

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.

COLORADO APARTMENT ASSOCIATION et al.

Plaintiffs,

v.

**JILL HUNSAKER RYAN, in her Official Capacity as the Executive Director of the Colorado
Department of Public Health and Environment, et al.**

Defendants.

Declaration of Tyler Carlson

I, Tyler Carlson, declare as follows:

1. My name is Tyler Carlson. I am over 18 years of age. The information in this declaration is true and correct to the best of my knowledge, information, and belief and is based on my personal experience.

2. I live in Greenwood Village, Colorado.

3. I am current Chief Executive Officer (“CEO”) at Evergreen Devco, Inc. (“Evergreen”).

4. In that position, I manage all day to day and strategic affairs for Evergreen.

5. As CEO, I am familiar with the day-to-day and long-term operations of Evergreen, and am qualified and authorized by Evergreen to speak to the matters discussed in this declaration.

6. Evergreen is a member of NAIOP Colorado, the Commercial Real Estate Development Association, (“NAIOP Colorado”), and has been since November, 2017.

7. As a member of NAIOP Colorado, Evergreen relies on NAIOP Colorado to represent its interests in the City and County of Denver, Colorado and the State of Colorado, including advocating for regulations that are in compliance with state and federal law.

8. Evergreen is developing two (2) industrial buildings in the City and County of Denver, Colorado which it believes will be subject to the requirements of the City of Denver, Colorado’s Denver Ordinance No. 20211310 (“Energize Denver Ordinance”), and the implementing rules for Energize Denver enacted by the Denver Office of Climate Action, Sustainability, and Resiliency, (“OCASR”) entitled “Rules & Regulations Governing Energize Denver Building Energy Performance Requirements” (“Energize Denver Regulations”) (the Ordinance and Regulations may be collectively referred to as “Energize Denver”).

9. Under Energize Denver, Evergreen is required to meet building performance standards, generally expressed and measured as Energy Intensity Use (“EUI”) scores. Each regulation has established an enforceable schedule for achieving interim and final EUI targets. Evergreen must also submit annual benchmarking reporting to OCASR. These annual benchmarking submittals are time-consuming and costly to prepare, and require the assistance of outside consultants. In my experience, the total cost of preparing annual benchmarking reports is approximately \$1,000 per covered building.

10. In addition to the required benchmarking submittals, Evergreen must prepare initial Level I ASHRAE energy audits to determine whether the properties’ benchmarking data is accurate and what range of energy use reductions must be made in order to comply with Energize Denver.

11. In my experience, these preliminary Level I energy audits alone can cost between \$4,500 and \$7,500 per building (depending on the size and complexity of the building).

12. In addition to the required initial Level I analyses, building owners must conduct more detailed Level II ASHRAE “energy audits” to evaluate buildings’ status against the performance standards and the options available to achieve those standards. In my experience, the Level II energy audits alone can cost approximately \$0.15 per building square foot (depending on the size and complexity of the building).

13. Based on the evaluations of its building designs conducted thus far, Evergreen has determined that it must immediately begin to make material modifications to Evergreen’s building plans to meet the fast-approaching compliance deadlines and corresponding EUI building performance standards under Energize Denver. Evergreen will incur significant costs implementing each of these early actions.

14. To bring Evergreen’s buildings into compliance with Energize Denver, Evergreen

anticipates that it will have to spend significant capital and materially modify the aforementioned building plans, significantly increasing costs of construction. Evergreen currently estimates the additional costs for these buildings to be over \$950,000, which costs include the need to change out HVAC equipment from fossil fuel utilizing equipment to electric equipment, and electric service upgrades.

Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information, and belief.



Tyler Carlson
Chief Executive Officer
Evergreen Devco, Inc.