

CAUSE NO. \_\_\_\_\_

<b>AMERICAN WESTERN STEEL, LLC</b>	§	<b>IN THE DISTRICT COURT</b>
<b>Plaintiff,</b>	§	
	§	
<b>vs.</b>	§	
	§	
<b>TRIPLE STAR TRIUMVIRATE</b>	§	<b>OF HARRIS COUNTY, TEXAS</b>
<b>INVESTMENTS, LLC, JERRY DU</b>	§	
<b>AND HANCOCK WHITNEY BANK</b>	§	
	§	
<b>Defendants.</b>	§	<b>_____ JUDICIAL DISTRICT</b>

**PLAINTIFF’S ORIGINAL PETITION AND REQUEST FOR DISCLOSURES**

**TO THE HONORABLE JUDGE OF SAID COURT:**

COMES NOW AMERICAN WESTERN STEEL, LLC, hereinafter referred to as “Plaintiff,” and files this its Original Petition and Request for Disclosures complaining of **DEFENDANT TRIPLE STAR TRIUMVIRATE INVESTMENTS, LLC, JERRY DU and HANCOCK WHITNEY BANK**, hereinafter referred to as “Defendants,” and for cause of action would respectfully show the Court the following:

**I. DISCOVERY CONTROL PLAN**

1. Plaintiff intends to conduct discovery under Level 2 of the Texas Rules of Civil Procedure 190.3.

**II. PARTIES**

2. Plaintiff American Western Steel, LLC (hereinafter “Plaintiff”) is a Texas limited liability company with its principal place of business located in Harris County, Texas.

3. Defendant Triple Star Triumvirate Investments, LLC (hereinafter “Defendant Triple Star”) is a Texas limited liability company which may be served by serving its registered agent for service of process, Jerry Du at 5315 Glenmont Dr., Houston, Texas 77081 or wherever else he may be

found.

4. Defendant Jerry Du (hereinafter “Defendant Du”) is an individual with his principal place of business in Harris County Texas and who may be served with service of process at 5315 Glenmont Dr., Houston, Texas 77081 or wherever else he may be found.

5. Defendant Hancock Whitney Bank (hereinafter “Defendant Whitney Bank”) is a foreign financial institution which may be served by serving its registered agent for service of process, C T Corporation System at 1999 Bryan St., Suite 900, Dallas, Texas 75201 or wherever else it may be found.

### **III. STATEMENT OF RELIEF SOUGHT**

6. Plaintiff seeks monetary relief over \$250,000.00 but not more than 1,000,000.00.

### **IV. JURISDICTION AND VENUE**

7. This Court has jurisdiction in this cause in that the amount in controversy is above the minimum jurisdictional limits of the Court. Further, venue is proper in Harris County, Texas under the general venue rule because: 1) the property subject to this suit is located in Harris County, Texas and 2) all or which a substantial part of the events or omissions giving rise to the claim(s) herein occurred in Harris County, Texas.

### **V. FACTS**

8. Defendants Triple Star and Du approached Plaintiff to construct improvements to 14724 Almeda School Road, Houston, Texas 77047 (the “Project”).

9. Plaintiff required that Defendants Triple Star and Du obtain financing prior to beginning of the construction of the Project.

10. Defendants Triple Star and Du also approached Defendant Whitney Bank for the financing of the Project. Defendant Whitney Bank as part of the loan approval process met with Plaintiff

and Defendants Triple Star and Du as the credit worthiness of Plaintiff and the scope of the Project were a key component of the loan.

11. Defendant Whitney Bank, as a prerequisite to lending Defendant Triple Star the money to construct the improvements for the Project, required that Plaintiff and Defendant Triple Star execute a Construction Contract using AIA Forms 101 and 201 (the “Construction Contract”) which Plaintiff and Defendant Triple Star used.

12. As a result thereof, Defendant Whitney Bank entered into a loan agreement with Triple Star (the “Whitney Bank Loan”). Said Whitney Bank Loan was in the amount of \$1,663,838.00. Defendant Whitney Bank represented to Plaintiff that it would fund the full amount of the loan in order to induce Plaintiff to commence construction of the Project.

13. Prior to any funding of the Whitney Bank Loan by Defendant Whitney Bank, and in part to induce Defendant Whitney Bank to fund the Whitney Bank Loan, Defendants Triple Star and Du requested that Plaintiff loan them \$127,500.00 (the “AWS Loan”). The parties agreed that the AWS Loan would be repaid in full on the completion of the Project. Based on that agreement, Plaintiff loaned Triple Star and Du \$127,500.00.

14. At the same time, in addition to the Whitney Bank Loan and the AWS Loan, on information and belief, Triple Star and/or Du obtained a loan from Noi Bozdag, the bank officer at Defendant Whitney Bank handling the Loan to Triple Star and Du in the amount of \$200,000.00 (the “Bozdag Loan”) in order to purchase the land for the Project. On information and belief, Triple Star and and/or Du agreed to repay an extraordinary and or usurious amount of \$40,000.00 to Noi Bozdag for the Bozdag Loan.

15. Subsequently, Plaintiff commenced to make the contracted improvements to the Project and received payment from Defendant Whitney Bank until the very end of construction. Upon the end of construction, a balance of \$272,458.05 remained due and payable.

16. Upon the completion of the Project by Plaintiff and the receipt of the Certificate of Occupancy, Plaintiff submitted its final payment request to Defendant Whitney Bank. Defendant Whitney Bank refused to pay and/or fund any of the final payment request without any explanation or reasoning.

17. Plaintiff has made demand on Defendants Triple Star and Du for payment for the \$272,458.05. Defendants Triple Star and Du have failed and/or refused to pay the \$272,458.00.

18. The Project received its certificate of occupancy, is fully leased, and, to Plaintiff's belief, is producing income.

19. Defendant Whitney Bank is now secured with the Project which is fully leased and cash flowing.

20. Defendants Triple Star and Du have the completed Project and income therefrom.

21. Plaintiff, however, is still owed \$272,458.00 for the construction of the building. In addition, Defendants Triple Star and Du have not paid back the \$127,500.00 as promised.

22. As a result, Plaintiff seeks the \$272,458.00 in unpaid construction costs from Defendants Whitney Bank, Triple Star and Du. Further, Plaintiff seeks the \$127,500.00 from Defendants Triple Star and Du.

**VI. COUNT ONE – BREACH OF CONTRACT (CONSTRUCTION CONTRACT)**

23. Paragraphs 1 to 22 are incorporated herein for all purposes.

24. On or about January 2018 Defendants Triple Star and Du entered into the Construction Contract with Plaintiff. Pursuant to the Construction Contract, Plaintiff agreed to construct the

improvements and Defendants agreed to pay for the improvements to the Project.

25. Plaintiff began and subsequently completed the construction of the improvements to the Project as contracted.

26. Defendants Triple Star and Du through Defendant Whitney Bank paid most, but not all of Plaintiff's work performed pursuant to the Construction Contract.

27. Defendants Triple Star and Du have accepted the completed Project and have not only leased out the Project and are also collecting rents therefrom.

28. However, there still remains an unpaid balance of \$272,458.05 for the construction of the improvements to the Project.

29. Plaintiff has made demand for payment of the \$272,485.05 to Defendants Triple Star, Du and Whitney Bank.

30. Said Defendants have either failed and/or refused to pay as contracted and this Triple Star and Du have breached the Construction Contract.

31. As a result of Defendants Triple Star and Du's breach of the Construction Contract, Plaintiff has been damaged in an amount of at least \$272,485.05 and which it now sues.

## **VII. COUNT TWO – BREACH OF CONTRACT (AWS LOAN)**

32. Paragraphs 1 to 31 are incorporated herein for all purposes.

33. Defendants Triple Star and Du requested from and received the AWS Loan from Plaintiff in the amount of \$127,500.00. Defendants agreed, promised and contracted to repay the \$127,500.00 loan to Plaintiff upon completion of the Project.

34. Plaintiff has completed construction of the Project. Defendants Triple Star and Du have accepted the completed Project and have leased the Project and are collecting rents thereon.

35. Defendants Triple Star and Du have not repaid any portion of the \$127,500.00 AWS Loan.

36. Plaintiff has made demand for payment of the \$127,500.00 to Defendants Triple Star and Du.

37. Said Defendants have either failed and/or refused to pay as promised and as agreed and thus Triple Star and Due have breached the AWS Loan Agreement.

38. As a result of Triple Star and Du's breach of the AWS Loan Agreement, Plaintiff has been damaged in an amount of at least \$127,500.00 and which it now sues.

#### **VIII. COUNT THREE – BREACH OF CONTRACT (WHITNEY LOAN)**

39. Paragraphs 1 to 38 are incorporated herein for all purposes.

40. Defendants Triple Star and Du entered into the Whitney Bank Loan with Defendant Whitney. The amount of the Whitney Bank Loan was \$1,663,838.00 which was the estimated cost of construction of the Project and the initial amount of the Construction Contract. Plaintiff was an integral part for Defendant Whitney Bank in agreeing to make the loan and was a direct beneficiary of the Whitney Bank Loan.

41. Defendant Whitney Bank agreed to fund the construction of the Project up to the Whitney Bank Loan amount.

42. Based on Defendant Whitney Bank's agreement to fund the Project and the assurances and promises it made to Plaintiff, Plaintiff began construction and began submitting construction draw requests to Defendant Whitney Bank.

43. Defendant Whitney Bank, accepted and paid each and every of Plaintiff's draw requests with the exception of the final draw request made by Plaintiff upon the final completion of the Project.

44. Plaintiff made demand on Defendant Whitney Bank to pay the last draw request up to the full amount of the Whitney Bank Loan.

45. Defendant Whitney Bank has failed and/or refused to pay any amount of the last draw request thus breaching its agreement with Plaintiff and Defendants Triple Star and Du.

46. As a result of Defendant Whitney Bank's breach of contract, Plaintiff has been damaged in an amount of at least \$272,458.05 and for which it now sues.

**IX. COUNT FOUR – FRAUD/FRAUDULENT INDUCEMENT (TSTI and DU -  
CONSTRUCTION CONTRACT)**

47. Paragraphs 1 to 46 are incorporated herein for all purposes.

48. Plaintiff sues Defendants Triple Star and Du for Fraud/Fraudulent Inducement in relation to the Construction Contract.

49. Plaintiff asserts that Defendants Triple Star and Du are guilty of Fraud by fraudulently inducing Plaintiff to enter into the Construction Contract and to complete the construction of the Project without the intent or expectation that Defendants Triple Star and Du would pay for the improvements to the Project in full.

50. Defendants Triple Star and Du made representations that one or both would pay Plaintiff in full for the construction of the Project. Those representations proved to be false in that Defendants Triple Star and Du have failed and refused to pay Plaintiff in full for the construction of the Project.

51. Defendants Triple Star and Du made representations that one or both had the ability to pay Plaintiff in full for the construction of the Project. These representations also have proven to be false in that Defendant's Triple Star and Du have asserted they do not have the money to pay Plaintiff in full despite having leased to the Project and receiving rents therefrom.

52. Plaintiff reasonably relied on the representations of Defendants Triple Star and Du.

53. The foregoing representations made by Defendants Triple Star and Du were material in

that Plaintiff would not have entered into the Construction Contract but for those same false representations.

54. Plaintiff asserts that Defendants Triple Star and Du knew those representations to be false and that they intended Plaintiff to rely on those representations.

55. Plaintiff has made demand to Defendants Triple Star and Du for payment of the \$272,458.05 but Defendants Triple Star and Du have refused and/or failed to pay.

56. As a result of Defendants Triple Star and Du fraud, Plaintiff has been damaged in an amount of at least \$272,458.05 and for which it now sues.

**X. COUNT FIVE – FRAUD FRAUD/FRAUDULENT INDUCEMENT (AWS LOAN)**

57. Paragraphs 1 to 56 are incorporated herein for all purposes.

58. Plaintiff sues Defendants Triple Star and Du for Fraud/Fraudulent Inducement in relation to the AWS Loan.

59. Plaintiff asserts that Defendants Triple Star and Du are guilty of Fraud by fraudulently inducing Plaintiff to loan Defendant's Triple Star and Du \$127,500.00 without the intent or expectation that Defendants Triple Star and Du would repay the \$127,500.00 loan.

60. Defendants Triple Star and Du made representations that one or both would repay Plaintiff in full for the AWS Loan upon completion of the Project. Those representations proved to be false in that Plaintiff has completed the Project and Defendants Triple Star and Du have failed and refused to repay Plaintiff for the AWS Loan.

61. Defendants Triple Star and Du made representations that one or both had the ability to pay Plaintiff in full for the AWS Loan once the Project was completed. These representations also have proven to be false in that Defendant's Triple Star and Du have asserted they do not have the money to repay the AWS Loan despite having leased to the Project and receiving rents therefrom.



62. Plaintiff reasonably relied on the representations of Defendants Triple Star and Du.

63. The foregoing representations made by Defendants Triple Star and Du were material in that Plaintiff would not have loaned Defendants Triple Star and Du the \$127,500.00 but for those same false representations.

64. Plaintiff asserts that Defendants Triple Star and Du knew those representations to be false and that they intended Plaintiff to rely on those representations.

65. As a result of Defendants Triple Star and Du's fraud, Plaintiff has been damaged in an amount of at least \$127,500.00 and for which it now sues.

**XI. COUNT SIX – FRAUD/FRAUDULENT INDUCEMENT – WHITNEY BANK**

66. Paragraphs 1 to 65 are incorporated herein for all purposes.

67. Plaintiff sues Defendant Whitney Bank for Fraud/Fraudulent Inducement in relation to the Construction Contract.

68. Plaintiff asserts that Defendant Whitney Bank is guilty of Fraud by fraudulently inducing Plaintiff to enter into the Construction Contract and to completing the Project without the intent or expectation that Defendant Whitney Bank would pay for the improvements to the Project in full.

69. Defendant Whitney Bank and its loan officer (the same officer who made a usurious personal loan to Defendants Triple Star and Du) made representations that Defendant Whitney Bank would pay Plaintiff in full up to the amount of the Whitney Bank Loan for the construction of the Project. Those representations proved to be false in that Defendant Whitney Bank has failed and refused to pay Plaintiff in full for the construction of the Project up to the amount of the Whitney Bank Loan.

70. Plaintiff reasonably relied on the representations of Defendant Whitney Bank and its loan officer.

71. The foregoing representations made by Defendant Whitney Bank and its loan officer were material in that Plaintiff would not have entered into the Construction Contract but for those same false representations.

72. Plaintiff asserts that Defendant Whitney Bank and its loan officer knew those representations to be false and/or recklessly made and that they intended Plaintiff to rely on those representations.

73. Plaintiff has made demand to Defendant Whitney Bank for payment of the \$272,458.05 but Defendant Whitney Bank has refused and/or failed to pay.

74. As a result of Defendant Whitney Bank's fraud, Plaintiff has been damaged in an amount of at least \$272,458.05 and for which it now sues.

**XII. COUNT SEVEN – UNJUST ENRICHMENT – TRIPLE STAR /DU**

75. Paragraphs 1 to 74 are incorporated herein for all purposes.

76. Defendants Triple Star and Du will be unjustly enriched in the amount owed to Plaintiff for the full amount invoiced for the construction of the Project, to Plaintiff's detriment, if Defendants Triple Star and Du are not required to abide by the terms of their agreement to pay for the construction of the Project.

77. Plaintiff has completed the construction of the Project and Defendants Triple Star and Du have accepted the completed Project and have leased the Project and are receiving rents therefrom. Despite the completion of the Project, Defendant's Triple Star and Du have not paid the full amount for the construction of the Project and thus have been unjustly enriched to the detriment of Plaintiff.

78. Plaintiff has been damaged as a result of said Defendant Triple Star and Du's unjust enrichment in the amount of at least \$272,458.05 for which it now sues.

### **XIII. COUNT EIGHT – UNJUST ENRICHMENT – AWS LOAN**

79. Paragraphs 1 to 78 are incorporated herein for all purposes.

80. Defendants Triple Star and Du will be unjustly enriched in the amount owed to Plaintiff for the AWS Loan, to Plaintiff's detriment, if Defendants Triple Star and Du are not required to abide by their promise to repay the AWS Loan upon the completion of the Project.

81. Plaintiff has completed the construction of the Project and Defendants Triple Star and Du have accepted the completed Project and have leased the Project and are receiving rents therefrom. Yet Defendants Triple Star and Du have not repaid the AWS Loan as agreed and promised and thus have been unjustly enriched to the detriment of Plaintiff.

82. Plaintiff has been damaged as a result of said Defendant Triple Star and Du's unjust enrichment in the amount of at least \$127,500.00 for which it now sues.

### **XIV. COUNT NINE – UNJUST ENRICHMENT – WHITNEY BANK**

83. Paragraphs 1 to 82 are incorporated herein for all purposes.

84. Defendant Whitney Bank will be unjustly enriched in the amount owed to Plaintiff for the full amount to for the construction of the Project, to Plaintiff's detriment, if Defendant Whitney Bank is not required to abide by the terms of their agreement to pay for the construction of the Project up to the amount of the Whitney Bank Loan.

85. Plaintiff has completed the construction of the Project and Defendants Triple Star and Du have accepted the completed Project and have leased the Project and are receiving rents therefrom. Defendant Whitney Bank now has a fully secured interest in a completed property that is leased and cash flowing. Yet Defendant Whitney Bank has not paid Plaintiff fully for the construction of the Project up to the amount of the Whitney Bank Loan and thus has been unjustly enriched to the detriment of Plaintiff.

86. Plaintiff has been damaged as a result of said Defendant Whitney Bank's unjust enrichment in the amount of at least \$272,458.05 for which it now sues.

**XV. COUNT TEN – QUANTUM MERUIT – TRIPLE STAR AND DU**

87. Paragraphs 1 to 86 are incorporated herein for all purposes.

88. Plaintiff alleges that it is entitled to recover under quantum meruit. Defendants Triple Star and Du has become indebted to Plaintiff for the unpaid balance for the construction of the Project pursuant to the equitable principles of implied contract and/or quantum meruit. Defendants Triple Star and Du entered into and executed the Construction Contract and agreed and promised to pay Plaintiff for the construction of the Project, and Defendants Triple Star and Du did so with the intent to comply with the terms of the said Construction Contract. Plaintiff fulfilled its obligation under the Construction Contract and the agreements of the parties by providing constructing, completing and delivering the Project to Defendants Triple Star and Du and which benefited Defendants Triple Star and Du.

89. Defendants Triple Star and Du received and accepted the benefit of the said Construction Contract and the construction and completion of the Project with full knowledge that the Plaintiff would expect to be paid in full therefore. By implication, Defendants Triple Star and Du agreed to pay the reasonable value of each of the said improvements, and the reasonable value after all payments received is a sum of at least \$272,458.05 and for which sum Plaintiff now sues.

**XVI. COUNT ELEVEN – QUANTUM MERUIT – TRIPLE STAR AND DU**

90. Paragraphs 1 to 89 are incorporated herein for all purposes.

91. Plaintiff alleges that it is entitled to recover under quantum meruit. Defendants Triple Star and Du have become indebted to Plaintiff for the unpaid balance of the \$127,500.00 AWS Loan pursuant to the equitable principles of implied contract and/or quantum meruit. Defendants Triple

Star and Du borrowed and agreed to repay the \$127,500.00 AWS Loan by agreeing and promising to repay the AWS Loan upon completion of the Project, and Defendants Triple Star and Du did so with the intent to comply with the terms of their agreements and promises. Plaintiff fulfilled its obligation by constructing, completing and delivering the Project to Defendants Triple Star and Du and which benefited Defendants Triple Star and Du.

92. Defendants Triple Star and Du received and accepted the benefit of the said AWS Loan with full knowledge that the Plaintiff would expect to be repaid for the AWS Loan upon Completion of the Project. By implication, Defendants Triple Star and Du agreed to repay the reasonable value of AWS Loan, and the reasonable value after all payments received is a sum of at least \$127,500.00 and for which sum Plaintiff now sues.

#### **XVII. COUNT TWELVE – QUANTUM MERUIT – WHITNEY BANK**

93. Paragraphs 1 to 92 are incorporated herein for all purposes.

94. Plaintiff alleges that it is entitled to recover under quantum meruit. Defendant Whitney Bank has become indebted to Plaintiff for the unpaid balance for the construction of the Project pursuant to the equitable principles of implied contract and/or quantum meruit. Defendant Whitney Bank agreed and promised to pay Plaintiff for the construction of the Project up to the Whitney Bank Loan amount, and Defendant Whitney Bank did so with the intent for Plaintiff to construction the Project pursuant to the terms of the Construction Contract (which was in the form required by Defendant Whitney Bank). Plaintiff fulfilled its obligation under the Construction Contract and the agreements of the parties by providing constructing, completing and delivering the Project to Defendants Triple Star and Du and which benefited Defendant Whitney Bank by securing its interest in a completed Project.

95. Defendant Whitney Bank received and accepted the benefit of the said Construction

Contract and the construction and completion of the Project with full knowledge that the Plaintiff would expect to be paid in full therefore. By implication, Defendant Whitney Bank agreed to pay the reasonable value of each of the said improvements, and the reasonable value after all payments received is a sum of at least \$272,458.05 and for which sum Plaintiff now sues.

#### **XVIII. ATTORNEY FEES**

96. Paragraphs 1 to 95 are incorporated herein for all purposes.

97. Plaintiff is entitled to its reasonable and necessary attorney fees incurred in the prosecution of his claims made herein pursuant to Chapter 38 of the Texas Civil Practices and Remedies Code.

98. Therefore, demand is hereby made for all costs and reasonable and necessary attorney's fees incurred by or on behalf of Plaintiff herein, including all fees necessary in the event of an appeal of this cause to the Court of Appeals and the Supreme Court of Texas, as the Court deems equitable and just as provided by Chapter 38 of the Texas Civil Practices and Remedies Code and/or Common Law.

#### **XIX. NOTICE OF SELF AUTHENTICATION**

99. Defendants are hereby notified that Plaintiff intends to use all documents produced by Defendants in discovery of the trial of this cause, and therefore requests that Defendants assert any objection to the authenticity of any document that a Defendant produces within ten (10) days of its production. Otherwise, the documents are considered self-authenticated for admissibility purposes under Texas Rule of Evidence 901(a).

#### **XX. RULE 193.7 NOTICE**

100. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Plaintiff hereby gives notice that any and all documents produced by a Defendant in this cause may be used against that Defendant at any pretrial proceeding or at trial without the necessity of authenticating the

documents. This includes, but is not limited to, all Defendant produced documents provided during the course of discovery. Therefore, Plaintiff requests that each Defendant asserts the specific basis for any objection to the authenticity of any such documents within ten (10) days of its production.

## **XXI. PRAYER**

**WHEREFORE, PREMISES CONSIDERED, PLAINTIFF AMERICAN WESTERN STEEL, LLC**, prays that **DEFENDANTS TRIPLE STAR TRIUMVIRATE INVESTMENTS, LLC, JERRY DU and HANCOCK WHITNEY BANK** be cited to appear and answer herein, and that **PLAINTIFF AMERICAN WESTERN STEEL, LLC**, have judgment against **DEFENDANTS TRIPLE STAR TRIUMVIRATE INVESTMENTS, LLC, JERRY DU and HANCOCK WHITNEY BANK**, jointly and severally, as follows:

- a. Judgment against Defendants for a sum within the jurisdictional limits of this Court;
- b. Prejudgment interest as provided by law;
- c. Post judgment interest as provided by law;
- d. Reasonable and necessary attorney's fees;
- e. All costs of suit; and
- f. All such other and further relief to which Plaintiff may show itself justly entitled.

Respectfully submitted,

**THE GERBER LAW FIRM, P.C.**

*/s/ Yonatan Z. Gerber*

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