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2 **DEVIRIAN & SHINMOTO**
3 **PROFESSIONAL CORPORATION**

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ELECTRONICALLY FILED
Superior Court of California,
County of Orange

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Clerk of the Superior Court
By Angelina Nguyen-Do, Deputy Clerk

7
8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE**
9 **CENTRAL JUSTICE CENTER**

10
11 ASSOCIATED READY MIXED
12 CONCRETE, INC., a corporation,

13 Plaintiff,

14 vs.

15 VILLA NOVA DEVELOPING, INC., a
16 corporation; ANDREW NOWACZEK;
and JOHN DOES 1 TO 100, Inclusive,

17 Defendants.
18

Case No.: 30-2019-01047241-CU-CO-CJC

[Unlimited Jurisdiction]

COMPLAINT

[Breach of Judge Nathan Scott
Wares and Merchandise Sold and
Delivered; Open Book Account;
Account Stated; Guaranty]

Amount of Claim: \$117,679.59

19 COMES NOW THE PLAINTIFF, ASSOCIATED READY MIXED
20 CONCRETE, INC. AND FOR A CAUSE OF ACTION AGAINST THE
21 DEFENDANTS, VILLA NOVA DEVELOPING, INC. AND DOES 1 TO 100
22 INCLUSIVE FOR BREACH OF CONTRACT, COMPLAINS AND ALLEGES
23 AS FOLLOWS:

24
25 1) The defendants, JOHN DOES 1 TO 100, inclusive, are sued herein under
26 the foregoing fictitious names for the reason that the plaintiff does not now know
27 their true names or capacities, but upon ascertaining same, plaintiff will ask leave of
28 Court to amend this Complaint and to insert herein their true names and capacities.

1 2) At all times herein mentioned, the defendants and each of them were the
2 agents, servants and employees of each of the other remaining defendants, and were
3 at all times acting within the purpose and scope of said agency and employment.
4

5 3) The plaintiff, ASSOCIATED READY MIXED CONCRETE, INC.
6 (hereinafter referred to as "ASSOCIATED") is a corporation organized and existing
7 under the laws of the State of California. The plaintiff is informed and believes and
8 based on said information and belief alleges that the defendant, VILLA NOVA
9 DEVELOPING, INC. is a corporation.
10

11 4) The contract hereinafter referred to was performed in the City of Newport
12 Beach, County of Orange, State of California.
13

14 5) On or about October 20, 2015, plaintiff, ASSOCIATED and defendants
15 entered into a written contract which provided, in part, that plaintiff would provide
16 defendant VILLA NOVA DEVELOPING, INC. with ready mixed concrete on a
17 credit basis and defendant would pay all sums due to the plaintiff on or before the
18 tenth of the month following billing. A copy of said contract is attached hereto,
19 marked Exhibit "A" and incorporated herein by this reference.
20

21 6) Plaintiff has fully performed and executed all terms, provisions and
22 conditions of said written contract to be performed by it.
23

24 7) Although demand has been made by plaintiff upon defendants, defendants
25 have breached said written contract by refusing to pay to plaintiff any sum, and
26 there is now due, owing and unpaid to plaintiff by defendants the sum of
27 \$117,679.59.
28

...///

...///

1 8) Said written contract further provided that should suit be necessary to
2 enforce any term or provision of said contract, the unsuccessful party of such
3 litigation would pay to the successful party reasonable attorney's fees. As a result
4 of defendants' failure and refusal to pay the sum due, plaintiff has been required to
5 institute the instant action. Said contract further provided that a service charge of
6 eighteen percent (18%) per annum would be added to all past due amounts on
7 defendant's account. The sum of \$117,679.59 is currently past due on defendant's
8 account.

9
10 FOR A SECOND, FURTHER AND SEPARATE CAUSE OF ACTION
11 AGAINST THE DEFENDANT VILLA NOVA DEVELOPING, INC.; AND JOHN
12 DOES 1 TO 100 INCLUSIVE FOR GOODS, WARES AND MERCHANDISE
13 SOLD AND DELIVERED, PLAINTIFF, ASSOCIATED COMPLAINS AND
14 ALLEGES:

15
16 9) Plaintiff repeats paragraphs 1, 2 and 3 and makes them a part of this, its
17 Second Cause of Action, as though fully set out herein.

18
19 10) Within two years last past, to wit, November 30, 2018, the defendant,
20 VILLA NOVA DEVELOPING, INC.; and JOHN DOES 1 TO 100, Inclusive
21 became indebted to plaintiff, ASSOCIATED for goods, wares and merchandise sold
22 and delivered to defendants at their written instance and request in the reasonable
23 and agreed sum of \$117,679.59; although demand has been made upon defendants
24 for said sum, the defendants and each of them have failed and refused and still fail
25 and refuse to pay said sum or any part thereof, and there is now due, owing and
26 unpaid from defendants to plaintiff, ASSOCIATED the sum of \$117,679.59,
27 together with interest at the rate of eighteen per cent (18%) per annum from said
28 date.

1 FOR A THIRD, FURTHER AND SEPARATE CAUSE OF ACTION FOR
2 OPEN BOOK ACCOUNT AGAINST THE DEFENDANT VILLA NOVA
3 DEVELOPING, INC.; AND JOHN DOES 1 TO 100, INCLUSIVE, PLAINTIFF,
4 ASSOCIATED COMPLAINS AND ALLEGES AS FOLLOWS:

5
6 11) Plaintiff repeats paragraphs 1, 2 and 3 and makes them a part of this, its
7 Third Cause of Action, as though fully set out herein.

8
9 12) Within four years last past, to wit, November 30, 2018, the defendant,
10 VILLA NOVA DEVELOPING, INC.; and JOHN DOES 1 TO 100, Inclusive
11 became indebted to plaintiff, ASSOCIATED for an open book account in the sum
12 of \$117,679.59; although demand has been made upon defendants for said sum, the
13 defendants and each of them have failed and refused and still fail and refuse to pay
14 said sum or any part thereof, and there is now due, owing and unpaid from
15 defendants to plaintiff, ASSOCIATED the sum of \$117,679.59, together with
16 interest at the rate of eighteen per cent (18%) per annum from said date.

17
18 FOR A FOURTH, FURTHER AND SEPARATE CAUSE OF ACTION FOR
19 ACCOUNT STATED AGAINST THE DEFENDANT VILLA NOVA
20 DEVELOPING, INC.; AND JOHN DOES 1 TO 100, INCLUSIVE, PLAINTIFF,
21 ASSOCIATED COMPLAINS AND ALLEGES AS FOLLOWS:

22
23 13) Plaintiff repeats paragraphs 1, 2 and 3 and makes them a part of this, its
24 Fourth Cause of Action, as though fully set out herein.

25
26 14) Within four years last past, to wit, November 30, 2018, the defendant
27 VILLA NOVA DEVELOPING, INC. and JOHN DOES 1 TO 100, Inclusive and
28 plaintiff stated an account wherein said account stated and disclosed that defendants

1 were indebted to plaintiff, ASSOCIATED in the sum of \$117,679.59; although
2 demand has been made upon defendants for said sum, the defendants and each of
3 them have failed and refused and still fail and refuse to pay said sum or any part
4 thereof, and there is now due, owing and unpaid from defendants to plaintiff,
5 ASSOCIATED the sum of \$117,679.59, together with interest at the rate of
6 eighteen per cent (18%) per annum from said date.

7
8 FOR A FIFTH, FURTHER AND SEPARATE CAUSE OF ACTION
9 AGAINST THE DEFENDANTS, ANDREW NOWACZEK AND JOHN DOES 1
10 TO 100 INCLUSIVE, FOR A GUARANTY, PLAINTIFF COMPLAINS AND
11 ALLEGES AS FOLLOWS:

12
13 15) Plaintiff repeats paragraphs 1, 2, 3 and 4 and makes them a part of this, its
14 Fifth Cause of Action, as though fully set out herein.

15
16 16) On or about October 20, 2015, defendants ANDREW NOWACZEK and
17 JOHN DOES 1 TO 100, Inclusive, in consideration of the extension of credit from
18 time to time by plaintiff to VILLA NOVA DEVELOPING, INC., made, executed
19 and delivered to plaintiff a guaranty, a copy of which is attached hereto as Exhibit
20 "A" and by reference made a part hereof, wherein defendant, ANDREW
21 NOWACZEK unconditionally guaranteed all existing and future obligations of
22 VILLA NOVA DEVELOPING, INC. to plaintiff including all indebtedness and
23 liabilities of every nature then owing or thereafter incurred by said corporation to
24 plaintiff.

25
26 17) As of November 30, 2018, there was due, owing and unpaid to plaintiff
27 from VILLA NOVA DEVELOPING, INC. the sum of \$117,679.59.

28 ...///

...///

1 18) Said guaranty provided for the payment of attorneys' fees by defendants
2 and plaintiff has been compelled to and has retained the services of attorneys in
3 connection with this proceeding.
4

5 19) Although demand has been made upon defendants for said sum, the
6 defendants and each of them have failed and refused and still fail and refuse to pay
7 said sum or any part thereof, and the whole is now due, owing and unpaid from
8 defendants to plaintiff together with interest at the rate of eighteen percent (18%)
9 per annum from said date.
10

11 WHEREFORE, plaintiff prays for judgment against the defendants and each
12 of them as follows:

13 1. For the sum of \$117,679.59, together with interest thereon at the rate of
14 eighteen per cent (18%) per annum from November 30, 2018 as against the
15 defendants, VILLA NOVA DEVELOPING, INC.; ANDREW NOWACZEK and
16 JOHN DOES 1 TO 100, Inclusive;

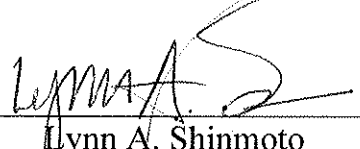
17 2. For reasonable attorney's fees;

18 3. For costs of suit; and

19 4. For such other and further relief as the Court may deem just and proper.

20 DATED: January 28, 2019
21

22 DEVIRIAN & SHINMOTO

23 By: 
24 Lynn A. Shinmoto
25 Attorneys for Plaintiff
26
27
28

Credit Agreement and Guaranty

127182

Company Information

Sales Agent: Dee Ruffin

Date: 10/10/11

Business Type (Check one or more)

Proprietorship Partnership Corp. x LLC

Contractor's License # 706070

Business Name

Villa Nova Developing, Inc

Business Phone

(818) 352 0935

Is your Business Property Owned or Leased?

owned

Business Street Address

8209A Foothill Blvd. #700

Fax Number

(818) 352 2456

How Long in Business?

25

City / State / Nine (9) Digit Zip Code

Sunland, CA 91040

Cell Number

(818) 253 5501

How Long at Present Address?

8 years

General Information

Applicant's Name

(Owner/Gen.Partner/Corp.Officer)

Andrew Nowaczek

Driver's License Number

[REDACTED]

Social Security Number

[REDACTED]

Home Street Address

Home Phone

Is Your Residence Owned or Rented?

owned

City / State / Nine (9) Digit Zip Code

Sunland, CA 91040

How Long at This Address?

8

Former Address

How Long at This Address?

Other Officer's or Partner's Names

Driver's License Number

Social Security Number

Chief Financial Officer or Spouse

Accounts Payable Officer

Credit References

Bank Name & Address

Bank of America

Phone Number

[REDACTED]

Account Number

[REDACTED]

Other Ref.'s & Addresses

(e.g. Ready Mix Suppliers)

J.W. Door

Phone Number

(618) 994 3633

Account Number

[REDACTED]

Other Ref.'s & Addresses

(e.g. Ready Mix Suppliers)

JMS Heat & Air

Phone Number

(818) 501 6750

Account Number

[REDACTED]

Other Ref.'s & Addresses

(e.g. Ready Mix Suppliers)

ProBuild (ANA)

Phone Number

(619) 358 8493

Account Number

[REDACTED]

(To expedite approval, please provide all above information)

Page 1 of 2

EXHIBIT "A"

Credit Agreement and Guaranty

Page 2

For customer efficiency and convenience, the companies listed below use a common credit review and approval process.

I/We (hereinafter referred to as "Customer") understand and agree that this Credit Agreement and Guaranty, upon approval and acceptance by the following companies, will establish credit with said companies (hereinafter referred to as "Creditor Companies"):

Associated Ready Mixed Concrete, Inc. * A & A Ready Mixed Concrete, Inc.
A & A Transit Mix * A & A Concrete Supply, Inc.

Customer also understands and agrees to be bound by the following commercial credit terms and conditions with respect to all deliveries made by any of the Creditor Companies which is in no way governed by Federal or State consumer credit laws:

1. All invoices shall be paid in full on or before the last day of the month following the date of delivery. Customer agrees to pay a service charge of 1 1/2 percent per month on any and all invoices which are not paid in full on or before the last day of the month following the date of delivery. Customer understands that the service charge is not intended as an alternate to prompt payment.
2. If this account is not paid as agreed herein, Customer will pay, in addition to any and all other charges, the actual attorney's fees incurred in collecting the amount due on this account. In addition, if this account is placed with a collection agency, Customer acknowledges that Creditor Companies will be damaged thereby to the extent of the collection charges paid by Creditor Companies to said collection agency and Customer therefore agrees to pay to Creditor Companies, in addition to any and all other charges, an amount equal to the amount charged by said collection agency. Jurisdiction for the enforcement of any transaction made, pursuant to this credit application shall be performed in the County of Orange, State of California. All transactions taking place pursuant to this credit application shall be performed in the County of Orange, State of California. The laws and decisions of the state of California shall govern all transactions taking place between the parties.
3. Customer will immediately notify the Creditor Companies of their designated credit representative of any change in the ownership, address, or name of said Customer. In addition, this agreement shall remain in full force and effect until written notice of revocation is received by Creditor Companies.
4. Customer understands that there are standard charges such as minimum load charges, truck standing time, fees for plant opening, environmental, energy, fuel surcharges and other fees which will be included on any applicable invoices and Customer agrees to pay all such standard charges. Customer understands that, upon request, Customer can obtain a copy of these standard charges. Customer understands and agrees to all terms and conditions stated on delivery tickets and written sales quotes. Customer understands and accepts that any adjustment made by Creditor Companies is a one-time event, and does not change any terms or prior agreements.

Customer hereby authorizes the Creditor Companies or any credit bureau or other investigative agency employed by Creditor Companies, to investigate any references or other data obtained from Customer, or from any other person, pertaining to Customer's credit and financial responsibility. Customer represents that Customer's firm is financially able to meet all commitments the Customer has made and will pay all invoices according to the terms of this Credit Agreement and Guaranty (not pay upon paid).

In the event that the Customer is a corporation, in consideration of the Creditor Companies extending credit to the Customer, the undersigned (an officer of the corporation) accepts and agrees that the undersigned personally guarantees all obligations and liabilities incurred by the Corporation.

The undersigned, as an individual, hereby unconditionally and personally guarantees the obligations and liabilities incurred by the Debtor Company (Customer) under this Credit Agreement and Guaranty.

I/WE GIVE AUTHORIZATION TO OBTAIN CONSUMER CREDIT REPORTS.

BUSINESS NAME: Villa Nova Developing, Inc.

SIGNATURE: [Signature] PRINT NAME: Andrew Nowaczek TITLE: President

SIGNATURE: _____ PRINT NAME: _____ TITLE: _____

NOTE: THIS FORM WILL NOT BE ACCEPTED UNLESS PROPERLY SIGNED IN BLUE INK.

IF A CORPORATION, 2 OFFICERS SIGNATURES ARE REQUIRED; ONE MUST BE THE LICENSE HOLDER. IF A PARTNERSHIP, ALL PARTNERS MUST SIGN.

APPROVAL PENDING RECEIPT OF ORIGINAL

Mail original copy to: Credit Dept. * A & A Ready Mixed Concrete * 4621 Teller Ave., Suite #100 * Newport Beach, CA 92660-2165
Phone: (949) 253-2800 * Fax (949) 852-0513

Revised 04/01