

AFFIDAVITS AND STATEMENTS

PETER LUTTS AFFIDAVIT (6/6/2023)

I, Peter Lutts, hereby state that the following is the truth to the best of my knowledge and trust.

1. I, Peter Lutts, am a Managing Member of Overlook Acres, LLC (*hereinafter, Overlook*).
2. Overlook is an entity registered with the MA Secretary of State's Office that was formed for the purpose of planning and building a residential development on properties known as 381, 383 and 379 Highland Avenue, 14 and 16 Barnes Road and 9, 12, 14, 15, 16, and 18 Cedar Road, all of the City of Salem, MA.
3. In the process of pursuing this project me and other members of Overlook Acres, LLC, met with Kathleen Ingemi, a defendant in the instant matter, who has an ownership interest in the properties noted in paragraph 2 of this affidavit. Kathleen Ingemi's brother, Stephen S. Ingemi, also a defendant in this matter, has ownership interests in these properties as well. Their ownership interests are through their position as Trustees and beneficiaries in the John M. Ingemi Realty Trust, JL Realty Trust and Barnes Road Trust.
4. Overlook's purpose in meeting with Kathleen Ingemi was to explore the option of purchasing the properties noted in paragraph 2. At all times in this process all parties were fully aware that Overlook's sole interest in the aforementioned properties was to build a large residential development.

I was aware that for many years Kathleen Ingemi had a for sale sign near the curb by her home of 381 Highland Avenue, regarding her interest in selling an expanse of vacant land behind 381 Highland Avenue.

5. On April 12, 2019, Overlook entered into Purchase and Sale Agreements with Kathleen and Stephen Ingemi (*hereinafter, the 'Trusts'*) for the aforementioned properties - hereinafter referenced as the 'Premises' as referenced in Plaintiff's Motion for a Writ of Attachment and Complaint in the instant matter. *Please see, Exhibit 9.*
6. The P&S agreement specifically required that the Premises be delivered not in violation of any building or zoning laws, and was warranted, via the P&S, that the Trusts were not aware of any violations pursuant to zoning, building, health, environmental or other Applicable Laws, and were not aware of the presence of any hazardous materials on the Premises. *Please see Exhibit 9 paragraphs 9, 10, 11, 25, 28, 29, 35.*
7. At the signing of the P&S Agreements Overlook paid the Trusts one hundred and fifty thousand dollars (\$150,000) as a down payment.
8. In reliance on the Trusts warranties noted in paragraph 6, Overlook began their due diligence hiring a Licensed Site Professional - LSP - (An entity named 'CHUBB') to conduct a Phase I Environmental Site Assessment - ESA.
9. On or about August of 2019 Overlook received an approximately three hundred (300) page Phase 1 report from the LSP, CHUBB. I read and reviewed this report to include the interview conducted by the LSP site investigator of Kathleen Ingemi. This interview was part of the

investigation into the historical use of the Premises based on Kathleen Ingemi's 65 years of residence on the Premises.

10. Kathleen Ingemi also presented to me that she is a real estate agent and served as such on behalf of the Trusts throughout the time of Overlook and the Trusts engagement. By knowledge and public record of the MA Secretary of State, I also know that Kathleen Ingemi has been the owner and President of KB Real Estate, Inc., since 1994.
11. Kathleen Ingemi informed me during the pendency of this matter that she resides at 381 Highland Avenue, Salem, MA, which is contiguous with the Premises and one of the properties Overlook was to purchase.
12. I am knowledgeable that Kathleen Ingemi reported to the LSP/CHUBB site investigator that she lived at 381 Highland Avenue address for 65 years and that her family had owned the Premises for many years before that.
13. I am also knowledgeable that Kathleen Ingemi reported to the LSP/CHUBB Phase 1 investigator that;

She had no knowledge of;

- a. Any environmental liens on the Premises;
- b. Any use limitations on the use of the Premises;
- c. Any specialized knowledge or experience related to the Premises or adjoining properties as a long term resident, to include, knowledge of chemicals;
- d. *Any "commonly known or reasonably ascertainable information about the Property that would help the environmental professional to identify conditions indicative of releases or threatened releases;*
- e. Any specific chemicals present or once present at the Property;
- f. Spills or other chemical releases taken place on the Property;
- g. *Any Environmental Cleanups take'n place on the Property - to which Kathleen Ingemi reported 'Not in the past 65 years';*
- h. Any obvious indicators that point to the presence of the likely presence of contamination at the Property.

Please see, Exhibit 11.

I have since reviewed materials and information that indicate that each of these representations made by Kathleen Ingemi to be false and to have been made knowingly and intentionally to deceive Overlook.

14. Overlook relied on the representations made on behalf of the Trusts by Kathleen Ingemi to the LSP/CHUBB as well as the aforementioned representations made on behalf of the Trusts by Kathleen and Stephen Ingemi in the P&S Agreements, in continuing with the development of the Premises after the Phase I investigation.
15. Following the Phase I report Overlook proceeded with the project and incurred costs for site and construction engineers, title exams, architects, drawings and development plans for the infrastructure to include the provision of gas, electrical, water and sewer service, site planning to include roadways and traffic pattern studies and plans, various permitting with governmental organizations, and the purchase of several lots not owned by the Trusts.

Please see, Exhibit 33.

16. Through the efforts noted in paragraph 14 Overlook received permitting for the development of two hundred and eighty (280) residential units on the Premises.
17. Following this Overlook engaged the services of additional infrastructure and environmental engineers to take deep borings of soil throughout the premises in order to determine the soil make up and allow building engineers to determine the proper construction methods to be utilized.
18. As a result of the deep boring, site engineers informed Overlook that they found visible automobile shredding residue that exceeded a depth of 35 feet below the surface, a potential environmental hazard.
19. As a result of the discovery of automobile residue Overlook engaged in further environmental investigation by several LSP's to include a Phase 2 investigation by CHUBB. On or about June 16, 2020, CH UBS reported to Overlook that automobile shredding was observed in deep fill throughout the Premises and was consistent with car parts and miscellaneous rubber parts.
20. Subsequent laboratory testing done by CHUBB indicated harmful chemicals within the tested soil. Further excavation of soil samples and more in depth testing by other environmental engineers and LSP's retained by Overlook, resulted in findings that the soil throughout the Premises had elevated levels of polychlorinated biphenyls (PCB's), volatile organic compounds (VOC's), total petroleum hydrocarbons (TPH's) and total metal and polycyclic aromatic hydrocarbons (PAH's).
21. The environmental engineers engaged by Overlook informed Overlook that the condition of the soil throughout the Premises posed a significant and imminent risk of harm to the public and environment and exceeded levels that were permissible by state and local law to build residential units on.
22. Overlook was informed by CHUBB that based on a historical record investigation, including overhead photography dating back to the early 1900's, that they could determine that the Premises had not been the site of any industrial entities that would create this contamination and that based on this and the plethora of automobile residue, the contamination was completely consistent with having been used as a dump and fill site for non recyclable automobile parts.
23. These findings were shared with the Trusts in the form of Trustee's Kathleen and Stephen Ingemi. At no time did the Trusts indicate to Overlook that the Premises had knowingly been used for years as a dump site for automobile residue and been the subject of innumerable actions by the Salem Conservation Commission, Army Corp of Engineers and DEQE or that Trustee Kathleen Ingemi had commissioned a Preliminary Phase I examination between 2000-2004 that resulted in the report to Kathleen and Stephen Ingemi and 4 to 5 other family members that the Premises was contaminated with automobile residue to the point that it could not be used for Residential purposes.
24. Upon the findings as to the condition of the Premises Overlook and the Trusts agreed to extend the closing date - in exchange for Overlook giving the Trusts another fifty thousand dollar (\$50,000) deposit. Overlook agreed and expended more resources so that the alleged - unknown condition of the Premises - could be fully investigated as to the breadth of environmental damage to the Premises and whether the Premises could be remediated to the point of legally sustaining a residential development and the feasibility of any such remediation.

25. Overlook's efforts noted above resulted in Overlook learning that the extensive and pervasive contamination of the Premises would require an expenditure of between \$12,000,000 and \$34,000,000 (twelve and thirty-four million dollars) to remediate the Premises to support any form of residential land albeit likely not the 280 residential units Overlook had already expended considerable funds to permit.
26. In November of 2020 Overlook met with the Trusts to discuss the status of the development to include the costs of remediation leaving any such plan unfeasible. The Trusts stated that they would not take part in any remediation.
27. Due to the Trusts inability to deliver the Premises as required in the P&S Agreement the deal between Overlook and the Trusts folded shortly after the November 2020 meeting. Upon the failure of the deal Overlook made a demand for the return of their deposit of \$200,000.00 which the Trusts were in possession of which the Trusts ignored or refused to this day.
28. In total Overlook expended on the doomed project and in reliance on the representations of the Trusts, and seeks to recover through its lawsuit, one million, eighty thousand dollars (\$1,080,000) without factoring in any interest, attorney fees, or other costs incurred in bringing suit or any recovery pursuant to 93A. This figure strictly represents out of pocket expenses. *(This figure includes the \$200,000 in deposits that the Trusts have refused to return).*

Overlook has created a spreadsheet as to all incurred costs arriving at this figure which I have reviewed along with other Members of Overlook and confirm is accurate - reflecting the figure above. I have attached this spreadsheet to my affidavit and understand that it has also been provided with the Motion to Attach as Exhibit 33.

29. Subsequent to the collapse of the deal in or about November of 2020, I became aware of the minutes of meetings of the Salem Conservation Commission - ConCom - spanning the years 1976-1981.
30. I read through all of these minutes. Throughout these minutes there is extensive discussion of the vacant land owned by John Ingemi off of Highland Avenue, Salem. It is also noted that John Ingemi is the father of Trustees of the Premises, Kathleen Ingemi and Stephen Ingemi. The Premises optioned by Overlook were largely held in trusts of John Ingemi (John M. Ingemi Trust and John M. Ingemi Realty Trust).
31. By virtue of the detailed and extensive discussion in the ConCom minutes of the land of John Ingemi being investigated, its location, its distance back from Highland Avenue, the bordering streets, the abutting properties, its configuration with the Ingemi home of 381 Highland Avenue - now the home of Trustee Kathleen Ingemi - and the distinctive topography, I know that the land being discussed in the ConCom minutes I read is part of the Premises optioned by Overlook in 2019. This is without taking into consideration the admissions of John Ingemi and his Attorney that the land was used for dumping/filling automobile residue as admitted throughout the minutes - exactly as the Premises were proven to have been used again in both 2004 and 2020.
32. Despite the extensive history of admitted dumping of automobile residue on the Premises proven by the Con Corn minutes for which Trustee Kathleen Ingemi was present, and even upon the discoveries of Overlook's LSP's regarding automobile residue, the Trust never varied from its absolute and total denial of any knowledge whatsoever of any dumping, filling, presence, or discussion of any hazardous materials on, about or abutting the Premises.

33. Kathleen Ingemi of 381 Highland Avenue, Salem, MA, was born in 1951 and was 28 in August of 1979 when Kathleen Ingemi appeared before ConCom with John Ingemi at the time offering land to ConCom in exchange for the cessation of litigation regarding the contamination of the Premises. I am aware of her date of birth as it is self-reported by Kathleen Ingemi within her interrogatories on this matter.
34. I have had an opportunity to review the deposition transcript of Bruce Poole, an Environmental Engineer who reports having done a Preliminary Phase I investigation at the request of Kathleen Ingemi on land behind the home of Kathleen Ingemi, 381 Highland Avenue, Salem, MA.
35. Throughout the transcript Mr. Poole provides precise and descriptive explanations of the land he was hired to test. Mr. Poole's description of the location and setting of the land pursuant to the surrounding areas, to include Highland Avenue, the surrounding and abutting entities - to include A&H salvage - and the topography, place his investigation squarely within the Premises optioned by Overlook in 2019. This, again, without taking into consideration Mr. Poole's findings In 2000-2004, being entirely consistent with the automobile residue, or fluff, found by Overlook's LSP's in 2019 and the findings by the Army Corp of Engineers, DEQE, ConCom, and others reported in ConCom minutes.
36. Having met with Kathleen Ingemi on numerous occasions I can attest that Mr. Poole's physical description of Kathleen Ingemi is consistent In all ways, Including height, weight, hair, age and overall appearance, with Kathleen Ingemi when I subsequently met Kathleen Ingemi.

(Signed, Peter Lutts, Managing Member, OVERLOOK ACRES, LLC, 6/6/2023)

RICHARD GRUNDY AFFIDAVIT (6/7/2023)

1. My name is Richard D. Grundy. I have been an attorney licensed in the Commonwealth of Massachusetts since 1987, in good standing throughout that time, BBO 549939.
2. I represent plaintiff Overlook Acres, LLC, in the matter presently before the Essex County Superior Court holden at Salem, MA, Docket No. 217700088.
3. In the instant case the plaintiff has sued the defendants for damages in the amount of \$1,080,000, not factoring in interest, costs, attorneys fees or a potential recovery pursuant to a 93A claim filed with this complaint.
4. The matter concerns the breach of a contract to purchase approximately 17 acres of vacant land in Salem, MA, by the plaintiff from the defendants for the stated purpose of building a residential development.
5. During the course of the project and prior to the closing of the purchase it was learned that the entire area was contaminated to the extent that it could not legally be used for purposes of residential development. This is contrary to the express representations made by the defendants on numerous occasions. As a result, after the expenditure of \$1,080,000.00 pursuing the project - the Defendants could not deliver the land in the condition required by the Purchase and Sale Agreement. (Please see the accompanying affidavit of Peter Lutts, Managing Member of Overlook Acres, LLC).

6. Based on the breach described in paragraph 5 and fully developed in the accompanying affidavit of Peter Lutts, Overlook, LLC, filed the instant lawsuit against the Defendants on 1/26/21.
7. The 'Defendants' are Stephen Ingemi and Kathleen Ingemi, individually and as the two Trustees in the named trusts which held the 17 acres of land that are the subject matter of the lawsuit.
8. Within the past seventy-two (72) hours I have learned that the Defendants, Stephen and Kathleen Ingemi, are in the process of liquidating most of their real estate holdings. By information and belief, following a thorough search and review of Essex County Registry of Deeds, the Defendants real estate holdings, primarily as trustee/beneficiaries, represent the only assets of the Defendants by which Overlook may recover their damages in the instant matter. It should also be noted that the Defendants holdings have almost exclusively passed down through the family and held by members of the Ingemi family for many decades. The sale of these holdings are rare.
9. Based on my research I learned that on 4/28/2023 the Defendants sold a commercial property they held in conjunction with other family members. The Defendants held this property through the John M. Ingemi Trust, the original trustee being the father of the Defendants. This property had been held by the Ingemi family for decades.

Please see Exhibit 1 to the Plaintiff's Motion to Attach.

10. A thorough review of the Registry of Deeds indicates that the remaining real estate holdings of the Defendants are their homes, which appear to be exempt from attachment, and the numerous holdings that are the subject of this lawsuit which are of limited value due to the severe chemical contamination discovered by Overlook Acres, LLC.

(Please see the accompanying affidavit of Peter Lutts).

11. The Defendants remaining holdings are 5 Gedney Street, Salem, MA, a commercial property operated as Quality Liquors that has been owned and operated by the Ingemi's for over fifty (50) years.
12. The MA Secretary of State's Office lists Kathleen Ingemi as the President (since at least 1999), holding all of the corporate stock and Stephen Ingemi as a director.

Please see Exhibit 2 of Plaintiff's Motion to Attach.

13. Secondly, next door to Quality Liquors, is Steve's Quality Market, address 36-40 Margin Street. Another commercial property, this has been operated as a grocery store owned and operated by the Ingemi family for well over sixty (60) years. Stephen Ingemi is listed as the President (since at least 2000 - the first year reported electronically by the SOS - but by information and belief for a considerable time before that). Kathleen Ingemi is a director.

Please see Exhibit 3 to the Plaintiff's Motion to Attach.

14. The Margin Street property, according to the registry of deeds, is presently held by Stephen C. Ingemi and Kathleen R. Ingemi (an aka of defendant Kathleen Ingemi - please see Exhibit 1) as trustees of the Margin Street Trust.

Please see Exhibit 4j to the Plaintiff's Motion to Attach.

15. The Gedney Street property, according to the registry of deeds, is presently held by Stephen C. Ingemi and Kathleen J. Ingemi (an aka of defendant Kathleen Ingemi - please see Exhibit 1) as trustees of the Gedney Street Trust.

Please see Exhibit 5 to the Plaintiff's Motion to Attach.

16. However with respect to both of these properties, Stephen C. Ingemi passed away in 2018 and has not, according to the Registry of Deeds, been replaced. Therefore it is entirely likely that

defendant Kathleen Ingemi holds all the interest in both of these buildings and/or defendant Stephen Ingemi holds an undeeded or otherwise unreported interest in the properties.

17. Regardless, each of these is a successful business and by information and belief the major source of income for the Defendants for most of their adult lives. The value of these assets far exceeds the mere value of the real estate.
18. The MA Secretary of State filings indicate that all of the officers of both Steve's Quality Market and Quality Liquors are cousins or spouses of cousins of the Defendants. The circumstances of the trust currently holding these properties, in conjunction with the timing of the simultaneous sale of the businesses, is ripe for the Defendants to hide assets, allow assets to be distributed at the time of sale to other family members for the time being, or otherwise hide the assets and terminally frustrate Overlook's efforts to recover damages. It is also noteworthy that this occurs as deposition and assignment of a trial date approach.
19. Likewise, were the properties to be sold prior to an attachment the deal could be structured to reflect a low ball number on the real estate only, and the bulk of the profit attributed to the sale of the businesses, shielding these bulk of the assets from recovery by Overlook Acres, LLC.
20. Based on a thorough review of the Essex County Registry of Deeds, and any other public information available to be viewed, the Defendants, as individuals and trustees, have no holdings capable of satisfying the recovery sought in this matter IF the sale of 36-40 Margin Street and 5 Gedney Street, and the associated businesses, occurs. And this could happen any day.
21. In the past forty-eight (48) hours Overlook learned that on February 27, 2023, Naryan Muni LLC d/b/a as Steve's Quality Business appeared before the Salem Licensing Board applying for a transfer of the annual wine and malt package store of 36 Margin Street (Steve's Quality Market).
Please see, Exhibit 6 of the Plaintiffs Motion to Attach.
22. The same date, Jashiba LLC d/b/a Quality Liquors appeared before the Salem Licensing Board applying for a transfer of the annual all liquor package store license of 5 Gedney Street (Quality Liquors).
Please see, Exhibit 6 of the Plaintiff's Motion to Attach.
23. In both instances the minutes of the meeting report that counsel for the applicants reported that the applicant is purchasing the real estate and *the business of Steve's Quality Market and Quality Liquors.*
24. The MA Secretary of State reports the Naryan Muni LLC was created on January 13, 2023, regarding 36 Margin Street, for the purposes of owning and operating Steve's Quality Market.
25. The Jashiba LLC was created on the same day regarding 5 Gedney Street for the purpose of owning and operating Quality Liquors. Both filings indicate that the intention of the LLC's is to continue the business of the current owners.
Please see Exhibits 7 and 8 of the Plaintiff's Motion to Attach.
26. These actions have all the earmarks of a planned sudden and complete liquidation of assets to protect the assets from being used to satisfy any judgment against them as the instant case progresses to some form of resolution.
27. (Omitted)
28. Based on my research this sale could occur anyday.

29. Without the protection of an Attachment on these particular assets, the real estate and businesses known as 36-40 Margin Street, Salem, MA Steve's Quality Market, and 5 Gedney Street, Salem, MA, Quality Liquors, Overlook Acres, LLC, will suffer irretrievable harm.

(Signed, Richard Grundy, 6/7/2023)

PLAINTIFF'S MOTION FOR A WRIT OF ATTACHMENT (filed June 8, 2023)

Now comes the Plaintiff in the above captioned matter and respectfully moves this Honorable Court to issue a Writ of Attachment, pursuant to MGL 223 sec. 42 and Massachusetts Rule of Civil Procedure 41 (*hereinafter*, 'MRCvP'), for certain properties the Defendants, Stephen and Kathleen Ingemi, jointly and/or individually hold ownership interests in.

As reasons therefore the Plaintiff presents that the Defendants, in recognition of the strength of the Plaintiff's case, are liquidating their most valuable assets just prior to deposition and trial assignment in the instant matter. Furthermore, without these properties/assets the Plaintiff will be without recourse to recover the damages, costs and fees incurred that the Plaintiff may recover.

INTRODUCTION

Plaintiff, Overlook Acres, LLC, (*hereinafter* *Overlook*) hereby moves, pursuant to MGL 223 sec. 42 and MRCvP 41, for a Writ of Attachment on the real and personal property of defendants, Kathleen Ingemi (aka Kathleen J. Ingemi and Kathleen R. Ingemi) and Stephen Ingemi (aka Stephen S. Ingemi), Trustees of the John M. Ingemi Realty Trust, and Stephen Ingemi (aka Stephen S. Ingemi), Trustee of the J.I. Realty Trust, and Kathleen Ingemi, Trustee of the Barnes Road Trust, and, KB Real Estate, Inc., and, Kathleen Ingemi individually and Stephen Ingemi individually (*hereinafter*, *The Trusts*'), *in the amount of one million eighty thousand dollars (\$1,080,000.00), plus all allowable pre and post judgment interest and other allowable expenses and costs, said property to be ordered attached and held to satisfy judgment for damages and costs which the plaintiff may recover.*¹

Please see a full accounting of the funds sought to be attached as Exhibit 33.

Overlook Acres, LLC does not have any insurance coverage applicable to these losses.

Please see Affidavit of Peter Lutts, Managing Member of Overlook Acres, LLC.

NECESSITY OF ATTACHMENT

Within the past seventy-two (72) hours Overlook has ascertained that the Defendants, Stephen and Kathleen Ingemi were liquidating most of their real estate holdings. By information and belief the Defendants real estate holdings, primarily as trustee/beneficiaries, represent the only assets of the Defendants by which Overlook may recover their damages in the instant matter. It should also be noted that the Defendants holdings have almost exclusively been held and passed down through family for many decades. The sale of these holdings is rare.

¹ This figure does NOT factor in any anticipated treble damages pursuant to the 93A claim levied within the complaint.

One June 2, 2023 Overlook learned that on 4/28/2023 the Defendants sold a commercial property they held in conjunction with other family members. The Defendants held this property through the John M. Ingemi Trust, the original trustee being the father of the Defendants.²

Please see Exhibit 1.

A thorough review of the Registry of Deeds indicates that the remaining real estate holdings of the Defendants are their homes, which appear to be exempt from attachment, and the numerous holdings that are the subject of this lawsuit which are of limited value due to the severe chemical contamination discovered by Overlook Acres, LLC. (*Please see Statement of Facts*).

By far and away the crown jewels of the Defendants remaining holdings are 5 Gedney Street, Salem, MA, a commercial property operated as Quality Liquors that has been owned and operated by the Ingemi's for over fifty (50) years. The MA Secretary of State's Office lists Kahtleen Ingemi as the President (since at least 1999), holding all of the corporate stock and Stephen Ingemi as a director.

Please see Exhibit 2.

Secondly, next door to Quality Liquors, is Steve's Quality Market, address 36-40 Margin Street. Another commercial property, this has been operated as a grocery store owned and operated by the Ingemi family for well over sixty (60) years. Stephen Ingemi is listed as the President (since at least 2000 - the first year reported electronically by the SOS - but by information and belief for a considerable time before that). Kathleen Ingemi is a director.

Please see Exhibit 3.

The Margin Street property, according to the registry of deeds, is presently held by Stephen C. Ingemi and Kathleen R. Ingemi (an aka of defendant Kathleen Ingemi - please see Exhibit 1) as trustees of the Margin Street Trust.

Please see Exhibit 4.

The Gedney Street property, according to the registry of deeds, is presently held by Stephen C. Ingemi and Kathleen J. Ingemi (an aka of defendant Kathleen Ingemi, please see Exhibit 1) as trustees of the Gedney Street Trust.

Please see Exhibit 5.

However, Stephen C. Ingemi passed away in 2018.³ Therefore it is entirely likely that defendant Kathleen Ingemi holds all interest in both of these buildings and/or defendant Stephen Ingemi holds an undeeded or otherwise unreported interest in the properties.

Regardless, each of these is a successful business and by information and belief the major source of income for the Defendants for most of their adult lives. The value of these assets far exceeds the mere value of the real estate.⁴

All of the officers of both Steve's Quality Market and Quality Liquors are family members, cousins, or their spouses, of the Defendants. The circumstances of the holding of these properties, in

² This is the same Trust by which the Defendants held some of the properties that are the subject of the instant matter.

³ Mr. Stephen C. Ingemi passed away in 2018 at the age of 95. Mr. Ingemi's obituary reported that he took over the Market from his father after fighting in WWII and that his father began the business in order to sell eggs from his chickens at the home on Highland Avenue. All of the directors and officers of both the Market and liquor store are members of the extended Ingemi family. This sheds light on the magnitude of the sale of these businesses at this time.

⁴ This real estate is a prime location in the center of downtown Salem located on Riley Plaza, next to the post office.

conjunction with the timing of the simultaneous sale of the businesses, is ripe for the Defendants to hide assets, allow assets to be distributed at the time of sale to other family members, or otherwise hide assets and terminally frustrate Overlook's efforts to recover damages. Likewise, were the properties to be sold prior to an attachment the deal could be structured to reflect a low ball number on the real estate only, and the bulk of the profit attributed to the sale of the businesses, shielding these assets from recovery by Overlook Acres, LLC.

Therefore, only with the attachment herein sought by Overlook Acres, LLC, prior to any closing, can the full assets, including the businesses themselves, be reliably preserved for potential damages in the instant case.

These assets are essential to the recovery of the alleged damages to Overlook Acres, LLC, in the instant matter.

Overlook became concerned by the liquidation on 4/28/2023, based on the infrequency of sales of the Defendants properties and the timing of the sale occurring as the instant case is approaching depositions and a final pre trial conference.

Please see, Exhibit 1.

In the past forty-eight (48) hours Overlook learned that on February 27, 2023, Naryan Muni LLC d/b/a as Steve's Quality Business appeared before the Salem Licensing Board applying for a transfer of the annual wine and malt package store of 36 Margin Street (Steve's Quality Market).

Please see, Exhibit 6 paragraph 8.

The same date, Jashiba LLC d/b/a Quality Liquors appeared before the Salem Licensing Board applying for a transfer of the annual all liquor package store license of 5 Gedney Street (Quality Liquors).

Please see, Exhibit 6 paragraph 7.

In both instances the minutes of the meeting report that counsel for the applicants reported that the applicant is purchasing the real estate and *the business of Steve's Quality Market and Quality Liquors. Id.*

The MA Secretary of State reports the Naryan Muni LLC was created on January 13, 2023, regarding 36 Margin Street, for the purposes of owning and operating Steve's Quality Market.

The Jashiba LLC was created on the same day regarding 5 Gedney Street for the purpose of owning and operating Quality Liquors. Both filings indicate that the intention of the LLC's is to continue the business of the current owners.

Please see Exhibit 7 and 8.

These actions have all the earmarks of a planned sudden and complete liquidation of assets to protect the assets from being used to satisfy any judgment against them in the instant case. The enormity of selling businesses that have been in the family for many decades, keeping deceased members of the family as deeded trustees for the properties, the use of aliases and the simultaneous dissolution of the major assets of the Defendants is not without reason or purpose.

Without the protection of an Attachment on these particular assets, the real estate and businesses known as 36-40 Margin Street, Salem, MA Steve's Quality Market, and 5 Gedney Street, Salem, MA, Quality Liquors, Overlook Acres, LLC will suffer irretrievable harm.

The stature and strength of the instant case fulfills the merits, and more, requisite for a Writ of Attachment on these properties to issue.

STATEMENT OF FACTS

Overlook filed the instant complaint on 1/26/2021. The complaint alleges that Overlook and the Trusts entered into a series of Purchase and Sale agreements (*hereinafter, P&S*) for a number of contiguous properties owned by the Trusts to include, 383 Highland Avenue, 379 Highland Avenue, 14 and 16 Barnes Road, 9, 12, 14, 15, 16, and 18 Cedar Road, all located in Salem, MA (*hereinafter, collectively referenced as the 'Premises'*). All parties understood prior to entering into the P&S's that Overlook's planned use of the Premises was the development of residential housing.

The pertinent portions of the P&S agreements for purposes of this action include, that the Premises, upon delivery by the Trusts, "not (be) in violation of said building and zoning laws or any other Applicable Laws", and that;

Seller warrants and represents as follows ... (a) seller is not aware of, and has not received any notice of any zoning, building, health, environmental or other Applicable laws relating to the Premises. (b) To the best of the Seller's knowledge, there is no insulation containing urea formaldehyde contained within the Premises *or Hazardous Matters as such term is defined in Paragraph 28, present in, on, or under, or about or adjacent to the Premises* (e) To the Seller's knowledge, the Premises ... and use thereof for all present uses under applicable zoning laws comply in all material respects with all Applicable laws ... (f) *To Seller's knowledge ... there are no articles or substances on the Premises which are toxic or hazardous.*

The applicable executed P & S agreements additionally state;

Seller hereby represents to the best of Seller's knowledge and belief, that no notice or communication has been received by Seller from any public authority that there exists with respect to the Premises any condition which violates any Applicable Law which has not heretofore been rectified or otherwise disclosed herein, nor is the Seller aware of any such violation.

Please see Exhibit 9 - Purchase and Sale Agreement, Paragraphs 9, 11, 25, and 35.

Subsequent to the parties entering into the P&S agreement, and pursuant to said agreement, Overlook made a one hundred and fifty thousand dollar (\$150,000) deposit to the Trusts.

In reliance on the Trusts representations and warranties contained within the P&S agreement, specifically that the Premises were free of any hazardous materials and/or contamination, Overlook next expended funds to conduct initial due diligence. This included securing a Licensed Site Professional (*hereinafter, 'LSP'*) to inspect the Premises in what is referenced as a 'Phase I', Environmental Site Assessment (*hereinafter, 'ESA'*).

A Phase I ESA consists of a visual inspection of the land and investigation into the history of the use of the land through a variety of methods to include research, historical photography of the area and interviews of people with knowledge of the area. The Phase I was conducted by the entity CHUBB, Inc. *Please see Exhibit 10 - Cover Sheet, Table of Contents for the 300 page Phase I report.*

Regarding the historical use of the land the LSP investigator interviewed the defendant Trustee Kathleen Ingemi, who lived on the property, is a realtor in the area for over thirty (30) years and was functioning as the Trusts realtor for these transactions. Trustee Kathleen Ingemi was aware that her answers were for the purpose of completing the Phase I investigation and the suitability of the Premises pursuant to the P&S agreements.

On behalf of the Trusts K. Ingemi reported living in the residential home on the Premises (one of the properties to be purchased by Overlook) for over sixty-five (65) years. On behalf of the Trusts, K. Ingemi reported to the LSP investigator that, in addition to having lived on the land for sixty-five (65) years, her family had owned and resided on the land for many years prior to that.

Please see Exhibit 11. Phase I ESA Interview of Trustee K. Ingemi, in addition to the prior noted averments re: the condition of the Premises contained within the P&S Agreement.

On behalf of the Trusts, K. Ingemi informed the LSP investigator that, with the exception of her home, the Premises consisted of vacant land. On behalf of the Trusts, K. Ingemi claimed that she had no knowledge of the land being used for any purpose throughout the sixty-five (65) years she had resided on the land. Id.

As a part of the Phase I ESA, on behalf of the Trusts, K. Ingemi stated that she had no knowledge of any contamination or hazardous material on, about or abutting the Premises. Id.

Based on the Trusts' representations reported in the Phase I ESA report Overlook proceeded to the next stage of the project. These efforts included but were not limited to, surveying the premises, conducting title exams, engaging various land and building engineers, engaging architects, securing plans and drawings for the development of the Premises infrastructure (roads, utilities, sewers etc), applying for necessary permits from various governmental organizations, dozens of meetings with professionals, government officials and attorneys to facilitate all of the above.

These expenses were added to the initial outlay for the Trusts properties along with expenses to secure properties contiguous to the Trusts, and costs associated with negotiating, drafting and executing these P&S Agreements for these properties.

As a result of these efforts the Plaintiff secured approval for permits for the development of two hundred and eighty (280) residential units on the Premises.⁵

Having achieved the necessary permitting, the Plaintiff took deep boring soil samples throughout the Premises required to determine the makeup of the soil with respect to the design and layout of the infrastructure as well as the residences.

In the process of boring and taking soil samples it was reported that the samples had visible and significant evidence of automobile shredding residue that exceeded a depth of thirty-five (35) feet below the surface. Subsequent further investigation and laboratory analysis of the samples revealed highly elevated levels of polychlorinated biphenyls (PCBs), volatile organic compounds (VOC's), total petroleum hydrocarbons (TPHs) and total metal and polycyclic aromatic hydrocarbons (PAHs).

The shredding residue was deemed to be consistent with "automobile fluff". "Fluff" includes fabric, rubber components (belts, hoses etc.), insulation, glass, plastics, and other non recyclables that are required to be removed before an automobile is crushed and sold. At one time it was common to bury fluff aka automobile shredding residue. By the 1970's it became known that as 'fluff' breaks down it severely contaminates the land and water systems. By the mid-1970's it was illegal to bury "fluff" and the use of land contaminated by it was limited, prohibiting contaminated land at the level of the Premises to be used for residential purposes.

⁵ This was to be a large-scale development of a previously unimproved 17 acres that required complete design and creation to include roads, utilities, sewers, landscaping and traffic designs and controls to be developed and permitted prior to any construction taking place.

These findings on the Premises were not consistent with the Trusts' representations made in both the P&S Agreement (*See, Exhibit 9*) or the ESA Interview regarding the historical use of the land and the condition of the Premises. (*See, Exhibit 11*).

As a result of these findings Overlook further engaged an LSP to conduct more testing to determine the extent and degree of the contamination. The second ESA by CHUBB (Phase II) noted that, "fill material was observed throughout the Site at depths of up to 10 ft bg" and that in light of the historic background of the land (no industrial activity from 1888 to the present) and the materials found within the soil, visible and tested, it was consistent only with the Premises having been used as a dumping/fill site for automobile shredding residue/fluff. This material included asphalt chinks, car parts and miscellaneous rubber parts.

Please see Exhibit 12.

Further laboratory testing by environmental engineers commissioned by Overlook, determined that hazardous contaminants from the breakdown of the fluff were throughout the Premises and represent a significant and imminent risk of harm to the public and environment. The levels found throughout the premises preclude the use of the Premises for any residential purposes in its current condition.

Overlook and the Trusts reached an agreement to extend the closing date so that Overlook could complete the investigation into the scope of the problem and examine the possibility of the remediation of the Premises by the parties so that it could support some version of the Overlook development. As a part of this agreement the Trusts received another fifty thousand dollar (\$50,000) down payment from Overlook.

Overlook encumbered further LSP and engineering expenses to make these determinations and explore the possibility and feasibility of remediation of the Premises. Through these expenditures it was determined that the cost of remediation would be between twelve million (\$12,000,000) and thirty-four million (\$34,000,000) dollars.

In November of 2020 the Trusts notified Overlook that they would not participate in any costs for remediation of the land. Unable to deliver the land consistent with the terms and conditions of the P&S agreements, the project could go no further.

Upon demand the Trusts refused to return the two hundred thousand dollar (\$200,000) of down payments in the possession of the Trusts. The deposit money has yet to be returned at the time of the filing of this motion.

Throughout this entire process, including the discoveries gleaned from Phase I and Phase II ESA's, the Trusts, represented by Stephen Ingemi and Kathleen Ingemi maintained that they had no knowledge of any use of the land to include any dumping or filling and that they had no prior knowledge regarding the contamination of the Premises or surrounding land.⁶

Overlook expended one million and eighty thousand dollars (\$1,080,000) from April 2019 through November 2020 in this failed project that it seeks to recover throughout the instant matter.

FURTHER INVESTIGATION

During consideration of filing a lawsuit for the failure of the Trusts to deliver the Premises in the condition agreed to in the P&S Agreements, and return of the deposit funds, further investigation was

⁶ Stephen Ingemi since, in answers to Interrogatories, stated that he knew that proliferized (fluff) materials were being delivered to property but at a location further back than the Premises.

conducted. It was revealed that the Trusts, as represented by Trustees Kathleen and Stephen Ingemi, were in fact well aware of the contamination of the land, the precise nature of the contamination and the resulting limitation on the use of the land dating as far back as the mid 1970's.

In fact it had become a primary focus of the Salem Conservation Commission and the Salem Board of Health, with major involvement and investigation by the Army Corp of Engineers, the Department of Environmental Quality Engineering (*hereinafter, 'DEQE'*) and numerous private environmental professionals - some hired by the Ingemi's father - investigating and testing the Premises.

Throughout the process described in the preceding paragraph the Ingemi family rebuffed the demands of the City of Salem that the matter be rectified. Representations were made by the Ingemi's attorney at the time that the contamination "would go away" with time and John Ingemi (father) stated that they would only spend limited funds to rectify the matter.

In 1979 Trustee/defendant Kathleen Ingemi and her father John Ingemi presented to the Conservation Commission that they would donate a portion of the land to the Commission in exchange for a promise from the DEQE to cease all litigation against them.

Please see Exhibit 13, p. 2.

Rather the matter stood unabated for another twenty years, perhaps in the belief that the contamination would in fact go away. During much of this time, Trustee Kathleen Ingemi, residing at the Premises, posted a "For Sale" for the Premises.

With this backdrop Overlook subsequently learned that between 2000-2004, Trustee Kahtleen Ingemi secured the services of Bruce Poole to test the land of the Trusts that comprised the Premises.

More specifically the report of Bruce Poole to the Defendants between 2000-2004 was that the land was contaminated, the contamination was the result of the land being used as a landfill for solid waste, particularly fluff, that a neighboring auto salvage business had utilized the Premises as a landfill and that the condition of the Premises precluded residential development. In sum, Trustee's Kathleen and Stephen Ingemi learned that the contamination that was there in 1979 when the land was offered to the Conservation Commission, it did not "go away".

The 2000-2004 investigation and report commissioned by Trustee Kathleen Ingemi was conducted by Bruce Poole, founder of SP Engineering and an Environmental Scientist with extensive experience in environmental investigations on the North Shore to include the vicinity of the Premises.

Mr. Poole was deposed by the parties. Mr. Poole stated that at some point between 2000-2004 he received a call from Kahtleen Ingemi regarding her desire to commission an environmental investigation of the Premises. Mr. Poole did a Preliminary Phase 1 investigation that included a visual inspection of the property, the digging and extraction of test surface and subsurface soil samples and a chemical analysis of the same.

Please see Exhibit 14, Deposition Testimony of Bruce Poole, p. 16.⁷

Mr. Poole testified that in the same 2000-2004 period he was doing work for A&H Salvage located adjacent to the Premises, regarding wetland permits and an ESA. Mr. Poole had previously done work for several other neighbors to the Premises. See, Exhibit 14 at 10-11. Mr. Poole testified that the owner of A&H Salvage, Carl Hutchinson (deceased), told him that the Premises had been used for the receipt of solid waste such as the fluff from auto salvage. Part of A&H's business was crushing cars necessitating removal and disposal of automobile shedding residue. *Id.* at 11-15.

⁷ The entire transcript of Mr. Poole's testimony has been provided in order to avoid any claim of incompleteness. What Plaintiff believe's is pertinent to the instant matter is cited to only several specific pages within the transcript.

Within approximately a month of being contacted by Trustee Kathleen Ingemi Mr. Poole testified he met and received a check from Trustee Kathleen Ingemi, conducted the site investigation and forwarded the samples to a lab for testing. *Id.* 21-26. Mr. Poole testified that within several weeks he received the lab report that the soil was contaminated, that it exceeded 'S1 levels', meaning that it was not fit for residential development and consistent with having been used as a landfill for fluff. *Id.* at 26-27.

Mr. Poole orally reported the findings to Trustee Kathleen Ingemi. No written report was provided as a part of the Preliminary Phase I or requested by Trustee Kathleen Ingemi. Mr. Poole also went to Steve's Quality Market on Margin Street in Salem, MA, and presented the same report to a group of 4-6 other Ingemi family members, to include Trustee Kathleen Ingemi and Trustee Stephen Ingemi.⁸ Mr. Poole was aware that 'Steve's Market' was owned by the Ingemi family and that numerous Ingemi family members worked there.⁹ Mr. Poole again informed those present that the Premises were contaminated and not permissible for residential development. *Id.* at 27-28.

Throughout the time of these events with Mr. Poole, Trustee Kathleen Ingemi was a resident within the Premises, a licensed real estate agent and owner/president of KB Real Estate, Inc., located at 381 Highland Avenue, Salem, MA. (Next door to the Premises).

In light of the aforementioned Conservation Commission, Mr. Poole's investigation and report was clearly part of an effort amongst the Defendants and extended family to see if there had been any change in the environmental status of the land, twenty (20) plus years after Trustee Kathleen Ingemi's appearance at the Conservation Commission, that would allow for the sale of the land as a lucrative 15 acre plot suitable for development to include residential.

As noted, over twenty (20) years prior, in the face of the all encompassing efforts of the Conservation Commission, Salem Board of Health, Army Corp of Engineers and DEQE, it had been presented by counsel for John Ingemi that the Premises would clean itself over time. Minutes of the Conservation Commission's meetings throughout this time, culminating in Trustee Kathleen Ingemi's appearance¹⁰ with her father, offering land for the cessation of litigation, were pervasive, as were the investigations on the Premises.

Please see, Exhibit 15 - meeting of officials at the Highland addresses of the Premises several weeks prior to Trustee Kathleen Ingemi's appearance before the Conservation Commission.

Throughout this time Trustee Kathleen Ingemi reports living on the Premises.

An exhaustive review of minutes of the Salem Conservation Commission from 1976-1981 profoundly demonstrate the intensity with which the issue of the Premises was probed both within the hearings and at the Premises.

Minutes of meetings of the City of Salem Conservation Commission (*hereinafter* 'ConCom') dating back to 1976 reveal that the exact condition discovered by Overlook post the signing of the aforementioned P&S Agreements and Overlook's reliance on the veracity of the Trusts averments.

⁸ Subsequently in answers to interrogatories, Stephen Ingemi stated that he was a meat cutter by profession.

⁹ Title searches and P&S Agreements entered into by Overlook for certain plots of the Premises confirm that a portion of the Premises were owned by various members of the Ingemi family.

¹⁰ At the time of the August 1979 appearance of Kathleen Ingemi at the ConCom meeting she was 28 years old.

In April of 1976 ConCom unanimously voted to begin a civil action against John Ingemi - the father of Trustees Stephen and Kathleen Ingemi and creator of the John M. Ingemi Trust under which most parcels of the Premises are held - regarding the Premises, noting that " .. Mr. Ingemi as to date has not fulfilled any of his responsibilities and ConCom feels that any further delays could seriously endanger the environment of the wetland and downstream marsh".

Please see, Exhibit 16 highlighted.

In August of 1976 the Con Com reported that they were reviewing a report of the dumping of polimerized materials on the Premises referencing it as the "Ingemi situation". It was further reported by the Con Com in September of 1976 that a representative of the U.S. Fish and Wildlife Service would be visiting the Ingemi land to examine samples of the material being dumped and "the current status of the cease and desist issued to Mr. Ingemi." Also in September of 1976 ConCom reported that the Army Corp of Engineers had inspected the Ingemi property (the Premises) and that they had determined that Ingemi's dumping does affect a tributary in the headwaters".

Please see, Exhibits 17-19 highlighted.

In October of 1976 the ConCom reported that the Army Corp of Engineers had sent a letter to John Ingemi, dated October 5, 1976, stating that Mr. Ingemi had not applied for a Federal Permit to fill the area "adjacent and continuous to the Forest River and that this appears to be violation of Federal Laws". Additionally ConCom agreed to directly notify Mr. Ingemi that, "his continued failure to comply with the Wetlands Protection Act and file a Notice of Intent will cause the City to take legal action against him" and would "contact the manufacturers of the material Mr. Ingemi is dumping to try to ascertain alternatives to the present dumping".

Please see, Exhibit 20 highlighted.

In November of 1976 Con Com reported that the Department of Environmental Quality and Engineering (hereinafter, 'DEQE') had begun an investigation into the Premises and had discussed with the Salem Board of Health filing a joint suit against Mr. Ingemi regarding the Premises. Late in this same month it is reported that John Ingemi filed with ConCom for a Wetlands Hearing.

The Wetlands hearing noted above was held on November 30, 1976 and ConCom reported that present for the hearing were John Ingemi and 'Stephen Ingemi'. Con Com noted that the application of Ingemi did not address the issue of the "existing pollution and its effect on Mr. Ingemi's land that the matter at hand regarded, the suitability of polimerized (sic) automobile material as cover in a sanitary landfill" and that the (Salem) Department of Health, "considers this material to be thoroughly (sic) unsuitable for cover materials in a sanitary landfill". The hearing was continued to March 1977 with the understanding that further testing would be done and that the parties would present suggestions for the proper disposal of the materials.

Please see, Exhibit 21.

In December of 1976 Con Com reported that; (a) the Army Corp of Engineers and a State Biologist would be viewing the property of Mr. Ingemi in the Forest River Area (the Premises) on December 7, 1976, (b) introduced a letter from the Army Corp of Engineers to John Serafini (counsel for John Ingemi) stating that the fill placed on Ingemi's property may be subject to the jurisdiction of the Army Corps of Engineers and requesting that the proposed project as well as a statement outlining any steps Mr. Ingemi intends to take to ensure that the fill material does not have an adverse effect on the water quality of the area, (c) Ingemi had notified the Salem Board of Appeal that the Salem Board of Health proposed action on the property.

Please see, Exhibit 22 highlighted.

1977 brought an increase in the ConCom's attention to the contamination of the Premises.

March 29, 1977 was the scheduled date for the continuance of the Con Com hearing regarding the use of "polerized" materials as landfill on the Premises in and around wetlands.

Instead, counsel for Ingemi, Attorney Serafini, requested to withdraw the present notice of intent regarding the land and additional lime to, " ... ascertain the severity of the pollution in the area and the procedures necessary for correction (sic) the pollution", citing the inability of Ingemi to have had the testing done that was agreed to November 30, 1976.

Please see, Exhibit 23.

In May of 1977 the ConCom received a report from Tom Rich of Geo-Chemical regarding sampling that had been done on the Ingemi land (the Premises) and an abutting property owned by Mr. Ragone. The report concluded that, "runoff from the Ingemi landfill is severely contributing to the pollution of the adjacent wetlands and contributing to the delinquency of the neighboring Ragone property wetlands and the tributary Forest River" and that the waters sampled from the Ingemi property, "do not meet Class C requirements necessary for a suitable habitat for wildlife and fish". It was noted that Ingemi was invited to attend the testing and declined. The hearing was continued to June 1977.

Please see, Exhibit 24 p. 's 2-3.

The hearing regarding the Ingemi property reconvened on June 28, 1977. It was noted that, *"All of the abutters are related to Mr. Ingemi and their permission has been obtained relevant to any future action by Mr. Ingemi". (Emphasis added).*

Attorney Serafini reported on behalf of Ingemi that, *"there is no disagreement that pollution exists in the area". (Emphasis added).* Attorney Serafini references testing done for Ingemi by Worthy Lab of Chelsea and Weston and Sampson. Attorney Serafini noted; (a) that the present Notice of Intent filed by Ingemi, "calls for *the maintenance of the existing fill along with the addition of new fill*"; (b) that Ingemi had ceased the dumping of any material on the property, (c) that Attorney Serafini was not aware of areas which would legally allow the dumping of 'prolerized' material, (d) that the 'prolerized' material previously dumped need only to be contained since they felt enough time had passed that the major negative results from the dumping had "filtered out" - to which the Board drew Attorney Searfini's attention to the Geo-Chemical report contradicting this - and (e) that the condition of the whole area is the result of filling and that the previous actions of all involved has led to the pollution of the area. *(Emphasis added).*

ConCom made note at the hearing that the "problem is substantially that of Mr. Ingem's, it would be noted in the course of actions arrived at." Mr. Ingemi responded, *"he will not be willing to spend much more money" relevant to the issue.*

Please see, Exhibit 25.

Through July and August of 1977 the issue of the Ingemi land was discussed in preparation for the continuation of the hearing scheduled for October 1977. The Board elected to deal with the Ingemi land individually as, "... the Ingemi situation has been discussed for 3 years without any action being taken to rectify the situation" and that "... Mr. Ingemi should be dealt with separately relevant to the pollution from his land, which is the most serious." ConCom advised Attorney Serafini that he and Ingemi were expected to present a plan of action to clean the contaminated land at the next hearing.

Please see, Exhibit 26 highlighted.

The continuation of the Ingemi hearing occurred in November 1977. Attorney for Ingemi indicated that their engineer, Mr. Lavoie of Essex Survey, feels that the contamination of the Ingemi land, "will go away". Mr. Lavoie offered an updated plan on behalf of Ingemi to extend the fill area on the Premises and fill it with clean gravel to provide a greater area of fill and greater filtration. Mr. Lavoie stated that the only other alternative would be, "„the removal of the 'prolerized' material which would be a very expensive project." Attorney Serafini, acknowledged that Ingemi had used the land for the dumping of 'prolerized' material and offered that Ingemi would be willing to try the option of additional fill at "considerable expense" to Ingemi.

Please see, Exhibit 27 highlighted.

At the end of the year, without progress on the matter, the Con Com board elected to notify Ingemi that he need submit a detailed Notice of Intent with a detailed restoration plan in response to their Order of Conditions and outlined two alternatives, one the removal of all 'polerized' material and the second a restoration plan. Id.

Throughout 1978 the matter of the contamination of the Premises continued to be a focus of ConCom, to include the Army Corp of Engineers notice to Ingemi, "that all of the unauthorized fill be removed or construct and (sic) impervious dyke around the base of the existing fill to prevent pollutants from entering the Wetlands." Ingemi's attorney responded that their engineer, Erland Townsent, was working with DEQE on the situation.

Please see, Exhibit 28 highlighted.

In January of 1979, Sterling Wall of the DEQE, reported lo ConCom that their actions regarding the Ingemi property will address both the illegal landfill and the violation of the Wetlands Protection Act, and that DEQE had been at the Premises again and taken further water samples and pictures of the site.

Please see, Exhibit 29 highlighted.

ConCom reports a meeting on May 11, 1979, involving Ingemi's counsel (Atty. Serafini), a representative of Essex Survey, two representatives of the Army Corp of Engineers, and two representatives of DEQE, "to discuss the 'prolerized' material off Highland Avenue on Ingemi's property."

Attorney Serafini is reported to propose covering the landfill with acceptable fill and install a clay dyke. Members of ConCom stated that the proposal would not be sufficient and would not stop the leeching of the 'prolerized' material and the pollution would get worse. It was decided that Essex Survey would do 20 more borings at the Premises to determine the best option and DEQE would continue to monitor water samples from the Premises.

Please see, Exhibit 30 highlighted.

On August 21, 1979, the ConCom met and the Ingemi land was on the agenda. ConCom reported that John Ingemi was present with Kathleen Ingemi, one of the defendants in the instant matter. *Specifically, ConCom's minutes report, "John Ingemi was present along with his daughter Kathleen to make a proposal to donate to the Salem Conservation Commission a portion of his land, namely lot 51, in exchange for a promise to have the litigations brought against him dropped by the DEQE." These litigations stem from the neglect to clean up the 'prolerized' materials and other rubble being dumped in that area. (Emphasis added).*

ConCom informed the Ingemi's that due to an appeal taken with the DEQE regarding Con Com's Order of Conditions, Con Com could not enter such an agreement. DEQE indicated that further borings and water testing would have to be done before such a decision could be made.

Please see, Exhibit 30 highlighted.

As of February 1981 ConCom continued to report that "Action on the Ingemi violation property" remained one of their top goals for the new year. Con Com noted in their minutes that;

INGEMI: Off Highland Avenue, Mr. Ingemi has dumped unacceptable fill which is breaking down and leeching (sic) into the river. The wetland is now dead and a serious pollution problem exists. Despite a Cease and Desist order issued some time ago, no action has been taken to remedy this problem."

Please see, Exhibit 31.

COMPLAINT

As a result of the foregoing and based on the evidence summarized, Overlook filed the instant lawsuit in the Essex County Superior Court on 1/26/2021. The complaint alleges Negligent Misrepresentation against the Trusts, Kathleen and Stephen Ingemi individually and KB Real Estate, Inc.

As noted, Kathleen Ingemi stood to profit from the sale of her home and the damaged property but was also to be compensated for her role as the real estate agent for the Trusts.

The suit also alleges the Intentional Misrepresentation of the Trusts, Stephen and Kathleen Ingemi individually and KG Real Estate, Inc., in light of the strong evidence that misrepresentations regarding the condition of the Premises were well known to the Defendants at all times during the Defendants interactions with Overlook as evidenced by the ConCom minutes and testimony of Bruce Poole.

The suit alleges Breach of Contract, Breach of the Covenant of Good Faith & Fair Dealing, Unjust Enrichment (regarding the deposit of \$200,000), conversion (regarding the \$200,000 deposit), unjust enrichment (regarding the permitting that Overlook successfully obtained on the Premises - increased land value), and Fraud alleged against the Trusts. There is an allegation of Fraud pursuant to KB Real Estate, and Stephen and Kathleen Ingemi as well.

Finally, there is an allegation of a violation of MGL Ch 93A alleged against both the Trusts and KB Estates, Inc. stemming from the deliberate and knowingly false statements as to the condition of the Premises.

Please see, Exhibit 32 - Complaint.

CONCLUSION

Based on the foregoing, supported by the thirty-two (32) exhibits, Affidavit of Peter Lutts, and Affidavit of Richard D.Grundy, the Plaintiff submits that they have amply provided the court with evidence, meeting and exceeding the standards required by MGL Ch 223 sec.42 and MCvRP 4.1 for the issuance of a Writ of Attachment, that the Plaintiff clearly has established a reasonable likelihood of recovery in the instant matter in the amount for which the attachment is requested and that without said attachment there is a more than substantial risk, based on the very recent actions of the Defendants, that the Plaintiff will be unable to recover their damages.

As such, the Plaintiff respectfully ask this Honorable Court to issue a Writ of Attachment in the amount of one million and eighty thousand dollars (\$1,080,000.00) attaching:

1. 36-40 Margin St., Salem, MA and the business within;

2. 5 Gedney Street, Salem, MA and the business within;
3. And the \$200,000 previously provided the Defendants as downpayments.

(Signed, Richard Grundy)

DEFENDANT'S PARTIAL OPPOSITION TO MOTION FOR WRIT OF ATTACHMENT (6/13/2023)

Now come the Defendants and hereby partially oppose the Plaintiffs Motion for the Issuance of a Writ of Attachment. In support of this opposition, the Defendants have attached an Affidavit of Kathleen Ingemi and an Affidavit of Stephen S. Ingemi.

A. Summary of Position

1. The Defendants do not oppose this Honorable Court issuing an attachment against the owners of property that is the subject matter of this litigation ("Premises") that being:
 - a. John M. Ingemi Trust (Kathleen Ingemi and Stephen Ingemi Trustee)
 - b. J.L. Realty Trust (Stephen Ingemi Trustee)
 - c. Barnes Road Trust (Kathleen Ingemi Trustee)
2. The Defendants do oppose the issuance of an attachment against the following three Defendants who do not own property that is the subject of this litigation:
 - a. Kathleen Ingemi Individually
 - b. K.B. Real Estate, Inc.
 - c. Stephen Ingemi Individually

In support thereof, the Defendants state the Plaintiff cannot establish a likelihood of success against these three Defendants.

B. The Plaintiff is Unlikely to Succeed Against Kathleen Ingemi or K.B. Real Estate, Inc.

The essence of the claims that the Plaintiff has brought against Kathleen Ingemi acting individually and as a real estate broker affiliated with K.B. Real Estate, Inc. is that Kathleen Ingemi negligently misrepresented information concerning her knowledge of the presence of hazardous material at the Premises. The Plaintiff has provided specific reference to the provisions in the Purchase and Sale Agreement that details the representations made by Kathleen Ingemi. By way of summary, Kathleen Ingemi represented:

- a. That she had not received any notice of any health or environmental matters relating to the Premises.
- b. That to the best of her knowledge there were no hazardous matters present in, on, under or about or adjacent to the Premises.

- c. That the Sellers had not received any notice of any violation of applicable law regarding the Premises.

Ms. Ingemi also told an LSP Investigator that she had no knowledge of any contamination or hazardous material on, about or abutting the Premises.

The statements made by Kathleen Ingemi are all true.

One element that the Plaintiff must prove to establish a negligent misrepresentation is that there was a false statement made by the Defendant and that the Defendant negligently failed to determine whether the statement was true or false. Danca v. Taunton Save Bank, 385 Mass 1, 9 429 NE.2d 1129, 1133-34 (1977)

In order to determine the likelihood of the Plaintiff proving that Kathleen Ingemi made a false statement and that she negligently failed to determine whether it was true or false, the Court must consider the evidence offered by both parties.

Here, the Plaintiffs evidence is in two general forms.

1. Mr. Poole

The Plaintiff alleges that during the years 2000 - 2004 Stanley Poole was contracted by Kathleen Ingemi to conduct environmental testing on the Premises. This allegation is baseless; Kathleen Ingemi has denied that she ever hired Mr. Poole or any environmental contractor to test the Premises. It appears that Stanley Poole tested property a few doors down from Ms. Ingemi that was owned by someone entirely unaffiliated with Ms. Ingemi.

Highland Avenue in Salem is a main street. If one were to stand on Highland Avenue and view the Premises, one would see Barnes Road to the right and Cedar Road to the left. Ms. Ingemi's house is at the right corner where Highland Avenue intersects with Barnes Road. The property at the far-left corner where Highland Avenue intersects with Cedar Road is not owned by the Ingemi family. During the general time frame of 2000 to 2004 that property was owned by an individual who operated a nursery/garden center. We believe the individual is named Mr. Lee.

Mr. Poole's testimony is outlined in the Affidavit of Kathleen Ingemi. Mr. Poole testified he had not thought about the Premises for 20 years' until he saw an article in the Salem News that concerned this litigation. He did not have any notes or documents to refresh his memory, but as he thought about it he thought that he had tested the Ingemi property. Mr. Poole acknowledged that he was simply going off memory. What Mr. Poole did remember was that he tested a parcel of land at the corner of Highland Ave and Cedar Road which is the front left corner of the land located between two side streets, with Cedar Road on the left and Barnes Street on the right. He was hired to test by a woman who lived in a green cape that had a fig tree in the backyard. Kathleen Ingemi did not live on the left corner. She lived on the right corner. Kathleen Ingemi did not live in a green cape style house. She lived in a brick ranch. Kathleen Ingemi has never had a fig tree in her backyard. Remarkably, the building at the left corner, where Mr. Poole tested was a nursery/garden center property. That property had a green cape on it and a fig tree in the backyard. When challenged during cross examination at his deposition, Mr. Poole admitted, "I may have been mistaken". He is mistaken.

2. Minutes of Meetings of City of Salem Conservation Commission held during the late 1970's

The second form of proof that the Plaintiffs use to support their argument that Kathleen Ingemi had knowledge of contamination are Minutes of Meetings the City of Salem Conservation Commission held during the late 1970' s and early 1980's. During this period of time, Kathleen Ingemi was in her late 20's. During this period of time, Kathleen Ingemi was not involved in the management or operation of the Premises. There is only one reference to Kathleen Ingemi being present at a Conservation Committee meeting on August 21, 1979. Kathleen Ingemi does not recall accompanying her father to any meeting of the City of Salem Conservation Commission. If Kathleen Ingemi had accompanied her father to a City of Salem Conservation Commission meeting, she would not have had any meaningful role; Further, if Kathleen Ingemi was simply in attendance at a meeting in 1979, it is credible for her to maintain that she did not recall attending that meeting some 30 years later when she entered into a Purchase and Sale Agreement.

The only information that Kathleen Ingemi had about material at the Premises was that over the years that her grandfather had placed signs that allowed others to leave solid fill at the Premises. Kathleen Ingemi had no knowledge that any fill that was left by others was hazardous.

C. The Plaintiff is Unlikely to Succeed Against Stephen Ingemi

At the outset, the Court should understand that there are many Stephen Ingemi's within the Ingemi Family. The Defendant is Stephen S. Ingemi. The Defendant's uncle is Stephen C. Ingemi.

Stephen Ingemi did not speak with the LSP investigator. His representations are limited to the Purchase and Sale Agreement.

The evidence the Plaintiff has produced against Stephen S. Ingemi to prove that he had knowledge of hazardous waste is categorized in the same manner as the evidence presented against Kathleen Ingemi. First, there is the flawed testimony of Stanley Poole that is explained above. Second, there is reference to Stephen Ingemi's father and uncle attending Conservation Commission meetings in the late 1970's, but Stephen Ingemi denies that he attended any such meeting or had any knowledge of the substance of those meetings. The minute meetings do not reflect Stephen S. Ingemi ever being present.

Stephen S. Ingemi has filed an Affidavit that outlines his knowledge of material that was used as fill at the Premises during the 1960's and 1970's. Briefly, at some point during the 1970's Stephen himself read an article in the Boston Globe that advertised prolerized material to be good clean fill. Stephen's father was in the process of trying to fill the Premises so as to change the grade. Stephen brought the advertisement to the attention of his father. Stephen's father consulted with Augustus Twoomey who was affiliated with the City of Salem Board of Health. Augustus Twoomey confirmed that prolerized material was good clean fill and approved its use at the Premises.

Further, Stephen S. Ingemi was aware that during the 1960's the City of Salem dredged the North River and placed some of the dredging on a small area of the Premises. Stephen S. Ingemi knew that the City of Salem Board of Health was involved in the process and concluded that the fill was clean otherwise the City of Salem Board of Health would not have approved placing the dredged material at the Premises.

While Stephen S. Ingemi knew of material having been used as fill at the Premises, he had every reason to believe that the fill was clean and had no knowledge that the fill was hazardous.

D. It Would be Inappropriate to Issue an Attachment Against Property not Owned by any of the Defendants

As per the Affidavits of Kathleen Ingemi and Stephen Ingemi, they have been involved in the operation of a market and liquor store for decades. They are not the sole individuals involved in the operation of the market and liquor store. They do not control the operation of the market and liquor store.

As to the market, Stephen is President and both Stephen and Kathleen are on the . Board of Directors, but they do not have a majority vote. The land on which the market operates is held in a Trust.. Kathleen Ingemi and Stephen Ingemi are trustees of the trust but are not sole beneficiaries of the trust. There is another part of the Ingemi family that is involved in the business, that being the children of the deceased, Stephen C. Ingemi, who is a: brother of Kathleen and Stephen's father, John Ingemi. The two branches of the Ingemi family do not get along.

Kathleen Ingemi is President of the liquor store. She does not control the Board of the liquor store nor are she and Stephen majority stock shareholders. Kathleen Ingemi and Stephen S. Ingemi are trustees of The Gedney Trust which is the land in which the liquor store operates. Kathleen Ingemi and Stephen Ingemi are not majority beneficiaries. Markham v. Fay, 74 F.3d 1347 (1996)

Inasmuch as the ownership of real estate affiliated with the market and the liquor store are held in trust that is not a party to this litigation, it would not be appropriate to attach property held by the trust. An attachment is designed to encumber property owned by the Defendants. Real estate held in The Margin Street Trust or The Gedney Street Trust are not owned by any of the named Defendants. The legal title to ownership is the Trust, not the beneficiaries. Markham v. Fay, 74 F.3d 1347 (1996)

CONCLUSION

This Honorable Court should not issue real estate attachments held against property held by Kathleen Ingemi, Stephen S. Ingemi or K.B. Real Estate, Inc. on grounds that the Plaintiff does not have a likelihood of succeeding against these three Defendants.

(Signed, Thomas Delaney, 6/13/2023, on behalf of Kathleen and Stephen S Ingemi)

KATHLEEN INGEMI AFFIDAVIT (6/13/2023)

I, Kathleen Ingemi, on oath do depose and state:

1. I reside at 381 Highland Avenue, Salem, MA
2. I am 71 years old. I am President of Quality Liquors, Inc. which owns and . operates a liquor store. I have also been a licensed real estate agent since the 1980's.
3. On or about April 12, 2019, two Purchase and Sale Agreements were entered into that concerned the sale of vacant land at the following addresses:

383 Highland Avenue
Salem, MA 01970

379 Highland Avenue
Salem, MA 01970

14 Barnes Road
Salem, MA 01970

16 Barnes Road
Salem, MA 01970

9, 12, 19, 15, 16 & 18 Cedar Road
Salem, MA 01970

I will hereafter refer to the property that is the subject of the Purchase and Sale Agreements as the "Premises".

I was not involved in this transaction as an individual. Rather; I was involved as a fiduciary. The sellers were as follows:

- a. John M. Ingemi Realty Trust (Kathleen Ingemi and Stephen S. Ingemi Trustees)
 - b. J.L. Realty Trust (Stephen S. Ingemi Trustee)
 - c. Barnes Road Trust {Kathleen Ingemi and Stephen S. Ingemi Trustees)
4. The lots of land that constitute the Premises were located adjacent to one another and essentially formed a rectangle bordered by a main road, Highland Avenue, and two side roads, Barnes Road and Cedar Road. The sellers did not own all of the land within the rectangle as several lots were owned by others. I have attached as Exhibit A a map that shows the parcels of land that form the Premises shaded in yellow.
 5. I understand that the essence of the civil case that is now pending against me, both as an individual and a trustee, is an allegation that I knew or had reason to know that the Premises contained hazardous materials.
 6. I did not know that the Premises contained hazardous materials.
 7. I will respond to the evidence that the Plaintiff has produced in an effort to support its allegation that I did have knowledge that the property contained hazardous material. The Plaintiff's evidence can be generally categorized as follows:
 - a. Evidence provided by Stanley Poole
 - b. Minutes from City of Salem Conservation Commission meetings held in the late 1970s.
 8. Mr. Poole's memory is clearly mistaken. Mr. Poole was never hired by me nor to the best of my knowledge anyone affiliated with the ownership of the Premises to conduct environmental testing at the Premises. Rather, it appears that Mr. Poole has mistaken work that he performed for a neighbor for work that he now thinks that he performed for me. There is a volume of evidence that establishes that Mr. Poole's memory is mistaken as follows:

- a. Mr. Poole, after many inconsistencies were brought to his attention at his deposition, admitted that he may be mistaken in his memory that he had interacted with me about testing the Premises. At Page 66, Line 6 (trial exhibit B) the following exchange occurred:

Question: Right, but you can't sit here under oath today and tell me that you're sure you spoke to Kathleen Ingemi as opposed to some other woman. Fair?

Mr. Hogan: Objection

Answer: I believe I talked to Kathleen Ingemi

Question: And if I told you that Kathleen Ingemi maintains that she never talked to you does that cause you any concern?

Mr. Hogan: Objection

Answer: I may have been mistaken

- b. Mr. Poole had not thought about the testing that he now recalls doing in 2000 - 2004 for approximately 20 years until he read about this litigation in the Salem News. He thought back 20 years and without access to any notes, thought he tested property that is the subject of this litigation. (trial exhibit B: Page 76 and 77)
- c. Mr. Poole does not have a single document to review to assist with his memory. (trial exhibit B - Page 76 to 77)
- d. Mr. Poole recalls meeting a woman about the supposed testing that I ordered at my house that he now thinks was me. He described the house that he met me at as follows:
- i. A Cape Cod style house
 - ii. The house was green in color.
 - iii. The house had a fig tree in the backyard.
 - iv. He met me at a house at the left front corner of the property near Cedar Road. (trial exhibit B - Page 20, Line 18 to Page 21, Line 1; Exhibit C - Page 60, Line 10 to Page 62, Line 21)
- e. Mr. Poole did not meet me at my house because I live in a ranch-style house, not a cape. Mr. Poole did not meet me at my house because I live in a brick house, not a house that is green in color. Mr. Poole did not meet me at my house because my house has never had a fig tree. Mr. Poole did not meet me at my house because my house is located at the front right corner of the rectangular piece of land, not the left front corner, if one views the land from Highland Avenue.
9. It is apparent to me that Mr. Poole did testing for a neighbor. The property to the left front corner of the rectangular piece of land is owned by an individual unrelated to me. I

believe in the 1970's the property was owned by Mr. Lee who operated a nursery/garden center. The Lee property is consistent with Mr. Poole's memory as follows:

- a. The Lee property is a cape style house.
 - b. The Lee property is green in color.
 - c. The Lee property is located at the front left corner of the rectangular parcel of land near Cedar Road.
 - d. The Lee property has had a fig tree in the backyard for years.
10. I never met with Bruce Poole and never asked him to test any of the properties that are the subject of the Purchase and Sale.
 11. My father, John Ingemi, died in 2002. My mother, Letteria Ingemi, died in 2015. I had very limited involvement with the Premises before my mother died in 2015. I have served as Trustee, but given that I was dealing with vacant land, my involvement over the years was fairly minor. I collected rent from two tree cutting companies that parked vehicles on the Subject Property. I was never involved with any issue concerning hazardous material.
 12. I have reviewed the Minutes of Meetings of the City of Salem Conservation Commission held during the late 1970's and early 1980's and offer the following:
 - a. I do not recall accompanying my father to a Conservation Commission meeting on August 21, 1979. At the time, I was 28 years old and had no involvement with the Premises.
 13. Over the years, I was aware that my grandfather had placed a sign that notified the public that they could leave solid fill on two of the several parcels of land. I was not aware that any fill was hazardous.
 14. Steve's Quality Market owns and operates a grocery store on land owned by The Margin Street Trust. I am a member of the Board of Directors of Steve's Quality Liquors. I am not the sole shareholder as has been alleged.
 15. Steve's Quality Market operates its business on property owned by The Margin Street Trust. I am the trustees of The Margin Street Trust, but I am not the sole beneficiary.
 16. I am the President of Quality Liquors. I do not hold all of the corporate stock as has been alleged.
 17. Quality Liquors operates its business on property owned by The Gedney Street Trust. My brother, Stephen S. Ingemi and I, are trustees of The Gedney Street Trust, but we are not the sole beneficiaries.
 18. I do not control the sale of Steve's Quality Market or Quality Liquors. The Boards of Directors make decisions. The Boards of Directors has been deeply divided for years as members of the Boards of Directors are not all children of the same parents and do not get along.
 19. Steve's Quality Market and Quality Liquors have been preparing for a sale of the businesses and the land upon which these businesses have operated for in excess of one year. Most of the key players are of a similar age to me, for that reason, it was decided that it was time to sell. The sale has nothing to do with the litigation that is ongoing.
 20. The agreements that have been reached relative to the sale were reached with an unrelated third party and constitute an arm's length transaction. The closing is tentatively scheduled to occur during the week of June 26, 2023.

(Signed, Kathleen Ingemi, June 13, 2023)

JOINT FINAL PRETRIAL CONFERENCE MEMORANDUM (6/19/2023)

NOW COME the parties, Plaintiff, OVERLOOK ACRES, LLC (*hereinafter*, 'Overlook') and Defendants, KATHLEEN INGEMI & STEPHEN INGEMI, Trustees of the John M. Ingemi Realty Trust, & STEPHEN INGEMI, Trustee of the J.L. Realty Trust, & KATHLEEN INGEMI, Trustee of the Barnes Road Trust, & KB REAL ESTATE, INC., & KATHLEEN INGEMI, Individually, & STEPHEN INGEMI, Individually (*hereinafter*, collectively, 'the INGEMI's'), in the above entitled civil action, and, through counsel, submit this Joint Final Pretrial Conference Memorandum to this Honorable Court.

1. AGREED TO FACTS IN A FORM SUITABLE FOR SUBMISSION TO A JURY AS AN EXHIBIT AT TRIAL

On April 12, 2019, the parties entered into two Purchase and Sale Agreements' (*hereinafter*, P&S) for OVERLOOK to purchase from the INGEMI's, 17 acres of largely undeveloped land in Salem, MA, (*hereinafter*, 'the Premises') for the purposes of residential development, at a total cost of five million, three hundred thousand dollars (\$5,300,000).

2. STATEMENT OF EXPECTED EVIDENCE:

A) PLAINTIFF: It is the expectation of the Plaintiff that it will present to the jury that the Defendants were fully aware of the contaminated condition of the land that was the subject of the P&S, the 'Premises', and that the condition precluded residential, if not all development of the Premises. Furthermore the Plaintiff will prove that this knowledge of the Defendants data back to the 1970's.

Evidence will be presented that the Defendants (brother and sister) grew up in a house located on a portion of the Premises and lived in the home during the period of time that the land was used for landfill. In the case of defendant Kathleen Ingemi, she has lived there her entire life.

Evidence would be offered that from 1976-1981 the Salem Conservation Commission was aware of the contamination of the land having been used as a landfill for the disposal of car parts and that as these parts broke down they released contaminants that entered the water systems of the Premises.

Furthermore the evidence would be that the father of the defendants, along with counsel, attended many Conservation Commission meetings in which they expressly acknowledged the use of fill, the resulting contamination and the need to remediate that problem. Evidence would be presented that in 1979 Kathleen Ingemi, then 28 and a real estate agent, and her father presented to the Conservation Commission that they would donate land to the City of Salem in exchange for the cessation of all litigation regarding the contamination of the Premises.

During this same period of time the Department of Environment and Quality Engineering, the Army Corp of Engineers and at a minimum three (3) private sector Environmental Engineers entered, investigated and tested the Premises, all finding chemical contamination.

Additionally, evidence will be presented that between 2000-2004 defendant K. Ingemi secured the services of an environmental investigator who investigated the condition of the Premises. Evidence will be offered through the investigator, Bruce Poole, that his investigation included soil samples that

were laboratory tested revealing the same chemical contamination found by numerous environmental engineers twenty (20) years before and OVERLOOK twenty years (20) after Mr. Poole's investigation. Mr. Poole reported providing this information to defendant K. Ingemi and subsequently to a group of Ingemi family members, to include defendants Kathleen and Stephen, at Steve's Quality Market, where Stephen Ingemi is the President and Kathleen Ingemi a director.

Further 'evidence will be that defendant K. Ingemi told the Phase I environmental investigator that she had no knowledge of chemicals on, in or abutting the Premises, or any environmental actions lodged against the Premises or abutters, or any environmental clean ups of the Premises in the past 65 years.

B. DEFENDANTS

The Defendants deny that they had any knowledge that the vacant land that was the subject of the Purchase and Sale Agreements contained hazardous material when they represented having no knowledge of hazardous material.

Stephen S. Ingemi has stated, under oath, that he recalls that in the early 1970's his father John Ingemi and his uncle, Stephen C. Ingemi controlled the property. ("Prior Generation"). Stephen S. Ingemi knew that the Prior Generation had decided to use clean fill to change the grade of the land. The Prior Generation used prolerized material as fill. It was not illegal to use prolerized material in the 1970's as fill as then prolerized material was considered to be clean fill.

Kathleen Ingemi also stated, under oath, that she did not have knowledge of hazardous material being at the Property when she made the representation that she had no such knowledge.

Any representations made by Stephen S. Ingemi or Kathleen Ingemi were truthful.

The Plaintiffs have made two arguments in support of their allegation that Stephen S. Ingemi and Kathleen Ingemi knew of the presence of hazardous material at the Property when they signed the Purchase and Sale Agreement. First, the Plaintiff points to Minutes of Meetings of the City of Salem Conservation Committee that were held in the late 1970's, more than 40 years ago. The Plaintiff argues that Stephen and Kathleen must have known that the Prior Generation was involved in discussions with the City of Salem Conservation Commission that concerned whether the Prior Generation having used prolerized material as fill was causing a contamination of ground water. Stephen S. Ingemi never attended one meeting of the City of Salem Conservation Commission. The Prior Generation never shared with him any information about their business with the City of Salem Conservation Commission. Kathleen Ingemi does not recall ever attending any of the City of Salem Conservation' Commission meetings. The Prior Generation Prior Generation did not share with Kathleen the substance of what was discussed at the City of Salem Conservation. Committee meetings. There is one reference in the city records to Kathleen Ingemi having attended a meeting of the City of Salem Conservation Commission in the late 1970s. Kathleen Ingemi notes that the Prior Generation was in charge of the land at this time and that she played no meaningful role in the Prior Generation's involvement with the City of Salem as to this issue. She does not ever recall attending a meeting of the City of Salem Conversation Commission nor becoming involved in any concerns raised by the City of Salem relative to contamination of the land.

The Plaintiffs second form of evidence in support of its allegation that Stephen S. Ingemi and Kathleen Ingemi knew that the land was contaminated comes from the testimony of engineer Stanley Poole who alleges that he tested the Property in the 2004 to 2006 Timeframe. It is apparent that Mr. Poole's memory is mistaken. Kathleen Ingemi never hired Mr. Poole to conduct environmental testing at

the property. Rather, it appears that Mr. Poole has mistaken work that he performed for a neighbor. Mr. Poole now mistakenly believes that he performed for Kathleen Ingemi. Briefly, Mr. Poole had not thought about the testing that he now recalls doing in approximately 2000- 2004 for approximately 20 years until he read about this litigation in the Salem News. When he thought back 20 years, and without access to any notes, it was his memory that he tested the Ingemi Property. M. Poole does not have a single document that concerns the alleged testing that he believes he did for Kathleen Ingemi. At deposition, Mr. Poole was able to describe who hired him. He testified that he was hired by a woman with salt and pepper hair who he met at a Cape Cod style house. He stated that the house was green in color and recalled that the house had a fig tree in the backyard. He recalled that the house was near the corner of Cedar Street which is to the left corner of the property as one viewed the property from Highland Avenue. After questioning, Mr. Poole conceded that his memory may be mistaken. Kathleen Ingemi does not have salt and pepper hair. She does not live in a Cape Cod style home, but rather lives in a ranch. The ranch is not green in color, but rather it is brick. Kathleen Ingemi's house has never had a fig tree in the backyard. Kathleen Ingemi's house is not positioned on the left front corner of the property near Cedar Road, but rather is positioned at the right front corner of the property near Barnes Road. It appears that Mr. Poole did testing in the 2000 to 2004 timeframe for the neighbor who did live in a green Cape Cod style home at the corner of Highland Avenue and Cedar. The neighbor lived in a Cape Cod style home that was green in color and had a fig tree in the backyard.

In summary, the Defendants maintain that they did not know the presence of hazardous waste at the Property and the Plaintiff does not have reliable evidence to prove that they did.

3. AGREED DESCRIPTION OF THE CASE

OVERLOOK ACRES, Inc. has filed this civil lawsuit seeking compensation for monetary harm that it suffered. Briefly, OVERLOOK entered into Purchase and Sale Agreements to acquire a 17-acre parcel of land in Salem, MA. OVERLOOK intended to construct a large residential apartment complex on the land. After entering into these Purchase and Sale Agreements, OVERLOOK began to incur costs related to its construction project, including costs for engineers and attorneys who were needed to successfully pursue the project. OVERLOOK also hired an environmental engineer to test the land for the presence of hazardous material. The testing revealed the presence of hazardous material and as a result OVERLOOK discontinued pursuit of the project. OVERLOOK maintains that the Defendants should reimburse it for the costs that it incurred related to the PROJECT. OVERLOOK alleges that the Defendants are responsible because they knew of the presence of hazardous material at the time the Purchase and Sale Agreements were signed and yet represented just the opposite.

The Defendants deny OVERLOOK's allegations. The Defendants maintain that they truthfully represented that they were not aware of the presence of hazardous material at the Property at the time the Purchase and Sale Agreements were signed.

4. STATEMENT OF SIGNIFICANT LEGAL ISSUES

The parties do not anticipate any significant legal issues.

5. WITNESS LISTS:

a. PLAINTIFF OVERLOOKS' WITNESS LIST

1. Keeper of the Records City of Salem, Conservation Commission
2. Keeper of the Records City of Salem, Board of Health

3. Keeper of the Records, former office of the Department of Environment and Quality Engineering.
4. Keeper of Records Department of Environmental Protection.
5. Keeper of the Records Army Corp Engineering.
6. Keeper of Records Sampson & Watson.
7. Keeper of Records Lavoie Surveying.
8. Keeper of Records CHUBB, Inc.
9. Bruno Aguiar, Overlook Acres, LLC - Beverly MA
10. Pavel Espinol, Overlook Acres, LLC - Beverly MA
11. Peter Lutts, Overlook Acres, LLC - Beverly MA
12. Paul Herrick, Overlook Acres, LLC - Beverly MA
13. Chris Koeplin, Overlook Acres, LLC - Beverly MA
14. Bruce Poole, Swampscott, MA
15. Kylie Flynn, CHUBB, INC.
16. Brien, CHUBB, Inc.
17. Scott Cameron, Morin-Cameron
18. Kathleen Ingemi
19. Stephen Ingemi
20. Frank Ricciardi, Sampson & Watson
21. Scott Grover, Salem, MA

b. PLAINTIFF OVERLOOKS' WITNESS LIST

1. Kathleen Ingemi, Salem, MA
2. Stephen S. Ingemi, Salem, MA
3. Stanley Poole, Salem, MA
4. Stephen Lovely, Salem, MA
5. John Keilty, Peabody, MA
6. Keeper of the Records City of Salem, Conservation Commission
7. Keeper of the Records City of Salem, Board of Health
8. Keeper of the Records, former office of the Department of Environment and Quality Engineering.
9. keeper of Records Department of Environmental Protection.
10. Keeper of the Records Army Corp Engineering.
11. Keeper of Records Sampson & Watson.
12. Keeper of Records Lavoie Surveying.
13. Keeper of Records CHUBB, Inc.
14. Bruno Aguiar, Overlook Acres, LLC - Beverly MA
15. Pavel Espinol, Overlook Acres, LLC - Beverly MA
16. Peter Lutts, Overlook Acres, LLC - Beverly MA
17. Paul Herrick, Overlook Acres, LLC - Beverly MA
18. Chris Koeplin, Overlook Acres, LLC - Beverly MA
19. Bruce Poole, Swampscott, MA
20. Kylie Flynn, CHUBB, INC.

21. K. Brien, CHUBB, Inc.
22. Scott Cameron, Morin-Cameron,
23. Frank Ricciardi, Sampson & Watson
24. Scott Grover, Salem, MA

The parties reserve the right to to call additional witnesses and rebuttal witnesses.

6. EXPERT WITNESS LISTS:

The parties have not yet disclosed expert witnesses and seek to coordinate a time for disclosure of expert witnesses with the Court at the Pre-Trial Conference.

7. ESTIMATED LENGTH OF TRIAL:

Three to four (3-4) full days.

8. STIPULATED DOCUMENTS:

Not completed at this time. To be compiled in the Agreed Exhibit Notebook.

9. NON-STIPULATED DOCUMENTS:

Not complete at this time. To be compiled in the Contested Exhibit Notebook.

10. SPECIAL OR LIQUATED DAMAGES:

N/A.

11. CERTIFICATION OF COUNSEL:

Counsel hereby certify they have apprised their respective clients of alternate dispute resolution(s) available to them.

12. MANNER OT TRIAL:

The matter should be scheduled for a JURY trial until when/if the parties request a bench trial.

13. MEDIATION:

The plaintiff and defendant have discussed and agreed that they would be amenable to participate in a mediation process.

14. MOTIONS IN LIMINE:

The parties will file motions in limine prior to trial. Parties are not prepared to at this time.

15. SUPERIOR COURT RULE 20 AGREEMENTS:

There are no agreements regarding Superior Court Rule 20(2)(h-j),.

(Signed, Richard Grundy for the plaintiff, Thomas Delaney for the defendants, 6/19/2023

PROLERNIZED NEW ENGLAND RFI RESPONSE (7/7/2023)

PROLERIZED NEW ENGLAND'S RESPONSE TO THE MAY 30, 2023 REQUEST FOR INFORMATION ISSUED BY THE MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION

Prolerized New England Company, LLC ("PNE") hereby responds to the Request for Information ("RFI") dated May 30, 2013 by the Department of Environmental Protection ("MassDEP") concerning 14 and 16 Barnes Road; 355, 373, 379 and 383 Highland Avenue; and 2, 3, 5, 6, 9, 10, 12, 14, 15, 16 and 18 Cedar Road, Salem, Massachusetts (collectively, the "Salem Properties").

The focus of the RFI relates to events that are roughly five decades old. It is not possible for PNE to retrieve or reconstruct the requested information. Many of the individuals who may have had personal knowledge of the subject matter of the Requests are deceased, unknown or otherwise unavailable to PNE. PNE has a document retention policy under which it maintains most documents for a period of seven years. Thus, it has no documents, such as invoices or truck slips, from the 1970s when, according to the RFI, the alleged dumping took place. The responses to the requests are based on the current best knowledge of PNE and its employees, and diligent searches for records by PNE and its legal counsel.

In response to Request No. 7, PNE is providing copies of certain materials John F. Shea, Esq., counsel for PNE, received from John Miano at MassDEP/NERO in June 2013, in response to a Public Record Request for documents in the Department's possession regarding automobile shredder residual disposal. The MassDEP documents are attached hereto as Exhibit A. PNE is also providing certain documents obtained from a public records review at the Middleton Board of Health in 2013 at the direction of PNE's legal counsel. The documents from the Middleton Board of Health are attached hereto as Exhibit B.

PNE responds to each individual request as follows:

1. Prolerized New England Company, LLC ("PNE") was formerly a New York General Partnership organized on October 3, 1965 which was converted to a Delaware limited liability company in March 2006. PNE is an indirect wholly-owned subsidiary of Schnitzer Steel Industries, Inc. ("SSI"), an Oregon corporation.
2. PNE does not have any knowledge of anyone arranging for the transport of shredded automotive parts, automotive "fluff", Prolerized waste material, solid waste, used automotive parts, fill materials, waste oil or hazardous materials to or in the Salem Properties.
3. PNE does not have any knowledge of anyone arranging for the disposal of shredded automotive parts, automotive "fluff", Prolerized waste material, solid waste, used automotive parts, fill materials, waste oil or hazardous materials to or in the Salem Properties.
4. PNE does not have any knowledge of anyone arranging for the treatment of shredded automotive parts, automotive "fluff", Prolerized waste material, solid waste, used automotive parts, fill materials, waste oil or hazardous materials to or in the Salem Properties.
5. PNE did not answer "yes" to Requests 2, 3, or 4.
6. PNE does not have any information regarding dealings, communications or documents with any member(s) of the current or former property owners of the Salem Properties.

7. PNE objects to Request #7 to the extent it assumes that waste materials from PNE were transported to the Salem Properties. As noted above, pursuant to public record requests to MassDEP and the Middleton Board of Health, counsel for PNE received copies of certain public records that concern the presence of waste materials at the Salem Properties. Other than these documents PNE obtained from the public records maintained by MassDEP and the Middleton Board of Health, which PNE is producing as part of its Response and attached hereto as Exhibit A and B, respectively, PNE does not have any information, communications or documents concerning the presence of waste materials at the Salem Properties its possession, custody, or control.
8. PNE is not aware of any delivery, transport, hauling, disposal of or other conveyance of any materials to the Salem Properties. PNE is not aware of any contracting with anyone to deliver, transport, haul, dispose of or otherwise convey any materials to the Salem Properties.
9. PNE is not in possession of any information, documents or communications regarding the delivery of shredded automotive waste, automotive fluff, Prolerized waste materials, solid waste, used automotive parts, fill materials, waste oil or hazardous materials, to any location in Salem, Massachusetts.
10. PNE is not aware of any communications with the City of Salem, the Salem Board of Health, the City of Salem Conservation Commission or any other City of Salem Department or Officials regarding the Salem Properties.
11. Except as specified in the Response to Request #7 above regarding certain public records obtained by PNE's counsel, PNE does not have any documents or records concerning the information requested by MassDEP in this RFI. As noted above, PNE has a document retention policy pursuant to which it maintains most documents for a period of seven years. It has no documents, such as invoices or truck slips from the 1970s.

(Signed, Michael Henderson, operations president, Prolerized New England Company LLC)

STEPHEN INGEMI RFI RESPONSE (7/29/2023)

July 29, 2023

Erik.Johnson@mass.gov

Response to Request for Information/MassDEP

From: J.L. Realty Trust, Stephen S. Ingemi Trustee

RE: Salem – 12, 14, 16 Cedar Road

Dear MassDEP Bureau of Waste Site Cleanup, c/o Stephen M. Johnson:

Thank you for your recent Request for Information addressed to the J.L. Realty Trust (the "Trust" or the "J.L. Realty Trust"). Thank you also for the telephone discussions upon receipt including regarding the Trust seeking to hire a Licensed Site Professional to obtain contemporary information regarding environmental conditions. The LSP has been hired. Until that LSP (Blackstone Environmental Services, Michael Bricher) has been able to progress with his work, this Response is based on

knowledge available at this time and will be supplemented as ongoing. The Trustee is 79 years old and hard of hearing and is doing his best to recall or learn what is asked of him. This Response to the Request for Information is being sent electronically, per the direction/request of MassDEP counsel.

1. Trustees: The current Trustee is said to be Stephen S. Ingemi, although the Trustee has no recollection of signing as Trustee. The former Trustee was believed to be his father, uncle, and mother. The Trust was established in 1995. See attached, to be supplemented.
2. When Properties Acquired by Trusts and Deeds: See attached, to be supplemented. According to the Trustee's memory, the Properties were acquired by the Trust from elder family members in the 1995.
3. Property Operations
 - a. 12 Cedar Road: Based on personal interviews, to the best of the Trustee's recollection, the address was used by the father and grandfather as vacant land with no industrial or commercial operations for over half a century. The trustee is uncertain which relative had which property but he is confident it was vacant land.
 - b. 14 Cedar Road: Same as above.
 - c. 16 Cedar: same as above.
4. Nature of Trust business during ownership period of the 12, 14, 16 Cedar Street: Based on personal interviews, to the best of the Trustees recollection, the Trust was just property owners and carried on no other businesses on those sites.
5. Knowledge of Transport, Disposal or treatment of material to or in specified properties: Based on personal interviews, to the best of the Trustees recollection, the properties had filling in wetland areas and near wetland areas perhaps using material now not acceptable for any use in ground. See Responses below for more information obtained regarding these properties.
6. (Covered by point 5)
7. (Covered by point 5)
8. See below.
9. Information concerning Prolerized New England Company, LLC:

The search for any remaining documents continues, as none are in the direct possession of the Trustees. To the best of the Trustee's recollection or information recently obtained, Prolerized New England Company, LLC was the name of a company which dumped waste material on properties near where one they grew up. To the best of his recollection and new information, those materials were thought to be ok at the time dumped to be used as fill on those other properties at the time, and then later became unacceptable to use as fill on those other sites. It is also his understanding that the materials were rejected because they were being placed in "wetlands". His only memory was of trucks coming with material and no memory of where the company got the material. Please also see the Responses below.

10. Presence of Waste Materials: Please see Responses below.

11. Environmental Sampling Data or Investigations:

In June 2023, an LSP was contacted by the Trust to be hired by the Trust and the property-owning Trusts in the area to do a dispassionate, thorough review of the records and, as needed, on site investigation. The area generally was investigated by Geological Field Services, Inc (GFS) for environmental contamination in August 2020 as part of an environmental due diligence for a proposed buyer for some of the area, but that investigation was not given to or trusted by the Trustee as accurate or even understood as different from what was already “common knowledge” from front page news and participation from multiple state and local and even federal agencies, including “DEQE” in the late 1970’s.

The information below is a summary written by the LSP and copied here for ease of reference of what is known so far from the LSP’s work. It will be supplemented as his work continues.

The excavation of 14 test pits were performed. A Summary Report was prepared by GFS for Scott M. Grover, Esq., representative for a prospective buyer. The Summary Report revealed the following:

16 Barnes Road¹¹: Polychlorinated Biphenyls (PCBs), benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, bis(2-ethylhexyl) phthalate, and lead were detected in one or more soil samples at concentration exceeding the applicable Reporting Category RCS-1 threshold value. The highest reported concentration for each of the above referenced analytes is noted below:

- PCBs- 47.9 micrograms per kilogram (mg/kg)
- benzo(a)anthracene- 9.93 mg/kg
- benzo(a)pyrene- 6.47 mg/kg
- benzo(b)fluoranthene- 8.23 mg/kg
- bis(2-ethylhexyl) phthalate- 374 mg/kg
- lead- 1,800 mg/kg

9 and 15 Cedar Road: PCBs, bis(2-ethylhexyl) phthalate, and lead were detected in one or more soil samples at concentration exceeding the applicable Reporting Category RCS-1 threshold value. The highest reported concentration for each of the above referenced analytes is noted below:

- PCBs- 21.3 mg/kg
- bis(2-ethylhexyl) phthalate- 4,190 mg/kg
- lead- 1,220 mg/kg

¹¹ Please be aware the Trustees do not understand why 16 Barnes Road could show contamination, as it is a wedge shaped site not known to have had any dumping.

12 Cedar Road: PCBs, bis(2-ethylhexyl) phthalate, arsenic, cadmium, chromium, and lead were detected in one or more soil samples at concentration exceeding the applicable Reporting Category RCS-1 threshold value. The highest reported concentration for each of the above referenced analytes is noted below:

- PCBs- 40.7 mg/kg
- bis(2-ethylhexyl) phthalate- 2,260 mg/kg
- arsenic- 21.4 mg/kg
- cadmium- 95.2 mg/kg
- chromium- 182 mg/kg
- lead- 2,050 mg/kg

14 Cedar Road: PCBs, 2-methylnaphthalene, bis(2-ethylhexyl) phthalate, barium, and lead were detected in one or more soil samples at concentration exceeding the applicable Reporting Category RCS-1 threshold value. The highest reported concentration for each of the above referenced analytes is noted below:

- PCBs- 22.3 mg/kg
- 2-methylnaphthalene- 2.24 mg/kg
- bis(2-ethylhexyl) phthalate- 793 mg/kg
- barium- 1,130 mg/kg
- lead- 2,070 mg/kg

16 Cedar Road: PCBs, bis(2-ethylhexyl) phthalate, 2-methylnaphthalene, arsenic, barium, chromium, and lead were detected in one or more soil samples at concentration exceeding the applicable Reporting Category RCS-1 threshold value. The highest reported concentration for each of the above referenced analytes is noted below:

- PCBs- 6.76 mg/kg
- 2-methylnaphthalene- 2.15 mg/kg
- bis(2-ethylhexyl) phthalate- 1,110 mg/kg
- arsenic- 97.9 mg/kg
- barium- 1,340 mg/kg
- chromium- 151 mg/kg
- lead- 21,800 mg/kg

The report from which this information was obtained has already been provided to MassDEP on June 30, 2023 (the “Overlook” Report) with another copy attached today. In addition to the LSP information above, there is also an Abbreviated Notice of Resource Area Delineation prepared by the Morin-Cameron Group, Inc. prepared by a prospective buyer dated June 25, 2019. This ANRAD shows Bordering Vegetated Wetland or Isolated Vegetated Wetland at: 9 Cedar Road; 15 Cedar Road; 18 Cedar Road; 16 Cedar Road; 14 Cedar Road. Copy to be provided.

12. Asbestos Transport or Disposal: Based on personal interviews, to the best of the Trustee's recollection, no. He recalls no asbestos. However, see Responses above and below for developing information.
13. (Included in point 12)
14. n/a
15. Any Information regarding delivery of shredded automotive parts, automotive fluff, Prolerized waste materials, solid waste, used automotive parts, fill materials, waste oil, or hazardous material to any location in Salem, Mass other than those specified:

See Question/Response 11, above. Based on interviews with the Trustee, the Trustee's grandfather (Stephan C. Ingemi) owned Highland, Barnes and Cedar and the family grandparents had ten children (two died as infants, 4 brothers and sisters all deceased now) and all lived in their own houses on land his grandfather owned, with no fences or clear lot separations. Some vacant land needed leveling, over half a century ago. His grandfather had a sign saying "solid fill" but people would dump stuff, some would sneak in when no one was home and would be stopped if they were caught dumping not solid fill material. His Grandfather had a bad stroke in a nursing home ten years before he died and couldn't communicate. Trusts were made up. All original trustees are now deceased. Prolerized New England Company, LLC was the name of a company which dumped waste material on other properties near where the Trustee grew up.

More recently, a prospective buyer, Overlook, for many properties did initial environmental due diligence and found nothing of concern and continued pursuing permitting for several years. Then, Overlook did more deep subsurface testing and, as the Trustee recently learned, produced a report indicating Prolerized waste was likely dumped and buried underground on some sites (see above for summary). Legal counsel at the time was not environmental counsel and the Trustee did not understand more than that Overlook was seeking a lower purchase price and eventually to drop out of the transaction, although Overlook still pursued permitting approvals for quite some time thereafter. Then, after dropping out as a potential buyer, Overlook initiated litigation to recover its pre-development costs and more information came through legal counsel in litigation discovery. This same non-environmental legal counsel told the Trustee and all those who asked that the Overlook report was confidential due to ongoing litigation.

The "Overlook" potential buyer sued the Trusts and in the course of the litigation did extensive research on meetings and minutes from half a century ago. After being told of those 1976 minutes, the Trustee was also told the minutes of the 1976 Salem Conservation Commission indicate Pulverized material had been dumped where it should not have been and that state and federal agencies were aware (including "DEQE"). It was also stated that there was an incinerator nearby and an abutter and that the groundwater flowed together and that the City of Salem owned the incinerator (and still the transfer station on the same site after they closed the incinerator).

16. See attached. The only documents withheld are those containing legal advice or negotiation documents among former legal counsel regarding the possible sale to the prospective buyer. Any factual documents or reports including environmental reports are included, not withheld. Similarly, all possibly relevant exhibits from the pending Overlook lawsuit are included, even those in dispute in the lawsuit.

These responses will be supplemented as new information is obtained, as per the Request for Information. More is anticipated after the LSP completes records reviews the week of August 7.

KATHLEEN INGEMI RFI RESPONSE (7/29/2023)

July 29, 2023

Stephen M. Johnson, c/o Erik.Johnson@mass.gov
Response to Request for Information/MassDEP
From: Barnes Road Trust, Trustee Kathleen J. Ingemi
Re: Salem: 383 Highland Ave; 14 Barnes Road

Dear MassDEP Bureau of Waste Site Cleanup, c/o Stephen M. Johnson:

Thank you for your recent Request for Information addressed to the Barnes Road Trust, Trustee Kathleen J. Ingemi (the “Trust” or the “Barnes Road Trust”). Thank you also for the telephone discussions upon receipt including regarding the Trust seeking to hire a Licensed Site Professional to obtain contemporary information regarding environmental conditions. The LSP has been hired. Until that LSP (Blackstone Environmental Services, Michael Bricher) has been able to progress with his work, this Response is based on knowledge available at this time and will be supplemented as ongoing.

The Trustee Kathleen Ingemi is 72 years old and is doing her best to recall or learn what is asked of her. The area generally did not have the same site addresses or even streets while she was growing up here as a child. She lives still in the house on Highland Avenue adjacent to what is now the Tropical/Berman Warehouse site under development by an unrelated party.

This Response to the Request for Information is being sent electronically, per the direction/request of MassDEP counsel.

1. Trustees: The current Trustee of the Barnes Road Trust is said to be Trustee Kathleen J. Ingemi. It is her recollection, however, that her brother, Stephen S. Ingemi, is also a trustee. The records are not yet clear to the Trust on this point, so this Response will be supplemented when more records are clarified. She has been the Trustee since her mother died. It was her recollection that her brother became an additional Trustee when her father’s brother, Stephen C., died. For the remainder of this Response, the term “trustee” refers to Kathleen J. Ingemi.
1. When Properties Acquired by Trusts and Deeds: According to the Deeds attached (“Deeds”), the Trust acquired the property in 1980 from all the older family members. It

is also family memory is that all this land was acquired during the 1940's or for sure before the oldest living person, Stephen S. Ingemi, Kathleen Ingemi's brother, was born or when he was a baby.

2. Current or Former Operations at 383 Highland Ave and 14 Barnes Road: Based on personal interviews, to the best of the Trustee's recollection, the Trust was just property owners and carried on no other businesses on those sites. It has always been vacant land.
3. Based on personal interviews, to the best of the Trustee's recollection, the Trust was just property owners and had no other business during the ownership period of 383 Highland Avenue and 14 Barnes Road, Salem.
4. Knowledge of Transport, Disposal or treatment of material to or in specified properties: Based on personal interviews, to the best of the Trustees recollection, the properties known as 383 Highland, 14 Barnes Road were not sites on which the Trust or its Trustee had ever known of transport, disposal or treatment of any fill or dumping (as those terms are further described in the RFI and abbreviated here).
5. (Omitted?)
6. (Covered by point 4)
7. (Covered by point 4)
8. (n/a)
9. Information concerning Prolerized New England Company, LLC:

The search for any remaining documents continues, as none are in the direct possession of the Trust. To the best of the Trustee's recollection or information recently obtained, Prolerized New England Company, LLC was the name of a company which dumped waste material on other properties near where she grew up, not 383 Highland Avenue and/or 14 Barnes Road, Salem. Trustees are aware of Prolerized on other properties (see other information requests). To the best of her recollection and information, those materials on other properties were thought to be ok at the time dumped to be used as fill on those other properties at the time, and then later became unacceptable to use as fill on those other sites. It is also her understanding that the materials were rejected because they were being placed in "wetlands".

10. Presence of Waste Materials: Based on personal interviews, to the best of the Trustee's recollection, the properties known as 383 Highland, 14 Barnes Road have no known waste materials on site. An LSP has been hired to obtain more information.
11. Environmental Sampling Data or Investigations:

In June, 2023, an LSP was contacted by the Trust to be hired by the Trust and the property owning Trusts in the area to do a dispassionate, thorough review of the records and, as needed, on site investigation. The area generally was investigated by Geological Field Services, Inc (GFS) for environmental contamination in August 2020 as part of an environmental due diligence for a proposed buyer for some of the area, but that investigation was not given to or trusted by the Trustee as accurate or even understood as different from what was already "common knowledge" from front page news and participation from multiple state and local and even federal agencies, including "DEQE"

in the late 1970's.

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See Question/Response 11, above. Based on interviews with the Trustee and her

still-living brother, it is their memory that the Trustee's grandfather (Stephan O. Ingemi) owned Highland, Barnes and Cedar and the family grandparents had ten children (two died as infants, 4 brothers and sisters all deceased now) and all lived in their own houses on land her grandfather owned, with no fences or clear lot separations. Some vacant land needed leveling, over half a century ago. Next to the house Kathleen Ingemi lives in now on Highland, her grandfather had a sign saying "solid fill" and people would dump stuff, some would sneak in when no one was home and would be stopped if they were caught dumping not solid fill material. Her Grandfather had a bad stroke in a nursing home ten years before he died and couldn't communicate. Trusts were made up. All three original trustees are now deceased. Prolerized New England Company, LLC was the name of a company which dumped waste material on other properties near where the Trustee and her brother grew up, see above.

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