

CAUSE NO. CC-19-00367-C

<b>ROBERT L. MARCUS</b>	§	<b>COUNTY COURT AT LAW</b>
	§	
<b>PLAINTIFF,</b>	§	
	§	
<b>V.</b>	§	<b>NO. 3</b>
	§	
<b>THE PRESTON TOWER</b>	§	
<b>CONDOMINIUMS ASSOCIATION and</b>	§	
<b>INTERCITY INVESTMENTS, INC.</b>	§	
<b>d/b/a ICI MANAGEMENT COMPANY</b>	§	
<b>and/or INTERCITY MAINTENANCE,</b>	§	
<b>WD PIANO MOVERS, INC., and</b>	§	
<b>AMERICAN EAGLE ELEVATOR, LLC</b>	§	
<b>DEFENDANTS.</b>	§	<b>DALLAS COUNTY, TEXAS</b>

**PLAINTIFF'S SECOND AMENDED ORIGINAL PETITION & REQUEST FOR  
DECLARATORY JUDGMENT**

Plaintiff, Robert L. Marcus, files this second amended original petition and request for declaratory judgement against defendants, The Preston Tower Condominiums Association, Intercity Investment, Inc., WD Piano Movers, Inc., and American Eagle Elevator, LLC and alleges as follows:

**DISCOVERY-CONTROL PLAN**

1. Plaintiff intends to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.4 and affirmatively pleads that this suit is not governed by the expedited actions process in Texas Rule of Civil Procedure 169 because plaintiff sought injunctive relief.

**CLAIM FOR RELIEF**

2. Plaintiff seeks monetary relief over \$200,000 but not more than \$1,000,000. Tex. R. Civ. P. 47(c)(4).

## **PARTIES**

3. Plaintiff Robert L. Marcus (Marcus) is a citizen of the State of Texas who resides in Dallas County, Texas. The last three digits of his social security number are 401 and the last three digits of his Texas Driver's license number are 941.
4. Defendant The Preston Tower Condominiums Association (Association) is a Texas Nonprofit Corporation that has filed an answer in this case.
5. Defendant Intercity Investment, Inc. d/b/a/ ICI Management Company and/or Intercity Maintenance (ICI and/or Management Company) is a Texas for-profit corporation that has filed and answer in this case.
6. Defendant WD Piano Movers, Inc. (WD) is a Texas for-profit corporation that may be served through its registered agent and President, Daryl Glenn Lefler at 3304 Topeka Court, Plano, Texas 75074, or wherever he may be found. WD has been served but has failed or refused to file an answer in this case.
7. Defendant American Eagle Elevator, LLC (America Eagle) is Texas Limited Liability Company that has filed and answer in this case.

## **JURISDICTION & VENUE**

8. The Court has jurisdiction over this lawsuit because the amount in controversy is in excess of the minimum jurisdictional limits of the Court.
9. Venue is proper in Dallas County pursuant to Tex. Civ. Prac. Remedies Code §15.002, §15.004, and §15.005, as well as §134.004 because this is a suit under the Texas Theft Liability Act and Dallas is the county where the theft occurred, and where two of the defendants reside.

## FACTS

10. Plaintiff Marcus is a classically trained concert pianist. Marcus began taking piano lessons at age seven from a relative. Within a short time, his talents were recognized, and he was referred to Dr. David Karp, then head of the piano division at Southern Methodist University in Dallas, Texas for private lessons. Marcus was later accepted into the newly formed Arts Magnet Booker T. Washington High School for the Performing and Visual Arts in 1976 and was placed in the Upper Advanced Piano class until his graduation. Upon graduation from Booker T., Marcus continued his undergraduate studies at SMU, as a pupil of Alfred Mouldous, a protégé of the legendary pianist Walter Gieseking. After graduation from SMU, Marcus was accepted at the famed Julliard school of Music to train under Ms. Adele Marcus (no relation), one of the pianistic greats of the 20th century. Marcus continues his love of music today by teaching, as well as recording and transcribing his own arrangements and exercises for the piano.

11. In 1996, Marcus purchased his Steinway Concert Grand Piano, serial No. 533616, Model D. The piano was built by Steinway & Sons in its New York factory and was hand-picked from Steinway's inventory for Marcus. It is built of the US design, which varies slightly from the German Model D. This particular piano was one of only a few to be built and sold in the retail market, as this model is typically destined for concert stages and schools around the world. A few, however, are included in Steinway Artist's Bank. The Artist Bank is comprised of pianos set aside in U.S. cities specifically for performing artists. Marcus met with several technicians and tuners from Steinway to discuss his musical needs and what he looked for in a piano. One of the technicians was sent to the New York factory to select several pianos which were complete and ready for sale. The chosen pianos were then shipped to Dallas and set up in Steinway's Dallas showroom for Marcus to try and select from. The

piano that fit his artistic temperament was 533616 because of its warm tone and full body of sound. The selected piano was then delivered to Marcus' unit in Preston Tower Condominiums and has been in his continuous possession since—until it was “disposed” of by the defendants, which necessitated the filing of this suit. Today, a New Model D Concert Grand sells for \$155,000.00.

12. Plaintiff was the titled owner of Unit 2900 in The Preston Tower Condominiums located in Dallas, Texas for more than 30 years until September 1, 2018—when he sold the unit and leased another unit on the 2nd floor within the same building.
13. In July 2018, a full month before the move, Marcus scheduled Metroplex Piano f/k/a Cousins Moving & Storage to move his special order 9 foot, 1200lbs Steinway Concert Grand piano to his new unit on the 2nd floor within Preston Tower.<sup>1</sup> This was the same company, now run by the owner's son, Blake Speir, that moved the piano to Preston Tower in 1996 when Marcus purchased it new from Steinway Dallas.
14. In late August of 2018, Marcus contacted the Preston Tower Condominium's General Manager, Robert Kennehan, and Assistant General Manager, Grisel Garcia, and informed them that he was moving from the 29<sup>th</sup> to the 2<sup>nd</sup> floor and requested their approval and assistance in moving his piano.<sup>2</sup>
15. Due to the size and value of the piano, Marcus was advised by Speir of Metroplex Piano that an elevator technician would need to assist in the move and preparation of the elevator. ICI, Preston Tower's management company, told Marcus that American Eagle Elevator, LLC was the elevator service provider for Preston Tower and provided Marcus with the number to

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<sup>1</sup> Exhibit 1 (August 27, 2018 email from Trecia Fugitt of Metroplex Piano confirming date and price for move).

<sup>2</sup> Exhibit 21 (Exhibit 3 to Kennehan Depo).

contact them directly. As required, on or around August 26, 2018 Marcus completed the Preston Tower Move and Delivery Procedures form and paid the \$250 refundable moving deposit to ICI.<sup>3</sup> This deposit was never returned.

16. Marcus contacted Bill Sweeney Jr. of American Eagle Elevator, LLC. Sweeney agreed to meet Marcus and Speir from Metroplex Piano at Preston Tower to measure the piano and elevator and to plan the move. Over the course of the next few weeks, Speir and Marcus met with Sweeney of American Eagle Elevator on several occasions, believing that they had the full support of the elevator technician.
17. During the last meeting before the scheduled move, Sweeney agreed to open/access the tops of the elevators so that Speir could photograph and evaluate them. But after opening the *first* of three elevators for inspection, Sweeney abruptly disappeared and did not return to the meeting. The pictures taken of the *first* elevator revealed to both Speir and Marcus, that this particular elevator was not suitable for the move. This assessment was confirmed by other movers who also viewed the pictures taken by Speir. Because of Sweeney's unexpected departure from the meeting, the tops of the building's other two elevators (including the freight elevator) could not be viewed and evaluated.<sup>4</sup>
18. As it had been determined that the piano was too large to fit *in* the elevator, and that the top of the *first* elevator would also not accommodate the move, an alternate plan was required. Either the piano would have to be placed in a special cradle on top of one of the other elevators (a dangerous and risky move as the piano weighs 1200lbs) or some disassembly of

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<sup>3</sup> Exhibit 22 (Exhibit 4 to Kennehan Depo).

<sup>4</sup> Since filing suit, Marcus has learned that the *only* elevator that the Association would approve for the use of a resident's move is the freight elevator. The freight elevator was also the only elevator that would accommodate a move on the top of the elevator. Marcus, however, was not given the opportunity to inspect the top of the freight elevator until the day before defendants "disposed" of his piano.

the elevator cab would be required. Both Speir and Sweeney had grave concerns about the safety of a move on top of the elevator. As such, Marcus contacted several other movers for advice, including the Steinway Piano Company, where he purchased the piano. The representative from Steinway advised him that it was against the Texas Building Code to place objects on top of elevators and that Steinway would be unable to help.<sup>5</sup>

19. The morning of August 30, 2018, the day of the scheduled move, Blake Speir of Metroplex Piano—for the first time—notification Marcus that the move was too risky and that he was cancelling the move as he could not guarantee the safety of the piano or the movers and because he did not have sufficient support from the elevator technician.<sup>6</sup> Speir contacted WD Piano Movers (WD), through its owner Daryl Lefler (Lefler), with whom Speir worked closely, to see if WD would perform the move or assist Speir with the move at a later date.<sup>7</sup>

20. Within a day or two, Lefler of WD, contacted Marcus to see the piano and elevator. Lefler was very hesitant to accept the move and cited the Dallas City Code regarding moving objects on top of elevators. Lefler also stated that he wanted a release of liability signed by Marcus for any damages and demanded that Marcus get his own liability insurance against damage to the premises—as Lefler stated that we would **not** cover the move on his policy.<sup>8</sup> While Marcus would not agree to any waiver of liability, Marcus did agree to attempt to have his own policy written for the move. No insurance company, however, would issue such a

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<sup>5</sup> Exhibit 2 (August 16, 2018 email from Steinway stating that they cannot move piano on top of elevator per Dallas City Code).

<sup>6</sup> August 30, 2018 voicemail from Speir to Marcus; Exhibit 3 and 4 (September 4 and 5, 2018 emails from Marcus to Preston Tower management advising of problems securing elevator technician and requesting help).

<sup>7</sup> August 30, 2018 voicemail from Speir to Marcus canceling scheduled move.

<sup>8</sup> Exhibit 6 at page 1 (September 23, 2018 email from Marcus to Kennehan stating that WD would not cover the move on their insurance).

policy as Marcus was not in the “business” of moving pianos. At this point, WD had refused to cover the move on their policy, Marcus was unable to get his own policy to cover the move, and the Association would not approve a move without proof of insurance.<sup>9</sup>

21. On or around September 1, 2018, the new owners of Marcus’ old apartment 2900 requested that the piano be removed from the unit, as it was in the way of contractors who were scheduled to begin renovations. The new owners allowed Marcus several more days to have the piano moved from the unit. On September 6, 2018, Marcus and Lefler reached an agreement to move the piano outside of the unit.<sup>10</sup> Marcus had alerted the Assistant Manager for Preston Towers, Grisel Garcia, in late August when he hand-delivered his moving deposit, that the piano may need to be placed in the hallway temporarily pending finalization of the piano move.<sup>11</sup> The Assistant Manager did not raise any objections.

22. On the morning of September 6, 2018, Marcus received a call from Preston Tower’s front desk agent, David Davenport, stating that WD was here to breakdown the piano. WD was granted permission to enter the building. Had the management had any issues with WD’s request to enter the building for the purposes of breaking down the piano and placing it in the hallway—WD would not have been granted access to the building.

23. Lefler proceeded to disassemble the piano, removed it from Marcus’ old apartment, and place it in the hallway on the 29th floor, so as not to block the hallway or fire escape, until firm arrangements could be made to safely move the piano to the 2nd floor.<sup>12</sup> The parts and pieces that could be moved easily were taken by Lefler to Marcus’ new unit on the 2nd floor.

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<sup>9</sup> Exhibit 5 (August 28, 2018 email from Preston Tower management to Marcus re: insurance requirements/forms).

<sup>10</sup> Exhibit 21 (Exhibit 3 to Kennehan Depo).

<sup>11</sup> Exhibit 22 (Exhibit 4 to Kennehan Depo) and Exhibit 23 (Exhibit 5 to Kennehan Depo).

The piano was placed on blocks above the floor and carefully wrapped in blankets, including the bedding from Marcus' own bed to ensure its safety. Marcus checked on the piano daily and was in constant communication with Preston Tower management seeking support and advice on the situation.

24. As WD was still unwilling to provide insurance coverage for the move, Marcus reviewed several other options for moving the piano down to a lower level. One of which included a freight helicopter removing the piano from the roof of Preston Tower and another involved the construction a 30-story crane on Pickwick Lane (across the street) to remove the piano off the balcony—neither of these options were realistic or feasible. By the end of September 2018, there was still no plan for how to move the piano, given its size and value. Marcus could not obtain the insurance requirements demanded by Lefler to conduct the move on top of the elevator, nor did Marcus have the support of an elevator technician.<sup>13</sup> Marcus advised Preston Tower's General Manager, Rob Kennehan, of the problem and requested his immediate assistance—no help was provided.<sup>14</sup>

25. Still needing support of the elevator technician and realizing the top of the elevator was the *only* realistic option to move the piano, Marcus and Lefler continued to try and reach Sweeney of America Eagle Elevator to help in planning the move. Only when Marcus concealed or blocked his number, did Sweeney finally answer his call. Marcus asked why Sweeney had not answered or returned calls; Sweeney responded that it was because neither Lefler nor Speir has returned his calls. Marcus pointed out that this was not the case and that

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<sup>12</sup> September 6, 2018 voicemail from front desk stating that WD was there to breakdown Marcus' piano; Exhibit 24 (Exhibit 1 to Kennehan Depo).

<sup>13</sup> Exhibit 3 and 4 (September 4 and 5, 2018 emails from Marcus to Preston Tower management advising of problems securing elevator technician and requesting help).

<sup>14</sup> *Id.*

Marcus' own calls went unanswered as well. It was at this point that Sweeney broke and stated he did not want the liability of the move and that he would not assist in any manner and to find someone else.<sup>15</sup> Indeed, since filing suit, Marcus has learned that on October 18, 2018—the day before the move of his piano by the Association—American Eagle required the Association to sign a “Hold Harmless Agreement” *before* it would operate the elevator during the move of Marcus' piano.<sup>16</sup> At no time did American Eagle inform Marcus that it required such an agreement due to liability concerns. Instead, American Eagle simply stopped taking Marcus' calls. Without American Eagle's assistance and cooperation Marcus was unable to move his piano.

26. By mid-September 2018, Marcus had been advised by both movers (Lefler and Speir), that due to the size of the piano, the easiest solution was to remove a portion of the top or sides of the elevator, so that the piano could be placed inside the elevator cab. Only as a last resort, should the piano be placed on top of the elevator. Lefler continued to raise concerns that placing the piano on top of the elevator would potentially violate Dallas City Code—and that he did not want to be held liable. Lefler still had not provided Marcus with proof of insurance that would cover the move of the piano, either inside or on top of the elevator.<sup>17</sup>

27. During this time, Marcus was in constant communication with Rob Kennehan, General Manager for Preston Tower, and was continually advising Kennehan of the issues that he was encountering. Despite Marcus' constant communication and request for help in facilitating the move, it often took days, if not weeks, to get a response from Kennehan and others at the

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<sup>15</sup> Exhibit 6 at page 2 (September 17, 2018 email from Marcus to Kennehan re: elevator technician's refusal to help with move due to liability and safety concerns).

<sup>16</sup> Exhibit 25 (Exhibit 42 to Kennehan Depo).

<sup>17</sup> Exhibit 6 at page 1 (September 23, 2018 email from Marcus to Kennehan stating that WD would not cover the move on their insurance).

management office. Nevertheless, Marcus supplied Kennehan with answers to all his questions, including names of the various movers; phone numbers; scope of the work; proof of liability insurance; as well as *why* an elevator technician was needed.<sup>18</sup> Marcus explained that as the only solutions to move the piano were to either, (1) place the piano on top of the elevator or (2) removal of a portion of the elevator’s sides or roof. Both required an elevator technician—and without such assistance, the move was not possible.<sup>19</sup>

28. By the end of September 2018, Marcus realized that he could **not** use WD Piano Movers to complete the move as the owner, Lefler, had stated that (1) he was unwilling to have his company’s insurance policy cover the move, (2) Marcus had not been able to obtain his own policy to cover the move, and (3) the building’s management required proof of coverage *before* it would approve a move.<sup>20</sup> Accordingly, Marcus began contacting other piano movers in the area to complete the move. When Lefler learned that Marcus was contacting other companies, Lefler became belligerent and accused Marcus of “trying to go around him” and blamed Marcus of causing him to miss a \$5,000.00 hunting trip.

29. Around October 1, 2018, Marcus received a message from Lefler stating—for the first time—that Lefler had spoken to his insurance company and that his carrier would now cover a move on-top of the elevator. In light of Lefler’s repeated refusal to cover the move on WD’s own policy and because of Lefler’s rude and aggressive attitude towards Marcus—Marcus continued to contact other piano movers in and outside the DFW area. Specifically, Marcus contacted Andy at Metroplex Piano in Fort Worth. Andy stated that he would check

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<sup>18</sup> Exhibit 6 at page 3 (September 7, 2018 email from Marcus to Kennehan explaining *why* an elevator technician was required).

<sup>19</sup> *Id.*

<sup>20</sup> Exhibit 6 at page 1 (September 23, 2018 email from Marcus to Kennehan stating that WD would not cover the move on their insurance).

with his insurance company to make sure that there was coverage, as required by the Association, and get back with Marcus. When Marcus followed up with Andy, on or around October 4, 2018, Andy stated that Lefler, WD's owner, had contacted him and told him that this move "belonged to WD," that the building management for Preston Towers had already contracted with WD and was going to pay Lefler directly to move the piano, and that Andy should stay out of it. As a result of WD's interference, Andy told Marcus he was unable to help with the move.

30. Marcus immediately called Lefler to ask why he claimed to already have a contract with the building's management company to move *his* piano. Marcus left numerous messages, but none of his calls were returned. Marcus also contacted Speir, with whom Lefler worked closely, and asked for his help in dealing with Lefler. Speir agreed to try and contact Lefler and ask him to cease his communications with other movers. Lefler purportedly told Speir that he would not interfere further.

31. Internal communications obtained from the Association's management company revealed that by October 2, 2018, Kennehan had already confirmed with Lefler that WD would move Marcus' piano on behalf of the Association. At no time, however, did Kennehan, GM for Preston Tower, reveal this to Marcus.

32. By October 5, 2018, Marcus had now been forced to call movers from around the state to complete the move—as Lefler had put the word out that this was "his" move and to stay out of it. Desperate to locate a mover, on or about October 5, 2018, Marcus contacted the Steinway Piano Company again to see if they could recommend a piano mover outside of DFW. They recommended Piano Handlers in Austin, Texas and Action Piano in Houston, Texas. Marcus proceeded to contact both movers. Only Action Piano of Houston could

assist—but it would be October 17, 2018 before they could send someone to Dallas to evaluate the move.

33. On October 10, 2018, Marcus received an email from Management advising, for the first time, that the top and or sides of the elevator would not be removed to accommodate the move.<sup>21</sup> On the same day, Kennehan, general manager for Preston Tower, sent Marcus a letter stating that if the piano was not removed on or before October 18, 2018, the “Board will exercise its rights under Section H-5 of the Community Manual, which includes the removal and disposal of the piano.”<sup>22</sup>

34. After receiving the letter threatening disposal of his piano, Marcus had a telephone conversation with Kennehan. In this call, Marcus again tried to explain that the piano would not fit inside the elevator without modification, and that in order to move the piano on top of the elevator Marcus required the assistance of the elevator technician—who was not responding to his calls. Marcus explained that he needed Kennehan’s help before he could proceed any further. At this, Kennehan became irate and told Marcus it was not his problem and that he didn’t want to be bothered with it anymore.

35. Marcus, now desperate at the prospect of his piano being “disposed” of, called Speir again for advice and even asked if he could talk to Lefler of WD about doing the move for Marcus—despite Marcus’ extreme reservations about doing so, given Lefler’s past behavior and demands on Marcus. Speir, however, was not successful in his attempts to reach Lefler. We now know, Lefler had no reason to return Marcus’ calls—as Lefler had already come to

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<sup>21</sup> Exhibit 7 at page 2 (October 10, 2018 email from Kennehan to Marcus stating that sides/top of the elevator will not be removed to accommodate the move of the piano).

<sup>22</sup> Exhibit 8 (October 10, 2018 letter from Kennehan to Marcus re: “disposal” of piano).

an agreement with the Association to move Marcus' piano to WD's storage facility for \$3,500.00 and to store the piano for an additional 200.00 per month.

36. On October 17, 2018, Marcus notified Preston Tower GM, Kennehan, that two movers would be coming to evaluate the move and requested an elevator tech to be present when they arrived.<sup>23</sup> Kennehan was clearly aware of Marcus' efforts to try and meet the October 18, 2018 deadline—but when Marcus requested an extension, it was denied without explanation.<sup>24</sup> At no time did Kennehan disclose that he had already agreed to have WD perform the move.

37. The first mover to arrive on October 17, 2018 was DFW Movers & Erectors, Inc. Even though they don't normally move pianos, Marcus had convinced them to come and evaluate the move. The meeting was set for 3 p.m. At approximately 3:06 p.m., Marcus received a call from the front desk stating that a mover from DFW Movers & Erectors was waiting in the lobby area to meet with him. Marcus proceeded to the lobby, where the mover from DFW Movers & Erectors, Inc. advised Marcus that he had been contacted by the building's management and asked to come at an earlier time.<sup>25</sup> At this earlier meeting, Kennehan apparently had an elevator technician present from American Eagle Elevator and proceeded to show the mover and the technician both the piano and elevator. The mover stated that he was told by the building manager that he needed to move the piano immediately. Given the complexity of the moves this was simply not possible. The mover, sensing a potential

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<sup>23</sup> Exhibit 9 at page 2 (October 17, 2018 email from Marcus to Kennehan advising that movers coming to evaluate the move and requesting that an elevator technician be present).

<sup>24</sup> Exhibit 10 (October 18, 2018 email from Kennehan to Marcus denying extension); *see also* Exhibit K (October 18, 2018 email from Marcus to Jeff Shaw, Association President, requesting extension. No response was received).

<sup>25</sup> Exhibit 26 (Exhibit 32 to Kennehan Depo).

conflict between Marcus, the owner of the piano, and the building's management, refused to perform the move.<sup>26</sup>

38. The second mover, Action Piano from Houston, arrived at 4 p.m. as scheduled to evaluate the move. The agent from Action Piano Moving drove from Houston to meet with Marcus to evaluate the piano, elevator, and move. An early morning message from Action Piano's offices indicated that they too had received a call the Preston Tower management office demanding that the piano be moved that day.<sup>27</sup> Action Piano explained that it was not possible on such short notice and that they first needed to evaluate the move.<sup>28</sup>

39. During this second meeting the same elevator technician from American Eagle Elevator Company that was present at the meeting with Action Piano was also present to meet with Marcus and the mover from Action Piano Moving. Kennehan, Preston Tower's GM, was also present but disappeared after five minutes, showing little interest in the details of the move. The mover requested that a light fixture inside the elevator be removed, so that the piano could be placed *inside* the elevator. The elevator technician stated that it would be possible to remove the light fixture, but that an elevator cab servicer would be required to do it. Marcus asked for a referral to schedule the light's removal. The evaluation continued, the technician opened the top of the *freight* elevator for Marcus and Action Piano Moving to inspect and photograph. At this juncture, the mover and Marcus discovered that the freight elevator—**not** the elevator photographed in July 2018—was the best choice for the move. Marcus had not

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<sup>26</sup> Exhibit 9 (October 18, 2018 email from Marcus to Kennehan stating that DFW Movers and Erectors had refused to perform the move).

<sup>27</sup> October 18, 2018 voicemail from Mary at Action Piano Movers stating that the move could not be performed that day.

<sup>28</sup> *Id.*

been able to inspect the building's freight elevator at the July 2018 meeting because Sweeney had abruptly left the meeting without explanation.

40. The technician also shared pictures of the piano with Marcus, which had purportedly been taken when the piano was originally moved on-top of the elevator in 1996. These pictures were apparently given to the technician by the building's management—but had **never** been given to Marcus to share with his movers in planning the move. Had the building's management company supplied Marcus with the pictures of the *correct* elevator (i.e., freight elevator) from the start—it is likely that the move could have been accomplished much earlier, and that some of the movers that had initially rejected the move, might have been willing to go forward with this additional information.

41. Nevertheless, the plan was to first have the light fixture removed from the interior of the elevator, thereby allowing the piano to be moved in the elevator. And only as a last resort, if the light could not be removed, Action Piano would proceed to place the piano on the top of the freight elevator. With the plan confirmed, Action Piano agreed to perform the move the very next week and stated that they would return with the necessary gear and personnel to do the job. Despite Action Piano's willingness to conduct the move—and despite the management company's awareness of this fact—Marcus was still concerned, as the scheduled move would not be completed until after the October 18, 2018.

42. On October 17, 2018, Marcus pleaded for an extension to the Association's then President,

Mr. Jeff Shaw stating:

Hi Jeff,

I hope you are well. I needed to ask your assistance and a big favor from you and the Association. I have been trying to get my piano moved from the 29th floor. The piano was placed in the hallway several weeks back in the course of my move from 2900 after the movers could not get it into the elevator, we were

denied entry back into 2900 and forced to leave it in the hallway (out of the way best we could). Mr. Rob Kennehan was seeking board permission to leave the piano in the hallway until arrangements could be made for its move. Mr. Kennehan was also trying to coordinate with the elevator technician to have the sides and or top of the elevator removed to accommodate the piano, I was notified this last week that was not possible, the piano movers are reluctant to put such a massive instrument on top of the elevator and have backed out.

I am speaking with piano/ equipment movers from New York and Houston for assistance in getting this move accomplished. Mr. Kennehan has given me until 5 PM tomorrow (Thursday the 18th to have it move or it will be scrapped and disposed of). I have tried explaining that this is a \$165,000.00 Steinway Concert piano and weighs over 1500lbs and will require careful planning for the move. Mr. Kennehan is reluctant to allow any more time and does not seem to grasp the complications and dangers of placing heavy objects on the top of elevators. When it was brought up upstairs years ago, it took months of planning and a team from Steinway in New York was flown into assure the safety for all with special equipment [sic] to do this particular move.

Jeff can you please give me an extension of time for the move, I can't risk injury to the personnel involved, piano or the elevator/building, these are extraordinary circumstances. Please let me know, I would greatly appreciate your assistance in this matter. If all else fails can you help in finding a suitable storage place on the 29th floor until the move is accomplished??

Thank you greatly for your consideration, Robert Marcus<sup>29</sup>

43. Having received no response, Marcus, the very next day renewed his plea:

Hi Jeff, I am not sure whether you got my email from yesterday as I have not had any response. I really need your help in saving my piano, please respond.

Thank you, Robert<sup>30</sup>

44. Mr. Shaw never responded to either of Marcus' emails. When asked at his deposition why he had not responded, Shaw testified that because Marcus was now a renter, Shaw was not

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<sup>29</sup> Exhibit 27 (Exhibit 23 to Kennehan Depo).

<sup>30</sup> Exhibit 11.

required to respond to Marcus' email and that "[he] owed him nothing." When asked whether he could have responded, Shaw testified as follows:

Q. Could you have responded to Mr. Marcus and stated, you know, as you are no longer a -- an owner in this building, you should direct your correspondence to, and then point him to the appropriate person?

A. Oh, I could have, yes.

Q. (BY MS. ALSTRIN) Okay. Is there a reason you didn't do that?

A. **I didn't think it was worthwhile.**

Q. **Okay. It isn't worthwhile to take the time to write that e-mail to him?**

A. **Look, he's a grown man, and I can't help him.**

Q. Okay.

A. So you know what I mean?

Q. Okay. **Well, certainly, you as a board member could have granted him an extension, that would have helped him, wouldn't it?**

A. **I don't know.**<sup>31</sup>

45. On October 18, 2018, Marcus also wrote the following email to Preston Towers GM and Assistant GM, requesting an extension:

Good Afternoon Rob, I am doing everything I can to try and get the piano moved today, DFW Movers are assessing this to see if the elevator is even an option, they will be here at 3PM today. Action Piano movers are also on the way in from Houston and expected in around 4:15 PM to look as well, I would like the elevator technician available for this as well, you are welcome to be present for both meetings, your input and suggestions on the matter would be appreciated, I am exploring the use of a crane or helicopter if we cant use the elevator, we have already ruled out the stairs.

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<sup>31</sup> Jeff Shaw Depo. at 15:22 – 16:15.

Being without my piano has been disastrous to my teaching, recording and performing career and has caused a great hardship and mental anguish. I am asking for your patience and understanding while trying to get this accomplished, it took months of preparation and a team was brought in from New York to get the piano up to the 29<sup>th</sup> floor, it is just a big challenge to get it back down. Would you please grant an extension of time to try and get this done.

Thank you, Robert<sup>32</sup>

46. No extension was granted.<sup>33</sup> On October 19, 2018 at approximately 11:50 a.m., Marcus went to check on the piano's condition and safety—as was his daily practice and discovered that it had been removed. Marcus immediately contacted counsel. Plaintiff's counsel called and left messages at Riddle & Williams, then counsel and registered agent for the Association. Marcus' counsel explained that given the piano's value and the complexity of the move, several piano movers had been unable or unwilling to take on the move and as a result, the piano was being temporarily housed on the 29th floor outside of Marcus' former unit. Plaintiff's counsel requested that the Association and management company not take any action to move the piano and instead, allow Marcus additional time to secure qualified piano movers—which would have been within the next week, as Action Piano from Houston had already stated that they were willing to take on the move.

47. The following day, Chad Robinson of Riddle & Williams responded that the Association had not retained them to handle this matter and instead, that the Association was handling it on its own. Plaintiff's counsel immediately reached out directly to Rob Kennehan, General Manager for the Association, and to Jeff Shaw, the President of the Association.<sup>34</sup> Plaintiff's counsel left two voice messages for Kennehan—neither call was returned. At 3:01 p.m. on

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<sup>32</sup> Exhibit 28 (Exhibit 28 to Kennehan Depo).

<sup>33</sup> Exhibit 29 (Exhibit 34 to Kennehan Depo).

Friday, October 19, 2017, Clayton Hearn, the Association's newly retained counsel, responded in an email and alleged that Marcus had "abandoned" the piano and stated that "In the unlikely even [sic] you have some legal authority for him to store this piano in a hallway at Preston Tower, please forward that to my attention."<sup>35</sup> Plaintiff's counsel immediately requested a phone call, only to be told the Association had already contracted with WD, and that the piano was gone.<sup>36</sup>

48. Plaintiff's counsel requested information on the location and condition of the piano and was provided with the contact information for WD Piano Movers. Plaintiff's counsel called both the main number for WD Piano movers, as well as the cell phone number for Lefler, the owner. After introducing herself, she was hung up on both times. Plaintiff's counsel then contacted Clayton Hearn, counsel for the Association, and explained that she had been unable to confirm the whereabouts or condition of the piano. Hearn responded that he would inquire into the condition of the piano but that he would instruct WD Piano Movers to not release the piano to Marcus, as the Association was now the "owner" of the piano. The Association's claim of ownership was confirmed in Hearn's email to plaintiff's counsel.<sup>37</sup>

49. Plaintiff has since learned that on or about October 2, 2018, the Association and WD entered into an agreement to have WD remove and store Marcus' piano. On October 19, 2018, WD Piano Movers arrived and met with the Preston Tower management and American Eagle Elevator, LLC and removed Marcus' piano from the building. None of the defendants obtained Marcus' permission before moving the piano or informed him that they were

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<sup>34</sup> Exhibit 12 at page 2 (October 19, 2018 email from Alstrin to Kennehan and Shaw requesting that the piano not be moved and that Marcus be given additional time to secure a qualified mover).

<sup>35</sup> *Id.* (October 19, 2018 email from Hearn to Alstrin).

<sup>36</sup> *Id.*

<sup>37</sup> Exhibit 13 (October 25, 2018 email from Hearn to Alstrin re: claim of ownership).

moving his piano. In fact, the move itself was done covertly. Management personnel had been instructed to state that the freight elevator was down for regularly scheduled maintenance rather than to reveal that Marcus' piano was being moved.<sup>38</sup>

50. All defendants were aware that Marcus had moved to a new apartment on the 2nd floor within the same building—and that he was trying to have the piano moved there. Indeed, WD brought some of the smaller parts down to Marcus' 2<sup>nd</sup> floor unit, knowing full well that Marcus intended the rest would follow. Marcus chose that particular apartment, at the end of the building, so as not to disturb other tenants when he practiced, composed, recorded, and taught lessons. Nevertheless, Marcus is now unable to do any of those things without his piano and has been forced to make alternate arrangements to try and continue his practice and teaching routine.<sup>39</sup>

51. Although defendants finally confirmed the location of the piano—Marcus was unable to ascertain the condition of the piano, as he was not permitted to inspect it. Plaintiff's counsel warned that if not stored in a proper environment, the piano could be severally damaged.

52. As the Association continued to claim ownership of Marcus' piano, and WD Piano Movers refused to release the piano, or allow plaintiff to inspect it—plaintiff was forced to seek a Temporary Restraining Order, Temporary Injunction, and Permanent Injunction to prevent defendants from moving, altering, damaging, or selling Marcus' piano and to ensure that the piano be moved to a secure, climate-controlled environment immediately, where it could be inspected, and its safety ensured. It was only after plaintiff sought such relief from this Court

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<sup>38</sup> Per Association rules, a resident can only reserve the freight elevator for a move on the weekend. October 18, 2018, the day defendants moved Marcus' piano, was a Thursday. *See also* Exhibit 30 (building link calendar's does **not** reflect a move scheduled on 10/18/2019).

<sup>39</sup> Exhibit 14 (October 18, 2018 email from Marcus to Kennehan regarding the disastrous effect the delays in moving the piano have had on his on teaching, recording, and performing).

that the Piano was moved to Bradfield Piano Restoration, Moving & Storage, LLC (Bradfield), a mutually agreed upon third-party for the purpose of inspection and storage of the piano during the pendency of this lawsuit.<sup>40</sup>

53. Only after Marcus' piano was transferred to and inspected by Bradfield, did plaintiff learn that his piano had sustained \$7,600.00 in damage as a result of WD's improper moving and handling of the piano as documented by videos and pictures of the move taken the building's management company.<sup>41</sup> The video and pictures revealed that the piano keyboard was **not** removed before the move, as was as required to ensure that the keyboard mechanism would not be damaged, and further that the piano was loaded backwards and moved without the use of any cradle or harness to protect it—as had been discussed with all movers, including WD.. Additionally, when Lefler delivered the piano to Bradfield and opened his trailer to remove the piano, it was revealed that the lid of the piano had not been properly secured or wrapped during transport, resulting in multiple scratches and several deep gouges.

54. Since filing suit, Marcus has received Association documents that reveal he was **not** afforded the same courtesies and accommodations as other residents. Specifically, a fellow resident on the 29<sup>th</sup> floor—the same floor where Marcus owed a unit for some 30 years—stored his piano in the same hallway for close to three weeks while he had his unit painted.<sup>42</sup> This other piano took up more hallway space—as it had an electronic playing device which protruded into the hallway, blocking access to the fire escape.<sup>43</sup> This other piano, however, was much shorter in length, meaning that it could have been easily moved in the elevator, if required.

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<sup>40</sup> Exhibit 31 (Rule 11 Agreement)

<sup>41</sup> Exhibit 32 (Bradfield Repair estimate).

<sup>42</sup> Exhibit 33 (Exhibit 19 to Kennehan Depo).

<sup>43</sup> *Id.*

55. But rather than threatening to “dispose” of this neighbor’s personal property—the General Manager, Robert Kennehan—offered to find a place to store this the piano:

**Can you move the piano back into your unit that is in the hallway? If you need to bring it downstairs to the garage for a few weeks I can make some space. I understand that item could cause some challenges for the ceilings you are painting due to the water leak and I want to help however I can.**<sup>44</sup>

56. Yet when Marcus requested Kennehan’s help in finding a place to store his piano, Kennehan did not offer up any storage solutions and affirmatively stated that he could not ask any residents to help in storing the piano—even through at least one board member suggested this as a solution when Marcus was having trouble moving the piano.<sup>45</sup> Kennehan conceded at his deposition that he never offered Marcus a temporary storage option for his piano.<sup>46</sup>

57. Additionally, it was only *after* Marcus pointed out that another piano was being stored on the 29<sup>th</sup> floor, that Kennehan requested that this other resident’s piano be moved.<sup>47</sup> But instead of threatening to dispose of the piano, Kennehan stated in a letter that the resident would be subject to a \$100 fine. To the extent this resident disagreed with the proposed fine, the resident was provided the opportunity to request a hearing before the Board of Directors within 30 days of the receipt of the letter.<sup>48</sup> After storing his piano in the hallway for close to three weeks, this resident moved it back into his unit and was never fined. When asked whether the Association and its management company could pick and choose when and how to apply the declaration and bylaws, Kennehan testified as follows:

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<sup>44</sup> Exhibit 35 (Exhibit 50 to Kennehan Depo).

<sup>45</sup> Exhibit 29 (Exhibit 34 to Kennehan Depo); Exhibit 34 (Exhibit 27 to Kennehan Depo).

<sup>46</sup> Kennehan Depo at 139:6-8.

<sup>47</sup> Exhibit 35 (Exhibit 50 to Kennehan Depo).

<sup>48</sup> Exhibit 36 (Exhibit 49 to Kennehan Depo).

Q. (BY MS. ALSTRIN) Okay. And the governing documents require that, to the extent there's a violation, that the owner has the opportunity for a hearing, don't they?

A. Correct.

Q. Okay. Do you get to pick and choose which residents get hearings and which don't?

A. No, I don't believe so.

Q. Do you get to pick and choose which residents you notify of their right to a hearing?

A. No.<sup>49</sup>

58. Marcus was treated very differently than his fellow residents. It appears the disparate treatment Marcus received was, at least in part, based on ill will towards Marcus because back in 2015 he had fallen behind on his Association dues payments after his mother became ill. Marcus later sold his unit and made *full* payment to the Association for all delinquent dues and related fees and expenses. But apparently the stigma of falling behind remained. In response to Marcus' request for an extension, one board member specifically references Marcus' "delinquencies" when refusing to grant him an extension:

**He's [sic] [Marcus] used the term "big favor, in the past with respect to his delinquencies. We don't owe him any favors!"**

Another Board member stated: "**Get it out of there, no more extensions, no more stalling.**"

As Marcus hadn't been granted any extensions with respect to the piano, it appears this Board member was also referring to past requests for extensions by Marcus. A third board member simply responded "**what an absolute jerk...**"

59. Apparently, their contempt for Marcus falling behind had run so deep that the Board had contemplated turning off his water and electricity, but reconsidered only after then President, Susan Conard, thought that the smell emanating from Marcus' unit as a result of non-

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<sup>49</sup> Kennehan Depo at 143:19 - 144:4.

functioning plumbing and A/C in the middle of the summer might “inconvenience” Marcus’ neighbors. Marcus’ well-being was not a consideration:

Good morning,

Last night as I prepared to forward the utility shut-off letter to the Board, I began to feel uneasy about the potential consequences. Mr. Marcus likely has no ability to pay his past due amount and has yet to pay this month's dues. **I foresee a situation similar [name redacted] odor issues in the middle of the summer, in this case as a result of non-functional plumbing and air conditioning.**

**After much thought, I am no longer in favor of a utility shut-off. It appears unlikely that the action will produce the delinquent funds, and quite likely an undesirable inconvenience for his neighbors.**

Thoughts?

Susan<sup>50</sup>

60. Marcus made numerous efforts to move his piano and kept the Association and its management company informed of his efforts at all times. Yet, Marcus was not afforded the same rights, opportunities, support, and assistance as other residents. Ultimately, the defendants made the decision—knowing full well that they did not have the right to possession of Marcus’ personal property—to move the piano without Marcus’ knowledge, permission, or consent to an undisclosed off-site location. Following the move, defendants would not allow Marcus to inspect the piano, instead claiming that they now “owned” it and would only release it to Marcus if he agreed to a full waiver of liability and damages. Marcus could not agree to such terms, having not had the opportunity to first inspect the piano, this lawsuit followed.

### **COUNT 1 – THEFT OF PROPERTY**

61. Plaintiff brings this action under the Texas Theft Liability Act for an unlawful appropriation of property under Texas Penal Code § 31.03.

62. Plaintiff was entitled to possession of his Steinway Model D concert grand piano with ebony satin finish and serial number 533616, purchased new by plaintiff from the Dallas Steinway Dealer in 1996. All defendants knew that the piano belonged to plaintiff. Indeed, then President, Mr. Jeff Shaw, conceded in an email *after* Marcus' piano had been removed from the building that:

**The piano is Marcus's personal property and the Association has no standing to give away anyone's personal property.** The piano is being stored at a piano warehouse and **if he wants his property back,** he'll have to reimburse the Association for the cost of the removal.<sup>51</sup>

63. Plaintiff was in constant communication, both via phone and email, with the Association's management company about the move and the trouble he was encountering in attempting to move his piano. Further, plaintiff was required to get the Association and ICI's approval before the piano could be moved, which included providing the management company with the required proof of insurance, reserving the building's elevators, and payment of a moving deposit—all of which Marcus did.

64. The owner and agents of defendant American Eagle Elevator also knew that Marcus was the owner of the piano, having met with Marcus on several occasions to coordinate the move of Marcus' piano. American Eagle was certainly concerned that Marcus would have a claim for

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<sup>50</sup> Exhibit 37 (June 5, 2015 email from Susan Conard)[Def00099] (emphasis added).

damages as a result of the removal of his piano from Preston Towers without his consent, as American Eagle required that the Association enter into a “Hold Harmless” agreement before it would assist in the move of Marcus’ piano.

65. WD Piano Moving also knew that the piano belonged to Marcus, as WD broke down the piano for Marcus and moved pieces of the piano to Marcus’ new unit, after Marcus’ original movers backed out at the last minute. Further, WD Piano Moving charged Marcus rent for the storage of his piano after the move.<sup>52</sup>

66. As such, it is undisputed that all defendants knew, and continue to know, that the piano was and is owned by Marcus. Defendants unlawfully appropriated plaintiff’s personal property in violation of Texas Penal Code § 31.03 when they contracted without plaintiff’s permission for the removal of his piano from Preston Tower Condominiums to an undisclosed location. While plaintiff has since learned that it was WD that the Association contracted with to move and store the piano—at the time Marcus filed his original petition, he had not been able to confirm the location or condition of the piano, nor had he been allowed to inspect it.

67. Defendants’ unlawful appropriation was made with the intent to deprive plaintiff of the property. The Association, through ICI, originally claimed that the piano needed to be moved because it was partially blocking the entrance to the stairway. As such, Marcus requested assistance in securing a temporary location to store the piano. This request was denied.

68. At the same time Marcus’ piano was in the hallway, another resident was “storing” his piano at the end of the same hallway on the 29th floor, while his unit was under renovation.<sup>53</sup> This other piano took up more hallway space—as it had an electronic playing device which

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<sup>51</sup> Exhibit 38 (Exhibit 47 to Kennehan Depo).

<sup>52</sup> Exhibit 15 (October 19, 2018 letter from WD to Marcus regarding storage fees for Marcus’ piano).

<sup>53</sup> Exhibit 16 (picture of other piano being “stored” in hallway on the 29<sup>th</sup> floor of Preston Towers).

protruded into the hallway, blocking access to the fire escape.<sup>54</sup> Indeed, this second piano received a citation from the Dallas Fire Department. Marcus's piano did not receive any citations.

69. This second piano, although wider, was much shorter in length, meaning that it could have been easily moved in the elevator, if required. The Association and ICI did not threaten to dispose of it, despite the issuance of a citation from Dallas Fire Department. Instead, the Association and its management company gave this homeowner preferential treatment and even offered to provide a location to store the piano while his unit was being renovated.

70. Instead of assisting Marcus in moving his piano out of the hallway either to a temporary storage location, or to plaintiff's new unit on the second floor—and then billing Marcus for the cost of the move—defendants (Association, ICI, American Eagle Elevator, and WD Piano Moving) conspired to move the piano, without plaintiff's permission or consent, to an undisclosed off-site location. As such, defendants' actions were clearly made with the intent to deprive plaintiff of his property.

71. Defendants' wrongful conduct caused injury to plaintiff, which resulted in the following damages: loss of value of the stolen property, loss of use of the stolen property, and loss of profits from the stolen property.<sup>55</sup> Plaintiff seeks return of the stolen property and damages within the jurisdictional limits of this Court.

72. Upon proof of actual damages, plaintiff is entitled to additional statutory damages of up to \$1,000 from defendants under Texas Civil Practice & Remedies Code § 134.005(a)(1).

73. Plaintiff seeks damages within the jurisdictional limits of this Court.

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<sup>54</sup> *Id.*

<sup>55</sup> Exhibit 39 (rental cost for Steinway Model D).

74. Exemplary damages. Plaintiff's injury resulted from defendants' malice or actual fraud, which entitles plaintiff to exemplary damages under Texas Civil Practice & Remedies Code § 41.003(a) as defendants conspired to deprive plaintiff of his property and refused to release or allow plaintiff to inspect the piano, all the while charging Marcus storage fees, until Marcus agreed to pay the Association for the cost of the move. A move that was much more costly than the intended move from the 29th to the 2nd floor of Preston Tower.<sup>56</sup>
75. Additionally, as a result of defendants' actions, Marcus will be forced to incur the expense of a second move and risk exposing his piano to additional stress and potential damage.
76. Plaintiff's injury resulted from defendants' felony theft in the third degree or higher under the Texas Penal Code because it was committed knowingly or intentionally, which exempts this claim from the cap on exemplary damages under Texas Civil Practice & Remedies Code section 41.008(c). Before the theft of the piano, plaintiff made it clear that he was having difficulty moving the piano.<sup>57</sup> Further, plaintiff's counsel left multiple messages for Rob Kennehan, the General Manager of Preston Tower Condominiums—via voicemail and with the valet at the condominiums, and with ICI's management office. No calls were returned.
77. Plaintiff later learned that his piano had been unlawfully appropriated. At no time did defendants inform Marcus of the whereabouts of his piano. Only after the Piano was taken, was plaintiff's counsel provided with the contact information of the movers.
78. Counsel attempted to arrange for the inspection and return of the piano—but was hung up on. Plaintiff made two written demands for the return of the piano on WD Piano Movers.<sup>58</sup>

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<sup>56</sup> Compare Exhibit 1 (original quote from Metroplex piano for \$2,000) and Exhibit 13 (October 25, 2018 email from Hearn stating that the cost of the move was \$5,000).

<sup>57</sup> Exhibit 14 (October 18, 2018 email from Marcus to Kennehan explaining the difficulties encountered in attempting to move his piano).

<sup>58</sup> Exhibits 17 and 18 (Marcus' requests to WD to release his piano).

Lefler, the owner of WD Piano Movers responded in writing, that he would **not** release the piano to Marcus until the Association instructed him to do so and instead, WD would continue to charge Marcus \$200.00 per month to store his piano.<sup>59</sup> The Association would not authorize the release of the piano

79. Court costs. Plaintiff is entitled to recover court costs under Texas Civil Practice & Remedies Code section 134.005(b).

80. Attorney fees. Plaintiff is entitled to recover reasonable and necessary attorney fees under Texas Civil Practice & Remedies Code section 134.005(b).

## **COUNT 2 – CONVERSION OF PERSONAL PROPERTY**

81. In the alternative, defendants converted plaintiff's property.

82. Plaintiff owns the following personal property: Steinway Model D concert grand piano with ebony satin finish and serial number 533616.

83. Defendants wrongfully acquired and exercised dominion and control over plaintiff's personal property when they moved the piano to an undisclosed offsite location.

84. Defendants refused to return the property on plaintiff's demand. On October 24, 2018, Plaintiff's counsel called and spoke with Lefler, the owner and president of WD Piano Moving. Plaintiff's counsel requested the piano be returned and that the Plaintiff would arrange for the pickup of the piano at WD Piano Movers storage facility. Lefler stated that this was a matter for the Association or management company's attorney and hung up. Counsel for plaintiff next called Mr. Clayton Hearn, counsel of the Association. Plaintiff's

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<sup>59</sup> Exhibit 19 (December 16, 2018 response from WD to Marcus' request to release his piano).

counsel requested that the defendants make arrangements for the return of the piano to Marcus. Mr. Hearn refused stating that the piano was now the property of the Association.

85. On or around October 28, 2018 Marcus received a certified letter from WD Piano Movers signed by Lefler and dated October 19, 2018, stating that Lefler had been hired by the Association to conduct the move on-top of the elevator, and that he would not release the piano to Marcus, until Marcus compensated the Preston Tower Homeowners' Association for the cost of moving his piano.<sup>60</sup> While WD continued to store the piano, in an undisclosed location and unknown condition, WD Piano Moving continued to demand \$200.00 a month in storage fees.<sup>61</sup> To date, Marcus has paid over \$680.00 to WD but was nevertheless denied access to his piano to access its condition and inspect it for damages.<sup>62</sup> Defendants' acts amount to a clear repudiation of plaintiff's rights.

86. Defendants' wrongful acts proximately caused injury to plaintiff, which resulted in the following damages: loss of value of the converted property, loss of use of the converted property, loss of profits from the converted property. Plaintiff seeks return of the converted property and damages within the jurisdictional limits of this Court.

87. Exemplary damages. Plaintiff's injury resulted from defendants' malice, which entitles plaintiff to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a)(2).

### **COUNT 3 – TRESPASS TO PERSONAL PROPERTY**

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<sup>60</sup> Exhibit 15 (October 19, 2018 letter from WD to Marcus).

<sup>61</sup> *Id.*

<sup>62</sup> Exhibit 20 (Marcus' payments to WD for storage of his piano) (Marcus has also paid additional storage fees for the time that his piano has been stored at Bradfield).

88. In the alternative, defendants interfered with plaintiff's personal property and have deprived Marcus from the use of his property.

89. Plaintiff seeks return of the property and damages within the jurisdictional limits of this Court.

90. Exemplary damages. Plaintiff's injury resulted from defendants' malice, which entitles plaintiff to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a)(2).

#### **COUNT 4 – QUANTUM MERUIT AGAINST THE ASSOCIATION**

91. In the alternative, the Association accepted the piano from the plaintiff without compensating plaintiff.

92. Defendant benefited from taking possession of the piano.

93. Defendant knew or should have known that plaintiff expected compensation when defendant accepted the piano.

94. Because plaintiff expected compensation, defendant's acceptance of the piano without payment resulted in the following damages: loss of value of the property, loss of use of the property, loss of profits from the property.

95. Plaintiff seeks damages within the jurisdictional limits of this Court.

96. Attorney fees. Plaintiff is entitled to recover reasonable attorney fees under Texas Civil Practice & Remedies Code section 38.001(1)-(3) because this suit is for Quantum Meruit. Plaintiff retained counsel, who presented plaintiff's claim to defendant. Defendant did not tender the amount owed within 30 days after the claim was presented.

**COUNT 5 – TORTIOUS INTERFERENCE AS TO DEFENDANTS**  
**THE ASSOCIATION, ICI, AND WD ONLY**

97. Plaintiff was prepared to enter into a contract with a one of several piano moving companies.

Marcus had arranged for WD to break down the piano and place it in the hallway until plans to move the piano were finalized and the necessary permissions obtained, including insurance, and elevator technician assistance. When WD refused to cover the move on their insurance, Marcus contacted other movers including Metroplex Piano Movers in Fort Worth, Action Piano Movers from Houston, and DFW Movers & Erectors from Fort Worth Texas.<sup>63</sup>

98. Defendants knew of plaintiffs’ prospective business relationship with these piano moving companies and nevertheless, intentionally interfered by undermining plaintiff’s attempt to secure the move of his piano with one of these companies. Each of the above-mentioned movers received threatening or conflicting information from the Association’s management company or from WD. Specifically, WD told Metroplex Movers not to get involved as Lefler had already contracted with the Association directly to move the piano. Further, the management company called both DFW Movers & Erectors and Action Piano Movers and asked that they come “earlier” to meet with the building management. At these earlier meetings, which were conducted without plaintiff’s knowledge, management pressured these moving companies to move the piano immediately. As a result of the management’s interference, both companies refused to participate in moving the piano.

99. ICI on behalf of the Association then proceeded to enter into a contract with WD to move the Piano without Marcus’ permission or consent.

100. Defendants' actions were independently tortious and unlawful, regardless of the effect those actions had on plaintiff's prospective contract the piano moving companies.
101. Plaintiff suffered actual damage because defendants' interference prevented plaintiff from entering into a contract to move his piano to his unit.
102. Defendants' interference proximately caused injury to plaintiff, which resulted in plaintiff not being able to consummate the move of his piano to his unit with one or more of the prospective piano movers.
103. Plaintiff seeks damages within the jurisdictional limits of this Court.
104. Exemplary damages. Plaintiff's injury resulted from defendants' gross negligence, malice, or actual fraud, which entitles plaintiff to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).

### **COUNT 6 – AIDING & ABETTING**

#### **A. Participatory Liability - Assisting or Encouraging**

105. Defendants knew that the removal of plaintiff's piano from the building without plaintiff's permission or consent constituted a tort against plaintiff.
106. With the intent to assist in committing a tort, defendants substantially assisted and/or encouraged one another in the removal of plaintiff's piano from the building by coordinating and/or contracting for the removal of the piano from the building without plaintiff's permission and approval.
107. Defendants' assistance and/or encouragement with one another was a substantial factor in causing the tort.

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<sup>63</sup> Exhibit 40 (Dec sheet obtained in discovery reveals that WD did even have a policy that would cover

## **B. Participatory Liability - Assisting & Participating**

108. Defendants substantially assisted one another in the removal of plaintiff's piano from the building without plaintiff's permission or consent.
109. Each defendants' assistance and participation separate from each other defendants' acts, breached a duty that each defendant owed to plaintiff to not remove plaintiff's piano from the building without plaintiff's permission or consent.
110. Defendants' assistance and participation was a substantial factor in causing the tort.

## **C. Concert of Action**

111. Defendants agreed to act in concert with one another to remove of plaintiff's piano from the building without plaintiff's permission or consent.
112. Defendants agreed to remove plaintiff's property from the building without plaintiff's consent, thereby converting plaintiff's property, which defendants knew was highly dangerous to plaintiff's personal property and was likely to cause serious injury to plaintiff.
113. Defendants' own acts in carrying out the agreement to convert plaintiff's property caused injury to plaintiffs

## **COUNT 7 – CONSPIRACY**

114. Defendants Association, in combination with ICI, WD, and/or American Eagle agreed to remove plaintiff's property from the building without plaintiff's permission or consent

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the move until September 28, 2018).

115. Defendants Association, ICI, WD and/or American Eagle acted with the intent to harm plaintiff.

116. To accomplish the object of their agreement, the Association, ICI, WD and/or American Eagle conspired to remove plaintiff's property from the building without plaintiff's permission or consent to and undisclosed location.

117. The agreement to remove plaintiff's property from the building without plaintiff's permission or consent proximately caused injury to plaintiff.

### **COUNT 8 – ALTERNATIVE LIABILITY**

118. All defendants are or will be before the court.

119. Two or more of the defendants committed a tort. The tortious conduct of the defendants combined to injure the plaintiff.

120. When a defendant has caused harm to the plaintiff, it may not escape liability merely because the harm it inflicted combined with similar harm caused by other wrongdoers.

121. If one of the defendants seeks to limit its liability on the grounds that the plaintiffs' damages should be apportioned, Under Restatement (2d) of Torts § 433B(3), the theory of alternative liability shifts the burden of proof to a defendant to determine which defendant's tortious conduct caused the plaintiffs injury.

### **COUNT 9 – VICARIOUS LIABILITY**

122. The Association intentionally granted authority to its management company, ICI, to act on behalf of the Association. Any act or omission by ICI was within the scope of its authority granted by the Association. In turn ICI, on behalf of the Association, contracted with WD

Piano Movers and American Eagle Elevators to facilitate the removal and disposal of plaintiff's piano.

123. The Association ratified or approved ICI, WD Piano Mover, and American Eagle Elevator's acts and as such, defendants are jointly and severally liable for all damages.

#### **COUNT 10 - REQUEST FOR DECLARATORY JUDGMENT**

124. This action is being brought pursuant to Chapter 37 of the Tex. Civ. Prac. & Rem. Code Section 37.004, which states in relevant part "a person interested under a ... written contract ... or whose rights, status or other legal relations are affected by a ... contract ... may have determined any question of construction or validity arising under the... contract ... and obtain a declaration of rights, status or other legal relations thereunder."

125. Defendants Association, ICI, and American Eagle Elevator claim that Community Rule H-5 allowed defendants to "dispose" of plaintiff's piano. Rule H-5 states as follows:

- a. Hallways. No item or object of any type, including floor mats, furniture, plants, and decorative items, may be stored, placed, or maintained anywhere on the general common elements, including hallways and stairwells, except by the Board or with the Board's prior written consent. **Items of personal property found on general common elements are deemed abandoned and may be disposed of by the Board.** The exception to this Rule is the hallway furnishings on the 29th floor of the tower building, which were installed by the developer when the condominium was created.

126. Rule H-5 is not enforceable on its face as it is not reasonable, and is vague, ambiguous, overly broad, does not meet fair notice requirements under Texas Property Code, and is void against public policy.

127. Further, Rule H-5 has not been enforced equally and fairly among Preston Tower Condominium residents. At the **same time** plaintiff's piano was being temporarily housed in

the hallway of the 29th floor, another resident also stored his piano in the same hallway. Yet, the Association and ICI did not “deem the piano abandoned and dispose of it.”

128. As such the defendants’ enforcement of this Community Rule against plaintiff is arbitrary and capricious and therefore is not enforceable against plaintiff. Alternatively, defendants have waived their right to enforce Rule H-5.

129. This is a live controversy because the determination of this issue directly affects the rights of the parties, and the outcome of this issue affects plaintiffs’ rights under the Declaration, By-Laws, and Community Rules for Preston Towers.

130. Plaintiff, through this action, seeks to have the Court interpret whether the language of the Declaration, Bylaws, and Community Rules allows defendants to “deem” property abandoned and then “dispose” of it.

131. Plaintiff, if necessary, also seeks to the court interpret whether the language of the Declaration, By-Laws, and Community Rules. The question of whether the Community Rule No. H-5 is unenforceable as written because it not reasonable as required by the declaration, and is overly broad, vague, does not meet fair notice requirements, is unconscionable and/or is void against public policy as a matter of law. There are no material facts in dispute about the language of the Declaration, By-Laws, and Community Rules and Defendant cannot raise any such factual disputes outside the language of the documents. Accordingly, this matter is ripe for declaratory judgment.

### **JURY DEMAND**

132. Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

### **CONDITIONS PRECEDENT**

133. All conditions precedent to plaintiff's claim for relief have been performed or have occurred.

### **PRAYER**

134. For these reasons, plaintiff asks that defendants be cited to appear and answer and, on final trial, that plaintiff be awarded a judgment against defendants for the following:

- a. enter a declaratory judgment that the language of Community Rule H-5 is not enforceable because it is not reasonable as required by the declaration, and is overly broad, vague, does not meet fair notice requirements, is unconscionable and/or is void against public policy as a matter of law, or alternatively, that defendants' have waived their right to enforce Rule H-5 and award attorney fees under Tex. Civ. Prac. & Rem. Code § 37.009;
- b. Actual damages.
- c. Statutory damages.
- d. Exemplary damages.
- e. Prejudgment and postjudgment interest.
- f. Court costs.
- g. Attorney fees.
- h. All other relief to which plaintiff is entitled.

Respectfully submitted,

**PAYNE ALSTRIN, PLLC**

/s/ Christopher A. Payne

Christopher A. Payne

Texas State Bar No. 15651500

[Chris.Payne@Payne-Alstrin.com](mailto:Chris.Payne@Payne-Alstrin.com)

Christina Alstrin

Texas State Bar No. 24068019

[Christina.Alstrin@Payne-Alstrin.com](mailto:Christina.Alstrin@Payne-Alstrin.com)

9101 LBJ Freeway, Suite 760

Dallas TX 75243

Telephone: (214) 945-1022

Facsimile: (214) 945-1023

**Attorneys for Plaintiff**

### **CERTIFICATE OF SERVICE**

I certify that the foregoing document was served upon all counsel of record through the court's e-filing system on November 12, 2019.

/s/ Christina V. Alstrin

Christina V. Alstrin

# Exhibit 1

**From:** [Trecia Fugitt](#)

**To:** [robert7557@att.net](mailto:robert7557@att.net)

**Sent:** Monday, August 27, 2018 12:47 PM

**Subject:** Steinway Piano Move

THURSDAY, AUGUST 30

ESTIMATED ARRIVAL TIME IS 1PM-3PM

From

Robert Marcus

6211 W. Northwest Highway #2900

Dallas, Texas 75225

214-668-8989

To

???

9' Steinway (move on top of the elevator \$2000.00)

American Eagle Elevator Company

Bill Sweeney

903-527-3810

972-423-7260

RELEASE OF LIABILITY MUST BE SIGNED

## Exhibit 2

[REDACTED]

----- Original Message -----

**From:** [Heather Fries](#)

**To:** [Robert L. Marcus](#)

**Sent:** Thursday, August 16, 2018 9:23 AM

**Subject:** Re: Steinway Piano Moving Help

Robert,

I checked with my boss and verified that moving a piano on top of an elevator is against Dallas City Code (as of 2005) and is not something that our insurance will allow us to be a part of.

Regards,

Heather Fries

Customer Service

Steinway Hall Dallas

[214-302-5803](tel:214-302-5803)

[hfries@steinwaypianos.com](mailto:hfries@steinwaypianos.com)

[www.steinwaypianos.com](http://www.steinwaypianos.com)

On Wed, Aug 15, 2018 at 11:32 AM, Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)> wrote:

Hi Heather, I met you this last Saturday regarding the move of my piano. I am in need of having my Steinway D moved, please let me know how we need to proceed.

Thank you, Robert Marcus

## Exhibit 3

[REDACTED]

---

----- Original Message -----

**From:** [Robert L. Marcus](#)

**To:** [Grisel Garcia](#) ; [Elsa Lira](#)

**Cc:** [Rob Kennehan](#)

**Sent:** Tuesday, September 04, 2018 11:40 AM

**Subject:** Elelvator Man

Hi Rob And Grisel, Can you please speak to the elevator man. He came out once and since then has been unresponsive to my calls or the callas to the piano mover, have left close to a dozen messages. He did not show up for the planned move this past Thursday and the piano has to be out ASAP. We are tentative for this Thursday, if we can get assistance with the elevator and need him here so the mover can make preparations. Please see what you can do.

Please help, Robert

## Exhibit 4



---

----- Original Message -----

**From:** [Robert L. Marcus](#)

**To:** [Rob Kennehan](#)

**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)

**Sent:** Wednesday, September 05, 2018 1:05 PM

**Subject:** Elevator Man

Hello, wondering if there was any word from the elevator man to assist in the piano move. The piano movers stopped by again to check on our progress.

Thanks. Robert

# Exhibit 5

[REDACTED]

----- Original Message -----

**From:** [Robert L. Marcus](#)

**To:** [Grisel Garcia](#)

**Sent:** Wednesday, August 29, 2018 12:19 PM

**Subject:** Re: Liability Insurance

Thank you

----- Original Message -----

**From:** [Grisel Garcia](#)

**To:** [Robert L. Marcus](#)

**Sent:** Wednesday, August 29, 2018 1:08 PM

**Subject:** RE: Liability Insurance

Hi Robert,

Please see attachment for the sample insurance paper I was talking about.

*Grisel Garcia*

*Assistant General Manger*

*Preston Tower Condominiums*

*6211 W Northwest Hwy*

*C-120A*

*Dallas TX 75225*

[office@prestontower.com](mailto:office@prestontower.com)

*214-369-7543*



**PRESTON TOWER**  
CONDOMINIUMS

The information contained in this email, including any attachments or other embedded messages, is legally privileged and confidential and is intended only for the use of the individual or entity to whom it is addressed. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that any viewing, dissemination, distribution, retransmitting, or copying of this e-mail message is strictly prohibited. If you have received and/or are viewing this e-mail in error, please notify the sender immediately by reply e-mail, and delete this and all copies of this communication from your system. Thank you.

**From:** Robert L. Marcus <robert7557@att.net>

**Sent:** Wednesday, August 29, 2018 10:20 AM

**To:** Grisel Garcia <office@prestontower.com>

**Subject:** Liability Insurance

Good morning, the movers have asked the company name, address, and such to be included in the insurance for Preston Tower.

Thank you

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## Exhibit 6

**E** **[REDACTED]**

---

----- Original Message -----

**From:** [Robert L. Marcus](#)

**To:** [Rob Kennehan](#)

**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)

**Sent:** Sunday, September 23, 2018 6:23 PM

**Subject:** Re: Piano Move //American Eagle Elevator

Hi Rob,

Hope you had a good weekend, thank you for the call yesterday. Please let me know if you need copies of any of the documents signed with George Dibi regarding the lease of G219 or any questions regarding this, I have copies of everything I signed and do not wish to have my access to the building revoked.

After speaking to you, I spoke to the piano mover and discussed the insurance for the move (why the COI was not supplied to you). He indicated to me that after review of the requirements his insurance would not be adequate for this move, he frankly did not want to rely on his coverage, it was agreed I would get outside insurance on my own. I have contacted Lloyds and several others firms and buying a policy to cover the move. Will forward a copy to you once purchased. Thank you for your assistance in the matter and your understanding, will keep you updated.

Regards, Robert Marcus

----- Original Message -----

**From:** [Rob Kennehan](#)

**To:** [Robert L. Marcus](#)

**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)

**Sent:** Thursday, September 20, 2018 2:13 PM

**Subject:** RE: Piano Move //American Eagle Elevator

Good morning Robert. Per my previous email on September 6<sup>th</sup> ...I need information on who will be providing insurance for this move. Please have the Insurance Company send me over a COI. Attached is an example.

*Rob Kennehan*

Preston Tower- General Manager

6211 W. Northwest Hwy.

Suite C-120A

Dallas, TX 75225

214-369-9276

---

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>

**Sent:** Tuesday, September 18, 2018 4:49 PM

**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>

**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>

**Subject:** Re: Piano Move //American Eagle Elevator

Hi Rob, the firm is WD Piano Moving, the owner of the company is Daryl Lefler. His Facebook Page/website is <https://www.facebook.com/wdpianomovers1/> He is expecting to hear from you, his direct number is 469-853-6404. Please advise if I may offer any more assistance.

Thank you, Robert

----- Original Message -----

**From:** [Rob Kennehan](#)  
**To:** [Robert L. Marcus](#)  
**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)  
**Sent:** Tuesday, September 18, 2018 2:20 PM  
**Subject:** RE: Piano Move //American Eagle Elevator

Good afternoon Robert. Please email me the name, phone number and email address for professional piano moving company you are working with on this matter.

Thank you,

*Rob Kennehan*

Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

---

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>  
**Sent:** Monday, September 17, 2018 5:49 PM  
**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>  
**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>  
**Subject:** Re: Piano Move //American Eagle Elevator  
**Importance:** High

Hi Rob, Hope you had a good weekend. I finally spoke to Bill the elevator man today, he advised that he will NOT assist with the move of the piano under any circumstances, it is not something that he has any interest in being involved with and I should seek assistance else where. He first implied that I didn't seem very interested in working with him, when I mentioned the number of times I and the piano mover called and the appointments that were missed, he let me know his stance as stated above.

I was going to contact some other elevator people for help with the matter, if you are okay with that. What are your thoughts/suggestions ?

Thanks, Robert

----- Original Message -----

**From:** [Rob Kennehan](#)  
**To:** [Robert L Marcus](#)  
**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)  
**Sent:** Monday, September 17, 2018 9:43 AM

**Subject:** RE: Piano Move //American Eagle Elevator

Good morning Robert. I spoke with the Elevator Company and he left a vm for the Piano Movers several weeks ago, he has yet to receive a call back from the movers. Please ask the piano movers to call Billy at American Eagle.

Thank you,

*Rob Kennehan*

Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

---

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>

**Sent:** Friday, September 7, 2018 12:14 PM

**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>

**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>

**Subject:** Re: Piano Move //American Eagle Elevator

**Importance:** High

Good Morning Rob, the piano is too big to fit in the elevator as it is. The roof or side of the cab must be opened or the piano must be placed on top of the elevator in a special cradle, is "why" an elevator person needs to advise on this. The piano is resting in the hallway of the 29th floor until we can come up with a solution to get it down, the new owner needed it out.

The piano mover is a top mover who has over 40 years experience, he is used around the country to handle difficult moves, he does the moves for Steinway and piano stores around the area. They have insurance, but might require more based on how the move is done.

Please advise, Robert

----- Original Message -----

**From:** [Rob Kennehan](#)

**To:** [Robert L Marcus](#)

**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)

**Sent:** Thursday, September 06, 2018 1:42 PM

**Subject:** RE: Elevator Man

Good afternoon Robert. I am assuming you have hired a professional piano moving company correct? Can you please have them email me their Insurance as well as a "scope of work", I need to have an understanding of "why" American Eagle Elevator needs to be onsite for this and what they will be needed for.

Thank you,

*Rob Kennehan*

Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

---

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>  
**Sent:** Wednesday, September 5, 2018 2:05 PM  
**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>  
**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>  
**Subject:** Elevator Man

Hello, wondering if there was any word from the elevator man to assist in the piano move. The piano movers stopped by again to check on our progress.

Thanks. Robert

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# Exhibit 7

**F** [REDACTED]

----- Original Message -----

**From:** [Robert L. Marcus](#)  
**To:** [Rob Kennehan](#)  
**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)  
**Sent:** Friday, October 19, 2018 11:24 AM  
**Subject:** Re: Piano Move 2900 Continued

Rob,

I spoke with my attorney earlier and he advises that we will seek legal action and pursue all legal remedies if my piano is touched, moved and or damaged in any way by you, your agents, employees or contractors. Notice has been sent to the legal counsel of the Preston Tower HOA advising of this matter and our position. I continue to seek resolution for the move and will advise my progress.

Thank you, Robert

----- Original Message -----

**From:** [Robert L. Marcus](#)  
**To:** [Rob Kennehan](#)  
**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)  
**Sent:** Thursday, October 18, 2018 6:03 PM  
**Subject:** Re: Piano Move~ Schedule And COI

I just got a call from DFW Movers and Erectors stating the move was to dangerous and to much risk for them to attempt, they have declined the move. Action Piano is still interested and working on this for us. I am calling others around the country to get this done ASAP.

----- Original Message -----

**From:** [Rob Kennehan](#)  
**To:** [Robert L. Marcus](#)  
**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)  
**Sent:** Thursday, October 18, 2018 12:59 PM  
**Subject:** RE: Piano Move~ Schedule And COI

Good afternoon Robert. The units on the 29<sup>th</sup> floor are all individually owned, unfortunately cannot ask to use their property to store your piano.

It is my understanding that DFW Movers will be here today at 3pm to move your piano.

*Rob Kennehan*

Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>  
**Sent:** Wednesday, October 17, 2018 7:03 PM  
**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>  
**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>  
**Subject:** Re: Piano Move~ Schedule And COI  
**Importance:** High

Rob, if you can help me find a safe place to store the piano until the move is accomplished, I would greatly appreciate it. Please advise ASAP, thanks.

----- Original Message -----

**From:** [Rob Kennehan](mailto:Rob.Kennehan@prestontower.com)  
**To:** [Robert L Marcus](mailto:Robert.L.Marcus@prestontower.com)  
**Cc:** [Grisel Garcia](mailto:Grisel.Garcia@prestontower.com) ; [Elsa Lira](mailto:Elsa.Lira@prestontower.com)  
**Sent:** Wednesday, October 17, 2018 3:07 PM  
**Subject:** RE: Piano Move~ Schedule And COI

Robert, I can make that happen. What is the name of the company?

*Rob Kennehan*  
Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

---

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>  
**Sent:** Wednesday, October 17, 2018 2:59 PM  
**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>  
**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>  
**Subject:** Re: Piano Move~ Schedule And COI  
**Importance:** High

Hi Rob, a professional mover is coming by tomorrow to help arrange the piano move. He will be here at 3:00 PM and would like an elevator technician on hand for access to the top of the elevator, could you please arrange and let me know.

Thank you, Robert

----- Original Message -----

**From:** [Rob Kennehan](mailto:Rob.Kennehan@prestontower.com)  
**To:** [Robert L Marcus](mailto:Robert.L.Marcus@prestontower.com)  
**Cc:** [Grisel Garcia](mailto:Grisel.Garcia@prestontower.com) ; [Elsa Lira](mailto:Elsa.Lira@prestontower.com)  
**Sent:** Wednesday, October 10, 2018 10:58 AM  
**Subject:** RE: Piano Move~ Schedule And COI

Good morning Robert. It is not possible to remove the tops or the sides of the elevator cabs.

*Rob Kennehan*  
Preston Tower- General Manager

6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

---

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>  
**Sent:** Tuesday, October 9, 2018 2:50 PM  
**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>  
**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>  
**Subject:** Re: Piano Move~ Schedule And COI  
**Importance:** High

Hello hope everyone is safe in this unsettling Texas weather. Please find enclosed the proof of liability insurance needed for the move. In order to accomodate the piano we will need the sides and top of the elevator removed, please advise the availability and scheduling for this event and I will contact the movers for that time. Thanks again for your patience and assistance in this matter.

Regards, Robert

----- Original Message -----

**From:** [Rob Kennehan](mailto:Rob.Kennehan)  
**To:** [Robert L Marcus](mailto:Robert.L.Marcus)  
**Cc:** [Grisel Garcia](mailto:Grisel.Garcia) ; [Elsa Lira](mailto:Elsa.Lira)  
**Sent:** Thursday, September 20, 2018 2:13 PM  
**Subject:** RE: Piano Move //American Eagle Elevator

Good morning Robert. Per my previous email on September 6<sup>th</sup> ...I need information on who will be providing insurance for this move. Please have the Insurance Company send me over a COI. Attached is an example.

*Rob Kennehan*

Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

---

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>  
**Sent:** Tuesday, September 18, 2018 4:49 PM  
**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>  
**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>  
**Subject:** Re: Piano Move //American Eagle Elevator

Hi Rob, the firm is WD Piano Moving, the owner of the company is Daryl Lefler. His Facebook Page/website is <https://www.facebook.com/wdpianomovers1/> He is expecting to hear from you, his direct number is 469-853-6404. Please advise if I may offer any more assistance.

Thank you, Robert

----- Original Message -----

**From:** [Rob Kennehan](#)  
**To:** [Robert L. Marcus](#)  
**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)  
**Sent:** Tuesday, September 18, 2018 2:20 PM  
**Subject:** RE: Piano Move //American Eagle Elevator

Good afternoon Robert. Please email me the name, phone number and email address for professional piano moving company you are working with on this matter.

Thank you,

*Rob Kennehan*

Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

---

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>  
**Sent:** Monday, September 17, 2018 5:49 PM  
**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>  
**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>  
**Subject:** Re: Piano Move //American Eagle Elevator  
**Importance:** High

Hi Rob, Hope you had a good weekend. I finally spoke to Bill the elevator man today, he advised that he will NOT assist with the move of the piano under any circumstances, it is not something that he has any interest in being involved with and I should seek assistance else where.

He first implied that I didn't seem very interested in working with him, when I mentioned the number of times I and the piano mover called and the appointments that were missed, he let me know his stance as stated above.

I was going to contact some other elevator people for help with the matter, if you are okay with that. What are your thoughts/suggestions ?

Thanks, Robert

----- Original Message -----

**From:** [Rob Kennehan](#)  
**To:** [Robert L Marcus](#)  
**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)  
**Sent:** Monday, September 17, 2018 9:43 AM  
**Subject:** RE: Piano Move //American Eagle Elevator

Good morning Robert. I spoke with the Elevator Company and he left a vm for the Piano Movers several weeks ago, he has yet to receive a call back from the movers.

Please ask the piano movers to call Billy at American Eagle.

Thank you,

*Rob Kennehan*

Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

---

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>

**Sent:** Friday, September 7, 2018 12:14 PM

**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>

**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>

**Subject:** Re: Piano Move //American Eagle Elevator

**Importance:** High

Good Morning Rob, the piano is too big to fit in the elevator as it is. The roof or side of the cab must be opened or the piano must be placed on top of the elevator in a special cradle, is "why" an elevator person needs to advise on this. The piano is resting in the hallway of the 29th floor until we can come up with a solution to get it down, the new owner needed it out.

The piano mover is a top mover who has over 40 years experience, he is used around the country to handle difficult moves, he does the moves for Steinway and piano stores around the area. They have insurance, but might require more based on how the move is done.

Please advise, Robert

----- Original Message -----

**From:** [Rob Kennehan](#)

**To:** [Robert L Marcus](#)

**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)

**Sent:** Thursday, September 06, 2018 1:42 PM

**Subject:** RE: Elevator Man

Good afternoon Robert. I am assuming you have hired a professional piano moving company correct? Can you please have them email me their Insurance as well as a "scope of work", I need to have an understanding of "why" American Eagle Elevator needs to be onsite for this and what they will be needed for.

Thank you,

*Rob Kennehan*

Preston Tower- General Manager  
6211 W. Northwest Hwy.

Suite C-120A  
Dallas, TX 75225  
214-369-9276

---

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>  
**Sent:** Wednesday, September 5, 2018 2:05 PM  
**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>  
**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>  
**Subject:** Elevator Man

Hello, wondering if there was any word from the elevator man to assist in the piano move. The piano movers stopped by again to check on our progress.

Thanks. Robert

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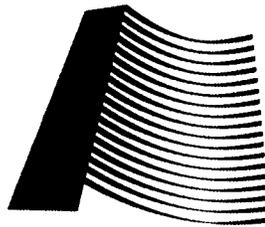
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## Exhibit 8



### PRESTON TOWER C O N D O M I N I U M S

October 10, 2018

**Via Hand-Delivery:**

Mr. Robert Marcus  
6211 W. Northwest Hwy Unit G219  
Dallas, Texas 75225

Re: Removal of Piano from Association Property

Dear Mr. Marcus

I am writing to confirm the details of our discussion regarding the removal of your piano from Association property.

Section H-5 of the Community Manual provides “[n]o item or object of any kind.... may be stored, placed, or maintained anywhere on the general common elements, including hallways and stairwells, except by the Board or with the Board’s prior written consent. Items of personal property found on general common elements are deemed abandoned and may be disposed of by the Board.”

As you are aware and have acknowledged, you are improperly storing a piano in the hallway outside of your former Unit, which was left behind when you moved out several weeks ago. The Management Office has attempted to work with you to address this issue on several occasions. Per our recent discussion, you have agreed to have the piano removed from Association property on or before Thursday, October 18, 2018. If the piano has not been removed by that date, the Board will exercise its rights under Section H-5 of the Community Manual, which include removal and disposal of the piano. We look forward to your cooperation on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Rob Kennehan", written in a cursive style.

ROB KENNEHAN  
General Manager  
Preston Tower

# Exhibit 9

**F** [REDACTED]

----- Original Message -----

**From:** [Robert L. Marcus](#)  
**To:** [Rob Kennehan](#)  
**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)  
**Sent:** Thursday, October 18, 2018 5:03 PM  
**Subject:** Re: Piano Move~ Schedule And COI

I just got a call from DFW Movers and Erectors stating the move was to dangerous and to much risk for them to attempt, they have declined the move. Action Piano is still interested and working on this for us. I am calling others around the country to get this done ASAP.

----- Original Message -----

**From:** [Rob Kennehan](#)  
**To:** [Robert L. Marcus](#)  
**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)  
**Sent:** Thursday, October 18, 2018 12:59 PM  
**Subject:** RE: Piano Move~ Schedule And COI

Good afternoon Robert. The units on the 29<sup>th</sup> floor are all individually owned, unfortunately cannot ask to use their property to store your piano.

It is my understanding that DFW Movers will be here today at 3pm to move your piano.

*Rob Kennehan*

Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

---

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>  
**Sent:** Wednesday, October 17, 2018 7:03 PM  
**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>  
**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>  
**Subject:** Re: Piano Move~ Schedule And COI  
**Importance:** High

Rob, if you can help me find a safe place to store the piano until the move is accomplished, I would greatly appreciate it. Please advise ASAP, thanks.

----- Original Message -----

**From:** [Rob Kennehan](#)  
**To:** [Robert L. Marcus](#)  
**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)  
**Sent:** Wednesday, October 17, 2018 3:07 PM

**Subject:** RE: Piano Move~ Schedule And COI

Robert, I can make that happen. What is the name of the company?

*Rob Kennehan*

Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

---

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>

**Sent:** Wednesday, October 17, 2018 2:59 PM

**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>

**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>

**Subject:** Re: Piano Move~ Schedule And COI

**Importance:** High

Hi Rob, a professional mover is coming by tomorrow to help arrange the piano move. He will be here at 3:00 PM and would like an elevator technician on hand for access to the top of the elevator, could you please arrange and let me know.

Thank you, Robert

----- Original Message -----

**From:** [Rob Kennehan](mailto:Rob.Kennehan)

**To:** [Robert L Marcus](mailto:Robert.L.Marcus)

**Cc:** [Grisel Garcia](mailto:Grisel.Garcia) ; [Elsa Lira](mailto:Elsa.Lira)

**Sent:** Wednesday, October 10, 2018 10:58 AM

**Subject:** RE: Piano Move~ Schedule And COI

Good morning Robert. It is not possible to remove the tops or the sides of the elevator cabs.

*Rob Kennehan*

Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

---

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>

**Sent:** Tuesday, October 9, 2018 2:50 PM

**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>

**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>

**Subject:** Re: Piano Move~ Schedule And COI

**Importance:** High

Hello hope everyone is safe in this unsettling Texas weather. Please find enclosed the

proof of liability insurance needed for the move. In order to accomodate the piano we will need the sides and top of the elevator removed, please advise the availability and scheduling for this event and I will contact the movers for that time. Thanks again for your patience and assistance in this matter.

Regards, Robert

----- Original Message -----

**From:** [Rob Kennehan](#)  
**To:** [Robert L Marcus](#)  
**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)  
**Sent:** Thursday, September 20, 2018 2:13 PM  
**Subject:** RE: Piano Move //American Eagle Elevator

Good morning Robert. Per my previous email on September 6<sup>th</sup> ...I need information on who will be providing insurance for this move. Please have the Insurance Company send me over a COI. Attached is an example.

*Rob Kennehan*

Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

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**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>  
**Sent:** Tuesday, September 18, 2018 4:49 PM  
**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>  
**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>  
**Subject:** Re: Piano Move //American Eagle Elevator

Hi Rob, the firm is WD Piano Moving, the owner of the company is Daryl Lefler. His Facebook Page/website is <https://www.facebook.com/wdpianomovers1/> He is expecting to hear from you, his direct number is 469-853-6404. Please advise if I may offer any more assistance.

Thank you, Robert

----- Original Message -----

**From:** [Rob Kennehan](#)  
**To:** [Robert L. Marcus](#)  
**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)  
**Sent:** Tuesday, September 18, 2018 2:20 PM  
**Subject:** RE: Piano Move //American Eagle Elevator

Good afternoon Robert. Please email me the name, phone number and email address for professional piano moving company you are working with on this matter.

Thank you,

*Rob Kennehan*

Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

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**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>  
**Sent:** Monday, September 17, 2018 5:49 PM  
**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>  
**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>  
**Subject:** Re: Piano Move //American Eagle Elevator  
**Importance:** High

Hi Rob, Hope you had a good weekend. I finally spoke to Bill the elevator man today, he advised that he will NOT assist with the move of the piano under any circumstances, it is not something that he has any interest in being involved with and I should seek assistance else where.

He first implied that I didn't seem very interested in working with him, when I mentioned the number of times I and the piano mover called and the appointments that were missed, he let me know his stance as stated above.

I was going to contact some other elevator people for help with the matter, if you are okay with that. What are your thoughts/suggestions ?

Thanks, Robert

----- Original Message -----

**From:** [Rob Kennehan](#)  
**To:** [Robert L Marcus](#)  
**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)  
**Sent:** Monday, September 17, 2018 9:43 AM  
**Subject:** RE: Piano Move //American Eagle Elevator

Good morning Robert. I spoke with the Elevator Company and he left a vm for the Piano Movers several weeks ago, he has yet to receive a call back from the movers. Please ask the piano movers to call Billy at American Eagle.

Thank you,

*Rob Kennehan*  
Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

---

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>

**Sent:** Friday, September 7, 2018 12:14 PM  
**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>  
**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>  
**Subject:** Re: Piano Move //American Eagle Elevator  
**Importance:** High

Good Morning Rob, the piano is too big to fit in the elevator as it is. The roof or side of the cab must be opened or the piano must be placed on top of the elevator in a special cradle, is "why" an elevator person needs to advise on this. The piano is resting in the hallway of the 29th floor until we can come up with a solution to get it down, the new owner needed it out.

The piano mover is a top mover who has over 40 years experience, he is used around the country to handle difficult moves, he does the moves for Steinway and piano stores around the area. They have insurance, but might require more based on how the move is done.

Please advise, Robert

----- Original Message -----

**From:** [Rob Kennehan](mailto:Rob.Kennehan)  
**To:** [Robert L Marcus](mailto:Robert.L.Marcus)  
**Cc:** [Grisel Garcia](mailto:Grisel.Garcia) ; [Elsa Lira](mailto:Elsa.Lira)  
**Sent:** Thursday, September 06, 2018 1:42 PM  
**Subject:** RE: Elevator Man

Good afternoon Robert. I am assuming you have hired a professional piano moving company correct? Can you please have them email me their Insurance as well as a "scope of work", I need to have an understanding of "why" American Eagle Elevator needs to be onsite for this and what they will be needed for.

Thank you,

*Rob Kennehan*  
Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

---

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>  
**Sent:** Wednesday, September 5, 2018 2:05 PM  
**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>  
**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>  
**Subject:** Elevator Man

Hello, wondering if there was any word from the elevator man to assist in the piano move. The piano movers stopped by again to check on our progress.

Thanks. Robert

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# Exhibit 10

**F**

[REDACTED]

----- Original Message -----

**From:** [Robert L. Marcus](#)

**To:** [Rob Kennehan](#)

**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)

**Sent:** Thursday, October 18, 2018 4:19 PM

**Subject:** Re: Piano Move~ Schedule And COI

Rob, thank you for stopping in and meeting us, it was a pleasure to see you again, also thanks for having the elevator tech present. I had the original piano move set for August 29th this set was to be accomplished by Metroplex Piano (fka Cousins Piano Moving and Storage) and it's owner/director Blake Speir. On the day of the move I was informed it was to risky and the move was cancelled, since then every other piano mover in Dallas and Fort Worth has been out to assess the situation and declined due to the risk. I was waiting for the sides and or top of the elevator to be removed which would make for a simple easy move, you informed me last week this was not possible, so we are back to the top of the elevator.

Rob, please understand I am a musician and need my piano, I don't know what I would do if anything happened to it, I could never replace it. I am doing everything in my power to have it moved, I kindly ask for your assistance in granting some more time. Did I see another piano stored in the hallway of the 29th floor ?

Best, Robert

----- Original Message -----

**From:** [Rob Kennehan](#)

**To:** [Robert L. Marcus](#)

**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)

**Sent:** Thursday, October 18, 2018 4:34 PM

**Subject:** RE: Piano Move~ Schedule And COI

Good evening Robert. The piano has been sitting in the common hallway since September 6<sup>th</sup>. No extension will be given at this time.

*Rob Kennehan*

Preston Tower- General Manager

6211 W. Northwest Hwy.

Suite C-120A

Dallas, TX 75225

214-369-9276

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>

**Sent:** Thursday, October 18, 2018 3:29 PM

**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>

**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>

**Subject:** Re: Piano Move~ Schedule And COI

**Importance:** High

Hi Rob, I just met with DFW Movers, you apparently met with them first along with the elevator tech. They took a look at everything, but refused today it today. I obviously need more time and waiting for Action Piano to arrive. Can you give me more time to get this done, please talk to the HOA members and advise.

----- Original Message -----

**From:** [Rob Kennehan](#)  
**To:** [Robert L Marcus](#)  
**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)  
**Sent:** Thursday, October 18, 2018 12:59 PM  
**Subject:** RE: Piano Move~ Schedule And COI

Good afternoon Robert. The units on the 29<sup>th</sup> floor are all individually owned, unfortunately cannot ask to use their property to store your piano.

It is my understanding that DFW Movers will be here today at 3pm to move your piano.

*Rob Kennehan*

Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

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**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>  
**Sent:** Wednesday, October 17, 2018 7:03 PM  
**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>  
**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>  
**Subject:** Re: Piano Move~ Schedule And COI  
**Importance:** High

Rob, if you can help me find a safe place to store the piano until the move is accomplished, I would greatly appreciate it. Please advise ASAP, thanks.

----- Original Message -----

**From:** [Rob Kennehan](#)  
**To:** [Robert L Marcus](#)  
**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)  
**Sent:** Wednesday, October 17, 2018 3:07 PM  
**Subject:** RE: Piano Move~ Schedule And COI

Robert, I can make that happen. What is the name of the company?

*Rob Kennehan*

Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
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**Subject:** Re: Piano Move~ Schedule And COI  
**Importance:** High

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Thank you, Robert

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**From:** [Rob Kennehan](mailto:Rob.Kennehan@prestontower.com)  
**To:** [Robert L Marcus](mailto:Robert.L.Marcus@att.net)  
**Cc:** [Grisel Garcia](mailto:Grisel.Garcia@prestontower.com) ; [Elsa Lira](mailto:Elsa.Lira@prestontower.com)  
**Sent:** Wednesday, October 10, 2018 10:58 AM  
**Subject:** RE: Piano Move~ Schedule And COI

Good morning Robert. It is not possible to remove the tops or the sides of the elevator cabs.

*Rob Kennehan*

Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

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**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>  
**Sent:** Tuesday, October 9, 2018 2:50 PM  
**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>  
**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>  
**Subject:** Re: Piano Move~ Schedule And COI  
**Importance:** High

Hello hope everyone is safe in this unsettling Texas weather. Please find enclosed the proof of liability insurance needed for the move. In order to accomodate the piano we will need the sides and top of the elevator removed, please advise the availability and scheduling for this event and I will contact the movers for that time. Thanks again for your patience and assistance in this matter.

Regards, Robert

----- Original Message -----

**From:** [Rob Kennehan](mailto:Rob.Kennehan@prestontower.com)  
**To:** [Robert L Marcus](mailto:Robert.L.Marcus@att.net)  
**Cc:** [Grisel Garcia](mailto:Grisel.Garcia@prestontower.com) ; [Elsa Lira](mailto:Elsa.Lira@prestontower.com)  
**Sent:** Thursday, September 20, 2018 2:13 PM  
**Subject:** RE: Piano Move //American Eagle Elevator

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*Rob Kennehan*

Preston Tower- General Manager  
6211 W. Northwest Hwy.  
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**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>

**Sent:** Tuesday, September 18, 2018 4:49 PM

**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>

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**Subject:** Re: Piano Move //American Eagle Elevator

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Thank you, Robert

----- Original Message -----

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**To:** [Robert L. Marcus](#)

**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)

**Sent:** Tuesday, September 18, 2018 2:20 PM

**Subject:** RE: Piano Move //American Eagle Elevator

Good afternoon Robert. Please email me the name, phone number and email address for professional piano moving company you are working with on this matter.

Thank you,

*Rob Kennehan*

Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

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**Sent:** Monday, September 17, 2018 5:49 PM

**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>

**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>

**Subject:** Re: Piano Move //American Eagle Elevator

**Importance:** High

Hi Rob, Hope you had a good weekend. I finally spoke to Bill the elevator man today, he advised that he will NOT assist with the move of the piano under any circumstances, it is not something that he has any interest in being involved with and I should seek assistance else where.

He first implied that I didn't seem very interested in working with him, when I mentioned the number of times I and the piano mover called and the appointments that were missed, he let me know his stance as stated above.

I was going to contact some other elevator people for help with the matter, if you are okay with that. What are your thoughts/suggestions ?

Thanks, Robert

----- Original Message -----

**From:** [Rob Kennehan](#)

**To:** [Robert L Marcus](#)

**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)

**Sent:** Monday, September 17, 2018 9:43 AM

**Subject:** RE: Piano Move //American Eagle Elevator

Good morning Robert. I spoke with the Elevator Company and he left a vm for the Piano Movers several weeks ago, he has yet to receive a call back from the movers. Please ask the piano movers to call Billy at American Eagle.

Thank you,

*Rob Kennehan*

Preston Tower- General Manager

6211 W. Northwest Hwy.

Suite C-120A

Dallas, TX 75225

214-369-9276

---

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>

**Sent:** Friday, September 7, 2018 12:14 PM

**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>

**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>

**Subject:** Re: Piano Move //American Eagle Elevator

**Importance:** High

Good Morning Rob, the piano is too big to fit in the elevator as it is. The roof or side of the cab must be opened or the piano must be placed on top of the elevator in a special cradle, is "why" an elevator person needs to advise on this. The piano is resting in the hallway of the 29th floor until we can come up with a solution to get it down, the new owner needed it out.

The piano mover is a top mover who has over 40 years experience, he is used around the

country to handle difficult moves, he does the moves for Steinway and piano stores around the area. They have insurance, but might require more based on how the move is done.

Please advise, Robert

----- Original Message -----

**From:** [Rob Kennehan](#)

**To:** [Robert L Marcus](#)

**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)

**Sent:** Thursday, September 06, 2018 1:42 PM

**Subject:** RE: Elevator Man

Good afternoon Robert. I am assuming you have hired a professional piano moving company correct? Can you please have them email me their Insurance as well as a "scope of work", I need to have an understanding of "why" American Eagle Elevator needs to be onsite for this and what they will be needed for.

Thank you,

*Rob Kennehan*

Preston Tower- General Manager

6211 W. Northwest Hwy.

Suite C-120A

Dallas, TX 75225

214-369-9276

---

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>

**Sent:** Wednesday, September 5, 2018 2:05 PM

**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>

**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>

**Subject:** Elevator Man

Hello, wondering if there was any word from the elevator man to assist in the piano move. The piano movers stopped by again to check on our progress.

Thanks. Robert

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# Exhibit 11

**F**

[REDACTED]

----- Original Message -----

**From:** [Robert L. Marcus](#)

**To:** [Jeff Shaw](#)

**Sent:** Thursday, October 18, 2018 11:15 PM

**Subject:** Fw: Need Assistance/ Piano Move From 2900

Jeff, I spoke with my attorney earlier and he advises that we will seek legal action and pursue all legal remedies if my piano is touched, moved and or damaged in anyway by you, your agents, employees or contractors. Notice has been sent to the legal counsel of the Preston Tower HOA advising of this matter and our position. I continue to seek resolution for the move and will advise my progress.

Thank you, Robert

----- Original Message -----

**From:** [Robert L. Marcus](#)

**To:** [Jeff Shaw](#)

**Sent:** Thursday, October 18, 2018 5:40 PM

**Subject:** Fw: Need Assistance/ Piano Move From 2900

Hi Jeff, I am not sure whether you got my email from yesterday as I have not had any response. I really need your help in saving my piano, please respond.

Thank you, Robert

----- Original Message -----

**From:** [Robert L. Marcus](#)

**To:** [Jeff Shaw](#)

**Sent:** Wednesday, October 17, 2018 5:55 PM

**Subject:** Need Assistance/ Piano Move From 2900

Hi Jeff,

I hope you are well. I needed to ask your assistance and a big favor from you and the Association. I have been trying to get my piano moved from the 29th floor. The piano was placed in the hallway several weeks back in the course of my move from 2900 after the movers could not get it into the elevator, we were denied entry back into 2900 and forced to leave it in the hallway (out of the way best we could). Mr. Rob Kennehan, was seeking board permission to leave the piano in the hallway until arrangements could be made for its move. Mr. Kennehan was also trying to coordinate with the elevator technician to have the sides and or top of the elevator removed to accommodate the piano, I was notified this last week that was not possible, the piano movers are reluctant to put such a massive instrument on top of the elevator and have backed out.

I am speaking with piano/ equipment movers from New York and Houston for assistance in getting this move accomplished. Mr. Kennehan has given me until 5 PM tomorrow (Thursday the 18th to have it move or it will be scrapped and disposed of). I have tried explaining that this is a \$165,000.00 Steinway Concert piano and weighs over 1500lbs and will require careful planning for the move. Mr. Kennehan is reluctant to allow any more time and does not seem to grasp the complications and dangers of placing heavy objects on the top of elevators. When it was brought up upstairs years ago, it

took months of planning and a team from Steinway in New York was flown into assure the safety for all with special equipment to do this particular move.

Jeff can you please give me an extension of time for the move, I can't risk injury to the personnel involved, piano or the elevator/building, these are extraordinary circumstances. Please let me know, I would greatly appreciate your assistance in this matter. If all else fails can you help in finding a suitable storage place on the 29th floor until the move is accomplished ??

Thank you greatly for your consideration, Robert Marcus

# Exhibit 12

---

**From:** Clayton Hearn <chearn@rmwbh.com>  
**Sent:** Friday, October 19, 2018 3:26 PM  
**To:** Christina Alstrin  
**Cc:** gm@prestontower.com; Jeff Shaw; Peter Malouf; Ashley Koirtyohann  
**Subject:** RE: Potential damage to Robert Marcus' Steinway piano by Preston Towers HOA and ICI

214-365-9290

I'm on a call but hope to be off in the next few minutes. Try me in 15 minutes, please.

---

**From:** Christina Alstrin <christina.alstrin@paynerobinson.com>  
**Sent:** Friday, October 19, 2018 3:15 PM  
**To:** Clayton Hearn <chearn@RMWBH.com>  
**Cc:** gm@prestontower.com; Jeff Shaw <Jeff.Shaw@ptdirector.com>; Peter Malouf <Peter.Malouf@ptdirector.com>  
**Subject:** RE: Potential damage to Robert Marcus' Steinway piano by Preston Towers HOA and ICI

Clayton,

Please provide your contact info so we can discuss.

Thanks,

Christina V. Alstrin

## **PAYNE ROBINSON, LLP**

9101 LBJ Freeway, Suite 760

Dallas, Texas 75243

Phone: 214-945-1022

Fax: 214-945-1023

Cell: 281-702-6286

[Christina.Alstrin@PayneRobinson.com](mailto:Christina.Alstrin@PayneRobinson.com)

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---

**From:** Clayton Hearn <[chearn@rmwbh.com](mailto:chearn@rmwbh.com)>  
**Sent:** Friday, October 19, 2018 3:01 PM  
**To:** Christina Alstrin <[christina.alstrin@paynerobinson.com](mailto:christina.alstrin@paynerobinson.com)>  
**Cc:** [gm@prestontower.com](mailto:gm@prestontower.com); Jeff Shaw <[Jeff.Shaw@ptdirector.com](mailto:Jeff.Shaw@ptdirector.com)>; Peter Malouf <[Peter.Malouf@ptdirector.com](mailto:Peter.Malouf@ptdirector.com)>  
**Subject:** FW: Potential damage to Robert Marcus' Steinway piano by Preston Towers HOA and ICI  
**Importance:** High

Ms. Alstrin:

I represent Preston Tower -- Your email below has been forwarded to my attention. You are free to contact me to discuss the piano your client abandoned on common area in Preston Tower. It's my understanding this abandonment occurred well over a month ago. In the unlikely even you have some legal authority for him to store this piano in a hallway at Preston Tower, please forward that to my attention.

---

**From:** Christina Alstrin <[christina.alstrin@paynerobinson.com](mailto:christina.alstrin@paynerobinson.com)>  
**Sent:** Friday, October 19, 2018 12:41 PM  
**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>; Jeff Shaw <[Jeff.Shaw@ptdirector.com](mailto:Jeff.Shaw@ptdirector.com)>  
**Cc:** Chad Robinson <[CRobinson@riddleandwilliams.com](mailto:CRobinson@riddleandwilliams.com)>  
**Subject:** Potential damage to Robert Marcus' Steinway piano by Preston Towers HOA and ICI  
**Importance:** High

Messrs. Kennehan and Shaw,

Please be advised that I represent Mr. Robert Marcus. As you know, he recently moved from the penthouse to another unit within the building, and is in the process of having his Steinway piano moved. However, due to the complexity of moving the concert piano, given the piano's value, in excess of \$150,000, several piano movers have been unable/unwilling to complete the task. As a result, the piano is currently being housed in the hallway of the 29th floor. The HOA/management company has threatened to take action if the piano is not moved by today. I would urge the HOA/management company **not** to take any action to move the piano and to allow Mr. Marcus additional time to secure qualified piano movers to do so. I trust that legal action will not be necessary. Please call me immediately to discuss.

Thank you,

Christina V. Alstrin

## **PAYNE ROBINSON, LLP**

9101 LBJ Freeway, Suite 760

Dallas, Texas 75243

Phone: 214-945-1022

Fax: 214-945-1023

Cell: 281-702-6286

[Christina.Alstrin@PayneRobinson.com](mailto:Christina.Alstrin@PayneRobinson.com)

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Clayton Hearn  
Shareholder  
**Roberts Markel Weinberg Butler Hailey PC – Attorneys and Counselors at Law**  
(800) 713-4625 | [chearn@RMWBH.com](mailto:chearn@RMWBH.com) | [www.rmwbhlaw.com](http://www.rmwbhlaw.com)

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Clayton Hearn  
Shareholder  
**Roberts Markel Weinberg Butler Hailey PC – Attorneys and Counselors at Law**  
(800) 713-4625 | [chearn@RMWBH.com](mailto:chearn@RMWBH.com) | [www.rmwbhlaw.com](http://www.rmwbhlaw.com)

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# Exhibit 13

**From:** [Clayton Hearn](#)  
**To:** [Christina Alstrin](#)  
**Subject:** RE: Piano  
**Date:** Thursday, October 25, 2018 2:14:48 PM

---

I also just learned that an additional \$1500 was paid to the elevator company for the removal process. That will need to be addressed as well.

---

**From:** Clayton Hearn  
**Sent:** Thursday, October 25, 2018 10:10 AM  
**To:** 'Christina Alstrin' <[christina.alstrin@paynerobinson.com](mailto:christina.alstrin@paynerobinson.com)>  
**Subject:** Piano

Christina,

I'm writing to follow up on our conversation of last night. Please note that the Rules and Regulations applicable to Preston Towers (H-5) state that "...Items of personal property found on general common elements are deemed abandoned and may be disposed of by the Board." Last night you alluded to the fact that your client may be taking the position that he is not going to reimburse Preston Tower for the cost of removing the piano and would not sign a release in exchange for being allowed to pick it up from storage.

Please check with Mr. Markus and confirm his position. I understand that the association management tried to work with your client to encourage him to have the piano moved at his expense but it sat there for over a month. I see no legal basis for him claiming ownership of the piano at this point, but will certainly speak to my client about any proposal you and Mr. Markus have to resolve this matter.

The cost of removal was \$3,500 and the Association has paid this amount. At this time I am authorized to propose that he pay the \$3,500 back to the Association and execute a release in exchange for the Association releasing any claim it has to the piano. He will continue to be responsible for any storage fees charged. This offer will remain open until the close of business on Friday, at which time it will be withdrawn.

-----  
Clayton Hearn  
Shareholder

**Roberts Markel Weinberg Butler Hailey PC – Attorneys and Counselors at Law**  
(800) 713-4625 | [chearn@RMWBH.com](mailto:chearn@RMWBH.com) | [www.rmwbhlaw.com](http://www.rmwbhlaw.com)

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# Exhibit 14

**F**

[REDACTED]

----- Original Message -----

**From:** [Robert L. Marcus](#)

**To:** [Rob Kennehan](#)

**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)

**Sent:** Thursday, October 18, 2018 1:24 PM

**Subject:** Re: Piano Move~ Schedule And COI

Good Afternoon Rob, I am doing everything I can to try and get the piano moved today, DFW Movers are assessing this to see if the elevator is even an option, they will be here at 3PM today. Action Piano movers are also on the way in from Houston and expected in around 4:15 PM to look as well, I would like the elevator technician available for this as well, you are welcome to be present for both meetings, your input and suggestions on the matter would be appreciated. I am exploring the use of a crane or helicopter if we cant use the elevator, we have already ruled out the stairs.

Being without my piano has been disastrous to my teaching, recording and performing career and has caused a great hardship and mental anguish. I am asking for your patience and understanding while trying to get this accomplished, it took months of preparation and a team was brought in from New York to get the piano up to the 29th floor, it is just a big challenge to get it back down. Would you please grant an extension of time to try and get this done.

Thank you, Robert

----- Original Message -----

**From:** [Rob Kennehan](#)

**To:** [Robert L. Marcus](#)

**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)

**Sent:** Thursday, October 18, 2018 12:59 PM

**Subject:** RE: Piano Move~ Schedule And COI

Good afternoon Robert. The units on the 29<sup>th</sup> floor are all individually owned, unfortunately cannot ask to use their property to store your piano.

It is my understanding that DFW Movers will be here today at 3pm to move your piano.

*Rob Kennehan*

Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>

**Sent:** Wednesday, October 17, 2018 7:03 PM

**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>

**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>

**Subject:** Re: Piano Move~ Schedule And COI

**Importance:** High

Rob, if you can help me find a safe place to store the piano until the move is accomplished, I would greatly appreciate it. Please advise ASAP, thanks.

----- Original Message -----

**From:** [Rob Kennehan](#)  
**To:** [Robert L Marcus](#)  
**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)  
**Sent:** Wednesday, October 17, 2018 3:07 PM  
**Subject:** RE: Piano Move~ Schedule And COI

Robert, I can make that happen. What is the name of the company?

*Rob Kennehan*

Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

---

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>  
**Sent:** Wednesday, October 17, 2018 2:59 PM  
**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>  
**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>  
**Subject:** Re: Piano Move~ Schedule And COI  
**Importance:** High

Hi Rob, a professional mover is coming by tomorrow to help arrange the piano move. He will be here at 3:00 PM and would like an elevator technician on hand for access to the top of the elevator, could you please arrange and let me know.

Thank you, Robert

----- Original Message -----

**From:** [Rob Kennehan](#)  
**To:** [Robert L Marcus](#)  
**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)  
**Sent:** Wednesday, October 10, 2018 10:58 AM  
**Subject:** RE: Piano Move~ Schedule And COI

Good morning Robert. It is not possible to remove the tops or the sides of the elevator cabs.

*Rob Kennehan*

Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>  
**Sent:** Tuesday, October 9, 2018 2:50 PM  
**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>  
**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>  
**Subject:** Re: Piano Move~ Schedule And COI  
**Importance:** High

Hello hope everyone is safe in this unsettling Texas weather. Please find enclosed the proof of liability insurance needed for the move. In order to accomodate the piano we will need the sides and top of the elevator removed, please advise the availability and scheduling for this event and I will contact the movers for that time. Thanks again for your patience and assistance in this matter.

Regards, Robert

----- Original Message -----

**From:** [Rob Kennehan](mailto:Rob.Kennehan)  
**To:** [Robert L. Marcus](mailto:Robert.L.Marcus)  
**Cc:** [Grisel Garcia](mailto:Grisel.Garcia) ; [Elsa Lira](mailto:Elsa.Lira)  
**Sent:** Thursday, September 20, 2018 2:13 PM  
**Subject:** RE: Piano Move //American Eagle Elevator

Good morning Robert. Per my previous email on September 6<sup>th</sup> ...I need information on who will be providing insurance for this move. Please have the Insurance Company send me over a COI. Attached is an example.

*Rob Kennehan*

Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

---

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>  
**Sent:** Tuesday, September 18, 2018 4:49 PM  
**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>  
**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>  
**Subject:** Re: Piano Move //American Eagle Elevator

Hi Rob, the firm is WD Piano Moving, the owner of the company is Daryl Lefler. His Facebook Page/website is <https://www.facebook.com/wdpianomovers1/> He is expecting to hear from you, his direct number is 469-853-6404. Please advise if I may offer any more assistance.

Thank you, Robert

----- Original Message -----

**From:** [Rob Kennehan](mailto:Rob.Kennehan)  
**To:** [Robert L. Marcus](mailto:Robert.L.Marcus)  
**Cc:** [Grisel Garcia](mailto:Grisel.Garcia) ; [Elsa Lira](mailto:Elsa.Lira)  
**Sent:** Tuesday, September 18, 2018 2:20 PM  
**Subject:** RE: Piano Move //American Eagle Elevator

Good afternoon Robert. Please email me the name, phone number and email address for professional piano moving company you are working with on this matter.

Thank you,

*Rob Kennehan*

Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

---

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>  
**Sent:** Monday, September 17, 2018 5:49 PM  
**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>  
**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>  
**Subject:** Re: Piano Move //American Eagle Elevator  
**Importance:** High

Hi Rob, Hope you had a good weekend. I finally spoke to Bill the elevator man today, he advised that he will NOT assist with the move of the piano under any circumstances, it is not something that he has any interest in being involved with and I should seek assistance else where.

He first implied that I didn't seem very interested in working with him, when I mentioned the number of times I and the piano mover called and the appointments that were missed, he let me know his stance as stated above.

I was going to contact some other elevator people for help with the matter, if you are okay with that. What are your thoughts/suggestions ?

Thanks, Robert

----- Original Message -----

**From:** [Rob Kennehan](#)  
**To:** [Robert L Marcus](#)  
**Cc:** [Grisel Garcia](#) ; [Elsa Lira](#)  
**Sent:** Monday, September 17, 2018 9:43 AM  
**Subject:** RE: Piano Move //American Eagle Elevator

Good morning Robert. I spoke with the Elevator Company and he left a vm for the Piano Movers several weeks ago, he has yet to receive a call back from the movers. Please ask the piano movers to call Billy at American Eagle.

Thank you,

*Rob Kennehan*

Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

---

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>

**Sent:** Friday, September 7, 2018 12:14 PM

**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>

**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>

**Subject:** Re: Piano Move //American Eagle Elevator

**Importance:** High

Good Morning Rob, the piano is too big to fit in the elevator as it is. The roof or side of the cab must be opened or the piano must be placed on top of the elevator in a special cradle, is "why" an elevator person needs to advise on this. The piano is resting in the hallway of the 29th floor until we can come up with a solution to get it down, the new owner needed it out.

The piano mover is a top mover who has over 40 years experience, he is used around the country to handle difficult moves, he does the moves for Steinway and piano stores around the area. They have insurance, but might require more based on how the move is done.

Please advise, Robert

----- Original Message -----

**From:** [Rob Kennehan](mailto:Rob.Kennehan@prestontower.com)

**To:** [Robert L Marcus](mailto:Robert.L.Marcus@att.net)

**Cc:** [Grisel Garcia](mailto:Grisel.Garcia@prestontower.com) ; [Elsa Lira](mailto:Elsa.Lira@prestontower.com)

**Sent:** Thursday, September 06, 2018 1:42 PM

**Subject:** RE: Elevator Man

Good afternoon Robert. I am assuming you have hired a professional piano moving company correct? Can you please have them email me their Insurance as well as a "scope of work", I need to have an understanding of "why" American Eagle Elevator needs to be onsite for this and what they will be needed for.

Thank you,

*Rob Kennehan*

Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

---

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>

**Sent:** Wednesday, September 5, 2018 2:05 PM

**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>

**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>

**Subject:** Elevator Man

Hello, wondering if there was any word from the elevator man to assist in the piano move. The piano movers stopped by again to check on our progress.

Thanks. Robert

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## Exhibit 15



WD PIANO MOVERS  
717 Grand Cayman Way  
Mesquite, TX 75149  
972-423-8327

---

Date: October 19, 2018

RE: Piano Removal - Steinway D Grand Piano Serial #533616

Dear Mr. Marcus,

WD Piano Movers was hired by Preston Tower Condominiums to move your piano from the 29<sup>th</sup> floor, down the elevator shaft, to our climate controlled storage facility due to your piano violating your Associations rules under Section H-5. They have the right to dispose of any property left on general common elements as it is considered abandoned.

WD Piano Movers will store your piano for a fee of \$200.00 monthly to be mailed to the above address by the 10<sup>th</sup> of the month to avoid late fees. After the 10<sup>th</sup> a \$25.00 late fee will apply every 10 days payment is not made.

Once you meet your financial obligation with Preston Tower Condominiums for absorbing the cost of the piano move they will contact us to release your piano.

Should you have any questions regarding this move, please contact Preston Tower Condominiums HOA . If you have any questions regarding storage fees, please feel free to contact our office.

Thank you,

Darryl Lefler  
WD Piano Movers

# Exhibit 16

**From:** [Robert Marcus](#)  
**To:** [Christina Alstrin](#)  
**Subject:** The "other" piano  
**Date:** Thursday, October 25, 2018 4:51:30 PM

---



Sent from my Motorola cellular flip phone.

# Exhibit 17

*Robert Marcus*

6211 West Northwest Hwy Suite G219 Dallas, Texas 75225

Date: 11-2-2018

RE: Piano Removal And Storage Steinway D Grand Piano Serial #533616

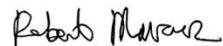
Dear Mr. Lefler and WD Piano Movers,

I am in receipt of your letter dated October 19, 2018. I appreciate you alerting me to the whereabouts of my piano and advising me that it is safely in your storage. Enclosed you will find my check for \$200.00 to cover the cost of the storage for the month of November.

As you are aware I moved to a specific apartment in the Preston Tower building to house the piano. I would ideally like the piano delivered to my new address as we originally discussed. I request that you kindly release the piano into my custody and would like to arrange for it to be picked up at your convenience. Please contact me when I might be able to meet you along with a mover to remove it from your location.

Thank you for your help in this matter and looking forward to hearing from you.

Regards, Robert Marcus

A handwritten signature in black ink that reads "Robert Marcus". The signature is written in a cursive style with a prominent "R" and "M".

WD Piano Movers  
 717 Grand Cayman Way  
 Mesquite, Texas 75149  
 Tel 469-853-6404



NOVEMBER

Invoice No. 1

Due Date: December 1, 2018

Bill To	Ship To	Instructions
Robert Marcus 6211 W. Northwest Hwy Unit G219 Dallas, TX 75225	Same as recipient	Piano Storage - Please remit this with your payment

Quantity	Description	Unit Price	Total
1	Steinway D Grand Piano Serial # 533616	\$200.00	\$200.00

Robert Marcus  
 6211 West Northwest Hwy  
 Apartment 2900  
 Dallas TX 75225

Bank Of America  
 6019 Berkshire Ln  
 Suite 100  
 Dallas, Texas 75225

353  
 32-21110 TX/ 4246  
 DATE 11-2-2018

PAY TO THE ORDER OF WD PIANO MOVERS \$ 200.00  
TWO HUNDRED DOLLARS NO CENTS DOLLARS

MEMO STEINWAY D STORAGE  
NOVEMBER SN- 533616

Robert Marcus

Subtotal	\$200.00
Sales Tax	
Shipping & Handling	
Total Due by <del>December</del> <u>NOVEMBER</u> 10, 2018	\$200.00

Thank you for your business!

# Exhibit 18

*Robert Marcus*

6211 West Northwest Hwy Suite G219 Dallas, Texas 75225

Date: 12/01/2018

RE: Piano Removal and Storage Steinway D Grand Piano Serial #533616

Dear Mr. Lefler and WD Piano Movers,

Enclosed you will find my check for \$200.00 to cover the cost of the storage for the month of December 2018.

I have called the number listed on the invoice several times and been unable to reach anybody. In my previous correspondence I request that you kindly release the piano into my custody and have had zero reply. As stated I would like to arrange for it to be picked up at your convenience. Please contact me when I might be able to meet you along with a mover to remove it from your location. I will continue to try and reach you.

Thank you for your help in this matter and will await your response.

Regards, Robert Marcus

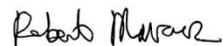


Exhibit 19

U.S. POSTAGE PAID  
FIRST CLASS PERMIT NO. 1000  
CRANDALL, TX 75114  
DEC 17, 18  
AMOUNT  
**\$3.95**  
R2305E124351-05



1000

75225-3465

WD PIANO MOVERS  
717 Grand Canyon Hwy  
Mesquite, TX 75149

Robert Marcus  
6011 W. Northwest Hwy  
Unit 6219  
Dallas, TX 75225

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT  
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE  
**CERTIFIED MAIL**



7017 3040 0000 5537 2549

75225-3465 0022



WD PIANO MOVERS  
717 Grand Cayman Way  
Mesquite, TX 75149  
972-423-8327

---

Date: December 16, 2018

RE: Piano Storage Monthly Fee- Steinway D Grand Piano Serial #533616

Dear Mr. Marcus,

Per our previous letter, we are to receive your monthly storage fee for your piano in the amount of \$200.00 before the 10<sup>th</sup> of the month in order to avoid late fees of \$25.00. We have not received your December payment. In your previous letter I provided you with several months of monthly storage invoices for you to use and send in with your payments.

Current amount due:

Payment - \$200.00

Late Fee after 10<sup>th</sup> - \$25.00

Total: \$225.00

Please send in your payment to the address above in over to avoid additional late fees. Once you meet your financial obligation with your management HOA Company for absorbing the cost of the piano move they will contact us to release your piano.

Should you have any questions, please contact your HOA management team. If you have any questions regarding storage fees, please feel free to contact our office.

Thank you,

Darryl Lefler

# Exhibit 20

Robert Marcus  
6211 West Northwest Hwy  
Apartment 2900  
Dallas TX 75225

Bank Of America  
6019 Berkshire Ln  
Suite 100  
Dallas, Texas 75225

4.04  
353  
32-21110 TX 4246  
DATE 11-2-2018

PAY TO THE ORDER OF W.D. PIANO MOVERS \$ 200.00  
TWO HUNDRED DOLLARS NO CENTS DOLLARS

MEMO STEINWAY D STORAGE Robert Marcus  
NOVEMBER SN- 533616

TO THE ORDER OF  
W.D. PIANO MOVERS  
 HOME BANK  
 HOUSTON, TX 77059  
 111922776  
 \*OR DEPOSIT ONLY  
 MARLOW'S ENTERPRISES INC  
 111 MARLOW'S CHECK CASHING  
 11-19056

PAY TO THE ORDER OF  
 HomeBank Texas Seagoville  
 111922776  
 Marlow's Enterprises, Inc  
 ACCT: 4009056

WD Piano Movers  
 717 Grand Cayman Way  
 Mesquite, Texas 75149  
 Tel 469-853-6404



Invoice No. 1

Due Date: December 1, 2018

Bill To	Ship To	Instructions
Robert Marcus 6211 W. Northwest Hwy Unit G219 Dallas, TX 75225	Same as recipient	Piano Storage - Please remit this with your payment

Quantity	Description	Unit Price	Total
1	Steinway D Grand Piano Serial # 533616	\$200.00	\$200.00

MEMO  
 STORAGE STEINWAY  
 SERIAL # 533616  
 R. Mark M...  
 PAY TO THE ORDER OF  
 TWO THOUSAND DOLLARS  
 \$2,000.00 DOLLARS  
 W.D.'s PIANO MOVING & STORAGE  
 717 Grand Cayman Way  
 Mesquite, TX 75149  
 Robert Marcus  
 6211 West Northwest Hwy  
 Apartment 2900  
 Dallas, TX 75225  
 Bank Of America  
 8019 Berkshire Ln  
 Suite 100  
 Dallas, Texas 75225  
 DATE 12-1-2018  
 32-21110 TX 4246  
 348

Subtotal	\$200.00
Sales Tax	
Shipping & Handling	
<b>Total Due by December 10, 2018</b>	<b>\$200.00</b>

Thank you for your business!

WD Piano Movers  
 717 Grand Cayman Way  
 Mesquite, Texas 75149  
 Tel 469-853-6404



TO: Robert Marcus  
 6211 W. Northwest Hwy  
 Unit G219  
 Dallas, TX 75225  
 FROM: Same as recipient  
 PAY TO: Piano Storage - Please remit this with your payment

1	Steinway D Grand Piano Serial # 533616	\$200.00	\$200.00
---	--	----------	----------

Robert Marcus  
 6211 West Northwest Hwy  
 Apartment 2900  
 Dallas TX 75225

Bank Of America  
 6019 Berkshire Ln  
 Suite 100  
 Dallas, Texas 75225

352

32-21110 TX 4246

DATE 1-3-2019

PAY TO THE ORDER OF

WD PIANO MOVERS

\$ 200.00

Two Hundred dollar and No Cents DOLLARS

MEMO

January 2019

Robert Marcus

STORAGE FEE STEINWAY 533616



Quantity	\$200.00
Sales Tax	
Shipping & Handling	
<b>Total Due By January 3, 2019</b>	<b>\$200.00</b>

Thank you for your business!

# Exhibit 21

**From:** Robert L. Marcus <robert7557@att.net>  
**Sent:** Monday, August 27, 2018 2:29 PM CDT  
**To:** Grisel Garcia <office@prestontower.com>; Rob Kennehan <gm@prestontower.com>  
**CC:** Elsa Lira <elsa.lira@prestontower.com>  
**Subject:** Re: Upcoming Move. Need Assistance with Scheduling

Hi Grisel,

I would request this Thursday and Friday with your kind approval from 1 pm to 8 pm of these hours. Of course if we finish earlier all the better. We will be going from the 29th floor to the 2nd floor from what it looks like at this point. Using buggies and carts, will be quiet as possible. Thanks for your consideration, please advise how we may make this work. Many thanks, Robert

----- Original Message -----

**From:** Grisel Garcia  
**To:** Robert L. Marcus ; Rob Kennehan  
**Cc:** Elsa Lira  
**Sent:** Monday, August 27, 2018 1:58 PM  
**Subject:** RE: Upcoming Move. Need Assistance with Scheduling

Please see attached. What were the hours you were wanting to schedule that for?

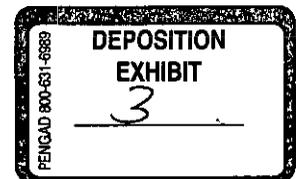
Grisel Garcia  
Assistant General Manger  
Preston Tower Condominiums  
6211 W Northwest Hwy  
C-120A  
Dallas TX 75225  
[office@prestontower.com](mailto:office@prestontower.com)  
214-369-7543



## PRESTON TOWER C O N D O M I N I U M S

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**From:** Robert L. Marcus <robert7557@att.net>  
**Sent:** Monday, August 27, 2018 1:33 PM  
**To:** Rob Kennehan <gm@prestontower.com>  
**Cc:** Grisel Garcia <office@prestontower.com>  
**Subject:** Re: Upcoming Move. Need Assistance with Scheduling  
**Importance:** High



Hi Rob, I hope this email finds you well. I spoke to Elsa last Wednesday, she was going to speak to you, not sure if she had. Later this week I am moving from my apartment (2900) to another unit in the building, it appears to be G219 at this point; that unit is not quite finished from renovation, however should be habitable by end of week. I have movers scheduled in for the afternoons and evenings of Thursday and Friday (August 30-31st) and could possibly extend into Saturday the 1st. We will be quiet and discrete in our move.

The piano movers are scheduled for Thursday between 1-3PM and will require the use of the elevator, I have requested American Eagle Elevator be present to protect the elevator and assist in its operation.

I wanted to request permission for the move and possible after hours use of an elevator. The movers have also asked for the requirements of liability insurance and rules to be aware of. Please help me accommodate this move and not sure of all of the restrictions, permits and requirements for such a move.

Thank you, Robert Marcus -2900

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DEF000513

# Exhibit 22

## Preston Tower

### Moves and Deliveries Procedures

Unit 2900  
- 6-219

Date of Move/Delivery 2018  
upon APPROVAL

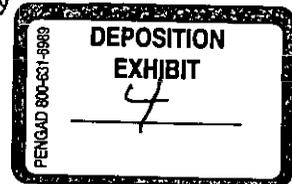
Moves/Deliveries may take place:  
Business Days 8:00 a.m. – 4:30 p.m.

- O-1. **Notice.** The time and date of all moves must be scheduled with and approved by management. A resident must give management at least 5 days' prior notice of any move or bulk delivery (defined as a delivery that requires multiple elevator trips) of furniture, appliances, or other large or heavy objects to or from the building.
- O-2. **Times.** Moves and bulk deliveries must be performed between 8:00 a.m. and 4:30 p.m. on business days. It is the resident's duty to notify the movers or delivery company about this rule.
- O-3. **Elevators.** The number "3" elevator in the Tower is the designated freight elevator for moves and deliveries to and from Tower units. The east elevator in the Garden building is the designated freight elevator for moves and deliveries to and from Garden units. No other elevators may be used for moves. The association will not guarantee the exclusive use of an elevator.
- O-4. **Deposits.** To schedule a move (in or out) requires a \$250.00 refundable deposit. The deposit must be received a minimum of 72 hours before the move or delivery. The deposit will be refunded within 10 days after the move if the move did not damage the elevator or common areas, and if the move occurred within the scheduled time period.
- O-5. **Liability.** Use of professional movers is strongly recommended by the Association in order that a certificate of insurance be obtained that names Preston Tower Condominiums as the secondary insured. General liability coverage must be a minimum of \$1,000,000. The resident should direct the mover to submit to management a certificate as described a minimum of 72 hours before the move or delivery. The unit owner will be held liable for any damage to elevators or common elements that occurs in the course of a move that is not covered by insurance as described, or in the event that a claim is disputed, rejected, or found insufficient for any reason; therefore, owners are urged to require use of professional movers by any tenants or family members occupying their units.

#### Packing Material

*Saturday, maybe.*  
1-8pm. Piano 1-3pm.  
1-8pm

- ❖ It is the resident's responsibility to dispose of any packing material.
- ❖ Boxes may be placed in the basement level's recycled trash area if they are broken down and tied in bundles.



Resident signature DA [Signature] Date this form was submitted 8-26-2018

Security Deposit - CK# 3416

Robert Marcus  
6211 West Northwest Hwy  
Apartment 2900  
Dallas TX 75225

Bank Of America  
6019 Berkshire Ln  
Suite 100  
Dallas, Texas 75225

346

32-21110 TX/4246

DATE

8-16-19

PAY TO THE  
ORDER OF

Robert Jones Home Assoc  
Five Hundred and Fifty Dollars

\$ 750.00

DOLLARS

MEMO  
Darryl Deppert

Robert Jones

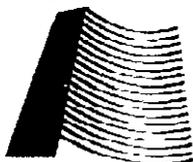


**From:** Grisel Garcia <office@prestontower.com>  
**Sent:** Tuesday, August 28, 2018 4:41 PM CDT  
**To:** Robert L. Marcus <robert7557@att.net>; Elsa Lira <elsa.lira@prestontower.com>  
**CC:** Rob Kennehan <gm@prestontower.com>  
**Subject:** RE: Upcoming Move// AC// Storage and Others

Exhibit 23

Thank you Robert.

Grisel Garcia  
Assistant General Manger  
Preston Tower Condominiums  
6211 W Northwest Hwy  
C-120A  
Dallas TX 75225  
[office@prestontower.com](mailto:office@prestontower.com)  
214-369-7543



**PRESTON TOWER**  
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**From:** Robert L. Marcus <robert7557@att.net>  
**Sent:** Tuesday, August 28, 2018 4:33 PM  
**To:** Grisel Garcia <office@prestontower.com>; Elsa Lira <elsa.lira@prestontower.com>  
**Cc:** Rob Kennehan <gm@prestontower.com>  
**Subject:** Re: Upcoming Move// AC// Storage and Others

Hi Rob,

Thanks for the call and giving me the update on the A/C, we can visit tomorrow on the patio furniture and other items mentioned. I will survive while the repairs are being made. Wanted to ask if there is any storage space if I need to place the items in temporary storage while finding them a new home?

Grisel, I completed this form yesterday and gave a copy to the movers to get insurance clearance.

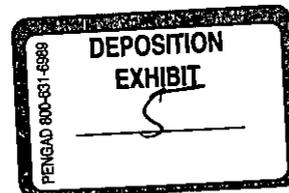
Robert Marcus

----- Original Message -----  
**From:** Grisel Garcia  
**To:** Robert L. Marcus  
**Sent:** Tuesday, August 28, 2018 4:12 PM  
**Subject:** RE: Upcoming Move. Need Assistance with Scheduling

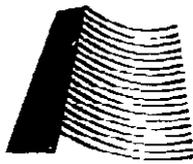
Hi Robert,

I just wanted to let you know that I went ahead and put you in the calendar from 1pm-8pm. I cannot remember if we talked about your movers yesterday. But they do need insurance. I have attached a copy of the move and delivery procedure. If you have any questions please let me know. Thank you.

Grisel Garcia  
Assistant General Manger  
Preston Tower Condominiums  
6211 W Northwest Hwy  
C-120A  
Dallas TX 75225  
[office@prestontower.com](mailto:office@prestontower.com)  
214-369-7543



DEF000518



**PRESTON TOWER**  
C O N D O M I N I U M S

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**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>  
**Sent:** Monday, August 27, 2018 2:29 PM  
**To:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>  
**Cc:** Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>  
**Subject:** Re: Upcoming Move. Need Assistance with Scheduling

Hi Grisel,

I would request this Thursday and Friday with your kind approval from 1 pm to 8 pm of these hours. Of course if we finish earlier all the better. We will be going from the 29th floor to the 2nd floor from what it looks like at this point. Using buggies and carts, will be quiet as possible. Thanks for your consideration, please advise how we may make this work. Many thanks, Robert

----- Original Message -----

**From:** [Grisel Garcia](mailto:Grisel Garcia)  
**To:** [Robert L. Marcus](mailto:Robert L. Marcus) ; [Rob Kennehan](mailto:Rob Kennehan)  
**Cc:** [Elsa Lira](mailto:Elsa Lira)  
**Sent:** Monday, August 27, 2018 1:58 PM  
**Subject:** RE: Upcoming Move. Need Assistance with Scheduling

Please see attached. What were the hours you were wanting to schedule that for?

Grisel Garcia  
Assistant General Manger  
Preston Tower Condominiums  
6211 W Northwest Hwy  
C-120A  
Dallas TX 75225  
[office@prestontower.com](mailto:office@prestontower.com)  
214-369-7543



**PRESTON TOWER**  
C O N D O M I N I U M S

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**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>  
**Sent:** Monday, August 27, 2018 1:33 PM  
**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>  
**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>  
**Subject:** Re: Upcoming Move. Need Assistance with Scheduling  
**Importance:** High

Hi Rob, I hope this email finds you well. I spoke to Elsa last Wednesday, she was going to speak to you, not sure of she had. Later this week I am moving from my apartment (2900) to another unit in the building, it appears to be G219 at this point, that unit is not quite finished from renovation, however should be habitable by end of week. I have movers scheduled in for the afternoons and evenings of Thursday and Friday (August 30-31st) and could possible extend into Saturday the 1st. We will be quiet and discrete in our move.

DEF000519

The piano movers are scheduled for Thursday between 1-3PM and will require the use of the elevator, I have requested American Eagle Elevator be present to protect the elevator and assist in it's operation.

I wanted to request permission for the move and possible after hours use of an elevator. The movers have also asked for the requirements of liability insurance and rules to be aware of. Please help me accomodate this move and not sure of all of the restrictions, permits and requirements for such a move.

Thank you, Robert Marcus -2900

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## Exhibit 24

----- Original Message -----

**From:** [shawn@teq.org](mailto:shawn@teq.org)

**To:** [Robert Marcus](#)

**Sent:** Thursday, September 06, 2018 8:03 PM

**Subject:** Re: Checking In And Move Updates

All cleared, thank you. Nice job on the piano. Didn't block the fire escape.

--- Original message ---

**From:** Robert Marcus <[robert7557@att.net](mailto:robert7557@att.net)>

**Sent:** September 6, 2018 5:16:16 PM

**To:** Shawn <[shawn@teq.org](mailto:shawn@teq.org)>

**Subject:** Re: Checking In And Move Updates

Hi Shawn, the charity picked up earlier. Please walk thru and let me know if everything is in order.

Sent from my Motorola cellular flip phone.

On Sep 6, 2018, at 1:11 PM, Shawn <[shawn@teq.org](mailto:shawn@teq.org)> wrote:

No need to clean (as long as there isn't any trash), but thank you.

Did you want to keep the cabinet doors or the kitchen appliances? I assume not, but you're welcome to take them if you'd like.

On 6 September 2018 at 13:09, Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)> wrote:  
Good morning Shawn,

Getting the movers inline for removal of items to charity this afternoon. Was going to have the unit cleaned for you, what are your thoughts? Tried to clean and vacuum, but seemed like I made it worse. A/C starting acting up in the back and a repair order was placed if you see them up there.

----- Original Message -----

**From:** [shawn@teq.org](mailto:shawn@teq.org)

**To:** [Robert L. Marcus](#)

**Sent:** Wednesday, September 05, 2018 12:58 PM

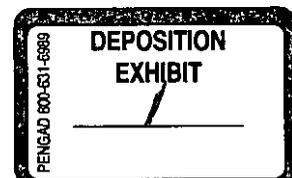
**Subject:** Re: Checking In And Move Updates

That's fine. What time will it be done? I will reschedule from morning to afternoon.

--- Original message ---

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>

**Sent:** September 5, 2018 12:56:04 PM



To: [shawn@teq.org](mailto:shawn@teq.org)  
Subject: Re: Checking In And Move Updates

Hi Shawn, hope all is well in your travels. There has been a scheduling error for the freight elevator. There is some trash and items going to charity left. The earliest I can get reserved is Thursday afternoon. The piano was moved out. I can get the charity/trash out Thursday if that meets your approval?

----- Original Message -----

From: [shawn@teq.org](mailto:shawn@teq.org)  
To: [Robert L. Marcus](mailto:Robert.L.Marcus)  
Sent: Sunday, September 02, 2018 4:10 PM  
Subject: Re: Checking In And Move Updates

Tuesday is fine. I had to unexpectedly fly to Columbia for work and will not be back until Wednesday.

Good luck with your move. I will bring the contractors by on Thursday to finish pre-work. We'll start opening some of the walls for inspection, so please cover the piano if still there on Thursday. We'll be careful but it may get a little dusty.

--- Original message ---

From: Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>  
Sent: September 2, 2018 4:05:07 PM  
To: [shawn@teq.org](mailto:shawn@teq.org)  
Subject: Re: Checking In And Move Updates

Hi Shawn, hope your having a great holiday weekend. Update on the move:

I vacated parking spot 108 and is ready for you. I will leave the mailbox key in the valet office for you. I am assuming you have keys and have access to the unit. Sadly, the movers did not finish moving at close of day Friday and Building by-laws will not permit moving over the weekend nor Memorial Day. I have quietly continued moving carrying everything by hand working till wee morning hours both Friday and Saturday trying to keep up with deadlines. I am back up there now and will work today today and tomorrow. The movers are scheduled back to finish Tuesday. If you have anything happening in the unit today/tomorrow I can get the rest in the hallway out of your way. Please advise how I may best accommodate you. Sorry about this inconvenience. I will always be at your disposal if you have any questions/concerns during the course of renovation.

Robert

----- Original Message -----

From: [shawn@teq.org](mailto:shawn@teq.org)  
To: [Robert L. Marcus](mailto:Robert.L.Marcus)  
Sent: Thursday, August 30, 2018 5:31 PM  
Subject: Re: Checking In And Move Updates

Fine for leaving the piano in the unit that is.

--- Original message ---

From: [shawn@teq.org](mailto:shawn@teq.org)

**Sent:** August 30, 2018 5:30:19 PM  
**To:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>  
**Subject:** Re: Checking In And Move Updates

That's fine, thank you for letting me know.

--- Original message ---

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>  
**Sent:** August 30, 2018 1:37:42 PM  
**To:** Shawn <[shawn@teq.org](mailto:shawn@teq.org)>  
**Subject:** Checking In And Move Updates

Hi Shawn,

Hope everything is going well with you. I submitted a work order to have the AC looked at, some repairs have been made, seems to be a little better. I am getting moved in to my new unit and will be finishing Saturday as planned.

Did have an issue in the move and needed your suggestions. The piano mover that had been scheduled a month ago to handle the piano move was injured in another move and did not do the move as we had planned. I have another mover coming in to do this in the upcoming week (Wednesday, Thursday-ish) is the earliest, which is also coordinated with the elevator company, my options are:

- A. Leave the piano in the 2900 for these days, could be disassembled and placed on its side out of your way.
- B. Could be moved out of the unit entirely and would rest in the outside hallway until the movers and elevator are ready again (disassembled and on its side). Probably the best for you.
- C. Might get one of the neighbors on the floor to house it in their apartment until the movers are ready again, completely out of your sight.

Really sorry about this, but needed to let you know and get your feedback on this issue and how we may best address.

Robert

**From:** Jeff Shaw <Jeff.Shaw@ptdirector.com>  
**Sent:** Thursday, October 18, 2018 12:35 PM CDT  
**To:** Rob Kennehan <gm@prestontower.com>; William Lane <bill.lane@ptdirector.com>; Angela Jeffrey <angela.jeffrey@ptdirector.com>; Robert Bowling <robert.bowling@ptdirector.com>  
**CC:** Sandra Gotterup <SGotterup@icirealestate.com>  
**Subject:** Re: Hold Harmless agreement

Rob,

## Exhibit 25

I believe this hold harmless is standard, and I'm OK with it.

Jeff

---

**From:** Rob Kennehan  
**Sent:** Thursday, October 18, 2018 11:01:41 AM  
**To:** Jeff Shaw; William Lane; Angela Jeffrey; Robert Bowling  
**Cc:** Sandra Gotterup  
**Subject:** FW: Hold Harmless agreement

Good afternoon, please see the attached hold harmless letter from American Eagle. They are requesting we agree to this prior to placing a piano on top of the elevator cab. Please let me know if approved and I will seek a signature from a member of EC.

*Rob Kennehan*  
Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

**From:** Brandi Sweeney <bsweeney@ameaglelevator.com>  
**Sent:** Thursday, October 18, 2018 10:33 AM  
**To:** Billy Sweeney <billy@ameaglelevator.com>; Rob Kennehan <gm@prestontower.com>  
**Subject:** Hold Harmless agreement

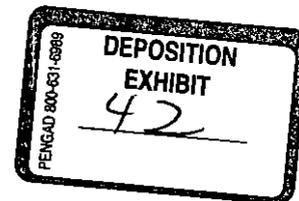
Rob,

Per Billy's request attached is the hold harmless agreement. Please let me know if you need anything further.

Thank you,

Brandi Sweeney  
Manager of Operations  
American Eagle Elevator, LLC  
Office- 903-527-3810  
Fax - 903-527-3815

----- Original Message -----  
Subject:  
From: <tsweeney@ameaglelevator.com>  
Date: Thu, October 18, 2018 10:30 am  
To: [bsweeney@ameaglelevator.com](mailto:bsweeney@ameaglelevator.com)



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DEF000621

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# American Eagle Elevator, LLC

## Hold Harmless Agreement

This HOLD HARMLESS AGREEMENT (this "Agreement") is made effective on November 20, 2017 by and between American Eagle Elevator LLC (hereinafter, "American Eagle Elevator LLC") of 4872 Private Road 2671 ROYSE CITY, Texas 75189 and \_\_\_\_\_ (hereinafter, "Company") \_\_\_\_\_ American Eagle Elevator LLC and Company are sometimes individually referred to as "Party" and collectively referred to as the "Parties."

WHEREAS, American Eagle Elevator LLC desires to hold Company from any claims and/or litigation arising out of American Eagle Elevator, LLC's actions in connection with Allowing Car-top access.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, American Eagle Elevator, LLC and Company hereby agree as follows:

### TERMS

- 1. Hold Harmless.** Company shall defend, indemnify, and hold harmless American Eagle Elevator LLC from any and all actual or alleged claims, demands, causes of action, liability, loss, damage and/or injury (to property or persons, including without limitation wrongful death), whether brought by an individual or other entity, or imposed by a court of law or by administrative action of any federal, state, or local governmental body or agency, arising out of or incident to any acts, omissions, negligence, or willful misconduct of American Eagle Elevator, LLC, its personnel, employees, agents, contractors, or volunteers in connection with or arising out of American Eagle Elevator, LLC's actions. This indemnification applies to and includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fee, and related costs or expenses, and any reimbursement to American Eagle Elevator LLC for all legal expenses and costs incurred by it.
- 2. Authority to Enter Agreement.** Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority make this Agreement and bind each respective Party.
- 3. Amendment; Modification.** No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

---

# American Eagle Elevator, LLC

**4. Waiver.** No Waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver , benefit, privilege , or service voluntarily given or performed by the Party any contractual right by custom, estoppel, or otherwise.

**5. Attorney's Fees and Costs.** If any legal action or other proceeding is brought in connection with this Agreement , the success or prevailing Party shall be entitled to recover reasonable attorneys' fees and other related cost , in addition to any other relief to which the Party is entitled.

X \_\_\_\_\_  
By: *Nyle Shaw*  
Date: 10-18-18  
Job Title: PRESIDENT P.T. HOA

X \_\_\_\_\_  
By: \_\_\_\_\_  
Date: \_\_\_\_\_  
Job Title: \_\_\_\_\_

**From:** Robert L. Marcus <robert7557@att.net>  
**Sent:** Thursday, October 18, 2018 3:29 PM CDT  
**To:** Rob Kennehan <gm@prestontower.com>  
**CC:** Grisel Garcia <office@prestontower.com>; Elsa Lira <elsa.lira@prestontower.com>  
**Subject:** Re: Piano Move~ Schedule And COI

## Exhibit 26

Hi Rob, I just met with DFW Movers, you apparently met with them first along with the elevator tech. They took a look at everything, but refused today it today. I obviously need more time and waiting for Action Piano to arrive. Can you give me more time to get this done, please talk to the HOA members and advise.

----- Original Message -----

**From:** Rob Kennehan  
**To:** Robert L. Marcus  
**Cc:** Grisel Garcia ; Elsa Lira  
**Sent:** Thursday, October 18, 2018 12:59 PM  
**Subject:** RE: Piano Move~ Schedule And COI

Good afternoon Robert. The units on the 29<sup>th</sup> floor are all individually owned, unfortunately cannot ask to use their property to store your piano.

It is my understanding that DFW Movers will be here today at 3pm to move your piano.

*Rob Kennehan*  
Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

**From:** Robert L. Marcus <robert7557@att.net>  
**Sent:** Wednesday, October 17, 2018 7:03 PM  
**To:** Rob Kennehan <gm@prestontower.com>  
**Cc:** Grisel Garcia <office@prestontower.com>; Elsa Lira <elsa.lira@prestontower.com>  
**Subject:** Re: Piano Move~ Schedule And COI  
**Importance:** High

Rob, if you can help me find a safe place to store the piano until the move is accomplished, I would greatly appreciate it. Please advise ASAP, thanks.

----- Original Message -----

**From:** Rob Kennehan  
**To:** Robert L. Marcus  
**Cc:** Grisel Garcia ; Elsa Lira  
**Sent:** Wednesday, October 17, 2018 3:07 PM  
**Subject:** RE: Piano Move~ Schedule And COI

Robert, I can make that happen. What is the name of the company?

*Rob Kennehan*  
Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

**From:** Robert L. Marcus <robert7557@att.net>  
**Sent:** Wednesday, October 17, 2018 2:59 PM  
**To:** Rob Kennehan <gm@prestontower.com>  
**Cc:** Grisel Garcia <office@prestontower.com>; Elsa Lira <elsa.lira@prestontower.com>  
**Subject:** Re: Piano Move~ Schedule And COI  
**Importance:** High

Hi Rob, a professional mover is coming by tomorrow to help arrange the piano move. He will be here at 3:00 PM and would like an elevator technician on hand for access to the top of the elevator, could you please arrange and let me know.

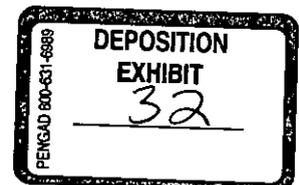
Thank you, Robert

----- Original Message -----

**From:** Rob Kennehan  
**To:** Robert L. Marcus  
**Cc:** Grisel Garcia ; Elsa Lira  
**Sent:** Wednesday, October 10, 2018 10:58 AM  
**Subject:** RE: Piano Move~ Schedule And COI

Good morning Robert. It is not possible to remove the tops or the sides of the elevator cabs.

*Rob Kennehan*  
Preston Tower- General Manager



DEF000635

**From:** Robert L. Marcus <robert7557@att.net>  
**Sent:** Wednesday, October 17, 2018 5:55 PM CDT  
**To:** Jeff Shaw <Jeff.Shaw@ptdirector.com>  
**Subject:** Need Assistance/ Piano Move From 2900

## Exhibit 27

Hi Jeff,

I hope you are well. I needed to ask your assistance and a big favor from you and the Association. I have been trying to get my piano moved from the 29th floor. The piano was placed in the hallway several weeks back in the course of my move from 2900 after the movers could not get it into the elevator, we were denied entry back into 2900 and forced to leave it in the hallway (out of the way best we could). Mr. Rob Kennehan, was seeking board permission to leave the piano in the hallway until arrangements could be made for its move. Mr. Kennehan was also trying to coordinate with the elevator technician to have the sides and or top of the elevator removed to accommodate the piano, I was notified this last week that was not possible, the piano movers are reluctant to put such a massive instrument on top of the elevator and have backed out.

I am speaking with piano/ equipment movers from New York and Houston for assistance in getting this move accomplished. Mr. Kennehan has given me until 5 PM tomorrow (Thursday the 18th to have it move or it will be scrapped and disposed of). I have tried explaining that this is a \$165,000.00 Steinway Concert piano and weighs over 1500lbs and will require careful planning for the move. Mr. Kennehan is reluctant to allow any more time and does not seem to grasp the complications and dangers of placing heavy objects on the top of elevators. When it was brought up upstairs years ago, it took months of planning and a team from Steinway in New York was flown into assure the safety for all with special equipment to do this particular move.

Jeff can you please give me an extension of time for the move, I can't risk injury to the personnel involved, piano or the elevator/building, these are extraordinary circumstances. Please let me know, I would greatly appreciate your assistance in this matter. If all else fails can you help in finding a suitable storage place on the 29th floor until the move is accomplished ??

Thank you greatly for your consideration, Robert Marcus



DEF000596

**From:** Robert L. Marcus <robert7557@att.net>  
**Sent:** Thursday, October 18, 2018 2:24 PM CDT  
**To:** Rob Kennehan <gm@prestontower.com>  
**CC:** Grisel Garcia <office@prestontower.com>; Elsa Lira <elsa.lira@prestontower.com>  
**Subject:** Re: Piano Move~ Schedule And COI

# Exhibit 28

Good Afternoon Rob, I am doing everything I can to try and get the piano moved today, DFW Movers are assessing this to see if the elevator is even an option, they will be here at 3PM today. Action Piano movers are also on the way in from Houston and expected in around 4:15 PM to look as well, I would like the elevator technician available for this as well, you are welcome to be present for both meetings, your input and suggestions on the matter would be appreciated. I am exploring the use of a crane or helicopter if we cant use the elevator, we have already ruled out the stairs.

Being without my piano has been disastrous to my teaching, recording and performing career and has caused a great hardship and mental anguish. I am asking for your patience and understanding while trying to get this accomplished, it took months of preparation and a team was brought in from New York to get the piano up to the 29th floor, it is just a big challenge to get it back down. Would you please grant an extension of time to try and get this done.

Thank you, Robert

----- Original Message -----

**From:** Rob Kennehan  
**To:** Robert L. Marcus  
**Cc:** Grisel Garcia ; Elsa Lira  
**Sent:** Thursday, October 18, 2018 12:59 PM  
**Subject:** RE: Piano Move~ Schedule And COI

Good afternoon Robert. The units on the 29<sup>th</sup> floor are all individually owned, unfortunately cannot ask to use their property to store your piano.

It is my understanding that DFW Movers will be here today at 3pm to move your piano.

*Rob Kennehan*  
Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

**From:** Robert L. Marcus <robert7557@att.net>  
**Sent:** Wednesday, October 17, 2018 7:03 PM  
**To:** Rob Kennehan <gm@prestontower.com>  
**Cc:** Grisel Garcia <office@prestontower.com>; Elsa Lira <elsa.lira@prestontower.com>  
**Subject:** Re: Piano Move~ Schedule And COI  
**Importance:** High

Rob, if you can help me find a safe place to store the piano until the move is accomplished, I would greatly appreciate it. Please advise ASAP, thanks.

----- Original Message -----

**From:** Rob Kennehan  
**To:** Robert L. Marcus  
**Cc:** Grisel Garcia ; Elsa Lira  
**Sent:** Wednesday, October 17, 2018 3:07 PM  
**Subject:** RE: Piano Move~ Schedule And COI

Robert, I can make that happen. What is the name of the company?

*Rob Kennehan*  
Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

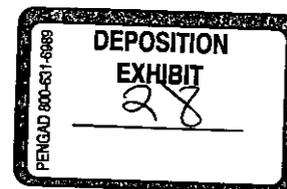
**From:** Robert L. Marcus <robert7557@att.net>  
**Sent:** Wednesday, October 17, 2018 2:59 PM  
**To:** Rob Kennehan <gm@prestontower.com>  
**Cc:** Grisel Garcia <office@prestontower.com>; Elsa Lira <elsa.lira@prestontower.com>  
**Subject:** Re: Piano Move~ Schedule And COI  
**Importance:** High

Hi Rob, a professional mover is coming by tomorrow to help arrange the piano move. He will be here at 3:00 PM and would like an elevator technician on hand for access to the top of the elevator, could you please arrange and let me know.

Thank you, Robert

----- Original Message -----

**From:** Rob Kennehan  
**To:** Robert L. Marcus



DEF000626

Cc: Grisel Garcia ; Elsa Lira  
Sent: Wednesday, October 10, 2018 10:58 AM  
Subject: RE: Piano Move~ Schedule And COI

Good morning Robert. It is not possible to remove the tops or the sides of the elevator cabs.

*Rob Kennehan*  
Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>  
**Sent:** Tuesday, October 9, 2018 2:50 PM  
**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>  
**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>  
**Subject:** Re: Piano Move~ Schedule And COI  
**Importance:** High

Hello hope everyone is safe in this unsettling Texas weather. Please find enclosed the proof of liability insurance needed for the move. In order to accommodate the piano we will need the sides and top of the elevator removed, please advise the availability and scheduling for this event and I will contact the movers for that time. Thanks again for your patience and assistance in this matter.

Regards, Robert

----- Original Message -----

**From:** [Rob Kennehan](mailto:Rob.Kennehan)  
**To:** [Robert L. Marcus](mailto:Robert.L.Marcus)  
**Cc:** [Grisel Garcia](mailto:Grisel.Garcia) ; [Elsa Lira](mailto:Elsa.Lira)  
**Sent:** Thursday, September 20, 2018 2:13 PM  
**Subject:** RE: Piano Move //American Eagle Elevator

Good morning Robert. Per my previous email on September 6<sup>th</sup> ...I need information on who will be providing insurance for this move. Please have the Insurance Company send me over a COI. Attached is an example.

*Rob Kennehan*  
Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>  
**Sent:** Tuesday, September 18, 2018 4:49 PM  
**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>  
**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>  
**Subject:** Re: Piano Move //American Eagle Elevator

Hi Rob, the firm is WD Piano Moving, the owner of the company is Daryl Lefler. His Facebook Page/website is <https://www.facebook.com/wdpianomovers1/> He is expecting to hear from you, his direct number is 469-853-6404. Please advise if I may offer any more assistance.

Thank you, Robert

----- Original Message -----

**From:** [Rob Kennehan](mailto:Rob.Kennehan)  
**To:** [Robert L. Marcus](mailto:Robert.L.Marcus)  
**Cc:** [Grisel Garcia](mailto:Grisel.Garcia) ; [Elsa Lira](mailto:Elsa.Lira)  
**Sent:** Tuesday, September 18, 2018 2:20 PM  
**Subject:** RE: Piano Move //American Eagle Elevator

Good afternoon Robert. Please email me the name, phone number and email address for professional piano moving company you are working with on this matter.

Thank you,

*Rob Kennehan*  
Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>  
**Sent:** Monday, September 17, 2018 5:49 PM

DEF000627

**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>  
**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>  
**Subject:** Re: Piano Move //American Eagle Elevator  
**Importance:** High

Hi Rob, Hope you had a good weekend. I finally spoke to Bill the elevator man today, he advised that he will NOT assist with the move of the piano under any circumstances, it is not something that he has any interest in being involved with and I should seek assistance else where.

He first implied that I didn't seem very interested in working with him, when I mentioned the number of times I and the piano mover called and the appointments that were missed, he let me know his stance as stated above.

I was going to contact some other elevator people for help with the matter, if you are okay with that. What are your thoughts/suggestions ?

Thanks, Robert

----- Original Message -----

**From:** [Rob Kennehan](mailto:Rob.Kennehan)  
**To:** [Robert L Marcus](mailto:Robert.L.Marcus)  
**Cc:** [Grisel Garcia](mailto:Grisel.Garcia) ; [Elsa Lira](mailto:Elsa.Lira)  
**Sent:** Monday, September 17, 2018 9:43 AM  
**Subject:** RE: Piano Move //American Eagle Elevator

Good morning Robert. I spoke with the Elevator Company and he left a vm for the Piano Movers several weeks ago, he has yet to receive a call back from the movers. Please ask the piano movers to call Billy at American Eagle.

Thank you,

*Rob Kennehan*  
Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>  
**Sent:** Friday, September 7, 2018 12:14 PM  
**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>  
**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>  
**Subject:** Re: Piano Move //American Eagle Elevator  
**Importance:** High

Good Morning Rob, the piano is too big to fit in the elevator as it is. The roof or side of the cab must be opened or the piano must be placed on top of the elevator in a special cradle, is "why" an elevator person needs to advise on this. The piano is resting in the hallway of the 29th floor until we can come up with a solution to get it down, the new owner needed it out.

The piano mover is a top mover who has over 40 years experience, he is used around the country to handle difficult moves, he does the moves for Steinway and piano stores around the area. They have insurance, but might require more based on how the move is done.

Please advise, Robert

----- Original Message -----

**From:** [Rob Kennehan](mailto:Rob.Kennehan)  
**To:** [Robert L Marcus](mailto:Robert.L.Marcus)  
**Cc:** [Grisel Garcia](mailto:Grisel.Garcia) ; [Elsa Lira](mailto:Elsa.Lira)  
**Sent:** Thursday, September 06, 2018 1:42 PM  
**Subject:** RE: Elevator Man

Good afternoon Robert. I am assuming you have hired a professional piano moving company correct? Can you please have them email me their insurance as well as a "scope of work", I need to have an understanding of "why" American Eagle Elevator needs to be onsite for this and what they will be needed for.

Thank you,

*Rob Kennehan*  
Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

**From:** Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)>  
**Sent:** Wednesday, September 5, 2018 2:05 PM  
**To:** Rob Kennehan <[gm@prestontower.com](mailto:gm@prestontower.com)>

DEF000628

**Cc:** Grisel Garcia <[office@prestontower.com](mailto:office@prestontower.com)>; Elsa Lira <[elsa.lira@prestontower.com](mailto:elsa.lira@prestontower.com)>  
**Subject:** Elevator Man

Hello, wondering if there was any word from the elevator man to assist in the piano move. The piano movers stopped by again to check on our progress.

Thanks. Robert

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DEF000629

**From:** Rob Kennehan  
**Sent:** Thursday, October 18, 2018 4:34 PM CDT  
**To:** Robert L. Marcus <robert7557@att.net>  
**CC:** Grisel Garcia <office@prestontower.com>; Elsa Lira <elsa.lira@prestontower.com>  
**Subject:** RE: Piano Move~ Schedule And COI

## Exhibit 29

Good evening Robert. The piano has been sitting in the common hallway since September 6<sup>th</sup>. No extension will be given at this time.

*Rob Kennehan*  
Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

**From:** Robert L. Marcus <robert7557@att.net>  
**Sent:** Thursday, October 18, 2018 3:29 PM  
**To:** Rob Kennehan <gm@prestontower.com>  
**Cc:** Grisel Garcia <office@prestontower.com>; Elsa Lira <elsa.lira@prestontower.com>  
**Subject:** Re: Piano Move~ Schedule And COI  
**Importance:** High

Hi Rob. I just met with DFW Movers, you apparently met with them first along with the elevator tech. They took a look at everything, but refused today it today. I obviously need more time and waiting for Action Piano to arrive. Can you give me more time to get this done, please talk to the HOA members and advise.

----- Original Message -----

**From:** Rob Kennehan  
**To:** Robert L. Marcus  
**Cc:** Grisel Garcia ; Elsa Lira  
**Sent:** Thursday, October 18, 2018 12:59 PM  
**Subject:** RE: Piano Move~ Schedule And COI

Good afternoon Robert. The units on the 29<sup>th</sup> floor are all individually owned, unfortunately cannot ask to use their property to store your piano.

It is my understanding that DFW Movers will be here today at 3pm to move your piano.

*Rob Kennehan*  
Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

**From:** Robert L. Marcus <robert7557@att.net>  
**Sent:** Wednesday, October 17, 2018 7:03 PM  
**To:** Rob Kennehan <gm@prestontower.com>  
**Cc:** Grisel Garcia <office@prestontower.com>; Elsa Lira <elsa.lira@prestontower.com>  
**Subject:** Re: Piano Move~ Schedule And COI  
**Importance:** High

Rob, if you can help me find a safe place to store the piano until the move is accomplished, I would greatly appreciate it. Please advise ASAP, thanks.

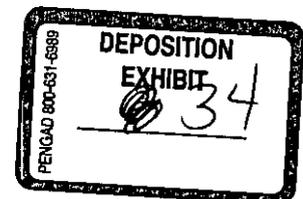
----- Original Message -----

**From:** Rob Kennehan  
**To:** Robert L. Marcus  
**Cc:** Grisel Garcia ; Elsa Lira  
**Sent:** Wednesday, October 17, 2018 3:07 PM  
**Subject:** RE: Piano Move~ Schedule And COI

Robert, I can make that happen. What is the name of the company?

*Rob Kennehan*  
Preston Tower- General Manager  
6211 W. Northwest Hwy.  
Suite C-120A  
Dallas, TX 75225  
214-369-9276

**From:** Robert L. Marcus <robert7557@att.net>  
**Sent:** Wednesday, October 17, 2018 2:59 PM  
**To:** Rob Kennehan <gm@prestontower.com>  
**Cc:** Grisel Garcia <office@prestontower.com>; Elsa Lira <elsa.lira@prestontower.com>  
**Subject:** Re: Piano Move~ Schedule And COI  
**Importance:** High



DEF000643

- Legend:
- Board Meetings
  - Building Events
  - Fire Inspection/Drill/Specialty Inspection
  - Holiday
  - MOVE IN/OUT
  - Neighborhood Events
  - Office Closed
  - Water Shut-Off

[Select All](#)   [Clear All](#)

# Exhibit 30

October 2018

Jan Feb Mar Apr May Jun Jul Aug Sep **Oct** Nov Dec

Sun	Mon	Tue	Wed	Thu	Fri	Sat
30	<b>1 Oct</b>	2 <input type="checkbox"/> 9:00AM-12:30PM [REDACTED]	3	4	5	6
7	8	9	10	11	12 <input type="checkbox"/> 9:30AM-3:00PM [REDACTED]	13
14	15	16	17	18	19	20
21	22	23	24 <input type="checkbox"/> 8:00AM-10:00AM [REDACTED]	25	26	27
28	29 <input type="checkbox"/> 6:30PM-8:30PM October Board of Directors Meeting	30	31	<b>1 Nov</b>	2	3





Mockingbird Station  
5307 E. Mockingbird Lane, Suite 685  
Dallas, Texas 75206  
Telephone: 214-365-9290  
Toll Free: 800-713-4625

[www.rmwbhlaw.com](http://www.rmwbhlaw.com)

## Exhibit 31

**CLAYTON HEARN**  
Attorney and Counselor at Law  
Shareholder  
Board Certified by the  
Texas Board of Legal Specialization  
Labor and Employment

[chearn@rmwbhlaw.com](mailto:chearn@rmwbhlaw.com)

February 1, 2019

Christina Alstrin  
Payne Robinson, LLP

Darryl Lefler  
WD Piano Movers

Re: Cause No.: CC-19-00367-C; *Marcus v. Preston Tower Condominium Association et al*, in the County Court at Law No. 3, Dallas County, Texas.

### RULE 11 AGREEMENT

Please allow this letter to confirm the terms of the Rule 11 Agreement reached at mediation on February 1, 2019.

- 1) The parties agree that WD Piano Movers will arrange transport of the subject piano to Bradfield on a mutually-agreeable date and time within the month of February, 2019;
- 2) The parties will have the opportunity to have their counsel and/or experts present for the move and any subsequent evaluation;
- 3) This agreement shall not be construed to alter the parties' respective rights of possession/ownership of the piano;
- 4) The ownership of the piano is in controversy and neither this Rule 11 Agreement nor the movement/relocation of the piano shall influence the determination of ownership;
- 5) Marcus will be responsible to WD Piano Movers for \$325 as the cost of moving the piano from WD Piano Movers' facility to Bradfield's facility. In addition, Marcus will pay to WD Piano Movers the current outstanding late fees of \$50. The total amount of \$375 is to be paid by Cashier's Check prior to the move; and
- 6) Marcus will continue to pay \$200 per month for storage fees as long as the piano remains with WD Piano Movers;

- 7) Marcus represents that he <sup>will</sup> has made arrangements with Bradfield concerning the above, and that Bradfield will be prepared to assemble the piano for inspection on the date of the move;
- 8) The piano shall not be moved from Bradfield's facility until a final determination regarding ownership has been made by the Court, or by a mutual agreement between the parties;
- 9) The filing of this Rule 11 Agreement shall not constitute an appearance by any party.

If you are in agreement with these terms, please sign in the space provided below.

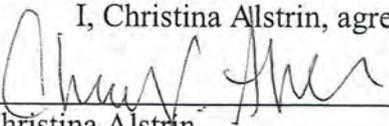
Sincerely,

ROBERTS MARKEL WEINBERG BUTLER HAILEY PC



CLAYTON HEARN

I, Christina Alstrin, agree to the terms of the Rule 11 Agreement outlined above.

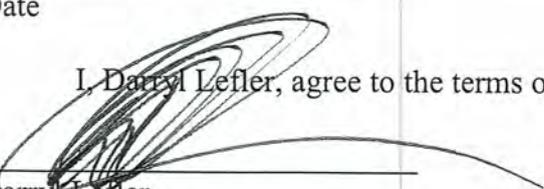


Christina Alstrin

2/1/2019

Date

I, Darryl Lefler, agree to the terms of the Rule 11 Agreement outlined above.



Darryl Lefler

2-1-19

Date



B R A D F I E L D  
p i a n o

## Exhibit 32

### Piano Evaluation

---

Piano Make, Model & Serial # : Steinway Model D - 533616 (1995-1996)

Soundboard<sup>1</sup> : Downbearing  
Treble - .015 -to .018  
Midrange - .012 to .015  
Bass - .018 to .021

Excellent downbearing indicates good soundboard crown.

Pinblock<sup>2</sup> : Pin torque

75 to 100 inch lbs average from bass to treble

Tight tuning pins indicate good pin-block health.

**Action Parts :** Original Steinway Parts in good condition. No damage observed to the action however there are 5 missing key-fronts, 4 have been recovered but need to be re-glued. See photos.

**Hammer condition :** Poor | Fair | Good | Excellent | 99% Flawless

**Notes:** Hammers are worn flat as a result of normal use.

---

**Finish :** Poor | Fair | Good | Excellent | 99% Flawless

**Notes:** There are some scratches on the left side and a large scratch/ding on the left corner of the lid. There is also an inch wide dent in the inner rim near the tail of the piano. See photos on the next page.

**Pedals And Lyre :** Pedals and lyre are in good condition and functioning properly

**General Notes :** The soundboard shows no sign of cracking and ribs remain solidly affixed to the soundboard. Bridges and bridge caps appear to be in good condition. No structural damage was observed during the evaluation.

Lucas Heuer, RPT

<sup>1</sup> Soundboards are evaluated to determine structural integrity and resonance.

<sup>2</sup> Pin-blocks are evaluated to show stability of tuning and longevity.

<sup>3</sup> The touch rating represents the degree of force required to depress the keys and strike the pianos strings. Measured in grams.

\* The structural components evaluated give important information about the longevity and integrity of the instrument.



*Photos Of The Case and Finish*





*Dent in Inner Rim*



*Hammer Condition*



----- Original Message -----

**From:** [Bradfield Piano Restoration Moving & Storage LLC](#)

**To:** [robert7557@att.net](mailto:robert7557@att.net)

**Sent:** Monday, March 04, 2019 3:12 PM

**Subject:** Quote from Bradfield Piano Restoration, Moving & Storage, LLC - 03/04/2019



**Bradfield Piano Restoration, Moving &  
Storage, LLC**

---

## Quote

Hi Robert Marcus,

Thank you for asking us to quote on your project. This quote reflects the repair of damages likely caused by moving and/or improperly storing the piano.

If you have any questions or concerns regarding this quote, please don't hesitate to get in touch with us at [lucas@bradfieldpiano.com](mailto:lucas@bradfieldpiano.com).

Sincerely,

Bradfield Piano Restoration, Moving & Storage, LLC

214-490-6200

[bradfieldpiano.com](http://bradfieldpiano.com)

Piano Restoration - Piano Moving - Piano Storage - Piano Tuning

[Review Quote](#)

**Bradfield Piano Restoration, Moving & Storage, LLC**

214-883-1885

[lucas@bradfieldpiano.com](mailto:lucas@bradfieldpiano.com)

10755 Sanden Dr STE 300

Dallas, TX 75238

**Powered by Jobber**

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# Bradfield Piano Restoration, Moving & Storage, LLC

10755 Sanden Dr STE 300  
Dallas, TX 75238  
214-883-1885  
lucas@bradfieldpiano.com | www.bradfieldpiano.com



## RECIPIENT:

### Robert Marcus

8604 Turtle Creek Blvd  
Suite 12732  
Dallas, Texas 75225

## Quote #251

Sent on 03/22/2019

**Total \$7,144.50**

SERVICE / PRODUCT	DESCRIPTION	QTY.	UNIT COST	TOTAL
Refinishing	Sand, repair dents, re-spray lacquer, bring to satin finish. Repair damage to finish caused by improper moving and storage.	1	\$6,500.00	\$6,500.00
General repair	Repair missing key fronts caused by improper handling of the piano. Re-glue key fronts and replace one missing key front.	1	\$100.00	\$100.00

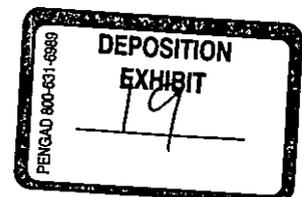
This quote is valid for the next 30 days, after which values may be subject to change.

<b>Subtotal</b>	\$6,600.00
<b>Dallas County (8.25%)</b>	\$544.50
<b>Total</b>	<b>\$7,144.50</b>

**From:** davidj058 <davidj058@gmail.com>  
**Sent:** Thursday, October 11, 2018 1:10 PM CDT  
**To:** Rob Kennehan <gm@prestontower.com>  
**Subject:** My piano move

# Exhibit 33

Please call me i have a professional piano mover scheduled to move my piano out of my unit on Monday David 2143614500  
Sent from my iPhone



DEF000575

**From:** Angela Jeffrey <angela.jeffrey@ptdirector.com>  
**Sent:** Wednesday, October 17, 2018 9:15 PM CDT  
**To:** Jeff Shaw <Jeff.Shaw@ptdirector.com>; BoardMembers <boardmembers@ptdirector.com>  
**CC:** Rob Kennehan <gm@prestontower.com>  
**Subject:** Re: Need Assistance/ Piano Move From 2900

Exhibit 34

Why not let Marcus store the piano with the resident who wanted it? Marcus could pay the resident and buy whatever time he needs. I don't mean to sound soft, but there is a willing person who would like to have it.

---

**From:** Jeff Shaw  
**Sent:** Wednesday, October 17, 2018 7:06:44 PM  
**To:** BoardMembers  
**Cc:** Rob Kennehan  
**Subject:** Fw: Need Assistance/ Piano Move From 2900

As this has been an ongoing challenge since September 5 when it was placed in the hallway, and having received your consensus of opinions Monday night, does anyone feel we should extend the Friday deadline?

Jeff

---

**From:** Robert L. Marcus <robert7557@att.net>  
**Sent:** Wednesday, October 17, 2018 5:55 PM  
**To:** Jeff Shaw  
**Subject:** Need Assistance/ Piano Move From 2900

Hi Jeff,

I hope you are well. I needed to ask your assistance and a big favor from you and the Association. I have been trying to get my piano moved from the 29th floor. The piano was placed in the hallway several weeks back in the course of my move from 2900 after the movers could not get it into the elevator, we were denied entry back into 2900 and forced to leave it in the hallway (out of the way best we could). Mr. Rob Kennehan, was seeking board permission to leave the piano in the hallway until arrangements could be made for its move. Mr. Kennehan was also trying to coordinate with the elevator technician to have the sides and or top of the elevator removed to accommodate the piano, I was notified this last week that was not possible, the piano movers are reluctant to put such a massive instrument on top of the elevator and have backed out.

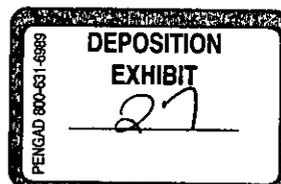
I am speaking with piano/ equipment movers from New York and Houston for assistance in getting this move accomplished. Mr. Kennehan has given me until 5 PM tomorrow (Thursday the 18th to have it move or it will be scrapped and disposed of). I have tried explaining that this is a \$165,000.00 Steinway Concert piano and weighs over 1500lbs and will require careful planning for the move. Mr. Kennehan is reluctant to allow any more time and does not seem to grasp the complications and dangers of placing heavy objects on the top of elevators. When it was brought up upstairs years ago, it took months of planning and a team from Steinway in New York was flown into assure the safety for all with special equipment to do this particular move.

Jeff can you please give me an extension of time for the move, I can't risk injury to the personnel involved, piano or the elevator/building, these are extraordinary circumstances. Please let me know, I would greatly appreciate your assistance in this matter. If all else fails can you help in finding a suitable storage place on the 29th floor until the move is accomplished ??

Thank you greatly for your consideration, Robert Marcus

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DEF000608

**From:** davidj058 <davidj058@gmail.com>  
**Sent:** Friday, October 26, 2018 11:43 AM CDT  
**To:** Rob Kennehan <gm@prestontower.com>  
**Subject:** Re: FW: Construction

Please call to discuss. My number is 214 361 4500  
All the best,  
David

## Exhibit 35

On Thu, Oct 25, 2018 at 12:16 PM Rob Kennehan <gm@prestontower.com> wrote:

Good afternoon David. Please see my email below. I need your assistance immediately. The piano needs to be moved out of the common hallway immediately.



Please let me know if you have any questions.

Sincerely,

*Rob Kennehan*

Preston Tower- General Manager

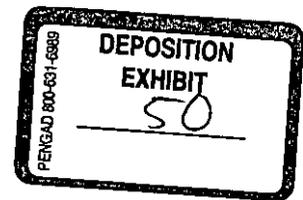
6211 W. Northwest Hwy.

Suite C-120A

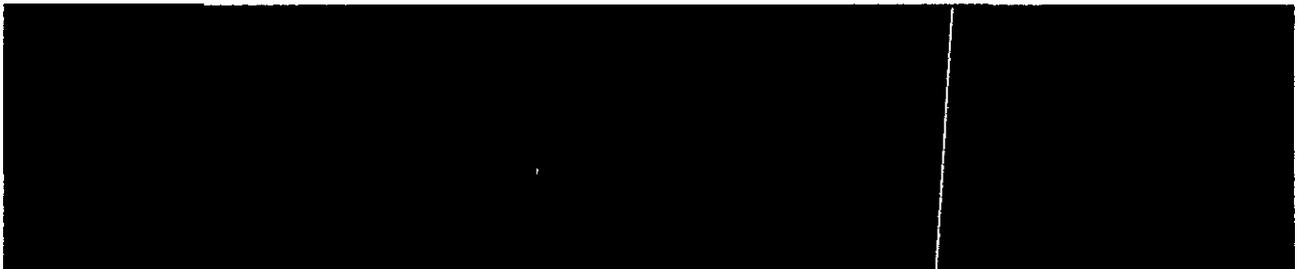
Dallas, TX 75225

214-369-9276

**From:** Rob Kennehan  
**Sent:** Tuesday, October 23, 2018 10:48 AM  
**To:** 'davidj058' <davidj058@gmail.com>  
**Subject:** Construction



Good afternoon David, I hope your day is going well. There have been some concerns reported to me about the work that is happening on the 29<sup>th</sup> floor. I am hoping you can assist me with a few items.



- Can you move the piano back into your unit that is in the hallway? If you need to bring it downstairs to the garage for

DEF000701

a few weeks I can make some space. I understand that item could cause challenges for the ceilings you are painting due to the water leak and want to help however I can.

Thank you,

*Rob Kennehan*

Preston Tower- General Manager

6211 W. Northwest Hwy.

Suite C-120A

Dallas, TX 75225

214-369-9276

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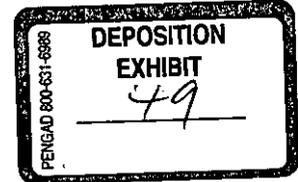
DEF000702



## Exhibit 36

October 25, 2018

David Jackson  
6211 West Northwest Hwy. Unit #2907  
Dallas, Texas 75225



Dear Mr. Jackson,

We have received several complaints from concerned residents regarding your unit. It has been reported that you are transporting construction materials to your unit without a remodel agreement and you have workers entering your unit and not checking in with the Valet Office. Additionally, you have a piano being stored in the Common hallway on the 29<sup>th</sup> floor.

You are hereby notified that you are in violation of the following rules in our Community Manual:

- H-1. Hallways. No item or object of any type, including floor mats, furniture, plants, and decorative items, may be stored, placed, or maintained anywhere on the general common elements, including hallways and stairwells, except by the Board or with the Board's prior written consent. Items of personal property found on general common elements are deemed abandoned and may be disposed of by the Board. The exception to this Rule is the hallway furnishings on the 29<sup>th</sup> floor of the tower building, which were installed by the developer when the condominium was created.
- H-2. Service Entrance. The Association maintains a service entrance on Pickwick for use by delivery personnel, contractors, laborers, service persons, caregivers, and housekeepers. Such individuals shall be instructed to go to the Pickwick gate, use the intercom to identify himself and the purpose of his visit, proceed to the basement office, sign in, and obtain a vendor badge before entering an elevator.
- L-1. Board Approval. To obtain the Board's written consent for an alteration or modification, an owner must submit to the manager complete plans and specifications showing the nature, kind, shape, size, materials, colors, and location for all proposed work, and any other information reasonably requested by the Board. The Board's failure to respond to the owner's written request within 45 days after it receives the owner's request may be construed as no objection to the proposed changes.
- L-2. Code Compliance, Insurance & Licensing.
  - a. All construction and remodeling must conform to the City of Dallas Building, Construction Codes.
  - b. All contractors must provide evidence of liability and property damage insurance.
  - c. Licenses are required for all mechanical, electrical, and plumbing trades.

You are hereby instructed to comply with the aforementioned rules by **immediately**. To cure these issues you need to remove the piano from the hallway, submit a scope of work for Board Approval and ensure your meet code compliance, insurance and Licensing requirements. Failure to correct this violation may result in a fine levied by the Association in the amount of \$100.00.

DEF000699

Pursuant to the Rules, you may, on or before the thirtieth (30th) day after the date of your receipt of this letter, submit a written request for a hearing before the Board of Directors regarding the alleged violations. The request must be submitted to the Manager, in writing.

Sincerely,

Rob Kennehan

General Manager

**From:** Susan <scon0820@yahoo.com>  
**Sent:** Friday, June 05, 2015 10:23 AM CDT  
**To:** Preston Tower Condominium <gm@prestontower.com>  
**CC:** Kyle Hall <kyleh1@earthlink.net>; Leonardwennmohs <lwennmohs@yahoo.com>  
**Subject:** Re: marcus unit

## Exhibit 37

Good morning,

Last night as I prepared to forward the utility shut-off letter to the Board, I began to feel uneasy about the potential consequences. Mr. Marcus likely has no ability to pay his past due amount and has yet to pay this month's dues. I foresee a situation similar to [REDACTED] odor issues in the middle of the summer, in this case as a result of non-functional plumbing and air conditioning.

After much thought, I am no longer in favor of a utility shut-off. It appears unlikely that the action will produce the delinquent funds, and quite likely an undesirable inconvenience for his neighbors.

Thoughts?

Susan

Sent from my iPhone

On Jun 4, 2015, at 2:02 PM, "Preston Tower Condominium" <gm@prestontower.com> wrote:

Utility shut-off draft letter.

Douglas Mertz  
General Manager  
Preston Tower Condominiums  
214-369-7530  
[gm@prestontower.com](mailto:gm@prestontower.com)

---

**From:** Susan Conard [<mailto:scon0820@yahoo.com>]  
**Sent:** Thursday, June 04, 2015 12:54 PM  
**To:** Preston Tower Condominium; 'Kyle Hall'; 'Leonardwennmohs'  
**Subject:** Re: marcus unit

Either way, we need to move quickly if we are to recover the outstanding debt. I am in favor of both moving forward with the foreclosure and serving Mr. Marcus with a notice of utility shut-off.

Susan

On Thursday, June 4, 2015 9:30 AM, Preston Tower Condominium <[gm@prestontower.com](mailto:gm@prestontower.com)> wrote:

Good morning,

I could not find the posting date for the foreclosure, it could have been this past Tuesday. The "trulia" link below is indicating it's been sold. I'll see what more I can find out today.

<http://www.trulia.com/homes/Texas/Dallas/sold/21018428-6211-W-Northwest-Hwy-2900A-Dallas-TX-75225>

Douglas Mertz  
General Manager  
Preston Tower Condominiums  
214-369-7530  
[gm@prestontower.com](mailto:gm@prestontower.com)

---

**From:** Kyle Hall [<mailto:kyleh1@earthlink.net>]  
**Sent:** Wednesday, June 03, 2015 6:11 PM  
**To:** Leonardwennmohs; Susan Conard  
**Cc:** Preston Tower Condominium; Kyle Hall  
**Subject:** Re: marcus unit

I have no objections to moving forward. I do have one question re: the second notice, which indicates that is delivered at least five days prior to the scheduled shutoff. Do we conclude from this that we need to specify the date of utility shutoff? If so, what do we propose that be? It does seem to be that we ought to indicate a date, even if we do so as loosely as to say, "Your utilities may be shut off as soon as [five days from the date of letter]." This would allow for the third notice to be truly specific, while letting him know that a very real clock is ticking.

Doug, has the bank (which I presume notified you of its foreclosure) offered any indication of when they will remove Mr. Marcus? Is there someone you can this question?

DEF000100

**From:** Robin Kyle <robin.kyle@ptdirector.com>  
**Sent:** Monday, October 22, 2018 4:31 PM CDT  
**To:** Jeff Shaw <Jeff.Shaw@ptdirector.com>; BoardMembers <boardmembers@ptdirector.com>  
**CC:** Rob Kennehan <gm@prestontower.com>  
**Subject:** Re: Board meeting agenda

## Exhibit 38

Thanks Jeff for the reply. I do remember discussing at the executive session. I wasn't clear on the reason we paid to have it moved rather than give it away - understand that we have no standing to give it away. Thanks.

---

**From:** Jeff Shaw  
**Sent:** Monday, October 22, 2018 12:38:34 PM  
**To:** Robin Kyle; BoardMembers  
**Cc:** Rob Kennehan  
**Subject:** Re: Board meeting agenda

Robin,

This was discussed at the last executive session. As the piano had been stored in the common area for over six weeks, creating a violation of our by-laws and the fire ordinance of the city, the consensus was to give Marcus ample warning to move the piano or the Association will intervene.

The piano is Marcus's personal property and the Association has no standing to give away anyone's personal property. The piano is being stored at a piano warehouse and if he wants his property back, he'll have to reimburse the Association for the cost of the removal.

Jeff

---

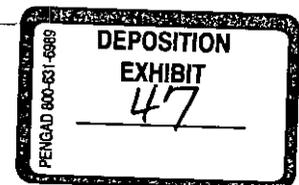
**From:** Robin Kyle  
**Sent:** Monday, October 22, 2018 11:48:01 AM  
**To:** Jeff Shaw; BoardMembers  
**Cc:** Rob Kennehan  
**Subject:** Re: Board meeting agenda

Agree about mentioning the elevator particularly since we had someone stuck in it recently.

Also, I have been asked by some homeowners, why did we pay to move the piano rather than just offering it to a company/charity that would haul it off at no charge to us?

---

**From:** Jeff Shaw  
**Sent:** Monday, October 22, 2018 9:40 AM  
**To:** BoardMembers  
**Cc:** Rob Kennehan  
**Subject:** Board meeting agenda



All,

Putting together the Board meeting packet. Are there any agenda items, old business or new business that needs to be included.

I think some mention should be made that we are underway in addressing the elevator issue. People are asking about this.

Jeff

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**Notice:** The information contained in this transmission, including any attachments or other embedded messages, contains information which may be strictly confidential. If you are not the intended recipient of this message, you may not disclose, print, copy or disseminate this information. If you have received this in error, please reply and notify the sender (only) and delete the message. Unauthorized interception of this e-mail is a violation of federal criminal law.

DEF000689

# Exhibit 39-A

----- Original Message -----

**From:** [Steve Claunch](#)  
**To:** [Robert L. Marcus](#)  
**Cc:** [Adam Manning](#) ; [Casey D. Saliba](#)  
**Sent:** Thursday, January 31, 2019 4:32 PM  
**Subject:** Re: Rental Of Model D Info

Mr. Marcus,

The rental of a Concert & Artist Model D Steinway is \$1600.00 per day. We have a 4 day limit for this rental, as these pianos are required to be ready for the next performer and/or venue. There is an upcharge of \$400.00 per day if the use extends beyond the 4 day time frame, with a maximum of 2 extra days.

Thank you  
Steve Claunch  
Chief Operations Officer  
Vice President Technical Services  
Steinway Hall- Dallas/Fort Worth/Plano  
Steinway Piano Gallery Houston

On Wed, Jan 30, 2019 at 6:07 PM Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)> wrote:

Thanks Adam, I understand. If possible I would like to speak with Steve or Casey at their earliest convenience.

Thanks, Robert

----- Original Message -----

**From:** [Adam Manning](#)  
**To:** [Robert L. Marcus](#) ; [Steve Claunch](#) ; [Casey D. Saliba](#)  
**Sent:** Wednesday, January 30, 2019 5:46 PM  
**Subject:** Re: Rental Of Model D Info

Hi Robert,

As I said yesterday, I am legally not allowed to confirm any pricing for long term rentals. I have given your information to our sales department, and asked them to contact you with any information on possible long term rentals, and/or purchasing.

Thank you, sir!

Warmest regards,  
Adam Manning  
Concert and Artist Director  
[amanning@steinwaypianos.com](mailto:amanning@steinwaypianos.com)  
Office: 214-451-3590

On Wed, Jan 30, 2019 at 2:51 PM Robert L. Marcus <[robert7557@att.net](mailto:robert7557@att.net)> wrote:

Hi Adam,

Thanks for speaking with me again yesterday. As requested could you kindly confirm the pricing of a Model D thru your department. To the best of my understanding, it was \$1,600.00 for 4 days and each additional day was \$400.00. Additional charges for deliver/pickup and tuning would incur. I have a meeting tomorrow to discuss the repair or replacement of my D and wanted to present this information.

Thanks again, Robert

----- Original Message -----

**From:** [Fred Riley](#)

**To:** [robert7557@att.net](mailto:robert7557@att.net)

**Sent:** Wednesday, January 30, 2019 5:52 PM

**Subject:** Steinway & Sons Concert Grand Lease

Hello Mr. Marcus,

Classic Pianos Portland would be able to offer you a weekly rate of \$5,000.00 per week for a Steinway & Sons Concert Grand Piano. This would include a piano tuning every 90 days and a Concert Artist Bench. The shipping would be a round trip cost of \$10,000.00. Please let me know if you have any questions.

Best regards,

--

*Fred Riley ~ Classic Pianos & Forte Marketing*

[premiumpianofinder.com](http://premiumpianofinder.com)

Youtube Channel [https://www.youtube.com/channel/UCu\\_CaTQz7bWxdeAzrgTrWPQ](https://www.youtube.com/channel/UCu_CaTQz7bWxdeAzrgTrWPQ)

*o. 503.239.9969*

*c. 541.255.8717*



Exhibit 39-B

STEINWAY HALL  
DALLAS • FORT WORTH • PLANO

February 21, 2019

Robert Marcus  
8604 Turtle Creek Blvd  
Unit #12732  
Dallas, TX 75225

Re: Steinway & Sons Model D / Replacement Value for Insurance

According to our records, Steinway Serial No. 533616, corresponds to a New York Grand Model D Ebony Satin.

For insurance purposes, this instrument should be covered for a replacement value of \$176,300 or the current 2019 New York retail price of a new Model D Grand Piano in the Ebony Satin finish.

Best regards,

Casey D. Saliba  
*Vice President*



# Exhibit 40

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

09/28/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Insurance One Agency, L.C. 1225 Beltline Road Suite 103 Garland TX 75040		<b>CONTACT NAME:</b> Jeanette Nelson <b>PHONE (A/C, No, Ext):</b> (972) 495-8657 <b>E-MAIL ADDRESS:</b> jnelson@insuranceoneagency.com <b>FAX (A/C, No):</b> (866) 663-5196	
<b>INSURED</b> Darryl Lefler, DBA: W D Piano Movers 717 Grand Cayman Way Mesquite TX 75149		<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Burlington Ins Co <b>INSURER B:</b> Progressive Companies <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>	

**COVERAGES**

CERTIFICATE NUMBER: CL1892877967

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			110B113676	07/13/2018	07/13/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ Included \$
B	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY			07606433-0	05/10/2018	05/10/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 300,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ PIP-Basic \$ 2,500
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$ PER STATUTE OTH-ER
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**CERTIFICATE HOLDER****CANCELLATION**

For Insurance Information Purposes Only

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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