

Voss Family Limited Partnership

Press Release:
August 24, 2017

Subject: Eviction of Wyoming Statewide Elected Officials from 2020 Carey Avenue

The Voss Family Limited Partnership has issued eviction notices to the State of Wyoming for elected officials and their offices occupying 2020 Carey Avenue floors two through four and six through nine. The offices include the Wyoming Secretary of State, Wyoming State Auditor, and the Wyoming State Treasurer and their respective staff. The fifth floor is occupied by another state agency that has a lease that is not disputed. The reason for the eviction is the failure of the State of Wyoming to pay rent in 2015, 2016 and 2017, as required by the lease agreement signed March 23, 2015 between the Department of Administration and Information and the Voss Family Limited Partnership. The State of Wyoming also conducted alterations to the building without the permission of the Voss Family Limited Partnership, in violation of the lease agreement. The Notice of Eviction gave the elected officials and their offices three days to vacate the building. The State of Wyoming has ignored the Notice of Eviction and continues to occupy the building without paying rent. The Voss Family has been forced to seek assistance from Wyoming courts to evict the State tenants from the building.

When the State of Wyoming failed to pay rent, again, on July 1, 2017, the Voss Family Limited Partnership provided notice to the State of Wyoming in compliance with the Wyoming Governmental Claims Act, Wyo. Stat. Ann. 1-39-101 *et seq.*, that it would seek assistance from the Wyoming courts to remove the elected officials from the building and recover the approximately \$931,000 owed in past due rent.

The office tower at 2020 Carey Avenue a large commercial space commonly known as the US Bank Building or the Wyoming Financial Center. It is located on the block immediately North of the Laramie County Courthouse. The Wyoming Secretary of State, Wyoming State Auditor, and the Wyoming State Treasurer moved from the Capitol building into 2020 Carey in 2015 to vacate the Capitol during renovation and restoration project.

Wayne and Mary Beth Voss are general partners in the Voss Family Limited Partnership. Wayne Voss is a lifelong Wyoming citizen. He is a graduate of the University of Wyoming and a Marine Corps veteran residing with his wife Mary Beth in Worland Wyoming. The Voss Family Limited Partnership is represented in this matter by GODFREY | JOHNSON, P.C.

For more information contact:
Brett Godfrey or Karen Porter

COPY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF WYOMING IN AND FOR LARAMIE COUNTY

Docket No. 188-419

THE VOSS FAMILY LIMITED
PARTNERSHIP,

Plaintiff,

v.

STATE OF WYOMING; STATE OF
WYOMING, DEPARTMENT
OF ADMINISTRATION AND
INFORMATION; STATE OF WYOMING,
DEPARTMENT OF ADMINISTRATION
AND INFORMATION, CONSTRUCTION
MANAGEMENT DIVISION; STATE OF
WYOMING, DEPARTMENT OF
ADMINISTRATION AND INFORMATION,
GENERAL SERVICES DIVISION; STATE
OF WYOMING, DEPARTMENT OF
ADMINISTRATION AND INFORMATION,
BUDGET DIVISION; CAPITOL BUILDING
REHABILITATION AND RESTORATION
PROJECT OVERSIGHT GROUP;
MATTHEW H. MEAD, Governor; ELI
BEBOUT, President of the Senate; CATHY
CONNOLLY, House Minority Floor Leader;
FRED EMERICH, Senator; MARK
GORDON, Wyoming State Treasurer; STEVE
HARSHMAN, Speaker of the House; DAVID
MILLER, House Majority Floor Leader; BOB
NICHOLAS, Representative of the House;
PHILIP NICHOLAS, Previous President of
Senate; DREW PERKINS, Senate Majority
Floor Leader; TONY ROSS, Previous Senator;
CHRIS ROTHFUSS, Senate Minority Floor
Leader

Defendants.

FILED

AUG 23 2017

DIANE SANCHEZ
CLERK OF THE DISTRICT COURT

COMPLAINT AND JURY DEMAND

Plaintiff, by and through counsel, Brett Godfrey of GODFREY | JOHNSON, P.C., for its Complaint and damages against Defendants, hereby alleges and avers as follows:

I. PARTIES

A. Plaintiff

1. The Voss Family Limited Partnership (“Plaintiff” or “VFLP”) is a Wyoming Limited Partnership in good standing with the State of Wyoming and that owns a large commercial building located at 2020 Carey Avenue, Cheyenne, Wyoming (“Building”).

B. Defendants

2. The State of Wyoming entered into a lease agreement with Plaintiff, entitled ~~“Real Property Lease Agreement No. 8-09656 Between Voss Family Limited Partnership~~ and State of Wyoming, Department of Administration & Information, Construction Management” (hereinafter “Lease”), for the purpose of leasing several floors of the Building to provide substitute office space for Wyoming state government employees, including but not limited to the Secretary of State, State Auditor and State Treasurer, together with their respective aids, subordinates and staff, who had been displaced from the State Capitol building during the Capitol Renovation Project, which remains underway at the time of the commencement of the instant action.

3. The Lease was executed on behalf of the state by its duly authorized agents and representatives for that purpose, Mel Muldrow, Administrator of the Construction Management Division, and Dean Fausset, Director of the Department of Administration and Information.

4. As Administrator of the Construction Management Division, Mr. Muldrow is also Secretary of the Wyoming State Building Commission, a government body comprised of five

Wyoming elected officials. The Secretary of the Building Commission is responsible for carrying out Commission directives and charges. Upon information and belief, the Lease was part and parcel to a directive issued by the Wyoming Building Commission, entered into for the benefit of the State. Pursuant to Wyo.Stat. § 1-35-103(b), the Lease is deemed a statutory “contract with the state.” To wit,

A contract with the state of Wyoming includes any contract, lease or instrument in writing entered into by any board, officer or commission of the state of Wyoming for the benefit of the state whether the contract is made in the name of the state of Wyoming or in the name of the officer, board or commission.

Wyo.Stat. § 1-35-103(b)

5. ~~The State of Wyoming Department of Administration and Information is a~~ Wyoming agency created to provide services to all branches of the Wyoming government through the divisions of Human Resources, General Services, Economic Analysis, Budget and State Library. It is signatory to the Lease through its Director, Dean Fausset.

6. The State of Wyoming Department of Administration and Information, Construction Management Division (“Defendant” or the “State”) is signatory to the Lease through its Administrator, Mel Muldrow, and upon information and belief, is an agency recently created by the State of Wyoming to oversee and control the renovation of the State’s capitol building and related construction projects.

7. The State of Wyoming Department of Administration and Information, General Services Division is a division of the Department of Administration and Information created to provide services to all State agencies and building within the Cheyenne Capitol Complex, including services related to procurement and risk management.

8. Pursuant to the enabling statute for the General Services Division, this division has the power to lease property on behalf of the State in accordance with the rules of the State Building Commission.

9. Upon information and belief, after the Lease was executed, the Construction Management Division was removed from under the aegis of the Department of Administration and Information and is now a stand-alone agency.

10. While the Construction Management Division was involved with the procurement of the Building and execution of the Lease, upon information and belief, the General Services Department has assumed the role previously served by the Construction Management Division in connection with the Lease.

11. The State of Wyoming, Department of Administration and Information, Budget Division is a division of the Department of Administration and Information created to provide administrative support and technical expertise to the Governor, the Legislature, and state agencies on the allocation of state resources, which resources include State funds set aside for the rent obligation to Plaintiff set forth in the Lease.

12. The Capitol Building Rehabilitation and Restoration Project Oversight Group (“Oversight Group”), enacted pursuant to Bill No. SF103(2014) and its enabling statute codified as Wyo.Stat. § 9-5-110 through 113, was created to oversee and approve all aspects of the Capitol renovation project, including the selection and procurement of the Building as a temporary space for State employees displaced by the Capitol renovation.

13. Pursuant to Wyo.Stat. 9-5-112, funds earmarked for the Capitol renovation project, which is a “single funded project” containing multiple components as set forth in § 9-5-112(a), include funds for leasing temporary spaces as determined necessary by the

Governor. Pursuant to Wyo.Stat. § 9-5-112(f), the Oversight Group is tasked with expending such earmarked funds, which include funds for payment of the rent obligation owed to Plaintiff. Pursuant to its commission and as set forth in its enabling statute, the Oversight Group sought out and approved the Lease of the Building and controlled all decisions made related to and regarding the Lease.

14. Matthew H. Mead, as Governor of the State of Wyoming and elected co-chair of the Oversight Group, pursuant to Wyo.Stat § 9-5-112(a)(iii), is charged with the responsibility of appropriating temporary office space for displaced State employees and advising the Oversight Group regarding the need for such interim accommodations.

15. Pursuant to Wyo.Stat. § 9-5-113, all construction to occur in connection with the Capitol renovation project, including construction to the Building to suit to the same to the needs of Defendants' tenants, "shall proceed under the immediate direction and control of the governor. . . ." Defendant Mead's statutory control over the selection of the Building as temporary space for State employees and alterations thereto, as set forth in the Lease, includes Defendant Mead's proscriptive control over payment of rents for temporary spaces.

16. On information and belief, Defendant Mead directed the non-payment of rent to Plaintiff in violation of the Lease. Furthermore, Defendant Mead instructed and controlled the alterations to the Building performed in violation of the Lease.

17. Eli Bebout, as President of the Senate and elected co-chair of the Oversight Group, proscriptively participates in decisions related to rental payments under the Lease as part and parcel to the Capitol renovation project, including the decision not to pay rent on a timely basis as required under the Lease, and to direct tenant improvements and other construction activities at the Building.

18. Cathy Connolly, as House Minority Floor Leader and member of the Oversight Group, proscriptively participates in decisions related to rental payments under the Lease as part and parcel to the Capitol renovation project, including the decision not to pay rent on a timely basis as required under the Lease, and to direct tenant improvements and other construction activities at the Building.

19. Fred Emerich, as Wyoming Senator and member of the Oversight Group, proscriptively participates in decisions related to rental payments under the Lease as part and parcel to the Capitol renovation project, including the decision not to pay rent on a timely basis as required under the Lease, and to direct tenant improvements and other construction activities at the Building.

20. Mark Gordon, as Wyoming State Treasurer and member of the Oversight Group, proscriptively participates in decisions related to rental payments under the Lease as part and parcel to the Capitol renovation project, including the decision not to pay rent on a timely basis as required under the Lease, and to direct tenant improvements and other construction activities at the Building.

21. Steve Harshman, as Speaker of the House and member of the Oversight Group, proscriptively participates in decisions related to rental payments under the Lease as part and parcel to the Capitol renovation project, including the decision not to pay rent on a timely basis as required under the Lease, and to direct tenant improvements and other construction activities at the Building.

22. David Miller, as House Majority Floor Leader and member of the Oversight Group, proscriptively participates in decisions related to rental payments under the Lease as part and parcel to the Capitol renovation project, including the decision not to pay rent on a

timely basis as required under the Lease, and to direct tenant improvements and other construction activities at the Building.

23. Bob Nicholas, as Representative of the House and member of the Oversight Group, proscriptively participates in decisions related to rental payments under the Lease as part and parcel to the Capitol renovation project, including the decision not to pay rent on a timely basis as required under the Lease, and to direct tenant improvements and other construction activities at the Building.

24. Philip Nicholas, a prominent and highly skilled Wyoming attorney, as former President of the Senate and member of the Oversight Group, proscriptively participates in decisions related to rental payments under the Lease as part and parcel to the Capitol renovation project, including the decision not to pay rent on a timely basis as required under the Lease, and to direct tenant improvements and other construction activities at the Building.

25. Drew Perkins, as Senate Majority Floor Leader and member of the Oversight Group, proscriptively participates in decisions related to rental payments under the Lease as part and parcel to the Capitol renovation project, including the decision not to pay rent on a timely basis as required under the Lease, and to direct tenant improvements and other construction activities at the Building.

26. Tony Ross, as a previous Wyoming Senator and current member of the Oversight Group, proscriptively participates in decisions related to rental payments under the Lease as part and parcel to the Capitol renovation project, including the decision not to pay rent on a timely basis as required under the Lease, and to direct tenant improvements and other construction activities at the Building.

27. Chris Rothfuss, as Senate Minority Floor Leader and member of the Oversight Group, proscriptively participates in decisions related to rental payments under the Lease as part and parcel to the Capitol renovation project, including the decision not to pay rent on a timely basis as required under the Lease, and to direct tenant improvements and other construction activities at the Building.

28. Based upon the joint and interrelated acts and omissions by each of the named defendants in bringing about twrongs perpetrated against Plaintiff, and in light of the legal and equitable nature of the claims asserted herein, the State of Wyoming, together with its aforementioned Departments and the Oversight Group and its members are named as defendants herein, and are collectively referred to herein as “Defendants.”

II. COMPLIANCE WITH WYOMING GOVERNMENTAL CLAIMS ACT

29. In compliance with Wyo.Stat. § 1-39-101 *et seq.*, a notice of claim, including an itemized statement of Plaintiff’s damages alleged herein and documentation supporting that itemization (“Notice of Claim”), was presented on July 11, 2017 to the following entities and individuals:

Department of Administration and
Information, General Services
Division,
Risk Management Section
2800 Central Ave.
Cheyenne, Wyoming 82002
(Via certified mail)

Michael R. O’Donnell, Esq.
michael.odonnell@wyo.gov
(Via electronic mail)

Wyoming Attorney General
Civil Division
Pioneer Building, 3rd Floor
2424 Pioneer Ave.
Cheyenne, Wyoming 82002
(Via certified mail)

Wyoming Governor Matt Mead
Idelman Mansion
2323 Carey Ave.
Cheyenne, WY 82002-0010
(Via certified mail)

Wyoming Capitol Square Project
Group
capitolsquare@wyo.gov
(Via electronic mail)

Wyoming Deputy Attorney General
Ryan Schelhaas
Fax: (307) 777-3687
(Via facsimile)

Wyoming Senator Eli D. Bebout
P.O. Box 112
Riverton, Wyoming 82501
eli.bebout@wyoleg.gov
(Via certified and electronic mail)

30. In response to the Notice of Claim transmitted to Mr. O'Donnell, counsel for some or all named Defendants, the VFLP, through its counsel, received an email on July 12, 2017 from Michael Robinson, Senior Assistant Attorney General, stating that he and Dan White, Chief Deputy of the Attorney General's Tort Litigation Division, "will be representing all State defendants in this matter"¹.

31. In email correspondence dated July 13, 2017, regarding presentation of the notice of claim, Mr. Robinson stated as follows:

The notice of claim should be filed with the Department of Administration & Information. Wyo. Stat. Ann. 1-39-113(a) ("no action shall be brought under this act against a government entity unless the claim upon which the action is based is **presented to the entity**[.]). To the extent you are concerned about contacting A&I directly in light of this Office's representation of them in this matter, you have my permission to do so for the purposes of completing presentation of the notice of claim. [boldface and brackets in original]

¹ Mr. Robinson and Mr. White were provided a copy of a draft complaint in this matter with the Notice of Claim. At the time of Mr. Robinson's email, the draft complaint named only the State of Wyoming, Department of Administration and Information, Construction Management Division. Thus, Mr. Robinson's statement quoted above that he represents "all state defendants in this matter" does not necessarily mean that Mr. Robinson and Mr. White represent all Defendants now named.

32. Thereafter, on July 13, 2017, in compliance with Wyo.Stat. § 1-39-113 and upon receipt of approval from Mr. Robinson, the VFLP provided the Notice of Claim on July 13, 2017 to the following entities and individuals:

Department of Administration and Information, Director's Office c/o Director Dean Fausset Emerson Building, Room 131 2001 Capitol Ave. Cheyenne, WY 82002 <i>dean.fausset@wyo.gov</i> (Via certified and electronic mail)	Department of Administration and Information, Director's Office c/o Deputy Director Russ Noel Emerson Building, Room 131 2001 Capitol Ave. Cheyenne, WY 82002 <i>russell.noel@wyo.gov</i> (Via certified and electronic mail)
Department of Administration and Information, Director's Office c/o Director of Policy & Planning Tim Thorson Emerson Building, Room 131 2001 Capitol Ave. Cheyenne, WY 82002 <i>tim.thorson@wyo.gov</i> (Via certified and electronic mail)	Mel Muldrow Secretary of the State Building Commission <i>mel.muldrow@wyo.gov</i> (Via electronic mail)
Department of Administration and Information, General Services Woodson Building 801 W. 20 th St. Cheyenne, WY 82002 (Via certified mail)	Department of Administration and Information, Construction Management Division 700 W. 21st St. Cheyenne, WY 82002 (Via certified mail)

33. Although not required by Wyo.Stat. § 1-39-101 *et seq.*, the claim form submitted with the Notice of Claim, which was obtained on the website for the Department of Administration & Information, General Services Division, Risk Management Section, requires that the original form be submitted, rather than a faxed or emailed copy. To ensure strict compliance with all guidelines set forth by the State Risk Management Section, on July 14, 2017, the Notice of Claim containing the original, notarized claim form was mailed to the Risk Management Section at the following address:

Department of Administration and Information, General
Services Division, Risk Management Section
2800 Central Ave.
Cheyenne, Wyoming 82002
(Via certified mail)

34. Thereafter, the VFLP revised the Notice of Claim ("Revised Notice of Claim) to include a more detailed itemization of damages and presented the Revised Notice of Claim on August 15, 2017 to the following entities and individuals:

Michael Robinson
Senior Assistant Attorney General
mike.robinson@wyo.gov
(Via electronic mail)

Dan White
Chief Deputy of the Attorney
General's Tort Litigation Division
dan.white@wyo.gov
(Via electronic mail)

Department of Administration and
Information, General Services
Division, Risk Management
Section
2800 Central Ave.
Cheyenne, Wyoming 82002
ai-riskmanagement@wyo.gov
(Via certified and electronic mail)

Department of Administration and
Information, Director's Office
c/o Director Dean Fausset
Emerson Building, Room 131
2001 Capitol Ave.
Cheyenne, WY 82002
dean.fausset@wyo.gov
(Via certified and electronic mail)

Department of Administration and
Information, Director's Office
c/o Deputy Director Russ Noel
Emerson Building, Room 131
2001 Capitol Ave.
Cheyenne, WY 82002
russell.noel@wyo.gov
(Via certified and electronic mail)

Department of Administration and
Information, Director's Office
c/o Director's Policy & Planning
Tim Thorson
Emerson Building, Room 131
2001 Capitol Ave.
Cheyenne, WY 82002
tim.thorson@wyo.gov
(Via certified and electronic mail)

Mel Muldrow
Secretary of the State Building
Commission
mel.muldrow@wyo.gov
(Via electronic mail)

Department of Administration and
Information, General Services
Woodson Building
801 W. 20th St.
Cheyenne, WY 82002
(Via certified mail)

Department of Administration and
Information, Construction

Department of Administration and
Information, Budget Division

Management Division
700 W. 21st St.
Cheyenne, WY 82002
(Via certified mail)

c/o Deputy Director Kevin
Hibbard
State Library Building
2800 Central Ave.
Cheyenne, WY 82002
kevin.hibbard@wyo.gov
(Via certified and electronic mail)

Governor Matt Mead
Idelman Mansion
2323 Carey Ave.
Cheyenne, WY 82002-0010
(Via certified mail)

Senator Eli D. Bebout
P.O. Box 112
Riverton, Wyoming 82501
eli.bebout@wyoleg.gov
(Via certified and electronic mail)

Representative Cathy Connolly
1321 Garfield St.
Laramie, WY 82070
cathy.connolly@wyoleg.gov
(Via certified and electronic mail)

Senator Fred Emerich
P.O. Box 903
Cheyenne, WY 82003
fred.emerich@wyoleg.gov
(Via certified and electronic mail)

Treasurer Mark Gordon
2020 Carey Ave., 4th Floor
Cheyenne WY, 82002
treasurer@wyo.gov
(Via certified and electronic mail)

Representative Steve Harshman
4286 Moonbeam Road
Casper, WY 82604
steve.harshman@wyoleg.gov
(Via certified and electronic mail)

Representative David Miller
131 Davis Lane
Riverton, WY 82501
david.miller@wyoleg.gov
(Via certified and electronic mail)

Representative Bob Nicholas
6225 Mountainview Drive
Cheyenne, WY 82009
bob.nicholas@wyoleg.gov
(Via certified and electronic mail)

Philip A. Nicholas
Nicholas Tangeman
170 North 5th Street
Laramie, WY 82072
info@wyolegal.com
(Via certified and electronic mail)

Senator Drew Perkins
1133 Granada Avenue
Casper, WY 82601
drew.perkins@wyoleg.gov
(Via certified and electronic mail)

Tony Ross
Ross, Ross & Santini, LLC
2402 Pioneer Avenue
Cheyenne, WY 82001
tony@ross-santini.com
(Via certified and electronic mail)

Senator Chris Rothfuss
P.O. Box 1791
Laramie, WY 82073
chris.rothfuss@wyoleg.gov
(Via certified and electronic mail)

Wyoming Capitol Square Project

Laramie County Clerk, Debra Lee

Group
capitolsquare@wyo.gov
(Via electronic mail)

P.O. Box 608
Cheyenne, WY 82003
office@laramiecountyclerk.com
(Via certified and electronic mail)

Cheyenne City Clerk,
Carol Intlekofer
2101 O'Neil Ave.
Cheyenne, WY 82001
cityclerk@cheyennecity.org
(Via certified and electronic mail)

35. As noted above, and as required by the Risk Management Section claim form, the Revised Notice of Claim, along with the original, notarized claim form, was transmitted to the Risk Management Section on August 15, 2017 as follows:

Department of Administration and Information, General
Services Division, Risk Management Section
2800 Central Ave.
Cheyenne, Wyoming 82002
(Via certified mail)

36. The Notice of Claim and Revised Notice of Claim (collectively referred to herein as the "Notice") submitted to the individuals and entities set forth above fully complied with the signature and certification requirements of article 16, section 7 of the Wyoming Constitution.

III. JURISDICTION & VENUE

37. Jurisdiction is proper with this Court pursuant to the jurisdiction provision of the Wyoming Governmental Claims Act, Wyo.Stat. § 1-39-117, stating that "[o]riginal and exclusive jurisdiction for any claim filed in state court under this act shall be in the district courts of Wyoming," and pursuant to the choice of law provision in the Lease Agreement between the Parties upon which this Complaint is based, which reads as follows:

The construction, interpretation and enforcement of this Lease shall be governed by the laws of the State of Wyoming. The

Courts of the State of Wyoming shall have jurisdiction over this Lease and the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.

Lease, § 11(C).

38. Venue is properly situated in this Court, as the events upon which this Complaint is based occurred in Laramie County. Additionally, section 11(C) of the Lease between the Parties identified this Court as the agreed-upon venue for the construction, interpretation and enforcement of the Lease.

IV. FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

39. In March 2015, Defendants approached Plaintiff about leasing the majority of a large commercial space, owned by the Plaintiff and located at 2020 Carey Avenue, Cheyenne, Wyoming (the "Building"), which location is in close proximity to the State Capitol building, to provide substitute office space for Wyoming state government employees, including but not limited to the Secretary of State, State Auditor and State Treasurer, together with their respective aids, subordinates and staff, who had been displaced from the State Capitol building during the Capitol Renovation Project, which remains underway at the time of the commencement of the instant action

40. The Parties entered into the Lease in late March 2015 for a five-year term commencing July 1, 2015 and terminating June 30, 2020. A copy of the Lease is attached hereto as Exhibit A

41. The Lease required that Defendants make an annual rent payment of \$539,280.00 to Plaintiff, with the first rent payment due prior to the July 1, 2015 commencement date of the Lease and each succeeding payment due on or before the first day of each succeeding July. To wit,

Rent Payment. The annual rent to be paid by Tenant to Lessor shall be five hundred thirty-nine thousand, two hundred eighty dollars (\$539,280.00) which shall be paid prior to commencement of this Lease and thereafter on or before the first (1st) day of each succeeding July.

Exhibit A, Lease § 5.

42. The “purpose” provision of the Lease, section 3, contemplated that after the initial five-year term, Defendants would continue to lease the Building for use by the same or other State employees. As such, the Lease permitted Defendants to engage in tenant improvements to the Building to convert the Building to suit the needs of its various State employee occupants.

43. As a precondition of Defendants engaging in alterations, additions or improvements to the Building, the Lease required that Defendants obtain appropriate approvals from Plaintiff as follows:

Tenant Improvements.

A. Tenant agrees to perform and bear the cost of Tenant Improvements (TIs) to the Premises, in advance of the commencement of this Lease, as described herein. Lessor agrees that other improvements to the Premises may be necessary to bring common areas, stairs, elevators, restrooms, ceilings, electrical, mechanical and plumbing up to code and/or into compliance with the ADA (Lessor Improvements), in advance of the commencement of this Lease, and agrees to bear the cost of such improvements . . . All TIs and all other Lessor Improvements described in this Section 6 shall be performed by the Tenant’s Contractor, and each party shall pay its respective share. Tenant shall *design the improvements subject to Lessor approval*, and shall manage the construction following execution of the appropriate contracts.

Exhibit A, Lease § 6(A) [emphasis added].

Special Provisions.

A. Alterations, Additions and Improvements.

(i) In addition to the Tenant Improvements noted above, Tenant may, *with Lessor's prior written approval and at Tenant's own expense*, at any time during the Lease term, make alterations, additions, or improvements in and to the Premises . . . *No structural or substantial portion of the Premises shall be demolished or removed by Tenant without the prior written consent of Lessor.*

Exhibit A, Lease § 10(A) [emphasis added].

44. Without providing notice to Plaintiff or obtaining design or written approval from Plaintiff, beginning late March or early April 2015 and continuing through the present date, Defendants planned and carried out extensive alternations to the Building affecting more than 50% of the interior of the leased portion of the Building.

45. On May 1, 2015, Defendants submitted their construction plans to the City of Cheyenne ("City") for approval and issuance of a building permit.

46. Defendants did not provide notice to Plaintiff that they had completed construction plans, did not provide a copy of the plans to Plaintiff nor did they seek approval from Plaintiff to proceed with those plans.

47. Upon reviewing Defendants' construction plans, the City of Cheyenne, through its Fire Prevention Bureau, issued a letter to Defendants' contractor, JE Dunn Construction, dated June 5, 2015, outlining various, additional alterations to the building, ostensibly code-related, that were required by the City as a condition of the State's construction.

48. These additional alterations had not previously been required by the City and were triggered by Defendants' proposed, extensive alterations to the Building.

49. Thereafter, Defendants made additional alterations to the Building, ostensibly in compliance with the June 5, 2015 letter from the City.

50. Prior to making the additional alterations, Defendants failed to notify Plaintiff about the alterations ordered by the City or obtain approval from Plaintiff for the additional alterations.

51. While Plaintiff was listed as a copied recipient on the June 5, 2015 letter from the City, Plaintiff has no record of having received that correspondence, and was unaware of the alterations that had been ordered by the City until the undersigned counsel for Plaintiff received a copy of the June 5, 2015 letter in November 2016 connection with an effort to mediate this dispute with Defendants.

52. After having incurred expenses for alterations to the Building that they claim had been required by the City, Defendants unilaterally and with no legal basis to do so, withheld rent from Plaintiff as a setoff for expenses incurred in connection with those additional alterations, none of which Plaintiff had approved or agreed to fund.

53. Defendants have had possession of the leased portion of the Building from approximately April 2015 through the present date and have yet to make a timely or full rent payment.

54. Defendants failed to pay rent for the year 2015 before the July 1, 2015 commencement date of the Lease, and made only a partial payment on December 3, 2015 in the amount of \$336,879.

55. Defendants failed to pay rent for the year 2016 on or before July 1, 2016, and made only a partial rent payment in mid-February 2017 in the amount of \$350,000.

56. Defendants failed to make a rent payment for the year 2017, despite that payment being due and owing as of July 1, 2017.

57. As of the date of this Complaint, Defendants are indebted to Plaintiff for past due rent from 2015, 2016 and 2017 in the amount of \$930,961.

58. The Lease requires that Defendants' alterations, additions and improvements "be performed in a workmanlike manner and shall not weaken or impair the structural strength, or lessen the value of the Premises." Exhibit A, Lease § 10(A).

59. Defendants' contractors damaged the building during construction, including approximately \$20,452.50 in damage to the parking lot asphalt, \$7,366.65 in increased HVAC system services expenses and \$5,454.96 to replace sloan valves that were removed by the contractors and never located again.

60. Furthermore, Defendants demanded the demolition and reconstruction of the Building exterior stairs alleging that their contractors had performed an examination of those stairs and such extensive repairs were required. The VFLP retained Reiman Corp. to perform the demolition, and Reiman thereafter informed the VFLP that the core of the stairs had been in excellent condition and demolition had been entirely unnecessary. To date, the VFLP have incurred approximately \$337,261.04 in connection with the unnecessary demolition and reconstruction of the exterior stairs based on Defendants' false representations. Additional expenses are anticipated in connection with the exterior stairs reconstruction.

61. As of the date of this action, Defendants retain possession and control over the Building. The VFLP does not now nor has it had possessory control over the Building since early 2015. As such, the VFLP has not performed an inspection of the condition of the Building after the commencement of Defendants' construction. The VFLP reserves the right to amend its itemization of damages based on a forensic investigation of the Building.

62. On July 5, 2017, Plaintiff, through the undersigned counsel, provided Defendants with a “Notice to Quit,” as required by Wyo.Stat. § 1-21-1003 prior to commencing an action for forcible entry and detainer. A copy of the Notice to Quit is attached hereto as Exhibit B.

63. The timeframe to cure or vacate the premises set forth in the Notice to Quit has expired, and Defendants have neither responded to the Notice to Quit, sought to cure the breaches detailed therein nor vacated the premises.

64. Pursuant to the Lease, Defendants’ right to quiet enjoyment of the Building is contingent upon full performance of the terms contained in the Lease. To wit,

Quiet Enjoyment. Lessor warrants that Tenant shall be granted peaceable and quiet enjoyment of the Premises free from any eviction or interference by Lessor *if Tenant pays the rent, and otherwise fully and punctually performs the terms and conditions imposed on Tenant.*

Exhibit A, Lease § 8(C) [emphasis added].

65. Defendants unlawfully and wrongfully retain possession of the Building in violation of the Lease between the Parties.

V. FIRST CLAIM FOR RELIEF — FORCIBLE ENTRY AND DETAINER

66. Plaintiff incorporates by reference within this claim for relief all other averments set forth herein.

67. Defendants failed to comply with their obligation in the Lease to fully and punctually pay rent.

68. Defendants failed to comply with their obligation in the Lease to obtain Plaintiff’s approval prior to performing extensive alterations to the Building.

69. Defendants failed to comply with their obligation in the Lease to ensure that alterations to the Building were performed in a workmanlike manner and did not lessen the value of the Building.

70. Defendants failed to cure the breaches detailed herein or vacate the Building within the timeframe set forth in the Notice to Quit.

71. Defendants unlawfully and wrongfully retain possession of the Building in violation of the Lease between the Parties.

72. Pursuant to Wyo.Stat. 1-21-1001 *et seq.*, Plaintiff is entitled to the assistance of this Court to evict Defendants from the Building and obtain a writ of restitution for the past-due rent, including statutory interest, and Plaintiff's attorney's fees and costs incurred in bringing this action.

VI. SECOND CLAIM FOR RELIEF — BREACH OF CONTRACT

73. Plaintiff incorporates by reference within this claim for relief all other averments set forth herein.

74. The Lease requires that Defendants make an annual rent payment on or before July 1, with the first payment obligation accruing on July 1, 2015 and proceeding annually each successive year until the termination of the Lease. *See* Exhibit A, Lease § 5.

75. Defendants breached the Lease by failing to fully or timely comply with their rent payment obligation and, as of the date of this Complaint, are indebted to Plaintiff in the amount of \$930,961.

76. The Lease requires that Defendants obtain either design or written approval from Plaintiff prior to performing alterations, additions or improvements to the Building.

77. Defendants breached the Lease by failing to obtain approval from Plaintiff prior to engaging in extensive alterations to the Building that affected more than 50% of the interior of the leased premises.

78. The Lease requires that Defendants perform alterations, additions or improvements to the Building in a workmanlike manner that does not reduce the value of the Building.

79. Defendants breached the Lease, as its contractors have not performed alterations in a workmanlike manner and have damaged the building during the construction on the same.

80. Plaintiff has been damaged by Defendant's multiple breaches in an amount to be proven at trial, and Plaintiff is entitled to its attorneys fees and costs incurred in bringing this action.

VII. THIRD CLAIM FOR RELIEF — BREACH OF IMPLIED DUTY OF GOOD FAITH AND FAIR DEALING

81. Plaintiff incorporates by reference within this claim for relief all other averments set forth herein.

82. In Wyoming, every contract imposes upon each party a duty of good faith and fair dealing in its performance and enforcement, which requires that a party's actions be consistent with the agreed common purpose and justified expectations of the other party.

83. The Lease between the Parties required that the Defendants pay the rent set forth therein as a condition of their possession, occupancy and use of the Building.

84. Defendants failed to pay rent as required by the Lease, which was not consistent with the agreed upon common purpose and justified expectation of Plaintiff.

85. The Lease between the Parties required that the Defendants obtain Plaintiff's approval prior to making alterations, additions or improvement to the Building.

86. Defendants failed to obtain the required approvals from Plaintiff prior to making extensive alterations to the Building, which actions were not consistent with the agreed upon common purpose and justified expectation of Plaintiff.

87. Plaintiff has been damaged by Defendants' breach of their implied duty of good faith and fair dealing in an amount to be proven at trial, and Plaintiff is entitled to its attorneys and costs incurred in bringing this action.

VIII. FOURTH CLAIM FOR RELIEF – UNJUST ENRICHMENT

88. Plaintiff incorporates by reference within this claim for relief all other averments set forth herein.

89. Pursuant to the Lease, Plaintiff provided the Building to Defendants for the uses contained therein and fully complied with their obligations in the Lease, including provided valuable maintenance to the Building for the benefit of Defendants.

90. Defendants assumed occupancy of the Building and have retained occupancy since early 2015.

91. At no time has Defendant made a complete or timely rent payment and continues to occupy the Building despite a significant debt owed to Plaintiff in past-due rent. As such, the Defendants have been unjustly enriched to the detriment of Plaintiff, and Plaintiff is further entitled to statutory interest, both pre- and post-judgment, on the past due amounts and their attorneys fees and costs incurred in bringing this action.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment in its favor and against Defendants, including the immediate eviction of Defendant from the Building, and compensation in an amount that will justly and adequately compensate it for its monetary and non-monetary injuries, damages and losses, including unpaid rent, expenses and other damages incurred as consequential damages, pre- and post-judgment interest and attorneys fees and costs, in an amount not less than \$1,496,043.87, together with such other and further relief as this Honorable Court deems just and proper in the circumstances.

X. JURY DEMAND

PLAINTIFF DEMANDS TRIAL TO A JURY OF SIX PERSONS OF ALL CLAIMS SO TRIABLE.

Respectfully submitted this 22nd day of August, 2017.



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Attorneys for Plaintiff

**REAL PROPERTY LEASE AGREEMENT NO. 8-09656 BETWEEN
VOSS FAMILY LIMITED PARTNERSHIP
AND
STATE OF WYOMING, DEPARTMENT OF ADMINISTRATION & INFORMATION,
CONSTRUCTION MANAGEMENT**

In consideration of the mutual covenants contained herein, the parties agree as follows:

1. **Parties.** This Real Property Lease Agreement (Lease) is made between Voss Family Limited Partnership (Lessor), whose address is: 801 W. Big Horn Avenue, Worland, Wyoming 82401 and the State of Wyoming, Department of Administration & Information, Construction Management (Tenant) whose address is: 700 West 21st Street, Cheyenne, Wyoming 82002.

A. Lessor's contact information is:

Voss Family Limited Partnership
801 W. Big Horn Ave.
Worland, Wyoming 82401
(307) 431-5010

B. Tenant's contact information is:

Department of Administration and Information
Construction Management
700 West 21st Street
Cheyenne, WY 82002
307-777-7769

C. In the event that any of the above information changes, the party whose information has changed shall immediately notify the other party in writing at the addresses noted above.

2. **Premises.**

Lessor desires to lease to Tenant, and Tenant desires to lease from Lessor the following described real property (Premises):

Approximately 35,952 square feet of office space located at 2020 Carey Ave., Cheyenne, WY 82001, more particularly described below, plus full use of all adjacent parking and outbuildings, sanitary disposal facilities and other appurtenances located on the Premises. A full legal description of the building and site upon which the leased Premises is located is:

ALL BLOCK 267, PLUS (1920 SQFT, ORD 2812) THE E 120' VAC 16'
ALLEY, PLUS (2304 SQFT, ORD 2098) THE W 144' VAC 16' ALLEY.

Lessor and Tenant agree that the final, total square footage to be leased by Tenant is subject to revision depending upon final Tenant Improvement decisions and security needs. In

the event the total leased square footage is adjusted from the 35,952 square feet noted above, the final and total leased square footage will be added to this Lease by amendment and the total base rent noted in paragraph 5, below, will be adjusted based upon a square footage rent calculation at fifteen dollars (\$15.00) per square foot per year.

Calculation of the initially contemplated square footage of the leased Premises is based upon the following:

<u>Area of Building</u>	<u>Useable Sq. Ft.</u>	<u>Rentable Sq. Ft.</u>
Second Floor (Mezz.)	1,700	1,904
Third Floor	5,766	6,400
Fourth Floor	5,766	6,400
Sixth Floor	5,749	6,383
Seventh Floor	5,730	6,364
Eighth Floor	5,730	6,364
Ninth Floor	<u>1,908</u>	<u>2,137</u>
Total	32,349	35,952

A visual depiction of the building and site is attached as Attachment "A" and a floorplan of the leased Premises is attached as Attachment "B".

3. Purpose of Lease.

A. Lessor is the sole owner of the Premises described above, and desires to lease the Premises to Tenant for use by the State of Wyoming as a time-limited, temporary facility for the Wyoming Secretary of State, Wyoming State Auditor and Wyoming State Treasurer, together with their respective staff and functions; and, following such time-limited temporary use, for continued use by other State agencies.

B. Tenant desires to lease a portion of the Premises for conducting state executive branch and other government business.

C. For consideration, Lessor leases to Tenant the Premises in accordance with the terms of this Lease.

4. Term of Lease.

A. Lessor leases the above Premises for a single term of five (5) years, commencing July 1, 2015, and terminating June 30, 2020 or sooner as provided herein. This Lease is not valid and shall not become effective until it is signed by an authorized representative of the Lessor and an authorized representative of the Tenant, has been approved and signed by an authorized representative of the Department of Administration and Information, approved as to form by the Office of the Wyoming Attorney General, and, approved by the Governor or his designee. The effective date of this Lease shall be the date of the last signature, and the Lease shall commence on the date of the last signature or on the date specified in the Term of Lease provision, whichever is later.

B. Tenant shall have an unrestricted option to extend this Lease under the same terms and conditions set forth herein for two (2), three (3) month terms with three (3) months prior written notice.

C. [Not Used]

D. In the event Tenant wishes to continue to use the Premises past the Term set forth in paragraph A above, and in addition to any extensions provided in paragraph B above, Tenant shall have the unrestricted option to extend this Lease for one (1) additional five-year (5-year) period upon the same terms and conditions set forth herein. The base rent for the additional five-year (5-year) period shall be based on an increase in the CPI published by the U.S. Department of Labor, Bureau of Labor Statistics, CPI-U West Region, All Items ("CPI Index") with a reference base period of the average CPI Index for each year of the 5-year period ending June 30, 2020, provided however that regardless of the adjustment to Rent determined by the CPI Index, the Rent for the first Renewal Period shall in no case be less than fifteen dollars (\$15.00) per square foot nor more than eighteen dollars (\$18.00) per square foot. Tenant shall provide Lessor with six (6) months prior written notice of the intent to exercise this option.

E. Subject to progress of Tenant Improvements noted in paragraph 6, below, and to the needs of Tenant, Tenant shall have the ability to occupy portions of the leased Premises in advance of the commencement date of this Lease. In the event of early occupancy for these purposes, all provisions of this Lease shall apply as if the formal term of the Lease had commenced except that identification of the early occupancy portions of the Premises and their respective square footages shall be added to this Lease by amendment and an early occupancy monthly rental payment shall be calculated based upon the annual rate of fifteen dollars (\$15.00) per square foot.

(i) Tenant shall occupy the sixth and seventh floors of the leased Premises as soon as practicable prior to July 1, 2015, in order to accommodate early termination of an existing lease. All existing wall systems and furniture, fixtures and equipment currently in place shall remain on the Premises for Tenant's use through the Term of this Lease and any extensions.

F. From the date of final execution of this Lease, Tenant is granted the right to "opt-out" of, and terminate the Lease. If this right is exercised, Tenant shall pay for all Tenant Improvements performed through the date of notice of the "opt-out", and shall pay for the cost of any construction or design services which are necessary to bring Tenant Improvements to an end.

5. **Rent Payment.** The annual rent to be paid by Tenant to Lessor shall be five hundred thirty-nine thousand, two hundred eighty dollars (\$539,280.00) which shall be paid prior to commencement of this Lease and thereafter on or before the first (1st) day of each succeeding July. The total amount of rent paid under this Lease shall not exceed two million, six hundred ninety-six thousand, four hundred dollars (\$2,696,400.00) unless the Lease is extended according to the terms set forth herein. No payment shall be made

under this Lease for any tenancy occurring prior to the date upon which the last required signature is affixed to this Lease.

6. **Tenant Improvements.**

A. Tenant agrees to perform and bear the cost of Tenant Improvements (TIs) to the Premises, in advance of the commencement of this Lease, as described herein. Lessor agrees that other improvements to the Premises may be necessary to bring common areas, stairs, elevators, restrooms, ceilings, electrical, mechanical and plumbing up to code and/or into compliance with the ADA (Lessor Improvements), in advance of the commencement of this Lease, and agrees to bear the cost of such improvements. Lessor agrees to provide and Tenant agrees to install new window shades for the second, third, fourth, seventh, eighth and ninth floors of a kind and quality to be agreed upon by the parties. The parties shall negotiate which ceiling tiles shall be replaced to comply with standard grade commercial finish. All TIs and all other Lessor Improvements described in this Section 6 shall be performed by the Tenant's Contractor, and each party shall pay its respective share. Tenant shall design the improvements subject to Lessor approval, and shall manage the construction following execution of the appropriate contracts.

B. Tenant Improvements shall only occur for purposes of Tenant's use of the Premises and not for general upgrade of the Premises or other aspects of the building or site upon and within which the leased Premises are located. TIs are not intended to bring common areas, stairs, elevators, restrooms, ceilings, electrical, mechanical or plumbing up to code.

C. Tenant Improvements are necessary for the Premises to function as a time-limited, temporary facility for the Wyoming Secretary of State, Wyoming State Auditor and Wyoming State Treasurer, together with their respective staffs and functions. TIs and Lessor Improvements in accordance with the terms set forth herein are a term of essence of this Lease. Failure of Lessor to pay its share of construction costs for Lessor Improvements in accordance with the terms of this Lease allows the Tenant to immediately terminate this Lease without further financial obligation to the Tenant and subjects the Lessor to all remedies available to the Tenant for damages under Wyoming law, including consequential damages.

D. In general, Lessor and Tenant will require all improvements to be performed in a workmanlike, quality manner which delivers standard grade commercial finish tenant space to Tenant for its use during the term of the Lease. Standard grade commercial finish, for the purposes of this Lease, means finish of a like kind and quality to that found in the building on the date of execution of this Lease.

7. **Exclusive Use.**

A. Tenant shall have exclusive use of the leased Premises during the term of the Lease. Lessor shall provide appropriate locking doors and other standard security measures. Tenant may provide such additional security measures as it deems necessary