Hearing Date: No hearing scheduled
Location: <<CourtRoomNumber>>
Judge: Calendar, 64

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

FIRST BANK OF HIGHLAND PARK,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 2025CH10558
	)	
THE FULTON BUILDING, LLC, *et al.*,	)	2701-09 W. Fulton St., Chicago, IL
	)	
Defendants.	)	

ANSWER AND AFFIRMATIVE DEFENSES

NOW COMES the Defendant, the Fulton Building, LLC, by and through its attorney, Timothy C. Culbertson, and for its Answer and Affirmative Defenses to the Complaint in this matter, alleges as follows:

INTRODUCTION

1. First Bank agreed to loan to Defendant, The Fulton Building, LLC ("Fulton Building LLC" or "Borrower"), the original principal amount of $2,450,000.00 (the "Loan"). The Loan is governed by that certain Business Loan Agreement executed as of September 17, 2020 (the "Loan Agreement"), evidenced by a Promissory Note dated September 17, 2020 (the "Note"), and secured by, among other things, a mortgage dated September 17, 2020 (the "Mortgage"), Assignment of Rents dated September 17, 2020 ("Assignment of Rents") and a commercial guaranty by Michael Federow ("Federow") dated September 17, 2020 (the "Guaranty") (collectively, the "Loan Documents").

Answer:

1. Defendant admits the allegations of Paragraph 1.

2. Borrower has defaulted on several of its obligations under the Loan Agreement, Mortgage and Note—including failing to repay the loan upon maturity. First Bank files this Complaint to foreclose upon the Mortgage and other collateral securing the Loan, to terminate all junior liens, encumbrances and/or alleged subordinate claims on the real property located at 270109 W. Fulton St., Chicago, Illinois 60612 (the "Mortgaged Premises") that is the subject of the Mortgage, and

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to obtain other remedies against the Borrower. First Bank also seeks to obtain a judgment against Federow for breach of the Guaranty.

Answer:

2. Defendant denies each and every allegation of Paragraph 2.

THE PARTIES

3. Plaintiff First Bank is a division of First Bank Chicago Corp., an Illinois Corporation that maintains its principal place of business in Northbrook, Cook County, Illinois. First Bank is the holder of the Note, the lender on the Loan, and the mortgagee of the Mortgaged Premises.

Answer:

3. Defendant lacks knowledge or information sufficient to allow it to form a belief as to the truth of the allegations of Paragraph 3, and therefore denies the same.

4. Defendant Fulton Building LLC/Borrower is an Illinois limited liability company, upon information and belief, maintains its principal place of business in Chicago, Cook County, Illinois. Borrower is the borrower under the Loan, the maker of the Note, and the mortgagor of the Mortgaged Premises.

Answer:

4. Defendant admits the allegations of Paragraph 4.

5. Defendant Michael Federow is an individual who, upon information and belief, resides in Cook County, Illinois. Federow is the manager of Fulton Building LLC and guarantor on the Guaranty.

Answer:

5. Defendant admits the allegations of Paragraph 5.

6. All unknown owners in connection with the real property and personal property in issue are also named as defendants and are referred to as "Unknown Owners."

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Answer:

6. Defendant lacks knowledge or information sufficient to allow it to form a belief as to the truth of the allegations of Paragraph 6, and therefore denies the same.

7. All non-record claimants in connection with the real property and personal property in issue are also named as defendants and are referred to as "Non-Record Claimants."

Answer:

7. Defendant lacks knowledge or information sufficient to allow it to form a belief as to the truth of the allegations of Paragraph 7, and therefore denies the same.

VENUE AND JURISDICTION

8. Jurisdiction is proper under one or more subsections of 735 ILCS 5/2-209 and 735 ILCS 5/15-1103 because, among other things, Borrower claims an interest in real property in Illinois, Borrower and Federow have made or performed a contract or promise substantially connected with Illinois or have transacted business within Illinois, and the Loan Agreement, Note, Mortgage and Guaranty contain provisions setting the courts of Cook and/or Lake County as proper jurisdiction for claims included in this lawsuit.

Answer:

8. Defendant admits the allegations of Paragraph 8.

9. The Mortgaged Premises is located in Cook County and therefore venue is proper in this Court under 735 ILCS 5/2-103(b), which provides that "[a]ny action . . . to foreclose a mortgage . . . must be brought in the county in which the real estate or some part of it is situated." Venue is also proper in this Court under 735 ILCS 5/2-101 because part of the transactions out of which give rise to First Bank's causes of action against Borrower and Federow occurred in Cook County. Venue is also proper in this Court under 735 ILCS 5/2-102 because Borrower has its principal office and its registered office in, and is doing business in, Cook County. Lastly, venue is proper in this Court because the Loan Agreement, Note, Mortgage and Guaranty contain provisions setting the courts of Cook and/or Lake County as the venue for claims included in this lawsuit.

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Answer:

9. Defendant admits the allegations of Paragraph 9.

FACTS COMMON TO ALL COUNTS

10. First Bank agreed to loan the original principal amount of $2,450,000 to Borrower. The Loan is governed by that certain Loan Agreement between First Bank and Borrower executed as of September 17, 2020, a true and correct copy of which is attached as Exhibit A.

Answer:

10. Defendant admits the allegations of Paragraph 10.

11. The Loan is evidenced by that certain Note dated as of September 17, 2020 in the principal amount of $2,450,000, executed by Borrower to the order of First Bank, a true and correct copy of which is attached as Exhibit B.

Answer:

11. Defendant admits the allegations of Paragraph 11.

12. The Loan is secured by, among other things, (i) that certain Mortgage dated September 17, 2020 executed by Borrower in favor of First Bank, for the Mortgaged Premises; (ii) that certain Assignment of Rents dated September 17, 2020 executed by Borrower in favor of First Bank, for the Mortgaged Premises; and (ii) that certain Guaranty dated September 17, 2020 executed by Federow in favor of First Bank.

Answer:

12. Defendant admits the allegations of Paragraph 12.

13. Borrower executed the Mortgage and delivered it to First Bank on or about September 17, 2020 in order to secure the Note and any other obligations of Borrower arising under the Loan Agreement. The Mortgage was recorded with the Recorder of Deeds of Cook County, Illinois, on November 5, 2020 as Document Number 2031044216. A true and correct copy of the Mortgage is attached as Exhibit C.

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Answer:

13. Defendant admits the allegations of Paragraph 13.

14. As further security for the Loan, on or about September 17, 2020, Federow executed the Guaranty in favor of First Bank, a true and correct copy of which is attached as Exhibit D. Pursuant to the Guaranty, Federow absolutely and unconditionally agreed, *inter alia*, to fully and punctually satisfy the Indebtedness (as defined in the Guaranty) of Borrower to First Bank, and to fully and punctually perform and discharge all of Borrower's other obligations under the Loan Agreement, the Note, and any other Related Documents (as defined in the Guaranty). (Ex. D, at 4).

Answer:

14. Defendant admits the execution of the Guaranty and denies all further allegations of Paragraph 14 to the extent that any of them misstate, misconstrue or otherwise mis-characterize any of the terms of that document.

15. Under the Note, Borrower agreed to make monthly payments of principal and interest in the amount of $13,009.87 to First Bank beginning on October 17, 2020 and continuing on the same day of each subsequent month until a final payment for all principal and all accrued interest not yet paid was due on September 17, 2025 (the "Maturity Date"). (Ex. B, at 1). The Note also provides that Borrower's failure to make any monthly payment and/or the final payment on the Maturity Date is an "Event of Default." (Id.)

Answer:

15. Defendant denies the allegations of Paragraph 15 to the extent that any of them misstate, misconstrue or otherwise mis-characterize any of the terms of the referenced document.

16. Under the Loan Agreement, Borrower agreed to i) maintain a non-interest bearing real estate tax escrow with First Bank during the term of the loan (Ex. A, at 3 (REAL ESTATE TAX ESCROW)); ii) furnish to lender certain financial documents and information by certain deadlines (Id. at 2 (FINANCIAL STATEMENTS)); and iii) maintain the Mortgaged Premises in compliance with all applicable laws, ordinances and

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regulations (Id. at 3(COMPLIANCE WITH GOVERNMENTAL REQUIREMENTS)).

Answer:

16. Defendant denies the allegations of Paragraph 16 to the extent that any of them misstate, misconstrue or otherwise mis-characterize any of the terms of the referenced document.

17. The Note also provides upon a default, including a default for failure to comply with or to perform any other terms, obligations or covenants in any of the related documents or any other agreements between the Borrower and First Bank, the base interest rate (as computed according to the terms of the Note) increases by 5.000 percentage points. (Id.)

Answer:

17. Defendant denies the allegations of Paragraph 17 to the extent that any of them misstate, misconstrue or otherwise mis-characterize any of the terms of the referenced document.

18. First Bank funded the full principal of the Loan in the amount of $2,450,000.00 on September 29, 2020.

Answer:

18. Defendant admits the allegations of Paragraph 18.

19. Beginning with the payment due on July 17, 2025, Borrower failed to make the monthly payment of $13,009.87 to First Bank and has not made any payments since July 23, 2025, including the final payment of all principal and all accrued interest due on September 17, 2025.

Answer:

19. Defendant denies the allegations of Paragraph 19.

20. Beginning with the payment due on April 17, 2025, Borrower failed fund a non-interest bearing real estate tax escrow with First Bank.

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Answer:

20. Defendant denies the allegations of Paragraph 20.

21. During the duration of the Loan, Borrower has failed to timely provide at least the following financial documents and information:

a. 2021 (incomplete), 2022 (incomplete) & 2023 tax returns for The Fulton Building, LLC;

b. 2020, 2021, 2022 & 2023 tax returns for Michael Federow;

c. 2023 & 2024 internally-prepared operating statements and current copies of tenant leases for the Mortgaged Premises; and

d. To maintain the Mortgaged Premises in compliance with all applicable laws, ordinances and regulations including, but not limited to, i) failing to maintain the exterior walls; ii) failing to maintain the roof; iii) failing to maintain the parking area; iv) failing to maintain code compliance of the electrical systems; and v) failing to maintain emergency systems.

Answer:

21. Defendant denies the allegations of Paragraph 21.

22. By letter dated August 25, 2025, First Bank provided written notice (the "Notice of Default") to Borrower (via Federow) of the foregoing defaults under the Loan Documents, including that Borrower failed to make the full monthly payment of interest and principal due on July 17, 2025. A true and correct copy of the Notice of Default is attached as Exhibit E.

Answer:

22. Defendant admits receipt of the referenced document and denies any facts stated therein.

23. Despite receiving notice (via the Borrower), Federow has not fulfilled his obligations under the Guaranty to fully and punctually pay and satisfy all Indebtedness (as defined in the Guaranty) of Borrower to Lender and to fully perform and discharge all Borrower's obligations under the Note and other Related Documents (as defined in the Guaranty). Specifically, Federow failed to timely fulfill Borrower's obligation to pay

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(i) the monthly payment of principal and interest due on July 17, 2025 and (ii) the final payment of all principal and all accrued interest due on September 17, 2025.

Answer:

23. Defendant denies the allegations of Paragraph 23.

COUNT I
FORECLOSURE OF THE MORTGAGE
(Against The Fulton Building, LLC and Unknown Owners and Non-Record Claimants)

24. First Bank realleges and incorporates by reference the allegations set forth in paragraphs 1 through 23 above as its allegations for this paragraph 24.

Answer:

24. As and for its Answer to this Paragraph 24, Defendant realleges and incorporates by this reference its Answers to Paragraph 1 through 23 above as if fully set forth herein..

25. In this Count I, First Bank seeks to foreclose its liens and security interests in both real and personal property granted to it pursuant to the Mortgage. First Bank joins the following parties as defendants: Borrower and Unknown Owners and Non-Record Claimants.

Answer:

25. Defendant denies the allegations of Paragraph 25.

26. Information concerning the Mortgage pursuant to 735 ILCS 5/15-1504:

a. Name of the instrument: Mortgage.

b. Date of mortgage: The Mortgage is dated September 17, 2020.

c. Name of the mortgagor: First Bank of Highland Park.

d. Name of the mortgagee: The Fulton Building, LLC.

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e. Date and place of recording: The Mortgage was recorded on November 5, 2020 with the Recorder of Deeds for Cook County, Illinois.

f. Identification of recording: The Mortgage was recorded as Document Number 2031044216.

g. Interest subject to the Mortgage: Fee simple to the Mortgaged Premises, as described in the Mortgage, and improvements, fixtures, and personal property as described therein.

h. Amount of original indebtedness: $2,450,000.00

i. The legal description and the common address of the Mortgaged Premises:

PARCEL 1: LOTS, 1, 2, 3, AND 4 IN BLOCK 7 IN DAVIS' ADDITION TO CHICAGO, BEING A SUBDIVISION OF PART OF THE SOUTH HALF OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2: THE NORTH 7.5 FEET OF THE ALLEY LYING SOUTH OF AND ADJOINING LOTS 1, 2, 3, AND 4 IN BLOCK 7 IN DAVIS' ADDITION TO CHICAGO, BEING A SUBDIVISION OF PART OF THE SOUTH HALF OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Index Number: 16-12-408-008-0000
Common Address: 2701-09 W. Fulton St., Chicago, Illinois 60612

j. Statements as to defaults: Borrower failed to make the monthly payment of $13,009.87 to First Bank due on July 17, 2025, and has not made any payments since July 23, 2025, including the final payment of all principal and all accrued interest due on September 17, 2025. (Ex. B, at 1 (PAYMENT)). Beginning with the payment due on April 17, 2025, Borrower failed fund a non-interest bearing real estate tax escrow with First Bank. (Ex. A, at 3 (REAL ESTATE TAX ESCROW)). Borrower failed to timely provide at least the following financial documents and information: 2022 & 2023 tax returns for The Fulton Building, LLC; 2022 & 2023 tax returns for Michael Federow; and 2023 & 2024 internally-prepared operating statements and current copies of tenant leases for the

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Mortgaged Premises (Id. at 2 (FINANCIAL STATEMENTS)). Borrower failed to maintain the Mortgaged Premises in compliance with all applicable laws, ordinances and regulations by, among other issues, i) failing to maintain the exterior walls; ii) failing to maintain the roof; iii) failing to maintain the parking area; iv) failing to maintain code compliance of the electrical systems; and v) failing to maintain emergency systems. The Note provides the preceding are collectively and individually Events of Default (as defined in the Note). Additionally, the Loan Agreement and Mortgage each provide an Event of Default under the Note or any other related agreement constitutes an Event of Default of the Loan Agreement and Mortgage. In addition, other defaults or Events of Default may have occurred pursuant to the Mortgage, the Loan Agreement, or the Loan Documents.

The following amounts are due under the Mortgage as of October 1, 2025:

Principal as of October 1, 2025:	$2,149,665.20
Accrued and Unpaid Interest as of October 1, 2025 (including interest at the default rate):	$48,022.18
Late Charges	$14,961.27
Credit for Escrow Surplus	($9,731.83)

Total Amount Due as of October 1, 2025 (excluding costs and attorneys' fees)

Per Diem Interest as of October 1, 2025 (subject to change in accordance with the terms of the Note and the Loan Agreement):

k. Name of the present owners of the real estate: The Fulton Building, LLC.

l. Names of other persons who are joined as defendants and whose interest in or lien on the mortgaged real estate is sought to be terminated or subordinated: Unknown Owners and Non-Record Claimants.

m. Names of defendants claimed to be personally liable for deficiency, if any: The Fulton Building, LLC and Michael Federow, provided that nothing herein shall waive or be construed to waive the rights that First Bank may have under the provisions of any of the Mortgage, the Note, or the Guaranty to pursue claims which are available to or reserved to First Bank against any of the named defendants and/or the guarantor of the Loan.

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n. Capacity in which Plaintiff brings this foreclosure: First Bank brings this foreclosure in its capacity as the owner and legal holder of the Mortgage.

o. Facts in support of shortened redemption period: The real estate being foreclosed is "other real estate" as defined by Section 15-1601 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1601(b)) and, pursuant to the "Waiver of Right of Redemption" provision on page 11 of the Mortgage, Borrower has expressly waived any and all rights of redemption from any foreclosure of the Mortgaged Premises.

p. Statement that the right of redemption has been waived by all owners of redemption: Pursuant to the "Waiver of Right of Redemption" provision on page 11 of the Mortgage, Borrower, as the owner of the right of redemption, has expressly waived any and all rights of redemption from any foreclosure of the Mortgaged Premises.

q. Facts in support of request for attorneys' fees, costs and expenses: Pursuant to the "Attorneys' Fees; Expenses" provision on page 10 of the Mortgage, the "Attorneys' Fees; Expenses" provision on page 2 of the Note, and the "Attorneys' Fees; Expenses" provision on page 5 of the Loan Agreement, First Bank is entitled to recover its attorneys' fees, costs and expenses for enforcing the Mortgage and the other Loan Documents. First Bank has been required to incur attorneys' fees, court costs, title insurance and other expenses in connection with the enforcement of the Mortgage, the other Loan Documents and this foreclosure action.

r. Facts in support of a request for appointment of receiver and identity of such receiver: The "Mortgagee in Possession" provision on page 9 of the Mortgage authorizes First Bank, as lender and mortgagee, to take possession of the Mortgaged Premises or to have a receiver appointed to take possession of all of all or any part of the Mortgaged Premises. Due to the defaults under the Loan Agreement, the Mortgage, and the Note, there is a reasonable probability that First Bank will prevail on a final hearing of the cause. First Bank intends to file an appropriate motion that will identify the requested receiver.

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s. Offer to mortgagor in accordance with Section 15-1402: First Bank does not now make, but reserves its right to make an offer in accordance with 735 ILCS 5/15-1402 upon a properly noticed motion.

t. Name or names of defendants whose interest in the mortgaged real estate, after the confirmation of a foreclosure sale, is sought to be terminated and/or subordinated and, if not elsewhere stated, the facts in support thereof: The Fulton Building, LLC and Unknown Owners and Non-Record Claimants. As stated above, First Bank asserts that its interests under the Mortgage in the Mortgaged Premises are superior to those of the defendants identified in this subparagraph.

Answer:

26. Defendant admits the allegations of Paragraph 26, except that it denies sub-paragraphs j., q., r., s. and t. thereof.

Wherefore, the Defendant, The Fulton Building, LLC, prays that this Court deny all relief sought by Plaintiff through Count I of the Complaint, and provide to Defendant's favor all further relief as is just and equitable.

COUNT II
BREACH OF THE NOTE
(Against The Fulton Building, LLC)

27. First Bank realleges and incorporates by reference the allegations set forth in paragraphs 1 through 26 above as its allegations for this paragraph 27.

Answer:

27. As and for its Answer to this Paragraph 27, Defendant realleges and incorporates by this reference its Answers to Paragraph 1 through 26 above as if fully set forth herein..

28. Borrower entered into a valid and enforceable contract when it executed the Note.

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Answer:

28. Defendant admits the allegations of Paragraph 28.

29. Each of Borrower's failures (i) to make the monthly payment of principal and interest due July 17, 2025 and on the 17th day of each subsequent month until September 17, 2025 and (ii) to make the final payment of all principal and all accrued interest not yet paid on the September 17, 2025 Maturity Date constitute a breach of the Note and an Event of Default under the Loan Agreement and the Note. (Ex. B, at 1 (PROMISE TO PAY; PAYMENT; DEFAULT); Ex. A, at 4 (DEFAULT)).

Answer:

29. Defendant denies the allegations of Paragraph 29.

30. Borrower's breaches of its obligations under the Note means Borrower is in default and also owes interest at the Default Rate under the Note. (Ex. B, at 1 (INTEREST AFTER DEFAULT)).

Answer:

30. Defendant denies the allegations of Paragraph 30.

31. First Bank has fully performed and fulfilled all of the terms and conditions of the Note that it agreed to perform and fulfill including, but not limited to, fully funding the principal amount of the Loan.

Answer:

31. Defendant denies the allegations of Paragraph 31.

32. Pursuant to the Note, First Bank is entitled to reasonable attorneys' fees, costs, and expenses incurred in enforcing its right under the Note and other Loan Documents. (Ex. A, at 5 (ATTORNEYS' FEES; EXPENSES; Ex. B, at 2 (ATTORNEYS' FEES; EXPENSES)).

Answer:

32. Defendant denies the allegations of Paragraph 32.

33. First Bank has been required to retain legal counsel and has been required to incur attorneys' fees, courts costs, and

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other expenses to enforce its rights under the Note and other Loan Documents, and as a result of Borrower's failure to comply with its obligations under the Note.

Answer:

33. Defendant denies the allegations of Paragraph 33.

34. Consequently, First Bank has been damaged and continues to be damaged by Borrower's breach of its obligations under the Note.

Answer:

34. Defendant denies the allegations of Paragraph 34.

Wherefore, the Defendant, The Fulton Building, LLC, prays that this Court deny all relief sought by Plaintiff through Count II of the Complaint, and provide to Defendant's favor all further relief as is just and equitable.

COUNT III
BREACH OF GUARANTY
(Against Federow)

Count III of the Complaint is not directed to this Defendant, and therefore no response thereto is required by this Defendant.

AFFIRMATIVE DEFENSES

1. At some point prior to the maturity of the Note at issue in thus matter, Defendant, through its officers and agents, started negotiating for the extension thereof with officers of the Plaintiff.

2. To ensure that Defendant's obligation s to Plaintiff remained current pas th maturity date, Defendant offered, among other things, to use financed funds from another property to use as a tax and interest escrow while working out the refinancing if the subject property.

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3. At all times, Plaintiff, through its agents and employees assured its willingness to work with Defendant in its efforts to refinance the Property.

4. However, rather than allowing Defendant an brief extension to refinance the loan, as of the maturity date Plaintiff declared the loan to be default.

5. As Plaintiff had always indicated its willingness to work with Defendant to keep the obligation current so as to allow the refinancing of the loan, Defendant did not engage in other efforts to deal with the maturity of the Note at issue.

6. Due to Plaintiff's failure to inform Defendant of the truth of the matter, that it would not allow any extension of the loan to allow for its refinancing, Plaintiff breached its obligation of good faith and fair dealing with Defendant.

7. Had Plaintiff, as it indicated it would do, worked with Defendant to allow the obligation to remain current for a brief period post-maturity, the loan would have been paid off prior to now.

8. Accordingly, Plaintiff's alleged damages, if any actual, have occurred of its own doing.

9. As such, Plaintiff has come to this Court with unclean hands.

Wherefore, the Defendant, The Fulton Building, LLC, prays that this Court deny all relief sought by Plaintiff through its Complaint, and provide to Defendant's favor all further relief as is just and equitable.

The Fulton Building, LLC

By: /s/ Timothy C. Culbertson
Its Attorney

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VERIFICATION

I, Michael P. Federow, managing member, under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, certify that the statements set forth in the foregoing Answer are true and correct, except as to matters therein stated to be on information and belief and as to such matters I certify as aforesaid that I verily believe the same to be true. As to all allegations to which I answer a lack of knowledge or information, I hereby certify the truth of my want of knowledge with respect thereto.



Michael P. Federow