

DISTRICT COURT, WELD COUNTY, COLORADO 901 9th Ave. Greeley, CO 80631 (970) 475-2400		DATE FILED: January 19, 2024 9:50 AM FILING ID: 28B34110276E9 CASE NUMBER: 2024CV30044
Plaintiff: DAN BRENNAN, LLC , a Colorado limited liability company; v. Defendants: CORY HERMAN-CALVIN a/k/a CORY CALVIN a/k/a CORY HERMAN a/k/a STOREX, LLC a/k/a STOREX BRIGHTON HOLDINGS, LLC a/k/a ELITE STORAGE HOLDINGS, LLC , an individual; and DAVID JOHN HEIL a/k/a ELITE STORAGE HOLDINGS, LLC , an individual; ELITE STORAGE HOLDINGS, LLC a/k/a CORY HERMAN-CALVIN a/k/a CORY CALVIN a/k/a CORY HERMAN a/k/a DAVID JOHN HEIL , a Colorado limited liability company.		Δ COURT USE ONLY Δ
Attorneys for Plaintiff: FLANDERS, ELSBERG, HERBER & DUNN, LLC Mark A. Herber, #32036 Andrew N. Dunkin, #47815 401 Main St., Suite 1, Longmont, CO 80501 Phone: (303) 776-5380; Fax: (303) 776-8102 mark@flanderslaw.com ; andrew@flanderslaw.com		Case No: 2024CV Div.:
COMPLAINT		

Plaintiff Dan Brennan, LLC, by and through its attorneys at FLANDERS, ELSBERG, HERBER & DUNN, LLC, respectfully files and serves this *Complaint*, stating as follows:

JURISDICTION & VENUE

1. All paragraphs in this pleading are incorporated here by reference.
2. Venue is proper under C.R.C.P. Rule 98(c) as one or more Defendants resides in the County of Weld, State of Colorado.
3. Venue is proper under C.R.C.P. 98(c) as this is an action upon a contract to be performed in the County of Weld, State of Colorado.
4. Jurisdiction is proper pursuant to Colo. Const. Art. VI, Section 9.

GENERAL ALLEGATIONS

5. All paragraphs in this pleading are incorporated here by reference.
6. Plaintiff Dan Brennan, LLC (hereafter “Plaintiff” or “Brennan, LLC”) is a Colorado limited liability company having a principal office address of 15388 County Road 36, Platteville, CO 80651.
7. Upon information and belief, Defendant Cory Herman-Calvin a/k/a Cory Calvin a/k/a Cory Herman a/k/a StoreX, LLC a/k/a StoreX Brighton Holdings, LLC a/k/a Elite Storage Holdings, LLC (“Calvin”) is an individual residing in Weld County, Colorado.
8. Upon information and belief, Defendant David John Heil a/k/a Elite Storage Holdings, LLC (“Heil”) is an individual residing in Hennepin County, Minnesota.
9. Defendant Elite Storage Holdings, LLC a/k/a Cory Herman-Calvin a/k/a Cory Calvin a/k/a Cory Herman a/k/a David John Heil (“Elite”) is a Colorado limited liability company having a principal office address of 1437 Denver Ave., Loveland, CO 80538.
10. Brennan, LLC is a judgment creditor of the Defendants and now brings this action to pierce the corporate veil. The question of whether a corporate veil can be pierced in Colorado is an equitable one. *See Straub v. Mountain Trails Resort, Inc.*, 770 P.2d 1321 (Colo. App. 1988).
11. Defendant Calvin has claimed to be an owner, member, and manager of Defendant Elite.
12. Defendant Heil has claimed to be an owner, member, and manager of Defendant Elite.
13. On or around September 14, 2021, Elite filed a lawsuit against Brennan, LLC in Weld County District Court Case No. 2021CV30550 (the “Prior Litigation”). In the Prior Litigation, Elite sought to enforce a Purchase and Sale Agreement (“PSA”) it entered into with Brennan, LLC concerning the sale of certain real property.
14. Defendant Calvin formed StoreX, LLC for the sole purpose of participating as a party to the PSA and through a series of transfers from StoreX, LLC to StoreX Brighton Holdings, LLC, and then to Elite, Elite became a party to the PSA and filed the Prior Litigation.
15. During discovery and through trial in the Prior Litigation, Brennan, LLC discovered that Defendant Calvin had formed StoreX, LLC, StoreX Brighton Holdings, LLC, and Defendant Elite, which was formed with Defendant Heil, for purposes of avoiding creditors rather than for any actual business purposes.
16. During the transaction involving the PSA, Defendant Calvin engaged in fraudulent and other improper conduct with potential investors and with his other business partners.

Once these potential investors and business partners confronted Defendant Calvin concerning his improper actions, Defendants Calvin and Heil formed Elite on July 12, 2021, a mere days before the anticipated closing of the PSA, to avoid claims, rights, and interests that these individuals and Brennan, LLC may have related to the transaction.

17. Following a trial to the court, on October 16, 2023, the court in the Prior Litigation issued its Findings of Fact and Conclusions of Law and Judgment, finding in favor of Brennan, LLC and against Elite on all of Elite's claims and entering judgment with prejudice in favor of Brennan, LLC and against Elite.
18. The PSA contained a fee shifting provision, which provided that the prevailing party was/is entitled to an award of all costs and expenses of suit, including reasonable attorney fees.
19. On December 4, 2023, the court entered an Order against Defendant Elite in the Prior Litigation awarding Brennan, LLC \$199,727.50 in attorney's fees together with any additional attorney fees incurred beyond the date of filing, together with post judgment interest at the rate of 8% per annum compounded annually from the date of the Judgment until paid in full, and entered judgment for the same. A copy of the order awarding attorney's fees to Brennan, LLC is attached hereto as **Exhibit 1** and incorporated herein.
20. On December 4, 2023 the court entered an Order against Defendant Elite in the Prior Litigation awarding Brennan, LLC \$15,142.97 in costs incurred in defending the lawsuit, together with post judgment interest at the rate of 8% per annum compounded annually from the date of the Judgment until paid in full, and entered judgment for the same. A copy of the order awarding costs to Brennan, LLC is attached hereto as **Exhibit 2** and incorporated herein.
21. Elite was formed and operated as a mere shell for the personal affairs of Defendants Calvin and Heil.
22. At all relevant times, Defendants Calvin and Heil were aware that Brennan, LLC was entitled to recover its attorney's fees and costs incurred in successfully defending the Prior Litigation.
23. Defendant Elite was formed and assigned interests under the PSA in part for the purpose of avoiding claims, rights, and interests, namely Brennan, LLC's rights under the PSA to recover attorney's fees and costs.
24. At no time have Defendants Calvin and Heil maintained an operating agreement or other written document or written agreement concerning their purported ownership, membership, or management interests in Defendant Elite.
25. Neither Defendant Calvin nor Defendant Heil provided any capital contribution as consideration for their purported ownership or membership in Defendant Elite.

26. Defendant Elite has never maintained any bank accounts or assets of any kind.
27. At no time did Elite hold the funds necessary to close on the PSA.
28. Defendant Elite has not engaged in any business aside from being a party to the PSA.
29. Defendant Elite does not maintain any storefront or office, and instead lists its principal office address as a UPS Store in Loveland, Colorado.
30. Upon information and belief, Defendant Elite has never had any employees, never leased any office space, does not maintain insurance, has no telephone number or email address(es), has not filed tax returns, and was only created in an attempt to shield Defendants Calvin and Heil from creditors, including Brennan, LLC.
31. All conditions precedent to this action have been exhausted, excused or waived.
32. Defendants are not incompetent or a minor.
33. Defendants are not in the military service of the United States and in support of this statement Plaintiff states upon information and belief that Defendants are corporations, limited liability companies, trusts, or individuals engaged in civil pursuits in and around the State of Colorado and/or Minnesota.

FIRST CLAIM FOR RELIEF

(Alter Ego/Piercing of Elite's Corporate Veil – All Defendants)

34. All paragraphs in this Complaint are incorporated here by reference.
35. The personalities and assets of Defendants are so indistinct that adherence to the corporate/company fictions will defeat public convenience, justify wrong or protect fraud.
36. Defendant Elite is the alter ego of Defendants Calvin and Heil. *See McCallum Family L.L.C. v. Winger*, 221 P.3d 69 (Colo. App. 2009).
37. Defendants Calvin and Heil did not operate Defendant Elite as a distinct business entity.
38. Defendant Elite has never maintained or held any funds or assets.
39. At no time has Defendant Elite maintained corporate records, such as an operating agreement.
40. The nature and form of Defendant Elite's ownership and control facilitates misuse by the insider individual Defendants.

41. At all relevant times, Defendant Elite was thinly/undercapitalized to engage in the business(es) for which it was formed.
42. Defendants Calvin and Heil misused Defendant Elite as a mere shell for their own personal affairs.
43. Defendant Elite disregards legal formalities.
44. Defendant Elite does not and has not maintained any assets or funds.
45. Elite has not maintained company funds and/or assets to avoid paying its creditors, namely Brennan, LLC.
46. Elite's corporate form has been used to defeat a rightful claim, namely Brennan, LLC's judgment(s) against it.
47. To maintain Elite's corporate form would promote injustice and defeat a rightful claim with respect to Brennan, LLC's judgments against it.
48. Principles of equity require that Defendants be held jointly and severally liable to the debts and liabilities of each other.

SECOND CLAIM FOR RELIEF
(Declaratory Judgment – All Defendants)

49. All paragraphs in this complaint are incorporated here by reference.
50. Plaintiff is an entity who has an interest in its rights, status, and legal relations with Defendants, in accordance with the Uniform Declaratory Judgments Law, C.R.S. §13-51-101, *et seq.*
51. Plaintiff seeks a declaratory judgment that Defendant Elite is the alter ego of Defendant Calvin and/or Defendant Heil.
52. Plaintiff seeks a declaratory judgment that it is permitted to pierce the corporate veil against Elite to recover amounts due to it from all Defendants, jointly and severally.

DEMAND FOR RELIEF

53. All paragraphs in this Complaint are incorporated here by reference.
54. Plaintiff respectfully requests the Court to enter judgment in Plaintiff's favor and against Defendants, jointly and severally, as applicable for the following:

- a. A declaration that Defendant Elite is the alter ego of Defendants Calvin and Heil;
- b. Piercing the corporate veil of Defendant Elite;
- c. Alter ego liability as to Defendant Elite's members/owners as allowed by law and equity;
- d. A declaration that Defendants Calvin and Heil are jointly and severally liable for the amounts awarded to Brennan, LLC in the Prior Litigation, plus additional attorney's fees, costs, and interest;
- e. Interest at the contractual or statutory rate (whichever is higher) from the date of accrual or the earliest date provided by law;
- f. Attorney fees and cost as may be provided by contract or statute; and
- g. Such greater and further relief as this Court deems just and proper.

Respectfully submitted on January 19, 2024.

FLANDERS, ELSBERG, HERBER & DUNN, LLC

/s/Andrew N. Dunkin

Mark A. Herber, #32036

Andrew N. Dunkin, #47815

Attorneys for Plaintiff

Plaintiff can be contacted as follows:

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DISTRICT COURT, WELD COUNTY, COLORADO 901 9 th Avenue Greeley, Colorado 80631	▲ COURT USE ONLY ▲
PLAINTIFF: Elite Storage Holdings, LLC, a Colorado limited liability company v. DEFENDANT: Dan Brennan, LLC, a Colorado limited liability company	
Nathan S. Silver #28836 The Silver Law Firm, LLC 1616 17 th Street, Suite 478 Denver, Colorado 80202 Phone Number: (720) 341-0950	
Case Number: 2021CV30550 Div.: 5 Ctrm.:	
AMENDED COMPLAINT	

COMES NOW Plaintiff Elite Storage Holdings, LLC, by and through its attorney, The Silver Law Firm, LLC, and for its Amended Complaint, states as follows:

I. PARTIES AND VENUE

1. Plaintiff Elite Storage Holdings, LLC ("Plaintiff") is a Colorado limited liability company with a business address of 1437 N. Denver Avenue #216, Loveland, Colorado 80538. Cory Calvin is the owner of Plaintiff.

2. Defendant Dan Brennan, LLC ("Defendant") is a Colorado limited liability company with a business address of 15388 County Road 36, Platteville, Colorado 80651. Dan Brennan is the owner of Defendant.

3. Venue is proper in the Weld County pursuant to Rules 98(a) and 98(c) of the Colorado Rules of Civil Procedure because the subject of this action is real property situated in the Weld County and Dan Brennan, LLC's business address is in Weld County.

II. GENERAL ALLEGATIONS

A. Access Easement.

4. Defendant executed a Purchase and Sale Agreement dated January 18, 2021 ("PSA") to sell the real property and its improvements located at 1577 County Road 27, Brighton, Colorado 80603 ("Property") to StoreX, LLC. See PSA, attached hereto as Exhibit 1.

5. The PSA was assigned from StoreX, LLC to StoreX Brighton Holdings, LLC and then to Elite Storage Holdings, LLC (collectively "Elite Storage Holdings").

6. Paragraph 3(H)(1) of the PSA required Defendant to deliver to Plaintiff the real property identified in Exhibit A to the PSA.

7. Exhibit A to the PSA identifies the Property to include "Lot A of Recorded Exemption No. 1471-30-1-RE2050, recorded October 21, 1997 in Book 1633 as Reception No. 2575168" ("1997 Plat"). *See* PSA, Exhibit A.

8. Exhibit A to the PSA identifies the Property to include "a 30 foot non-exclusive access easement over and across Lot B" ("30' Access Easement"). *Id.*

9. The 1997 Plat identifies Lot A, Lot B, and shows the 30' Access Easement running east and west through Lot B. *See* 1997 Plat, attached hereto as Exhibit 2.

10. Lot A is the lot Plaintiff was under contract to purchase from Defendant. *See* PSA, §1, PSA, § 3(H)(1), and the PSA's Exhibit A.

11. Lot B is the lot immediately east of Lot A. *See* 1997 Plat, attached hereto as Exhibit 2.

12. FMC Technologies, Inc. owns Lot B. *See* FMC Surface Technologies Facility Subdivision Plat ("FMC Plat"), attached hereto as Exhibit 3.

13. The 30' Access Easement runs through the approximate middle of Lot B. *See* 1997 Plat, attached hereto as Exhibit 2.

14. The 30' Access Easement runs from Lot A, through Lot B, and to Weld County Road 27. *Id.*

15. In 2014, Lot B was replatted as Lot 1. *See* FMC Plat, attached hereto as Exhibit 3.

16. Defendant and FMC Technologies, Inc. executed the Second Corrected Agreement Relating to Relocation of Easement and Roadway ("Second Corrected Easement Agreement"). The Second Corrected Easement Agreement is attached hereto as Exhibit 4.

17. The Second Corrected Easement Agreement was recorded in Weld County, Colorado on June 24, 2021 at Reception No. 4728979. *Id.*

18. In the Second Corrected Easement Agreement, Defendant conveyed the 30' Access Easement to FMC Technologies, Inc. *Id.* at § 4(iii).

19. The access easement Defendant conveyed to FMC Technologies, Inc. is the 30' Access Easement identified in Exhibit A to the PSA. *Id.* at § 4(iii) and PSA, §1, PSA, § 3(H)(1), and the PSA's Exhibit A.

B. Authority To Sell The Property.

20. In the PSA, Defendant made the representation "Seller has the lawful right, power and authority to sell the Property in accordance with the terms, covenants and conditions of this Agreement." *See* PSA, § 6(A)(1).

21. The Property includes the 30' Access Easement.

22. Prior to the Closing Date of July 19, 2021, Defendant conveyed the 30' Access Easement to FMC Technologies, Inc. by the Second Corrected Easement Agreement, which was recorded on June 24, 2021. The Second Corrected Easement Agreement is attached hereto as Exhibit 4.

23. After June 24, 2021, Defendant did not have the lawful right, power and authority to convey the 30' Access Easement to Plaintiff.

C. Due Diligence Documents.

24. Paragraph 5(A) of the PSA required Defendant to deliver to Plaintiff: (a) all certificates of occupancy issued by governmental authorities for the use or occupancy of the Property; and (b) fully executed copies of all billboard contracts (collectively "Due Diligence Documents") to Defendant.

25. There are fourteen (14) permanent buildings on the Property.

26. Defendant delivered one (1) certificates of occupancy to Plaintiff.

27. Defendant delivered copies of the billboard contract and its amendment to Plaintiff, but they were not fully executed by lessee, The Lamar Companies. The Billboard Contract and its amendment are attached hereto as Exhibit 5.

28. Paragraph 5(A) of the PSA states "At the option of Buyer, the Inspection Period will be extended by one (1) day for each day Seller is delayed beyond the Delivery Date in delivering the due diligence items identified in this Paragraph 5.A."

29. The Inspection Period has not ended because Defendant did not deliver to Plaintiffs the Due Diligence Documents.

30. The Closing Date is thirty (30) days after the expiration of the Inspection Period.

See PSA, § 3(A).

31. Plaintiff cancelled the July 19, 2021 Closing Date.

32. Under the PSA, Plaintiff had the right to cancel the July 19, 2021 Closing Date because the Inspection Period had not ended.

33. Plaintiff attempted to reschedule the Closing Date later during the week of July 19, 2021.

34. Dan Brennan refused to set a new Closing Date to close the sale of Defendant to Plaintiff.

35. Upon Defendant's default, the PSA provides Plaintiff the remedy of specific performance and damages. *See* PSA, § 9(B).

FIRST CLAIM FOR RELIEF
(Specific Performance)

36. Plaintiff incorporates the foregoing paragraphs of its Amended Complaint, as if set forth verbatim herein.

37. Defendant breached the PSA when Dan Brennan refused to reschedule the Closing Date after Plaintiff cancelled the closing on July 19, 2021. Plaintiff had the right to cancel the closing on July 19, 2021 and reschedule the closing because the Inspection Period had not ended.

38. Defendant breached the PSA because Dan Brennan refused to sell Dan Brennan, LLC to Plaintiff.

39. Defendant breached the PSA when it conveyed the 30' Access Easement to a third party, when the PSA required Defendant to convey this Access Easement to Plaintiff.

40. Defendant breached the PSA because it did not provide the Due Diligence Documents to Plaintiff.

41. Money damages would not give full relief to Plaintiff. If Dan Brennan had rescheduled the closing date for Plaintiff to purchase the Property in July 2021, Plaintiff would have benefited from the increase in the Property's value due to Plaintiff's management of the Property ("Upside Potential"), the increase in the demand for self-storage facilities, and inflation. This increase in the Property's value is the benefit of the bargain Plaintiff would have received from its purchase of the Property in July 2021. Monetary damages would not include these benefit of the bargain damages.

42. Money damages would not give full relief to Plaintiff because Plaintiff wants to purchase a storage facility in this Property's location. Plaintiff cannot purchase a substitute property in this Property's location that would generate similar revenue, profits, and Upside Potential for the \$4,000,000.00 purchase price plus the monetary damages.

43. Money damages would not give full relief to Plaintiff. Due to the increased demand for self-storage facilities and inflation, Plaintiff cannot purchase a substitute property in northern Colorado that would generate similar revenue, profits, and Upside Potential for the \$4,000,000.00 purchase price plus the monetary damages.

44. Money damages would not give full relief to Plaintiff because Plaintiff cannot easily prove the extent of its damages. Plaintiff's damages would include the Upside Potential from its management of the Property since July 2021. It would be difficult to prove this Upside Potential without Plaintiff managing the Property.

45. The court should additionally order specific performance because a remedy in the PSA for Defendant's default is specific performance.

SECOND CLAIM FOR RELIEF
(Declaratory Judgment)

46. Plaintiff incorporates the foregoing paragraphs of its Amended Complaint, as if set forth verbatim herein.

47. The primary purpose of the Uniform Declaratory Judgment Act is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations, which are affected by a statute or a contract, and to obtain a declaration of rights, status, or other legal relations thereunder. C.R.S. § 13-51-101 et seq. See also C.R.C.P. 57.

48. A controversy exists as to whether the Inspection Period in the PSA has ended.

49. Plaintiff requests a declaratory judgment the Inspection Period in the PSA had not ended on July 19, 2021 because Defendant did not deliver to Plaintiff the Due Diligence Documents.

50. Plaintiff requests a declaratory judgment it had the right to reschedule the Closing Date after July 19, 2021 because the Inspection Period had not ended.

51. Plaintiff requests a declaratory judgment it has the right to schedule a closing and purchase the Property because the Inspection Period had not ended.

THIRD CLAIM FOR RELIEF
(Breach of Contract)

52. Plaintiff incorporates the foregoing paragraphs of its amended complaint, as if set forth verbatim herein.

53. Plaintiff and Defendant formed a contract when their representatives, Dan Brennan and Cory Calvin, executed the PSA.

54. Plaintiff fully performed the PSA.

55. Defendant breached the PSA when Dan Brennan refused to reschedule the Closing Date.

56. Plaintiff was damaged because Defendant would not reschedule the Closing Date.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiffs Elite Storage Holdings, LLC and Elite Storage Group, Inc. pray as follows:

A. For judgment against Defendant Dan Brennan, LLC on Plaintiff's First Claim for Relief for specific performance.

B. On Plaintiff's Second Claim for Relief for a declaratory judgment: (1) the Inspection Period in the Purchase And Sale Agreement had not ended on July 19, 2021; (2) Plaintiff had the right to reschedule the Closing Date after July 19, 2021; and (3) Plaintiff has the right to now schedule a closing to purchase the Property because the Inspection Period had not ended.

C. For judgment against Defendant Dan Brennan, LLC on Plaintiff's Third Claim for Relief for Breach of Contract.

D. For the court to order the parties to schedule a closing as soon as Land Title Guarantee Company will set the closing, but no later than fourteen (14) days after the date of the court's order, for Elite Storage Holdings, LLC to purchase Dan Brennan, LLC pursuant to the terms of the Purchase and Sale Agreement.

E. For statutory interest in favor of Plaintiff Elite Storage Holdings, LLC and against Dan Brennan, LLC at eight percent per annum compounded annually from the date judgment is entered until satisfaction thereof is made pursuant to C.R.S. § 5-12-102.

F. For attorney's fees in favor of Plaintiff Elite Storage Holdings, LLC and against Defendant Dan Brennan, LLC pursuant to Paragraph 17.6 of the Purchase and Sale Agreement. Attorney's fees include collection of the court's judgement and the costs for such collection.

H. For costs pursuant to C.R.S. § 13-16-104.

I. If Defendant has not paid Plaintiff the judgment entered by the court before the new closing date, then for the court to order such amount shall be deducted from the amount Plaintiff will pay Defendant for the purchase of Dan Brennan, LLC.

J. For such other and further relief as the Court deems proper under the circumstances.

Respectfully submitted this 28th day of September, 2021.

THE SILVER LAW FIRM, LLC

/s/ Nathan S. Silver

Nathan S. Silver

Plaintiff's Address:

1437 N. Denver Avenue
Loveland, Colorado 80538

DISTRICT COURT, WELD COUNTY, COLORADO 901 9 th Avenue Greeley, Colorado 80631	
PLAINTIFFS: Elite Storage Holdings, LLC, a Colorado limited liability company and Elite Storage Group, Inc., a Colorado corporation v. DEFENDANTS: Dan Brennan, LLC, a Colorado limited liability and company and Highway 85 Self Storage, Inc., a Colorado corporation	
Nathan S. Silver #28836 The Silver Law Firm, LLC 1616 17 th Street, Suite 478 Denver, Colorado 80202 Phone Number: (720) 341-0950	▲ COURT USE ONLY ▲ Case Number: Div.: Ctrm.:
COMPLAINT FOR SPECIFIC PERFORMANCE	

COME NOW Plaintiffs Elite Storage Holdings, LLC and Elite Storage Group, Inc. (collectively "Plaintiffs"), by and through their attorney, The Silver Law Firm, LLC, and for their Complaint For Specific Performance, state as follows:

I. PARTIES AND VENUE

1. Plaintiff Elite Storage Holdings, LLC is a Colorado limited liability company with a business address of 1437 N. Denver Avenue #216, Loveland, Colorado 80538.
2. Plaintiff Elite Storage Group, Inc. is a Colorado corporation with a business address of 1437 N. Denver Avenue #216, Loveland, Colorado 80538.
3. Defendant Dan Brennan, LLC is a Colorado limited liability company with a business address of 15388 County Road 36, Platteville, Colorado 80651.
4. Defendant Highway 85 Self Storage, Inc. ("Highway 85 Self Storage") is a Colorado corporation with a business address of 1577 County Road 27, Brighton, Colorado 80603.
5. Venue is proper in the Weld County pursuant to Rules 98(a) and 98(c) of the Colorado Rules of Civil Procedure because the subject of this action is real property situated in the Weld County and the Defendants' addresses are in Weld County.

II. GENERAL ALLEGATIONS

A. Purchase And Sale Agreement.

6. Dan Brennan, LLC executed a Purchase And Sale Agreement dated January 18, 2021 ("PSA") to sell the real property and its improvements located at 1577 County Road 27, Brighton, Colorado 80603 ("Property") to StoreX, LLC. See PSA, attached hereto as Exhibit 1.

7. Dan Brennan executed the PSA for Dan Brennan, LLC.

8. The PSA was assigned from StoreX, LLC to StoreX Brighton Holdings, LLC and then to Elite Storage Holdings, LLC (collectively "Elite Storage Holdings").

9. Paragraph 5.A of the PSA required Dan Brennan, LLC to deliver to Elite Storage Holdings the following documents no later than five (5) days after its January 18, 2021 effective date ("Delivery Date").

a. Fully executed copies of all storage contracts, all other contracts to include the billboard contracts, and amendments or guaranties thereto, if any, all documents in tenant's or customer's file, together with an accounting of all security deposits, if any, held pursuant to such contracts and/or agreements.

b. A current rent roll to the date of this Agreement, certified by Seller as being true, accurate and complete, showing: (a) the unit number, (b) the name of the tenant (or if the unit is vacant, a notation indicating the vacancy), (c) the lease expiration date, (d) the amount of the monthly rent, (e) any amount delinquent, (f) any prepayments, (g) the amount of any unapplied deposits, and (h) any concessions granted (the "Rent Roll").

c. A list of all insurance policies insuring the Property together with true and correct copies of such policies, and copies of all correspondence, of any kind or character, including claims, and adjusters' reports connected with such insurance coverings the twelve (12) month period immediately preceding the Effective Date of this Agreement.

d. Copies of the most recent tax statements for the Property and Personal Property, and copies of all tax notices and protests or appeals for the last two years.

e. Year-end income and expense statements and balance sheets for the Property for the two most recent calendar years and year-to-date through the most recent month, if any, and current tenant ledgers (collectively referred to as "Financial Statements").

f. Copies of all licenses, permits and approvals, and copies of all certificates of occupancy issued by governmental authorities for the use or occupancy of the Property or any portion thereof or any item or facility located thereon.

g. A copy of all plans and specifications for the Property, and all engineering studies, reports or proposals relating to the Property that are in the possession of Seller.

h. A copy of all environmental assessments, Phase 1 or Phase 2 reports, and any asbestos abatement and maintenance plan that are in the possession of Seller.

i. A schedule of any Building improvement work Seller is obligated to complete but has not yet completed, and capital improvement work either scheduled or in process on the Effective Date of this Agreement that are in the possession of Seller.

j. Copies of any and all warranties and guarantees affecting or relating to the Property that are in the possession of Seller.

k. A list of all supply, service, management, employment or maintenance contracts affecting the Property (including landscaping and alarm), together with true and correct copies thereof.

l. A list of all personal property located on or used in conjunction with the Property.

m. Copies of the most recent surveys relating to the Property that are in the possession of Seller.

n. Copies of the latest utilities bills, including water, sewer, gas, electric, trash, telephone, internet, and cable relating to the Property.

o. Well permit for the well at the Property.

10. At the Closing, Dan Brennan, LLC must:

Deliver: (a) the originals of each of the Leases (including any amendments) in effect at the Property as of the Closing Date; (b) all tenant files, including without limitation, all applications, correspondence, and credit reports for each tenant; (c) all tenant ledgers; (d) an escrow deposit reconciliation; (e) a net receivables report for the tenant security; (f) an update of the Rent Roll dated no earlier than one (1)

day prior to the Closing Date, certified by Seller to be true and correct in all material respects, which will identify all rents collected for the month in that the Closing will occur; (g) all maintenance records and logs for the Property; (h) all warranties applicable to the Property; (i) the originals of all the Service Contracts and Personal Property Leases that Buyer will assume; (j) all passwords or access codes in Seller's possession or control related to the Property or to the Property's website; (k) last utility bills; and (l) all keys to all locks which are labeled for each lock and unit. To the extent not already delivered to Buyer, Seller shall deliver to Buyer at Closing those records and files in Seller's possession or control relating to the operation, leasing, and maintenance of the Property.

See PSA, ¶ 7.B.7.

B. Asset Purchase Agreement.

11. Highway 85 Self Storage executed an Asset Purchase Agreement dated January 18, 2021 ("APA") to sell Highway 85 Self Storage to StoreX, LLC. *See* APA, attached hereto as Exhibit 2.

12. Dan Brennan executed the APA for Highway 85 Self Storage.

13. The APA was assigned from StoreX, LLC to StoreX Brighton Operations, LLC and then to Elite Storage Group, Inc. (collectively "Elite Storage Group").

14. The APA's closing date is the date the PSA closes. *See* APA, ¶ 4.

15. Paragraph 1.1 of the APA required Highway 85 Self Storage to deliver or transfer to Elite Storage Group the following at the Closing.

- a. All of its business records, including software and computer records.
- b. Its telephone and fax numbers.
- c. The content for the website highway85storage.com, its domain name, and the account for its domain name.
- d. The account for Highway 85 Self Storage's Facebook page.
- e. All of its software licenses and the accounts for these licenses.

16. Paragraph 5.1 of the APA required Highway 85 Self Storage to deliver to Elite Storage Group at the Closing.

a. All login credentials for the domain names, website, social media accounts, and other accounts included in Assets.

b. All login credentials for Highway 85 Self Storage's computers, software, and software accounts or internet "cloud" accounts.

c. All codes and keys to access Highway 85 Self Storage with the codes and keys identified for each door, storage unit, fence, etc.

17. Additionally, the First Amendment to the APA required Highway 85 Self Storage to convey two golf carts to Elite Storage Group.

C. Due Diligence Documents, Closing Documents and Intellectual Property.

18. Dan Brennan, LLC and Highway 85 Self Storage (collectively "Defendants") did not deliver any due diligence documents to Plaintiffs by the January 23, 2021 Delivery Date.

19. The only due diligence documents Defendants delivered to Plaintiffs were: (a) one page from Schedule K for Highway 85 Self Storage's tax returns; (b) one page of the Security Deposit Liabilities dated February 8, 2021; (c) one page of the Prepaid Rent dated February 1, 2021 through February 8, 2021; (d) a Profit and Loss Statement dated January 1, 2020 through December 31, 2020 (which contained handwritten annotations that changed the numbers); and (e) Itemized Categories - Year to Date dated January 1, 2020 through October 1, 2020 (which contained handwritten annotations that changed the numbers). *See* Documents, attached hereto as Exhibit 3.

20. Defendants did not deliver to Plaintiffs: (a) fully executed copies of all storage contracts; (b) copies of all documents in tenant's or customer's file; (c) a rent roll certified by Seller as being true, accurate and complete; (d) copies of the most recent tax statements for the Property; (e) year-end income and expense statements for 2019 and in 2021 through the most recent month before the Closing Date; (f) the balance sheets; (g) copies of the tenant ledgers; (h) copies of the certificates of occupancy for the Property; (i) copies of the latest utility bills for the Property; and (j) and the well permits (collectively the "Due Diligence Documents").

21. Dan Brennan told Cory Calvin the Defendants would not deliver at Closing: (a) the originals of each of the Leases; (b) all tenant files, including all applications, correspondence, and credit reports for each tenant; (c) all tenant ledgers; and (d) the keys to all locks at the Property which are labeled for each lock and unit (collectively the "Closing Documents and Keys") .

22. Dan Brennan told Cory Calvin he did not know how to convey and Defendants would not convey to Plaintiffs at Closing: (a) the content for the website Highway85storage.com, its domain name, and the account for its domain name; (b) the account for Highway 85 Self Storage's Facebook page; and (c) Defendants' software licenses and the accounts for these licenses,

including their Microsoft software (collectively the "Intellectual Property").

23. On information and belief, before the July 15, 2021 and the July 19, 2021 Closing Dates, Defendants took no actions to transfer their telephone and fax numbers to Plaintiffs.

24. Defendants could not convey title to the two golf carts to Plaintiffs at Closing because Defendants did not have title to the golf carts.

25. Cory Calvin asked Dan Brennan to escrow funds with Land Title, until Defendants could convey title to the golf carts to Plaintiffs.

26. Dan Brennan refused to set up an escrow with Land Title for the golf carts.

27. Plaintiffs cancelled the July 15, 2021 Closing Date because Defendants had not delivered the: (a) Due Diligence Documents; (b) Closing Documents and Keys; (c) Intellectual Property; and (d) balance sheets and the income and expense statements (collectively "Financial Statements"). Additionally, Defendants could not convey title to the two golf carts to Plaintiffs and refused to set up an escrow at Land Title until they could convey such title.

28. The parties rescheduled the Closing Date to July 19, 2021.

29. Since Defendants would not provide their Financial Statements, Plaintiffs asked Defendants to deliver their 2020 IRS income tax return and copies of their 2021 bank statements through June (collectively "Income Tax Return and Bank Statements"). No Income Tax Return and Bank Statements were provided by Defendants to Plaintiffs.

30. Plaintiffs cancelled the July 19, 2021 Closing Date because Defendants had not delivered the: (a) Due Diligence Documents; (b) Closing Documents and Keys; (c) Intellectual Property; and (d) Financial Statements or the Income Tax Return and Bank Statements. Additionally, Defendants could not convey title to the two golf carts to Plaintiffs and refused to set up an escrow at Land Title until they could convey such title.

31. Plaintiffs attempted to reschedule the Closing Date later during the week of July 19, 2021.

32. Dan Brennan refused to set a new Closing Date, and has refused to close the sale of Dan Brennan, LLC and Highway 85 Self Storage, Inc. to Plaintiffs.

FIRST CLAIM FOR RELIEF
(Breach of Contract – Specific Performance)

33. Plaintiffs incorporates the foregoing paragraphs of their complaint, as if set forth verbatim herein.

34. Defendants entered into the PSA and the APA with Plaintiffs (collectively "Contracts").

35. Plaintiffs fully performed the Contracts.

36. Defendants breached the Contracts because they would not provide to Plaintiffs for the July 15, 2021 and the July 19, 2021 Closing Dates the: Due Diligence Documents; (b) Closing Documents and Keys; (c) Intellectual Property; and (d) Financial Statements as required by the PSA and the APA. Additionally, Defendants could not convey title to the two golf carts to Plaintiffs and refused to set up an escrow at Land Title until they could convey such title.

37. Plaintiffs attempted to reschedule the Closing later during the week of July 19, 2021.

38. Defendants breached the Contracts because Dan Brennan refused to set a new Closing Date and refused to sell Dan Brennan, LLC and Highway 85 Self Storage to Plaintiffs.

39. Plaintiffs were damaged because Dan Brennan refused to set a new Closing Date, and refused to sell Dan Brennan, LLC and Highway 85 Self Storage to Plaintiffs.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiffs Elite Storage Holdings, LLC and Elite Storage Group, Inc. pray as follows:

A. For judgment against Defendants Dan Brennan, LLC and Highway 85 Self Storage, Inc. on Plaintiff's First Claim for Relief for specific performance for breaching the Contracts.

B. For the court to order Dan Brennan, LLC and Highway 85 Self Storage, Inc. to provide to Plaintiffs the: (a) Due Diligence Documents; (b) Closing Documents and Keys; (c) Intellectual Property; and (d) Financial Statements as required by the PSA and the APA or the Income Tax Return and Bank Statements.

C. For the court to order Dan Brennan to schedule a closing and sell Dan Brennan, LLC to Elite Storage Holdings, LLC pursuant to the Purchase And Sale Agreement dated January 18, 2021 and its amendments.

D. For the court to order Dan Brennan to schedule a closing and sell Highway 85 Self Storage, Inc. to Elite Storage Group, Inc. pursuant to the Asset Purchase Agreement dated January 18, 2021 and its amendments.

E. For the court to order the two closings to occur on the same date and time.

F. For statutory interest in favor of Plaintiffs Elite Storage Holdings, LLC and Elite Storage Group, Inc., and against Dan Brennan, LLC and Highway 85 Self Storage, Inc., joint and severally, at eight percent per annum compounded annually from the date judgment is entered until satisfaction thereof is made pursuant to C.R.S. § 5-12-102.

G. For attorney's fees in favor of Plaintiffs Elite Storage Holdings, LLC and Elite Storage Group, Inc., and against Defendants Dan Brennan, LLC and Highway 85 Self Storage, Inc., joint and severally, pursuant to Paragraph 17.6 of the Purchase And Sale Agreement and Paragraph 12.6 of the Asset Purchase Agreement.

H. For costs pursuant to C.R.S. § 13-16-104.

I. If Defendants have not paid Plaintiffs the judgment entered by the court before the Closing Date, then for the court to order such amount shall be deducted from the amounts Plaintiffs will pay Defendants for the purchase of Dan Brennan, LLC and Highway 85 Self Storage, Inc.

J. For such other and further relief as the Court deems proper under the circumstances.

Respectfully submitted this 14th day of September, 2021.

THE SILVER LAW FIRM, LLC

/s/ Nathan S. Silver

Nathan S. Silver

Plaintiff's Address:

1437 N. Denver Avenue
Loveland, Colorado 80538