

IN THE SHAKER HEIGHTS MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO

CITY OF UNIVERSITY HEIGHTS,)
)
) Plaintiff- Appellee,)
)
) -vs-)
)
) UNIVERSAL REALTY USA, L.L.C.,) NOTICE OF APPEAL
)
) Defendant-Appellant) Complaint
)
) CA 21 110728

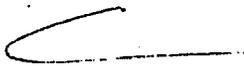
Notice is hereby given that Defendant-Appellant, University Realty USA, by and through undersigned counsel, Friedman & Nemecek, L.L.C., hereby appeals to the Court of Appeals of Cuyahoga County, Ohio, Eighth Appellate District, from the final judgment of this Honorable Court, which was filed on July 8, 2021. A copy of said Entry is attached hereto as Exhibit "A" and is incorporated herein by express reference.

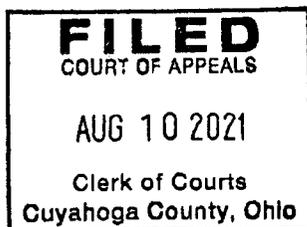
Respectfully submitted,

Judge:

9B (Reg)

CA 21 110728


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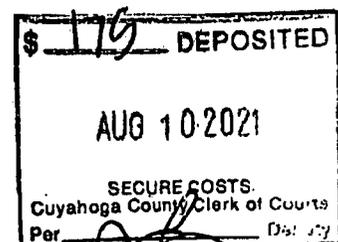


SHAKER HEIGHTS, OHIO

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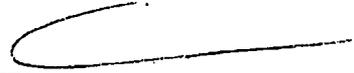
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CERTIFICATE OF SERVICE

A copy of the foregoing Notice of Appeal has been filed and served via certified mail on the University Heights Law Department, *to wit*: 2300 Warrensville Center Road, University Heights, Ohio 44118 this 6th day of August, 2021.



ERIC C. NEMECEK
Counsel for Defendant-Appellant

IN THE SHAKER HEIGHTS MUNICIPAL COURT

CUYAHOGA COUNTY, OHIO

University Heights,)	Case No. 19CRB01016
Plaintiff)	
vs.)	Judge K. J. Montgomery
)	
University Realty USA, LLC)	JOURNAL ENTRY
Defendant)	

On May 12, 2021, the parties appeared in court represented by counsel and after full explanation of rights and potential penalties, the defendant withdrew its previously entered plea of not guilty and entered a plea of no contest to violations listed in the complaint. The court found defendant guilty and passed the case for sentence.

Thereafter, in consultation with counsel and with consent of the parties, it was agreed that the city would be permitted to amend/supplement the violations listed in the original complaint to outline the charging documents with greater specificity in order to assist the court in sentencing. It was further agreed that the parties would waive any defects in service or other defenses pertaining to the fact that these charges were being clarified post-conviction.

On May 28, 2021, the city filed three counts which cite on individual complaints violation of University Heights Codified Ordinances 1274.04(a), 1420.02, and 1250.02. The elements of the violations remained the same (as was agreed by the parties) including the property owner, property location, and that each count existed for purposes of these complaints from February 1 through August 7, 2019 – a period of 188 days, each day being a separate violation punishable by a monetary penalty ranging from \$0 to \$5,000. There being three counts and as explained before the taking of the plea on May 12, 2021, the total penalties for all counts and days of violation could total a maximum fine of \$2,820,000 (calculated at the maximum per diem rate of \$5,000 per day for each count).

On June 23, 2021, the parties, again represented by counsel, addressed the court regarding sentencing. The court now proceeds to sentencing:



Count 1: University Heights, Ohio, Municipal Code §1420.02

Violation Date	Fine	Prob./CC	A/IA	Suspended
02/01/2019	\$1,000	4 years	A	
02/02/2019	\$1,000	4 years	A	
02/03/2019	\$1,000	4 years	A	
02/04/2019	\$1,000	4 years	A	
02/05/2019	\$1,000	4 years	A	
02/06/2019	\$1,000	4 years	A	
02/07/2019	\$1,000	4 years	A	
02/08/2019	\$1,000	4 years	A	
02/09/2019	\$1,000	4 years	A	
02/10/2019	\$1,000	4 years	A	
02/11/2019	\$1,000	4 years	A	
02/12/2019	\$1,000	4 years	A	
02/13/2019	\$1,000	4 years	A	
02/14/2019	\$1,000	4 years	A	
02/15/2019	\$1,000	4 years	A	
02/16/2019	\$1,000	4 years	A	
02/17/2019	\$1,000	4 years	A	
02/18/2019	\$1,000	4 years	A	
02/19/2019	\$1,000	4 years	A	
02/20/2019	\$1,000	4 years	A	
02/21/2019	\$1,000	4 years	A	\$1,000
02/22/2019	\$1,000	4 years	A	\$1,000
02/23/2019	\$1,000	4 years	A	\$1,000
02/24/2019	\$1,000	4 years	A	\$1,000
02/25/2019	\$1,000	4 years	A	\$1,000
02/26/2019	\$1,000	4 years	A	\$1,000
02/27/2019	\$1,000	4 years	A	\$1,000
02/28/2019	\$1,000	4 years	A	\$1,000
03/01/2019	\$1,000	4 years	A	\$1,000
03/02/2019	\$1,000	4 years	A	\$1,000
03/03/2019	\$1,000	4 years	A	\$1,000
03/04/2019	\$1,000	4 years	A	\$1,000
03/05/2019	\$1,000	4 years	A	\$1,000
03/06/2019	\$1,000	4 years	A	\$1,000
03/07/2019	\$1,000	4 years	A	\$1,000
03/08/2019	\$1,000	4 years	A	\$1,000
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03/10/2019	\$1,000	4 years	A	\$1,000

03/11/2019	\$1,000	4 years	A	\$1,000
03/12/2019	\$1,000	4 years	A	\$1,000
03/13/2019	\$1,000	4 years	A	\$1,000
03/14/2019	\$1,000	4 years	A	\$1,000
03/15/2019	\$1,000	4 years	A	\$1,000
03/16/2019	\$1,000	4 years	A	\$1,000
03/17/2019	\$1,000	4 years	A	\$1,000
03/18/2019	\$1,000	4 years	A	\$1,000
03/19/2019	\$1,000	4 years	A	\$1,000
03/20/2019	\$1,000	4 years	A	\$1,000
03/21/2019	\$1,000	4 years	A	\$1,000
03/22/2019	\$1,000	4 years	A	\$1,000
03/23/2019	\$1,000	4 years	A	\$1,000
03/24/2019	\$1,000	4 years	A	\$1,000
03/25/2019	\$1,000	4 years	A	\$1,000
03/26/2019	\$1,000	4 years	A	\$1,000
03/27/2019	\$1,000	4 years	A	\$1,000
03/28/2019	\$1,000	4 years	A	\$1,000
03/29/2019	\$1,000	4 years	A	\$1,000
03/30/2019	\$1,000	4 years	A	\$1,000
03/31/2019	\$1,000	4 years	A	\$1,000
04/01/2019	\$1,000	4 years	A	\$1,000
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04/04/2019	\$1,000	4 years	A	\$1,000
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04/06/2019	\$1,000	4 years	A	\$1,000
04/07/2019	\$1,000	4 years	A	\$1,000
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04/09/2019	\$1,000	4 years	A	\$1,000
04/10/2019	\$1,000	4 years	A	\$1,000
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04/16/2019	\$1,000	4 years	A	\$1,000
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07/02/2019	\$1,000	4 years	A	\$1,000
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08/02/2019	\$1,000	4 years	A	\$1,000
08/03/2019	\$1,000	4 years	A	\$1,000
08/04/2019	\$1,000	4 years	A	\$1,000
08/05/2019	\$1,000	4 years	A	\$1,000
08/06/2019	\$1,000	4 years	A	\$1,000
08/07/2019	\$1,000	4 years	A	\$1,000

Count 2: University Heights, Ohio, Municipal Code §1250.02

Violation Date	Fine	Prob./CC	A/IA	Suspend
02/01/2019	\$5,000	4 years	A	
02/02/2019	\$5,000	4 years	A	
02/03/2019	\$5,000	4 years	A	
02/04/2019	\$5,000	4 years	A	
02/05/2019	\$5,000	4 years	A	
02/06/2019	\$5,000	4 years	A	
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02/16/2019	\$5,000	4 years	A	\$5,000
02/17/2019	\$5,000	4 years	A	\$5,000
02/18/2019	\$5,000	4 years	A	\$5,000
02/19/2019	\$5,000	4 years	A	\$5,000
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02/27/2019	\$5,000	4 years	A	\$5,000
02/28/2019	\$5,000	4 years	A	\$5,000
03/01/2019	\$5,000	4 years	A	\$5,000
03/02/2019	\$5,000	4 years	A	\$5,000
03/03/2019	\$5,000	4 years	A	\$5,000
03/04/2019	\$5,000	4 years	A	\$5,000
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03/09/2019	\$5,000	4 years	A	\$5,000
03/10/2019	\$5,000	4 years	A	\$5,000
03/11/2019	\$5,000	4 years	A	\$5,000
03/12/2019	\$5,000	4 years	A	\$5,000
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03/15/2019	\$5,000	4 years	A	\$5,000
03/16/2019	\$5,000	4 years	A	\$5,000
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03/23/2019	\$5,000	4 years	A	\$5,000

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04/02/2019	\$5,000	4 years	A	\$5,000
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04/05/2019	\$5,000	4 years	A	\$5,000
04/06/2019	\$5,000	4 years	A	\$5,000
04/07/2019	\$5,000	4 years	A	\$5,000
04/08/2019	\$5,000	4 years	A	\$5,000
04/09/2019	\$5,000	4 years	A	\$5,000
04/10/2019	\$5,000	4 years	A	\$5,000
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04/14/2019	\$5,000	4 years	A	\$5,000
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04/16/2019	\$5,000	4 years	A	\$5,000
04/17/2019	\$5,000	4 years	A	\$5,000
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05/31/2019	\$5,000	4 years	A	\$5,000
06/01/2019	\$5,000	4 years	A	\$5,000
06/02/2019	\$5,000	4 years	A	\$5,000
06/03/2019	\$5,000	4 years	A	\$5,000
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06/09/2019	\$5,000	4 years	A	\$5,000
06/10/2019	\$5,000	4 years	A	\$5,000
06/11/2019	\$5,000	4 years	A	\$5,000
06/12/2019	\$5,000	4 years	A	\$5,000
06/13/2019	\$5,000	4 years	A	\$5,000

06/14/2019	\$5,000	4 years	A	\$5,000
06/15/2019	\$5,000	4 years	A	\$5,000
06/16/2019	\$5,000	4 years	A	\$5,000
06/17/2019	\$5,000	4 years	A	\$5,000
06/18/2019	\$5,000	4 years	A	\$5,000
06/19/2019	\$5,000	4 years	A	\$5,000
06/20/2019	\$5,000	4 years	A	\$5,000
06/21/2019	\$5,000	4 years	A	\$5,000
06/22/2019	\$5,000	4 years	A	\$5,000
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06/27/2019	\$5,000	4 years	A	\$5,000
06/28/2019	\$5,000	4 years	A	\$5,000
06/29/2019	\$5,000	4 years	A	\$5,000
06/30/2019	\$5,000	4 years	A	\$5,000
07/01/2019	\$5,000	4 years	A	\$5,000
07/02/2019	\$5,000	4 years	A	\$5,000
07/03/2019	\$5,000	4 years	A	\$5,000
07/04/2019	\$5,000	4 years	A	\$5,000
07/05/2019	\$5,000	4 years	A	\$5,000
07/06/2019	\$5,000	4 years	A	\$5,000
07/07/2019	\$5,000	4 years	A	\$5,000
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07/10/2019	\$5,000	4 years	A	\$5,000
07/11/2019	\$5,000	4 years	A	\$5,000
07/12/2019	\$5,000	4 years	A	\$5,000
07/13/2019	\$5,000	4 years	A	\$5,000
07/14/2019	\$5,000	4 years	A	\$5,000
07/15/2019	\$5,000	4 years	A	\$5,000
07/16/2019	\$5,000	4 years	A	\$5,000
07/17/2019	\$5,000	4 years	A	\$5,000
07/18/2019	\$5,000	4 years	A	\$5,000
07/19/2019	\$5,000	4 years	A	\$5,000
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08/02/2019	\$5,000	4 years	A	\$5,000
08/03/2019	\$5,000	4 years	A	\$5,000
08/04/2019	\$5,000	4 years	A	\$5,000
08/05/2019	\$5,000	4 years	A	\$5,000
08/06/2019	\$5,000	4 years	A	\$5,000
08/07/2019	\$5,000	4 years	A	\$5,000

Count 3: University Heights, Ohio, Municipal Code §1274.04(a)

Count	Fine	Prob./ CC	A/IA	Suspend
02/01/2019	\$2,500	4 years	A	
02/02/2019	\$2,500	4 years	A	
02/03/2019	\$2,500	4 years	A	
02/04/2019	\$2,500	4 years	A	
02/05/2019	\$2,500	4 years	A	
02/06/2019	\$2,500	4 years	A	
02/07/2019	\$2,500	4 years	A	\$2,500*
02/08/2019	\$2,500	4 years	A	\$2,500*
02/09/2019	\$2,500	4 years	A	\$2,500*
02/10/2019	\$2,500	4 years	A	\$2,500*
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02/14/2019	\$2,500	4 years	A	\$2,500*
02/15/2019	\$2,500	4 years	A	\$2,500*
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02/18/2019	\$2,500	4 years	A	\$2,500*
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02/20/2019	\$2,500	4 years	A	\$2,500*
02/21/2019	\$2,500	4 years	A	\$2,500*
02/22/2019	\$2,500	4 years	A	\$2,500*
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03/01/2019	\$2,500	4 years	A	\$2,500*
03/02/2019	\$2,500	4 years	A	\$2,500*
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08/06/2019	\$2,500	4 years	A	\$2,500

08/07/2019	\$2,500	4 years	A	\$2,500
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*** See Probation Terms**

(In summary:

Count One: \$180,000 fine. \$160,000 suspended on condition that during 4 years active probation, defendant does not violate UHCO 1420.02. \$20,000 of fines is not suspended.

Count Two: \$940,000 fine. \$910,000 suspended on condition that during 4 years active probation, defendant does not violate UHCO 1250.02. \$30,000 of fines is not suspended.

Count Three: \$470,000 fine. \$455,000 suspended as follows - \$75,000 is suspended on condition unlawful surfaces are removed as set forth in the terms of probation/PRC and \$380,000 suspended on condition that during 4 years active probation, defendant does not violate UHCO 1274.04(a). \$15,000 of fines is not suspended.

This summary is provided for ease of review of this lengthy order only. The actual per count sentencing is as set forth above in the sentencing chart.)

Costs are assessed to defendant.

The fines set forth in this sentence are consecutive as the court finds that a lesser penalty will not adequately encourage rehabilitation, administer justice and/or ensure the defendant's future compliant behavior. The probationary term shall be active until probation determines that these sentencing goals can be reached and/or maintained through inactive probation for the balance of probation/community control sanction period (CCS). Those penalties imposed and suspended shall remain suspended so long as conditions of probation/CCS, including those with time restrictions, are not violated. The court hereby imposes the following conditions of probation/CCS as each is related to rehabilitation, justice and/or future good behavior:

TERMS OF PROBATION/CCS: Defendant shall:

- Develop and present a plan for compliance and correction of any outstanding housing code violations noted on the notice of violations paperwork and remaining uncorrected as of this date.
- Comply with all further orders of this court including meeting compliance plan dates, correcting violations, ordering city inspections, etc.
- Not be cited for similar violations during defendant's probation period.
- Provide to the court a list of all real property owned by or under the control of the defendant. Unless the court orders otherwise, the list shall include all property whether located within or without the court district and shall include the defendant's place of business. The court may order that the list of properties be in a particular form or

contain specific information. The defendant shall notify the court whenever the defendant has any change in ownership or control of properties.

- Keep all of defendant's properties in good repair and in compliance with any local and state housing, building and/or fire codes. This requirement includes the obligation to keep each property clean of debris, secure from entry if vacant, with landscaping properly maintained.
- Abide by all laws required to be followed under Ohio laws for probation and/or community control.
- Regularly visit and inspect each of defendant's properties. The defendant shall visit and photograph upon court order said properties and take photos during scheduled visits.
- Permit court and/or city representatives to inspect the subject property upon court order.
- Additionally, with regard to Count Three, the fines of \$2,500 for violation days 7 (2/7/19) through (up to and including) 37 (3/9/19), shall be suspended for compliance with the above conditions AND SO LONG AS DEFENDANT REMOVES ANY UNAUTHORIZED HARD SURFACE MATERIALS USED TO CREATE ILLEGAL PARKING FACILITIES AND WHICH ARE THE SUBJECT OF COUNT THREE – violation of Codified ordinance 1274.04(a) – within 45 days of this order. So long as the illegal surfaces are removed within 45 days, the fines imposed for violation days 7 through 37 shall remain suspended so long as none of the other probation terms are violated.

EFFECT OF FAILURE TO COMPLY WITH TERMS OF PROBATION/CCS:

Defendant is informed that upon a finding of violation of the terms of probation/CCS, the court may:

- Impose a longer period of probation/CCS up to five years in total.
- Impose more restrictive probation/CCS sanctions under RC 2929.26-28, including increased financial sanctions (fines) up to \$2,820,000.

FURTHER ORDERS: *Fines + costs due in full in 120 days.*

For the next court date of Aug 11, 2021 at 10:00^{am} the defendant shall have met with the city to determine which violations listed in the violation notice of 2/1, 2019 remain in need of correction. A compliance plan shall be the next step in order to eliminate these violations.

Date:

July 8, 2021

Judge

[Signature]

Journalized

7/8/2021

[Signature]
Clerk of Court

AV

Journalized

7.8.21

By

[Signature]
Clerk of Court

[Signature]
Clerk

APPENDIX A

EIGHTH DISTRICT COURT OF APPEALS
LOCAL APPELLATE RULE 9
Praecipe and Docketing Statement

FILED
COURT OF APPEALS
AUG 10 2021
Clerk of Courts
Guyahoga County, Ohio

Name of Trial Court: SHAKER HEIGHTS MUNICIPAL COURT

Case Caption: CITY OF UNIVERSITY HEIGHTS

Plaintiff,

vs.

UNIVERSAL REALTY USA, L.L.C.

Defendant

Trial Court Case Number: 19CRB01016

Trial Court Judge: K.J. MONTGOMERY

Date of judgment appealed: JULY 8, 2021

The notice of appeal was filed in compliance with:

- App.R. 4(A) (within 30 days); or
- App.R. 4(B) (time extended); or
- App.R. 5 (delayed appeal)

A. PRAECIPE: REQUESTING THE RECORD

TO THE CLERK OF THE TRIAL COURT:

1. By checking this box, appellant requests that the clerk of the trial court immediately prepare and assemble the original papers and exhibits filed in the trial court and a certified copy of docket and journal entries under App.R. 9(A). **(If appellant only selects this box, appellant acknowledges that no transcript is required to be prepared.)**
2. Check this box if you seek the record in this appeal to include one of the following listed below that is necessary for the resolution of the appeal. **(Please select only one of the following below.)**
 - a. Complete transcript under App.R. 9(B). (Note: the appellant must instruct the court reporter to prepare the transcript.)
 - b. Partial transcript under App.R. 9(B). (Note: the appellant must instruct the court reporter to prepare the transcript.)
 - c. Statement of evidence or proceedings under App.R. 9(C).
 - d. Agreed statement under App.R. 9(D).

B. CALENDAR

Choose the appropriate calendar designation for this case. **Check only one of the following:**

Regular Calendar

This is the appropriate selection if **any** of the following apply:

- Transcript and all other evidentiary materials are more than one hundred pages;
- A brief in excess of 15 pages is necessary to argue the issues adequately;
- Appeal concerns unique issues of law that will be of substantial precedential value in determining similar cases;
- Appeal concerns multiple or complex issues; or
- Do not want accelerated calendar.

Accelerated Calendar (*See LocApp.R. 11.1*)

An appeal may be assigned to the accelerated calendar if (1) no transcript is required, or (2) the transcript and all other evidentiary materials consist of 100 or fewer pages. If any of the criteria listed above for regular calendar applies, the appeal will not be assigned to the accelerated calendar.

Expedited Calendar (*See App.R. 11.2*)

This is the appropriate selection if any of the following apply. Please designate the specific category below:

- Abortion-related appeal from juvenile court
- Adoption or parental rights appeal (includes award of temporary custody to the agency)
- Dependent, abused, neglected, unruly or delinquent child appeal
- Prosecutorial appeal from suppression order
- Denial of a bail bond as provided in R.C. 2937.222(D)
- Election contests as provided in R.C. 3515.08

C. GENERAL INFORMATION

1. Was a stay requested in the trial court? Yes No (See App.R. 7 and App.R. 8)
If a stay was requested, how did the trial court rule?
 Granted Denied Pending

2. If this case has previously been before this Court, list prior appellate case number(s):

3. List case names and numbers of cases pending in this court that involve the same transaction or controversy involved in this appeal: _____

4. Probable issues for appeal (if known): ABUSE OF DISCRETION IN IMPOSING SENTENCE

5. Have you attached a time-stamped copy of the final judgment being appealed as required under Loc.App.R. 3(B)? Yes

6. Have you been declared a vexatious litigator? Yes No
If yes, did you comply with R.C. 2323.52(F)(2) and seek leave to file?
 Yes No

D. CRIMINAL CASE

(If this is an appeal from a civil case, skip ahead to SECTION E. If a criminal case, complete this section and then skip to the signature block.)

1. Does the sentencing order contain the following **four requirements**:
 - fact of conviction for **each** count;
 - separate sentence for **each** convicted count;
 - signature of trial court judge; and
 - file stamp of the clerk of court? Yes No

2. If a co-defendant(s) was indicted and convicted under the same complaint, list the name(s) of co-defendant(s):

3. Type of Appeal (**Select only one of the following**):

- Defendant's Appeal as of Right State's Appeal as of Right
 Defendant's Delayed Appeal by Leave of Court (See App.R. 5(A))
 State's Appeal by Leave of Court (See App.R. 5(B))

E. CIVIL CASE

1. Specify the type of action in the trial court (e.g. administrative appeal; contract; declaratory judgment; domestic relations; juvenile; medical malpractice; personal injury; probate; etc.):

2. Is the order appealed from a final appealable order:

- a. Did the judgment dispose of all claims by and against all parties?

Yes No

- b. If not, is there a determination that there is "no just reason for delay" per Civ.R. 54(B)?

Yes No

- c. If you are appealing an interlocutory order, specify what authority (e.g. specific provision under R.C. 2505.02, other statute, or case law) that gives this court jurisdiction to hear the appeal: _____

3. Settlement discussions:

a. How would you characterize the extent of your settlement discussions before judgment?

- None Minimal
 Moderate Extensive

b. Have settlement discussions taken place since the judgment or order appealed from was entered? Yes No

c. Would a mediation conference assist in the resolution of this matter?

- Yes No
 Maybe

I certify that the above information is accurate to the best of my knowledge. I also acknowledge that I must file the Notice of Appeal along with this Praecipe and Docketing Statement in the trial court.

ERIC C. NEMECEK

Appellant or Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that a copy of this Praecipe and Docketing Statement was served upon the University Heights Law Department on 08 / 06 / 2021 in the following manner: certified mail.

Eric C. Nemecek
(Signature)

Shaker Heights Municipal Court

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CASE 19CRB01016 DOCKET

19CRB01016 GENERAL INFORMATION 19CRB01016

Defendant.....: REALTY USA, UNIVERSITY
15 S 8TH ST
BROOKLYN, NY 11211

Date Filed: 09/06/2019

Heard By:

DOB: Drivers License:

BMV Batch:

Court Date: PROGRESS RPT Set for 08/11/2021 at 9:59 am in Court Room 3

INCIDENT

Incident #: 643099 FRA: Unknown Agency: UNIVERSITY HEIGHTS

Citation #: Offense Date: 02/01/2019 Affiant:

Offense: Ordinance 1420.02 - PAYMENT OF FILING FEE REQUIRED (X189) - Deg: M1 - Non-Moving Violation - at 4380 UNIVERSITY PARKWAY
Plea: NO CONTEST Finding: (05-12-21) GUILTY Sentenced: 07/08/2021 Probation:4 YEARS By: JUDGE K. J. MONTGOMERY

Offense: Ordinance 1274.04a - PARKING FACILITIES (X189) - Deg: M1 - Non-Moving Violation - at 4380 UNIVERSITY PARKWAY
Plea: NO CONTEST Finding: (05-12-21) GUILTY Sentenced: 07/08/2021 Probation:4 YEARS By: JUDGE K. J. MONTGOMERY

Offense: Ordinance 1250.02 - PERMITTED USES - Deg: M1 - Non-Moving Violation - at 4380 UNIVERSITY PARKWAY
Plea: NO CONTEST Finding: (05-12-21) GUILTY Sentenced: 07/08/2021 Fine:940,000+COSTS Suspended Fine:910,000 Probation:4 YEARS By: JUDGE K. J. MONTGOMERY

BOND INFORMATION

Date Set: Type: Posted Amt. Posted: Amount: St-R: Bond #: Return/Apply/Transfer/Forfeit Check #:

CASE PROCEEDINGS

Entered Charge EntryText

09/06/2019 Case Filed on 09/06/2019

ARRAIGNMENT set for 10/15/2019 at 02:00 PM in room 3

09/11/2019 Return made 9-10-19

10/18/2019 Motion for continuance filed by UH pros. this date

I, STEVEN TOMASZEWSKI, Clerk of the Shaker Heights Municipal Court, hereby certify that the above and foregoing is a true and correct copy of the DOCKET entered in the above entitled case.

STEVEN TOMASZEWSKI

Deputy Clerk

8/9/21

10/18/2019 Prosecutor's motion is granted. Arraignment is continued until November 13, 2019 at 10:00 a.m. KJM

10/21/2019 ARRAIGNMENT set for 11/13/2019 at 10:00 AM in room 3

10/21/2019 PC CONTINUANCE Notice Sent

10/21/2019 TR/CR FREE FORMAT Notice Sent

10/28/2019 KENNETH J. FISHER enters as attorney of record.

10/28/2019 Written Motion for Continuance filed by Defendant's Attorney on 10/28/2019

10/28/2019 Paid \$20.00 receipt# 2019024725 paid by UNIVERSITY REALTY USA

10/28/2019 Kenneth J Fisher enters as attorney of record. At the request of defense counsel, Arraignment is continued until November 27, 2019 at 10:00 a.m. KJM

10/29/2019 ARRAIGNMENT set for 11/27/2019 at 10:00 AM in room 3

10/29/2019 TR/CR FREE FORMAT Notice Sent

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CASE 19CRB01016 DOCKET

11/26/2019 Written Motion for Continuance filed by Defendant's Attorney on 11/26/2019
11/26/2019 Paid \$20.00 receipt# 2019027071 paid by UNIVERSITY REALTY USA
12/13/2019 At the request of defense counsel, Arraignment is continued until January 22, 2020 at 10:00 a.m.
No further continuances will be granted on arraignment. KJM
12/16/2019 ARRAIGNMENT set for 01/22/2020 at 10:00 AM in room 3
12/16/2019 TR/CR FREE FORMAT Notice Sent
12/16/2019 Right to speedy trial waived by defendant on 12/16/2019
12/16/2019 Request for Pretrial filed by Defendant's Attorney.
12/18/2019 Canceled ARRAIGNMENT for 01/22/2020 at 10:00 AM in room 3
12/17/2019 Attorney for the defendant enters a plea of Not Guilty on defendant's behalf. Pretrial is set for
Janury 29, 2020 at 9:30 a.m. Time is waived. KJM
12/18/2019 PRE-TRIAL set for 01/29/2020 at 09:30 AM in room 3
12/18/2019 TR/CR FREE FORMAT Notice Sent
01/28/2020 Written Motion for Continuance filed by Defendant's Attorney on 01/28/2020
01/28/2020 Paid \$20.00 receipt# 2020002152 paid by UNIVERSITY REALTY USA
01/29/2020 Pre-trial continued at the defendants request until 2-26-2020 at 9:00a.m.
KJM
01/29/2020 PRE-TRIAL set for 02/26/2020 at 09:00 AM in room 3
01/29/2020 PC CONTINUANCE Notice Sent
02/25/2020 Written Motion for Continuance filed by Defendant's Attorney on 02/25/2020
02/26/2020 Paid \$20.00 receipt# 2020004706 paid by UNIVERSITY REALTY USA
02/28/2020 Motion to reset pretrial is granted. Pretrial is reset to April 22, 2020 at 9:30 am.
02/28/2020 PRE-TRIAL set for 04/22/2020 at 09:30 AM in room 2
02/28/2020 PC PRE-TRIAL/CONTINUANCE Notice Sent
PC PRE-TRIAL/CONTINUANCE Notice Sent
04/17/2020 PRE-TRIAL changed to 04/22/2020 at 09:30 AM in room 3
04/23/2020 Pretrial held with defense counsel via telephone. Next pretrial set for July 8, 2020 at 10:00 a.m.
KJM
05/05/2020 PRE-TRIAL set for 07/08/2020 at 10:00 AM in room 3
05/05/2020 PC PRE-TRIAL Notice Sent
05/05/2020 PC PRE-TRIAL Notice Sent
07/07/2020 Written Motion for Continuance filed by Defendant's Attorney on 07/07/2020
07/07/2020 Paid \$20.00 receipt# 2020011890 paid by UNIVERSITY REALTY USA
07/08/2020 At the request of defense counsel, pretrial is continued until August 26, 2020 at
10:00 a.m.

K.J.

Montgomery, Judge

07/13/2020 PRE-TRIAL set for 08/26/2020 at 10:00 AM in room 3
07/13/2020 Sentencing/COP Telephone Date Notice Sent
07/13/2020 Sentencing/COP Telephone Date Notice Sent
07/13/2020 Sentencing/COP Telephone Date Notice Sent
08/28/2020 Telephone pretrial held with defense counsel. Final telephone pretrial set for
October 28, 2020 at 9:00 a.m. K.J. Montgomery, Judge

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08/28/2020 PRE-TRIAL set for 10/28/2020 at 09:00 AM in room 3
08/28/2020 TR/CR FREE FORMAT Notice Sent
10/29/2020 Pretrial held via telephone. Trial is set for March 10, 2021 at 10:30 am. K.J. Montgomery, Judge

11/03/2020 TRIAL set for 03/10/2021 at 10:30 AM in room 3
11/03/2020 TRIAL Notice Sent
TRIAL Notice Sent

03/05/2021 Written Motion for Continuance filed by Defendant's Attorney on 03/05/2021
03/05/2021 Paid \$20.00 receipt# 2021003335 paid by UNIVERSITY REALTY USA
03/08/2021 Motion to reset trial is granted. Trial is reset to May 12, 2021 at 11:00 am. K.J. Montgomery, Judge.

03/09/2021 Motion Motion for Continuance GRANTED by K. J. MONTGOMERY JUDGE on 03/09/2021
03/09/2021 TRIAL set for 05/12/2021 at 11:00 AM in room 1
03/09/2021 TRIAL Notice Sent
TRIAL Notice Sent

03/09/2021 TRIAL changed to 05/12/2021 at 11:00 AM in room 3
03/29/2021 Written Motion to Withdraw as Attorney filed by Defendant's Attorney on 03/29/2021
03/29/2021 Paid \$20.00 receipt# 2021004900 paid by UNIVERSITY REALTY USA
03/30/2021 Motion Motion to Withdraw as Attorney GRANTED by ANNE KELLER MAGISTRATE on 03/30/2021
03/30/2021 Kenneth Fisher's motion to withdraw as attorney of record is granted. Trial to remain set as scheduled. Anne Keller, Acting Judge.

03/30/2021 Attorney representation withdrawn
03/30/2021 TR/CR FREE FORMAT Notice Sent
03/30/2021 TR/CR FREE FORMAT Notice Sent
03/30/2021 TR/CR FREE FORMAT Notice Sent

04/28/2021 Subpoea issued by Prosecutor.
04/28/2021 Subpoea issued by Prosecutor.

05/07/2021 SEAN BURKE enters as attorney of record.
05/07/2021 Written Motion for Continuance filed by Defendant's Attorney on 05/07/2021
05/07/2021 Paid \$20.00 receipt# 2021007451 paid by UNIVERSITY REALTY USA
05/10/2021 Motion to reset trial is denied.
05/10/2021 TR/CR FREE FORMAT Notice Sent
05/10/2021 OBJECTION TO DEFENDANT'S MOTION FOR CONTINUANCE file by Prosecutor.

05/13/2021 A Finding of GUILTY entered for 1420.02 - PAYMENT OF FILING FEE REQUIRED (X180)
05/13/2021 B Finding of GUILTY entered for 1274.04a - PARKING FACILITIES (X180)
05/13/2021 A Plea of NO CONTEST entered on 05/12/2021
B Plea of NO CONTEST entered on 05/12/2021

05/13/2021 SENTENCE set for 06/23/2021 at 10:00 AM in room 3
05/13/2021 PC PROBATION SENTENCING Notice Sent
PC PROBATION SENTENCING Notice Sent

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05/13/2021 TR/CR FREE FORMAT Notice Sent
05/13/2021 TR/CR FREE FORMAT Notice Sent
05/21/2021 The court has received this matter per previous journal entry for sentencing. The court hereby orders a sentencing conference with the Judge on Wednesday, May 26, 2021 at 1:30 p.m. Counsel must be present. K.J. Montgomery, Judge.
05/21/2021 SENTENCE set for 05/26/2021 at 01:30 PM in room 3
05/21/2021 TR/CR FREE FORMAT Notice Sent
06/29/2021 This case is set for sentencing on Thursday, July 8, 2021 at 9:00 a.m. Sentence to be announced in open court and on the record. K.J. Montgomery, Judge.
06/29/2021 SENTENCE set for 07/08/2021 at 09:00 AM in room 1
06/29/2021 TR/CR FREE FORMAT Notice Sent
07/01/2021 SENTENCE changed to 07/08/2021 at 09:00 AM in room 3
07/08/2021 A Finding of GUILTY entered for 1420.02 - PAYMENT OF FILING FEE REQUIRED (X189)
07/08/2021 C Finding of GUILTY entered for 1250.02 - PERMITTED USES
07/08/2021 B Finding of GUILTY entered for 1274.04a - PARKING FACILITIES (X189)
07/08/2021 ACTIVE PROBATION of \$125.00 assessed
07/08/2021 ACTIVE PROBATION of \$125.00 assessed
07/08/2021 ACTIVE PROBATION of \$125.00 assessed
07/08/2021 C Plea of NO CONTEST entered on 05/12/2021
07/08/2021 B Sentence was edited for PARKING FACILITIES (X189) on 07/08/2021
07/08/2021 ACTIVE PROBATION of \$125.00 assessed
07/08/2021 C Sentence was edited for PERMITTED USES on 07/08/2021
07/08/2021 TOTAL OWED Notice Sent
07/08/2021 Ordered Pay Plan Notice Sent
07/08/2021 TR/CR INVOICE Notice Sent

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07/08/2021

On May 12, 2021 the parties appeared in court represented by counsel and after full explanation of rights and potential penalties, the defendant withdrew its previously entered plea of not guilty and entered a plea of no contest to violations listed in the complaint. The court found defendant guilty and passed the case for sentence.

Thereafter, in consultation with counsel and with consent of the parties, it was agreed that the city would be permitted to amend/supplement the violations listed in the original complaint to outline the charging document with greater specificity in order to assist the court in sentencing. It was further agreed that the parties would waive any defects in service or other defenses pertaining to the fact that these charges were being clarified post-conviction.

On May 28, 2021, the city filed three counts which cite on individual complaints violation of University Heights Codified Ordinances 1274.04(a), 1420.02, and 1250.02. The elements of the violations remained the same (as was agreed by the parties) including the property owner, property location, and that each count existed for purposes of these complaints from February 1 through August 7, 2019- a period of 188 days, each day being a separate violation punishable by a monetary penalty ranging from \$0 to \$5,000. There being three counts and as explained before the taking of the plea on May 12, 2021, the total penalties for all counts and days of violation could total a maximum fine of \$2,820,000 (calculated at the maximum per diem rate of \$5,000 per day for each count).

On June 23, 2021, the parties, again represented by counsel, addressed the court regarding sentencing. The court now proceeds to sentencing: SEE JOURNAL ENTRY.

(In summary:

Count One: \$180,000 fine. \$160,000 suspended on condition that during 4 years active probation, defendant does not violate UHCO 1420.02. \$20,000 of fines is not suspended.

Count Two: \$940,000 fine. \$910,000 suspended on condition that during 4 years active probation, defendant does not violate UHCO 1250.02. \$30,000 of fines is not suspended.

Count Three: \$470,000 fine. \$455,000 suspended as follows - \$75,000 is suspended on condition unlawful surfaces are removed as set for in the terms of probation/ PRC and \$380,000 suspended on condition that during 4 years active probation, defendant does not violate UHCO 1274.04(a). \$15,000 if fines is not suspended.

This summary is provided for ease of review of this lengthy order only. The actual per count sentencing is as set forth above in the sentencing chart.)

Costs are assessed to defendant.

The fines set forth in this sentencing are consecutive as the court finds that a lesser penalty will not adequately encourage rehabilitation, administer justice and/or endure the defendant's future complain behavior. The probationary term shall be active until probation determines that these sentencing goals can be reached and/or maintained through inactive penalties imposed and suspended shall remain suspended so long as conditions of probation/CCS, including those with time restriction, are not violated. The court hereby imposes the following conditions of probation/CCS as each is related to rehabilitation, justice and/or future good behavior:

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TERMS OF PROBATION/CCS: Defendant shall:

- Develop and present a plan for compliance and correction of any outstanding housing code violations noted on the notice of violations paperwork and remaining uncorrected as of this date.
- Comply with all further ordered of this court including meeting compliance plan dates, correcting violations, ordering city inspections, etc.
- Not be cited for similar violations during defendant's probation period.
- Provide to the court a list of all real property owned by or under the control of the defendant. Unless the court ordered otherwise, the list shall include all property whether located within or without the court district and shall include the defendant's place of business. The court may order that the list of properties be in a particular form or contain specific information. The defendant shall notify the court whenever the defendant has any change in ownership or control of properties.
- Keep all of defendant's properties in good repair and in compliance with any local and state housing, building and/or fire codes. This requirement includes the obligation to keep each property clean of debris, secure from entry if vacant, with landscaping properly maintained.
- Abide by all laws required to be followed under Ohio laws for probation and/or community control.
- Regularly visit and inspect each of defendant's properties. The defendant shall visit and photograph upon court order said properties and take photos during scheduled visits.
- Permit court and/or city representatives to inspect the subject property upon court order.
- Additionally, with regard to Count Three, the fines of \$2,500 for violation days 7 (2/7/19) through (up to and including) 37 (3/9/19), shall be suspended for compliance with the above conditions **AND SO LONG AS DEFENDANT REMOVES ANY UNAUTHORIZED HARD SURFACE MATERIALS USED TO CREATE ILLEGAL PARKING FACILITIES AND WHICH ARE THE SUBJECT OF COUNT THREE-** violation of Codified ordinance 1274.02(a) – within 45 days of this order. So long as the illegal surfaces are removed within 45 days, the fines imposed for violation days 7 through 37 shall remain suspended so long as none of the other probation terms are violated.

EFFECT OF FAILURE TO COMPLY WITH TERMS OF PROBATION/CCS:

Defendant is informed that upon a finding of violation of the terms of probation/CCS, the court may:

- Impose a longer period of probation/ CCS up to five years in total.
- Impose more restrictive probation/CCS sanctions under RC 2929.26-28, including increased financial sanctions (fines) up to \$2,820,000.

FURTHER ORDERS: Fines and costs are due in full in 120 days.

For the next court date of August 11, 2021 at 10:00 a.m., the defendant shall have met with the city to determine which violations listed in the violation notice of 2/1/2019 remain in need of correction. A compliance plan shall be the next step in order to eliminate these violations.

K.J. Montgomery, Judge.

07/08/2021
07/08/2021

PROGRESS RPT set for 08/11/2021 at 10:00 AM in room 1
TR/CR FREE FORMAT Notice Sent

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07/28/2021 Request recording of proceedings
 07/28/2021 Paid \$25.00 receipt# 2021012073 paid by UNIVERSITY REALTY USA
 08/06/2021 Paid \$20.00 receipt# 2021012563 paid by UNIVERSITY REALTY USA
 08/06/2021 PROGRESS RPT changed to 08/11/2021 at 10:00 AM in room 3
 08/06/2021 Written Motion of Appeal filed by Defendant's Attorney on 08/06/2021
 08/06/2021 Paid \$50.00 receipt# 2021012564 paid by UNIVERSITY REALTY USA
 08/06/2021 Motion filed to Stay Execution of Sentencing Pending Appeal

FINANCIALS

<u>Date</u>	<u>Bonds</u>	<u>Assessed</u>	<u>Paid/Credit</u>	<u>Receipt Number</u>
10/28/2019	\$0.00	\$0.00	\$20.00	2019024725
Continuance	\$0.00	\$0.00	20.00	
11/26/2019	\$0.00	\$0.00	\$20.00	2019027071
Continuance	\$0.00	\$0.00	20.00	
01/28/2020	\$0.00	\$0.00	\$20.00	2020002152
Continuance	\$0.00	\$0.00	20.00	
02/26/2020	\$0.00	\$0.00	\$20.00	2020004706
Continuance	\$0.00	\$0.00	20.00	
07/07/2020	\$0.00	\$0.00	\$20.00	2020011890
Continuance	\$0.00	\$0.00	20.00	
03/05/2021	\$0.00	\$0.00	\$20.00	2021003335
Continuance	\$0.00	\$0.00	20.00	
03/29/2021	\$0.00	\$0.00	\$20.00	2021004900
Motion	\$0.00	\$0.00	20.00	
05/07/2021	\$0.00	\$0.00	\$20.00	2021007451
Motion	\$0.00	\$0.00	20.00	
05/12/2021	\$0.00	#####	\$0.00	
Capital Improvements	\$0.00	\$10.00	0.00	
Computer Legal Research	\$0.00	\$3.00	0.00	
Continuance	\$0.00	\$20.00	0.00	
Continuance	\$0.00	\$20.00	0.00	
Continuance	\$0.00	\$20.00	0.00	
Continuance	\$0.00	\$20.00	0.00	
Continuance	\$0.00	\$20.00	0.00	
Continuance	\$0.00	\$20.00	0.00	
Court Costs	\$0.00	\$146.00	0.00	
CRIME STOPPERS	\$0.00	\$1.00	0.00	
Motion	\$0.00	(\$20.00)	0.00	
Motion	\$0.00	\$20.00	0.00	
Motion	\$0.00	\$20.00	0.00	
Motion	\$0.00	\$20.00	0.00	
Security Fee	\$0.00	\$1.00	0.00	
Victims of Crime	\$0.00	\$9.00	0.00	
A University Heights Fines	\$0.00	#####	0.00	
B University Heights Fines	\$0.00	(\$1,500.00)	0.00	
B University Heights Fines	\$0.00	\$1,500.00	0.00	
B University Heights Fines	\$0.00	#####	0.00	
C University Heights Fines	\$0.00	#####	0.00	
C University Heights Fines	\$0.00	#####	0.00	

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C	University Heights Fines	\$0.00	#####	0.00	
07/08/2021		<u>\$0.00</u>	<u>\$500.00</u>	<u>\$0.00</u>	
	Active Probation>3Months	\$0.00	\$125.00	0.00	
	Active Probation>3Months	\$0.00	\$125.00	0.00	
	Active Probation>3Months	\$0.00	\$125.00	0.00	
	Active Probation>3Months	\$0.00	\$125.00	0.00	
07/28/2021		<u>\$0.00</u>	<u>\$25.00</u>	<u>\$0.00</u>	
	Miscellaneous	\$0.00	\$25.00	0.00	
07/28/2021		<u>\$0.00</u>	<u>\$0.00</u>	<u>\$25.00</u>	2021012073
	Miscellaneous	\$0.00	\$0.00	25.00	
08/06/2021		<u>\$0.00</u>	<u>\$90.00</u>	<u>\$0.00</u>	
	IDSF HB1 & HB562	\$0.00	\$20.00	0.00	
	Motion	\$0.00	\$20.00	0.00	
	Notice of Appeal	\$0.00	\$50.00	0.00	
08/06/2021		<u>\$0.00</u>	<u>\$0.00</u>	<u>\$20.00</u>	2021012563
	Court Costs	\$0.00	\$0.00	20.00	
08/06/2021		<u>\$0.00</u>	<u>\$0.00</u>	<u>\$50.00</u>	2021012564
	Court Costs	\$0.00	\$0.00	50.00	
	<u>Total as of 08/09/21 :</u>	<u>\$0.00</u>	<u>#####</u>	<u>\$255.00</u>	<u>\$65,690.00</u> OWES