

**IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA**

LUEDER CONSTRUCTION COMPANY,

Plaintiff,

v.

SAI PROPERTIES II, INC.,

Defendant.

Case No. \_\_\_\_\_

**COMPLAINT**

Plaintiff, Lueder Construction Company ("Lueder"), states and alleges as follows for its claims for relief against Defendants SAI Properties II, Inc. ("Defendants"):

**PARTIES AND JURISDICTION**

1. Plaintiff Lueder is a Delaware corporation authorized to transact business in the State of Nebraska, with its principal place of business in Omaha, Douglas County, Nebraska.

2. Defendant SAI Properties II, Inc. ("SAI Properties") (the "Owner") is a Nebraska corporation with its principal place of business in Omaha, Douglas County, Nebraska.

3. Venue is proper in Douglas County, Nebraska, pursuant to Neb. Rev. Stat. § 25-403.01.

4. This Court has jurisdiction over this matter pursuant to Neb. Rev. Stat. §§ 24-302 and 25-536.

**FACTUAL ALLEGATIONS**

5. In November of 2013, Lueder and the Owner entered into a contract for the construction of a Comfort Suites hotel at 192<sup>nd</sup> Avenue and Gold Street in Omaha, Neb. (the "Project"), for which construction began in the Spring of 2014.

6. The Project took place on a lot owned by Owner with a legal description of CENTER RIDGE REPLAT 2 LOT 3 BLOCK 0 LOT 3 81317 SQ FT ("Lot 1").

7. Also at the start of the Project, the Owner owned various surrounding lots, and one of those lots has a legal description of CENTER RIDGE REPLAT 2 LOT 1 BLOCK 0 LOT 1 53923 SQ FT ("Lot 2").

8. Lots 1 and 2 are adjoining each other, and Lot 2 is south of Lot 1.

9. As part of the Project, Lueder acquired a stormwater permit from the City of Omaha ("City"), which required designing a Stormwater Pollution Prevention Plan ("SWPPP") for Lot 1.

10. The allowance in the Project contract for SWPPP maintenance was \$8,500.00.

11. Lueder, on behalf of the Owner, undertook the SWPPP in its name for Lot 1 for the duration of the Project, with the understanding that once the project was completed, the SWPPP would be transferred to the Owner's name and would be the Owner's responsibility.

12. Disputes arose during the course of the Project, in which Lueder asserted non-payment by Owner and Owner claimed Lueder had completed the Project work poorly. The parties entered mediation. In September of 2016, Lueder and Owner entered into a Settlement Agreement in relation to the damage on the Project.

13. The Settlement Agreement read in pertinent part:

Regarding the Storm Water Plan ("SWPPP"), within 60 days of the receipt of the Settlement Funds, Lueder shall (i) remove the concrete waste material near the northeast corner of the Project, at Lueder's expense, (ii) re-seed the south area of the Project; and (iii) schedule an inspection once the vegetation has grown to a satisfactory level and **to seek to have the SWPPP approved and closed**. Once the SWPPP is closed, all claims

relating to the SWPPP shall become [Owner's] Claims, and shall be treated as fully and finally released and forever discharged by Owner as provided in section 6 below. The parties reserve and do not release the right to enforce the provisions of this section 4(b).

Settlement Agreement dated September 30, 2016, section 4(b) (emphasis added).

14. Before the start of the Project, Lot 2 was in a condition that did not comply with SWPPP requirements and objectives, but the City was not aware of those conditions. During the course of the Project, a portion of Lot 2 was affected by construction activities ongoing in Lot 1, which necessitated some repairs to Lot 2. Once the City inspected the area, even though Lot 2 was not subject to the SWPPP, the City would not approve and close the SWPPP on Lot 1 until Lot 2 was in acceptable condition.

15. Lueder removed the concrete waste material and graded and seeded Lot 1 and affected areas on Lot 2, consistent with the SWPPP. After that work was completed and after the seeded areas established sufficient vegetation, the City would inspect the areas for compliance with the SWPPP.

16. During the time period allotted to allow the seeded areas to achieve sufficient vegetation, the Owner repeatedly neglected its duties to maintain, water, weed, and fill in ruts in Lots 1 and 2, resulting in the areas not developing sufficient vegetation and developing ruts and washouts. As a result of Owner's neglect, the City would not approve the conditions of Lots 1 and 2, and refused to close the SWPPP.

17. Thus, on several occasions, Lueder had to regrade and reseed those areas consistent with the SWPPP and to seek re-inspections by the City. But, the Owner continued to neglect its duties to maintain, water, weed, and fill in ruts in Lots 1

and 2, resulting in a loss of vegetation, rutting, and washout. As a result, the City declined to approve and close the SWPPP.

18. Lueder received positive feedback from the City in SWPPP inspections because good establishment at the Project site had started, but the Owner failed to maintain the area in Lot 2, resulting in the property not reaching 75 percent vegetation with rutting and washouts throughout that Lot 2. The City will not approve and close the SWPPP until Lot 2 attains 75 percent vegetation without rutting and washouts throughout that Lot 2.

19. Lueder has fulfilled its obligations under the Settlement Agreement and is not required to take any further actions to have the SWPPP approved and closed. Lueder was not obligated to maintain Lots 1 and 2; that was the Owner's responsibility. As such, Lueder never guaranteed that the SWPPP would be approved, only that it would seek approval. The Owner's failure to maintain the Lots, and particularly Lot 2, is the sole cause of the SWPPP not being approved and closed.

20. Based on the terms of the Settlement Agreement, the Owner is obligated to transfer the SWPPP into its name, but has failed to do so. Lueder has provided the Owner with the Change of Grading Permit Responsibility Form ("Form") and asked the Owner to complete the Form and send the completed Form to the City, but the Owner has refused.

21. Every time Lueder regrades and reseeds the Owner's property, it cost Lueder between \$1,500.00 and \$3,000.00.

22. Because the SWPPP remains open, routine inspections are required by the City through Lueder's SWPPP inspection agency. Each time an inspection is done,

Lueder is billed \$175.00. Thus far, the inspection agency has billed Lueder, and Lueder has paid, more than \$19,000.00 in SWPPP inspection costs.

23. After the credit for the \$8,500.00 SWPPP allowance, the Owner is obligated to reimburse Lueder for all inspection fees and repair costs for Lots 1 and 2 incurred after September 2016.

### **FIRST CLAIM FOR RELIEF**

#### **Breach of Contract (against SAI Properties II, Inc.)**

24. Lueder incorporates the allegations of the foregoing paragraphs as if fully set forth herein.

25. Lueder and SAI Properties entered into the Settlement Agreement, which is a valid contract that imposes obligations on both parties.

26. SAI Properties has materially breached its obligations under the Settlement Agreement in one or more of the ways described above.

27. Lueder has demanded that SAI Properties cure its breaches and to reimburse Lueder for its damages, but SAI Properties has refused to do so.

28. As a direct and proximate result of SAI Properties' breaches of the Settlement Agreement, Lueder has incurred damages, costs and expenses in an amount to be determined at trial.

29. Lueder has satisfied all conditions precedent and substantially performed its duties under the Settlement Agreement, or such conditions precedent and performance have been waived or excused.

WHEREFORE, for its First Claim for Relief for Breach of Contract, Lueder prays for judgment in its favor and against Defendant SAI Properties II, Inc., awarding Lueder

an amount to be determined at trial plus ongoing damages and losses, pre-judgment interest, attorney fees, costs of this action, and awarding Lueder such other, further, and different relief as to the Court seems just and equitable.

## **SECOND CLAIM FOR RELIEF**

### **Declaratory Judgment**

30. Lueder incorporates the allegations of the foregoing paragraphs as if fully set forth herein.

31. An actual controversy of a justiciable nature exists between Lueder and SAI Properties regarding the rights and obligations of each party under section 4(b) of the Settlement Agreement.

WHEREFORE, Lueder respectfully requests that the Court enter an Order in its favor declaring that:

(i) Lueder has fulfilled its obligations under section 4(b) of the Settlement Agreement;

(ii) SAI Properties is responsible for the SWPPP for the Project;

(iii) SAI Properties is obligated to switch the SWPPP to its name using the Change of Grading Permit Responsibility Form and any other documents required by the City;

(iv) After the credit for the \$8,500.00 SWPPP allowance, SAI Properties must reimburse Lueder for all inspection fees and repair costs for Lots 1 and 2 incurred after September 2016;

(vi) Lueder is entitled to its reasonable attorney fees and costs incurred in bringing this action; and

(vii) for such other, further and different relief as to this Court seems just and equitable.

**DEMAND FOR JURY TRIAL**

Plaintiff requests a jury trial for all issues triable by a jury.

Dated this 17<sup>th</sup> day of July 2017.

LUEDER CONSTRUCTION COMPANY,  
Plaintiff,

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