

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM YORK COUNTY
Court of Common Pleas

DEC 08 2023

Honorable Mark J. Hayes, Circuit Court Judge

SC Court of Appeals

Appellate Case Number 2022-001826

Carolina Real Estate Holdings, LLC Appellant,

v.

Brilin Electric, LLC and W & L Services, LLC Defendants,

of which, Brilin Electric, LLC is Respondent.

**RECORD ON APPEAL
VOL. I
(ROA00001 – 00458)**

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

CAROLINA REAL ESTATE HOLDINGS,
LLC

Plaintiff,

v.

BRILIN ELECTRIC, LLC and W & L
SERVICES, LLC

Defendants.

IN THE GENERAL COURT OF COMMON
PLEAS SIXTEENTH JUDICIAL CIRCUIT
CASE NO. 2020-CP-46-01145

ORDER ON POST-TRIAL MOTIONS

This above referenced matter is before the Court for post-trial motions.

The underlying litigation arises from a commercial Lease relationship between Carolina Real Estate Holdings, LLC ("Plaintiff" or "Landlord") and Defendant Brilin Electric, LLC ("Defendant" or "Tenant"). After a lengthy trial, the jury was presented a general verdict form that addressed three claims: (1) the Plaintiff's Breach of Contract claim against the Defendant; (2) the Defendant's Breach of Contract counterclaim against the Plaintiff; and (3) the Defendant's counterclaim of a violation of the Unfair Trade Practices Act ("UTPA"). After concluding their deliberations, the jury's foreperson completed and signed the verdict form. The jury found for the Plaintiff on its breach of contract claim against the Defendant in the amount of \$10,513.88 as actual damages. The jury found for the Defendant on its breach of contract counterclaim against the Plaintiff in the amount of \$4,424.75 as actual damages; and found for the Defendant on its UTPA counterclaim against the Plaintiff in the amount of \$6,089.13 as actual damages. After the verdict was announced, both parties were provided an opportunity to raise any concerns or issues prior to the jury's dismissal. Hearing nothing from either side, the jury was dismissed.

Post-trial motions were timely filed by both parties. Both parties seek an award of attorney's fees pursuant to the Lease provision which provides for an award of reasonable attorney's fees to the prevailing party if litigation over the Lease occurs. Plaintiff also seeks a

JNOV on the jury determination on the UTPA counterclaim; and Plaintiff seeks a *nisi remittitur* as to the dollar amounts awarded on the UTPA (from \$6,089.13 to \$1.00) and the breach of contract claim against the Plaintiff (seeks a reduction in the amount of \$280.00). In addition to an award of reasonable attorney's fees pursuant to the Lease terms, the Defendant also seeks an award of reasonable attorney's fees pursuant to the UTPA. The Defendant also seeks to treble the jury's determination of actual damages of the UTPA award as mandated and required by the statute for willful conduct.

When determining the issue of "prevailing party" this Court has examined the case law offered by both sides and also considered the statutory references made by the parties and those cited in the *Seckinger* case. *Seckinger v. Vessel Excalibur*, 326 S.C. 382, 388, 483 S.E.2d 775, 777-78 (1997). It is very clear to this Court that the Plaintiff is not the prevailing party. The only way the Plaintiff can be considered as the prevailing party is to isolate the jury determination of its award of \$10,513.88 of actual damages and to ignore the rest of the litigation involving the Lease. The jury's verdict, on its face, was clear that it did not want the Plaintiff to leave the courtroom with an award of money. In the jury's wisdom, it made an identical award of \$10,513.88 to the Defendant which it split between the defendant's contract claim and the UTPA claim. While the Plaintiff can and did argue through its motion of JNOV and *Nisi Remittitur* motions that the awards should be reduced, even if granted, the jury's message remains clear. The jury did not wish the Plaintiff to net a recovery of money. While the argument can be made that by awarding the identical amount to the Defendant, the jury also did not wish the defendant to net a recovery, the jury gave the Defendant a sum that was more than what was argued in the defendant's closing. The more logical and reasonable conclusion is that the jury accepted the Defendant's factual theory of the case and viewed the evidence in a manner that favored the

Defendant. Thus, the reasonable conclusion was that the Defendant prevailed in convincing the jury of the truth of the matters it asserted to them. Additionally, even if the Plaintiff's JNOV and *nisi* motions were granted, the Plaintiff still would not meet its burden of it being the prevailing party given the magnitude of the case it brought and actively pursued against the Defendant in relation to the award of damages it made to the Plaintiff. The testimony presented during the trial also supports this Court's conclusion. Given the overall nature of the case, the Defendant is the prevailing party as to the issues arising from the Lease.

It is worth noting that before trial, this Court made repeated attempts to encourage the parties to the litigation to resolve the dispute prior to trial. Both parties proposed informal offers, but neither party made a formal written offer as allowed by the statutes referenced in *Seckinger* (and no formal offer of judgment was made as allowed by the rules of civil procedure). As such, this Court is prohibited from using any settlement demands as a factor in determining the issue of prevailing party. This Court also examined the pleadings and could not find an exact amount demanded by either party. Notwithstanding, this Court's knowledge of the settlement discussions was a factor in determining the reasonableness of the award of attorney's fees as it relates to the work performed by the attorneys in preparing the case.

Because neither party desired to engage the jury with further questions after their verdict was announced, the issue of willfulness is made *de novo* by this Court. This Court's *de novo* review includes the credibility of the witnesses who testified at trial. Accordingly, this Court finds the Defendant has met its burden of establishing willfulness for purposes of the UTPA.

The UTPA, similar to the Lease provision, mandates the award of attorney fees when a willful violation is established. The same attorney fees analysis accomplished herein related to the Lease agreement can also apply to the award of attorney fees for UTPA.

As to the reasonableness amount of the fee, this Court has considered the traditional factors in South Carolina for setting attorney fees. This Court has also considered factors unique to this particular case. Given the dollar amount sought by the Plaintiff if it were determined to be the prevailing party, the amount awarded by this Court falls within the area of reasonableness. Furthermore, the fact that Plaintiff was successful on one of its claims against the Defendant is the primary factor in reducing the full amount sought by Defendant for attorney fees. The quality of legal work performed by all of the attorneys before this Court was of a very high caliber. While both hourly rates listed by the attorneys are reasonable, some consideration was given to the lower rate charged by Plaintiff's counsel. Also, some consideration was given to the fact that some charges appear to be for prelitigation matters. Another factor in not awarding the full amount presented by the defendant for attorney fees is that this Court has trebled the damages for the UTPA claim. In other words, this Court has made a diligent effort to determine a reasonable attorney fee to award in this case.

THEREFORE, it shall be the Order of the Court that:

1. That Defendant's jury award for damages for the Plaintiff's violation of the UTPA be trebled and awarded to the Defendant in the amount of \$18,267.99;
2. The Defendant is entitled to its reasonable attorney's fees of \$58,879.55 and costs of \$3,553.05, totaling \$62,432.60 pursuant to the prevailing party provision contained in section 28(g) of the Lease; and
3. The Plaintiff pay the Defendant's reasonable attorney's fees and costs as the prevailing party, and treble damages resulting from the Plaintiff's violation of the UTPA, in the total amount of \$80,700.59.

AND IT IS SO ORDERED.

HON. MARK J. HAYES
SIXTEENTH JUDICIAL CIRCUIT

November __, 2022
York, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2020-CP-46-01145

Carolina Real Estate Holdings, LLC

Brilin Electric, LLC &

W & L Services, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Nathan A. White

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Brilin Electric, LLC	Carolina Real Estate Services, LLC	\$80,700.59
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Verdict, plus Order on Post-Trial Motions; see attached order.



York Common Pleas

Case Caption: Carolina Real Estate Holdings Llc VS Brilin Electric Llc , defendant,
et al
Case Number: 2020CP4601145
Type: Order/Judgment and Form 4

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2022-12-09 15:26:33 page 8 of 8

ELECTRONICALLY FILED - 2022 Dec 09 3:38 PM - YORK - COMMON PLEAS - CASE#2020CP4601145

ROA00015

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2020CP4601145

ELECTRONICALLY FILED - 2023 Jan 19 4:49 AM - YORK - COMMON PLEAS - CASE # 2020CP4601145

Carolina Real Estate Holdings
Llc

Brilin Electric Llc

W & L Services Llc

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit)
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

SEE ATTACHED VERDICT FORM

ORDER INFORMATION

This order ~~ends~~ does not end the case.
Additional Information for the Clerk: _____

Jury Verdict \$10,513.85 for Plaintiff, \$4,424.75 for Defendant, cost \$6,089.73 for Plaintiff

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2132
Judge Code

7/21/2022
Date

For Clerk of Court Office Use Only

This judgment was entered on 1/19/22, and a copy mailed first class or placed in the appropriate attorney's box on 1/19/23, to attorneys of record or to parties (when appearing pro se) as follows:

Stephen David Dluznieski PO Box 10940 Rock Hill, SC
29731

Nathan Adam White 1420 E. 7Th St. Suite 100 Charlotte, NC
28204

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter: DCRP

David Hamilton - Clerk of Court

Court Reporter: DCRP: Ebony Love Taylor

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2023 Jan 19 11:49 AM - YORK - COMMON PLEAS - CASE#2020CP4601145

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
C/A No. 2020-CP-46-01145

CAROLNA REAL ESTATE HOLDINGS,
LLC

Plaintiff,

JURY VERDICT FORM

v.

BRILIN ELECTRIC, LLC and W & L
SERVICES, LLC

Defendants.

- I. As to the Plaintiff's claim of Breach of Contract against the Defendant, we unanimously find:

☒ for the Plaintiff and award
\$ 10,513.88 as actual damages

OR

☐ for the Defendant

- II. As to the Defendant's counterclaim of Breach of Contract against the Plaintiff, we unanimously find:

☐ for the Plaintiff

OR

☒ for the Defendant and award
\$ 4,424.75 as actual damages

III. As to the Defendant's counterclaim of a violation of the Unfair Trade Practice Act, we unanimously find:

_____ for the Plaintiff

OR

☒ for the Defendant and award

\$ 6,089.13 as actual damages

July 21, 2022
York, SC

Patti L. Spradling
JURY FOREPERSON

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
Carolina Real Estate Holdings, LLC,)
)
Plaintiff,)
)
vs.)
)
Brilin Electric, LLC,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

SUMMONS
(NON-JURY ACTION)

CASE NO.: 2020-CP-46-_____

TO THE DEFENDANT NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Complaint on the undersigned at HAMILTON MARTENS, LLC, at Post Office Box 10940, Rock Hill, South Carolina 29731, within thirty (30) days after the service hereof, exclusive of the day of such service; and you are hereby notified that should you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Complaint.

s/ Steve D. Dlugneski
Steve D. Dlugneski
S.C. Bar No.: 102019
HAMILTON MARTENS, LLC
P. O. Box 10940
Rock Hill, South Carolina 29731
(803) 329-7672
steve.dlugneski@hamiltonmartens.com
ATTORNEYS FOR PLAINTIFF

March 27, 2020
Rock Hill, South Carolina

ROA00020

FACTUAL BACKGROUND

5. Plaintiff realleges all prior allegations, except those inconsistent herewith, as if fully set forth hereinafter.

6. Plaintiff is the owner of a commercial property located at 2180 Carolina Place Drive, Suite 111 in Fort Mill, South Carolina (the "Premises").

7. On or about April 17, 2017, the Plaintiff entered a written lease agreement with Defendant for the Premises (the "Lease"). A true and accurate copy of the Lease is attached hereto as "Exhibit A" and its terms are incorporated herein by reference.

8. Among other provisions, the Lease provided for a three-year lease term commencing on May 1, 2017, and ending on April 30, 2020.

9. Paragraph 10 of the Lease provided that the Plaintiff "shall not be responsible for repairs or capital repairs or replacements rendered necessary by the negligence or intentional wrongful acts of [the Defendant], its employees, agents, invitees or contractors."

10. Paragraph 11(a) of the Lease provided that the Defendant, "throughout the initial term of [the Agreement], and any extension or renewal thereof, at its expense, shall maintain in good order and repair the [Premises], specifically including but not limited to any building and other improvements located thereon."

11. During the third year of the initial term of the Lease, the Plaintiff discovered multiple damages to the Premises that were caused by the negligence, recklessness, and/or intentional wrongful acts of the Defendant including, but not limited to, the following:

(a) There is damage to one or more interior walls inside the building at the Premises that must be repaired;

(b) Two of the overhead doors of the building at the Premises have been damaged and

must be repaired or replaced;

(c) The carpeting inside the office area of the building at the Premises has been soiled and must be professionally cleaned;

(d) The walls inside the office area of the building at the Premises have been damaged and must be re-painted;

(e) Asphalt paving outside the building at the Premises has been damaged in one or more areas and must be replaced; and,

(f) The brickwork in the area of the overhead door that opens on to the ramp at the building at the Premises has been damaged and must be repaired.

12. As a direct and proximate result and consequence of the negligence, recklessness, and/or intentional wrongful acts by the Defendant at the Premises, the Plaintiff has incurred damages in an amount to be determined by the trier of fact.

FOR A FIRST CAUSE OF ACTION
(Negligence and Gross Negligence)

13. The Plaintiff realleges all prior allegations, except those inconsistent herewith, as if fully set forth hereinafter.

14. The Defendant has a duty, throughout the lease term provided for in the Lease, to maintain the Premises in good order and repair.

15. The Defendant breached its duty to maintain the Premises in good order and repair, and the Defendant was negligent, grossly negligent, careless, willful and wanton in connection with its tenancy at the Premises in the following particulars:

(a) By causing damage to one or more of the interior walls inside the building at the Premises;

(b) By causing damage to two of the overhead doors of the building at the

Premises;

- (c) By engaging in actions and/or omissions that have caused the carpeting inside the office area of the building at the Premises to become soiled to the point of needing professional cleaning;
- (d) By engaging in actions and/or omissions that have caused the walls inside the office area of the building at the Premises to require re-painting of the same;
- (e) By causing damage to the asphalt paving outside the building at the Premises in one or more areas; and,
- (f) By causing damage to the brickwork in the area of the overhead door that opens on to the ramp at the building at the Premises.

16. The damages set out and described in Paragraphs #11 and 15 herein have proximately damaged the Plaintiff in an amount to be determined by the trier of fact.

17. Since the damages set out and described in Paragraphs #11 and 15 herein were committed with gross negligence and reckless disregard for the rights of others, the Plaintiff is entitled to an award of punitive damages.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract)

18. The Plaintiff realleges all prior allegations, except those inconsistent herewith, as if fully set forth hereinafter.

19. The Defendant breached the Lease by failing to maintain the Premises, including the building located thereon, in good order and repair during the lease term provided for in the Lease.

20. The Defendant's breach of the Lease has caused the Plaintiff to suffer damages, in that the Plaintiff must now repair the damages set out and described in Paragraphs #11 and 15

herein.

21. The Plaintiff is entitled to the remedies available to it pursuant to the Lease, and under the common and statutory law of this state.

WHEREFORE, having fully plead, the Plaintiff prays for the following relief:

- (1) For judgment against the Defendant, and for an award of such damages and relief as authorized by the terms of the Lease, at law or in equity;
- (2) For an award of attorney's fees and court costs incurred by the Plaintiff in bringing and prosecuting this action; and,
- (3) For such other and further relief as the Court deems just and proper.

Respectfully Submitted,

s/ Steve D. Dluzneski

Steve D. Dluzneski

S.C. Bar No.: 102019

HAMILTON MARTENS, LLC

P. O. Box 10940

Rock Hill, South Carolina 29731

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ATTORNEYS FOR PLAINTIFF

March 27, 2020

Rock Hill, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA)
COUNTY OF YORK) LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") by and between Carolina Real Estate Holdings, LLC, a North Carolina limited liability company, ("Landlord"), whose address is 15105-D John J. Delaney Drive, Suite 347, Charlotte, NC 28277-2741, or such other address as Landlord specifies in writing; and Brelin Electric LLC, ("Tenant"), whose address is 1774 Carolina Place Dr #108 Fort Mill, SC 29708

For and in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

BACKGROUND STATEMENT

A. Landlord is the owner of the building located at 2180 Carolina Place Drive, Fort Mill, York County, South Carolina, (the "Building").

B. Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the Premises for the purposes and upon the terms and conditions hereinafter set forth.

PREMISES

1. Landlord leases unto Tenant, and Tenant hereby leases and takes upon the terms and conditions which hereinafter appear, the following described property, including any improvements located thereon (hereinafter called the "Premises"), to wit: Suite 111, 2180 Carolina Place Drive, Fort Mill, SC 29715.

TERM AND CONSTRUCTION

2. (a) The term of this Lease shall commence on the date May 1, 2017 (the "Rent Commencement Date") and ends on April 30, 2020. All of the following conditions shall have been satisfied or waived by Tenant in writing:

2.1 Landlord has delivered actual possession and control of the Premises to Tenant;

2.2 Landlord has delivered a fully executed copy of this Lease to Tenant.

The first Lease Year Anniversary shall be the date twelve calendar months after the first day of the first full month immediately following the Rent Commencement Date and successive Lease Year Anniversaries shall be the date twelve calendar months from the previous Lease Year Anniversary. The lease shall terminate on the date which is the third Lease Year Anniversary (the "Initial Term"), unless sooner terminated pursuant to this Lease. Further, and so long as

this Lease has not been terminated and so long as Tenant is not then in default, Tenant shall have the right to renew the term of this Lease for one (1) successive period of three (3) years by providing written notice of its election to renew the term to Landlord one hundred eighty (180) days prior to the expiration of the then existing term of this Lease (as it may have been renewed). Rent for the additional three (3) period shall be \$3,200.00 per month, plus 3% per year.

(b) Tenant shall not permit any mechanic's, materialman's or similar lien to be filed against any portion of the Premises for any labor performed or material furnished in connection with any work performed or caused to be performed by Tenant, (and not relating to Landlord's failure to perform Landlord's obligations hereunder) to attach to the Premises or the Building or the interest of Landlord or Landlord's lessor, if any, therein or to Tenant's interest in this Lease or the Premises at any time. Tenant covenants and agrees to indemnify, defend and hold harmless Landlord from and against any such lien or claim of lien and any and all costs, expenses and liabilities relating thereto. If any such lien is filed, then Tenant shall fully pay or discharge the same or post a bond regarding such lien in accordance with applicable law and in a manner acceptable to Landlord within ten (10) days of receipt of written notice of the filing thereof. If Tenant fails to fully pay or discharge such lien or post a bond regarding such lien in accordance with applicable law and in a manner acceptable to Landlord within ten (10) days of receipt of written notice of the filing thereof, then Landlord shall have the immediate right (but not the obligation) to pay and/or discharge such lien at Tenant's cost and expense, and Tenant shall, within ten (10) days of written demand, pay all Landlord's costs and expenses incurred in paying or discharging such lien. Tenant's failure to fully pay or discharge said lien or post a bond within the time specified shall also constitute an immediate default under the Lease and Tenant may exercise its rights to terminate and pursue any other remedies available at law or in equity. Prior to the commencement of any improvements to the Premises, Tenant shall notify Landlord thereof so that Landlord may execute for Tenant, and Tenant may post in a conspicuous place upon the Premises, a notice of non-responsibility as contemplated by the South Carolina Code of Laws.

RENTAL

3. Beginning on the "Rent Commencement Date," Tenant agrees to pay Landlord without notice, demand, deduction or set off, rent in monthly installments in advance on the first day of each calendar month as follows: \$3,000.00 per month during the first Lease Year; \$3,090.00 per month during the second Lease Year; and \$3,182.70 per month during the third Lease Year. Rental for any period during the term hereof which is less than one month shall be the pro-rated portion of the monthly installment of rental due, based upon a 30-day month.

Tenant shall pay all rental to Landlord at the following address: Carolina Real Estate Holdings LLC, 15105-D John J. Delaney Dr., Suite 347, Charlotte, NC 28277.

LATE CHARGES

4. If Landlord fails to receive full rental payment within ten days after it becomes due, Tenant shall pay Landlord, as additional rental, a late charge equal to five percent (5.00%) of the overdue amount, plus any actual bank fees incurred for dishonored payments. The parties agree that such a late charge represents a fair and reasonable estimate of the cost Landlord will incur by reason of such late payment.

SECURITY DEPOSIT

5. Upon the execution of this Lease, Tenant shall deposit with Landlord the sum of \$3,000.00 as a security deposit which shall be held by Landlord as security for the full and faithful performance by Tenant of each and every term, covenant and condition of this Lease. The security deposit does not represent payment of and Tenant shall not presume application of same as payment of the last monthly installment of rental due under this Lease. Landlord shall have no obligation to segregate or otherwise account for the security deposit except as provided in this paragraph 5. If any of the rental or other charges or sums payable by Tenant shall be over-due and unpaid or should payments be made by Landlord on behalf of Tenant, or should Tenant fail to perform any of the terms of this Lease, then Landlord may, at its option, appropriate and apply the security deposit, or so much thereof as may be necessary, to compensate toward the payment of the rents, charges or other sums due from Tenant, or towards any loss, damage or expense sustained by Landlord resulting from such default on the part of the Tenant; and in such event Tenant upon demand shall restore the security deposit to the amount set forth above in this paragraph 5. In the event Tenant furnishes Landlord with proof that all utility bills and other bills of Tenant related to the Premises have been paid through the date of Lease termination, and performs all of Tenant's other obligations under this Lease, the security deposit shall be returned to Tenant within sixty (60) days after the date of the expiration or sooner termination of the term of this Lease and the surrender of the Premises by Tenant in compliance with the provisions of this Lease.

UTILITY BILLS/SERVICE CONTRACTS

6. Landlord and Tenant agree that utility bills and service contracts ("Service Obligations") for the Premises shall be paid by the party indicated below as to each Service Obligation. In each instance, the party undertaking responsibility for payment of a Service Obligation covenants that they will pay the applicable Service Obligations prior to delinquency. The responsibility to pay for a Service Obligation shall include all metering, hook-up fees or other miscellaneous charges associated with establishing, installing and maintaining such utility or contract in said party's name. Within thirty (30) days of the Lease Commencement Date, Tenant shall provide Landlord with a copy of any requested Tenant Service Obligation information.

Landlord shall be responsible for: Landscaping and Pest Control.

Tenant shall be responsible for: Sewer/Septic, Water, Electric, Gas, Telephone, HVAC (excluding semiannual service), Security System, Fiber Optic, and interior janitorial and cleaning.

Landlord shall not be liable for injury to Tenant's business or loss of income therefrom or for damage that may be sustained by the person, merchandise or personal property of Tenant, its employees, agents, invitees or contractors or any other person in or about the Premises, caused by or resulting from fire, steam, electricity, gas, water or rain, which may leak or flow from or into any part of the Premises, or from the breakage, leakage, obstruction or other defects of any utility installations, air conditioning system or other components of the Premises, except to the extent that such damage or loss is caused by Landlord's gross negligence or willful misconduct. Landlord makes no representations or warranties with respect to the heating, ventilation and air conditioning system(s) or utility installations existing as of the date hereof or in the future. Subject to the provisions of this paragraph 6, Landlord shall not be liable in damages or otherwise for any discontinuance, failure or interruption of service to the Premises of utilities or the heating, ventilation and air conditioning system(s) and Tenant shall have no right to terminate this Lease or withhold rental because of the same.

RULES AND REGULATIONS

7. The rules and regulations, if any, attached hereto ("Rules and Regulations") are made a part of this Lease. Tenant agrees to comply with any Rules and Regulations of Landlord in connection with the Premises which are in effect at the time of the execution of the Lease or which may be from time to time promulgated by Landlord in its reasonable discretion, provided such Rules and Regulations are in writing and are not in conflict with the terms and conditions of the Lease.

TAXES AND INSURANCE

8. Landlord shall pay all taxes (including but not limited to, ad valorem taxes, special assessments and any other governmental charges) on the Premises and shall procure and pay for such commercial general liability, broad form fire and extended and special perils insurance with respect to the Premises as Landlord in its reasonable discretion may deem appropriate. Tenant shall be solely responsible for insuring Tenant's personal and business property and for paying any taxes or governmental assessments levied thereon.

INSURANCE; WAIVER; INDEMNITY

9. (a) During the term of this Lease, Tenant shall maintain commercial general liability insurance coverage (occurrence coverage) with broad form contractual liability coverage and with coverage limits of not less than \$1,000,000.00 combined single limit, per occurrence, specifically including liquor liability insurance covering consumption of alcoholic beverages by customers or invitees of Tenant should Tenant choose to sell alcoholic beverages. Such policy shall insure Tenant's performance of the indemnity provisions of this Lease, but the amount of such insurance shall not limit Tenant's liability nor relieve Tenant of any obligation hereunder. All policies of insurance provided for herein shall name as "additional insureds" Landlord, Landlord's Agent, all mortgagees of Landlord and such other individuals or entities as Landlord may from time to time designate upon written notice to Tenant. Tenant shall provide to Landlord,

at least thirty (30) days prior to expiration, certificates of insurance to evidence any renewal or additional insurance procured by Tenant. Tenant shall provide evidence of all insurance required under this Lease to Landlord prior to the Lease Commencement Date.

(b) Landlord (for itself and its insurer) waives any rights, including rights of subrogation, and Tenant (for itself and its insurer) waives any rights, including rights of subrogation, each may have against the other for compensation of any loss or damage occasioned to Landlord or Tenant arising from any risk generally covered by the "all risks" insurance required to be carried by Landlord and Tenant. The foregoing waivers of subrogation shall be operative only so long as available in the State of South Carolina. The foregoing waivers shall be effective whether or not the parties maintain the insurance required to be carried pursuant to this Lease.

(c) Except as otherwise provided in paragraph 10(b), Tenant indemnifies Landlord for damages proximately caused by the negligence or wrongful conduct of Tenant and Tenant's employees, agents, invitees or contractors. Except as otherwise provided in paragraph 10(b), Landlord indemnifies Tenant for damages proximately caused by the negligence or wrongful conduct of Landlord and Landlord's employees, agents, invitees or contractors. The indemnity provisions in this paragraph 10 cover personal injury and property damage and shall bind the employees, agents, invitees or contractors of Landlord and Tenant (as the case may be). The indemnity obligations in this paragraph 10 shall survive the expiration or earlier termination of this Lease.

REPAIRS BY LANDLORD

10. Landlord agrees to keep in good repair the roof, foundation, structural supports and exterior walls of the buildings located on the Premises (exclusive of all glass and exclusive of all exterior doors) and, except as may be specifically allocated to Tenant in paragraph 12 herein, Landlord agrees to be responsible for capital repairs and replacements on the Premises; provided that Landlord shall not be responsible for repairs or capital repairs or replacements rendered necessary by the negligence or intentional wrongful acts of Tenant, its employees, agents, invitees or contractors. Tenant shall promptly report in writing to Landlord any defective condition known to it which Landlord is required to repair or replace and failure to report such conditions shall make Tenant responsible to Landlord for any liability incurred by Landlord by reason of such conditions. Tenant agrees to pay, within thirty (30) days of receipt of an invoice detailing such increase, Tenant's Proportionate Share (18%) of any increase in the Common Area Maintenance over the Base Year of 2016. The term "Common Area Maintenance Expenses" shall mean and include the total cost and expense typically paid or incurred in operating and maintaining the Common Areas of property of this type, including but not limited to landscaping, parking lot repair, painting, lighting, insurance, removal of trash and payment for exterior lighting and water.

REPAIRS BY TENANT

11. (a) Tenant accepts the Premises in their present condition and as suited for the Permitted Use and Tenant's intended purposes. Tenant, throughout the initial term of this Lease, and any extension or renewal thereof, at its expense, shall maintain in good order and repair the Premises, (except those repairs expressly required to be made by Landlord hereunder), specifically including but not limited to any building and other improvements located thereon, all light bulb and ballast replacements, plumbing fixtures and systems repairs within the Premises and water heater repairs. Tenant shall use only licensed contractors for repairs where such license is required. Landlord shall have the right to approve the contractor as to any repairs in excess of \$3,000.00.

Landlord warrants to Tenant that all components of the building shall be in good first class condition and working order at the time Tenant first occupies the Premises. Landlord shall either assign to Tenant or enforce on Tenant's behalf, all warranties on the HVAC system and any other systems and equipment installed on or within the Premises.

Tenant, at its expense, shall maintain the heating, ventilation and air conditioning system(s) in good order and repair, including but not limited to replacement of parts, compressors, air handling units and heating units. Provided that Tenant shall have obtained Landlord's prior written approval of the contractor and the repair or replacement expenses for heating, ventilation and air conditioning equipment, Tenant shall not be liable for more than \$ 200.00 (per occurrence) or \$600.00 (annually), and Landlord shall reimburse Tenant for the amount in excess of the stated amount upon the written request of Tenant.

(b) Tenant agrees to return the Premises to Landlord at the expiration or prior termination of this Lease, in as good condition and repair as on the Lease Commencement Date, natural wear and tear, damage by storm, fire, lightning, earthquake or other casualty alone excepted. Tenant, Tenant's employees, agents, invitees or contractors shall take no action which may void any manufacturers or installers warranty with relation to the Premises. Tenant shall indemnify and hold Landlord harmless from any liability, claim, demand or cause of action arising on account of Tenant's breach of the provisions of this paragraph 12.

ALTERATIONS

12. Other than Tenant's Initial Improvements, Tenant shall not make any alterations, additions, or improvements to the Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall promptly remove any alterations, additions, or improvements constructed in violation of this paragraph 13 upon Landlord's written request. All approved alterations, additions, and improvements will be accomplished in a good and workmanlike manner, in conformity with all applicable laws and regulations, and by a contractor approved by Landlord, free of any liens or encumbrances. Tenant shall have the right to remove any alterations, additions or improvements (whether or not made with Landlord's consent) at the termination of the Lease and shall restore the Premises to its prior condition, all at Tenant's expense. Tenant may remove any of Tenant's machinery, equipment or trade fixtures. Tenant shall repair, at Tenant's expense, any damage to the Premises caused by the

removal of any such machinery, equipment or trade fixtures. It is Tenant's intention to have a third party install and own certain work station and divider equipment within the Premises. Landlord consents to this installation and waives any lien as to such third party property.

DESTRUCTION OF OR DAMAGE TO PREMISES

13. (a) If the Premises are totally destroyed by storm, fire, lightning, earthquake or other casualty, Landlord shall have the right to terminate this Lease on written notice to Tenant within thirty (30) days after such destruction and this Lease shall terminate as of the date of such destruction and rental shall be accounted for as between Landlord and Tenant as of that date.

(b) If the Premises are damaged but not wholly destroyed by any such casualties or if the Landlord does not elect to terminate the Lease under paragraph 14(a) above, Landlord shall commence (or shall cause to be commenced) reconstruction of the Premises within one hundred twenty (120) days after such occurrence and prosecute the same diligently to completion, not to exceed two hundred seventy (270) days from the date upon which Landlord receives applicable permits and insurance proceeds. In the event Landlord shall fail to substantially complete reconstruction of the Premises within said two hundred seventy (270) day period, Tenant's sole remedy shall be to terminate this Lease.

(c) In the event of any casualty at the Premises during the last one (1) year of the Lease Term, Landlord and Tenant each shall have the option to terminate this Lease on written notice to the other of exercise thereof within sixty (60) days after such occurrence.

(d) In the event of reconstruction of the Premises, Tenant shall continue the operation of its business in the Premises during any such period to the extent reasonably practicable from the standpoint of prudent business management, and the obligation of Tenant to pay annual rental and any other sums due under this Lease shall remain in full force and effect during the period of reconstruction. The annual rental and other sums due under this Lease shall be abated proportionately with the degree to which Tenant's use of the Premises is impaired, commencing from the date of destruction and continuing during the period of such reconstruction. Tenant shall not be entitled to any compensation or damages from Landlord for loss of use of the whole or any part of the Premises, Tenant's personal property, or any inconvenience or annoyance occasioned by such damage, reconstruction or replacement.

(e) In the event of the termination of this Lease under any of the provisions of this paragraph 14, both Landlord and Tenant shall be released from any liability or obligation under this Lease arising after the date of termination, except as otherwise provided for in this Lease.

GOVERNMENTAL ORDERS

14. Tenant, at its own expense, agrees to comply with: (a) any law, statute, ordinance,

regulation, rule, requirement, order, court decision or procedural requirement of any governmental or quasi-governmental authority having jurisdiction over the Premises, (b) the rules and regulations of any applicable governmental insurance authority or any similar body, relative to the Premises and Tenant's activities therein; (c) provisions of or rules enacted pursuant to any private use restrictions, as the same may be amended from time to time and (d) the Americans with Disabilities Act (42 U.S.C.S. § 12101, et seq.) and the regulations and accessibility guidelines enacted pursuant thereto, as the same may be amended from time to time. Landlord and Tenant agree, however, that if in order to comply with such requirements the cost to Tenant shall exceed a sum equal to one (1) year's rent, then Tenant may terminate this Lease by giving written notice of termination to Landlord in accordance with the terms of this Lease, which termination shall become effective sixty (60) days after receipt of such notice and which notice shall eliminate the necessity of compliance with such requirements, unless, within thirty (30) days of receiving such notice, Landlord agrees in writing to be responsible for such compliance, at its own expense, and commences compliance activity, in which case Tenant's notice given hereunder shall not terminate this Lease.

CONDEMNATION

15. (a) If the entire Premises shall be appropriated or taken under the power of eminent domain by any governmental or quasi-governmental authority or under threat of and in lieu of condemnation (hereinafter, "taken" or "taking"), this Lease shall terminate as of the date of such taking, and Landlord and Tenant shall have no further liability or obligation arising under this Lease after such date, except as otherwise provided for in this Lease.

(b) If more than twenty-five percent (25%) of the floor area of any building of the Premises is taken, or if by reason of any taking, regardless of the amount so taken, the remainder of the Premises is not one undivided space or is rendered unusable for the Permitted Use, either Landlord or Tenant shall have the right to terminate this Lease as of the date Tenant is required to vacate the portion of the Premises taken, upon giving notice of such election within thirty (30) days after receipt by Tenant from Landlord of written notice that said Premises have been or will be so taken. In the event of such termination, both Landlord and Tenant shall be released from any liability or obligation under this Lease arising after the date of termination, except as otherwise provided for in this Lease.

(c) Landlord and Tenant, immediately after learning of any taking, shall give notice thereof to each other.

(d) If this Lease is not terminated on account of a taking as provided herein above, then Tenant shall continue to occupy that portion of the Premises not taken and the parties shall proceed as follows: (i) at Landlord's cost and expense and as soon as reasonably possible, Landlord shall restore (or shall cause to be restored) the Premises remaining to a complete unit of like quality and character as existed prior to such appropriation or taking; and (ii) the annual rent provided for in paragraph 3 and other sums due under the Lease shall be reduced on an equitable basis, taking into account the relative values of the portion taken as compared to the portion remaining. Tenant waives any statutory rights of termination that may arise because of any

partial taking of the Premises.

(e) Landlord shall be entitled to the entire condemnation award for any taking of the Premises or any part thereof. Tenant's right to receive any amounts separately awarded to Tenant directly from the condemning authority for the taking of its merchandise, personal property, relocation expenses and/or interests in other than the real property taken shall not be affected in any manner by the provisions of this paragraph 16, provided Tenant's award does not reduce or affect Landlord's award and provided further, Tenant shall have no claim for the loss of its leasehold estate.

ASSIGNMENT AND SUBLETTING

16. Tenant shall not assign this Lease or any interest hereunder or sublet the Premises or any part thereof, or permit the use of the Premises by any party other than the Tenant, without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Consent to any assignment or sublease shall not impair this provision and all later assignments or subleases shall be made likewise only on the prior written consent of Landlord. No sublease or assignment by Tenant shall relieve Tenant of any liability hereunder.

EVENTS OF DEFAULT

17. The happening of any one or more of the following events (hereinafter any one of which may be referred to as an "Event of Default") during the term of this Lease, or any renewal or extension thereof, shall constitute a breach of this Lease on the part of the Tenant: (a) Tenant fails to pay when due the rental or any other monetary obligation as provided for herein; (b) Tenant abandons or vacates the Premises; (c) Tenant fails to comply with or abide by and perform any non-monetary obligation imposed upon Tenant under this Lease within thirty (30) days after written notice of such breach; (d) Tenant is adjudicated bankrupt; (e) A permanent receiver is appointed for Tenant's property and such receiver is not removed within sixty (60) days after written notice from Landlord to Tenant to obtain such removal; (f) Tenant, either voluntarily or involuntarily, takes advantage of any debt or relief proceedings under any present or future law, whereby the rent or any part thereof is, or is proposed to be, reduced or payment thereof deferred and such proceeding is not dismissed within sixty (60) days of the filing thereof; (g) Tenant makes an assignment for benefit of creditors; or (h) Tenant's effects are levied upon or attached under process against Tenant, which is not satisfied or dissolved within thirty (30) days after written notice from Landlord to Tenant to obtain satisfaction thereof.

REMEDIES UPON DEFAULT

19. Upon the occurrence of Event of Default, Landlord may pursue any one or more of the following remedies separately or concurrently, without prejudice to any other remedy herein provided or provided by law: (a) Landlord may terminate this Lease by giving written notice to Tenant and upon such termination shall be entitled to recover from Tenant damages as may be permitted under applicable law; or (b) Landlord may terminate this Lease by giving written notice to Tenant and, upon such termination, shall be entitled to recover from the Tenant

damages in an amount equal to all rental which is due and all rental which would otherwise have become due throughout the remaining term of this Lease, or any renewal or extension thereof (as if this Lease had not been terminated); or (c) Landlord, as Tenant's agent, without terminating this Lease, may enter upon and rent the Premises, in whole or in part, at the best price obtainable by reasonable effort, without advertisement and by private negotiations and for any term Landlord deems proper, with Tenant being liable to Landlord for the deficiency, if any, between Tenant's rent hereunder and the price obtained by Landlord on re-letting, provided however, that Landlord shall not be considered to be under any duty by reason of this provision to take any action to mitigate damages by reason of Tenant's default and expressly shall have no duty to mitigate Tenant's damages. No termination of this Lease prior to the normal ending thereof, by lapse of time or otherwise, shall affect Landlord's right to collect rent for the period prior to termination thereof.

EXTERIOR SIGNS

19. Any and all signs placed on the Premises shall be in compliance with governmental rules and regulations governing such signs. Tenant shall provide the Landlord with the basic design of any exterior building sign proposed to be installed on the exterior of the building for approval, approval shall not be unreasonably withheld. Tenant may place additional signs and shall be responsible to Landlord for any damage caused by installation, use or maintenance of said signs, and all damage incident to removal thereof.

LANDLORD'S ENTRY OF PREMISES

20. Landlord may advertise the Premises "For Rent" or "For Sale" 90 days before the termination of this Lease. Landlord may enter the Premises upon prior notice at reasonable hours to exhibit same to prospective purchasers or tenants, to make repairs required of Landlord under the terms hereof, for reasonable business purposes and otherwise as may be agreed by Landlord and Tenant. Landlord may enter the Premises at any time without prior notice, in the event of an emergency or to make emergency repairs to the Premises. Upon request of Landlord, Tenant shall provide Landlord with a functioning key to the Premises and shall replace such key if the locks to the Premises are changed.

QUIET ENJOYMENT

21. So long as Tenant observes and performs the covenants and agreements contained herein, it shall at all times during the Lease term peacefully and quietly have and enjoy possession of the Premises, subject to the terms hereof.

HOLDING OVER

22. If Tenant remains in possession of the Premises after expiration of the term hereof, Tenant shall be a tenant at sufferance and there shall be no renewal of this Lease by operation of law. In such event, commencing on the date following the date of expiration of the term, the

monthly rental payable under Paragraph 3 above shall for each month, or fraction thereof during which Tenant so remains in possession of the Premises, be twice the monthly rental otherwise payable under Paragraph 3 above.

ENVIRONMENTAL LAWS

23. (a) Tenant covenants that with respect to any Hazardous Materials (as defined below) it will comply with any and all federal, state or local laws, ordinances, rules, decrees, orders, regulations or court decisions relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Premises or soil and ground water conditions, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, any other legal requirement concerning hazardous or toxic substances, and any amendments to the foregoing (collectively, all such matters being "Hazardous Materials Requirements"). Tenant shall remove all Hazardous Materials from the Premises, either after their use by Tenant or upon the expiration or earlier termination of this Lease, in compliance with all Hazardous Materials Requirements.

(b) Tenant shall be responsible for obtaining all necessary permits in connection with its use, storage and disposal of Hazardous Materials, and shall develop and maintain, and where necessary file with the appropriate authorities, all reports, receipts, manifest, filings, lists and invoices covering those Hazardous Materials and Tenant shall provide Landlord with copies of all such items upon request. Tenant shall provide within five (5) days after receipt thereof, copies of all notices, orders, claims or other correspondence from any federal, state or local government or agency alleging any violation of any Hazardous Materials Requirements by Tenant, or related in any manner to Hazardous Materials. In addition, Tenant shall provide Landlord with copies of all responses to such correspondence at the time of the response.

(c) Tenant hereby indemnifies and holds harmless Landlord, its successors and assigns from and against any and all losses, liabilities, damages, injuries, penalties, fines, costs, expenses and claims of any and every kind whatsoever (including attorney's fees and costs) paid, incurred or suffered by, or asserted against Landlord as a result of any claim, demand or judicial or administrative action by any person or entity (including governmental or private entities) for, with respect to, or as a direct or indirect result of, the presence on or under or the escape, seepage, leakage, spillage, discharge, emission or release from the Premises of any Hazardous Materials caused by Tenant or Tenant's employees, agents, invitees or contractors. This indemnity shall also apply to any release of Hazardous Materials caused by a fire or other casualty to the premises if such Hazardous Materials were stored on the Premises by Tenant, its agents, employees, invitees or successors in interest.

(d) For purposes of this Lease, "Hazardous Materials" means any chemical, compound, material, substance or other matter that: (i) is defined as a hazardous substance, hazardous material or waste, or toxic substance pursuant to any Hazardous Materials Requirements, (ii) is regulated, controlled or governed by any Hazardous Materials Requirements, (iii) is petroleum or a petroleum product, or (iv) is asbestos, formaldehyde, a radioactive material, drug, bacteria,

virus, or other injurious or potentially injurious material (by itself or in combination with other materials).

(e) The warranties and indemnities contained in this paragraph 24 shall survive the termination of this Lease.

SUBORDINATION; ATTORNMEN; ESTOPPEL

24. (a) This Lease and all of Tenant's rights hereunder are and shall be subject and subordinate to all currently existing and future mortgages affecting the Premises. Within ten (10) days after the receipt of a written request from Landlord or any Landlord mortgagee, Tenant shall confirm such subordination by executing and delivering Landlord and Landlord's mortgagee a recordable subordination agreement and such other documents as may be reasonably requested, in form and content satisfactory to Landlord and Landlord's mortgagee. Provided, however, as a condition to Tenant's obligation to execute and deliver any such subordination agreement, the applicable mortgagee must agree that mortgagee shall not unilaterally, materially alter this Lease and this Lease shall not be divested by foreclosure or other default proceedings thereunder so long as Tenant shall not be in default under the terms of this Lease beyond any applicable cure period set forth herein. Tenant acknowledges that any Landlord mortgagee has the right to subordinate at any time its interest in this Lease and the leasehold estate to that of Tenant, without Tenant's consent.

(b) If Landlord sells, transfers, or conveys its interest in the Premises or this Lease, or if the same is foreclosed judicially or non-judicially, or otherwise acquired, by a Landlord mortgagee, upon the request of Landlord or Landlord's successor, Tenant shall attorn to said successor, provided said successor accepts the Premises subject to this Lease. Tenant shall, upon the request of Landlord or Landlord's successor, execute an attornment agreement confirming the same, in form and substance acceptable to Landlord or Landlord's successor and Landlord shall thereupon be released and discharged from all its covenants and obligations under this Lease, except those obligations that have accrued prior to such sale, transfer or conveyance; and Tenant agrees to look solely to the successor in interest of Landlord for the performance of those covenants accruing after such sale, transfer or conveyance. Such agreement shall provide, among other things, that said successor shall not be bound by (a) any prepayment of more than one (1) month's rental (except the Security Deposit) or (b) any material amendment of this Lease made after the later of the Lease Commencement Date or the date that such successor's lien or interest first arose, unless said successor shall have consented to such amendment.

(c) Within ten (10) days after request from Landlord, Tenant shall execute and deliver to Landlord an estoppel certificate (to be prepared by Landlord and delivered to Tenant) with appropriate facts then in existence concerning the status of this Lease and Tenant's occupancy, and with any exceptions thereto noted in writing by Tenant. Tenant's failure to execute and deliver the Estoppel Certificate within said ten (10) day period shall be deemed to make conclusive and binding upon Tenant in favor of Landlord and any potential mortgagee or transferee the statements contained in such estoppel certificate without exception.

ABANDONMENT

25. Tenant shall not abandon the Premises at any time during the Lease term. If Tenant shall abandon the Premises or be dispossessed by process of law, any personal property belonging to Tenant and left on the Premises, at the option of Landlord, shall be deemed abandoned, and available to Landlord to use or sell to offset any rent due or any expenses incurred by removing same and restoring the Premises.

MEDIATION

26. If any dispute relating to this lease between the Parties is not resolved through informal discussion within 14 days from the date a dispute arises, the Parties agree to submit the issue before a mediator. The decision of the mediator will be binding on the Parties. Any mediator must be a neutral party acceptable to both Parties. The cost of any mediation will be shared equally by the Parties.

NOTICES

27. All notices required or permitted under this Lease shall be in writing and shall be personally delivered or sent by U.S. certified mail, return receipt requested, postage prepaid. Notices to Tenant shall be delivered or sent to the address shown at the beginning of this Lease, except that upon Tenant taking possession of the Premises, then the Premises shall be Tenant's address for such purposes. Notices to Landlord shall be delivered or sent to the address shown at the beginning of this Lease and notices to Agent, if any, shall be delivered or sent to the address set forth in Paragraph 3 hereof. All notices shall be effective upon delivery. Any party may change its notice address upon written notice to the other parties, given as provided herein.

GENERAL TERMS

28. (a) "Landlord" as used in this Lease shall include the undersigned, its heirs, representatives, assigns and successors in title to the Premises. "Agent" as used in this Lease shall mean the party designated as same in Paragraph 3, its heirs, representatives, assigns and successors. "Tenant" shall include the undersigned and its heirs, representatives, assigns and successors, and if this Lease shall be validly assigned or sublet, shall include also Tenant's assignees or sub lessees as to the Premises covered by such assignment or sublease. "Landlord", "Tenant", and "Agent" include male and female, singular and plural, corporation, partnership or individual, as may fit the particular parties.

(b) No failure of Landlord to exercise any power given Landlord hereunder or to insist upon strict compliance by Tenant of its obligations hereunder and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's right to demand exact compliance with the terms hereof. All rights, powers and privileges conferred hereunder upon parties hereto shall be cumulative and not restrictive of those given by law.

(c) Time is of the essence in this Lease.

(d) This Lease may be executed in one or more counterparts, which taken together, shall constitute one and the same original document. Copies of original signature pages of this Lease may be exchanged via facsimile or e-mail, and any such copies shall constitute originals. This Lease constitutes the sole and entire agreement among the parties hereto and no modification of this Lease shall be binding unless in writing and signed by all parties hereto. The invalidity of one or more provisions of this Lease shall not affect the validity of any other provisions hereof and this Lease shall be construed and enforced as if such invalid provisions were not included.

(e) Each signatory to this Lease represents and warrants that he or she has full authority to sign this Lease and such instruments as may be necessary to effectuate any transaction contemplated by this Lease on behalf of the party for whom he or she signs and that his or her signature binds such party. The parties acknowledge and agree that: (i) the initials lines at the bottom of each page of this Lease are merely evidence of their having reviewed the terms of each page, and (ii) the complete execution of such initials lines shall not be a condition of the effectiveness of this Lease.

(f) Upon request by either Landlord or Tenant, the parties hereto shall execute a short form lease (memorandum of lease) in recordable form, setting forth such provisions hereof (other than the amount of annual rental and other sums due) as either party may wish to incorporate. The cost of recording such memorandum of lease shall be borne by the party requesting execution of same.

(g) If legal proceedings are instituted to enforce any provision of this Lease, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorney's fees and court costs incurred in connection with the proceeding.

IN WITNESS WHEREOF, the parties hereto have hereunto caused this Lease to be duly executed.

LANDLORD

Carolina Real Estate Holdings, LLC

By: _____

Title: _____

Date: _____

TENANT

Brim Electric

By: [Signature]

Title: Owner

Date: 4/17/17

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
Carolina Real Estate Holdings, LLC,	)	
	)	ANSWER & COUNTERCLAIMS
Plaintiff,	)	
vs.	)	(Jury Trial Demanded)
Brilin Electric, LLC,	)	CASE NO.: 2020-CP-46-01145
Defendant.	)	

Defendant Brilin Electric, LLC ("Brilin" or "Defendant"), answering the Complaint of Plaintiff Carolina Real Estate Holdings, LLC ("CREH"), filed March 27, 2020, responds as follows:

FIRST DEFENSE AND ANSWER

1. Admitted, upon information and belief.
2. Admitted.
3. Admitted that there is written lease agreement between Brilin and CREH. Admitted that the leased premises are in York County. Except as admitted, denied.
4. Admitted.
5. Brilin incorporates by reference its responses to the preceding paragraphs.
6. Admitted.
7. Admitted that Brilin signed the Lease on April 17, 2017, and that the document at Exhibit A is a true and accurate copy of the Lease. Except as admitted, denied.
8. The Lease is a writing that speaks for itself. Except as admitted, denied.
9. The Lease is a writing that speaks for itself. Except as admitted, denied.
10. The Lease is a writing that speaks for itself. Except as admitted, denied.

11. Denied. All subparagraphs, denied.
12. Denied
13. Brilin incorporates by reference its responses to the preceding paragraphs.
14. Denied.
15. Denied. All subparagraphs, denied.
16. Denied.
17. Denied.
18. Brilin incorporates by reference its responses to the preceding paragraphs.
19. Denied.
20. Denied.
21. Denied.

22. WHEREFORE, Defendant Brilin Electric, LLC denies that Plaintiff is entitled to the relief requested in the "WHEREFORE" Paragraph set forth in its Complaint, including all subsections, one through three, and the costs and fees demanded.

GENERAL DENIAL

23. Unless specifically admitted herein, Brilin denies each and every allegation set forth in CREH's Complaint. All affirmative defenses are subject to and do not waive other responses and defenses.

SECOND AFFIRMATIVE DEFENSE
(Failure to State a Claim, Rule 12(b), SCRCP)

24. Subject to and without waiving the above responses and other defenses, CREH's claims, in whole or in part, are barred for failure to state a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE
(Unclean Hands)

25. CREH's claims are barred by the doctrine of unclean hands, and the balance of the equities favors Brilin.

FOURTH AFFIRMATIVE DEFENSE
(Accord and Satisfaction)

26. CREH's claims are barred in whole or in part because repairs were made to the Premises by Brilin as directed by CREH and CREH reviewed, supervised, and approved the repairs. CREH's acceptance of the repairs made by Brilin for damage allegedly caused by Brilin constitutes an accord and satisfaction.

FIFTH AFFIRMATIVE DEFENSE
(Ratification and Waiver)

27. CREH's claims are barred in whole or in part by the doctrines of ratification and waiver.

SIXTH AFFIRMATIVE DEFENSE
(Unfair or Deceptive Trade Practices)

28. Brilin is informed and believes that the acts of CREH constitute unfair and deceptive trade practices as defined in the South Carolina Unfair Trade Practices Act, Article 1, Chapter 5, Title 39, S.C. Code of Laws.

SEVENTH AFFIRMATIVE DEFENSE
(Brilin's Conduct in Conformity with Law or Contract)

29. CREH's claims are barred because Brilin has behaved in conformity with the law and all contractual obligations, to the extent any valid or enforceable contract exists between CREH and Brilin.

EIGHTH AFFIRMATIVE DEFENSE
(Laches, Estoppel, Release)

30. CREH's claims are barred in whole or in part by the doctrines of laches, estoppel, including equitable estoppel, and release.

NINTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

31. CREH failed to mitigate its damages or has suffered no damages.

TENTH AFFIRMATIVE DEFENSE
(Absence of Damages Suffered)

32. CREH has suffered no actual damages.

ELEVENTH AFFIRMATIVE DEFENSE
(Negligence of Others)

33. Any damage allegedly sustained by CREH was caused or contributed to or by the negligence of persons, firms, corporations, or entities other than Brilin, and such negligence of other parties bars CREH's recovery against Brilin, and/or comparatively reduces Brilin's percentage of fault, if any. Any acts or omissions by Brilin were superseded by the negligence and wrongful conduct of others.

TWELFTH AFFIRMATIVE DEFENSE
(Failure to Allege Facts Sufficient to Show Malice, Recklessness or Intentional Misconduct)

34. CREH's Complaint fails to state sufficient factual content to plausibly suggest that Brilin acted with malice, gross negligence, recklessness and outrageous indifference and disregard for the rights of others, such that CREH would be entitled to an award of punitive damages.

THIRTEENTH AFFIRMATIVE DEFENSE
(Speculative Damages)

35. CREH's damages, if any, are entirely speculative, and CREH is therefore not entitled to an award of damages against Brilin.

FIFTEENTH AFFIRMATIVE DEFENSE
(Justification and Privilege)

36. CREH's claims are barred, in whole or in part, because Brilin's conduct was justified in that the actions taken by Brilin were in good faith, acting for a legitimate business purpose, and in furtherance of its own interests by means that are lawful.

SIXTEENTH AFFIRMATIVE DEFENSE
(Barred by Contract)

37. CREH's claims are barred by the terms of the Lease.

SEVENTEENTH AFFIRMATIVE DEFENSE
(Reservation)

38. Brilin specifically reserves the right to file and assert any and all additional defenses in response to CREH's Complaint, including any additional affirmative or special defenses, or any such other matters constituting avoidance, which may subsequently come to the attention of Brilin, to the full extent permitted by the law, including those that become available or apparent during discovery.

BY WAY OF COUNTERCLAIMS AGAINST PLAINTIFF

1. Brilin incorporates by reference its responses in all preceding paragraphs as if restated herein verbatim. All capitalized terms not defined shall have the meaning ascribed to them above or in the Lease unless defined otherwise in these Counterclaims.

2. This Court has subject matter and personal jurisdiction over these Counterclaims.

3. Brilin is a commercial electrician business and provides expertise in all commercial electrical installation and repair. Brilin has over 40 employees.

4. Brilin and CREH are parties to a Lease Agreement (the "Lease"), signed by Brilin on April 17, 2017.

5. The Lease was for a three-year term commencing May 1, 2017 and ending April 30, 2020 (the "Initial Term").

6. Brilin was the "Tenant" and CREH was the "Landlord" and, collectively, are the "Parties" to the Lease.

7. The Lease was for Suite 111, 2180 Carolina Place Drive, Fort Mill, South Carolina, 29715 (the "Premises").

8. The Premises are part of a "Building" consisting of multiple commercial/industrial suites. The Premises are situated on the far-right side of the Building.

9. Only Brilin utilized the right of the Building. The front of the Building is a parking lot for employees and guests, the rear of the Building consists of loading docks with concrete pads and rear entrances servicing the various suites and a large, an unpaved gravel and dirt surface area, and the left side of the Building is a paved surface area allowing for the ingress/egress of commercial trucks to/from the rear of the Building.

10. Commercial vehicles are not permitted in the front Building side parking lot.

11. The Premises contain three large garage doors, two to the rear and one to the right side of the Premises/Building. The two garage doors to the rear (the "Loading Dock Garage Doors") are elevated to allow for the loading/off-loading of large commercial vehicles. The one garage door to the right (the "Side Garage Door") is serviced by a ramp with a sloping grade out to a paved surface area. The garage doors allow for the loading/unloading of heavy equipment stored in the warehouse section of the Premises, which comprises approximately 75% of the square footage of the Premises.

12. Because Brilin is a commercial electrical services company, Brilin does not use large commercial delivery trucks and instead employs a fleet of lighter duty pickup trucks, vans,

and smaller delivery trucks to transport its electrical equipment to and from the Premises to the various jobsites. As such, the Loading Dock Garage Doors cannot be used to directly load/unload equipment on/off Brilin's vehicles. Instead, Brilin used its forklift truck to haul heavy equipment from the warehouse to the rear of the Premises via the Side Garage Door, the ramp, and the right Building side surface area and vice versa.

13. From the outset of the initial term, CREH was aware that Brilin used a forklift truck and that the use of the forklift truck was an essential part of Brilin's business.

14. Brilin would typically load up to 20 vehicles each day before they went off to various jobsites. Using a forklift truck at the Premises was a commercially reasonable thing to do.

15. CREH was also aware that the Side Garage Door and ramp was an essential part of Brilin's business because it could not use the Loading Dock Garage Doors for direct loading/unloading.

16. When the Initial Term commenced, the ramp connecting the Side Garage Door to the paved surface area to the right Building side surface consisted of asphalt. At times, Brilin's forklift truck could not get sufficient traction to climb up the ramp and Landlord agreed to replace the asphalt ramp with a concrete ramp.

17. Concrete is a more suitable surface area for a ramp connected to a large garage door and warehouse where forklift trucks are likely to be employed.

Repaving the Asphalt

18. In the summer of 2019, CREH caused the paved surface areas to the front and sides of the Building to be re-paved. CREH provided no advance notice to Brilin of this construction activity.

19. CREH had the contractor pave the front and right Building side surface areas to a certain thickness and the left Building side surface area to a greater thickness.

20. CREH had the left Building side surface area paved to a greater thickness because, upon information and belief, that was the sole ingress/egress for commercial trucks going to/from the back of the Building and because of the greater weight this surface area would be required to bear.

21. The thickness of the asphalt used for the front and right Building surface areas was suitable only for standard-sized automobiles.

22. CREH, knowing that Brilin utilized a forklift truck to load/unload equipment from the Side Garage Door and that Brilin's use of the forklift truck was commercially reasonable, failed to repave the right Building side with asphalt for a suitable thickness to bear the weight of a forklift truck.

23. The commercially reasonable thing to do would have been for CREH to have the right Building side surface repaved with concrete, the appropriate material to bear the heavy weight of a forklift truck.

24. Repaving with concrete was commercially reasonable for the same reasons the loading docks on the rear of the Building were serviced by concrete pads.

25. Instead of repaving the right Building side surface area with concrete or to the appropriate asphalt thickness to bear the weight of a forklift truck, CREH's "solution" to the problem of its own making was to put up Jersey barriers that precluded Brilin's ability to access the Side Garage Door with a forklift truck.

26. The repaving and blocking of the right Building side surface area impacted Brilin's ability to load and unload using the Side Garage Door. Because of the inability to load/unload

equipment directly into the vehicles using the Loading Dock Garage Doors, and in order to mitigate the impact, Brilin was required to rent out an additional forklift truck in order to expedite loading/unloading by having the forklifts raise up and lower equipment from the Loading Dock Garage Doors, with one forklift truck on the inside and the other forklift truck on the outside.

27. Brilin complained to CREH about this impact and stated it would deduct from its August rent an amount equal to the amount of funds Brilin expended on renting the additional forklift truck, or \$1,144,75.

28. CREH never objected to Brilin's reduction in the rent amount until months later. CREH retained an attorney, sent a Notice of Eviction, and threatened legal action against Brilin including ejectment in Magistrate Court and a money damages suit in Common Pleas, and forced Brilin to pay the full rent amount, plus additional fees.

29. Eventually, CREH relented and allowed Brilin to resume use of the Side Garage Door, the ramp, and the right Building side surfacing area. Brilin continued to use its forklift to transport to/from the warehouse and to load/unload equipment from its vehicles.

30. The repaved surface area began to deteriorate near the concrete ramp. Brilin, at its own expense, had a strip of the asphalt repaved in concrete after CREH refused to make the repairs.

31. After CREH's threats to eject and sue Brilin, the Parties agreed to an onsite meeting on or about October 31, 2019. CREH's owner complained of the items that form the substance of CREH's Complaint. The meeting concluded with Brilin's owner having the distinct impression that CREH's owner only cared about Brilin getting everything fixed and that the issues were largely resolved.

32. Despite the positive outcome of the meeting, and Brilin's assurances that Brilin would repair anything that needed to be repaired, CREH continued to complain about various

items and in February of 2020, began insisting that all repairs be done by contractors selected by CREH or approved by CREH.

33. The Lease divides repair responsibilities between Landlord and Tenant. For those repairs for which Tenant is responsible, Tenant is required to hire licensed contractors and to obtain preapproval from Landlord for any work to be done in excess of \$3,000.

34. It is an implied term of the Lease that Landlord preapprovals will not be unreasonably withheld.

35. CREH also demanded Brilin provide its security access codes so CREH could inspect the Premises at unreasonable hours. CREH claimed this was necessary in part because of the acrimonious relationship between CREH's property manager and Brilin's owner.

36. The Lease does not allow for the Landlord to come upon the Premises at unreasonable hours or for any purpose it so deems without agreement with Tenant, excepting emergency situations.

37. CREH also demanded Brilin disclose the names of all contractors it used for repairs and demanded Brilin cause its contractors for repairs to provide certificates of insurance, including demanding that the certificates of insurance include CREH as an additional insured.

38. No Lease provision requires Tenant to provide contractor certificates of insurance and/or to cause the certificates of insurance to name CREH as an additional insured.

39. No Lease provision requires Tenant to provide contractor names to CREH for any repairs less than \$3,000.

The Demising Wall

40. During the Initial Term, in June 2019, CREH alleged that Brilin caused damaged and a displacement of the demising wall separating the Premises from the remainder of the Building.

41. Brilin, at its own expense, hired a contractor to repair the demising wall and return the demising wall to its original location. The contractor opened the wall from the opposite side of the demising wall and made the necessary repairs.

42. CREH's property manager or other of its agents directed, observed, supervised and ultimately approved the repairs. Until May 2020, CREH did not raise any issues or concerns with the repairs or that it had any additional concerns with the condition of the demising wall.

43. During the final month of the Initial Term, once Brilin had removed most of its equipment of the warehouse, Brilin performed repair work on the demising wall on the Premises side, which consisted primarily of repairing various patches in the gypsum board of the drywall.

44. CREH warranted in the Lease that all components of the Building shall be in good first-class condition and working order at the time Brilin first occupied the Premises. Upon information and belief, the demising was never in a first-class condition, because the materials used in its construction were marginal or not to the appropriate specifications, and that the demising wall was not properly constructed and situated properly when constructed.

45. To the extent there remains any additional issues with the demising wall, upon information and belief, those issues are due marginal materials or improper initial construction of the demising wall.

Other Claimed Damages

46. During the course of the final months of the Initial Term, Brilin caused to be replaced the Side Garage Door and one of the Loading Dock Garage Doors. Brilin replaced the garage doors with like-kind garage doors in terms of quality, components, and color.

47. The repair estimates for the garage doors was over \$3,000. Brilin sought CREH's approval to make the repairs and CREH refused to approve the repair. Instead, CREH insisted that the repairs be done by a contractor it selected who quoted the replacement of one garage door at twice the cost of the Brilin's contractor to replace both garage doors.

48. CREH's refusal to approve Brilin's request was unreasonable.

49. Brilin repaired and repainted the walls in the office area, Brilin professionally cleaned the carpeting in the office area, and Brilin replaced the handful of damaged bricks over the top right corner of the Side Garage Door.

50. Brilin received quotes to replace a section of damaged asphalt on the right Building side with like kind asphalt of the same thickness, but once again, CREH refused and insisted that Brilin use its selected contractor. Brilin was able to obtain a quote from CREH's paving contractor, which was the same contractor that paved the surface areas in summer of 2019. The quote was for a thickness of asphalt greater than what was in place.

51. At the conclusion of the Initial Term, Brilin requested and attempted to have a final walkthrough to enable CREH to inspect all of the conditions for which CREH had issues or to enable CREH to identify any concerns so that Brilin could address them. CREH refused to have a final walkthrough inspection.

52. The Lease requires Tenant to leave the Premises in a certain condition.

53. It is an implied term of the Lease that Brilin be given the opportunity before the end of the Initial Term to ensure that it satisfies its obligations with regard to the condition of the Premises upon surrender of possession.

54. CREH denied Brilin that opportunity and instead waited until the expiration of the Initial Term to register additional complaints about the condition of the Premises.

55. The Initial Term has expired and Tenant has returned possession of the Premises to Landlord.

FOR A FIRST CAUSE OF ACTION
(Breaches of Contract)

56. Brilin incorporates by reference its allegations in all preceding paragraphs as if restated herein verbatim.

57. The Lease provides for Brilin to peacefully and quietly have and enjoy the possession of the Premises.

58. All conditions precedent for Brilin to avail itself of the covenant of quiet enjoyment have been satisfied.

59. CREH had a duty to not breach the covenant of quiet enjoyment or any other term of the Lease.

60. CREH breached the covenant of quiet enjoyment throughout the Initial Term, and other terms of the Lease.

61. Throughout the Initial Term, CREH's property manager came upon the Premises uninvited, harassed Brilin's employees, and interfered with Brilin's business operations, thereby breaching the Lease and the covenant of quiet enjoyment.

62. CREH insisted on its entry of the Premises without prior notice at unreasonable hours without prior agreement with Brilin in violation of the Lease.

63. CREH began to repave the surface areas without providing adequate notice to Brilin and the failure to give said notice had a material impact on Brilin's business operations.

64. CREH erected Jersey barriers to deliberately, willfully, and maliciously interfere with Brilin's ability to use its forklift truck to move equipment from the warehouse to Brilin's vehicles by way of the Side Door Garage, ramp, and surface area.

65. CREH further harassed Brilin for months and demanded Brilin perform obligations not set forth in the Lease, to wit: demanding Brilin provide the names of all contractors used for repairs; demanding Brilin use only contractors for repairs approved by and selected by CREH; demanding Brilin obtain certificates of insurance for all repairs, including the demand that all certificates of insurance for repairs include CREH as an additional insured; and demanding that Brilin make repairs to the right Building side surface area which was damaged solely because of CREH's own negligence in using commercially unsuitable materials.

66. When Brilin proceeded with replacing two of the garage doors despite Brilin's unreasonable refusal of preapproval, CREH's property manager called the local police to the Premises to further harass and intimidate Brilin.

67. The Lease requires that any disputes between the Parties be resolved through informal mediation or, subsequently, binding mediation.

68. Instead, CREH proceeded to threaten Brilin with ejectment and with a money damages lawsuit.

69. CREH never attempted to submit any disputes to binding mediation before bringing its action, in violation of the Lease.

70. Despite meetings to discuss CREH's concerns and Brilin actively performing its obligations under the Lease, CREH proceeded without notice to file this lawsuit.

71. Despite Brilin performing all repairs and all other conditions precedent under the Lease, upon information and belief, CREH has refused or will refuse to return to Brilin its security deposit within sixty (60) after surrender of the Premises as required by the Lease.

72. CREH warranted in the Lease that all components of the Building shall be in good first-class condition and working order at the time Brilin first occupied the Premises. Upon information and belief, the demising wall is not of a first-class condition, meaning it is comprised of marginal or inadequate materials and was improperly constructed.

73. CREH's failure to provide Premises in first class condition constitutes a breach of the Lease.

74. CREH's multiple breaches of the Lease deprived Brilin of the full value of the Lease, deprived Brilin of its right to quiet enjoyment of the Premises, and have caused Brilin to suffer damages, and Brilin is entitled to the remedies set forth under the Lease and at law.

FOR A SECOND CAUSE OF ACTION
(Breach of the Implied Covenant of Good Faith & Fair Dealing)

75. Brilin incorporates by reference its allegations in all preceding paragraphs as if restated herein verbatim.

76. In every contract, under South Carolina law, there is an implied covenant of good faith and fair dealing. The covenant prohibits one party to a contract from acting in such a manner as to prevent the other party from performing its obligations.

77. The Lease imposes an obligation on Tenant to perform certain repairs. When those repairs cost in excess of \$3,000, Tenant must obtain Landlord's preapproval.

78. Implied in this term is the obligation that Landlord not unreasonably withhold its approval.

79. When Brilin sought to replace two garage doors with like-kind garage doors, CREH refused to approve the repair solely on the basis that CREH wanted a contractor of its choosing to make the repairs.

80. Such refusal was unreasonable and CREH acted in bad faith and thereby breached the implied covenant.

81. The Lease contemplates that when the Initial Term ended, there would be a surrender of possession of the Premises from Tenant to Landlord, and that Tenant had to satisfy certain conditions, including repairs and any outstanding payments.

82. It is an implied term of the Lease that Brilin be given the opportunity before the end of the Initial Term to ensure that it satisfies its obligations with regard to the condition of the Premises upon surrender of possession.

83. Given all of the repairs CREH demanded Brilin make, it was entirely reasonable for Brilin to request a final walkthrough inspection to ensure CREH's approval of the repairs.

84. It is customary in commercial leases in South Carolina for the parties to conduct a final walkthrough so that any issues may be resolved without undue delay or unfair surprise.

85. CREH refused Brilin's requests for a final walkthrough inspection and instead insisted on conducting its own inspection of the Premises after the Initial Term had expired so that, upon information and belief, CREH could manufacture various problems with the Premises, repair those problems, and then pass on those costs to Brilin by way of this lawsuit.

86. CREH's refusal to conduct a final walkthrough inspection and allow for formal surrender of possession of the Premises was unreasonable and CREH acted in bad faith and thereby breached the implied covenant.

87. Throughout the course of the various complaints and issues raised by CREH against Brilin, a common theme is apparent, and that is CREH's attempt to cause Brilin to perform work that are effectively upgrades to the Premises.

88. CREH's multiple breaches of the implied covenant of good faith and fair dealing have caused Brilin to suffer damages, and Brilin is entitled to the remedies set forth under the Lease and at law.

FOR A THIRD CAUSE OF ACTION
(Quantum Meruit/Unjust Enrichment)

89. Brilin incorporates by reference its allegations in all preceding paragraphs as if restated herein verbatim.

90. Brilin's obligations under the Lease are confined to the Premises. The paved surface areas and other common areas are outside the scope of the Lease and Brilin has no obligations under the Lease to make repairs to other parts of the Building or the land upon which it is situated.

91. When CREH resurfaced the paved surfaces, CREH negligently paved the right Building side surface area with inadequate and commercially unreasonable materials. CREH should have resurfaced the right Building side surface area with concrete or asphalt of a greater thickness.

92. When a portion of the asphalt began to deteriorate through, among other things, Brilin's commercially reasonable use of a forklift truck, Brilin requested and CREH refused to make repairs to the asphalt where it connected to the concrete ramp.

93. As part of its campaign of harassment and as a claim under this lawsuit, CREH demanded Brilin repair some exterior bricks, despite such repairs being the responsibility of CREH.

94. Brilin, at its own expense, repaired this area with a proper material, concrete, of a depth and thickness that will avoid the same deterioration from recurring.

95. The Lease requires CREH to keep in good repair, among other things, the exterior walls of the buildings.

96. Throughout the last year of the Initial Term, CREH interfered with Brilin's quiet enjoyment of the Premises, interfered with Brilin's business operations, harassed its employees and invitees, to include calling the police out to the Premises, threatened ejectment and lawsuits, such that Brilin was deprived of the full bargained-for value of the Lease.

97. When CREH repaved the surface areas, it materially impacted Brilin's business operation, which Brilin sought to offset through renting an additional forklift truck.

98. By making the surface repairs and repairing the bricks and paying full rent in the last year of the Initial Term, Brilin conferred upon CREH a benefit.

99. Brilin has vacated the Premises and CREH and the successor tenant have realized and continue to realize the physical benefits conferred by Brilin and CREH has realized the benefits of Brilin's rent payments.

100. CREH demanded full rental payment for August, despite CREH incurring costs related to the hiring of an additional forklift truck, costs which should have been offset by a deduction in the rental.

101. Retention by CREH of these benefits without reimbursing Brilin its costs or refunding some amount of rent equal to the diminution in value of the Lease and it would be unjust for CREH to retain these benefits under these conditions.

FOR A FOURTH CAUSE OF ACTION
(Unfair Trade Practices Act Violation; S.C. Code §§ 39-5-10 *et seq.*)

102. Brilin incorporates by reference its allegations in all preceding paragraphs as if restated herein verbatim.

103. CREH has over the past year and continuing through to the present day, continuously attempted to manufacture problems with the Premises, attempt or have made repairs to the Premises in excess of what needed to be repaired, and then demand payment from Brilin for said repairs.

104. In conjunction with these manufactured problems, CREH has bullied Brilin with demands to perform obligations not contemplated by the Lease and to threaten Brilin with ejectment, lawsuits, and other threats.

105. CREH has demanded Brilin repair the asphalt which it negligently and inadequately repaved with inferior materials.

106. CREH has presented a quote for repairs that includes repaving the asphalt at a greater thickness than the prior repaving thereby admitting by implication that its prior repaving was negligent and inadequate.

107. CREH has demanded Brilin replace the garage doors with a more expensive product.

108. CREH after Tenant vacated the Premises has complained about additional damage to the demising wall that it could have raised when repairs were previously made on the opposite side – repairs that were directed by CREH and observed supervised, and approved by CREH – or when Brilin made repairs to the Premises side, or at a final walkthrough inspection which CREH refused to undertake.

109. Since the filing of its lawsuit, CREH has "discovered" new issues with the demising wall and has demanded Brilin pay over \$10,000 for the repairs to be made.

110. CREH has hired an engineer who is charging an exorbitant rate for every site visit and who has made absurd and excessive recommendations on what needs to be done to inspect the demising wall.

111. CREH has already procured replacement metal studs and gypsum board to replace sections of the demising wall CREH has deemed need to be replaced.

112. None of these newly-discovered issues were raised at any point during the Initial Term, not when the demising wall had been opened up and repaired previously in June 2019 or when additional repairs were made in April 2020 near the conclusion of the Initial Term.

113. Upon information and belief, CREH stands to gain directly and indirectly through payments made to the contractors hired to make repairs to the Premises. This is the reason why CREH is insistent on selecting the contractors to be used for any repairs.

114. Upon information and belief, CREH knows or has reason to believe that the materials used in the demising wall are marginal or inadequate, and the initial construction of the demising wall was insufficient or improper.

115. Upon information and belief, CREH refused a walkthrough inspection because it had every intention of "discovering" issues with the demising wall in order to cause repairs to be made with suitable materials and then pass those costs on to Brilin under the subterfuge that Brilin damaged the demising wall and is solely responsible for the condition of the demising wall.

116. The demising wall issues, the garage doors attempted upgrade, the demand for repair of an upgraded asphalt surface, and the demand that CREH select the contractors are part of

a concerted effort by CREH to upgrade the Premises in a greater condition than required under the Lease at the conclusion of the Initial Term.

117. CREH's attempts to "upgrade" the Premises through subterfuge at the expense of Brilin constitutes an unlawful trade practice. Any pecuniary incentives received by CREH for repairs made to the Premises constitutes an unlawful trade practice.

118. Brilin has suffered actual, ascertainable damages, including special and consequential damages, that are a natural and proximate result of CREH's use of its unlawful trade practices and deceptive conduct.

119. If CREH or other lessors of real property or chattel goods are permitted to compel lessees into upgrading leased premises or improving the chattel goods under the guise of required repairs at the conclusion of every tenancy or lease period, such unlawful practices would have an adverse impact on the public interest. CREH's actions have an adverse impact on the public interest.

WHEREFORE, Brilin prays the Court that:

1. That this Court dismiss CREH's claims with prejudice and that CREH have and recover nothing from Brilin.
2. That Brilin recover judgment against CREH on its counterclaims, and for an award of such damages and relief as authorized by the Lease, at law, and in equity in an amount to be proven at trial.
3. That Brilin have a jury trial on issues of fact to the extent entitled under the law.
4. That Brilin have and recover its attorneys' fees as authorized by the Lease and to the extent allowed by law.

5. That this Court treble Brilin's damages incurred through CREH's violation of the SCUTPA (S.C. Code §§ 39-5-10 et seq.) and award attorneys' fees incurred for the same.

6. For such other and further relief as the Court may deem just and proper.

ALEXANDER RICKS PLLC

/s/ Nathan A. White
Nathan A. White
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1420 E. 7th Street, Suite 100
Charlotte, North Carolina 28204
Telephone: (980) 498-6105
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nathan@alexanderricks.com

Counsel for Defendant Brilin Electric,
LLC

May 29, 2020

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **ANSWER & COUNTERCLAIMS** has been served upon each of the parties to this action by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

Steve D. Dluzneski, Esq.
Hamilton Martens, LLC
241 Oakland Avenue
Rock Hill, South Carolina 29731
Attorney for Plaintiff

ALEXANDER RICKS PLLC

/s/ Nathan A. White

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Attorney for Defendant Brilin Electric, LLC

May 29, 2019.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Carolina Real Estate Holdings, LLC,)
Plaintiff,)
vs.)
Brilin Electric, LLC and W & L Services,)
LLC,)
Defendants.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

AMENDED SUMMONS

CASE NO.: 2020-CP-46-01145

TO THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Complaint on the undersigned at HAMILTON MARTENS, LLC, at Post Office Box 10940, Rock Hill, South Carolina 29731, within thirty (30) days after the service hereof, exclusive of the day of such service; and you are hereby notified that should you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Complaint.

s/ Steve D. Dluzneski
Steve D. Dluzneski
S.C. Bar No.: 102019
HAMILTON MARTENS, LLC
P. O. Box 10940
Rock Hill, South Carolina 29731
(803) 329-7672
steve.dluzneski@hamiltonmartens.com
ATTORNEYS FOR PLAINTIFF

June 25, 2020
Rock Hill, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Carolina Real Estate Holdings, LLC,)
Plaintiff,)
vs.)
Brilin Electric, LLC and W & L Services,)
LLC,)
Defendants.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

AMENDED COMPLAINT

CASE NO.: 2020-CP-46-01145

The Plaintiff, Carolina Real Estate Holdings, LLC, complaining of the above-named Defendants, would respectfully show unto the Court and allege:

PARTIES AND JURISDICTION

1. The Plaintiff, Carolina Real Estate Holdings, LLC ("CREH"), is a limited liability company organized and existing under the laws of the State of North Carolina, which is qualified to do business in the State of South Carolina, and is presently in good standing.

2. Upon information and belief, Defendant Brilin Electric, LLC ("Brilin") is a South Carolina limited liability company that conducts business and maintains its principal place of business in York County, South Carolina.

3. Upon information and belief, Defendant W & L Services, LLC ("W & L") is a limited liability company organized and existing under the laws of the State of North Carolina, which is qualified to do business in the State of South Carolina, and is presently in good standing.

4. The Court has jurisdiction over the parties to this action, and venue is appropriate in York County, South Carolina because the most substantial part of the acts or omissions giving rise to this case occurred here.

FACTUAL BACKGROUND

5. CREH realleges all prior allegations, except those inconsistent herewith, as if fully set forth hereinafter.

6. On or about April 17, 2017, CREH entered into a Lease Agreement ("Agreement") with Brilin for a commercial unit located at 2180 Carolina Place Drive, Fort Mill, South Carolina 29715 ("Subject Property"). A copy of the Agreement is attached hereto as "Exhibit A" and is incorporated herein by reference.

7. The Agreement provided, among other things, for a three-year lease term commencing on May 1, 2017, and ending on April 30, 2020.

8. Paragraph 10 of the Agreement provides that CREH "shall not be responsible for repairs or capital repairs or replacements rendered necessary by the negligence or intentional wrongful acts of [Brilin], its employees, agents, invitees or contractors."

9. Paragraph 11(a) of the Agreement provides that Brilin, "throughout the initial term of [the Agreement], and any extension or renewal thereof, at its expense, shall maintain in good order and repair the [Subject Property], specifically including but not limited to any building and other improvements located thereon."

10. Prior to the expiration of the lease term provided for in the Agreement, upon information and belief, Brilin contracted with W & L to complete certain repair work involving the interior partition wall inside the building at the Subject Property that separated Brilin's warehouse space from the neighboring commercial tenant's warehouse space. The damage to the interior partition wall that necessitated this repair work resulted from Brilin's negligence, recklessness, and/or intentional wrongful acts inside the warehouse, which caused damage to both the exterior covering of the partition wall as well as the internal structural elements of the partition

wall.

11. Rather than removing the exterior drywall covering to assess the damage to the structural elements inside the partition wall and repairing the damaged internal structural elements along with the damaged exterior drywall covering, upon information and belief, W & L only repaired/replaced and re-painted the exterior drywall covering of the interior partition wall. In this way, W & L failed to properly repair the damaged interior partition wall inside the building at the Subject Property.

12. Upon information and belief, Brilin represented to CREH prior to the expiration of the lease term provided for in the Agreement that the damages to the interior partition wall inside the building at the Subject Property had been properly repaired, and Brilin intended that CREH rely on its representations in this regard.

13. At the time that Brilin made the representations discussed in Paragraph 12 herein to CREH, upon information and belief, Brilin knew that the damaged structural elements inside the partition wall had not been properly repaired and that the only repairs that had been made to the interior partition wall were to the exterior covering of the partition wall. Brilin intended to conceal the true extent of the damages involving the interior partition wall from CREH.

14. During the third year of the lease term provided for in the Agreement, CREH discovered multiple damages to the Subject Property that were caused by the negligence, recklessness, and/or intentional wrongful acts of Brilin including, but not limited to, the following:

- (a) There was significant and still-existing damage to the interior partition wall inside the building at the Subject Property. Upon further inspection, CREH discovered that Brilin and W & L had not, in fact, properly repaired all of the damages to the interior partition wall as Brilin previously represented to CREH. Specifically, CREH discovered that the

internal structural elements of the partition wall were severely damaged and needed to be repaired or replaced in order to ensure the structural soundness of the partition wall;

(b) Two of the overhead doors of the building at the Subject Property were damaged and needed to be replaced. After the lease term provided for in the Agreement expired, Brilin replaced both of the damaged overhead doors with new ones; however, upon information and belief, the overhead doors with which Brilin replaced the damaged ones are of inferior quality and do not satisfy the use requirements for overhead doors at the Subject Property;

(c) The carpeting inside the office area of the building at the Subject Property was soiled and must be professionally cleaned;

(d) The asphalt paving outside the building at the Subject Property was damaged in one or more areas and must be replaced. Prior to the expiration of the lease term provided for in the Agreement, Brilin patched the damaged asphalt in one location with concrete; however, upon information and belief, there still remain other areas of significantly damaged asphalt at the Subject Property that must be replaced, and the concrete patch that Brilin completed is inadequate to prevent further damage to the asphalt in that area; and,

(e) The brickwork in the area of the overhead door that opens on to the ramp at the building at the Subject Property was damaged and must be repaired.

15. As a direct and proximate result and consequence of the negligence, recklessness, and/or intentional wrongful acts by the Defendants at the Subject Property, CREH has incurred damages.

FOR A FIRST CAUSE OF ACTION
(Negligence and Gross Negligence – As To Brilin)

16. CREH realleges all prior allegations, except those inconsistent herewith, as if fully

set forth hereinafter.

17. Brilin had a contractual duty, throughout the lease term provided for in the Agreement, to maintain the Subject Property in good order and repair.

18. Brilin breached its duty to maintain the Subject Property in good order and repair, and Brilin was negligent, grossly negligent, careless, willful and wanton in connection with its tenancy at the Subject Property in the following particulars:

- (a) By causing significant external and internal damage to the partition wall inside the building at the Subject Property;
- (b) By causing damage to two of the overhead doors of the building at the Subject Property;
- (c) By engaging in actions and/or omissions that have caused the carpeting inside the office area of the building at the Subject Property to become soiled to the point of needing professional cleaning;
- (d) By causing significant damage to the asphalt paving outside the building at the Subject Property in multiple areas; and,
- (e) By causing damage to the brickwork in the area of the overhead door that opens on to the ramp at the building at the Subject Property.

19. The damages set out and described herein have proximately damaged CREH in an amount to be determined by the trier of fact.

20. Since the damages set out and described herein were committed with gross negligence and reckless disregard for the rights of others, CREH is entitled to an award of punitive damages.

29. At the time that Brilin made its misrepresentation(s) to CREH that the damaged partition wall had been properly repaired, CREH was unaware that there was still significant damage to the internal structural elements of the partition wall.

30. CREH reasonably relied on the misrepresentation(s) of Brilin.

31. CREH had the right to rely on the misrepresentation(s) of Brilin.

32. As a proximate result of Brilin's fraudulent misrepresentation(s) that the damaged partition wall had been properly repaired, CREH has suffered damages in the form of having work redone, mitigated, and completed, all at a significant cost.

FOR A FOURTH CAUSE OF ACTION
(Negligence – As To W & L)

33. CREH realleges all prior allegations, except those inconsistent herewith, as if fully set forth hereinafter.

34. W & L had a duty to repair the damaged partition wall inside the building located at the Subject Property, which included an implied duty for W & L to use due care in the repair work and to complete the repair work in accordance with industrial and legal standards.

35. W & L breached this duty by failing to use due care in the repair work involving the damaged partition wall and to complete the repair work in accordance with industrial and legal standards. W & L failed to repair/ replace the damaged internal structural elements of the partition wall and only repaired the damaged exterior of the partition wall.

36. As a proximate result of W & L's negligent actions and/or omissions with respect to the damaged partition wall inside the building at the Subject Property, CREH has suffered damages in the form of having work redone, mitigated, and completed, all at a significant cost.

FOR A FIFTH CAUSE OF ACTION
(Civil Conspiracy – As To Both Defendants)

37. CREH realleges all prior allegations, except those inconsistent herewith, as if fully set forth hereinafter.

38. Brilin and W & L combined as two or more entities in the context of the improper and negligent repairs to the damaged partition wall inside the building at the Subject Property.

39. By engaging in repair work that they knew would not fully and properly repair the damages to the partition wall inside the building at the Subject Property, and that would only mask the true extent of the damages thereto, Brilin and W & L undertook the improper and negligent repair work involving the damaged partition wall for the purpose of injuring CREH.

40. CREH has suffered damages that it would not have otherwise suffered but for the combined efforts of Brilin and W & L.

WHEREFORE, having fully plead, CREH prays for the following relief:

- (1) As to the First Cause of Action, that this Court enter judgment in favor of CREH and against Brilin for an appropriate amount of actual and punitive damages as the evidence presented at trial supports for negligence and gross negligence;
- (2) As to the Second Cause of Action, that this Court enter judgment in favor of CREH and against Brilin for an appropriate measure of damages and relief as authorized by the Agreement and under the common and statutory law of this state for breach of contract;
- (3) As to the Third Cause of Action, that this Court enter judgment in favor of CREH and against Brilin for an appropriate amount of actual damages as the evidence presented at trial supports for fraudulent misrepresentation;

- (4) As to the Fourth Cause of Action, that this Court enter judgment in favor of CREH and against W & L for an appropriate amount of actual damages as the evidence presented at trial supports for negligence;
- (5) As to the Fifth Cause of Action, that this Court enter judgment in favor of CREH and against both Defendants for an appropriate amount of actual and special damages as the evidence presented at trial supports for civil conspiracy;
- (6) For an award of attorney's fees and court costs incurred by CREH in bringing and prosecuting this action; and,
- (7) For such other and further relief as the Court deems just and proper.

Respectfully Submitted,

s/ Steve D. Dluznieski

Steve D. Dluznieski

S.C. Bar Number: 102019

HAMILTON MARTENS, LLC

Post Office Box 10940 (29731)

241 Oakland Avenue (29730)

Rock Hill, South Carolina

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E-mail: steve.dluznieski@hamiltonmartens.com

Attorneys for the Plaintiff

June 25, 2020

Rock Hill, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA)
COUNTY OF YORK) LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") by and between Carolina Real Estate Holdings, LLC, a North Carolina limited liability company, ("Landlord"), whose address is 15105-D John J. Delaney Drive, Suite 347, Charlotte, NC 28277-2741, or such other address as Landlord specifies in writing; and Brill Electric LLC ("Tenant"), whose address is 1974 Carolina Place Dr #108 Fort Mill SC 29708

For and in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

BACKGROUND STATEMENT

A. Landlord is the owner of the building located at 2180 Carolina Place Drive, Fort Mill, York County, South Carolina, (the "Building");

B. Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the Premises for the purposes and upon the terms and conditions hereinafter set forth.

PREMISES

1. Landlord leases unto Tenant, and Tenant hereby leases and takes upon the terms and conditions which hereinafter appear, the following described property, including any improvements located thereon (hereinafter called the "Premises"), to wit: Suite 111, 2180 Carolina Place Drive, Fort Mill, SC 29715.

TERM AND CONSTRUCTION

2. (a) The term of this Lease shall commence on the date May 1, 2017 (the "Rent Commencement Date") and ends on April 30, 2020. All of the following conditions shall have been satisfied or waived by Tenant in writing:

2.1 Landlord has delivered actual possession and control of the Premises to Tenant;

2.2 Landlord has delivered a fully executed copy of this Lease to Tenant.

The first Lease Year Anniversary shall be the date twelve calendar months after the first day of the first full month immediately following the Rent Commencement Date and successive Lease Year Anniversaries shall be the date twelve calendar months from the previous Lease Year Anniversary. The lease shall terminate on the date which is the third Lease Year Anniversary (the "Initial Term"), unless sooner terminated pursuant to this Lease. Further, and so long as

this Lease has not been terminated and so long as Tenant is not then in default, Tenant shall have the right to renew the term of this Lease for one (1) successive period of three (3) years by providing written notice of its election to renew the term to Landlord one hundred eighty (180) days prior to the expiration of the then existing term of this Lease (as it may have been renewed). Rent for the additional three (3) period shall be \$3,200.00 per month, plus 3% per year.

(b) Tenant shall not permit any mechanic's, materialman's or similar lien to be filed against any portion of the Premises for any labor performed or material furnished in connection with any work performed or caused to be performed by Tenant, (and not relating to Landlord's failure to perform Landlord's obligations hereunder) to attach to the Premises or the Building or the interest of Landlord or Landlord's lessor, if any, therein or to Tenant's interest in this Lease or the Premises at any time. Tenant covenants and agrees to indemnify, defend and hold harmless Landlord from and against any such lien or claim of lien and any and all costs, expenses and liabilities relating thereto. If any such lien is filed, then Tenant shall fully pay or discharge the same or post a bond regarding such lien in accordance with applicable law and in a manner acceptable to Landlord within ten (10) days of receipt of written notice of the filing thereof. If Tenant fails to fully pay or discharge such lien or post a bond regarding such lien in accordance with applicable law and in a manner acceptable to Landlord within ten (10) days of receipt of written notice of the filing thereof, then Landlord shall have the immediate right (but not the obligation) to pay and/or discharge such lien at Tenant's cost and expense, and Tenant shall, within ten (10) days of written demand, pay all Landlord's costs and expenses incurred in paying or discharging such lien. Tenant's failure to fully pay or discharge said lien or post a bond within the time specified shall also constitute an immediate default under the Lease and Tenant may exercise its rights to terminate and pursue any other remedies available at law or in equity. Prior to the commencement of any improvements to the Premises, Tenant shall notify Landlord thereof so that Landlord may execute for Tenant, and Tenant may post in a conspicuous place upon the Premises, a notice of non-responsibility as contemplated by the South Carolina Code of Laws.

RENTAL

3. Beginning on the "Rent Commencement Date," Tenant agrees to pay Landlord without notice, demand, deduction or set off, rent in monthly installments in advance on the first day of each calendar month as follows: \$3,000.00 per month during the first Lease Year; \$3,090.00 per month during the second Lease Year; and \$3,182.70 per month during the third Lease Year. Rental for any period during the term hereof which is less than one month shall be the pro-rated portion of the monthly installment of rental due, based upon a 30-day month.

Tenant shall pay all rental to Landlord at the following address: Carolina Real Estate Holdings LLC, 15105-D John J. Delaney Dr., Suite 347, Charlotte, NC 28277.

LATE CHARGES

4. If Landlord fails to receive full rental payment within ten days after it becomes due, Tenant shall pay Landlord, as additional rental, a late charge equal to five percent (5.00%) of the overdue amount, plus any actual bank fees incurred for dishonored payments. The parties agree that such a late charge represents a fair and reasonable estimate of the cost Landlord will incur by reason of such late payment.

SECURITY DEPOSIT

5. Upon the execution of this Lease, Tenant shall deposit with Landlord the sum of \$3,000.00 as a security deposit which shall be held by Landlord as security for the full and faithful performance by Tenant of each and every term, covenant and condition of this Lease. The security deposit does not represent payment of and Tenant shall not presume application of same as payment of the last monthly installment of rental due under this Lease. Landlord shall have no obligation to segregate or otherwise account for the security deposit except as provided in this paragraph 5. If any of the rental or other charges or sums payable by Tenant shall be over-due and unpaid or should payments be made by Landlord on behalf of Tenant, or should Tenant fail to perform any of the terms of this Lease, then Landlord may, at its option, appropriate and apply the security deposit, or so much thereof as may be necessary, to compensate toward the payment of the rents, charges or other sums due from Tenant, or towards any loss, damage or expense sustained by Landlord resulting from such default on the part of the Tenant; and in such event Tenant upon demand shall restore the security deposit to the amount set forth above in this paragraph 5. In the event Tenant furnishes Landlord with proof that all utility bills and other bills of Tenant related to the Premises have been paid through the date of Lease termination, and performs all of Tenant's other obligations under this Lease, the security deposit shall be returned to Tenant within sixty (60) days after the date of the expiration or sooner termination of the term of this Lease and the surrender of the Premises by Tenant in compliance with the provisions of this Lease.

UTILITY BILLS/SERVICE CONTRACTS

6. Landlord and Tenant agree that utility bills and service contracts ("Service Obligations") for the Premises shall be paid by the party indicated below as to each Service Obligation. In each instance, the party undertaking responsibility for payment of a Service Obligation covenants that they will pay the applicable Service Obligations prior to delinquency. The responsibility to pay for a Service Obligation shall include all metering, hook-up fees or other miscellaneous charges associated with establishing, installing and maintaining such utility or contract in said party's name. Within thirty (30) days of the Lease Commencement Date, Tenant shall provide Landlord with a copy of any requested Tenant Service Obligation information.

Landlord shall be responsible for: Landscaping and Pest Control.

Tenant shall be responsible for: Sewer/Septic, Water, Electric, Gas, Telephone, HVAC (excluding semiannual service), Security System, Fiber Optic, and interior janitorial and cleaning.

Landlord shall not be liable for injury to Tenant's business or loss of income therefrom or for damage that may be sustained by the person, merchandise or personal property of Tenant, its employees, agents, invitees or contractors or any other person in or about the Premises, caused by or resulting from fire, steam, electricity, gas, water or rain, which may leak or flow from or into any part of the Premises, or from the breakage, leakage, obstruction or other defects of any utility installations, air conditioning system or other components of the Premises, except to the extent that such damage or loss is caused by Landlord's gross negligence or willful misconduct. Landlord makes no representations or warranties with respect to the heating, ventilation and air conditioning system(s) or utility installations existing as of the date hereof or in the future. Subject to the provisions of this paragraph 6, Landlord shall not be liable in damages or otherwise for any discontinuance, failure or interruption of service to the Premises of utilities or the heating, ventilation and air conditioning system(s) and Tenant shall have no right to terminate this Lease or withhold rental because of the same.

RULES AND REGULATIONS

7. The rules and regulations, if any, attached hereto ("Rules and Regulations") are made a part of this Lease. Tenant agrees to comply with any Rules and Regulations of Landlord in connection with the Premises which are in effect at the time of the execution of the Lease or which may be from time to time promulgated by Landlord in its reasonable discretion, provided such Rules and Regulations are in writing and are not in conflict with the terms and conditions of the Lease.

TAXES AND INSURANCE

8. Landlord shall pay all taxes (including but not limited to, ad valorem taxes, special assessments and any other governmental charges) on the Premises and shall procure and pay for such commercial general liability, broad form fire and extended and special perils insurance with respect to the Premises as Landlord in its reasonable discretion may deem appropriate. Tenant shall be solely responsible for insuring Tenant's personal and business property and for paying any taxes or governmental assessments levied thereon.

INSURANCE; WAIVER; INDEMNITY

9. (a) During the term of this Lease, Tenant shall maintain commercial general liability insurance coverage (occurrence coverage) with broad form contractual liability coverage and with coverage limits of not less than \$1,000,000.00 combined single limit, per occurrence, specifically including liquor liability insurance covering consumption of alcoholic beverages by customers or invitees of Tenant should Tenant choose to sell alcoholic beverages. Such policy shall insure Tenant's performance of the indemnity provisions of this Lease, but the amount of such insurance shall not limit Tenant's liability nor relieve Tenant of any obligation hereunder. All policies of insurance provided for herein shall name as "additional insureds" Landlord, Landlord's Agent, all mortgagees of Landlord and such other individuals or entities as Landlord may from time to time designate upon written notice to Tenant. Tenant shall provide to Landlord,

at least thirty (30) days prior to expiration, certificates of insurance to evidence any renewal or additional insurance procured by Tenant. Tenant shall provide evidence of all insurance required under this Lease to Landlord prior to the Lease Commencement Date.

(b) Landlord (for itself and its insurer) waives any rights, including rights of subrogation, and Tenant (for itself and its insurer) waives any rights, including rights of subrogation, each may have against the other for compensation of any loss or damage occasioned to Landlord or Tenant arising from any risk generally covered by the "all risks" insurance required to be carried by Landlord and Tenant. The foregoing waivers of subrogation shall be operative only so long as available in the State of South Carolina. The foregoing waivers shall be effective whether or not the parties maintain the insurance required to be carried pursuant to this Lease.

(c) Except as otherwise provided in paragraph 10(b), Tenant indemnifies Landlord for damages proximately caused by the negligence or wrongful conduct of Tenant and Tenant's employees, agents, invitees or contractors. Except as otherwise provided in paragraph 10(b), Landlord indemnifies Tenant for damages proximately caused by the negligence or wrongful conduct of Landlord and Landlord's employees, agents, invitees or contractors. The indemnity provisions in this paragraph 10 cover personal injury and property damage and shall bind the employees, agents, invitees or contractors of Landlord and Tenant (as the case may be). The indemnity obligations in this paragraph 10 shall survive the expiration or earlier termination of this Lease.

REPAIRS BY LANDLORD

10. Landlord agrees to keep in good repair the roof, foundation, structural supports and exterior walls of the buildings located on the Premises (exclusive of all glass and exclusive of all exterior doors) and, except as may be specifically allocated to Tenant in paragraph 12 herein, Landlord agrees to be responsible for capital repairs and replacements on the Premises; provided that Landlord shall not be responsible for repairs or capital repairs or replacements rendered necessary by the negligence or intentional wrongful acts of Tenant, its employees, agents, invitees or contractors. Tenant shall promptly report in writing to Landlord any defective condition known to it which Landlord is required to repair or replace and failure to report such conditions shall make Tenant responsible to Landlord for any liability incurred by Landlord by reason of such conditions. Tenant agrees to pay, within thirty (30) days of receipt of an invoice detailing such increase, Tenant's Proportionate Share (18%) of any increase in the Common Area Maintenance over the Base Year of 2016. The term "Common Area Maintenance Expenses" shall mean and include the total cost and expense typically paid or incurred in operating and maintaining the Common Areas of property of this type, including but not limited to landscaping, parking lot repair, painting, lighting, insurance, removal of trash and payment for exterior lighting and water.

REPAIRS BY TENANT

11. (a) Tenant accepts the Premises in their present condition and as suited for the Permitted Use and Tenant's intended purposes. Tenant, throughout the initial term of this Lease, and any extension or renewal thereof, at its expense, shall maintain in good order and repair the Premises, (except those repairs expressly required to be made by Landlord hereunder), specifically including but not limited to any building and other improvements located thereon, all light bulb and ballast replacements, plumbing fixtures and systems repairs within the Premises and water heater repairs. Tenant shall use only licensed contractors for repairs where such license is required. Landlord shall have the right to approve the contractor as to any repairs in excess of \$3,000.00.

Landlord warrants to Tenant that all components of the building shall be in good first class condition and working order at the time Tenant first occupies the Premises. Landlord shall either assign to Tenant or enforce on Tenant's behalf, all warranties on the HVAC system and any other systems and equipment installed on or within the Premises.

Tenant, at its expense, shall maintain the heating, ventilation and air conditioning system(s) in good order and repair, including but not limited to replacement of parts, compressors, air handling units and heating units. Provided that Tenant shall have obtained Landlord's prior written approval of the contractor and the repair or replacement expenses for heating, ventilation and air conditioning equipment, Tenant shall not be liable for more than \$ 200.00 (per occurrence) or \$600.00 (annually), and Landlord shall reimburse Tenant for the amount in excess of the stated amount upon the written request of Tenant.

(b) Tenant agrees to return the Premises to Landlord at the expiration or prior termination of this Lease, in as good condition and repair as on the Lease Commencement Date, natural wear and tear, damage by storm, fire, lightning, earthquake or other casualty alone excepted. Tenant, Tenant's employees, agents, invitees or contractors shall take no action which may void any manufacturers or installers warranty with relation to the Premises. Tenant shall indemnify and hold Landlord harmless from any liability, claim, demand or cause of action arising on account of Tenant's breach of the provisions of this paragraph 12.

ALTERATIONS

12. Other than Tenant's Initial Improvements, Tenant shall not make any alterations, additions, or improvements to the Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall promptly remove any alterations, additions, or improvements constructed in violation of this paragraph 13 upon Landlord's written request. All approved alterations, additions, and improvements will be accomplished in a good and workmanlike manner, in conformity with all applicable laws and regulations, and by a contractor approved by Landlord, free of any liens or encumbrances. Tenant shall have the right to remove any alterations, additions or improvements (whether or not made with Landlord's consent) at the termination of the Lease and shall restore the Premises to its prior condition, all at Tenant's expense. Tenant may remove any of Tenant's machinery, equipment or trade fixtures. Tenant shall repair, at Tenant's expense, any damage to the Premises caused by the

removal of any such machinery, equipment or trade fixtures. It is Tenant's intention to have a third party install and own certain work station and divider equipment within the Premises. Landlord consents to this installation and waives any lien as to such third party property.

DESTRUCTION OF OR DAMAGE TO PREMISES

13. (a) If the Premises are totally destroyed by storm, fire, lightning, earthquake or other casualty, Landlord shall have the right to terminate this Lease on written notice to Tenant within thirty (30) days after such destruction and this Lease shall terminate as of the date of such destruction and rental shall be accounted for as between Landlord and Tenant as of that date.

(b) If the Premises are damaged but not wholly destroyed by any such casualties or if the Landlord does not elect to terminate the Lease under paragraph 14(a) above, Landlord shall commence (or shall cause to be commenced) reconstruction of the Premises within one hundred twenty (120) days after such occurrence and prosecute the same diligently to completion, not to exceed two hundred seventy (270) days from the date upon which Landlord receives applicable permits and insurance proceeds. In the event Landlord shall fail to substantially complete reconstruction of the Premises within said two hundred seventy (270) day period, Tenant's sole remedy shall be to terminate this Lease.

(c) In the event of any casualty at the Premises during the last one (1) year of the Lease Term, Landlord and Tenant each shall have the option to terminate this Lease on written notice to the other of exercise thereof within sixty (60) days after such occurrence.

(d) In the event of reconstruction of the Premises, Tenant shall continue the operation of its business in the Premises during any such period to the extent reasonably practicable from the standpoint of prudent business management, and the obligation of Tenant to pay annual rental and any other sums due under this Lease shall remain in full force and effect during the period of reconstruction. The annual rental and other sums due under this Lease shall be abated proportionately with the degree to which Tenant's use of the Premises is impaired, commencing from the date of destruction and continuing during the period of such reconstruction. Tenant shall not be entitled to any compensation or damages from Landlord for loss of use of the whole or any part of the Premises, Tenant's personal property, or any inconvenience or annoyance occasioned by such damage, reconstruction or replacement.

(e) In the event of the termination of this Lease under any of the provisions of this paragraph 14, both Landlord and Tenant shall be released from any liability or obligation under this Lease arising after the date of termination, except as otherwise provided for in this Lease.

GOVERNMENTAL ORDERS

14. Tenant, at its own expense, agrees to comply with: (a) any law, statute, ordinance,

regulation, rule, requirement, order, court decision or procedural requirement of any governmental or quasi-governmental authority having jurisdiction over the Premises, (b) the rules and regulations of any applicable governmental insurance authority or any similar body, relative to the Premises and Tenant's activities therein; (c) provisions of or rules enacted pursuant to any private use restrictions, as the same may be amended from time to time and (d) the Americans with Disabilities Act (42 U.S.C.S. § 12101, et seq.) and the regulations and accessibility guidelines enacted pursuant thereto, as the same may be amended from time to time. Landlord and Tenant agree, however, that if in order to comply with such requirements the cost to Tenant shall exceed a sum equal to one (1) year's rent, then Tenant may terminate this Lease by giving written notice of termination to Landlord in accordance with the terms of this Lease, which termination shall become effective sixty (60) days after receipt of such notice and which notice shall eliminate the necessity of compliance with such requirements, unless, within thirty (30) days of receiving such notice, Landlord agrees in writing to be responsible for such compliance, at its own expense, and commences compliance activity, in which case Tenant's notice given hereunder shall not terminate this Lease.

CONDEMNATION

15. (a) If the entire Premises shall be appropriated or taken under the power of eminent domain by any governmental or quasi-governmental authority or under threat of and in lieu of condemnation (hereinafter, "taken" or "taking"); this Lease shall terminate as of the date of such taking, and Landlord and Tenant shall have no further liability or obligation arising under this Lease after such date, except as otherwise provided for in this Lease.

(b) If more than twenty-five percent (25%) of the floor area of any building of the Premises is taken, or if by reason of any taking, regardless of the amount so taken, the remainder of the Premises is not one undivided space or is rendered unusable for the Permitted Use, either Landlord or Tenant shall have the right to terminate this Lease as of the date Tenant is required to vacate the portion of the Premises taken, upon giving notice of such election within thirty (30) days after receipt by Tenant from Landlord of written notice that said Premises have been or will be so taken. In the event of such termination, both Landlord and Tenant shall be released from any liability or obligation under this Lease arising after the date of termination, except as otherwise provided for in this Lease.

(c) Landlord and Tenant, immediately after learning of any taking, shall give notice thereof to each other.

(d) If this Lease is not terminated on account of a taking as provided herein above, then Tenant shall continue to occupy that portion of the Premises not taken and the parties shall proceed as follows: (i) at Landlord's cost and expense and as soon as reasonably possible, Landlord shall restore (or shall cause to be restored) the Premises remaining to a complete unit of like quality and character as existed prior to such appropriation or taking, and (ii) the annual rent provided for in paragraph 3 and other sums due under the Lease shall be reduced on an equitable basis, taking into account the relative values of the portion taken as compared to the portion remaining. Tenant waives any statutory rights of termination that may arise because of any

partial taking of the Premises.

(e) Landlord shall be entitled to the entire condemnation award for any taking of the Premises or any part thereof. Tenant's right to receive any amounts separately awarded to Tenant directly from the condemning authority for the taking of its merchandise, personal property, relocation expenses and/or interests in other than the real property taken shall not be affected in any manner by the provisions of this paragraph 16, provided Tenant's award does not reduce or affect Landlord's award and provided further, Tenant shall have no claim for the loss of its leasehold estate.

ASSIGNMENT AND SUBLETTING

16. Tenant shall not assign this Lease or any interest hereunder or sublet the Premises or any part thereof, or permit the use of the Premises by any party other than the Tenant, without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Consent to any assignment or sublease shall not impair this provision and all later assignments or subleases shall be made likewise only on the prior written consent of Landlord. No sublease or assignment by Tenant shall relieve Tenant of any liability hereunder.

EVENTS OF DEFAULT

17. The happening of any one or more of the following events (hereinafter any one of which may be referred to as an "Event of Default") during the term of this Lease, or any renewal or extension thereof, shall constitute a breach of this Lease on the part of the Tenant: (a) Tenant fails to pay when due the rental or any other monetary obligation as provided for herein; (b) Tenant abandons or vacates the Premises; (c) Tenant fails to comply with or abide by and perform any non-monetary obligation imposed upon Tenant under this Lease within thirty (30) days after written notice of such breach; (d) Tenant is adjudicated bankrupt; (e) A permanent receiver is appointed for Tenant's property and such receiver is not removed within sixty (60) days after written notice from Landlord to Tenant to obtain such removal; (f) Tenant, either voluntarily or involuntarily, takes advantage of any debt or relief proceedings under any present or future law, whereby the rent or any part thereof is, or is proposed to be, reduced or payment thereof deferred and such proceeding is not dismissed within sixty (60) days of the filing thereof; (g) Tenant makes an assignment for benefit of creditors; or (h) Tenant's effects are levied upon or attached under process against Tenant, which is not satisfied or dissolved within thirty (30) days after written notice from Landlord to Tenant to obtain satisfaction thereof.

REMEDIES UPON DEFAULT

19. Upon the occurrence of Event of Default, Landlord may pursue any one or more of the following remedies separately or concurrently, without prejudice to any other remedy herein provided or provided by law: (a) Landlord may terminate this Lease by giving written notice to Tenant and upon such termination shall be entitled to recover from Tenant damages as may be permitted under applicable law; or (b) Landlord may terminate this Lease by giving written notice to Tenant and, upon such termination, shall be entitled to recover from the Tenant

damages in an amount equal to all rental which is due and all rental which would otherwise have become due throughout the remaining term of this Lease, or any renewal or extension thereof (as if this Lease had not been terminated); or (c) Landlord, as Tenant's agent, without terminating this Lease, may enter upon and rent the Premises, in whole or in part, at the best price obtainable by reasonable effort, without advertisement and by private negotiations and for any term Landlord deems proper, with Tenant being liable to Landlord for the deficiency, if any, between Tenant's rent hereunder and the price obtained by Landlord on re-letting, provided however, that Landlord shall not be considered to be under any duty by reason of this provision to take any action to mitigate damages by reason of Tenant's default and expressly shall have no duty to mitigate Tenant's damages. No termination of this Lease prior to the normal ending thereof, by lapse of time or otherwise, shall affect Landlord's right to collect rent for the period prior to termination thereof.

EXTERIOR SIGNS

19. Any and all signs placed on the Premises shall be in compliance with governmental rules and regulations governing such signs. Tenant shall provide the Landlord with the basic design of any exterior building sign proposed to be installed on the exterior of the building for approval, approval shall not be unreasonably withheld. Tenant may place additional signs and shall be responsible to Landlord for any damage caused by installation, use or maintenance of said signs, and all damage incident to removal thereof.

LANDLORD'S ENTRY OF PREMISES

20. Landlord may advertise the Premises "For Rent" or "For Sale" 90 days before the termination of this Lease. Landlord may enter the Premises upon prior notice at reasonable hours to exhibit same to prospective purchasers or tenants, to make repairs required of Landlord under the terms hereof, for reasonable business purposes and otherwise as may be agreed by Landlord and Tenant. Landlord may enter the Premises at any time without prior notice, in the event of an emergency or to make emergency repairs to the Premises. Upon request of Landlord, Tenant shall provide Landlord with a functioning key to the Premises and shall replace such key if the locks to the Premises are changed.

QUIET ENJOYMENT

21. So long as Tenant observes and performs the covenants and agreements contained herein, it shall at all times during the Lease term peacefully and quietly have and enjoy possession of the Premises, subject to the terms hereof.

HOLDING OVER

22. If Tenant remains in possession of the Premises after expiration of the term hereof, Tenant shall be a tenant at sufferance and there shall be no renewal of this Lease by operation of law. In such event, commencing on the date following the date of expiration of the term, the

monthly rental payable under Paragraph 3 above shall for each month, or fraction thereof during which Tenant so remains in possession of the Premises, be twice the monthly rental otherwise payable under Paragraph 3 above.

ENVIRONMENTAL LAWS

23. (a) Tenant covenants that with respect to any Hazardous Materials (as defined below) it will comply with any and all federal, state or local laws, ordinances, rules, decrees, orders, regulations or court decisions relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Premises or soil and ground water conditions, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, any other legal requirement concerning hazardous or toxic substances, and any amendments to the foregoing (collectively, all such matters being "Hazardous Materials Requirements"). Tenant shall remove all Hazardous Materials from the Premises, either after their use by Tenant or upon the expiration or earlier termination of this Lease, in compliance with all Hazardous Materials Requirements.

(b) Tenant shall be responsible for obtaining all necessary permits in connection with its use, storage and disposal of Hazardous Materials, and shall develop and maintain, and where necessary file with the appropriate authorities, all reports, receipts, manifest, filings, lists and invoices covering those Hazardous Materials and Tenant shall provide Landlord with copies of all such items upon request. Tenant shall provide within five (5) days after receipt thereof, copies of all notices, orders, claims or other correspondence from any federal, state or local government or agency alleging any violation of any Hazardous Materials Requirements by Tenant, or related in any manner to Hazardous Materials. In addition, Tenant shall provide Landlord with copies of all responses to such correspondence at the time of the response.

(c) Tenant hereby indemnifies and holds harmless Landlord, its successors and assigns from and against any and all losses, liabilities, damages, injuries, penalties, fines, costs, expenses and claims of any and every kind whatsoever (including attorney's fees and costs) paid, incurred or suffered by, or asserted against Landlord as a result of any claim, demand or judicial or administrative action by any person or entity (including governmental or private entities) for, with respect to, or as a direct or indirect result of, the presence on or under or the escape, seepage, leakage, spillage, discharge, emission or release from the Premises of any Hazardous Materials caused by Tenant or Tenant's employees, agents, invitees or contractors. This indemnity shall also apply to any release of Hazardous Materials caused by a fire or other casualty to the premises if such Hazardous Materials were stored on the Premises by Tenant, its agents, employees, invitees or successors in interest.

(d) For purposes of this Lease, "Hazardous Materials" means any chemical, compound, material, substance or other matter that: (i) is defined as a hazardous substance, hazardous material or waste, or toxic substance pursuant to any Hazardous Materials Requirements, (ii) is regulated, controlled or governed by any Hazardous Materials Requirements, (iii) is petroleum or a petroleum product, or (iv) is asbestos, formaldehyde, a radioactive material, drug, bacteria,

virus, or other injurious or potentially injurious material (by itself or in combination with other materials).

(c) The warranties and indemnities contained in this paragraph 24 shall survive the termination of this Lease.

SUBORDINATION; ATTORNMEN; ESTOPPEL

24. (a) This Lease and all of Tenant's rights hereunder are and shall be subject and subordinate to all currently existing and future mortgages affecting the Premises. Within ten (10) days after the receipt of a written request from Landlord or any Landlord mortgagee, Tenant shall confirm such subordination by executing and delivering Landlord and Landlord's mortgagee a recordable subordination agreement and such other documents as may be reasonably requested, in form and content satisfactory to Landlord and Landlord's mortgagee. Provided, however, as a condition to Tenant's obligation to execute and deliver any such subordination agreement, the applicable mortgagees must agree that mortgagee shall not unilaterally, materially alter this Lease and this Lease shall not be divested by foreclosure or other default proceedings thereunder so long as Tenant shall not be in default under the terms of this Lease beyond any applicable cure period set forth herein. Tenant acknowledges that any Landlord mortgagee has the right to subordinate at any time its interest in this Lease and the leasehold estate to that of Tenant, without Tenant's consent.

(b) If Landlord sells, transfers, or conveys its interest in the Premises or this Lease, or if the same is foreclosed judicially or non-judicially, or otherwise acquired, by a Landlord mortgagee, upon the request of Landlord or Landlord's successor, Tenant shall attorn to said successor, provided said successor accepts the Premises subject to this Lease. Tenant shall, upon the request of Landlord or Landlord's successor, execute an attornment agreement confirming the same, in form and substance acceptable to Landlord or Landlord's successor and Landlord shall thereupon be released and discharged from all its covenants and obligations under this Lease, except those obligations that have accrued prior to such sale, transfer or conveyance; and Tenant agrees to look solely to the successor in interest of Landlord for the performance of those covenants accruing after such sale, transfer or conveyance. Such agreement shall provide, among other things, that said successor shall not be bound by (a) any prepayment of more than one (1) month's rental (except the Security Deposit) or (b) any material amendment of this Lease made after the later of this Lease Commencement Date or the date that such successor's lien or interest first arose, unless said successor shall have consented to such amendment.

(c) Within ten (10) days after request from Landlord, Tenant shall execute and deliver to Landlord an estoppel certificate (to be prepared by Landlord and delivered to Tenant) with appropriate facts then in existence concerning the status of this Lease and Tenant's occupancy, and with any exceptions thereto noted in writing by Tenant. Tenant's failure to execute and deliver the Estoppel Certificate within said ten (10) day period shall be deemed to make conclusive and binding upon Tenant in favor of Landlord and any potential mortgagee or transferee the statements contained in such estoppel certificate without exception.

ABANDONMENT

25. Tenant shall not abandon the Premises at any time during the Lease term. If Tenant shall abandon the Premises or be dispossessed by process of law, any personal property belonging to Tenant and left on the Premises, at the option of Landlord, shall be deemed abandoned, and available to Landlord to use or sell to offset any rent due or any expenses incurred by removing same and restoring the Premises.

MEDIATION

26. If any dispute relating to this lease between the Parties is not resolved through informal discussion within 14 days from the date a dispute arises, the Parties agree to submit the issue before a mediator. The decision of the mediator will be binding on the Parties. Any mediator must be a neutral party acceptable to both Parties. The cost of any mediation will be shared equally by the Parties.

NOTICES

27. All notices required or permitted under this Lease shall be in writing and shall be personally delivered or sent by U.S. certified mail, return receipt requested, postage prepaid. Notices to Tenant shall be delivered or sent to the address shown at the beginning of this Lease, except that upon Tenant taking possession of the Premises, then the Premises shall be Tenant's address for such purposes. Notices to Landlord shall be delivered or sent to the address shown at the beginning of this Lease and notices to Agent, if any, shall be delivered or sent to the address set forth in Paragraph 3 hereof. All notices shall be effective upon delivery. Any party may change its notice address upon written notice to the other parties, given as provided herein.

GENERAL TERMS

28. (a) "Landlord" as used in this Lease shall include the undersigned, its heirs, representatives, assigns and successors in title to the Premises. "Agent" as used in this Lease shall mean the party designated as same in Paragraph 3, its heirs, representatives, assigns and successors. "Tenant" shall include the undersigned and its heirs, representatives, assigns and successors, and if this Lease shall be validly assigned or sublet, shall include also Tenant's assignees or sub lessees as to the Premises covered by such assignment or sublease. "Landlord", "Tenant", and "Agent" include male and female, singular and plural, corporation, partnership or individual, as may fit the particular parties.

(b) No failure of Landlord to exercise any power given Landlord hereunder or to insist upon strict compliance by Tenant of its obligations hereunder and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's right to demand exact compliance with the terms hereof. All rights, powers and privileges conferred hereunder upon parties hereto shall be cumulative and not restrictive of those given by law.

(c) Time is of the essence in this Lease.

(d) This Lease may be executed in one or more counterparts, which taken together, shall constitute one and the same original document. Copies of original signature pages of this Lease may be exchanged via facsimile or e-mail, and any such copies shall constitute originals. This Lease constitutes the sole and entire agreement among the parties hereto and no modification of this Lease shall be binding unless in writing and signed by all parties hereto. The invalidity of one or more provisions of this Lease shall not affect the validity of any other provisions hereof and this Lease shall be construed and enforced as if such invalid provisions were not included.

(e) Each signatory to this Lease represents and warrants that he or she has full authority to sign this Lease and such instruments as may be necessary to effectuate any transaction contemplated by this Lease on behalf of the party for whom he or she signs and that his or her signature binds such party. The parties acknowledge and agree that: (i) the initials lines at the bottom of each page of this Lease are merely evidence of their having reviewed the terms of each page, and (ii) the complete execution of such initials lines shall not be a condition of the effectiveness of this Lease.

(f) Upon request by either Landlord or Tenant, the parties hereto shall execute a short form lease (memorandum of lease) in recordable form, setting forth such provisions hereof (other than the amount of annual rental and other sums due) as either party may wish to incorporate. The cost of recording such memorandum of lease shall be borne by the party requesting execution of same.

(g) If legal proceedings are instituted to enforce any provision of this Lease, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorney's fees and court costs incurred in connection with the proceeding.

IN WITNESS WHEREOF, the parties hereto have hereunto caused this Lease to be duly executed.

LANDLORD:

Carolina Real Estate Holdings, LLC

By: _____

Title: _____

Date: _____

TENANT

Brilin Electric

By: CR Unid

Title: Owner

Date: 4/17/17

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	
Carolina Real Estate Holdings, LLC,	)	
	)	ANSWER TO AMENDED COMPLAINT &
Plaintiff,	)	COUNTERCLAIMS
	)	
vs.	)	(Jury Trial Demanded)
	)	
Brilin Electric, LLC and W & L Services,	)	CASE NO.: 2020-CP-46-01145
LLC,	)	
	)	
<u>Defendants.</u>	)	

Defendant Brilin Electric, LLC ("Brilin" or "Defendant"), answering the Amended Complaint of Plaintiff Carolina Real Estate Holdings, LLC ("CREH" or "Plaintiff"), filed June 25, 2020, responds as follows:

FIRST DEFENSE AND ANSWER

1. Admitted, upon information and belief.
2. Admitted.
3. Admitted, upon information and belief.
4. Admitted as pertaining to Brilin. This paragraph contains allegations pertaining to a party other than Brilin, to which no response is required. To the extent such a response is required, admitted upon information and belief.
5. Brilin incorporates by reference its responses to the preceding paragraphs.
6. Admitted there is written lease agreement (the "Lease") between Brilin and CREH. The Lease is a writing that speaks for itself. To the extent this paragraph contains allegations inconsistent with the Lease, denied.
7. The Lease is a writing that speaks for itself. To the extent this paragraph contains allegations inconsistent with the Lease, denied.

8. The Lease is a writing that speaks for itself. To the extent that this paragraph contains allegations inconsistent with the Lease, denied.

9. The Lease is a writing that speaks for itself. To the extent that this paragraph contains allegations inconsistent with the Lease, denied.

10. Admitted that Brilin engaged Defendant W & L Services, LLC ("W&L") to make repairs at the Lease premises, repairs of which CREH was well aware of and, in part, supervised and approved. Except as admitted, denied.

11. This paragraph contains allegations pertaining to a party other than Brilin, to which no response is required. To the extent such a response is required, denied.

12. Admitted that Brilin caused repairs to be made to the interior partition wall as directed by CREH. Except as admitted, denied.

13. Denied.

14. Admitted that Brilin caused to be replaced two overhead doors with like-kind overhead doors; admitted that Brilin had the carpeting professionally cleaned before vacating the Premises; admitted that Brilin at its own expense repaired a portion of the exterior surface area with concrete; admitted that Brilin repaired the brickwork; except as admitted, denied.

15. Denied.

16. Brilin incorporates by reference its responses to the preceding paragraphs.

17. This paragraph makes indirect reference to the Lease, which is a writing that speaks for itself. This paragraph also contains a legal conclusion or conclusions to which no response is required. To the extent a response is required, denied.

18. Including all subparagraphs, denied.

19. Denied.

20. Denied.

21. Brilin incorporates by reference its responses to the preceding paragraphs.

22. Denied.

23. Denied.

24. Denied.

25. Brilin incorporates by reference its responses to the preceding paragraphs.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

33. Brilin incorporates by reference its responses to the preceding paragraphs.

34. This paragraph contains allegations pertaining to a party other than Brilin, to which no response is required. This paragraph also contains a legal conclusion or conclusions to which no response is required. To the extent such a response is required, denied.

35. This paragraph contains allegations pertaining to a party other than Brilin, to which no response is required. This paragraph also contains a legal conclusion or conclusions to which no response is required. To the extent such a response is required, denied.

36. This paragraph contains allegations pertaining to a party other than Brilin, to which no response is required. This paragraph also contains a legal conclusion or conclusions to which no response is required. To the extent such a response is required, denied.

37. Brilin incorporates by reference its responses to the preceding paragraphs.

38. Denied.

39. Denied.

40. Denied.

41. WHEREFORE, Defendant Brilin Electric, LLC denies that Plaintiff is entitled to the relief requested in the "WHEREFORE" Paragraph set forth in its Complaint, including all subsections, one through seven, and the costs and fees demanded.

GENERAL DENIAL

42. Unless specifically admitted herein, Brilin denies each and every allegation set forth in CREH's Complaint. All affirmative defenses are subject to and do not waive other responses and defenses.

SECOND AFFIRMATIVE DEFENSE
(Failure to State a Claim, Rule 12(b), SCRCP)

43. Subject to and without waiving the above responses and other defenses, CREH's claims, in whole or in part, are barred for failure to state a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE
(Unclean Hands)

44. CREH's claims are barred by the doctrine of unclean hands, and the balance of the equities favors Brilin.

FOURTH AFFIRMATIVE DEFENSE
(Accord and Satisfaction)

45. CREH's claims are barred in whole or in part because repairs were made to the Premises by Brilin as directed by CREH and CREH reviewed, supervised, and approved the repairs. CREH's acceptance of the repairs made by Brilin for damage allegedly caused by Brilin constitutes an accord and satisfaction.

FIFTH AFFIRMATIVE DEFENSE
(Ratification and Waiver)

46. CREH's claims are barred in whole or in part by the doctrines of ratification and waiver.

SIXTH AFFIRMATIVE DEFENSE
(Unfair or Deceptive Trade Practices)

47. Brilin is informed and believes that the acts of CREH constitute unfair and deceptive trade practices as defined in the South Carolina Unfair Trade Practices Act, Article 1, Chapter 5, Title 39, S.C. Code of Laws.

SEVENTH AFFIRMATIVE DEFENSE
(Brilin's Conduct in Conformity with Law or Contract)

48. CREH's claims are barred because Brilin has behaved in conformity with the law and all contractual obligations, to the extent any valid or enforceable contract exists between CREH and Brilin.

EIGHTH AFFIRMATIVE DEFENSE
(Laches, Estoppel, Release)

49. CREH's claims are barred in whole or in part by the doctrines of laches, estoppel, including equitable estoppel, and release.

NINTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

50. CREH failed to mitigate its damages or has suffered no damages.

TENTH AFFIRMATIVE DEFENSE
(Absence of Damages Suffered)

51. CREH has suffered no actual damages.

ELEVENTH AFFIRMATIVE DEFENSE
(Negligence of Others)

52. Any damage allegedly sustained by CREH was caused or contributed to or by the negligence of persons, firms, corporations, or entities other than Brilin, and such negligence of other parties bars CREH's recovery against Brilin, and/or comparatively reduces Brilin's percentage of fault, if any. Any acts or omissions by Brilin were superseded by the negligence and wrongful conduct of others.

TWELFTH AFFIRMATIVE DEFENSE
(Failure to Allege Facts Sufficient to Show Malice, Recklessness or Intentional Misconduct)

53. CREH's Complaint fails to state sufficient factual content to plausibly suggest that Brilin acted with malice, gross negligence, recklessness and outrageous indifference and disregard for the rights of others, such that CREH would be entitled to an award of punitive damages.

THIRTEENTH AFFIRMATIVE DEFENSE
(Speculative Damages)

54. CREH's damages, if any, are entirely speculative, and CREH is therefore not entitled to an award of damages against Brilin.

FIFTEENTH AFFIRMATIVE DEFENSE
(Justification and Privilege)

55. CREH's claims are barred, in whole or in part, because Brilin's conduct was justified in that the actions taken by Brilin were in good faith, acting for a legitimate business purpose, and in furtherance of its own interests by means that are lawful.

SIXTEENTH AFFIRMATIVE DEFENSE
(Barred by Contract)

56. CREH's claims are barred by the terms of the Lease.

SEVENTEENTH AFFIRMATIVE DEFENSE
(Reservation)

57. Brilin specifically reserves the right to file and assert any and all additional defenses in response to CREH's Complaint, including any additional affirmative or special defenses, or any such other matters constituting avoidance, which may subsequently come to the attention of Brilin, to the full extent permitted by the law, including those that become available or apparent during discovery.

BY WAY OF COUNTERCLAIMS AGAINST PLAINTIFF

1. Brilin incorporates by reference its responses in all preceding paragraphs as if restated herein verbatim. All capitalized terms not defined shall have the meaning ascribed to them above or in the Lease unless defined otherwise in these Counterclaims.

2. This Court has subject matter and personal jurisdiction over these Counterclaims.

3. Brilin is a commercial electrician business that provides expertise in all forms of commercial electrical installation and repair. Brilin has over 40 employees.

4. Brilin and CREH are parties to a Lease Agreement (the "Lease"), signed by Brilin on April 17, 2017.

5. The Lease was for a three-year term commencing May 1, 2017, and ending April 30, 2020 (the "Initial Term").

6. Brilin was the "Tenant" and CREH was the "Landlord" and, collectively, are the "Parties" to the Lease.

7. The Lease was for Suite 111, 2180 Carolina Place Drive, Fort Mill, South Carolina, 29715 (the "Premises").

8. The Premises are part of a "Building" consisting of multiple commercial/industrial suites. The Premises are situated on the far-right side of the Building.

9. Only Brilin utilized the right side of the Building. The front of the Building is a parking lot for employees and guests, the rear of the Building consists of loading docks with concrete pads and rear entrances servicing the various suites and a large, unpaved gravel and dirt surface area, and the left side of the Building is a paved surface area allowing for the ingress/egress of commercial trucks to/from the rear of the Building.

10. Commercial vehicles are not permitted in the front Building side parking lot.

11. The Premises contain three large garage doors, two to the rear and one to the right side of the Premises/Building. The two garage doors to the rear (the "Loading Dock Garage Doors") are elevated to allow for the loading/off-loading of large commercial vehicles. The one garage door to the right (the "Side Garage Door") is serviced by a ramp with a sloping grade out to a paved surface area. The garage doors allow for the loading/unloading of heavy equipment stored in the warehouse section of the Premises, which comprises approximately 75% of the square footage of the Premises.

12. Because Brilin is a commercial electrical services company, Brilin does not use large commercial delivery trucks and instead employs a fleet of lighter duty pickup trucks, vans, and smaller delivery trucks to transport its electrical equipment to and from the Premises to the various jobsites. As such, the Loading Dock Garage Doors cannot be used to directly load/unload equipment on/off Brilin's vehicles. Instead, Brilin used its forklift truck to haul heavy equipment from the warehouse to the rear of the Premises via the Side Garage Door, the ramp, and the right Building side surface area and vice versa.

13. From the outset of the initial term, CREH was aware that Brilin used a forklift truck and that the use of the forklift truck was an essential part of Brilin's business.

14. Brilin would typically load up to 20 vehicles each day before they went off to various jobsites. Using a forklift truck at the Premises was a commercially reasonable thing to do.

15. CREH was also aware that the Side Garage Door and ramp was an essential part of Brilin's business because it could not use the Loading Dock Garage Doors for direct loading/unloading.

16. When the Initial Term commenced, the ramp connecting the Side Garage Door to the paved surface area to the right Building side surface consisted of asphalt. At various times, Brilin's forklift truck could not get sufficient traction to climb up the ramp and Landlord agreed to replace the asphalt ramp with a concrete ramp.

17. Concrete is a more suitable surface area for a ramp connected to a large garage door and warehouse where forklift trucks are likely to be employed.

Repaving the Asphalt

18. In the summer of 2019, CREH caused the paved surface areas to the front and sides of the Building to be re-paved. CREH provided no advance notice to Brilin of this construction activity.

19. CREH had the contractor pave the front and right Building side surface areas to a certain thickness and the left Building side surface area to a greater thickness.

20. CREH had the left Building side surface area paved to a greater thickness because, upon information and belief, that was the sole ingress/egress for commercial trucks going to/from the back of the Building and because of the greater weight this surface area would be required to bear.

21. The thickness of the asphalt used for the front and right Building surface areas was suitable only for standard-sized automobiles.

22. CREH, knowing that Brilin utilized a forklift truck to load/unload equipment from the Side Garage Door and that Brilin's use of the forklift truck was commercially reasonable, failed to repave the right Building side with asphalt for a suitable thickness to bear the weight of a forklift truck.

23. The commercially reasonable thing to do would have been for CREH to have the right Building side surface repaved with concrete, the appropriate material to bear the heavy weight of a forklift truck.

24. Repaving with concrete was commercially reasonable for the same reasons the loading docks on the rear of the Building were serviced by concrete pads.

25. Instead of repaving the right Building sight surface area with concrete or to the appropriate asphalt thickness to bear the weight of a forklift truck, CREH's "solution" to the problem of its own making was to put up Jersey barriers that precluded Brilin's ability to access the Side Garage Door with a forklift truck.

26. The repaving and blocking of the right Building side surface area impacted Brilin's ability to load and unload using the Side Garage Door. Because of the inability to load/unload equipment directly into the vehicles using the Loading Dock Garage Doors, and in order to mitigate the impact, Brilin was required to rent out an additional forklift truck in order to expedite loading/unloading by having the forklifts raise up and lower equipment from the Loading Dock Garage Doors, with one forklift truck on the inside and the other forklift truck on the outside.

27. Brilin complained to CREH about this impact and stated it would deduct from its August rent an amount equal to the amount of funds Brilin expended on renting the additional forklift truck, or \$1,144,75.

28. CREH never objected to Brilin's reduction in the rent amount until months later. CREH retained an attorney, sent a Notice of Eviction, and threatened legal action against Brilin including ejectment in Magistrate Court and a money damages suit in Common Pleas, and forced Brilin to pay the full rent amount, plus additional fees.

29. Eventually, CREH relented and allowed Brilin to resume use of the Side Garage Door, the ramp, and the right Building side surfacing area. Brilin continued to use its forklift to transport to/from the warehouse and to load/unload equipment from its vehicles.

30. The repaved surface area began to deteriorate near the concrete ramp. Brilin, at its own expense, had a strip of the asphalt repaved in concrete after CREH refused to make the repairs.

31. After CREH's threats to eject and sue Brilin, the Parties agreed to an onsite meeting on or about October 31, 2019. CREH's owner complained of the items that form the substance of CREH's Complaint and Amended Complaint. The meeting concluded with Brilin's owner having the distinct impression that CREH's owner only cared about Brilin getting everything fixed and that the issues were largely resolved.

32. Despite the positive outcome of the meeting, and Brilin's assurances that Brilin would repair anything that needed to be repaired, CREH continued to complain about various items and in February of 2020, began insisting that all repairs be done by contractors selected by CREH or approved by CREH.

33. The Lease divides repair responsibilities between Landlord and Tenant. For those repairs for which Tenant is responsible, Tenant is required to hire licensed contractors and to obtain preapproval from Landlord for any work to be done in excess of \$3,000.

34. It is an implied term of the Lease that Landlord preapprovals will not be unreasonably withheld.

35. CREH also demanded Brilin provide its security access codes so CREH could inspect the Premises at unreasonable hours. CREH claimed this was necessary in part because of the acrimonious relationship between CREH's property manager and Brilin's owner.

36. The Lease does not allow for the Landlord to come upon the Premises at unreasonable hours or for any purpose it so deems without agreement with Tenant, excepting emergency situations.

37. CREH also demanded Brilin disclose the names of all contractors it used for repairs and demanded Brilin cause its contractors for repairs to provide certificates of insurance, including demanding that the certificates of insurance include CREH as an additional insured.

38. No Lease provision requires Tenant to provide contractor certificates of insurance and/or to cause the certificates of insurance to name CREH as an additional insured.

39. No Lease provision requires Tenant to provide contractor names to CREH for any repairs less than \$3,000.

The Demising Wall

40. During the Initial Term, in June 2019, CREH alleged that Brilin caused damage and a displacement of the demising wall separating the Premises from the remainder of the Building.

41. Brilin, at its own expense, hired a contractor to repair the demising wall and return the demising wall to its original location. The contractor opened the wall from the opposite side of the demising wall and made the necessary repairs.

42. CREH's property manager or other of its agents directed, observed, supervised and ultimately approved the repairs. Until May 2020, CREH did not raise any issues or concerns with the repairs or that it had any additional concerns with the condition of the demising wall.

43. During the final month of the Initial Term, once Brilin had removed most of its equipment from the warehouse, Brilin performed repair work on the demising wall on the Premises side, which consisted primarily of repairing various patches in the gypsum board of the drywall.

44. CREH warranted in the Lease that all components of the Building shall be in good first-class condition and working order at the time Brilin first occupied the Premises. Upon information and belief, the demising was never in a first-class condition, because the materials used in its construction were marginal or not to the appropriate specifications, and that the demising wall was not properly constructed and situated properly when constructed.

45. To the extent there remains any additional issues with the demising wall, upon information and belief, those issues are due to marginal materials or improper initial construction of the demising wall.

Other Claimed Damages

46. During the course of the final months of the Initial Term, Brilin caused to be replaced the Side Garage Door and one of the Loading Dock Garage Doors. Brilin replaced the garage doors with like-kind garage doors in terms of quality, components, and color.

47. The repair estimates for the garage doors was over \$3,000. Brilin sought CREH's approval to make the repairs and CREH refused to approve the repair. Instead, CREH insisted that the repairs be done by a contractor it selected who quoted the replacement of one garage door at twice the cost of the Brilin's contractor to replace both garage doors.

48. CREH's refusal to approve Brilin's request was unreasonable.

49. Brilin repaired and repainted the walls in the office area, Brilin professionally cleaned the carpeting in the office area, and Brilin replaced the handful of damaged bricks over the top right corner of the Side Garage Door.

50. Brilin received quotes to replace a section of damaged asphalt on the right Building side with like kind asphalt of the same thickness, but once again, CREH refused and insisted that Brilin use its selected contractor. Brilin was able to obtain a quote from CREH's paving contractor, which was the same contractor that paved the surface areas in summer of 2019. The quote was for a thickness of asphalt greater than what was in place.

51. At the conclusion of the Initial Term, Brilin requested and attempted to have a final walkthrough to enable CREH to inspect all of the conditions for which CREH had issues or to enable CREH to identify any concerns so that Brilin could address them. CREH refused to have a final walkthrough inspection.

52. The Lease requires Tenant to leave the Premises in a certain condition.

53. It is an implied term of the Lease that Brilin be given the opportunity before the end of the Initial Term to ensure that it satisfies its obligations with regard to the condition of the Premises upon surrender of possession.

54. CREH denied Brilin that opportunity and instead waited until the expiration of the Initial Term to register additional complaints about the condition of the Premises.

55. The Initial Term has expired and Tenant has returned possession of the Premises to Landlord.

FOR A FIRST CAUSE OF ACTION
(Breaches of Contract)

56. Brilin incorporates by reference its allegations in all preceding paragraphs as if restated herein verbatim.

57. The Lease provides for Brilin to peacefully and quietly have and enjoy the possession of the Premises.

58. All conditions precedent for Brilin to avail itself of the covenant of quiet enjoyment have been satisfied.

59. CREH had a duty to not breach the covenant of quiet enjoyment or any other term of the Lease.

60. CREH breached the covenant of quiet enjoyment throughout the Initial Term, and other terms of the Lease.

61. Throughout the Initial Term, CREH's property manager came upon the Premises uninvited, harassed Brilin's employees, and interfered with Brilin's business operations, thereby breaching the Lease and the covenant of quiet enjoyment.

62. CREH insisted on its entry of the Premises without prior notice at unreasonable hours without prior agreement with Brilin in violation of the Lease.

63. CREH began to repave the surface areas without providing adequate notice to Brilin and the failure to give said notice had a material impact on Brilin's business operations.

64. CREH erected Jersey barriers to deliberately, willfully, and maliciously interfere with Brilin's ability to use its forklift truck to move equipment from the warehouse to Brilin's vehicles by way of the Side Door Garage, ramp, and surface area.

65. CREH further harassed Brilin for months and demanded Brilin perform obligations not set forth in the Lease, to wit: demanding Brilin provide the names of all contractors used for repairs; demanding Brilin use only contractors for repairs approved by and selected by CREH; demanding Brilin obtain certificates of insurance for all repairs, including the demand that all certificates of insurance for repairs include CREH as an additional insured; and demanding that Brilin make repairs to the right Building side surface area which was damaged solely because of CREH's own negligence in using commercially unsuitable materials.

66. When Brilin proceeded with replacing two of the garage doors despite Brilin's unreasonable refusal of preapproval, CREH's property manager called the local police to the Premises to further harass and intimidate Brilin.

67. The Lease requires that any disputes between the Parties be resolved through informal mediation or, subsequently, binding mediation.

68. Instead, CREH proceeded to threaten Brilin with ejectment and with a money damages lawsuit.

69. CREH never attempted to submit any disputes to binding mediation before bringing its action, in violation of the Lease.

70. Despite meetings to discuss CREH's concerns and Brilin actively performing its obligations under the Lease, CREH proceeded without notice to file this lawsuit.

71. Despite Brilin performing all repairs and all other conditions precedent under the Lease, upon information and belief, CREH has refused or will refuse to return to Brilin its security deposit within sixty (60) after surrender of the Premises as required by the Lease.

72. CREH warranted in the Lease that all components of the Building shall be in good first-class condition and working order at the time Brilin first occupied the Premises. Upon information and belief, the demising wall is not of a first-class condition, meaning it is comprised of marginal or inadequate materials and was improperly constructed.

73. CREH's failure to provide Premises in first class condition constitutes a breach of the Lease.

74. CREH's multiple breaches of the Lease deprived Brilin of the full value of the Lease, deprived Brilin of its right to quiet enjoyment of the Premises, and have caused Brilin to suffer damages, and Brilin is entitled to the remedies set forth under the Lease and at law.

FOR A SECOND CAUSE OF ACTION
(Breach of the Implied Covenant of Good Faith & Fair Dealing)

75. Brilin incorporates by reference its allegations in all preceding paragraphs as if restated herein verbatim.

76. In every contract, under South Carolina law, there is an implied covenant of good faith and fair dealing. The covenant prohibits one party to a contract from acting in such a manner as to prevent the other party from performing its obligations.

77. The Lease imposes an obligation on Tenant to perform certain repairs. When those repairs cost in excess of \$3,000, Tenant must obtain Landlord's preapproval.

78. Implied in this term is the obligation that Landlord not unreasonably withhold its approval.

79. When Brilin sought to replace two garage doors with like-kind garage doors, CREH refused to approve the repair solely on the basis that CREH wanted a contractor of its choosing to make the repairs.

80. Such refusal was unreasonable and CREH acted in bad faith and thereby breached the implied covenant.

81. The Lease contemplates that when the Initial Term ended, there would be a surrender of possession of the Premises from Tenant to Landlord, and that Tenant had to satisfy certain conditions, including repairs and any outstanding payments.

82. It is an implied term of the Lease that Brilin be given the opportunity before the end of the Initial Term to ensure that it satisfies its obligations with regard to the condition of the Premises upon surrender of possession.

83. Given all of the repairs CREH demanded Brilin make, it was entirely reasonable for Brilin to request a final walkthrough inspection to ensure CREH's approval of the repairs.

84. It is customary in commercial leases in South Carolina for the parties to conduct a final walkthrough so that any issues may be resolved without undue delay or unfair surprise.

85. CREH refused Brilin's requests for a final walkthrough inspection and instead insisted on conducting its own inspection of the Premises after the Initial Term had expired so that, upon information and belief, CREH could manufacture various problems with the Premises, repair those problems, and then pass on those costs to Brilin by way of this lawsuit.

86. CREH's refusal to conduct a final walkthrough inspection and allow for formal surrender of possession of the Premises was unreasonable and CREH acted in bad faith and thereby breached the implied covenant.

87. Throughout the course of the various complaints and issues raised by CREH against Brilin, a common theme is apparent, and that is CREH's attempt to cause Brilin to perform work that are effectively upgrades to the Premises.

88. CREH's multiple breaches of the implied covenant of good faith and fair dealing have caused Brilin to suffer damages, and Brilin is entitled to the remedies set forth under the Lease and at law.

FOR A THIRD CAUSE OF ACTION
(Quantum Meruit/Unjust Enrichment)

89. Brilin incorporates by reference its allegations in all preceding paragraphs as if restated herein verbatim.

90. Brilin's obligations under the Lease are confined to the Premises. The paved surface areas and other common areas are outside the scope of the Lease and Brilin has no obligations under the Lease to make repairs to other parts of the Building or the land upon which it is situated.

91. When CREH resurfaced the paved surfaces, CREH negligently paved the right Building side surface area with inadequate and commercially unreasonable materials. CREH should have resurfaced the right Building side surface area with concrete or asphalt of a greater thickness.

92. When a portion of the asphalt began to deteriorate through, among other things, Brilin's commercially reasonable use of a forklift truck, Brilin requested and CREH refused to make repairs to the asphalt where it connected to the concrete ramp.

93. As part of its campaign of harassment and as a claim under this lawsuit, CREH demanded Brilin repair some exterior bricks, despite such repairs being the responsibility of CREH.

94. Brilin, at its own expense, repaired this area with a proper material, concrete, of a depth and thickness that will avoid the same deterioration from recurring.

95. The Lease requires CREH to keep in good repair, among other things, the exterior walls of the buildings.

96. Throughout the last year of the Initial Term, CREH interfered with Brilin's quiet enjoyment of the Premises, interfered with Brilin's business operations, harassed its employees and invitees, to include calling the police out to the Premises, threatened ejectment and lawsuits, such that Brilin was deprived of the full bargained-for value of the Lease.

97. When CREH repaved the surface areas, it materially impacted Brilin's business operation, which Brilin sought to offset through renting an additional forklift truck.

98. By making the surface repairs and repairing the bricks and paying full rent in the last year of the Initial Term, Brilin conferred upon CREH a benefit.

99. Brilin has vacated the Premises and CREH and the successor tenant have realized and continue to realize the physical benefits conferred by Brilin and CREH has realized the benefits of Brilin's rent payments.

100. CREH demanded full rental payment for August, despite CREH incurring costs related to the hiring of an additional forklift truck, costs which should have been offset by a deduction in the rental.

101. Retention by CREH of these benefits without reimbursing Brilin its costs or refunding some amount of rent equal to the diminution in value of the Lease and it would be unjust for CREH to retain these benefits under these conditions.

FOR A FOURTH CAUSE OF ACTION
(Unfair Trade Practices Act Violation; S.C. Code §§ 39-5-10 *et seq.*)

102. Brilin incorporates by reference its allegations in all preceding paragraphs as if restated herein verbatim.

103. CREH has over the past year and continuing through to the present day, continuously attempted to manufacture problems with the Premises, attempt or have made repairs to the Premises in excess of what needed to be repaired, and then demand payment from Brilin for said repairs.

104. In conjunction with these manufactured problems, CREH has bullied Brilin with demands to perform obligations not contemplated by the Lease and to threaten Brilin with ejectment, lawsuits, and other threats.

105. CREH has demanded Brilin repair the asphalt which it negligently and inadequately repaved with inferior materials.

106. CREH has presented a quote for repairs that includes repaving the asphalt at a greater thickness than the prior repaving thereby admitting by implication that its prior repaving was negligent and inadequate.

107. CREH has demanded Brilin replace the garage doors with a more expensive product.

108. CREH after Tenant vacated the Premises has complained about additional damage to the demising wall that it could have raised when repairs were previously made on the opposite side – repairs that were directed by CREH and observed supervised, and approved by CREH – or when Brilin made repairs to the Premises side, or at a final walkthrough inspection which CREH refused to undertake.

109. Since the filing of its lawsuit, CREH has “discovered” new issues with the demising wall and has demanded Brilin pay over \$10,000 for the repairs to be made.

110. CREH has hired an engineer who is charging an exorbitant rate for every site visit and who has made absurd and excessive recommendations on what needs to be done to inspect the demising wall.

111. CREH has already procured replacement metal studs and gypsum board to replace sections of the demising wall CREH has deemed need to be replaced.

112. None of these newly-discovered issues were raised at any point during the Initial Term, not when the demising wall had been opened up and repaired previously in June 2019 or when additional repairs were made in April 2020 near the conclusion of the Initial Term.

113. Upon information and belief, CREH stands to gain directly and indirectly through payments made to the contractors hired to make repairs to the Premises. This is the reason why CREH is insistent on selecting the contractors to be used for any repairs.

114. Upon information and belief, CREH knows or has reason to believe that the materials used in the demising wall are marginal or inadequate, and the initial construction of the demising wall was insufficient or improper.

115. Upon information and belief, CREH refused a walkthrough inspection because it had every intention of "discovering" issues with the demising wall in order to cause repairs to be made with suitable materials and then pass those costs on to Brilin under the subterfuge that Brilin damaged the demising wall and is solely responsible for the condition of the demising wall.

116. The demising wall issues, the garage doors attempted upgrade, the demand for repair of an upgraded asphalt surface, and the demand that CREH select the contractors are part of a concerted effort by CREH to upgrade the Premises in a greater condition than required under the Lease at the conclusion of the Initial Term.

117. CREH's attempts to "upgrade" the Premises through subterfuge at the expense of Brilin constitutes an unlawful trade practice. Any pecuniary incentives received by CREH for repairs made to the Premises constitutes an unlawful trade practice.

118. Brilin has suffered actual, ascertainable damages, including special and consequential damages, that are a natural and proximate result of CREH's use of its unlawful trade practices and deceptive conduct.

119. If CREH or other lessors of real property or chattel goods are permitted to compel lessees into upgrading leased premises or improving the chattel goods under the guise of required repairs at the conclusion of every tenancy or lease period, such unlawful practices would have an adverse impact on the public interest. CREH's actions have an adverse impact on the public interest.

WHEREFORE, Brilin prays the Court that:

1. That this Court dismiss CREH's claims with prejudice and that CREH have and recover nothing from Brilin.
2. That Brilin recover judgment against CREH on its counterclaims, and for an award of such damages and relief as authorized by the Lease, at law, and in equity in an amount to be proven at trial.
3. That Brilin have a jury trial on issues of fact to the extent entitled under the law.
4. That Brilin have and recover its attorneys' fees as authorized by the Lease and to the extent allowed by law.
5. That this Court treble Brilin's damages incurred through CREH's violation of the SCUTPA (S.C. Code §§ 39-5-10 et seq.) and award attorneys' fees incurred for the same.
6. For such other and further relief as the Court may deem just and proper.

ALEXANDER RICKS PLLC

/s/ Nathan A. White

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Counsel for Defendant Brilin Electric,
LLC

July 27, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
Carolina Real Estate Holdings, LLC,	)	
Plaintiff,	)	REPLY TO COUNTERCLAIMS
vs.	)	
Brilin Electric, LLC and W & L Services,	)	CASE NO.: 2020-CP-46-01145
LLC,	)	
Defendants.	)	

Plaintiff Carolina Real Estate Holdings, LLC ("Plaintiff" or "CREH"), replying to the Answer to Amended Complaint and Counterclaims of Defendant Brilin Electric, LLC ("Defendant" or "Brilin"), alleges and states as follows:

FOR A FIRST DEFENSE

1. Plaintiff hereby denies each and every allegation of Brilin's Answer and Counterclaims not hereinafter specifically admitted or qualified in this Reply.

2. Paragraphs 1 through 57 of Brilin's Answer and Counterclaims constitute its answer and affirmative defenses to Plaintiff's amended complaint, to which no reply by Plaintiff is required. To the extent a response is deemed necessary, Plaintiff refers to the allegations set forth in its Amended Complaint and denies any allegations inconsistent therewith. Plaintiff further denies that any of Brilin's affirmative defenses are valid, that they are legally sufficient or appropriate defenses to Plaintiff's causes of action, or that the said defenses are supported by the evidence.

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AS TO PARAGRAPHS 1-55 LABELED "BY WAY OF COUNTERCLAIMS AGAINST PLAINTIFF"

3. Paragraph 1 does not require a response.
4. Plaintiff admits the allegations of Paragraph 2.
5. Plaintiff lacks sufficient information to form an opinion or belief as to the allegations of Paragraph 3, and denies the same on that basis and demands strict proof thereof.
4. Responding to the allegations of Paragraphs 4, 5, 6, 7, the Parties' written Lease Agreement speaks for itself. Plaintiff denies any allegation of the foregoing Paragraphs that is inconsistent with the terms of the Parties' written Lease Agreement.
5. Plaintiff admits the allegations of Paragraphs 8, 9, 10, and 11.
6. Plaintiff lacks sufficient information to form an opinion or belief as to the allegations of Paragraph 12, and denies the same on that basis and demands strict proof thereof.
7. Plaintiff denies the allegations of Paragraph 13 and demands strict proof thereof.
8. Responding to the allegations of Paragraph 14, Plaintiff lacks sufficient information to form an opinion or belief as to the number of vehicles that Brilin loaded and unloaded per day during the term of the Lease Agreement, and denies the same on that basis and demands strict proof thereof. Plaintiff denies the remaining allegations of Paragraph 14 and demands strict proof thereof.
9. Plaintiff denies the allegations of Paragraphs 15, 16, and 17, and demands strict proof thereof.
10. Plaintiff admits the allegations of Paragraph 18 only insofar as it alleges that, in the summer of 2019, Plaintiff caused the paved surface areas to the front and sides of the Building to be re-paved. Plaintiff denies the remaining allegations of Paragraph 18 and demands strict proof

thereof.

11. Plaintiff denies the allegations of Paragraphs 19, 20, 21, 22, 23, 24, 25, and 26, and demands strict proof thereof.

12. Responding to the allegations of Paragraph 27, Plaintiff admits that Brilin attempted to unilaterally reduce its August 2019 rent by the amount that it expended on renting the additional forklift truck. However, Plaintiff would affirmatively allege and show that it never approved or consented to the said reduction in Brilin's August 2019 rent payment, and that such reduction is not permitted by the Parties' written Lease Agreement.

13. Responding to the allegations of Paragraph 28, Plaintiff admits that it retained counsel to represent it in this matter; sent written notice to Brilin advising that Plaintiff was terminating the Lease Agreement due to Brilin's default of the same, which the Plaintiff was authorized and privileged to do under the terms of the Lease Agreement; and advised Brilin that it would take legal action against Brilin if necessary to protect the Plaintiff's legal rights under the Lease Agreement. Plaintiff denies the remaining allegations of Paragraph 28 and demands strict proof thereof.

14. Plaintiff denies the allegations of Paragraph 29 and demands strict proof thereof.

15. Responding to the allegations of Paragraph 30, the Plaintiff would affirmatively allege and show that the damage to and/or deterioration of the paved surface area near the concrete ramp was the result of Brilin using that area of paved surface in an inappropriate manner, despite being asked several times by the Plaintiff to cease doing so because such manner of use would cause damage to the paved surface. In further response to Paragraph 30, the Plaintiff denies that it refused to make repairs to the damaged and/or deteriorated paved surface area, and would

affirmatively allege and show that it intended and desired to retain the same company that repaved the surface areas to the front and sides of the Building in the summer of 2019. Brilin had the asphalt repaved in concrete before the Plaintiff had an opportunity to make the repairs, and without the consent or approval of the Plaintiff.

16. Responding to the allegations of Paragraph 31, the Plaintiff admits that the Parties had an onsite meeting at the Premises on or about October 31, 2019. The Plaintiff also admits that, during the onsite meeting, CREH's owner discussed with Brilin's owner several of the items that form the substance of Plaintiff's Complaint and Amended Complaint. The Plaintiff further admits that the onsite meeting concluded with an agreement between CREH's owner and Brilin's owner that Brilin was to repair the items discussed during the meeting prior to the end of Brilin's Lease Term, and that CREH would have a fair opportunity to inspect those repairs.

17. Responding to the allegations of Paragraph 32, the Plaintiff would affirmatively allege and show that, after the October 31, 2019, onsite meeting, multiple issues arose between Brilin and CREH. These issues included, among other things, Brilin negligently and recklessly causing damage to the Building and the Premises; Brilin commissioning repairs to be made to the Building and the Premises without the Plaintiff's knowledge or consent; and Brilin further antagonizing CREH, its agents, and employees.

18. The allegations of Paragraphs 33 and 34 refer to the Parties' Lease Agreement, which is a written document that speaks for itself. Plaintiff denies any allegation of the foregoing Paragraphs that is inconsistent with the terms of the Parties' written Lease Agreement.

19. Plaintiff denies the allegations of Paragraph 35 and demands strict proof thereof.

20. The allegations of Paragraph 36 refer to the Parties' Lease Agreement, which is a

written document that speaks for itself. Plaintiff denies any allegation of Paragraph 36 that is inconsistent with the terms of the Parties' written Lease Agreement.

21. Responding to the allegations of Paragraph 37, Plaintiff admits that it requested that Brilin disclose to CREH the names of all contractors that Brilin used for repairs, and that Plaintiff requested that Brilin cause its contractors for repairs to provide certificates of insurance naming CREH as an additional insured. However, Plaintiff would affirmatively allege and show that these requests were reasonable and were made for a proper purpose.

22. The allegations of Paragraphs 38 and 39 refer to the Parties' Lease Agreement, which is a written document that speaks for itself. Plaintiff denies any allegation of the foregoing Paragraphs that is inconsistent with the terms of the Parties' written Lease Agreement.

23. Plaintiff admits the allegations of Paragraph 40.

24. Plaintiff lacks sufficient information to form an opinion or belief as to the allegations of Paragraph 41, and denies the same on that basis and demands strict proof thereof. Plaintiff also specifically denies that the contractor hired by Brilin to make the necessary repairs to the demising wall performed those repairs completely and in a commercially reasonable manner.

25. Plaintiff denies the allegations of Paragraph 42 and demands strict proof thereof.

26. Plaintiff lacks sufficient information to form an opinion or belief as to the allegations of Paragraph 43, and denies the same on that basis and demands strict proof thereof.

27. The allegations of Paragraph 44 refer to the Parties' Lease Agreement, which is a written document that speaks for itself. Plaintiff denies any allegation of Paragraph 44 that is inconsistent with the terms of the Parties' written Lease Agreement. Plaintiff also denies the allegations of Paragraph 44 related to the condition of the demising wall at the time Brilin first

occupied the Premises, the quality of the materials that were used in the construction of the demising wall, and manner in which the demising wall was constructed. Plaintiff demands strict proof of all of these allegations.

28. Plaintiff denies the allegations of Paragraph 45 and demands strict proof thereof.

29. Plaintiff admits the allegations of Paragraph 46 only to the extent that it alleges that Brilin caused to be replaced the Side Garage Door and one of the Loading Dock Garage Doors during the course of the final months of the Initial Lease Term. Plaintiff denies that Brilin replaced the garage doors with like-kind garage doors with regard to quality, components, and color, and demands strict proof thereof. Further responding to the allegations of Paragraph 46, Plaintiff would affirmatively allege and show that Brilin replaced the aforementioned garage doors on its own and without the consent or approval of the Plaintiff, that Brilin replaced the said garage doors with garage doors of inferior quality that were not suited for the commercial purposes for which the said garage doors were to be used; and that Brilin improperly removed the existing garage doors from the Premises without advising the CREH of where Brilin was taking them, despite multiple requests by CREH that Brilin disclose how and where it disposed of the garage doors that were removed from the Building.

30. Responding to the allegations of Paragraph 47, Plaintiff admits that the replacement estimates for the garage doors was over \$3,000, that Brilin sought CREH's approval to replace the said garage doors, and that CREH refused to approve the contractor that Brilin intended to use to replace the said garage doors. However, Plaintiff would affirmatively allege and show that its refusal of the contractor that Brilin intended to use to replace the said garage doors was reasonable.

31. Plaintiff denies the allegations of Paragraph 48 and demands strict proof thereof.

32. Plaintiff lacks sufficient information to form an opinion or belief as to the allegations of Paragraph 49, and denies the same on that basis and demands strict proof thereof.

33. Responding to the allegations of Paragraph 50, Plaintiff lacks sufficient information to form an opinion or belief as to the allegations regarding the quotes that Brilin received for the replacement of the damaged section of asphalt on the right side of the Building, and denies the same on that basis and demands strict proof thereof. Plaintiff admits that it refused to approve the contractor that Brilin intended to use to replace the said damaged section of asphalt, but Plaintiff would affirmatively allege and show that such refusal was reasonable. Plaintiff denies the remaining allegations of Paragraph 50 and demands strict proof thereof.

34. Plaintiff denies the allegations of Paragraph 51 and demands strict proof thereof.

35. The allegations of Paragraphs 52 and 53 refer to the Parties' Lease Agreement, which is a written document that speaks for itself. Plaintiff denies any allegation of the foregoing Paragraphs that is inconsistent with the terms of the Parties' written Lease Agreement.

36. Plaintiff denies the allegations of Paragraph 54 and demands strict proof thereof.

37. Plaintiff admits the allegations of Paragraph 55.

**AS TO PARAGRAPHS 56-74 LABELED "FOR A FIRST CAUSE OF ACTION
(BREACHES OF CONTRACT)"**

38. Paragraph 56 does not require a response.

39. The allegations of Paragraph 57 refer to the Parties' Lease Agreement, which is a written document that speaks for itself. Plaintiff denies any allegation of Paragraph 57 that is inconsistent with the terms of the Parties' written Lease Agreement.

40. Plaintiff denies the allegations of Paragraph 58 and demands strict proof thereof.

41. Paragraph 59 is a legal conclusion that does not require a response.

42. Plaintiff denies the allegations of Paragraphs 60, 61, 62, 63, 64, 65, and 66, and demands strict proof thereof.

43. The allegations of Paragraph 67 refer to the Parties' Lease Agreement, which is a written document that speaks for itself. Plaintiff denies any allegation of Paragraph 67 that is inconsistent with the terms of the Parties' written Lease Agreement.

44. Responding to the allegations of Paragraph 68, Plaintiff admits that it retained counsel to represent it in this matter; sent written notice to Brilin advising that Plaintiff was terminating the Lease Agreement due to Brilin's default of the same, which the Plaintiff was authorized and privileged to do under the terms of the Lease Agreement; and advised Brilin that it would take legal action against Brilin if necessary to protect the Plaintiff's legal rights under the Lease Agreement. Plaintiff denies the remaining allegations of Paragraph 68 and demands strict proof thereof.

45. Responding to the allegations of Paragraph 69, Plaintiff admits that it never submitted any disputes to binding mediation, but Plaintiff denies that not doing so is a violation of the Parties' written Lease Agreement. Plaintiff would also affirmatively allege and show that Brilin never requested to stay the present litigation pending binding mediation after the filing of the Plaintiff's complaint in this matter.

46. Plaintiff denies the allegations of Paragraphs 70 and 71, and demands strict proof thereof.

47. The allegations of Paragraph 72 refer to the Parties' Lease Agreement, which is a written document that speaks for itself. Plaintiff denies any allegation of Paragraph 72 that is inconsistent with the terms of the Parties' written Lease Agreement. Plaintiff also denies the

allegations of Paragraph 72 related to the condition of the demising wall at the time Brilin first occupied the Premises, the quality of the materials that were used in the construction of the demising wall, and manner in which the demising wall was constructed. Plaintiff demands strict proof of all of these allegations.

48. Plaintiff denies the allegations of Paragraphs 73 and 74, and demands strict proof thereof.

**AS TO PARAGRAPHS 75-88 LABELED "FOR A SECOND CAUSE OF ACTION
(BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING)"**

49. Paragraph 75 does not require a response.

50. Paragraph 76 is a statement of the law in South Carolina regarding the implied covenant of good faith and fair dealing. Plaintiff denies any portion of Paragraph 76 that does not accurately reflect prevailing South Carolina law.

51. The allegations of Paragraphs 77 and 78 refer to the Parties' Lease Agreement, which is a written document that speaks for itself. Plaintiff denies any allegation of the foregoing Paragraphs that is inconsistent with the terms of the Parties' written Lease Agreement.

52. Plaintiff denies the allegations of Paragraphs 79 and 80, and demands strict proof thereof.

53. The allegations of Paragraphs 81 and 82 refer to the Parties' Lease Agreement, which is a written document that speaks for itself. Plaintiff denies any allegation of the foregoing Paragraphs that is inconsistent with the terms of the Parties' written Lease Agreement.

54. Plaintiff denies the allegations of Paragraphs 83, 84, 85, 86, 87, and 88, and demands strict proof thereof.

**AS TO PARAGRAPHS 89-101 LABELED "FOR A THIRD CAUSE OF ACTION
(QUANTUM MERUIT / UNJUST ENRICHMENT)"**

55. Paragraph 89 does not require a response.

56. Plaintiff denies the allegations of Paragraphs 90, 91, 92, 93, and 94, and demands strict proof thereof.

57. The allegations of Paragraph 95 refer to the Parties' Lease Agreement, which is a written document that speaks for itself. Plaintiff denies any allegation of Paragraph 95 that is inconsistent with the terms of the Parties' written Lease Agreement.

58. Plaintiff denies the allegations of Paragraphs 96, 97, 98, and 99, and demands strict proof thereof.

59. Responding to the allegations of Paragraph 100, Plaintiff admits that it demanded payment from Brilin of the full amount of rent due under the Parties' written Lease Agreement for the month of August 2019, which is the amount that Brilin is contractually obligated to pay. Plaintiff denies the remaining allegations of Paragraph 100 and demands strict proof thereof.

60. Plaintiff denies the allegations of Paragraph 101 and demands strict proof thereof.

**AS TO PARAGRAPHS 102-119 LABELED "FOR A FOURTH CAUSE OF ACTION
(UNFAIR TRADE PRACTICES ACT VIOLATION; S.C. CODE §§ 39-5-10 *ET SEQ.*)"**

61. Paragraph 102 does not require a response.

62. Plaintiff denies the allegations of Paragraphs 103, 104, 105, 106, 107, and 108, and demands strict proof thereof.

63. Responding to the allegations of Paragraph 109, Plaintiff would affirmatively allege and show that the "new issues" with the demising wall that it has discovered since the filing of the present litigation were issues that Brilin, with the assistance of Co-Defendant W & L

Services, concealed from CREH, and which CREH was only able to discover during an inspection of the Building and the Premises after Brilin vacated the Building and the Premises. After discovering these concealed damages, CREH reasonably asked Brilin to pay for the necessary repairs to the demising wall because, upon information and belief, the damages were caused by Brilin during its tenancy at the Building and the Premises.

64. Plaintiff admits the allegations of Paragraph 110 only to the extent that they allege that CREH has hired an engineer to inspect the damaged demising wall and make recommendations as to what repairs are necessary based upon the engineer's professional training and expertise. Plaintiff denies all other allegations of Paragraph 110 and demands strict proof thereof.

65. Responding to the allegations of Paragraph 111, Plaintiff admits that it has procured replacement metal studs and gypsum board to repair damaged sections of the demising wall, but the Plaintiff would affirmatively allege and show that its actions in this regard were based upon the professional recommendations and guidance of CREH's retained engineer as well as a licensed general contractor that CREH retained to inspect the damaged demising wall and oversee the necessary repairs;

66. Plaintiff denies the allegations of Paragraphs 112, 113, 114, 115, 116, 117, 118, and 119, and demands strict proof thereof.

FOR A SECOND DEFENSE

67. Plaintiff re-alleges all prior allegations and defenses, except those inconsistent herewith, as if fully set forth hereinafter.

68. Brilin's counterclaims fail to state a claim upon which relief can be granted against

Plaintiff. Therefore, Brilin's counterclaims against Plaintiff should be dismissed as a matter of law pursuant to Rule 12(b)(6), S.C.R. Civ. P.

FOR A THIRD DEFENSE

69. Plaintiff re-alleges all prior allegations and defenses, except those inconsistent herewith, as if fully set forth hereinafter.

70. Brilin does not have clean hands with regard to the allegations contained in its counterclaims against Plaintiff. Plaintiff pleads the doctrine of unclean hands as a complete bar to Brilin's counterclaims.

WHEREFORE, having fully answered Brilin's counterclaims, the Plaintiff prays for dismissal of the same; for judgment in Plaintiff's favor as asserted in the Amended Complaint; for costs and reasonable attorney's fees; and for such other and further relief as the Court deems just and proper.

s/ Steve D. Dluzneski
Steve D. Dluzneski
S.C. Bar # 102019
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ATTORNEY FOR THE PLAINTIFF

August 25, 2020.
Rock Hill, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
Carolina Real Estate Holdings, LLC,	)	
	)	C/A No. 2020-CP-46-01145
Plaintiff,	)	
v.	)	
Brilin Electric, LLC and W & L Services, LLC,	)	DEFENDANT BRILIN ELECTRIC, LLC'S
	)	MOTION FOR TREBLE DAMAGES AND
Defendants.	)	ATTORNEY'S FEES

Now Comes Defendant Brilin Electric, LLC ("Brilin"), pursuant to South Carolina Rules of Civil Procedure 7, 58, and otherwise, and moves this Court to treble its damages under the South Carolina Unfair Trade Practices Act (the "UTPA") and to award it attorney's fees under the prevailing party provision of the Lease Agreement (the "Lease") and/or the UTPA. In support thereof, Brilin would show the Court the following:

I. OVERVIEW

1. This matter came before the Court for trial on July 18, 2022.
2. Plaintiff Carolina Real Estate Holdings, LLC ("CREH") filed this suit seeking to recover damages for a breach of the Lease, gross negligence, negligence, and fraudulent misrepresentation.
3. Brilin filed counterclaims seeking to recover for CREH's breach of the Lease and for violations of the UTPA.
4. At the close of CREH's case, the Court granted a directed verdict in favor of Brilin and dismissed CREH's claims of gross negligence, negligence, and fraudulent misrepresentation.
5. On July 21, 2022, CREH argued to the jury that it was entitled to approximately \$28,500.00 in damages for breach of the Lease. The jury disagreed and only awarded \$10,513.88

on its breach claim, the amount associated with alleged damages related to the demising wall. The jury dismissed CREH's claims regarding the garage doors, the bricks, the cleanliness of the office area, the ductwork, and the asphalt damage.

6. The jury found in favor of Brilin on its breach of Lease claim in the amount of \$4,424.75, the exact amount requested by Brilin. The jury also found in favor of Brilin on its claim for CREH's violation of the UTPA in the amount of \$6,089.13.

7. The damages awarded to Brilin completely offset any recovery to CREH, leaving CREH with a net recovery of \$0.00.

8. The jury through its verdict sent a clear and unmistakable message that CREH's claims — other than those related to the demising wall — were without merit and CREH's actions offended "established public policy and/or were immoral, unethical, or oppressive" and because of CREH's appalling conduct, CREH deserved to recover nothing from Brilin.

9. Accordingly, the Court should exercise its authority to grant Brilin treble damages and award it its reasonable attorney's fees and costs.

II. BRILIN IS ENTITLED TO TREBLE DAMAGES PURSUANT TO UTPA

10. A party may recover treble damages pursuant to the UTPA where "the court finds that the use or employment of the unfair or deceptive method, act or practice was a willful or knowing violation of Section 39-5-20." S.C. Code §§ 39-5-140(a). "[I]f a person of ordinary prudence who was engaged in trade or commerce could have ascertained that his conduct violated the UTPA, such conduct is willful within the meaning of the statute." *Maybank v. BB&T Corporation*, 416 S.C. 541, 578, 787 S.E.2d 498, 517 (2016) (citing *Wright v. Craft*, 372 S.C. 1, 23-24, 640 S.E.2d 486, 498 (Ct. App 2006)). Brilin put forth sufficient evidence to show that CREH's conduct was a willful violation through, among other things, the creation of fraudulent

invoices, demands for damages that CREH never actually sustained, and CREH's ongoing harassment of Brilin throughout the course of the Lease term.

11. The jury in this matter found that CREH engaged in unfair or deceptive trade practices and that Brilin was damaged in an amount of \$6,089.13. Based on this verdict and CREH's willful violations, the Court should award Brilin \$18,267.39, trebling the jury's award.

III. BRILIN IS ENTITLED TO ITS ATTORNEY'S FEES PURSUANT TO THE UTPA AND PREVAILING PARTY PROVISION OF THE LEASE

A. UTPA

12. The SCUTPA mandates that a court award attorney's fees and costs to a successful party." *Liberty Mut. Ins. Co. v. Employee Resource Management, Inc.*, 176 F.Supp. 2d 510, 531(D.S.C. 2001). "Upon the finding by the court of a violation of this article, the court *shall* award to the person bringing such action under this section reasonable attorney's fees and costs" (emphasis in original). *Id.*, (quoting S.C. Code §§ 39-5-140(a)).

13. The jury in this matter found that CREH engaged in unfair or deceptive trade practices and that Brilin was damaged in an amount of \$6,089.13.

14. As evidenced by the Affidavit of Nathan A. White filed contemporaneously herewith, Brilin has incurred \$99,027.55 in reasonable attorney's fees and costs to date.

15. Based on the jury's verdict, the Court should award Brilin \$99,027.55, which represents its reasonable attorney's fees and costs in this matter.

B. Prevailing Party Provision of the Lease

16. Additionally, the Court should grant Brilin its attorney's fees as it prevailed in this matter as the verdict resulted in CREH recovering nothing.

17. Section 28(g) of the Lease states "[i]f any legal proceedings are instituted to enforce any provision of this lease, the prevailing party in the proceeding shall be entitled to recover from

the non-prevailing party reasonable attorney's fees and court costs incurred in connection with the proceeding."

18. "In the context of statutes allowing attorney fees, our supreme court has defined a 'prevailing party' as '[t]he one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered.'" *Seckinger v. Vessel Excalibur*, 326 S.C. 382, 388, 483 S.E.2d 775, 777-78 (1997) (quoting *Heath v. County of Aiken*, 302 S.C. 178, 182-83, 394 S.E.2d 709, 711 (1990)).

19. "According to *Heath*, 'a party need not be successful as to all issues in order to found to be a prevailing party.'" *Id.*

20. *Seckinger* dealt with statutory attorney's fees in the mechanics lien context. However, S.C. Code Ann. § 29-5-10(b) is also instructive regarding settlement offers versus verdicts and sets forth that if written offers are made by the parties, "the party whose offer is closer to the verdict reached is considered the prevailing party in the action." *Id.*, 326 S.C. at 389 (quoting S.C. Code Ann. § 29-5-10(b)).

21. In May of 2022, Brilin offered \$20,000 to settle the case. Prior to this point, Brilin made offers to settle the case at multiple points, including at the outset of the lawsuit and at mediation. CREH ignored or rejected all offers and never made a counteroffer until the first day of trial, when CREH offered to accept \$65,000 to settle the case.¹ Using the provisions of S.C. Code Ann. § 29-5-10(b) as an analog, it is indisputable that CREH's recovery of nothing was far closer to Brilin's settlement offer than CREH's.

¹ Given CREH requested approximately \$28,500 in damages during its closing argument to the jury, it is clear that well over 50% of CREH's settlement offer contemplated Brilin paying CREH some or all of CREH's attorney's fees.

22. CREH ultimately failed to recover any damages from its claim for a breach of contract because it lost on Brilin's counterclaims and the jury awarded damages on Brilin's claims equal to the award to CREH on its claim.

23. Moreover, when factoring in Brilin is entitled to treble its damages pursuant to the UTPA, not only did CREH recover nothing, but will have a judgment against it requiring CREH to pay Brilin \$12,178.26.

24. Brilin clearly prevailed: (i) because it eliminated Plaintiff's damages for the alleged breach of lease; (ii) as it is entitled to treble damages; and (iii) because Brilin's best settlement offer was greatly in excess of the amount CREH received.

25. As evidenced by the Affidavit of Nathan A. White filed contemporaneously herewith, Brilin has incurred \$99,027.55 in reasonable attorney's fees and costs to date.

26. Based on the jury's verdict and the prevailing party's attorney's fees provision in the Lease, the Court should award its reasonable attorney's fees and costs of \$99,027.55.

IV. CONCLUSION

Wherefore, based on the foregoing, Brilin Electric, LLC requests the Court:

1. Enter an order trebling the jury's award of damages for CREH's violation of the UTPA and enter judgment in Brilin's favor in the amount of \$12,178.26;
2. Enter an order requiring CREH to pay Brilin's reasonable attorney's fees and costs for CREH's violation of the UTPA and a judgment in Brilin's favor in the amount of \$99,027.55;
3. Enter an order requiring CREH to pay Brilin's reasonable attorney's fees and costs pursuant to the prevailing party provision contained in section 28(g) of the Lease
4. Enter a judgment in Brilin's favor in the amount of \$99,027.55 (such amount being concurrent with any attorney's fee award pursuant to the UTPA); and

5. Provide such other relief as the Court deems just and proper.

Respectfully submitted,

ALEXANDER RICKS PLLC

/s/ Nathan A. White

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Counsel for Brilin Electric, LLC

This the 2nd day of August, 2022

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Carolina Real Estate Holdings, LLC,)
)
Plaintiff,)
)
v.)
)
Brilin Electric, LLC and W & L Services,)
LLC,)
)
Defendants.)

C/A No. 2020-CP-46-01145

PLAINTIFF'S POST-TRIAL MOTIONS

Plaintiff makes the following post-trial motions:¹

Factual Overview

On or about April 17, 2017, Carolina Real Estate Holdings, LLC ("CREH" or "Plaintiff") entered into a Commercial Lease Agreement ("Lease") with Brilin Electric, LLC ("Brilin" or "Defendant") in relation to CREH's commercial property located at 2180 Carolina Place, Suite 111, Fort Mill, SC 29708. Pl. Ex. 2. The Lease provided for a three-year term, commencing on May 1, 2017, and ending on April 30, 2020. Pl. Ex. 2 ¶ 2. The Lease obligated Brilin, during the lease term, to "maintain in good order and repair the Premises," and to "use only licensed contractors for repairs." The Lease also afforded to CREH, as the Landlord, the contractual right to approve the contractor selected by Brilin as to any repairs made to the Premises when the cost of such repairs exceeded \$3,000.00. Pl. Ex. 2 ¶ 11(a). The Lease required Brilin, upon the expiration of its lease term, to return the Premises to CREH "in as good condition and repair" as Brilin received the Premises at the beginning of its lease term. Pl. Ex. 2 ¶ 11(b).

¹ At the close of trial, the trial judge extended the deadline for the filing of post-trial motions until 5:00 P.M. (EST) on Wednesday, August 17, 2022.

In the early portion of Brilin's lease term, interactions and dealings between CREH and Brilin were, for the most part, copacetic. There was an open line of communication between the parties, and there were no significant issues. However, in 2019, the parties' relationship began to take a turn in a negative direction. During Brilin's third lease year, the Lease set the monthly rental amount as \$3,182.70 per month. Pl. Ex. 2 ¶ 3. Brilin took it upon itself to only pay \$2,037.95 to CREH as rent during the month of August 2019, which amounts to \$1,144.75 that Brilin unilaterally (i.e., without notifying or speaking with CREH in advance) decided to withhold from its rent payment for that month. Around this same time, CREH became aware of various damages to the Premises that were caused, to a significant degree, by Brilin's careless, negligent, and perhaps reckless operation of a forklift both inside and outside of the warehouse space that Brilin occupied. As it was CREH's commercial property, and because CREH was cognizant of the fact that it would have future commercial tenants occupying the Premises after Brilin vacated, CREH was understandably concerned about Brilin's non-payment of rent and causing damage to CREH's commercial space. CREH attempted to resolve these issues directly with Brilin, to no avail. Consequently, CREH was forced to retain counsel in or about September 2019 to represent it in a dispute with a commercial tenant (Brilin) that CREH was concerned had "gone rogue."

CREH, through counsel, sent a certified letter to Brilin on September 24, 2019, in which CREH reiterated its concerns about Brilin's actions and omissions as of that date. Pl. Ex. 3. In its September 24 letter to Brilin, CREH instructed Brilin to not operate any forklifts or other heavy machinery in the parking lot outside the warehouse building "due to the damage that this activity has already caused thereto." Pl. Ex. 3 ¶ 6. CREH also instructed Brilin to not "attempt any repairs of the damages discussed [in the letter]" because CREH was concerned about the quality of those repairs if Brilin were to make them, and because CREH wanted to ensure that the contractors who

would ultimately be repairing the damages that Brilin had caused to the Premises would be properly licensed and insured. Pl. Ex. 3 ¶ 5. CREH's September 24 certified letter to Brilin was returned as "undeliverable" because Brilin failed and/or refused to pick it up from the post office. Fearing what may happen to the Premises as additional time passed without Brilin seeing the September 24, 2019, letter from CREH's counsel, Brad Decker, the Principal of CREH, posted copies of the letter on the exterior doors of the warehouse building at the Premises. Brilin ultimately received the September 24, 2019, letter once Mr. Decker posted it at the Premises, and retained counsel to address the issues contained therein.

Following some e-mail correspondence between counsel regarding the issues addressed in the aforementioned September 24 letter, the parties ultimately decided to meet in person at the Premises, with counsel present, for the purpose of inspecting the Premises and discussing resolution of CREH's concerns expressed in the September 24 letter. This meeting at the Premises occurred on October 31, 2019, with Brad Decker of CREH, Bryon Russell of Brilin, and their respective attorneys present. The undersigned attorney for CREH was present on site at the Premises during the October 31 meeting, and continued representing CREH thereafter in the subsequent litigation. At the time of the parties' on-site meeting at the Premises, Brilin was represented by Ryan Hoffman, an attorney at Alexander Ricks who is not licensed to practice in South Carolina.² During the October 31 on-site meeting, Mr. Decker, Mr. Russell, and both attorneys walked the Premises and discussed CREH's concerns and the damages that Brilin had caused to the Premises as of that date. Notably, Mr. Russell refused to allow Mr. Decker to perform a proper inspection of the demising wall inside Brilin's warehouse space during the October 31

² Once CREH filed suit in this matter against Brilin, Nathan White at Alexander Ricks, who is licensed to practice in South Carolina, began representing Brilin as counsel of record in the litigation.

meeting due to racks with Brilin's inventory and equipment being attached to the demising wall at that time; however, Mr. Russell did assure Mr. Decker, in the presence of both attorneys, that he would allow and provide for a proper inspection of the demising wall once all of Brilin's inventory and equipment were removed at the end of Brilin's lease term. Mr. Decker reluctantly agreed. Mr. Russell also told Mr. Decker during the October 31 meeting about some HVAC ductwork directly below the roof on the inside of the warehouse space that Brilin had damaged and then reconfigured to better suit Brilin's needs. Mr. Decker was unaware that Brilin had reconfigured the HVAC ductwork, as no one from Brilin had spoken with anyone at CREH prior to the reconfiguration work being done. Mr. Decker told Mr. Russell that the HVAC ductwork reconfiguration would be addressed at the end of Brilin's lease term. At the conclusion of the October 31, 2019, on-site meeting at the Premises, Mr. Decker and Mr. Russell shook hands, and Mr. Russell promised that he would not perform any more work at the Premises without CREH's knowledge and approval. Mr. Decker believed that Mr. Russell was being genuine with his promise in this regard, which also occurred in the presence of both attorneys, and agreed to take him at his word. Both parties genuinely believed that the October 31 meeting had gone well and was productive, and that there would not be any future issues or problems at the Premises.

Unfortunately, it did not take long after the October 31 on-site meeting for Mr. Russell to throw the promise that he made to Mr. Decker at the end of the meeting to the wind. Within a matter of weeks of the parties' on-site meeting at the Premises, CREH learned from its property manager, Wayne Schulte, as well as from one or more neighboring businesses that Brilin was causing additional damages to the Premises by way of its forklift, and that Brilin was also having work performed at the Premises without CREH's knowledge or approval. These discoveries were in direct contravention to the promise that Mr. Russell made to Mr. Decker at the conclusion of

the October 31 meeting, and CREH was justifiably distressed and concerned upon learning this information. Therefore, CREH, through counsel, communicated with Brilin, through counsel, to try to figure out what Brilin was doing at CREH's commercial property. In some instances, Brilin's counsel was unaware of what Brilin was doing at the Premises and responded that he would speak with Brilin and then follow up with CREH's counsel. This back-and-forth persisted for a period of time, with CREH renewing its belief that Brilin had "gone rogue," and would continue to exclude CREH from knowing what Brilin was doing (or not doing) with and at CREH's commercial property. At this point, in early 2020, CREH reasonably and justifiably feared what Brilin was doing at and to the commercial property that CREH owned. As a result, CREH decided that it had no other choice but to file suit against Brilin, which it did on March 27, 2020.

The case by CREH against Brilin proceeded through initial pleadings, discovery, and mediation, and was ultimately called for jury trial during the July 18-22, 2022, Common Pleas Jury Term before The Honorable J. Mark Hayes, II. The jury trial of this case lasted for 4 days, with the jury ultimately reaching a verdict in the afternoon of Thursday, July 21, 2022. During CREH's case-in-chief, CREH showed the jury photographs of the damages that Brilin caused to the Premises during its lease term. Pl. Exs. 5, 7, 8, 11, 13, 14, 15, 16, and 21. CREH also presented the jury with documentation supporting all of the damages that CREH was claiming against Brilin. Pl. Exs. 6, 9, 10, 12, 17, 18, 20, 22, 23, 25, 26, and 27. Brilin did not present any evidence of any damages that it sustained as a result of any actions or inactions by CREH during its case-in-chief; however, during its closing argument, Brilin argued that it was entitled to the return of its \$3,000.00 security deposit³ as well as the \$1,144.75 that Brilin unilaterally withheld from its August 2019

³ At the conclusion of Brilin's case-in-chief, but before the parties presented closing arguments to the jury, the parties stipulated that Brilin did not receive its \$3,000.00 security deposit back from CREH.

rent payment. Curiously, Brilin did not present any evidence of, nor did it ask for from the jury during its closing argument, any actual damages that Brilin allegedly sustained as a result of CREH's alleged unfair trade practices toward Brilin.⁴ The only damages that Brilin asked the jury to award in its favor and against CREH in its closing argument were \$3,000.00 for its security deposit and \$1,144.75, for a total of \$4,144.75 in actual damages on Brilin's breach of contract counterclaim against CREH. With respect to its Unfair Trade Practices counterclaim, Brilin asked the jury for \$1.00 in actual damages during its closing argument. Even though Brilin did not present any evidence of actual damages sustained by Brilin in relation to its Unfair Trade Practices counterclaim against CREH, and despite Brilin arguing during its closing argument that Brilin believed that it was only entitled to \$1.00 from CREH on its Unfair Trade Practices counterclaim, the jury nonetheless returned a verdict, much to CREH's surprise and dismay, awarding Brilin \$6,089.13 in actual damages on its Unfair Trade Practices counterclaim. The jury also awarded Brilin \$4,424.75 in actual damages on Brilin's breach of contract counterclaim, which is more than the amount of actual damages that Brilin requested from the jury during its closing argument and presented evidence at trial for.

It is worth noting that, during its closing argument, Brilin referred to this case as a "bad movie," and referred to Mr. Decker as "Dr. Evil" and CREH's property manager, Wayne Schulte, as "Lurch." In fact, the central theme of its closing argument that Brilin argued to the jury was that this case was a bad movie in which Dr. Evil (Brad Decker) took advantage of the feeble and defenseless Brilin, and that he did so primarily by and through Lurch (Wayne Schulte), his trusty henchman. Mr. Decker, who was present during the entirety of the jury trial of this case, was

⁴ In addition to its counterclaim against CREH for breach of contract, Brilin also counterclaimed against CREH for allegedly violating the South Carolina Unfair Trade Practices Act.

deeply offended when he heard these characterizations during Brilin's closing argument, and he was justifiably concerned about how this name-calling behavior would affect the jury's consideration of the case. In other words, by and through its closing argument at trial, Brilin presented derogatory and inflammatory statements (and, in fact, a derogatory and inflammatory theory of the case) about a party to this case that the jury heard and undoubtedly considered during its deliberations. As the evidence presented at trial showed, Brilin took unilateral and unauthorized liberties during its three-year lease term at CREH's commercial property, and those unilateral and unjustified liberties continued up through and including Brilin's closing argument at trial.

Motion for Attorney's Fees and Costs

Paragraph 28(g) of the Lease states that "[i]f legal proceedings are instituted to enforce any provision of this Lease, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorney's fees and court costs incurred in connection with the proceeding." Pl. Ex. 2 ¶ 28(g). In this case, CREH filed suit against Brilin to enforce several provisions of the Lease; namely, Paragraphs 10, 11(a), and 11(b) of the Lease. Therefore, for the reasons set out and discussed herein *infra*, CREH moves the Court for an award of its attorney's fees and costs incurred in connection with this matter against Brilin.

"In the context of statutes allowing attorney fees, our supreme court has defined a 'prevailing party' as '[t]he one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, *even though not to the extent of the original contention* [and] is the one in whose favor the decision or verdict is rendered and judgment entered'" (emphasis added). Seckinger v. Vessel Excaliber, 326 S.C. 382, 388, 483 S.E.2d 775, 777-78 (Cl. App. 1997) (quoting Heath v. County of Aiken, 302 S.C. 178, 182-83, 394 S.E.2d 709, 711

(1990)). “According to Heath, ‘a party need *not* be successful as to all issues in order to be found to be a prevailing party’” (emphasis added). Id.

Here, the “main issue” involved in CREH’s case against Brilin was Brilin’s alleged breach of the Lease. In its closing argument at trial, CREH asked the jury to award approximately \$28,500 on its breach of contract claim against Brilin. Ultimately, the jury unanimously found for CREH on CREH’s breach of contract claim against Brilin and awarded \$10,513.88 in actual damages. If we consider this result in the context of the definition of “prevailing party” established by the South Carolina Supreme Court and recited by the South Carolina Court of Appeals in Seckinger, CREH fits squarely within the definition because it successfully prosecuted the action and prevailed on the main issue of whether Brilin breached the Lease.

It is true that the jury did not award CREH the full amount of actual damages that it requested during its closing argument, but the definition of “prevailing party” recited in Seckinger does not require a party to prevail “to the extent of the original contention” in order to be, nevertheless, deemed a prevailing party in the action. It is also true that the jury returned verdicts in favor of Brilin on its breach of contract and Unfair Trade Practices counterclaims against CREH, with the said counterclaims constituting additional issues in this case. However, the Court of Appeals in Seckinger also made clear that, “a party need not be successful as to all issues in order to be found to be a prevailing party.” Id. In other words, the fact that the jury returned verdicts in favor of Brilin on Brilin’s counterclaims against CREH *does not* affect CREH’s status as a prevailing party in this case. The fact of the matter is that the jury rendered a verdict in CREH’s favor on its breach of contract claim against Brilin, which, according to Seckinger, necessitates the conclusion that CREH is a prevailing party in this case, and, consequently, is entitled to an award of its attorney’s fees and costs pursuant to Paragraph 28(g) of the Lease.

In its motion for attorney's fees and costs filed with the Court on August 2, 2022, Brilin discussed Section 29-5-10(b) and indicated that this Section "is also instructive" and should be considered by the Court in this case in the determination of the parties' competing motions for attorney's fees and costs. Def.'s Mtn. for Treble Damages and Atty's Fees ¶ 20. At the outset, it is important to note that Section 29-5-10(b) applies to the "prevailing party" determination for purposes of attorney's fees awards in mechanic's lien foreclosure cases. It has no applicability whatsoever to a contract dispute such as this one.

Even if the Court finds that Section 29-5-10(b) is somehow applicable to this case, Brilin did not comply with the requirements of the Section, which renders the definition of "prevailing party" found therein inapplicable. Specifically, Brilin's motion is correct when it states that Brilin "made offers to settle the case at multiple points," with its final written settlement offer of \$20,000 being made in May of 2022. Def.'s Mtn. for Treble Damages and Atty's Fees ¶ 21. The problem, though, is that none of Brilin's written settlement offers to CREH stated that they were made under Section 29-5-10(b), nor were any of them filed with the Court. In Seckinger, Mark Seckinger made a written offer to settle to Richard P. McDonnell, III on July 11, 1994. Like with Brilin's various written settlement offers in this case, though, "Seckinger's July 11, 1994, written offer did not state that it was made under Section 29-5-10(b)[,] nor was it filed with the court." As a result, the Court found that Seckinger's written offer did not comply with the requirements of Section 29-5-10(b) and that, consequently, the definition of "prevailing party" found in Section 29-5-10(b) was not applicable. Id. at 391. Similarly, in this case, in the event that the Court determines that Section 29-5-10(b) is somehow applicable to this contract dispute, the Court should find, as did the Court of Appeals in Seckinger, that Brilin did not comply with the requirements of Section 29-

5-10(b), and that, as a result, the definition of “prevailing party” found therein is not applicable here and should not be considered in any way in the Court’s determination of prevailing party.

Returning to the South Carolina Supreme Court’s established definition of “prevailing party” recited in Seckinger, CREH respectfully requests and moves the Court to find that it is a “prevailing party” in this action because CREH successfully prosecuted its breach of contract claim against Brilin and prevailed on the “main issue” of whether Brilin breached the Lease in one or more particulars. According to the Court in Seckinger, it matters not that the jury did not award CREH the full amount of damages that CREH was seeking against Brilin on its breach of contract claim. It also matters not, according to Seckinger and Heath, that the jury also returned verdicts in favor of Brilin on Brilin’s counterclaims against CREH. By way of the jury’s unanimous verdict in favor of CREH on its breach of contract claim, CREH is a prevailing party in this case and is, consequently, entitled to an award of its attorney’s fees and costs pursuant to Paragraph 28(g) of the Lease. Accordingly, CREH respectfully moves for a determination by the Court that it is a prevailing party in this case. CREH also respectfully moves for an award of its attorney’s fees and costs against Brilin for CREH’s attorney’s fees and costs incurred in this action.

An Affidavit of CREH’s Attorney’s Fees and Costs in this matter is being filed contemporaneously herewith.

Motion for JNOV

“A trial court should grant JNOV when the evidence is insufficient to support the jury’s verdict.” Helms Realty, Inc. v. Gibson-Wall Co., 383 S.C. 334, 338, 611 S.E.2d 485, 487 (2005) (citing Jinks v. Richland County, 355 S.C. 341, 345, 585 S.E.2d 281, 283 (2003)). CREH is entitled to JNOV as to Brilin’s counterclaim for Unfair Trade Practices because Brilin failed to establish one or more essential elements of its counterclaim.

It is well-established that, “[t]o recover in an action under the UTPA, the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public policy; and (3) the plaintiff suffered monetary or property loss as a result of the defendant’s unfair or deceptive act.” Wright v. Craft, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006).

In this case, Brilin did not present any evidence of any actual damages that it suffered as a result of any alleged unfair or deceptive act by CREH. As discussed herein *supra*, the only damages that Brilin presented during the trial of this case and requested that the jury award were the \$3,000.00 of its security deposit to which the parties stipulated and the \$1,144.75 that Brilin unilaterally decided to withhold from its August 2019 rent payment. Neither one of these monetary damages amounts were tied or related to any allegedly unfair or deceptive act by CREH toward Brilin. The best that Brilin was able to do at trial was to allege that CREH generated fraudulent invoices to Brilin during Brilin’s lease term. However, each and every witness that Brilin questioned regarding the allegedly fraudulent invoices denied that they were fraudulent, and there was no evidence that Brilin ever actually paid any of the allegedly fraudulent invoices.

It is also quite revealing that, during its closing argument at trial, Brilin only asked the jury to award \$1.00 on its Unfair Trade Practices counterclaim as “nominal damages.” Had Brilin suffered any actual damages as a result of any alleged unfair or deceptive act by CREH, CREH is certain that Brilin would have presented those damages during trial. Brilin did not present evidence of any such actual damages for the simple fact that it did not sustain any actual damages as a result of any alleged unfair or deceptive act by CREH.

Since Brilin did not present one shred of evidence of any actual damages that it suffered as a result of CREH’s alleged unfair or deceptive behavior, CREH is entitled to JNOV as to Brilin’s

counterclaim for Unfair Trade Practices. In the words of the Court in Helms Realty, the evidence that Brilin presented in this regard is simply insufficient to support the jury's verdict. Accordingly, since Brilin woefully failed to establish that it suffered any actual damages as a result of any alleged unfair or deceptive acts by CREH, CREH is entitled to JNOV as to Brilin's counterclaim for Unfair Trade Practices.

CREH is also entitled to JNOV as to Brilin's counterclaim for Unfair Trade Practices because Brilin did not establish that any alleged unfair or deceptive act by CREH toward Brilin affected public policy. "To be actionable under the UTPA, an unfair or deceptive act or practice must have an impact upon the public interest." Id. at 29. "Since 1986, South Carolina courts have required that a plaintiff bringing a private cause of action under UTPA allege and prove the defendant's actions adversely affected the public interest. An impact on the public interest may be shown if the acts or practices have the potential for repetition." Id.

This case involves a private lease dispute between two corporate entities. Brilin did not present any evidence at trial, nor did Brilin argue to the jury during its closing argument, that any alleged unfair or deceptive act by CREH toward Brilin are capable of repetition, or have been repeated, in any other lease dispute that CREH has had with any of its former or current commercial tenants. In fact, Mr. Decker commented during the jury trial that this case is the very first time that he has ever been involved in a jury trial in his capacity as Principal of CREH. The most that Brilin was able to offer in this regard at trial was during argument on CREH's motion for directed verdict as to Brilin's Unfair Trade Practices counterclaim. In particular, Brilin argued that the allegedly fraudulent invoices that it contended that CREH generated, which each and every CREH witness denied, show that that kind of conduct is capable of repetition because CREH allegedly did it in this case, so Brilin supposedly had reason to believe that CREH might repeat it

in the future. Brilin's contentions in this regard are nothing but mere speculation, and unfortunately for Brilin, mere speculation and conjecture is simply insufficient to meet Brilin's burden of proof as to the second element of an Unfair Trade Practices claim. Therefore, CREH is also entitled to JNOV as to Brilin's counterclaim for Unfair Trade Practices because Brilin failed to establish that CREH's alleged unfair or deceptive act affected public policy.

Motions for Remittitur

"The trial court has wide discretionary power to reduce the amount of a verdict which in his or her judgment is excessive. The decision of the trial judge to reduce the verdict will not be disturbed unless it clearly appears that the exercise of discretion was controlled by a manifest error of law." Rush v. Blanchard, 310 S.C. 375, 381, 426 S.E.2d 802, 806 (1993). CREH is entitled to remittitur as to the jury's awards on both of Brilin's counterclaims against CREH because the amounts of both of the said awards are excessive.

I. Breach of Contract

During its case-in-chief, Brilin presented no evidence of damages as to its counterclaim against CREH for breach of contract. However, after Brilin rested its case, but before the parties delivered their respective closing arguments to the jury, the parties stipulated that Brilin did not receive its \$3,000.00 security deposit back from CREH. Brilin subsequently included this \$3,000.00 in its closing argument, along with the \$1,144.75 that Brilin unilaterally decided to withhold from its August 2019 rent payment, in its damages calculation that Brilin requested from the jury. Brilin presented no other evidence of damages at trial. The jury ultimately awarded Brilin \$4,424.75 in actual damages on its breach of contract counterclaim, which is \$280.00 more than the total amount that Brilin's evidence presented at trial supports and that Brilin asked the jury to award. Consequently, CREH respectfully requests that the Court grant remittitur as to the

jury's award on Brilin's breach of contract counterclaim and reduce the said actual damages award to \$4,144.75, which reflects the total amount of actual damages for which Brilin presented evidence at trial and requested that the jury award during its closing argument.

II. Unfair Trade Practices

Brilin presented no evidence that Brilin suffered any actual damages whatsoever as a result of any alleged unfair or deceptive act by CREH. The most that Brilin did in this regard was to present and question CREH's witnesses about one or more invoices that CREH purportedly generated to Brilin that Brilin believed were fraudulent. However, all of the CREH witnesses that Brilin questioned about the allegedly fraudulent invoices denied that they were fraudulent, and Brilin presented no evidence at all showing that Brilin ever paid any of the allegedly fraudulent invoices. Brilin also did not argue to the jury during its closing argument that it paid any of the allegedly fraudulent invoices that CREH purportedly generated, nor did Brilin argue to the jury that it suffered any actual damages as a result of any alleged unfair or deceptive act by CREH. In fact, Brilin asked the jury to award a mere \$1.00 as "nominal damages" against CREH on its counterclaim for Unfair Trade Practices. Despite the complete lack of evidence of actual damages as to Brilin's Unfair Trade Practices counterclaim presented at trial, and Brilin's own request that the jury award a mere \$1.00 on this counterclaim, the jury, for reasons that elude comprehension, returned a verdict in Brilin's favor of \$6,089.13 in actual damages on the Unfair Trade Practices counterclaim. The jury, of course, returned this verdict not long after hearing Brilin's closing argument, in which Brilin referred to this case as a "bad movie," and referred to Brad Decker, CREH's Principal, as "Dr. Evil" and Wayne Schulte, CREH's Property Manager, as "Lurch."

Upon receiving the jury's verdict on Brilin's Unfair Trade Practices counterclaim, and after recalling the derogatory and inflammatory characterizations of this case and of CREH that Brilin

incorporated into its closing argument, CREH was deeply concerned that the jury's award of a seemingly exorbitant amount of actual damages on Brilin's Unfair Trade Practices counterclaim was the result not of the evidence actually presented at trial, but of a desire to punish "Dr. Evil." It remains unclear, and is frankly stunning and shocking to the conscience, as to how the jury arrived at a verdict of an exorbitant \$6,089.13 in actual damages on Brilin's counterclaim for Unfair Trade Practices when Brilin did not present any evidence of any actual damages that it suffered as a result of any allegedly unfair or deceptive act by CREH and when Brilin itself asked the jury for a mere \$1.00 in actual damages on its Unfair Trade Practices counterclaim. In this way, the amount of the jury's award of actual damages on Brilin's Unfair Trade Practices counterclaim is wholly unsupported by the evidence presented at trial.

Therefore, CREH respectfully requests that the Court also grant remittitur as to the jury's award on Brilin's Unfair Trade Practices counterclaim and reduce the said actual damages award to either \$0.00, which is the amount of actual damages actually supported by Brilin's evidence presented at trial, or in the alternative, \$1.00, which is the amount of actual damages that Brilin requested from the jury during its closing argument. This motion for remittitur, of course, is presented as an alternative to the requested JNOV as to Brilin's Unfair Trade Practices counterclaim, which CREH requests in the event that the Court is not inclined to grant JNOV in CREH's favor on Brilin's Unfair Trade Practices counterclaim.

August 17, 2022

Attorney Signature Page to Follow

/s/ Steve D. Dluzneski

Steve D. Dluzneski

S.C. Bar Number: 102019

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ATTORNEYS FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
Carolina Real Estate Holdings, LLC,	)	
	)	C/A No. 2020-CP-46-01145
Plaintiff,	)	
v.	)	AFFIDAVIT OF ATTORNEY'S FEES
	)	AND COSTS
Brilin Electric, LLC and W & L Services, LLC,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED BEFORE ME, Nathan A. White, who being first duly sworn, deposes and says:

1. I am an attorney with the law firm of Alexander Ricks PLLC, and I aver my competency to testify as a sworn witness to the matters contained herein.

2. This case is an action related to disputes regarding a lease of real property located in York County, South Carolina and for collection of sums due arising from a breach of lease and counterclaims for breach of the lease and a violation of the South Carolina Unfair Trade Practices Act ("UTPA").

3. The subject Lease specifically provides that the prevailing party in any litigation is entitled to the recovery of attorney's fees and costs associated with enforcing any provision of the lease.

4. Furthermore, the UTPA entitles a party who prevails on a claim for unfair or deceptive trade practices to recover its attorney's fees.

5. Our firm was retained by Defendant Brilin Electric, LLC ("Brilin") to assist it with responding to a demand letter and then to defend this action once Plaintiff Carolina Real Estate Holdings, LLC ("CREH") brought suit before the conclusion of the Lease term. Brilin also

brought counterclaims resulting from CREH's breach of the Lease and counterclaims under the UTPA. The standard hourly rates of the attorneys who worked on this matter were \$350 per hour or less, said amounts being fair and reasonable given the nature of the dispute and costs associated with trial.

6. Despite repeated attempts to settle this matter, it went to trial before the Honorable Judge J. Mark Hayes II on July 18, 2022. I tried this matter, with the assistance of my associate Jack Spencer and paralegal support, from July 18 through July 21, 2022.

7. Brilin has incurred \$95,474.50 in legal fees and \$3,553.05 in court costs and expenses related to its enforcement of the Lease.

8. According to *Dedes v. Strickland*, 414 S.E.2d 134, 137 (S.C. 1992), the Supreme Court of South Carolina has set forth the following factors to be considered in an award of attorney's fees. These factors include: (1) the nature, extent and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. These factors, as applied in this case, are as follows:

- a. Nature, Extent and Difficulty of the Legal Services Rendered. This is an action to defend and to bring suit for breach of a commercial lease and to bring suit for violation of the UTPA. The factual and legal issues presented were complex and detailed in nature. Various attorneys as well as experienced paralegal staff have been responsible for, and expended extensive professional time in, the preparation and/or review and analysis of the various pleadings and other documents.
- b. Time and Labor Necessarily Devoted to the Case. As stated above, this case involved difficult issues of both legal and factual natures. The time and labor devoted to this case were necessary to properly prepare this case for the Court. The extent of the work performed was necessary to adequately prepare and try these matters, and the matters decided were of legal and factual difficulty. Attorneys and paralegals have spent hundreds of hours working on this matter including trying to resolve the matter before litigation, answering the complaint and the amended

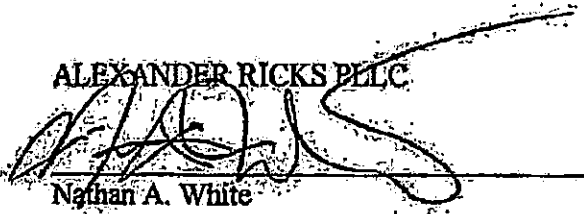
complaint, extensive discovery, and preparing for and trying the case to verdict before a jury.

- c. Professional Standing of Counsel. I am a licensed member of the Bar of the State of South Carolina. I have practiced law for approximately 17 years. I am experienced in the field of real property law, commercial landlord-tenant law, creditor's rights, and commercial collections.
- d. Fee Customarily Charged in the Locality for Similar Legal Services. I am aware from discussions with clients and other similarly situated attorneys and law firms in South Carolina that this firm's hourly rates are in line with those customarily charged by counsel with similar experience and at similar law firms.
- e. Beneficial Results Obtained. I have obtained beneficial results for Brilin in this action by enforcing Brilin's rights with regard to the subject Lease. CREH recovered nothing of Brilin and will be required to pay Brilin damages once Brilin's UTPA damages are trebled. Accordingly, it is submitted that beneficial results were obtained by this firm on Brilin's behalf.

9. After due consideration of the nature, extent and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the fee customarily charged in the locality for similar legal services, and the beneficial results obtained, the undersigned believes that attorney's fees in the amount of \$95,474.50 and costs in the amount of \$3,553.05 are fair and reasonable in this case, and that Brilin is entitled to these amounts pursuant to the provisions of the loan documents.

Further, Affiant sayeth not.

ALEXANDER RICKS PLLC


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1420 E. 7th Street, Suite 100
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Tel: (980) 498-6105
Fax: (704) 365-3676
nathan@alexanderricks.com

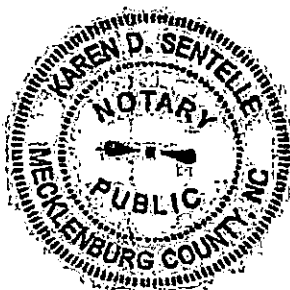
Counsel for Brilin Electric, LLC

Sworn to and subscribed before
me this 2nd day of August 2022.


Official Signature of Notary


Notary's printed or typed name

My Commission Expires: 8/11/2024
(Official Seal)



CERTIFICATE OF SERVICE

I hereby certify that the foregoing **AFFIDAVIT OF ATTORNEY'S FEES AND COSTS** has been served upon each of the parties to this action or their attorneys of record by email addressed as follows:

Steve D. Dluzneski
Hamilton Martens, LLC
P.O. Box 10940
Rock Hill, SC 29731
steve.dluzneski@hamiltonmartens.com

Counsel for Plaintiff

ALEXANDER RICKS PLLC

/s/ Nathan A. White
Nathan A. White
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nathan@alexanderricks.com

Counsel for Brilin Electric, LLC

This the 2nd day of August, 2022.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Carolina Real Estate Holdings, LLC,
Plaintiff,

C/A No. 2020-CP-46-01145

v.

Brilin Electric, LLC and W & L Services,
LLC,
Defendants.

PLAINTIFF'S
AFFIDAVIT REGARDING ATTORNEY'S
FEES AND COSTS

PERSONALLY appeared before me, Steve D. Dluznieski, who, being duly sworn, deposes and says:

1. I represent Carolina Real Estate Holdings, LLC, the plaintiff in the above-referenced matter, and have served as its counsel throughout this action. As such, I am personally familiar with the services performed in this matter, and I make this affidavit based on my personal knowledge and the billing records that my firm has generated and maintained in the ordinary course of business.

2. I was admitted to the South Carolina Bar in May 2015, and I was engaged in the general practice of law at Charles S. Bradford, P.A. from January 2017 through December 2019. On January 1, 2020, I moved to the law firm of Hamilton Martens, LLC, where I have continued to engage in the general practice of law. I would estimate that approximately 85% of my practice at Charles S. Bradford, P.A. was devoted to litigation, and that approximately 95% of my practice at Hamilton Martens, LLC is devoted to litigation. I am currently a member in good standing with both the South Carolina Bar Association and the York County Bar Association. I am also admitted

to practice in the United States District Court for the District of South Carolina, the United States Court of Appeals for the Fourth Circuit, and the United States Supreme Court.

3. My present billing rate is \$265 per hour. The fees generated for this matter have been based on that rate, and my other hourly billing rates since I became involved in this matter in 2019, and the amount of time that I actually devoted to this matter. I also advanced costs related to this matter and billed my client accordingly.

4. As set forth in Plaintiff's Post-Trial Motions, which are being filed with the Court contemporaneously herewith, Plaintiff is entitled to attorney's fees pursuant to Paragraph 28(g) of its Commercial Lease Agreement with Brilin Electric, LLC if the Court determines that the Plaintiff is a "prevailing party" in this action.

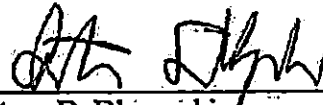
5. To date, the attorney's fees and costs billed to Carolina Real Estate Holdings, LLC ("Plaintiff") have totaled \$45,728.95. At the time of this Affidavit, the fees incurred for this matter, which have not been billed, are \$2,199.50 as of the time of this affidavit, but I expect more since this affidavit is being prepared before the hearing on the parties' post-trial motions. I will make the detailed invoices available to the Court for in camera review if requested by the Court.

6. Plaintiff is current in all payments to me under my billing criteria. I anticipate that Plaintiff will incur additional attorney's fees and costs related to the pending post-trial motions as well as other matters that may be necessary to bring this matter to a conclusion and collect on the judgment rendered.

7. Plaintiff is submitting this Affidavit to the Court in connection with its Motion for Attorney's Fees and Costs in this matter. In the event that the Court determines that Plaintiff is a "prevailing party" in this action, Plaintiff requests that the Court enter an award in favor of Plaintiff for all of Plaintiff's attorney's fees and costs incurred in this matter.

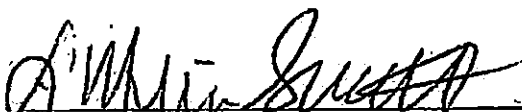
FURTHER DEPONENT SAYETH NOT.

HAMILTON MARTENS, LLC



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Attorneys for the Plaintiff

SWORN TO AND SUBSCRIBED
before me this 17th day of August, 2022.



Notary Public for South Carolina
My Commission Expires: 6-15-22

1 STATE OF SOUTH CAROLINA)
2)
3 COUNTY OF YORK)
4)
5 CAROLINA REAL ESTATE)
6 HOLDINGS, LLC,)
7 Plaintiff,)
8 vs.)
9 BRILIN ELECTRIC, LLC,)
10 Defendant.)
11)

TRANSCRIPT OF RECORD
2020-CP-46-01145

July 18-21, 2022
York, South Carolina

B E F O R E:

HONORABLE J. MARK HAYES, II, Judge.

COURT MONITOR: EBONY LOVE-TAYLOR
Proceedings recorded by DCRP,
Digital Courtroom Recorder Project

TRANSCRIBED BY:
Julie A. Cendroski,
Circuit Court Reporter II
Seventh Judicial Circuit

1 A P P E A R A N C E S

2 STEVE D. DLUZNESKI, ESQUIRE
3 For The Plaintiff

4 NATHAN A. WHITE, ESQUIRE
5 For Defendant

6 JACK SPENCER, ESQUIRE
7 For Defendant

8

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CAROLINA REAL ESTATE HOLDINGS VS. BRILIN ELECTRIC

DAY ONE OF TRIAL

(Plaintiff's Exhibit Number 1, Report, was marked for identification.)

(Plaintiff's Exhibit Number 2, Lease Agreement, was marked for identification.)

(Plaintiff's Exhibit Number 3, Remand Letter, was marked for identification.)

(Plaintiff's Exhibit Number 4, Photograph, was marked for identification.)

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10 (Plaintiff's Exhibit Number 17, Invoice, was
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16 (Plaintiff's Exhibit Number 20, Invoice, was
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18 (Plaintiff's Exhibit Number 21, Photograph, was
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20 (Plaintiff's Exhibit Number 22, Report, was
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3 (Plaintiff's Exhibit Number 26, Invoice, was
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5 (Plaintiff's Exhibit Number 27, Invoice, was
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14 (Defendant's Exhibit Number 17, Photograph, was
15 marked for identification.)

16 (Defendant's Exhibit Number 18, Invoice, was
17 marked for identification.)

18 (Defendant's Exhibit Number 19, Photograph, was
19 marked for identification.)

20 THE COURT: All right, ladies and gentlemen.
21 Congratulations, you've made the second cut. All right.
22 Ladies and gentlemen, we're now going to select the
23 first jury for the week. We're gonna select the first
24 jury in the week of the case of Carolina Real Estate
25 Holding, LLC, Plaintiff, versus Brilin Electrical, LLC.

1 Now, Ladies and gentlemen, again, like we did
2 downstairs, I've got a series of questions that I need
3 to ask you. But before I ask you these questions, the
4 clerk of court needs to administer an oath to you, so I
5 need you to, please, stand and raise your right hand.
6 (All comply.) All right, ladies and gentlemen, I'll
7 swear you in.

8 Do you solemnly swear or affirm that you will
9 truthfully answer the questions asked of you and that
10 you will tell the truth, the whole truth, and nothing
11 but the truth?

12 (All answer in the affirmative.)

13 Thank you, you may be seated. All right. Ladies
14 and gentlemen, please listen to these questions. And if
15 you need to respond to the questions, again, please
16 stand and let me call on you.

17 All right. Ladies and gentlemen, again, as I
18 told you, this case is Carolina Real Estate Holdings,
19 LLC, versus Brilin Electric, LLC as defendants. I'm
20 going to introduce you first to the principles of these
21 two companies. All right. I would ask, if you would,
22 Carolina Real Estate Holdings, LLC, sir, if you will
23 please stand and face the ladies and gentlemen of the
24 jury. This is -- tell me your name, sir.

25 MR. DECKER: William Decker.

1 THE COURT: This is William Decker, otherwise
2 known as Brad?

3 MR. DECKER: Yes, sir.

4 THE COURT: This is William Brad Decker. He is
5 the principle of Carolina Real Estate Holdings, LLC.
6 And then, let's see, you're Bryon Russell?

7 MR. RUSSELL: Yes, sir.

8 THE COURT: If you would, sir. This is Bryon
9 Russell. He's principle of Brilin Electric, LLC.

10 Now, ladies and gentlemen, this case involves a
11 dispute involving a commercial real estate lease. The
12 action -- in this case, plaintiff was the landlord of
13 the lease, and the defendant, Brilin Electrical, was the
14 defendant. The lease involved a lease for commercial
15 space located at 2180 Carolina Place Drive in York, Fort
16 Mill in York County, and the lease included a three-year
17 term commencing May 1st, 2017, and ending on April the
18 30th of 2020. And the litigation or the dispute between
19 these parties involve performance or lack thereof of
20 that lease.

21 Now, ladies and gentlemen, I need for you to
22 please stand if you are related by blood or marriage to
23 either of these individuals or if you have a close
24 personal or social relationship with either of these
25 individuals or if you've ever been in any type of

1 employment situation with any of these types of
2 individuals. If so, please stand at this time.

3 All right. Ladies and gentlemen, I also would
4 ask that you please stand -- I'd also ask that you
5 please stand, ladies and gentlemen, if you've ever had
6 any business transactions or dealings or any type of
7 commercial or professional relationships with either
8 Carolina Real Estate Holdings, LLC or Brilin Electric,
9 LLC. If so, please stand at this time.

10 All right. Gentlemen, I'll tell you what, can
11 you all sit down just for a moment? Yes, sir, your
12 juror number?

13 JUROR: Seven.

14 THE COURT: Give me one second, sire. All right.
15 Sir, if you will, come right over here. Let me see the
16 lawyers. Tell you what, meet me right over there at the
17 court reporter.

18 (Judge leaves the bench.)

19 (No audio.) (Monitor notes state: Juror's
20 ex-wife and Mr. Decker used to be friends.)

21 All right. Ladies and gentlemen, I'm now going
22 to read to you a list of potential witnesses who may be
23 called as part of this case. I need you to listen to
24 all these names. Once all the names have been published
25 to you or read to you, I'm gonna ask that you please

1 stand if you're related by blood or marriage to any of
2 these witnesses. I'm gonna ask that you please stand if
3 you have a close personal or social relationship with
4 any of these witnesses, or if you've ever been in any
5 type of relationship or business relationship with any
6 of these witnesses, so please listen to them.

7 And I would also ask when I call the names, if
8 the witnesses are in the courtroom, if they would please
9 stand and face the ladies and gentlemen of the jury. We
10 have Mark Robinson, John Abernathy, Wayne Schulte, Trip
11 Moore, Craig King, Jim Hemphill, Luis Her a -- do I say
12 that correctly?

13 MR. White: Heredia, Your Honor.

14 Heredia, and Bill Broadway. Again, ladies and
15 gentlemen, if you're related by blood or marriage to any
16 of those individuals or if you have a close personal or
17 social relationship with any of those individuals or if
18 you've ever been in any type of employment or business
19 relationship with any of those individuals, I would ask
20 that you please stand at this time.

21 Ladies and gentlemen, at this time, I'm going to
22 ask the lawyers, who will be participating in the trial
23 of this case to please stand and introduce themselves to
24 you. Yes, sir.

25 MR. DLUZNESKI: Ladies and gentlemen, I'm Steven

1 Dluzneski. I'm an attorney with the Hamilton Martens
2 law firm.

3 MR. WHITE: Good morning. I'm Nathan White. I
4 am an attorney at the law firm Alexander Ricks. And I
5 (inaudible.)

6 THE COURT: Ladies and gentlemen, if you're
7 related by blood or marriage to any of these attorneys
8 or if you have a close personal or social relationship
9 with any of these attorneys, or if you've ever been in
10 any type of employment or business relationship with any
11 of these attorneys, I would ask that you please stand at
12 this time.

13 Ladies and gentlemen, I would also ask that you
14 please stand if you or a member of your immediate family
15 has ever been represented by any of these attorneys or
16 any member of their firms. If so, please stand at this
17 time.

18 Thank you very much. Ladies and gentlemen, if
19 you or a member of your immediate family has ever been
20 involved in litigation, either where you or a member of
21 your immediate family was a landlord or you or a member
22 of your immediate family was a tenant, I would ask that
23 you please stand. If you've ever been involved in any
24 type of litigation where you either served as a tenant
25 or a landlord or a member of your immediate family was

1 ever a landlord or a tenant, please stand at this time.

2 Ladies and gentlemen, is any member of the jury
3 panel aware of any bias or prejudice towards either the
4 plaintiff or the defendant in this case? If so, please
5 stand at this time.

6 Is there any member of the jury panel who's a
7 member of or contributor to any group which has as its
8 primary concern the promotion of law enforcement or
9 victims rights? Now, these groups would certainly
10 include, but not be limited to such groups as MADD,
11 SADD, CAVE, or against Citizens Against Violent Crime?
12 If so, please stand at this time.

13 Does any member of the jury panel know of any
14 reason whatsoever why he or she should not serve as a
15 juror in this case, with particular emphasis being
16 placed on your ability to be fair and impartial to both
17 the plaintiff and the defendant in this case? If so,
18 please stand at this time.

19 Does the plaintiff have any additional questions?

20 MR. DLUZNESKI: No, Your Honor.

21 Any additional the defendant wished the Court to
22 explore?

23 MR. WHITE: No, Your Honor.

24 THE COURT: Thank you very much.

25 Ladies and gentlemen, we are now going to move

1 into the striking process. Madam Clerk.

2 Ladies and gentlemen, what we're now doing, to
3 let you know. We -- the clerk of court is performing
4 what used to be in Spartanburg, is that she's now making
5 a random selection of your names. She's throwing your
6 names into a barrel, and -- but she's doing it
7 electronically. And from that barrel, she's now going
8 to present a list to both of the lawyers and the lawyers
9 have an opportunity to review the list. And then we're
10 gonna strike from that list and come up with the 12 and
11 the 2 alternates that will serve as a jury in this case.

12 I mention that to you because if you ever come to
13 Spartanburg, we used to do this. When I was a younger
14 lawyer, jury selection was a little bit different before
15 we had internet technology and all of the IT equipment
16 that we have now. We would actually put your names into
17 a capsule and we'd put that capsule into a wooden
18 barrel. Spartanburg is the home for the School for the
19 Deaf and Blind in South Carolina, so we'd bring in a
20 person who was visually impaired. And we would actually
21 have that person visually impaired reach into that
22 barrel and pull your names out one at a time.

23 I mention that to you because jury selection in a
24 case like this would usually take the entire day. And
25 we still have that barrel, and every now and then when

1 we have technical glitches or we have a power outage, we
2 will bring that barrel out and it takes -- and can take
3 quite a while. But, fortunately, we've advanced enough
4 so that now this barrel rolling and barrel selection of
5 your names only just a few minutes. So give the clerk
6 of court and I just a few minutes and we'll have the
7 list produced, and then we'll move into the striking
8 process for the jury.

9 York is one of my favorite places to come and
10 work. One of the big benefits that you all have is, is
11 that you all have a very nice courthouse. It's
12 technology, it's equipped. You have nice people who
13 work in it, but you have good courtrooms, good security,
14 and you need to feel fortunate that you -- that you and
15 your community leaders have decided to invest in your
16 judicial system and have this facility to perform your
17 service as jurors.

18 We're in the process of building one in
19 Spartanburg. Our present courthouse was opened in 1960.
20 And one of my old law clerks said the architectural
21 design is like post-era Soviet era communism buildings.
22 It is a lot of brick and block and that's about it, is
23 brick and block.

24 And our courthouse has served it's function over
25 the last 60-plus years, but it's time for it to go. And

1 we're in the process of building a courthouse, a new
2 courthouse in Spartanburg and it's taken quite some
3 effort. The voters approved the plan for the courthouse
4 in 2017 and this is 2022 now, so we should be in it next
5 year. But it takes that long to build a building like a
6 courthouse and to get it up and functioning. But feel
7 blessed that you live in York County and have a facility
8 like this.

9 Ladies and gentlemen, the lawyers now have a
10 list. They now have to have an opportunity to go
11 through the list and to check their list and figure out
12 who they want and don't want, and so we're gonna need to
13 take about a 15-minute break.

14 I've looked, there's a clock back there above the
15 door. I'm gonna ask, if you would, to be back in your
16 seats. I'm gonna let you stretch your legs and you can
17 walked outside in the hall way and maybe find a restroom
18 if you need to. I'm gonna ask, if you would, to be back
19 in your seats by 12 o'clock, and we will continue with
20 the striking process to select the first jury, but I
21 will step down and see you all in about 15 minutes.
22 Thank you very much.

23 (Recess was held from 11:46 a.m. - 12:06 p.m.)

24 THE COURT: All right. Are the parties ready to
25 select -- do the strikes?

1 (Conference was held off the record between the
2 Court and the clerk.)

3 MR. DLUZNESKI: Yes.

4 MR. WHITE: Yes.

5 THE COURT: All right. Yes, ma'am, madam clerk.

6 THE CLERK: Counsel, I'll receive your
7 alternating strikes, beginning with the plaintiff, using
8 the number on the left 1 through 20 for your four
9 strikes. Numbers 21 through 23 as your first alternate
10 and numbers 24 through 26 for your second alternate.

11 MR. DLUZNESKI: Plaintiff would strike juror
12 number 1.

13 MR. WHITE: Defendant strikes juror number 9.

14 MR. DLUZNESKI: Plaintiff would strike juror
15 number 11.

16 MR. WHITE: Defendant strikes juror number 10.

17 MR. DLUZNESKI: Plaintiff would strike juror
18 number 14.

19 MR. WHITE: Defendant strikes juror number 16.

20 THE CLERK: I'm sorry?

21 MR. WHITE: Juror number 16.

22 THE CLERK: 16, thank you.

23 MR. DLUZNESKI: Plaintiff strikes juror number
24 15.

25 MR. WHITE: Defendant strikes juror number 22.

1 THE CLERK: I'm sorry, it has to be from 1
2 through 20.

3 MR. WHITE: We have no further preemptory
4 challenges for the primaries. (Inaudible.)

5 THE COURT: You've got four? I've got four from
6 the plaintiff, I've got three from the defendant.

7 MR. WHITE: We have no further peremptory
8 challenges.

9 THE COURT: All right. Take number 20 off.

10 THE CLERK: Yes, sir.

11 THE COURT: Okay.

12 MR. WHITE: Defendant strikes number 22.

13 MR. DLUZNESKI: Did the defendant strike number
14 22?

15 THE COURT: He did.

16 MR. DLUZNESKI: Plaintiff will strike juror
17 number 21.

18 THE COURT: Okay.

19 THE CLERK: And your second alternate?

20 MR. WHITE: Defendant would strike juror number
21 25.

22 MR. DLUZNESKI: Plaintiff would strike juror
23 number 26.

24 THE CLERK: Okay. I would like to verify strikes
25 for both sides. I have the following strikes for the

1 plaintiff: 1, 11, 14, 15. As your first alternate, 21,
2 and as your second alternate 26. Is this correct?

3 MR. DLUZNESKI: That's correct.

4 THE CLERK: And for the defendant I have: 9, 10,
5 16. Court strikes 20. As your first alternate, I have
6 22, and as your second alternate I have 25. Is this
7 correct?

8 MR. WHITE: That is correct.

9 THE COURT: Thank you. Madam Clerk, if you will
10 seat the jury.

11 THE CLERK: Ladies and gentlemen, as I call your
12 name, please bring your personal belongings and move to
13 the jury box to my right. There will be a bailiff to
14 direct you.

15 Juror number 105, Brittany Lee. Number 86,
16 Jessica Johnson. Number 167, Megan Sowell. Number 108,
17 Ellen Lundy. Number 66, Curtis Greenway. Number 143,
18 Mary Pride. Number 129, Lori O'Dell. Number 65, Patty
19 Goodnight. Number 43, Angela Dalton. Number 165 Edward
20 Snowdecki. Number 107, Valerie Lowrey. Number 114,
21 Clair Manor. As our first alternate, number 23,
22 Margaret Boone. As our second alternate, number 64,
23 Nicholas Gonzales.

24 THE COURT: Anything concerning the manner and
25 method of selection of the jury from the plaintiff?

1 MR. DLUZNESKI: No, Your Honor.

2 THE COURT: From the defendant?

3 MR. WHITE: No, Your Honor.

4 THE COURT: Thank you very much. Ladies and
5 gentlemen, congratulations on being selected to our jury
6 for this trial. Give me just a moment. I've got to
7 address those unfortunate people who did not get
8 selected to be a part of this jury.

9 Ladies and gentlemen, thank you very much for
10 your time, your patience while we went through the jury
11 qualification process, as well as the jury selection
12 process in this case. I'm gonna ask, if you would, to
13 please return back down to the jury assembly room.
14 Someone will be down there to give you, your
15 instructions, which are probably going to be to all back
16 after 6 o'clock.

17 But just to be sure that something has not
18 happened that I'm not aware of, please go with the
19 bailiffs. They'll take you back downstairs. But thank
20 you very much. Please leave the courtroom quietly,
21 we're gonna continue to work. Thank you very much.

22 All right. Ladies and gentlemen, congratulations
23 on being selected on our jury for this trial. I'm gonna
24 give you a couple of preliminary instructions right now
25 that are gonna apply throughout this entire case. I

1 need you to listen to these, because both of these are
2 very, very important.

3 What you're gonna be asked to do in this case is
4 gonna be to decide the outcome. And what that will
5 entail is that you will engage in deliberations in this
6 case. And your deliberations mean that the 12 of you
7 who make the final round, you will get in the jury
8 deliberation room and you will discuss the case. You
9 will discuss the evidence. You will discuss the law.
10 You will apply the law to the evidence that has been
11 presented to you during this trial, and then you will
12 come up with the decisions that you have to make in this
13 case. Now, again, that discussion, those things are
14 called deliberations, where you talk among yourselves
15 about this case.

16 Your first instruction, until you begin your
17 deliberations of this case, which is at the end of this
18 case, after all of the evidence has been presented to
19 you and I have instructed you on the law of this case,
20 you are not to talk to anyone about anything involving
21 this case. So don't start your deliberations at breaks.
22 Don't say, oh, gosh, did you see what that witness had
23 on or did you believe what that witness said, or you
24 can't believe a witness didn't say this. Do not talk
25 about anything involving this case until you begin your

1 deliberations in this case.

2 And, again, your deliberations in this case
3 occurs at the end of the case, after all the evidence
4 has been presented and I have instructed you on the law.
5 So don't discuss this case among yourselves.

6 Take that a little bit further. Do not discuss
7 this case with anyone at any point during the process of
8 this case. That means that shortly we're gonna take a
9 lunch break and you might run home, you might go back to
10 your job, or you -- and you run into somebody. Oh, you
11 got selected on a jury, they might say. What kind of
12 case is it? Or who is the judge? Or who are the
13 lawyers? Very politely tell them, I'm sorry, I can't
14 talk to you about anything involving this case while
15 it's still going on.

16 Now, after the case is over, I will talk to you
17 as much as you want to know, but until this case is
18 over, I cannot talk to you at all about anything
19 involving this case. So at lunch break, any breaks,
20 even in the evenings, do not have any discussions with
21 anyone about anything involved in the case.

22 All right. Second instruction to you that
23 applies throughout this case. There's things that you
24 talk about in your deliberation. That thing that occurs
25 after, at the end of the trial? You're gonna be

1 discussing the evidence that has been presented during
2 the course of this trial and the law that I will tell
3 you at the end of this case. That's what you will
4 discuss in your deliberations in order to reach the
5 decision that you have to make in this case.

6 The second instruction is do not do any type of
7 independent research or investigation into anything
8 involving this case. Allow your deliberations to be
9 controlled by the evidence that is presented and the law
10 that I will tell you.

11 If by chance during the course of this trial, or
12 maybe I've said something already, let's say, oh, I'm
13 not quite sure I understood what the judge meant. Or
14 one of the lawyers may present something during the
15 course of this trial and say, oh, I'm not quite sure I
16 understand that. Or you might hear a location. Oh,
17 well, I think that's close to my home. I'm gonna drive
18 around this way to get to that and see if I can go find
19 this location. Don't do any of that.

20 Do not do any type of independent research or
21 investigation because it'll allow your deliberations to
22 be influenced and based solely on the evidence as it's
23 presented during the course of this trial and the law
24 that I give you at the end of this trial. And that
25 includes, even if I've used a word that you don't

1 understand or somebody else, do not pull Webster's
2 dictionary off the shelf and look up that word.

3 All us, the people that are participating in this
4 trial before you to educate you as to what you need to
5 know as part of your deliberations. So, don't do any
6 type of homework, don't feel any responsibility that
7 you've got to do anything outside of this courtroom.
8 Let the lawyers educate you as to what the evidence is
9 and allow me the opportunity to instruct you on the law.

10 Now, with those two instructions that are gonna
11 carry throughout the course of this trial, I'm gonna
12 allow you to take a lunch break now. Given the hour
13 that it is, the fact that you've been downstairs, held
14 hostage, you came up here, we made you -- we locked you
15 in this room even further, I'm gonna let you take a
16 lunch break.

17 Looking at that clock on the wall, I'm gonna ask
18 that you be back in here -- let's say, I'm gonna ask
19 that you be back in here by 2 o'clock. And we will
20 start with the opening statements from the lawyers. I
21 will then give you some preliminary instructions. We
22 then will receive the opening statements of the lawyers
23 and we will begin with the presentation of the evidence
24 that you will hear in this case.

25 So, with those two instructions, don't talk about

1 anything involving the case with anyone, and don't do
2 any type of independent research or investigation. I'm
3 gonna let you go with the bailiff, and he will show you
4 where the jury deliberation room, and have it come in
5 and out of the courtroom. But thank you very much.

6 Ms. Goodnight, when we come back, I'm gonna ask
7 that you serve as the forelady of this jury. So you'll
8 get further instructions on that when we come back. But
9 you all may go with the bailiff, right here.

10 (Jury leaves the courtroom at 12:19 p.m.)

11 All right. A couple comments. There will be
12 times -- and these comments are primarily for the
13 litigants that are involved in this case. Also, to some
14 degree, to the attorneys that are involved in this case.
15 I have -- thank you, first, for showing up for this
16 today. Thank you for participating and being downstairs
17 with the jury qualification process. Also, for
18 participating and being present during the jury
19 selection process.

20 I think it's very -- those are, while sometimes
21 might not seem to be that significant or important
22 during the course of a litigation, they actually are,
23 because we now have, through this process that has been
24 tested for hundreds of years, gotten to the point to
25 where we now have the 12 people out of those 14 that are

1 going to be deciding the issues in this case. And those
2 12 people will, if we don't need the alternates, but 12
3 of those people will go into the jury deliberation room
4 at the end of this case and will decide the issues that
5 are gonna be presented to them.

6 If you haven't figured it out, I take this
7 process pretty darn seriously. I've been doing this
8 coming up on 20 years. And I take it a little serious
9 these days because I have witnessed, I can say hundreds
10 of jury trials during my career. And I will tell you,
11 taking a look at who you all and your lawyers have
12 selected to be on this jury, you have a smorgasbord of a
13 cross section of the community here in York County.

14 I've got a teacher with a masters degree. A
15 quality technician with a ninth grade education. I've
16 got a dental hygienist. I've got a machine operator.
17 I've got a sales manager for a TV station. I've got a
18 Dominoes -- well, you all struck the Dominoes. I've got
19 a carpenter with a 12th grade education. I've got a
20 teacher from Rock Hill with a bachelor's degree. You've
21 got a cross-section of the community here in York.

22 My experience in sitting where I've sat for
23 almost 20 years is that it is going to be hard to
24 predict what's gonna happen when those 12 people start
25 their deliberations. I mention that because there are

1 -- and I'm talking, making these comments now, as
2 opposed to some other point, because there gets to be
3 times during the course of a litigation during a trial
4 where what's windows or doors open for possible
5 resolution. This is one of those times where that
6 window and door has cracked open.

7 You now have an insight to the people who are
8 going to -- you're going to be asking to make the
9 decisions to control the outcome of this case. I will
10 tell you, I have met with your lawyers and we have
11 discussed this case. You both have hired very good and
12 competent lawyers and your lawyers are well prepared in
13 this case, but it's still gonna be up to those 12 people
14 to do the job that we're asking them to do.

15 And it is not a light responsibility that they
16 are undertaking. They probably, like most jurors that
17 I've had the opportunity to appear in front of them as a
18 judge, they will take it very seriously, and they will
19 do the best job that they know how to do. But I will
20 also, again, I'll tell you, it's gonna be hard to
21 predict how this case is going to -- I don't know what
22 the outcome is going to be.

23 I mention that to you, because I need for you to
24 very seriously consider during this lunch break, explore
25 the possibility of resolving this case. Resolving this

1 case and exploring the opportunity of what they call
2 settling or coming up with a neutral resolution, allows
3 the parties to still have some control over the outcome
4 of this case.

5 Meaning, that you can still control and influence
6 the direction of what this takes. Once it's given to
7 those 12 people, your lawyers have done the best they
8 can do. I've done the best that I can do, but it's in
9 their hands. And I will tell you, I have seen jurors
10 come to decisions in cases that I was shocked,
11 surprised, but upon reflection was completely supported
12 by the evidence that was presented to them.

13 Because we can sit here and we can say, oh, that
14 was a good piece of evidence, well that's not real
15 important, or why did he say that or why did she do
16 this? Yeah, we can say that sitting on the outside, but
17 once those 12 people get back in that jury room, it is
18 up to them as to what they do or as important to what
19 they view as material to the outcome of their case.

20 I will tell you, when I was a young lawyer, one
21 of my first cases in Spartanburg, and this was before
22 they did the remodeling of the courthouse, you could
23 hear the jury in deliberations sitting in the courtroom.
24 I had one of the jurors -- it was an automobile case. I
25 had one of the jurors say, well, I don't like that

1 little red-headed lawyer in that blue suit, he's from
2 the insurance company.

3 I was not from the insurance company. I was for
4 the plaintiff and insurance never became an issue in the
5 case, but somehow somebody in that jury room, thinking
6 they understood the judicial process, figured out that I
7 was -- somewhere insurance was involved in this case and
8 I must be that insurance's lawyer, and that affected
9 that juror's decision in the case that I tried in front
10 of that -- in front of them.

11 And it could be that in this case, those 12
12 people may pick up on something that you or your lawyers
13 do not even think is important, and they may very well
14 hang their hat on that particular piece of information
15 that they believe is true and decide this case. This is
16 this opportunity where this door and this window has
17 opened that you all still have some control over the
18 outcome of this case.

19 I encourage you to talk during this lunch break
20 and to come to some amicable resolution. If you don't,
21 that is fine. I have to be doing something. Much --
22 you've got great lawyers. I'd much rather try a case
23 with these lawyers, than probably any lawyer in the
24 county of York, because they're well prepared. But I
25 just want to tell you that you need to talk, because

1 this is one of those cases where reasonable heads could
2 get it resolved, if you will explore that.

3 Now, with those comments, take it for what it's
4 worth. I will step down and I will see you all about 2
5 o'clock. Thank you all very much.

6 (Lunch break was held from 12:27 p.m. to 2:01
7 p.m.)

8 THE COURT: All right. I'm told that all the
9 jury has returned from -- as requested, anything from
10 the plaintiff or the defendant before we begin the
11 trial?

12 MR. DLUZNESKI: Your Honor, we've submitted --
13 we've stipulated to a set of exhibits for both the
14 plaintiff and the defendant. We have submitted binders
15 to the court, the court reporter, each side has one, the
16 witness will have one, and then all 14 jurors will have
17 one. We wanted to move all of those exhibits into
18 evidence and so stipulated and premarked in the binders.

19 THE COURT: Is that correct?

20 MR. WHITE: Yes, Your Honor. We'd like to move
21 them into exhibit [sic], and we'll have a binder up
22 there for every witness to use. And he goes first, so
23 if he wants to publish the binders, we've got all the
24 binders for each of the 14 jurors, Your Honor.

25 (Plaintiff's Exhibits 1-27 were admitted into

1 evidence.)

2 (Defendant's Exhibits 1-19 were admitted into
3 evidence.)

4 THE COURT: Okay, they'll be admitted without
5 objection. My understanding is they're all agreed to
6 and you all will use them as they are numbered, and
7 refer to them as their number as you go forward with the
8 trial?

9 MR. WHITE: Yeah. Do we want to have each juror
10 have one after openings, or when do we want to do ---

11 MR. DLUZNESKI: Sure.

12 MR. WHITE: Okay.

13 THE COURT: I mean, I've seen it so that if you
14 would place them in their chairs, and then they can open
15 them whenever you refer to them. I don't know whether
16 you're gonna use them in the opening or not.

17 MR. WHITE: We are not. We will, however, be
18 using them during the first witness.

19 THE COURT: Okay. Why don't you go ahead and put
20 them in the chairs, have somebody put them in the
21 chairs. That way you don't have to take up time to, to
22 hand them out when they come in.

23 MR. WOODS: And, Your Honor, I'll also say, as
24 far as the exhibits go, I do have several demonstrative
25 exhibits. The exhibit -- these demonstrative exhibits

1 are in the binders, but some of the photographs I've had
2 blown up and so on and so forth. And so I am going to
3 publish those to the jury, since all the exhibits have
4 come in as appropriate. We have the easel here.

5 MR. DLUZNESKI: No issue, Your Honor.

6 THE COURT: Just be sure when you're doing that,
7 referring to, like, Plaintiff's 3, this is showing a big
8 blow up of Plaintiff's 3 so that it'll be on the record.

9 MR. WHITE: Okay. Fair enough. Fair enough.

10 THE COURT: Anything else?

11 MR. DLUZNESKI: Your Honor, I do have just one
12 brief thing, just to bring to the Court's attention. I
13 don't think it'll be an issue, but as you probably have
14 seen from the case caption, W&L Services, LLC was also a
15 defendant in this case. They were brought in by way of
16 the amended complaint. They have settled out of court
17 with the plaintiff.

18 Luis Heredia, one of our witnesses, is the
19 principle for W&L Services. I don't intend to really
20 get into the fact that they settled or anything like
21 that. And I certainly would not be offering it for any
22 proving or disproving liability under rule of evidence
23 408, but I could see how somehow, some way it might just
24 simply come out as a fact, that W&L was in the case and
25 then no longer in the case. But just again, wanted to

1 bring that to the Court's attention.

2 MR. WHITE: And, Your Honor, if that does come up
3 through the witness, himself, I would plan to object and
4 ask that that testimony be stricken from the record.

5 THE COURT: Now, let me ask you this. My
6 notebook has W&L written on the outside of it. I mean,
7 aren't they going to know about it anyway?

8 MR. DLUZNESKI: Well, that's what I'm saying.
9 It's gonna be an open secret for the jurors. And I, you
10 know, like I said, I don't plan on getting into it. And
11 I will certainly counsel the witness to not refer to the
12 fact that he was in the suit --

13 THE COURT: Okay.

14 MR. DLUZNESKI: -- and nothing like that.

15 THE COURT: Okay. All right. Then, counsel your
16 witnesses how you believe they need to be counseled. I
17 can't do that. Okay. All right. And I would
18 anticipate brief opening statements?

19 MR. DLUZNESKI: Yes, Your Honor. Yes.

20 THE COURT: Okay. Anything else before we bring
21 the jury in?

22 MR. DLUZNESKI: Nothing from the plaintiff, Your
23 Honor.

24 THE COURT: Nothing from the defendants? Let's
25 bring the jury in.

1 Tell me one time, counsel. Pronounce the
2 defendant's name, Berling?

3 MR. WHITE: Brilin.

4 THE COURT: Brilin, okay.

5 (Jurors enter the courtroom at 2:07 p.m.)

6 THE COURT: All right. Ladies and gentlemen, we
7 are now going to start the trial of the case of Carolina
8 Real Estate Holdings, LLC and Brilin Electric, LLC. But
9 before we do that, the clerk of court has to administer
10 an oath to you. So, if you would, you can just put
11 those notebooks on the floor, but I need you to please
12 stand and raise your right hand.

13 THE CLERK: (Inaudible.)

14 THE COURT: All right, ladies and gentlemen.
15 Before we begin the trial, I want to tell you that this
16 trial probably will be different from what you might
17 expect. Many people do not have a chance to attend an
18 actual court session, as you are doing now. And they
19 think that from watching television or movies or reading
20 books that trials are always full of high drama, intense
21 action, and riveting circumstances.

22 Now, while all of those things may be true at
23 times, this trial is not for entertainment. It is a
24 fundamental part of our democracy. And trials are often
25 slow, deliberate, and repetitive, just the opposite of

1 what you might have seen on television or in a movie or
2 read about in a book. This courtroom is a place of
3 honor dedicated to the protection and preservation of
4 citizens rights through what many have called the
5 greatest justice system ever created.

6 The attorneys appearing before you, they are
7 advocates for the parties that they represent. But
8 first and foremost, they are officers of the court,
9 sworn to and uphold the integrity and fairness about the
10 judicial system.

11 You should expect them to be professional,
12 competent, and ethical in the representation of their
13 client's interests, but remember that you have now taken
14 an oath to try this case and reach a fair and just
15 verdict. You are also expected to be professional,
16 reasonable, and ethical. But thank you for accepting
17 the important responsibility of jury service and for
18 your contribution today to our justice system.

19 What I will say now is meant to serve as an
20 introduction to the trial in the case. And my remarks
21 are not a charge on the law. I will instruct you on the
22 law at the end of the trial before you retire to decide
23 the case. Before the trial begins, I want to explain to
24 you the procedures that we will follow so that you can
25 better understand what is going to happen.

1 You have been selected as fair and impartial
2 jurors, whose purpose is to find and determine the facts
3 of this case. You are the sole judge of the facts of
4 this case. If at any time during this trial I make
5 comments regarding the facts, you must disregard my
6 comments. You are to determine the facts from the
7 testimony you hear and other evidence that is presented.

8 You should not be influenced by any opinions or
9 statements you may have heard outside of this courtroom.
10 It is especially important that you perform your duty of
11 determining the facts of this case, diligently and
12 conscientiously, because ordinarily there is no way to
13 correct an erroneous determination of facts that is made
14 by a jury. When you comply with your oath to
15 impartially determine the facts of this case, you will
16 have fulfilled your duty as jurors and no one will have
17 the right to criticize your verdict.

18 Now, on the other hand, and with equal emphasis,
19 the same law that makes you the judge of the facts,
20 makes me the judge of the law. The law, as given by the
21 Court is the only law that you may consider. You must
22 accept and follow it, even though you may disagree with
23 it. I cannot tell you what the facts are, and you
24 cannot disagree with me about what the law is or should
25 be.

1 Your job is to take the law as I give it to you
2 and apply it to the facts as you find them from the
3 testimony of the witness and any other evidence that is
4 presented. After doing that, you will render your
5 verdict, a true and just verdict under the solemn oath
6 that you just took as jurors.

7 As I've mentioned to you, until you begin your
8 deliberations, you must not discuss the case with
9 anyone, including your fellow jurors, friends, family
10 members, and anyone involved in this case. This
11 includes you cannot have any discussions face-to-face or
12 by telephone, e-mail, text, blog, or any other types of
13 communication.

14 You must not use a computer, a cellphone, or
15 other electronic device with communication capabilities
16 at any time while you are in this courtroom or while you
17 are in your deliberations. During the breaks, for
18 meals, at nights, and for meals, and otherwise, you can
19 use those devices, but you cannot use those devices to
20 have any types of communications with anyone about
21 anything involved in the case, nor, as I've already
22 informed you, you cannot do any type of independent
23 research or investigation into any matter that might be
24 involved in this case.

25 I do not anticipate there being any type of media

1 coverage, but if there is, do not read, listen to, or
2 watch any news reports about this case. This includes
3 anything that might be in a newspaper, on an internet,
4 radio, or television. You must not consider anything
5 you may have heard or read about the case outside of the
6 courtroom, whether before or during the trial. After
7 the case is submitted to you, you must discuss it only
8 in the jury room with your fellow jurors.

9 The attorneys and the parties in this case have
10 been advised that they are not to talk to you at all, so
11 if you see anyone that is involved with this case and
12 they do not even say hello to you as they were coming
13 and going from the courthouse, they're not being rude to
14 you, they're simply following my instructions not to
15 have any communications with you.

16 It is important that you keep an open mind and
17 not decide any issues in this case until all of the
18 evidence has been presented, the parties have made their
19 closing arguments to you, and I have instructed you on
20 the law to apply to this case.

21 . Now, in just a moment the attorney for the
22 plaintiff will make what's called an opening statement.
23 The attorney will explain to you the issues in the case,
24 or at least what the attorney thinks the issues are in
25 the case. The attorney for the defendant will also make

1 an opening statement. Now, ladies and gentlemen, what
2 the attorneys tell you during their opening statements
3 is not evidence in a case. It is only their contention
4 as to what the issues are.

5 The evidence in the case will be presented to you
6 by testimony of sworn witnesses from this witness stand
7 and any exhibits that will be introduced through the
8 course of this trial, which is why you have those
9 notebooks that are sitting in front of you. Those are
10 exhibits that have been agreed upon by the parties in
11 this case.

12 Now, I want to let you know in advance, from time
13 to time, you may hear one of the lawyers say, Your
14 Honor, I believe I have a question of law or a matter of
15 law to discuss with you. Or they may say, Your Honor,
16 may we approach the bench? Or sometimes I, myself, may
17 find it necessary to excuse you from a courtroom for a
18 short while so that the attorneys and I can discuss what
19 is called matters of law.

20 The reason for -- the reason for -- the reason
21 that we exclude you from these discussions is because
22 you are the judges of the facts in this case, and
23 sometimes in discussing matters of law with the
24 attorneys, it is necessary for me to make some comment
25 about the facts in connection with ruling on whether or

1 not a particular law applies or not. I'm not supposed
2 to tell you what I think the facts are, so I will excuse
3 you from a courtroom, while these types of discussions
4 take place so that you will not be influenced by
5 anything that I say in rulings on matters of law.

6 In determining what the true facts are in this
7 case, you must determine whether or not the testimony of
8 a witness is believable. It'll be my responsibility to
9 rule as a matter of law whether or not certain testimony
10 is admissible at all or not, but once the testimony is
11 admitted, whether or not you believe it is fully for you
12 to determine.

13 In deciding whether to believe a witness, you
14 have the right to consider whether the witness has an
15 interest in the result of the trial, whether the witness
16 is prejudiced towards either the plaintiff or the
17 defendant. The opportunity for the witness to have seen
18 the matters and things about which the witness may
19 testify, and the way the witness acts on the witness
20 stand.

21 You have the right to consider anything that is
22 in the record of this case that will help you evaluate
23 the testimony of the witnesses. Now, that means that it
24 is your duty to pay close attention to the witnesses, to
25 observe the witnesses, to listen to the witnesses, and

1 to pay close attention to the attorneys and to the
2 Court. Do not let your thoughts wander, but pay
3 attention to the testimony so that at the end of the
4 trial, you will be able to determine what the true facts
5 are, to apply the law to those facts and render a true
6 and just verdict.

7 It is your added duty, Madam Foreperson, to
8 preside in the jury room and to be the jury spokesperson
9 in this court, but we will have further discussions
10 about that later.

11 Now, in order to preserve everyone's rights, I
12 will give the parties an opportunity to object to
13 anything that I have said during this instruction to
14 you. Is there any exceptions by the plaintiff?

15 MR. DLUZNESKI: None, Your Honor.

16 THE COURT: Any by the defendant?

17 MR. DLUZNESKI: No, Your Honor.

18 THE COURT: Thank you, gentlemen. Ladies and
19 gentlemen, at this time we will receive the opening
20 statement from the attorneys.

21 MR. DLUZNESKI: Your Honor, may it please the
22 Court?

23 THE COURT: Yes, sir.

24 OPENING STATEMENT

25 BY MR. DLUZNESKI:

1 Your Honor, opposing counsel, ladies and
2 gentlemen of the jury, sticks and stones may break my
3 bones, but words can never hurt me. This is something
4 that we have all heard thousands of times throughout our
5 lives. It is something that our parents taught us to
6 say when we were kids when someone said something you
7 didn't like. Words can't hurt you. Words aren't
8 important, they're just words.

9 But as we grow and as we gain life experiences,
10 we learn that words are important, words matter. Words
11 have power. The United States Constitution: We, the
12 people of the United States, in order to form a more
13 perfect union, establish justice, ensure domestic
14 tranquility, provide for the common defense, promote the
15 general welfare, and secure the blessings of liberty to
16 ourselves and our prosperity, do ordain and establish
17 this constitution for the United States of America.

18 These are just words on paper, but we know that
19 those words on that paper laid the course of this
20 nation. Those words on that paper are the very
21 foundation of the laws and procedures that bring us
22 together today. Words on paper matters. Spoken words
23 matters. They are important. They have power.

24 Ladies and gentlemen, my name is Steve Dluzneski.
25 I'm an attorney in Rock Hill, and I represent a company

1 that you will hear referred to as Carolina Real Estate
2 Holdings or CREH, for short, during the course of this
3 trial. CREH is owned by a gentleman named Brad Decker,
4 who is seated to my left at the plaintiff's table.

5 This is a case about some words on a piece of
6 paper. That paper is a commercial lease agreement
7 between CREH and a company called Brilin Electric. What
8 you will learn during the course of this trial is for
9 the past several years, Carolina Real Estate Holdings,
10 under Mr. Decker's leadership and direction has acquired
11 and rented out commercial real estate to local
12 businesses.

13 One of those local businesses is a business that
14 some of you have probably heard of, Two Men And A Truck.
15 And in the course of renting out its commercial real
16 estate, CREH came across another local company called
17 Brilin Electric.

18 You will learn that in April of 2017, CREH and
19 Brilin Electric, that you may hear referred as simply
20 Brilin during this trial, entered into a three-year
21 commercial lease agreement, commencing on May 1st, 2017,
22 and ending on April 30th, 2020. You will hear about and
23 see for yourselves what this commercial lease agreement
24 required of both CREH and Brilin Electric during the
25 lease term. You will hear and see how this commercial

1 lease agreement allowed Brilin Electric to use its
2 leased commercial space.

3 In addition to the written words contained in the
4 commercial lease agreement, you will also hear a lot
5 about the spoken word during the course of this trial.
6 You will hear about Brilin Electric's spoken words
7 toward its landlord, CREH, as well as its spoken words
8 towards CREH's agents and employees and its neighboring
9 commercial tenant, Two Men And A Truck.

10 You will learn that during its tenancy at CREH's
11 commercial property, Brilin Electric caused a variety of
12 damages to its leased commercial space. Pay careful
13 attention to how Brilin's owner, agents, employees
14 reacted when CREH attempted to discuss those damages
15 with Brilin and ensure that Brilin Electric remain in
16 compliance with the lease agreement. Pay careful
17 attention to whether Brilin Electric allowed CREH's
18 agents and employees to enter its leased commercial
19 space during Brilin's tenancy to inspect the premises
20 and make repairs, as the lease agreement expressly
21 allows.

22 Pay careful attention to how Brilin Electric's
23 owner and employees treated Wayne Schulte, CREH's
24 property manager, when he patrolled Brilin's leased
25 commercial space to ensure that the property owned by

1 CREH was okay and that Brilin was conducting itself
2 appropriately and within its landlord's expectation.
3 Probably the most significant thing that you will hear
4 and learn about during the course of this trial is a
5 partition wall that expands the entire length of the
6 warehouse space at Brilin's leased commercial property
7 and separated Brilin's Electric from its neighbor, Two
8 Men And A Truck.

9 You will hear that Brilin Electric hit the
10 partition wall many times, possibly on an almost daily
11 basis during its three-year lease term at CREH's
12 property. You will hear that the repeated, forceful
13 contacts that Brilin made to the partition wall were
14 done with a forklift that Brilin was using, both inside
15 and outside of the warehouse space at its leased
16 premises.

17 You will hear from a general contractor, as well
18 as a structural engineer that these repeated forceful
19 hits to the partition wall caused the internal
20 structural components to the wall, the things tasked to
21 hold the 11,000-pound wall up and in place to become
22 bent, twisted, and damaged, in some cases beyond repair.

23 While you listen to this testimony, pay special
24 attention to how Brilin's owner, Bryon Russell, reacted
25 to the experts findings that portions of the wall had to

1 be replaced. You will hear that Mr. Russell became
2 hostile and irate at one point during a meeting with
3 CREH's general contractor and had to be removed from the
4 meeting.

5 You will hear that Brilin Electric had an
6 opportunity to, and did inspect the damaged partition
7 wall for itself, and have its own structural engineer of
8 Brilin's choosing to inspect the damage. You will hear
9 that Brilin performed its own inspection of the damaged
10 partition wall, Brilin chose not to participate in any
11 repair that had to be made to the wall. You will hear
12 that CREH shouldered the full expense of repairing the
13 partition wall all on its own, from the damage that
14 Brilin Electric caused by hitting the wall over and over
15 and over again with a forklift.

16 Pay careful attention to what Brilin finds
17 through Mr. Russell, himself, did and did not do in this
18 regard. Pay careful attention to his spoken words, what
19 he said and did not say. Remember, I told you that at
20 the outset that words, both written and spoken, are
21 important. That words of a commercial lease agreement
22 matter. That the spoken words of the parties matter.
23 Those words mean something and are important.

24 Focus on the lease, what it says, what it doesn't
25 say. Focus, too, on the spoken words of the parties,.

1 what they said and didn't say. And we are confident
2 that if you do that, you will be able to return a
3 verdict in this case that is fair and impartial. That's
4 all that anyone can ask of you.

5 I want to conclude my comments this afternoon by
6 thanking all of you for being here today and for serving
7 your community and country as jurors. My client and I
8 sincerely appreciate it. Thank you.

9 THE COURT: Yes, sir.

10 MR. WHITE: May it please the Court, Your Honor?

11 OPENING STATEMENT

12 BY MR. WHITE:

13 Good afternoon, ladies and gentlemen of the jury.
14 Let me introduce myself once again. I am Nathan White
15 with the law firm of Alexander Ricks. Over on the left
16 side there is Mr. Jack Spencer, he's an associate with
17 my firm. You're not going to hear anything from Mr.
18 Spencer because he is a North Carolina licensed only
19 attorney, so don't feel like I'm hogging you all to
20 myself. That's why he's helping me out.

21 Mr. Bryon Russell is the founder and owner of
22 Brilin Electric, the defendant in this case. Ms. Karen
23 Sintell (phonetic) is the case paralegal on this case.

24 This case is about a commercial lease between
25 landlord and tenant -- do I need to be by a microphone,

1 madam court reporter?

2 This is about a commercial lease between a
3 landlord and a tenant. A three-year lease. The lease
4 ended April 30th, 2020. Now, as you're gonna see, the
5 lease clearly requires the tenant to make any repairs
6 that are the tenant's responsibility during the lease,
7 and then turn the property back over to the landlord.
8 And the evidence will show that's exactly what we tried
9 to do, but we were not able to do.

10 Remember that date that I just told you, ladies
11 and gentlemen. The lease ended April 30th, 2020. Mr.
12 Bryon Russell's company got sued March 27th, 2020. We
13 got sued before we even moved out and had an opportunity
14 to repair things. However, what you will find when you
15 hear all the evidence, both documentary and testimonial,
16 is that we made almost all of the repairs that we
17 possibly could. Even some that we were not responsible
18 for making.

19 Why did we not make all the repairs? Well, the
20 evidence will show that upon getting sued and trying to
21 work this out and get everything resolved and repair
22 what needed to be repaired, our side asked their side,
23 Mr. Decker, to come do a walkthrough of the premises.
24 Come walkthrough the premises, see what we've done, tell
25 us what we need to do.

1 And the evidence will show that Mr. Decker, CREH,
2 refused to do a final walkthrough. So this is more than
3 just words on a piece of paper, this is about what the
4 lease requires, and it's also about good faith and fair
5 dealing between two counter parties to a contract. And
6 when Mr. Decker refused to do a final walkthrough and
7 tell Mr. Russell what needed to be done, Mr. Russell, as
8 the evidence will show, did what he could do, patch up
9 whatever needs to be patched up, turn the space over as
10 good as he possibly could.

11 Now, back it up a little bit. Before we even get
12 to that point this relationship went off the rails in
13 approximately the middle of 2019. Not a 100 percent
14 clear why. Maybe we'll figure it out during the course
15 of these proceedings why that happened, but I believe
16 the evidence may show that it's because at some point in
17 2019, Brilin indicated that they were going to move out
18 of the space. Brilin is doing quite well with its
19 business and it was running out of space, and needed a
20 new space that was much bigger.

21 CREH wasn't too crazy about that. And because by
22 mid-2019, things start getting hostile. In fact, the
23 evidence will show that CREH at one point put up jersey
24 barriers that blocked off the side of this building.
25 The side of that building has a side garage door with a

1 ramp. And that ramp was integral for Brilin's
2 operations, because Brilin is an electric company that
3 goes into track developments and buildings and puts all
4 the electrical wiring in.

5 And what they do is they have a lot of smaller,
6 light-duty trucks that they load up with all their
7 wiring equipment and all that, and they ship them off to
8 all their jobs. So there's two garage doors in the back
9 of this space that are loading bays for an 18-wheeler.

10 Well, he doesn't -- Mr. Russell doesn't use
11 18-wheelers. He uses small trucks, and he gets the
12 stuff in and out of his warehouse using a forklift. And
13 with those jersey barriers there, he couldn't use the
14 forklift. Blocked it off. Had to go actually hire a
15 larger forklift that could lift up the bay and they
16 could load and off load from the back area.

17 And it all kind of went downhill from there, as
18 you're gonna see. There was a default letter. There
19 was claims of all this damage and on and on and on. And
20 Brilin indicated, look, we will repair anything we need
21 to repair before we move out. I'll reiterate once
22 again, Brilin was sued before they moved out.

23 Now, you're gonna hear specific points of
24 damages. One of them is the wall. Now, I'm probably
25 gonna call it the demising wall. Plaintiff's counsel is

1 probably gonna call it the partition wall. Partition
2 wall, demising wall, tomato, tomato, okay? So, in the
3 summer of '19, repairs were made at the demand of CREH
4 by Brilin Electric. Hired a company called W&L Services
5 to come in and make repairs to the drywall on the other
6 side of the demising wall.

7 At the time, Two Men And A Truck occupied that
8 space. And they told landlord, hey, the wall is kind of
9 busted up and it's kind of pushed toward us, can you get
10 Brilin to fix it? We did. CREH's property manager, Mr.
11 Wayne Schulte, oversaw that whole operation. And you're
12 gonna see that that wall was opened right up. You're
13 gonna see pictures. You're gonna see the aluminum
14 studs. You're gonna see the installation. And you're
15 gonna see that the drywall's fixed.

16 CREH asked Brilin to fix the other side.
17 Brilin's got pallets and pallets of electrical equipment
18 on its side and said, look, we'll fix it when we move
19 out, because what was so critical about that final
20 walkthrough tell us exactly what we need to fix on this
21 wall.

22 Now, there are other things that CREH is claiming
23 were damaged. One of which is these bricks on the top
24 of that side garage door. And I'm not sure if the
25 evidence is gonna show what caused the damage to the

1 bricks, but we fixed them.

2 There's gonna be claims of damages to paint in
3 the office area. There's gonna be claims about soiled
4 carpets. We did all that. There's gonna be claims
5 about the garage doors. Now, remember, there's a few in
6 the loading bay that I've talked about and there's one
7 on the side.

8 A few of them got busted up, we fixed them. We
9 repaired them. We replaced them. And to this very day
10 two years later, they're still there. Well, one thing
11 thing that I expect the evidence is gonna show in the
12 plaintiff's case in chief is, hey, the lease has this
13 provision and any repairs over \$3,000, that contractor
14 must be approved by the landlord.

15 Remember what I said earlier about that good
16 faith and fair dealings. We hired a contractor. We
17 asked for them to use it, they refused. Now, you're
18 gonna hear from Mr. Hemphill, who's gonna tell you how
19 these doors are identical, they were alike in every way,
20 even right down to the paint color. And you're gonna
21 see the pictures.

22 You're gonna see a side-by-side of the old garage
23 door in the left loading bay, and the right one, the new
24 one, on the right loading bay, and they look exactly the
25 same. The only thing that looks different is the one on

1 the left says Natural Power Cord. Everything else looks
2 exactly the same.

3 CREH, as the evidence will show, they wanted to
4 use their contractor. Their contractor's doors were not
5 like that and cost twice as much. And this is gonna be
6 a theme that you're gonna see throughout the
7 presentation of both sides, is CREH wanted to use its
8 preferred vendors because it could up charge and then
9 pass it along, those costs, to Brilin. You're gonna see
10 that every single way.

11 And we believe that the evidence will show that
12 that's exactly why the final walkthrough was not done,
13 the wall was not opened up and inspected, and Brilin was
14 not given an opportunity to repair those structural
15 supports that plaintiff's counsel referenced earlier.
16 Now, those structural ports are alluminum studs. It's
17 an easy fix. Sometimes you can put one in and bracket
18 it, or you rip it out and you put another one in.

19 It's not complicated, and Brilin would have been
20 more than willing to do it, had we been given the
21 opportunity. We didn't know they were damaged, and we
22 certainly weren't going to cut open the wall and see
23 what was going on. That was the whole point of the
24 final walkthrough, as the evidence will show CREH
25 refused to do.

1 Now, there's one other damaged piece, asphalt.
2 They're gonna say we damaged the asphalt because we used
3 this forklift that would come around the ramp. It would
4 loop around and there were -- then the asphalt got torn
5 up. But the evidence will show that the thickness of
6 that asphalt was not commercially reasonable. CREH knew
7 that Brilin would use a forklift as part of its
8 operations to load and unload its vehicle, and that that
9 was a commercially reasonable thing to do for a light
10 industrial warehouse space such as this.

11 The evidence will show that the other side of the
12 building, where the trucks that would use those loading
13 bays would ingress and egress from the main road to the
14 back, was double the thickness of the asphalt on the
15 side where the forklift was. And anybody who knows
16 anything about forklifts would know, that turning
17 radius, it's gonna tear up asphalt if it's not thick
18 enough.

19 For example, as the evidence will show in the
20 pictures you'll be able to see, all of those pads where
21 all those loading bays are, are all concrete, because
22 concrete is a type of material you should use for very
23 thick asphalt.

24 So the reason why the asphalt was damaged, was
25 because CREH did not use commercially reasonable

1 efforts. They did not use commercially reasonable
2 building materials, which obviously is part of the
3 evidence that we tried to fix that too. But remember,
4 we got sued and it all fell apart.

5 So, at the end of the day, at the end of
6 hopefully three days, maybe four, no guarantees, I'm
7 gonna say this right now and I'm gonna be bold in my
8 statement. I think you all are all gonna be wondering
9 why we are all here. Why this wasn't resolved in April
10 of 2020 or May of 2020, and none of us had to show up
11 here at this beautiful courthouse for three or four days
12 a few years later. Thank you, ladies and gentlemen.

13 THE COURT: Is the plaintiff ready to call their
14 first witness?

15 MR. DLUZNESKI: We are, Your Honor. Our first
16 witness will be Brad Decker.

17 THE COURT: Mr. Decker, come right up here and
18 let the clerk of court swear you in.

19 THE CLERK: Place your left hand on the bible and
20 raise your right hand, please. Do you solemnly swear or
21 affirm the testimony you give to this court will be the
22 truth, the whole truth, and nothing but the truth so
23 help you God?

24 THE WITNESS: Yes, I do.

25 THE CLERK: Thank you. Please be seated.

1 THE COURT: Sir, watch your step as you're
2 stepping up. Just have a seat in the chair and speak
3 into the microphone. Thank you, sir.

4 THE WITNESS: You're welcome.

5 WILLIAM BRAD DECKER,
6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. DLUZNESKI:

9 Q. Afternoon, Mr. Decker.

10 A. Good afternoon.

11 Q. If you would, please, state your full name:

12 A. William Decker.

13 Q. And what city and state do you currently live?

14 A. I'm in Myrtle Beach, South Carolina.

15 Q. What do you do for a living?

16 A. Contractor, general contractor.

17 Q. How long have you been doing that?

18 A. Thirty years.

19 Q. What does your day-to-day schedule look like?

20 A. Varies from looking at job site estimates, at
21 jobs, properties that we own, maintenance schedules, or
22 just a general thing with the construction and the
23 properties that we currently own and maintain.

24 Q. Do you own any businesses?

25 A. Yes.

1 Q. Okay. Tell us what businesses you own or have an
2 ownership interest in.

3 A. Carolina Real Estate Holdings, LLC and Decker
4 Inspections and Contracting Services.

5 Q. All right. All right. I want to focus our time
6 today talking about Carolina Real Estate Holdings, LLC.
7 I mean, and you may hear me refer to the company as
8 CREH. Is that fair to you?

9 A. That's fair.

10 Q. Okay. When was CREH created?

11 A. 2012, '10, sometime in that timeline.

12 Q. All right. And why was it created?

13 A. From the construction side of the business, we
14 decided that we should probably start owning properties.
15 It seemed to be the right thing to do. We could buy
16 older properties, fix them up, turn them into something
17 and have a stream of income coming in from two sides
18 instead of just one direction.

19 Q. All right. And tell the jury what CREH does.
20 What is its business structure?

21 A. To buy buildings, modify them and make them
22 better, and then lease them out to the general public or
23 businesses.

24 Q. And what real properties does CREH own?

25 A. Several. The ones in this area would be 118

1 Academy Street in Fort Mill near the police station.

2 And 2180 Carolina Place, which is the commercial
3 warehouse near Shutterfly or I-77.

4 Q. Okay. All right. So let's talk about the second
5 piece of property that you just mentioned. Is that
6 piece of property 2180 Carolina Place located here in
7 York County?

8 A. Yes, sir.

9 Q. Okay. And who owned that company prior to CREH?

10 A. A holding company, but it was a direct buy, was
11 their tenant. It was a membership company.

12 Q. Do you know when CREH acquired that piece of
13 property?

14 A. Oh, there's been so many transitions. About 12
15 years ago.

16 Q. Okay.

17 A. The same time.

18 Q. All right. And what does CREH do with that
19 Carolina Place property?

20 A. It's a warehouse flex space building, meaning it
21 has offices and warehouse in the back and it's divided
22 in numerous portions of a building that we can rent out
23 to different tenants. So we just split it up and we
24 rent it out.

25 Q. All right. So it's commercial?

1 A. It is commercial.

2 Q. Okay. Who's occupying suite 111 of 2180 Carolina
3 Place now?

4 A. Now would be Two Men And A Truck.

5 Q. And who, prior to Two Men And A Truck, who was in
6 that property?

7 A. Brilin Electric.

8 Q. Okay. And did you have a written lease agreement
9 with Brilin Electric?

10 A. We did.

11 Q. All right. Mr. Decker, there is a binder in
12 front of you, and each of the jurors also have a binder.
13 I want to look with you at the first exhibit that we're
14 gonna talk about. And the first exhibit is going to be
15 in the first section of the binder, which is Plaintiff's
16 Exhibits, Exhibit Number 2. Do you see Exhibit Number
17 2?

18 A. Yes, I have it.

19 Q. All right. And what is Exhibit Number 2?

20 A. That is a lease between Brilin Electric and
21 Carolina Real Estate Holdings.

22 Q. All right. Is Exhibit Number 2 in this binder
23 the lease agreement that we're here for today in this
24 case?

25 A. Yes.

1 Q. Okay. All right. What was the term of CREH's
2 lease with Brilin?

3 A. It was a three-year lease.

4 Q. All right. All right. Let's go through a few
5 portions of this lease agreement, all right? The first
6 one that I want to talk about is Paragraph 10.

7 And, Your Honor, this is the first one I'm gonna
8 have a demonstrative exhibit that I would like to
9 publish to the jury.

10 All right. Mr. Decker, do you see paragraph
11 number ten of exhibit ten of the lease agreement?

12 A. I do.

13 Q. All right. Can you read for us the first
14 sentence of paragraph ten?

15 A. Landlord agrees to keep good repair of the roof,
16 foundation and structural supports, exterior walls of
17 the buildings located at the premise.

18 Do you want me to continue?

19 Q. Yes.

20 A. Exclusions of all glass, inclusive of all
21 exterior doors. And accept as may be speci -- excuse
22 me. Specifically allocated to the tenant in paragraph
23 12. The landlord agrees to be responsible for capital
24 repairs, replacements on the premises, provided the
25 landlord shall not be responsible for repairs or capital

1 repairs or replacements rendered necessary by negligence
2 or intentional wrongful acts of a tenant, its employees,
3 agents or invitees or contractors.

4 Q. All right. I want to stop you right there. So
5 the last portion of that, that you just read, which is
6 highlighted on this demonstrative exhibit says that CREH
7 isn't responsible for things that were rendered
8 necessary due to the negligence, intentional harmful
9 acts of the tenant, right?

10 A. Correct.

11 Q. Employees, agents, invitees or contractors,
12 correct?

13 A. That's how I interpret it, yes.

14 Q. All right. Let's look at paragraph 11(a) of the
15 lease. Do you see that?

16 A. Yes.

17 Q. All right. This session discusses repairs by the
18 tenant, correct?

19 A. Yes.

20 Q. Okay. All right. If you will read the first
21 sentence of this provision for us, please.

22 A. The tenant accepts the premises in their present
23 condition and is suited for the permitted use and
24 tenants intended purpose.

25 Q. All right. If you'll continue.

1 A. Tenant, throughout the initial term of the lease
2 and any extensions or renewal thereof at its expense,
3 shall maintain in good order and repair the premises,
4 except those repairs expressly acquired to be made to
5 the landlord hereunder, which would include, but not
6 limited to, any building or other improvements located
7 therein of all light bulbs, ballast replacements,
8 plumbing fixtures, systems repairs within the premise,
9 and water and heater repairs.

10 The tenant should only use licensed contractors
11 for repairs such as where a license is required. The
12 landlord shall have the right to approve the contractor
13 as to any repairs in excess of \$3,000.

14 Q. All right. So from this provision we see a
15 couple of important things. The tenant, in this case,
16 Brilin Electric, is obligated to maintain the property
17 in as good a condition as it received it, right?

18 A. Correct.

19 Q. Okay. Brilin was obligated under this provision
20 to only use licensed contractors for repairs?

21 A. Correct.

22 Q. And the landlord, meaning CREH, has the
23 responsibility and the ability to approve the contractor
24 that Brilin intends to use for any repairs that costs
25 above \$3,000?

1 A. Correct.

2 Q. Okay. All right. And, finally, let's look at
3 11(b). All right. If you'll read the first sentence of
4 11(b).

5 A. Tenant agrees to return the premise to the
6 landlord at the expiration date or prior termination of
7 this lease in good condition and repair, as the lease
8 commencement date. Natural wear and tear, damage by
9 storm, fire, lightning, earthquake, or other casualty
10 alone is accepted.

11 Q. Okay.

12 A. Do you want me to stop right there?

13 Q. Continue.

14 A. Tenant, tenant's employees, agents, invitees, or
15 contractors shall take no such action, which may void
16 any manufacturer or installer's warranties which
17 relationship to the premise. Tenants shall indemnify
18 and hold the landlord harmless from the liability,
19 claim, demand, or cause of this action arising on this
20 account of the tenant's breach of provision of this
21 paragraph. 12.

22 Q. All right. Now, did Brilin Electric occupy suite
23 111 for the entire term of its lease?

24 A. Yes.

25 Q. At the beginning of the lease term, tell us about

1 what your dealings and interactions with Brilin were
2 like.

3 A. They were reasonable. They were good in the
4 beginning. I really didn't have any issue in the
5 beginning.

6 Q. Would you say they were like those that you have
7 with other tenants?

8 A. Yeah. You get to know them on a request of a
9 roof leak or maybe something on the property needs
10 attention, pest control, maybe capital improvements that
11 we might have to do around the premise, we would notify
12 the tenants. Or something somebody did on the adjacent
13 tenant, we would notify them to the issue or concern.

14 Q. All right. So, as the three-year lease term
15 progressed, tell us about what happened with your
16 dealings and interactions with Brilin?

17 A. Myself, I didn't have as many interactions daily
18 as we did with Mr. Schulte, which I think will be
19 testifying at a later date, but they were brought to my
20 attention. And during those times, you try to pull
21 those people out and put yourself in their shoes to deal
22 with whoever you're dealing with to see if you can
23 resolve an issue and come to some sort of a compromise
24 or an agreeance.

25 For some reason that dissolved with all parties

1 on our team, including me, Frank Jackson, and Mr.
2 Schulte. None of us were able to communicate very well,
3 just for some reason that's unknown to me. It became
4 difficult towards the end.

5 Q. Now, just so we orient ourselves, you mentioned a
6 couple of people, the first one being Frank Jackson.
7 Who is Frank Jackson?

8 A. Frank Jackson's our CFO that's been overseeing
9 our books and accounting and taxes for over 17 years
10 through the different companies.

11 Q. And who is Wayne Schulte?

12 A. Wayne Schulte was an employee of both companies
13 and had been with us for over 20 years, and was
14 maintaining and we called him a project property
15 manager. We tried to change the walls for him so he
16 could be included in all facets of the business.

17 Q. All right. How was Brilin with paying its rent
18 on time every month?

19 A. He was good. Brilin was good overall. There was
20 a couple hiccups there, but overall was good.

21 Q. All right. At some point, did you send a letter,
22 a written correspondence to Brilin Electric?

23 A. In reference to?

24 Q. What we may call a cease and desist letter.

25 A. Oh, yeah. Yeah. I think that's gonna go along

1 with the jersey barriers that the defendant said in his
2 opening statement. We, obviously, do improvements
3 around properties and had to change traffic controls.
4 And we weren't getting anywhere by e-mail or phone or
5 responses from the tenant. And it got to a point where
6 I asked Steve to get involved and send out a letter
7 certified mail first.

8 It went unanswered, so we did it again. And then
9 we still saw the actions on the property, things that
10 were not the way we want them, and we couldn't get a
11 response. So I took the letter, against his better
12 judgment, and taped it to all the doors. Somebody had
13 to see the letter. It's a general letter. We got a
14 response the next day and dialog started.

15 Q. All right. So let's take a look at that letter.
16 Let's break down what you just testified to. Let's look
17 at Exhibit 3, Plaintiff's Exhibit Number 3 in this
18 binder. What is Plaintiff's Exhibit 3?

19 A. It's the, it's the action I asked to help me with
20 to get resolved to get somebody to talk to us.

21 Q. All right. So, Exhibit 3 is the letter that was
22 sent to Brilin?

23 A. Yes.

24 Q. Okay. You've testified to the reasons why you
25 decided to have that sent. What were your concerns

1 about Brilin when you sent this letter?

2 A. I had multiple concerns. We had ductwork damage
3 that we originally saw months before that, that we
4 brought to his attention, via the rent invoice, per my
5 CFO, followed with an invoice to fix the ductwork.
6 Nonresponse to that for a long time.

7 Then we saw the jersey barriers that we placed
8 in the new parking lot to control the traffic, but we're
9 sharing the property with an adjacent property owner.
10 But we, we split it on the property line, so everybody
11 had the same right to be there. We just had to
12 reconfigure it due to car burnouts, loud noise,
13 directed, from what I heard, Brilin's employees were
14 driving fast and making it unsafe for other tenants. So
15 we came up with a mastermind plan to put jersey barriers
16 in to separate our property from the neighbor. But I
17 also went to the neighbor and asked them how to separate
18 it. We all agreed. We put a notice out to all the
19 tenants. If they had any ideas of how we could resolve
20 this to pitching their ideas, we got zero.

21 We noticed it was becoming a hardship for them,
22 as well as us trying to understand what they were doing.
23 The jersey barriers became the problem in the beginning
24 because they were moving them with their forklift to
25 make room to do whatever they wanted to do, and that was

1 causing us problems with the neighbor and trying to keep
2 some sort of rule or order here, and it just turned into
3 a problem.

4 And we had a balance -- we had some checks
5 missing from rent. Some other things were probably
6 covered in that. And we had a number of catalog things
7 that we call protocol that we said we need to get help
8 because the landlord tenant is not working. The
9 relationship broke down for whatever reason. They may
10 have their side, the reasons, and I may have my own. I
11 tried to be neutral to figure it out, and I had zero
12 luck in getting there, and so I got Steve involved.

13 Q. All right. Now, Mr. Decker, at any point during
14 Brilin's lease term, did you try to interfere with
15 Brilin's ability to conduct and run its business?

16 A. No.

17 Q. What was your primary concern about Brilin when
18 it was occupying CREH's commercial space?

19 A. You know, you want a good tenant and you see
20 damages, you want a good response for what you're seeing
21 is gonna be taken care of, especially knowing that the
22 lease was coming to its end term. We all know as
23 landlords, and I'll share with everybody, it's hard to
24 chase it after they're gone. You need to expose these
25 things in the front because people just leave and then

1 we're here.

2 We tried to do it before it got to that point,
3 and we just couldn't get traction. We couldn't see
4 anything that was positive coming back to us. It was
5 like, we'll fix it when we're done. And we're like,
6 yeah, but that's a lot of money. I mean, we don't have
7 a big deposit. And, you know, what are you doing?

8 How do you promise me you're gonna do that,
9 because you're not listening to what I'm saying now.
10 You're doing the opposite of what we agreed to. And so,
11 I called Steve and said timeline is right now. Wherever
12 it goes, it's gonna start here with you legal, because I
13 don't know how to -- everybody's not the best at
14 interpreting a lease.

15 You get it to enforce for both parties, but you
16 can't always come to the same conclusion. And when you
17 start seeing these problems and your own property being
18 damaged, you put a lot of blood, sweat, and tears into,
19 and money, it's disheartening if you can't get the
20 tenant to kind of help you do that. During, not after,
21 but during the time that there's a problem, so that's
22 where we headed.

23 Q. Now, Mr. Decker, you just testified that you were
24 concerned about Brilin potentially moving out of your
25 commercial space and not knowing where they went. Is

1 that why you decided to file suit prior to them moving
2 out?

3 A. Probably a number of factors came in. Of course,
4 having legal advice was one. We're not getting dialog
5 from the representative attorneys for Brilin. We're
6 getting promises that they're talking, the two attorneys
7 and Brilin are talking to come to a resolve, but the
8 actions aren't there. I mean, you just sat back and go,
9 what's going on?

10 And the parking lot, the building became, you
11 rented a building, there was parking lot around it, but
12 your business grew so big, now you're disrupting not
13 only the people around you, but you're tearing up the
14 parking lot by extending your building outside the
15 footprint of what maybe we all think your lease it. And
16 you're going, what are you doing? You shake your head.

17 Forklift in the parking lot, asphalt. You
18 wonder, why are you using a concrete type warehouse
19 forklift in an asphalt parking lot? And you see the
20 damages on a brand new parking lot at \$100,000. It's
21 disheartening. You have to nail it in the butt first
22 and say, hey, can we change forklifts? Can we put air
23 tires? Can we figure out a better process? Nobody
24 replied. Wouldn't do it.

25 Q. All right. So you mentioned, one of the things

1 that you mentioned was some jersey barrier.

2 A. Yes, sir.

3 Q. And first, for the record, this is gonna be
4 Exhibit Number 4 in the binder. Mr. Decker, Exhibit
5 Number 4 in the binder, are these the jersey barriers
6 that you're talking about?

7 A. Yeah. Jersey barriers are the concrete structure
8 you see on the highway. That is called a jersey
9 barrier, yes.

10 Q. Okay. What conversations or interactions with
11 Brilin did you have regarding these jersey barriers?

12 A. Well, the first notice was with the asphalt that
13 we were gonna reconfigure the parking lot for safety
14 reasons. We had FedEx, UPS, overnight tractor trailers.
15 It's a horseshoe shaped lot. You can go under another
16 property owner's entrance and come out on our side, but
17 we both have a property on the middle.

18 And he was getting his parking lot torn up,
19 rutted out, watered. The truck's parking overnight
20 illegally, so we talked to the fire marshall, and the
21 fire marshall told us, yes, this would be the best way
22 to divide the parking lot for safety reason and for
23 traffic flow, speeding, flow of traffic would work.

24 So we decided to split it right on the property
25 line like a fence. This is our property. This is your

1 property. You can still access the back of your
2 property where you need to, and separate it from the
3 front where the commercial cars come in, like for
4 patrons, like all of us, that go to a store, we go in
5 the front, the warehouse is in the back.

6 We left them to have their flex space warehouse
7 office in the front, and the heavy stuff and the
8 movement out back, and the jersey barriers controlled
9 that.

10 Q. Okay. So, did there become any problems with the
11 jersey barriers?

12 A. Not the jersey barriers themselves, they were
13 fine. The problem became that, not Mr. Russell himself,
14 but his employees at times would move those jersey
15 barriers and I had this conversation with Bryon and sent
16 him voice-mails to not move the jersey barriers. If
17 we're gonna do something, we need to figure out a
18 figuration.

19 But, again, I'm in Myrtle Beach about this time,
20 trying to see it from a distance. And Wayne Schulte,
21 the project manager, maintenance man is watching over
22 this and he says, they're moving on, they're changing
23 them. And nobody's listening to Wayne, so I'm trying to
24 get some logic across. Don't move them right now, we're
25 trying to figure out a plan. Again, we have \$100,000

1 parking lot specced out by a company that's reputable
2 with a warranty in place.

3 So anything we do to that parking lot and change
4 the configuration voids my warranty, including a
5 forklift in the parking lot causing damage. They're not
6 gonna warrant that, and I'm concerned, because that's a
7 lot of money and we budgeted for a long time to put that
8 capital investment back and to make it better for
9 everybody. Just with this it wasn't working out.

10 Q. All right. Now Exhibit 4 that we're looking at,
11 it looks like there's several jersey barriers. And then
12 it appears that there's some kind of trailer between
13 them. Can you tell us about this photograph and what
14 happened with this?

15 A. It's a -- somebody had moved the jersey barriers
16 to place a trailer in there again. So, obviously, I can
17 say, if you look at where the trailer's at, I didn't see
18 it happen, but the picture indicates that Brilin, at one
19 occasion asked me, can he park a trailer behind the
20 jersey barriers and I said I'd rather you not, because
21 we don't want damage, parking in the gravel anywhere,
22 but we worried about security.

23 He was worried about it being stolen. And I
24 said, well, lock it up or put a truck in front of it or
25 figure it out. And he text me back and said, I'll take

1 care of it. Don't worry about it, I'll move it
2 somewhere else, but I don't know what happened after
3 that. I just have this picture from one of my guys.

4 Q. So, did Brilin heed your request or follow your
5 requests about not moving the jersey barriers?

6 A. Obviously I can't say, I wasn't there, but it
7 looks like he didn't on the picture.

8 Q. And how soon, how early or late in this lease
9 term did you go through this rigamarole with the jersey
10 barriers?

11 A. It was at the end of this one. We did the
12 capital improvement, so it would be towards the end of
13 the lease when, you know, we finally said the parking
14 lot's exhausted its original life and we put the dollars
15 into making it better.

16 Q. Okay. And when did you redo the parking lot or
17 repave the parking lot?

18 A. I would say '19. I don't know the exact day
19 without seeing an invoice. It's been a while, though.

20 Q. Okay. All right. So, now, you mentioned not
21 only the jersey barrier, talking about these issues, but
22 you also mention some damages to the asphalt in the
23 parking lot, right?

24 A. Yes.

25 Q. All right. And this is gonna be Exhibit 5, for

1 plaintiff's exhibits in the binder. Mr. Decker, what
2 does Exhibit 5 show?

3 A. There was asphalt just outside the warehouse and
4 a ramp that we're discussing on the property, and the
5 pallets that are in the picture are of the defendant's
6 workload that he brings out to the site, as his attorney
7 stated, to run the business outside the warehouse.

8 Q. All right. So, there's a few things in this
9 picture that I want to discuss with you. The first one
10 is the actual, it looks like, asphalt damage itself, but
11 a circle, circular shape damage area at the bottom of
12 the asphalt pavement. Do you see that?

13 A. I do.

14 Q. All right. Do you know what causes asphalt
15 damage?

16 A. There are a number of things. I don't know
17 exactly. I mean, anybody can drive on that part, part
18 of the asphalt, but obviously brought it to their
19 attention. There's damages being caused outside and try
20 to get it resolved.

21 Q. And with regard to this asphalt damage that we're
22 looking at in Exhibit Number 5, tell us what
23 conversations or interactions you've had with Brilin
24 specifically regarding this asphalt.

25 A. Well, one of them we noticed a forklift, which

1 seemed to me, and after researching it and calling the
2 forklift company and figuring out if it was resolved and
3 I left him a voicemail, the forklift seemed to be the
4 nemesis to the whole problem.

5 Cars don't do that. The density of a pneumatic
6 tire is a very hard rubber. Very solid tire. And the
7 forklift guys that I -- I don't own one, but I checked
8 with them and I've used them before, coming down an
9 incline of a ramp with a load on your forks, hitting the
10 hot asphalt or a dense material like that, was not gonna
11 hold up to a forklift.

12 Depending on how fast the driver comes down, what
13 the load is and the turn radius. If he did a wider
14 turn, he might have some more longevity. If he did --
15 if he sat a sharp turn, that edge of that tire would cut
16 and cut and then peanut brittle the asphalt, is probably
17 a good term for it. It would cause it to alligator or
18 crack.

19 And continued use like that, water gets in it, it
20 rains, it's cold, it would just deteriorate faster. And
21 there's -- and I saw it happening and I'm like, you've
22 got to figure a better way. There's got to be a better
23 way.

24 We have two dock doors out back. How about an
25 idea of you get whatever you need out the back door and

1 not the side door, but I couldn't get anybody to listen
2 to that, so...

3 Q. So this asphalt damage was on Brilin's property?

4 A. It's on the area that's on his end of the
5 building that no other tenant really uses. It would be
6 deliveries for him, his daily truck usage, or his
7 vendors, from what Wayne Schulte had monitored for us
8 for a while.

9 What's going on over there? And we had him go
10 out and take pictures and just write notes and send them
11 back to us so we could kind of figure out which
12 direction do we go here, and headed out, because
13 obviously we had counsel by then and we were trying to
14 figure out how to articulate the next step into fixing a
15 problem that maybe he was gonna fix when he left, and we
16 hated to see it torn up to a point where it was gonna
17 cost so much money.

18 And when you have a \$3,000 deposit and you have X
19 amount of dollars in repairs, you start to get worried
20 if you're gonna get that or end up in a place like this
21 to fight it out.

22 Q. All right. So, the asphalt that we're looking at
23 in exhibit 5, you mention in one of prior responses,
24 that you've had the, the pavement resurfaced or redone.

25 A. Correct.

1 Q. Was this area in the area of the pavement that
2 CREH had resurfaced or redone?

3 A. It seems to be. I mean, I'd have to know the
4 date of this picture, but, obviously, that's what,
5 that's what I was given and I would say yes.

6 Q. Okay. And in terms of the resurfacing work
7 itself, how much did CREH spend to have that done?

8 A. 100,000-plus dollars to do the front of the
9 building, which would be the length of the whole
10 building and down this section right here that we can
11 see from front to back.

12 Q. All right.

13 A. It's like a horseshoe around the building.

14 Q. Now, when you have the -- do you know how many
15 square feet we're talking about here?

16 A. Not off the top of my head, no.

17 Q. Okay. How did you determine -- did CREH have any
18 part in determining how thick or the thickness of the
19 repaving?

20 A. We used a contractor. We told them about the use
21 of the alleyway or what we called between the
22 properties. We talked about car usage in the front. We
23 talked about side. We actually undermined that whole
24 area, extra excavation to get down to a more bearing
25 soil. We compacted a gravel, under the recommendations

1 of our contractor that said he would warrant it, but not
2 for -- he never said for forklift, so that's when this
3 all came into play. And once we found out the forklift
4 was causing the damage, then it became who fixes the
5 job?

6 At one point he gave us an estimate to fix. But
7 then I called his guy and his guy said I'm not
8 warranting anything. My guy said he would warrant it
9 and keep it under same umbrella of the \$100,000 job, but
10 he had to do the job. But he wasn't happy about cutting
11 seams in asphalt because in our terms, if you cut a seam
12 in something, it is the point that might be the less --
13 it won't be the strongest point.

14 You like to do an entire asphalt job. If you
15 start piecing it together, water could get into those
16 joints and cause it to laminate or crack again, so we
17 had concerns about that. But we were trying to address
18 them, we just couldn't come eye-to-eye on how to do it
19 until now, which we recently did it. We just bit the
20 bullet and did it.

21 Q. All right. Now, you mentioned your response that
22 you went through -- you had some extra excavation done.

23 A. We did.

24 Q. What is -- what benefit does extra excavation
25 serve for the strength and the durability of this

1 asphalt?

2 A. The original asphalt job was done with no gravel
3 base. It was one of those jobs that somebody probably
4 did and ran out of a budget and they just put asphalt
5 under it, so we took it all up. Six inches in the
6 front, four inches on the side. We tried to come up.
7 This wasn't a main traffic area. The side door wasn't
8 used by any tenant prior. And we said and we're putting
9 jersey barriers up and it's a dead end.

10 We came up with the methodology that we would go
11 four inches, an inch-and-a-half, two inches of asphalt
12 on top, using a high-grade asphalt, and I was happy with
13 that. I was -- coming from my professional that I used,
14 I was like, you're gonna warrant it, and I really need
15 it to be warranted. And also, maintenance warranty. He
16 was gonna follow up every year so we could catch before
17 it gets worse. And I wanted to have all that wrapped up
18 with one guy. I don't need five different contractors
19 coming every year because something else happened. I
20 was trying to keep it under that umbrella.

21 And I explained that to Mr. Russell that it was
22 under warranty, or even his SMI guy that gave him the
23 quote that we'll probably see later. I called that guy
24 as a working owner, like I always do. I don't know what
25 you're doing. How are you gonna fix this? He goes, I'm

1 not warranting anything that guy said. Mr. Russell just
2 asked me to patch it. And I said, well, you understand
3 we just did the parking lot? And he goes, oh, no, I
4 didn't really know what was going on here. And I said,
5 well, we'll see what happens. And obviously we didn't
6 use that guy.

7 Q. All right. Now, so were -- you know, when you
8 testified earlier about your, you know, background being
9 a general contractor, I want to delve a little bit
10 deeper into the thickness of the asphalt issue. In this
11 area, I believe, if I understand your testimony
12 correctly, the asphalt in this area that we're looking
13 at is about four-inch thickness; is that correct?

14 A. No. The base is four inches of thick, the
15 gravel. I don't think anybody puts four inches of
16 asphalt many places. Maybe at an airport or something,
17 but for commercial use, we decided this would be the
18 best use with the -- they're using more of an
19 emulsification, which is the tar and gravel mix that
20 would get a tighter pack with rolling the machine on it.
21 We all see rolling over asphalt to compact it down and
22 make a nice bond, and then you let it cure out and you
23 hope that it's gonna hold up to normal wear and tear.

24 Again, it goes back to the forklift. This
25 forklift normal -- I didn't know the guy was operating a

1 forklift from the parking lot, first of all, because it
2 never came to my attention until he had it in the
3 warehouse on the concrete the whole time, that I ever
4 saw it, until he outgrew the warehouse, then it was out
5 in the parking lot.

6 And then we notified him about the damages and it
7 went, hey, I take care of it later to, you know, to
8 where we're at now with Steve, get him involved to try
9 to figure out how do we deal with this, this, this, and
10 this and get somewhere.

11 Q. All right. Now, this damaged asphalt, are you
12 aware of whether or not Brilin fixed it or attempted to
13 repair it at any time?

14 A. Yes.

15 Q. All right. And what did Brilin do in terms of
16 its repair, of this damaged asphalt?

17 A. He added a -- he added a concrete apron at the
18 base of this ramp in this picture. I can't see it from
19 your angle, but from right to left there's a ramp
20 concrete. He extended it out where the biggest part of
21 the damage was when you come down the ramp. The front
22 of the forklift's tire would hit that asphalt and kept
23 peanut brittle type glass shatter technique would hit
24 the asphalt and it would just start to break up. And he
25 noticed it, so he decided to cut out the asphalt and put

1 a concrete pad there.

2 - Q. Was that repair acceptable to you?

3 A. No.

4 Q. Why not?

5 A. One, I didn't know about it. I heard about it,
6 but I didn't know about it, so I didn't understand what
7 really happened there.

8 Q. All right. Did you ever authorize or approve
9 Brilin to patch the damaged asphalt?

10 A. No.

11 Q. All right. And why not?

12 A. Because he had started with you. Once we had the
13 other issues, we decided -- we had a meeting on a job
14 site.

15 Q. All right.

16 A. Yeah.

17 Q. And we'll discuss that.

18 A. That's fine.

19 Q. We'll discuss that --

20 A. Yeah, no.

21 Q. -- in a few moments.

22 A. I know.

23 Q. Did you solicit any estimates for the repairs to
24 the damaged asphalt?

25 A. Yeah. Not only that area, but the associated

1 area in that area right there by the ramp, what we call
2 the alley property line, yes.

3 Q. All right. Let's look at Exhibit 6. Can you
4 tell us what Exhibit 6 is?

5 A. That's a repair to that area.

6 Q. All right. And what is the grand total of this
7 repair proposal?

8 A. \$5,950. And this is by the same company that did
9 the original job.

10 Q. All right. And the same company that you
11 testified warranted ---

12 A. And would warrant this, included with their job.

13 Q. All right. Did Brilin ever make or attempt to
14 make any other repairs to the asphalt outside of the
15 building at suite 111?

16 A. Other than an estimate, no, no attempt.

17 Q. All right. I want to look at what is Exhibit 7
18 in the binder. What does exhibit -- what does Exhibit 7
19 show?

20 A. A concrete patch in the asphalt area at the
21 bottom of the ramp.

22 Q. All right. Tell us what conversations or
23 dealings you have with Brilin specifically regarding
24 this concrete patch.

25 A. From the start?

1 Q. Just regarding the concrete patch that we're
2 looking at in Exhibit 7.

3 A. Asked who did it. Wanted to know if there's
4 rebar in it, what PSI the concrete was. I didn't know
5 anything of how thick it was. I was like, how thick is
6 that concrete? Is it gonna break on me? I didn't have
7 any idea of why they did it. In reason it sounded good,
8 but actually I didn't know anything, because concrete
9 can be over mixed, under mixed. And he could have said
10 I fixed the problem, and then I end up with the problem
11 when he's gone. It all cracks up. So I want to know I
12 have the best job in that situation. I asked him that,
13 but I never got an answer.

14 Q. So, so you were asking these questions of Brilin,
15 but, but was Brilin, Mr. Russell or anybody else at
16 Brilin not responsive to your questions?

17 A. That was in a group meeting that we'll probably
18 get to sooner than right now, but it was in the context
19 of a job site meeting that we were all on when that came
20 up.

21 Q. All right. Now, thinking back to the lease
22 agreement and the provisions that we went through with
23 that. Did Brilin Electric ever request permission from
24 you or authorization from you or anyone else at CREH, to
25 your knowledge, to do this concrete path?

1 A. No.

2 Q. All right. Did you ever authorize Brilin
3 Electric to patch this area?

4 A. I did not.

5 Q. Was this concrete patch, when you discovered it,
6 acceptable to you?

7 A. No.

8 Q. Why not?

9 A. Why I just stated, I didn't know anything about
10 it. Again, you want some ownership, you want somebody
11 to tell you what they did, how they did it, and I have
12 nothing because somebody did the work that wasn't
13 authorized.

14 Q. So, would you say that your concerns were about
15 the durability of this concrete patch?

16 A. Yeah. And water intrusion, because water likes
17 to get in the cracks. Any time you have a crack, next
18 to another crack, next to another crack, that seems to
19 be the biggest problem with us with commercial
20 buildings.

21 Water and heavy trucks or equipment will get the
22 soil soft underneath. So you try to do a full
23 encapsulation of an area with the proper drainage taking
24 the water away from the problem. The water seeps into
25 these joints. It's like anything else, water at your

1 house, in a window, it gets in, you can't see it, the
2 damage starts, and before you know it you're tearing it
3 apart trying to find the root of the problem, and it's
4 really right in front of you.

5 Q. So Brilin patched this area with concrete during
6 its tenancy, but CREH still owned that property at that
7 time, did it not?

8 A. Yes.

9 Q. And even today, the day of this trial, CREH still
10 owns that property, does it not?

11 A. We do.

12 Q. Okay. So were your concerns about future tenants
13 having issues? Did that enter your mind?

14 A. It didn't enter my mind at the time. I'd just
15 like to know, when you own something exactly what's
16 going on so you know how to fix it or, you know, deal
17 with the problem if it results to another problem. If
18 you did something good or bad.

19 Q. All right. At a certain point did you become
20 aware of some damage to some bricks above one of the
21 doors of the warehouse door?

22 A. Yes, I did, become aware of it.

23 Q. All right. And for the record we're looking at
24 Exhibit 8 in the binder of plaintiff's exhibits. Can
25 you refer our attention in this photograph of where the

1 damaged bricks are?

2 A. That would be at the top of the ramp that we just
3 looked at from the asphalt pictures. There's a side
4 door entrance to the warehouse with a concrete ramp that
5 leads up to that door. And that's a roll up door
6 picture with a steel lentil.

7 Q. Okay. Now, so let's back up and kind of talk
8 about what you just said. The bricks that you're
9 talking about, are they -- where are they in relation to
10 the door in this picture?

11 A. If you're facing the door, it would be the upper
12 right-hand corner of the full opening of the door.

13 Q. Okay. All right. How did you find out about
14 this damage to the bricks?

15 A. It was brought to our attention by Wayne Schulte.

16 Q. All right. After you learned of the damage, did
17 you discuss it with Brilin?

18 A. I did not personally discuss it with him, no.

19 Q. Okay. All right. Do you have any knowledge or
20 understanding as to how this damage to the brick
21 occurred?

22 A. From what Mr. Schulte told me, he investigated
23 and it's possible that the discussions he had he might
24 -- he said, forklift hit. It's something high. Hit the
25 door. Hit the -- maybe they had a load high and it hit

1 the door and it jolted that corner and caused it to
2 become loose or detached. That's all he said. And he
3 was looking into trying to figure out how to get a
4 repair, fix it.

5 Q. Now, you mentioned a few moments ago the lentil.
6 Tell us what a lentil is.

7 A. It's like a header above the door. It carries
8 the load, because obviously there's nothing underneath
9 it. A brick doesn't go from the ground up to the top of
10 the opening, so that piece of metal stands across to the
11 left side and the right side of that opening, onto the
12 courses of brick and it's usually attached to something
13 of the building or the structure so they can carry the
14 brick above that up to the roof line, like a load,
15 carrying that load above. So like from the top of this
16 above. So that's all it does.

17 Q. All right. Now, and from this picture it appears
18 that the brick damage is relatively minimal. Do you
19 have any concerns about the lentil that you just told us
20 about?

21 A. Yeah. The only concerns I had was to make sure
22 that it was structurally sound, it wasn't loose. I was
23 concerned that -- we don't know how -- sometimes you
24 don't even know how much that's bearing. You don't even
25 think about it until you see a crack or some structural

1 concern like that.

2 If the lentil was barely touching and barely on
3 the other bricks and you just band-aid or patch it and
4 don't investigate it into the depth, at least to get a
5 clear mind a couple of pictures, satisfy everybody that
6 you fixed it. And my concern was to Wayne, hey, if we
7 get our guy, Billy Philemon, out there, can you have him
8 check to make sure that if that gets repaired, it's not
9 a band-aid, it's a factual solid repair, and he said he
10 would.

11 Q. Did you ever discuss with Brilin or Mr. Russell
12 the need to have this damage repaired?

13 A. We talked about it at a walkthrough at one point,
14 yeah.

15 Q. All right. Did this damage occur during Brilin's
16 lease term?

17 A. Yes.

18 Q. Okay. Did you solicit an estimate to repair this
19 damage?

20 A. We did.

21 Q. All right. I want to look at Exhibit 9,
22 Plaintiff's Exhibit 9. Tell us what Exhibit 9 is.

23 A. That's the estimate of Billy Philemon to do the
24 work in those areas, and then get further inspection
25 inside the cavity where the brick was loose and falling

1 or had fallen out. Billy said, I need to see it more,
2 inspect it and repair it, and that was the estimate to
3 do that.

4 Q. Okay. So this estimate includes the necessary
5 inspection, as well as the repair work?

6 A. Correct.

7 Q. All right. And what is the total price for this
8 repair work, according to Exhibit 9?

9 A. \$1600.

10 Q. All right. Now, it might sound like a silly
11 question, but did the building that Brilin occupied
12 during its lease term have doors?

13 A. Yes.

14 Q. All right. I want to spend a little bit of time
15 talking about, Mr. White mentioned it in defendant's
16 opening, the rollup doors in the back of the building.

17 A. Correct.

18 Q. Okay. Describe those doors for us.

19 A. They're commercial rollup doors that you quite
20 often see in the back of a building. They're metal in
21 nature and alluminum components, spring loaded. They
22 roll up and coil up, so they just lift straight up and
23 they roll into themselves.

24 Q. Was there any incident or incidents involving the
25 doors to the building, the rollup doors, during Brilin's

1 tenancy?

2 A. Yeah. Mr. Russell text me one day and said
3 something to the fact that we damage the doors, I'll
4 need to get those replaced before I leave. And I said,
5 okay. And we discussed possibly getting what type of
6 doors replaced and with a future date.

7 Q. All right. So, what kind -- what type of rollup
8 doors, specifically, were on the building when Brilin
9 moved in, took possession of the premises?

10 A. It's a coil rollup door. There's probably
11 different doors, styles from each manufacturer, but it's
12 a coil rollup. They interlock differently. Probably
13 better explained by somebody besides me, but that is
14 what I was challenged with when I found out the doors
15 were damaged and we get an equal door to what's there.

16 Q. All right. When you were looking at new doors to
17 replace these with after you and Mr. Russell discussed
18 the damage to them, were you concerned about the quality
19 of door that he proposed?

20 A. Yeah. Both from his side and our side, because
21 we use Overhead Doors, our preferred vendor. In our
22 business you like to stay with the same companies. You
23 can't have everybody using a different company to fix
24 something and you hope that when you lead them to one,
25 you come to some agreeance that you use the product.

1 Because it makes sense for us going down the
2 road, and if the price is different, maybe we come to an
3 agreeance that we're still gonna use that guy that we
4 want to use, but you give us the money so we can do it
5 the way we want to do it. And that was discussed. It
6 was discussed with -- he gave me the specs of the doors.
7 I called the door manufacturer he gave me, had a long
8 talk with him. Very nice gentleman.

9 Also called our expert and he disagreed with the
10 doors they are using, so I brought it back to his
11 attention through Steve that they're not apples for
12 apples and we're trying to figure it out what to do.
13 But we didn't know that they were gonna replace the
14 doors while we were in negotiations to figure out what
15 we needed to do. So we were happy to try to figure it
16 out, but I never got that phone call.

17 I just, I got a call that someone was at our
18 building, removing the doors off the back of the
19 building in the middle of the day. And I have no clue
20 who it is, but I assume it's those guys. But no
21 paperwork, no work invoice.

22 Not even an acknowledgement from the company that
23 did it to make sure that it was okay with the owner of
24 the building that you remove doors from a building,
25 which I thought was ludicrous that you don't have the

1 owner of the building sign something to approve removing
2 something and taking it away. And he said, no, but we
3 should, because he'd never been in this situation
4 before.

5 Q. All right. Let's look at exhibit 10 of
6 plaintiff's exhibits in the binder. Tell us what
7 exhibit 10 is.

8 A. Let me get to 10.

9 Q. All right.

10 A. I've been working with Overhead Doors for a long
11 time. Again, trying to stay loyal to the trusted
12 vendors. We all build reputations. Overhead will
13 service me in a minute. They'll come out in a second.
14 They'll, you know, they'll give me the quote. He did
15 everything he did. He just supplied me with a quote to
16 repair the doors, which they said was light condition to
17 what was there, and I said okay. And that's the quote
18 they gave me.

19 Q. So you just said light condition were the
20 parameters that you gave to Overhead Doors.

21 A. Correct.

22 Q. All right. Did you ever say, we want to upgrade
23 the doors?

24 A. I wanted that opportunity. If I needed to, that
25 was on our nickel. But first of all, the doors that I

1 was given by the defendant, I wasn't getting the
2 comfortable feeling that I was getting apples for
3 apples. So I wanted the chance to figure it out. And
4 they were like, hey, we need to know now. We need to
5 know now. And I'm like, I can't get people just to give
6 me the information like that. I didn't get it. So I
7 told my guy, is this the door I should put on the
8 building and he said yes. And that was Joshua Montoya,
9 I believe.

10 Q. All right. Now, how much is this estimate for,
11 for both of the roll up doors that were damaged?

12 A. \$7913.51.

13 Q. All right. And is it your understanding that
14 these doors were like kind to the doors that were
15 existing on the building?

16 A. That's my understanding.

17 Q. Okay. All right. Let's look at, let's look at
18 Exhibit 25 of plaintiff's exhibits.

19 A. 25, you said?

20 Q. 25.

21 A. All right, 25. Oh, okay, I got ya.

22 Q. All right. Now, what is, what does Exhibit 25
23 show? Just very briefly and generally?

24 A. Josh's comparison to the door being provided,
25 versus what should be there for us, compared to what's

1 at the building existing.

2 Q. Okay. If you would, read what Josh Montoya wrote
3 regarding the doors.

4 A. He just says to Wayne: Wayne, per our phone
5 conversation a couple of days ago, this is where my
6 research led me. The A Montessori 5501 door -- all
7 right, it's a door actually -- is a great product for
8 the proper application.

9 The application at your address would be better
10 suited for a commercial door, meant for a more frequent
11 revolutions between the two options, the OHD Model 600
12 door is better than the option for your location. The
13 slats and angle mounting offer more structure, structure
14 is very important in a commercial application.

15 The Model 600 is a lighter duty rolling steel
16 slat door, but in a different class. Light duty
17 compared to the Amarr series 5501. This is an old age
18 comparison of apples to oranges, considering these
19 openings are used every -- used for commercial
20 industrial purposes.

21 Q. All right.

22 A. And then he highlighted some stuff from somewhere
23 along the way.

24 Q. All right. And if we go back to Exhibit 10,
25 which is the Overhead Door estimate, what kinds of --

1 A. Hold on, I need to go back.

2 Q. -- what kinds of doors is this estimate for?

3 A. Ten?

4 Q. Exhibit 10.

5 A. Yes.

6 Q. What model or brand of rollup doors is this
7 Exhibit 4?

8 A. Hold on, let me look at it for a second. It's
9 the model 600 coil away rolling steel service door.

10 Q. And is that the preferred type of door that
11 Joshua Montoya talked about in his e-mail, which is
12 Exhibit 25?

13 A. It is.

14 Q. All right. Now, did this e-mail, did Exhibit 25,
15 the e-mail that we just looked at from Joshua Montoya,
16 give you any concern or any pause regarding the doors
17 that Brilin Electric was seeking to introduce or to have
18 installed at your building?

19 A. Not.

20 Q. Okay. So you didn't have any concern about the
21 doors that Brilin was trying to install?

22 A. Oh, I did have concern, but I didn't have a time
23 to -- let's go back to it. They asked about the door to
24 be installed. At the same time, they had already
25 engaged with a guy to install it.

1 I found out later they already signed a contract
2 and he said, the doors are already ordered, Brad.
3 Brilin already gave me the green light, but we're still
4 researching and looking up what we're supposed to be
5 doing between his team and their communication and me
6 when theirs was broke down. I told them what I was
7 doing.

8 I was looking at the door trying to figure out
9 what's the best application, in all fairness, and I was
10 getting told, that's not the best door for my guy. And
11 I'm asking them, can we figure it out? And then he told
12 me in the e-mail, use this door. That's equal to it.
13 That one that they're putting in wasn't, so I went with
14 that.

15 Q. All right. Now, so did Brilin have the damaged
16 rollup doors at the building taken off and replaced?

17 A. He did.

18 Q. All right. Do you know what happened to the
19 damaged doors that were taken off?

20 A. I have no clue.

21 Q. All right. Did you ---

22 A. Oh, hold on a second, let me go back. I, at the
23 time we saw the doors going down, we had Wayne go out.
24 He found out arbitrarily the doors be taken out and we
25 had some back and forth on what are you doing? We were

1 told to let them continue to put up the doors, because
2 it's a legal matter. I think the police were called for
3 that.

4 I called the owner of the -- that's why I called
5 the owner of the company that had installed and said,
6 what are you doing? Don't you call the people that own
7 the place? And he's like, Mr. Russell told me to put
8 them up, take it up with them. I said, this could be a
9 court matter, because we already started some legal
10 talks with the cease and desist. Do not do anymore work
11 on our property without us knowing, period. That's a
12 cease and desist official letter, but you keep doing
13 work.

14 So it kind of gets you going back and forth all
15 the time. Your brain is I want to help the guy, but I
16 can't because I don't know what he's doing.

17 Q. Do you know what Brilin did with the rollup doors
18 that it removed from the building?

19 A. Yes. Vendor told me they were discarded.

20 Q. Okay. Did you ask for Brilin to -- did you make
21 a specific request to Brilin that the damaged doors be
22 returned?

23 A. I, I didn't. I think you did, but I also called
24 the owner and he said, I can't bring them back. And I
25 said, I want my doors back. You shouldn't have took

1 them down. He's like, they're gone. They're in a
2 dumpster.

3 Q. All right. To date, as of today, have you gotten
4 those rollup doors back?

5 A. I have not.

6 Q. All right. Now, you mentioned this a couple of
7 times in your testimony so far. After all of this
8 happened, and all the damages that we've talked about so
9 far, did they all happen during Brilin's three-year
10 lease term?

11 A. They did.

12 Q. Okay. Now, after all this happened, did you meet
13 with Brilin out at the property, out at the lease
14 premises?

15 A. Yes.

16 Q. All right. And when did that meeting occur?

17 A. I want to say late October, November-ish of '19.

18 Q. Okay. Who was present at that meeting?

19 A. His original attorney, Nathan, which works for
20 the same firm. You, me, and Mr. Russell. And the
21 meeting was for us to come to a meeting of the minds.
22 We started a lawsuit. Obviously none of us wanted to go
23 there. We were gonna try to meet on the ground and come
24 to what's really going on here, at Ryan's request, to
25 resolve the possibility of this lawsuit coming to this

1 point.

2 Q. Now you just mentioned Ryan. Tell us who Ryan
3 is.

4 A. Ryan was his original counsel that was hired out
5 of the North Carolina firm. We thought we were making
6 headway.

7 Q. Okay. Tell us, tell the jury what happened
8 during this meeting in October of 2019.

9 A. I thought it was a good meeting, first of all.
10 To this day I'll say that until it goes wrong. We met
11 at the site. We all agreed to walk the premise. Went
12 in the front door. Mr. Russell was very nice about
13 that. He -- I knew he had some bad blood with Wayne and
14 whoever else. We went through the offices to the
15 warehouse. We got to the warehouse and we wanted to
16 address a few things.

17 The doors would come up. The ductwork that's
18 probably going to come up in the rest of this testimony,
19 and the damaged studs in the walls and the racking
20 system and the asphalt apron and the brick. Oh, and all
21 the punch work that he asked me to do at that meeting
22 were all discussed.

23 And immediately the punch work got done. As soon
24 as I left my office and we had a handshake, I left back
25 to my office and ordered a new lock for a door. I did

1 weather stripping, some things that he was concerned
2 with. I text him and he was thankful and it was all
3 good.

4 Q. Now, the punch list items that you just
5 mentioned, the things that Mr. Russell asked you to do
6 as the landlord during this meeting. How quickly did
7 you get that entire punch list of work done?

8 A. Within a week, including the locksmith that he
9 asked me to change the lock in the hallway. I took it
10 away from Wayne Schulte. Seems to be a little bit of
11 animosity with Wayne and his employees and him not
12 liking Wayne, keep him off the property, I stepped in to
13 take the role, to try to, like, okay, we'll be better at
14 this.

15 We'll just go and meet everybody of minds, with
16 two constituents I thought would be able to resolve
17 this, because it's -- it was kind of childish, but at
18 the same time he's not happy. I'm concerned about the
19 building and we're all trying to resolve something, with
20 good intentions at that meeting. And I think that's
21 what it was all about.

22 Q. All right. Now, during the meeting, do you
23 recall anything about what Mr. Russell said, if
24 anything, about making future repairs or alterations at
25 the leased premises?

1 A. Yeah. He said he would not do anymore repairs.
2 And if we go through the beginning of this, if we do it
3 and you guys decide to do that, at the end of it he said
4 he'd do zero more repairs, reiterated by his attorney
5 and you both in front of me and he was right there. He
6 promised he would not do any more work without us
7 knowing about it.

8 Q. Did you believe him at that point?

9 A. I did. And we also said -- you said we want
10 approval and I said, yes, that would be nice. We'd have
11 it in writing, some approval that we okayed this,
12 because we were ready to go. We just want to know what
13 you're doing and it's done to a standard of quality that
14 we can both agree on.

15 And that's how I left it. And that's why I
16 jumped on the punch items. Didn't let Mr. Schulte do
17 the punch items. I did them personally as the owner. I
18 walked through every list item he gave me and I made
19 sure it was done, because I didn't want to have that --
20 he asked me, how fast can you do it, Steve did.

21 I said, I'm on it. I already did it. I called
22 the locksmith. I called the weather stripping guy for
23 the door. I did this and he said, okay, great. And
24 I'll let the other's counsel know. And that's what I
25 was told.

1 Q. All right. Now, during the meeting, did Mr.
2 Russell point out anything to you related to the
3 ductwork inside the building?

4 A. Yes, he did.

5 Q. All right. And this is gonna be, for the record,
6 Exhibit Number 11 in the plaintiff's exhibits. What did
7 -- what do you recall Mr. Russell telling you or talking
8 to you about the ductwork inside the building during the
9 October 2019 meeting?

10 A. Well, I'm gonna take it back a step. The
11 ductwork was known to Mr. Russell early on in '18,
12 because we noticed it got damaged on our inspections we
13 do every year on our buildings. We do pest control. We
14 walkthrough the buildings. We try to see things that
15 need fixing or damages maybe a tenant caused or it could
16 fall down and hurt somebody. And we saw some ductwork.

17 And Mr. Jackson, our CFO, asked me to get an
18 estimate and then we would provide it to Brilin in his
19 lease statement or his monthly payment. And it went
20 unheard of. He didn't respond to it for a long time.
21 And then at one point he told Mr. Jackson, I'll take
22 care of it at the end of my lease.

23 So, as we walked in that day and we saw it,
24 before we even got to get our attention to it, he
25 brought it up. He said, oh, by the way, I fixed that

1 ductwork. And I said, okay. And he told us what he
2 did. He reconfigured it to make it work better for him
3 without we really knowing what it was really doing yet.
4 It looked to be good, but we asked him, well, who did
5 the work? What if that falls down and kills somebody or
6 hurts somebody? We needed to see a lot.

7 And I think Steve went back to Nathan and said,
8 oh, I need a COI, I need a COI, I need a COI. We end up
9 getting a COI for the company that did it, but he also,
10 since he altered it. I hadn't talked to our HVAC guy
11 yet, and understand the flow of that ductwork, how it
12 really worked in the warehouse, because now you changed
13 it and put it up higher, it'll take a lot more force to
14 get it down here to cool or heat for the person on the
15 floor. So it was, it was made and engineered at a
16 certain height, so when you turn on the AC and it comes
17 out of the vent, it actually gets to you.

18 And my AC guy says, well, it's not the worst
19 repair, but it's not what was there before. They
20 changed it. And I said, yeah, I'm not real happy with
21 it but, you know, right now I'm just gonna let it go
22 until we go to the next step, which was walk into the
23 wall area that was hit by the forklift.

24 Q. Now, you mentioned a COI. Tell us what a COI is
25 and what the importance or utility of it is.

1 A. Okay. As a landlord, or even anybody, COI is a
2 Certificate of Insurance. It's for the person that does
3 the work they provided. At your house, if you have a
4 plumber come, you want to get a Certificate of
5 Insurance. Or a roofer, if they fall off the roof, you
6 want to know they're insured, because if they're not
7 insured and they get hurt on your site or something
8 happens to that product and you get hurt, your insurance
9 has to cover it. So it mitigates the damages for you.

10 You learn this in business real fast when you own
11 something. Try to get as many COI's in your file as you
12 can, so you limit your risk if something happens,
13 especially if you're building or remodeling. So there
14 was a protocol for us to have a COI with the -- it's an
15 insurance policy for the vendor that did the work.

16 Q. All right. Now, the reconfiguration work that,
17 that Mr. Russell talked to you about that he had done to
18 this ductwork, did he ever request permission from you
19 or anyone else at CREH, to your knowledge, to do that
20 work?

21 A. No, sir.

22 Q. Okay. So, you found out about it after the fact?

23 A. I did.

24 Q. Okay.

25 A. The same day you were there.

1 Q. All right. After Brilin did its reconfiguration
2 work, did you, as the landlord, have to do anything else
3 with the ductwork?

4 A. No. Not to this date, nothing, no.

5 Q. Okay.

6 A. Still in the same condition it was, because it
7 was another expense that we didn't want to burden
8 ourselves with at the time because of the lawsuit. We
9 were kind of picking and choosing where we spend the
10 money to fix some things that were more important, like
11 the asphalt that was left behind damage, or this costing
12 a lot of money to figure out how to fix this.

13 Q. Now, you mentioned your ductwork, HVAC guy.

14 A. Yes, sir.

15 Q. What company do you use for this type of service?

16 A. We're using a trade vendor called MTB. They were
17 used by us for many, many years.

18 Q. Okay. And did you solicit any kind of estimate
19 or invoice from MTB to have any repairs done to the
20 ductwork?

21 A. We did.

22 Q. All right. Let's look at number 12, Exhibit
23 Number 12 of plaintiff's exhibits. Number -- Exhibit 12
24 is two pages. Can you tell us what those two pages are?

25 A. Number 12?

1 Q. Yes.

2 A. It was the estimate and a quote. The quote was
3 from MTB, and then it was an invoice from us to get them
4 to pay so we could fix the damages prior to them
5 leaving, because we felt responsibility to do that at
6 the time.

7 Q. All right. And the damages related to the
8 ductwork, were those damages done during Brilin's lease
9 term?

10 A. Yes.

11 Q. All right. All right. So we've talked about
12 this meeting. We talked about what was discussed during
13 the meeting. How were you feeling at the end of the
14 meeting?

15 A. Oh, great. He gave me his promise. With you and
16 Ryan, he promised not to do anymore work and I believed
17 him.

18 Q. When you say he, who are you talking about?

19 A. Mr. Russell. Bryon Russell, owner of Brilin
20 Electric.

21 Q. All right. Now, from the time of the site
22 meeting with Mr. Russell up until the date when Brilin
23 vacated the premises, tell us how things were with
24 Brilin.

25 A. Say that again.

1 Q. From the time of the site meeting with Mr.
2 Russell in October 2019 --

3 A. Right.

4 Q. -- up until the date when Brilin vacated the
5 premises, how were things between CREH and Brilin?

6 A. Fairly mild, quiet. I mean, normal. We're still
7 trying to resolve the issues we knew were coming up that
8 we all want done. We were trying to get a game plan.

9 Q. Now, did you ever, as the landlord, ever try to
10 antagonize Brilin or interfere with Brilin's business?

11 A. I did not.

12 Q. All right. All right. Let's talk a little bit
13 more about the inside of the building of Brilin's space.
14 How is the interior warehouse building configured?

15 A. It's a flex space, what we call offices, at the
16 front side of the building, with a warehouse basically
17 in the back. But this one actually had a warehouse in
18 the back and a side portion was a warehouse. So small
19 offices in the front and warehouses in the back, so that
20 would be the best description of the, of the space.

21 Q. All right. And is there a -- tell us about the
22 building itself. Are there multiple tenants in the same
23 building or how does that work?

24 A. It's split up between several tenants. It's a
25 long rectangle building. Probably 19 feet and 20 feet

1 in height. And a ceiling height in the front. It
2 slopes down to the back, with all dock doors in the
3 back. All store front in the front, like when you go to
4 a commercial store front. Each tenant has a little bit
5 more space than the other. Some are bigger, some are
6 smaller, and it's broken up like that.

7 Q. All right. Is there any kind of dividing wall or
8 partition wall between the commercial spaces?

9 A. Yeah. One, one part of the building under the
10 square footage premise and zoning has a firewall, which
11 would be a solid center-block wall from floor to
12 ceiling. And then some have a demising wall, as Mr.
13 White said, or a, you know, separation wall between the
14 two tenants under the same roof.

15 Q. All right. And to your understanding, is there
16 any real difference between calling something a demising
17 wall, versus calling it a partition wall?

18 A. No, the same. I agree with Mr. White.

19 Q. Okay. All right. So let's talk about this wall,
20 all right? Was there a partition wall or a demising
21 wall in the warehouse area of Brilin's leased commercial
22 space?

23 A. Yes, there is.

24 Q. All right. How long would you estimate that wall
25 is?

1 A. 90 to 120 feet in length.

2 Q. All right. And how, how tall is it?

3 A. 19 feet on average, probably.

4 Q. Okay. Do you know what that wall's made of or
5 how it's constructed?

6 A. It's made of steel studs, aluminum studs inside
7 the wall cavity with drywall on both sides.

8 Q. All right. Now, when Brilin moved into that
9 space that we're talking about, what was the condition
10 of the wall at that time, the partition wall or the
11 demising wall?

12 A. It was in good condition.

13 Q. All right. Tell us what you mean by good
14 condition.

15 A. It was plumb. All the drywall seams and tape was
16 consistent. There was no damaged drywall. And we
17 inspected that when we bought the building. That was
18 one of our inspection points, so to look for walls and
19 roofs and all that. So we had some history of knowing
20 the wall and what it did and what its purpose was.

21 Q. Now, what is -- you used the term plumb. What
22 does plumb mean?

23 A. Plumb vertically. Plumb straight top to bottom
24 with little variance within tolerance of a wall being
25 that high. Straight up and down from the bottom, put a

1 level on it. Plumb and straight.

2 Q. What was the condition of the demising wall or
3 the partition wall when Brilin vacated that place?

4 A. It was not a 100 percent plumb.

5 Q. All right.

6 A. It was patched, and that was part of the concern
7 to figure out what was going on.

8 Q. All right. Let's look at Exhibit 14 in
9 plaintiff's exhibits. What does Exhibit 14 show?

10 A. That shows the demise -- the wall, partition wall
11 or demising wall. We're talking about separation wall,
12 the two spaces. The picture view is of the side of Two
13 Men And a Truck. That was on one side, and Brilin's on
14 the side that you can't see in the picture on the other
15 side of the drywall.

16 Q. All right. Now, you used the word "plumb"
17 before, and you said that when Brilin took occupancy of
18 this space, the wall, the demising wall plumb. What can
19 you tell us about the plumbness of this demising wall
20 after Brilin left?

21 A. Well, after he left, it wasn't as plumb as we
22 would have hoped. He did a repair on it. And this is
23 the picture of it when it -- before it was repaired on
24 Two Men And A Truck side, showing how it got bumped out
25 by the forklift that we all discussed out earlier.

1 Q. Now, on, on the left-hand side of this, do you
2 see a yellow, what appears to be a yellow line?

3 A. I do.

4 Q. All right. What does that yellow line show in
5 reference to the wall?

6 A. Variations of plumbness at the bottom if you use
7 a straight line. Those lines were taped on the ground
8 by the lieutenant that was there to store, directly
9 store things against the wall and tell those people not
10 to put it too close to the wall.

11 So he had a particular way he wanted things in
12 the building, in the warehouse, Two Men And A Truck,
13 stores furniture, and they were not to go on the other
14 side of the yellow line, and try to stay within the
15 yellow line when they put packages or furniture to have
16 room to get around.

17 For fire marshall codes and for reasons that we
18 can exterminate and pest control the building, we don't
19 need a lot of stuff against the wall. We need to be
20 able to get around and check things out.

21 Q. All right. Now, is it your understanding that
22 this yellow line that you see in this exhibit is a
23 straight line or is it curved or...

24 A. No, it's straight.

25 Q. Straight line, okay. So in this exhibit we are

1 looking at, with a reference point this yellow straight
2 line, for looking at a plumbness, as you termed it, onto
3 the demising wall?

4 A. Correct.

5 Q. All right. Now, moving away for a moment from
6 the exterior demising wall, are you aware at all about
7 the internal structural components of the wall?

8 A. I'm familiar with them.

9 Q. Okay. All right. At some point, did you become
10 aware of what the condition of those structural
11 components inside the wall were while it vacated the
12 premises?

13 A. I became aware of those, yes.

14 Q. Okay. Let's look at Exhibit 16, plaintiff's
15 exhibits. What does Exhibit 16 show us?

16 A. Damaged studs.

17 Q. All right. Are these the structural components
18 inside that demising wall we just talked about?

19 A. Yes.

20 Q. All right. So this, this wall that you described
21 for us, would it be fair to say that it's held up, for
22 lack of a better term, by these metal studs?

23 A. Yes.

24 Q. Okay. All right. So... And tell us about what
25 we're looking at in Exhibit 16, as far as the metal

1 studs go.

2 A. All right. We're looking at a viewpoint from
3 Brilin Electric side, versus the other picture was on
4 Two Men And A Truck side that we saw with the drywall.
5 This is what we found when we opened the drywall on the
6 tenant's side, which was Brilin's.

7 When we investigated the repair that they did on
8 the wall, they did one side of the wall, Two Men And A
9 Truck side, that they had access to. We had to come in
10 and investigate what happened on this side, because we
11 didn't get the opportunity to see it before he repaired
12 his side of the wall, because he did it in two stages.

13 He did, phase one, he plumbed the wall up or did
14 something with the wall. Someway he pushed it over and
15 had somebody correct one side of the wall. But the
16 impact came from his side of the wall with a forklift.

17 So it hit the studs and damaged the studs to one
18 side; but didn't show up on the other side.

19 Q. When did you become aware that the damage to
20 these studs was done by a forklift?

21 A. He told us.

22 Q. When you say he, who are you talking about?

23 A. Bryon told us that the wall damage that caused
24 the plumbness out in our vigil site meeting that we met
25 with the two attorneys and myself. Oh, yeah, I know I

1 damaged the wall. I'll let you see it when I take the
2 racks down.

3 So he had racks from front to back full of stuff.
4 And he was out of space. He had a lot of pallets there.
5 And I remember looking up in the pallets and looking
6 around and going there's, there's holes in the walls and
7 I can see stuff. And I go, we need to see that before
8 you fix this side or whatever you're gonna do. And he
9 said he would let us see it before it got covered up,
10 and that whenever he pulled the rack out, he would give
11 us a call to come over and check it out. And that was
12 part of that meeting.

13 Q. Did Mr. Russell ever give you an opportunity to
14 come and inspect the wall further?

15 A. No.

16 Q. All right. So, after you discover these damages
17 that we talked about to the demising wall, what did you
18 do?

19 A. Well, let's -- we knew there was damages from one
20 side or the other. One that got plumb. But it still
21 had drywall on it. It just had puncture holes from
22 either pallets going through or maybe the forks being
23 extended through a pallet, when you pick up a pallet,
24 hidden puncture marks on the wall.

25 So, you don't really know what's there until you

1 open it up. So, since it got covered up before we saw
2 it, it looked nice. It was clean and sanded and -- but
3 you could see the old textured drywall versus the new,
4 so it was easy to figure out, like a quilt, not all the
5 squares matched, so it was like an easy puzzle to figure
6 out. We're like, what's going on here?

7 And that was done with you and Mark Robinson and
8 myself. We had access to the building to go see what it
9 -- looked like after the tenant when I couldn't make the
10 walkthrough. What happened? You know, we went into the
11 building, trying to figure it out and see what was going
12 on.

13 Q. Now, when you were talking about when we were in,
14 when the October 2019 meeting occurred --

15 A. Oh, yeah.

16 Q. -- were you able to adequately inspect the
17 condition of the demising wall at that time?

18 A. No. And that was one of our conditions that he
19 offered to let us come, because my concern was we can't
20 see this side of the wall, because it's covered with
21 those racks again and pallets in different positions and
22 pallets extending in front of those. And his exact
23 words is, I'm not gonna move all this stuff. You'll see
24 it when I take the rack down.

25 Q. So, from my understanding, your testimony is

1 during that meeting, there was stuff on the walls so you
2 weren't able to conduct a proper inspection?

3 A. I was not.

4 Q. Okay.

5 A. Just a visual.

6 Q. All right. So, after Brilin Electric vacated the
7 space, did you enlist any type of professional to do an
8 inspection of the wall?

9 A. I did.

10 Q. All right. And who did you enlist to do that?

11 A. John Abernathy, a local structural inspector. We
12 paid for him to come out to give a third-party
13 inspection of the wall.

14 Q. Okay. And so, you paid Mr. Abernathy for his
15 work in this case. If you'll turn to Exhibit 17 of
16 plaintiff's exhibits. What does Exhibit 17 show or what
17 is this?

18 A. That's services we hired John that was for the
19 site visits. So once we engaged Mr. Abernathy, we
20 decided that we should do a demo diagnostic of the wall
21 to see what was left behind that maybe the tenant didn't
22 purposely leave, but he hired someone to do the work.

23 And I don't think they understood the scope of
24 work, and they just put drywall over damaged studs
25 because we took the pieces they brought on and obviously

1 found the damaged studs behind it, and we immediately
2 stopped. And called a -- actually, we called our
3 attorney and he came too. And we had everybody that was
4 involved on site, not to go any further other than a
5 demo diagnostic which is open it up and see what we got.

6 Q. All right. Now, before we proceed any further,
7 these damages to the wall that we're looking at, we have
8 this one of the damage, structural damage, and then we
9 have the other one of the damages, how the wall looked
10 from the outside. Did you manufacture or cause any of
11 those damages?

12 A. No.

13 Q. All right. Did anyone at CREH manufacture or
14 cause any of those damages?

15 A. No. Not to my knowledge, no.

16 Q. Okay. So, after Mr. Abernathy conducted his
17 inspection of the wall, was a general contractor
18 involved to actually do any repairs?

19 A. We hired a -- well, I say contractor. We hired
20 someone to take the repairs on, yes.

21 Q. Okay. And who was that contractor?

22 A. Mark Robinson.

23 Q. All right. What is Mr. Robinson's company name?

24 A. Benchmark Flooring.

25 Q. All right. If you'll turn to Exhibit 18 in

1 plaintiff's exhibits. Tell us what Exhibit 18 is.

2 A. It's an invoice for a marked -- it's a final
3 invoice to repair the wall that the tenant left behind
4 damaged.

5 Q. Okay. And all of the work in this invoice, has
6 it all been completed?

7 A. It has.

8 Q. All right. And have you paid Mark Robinson the
9 full amount of this invoice?

10 A. Yes.

11 Q. All right. What's the total cost, according to
12 this invoice?

13 A. \$6,121.00.

14 Q. Okay. Now, at any time, Mr. Decker, did you
15 instruct Mark Robinson or anyone else to inflate any
16 costs to repair the damaged wall?

17 A. I did not.

18 Q. Did you ask anybody who repaired any of the
19 damages that were caused during Brilin's lease term to
20 inflate any repair costs or material costs?

21 A. No, I did not.

22 Q. Okay. Did Carolina Real Estate Holdings incur
23 any expense for materials for any repair work that were
24 done?

25 A. Yes.

1 Q. All right. And who does CREH obtain those
2 materials from?

3 A. L&W Supply.

4 Q. All right. If you'll turn with me to Exhibit 26,
5 plaintiff's exhibits. What does Exhibit 26 show?

6 A. It was a cost of damage material we bought to fix
7 the damages. And you can see my writing on it to have
8 accounting post it properly to the repair costs, because
9 we were in a legal situation. We figured we'd better
10 track everything.

11 Q. All right. So under product description on this
12 invoice, it looks like there's some codes for the
13 materials that were actually purchased. Can you tell us
14 what materials this invoice covered?

15 A. Probably most of it. Yeah, the studs, the
16 18-gauge studs, sheets of drywall, the joint tape. It
17 looks like a drill point, probably putting in the
18 fasteners. And some gold bond is the mud you use, the
19 drywall mud. It just has a different name. It's the
20 pro form.

21 Q. Okay. And did Carolina Real Estate Holdings
22 actually pay this invoice?

23 A. We did.

24 Q. All right. And what's the total invoiced amount?

25 A. \$1861.38.

1 Q. All right. Let's look at Exhibit 27, the very
2 next exhibit.

3 A. Okay.

4 Q. What is -- what does Exhibit 27 show?

5 A. Something about rental. It was for the scissor
6 lift. Since the ceiling's so high, we rented a lift to
7 go up and down to work on the wall. It was a safer way
8 of putting the drywall up since it's so high, and
9 securing it properly.

10 And also using it for inspections for Mr.
11 Abernathy is available to inspect a wall, and in a dual
12 roll, leave it for the tenant to come back to use the
13 lift, which they did, to see the wall that we did the
14 demo diagnostic on. Because they had a right to look at
15 it, and we let them come over before we started the
16 repairs.

17 Q. All right. So, as of the date of this trial,
18 what repairs do you understand still need to be made to
19 the demising wall?

20 A. No, none at all.

21 Q. Okay. So all the repairs have been completed?

22 A. Yes. We looked at 100 percent of the wall and
23 tried to work with the laws of nature with an engineer
24 to fix a percentage of the wall. Some theories were to
25 take the whole wall down and make it an exorbitant cost,

1 but when you're in th middle of this, you've got to make
2 decisions sometimes that are in the best interest for
3 you and maybe when you know you're not gonna go to
4 court, we decided to do it with John Abernathy and fix
5 under his direction and get this to a structurally sound
6 certifiabile wall. And we have a letter for that we
7 provide everybody here.

8 Q. All right. Do you have any concerns, as far as
9 future tenants go about the condition of the demising
10 wall?

11 A. I do not.

12 Q. All right. Have there been any issues since you
13 made the repairs to the demising wall?

14 A. Not that I'm aware of.

15 Q. Okay. All right, now, moving away from the
16 warehouse space, in addition to the warehouse space,
17 Brilin Electric's lease premises, is there a separate
18 office area of the building that Brilin also occupied?

19 A. Yeah, the flex space in the front of the office
20 is. Break room, bathrooms are all in the conditioned,
21 air conditioned space.

22 Q. All right. And what type of flooring -- I
23 understand at a warehouse you're gonna have concrete,
24 but what type of floor covering is in the office area?

25 A. Mostly carpet.

1 Q. Okay. What was the condition of the carpeting in
2 the office area when Brilin began occupying that space?

3 A. It was in good condition.

4 Q. All right. Tell us what you mean by good
5 condition.

6 A. Similar to what's here in the courtroom. It was
7 clean and free of debris. It had no odors. No major
8 stains that were brought out before the lease was
9 signed. And so I would say it was in good condition,
10 similar to what's here.

11 Q. Were you able to walk the interior office space
12 of this property after Brilin vacated?

13 A. I was at a later date, yes.

14 Q. All right. Between when Brilin vacated and when
15 you got into the office space to inspect, was there
16 anybody else in that space?

17 A. There was not.

18 Q. Okay. What was the conditioning of the carpeting
19 in the office space after Brilin vacated?

20 A. It was in pretty good condition. It just had an
21 odor. Had recently been cleaned by Mr. Russell. But it
22 had a smell, and I couldn't figure out what it was. And
23 so, I called my carpet guy, because it smelled like to
24 me like pee. So I brought my guy out and he did a black
25 light and found dog urine in the corner of the office

1 where there used to be a dog or something there that --
2 I know they had dogs there at times, but apparently it
3 peed on the carpet. You can't see it, but you can smell
4 it when it's wet.

5 Q. All right. And this was after Mr. Russell had it
6 cleaned himself, is that your understanding?

7 A. Yes. It was just a secondary. He did clean it.
8 It just didn't smell good enough to turn it over to the
9 next person. I was like, something's not right.

10 Q. All right. So what, if anything, did you do with
11 respect to the carpeting in that office area?

12 A. We cleaned it again and, you know, absorbed the
13 cost. And, you know, we were still in the middle of
14 what we started before with the problems. We just kept
15 adding them. Even as minors, they would be a couple
16 hundred bucks here or a couple hundred bucks there. We
17 added it in thinking we would resolve this at some point
18 before we got to trial. Or we never thought we'd be
19 here, but we're here.

20 Q. And what company did you have perform that carpet
21 cleaning service?

22 A. I used COIT Services out of Fort Mill.

23 Q. All right. If you'll turn to Exhibit Number 20.
24 All right. What is Exhibit Number 20?

25 A. It's an invoice for COIT to reclean the carpets.

1 Q. All right. And how much is that?

2 A. \$250.

3 Q. Okay.

4 A. He noted on here, carpets appeared to have a pet
5 stain in spots, so I'm just going by the professional.
6 We couldn't figure out the odors. He did a black light
7 test and some other testing came up. It said, some dog
8 urine, it can be cleaned. You know, we just said, do
9 it, because you have to do it. It's not a point to
10 debate.

11 Q. All right. Mr. Decker, what are you, what are
12 you asking the jury to do in this case?

13 A. The whole thing?

14 Q. For the case. What are you, as the plaintiff,
15 asking this jury to do?

16 A. You know, we had a tenant, we lost them somehow.
17 They did some good things, they did some bad things, but
18 then they took it on their own. They didn't communicate
19 the best way they could. And we had an attorney -- I
20 called an attorney because I got frustrated and didn't
21 want to do the wrong thing. Because every time I hear
22 the story, you did what? You did this, did this.

23 I called Mr. Dluzneski, had hired him on the
24 referral of Morton & Gatty's, a local Rock Hill attorney
25 that we used in the past. Said he would be great for

1 this and try to resolve it. He said, let's start. And
2 every time we got somewhere and we started something, we
3 found different things that we needed to do or we didn't
4 like what happened. We didn't get the best result.

5 And I was promised. That's why we met on the job
6 site. Even though I don't want to meet, it's
7 uncomfortable, probably for Mr. Russell as well as me,
8 and we're paying these attorneys. We met at the expense
9 of that to resolve this with a plan. And he promised me
10 he would not do any work without me approving it. I did
11 not drag my feet. I didn't get the proper information.

12 I thought I put myself out there the best way I
13 could and those two attorneys could correspond pretty
14 easily. Due to their caseloads, who knows what they do.
15 I'm ready to answer the phone. It's on 24/7. I would
16 just get calls of jersey barriers are being moved, doors
17 going in without me knowing. You know, this or that, or
18 we're gonna repair the wall on one side, we've got a
19 little plumb, but we'll let you see this side when we
20 take all the stuff out. Before I repair it, Mr. Russell
21 said, you'll get to see it in that meeting.

22 So I was assuming that's what was gonna happen.
23 Since it didn't, I had to go backwards and reconstruct
24 each piece. Keeping in mind, that in fairness to him
25 also, he did give me estimates.

1 He did give me some tools to work with, but they
2 didn't always meet the standard or we didn't have enough
3 time to, hey, why don't you just pay me for the two
4 doors you replaced and I'll keep the ones that are
5 there. And if I want to upgrade or change or do
6 anything, they just replaced them and took them away.

7 And it was almost deflating to me to see my, the
8 building that I own, with employees that I care about
9 just being stuff taken out because it wasn't that bad,
10 but he wanted to do it. He could have come to an
11 agreeance with me.

12 It's just like they just rush things, and then
13 you get pointed fingers at -- you're at fault, you're at
14 fault. I feel like we did the best we could with where
15 the meeting led us, with Ryan and Steve, honestly was a
16 promise that we made to each other.

17 I did my punch work. I followed the rules that
18 they asked me to. And then we go through all the other
19 stuff before we get here, which is, you know,
20 disheartening for Mr. Russell as well as me. I kept
21 hoping it would settle. I don't like it, but you're
22 right. The guys he hired didn't do the best job. They
23 have no expert witness. They don't have people to stand
24 on to back this, I do. Not to be a bad guy, but you've
25 gotta do what's right, and I did it. And that's why I

1 ended up with Steve and that's why I ended up putting
2 this together and agreeing to this as kind of like a
3 good Bible or tool to go through. I'm gonna see the
4 plaintiff's stuff too, is in here, and he's gonna come
5 after me trying to make me look like a bad guy. I'm a
6 good guy. Mr. Russell's a good guy, but, man, he's
7 overwhelmed and stressed. He's got a lot going on. He
8 had a divorce going on at the time. He was very not
9 himself and he's angry at Wayne. Who knows what they
10 did, because I can never get to the bottom of it. But
11 that didn't deflate the promise he gave me. And I did
12 that with my own admission with you and Byron.

13 Q. All right. Now, when we're talking about all
14 these damages that we looked at today --

15 A. Yeah.

16 Q. -- that you're seeking --

17 A. Correct.

18 Q. -- do you believe that you're asking for too
19 much? Did you inflate any of the damages that we're
20 asking for today?

21 A. No. It's an unfortunate situation, but I'm not
22 inflating it. It just gets out of hand. Everybody
23 knows when you do stuff after the fact that it just
24 catches you. And we've absorbed all this the whole
25 time, the whole thing until this point.

1 Q. So CREH, the plaintiff in this case, has absorbed
2 these damages?

3 A. We've absorbed it. We've paid for them in full.
4 There's no liens. Nobody's owed anything. That's not
5 how we operate. We pay as we go.

6 MR. DLUZNESKI: All right. Thank you, Mr.
7 Decker.

8 Your Honor, I tender the witness.

9 THE COURT: All right. Ladies and gentlemen,
10 we've been at it for quite some time. I'm gonna let you
11 take a short recess. I'll remind you of the two ongoing
12 instructions, don't have any discussions among
13 yourselves or anyone else involved in the case. Do not
14 do any type of independent research or investigation.
15 You can leave the notebooks in your chair when you stand
16 up and you may retire with the bailiff back to the jury
17 deliberation room. We'll get you back just shortly.

18 (Jury left courtroom at 4:11 p.m.)

19 THE COURT: All right. Sir, I just need to
20 remind you that you're in the process of giving
21 testimony, so you can't have any discussions with anyone
22 about the substance of your testimony, but you may step
23 down as well.

24 THE WITNESS: Thank you.

25 THE COURT: All right. We're gonna step down for

1 just a second.

2 Madam Clerk, can I see you in the back for a
3 moment?

4 (Recess was held from 4:11 p.m. - 4:32 p.m.)

5 (Judge briefly leaves the bench.)

6 (Jury enters courtroom at 4:32 p.m.)

7 THE COURT: Ms. Goodnight, thank you for serving
8 as forelady of this jury. What we've done, is I've
9 discussed with the lawyers and we tried to come up with
10 a schedule. And what we're going to do is we're going
11 to break for the evening. I would like for you to
12 inform the jury, remind them of those two ongoing
13 instructions, don't do any type of independent research
14 or investigation and don't do any type of investigation
15 and don't do any type of discussions with anyone about
16 anything involving the case. Do you think you can do
17 that for me?

18 MADAM FORELADY: Yes.

19 THE COURT: If you'll do that for me, ask them to
20 please return by 9:30 in the morning and we will resume
21 taking the testimony. Thank you very much.

22 MS. FORELADY: Thank you.

23 THE COURT: Thank you.

24 MS. FORELADY: Do I leave the books?

25 THE COURT: Yes. Just leave the books right

1 there and we'll get them tomorrow.

2 (Madam Forelady leaves the courtroom at 4:33
3 p.m.)

4 All right, gentlemen. Thank you all very much
5 for your work today. We will see you by 9:30 in the
6 morning.

7 MR. DLUZNESKI: Thank you, Your Honor. Have a
8 good evening.

9 (Court concluded at 4:34 p.m.)

10

11 --- THIS CONCLUDES DAY ONE OF TRIAL ---

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13 --- THIS IS THE END OF DAY ONE OF TRIAL ---

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1 CAROLINA REAL ESTATE HOLDINGS VS. BRILIN ELECTRIC

2 START OF DAY TWO OF TRIAL

3 THE COURT: Anything before we bring the
4 jury in?

5 MR. DLUZNESKI: Not from the Plaintiff, Your
6 Honor.

7 MR. WHITE: Not from the defendant.

8 THE COURT: Sir, do you want to come back up here
9 and sit where you were yesterday. Sir, I just need to
10 remind you that you remain under oath, do you understand
11 that?

12 THE WITNESS: I do.

13 THE COURT: Okay. Let's bring the jury in.

14 THE WITNESS: Do I need to turn the microphone
15 on?

16 THE COURT: I'm not the technology person.

17 THE WITNESS: It's red. So I don't know if it's
18 supposed to be green or if you can hear me? I don't
19 know. It's fine? Okay. Hello? Okay.

20 (Jury enters the courtroom at 9:39 a.m.)

21 THE COURT: Is defense ready for
22 cross-examination?

23 MR. WHITE: Yes, Your Honor.

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION

1 BY MR. WHITE:

2 Q. Good morning, Mr. Decker.

3 A. Good morning.

4 Q. I'll just remind you again that you are under
5 oath. See that binder right there, I just want to
6 orient you and the jury, there's a little blue sticky
7 note. Do you see that on the side?

8 A. Yes.

9 Q. Y'all should have one too. That's a super fancy
10 marker where the defendant exhibits begin --

11 A. Okay.

12 Q. So we're gonna be bouncing back and forth between
13 the plaintiff's --

14 A. I understand.

15 Q. -- exhibits and the defendant's exhibits. Let's
16 start with Plaintiff's Exhibit 4. And I'm gonna try to
17 go through my cross-examination issue-by-issue, like the
18 direct was.

19 A. Okay.

20 Q. So we're gonna start with the asphalt. And I'll
21 just hold this up for you real quick. This is the side
22 right here, right?

23 A. Side door entrance.

24 Q. All right. So this is the back?

25 A. Yes.

1 Q. To give everyone an orientation, beyond that tree
2 line that's I-77, right?

3 A. That's correct.

4 Q. And so, if you keep going that way, you'll run
5 into the Shutterfly building, right? This side, the
6 opposite side, that's where all the big trucks go around
7 and then Shutterfly's ---

8 A. Yeah. You'd have to go through the woods to get
9 to Shutterfly, but...

10 Q. Right. I'm just trying to point out where we are
11 in York County.

12 A. I understand.

13 Q. And so those are, also while we're looking at
14 this, those are some of -- those are Brilin's vehicles
15 right there?

16 A. They are.

17 Q. So that's what they use for their business?

18 A. Correct.

19 Q. Now, in this picture, Plaintiff's Exhibit 4, that
20 ramp is made of concrete, right?

21 A. It is.

22 Q. Now, you mention in your direct, the prior tenant
23 never used this side with the ramp. Never used that
24 side garage, right?

25 A. No. They used it. It was just more vehicles

1 than a forklift. They never had a forklift outside the
2 warehouse.

3 Q. Never had a forklift that they used. And, in
4 fact, when Brilin took over it was a -- it was asphalt,
5 just like the rest of this? It was all asphalt.

6 A. Correct.

7 Q. And when they started using the forklift almost
8 immediately upon taking occupancy of the premises, that
9 became a problem, right?

10 A. Yes, it did.

11 Q. The ramp, when it was asphalt, could not handle
12 the weight of a forklift?

13 A. I don't know if it was that or it was just that
14 the asphalt that was there wasn't that great.

15 Q. Okay. And like you said, like in your direct,
16 you know, certain forklift, asphalt just can't handle
17 it.

18 A. Well, we inherited that building, so it had
19 asphalt there when we got it.

20 Q. And so you actually replaced that, at landlord's
21 expense.

22 A. I did not.

23 Q. You converted that asphalt to ---

24 A. I did not replace it.

25 Q. Who did then?

1 A. Mr. Bryon Russell did.

2 Q. And you were fine with him making that into
3 concrete?

4 A. We worked on a deal and he worked with me in the
5 beginning and then we came to a decision that it was
6 okay to do that. Discussed it with him.

7 Q. And that happened right, like within months, of
8 Brilin taking over the space?

9 A. I don't remember the timeline, but it was a
10 reasonable request and we went with what he said and he
11 got a vendor and showed us what he was doing and, and
12 explained it to us and gave us some time to think about
13 it and that was great. He did it and we liked what he
14 did.

15 Q. So you knew from the beginning he was using
16 forklifts?

17 A. Oh, not all the time. Not, not on, not on the
18 new parking lot. On the old parking lot he was.

19 Q. So you knew he was using forklifts to get in and
20 out of the door, right?

21 A. On some basis, yes.

22 Q. Okay. Once he goes out this door, he goes down a
23 ramp.

24 A. That is true.

25 Q. But you agreed to let him convert it to concrete?

1 A. I did, for the ramp only.

2 Q. And then when it goes down the ramp, it goes down
3 the asphalt.

4 A. That is true.

5 Q. Back to those, where those little bands of trucks
6 are to load and unload.

7 A. I don't know where he goes down or if the trucks
8 come to him. I never saw that.

9 Q. Well, let me ask you this. It's totally
10 reasonable for him to take forklift and load and unload
11 the vehicles, is it not?

12 A. It's reasonable, yes.

13 Q. This property is light industrial?

14 A. It is.

15 Q. And that's what he does, he takes electrical
16 equipment and he goes to like track homes and stuff like
17 that and installs electrical wiring?

18 A. I'm sure he does, yes.

19 Q. So it's completely commercially reasonable to use
20 a forklift at a light industrial place like this?

21 A. It could be. That's fair enough.

22 Q. He was doing that from the beginning.

23 A. I don't know that.

24 Q. Well, you knew it when you had to replace the
25 ramp. You replaced the ramp ---

1 A. He was going in and out of the ramp and he
2 requested the change to the concrete. He didn't say
3 just because of the forklift. He says he's using it for
4 access. He had cars going there, trucks backing up. I
5 don't know. I wasn't there daily.

6 Q. And I know you said you didn't remember exactly
7 when you had the parking lot repaved. You said it was
8 in 2019, right?

9 A. Yeah, '20 -- August of 2019, I believe.

10 Q. August of 2019, does that sound right?

11 A. I'd have to look at the invoice. It's somewhere
12 in the dockets.

13 Q. Well, we're going to flip to Defendant's Exhibit
14 13. Scratch that. Defendant's Exhibit 7. Countywide
15 Commercial, that's who did the repaving in 2019, right?

16 A. Yes, sir.

17 Q. And Defendant's Exhibit 7 is their April 1st,
18 2019, proposal and contract to do the entire repaving
19 where you wanted it done to repave the asphalt?

20 A. Yeah. We came up with a side plan and they acted
21 on it.

22 Q. In your direct yesterday you said it was about
23 \$100,000, and we've got a quote there for 97,5. That is
24 the quote and that's what you paid to repave the
25 asphalt?

1 A. Yes, sir.

2 Q. Okay. Now, let's look down. You see where it
3 says grand total? There's two bullets immediately above
4 that. One says on left entrance inside.

5 A. Yes.

6 Q. Okay. Just tell the, you know, in layman's
7 terms, tell this jury what ABC stone is.

8 A. It's a gravel that you probably see most commonly
9 in parking lots. It's used for a base in either an open
10 parking lot, or somebody might use it for the base to
11 put concrete or asphalt on top to have a better
12 substrate instead of a soft soil or a sand.

13 Q. You're saying the soil is going to settle and so
14 you're gonna start getting crack in the asphalt once you
15 put down that, that gravel base?

16 A. Not always. You can compact the soil sometimes,
17 but that was just the method they used on this
18 particular spec.

19 Q. Okay. And on the left entrance to the side it
20 says, six -- and I believe that's a typo. It probably
21 should be six inches, not six feet of ABC stone?

22 A. I would -- yeah, that's a typo.

23 Q. A quarter inch of asphalt?

24 A. Correct.

25 Q. Now the left side, the left entrance, that is the

1 exact opposite side of this building? Like if
2 you're ---

3 A. Oh, left side is facing the front. Yeah, it
4 would be the other side.

5 Q. The other side. So this is the right side --

6 A. Yes.

7 Q. -- that we're looking at in Plaintiff's Exhibit
8 4?

9 A. Yes, that is correct.

10 Q. And the left entrance is -- and we'll get to some
11 pictures later. Back here, I don't know if you can see
12 it, it's kind of ---

13 A. Yeah, I can see it.

14 Q. Like, that's where all the loading bays are,
15 around that corner, right?

16 A. The dock doors are on the back corner.

17 Q. The dock doors. And so, folks will then go
18 around in grass and egress from having trucks on the
19 left side?

20 A. With the new layout with the jersey barriers,
21 that's correct.

22 Q. Right. So left entrance other side.

23 A. Yes, sir.

24 Q. Six inches ABC stone, four inches asphalt on that
25 side?

1 A. Correct.

2 Q. And the rest of the parking lot, which is the
3 front, which is kind of right here --

4 A. Correct.

5 Q. -- and this side, you only had them do four
6 inches of ABC stone and two inches of asphalt.

7 A. That's not what we did there.

8 Q. Well, that's what the quote says.

9 A. That's fine. We made field decisions when we're
10 out there and we went with a little thicker gravel,
11 because it was an idea to do on the field.

12 Q. Do you have any evidence that shows you did
13 something other than what's on this contract?

14 A. I'm on site, all I can tell you is what happened.

15 Q. Do you have a, do you have a document that shows
16 that you --

17 A. I can only --

18 Q. -- used different materials with this?

19 A. I can let you know, the project manager, Wayne
20 Schulte, when he's here, can probably answer that
21 question for the jurors and the Court to what was there
22 because he was on site daily and can tell you -- answer
23 that question.

24 Q. And, actually, in your testimony yesterday you
25 said, no, we didn't do four inches of asphalt anywhere.

1 Only an airport would do that. Do you remember saying
2 that?

3 A. An airport? No, I used it as an example.

4 Q. I believe you said only at an airport would you
5 see four inches of asphalt.

6 A. It's an example.

7 Q. But, in fact, on the opposite side where all the
8 heavy trucks come and go, you did four inches of
9 asphalt.

10 A. Tractor-trailers come in there.

11 Q. Four inches of asphalt, yes or no?

12 A. Yes.

13 Q. You did not do four inches of asphalt on this
14 side.

15 A. I can't tell you that exactly, because I'd have
16 to look at my notes and my field notes. But Wayne
17 Schulte was on site. It would probably be better to ask
18 Wayne than me.

19 Q. We'll ask Wayne too.

20 A. Please.

21 Q. Again, Brilin took over this space in 2017.

22 A. That's fair, yep.

23 Q. You repaved it in 2019?

24 A. Correct.

25 Q. Before you repaved it, you allowed them to put a

1 concrete ramp in for the forklift.

2 A. That's what he requested, and we worked with him
3 to do that.

4 Q. So when you had this side paved to the thickness
5 equivalent of a parking lot for light automobiles, you
6 knew he was using a forklift, did you not?

7 A. Not to the degree he was using it or the damage
8 it might cause. I wouldn't know that at the time.

9 Q. Okay. You didn't know the degree to which he was
10 using it, but you knew he was using a forklift?

11 A. We knew it, but not daily.

12 Q. Yes or no?

13 A. Yeah, but I don't know if he's using it every day
14 outside. I don't know what he's doing over there. I
15 wasn't there every day.

16 Q. You knew he was using a forklift.

17 A. I did know he was using it.

18 Q. And you already testified earlier this morning
19 that it was a commercially reasonable thing to do to use
20 a forklift at a light industrial space like this.

21 A. I'm not disagreeing with that.

22 Q. So it should have come as no surprise when the
23 asphalt started getting torn up, because you did a
24 parking lot depth instead of a heavy vehicle depth,
25 right?

1 A. It was a surprise.

2 Q. Why was it a surprise?

3 A. Because the damage is on the ramp. If he was so
4 concerned with the ramp being asphalt and he saw the
5 bottom before it was fixed, then it was asphalt too, why
6 wouldn't he ask to bring the concrete ramp all the way
7 out into the parking lot, knowing that he's already
8 damaging the asphalt that's on the ramp, consequently
9 gonna damage the bottom of the ramp that's asphalt that
10 you're trying to depend on.

11 Q. Well, I will try to do most of the questions, Mr.
12 Decker, but that is a good question. But the reason why
13 is because you never told them when you were gonna
14 repave it. This was a no-notice thing. You never gave
15 them a heads up you were going to repave this, didn't
16 you? You never told him?

17 A. I told him. He actually contacted me about the
18 schedule because I messed the schedule up when I paved
19 it because they delayed it by a week because of rain and
20 he was irate that I disrupted his business. And I said,
21 we had a full-time guy on site going to each tenant
22 daily to tell them what's going on. If he's not at his
23 business, I don't know, or his staff doesn't tell him,
24 but Wayne Schulte can answer that question. Please ask
25 him.

1 Q. So part of the reason you put up the jersey
2 barriers here is not just to partition your side from
3 the Keller side, it's to block off his ability to use
4 his forklifts in that area.

5 A. Not true. And we also gave him an opportunity to
6 discuss the barrier layout. I got no reply.

7 Q. You set these up. See how that's moved?

8 A. And they're able to be moved.

9 Q. Brilin moved that, right?

10 A. Brilin moved them all the time. And he even told
11 me that he had problems with his employees moving them.
12 We tried to work with them to find out the configuration
13 that would work best for their use.

14 We have nothing in writing and no reply from him
15 to tell me to do that, but we actually tried to make
16 something work between the next door neighbor and their
17 business with the new traffic pattern, not to disrupt
18 businesses, but just to make some better sense of no
19 speeding through the parking lots, no turnarounds, no
20 big tractor-trailers cutting through where they might
21 cause damage.

22 Q. Who put the jersey barriers there, y'all or
23 Brilin?

24 A. We put them there.

25 Q. And you configured them away so that they could

1 not use this frame unless they moved the jersey
2 barriers?

3 A. No. That jersey barrier is placed where you can
4 go down the ramp and get out and drive around the
5 barrier.

6 Q. Well, that's because they moved them with a
7 forklift.

8 A. Well, I don't know what they moved. I got
9 reported to daily, sometimes weekly, that things were
10 being moved either by the adjacent property owner or
11 boots on the ground Wayne Schulte would call me and say
12 they moved the barriers. And I'd get those calls. It
13 really is a two-way street. We put them there to help
14 everybody, including him, understanding, one, is there's
15 people stealing stuff from the back of the buildings?
16 We cannot control these trucks coming through, and we
17 have had thefts there, so we just came up with a great
18 plan and nobody really added any value to it, including
19 your, your client.

20 He didn't come to me and say, hey, can we move
21 the barriers? Can we meet out here and mark it in the
22 best way to make it reasonable that we can function?
23 They just did what they wanted to do, went rogue.

24 Q. Because the barriers just showed up and they
25 couldn't use the ramp to load and offload their trucks.

1 A. Well, that's your assumption. You weren't there.
2 I was there.

3 Q. I've been living and breathing this case for Mr.
4 Decker for two years.

5 A. Me too, brother. Me too.

6 Q. All right. Let's move to Plaintiff's Exhibit 6.

7 A. Yes, sir.

8 Q. All right. We're gonna bounce back and forth
9 between Defendant's 7 and Plaintiff's 6. All right.
10 This is a quote to ---

11 A. Six and seven?

12 Q. Plaintiff's Exhibit 6.

13 A. Got ya.

14 Q. But put a tab in for Defense 7, because I'm gonna
15 go, flip back and forth between them. So this is, this
16 quote here is from February 11th, 2020, right?

17 A. It's an invoice. It's not a quote.

18 Q. It says, proposal and contract.

19 A. Which one am I looking at, number six? I'm
20 sorry, I'm on number five.

21 Q. Yeah, Plaintiff's Exhibit 6.

22 A. Six in my book says invoice.

23 Q. No. Plaintiff's Exhibit 6. Flip to the front.

24 A. Oh, sorry. You're right. My bad.

25 Q. All right. Do you see Countywide Commercial

1 proposal and contract?

2 A. Okay, go ahead.

3 MR. WHITE: Okay. May I approach, Your Honor?

4 THE COURT: Yes, sir.

5 BY MR. WHITE:

6 Q. All right. You've got it?

7 A. Yeah.

8 Q. I want to make sure. All right. You see that
9 date on the top left, February 11th, 2020? Yes? No?
10 Maybe so?

11 A. Yeah, I see it.

12 Q. Okay. This was a proposal to do a patch on this
13 right side.

14 A. Correct.

15 Q. So where the asphalt was damaged, right?

16 A. Being damaged, yeah.

17 Q. Now, if you go down, do you see where it says
18 asphalt repair, right towards the middle of that?

19 A. Yeah, I see it.

20 Q. It says, includes adding stone to damaged areas.
21 Make sure it is six inches deep.

22 A. Okay.

23 Q. So this is where I want you to go back to Defense
24 7. Rest of parking lot four inches of ABC stone. So
25 this quote now is 50 percent more gravel impacted in the

1 patch you're gonna have them do.

2 A. Fair enough.

3 Q. All right. Then go back to Plaintiff's 6.

4 Second to last bullet, install three-inch surface course
5 with hot mix asphalt. And if you go back to Defense 7,
6 it was two inches of asphalt during the original paving,
7 correct?

8 A. Yes.

9 Q. So you had them do 50 percent more gravel and 50
10 percent more asphalt on the patch.

11 A. I did not.

12 Q. What do you mean you did not? Is that not --

13 A. I asked them for a quote.

14 Q. -- what the quote says?

15 A. I asked them for a proposal based on the site
16 conditions that they saw, based on the usage that they
17 saw the damage being caused by the defendant, they came
18 up with this plan and proposed it to me. I did not do
19 it myself. I asked them for their expert opinion, what
20 should we do here based on a light industrial use, like
21 you said. And they said, wow, that's a lot of damage.

22 Q. Countywide says make it 50 percent thicker all
23 around.

24 A. Hey, they can change their mind based on daily
25 activity. Things change a lot, and that changed.

1 Q. Maybe they would have done that back in 2019 if
2 you had told them the forklift was being used, right?

3 A. Maybe if we didn't have a bad substrate with the
4 original asphalt, not knowing that the next asphalt
5 would be damaged as hard or maybe used as much as it was
6 under the conditions of unknown to me. Yeah, maybe we
7 could offset there, but we brought it to Brilin's
8 attention and we asked him what he wanted to do.

9 Q. So you knew the forklift was being used, you know
10 what a forklift can do to asphalt if it's not the
11 required thickness and you didn't do it over here in
12 '19, but you did do it at some point later, did you not?

13 A. I'm not gonna say required because I wouldn't say
14 that. We hired experts. We used the conditions that
15 were there prior to us getting the building. We specced
16 out something. We also specced out and we also told
17 Brilin we saw minimal damage. Hey, by the way, you're
18 damaging the new asphalt, but he continued to make it
19 worse and worse and worse.

20 Instead of calling us up and saying, hey, hey, we
21 need to do something else that he took advantage of that
22 later by adding the concrete at the bottom without
23 telling us, maybe that could have been resolved without
24 it being resolved here in court, but, he didn't
25 communicate.

1 This is communication. You've got it right here.
2 My professionals came out and advised us on the
3 conditions, maybe the next steps we should take, based
4 on his usage and a future tenant, this would be the best
5 way to go about it, but we all know when we do stuff it
6 doesn't always, always come out perfect, right? So...

7 Q. Mr. Decker, what we're trying to figure out right
8 now is who is the proximate cause to the damage of the
9 asphalt? Is it a guy using a forklift, which was a
10 commercially reasonable thing to do per your testimony,
11 or was it the person who has the, the space paved in the
12 first place?

13 A. That would be an expert to say. You would have
14 to ask the expert, obviously. If you think driving down
15 the road it never cracks and heavy tracks going on
16 something and nobody knows the weight it distributes.
17 If we had a forklift expert, but I'm not. I've got
18 common sense. A forklift weighs 9,000 pounds, you add
19 goods on the front of it that weighs thousands of
20 pounds. You come down at an angle. You see damages as
21 a tenant. You should probably report him to the
22 landlord right then and tell them, hey, I'm seeing a
23 problem with the new asphalt and I don't want to be
24 liable for it, can you help me fix it?

25 Q. I believe this is Plaintiff's 7.

1 A. We're at what number?

2 Q. Plaintiff's 7.

3 A. Plaintiff's 7.

4 Q. I mean, we knew pretty quick that the asphalt
5 wasn't getting the job done. That's why Brilin went and
6 put that additional concrete strip in there.

7 A. Great.

8 Q. It was the moment they were going from the
9 concrete to the asphalt and making that turn, there's
10 that partition right there between the Keller side and
11 your side --

12 A. I'm not disagreeing with that.

13 Q. -- tearing it up instantly, right?

14 A. I'm not disagreeing with it. He just never asked
15 us to do it, never told us to do it, and we asked,
16 what's it constructed of? Was it rebar? Was it PSI
17 concrete? Who did the work? Who's liable for the work
18 if it breaks? I don't have any answers for you.

19 Q. Well, your lawyer did these big blowups with
20 highlighted letters saying it's our responsibility,
21 right? Shouldn't we fix it if it's our responsibility?
22 No, he just took the initiative and fixed it, didn't he?

23 A. That's just a part of that lease. I'm sure
24 there's more to that lease than just that one segment
25 that works both ways for us.

1 Q. And you mentioned expert. You need an expert to
2 talk about his. Actually, you just testified earlier
3 that Countywide Commercial is an expert, right?

4 A. I hope so.

5 Q. No, hold on. I'm not done with my question. You
6 said you didn't come up with the 50 percent increase in
7 that quote of February 2020, they did, because they're
8 the experts. Okay? Did you not just say that?

9 A. They are experts.

10 Q. Okay. So there's our expert right there saying
11 it should have been 50 percent more from the get go.

12 A. Great analogy, but I'm not buying it. Nice try.
13 You're not gonna convince me that that apron was done
14 because I admitted to something or somebody made a
15 fault. Accidents could happen, you're right. But a
16 tenant doing work on a building that he doesn't own
17 without permission with no knowledge to me is not gonna
18 fly. Sorry. I'm gonna raise my hand and ask the
19 question to everybody in this room. How did that get
20 there? And I might be okay with it, if you'll just tell
21 me what it's -- how it's made, like, the asphalt's made
22 and the base is made. How is that made? We'll ask your
23 client when he sits up there. Who did the work? What's
24 the PSI? And how much rebar is in it? And then you and
25 I and the judge and the Court and the jury can decide,

1 wow, you're gonna ask me the same questions I'm gonna
2 ask you. And you can't answer them. I know you can't.

3 Q. Now, you're claiming these damages, Plaintiff's
4 Exhibit 6, 5950, you're claiming that under damages here
5 today, correct?

6 A. Say that again.

7 Q. You're claiming that the 5950 that's in this
8 proposal in Plaintiff's Exhibit 6, you're claiming those
9 as damages, are you not?

10 A. Yes.

11 Q. You want us to write you a check for 5950, right?

12 A. I paid to have the area outside that apron detail
13 that got continued to get broken up after he did the
14 apron. You don't show the pictures or we don't or
15 anybody with additional damages there that your client
16 also admitted to and said he would take care of it to me
17 upon his leaving the building. He admitted to it. He
18 said, I've got to take care of that, you're right.

19 During our walkthrough meeting with your other
20 attorney that didn't practice law in South Carolina and
21 then switched it over to you and passed the baton to
22 you. Unfortunately, you weren't at that meeting, but if
23 you were, we probably wouldn't be here today, because
24 they all promised me the things they were gonna do and
25 they didn't deliver.

1 Q. This is a quote from February 11th, 2020,
2 correct?

3 A. Number seven?

4 Q. Plaintiff's 6.

5 A. Let me go back to six. Yeah, it is 2020.

6 Q. Brilin was still in the space until April 30th of
7 2020, right?

8 A. Yes, he was.

9 Q. And, in fact, Brilin did, as a good faith
10 gesture, try to do the repaving, right? Go ahead and
11 switch to ---

12 A. He did give us a proposal, yes, sir.

13 Q. Go ahead and switch to Defense Exhibit 8.

14 A. Number 8.

15 Q. Are you there?

16 A. I'm there.

17 Q. All right. You see that's SMI payment quote?

18 A. I do.

19 Q. And if you look down at the patch area at the
20 loading dock, it's two patch back same area. It's the
21 second bullet towards the bottom. Approximately 2 1/2
22 inches of hot mix asphalt?

23 A. Correct.

24 Q. So this was kind of a like kind repair. Two
25 inches, two-and-a-half, and it was originally two inches

1 and it was half the quote that you got a month earlier,
2 right?

3 A. It is half the quote, based on what you just
4 said, yes.

5 Q. Because the quote you got wasn't like kind, it
6 was actually a 50 percent upgrade of materials in that
7 area.

8 A. To be honest with you, I called SMI and they told
9 me exactly what they said. He asked me to patch it, but
10 he didn't really get into the details of why he was
11 patching it, just patch it. I called the guy and asked
12 him at SMI and he said, first of all, I'm not gonna
13 warrant that job because you just did the parking lot,
14 but Mr. Brown and Russell asked me to give them a patch
15 quote.

16 I said, okay, well, do you understand there's
17 damages from the forklift there and you're gonna be
18 liable for it? He goes, I don't warrant patches. I
19 also explained to him the building was under warranty
20 for the \$100,000 job that I was really concerned with
21 and now I'm gonna have a patch that you're not gonna
22 warrant, a company that serviced the entire project for
23 \$100,000 and they will warrant the patch. So, yeah, I
24 was concerned on which way to go. And I didn't pull the
25 trigger and tell them to do it.

1 I didn't stop them from doing it, but I did bring
2 it up with SMI and I said, you better get back with your
3 client and talk to them about what we're doing here,
4 because I wouldn't want them to do it again. I don't
5 want them to do it a third time. Obviously, if he did
6 the asphalt I'd hold him liable.

7 Then I would be going back to him after his lease
8 was over, taking him to small claims court to say he did
9 an inferior job. Well, that's what we were trying to
10 avoid. We both could have worked between our estimate
11 and his, if the two teams would get together, but I
12 don't know what happened. The breakdown happens
13 sometimes. That's why we're here.

14 Q. Bryon got that quote on March 11th, 2020, 16 days
15 before you filed suit on him, right?

16 A. Oh, yeah.

17 Q. All right. Let's go to Defense Exhibit 14.

18 A. Yes, sir.

19 Q. And I want you to start in the back. Actually,
20 I'll tell you what, just to orient everybody --

21 A. Yes, sir.

22 Q. -- the first page says Brilin 56 in the bottom
23 right corner. Do you see that?

24 Your Honor, can I have exhibit 14?

25 THE WITNESS: Yes, sir.

1 BY MR. WHITE:

2 Q. Bottom right, see it says Bryon 000056?

3 A. Right.

4 Q. See that? And then if you go all the way to the
5 back, the 24th page is actually Brilin 00079. Do you
6 see that?

7 A. Are we gonna go back?

8 Q. We're gonna go from the ---

9 A. Yeah, you've got to flip, I'll just make -- I'm
10 gonna tab them when you do it.

11 Q. Okay. Since this is an e-mail chain, we're gonna
12 start in the back and work our way through it.

13 A. I got ya.

14 Q. I promise I'll go fast.

15 A. No problem.

16 Q. All right. So you go to page 78, number 23, as
17 the note states.

18 A. Seventy? Yes.

19 Q. So it says, Monday, March 30th, 2020, 10:35 a.m.
20 right?

21 A. Yes.

22 Q. All right. That's me reaching out to your lawyer
23 on Monday after y'all sued us on that Friday, right?

24 A. It seems to be, yeah.

25 Q. Yeah, okay. And then if you look in the body

1 with a paragraph that starts with Ryan. So it's: Ryan
2 said all communications go through counsel. That's Ryan
3 Hoffman in my office. So at your request, at your
4 lawyer's request, whomever, everything from that point
5 forward was to go through the lawyer, right?

6 A. Yeah, I would hope so. At some point it had to.

7 Q. That's what it says, right?

8 A. I hope so.

9 Q. Okay. All right. Now we're gonna go jump ahead
10 to page 18, Brilin 73.

11 THE COURT: I'm sorry, where are you?

12 MR. WHITE: Page 18, Your Honor. Also has the
13 Bates number Brilin 73 in the bottom right. Okay. You
14 see that bottom there? That's an e-mail from me to your
15 attorney on April 3rd, 2020.

16 THE WITNESS: Correct.

17 BY MR. WHITE:

18 Q. Okay. You got a phone call. I'm gonna send
19 Certificates of Insurance. I have you, CREH, added as
20 an additional insurer, and then send any invoice
21 estimate. This is us trying to work this out
22 immediately, is it not?

23 A. Yeah. You guys were working at times, but other
24 times you weren't.

25 Q. And you were, you were privy to all these

1 communications?

2 A. Not on a daily basis, but at times I was, yes.

3 Q. Don't tell me anything you and your lawyer talk
4 about --

5 A. I understand.

6 Q. But was he sending you these e-mails as it was
7 going on?

8 A. He may have been, but if I didn't see them, if
9 I'm out in the field, it may have been something I
10 didn't see for a while.

11 Q. And you talk about COI's in your direct
12 yesterday. There's nothing in that lease that says we
13 need to give you Certificates of Insurance, does it?

14 A. No, there is not.

15 Q. There's nothing in there that says we need to put
16 you as an additional insurer on any of the insurance,
17 does it?

18 A. That's correct.

19 Q. But we did it anyway because you asked?

20 A. You did.

21 Q. All right. Now, you, that's your lawyer. Me,
22 that's me.

23 A. Correct.

24 Q. There's four things that I'm supposed to do to
25 try and work this out?

1 A. Correct.

2 Q. Get you all's folks added. Get y'all a quote for
3 replacing the garage doors. Paving quote. And
4 permission for my folks, for the landlord to come on
5 site for an inspection, preferably Monday. Monday,
6 being April 6th, 2020. Do you see all that?

7 A. And this was on?

8 Q. The e-mail's from April 3rd.

9 A. All right. So you had a Friday to a Monday.
10 Okay. I'm just trying to see the timeline.

11 Q. Okay. And if you flip to the next page, 19.

12 A. Yeah.

13 Q. That's me talking about the garage door quote
14 that we got, right? Do you see that?

15 A. I see it right here.

16 Q. Bullet number two.

17 A. Right.

18 Q. I'm attaching a brochure from the contractor that
19 Brilin has engaged to fix the doors.

20 A. Okay.

21 Q. Now, pursuant to section 11(a) of the lease,
22 tenant requests landlord's approval of this contract to
23 proceed with repairs, which are estimated in excess of
24 \$3,000. Do you see that?

25 A. Yes.

1 Q. So, let's just, for the jury, for that quote,
2 which is Plaintiff --- excuse me, Defense 1. That's a
3 quote from two garage doors, right?

4 A. It is.

5 Q. And the total quote is 4943.

6 A. Correct.

7 Q. Now, to be on the safe side, if you flip back to
8 that page 19, Defendant's 14, we said it was in excess
9 of \$3,000.

10 A. We're back to 19 on the?

11 Q. Defense 14.

12 A. Okay.

13 Q. And you know the reason we did that is there was
14 a lease provision with respect to tenant repairs that
15 anything in excess of \$3,000 must be contractor -- you
16 have the right to approve the contract.

17 A. Okay.

18 Q. Now, if you actually break up those doors,
19 because really they were two repairs with less than
20 \$2500 for each repair, if you look at Defense Exhibit 1,
21 correct?

22 A. It's not broken up that way so, no, I can't say
23 that.

24 Q. Each of those doors would have cost less than
25 \$2500 to repair when you look at Defense Exhibit 1,

1 correct?

2 A. It says one door, item one is 4943.

3 Q. It's a quote for two garage doors, is it not?

4 A. Two were ordered, but one was quoted on one line.

5 Q. Well, there is one line item for the price,
6 quantity ordered one and one. So there's two garage
7 doors, correct?

8 A. Where's the paid invoice? I have no clue what
9 you're -- where you're heading with this.

10 Q. Where I'm heading is each garage door cost less
11 than \$2500, so we really didn't need your approval to
12 replace these doors because each of these replacements
13 was less than \$3,000, correct?

14 A. I would have to defend the lease and say that's
15 not right. The lease says \$3,000 total. It doesn't
16 split it out. It doesn't give you the opportunity to
17 split it at your leisure and do lots of work around the
18 building at 100,000 and say, well, this was the paint,
19 was 2,000 and then the labor was 1,000 and the plastic
20 was this part.

21 I would assume this is per task per the lease. I
22 would be fair to the jury to say that. You did
23 something over the amount of the lease and didn't get
24 approved, and now you're wanting me to admit that I
25 could break it apart right here and incriminate myself.

1 I'm not gonna do that for you.

2 Q. Now, just to be on the safe side we did say, hey,
3 it looks like it's in excess of \$3,000 so we are
4 requesting your approval. And although it is not
5 expressly stated in the lease, the landlord may not
6 unreasonably withhold its approval. And that if he did
7 so, any unreasonable holding of approval will be treated
8 as a breach of the lease where alternatively it'll be
9 applied covenant good faith and fair dealings. Do you
10 see that?

11 A. Yeah, I see it.

12 Q. All right. And you wanted your preferred vendor?

13 A. No. I called your preferred vendor and talked
14 with him also before I talked to my vendor. And I put
15 the two together to try to figure out what the best
16 situation was for CREH's doors to be replaced, and we
17 could not agree, so time did expire a little bit. But
18 we were working on it feverishly, obviously, because it
19 was a concern.

20 Unfortunately you weren't privy to that, because
21 I was working with my counsel and my team to try to
22 figure out the best way to handle this, because it was
23 over the 3,000 and our quote was a little higher, and I
24 couldn't understand what the difference was. So I
25 called SMI, which was one of your witnesses that will

1 tell him I called and asked him where our doors were,
2 why he was putting doors in without my approval. And he
3 said, Mr. Bryon Russell ordered them.

4 And if we look at the order date on when the
5 doors were installed, it was probably all undermining
6 the process. They were ordered way ahead of all this.
7 He already said go ahead and do it.

8 Q. Go to Plaintiff's Exhibit 10 real quick. This is
9 your preferred vendor's quote for \$8,000.

10 A. Ten.

11 Q. No, go back. Right?

12 A. Right.

13 Q. In fact, although it's not in evidence, you went
14 and got a quote from this guy back in 2019, did you not?

15 A. Bryon sent me a text and said he had to replace
16 the doors. And he sent me a picture. I said I'll have
17 it today. I looked at the picture, I thought, crap. I
18 wasn't sure if we're really going to replace the doors
19 because he said he wanted to and I like that, but didn't
20 know that the damage was far enough. If you have a bad
21 dent in the car door, you don't replace the door.

22 I thought maybe we would figure something out.
23 Like, he'll just say here. Here's what it was, here's
24 what we'll do and we'll settle or we'll figure out
25 something, but it didn't happen. It just didn't happen.

1 It happened the way it came out. I got a quote from
2 you. I asked my expert, because he's our preferred
3 trade vendor, as I told everybody yesterday. We try to
4 keep the same vendors housed on every property, so when
5 we need them, we get them. And we get consistent
6 service and quality. Not that I wouldn't get it from
7 their guy, but their guy said, hey, I'm not working for
8 you, I'm working for him. So he only gave me vague
9 answers and he did try to help me along. He's very
10 nice. And asked me to be part of this suit. And I told
11 him, I don't want to sue you, I just want to know what's
12 going on here. And he said, I'm sorry, the doors are
13 gone, I trashed them, I put them up. I said that's not
14 good. Not a good situation.

15 Q. You just said it again, like you said yesterday.
16 You like the preferred vendors, you like to build a
17 relationship?

18 A. I do.

19 Q. You want to have control on the repairs that are
20 made to your buildings that you own, right?

21 A. It's not control, it's just a logic situation.
22 When you go to the dentist, do you go to 15 different
23 dentists your whole life? Do you go to the mechanic?
24 Do you go to 50 different mechanics? At some point in
25 your life you're gonna drive yourself crazy if you have

1 50,000 people to call and you can't depend on any of
2 them.

3 So that's my methodology of my business. Not
4 yours, but it is mine. And I will stick by it, and it
5 has been very successful for me. I like it. I like to
6 call you or her or whoever's in this courtroom that
7 works for me and be able to have that communication.
8 And if the prices were higher we could have debated
9 that.

10 I could have sat down with you. You could have
11 called me for a site meeting, because I met your other
12 constituents out there. I had no problem doing that,
13 because of the diffusion with Wayne Schulte that we all
14 know is going to be discussed in the next day or so with
15 him, that we couldn't work together with Wayne on the
16 ground. So I'm the guy. The buck stops with me. I'll
17 sit in this chair for ---

18 Q. So it doesn't really matter about logic and going
19 to see a bunch of dentists, it's what the contract says,
20 what the lease says, right Mr. Decker.

21 A. It said \$3,000, then, if we're gonna hang
22 ourselves with that one and you didn't -- they didn't
23 honor that. They spent more than \$3,000 on that item.

24 Q. Any duty that Brilin Electric owes to CREH is
25 established by that lease and that lease alone. Do you

1 agree or disagree?

2 A. It's a tool, yes. It works both ways for both
3 Brilin and myself. Obviously I care about the tenants,
4 but also in a situation like this, I'm not sure the best
5 defense or offense to this situation, other than we're
6 going by the letter of the law. Then you're gonna win
7 some and I'm gonna win some. And on that case the
8 letter says \$3,000.

9 Q. The legal document that is the lease governs the
10 duties that CREH and Brilin have with respect with each
11 other, yes or no?

12 A. It does have respect, yes, sir.

13 Q. And there is nothing else besides that lease,
14 correct?

15 A. Other than the meeting on the side and our verbal
16 meeting that we had that we all agreed what we were
17 doing going forward. And I was promised by Mr. Russell
18 during that meeting with your constituent, my attorney,
19 Brilin, and myself what the method was going forward,
20 because we did have the suit, but we also are moving in
21 the direction not to go this far. That was the reason
22 to start the suit, because things weren't going right.
23 Communication was not working, so I thought attorneys
24 would be able to figure that out and I can step back and
25 not do it wrong per the lease, because you know I might

1 have the lease, but I'm not the attorney that wrote the
2 lease.

3 Q. All right. Let's go back to Defense 14. 14
4 through 16 is sending your attorney ---

5 A. Fourteen?

6 Q. Defense Exhibit 14.

7 A. Okay.

8 Q. Pages 14 through 16.

9 A. Yes, sir.

10 Q. That's us sending y'all the brochure from
11 Southern, and that's Defense Exhibit 2, just for
12 reference. You don't need to look at it. Got it?

13 A. Got ya.

14 Q. So we sent y'all a brochure so y'all could look
15 at this contractor and see if you were okay with them.

16 A. You did.

17 Q. Okay. All right. Let's go to 12 on Defendant's
18 Exhibit 14. Page 12.

19 A. Yes, sir.

20 Q. Bottom of page we're still on April 3rd here at
21 the bottom of page 12, less than exactly one week after
22 we're getting sued. And this is me telling your lawyer
23 any time between 10 and 5 will work on Monday. Let me
24 know what works for your side. And that is to arrange a
25 final walk-through of the premises by the landlords,

1 okay?

2 A. Okay.

3 Q. And at this point, April, there's still one month
4 left on the lease, the entire month of April 2020,
5 correct?

6 A. Right.

7 Q. But Brilin has completely moved all her stuff out
8 of the space by this point, correct?

9 A. I don't know that, I wasn't there.

10 Q. If you would have done a walkthrough you would
11 have known, right?

12 A. I couldn't be there, I had a conflict.

13 Q. Well, look, remember you talked about on direct,
14 you were like, yeah, I need you to fix your side and he
15 said, when we move all our stuff out we will?

16 A. Well, we don't know if he's going over his
17 timeline. I didn't know if he would be out on time,
18 under time. I wasn't there. And I explained that to my
19 counsel to explain to you.

20 Q. I told you at the October 2019 meeting, the
21 moment we got all our stuff out, you go ahead and tell
22 us what you need us to do, correct?

23 A. Okay.

24 Q. And so this is us trying to set up a final
25 walkthrough.

1 A. I don't disagree with trying to set something up,
2 it just didn't work for me on that day.

3 Q. Didn't work for you on that day.

4 A. Or that week.

5 Q. I followed up.

6 A. There's a lot going on.

7 Q. Let's go to page 11.

8 A. All right.

9 Q. I followed up with your lawyer. On Monday, 9:30
10 in the morning, hey, how are we looking for meeting
11 today?

12 A. Which page? Which item?

13 Q. Page 11. Right towards the bottom. Hi, Steve,
14 how are we looking for meeting today? Regards, Nate.
15 Okay.

16 And let's go to the bottom of page 10. This is
17 your attorney's response less than 30 -- about 30
18 minutes later. Hey, got off the phone with my client.
19 We won't be able to have the meeting today.

20 A. Okay.

21 Q. Then you start using COVID as an excuse, right?

22 A. I'm not sure. I'd have to look back and see
23 what's going on in my ---

24 Q. Read what it says right there.

25 A. I'm trying to find it. If you look at me, I

1 asked you where you're at in the book, because ---

2 Q. The bottom of page 10.

3 A. Which number.

4 Q. We are still in Defendant's Exhibit 14.

5 A. Okay. I flipped the book over and that lost the
6 page. And page again?

7 Q. 10, at the bottom.

8 A. All righty.

9 Q. Are you there?

10 A. Yeah.

11 Q. The very last sentence on the very last line:

12 So, unfortunately, the site meeting is not going to
13 happen. Go to page 10, the one forward -- or, excuse
14 me, nine.

15 A. Nine?

16 Q. I'm sorry. Here's me in the middle of the page
17 four minutes later: Steve, So I'm clear, your clients
18 do not want to have an on site meeting at any point,
19 correct? Again, we're still going back and forth about
20 the doors too. You see that, right?

21 A. That's between you and Steve. Yeah, I see it
22 going.

23 Q. Let's go to eight.

24 A. Okay.

25 Q. Steve -- about two minutes later: Nathan, that

1 is what I understand from my phone call with Brad Decker
2 this morning. If that position changes, I will let you
3 know.

4 A. Okay.

5 Q. So Brilin is completely, physically out of the
6 space with all their stuff, trying to set up a
7 walkthrough a week after you sue them, a month left on
8 the lease and you refuse to do a final walkthrough.

9 A. I didn't refuse, I had a conflict. Even my
10 counsel had COVID at one point. There's been -- it was
11 a bad time.

12 Q. Oh, no, no, no. This isn't a conflict. Your
13 clients do not want to have an onsite meeting at any
14 point.

15 A. That's not true. We met before. Just couldn't
16 meet at that time.

17 Q. But that was October of 2019. We're October --
18 April 2020 now. You did not want to do a final
19 walkthrough.

20 A. Not true.

21 Q. It is commercially reasonable for a landlord and
22 a tenant to walkthrough a space and hand it over.
23 Eight, premises, we're leaving. Handing it back to you
24 landlord, but let us know if there's anything we need to
25 do, right? Is that commercially reasonable?

1 A. It's reasonable.

2 Q. That's pretty standard practice in South
3 Carolina?

4 A. It doesn't always happen, but it's reasonable.

5 Q. You do it with your other tenants, right?

6 A. Not always. I'm not always at every walkthrough.
7 I'm not at every place every time. Sometimes we do it
8 after the lease is over, depending where we're at.

9 Q. Don't you want to know what's going on in the
10 space before you get it back?

11 A. Obviously. That's why we came back at a future
12 date. And I believe when we did go, we asked you to
13 come.

14 Q. Your testimony -- your testimony yesterday was,
15 you know, we've got a \$3,000 security deposit. I'm
16 getting worried about being more than \$3,000 ---

17 A. 3,000? We never talked about that yesterday, the
18 security deposit.

19 Q. You most certainly did, Mr. Decker.

20 A. Even the security deposit?

21 Q. You don't remember yesterday?

22 A. Did you ask me that question?

23 Q. I didn't ask you any questions yesterday. Your
24 lawyer asked you that question.

25 A. I think it referenced the \$3,000 limit to what

1 the repairs were.

2 Q. You were getting worried about the \$3,000
3 security deposit ---

4 A. Really?

5 Q. Were you getting worried about the security
6 deposit?

7 A. Really?

8 Q. Do you not recall saying anything about the
9 security deposit?

10 A. Really? A large company like us is gonna worry
11 about \$3,000? Come on.

12 Q. No, that wasn't my question, Mr. Decker. Do you
13 not remember Paul mentioning anything about a security
14 deposit yesterday, yes or no?

15 A. Not being irate about it or concerned, but go
16 ahead, let's see.

17 Q. I'm asking you, do you remember talking about it
18 or not?

19 A. I talked about the \$3,000.

20 Q. The security deposit.

21 A. Tell me what it ---

22 Q. Do you remember talking about the security
23 deposit? That's fine if you don't remember your own
24 testimony.

25 All right. 11(b). We've got it blown up right

1 here, it's part of the lease on Plaintiff's Exhibit 2.
2 Tenant agrees to return the premises in good repair.
3 That's why we do walkthroughs, landlords and tenants,
4 right, Mr. Decker?

5 A. We hope so. We hope that's the intention.

6 Q. To tell me, if I'm giving it back to you the way
7 I got it from you in the first place. That's why you do
8 a walkthrough.

9 A. You did not.

10 Q. What do you mean I did not?

11 A. You did not give it back --

12 Q. I didn't do --

13 A. -- the way you got it. That's why we're here.

14 Q. -- anything, I'm just the lawyer.

15 A. I understand.

16 Q. But you didn't do a walkthrough. And there's a
17 provision in the lease which governs the duties and
18 rights and responsibilities of the parties. One of
19 which is, we've got to give it back to you. Brilin's
20 got to give it back to CREH the way we got it. And the
21 way we, in South Carolina, in commercial leases achieve
22 that is to do a walkthrough and say, is it good to go,
23 Mr. Landlord.

24 A. I agree.

25 Q. But you refused to do that final walkthrough.

1 A. I didn't refuse. I had a conflict and we made it
2 for another time and we actually invited you to that
3 time at a later date, but I believe you declined because
4 it was after the lease and you said, go ahead and go in
5 the building. That's just what I heard. I didn't write
6 the e-mail.

7 Q. We're getting off track here, Mr. Decker. We're
8 getting off track on a lot of your responses, quite
9 frankly, but we did actually come back after the lease
10 was over. We did come back on site, didn't we?

11 A. No.

12 Q. You don't remember that?

13 A. Not with me, you didn't.

14 Q. Mr. --

15 A. Nice try.

16 Q. Mr. Robinson was there. You had all the
17 materials all ready to rock and roll. We came over and
18 took a look.

19 A. No. We did a demo diagnostic at first, then we
20 invited you to see what we found in the wall. And we'll
21 get to that with your client when the jury hears that.
22 Then we'll probably get the real story. But nice, nice
23 to paint me there when I'm not there.

24 Q. There were stacks and stacks of materials ready
25 to go and Mr. Robinson was ready to do the repair,

1 right?

2 A. And what does that mean? Did we do the repairs
3 yet or did we not do them?

4 Q. No. I'm just saying, you waited until the moment
5 we moved out to do your demo diagnostics.

6 A. No, that's not true. We went in -- we went in
7 and looked at the space. I was, I was actually pretty
8 surprised how well it looked. I'll be honest. We don't
9 need to go sugarcoat this. Painting looked great,
10 things were looking fine, but there were some direct
11 concerns with the rollup doors, with the walls, always
12 been the concern. You got that point across. They can
13 see the pictures. I can paint the picture. It looked
14 like this courtroom, where we had to strip it down to
15 see what really happened to the problem.

16 Q. Of course, because you can't see that the studs
17 are damaged unless you tear out the walls, right?

18 A. He promised me to see that side. He had a rack
19 in front of it with equipment. He said, you have to see
20 that side. We were adamant about seeing that side.

21 Q. You were adamant until you said you didn't want
22 to do a walkthrough, then you ---

23 A. I couldn't be there at that time, and that's
24 fine. If anybody has a conflict in their life and can't
25 be somewhere, they just say they can't be there and make

1 another date.

2 Q. The reason why you didn't want to do a final
3 walkthrough ---

4 A. One time.

5 Q. The reason why you didn't want to do a final
6 walkthrough while Brilin was still in possession of the
7 premises is because you wanted to wait until after they
8 were out so you could use your vendors to make the
9 repairs, yes or no?

10 A. No. That would be absurd.

11 Q. Do you have any doubt in your mind that if you
12 had gone in there and done your demo diagnostic in April
13 and the whole place was empty, except fix these studs,
14 do you have any doubt in your mind that Brilin would not
15 have done that?

16 A. I was hoping he came back when we saw him in the
17 meeting that we came and we all went for the demo
18 diagnostic. I was hoping you guys stood up to the plate
19 and said, oh, God, my drywall guy left some bad studs in
20 the wall. You know what? We'll take care of it.

21 But when Robinson and you guys talked about your
22 meeting, I'm sure the truth will come out how that
23 meeting went with your client being irate about us
24 finding a dented stud behind sheetrock. Why repair one
25 side and not repair the other properly? Who knows? I

1 wasn't there. The facts will be known by John
2 Abernathy, our expert.

3 I will testify to you guys what I know from a
4 distance. I'll support the pictures. Also support
5 Brilin at times. He did some great things. He's not
6 the worst guy in the world.

7 I just want to get to the bottom of it. How come
8 we weren't invited? Because we're contractors. You
9 might say, hey, Bryon, I need a further place to save
10 those studs. Oh, you know, God, that's another two
11 grand, he could have took it on his own.

12 He went rogue. I believe between the move, the
13 stress of a divorce, just hearsay, and all that on his
14 plate, he just forgot to call me. He got busy himself.
15 So we'll ask him on the stand, and he'll know my pre
16 question before he gets here, because that's gonna be a
17 direct question.

18 Q. Mr. Decker, what are you talking about when you
19 say he didn't call you? We are trying on April 6th of
20 2020, a week after you sued us, a month before the lease
21 is over, to have you come over and look at the space.
22 What are you talking about?

23 A. I don't believe Mr. Brilin saw the repairs going
24 on in that building and he trusted somebody else to do
25 it. And he's a business owner like me and they didn't

1 do a good job and now he's hanging with the bag, bottom
2 line. Period.

3 Q. Let me, let me close the loop on the garage
4 doors. Something I forgot to ask you and we'll take it
5 back to this wall. You never did approve Southern
6 putting those garage doors in, did you?

7 A. No, we didn't. That's why you -- that's why you
8 got a lawsuit.

9 Q. No. You sued us before.

10 A. And it included that and it kept perfecting along
11 the way, as you know.

12 Q. You sued Brilin before we moved out, Mr. Decker.

13 A. That's because we couldn't get him to listen to
14 us. But I'm just the guy asking, hey, can you do this?
15 And I might get, hey, don't move the jersey barriers.
16 Nobody listens to Brad, they just move them.

17 Q. Let me go back to Defense Exhibit 14, page 5.
18 All right, towards the middle. Here's where -- you got
19 me off track on the wall. Let me close the lid on the
20 garage doors and we can talk about the wall again.

21 Here's me two days later, April 8th. Steve,
22 checking on installation of the doors.

23 A. Okay.

24 Q. We have the contractor lined up to go next week,
25 Wednesday, April 15th.

1 A. When did you order the doors? We're gonna ask
2 your guy that when he comes.

3 Q. I'll ask -- from now on, Mr. Decker, I will ask
4 all the questions during this examination.

5 A. Fair enough.

6 Q. Okay. All right. So here's me trying to get
7 approval again.

8 A. Okay.

9 Q. Now, second paragraph. I had the opportunity to
10 inspect the premises today and I have to tell you
11 honestly, I don't understand why we're in litigation.
12 The doors will be repaired next week, and the asphalt,
13 if your client so desires, more below. The drywall is
14 done and the carpets and walls in the office area will
15 be good to go -- as good as new once tenant moves out.
16 All right, do you see that?

17 A. Yeah, I see it.

18 Q. Okay. And we got the next paragraph. We've got
19 the asphalt person come next Tuesday. All right, do you
20 see that?

21 A. Yeah.

22 Q. Tenant would like to patch the asphalt as a
23 good-faith gesture to rectify this matter and have you
24 drop the lawsuit. Do you see that?

25 A. I see it.

1 Q. Our position is that the asphalt is a capital
2 improvement. And it deteriorated through normal wear
3 and tear of the base, if there is any. And asphalt
4 depth was not sufficient for commercially reasonable and
5 known uses of that surface area by the tenant. Do you
6 see that sentence?

7 A. I see it.

8 Q. Okay. That's that whole back and forth we went
9 about the forklift when we started, okay? All right.
10 We talked about how there was ponding. Know there was a
11 water, because obvious the rain. You know, I'm sure you
12 remember this. Because there's a ramp, water would kind
13 of trickle down and would go that way, because there's a
14 little drain down this way, right?

15 A. Water runs from the lowest point.

16 Q. And that kind of messed up the asphalt too.

17 A. Yep.

18 Q. So, okay. So here's us saying we're gonna --
19 we're gonna -- we'll do the asphalt as a good-faith
20 gesture, but, but it's not our fault. It was a bad
21 install job because it wasn't sufficient material.

22 A. The damage ---

23 Q. All the way --

24 A. You damaged it either way.

25 Q. All the way back in April of 2020 we're saying

1 this.

2 A. If you rent a car, you damage it, you're liable.
3 You don't get to say, well, you know, I'm sorry.

4 Q. Well, we'll wait for the judge's instructions on
5 that point of law, Mr. Decker.

6 A. All right. I hope so.

7 Q. Okay.

8 A. Remember, I called all those vendors in between
9 all those e-mails and talked to them and was trying to
10 figure out what they were doing and who they were and to
11 make sure that if they're gonna be doing the work, that
12 we agree what we're doing, and I got mixed
13 communications.

14 Q. Get Defense Exhibit 14, we're not done.

15 A. All right.

16 Q. All right. Next one sentence paragraph: If you
17 do not want us to patch the asphalt, then please let me
18 know immediately so I can have my client cancel the job.
19 And that was SMI, right? That was -- that's who we're
20 talking about, that SMI that we talked about briefly
21 or...

22 And we didn't end up using them because
23 Countywide, it would kill the Countywide warranty if we
24 got some -- another vendor to use, right?

25 A. Well, I wanted them both to know that it was a

1 job that was recently done and that what -- how could we
2 warrant the job? And SMI declined. They said, you just
3 asked me for a patch. And I said, do you realize what's
4 going on here? The damage is caused from a forklift.
5 We're all concerned with whether it's been damaged in
6 the parking lot.

7 However it's happening, we're sorry it's
8 happening, but we need to fix it. And, correctly, he
9 goes, I'm not warranting anything. I'm just patching
10 it, because that's all I was asked to do, so I walked.

11 I said, hold on a second. Let me call my guy
12 back up. I can't engage you to tell you what to do,
13 because you're not my client. Only Russell can tell
14 him. Russell could have did it behind my back, like he
15 did the doors, or like he did the wall.

16 Q. Well, you know -- all right. So, just to orient
17 the jury, just to ---

18 A. Why didn't he do that? He did everything else.

19 Q. No. No. No. Quick jump to Defense 13. Hold
20 your, hold your place in Defense 14.

21 A. Okay.

22 Q. All right. You see Satwinder Singh there? He's
23 the, he's the principal of Countywide Commercial, right?

24 A. Correct.

25 Q. You know that I talked to him --

1 A. Good.

2 Q. -- about doing the asphalt job? You know that,
3 right?

4 A. I don't know.

5 Q. You don't know that I talked to him?

6 A. I have no clue.

7 Q. You don't know that? You don't -- he never told
8 you that we talked?

9 A. I haven't talked to him.

10 Q. And that we were more than happy to --

11 A. He might have talked to Wayne.

12 Q. -- use him so that we wouldn't void the warranty?

13 A. Okay.

14 Q. Nobody communicated that to you?

15 A. Maybe Wayne. Not me personally, no.

16 Q. So we were more than happy to use him because we
17 didn't want to kill you all's warranty either.

18 A. Okay.

19 Q. But then it all fell apart, because you continued
20 to do it anyways.

21 A. Did you send me an e-mail? Did anybody tell me?

22 Q. I can't talk to you, you've got a lawyer.

23 A. Send it to my lawyer. You sent him all the other
24 stuff.

25 Q. I most certainly did.

1 A. I know, but you didn't send that. I would have
2 responded. I would have tried to.

3 Q. Okay. Now, it says: Please let me know if
4 you'll be sending the 18K in quotes invoices. Then it
5 says: Once we have everything fixed up and mentioned
6 above, that leaves those three cracked bricks at the top
7 right corner. And who knows what caused those, right?
8 We have no idea of what caused that damage way high up
9 in the top right corner. We don't, do we?

10 A. We can only imagine, based on the door, the wall
11 with the forklift, the two doors that were hit by the
12 forklift, maybe. Maybe they hit the other door.

13 Q. But you have no proof that you can present here
14 in this court that Brilin was responsible for damaging
15 those bricks way up high, do you?

16 A. Other than he said, hey, the bricks are broke at
17 the top, I'm gonna fix them. I said, okay, what
18 happened? He might not know. I don't know that.

19 Q. He did fix them. Let's go to Defense Exhibit 4.

20 A. Okay.

21 Q. 280 bucks to fix the, fix the bricks, right?

22 A. Yeah.

23 Q. And he fixed the bricks. Again, another good
24 faith gesture to just kind of make this thing go away.
25 Who knows what caused those bricks way up high to get

1 dislodged. I don't know. Maybe we'll find out from
2 another witness might have caused that.

3 A. It's possible. I think there's some people that
4 have suspicion to what caused it and have more expertise
5 than me in that particular department.

6 Q. All right. We're gonna jump around again. We're
7 gonna go to Plaintiff 9 right now.

8 A. Number 9.

9 Q. This is Philemon. This is one of your preferred
10 vendors that you got to do a quote for bricks, right?

11 A. Yes.

12 Q. And they never actually repaired bricks, did
13 they?

14 A. They did not.

15 Q. But this quote is for \$1600, Mr. Decker, right?

16 A. Yes.

17 Q. Your preferred vendor's quote is five times more
18 than what was charged to my client for this repair.

19 A. Okay.

20 Q. Are you seeing a pattern yet, Mr. Decker?

21 A. No.

22 Q. Your asphalt quote. Your brick quote, your
23 garage door quote, they're all substantially higher than
24 what my client's quotes or actual repair jobs cost.

25 A. They are different types of specs for each one of

1 those quotes.

2 Q. Are they? We're talking about the same thing.

3 A. No, we're not.

4 Q. We're talking about garage doors. We're talking
5 about asphalt, we're talking about bricks.

6 A. We're talking about Coca-Cola and then Food Lion
7 cola. It's two different things.

8 Q. Okay. Why is it Coca Cola and Food Lion?

9 A. Because everything is different in the world.
10 Every price is different from everybody. They're
11 different products. They're not the exact same apples
12 for apples. It's oranges for apples. You're trying to
13 get me to admit to you that because a quote's higher, we
14 took advantage or we're going with the highest quotes.
15 No.

16 The quote could have been lower too, I would have
17 been fine with it. The question is, he would have still
18 had the opportunity to fix it, which we let him have it.
19 But we don't know what caused the problem. We don't
20 know if McGee Brothers investigated to see if the lintel
21 was straight or if it's still that way. We have no
22 clue, but when it happened under their ownership of the
23 space, was obviously a concern.

24 Q. All your quotes are higher than our quotes for
25 repair, right? I just want a yes or no.

1 A. Yes.

2 Q. Okay, thank you. And that leaves us with the
3 demising flash partition wall.

4 A. Uh-huh.

5 Q. And that's why you didn't want to do a final
6 walkthrough, because you wanted your preferred vendor,
7 Mr. Robinson, to do those repairs and get the Cadillac
8 version on that repair too, right?

9 A. No. We offered Robinson to work with him
10 directly. And if he wanted to use it, whatever, and use
11 it through us or come back with a solution. He chose
12 the latter, which I don't think he really paid attention
13 to what was going on. It's unfortunate.

14 Q. You did not do a demo diagnostic while Brilin was
15 still in possession of the premises, you knew what
16 possible damage there to tell him to fix it, did you?
17 Yes or no?

18 A. No. The rack system was in the way and, no, we
19 did not.

20 Q. Well, they weren't in the way in April of 2020,
21 Mr. Decker, right?

22 A. No.

23 Q. That's why we were trying to do a final
24 walkthrough.

25 A. Well, we tried, but I couldn't meet that date,

1 unfortunately. And the space stayed empty until we went
2 in there so we could look at it.

3 Q. All right. This is plaintiff 13. All right. To
4 orient the jury, the demising wall we're talking about
5 is that one right there, right?

6 A. No, that's the front wall.

7 Q. Front wall? No, this is the front wall.

8 A. No, that's the office wall.

9 Q. Well, yeah, the office.

10 A. That's the back of the office. The demising wall
11 is not in that picture.

12 Q. Well, you see the corner right there, right?

13 A. That's the demising wall. You don't have any
14 pictures of that because nobody ever took any pictures
15 when they did the repairs on that side because the racks
16 were up. And when you left, you patched it, and nobody
17 got to see it. That's why we're here.

18 Q. Nobody got to see it. You didn't get to see it
19 because you didn't do a final walkthrough.

20 A. Couldn't. There were racks in the way when I was
21 there last in the meeting, and I wasn't invited back to
22 say we took the racks down, and why don't you look at
23 this wall when we repair the side of it so we can make
24 sure it meets, you know, standards. Because we knew it
25 got pushed so far out that we had an engineer come out.

1 We had a lot of people concerned with the wall, even
2 Bryon was concerned, and he wanted to put it back in
3 place somehow. That's fine.

4 But we didn't get to see the side that we saw
5 earlier in yesterday's testimony where the studs are
6 damaged because it's not in anybody's picture. Your
7 drywall guy didn't give me a picture. You can't give me
8 a picture because we weren't invited. It's kind of
9 funny that nobody has a picture of that, except the ones
10 that we took in the demo diagnostic.

11 Q. Let's give you some pictures right now.

12 A. A little credit here.

13 Q. The same ones we gave you years ago. Let's go to
14 Defense Exhibit 19. Actually, let's do 18 real quick.
15 The other thing you're complaining about is the carpet.
16 The carpets need to be clean. You got your black light
17 out. We owe you money for carpet cleaning, right?

18 A. Yeah, that's fair.

19 Q. Okay. So Defense 18, there's an e-mail. And if
20 you look at the second page through the third page, that
21 is the receipt for the carpet cleaning that occurred on
22 April 22nd, 2020, where Brilin was still in possession
23 of the premises, correct?

24 A. Correct.

25 Q. And unlike all your invoices, your proposals, and

1 all your quotes, that actually says, amount paid.

2 A. Okay.

3 Q. \$280.

4 A. Fair enough.

5 Q. All right. Let's flip that page. You've got
6 Southern Dry Carpeting again. Here's an estimate of the
7 carpet cleaning to be done in September of 2019. So six
8 months before April 2020 they did the carpets again as
9 well, right?

10 A. Well, they had animals in there. We saw dogs in
11 there. Maybe they did it for that reason.

12 Q. No. Is that a quote --

13 A. Yes.

14 Q. -- for carpet cleaning? All right. Flip the
15 page. All right. And there's the deduction of that
16 235.20 from Brilin's checking account, the one that they
17 actually paid to have that done, too.

18 A. That's because ---

19 Q. They had the carpets cleaned in September of 2019
20 and April of 2020, when it's empty, and they have moved
21 out, right?

22 A. They're in the construction business, I ---

23 Q. Yes or no.

24 A. Yes.

25 Q. I'm gonna start making you do yes or no questions

1 because --

2 A. That's fair enough.

3 Q. -- you talk too much and it's driving the jury
4 and me crazy. All right? Yes or no questions. Yes or
5 no answers or yes or no answers. All right. Let's flip
6 to Defense Exhibit 19. All right. These are the move
7 out photos. There's the front, right, first page?

8 A. Yep.

9 Q. This is the flex page we're talking about or the
10 office. Second page, that's one of the offices. Third
11 page, that's the hallway. Fourth page another office.
12 Fifth page, there's the bathroom. Not only have they
13 cleaned the carpets, but they painted the walls too,
14 right? There's a break room on the sixth page. But
15 they painted the walls, too, didn't they?

16 A. Yes.

17 Q. You never painted the walls, did you?

18 A. I did not.

19 Q. All right. Seventh page.

20 A. Seventh?

21 Q. That's for one of those garage doors, right?

22 A. Right.

23 Q. On the inside. And the next one, page 8, see
24 that exit door?

25 A. Yes.

1 Q. Okay. So to orient the panel -- excuse me, jury,
2 that first garage door, that's actually the side garage
3 door, right?

4 A. That is a -- no, that is a -- that is the rear
5 door. Hold on a second. Yeah, yeah, the first one is
6 the side door.

7 Q. The first one is the side one, and then the next
8 page, that's the right of the two back ones if you're
9 looking at it from the inside.

10 A. The second page is the right if you're looking at
11 it from the inside, yes.

12 Q. Let's go back to the first page. Do you see any
13 damage up on the top left on the interior, Mr. Decker?
14 Have we done something to those three magic bricks?

15 A. Yeah, the drywall's cracked.

16 Q. Where?

17 A. Right at, right at the point where you're talking
18 about on the left-hand side.

19 Q. Okay.

20 A. There's a seam, and the drywall's totally cracked
21 all the way through.

22 Q. Okay. So you think that's it?

23 A. I don't know, but you said, did I see anything, I
24 see that.

25 Q. That doesn't look like a forklift ran into it.

1 This looks like a crack of mud of where the gypsum one
2 needs to go.

3 A. All I can tell you, what I see is a crack in the
4 associated area of the brick on the outside.

5 Q. You testified yesterday that your guy thought
6 maybe somebody banged it up from the inside. Does that
7 look like ---

8 A. If Brilin has said that, I'm sorry, they hit the
9 doors. He told me in a meeting one time, our guy's hit
10 the door and I get it. We all get it. The forklift is
11 a hit thing.

12 Q. That's good. No, just to be clear for the jury,
13 that's one of the doors that are replaced, that side
14 door, right?

15 A. The side door was not replaced.

16 Q. The side garage door.

17 A. No, it was never replaced. He only replaced the
18 brick.

19 Q. No. The garage door. He replaced the -- Brilin
20 replaced the side garage door ---

21 A. No. He replaced the two back dock doors. The
22 side door he never replaced, sorry.

23 Q. Okay. All right. Let's just jump around here
24 and get this one knocked out. All right. Let's go to
25 Defense Exhibit -- give me a second. Bouncing around.

1 All right. Defense Exhibit 6.

2 A. Six?

3 Q. Six.

4 A. Six.

5 Q. Yeah. I'm sorry, hold on one second, that's the,
6 that's the -- give me a second. Okay. Defense 3, my
7 apologies.

8 A. Defense 3?

9 Q. Yeah.

10 A. Okay.

11 Q. All right. First page, left right, you see
12 Nations Power Corp up on the left --

13 A. Right.

14 Q. I mean on the right. It's not on there, is it?

15 A. No, I don't see it, not National Power Corp.

16 Q. Now, flip that second page. That's what it looks
17 right now. Same doors, right?

18 A. Well, no, I can't say it's the same doors, that's
19 a picture.

20 Q. It's the same door.

21 A. It is?

22 Q. Well, I'm asking ---

23 A. The same doors as what?

24 Q. If you don't know, just say I don't know.

25 A. I don't know. It's the same doors as what?

1 Q. Look real closely on that second page on what
2 says National Power Corp. Do you see that, Mr. Decker?

3 A. I see the National Power Corp, yes.

4 Q. And it's not -- doesn't say National Power Corp
5 on the right door, right?

6 A. No.

7 Q. Because the right door was replaced.

8 A. Correct.

9 Q. We replaced two doors, right?

10 A. You did.

11 Q. The left one is an original door, correct?

12 A. That is true.

13 Q. So then we replaced the second door.

14 A. You did replace them.

15 Q. There we go. All right. Just wanted to get that
16 into evidence. So let's jump back to 19. So, that
17 first garage door we're looking at from the interior,
18 that's one of those replaced garage doors. You can see
19 that. That's the insulation there, right? That's what
20 we're looking at, that silvery stuff. It's an
21 insulation garage door.

22 A. Okay.

23 Q. All right. Now, if we look at the next page,
24 that's the original door that's still there to this day,
25 right?

1 A. They're not numbered, so you've got to ---

2 Q. I know.

3 Permission to approach, Your Honor?

4 THE COURT: Yes, sir.

5 BY MR. WHITE:

6 Q. All right. So side door.

7 A. Got that. Yeah, I know that now.

8 Q. That's the door that we did not replace right
9 there on that next page, right?

10 A. No, you replaced that door.

11 Q. No, we did not replace that door.

12 A. That's the back door. There's no exit door.

13 Q. The one on the left. On the right if you're on
14 the outside.

15 A. You replaced both back doors. There's no exit
16 egress door at the side door, if that helps you
17 reference.

18 Q. Okay. Just to be 100 percent clear, Mr. Decker,
19 your testimony here today, it that the two garage doors
20 were replaced are the rear doors where the loading bays
21 are.

22 A. That's ---

23 Q. That's your testimony?

24 A. That's the one that you replaced. No side doors.

25 Q. Not the one, not the one with the ramp that the

1 forklift uses. You didn't replace that? That's your
2 testimony?

3 A. The first picture is the one with the ramp.

4 Q. I know. But you're saying we didn't replace that
5 one?

6 A. You did not.

7 Q. Okay. All right. So, and we keep flipping
8 through. All right? Now, I want you to get to this one
9 right here.

10 May I approach, Your Honor?

11 THE COURT: Yes, sir.

12 BY MR. WHITE:

13 Q. Okay. It's three -- this one right here, where
14 it has that little corner right there. Keep going.
15 That one. All right. Everyone see that? That's the
16 demising wall right there on the right, right? The
17 partition wall or dividing wall?

18 THE COURT: Is that in your notebook?

19 MR. WHITE: Yes, Your Honor.

20 THE COURT: It's 19?

21 MR. WHITE: Yes, Your Honor.

22 THE COURT: Okay.

23 BY MR. WHITE:

24 Q. Defense 19. So that's what it looked like when
25 we moved out.

1 A. Okay.

2 Q. Do you see any racks? Do you see any pallets?
3 Do you see any stuff there?

4 A. That's all removed.

5 Q. And it had been removed for the entire month of
6 April when you could have done a final walkthrough at
7 any time, which you refused to do. Correct, Mr. Decker?

8 A. No, that's not correct.

9 Q. All right. I want you to go to the second to
10 last picture of Defense Exhibit 19. That's the ductwork
11 on there?

12 A. Yes.

13 Q. All right. Brilin asked to raise up the ductwork
14 to create more space for their racks for storing all
15 their materials, right?

16 A. No.

17 Q. They didn't?

18 A. They didn't ask.

19 Q. Okay. But that little like, kind of that little
20 S joint right there, Brilin did that, right? They made
21 that repair?

22 A. That's what he told me.

23 Q. With your approval?

24 A. No.

25 Q. Your testimony here today is that you did not

1 approve that modification of the ductwork?

2 A. I did not. That was impossible.

3 Q. The lease specifically says that ductwork, the
4 HVAC system is the responsibility of the tenant. Yes or
5 no or you don't know?

6 A. I don't know either.

7 Q. Okay. Would it surprise you if I told you that
8 the lease says the ductwork, HVAC system is the
9 responsibility of the tenant?

10 A. Yeah, but not altered HVAC systems. He altered
11 the flow of the air by changing the duct.

12 Q. Okay. Your testimony here today under oath is
13 that you did not give him permission to make any
14 modifications of that ductwork?

15 A. No. I sent him an invoice in 2018, all the way
16 up to the time of '19 to pay the invoice or help us
17 understand if we needed to do it or not, and he never
18 responded. He just went death con on us.

19 Q. Okay. Let's talk about that invoice. Let's look
20 at Plaintiff 12. That first page, that's the invoice
21 that you sent to Brilin, right?

22 A. Nathan, what number is that?

23 Q. Plaintiff's Exhibit 12, Mr. Decker.

24 A. Okay.

25 Q. That's it right there.

1 A. Yes.

2 Q. It says Carolina Real Estate Holdings, LLC billed
3 to Brilin Electric, LLC, right?

4 A. Correct.

5 Q. And then a description, costs and repair damaged
6 ductwork in warehouse caused by forklift hitting
7 overhead HVAC duct?

8 A. Yes.

9 Q. So you think the forklifts got that high up and
10 hit those ducts?

11 A. He told me that when they loaded the top of the
12 racks, they were hitting it because the way that it's
13 configured, the ductworks hung down from the ceiling at
14 a certain height. Well, the rack was as high as what
15 they needed that last space to load the pallets. So
16 they were hitting it in numerous places.

17 Q. Top right of that Plaintiff's Exhibit 12, first
18 page, invoice date 5/2/2018. Is that May 2nd, 2018?

19 A. It is.

20 Q. And that was an invoice for, at the bottom, total
21 \$2,625?

22 A. Yes. You sent it to us.

23 Q. Let's go to the next page. This is one of your
24 preferred vendors, Mr. Decker, like you said yesterday
25 in your testimony. MTB, you've got a great relationship

1 with them, right?

2 A. I do have a good relationship with them.

3 Q. And this is their invoice billed to you.

4 A. This was their quote. It's not an invoice.

5 Q. \$2,000 -- okay. That's right. Good point. It
6 is a quote. It's not a bill, it's a quote. But it does
7 say, billed to Carolina Real Estate Holdings, right?

8 A. Yeah. Because we thought we would do that,
9 because we asked the tenant, do you want to fix the --
10 we can fix it. And he said, I'll take care of it when
11 he's at the end of the lease. That's all he said.

12 Q. Their quote was for \$2,625, the same exact number
13 as your invoice, right?

14 A. That's in '18, and they fixed it in '19. That's
15 the point.

16 Q. That's the same number as your invoice that you
17 were gonna quote Brilin, right?

18 A. Brilin would have been responsible for this if it
19 was fixed by us.

20 Q. Well, you did an invoice for \$2,625 on May 20 --
21 May 2nd, 2018, billed to Brilin, yes or no?

22 A. Yes.

23 Q. And then you got an invoice, a quote, excuse me,
24 from MTB for the same exact amount, \$2,625.

25 A. Yes.

1 Q. But that quote is from December 28th, 2018, Mr.
2 Decker. How did you know to invoice Brilin the same
3 exact amount as your preferred vendor would bill you.
4 seven months later? How were you able to do that?

5 A. We sent it with the rent, the invoice, because we
6 thought we would be taking care of it and he would say
7 go ahead and do it because we're the landlord.

8 Q. Oh. So you came up with a number to bill to
9 Brilin and your preferred vendor filled that number into
10 their invoice?

11 A. No, not at all.

12 Q. Well, how did you -- you just said that. You
13 just said you gave MTB an invoice.

14 A. Listen, we got a quote. We invoiced for the
15 amount of the damage it was gonna cost us to fix, and if
16 it got reciprocated by the tenant, we would, like most
17 tenants do, because they don't have all these people to
18 do stuff ---

19 Q. You got the quote seven months after you invoiced
20 or created an invoice to Brilin.

21 A. No. I think we asked them to revise the quote if
22 it was still actually valid after the fact.

23 Q. This is what you do. You get preferred vendors
24 to fill in the number they're gonna pass along to your
25 tenant.

1 A. Not true.

2 Q. Because you're not gonna pay anything.

3 A. Not true.

4 Q. That's how they knew to put \$2,625.

5 A. Most tenants use that ---

6 Q. Do you still not see the pattern, Mr. Decker, how
7 your vendors seem to up charge ---

8 A. I see your pattern --

9 Q. (Inaudible.)

10 A. -- but not my pattern. I don't. I get where
11 you're going, but that's not how it works. We have a
12 team of people. I'm not sitting around the corner
13 going, hey, every job that comes up, I'm gonna try to
14 make some. That's ridiculous. I have no time for that.

15 Q. It was your testimony not two minutes ago that
16 you sent this invoice to MTB, was it not?

17 A. It was, because we asked them to requote it
18 because it already lapsed and expired. And I said, hey,
19 guys, we still need to get this. Can you send me a
20 quote again so we can revise this and send it to the
21 tenant.

22 Q. So there's another MTB quote that precedes May
23 2nd, 2018, is that your testimony?

24 A. Well, I think there was a lapse of time, and then
25 it went so long that Mr. Brilin didn't respond to our

1 invoice with his thing until Frank went months and
2 months later, Mr. Jackson, our CFO.

3 Q. Well, where did you get this number from on May
4 2nd, 2018?

5 A. Listen, it's a real number. The guy could have
6 called me. Why are you asking me about it? Why didn't
7 he ever ask me about it? He brushed it off until the
8 end.

9 Q. How do you know what to bill your tenant, unless
10 you've talked to a vendor?

11 A. I only bill them with the vendor. He had a
12 chance to approve it or deny it.

13 Q. But you didn't get a quote until --

14 A. Obviously, he let it go.

15 Q. -- seven months later, Mr. Decker.

16 A. Well, he fixed it at the end and he altered the
17 whole thing, so now it's his responsibility. So it's a
18 moot point. Really a moot.

19 Q. Again, you never paid \$2,625 to MTB?

20 A. We didn't say we paid. That was a quote.

21 Q. So these aren't damages? You're not --

22 A. They are, they are to fix it.

23 Q. -- claiming damages?

24 A. They are to fix it back to the way it is now. If
25 you call MTB today, he will come out and fix the

1 ductwork the way it used to be before Mr. Brilin
2 reconfigured it to make it higher for his ability to use
3 a forklift.

4 Q. And how much will that repair be to work ---

5 A. We're gonna honor what we're suing for, even
6 though it's way in the future. It can't be much more,
7 and we're willing to absorb that, because why would we
8 keep spending time trying to reestimate to reestimate to
9 reestimate in 2022? We'll just have to bite the bullet.

10 Q. Now, you said you're gonna honor what you're
11 suing for.

12 Your Honor, may I approach?

13 THE COURT: Yes, sir.

14 MR. WHITE: This is a discovery document. I was
15 gonna offer this as substantive evidence, Your Honor,
16 but if you want me to mark this I'd be happy to.

17 THE COURT: All right.

18 BY MR. WHITE:

19 Q. All right. Do you see this? Two pages here, Mr.
20 Decker. 7 of 18 and 8 of 18, those are your responses
21 to our discovery requests. Do you see that?

22 A. Sure.

23 Q. Bottom of seven, number six. Set forth an
24 itemized statement of all damages claimed to have been
25 sustained by the plaintiff as a result of the alleged

1 cause of action against Brilin or co-defendant W&L
2 Services. Do you see that, bottom of page six? Excuse
3 me, bottom of page seven.

4 A. Seven.

5 Q. All right. Page eight, that's your line items
6 right there. You've got your asphalt quote. That's
7 number eight. You've got your carpet cleaning, right?

8 A. Fair enough.

9 Q. You got your -- yes or no? So, you've got your
10 Philemon Brick quote that you never did that, right?
11 They never repaired the bricks, right? We're looking at
12 C?

13 A. At the time, this was probably stuff that was out
14 in front of us, yes.

15 Q. You submitted this to us in June of 2021. Do you
16 not recall that?

17 A. Fair enough.

18 Q. You did review the responses to our discovery
19 requests that your lawyer gave you, right?

20 A. I'm sure we did, yeah.

21 Q. Okay. And then you've got Overhead Door Company
22 in Charlotte to replace the two doors? They never
23 actually replaced those doors, did they?

24 A. Well, they will when we finish with this court
25 case. We'll either be replacing them or you will,

1 because you took my original doors.

2 Q. So, so the doors -- let's make sure we get this
3 clear. The doors that Brilin put on, they're still
4 there to this day, right?

5 A. Until we resolve this case, yes.

6 Q. So you're gonna take them down, even though
7 they've been working for two years, and put up your
8 doors?

9 A. Absolutely.

10 Q. Okay. And then we've got Decker inspections and
11 contracting services, Inc. The cost for repairing
12 damages, drywall in the warehouse area of the subject
13 property, including the interior office area inside of
14 the building of the subject property, \$2700. See
15 estimate date of March 13th, 2020. Do you see that?
16 It's little E.

17 A. What's the number.

18 Q. No, right here. The one on the discovery
19 response I just gave you on page 818(e).

20 A. I see E.

21 Q. Decker Inspection and Contracting Services, Inc.
22 You see that, right?

23 A. I see it.

24 Q. And it says: The costs for repairing damaged
25 drywall in the warehouse area of the subject property

1 and any interior office inside the building of the
2 subject property, \$2700, right?

3 A. Correct.

4 Q. And so this is part of your itemized statement of
5 damages that we asked you to give us to figure out what
6 you were claiming were damages, right? Right?

7 A. Right.

8 Q. Okay. Now, we've got a whole mess of invoices
9 and quotes and proposals in the plaintiff's exhibits,
10 but we don't have that \$2700 estimate.

11 A. It's an estimate?

12 Q. It's a plaintiff's exhibit, right?

13 A. It's an estimate.

14 Q. It's an estimate. But this was not -- this was
15 us -- these are your damages. You set forth an itemized
16 statement of all damages claimed to have been sustained.
17 And you submitted that invoice, did you not?

18 A. I didn't submit an invoice, we submitted an
19 estimate from ---

20 Q. You gave it to us in discovery, right?

21 A. This is true.

22 Q. Do you understand when I use the word discovery
23 what I mean by that?

24 A. I do.

25 Q. Okay. That's when we figure out what everybody

1 else has, right?

2 A. Yes.

3 Q. Okay. And that's not a plaintiff's exhibit, is
4 it? Correct?

5 A. No.

6 Q. Well, it's Defense Exhibit 9, right? Let's move
7 to Defense Exhibit 9. That is the estimate to which
8 you, a year ago, respond to our discovery request that
9 that was a, one of the itemized statements of damages
10 that CREH sustained, correct?

11 A. Correct.

12 Q. Now, you said one of the first things you said in
13 your testimony yesterday, you have two main companies,
14 Carolina Real Estate Holdings and who's the other one?

15 A. Decker Inspections and Contracts.

16 Q. Well, this is an invoice, Decker Inspections and
17 Contracting Services.

18 A. It's an estimate, it's not an invoice.

19 Q. This is an estimate of your one company to do
20 repairs for your other company.

21 A. Could have been for that particular position,
22 yes.

23 Q. Yes or no?

24 A. Yes.

25 Q. So, in this case, you would have been the payor

1 and the payee, right?

2 A. Yeah. I could have sent somebody.

3 Q. And you told us these were some of the damages
4 you just sustained, \$2700. \$2700 in drywall and paint
5 damages, right?

6 A. Yes.

7 Q. Mr. Decker, that is a fake invoice, is it not?

8 A. It's an estimate.

9 Q. That is a fake invoice.

10 A. It says estimate on the top.

11 Q. You told us in discovery that this was one of
12 your itemized statements of damages that you sustained.
13 This was a completely manufactured invoice.

14 A. It was at the time, and maybe it was confused
15 with one thing. It may be --

16 Q. You never did --

17 A. -- an invoice to an estimate.

18 Q. -- \$2700 of drywall -- Decker Inspections never
19 did \$2700 drywall repair and ---

20 A. If we did, it would say invoice. It says
21 estimate. It may have been produced as an invoice.
22 Maybe counsel can answer that or maybe somebody else
23 can. I can't, but I didn't make the estimate. And it
24 might have got produced in all these thousands of papers
25 that we did. We could have possibly given you an

1 estimate versus an invoice, because we thought all of a
2 sudden we were asked to do some work, or maybe we were
3 gonna do some work. I'd have to know, but it is an
4 estimate.

5 Q. You said -- was it your testimony just two
6 seconds ago that you didn't make this estimate?

7 A. No. Frank Jackson did that.

8 Q. Okay. Frank Jackson made this. Who's Frank
9 Jackson?

10 A. He's a CFO.

11 Q. CFO of?

12 A. Carolina Real Estate Holdings and Decker
13 Inspections.

14 Q. So Carolina Real Estate, or the CFO from Carolina
15 Real Estate Holdings --

16 A. Oh, Jesus.

17 Q. -- made a Decker Inspections invoice?

18 A. Why not? He's, he's a CPA, accountant,
19 accredited.

20 Q. So not only, Mr. Decker, do you make up charge
21 fake invoices or give the number of your preferred
22 vendor to fill in the blank for their invoice, you just
23 manufactured invoices and try and pass them off to the
24 tenant. Is that not what you did right here? Is this
25 not what you tried to do?

1 A. No. Nice try. No, that's not what ---

2 Q. What is it?

3 A. It's an estimate. At the time it was probably
4 for some repairs and painting in the warehouse. There's
5 a lot that goes onto that. I would say in that
6 particular case, it was estimated to do a repair, but
7 was never invoiced.

8 And maybe through all the discovery, it was given
9 to your team and my team and they -- you just said it
10 yourself. It's estimates, it's an invoice. You're
11 confused too. It says estimate. And maybe we got
12 confused on that item. We'll remove it. If that's the
13 end of the case and I'm the owner here, I'll pull it out
14 of my final say.

15 And if we end up winning this or you win, whoever
16 wins this, I'll put that out if we win, and we won't ask
17 your client to pay it. That's what I'll say here on the
18 stand. We did not pay anybody to do the work, and we
19 sent it to somebody as an estimate. That's all, that's
20 all it is.

21 Q. All right. I'm gonna wrap up in just a couple
22 minutes and we'll be done with this cross. All right.
23 Let's got to Plaintiff's 3, very quickly. This is your
24 default letter that you had your lawyer send, right?

25 A. Yes, sir.

1 Q. And here you are rattling off all these damages
2 back then. You've got the doors. You've got the door
3 quote in there. You've got the HVAC quote in there.
4 You've also got, if you look at page two of three, an
5 \$1800 quote to do some more drywall stuff. There's a
6 whole mess of quotes in here, right?

7 A. Yeah, supplied by counsel.

8 Q. And what triggered this is if we go all the way
9 back to those jersey barriers, is you shut Brilin down
10 and they couldn't use that ramp, so they went out and
11 hired a forklift where they could actually raise it up
12 to the loading bay and load and offload?

13 A. I don't even think you have a clue what happened
14 out there, buddy, I'm sorry.

15 Q. Well, do you have a clue what happened?

16 A. I do. I know exactly what happened.

17 Q. Don't you know that he rented a forklift?

18 A. He did the asphalt job and he couldn't use the
19 side door for a couple of days, so he decided on his own
20 merits, since he wanted to go get a forklift, to, to
21 reach into his back doors, the two dock doors. He
22 rented it for that purpose only. It was nothing else.

23 Q. Because he couldn't use the ramp, right?

24 A. Well, yeah, because we're doing new asphalt. We
25 closed it down for a few days.

1 Q. He's got vans and trucks. He doesn't have a
2 loading bay, right?

3 A. He's got a dock. He never once called me doing
4 the asphalt job and said, hey, can you help me? He had
5 30 people around that job site. I would have helped him
6 offload trucks. I would have helped him. I would have
7 had no problem.

8 Q. With what?

9 A. Listen. It was a couple of days ---

10 Q. What would you have uploaded and unloaded?

11 A. Whatever we could. Maybe we could have made a
12 temporary gravel ramp right there to assist him getting
13 out in the morning and asphalt it in the afternoon. But
14 he rented the forklift, and it's a big forklift, to
15 extend out and for whatever reason -- and it's in this
16 complaint that you're showing me. I don't see where
17 that's relevant. It has nothing to do with one or the
18 other.

19 It was unfortunate he didn't communicate, but
20 when you do an asphalt job, you need all cars and all
21 the stuff out off of it. And all the tenants knew. And
22 to preplan it, he should have put the stuff out the
23 night before and have it staged with a security guard or
24 asked us to watch it, or help us. I asked my team,
25 would you put a temporary ramp there to help him? They

1 go, yes, we would. We would have.

2 Q. You completely shut down his ability to use that
3 ramp --

4 A. Oh, come on.

5 Q. -- and you took away his ability to load and
6 unload until he went and got a forklift that cost him
7 \$1200 so he could load and unload in the bay.

8 A. He never asked. I would have helped him. We
9 have forklifts on the job. We're doing asphalt. We
10 could have used our forklift.

11 Q. What do you mean he could have asked? Would you
12 have credited him that amount?

13 A. I would have gave him a free forklift we were
14 using on the job site to offload the trucks. That's how
15 mysterious that whole forklift episode was. We were
16 there, and all the other tenants knew it. I know he had
17 a busy business. I get it.

18 Q. That's what triggered this default letter,
19 because he actually deducted a ---

20 A. No. There's probably a lot of things. I'd have
21 to go to counsel. The letter reads like it reads. It
22 means we're not communicating well enough to get to
23 where we need to go. And, please, come to -- as a
24 matter of fact, we sent it certified and you never
25 picked it up. We sent it twice. I pasted it on the

1 doors in yesterday's testimony. Right on the windows.
2 I got a call the next day, to my attorney. And then ---

3 Q. It affected the 1144.75 from his August rent
4 payment, and you didn't take your time with that, did
5 you?

6 A. Listen, we have protocol. When you deduct off of
7 rent without an explanation, somebody's --

8 Q. Yes or no.

9 A. -- gonna ask a question. I'm sorry.

10 Q. Didn't take too kindly to that, yes or no?

11 A. I didn't take -- I'm not taking kindly to it.

12 Q. Let's turn to Defense Exhibit 12. And go to the
13 second page, page two, Brilin (e)1.

14 A. Say that page one more time.

15 Q. Page two. It's defense exhibit 12.

16 A. I got ya.

17 Q. We're on the second page. So, do you see where
18 it says on August 12th, 2019, 11:45, Bryon wrote? It
19 says: Bryon Russell with Bryon Electric. Do you see
20 that?

21 A. Which two?

22 MR. WHITE: May we approach? May I approach?

23 THE COURT: Yes, sir.

24 THE WITNESS: Yeah, show me that.

25 BY MR. WHITE:

1 Q. Okay. It's right here. It's that line right
2 there.

3 A. I got ya.

4 Q. Okay. He's actually sent that to Frank?

5 A. Yeah. Actually, you can see Frank Jackson at the
6 top. Sent from iPhone, Frank Jackson. It said: Hey, I
7 got this from Brad, I'm not sure why.

8 Q. That's a text message from you saying this serves
9 as your eviction notice, due to short paid rent. Damage
10 to the property, both inside and out. Please be advised
11 that our attorney is taking all reasonable steps to
12 enforce the lease. So, here's you trying to kick him
13 out via a text message?

14 A. That's a text from me?

15 Q. That's what I -- yes, that is what ---

16 A. Or is that an e-mail from some ---

17 Q. Did you know that that's a text from you?

18 A. It says Frank Jackson's iPhone above, so it's not
19 me.

20 Q. Yes or no?

21 A. How am I Frank?

22 Q. Because Mr. Russell forwarded it to Mr. Jackson,
23 and he says, I just received this from Brad.

24 A. Well, I might have been communicating to Frank
25 and he forwarded it to them, that's fine. I was upset

1 that they kept doing things around the job site to at
2 the end of the point, I'm like, this guy's not
3 listening. He won't work with us. What do we do?

4 Q. Well, Frank says, how much was your August rent
5 check? So let's jump to page one.

6 A. Okay.

7 Q. Mr. Russell says, \$2,037.95, deducting for the
8 lift 1 -- 1144.75.

9 A. Okay.

10 Q. Should have sent you paperwork, but she paid
11 through ACH. Because they normally auto pay checks. So
12 just the checks come in the mail, right? So that's how
13 they did the rent?

14 A. I think so. I believe I've seen it in the
15 office. I don't handle the checks, so...

16 Q. Well, let's jump very quickly. We're gonna jump
17 right back to this, to Defense Exhibit 10. That's an
18 example -- that's the September 2019 rent check right?

19 A. Exhibit Number 10?

20 Q. Yeah. Defense Exhibit 10.

21 A. Yeah.

22 Q. That's what the checks normally look like, but
23 because they deducted that money, they did this one by
24 an ACH. Go back to 12, Defense exhibit 12 --

25 A. Right.

1 Q. Defendant's Exhibit 12. Mr. Jackson, along with
2 you, not too happy, the objection for the rental of the
3 lift during the paving project is a violation of the
4 terms of your lease, and that is why you sent the
5 eviction notice. So y'all -- y'all weren't crazy ---

6 A. I don't think it was that. I think it was a
7 multitude of things. It wasn't just about that.

8 Q. Oh, sure. So let's go to two. Let's go to that
9 lease.

10 A. And it's not official anyway, it's talk. It's
11 not official until it goes to a magistrate.

12 Q. Go to Plaintiff's Exhibit 2.

13 A. Just talk about an eviction.

14 Q. All right. We're gonna talk about paragraph 21.

15 A. Back to the lease?

16 Q. Back to the lease. Section 21.

17 A. Twenty-one.

18 Q. Let me know when you're there, Mr. Decker.

19 A. I will, but... what was the section again?

20 Q. Twenty-one. With the heading Pride and
21 Enjoyment.

22 A. Well...

23 Q. The one that: Tenant observes and performs a
24 covenant agreement said herein and shall at all times
25 during the lease, peacefully and quietly have and enjoy

1 possession of premises, subject to terms thereof. So,
2 when you shut down his ability to use his ramp, that's a
3 breach of the covenant applied during this lease.

4 A. No. We made a capital improvement and notified
5 the tenants and we acted within the leased parameters.

6 Q. You shut him down, you breached the provision of
7 the lease.

8 A. I never shut him down. You can still use the
9 ramp.

10 Q. You can say no.

11 A. No.

12 Q. Okay.

13 A. He could have drove over the ramp, up and down
14 the ramp on gravel.

15 Q. All right.

16 A. Just because asphalt's not there, doesn't mean he
17 can't get in.

18 Q. Let's jump up to 20. Landlord entry of premises.
19 On the lease, section 20. Landlord may have a cause of
20 premises, blah, blah, blah. Then it says: Landlord may
21 enter the premises upon prior notice at reasonable hours
22 to exhibit same for prospects and purchasers or tenants,
23 to make repairs for our landlord. For reasonable
24 business purposes and as otherwise this may be agreed by
25 landlord and tenant.

1 The only time you can come on there without
2 notice is for emergencies, per the lease. Yes or no?

3 A. Yes.

4 Q. Almost done. All right. We're gonna jump real
5 quick to a couple things. Now, there was an issue with
6 the October rent as well from the -- you all sent the
7 default letter in September '19. And then October '19,
8 there was an issue with the rent. You all couldn't find
9 the rent check, right? Remember that?

10 A. I don't know if they could find it.

11 Q. Go to ---

12 A. I was just told the rent didn't show up.

13 Q. Go to defense, let's do 11 real quick.

14 A. Defendant's Number 11. Got ya.

15 Q. Do you see that?

16 A. Yeah, I see it.

17 Q. Go to the second page.

18 A. Yes.

19 Q. See the checks?

20 A. Yeah. October 11th, 2019?

21 Q. That's a rent check you all said you couldn't
22 find, and then Brilin ACH'd over the rent for October,
23 right?

24 A. I don't know. I don't handle that.

25 Q. If you don't remember, say you don't remember.

1 A. I don't recall.

2 Q. Okay. You don't recall. Do you see where it
3 says stop payment?

4 A. From your -- from Brilin?

5 Q. Yeah.

6 A. Yes.

7 Q. Now, page one of defense, Defendant's Exhibit 11,
8 that's from your bank, right?

9 A. Bank of America, yes.

10 Q. Okay. And it says Carolina Real Estate Holdings,
11 LLC on there?

12 A. Yes, correct.

13 Q. You all tried to -- once you all actually found
14 that check in July, you tried to deposit that check on
15 July 27, 2020, right?

16 A. I believe it showed up later through the mail
17 service, or undeliverable or something. It got
18 misdirected. But it showed up at a later date.

19 Q. And I did misspeak. It was actually, the bottom
20 left there, July 23rd, 2020, once you all found that
21 check and tried to deposit it, right?

22 A. It came into the office through the mail, and I'm
23 sure they do what they always do, they put it in the
24 bank. It was a payment that was missing from the
25 defendant.

1 Q. But he paid you back in October by an ACH direct
2 deposit.

3 A. He may have, but it was just a corresponding
4 problem that we were having. We didn't get the check,
5 and then when we came back from our bank it said it was
6 stop payment, so we don't know what check numbers come
7 in every day and look to some sequence of stop payment.
8 Only Brilin gets to stop payment. We don't get to see
9 it.

10 Q. Right. He stopped the payment. We know that,
11 because that's what it says on page ---

12 A. Okay. Well, then he probably rectified at a
13 later date or not.

14 Q. Well, when you guys supposedly found this missing
15 check in July, a few months later, you tried to deposit
16 it, didn't you?

17 A. You say find, it probably turned up. You know,
18 the mail's not the most dependable thing. Brilin paid
19 his rent most of the time on time, so...

20 Q. You tried to deposit his check?

21 A. I did not try. Somebody in our office ---

22 Q. When I say you, I mean CREH.

23 A. I'm sure they deposited the check at some point
24 in time, yes.

25 Q. How many employees does CREH have?

1 A. Pardon?

2 Q. How many employees at this time does CREH have?

3 A. Frank was handling the checks, so it would have
4 went to Frank Jackson for ---

5 Q. No. Are you an employee of CREH?

6 A. I am.

7 Q. What about Wayne Schulte?

8 A. Yes.

9 Q. Was he an independent contractor?

10 A. Well, actually, Wayne was with Decker Inspections
11 and Contracting.

12 Q. Right. He was an independent contractor with
13 Decker Inspections, right?

14 A. No, he was an employee.

15 Q. Was he a 1099 or a salaried employee?

16 A. Salary.

17 Q. Okay. For Decker?

18 A. Yeah. He got a W-2.

19 Q. The only actual salaried employees was you and
20 Mr. Decker [sic], right?

21 A. No.

22 Q. Who else is there?

23 A. Man, you have no clue.

24 Q. Who else is there?

25 A. What do you mean?

1 Q. Who else is on the payroll for CREH?

2 A. What's the point?

3 Q. Just answer the question, Mr. Decker. Who else
4 is on the payroll? Who could have possibly -- the point
5 is, who could have possibly deposited this check?

6 A. Frank Jackson could have, because he actually
7 handles the books and the checks, and the remittances,
8 and the payments, and the taxes, and all the stuff that
9 office people handle with that kind of title. We're the
10 field guys. We get the mail and bring it to the office,
11 and then we do our job.

12 Q. So, after you've sued our client and you're
13 trying to go after him for all this stuff, you find this
14 check and you try to deposit it.

15 A. I'm assuming it came in. I'm assuming it came in
16 and it got deposited because, oh, look, there's a check.
17 Maybe they didn't even look at the top date. Oh,
18 Brilin's check.

19 Q. Who is they, Mr. Decker? The only employees are
20 you and Mr. ---

21 A. If Frank didn't see the top of the check date and
22 he's like, oh, I got a check and he went to reconcile it
23 against the books and saw the account was, I would say,
24 past due and a certain amount, he would have applied the
25 check.

1 Q. You and Mr. Jackson were just trying to get a
2 little extra money from the guy you had sued, right?

3 A. 36 checks Mr. Russell sent, and one check is what
4 we're gonna send over to the jury and try to figure out
5 if we deposit it or not late? Come on. It's a straw
6 you're trying to draw with me and I'm not gonna bite
7 into it. I didn't do anything to hurt Mr. Russell. It
8 came in late. I would have totally told him about it.
9 Even if he might have double paid me, we would have sent
10 him a credit back. We have an accountant. We're
11 accountable for this stuff too. We don't just get to
12 deposit people's money if they don't send it to us.

13 Q. So you think you buy it (inaudible) when you
14 couldn't find the check. And then when the check
15 magically shows up after you sued them, you tried to
16 deposit the check, yes or no? You can say no, it's
17 fine.

18 A. No.

19 Q. When I say you, I mean CREH.

20 A. I understand.

21 Q. Either you or Mr. Jackson as the natural person.
22 All right Defendant's Exhibit 15. We're gonna close on
23 the wall and we're done.

24 A. Okay.

25 Q. Are you there, Defendant's Exhibit 15?

1 A. Yes, sir.

2 Q. Okay. \$1800. That's the \$1800 that Brilin paid
3 back in 2019 to fix the Two Men And A Truck side of the
4 demising wall, correct? Yes or no?

5 A. That's a trick question.

6 Q. I don't know why that's a trick question.

7 A. Fix. I guess he did. That's what this says. I
8 didn't hire the guy, so I can't tell you what he did.

9 Q. Okay. You are aware that W&L did the repairs,
10 right?

11 A. Yes. They attempted to do the repairs.

12 Q. Well, and that is for the Two Men And A Truck
13 side. So in 2019, Two Men And A Truck side.

14 A. I don't know that it's for that side.

15 Q. And the plan ---

16 A. It doesn't say that it's for that side. That
17 invoice does not say that's for Two Men And A Truck
18 side.

19 Q. Well, it's from 2019, right?

20 A. It's from 2019.

21 Q. And it says: Labor to fix wall that had been
22 knocked out of bottom plate. See that?

23 A. Yeah, I see it.

24 Q. So everyone knew like something had happened to
25 the wall, even as far back as 2019, right?

1 A. Yeah.

2 Q. Nobody was trying to conceal that ---

3 A. No. I think Two Men And A Truck called us and
4 said, oh my God, this wall is blowing out really bad on
5 my side and I'm worried. It's a dangerous situation.
6 And that's when ---

7 Q. So what they did is they fixed all those bent up
8 drywall gypsum boards. Let's go to 16.

9 A. Well, wait a second. Bent drywall or gypsum
10 board?

11 Q. Well, one in the same. The gypsum board part.
12 Okay. Let's just go to defense -- Defendant's Exhibit
13 16. You can say I don't know to this question. That's
14 the Two Men And A Truck side and that's the 2019
15 repairs, right?

16 A. That's an open portion of the wall from the Two
17 Men And A Truck side, correct.

18 Q. Okay. And you can see the drywall and you can
19 see the insulation and you can see the alluminum stud,
20 right?

21 A. Correct.

22 Q. So you can see that on the other side of that
23 insulation is just gonna be the drywall on the Brilin
24 side, right?

25 A. Yes.

1 Q. So if you just pulled out some of that
2 insulation, you're just gonna see drywall?

3 A. And the other side of the stud. You only see one
4 side of the stud on this side, so you'll see the other
5 side of the drywall and the condition of the studs on
6 the adjacent side.

7 Q. Mr. Schulte, your property manager oversaw this
8 repair on the Two Men And A Truck side.

9 A. Not true.

10 Q. Right?

11 A. Not true.

12 Q. Not true? Okay.

13 A. Not true. He didn't oversee it. He let you have
14 access to it.

15 Q. He observed this being done, right?

16 A. Uh-huh. You took responsibility. You wanted to
17 touch it.

18 Q. He could have taken out some insulation and seen
19 what's going on with the studs at any time in 2019,
20 right?

21 A. That wasn't his job that day.

22 Q. He could have done that, right?

23 A. Maybe. You'll have to ask him.

24 Q. Now, let's compare that to this picture right
25 here. This is what it looks like on the Brilin side.

1 A. That's the wrong picture of where you're talking
2 about. That's ---

3 Q. No. This example right here shows where the
4 drywall has been banged up, right?

5 A. But that doesn't show you the actual wall that
6 we're talking about.

7 Q. I know, but that's just -- that's an example of
8 the banged up drywall, correct?

9 A. No. That's, that's the wall -- that's an example
10 of the wall that's on the opposite. It's a whole
11 different story. The rack to the right, that's not in
12 that picture. Is the wall we're talking about, which we
13 showed you yesterday with the impacted studs. Like one
14 side of the Coke can you dent and you look at it from
15 this side, it looks great, but the the other side is
16 dented.

17 Q. All right.

18 A. Two Men And A Truck looks great.

19 Q. Until once you actually start cutting into this
20 drywall, you really can't see what's going on, right?
21 Correct? You can't see the studs, you can't see the
22 insulation.

23 A. You can only see the damages from the picture,
24 correct.

25 Q. Right. And here's a picture. This is an

1 equivalent of a demo diagnostic in 2019, is it not?

2 A. I don't know what that is.

3 Q. When you say demo diagnostic, that's a fancy way
4 of saying cutting a hole in the drywall and seeing
5 what's going on, right?

6 A. We remove the products to see what's behind it.

7 Q. And then ---

8 A. On both sides.

9 Q. And in 2019 that happened?

10 A. Half the picture. Show me the other side of the
11 wall and we'll be done with this --

12 Q. Nobody's trying to conceal --

13 A. -- because that's not the other side.

14 Q. -- anything that might have been going on inside
15 that wall, right?

16 A. I think they are, but that's just for me and you
17 and this whole thing to debate.

18 Q. Then if you flip through the rest of ---

19 A. Show me the other picture to the other side of
20 the wall at the exact time that you repaired that side,
21 and we'll settle this today.

22 Q. Well, flip ---

23 A. You can't show me the picture because nobody took
24 a picture.

25 Q. Look through Defendant Exhibit -- 16 pages and

1 that's not just -- they literally did the entire wall.

2 A. They half-ass'd it.

3 Q. Watch your language, Mr. Decker, we are in a
4 court of law.

5 THE WITNESS: Sorry, Your Honor.

6 BY MR. WHITE:

7 Q. All right. But this is why I'm going down the
8 line section by section --

9 A. Show me the picture of the other side and I'll
10 answer.

11 Q. -- pushing the wall back so it's --

12 A. How did they push it back?

13 Q. -- long like they were shown yesterday --

14 A. How did they push it back?

15 Q. -- and put up new drywall. Isn't that what these
16 pictures show?

17 A. How do you push a 19-foot stud back? Tell me how
18 you did it. Show me your expert witness. Show me the
19 picture of the other side of those studs and I will
20 answer the question, but this is a half a story here.

21 Q. If we all just thumb through those, we can see
22 inside that drywall in 2019, right Mr. Decker?

23 A. You can see drywall, but you can't see the
24 damaged studs that you saw in the picture yesterday
25 because you're not bringing that picture up today

1 because that's pretty much gonna rest the case.

2 Q. Now, let's go quickly to Defendant's Exhibit 17.
3 I'm showing some of the asphalt damage. And that's a
4 good picture, although it kind of cuts it off, but that
5 shows the loading bay, right, in the back? There's the
6 Two Men And A Truck loading dock backed up to their
7 loading bay on that first page, right?

8 A. Correct.

9 Q. Okay. And that's all concrete pads where the
10 loading bays are, right? You kind of see if you go to
11 the next page you can actually see up and see the
12 loading bay garage doors, how they are elevated and that
13 you need either a forklift or an 18-wheeler to get
14 through? See those on that second page?

15 A. I do.

16 Q. But the concrete pads are there because you're
17 gonna be backing up heavy equipment and concrete is
18 better than asphalt in sustaining heavy equipment like
19 an 18-wheeler or like a forklift, right?

20 A. Obviously I can't say that is better, but one
21 would want to know -- hope it's better.

22 Q. Why do you got concrete pads for your loading
23 bays at your building, Mr. Decker?

24 A. They have asphalt ones too. It's by design.
25 Whoever designed this building designed it to use

1 concrete.

2 Q. I'm asking, why did you go with concrete pads or
3 asphalt pads? That's how it was when you got it, right?

4 A. It wasn't a choice at the time. I mean, we
5 designed it with a crew of people. We used the asphalt
6 guy and we talked to him, we said we're doing the front
7 parking lot and we came up with the methodology this is
8 what we want to do for the job. We don't want to mix
9 and match. Maybe it was probably a discussion besides
10 me, with maybe a project manager or somebody who was out
11 in the field with the asphalt guy and he said, hey, we
12 can do all this on asphalt and you'll get a really good
13 result and we'll warrant it, we'll service it, and no
14 problems. I get it. You hope for that. But concrete
15 cracks too, so I can't see that you can't say that a
16 heavy truck doesn't cut asphalt.

17 Q. Okay. Go quickly to Plaintiff's Exhibit 19.

18 A. 19?

19 Q. Yeah. That \$1800 invoice is exactly the same as
20 the \$1800 invoice Brilin paid to W&L Services to do the
21 drywall, right?

22 A. Excuse me, I want to make sure I'm on the right
23 one.

24 Q. Plaintiff's Exhibit 19.

25 A. 19. My 19 shows carpet. Am I missing something?

1 MR. WHITE: May I approach, Your Honor?

2 THE COURT: Yes, sir.

3 BY MR. WHITE:

4 Q. Plaintiff's 19.

5 A. Oh, sorry. Sorry. Yes.

6 Q. Okay. And that \$1800 invoice is exactly the same
7 as what Brilin paid W&L back in 2019 to fix the drywall
8 on the Two Men And A Truck side, right?

9 A. That's the amount on yours, yes.

10 Q. Labor and materials to repair damage to the wall
11 between Brilin Electric and Two Men And A Truck caused
12 by your careless forklift operator. See that?

13 A. Correct.

14 Q. And, you again, Carolina Real Estate Holdings
15 billing this to Brilin Electric, right?

16 A. Yeah. There might have been discussions with
17 Wayne or somebody to do something and we never did it,
18 but that was -- we were going to invoice that amount to
19 make the temporary repair.

20 Q. This isn't a damage you're claiming here today,
21 is it?

22 A. No, not at this time.

23 Q. It's another just made up invoice?

24 A. No. It was probably asked and estimates and
25 invoices may have been something we asked for. So they

1 invoiced me, we'll get it fixed and you guys do it. I
2 would have to ask Wayne or Frank what that actually came
3 from, but we didn't do the work so it's a moot point,
4 you're right.

5 Q. Why did you make an invoice then?

6 A. It's probably something you can ask one of the
7 other witnesses that might be able to answer that. I
8 can't answer that.

9 MR. WHITE: Nothing further for this witness,
10 Your Honor.

11 THE COURT: Ladies and gentlemen, thank you very
12 much for your time while we did the cross-examination.
13 I'm gonna let you take a break. Leave the books either
14 in the floor or in your chair. I'll remind you of the
15 two ongoing instructions. Don't have any discussions
16 among yourselves or anything involving the case. Do not
17 do any type of independent research or investigation or
18 anything involving the case. You may go with the
19 bailiff and we'll get you back here just shortly.

20 MR. DLUZNESKI: May I approach?

21 THE COURT: No.

22 (Jury leaves courtroom at 11:22 a.m.)

23 All right. I just need to remind you, you remain
24 under the process of giving testimony, so don't have any
25 discussions with anyone about anything involving the

1 substance of your testimony, but you may step down.

2 Now, you want to approach?

3 (Witness leaves witness stand.)

4 MR. DLUZNESKI: I just want to get the discovery
5 document.

6 THE COURT: Uh-huh. We can make that a Court's
7 Exhibit to the proceeding. All right. We'll step down
8 for a few minutes.

9 (Court's Exhibit Number 1, Discovery Document,
10 was marked for identification.)

11 (Court's Exhibit Number 1 was entered into the
12 record.)

13 (Recess was had from 11:23 a.m. - 11:44 a.m.)

14 THE COURT: Okay. Let's bring them on in. Sir,
15 do you want to come on back up here? Mr. Decker, just
16 come on back up here.

17 (Witness resumes witness stand.)

18 I need to remind you, you're still under oath,
19 okay?

20 THE WITNESS: Yes, sir.

21 (Jury enters courtroom at 11:44 a.m.)

22 THE COURT: Plaintiff ready for his redirect?

23 MR. DLUZNESKI: Yes, Your Honor.

24 THE COURT: Limited to what he went into, please,
25 sir.

1 MR. DLUZNESKI: Yes, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. DLUZNESKI:

4 Q. Mr. Decker, there's just -- I want this redirect
5 to be brief, if we can make it. So, I just have a few
6 issues that Mr. White covered with you on cross that I
7 want to follow-up on.

8 A. Okay.

9 Q. The first one is Mr. White started out by talking
10 with you about the thickness of the asphalt and the
11 Countywide Commercial proposal.

12 A. Right.

13 Q. All right. Now, did you tell or discuss at all
14 with Countywide Commercial what the property was being
15 used for when you solicited those proposals?

16 A. Yes.

17 Q. All right. And what did you tell Countywide
18 Commercial that that property was being used for?

19 A. For warehouse and flex space and, you know,
20 traffic. You know, the basic stuff.

21 Q. All right. So at the time that Countywide
22 prepared the proposals that Mr. White asked you about,
23 Countywide Commercial was aware that there was traffic
24 coming and going through that property?

25 A. Say that again.

1 Q. At the time that you solicited the proposals from
2 Countywide Commercial that Mr. White asked you about on
3 cross, you had already discussed with them that that
4 property had traffic coming through it?

5 A. I did.

6 Q. Okay. All right. And who determined the
7 thickness of the asphalt, you or Countywide Commercial?

8 A. Countywide.

9 Q. Okay. And did Countywide discuss those opinions
10 with you?

11 A. Yeah, we discussed that.

12 Q. Okay. And did you rely on those specs that
13 Countywide provided?

14 A. I did.

15 Q. Okay. All right. Now, how often does CREH use
16 County Commercial as a vendor?

17 A. Periodically. The asphalt typically lasts quite
18 a while. And then when it starts to wear out we do seal
19 coating, which was the next process. Probably most
20 people see it as a black coating and spray it over the
21 parking lot to get a little bit more time out of the
22 original.

23 Q. All right. Now, very briefly, tell us why CREH
24 uses Countywide Commercial over maybe other vendors for
25 parking lot repaving, those types of things.

1 A. Trusted vendor. You know, I felt good about
2 them, confident in their abilities. The people were
3 responsive, timely. Showed up when they said they'd
4 show up. All the things we all would like to have when
5 you hire somebody. And it could work within our
6 schedule at the time. And the pricing, we quoted out,
7 like we do in some places. We'll spot check things
8 every once in a while. And time when it's -- you do
9 that at points when you have time, especially on a big
10 project like that. An undertaking, which is in the six
11 figures. We were trying to figure out which way to go
12 and we ended up using them.

13 Q. All right. Now, let's move on to those rollup
14 doors that Mr. White asked you about. And I want to
15 specifically look at Plaintiff's Exhibit 25 in the
16 binder. And put your thumb there, along with Defense
17 Exhibit 1.

18 A. Okay.

19 Q. All right. Now, to orient the jury, Plaintiff's
20 Exhibit 25 is the e-mail from Joshua Montoya that we
21 talked about yesterday, right?

22 A. Right.

23 Q. Okay. And Defense Exhibit 1 is the estimate or
24 invoice from Southern, correct?

25 A. Yes. On theirs, yes.

1 Q. Okay. So -- and from the Southern invoice, what
2 model of the rollup doors was Brilin proposing?

3 A. From Southern?

4 Q. Yes.

5 A. They were reporting a model 5501 sheet door color
6 buckskin.

7 Q. Okay. Now, if we flip back to Plaintiff's 25,
8 the e-mail from Mr. Montoya, did Mr. Montoya consider
9 Brilin's proposed doors, in his opinion?

10 A. No.

11 Q. He did not?

12 A. Well, he put them -- he put apples to oranges.
13 So he looked at them against what Overhead Door wanted
14 to use versus what Southern Door was proposing, because
15 I got involved with all these guys to figure out what's
16 the best, because obviously the tenant sent us an
17 estimate to replace some doors, but I didn't know
18 anything about the type of doors he was using, so I had
19 to trust Montoya was my go-to guy to figure it out in
20 the application that was being used.

21 Q. All right. So if we're looking at the doors,
22 apples to apples, which model of door did Mr. Montoya
23 say would be the most appropriate one for Brilin's
24 leased space?

25 A. Well, he specs it out right here. Which one is

1 better, it's a great product for the application, but
2 it's not suited for a commercial every day use. It's
3 more of a mini storage warehouse, is how he explained it
4 to me when you go to like Pointing Star or one of those.
5 They're not -- their doors are good for that
6 application, but wasn't equal to what we had, is what
7 was explained to me. So, that's where the difference
8 went of why I was trying to get Overhead Door to be
9 recognized when we said, hey, we've got a guy that's
10 gonna do it, because he's telling me it's not apples to
11 apples or oranges to oranges. There was a difference.
12 And he figured those guys would have picked up on it,
13 but that's all I was told.

14 Q. All right. Now, before we move away from Defense
15 Exhibit 1, those two line items, they add up to more
16 than \$3,000?

17 A. Yes.

18 Q. All right. So, under the terms of the lease
19 agreement, Brilin had to solicit CREH's approval in
20 order to install those doors?

21 A. Correct.

22 Q. Now, you indicated on cross that you did not
23 approve the doors that -- you indicated to Brilin that
24 you did not want those doors installed. Why not?

25 A. Because I was in the motions of figuring all this

1 out, what was the best use. And I called Southern Door
2 and they also said there was a better door at the time,
3 but this is the door they chose to use. He said it was
4 a quality door, but at the same time I tried to ask him,
5 well, Overhead's saying another door. The Southern door
6 is one that Mr. Russell used. He said, they're already
7 ordered and, you know, that's what we're doing, but he
8 hadn't installed them yet.

9 And I was just like a little taken back. Wait a
10 second, you already ordered the doors when we're talking
11 about the doors? So, how come I don't get a choice?
12 I'm supposed to get a choice, I thought, but I didn't
13 get it.

14 Q. All right. Let's turn to Defense Exhibit 4,
15 which is the McGee Brothers invoice.

16 A. Okay.

17 Q. Now, that line on -- there's only one line item
18 on that invoice; is that correct?

19 A. Yes.

20 Q. Okay. And the line item reads: Repair broken
21 brick at garage door for \$280.

22 A. That's correct. That's what it says.

23 Q. Does it include anything about inspecting the
24 lentil that you told us about yesterday?

25 A. No.

1 Q. Does it talk -- does it include anything related
2 to inspecting the interior of the door behind the brick
3 regarding the structural aspect?

4 A. No.

5 Q. Okay. So, this McGee Brothers invoice is just
6 for the broken bricks?

7 A. Correct.

8 Q. Okay. Whereas, if we look at the Philemon
9 invoice that we saw yesterday, that covered inspection
10 as well, did it not?

11 A. It did.

12 Q. Okay. All right. We talked about the partition
13 wall a lot already during this trial. Regard -- one
14 aspect regarding the partition wall, did Brilin ever
15 even offer to participate or assist in any repairs to
16 the partition wall?

17 A. With us?

18 Q. Yes.

19 A. No.

20 Q. Okay. After you did the, what you call, the demo
21 diagnostic and you knew what the damages were, did
22 Brilin offer to assist or participate in any repairs to
23 the wall at that point?

24 A. No.

25 Q. Okay. All right. Let's look at Defense Exhibit

1 16. And this is the last thing that we're gonna talk
2 about. Defense Exhibit 16 is the, I believe what you
3 termed, the temporary repairs.

4 A. Correct.

5 Q. Okay. And the temporary repairs you testified
6 were made on the Two Men And A Truck side, the opposite
7 side of the wall to Brilin?

8 A. Correct.

9 Q. Okay. Were you present when any of these repairs
10 were made?

11 A. I was not.

12 Q. All right. Were you present when the drywall
13 that we see in Defense Exhibit 16 was pulled off?

14 A. No.

15 Q. Do you have any idea of the condition of the
16 metal studs at that time?

17 A. I do not.

18 Q. Okay. So after the dry -- the temporary repairs,
19 what we see in Defense Exhibit 16 were made, the
20 sheetrock was replaced? The drywall -- the wall was
21 covered back up?

22 A. Correct.

23 Q. Is that correct?

24 A. Yes.

25 Q. Okay. Did Brilin or W&L, the one that Mr. White

1 talked to you about, the company that made the repairs,
2 ever tell you anything about the condition of the
3 interior of the wall after the wall was covered back up?

4 A. No.

5 MR. DLUZNESKI: Okay. All right, Your Honor, I
6 don't think I have anything further for this witness.

7 THE COURT: All right. Thank you very much.
8 Thank you, sir, you may step down. Watch your step as
9 you're stepping down, sir.

10 THE WITNESS: Yes, sir.

11 (Witness leaves witness stand.)

12 THE COURT: All right, ladies and gentlemen,
13 conferenced with the lawyers about scheduling and it
14 seems -- I know you just had a break. Well, you get to
15 have another break. I'm gonna let you take your lunch
16 break at this time. I'm gonna remind you of two ongoing
17 instructions. Do not have any discussions with anyone
18 about anything involving the case, including yourselves.
19 And do not do any type of independent research or
20 investigation in anything involving the case.

21 Now, you've heard testimony. You've probably
22 have heard some locations. If by chance you go to lunch
23 and say, well, I just might drop by that place. No,
24 don't do that. That would be a violation of my
25 instructions to you. It prohibits you from doing any

1 type of independent research or investigation.

2 Thank you very much for your patience and your
3 service this morning. Taking a look at the clock back
4 there on the wall, I'm gonna use that. I'm gonna ask
5 that you would, please, be back in the jury deliberation
6 room. Is 1:30 sufficient counselors?

7 MR. DLUZNESKI: Yes, Your Honor.

8 THE COURT: I ask that you be back in the jury
9 deliberation room by 1:30 and we will resume with the
10 presentation of the case. You can just leave those
11 books in the chair or on the floor. Thank you very
12 much. You may go with the bailiff.

13 (Jury leaves courtroom at 11:56 a.m.)

14 Anything else before I step down?

15 MR. DLUZNESKI: Nothing, Your Honor.

16 MR. WHITE: No, Your Honor.

17 THE COURT: Thank you very much. We'll see you
18 all shortly.

19 (Lunch recess was had from 11:56 a.m. - 1:36
20 p.m.)

21 THE COURT: Okay. I'm told that all of the
22 jurors have returned. Is the plaintiff ready to call
23 their next witness?

24 MR. DLUZNESKI: We are, Your Honor. I just
25 wanted to take this opportunity before the jury comes

1 back in to put something on the record. Two of the
2 witnesses that plaintiff is going to be presenting this
3 afternoon, Mark Robinson and John Abernathy, we intend
4 to present as expert witnesses. I discussed with
5 defense counsel prior to the lunch break if the defense
6 would stipulate to Mark Robinson being qualified as an
7 expert witness in general contracting and John Abernathy
8 being qualified as an expert witness in structural
9 engineering. And it's my understanding that defense
10 counsel agrees to stipulate to those qualifications and
11 we would ask that the Court give the jury the proper
12 instructions under rule 702 as to expert witnesses.

13 THE COURT: All right. Robinson is general
14 contractor?

15 MR. DLUZNESKI: General contracting.

16 THE COURT: General contracting.

17 MR. DLUZNESKI: And then, John Abernathy is
18 structural engineering.

19 THE COURT: Okay. And that's your understanding
20 of the agreement as well?

21 MR. WHITE: Yes, Your Honor, we'll keep it
22 moving.

23 THE COURT: Okay.

24 MR. WHITE: Get up and get that out of the way.

25 THE COURT: What I'll do is when you present the

1 witness, offer the witness, when you get to that point,
2 you would like to now offer the witness as an expert in
3 general contracting. Then I will tell the jury what an
4 expert witness is.

5 MR. DLUZNESKI: Okay. So, the Court would like
6 us to go through the litany of questions that apply ---

7 THE COURT: No. No. You can just say, this
8 witness is being presented as an expert witness in
9 whatever, you know? Then I'll tell them about what an
10 expert witness is and what they're to do with it.

11 MR. DLUZNESKI: Yes, sir. Okay, fair enough.

12 THE COURT: Thanks for alerting me.

13 MR. DLUZNESKI: Absolutely.

14 THE COURT: Okay. Anything else before we bring
15 the jury in?

16 MR. DLUZNESKI: No, Your Honor.

17 THE COURT: Okay. Let's bring the jury in.

18 (Jury enters the courtroom at 1:37 p.m.)

19 THE COURT: Is the plaintiff ready to call their
20 next witness?

21 MR. DLUZNESKI: We are, Your Honor. Before we
22 do, can we approach?

23 THE COURT: Sure.

24 (Bench conference was held off the record.)

25 MR. DLUZNESKI: Your Honor, plaintiff calls next

1 exhibit -- or the next witness, who is Mark Robinson.

2 THE COURT: Mr. Robinson, come on up here, if you
3 would. Let the clerk of court swear you in, just right
4 in front of me.

5 THE CLERK: Would you, please, place your left
6 hand on the Bible and raise your right. Do you solemnly
7 swear or affirm the testimony you give today will be the
8 truth, the whole truth, and nothing but the truth so
9 help you God?

10 THE WITNESS: I do.

11 THE CLERK: Thank you. Please be seated.

12 THE COURT: Sir, come right over here and have a
13 seat in the chair. Careful stepping up, and just be
14 sure you speak into the microphone.

15 THE WITNESS: Yes, sir.

16 MR. DLUZNESKI: And, Your Honor, this is a
17 witness that has been stipulated between the parties as
18 an expert witness in the area of general contracting.

19 THE COURT: All right. Thank you, sir. Ladies
20 and gentlemen, normally a person cannot give opinion
21 testimony. Normally when a person testifies, they must
22 testify as to what either they saw, heard, or sensed by
23 smell or something of that nature. However, there is an
24 exception when someone is qualified because of education
25 or experience.

1 They are permitted to give their opinion in
2 certain areas if the Court qualifies them that way.
3 This witness will be qualified in the area as a general
4 contractor to give opinion testimony in that area. Now,
5 that does not mean that you must accept the opinion, but
6 it is evidence for you to use in any way that you see
7 fit.

8 MR. DLUZNESKI: Thank you, Your Honor.

9 THE COURT: Uh-huh.

10 MARK PRESTON ROBINSON,
11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. DLUZNESKI:

14 Q. Mr. Robinson, could you, please, state your full
15 name for us for the record?

16 A. Mark Preston Robinson.

17 Q. Okay. Do you understand why we're all in this
18 courtroom this week?

19 A. Most definitely.

20 Q. Okay. Tell us what your understanding is about
21 why we're all here.

22 A. Well, what I was part of is a wall got damaged, I
23 was called in, and I was supposedly supposed to come
24 down and give my opinion on the wall and what we needed
25 to do to fix the problem.

1 Q. Okay. When you're talking about the wall, are
2 you talking about what we referred to this week as the
3 partition wall or a demising wall?

4 A. Yes. It basically separates two tenants so they
5 can't get from one space to the other.

6 Q. Okay. Now, other than a demising wall -- and
7 before I ask you that question, let me ask you this one.
8 The demising wall that you were contacted about, where
9 was the demising wall located?

10 A. It was between Two Men And A Truck and between
11 Brilin Electric.

12 Q. Okay. So other than the demising wall inside the
13 building that Brilin Electric previously occupied, did
14 you have any other dealings or involvement with anybody
15 else associated with this lawsuit?

16 A. Well, I mean, I came -- are we talking about
17 before this or just on the job?

18 Q. On the job.

19 A. Okay. I was called before then and came down.
20 And I guess the wall got knocked out before then and I
21 was called earlier that morning and we were working and
22 Mr. Schulte called me and said, hey, can you come down
23 here? This wall's been knocked out pretty far, I need
24 to know what we need to do. By the time I got there, I
25 don't know what company or what people because they were

1 on the other side working. I walked into Two Men And A
2 Truck side and basically the wall -- hearsay, but the
3 wall was knocked back into place on Two Men And A Truck
4 side to be pushed back.

5 Q. Okay. All right. So, what you just told us
6 about, is that the first time that you became involved
7 in this matter with respect to the partition wall?

8 A. Oh, most definitely. Yeah, that was the first
9 time.

10 Q. Okay. And when was that?

11 A. I don't have a clue. It was way before Brilin.
12 got out of its lease.

13 Q. Okay. So it was during Brilin's lease term?

14 A. Oh, most definitely, yes.

15 Q. Okay. And when you, when you came down to the
16 property to look at the demising or the partition wall,
17 who did you meet up with when you arrived?

18 A. Well, I was going -- I pulled into the parking
19 lot and I was going into the Brilin Electric side
20 because that's what I was told on the phone. And then
21 Wayne Schulte caught me outside and said, hey, you can't
22 go over there. And, you know, I didn't say anything.
23 Okay, and then I walked into Two Men And A Truck side.
24 And that's where, golly, the owner of Two Men And A
25 Truck was there, and Wayne Schulte. And I'm like, so

1 what do we got to do? And he said, well, they took and
2 beat it back into place and that's what they done.

3 And I'm, you know, kind of puzzled because it was
4 a 20-foot wall. I mean, it's pretty heavy. So I was
5 just like -- and then the words that was, we're not
6 allowed to be on that side of the wall. And I was like,
7 okay, this makes no sense.

8 Q. And when you were told that you were not allowed
9 to be on that side of the wall, what side of the wall
10 are you referring to?

11 A. Brilin Electric.

12 Q. Okay. Were you able to get in? Did Brilin
13 Electric allow you in to look at the time?

14 A. I didn't ask because basically, I guess, there
15 was some bad blood or something between Wayne and them.
16 And so I just basically just stepped back and was just
17 like, okay just call me and let me know when, you know,
18 we can fix it. Because I told Wayne, I said that, you
19 know, there's no way. If that wall got hit that hard,
20 it's suffered some grave consequences.

21 Q. All right. So, tell us about what you observed
22 with respect to the demising wall or the partition wall
23 during that first visit.

24 A. Well, basically what they done is some of the --
25 the wall got pushed out, and the sheets are 4 by 12's.

1 So what it done, it just pushed out sheets and broke the
2 joints apart. So it pushed them out. And then when I
3 got there, the wall had been pushed back. And there had
4 been some patches, some new sheetrock. And then they
5 had patched up where the sheets had been pushed out.
6 And so that's basically what I seen on the first on that
7 side. And the scuffs on the floor, because you could
8 see the wall came way -- I mean, if I had to -- I'd say
9 it was 12 to 16" pushed out.

10 Q. Okay. Was the wall what we would call plumb at
11 that point?

12 A. Of course not. It was, I mean, they took a
13 140-foot wall and they beat it back with a -- I was
14 told. I didn't see what they beat it back with, but I
15 was told like a 4X4 and a sledge hammer and they beat it
16 back into place and the wall, it just looked like a
17 snake. It was just, you know?

18 Q. And when you say they, who are you referring to?

19 A. I'm assuming whoever Brilin Electric got to come
20 in to fix it.

21 Q. Okay. All right.

22 A. I did not see anybody on this side of the wall.
23 Apparently they were still working on the other side.

24 Q. Okay. So, the side, just so it's absolutely
25 clear, the side of the wall that you were on, was

1 Brilin's neighbor, Two Men and And A Truck?

2 A. Yeah. I never got to see the other side of the
3 wall until the tenants moved out.

4 Q. All right. So, after you looked at the wall from
5 the Two Men And A Truck side, what concerns did you have
6 about the wall at that time?

7 A. Well, my concern is when you hit a wall like that
8 and you push it out, there's pins that are shot into the
9 floor that hold the track in place. And me, if the wall
10 was that crooked, they got sheared off. So the wall, if
11 you're just beating back into place, you're just
12 basically beating the studs back that had already been
13 compromised.

14 When you take a stud and you take a -- it's
15 pretty rigid when you got it in its natural form. But
16 if you take and kink it, bend it, or put any kink in it,
17 there's no strength to the stud. So, you know, there's
18 nothing in the floor that is shot into the floor that's
19 holding this wall back in place. At that point, if the
20 wall got pulled out like it did, then there's stuff up
21 in the ceiling that's shot in there that holds it into
22 place.

23 So, me thinking, okay, well this wall's just
24 sitting here, it basically got beat back into place and
25 is basically engined on the ceiling not knowing if it's

1 gonna fall or not. So, on their side, my understanding
2 was there was racks on their side. So, there's, you
3 know, it can't come down on their side, but it could
4 have come down on Two Men And A Truck side.

5 Q. Now, in terms of how big of a wall we're talking
6 about, how much would you estimate that this partition
7 wall weighs?

8 A. Well, as a matter of fact, I took, before I met
9 with Bryon and the attorney, I had taken and estimated
10 the weight and it was between 9 and 10,000 pounds, give
11 and take. And, you know, that's where the conversation
12 dividing wall or demising wall, it don't matter. When
13 you put 10,000 pounds 20-foot tall over somebody's head,
14 if it comes down it's gonna kill you.

15 Q. Okay. So based on what you saw in your first
16 inspection of the wall, on the Two Men And A Truck side,
17 what, if anything, did you recommend be done about the
18 wall at that time?

19 A. Well, I did not talk to Wayne about it. I called
20 Brad. And I told Brad at that time, I said, this is a
21 very dangerous wall. Somebody's gonna end up getting
22 hurt. And Brad said I know, I know, you know, we're
23 kind of stuck in a situation and I don't -- I just gotta
24 keep doing what I'm doing. And, you know, I was kind of
25 just taken, because I've worked with Brad on some of his

1 properties and he's very conscious about his properties,
2 very conscious. He's always worried about what they
3 look like, what the appearance is, and he takes very
4 good care of his properties.

5 Q. Okay. All right. So after your first visit to
6 inspect the demising wall, did you have occasion to
7 return to Brilin's lease space to do anything else
8 related to the wall?

9 A. We returned the day after his lease. Brad had
10 called me a week before and said is there any way you
11 can meet me down here so we can walkthrough this space
12 because of the wall. And I told him, yeah, that was
13 fine. And at that time I met Brad Decker and yourself
14 on the job when the door was first unlocked the day
15 after his lease.

16 Q. Okay. So the day after Brilin's lease term ended
17 was the first time that you were able to get into Brilin
18 Electric's side to look at the wall?

19 A. Well, at that point that's when I was asked to
20 come back.

21 Q. Okay.

22 A. Yes.

23 Q. All right. So, tell the jury, if you would, what
24 happened when you returned to inspect the wall for the
25 second time.

1 A. Well, I actually came in to inspect pretty much
2 everything because that's what I do. We came in and we
3 looked through and we walked through. And, you know,
4 the walls, everything in the place looked good. I mean,
5 you know, it had an odor, so I noticed that right off.
6 Brad noticed it. We kept walking through and I mean
7 they done a pretty decent job. But when I got all the
8 way through, I started looking and that's when I got to
9 the wall. And, you know, at that time I was kind of
10 like, okay, looking at it. And it -- the phrase, put
11 lipstick on a pig, that's basically what happened. He
12 took and put sheetrock mud over and replaced pieces.
13 So, when I walked in, there was just big chunks here and
14 there where they had taken sheetrock and put back over
15 and screwed it into place and mud it over and made it
16 look good. I mean, that's what the purpose was.

17 Q. Now, let me stop you there and ask you, when you
18 say they, they put sheetrock back up and, you know, did
19 the work on the wall, who, who was the they that you're
20 referring to?

21 A. Oh. My understanding, Brilin Electric done it.

22 Q. Okay.

23 A. I can't say Bryon done it because, you know, he's
24 like Brad. He tells people to do stuff and that's what
25 happens.

1 Q. Okay. All right. So, what did you observe about
2 the wall during your second visit to the property?

3 A. Well, the first visit is when I felt the wall.
4 That was with yourself and Brad. And it was, you could
5 put your hand on it and it would -- shaking. I mean, it
6 was pretty much I didn't even want to be around it.

7 The second time we came in, Brad instructed me, I
8 need to know what's going on with the wall. I said,
9 okay. I said -- well, he asked my opinion what I needed
10 to do. I said, well, first off, we need to just go to
11 everywhere that the sheetrock's been put on. We need to
12 take those off and we need to see what's going on.

13 So, me and my employees went down and that's what
14 we done. We went and started searching for, you know,
15 if there was something the matter with the wall. And
16 there's pictures that show where it had been patched.

17 Q. Now, let me stop you there. When you say that
18 you pushed on the wall and there was movement. How much
19 movement? How many inches? Give us an idea of how much
20 movement there was when you went up and actually pushed
21 on this wall?

22 A. I would say there was anywhere between an inch to
23 three inches. That's a lot. That's a lot.

24 Q. So, based on your experience, was that concerning
25 to you?

1 A. I didn't want to be in the room.

2 Q. Okay. All right. What did you recommend at that
3 time, during the second visit after Brilin had vacated?

4 A. Basically the second visit when I came in is when
5 we cut open the holes and we started looking around at
6 what was going on. And then at that point we uncovered
7 everything you've seen in the pictures where the studs
8 were just beat. I mean, and you could tell it was a, it
9 was a sharp object. So that point blank told me that it
10 was a forklift, the tong on the forklift basically went
11 in and sheered, sheered some off, sheered some sideways,
12 but it comes to the same thing. As soon as you take a
13 stud and you bend it, it's no good. Well, it's junk.

14 Q. Now, give the jury some idea of how durable these
15 studs are that there was some mention on the defense
16 side during opening that these are alluminum studs. Are
17 these studs alluminum or are they made with some other
18 material?

19 A. They're not alluminum, they're of steel.

20 Q. They're steel studs? Okay.

21 A. Yeah, they're not alluminum. We don't build
22 studs out of alluminum.

23 Q. Okay. All right. So we're talking about steel
24 studs that were, in your words, bent and twisted?

25 A. Yeah. I mean, when something -- you figure the

1 forklift that they have in there picks up about 4,000
2 pounds, so the weight on the back of it has to counter,
3 so it's a 7,000 pound weight. So, when you take and
4 you, you hit something like that, I mean, they took,
5 they took 9,000 pounds and knocked it out 16 to 18
6 inches. That tells you they're a pretty good force.
7 Plus they had shelves in front of it, so that means they
8 had to move the shelves too. So, you know, I mean, it
9 wouldn't take much for to take a forklift and drive it
10 through a wall.

11 Q. Okay. Now, before you opened -- before you --
12 how much of the wall did you expose? In other words,
13 how much sheetrock did you remove from the wall?

14 A. We probably, maybe 25 percent at first. And then
15 at that point I called Brad, Mr. Decker, and asked him
16 -- told him that we needed to get an engineer because I
17 basically, in my expert opinion, I could have went in
18 there and done what we done. But my problem with the
19 whole project was the liability comes back on me if I
20 just patch it. So, that was my problem with the whole
21 deal, was a patch is a patch, and if somebody gets
22 killed, I want somebody to stand behind me saying that,
23 yeah, you done it right.

24 Q. Okay. All right. So after the structural
25 engineer became involved, did the structural engineer,

1 who we'll hear from next, Mr. John Abernathy, did he
2 come out and do an inspection of the wall?

3 A. Yeah. When we took down the first 25 percent --
4 25 to 30 percent of the wall, I called Brad. He called
5 Mr. Abernathy and Mr. Abernathy met me on the job, but
6 this was before we done anything. And basically, we had
7 a scissor lift there and I let him take -- get on the
8 scissor lift or I drove the scissor lip and took him to
9 every hole in the wall and we looked at it. And, you
10 know, basically at the end of it I said, what do you
11 think? He said, that's not good.

12 Q. All right. So, did you ever remove -- you
13 indicated that you removed about 25 percent of the
14 sheetrock from the wall to be able to see the interior
15 components of the wall. Did you remove any more than 25
16 percent?

17 A. Nope. After Mr. Abernathy got finished with the
18 first one, his words were we need to see the whole wall
19 to see what happened. So, I think within two or three
20 days we took the complete -- well, hold on, not the
21 complete. We left about two sheets at this end and none
22 on the other end. So, basically, I would say 4X20 feet
23 on one end, because nothing ever got hit down there.

24 Q. Okay.

25 A. We're not gonna tear apart something that don't

1 need to be torn up.

2 Q. Okay. So in removing the sheetrock from this
3 wall, did you just do that on your own or were you
4 relying on Mr. Abernathy? How did you determine how
5 much of the sheetrock to remove?

6 A. Mr. Abernathy said we need to look at the wall to
7 make a conclusion of what needs to happen. So, as soon
8 as I finished with him, I called Brad, a Mr. Decker and
9 said, hey, Mr. Abernathy said he needs to look at it.
10 He said, whatever he tells you to do, let's get it done.
11 So we removed the sheetrock. And then when we removed
12 all of the sheetrock, it was even worse than we thought.

13 Q. All right. So tell us what you mean by that.
14 What did you see in the interior structural components
15 of the demising wall that gave you particular concern?

16 A. Well, okay, so, so after we finished taking the
17 wall down, the wall was -- most of the -- if you take
18 studs and you put them on concrete and it's called a
19 track, you run the track the length of the building
20 front to back and you put, basically a nail, but it's a
21 shot. It's a concrete nail. We take and shoot those
22 in, in between every stud, all the way down through the
23 building. I would say 25 to 30 percent of those were
24 missing in the floor. And mostly where the wall got
25 hit. So, basically, they didn't shoot it back in the

1 floor. They beat it back into place, but they didn't
2 shoot it back in the floor.

3 Well, after that I'm sitting here going, oh, my,
4 because what happens is those studs, they're screwed in
5 the bottom. It's a track. And then the stud comes in
6 the top here and they're screwed here and here on both
7 sides. So, the track shot into the floor.

8 So, up top there's another track and it's shot
9 into the, the beam. So, then we look at the bottom and
10 I'm like, this is not good. A track had been, you --
11 could tell that they took and beat the track back over,
12 because what they done is some of the track stayed on
13 the floor and the studs went out. So they pushed the
14 studs back in and beat the track back together.

15 Well, there again, as soon as you take and you
16 bend a piece of metal, the strength's not there anymore.
17 So, then we took -- I took the lip, I go up top. And
18 I'd say 15 to 20 percent of those were out. The shot in
19 the ceiling. So, basically the wall was holding up
20 there by itself.

21 Q. Okay.

22 A. And the studs were, I mean, destroyed. I mean,
23 they were just here, there. I mean, it was all through
24 the whole, the whole wall.

25 Q. All right. Mr. Robinson, you have a binder of

1 exhibits in front of you, if you could grab that for me?
2 And I want to -- I want you to look at Plaintiff's
3 Exhibit 16. And the plaintiffs exhibits are in the
4 front and they're tabbed. If you'll look at Plaintiff's
5 Exhibit 16.

6 A. Uh-huh.

7 Q. What does Plaintiff's Exhibit 16 show?

8 A. I don't have a 16. I've got a 15. Oh, here it
9 is, okay, behind it. That's the studs. That's what I
10 was talking about. This, this is a picture of all the
11 studs that were just bent over. As a matter of fact, I
12 can tell you this certain part here was never pushed
13 back over. They repaired it by taking 1X4's and putting
14 between the seams of the sheetrock to keep it from
15 flexing so the tape would stay stable.

16 Q. All right. And what are 1X4's?

17 A. They took a piece of wood, a piece of 1X4 wood.
18 Basically, when people are scabbing something together,
19 put lipstick on a pig, you take and you scab that behind
20 it. And they took and put screws on it so the sheetrock
21 wouldn't flex.

22 Q. Okay. Now, at a certain point did you have an
23 opportunity to meet with Mr. Bryon Russell, the owner of
24 Brilin Electric at, at the premises, at the demising
25 wall?

1 A. Most definitely.

2 Q. And who -- and when did that meeting occur?

3 A. I don't know the date. I'm pretty sure you all
4 do. I know Nathan does. He was with him. His lawyer
5 was with him. Bryon was with him. And they had another
6 independent inspector come out with them.

7 Q. Okay. All right. Tell us about that meeting and
8 how it went.

9 A. I had the key, I met -- I had the key. I think I
10 met Bryon and the lawyer out front. The inspector came
11 about five minutes later. He was behind. So, we just
12 stood around and just chitchatted and were talking. And
13 then the inspector showed up. And that's when the
14 conversation about the wall. Because I want -- when I
15 talked to somebody, I want us all to be on the same
16 page. I didn't want it spotty. I didn't want he said,
17 she said. So, basically, I think Nathan was in the same
18 boat. He wanted, you know, everybody to be on the same
19 page. So, he got there and we walked to the wall. And
20 I basically stood back off and let them look at the wall
21 -- let him look at the wall. Nathan and Bryon stood
22 back a little bit. He went and looked and then he asked
23 me, is there any way I can look up high, but we had the
24 lift there still, because we had just taken all the
25 sheetrock off one side.

1 So, I took him on the lift and showed him points
2 that I had concern and points that he wanted to look at.
3 At that point we came down off the lift and that's when
4 Nathan and Bryon and myself started talking about the
5 wall. And, you know, they gave me their concerns and I
6 told them my concerns.

7 Q. All right. And what concerns did you voice to
8 Mr. White and Mr. Russell?

9 A. Basically the wall is dangerous. The wall needs
10 to be fixed. And, you know, what are we gonna do? And,
11 you know, Mr. White said, well, you know, are we sure we
12 need this?

13 MR. WHITE: Objection, Your Honor, hearsay.

14 THE COURT: I'll sustain the objection.

15 BY MR. DLUZNESKI:

16 Q. Tell us what, if anything, Mr. Russell said
17 during that conversation about the wall.

18 A. Basically we took and were talking about it.
19 And, you know, we were talking about how we need to fix
20 the wall, why we need to fix the fall, but there's
21 nothing -- I think Bryon said why did you take the
22 sheetrock off? You know, this is ridiculous. And I
23 said, well, it's dangerous. I mean, this wall could
24 fall. And then it became, they started questioning,
25 well, did you take a hammer and beat this? Did you do

1 this? And I said, excuse me? Whoa, whoa, whoa, stop.
2 Listen, I'm a very honest person. I'm not gonna do
3 anything. I had my employees on the job, come on.

4 So, basically, it became -- the question I had
5 was -- oh, he said -- I'm trying, I'm trying to remember
6 exactly how it came about, because at that point I said,
7 you know, hey, I'll tell you what, you all sign off on
8 the wall and sign a tenure thing that we'll just let the
9 wall stand here and if it kills somebody, you all are
10 responsible for it, because that's what's gonna happen.
11 And that's when Mr. Bryon got upset. And Nathan called
12 him down the hall and was going out front. And then
13 their inspector was standing there with me and he was
14 like -- I was like, so what do you think? And he
15 said ---

16 MR. WHITE: Objection, Your Honor, hearsay.

17 THE COURT: Sustained. Sustain the objection.

18 BY MR. DLUZNESKI:

19 Q. All right. So, after Mr. White escorted Mr.
20 Russell from the meeting, did Mr. Russell subsequently
21 join the meeting back at any point?

22 A. Oh, yeah, yeah. They came back in. It was a
23 couple minutes. They went down the hall. I don't know
24 where they went, because I just -- all I seen, we were
25 in the warehouse, they went down the hall, they came

1 back, and Ms. -- Bryon didn't talk anymore. Nathan
2 talked.

3 Q. Okay.

4 A. And we just basically stood there. And I was
5 just like -- I think the question was, so what do you
6 gotta do? I said, well, everything that's bent has got
7 to be fixed. Then it was, I don't think we need to talk
8 anymore. But basically I said okay and we were going to
9 walk out.

10 Well, at that time Two Men And A Truck was in the
11 two front offices, I think. And I stood there and I was
12 just like, okay. And then the meeting was over. It was
13 that quick that they walked out.

14 Q. All right. So at any point in this process,
15 either before this meeting with Mr. Russell present,
16 after -- during the meeting with Mr. Russell present or
17 after the meeting with Mr. Russell present, did Mr.
18 Russell ever ask or request, be involved with or
19 participate in any other repairs to the wall?

20 A. No. I asked them standing there, they can fix
21 the wall. I'll call Brad and you all can fix it. And,
22 basically, you know, we're not gonna do nothing. And
23 that was the end of it.

24 Q. All right. So after the meeting, did you
25 undertake to perform any repairs to the wall?

1 A. Yeah. At that point the engineer had told me
2 what I needed to do. So we took and replaced -- I can't
3 remember right now how many studs, like track studs and
4 -- and we had to re-attach the wall to the top at the
5 metal and reattach on the concrete. And then we put the
6 sheetrock up and, you know, got it back. And then we
7 went on Two Men And A Truck side and attached the
8 sheetrock to the new studs.

9 Q. Okay. And at any point in that process any
10 input, any assistance, any participation from Brilin?

11 A. My understanding they were done.

12 Q. Okay. All right. So, how long did these repairs
13 take?

14 A. Well, I mean, are you talking about when we
15 started tearing down the wall to when we met with our
16 guy and then and then finishing the wall or -- after the
17 meeting with Mr. Russell and Mr. White on site.

18 Q. When you all actually started the repairs to the
19 wall, how long did those repairs take?

20 A. I think, I think we finished it off and -- well,
21 we sheetrocked it and mudded it for the first time, five
22 times, for five days. And I think we came back and
23 mudded it one more time.

24 Q. Okay. And when you say you mudded it, what are
25 you talking about?

1 A. Basically just taking the sheetrock mud and
2 pulling the joints over and make it look good.

3 Q. Okay. All right. And did you invoice Carolina
4 Real Estate Holdings for those repairs?

5 A. Yeah, most definitely.

6 Q. Okay. All right. If you'll take that binder and
7 turn with me to Plaintiff's Exhibit 18.

8 A. Okay.

9 Q. All right. Plaintiff's Exhibit 18 is what?

10 A. That's a bill from us on the sheetrock wall.

11 Q. All right. And does this invoice cover all the
12 repairs that you performed to the partition wall or the
13 demising wall?

14 A. It does not.

15 Q. Huh, okay.

16 A. Because Brad and them paid me to come out and
17 meet with the people. They paid me to meet with them.
18 They paid me after to meet with him afterwards. This is
19 just the bill for the wall.

20 Q. Okay. All right. And how much is this bill for?
21 What's the cost?

22 A. \$1,121.00.

23 Q. All right. And did Carolina Real Estate Holdings
24 pay the full amount of this invoice?

25 A. Yes.

1 Q. Okay. The repairs that you made, that you talked
2 to us about.

3 A. Most definitely.

4 Q. Okay. The repairs that you made that you talked
5 to us about, why were those repairs necessary?

6 A. Because it was a dangerous wall that could have
7 hurt somebody.

8 Q. All right. Did you do more work than was
9 necessary for the purpose of passing that charge to
10 Brilin?

11 A. No.

12 Q. Okay. Did you up charge any expenses related to
13 the inspection or the repair of the demising wall?

14 A. No.

15 Q. Have you been paid in full by Carolina Real
16 Estate Holdings for everything that you did in relation
17 to the wall?

18 A. Most definitely.

19 Q. Okay. Are you aware of any other problems
20 related to the wall since you completed those repairs?

21 A. None whatsoever.

22 Q. All right. Thank you, Mr. Robinson.

23 Your Honor, I tender the witness.

24 THE COURT: Yes, sir.

25 MR. WHITE: Thank you, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. WHITE:

3 Q. Good afternoon, Mr. Robinson.

4 A. I was fixing to say, can you get a little bit
5 closer? I can't hear very well.

6 Q. I will get closer. You are one of Mr. Decker's
7 preferred vendors, are you not?

8 A. Yes, I would say that.

9 Q. You've done a lot of work for him?

10 A. Most definitely.

11 Q. For a lot of his different properties?

12 A. Uh, yeah.

13 Q. You're his go to general contractor for stuff
14 like this?

15 A. Umm, yeah. Yeah.

16 Q. And you said you weren't able to get into the
17 Brilin's space until May 1st of 2020, right?

18 A. That's when I was asked to go.

19 Q. That's when you were asked to go?

20 A. Yeah, thank you.

21 Q. No one asked you to go before that?

22 A. Yeah, I was asked. Mr. Schulte called me the day
23 that the wall got knocked out to get out there, that the
24 wall could fall.

25 Q. All right. That's fair enough. That's -- let

1 me, let me back up, review 2019. So I know you were
2 sitting back there. You heard Mr. Decker during the
3 cross say 2019, the summer of 2019 is when the Two Men
4 And A Truck's side was getting fixed, right?

5 A. Yeah, I would say. I wasn't paying that much of
6 attention.

7 Q. Go ahead and go to Defendant's Exhibit 16 in your
8 binder there, Mr. Robinson.

9 A. Yep.

10 Q. So you heard us talking about that's the Two Men
11 And A Truck side on that side, right?

12 A. Uh-huh.

13 Q. And it sounds like you came in on the tail end of
14 W&L doing this, this job over here.

15 A. Yeah. They -- my -- if I'm not mistaken, they
16 were on the other side of the wall working --

17 Q. Right.

18 A. -- at that time.

19 Q. Okay. So, you had a concern in 2019 that the
20 wall may not be fastened to the floor anymore, right?

21 A. Uh-huh.

22 Q. And you want it fastened to the floor?

23 A. Most definitely.

24 Q. You know, it's got a little give up in the top.

25 A. No give.

1 Q. A little bit. A little bit of sway.

2 A. No give.

3 Q. It's not anchored in.

4 A. No, it's anchored in.

5 Q. It's anchored it?

6 A. Yeah.

7 Q. But it's not connected to the roof, right,
8 because you --

9 A. No, it's anchored to --

10 Q. -- want an expansion and all that?

11 A. It's anchored to the girders of the building.

12 Q. Right. Right. Right. Fair enough.

13 A. To hold the outside of the building up.

14 Q. All right. Let's go back to Plaintiff's 16. You
15 were talking about that on direct.

16 A. Yes.

17 Q. Okay. So that's some, that's some of the damaged
18 studs right there, right?

19 A. I'm assuming. I wasn't there at that time.

20 Q. Okay.

21 A. I came in after the sheetrock was up.

22 Q. But this is on the Brilin side, right? Didn't
23 you testify to that? This is when you guys opened it
24 up.

25 A. No. This is way before. This is when the wall

1 got --

2 Q. No, I'm sorry.

3 A. -- damaged by a forklift.

4 Q. I'm jumping around. Plaintiff's Exhibit 16 now.

5 Yeah, I went from defense exhibit to plaintiff's
6 exhibit.

7 A. Okay. Sorry about that. Yeah.

8 Q. That's when y'all opened it up? Demo diagnostic
9 is the term we've heard.

10 A. Yep.

11 Q. Okay. So the bent grayish things, those are the
12 studs, right?

13 A. Yes, sir.

14 Q. And the gray stuff to the left of that, that's
15 the floor.

16 A. Yep.

17 Q. And the little yellow bits, that's some residual
18 insulation, when you all ripped off the insulation?

19 A. Well, we pulled it out --

20 Q. Right.

21 A. -- because we saved it all. They didn't get
22 charged for that.

23 Q. Go to the, just to orient you, this page part
24 right there on the right side. That's the drywall on --

25 A. Two Men And A Truck.

1 Q. -- Two Men and A Truck side. So that's how,
2 that's how skinny it is, right? What's that, about four
3 inches of four inches of four-inch studs?

4 A. Uh-huh.

5 Q. So, if you go back to Plaintiff's Exhibit --
6 excuse me, Defendant Exhibit 16.

7 A. Okay.

8 Q. If you were to stick your hand into that
9 insulation, it's only going in four inches, right?

10 A. Uh-huh.

11 Q. So you knew in 2019 there might be an issue with
12 the wall, based on the fact that it had been pushed out
13 of place and put back in place, right?

14 A. So, yeah. Yeah, okay.

15 Q. You had concerns about the integrity of the wall?

16 A. When I was standing with Mr. Schulte on the
17 outside of the Two Men And A Truck side, yeah, we were.
18 I was concerned because I thought I was gonna get in
19 there and be able to look and see what had happened.

20 Q. Right.

21 A. But my understanding was ---

22 Q. There may have been -- there may have been some
23 compromise to the wall. You had that concern as far
24 back as 2019, right?

25 A. Yeah.

1 Q. Okay. And so, now let's fast forward to the
2 question I asked a little while ago. You were not asked
3 to come over on the Brilin side until May 1st, 2020.

4 A. Well, when I walked onto the project ---

5 Q. Yes or no? You were not asked to come onto the
6 Brilin side.

7 A. Yes. I was called by Mr. Schulte after that.

8 Q. Right.

9 A. And we couldn't get into, into the facility.

10 Q. All right. Well, when? What do you mean you
11 couldn't get into the facility?

12 A. After, when I talked to Wayne, I was called the
13 day the wall got knocked out. And then I called Wayne
14 after that and asked him, what are we gonna do? He said
15 they will not let us in there.

16 Q. Your testimony right now, you're still back in
17 the summer of 2019 when you were first alerted as to the
18 issue of the wall by Mr. Schulte, right?

19 A. Yes.

20 Q. All right. I'm fast forwarding to 2020.

21 A. Okay.

22 Q. At no point in 2020 were you asked to come look
23 at that wall until May 1st, 2020, right?

24 A. Most definitely.

25 Q. The moment CREH lease had expired, CREH came back

1 into possession of it. And after the expiration of the
2 lease, the very next day is the first day you were asked
3 to come look at the wall from the Brilin side?

4 A. That's most definitely right.

5 Q. As a matter of fact. And then the engineer came
6 just three days later after the recommendation?

7 A. I don't know if it was three days, but somewhere
8 in there.

9 Q. Well, do you know? I won't get into it with him,
10 but just to give the -- a purview to the jury, we'll
11 grab Plaintiff's Exhibit 22, please. I'll tell you
12 what. See the salutation, Carolina Real Estate
13 Holdings, LLC colon, right there under the regards,
14 partition wall, temporary showing. Do you see that? I
15 can point to it, if it's easier?

16 A. Please.

17 MR. WHITE: All right. May I approach, Your
18 Honor?

19 THE COURT: Yes, sir.

20 BY MR. WHITE:

21 Q. All right. I want you right here. That first,
22 that first line, at your request, ICG met with you on
23 Monday, May 4th, 2020, four days after Brilin left and
24 CREH is back in the space. And they did that at your
25 recommendation, right?

1 A. Yes, sir. Certainly.

2 Q. Now, we looked at Defense Exhibit 16. We looked
3 at Plaintiff's Exhibit 16. We saw it's only four-inch
4 studs.

5 A. Uh-huh.

6 Q. If you had concerns about this wall, you could
7 have told CREH, hey, let's do a demo diagnostic on the
8 Two Men And A Truck side. Let's cut it open and take a
9 look, right?

10 A. Yeah.

11 Q. You were worried it could have fallen down. So
12 if you were that worried about it, you could have done
13 that right then and there. I know it's attached to
14 something. You've got to cut it open to see how bad it
15 is. You could have done that back in the summer of
16 2019, right?

17 A. Okay. Can I give you a little ---

18 Q. Yes or no?

19 A. Yeah.

20 Q. You could have made that recommendation to CREH.

21 A. I did make that recommendation.

22 Q. Had you made a time to do it?

23 A. No, they declined.

24 Q. They didn't do it?

25 A. It was pretty hostile.

1 Q. No. We're talking about the Two Men And A Truck
2 side. There's nothing hostile over there on the Two Men
3 And A Truck side.

4 A. Two Men And A Truck side looked fine on that side
5 at the time. The wall was -- the wall looked like a
6 snake but, you know, it was holding up doing what it was
7 supposed to do.

8 Q. But if it was so hostile and awful on the Brilin
9 side and you had safety concerns, you all could have
10 come in from the Two Men And A Truck side ---

11 A. I didn't need to see on Two Men And A Truck side,
12 I need to see the wall that got hit with a forklift.

13 Q. Okay. Well, let's look at what it looked like.
14 Plaintiff's Exhibit 21. Let me know when you're there,
15 Mr. Robinson.

16 A. I'm here.

17 Q. All right. That's what it looked like.

18 A. Uh-huh.

19 Q. Right?

20 A. Uh-huh.

21 Q. Can you, can you see any studs, any studs looking
22 at that?

23 A. No. Because if I had walked in on that, my first
24 thing would have been -- you see everywhere there's a
25 puncture mark?

1 Q. Right.

2 A. I'll fix that blade on that forklift.

3 Q. Are you sure it was the blade or just a pallet?

4 A. How thick is the blade?

5 Q. You see all those pallets there down at the
6 bottom?

7 A. I promise you that's the blade. So ---

8 Q. So you think they're crashing a forklift into the
9 wall --

10 A. No. No. No. No.

11 Q. -- instead of maybe the pallets busting holes in
12 the gypsum board?

13 A. It's the same thing. Brilin's in the same
14 situation I'm in. My guys are working on the job right
15 now, but I have to, I have to rely on the information
16 and the stuff they give me, okay? So his guys were
17 sitting in that warehouse driving a forklift around, and
18 if they hit the wall and they took and went outside of
19 it and they hit that metal, Brilin don't know that. His
20 guys know it. Do you think that his guy is gonna run in
21 there and say, oh, gosh, I just hit the wall? No, they
22 don't. My guys don't.

23 Q. Were you aware that Brilin was trying to do a
24 final walkthrough in the month of April with CREH?

25 A. No.

1 Q. No one from CREH asked you if you could come over
2 at any point in April of 2020 to the Brilin side?

3 A. They would not ask me. They would not ask me.

4 Q. They, being CREH, right?

5 A. (No verbal response.)

6 THE COURT: Mr. Robinson, if you would, we're
7 making a recording of everything that happens here.
8 Don't shake and nod your head. Give verbal answers.
9 And a few times you've given grunts. Give verbal
10 responses so that we can have a good record, okay?

11 THE WITNESS: Okay, Judge.

12 THE COURT: Thank you.

13 MR. WHITE: I'm gonna wrap this up real quick.
14 Thank you, Your Honor.

15 BY MR. WHITE:

16 Q. Myself, our engineer, and Mr. Russell did come
17 over in May to look at the wall, right?

18 A. Most definitely.

19 Q. We came over to look at the wall because we
20 wanted to look at the wall while it was open before you
21 did all the stuff you were gonna do --

22 A. Most definitely.

23 Q. -- on behalf of CREH.

24 A. At my request.

25 Q. Of course. Sure. Whoever. Well, it was at our

1 request too. We all wanted to see it, see what was
2 going on.

3 A. Well, I think the e-mail that I got that I was in
4 was they were asking you all to come look at it. I
5 don't think you all requested. I think you all -- we
6 asked you all to come look at it, because we had great
7 concerns.

8 Q. You had an engineer to come look at the wall
9 while it was open and that's what happened, right?

10 A. At our request.

11 Q. And now, when we got there, you already had all
12 of your materials ready to go to do the job, correct?

13 A. Most definitely.

14 Q. So as soon as we got to look at the wall while it
15 was open, you were ready to go and get those studs
16 fixed, replaced, repaired, whatever and put the drywall
17 back up?

18 A. Yeah. Because we had a client that wanted to get
19 into his space that he was still on the other side.

20 Q. And Two Men And A Truck was gonna come right over
21 to the other side. As a matter of fact, there was
22 really no impact because they were sitting over there,
23 and then they came right over the moment you finished
24 this all in May, right?

25 A. That's how the real estate world works.

1 MR. WHITE: Nothing further, Your Honor.

2 THE COURT: Any redirect, limited to what he went
3 into?

4 REDIRECT EXAMINATION

5 BY MR. DLUZNESKI:

6 Q. Mr. Robinson, I have one question for you on
7 redirect. Mr. White was asking you about tenants and
8 Two Men And A Truck moving into Brilin's commercial
9 space. Are you aware of whether or not CREH gave Two
10 Men And A Truck a rent abatement due to the decreased
11 utility of that space while the repairs were being made?

12 A. No. I wouldn't know about any rent.

13 MR. WHITE: Objection, Your Honor, calls for
14 speculation.

15 THE COURT: All right. He's already answered it.
16 Go ahead.

17 MR. DLUZNESKI: That's all I have, Your Honor,
18 thank you.

19 THE COURT: Thank you, sir. You may step down.
20 Watch your step as you're stepping down. Lawyers want
21 to approach real fast?

22 (Bench conference was held off the record.)

23 MR. WHITE: All right. Your Honor, Plaintiff has
24 kindly allowed us to take a witness out of turn because
25 he's got surgery tomorrow. So the defense would like to

1 call Mr. Bill Broadway to the stand.

2 THE COURT: Ladies and gentlemen, we're now --
3 I'll let you know what's going on. The lawyers have
4 agreed we have a witness that has an issue that can't be
5 here during the regular calling of witnesses, so we're
6 now gonna call one of the defense witnesses, which is
7 out of order. So we're now gonna hear from who?

8 MR. WHITE: Mr. Bill Broadway, Your Honor.

9 THE COURT: We're now gonna hear from Mr. Bill
10 Broadway. Mr. Broadway, come right up here and let the
11 clerk of court swear you in.

12 THE CLERK: Do you solemnly swear or affirm the
13 testimony you give will be the truth, the whole truth,
14 and nothing but the truth?

15 THE WITNESS: I do.

16 THE COURT: Sir, just have a seat up here. Watch
17 your step as you're having a seat. Please have a seat
18 in the chair and speak into the microphone, if you
19 would.

20 BILL BROADWAY,
21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. WHITE:

24 Q. Good afternoon, Mr. Broadway. Thank you for
25 being here. Could you, please, introduce yourself to

1 the jury?

2 A. Bill Broadway from McGee Brothers Masonry.

3 Q. Okay. And who do you work for, Mr. Broadway?

4 A. McGee Brothers Masonry.

5 Q. Okay. What do you all do?

6 A. We lay brick for buildings.

7 Q. Are you familiar with the premises in this case?

8 A. Yes.

9 Q. Okay. Now, I've got a binder up here.

10 Can I approach, Your Honor?

11 THE COURT: Yes, sir.

12 BY MR. WHITE:

13 Q. We've got a whole mess of exhibits in here, but
14 I'm going to orient you towards the back. If you can go
15 to Defense Exhibit 4. If you need help getting there,
16 I'm happy to help you, Mr. Broadway.

17 A. I don't see it.

18 MR. WHITE: All right. May I approach, Your
19 Honor?

20 THE COURT: Yes, sir.

21 THE WITNESS: I have two pages of that picture.

22 BY MR. WHITE:

23 Q. That's three. We're gonna go to this one right
24 here.

25 A. Oh, okay.

1 Q. Do you recognize that invoice, Mr. Broadway?

2 A. Yes. It's for a repair for replacing a couple of
3 bricks.

4 Q. Tell us about your efforts to make that repair.

5 A. We had to try to match the brick. It was an odd
6 colored brick, so we ended up finding a white, white
7 colored brick and tried to stain it to match the
8 building.

9 Q. Now, please flip to the next exhibit, Defendant's
10 Exhibit 5. Let me know when you're ready, Mr. Broadway.

11 A. Did you say defense?

12 Q. Yes, your -- yes. Yes, sir.

13 A. Yes.

14 MR. WHITE: May I approach?

15 THE COURT: Yes, sir.

16 BY MR. WHITE:

17 Q. All right. Do you recognize that picture, Mr.
18 Broadway?

19 A. Yes, I do.

20 Q. All right. Do you see the bricks in there?

21 A. Yeah.

22 Q. Is that a before picture?

23 A. Yes.

24 Q. Okay. Tell me what, tell me what your kind of
25 diagnosis of the situation was with the brick. What was

1 going on there?

2 A. At this time we just thought they got chipped,
3 hit. Somebody hit the building or something got chipped
4 or something, so we cut them out and replaced them.

5 Q. Okay. Now, let's flip to Defendant's Exhibit 6.
6 Let me know when you're there, Mr. Broadway.

7 A. I'm here.

8 Q. All right. What does that picture depict?

9 A. That's one picture I took about last week, same
10 corner.

11 Q. All right. And we got two pages here, right?

12 A. Yes.

13 Q. Well, let's flip to that second page. There's
14 kind of a vertical strip from kind of the corner of the
15 lentil, all the way up to the roof. Do you see that
16 there?

17 A. Uh-huh.

18 Q. What is that?

19 A. They call it an expansion joint so it moves. As
20 the building -- masonry moves different than a metal
21 building move so, yes, it's some relief so it won't
22 crack.

23 Q. And there's kind of some black stuff in the
24 middle of that. You can see it better on that first
25 page.

1 A. Yeah.

2 Q. What, what is that black stuff?

3 A. That stuff is the joint they put inside and then
4 they caulk over it and give it room to expand.

5 Q. So is that black stuff, is that like a crack in
6 the caulk?

7 A. No. That's the material behind the caulking that
8 you put in there when you lay it up and give it room to
9 move. And then they caulk over it to seal it so it
10 won't get water in there.

11 Q. You -- and the brick, like kind of the masonry,
12 even though you all replaced it two years ago, looks a
13 little kind of worn away on that top brick of the three
14 bricks.

15 A. It has broke again. Something in there -- this
16 is just my opinion, because we do this a lot. Something
17 in that corner's given to make that metal, the lentil
18 under there shifting a little bit to make that brick
19 break or something's not secure right there. There's a
20 little bit of movement in there that makes it chip,
21 break out.

22 Q. So, your original kind of diagnosis was something
23 maybe hit it. And then two years later you see that,
24 you think there's just something going on there?

25 A. Just a little movement there to make the brick

1 chip.

2 Q. Because that's probably what's making the brick
3 kind of wear away, kind of fall out, maybe even need to
4 be replaced again in a couple of years?

5 A. No, that lentil needed to be replaced any time.
6 It's just something in that lentil right there is moving
7 a little bit to make it chip.

8 Q. Maybe that -- what about that expansion joint, do
9 you think that might be a culprit too?

10 A. It's just a little bit of movement in the wall.
11 It probably just needs to be re-caulked.

12 MR. WHITE: Okay. Nothing further, Your Honor.

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. DLUZNESKI:

16 Q. Mr. Broadway, good afternoon.

17 A. Good afternoon. How are you doing?

18 Q. Good. I'm gonna come up here so I can get closer
19 to you. Now, you talked about Exhibit Number 4.
20 Defense Exhibit 4, which is your invoice. Do you
21 remember that?

22 A. Yes, sir.

23 Q. All right. And looking at Defense Exhibit 4, the
24 work description is repair broken brick at the garage
25 door, right?

1 A. Right.

2 Q. All right. I noticed on here that other than the
3 broken brick, there was nothing for any kind of
4 inspection of the interior structural area of this or
5 the lentil. Did you do any of that kind of inspection?

6 A. No, sir.

7 Q. You did not?

8 A. No, sir.

9 Q. All right.

10 A. Excuse me. I walked inside and looked, but it
11 was enclosed sheetrock or something was in there. I
12 couldn't see it, so that's as far as I went.

13 Q. Okay. So other than replacing the broken brick,
14 you didn't go any further?

15 A. No, sir.

16 Q. Okay. You didn't look at the lentil, did you?

17 A. Just from right there.

18 Q. Okay. So your inspection of the lentil was
19 limited to what you could see from the outside with your
20 naked eye?

21 A. Correct.

22 Q. Okay. All right. So you're unaware as to
23 whether or not the lentil could have been damaged and
24 also needed to be repaired or replaced?

25 A. That's correct.

1 Q. Okay. It -- would that replacement of a lentil,
2 if that needed to be done, would that be an additional
3 expense?

4 A. Yes.

5 Q. Okay. Do you know about how much that would be?

6 A. No, sir, not right offhand. Not being able to
7 see inside, see what's moving. You might not have to
8 replace the lentil, just tighten it up inside there.
9 Something's just giving just a little bit.

10 Q. Okay. Now, who were you hired by to come out and
11 do this work?

12 A. I can't really answer that. It's been two years
13 ago. And I get calls all the time, but it's got Brilin
14 Electric on the invoice.

15 Q. All right. So Brilin Electric is the company or
16 entity that you billed pertaining to this?

17 A. Uh-huh.

18 Q. Is it fair to say that Brilin Electric is the one
19 that hired you to come out?

20 A. Correct.

21 Q. Okay. Did you -- were you aware when you came
22 out and when you were discussing this with Brilin, that
23 it was not Brilin's building?

24 A. No, sir.

25 Q. Did you have any idea of who the building

1 belonged to?

2 A. No, sir.

3 Q. Did you have any idea as to whether or not when
4 you performed these repairs, that there was an ongoing
5 lawsuit related to Brilin's conduct and behavior inside
6 this building?

7 A. No, sir. The first time I heard about it was
8 when I was sitting back here by this other wall.

9 Q. Okay. All right. Now, you talked about that you
10 were told that the cause was that bricks got hit or
11 chipped.

12 A. No, that was my assumption. I just thought
13 something had hit it and chipped it, said they needed
14 some brick to be repaired, so went out there to look and
15 see what it was and we just went ahead and repaired it.

16 Q. All right. Did you ever, did you ever ask any
17 questions or inquire further of the person who hired you
18 about what caused that damage?

19 A. No, sir.

20 Q. All right. So you were going completely off of
21 your assumption?

22 A. Correct.

23 Q. All right. So you have no idea if, for example,
24 a forklift came into contact with those bricks?

25 A. (Inaudible.)

1 Q. Okay. So you came out, you replaced the bricks
2 and only the bricks and you were done. The job was
3 finished?

4 A. Right.

5 Q. Okay. Tell us what you understand - we talked
6 about the lentil. What do you understand a lentil does?
7 Tell the jury what the purpose of it is.

8 A. It carries the weight over the garage door. The
9 brick, you know, the veneer carries the weight up there
10 and secures it.

11 Q. Okay.

12 A. And it's this -- that's what it's for.

13 Q. All right. So, would you agree with me that if
14 the lentil is damaged, there could be recurring issues
15 in this area?

16 A. This is my assumption of doing this. What I've
17 been doing for years is that something in that corner,
18 that lentil in the wall, something's just moving a
19 little bit there to cause that break. Might have never
20 been hit. It might have been like that when it first
21 constructed. It just took a while for it to move a
22 little bit. Everything, the measuring material in the
23 metal buildings moves differently. And something right
24 there is just making that shift a little bit, chipping
25 brick off.

1 Q. Okay. All right. But you testified a few
2 moments ago that you didn't investigate further, you
3 didn't determine what that cause may have been.

4 A. That's correct.

5 Q. Okay. When you were hired to do this work, what
6 were you told about the scope of work that you were
7 being hired to perform?

8 A. Just needed to replace some chip brick.

9 Q. Just replacing chip brick, okay. So no
10 inspection. You weren't hired to do an inspection, just
11 the bricks?

12 A. That's correct.

13 Q. Okay. Do you recall anything that Brilin told
14 you about? Anything about the damage, what caused it or
15 anything like that?

16 A. No, sir.

17 MR. DLUZNESKI: Okay. All right. Your Honor, I
18 don't have anything further. Thank you.

19 THE COURT: Any redirect, limited to what he went
20 into?

21 MR. WHITE: Yes, Your Honor. Two quick
22 questions.

23 THE COURT: All right.

24 REDIRECT EXAMINATION

25 BY MR. WHITE:

1 Q. Any damage to that lentil, Mr. Broadway?

2 A. No, sir.

3 Q. Brilin pay their bill?

4 A. Yes, sir.

5 MR. WHITE: Nothing further, Your Honor.

6 THE COURT: Thank you, sir.

7 Mr. Broadway, you may step down. Watch your step
8 as you're stepping down.

9 (Witness leaves witness stand.)

10 Ladies and gentlemen, we're gonna take a short
11 recess. Remind you, don't have any discussions among
12 yourselves about anything involving the case and do not
13 do any type of independent research or investigation.
14 You may put the books on the floor or in your chair and
15 we'll get you back just shortly.

16 (Jury leaves courtroom at 2:38 p.m.)

17 THE COURT: All right. Your next witness is
18 gonna be about the same length, you think.

19 MR. DLUZNESKI: Yes. Mr. Abernathy should be
20 about the same length as Mr. Robinson was.

21 (A recess was had from 2:38 p.m. - 2:54 p.m.)

22 THE COURT: Do you know if they're ready?

23 THE BAILIFF: Yes, sir, they are.

24 THE COURT: Okay. Anything from the lawyers
25 before we bring the jury back in?

1 MR. DLUZNESKI: No, Your Honor.

2 THE COURT: Okay. Let's bring them back in.

3 (Jury enters the courtroom at 2:54 p.m.)

4 THE COURT: Plaintiff ready to call their next
5 witness?

6 MR. DLUZNESKI: Yes, Your Honor. Plaintiff calls
7 John Abernathy.

8 THE COURT: Sir, just come right up here and let
9 the clerk of court swear you in, sir.

10 THE CLERK: Would you, please, place your left
11 hand on the Bible and raise your right hand. Do you
12 solemnly or affirm the testimony you give this court
13 will be the truth, the whole truth, and nothing but the
14 truth so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Thank you, and please be seated.

17 THE COURT: Sir, just have a seat in the chair
18 and pull the chair up to the microphone and speak into
19 it. Thank you.

20 MR. DLUZNESKI: And, Your Honor, this is the
21 second witness that the parties have stipulated to be
22 qualified as an expert witness in the field of
23 structural engineering.

24 THE COURT: Structural engineering. All right,
25 ladies and gentlemen. Once again, normally a person