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PROTHONOTARY'S OFFICE  
LANCASTER, PA

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

**IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA  
CIVIL ACTION—LAW**

CITY OF LANCASTER,  
Plaintiff,

vs.

No. 18-04365

DWAIN S. LONDON,  
CARMEN IVY LONDON,  
MARTIN NORRIS, JEFF LOY,  
BARON BROWN, TRACY BOWMAN,  
GARY CLARK, and  
CHRIS MCOUGHLEN  
Defendants.

**TRIAL MEMORANDUM OF THE CITY OF LANCASTER  
IN SUPPORT OF PRELIMINARY INJUNCTION**

**I. FACTS**

The properties at issue in this case, aside from Mr. London's personal home, are as follows:

<u>Address</u>	<u>Zoning</u>	<u>Square Footage</u>
316 South Ann Street	R-3	1,585
336 South Queen Street	R-3	2,340
421 Green Street	R-3	1,257
*443 Pershing Street	R-3	1,244
512 South Lime Street	R-3	1,647
533 Juniata Street	R-3	1,072
534 Pershing Street	R-3	1,640
*539 Woodward Street	R-3	1,288

<u>Address</u>	<u>Zoning</u>	<u>Square Footage</u>
549 South Lime Street	R-3	1,846
553 South Lime Street	R-3	1,410
587 Pershing Street	R-3	1,327
710 South Lime Street	R-3	1,584
749 South Lime Street	R-3	1,712
761 South Lime Street	R-3	1,712
*933 North Lime Street	R-3	1,694

\*Not occupied as a rooming/boarding house.

## II. ZONING

The City of Lancaster does not allow rooming/boarding houses in the R-3 Zone. Rooming/boarding houses are only allowed in the R-4 Zone, and in the C-1 and C-2 Zones. Even in those zones, a rooming/boarding house is required to have a minimum of 3,500 gross square foot area. Rooming and boarding houses that do not meet the 3,500 gross square foot building area requirement are only allowed in the CB-1 and CB Districts. Further, rooming and boarding units require 200 square feet of habitable floor area for each room occupied as a living unit, plus one parking space per rooming unit.

No zoning applications have ever been filed requesting any zoning relief with respect to any of the rooming house properties. The properties are only licensed for single-unit residential occupancy.

## III. STATUS OF AGREEMENT WITH TENANTS

At least one of the tenants has asserted a right based upon her occupancy arrangements with Mr. London. That individual is seeking to have the court recognize that she has the right to protection by virtue of her arrangement.

A contract is illegal if either its formation or its performance is criminal, tortious, or otherwise opposed to public policy. O'Brien v. O'Brien Steel Construction Co., 440 Pa. 375, 271 A.2d 254 (1970). In determining whether a contract is valid of a public policy,

the entire transaction must be evaluated. In this case, the City specifically prohibits rooming/boarding houses in the R-3 Zone, and even if the rooming/boarding houses were in a zone where such units could be allowed, Mr. London has no permits to operate rooming/boarding houses. His permits are to operate only single-unit dwellings. A contract which cannot be performed without violation of a statute is illegal. County Comm'rs of Tioga County to Use of L.B. Smith, Inc. v. C. Davis, Inc., 439 Pa. 285, 266 A.2d 749 (1970). The violation of a municipal ordinance may render a contractual bargain illegal. See, Contractor Industries & Acceptance Corp. v. Zerr, 241 Pa. Super. 92, 359 A.2d 803 (1976). To be illegal, the subject of the agreement must be specifically prescribed by the ordinance. Shafer v. A.I.T.S., Inc., 285 Pa. Super. 490, 428 A.2d 152 (1981), which is the case here.

If a contract is found to be illegal, the law will have nothing to do with it and no part of the contract should be enforced. Knuth v. Erie-Crawford Dairy Co-operative Ass'n., 463 F.2d 470 (3<sup>rd</sup> Cir. 1972), *cert. denied*, 410 U.S. 913 (1973).

Plaintiff seeks the issuance of a continuing injunction pending a trial on the merits.

Respectfully submitted,  
ZIMMERMAN, PFANNEBECKER,  
NUFFORT & ALBERT, LLP

Dated: 6/20/18

By: 

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GARY CLARK, and  
CHRIS MCOUGHLIN  
Defendants.

**CERTIFICATE OF SERVICE**

I, Neil L. Albert, Esquire, hereby certify that on June 20, 2018, I served a true and correct copy of the Trial Memorandum of the City of Lancaster in Support of Preliminary Injunction upon the following person and in the manner indicated below:

**Service by Electronic Mail addressed as follows:**

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ZIMMERMAN, PFANNEBECKER,  
NUFFORT & ALBERT, LLP

Dated: June 20<sup>th</sup> 2018

By: 

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