

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CITY OF DEARBORN,

Plaintiff

Case No.  
Hon.

-CK

v.

BURTON-KATZMAN DEVELOPMENT  
COMPANY, INC., WEST VILLAGE  
COMMONS, LLC, ABBEY HOMES, LLC,  
PETER BURTON, ROBERT KATZMAN,  
CHARLES DIMAGGIO, and DANIEL  
SHARE,

Defendants.

\_\_\_\_\_/

DEBRA A. WALLING (P37067)  
LAURIE M. ELLERBRAKE (P38329)  
MATTHEW J. ZALEWSKI (P72207)  
Attorneys for Plaintiff  
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\_\_\_\_\_/

There is no other pending or resolved  
civil action arising out of the transaction  
or occurrence alleged in this Complaint.

**COMPLAINT AND DEMAND FOR JURY TRIAL**

NOW COMES the City of Dearborn, a municipal corporation, through its  
attorneys DEBRA A. WALLING, LAURIE M. ELLERBRAKE, and MATTHEW J.  
ZALEWSKI, and for its Complaint states as follows:

## JURISDICTION & VENUE

1. Plaintiff, City of Dearborn ("the City"), is a Michigan municipal corporation and Home Rule City organized under the laws of the State of Michigan, with principal offices at 13615 Michigan Avenue in the City of Dearborn, County of Wayne, State of Michigan.

2. Defendant Burton-Katzman Development Company, Inc. ("Burton-Katzman") is a Michigan corporation with principal offices at 30100 Telegraph Road, Suite 366, Bingham Farms, MI 48025.

3. Defendant West Village Commons, LLC ("West Village") is a Michigan limited liability company with principal offices at 30100 Telegraph Road, Suite 366, Bingham Farms, MI 48025.

4. Defendant Abbey Homes, LLC ("Abbey Homes") is a Michigan limited liability company with principal offices at 30100 Telegraph Road, Suite 366, Bingham Farms, MI 48025.

5. Defendant Peter Burton is a partner and president of Burton-Katzman Development, Inc., with principal offices at 30100 Telegraph Road, Suite 366, Bingham Farms, MI 48025.

6. Defendant Robert Katzman is partner of Burton-Katzman Development, Inc., with principal offices at 30100 Telegraph Road, Suite 366, Bingham Farms, MI 48025.

7. Defendant Charles DiMaggio is Vice President of Project Management for Burton-Katzman Development, Inc., with principal offices at 30100 Telegraph Road, Suite 366, Bingham Farms, MI 48025.

8. Defendant Daniel Share is an attorney acting on behalf of Burton-Katzman Development, Inc., with principal offices at 211 West Fort Street, Fifteenth Floor, Detroit, MI 48226.

9. Defendants are doing business in the City of Dearborn as parties to a Development Agreement with the City to develop West Village Commons, located in the City of Dearborn, County of Wayne.

10. The amount in controversy in this case exceeds \$25,000.

11. This case is within the jurisdiction of this Court.

### **COUNT I**

### **BREACH OF CONTRACT**

12. Plaintiff realleges and incorporates by reference Paragraphs 1-11 as though fully set forth herein.

13. The City and Defendants Burton-Katzman and West Village Commons, LLC executed a Development Agreement on April 23, 2003. (A copy is attached as Exhibit A.)

14. Defendants were selected as the Preferred Developer for the City-owned property based on a proposal submitted by them during a competitive bid process.

15. Defendant Abbey Homes is an affiliate of Defendant Burton-Katzman and is responsible for developing residential areas called for in the Development Agreement.

16. The Development Agreement provides for a multi-phase development divided into Areas A-1, A-2, A-3, B-1, B-2, B-3, and C.

17. Section 8.01 of the Development Agreement provides that "time is of the essence with respect to the performance by the City and the Developer of their respective obligations under this Agreement."

18. Areas A-1, A-2, B-1, B-2, and B-3 have been developed according to the terms of the Development Agreement.

19. Per Section 1.01(c)(vi) of the Development Agreement, the City was required to build two 300+ vehicle parking decks on Areas B-1 and B-2. The two parking decks were constructed by the City according to the terms of the Development Agreement, at a cost totaling \$16,451,296.72, including \$3,595,632.73 in debt costs. (Exhibit B.) Bonds were issued by the City to pay for the deck, which were to be repaid with tax capture from Defendants' proposed project, monthly parking permits purchased by Defendants' tenants, and fee-based public parking.

20. Per Section 2.04 of the Development Agreement, the City's sale of bonds and commencement of construction of the parking decks was a condition precedent of Defendants' obligation to close on the purchase of any portion of the site.

21. The parking decks are owned and operated by the City, and were designed and scaled to service buildings on Areas A-1, A-2, and C. Pursuant to Paragraph 5 of the First Amendment to Development Agreement (attached as Exhibit C), a significant portion of the space in the parking decks was intended to be dedicated for hotel and residential developments through parking space lease agreements. The City relied, to its detriment, on the unfulfilled obligations, promises and commitments made by Defendants.

22. Section 1.01(b)(iii) of the Development Agreement requires Defendants Burton-Katzman and West Village to “construct two (2) midrise buildings” on Area C of the site, one being a hotel, and the other being an office and/or residential condominium use.

23. The requirement that Defendants Burton-Katzman and West Village build a hotel is modified by Section 1.18, which excuses Defendants Burton-Katzman and West Village from constructing a hotel if, after “diligent good faith efforts,” they are “unable to locate a hotel operator,” and Defendants provide notice to the City that they will be unable to complete the hotel.

24. Section 1.18 further provides that, should Defendants Burton-Katzman and West Village be unable to construct the hotel and the City does not provide Defendants another 90 days to pursue hotel construction, Defendants must instead construct “a second office and/or residential condominium midrise building in lieu of the hotel.”

25. The Development Agreement does not contain any similar clause that would excuse Defendants Burton-Katzman and West Village from constructing the first office building, nor does it contain any provision that would excuse them from constructing the second office and/or residential building in lieu of a hotel.

26. Section 1.07 of the Development Agreement provides that the City and Defendants are to “commence, pursue, and complete construction” in accordance with the schedule included as Exhibit E of the Development Agreement.

27. Exhibit E-2 of the Development Agreement, “Developer’s Construction Schedule” provides that Defendants Burton-Katzman and West Village are to

“Commence construction of hotel, office/residential mid-rise on Area C” by the “Later of (A) 120 days after (i) Closing, (ii) release of escrow under Section 2.07, or (iii) both parking decks are open to the public, or (B) 60 days after substantial completion of retail on Area A-1 and/or A-2.”

28. Like Section 2.04 of the Development Agreement, Exhibit E-2 envisioned construction of the parking decks as a condition precedent to Defendants’ performance. Plaintiff constructed the parking decks in reliance on Defendants’ agreement that Defendants would proceed with their construction obligations according to the development schedule.

29. The latest of the events itemized in Exhibit E-2 to occur was the “substantial completion of retail on Area A-1 and/or A-2,” which occurred in June 2006.

30. Based on the completion date of the retail components, Defendants Burton-Katzman and West Village were required to commence construction within Area C by August 2006.

31. Deviations from the prescribed construction schedule are allowed only in the event of a “Permitted Delay,” as described in Section 1.07, or an “Unavoidable Delay,” as provided in Section 1.09. No event described in Section 1.07 or Section 1.09 has occurred, and therefore all Defendants are bound by the development schedule provided for in Exhibit E-2.

32. The Development Agreement, at Section 5.02, provides that if the Developer defaults in its obligations under the Development Agreement, and does not cure the default within 30 days, or at least commence the process of curing the default, the City may pursue one of several remedies, including specific performance.

33. Section 5.02(d) provides that, "in the event the default is a failure of performance of a construction obligation under this Agreement, City shall be entitled to seek and obtain an order of specific performance against Developer without the necessity of proving immediate irreparable harm or inadequate remedy at law."

34. By letter dated February 16, 2007, Defendants Burton-Katzman and West Village indicated that they would not be honoring their commitment to construct any of the envisioned buildings on Area C, citing economic conditions. (See Exhibit D.)

35. Economic conditions are not recognized as a "Permitted Delay" or an "Unavoidable Delay" that would allow construction to be postponed.

36. On March 1, 2007, the City sent Defendants Burton-Katzman and West Village a letter indicating that it had been over 60 days since the substantial completion of Areas A-1 and A-2, and noted the Developer's "obvious failure to satisfy its obligations." (See Exhibit E.)

37. The City's March 1, 2007 letter expressly stated it was being sent as written notice of default pursuant to Section 5.02 of the Development Agreement.

38. The notice of default provided Defendants Burton-Katzman and West Village an additional thirty days beyond the thirty day period to cure provided for in Section 5.02, and therefore allowed Defendants sixty days to cure their default, expiring May 1, 2007.

39. By letter dated April 27, 2007, Defendants Burton-Katzman and West Village acknowledged receipt of the City's notice of default, and reiterated their unwillingness to fulfill their obligations under the contract. (See Exhibit F.)

40. Dearborn extended additional courtesies to Defendants Burton-Katzman and West Village, allowing them more time to cure their default, and also sent another letter dated July 18, 2007, which indicated that the City had not received any proposals from Defendants; noted the increasing concerns about the lack of activity on Area C; and requested a response by August 1, 2007. (See Exhibit G.)

41. Defendants Burton-Katzman and West Village replied by letter dated July 31, 2007, but failed to provide a definitive plan for Area C, and demonstrated their continued unwillingness to comply with the terms of the Development Agreement. (See Exhibit H.)

42. Despite ongoing efforts by Plaintiff to cause Defendants Burton-Katzman and West Village to commence construction on Area C, Defendants have refused to honor their obligations under the Development Agreement, and instead have attempted to sell Area C without the city's consent for a project that would not have met projections and obligations under the Development Agreement. (See letter from Mayor O'Reilly, attached as Exhibit I.)

43. Due to Defendants' default, the City has incurred, and will continue to incur damages due to lost parking fees at the parking decks and lost tax revenues from Area C, for which the City has no adequate remedy other than specific performance.

44. To date, the City has paid, or is scheduled to pay, a total of \$2,472,875.00 out of its General Fund to pay the shortfall caused by the failure of Defendants Burton-Katzman and West Village to fulfill their obligations under the Development Agreement to develop Area C. (Exhibit B.)

45. The 2000 projected true cash values of proposed developments by Defendants Burton-Katzman and West Village within Area C were \$25,209,188.00 for a Hotel/Office development, or \$34,045,243.00 for a Hotel/Condo development, or \$40,588,662 for a Condo/Retail development. (See Exhibit J, line items "Business Subtotal" plus "Condo/North.") At these true cash values, the taxable values of these proposed projects would be \$12,604,594.00 for the Hotel/Office; \$17,022,621.50 for the Hotel/Condo development; and \$20,294,331.00 for the Retail/Condo development.

46. By 2006, the projected true cash values of these developments had increased as follows: Hotel/Office: \$36,520,871.00; Hotel/Condo: \$39,016,988.00; Condo/Retail: \$46,019,910.00. (See Exhibit J.) At these true cash values, the corresponding taxable values would equal \$18,260,435.50 for the Hotel/Office; \$19,508,494.00 for the Hotel/Condo; and \$23,009,955.00 for the Condo/Retail development.

47. Due to the failure of Defendants Burton-Katzman and West Village to honor their obligations under the Development Agreement, Plaintiff has lost, and continues to lose, all revenues on the potential taxable values of development within Area C.

48. Section 1.01(b)(ii) of the Development Agreement provides that the Developer shall "construct owner-occupied residential uses on the property between the railroad right-of-way on the north and West Village Commons Drive on the south," which is designated as Area A-3. (See Exhibit B.)

49. Exhibit E-2 of the Development Agreement, "Developer's Construction Schedule," provides that Defendants were to "commence construction of residential

south of railroad tracks in [Area] A-3" the "later of 30 days after (i) City commences construction of parking decks or (ii) Closing, provided Developer has delivered Section 1.07 staging report to City." Plaintiff constructed the parking decks in reliance on Defendants' agreement that Defendants would proceed with their construction obligations according to the development schedule.

50. The "Developer's Construction Schedule" further required that "substantial completion of construction" of "residential south of railroad tracks (Area A-3)" be achieved "15 months from start of construction."

51. "Substantial completion" with respect to Area A-3 is defined in Section 1.07(b) of the Development Agreement, as amended by Paragraph 3 of the First Amendment to Development Agreement as "completion of the shell and exterior finish, including landscaping" of forty-eight (48) "units in accordance with the terms of the building permit for that construction such that the" forty-eight (48) "units are ready for sale to owner-occupants."

52. To date, Defendants have only completed thirty-six (36) of the required forty-eight (48) units.

53. Foundations for twelve (12) remaining units in Area A-3 were laid in November 2006, but Defendants have subsequently halted construction on those units.

54. Based on the date that construction commenced, Defendants were to substantially complete construction in Area A-3 by February 2008.

55. Deviations from the prescribed construction schedule for Area A-3 are allowed only in the event of a "Permitted Delay," as described in Section 1.07, or an

"Unavoidable Delay," as provided in Section 1.09. No event described in Section 1.07 or Section 1.09 has occurred, and therefore Defendants are bound by the development schedule provided for in Exhibit E-2.

56. Due to Defendants' default, the City has incurred, and will continue to incur damages due to lost tax revenues from Area A-3.

57. The 2006 projected true cash value of each unit in Area A-3 was \$210,000.00. (See Exhibit J, line item "Condo/South.") At that per-unit value, the twelve units that Defendants failed to complete would have a combined true cash value of \$2,520,000.00, resulting in a taxable value of \$1,260,000.00. The City has lost, and continues to lose, revenues associated with this taxable value.

58. As owners of real property that is the subject of the Development Agreement, Defendants Burton-Katzman, West Village, and Abbey Homes are responsible for paying taxes on the property.

59. Per Section 7.01(c) of the Development Agreement, tax increment revenues from the properties served and benefitted by public improvements provided for in the Development Agreement – including the parking decks – are pledged to secure bonds issued to finance those public improvements.

60. Dearborn City Charter, Section 13.11, requires payment of property taxes by the fourteenth day of September of each year.

61. Section 1.04 of the Development Agreement provides that, "in constructing and operating the project, Developer shall comply with the Ordinances of the City."

62. Defendants are currently delinquent on 2008 taxes to the City totaling \$95,879.38; 2008 school and county taxes totaling \$186,223.93; and back taxes for 2007 and 2006 due to Wayne County totaling \$66,891.94, for a grand total of \$348,995.25. (See breakdown attached as Exhibit K.)

63. Due to Defendants' failure to pay property taxes, revenues pledged to support bond debt are not being collected, and Defendants are in violation of the City Charter and the Development Agreement.

64. Defendants have also failed to pay water bill penalties totaling \$833.87, and therefore are in violation of Dearborn Code of Ordinances Section 19-28 requiring payment of water bills on a quarterly basis. (See Exhibit L.)

65. Section 2.05 of the Development Agreement provides, in part, that "in the event City or Developer become aware that any of the representations and warranties they have made in this Agreement have become untrue, they shall promptly notify the other, and the party making such representation or warranty shall take reasonable steps to cause the representation and warranty to become true."

66. Section 2.05 imposes a duty of disclosure upon the parties to the contract.

67. "Representations and Warranties of the Developer" appears in Section 3.01 of the Development Agreement.

68. Representations and warranties made by Defendants include: "The Developer has all requisite power and authority and financial resources to execute and deliver this Agreement and to consummate the transactions contemplated hereby;" "this Agreement and all instruments executed or to be executed or delivered in

connection herewith are and will be legally valid, binding, and enforceable against Developer;” and “Developer shall be the master developer of the Project.”

69. On March 28, 2008, on the direction of its shareholders and/or members, Defendant Burton-Katzman executed a Certificate of Dissolution that was filed on April 2, 2008 with the Michigan Department of Labor & Economic Growth. (See Exhibit M.)

70. Per Section 3.01 of the Development Agreement, Defendant Burton-Katzman represented to Plaintiff that it had the power and the financial resources to carry out its obligations under the contract. Given Defendants’ obligation under Section 2.05 of the Development Agreement to inform Plaintiff of any changes in Defendants’ warranties and representations, Plaintiff proceeded in its relationship with Defendant Burton-Katzman under the assumption that Defendant remained a viable entity with the power and financial ability to carry out its obligations under the Development Agreement.

71. To date, Defendants have not informed Plaintiff of Burton-Katzman’s dissolution.

72. Plaintiff only learned of Defendant Burton-Katzman’s dissolution on January 9, 2009, in preparation for this litigation, when it conducted a search of the company through the Department of Energy, Labor, and Economic Growth Corporation Division Business Entity Search.

73. Section 6.01 of the Development Agreement provides that the rights contained within the Development Agreement are not transferable. It further provides that the Developer will be deemed to have conveyed its rights in the event of “(b) any

voluntary or involuntary disposition of legal or beneficial title to a controlling interest in the Developer.”

74. The Certificate of Dissolution filed by Burton-Katzman was approved “by written consent of all shareholders or members entitled to vote,” and constitutes a voluntary disposition of a controlling interest in the Developer.

75. Defendants are in default of their obligations under the Development Agreement, and per Section 5.02(d), the City of Dearborn is entitled to relief.

WHEREFORE, Plaintiff, City of Dearborn, respectfully requests that this Honorable Court grant Plaintiff the following relief:

- a) Order Defendants to construct two midrise buildings on Area C of the West Village Commons, pursuant to the terms of the Development Agreement, which have a combined taxable value of at least \$20,294,331.00, and
- b) Order Defendants to complete construction of the 12 condominium units within Area A-3, and
- c) Award damages in the amount of \$16,451,296.72 for Plaintiff’s costs to date in constructing the parking decks and covering the debt service shortfall caused by Defendants’ failure to build two midrise buildings in Area C, and
- d) Award damages in the amount of \$348,995.25, plus penalties and interest for Defendants’ failure to pay taxes, and
- e) Award damages totaling \$833.87 for unpaid water penalties, and
- f) Grant costs, attorney fees, and any other relief deemed appropriate.

**COUNT II**  
**SILENT FRAUD**

76. Plaintiff realleges and incorporates by reference Paragraphs 1-75 as though set forth fully herein.

77. At all times pertinent to this Complaint, Defendants Peter Burton, Robert Katzman, Charles DiMaggio, and Daniel Share have held themselves out as agents of Defendants Burton-Katzman, West Village Commons, and Abbey Homes. At all times Plaintiff has believed that Defendants Burton, Katzman, DiMaggio, and Share were acting on behalf of the corporation.

78. Section 2.05 of the Development Agreement provides, in part, that "in the event City or Developer become aware that any of the representations and warranties they have made in this Agreement have become untrue, they shall promptly notify the other, and the party making such representation or warranty shall take reasonable steps to cause the representation and warranty to become true."

79. Section 2.05 imposes a duty of disclosure upon the parties to the contract.

80. "Representations and Warranties of the Developer" appears in Section 3.01 of the Development Agreement.

81. Representations and warranties made by Defendants Burton-Katzman and West Village include: "The Developer has all requisite power and authority and financial resources to execute and deliver this Agreement and to consummate the

transactions contemplated hereby;" "this Agreement and all instruments executed or to be executed or delivered in connection herewith are and will be legally valid, binding, and enforceable against Developer;" and "Developer shall be the master developer of the Project."

82. On March 28, 2008, on the direction of its shareholders and/or members, Defendant Burton-Katzman executed a Certificate of Dissolution, which was ultimately filed on April 2, 2008 with the Michigan Department of Labor & Economic Growth.

83. To date, Defendants have not informed Plaintiff that Burton-Katzman had dissolved.

84. Plaintiff only learned of Defendant Burton-Katzman's dissolution as part of its preparation for this litigation. Plaintiff discovered the Certificate of Dissolution on January 9, 2009, when it conducted a search of the company through the Department of Energy, Labor, and Economic Growth Corporation Division Business Entity Search.

85. Given that Section 2.05 of the Development Agreement imposed upon Defendants a duty to disclose any changes in the warranties or representations made to Plaintiff in the Development Agreement, Plaintiff relied upon the ongoing assumption that Burton-Katzman was a viable entity, and its reliance was reasonable.

86. Despite the fact that Defendant Burton-Katzman had dissolved, and despite Defendants' duty to correct warranties and representations made to Plaintiff, Defendants West Village, Abbey Homes, Peter Burton, Robert Katzman, Charles DiMaggio, and Daniel Share proceeded in their relationship with Plaintiff as though the legal status of Burton-Katzman had not changed.

87. On March 28, 2008 – the same date that Burton-Katzman executed the Certificate of Dissolution – Defendants Burton and DiMaggio attended a breakfast meeting with City of Dearborn officials at the Dearborn Inn. Scott Auvenshine also attended the meeting on behalf of Abbey Homes. Neither Burton, DiMaggio, nor Auvenshine mentioned the Certificate of Dissolution. Consequently, Plaintiff was unaware of the pending change in the legal status of Burton-Katzman.

88. Defendant DiMaggio attended a meeting at Dearborn City Hall on May 22, 2008 with agents of Plaintiff to discuss proposed development between the parking decks in Area C. At no point during this meeting did Defendant DiMaggio mention the dissolution of Burton-Katzman.

89. Defendant DiMaggio attended a breakfast meeting with Plaintiff's agents at the Dearborn Inn on August 12, 2008. Again, the dissolution of Burton-Katzman was not revealed, and Plaintiff had no reason to believe that there had been any changes in the representations and warranties of Defendants.

90. Defendant DiMaggio attended another meeting on August 14, 2008 regarding development between the parking decks. Still, the dissolution of Burton-Katzman remained concealed.

91. On August 19, 2008, Defendant Share sent to Plaintiff a letter, with the consent of Defendants DiMaggio, Burton, and Katzman, seeking Plaintiff's permission to sell Area C to a developer. (Exhibit N.)

92. In a letter to Defendants Burton, DiMaggio and Share dated August 25, 2008, Mayor John O'Reilly noted that Plaintiff had not been a party to negotiations to sell the property, and that the development proposed by the identified purchaser would

not satisfy Defendants' obligations under the Development Agreement. (See Exhibit I.)

93. Defendants' continued actions and nondisclosures, including its ongoing meetings with Plaintiff's agents, negotiations to sell Area C, and silence with respect to the dissolution of Burton-Katzman constitute silent fraud.

94. In fall 2008, Plaintiff made inquiries to Defendants as to whether Burton-Katzman had filed or was contemplating filing for bankruptcy. Despite Plaintiff's clear interest in the viability of Burton-Katzman, Defendants did not disclose any information about the Certificate of Dissolution.

95. By failing to disclose information about Burton-Katzman's dissolution, the responses Defendants provided with respect to Burton-Katzman not filing for bankruptcy misled Plaintiff into believing Burton-Katzman remained a viable entity with the power and authority to fulfill its obligations under the Development Agreement. This misleading information constitutes silent fraud.

96. Defendants perpetuated these frauds with knowledge that Burton-Katzman had filed a Certificate of Dissolution, that their representations were false or misleading, and that their conduct rendered representations and warranties made in the Development Agreement false and misleading.

97. Plaintiff detrimentally relied on Defendants' silent fraud by continuing its negotiations with Burton-Katzman, continuing to believe that Burton-Katzman would fulfill its obligations under the Development Agreement, delaying exercising its remedies under the Development Agreement, and delaying litigation against Defendants.

98. Due to Plaintiff's detrimental reliance on the representations constituting Defendants' silent fraud, Plaintiff has incurred, and will continue to incur damages due to lost parking fees at the parking decks and lost tax revenues from Area C. Plaintiff's detrimental reliance has also caused Plaintiff to delay pursuing its remedies under the Development Agreement and in the courts, therefore compounding its damages.

99. Defendants Burton, Katzman, DiMaggio, and Share committed their silent fraud while purporting to act on behalf of Burton-Katzman and are individually liable for their conduct.

WHEREFORE, Plaintiff, City of Dearborn, respectfully requests that this Honorable Court grant Plaintiff the following relief:

- a) Order Defendants to construct two midrise buildings on Area C of the West Village Commons, pursuant to the terms of the Development Agreement, which have a combined taxable value of at least \$20,294,331.00, and
- b) Order Defendants to complete construction of the 12 condominium units within Area A-3, and
- c) Award damages in the amount of \$16,451,296.72 for Plaintiff's costs to date in covering the debt service shortfall caused by Defendants' failure to build two midrise buildings in Area C, and
- d) Award damages in the amount of \$348,995.25, plus penalties and interest for Defendants' failure to pay taxes, and
- e) Award damages totaling \$833.87 for unpaid water penalties, and

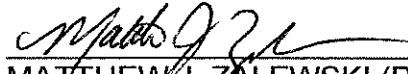
- f) Grant costs, attorney fees, and any other relief deemed appropriate.

Respectfully submitted,

ATTORNEYS FOR PLAINTIFF

  
DEBRA A. WALLING (P37067)

  
LAURIE M. ELLERBRAKE (P38329)

  
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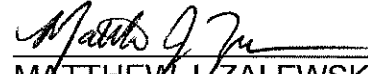
DATED: January 16, 2009

**DEMAND FOR JURY TRIAL**

NOW COMES Plaintiff, City of Dearborn, through its attorneys DEBRA A. WALLING, LAURIE M. ELLERBRAKE, and MATTHEW J. ZALEWSKI, and hereby demands a trial by jury in the above-titled matter.

  
DEBRA A. WALLING (P37067)

  
LAURIE M. ELLERBRAKE (P38329)

  
MATTHEW J. ZALEWSKI (P72207)  
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DATED: January 16, 2009