

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

UNIVEST I CORP., individually as a member of
470 PEARL STREET, LLC, and derivatively on behalf
of Nominal Defendant 470 PEARL STREET, LLC,

Plaintiffs,

v.

Index No.: 809598-2014

BUFFALO DEVELOPMENT CORPORATION,
SKYDECK CORPORATION d/b/a PAY2PARK, and
470 PEARL STREET, LLC,

and

MARK D. CROCE, individually and as President
of BUFFALO DEVELOPMENT CORPORATION,

Defendants.

FIRST AMENDED COMPLAINT

Plaintiff, Univest I Corp. (“Univest”), as a fifty percent (50%) member of
470 Pearl Street, LLC (“470 Pearl Street” or “the LLC”), and derivatively on behalf of 470 Pearl
Street (the “Plaintiffs”), by and through its attorneys, Rupp, Baase, Pfalzgraf, Cunningham &
Coppola LLC, alleges as follows:

PARTIES AND FACTUAL BACKGROUND

1. Univest is a corporation organized and existing under the laws of the State
of New York, with its principal place of business located at 100 Corporate Parkway, Suite 500,
Amherst, New York 14226. Univest also is a fifty percent (50%) member of 470 Pearl Street.

2. Upon information and belief, Defendant, Buffalo Development Corporation (“BDC”), is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 257 Franklin Street, Buffalo, New York 14202. BDC also is a fifty percent (50%) member of 470 Pearl Street, and the sole manager thereof.

3. Upon information and belief, Defendant, Skydeck Corporation d/b/a Pay2Park (“Skydeck”), is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 257 Franklin Street, Suite 300, Buffalo, New York 14202.

4. Upon information and belief, Defendant, Mark D. Croce (“Croce”) is an individual who resides at 17 Majestic View Court, Orchard Park, in the County of Erie, State of New York and is now and has been the President of BDC and maintains an ownership interest in BDC.

5. Upon information and belief, Croce is now and has been at all relevant time periods the Chief Executive Officer of Skydeck and also is a shareholder, member, and/or employee thereof.

6. 470 Pearl Street is a limited liability company organized and operating under the laws of the State of New York, with its principal place of business located at 294 Franklin Street, Buffalo, New York 14202.

7. An operating agreement, entitled “470 Pearl Street, LLC Operating Agreement” (the “Operating Agreement”) was executed by Univest and BDC on January 28, 2005, with the express purpose and intent of acquiring a 43,990 square foot parcel of real property located at 470 Pearl Street, Buffalo, New York, and operating it as a parking lot (the “Parking Lot”). A copy of the Operating Agreement is attached hereto as Exhibit A.

8. The Operating Agreement was executed for the intended purpose of managing and securing the Parking Lot until such time as the members of 470 Pearl Street begin development of a parking complex (the “Project”) as detailed in a Land Development Agreement between 470 Pearl Street and non-party Manufacturers and Traders Trust Company (the “Land Development Agreement”). A copy of the Land Development Agreement is attached hereto as Exhibit B.

9. The Operating Agreement provides that BDC, as the managing member, may retain a professional parking company to operate the Parking Lot, and that the Parking Lot shall be operated “in accordance with prudent business standards in an effort to maximize profits” for 470 Pearl Street. *See* Exhibit A, § 6.01(b).

10. Upon information and belief, at or around the time of execution of the Operating Agreement, 470 Pearl Street (by BDC as manager) entered into a certain lease agreement with Skydeck for the operation of the Parking Lot (the "Lease Agreement"). Croce signed the Lease Agreement on behalf of both 470 Pearl Street (on behalf of BDC as manager) and Skydeck (as President). A copy of the Lease Agreement is attached hereto as Exhibit C.

11. The Lease Agreement provided that Skydeck, as lessee, would operate the Parking Lot as a parking lot, for a term of one year, with continuing operation on a month-to-month basis thereafter. *See* Exhibit C, ¶ 2.

12. Upon information and belief, Skydeck has been operating the Parking Lot continuously since January 31, 2005.

13. Upon information and belief, BDC has only increased the rental rates for the Parking Lot incrementally and randomly from time to time, but at no times mentioned did the Lease Agreement reflect a fair market value rental rate for the Parking Lot.

14. Upon information and belief, BDC has failed to make any attempt in good faith, since execution of the Lease Agreement, to renegotiate the terms of the Lease Agreement, enter into a new lease agreement, or seek out alternative bids and/or tenants for the Parking Lot.

15. The Lease Agreement provided that 470 Pearl Street could terminate the lease at any time upon sixty (60) days notice. *See* Exhibit C, ¶ 16. The Lease Agreement also provided that upon termination, Skydeck was required to vacate the Parking Lot, remove all of its property, and return the Parking Lot to the condition in which it received the Parking Lot. *See id.*

16. The Operating Agreement provided that any member of 470 Pearl Street could terminate the Lease Agreement, pursuant to the terms of the Lease Agreement, without prior approval or consent of any other member. *See* Exhibit A, § 6.02.

17. Univest terminated the Lease Agreement by letter to Skydeck and BDC dated May 27, 2014 (the “Termination Letter”), with an effective termination date of July 27, 2014. A copy of the May 27, 2014 Termination Letter is attached hereto as Exhibit D.

18. In a letter dated May 28, 2014, BDC admitted that Skydeck is an affiliated entity of BDC; that it allegedly was understood when 470 Pearl Street was formed that Skydeck would operate the Parking Lot; and that “[i]t would not be in the best interest of 470 Pearl Street, LLC to have a competitor [of Skydeck] operating the lot.” That letter also contained a new proposed five-year lease agreement between 470 Pearl Street and Skydeck. A copy of the May 28, 2014 letter is attached hereto as Exhibit E.

19. In a letter to Skydeck and BDC dated July 18, 2014, Uninvest reminded Skydeck that it had terminated the Lease Agreement, and that it expected BDC to secure the property following the termination date until such time as a replacement operator for the Parking Lot could be found. A copy of the July 18, 2014 letter is attached hereto as Exhibit F.

20. In a letter dated August 1, 2014, Skydeck confirmed receipt of Uninvest's May 27, 2014 Termination Letter. However, Skydeck asserted that the Lease Agreement would remain in force and continue on a month-to-month basis, improperly alleging that the Termination Letter was defective and without effect because it did not fall on the last day of a monthly term. A copy of the August 1, 2014 letter is attached hereto as Exhibit G.

21. In a letter dated August 4, 2014, as, Croce (as President of BDC – the LLC's managing member) confirmed receipt of Uninvest's Termination Letter, and of Skydeck's August 1, 2014 letter disputing and refusing to recognize the effectiveness of the Termination Letter. Croce asserted that he believed that securing the property was not in the best interest of 470 Pearl Street, that Skydeck should continue to operate the Parking Lot “[u]ntil there is an alternative use of the property agreed to by and between the members” because it would allegedly be better to “collect rent from Skydeck Corporation as a holdover tenant.” A copy of the August 4, 2014 letter is attached hereto as Exhibit H.

22. In an order dated September 26, 2014, the Hon. Timothy J. Walker, J.C.C., determined that Lease Agreement properly was terminated by Uninvest. A copy of Justice Walker's order is attached hereto as Exhibit I.

JURISDICTION AND VENUE

23. This Court has jurisdiction over this proceeding because the principal place of business of each of the Defendant corporations (BDC and Skydeck) is located in Erie County, New York.

24. This Court is the proper venue for this proceeding because one or more of the parties has a principal place of business in Erie County, New York, and/or resides in Erie County.

PLAINTIFF'S STANDING TO BRING CLAIMS ON BEHALF OF 470 PEARL STREET

25. Uninvest and BDC each hold a fifty percent (50%) interest in 470 Pearl Street. BDC is the managing member of 470 Pearl Street.

26. The Operating Agreement vested all managerial authority of 470 Pearl Street in BDC. As such, BDC was under a fiduciary obligation to act in the best interests of 470 Pearl Street, which expressly included operating the Parking Lot in such a manner as to maximize profits therefrom. *See* Exhibit A, § 6.01(a),(b).

27. New York Limited Liability Company Law § 409(a) provides that a “manager shall perform his or her duties as a manager . . . in good faith and with that degree of care that an ordinarily prudent person in a like position would use under similar circumstances.”

28. Pursuant to the Operating Agreement and LLC Law, BDC, as managing member, owed fiduciary duties to 470 Pearl Street, and to Univest as member thereof.

29. BDC’s President, Croce, acknowledged that BDC owes fiduciary duties to act in the best interest of 470 Pearl Street. *See* Exhibit H. (“I believe that our position is more in line with the fiduciary obligation we hold to act for the benefit of the LLC and not for any individual member.”).

30. BDC has breached its fiduciary duties causing damages directly to 470 Pearl Street, and to Univest as a member and fifty percent (50%) owner of 470 Pearl Street.

31. Univest has standing to pursue these derivative claims as a member of 470 Pearl Street because a demand on BDC, as managing member, would be futile.

32. Demand would be futile because BDC, as the managing member of 470 Pearl Street and as an affiliate of Skydeck, is a self-interested party to the challenged transaction of allowing Skydeck to remain as lessee and/or holdover tenant of the Parking Lot at significantly less than fair market value rental rates.

FIRST CAUSE OF ACTION
Breach of the Operating Agreement Against All Defendants

33. Plaintiffs repeat and reallege each and every the allegation contained in paragraphs 1 through 32 above as if set forth fully herein.

34. Univest and BDC executed the Operating Agreement on January 28, 2005, vesting the management authority of 470 Pearl Street in BDC.

35. Univest fully performed under the Operating Agreement by funding its capital account, and by relying upon BDC to properly manage 470 Pearl Street and its assets so as to maximize profits for 470 Pearl Street and Univest.

36. BDC breached the Operating Agreement by failing to manage 470 Pearl Street and its assets, including the Parking Lot, in a manner that would maximize profits.

37. BDC breached the Operating Agreement when it took no action to acquire a more profitable lessee for 470 Pearl Street, despite market availability of viable competitors to Skydeck, either at the conclusion of the initial one-year term of the Lease Agreement with Skydeck, or at any time since.

38. BDC breached the Operating Agreement when it took no action to renegotiate the terms of the Lease Agreement to secure greater profit for 470 Pearl Street, despite market availability of viable competitors to Skydeck, either at the conclusion of the initial one-year term of the Lease Agreement with Skydeck, or at any time since.

39. BDC breached the Operating Agreement when it failed to take any action to ensure Skydeck vacated the Parking Lot following the effective date of termination of the Lease Agreement on July 27, 2014.

40. BDC breached the Operating Agreement by failing to secure the Parking Lot following the termination of the Lease Agreement with Skydeck, despite a written demand to do so by Univest on July 18, 2014. *See* Exhibit F.

41. BDC's breaches of the Operating Agreement were intentional, willful, and wanton because BDC's President, Croce, who upon information and belief, was and still is a shareholder, member, officer, director, and/or employee of Skydeck at all relevant times, has substantially benefitted from the continued existence of the Lease Agreement with Skydeck at substantially below fair market value rental rates, all to Plaintiffs' detriment.

42. BDC's breaches of the Operating Agreement have caused severe financial injury and damage to Plaintiffs since the inception of the Lease Agreement, in that Plaintiffs have suffered significant lost income, profits and opportunities, all to their further detriment.

43. As a result of BDC's breaches of the Operating Agreement, Plaintiffs have suffered and will continue to suffer damages in an amount to be determined at trial, including punitive damages.

SECOND CAUSE OF ACTION
Declaratory Judgment Against All Defendants

44. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 43 above as if set forth fully herein.

45. Pursuant to the terms of the Operating Agreement and the Limited Liability Company Law of New York Section 409(a), defendants BDC and Croce, as manager of 470 Pearl Street, have a duty to abide by and enforce the provisions of the Operating Agreement in "good faith and with that degree of care that an ordinarily prudent person in a like position would use under similar circumstances." LLC Law, §409(a) (McKinney 1963).

46. Defendants BDC, by and through its President Croce, and Croce individually have failed to comply with specific provisions of the Operating Agreement, in particular Section 6.02 which provided that either member of 470 Pearl Street had the unencumbered right to terminate the Lease Agreement.

47. Uninvest rightfully exercised its discretion to terminate the Lease Agreement on May 27, 2014 via the Termination Letter. A copy of the Termination Letter is attached hereto as Exhibit D.

48. In a letter dated May 28, 2014, BDC, by and through its President Croce and Croce individually purported to reject the Termination Letter. In a further letter dated August 4, 2014, defendants BDC by and through its President Croce, and Croce individually repeated their refusal to enforce the Termination Letter. A copy of the May 28, 2014 letter is attached hereto as Exhibit E. A copy of the August 4, 2014 letter is attached hereto as Exhibit H.

49. The validity of the Termination Letter was confirmed by an order of the Hon. Timothy J. Walker, J.C.C., on September 26, 2014. *See* Exhibit I.

50. A real and justifiable controversy exists between Uninvest and Defendants BDC and Croce concerning the defendants' refusal to enforce the valid termination of the Lease Agreement, and whether such refusal is a breach of the specific terms of the Operating Agreement.

51. Accordingly, Uninvest is entitled to a judgment declaring, pursuant to the terms of the Operating Agreement, LLC Law §409(a), and the September 26, 2014 order of this Court, that the defendants refusal to recognize the valid and enforceable termination of the Lease Agreement is a breach of the specific terms of the Operating Agreement.

THIRD CAUSE OF ACTION

Declaratory Judgment – Removal of BDC as Manager of 470 Pearl Street

52. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 51 above as if set forth fully herein.

53. Univest rightfully exercised its discretion to terminate the Lease Agreement on May 27, 2014 via the Termination Letter. *See Exhibits D and I.*

54. In a letter dated July 18, 2014, Univest reminded BDC and Skydeck of its decision to terminate the Lease Agreement, and asked BDC, by and through its President Croce, and Croce individually, to secure the Parking Lot to protect it against pedestrians, passersby and/or vehicles. *See Exhibit F.*

55. In a letter dated July 29, 2014, Univest put BDC on notice that its failure to secure the Parking Lot and remove Skydeck as operator of the lot was a failure by BDC to perform a material obligation under the Operating Agreement. Pursuant to the terms of the Operating Agreement, the failure must be cured within ten (10) days, or the manager may be removed for cause. A copy of plaintiff's July 29, 2014 letter is annexed hereto as Exhibit J.

56. The July 29, 2014 letter was sent, certified mail, return receipt requested to BDC's address at 257 Franklin Street, Buffalo, New York.

57. In a letter dated August 4, 2014, BDC, by and through its President Croce, and Croce individually, restated their refusal to secure the Parking Lot or to remove Skydeck as the operator and tenant of the Parking Lot. *See* Exhibit H. As of this filing, Skydeck remains in possession of the Parking Lot and continues to operate it, despite the Termination Letter and this Court's September 26, 2014 order. *See* Exhibit I.

58. Pursuant to the Section 6.04 of the Operating Agreement, the manager of 470 Pearl Street may only be removed for cause. Cause is defined as "(i) the Manager's failure to perform any of his material obligations as set forth in this [Operating] Agreement or the Limited Liability Company Law, the failure to cure the lack of performance within 10 days after receiving notice of it by the Members, (ii) the Mangers commission of an act of fraud, theft or dishonesty against 470 Pearl [Street] or (iii) the Manager's conviction (or plea of nolo contendere to) any felony." *See* Exhibit A.

59. BDC, by and through its President, Croce, failed to comply with material obligations set forth in the Operating Agreement. In particular, the Operating Agreement materially was breached as a result of BDC's failure and refusal to remove Skydeck as the tenant and operator of the Parking Lot after a valid termination of the Lease Agreement and the failure and refusal to secure the Parking Lot after the Termination Letter.

60. BDC, by and through its President, Croce, and Croce individually, have failed and refused to cure their material breaches of the Operating Agreement after due notice thereof.

61. A real and justifiable controversy exists concerning BDC's failure to perform a material obligation as manager of 470 Pearl Street, namely to protect and secure the Parking Lot, and to remove Skydeck from possession and occupancy of the Parking Lot after a rightful termination of the Lease Agreement, and BDC's refusal to cure this failure.

62. Therefore, Uninvest is entitled to a judgment declaring, pursuant to Section 6.04 of the Operating Agreement, that BDC failed to perform a material obligation under the Operating Agreement and have failed to cure the lack of performance within ten (10) days of notification thereof, and therefore may be removed as manager of 470 Pearl Street.

63. Accordingly, Uninvest respectfully requests a judgment removing BDC as manager of 470 Pearl Street, for cause, as a result of its failure to perform material obligations under the Operating Agreement.

FOURTH CAUSE OF ACTION
Breach of Fiduciary Duty Against BDC

64. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 63 above as if set forth fully herein.

65. BDC owed fiduciary duties to 470 Pearl Street as its managing member.

66. BDC's fiduciary duties included an obligation to act in the best interest of 470 Pearl Street.

67. BDC owed a duty to 470 Pearl Street not to exploit its position as managing member for its own personal gain, to the exclusion of other members, namely Univest.

68. BDC owed a duty of loyalty to 470 Pearl Street.

69. BDC breached its fiduciary duties when it failed to market the Parking Lot or make any effort to acquire a more profitable lessee for the Parking Lot, despite the known existence of viable competitors to Skydeck in the marketplace, either at the conclusion of the initial one-year term of the Lease Agreement with Skydeck, or at any time thereafter.

70. BDC breached its fiduciary duties when it failed to take any action to renegotiate the terms of the Lease Agreement, despite the known existence of viable competitors to Skydeck in the marketplace, either at the conclusion of the initial one-year term of the Lease Agreement with Skydeck, or at any time thereafter.

71. BDC breached its fiduciary duties when it failed to take any action to ensure Skydeck vacated the Parking Lot following the valid termination of the Lease Agreement by Uninvest.

72. BDC breached its fiduciary duties when it failed to take any action to secure the Parking Lot from damage or trespass following termination of the Lease Agreement by Uninvest.

73. BDC breached its fiduciary duties by failing to secure the Parking Lot, the sole asset of 470 Pearl Street, following the termination of the Lease Agreement with Skydeck, despite a written demand to do so by Uninvest on July 18, 2014. *See Exhibit F.*

74. BDC's breaches of fiduciary duties were intentional, willful, and wanton because BDC's President, Croce, who upon information and belief, was and still is a shareholder, member, officer, director, and/or employee of Skydeck at all relevant times, has substantially benefitted from the continued existence of the Lease Agreement with Skydeck at substantially below fair market value rental rates, all to Plaintiffs' detriment.

75. BDC's breaches of fiduciary duties have caused severe financial injury and damage to Plaintiffs since the inception of the Lease Agreement, in that Plaintiffs have lost significant income, profits and opportunities, all to its further detriment.

76. As a result of BDC's breaches of fiduciary duties, Plaintiffs have suffered and will continue to suffer damages in an amount to be determined at trial, including punitive damages.

FIFTH CAUSE OF ACTION
Breach of Fiduciary Duty Against Croce

77. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 76 above as if set forth fully herein.

78. BDC is the manager of 470 Pearl Street.

79. Upon information and belief, at all times herein mentioned, Croce is and has been the President of BDC.

80. Upon information and belief, at all times herein mentioned, Croce is and has been the sole shareholder and/or sole beneficial owner of BDC.

81. As manager of 470 Pearl Street and acting by and through Croce – its President and sole shareholder/beneficial owner – BDC owes 470 Pearl Street and Uninvest the duty of loyalty and the duty to exercise good faith, due care and diligence in the management and administration of 470 Pearl Street's affairs with that degree of care that an ordinarily prudent person in like position would use under similar circumstances.

82. Similarly, as the sole shareholder/beneficial owner and President of BDC, and by virtue of his position as manager of 470 Pearl Street, Croce individually owes 470 Pearl Street and Univest the duty of loyalty and the duty to exercise good faith, due care and diligence in the management and administration of 470 Pearl Street's affairs with that degree of care that an ordinarily prudent person in like position would use under similar circumstances.

83. Croce has breached his fiduciary duties by his intentional self-interested failure to act and in refusing to enter into a new lease with Skydeck, renegotiate a market rental rate with Skydeck, or seek out alternative bids or tenants.

84. Croce has breached his fiduciary duties by his intentional self-interested failure to act, resulting in Skydeck paying an artificially low rental rate for the Parking Lot and ensuring that 470 Pearl Street incurred the costs of property tax, assessments and utilities, costs normally borne by a tenant, causing severe injury to 470 Pearl Street and Univest.

85. Notably, Croce has justified his actions by alleging that "it would not be in the best interest of 470 Pearl Street, LLC to have a competitor operating the lot." *See* Exhibit F.

86. If not for Croce's self-dealing in this regard, 470 Pearl Street would have procured market rental rates for its sole asset, the Parking Lot.

87. As alleged above, Croce has failed to exercise loyalty, due care, skill or diligence in conducting the affairs of 470 Pearl Street, and has exploited his control over 470 Pearl Street to further his self-interests to the detriment of Plaintiffs.

88. The actions or inactions of Croce were taken in bad faith, and Croce could not reasonably have believed in good faith that his self-dealing was within the scope of authority conferred by the Operating Agreement. Therefore, his liability for breaches of his fiduciary duties is not absolved by the Operating Agreement or New York law.

89. As a result of Croce's breaches of fiduciary duties, Plaintiffs have suffered and will continue to suffer damages in an amount to be determined at trial, including punitive damages.

SIXTH CAUSE OF ACTION **Specific Performance**

90. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 89 above as if set forth fully herein.

91. BDC is required to perform under the Operating Agreement, such that it is obligated to sell its fifty percent (50%) interest in 470 Pearl Street to Uninvest, at the agreed upon Purchase Price (as defined in § 9.01(a)(ii) of the Operating Agreement) in the event of an unresolved deadlock on issues related to the operation or development of the property – except

termination of the Lease Agreement which specifically was negotiated and carved out of Section 6.02 as not requiring consent or approval of other members of the LLC.

92. BDC, by and through its attorney, sponsored a Decision (as defined by § 9.01 of the Operating Agreement), and tendered that Decision as a Sponsoring Member (as defined by § 9.01 of the Operating Agreement) to Uninvest in a “request for consent to the Decision,” requesting that a new lease agreement be executed by 470 Pearl Street with Skydeck, extending the term of the agreement to five years, and limiting the termination rights of 470 Pearl Street. *See* Exhibit E.

93. BDC’s tendering of a proposed new lease agreement by letter dated May 28, 2014, is a “request for consent to the Decision” as contemplated by the parties during formation of the Operating Agreement. *See* Exhibit A § 9.01(a); Exhibit E.

94. BDC intended the May 28, 2014 letter to be a “request for consent to the Decision,” as the same is defined in § 9.01(a) of the Operating Agreement, and as a result, had Uninvest agreed to the Decision 470 Pearl Street would have executed a new lease agreement with Skydeck under that same proposed lease agreement.

95. As a result, BDC is a Sponsoring Member, as defined by § 9.01(a) of the Operating Agreement. *See* Exhibit A.

96. Uninvest expressly rejected BDC's "request for consent to the Decision" by letter dated July 8, 2014, in which Uninvest stated that it continues to believe that a request for proposals process would be the best approach to selecting a new company to manage the Parking Lot. *See* Exhibit F.

97. Alternatively, in the event Uninvest's July 8, 2014 letter is not determined to be an express rejection of BDC's "request for consent to the Decision," then Uninvest remained silent on BDC's "request for consent to the Decision" for thirty (30) days, i.e., until at least June 28, 2014, as outlined in § 9.01(a) of the Operating Agreement. BDC's silence would be considered a failure to respond. *See* Exhibit A.

98. According to the terms of the Operating Agreement, in the event that a Dissenting Member either expressly rejected the "request for consent to the Decision," or failed to respond to the same within thirty (30) days (by June 28, 2014), a deadlock would ensue as outlined in §9.01(a) of the Operating Agreement.

99. In the event of a deadlock created by a "request for consent to the Decision," the Sponsoring Member is required under the terms of the Operating Agreement to either withdraw its "request for consent to the Decision" within ten (10) days (by July 8, 2014), or sell its interest in

470 Pearl Street to the Dissenting Member at the agreed upon Purchase Price (as defined in § 9.01(a)(ii) of the Operating Agreement). *See* Exhibit A.

100. BDC failed to withdraw its “request for consent to the Decision,” here the proposed new lease terms with Skydeck, before July 8, 2014.

101. Pursuant to § 9.01 of the Operating Agreement, BDC is now obligated to sell its interest in 470 Pearl Street to Uninvest as the Dissenting member because BDC is a Sponsoring Member who has failed to withdraw a “request for consent to the Decision” once there is a deadlock.

102. Accordingly, Uninvest demands specific performance by BDC under § 9.01 of the Operating Agreement, insofar as BDC is obligated to sell its interest in 470 Pearl Street to Uninvest at the Purchase Price. In the absence of compelled specific performance, plaintiffs have suffered and will continue to suffer damages in an amount to be determined at trial, including punitive damages.

WHEREFORE, Plaintiffs, Uninvest I Corp., as a member of 470 Pearl Street, LLC, and derivatively on behalf of 470 Pearl Street, LLC, respectfully requests an order and judgment against the Defendants, Buffalo Development Corporation, Skydeck Corporation d/b/a Pay2park, 470 Pearl Street, LLC and Mark D. Croce:

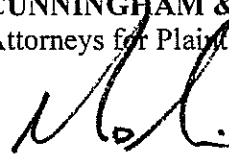
1. Awarding damages, on the First Cause of Action, including punitive damages, in an amount to be determined at trial;
2. Declaring, on the Second Cause of Action, that defendants' refusal to recognize and enforce the valid termination of the Lease Agreement is a breach of the specific terms of the Operating Agreement;
3. Declaring, on the Third Cause of Action, that BDC shall be removed as manager of 470 Pearl Street for cause, as BDC failed to perform a material obligation as set forth in the Operating Agreement;
4. Awarding damages, on the Fourth Cause of Action, including punitive damages, in an amount to be determined at trial;
5. Awarding damages, on the Fifth Cause of Action, including punitive damages, in an amount to be determined at trial;
6. Ordering specific performance, on the Sixth Cause of Action, requiring BDC to sell its interest in 470 Pearl Street to Uninvest, insofar as BDC is a Sponsoring Member who has created an unresolved deadlock pursuant to §9.01 of the Operating Agreement; and

7. Ordering such other and further relief as the Court deems just and proper, together with all costs and disbursements of this proceeding, including all reasonable attorneys' fees.

Dated: October 3, 2014
Buffalo, New York

**RUPP, BAASE, PFALZGRAF,
CUNNINGHAM & COPPOLA LLC**
Attorneys for Plaintiffs,

By:

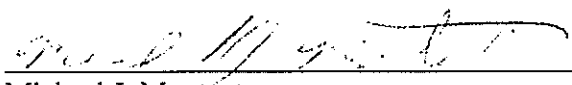


Matthew D. Miller, Esq.
David R. Pfalzgraf, Jr., Esq.
1600 Liberty Building
Buffalo, New York 14202
(716) 854-3400

VERIFICATION

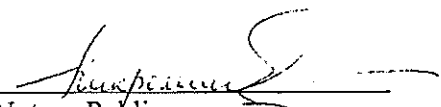
STATE OF NEW YORK)
) ss.:
COUNTY OF ERIE)

Michael J. Montante, being duly sworn, deposes and says that he is the Vice President of Univest I Corp.; that he has read the foregoing First Amended Verified Complaint and knows the contents thereof; and that the same is true to his own knowledge, except as to those matters therein alleged to be upon information and belief, and as to those matters he believes them to be true.



Michael J. Montante
Vice President
Univest I Corp.

Sworn to before me this
2nd day of OCTOBER, 2014



Notary Public

LYUBOV S GOELZ
NOTARY PUBLIC, STATE OF NEW YORK
REGISTRATION NO. 01GO6105503
QUALIFIED IN ERIE COUNTY
COMMISSION EXPIRES FEBRUARY 9, 2016