

**STATE OF NEW YORK  
SUPREME COURT      COUNTY OF MONROE**

In the Matter of the Application of

120 EMS Hotel LLC, 120 EMS Parking LLC, Morgan  
Management, LLC and Robert C. Morgan,

Petitioner,

vs.

City of Rochester Board of Assessment Review,  
the Assessor of the City of Rochester,  
the City of Rochester, Monroe County, New York.

Respondents.

**PETITION**

Index No.:

Judge: Hon.

Tax Year: 2018/2019

For review of a Tax Assessment under Article 7  
of the Real Property Tax Law

The Petitioner above named, by its attorney, **ROBERT L. JACOBSON, ESQ.**,  
alleges as follows:

1. At all times hereinafter mentioned, Petitioner was, and still is, a taxpayer with a pecuniary interest in certain real property in the assessing unit of which the Respondents above named are the duly appointed assessor and the Board of Assessment Review, and is an aggrieved party with respect to the challenged assessment within the meaning of the Real Property Tax Law Section 704.
2. The Respondent, City of Rochester, at all times hereinafter mentioned, is a domestic municipal corporation situated in the County of Monroe, New York, organized and existing under and by virtue of the laws of the State of New York; the Assessor of said municipal corporation duties include the preparation and filing of the real property assessment rolls for the said tax year; and the Board of Assessment Review hears grievances and determines whether assessments should be reduced for said tax year.
3. The Respondent has heretofore prepared, completed and perfected, purportedly in accordance to law, an assessment roll for properties within the assessing unit for the 2018 tax roll year, which assessment roll included an assessment for Petitioner's real property described and assessed on **Schedule A** annexed

hereto.

4. Petitioner duly and timely made and filed a written application and statement under oath with Respondent Board of Assessment Review to protest and have the assessed valuation of said real property corrected, revised, and reduced, specifying therein the respects in which the assessment complained of was incorrect; the said application and statement requested reduction of the assessment complained of to an amount based upon its full and actual value, the property having been overvalued as set forth herein. The said application and statement are hereby referred to and made a part of this application as though fully set forth herein.
5. Upon information and belief, a final decision and determination on the said application and statement was rendered by the Respondents who failed and refused to correct and/or reduce the assessment as requested, and confirmed the assessed valuation of Petitioner's property as set forth herein.
6. Upon information and belief, Respondents duly gave the notice required by law by posting and publishing notice of the completion and filing of said assessment roll.
7. That the said assessment of Petitioner's real property and improvements is erroneous, unjust, unlawful and unequal, upon one or more of the following grounds:
  - a. **Overvaluation**, to wit: the full value stated or implied by the assessment of the Petitioner's real property herein is in excess of the actual value of said property, resulting in the extent of overvaluation of said property as set forth on **Schedule A** annexed hereto.
  - b. **Inequality**, to wit: the assessment of the real property of Petitioner has been made at a higher uniform percentage of value than the assessments of other

real property within the assessing unit; the specific instances of such inequality being the assessments of all other real property in the assessing unit and each and every parcel thereof.

c. **Inequality/classification**, to wit: said assessment is unequal in that it has been made at a higher proportionate valuation than the assessment of other taxable property of the same major type or, if applicable, classification, on the same rolls by the same assessing officer and such inequality is demonstrated by all the other real properties that are assessed upon the same assessment rolls;

d. **Exemptions and other agreements**, to wit: said assessment failed to take into account exemptions granted, or which should have been granted, to the Petitioner's property by law and/or pursuant to any agreements with respect to the Petitioner's property regarding payments due in lieu of taxes, or

e. **Illegal/erroneous**, to wit: said assessment is illegal and erroneous in that Petitioner's real property is not assessed on one common and general principle of valuation applied by respondent assessor in assessing generally the other real property appearing on the same assessment rolls.

8. Thirty (30) days have not elapsed since the final completion and filing of said assessment roll and public notice thereof.
9. Petitioner is aggrieved and injured by said unjust, unequal, excessive, illegal and erroneous assessment and will be required to pay a greater amount and proportion of real property taxes than Petitioner would be required to pay if the said assessment had been just, equal, fair, and accurate.
10. It is necessary that the assessment of your Petitioner's real estate be reduced in order to be made commensurate with the value of the property as set forth herein.

11. No provision is made by law for an appeal from Respondents' final determination, except by review on Petition to this Court, and no previous application for the relief sought herein has been made to any court or judge.

### **AS AND FOR A SECOND CAUSE OF ACTION**

12. Petitioner repeats and re-alleges paragraphs 1 through 11.
13. Upon information and belief, the method of computing the valuation of the improvements on said property is incorrect, inaccurate, unlawful, and illegal and said property is assessed at a higher proportionate value than the assessment of other property on the assessment rolls of the City of Rochester, New York.
14. Upon information and belief, your Petitioner is aggrieved by the aforesaid assessment and will be greatly injured by such over-valuation and inequality in that the tax that your Petitioner will be required to pay, if such assessment is allowed to remain as it now is, will amount to a far greater sum than your Petitioner would be required to pay if said property were not over-assessed at a higher proportionate ratio than that of other property upon the said assessment roll.
15. Upon information and belief, the Respondent has not applied the same rule, method or system of determining the valuation and computing the assessment upon the property or its benefits, without due process of law; said assessment is erroneous, unequal, excessive, unjust, inequitable, unreasonable and/or inappropriate for property of its type or class; and said assessment constitutes an unjust and unlawful discrimination against said property so appearing on the said assessment roll.
16. Upon information and belief, the Respondent has not applied the same rule, method or system of determining the valuation and computing the assessment upon the property of your Petitioner and the property of persons other than your Petitioner upon said assessment roll of the City of Rochester for the 2018 tax roll

year, but has adopted an arbitrary, unfair, unjust and unlawful method which has resulted in an unfair, unjust, and arbitrary discrimination against your Petitioner, and the property of your Petitioner on said assessment roll.

17. Upon information and belief, the equalization rate relied upon by the Respondent assessor in preparing and certifying the 2018 assessment roll of the City of Rochester is not an accurate indicator of the actual ratio of assessed value to fair market value for all parcels in this assessing unit in the said year. The evidence of verified, actual, recent sales of properties within the City of Rochester, either comprehensive or taken at random, is a more accurate indicator of the true percentage of fair market value at which the said City has assessed property in said year and the extent to which Petitioner's subject assessment is unequal.

#### **AS AND FOR A THIRD CAUSE OF ACTION**

18. Petitioner repeats and re-alleges paragraphs 1 through 17.
19. Upon information and belief, the Petitioner was not given fair, timely, and adequate notice of the assessment of the Petitioner's real property as it appears on the Respondent's duly filed 2018 tax roll.
20. Upon information and belief, the Petitioner's application for assessment review was not fair and adequately considered by the Board of Assessment because the Petitioner's application was rejected out of hand, without considering the information proffered, without conditioning the matters at issue, and without the Board of Assessment Review dedicating an adequate amount of time and resources to the Petitioner's grievance in violation of the procedures for such hearings under State law.
21. Upon information and belief, because of the excessive, unequal and unlawful assessment, and the improper methods used by said Assessor in making said

assessment, and because said assessment is erroneous, unreasonable, excessive and illegal, and because said property is assessed at a higher proportionate value than the assessment of other property on the assessment roll, the Petitioner is and will be forced to pay higher real property taxes than it would have if the assessment was fair, reasonable, and equitable.

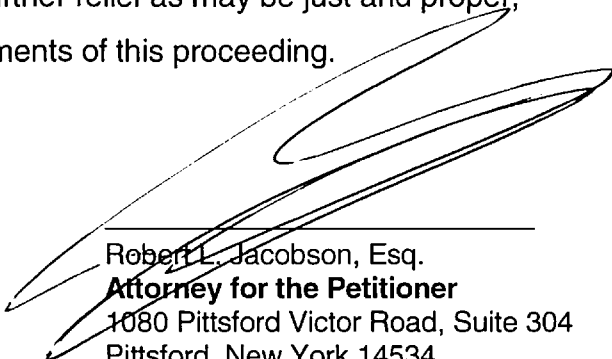
#### **AS AND FOR A FOURTH CAUSE OF ACTION**

22. Petitioner repeats and re-alleges paragraphs 1 through 21.
  
23. The Petitioner has not been provided with fair and adequate notice and opportunity to be heard with respect the Petitioner's assessment and the taxation of its property because the Petitioner did not have adequate notice of its new assessment for the 2018 tax year in time to prepare for the hearing of the Board of Assessment Review, because the Respondents herein failed to follow the rules and regulations of the State Board of Real Property Tax Services and the laws of the State of New York with respect to the assessment of real property, because the Respondents herein set the assessment of the Petitioner's property in an unfair and discriminatory manner and not at the same percentage of value consistent with other properties that are similar to the Petitioner's property thereby denying the Petitioner its right of equal protection under the law guaranteed by the state and federal constitutions, and because the rules and procedures of the State Board of Real Property Tax Services and the laws of the State of New York with respect to the assessment of real property violate the New York State and Federal constitutions.

**WHEREFORE**, Petitioner respectfully prays that the assessment roll be reviewed and corrected, and that said assessment of Petitioner's real property be reduced to a proper amount and be properly equalized with the assessments of other real property on the same roll; and that this Court take evidence, or cause same to be taken, to enable Petitioner to show the overvaluation unjust, unequal, excessive, illegal and erroneous assessment of Petitioner's real property to the end that the

assessment may be reduced to the full, true market value thereof and to a valuation proportionate to the assessments of other real property assessed; that the assessment roll be corrected to reflect any exemption or other agreement that affects the taxable value of the Petitioner's real property; that Petitioner receive refunds from the responsible party and be awarded costs pursuant to Section 722 of the Real Property Tax Law, costs pursuant to the CPLR, counsel fees, disbursements and such other and further relief as may be just and proper, together with the costs and disbursements of this proceeding.

Dated: May 24, 2018



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Robert L. Jacobson, Esq.  
**Attorney for the Petitioner**  
1080 Pittsford Victor Road, Suite 304  
Pittsford, New York 14534  
(585) 218-6290

# Petition Schedule A

**City** Rochester **County:** Monroe

**Legal Address:** 120 E. Main St.

**Tax ID Number:** 121.23-1-4.001

*File Number:* MOR02-10 **Client ID:**

Assessed Value	Equalization Rate	Full Value Assessment	Proper Full Value Assessment	Over Valuation	Proper Assessment	Over Assessment
\$5,212,400	98.00%	\$5,318,776	\$535,900	\$4,782,876	\$525,182	\$4,687,218

**Legal Address:** 124 E. Main St

**Tax ID Number:** 121.23-1-4.002

*File Number:* MOR02-11 **Client ID:**

Assessed Value	Equalization Rate	Full Value Assessment	Proper Full Value Assessment	Over Valuation	Proper Assessment	Over Assessment
\$1,987,600	98.00%	\$2,028,163	\$202,816	\$1,825,347	\$198,760	\$1,788,840

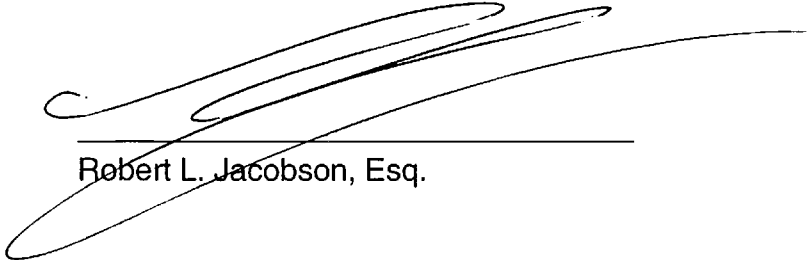
**Case Number:** MOR02-Rochester City-2018 (Riverside)



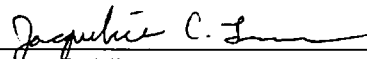
**VERIFICATION**

**STATE OF NEW YORK)  
COUNTY OF MONROE) ss:**

The undersigned, being duly sworn, deposes and says: I am an attorney and agent for the Petitioner herein. I have read the foregoing Petition and know the contents thereof; the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information and belief and, that as to those matters, I believe them to be true. The reason this verification is made by me and not by the Petitioner is that all the material allegations (except those as to matters of public record) of said Petition are within my personal knowledge.

  
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Robert L. Jacobson, Esq.

STATE OF NEW YORK)  
COUNTY OF MONROE) ss:  
Sworn to before me on this  
24 day of May, 2018

  
\_\_\_\_\_  
Notary Public  
JACQUELINE C LUM  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01LU6240499  
Qualified in Monroe County  
My Commission Expires May 02, 2019