

STATE OF MICHIGAN  
IN THE 6<sup>th</sup> JUDICIAL CIRCUIT FOR  
OAKLAND COUNTY

LEHMAN INVESTMENT COMPANY, LLC

Appellant,

Circuit Court Appeal No.: 21-186123-AA  
Agency Case No.: 17-024366-REM  
Hon. Nanci J. Grant

v

CITY OF THE VILLAGE OF CLARKSTON, a  
Municipal Corporation and  
its Historic District Commission,

Appellee.

---

THE LAW OFFICE OF JOHN D. MULVIHILL, PLLC  
By: John D. Mulvihill, P35637  
Attorney for Appellant  
20 W. Washington, Ste 2  
Clarkston, MI 48346  
(248)625-3131  
[jdmulvihill@sbcglobal.net](mailto:jdmulvihill@sbcglobal.net)

THOMAS J. RYAN, P.C.  
Thomas J. Ryan (P19809)  
Attorney For Appellee  
2055 Orchard Lake Road  
Sylvan Lake, MI 48320  
(248) 334-9938  
[sylvanlawtr@gmail.com](mailto:sylvanlawtr@gmail.com)

---

APPELLANT'S MOTION FOR  
MISCELLANEOUS RELIEF PURSUANT TO  
MCR 7.112 AND MCR 7.216

NOW COMES, the Appellant, Lehman Investment Co., LLC ("Appellant") and respectfully requests that the Court exercise its discretion as provided by the above court rules and permit an addition to the record and/or permit an amendment for the grounds of appeal for the following reasons:

1. The Appellant's have an appeal pending before the Court arising from an administrative hearing held pursuant to the Administrative Procedures Act, MCL 24.271 et. seq.
2. At issue in the appeal are several orders and decisions made in connection with the denial of the Appellant's request for demolition of the Subject Property.

3. In particular, remand orders requiring Appellant to meet the standards of a Notice To Proceed from the Clarkston Historic District Commission (“HDC”) as a condition for demolition.
4. The instant motion is brought because of new evidence discovered following the administrative proceedings and subsequent to the filing of Appellant’s Brief On Appeal now pending before the Court.
5. The new evidence is directly related to the standards for a Notice to Proceed that was in the possession of the HDC and the City but not disclosed and concealed during the administrative proceedings.
6. The new evidence is material to the proofs required for the issuance of a Notice To Proceed.
7. Pursuant to several FOIA requests, the Appellant recently became aware that in 2009, the City had paid \$80,000 dollars to the prior owners of the Subject Property related to damage caused from a collapsed storm drain that ran next to the house causing an 11’ sinkhole.
8. The FOIA request was responded to on October 4, 2021, and the City produced documents that reflected payment of \$20,000 by the City and \$60,000 by its insurer in settlement of a lawsuit related to the collapse, Case No. 09-097841-CC, *City of the Village of Clarkston v. Cristea, et. al.* See **Exhibit 1**. Engineering reports showing the extent of the structural damage caused to the house, however, were not included in the FOIA response.
9. Counsel for Appellant checked the OCCC case file on the above case and obtained a copy of a counterclaim filed by the homeowners at that time for the damage caused to the home.
10. Attached to the counterclaim was an engineering report from McDowell & Associates dated January 9, 2009, reflecting the full scope of the significant structural damage that the property sustained because of the collapsed storm drain. See **Exhibit 2**.
11. The McDowell report verifies:

LAW OFFICE  
OF  
JOHN D. MULVIHILL  
PLLC

20 W. Washington  
Suite 2  
Clarkston, Mi 48346

(248) 625-3131  
(248) 625-3132 Fax

- ¼” cracks throughout the walls and floors in the house, different in nature than earlier cracks
- Significant downward movement to the northeast section of the house where the storm drain collapsed with settlement over 2/3’s of the structure.
- The collapse undermined and softened the soils below the foundation and basement floor slabs with significant structural settlement.
- The voids are present 15’ to 20’ below the surface and that repair will require deep foundational support to stabilize the floor slabs.
- The McDowell report recommended that substantial soil borings be performed to determine the extent of the damage and needed repairs.

12. Appellant also recently obtained the results of the soil borings by McDowell that suggested extensive repairs to correct the structural damage and further sinking and deterioration of the

Subject Property finding:

- Alternate types of deep foundation systems to support the existing home by installation of numerous “cast in place piles” to support the structure.
- The pile driving could result in further damage to the property.
- Further settlement could occur between underpinned portions of the structure and the footings and slabs which are not underpinned.

The soil exploration report of McDowell is attached as **Exhibit 3**.

13. The lack of disclosure and transparency by the City and HDC is further evident by an inspection that Appellant permitted in June of 2021.

14. On June 28, 2021, Appellant allowed officials of the City and the HDC to inspect the house and view the extent of the increased settling and cracks.

15. Also present was Michael Wise of Lopez Engineering at Appellant’s request. Mr. Wise advised that he, coincidentally, had inspected the house in 2009 at the request of the prior owners and prepared reports regarding his inspections. Attached as **Exhibit 4** are his reports prepared at that time reflecting the damage caused by the storm drain.

LAW OFFICE  
OF  
JOHN D. MULVIHILL  
PLLC

20 W. Washington  
Suite 2  
Clarkston, Mi 48346

(248) 625-3131  
(248) 625-3132 Fax

16. At the inspections, the HDC and City officials did not disclose that it was in possession of the above referenced documents and would have been aware of the lawsuit, the substantial damage caused to the house by the storm drain and payment to settle the property damage claim. Despite knowledge of the above, the HDC officials commented at the inspection that the building should be preserved for alleged historical reasons.
17. What is significant is the City and HDC also had this information during the administrative proceedings and when the matter was remanded to the HDC to consider the demolition permit related to a Notice To Proceed: The HDC never disclosed the information in any of the administrative proceedings or in the hearings before the HDC for the demolition permit.
18. When Appellant purchased the Subject Property in 2013, the seller disclosed that a storm drain had failed next to the house and caused cracking but that it had been repaired, the drain rerouted and filled with concrete. The seller did not disclose the full extent of the structural damage to the house or the engineering reports.
19. After the sale, the Appellant observed the cracking, but it appeared minor and typical of aged concrete. Further, Appellant did not intend you use the house for residential uses, but for a commercial use since located adjacent to Appellant's large commercial property.
20. If Appellant had been aware of the full extent of the damage caused by the City's storm drain, it would have proceeded on remand for a Notice To Proceed based MCL 399.205 (6)(a) and (c) that states:

(6) Work within a historic district shall be permitted through the issuance of a notice to proceed by the commission if any of the following conditions prevail and if the proposed work can be demonstrated by a finding of the commission to be necessary to substantially improve or correct any of the following conditions:

(a) The resource constitutes a hazard to the safety of the public or the structure's occupants.

LAW OFFICE  
OF  
JOHN D. MULVIHILL  
PLLC

20 W. Washington  
Suite 2  
Clarkston, Mi 48346

(248) 625-3131  
(248) 625-3132 Fax

...

(c) Retaining the resource will cause undue financial hardship to the owner when a governmental action, an act of God, or other events beyond the owner's control created the hardship, and all feasible alternatives to eliminate the financial hardship, which may include offering the resource for sale at its fair market value or moving the resource to a vacant site within the historic district, have been attempted and exhausted by the owner.

...

21. In the absence of this information, Appellant proceeded upon remand under subsection (d) that states:

(d) Retaining the resource is not in the interest of the majority of the community.

22. As argued in Appellant's Brief on Appeal, Appellant objected to the remand since the Notice to Proceed statute and subsection (d) did not apply since community interest in preservation had been fully debated and vetted in the proceedings.

23. The Administrative Law Judge, Judge Plummer agreed, but remanded on subsection (d) since he believed that the HDC was better suited to reflect the "interest of the majority of the community" in preservation of the Subject Property.

24. Once again, the Appellant was misled by the HDC and required it to meet the standards of a Notice to Proceed under subsection (d) knowing that the relevant subsections (a) and (c) were material and likely dispositive in support of the demolition request.

25. In fact, at remand before the HDC, counsel for Appellant argued that only subsection (d) had any relevancy to the demolition request and did not rely upon subsections (a) or (c) since Appellant was unaware of the engineering reports, the lawsuit and the settlement made by the City for the substantial damage caused by the failed storm drain.

26. The terms of the settlement and the engineering reports, though not part of the record before the court, is not new evidence to the City or HDC; it was in possession of same when the drain began to fail in 2003 and did nothing until it collapsed in 2008.

LAW OFFICE  
OF  
JOHN D. MULVIHILL  
PLLC

20 W. Washington  
Suite 2  
Clarkston, Mi 48346

(248) 625-3131  
(248) 625-3132 Fax

27. The Appellee and the HDC, however are insistent that the house is historical, should be designated historical and preserved, despite its knowledge of the substantial structural damage that it sustained [the HDC is currently attempting to have the house designated as historical while the instant appeal is pending].

28. In light of this new evidence, Appellant retained Walter Pytiak & Company (“Pytiak”), a builder and general contractor, to review the engineering reports and to inspect the Subject Property to determine the feasibility of whether the house can be repaired and salvaged.

29. Mr. Pytiak is also a dangerous building official for the Township of Waterford.

30. Attached as **Exhibit 5**, is Pytiak’s report, confirming in its simplest terms, that the failed storm drain washed out the soils beneath the house creating a large sinkhole causing the structure to sink 6” below grade. Years of flow from the collapse of the drain resulted in:

- The basement collapsing on the northeast corner.
- The south end of the house is sinking, with a total collapse of half the rear deck.
- Foundations are moving, and there are voids beneath the basement floors and foundation of a large fireplace which carries excessive weight in the center of the home because of the absence of supporting soils underneath.
- To stabilize the house with pilings and other repairs noted in the McDowell Report would result in heavy vibrations causing further structural damage and likely damage to adjacent homes.

31. The Pytiak report notes that the costs to retain engineering services along with construction repair costs exceed the value of the home; it is sinking due to compromised soils beneath it, is dangerous and is beyond reasonable repair.

32. There is no prejudice to the Appellee if the Court exercises its discretion and allows that the above evidence be made part of the record and considered in the instant appeal.

33. That judicial economy dictates that this additional evidence be admitted and considered by the Court related to a Notice to Proceed under subsections (a) and (c) to avoid any further remands or appeals.

34. The additional evidence is relevant and central to the issue of whether the standards for a Notice To Proceed are present in light of the severe damage to the Subject Property.
35. Appellant submits that the above evidence should be admitted to the record, since Appellant has already been subjected to nearly 4 years of delay and expense because the HDC required that it apply for a Certificate of Appropriateness which the Review Board believed was a mistake directing the matter to be remanded for consideration of a Notice To Proceed.
36. Further, the HDC and the City failed to disclose and concealed its knowledge of the substantial structural damage the Subject Property during the administrative proceedings.
37. That attached hereto and marked as **Exhibit 6**, is the Affidavit of Robert Roth, principal of the Appellant attesting to the veracity of the above facts based on his personal knowledge.
38. Appellant respectfully requests that the Court admit the new evidence and allow the parties to file limited briefs [3-5 pages] related to the new evidence and if it provides the grounds for the Court to grant a Notice To Proceed pursuant to MCL 399.205(6) (a) and (c) or other and further relief as prayed for.

WHEREFORE, the Appellant request entry of an order as follows:

- a. That pursuant to MCR 7.216(A) (3) and (4), the Court grant miscellaneous relief and permit amendment and add to the record, Exhibits 1-6 attached hereto;
- b. That the parties be entitled to file limited briefs [3-5 pages] to address if the new evidence meets the standards for a a Notice To Proceed based on subsections (a) and (c); and
- c. That the Court consider this additional evidence when deciding the appeal.

LAW OFFICE  
OF  
JOHN D. MULVIHILL  
PLLC

20 W. Washington  
Suite 2  
Clarkston, Mi 48346

(248) 625-3131  
(248) 625-3132 Fax

December 20, 2021

RESPECTFULLY SUBMITTED  
LAW OFFICE OF JOHN D. MULVIHILL, PLLC  
/s/ John D. Mulvihill (P35637)  
Counsel for Appellant  
20 W. Washington, Ste. 2, Clarkston, MI 48346

**BRIEF IN SUPPORT**  
**STATEMENT OF LAW**

In a circuit court appeal, MCR 7.112, **Miscellaneous Relief** states:

In addition to its general appellate powers, the circuit court may grant relief as provided by MCR 7.216.

MCR 7.216 states:

(A) Relief Obtainable. The Court of Appeals may, at any time, in addition to its general powers, in its discretion, and on the terms that it deems just:

- (1) exercise any or all of the powers of amendment of the trial court or tribunal;
- (2) allow substitution, addition, or deletion of parties or allow parties to be rearranged as appellants or appellees, on reasonable notice;
- (3) permit amendment or additions to the ground for appeal;
- (4) permit amendments, corrections, or additions to the transcript or record;
- (5) remand the case to allow additional evidence to be taken;
- (6) draw inferences of fact;
- (7) enter any judgement or order or grant further or different relief as the case may require;

. . .

(Emphasis added).

It is clear that the Court has broad discretion to permit amendment or additions to the record and the grounds for appeal, as provided by subsections (3) and (4). Subsection (1) also permits the Court to exercise any or all of the powers of the tribunal from which the appeal arises. Based on the record and the new evidence, the Court is empowered to amend the Proposal For Decision issued by Judge Plummer or the Final Decision of the Review Board and order that a Notice To Proceed be issued if the new evidence meets the standards of subsection (a), (c) or (d).

The above rule affords broad discretion to the Court in a Circuit Court appeal. The above rule even allows a court to entertain an improperly filed appeal as of right from a nonfinal order. A court is empowered to excuse the failure to correctly invoke the jurisdiction of the Court. *Erickson v. Fisher*, 166 Mich. App. 439 421 N.W.2d 193 (1988); *Guzowski v. Detroit Racing Assoc.*, 130 Mich. App. 322; 343 N.W.2d 536 (1983). The appropriate means to amend the record on appeal is by motion

LAW OFFICE  
OF  
JOHN D. MULVIHILL  
PLLC

20 W. Washington  
Suite 2  
Clarkston, Mi 48346

(248) 625-3131  
(248) 625-3132 Fax



*Golden v. Baghdoian*, 222 Mich. App. 220; 564 N.W.2d 505 (1997). Enlargement of the record on appeal in the absence of a motion to amend the record pursuant to MCR 7.216(A)(4) is generally not permitted. *AFSCME Council v. Woodhaven-Brownstown School Dist.*, 293 Mich. App. 143; 809 N.W.2d 444 (2011). In *Klooster v. City of Charlevoix*, 488 Mich. 289; 795 N.W.2d 578 (2011), the Supreme Court permitted the admission of new and additional evidence on an uncapping event in a tax tribunal matter stating that the preservation requirement is not an inflexible rule; it yields to the necessity of considering additional issues when necessary for a proper determination of a case. *Id.* at 310 (citations omitted). A party should not be punished for an issue not decided below by the trial court.

The Administrative Procedures Act, MCL 24.305 also addresses the presentation of additional evidence and states:

If timely application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that an inadequate record was made at the hearing before the agency or that the additional evidence is material, and that there were good reasons for failing to record or present it in the proceeding before the agency, the court shall order the taking of additional evidence before the agency on such conditions as the court deems proper. The agency may modify its findings, decision or order because of the additional evidence and shall file with the court the additional evidence and any new findings, decision, or order, which shall become part of the record.

See, *N'West Nat'l Ins. Com'r v. Ins. Com'r*, 231 Mich.App. 483; 586 N.W.2d 563 (1998) where the Court, citing the above rule in an administrative appeal, held that additional discovery sought by the appellant was not material to the issues before it and did not allow the discovery of the evidence. In this case, the new evidence is direct, material and pertinent to the standards of a Notice To Proceed. Further, it was concealed by the Appellee.

### **ARGUMENT AND CONCLUSION**

In the instant appeal, subsections (a) and (c) of the Notice to Proceed statute are most relevant and material to the new evidence regarding the substantial structural damage to the Subject Property.

Under subsection (a), the evidence is material to whether the Subject Property poses a hazard to the public or its occupants, under (c), it is material to the issue of whether it poses a financial hardship upon Appellant since the structural damage is extensive, repairs are not economically feasible, and the damage was not caused by any act of the Appellant. The house is sinking and structurally unsound.

When Judge Plummer, the Administrative Law Judge, held a hearing following remand to consider a Notice To Proceed at the direction of the Review Board, the extent of the structural damage and engineering reports was unknown. This evidence was not part of the record when the matter was before Judge Plummer when the Review Board remanded for consideration of a Notice To Proceed. The evidence was not known to the Appellant when it reappeared before the HDC at the remand hearing when required to meet the standards of a Notice to Proceed.

No surprise or prejudice can be argued by the Appellee. The reports have been in its possession since 2009 and used to justify payment of \$80,000 to settle the property damage claim caused by Appellee's storm sewer. Finally, the instant request for miscellaneous relief is timely. The extent of the structural damage was unknown when Appellant's Brief was filed. The McDowell report was not discovered until October of 2021. The engineering and Pytiak reports clearly indicate it is not feasible to repair the Subject Property, a non-historic resource.

WHEREFORE, pursuant to MCR 7.112 and the provisions of MCR 7.216 (A)(3) and (4), Appellant respectfully requests that the Court exercise its broad appellate powers to enter an order to admit the proffered evidence and permit additional grounds for appeal and consider subsections (a) and (c) of the Notice To Proceed statute. The new evidence consisting of the engineering reports and payment for the structural damage to the Subject Property is material and was not disclosed by the Appellee or considered during the administrative proceedings.

Dated: December 20, 2021

LAW OFFICE OF JOHN D. MULVIHILL, PLLC  
By: /s/ John D. Mulvihill (P35637)  
Attorney for Appellant

LAW OFFICE  
OF  
JOHN D. MULVIHILL  
PLLC

20 W. Washington  
Suite 2  
Clarkston, Mi 48346

(248) 625-3131  
(248) 625-3132 Fax

Rec'd 9/10/10

O'CONNOR, DEGRAZIA, TAMM & O'CONNOR, P.C.

RICHARD M. O'CONNOR  
JAMES E. TAMM  
JULIE McCANN O'CONNOR  
LAURI STEWART KOTCH  
RICHARD V. STOKAN, Jr.  
JEFFREY T. HERRICK  
ELIZABETH L. WILHELMI

ATTORNEYS AND COUNSELORS AT LAW  
40701 WOODWARD AVENUE - SUITE 105  
BLOOMFIELD HILLS, MICHIGAN 48304

JAMES I. DEGRAZIA  
(1945-2005)

TELEPHONE  
(248) 433-2000

FAX  
(248) 433-2001

E-MAIL  
[ictamm@odtlegal.com](mailto:ictamm@odtlegal.com)

September 8, 2010

Mr. Gary D. Quesada  
Cavanaugh & Quesada, PLC  
1027 South Washington, Ste. A  
Royal Oak, MI 48067

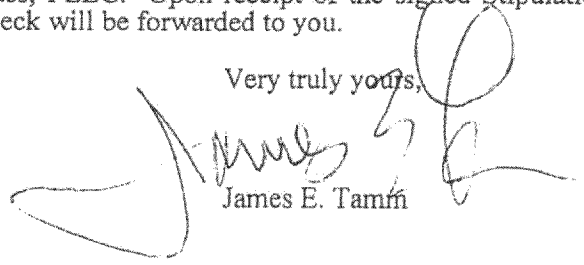
Mr. Gary D. Strauss  
Strauss & Strauss, PLLC  
306 S. Washington, Ste. 217  
Royal Oak, MI 48067  
(248) 584-0100

Re: Norm E. Cristea vs. City of the Village of Clarkston  
Our File: 100.3344

Dear Mr. Quesada:

Enclosed is a Stipulation and Order of Dismissal and Release and Settlement Agreement for your review. I have requested a settlement check in the amount of \$60,000.00 be made payable to Norm E. Cristea and Rawleen J. Cristea, and their attorneys, Cavanaugh & Quesada, PLC and Strauss & Strauss, PLLC. Upon receipt of the signed Stipulation for Dismissal and Release, the settlement check will be forwarded to you.

Very truly yours,



James E. Tamm

JET:cr  
Enc.

cc: Thomas J. Ryan, Esq.

## RELEASE AND SETTLEMENT AGREEMENT

Definition of terms used in this Release and Settlement Agreement:

- "AGREEMENT": This Release and Settlement Agreement.
- "DAMAGES": Damages, costs, expenses, attorney fees, losses in any manner related to injury to person or property whether asserted or unasserted, actual or alleged, whether real property, personal property, whether to a person, whether mental, emotional or physical, whether permanent or temporary, whether known or unknown.
- "UNDERSIGNED": NORME. CRISTEA, RAWLEEN J. CRISTEA, including their heirs, wards, next of kin, assigns, children and estates.
- "RELEASED PARTIES": CITY OF THE VILLAGE OF CLARKSTON, its agents, servants, successors, assigns, heirs, executors, administrators and all other persons, firms, employers, employees, corporations, associations or partnerships and assigns.
- "OCCURRENCE": The condemnation proceedings, installation, repair, relocation and any damage resulting from the existence or relocation of a storm water drain located on the Undersigned's property located at 42 W. Washington, City of the Village of Clarkston, MI.
- "PENDING CLAIM": A lawsuit and counter-claim captioned: CITY OF THE VILLAGE OF CLARKSTON vs. NORME. CRISTEA, RAWLEEN J. CRISTEA, and WELLS FARGO HOME MORTGAGE, INC. , Case No.: 09-097841-CC, Hon. Wendy L. Potts.

Being aware of all the numbered agreements listed below, the UNDERSIGNED fully releases and discharges the RELEASED PARTIES from any and all claims or causes of action made or which could have been made for the OCCURRENCE, DAMAGES or any aspect of the PENDING CLAIM.

1. **Dismissal of RELEASED PARTIES to the PENDING CLAIM:** The PENDING CLAIM shall be dismissed with prejudice and without costs, interest or attorneys' fees as to the RELEASED PARTIES, and the UNDERSIGNED authorize their attorneys to execute Stipulations and Orders of Dismissal consistent with this AGREEMENT.

2. **Settlement Amount to be Paid:** On behalf of RELEASED PARTIES, the UNDERSIGNED agrees to accept the amount of **eighty thousand dollars and No/100 Cents (\$80,000.00)** in a single, lump sum, the funds to be paid to the Undersigned and Undersigned's counsel after this AGREEMENT has been signed. The UNDERSIGNED further agree that any and all liens, known or unknown at this time, are their sole responsibility to fully discharge and satisfy by full payment or legally effective compromise. In this regard, the UNDERSIGNED agrees to take responsibility for obtaining a full discharge of any lien interest in the proceeds of the settlement embodied in this AGREEMENT.

3. **Hold harmless:** The UNDERSIGNED agrees to hold harmless the RELEASED PARTIES from making any payment or indemnity to any person, corporation or other entity asserting a claim arising out of the OCCURRENCE, DAMAGES or any aspect of the PENDING CLAIM, including but not limited to past, present and future liens (statutory and contractual), relating to or arising out of the OCCURRENCE.

4. **Continuing Responsibility for Execution and Completion of Papers:** The UNDERSIGNED agrees to consent to and execute all incidental and supplemental documents, pleadings, papers, and to take all necessary steps to give full force and effect to this AGREEMENT.

5. **No Prevailing Party:** The UNDERSIGNED agrees that they are not to be considered the prevailing parties in the PENDING CLAIM. It is further acknowledged that the RELEASED PARTIES do not admit fault, proximate cause or DAMAGES in the OCCURRENCE, or any aspect of the PENDING CLAIM by entering into this AGREEMENT, nor do they state that anyone is entitled to recover from the RELEASED PARTIES.

6. **Case and Settlement Not to be Disclosed:** The UNDERSIGNED and their attorneys agree that in exchange for the settlement amount mentioned in Paragraph 2, they shall not discuss, publish or otherwise disclose the amount of any settlement unless ordered by a Court or upon written agreement between the parties.

7. **No Assignment of Rights or Claims:** The UNDERSIGNED specifically state that they have not assigned or transferred to any third party, any claim, right or interest against the RELEASED PARTIES in the PENDING CLAIM.

8. **Risk of Future DAMAGES Assumed:** The UNDERSIGNED agree that they assume the risk that DAMAGES may in the future occur and be progressive and may be greater or more extensive than currently appreciated or appreciable.

9. **Binding Release for RELEASED PARTIES:** The UNDERSIGNED agrees that this AGREEMENT is final, conclusive and binding on the UNDERSIGNED, and any other persons or entities who may claim an interest through them in the PENDING CLAIM, and that upon the execution of this AGREEMENT, any liability of the RELEASED PARTIES to any person for matters released in this AGREEMENT shall cease and be fully and finally discharged. The UNDERSIGNED further agree that they will never institute in the future any complaint, suit, action or cause of action in law or equity against the RELEASED PARTIES for or on account of any OCCURRENCE or DAMAGES released by this AGREEMENT.

10. **Void Provisions are Severable:** The individual, numbered agreements of this AGREEMENT are severable, and if any part of the AGREEMENT is found to be void or inoperative by a Court of competent jurisdiction, the other agreements or portions of the AGREEMENT shall remain valid and enforceable.

11. This AGREEMENT contains the entire agreement of the parties. The terms of this AGREEMENT are contractual, not a mere recital. This AGREEMENT is entered into in the State of Michigan and shall be construed and interpreted according to the laws of the State of Michigan.

12. **Acknowledgment of Informed Execution:** The UNDERSIGNED acknowledges that they were advised to consult with an attorney prior to executing this AGREEMENT, and that they were provided with the opportunity to consult an attorney regarding this document and its legal import. The UNDERSIGNED also acknowledges that they sign this AGREEMENT knowingly and voluntarily.

\_\_\_\_\_  
NORM E. CRISTEA

\_\_\_\_\_  
RAWLEEN J. CRISTEA

On this date, **NORM E. CRISTEA** and **RAWLEEN J. CRISTEA**, personally appeared before me, a Notary Public, and swore that they have read the foregoing Release and Settlement Agreement, and that they fully understood it and signed this Release and Settlement Agreement as his own free act and deed.

\_\_\_\_\_  
**NOTARY SIGNATURE BLOCK**  
Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_, Notary Public  
State of Michigan, County of \_\_\_\_\_  
My Commission Expires:

As counsel for Plaintiffs, I certify that I have explained the legal import of this document to **NORM E. CRISTEA, RAWLEEN J. CRISTEA** prior to their signing it.

## **McDowell & Associates**

*Geotechnical, Environmental & Hydrogeological Services • Materials Testing & Inspection*

21355 Hatcher Avenue • Ferndale, MI 48220  
Phone: (248) 399-2066 • Fax: (248) 399-2157

January 8, 2009

Mr. Norm Cristea  
42 West Washington  
Clarkston, Michigan 48346-1552

Subject: Structural Damage of Residence  
42 West Washington  
Clarkston, Michigan

Dear Mr. Cristea:

A visit to your residence at 42 West Washington in Clarkston, Michigan was made on January 7, 2009 by McDowell & Associates. The purpose of the visit was to observe the structural damage of the house and to evaluate its proximate cause. Our findings are described below along with our recommendations for additional investigation.

The subject residence is a single-family home which has one story with an attached garage and a rear walk-out basement. The exterior walls are masonry block with stucco. Numerous cracks have developed in the exterior walls and the attached garage and basement floors. Many of the cracks are clearly visible from both the interior and exterior of the residence with crack widths ranging from hairline to more than 0.25-inch. Some of the wall cracks follow the mortar between the masonry blocks while others appear to reveal shearing of the masonry blocks themselves. The various crack shapes, relative widths, and directions clearly point to significant downward movement of the more or less northeastern corner of the residence. The settlements have caused direct damage to the northeastern portion of the home and collateral structural distress appears to extend over the approximately eastern two-thirds of the home. Evidence of earlier wall cracks may be seen. However, the earlier cracks are readily distinguished from the recent cracks and are relatively minor in their effects on the structure.

Apparently, a vitrified clay storm sewer is present within a few feet of the northeast corner of the residence with its invert about ten feet (10') to twelve feet (12') below the existing ground surface. Based on the locations of two (2) manholes in the front yard, the storm sewer appears to run in a northwest-southeast direction and continues off-site to the southeast to another manhole at a significantly lower elevation. The existing manhole near the northeast corner of the house had its rim about six inches (6") below the ground surface and a large hole has developed in the ground next to the manhole between the manhole and the house. Apparently, a relatively recent exploration of the sewer by others discovered blockages on both sides of the manhole closest to the house.

Based on the foregoing information, it is our professional opinion that the following has occurred:

### **Mid-Michigan Office**

3730 James Savage Road • Midland, MI 48642  
Phone: (989) 496-3610 • Fax: (989) 496-3190

EXHIBIT 2

1. Soil materials migrated into the storm sewer, possibly resulting in collapse of portions of the storm sewer.
2. The migration of soil into the storm sewer resulted in ground loss, voids, and softening of the soils beneath the foundations and floor slabs of the residence, particularly in the vicinity of its northeast corner.
3. Significant structural settlements and damage to the residence have occurred due to the ground loss, voids, and soil softening.

Therefore, it is our professional opinion that the deteriorating condition of the storm sewer has caused damage to the existing residence. Given the likely depths of affected soils in the range of fifteen feet (15') to twenty feet (20') below the existing ground surface, it appears that deep foundations which are brought to bear on competent, unaffected soils will be needed. Further, the floor slabs may also need to be structurally supported.

It is understood that the City intends to abandon and replace the existing storm sewer. It would be preferable to keep the new sewer alignment and its manholes as far as possible from the existing residence. This would be to avoid a similar occurrence of structural damage due to ground loss if the replacement sewer fails and more importantly, to avoid additional structural damage and exacerbation of existing structural damage due to construction activities. Another consideration for relocation of the sewer is the presence of your water well near the northeast corner of the house. Our understanding is that an isolation distance of at least fifty feet (50') between the water well and a buried sewer is customarily required by the county health department/ Michigan Department of Environmental Quality so that the water well is not exposed to a potential source of contaminants.

Prior to initiating repairs to your home, it is recommended that you retain the services of a qualified structural engineer who is familiar with underpinning and associated repairs to residential structures. The structural engineer should evaluate the existing structural conditions and design the necessary repair work. Further, it is recommended that a geotechnical engineering investigation be conducted to ascertain the prevailing soil and groundwater conditions, and to provide soil strength and compressibility information which would be needed by the structural engineer for design purposes. It is recommended that a minimum of two (2) soil test borings be made to depths of about forty feet (40') below the ground surface. One of the borings should be done near the northeast corner of the house and the other boring should be done on either the opposite side or opposite corner of the house in order to assess the horizontal variation of subsurface conditions. The boring near the northeast corner should be continuously sampled to a depth of about twenty feet (20') and then at about five foot (5') intervals. The other boring should be sampled at two foot six inch (2'6") intervals to a depth of about ten feet (10') and then at about five foot (5') intervals. If you elect to retain McDowell & Associates to perform the geotechnical evaluation, our fee for Mobilization, Drilling, Sampling, Laboratory Testing, Analysis and Report would be about \$3,050.00.



If you have any questions, or need additional information, please do not hesitate to call.

Very truly yours,

McDOWELL & ASSOCIATES



John H. Lamb, III, P.E.

JHL/jb

SOILS EXPLORATION  
42 WEST WASHINGTON  
CLARKSTON, MICHIGAN

MR. NORM CRISTEA  
42 WEST WASHINGTON  
CLARKSTON, MICHIGAN 48346

DECEMBER 10, 2009  
BY  
McDOWELL & ASSOCIATES

EXHIBIT 3

## **McDowell & Associates**

*Geotechnical, Environmental & Hydrogeological Services • Materials Testing & Inspection*

21355 Hatcher Avenue • Ferndale, MI 48220

Phone: (248) 399-2066 • Fax: (248) 399-2157

www.mcdowasc.com

December 10, 2009

Mr. Norm Cristea  
42 West Washington  
Clarkston, Michigan 48346

Job No. 09-185

Subject: Soils Exploration  
42 West Washington  
Clarkston, Michigan

Dear Mr. Cristea:

As requested we have conducted a Soils Exploration at the subject site. Our findings are presented below.

Two (2) Soil Test Borings, designated 1 and 2, have been made and these were each advanced to depths of about forty feet six inches (40'6") below the existing ground surface. Descriptions of the subsurface conditions encountered at each boring may be found on the Log of Soil Boring sheets which accompany this report. The borings were made in the approximate locations indicated on the accompanying Soil Boring Location Plan. Intact soil samples were obtained from the borings using spoon samplers outfitted with brass liners in conjunction with standard penetration tests. Selected soil samples were subjected to laboratory tests for moisture content, density, and mechanical grain-size distribution. Individual test results may be found on the boring logs and the accompanying laboratory summary sheet.

The soil stratifications and depths indicated on the boring logs are not intended to represent areas of exact change between soil types. Due to the manner of deposition, the transition from one soil type to the next may be gradual rather than abrupt. It is also difficult to distinguish between naturally deposited soils and fill soils in the absence of foreign matter.

Boring 1 encountered about eighteen feet zero inches (18'0") of uncontrolled fill at the surface. The fill consisted of about four feet seven inches (4'7") of organic topsoil fill which was underlain by about ten feet four inches (10'4") of fine sand fill containing vegetation, pebbles, pea stones, trace clay, and traces of brick, which was underlain, in turn, by about three feet one inch (3'1") of dark brown sand and gravel fill. Standard penetration resistances in the various fill materials ranged from one (1) blow per foot to seven (7) blows per foot. Below the fill, about four feet six inches (4'6") of fine sand with silty sand seams was encountered which exhibited standard penetration resistances of eight (8) to nine (9) blows per foot. These were underlain by about ten feet six inches (10'6") of fine sands with clayey silt seams, and silty sands with standard penetration resistances ranging from twenty-two (22) to twenty-five (25) blows per foot. Below the silty sands, sand and gravel with stones was encountered and this continued to the termination depth of the boring at about forty feet six inches (40'6") below the existing ground surface. Standard penetration resistances ranged from twenty (20) to twenty-seven (27) blows per foot and these may be magnified due to the presence of gravel and stones. Groundwater was encountered at depths of about five feet four inches (5'4") and fourteen feet

### **Mid-Michigan Office**

3730 James Savage Road • Midland, MI 48642

Phone: (989) 496-3610 • Fax: (989) 496-3190

eleven inches (14'11") below the existing ground surface during advancement of the borehole. On completion of drilling, groundwater was observed at a depth of about seventeen feet five inches (17'5") below the existing ground surface inside the hollow stem augers used to advance the boring. The driller described groundwater volumes as heavy.

Boring 2 encountered about four feet eight inches (4'8") of uncontrolled fill at the surface. The fill consisted of about twelve inches (12") of organic topsoil which was followed by about three feet eight inches (3'8") of clayey sand fill containing topsoil, pebbles and vegetation. The fill was underlain by about eight feet one inch (8'1") of sand and gravel with stones and pebbles. This showed standard penetration resistances ranging from seventeen (17) blows per foot to seventy-one (71) blows per foot. The penetration resistances may be magnified due to the presence of gravel. Below the sand and gravel, about five feet three inches (5'3") of fine sand with trace pebbles was encountered and showed a standard penetration resistance of nineteen (19) blows per foot at the nominal fifteen foot zero inch (15'0") depth. This was followed by about four feet zero inches (4'0") of medium to coarse sand with pebbles and silty sand seams which showed a standard penetration resistance of twenty-two (22) blows per foot at the nominal twenty foot zero inch (20'0") depth. The medium to coarse sands were underlain by about twelve feet eight inches (12'8") of fine sand with pebbles and occasional stones which showed standard penetration resistances of twenty-five (25) blows per foot at the nominal twenty-five foot zero inch (25'0") depth and thirty-five (35) blows per foot at the nominal thirty foot zero inch (30'0") depth. Below the fine sands, gravelly sand with stones was encountered and this continued to the termination depth of the boring at about forty feet six inches (40'6") below the existing ground surface. Standard penetration resistances were found as forty (40) blows per foot at the nominal thirty-five foot zero inch (35'0") depth and fifty-two (52) blows per foot at the nominal forty foot zero inch (40'0") depth. The penetration resistances may be magnified due to the presence of gravel. Groundwater was encountered at a depth of about eighteen feet zero inches (18'0") below the existing ground surface during advancement of the borehole. On completion of drilling, groundwater was observed at a depth of about twenty-three feet two inches (23'2") below the existing ground surface inside the hollow stem augers used to advance the boring. The driller described groundwater volumes as heavy.

It must be noted that the short-term water levels observed in the borings are not considered reliable indications of the depth of the water table. In sandy soils, the potential exists for water to become trapped in the upper soils due to the presence of lower permeability soil seams or layers, particularly following periods of heavy rainfall or snow melt. It is anticipated that groundwater levels at the site fluctuate seasonally.

It is understood that an approximately ten foot (10') to twelve foot (12') deep storm sewer collapsed, resulting in ground loss near the northeastern corner of the existing residence. Significant settlements and attendant structural damage have occurred to the existing residence. Apparently, the collapsed sewer was recently abandoned and replaced by the City of Clarkston.

Based on the project information provided and the results of field and laboratory tests, it is our professional opinion that deep foundations, such as drilled or driven piles or helical piers, would be suitable for use in raising and underpinning the structure and its floor slabs.

At Boring 1, weak and compressible soils appear to extend from the ground surface to a depth of about eighteen feet zero inches (18'0") below the existing ground surface. These weak soils are expected to produce negative skin friction (downdrag) effects on deep foundations which pass through them. Therefore, penetration of the deep foundations into the deeper competent soils will be needed to offset the negative skin friction effects. Net supporting capacity for deep foundations would begin to develop after reaching a depth necessary to compensate for the negative skin friction. Computations indicate that about seven feet (7') of penetration below a depth of twenty-two feet six inches (22'6") would be needed to offset negative skin friction effects at Boring 1. Therefore, deep foundation capacity to resist working loads would be available below a depth of about twenty-nine feet six inches (29'6") below the existing ground surface. It is estimated that a nominally twelve inch (12") diameter pipe pile driven closed-end would develop a working load of about 1.5 tons per foot of penetration below a depth of about twenty-nine feet six inches (29'6") below the existing ground surface. Similarly, it is estimated that a Class B-type timber pile would develop a working load of about 2.0 tons per foot of penetration below a depth of about twenty-nine feet six inches (29'6") below the existing ground surface.

At Boring 2, weak and compressible soils appear to extend from the ground surface to depths of about four feet eight inches (4'8") below the existing ground surface. These weak soils are expected to produce negative skin friction (downdrag) effects on deep foundations which pass through them. Therefore, penetration of the deep foundations into the underlying competent soils will be needed to offset the negative skin friction effects. Net supporting capacity for deep foundations would begin after reaching a depth necessary to compensate for the negative skin friction. Computations indicate that about two feet (2') of penetration below a depth of four feet eight inches (4'8") would be needed to offset negative skin friction effects at Boring 2. Therefore, deep foundation capacity to resist working loads would be available below a depth of about six feet eight inches (6'8") below the existing ground surface. It is estimated that a nominally twelve inch (12") diameter pipe pile driven closed-end would develop a working load of about 1.5 tons per foot of penetration below a depth of about six feet eight inches (6'8") below the existing ground surface. Similarly, it is estimated that a Class B-type timber pile could develop a working load of about 2.0 tons per square foot of penetration below a depth of about six feet eight inches (6'8") below the existing ground surface. It is recommended that piles at Boring 2 be driven to depths not less than eighteen feet (18') below the existing ground surface to avoid potential stability complications due to the deep weak soils found at Boring 1. Difficult pile driving is expected when passing through the soil layers containing appreciable amounts of gravel.

Actual pile capacities must be evaluated in the field either through the use of a dynamic pile driving formula or static load test. Any resistance in the upper fill soils and weak soils should be subtracted when evaluating pile capacities as these soils should not be counted on to provide long-term support. It is suggested that negative skin friction (downdrag) values of 8.5 tons be used for design at the Boring 1 location and 0.6 ton be used for design at the Boring 2 location.

It should be understood that vibrations due to pile driving operations could further damage the existing structure and/or nearby structures. It is suggested that you discuss this with a pile driving contractor.

Alternate types of deep foundation systems could be employed to support the existing residence including augered cast-in-place piles, helical piles/piers, mini-piles, and bulb-type piles. It is our understanding that manufacturers and contractors who install these piles have qualified engineering staffs who estimate lengths and capacities.

It should be noted that differential settlement could occur between underpinned portions of the structure and footings/slabs which are not underpinned. Additional cracking and distress could occur over time. This could be monitored and repaired as necessary. It may be possible to structurally isolate the underpinned areas. A structural engineer should be consulted in these matters.

Experience indicates that the actual subsoil conditions at the site could vary from those generalized on the basis of the two (2) test borings made at specific locations and particularly given the variations in results of the borings. At this point, the horizontal extent of the deep, weak soils found at Boring 1 is unknown. Therefore, it is essential that McDowell & Associates be notified of any variation of soil conditions to determine their effects on the recommendations presented in this report.

It is recommended that the services of McDowell & Associates be engaged to monitor pile driving operations to estimate the field load capacity of the piles using a dynamic pile driving formula.

If you have any questions or need additional information, please do not hesitate to call.

Very truly yours,

McDOWELL & ASSOCIATES



John H. Lamb, III, P.E.

JHL\def

# Lopez Engineering

STRUCTURAL CONSULTING

1400 E. Davisburg Road  
Suite 301  
Holly, MI 48442  
Phone (248) 634-0444  
Fax (248) 634-6646  
le@lopezengineers.com

February 13, 2009

Job No. 09-0036

Norm Cristea  
42 West Washington  
Clarkston, MI 48346

Re: 42 West Washington  
Crack Inspection

An inspection was performed on February 6, 2009, at the above referenced address. The nature was to document the width of cracks throughout the interior and exterior of the structure. Trees were being cut down on the property at the time of the inspection by contractors hired by the township. The cracks present on the site have been primarily caused by a drain that has collapsed that runs within 12 feet of the north east corner of the house.

The photos have been filed by Lopez Engineering and will be utilized after all repairs are performed on the house to determine if further movement has occurred. The location of the photos was marked using a permanent marker noting each location with a pair of identical letters placed on each side of the crack.

The new drain being placed by city contractors will be as close as 25'-0" from the northeast corner of the foundation. The repairs are being performed prior to the house foundation being stabilized and supported with a pier system. The placement of the new drains and the presence of the collapsed drain present a strong possibility that further damage will occur to the structure.

Please feel free to contact our office with any further questions or concerns.

Respectfully,

Michael C. Wise P.E.

# Lopez Engineering

STRUCTURAL CONSULTING

1400 E. Davisburg Road  
Suite 301  
Holly, MI 48442  
Phone (248) 634-0444  
Fax (248) 634-6646  
le@lopezengineers.com

March 9, 2009

Job No. 09-0036

Norm Cristea  
42 West Washington  
Clarkston, MI 48346

Re: 42 West Washington  
Crack Inspection

An inspection was performed on February 6, 2009, at the above referenced address. The nature was to document the width of cracks throughout the interior and exterior of the structure. Trees were being cut down on the property at the time of the inspection by contractors hired by the township. The cracks present on the site have been primarily caused by a drain that has collapsed that runs within 4 to 5 feet of the north east corner of the house. The drain was originally believed to have been a bit farther away from the front of the structure, but site plans have been provided showing the drain to be much closer.

The photos have been filed by Lopez Engineering and will be utilized after all repairs are performed on the house to determine if further movement has occurred. The location of the photos was marked using a permanent marker noting each location with a pair of identical letters placed on each side of the crack.

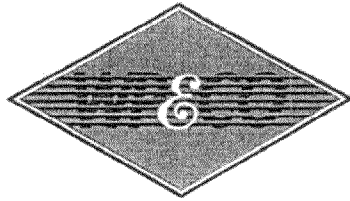
The new drain being placed by city contractors will be as close as 25'-0" from the northeast corner of the foundation. The repairs are being performed prior to the house foundation being stabilized and supported with a pier system. The placement of the new drains and the presence of the collapsed drain present a strong possibility that further damage will occur to the structure.

Please feel free to contact our office with any further questions or concerns.

Respectfully,

Michael C. Wise P.E.





*Walter Pytiak & Company*

December 15, 2021

Mr. Robert Roth  
20 W. Washington  
Clarkston, Mi 48346

Re: 42 West Washington

Dear Mr. Roth

I have visited the house at 42 West Washington, Clarkston, Michigan, and reviewed the engineering reports by Lopez Engineering dated February 13, 2009; March 9, 2009; September 15, 2010. I also read the report letter from McDowell & Associates dated January 8, 2009 and the Soils Exploration Report dated December 10, 2009.

As stated in McDowell's report, two clay storm man holes existed 4-5 feet near the northeastern corner of the house. Due to the age and neglect of maintenance, several compromising developments have occurred. The manholes got filled with heavy wet soil that caused a collapse of the clay structure, resulting in the structure sinking 6" below grade. The piping moving the water also got clogged with sediment causing a blockage resulting in storm water overflowing onto the grade. This was evident as stated in the McDowell report, that a "large" hole had developed between the manholes and the house. Years of this direct overflow saturated the ground soils, not only in the area of the manhole location, but also flowed under the basement of the house, following the natural grade of the ground, which is downhill towards the pond below. Again, this is clearly stated in McDowell's report.

After years of water saturation, a condition now exists of compromised soils under the foundation and floor slabs of this house. This is evident as the northeast corner of the house basement has collapsed and the floor slabs have also failed, they are cracked and sinking. A large portion of the south house foundation is sinking into the ground causing a horizontal 1" crack along the block basement wall. This condition has also caused the total collapse of half of the rear concrete deck. Due to this foundation movement, there is a crack going almost the entire length of the center of the basement floor going east to west. The south portion of the floor, from the crack toward the back yard, is slanted as you walk across it, obviously sinking, and following the rear foundation. This same crack has transferred up to the floor on the first level. It is also obvious that in the south portion of the back of the house, foundations continue to move. As I walked along the basement floor and tapped on it with a large crowbar, it was completely obvious that very large areas of this floor are hollow, meaning the soils beneath have washed away or sunk, thus causing voids. This is the same condition under the foundation that holds the house, as well as under the large fireplace foundation which supports a 4 story heavy masonry chimney structure with tons of weight in the center of the structure.

*Builders • General Contractors*  
2860 Lakeside Lake Road • Suite 300 • West Bloomfield Township, Michigan 48324  
Phone: (248) 362-8420 • Fax: (248) 362-8429  
[www.wpytiak.com](http://www.wpytiak.com) • Email: [office@wpytiak.com](mailto:office@wpytiak.com)

Per McDowell's report, a recommendation of a series of pilings or helical screws are recommended to raise and stabilize the foundations and basement concrete floors due to the compromised soils to a depth of 18' to 29'6" into the stable ground. Installing pilings as recommended would cause heavy vibrations due to the pile driving operation. This would cause further structural damage to the house itself. Also, the heavy vibration could damage the nearby, aging neighborhood homes. Helical piers are an option, but not a cure-all or guaranteed remedy. McDowell's report directly states that areas not underpinned may further sink or deteriorate due to the very poor soil conditions.

As stated in McDowell's report, this house is in a compromised condition, where the foundations and floor slabs are moving and unstable. These referenced reports are from 2009. Over the past eleven years, it is highly likely that the soils under this house have continued to further settle, thus compounding the compromised soil conditions. In order to consider the type and scope of any kind of feasible attempts to repair of the damaged foundations and floor slabs, it is absolutely necessary to hire professional services of structural, helical, and soil engineers. The combination of costs to hire professional engineering services along with construction repair costs would greatly surpass the value of this home.

The foundations of this house are sinking, and because of this, the house is moving. Soil conditions are compromised under the house, and directly under the heavy, multi-story masonry fireplace. This house is sinking into the ground under its own weight due to the compromised soils from the water damage. This house is a danger to itself, to anyone who enters it, and to the general public. This house is far beyond any reasonable repair and I strongly recommend this house be condemned and razed as soon as possible.

Sincerely,

A handwritten signature in cursive script that reads "Walter Pytiak". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

Walter Pytiak

STATE OF MICHIGAN  
IN THE 6<sup>th</sup> JUDICIAL CIRCUIT FOR  
OAKLAND COUNTY

LEHMAN INVESTMENT COMPANY, LLC

Appellant,

Circuit Court Appeal No.:21-186123-AA  
Agency Case No.: 17-024366-REM  
Hon. Nanci J. Grant

v

CITY OF THE VILLAGE OF CLARKSTON, a  
Municipal Corporation and  
its Historic District Commission,

Appellee.

THE LAW OFFICE OF JOHN D. MULVIHILL, PLLC  
By: John D. Mulvihill, (P35637)  
Attorney for Appellant  
20 W. Washington, Ste 2  
Clarkston, MI 48346  
(248)625-3131  
[jdmulvihill@sbcglobal.net](mailto:jdmulvihill@sbcglobal.net)

THOMAS J. RYAN, P.C.  
Thomas J. Ryan (P19809)  
Attorney For Appellee  
2055 Orchard Lake Road  
Sylvan Lake, MI 48320  
(248) 334-9938  
[sylvanlawtr@gmail.com](mailto:sylvanlawtr@gmail.com)

**AFFIDAVIT OF ROBERT ROTH**

STATE OF MICHIGAN )

COUNTY OF OAKLAND )

ROBERT ROTH, being first duly sworn, on oath, deposes and states as follows:

1. I am a principal of Lehman Investment Company, LLC owner of the property located at 42 W. Washington, Clarkston, MI 48346 ("Subject Property") and have personal knowledge of the statements made herein.
2. The Subject Property is adjacent to and was at one time part of the larger commercial parcel that Lehman now owns in Clarkston.
3. The Subject Property was purchased in 2013 for investment purposes with the intention of using it for a commercial use in conjunction with the larger commercial property.
4. Lehman did not intend to use the Subject Property for residential use. It has remained vacant since 2013.

LAW OFFICE  
OF  
JOHN D. MULVIHILL  
PLLC

20 W. Washington  
Suite 2  
Clarkston, Mi 48346

(248) 625-3131  
(248) 625-3132 Fax

EXHIBIT 6

5. When purchased the Seller disclosed that a city owned storm drain had failed next to the house in 2008 but that it had been repaired and that no further damage had occurred since.
6. After the sale I observed cracks in the basement but believed it was related to aged concrete and not relevant for Lehman's intended use of the property. The settling and cracks have significantly increased over the last two years.
7. The City of Clarkston and its Historic District Commission contends the house should be preserved for residential use since it may have historic significance.
8. The engineering documents discovered after the conclusion of the administrative proceedings and filing of the instant appeal, indicated that the Subject Property sustained significant structural damage due to the failed drain. None of this information was disclosed by the City or Historic Commission during the proceedings.
9. This prompted my retention of Walter Pytiak & Company, a builder and general contractor, to inspect the Subject Property and render an opinion on the extent of the damage and the feasibility of repairs.
10. As stated in Mr. Pytiak's report, Exhibit 5, because of the damages to the house from the failed storm drain and the nature of the repairs required, it is not feasible to repair it and it is not suitable for residential use.
11. The HDC and the City, however, continue to insist that the Subject Property be preserved since it may have future historic significance. The HDC is currently taking steps in an effort to designate it as historical

LEHMAN INVESTMENT CO., LLC

By: Robert Roth, Member

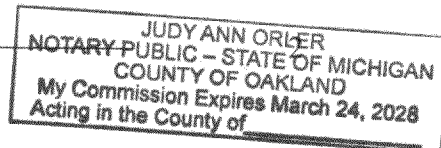
  
\_\_\_\_\_

Subscribed and sworn to before me, a Notary Public, Oakland County, Michigan, this 20<sup>th</sup> day of December 2021.

  
\_\_\_\_\_

Acting in Oakland County, MI

My commission expires \_\_\_\_\_



LAW OFFICE  
OF  
JOHN D. MULVIHILL  
PLLC

20 W. Washington  
Suite 2  
Clarkston, MI 48346

(248) 625-3131  
(248) 625-3132 Fax