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## Nebraska Judicial Branch

## Case Summary

In the District Court of LANCASTER County  
 The Case ID is CI 19 0001108  
 Barbara Delgado v. TCW Construction Inc  
 The Honorable Susan Strong, presiding.  
 Classification: Contract Disputes  
 Filed on 04/09/2019  
 This case is Open as of 04/09/2019

## Parties/Attorneys to the Case

Party	Attorney
Plaintiff ACTIVE Barbara Delgado 10510 Deer Valley Lane  Lincoln NE 68526	Andrew K Joyce 201 N 8 St, Ste 300 PO Box 83439 Lincoln NE 68501 402-474-1731
Defendant ACTIVE TCW Construction Inc 9229 Springlake North Lane Firth NE 68358	Jason B Bottlinger 2425 S 144th St Omaha NE 68144 402-493-4100
Defendant ACTIVE Joseph Delgado 9229 Springlake North Lane Firth NE 68358	Jason B Bottlinger 2425 S 144th St Omaha NE 68144 402-493-4100

## Court Costs Information

Incurred By	Account	Date	Amount
Plaintiff	Petition	04/09/2019	\$35.00
Plaintiff	Filing Fee - State	04/09/2019	\$1.00
Plaintiff	Automation Fee	04/09/2019	\$8.00
Plaintiff	NSC Education Fee	04/09/2019	\$1.00
Plaintiff	Dispute Resolution Fee	04/09/2019	\$0.75
Plaintiff	Indigent Defense Fee	04/09/2019	\$3.00
Plaintiff	Uniform Data Analysis Fee	04/09/2019	\$1.00
Plaintiff	J.R.F.	04/09/2019	\$6.00
Plaintiff	Filing Fee-JRF	04/09/2019	\$6.00
Plaintiff	Legal Aid/Services Fund	04/09/2019	\$6.25
Plaintiff	Complete Record	04/09/2019	\$15.00

Incurring By	Account	Date	Amount
Plaintiff	Service Fees	04/28/2019	\$49.72
Plaintiff	Service Fees	04/28/2019	\$40.72

### Financial Activity

No trust money is held by the court  
No fee money is held by the court

### Payments Made to the Court

Receipt	Type	Date	For	Amount
698784	Electronic Trans	04/09/2019	Delgado, Barbara,	\$83.00
			Petition	\$35.00
			Filing Fee - State	\$1.00
			Automation Fee	\$8.00
			NSC Education Fee	\$1.00
			Dispute Resolution Fee	\$.75
			Indigent Defense Fee	\$3.00
			Uniform Data Analysis	\$1.00
			J.R.F.	\$6.00
			Filing Fee-JRF	\$6.00
			Legal Aid/Services Fun	\$6.25
			Complete Record	\$15.00

### Register of Actions

07/01/2019 Cert-Service  
discovery This action initiated by party Barbara Delgado  
Image ID N19182DJAD02

06/20/2019 Cert-Service  
discovery This action initiated by party Barbara Delgado  
Image ID N19171UJAD02

05/28/2019 Answer  
& jury demand This action initiated by party Joseph Delgado  
Image ID N19148APID02

04/28/2019 Return Summons/Alias Summons  
The document number is 00570055  
Served 04/27/2019, Gage County Sheriff

## Residential Service

Please note correct address number for TCW Construction, Inc. above.  
Image ID D00571485D02

04/28/2019 Return Summons/Alias Summons  
The document number is 00570052

Served 04/27/2019, Gage County Sheriff  
Residential Service

Please note correct house number for Defendant above.  
Image ID D00571484D02

04/09/2019 Summons Issued on TCW Construction Inc  
The document number is 00570055  
E-MAILED: ajoyce@morrowpoppelaw.com  
Image ID D00570055D02

04/09/2019 Summons Issued on Joseph Delgado  
The document number is 00570053  
E-MAILED: ajoyce@morrowpoppelaw.com  
Image ID D00570053D02

04/09/2019 Summons Issued on Joseph Delgado

The document number is 00570052  
E-MAILED: ajoyce@morrowpoppelaw.com  
Image ID D00570052D02

04/09/2019 Complaint-Praecipe  
This action initiated by party Barbara Delgado  
breach of Promissory Note  
Image ID N19099J0AD02

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

BARBARA DELGADO, )  
 )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 TCW CONSTRUCTION, INC, AND )  
 JOSEPH DELGADO, )  
 )  
 Defendants. )

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

COMPLAINT AND PRAECIPE

COMES NOW the Plaintiff and for her Cause of Action against the Defendants, and each of them, states and alleges as follows, to-wit:

1. Plaintiff Barbara Delgado (“Barbara”) is a resident of Lincoln, Lancaster County, Nebraska.
2. Defendant, TCW CONSTRUCTION, INC., is a Nebraska Corporation in good standing and doing business in Lincoln, Nebraska.
3. Defendant, Joseph Delgado, (hereinafter “Joseph”) is a resident of Firth, Gage County, Nebraska.
4. On or about May 22, 1998, Defendant TCW Construction, Inc. executed a Promissory Note dated May 22, 1998 (“Note”) in the amount of Seven Hundred Thousand and no/100 (\$700,000.00) payable to Lorenzo Delgado, together with interest thereon at the rate of 8% per annum. Said Note is attached hereto as **Exhibit A**.
5. Lorenzo Delgado died on or about March 20, 2014 and all of his interest in the Note was assigned by operation of law to the Plaintiff, Barbara Delgado.
6. On or about May 22, 1998, Defendant Joseph Delgado personally guaranteed fifty one percent (51.0%) of the obligations of Defendant, TCW Construction, Inc.

("Guaranty"). Said Guaranty is attached hereto as **Exhibit B**.

5. That pursuant to the parties' Promissory Note, Defendant was to submit monthly payments of \$5,774.62 beginning July 1, 2008, and continuing through June 1, 2023 with the remaining principal balance, together with all interest accrued becoming due and payable in full.

6. There is, as of March 30, 2019, due and owing under said Note the principal sum of One Hundred Thirty Three Thousand Six Hundred Sixty Two and 73/100 Dollars (\$133,662.73) together with interest accruing at 8% per annum from March 30, 2019, together with interest thereon in the amount of 8% percent per annum.

WHEREFORE, Plaintiff prays for judgment against the Defendants, and each of them, on its Cause of Action, in the total amount of \$133,662.73, plus interest thereon at the rate of 8% percent per annum from March 30, 2019, plus costs of this action, and for other and further relief as the Court may deem just and equitable.

BARBARA DELGADO, Plaintiff

BY: MORROW, POPPE,  
WATERMEIER & LONOWSKI, P.C.  
A Limited Liability Organization  
201 North 8th Street, Suite 300  
P. O. Box 83439  
Lincoln, Nebraska 68501-3439  
(402) 474-1731

By: /s/Andrew K. Joyce  
Andrew K. Joyce #25657

**PRAECIPE**

TO THE CLERK OF SAID COURT:

Please issue summons in the above captioned matter, together with a copy of the Complaint and deliver the same to Andrew K. Joyce, attorney for Plaintiff, for forwarding to the Sheriff of Gage County, Nebraska, for personal or residential service upon the Defendant, Joseph M. Delgado individually and a separate summons to be served upon Joseph M. Delgado, president of TCW Construction, Inc., who may be served at 9229 Springlake North Lane, Firth, Nebraska, all returnable according to law.

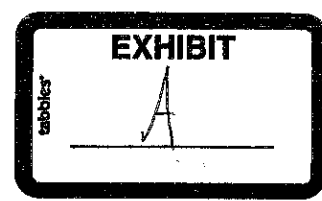
Please issue summons in the above captioned matter, together with a copy of the Complaint and deliver the same to Andrew K. Joyce, attorney for Plaintiff, for forwarding to the Sheriff of Gage County, Nebraska, for personal or residential service upon the Defendant, TCW Construction, Inc. by and through its registered agent and President, Joseph M. Delgado who may be served at 9229 Springlake North Lane, Firth, Nebraska, all returnable according to law.

/s/Andrew K. Joyce  
One of Said Attorneys

\*\*\*FEDERAL DISCLOSURE: This is an attempt to collect a debt and any information obtained will be used for that purpose.

COPY

PROMISSORY NOTE



\$700,000

May 22, 1998  
Lincoln, Nebraska

FOR VALUE RECEIVED, the undersigned, TCW CONSTRUCTION, INC., a Nebraska corporation (the "Borrower"), hereby promises to pay to the order of LORENZO DELGADO (the "Lender"), the principal sum of Seven Hundred Thousand Dollars (\$700,000), together with interest thereon at the rate of eight percent (8%) per annum. Interest after maturity shall be at the contract rate specified above plus three percent (3%) per annum, but in no event higher than the maximum rate permitted by law.

This Note shall be payable according to the following schedule:

(a) On June 1, 1998, interest only on the principal balance hereof from May 22, 1998 to and including May 31, 1998, which amounts to \$1,534.25;

(b) Beginning July 1, 1998, and continuing on the first day of each calendar month to and including June 1, 1999, interest only on the principal balance hereof, which amounts to \$56,000 annually and \$4,666.67 monthly; and on June 1, 1999, a principal payment of \$14,000;

(c) beginning July 1, 1999, and continuing on the first day of each calendar month to and including June 1, 2000, interest only on the principal balance of \$686,000, which amounts to \$54,880 annually and \$4,573.33 monthly; and on June 1, 2000, a principal payment of \$15,120;

(d) beginning July 1, 2000, and continuing on the first day of each calendar month to and including June 1, 2001, interest only on the principal balance of \$670,880, which amounts to \$53,670 annually and \$4,472.50 monthly; and on June 1, 2001, a principal payment of \$16,330;

(e) beginning July 1, 2001, and continuing on the first day of each calendar month to and including June 1, 2002, interest only on the principal balance of \$654,550, which amounts to \$52,364 annually and \$4,363.67 monthly; and on June 1, 2002, a principal payment of \$5,636;

(f) beginning July 1, 2002, and continuing on the first day of each calendar month to and including June 1, 2003, interest only on the principal balance of \$648,914 which amounts to \$51,913 annually and \$4,326.09 monthly; and on June 1, 2003, a principal payment of \$6,087;

(g) beginning July 1, 2003, and continuing on the first day of each calendar month to and including June 1, 2004, interest only on the principal balance of \$642,827, which amounts to \$51,426 annually and \$4,285.50 monthly; and on June 1, 2004, a principal payment of \$6,574;

(h) beginning July 1, 2004, and continuing on the first day of each calendar month to and including June 1, 2005, interest only on the principal balance of \$636,253,

which amounts to \$50,900 annually and \$4,241.67 monthly; and on June 1, 2005, a principal payment of \$7,100;

(i) beginning July 1, 2005, and continuing on the first day of each calendar month to and including June 1, 2006, interest only on the principal balance of \$629,153, which amounts to \$50,332 annually and \$4,194.33 monthly; and on June 1, 2006, a principal payment of \$7,668;

(j) beginning July 1, 2006, and continuing on the first day of each calendar month to and including June 1, 2007, interest only on the principal balance of \$621,485, which amounts to \$49,719 annually and \$4,143.25 monthly; and on June 1, 2007, a principal payment of \$8,281;

(k) beginning July 1, 2007, and continuing on the first day of each calendar month to and including June 1, 2008, interest only on the principal balance of \$613,204, which amounts to \$49,056 annually and \$4,088 monthly; and on June 1, 2008, a principal payment of \$8,944;

(l) beginning July 1, 2008, and continuing on the first day of each calendar month until June 1, 2023, equal monthly payments of principal and interest in the amount of Five Thousand Seven Hundred Seventy-four and 62/100 Dollars (\$5,774.62) each; and

(m) on June 1, 2023, all remaining balances of principal and interest shall be paid in full.

All payments shall be applied first to accrued interest and the balance to principal. Beginning with the calendar year 2003 and continuing through the calendar year 2007, the Borrower shall have the right, but not the obligation, to prepay principal in amounts not exceeding \$25,000 per calendar year. The Borrower may prepay the entire remaining balance of this Note at any time after June 1, 2008 without penalty. Otherwise, the Borrower may make prepayments only with the prior written consent of the Lender, which consent may be arbitrarily withheld. Any permitted prepayments shall be applied first to accrued interest and the balance shall be credited to future installments of principal in the inverse order of maturity. The foregoing notwithstanding, if on the date of any proposed prepayment, the treatment of capital gains under federal income tax law is less favorable than on the date of this Note, Lender may arbitrarily prohibit any prepayments.

Both principal and interest are payable in lawful money of the United States of America in immediately available funds to the Lender at 10510 Deer Valley Lane, Lincoln, Nebraska 68520, or such other place as the Lender shall from time to time notify the Borrower.

To the extent permitted by law, Borrower agrees to pay all costs and expenses, including reasonable attorney's fees, incurred by the holder in connection with the enforcement of this Note or the protection or preservation of any right of the holder hereunder.



This Note is referred to in and is entitled to the benefits of a Stock Purchase Agreement dated May 19, 1998. Reference is made to the Stock Purchase Agreement for a statement of the terms and conditions under which this indebtedness was incurred and under which the due date of this Note may be accelerated. This Note is secured by 775 shares of the common stock of Tony's Cement Works, Inc., a Nebraska corporation. Time is of the essence of this Note.

Borrower and any endorsers and guarantors of this Note hereby severally waive presentment for payment, notice of nonpayment, protest and notice of protest, diligence in enforcing payment or the bringing of suit against any party hereto, and all other notices of every kind and, to the fullest extent permitted by law, all rights to plead any statutes of limitations as a defense to any action hereunder and the benefit of any exemption, valuation or appraisal laws as to this debt.

TCW CONSTRUCTION, INC.

By Joseph M. Delgado  
Joseph M. Delgado  
resident

COPY

GUARANTY

THIS GUARANTY is made and delivered as of May 22, 1998, by JOSEPH M. DELGADO, SCOTT DELGADO, AND RYAN DELGADO (individually a "Guarantor" and collectively, the "Guarantors") to and for the benefit of LORENZO DELGADO and BARBARA DELGADO, husband and wife residing in Lincoln, Nebraska (the "Creditors"), and is made with reference to the following:

A. TCW CONSTRUCTION, INC., a Nebraska corporation (the "Borrower") has executed Promissory Note of even date herewith (the "Note") in favor of Lorenzo Delgado, one of the Creditors, under which the Borrower is obligated to make payments to him. In addition, the Borrower has executed a Lease (the "Lease") with Creditors wherein Borrower has leased from Creditors land and buildings located at 141 M Street, Lincoln, Nebraska.

B. The Guarantors are financially interested in the Borrower, and Creditors are requiring, as a condition precedent to accepting the Note and executing and delivering the Lease that Guarantors shall have executed and delivered this Guaranty to the Creditors.

NOW, THEREFORE, to induce the Creditors to accept the Note and execute and deliver the Lease, Guarantors hereby agree as follows:

1. Guarantors hereby unconditionally guarantee prompt payment to the Creditors of all indebtedness or obligations of the Borrower to the Creditors, whether now existing or hereafter arising, under the Note and the Lease, and any and all expenses incurred by the Creditors in enforcing any rights hereunder or under the Note or the Lease (all such obligations of the Borrower and such expenses of the Creditors shall be referred to herein as the "Guaranteed Obligations"). The words "indebtedness" and "obligations" are used herein in their most comprehensive sense and include any and all debts, contractual obligations and liabilities owed by the Borrower to the Creditors, heretofore, now or hereafter made or incurred, whether voluntary or involuntary, however arising, whether due or not due, absolute or contingent, liquidated or unliquidated.

2. Guarantors hereby expressly waive notice of acceptance of this Guaranty, diligence, presentment, demand, notice of nonpayment, protest and notice of protest, pursuit of any right or remedy against the Borrower or others, or pursuit of any security, and any and all suretyship defenses and defenses in the nature thereof and, without notice, consent to or waive, as the case may be, any and all modifications of the Guaranteed Obligations or the terms of any documents or instruments securing the same, including the terms of payment of the Guaranteed Obligations, extensions, renewals or alterations, sale, exchange, release, substitution, handling or surrender of any security, settlements, additions or compromises, and any and all obligations otherwise imposed upon the Creditors by suretyship principles.

3. The Creditors is expressly authorized to forward or deliver any and all collateral and security which may, at any time, be placed with it by the Borrower or the Guarantors or any other person, directly to the Borrower for collection and remittance or for credit, or to collect the same in any other manner, and to renew, extend, compromise,

exchange, release, surrender or modify the terms of any or all of such collateral and security, without in any manner affecting the absolute liability of Guarantors hereunder. The liability of Guarantors hereunder shall not be affected or impaired by any failure, neglect or omission on the Creditors's part to realize upon the collateral or security for the Guaranteed Obligations, nor by the taking by the Creditors of any other guaranty or guaranties to secure the Guaranteed Obligations, nor by the taking by the Creditors of collateral or security of any kind for the Guaranteed obligations, nor by any act or failure to act whatsoever (except payment) which, but for this provision, might or could in law or equity act to release or reduce the Guarantors' liabilities hereunder.

4. Guarantors agree that possession of this Guaranty by the Creditors shall be conclusive evidence of the delivery hereof.

5. Any indebtedness owed by Borrower to any Guarantor, as well as any other indebtedness which Borrower may now or hereafter owe to any Guarantor, is hereby subordinated to the Guaranteed Obligations. Guarantors shall not be subrogated to Creditors's rights with respect to repayment of any indebtedness so subordinated, and any Guaranteed Obligations paid by any Guarantor pursuant to this Guaranty, unless and until the Guaranteed Obligations have been paid in full.

6. The liability of Guarantors hereunder shall be reinstated and the rights of the Creditors shall continue if and to the extent that any payment by or on behalf of the Borrower is legally required to be forfeited, rescinded or otherwise restored by the Creditors as a result of any proceedings in bankruptcy or reorganization, all as though such amount had not been paid. The determination as to whether any such payment is legally required to be forfeited, rescinded or restored shall be made by the Creditors, acting in good faith, provided, however, that, if the Creditors chooses to contest any such requirement at the request of any Guarantor, Guarantor agree to indemnify and hold harmless the Creditors with respect to all costs (including, without limitation, attorney's fees) of such litigation or other acts to contest such requirement.

7. The liability of Guarantors shall not be affected or impaired by the existence, from time to time, of indebtedness from the Borrower to the Creditors in addition to the Guaranteed obligations.

8. All notices and other communications provided for hereunder shall be in writing (including telegraphic communication) and, if to the Guarantors, mailed registered or certified mail, return receipt requested, telegraphed or delivered to the Guarantors at 141 M Street, Lincoln, NE 68508, and, if to the Creditors, mailed, telegraphed or delivered to them at 10510 Deer Valley Lane, Lincoln, NE 68520, or, as to each party, at such address as shall be designated by such party in a written notice to each other party complying as to delivery with the terms of this Section. All such notices and communications shall, when mailed or telegraphed, respectively, be effective when deposited in the mails or delivered to the telegraph company, respectively, addressed as aforesaid.

9. This Guaranty shall be construed and interpreted in accordance with and governed by the laws of the State of Nebraska.

10. This Guaranty shall be binding upon the Guarantors, their heirs, personal representatives, successors and assigns, and it shall inure to the benefit of Creditors and its successors and assigns.

11. Time is of the essence of this Guaranty.

12. The rights and remedies of the Creditors, as contained in this Guaranty, are not the exclusive rights and remedies available to the Creditors, but are in addition to all other rights or remedies available to it at law or in equity. The Creditors's decision to pursue any right or remedy hereunder shall not be construed as an election of remedies.

13. This Guaranty may be amended, supplemented or interpreted at any time only by a written instrument duly executed by the Creditors.

14. Any provision hereof to the contrary notwithstanding, if any provision of this Guaranty shall be determined to be unlawful or invalid under the laws of any state, territory, county or other political subdivision, and would thereby invalidate this Guaranty therein, this Guaranty shall be construed as though it did not contain such provision.

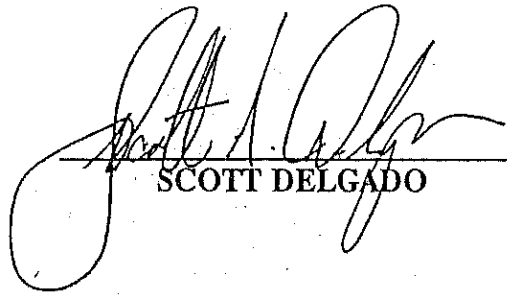
15. The obligations of Guarantors hereunder shall be several but not joint. Joseph M. Delgado shall be responsible for 51 percent of the Guaranteed Obligations; responsibility hereunder; Scott Delgado shall be responsible for 24.5 percent of the Guaranteed Obligations; and Ryan Delgado shall be responsible for 24.5 percent of the Guaranteed Obligations.

16. This Guaranty may be executed in counterparts, and shall becoming binding upon the Guarantor executing the same upon his execution thereof, without regard as to whether any other Guarantor has executed the same.

This Guaranty has been executed as of the date and year first above written.

**GUARANTORS:**

  
\_\_\_\_\_  
JOSEPH M. DELGADO

  
\_\_\_\_\_  
SCOTT DELGADO

  
\_\_\_\_\_  
RYAN DELGADO

**IN THE NEBRASKA DISTRICT COURT FOR LANCASTER COUNTY**

<b>BARBARA DELGADO,</b>  <b>Plaintiff,</b>  <b>vs.</b>  <b>TCW CONSTRUCTION, INC., and</b> <b>JOSEPH DELGADO,</b>  <b>Defendants.</b>	<b>No. CI 19-1108</b>  <b>DEFENDANTS' ANSWER &amp;</b> <b>JURY DEMAND</b>
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COME NOW, Defendants, TCW CONSTRUCTION, INC. and JOSEPH DELGADO, by and through the undersigned counsel, and for their answer and affirmative defenses to Plaintiff's Complaint filed herein, admit, deny, and allege as follows:

1. The Complaint's 1<sup>st</sup> Paragraph's allegations regarding residency of the Plaintiff are not contested.
2. The Complaint's 2<sup>nd</sup> Paragraph's allegations are admitted.
3. The Complaint's 3<sup>rd</sup> Paragraph's allegations are admitted to the extent that Defendant Joseph Delgado is a resident of Firth, Gage County, Nebraska. Defendant Joseph Delgado denies that he is a proper party to this lawsuit.
4. The Complaint's 4<sup>th</sup> Paragraph's allegations are admitted to the extent that Defendant TCW Construction, Inc. executed a Promissory Note dated May 22, 1998, payable to Lorenzo Delgado, as part of and in the course of a transaction for the purchase of Tony's Cement Works, Inc. by TCW Construction, Inc. Otherwise, denied.

5. The Complaint's 5<sup>th</sup> Paragraph's allegations are admitted to the extent that Lorenzo Delgado died on or about March 20, 2014. The remainder of the Complaint's 5<sup>th</sup> Paragraph's allegations are denied.

6. The Complaint's 6<sup>th</sup> Paragraph's allegations are denied.

7. The Complaint's 7<sup>th</sup> Paragraph's allegations (incorrectly numbered as the Complaint's second 5<sup>th</sup> Paragraph) are denied.

8. The Complaint's 8<sup>th</sup> Paragraph's allegations (incorrectly numbered as the Complaint's second 6<sup>th</sup> Paragraph) are denied, and the subsequent unnumbered WHEREFORE paragraph is also denied.

9. Defendants deny each and every remaining allegation contained in Plaintiff's Complaint in the above-captioned matter, except those allegations which may constitute an admission against Plaintiff's own interests.

#### **DEFENDANTS' AFFIRMATIVE DEFENSES**

10. Defendants affirmatively allege that Plaintiff's Complaint fails to state a claim upon which relief can be granted.

11. Defendants affirmatively allege that Plaintiff's claims are barred, in whole or in part, by the doctrine of recoupment.

11.1. Defendant TCW Construction, Inc. overpaid Plaintiff at least \$174,259.52 on obligations arising out of the same transaction and occurrences that gave rise to the purported Promissory Note and which are the basis of the Plaintiff's action herein, including the sale of Tony's Cement Works,

Inc. to TCW Construction, Inc.; and any of Plaintiff's damages should be reduced by the amount of any such overpayment.

11.2. Plaintiff has also breached other obligations and duties to TCW Construction, Inc. arising from the same transaction and occurrences that gave rise to the purported Promissory Note, and her breaches proximately caused caused harm and loss to Defendants, and Plaintiff's proven damages, if any, should be reduced by the amount of such harm and loss.

11.3. Defendants further plead that Plaintiff (1) received money in the course of and arising out of the same transaction and occurrences that gave rise to the purported Promissory Note, (2) retained possession of such money, and (3) in justice and fairness, ought to account for the money to the Defendants and have her proven damages, if any, reduced by the amount of such money she unjustly retains.

Accordingly, Defendants are entitled to a reduction of Plaintiff's proved damages for the full amount of funds subject to recoupment.

12. Defendants affirmatively allege that Plaintiff's claims are barred, in whole or in part, by the statute of limitations.

13. Defendants affirmatively allege that Plaintiff's claims, to the extent they are equitable in nature, are barred, in whole or in part, by the doctrine of laches.

14. Defendants affirmatively allege that Plaintiff's claims, to the extent they are equitable in nature, are barred, in whole or in part, by the doctrine of unclean hands.

15. Defendants affirmatively allege that Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

16. Defendants affirmatively allege that Plaintiff's claims are barred, in whole or in part, by the doctrine of unjust enrichment.

17. Defendants affirmatively allege that Plaintiff's claims are barred, in whole or in part, by the doctrine of ratification.

18. Defendants affirmatively allege that Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver.

19. Defendants affirmatively allege that Plaintiff's claims are barred, in whole or in part, by the doctrine of payment.

20. Defendants affirmatively allege that Plaintiff has failed to mitigate her damages, if any.

21. Defendants affirmatively allege that Plaintiff's claims are barred by the statute of frauds.

22. Defendants affirmatively allege that Joseph Delgado is not a proper party to this lawsuit, and he has no individual liability for the debts or obligations of TCW Construction, Inc.



23. Defendants affirmatively allege that no act or omission by Joseph Delgado was a proximate cause of harm or loss to the Plaintiff.

24. Defendants affirmatively allege that Plaintiff's claims are barred by the doctrine of accord and satisfaction.

25. Defendants affirmatively allege that Plaintiff's claims are barred by the doctrine of acquiescence.

26. Defendants specifically reserve the right to assert additional affirmative defenses as they become evident through discovery or investigation.

#### **PRAYER FOR RELIEF**

WHEREFORE, Defendants, TCW CONSTRUCTION, INC. and JOSEPH DELGADO, having fully answered each of the allegations included in Plaintiff's Complaint filed in the above-captioned matter, respectfully pray that the same be dismissed at Plaintiff's cost, that Defendants be awarded their costs and attorney's fees incurred in the defense thereof, and that Defendants have such other and further relief as the Court determines just and equitable.

#### **JURY DEMAND**

Defendants TCW CONSTRUCTION, INC. and JOSEPH DELGADO respectfully demand trial by jury on all issues so triable.

May 28, 2019.

**TCW CONSTRUCTION, INC. & JOSEPH  
DELGADO, Defendants,**

By: \_\_\_\_\_

  
Jason B. Bottlinger, #24049  
BOTTLINGER LAW L.L.C.  
4909 S. 135<sup>th</sup> Street, Suite 206  
Omaha, Nebraska 68137  
Ph (402) 505-8234  
Fax (402) 800-1328  
[jbottlinger@bottlingerlaw.com](mailto:jbottlinger@bottlingerlaw.com)

*Defendants' Lawyer*

**CERTIFICATE OF SERVICE**

On May 28, 2019, a copy of **DEFENDANTS' ANSWER & JURY DEMAND** was served by U.S. mail to:

Andrew K. Joyce  
Morrow, Poppe, Watermeier & Lonowski, P.C.  
201 North 8<sup>th</sup> Street, Suite 300  
P.O. Box 83439  
Lincoln, Nebraska 68501-3439

  
\_\_\_\_\_  
Jason B. Bottlinger

# Certificate of Service

I hereby certify that on Tuesday, May 28, 2019 I provided a true and correct copy of the Answer to the following:

TCW Construction Inc service method: Email

Delgado,Joseph, service method: Email

Delgado,Barbara, represented by Andrew K. Joyce (Bar Number: 25657) service method:  
Electronic Service to ajoyce@morrowpoppelaw.com

Signature: /s/ Jason Bottlinger (Bar Number: 24049)