon Group Companies, and Holdings held themselves out to the public and did business under the Debtor's assumed or fictitious names "Horizon Realty Group," "Horizon Group," and "Horizon." Jeffrey held out the "Horizon Realty Group" to the public as an integrated management and ownership enterprise.

432. The Horizon Group Enterprise operated under the Debtor's assumed name, Horizon Realty Group; the Horizon Group Enterprise had common officers, managers and employees; the business purpose of the members of the Horizon Group Enterprise were similar; the members of the Horizon Group Enterprise were located in the same office and used the same telephone number; and the managers, officers and employees of the Horizon Group Enterprise all used business cards and business letterhead displaying the Debtor's assumed name of Horizon Realty Group.

433. Daniel and Jeffrey made multiple fraudulent misrepresentations regarding the financial ability of the Debtor, including in the Settlement Agreement,

the Credit Reference Letter, bankruptcy court pleadings, Section 341 meetings testimony and Rule 2004 examinations testimony.

434. The transfer of millions through the Debtor to or for the benefit of insiders; the fraudulent representation of the Debtor's financial condition to induce forbearance with respect to the posting of the letter of credit; the obstruction of the Trustee's investigation by the withholding of documents and inaccurate and misleading testimony; and the calculated schemes to evade payment of the Class Counsel's claim and other creditor claims is an injustice sufficient to justify the disregard of the corporate veil.

WHEREFORE, the Trustee prays that this Court enter a judgment: (A) finding that the Debtor and Daniel, Holdings and the Horizon Group Companies are alter egos of each other and are one and the same; (B) piercing the corporate veil of the Debtor to hold Daniel, Holdings and the Horizon Group Companies liable for all of the estate's liabilities; (C) finding that the Horizon Group Enterprise's assets are included in the Debtor's bankruptcy estate under 11 U.S.C. §§ 541 and 542; (D) finding that the Trustee is authorized to administer and liquidate the Horizon Group Enterprise's assets for the benefit of the creditors of the Debtor's estate; (E) finding that the automatic stay is extended under 11 U.S.C. §362 over Horizon Group Enterprise and its assets, enjoining all persons or entities from interfering with the Trustee's administration of these assets; (F) appointing a receiver for the Horizon Group Companies to supervise their operation by limiting transfers to the payment of ordinary and necessary business expenses, or, alternatively, enjoining the Horizon

Group Companies from making any distributions to Holdings, Daniel, Martha, Jeffrey or any other person claiming by or through them; and (G) for such other and further relief as is necessary and just.

COUNT XXI – SANCTIONS PURSUANT TO 11 U.S.C. § 105(a) AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 9011—DANIEL AND JEFFREY

435. Count XXI was dismissed without prejudice to the Trustee's filing a Motion for Sanctions pursuant to Court's Order of February 3, 2017 [ECF No. 56].

Dated: August 22, 2017

ANDREW J. MAXWELL, TRUSTEE

By: /s/ Paul M. Bauch
One of His Attorneys

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
Eastern Division

In Re: HORIZON GROUP MANAGEMENT, LLC Debtor(s)	BK No.: 14-41230 Chapter: 7 Honorable Timothy A. Barnes
ANDREW J. MAXWELL, trustee for the estate of Horizon Group Management, LLC Plaintiff(s) DANIEL MICHAEL, et al. Defendant(s)	Adv. No.: 16-00394

ORDER

This adversary proceeding came on for hearing on status on May 23, 2022, the Court having considered the reports of the parties, it is hereby ORDERED that:

1. The parties shall file dispositive motions on or before September 1, 2022:
2. The parties shall file their responses to dispositive motions on or before October 17, 2022;
3. The parties shall file their replies in support of their dispositive motions on or before November 1, 2022.

Enter:

Timothy A. Barnes
United States Bankruptcy Judge

Dated: June 1, 2022

Prepared by:

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Landlords grumble that the ordinance imposes unnecessary administrative burdens on them that just enrich lawyers. Tenant lawyers also will file lawsuits against landlords over security deposits and disclosure issues as a tactic to delay eviction cases against their clients, says Wendy Durbin, an associate at Kovitz Shifrin Nesbit, a Chicago law firm that represents landlords.

The ordinance "was created to protect tenants and protect tenants' rights so they would not live in substandard conditions or be abused by landlords," she says. "I don't think it was created for attorneys to get fees."

Yet Horizon doesn't get much sympathy from John Bartlett, executive director of the Metropolitan Tenants Organization, a Chicago-based tenant advocacy group.

"How hard is it to make sure that you pay interest?" he says. "The reason that these cases get brought up is that there have been other problems. If Horizon had a better relationship with its renters, these other issues wouldn't have come up."

Word count: 841

From tiny acorns grow big disputes: Argument over $1.40 in interest leads to bankruptcy filing

Crain's Chicago Business; Chicago Vol. 37, Iss. 49, (Dec 8, 2014):

Gallun, Alby. 1.

Abstract

The Horizon story begins in June 2009, when Bonnen, who lived in an Uptown apartment building managed by Horizon, filed her class-action suit in Cook County Circuit Court. Under the settlement, Horizon has paid tenants in the class-action suit $45,000, including $5,000 to Bonnen, according to a filing in U.S. Bankruptcy Court in Chicago.

Full Text

As landlord-tenant disputes go, this one's a doozy. It started with the landlord allegedly coming up $1.40 short in interest on a security deposit. Then came the tweet that prompted a libel suit. Now, five years later, the story has taken a new twist, with the Chicago landlord in bankruptcy court after being hit with a legal judgment it can't pay.

Horizon Group Management, which manages about 25 apartment buildings, mainly on Chicago's North Side, filed for Chapter 11 protection last month after losing a class-action suit accusing it of violating the city's landlordtenant ordinance.

Horizon became briefly infamous in 2009, when it filed a libel suit against a tenant, Amanda Bonnen, after she complained on Twitter about a "moldy apartment." But Horizon is 0-and-2 against Bonnen, who not only prevailed in the libel suit but was lead plaintiff in the class-action suit that landed Horizon in bankruptcy.

The result could be portrayed as a victory for the little guy--a case of a victimized tenant beating a bullying landlord--with the bankruptcy delivering an extra dose of justice. Yet it also will add fuel to the long-running debate over the city's landlord-tenant ordinance, which supporters say protects tenants from unscrupulous property owners but many landlords criticize as a big fee generator for opportunistic lawyers.

"This is a classic example of the flaws in the (ordinance) and the inflexibility that judges have in deciding these cases," says Michael Mini, executive vice president of the Chicagoland Apartment Association.

Horizon executives and Bonnen, who now lives in Pittsburgh, did not respond to requests for comment, nor did the attorneys for both sides.

The Horizon story begins in June 2009, when Bonnen, who lived in an Uptown apartment building managed by Horizon, filed her class-action suit in Cook County Circuit Court. She alleged that the firm underpaid interest on her $250 security deposit by $1.40 and failed to provide disclosures about porch safety, both violations of the city's Residential Landlord and Tenant Ordinance.

About a month later, Horizon sued Bonnen, alleging that her tweet libeled the firm.

"Who said sleeping in a moldy apartment was bad for you? Horizon realty thinks its okay," her Twitter post said.

News media ranging from the Wall Street Journal to the Belfast Telegraph reported on the suit, drawing unfavorable attention to an issue that company critics said could have been settled quietly. A judge threw out the libel suit in early 2010.

Bonnen's suit against Horizon continued for another three years, with the two sides finally agreeing to settle the case in November 2013. Under the settlement, Horizon has paid tenants in the class-action suit $45,000, including $5,000 to Bonnen, according to a filing in U.S. Bankruptcy Court in Chicago.

But for Horizon, the worst was yet to come. On Aug. 27, a judge ordered it to pay $833,455 in fees to Bonnen's Chicago-based law firms, Edward T. Joyce & Associates and the Law Offices of Jeffrey S. Sobek. Horizon, which only manages properties and doesn't own them, can't pay the money, claiming assets of $100,000 to $500,000, according to court filings.

The firm, which filed for Chapter 11 protection on Nov. 14, "must take immediate action to preserve its operations and value as a going concern, including the jobs of its 91 employees," a court filing says.

Many apartment landlords have been tripped up by the city's landlord-tenant ordinance, paying too little interest on tenant security deposits or none at all. Many have stopped collecting security deposits altogether, wary of the potential legal liability, and have started to require nonrefundable "move-in fees" instead.

"Landlords just decided let's not call it a security deposit anymore," says Berton Ring, a Chicago attorney who represents tenants in disputes with landlords. "Let's call it something else."

Another common violation by landlords is not providing a required summary of the city's landlord-tenant ordinance to tenants when they sign a lease, he says. Ring says he is getting ready to file a class-action suit against the owner of a 400-unit apartment building on the North Side that didn't provide a summary when a tenant renewed a lease.

March 11, 2015 07:00 AM

Landlord in Twitter libel case accused of defrauding creditors

ALBY GALLUN

Manuel Martinez

The Uptown building where Amanda Bonnen lived

Listen to this article

Almost four months after filing for bankruptcy protection, a North Side apartment landlord wants to sell its assets to a company executive while facing allegations that it defrauded creditors by pulling money out of the business.

Horizon Group Management has asked a judge to approve the sale of its assets to Jeffrey Michael, its chief operating officer, for $75,000, well below the $833,455 it owes two Chicago law firms, its two biggest creditors. Horizon owes the money after settling a bitter class-action suit with the firms over unpaid interest on tenant security deposits.

Saying it doesn't have the money to pay them, Horizon **filed for Chapter 11 protection** last November. But the law firms—Edward T. Joyce & Associates and the Law Offices of Jeffrey S. Sobek—contend the company had plenty of cash, charging that it transferred $555,000 to company owners and members of the Michael family before the filing, putting the money beyond the reach of creditors.

The firms “believed that Horizon, and the Michael family in particular, had engaged in a deliberate course of conduct designed to defraud creditors of Horizon,” according to motion they filed in January in U.S. Bankruptcy Court in Chicago.

DISPUTE DATES TO 2009

The dispute goes back to June 2009, when a Horizon tenant filed a class-action suit accusing the company of underpaying interest on her security deposit and failing to provide disclosures about porch safety, both violations of the city's Residential Landlord and Tenant Ordinance. About a month later, Horizon **sued the tenant for libel** over a disparaging comment she posted on Twitter.

A judge threw out the libel suit. Horizon settled the class-action suit and wound up being on the hook for $833,455 in legal fees to Joyce and Sobek. But Horizon, which manages, but doesn't own, about 1,500 apartments, says it doesn't have many assets beyond two pickup trucks and some office furniture and equipment worth about $61,000 combined, according to a recent filing.

“There's no money in the company,” said Horizon owner Daniel Michael, Jeffrey Michael's father. “The company is broke.”

Horizon filed a motion last month saying the proposed $75,000 asset sale to the younger Michael is the best deal it's going to get. Its property management contracts “do not have much, if any, value because they are terminable on 60 days notice by either party, without cause,” the motion says.

“The only other viable alternative (to the proposed sale) appears be a piecemeal liquidation of the assets to one or more third parties at a substantial discount,” the motion says.

The Michael family owns many of the buildings Horizon manages.

SALES TO INSIDERS

Yet creditors in bankruptcy cases have reason to be circumspect about sales to company insiders, said bankruptcy lawyer Ronald Peterson, a partner at Jenner & Block in Chicago.

“When there's a sale to an insider, there should be special scrutiny,” he said. “The whole object of this exercise it to maximize value, and sometimes insiders have a conflict of interest. They don't always want to pay the most money they can.”

Edward Joyce and Jeffrey Sobek did not return calls. In their January filing, they accuse Horizon and the Michaels of acting in bad faith, using the $555,000 in transfers and other payments to family members to pull money out of the company.

Horizon paid $145,000 in Daniel Michael's credit card bills and covered $37,500 in his country club dues between November 2013 and November 2014, according to the motion. The firm also made monthly payments of $6,000 to Michael's wife, who is not a Horizon employee, and paid Jeffrey Michael an annual salary of $350,000, the motion says.

"They have the money, they should pay," said the law firms' attorney Paul Bauch, founding principal of Chicago-based Bauch & Michaels.

In January, Judge Timothy Barnes approved the motion, allowing the law firms to subpoena records of the Michaels, Horizon, its affiliates and Northern Trust, the family's bank. Judge Barnes is scheduled to consider the asset sale at a March 18 hearing.

D1-D4*

Downtown Districts

(Zoning Ordinance §6-11-2; 6-11-3; 6-11-4; 6-11-5) updated July 31, 2018

PURPOSE STATEMENTS

***See Title 6, Chapter 11 of the Evanston Code of Ordinances for more information, definitions, additional requirements and exceptions to these regulations. A Zoning Analysis is strongly recommended for major projects prior to submitting an application for building permits.**

D1 Downtown Fringe District
To provide for business and office development in compact locations. Massing and scale of structures should be reflective of established uses and provide suitable transition between the adjacent residential districts and the more intense downtown districts. Mixed use development is encouraged through the use of planned developments.

D2 Downtown Retail Core District
To support traditional downtown shopping in Evanston. The district is characterized by street level storefronts and structures that accent pedestrian use. 75% of the total sidewalk exterior shall be dedicated to retail trade activity, including Type I Restaurants. Mixed use developments and reuse of structures shall be encouraged to create and maintain the pedestrian retail character as identified in the adopted "Plan for Downtown Evanston." Lots zoned D2 located in the oRD Redevelopment Overlay District must be developed through planned development.

D3 Downtown Core Development District
To provide the highest density of business infill development and large scale redevelopment in downtown Evanston. This district is also intended to encourage a mix of office, retail, and residential uses. Lots zoned D3 located in the oRD Redevelopment Overlay District must be developed through planned development to ensure consistency with the "Plan for Downtown Evanston."

D4 Downtown Transition District
To provide business infill development and redevelopment in downtown Evanston. Massing and scale of structures should reflect established uses and provide suitable transitions between downtown and neighboring areas. The district is also intended to encourage a mix of office, retail, and residential uses. Lots zoned D4 located in the oRD Redevelopment Overlay District must be developed through planned development to ensure consistency with the "Plan for Downtown Evanston."

BUILDING HEIGHTS

The maximum mean building heights permitted in D1-D4 districts are:

	D1	D2	D3	D4
Containing Residential	42 ft[1]	42 ft[1,2]	85 ft[2]	105 ft[2]
Not Containing Residential				85 ft[2]

MAXIMUM FLOOR AREA RATIOS

	D1	D2	D3	D4
Containing Residential	No requirement	2.75	4.5	5.4
Not containing Residential				4.5

MINIMUM YARD REQUIREMENTS

Principle Structures		D1	D2	D3	D4
Front	All	15 ft	0 feet[3]		
Street Side	All	15 ft	0 feet[3]		
Interior Side, Abutting	Residential district	15 ft	5 ft	15 ft	N/R
	Nonresidential district	No requirement			
Rear, Abutting	Residential district	5 ft	10 ft		
	Nonresidential district	10 ft	(No requirement)		

Parking Setbacks		D1	D2	D3	D4
Front	All	Open, unenclosed parking prohibited			
Street Side	All	Open, unenclosed parking prohibited			
Interior Side, Abutting	Residential	10 feet			5 ft
	Nonresidential	5 feet			
Rear, Abutting	Residential district	5 ft	10 feet		
	Nonresidential district	5 feet		Zero feet	5 ft

PERMITTED AND SPECIAL USES

	D1	D2	D3	D4
Apartment hotel			*S*	
Artist Studio	**P**	**P**	**P**	**P**
Assisted living facility	*S*	*S*[4]	*S*[4]	*S*[4]
Banquet Hall	*S*	*S*	*S*	*S*
Boarding house	*S*			
Business or vocational school	*S*	*S*	*S*	*S*
Commercial indoor recreation	**P**	**P**[5]	**P**	**P**
Commercial parking garage			**P**	*S*
Convenience store	*S*	*S*	*S*	*S*
Craft brewery	*S*	*S*	*S*	*S*
Craft distillery or micro distillery	*S*	*S*	*S*	*S*
Cultural facility	**P**	**P**	**P**	**P**
Daycare center-adult	*S*		*S*	*S*
Daycare center-child	*S*	*S*	*S*	*S*
Drive-thru facilty[6]	*S*		*S*	*S*
Dwelling-Multiple-family	**P**			
Dwellings (above ground floor)		**P**	**P**	**P**
Education inst.-public or private	*S*	*S*	*S*	*S*
Financial institution	**P**	**P**[7]	**P**	**P**
Food store establishment	**P**[8]	**P**	**P**	**P**
Funeral services excluding on-site cremation	*S*	**P**	**P**	*S*
Government institutions	**P**	**P**	**P**	**P**
Hotel	**P**	**P**	**P**	**P**
Independent living facility	*S*	*S*[4]	*S*[4]	*S*[4]
Long term care facility	*S*			
Media broadcasting station			**P**	
Membership organizations	**P**	**P**	**P**	**P**
Neighborhood garden	*S*	*S*	*S*	*S*
Office	**P**	**P**	**p**	**P**
Open sales lot	*S*	*S*	*S*	*S*
Performance entertainment venue		*S*	*S*	*S*
Planned development	*S*	*S*	*S*	*S*
Public utility	**P**		**P**	**P**
Religious institution	**P**	*S*	*S*	*S*
Resale establishment	*S*	*S*	*S*	*S*
Residential care home-Category I	**P**	**P**	**P**	**P**
Residential care home-Category II	**P**	*S*	*S*	*S*[4]
Restaurant- Type I	**P**	**P**	**P**	**P**
Restaurant- Type II		*S*	*S*	*S*
Retail goods/service establishment	**P**	**P**	**P**	**p**
Retirement hotel or home	*S*			
Sheltered care home	*S*			
Transitional shelters	*S*			
Urban farm, rooftop	*S*	*S*	*S*	*S*
Wholesale goods establishment	S			

P=Permitted Use; *S*=Special Use; ☐ = Not Permitted

MINIMUM LOT SIZES

	D1	D2	D3	D4
Residential (square feet per DU)	5,000 (400/DU)		5,000 (300/DU)	5,000 (400/DU)
Stories	No requirement			

DU = dwelling unit

[1] Notwithstanding the foregoing, buildings existing in this district as of the effective date hereof, shall, for the purpose of the district and the requirements, be deemed complying with the building district height requirements.

[2] Building height (floors or stories) when 75% or more of the gross floor area is devoted to accessory parking decks, up to a maximum of 4 stories or 40 feet, whichever is less, shall be excluded from the calculation of the building height.

[3] Zero setback is permitted if setbacks of any existing buildings on the same street form a substantially continuous setback along the public right of way; and if the proposed setback allows for a minimum 5 feet clear width for pedestrian passage between the building's outermost projection and any object lawfully occupying the public right of way including, but not limited to, parking meters, utility poles, bicycle racks, planter boxes and planting areas, newspaper vending boxes, fire hydrants, traffic signs, and bus shelters.

[4] When located above the ground floor.

[5] When located above the ground floor. Special Use permit required for ground level location.

[6] Accessory or principle.

[7] Excluding drive-thru facilities.

[8] Only those with hours of operation from 6 am to 12 midnight.

- Boards, Commissions and Committees

911-Emergency Telephone System Board

Animal Welfare Board

Joint Board

Electoral Board

Reparations Committee

Social Services Committee

Land Use Commission

Land Use Commission

Ensuring the public health, safety, comfort, morals, convenience, general welfare, and the objectives and policies of the Comprehensive General Plan.

Purpose

How You Can Participate

Meetings, Agendas and More

Video

Date	Agenda	Actions	Minutes	Packet	Videos
2022					
08/24/22	Agenda (Updated)	Actions		Packet (Item 3B withdrawn)	Video

STANDARDS OF APPROVAL FOR SPECIAL USE AND STANDARDS OF APPROVAL FOR PLANNED DEVELOPMENTS

RE: PROPOSED 1621 - 1631 CHICAGO AVENUE DEVELOPMENT – CASE NUMBER 21ZONA-0065

SEPTEMBER 2, 2022

EXAMPLES OF A FEW OF THE "STANDARDS OF APPROVAL FOR SPECIAL USE" ON WHICH THE PROPOSED DEVELOPMENT AT 1621 – 1631 CHICAGO AVENUE FAILS

THESE STANDARDS ARE A SUBSET OF STANDARDS INCLUDED IN EVANSTON CITY ZONING CODE 6-3-5-10

The Zoning Board of Appeals or the Plan Commission, as the case may be, shall only recommend approval, approval with conditions, or disapproval of a special use based upon written findings of fact with regard to each of the standards set forth below and, where applicable, any special standards for specific uses set forth in the provisions of a specific zoning district:

- It is in keeping with purposes and policies of the adopted comprehensive general plan and the zoning ordinance as amended from time to time;
- It will not cause a negative cumulative effect, when its effect is considered in conjunction with the cumulative effect of various special uses of all types on the immediate neighborhood and the effect of the proposed type of special use upon the City as a whole;
- It does not interfere with or diminish the value of property in the neighborhood;
- It does not cause undue traffic congestion;

EXAMPLES OF A FEW OF THE “STANDARDS OF APPROVAL FOR PLANNED DEVELOPMENTS” ON WHICH THE PROPOSED DEVELOPMENT AT 1621 – 1631 CHICAGO AVENUE FAILS

THESE STANDARDS ARE A SUBSET OF STANDARDS INCLUDED IN EVANSTON CITY ZONING CODE 6-11-1-10

….the Plan Commission shall not recommend approval of, nor shall the City Council adopt a planned development in the downtown districts unless they shall determine, based on written findings of fact, that the planned development adheres to the following standards

- Each planned development shall be compatible with surrounding development and not be of such a nature in height, bulk, or scale as to exercise any influence contrary to the purpose and intent of the Zoning Ordinance as set forth in Section 6-1-2, "Purpose and Intent."
- Each planned development shall enhance the identity and character of the downtown, by preserving where possible character-giving buildings, enhancing existing streetscape amenities, maintaining retail continuity in areas where it is prominent, strengthening pedestrian orientation and scale and contributing to the mixed use vitality of the area

(CONTINUED) EXAMPLES OF A FEW OF THE "STANDARDS OF APPROVAL FOR PLANNED DEVELOPMENTS" ON WHICH THE PROPOSED DEVELOPMENT AT 1621 – 1631 CHICAGO AVENUE FAILS

THESE STANDARDS ARE A SUBSET OF STANDARDS INCLUDED IN EVANSTON CITY ZONING CODE 6-11-1-10

….the Plan Commission shall not recommend approval of, nor shall the City Council adopt a planned development in the downtown districts unless they shall determine, based on written findings of fact, that the planned development adheres to the following standards

- Each planned development shall be compatible with and implement the adopted Comprehensive General Plan, as amended, the Plan for Downtown Evanston, any adopted land use or urban design plan specific to the area, this Zoning Ordinance, and any other pertinent City planning and development policies, particularly in terms of:
  - LAND USE
  - HOUSING
  - ENVIRONMENT
  - TRAFFIC IMPACT & PARKING
  - ESSENTIAL CHARACTER OF THE DOWNTOWN DISTRICT, THE SURROUNDING RESIDENTIAL NEIGHBORHOODS AND THE ABUTTING RESIDENTIAL LOTS
  - NEIGHBORHOOD PLANNING
  - LAND USE INTENSITY
  - PRESERVATION
  - URBAN DESIGN
  - IMPACT ON SCHOOLS, PUBLIC SERVICES AND FACILITIES