

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN  
GREEN BAY DIVISION

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FORTUNE AVENUE, LLC,  
Plaintiff,

Case No. 18-C-1362

v.  
HOWARD BEDFORD,  
Defendant.

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**AFFIDAVIT OF JIM KELLAM**

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STATE OF WISCONSIN     )  
                                      )SS  
BROWN COUNTY            )

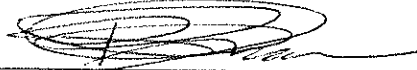
JIM KELLAM, being sworn on oath, states as follows:

1. I am an employee of VHC, Inc., and I make this affidavit based upon personal knowledge and belief.
2. On or about January 18, 2017, I sent Howard Bedford a letter with a proposed renewal note for the October 21, 2011 Unsecured Promissory Note. Attached hereto as ***Exhibit "A"*** is a true and accurate copy of the January 18, 2017 letter and proposed renewal note.
3. I was never contacted by Howard Bedford, or anyone else on his behalf, regarding the January 18, 2017 letter I sent him with the proposed renewal note for the October 21, 2011 Promissory Note.
4. This affidavit is being submitted in support of Plaintiff's Motion for Summary Judgment.

DATED this 25<sup>th</sup> day of April, 2019.

  
\_\_\_\_\_  
Jim Kellam

Subscribed and sworn to before me  
this 25 day of April, 2019.

  
\_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission expires: perman

*mailed 01-18-17*



CONSTRUCTION SERVICES INC.

118 Coleman Blvd. Savannah, GA 31408

Phone: (912) 748-8055

FAX: (912) 748-8069

January 18, 2017

Straubel Paper Company  
Attn: Mr. Howard Bedford  
1515 Partnership Road  
Green Bay, WI 54304

Re: Loan Renewal

Dear Mr. Bedford:

Enclosed you will find a Note that renews the Unsecured Promissory Note dated October 21, 2011. The original note matured on March 10, 2015. The renewal note matures on January 1, 2020.

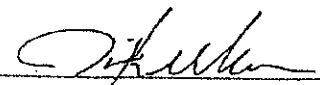
Please note that accrued interest calculated through December 31, 2016 totaling \$76,779.84 has been added to the principal balance. The new principal balance as of January 1, 2017 is \$387,001.15.

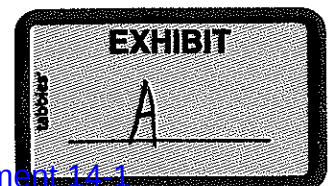
Please sign and return the note at your earliest convenience. You can mail the note to the following address:

Spirit Construction Services, Inc.  
Attn: Jim Kellam  
3131 Market Street  
Green Bay, WI 54304

I've enclosed a worksheet showing the calculation of the new principal balance. Please feel free to call me at 920-336-9590 if you have any questions.

Sincerely,

  
Jim Kellam



## UNSECURED PROMISSORY NOTE

HOWARD BEDFORD	January 1, 2017	\$387,001.15
(Borrower)	(Date)	(Amount)

1. Promise to Pay and Payment Schedule. The undersigned HOWARD BEDFORD, an adult currently residing at 20 Indian Hill Road, Winnetka, Illinois 60093 ("Borrower," whether one or more), promises to pay to the order of FORTUNE AVENUE, LLC, a Wisconsin limited liability company, ("Lender") at 3131 Market Street, Green Bay, Wisconsin, the sum of Three Hundred Eighty-Seven Thousand One and 15/100 Dollars (\$387,001.15). The outstanding balance plus accrued interest will be payable in full on January 1, 2020.

This note is a renewal of the Unsecured Promissory Note dated October 21, 2011 that matured on March 10, 2015.

2. Interest and Charges.

(a) Interest. Interest shall accrue before maturity (whether by acceleration or lapse of time) at the stated interest rate(s) identified in Section 2(b) below on the unpaid principal balance, calculated as provided in Section 2(e) below.

(b) Variable Interest Rate. The stated interest rate is variable and will adjust to equal the Index Rate (defined below) plus one percentage point; provided, however, the stated interest rate shall not be less than 5.5%, and until the first change date described below, the stated interest rate shall be 5.5%. The stated interest rate shall be adjusted on the change date provided below. The "Index Rate" is the reference rate adopted by Baylake Bank from time to time as its reference rate for interest rate determinations. The stated interest rate shall be adjusted as and when the Index Rate changes. If the Index Rate ceases to be made available to Lender during the term of this Note, Lender may substitute a comparable index.

(c) Interest Calculation. Interest will be calculated by applying a daily interest rate for the actual number of days interest is owing, up to 365 days in a full year or 366 days in a full leap year. The daily interest rate will be calculated on the basis of a 360 day year, which means that it is calculated by dividing the applicable stated interest rate stated in Section 2(b) above, and in Section 2(d) above, by 360. Prior to maturity (whether by acceleration or lapse of time) and any rate adjustment under Section 2(b) above, the daily interest rate based on this 360 day rate calculation is .01528%. Maker understands and agrees that calculating the daily interest rate using a 360 day year means the actual annual interest rate in a 365 day year and in a 366 day leap year is higher than the stated interest rate in Section 2(b) and in Section 2(d) above.

3. No Security. This Note is unsecured.

4. Prepayment. Full or partial prepayment of this Note is permitted at any time without penalty. All prepayments shall be applied first to accrued and unpaid interest, second to other charges payable by Maker to Lender and third to principal.

5. Default and Enforcement. To the extent not prohibited by Law, Borrower consents

that venue for any legal proceeding relating to collection of this Note shall be, at Lender's option, the county in which Lender has its principal office in Wisconsin, and Borrower submits to the jurisdiction of any such court.

6. Rights of Lender. Without affecting the liability of any Borrower, indorser, surety, or guarantor, Lender may, without notice, accept partial payments or issue releases for the payment of this Note or agree not to sue any party liable on it. Without affecting the liability of any indorser, surety or guaranty, Lender may from time to time, without notice, renew or extend the time for payment.

7. Obligations and Agreements of Maker. Maker agrees to pay all costs of collection before and after judgment, including reasonable attorneys' fees (including those incurred in successful defense or settlement of any counterclaim brought by Maker or incident to any action or proceeding involving Maker brought pursuant to the United States Bankruptcy Code) and waive presentment, protest, demand and notice of dishonor. Maker agrees to indemnify and hold harmless Lender, its directors, officers, employees and agents, for, from and against any and all claims, damages, judgments, penalties, and expenses, including reasonable attorneys' fees, arising directly or indirectly from credit extended under this Note or the activities of Maker. Maker represents that the legal name Maker and the address of Maker's principal residence are as set forth in Section 1. Maker shall not change his address without providing at least 30 days prior written notice of the change to Lender.

8. Amendments. This Note may not be supplemented or modified except in writing and signed by Maker and Lender.

9. Successors and Assigns. This Note benefits Lender, its successors and assigns, and binds Maker and Maker's heirs, personal representatives, successors and assigns.

10. Governing Law. The validity, construction and enforcement of this Note are governed by the internal laws of Wisconsin except to the extent such laws are preempted by federal law.

11. Severability. Invalidity or unenforceability of any provision of this Note shall not affect the validity or enforceability of any other provisions of this Note.

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Howard Bedford

Principal Balance on Unsecured Note dated 10-21-11	\$ 350,000.00
Less: Payments made in 2012 applied to Principal	\$ (39,778.69)
Principal Balance on Unsecured Note as of 12-31-11	<u>\$ 310,221.31</u>

Accrued Interest

	Balance at Beginning of Year	Interest by Year Owed	Paid	Balance at End of Year
2011	\$ -	\$ 1,076.78	\$ -	\$ 1,076.78
2012	\$ 1,076.78	\$ 17,675.62	\$ 10,221.31	\$ 8,531.09
2013	\$ 8,531.09	\$ 17,062.17	\$ -	\$ 25,593.26
2014	\$ 25,593.26	\$ 17,062.25	\$ -	\$ 42,655.51
2015	\$ 42,655.51	\$ 17,062.17	\$ -	\$ 59,717.68
2016	\$ 59,717.68	\$ 17,062.16	\$ -	\$ 76,779.84
				<u>\$ 76,779.84</u>
				<u>\$ 387,001.15</u>