

THE DEFENDANT HEREBY OBJECTS TO PLAINTIFF'S  
MOTION FOR SUPPLEMENTAL JUDGMENT DATED DEC. 22, 1995

ON DECEMBER 15, 1995, YOUR  
HONOR, JUDGE STANLEY, ISSUED  
THE FOLLOWING ORDER:

THIS CASE WILL BE DISMISSED ON  
JANUARY 31, 1996 FOR FAILURE TO  
PERFECT THE JUDGMENT OF PARTITION  
BY SALE IN A TIMELY MANNER IF  
A SUPPLEMENTAL JUDGMENT HAS NOT  
ENTERED BY THAT DATE.

ON DECEMBER 22, 1995, PLAINTIFF  
MOVED THAT THIS COURT ENTER A  
SUPPLEMENTAL JUDGMENT IN THE ABOVE ENTITLED  
AND NUMBERED CASE IN CONFORMITY  
WITH A PROPOSED ATTACHED SUPPLEMENTAL  
JUDGMENT.

THE PRO SE DEFENDANT, WILLIAM  
J. ZISK, FILED OBJECTIONS, DATED  
JANUARY 11, 1996, TO PLAINTIFF'S  
MOTION FOR SUPPLEMENTAL JUDGMENT  
DATED DECEMBER 22, 1995.

THE PLAINTIFF'S  
MOTION FOR SUPPLEMENTAL  
JUDGMENT, DATED DECEMBER 22, 1995, WAS  
PLACED ON THE JANUARY 16, 1996 SHORT  
CALENDAR BEFORE YOUR HONOR, JUDGE STANLEY.

ON JANUARY 17, 1996, YOUR  
HONOR, JUDGE STANLEY, GRANTED  
PLAINTIFFS MOTION FOR SUPPLEMENTAL  
JUDGMENT, DATED DECEMBER 22, 1995.

PURSUANT TO CONNECTICUT RULES  
OF COURT, PRACTICE BOOK SECTION 326,  
THE DEFENDANT FILED A MOTION,  
DATED FEBRUARY 16, 1996, TO REOPEN  
AND VACATE THE JUDGMENT AND SALE  
IN THE ABOVE ENTITLED AND NUMBERED  
CASE, FOR LACK OF SUBJECT MATTER JURISDICTION.

UPON THE FILING OF THE MOTION  
TO REOPEN AND VACATE THE JUDGMENT  
AND SALE, THE DEFENDANT PAYED TO  
THE CLERK OF THIS COURT, THE \$60  
FILING FEE PRESCRIBED BY THE  
STATUTE.

THE ORDER TO REOPEN AND VACATE THE  
JUDGMENT AND SALE IS SOUGHT ON THE  
GROUNDS THAT THE DEFENDANT IS ENTITLED  
TO AN ORDER AS A MATTER OF LAW  
AND MATERIAL FACTS.

A MEMORANDUM OF LAW IN SUPPORT  
OF DEFENDANTS MOTION TO REOPEN AND  
VACATE THE JUDGMENT AND SALE HAS  
BEEN ANNEXED THERETO.

WITH RESPECT TO THE FACTS  
PERTINENT TO THIS MOTION, THE FOLLOWING  
HAS BEEN ATTACHED AND MARKED:

PLAINTIFFS QUIT CLAIM DEED AND  
WARRANTEE DEED WHICH WERE EXECUTED  
AND DATED MAY 8, 1991 - EXHIBIT A;

PLAINTIFFS MORTGAGE DEED AND NOTE  
WHICH WAS EXECUTED AND DATED  
MAY 23, 1991 - EXHIBIT B;

A PARTIAL TRANSCRIPT OF THE  
SUPERIOR COURT TRIAL PROCEEDINGS  
HELD BEFORE THE HONORABLE DANIEL F.  
SPALLONE ON MARCH 30, 1993 - EXHIBIT C;

A COPY OF THE DEFENDANTS REQUEST FOR  
INTERROGATORIES AND PRODUCTION  
DATED SEPTEMBER 27, 1991 - EXHIBIT D

PLAINTIFFS CERTIFICATES OF ADOPTION OF  
FICTIONAL TRADE NAME DATED JULY 18, 1991  
AND DECEMBER 4, 1991 - EXHIBIT E.

THE PLAINTIFF, HIGH ST. ASSOCIATES FILED THE ABOVE ENTITLED AND NUMBERED CASE IN THIS COURT ON JUNE 4, 1991, ALLEGING TO BE A GENERAL PARTNERSHIP ORGANIZED AND EXISTING PURSUANT TO THE LAWS OF THE STATE OF CONNECTICUT WITH AN OFFICE AND PLACE OF BUSINESS AT 1785 SAYBROOK ROAD, HADDAM, CONNECTICUT.

A CURSORY REVIEW OF THE AFORE-MENTIONED EXHIBIT A, B, C, D, AND E, CLEARLY ESTABLISHES THAT NOT ONLY WAS HIGH STREET ASSOCIATES NON-EXISTANT WHEN THE PURPORTED QUIT CLAIM AND WARRANTEE<sup>DEEDS</sup>, WERE EXECUTED ON MAY 8, 1991, NOR WAS HIGH ST. ASSOCIATES EXISTING WHEN THE PURPORTED MORTGAGE DEED AND NOTE WERE EXECUTED ON MAY 23, 1991, NOR WAS HIGH STREET ASSOCIATES EXISTING ON JUNE 4, 1991, WHEN THE PARTITION COMPLAINT WAS FILED IN THIS COURT, NOR WAS HIGH ST. ASSOCIATES, IN ITSELF, AN EXISTING CONNECTICUT GENERAL PARTNERSHIP ON THE ABOVE MENTIONED DATES AND TIMES.

"A DEED OR OTHER CONVEYANCE TO A  
GRANTEE NOT IN EXISTENCE AT THE TIME  
OF THE CONVEYANCE --- DOES NOT CONVEY  
LEGAL TITLE TO THE LAND OR ESTATE  
DESCRIBED IN THE CONVEYANCE."

CONNECTICUT STANDARD OF TITLE, STANDARD  
7.1, COMMENT 1. "IF A DEED DOES  
NOT TRANSFER LEGAL TITLE TO A  
PURPORTED GRANTEE BECAUSE SUCH  
GRANTEE IS NOT IN EXISTENCE AT THE  
TIME OF THE CONVEYANCE --- THE LEGAL  
TITLE TO THE LAND --- REMAINS IN  
THE GRANTOR." CONNECTICUT STANDARD  
OF TITLE, STANDARD 7.1, COMMENT 2.

A DEED TRANSFERRING LAND TO ONE  
WHO HAS NO LEGAL EXISTENCE DOES NOT  
PASS TITLE, THOUGH SUCH DEED IS VALID  
BETWEEN GRANTOR AND GRANTEE UNDER  
PRINCIPALS OF EQUITY; THE DEED IS  
VOID WHEN ASSERTED AGAINST THIRD  
PARTIES ( COMMUNITY CREDIT UNION  
V. FEDERAL EXPRESS 534 A.2d 331  
( D.C. APP 1987 )

THE DOCTRINE OF MISREPRESENTATION  
AND THE REMEDY OF RESCISSION APPLY IN  
THIS JURISDICTION

IT IS IMPORTANT TO RECOGNIZE THAT THE DOCTRINE OF MISREPRESENTATION AND ITS CONCURRENT REMEDY OF RESCISSION APPLY IN THIS CASE BECAUSE THE MISREPRESENTATION WAS MADE PRIOR TO THE FILING OF THE COMPLAINT BY THE PLAINTIFF IN THIS ACTION.

IN ADDITION, CONNECTICUT GENERAL STATUTES, § 35-1 PROVIDES IN PERTINENT PART: FICTITIOUS TRADE NAMES FORBIDDEN: CERTIFICATES, UNFAIR TRADE PRACTICES. NO PERSON EXCEPT AS HEREINAFTER PROVIDED, SHALL CONDUCT OR TRANSACT BUSINESS IN THIS STATE, UNDER ANY ASSUMED NAME, OR UNDER ANY DESIGNATION, NAME OR STYLE, CORPORATE OR OTHERWISE, OTHER THAN THE REAL NAME OR NAMES OF THE PERSON OR PERSONS CONDUCTING OR TRANSACTING SUCH BUSINESS, UNLESS THERE HAS BEEN FILED, IN THE OFFICE OF THE TOWN CLERK IN THE TOWN IN WHICH SUCH BUSINESS IS OR IS TO BE CONDUCTED OR TRANSACTED, A CERTIFICATE STATING THE NAME UNDER WHICH SUCH BUSINESS IS OR IS TO BE CONDUCTED OR TRANSACTED, A CERTIFICATE STATING THE NAME UNDER

... WHICH SUCH BUSINESS IS OR IS TO BE CONDUCTED OR TRANACTED AND THE FULL NAME AND POST OFFICE ADDRESS OF EACH PERSON CONDUCTING OR TRANACTING SUCH BUSINESS - - - .

THE GENERAL RULE IS THAT THE OBJECT OR PURPOSE OF STATUTES WHICH REGULATE THE DOING OF BUSINESS UNDER A FICTITIOUS OR ASSUMED NAME IS - - - TO PROTECT THE PUBLIC BY GIVING NOTICE OR INFORMATION AS TO THE PERSON WITH WHOM THEY DEAL AND TO AFFORD PROTECTION AGAINST FRAUD AND DECEIT ( 57 AM. JUR. 2d, NAMES § 66 )

"WE WILL NOT PRESUME THAT THE LEGISLATURE INTENDED TO ENACT MEANINGLESS OR USELESS LEGISLATION" ( TURNER V. TURNER, 219 CONN. 703, 713, 595 A.2d 297 (1991) )

SECTION 35-1 PROVIDES TWO SUBSTANTIAL PENALTIES FOR NON-COMPLIANCE. FIRST, A FAILURE TO COMPLY SHALL BE DEEMED TO CONSTITUTE AN UNFAIR OR DECEPTIVE PRACTICE UNDER § 42-110b(2) OF THE

CONNECTICUT UNFAIR TRADE PRACTICES ACT (CUTPA). AS A RESULT, THE DEFENDANT FACES A FULL RANGE OF CIVIL PENALTIES AND LIABILITIES APPLICABLE TO A CUTPA VIOLATION. SECOND, THE DEFENDANT MAY BE CRIMINALLY PROSECUTED AND IMPRISONED FOR AS LONG AS ONE YEAR AND FINED UP TO \$500.

I WOULD ALSO DIRECT THE COURTS ATTENTION TO THE AFOREMENTIONED EXHIBIT B, ABOVE, THE MORTGAGE DEED AND NOTE, PURPORTEDLY EXECUTED BY THE PLAINTIFF (GRANTOR) ON MAY 23, 1991. THE TERMS AND CONDITIONS OF THE PURPORTED MORTGAGE DEED AND NOTE ARE SUCH THAT TITLE OWNERSHIP OF THE ENTIRE 32 ACRE SUBJECT PARCEL OF LAND LOCATED AT 106 HIGH STREET, HIGGANUM, CONNECTICUT, INCLUDING THE INTEREST OF THE DEFENDANT, WILLIAM J. ZISK, WOULD BE RETAINED BY MARY A. ZISK, EDWARD J. ZISK AND DONALD R. ZISK, PENDING DISPOSITION OF THE \$183,000 MORTGAGE, AND IN

EVENT OF A DEFAULT, THE ENTIRE  
PARCEL WOULD REVERT TO THE SAME  
THREE MEMBERS OF THE ZISK FAMILY.  
THE LAST SENTENCE IN PARAGRAPH  
EIGHT CLEARLY STATES: "IN NO EVENT  
SHALL A FINAL RELEASE BE GRANTED  
UNTIL SUCH TIME AS THE REMAINING  
PRINCIPAL BALANCE IS PAID IN FULL."  
MARY A. ZISK, EDWARD J. ZISK AND  
DONALD R. ZISK HAVE MAINTAINED AN  
OWNERSHIP INTEREST IN THE SUBJECT  
PARCEL OF LAND SINCE THE FILING  
OF THE COMPLAINT ON JUNE 4, 1991  
BY THE PLAINTIFF, AND HAVE NOT  
BEEN NAMED AS A PARTY TO THIS  
PROCEEDING. SAID PARTIES WERE INDISPENSABLE TO  
TO THE DETERMINATION OF ALLEGATIONS OF FRAUD IN PLAINTIFF'S PURPORTED  
PROCUREMENT OF TITLE.

"INDISPENSABLE PARTIES ARE PERSONS  
WHO NOT ONLY HAVE AN INTEREST IN  
THE CONTROVERSY, BUT AN INTEREST OF  
SUCH A NATURE THAT A FINAL DECREE  
CANNOT BE MADE WITHOUT EITHER  
AFFECTING THAT INTEREST, OR LEAVING  
THE CONTROVERSY IN SUCH A CONDITION  
THAT ITS FINAL DETERMINATION MAY  
BE WHOLLY INCONSISTENT WITH EQUITY  
AND GOOD CONSCIENCE." (STANDARD

MATTRESS COMPANY V. CITY OF HARTFORD, 31 Conn. Sup. 279, 329 A. 2d 613 (1974), CITING SHIELDS V. BARROW, 58 U.S. 150, 139. A DISMISSAL IS ORDINARILY REQUIRED AS A RESULT OF AN ABSENT INDISPENSABLE PARTY. (STANDARD MATTRESS COMPANY V. CITY OF HARTFORD, SUPRA.)

A PARTNERSHIP EXISTS WHEN BETWEEN TWO OR MORE PERSONS THERE IS A RELATIONSHIP THAT EACH IS, AS TO ALL THE OTHERS IN RESPECT TO THE SAME BUSINESS, BOTH PRINCIPAL AND AGENT. (SAMSTAG AND HILDAR BROTHERS V. OTTENHEIMER AND WEIL, 90 Conn. 475, 97 A. 465 (1916)). THE EVIDENCE AND TESTIMONY WITHIN EXHIBITS C, D, AND E CLEARLY DEFINE THE FACT THAT STEVEN A. ROCCO WAS THE SOLE INDIVIDUAL CONSTITUTING HIGH STREET ASSOCIATES, AND PRIOR TO DECEMBER 4, 1991, A TRUE PARTNERSHIP, WITHIN THE REALM OF "HIGH STREET ASSOCIATES" DID NOT EXIST.

THE EVIDENCE AND TESTIMONY  
WITHIN EXHIBITS A, B, C, D, AND E  
CLEARLY ESTABLISH THAT THE ALLEGED  
PLAINTIFF PARTNERSHIP WAS NOT  
IN EXISTANCE AT THE TIME IT  
PURPORTEDLY TOOK TITLE, AND THE  
QUIT CLAIM DEED AND WARRANTS  
DEED EXECUTED TO HIGH STREET  
ASSOCIATES ON MAY 8, 1991 DID NOT  
CONVEY LEGAL TITLE TO THE SUBJECT  
PROPERTY AT 106 HIGH STREET,  
HIGGANUM, CONNECTICUT. SINCE  
OWNERSHIP IS A PREREQUISITE TO  
THE BRINGING OF A PARTITION ACTION,  
THE PLAINTIFF, HIGH ST. ASSOCIATES,  
DID NOT HAVE STANDING TO BRING  
THIS ACTION AND THE COURT LACKED  
SUBJECT MATTER JURISDICTION TO  
RENDER A JUDGMENT IN THIS MATTER

PURSUANT TO CONNECTICUT RULES  
OF COURT, PRACTICE BOOK SECTION  
145, ANY CLAIM OF LACK OF  
JURISDICTION OVER THE SUBJECT MATTER  
CANNOT BE WAIVED; AND WHENEVER  
IT IS FOUND AFTER SUGGESTION OF THE  
PARTIES OR OTHERWISE THAT THE

COURT LACKS JURISDICTION OF THE SUBJECT MATTER, THE COURT SHALL DISMISS THE ACTION.

THE CONCEPT OF STANDING CONCERN'S LEGAL RIGHT OF INDIVIDUAL TO SEEK RELIEF VIA JUDICIAL SYSTEM. PARTY GENERALLY DOES NOT HAVE STANDING TO RAISE ANOTHER PERSON'S RIGHTS. ABSENCE OF STANDING PRECLUDES THE EXISTENCE OF THE COURT'S SUBJECT MATTER JURISDICTION AND REQUIRES DISMISSAL OF THE CLAIM. (THIRD TAXING DIST. OF CITY OF NORWALK V. LYONS 35 CONN. 647 A. 2d 32, 35 APP. 795 (1994)).

SINCE THE COURT LACKED SUBJECT MATTER JURISDICTION OVER THIS MATTER, JUDGE SPALLONE WAS WITHOUT AUTHORITY TO ORDER THE SUBJECT PROPERTY AT 106 HIGH STREET, HIGGANUM, CONNECTICUT TO BE SOLD, AND THE SALE OF SAID PREMISES BY RICHARD CARELLA, ESQ. IS NULL AND VOID AND MUST BE VACATED, WITH AN ORDER ENTERED BY THE COURT THAT THE TITLE AND

Premises be returned to the original ownership that existed prior to the seizure of, and commencement of this action by High St. Associates on June 4, 1991.

WHEREFORE, THE DEFENDANT RESPECTFULLY PRAYS FOR AN ORDER SUSTAINING THE DEFENDANTS OBJECTION TO PLAINTIFF'S MOTION FOR SUPPLEMENTAL JUDGMENT DATED DECEMBER 22, 1995, WITH A DISMISSAL OF THE ABOVE AND ENTITLED AND NUMBERED CASE IN HIS FAVOR AND AGAINST THE PLAINTIFF, <sup>WITH AWARD OF COST OF SUIT</sup>, WITH A FURTHER ORDER TO PROCEED WITH DEFENDANTS NOVEMBER 23, 1992 COUNTERCLAIM.

RESPECTFULLY SUBMITTED,

THE DEFENDANT

WILLIAM J. ZISK