

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Jeremy Stanbary and Epiphany Studio
Productions d/b/a Open Window Theater,

Plaintiffs,

v.

Metropolis Minneapolis, LLC, Space
Unlimited, LLC, Zev Oman, and Kristi
Oman,

Defendants.

Court File No.: _____
Case Type: Contract

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs Jeremy Stanbary and Epiphany Studio Productions d/b/a Open Window Theatre (together, Stanbary or Open Window Theatre), as for their Complaint against Defendants Metropolis Minneapolis, LLC, Space Unlimited, LLC, Zev Oman, and Kristi Oman, state and allege as follows:

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INTRODUCTION

Stanbary leased space in a building owned and operated by Defendants to be used as a performing arts venue for what would become one of the fastest growing professional theatres in the Twin Cities. But Defendants were illegally operating the building, lacking a certificate of occupancy that would allow them to lease the building to anyone for any use other than as a warehouse. In spite of this, Defendants advertised the space as usable for commercial tenants, and represented the space could be used as a theatre and performing arts venue. Eventually, due to

Defendants' illegal activities, Stanbary was constructively evicted from the tenancy and Open Window Theatre has been forced to cease operations indefinitely at great financial loss.

PARTIES

1. Jeremy Stanbary is a Minnesota resident and the owner and artistic director of Open Window Theatre.

2. Open Window Theatre is a d/b/a of Epiphany Studio Productions, a Nebraska non-profit corporation which is registered to do business in Minnesota. (Plaintiffs are generally referred to herein as Stanbary and Open Window Theatre.)

3. Metropolis Minneapolis, LLC, is a Minnesota Limited Liability Company that is the owner of certain commercial real property located at 1313 Chestnut Avenue (the "Building") and co-manager of the Building, and has a principal executive office at 100 West Franklin Avenue, Minneapolis, MN 55404.

4. Space Unlimited, LLC, is a Minnesota Limited Liability Company that is the co-manager of the Building, and has a principal executive office at 100 West Franklin Avenue, Minneapolis, MN 55404.

5. Zev Oman is a Minnesota resident who, upon information and belief, is a member, part owner, and manager of both Metropolis and Space Unlimited.

6. Kristi Oman is a Minnesota resident who, upon information and belief, is a member, part owner, and manager of both Metropolis and Space Unlimited.

7. Metropolis, Space Unlimited, Kristi Oman, and Zev Oman are hereafter referred to as the "Management Group."

8. Venue is proper in Hennepin County in accordance with Minn. Stat. § 542.09 because the causes of action arose from acts occurring in Hennepin County.

GENERAL FACTS

9. Space Unlimited, along with Metropolis, Kristi Oman, and Zev Oman, advertises the rental space of the Building.
10. Commercial Rental Applications distributed for the Building are in the name of Space Unlimited.
11. On March 11, 2011, Stanbary signed a multi-year lease with Space Unlimited and Metropolis to occupy suite 102 at the Building, 1313 Chestnut Avenue in Minneapolis. (“2011 Lease”.)
12. Space Unlimited and Metropolis expressly agreed to lease suite 102 to Stanbary for use as a “theatre.”
13. On May 2, 2011, Stanbary signed a Security Deposit Agreement with Space Unlimited.
14. On June 25, 2013, Stanbary signed a one-year lease with Metropolis to occupy suite 102 at the Building.
15. Metropolis expressly agreed to lease suite 102 to Stanbary for use as a “Performing (sic) Arts Venue.”
16. On or around July 1, 2014, Stanbary signed a one-year lease with Metropolis to occupy suites 102 and 105 of the Building.
17. Metropolis expressly agreed to lease suite 102 and 105 to Stanbary for use as a space for “Performing Arts Venue, Office Space and Storage.”
18. On February 5, 2015, Stanbary signed a 29-month lease with Metropolis to occupy suites 102, 103, 104, and 105 of the Building.

19. Metropolis expressly agreed to lease suites 102, 103, 104, and 105 to Stanbary for use as a space for “Performing Arts Venue, Office Space and Storage.” (The suites leased by Stanbary are hereinafter referred to as the “Leased Premises”.)

20. Each member of the Management Group represented that the Leased Premises could be used as a performing arts venue or as a theatre when each lease was executed.

21. Between 2011 and 2015, approximately 60 percent of rent and security deposit checks were paid to Space Unlimited, and approximately 40 percent of rent and security deposit checks were paid to Metropolis.

Zoning Issues

22. In the summer of 2015, Open Window Theatre moved forward with its plans to renovate the Leased Premises.

23. Shortly after beginning the renovation process, Open Window Theatre learned that the property was not actually zoned to allow operation of a performing arts company.

24. The zoning ordinances require the following:

All uses of land or structures, all alterations, expansions or relocations of existing structures, and all expansions, relocations, or intensifications of existing uses shall be subject to all applicable regulations of this zoning ordinance.”

Municipal Code of Ordinance 520.50

25. Before and at the beginning of 2015, 1313 Chestnut Avenue, Minneapolis Minnesota was zoned I1 Light Industrial.

26. Open Window Theatre contacted the Management Group requesting that they fix the problem with the building not being zoned to allow for use as a theater or performing arts center, but the Management Group refused.

27. Because the Management Group refused to act, Open Window Theatre took it upon itself to petition the City on behalf of the Management Group for an appropriate zoning overlay and submit the proper application for an overlay.

28. Sometime in 2015, after substantial efforts by Open Window Theatre, the zoning overlay application was approved by the Minneapolis City Council.

Certificate of Occupancy

29. When attempting to get the renovation plans approved, Open Window Theatre learned that the Building also lacked a valid certificate of occupancy.

30. The last valid certificate of occupancy for the Building was dated 1969 which only allowed the building to be occupied as a warehouse.

31. In 2007, the Management Group unofficially changed the building's use from an industrial warehouse to a building subdivided into suites for commercial tenants and for public meeting spaces.

32. In order to change how the building was to be used, the Management Group renovated the entire building.

33. The municipal code includes the following provision:

No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building, structure, or portion of a building structure shall be made until the building official has issued a certificate of occupancy under this part.

Minn. Admin. R 1300.0220, subp. 1

34. Subpart 3 of the municipal code requires the following:

Changes in the character or use of an existing structure must comply with chapter 1305 or 1311.

Minn. Admin. R 1300.0220, subp. 3

35. When the Building was renovated in 2007, the Management Group failed to obtain all of the necessary permits to allow the renovation to proceed.

36. When the Building was renovated in 2007, the permits that the Management Group did obtain were cancelled without final inspections by the City.

37. One of the necessary permits that the Management Group failed to complete is a change of use permit, which, when closed out, allows a building owner to obtain a new certificate of occupancy with a new authorized use.

38. Because no change of use permit was obtained, the Management Group never obtained a certificate of occupancy for the Building that allowed it to be occupied for any use other than as a warehouse.

39. At no time after 2007, including while Stanbary d/b/a Open Window Theatre occupied the Leased Premises, was there a valid certificate of occupancy that allowed the Building or any suite therein to be used for anything other than a warehouse.

40. During the period that Stanbary d/b/a Open Window Theatre occupied the Leased Premises, other suites in the building were leased by the Management Group to tenants who used the space as, for example, a church meeting space, a gym, and other commercial uses, none of which are included in the use category "warehouse."

41. Through the course of Open Window Theatre's attempts to renovate the Leased Premises, the lack of an appropriate certificate of occupancy was brought to the attention of the City.

42. Given the lack of a certificate of occupancy, the City ordered Open Window Theatre to cease operations.

43. After extended negotiations with the City, Open Window Theatre was able to come to an arrangement with the City allowing it to continue operations on a temporary basis, provided that the theatre paid for a “fire watch” for each individual performance of any future production.

44. For its production of *Everyman*, Open Window Theatre was forced to pay a total of \$6,240.00 in additional expenses for the fire watch.

45. Because of the additional cost incurred for the fire watch, Open Window Theatre was forced to cancel its final production of the 2015/2016 season, *Best of Enemies*, and has now ceased operations indefinitely.

Contract Provisions

46. Paragraph 6 of the 2015 Lease obligated Metropolis as follows:

Landlord shall keep and maintain in good order, condition and repair, the foundation, exterior walls (except glass materials used in structural portions) roof and structural parts of the floor.

(Same or similar language is included in the leases signed in 2011, 2013, and 2014.)

47. Paragraph 6 of the 2015 Lease also obligated Metropolis as follows:

Landlord shall be responsible for general outside maintenance of the Leased Premises and the Building. All such maintenance which is the responsibility of Landlord shall be provided as reasonably necessary to the comfortable use and occupancy of the Leased Premises....

(Same or similar language is included in the leases signed in 2011, 2013, and 2014.)

48. Paragraph 9 of the 2015 Lease obligated Metropolis as follows:

Both Tenant and Landlord agree to comply with all laws, ordinances, orders, rules, and regulations (state, federal, municipal, or promulgated by other agencies or bodies having any jurisdictions thereof) relating to the use, condition or occupancy of the Leased Premises. . . . If the Leased Premises are found to be in non-compliance with this section 9 at the fault of one party, the non-faulting party may, at its option, terminate this Lease Agreement.

(Same or similar language is included in the leases signed in 2013, and 2014.)

49. In paragraph 14 of the 2015 Lease, Metropolis warranted as follows:

QUIET ENJOYMENT. Landlord warrants that, subject to and except as provided for by the terms and conditions of this Lease Agreement, Tenant shall have, hold, and enjoy the Leased Premises during Term, without any other parties having rights to the Leased Premises.

(Same or similar language is included in the leases signed in 2011, 2013, and 2014.)

50. Paragraph 26 of the 2015 Lease provided the following non-waiver provision:

WAIVER. Failure of Landlord or Tenant to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive such default, but Landlord or Tenant shall have the right to declare any such default at any time thereafter.

(Same or similar language is included in the leases signed in 2011, 2013, and 2014.)

Code Violations & Health and Safety Hazards

51. In 2016, Open Window Theatre enlisted the help of an architect and a licensed contractor to conduct inspections of the Building. They found the following code violations:

Fire Hazards

- a. *Sprinkler System.* There is no sprinkler system in the Building. A sprinkler system is required because the building is a class A or B occupancy with an occupant load of greater than 30 for the corridors. The doors opening to the corridors are not fire rated with the minimum of one hour rating that is required to allow a non-sprinkled corridor.
- b. *Doors.* Doors opening into the corridors are not fire rated and are primarily made of glass.
- c. *Corridor Width.* The corridors are narrower than 8 feet wide. With doors opening into the corridor the effective width is even narrower.

- d. *Corridor Bottlenecks*. The 2007 renovations created bottlenecks at the emergency exits, where the corridors narrow even further to a mere four to five feet wide.
- e. *Holes in Fire-Walls*. The walls to the corridors have holes in them that punch all the way through to the suites. This negates any semblance of fire ratings that the corridors are required to have.
- f. *Fire Extinguisher*. Some fire extinguishers are not attached to the wall, but rather sit on the ground where they are moved around for convenience. Upon information and belief the building lacks an adequate number of extinguishers.
- g. *Shattered Windows*. The back door of the building (double pane glass) leading to the back parking lot has a missing (shattered out) pane of glass that has remained unrepaired for months.

Emergency Exits

- h. *Exit Obstruction*. Using two of the three emergency exits requires going up or down narrow, steep, and long stair cases.
- i. *Obstructed Exit Signs*. The Management Group has allowed tenants to hang flags, fliers, and other decorations in the hallways obstructing the view of the exit signs, sometimes completely.
- j. *Storage in Corridors*. The tenants have been allowed to use the corridors as storage for large pallets, exercise machines, and other heavy and obstructive objects.
- k. *Egress Lighting*. Most of the corridors lack adequate emergency egress lighting. There is only one set of emergency exit lights in only one of the corridors (none in the others), but that set of lights is stand alone and not connected to any of the exit signs.
- l. *Exit Sign Lighting*. There are exit signs that are not backlit on a separate power supply.

Restrooms

- m. *Restroom Venting.* Restrooms are not vented. The venting is capped in the building, risking an indoor buildup of sewage gas.
- n. *Insufficient Restrooms.* The occupancy of the building requires a minimum of 15 restrooms. There are only two accessible from the common areas.
- o. *Bathroom Lock.* The locks on the common area bathrooms only deadbolt and do not have the required passage set.
- p. *Bathroom Fans.* The bathroom fans are not vented outside, and instead are only only vented into the common areas.

Utilities

- q. *Faulty Wiring.* The HVAC systems have been rewired by the owners to allow tenants and the owner to steal electricity from other units.
- r. *Gas & Heating.* The heating and gas is ported such that some tenants are paying for the gas and heating of other tenants, and tenants have no control over the heat and gas in their own units.

Parking Lot & Outside the Building

- s. *No Striping.* Parts of the parking lot have no stripes indicating where the cars are allowed to park.
- t. *Proper Striping.* The parking lot striping that does exist is improperly done, with spaces that are too narrow, or spaces that are perpendicular to the Building when the width of the lot should require parallel parking spots.

- u. *Disability Parking*. There is no official disabled parking spot. The Management Group has designated a spot, but there is only one, the spot is not wide enough, is not in the proper location, is not properly marked, and is on a steep grade.
- v. *Grading*. The parking lot is too steep for how it is structured.
- w. *Dumpster*. There is no fence around the dumpster.
- x. *Drainage*. There are multiple drainage issues due to the lack of storm water runoff and the grade of the parking lot.
- y. *Graffiti*. The building has been tagged a number of times, both in the past and recently. The graffiti has not been properly cleaned as of the date of this letter.

52. Sometime during or before May 2015, the Management Group began advertising the Building as “ADA Compliant.”

53. The Building does not comply with the requirements of the Americans with Disabilities Act, including with respect to handicap parking.

54. The Management Group has been notified of these violations but has refused to fix them.

55. The Management Group has prevented Stanbary from resolving the various violations.

Utility Theft

56. During the tenancy, Open Window Theatre paid for utilities directly to the utility companies.

57. Wiring and piping of gas, electric, and HVAC for the Building and the Leased Premises were all done by Zev Oman, acting on behalf of Metropolis and Space Unlimited.

58. Upon information and belief, construction and renovation work for the utilities done or overseen by Zev Oman and the Management Group was not under proper permit.

59. Upon information and belief, neither Zev Oman nor the Management Group had the proper licenses to do or oversee any of the construction or renovation work on any of the utilities for any of the Building.

60. Sometime during or after December 2015, it was learned that gas had been improperly piped and metered by Zev Oman, acting on behalf of Metropolis and Space Unlimited.

61. Because of the improper piping and metering, Open Window Theater was forced to pay for the utilities of another tenant in the Building.

62. In or around December 2015, Open Window Theatre also learned that the Management Group was stealing electricity from Open Window Theatre's rooftop HVAC system by running electrical wires from rooftop HVAC units to trucks that were leasing space in the parking lot.

Retaliation & Constructive Eviction

63. Throughout 2015, Open Window Theatre notified the Management Group of the improper zoning for the Building.

64. Starting in or about December 2015, the Management Group was contacted multiple times regarding the missing of certificate of occupancy.

65. In response to the request for the Management Group to obtain the legally mandated certificate of occupancy, the Management Group threatened to evict Open Window Theatre.

66. In April and May of 2015, Open Window Theatre continued to demand that the Management Group obtain the legally mandated certificate of occupancy and resolve the various code violations.

67. Because the Management Group's numerous illegal acts that prevented Open Window Theatre's legal operation, and that caused substantial excess cost and lost revenue, Open Window

Theatre was forced to cease operations and was constructively evicted from the Leased Premises on August 29, 2016, before resolution of the eviction action.

68. The Management Group did not return any of the security deposit, in the amount of \$4,650, by September 19, 2016.

69. The Management Group did not furnish to Stanbary a written statement showing the specific reason for withholding any of the deposit or any portion thereof by September 19, 2016.

70. The Management Group's actions forced Open Window Theatre to cancel the remainder of the 2015/2016 season, as well as the 2016/2017 season and all future seasons indefinitely.

COUNT I – DECLARATORY JUDGMENT

71. Stanbary restates and re-alleges the foregoing as if fully stated herein.

72. The members of the Management Group had affirmative duties to obtain a certificate of occupancy for the Building after the 2007 renovation.

73. The Management Group did not obtain a certificate of occupancy for the Building after the 2007 renovation.

74. As of the date of this filing, there has never been a valid certificate of occupancy allowing the Building to be used as a multi-tenant commercial use facility.

75. During the tenancy defined by the 2011, 2013, 2014, and 2015 leases, the Building was not zoned for use as a performance arts venue or as a theater.

76. In accordance with Minn. Admin. R. 1300.0220, it is illegal to lease a unit in a building that does not have a valid certificate of occupancy.

77. In 2011, 2013, 2014, and 2015, the Management Group including Metropolis attempted to lease various suites in the Building to Stanbary.

78. Based on the foregoing, the 2011, 2013, 2014, and 2015 leases are illegal contracts and thereby void as a matter of law.

COUNT II – BREACH OF CONTRACT

79. Stanbary restates and re-alleges the foregoing as if fully stated herein.

80. If any of the 2011, 2013, 2014, or 2015 leases is not deemed void or voided and is otherwise enforceable, then it is a valid contract between Metropolis and Space Unlimited and Stanbary.

81. Stanbary performed all conditions precedent in the contracts to his right to demand performance by Metropolis and Space Unlimited.

82. Metropolis and Space Unlimited failed to perform their obligations under the contracts to keep and maintain in good order, condition and repair, the foundation, exterior walls, roof and structural parts of the floor.

83. Metropolis and Space Unlimited failed to perform their obligations under the contracts to maintain the outside of the Leased Premises and of the Building.

84. Metropolis and Space Unlimited failed to perform their obligations under the contracts to comply with all laws, ordinances, orders, rules, and regulations (state, federal, municipal, or promulgated by other agencies or bodies having any jurisdictions thereof) relating to the use, condition or occupancy of the Leased Premises.

85. Metropolis and Space Unlimited failed to perform their obligations under the contracts to allow Stanbary d/b/a Open Window Theatre to hold and enjoy the Leased Premises.

86. Metropolis and Space Unlimited breached the leases by failing to provide Stanbary a space that could be used as a theatre or as a performing arts venue.

87. Metropolis and Space Unlimited breached the leases by failing to obtain a certificate of occupancy that would allow the Building to be rented out as commercial space.

88. By failing to perform its obligations under the contracts, Metropolis and Space Unlimited breached the contract and thereby damaged Stanbary in the amount greater than \$50,000, the exact amount to be proved at trial.

COUNT III – FRAUDULENT MISREPRESENTATION

89. Stanbary restates and re-alleges the foregoing as if fully stated herein.

90. Metropolis and Space Unlimited represented to Stanbary that the space was legal for occupancy by Stanbary d/b/a Open Window Theatre.

91. Metropolis and Space Unlimited represented to Stanbary that Stanbary d/b/a Open Window Theatre was legally allowed to use the Leased Premises as a theater.

92. Metropolis and Space Unlimited represented to Stanbary that Stanbary d/b/a Open Window Theatre was legally allowed to use the Leased Premises as a performing arts venue.

93. These representations were of material facts existing at the time of the execution of the contracts.

94. Metropolis and Space Unlimited made the representations knowing the falsity of the representations or made the representations as if it was of Metropolis's and Space Unlimited's own knowledge without knowing whether the representation was in fact true or false.

95. The false representations was made to induce Stanbary to act in reliance thereon.

96. Because of the reliance on the false representations, the contracts, including the 2011, 2013, 2014, and 2015 lease are void as a matter of law.

97. Because of the reliance on the false representations, Stanbary has been damaged in an amount greater than \$50,000, the exact amount to be determined at trial.

COUNT IV – NEGLIGENT MISREPRESENTATION

98. Stanbary restates and re-alleges the foregoing as if fully stated herein.

99. Metropolis and Space Unlimited represented to Stanbary that Stanbary d/b/a Open Window Theatre was legally allowed to use the Leased Premises as a theater.

100. Metropolis and Space Unlimited represented to Stanbary that Stanbary d/b/a Open Window Theatre was legally allowed to use the Leased Premises as a performing arts venue.

101. Metropolis and Space Unlimited failed to disclose or communicate that the Building did not have a valid certificate of occupancy that allowed it to be used as a performing arts venue or as a theatre.

102. Metropolis and Space Unlimited failed to disclose or communicate that the Building did not have a valid certificate of occupancy that would allow the Leased Premises to be used as anything other than a warehouse.

103. Metropolis and Space Unlimited failed to disclose or communicate that the Building was not zoned to allow use as a performing arts venue or as a theater.

104. In doing so, Metropolis and Space Unlimited failed to exercise reasonable care or competence in obtaining or communicating the information.

105. Because of his reliance on the false representation, Stanbary has been damaged in an amount greater than \$50,000, the exact amount to be determined at trial.

**COUNT V – PROMISSORY ESTOPPEL &
UNJUST ENRICHMENT**

106. Stanbary restates and re-alleges the foregoing as if fully stated herein.

107. Metropolis and Space Unlimited made clear and definite promises to Stanbary in 2015 when they signed the 2015 Lease.

108. The promises identified above included, among others:

- a. The leased premises could be used as a performance arts venue and/or theatre;

- b. Stanbary d/b/a Open Window Theatre would have quiet enjoyment of the leased premises;
- c. Metropolis and Space Unlimited would keep and maintain in good order, condition, and repair the exterior walls;
- d. Metropolis and Space Unlimited would provide all maintenance for the areas outside the leased premises that were reasonably necessary to the comfortable use and occupancy of the leased premises; and
- e. Metropolis and Space Unlimited would comply with all laws, ordinances, orders, rules, and regulations relating to the condition or occupancy of the Leased Premises.

109. Metropolis and Space Unlimited made similar promises to Stanbary in 2011, 2013, and 2014 when they signed leases those years.

110. Metropolis and Space Unlimited intended to induce Stanbary to rely on those promises.

111. Stanbary reasonably relied on those promises.

112. Metropolis and Space Unlimited failed to provide the leased space as promised.

113. Because of his reasonable reliance on those promises, Stanbary d/b/a Open Window Theatre was harmed.

114. Because of its failures to fulfill its promises, Stanbary d/b/a Open Window Theatre was unjustly enriched in an amount greater than \$50,000, the exact amount to be proved at trial.

**COUNT VI – FAILURE TO RETURN SECURITY DEPOSIT
MINN. STAT. § 504B.178**

115. Stanbary restates and re-alleges the foregoing as if fully stated herein.

116. Metropolis and Space Unlimited collected \$4,650 in security deposits from Stanbary.

117. Stanbary's tenancy ended on August 29, 2016.

118. Metropolis and Space Unlimited did not return any security deposits to Stanbary by September 18, 2016.

119. Metropolis and Space Unlimited did not provide Stanbary with a written statement showing the specific reason for withholding of the deposit or any portion thereof.

120. Metropolis's and Space Unlimited's retention of the security deposit was in bad faith.

121. Because of Metropolis's and Space Unlimited's violation of Minn. Stat. § 504B.178, Stanbary d/b/a Open Window Theatre was harmed in the amount of \$4,650 plus interest, and is owed an additional \$4,650 as statutory penalty under Minn. Stat. § 504B.178, subd. 4 and subd. 7.

COUNTS VII & VIII – CIVIL THEFT & CONVERSION

122. Stanbary restates and re-alleges the foregoing as if fully stated herein.

123. Metropolis and other members of the Management Group were responsible for directing utilities to Leased Premises.

124. Metropolis and other members of the Management Group misdirected utilities throughout the Building, causing Stanbary d/b/a Open Window Theatre to pay for utilities used by other suites.

125. Metropolis and other members of the Management Group also tapped directly into the rooftop HVAC unit for the Leased Premises, and provided electricity from that unit to third parties, thereby stealing electricity from Stanbary d/b/a Open Window Theatre.

126. By illegally stealing and diverting utilities from Stanbary, Metropolis and other members of the Management Group interfered with Stanbary's personal property without lawful justification.

127. Because of the interference with Stanbary's personal properties, Stanbary d/b/a Open Window Theatre was deprived of its use and possession.

128. Due to these deprivations, Stanbary d/b/a Open Window Theatre was harmed in an undetermined amount of liquidated damages, the exact amount to be proved at trial.

**COUNT IX – FALSE STATEMENT IN ADVERTISING ACT (“FSAA”)
MINN. STAT. § 325F.67**

129. Stanbary restates and re-alleges the foregoing as if fully stated herein.

130. Metropolis and other members of the Management Group, with intent to sell its services and lease space at the Building and with intent to induce the public to enter into a contract thereto, published advertisements relating to the Building.

131. These published advertisements made material assertions, representations, or statements of fact which were untrue, deceptive, or misleading.

132. Each of these actions are a public nuisance.

133. Zev Oman and Kristi Oman, as members with ownership interest in Space Unlimited and Metropolis, had knowledge of the false, misleading, and deceptive character of the advertisements and/or had a financial interest in the leasing of the Leased Premises and the Building.

134. Due to these actions, the public at large was and is continuing to be substantially harmed.

135. Due to these actions, Stanbary d/b/a Open Window Theatre was harmed in an amount greater than \$50,000, the exact amount to be proved at trial.

**COUNT X – CONSUMER FRAUD ACT (“CFA”)
MINN. STAT. § 325F.68 *et seq.***

136. Stanbary restates and re-alleges the foregoing as if fully stated herein.

137. Metropolis and other members of the Management Group acted, used, and/or employed fraud, false pretenses, false promises, misrepresentations, misleading statements and/or deceptive practices during their attempts to lease space at the Building.

138. Metropolis and other members of the Management Group intended that others rely thereon.

139. Due to these actions, the public at large was and is continuing to be substantially harmed.

140. Due to these actions, Stanbary d/b/a Open Window Theatre was harmed in an amount greater than \$50,000, the exact amount to be proved at trial.

**COUNT XI – UNIFORM DECEPTIVE TRADE PRACTICES ACT (“UDTPA”)
MINN. STAT. § 325D.43 *et seq.***

141. Stanbary restates and re-alleges the foregoing as if fully stated herein.

142. During the course of business, vocation, or occupation, Metropolis and other members of the Management Group caused likelihood of confusion or of misunderstanding as to the certification of goods or services.

143. During the course of business, vocation, or occupation, Metropolis and other members of the Management Group represented that goods or services have sponsorship, approval, characteristics, or uses that they did not have.

144. During the course of business, vocation, or occupation, Metropolis and other members of the Management Group advertised goods or services with intent to not sell them as advertised.

145. During the course of business, vocation, or occupation, Metropolis and other members of the Management Group engaged in other conduct which similarly created a likelihood of confusion or of misunderstanding.

146. Due to these actions, the public at large was and is continuing to be substantially harmed.

147. Due to these actions, Stanbary d/b/a Open Window Theatre was harmed in an amount greater than \$50,000, the exact amount to be proved at trial.

WHEREFORE, Plaintiffs' pray for judgment as follows:

- A. The issuance of a declaratory judgment that the 2011 lease is void as a matter of law;
- B. The issuance of a declaratory judgment that the 2013 lease is void as a matter of law;
- C. The issuance of a declaratory judgment that the 2014 lease is void as a matter of law;
- D. The issuance of a declaratory judgment that the 2015 lease is void as a matter of law;
- E. Damages in excess of \$50,000, the exact amount to be proved at trial;
- F. Statutory punitive damages pursuant to Minn. Stat. § 604.14;
- G. Statutory penalties and punitive damages pursuant to Minn. Stat. § 504B.178;
- H. Enjoinment of the Management Group members leasing or use of the space at the Building until a valid certificate of occupancy is obtained for the intended use;
- I. Enjoinment of the Management Group members advertising that the Building is "ADA compliant" or any similar misrepresentation;
- J. Enjoinment of the Management Group members advertising that the Building is fit to be leased;
- K. Costs, disbursements, and expenses;
- L. Reasonable attorney's fees as allowed by law, including without limitation attorney's fees, costs, and expenses owed under the terms of the various leases, if enforceable, or in accordance with statutory authority including without limitation Minn. Stat. § 8.31; and
- M. Such other further relief as the Court deems just and equitable.

ECKLAND & BLANDO LLP

Dated: October 7, 2016



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The undersigned acknowledges that sanctions
may be awarded under Minn. Stat § 549.211.


Mark J. Blando

Attorneys for Plaintiffs

4829-9419-2442, v. 1