THE STATE OF SOUTH CAROLINA
In the Court of Appeals

ORIGINAL

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
James Martin Harvey, Jr., Special Referee

Case No. 2009-CP-02-000958

Elite Construction, Inc., Respondent

v.

Doris E. Tummillo and Georgia Bank and Trust Company of Augusta, Defendants,

Of Whom Doris E. Tummillo is the Appellant,

And

Georgia Bank and Trust Company of Augusta is a Respondent.

Appellate Case No. 2013-001624

RECEIVED
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SC Court of Appeals

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	C/A No. 2009-CP-02-000958
ELITE CONSTRUCTION, INC. Plaintiff vs. DORIS E. TUMMILLO, First Defendant And GEORGIA BANK AND TRUST COMPANY OF AUGUSTA, Second Defendant.	)	**AMENDED ORDER OF JUDGMENT**

7-22-13
Liz Godard
Clerk of Court
Anita Knowles
Deputy Clerk

This is an action to foreclose on a mechanic's lien arising from a contract to build a pole barn intended to house thoroughbred horses. Defendant Doris Tummillo counterclaimed for breach of contract, alleging plaintiff had abandoned the job. The matter was referred to me by agreement of the parties pursuant to Rule 53, South Carolina Rules of Civil Procedure. Trial was held in Aiken on July 12, 2012. Plaintiff and Defendant Tummillo stipulated that the mortgage lien of Defendant Georgia Bank and Trust Company of Augusta had priority over Plaintiff's claim, after which I heard testimony of Chris Key and J. D. Cooper on behalf of Plaintiff, and DorisTummillo, Robert D. Sidener and Mike Tummillo on behalf of Defendant. Based on the evidence in the record, I make the following findings of fact:

1. Elite Construction, Inc. [hereafter sometimes referred to as "Elite"] is a corporation organized and existing under and by virtue of the laws of the State of South Carolina.

MICROFILMED
JUL 22 2013

2. Doris E. Tummillo is a resident of Aiken County, South Carolina who owns real property located in the County of Aiken, State of South Carolina, commonly known as 4201 Shiloh Church Road, Aiken, South Carolina, 29801, and as more fully described as follows:

> All that certain piece, parcel or tract of land, situate, lying and being in the County of Aiken, State of South Carolina, containing 123.559 acres, more or less, and being more particularly described upon a plat prepared by W. J. Webb, PLS, for Doris E. Tummillo, dated June 20, 2008 and recorded on October 28, 2008 in Plat Book 54, at page 229, in the Office of the RMC for Aiken County, South Carolina. Reference being made hereby to aforementioned plat for a more complete and accurate description as to metes, boundaries, and location of subject property.
>
> This being a portion of the same property conveyed to Doris E. Tummillo by quitclaim deed of Tummekki, LLC dated November 27, 2008 and recorded on December 3, 2008 in Record Book 4231, at page 2080, in the Office of the RMC for Aiken County, South Carolina.
>
> Aiken County Tax Parcel No.: 101-00-02-002 (portion of)

3. Defendant Georgia Bank and Trust Company of Augusta is a banking institution organized and existing under the laws of one of the United States of America and transacts business in Aiken County, South Carolina. Defendant holds a mortgage over the real property in question given by Tummillo dated January 9, 2009, recorded in Mortgage Book 4236, Page 1820, Office of the Register of Mesne Conveyance for Aiken County, South Carolina.

4. On July 16, 2008 Elite and Tummillo entered into a contract under which Elite agreed to construct a pole barn on the subject property, including labor and materials for the sum of $358,379.00. The barn was designed to contain 45 horse stalls. The contract was reduced to writing [hereafter sometimes referred to as "the Document"]. [Plf. Ex.1] While the Document does not specifically state the dimensions of the stalls, the configuration of the building called for a main central section measuring 64 feet wide by 204 feet long, and three wings measuring 72 feet long by 24 feet wide. The central wing was eliminated when the parties agreed to reduce the total number of stalls to 40, consequentially reducing the contract price to $319,668.00.

5. The Document contains Tummillo's agreement to provide for site preparation work and the building permit. No completion date was specified in the Document. In spite of the absence of any language to the effect in the Document, at its execution Tummillo claims she informed Elite that time was of the essence in the construction, that the horse stalls in the barn

Att #2

were to be rented, and that if the project was not completed in a timely fashion, Tummillo would lose revenues due to her inability to rent the stalls for the 2008-9 season. Tummillo had the site work done in September and purchased the building permit on October 2, 2008. [Plf. Ex. 3]. Elite began work when the building permit was issued.

6. Drawings for the barn confirm the barn's exterior dimensions but are silent on the interior dimensions. [Plf. Ex. 2] It is not difficult to ascertain the interior dimensions by referring to Exhibits 1 and 2. The drawings provide for 10 groups of three stalls each in the main section, separated by 4 interior aisles allowing access to the stalls, with 2 aisles on each end. Two aisles run the length of the main structure. Building Specifications attached to Ex. 1 provide the aisle-ways to be 14 feet in width. Six total short aisles on the main section at 14 feet each amounts to 84 feet, leaving 120 feet to account for the 10 stalls [120 feet ÷ 10 stalls = 12 feet/stall]. Two long aisles of 14 feet each on the main section amounts to 28 feet, leaving 36 feet to account for the rows of 3 stalls [36 feet ÷ 3 stalls = 12 feet/stall]. I accept as credible and consistent with the plans Chris Key's explanation that the posts of each stall were placed at 12 feet on center and that interior dimensions of each would necessarily be smaller due to the diameter of the support posts and the thickness of the material used to construct the interior walls. I find Defendant Tummillo's expectancy of 144 interior square feet for each stall to be inconsistent with and contrary to the contract and plans.

7. Tummillo agreed to pay Elite the contract sum in four installments, or "draws": 30% due at signing; 30% due on completion of the roof; 30% due after completion of the exterior walls and; the balance "due when the job is completed, and be paid within 10 days of completion."

8. Tummillo paid Elite $107,513.70 shortly after the contract was signed on July 24 and $84,000 on November 24, 2008, for the first two draws, the latter taking into account the parties' amendment of the contract price.

9. In late December, 2008, Elite submitted a request for the third draw, informing Tumillo the exterior walls were completed. While photographic evidence is arguably contradictory on this issue, Chris Key's testimony on this issue is more credible than Mike Tummillo's. I find that the exterior walls were completed sufficiently to warrant a request for draw. To the extent that the walls were not fully completed, that which was to have been completed was so minor that it was of a "punch list" nature, which is taken into account

Draw #3

hereinbelow. Tummillo refused to pay the third draw, citing several perceived problems with the construction, to-wit: the stalls in the barn were not built according to the contract and the exterior walls were not complete.

10. With the third draw not forthcoming, on January 5, 2009, Elite suspended work on the barn and informed Tumillo it would not complete work until the third draw was paid. Elite admits the job was 85% complete when it left the site. Since the draw was to have been based upon 90% completion, I find this more than accounts for the exterior walls.

11. Tummillo did not complain about the size of the stalls until after January 5. Only then did she assert that the interior measurements were not 12 feet x 12 feet.

12. With the exception of grill work and stall doors, all material, labor and skills itemized by Elite were furnished for and actually used in the construction of defendant's barn. Elite mitigated its damages by returning the stall doors for credit. Elite was unable to return the grill work and remains responsible for payment.

13. On the 13th day of February 2009, within ninety (90) days after the last labor was provided to Tummillo, Elite filed a Notice of Mechanic's Lien seeking $126,160.37 in the Office of the Clerk of Court for Aiken County. The claim for lien was verified by oath of the plaintiff before a notary public in and for said State of South Carolina, and that the verification under the hand and seal of the notary public was attached to and filed with mechanic's lien.

14. Elite filed its Summons, Complaint and Lis Pendens six (6) months within the expiration of time limited by law for filing plaintiff's claim for lien.

15. In spite of the filing of the Notice of Mechanic's Lien and service of the verified statement of account as required by law, Tummillo failed to pay Elite's claim and plaintiff seeks foreclosure of its mechanic's lien against defendants' property according to law.

16. Elite has retained the services of legal counsel and has incurred expenses amounting to $13,650.18 in the pursuit of this matter.

CONCLUSIONS OF LAW

This Court has jurisdiction over the parties and subject matter of this action.

Tummillo breached her contract with Elite by failing to pay the third draw, or any portion thereof, as agreed upon in the Document, and as a result of the breach I conclude that Elite is entitled to damages; however, the sum claimed is the mechanics' lien is excessive.

Page # 4

The initial contract amount was $358,379 reduced to $319,668 when the parties eliminated five stalls. Based upon Elite's admission that it had only completed 85% of the contract on January 5, 2009, the total amount Elite should have collected would have been $271,717.80 [$319,668 x 85%]. Since Elite had received $191,513.70, the balance due on its claim is $80,204.10. I conclude that Elite is not entitled to the 10% retainage, or lost profit or overhead. Zepsa Construction, Inc. v. Radazzo, 357 S.C. 32, 591 S.E.2d 29 (Ct.App.2003). Interest shall accrue at the per diem rate allowed by law from the entry of judgment.

Tummillo argues Elite's leaving the job before completion is a breach, that Elite performed the contract in a deficient manner, and that the delay resulted in damages. Elite's departure from the job site before completion of the contract does not preclude it from recovering under the mechanic's lien statutes. Id.

Tummillo claims her damages from Elite's delay are due to Elite's late start of the contract and its failure to complete. Tummillo's position is based upon her assertion that the Document does not completely express the parties' intent.

A Court considering a case involving a contract must give effect to the intent of the parties as expressed by their written memorandum of their agreement. When a contract document is unambiguous, clear and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary and popular sense. C.A.N. v. South Carolina Health and Human Services, 296 S.C. 373, 373 S.E.2d 584 (1988).

The Document is clear in its terms. A combined reading of the Document, with its attached Specifications and the plans, indicates the stalls were to be built as 12 feet on center, not on interior dimensions. Had the parties intended for the stalls to have interior dimensions of 12 feet, the exterior perimeter would of necessity have had to measure larger than the Document provided.

Tummillo argues that even if the stall size was based upon center to center measurements, Elite's delay still made her lose money. When the contract does not include a provision that "time is of the essence," the law implies that it is to be done within a reasonable time. Faulkner v. Millar, 319 S.C. 216, 219, 460 S.E.2d 378, 380 (1995). Nothing within the four corners of the Document alludes to a completion date, nor is there a statement contained therein that states that time is of the essence. To the extent there was a delay, I conclude it was

Page # 5

reasonable. Elite's commencement of construction was predicated on Tummillo's completion of site preparation and obtaining the building permit. Elite began construction as soon as it was legally able.

Elite claims Tummillo owes it $23,590 for change orders and $6,007.66 in late fees to the contract. There is no evidence that the change orders were approved by Dr. Tumillo. The vast majority of the work provided for in the change orders was not performed. Elite seeks recovery for these under the guise that it is its policy to bill for changes orders in advance. There is no support for any such recovery, and this portion of Elite's claim has no merit.

Since Elite did not finish the job, Elite is not entitled to the 10% retainage. Tumillo's claims for damage due to incomplete work, defective roof and other "punch list" items [Plf. Ex. 15] are covered by this discounted value and her claims for roof repairs and costs of completion cannot be recognized twice. I further conclude that Tummillo's claims for lost profits are unsupported by credible evidence, and are speculative, at best. Even so, the party who breaches first bears the liability for nonperformance. Silver v Aabstract Pools & Spas, Inc., 376 S.C. 585, 658 S.E.2d 539 (Ct.App.2008).

"The crucial requirement in lost profits determinations is that they be "established with reasonable certainty, for recovery cannot be had for profits that are conjectural or speculative." Drews Co., Inc. v. Ledwith-Wolfe Associates, Inc., 296 S.C. 207, 213, 371 S.E.2d 532, 535-6 (1988); quoting South Carolina Finance Corp. V. West Side Finance Co., 236 S.C. 109, 122, 113 S.E.2d 329, 335 (1960). "The proof must pass the realm of conjecture, speculation, or opinion not founded on facts, and must consist of actual facts from which a reasonably accurate conclusion regarding the cause and the amount of the loss can be logically and rationally drawn." Id.

Tummillo argues Elite's claim for a Five (5%) Percent late charge is spurious, relying upon language on the first page of the Document that provides for a late fee "if the amount due is not paid within ten days of completion". Tummillo argues that because the job was not complete, the late fee is not due. I agree and deny the claim for late fees.

I conclude, therefore that Elilte should have judgment of foreclosure of the mechanic's lien in the sum of $80,204.10 and the property subject to the mechanic's lien described hereinabove should be ordered sold at public auction after due advertisement.

Amt #C

The question then turns to whether either side is entitled to recover their attorneys' fees. Tummillo's obligation to pay attorneys' is not just established by statute, it is also contractual. In either event, however, the determination of the amount of attorneys' fees that should be awarded is vested in the sound discretion of the Court. Keeneys Metals Roofing, Inc. vs. Palmieri, 345 S.C.550, 548 S.E.2d 900 (Ct.App. 2001).

The court must take into account six (6) factors: (1) Nature and extent and difficulty of the case; (2) Time necessarily devoted to the case; (3) Professional standing of the counsel; (4) The contingency of compensation; (5) Beneficial results obtained; and (6) Customary legal fees for similar services. Regardless of the outcome, the Court has discretion in this regard.

In determining the award for attorneys' fees under SC Code, Ann. §29-5-110(a), an additional issue to consider is identifying the "prevailing party." This decision is based upon the verdict in the action. The party whose offer is closer to the verdict is deemed to be the prevailing party. Where no written offer of settlement is made, the amount prayed for in the complaint is considered Elite's offer of settlement. While Tummillo has pursued a counterclaim, no amount is pled in the pleading. Elite's has claimed a lien in the amount of $126,160.37 and has been awarded $80,204.10 – a difference of $45,956.27. Defendant's claim for lost revenue is $12,000 per month for 3 months and has been awarded nothing. I conclude that Elite is the prevailing party; however, I am unable to award fees and costs without further information.

Elite's counsel's affidavit does not specify the number of hours devoted to the pursuit of the case. Likewise, there is insufficient evidence in the record that allows me to consider the contingency of compensation or the customary legal fees charged on matters of this nature by other members of the Aiken County Bar. I therefore reserve making an award pending a full submission by counsel of the items necessary for me to make a decision supported by the law.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. There is due to the Plaintiff on its mechanic's lien the sum of $80,204.10 representing the total debt due Plaintiff, plus attorneys' fees and costs to be determined after notice to all parties and an opportunity to be heard.
2. The total amount due in the preceding paragraph shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the legal rate.
3. That the Defendant liable for the aforesaid mechanic lien debt shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney,

the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

4. That on default of payment at or before the time herein indicated, the premises described in the Complaint, as hereinafter set forth, be sold by the undersigned Special Referee for Aiken County at Public Auction in the Master in Equity Courtroom at the Aiken County Courthouse, Aiken, South Carolina, on some convenient Sales Day hereafter (and should be the regular day of judicial sales fall on a legal holiday, then in such event, the Sales Day shall be on the Tuesday next succeeding such holiday), on the following terms, that is to say:

   a. **FOR CASH**: The undersigned Special Referee will require a deposit of five percent (5%) on the amount of the bid (in cash or equivalent) same to be applied on the purchase price upon compliance with the bid, but in case of non-compliance within twenty (20) days same to be forfeited and applied to the costs and Plaintiff's debt.

   b. The same shall be subject to the mortgage lien of Georgia Bank and Trust Company of Augusta, Georgia, taxes and assessments, existing easements and restriction, easement and restrictions of record, and any other senior encumbrances. Proceeds of sale shall not be paid to the prior lienholder.

   c. Purchaser to pay for deed stamps and costs of recording the deed.

5. If Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses, and the indebtedness of Plaintiff's indebtedness.

6. That the undersigned Special Referee will by advertisement according to law, give notice of the time and place of sale, and the terms thereof; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a Purchaser at such sale, and that is, upon such sale being made, the Purchaser, or Purchasers should fail to comply with the terms thereof within twenty (20) days after date of sale, then the undersigned Special Referee may advertise the said premises for sale on the next, or some other subsequent Sales Day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

7. That the undersigned Special Referee will apply the proceeds of sale as follows:

Item #8

FIRST: to the payment of the amount of the costs and expenses of this action including any Guardian ad Litem fee or fees of attorneys appointed under Order of Court;

SECOND: to the payment to the Plaintiff's or Plaintiff's attorney, of the amount of Plaintiff's debt and interest or so much thereof as the purchase money will pay on same;

NEXT: any surplus will be held pending further Order of this Court.

8. It is further **ORDERED, ADJUDGED AND DECREED** that in the event the successful bidder is other than the Defendant in possession herein, the Sheriff of Aiken County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in such peaceable possession.

9. And it is further **ORDERED, ADJUDGED AND DECREED** that the Defendant named herein and all persons whosever claiming under him, her, them or it including but not limited to any title holder acquiring title subsequent to the filing of the Lis Pendens in this matter whether a party to this action or not be forever barred and foreclosed of all right, title, interest, and equity in redemption in the said premises so sold, or any part thereof.

10. **IT IS FURTHER ORDERED** that, pursuant to SC Code Ann. Section 30-9-31 (Supp. 1987), the deed of conveyance made pursuant to this sale shall be indexed in the grantor index by the Register of Mesne Conveyances in the name of the owner of record of subject property immediately prior to the execution of the deed, as well as in the name of the Special Referee for Aiken County, who executes such a deed as Grantor.

11. The undersigned Special Referee will retain jurisdiction to do all the necessary acts incident to this foreclosure, including but not limited to, the issuance of a Writ of Assistance and disposing of any surplus funds pursuant to Rule 71(c), SCRCP.

AND IT IS SO ORDERED.

J. Martin Harvey, Special Referee

Barnwell, South Carolina

~~September 2012~~

July 15 2013

#9

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-02-958

ELITE CONSTRUCTION, INC.

PLAINTIFF(S)

DORIS E. TUMMILLO

GEORGIA BANK AND TRUST COMPANY OF AUGUSTA

DEFENDANT(S)

Submitted by:	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.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **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: Pursuant to Rule 60(a), the undersigned has discovered a clerical error in Item 14 in the Findings of Fact made in the Order entered in this matter dated September 5, 2012, and the attached Amended Order of Judgment is submitted in substitution.

7-22-13

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: MECHANIC'S LIEN FORECLOSURE

FILED
Lis Gedacle
Dep. C.P.&O.S.
Anita Kinnaird
Deputy Clerk

INFORMATION FOR THE PUBLIC 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)
ELITE CONSTRUCTION INC.	DORIS E. TUMMILLO	$99,998.50
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:
4201 SHILOH CHURCH RD AIKEN SC TMS 101-00-02-002

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.**

~~Circuit Court Judge~~ _____ Judge Code _____ Date 7/15/2013

SCRCP Form 4C (10/2011)

For Clerk of Court Office Use Only

This judgment was entered on the 22 day of June, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 22 day of July 2013 to attorneys of record or to parties (when appearing pro se) as follows:

July ASL

July ASL

CLARKE W. MCCANTS, III	NEAL W. DICKERT
P. O. BOX 2881	P O BOX 1564
AIKEN SC 29802	AUGUSTA GA 30903
ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)

By Order of the Court
CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

Elite Construction, Inc.,

Plaintiff,

vs.

Doris E. Tummillo and Georgia Bank and Trust Company of Augusta,

Defendants.

CA No. 2009-CP-02-958

ORDER ON MOTION TO AMEND

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

JUN 24 2013

C.C.C.P. & G.S., Aiken County, S.C.

Deputy Clerk

After entry of judgment in favor of the plaintiff by Order dated September 5, 2012, Defendant, Doris E. Tumillo, [herafter sometimes referred to as "Tummillo"] timely filed a Motion to Amend Judgment. While Tummillo filed her Motion pursuant to Rule 52(b), South Carolina Rules of Civil Procedure, I will also consider it pursuant to Rule 59(e). For the reasons set forth below, however, I deny the motion.

As part of her Motion to Amend Judgment Tummillo requests that the judgment issued by this Court be altered or amended in the following respects. First, she argues that the amount of the Plaintiff's judgment should be reduced to reflect a monetary credit for the number of finished stalls in the barn which fail to meet the size requirements set forth in the Parties' contract. Second, Tummillo urges that the judgment should be amended to reflect that the delay in completing the barn is attributable to the Plaintiff, thereby allowing her to recover under her counterclaim. Finally, Tummillo contends that this Court erred in allowing the Plaintiff to supplement the record for this matter with respect to recovery of attorney's fees.

A. Stall Size. Plaintiff agreed to construct "12 by 12" stalls for Tummillo. The testimony of certain witnesses, including the Plaintiff's expert witness, which I find to me more credible than conflicting evidence of other witnesses, shows that the term "12 by 12", as used in the construction and equestrian industry, does not refer to actual measurements, but rather to

FILED 6-24 2013
C.C.C.P. & G.S. 8:30am
Deputy Clerk

nominal dimensions. The term "12 by 12" is used to described stalls of an approximate, but not exact, size. While it is undisputed that a number of the stalls constructed by the Plaintiff do not actually measure "12 feet by 12 feet" there is nothing in the Parties' written agreement which sets forth a requirement that the stalls be so precisely constructed.

B. Timely completion. The written agreement did not contain a deadline for the project's completion. As noted in my September 5, 2012 Order, in the absence of anything to the contrary, the law implies that the agreement should be completed within a reasonable period of time.

The evidence taken as a whole indicates that the Plaintiff was not able to commence construction of the barn until the building site was fully prepared and a building permit was obtained. Tummillo was responsible for satisfying these requirements, both of which were delayed to some degree. There is no credible evidence that would lead me to conclude that once construction commenced the Plaintiff failed to move forward deliberately and reasonably in its performance.

Further, Tummillo was unable to establish with credible evidence that she sustained any damages as a result of her claimed delay in completion of the project. From this Court's perspective her testimony, and the remaining evidence offered to support her claim for damages, fails to meet those legal standards set forth in the September 5, 2012 Order.

C. Attorneys Fees. There is no basis to grant Tummillo's request to disallow the Plaintiff's claims for attorney's fees, costs and expenses in this case. Having determined that the Plaintiff is entitled to recover attorney fees, costs and expenses this Court has the discretion to retain jurisdiction and allow additional submissions and evidence to support such a claim.

For the above stated reasons Tummillo's Motion to Amend Judgment is denied.

With respect to the Plaintiff's claim for attorney's fees, costs and expenses I have reviewed the affidavit of its Counsel, with attachments. The Parties previously agreed that neither Counsel would be required to submit or offer testimony to support or verify the amount claimed or reasonableness of any fees, costs and expenses.

Upon review of the affidavit and attachments submitted by Counsel for the Plaintiff I find

that the Plaintiff's claim for fees, costs and expenses in the amount of $19,794.40 is fair and reasonable, is representative of the time and labor required to perform legal services such as those presented in this case and is representative of the fees, costs and expenses customarily charged for similar legal services in the venue where this action is pending. Now, therefore

IT IS ORDERED, that the motion to Amend Judgment filed by Defendant, Doris Tummillo, be and hereby is, DENIED.

FURTHER ORDERED, that the Plaintiff is awarded attorney's fees, costs and expenses incurred in pursuit of this matter in the amount of $19,794.40, and judgment is awarded and entered accordingly.

AND IT IS SO ORDERED.

J. Martin Harvey
Special Referee

Barnwell, South Carolina

Dated: June 17, 2013

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-02-958

ELITE CONSTRUCTION, INC.
PLAINTIFF(S)

DORIS E. TUMMILLO
GEORGIA BANK AND TRUST COMPANY OF AUGUSTA
DEFENDANT(S)

Submitted by:	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.

☐ **ACTION DISMISSED** *(CHECK REASON)*: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **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:

FILED 6.24 2013
Liz Godard
C.C.C.P.&G.S.
8:30am
Deputy Clerk

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: MECHANIC' S LIEN FORECLOSURE

INFORMATION FOR THE PUBLIC 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)
ELITE CONSTRUCTION INC.	DORIS E. TUMMILLO	$99,998.50
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:
4201 SHILOH CHURCH RD AIKEN SC TMS 101-00-02-002

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.**

~~Circuit Court Judge~~

Judge Code

Jun 17 2013
Date

SCRCP Form 4C (10/2011)

015

For Clerk of Court Office Use Only

This judgment was entered on **June 24, 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **June 24, 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

Clarke W. McCants III PO Box 2881 Aiken, SC 298022881

ATTORNEY(S) FOR THE PLAINTIFF(S)

James Samuel Murray PO Box 1495 Augusta, GA 309031495
Neal W. Dickert PO Box 1564 Augusta, GA 309031564

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by [illegible]

Court Reporter

Liz Godard - Clerk of Court

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.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	C/A No. 2009-CP-02-000958
	)	
ELITE CONSTRUCTION, INC.	)	
	)	
Plaintiff	)	
	)	
vs.	)	**ORDER OF JUDGMENT**
	)	
DORIS E. TUMMILLO,	)	
	)	
First Defendant	)	
	)	
And	)	
	)	
GEORGIA BANK AND TRUST COMPANY OF AUGUSTA,	)	
	)	
Second Defendant.	)	
	)	

FILED: 9-13-12
Clerk of Court 250

This is an action to foreclose on a mechanic's lien arising from a contract to build a pole barn intended to house thoroughbred horses. Defendant Doris Tummillo counterclaimed for breach of contract, alleging plaintiff had abandoned the job. The matter was referred to me by agreement of the parties pursuant to Rule 53, South Carolina Rules of Civil Procedure. Trial was held in Aiken on July 12, 2012. Plaintiff and Defendant Tummillo stipulated that the mortgage lien of Defendant Georgia Bank and Trust Company of Augusta had priority over Plaintiff's claim, after which I heard testimony of Chris Key and J. D. Cooper on behalf of Plaintiff, and DorisTummillo, Robert D. Sidener and Mike Tummillo on behalf of Defendant. Based on the evidence in the record, I make the following findings of fact:

1. Elite Construction, Inc. [hereafter sometimes referred to as "Elite"] is a corporation organized and existing under and by virtue of the laws of the State of South Carolina.

Ohm H #1

2. Doris E. Tummillo is a resident of Aiken County, South Carolina who owns real property located in the County of Aiken, State of South Carolina, commonly known as 4201 Shiloh Church Road, Aiken, South Carolina, 29801, and as more fully described as follows:

> All that certain piece, parcel or tract of land, situate, lying and being in the County of Aiken, State of South Carolina, containing 123.559 acres, more or less, and being more particularly described upon a plat prepared by W. J. Webb, PLS, for Doris E. Tummillo, dated June 20, 2008 and recorded on October 28, 2008 in Plat Book 54, at page 229, in the Office of the RMC for Aiken County, South Carolina. Reference being made hereby to aforementioned plat for a more complete and accurate description as to metes, boundaries, and location of subject property.
>
> This being a portion of the same property conveyed to Doris E. Tummillo by quitclaim deed of Tummckki, LLC dated November 27, 2008 and recorded on December 3, 2008 in Record Book 4231, at page 2080, in the Office of the RMC for Aiken County, South Carolina.
>
> Aiken County Tax Parcel No.: 101-00-02-002 (portion of)

3. Defendant Georgia Bank and Trust Company of Augusta is a banking institution organized and existing under the laws of one of the United States of America and transacts business in Aiken County, South Carolina. Defendant holds a mortgage over the real property in question given by Tummillo dated January 9, 2009, recorded in Mortgage Book 4236, Page 1820, Office of the Register of Mesne Conveyance for Aiken County, South Carolina.

4. On July 16, 2008 Elite and Tummillo entered into a contract under which Elite agreed to construct a pole barn on the subject property, including labor and materials for the sum of $358,379.00. The barn was designed to contain 45 horse stalls. The contract was reduced to writing [hereafter sometimes referred to as "the Document"]. [Plf. Ex.1] While the Document does not specifically state the dimensions of the stalls, the configuration of the building called for a main central section measuring 64 feet wide by 204 feet long, and three wings measuring 72 feet long by 24 feet wide. The central wing was eliminated when the parties agreed to reduce the total number of stalls to 40, consequentially reducing the contract price to $319,668.00.

5. The Document contains Tummillo's agreement to provide for site preparation work and the building permit. No completion date was specified in the Document. In spite of the absence of any language to the effect in the Document, at its execution Tummillo claims she informed Elite that time was of the essence in the construction, that the horse stalls in the barn

Amd #2

were to be rented, and that if the project was not completed in a timely fashion, Tummillo would lose revenues due to her inability to rent the stalls for the 2008-9 season. Tummillo had the site work done in September and purchased the building permit on October 2, 2008. [Plf. Ex. 3]. Elite began work when the building permit was issued.

6. Drawings for the barn confirm the barn's exterior dimensions but are silent on the interior dimensions. [Plf. Ex. 2] It is not difficult to ascertain the interior dimensions by referring to Exhibits 1 and 2. The drawings provide for 10 groups of three stalls each in the main section, separated by 4 interior aisles allowing access to the stalls, with 2 aisles on each end. Two aisles run the length of the main structure. Building Specifications attached to Ex. 1 provide the aisle-ways to be 14 feet in width. Six total short aisles on the main section at 14 feet each amounts to 84 feet, leaving 120 feet to account for the 10 stalls [120 feet ÷ 10 stalls = 12 feet/stall]. Two long aisles of 14 feet each on the main section amounts to 28 feet, leaving 36 feet to account for the rows of 3 stalls [36 feet ÷ 3 stalls = 12 feet/stall]. I accept as credible and consistent with the plans Chris Key's explanation that the posts of each stall were placed at 12 feet on center and that interior dimensions of each would necessarily be smaller due to the diameter of the support posts and the thickness of the material used to construct the interior walls. I find Defendant Tummillo's expectancy of 144 interior square feet for each stall to be inconsistent with and contrary to the contract and plans.

7. Tummillo agreed to pay Elite the contract sum in four installments, or "draws": 30% due at signing; 30% due on completion of the roof; 30% due after completion of the exterior walls and; the balance "due when the job is completed, and be paid within 10 days of completion."

8. Tummillo paid Elite $107,513.70 shortly after the contract was signed on July 24 and $84,000 on November 24, 2008, for the first two draws, the latter taking into account the parties' amendment of the contract price.

9. In late December, 2008, Elite submitted a request for the third draw, informing Tumillo the exterior walls were completed. While photographic evidence is arguably contradictory on this issue, Chris Key's testimony on this issue is more credible than Mike Tummillo's. I find that the exterior walls were completed sufficiently to warrant a request for draw. To the extent that the walls were not fully completed, that which was to have been completed was so minor that it was of a "punch list" nature, which is taken into account

hereinbelow. Tummillo refused to pay the third draw, citing several perceived problems with the construction, to-wit: the stalls in the barn were not built according to the contract and the exterior walls were not complete.

10. With the third draw not forthcoming, on January 5, 2009, Elite suspended work on the barn and informed Tumillo it would not complete work until the third draw was paid. Elite admits the job was 85% complete when it left the site. Since the draw was to have been based upon 90% completion, I find this more than accounts for the exterior walls.

11. Tummillo did not complain about the size of the stalls until after January 5. Only then did she assert that the interior measurements were not 12 feet x 12 feet.

12. With the exception of grill work and stall doors, all material, labor and skills itemized by Elite were furnished for and actually used in the construction of defendant's barn. Elite mitigated its damages by returning the stall doors for credit. Elite was unable to return the grill work and remains responsible for payment.

13. On the 13th day of February 2009, within ninety (90) days after the last labor was provided to Tummillo, Elite filed a Notice of Mechanic's Lien seeking $126,160.37 in the Office of the Clerk of Court for Aiken County. The claim for lien was verified by oath of the plaintiff before a notary public in and for said State of South Carolina, and that the verification under the hand and seal of the notary public was attached to and filed with mechanic's lien.

14. Elite filed its Summons, Complaint and Lis Pendens six (6) months after the expiration of time limited by law for filing plaintiff's claim for lien.

15. In spite of the filing of the Notice of Mechanic's Lien and service of the verified statement of account as required by law, Tummillo failed to pay Elite's claim and plaintiff seeks foreclosure of its mechanic's lien against defendants' property according to law.

16. Elite has retained the services of legal counsel and has incurred expenses amounting to $13,650.18 in the pursuit of this matter.

CONCLUSIONS OF LAW

This Court has jurisdiction over the parties and subject matter of this action.

Tummillo breached her contract with Elite by failing to pay the third draw, or any portion thereof, as agreed upon in the Document, and as a result of the breach I conclude that Elite is entitled to damages; however, the sum claimed is the mechanics' lien is excessive.

The initial contract amount was $358,379 reduced to $319,668 when the parties eliminated five stalls. Based upon Elite's admission that it had only completed 85% of the contract on January 5, 2009, the total amount Elite should have collected would have been $271,717.80 [$319,668 x 85%]. Since Elite had received $191,513.70, the balance due on its claim is $80,204.10. I conclude that Elite is not entitled to the 10% retainage, or lost profit or overhead. Zepsa Construction, Inc. v. Radazzo, 357 S.C. 32, 591 S.E.2d 29 (Ct.App.2003). Interest shall accrue at the per diem rate allowed by law from the entry of judgment.

Tummillo argues Elite's leaving the job before completion is a breach, that Elite performed the contract in a deficient manner, and that the delay resulted in damages. Elite's departure from the job site before completion of the contract does not preclude it from recovering under the mechanic's lien statutes. Id.

Tummillo claims her damages from Elite's delay are due to Elite's late start of the contract and its failure to complete. Tummillo's position is based upon her assertion that the Document does not completely express the parties' intent.

A Court considering a case involving a contract must give effect to the intent of the parties as expressed by their written memorandum of their agreement. When a contract document is unambiguous, clear and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary and popular sense. C.A.N. v. South Carolina Health and Human Services, 296 S.C. 373, 373 S.E.2d 584 (1988).

The Document is clear in its terms. A combined reading of the Document, with its attached Specifications and the plans, indicates the stalls were to be built as 12 feet on center, not on interior dimensions. Had the parties intended for the stalls to have interior dimensions of 12 feet, the exterior perimeter would of necessity have had to measure larger than the Document provided.

Tummillo argues that even if the stall size was based upon center to center measurements, Elite's delay still made her lose money. When the contract does not include a provision that "time is of the essence," the law implies that it is to be done within a reasonable time. Faulkner v. Millar, 319 S.C. 216, 219, 460 S.E.2d 378, 380 (1995). Nothing within the four corners of the Document alludes to a completion date, nor is there a statement contained therein that states that time is of the essence. To the extent there was a delay, I conclude it was

reasonable. Elite's commencement of construction was predicated on Tummillo's completion of site preparation and obtaining the building permit. Elite began construction as soon as it was legally able.

Elite claims Tummillo owes it $23,590 for change orders and $6,007.66 in late fees to the contract. There is no evidence that the change orders were approved by Dr. Tumillo. The vast majority of the work provided for in the change orders was not performed. Elite seeks recovery for these under the guise that it is its policy to bill for changes orders in advance. There is no support for any such recovery, and this portion of Elite's claim has no merit.

Since Elite did not finish the job, Elite is not entitled to the 10% retainage. Tumillo's claims for damage due to incomplete work, defective roof and other "punch list" items [Plf. Ex. 15] are covered by this discounted value and her claims for roof repairs and costs of completion cannot be recognized twice. I further conclude that Tummillo's claims for lost profits are unsupported by credible evidence, and are speculative, at best. Even so, the party who breaches first bears the liability for nonperformance. Silver v Aabstract Pools & Spas, Inc., 376 S.C. 585, 658 S.E.2d 539 (Ct.App.2008).

"The crucial requirement in lost profits determinations is that they be "established with reasonable certainty, for recovery cannot be had for profits that are conjectural or speculative." Drews Co., Inc. v. Ledwith-Wolfe Associates, Inc., 296 S.C. 207, 213, 371 S.E.2d 532, 535-6 (1988); quoting South Carolina Finance Corp. V. West Side Finance Co., 236 S.C. 109, 122, 113 S.E.2d 329, 335 (1960). "The proof must pass the realm of conjecture, speculation, or opinion not founded on facts, and must consist of actual facts from which a reasonably accurate conclusion regarding the cause and the amount of the loss can be logically and rationally drawn." Id.

Tummillo argues Elite's claim for a Five (5%) Percent late charge is spurious, relying upon language on the first page of the Document that provides for a late fee "if the amount due is not paid within ten days of completion". Tummillo argues that because the job was not complete, the late fee is not due. I agree and deny the claim for late fees.

I conclude, therefore that Elilte should have judgment of foreclosure of the mechanic's lien in the sum of $80,204.10 and the property subject to the mechanic's lien described hereinabove should be ordered sold at public auction after due advertisement.

Judd 46

The question then turns to whether either side is entitled to recover their attorneys' fees. Tummillo's obligation to pay attorneys' is not just established by statute, it is also contractual. In either event, however, the determination of the amount of attorneys' fees that should be awarded is vested in the sound discretion of the Court. Keeneys Metals Roofing, Inc. vs. Palmieri, 345 S.C.550, 548 S.E.2d 900 (Ct.App. 2001).

The court must take into account six (6) factors: (1) Nature and extent and difficulty of the case; (2) Time necessarily devoted to the case; (3) Professional standing of the counsel; (4) The contingency of compensation; (5) Beneficial results obtained; and (6) Customary legal fees for similar services. Regardless of the outcome, the Court has discretion in this regard.

In determining the award for attorneys' fees under SC Code, Ann. §29-5-110(a), an additional issue to consider is identifying the "prevailing party." This decision is based upon the verdict in the action. The party whose offer is closer to the verdict is deemed to be the prevailing party. Where no written offer of settlement is made, the amount prayed for in the complaint is considered Elite's offer of settlement. While Tummillo has pursued a counterclaim, no amount is pled in the pleading. Elite's has claimed a lien in the amount of $126,160.37 and has been awarded $80,204.10 – a difference of $45,956.27. Defendant's claim for lost revenue is $12,000 per month for 3 months and has been awarded nothing. I conclude that Elite is the prevailing party; however, I am unable to award fees and costs without further information.

Elite's counsel's affidavit does not specify the number of hours devoted to the pursuit of the case. Likewise, there is insufficient evidence in the record that allows me to consider the contingency of compensation or the customary legal fees charged on matters of this nature by other members of the Aiken County Bar. I therefore reserve making an award pending a full submission by counsel of the items necessary for me to make a decision supported by the law.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. There is due to the Plaintiff on its mechanic's lien the sum of $80,204.10 representing the total debt due Plaintiff, plus attorneys' fees and costs to be determined after notice to all parties and an opportunity to be heard.
2. The total amount due in the preceding paragraph shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the legal rate.
3. That the Defendant liable for the aforesaid mechanic lien debt shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney,

the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

4. That on default of payment at or before the time herein indicated, the premises described in the Complaint, as hereinafter set forth, be sold by the undersigned Special Referee for Aiken County at Public Auction in the Master in Equity Courtroom at the Aiken County Courthouse, Aiken, South Carolina, on some convenient Sales Day hereafter (and should be the regular day of judicial sales fall on a legal holiday, then in such event, the Sales Day shall be on the Tuesday next succeeding such holiday), on the following terms, that is to say:

   a. **FOR CASH**: The undersigned Special Referee will require a deposit of five percent (5%) on the amount of the bid (in cash or equivalent) same to be applied on the purchase price upon compliance with the bid, but in case of non-compliance within twenty (20) days same to be forfeited and applied to the costs and Plaintiff's debt.

   b. The same shall be subject to the mortgage lien of Georgia Bank and Trust Company of Augusta, Georgia, taxes and assessments, existing easements and restriction, easement and restrictions of record, and any other senior encumbrances. Proceeds of sale shall not be paid to the prior lienholder.

   c. Purchaser to pay for deed stamps and costs of recording the deed.

5. If Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses, and the indebtedness of Plaintiff's indebtedness.

6. That the undersigned Special Referee will by advertisement according to law, give notice of the time and place of sale, and the terms thereof; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a Purchaser at such sale, and that is, upon such sale being made, the Purchaser, or Purchasers should fail to comply with the terms thereof within twenty (20) days after date of sale, then the undersigned Special Referee may advertise the said premises for sale on the next, or some other subsequent Sales Day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

7. That the undersigned Special Referee will apply the proceeds of sale as follows:

Item #8

FIRST: to the payment of the amount of the costs and expenses of this action including any Guardian ad Litem fee or fees of attorneys appointed under Order of Court;

SECOND: to the payment to the Plaintiff's or Plaintiff's attorney, of the amount of Plaintiff's debt and interest or so much thereof as the purchase money will pay on same;

NEXT: any surplus will be held pending further Order of this Court.

8. It is further **ORDERED, ADJUDGED AND DECREED** that in the event the successful bidder is other than the Defendant in possession herein, the Sheriff of Aiken County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in such peaceable possession.

9. And it is further **ORDERED, ADJUDGED AND DECREED** that the Defendant named herein and all persons whosever claiming under him, her, them or it including but not limited to any title holder acquiring title subsequent to the filing of the Lis Pendens in this matter whether a party to this action or not be forever barred and foreclosed of all right, title, interest, and equity in redemption in the said premises so sold, or any part thereof.

10. **IT IS FURTHER ORDERED** that, pursuant to SC Code Ann. Section 30-9-31 (Supp. 1987), the deed of conveyance made pursuant to this sale shall be indexed in the grantor index by the Register of Mesne Conveyances in the name of the owner of record of subject property immediately prior to the execution of the deed, as well as in the name of the Special Referee for Aiken County, who executes such a deed as Grantor.

11. The undersigned Special Referee will retain jurisdiction to do all the necessary acts incident to this foreclosure, including but not limited to, the issuance of a Writ of Assistance and disposing of any surplus funds pursuant to Rule 71(c), SCRCP.

AND IT IS SO ORDERED.

J. Martin Harvey, Special Referee

Barnwell, South Carolina
September 5 2012

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2009-CP-02-958

ELITE CONSTRUCTION, INC.

PLAINTIFF(S)

DORIS E. TUMMILLO

GEORGIA BANK AND TRUST COMPANY OF AUGUSTA

DEFENDANT(S)

Submitted by:	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.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **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:

Filed 9-13-12 2:50
L. Godard
Deputy Clerk

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: MECHANIC'S LIEN FORECLOSURE

INFORMATION FOR THE PUBLIC 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)
ELITE CONSTRUCTION INC.	DORIS E. TUMMILLO	$ TBD
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:
4201 SHILOH CHURCH RD AIKEN SC TMS 101-00-02-002

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.**

Sept 5 2012

~~Circuit Court Judge~~ **Judge Code** **Date**

SCRCP Form 4C (10/2011) Page 1 of 2

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

SEP 26 2012

C.C.P. & G.S., Aiken County, S.C.

Deputy Clerk

For Clerk of Court Office Use Only

This judgment was entered on the 14 day of SEPTEMBER, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 14 day of Sept, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

CLARKE W. MCCANTS, III
P. O. BOX 2881
AIKEN SC 29802
ATTORNEY(S) FOR THE PLAINTIFF(S)

NEAL W. DICKERT
P O BOX 1564
AUGUSTA GA 30903
ATTORNEY(S) FOR THE DEFENDANT(S)

Per Judge by Shannon Lewis DC
CLERK OF COURT

Court Reporter:

State of South Carolina County of Aiken Elite Construction, Inc., Plaintiff, vs. Doris E. Tummillo and Georgia Bank and Trust Company of Augusta, Defendants.	)	In the Court of Common Pleas Civil Action No.: 2009-CP-02-958 **ORDER OF REFERENCE**

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina, do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office, this 12 day of July, 20 12
Liz Godard
C.C.C.P. & G.S., Aiken County, S.C.
Angel Miles 4m
Deputy Clerk

Upon motion of and with the consent of the Parties, it is hereby ordered that this matter be referred to James Martin Harvey, Esquire, for the purposes of hearing those claims and causes of action set forth in the Plaintiff's Complaint, those claims or defenses presented by the Defendants, and for entry of appropriate judgment.

SO ORDERED.

The Honorable Doyet A. Early, III
Chief Administrative Judge
Second Judicial Circuit
7-10-12

WE SO MOVE AND CONSENT:

Clarke W. McCants, III
Counsel for Plaintiff

FOV James S. Murray
Counsel for Georgia Bank & Trust Co. of Augusta

FOV Neal W. Dickert
Counsel for Doris E. Tummillo

FILED 11 July 2012
Liz Godard
C.C.C.P.&G.S.
10:00 Angel Miles am
am Deputy Clerk

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

Elite Construction, Inc
☒ Plaintiff

CASE NO.
2009-CP-02-958

v.

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Doris E. Tummillo And Georgia Bank And Trust Company Of Augusta
☐ Defendant.

Plaintiff's Attorney:	Defendant's Attorney:
Clarks Mccants, Bar No.	Neal W. Dickert, Bar No.
Address:	Address:
P.O. Box 2881, Aiken, SC 29802-2881	PO Box 1564, Augusta GA, 30903-1564
phone: 803-649-6200 fax: 803-649-5566	phone: fax:
e-mail: other:	e-mail: other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Order Of Reference
Estimated Time Needed: Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

FOR CLARKS MCCANTS
Signature of Attorney for ☒ Plaintiff / ☐ Defendant Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

FILED 11 July 2012
Lisa Harland
CLERK OF COURT & C.C.P.&G.S.
10:00 Angel Miles am
Deputy Clerk

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: am

☑ MOTION FEE COLLECTED: # $25 CK # 20680
☐ CONTESTED – AMOUNT DUE: Rec # 29537

SCCA/233 (11-03)

Common Pleas

Clerk : Liz Godard
P O Box 583
Aiken, SC 29802
(803) 642-1715

DUPLICATE

Received From:	McCants, Clarke W. III PO Box 2881 Aiken, SC 298022881		Date:	7/11/2012
			Receipt #:	29537
			Clerk:	c02awiley
Paying for:	Elite Construction Inc,			
Transaction Type:	Payment		Reference #:	20680
Payment Type:	Check	$25.00	Comment:	Non-Refundable
Total Paid:		$25.00		

Case #	Caption	Previous Balance	Amount Paid	Balance Due
2009CP0200958	Elite Construction Inc VS Doris E Tummillo , defendant, et al	**$25.00**	**$25.00**	**$0.00**
Total Cases:	**1**	**$25.00**	**$25.00**	**$0.00**

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2009CP0200958

Elite Construction Inc	Doris E Tummillo	Georgia Bank & Trust Company Of Georgia
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.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **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)

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.**

Circuit Court Judge	Judge Code	7/12/2012 Date

For Clerk of Court Office Use Only

This judgment was entered on **11th day of July 2012**, and a copy mailed first class or placed in the appropriate attorney's box on **12th day of July 2012**, to attorneys of record or to parties (when appearing pro se) as follows:

Clarke W. McCants III PO Box 2881 Aiken, SC 298022881

Marty Harvey

ATTORNEY(S) FOR THE PLAINTIFF(S)

James Samuel Murray PO Box 1495 Augusta, GA 309031495

Neal W. Dickert PO Box 1564 Augusta, GA 309031564

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by AngelMiles

Liz Godard - Clerk of Court

Court Reporter

State of South Carolina)
) In the Register of Mesne Conveyances
County of Aiken)

Elite Construction, Inc.,)
)
Plaintiff,) NOTICE AND CERTIFICATE
) OF MECHANIC'S LIEN
)
vs.)
)
Doris E. Tummillo,)
)
)
Defendant.)

2009003619
MECHANICS LIEN
RECORDING FEES $10.00
PRESENTED & RECORDED:
02-13-2009 11:15 AM
JUDITH WARNER
REGISTER OF MESNE CONVEYANCE
AIKEN COUNTY, SC
BY: LYNN STEMBRIDGE DEPUTY
ML - 09-458

TO DORIS E. TUMMILLO (hereinafter "Owner"):

PLEASE TAKE NOTICE that the Plaintiff, Elite Construction, Inc., is owed the sum of $126,160.39, plus interest, costs and reasonable attorney's fees, from Doris E. Tummillo, as set forth in the attached Verified Statement of Account (Exhibit "A") and hereby claims a mechanic's lien upon and against any interest of the Owner in the real property hereinafter described, together with the interest of any and all other persons having actual or record notice hereof, to the full extent permitted by law.

The debt above described is due and owing to Elite Construction, Inc. for labor performed and materials furnished and actually used in the erection, alteration, or improvement to buildings or structures situated on, or otherwise improving, the real property known as 4201 Shiloh Church Road, located in Aiken County, South Carolina, and being more fully described in Exhibit "B" attached hereto, for said Owner, and /or said debt is due because such improvements have been authorized by the Owner, as indicated by Exhibit "A" and incorporated by reference. Elite

EXHIBIT B

Construction, Inc., by and through its authorized agents, last labored on, or furnished labor and materials for, such buildings, property, structures or improvements on or about January 5, 2009.

By virtue of the foregoing, by the service and filing of this Notice and Certificate of Mechanic's Lien, and pursuant to the provisions of S.C. Code Ann. § 29-5-10 (1976), and other applicable law and regulation, Elite Construction, Inc. has and claims a lien against the real property described in Exhibit "B", to secure payment of the debt so due, together with the costs of enforcing and / or foreclosing the lien claimed herein, including a reasonable attorney's fee, and as provided by the laws of the State of South Carolina.

NANCE, MCCANTS & MASSEY

By: _____

Clarke W. McCants, III
218 Newberry St., SW
P.O. Box 2881
Aiken, S.C. 29802
(803)649-6200 x21
Counsel for Elite Construction, Inc.

Dated: February 13, 2009

VERIFIED STATEMENT OF ACCOUNT

This is a true and verified statement of the account of Doris E. Tummillo, which is owed to Elite Construction, Inc. The principal balance on the above-referenced account, as of the date hereof, is $126,160.37, plus interest, costs and a reasonable attorney's fee, and as more fully set forth below:

Contract Price	$358,379.00
Contract Deletion	- $ 38,115.00
Payments	-$191,513.70
75% of Total	$ 96,562.73
Change Orders	$ 23,590.00
5% Late Charge	$ 6007.64
TOTAL DUE:	$126.160.37

Personally appeared before me, Christopher Key, who being duly sworn, deposes and says that this is a just and true statement of the said account, and no part thereof has been paid by discount or otherwise.

ELITE CONSTRUCTION, INC.

By: Christopher Key
Christopher Key
Its: Owner.

Sworn to and Subscribed before me this
13th day of February, 2009.

Lisa K Smith (SEAL)
Notary Public for South Carolina
My Commission expires: _____

My Commission Expires
February 25, 2018

Exhibit "A"

DESCRIPTION OF PROPERTY

All that certain piece, parcel or tract of land, situate, lying and being in the County of Aiken, State of South Carolina, containing 123.559 acres, more or less, and being more particularly described upon a plat prepared by W. J. Webb, PLS, for Doris E. Tummillo, dated June 20, 2008 and recorded on October 28, 2008 in Plat Book 54, at page 229, in the Office of the Register of Deeds for Aiken County, South Carolina. Reference being made hereby to aforementioned plat for a more complete and accurate description as to metes, boundaries, and location of subject property.

This being a portion of the same property conveyed to Tummekki, LLC by deed of Aiken Land and Timber, LLC dated October 22, 2003 and recorded on October 30, 2003 in Deed Book 2367, at page 103, in the Office of the Register of Deeds for Aiken County, South Carolina.

Tax Parcel No.: 101-00-02-002

Exhibit "B"

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN)

Elite Construction, Inc.,)
Plaintiff(s))
) CIVIL ACTION COVERSHEET
vs.) 09-CP - 02- 00958

Doris E. Tummillo and Georgia Bank and Trust Company of Augusta,)
Defendant(s))

(Please Print)

Submitted By: Clarke W. McCants, III SC Bar #: 3725
Address: P. O. Box 2881 Telephone #: 649-6200, ext. 21
Aiken, SC 29802 Fax #: 649-5566
Other:
E-mail: mccants3rd@aol.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☒ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts - Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☒ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Administrative Law Judge (980)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Sexual Predator (510)

Submitting Party Signature: [signature] Date: May 1, 2009

COPY
ORIGINAL FILED
MAY 01 2009
COPY
AIKEN COUNTY
CLERK OF COURT

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

State of South Carolina County of Aiken	)	In the Court of Common Pleas
Elite Construction, Inc., Plaintiff, vs. Doris E. Tummillo and Georgia Bank and Trust Company of Augusta, Defendants.	)	Civil Action No.: 2009-CP-02-00958 **SUMMONS** **(Breach of Contract)** **(Mechanic's Lien Foreclosure)** **(Non-Jury)**

TO THE DEFENDANTS ABOVE-NAMED: You are hereby summoned and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of the Answer to the said Complaint on the subscriber at his office at 218 Newberry Street S.W., (P.O. Box 2881), Aiken, SC 29802, within thirty days after service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time before said, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint, and judgment by default will be rendered against you for the relief demanded in the Complaint.

NANCE, MCCANTS & MASSEY

By: _____

Clarke W. McCants, III, Esquire
P.O. Box 2881
Aiken, SC 29802-2881
(803) 649-6200
Counsel for Plaintiff

Dated: May 1, 2009

COPY
ORIGINAL FILED
MAY 01 2009
AIKEN COUNTY
CLERK OF COURT

State of South Carolina	)	
	)	In the Court of Common Pleas
County of Aiken	)	
	)	
Elite Construction, Inc.,	)	Civil Action No.: 2009-CP-02-00958
	)	
Plaintiff,	)	**COMPLAINT**
	)	**(Breach of Contract)**
vs.	)	**(Mechanic's Lien Foreclosure)**
	)	**(Non-Jury)**
Doris E. Tummillo and	)	
Georgia Bank and Trust Company of Augusta,	)	
Defendants.	)	
	)	

COMES NOW THE PLAINTIFF and respectfully shows unto the Court:

FOR A FIRST CAUSE OF ACTION

1. The Plaintiff is a corporation organized and existing under and by virtue of the laws of the State of South Carolina.

2. The Defendant, Doris E. Tummillo, upon information and belief, is a resident of Aiken County, South Carolina and owns real property located in the County of Aiken, State of South Carolina, commonly known as 4201 Shiloh Church Road, Aiken, South Carolina, 29801, and as more fully described below.

3. The Defendant Georgia Bank and Trust Company of Augusta is a banking institution organized and existing under the laws of one of the United States of America and transacts business in Aiken County, South Carolina. Said Defendant is named in this civil action to the extent that it may claim an interest in said property by virtue of a mortgage given by the Defendant Tummillo dated January 9, 2009, recorded in Mortgage Book 4236, Page 1820, Office of the Register of Mesne Conveyance for Aiken County, South Carolina.

4. On or about July 16, 2008 the Parties entered into a contract whereby the Plaintiff

COPY
ORIGINAL FILED
MAY 01 2009
AIKEN COUNTY
CLERK OF COURT

agreed to provide certain construction services upon the subject property, including labor and materials, and the Defendant agreed to pay for such services, and as more fully set forth in the Parties' agreement attached hereto as Exhibit "A".

5. The Plaintiff has complied with the terms and provisions of the Parties' agreement.

6. Despite proper demand the Defendant Tummillo has failed and refused to provide payment to the Plaintiff pursuant to the terms and provisions of the Parties' agreement and in breach of said agreement.

7. The Plaintiff has sustained certain actual damages as a result of the Defendant Tummillo's breach of the Parties' contract.

8. The Plaintiff is informed and believes that it is entitled to judgment against the Defendant Tummillo for such actual damages and payment of the costs and expenses of this civil action.

FOR A SECOND CAUSE OF ACTION

9. The Plaintiff realleges those matters set forth in Paragraphs 1-8 above.

10. The Plaintiff last performed work upon the subject property on January 5, 2009.

11. On February 13, 2009 the Plaintiff caused a mechanic's lien, Exhibit "B" attached hereto, to be filed against the subject property of the Defendant Tummillo, commonly known as 4201 Shiloh Church Road, Aiken, South Carolina, 29801, and more particularly described as follows:

> All that certain piece, parcel or tract of land, situate, lying and being in the County of Aiken, State of South Carolina, containing 123.559 acres, more or less, and being more particularly described upon a plat prepared by W. J. Webb, PLS, for Doris E. Tummillo, dated June 20, 2008 and recorded on October 28, 2008 in Plat Book 54, at page 229, in the Office of the RMC for Aiken County, South Carolina. Reference being made hereby to aforementioned plat for a more complete and accurate description as to metes, boundaries, and location of subject property.

This being a portion of the same property conveyed to Doris E. Tummillo by quitclaim deed of Tummekki, LLC dated November 27, 2008 and recorded on December 3, 2008 in Record Book 4231, at page 2080, in the Office of the RMC for Aiken County, South Carolina.

Aiken County Tax Parcel No.: 101-00-02-002 (portion of)

12. The Plaintiff is informed and believes that it is entitled to judgment and foreclosure of its lien pursuant to the provisions of S.C. Code Ann. § 29-5-10 (1976), et seq.

13. Pursuant to applicable law the Plaintiff is entitled to recovery of reasonable attorney's fees, costs and expenses as part of this matter.

14. Pursuant to applicable law the Plaintiff is entitled to recovery of pre-judgment interest as part of this matter.

WHEREFORE, the Plaintiff prays for judgment against the Defendant Tummillo for actual damages and the costs and expenses of this matter; the Plaintiff further prays this Court issue its order and judgment of foreclosure and sale of the of the subject property for purposes of satisfaction of the mechanic's lien set forth herein, determining the rights, responsibilities and priorities of those parties having interests in the subject property, awarding the Plaintiff attorney's fees, costs and expenses in this matter as well as such further relief as the Court deems just and proper.

NANCE, MCCANTS & MASSEY

By: _____

Clarke W. McCants, III, Esquire
P.O. Box 2881
Aiken, South Carolina 29802-2881
Telephone (803) 649-6200
Counsel for Plaintiff

Dated: May 1, 2009

ELITE
CONSTRUCTION, INC.

PURCHASE CONTRACT

EXHIBIT A

Name Doris Tummillo Date 7-16-08

Address Shiloh Church Road State, Zip S.C.

Directions to Site

Building Use Barn Building Size W 64' L 204' H 10'

Wall Color _____ Gable _____ Roof _____ Trim _____ Doors _____

Power on site? x Yes ___ No

Miscellaneous Building has three 72' long by 24' wide extensions with five stalls centered in each. Building permitted will be provided by Elite Construction. Electrical, plumbing, and two coats of polyurethane will be included in the price.

Building permit – Grading – Fill furnishing by owner unless specified.
We shall furnish all labor and material as described above and in accordance with the specifications and conditions shown on reverse side of this contract unless otherwise specified.

Total Contract $358,379.00

Financing by

Terms

30% of total cost of project due upon signing.
30% of total cost of project due after roof completion.
30% of total cost of project due after exterior walls completed
10% of total cost will be due when job is completed, and be paid within 10 days of completion.
If amount due is not paid within 10 days of completion, there will be a 5% late charge added to the total.
Any change orders shall be in writing and approved by the builder.

Amount due at signing $107,513.70 30%

Amount due after roof completion $107,513.70 30%

Amount due at completion of exterior walls $107,513.70 30%

Amount due at completion of job $35,837.90 10%

Buyer

Tummillo
Printed Name

Signed Name

Elite Construction Representative

Chris Key
Printed Name

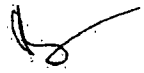
Chris Key
Signed Name

GENERAL SPECIFICATIONS CUSTOM POLE BUILDINGS

1. Foundation columns and other lumber which comes in contact with the ground will be pressure treated to resist rot, decay and insect damage
2. Standard spacing of side wall columns is 10' on center.
3. Truss lumber will be stress rated 1500 F.
4. Each building will have pressure treated splash boards at the bottom of the wall.
5. Truss designs are by licensed professional engineers and are certified as to load capacity. Standard spacing is 10' on center.
6. All trusses to be bolted as well as spiked into wall columns.
7. Hardware items such as door track, hinges, bolts, connector plates, door handles, hooks, etc., will be plated with zinc or equal.
8. Minor changes, which would not adversely affect the strength or appearance, may be made without notification.
9. Walls of this building are not designed to withstand the lateral loads imposed by the contact storage of bulk goods, such as fertilizer, grain, chopped or baled hay, or any loads that tend to settle or spread in storage.
10. All untreated lumber on the building exterior will be covered with pre-formed moldings.
11. Guarantee on pressure treated wood, workmanship and material becomes effective upon full payment of invoice. Craftsmanship and all other materials not covered under any other warranties will be covered for six months after completion date of the job.

TERMS OF SALE

1. Building will be Custom Structure and will be erected according to the above specifications. Builder will furnish all materials, labor and supervision for the building, but will not perform, furnish or install any electrical wiring, plumbing, heating, painting, glazing, concrete work, grading or filling, unless otherwise specified.
2. A service charge of 5% per month shall accrue to all accounts more than 30 days past invoice date. Should it be necessary to force collection of any monies due under this agreement, buyer shall be liable for service charges and reasonable attorney fees.
3. Buyer agrees to insure building for the amount of the contract price with the following coverage: fire, lightning, windstorm and hail. Such coverage is to be put into effect on date material is delivered to site and will remain in effect until contract price has been paid in full. The risk of any such casualty is assumed by the owner. In the event of loss, payment will be made to the owner and/or builder as their interests may appear.
4. Builder will carry adequate insurance to protect owner against any negligence by builder or his workmen.
5. Builder will carry workers' compensation on all workmen he employs on the job.
6. Builder is responsible for obtaining any required building permits prior to erection.
7. If possible, buyer will be at the building site at the start and finish of construction.
8. Buyer is responsible for and agrees to clear and level building site prior to scheduled date of erection. Leveling shall be performed so the site will not vary more than 6 inches from high to low points.
9. Buyer and builder assume that the building site is free from underground obstructions. Where rock, stumps, concrete or other unforeseen obstruction hinder digging holes for foundation columns, a charge will be made in accordance with additional time required. The builder reserves the right to decline jobs where underground obstructions are too severe, unless buyer can have site prepared.
10. Builder is not responsible for damage to underground utilities, such as tile, water lines, electric lines, etc.
11. Certain construction items such as ventilators, roof hatches, eave troughs, doors, windows, etc., are to be installed in a workmanlike manner in proper adjustment. However, such items are not sold with the understanding that they will never leak or need adjustment. This future maintenance and adjustment is the responsibility of the buyer.
12. If buyer or his agent requests change from specifications, any extra costs for such changes will be added to the purchase price.
13. This agreement is subject to verification by office of the builder.
14. This quotation is automatically withdrawn and is void after 30 days.
15. Occupancy or use of the building by purchase before completion will constitute acceptance of the building and payment in full is required at that time.



Building Specifications

Size

1. Length 204'
2. Width 64'
3. Overhang N/A
4. Other (3) 24' x 72' wings

Concrete and Insulation

1. Aisle way 14'
2. Aprons N/A
3. Bags N/A
4. Insulation Roof
5. Other

Color and Material

1. Roof 40 yr. Ag panel
2. Exterior Walls 40 yr. Ag panel (where applicable)
3. Stalls T&G
4. Bars (will be included in change order)
5. Doors Double Dutch 4' x 4' wood with cross bucks
6. Windows Dutch 4' x 4' wood with cross bucks
7. Interior Walls T&G
8. Other

INITIALS

Exterior

1. Cupolas N/A
2. Windows N/A
3. Doors N/A
4. Sky Lights 24" ridge
5. Front Posts N/A
6. Hydrants N/A
7. Other

Interior

1. Hydrants 9 frost freeze
2. Water Heaters N/A
3. Washer/Dryer N/A
4. Other

Stalls

1. Automatic Water Dispensers N/A
2. Feeder N/A
3. Mats N/A
4. Fans 45
5. Cribbing Metal Yes
6. Doors 4' x 4' Wooden Dutch with cross bucks
7. Divider Grill Work (will be included in change order)
8. Aisle Way Grill Work (will be included in change order)
9. Other

INITIALS

State of South Carolina)
) In the Register of Mesne Conveyances
County of Aiken)

Elite Construction, Inc.,)
)
Plaintiff,) NOTICE AND CERTIFICATE
) OF MECHANIC'S LIEN
)
vs.)
)
Doris E. Tummillo,)
)
)
Defendant.)

2009003619
MECHANICS LIEN
RECORDING FEES $10.00
PRESENTED & RECORDED:
02-13-2009 11:15 AM
JUDITH WARNER
REGISTER OF MESNE CONVEYANCE
AIKEN COUNTY, SC
BY: LYNN STEMBRIDGE DEPUTY
ML - 09-458

TO DORIS E. TUMMILLO (hereinafter "Owner"):

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The debt above described is due and owing to Elite Construction, Inc. for labor performed and materials furnished and actually used in the erection, alteration, or improvement to buildings or structures situated on, or otherwise improving, the real property known as 4201 Shiloh Church Road, located in Aiken County, South Carolina, and being more fully described in Exhibit "B" attached hereto, for said Owner, and /or said debt is due because such improvements have been authorized by the Owner, as indicated by Exhibit "A" and incorporated by reference. Elite

EXHIBIT B

Construction, Inc., by and through its authorized agents, last labored on, or furnished labor and materials for, such buildings, property, structures or improvements on or about January 5, 2009.

By virtue of the foregoing, by the service and filing of this Notice and Certificate of Mechanic's Lien, and pursuant to the provisions of S.C. Code Ann. § 29-5-10 (1976), and other applicable law and regulation, Elite Construction, Inc. has and claims a lien against the real property described in Exhibit "B", to secure payment of the debt so due, together with the costs of enforcing and / or foreclosing the lien claimed herein, including a reasonable attorney's fee, and as provided by the laws of the State of South Carolina.

NANCE, MCCANTS & MASSEY

By: _____

Clarke W. McCants, III
218 Newberry St., SW
P.O. Box 2881
Aiken, S.C. 29802
(803)649-6200 x21
Counsel for Elite Construction, Inc.

Dated: February 13, 2009

VERIFIED STATEMENT OF ACCOUNT

This is a true and verified statement of the account of Doris E. Tummillo, which is owed to Elite Construction, Inc. The principal balance on the above-referenced account, as of the date hereof, is $126,160.37, plus interest, costs and a reasonable attorney's fee, and as more fully set forth below:

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5% Late Charge	$ 6007.64
TOTAL DUE:	$126,160.37

Personally appeared before me, Christopher Key, who being duly sworn, deposes and says that this is a just and true statement of the said account, and no part thereof has been paid by discount or otherwise.

ELITE CONSTRUCTION, INC.

By: Christopher Key
Christopher Key
Its: Owner

Sworn to and Subscribed before me this
13th day of February, 2009.

Lisa K. Smith (SEAL)
Notary Public for South Carolina
My Commission expires:

My Commission Expires
February 25, 2018

Exhibit "A"

DESCRIPTION OF PROPERTY

All that certain piece, parcel or tract of land, situate, lying and being in the County of Aiken, State of South Carolina, containing 123.559 acres, more or less, and being more particularly described upon a plat prepared by W. J. Webb, PLS, for Doris E. Tummillo, dated June 20, 2008 and recorded on October 28, 2008 in Plat Book 54, at page 229, in the Office of the Register of Deeds for Aiken County, South Carolina. Reference being made hereby to aforementioned plat for a more complete and accurate description as to metes, boundaries, and location of subject property.

This being a portion of the same property conveyed to Tummekki, LLC by deed of Aiken Land and Timber, LLC dated October 22, 2003 and recorded on October 30, 2003 in Deed Book 2367, at page 103, in the Office of the Register of Deeds for Aiken County, South Carolina

Tax Parcel No.: 101-00-02-002

Exhibit "B"

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF AIKEN	)	**C/A No. 2009-CP-02-000958**
	)	
ELITE CONSTRUCTION, INC.	)	
	)	
Plaintiff	)	
	)	
vs.	)	**ANSWER AND COUNTERCLAIM**
	)	
DORIS E. TUMMILLO,	)	
	)	
First Defendant	)	
	)	
and	)	
	)	
	)	
GEORGIA BANK AND TRUST COMPANY OF AUGUSTA,	)	
	)	
Second Defendant.	)	
	)	

COPY
ORIGINAL FILED
MAY 29 2009
AIKEN COUNTY
CLERK OF COURT

Now comes the Defendant, Doris E. Tummillo, and files her answer and counterclaim to the Plaintiff's complaint in the above case as follows.

FIRST DEFENSE

The Plaintiff has waived its right, if any, to the relief requested in the complaint by failing to complete the contract in accordance with the agreement of the parties.

SECOND DEFENSE

The Plaintiff is estopped to assert the relief requested in the complaint in that the Plaintiff has failed to complete the contract in accordance with the agreement of the parties.

THIRD DEFENSE

The Plaintiff abandoned the contract forcing the Defendant, Doris E. Tummillo, to incur expenses above the amount of any sums that the Plaintiff might otherwise be entitled to recover.

FOURTH DEFENSE

In responding to the specific allegations of the Plaintiff's complaint, Defendant, Doris E. Tummillo, shows the following:

1. Defendant, Doris E. Tummillo, is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph numbered one (1) of the Plaintiff's complaint.

2. Defendant, Doris E. Tummillo, admits the allegations contained in paragraph numbered two (2) of the Plaintiff's complaint.

3. Defendant, Doris E. Tummillo, admits the allegations contained in paragraph numbered three (3) of the Plaintiff's complaint.

4. Defendant, Doris E. Tummillo, admits the allegations contained in paragraph numbered four (4) of the Plaintiff's complaint, but further alleges that the agreement attached as Exhibit "A" to the complaint was amended and or modified orally by the parties, to include certain provisions that differ from those set forth in this document.

5. Defendant, Doris E. Tummillo, denies the allegations contained in paragraph numbered five (5) of the Plaintiff's complaint.

6. The Defendant, Doris E. Tummillo denies the allegations contained in paragraph numbered six (6) of the Plaintiff's complaint.

7. Defendant, Doris E. Tummillo denies the allegations contained in paragraph numbered seven (7) of the Plaintiff's complaint.

8. Defendant, Doris E. Tummillo denies the allegations contained in paragraph numbered eight (8) of the Plaintiff's complaint.

FOR A SECOND CAUSE OF ACTION

9. In response to the allegations contained in paragraph numbered nine (9), Defendant, Doris E. Tummillo restates her responses to paragraphs one (1) through eight (8) as fully as if restated herein.

10. Defendant, Doris E. Tummillo, admits the allegations contained in paragraph numbered ten (10) of the Plaintiff's complaint

11. In response to the allegations contained in pargraph numbered eleven (11) , the Defendant, Doris E. Tummillo, admits the Plaintiff filed the lien as alleged, but further avers that the Plaintiff is not entitled to assert the lien filed as referenced in this paragraph.

12. Defendant, Doris E. Tummillo denies the allegations contained in paragraph numbered twelve (12) of the Plaintiff's complaint.

13. Defendant, Doris E. Tummillo denies the allegations contained in paragraph numbered thirteen (13) of the Plaintiff's complaint

14. Defendant, Doris E. Tummillo denies the allegations contained in paragraph numbered fourteen (14) of the Plaintiff's complaint.

COUNTERCLAIM

1. The Plaintiff and Defendant, Doris E. Tummillo, entered into a contract under the terms of which the Plaintiff was to complete a horse barn for the Defendant on her property located at 4201 Shiloh Church Road, Aiken County, South Carolina.

2. The Plaintiff was advised that time was of the essence in this contract and that the horse stalls constructed in the barn would be rented, and that if the project were not completed in a timely fashion, Defendant, Doris E. Tummillo, would lose revenues and the ability to rent these stalls for the 2008 season.

3. The Plaintiff abandoned the job prior to completion. The Plaintiff failed to complete its contractual obligations to the Defendant and performed the contract in a deficient manner. The Plaintiff's breach also delayed ultimate completion of the project. As a result of the breaches of contract, Defendant, Doris E. Tummillo, had to make other arrangements to complete the facility which the Plaintiff agreed to perform and has incurred expenses and damages in an amount to be determined by the trier of fact.

4. As a result of the delay in the completion of the project, Defendant, Doris E. Tummillo, has also suffered consequential damages from lost rental in an amount to be determined by the trier of fact.

WHEREFORE, Defendant prays:

(a) That the Plaintiff's complaint be dismissed with all costs assessed against the Plaintiff; and

(b) That the Plaintiff recover nothing from Defendant, Doris E. Tummillo, and that this Defendant be entitled to a judgment on her counterclaim for the damages due

from the Plaintiff's breach of contract in an amount to be determined by the trier of fact.

NEAL W. DICKERT
South Carolina Bar No: 001680

PAUL K. SIMONS, JR.
South Carolina Bar No: 076883

Attorneys for Defendant, Doris E. Tummillo

Of Counsel:
Hull, Towill, Norman, Barrett & Salley
Post Office Box 1564, Augusta, GA, 30903-1564
(706) 722-4481
P. O. Box 517, Aiken, SC, 29802
(803) 648-4213

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF AIKEN	)	**C/A No. 2009-CP-02-000958**
ELITE CONSTRUCTION, INC. Plaintiff	)	
vs.	)	**CERTIFICATE OF SERVICE**
DORIS E. TUMMILLO, First Defendant	)	
and	)	
GEORGIA BANK AND TRUST COMPANY OF AUGUSTA, Second Defendant.	)	

COPY
ORIGINAL FILED
MAY 29 2009 2:40
AIKEN COUNTY
CLERK OF COURT

I certify that, on this date, I served a copy of the ***Answer and Counterclaim of Doris E. Tummillo*** in this action by:

- o Delivering it to him/her personally; or,
- ✓ Mailing it to him/her at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage thereon, addressed as follows:

Mr. Clarke W. McCants, III
Nance McCants & Massey
P. O. Box 2881
Aiken, South Carolina 29802-2881
Attorney for Plaintiff

Mr. James S. ("Jeb") Murray
Warlick Tritt Stebbins & Murray
P. O. Box 1495
Augusta, Georgia 30903-1495
Attorney for 2nd Defendant

- o Other:

May 29 2009
(Date)

Neal W. Dickert
South Carolina Bar No: 1680
Attorney for Defendant,
Doris E. Tummillo

State of South Carolina	)	
	)	In the Court of Common Pleas
County of Aiken	)	
	)	
Elite Construction, Inc.,	)	Civil Action No.: 2009-CP-02-
	)	
Plaintiff,	)	**REPLY TO COUNTERCLAIM**
	)	**(Jury Trial Requested)**
vs.	)	
	)	
Doris E. Tummillo and	)	
Georgia Bank and Trust Company of Augusta,	)	
Defendants.	)	
	)	

COMES NOW THE PLAINTIFF and replies to the Defendant Tummillo's Counterclaim, as follows:

1. The Plaintiff denies each and every allegation set forth in the Counterclaim which is not hereinafter specifically admitted or to which a response is not otherwise provided.

2. The Plaintiff realleges those matters set forth in its Summons and Complaint for this matter.

3. With regard to the allegations set forth in Paragraph 1 of the Counterclaim the Plaintiff admits that the Parties entered into agreement, and respectfully requests that the Court make reference to said agreement for the terms and provisions thereof.

4. The Plaintiff denies the allegations set forth in Paragraph 2 of the Counterclaim, as alleged.

5. The Plaintiff denies the allegations set forth in Paragraphs 3 and 4 of the Counterclaim.

6. The Plaintiff requests a jury trial as to those allegations set forth in the

Counterclaim for this matter.

Wherefore, having fully replied to the Counterclaim the Plaintiff prays that the Counterclaim be dismissed and the Plaintiff be granted judgment as set forth in its Complaint.

NANCE, MCCANTS & MASSEY

By: _____

Clarke W. McCants, III, Esquire
P.O. Box 2881
Aiken, South Carolina 29802-2881
Telephone (803) 649-6200
Counsel for Plaintiff

Dated: June 29, 2009

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE this date served a copy of the within and attached document(s) upon the following by First Class mail with sufficient postage affixed thereto to insure proper delivery:

Neal W. Dickert, Esquire
Hull, Towill, Norman, Barrett & Salley
P. O. Box 1564
Augusta, GA 30903-1564

James S. Murray, Esquire
Warlick Tritt Stebbins & Hall, LLC
P. O. Box 1495
Augusta, GA 30903

NANCE, MCCANTS & MASSEY

By:_____
Clarke W. McCants, III, Esquire
P. O. Box 2881
Aiken, SC 29802-2881
(803) 649-6200

Dated: June 29, 2009

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	SECOND CIRCUIT
	)	
ELITE CONSTRUCTION, INC.	)	
	)	CIVIL ACTION NO. 2009-CP-02-00958
Plaintiff,	)	
	)	
vs.	)	STIPULATION OF ALL PARTIES
	)	AS TO PRIORITY OF LIENS
DORIS E. TUMMILLO and	)	
GEORGIA BANK AND TRUST	)	
COMPANY OF GEORGIA	)	
	)	
Defendants.	)	

All Parties stipulate that Georgia Bank and Trust Company of Georgia's mortgage, recorded on January 9, 2009, affecting the real estate at issue in this matter, is superior in priority to Plaintiff's materialman's lien, recorded on February 13, 2009. Any sale of the subject property pursuant to foreclosure of Plaintiff's lien in this action will be subject to said mortgage.

July 6, 2012

James S. (Jeb) Murray
Attorney for Defendant Georgia Bank & Trust
Warlick, Tritt, Stebbins & Murray, LLP
Post Office Box 1495
Augusta, Georgia 30903-1495

Clarke W. McCants, III
Nance, McCants & Massey
P.O. Box 2881
Aiken, SC 29802-2881
Attorney for Plaintiff

Neal Dickert
Hull Barrett
P.O. Box 1564
Augusta, GA 30903-1564
Attorney for Doris Tummillo

11 July 2012
Liz Godard
C.C.C.P.&G.S.
4:45 pm Angel Miles am
Deputy Clerk

STATE OF SOUTH CAROLINA COUNTY OF AIKEN ELITE CONSTRUCTION, INC. ☐ Plaintiff v. Doris E. Tummillo, Et Al. ☒ Defendant.	)	IN THE COURT OF COMMON PLEAS CASE NO. 2009-CP-02-0958 MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
Clarke W. Mccants, III, Bar No. Address: Nance McCants & Massey; P. O. Box 2881; Aiken, South Carolina; 29802-2881. phone: fax: e-mail: other:	Neal W. Dickert, Bar No. 1680 Address: Hull Barrett, PC; P. O. Box 1564; Augusta, Georgia; 30903-1564. phone: (706) 722-4481 fax: (706) 722-9779 e-mail: ndickert@hullbarrett.com other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant — September 24, 2012 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	_____ JUDGE CODE: Date:

CLERK'S VERIFICATION

Collected by: _____

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

Date Filed: COPY ORIGINAL FILED
2:50 SEP 24 2012
AIKEN COUNTY CLERK OF COURT

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF AIKEN	)	C/A No. 2009-CP-02-000958
ELITE CONSTRUCTION, INC. Plaintiff	)	
vs.	)	**MOTION TO AMEND JUDGMENT**
DORIS E. TUMMILLO, First Defendant	)	
and	)	
GEORGIA BANK AND TRUST COMPANY OF AUGUSTA, Second Defendant.	)	

COPY
ORIGINAL FILED
SEP 24 2012
AIKEN COUNTY
CLERK OF COURT

Now comes the Defendant, Doris E. Tummillo, and moves this Court for an order amending the judgment filed on September 13, 2012, in accordance with Rule 52(b) of the S.C.R.C.P., and in support thereof states the following:

1. The Defendant moves to reduce the Plaintiff's judgment to reflect the deficiencies in the stall size.

The evidence was insufficient for the Court to make a finding that the Defendant was not entitled to any set-off or reduction for the Plaintiff's failure to provide stalls of the size required by the contract. The Defendant contended the contract required stalls 12' x 12', measured from the interior walls of the stalls. The Court found, as the Plaintiff contended, that the contract required the stall size to be measured from center post to center post and not interior stall space. The uncontroverted evidence revealed that over one-half (1/2) of the stalls did not meet the requirement, as found by the Court. The uncontroverted evidence revealed that the reduction, even accepting the findings of the Court, was at least six (6%) percent less than that provided for by the contract. The judgment should be amended to afford some credit to the Defendant.

2. The Defendant moves to amend the judgment to afford some remedy on the Defendant's counterclaim.

The basis of the Defendant's counterclaim is that the parties agreed that time was of the essence. The written contract is silent as to the terms, yet the testimony clearly shows that the parties' agreed for a completion in November, 2008, or "as soon as possible." The Court found the delay in starting the work was the responsibility of the Defendant, yet the uncontroverted evidence revealed that, for at least the month of September, 2008, the delay was the Plaintiff's responsibility. The Defendant requests the Court to reconsider its refusal to find any recovery on the Defendant's counterclaim.

3. The Defendant moves to amend to deny the claim of attorneys' fees.

The Court afforded the parties at the conclusion of the trial an opportunity to file a post-trial brief and to supplement the record with evidence supporting the claim of attorneys' fees. The order found that the Plaintiff has failed to provide sufficient evidence to support the basis of an award of fees and has allowed the Plaintiff an additional opportunity to build a record for this recovery. The Defendant respectfully requests that the claim be denied for insufficient evidence to support the claim for fees.

Respectfully submitted.

NEAL W. DICKERT
South Carolina Bar No: 001680
PAUL K. SIMONS, JR.
South Carolina Bar No: 076883

Attorneys for Defendant, Doris E. Tummillo

Of Counsel:
Hull Barrett, P.C.
Post Office Box 1564
Augusta, Georgia 30903-1564
(706) 722-4481
P. O. Box 517
Aiken, South Carolina 29802
(803) 648-4213

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF AIKEN	)	**C/A No.** 2009-CP-02-000958
ELITE CONSTRUCTION, INC. Plaintiff	)	
vs.	)	**CERTIFICATE OF SERVICE**
DORIS E. TUMMILLO, First Defendant	)	
and	)	
GEORGIA BANK AND TRUST COMPANY OF AUGUSTA, Second Defendant.	)	

I certify that, on this date, I served a copy of the ***Motion to Amend Judgment*** in this action by:

- ○ Delivering it to him/her personally; or,
- ☒ Mailing it to him/her at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage thereon, addressed as follows:

Mr. James Martin Harvey, Jr.
Harvey & Kulmala
P.O. Box 705
Barnwell, South Carolina 29812-0705

Mr. Clarke W. McCants, III
Nance McCants & Massey
P. O. Box 2881
Aiken, South Carolina 29802-2881

Mr. James S. ("Jeb") Murray
Warlick Tritt Stebbins & Murray
P. O. Box 1495
Augusta, Georgia 30903-1495

COPY
ORIGINAL FILED
SEP 24 2012
2:50
AIKEN COUNTY
CLERK OF COURT

- ○ Other:

9/24/12
(Date)

Neal W. Dickert
South Carolina Bar No: 1680
Attorney for Defendant, Doris E. Tummillo

State of South Carolina	)	
	)	In the Court of Common Pleas
County of Aiken	)	
Elite Construction, Inc.,	)	Civil Action No.: 2009-CP-02-958
Plaintiff,	)	
	)	**AFFIDAVIT**
vs.	)	**OF ATTORNEY'S FEES, COSTS**
	)	**AND EXPENSES**
Doris E. Tummillo and	)	
Georgia Bank and Trust Company	)	
of Augusta,	)	
Defendants.	)	
	)	

COME NOW, Clarke W. McCants, III, being duly sworn and states the following:

1. Attached hereto are the itemized and detailed time records for legal services performed in connection with my representation of Elite Construction, Inc. in the above-captioned matter. The attorney's fees total $16,616.25. (Exhibit "A").

2. Attached hereto is a listing of the costs and expenses incurred by my law firm as part of the above-captioned matter. These costs total $561.40. (Exhibit "B").

3. Attached hereto are copies of invoices for costs incurred by the Plaintiff as part of the above-captioned matter. These costs total $2,616.75. (Exhibit "C").

Dated: Oct. 5, 2012

Clarke W. McCants, III

Sworn to and Subscribed before me this
5th day of October, 2012.

(SEAL)
Notary Public for South Carolina
My Commission expires: 2-4-2015

Selection Criteria

Slip.Classification	Open
Clie:Selection	Include: ELITE CONSTRUCTION v TUMMILLO
Slip.Transaction Typ	1 - 1

Rate Info - identifies rate source and level

Slip ID / Dates and Time / Posting Status / Description			Timekeeper / Activity / Client / IN RE	Units / DNB Time / Variance	Rate / Rate Info / Bill Status	Slip Value
98036	TIME		CWM	1.80	175.00	315.00
1/6/2009			Plan & Prepare	0.00	C@1	
Billed	G:20153	2/19/2009	ELITE CONSTRUCTION			
Preparation and review of correspondence to Dr. Tummillo regarding Mechanics' Lien for matter				0.00		
97777	TIME		CWM	1.00	175.00	175.00
1/26/2009			Communicate/CLIENT	0.00	C@1	
Billed	G:20153	2/19/2009	ELITE CONSTRUCTION			
Office conference with Mr. Key regarding representation in matter and to review contract and related documents				0.00		
97778	TIME		CWM	0.30	175.00	52.50
1/28/2009			Plan & Prepare	0.00	C@1	
Billed	G:20153	2/19/2009	ELITE CONSTRUCTION			
Preparation and review of correspondence to Mr. Key regarding representation in matter				0.00		
98035	TIME		CWM	2.00	175.00	350.00
2/6/2009			Review/analyze	0.00	C@1	
Billed	G:20153	2/19/2009	ELITE CONSTRUCTION			
Additional review of file and preparation and review of Verified Statement of Account, property description for matter and Notice and Certificate of Mechanics' Lien				0.00		
98042	TIME		CWM	0.20	175.00	35.00
2/11/2009			Communicate/CLIENT	0.00	C@1	
Billed	G:20153	2/19/2009	ELITE CONSTRUCTION			
Telephone conference with Mr. Key regarding review of Mechanics' Lien for matter and calculation of amount due				0.00		
98094	TIME		CWM	0.75	175.00	131.25
2/13/2009			Review/analyze	0.00	C@1	
Billed	G:20153	2/19/2009	ELITE CONSTRUCTION			
Make final revisions to Mechanics' Lien and Verified Statement of Account and conference with Mr. Key regarding execution of lien				0.00		

EXHIBIT "A"

Slip ID / Dates and Time / Posting Status / Description			Timekeeper / Activity / Client / IN RE	Units / DNB Time / Variance	Rate / Rate Info / Bill Status	Slip Value
98108	TIME		CWM	0.30	175.00	52.50
2/13/2009			Plan & Prepare	0.00	C@1	
Billed	G:20153	2/19/2009	ELITE CONSTRUCTION			
Preparation and review of correspondence to Georgia Bank & Trust regarding filed Mechanics' Lien in matter				0.00		
98110	TIME		CWM	0.30	175.00	52.50
2/13/2009			Plan & Prepare	0.00	C@1	
Billed	G:20153	2/19/2009	ELITE CONSTRUCTION			
Preparation and review of correspondence to Mr. Key regarding filed Mechanics' Lien for matter				0.00		
98684	TIME		CWM	0.50	175.00	87.50
3/10/2009			Communicate/CLIENT	0.00	C@1	
Billed	G:20224	4/7/2009	ELITE CONSTRUCTION			
Office conference with Mr. Key regarding foreclosure of Mechanic's Lien				0.00		
99094	TIME		CWM	0.10	175.00	17.50
3/27/2009			Communicate/CLIENT	0.00	C@1	
Billed	G:20224	4/7/2009	ELITE CONSTRUCTION			
Telephone conference with Mr. Key regarding action to foreclose lien in matter				0.00		
99035	TIME		APS	2.00	175.00	350.00
3/27/2009			Plan & Prepare	0.00	C@1	
Billed	G:20224	4/7/2009	ELITE CONSTRUCTION			
Preparation and review of Summons and Complaint for matter				0.00		
99036	TIME		APS	0.80	175.00	140.00
3/27/2009			Plan & Prepare	0.00	C@1	
Billed	G:20224	4/7/2009	ELITE CONSTRUCTION			
Preparation and review of Lis Pendens for matter				0.00		
99355	TIME		CWM	0.10	175.00	17.50
4/8/2009			Communicate/CLIENT	0.00	C@1	
Billed	G:20253	5/4/2009	ELITE CONSTRUCTION			
Telephone conference with Mr. Key regarding action to foreclose lien in matter				0.00		
99781	TIME		CWM	1.20	175.00	210.00
4/30/2009			Review/analyze	0.00	C@1	
Billed	G:20253	5/4/2009	ELITE CONSTRUCTION			
Make final revisions to Summons and Complaint for foreclosure of Mechanics' Lien				0.00		
99782	TIME		CWM	0.50	175.00	87.50
5/1/2009			Other Activities	0.00	C@1	
Billed	G:20253	5/4/2009	ELITE CONSTRUCTION			
Filed Summons and Complaint with Aiken County Clerk of Court				0.00		
99788	TIME		CWM	0.20	175.00	35.00
5/1/2009			Communicate/CLIENT	0.00	C@1	
Billed	G:20253	5/4/2009	ELITE CONSTRUCTION			

Slip ID / Dates and Time / Posting Status / Description			Timekeeper / Activity / Client / IN RE	Units / DNB Time / Variance	Rate / Rate Info / Bill Status	Slip Value
Telephone conference with Mr. Hill regarding filing of foreclosure action and additional contact with Defendant				0.00		
99789	TIME		APS	0.30	175.00	52.50
5/1/2009			Plan & Prepare	0.00	C@1	
Billed	G:20253	5/4/2009	ELITE CONSTRUCTION			
Preparation and review of correspondence to Aiken County Clerk of Court regarding initial pleadings to be filed in matter				0.00		
99799	TIME		APS	0.30	175.00	52.50
5/5/2009			Plan & Prepare	0.00	C@1	
Billed	G:20279	5/21/2009	ELITE CONSTRUCTION			
Preparation and review of correspondence to Client regarding filed Summons and Complaint and Lis Pendens				0.00		
99800	TIME		APS	0.30	175.00	52.50
5/5/2009			Plan & Prepare	0.00	C@1	
Billed	G:20279	5/21/2009	ELITE CONSTRUCTION			
Preparation and review of correspondence to Daniel Blanton, Registered Agent regarding service of Summons and Complaint and Lis Pendens on Georgia Bank & Trust Consent Order. of Augusta, GA				0.00		
99808	TIME		APS	0.10	175.00	17.50
5/6/2009			Review/analyze	0.00	C@1	
Billed	G:20279	5/21/2009	ELITE CONSTRUCTION			
Receipt and review of Affidavit of Service for Dr. Tummillo				0.00		
100238	TIME		CWM	0.20	175.00	35.00
5/16/2009			Review/analyze	0.00	C@1	
Billed	G:20317	6/26/2009	ELITE CONSTRUCTION			
Receipt and review of correspondence from Mr. Murray dated May 15, 2009 with Answer of Georgia Bank and Trust Company				0.00		
100239	TIME		CWM	0.30	175.00	52.50
5/17/2009			Plan & Prepare	0.00	C@1	
Billed	G:20317	6/26/2009	ELITE CONSTRUCTION			
Preparation and review of correspondence to Mr. Key regarding Answer of Georgia Bank and Trust Company				0.00		
100588	TIME		CWM	0.20	175.00	35.00
6/4/2009			Review/analyze	0.00	C@1	
Billed	G:20317	6/26/2009	ELITE CONSTRUCTION			
Receipt and review of correspondence from opposing counsel dated May 29, 2009 with Answer and Counterclaim for matter				0.00		
100589	TIME		CWM	0.30	175.00	52.50
6/5/2009			Plan & Prepare	0.00	C@1	
Billed	G:20317	6/26/2009	ELITE CONSTRUCTION			

Slip ID / Dates and Time / Posting Status / Description			Timekeeper / Activity / Client / IN RE	Units / DNB Time / Variance	Rate / Rate Info / Bill Status	Slip Value
Preparation and review of correspondence to Client regarding Answer and Counterclaim for matter and conference for matter				0.00		
100591	TIME		CWM	0.20	175.00	35.00
6/6/2009			Review/analyze	0.00	C@1	
Billed	G:20317	6/26/2009	ELITE CONSTRUCTION			
Receipt and review of correspondence from opposing counsel dated June 3, 2009 with Defendant's Interrogatories and Request for Production in matter				0.00		
99809	TIME		APS	0.30	175.00	52.50
6/6/2009			Plan & Prepare	0.00	C@1	
Billed	G:20279	5/21/2009	ELITE CONSTRUCTION			
Preparation and review of correspondence to Clerk of Court regarding Affidavit of Service				0.00		
100665	TIME		CWM	0.20	175.00	35.00
6/8/2009			Communicate/CLIENT	0.00	C@1	
Billed	G:20317	6/26/2009	ELITE CONSTRUCTION			
Conference with Mr. Key regarding Answer and Counterclaim for matter and proposed discovery in matter				0.00		
100716	TIME		APS	0.60	175.00	105.00
6/16/2009			Plan & Prepare	0.00	C@1	
Billed	G:20317	6/26/2009	ELITE CONSTRUCTION			
Preparation and review of Interrogatories to Dr. Tummillo and Georgia Bank & Trust				0.00		
100717	TIME		APS	0.60	175.00	105.00
6/16/2009			Plan & Prepare	0.00	C@1	
Billed	G:20317	6/26/2009	ELITE CONSTRUCTION			
Preparation and review of Request for Production of documents to Dr. Tummillo and Georgia Bank & Trust				0.00		
100718	TIME		APS	0.30	175.00	52.50
6/16/2009			Plan & Prepare	0.00	C@1	
Billed	G:20317	6/26/2009	ELITE CONSTRUCTION			
Preparation and review of correspondence to Dr. Tummillo's counsel, and Georgia Bank & Trust counsel regarding Plaintiff's initial discovery requests				0.00		
100719	TIME		APS	0.30	175.00	52.50
6/16/2009			Plan & Prepare	0.00	C@1	
Billed	G:20317	6/26/2009	ELITE CONSTRUCTION			
Preparation and review of correspondence to Client regarding Dr. Tummillo's initial discovery requests				0.00		
101109	TIME		CWM	1.70	175.00	297.50
6/29/2009			Plan & Prepare	0.00	C@1	
Billed	G:20372	7/27/2009	ELITE CONSTRUCTION			
Preparation and review of Reply to Counterclaim for matter; preparation and review of correspondence to Clerk of Court regarding Reply to Counterclaim for matter				0.00		

Slip ID / Dates and Time / Posting Status / Description			Timekeeper / Activity / Client / IN RE	Units / DNB Time / Variance	Rate / Rate Info / Bill Status	Slip Value
101102	TIME		CWM	0.80	175.00	140.00
6/29/2009			Communicate/CLIENT	0.00	C@1	
Billed	G:20372	7/27/2009	ELITE CONSTRUCTION			
Office conference with Mr. Key and Mr. Hill to review Answer and Counterclaim and regarding proposed discovery in matter				0.00		
101778	TIME		CWM	0.30	175.00	52.50
7/22/2009			Review/analyze	0.00	C@1	
Billed	G:20688	1/19/2010	ELITE CONSTRUCTION			
Receipt and review of correspondence from Mr. Murray dated July 16, 2009 with Georgia Bank & Trust response to Plaintiff's Interrogatories and Request for Production				0.00		
102295	TIME		CWM	0.20	175.00	35.00
8/18/2009			Communicate/MISC	0.00	C@1	
Billed	G:20688	1/19/2010	ELITE CONSTRUCTION			
Telephone conference with Mr. Dickert regarding proposed discovery in matter and settlement of matter				0.00		
104365	TIME		CWM	0.10	175.00	17.50
11/6/2009			Communicate/CLIENT	0.00	C@1	
Billed	G:20688	1/19/2010	ELITE CONSTRUCTION			
Telephone conference with Mr. Key regarding additional discovery in matter				0.00		
106680	TIME		CWM	0.10	175.00	17.50
2/9/2010			Communicate/CLIENT	0.00	C@1	
Billed	G:20754	3/9/2010	ELITE CONSTRUCTION			
Telephone conference with Mr. Key regarding office conference to review matter				0.00		
106895	TIME		CWM	1.00	175.00	175.00
2/17/2010			Communicate/CLIENT	0.00	C@1	
Billed	G:20754	3/9/2010	ELITE CONSTRUCTION			
Office conference with Mr. Key regarding additional discovery in matter, investigation of Dr. Tumillo				0.00		
107293	TIME		CWM	0.20	175.00	35.00
3/2/2010			Communicate/OUTCouns	0.00	C@1	
Billed	G:20754	3/9/2010	ELITE CONSTRUCTION			
Telephone conference with Mr. Dickert regarding additional discovery in matter, preparation for trial and settlement of matter				0.00		
107352	TIME		CWM	0.10	175.00	17.50
3/4/2010			Communicate/CLIENT	0.00	C@1	
Billed	G:20754	3/9/2010	ELITE CONSTRUCTION			
Telephone conference with Client regarding additional discovery in matter				0.00		

Slip ID / Dates and Time / Posting Status / Description			Timekeeper / Activity / Client / IN RE	Units / DNB Time / Variance	Rate / Rate Info / Bill Status	Slip Value
107513	TIME		APS	0.50	175.00	87.50
3/4/2010			Plan & Prepare	0.00	C@1	
Billed	G:20754	3/9/2010	ELITE CONSTRUCTION			
Preparation and review of Notice of Deposition of Defendant				0.00		
107514	TIME		APS	0.30	175.00	52.50
3/4/2010			Plan & Prepare	0.00	C@1	
Billed	G:20754	3/9/2010	ELITE CONSTRUCTION			
Preparation and review of correspondence to opposing counsel regarding Defendant's deposition in matter				0.00		
107977	TIME		CWM	1.40	175.00	245.00
3/22/2010			Review/analyze	0.00	C@1	
Billed	G:20808	4/9/2010	ELITE CONSTRUCTION			
Review of file and all documents produced by Client to prepare responses to Plaintiff's discovery requests for matter				0.00		
107979	TIME		CWM	2.20	175.00	385.00
3/24/2010			Plan & Prepare	0.00	C@1	
Billed	G:20808	4/9/2010	ELITE CONSTRUCTION			
Preparation for deposition of Defendant				0.00		
107978	TIME		CWM	0.70	175.00	122.50
3/24/2010			Review/analyze	0.00	C@1	
Billed	G:20808	4/9/2010	ELITE CONSTRUCTION			
Receipt and review of correspondence from opposing counsel dated March 24, 2010 regarding production of additional documents for matter and forwarding documents produced by Defendant				0.00		
107985	TIME		CWM	2.00	175.00	350.00
3/25/2010			Plan & Prepare	0.00	C@1	
Billed	G:20808	4/9/2010	ELITE CONSTRUCTION			
Additional preparation for deposition of Defendant				0.00		
107992	TIME		CWM	2.40	175.00	420.00
3/25/2010			Communicate/CLIENT	0.00	C@1	
Billed	G:20808	4/9/2010	ELITE CONSTRUCTION			
Conference with Client and attendance at initial deposition of Defendant				0.00		
108397	TIME		CWM	0.40	175.00	70.00
4/10/2010			Review/analyze	0.00	C@1	
Billed	G:20947	6/17/2010	ELITE CONSTRUCTION			
Receipt and review of deposition of Defendant				0.00		
108398	TIME		CWM	0.30	175.00	52.50
4/10/2010			Plan & Prepare	0.00	C@1	
Billed	G:20947	6/17/2010	ELITE CONSTRUCTION			
Preparation and review of correspondence to Client regarding deposition of Defendant				0.00		

Slip ID / Dates and Time / Posting Status / Description			Timekeeper / Activity / Client / IN RE	Units / DNB Time / Variance	Rate / Rate Info / Bill Status	Slip Value
108730	TIME		CWM	0.10	175.00	17.50
4/22/2010			Communicate/CLIENT	0.00	C@1	
Billed	G:20947	6/17/2010	ELITE CONSTRUCTION			
Telephone conference with Client regarding proposed trial date for matter				0.00		
109589	TIME		CWM	0.10	175.00	17.50
5/21/2010			Communicate/OUTCouns	0.00	C@1	
Billed	G:20947	6/17/2010	ELITE CONSTRUCTION			
Telephone conference with opposing counsel regarding additional discovery in matter				0.00		
109614	TIME		CWM	0.10	175.00	17.50
5/25/2010			Communicate/OUTCouns	0.00	C@1	
Billed	G:20947	6/17/2010	ELITE CONSTRUCTION			
Telephone conference with opposing counsel regarding additional discovery in matter				0.00		
110000	TIME		CWM	0.10	175.00	17.50
6/4/2010			Communicate/CLIENT	0.00	C@1	
Billed	G:20947	6/17/2010	ELITE CONSTRUCTION			
Telephone conference with Mr. Key regarding additional discovery in matter				0.00		
110317	TIME		CWM	0.10	175.00	17.50
6/15/2010			Review/analyze	0.00	C@1	
Billed	G:21137	9/28/2010	ELITE CONSTRUCTION			
Receipt and review of correspondence from Judge Early dated June 15, 2010 regarding proposed trial date for matter				0.00		
110333	TIME		CWM	0.10	175.00	17.50
6/16/2010			Communicate/CLIENT	0.00	C@1	
Billed	G:21137	9/28/2010	ELITE CONSTRUCTION			
Telephone conference with Mr. Key regarding proposed trial dated for matter				0.00		
111313	TIME		CWM	0.10	175.00	17.50
7/21/2010			Communicate/CLIENT	0.00	C@1	
Billed	G:21137	9/28/2010	ELITE CONSTRUCTION			
Telephone conference with Mr. Key regarding additional discovery in matter				0.00		
112174	TIME		CWM	0.10	175.00	17.50
8/19/2010			Review/analyze	0.00	C@1	
Billed	G:21137	9/28/2010	ELITE CONSTRUCTION			
Receipt and review of correspondence from Judge Early dated August 9, 2010 regarding proposed hearing date for matter				0.00		
112744	TIME		CWM	0.50	175.00	87.50
9/7/2010			Appear for/attend	0.00	C@1	
Billed	G:21137	9/28/2010	ELITE CONSTRUCTION			
Attendance at roster meeting for matter before Judge Early				0.00		

Slip ID / Dates and Time / Posting Status / Description			Timekeeper / Activity / Client / IN RE	Units / DNB Time / Variance	Rate / Rate Info / Bill Status	Slip Value
112913	TIME		CWM	0.10	175.00	17.50
9/13/2010			Communicate/MISC	0.00	C@1	
Billed	G:21137	9/28/2010	ELITE CONSTRUCTION			
Telephone conference with Judge Smoak regarding hearing date for matter				0.00		
113055	TIME		CWM	0.20	175.00	35.00
9/15/2010			Communicate/MISC	0.00	C@1	
Billed	G:21137	9/28/2010	ELITE CONSTRUCTION			
Telephone conference with Mr. Dickert regarding proposed hearing date for matter and additional discovery in matter				0.00		
113056	TIME		CWM	0.10	175.00	17.50
9/15/2010			Communicate/MISC	0.00	C@1	
Billed	G:21137	9/28/2010	ELITE CONSTRUCTION			
Telephone conference with Judge Smoak regarding proposed hearing date in matter				0.00		
113063	TIME		CWM	0.30	175.00	52.50
9/16/2010			Plan & Prepare	0.00	C@1	
Billed	G:21137	9/28/2010	ELITE CONSTRUCTION			
Preparation and review of correspondence to Judge Smoak regarding hearing fee for matter				0.00		
113067	TIME		CWM	0.40	175.00	70.00
9/16/2010			Plan & Prepare	0.00	C@1	
Billed	G:21137	9/28/2010	ELITE CONSTRUCTION			
Preparation and review of correspondence to Mr. Dickert regarding proposed hearing date for matter, hearing for additional discovery in matter				0.00		
113068	TIME		CWM	0.30	175.00	52.50
9/16/2010			Plan & Prepare	0.00	C@1	
Billed	G:21137	9/28/2010	ELITE CONSTRUCTION			
Preparation and review of correspondence to Mr. Key regarding proposed hearing date for matter				0.00		
113107	TIME		CWM	0.10	175.00	17.50
9/17/2010			Review/analyze	0.00	C@1	
Billed	G:21137	9/28/2010	ELITE CONSTRUCTION			
Receipt and review of Form Order Referral for matter forwarded by Judge Early				0.00		
113154	TIME		CWM	0.10	175.00	17.50
9/20/2010			Communicate/MISC	0.00	C@1	
Billed	G:21137	9/28/2010	ELITE CONSTRUCTION			
Telephone conference with Mr. Murray regarding proposed hearing date for matter				0.00		
113153	TIME		CWM	0.10	175.00	17.50
9/20/2010			Communicate/MISC	0.00	C@1	
Billed	G:21137	9/28/2010	ELITE CONSTRUCTION			
Telephone conference with Mr. Dickert regarding proposed hearing date for matter				0.00		

Slip ID / Dates and Time / Posting Status / Description			Timekeeper / Activity / Client / IN RE	Units / DNB Time / Variance	Rate / Rate Info / Bill Status	Slip Value
113172	TIME		CWM	0.10	175.00	17.50
9/21/2010			Communicate/OUTCouns	0.00	C@1	
Billed	G:21137	9/28/2010	ELITE CONSTRUCTION			
Telephone conference with opposing counsel regarding additional discovery in matter				0.00		
113175	TIME		CWM	0.10	175.00	17.50
9/21/2010			Review/analyze	0.00	C@1	
Billed	G:21137	9/28/2010	ELITE CONSTRUCTION			
Receipt and review of correspondence from opposing counsel dated September 21, 2010 regarding additional discovery in matter				0.00		
113444	TIME		CWM	0.10	175.00	17.50
9/30/2010			Communicate/OUTCouns	0.00	C@1	
Billed	G:21213	10/29/2010	ELITE CONSTRUCTION			
Telephone conference with opposing counsel regarding additional discovery in matter				0.00		
113647	TIME		CWM	0.10	175.00	17.50
10/6/2010			Communicate/CLIENT	0.00	C@1	
Billed	G:21213	10/29/2010	ELITE CONSTRUCTION			
Telephone conference with Mr. Key regarding preparation for additional depositions in matter				0.00		
113648	TIME		CWM	0.20	175.00	35.00
10/6/2010			Communicate/MISC	0.00	C@1	
Billed	G:21213	10/29/2010	ELITE CONSTRUCTION			
Telephone conference with Mr. Dickert regarding additional discovery in matter preparation for trial in matter				0.00		
113827	TIME		CWM	0.70	175.00	122.50
10/12/2010			Communicate/CLIENT	0.00	C@1	
Billed	G:21213	10/29/2010	ELITE CONSTRUCTION			
Office conference with Client to prepare for deposition in matter				0.00		
113828	TIME		CWM	0.10	175.00	17.50
10/12/2010			Communicate/CLIENT	0.00	C@1	
Billed	G:21213	10/29/2010	ELITE CONSTRUCTION			
Telephone conference with Client regarding expert witness in matter				0.00		
113854	TIME		CWM	0.80	175.00	140.00
10/12/2010			Review/analyze	0.00	C@1	
Billed	G:21213	10/29/2010	ELITE CONSTRUCTION			
Review of file to prepare for reconvening of deposition of Defendant				0.00		
113856	TIME		CWM	3.50	175.00	612.50
10/13/2010			Appear for/attend	0.00	C@1	
Billed	G:21213	10/29/2010	ELITE CONSTRUCTION			
Attendance at continuation of Defendant's deposition and deposition of Client				0.00		

Slip ID / Dates and Time / Posting Status / Description			Timekeeper / Activity / Client / IN RE	Units / DNB Time / Variance	Rate / Rate Info / Bill Status	Slip Value
113957	TIME		CWM	0.10	175.00	17.50
10/14/2010			Communicate/OUTCouns	0.00	C@1	
Billed	G:21213	10/29/2010	ELITE CONSTRUCTION			
Telephone conference with opposing counsel regarding status conference for matter				0.00		
113962	TIME		CWM	0.10	175.00	17.50
10/15/2010			Communicate/OUTCouns	0.00	C@1	
Billed	G:21213	10/29/2010	ELITE CONSTRUCTION			
Telephone conference with opposing counsel regarding status conference for matter				0.00		
113961	TIME		CWM	0.10	175.00	17.50
10/15/2010			Communicate/MISC	0.00	C@1	
Billed	G:21213	10/29/2010	ELITE CONSTRUCTION			
Telephone conference with Judge Smoak regarding status conference for matter				0.00		
114148	TIME		CWM	0.10	175.00	17.50
10/28/2010			Communicate/CLIENT	0.00	C@1	
Billed	G:21467	3/1/2011	ELITE CONSTRUCTION			
Telephone conference with Mr. Key regarding additional discovery in matter				0.00		
116037	TIME		CWM	0.10	175.00	17.50
1/14/2011			Communicate/CLIENT	0.00	C@1	
Billed	G:21467	3/1/2011	ELITE CONSTRUCTION			
Telephone conference with Mr. Key regarding conference with expert in matter				0.00		
116524	TIME		CWM	0.10	175.00	17.50
1/28/2011			Review/analyze	0.00	C@1	
Billed	G:21467	3/1/2011	ELITE CONSTRUCTION			
Receipt and review of correspondence from opposing counsel dated January 27,2011 regarding inspection of barn				0.00		
116525	TIME		CWM	0.20	175.00	35.00
1/28/2011			Communicate/CLIENT	0.00	C@1	
Billed	G:21467	3/1/2011	ELITE CONSTRUCTION			
Telephone conference with Client regarding inspection of barn and preparation and review of correspondence to opposing counsel regarding inspection of barn				0.00		
116579	TIME		CWM	0.10	175.00	17.50
2/1/2011			Communicate/CLIENT	0.00	C@1	
Billed	G:21467	3/1/2011	ELITE CONSTRUCTION			
Telephone conference with Client regarding inspection of Defendant's property				0.00		
116580	TIME		CWM	0.20	175.00	35.00
2/1/2011			Plan & Prepare	0.00	C@1	
Billed	G:21467	3/1/2011	ELITE CONSTRUCTION			
Preparation and review of correspondence to opposing counsel regarding visit to and inspection of Defendant's property				0.00		

Slip ID / Dates and Time / Posting Status / Description			Timekeeper / Activity / Client / IN RE	Units / DNB Time / Variance	Rate / Rate Info / Bill Status	Slip Value
116598	TIME		CWM	0.80	175.00	140.00
2/2/2011			Communicate/CLIENT	0.00	C@1	
Billed	G:21467	3/1/2011	ELITE CONSTRUCTION			
Conference with Client and Mr. Cooper at Defendant's property				0.00		
116911	TIME		CWM	0.10	175.00	17.50
2/12/2011			Review/analyze	0.00	C@1	
Billed	G:21467	3/1/2011	ELITE CONSTRUCTION			
Receipt and review of correspondence from Mr. Dickert dated February 9, 2011 regarding additional discovery in matter				0.00		
116912	TIME		CWM	0.20	175.00	35.00
2/12/2011			Plan & Prepare	0.00	C@1	
Billed	G:21467	3/1/2011	ELITE CONSTRUCTION			
Preparation and review of correspondence to opposing counsel regarding additional discovery in matter and selection of special referee				0.00		
117438	TIME		CWM	0.10	175.00	17.50
2/25/2011			Review/analyze	0.00	C@1	
Billed	G:21563	5/3/2011	ELITE CONSTRUCTION			
Receipt and review of correspondence from opposing counsel dated February 25, 2011 regarding additional discovery in matter				0.00		
117499	TIME		CWM	0.10	175.00	17.50
3/1/2011			Review/analyze	0.00	C@1	
Billed	G:21563	5/3/2011	ELITE CONSTRUCTION			
Receipt and review of correspondence from opposing counsel dated March 1, 2011 regarding additional discovery in matter				0.00		
117531	TIME		CWM	0.10	175.00	17.50
3/3/2011			Communicate/CLIENT	0.00	C@1	
Billed	G:21563	5/3/2011	ELITE CONSTRUCTION			
Telephone conference with Mr. Key regarding additional discovery in matter				0.00		
117669	TIME		CWM	0.50	175.00	87.50
3/9/2011			Communicate/CLIENT	0.00	C@1	
Billed	G:21563	5/3/2011	ELITE CONSTRUCTION			
Office conference with Mr. Key regarding preparation for additional discovery in matter				0.00		
117947	TIME		CWM	1.00	175.00	175.00
3/16/2011			Communicate/CLIENT	0.00	C@1	
Billed	G:21563	5/3/2011	ELITE CONSTRUCTION			
Office conference with Mr. Key and Mr. Norris regarding preparation for depositions and additional investigation in matter				0.00		
118776	TIME		CWM	0.10	175.00	17.50
4/8/2011			Review/analyze	0.00	C@1	
Billed	G:21563	5/3/2011	ELITE CONSTRUCTION			

Slip ID / Dates and Time / Posting Status / Description			Timekeeper / Activity / Client / IN RE	Units / DNB Time / Variance	Rate / Rate Info / Bill Status	Slip Value
Receipt and review of correspondence from opposing counsel dated April 8, 2011 regarding production of additional documents for matter				0.00		
118781	TIME		CWM	0.30	175.00	52.50
4/9/2011			Review/analyze	0.00	C@1	
Billed	G:21563	5/3/2011	ELITE CONSTRUCTION			
Receipt and review of correspondence from Mr. Dickert dated April 8, 2011 with Mr. Tummillo's notes and Mr. Barron's notes of inspection				0.00		
118901	TIME		CWM	0.20	175.00	35.00
4/13/2011			Communicate/MISC	0.00	C@1	
Billed	G:21563	5/3/2011	ELITE CONSTRUCTION			
Telephone conference with Mr. Dickert regarding preparation for depositions in matter and appearance by Mr. Barron as witness in matter				0.00		
119160	TIME		CWM	0.10	175.00	17.50
4/19/2011			Communicate/MISC	0.00	C@1	
Billed	G:21563	5/3/2011	ELITE CONSTRUCTION			
Telephone conference with Mr. Dickert regarding additional discovery in matter				0.00		
121114	TIME		APS	0.10	175.00	17.50
6/27/2011			Communicate/MISC	0.00	C@1	
Billed	G:21756	8/2/2011	ELITE CONSTRUCTION			
Telephone conference with Mr. Dickert regarding additional discovery in matter				0.00		
121115	TIME		APS	0.80	175.00	140.00
6/27/2011			Plan & Prepare	0.00	C@1	
Billed	G:21756	8/2/2011	ELITE CONSTRUCTION			
Preparation and review of Notice of Deposition for Mike Tummillo and Ricky Stewart				0.00		
121116	TIME		APS	0.30	175.00	52.50
6/27/2011			Plan & Prepare	0.00	C@1	
Billed	G:21756	8/2/2011	ELITE CONSTRUCTION			
Preparation and review of correspondence to opposing counsel regarding additional discovery in matter				0.00		
121997	TIME		CWM	0.10	175.00	17.50
8/4/2011			Communicate/MISC	0.00	C@1	
Billed	G:21805	9/2/2011	ELITE CONSTRUCTION			
Telephone conference with Mr. Dickert regarding additional discovery in matter				0.00		
122042	TIME		CWM	0.20	175.00	35.00
8/4/2011			Plan & Prepare	0.00	C@1	
Billed	G:21805	9/2/2011	ELITE CONSTRUCTION			
Preparation and review of correspondence to Mr. Dickert regarding additional discovery in matter and depositions of Mr. Tummillo and expert witness in matter				0.00		

Slip ID / Dates and Time / Posting Status / Description			Timekeeper / Activity / Client / IN RE	Units / DNB Time / Variance	Rate / Rate Info / Bill Status	Slip Value
121986	TIME		CWM	0.10	175.00	17.50
8/4/2011			Review/analyze	0.00	C@1	
Billed	G:21805	9/2/2011	ELITE CONSTRUCTION			
Receipt and review of correspondence from opposing counsel dated August 3, 2011 regarding additional discovery in matter				0.00		
121987	TIME		CWM	0.10	175.00	17.50
8/4/2011			Plan & Prepare	0.00	C@1	
Billed	G:21805	9/2/2011	ELITE CONSTRUCTION			
Preparation and review of correspondence to opposing counsel regarding additional discovery in matter				0.00		
122205	TIME		CWM	0.10	175.00	17.50
8/9/2011			Review/analyze	0.00	C@1	
Billed	G:21805	9/2/2011	ELITE CONSTRUCTION			
Receipt and review of correspondence from Mr. Dickert dated August 9, 2011 regarding additional discovery in matter				0.00		
122206	TIME		CWM	0.20	175.00	35.00
8/9/2011			Plan & Prepare	0.00	C@1	
Billed	G:21805	9/2/2011	ELITE CONSTRUCTION			
Preparation and review of correspondence to Mr. Dickert regarding additional discovery in matter and deposition of expert witness				0.00		
122574	TIME		CWM	0.10	175.00	17.50
8/25/2011			Review/analyze	0.00	C@1	
Billed	G:21805	9/2/2011	ELITE CONSTRUCTION			
Receipt and review of correspondence from opposing counsel dated August 25, 2011 regarding additional discovery in matter				0.00		
122831	TIME		CWM	0.10	175.00	17.50
9/6/2011			Communicate/CLIENT	0.00	C@1	
Billed	G:21823	9/29/2011	ELITE CONSTRUCTION			
Telephone conference with Client regarding additional discovery in matter				0.00		
123015	TIME		CWM	5.00	175.00	875.00
9/13/2011			Communicate/MISC	0.00	C@1	
Billed	G:21823	9/29/2011	ELITE CONSTRUCTION			
Conference with Mr. Key and Mr. Cooper regarding additional depositions in matter; attendance at deposition of Defendant's expert and deposition of Mr. Tummillo				0.00		
123127	TIME		CWM	0.10	175.00	17.50
9/19/2011			Communicate/CLIENT	0.00	C@1	
Billed	G:21823	9/29/2011	ELITE CONSTRUCTION			
Telephone conference with Mr. Key regarding additional inspection of Defendant's barn				0.00		

Slip ID / Dates and Time / Posting Status / Description			Timekeeper / Activity / Client / IN RE	Units / DNB Time / Variance	Rate / Rate Info / Bill Status	Slip Value
123323	TIME		CWM	0.10	175.00	17.50
9/26/2011			Plan & Prepare	0.00	C@1	
Billed	G:21823	9/29/2011	ELITE CONSTRUCTION			
Preparation and review of correspondence to Mr. Dickert regarding inspection of barn				0.00		
123456	TIME		CWM	0.40	175.00	70.00
10/1/2011			Review/analyze	0.00	C@1	
Billed	G:21909	11/3/2011	ELITE CONSTRUCTION			
Receipt and review of depositions of Mr. Tummillo and Mr. Sidener				0.00		
123507	TIME		CWM	0.20	175.00	35.00
10/3/2011			Review/analyze	0.00	C@1	
Billed	G:21909	11/3/2011	ELITE CONSTRUCTION			
Receipt and review of correspondence from opposing counsel dated October 3, 2011 regarding inspection of barns; Preparation and review of correspondence to opposing counsel regarding inspection of barns and availability of witness				0.00		
123521	TIME		CWM	0.10	175.00	17.50
10/4/2011			Communicate/OUTCouns	0.00	C@1	
Billed	G:21909	11/3/2011	ELITE CONSTRUCTION			
Telephone conference with opposing counsel regarding additional inspection of property				0.00		
123695	TIME		CWM	0.10	175.00	17.50
10/11/2011			Communicate/OUTCouns	0.00	C@1	
Billed	G:21909	11/3/2011	ELITE CONSTRUCTION			
Telephone conference with opposing counsel regarding additional inspection of barn				0.00		
124009	TIME		CWM	0.10	175.00	17.50
10/23/2011			Review/analyze	0.00	C@1	
Billed	G:21909	11/3/2011	ELITE CONSTRUCTION			
Receipt and review of correspondence from Clerk of Court regarding referral of matter to Master in Equity				0.00		
124163	TIME		CWM	0.20	175.00	35.00
10/27/2011			Plan & Prepare	0.00	C@1	
Billed	G:21965	12/1/2011	ELITE CONSTRUCTION			
Preparation and review of correspondence to opposing counsel regarding referral to Master in Equity and additional inspection of property				0.00		
124209	TIME		CWM	0.20	175.00	35.00
11/1/2011			Plan & Prepare	0.00	C@1	
Billed	G:21965	12/1/2011	ELITE CONSTRUCTION			
Preparation and review of correspondence to opposing counsel regarding inspection of barn and referral to Master in Equity for trial				0.00		
124470	TIME		CWM	0.20	175.00	35.00
11/14/2011			Review/analyze	0.00	C@1	
Billed	G:21965	12/1/2011	ELITE CONSTRUCTION			

Slip ID / Dates and Time / Posting Status / Description			Timekeeper / Activity / Client / IN RE	Units / DNB Time / Variance	Rate / Rate Info / Bill Status	Slip Value
Receipt and review of correspondence from Mr. Dickert dated November 14, 2011 regarding additional inspection of property; Preparation and review of correspondence to Mr. Dickert regarding additional inspection of property				0.00		
124488	TIME		CWM	0.10	175.00	17.50
11/15/2011			Review/analyze	0.00	C@1	
Billed	G:21965	12/1/2011	ELITE CONSTRUCTION			
Receipt and review of correspondence from Mr. Dickert dated November 15, 2011 regarding additional inspection of property				0.00		
124503	TIME		CWM	1.40	175.00	245.00
11/15/2011			Communicate/MISC	0.00	C@1	
Billed	G:21965	12/1/2011	ELITE CONSTRUCTION			
Conference with Mr. Cooper and Client at Defendant's property to inspect barn				0.00		
124891	TIME		CWM	0.10	175.00	17.50
11/29/2011			Plan & Prepare	0.00	C@1	
Billed	G:22001	1/2/2012	ELITE CONSTRUCTION			
Preparation and review of correspondence to opposing counsel regarding referral of matter to Aiken County Master in Equity				0.00		
124932	TIME		CWM	0.20	175.00	35.00
11/30/2011			Plan & Prepare	0.00	C@1	
Billed	G:22001	1/2/2012	ELITE CONSTRUCTION			
Preparation and review of correspondence to opposing counsel and Mr. Murray regarding referral of matter to Master in Equity and proposed Motion for matter				0.00		
124931	TIME		CWM	0.10	175.00	17.50
11/30/2011			Review/analyze	0.00	C@1	
Billed	G:22001	1/2/2012	ELITE CONSTRUCTION			
Receipt and review of correspondence from Mr. Dickert dated November 30, 2011 regarding referral of matter to Master in Equity				0.00		
124951	TIME		CWM	0.10	175.00	17.50
12/1/2011			Review/analyze	0.00	C@1	
Billed	G:22001	1/2/2012	ELITE CONSTRUCTION			
Receipt and review of correspondence from Mr. Dickert dated December 1, 2011 regarding deposition of Mr. Cooper				0.00		
125045	TIME		CWM	0.10	175.00	17.50
12/5/2011			Review/analyze	0.00	C@1	
Billed	G:22001	1/2/2012	ELITE CONSTRUCTION			
Receipt and review of correspondence from Mr. Murray dated December 3, 2011 regarding Order of Reference for matter				0.00		

Slip ID / Dates and Time / Posting Status / Description			Timekeeper / Activity / Client / IN RE	Units / DNB Time / Variance	Rate / Rate Info / Bill Status	Slip Value
125046	TIME		CWM	0.30	175.00	52.50
12/5/2011			Plan & Prepare	0.00	C@1	
Billed	G:22001	1/2/2012	ELITE CONSTRUCTION			
Preparation and review of correspondence to Judge Early regarding Order of Reference for matter				0.00		
125306	TIME		CWM	0.30	175.00	52.50
12/13/2011			Plan & Prepare	0.00	C@1	
Billed	G:22001	1/2/2012	ELITE CONSTRUCTION			
Preparation and review of correspondence to Clerk of Court regarding Order of Reference for matter				0.00		
125401	TIME		CWM	0.10	175.00	17.50
12/19/2011			Communicate/CLIENT	0.00	C@1	
Billed	G:22001	1/2/2012	ELITE CONSTRUCTION			
Telephone conference with Client regarding deposition of Mr. Cooper				0.00		
125500	TIME		CWM	0.10	175.00	17.50
12/28/2011			Communicate/MISC	0.00	C@1	
Billed	G:22001	1/2/2012	ELITE CONSTRUCTION			
Telephone conference with Judge Griffith regarding proposed hearing date for matter				0.00		
125508	TIME		CWM	0.20	175.00	35.00
12/28/2011			Plan & Prepare	0.00	C@1	
Billed	G:22001	1/2/2012	ELITE CONSTRUCTION			
Preparation and review of correspondence to counsel of record regarding proposed trial date for matter before Judge Griffith				0.00		
125548	TIME		CWM	0.20	175.00	35.00
12/29/2011			Review/analyze	0.00	C@1	
Billed	G:22035	2/2/2012	ELITE CONSTRUCTION			
Receipt and review of correspondence from opposing counsel dated December 29, 2011 regarding proposed trial date for matter; Preparation and review of correspondence to opposing counsel regarding proposed trial date for matter				0.00		
125564	TIME		CWM	0.20	175.00	35.00
12/30/2011			Review/analyze	0.00	C@1	
Billed	G:22035	2/2/2012	ELITE CONSTRUCTION			
Receipt and review of correspondence from opposing counsel dated December 30, 2011 regarding trial date for matter; Preparation and review of correspondence to Judge Griffith regarding proposed trial date for matter				0.00		
125609	TIME		CWM	0.10	175.00	17.50
1/4/2012			Review/analyze	0.00	C@1	
Billed	G:22035	2/2/2012	ELITE CONSTRUCTION			
Receipt and review of filed Order of Reference for matter forwarded by Judge Early				0.00		

Slip ID / Dates and Time / Posting Status / Description			Timekeeper / Activity / Client / IN RE	Units / DNB Time / Variance	Rate / Rate Info / Bill Status	Slip Value
125673	TIME		CWM	1.00	175.00	175.00
1/6/2012			Communicate/MISC	0.00	C@1	
Billed	G:22035	2/2/2012	ELITE CONSTRUCTION			
Conference with Mr. Cooper to prepare for deposition in matter				0.00		
125726	TIME		CWM	2.80	175.00	490.00
1/10/2012			Communicate/MISC	0.00	C@1	
Billed	G:22035	2/2/2012	ELITE CONSTRUCTION			
Conference with Mr. Cooper to prepare for deposition in matter and attendance at deposition of Mr. Cooper				0.00		
125727	TIME		CWM	0.20	175.00	35.00
1/10/2012			Communicate/OUTCouns	0.00	C@1	
Billed	G:22035	2/2/2012	ELITE CONSTRUCTION			
Conference with opposing counsel regarding additional discovery in matter and mediation in matter				0.00		
125732	TIME		CWM	0.80	175.00	140.00
1/11/2012			Plan & Prepare	0.00	C@1	
Billed	G:22035	2/2/2012	ELITE CONSTRUCTION			
Preparation and review of Amended Reply to Counterclaim for matter; Preparation and review of correspondence to Aiken Clerk of Court regarding Amended Reply				0.00		
126176	TIME		CWM	0.10	175.00	17.50
1/31/2012			Communicate/MISC	0.00	C@1	
Billed	G:22035	2/2/2012	ELITE CONSTRUCTION			
Telephone conference with Mr. Dickert regarding preparation for trial in matter				0.00		
126369	TIME		CWM	0.20	175.00	35.00
2/7/2012			Review/analyze	0.00	C@1	
Billed	G:22266	6/1/2012	ELITE CONSTRUCTION			
Receipt and review correspondence from Mr. Myrtle regarding additional hearing in matter; Preparation and review of correspondence to Counsel of record regarding additional referee for matter and additional hearing date for matter				0.00		
126597	TIME		CWM	0.10	175.00	17.50
2/18/2012			Plan & Prepare	0.00	C@1	
Billed	G:22266	6/1/2012	ELITE CONSTRUCTION			
Preparation and review of correspondence to Mr.Dickert regarding selection of special referee				0.00		
126843	TIME		CWM	0.10	175.00	17.50
3/5/2012			Review/analyze	0.00	C@1	
Billed	G:22266	6/1/2012	ELITE CONSTRUCTION			
Receipt and review of correspondence to Mr. Harvey dated March 5, 2012 regarding proposed hearing date for matter				0.00		

Slip ID / Dates and Time / Posting Status / Description			Timekeeper / Activity / Client / IN RE	Units / DNB Time / Variance	Rate / Rate Info / Bill Status	Slip Value
127609	TIME		CWM	0.20	175.00	35.00
4/10/2012			Plan & Prepare	0.00	C@1	
Billed	G:22266	6/1/2012	ELITE CONSTRUCTION			
Preparation and review of correspondence to Mr. Harvey regarding proposed hearing date for matter				0.00		
127615	TIME		CWM	0.10	175.00	17.50
4/10/2012			Review/analyze	0.00	C@1	
Billed	G:22266	6/1/2012	ELITE CONSTRUCTION			
Receipt and review of correspondence from opposing counsel dated April 10, 2012 regarding proposed trial date for matter				0.00		
127646	TIME		CWM	0.10	175.00	17.50
4/12/2012			Communicate/OUTCouns	0.00	C@1	
Billed	G:22266	6/1/2012	ELITE CONSTRUCTION			
Telephone conference with opposing counsel regarding proposed hearing date for matter				0.00		
128032	TIME		CWM	0.10	175.00	17.50
4/28/2012			Plan & Prepare	0.00	C@1	
Billed	G:22266	6/1/2012	ELITE CONSTRUCTION			
Preparation and review of correspondence to Counsel of Record regarding proposed hearing date for matter				0.00		
128302	TIME		CWM	0.10	175.00	17.50
5/9/2012			Plan & Prepare	0.00	C@1	
Billed	G:22266	6/1/2012	ELITE CONSTRUCTION			
Preparation and review of correspondence to Counsel of Record regarding proposed hearing date for matter				0.00		
129676	TIME		CWM	0.10	175.00	17.50
7/4/2012			Plan & Prepare	0.00	C@1	
Billed	G:22363	7/31/2012	ELITE CONSTRUCTION			
Preparation and review of correspondence to Counsel of Record regarding additional Order of Reference for matter				0.00		
129687	TIME		CWM	0.80	175.00	140.00
7/5/2012			Communicate/CLIENT	0.00	C@1	
Billed	G:22363	7/31/2012	ELITE CONSTRUCTION			
Office conference with Client for preparation for trial in matter				0.00		
129710	TIME		CWM	0.10	175.00	17.50
7/6/2012			Communicate/MISC	0.00	C@1	
Billed	G:22363	7/31/2012	ELITE CONSTRUCTION			
Telephone conference with Mr. Murray regarding preparation for trial in matter				0.00		
129711	TIME		CWM	0.10	175.00	17.50
7/6/2012			Communicate/MISC	0.00	C@1	
Billed	G:22363	7/31/2012	ELITE CONSTRUCTION			
Telephone conference with Mr. Cooper regarding preparation for trial in matter				0.00		

Slip ID / Dates and Time / Posting Status / Description			Timekeeper / Activity / Client / IN RE	Units / DNB Time / Variance	Rate / Rate Info / Bill Status	Slip Value
129715	TIME		CWM	0.40	175.00	70.00
7/6/2012			Plan & Prepare	0.00	C@1	
Billed	G:22363	7/31/2012	ELITE CONSTRUCTION			
Preparation and review of additional Order of Reference for matter				0.00		
129716	TIME		CWM	0.50	175.00	87.50
7/6/2012			Plan & Prepare	0.00	C@1	
Billed	G:22363	7/31/2012	ELITE CONSTRUCTION			
Preparation and review of Amended Reply to Counterclaim for matter				0.00		
129717	TIME		CWM	0.30	175.00	52.50
7/6/2012			Plan & Prepare	0.00	C@1	
Billed	G:22363	7/31/2012	ELITE CONSTRUCTION			
Preparation and review of correspondence to Counsel of Record regarding proposed additional Order of Reference for matter and Amended Reply to Counterclaims				0.00		
129720	TIME		CWM	0.30	175.00	52.50
7/6/2012			Plan & Prepare	0.00	C@1	
Billed	G:22363	7/31/2012	ELITE CONSTRUCTION			
Preparation and review of correspondence to Judge Early regarding Order of Reference for matter				0.00		
129873	TIME		CWM	2.50	175.00	437.50
7/7/2012			Review/analyze	0.00	C@1	
Billed	G:22363	7/31/2012	ELITE CONSTRUCTION			
Initial preparation and review of Pre-trial brief for matter and preparation for trial in matter				0.00		
129874	TIME		CWM	2.00	175.00	350.00
7/8/2012			Review/analyze	0.00	C@1	
Billed	G:22363	7/31/2012	ELITE CONSTRUCTION			
Review of depositions of Mr. Key and Defendant, depositions of Mike Tummillo, Dallas Sidener and J.D.Cooper				0.00		
129875	TIME		CWM	2.00	175.00	350.00
7/9/2012			Plan & Prepare	0.00	C@1	
Billed	G:22363	7/31/2012	ELITE CONSTRUCTION			
Additional preparation and review of Pre-Trial brief for matter and preparation for trial in matter				0.00		
129824	TIME		CWM	1.50	175.00	262.50
7/9/2012			Review/analyze	0.00	C@1	
Billed	G:22363	7/31/2012	ELITE CONSTRUCTION			
Review of proposed trial exhibits for matter				0.00		
129825	TIME		CWM	2.00	175.00	350.00
7/9/2012			Plan & Prepare	0.00	C@1	
Billed	G:22363	7/31/2012	ELITE CONSTRUCTION			
Preparation and review of Pre-Trial brief for matter				0.00		

Slip ID / Dates and Time / Posting Status / Description			Timekeeper / Activity / Client / IN RE	Units / DNB Time / Variance	Rate / Rate Info / Bill Status	Slip Value
129823	TIME		CWM	0.10	175.00	17.50
7/9/2012			Communicate/CLIENT	0.00	C@1	
Billed	G:22363	7/31/2012	ELITE CONSTRUCTION			
Telephone conference with Client regarding preparation for trial in matter				0.00		
129832	TIME		CWM	0.10	175.00	17.50
7/10/2012			Communicate/MISC	0.00	C@1	
Billed	G:22363	7/31/2012	ELITE CONSTRUCTION			
Telephone conference with Mr. Harvey regarding preparation for trial in matter				0.00		
129876	TIME		CWM	4.00	175.00	700.00
7/10/2012			Plan & Prepare	0.00	C@1	
Billed	G:22363	7/31/2012	ELITE CONSTRUCTION			
Additional preparation for trial of matter, preparation of direct examinations of Mr. Key and Mr. Cooper and cross-examinations of Dr. Tummillo, Mr. Sidener and Mike Tummillo				0.00		
129877	TIME		CWM	3.00	175.00	525.00
7/10/2012			Plan & Prepare	0.00	C@1	
Billed	G:22363	7/31/2012	ELITE CONSTRUCTION			
Preparation and review of file exhibits for matter and final preparation for trial in matter				0.00		
129878	TIME		CWM	7.00	175.00	1225.00
7/11/2012			Communicate/CLIENT	0.00	C@1	
Billed	G:22363	7/31/2012	ELITE CONSTRUCTION			
Conference with Client and Mr. Cooper to prepare for trial in matter and attendance at trial for matter before Special Referee Harvey				0.00		
130067	TIME		CWM	0.10	175.00	17.50
7/20/2012			Communicate/MISC	0.00	C@1	
Billed	G:22363	7/31/2012	ELITE CONSTRUCTION			
Telephone conference with Mr. Dickert regarding settlement of matter				0.00		
130255	TIME		CWM	0.10	175.00	17.50
7/26/2012			Communicate/OUTCouns	0.00	C@1	
Billed	G:22363	7/31/2012	ELITE CONSTRUCTION			
Telephone conference with opposing counsel regarding settlement of matter				0.00		
130395	TIME		CWM	0.10	175.00	17.50
7/30/2012			Communicate/IN FIRM	0.00	C@1	
Billed	G:22439	8/31/2012	ELITE CONSTRUCTION			
Telephone conference with Client regarding settlement of matter				0.00		

Slip ID / Dates and Time / Posting Status / Description			Timekeeper / Activity / Client / IN RE	Units / DNB Time / Variance	Rate / Rate Info / Bill Status	Slip Value
130741	TIME		CWM	0.10	175.00	17.50
8/17/2012			Communicate/CLIENT	0.00	C@1	
Billed	G:22439	8/31/2012	ELITE CONSTRUCTION			
Telephone conference with Mr. Dickert regarding post trial brief for matter				0.00		
130888	TIME		CWM	2.50	175.00	437.50
8/23/2012			Plan & Prepare	0.00	C@1	
Billed	G:22439	8/31/2012	ELITE CONSTRUCTION			
Preparation and review of draft of Post Trial Brief for matter				0.00		
130889	TIME		CWM	0.20	175.00	35.00
8/27/2012			Communicate/OUTCouns	0.00	C@1	
Billed	G:22439	8/31/2012	ELITE CONSTRUCTION			
Telephone conference with opposing counsel regarding issues presented for Post Trial Brief and commission of Post Trial Brief to Mr. Harvey				0.00		
131093	TIME		APS	0.40	175.00	70.00
8/29/2012			Review/analyze	0.00	C@1	
WIP			ELITE CONSTRUCTION			
Review Plaintiff's Post-Trial Brief prior to submission to Judge Harvey				0.00		
131094	TIME		APS	0.30	175.00	52.50
8/30/2012			Plan & Prepare	0.00	C@1	
WIP			ELITE CONSTRUCTION			
Preparation and review of correspondence to Judge Harvey regarding Plaintiff's Post-Trial Brief				0.00		
130983	TIME		CWM	0.40	175.00	70.00
9/1/2012			Review/analyze	0.00	C@1	
WIP			ELITE CONSTRUCTION			
Receipt and review correspondence from opposing counsel dated August 30, 2012 with Defendant's Post Trial Brief for matter				0.00		
131226	TIME		APS	0.30	175.00	52.50
9/12/2012			Plan & Prepare	0.00	C@1	
WIP			ELITE CONSTRUCTION			
Preparation and review of correspondence to Client regarding Judge Harvey's Order				0.00		
131299	TIME		CWM	0.10	175.00	17.50
9/18/2012			Communicate/CLIENT	0.00	C@1	
WIP			ELITE CONSTRUCTION			
Telephone conference with Client regarding filed Order for matter				0.00		
131486	TIME		CWM	0.20	175.00	35.00
9/26/2012			Review/analyze	0.00	C@1	
WIP			ELITE CONSTRUCTION			
Receipt and review correspondence from opposing counsel dated September 24, 2012 regarding Motion to Amend Judgment in matter				0.00		

Slip ID / Dates and Time / Posting Status / Description		Timekeeper / Activity / Client / IN RE	Units / DNB Time / Variance	Rate / Rate Info / Bill Status	Slip Value
131530	TIME	CWM	0.20	175.00	35.00
9/27/2012		Plan & Prepare	0.00	C@1	
WIP		ELITE CONSTRUCTION			
Preparation and review of correspondence to Judge Harvey regarding Motion for Reconsideration in matter and submission of additional attorney's fee information in matter			0.00		
131563	TIME	CWM	0.10	175.00	17.50
9/29/2012		Review/analyze	0.00	C@1	
WIP		ELITE CONSTRUCTION			
Receipt and review correspondence from Mr. Harvey dated September 28, 2012 regarding hearing for motion for Reconsideration in matter; Preparation and review of correspondence to Mr. Dickert regarding proposed hearing date			0.00		
Grand Total					
		Billable	94.95		16616.25
		Unbillable	0.00		0.00
		Total	94.95		16616.25

Selection Criteria

Slip.Classification	Open
Clie.Selection	Include: ELITE CONSTRUCTION v TUMMILLO
Slip.Transaction Typ	2 - 2

Rate Info - identifies rate source and level

Slip ID / Dates and Time / Posting Status / Description			Timekeeper / Activity / Client / IN RE	Units / DNB Time / Variance	Rate / Rate Info / Bill Status	Slip Value
97780	EXP		CWM	12	0.25	3.00
1/27/2009			Photocopy			
Billed	G:20153	2/19/2009	ELITE CONSTRUCTION			
Photocopying						
97779	EXP		CWM	2	0.42	0.84
1/28/2009			Postage			
Billed	G:20153	2/19/2009	ELITE CONSTRUCTION			
Postage						
98105	EXP		CWM	1	10.00	10.00
2/13/2009			Court fee			
Billed	G:20153	2/19/2009	ELITE CONSTRUCTION			
Filing Fee						
			Mechanics Lien			
98109	EXP		CWM	1	5.49	5.49
2/13/2009			Postage			
Billed	G:20153	2/19/2009	ELITE CONSTRUCTION			
Postage						
			Certified GA B&T			
98111	EXP		CWM	1	0.42	0.42
2/13/2009			Postage			
Billed	G:20153	2/19/2009	ELITE CONSTRUCTION			
Postage						
98168	EXP		CWM	1	60.00	60.00
2/14/2009			Other Expenses			
Billed	G:20153	2/19/2009	ELITE CONSTRUCTION			
Service fee of Mechanics' Lien						
99783	EXP		CWM	1	150.00	150.00
5/1/2009			Court fee			
Billed	G:20253	5/4/2009	ELITE CONSTRUCTION			
Filing Fee						
			Sum. & Compl.			
99784	EXP		CWM	45	0.25	11.25
5/1/2009			Photocopy			
Billed	G:20253	5/4/2009	ELITE CONSTRUCTION			
Photocopying						
			Sum. & Compl.			

EXHIBIT "B"

Slip ID / Dates and Time / Posting Status / Description			Timekeeper / Activity / Client / IN RE	Units / DNB Time / Variance	Rate / Rate Info / Bill Status	Slip Value
99968	EXP		CWM	1	60.00	60.00
5/2/2009			Other Expenses			
Billed	G:20279	5/21/2009	ELITE CONSTRUCTION			
Service fee of Summons and Complaint						
99801	EXP		APS	1	10.13	10.13
5/5/2009			Postage			
Billed	G:20279	5/21/2009	ELITE CONSTRUCTION			
Postage - Summons and Complaint			Certified...			
99802	EXP		APS	33	0.25	8.25
5/5/2009			Photocopy			
Billed	G:20279	5/21/2009	ELITE CONSTRUCTION			
Photocopying			SummonsComplaint			
99810	EXP		APS	2	0.42	0.84
5/6/2009			Postage			
Billed	G:20279	5/21/2009	ELITE CONSTRUCTION			
Postage						
99811	EXP		APS	3	0.25	0.75
5/6/2009			Photocopy			
Billed	G:20279	5/21/2009	ELITE CONSTRUCTION			
Photocopying						
100240	EXP		CWM	1	0.44	0.44
5/17/2009			Postage			
Billed	G:20317	6/26/2009	ELITE CONSTRUCTION			
Postage						
100241	EXP		CWM	10	0.25	2.50
5/17/2009			Photocopy			
Billed	G:20317	6/26/2009	ELITE CONSTRUCTION			
Photocopying						
101110	EXP		CWM	4	0.44	1.76
6/29/2009			Postage			
Billed	G:20372	7/27/2009	ELITE CONSTRUCTION			
Postage						
101111	EXP		CWM	20	0.25	5.00
6/29/2009			Photocopy			
Billed	G:20372	7/27/2009	ELITE CONSTRUCTION			
Photocopying						
107516	EXP		APS	5	0.25	1.25
3/4/2010			Photocopy			
Billed	G:20754	3/9/2010	ELITE CONSTRUCTION			
Photocopying						

Slip ID / Dates and Time / Posting Status / Description			Timekeeper / Activity / Client / IN RE	Units / DNB Time / Variance	Rate / Rate Info / Bill Status	Slip Value
107515 3/4/2010 Billed Postage	EXP G:20754	 3/9/2010	APS Postage ELITE CONSTRUCTION	2	0.44	0.88
107961 3/30/2010 Billed Photocopying - discovery responses	EXP G:20808	 4/9/2010	CWM Photocopy ELITE CONSTRUCTION	1	39.72	39.72
108399 4/10/2010 Billed Postage	EXP G:20947	 6/17/2010	CWM Postage ELITE CONSTRUCTION	1	0.44	0.44
108400 4/10/2010 Billed Photocopying	EXP G:20947	 6/17/2010	CWM Photocopy ELITE CONSTRUCTION	6	0.25	1.50
113064 9/16/2010 Billed Postage	EXP G:21137	 9/28/2010	CWM Postage ELITE CONSTRUCTION	4	0.44	1.76
113065 9/16/2010 Billed Photocopying	EXP G:21137	 9/28/2010	CWM Photocopy ELITE CONSTRUCTION	15	0.25	3.75
113066 9/16/2010 Billed one half of hearing fee	EXP G:21137	 9/28/2010	CWM Court fee ELITE CONSTRUCTION	1	75.00	75.00
113069 9/16/2010 Billed Postage	EXP G:21137	 9/28/2010	CWM Postage ELITE CONSTRUCTION	1	0.44	0.44
113070 9/16/2010 Billed Photocopying	EXP G:21137	 9/28/2010	CWM Photocopy ELITE CONSTRUCTION	6	0.25	1.50
118782 4/9/2011 Billed Photocopying	EXP G:21563	 5/3/2011	CWM Photocopy ELITE CONSTRUCTION	15	0.25	3.75
125307 12/13/2011 Billed Postage	EXP G:22001	 1/2/2012	CWM Postage ELITE CONSTRUCTION	4	0.44	1.76

Slip ID / Dates and Time / Posting Status / Description			Timekeeper / Activity / Client / IN RE	Units / DNB Time / Variance	Rate / Rate Info / Bill Status	Slip Value
125308 12/13/2011 Billed Photocopying	EXP G:22001	 1/2/2012	CWM Photocopy ELITE CONSTRUCTION	10	0.25	2.50
125309 12/13/2011 Billed Filing Fee	EXP G:22001	 1/2/2012	CWM Court fee ELITE CONSTRUCTION	1	25.00	25.00
125733 1/11/2012 Billed Postage	EXP G:22035	 2/2/2012	CWM Postage ELITE CONSTRUCTION	4	0.44	1.76
125734 1/11/2012 Billed Photocopying	EXP G:22035	 2/2/2012	CWM Photocopy ELITE CONSTRUCTION	20	0.25	5.00
129718 7/6/2012 Billed Postage	EXP G:22363	 7/31/2012	CWM Postage ELITE CONSTRUCTION	2	0.45	0.90
129719 7/6/2012 Billed Photocopying	EXP G:22363	 7/31/2012	CWM Photocopy ELITE CONSTRUCTION	30	0.25	7.50
131708 7/11/2012 WIP Outside copying - Color, enlarged pictures for trial exhibits	EXP		CWM Outside copy ELITE CONSTRUCTION	1	53.82	53.82
131228 9/12/2012 Billed Photocopying	EXP G:22490	 10/5/2012	APS Photocopy ELITE CONSTRUCTION	10	0.25	2.50
Grand Total			Billable Unbillable Total	0.00 0.00 0.00		561.40 0.00 561.40

SHARON DEHART
CERTIFIED COURT REPORTER
P.O. BOX 2474 AIKEN, S.C. 29802-2474
(803) 648-9434

FILE

INVOICE

Invoice Number: 2112
Invoice Date: 3/31/10

S.S.N. 251-45-2309

CLARKE W. McCANTS, III, ESQ.
NANCE, McCANTS & MASSEY
218 NEWBERRY STREET, S.W.
AIKEN, SOUTH CAROLINA

==========

FOR PROFESSIONAL SERVICES RENDERED:

RE: ELITE CONSTRUCTION V. DORIS E. TUMMILLO, MD

DATE	DESCRIPTION	AMOUNT
3/25/10	O&1 TRANS/DORIS E. TUMMILLO, MD	$ 513.50
	TOTAL	$ 513.50

(MAKE CHECKS PAYABLE TO: Sharon DeHart)
Terms: 30 days

EXHIBIT "C"

SHARON DEHART
CERTIFIED COURT REPORTER
P.O. BOX 2474 AIKEN, S.C. 29802-2474
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shadehart1@msn.com

INVOICE

Invoice Number: 2219
Invoice Date: 11/04/10

S.S.N. 251-45-2309

CLARKE W. McCANTS, III, ESQ.
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218 NEWBERRY STREET, S.W.
AIKEN, SOUTH CAROLINA

==========

FOR PROFESSIONAL SERVICES RENDERED:

RE: ELITE CONSTRUCTION V. DORIS E. TUMMILLO, MD, ET AL.

DATE	DESCRIPTION	AMOUNT
10/13/10	O&1 TRANSCRIPT/DORIS TUMMILLO, MD [CONT]	$ 435.00
	TRANSCRIPT/CHRIS KEY	275.35
	TOTAL	$ 710.35

(MAKE CHECKS PAYABLE TO: Sharon DeHart)
Terms: 30 days

oreland Court Reporting
819 Calhoun Pl SE
Aiken, SC 29801

Invoice

Bill To:
Clarke W. McCants, III, Esq. Nance, McCants & Massey 218 Newberry Street, SW Aiken, South Carolina 29801

Tax ID Number
90-0661455

Date	Invoice No.
09/19/11	45

Description	Amount
Deposition of Dallas Sidener and Michael Tummillo September 13, 2011 In Re: Elite Construction, Inc., vs. Doris E. Tummillo and Georgia Bank and Trust Company of Augusta Case No 09-CP-02-958	
Attendance of Reporter	160.00
Transcription - Dallas Sidener	386.75
Transcription - Michael Tummillo	255.00
Condensed transcript	0.00
Exhibits	0.60
Total	$802.35

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INVOICE

Invoice Number: 2426
Invoice Date: 1/16/12

S.S.N. 251-45-2309

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AIKEN, SOUTH CAROLINA

==========

FOR PROFESSIONAL SERVICES RENDERED:

RE: ELITE CONSTRUCTION, INC. V. DORIS E. TUMMILLO, ET AL.

DATE	DESCRIPTION	AMOUNT
1/10/12	TRANSCRIPT/JD COOPER	$ 165.55
	TOTAL	$ 165.55

(MAKE CHECKS PAYABLE TO: Sharon DeHart)
Terms: 30 days

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FILE

INVOICE

Invoice Number: 2534
Invoice Date: 7/25/12

S.S.N. 251-45-2309

CLARKE W. McCANTS, III, ESQ.
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218 NEWBERRY STREET, S.W.
AIKEN, SOUTH CAROLINA

==========

FOR PROFESSIONAL SERVICES RENDERED:

RE: ELITE CONSTRUCTION V. TUMMILLO

DATE	DESCRIPTION	AMOUNT
7/11/12	ATTENDANCE FEE/HEARING	$ 425.00
	TOTAL	$ 425.00

(MAKE CHECKS PAYABLE TO: Sharon DeHart)
Terms: 30 days

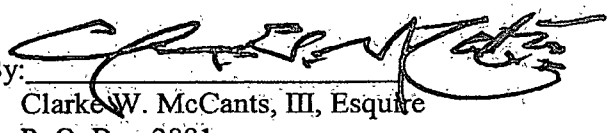
CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE this date served a copy of the within and attached document(s) upon the following by electronic transmission and First Class mail with sufficient postage affixed thereto to insure proper delivery:

Neal W. Dickert, Esquire
Hull Barrett P.C.
P. O. Box 1564
Augusta, GA 30903-1564

James S. Murray, Esquire
Warlick Tritt Stebbins & Hall, LLC
P. O. Box 1495
Augusta, GA 30903

NANCE, MCCANTS & MASSEY

By: 
Clarke W. McCants, III, Esquire
P. O. Box 2881
Aiken, SC 29802-2881
(803) 649-6200

Dated: October 5, 2012

State of South Carolina)
)
County of Aiken)

In the Court of Common Pleas

Elite Construction, Inc.,)
Plaintiff,)
)
vs.)
)
Doris E. Tummillo and)
Georgia Bank and Trust Company)
of Augusta,)
Defendants.)

Civil Action No.: 2009-CP-02-958

AFFIDAVIT OF ATTORNEY'S FEES, COSTS AND EXPENSES

COME NOW, Chris Key, being duly sworn and states the following:

1. Elite Construction has incurred the following Attorney's Fees and Costs as part of the above-referenced matter:

Attorney's Fees:	$11,033.75
Attorney's Costs & Expenses:	
Process Server Fees	$ 120.00
Document Filing Fees	185.00
Depositions	2,191.75
Postage	29.96
Photocopies	89.72
Total:	$ 2,616.43
TOTAL to May 9, 2012:	$13,650.18

2. This amount does not include Attorney's Fees and Costs after May 9, 2012.

Elite Construction, Inc.

Dated: 7/11/12

Chris Key

Chris Key

Sworn to and Subscribed before me this
11th day of July, 2012.

(SEAL)

Notary Public for South Carolina
My Commission expires: 2-4-2015

A. That's correct.

Q. And Elite Construction is the plaintiff in this case, is that correct?

A. That's correct.

Q. All right. Where are you from, Chris?

A. Originally from New Ellenton, South Carolina.

Q. Where do you live now?

A. I live in Ridge Spring, South Carolina.

Q. And your wife, Heather, is with us in the courtroom today?

A. Yes, sir.

Q. That's her over there?

A. Yes, sir.

Q. Now, tell Judge Harvey a little bit about the nature of the work done by your company, Elite Construction.

A. We specialize in custom barns. 90 percent of the construction we do is the pole building.

Q. What you call a pole building?

A. Yes, sir.

Q. What is a pole building?

A. It's an economical structure for a means of getting a larger area for less money and it's erected with either round or square columns, poles, as far as supporting the roof.

Q. The roof is supported by poles that circle the structure itself, is that correct?

A. Yes, sir.

Q. How long have you been doing this kind of work?

A. For 10 years.

Q. All right, sir. Are you a licensed building contractor in the State of South Carolina?

A. Yes, sir.

Q. Unlimited or are you limited in any regard?

A. Just residential.

Q. All right. And that includes the construction of barns, structures and things of that nature?

A. Yes, sir.

Q. So, you're within your guidelines and your licenses and whatnot?

A. Yes, sir.

Q. Never had any problems with your licenses or anything like that?

A. No, sir.

Q. Okay. And typically, for -- I'll go ahead and tell you, this barn is a pretty large structure, is that correct?

A. Yes, sir.

Q. It started off being 45 stalls and, through

same page here, Chris?

A. Yes, sir.

Q. You've got your contract. It's called a Purchase Contract, is that correct?

A. Yes, sir.

Q. And also, the Plans and Specifications for Dr. Tummillo's barn, is that correct?

A. That's correct.

Q. All right, now, the contract, of course, speaks for itself in our minds and we've been through this, but this before Judge Harvey, marked as Exhibit Number 1, was the end product of the negotiations you had with Dr. Tummillo for the construction of the barn, is that correct?

A. That's correct.

Q. And tell the Judge what the original contract price was for the construction of the barn.

A. It was $358,379.

Q. All right. And again, the size -- well, are the number of stalls defined on that contract?

A. No, sir.

Q. All right. That's defined by the Plans and Specs that --

A. That's correct.

Q. -- are Exhibit Number 2, is that correct?

barn that I had built and check the quality of my work.

Q. All right. And I want you to be careful in this case about testifying about what other people said. And I'm going to help you in that regard. You can say what Dr. Tummillo and of course what you said, but don't describe what other people said, but what you're saying is that Dr. Tummillo did have an opportunity to look at some of your other work product?

A. Yes, sir.

Q. And to examine your craftsmanship, is that correct?

A. Yes, sir.

Q. All right. You subsequently obtained a building permit for construction of Dr. Tummillo's barn, is that correct?

A. That's correct.

MR. McCANTS: That's going to be Exhibit Number 3, Judge.

THE COURT: Thank you.

MR. McCANTS: And then what I would like to do --

MR. DICKERT: What is Number 3?

MR. McCANTS: Number 3 is the building permit.

MR. DICKERT: No objection to that.

THE COURT: Admitted without objection.

Q. [Mr. McCants] I show you these photographs which have been pre-marked as Exhibits 4 through what? Which is the last one there, Chris?

A. 4 through 7.

Q. All right. Those are pictures of Dr. Tummillo's barn, is that correct?

A. That is correct.

Q. And they were taken on what date?

A. They were taken on January 5th, 2009.

Q. All right. And go ahead and give those to Judge Harvey so we can --

THE COURT: Thank you. All right.

MR. McCANTS: I'm going to offer this to The Court as just somewhat of a visual of the structure we're talking about.

Q. [Mr. McCants] But that shows the barn not finished, is that correct?

A. That's correct.

Q. And we're going to talk about this a little bit later, but they were taken, again, on January 5 of 2009, and what is significant about that date?

A. That is the last day we worked on that project.

Q. All right. And at that point, if you had to estimate, Mr. Key, how much -- what percentage was the

barn complete at that point, in your mind?

A. It was about 85 percent.

Q. All right. So, there was still work to be done?

A. Yes, sir.

Q. All right, and we'll talk a little bit more about that later and everything, but the main point is that does not show the finished barn?

A. That's correct.

Q. It's a large structure.

A. Yes, sir.

Q. Okay. All right. You began work on Dr. Tummillo's barn, and I want you to be careful with these dates and be very clear about them. The contract was negotiated on what day? On or about what date?

A. It was around the end of July.

Q. All right. Let's look at it. Get it in front of you. I've got a date on the second -- the first full page, up at the top, it says 7/16/08. Does that appear to be correct?

A. Yes, sir.

Q. All right. And she did pay you the initial deposits by check dated July 24, 2008, is that correct?

A. Yes, sir.

Q. All right. Is that a copy of the check?

A. Yes, sir.

MR. McCANTS: And that's Exhibit Number 8. All right, hand that to the Judge.

Q. [Mr. McCants] Read the amount of the check if you would, though, Chris, or maybe the Judge can do it just to get it in the record.

THE COURT: $107,513.70.

MR. McCANTS: All right.

THE COURT: Without objection?

MR. DICKERT: No objection.

Q. [Mr. McCants] Now, is there anything in that written contract which says when you're supposed to begin?

A. No, sir.

Q. Is there anything in that written contract that says when the project has to be completed?

A. No, sir.

Q. What was your understanding, though, about when you were supposed to begin?

A. My understanding, as far as a start date?

Q. Yes, sir.

A. As soon as possible.

Q. All right. Now, you ordered some building products pretty soon after you received the deposit that's represented by that check, is that correct?

A. Yes, sir.

Q. What did you order?

A. On 7/31, seven days, I think, after the check was wrote, I ordered the trusses for the barn.

Q. All right. Now, the next question is when did you -- that is, your company and your employees, actually begin construction of this barn? When did you put your hands on this project?

A. We set foot first on the property to start construction on October the 2nd.

Q. Of?

A. 2008.

Q. Now, why is there a gap between the end of July and October 2008?

A. Referring to the contract, the fill and grading was to be furnished by the owner and the building pad is the first thing you need to construct the project on and the building pads were not complete.

Q. All right. And I think everyone knows what a building pad is but what is it made of?

A. It's where you use heavy equipment to level dirt, usually sand clay, something of a hard substance, to support it and actually make the ground level.

Q. All right. In other words, prep the foundation, the site prep, that was not your

responsibility under the contract, is that correct?

A. No, sir.

Q. Whose responsibility was it?

A. That was Dr. Tummillo's.

Q. All right. And when was the site prepared for you to actually begin your construction work?

A. The building pad did not start or get finished until the month of September.

Q. All right. So, that brings us to the September/October time frame, is that correct?

A. Yes, sir.

Q. All right. Now, I want you to tell Judge Harley generally -- not in great, great detail, but generally, what's the process in building a pole barn?

A. In a pole barn, you start, of course, with a building pad. After the building pad has been completed, we use what we call layout frames, which is how we align and square the building on the building pad. We run string lines between those, pull measurements to make sure everything is square. We drill the holes for the footings, which is what the poles will set in, and that's when we require our first inspection. The inspector comes, verifies that the depth is okay, that at least up to 25 percent of the pole is in the ground with a max of four foot deep.

Once that's verified, we put concrete in the hole, we erect the post that supports the roof structure and then we set trusses. In between the trusses, we run two-by-six purlins, and then on top of the purlins, 95 percent of the time is insulation and metal.

Q. Spell purlins, if you would, for the court reporter.

A. P-e-r-l-i-n-s [sic].

Q. All right, purlins. We're going to talk about purlins in just a little bit. All right. And what is done after --

A. Well, after the roof is completed, this -- you know, pole buildings can be different structures. If it's a shop, you would complete the outside walls, install the doors, poor concrete and you have a finished product.

Q. All right.

A. With a barn, you continue building walls, setting other posts for door entryways and windows and, of course, the electrical and any plumbing involved.

Q. And that was your responsibility, basically this turnkey barn, after the site was prepped, is that correct?

A. Yes, sir.

Q. All right. Now, let's talk about some of the

issues in this case. The essential issue, as you know, and as the Court knows, it deals with the size of the horse stalls at Dr. Tummillo's barn, okay?

A. That's correct.

Q. I think everybody knows, when you talk about a horse stall, that's where you put the horse, where the horse is kept and whatnot, is that correct?

A. That's correct.

Q. All right. Again, there were 40 of these stalls or spaces at Dr. Tummillo's barn once the construction -- it was planned ultimately for 40 spaces or stalls, is that correct?

A. That's correct.

Q. Now, the contract, again, as you testified, provides certain dimensions for the barn, is that correct?

A. That's correct.

Q. And describes the type of materials which are going to be used for the barn, is that correct?

A. That's correct.

Q. It does not, however, mention any size specifications for the actual stalls, is that correct?

A. That's correct.

Q. Now, do you believe that the contract, though, by virtue of describing materials to be used and the

dimensions of the barn, in fact, defines the stall spaces?

A. Yes, sir, between the contract and the plans.

Q. All right. And explain that to the Court, if you would, then.

A. Well, the contract has the overall size of the structure, which is a U-shaped structure. And of course the coordinating plans is a U-shaped structure with the same measurements. And if you do the math and calculations, you'll come up with the measurements that the plans specify.

Q. All right. All things the contractors do?

A. That's correct.

Q. Things maybe not a lawyer would do or a lay person, though, correct?

A. No, sir.

Q. And for that reason, there were some discussions between you and Dr. Tummillo regarding the size of the stalls, is that correct?

A. That's correct.

Q. All right. Now, from your standpoint, what was discussed with her as to the size of the stalls that she was going to get for this barn?

A. That the stalls would be 12 by 12.

Q. You used the term 12 by 12, is that correct?

A. Yes, sir.

Q. All right. What does that mean? Tell Judge Harley what that means when you say 12 by 12.

A. In a pole building, the poles are normally set on either eight, 10, 12, 14-foot centers because that's the standard lumber lengths. Commonly, in horse barns, the poles are set on 12-foot centers because we do 12 by 12 stalls for the horses.

Q. I'm going to interrupt you. Is that the centers that these poles were set for Dr. Tummillo's barn?

A. Yes, sir.

Q. And Judge Harley, I'm sure, knows, but define what you mean when you say on center.

A. On center would be the measurement from the center of one pole to the center of the next pole.

Q. 12 feet from each other to the other?

A. Yes, sir.

Q. All right. Okay. So, continue then. I didn't mean to interrupt you.

A. When you're doing a barn, the poles are set on 12-foot centers and the poles that actually support the roof are the same poles that you use to build the box for -- that the horse will be in that we call the stall.

Q. The stall.

A. That's correct.

Q. All right. So, the 12-foot centers define the size of the stall, is that correct?

A. That's correct.

Q. But then you get into the interior construction and what happens?

A. When you start adding the stuff you need to securely house a horse, it unfortunately takes away from the dimensions.

Q. Takes away from what?

A. The dimensions.

Q. It reduces the interior dimensions, is that correct?

A. Yes, sir.

Q. All right. So, what you're telling the Court is ultimately, even though they're called 12 by 12's -- and they're not called 12 foot by 12 foot, are they?

A. No, sir.

Q. They're called 12 by 12's, is that right?

A. That's correct.

Q. Ultimately, end product results in an interior dimension less -- actually less than 12 feet by 12 feet, is that correct?

A. That's correct.

Q. All right. So, 12 by 12, is it fair to say,

describes an approximate size of the stalls?

A. That's correct.

Q. It does not mean every stall is going to be 12 foot by 12 foot, is that correct?

A. That's correct.

Q. Why do you call them 12 by 12's then?

A. I don't know what else you'd call them.

Q. All right. Because there's going to be a variance, right?

A. Yes, sir.

Q. How else would you describe the size of that stall if you didn't pick a number?

A. You would have to go by very specifically and label each stall size because the variances so far is 11-6 and a half by 11-7.

Q. In fact, one of the exhibits we're going to have produced today is some measurements from -- maybe provide to Dr. Tummillo -- they're a whole host -- you may not have seen this, but a whole host of different dimensions and measurements, is that correct?

A. That's correct.

Q. Is it fair to say when you're talking about a 12-foot stall, you're referring generically to the stall itself and not the actual measurement?

A. That's correct.

Q. How else do you think you could adequately describe the size of the stall to somebody if you couldn't just call it a round number?

A. I'm not sure there would be a good way to.

Q. All right. Now, is this a common usage or term in the horse industry?

A. Yes, sir.

Q. When you try to define the size of the stall?

A. Yes, sir.

Q. Are there other stall sizes that are referred to?

A. Yes, sir.

Q. For example?

A. I've built a barn with 10 by 10 stalls. I've done 12 by 14, I've done 14 by 14.

Q. Did they measure out actually 10 by 10 feet?

A. No, sir.

Q. Actually measure out 14 by 14 feet?

A. No, sir.

Q. Did you trust that Dr. Tummillo understood what a 12 by 12 was?

A. Yes, sir.

Q. Why?

A. Well, she considered her expert in the field. She did have race horses. I knew she was familiar with

horses so I trust that she'd just understand the term.

Q. All right. Chris, would it have been possible -- would it have been possible for you to construct a barn with stalls that actually measured 12 feet by 12 feet under the terms of the contract with products and materials used in the cost of this project?

A. No, sir.

Q. Explain to him why not.

A. The reason the pole buildings are efficient is you use standard lumber lengths. Your poles are set on 12-foot centers because you use 12-foot boards. Of course, each end of the board has to be nailed to the pole. And if there was 12 foot between the poles, a 12-foot board would not, of course, reach either end and in order to achieve that, you would have to buy 14 foot material, cut a foot and a half off to keep the 12-foot dimension between the poles and basically waste it.

Q. And the centers wouldn't even put 12 foot at that point, would they?

A. No, sir.

Q. All right. And it would increase, significantly, the cost of the project, correct?

A. Yes, sir. It would drive the cost up probably 15, maybe 20 percent.

Q. And in Dr. Tummillo's situation, have you

estimated the increase in cost off that $358,000 figure that if, in fact, you were required or you would have had to have built stalls that actually measured out 12 feet by 12 feet?

A. I don't have a total number but it would probably be 15 percent, at least.

Q. All right. 15 percent increase, is that correct?

A. Yes, sir.

Q. Now, I think when we talk about some of these lumber sizes and product sizes, we talk about something called nominal sizes, is that correct?

A. That's correct.

Q. And you've been working in construction for a while?

A. Yes, sir.

Q. All right. Are there other examples of nominal sizes in the construction industry?

A. Yes, sir. Most all of them --

Q. Give some of them to Judge Harvey.

A. Most all lumber -- of course, the six by six structures that we've been referring to actually measure five and a half by five and a half.

Q. What's the most common one that you deal with and perhaps even lay people deal with?

A. Two by six or two by fours.

Q. All right. And when you're talking about a two by four, you're talking about studs that may be used in any type of residence or similar buildings, is that correct?

A. That's correct. Pool houses, houses, barns.

Q. And if I go get a two by four from Home Depot down the street and put a tape on it, a tape measure, what am I going to find?

A. It's going to measure a inch and a half wide by three and a half inches.

Q. All right. And you mentioned purlins earlier. Purlins that you use --

A. Purlins is the term of the structure we use between the trusses.

Q. All right. To put your nail or screw the roof into?

A. That's correct.

Q. What size are those?

A. They are two by six.

Q. You call them two by sixes, but are they actually two by six?

A. No, sir.

Q. What do they measure out actually?

A. They are a inch and a half wide and five and a

half inches tall.

Q. And if you went to your contractor and said, "I want the inch and a half wide or an inch and three-quarter wide," he wouldn't know what you're talking about, would you?

A. They would ask, "Are you talking about a two by six?"

Q. Okay, all right. Okay. But you believe that when people refer to 10 by 10 stalls or 12 by 12 stalls or 14 by 14 stalls, that they're giving an approximate size?

A. That's correct.

Q. Okay. Are you aware of other examples of the manufacturing business where you deal with nominal sizes?

A. Yes, sir. Televisions are one. The box will say it's a 60-inch TV but that's from corner to corner, of course, and it doesn't specify on the box.

Q. What else?

A. Tires, for instance. A 33-inch radial tire does not measure 33 inches tall. It will be somewhere between 31 and 32 and a half.

Q. So, this nominal size thing is not an unusual concept, is it?

A. No, sir.

Q. In your mind? Is that fair?
A. That's fair.
Q. What size, Chris, are the stalls -- and we're talking about 40 of them, now.
A. Yes, sir.
Q. What are the sizes of the stalls, interior dimensions of the stalls at Dr. Tummillo's barn?
A. They're variable.
Q. All right. And you've been out there and Mr. Cooper's been out there and got kind of a range. What is the range that you found?
A. We did not measure all of them. The range we found was probably between 11-3 to 11-9.
Q. Do you think you did enough of a survey to make sure that you've got stalls that are represented by that testimony? That's a bad question. Do you feel comfortable in telling Judge Harvey today that you've got a comfortable range --
A. Yes, sir.
Q. -- by the number of ones that you actually measured?
A. Yes, sir.
Q. 40 stalls is a big barn, isn't it?
A. Yes, sir.
Q. All right. Do any of the stalls at her barn

measure below 11 feet?

A. They did not, as of January 5th, 2009.

Q. All right. Some of them may, to date, measure below 11 feet, is that correct?

A. That's correct.

Q. Why is that? It didn't shrink, did it?

A. Not enough to tell by a tape measure.

Q. Okay.

A. The stalls had had some other wood that was added to the inside dimensions of them.

Q. All right. And who have you understood installed that additional wood in the interior of the stall to again would at that point reduce the interior dimension?

A. From my understanding, it was Mike Tummillo.

Q. Mike who's here with us, here today, is that correct?

A. Yes, sir.

Q. And do you know why that was done?

A. No, sir.

Q. All right. And I think we've talked about this. You know, when you talk about 12 by 12's, is there any other way really that you can describe it because of the variance and the -- variances and actual measurements?

A. No, sir.

Q. Chris, did Dr. Tummillo ever tell you that she wanted every stall to measure out at least actually 12 foot by 12 foot?

A. No, sir.

Q. Did you ever promise Dr. Tummillo that the stalls in her barn would measure exactly 12 foot by 12 foot?

A. No, sir.

Q. Do you believe that you fulfilled the terms of the contract with respect to stall size?

A. Other than being able to actually complete the barn, yes, sir.

Q. All right. We'll talk about that a little bit more. All right, let's talk a little bit more about some of the other construction aspects of the barn we have here. And I'm going to talk in particular about the roof structure, okay?

A. Yes, sir.

Q. All right. Can you -- the roof, I think, is depicted in the photographs. First, what is the type of roof material for this barn?

A. It's a metal commonly called an ag panel.

THE COURT: Ag panel?

THE WITNESS: Ag panel.

problem?

A. Yes, sir.

Q. Have you had to go back on other projects even after you've left the job, completed a job?

A. Yes, sir.

Q. To do some fix-up?

A. Yes, sir.

Q. Do what they call work on a punch list, is that correct?

A. That's correct.

Q. All right.

A. Sometimes a screw will properly seat itself for months but, of course, the wood we're using is pine and has knots in it and with the expansion and contraction with the heat that the roof gets, sometimes, if you hit close to the knot, the expansion and contraction with a screw in the wood will actually pop the knot and a screw, and it can start leaking months, years afterwards.

Q. Chris, you kind of take the position that you left this job because you weren't being paid, is that correct?

A. That's correct.

Q. Is that the bottom line?

A. That's correct. There was a draw due that had

done after you completed the project, the follow up, correct?

A. That's correct.

Q. You would have been willing to do that, is that correct?

A. That's correct.

Q. All right. Then let's talk if we could about your claim for damages in this case and also the mechanics lien. I want to show you Exhibit Number 17. Here it is. Hand that to Judge Harvey.

THE COURT: 17 without objection.

Q. [Mr. McCants] Now, are you with me, Chris?

A. I haven't found it yet.

MR. DICKERT: Wait a minute, Clarke. I'm not with you. I don't --

MR. McCANTS: It's just a lien I filed. You want a copy of it?

Q. [Mr. McCants] You just had it.

A. Yeah, it's on the top of this one.

Q. You got it?

A. Yes, sir.

Q. All right. Let me talk to you about these numbers, okay?

A. Yes, sir.

Q. The original contract price is listed there.

$358,379. Is that correct?

A. That's correct.

Q. All right. Now, subtracted from that is what's called a contract deletion. What was that for, Chris?

A. The original contract was for the 45-stall barn. And after the contract was signed, they had decided that there was not enough room for some kind of horse equipment, and they want to delete the middle wing.

Q. And that's where those five stalls were?

A. That's correct.

Q. In that middle wing?

A. Yes, sir.

Q. Which was deleted to the tune of $38,115. Is that correct?

A. That's correct.

Q. All right. And then the next thing that's noted is the payments. Those are the payments that have been made by Dr. Tummillo, is that correct?

A. That's correct.

Q. And the total there is $191,513.70, is that correct?

A. That's correct.

Q. All right. Now, that would have left a total

and you've got on the lien 75 percent of the total --

A. That's correct.

Q. You are not claiming the total balance after you subtract the contract at least in the payments from that $358,000 figure, are you?

A. No, sir.

Q. You're only claiming 75 percent of it, is that correct?

A. That's correct.

Q. Explain to Judge Harvey why.

A. I've never taken all of my money for a job until we're 100 percent complete.

Q. Okay.

A. I don't feel that's fair.

Q. Don't feel it's fair?

A. That's correct.

Q. All right. So, you didn't ask for the balance of the contract price. You wanted to get paid, you believe, for what you had done and also the materials that had been provided, is that correct?

A. That's correct.

Q. Then we've got some change orders, is that correct?

A. That's correct.

Q. And do you have your notes with regard to the

problem with the stall size?

A. Not in November, no, sir.

Q. When did that come up?

A. That come up the first of January.

Q. All right. Well, it came up -- you know, there was never -- there was clearly a point at which before you left the job that there was an argument and discussion about the stall size being inadequate, wasn't there?

A. That's correct.

Q. Okay. All right. Now, you'll admit that there is the number of stalls as well as the size of the stall is not part of your purchase order agreement, would you agree?

A. Rephrase the question now.

Q. The size of the stall is nowhere in that purchase order agreement?

A. That's correct.

Q. Okay. And you will also agree that you had an agreement for the stalls to be 12 by 12?

A. That's correct.

Q. All right. And there's no dispute, Mr. Key, that the stalls do not measure 12 by 12, is there?

A. Depends on which way you measure them.

Q. Well, I asked you in your deposition if you

A. That's correct.

Q. And what -- the way you measure 12 by 12 is from center post to center post?

A. That's correct.

Q. So, you would have, I'm assuming, maybe three or four inches? Is that a fair statement of how much reduction you should have based upon that measurement?

A. It depends on the layout and the type of wood you're using, yes, sir.

Q. Okay. Well, what wood do you think you had out there?

A. They were anywhere, I would say, between 11-3 to 11-6.

Q. All right. So, six to nine inches? That would be all you would expect if the posts were 12 by 12 center posts, correct?

A. That's correct.

Q. So, you wouldn't expect a 10-9 or a 10-10, would you?

A. No, sir.

Q. Okay. But you don't have any measurements to refute the fact that there are stalls out there that that's the dimensions?

A. We did not write them down, no, sir.

Q. Okay. Now, when you started negotiating this

matter with Dr. Tummillo, she indicated to you very much the desire to get this barn completed as soon as possible, didn't she?

A. That's correct.

Q. And she was in a real hurry to get it done and she mentioned the date November, didn't she?

A. Yes, sir.

Q. All right. And she even paid a premium price or agreed to a premium price so we could get this barn done early, didn't she?

A. No, sir.

Q. She did not? You did not agree to raise the price -- she did not agree to a higher price in order to get this barn done in November?

A. No, sir.

Q. The building pad, you've testified, needed to be completed before you could do your work, correct?

A. That's correct.

Q. You would -- would you dispute the fact that the building pad was completed before the first of September --

A. Yes.

Q. -- and Dr. Tummillo paid the contractor on 9/4? Would you dispute the fact that the pad was completed by the first of September?

A. I believe so, yes, sir.

Q. You would dispute it or not?

A. I didn't go out there until later in September when I noticed it was finally installed.

Q. Okay. And you were on another job in September, weren't you?

A. Yes, sir.

Q. And you didn't start until a month -- until October the 2nd, I believe, is your testimony, correct?

A. That's correct.

Q. So, that's a month into -- the work was not actually begun on a contract that she wanted to be completed in November until October 2nd, is that correct?

A. That's correct.

Q. Now, we've talked a lot today, or you've talked a lot, about what the construction business refers to as approximate measurements or whatever in terms of you say a 12 by 12 isn't really a 12 by 12, correct?

A. That's correct.

Q. Okay. Did you have that discussion with Dr. Tummillo?

A. No, sir.

Q. You just assumed she figured it was 12 by 12

A. That's correct.

Q. And Dr. Tummillo's barn is by far the largest barn that Elite has ever worked on, is that correct?

A. That's correct.

Q. I think you -- I asked you about some barns that you did. You did a barn for Mr. Bard. I think the was a four-stall barn, correct?

A. Yes, sir.

Q. You did a barn for Mr. Wilson which was a six-stall barn?

A. That's correct.

Q. And you did a 16-stall barn for Justin Pimsner and Mary Guynn. And before that, wouldn't that have been the largest barn that Elite Construction had ever done, before this barn?

A. I believe so, yes, sir.

Q. All right, sir. Now, when you -- we agreed and I think you testified that when you signed this contract, that Dr. Tummillo gave you a check for $107,513.70. You got that check sometime in July?

A. That's correct.

Q. All right, sir. And as I said, no work was done until October?

A. That's correct.

Q. The building permit was issued on October the

2nd?

A. That's correct.

Q. And you agreed to finish the job just as soon as possible?

A. That's correct.

Q. You didn't finish the job in January, did you?

A. No, sir.

Q. The job wasn't finished?

A. No, sir.

Q. You got one check in July. You started in November. I'm sorry, started in October. And on November the 24th, you got another check for $84,000, right?

A. That's correct.

Q. That was your second draw?

A. That's correct.

Q. Okay. And you left the job on January the 5th, 2009?

A. That's correct.

Q. Now, you would also agree with me that while the contract price -- and I think you testified to this earlier -- was $358,000 and some odd change that that price was reduced by $38,115 because you took five stalls out?

might have been improperly fixed that need to be replaced, would you dispute his testimony?

A. Yes, sir.

Q. Okay, all right. Now, if I could call your attention, I'm not sure what exhibit the -- Mr. -- Mr. Tummillo's -- oh, here it is -- oh, yeah, I'm sorry. Let me ask you to go back a little bit. Mr. McCants asked you about Plaintiff's Exhibit 16. Is that 16? Is that correct?

A. Yes, sir. That's correct, 16.

Q. Is that the one with the numbers?

A. That's the one with the prices.

Q. All right. So, I think we've already established to some extent, at least -- with regard to some change orders that there's some portion of the change order that's included on that 23,000 was work that was not completed. When you departed the jobsite -- and that was your decision to depart the jobsite?

A. Yes, sir.

Q. Nobody ran you off the jobsite?

A. No, sir.

Q. I mean, nobody said, you know, "We don't want you back"?

A. No, sir.

Q. Okay. That Mr. Tummillo will testify later

Q. Chris, Mr. Dickert did take your deposition and, again, we talked about this 12 foot by 12 foot as opposed to 12 by 12. In your mind, and tell Judge Harvey, is there a difference between the term 12 foot by 12 foot and a, quote, 12 by 12?

A. Yes, sir.

Q. What's the difference?

A. A 12 by 12 is just a layman term for approximate and exactly 12 by 12 is exactly 12 foot by 12 foot.

Q. If you use the word "foot," that's a measurement, right?

A. That's correct.

Q. The term bandied between you and Dr. Tummillo was, what, 12 by 12 or 12 foot by 12 foot?

A. 12 by 12.

Q. All right, sir. And do you remember how I asked you at your deposition to clarify that after he tried to hogtie you and say 12 by 12 is 12 foot by 12 foot?

A. That's right.

MR. McCANTS: I can read it if you want me too, Judge.

THE COURT: Let's see, we've talked about cows, horses and now hogs.

A. That's correct.

Q. All right. The last time you worked was January 5 of 2009, is that correct?

A. That's correct.

Q. And as part of this case, you've visited that barn on several occasions?

A. That's correct.

Q. To inspect it with me and with Mr. Cooper, correct?

A. That's correct.

Q. And you've looked inside those stalls, correct?

A. That's correct.

Q. And has there been wood added to the interior of these stalls?

A. Yes, sir.

Q. And would that decrease the interior dimensions?

A. Of course, yes, sir.

Q. Do you know when these measurements that you just looked at were taken?

A. No, sir.

Q. You've done enough of a sample where you feel comfortable telling The Court that it's in the range you've previously testified to, is that fair?

[OFF THE RECORD]

- - - - -

JERRY DEAN COOPER

having first been duly sworn, took the stand and testified as follows:

- - - - -

DIRECT EXAMINATION

BY MR. McCANTS:

Q. Mr. Cooper, will you state your full name for our record, please, sir?

A. Jerry Dean Cooper.

Q. And you, of course, as we've indicated, go by JD, is that correct?

A. Correct.

Q. Where do you reside, JD?

A. In Aiken.

Q. And how are you employed at the present time?

A. Self-employed.

Q. And do you have a business name or do you go under your personal name at the present time?

A. The name of my business is JDC Construction and Management, LLC d/b/a Cooper Home and Stable.

Q. All right. What's your educational background?

A. Graduate of Auburn University with a BS in

business and minor in building technology.

Q. All right, sir. And you hold some licenses yourself. What licenses do you hold at the present time?

A. I hold an unlimited general contractor's license. I hold a residential contractor's license and a broker's real estate license all in the State of South Carolina.

Q. All right. Now, you've got a professional resume or a CV. Do you have it with you?

A. Yes, I do.

Q. Tell Judge Harvey a little bit about your professional work history and whatnot.

A. Beginning in 1972, I had my own building company in Louisville, Kentucky where I was a general contractor.

Q. All right, sir.

A. And built high-end custom homes there as well as developed single family residential developments including golf courses; built condominiums, converted apartments to condominiums; have resided here in Aiken County for six years specializing in custom homes and barns and the developments -- development of farms.

Q. Has it --

A. Primarily -- I'm sorry.

Q. -- been a pretty active area of business in Aiken and Barnwell Counties recently?

A. It's been very good in the equestrian sector, yes.

Q. All right, sir. Okay. What other significant work history other than the aspect of construction that you've mentioned? You do a lot of renovation work too, don't you?

A. Oh, yeah. Historic renovation, remodels, room additions. Have been a member of the Home Builders Association of Kentucky and served on it. Been a Board of Directors for a number of years there.

Q. All right, sir. Do you know what a pole barn is?

A. I do.

Q. Have you ever designed and constructed a pole barn?

A. I have.

Q. How many in your career?

A. I've probably done 20 plus here in Aiken County and half a dozen up in Kentucky.

Q. Are you familiar with the construction practices for building these types of barns?

A. Yes, sir.

Q. Are you familiar with the type and choice of

materials and products to be used to build pole barns?

A. Yes, sir.

Q. And have you had experience in maintaining pole barns which have been constructed?

A. I have, yes.

Q. And, of course, barns have been around as long as man or woman has needed to protect livestock and animals and store equipment. They're a unique kind of structure, is that correct?

A. Correct, yes, they are.

Q. Where is the pole barn found? Because we've seen barns of all shapes and sizes. Where does the pole barn fall in that spectrum?

A. I would say that the pole barn design and construction has been around for about 30-some years with the creation of the wood truss. It's been manufactured and created on large scale allowing you to use dimensional lumber in its two-foot incremental sizes, which is the way lumber is produced in two-foot -- two-foot incremental sections.

Q. Is it a very common barn?

A. Extremely.

Q. It's a working man's barn, is that correct?

A. That is correct.

Q. It's a good product though?

A. Very cost effective and it does the job.

Q. Okay. You have also worked and had personal and professional experience in the horse industry itself, is that correct?

A. I have.

Q. Tell Judge Harvey a little bit about that.

A. I have been involved in the equestrian sport of polo for 30-some years, 32 years now, and have bred, raised, trained and played pole and currently I still play polo and keep a string of horses.

Q. We call them strings of polo ponies, something like that, but what type of horses are these in actuality?

A. They're thoroughbreds. They're American thoroughbred horses.

Q. All right. And you have -- like you've said, you've overseen the care and boarding of that type of animal for a long time, is that correct?

A. Day-in, day-out, yes, sir.

Q. You've boarded them in your own barns?

A. I do presently, yes.

Q. Okay. And what -- I think we all know what that means, but for the record, what does it mean to board a horse? What's involved with that?

A. It's to keep a horse in a stall and/or turn-

Q. Six or seven inches, I guess. Did you see any there that, when you were out there, fell below 11 feet?

A. No, I did not, but I did not measure them all.

Q. All right. Did you see any of them that would appear to be new wood or interior wood added to them?

A. That would be difficult for me to determine, yeah.

Q. Okay. You have heard testimony regarding the size of the spaces and the term 12 by 12 and whatnot, okay?

A. Um-huh [yes]

Q. Describe that term as it's used within the horse industry and within the barn construction business.

A. Well, it's a nominal dimension and due to the character and the specification of a pole barn being on center, that timber that becomes the pole takes up a certain amount of space on either side of that center line. In this case, if it's a six by six, it takes up two and three-quarters inches. Then if you apply an interior wall to that six by six on the outside of it, that takes up another inch and a half, so the two and three-quarter and the inch and a half can take up as much as four -- four and a quarter, four to five inches in each direction once you enclose the stall.

Q. All right. So, what you're saying, the term 12 by 12 doesn't actually mean you get 12 feet by 12 feet; is that fair?

A. That would be correct. 12 by 12 is in name only. That's what nominal means.

Q. All right. It's like going and asking for a two by four at the lumber yard?

A. It's in name only.

Q. Right, and you get a two inch by two inch board?

A. Right.

Q. You don't, do you?

A. Nope.

Q. All right. Would you expect anybody working regularly within the horse industry and boarding horses, certainly engaging in the construction of a barn, to understand that concept; that is, name only, nominal size, 10 by 10 stall, 12 by 12, 14 by 14, based on your experience? Would you?

A. Yes.

Q. All right. And, you know, you're not only basing this on experience. I asked you to do some research on this, didn't I?

A. Um-huh [yes]. You did.

Q. Tell The Court what you found in that regard.

A. The University of Pennsylvania, which I have used before in their Ag Sciences Services Division of the University, has a veterinarian school and I've consulted with it a number of times on ventilation for barns; proper ventilation, which is important. And I went back to it to look at stall sizes and it recommends that a stall size be one and one half times the size of a horse. Well, a horse is anywhere from seven to eight feet so that gives you a range of 10 to 12 feet. I also looked at the -- the Canadian Agricultural Services Council and they recommend that a loose box of 10 foot by 10 foot to 12 foot by 12 foot for an average size riding horse be used. And in another service, StableWise - Horse Farm Planning, it's an outfit that does barn plans, states that typically a 12 foot by 12 foot stall is considered adequate for all horses. The actual dimensions are more like 11 foot six by 11 foot six because of standard lumber lengths.

Q. What is that resource reference again?

A. StableWise Horse Farm Planning.

Q. That seems to recognize the nominal name in context of construction.

A. It does.

Q. In other words, calling it one thing but realizing, because of building products, you may be

facing an actual dimension less, is that fair?

A. Correct.

Q. All right. And in particular, the Penn State reference that you've talked about, I've looked at it with you, and if I'm understanding it correctly, they say 12 foot by 12 foot is the standard recommendation for a 1000-pound horse, but many stables are successful with stalls slightly smaller than this, but walls less than 10 feet in length are not recommended, is that correct?

A. Correct.

Q. All right. So, what I'm seeing here is as much as possibly a two foot variance is adequate?

A. That is correct.

Q. All right. So, in that range, and within your experience and in your opinion, within that 10 to 12 foot range, is that adequate to board, house or protect a large animal to include a horse?

A. My experience has been that it does, yes. It's adequate.

Q. But from a practical aspect, what is the difference, given your experience with thoroughbred horses and animals, does -- help me out or help The Court out. Does six or seven inches make a huge difference? Does that -- is that a factor?

A. Well, in building codes, it does for people for sure. There are no codes for horses.

Q. All right.

A. So, it's a -- it's a generally accepted practice term as to each individual's thoughts and practices on how they should house their horses.

Q. You don't have a problem keeping one of your thoroughbreds in a 11 and a half by 11 and a half, do you?

A. No, they're comfortable in them.

Q. All right. How about 11 by 11, you're okay with that?

A. It's fine.

Q. All right, sir. And you heard Chris's testimony about giving the contract building materials chosen and whatnot. Was it possible to build stalls at Dr. Tummillo's property that actually measured out 12 foot by 12 foot?

A. He would not be able to on a 12 foot on center pole barn.

Q. All right. And in order to produce actual 12 foot by 12 foot stalls, how much more would this project have cost, in your estimation?

A. 15 to 20 percent.

Q. Above the contract price?

A. Correct.

Q. All right. Generally then, Mr. Cooper, we've got a barn. In your opinion, was it constructed in accordance with standard accepted building practices and does it show evidence of quality workmanship?

A. It was good workmanship throughout.

Q. You have no problem with it?

A. I had none.

Q. All right. Those are all the questions I have. Thank you, Mr. Cooper.

THE COURT: Anything on cross?

MR. DICKERT: All right.

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CROSS EXAMINATION

BY MR. DICKERT:

Q. Mr. Cooper, how are you today?

A. Good; how are you, sir?

Q. Fine.

A. Good.

Q. Would you want to put an eight foot horse in a 10 foot stall?

A. I have.

Q. You have, okay. The question is would you want to do that? Is that ideal?

A. I'd prefer to put him in a two-acre pasture.

measurements of some other stalls, I think, did you not?

A. I did.

Q. And HD Training, Wellspring, Whitney, Legacy, and most of those units, if I recall, that -- at least one dimension on a number of those was at least 12 feet and some of them, Whitney and Legacy, was as much as 14 feet, is that right?

A. That is true.

Q. Okay. And you would agree, I think, as you've testified, that the standard recommended stall size for a 1000-pound horse is 12 foot by 12 foot stall, correct?

A. Well, down to -- I would agree with that with a minimum of down to 10 by 10.

Q. I see. But you would -- all right, you said that the Penn State College of Agriculture Science is something you rely upon, I believe, is that right?

A. I do use it as reference, yes.

Q. And you wouldn't argue, I don't think, that it says a 12 foot by 12 foot stall is the standard recommendation for a 1000-pound horse?

A. It does state that.

Q. And it says foot, doesn't it? It doesn't say 12 by 12?

A. It does. It also says a 1000-pound horse, and

most of these thoroughbreds are eight and nine hundred pounds.

Q. Okay. All right. But I think you also said that it -- that it should be one and a half times the length of the horse?

A. Correct.

Q. And you would agree with me, I think -- you did, at least from the standpoint of my math that if you have an eight-foot horse in a 12-foot space and you cut a foot off that, then you've cut off at least 25 percent of the available space, is that correct?

A. That would be true.

Q. Okay. And you would also agree that with regard to construction of a barn that what is the size of the stall is a matter of agreement between the parties, correct?

A. Yes.

Q. Okay. You did find some problems with the roof when you inspected it?

A. Yes.

Q. And I think you had recommended, at least on the west wing, that there is at least one ridge cap that you found you thought needed to be extended, that there was not enough overlap?

A. It's questionable as to whether there is, yes,

Q. Sure, okay. And I think I've already asked you, but I -- just to make sure, you didn't visit the site until a number of months after Mr. Key was off?

A. Correct.

Q. And you, therefore, have not attempted to make any assessment as to what it might have taken to finish the job when Mr. Key's firm left in January of 2009? That's not something you sought an opinion about, was it?

A. No, I have not been asked to do that.

Q. And would you agree also that from your experience in the contracting industry and business that when a contractor has not finished a job and someone else has to come in and pick up the slack so to speak and finish it that that -- that a person who takes over responsibility is going to be a little bit more difficult for that person and maybe even expensive than it would for the original contractor to finish it?

A. There could be an initial learning curve, but once it's determined what the work is to be done, it's done like any other job.

Q. All right, sir.

MR. DICKERT: Give me just a minute, Your Honor. I think I'm -- may be all I have of this witness.

A. Two barns.

Q. Okay, all right. Let me ask you how you decided to build this facility that's the subject of this dispute, Dr. Tummillo?

A. Well, Aiken is very rich into thoroughbreds. We have the Aiken Training Track here. It used to be the winter home and Aiken is noted for training the yearlings and getting them ready to go off to the race track. That's what we're noted for. The climate here is good; they can train year round. The footing is excellent. It's the perfect place to raise a baby.

Q. All right. And how did you get in contact with Mr. Key at Elite Construction?

A. Actually, it was by a person by the name of James Nunnamaker.

Q. Okay. And you had some meetings with Mr. Key to discuss construction of the -- of this project?

A. I believe there were three meetings.

Q. All right. Where were those meetings?

A. I think they were all at the house. I saw the one barn but that was really to look at at Mary Guynn's and then --

Q. What --

A. -- I think --

Q. Was there any reason you wanted to look at Ms.

racing, it's usually a 12 by 12 are the interior diameter meaning that you get a full 144 square feet. That we went over specifically. We went over things on how there is nothing to show so they can't crib, so they can't get hurt. We went over that in enormous detail and also even like how the doors would open so you don't -- when they swing out you don't hit somebody. There are certain ways so you don't hang out in the aisle when that happens. And then the shed row was -- was particularly important also because of the training aspect.

Q. Okay. And was there an agreement that the stalls' interior space would be 12 by 12 in interior space feet?

A. Yes.

Q. And that was -- was that clear in your mind?

A. Several times.

Q. Okay. Did he ever have any discussion with you about the fact that 12 by 12 didn't really mean 12 by 12, or there was some other way to measure that?

A. Never.

Q. Okay. All right, and we've -- you've identified -- I think Mr. McCants has introduced the purchase contract, Plaintiff's -- Defendant's Exhibit Number 9 --

MR. DICKERT: But I don't know what your exhibit is but it's already in the record.

Q. [Mr. Dickert] But you recognize what that is?

A. Yes, sir.

Q. It is the contract that was entered into. Now, when you talked to Mr. Key, were you in a hurry to get this job done?

A. We wanted to open by November.

Q. And what's the reason for wanting to open by November?

A. The season usually starts anywhere from November to December, the last week, till the end of April and that's when everybody comes in. So it's the right time for when everybody was coming back to be able to get business started.

Q. If you delayed unnecessarily past November, what does that mean as far as your ability to lease those spaces?

A. We lose the whole season. Because once someone goes, they're not going to move.

Q. Okay. Did he understand that?

A. Yes.

Q. All right. Now, the -- the price -- was there any element of price that was affected by the desire to move this project along quickly?

A. That was the total price. That's why it was higher because he said he built in the overtime that it would take in order to get this done.

Q. Okay. All right. Now, when you signed the contract, did you pay him anything?

A. Yes.

Q. How much?

A. Whatever the check was made for, 107.

Q. Okay. And whatever is already in the record is established, is that correct?

A. Yes.

Q. Now, was there a -- was it ready to start then or were you able to start then?

A. No, he was not able to start then because the pad was not complete yet.

Q. When was the pad finished?

A. It had to be done before September, like at the end -- right before, probably, the first weekend because all the material came from the track and they didn't finish the track until probably September 4th so all that had to be moved out for them to finish that back part.

Q. Do you know when you paid for that?

A. I think it was September 4th through the --

Q. Okay, so they were done by then, or before

that?

A. Right. The pad was done before that.

Q. Was there any reason why Elite Construction couldn't have started the project on September the 4th or September the 5th?

A. He said he was unable to.

Q. For what reason did he give you?

A. He said he was busy.

Q. Okay. And he testified, I believe, he started October the 2nd. Is that about right?

A. Yes.

Q. And I know you have a busy schedule, Doctor, in practice, but did you periodically go out there to see what was going on?

A. Yeah, I go by it every morning when I feed.

Q. Did you encounter him on the job very often?

A. They were almost never there in the morning when I was there. I would -- I would leave the barn probably anywhere between 6:30 and 8 and I feed at 6.

Q. Did you have anybody that was trying to monitor at this stage, and I'm talking about October/November, anybody that was steady monitoring progress on your behalf?

A. Not really.

Q. Okay. Now, we've had some discussion about

then and the first of the year?

A. I paid much more attention when things weren't right and that -- when I gave him that draw. And that, I found out shortly afterwards.

Q. So, how long after you think November --

A. Probably --

Q. -- you would have discovered that there was a problem with the stalls?

A. I think about two weeks.

Q. Did you discuss that with Mr. Key?

A. Yes.

Q. What did you tell him?

A. I asked him, you know, what happened was that there was problems and I asked where the problems and we had several discussions on how to try to fix this. There really wasn't any way to fix it because everything's off. Nothing is what it should be. Everything is -- you can't do it then if you -- any way to fix it, you'd either have to tear something down -- there's really no way to fix it, not without compromising something else. And the whole barn was designed with certain dimensions for ease of use and training. So, if you cut into the aisleway, then they can't move. You can't go out because you cut into the shed row, so -- but even all of this, you'd have to take

$84,000 draw on November 14, did you?

A. No.

Q. Do you think, to your knowledge, that Mike ever asked him to leave the property?

A. I never had anything to do with him again.

Q. Okay. Have you solved the problems with the stall size?

A. They're not solvable unless you take it down.

Q. All right. And why is this such an important issue for you?

A. We're --

Q. I mean, you've heard all the testimony today.

A. Right.

Q. We've talked, "Well, it's about 12, maybe it's 11 and a half, 11-6, 11-9." What's the significance of having 12 feet by 12 feet?

A. This is a business. This is not a hobby, this is a business. You know, this is the standard. Whether -- it's not a play horse. This is what people do for their livelihood. They expect that. They expect enough space for their animal to be in. It's very important because, otherwise, they can get casted in the stall which means they get stuck. If they get stuck, they could die. That's why people have watch -- night watches that go around and check on these horses all

night long. They're a little bit different because, remember, there are -- there -- things to make them fast and hot so when they're in the stall, they can get injured. If you don't have enough space, they're truly going to get hurt.

Q. When Mr. Key and his company left, who had the responsibility to try to finish the job?

A. I got Mike to do it.

Q. At least for that time, did you give up on the stall size issue?

A. Oh, I said -- there's no way to correct it, so we just had to try to finish. I wanted to try to get whatever I could to get open. I was losing money. I just said we just have to try to get just -- just something complete that I can do something with it.

Q. Was Mike also involved in construction of other barns on the property at this time?

A. Yes.

Q. And how many of those stalls were built -- how many other barns he was involved in himself?

A. Three other barns, 21 stalls and three tack rooms.

Q. And the interior dimensions of those stalls are what?

A. 12 by 12. They're actually a little bit --

lumber to finish all the stalls. We had to get -- I had to get some -- I got some extra liability insurance when people were working. And then we spent a lot of materials and then there's the stall gates and then it sums up to the money that I paid on materials. And then the next part after that is that when I figured up when we measured all the stalls, you know, it was supposed to be 12 by 12 material, I calculated up the square footage that he shorted me on, which would have been 778.1. Now, that's if you do it by the material, not by the -- the center, whichever --.

Q. The center post?

A. Yeah. And so, that's a thing like 43,000 worth of --

Q. How do you come up with the 43,000 number and lack of space that you --

A. You take the 12 by 12, you get 144 square feet. You can multiply that by 40. Then you measure each stall and you calculate out what is there and then you subtract that from what it should be and that's the difference.

Q. And how do you come up with the 44,000 -- 43,000 number?

A. When I took his numbers, you know, and went --

Q. When you say his numbers, are you talking

about Mr. Key?

A. Right. On the contract. And divided that with that offset taken out, and did it per square foot.

Q. So, basically, I -- if I can summarize it, you know, if I can take some liberty here and lead the witness as Mr. McCants did this morning, the $44,000 represents the contract price divided by the total amount of square footage and then you take the difference between 12 by 12 per stall and the actual measurements that have been completed which we'll identify later, Dr. Tummillo, is that correct?

A. Yes, that's correct.

Q. Okay. Describe that exhibit for me. What else do you have there in addition to that cover sheet that you've got in the front that has a summary of the charges?

A. Basically I have copies of the checks that I wrote for all of the things that we spent. There's some -- I didn't get to bring the credit card ones but all of the building materials that we have to purchase in order to finish the barn.

Q. And that total is how much?

A. For the materials or do we want the total?

Q. The materials and labor and then we'll ask you for the number --

doesn't run along the side, it actually comes through the roof there. The way that you can see it every time it happens is, when you look at the base of the stall, you get -- where the water has -- because I have stall grids, you can see the water clear the stall grid and travel down. So there's numerous of those, there's at least 12 stalls. It's unacceptable.

Q. Okay. Let me go back a little bit, if I can, about Exhibit Number 8. In those expenses that you have and described, the checks and backup documentation, is there any evidence in there of paying this gentleman, Mr. Tummillo, your brother, anything for his work?

A. None.

Q. Okay. Have you had any problems renting the stalls?

A. Yes.

Q. What happened in the year of 2009?

A. We were out. We couldn't do any business.

Q. Why was that?

A. Because of all the problems with the stall. You can't do construction while they're -- you can't do construction while they're training.

Q. And have you made any estimate of how much revenue you would have generated from the January through April period if the stalls had been completed in

a timely fashion?

A. It would have been -- I forgot -- it's like, I think, 33,000.

Q. Okay. How did you come up with that number?

A. It's $10 a day times 40 stalls times 120 days.

Q. And that's for January through April?

A. Right. I gave it as a --

Q. You didn't count December --

A. No.

Q. -- or November?

A. No.

Q. Now, you've since been able to rent some of those stalls, haven't you?

A. Yes.

Q. And you've rented some of the stalls that your brother, Mike, constructed?

A. His were all rented.

Q. Those are all rented? Okay. Did you agree to reduce the initial number from 45 to 40 when the contract was signed?

A. We had to because there wasn't enough space to put the wing in.

Q. Okay. Did you agree to any other change orders? Did you authorize any other change orders on that?

A. No.

Q. All right. Just a minute and let me see if there's anything else.

MR. DICKERT: That's all I have, Your Honor.

THE COURT: You may cross.

MR. McCANTS: Thank you.

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CROSS EXAMINATION

BY MR. McCANTS:

Q. Dr. Tummillo, the name of your facility, of course, is the Palmetto Thoroughbred Training Center, is that correct?

A. Yes, that's correct.

Q. And I've taken the liberty of copying some of your website material. Let me ask you to identify it, if I could. This is the one we pulled in April of 2010. Is that your website information from that time frame?

A. Yes.

Q. All right. And could you read the exhibit number down there on the bottom for me, please, Doctor?

A. 19.

Q. All right, that's Exhibit 19. And, of course, that website is still up to date?

A. Yes.

Q. In fact, I looked at it the other day.

Thoroughbred Training Center is an ongoing business of yours, is that correct?

A. Yes.

Q. Have you told any -- I've looked over the website and I looked over the other media information I have. Have you told any of the potential customers that these stalls are unacceptable?

A. I have several 12 by 12 stalls that are available.

Q. No, but you -- you have pictures of the barn that Chris built for you on that website, do you agree?

A. Yes.

Q. All right. Have you put a little asterisk or anything below the picture saying, "Some of these stalls are not acceptable"?

A. Not unless I would like to go out of business.

Q. Well, I understand and that's kind of my question. You haven't told people that you're trying to earn income from -- let me finish my question please if you don't mind. You haven't told anybody who you're trying to earn income from that any part of the barn he constructed is unacceptable; is that a true statement?

A. No.

Q. It's not true?

A. No, it's not true.

Q. Point to where on that marketing and --

A. Not on the website, but when I talk to them, yes, and when people come there, I've told them personally and showed them.

Q. Why don't you put it on the website then?

A. How would you -- how can I pay the mortgage?

Q. Well, I'm asking you, don't you think you've got to be fair and honest and up front with --

A. I am fair. Everything I've put on here is true. I do have 12 by 12 stalls that are correct -- I have stalls that are correct.

Q. Well, it's not true if the website says nothing about unacceptable spaces underneath the picture of Chris's barn? I mean, you --

A. Sir, that's not appropriate.

Q. Okay. All right. And today, you're not satisfied with the size of the stalls, is that my understanding?

A. Yes.

Q. Your position is that The Court should require or should order that the barn be destroyed, torn down, and built from scratch again, is that correct?

A. That would be the correct way to do it.

Q. All right. And if that's the case, there's no reason to talk about repair of the roof, all the punch

list items, all the added extras or the things that you spent because that -- there's no need to do that if you're going to get a new barn, right?

A. Who's going to pay for it?

Q. I'm just asking, don't you agree with me --

A. No.

Q. -- that the two are kind of --

A. No, sir.

Q. -- mutually exclusive?

A. No, sir. No, sir. I've been trying to make the best out of a horrible situation that's cost me a fortune.

Q. All right. But you want a new barn but you also want him to pay for a new roof, is that right?

A. I would like the barn to function and to not have a roof that leaks that doesn't rain on a horse.

Q. All right, you want a barn that functions. Do you want to try and make the existing barn function then?

A. It has to be done at a reduced price and I tell everybody they get a bargain rate because of that, because it's wrong.

Q. That's not my question. Do you want to try and remedy and work with the barn you've got or do you want a new barn?

A. Tell me how to remedy the problem.

THE COURT: No, ma'am. Answer the question.

A. If it can be remedied and I can get 12 by 12 stalls interior dimension, that would be correct.

Q. [Mr. McCants] Okay. Well, do you know of any way that the existing stalls can be, as you called, remedied?

A. Not easily.

Q. All right, which means the barn has to come down?

A. The poles are off.

Q. Okay. All right. You're a practicing a physician, and a very good one, I understand. Do you also hold yourself as an expert in training thoroughbreds?

A. No.

Q. How about boarding thoroughbreds?

A. Boarding horses and thoroughbreds, yes.

Q. Okay. So, I can classify you as an expert in boarding thoroughbreds, is that fair?

A. I'm not -- my profession is a physician. I actually rent the facility.

Q. All right. Well, that's your website and you own Palmetto Thoroughbred Training Center, correct?

A. Correct.

Q. You certainly hold yourself out to potential customers as an expert in boarding thoroughbreds, is that fair?

A. The way that it works is that I refer them to people; I rent the facility.

Q. All right.

A. I don't train them.

Q. All right. How about an expert in providing adequate facilities? In other words, your facility, I trust, is adequate and suitable for boarding thoroughbred horses?

A. I am skilled at caring for the thoroughbred.

Q. Okay. Skilled, I'll go with that. Can we say very skilled?

A. It's probably a matter of opinion.

Q. Okay, all right. Do you have employees of Palmetto Thoroughbred Training Center?

A. No.

Q. All right. The people who bring their horses there, do they rely on their own staff employees to take care of the horses, or do you -- do you or any of your workers or anybody provide any assistance with boarding horses?

A. I don't have -- they rent the facility.

Q. Just the physical environments?

A. Right.

Q. Okay. The contract which you -- do you have it in front of you, Doctor?

A. No.

Q. Let me see if I can find a copy of it for you.

THE COURT: Exhibit 1, I've got it right here.

MR. McCANTS: You've got it.

THE WITNESS: Thank you.

Q. [Mr. McCants] Let me ask you to look at this, if I could, Doctor. Oh, you've got it. Very good. All right. You've talked -- Mr. Dickert asked you a little bit about how this was put together and I understand that you and Chris sat around and talked about some items, but ultimately, you did have a written agreement put in place, do you agree?

A. Yes.

Q. And that's Exhibit 1 in your hand. Now, you and I sat down in a deposition. I'm just going to run through some general questions and I think you told me at your deposition these were all true but you certainly read this agreement before you signed it, right?

A. Yes.

Q. And you understood the agreement before you signed it, correct?

A. After I clarified some issues with Mr. Key.

Q. All right, before you signed the agreement, you understood the written agreement?

A. After he explained a couple of facts.

Q. Nobody prevented you from reading any portion of the agreement?

A. No.

Q. Nobody prevented you from consulting with anybody, is that fair?

A. Yes.

Q. All right. Now, you've told me before there was a lady who worked for you named Kelly Tucker who was part of the conversations that you had with Mr. Key regarding this contract and she was your employee, correct?

A. Yes.

Q. And you told me at your deposition she would back up some of your statements and your interpretations of the conversations you had with Mr. Key, is that correct? In other words, she would support you?

A. Yeah, she was there, yes.

Q. All right. Is she going to testify here today?

A. She's in Kentucky.

Q. Well, is the answer to that question no?

A. Is no.

Q. All right. You don't disagree that the written agreement does not state a date to start or complete the work under the contract, do you?

A. No, I do not disagree.

Q. All right. You would also agree, and we've been over this numerous times but the agreement does not state that the stalls shall be either 12 by 12 or 12 foot by 12 foot, do you agree?

A. Yes.

Q. All right. Now, in your deposition, when we were talking about the issues, I asked you, I said, "What was the conversation that you had with Chris Key about this?" and you said, "Does this mean the stalls are going to be 12 by 12?" And I asked you, "Is that the exact question you asked Chris?" And you responded, "Yes." Do you remember that?

A. Yes.

Q. All right. You asked the question then, "Are these stalls going to be 12 by 12?" Do you, after listening today or at any point in time understand this concept of the difference between the phrase 12 by 12 and 12 foot by 12?

A. But I clarified what I meant by 12 by 12.

Q. Well, I'd like for you just to answer that question first and then I'm sure Judge Harvey will let

you explain it. Do you understand the difference between the phrases 12 by 12 and 12 foot by 12?

A. I understand what you presented.

Q. All right. What is the difference between the phrase 12 by 12 and the phrase 12 foot by 12?

A. Well, I don't think there should be because you're going at two different things. It's not the same.

Q. I know they're not the same. That's what you just told me.

A. Right.

Q. I want you to explain to me why they're not the same, those two concepts, 12 by 12 or 12 foot by 12.

A. You're talking about a building concept versus a concept that a lay person would have of spatial.

Q. Well, you're not really a lay person though, Doctor. You've held yourself as an expert or very skilled at boarding horses in facilities. You're a practicing physician. You're an educated person. I trust you've been in a hardware store and understand what a two by four -- or a lumber yard and know what a two by four, and how we use nominal or name only labels for things, as Mr. Cooper said, so you do understand there's a difference between a concept of 12 foot by 12 foot and 12 by 12 as a name; you agree with that?

A. Now, after the testimony today, yes, I heard what you said.

Q. That's fine. And you don't disagree in your deposition, when we talked in March of 2010, I asked you what was the direct question you asked of Chris Key, and you said, "Does this mean the stalls are going to be 12 by 12?" and I said, "And is that the exact question you asked Chris?" and you said, "Yes." That was your testimony in March of 2010, do you agree?

A. Yes.

Q. All right. Is it a possibility, Doctor, just you and I talking today, that you just -- you didn't understand that concept at the time of the agreement and just didn't appreciate that there was a term or a label that was used in this industry for purposes of the construction of barns and stalls?

A. I was clear on what I wanted.

Q. Okay. You were clear. There's no possibility that you just made a mistake?

A. Interior is interior.

Q. All right. You knew it was going to be a pole barn, correct?

A. Yes.

Q. You haven't had any horses die, have you, because of the stalls?

any existing stall?

A. That's finishing the stall.

Q. I understand, I'm talking about --

A. That's not adding wood, that's what it was supposed to be.

Q. Okay. I appreciate your testimony regarding the loss of revenue and income and whatnot but you used the word, "it's an estimate," okay? My first question, do you have any records or documents, any letters or correspondence from any person, business or anything, indicating or confirming that you weren't able to rent to them because of any alleged delay or problems with the barn?

A. Just the stalls weren't complete; they can't go in them.

Q. So, I take it you don't have any records or documents, any letters or memorandum confirming that from any potential customers, is that correct?

A. No one can see what the --

THE COURT: Ma'am, answer the question, please.

A. No.

Q. [Mr. McCants] For example, you know, if somebody came to you and say, "You know, I see your website, I see you've got something available, I want to

rent from you," and you had to tell them, "I can't do it because something's not right," and then you said, "I'm in a lawsuit, would you mind confirming that I offered to do this?" Do you have anything like that?

A. No, sir.

Q. Okay. Do you agree it's an estimate then, as to loss?

A. For the 40 stalls, that would be the number.

Q. That's an estimate? Did you use the word estimate earlier?

A. There -- the numbers originally, when it was done, where was there was supposed to be included track usage fee, I left that off. So, that means 40 horses would not have done it, they would have paid 150 a month per each. That, I left off. So, yes, it's an estimate because of that.

Q. All right. That's all I'm trying to get at. It's an estimate, is that fair?

A. Yes.

Q. All right. I'm going to go through with you, if I could, some of the documents that Mr. Dickert has brought today. Before I do that, is there any money still owed on this barn?

A. It's in a mortgage.

Q. Is that mortgaged with the bank that's in this

THE COURT: 19 is the 4/5/2010.

MR. McCANTS: Yes.

THE COURT: All right. Any objections, Mr. Dickert?

MR. DICKERT: No.

THE COURT: All right. Exhibit 19 admitted without objection. You may redirect.

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REDIRECT EXAMINATION

BY MR. DICKERT:

Q. Dr. Tummillo, I'm going to hand you what I've just identified -- the court reporter has identified as Defendant's Exhibit Number 17 and ask you if you can identify that one, please?

A. This was the final check to the -- that set the pad.

Q. That's the final check for what now?

A. The people that built the track and did my pad.

Q. Okay. What's the amount of that check and the date of it?

A. It's September 4th, 2008. It's 108,897 dollars and I think seven cents.

Q. Okay. And so the work was completed before that check was --

A. Correct.

Q. Okay. All right.

MR. DICKERT: I don't have a copy.

MR. McCANTS: Which one is it? I can't read this one.

MR. DICKERT: That's the check --

MR. McCANTS: Dated September 4, 2000- --

MR. DICKERT: Yeah.

MR. McCANTS: Okay, thank you.

MR. DICKERT: All right, Your Honor, I tender Exhibit 17 at this time.

THE COURT: Without objection.

MR. McCANTS: Well, who is it written to?

THE WITNESS: CIC.

MR. DICKERT: I'm sorry?

THE WITNESS: CIC.

MR. DICKERT: CIC.

MR. McCANTS: Who is CIC? Do you know? Can you ask her that?

THE WITNESS: Matt Ritioni [phonetic].

Q. [Mr. Dickert] I'm sorry?

A. Construction Company is -- Matt Ritioni's Construction Company.

Q. And what were they doing on the site?

A. They built the racetrack and they did the pad.

Q. Okay. All right. That's all I have.

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RECROSS EXAMINATION

BY MR. McCANTS:

Q. That check would -- being written in September of what, 4, 2008?

A. Yes.

Q. That's at or about the time the pad was completed then, correct?

A. Well, no, the pad was completed before that. Because they took the dirt off the end of the track and then they fixed the track afterwards, so --

Q. All right. Okay. Thank you.

MR. DICKERT: Nothing further.

THE COURT: You may step down. Next witness.

MR. DICKERT: All right. Mr. Dallas Sidener, please.

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ROBERT DALLAS SIDENER

having been duly sworn, took the stand and testified as follows:

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DIRECT EXAMINATION

BY MR. DICKERT:

Q. Good afternoon, Mr. Sidener, how are you

Q. All right.

MR. DICKERT: I would like to tender Exhibit Number 18 at this time.

THE COURT: Any objection?

MR. McCANTS: No objection.

THE COURT: Entered up without objection. Thank you.

Q. [Mr. Dickert] So, is it fair to say, Mr. Tummillo, that from your -- are these measurements accurate? I mean, these are correct?

A. Yes, sir.

Q. Is it fair to say that, out of 40 stalls, that in 37 of those, that the center to center measurement is less than 12 feet?

A. Yes.

Q. Okay. Do you know when Elite Construction left the jobsite, Mike?

A. Approximately January 5th.

Q. Of which year?

A. Of 2009.

Q. All right. When you went out there at that time or shortly thereafter, did you take a few photographs of what you saw?

A. Yes.

Q. I want to hand you what's been identified as

Exhibit 16. Any objection?

MR. McCANT: No objection.

THE COURT: All right.

A. Well, January 12th is approximately a week after he left. I met with Chris out at the site and I talked to him about -- you know, I told him that he's been gone too long. We need to get this barn finished ASAP. We are losing rental income every day it's unfinished and I also, you know, said we need this barn done in one and a half weeks. Chris said he can't do it without paying his people overtime and it would cost me -- or cost us more money. He said, "I have bills to pay and I want the third draw now." And I said -- then I -- I said to Chris --

Q. Let me ask you this. The third draw in the contract suggests that it's due at the completion of the exterior walls, and at that time, based upon your observations of what you saw, were the exterior walls of the facility of this building completed?

A. They were not.

Q. Okay, all right.

A. And so, then I asked Chris, I said, "Just come back with your full crew tomorrow and stay until the job is finished and I'll have a check for you tomorrow evening." I asked him to call me tonight and let me

THE COURT: Yeah.

Q. [Mr. McCants] Have you got them in front of you, Mike?

MR. McCANTS: Have we got extra copies somewhere?

THE COURT: What are you looking for?

MR. McCANTS: 15 and -- my 15 and 16, Judge. The two lists that you just had him look at.

A. Oh, I've got the originals, thank you.

Q. [Mr. McCants] You've got yours now, Mike?

A. Yes.

Q. All right. According to the testimony I had obtained earlier from you, Number 15 was done sometime in February of 2009 and then Number 16 was done about a week after 15 was done. Does that sound about right?

A. Yes.

Q. So, we're talking about your list of problems about a month after you first discovered any problems, is that correct?

A. A list of things which needed to be done to complete what was there.

Q. To complete work on a 40-stall barn, correct?

A. Yes.

Q. This is typed twice on two separate documents by you, is that correct?

A. Yes.

Q. This is what needed to be done to make that a finished project, is that fair?

A. To -- well --

Q. At the time you prepared both of these documents a week apart or the month after you first discovered any problems, keeping in mind your role here was to get this thing done, so I'm going to assume you've looked at it thoroughly, investigated it and made sure you had everything on the plate before you came to anybody and said, "This is what it's going to take to get this job done." Is that a fair way of looking at this?

A. Some things are missing.

Q. So, it wasn't a complete list? You had not made a thorough investigation, is that fair?

A. Well, I -- I -- things came up after the fact so -- I don't know, but that's -- I guess that's all I can say on that. I -- you know, I -- I went out there and I looked and I reviewed.

Q. All right.

A. And some things came up after the fact.

Q. Well, you didn't just look. I mean, you looked hard, come on. That's not just a look list.

A. You're right, no, I spent some time out there

and I looked.

Q. How many punch lists have you had thrown at you in your residential work over the years? A lot?

A. I would say out of all the houses I've built maybe three or four.

Q. Oh, how many are we talking about, come on? Homeowners, you didn't get everything right the first --

A. I do.

Q. All right. More power to you. You've had three or four punch lists in the years you've built houses?

A. If that.

Q. Okay. That just looks like a pretty comprehensive list to me. That's the way I look at this list. But let's just glance through it if we can. I understand removing trash that the contractor may have left on site. Piles of scrap, it all needs to be cleaned up. You know, we've got an issue regarding painting the stalls with polyurethane. The gutters, that wasn't in our contract though, was it? Have you looked at our contract?

A. When -- right, it's not in the contract but when I met Chris out there one time, we were talking about how the roof has very little -- metal has very little overhang over the framing and he specifically

A. Yes.

Q. All right. You, in fact, showed these two lists to your sister according to your deposition. Do you remember that?

A. Yes.

Q. Showed them to her and she reviewed them with you, is that fair?

A. Yes.

Q. And that's back in early 2009. All right, now, I want to talk to you about your recent measurements. The first list of measurements, I think, not the center widths -- yeah, this was done yesterday, Exhibit Number 1, Defendant's Exhibit Number 1?

A. No. No, this was done about a week ago. This is the stall -- these are the stall sizes.

Q. Oh, I beg your pardon. I beg your pardon. The center widths is which one?

THE COURT: I believe that was 18.

MR. McCANTS: All right.

THE COURT: Defendant's 18.

Q. [Mr. McCants] The center width was done yesterday, right?

A. Yes.

THE COURT: Yeah, Defendant's 18.

Q. [Mr. McCants] All right. These measurements

2009CP02 00958

ELITE CONSTRUCTION, INC.

PURCHASE CONTRACT

9-13-12

PLAINTIFF'S EXHIBIT 1

EXHIBIT P1 Tummillo

Name Doris Tummillo Date 7-16-08

Address Shiloh Church Road State, Zip S.C.

Directions to Site

Building Use Barn Building Size W 64' L 204' H 10'

Wall Color Gable Roof Trim Doors

Power on site? x Yes ___ No

Miscellaneous Building has three 72' long by 24' wide extensions with five stalls centered in each. Building permitted will be provided by Elite Construction. Electrical, plumbing, and two coats of polyurethane will be included in the price.

Building permit – Grading – Fill furnishing by owner unless specified.
We shall furnish all labor and material as described above and in accordance with the specifications and conditions shown on reverse side of this contract unless otherwise specified.

Total Contract $358,379.00

Financing by

Terms

30% of total cost of project due upon signing.
30% of total cost of project due after roof completion.
30% of total cost of project due after exterior walls completed
10% of total cost will be due when job is completed, and be paid within 10 days of completion.
If amount due is not paid within 10 days of completion, there will be a 5% late charge added to the total.
Any change orders shall be in writing and approved by the builder.

Amount due at signing $107,513.70 30%

Amount due after roof completion $107,513.70 30%

Amount due at completion of exterior walls $107,513.70 30%

Amount due at completion of job $35,837.90 10%

Buyer

Tummillo
Printed Name

Signed Name

Elite Construction Representative

Chris Key
Printed Name

Chris Key
Signed Name

GENERAL SPECIFICATIONS CUSTOM POLE BUILDINGS

1. Foundation columns and other lumber which comes in contact with the ground will be pressure treated to resist rot, decay and insect damage
2. Standard spacing of side wall columns is 10' on center.
3. Truss lumber will be stress rated 1500 F.
4. Each building will have pressure treated splash boards at the bottom of the wall.
5. Truss designs are by licensed professional engineers and are certified as to load capacity. Standard spacing is 10' on center.
6. All trusses to be bolted as well as spiked into wall columns.
7. Hardware items such as door track, hinges, bolts, connector plates, door handles, hooks, etc., will be plated with zinc or equal.
8. Minor changes, which would not adversely affect the strength or appearance, may be made without notification.
9. Walls of this building are not designed to withstand the lateral loads imposed by the contact storage of bulk goods, such as fertilizer, grain, chopped or baled hay, or any loads that tend to settle or spread in storage.
10. All untreated lumber on the building exterior will be covered with pre-formed moldings.
11. Guarantee on pressure treated wood, workmanship and material becomes effective upon full payment of invoice. Craftsmanship and all other materials not covered under any other warranties will be covered for six months after completion date of the job.

TERMS OF SALE

1. Building will be Custom Structure and will be erected according to the above specifications. Builder will furnish all materials, labor and supervision for the building, but will not perform, furnish or install any electrical wiring, plumbing, heating, painting, glazing, concrete work, grading or filling, unless otherwise specified.
2. A service charge of 5% per month shall accrue to all accounts more than 30 days past invoice date. Should it be necessary to force collection of any monies due under this agreement, buyer shall be liable for service charges and reasonable attorney fees.
3. Buyer agrees to insure building for the amount of the contract price with the following coverage: fire, lightning, windstorm and hail. Such coverage is to be put into effect on date material is delivered to site and will remain in effect until contract price has been paid in full. The risk of any such casualty is assumed by the owner. In the event of loss, payment will be made to the owner and/or builder as their interests may appear.
4. Builder will carry adequate insurance to protect owner against any negligence by builder or his workmen.
5. Builder will carry workers' compensation on all workmen he employs on the job.
6. Builder is responsible for obtaining any required building permits prior to erection.
7. If possible, buyer will be at the building site at the start and finish of construction.
8. Buyer is responsible for and agrees to clear and level building site prior to scheduled date of erection. Leveling shall be performed so the site will not vary more than 6 inches from high to low points.
9. Buyer and builder assume that the building site is free from underground obstructions. Where rock, stumps, concrete or other unforeseen obstruction hinder digging holes for foundation columns, a charge will be made in accordance with additional time required. The builder reserves the right to decline jobs where underground obstructions are too severe, unless buyer can have site prepared.
10. Builder is not responsible for damage to underground utilities, such as tile, water lines, electric lines, etc.
11. Certain construction items such as ventilators, roof hatches, eave troughs, doors, windows, etc., are to be installed in a workmanlike manner in proper adjustment. However, such items are not sold with the understanding that they will never leak or need adjustment. This future maintenance and adjustment is the responsibility of the buyer.
12. If buyer or his agent requests change from specifications, any extra costs for such changes will be added to the purchase price.
13. This agreement is subject to verification by office of the builder.
14. This quotation is automatically withdrawn and is void after 30 days.
15. Occupancy or use of the building by purchase before completion will constitute acceptance of the building and payment in full is required at that time.

(2)

Building Specifications

Size

1. Length 204'
2. Width 64'
3. Overhang N/A
4. Other (3) 24' x 72' wings

Concrete and Insulation

1. Aisle way 14'
2. Aprons N/A
3. Bags N/A
4. Insulation Roof
5. Other

Color and Material

1. Roof 40 yr. Ag panel
2. Exterior Walls 40 yr. Ag panel (where applicable)
3. Stalls T&G
4. Bars (will be included in change order)
5. Doors Double Dutch 4' x 4' wood with cross bucks
6. Windows Dutch 4' x 4' wood with cross bucks
7. Interior Walls T&G
8. Other

INITIALS

Exterior

1. Cupolas N/A
2. Windows N/A
3. Doors N/A
4. Sky Lights 24" ridge
5. Front Posts N/A
6. Hydrants N/A
7. Other

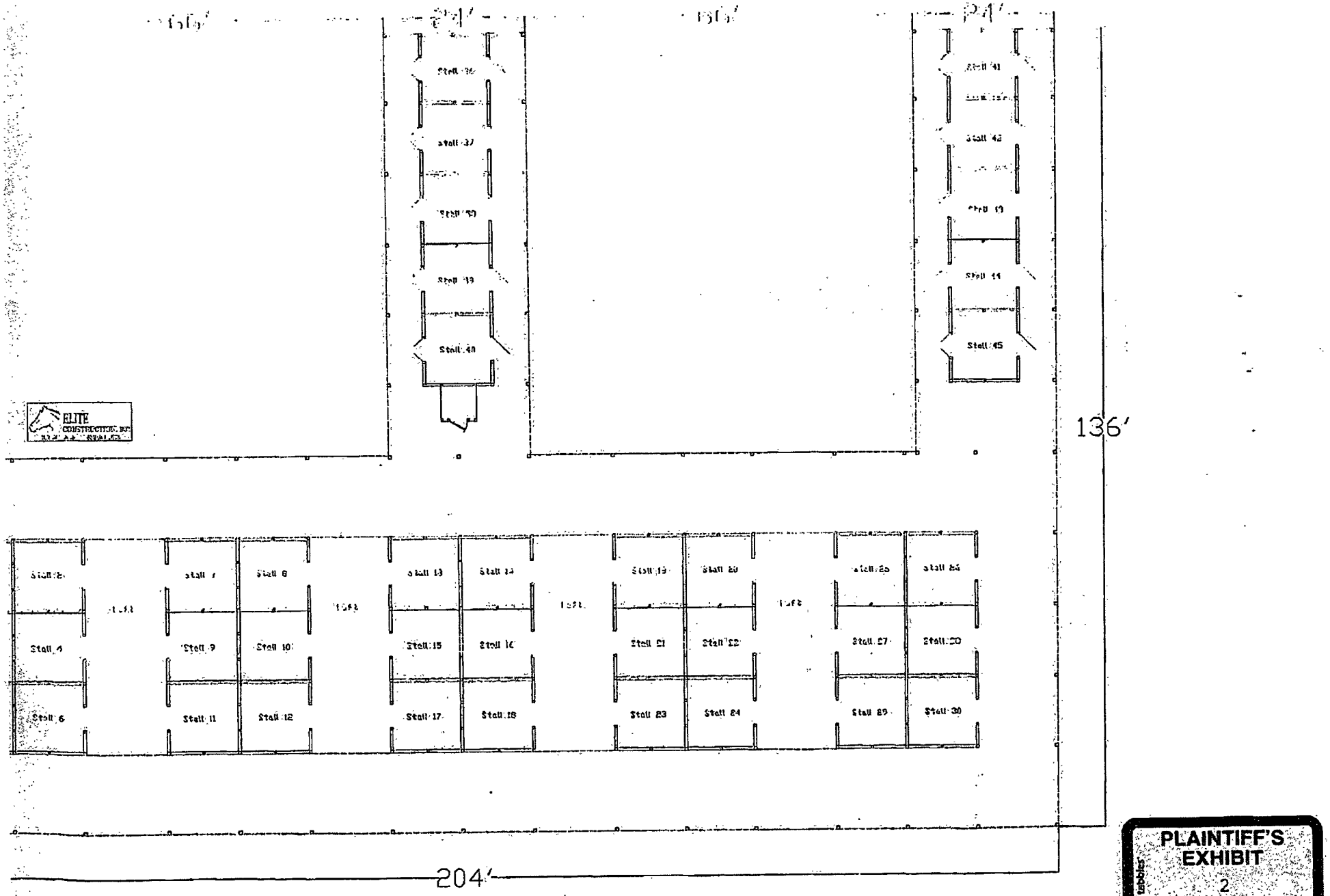
Interior

1. Hydrants 9 frost freeze
2. Water Heaters N/A
3. Washer/Dryer N/A
4. Other

Stalls

1. Automatic Water Dispensers N/A
2. Feeder N/A
3. Mats N/A
4. Fans 45
5. Cribbing Metal Yes
6. Doors 4' x 4' Wooden Dutch with cross bucks
7. Divider Grill Work (will be included in change order)
8. Aisle Way Grill Work (will be included in change order)
9. Other

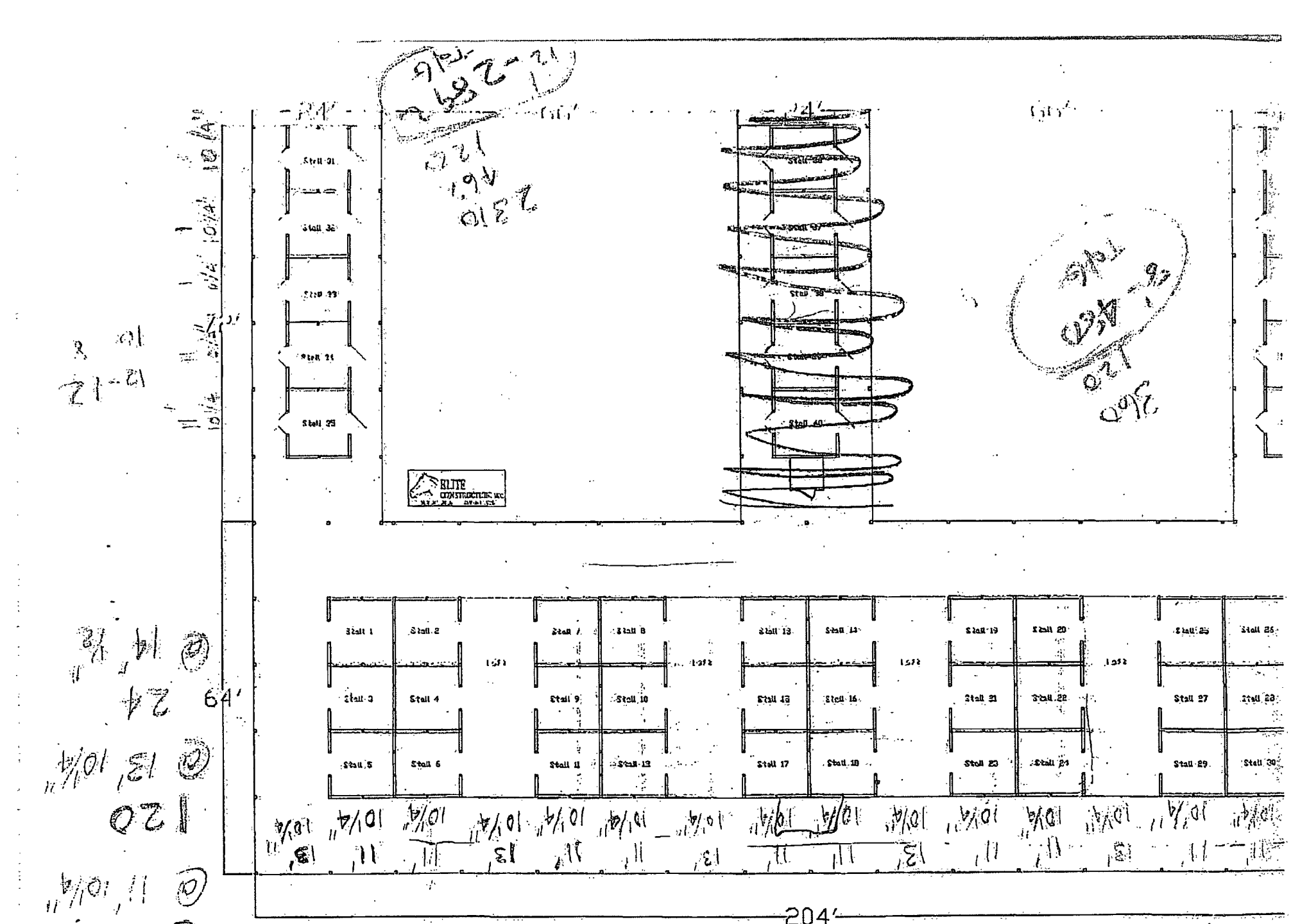
INITIALS

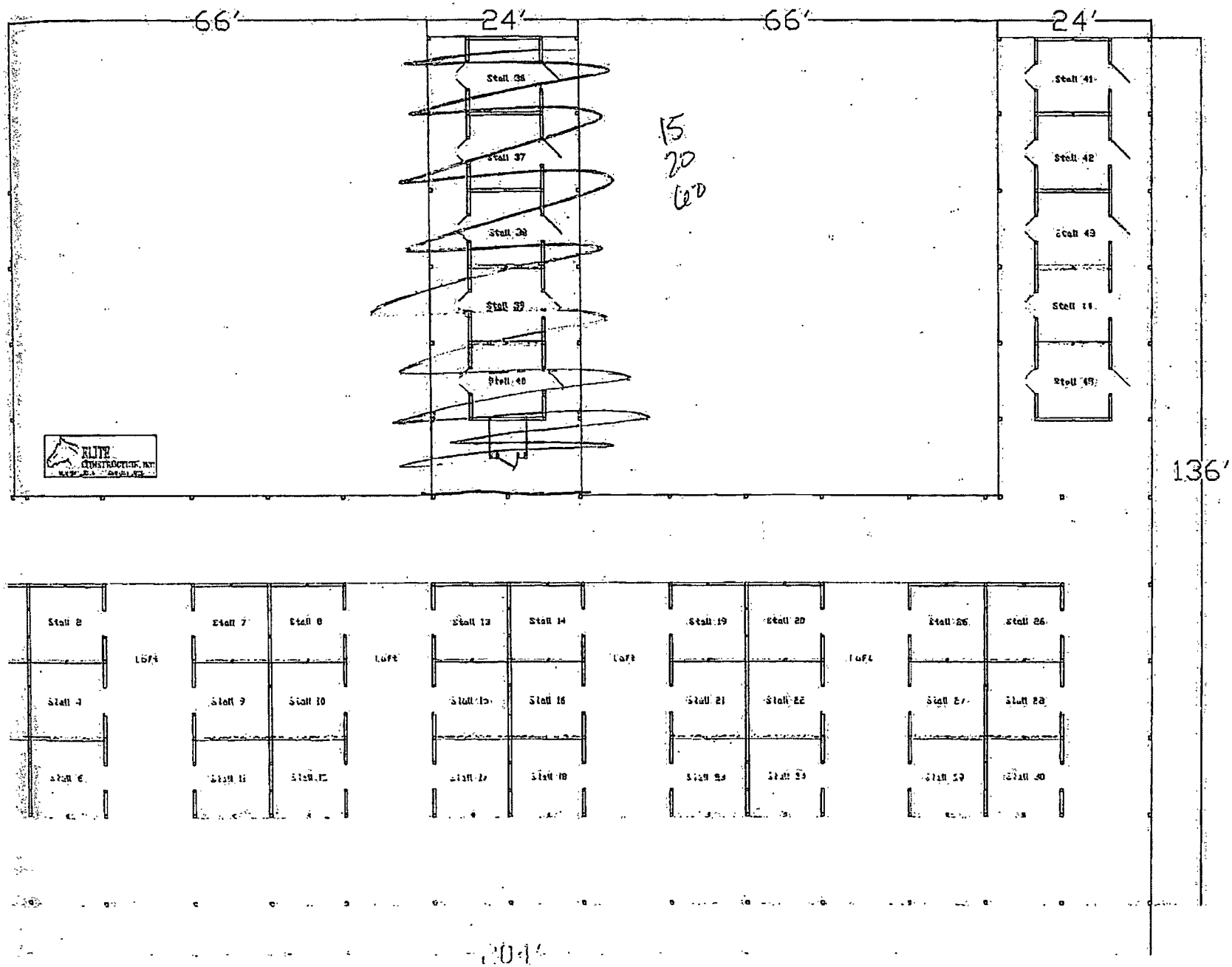


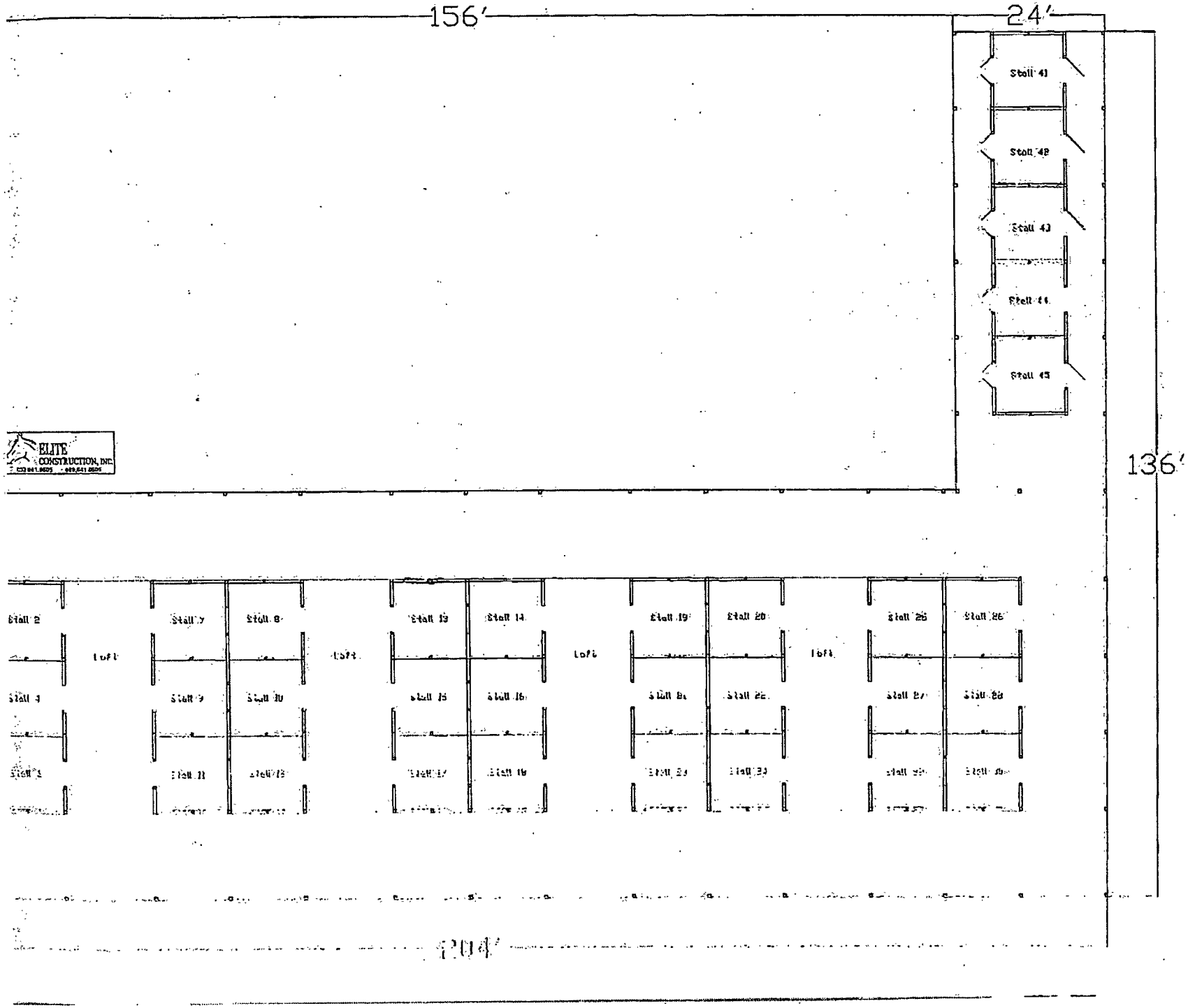
PLAINTIFF'S EXHIBIT 2

188

Stall 35
Stall 34
Stall 33
Stall 32
Stall 31
ELITE
CONSTRUCTION, INC.
Stall 5
Stall 6
Stall 11
Stall 12
Stall 17
Stall 18
Stall 23
Stall 24
Stall 29
Stall 30
Loft
Loft
Loft
Loft
Loft


Stall 1
Stall 2
Stall 3
Stall 4
Stall 5
Stall 6
Stall 7
Stall 8
Stall 9
Stall 10
Stall 11
Stall 12
Stall 13
Stall 14
Stall 15
Stall 16
Stall 17
Stall 18
Stall 19
Stall 20
Stall 21
Stall 22
Stall 23
Stall 24
Stall 25
Stall 26
Stall 27
Stall 28
Stall 29
Stall 30
Stall 31
Stall 32
Stall 33
Stall 34
Stall 35
Stall 36
Stall 37
Stall 38
Stall 39
Stall 40
ELITE
CONSTRUCTION, INC.
204'
64'


66'
24'
66'
24'
Stall 36
Stall 37
Stall 38
Stall 39
Stall 40
Stall 41
Stall 42
Stall 43
Stall 44
Stall 45
15
20
CD
136'
Stall 8
Stall 7
Stall 6
Stall 13
Stall 14
Stall 19
Stall 20
Stall 25
Stall 26
Loft
Loft
Loft
Loft
Stall 4
Stall 9
Stall 10
Stall 15
Stall 16
Stall 21
Stall 22
Stall 27
Stall 28
Stall 29
Stall 30
204'


156'
24'
136'
204'
192
Stall 41
Stall 42
Stall 43
Stall 44
Stall 45
ELITE CONSTRUCTION, INC.
Stall 2
Stall 7
Stall 8
Stall 13
Stall 14
Stall 19
Stall 20
Stall 25
Stall 26
Loft
Stall 4
Stall 9
Stall 10
Stall 15
Stall 16
Stall 21
Stall 22
Stall 27
Stall 28
Stall 1
Stall 11
Stall 12
Stall 17
Stall 18
Stall 23
Stall 24
Stall 29
Stall 30

156'

PORCH RAILS TO BE 36" H., MINIMUM AND MUST SUPPORT A 200 LB. LOAD AT ANY POINT. PICKETS MUST NOT ALLOW PASSAGE OF A 4" SPHERE.

FOR PLANS CONSTRUCTION SUBJECT TO ANY CHANGES INDICATED IN RED INK

SIGNATURE

DATE 7.30.08

ELITE CONSTRUCTION, INC.

Stall 31

Stall 32

Stall 33

Stall 34

Stall 35

72'

64'

Stall 1 Stall 2 Stall 7 Stall 8 Stall 14 Stall 13 Stall 19 Stall 20 Stall 25

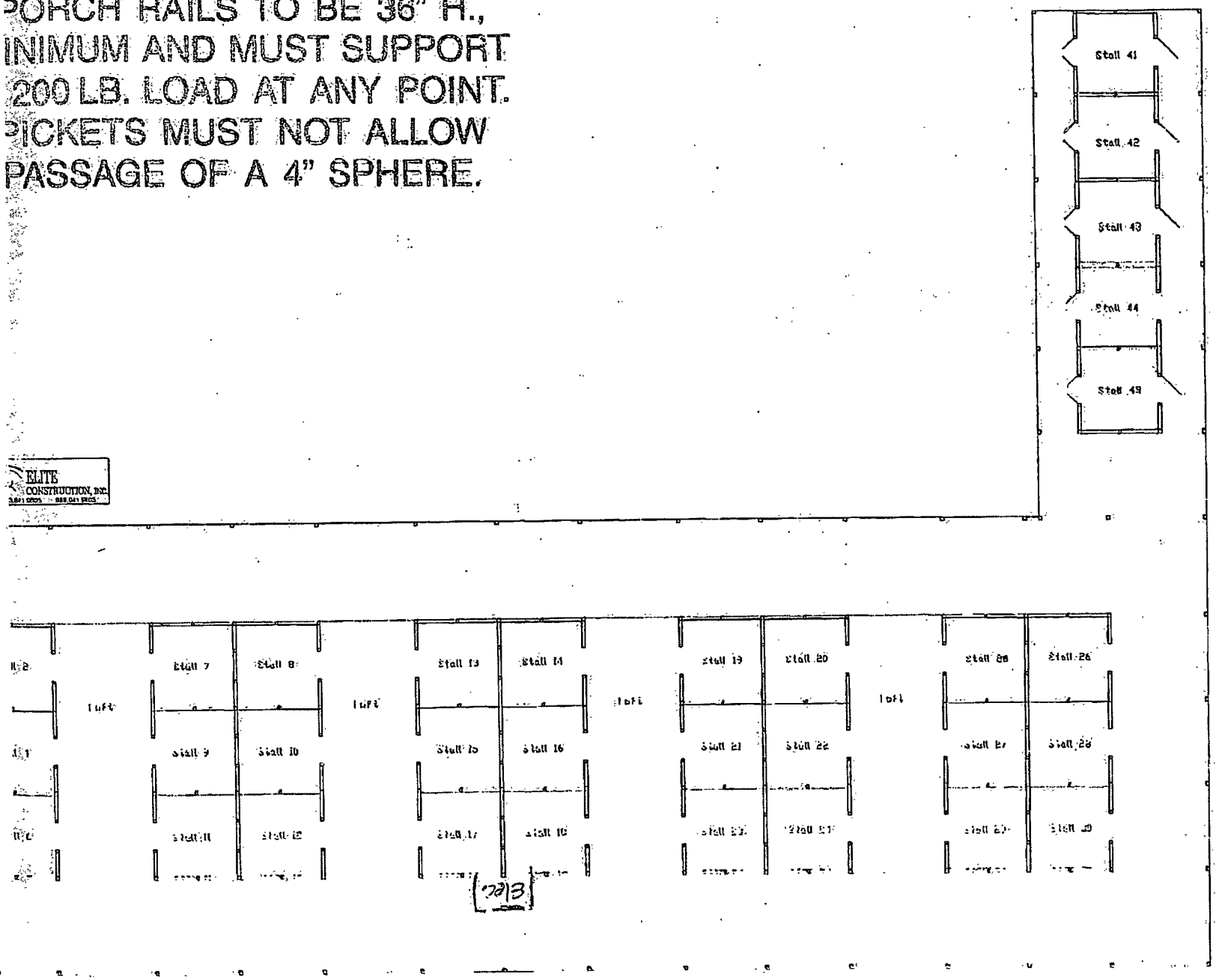
1 Gft 1 Gft 1 Gft 1 Gft

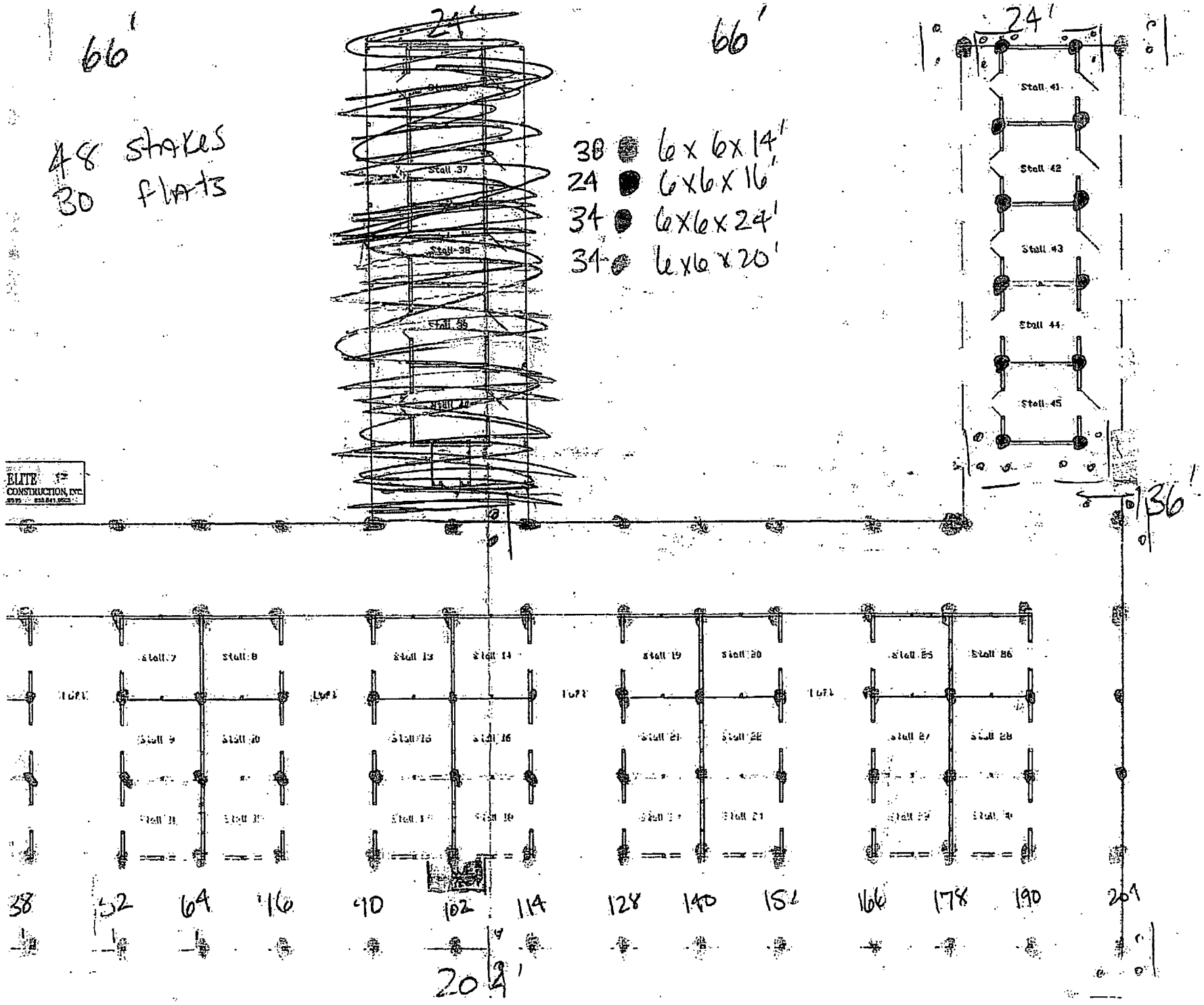
Stall 3 Stall 4 Stall 9 Stall 10 Stall 15 Stall 16 Stall 21 Stall 22 Stall 27

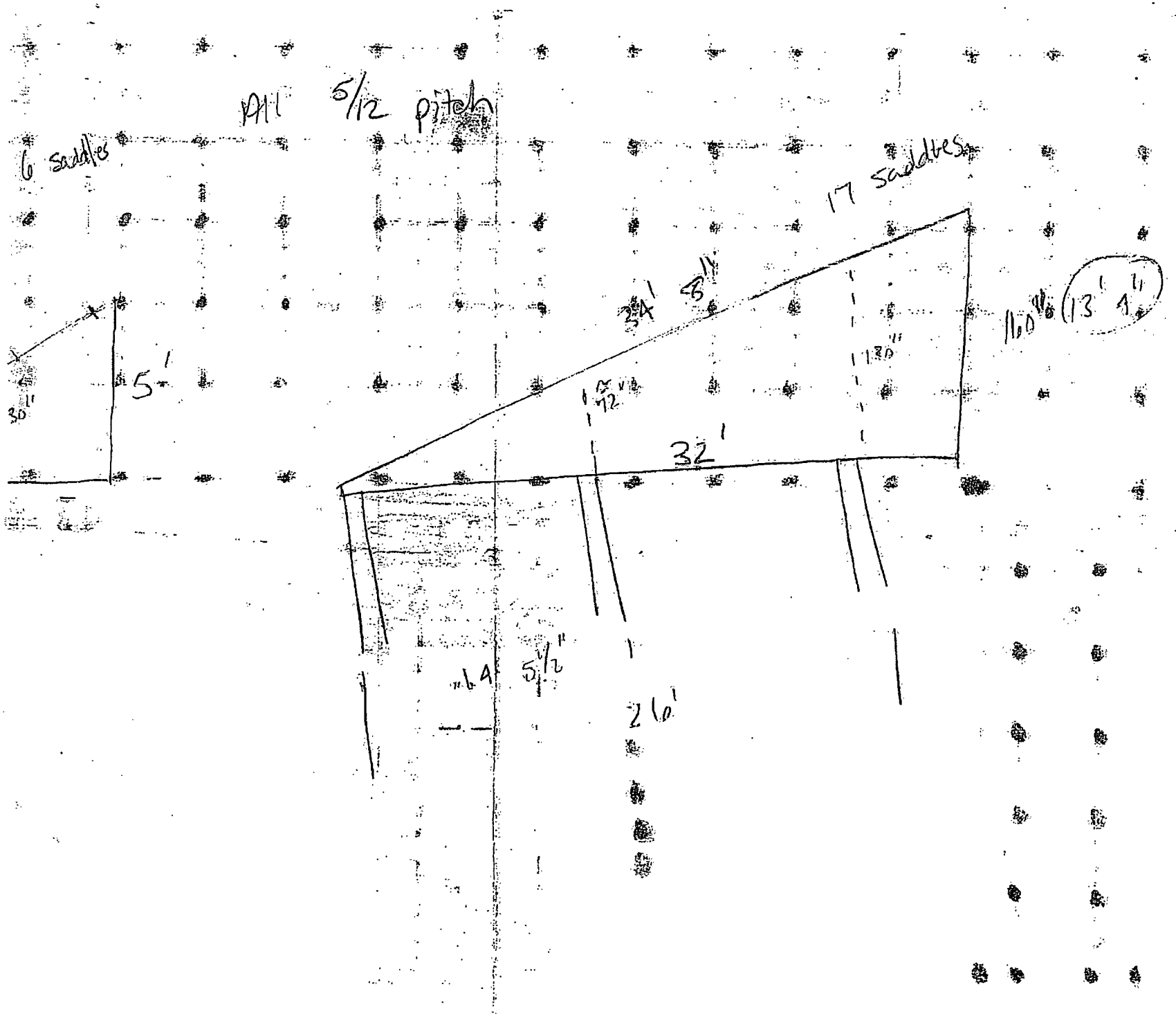
Stall 5 Stall 6 Stall 11 Stall 12 Stall 17 Stall 18 Stall 23 Stall 24 Stall 29

204'

PORCH RAILS TO BE 36" H.,
INIMUM AND MUST SUPPORT
200 LB. LOAD AT ANY POINT.
PICKETS MUST NOT ALLOW
PASSAGE OF A 4" SPHERE.




66'
24'
66'
24'
48 stakes
30 flats
38 6x6x14'
24 6x6x16'
34 6x6x24'
34 6x6x20'
Stall 37
Stall 38
Stall 41
Stall 42
Stall 43
Stall 44
Stall 45
ELITE CONSTRUCTION, INC.
136'
Stall 7
Stall 8
Stall 13
Stall 14
Stall 19
Stall 20
Stall 25
Stall 26
Stall 9
Stall 10
Stall 15
Stall 16
Stall 21
Stall 22
Stall 27
Stall 28
38
52
64
76
90
102
114
128
140
152
166
178
190
209
209'


All 5/12 pitch
6 saddles
5'
30"
17 saddles
32'
11'0"
13' 1"
5 1/2"
16'

BUILDING PERMIT
Aiken County, South Carolina

Tax Parcel No. 101-00-02-002-3001
Septic Tank Permit No.
NAME OF OWNER: TUMMILIO DORIS
PROPERTY ADDRESS: 4201 SHILOH CHURCH ROAD
MAILING ADDRESS: AIKEN, SC.
NAME OF CONTRACTOR: ELITE CONSTRUCTION INC.
CONTRACTOR ADDRESS: 512 CUMBER TRAIL ROAD
RIDGE SPRING, SC.
SUBDIVISION:
BLOCK NO.

Tel. No. 706-394-9737
Zip Code 29805-0000
Zip Code 29805-0000
S.C. License No. 19734
Tel. No. 803-685-8890

Receipt No. 93842
Issue Date 10/02/2008 Permit No. 2008-1312
Permit Expires Permit Fee $ 2014.00

CERTIFICATE OF OCCUPANCY
☒ Required for Power
☐ Not Required

FLOOD DISTRICT
☒ Yes
☐ No

AIRPORT DISTRICT
☐ Yes
☒ No

ZONING
UD RUD
RC
RD
IND
RUD
SPI
PUD

TYPE IMPROVEMENT: ALSO PERMIT REQUIRED
☒ New Structure ☐ Multi-Fami
☐ Addition ☐ Commer
☐ Other: ☐ Other:

PRINCIPLE TYPE OF CONSTRUCTION:
☒ Brick Veneer
☐ Wood Frame
☐ Other:

TO BE USED AS: 119 HORSE STAB
CONTRACTORS:
ELECTRICAL
MECHANICAL
PLUMBING

OWNER ACTING AS HIS OWN BUILDER:
☐ Owner is acting as his own builder and Disclosure Statement has been signed.

LOCATION: Atlas Page 10 Grid GE SUPER
DIRECTIONS: D FLOOD AREA.

TOTAL SQUARE FEET: 1472 462.9
VALUATION:
CENTRAL AIR CAPACITY:
TYPE OF HEATING SYSTEM:

ACCESS ROAD Road No.
☐ Public
☐ Private
☐ Easement

Inspections	Date	Time	By	Comments
Foundation / Ftg.				
Foundation / Wall				
Roughing-In				
– Electrical				
– Plumbing				
– Mechanical				
Final				
C.O. #				

Number of Stories	1.0
Number of Rooms	45
Number of Bedrooms	
Number of Bathrooms	4.0
Number of Water Closets	
Number of Bath Tubs	
Number of Sinks	
Number of Showers	
Number of Smoke Alarms	
Number of Fireplaces – Conventional	
– Pre-fab	
Crawl Space	
INSULATION – Ceiling:	MIN. R-30
– Walls:	MIN. R-13
– Floor:	MIN. R-19
Number of Foundation Vents (One within 3 ft. each corner)	

The owner of this property and/or undersigned agrees to conform to all applicable laws of Aiken County. In the case of an owner acting as his own builder, a Disclosure Statement provided by Aiken County, stating that a licensed builder did not build the dwelling, must be filed as a matter of public record with the register of deeds.

Property Owner or Agent — Date 10/2/08

Building Official — Date 10/2/08

TURN OVER FOR MORE INFORMATION

White – Office
Pink – Tax Assessor
Yellow – Office
Gold – Customer

PLAINTIFF'S EXHIBIT 3

197

BUILDING PERMIT
Aiken County, South Carolina

92842

Tax Parcel No. 101-00-02-002-8001
Septic Tank Permit No.
NAME OF OWNER: TUMMILIO DORIS — Tel. No. 706-294-9737
PROPERTY ADDRESS: 4201 SHILOH CHURCH ROAD — Zip Code 29805-0000
MAILING ADDRESS: AIKEN, SC. — Zip Code 29805-0000
NAME OF CONTRACTOR: ELITE CONSTRUCTION INC. — Zip Code 19734
CONTRACTOR ADDRESS: 512 CUMBEE TRAIL ROAD — S.C. License No. 803-645-8890
RIDGE SPRING, SC. — Tel. No.

SUBDIVISION: — PHASE:
BLOCK NO: — LOT NO:

10/02/2008 — Receipt No. 2008-1312
Issue Date — Permit No. 2014.00
Permit Expires — Permit Fee $

CERTIFICATE OF OCCUPANCY
- ☐ Required for Power
- ☒ Not Required

FLOOD DISTRICT
- ☐ Yes
- ☒ No

AIRPORT DISTRICT
- ☐ Yes
- ☒ No

ZONING: RUD

UD	
RC	
RD	
IND	
RUD	
SPI	1.0
PUD	45

TYPE IMPROVEMENT:
- ☒ New Structure
- ☐ Addition
- ☐ Other:

LMR PERMIT REQUIRED FOR:
- ☐ Multi-Family
- ☐ Commercial
- ☐ Other:

PRINCIPLE TYPE OF CONSTRUCTION:
- ☒ Brick Veneer
- ☐ Wood Frame
- ☐ Other:

119 HORSE STABLES
TO BE USED AS:

CONTRACTORS:
ELECTRICAL
MECHANICAL
PLUMBING

OWNER ACTING AS HIS OWN BUILDER:
- ☐ Owner is acting as his own builder and Disclosure Statement has been signed.

LOCATION: Atlas Page 10 G
DIRECTIONS: PERMIT IS CLOSED OUT WORK HAS BEEN COMPLETED WITH OUT INSPECTIONS-OWNER TO TRANSFER
14722

TOTAL SQUARE FEET: 462,900
VALUATION: $
CENTRAL AIR CAPACITY: Tons
TYPE OF HEATING SYSTEM:

ACCESS ROAD — Road No.
- ☐ Public
- ☐ Private
- ☒ Easement

Number of Stories	
Number of Rooms	.0
Number of Bedrooms	
Number of Bathrooms	
Number of Water Closets	
Number of Bath Tubs	
Number of Sinks	
Number of Showers	
Number of Smoke Alarms	
Number of Fireplaces – Conventional	
– Pre-fab	
Height of Crawl Space	
INSULATION – Ceiling:	MIN. R-30
– Walls:	MIN. R-13
– Floor:	MIN. R-19

Number of Foundation Vents
(One within 3 ft. each corner)

Inspections	Date	Time	By	Comments
Foundation / Ftg.				
Foundation / Wall				
Roughing-In				
– Electrical				
– Plumbing				
– Mechanical				
Final				
C.O. #				

The owner of this property and/or undersigned agrees to conform to all applicable laws of Aiken County. In the case of an owner acting as his own builder, a Disclosure Statement provided by Aiken County, stating that a licensed builder did not build the dwelling, must be filed as a matter of public record with the register of deeds.

Property Owner or Agent — Date

COPY

Building Official — Date

TURN OVER FOR MORE INFORMATION

White – Office
Pink – Tax Assessor
Yellow – Office
Gold – Customer

198

AIKEN C

Inspect

48 [illegible] Notice Must Be G
• NO WORK WILL BE START
• NO WORK W[illegible] CONTIN

C[illegible]rd Mu[illegible] Pr[illegible]ected F
BY ORDE[illegible] O[illegible] AIKEN C[illegible]UNTY C[illegible]

OK

Building Permit N[illegible] 8-1312

Job Address 42[illegible] Shiloh Church

Date Issued 10/[illegible]08

Nature of Work N[illegible]

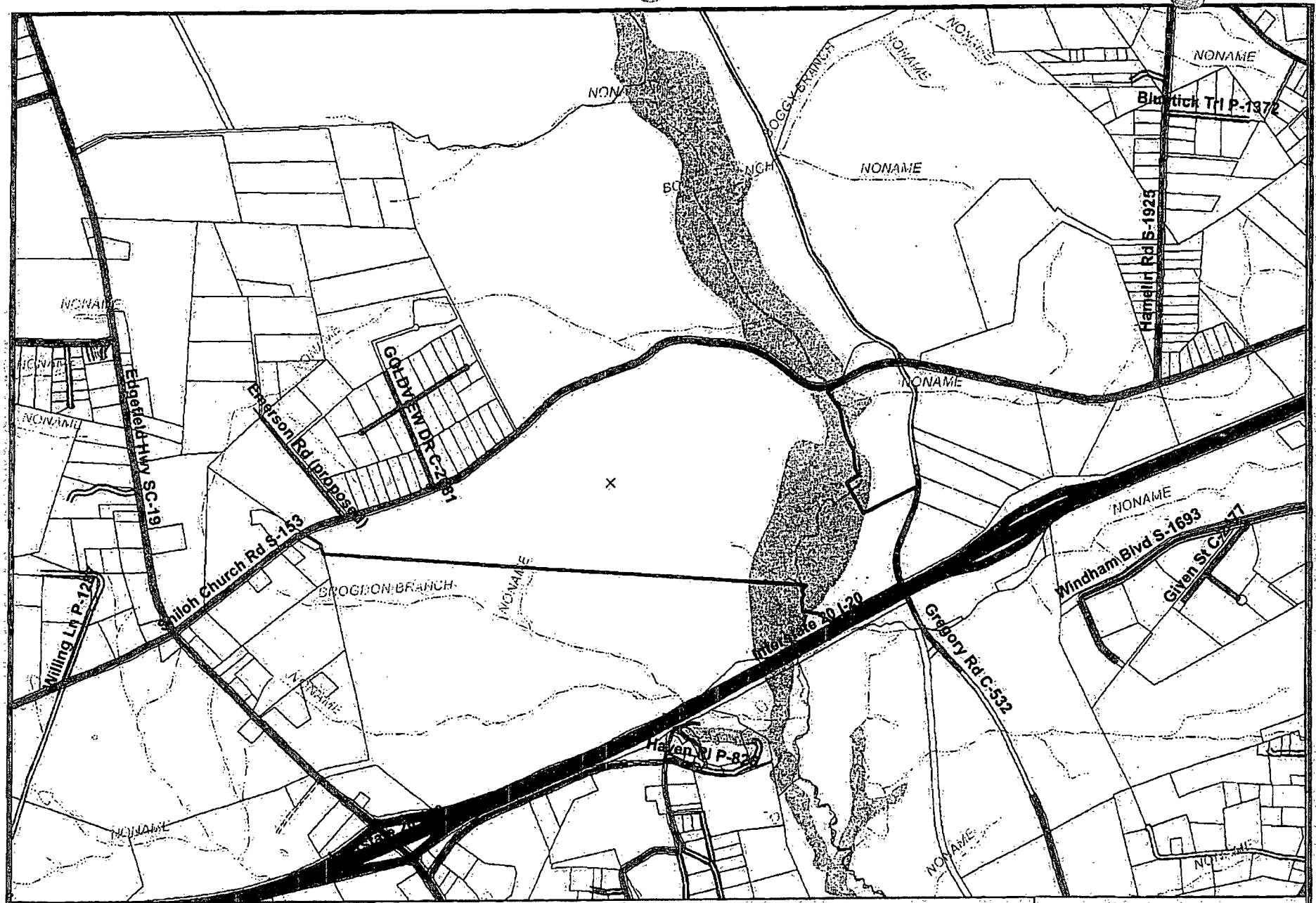
Use of Building ho[illegible] Stables

Owner Doris Tu[illegible]

Contractor Elite Con[illegible]

NOTICE TO BUILDERS

Any builder constructing residences or any other type construction at the above stated address will be held accountable and responsible for any damages by reason of said construction to curbs, gutters, man holes, catch basins, water mains, etc.



Parcel Map

Prepared by:
Aiken County Planning & Development
GIS Mapping Division

Scale:
1 inch equals 2,000 feet

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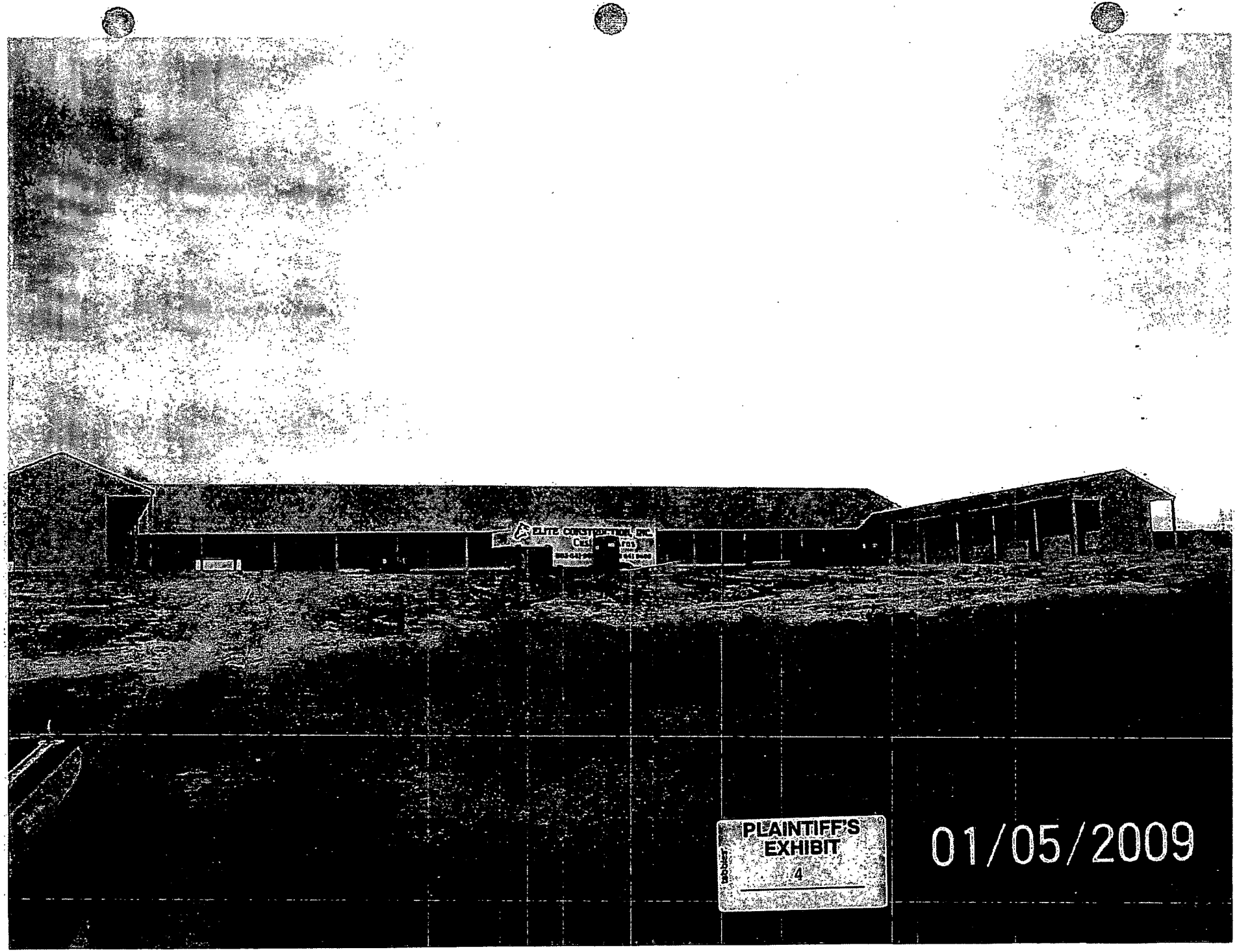
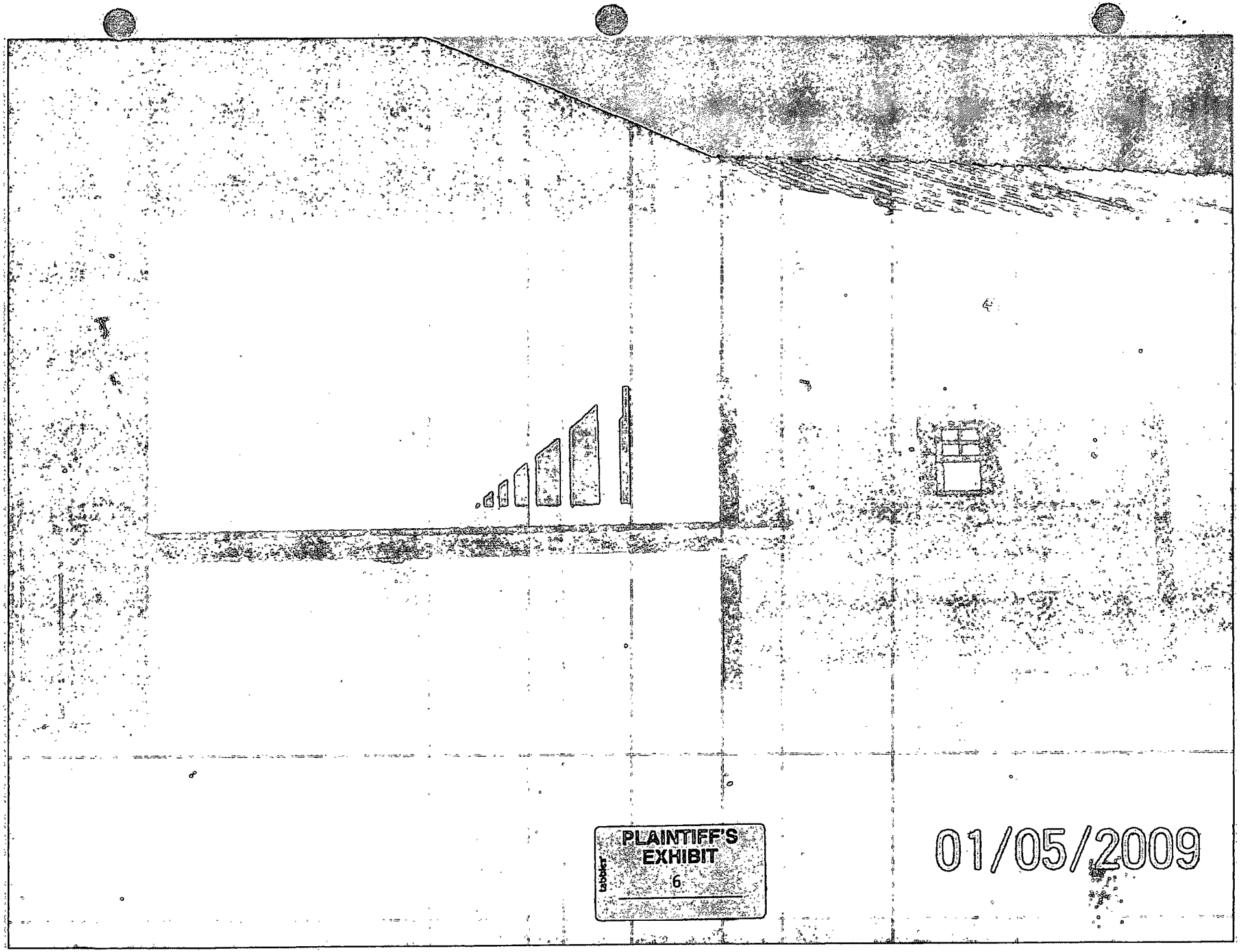
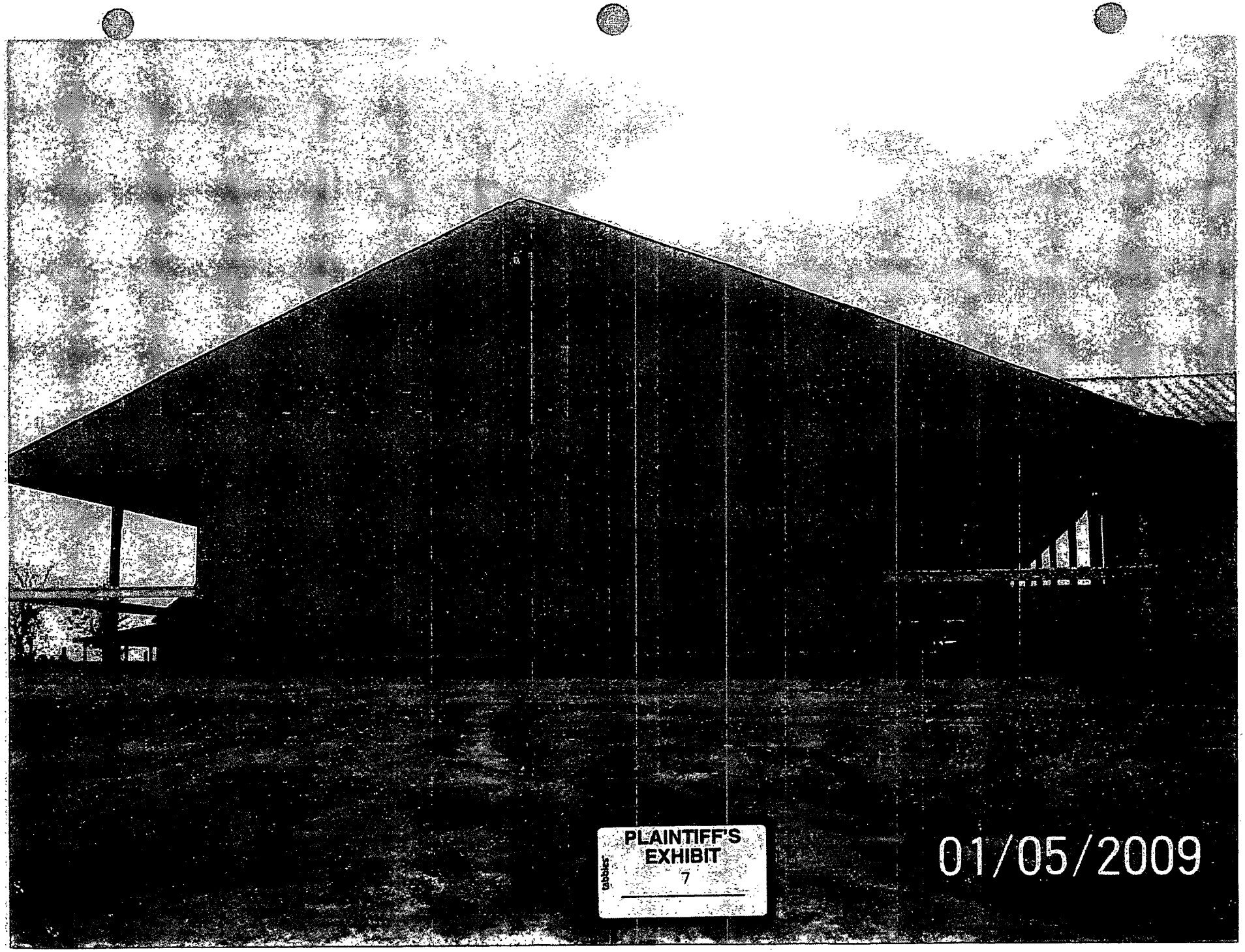

PLAINTIFF'S
EXHIBIT
4
01/05/2009

PLAINTIFF'S
EXHIBIT
5
01/05/2009


PLAINTIFF'S
EXHIBIT
6
01/05/2009


PLAINTIFF'S
EXHIBIT
7
01/05/2009

9-13-12

DORIS E TUMMILLO
TUMEKKI ACCOUNT
4201 SHILOH CHURCH ROAD
AIKEN, SC 29801

REGIONS: 8923025091 **1844**

Date 7/24 53-292/113

Pay to the order of [illegible] $ 167,573.70

[illegible] Dollars

Mellon Trust of New England, N.A., Boston, MA

T E Morgan Keegan MOR account

For

⑈0 1 1 8 3 0 2 9 2 0⑈ 3 0 0 0 8 9 2 3 0 2 5 0 8⑈ [illegible]

PLAINTIFF'S EXHIBIT
Exhibit
8

EXHIBIT 29d
PL
Tummillo

Estimate to complete unfinished work on 40 stall barn

Remove trash that contractor left on site
Piles of scrap wood
Boards with nails sticking out of it

Paint stalls with 2 coats of polyurethane

Install gutters

Complete electrical work

Install 2 sets of door locks

Finish exterior siding and interior siding

Install bracing above stalls to straighten out the wall

Install doors for stalls

Grade dirt in front of every stall so horse does not trip while entering or leaving

Install access hole for overhead storage areas

There are at least a dozen roof leaks do to substandard installation
In order to properly repair the leaks the entire metal panel for every leak will have to be replaced including any and all panels where leaks and or improperly installed screws were caulked as a temporary fix .

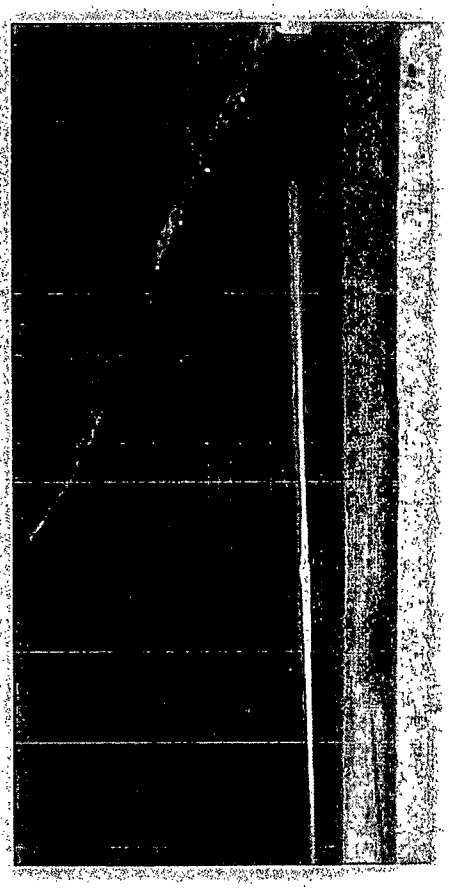
FINISH SIDING AROUND ELECTRICAL PANELS

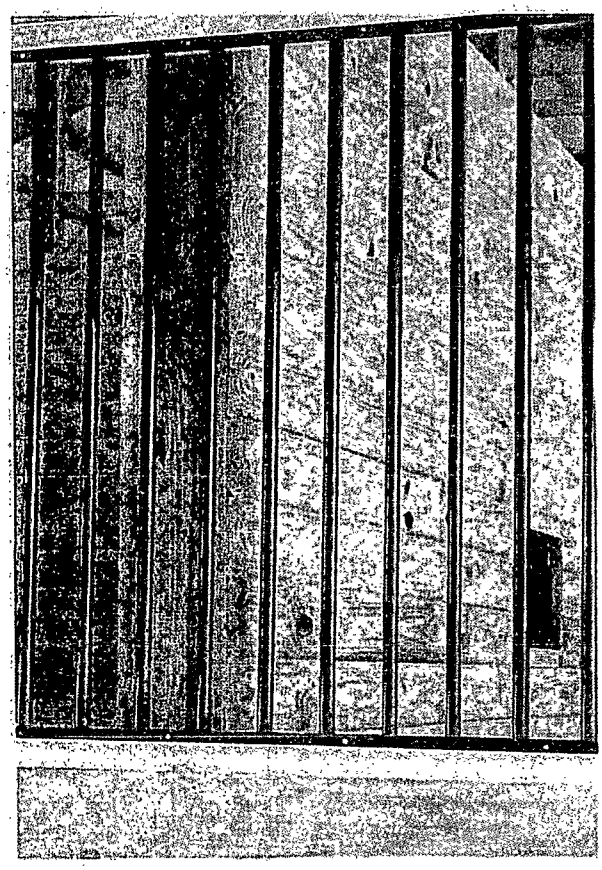
PLAINTIFF'S EXHIBIT 15

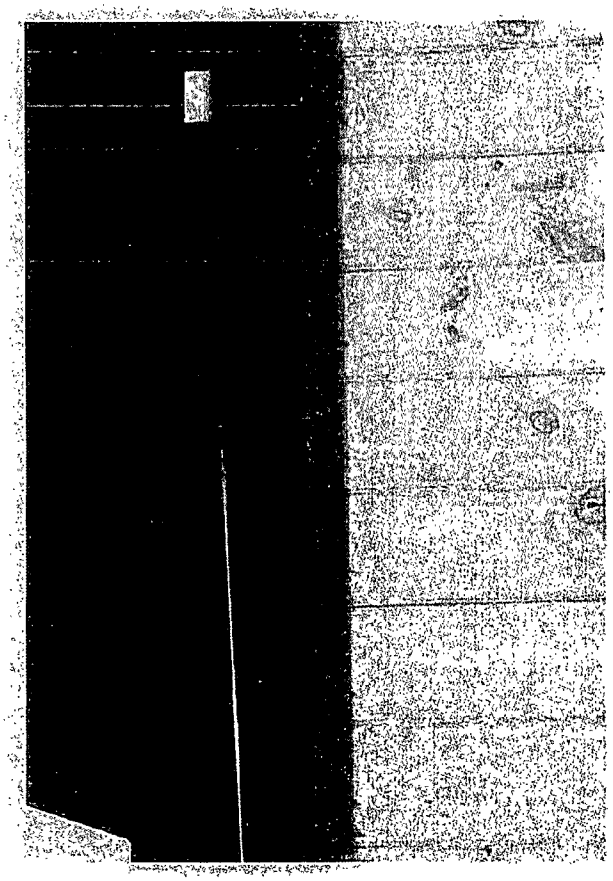
EXHIBIT P6 Tumminello

STALL	DOOR WIDTH	STALL
1	11-4" x 11-½"	21 11-3⅜ x 10-9¾
2	11-3¼ x 11-3¾	22 11-3⅞ x 10-11⅞
3	11-3½ x 11-¼"	23 11-2⅞ x 11-4⅛
4	11-4½ x 11-¼"	24 11-2⅝ x 11-¼
5	11-3⅛ x 11-3¾	25 11-3⅞ x 11 ⅜
6	11-3⅛ x 11-⅜"	26 11-3 x 11-3⅛
7	11-3⅛ x 11-1"	27 11-3¼ x 11-¾
8	11-3¾ x 11-3½	28 11-4⅛ x 11-½
9	11-3⅝ x 11-0	29 11-3¾ x 11-3"
10	11-3¼ x 11-⅜"	30 11-3½ x 11-¾
11	11-3⅜ x 11-3⅜	31 10-9¾ x 11-3⅜
12	11-3⅛ x 11-⅞"	32 10-10" x 11-3¾
HS12A	11-3½ x 11-½"	33 10-10 x 11-3⅞
14	11-3⅛ x 11-3⅜"	34 10-10⅛ x 11-3⅜
15	11-3⅞ x 11-3⅝"	35 10-10 x 11-3⅜
16	11-3⅝ x 11-⅝"	36 10-9¾ x 11-3½
17	11-3⅜ x 11-3¼"	37 10-9⅞ x 11-3⅛
18	11-3½ x 11-⅝"	38 10-10⅞ x 11-3⅜
19	11-4⅞ x 11-¼"	39 10-10 x 11-3⅜
20	11-3⅞ x 11-4⅛"	40 10-10⅛ x 11-3⅜

DEFENDANT'S EXHIBIT 1







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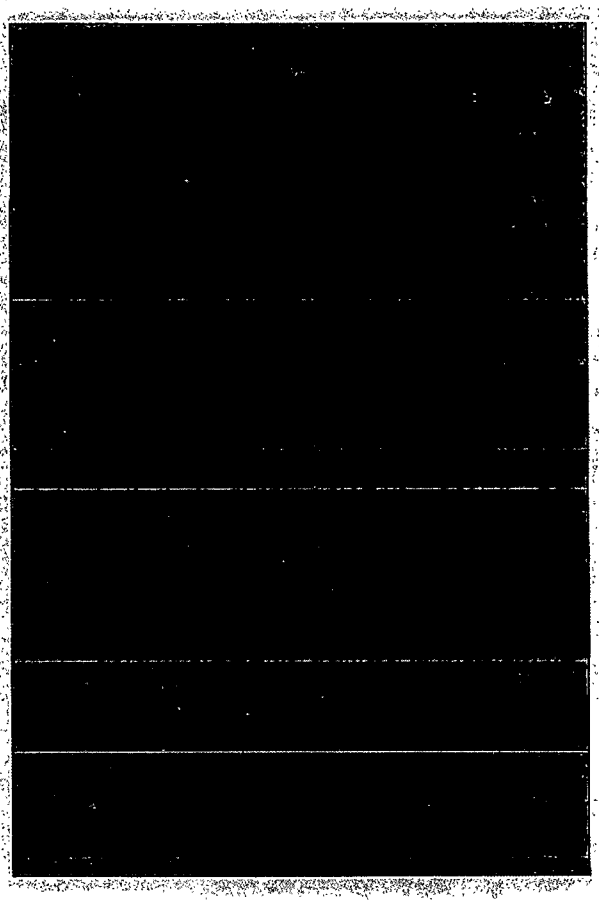
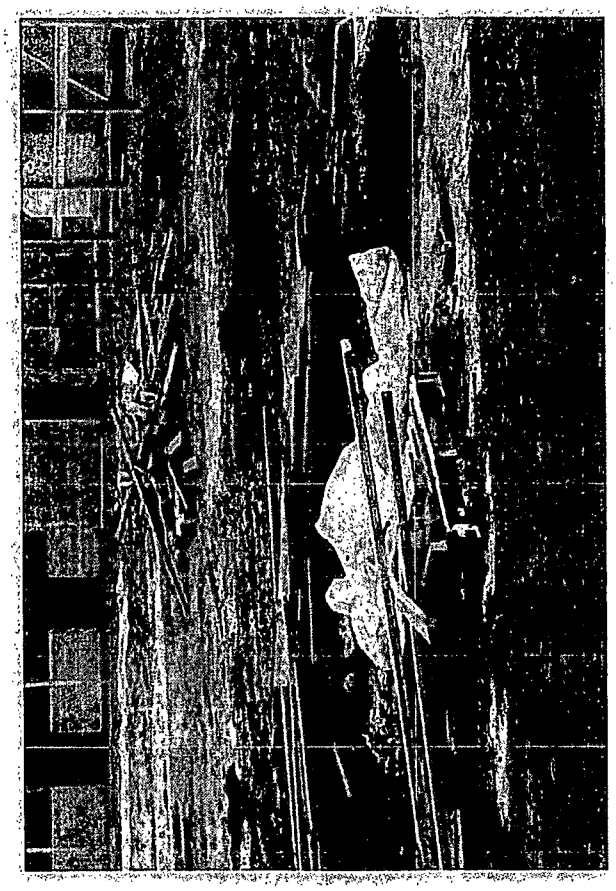
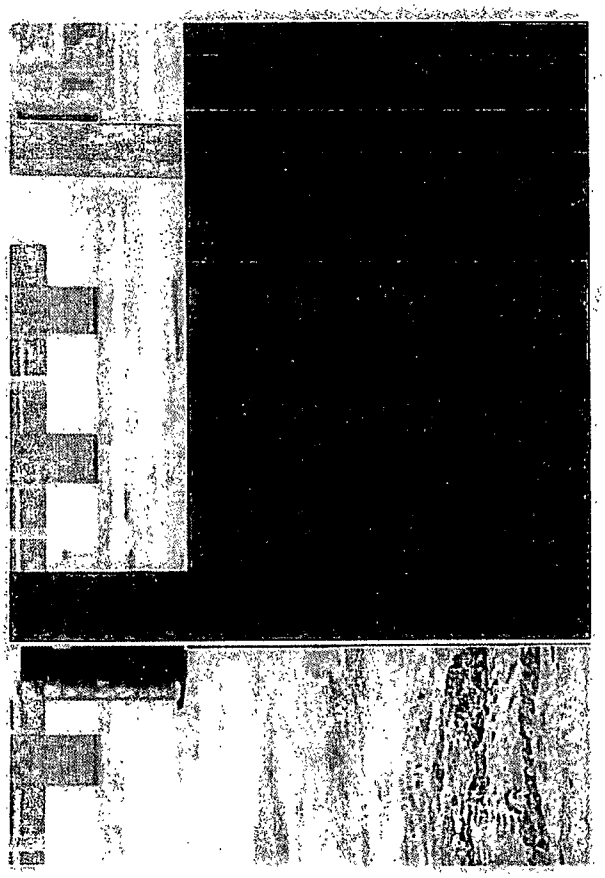
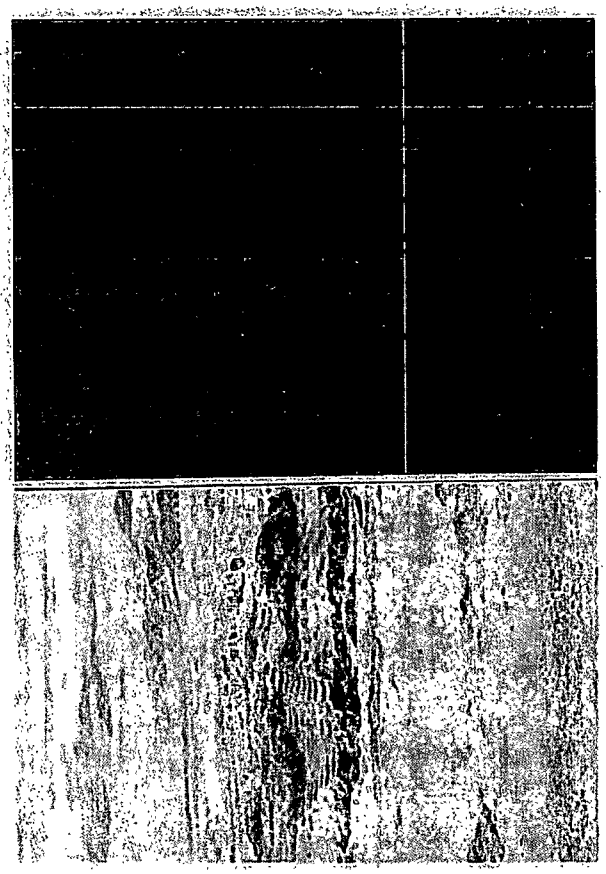
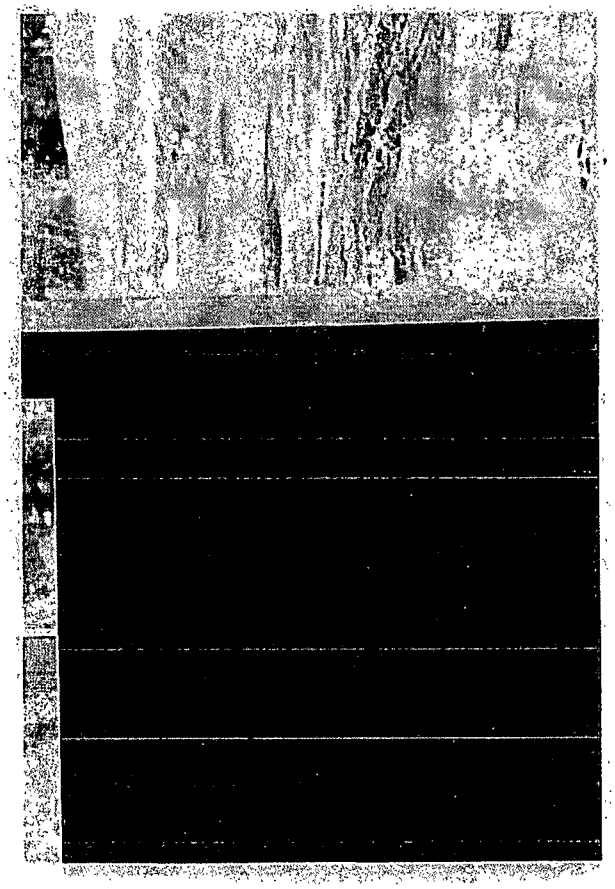
DEFENDANT'S EXHIBIT 3

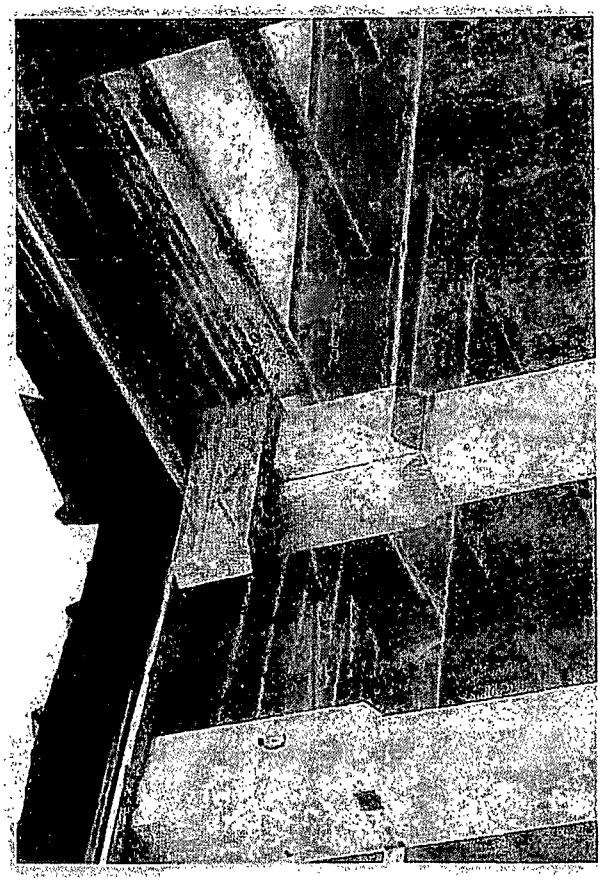


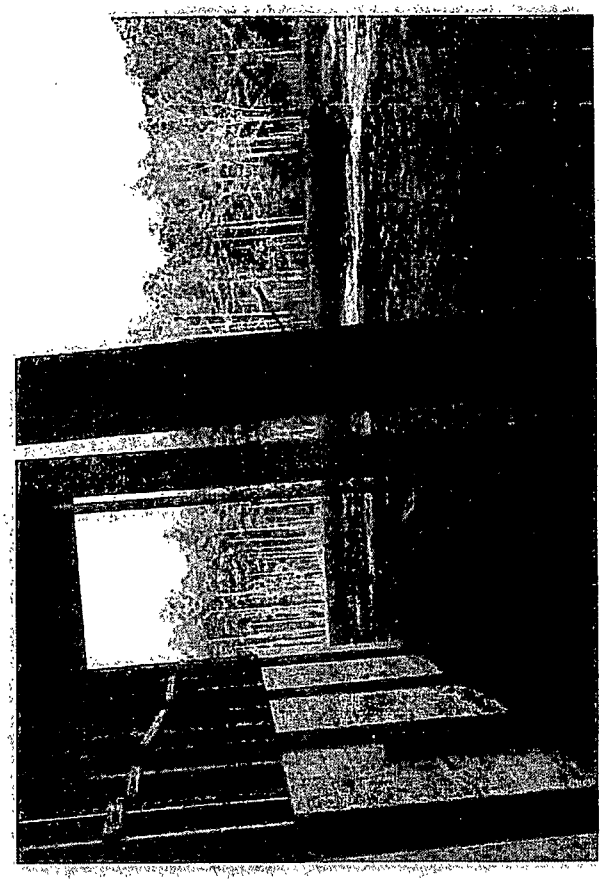












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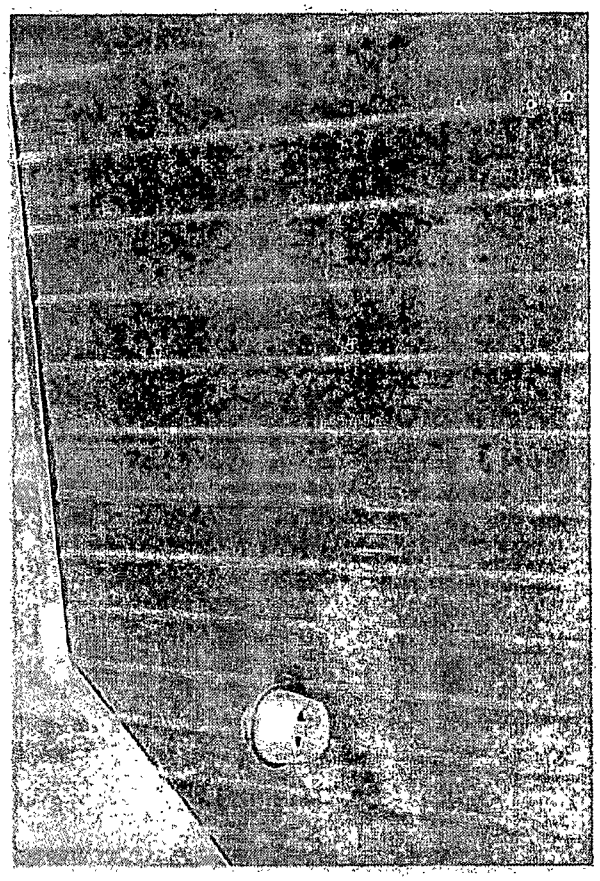

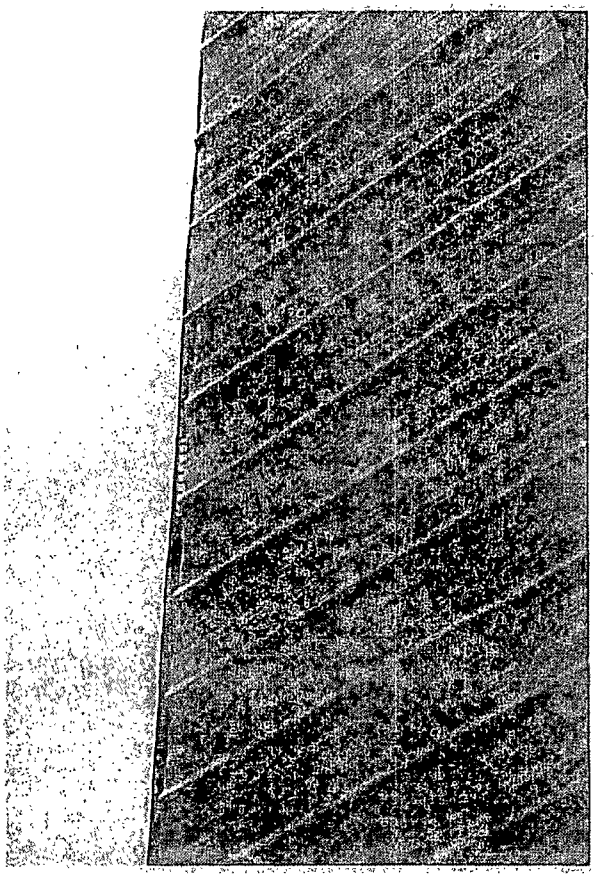

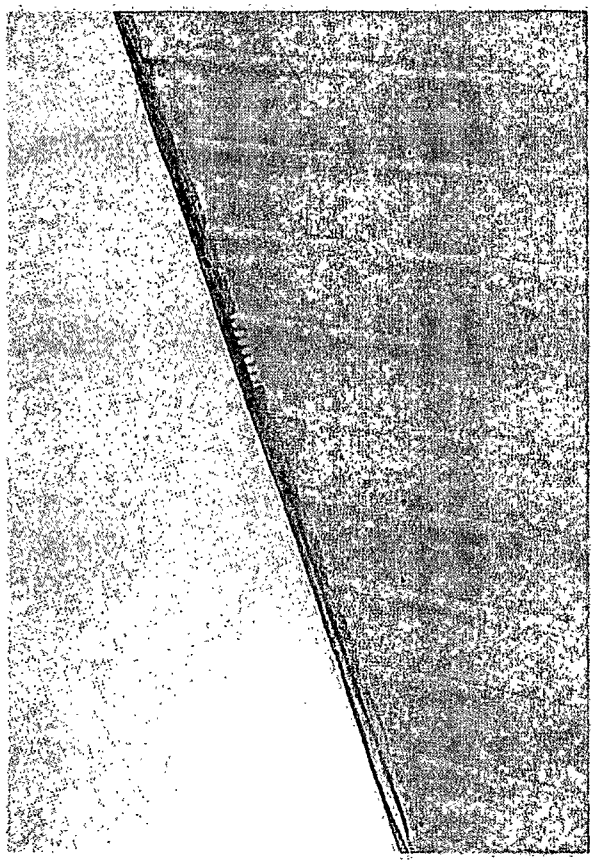

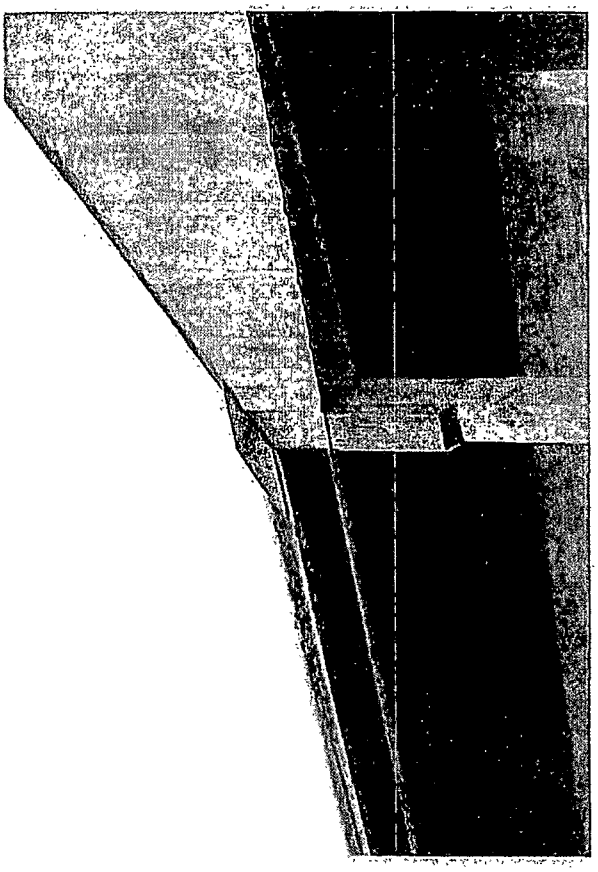

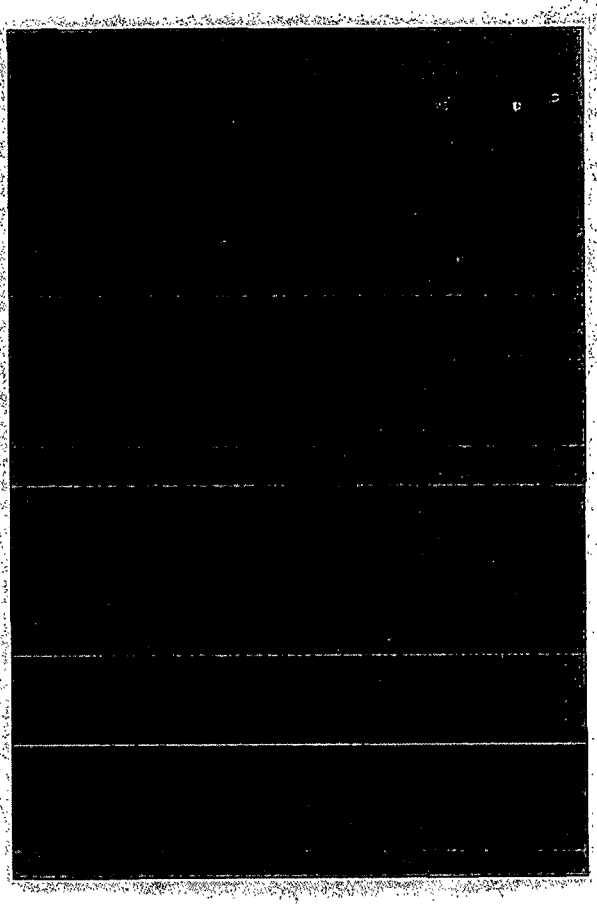

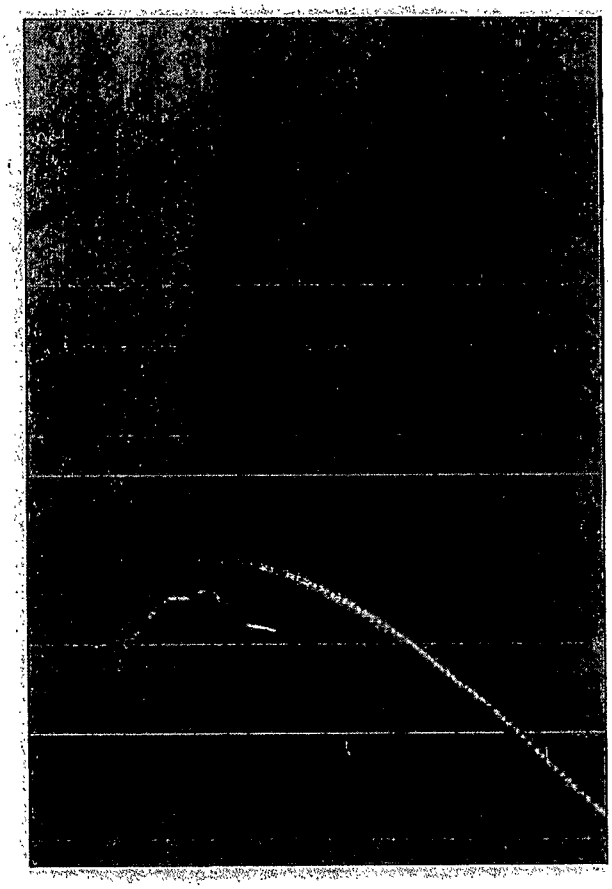

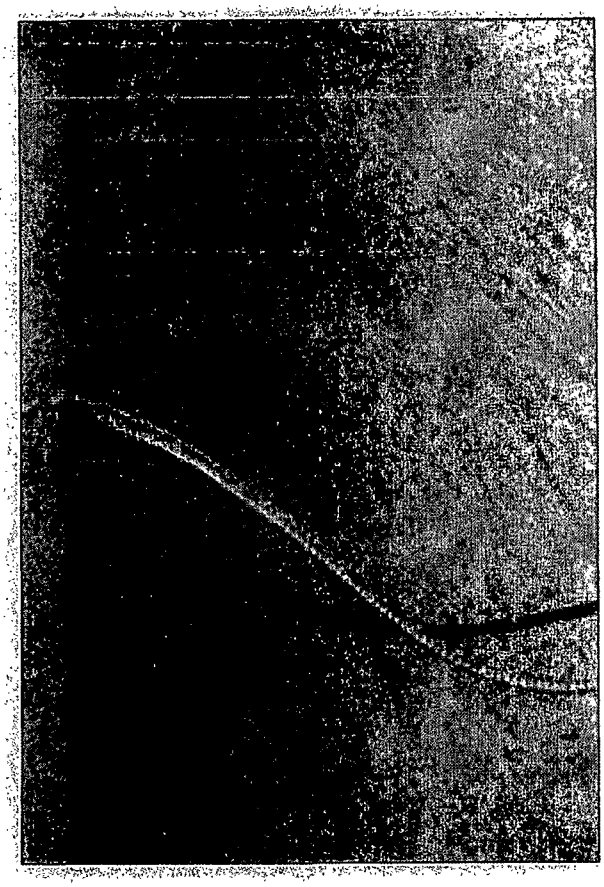

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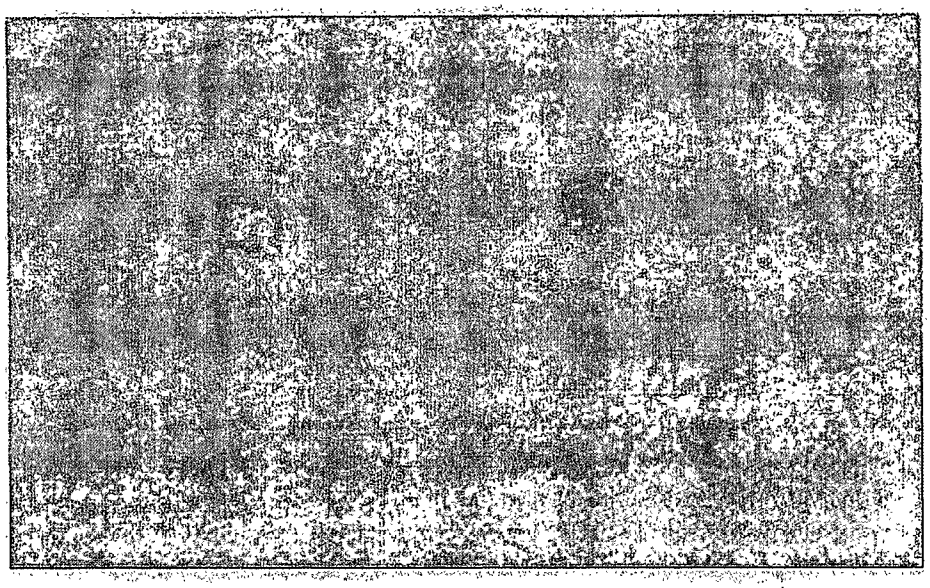
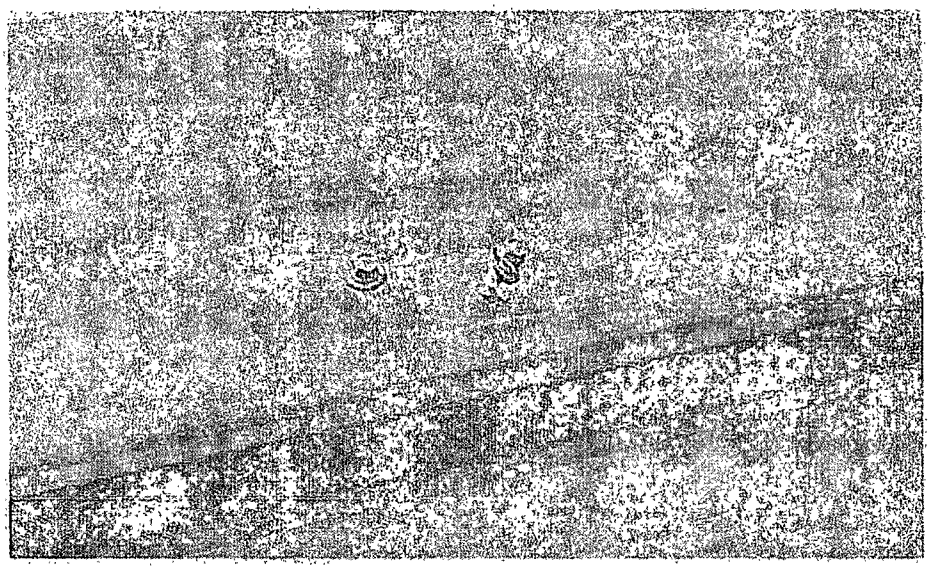
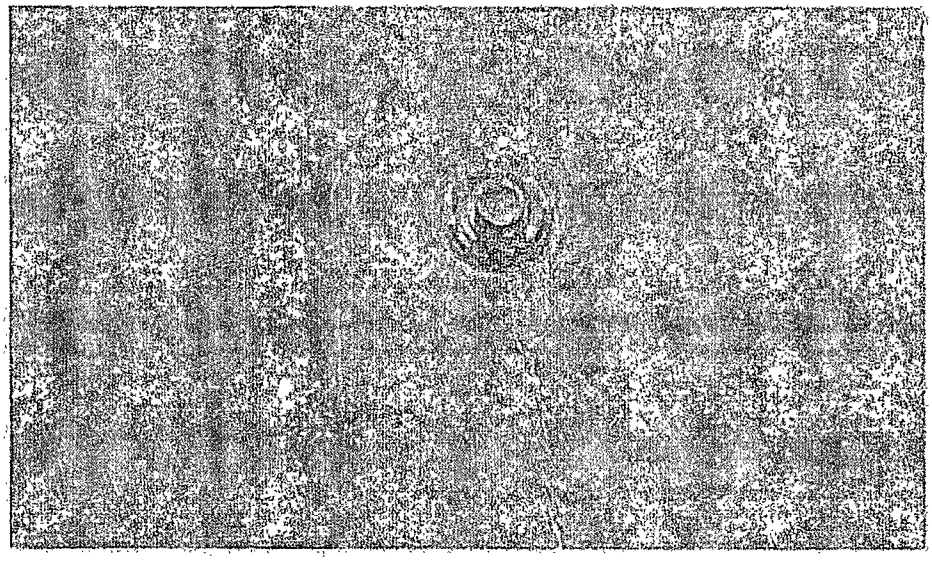
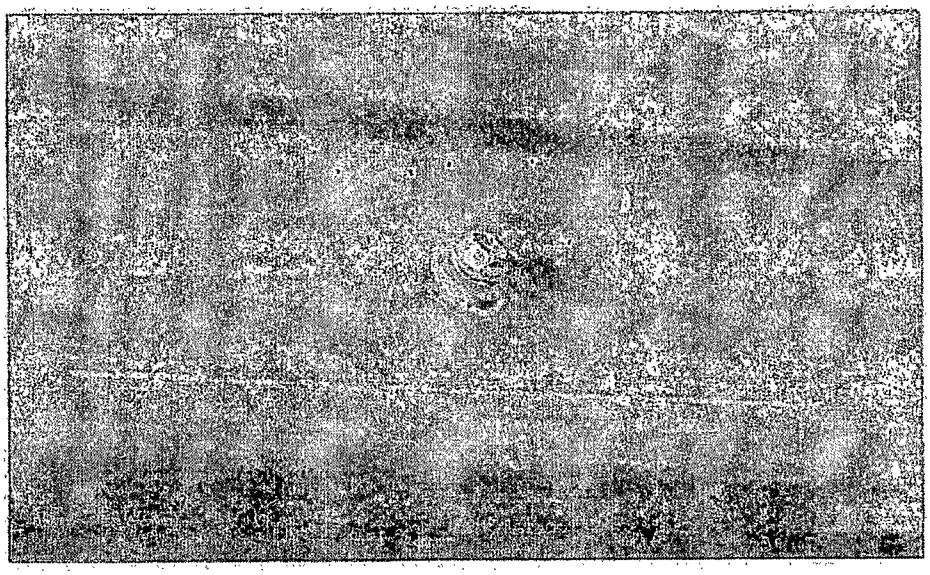
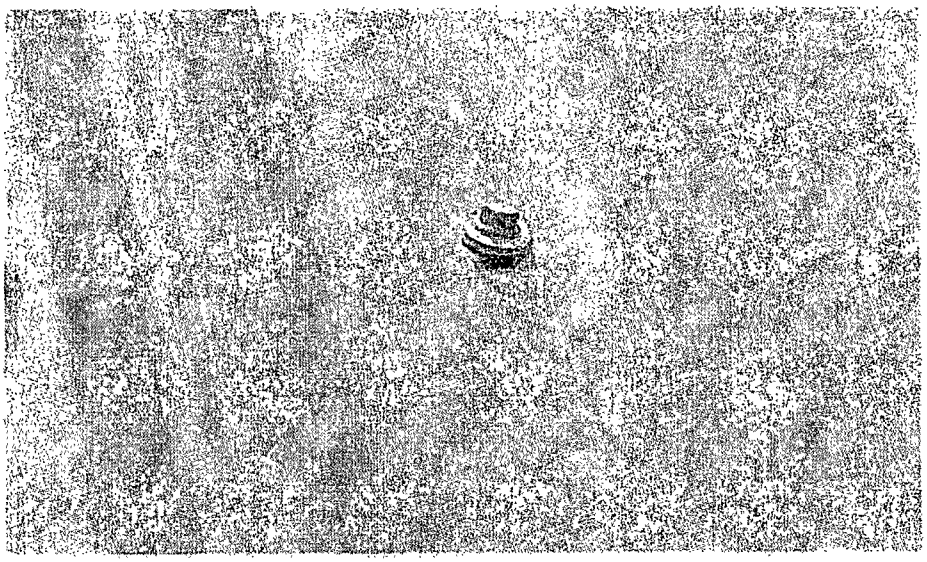


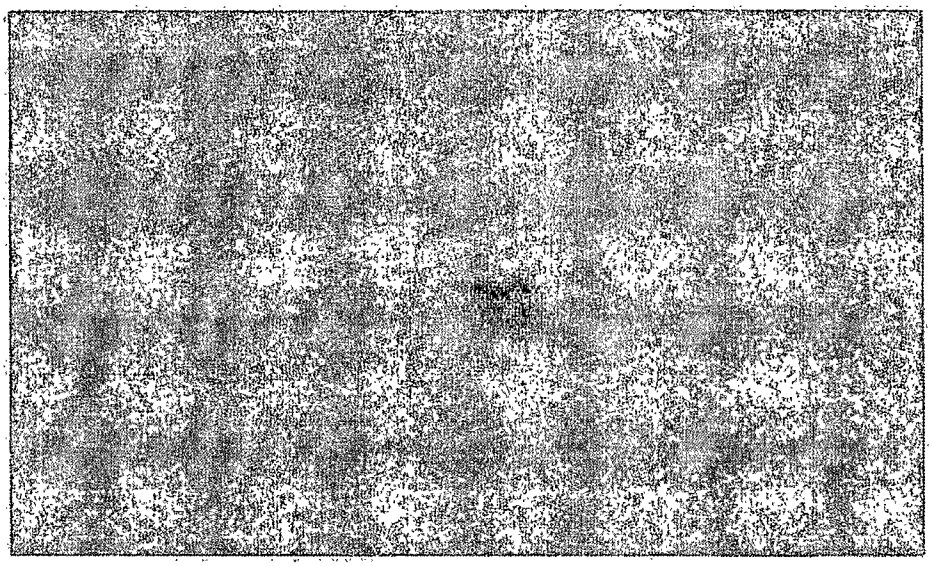


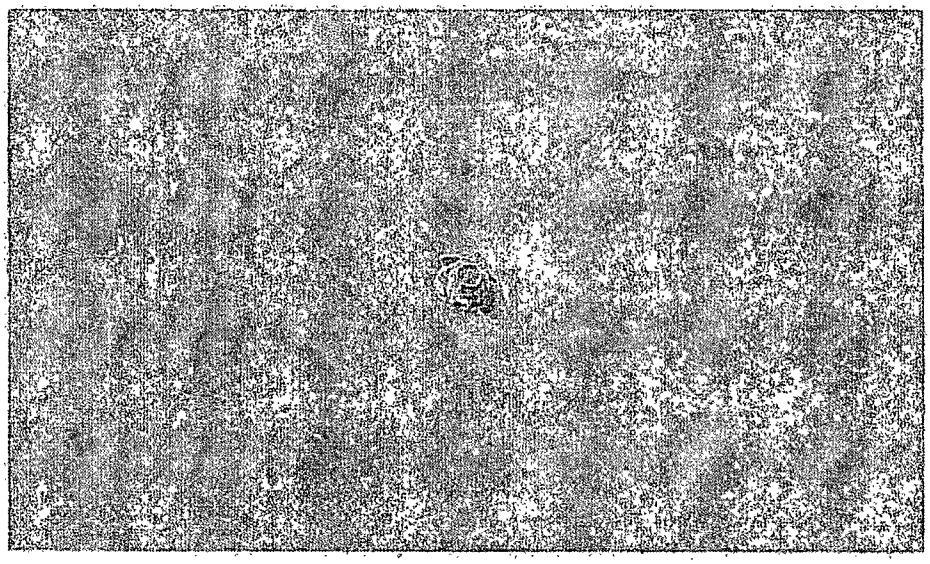


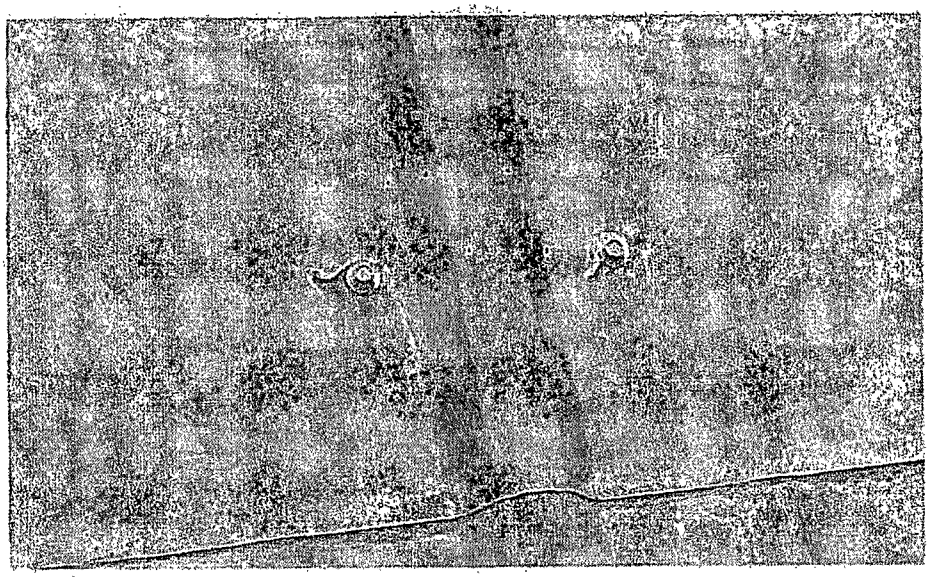
DEFENDANT'S EXHIBIT 4

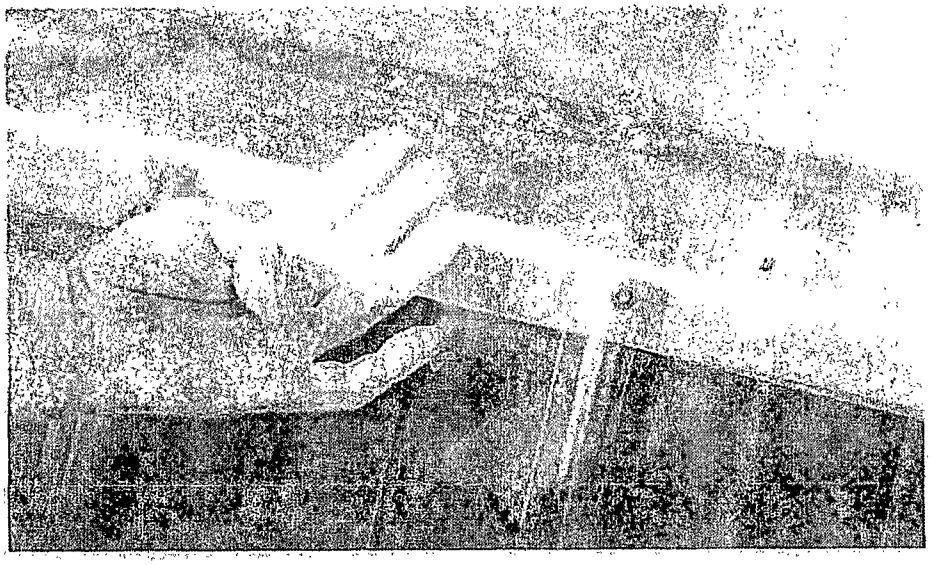


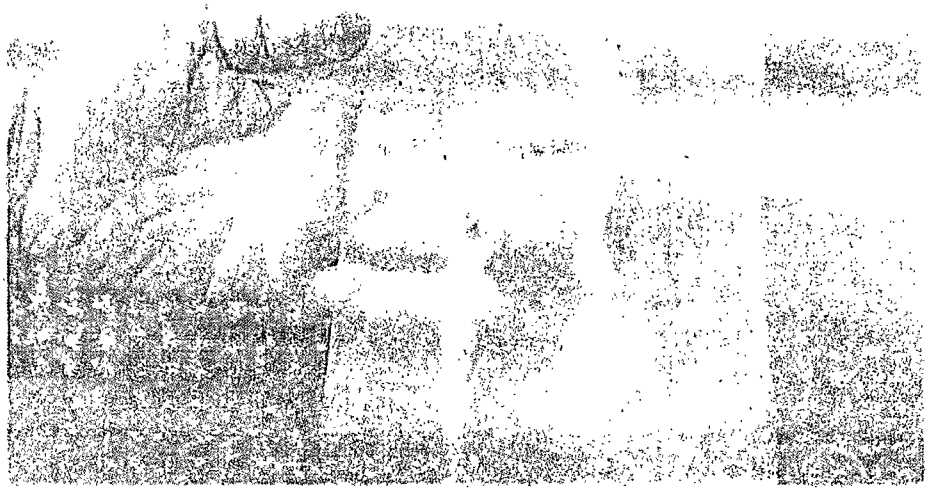


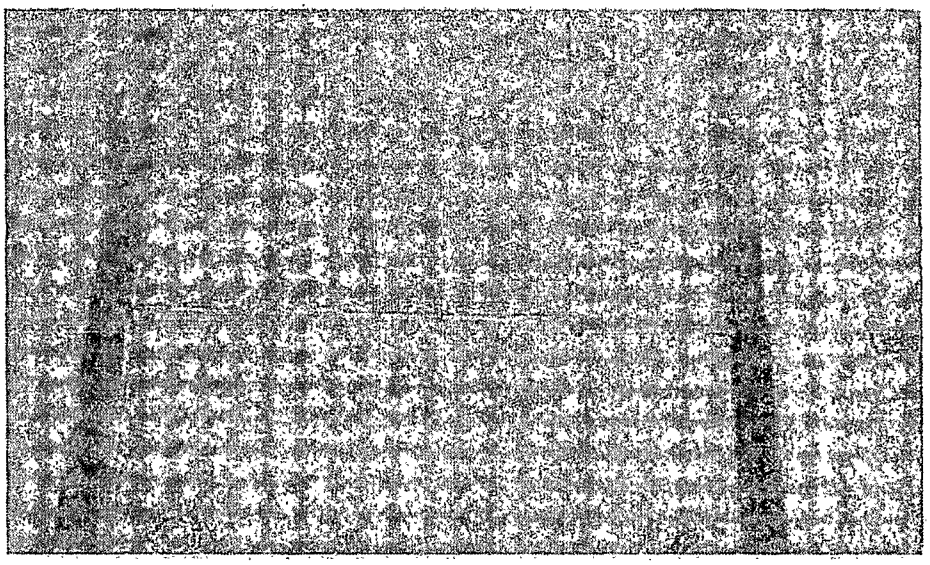


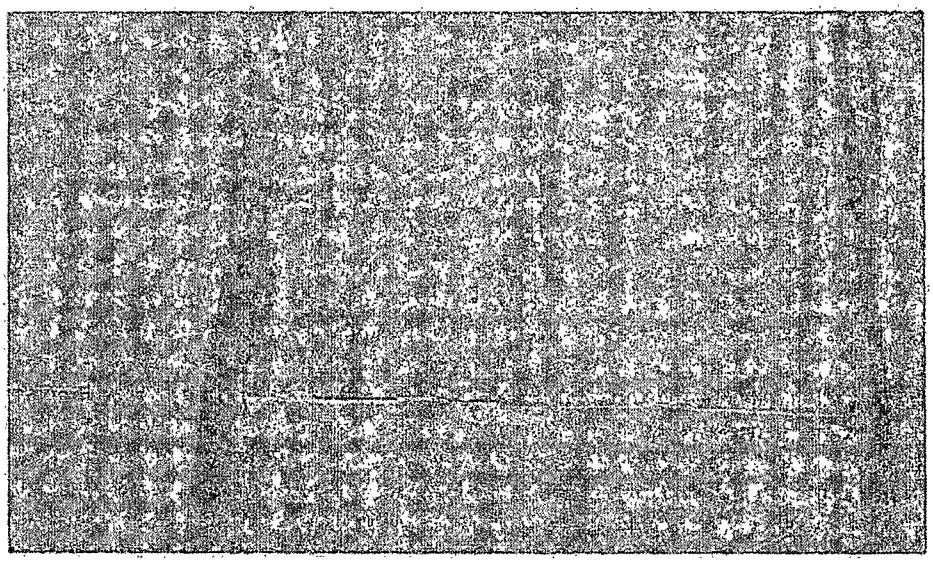


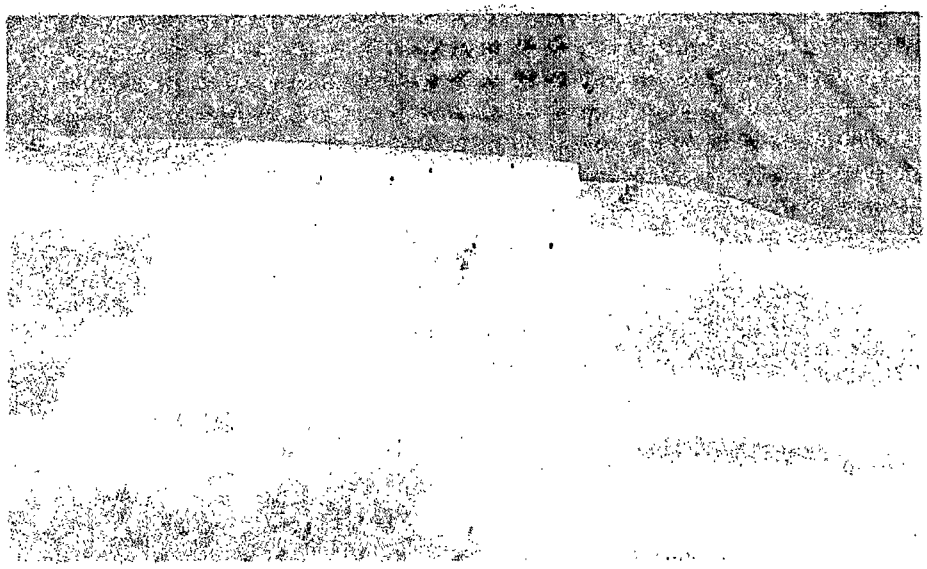


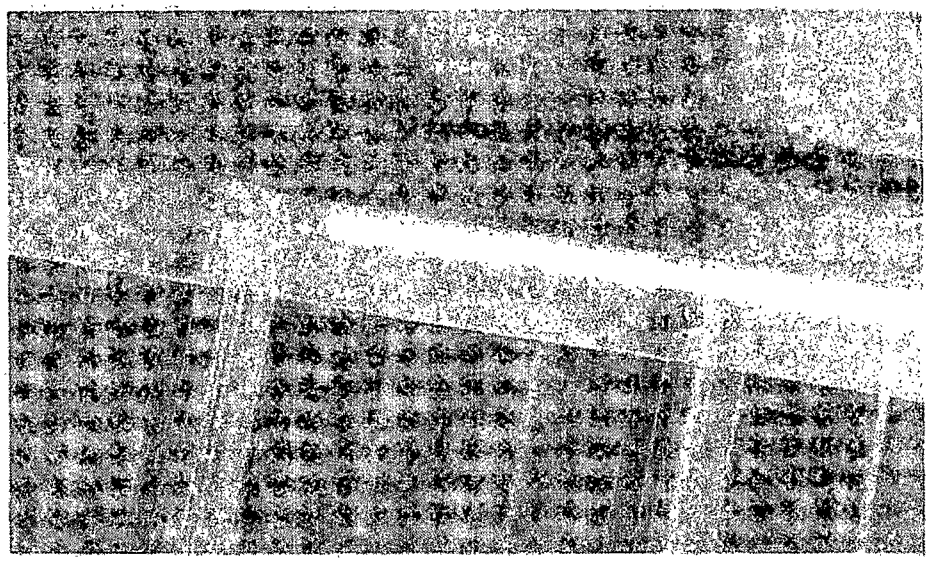


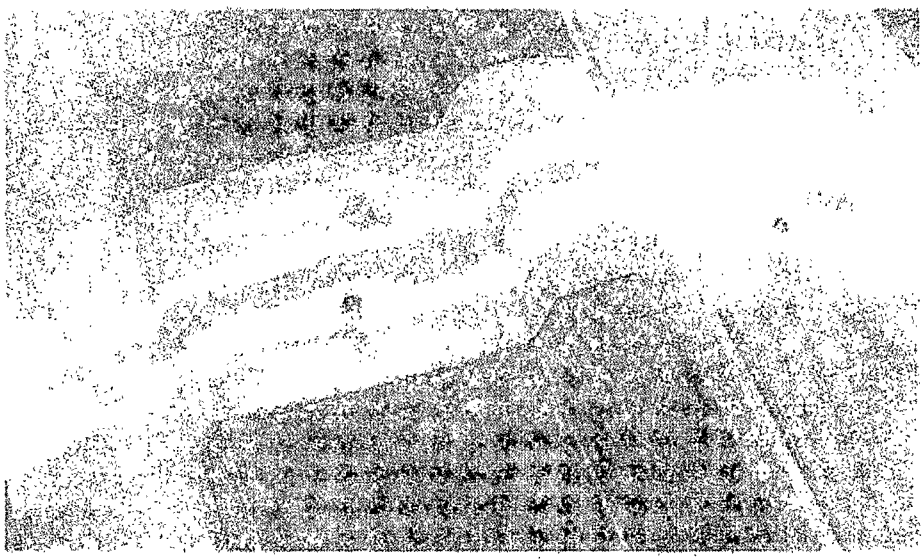


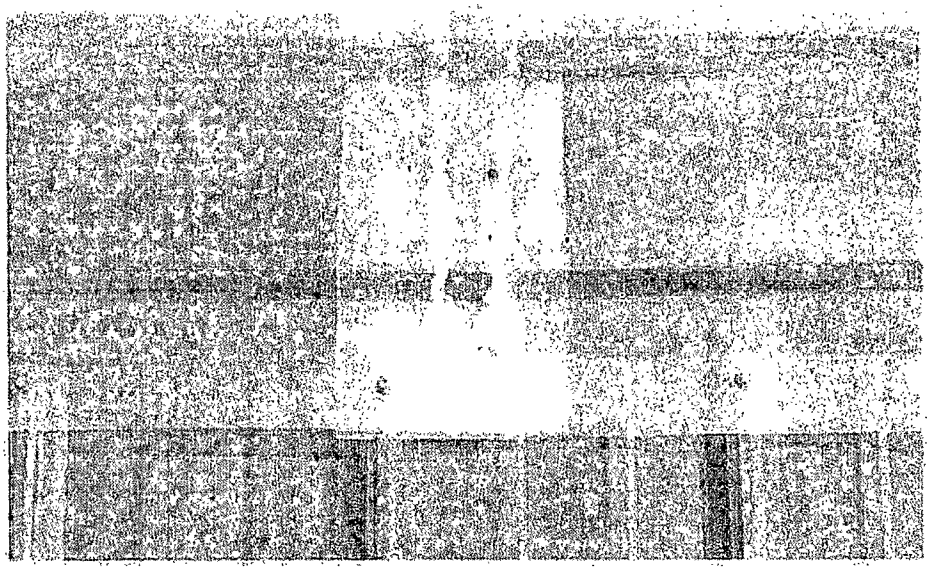


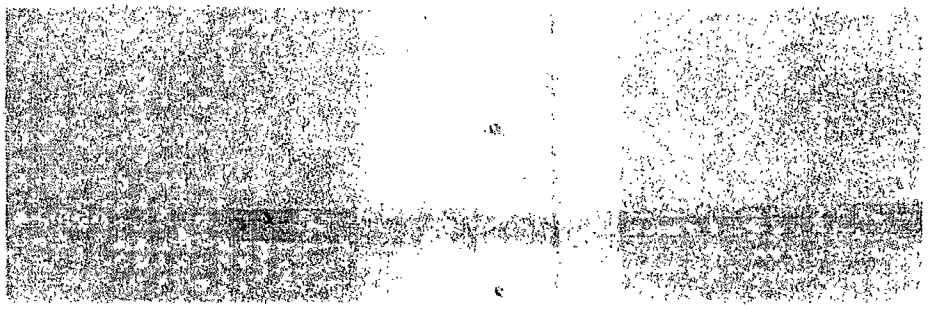


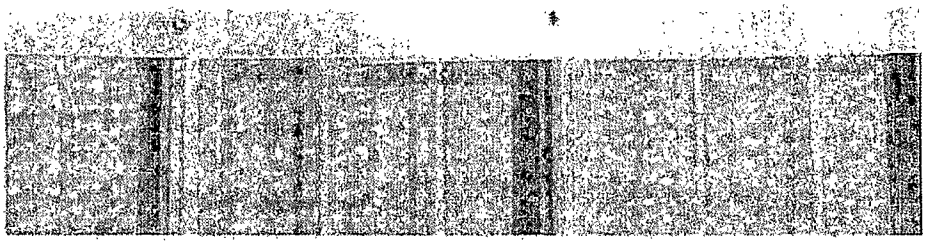


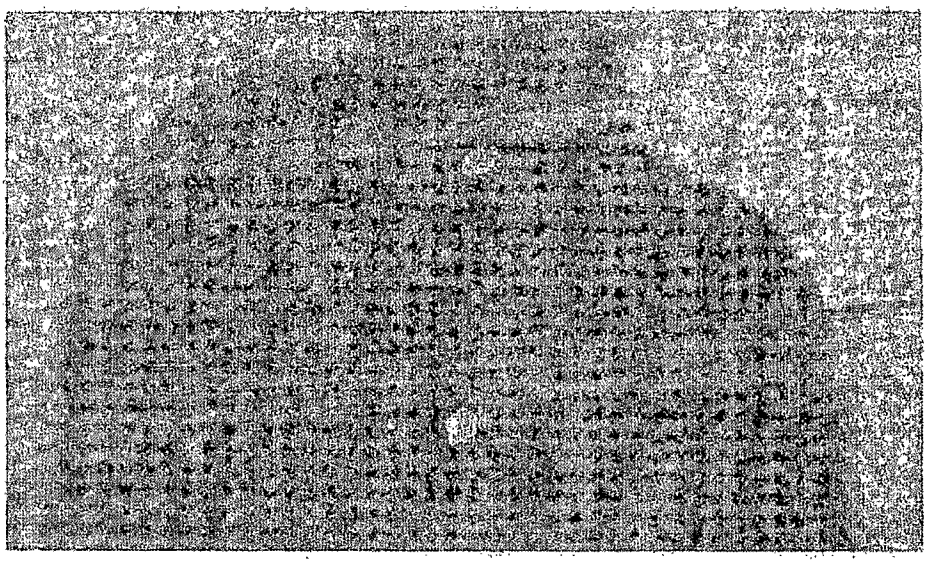


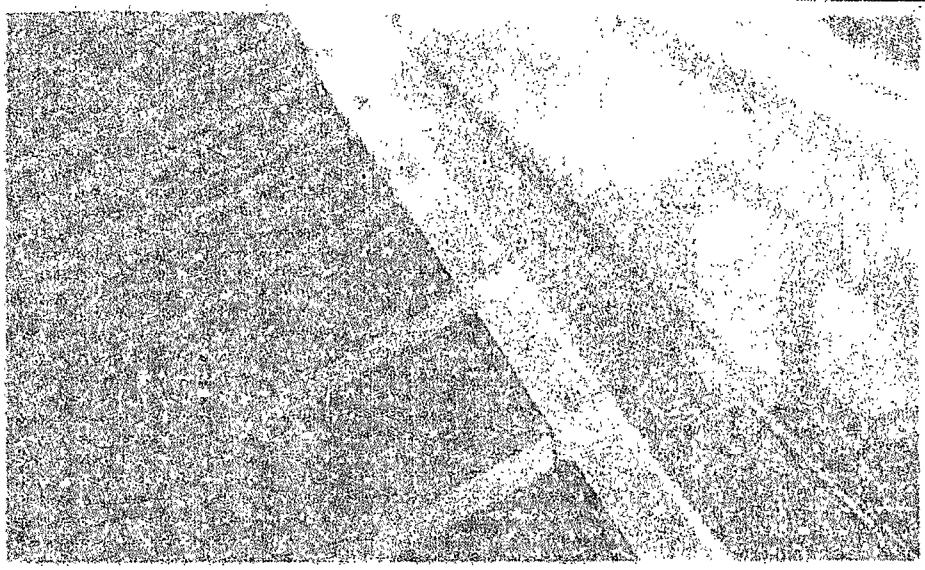


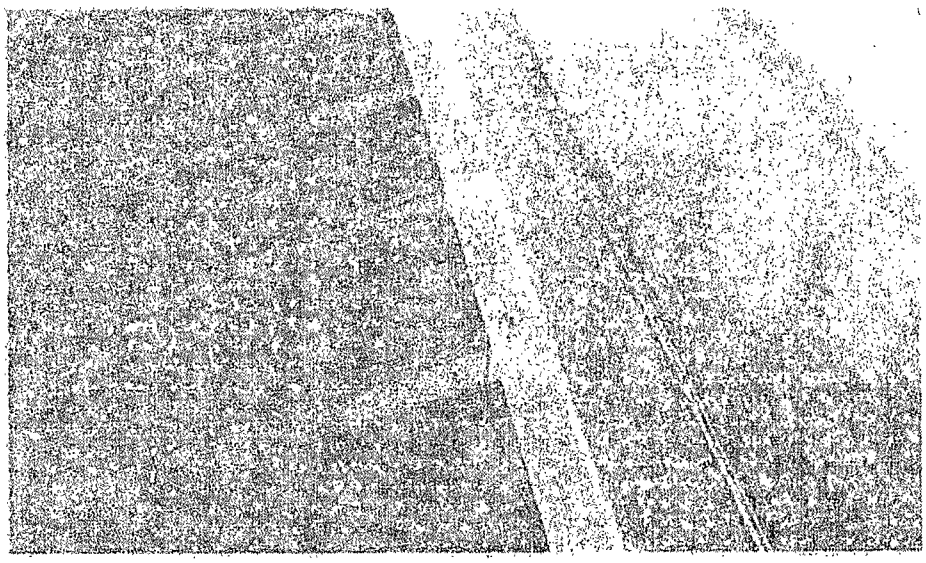


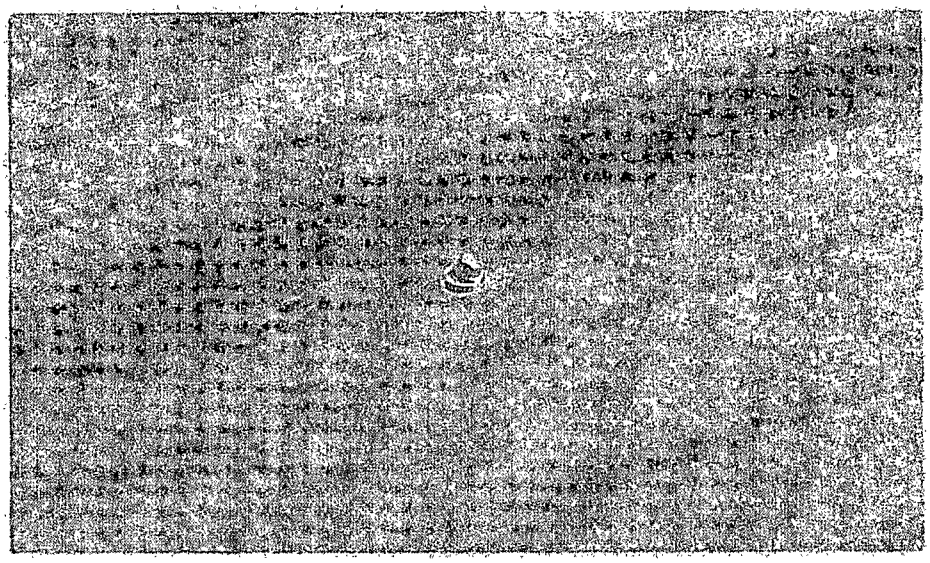


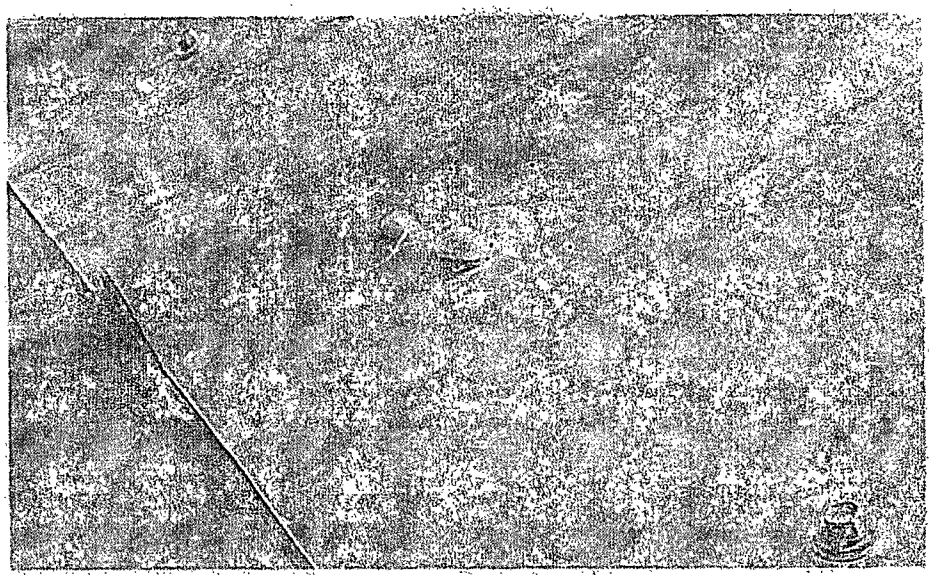


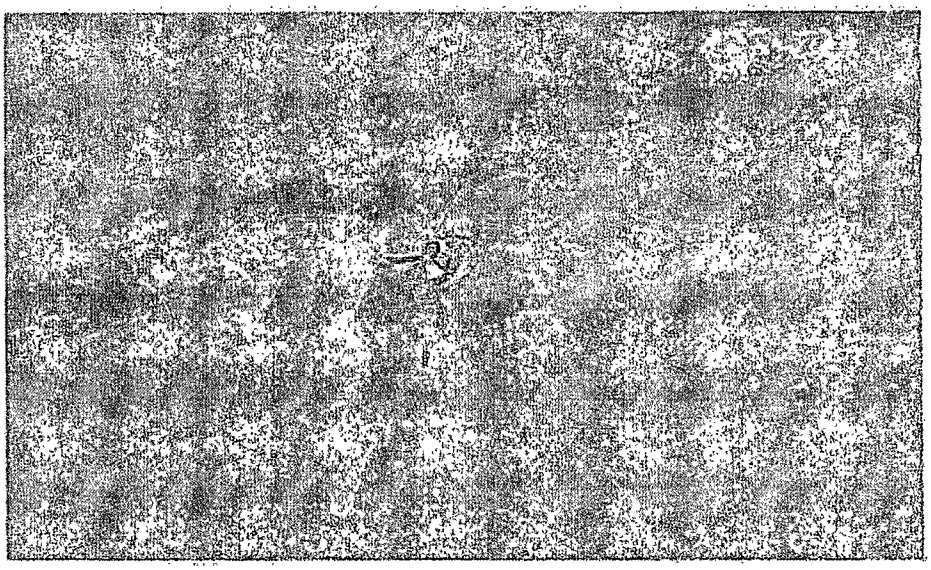


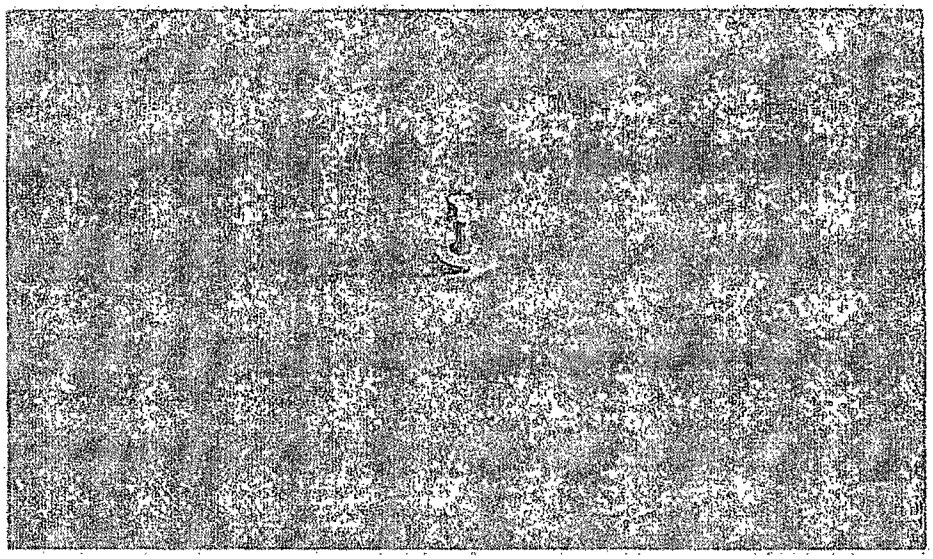


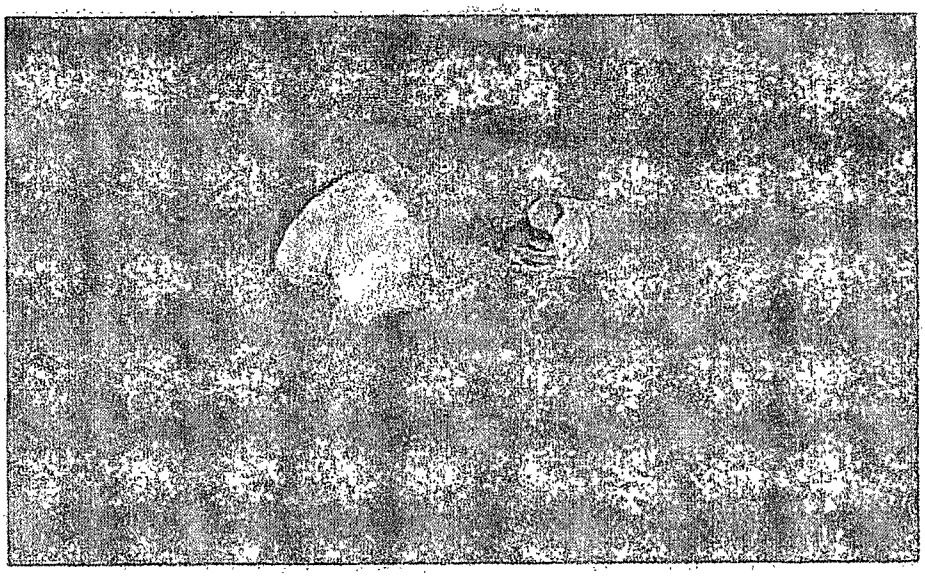


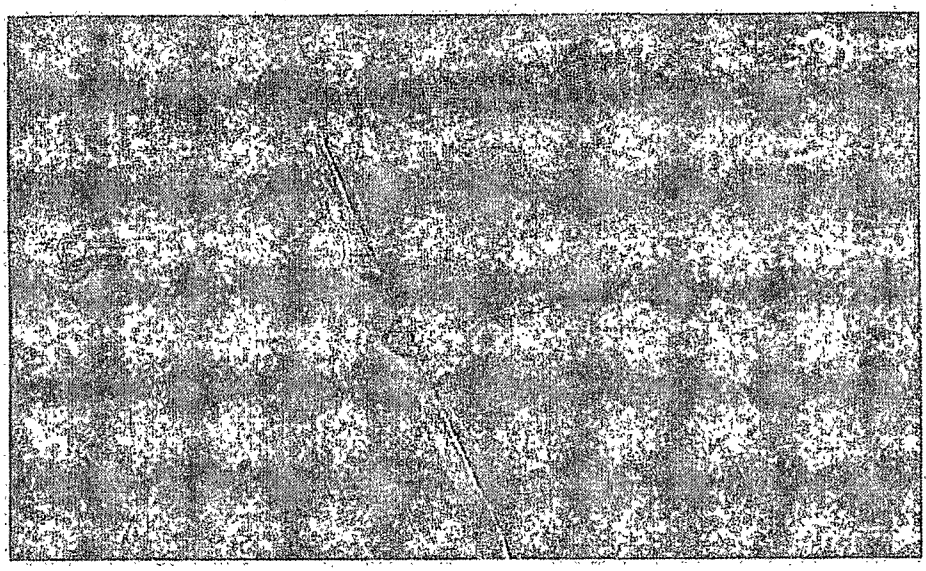


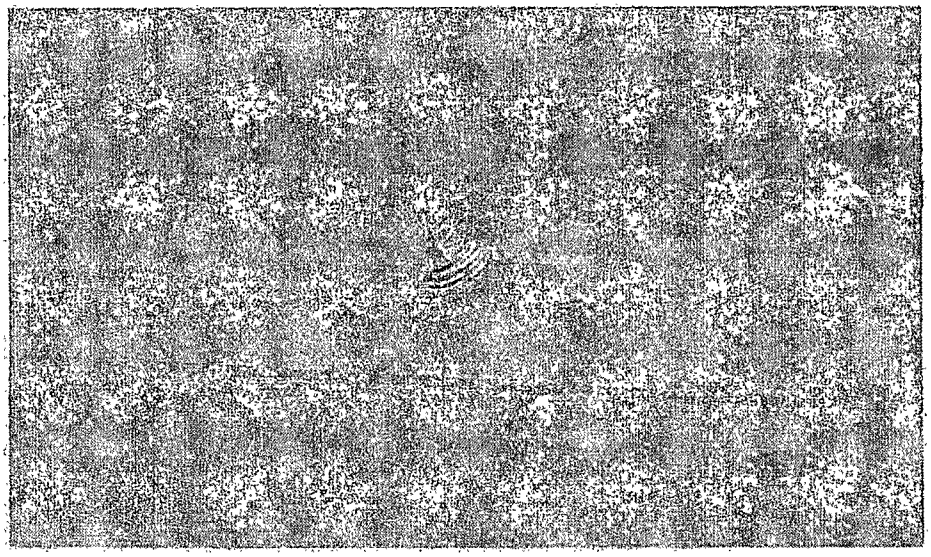


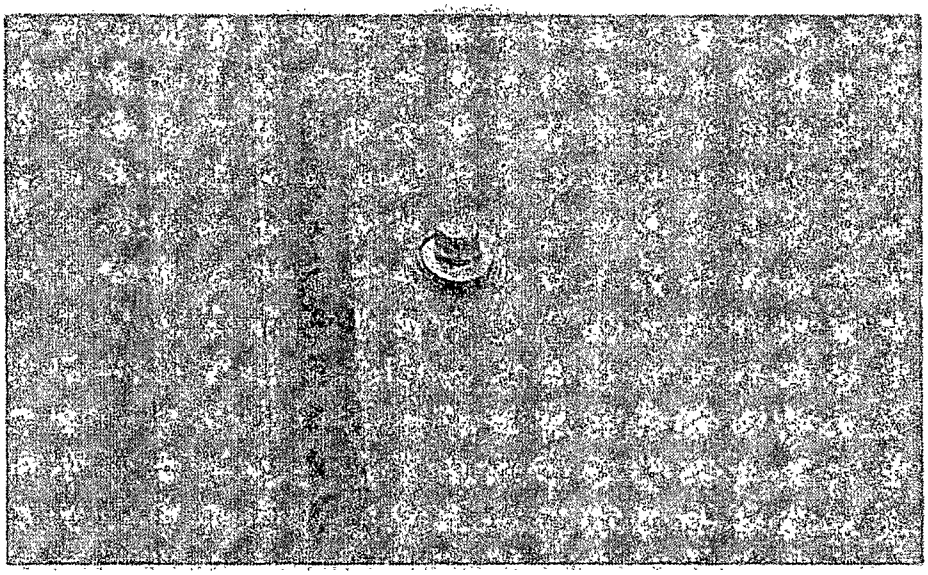


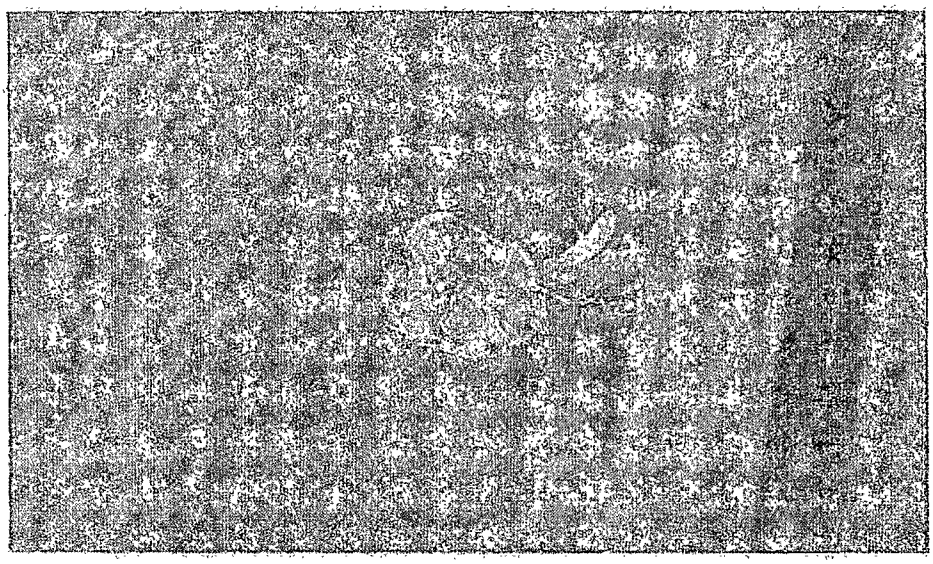












PLAINTIFF'S EXHIBIT
Plaintiff 2
Date: 9/13/11
Donna Moreland

MR CLARK McCANTS

FIX AREAS WHERE ELECTRICAL PANELS WERE NOT RECESSED INTO THE WALL
SEVERAL PLUMBING LEAKS
& HOSE FAUCETS - UNDERGROUND LEAKS

SCREWS AND NAILS LEFT ON THE GROUND WHERE PEOPLE AND HORSES WALK
SWEEP THE BARN NUMEROUS TIMES

REPLACED WARPED BOARDS

STRUCTURAL REINFORCEMENT
SAFETY RAILS FOR STORAGE AREAS

ANY ROTTEN WOOD FROM THE ROOF LEAKING NEEDS TO BE REPLACED

ANY WET INSULATION SHOULD BE REPLACED

9-13-11
S. Knight
ALSO

DEFENDANT'S EXHIBIT
7

Costs 40 stall barn

Labor 18763.00

Grill 4456.20

Insurance 240.25

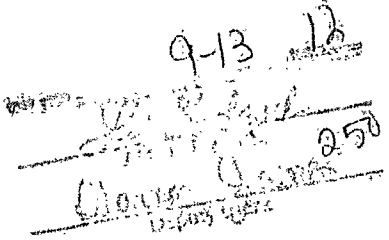
Materials 32143.98

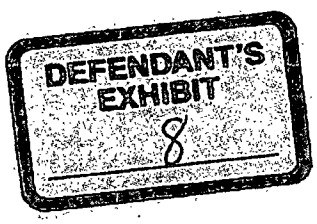
Stall gates 4548.00

Money paid 64,699.43

Stbrt 778.1 Square feet
Cost 43,263.44.

9-13 12





Honey Do Home Repair, Inc.

1075 Outaways Road
Aiken, SC 29803
803-649-2676
803-215-6700 cell

Invoice

Date	Invoice #
4/16/2009	341

Bill To
Doris Tummillo 4201 Shiloh Church Rd. Aiken, S.C. 29801

P.O. No.	Terms	Project	
Barn #4			

Item	Quantity	Description	Amount
Electrical		Construct mounting frame and install new SCE&G 400 amp meter can, install entrance cable to 2 200 amp panels. Install new circuit and make connection to water heater in wash area, install 4 lights in tack rooms.	1,920.00
Plumbing		Install water lines for water heater and 2 frost proof hose bibs in wash area. Insulate water lines and construct frame for mounting hose bibs.	652.00
misc.		Install end cap on barn ends and J-channel around door openings	580.00
Plumbing		Repair broken water line 3/5	63.00

Total	$3,215.00
Payments/Credits	$0.00
Balance Due	$3,215.00

Phone #

DORIS E TUMMILLO
TUMEKKI ACCOUNT
4201 SHILOH CHURCH ROAD
AIKEN, SC 29801

233

61-1/620

291

DORIS E TUMMILLO
TUMEKKI ACCOUNT
4201 SHILOH CHURCH ROAD
AIKEN, SC 29801

3-14-09

61-1/620

ANNO ALTANO

three seven hundred sixty three 00/100

3,763.00

⑆061200006⑈ 89230250961⑈ 0298

DORIS E TUMMILLO
TUMEKKI ACCOUNT
4201 SHILOH CHURCH ROAD
AIKEN, SC 29801

281

2-26-09

61-1/620

Amount
three thousand and 00/100

3,000.00

[redacted]

⑆062000069⑆ 892302509⑈ 0281

DORIS E TUMMILLO
TUMEKKI ACCOUNT
4201 SHILOH CHURCH ROAD
AIKEN, SC 29801

282

2-27-09 61-1/620

ARTURO ALFARO 1500 00

Septic - Annual P/M

[redacted]

⑆062000069⑆ 89230250961⑈ 0282

DORIS E TUMMILLO
TUMEKKI ACCOUNT
4201 SHILOH CHURCH ROAD
AIKEN, SC 29801

283

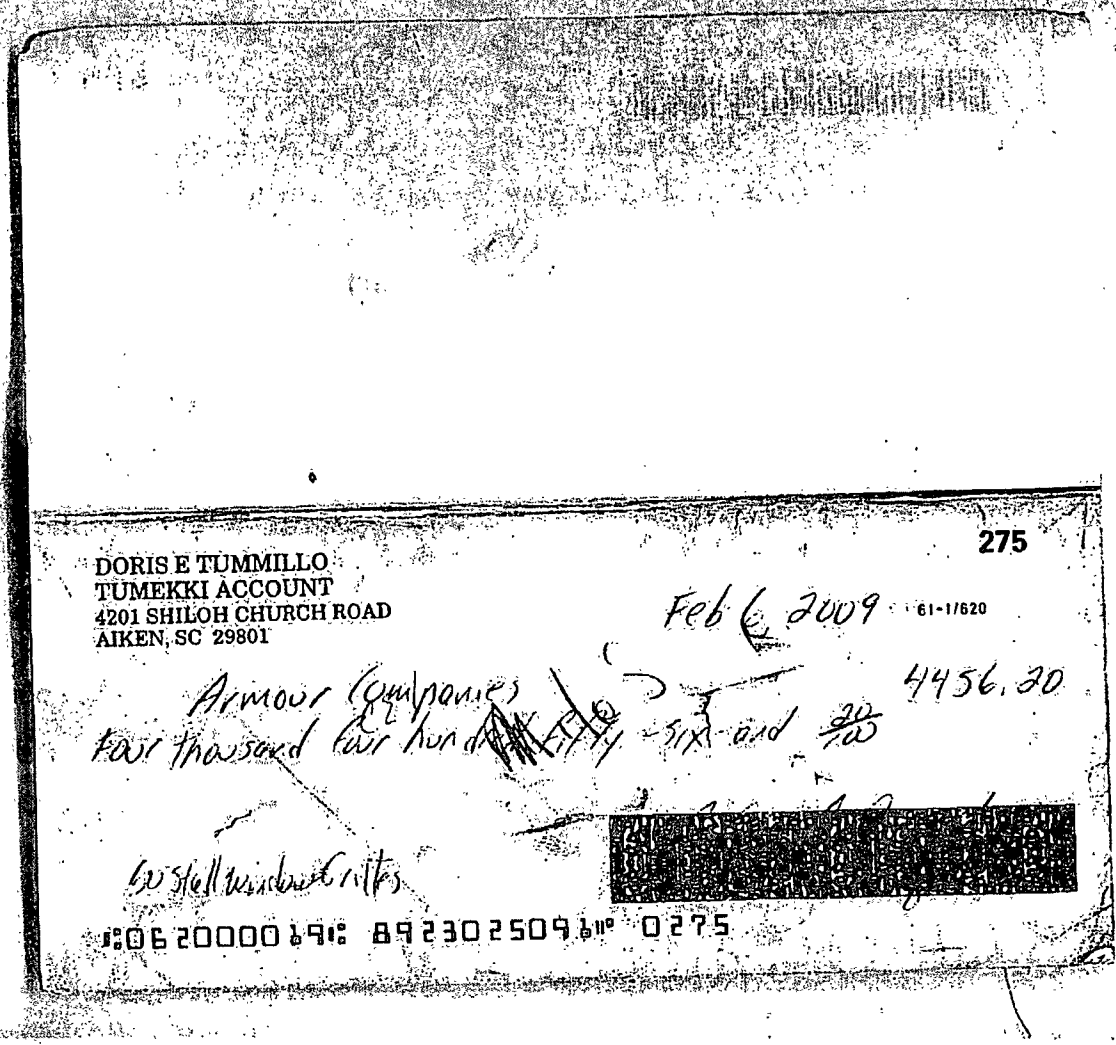
7-28-09

61-1/620

ANDINO ALFARO 1000 00/100

one thousand and 00/100 —

⑆061200001⑆ 892302509⑆ 0283



275

DORIS E TUMMILLO
TUMEKKI ACCOUNT
4201 SHILOH CHURCH ROAD
AIKEN, SC 29801

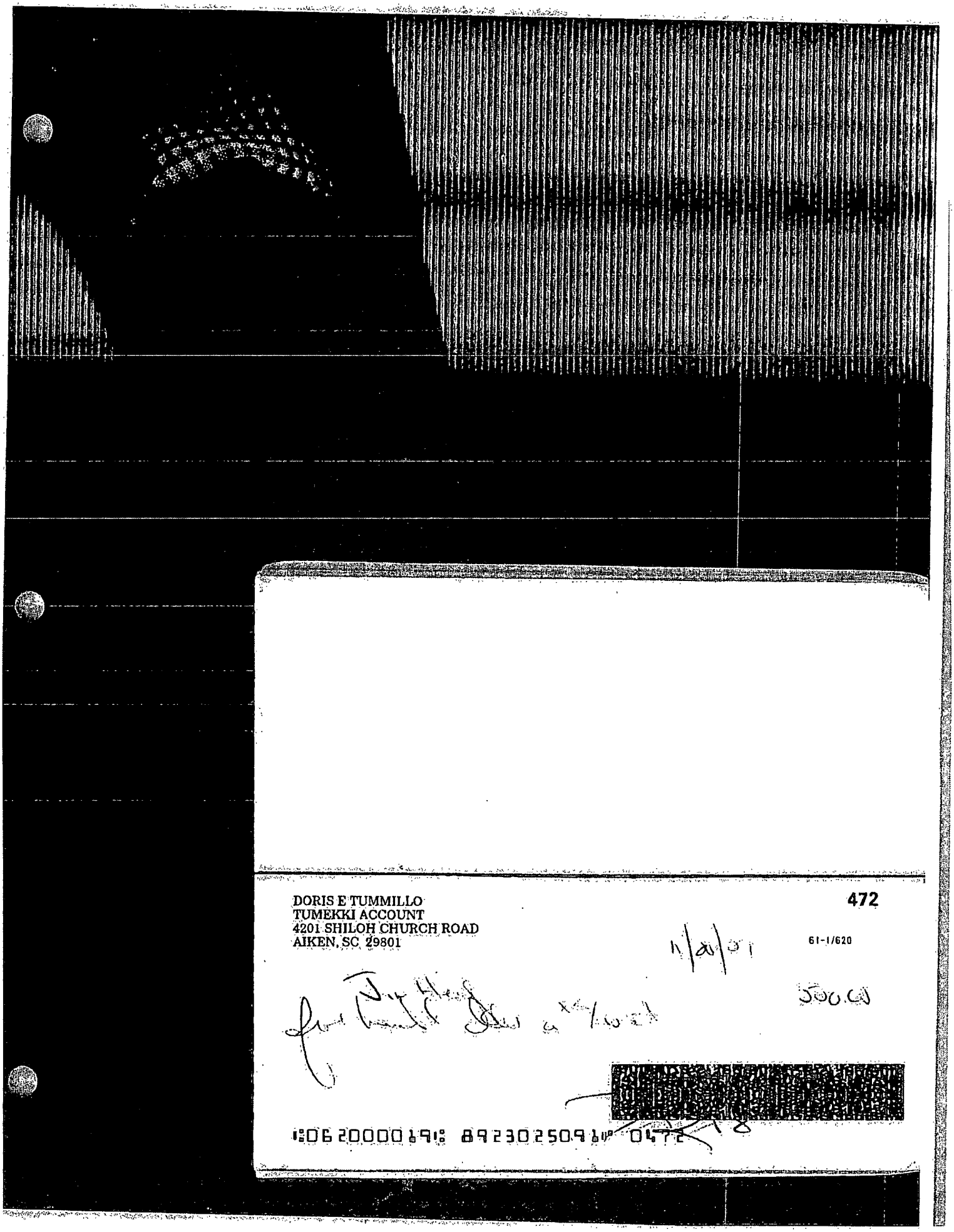
Feb 6 2009 61-1/620

Armour Companies 4456.20
Four thousand four hundred fifty-six and 20/100

[redacted]

Go Shell Windsor Cities

⑆062000691⑆ 892302509⑆ 0275



DORIS E TUMMILLO
TUMEKKI ACCOUNT
4201 SHILOH CHURCH ROAD
AIKEN, SC 29801

472

61-1/620

⑆062000191⑆ 89230250961⑈ 0472

DORIS E TUMMILLO
TUMEKKI ACCOUNT
4201 SHILOH CHURCH ROAD
AIKEN, SC 29801

424

61-1/620

[redacted]

⑆062000169⑆ 8923025096⑈ 0424

DORIS E TUMMILLO
TUMEKKI ACCOUNT
4201 SHILOH CHURCH ROAD
AIKEN, SC 29801

276

61-1/620

Manor Lane ~~ 6.00

[redacted]

⑆062000069⑆ 8923025096⑈ 0276

DORIS E TUMMILLO
TUMEKKI ACCOUNT
4201 SHILOH CHURCH ROAD
AIKEN, SC 29801

284

3-2-09

61-1/620

EURE CONSTRUCTION 1,430 60/100

fourteen hundred thirty 60/100

[redacted]

⑆062000019⑆ 89230250916⑈ 0284

DORIS E TUMMILLO
TUMEKKI ACCOUNT
4201 SHILOH CHURCH ROAD
AIKEN, SC 29801

287

3-10-09

61-1/620

MAYLE
fourteen-hundred twenty-four 25/100

1424 25/100

⑆062000619⑆ 892302509 6⑈ 0287

DORIS E TUMMILLO
TUMEKKI ACCOUNT
4201 SHILOH CHURCH ROAD
AIKEN, SC 29801

288

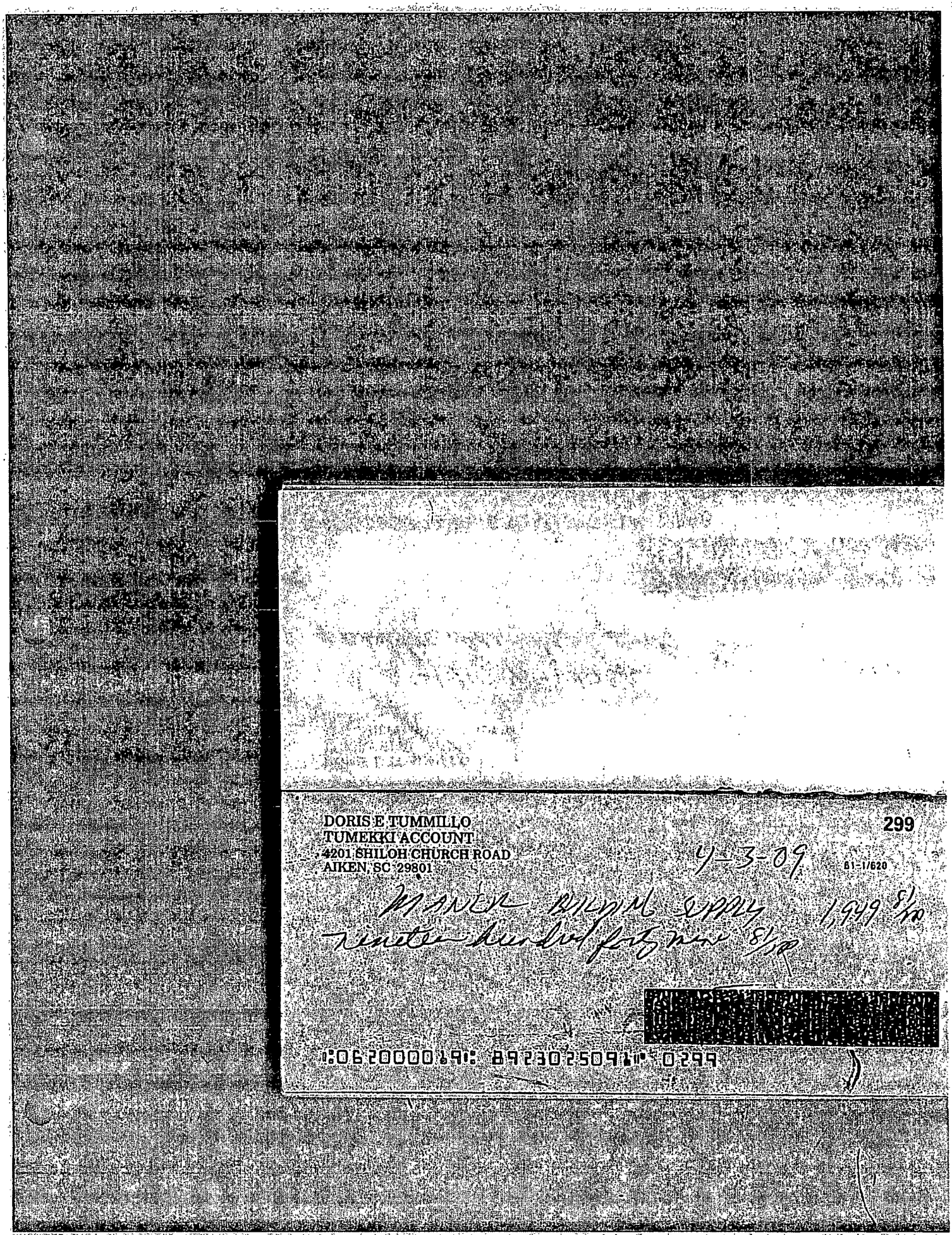
3-11-09

61-1/620

DAVIS INSULATION

three eight hundred thirty 00/100 3830 00

⑆062000069⑆ 89230250961 0288



DORIS E TUMMILLO
TUMEKKI ACCOUNT
4201 SHILOH CHURCH ROAD
AIKEN, SC 29801

299

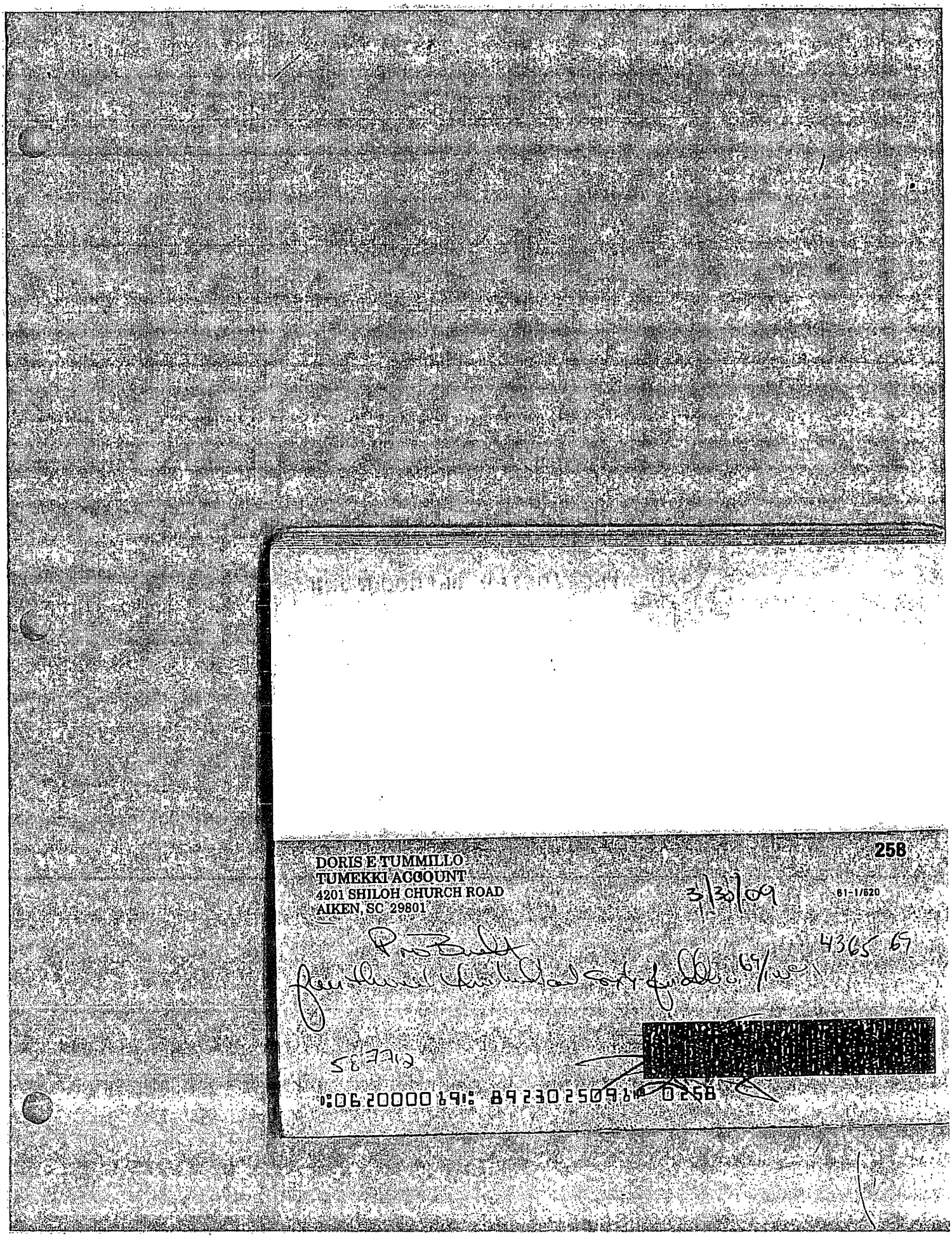
4-3-09

61-1/620

MAYER BLDG SUPPLY 1,949 81/100

Nineteen hundred forty nine 81/100

⑆062000061⑆ 892302509⑈ 0299



DORIS E TUMMILLO
TUMEKKI ACCOUNT
4201 SHILOH CHURCH ROAD
AIKEN, SC 29801

258

3/30/09

61-1/620

4365.67

:06200006 9: 89230250 96 0258

DORIS E TUMMILLO
TUMEKKI ACCOUNT
4201 SHILOH CHURCH ROAD
AIKEN, SC 29801

244

61-1/620

[redacted]

⑆063200006⑈ 892302509⑈ 0244

DORIS E TUMMILLO
TUMEKKI ACCOUNT
4201 SHILOH CHURCH ROAD
AIKEN, SC 29801

347

6/5/01

61-1/620

3215

[redacted]

#34. B. C

⑆062000019⑆ 892302509⑈ 0347

03/10/09 STORE: 98 A/R TRANSACTION AGING HOPE LUMBER GEORGIA AUGUSTA DS022P0D
14:15:10 PAGE 0001

ST	DATE	TRANS-NO	DUE	CHARGES THIS PER	PAYMENTS THIS PER	TOTAL BALANCE DUE	CURRENT	1-30 DAYS	31-60 DAYS	61-90 DAYS	90+ DAYS AND OVER	FIN-CHG
587712.000 O DESIGN CUSTOM BUILDERS, INC. CREDIT LIMIT: 15000 DATE OPENED: 10/09/08 PHONE #: 1904285712												
		7905 S N JUAN ROAD					RICHMOND, VIRGINIA				CONTACT: MIKE 8044148214 CELL	
SA	02/12/09	I 28550	0	03/10/09				191.02				
SA	02/12/09	I 28550	1	03/10/09				358.67				
SA	02/12/09	I 28550	1	03/10/09				376.86				
SA	02/12/09	I 28550	4	03/10/09				657.41				
SA	02/13/09	I 28559	3	03/10/09				347.40				
SA	02/16/09	R 28553	0	03/10/09				-140.07-				
SA	02/17/09	I 28559	2	03/10/09				821.76				
SA	02/17/09	I 28559	3	03/10/09				684.27				
SA	02/24/09	I 28560	8	03/10/09				1068.29				
	PREVIOUS BAL:		4365.69			4365.69		4365.69				

********** INVOICE AGING REPORT TOTALS **********

	PREV-BAL	CHARGES	PAYMENTS	BAL-DUE	CURRENT	1-30 DAYS	31-60 DAYS	61-90 DAYS	90+ DAYS	FIN-CHG
	4365.69			4365.69	4365.69					

NUMBER OF CUSTOMERS : 1 NET CHANGE:
NUMBER OF TRANSACTIONS: 9

PROBuild

STATEMENT

REMITTANCE ADVICE

REMIT TO:

PROBUILD SOUTH LLC - AUGUSTA
1825 GORDON HWY
AUGUSTA, GA 30904
(706) 733-2207 FAX (706) 737-0119

PROBUILD SOUTH LLC - AUGUS
1825 GORDON HWY
AUGUSTA, GA 30904
(706) 733-2207 FAX (706)

DESIGN CUSTOM BUILDERS, INC.
7906 SAN JUAN ROAD
RICHMOND, VIRGINIA 23229

587712.000 O 02/27/09
DESIGN CUSTOM BUILDERS, IN
7906 SAN JUAN ROAD
RICHMOND, VIRGINIA
23229

ST:58 ACCT: 587712.000 O DATE 02/27/09

TO INSURE PROPER CREDIT PLEASE RETURN THIS STUB WITH YOUR REMITTANCE. PLEASE CHECK OFF INVOICES BEING PAID

ST NUMBER DATE DUE BALANCE CUST PO

---------- ACCOUNT SUMMARY ----------

BEGINNING OF MONTH BALANCE		551.80
CHARGES	6499.34	
RETURNS	140.07-	
PAYMENTS	2545.38-	
ENDING BALANCE		4365.69

---------- PAYMENTS AND ADJUSTMENTS ----------

ST:58 DATE:02/24/09 CK NO: 244
PAYMENT: 2545.38

---------- OPEN INVOICES ----------

ST	NUMBER	DATE	DUE	BALANCE	CUST PO
58	SALE 2855851	21109	310	.00	TRT'D ETC
58	SALE 2855852	21109	310	.00	MISC MAT'L
58	SALE 2855890	21209	310	191.02	NAILS
58	SALE 2855891	21209	310	358.67	6X6'S/QUIK
58	SALE 2855893	21209	310	376.86	TEXT HARDI
58	SALE 2855894	21209	310	657.41	2X6X16'VGROO
58	SALE 2855923	21309	310	347.48	TRT'D/1X10
58	RETRN 2855930	21609	310	140.07-	OSB RETURN
58	SALE 2855982	21709	310	821.76	2X6 V-GROOVE
58	SALE 2855983	21709	310	684.27	1X10X16 SPF
58	SALE 2856098	22409	310	1068.29	2X6X12'VGROV

CURRENT :	4365.69	1-30 :	.00	BALANCE DUE
31-60 :	.00	61-90 :	.00	
OVER 90 :	.00	L-CHG :	.00	4365.69

THANK YOU FOR BUYING AT PRO-BUILD SOUTH LLC!

NUMBER DATE BALANCE

---- ACCOUNT SUMMARY ----

BEGINNING BAL	551.80
CHARGES	6499.34
RETURNS	140.07-
PAYMENTS	2545.38-
ENDING BAL	4365.69

PAYMENTS-----ADJUSTMENTS

22409 244
PY 2545.38

----- OPEN INVOICES ----

NUMBER	DATE	BALANCE
2855851	21109	.00
2855852	21109	.00
2855890	21209	191.02
2855891	21209	358.67
2855893	21209	376.86
2855894	21209	657.41
2855923	21309	347.48
2855930	21609	140.07-
2855982	21709	821.76
2855983	21709	684.27
2856098	22409	1068.29

BALANCE DUE

4365.69

TERMS: PAYMENT ON THIS ACCOUNT IS DUE IN FULL ON THE 10TH OF THE MONTH FOLLOWING PURCHASE. FINANCE CHARGES AT THE MAXIMUM LEGAL RATE IN THE STATE WHERE THE GOODS ARE PURCHASED WILL BE CHARGED ON ALL DELINQUENT AMOUNTS. CHARGES AND

INVOICE

LOADED BY	CHECKED BY	DELIVERED BY

PROBuild

1825 GORDON HWY
AUGUSTA, GA 30904
(706) 733-2207 FAX (706) 737-0119

# 28:15930	RETURN	02/16/09 06:52 01R

510

WT: 827.20

DESIGN CUSTOM BUILDERS, INC.
7506 SAN JUAN ROAD
RICHMOND, VIRGINIA 23229

SHIP TO: 4201 SHILOH CHURCH

LB5828 S 58
CB5815 P6140
DB5828 A5807
W5805
PR1107 C 3

CUST PO:DSB RETURN

CUST#:587712.0000 DEL DATE:02/13/09 TERMS: NET 10TH FROM: T 5801724
18042857718

LN	QTY	DESCRIPTION	CATALOG	UNITS	PRICE	AMOUNT
1	11-	4X8-3/4 T&G ORIENTED STRAND BOARD	340SBTG	D	11.90 EA	130.90-

Tumilla / 706-733-9363
Credit/return
2-20-09

DUE DATE: 03/10/09

	SUBTOTAL	130.90-
D	AIKEN CNTY, SC	9.17-
	TOTAL	140.07-

THANK YOU FOR HELPING YOUR RETURNS TO A MINIMAL

PAYMENT ON THIS ACCOUNT IS DUE IN FULL ON THE 10TH OF THE MONTH FOLLOWING PURCHASE. FINANCE CHARGES AT THE MAXIMUM LEGAL RATE IN THE STATE WHERE THE GOODS ARE PURCHASED WILL BE CHARGED ON ALL DELINQUENT AMOUNTS.

1. Check Your Load - No Adjustments Will Be Made To Our Account At Time of Delivery.
2. A Restocking Charge Will Be Made On All Merchandise Returned For Credit.
3. All Returns Must Be Accompanied By Your Store Invoice.
4. Special Orders Cannot Be Returned For Credit.

MERCHANDISE RECEIVED COMPLETE AND IN GOOD CONDITION

BY: _____
(SIGNATURE)

Thank You!
WE APPRECIATE YOUR BUSINESS
PLEASE KEEP THIS COPY FOR YOUR REFERENCE

INVOICE

LOADED BY	CHECKED BY	DELIVERED BY

ProBuild

1825 GORDON HWY
AUGUSTA, GA 30904
(706) 733-2207 FAX (706) 737-0119

# 28515982	INVOICE	02/17/09 14:44 011
	S10	

DESIGN CUSTOM BUILDERS, INC.
7906 SAN JUAN ROAD
RICHMOND, VIRGINIA 23229

SHIP TO: 4201 SHILOH CHURCH

MISC: TUES 2/17
CUST PO:2X6 V-GROOVE
OUR PO: 5808797

LB5828 6 58
CB5815 P3035
DB5828 A5807
TK5823 W5805
PRT101 C 3

CUST#:5877.2.0000 DEL DATE:02/17/09
18042857712

TERMS: NET 10TH

FROM: 0 4835848

LN	QTY	DESCRIPTION	CATALOG	UNITS	PRICE	AMOUNT
1	1200	2X6 T&G R2SYP V-GROOVE	WBMSO	E 1000	.64	768.00
2		GRD 75-16' PCS				
3		4201 SHILOH CHURCH RD				

DUE DATE: 03/10/09

	SUBTOTAL	768.00
D	AIKEN CNTY; SC	53.76
	TOTAL	821.76

))) BUILD WITH PRO-BUILD SOUTH LLC! (((

PAYMENT ON THIS ACCOUNT IS DUE IN FULL ON THE 10TH OF THE MONTH FOLLOWING PURCHASE. FINANCE CHARGES AT THE MAXIMUM LEGAL RATE IN THE STATE WHERE THE GOODS ARE PURCHASED WILL BE CHARGED ON ALL DELINQUENT AMOUNTS.

1. Check Your Load - No Adjustments Made If Not Called To Our Attention At Time of Delivery
2. Accounting Charge Will Be Made On All Merchandise Returned For Credit.
3. All Returns Must Be Accompanied By Your Store Invoice
4. Special Orders Cannot Be Returned For Credit.

MERCHANDISE RECEIVED COMPLETE AND IN GOOD CONDITION

BY: _____
(SIGNATURE)

Thank You!
WE APPRECIATE YOUR BUSINESS
PLEASE KEEP THIS COPY FOR YOUR REFERENCE

PROBuild

INVOICE

LOADED BY	CHECKED BY	DELIVERED BY

1825 GORDON HWY
AUGUSTA, GA 30904
(706) 733-2287 FAX (706) 737-0119

2853983 INVOICE 02/17/09 14:44 011

S10

WT: 2340.00

DESIGN CUSTOM BUILDERS, INC.
7906 SAN JUAN ROAD
RICHMOND, VIRGINIA 23229

SHIP TO: 4201 SHILOH CHURCH RD

MISC: SEND W/2X6'S
CUST PO: 1X10X16 SPF

LB5882 S 58
CB5815 P3035
DB5828 A5807
TK5823 W5805
PA1101 C 3

CUST#:5877: 2.0000 DEL DATE:02/17/09 TERMS: NET 10TH FROM: O 4835870
18042857712

LO	QTY	DESCRIPTION	CATALOG		UNITS	PRICE		AMOUNT
1	4	1110-16 #2 SPF/ESLP B192E	1101692	O	.4	12.65	EA	50.60
2	40	216-16 #2 TREATED SYP	2616T2	O	40	7.38	EA	295.20
3	15	214-14 #2 TREATED SYP	2414T2	O	15	4.38	EA	65.70
4	10	4X4-08 #1 TREATED SYP	4408T1	O	10	9.20	EA	92.00
5	2	RAIL RD HDG PLUS 3X120 650385	650385	O	2	68.00	EA	136.00
6		INPUT MATERIAL BY THE RACETRACK						
7		TO RIGHT OF MAIN ROAD++						

DUE DATE: 03/10/09

SUBTOTAL		639.50
AIKEN CNTY, SC	D	44.77
TOTAL		684.27

))) BUILD WITH PRO-BUILD SOUTH LLC! ((((

PAYMENT ON THIS ACCOUNT IS DUE IN FULL ON THE 10TH OF THE MONTH FOLLOWING PURCHASE. FINANCE CHARGES AT THE MAXIMAL LEGAL RATE IN THE STATE WHERE THE GOODS ARE PURCHASED WILL BE CHARGED ON ALL DELINQUENT AMOUNTS.

1. Check Your Load - No Adjustment Will Be Made On All Merchandise Returned For Credit.
2. A Restocking Charge Will Be Made On All Merchandise Returned For Credit.
3. All Returns Must Be Accompanied By Your Sales Invoice.
4. Special Orders Cannot Be Returned For Credit.

MERCHANDISE RECEIVED COMPLETE AND IN GOOD CONDITION

BY: _____

Thank You!

WE APPRECIATE YOUR BUSINESS

-PLEASE KEEP THIS COPY FOR YOUR REFERENCE-

INVOICE

LOADED BY	CHECKED BY	DELIVERED BY

ProBuild

1825 GORDON HWY
AUGUSTA, GA 30904
(706) 733-2207 FAX (706) 737-0119

285A89A | INVOICE | 02/24/09 11:22:01

510

DESIGN CUSTOM BUILDERS, INC.
7906 SAN JUAN ROAD
RICHMOND, VIRGINIA 23229

SHIP TO: 4201 SHILOH CHURCH

LB5892 S 58
CB5877 P3235
DB5892 A5807
TK5880 W5805
PR1101 C 3

CUST PO:2X6X12'VGROV
OUR PO: 5808818

CUST#:5877 2.0000 DEL DATE:02/23/09
18042857712

TERMS: NET 10TH

FROM: D 4835911

LA	QTY	DESCRIPTION	CATALOG	UNITS	PRICE	AMOUNT
1	1560	2X6 TRG 029YP V-GROOVE	VBMSO	E 1560	.64	998.40
2		5230 138-12' PCS				

Alejandro

DUE DATE: 30/10/09

D

SUBTOTAL	998.40
AIKEN CNTY, SC	69.89
TOTAL	1068.29

BUILD WITH PRO-BUILD SOUTH LLC!

PAYMENT ON THIS ACCOUNT IS DUE IN FULL ON THE 10TH OF THE MONTH FOLLOWING PURCHASE. FINANCE CHARGES AT THE MAXIMUM LEGAL RATE IN THE STATE WHERE THE GOODS AND SERVICES WILL BE CHARGED ON ALL DELINQUENT AMOUNTS.

1. Check Your Load - No Adjustments Made If Not Called To Our Attention At Time of Delivery.
2. A Restocking Charge Will Be Made On All Merchandise Returned For Credit.
3. All Returns Must Be Accompanied By Your Sales Ticket.
4. Special Order Goods Are Returned For Credit.

MERCHANDISE RECEIVED COMPLETE AND IN GOOD CONDITION

BY: _____
(SIGNATURE)

Thank You!
WE APPRECIATE YOUR BUSINESS
PLEASE KEEP THIS COPY FOR YOUR REFERENCE

ProBuild

INVOICE

LOADED BY	CHECKED BY	DELIVERED BY

1825 GORDON HWY
AUGUSTA, GA 30904
(706) 733-2217 FAX (706) 737-0113

2853890 INVOICE 02/12/09 14:50 011

S10

DES: GN/CUSTOM BUILDERS, INC.
7901 SAN JUAN ROAD
RICHMOND, VIRGINIA 23229

SHIP TO: 4201 SHILOH CHURCH

MISC: TODAY 2/12
CUST-PO:NAILS

LB5892 S 58
CB5815 P3035
DB5892 A5807
TK5880 W5805
PR1101 C 3

CUST#:5877: 2.0000 DEL DATE:02/12/09 TERMS: NET 10TH FROM: O 4835823
18042857712

LN	QTY	DESCRIPTION	CATALOG		UNITS	PRICE		AMOUNT
1	2	MIL RD HDG PLUS 3120 650385	650385	D	2	68.00	EA	136.00
2	1	PINLODE 2-3/8X113 FRM RH 650237	650237	D	1	91.00	EA	91.00
3	1	PINLODE 2-3/8X113 RS HDG 650383	650383	A	1	59.55	EA	59.55
4		4201 SHILOH CHURCH RD						

DUE DATE: 02/12/09

	SUBTOTAL	286.55
D	AIKEN CNTY, SC	20.06
	TOTAL	306.61
	Pd 2-24-09	(115.59)
		$191.02

BUILD WITH PROBUILD SOUTH LLC

PAYMENT ON THIS ACCOUNT IS DUE IN FULL ON THE 10TH OF THE MONTH FOLLOWING PURCHASE. FINANCE CHARGES AT THE MAXIMUM LEGAL RATE IN THE STATE WHERE THE GOODS ARE PURCHASED WILL BE CHARGED ON ALL DELINQUENT AMOUNTS.

1. Check Your Load - No Adjustments Made If Not Called To Our Attention At Time of Delivery
2. A Restocking Charge Will Be Made On All Merchandise Returned For Credit.
3. All Returns Must Be Accompanied By Your Sales Invoice.
4. Special Orders Cannot Be Returned For Credit.

MERCHANDISE RECEIVED COMPLETE AND IN GOOD CONDITION

BY:

Thank You!

WE APPRECIATE YOUR BUSINESS

PLEASE KEEP THIS COPY FOR YOUR RECORDS

2

INVOICE

LOADED BY	CHECKED BY	DELIVERED BY

ProBuild

1825 GORDON HWY
AUGUSTA, GA 30904
(706) 733-2227 FAX (706) 737-0119

№ 20511891 | INVOICE | 02/12/09 14:50 011

S10

WT: 1440.00

DESIGN CUSTOM BUILDERS, INC.
790E SAN JUAN ROAD
RICHMOND, VIRGINIA 23229

SHIP TO: 4201 SHILOH CHURCH R LBS892 S 58
CBS815 P3035
SBS892 A3807
MISC: THURS 2/12 TK5880 W5805
CUST PO:6X6'S/QUIK PR1101 C 3

CUST#:587712.0000 DEL DATE:02/12/09 TERMS: NET 10TH FROM: D 4835842
18042857712

LO	QTY	DESCRIPTION	CATALOG		UNITS	PRICE		AMOUNT
1	10	6X6-16 02 TREATED SYP	6616T2	D	10	28.62	EA.	286.20
2	10	QUIKRETE CONCRETE MIX 80LB BAG	CONCMIX80	D	10	4.90	BG	49.00

DUE DATE: 02/18/09

	SUBTOTAL	335.20
D	AIKEN CNTY, SC	23.47
	TOTAL	358.67

))) BUILD WITH HD-BUILD SOUTH LLC! (((

PAYMENT ON THIS ACCOUNT IS DUE IN FULL ON THE 10TH OF THE MONTH FOLLOWING PURCHASE. FINANCE CHARGES AT THE MAXIMUM LEGAL RATE IN THE STATE WHERE THE GOODS ARE PURCHASED WILL BE CHARGED ON ALL DELINQUENT AMOUNTS.

1. Check Your Load - No Adjustment Made If Not Called To Our Attention At Time of Delivery
2. A Restocking Charge Will Be Made On All Merchandise Returned For Credit
3. All Returns Must Be Accompanied By Your Sales Invoice.
4. Special Orders Cannot Be Returned For Credit.

MERCHANDISE RECEIVED COMPLETE AND IN GOOD CONDITION

BY:

Thank You!

WE APPRECIATE YOUR BUSINESS

PLEASE KEEP THIS COPY FOR YOUR REFERENCE

2

ProBuild

INVOICE

LOADED BY	CHECKED BY	DELIVERED BY

1825 GORDON HWY
AUGUSTA, GA 30904
(706) 733-2207 FAX (706) 737-0119

285:893 INVOICE 02/12/09 14:50 011

910

DESIGN CUSTOM BUILDERS, INC.
7906 SAN JUAN ROAD
RICHMOND, VIRGINIA 23229

SHIP TO: 4201 SHILOH CHURCH

MISC: THURS 2/12
CUST PO:TEXT HARDI
OUR PO: 5808762

LB5892 S 58
CB5815 P3035
DB5892 A5807
TK5880 W5805
PR1101 C 3

CUST#:587712.0000 DEL DATE:02/12/09
18042857712

TERMS: NET 10TH

FROM: O 4835777

LN	QTY	DESCRIPTION	CATALOG		UNITS	PRICE	AMOUNT
1	12	5/16" 4X8 TEXTURED HARDIE PANEL	WBM5D	E	12	29.35	352.20
2		**PUT MATERIAL TO RT SIDE BY					
3		RR CETNRCK AREA**					

DUE DATE: 02/19/09

	SUBTOTAL	352.20
D	AIKEN CNTY, SC	24.66
	TOTAL	376.86

))) BUILD WITH PROBUILD SOUTH LLC! ((((

PAYMENT ON THIS ACCOUNT IS DUE IN FULL ON THE 10TH OF THE MONTH FOLLOWING PURCHASE. FINANCE CHARGES AT THE MAXIMUM LEGAL RATE IN THE STATE WHERE THE GOODS ARE PURCHASED WILL BE CHARGED ON ALL DELINQUENT AMOUNTS.

1. Check Your Load - No Adjustment Made If Not Called To Our Attention At Time of Delivery.
2. A Restocking Charge Will Be Made On All Merchandise Returned For Credit.
3. All Returns Must Be Accompanied By Your Sales Invoice.
4. Special Orders Cannot Be Returned For Credit.

MERCHANDISE RECEIVED COMPLETE AND IN GOOD CONDITION

BY:

Thank You!
WE APPRECIATE YOUR BUSINESS
PLEASE KEEP THIS COPY FOR YOUR REFERENCE

2

PROBuild

INVOICE

LOADED BY	CHECKED BY	DELIVERED BY

1825 GORDON HWY
AUGUSTA, GA 30904
(706) 733-2207 FAX (706) 737-0119

# 2851894	INVOICE	02/12/09 14:51 011

S10

DESIGN CUSTOM BUILDERS, INC.
7906 SAN JUAN ROAD
RICHMOND, VIRGINIA 23229

SHIP TO: 4201 SHILOH CHURCH

MISC: THURS 2/12 ON ARRV
CUST PO:2X6X16' VBROO
OUR PO: 5808757

LB5892 S 58
CB5815 P3035
DB5892 A5807
TK5880 W5805
PR1101 C 3

CUST#:5877.2.0000 DEL DATE:02/12/09
18042857712

TERMS: NET 10TH FROM: D 4835770

LO	QTY	DESCRIPTION	CATALOG		UNITS	PRICE	AMOUNT
1	960	2 X 6 TRB #2SYP V-GROOVE	WBNSO	E	960	.64	614.40
2		BUND 60-16' PCS					
3		* PUT MATERIAL TO LEFT BY B16					
4		B [illegible]					

RE DATE: 03/10/09

SUBTOTAL	614.40
AIKEN CNTY, SC	43.01
TOTAL	657.41

[illegible] BUILD WITH PRO-BUILD SOUTH LLC [illegible]

PAYMENT ON THIS ACCOUNT IS DUE IN FULL ON THE 10TH OF THE MONTH FOLLOWING PURCHASE. FINANCE CHARGES AT THE MAXIMUM LEGAL RATE IN THE STATE WHERE THE GOODS ARE PURCHASED WILL BE CHARGED ON ALL DELINQUENT AMOUNTS.

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4. Special Orders Cannot Be Returned For Credit.

MERCHANDISE RECEIVED COMPLETE AND IN GOOD CONDITION

BY:

Thank You!

WE APPRECIATE YOUR BUSINESS

2

PROBuild

INVOICE

LOADED BY	CHECKED BY	DELIVERED BY

1825 GORDON HWY
AUGUSTA, GA 30904
(706) 733-2207 FAX (706) 737-0119

295:8951 | INVOICE | 02/11/09 11:11 011

S10

WT: 4950.40

DESIGN CUSTOM BUILDERS, INC.
7906 SAN JUAN ROAD
RICHMOND, VIRGINIA 23229

SHIP TO: 4201 SHILOH CHURCH
TAKE TO RT SIDE BY RACETRACK
MISC: WED AM 2/11
CUST PO:TAT'D ETC

LB5882 S 58
CB5877 P3035
DB5828 A5807
TK5823 W5805
PR1101 C 3

CUST#:587712.0000 DEL DATE:02/11/09 TERMS: NET 10TH FROM: O 4835796
18042857712

LO	QTY	DESCRIPTION	CATALOG		UNITS	PRICE		AMOUNT
1	48	2X4-92 5/8 5/8 SPF STUD	2408SS	O	48	1.63	EA	78.24
2	8	2X4-12 #2 SPF S4S	241282	O	8	2.98	EA	23.84
3	28	2X4-14 #2 SPF S4S	261482	O	28	5.63	EA	157.64
4	7	2X10-12 #2 TREATED SYP	21012T2	O	7	9.66	EA	67.62
5	18	2X12-12 #2 TREATED SYP	2812T2	O	18	7.43	EA	133.74
	52	5/4X6-12 #2 TREATED DECK SYP	54612T2	O	52	4.34	EA	225.68
	3	2X12-12 #2 TREATED SYP	21212T2	O	3	17.20	EA	51.60
8	8	2X12-12 #2 TREATED SYP	2412T2	O	8	3.79	EA	30.32
9	1	6X16-16 #2 TREATED SYP	6616T2	O	1	28.62	EA	28.62
10	11	4X8-3/4 T&G ORIENTED STRAND BOARD	340SBTG	O	11	11.90	EA	130.90
11	1	RFI 015 FELT 432 SQFT NON RATED	FELT15NR	O	1	20.15	RO	20.15
12	14	4X8-7/16 ORIENTED STRAND BOARD	716OSB	O	14	5.25	EA	73.50
13	12	QUIKRETE CONCRETE MIX 80LB BAG	CONCMIX80	O	12	4.90	BG	58.80
14	1	NAIL RD HDG PLUS 3X120 650385	650385	O	1	68.00	EA	68.00

DATE: 02/10/09

	SUBTOTAL	1148.65
D	AIKEN CNTY, SC	80.41
	TOTAL	1229.06

BUILD WITH PRO-BUILD SOUTH LLC! ((((Jay Flow

MENT ON THIS ACCOUNT IS DUE IN FULL ON THE 10TH THE MONTH FOLLOWING PURCHASE. FINANCE ARGES AT THE MAXIMUM LEGAL RATE IN THE STATE ERE THE GOODS ARE PURCHASED WILL BE CHARGED ALL DELINQUENT AMOUNTS.

1. Check Your Load - No Adjustments Made If Not Called To Our Attention At Time of Delivery
2. A Restocking Charge Will Be Made On All Merchandise Returned For Credit.
3. All Returns Must Be Accompanied By Your Store Invoice.
4. Special Orders Cannot Be Returned For Credit.

MERCHANDISE RECEIVED COMPLETE AND IN GOOD CONDITION

BY

Thank You!

WE APPRECIATE YOUR BUSINESS

2

PROBuild

INVOICE

LOADED BY	CHECKED BY	DELIVERED BY

825 GORDON HWY
AUGUSTA, GA 30904
(706) 733-2207 FAX (706) 737-0119

2851852 | INVOICE | 02/11/09 11:13 011

910

WT: 3787.21

DESIGN CUSTOM BUILDERS, INC.
7906 SAN JUAN ROAD
RICHMOND, VIRGINIA 23229

SHIP TO: 4201 SHILOH CHURCH RD-TO LEFT BY BIG BARN
MISC: WED AM 2/11
CUST PO:MISC MAT'L

LB5882 S 58
CB5877 P3035
DB5828 A5807
TK5823 W5805
PR1101 C 3

CUST#:587712.0000 DEL DATE:02/11/09 TERMS: NET 10TH FROM: O 4835795
18042857712

LO	QTY	DESCRIPTION	CATALOG		UNITS	PRICE		AMOUNT
1	17	2X10-16 #2 TREATED SYP	2816T2	O	17	9.35	EA	158.95
2	17	2X10-16 #2 TREATED SYP	2616T2	O	17	7.38	EA	125.46
3	40	2X6-12 #2 SYP SAS	2612Y2	O	40	3.47	EA	138.80
4	34	2X4-08 #2 SPF SAS	2408S2	O	34	1.54	EA	52.36
5	11	4X8-3/4 T&G ORIENTED STRAND BOARD	340SBTG	O	11	11.90	EA	130.90
6		**HANDLE THE OSB SEPARATE FROM						
7		TH: OTHER MATERIAL PLEASE**						
8		4201 SHILOH CHURCH RD-BY THE						
9		BIG BARN						

DATE: 02/10/09

	SUBTOTAL	606.47
D	AIKEN CNTY, SC	42.46
	TOTAL	648.93

BUILD WITH PROBUILD SOUTH LLC! ((((

YMENT ON THIS ACCOUNT IS DUE IN FULL ON THE 10TH OF THE MONTH FOLLOWING PURCHASE. FINANCE CHARGES AT THE MAXIMUM LEGAL RATE IN THE STATE WHERE THE GOODS ARE PURCHASED WILL BE CHARGED ON ALL DELINQUENT AMOUNTS

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MERCHANDISE RECEIVED COMPLETE AND IN GOOD CONDITION

BY: _____

Thank You!
WE APPRECIATE YOUR BUSINESS

2

PROBuild

INVOICE

LOADED BY	CHECKED BY	DELIVERED BY

25 GORDON HWY
UGUSTA, GA 30904
706) 733-2207 FAX (706) 737-0119

* 2835899 INVOICE 02/12/09 14:50 011

S10

DES GN/CUSTOM BUILDERS, INC.
7906 SAN JUAN ROAD
RICHMOND, VIRGINIA 23229

SHIP TO: 4201 SHILOH CHURCH

MISC: TODAY 2/12
CUST PO:NAILS

LB5892 S 58
CB5815 P3035
DB5892 A5807
TK5880 W5805
PR1101 C 3

CUST#:587712.0000 DEL DATE:02/12/09
18042857712

TERMS: NET 10TH

FROM: O 4835823

LN	QTY	DESCRIPTION	CATALOG	UNITS	PRICE		AMOUNT
1	2	NAIL RD HDG PLUS 3X120 650385	650385	0 2	68.00	EA	136.00
2	1	PASLODE 2-3/8X113 FRH RH 650237	650237	0 1	91.00	EA	91.00
3	1	PASLODE 2-3/8X113 RS HDG 650383	650383	A 1	59.55	EA	59.55
4		4201 SHILOH CHURCH RD					

DATE: 02/12/09

	SUBTOTAL	286.55
D	AIKEN CNTY, SC	20.06
	TOTAL	306.61

TLD WITH PRO-BUILD SOUTH LLC! ((((

MENT ON THIS ACCOUNT IS D E IN FULL ON THE 15TH THE MONTH FOLLOWING PURCHASE. FINANCE RGES AT THE MAXIMUM LEGAL RATE IN THE STATE RE THE GOODS ARE PURCHASED WILL BE CHARGED LL DELINQUENT AMOUNTS.

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MERCHANDISE RECEIVED COMPLETE AND IN GOOD CONDITION

BY _____ (SIGNATURE)

Thank You!

WE APPRECIATE YOUR BUSINESS

PLEASE KEEP THIS

2

PROBuild

INVOICE

LOADED BY	CHECKED BY	DELIVERED BY

5 GORDON HWY
UGUSTA, GA 30904
706) 733-2207 FAX (706) 737-0119

* 2895891 | INVOICE | 02/12/09 14:50 011

S10

WT: 1440.00

DES GN CUSTOM BUILDERS, INC.
7906 SAN JUAN ROAD
RICHMOND, VIRGINIA 23229

SHIP TO: 4201 SHILOH CHURCH R L.B5892 S 58
CB5815 P3035
DB5892 A5807
MISC: THURS 2/12 TK5880 W5805
CUST PO:6X6'S/QUIK PR1101 C 3

CUST#:587712.0000 DEL DATE:02/12/09 TERMS: NET 10TH FROM: O 4835842
18042857712

LO	QTY	DESCRIPTION	CATALOG		UNITS	PRICE		AMOUNT
1	10	6X6-16 02 TREATED SYP	6616T2	O	10	28.62	EA	286.20
2	10	QUIKRETE CONCRETE MIX 80LB BAG	CONCMIX80	O	10	4.90	BG	49.00

DATE: 02/10/09

	SUBTOTAL	335.20
D	AIKEN CNTY, SC	23.47
	TOTAL	358.67

BUILD WITH PRO-BUILD SOUTH LLC! ((((

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MERCHANDISE RECEIVED COMPLETE AND IN GOOD CONDITION

BY:

Thank You!

WE APPRECIATE YOUR BUSINESS

2

PROBuild

INVOICE

LOADED BY	CHECKED BY	DELIVERED BY

425 GORDON HWY
AUGUSTA, GA 30904
(706) 733-2207 FAX (706) 737-0119

2835893 INVOICE 02/12/09 14:50 011

910

DESIGN CUSTOM BUILDERS, INC.
7901 SAN JUAN ROAD
RICHMOND, VIRGINIA 23229

SHIP TO: 4201 SHILOH CHURCH

MISC: THURS 2/12
CUST PO:TEXT HARDI
OUR PO: 5808762
TERMS: NET 10TH

LB5892 8 58
CB5815 P3035
DB5892 A5807
TK5880 W5805
PR1101 C 3

CUST#:5877: 2.0000 DEL DATE:02/12/09
18042857712

FROM: O 4835777

LO	QTY	DESCRIPTION	CATALOG	UNITS	PRICE	AMOUNT
1	12	5/16" 4X8 TEXTURED HARDIE PANEL	WBMSO	E 12	29.35	352.20
2		**CUT MATERIAL TO RT SIDE BY				
3		MASTER BACK AREA**				

DATE: 02/10/09

	SUBTOTAL	352.20
D	AIKEN CNTY, SC	24.66
	TOTAL	376.86

BUILD WITH PRO-BUILD SOUTH LLC! ! ! !

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MERCHANDISE RECEIVED COMPLETE AND IN GOOD CONDITION

BY

Thank You!

WE APPRECIATE YOUR

2

PROBuild

INVOICE

LOADED BY	CHECKED BY	DELIVERED BY

25 GORDON HWY
AUGUSTA, GA 30904
(706) 733-2207 FAX (706) 737-0119

2855894 INVOICE 02/12/09 14:51 011

S10

DESIGN CUSTOM BUILDERS, INC.
7906 SAN JUAN ROAD
RICHMOND, VIRGINIA 23229

SHIP TO: 4201 SHILOH CHURCH

MISC: THURS 2/12 ON ARRV
CUST PO:2X6X16' VGROO
OUR PO: 5808757

LB5892 S 58
CB5815 P3035
DB5892 A5807
TK5880 W5805
PR1101 C 3

CUST#:587712.0000 DEL DATE:02/12/09
18042857712

TERMS: NET 10TH FROM: D 4835770

LN	QTY	DESCRIPTION	CATALOG	UNITS	PRICE	AMOUNT
1	960	2X6 T&G S2SYP V-GROOVE	WBMSO	E	960 .64	614.40
2		END 60-16' PCS				
3		INPUT MATERIAL TO LEFT BY BIG				
4		BINGS				

E DATE: 02/10/09

SUBTOTAL	614.40
D AIKEN CNTY, SC	43.01
TOTAL	657.41

BUILD WITH PROBUILD SOUTH LLC! ((( )

YMENT ON THIS ACCOUNT IS DUE IN FULL ON THE 10TH F THE MONTH FOLLOWIN PURCHASE. FINANCE HARGES AT THE MAXIMUM L GAL RATE IN THE STATE HERE THE GOODS ARE PURC HASED WILL BE CHARGED ALL DELINQUENT AMOUNTS

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MERCHANDISE RECEIVED COMPLETE AND IN GOOD CONDITION

BY:

Thank You!

WE APPRECIATE YOUR

2

Goldman's True Value
2615 Columbia Hwy North
Aiken, SC 29805
803-649-4908 Fax: 803-649-1732

STATEMENT

For the period: 3/25/2009 to 04/24/2009

Terms: NET THE 5TH

Account #: 9737

DORIS TUMMILLO
4201 SHILOH CHURCH ROAD
AIKEN, SC 29805

Date	Reference	PO / REF	Due Date	Credit	Debit
3/25/2009	Previous Balance				$4,559.04
03/28/2009	Payment Received			($4,559.04)	
04/03/2009	B46020		05/05/2009		$155.99
04/04/2009	B46170		05/05/2009		$121.98
04/13/2009	A48000		05/05/2009		$94.76
04/14/2009	A48068		05/05/2009		$60.99
04/15/2009	A48118		05/05/2009		$30.95
04/17/2009	B47056		05/05/2009		$114.99
04/18/2009	B47099		05/05/2009		$51.49
04/18/2009	A48358		05/05/2009		$17.91
04/18/2009	B47168		05/05/2009		$7.35
04/23/2009	B47437		05/05/2009		$1,225.90
			Totals:	($4,559.04)	$1,882.31
			Current Activity:		($2,676.73)

Account Summary

Previous Balance:	$4,559.04
Payments, Credits	($4,559.04)
Purchases, Charges	$1,882.31
New Balance:	$1,882.31

Aging Report by Due Date

PAST DUE:	$0.00
Current:	$1,882.31
1 to 30 Days:	$0.00
31 to 60 Days:	$0.00
61 to 90 Days:	$0.00
Over 90 Days:	$0.00

New Balance:

$1,882.31

Invoices on Reverse Side

prt042520090823S6

9998 STATE ROUTE 43
STREETSBORO, OH 44241
1-800-321-2142
PH: 1-330-626-5000 FAX: 1-330-626-5011
www.bigdweb.com sales@bigdweb.com

Page	Date	Invoice No.
1	02/13/09	802732*

SUMMARY COPY

SOLD TO

Mike Tummillo
4201 Shilo Church Rd
Aiken, SC 29801

SHIP TO

Customer No.	Sales No.	Reference	Media Code	Terms
345139	JJ /JJ		/SALE	XXXXXXXX6428 DISCOVER MOM

Credit Card Number	Type	Phone Number	Total Wt.	Zone	Tax	Ship Via
		(804) 614-8214	39960.0	41		T

Message:

GO TO OUR WEBSITE TO SEE MORE GREAT SPECIALS
ORDER ONLINE 24 HOURS A DAY!
WWW.BIGDWEB.COM

Qty	B/O	Shipped	Item	Description	Unit Price	Dist	Extension
40	0	40	873 CHR	STALL GATE LARGE WITH YOKE COUNTRY ESTATE 52X62 WITH MOUNTING BRACKETS	99.9500	--	3998.00
1	0	1	FREIGHT	THIS ITEM SHIPS FREIGHT TRUCK WE WILL EMAIL YOU WITH EXACT CHARGES FOR YOU APPROVAL	0.0000	--	0.00

MERCHANDISE INVOICE TOTAL $	3998.00
SHIPPING & HANDLING $	550.00
INVOICE TOTAL $	4548.00
CR. CARD: D2, APPR:012259 $	-4548.00
BALANCE FOR THIS ORDER $	0.00

Progress Paint Manufacturing

201 E. Market Street
Louisville, KY 40202

Phone: (502)587-8685 Fax: (502)587-2440

Invoice

Invoice #: 2009-22297-00
Bill to PO:

BILL TO:

DORIS TUMMILLO FARMS INC
4201 SHILOH CHURCH ROAD
AIKEN SC 29801

SHIP TO:

DORRIS TUMMILLO FARM INC
4201 SHILOH CHURCH ROAD
AIKEN, SC 29801

Ordered	Shipped	Invoiced	Terms	Payment Due	Shipped Via	B/L #
02/19/2009	02/27/2009	02/27/2009	Net 30 Days	03/29/2009	Common Carrier	

Part Number/Description	Unit	Ordered	Shipped	Price	Extension
88207 5GL - POLY VARNISH GLOSS	5GL	24	25	$97.40	$2,435.00

AMOUNT DUE: $2,435.00

A Service Charge of 1.5% will be applied to past due balances

Original FIXATT

Goldman's True Value
2615 Columbia Hwy North
Aiken, SC 29805
803-649-4908 Fax: 803-649-1732

STATEMENT

For the period: 5/25/2009 to 06/24/2009

Terms: NET THE 5TH

Account #: 9737

DORIS TUMMILLO
4201 SHILOH CHURCH ROAD
AIKEN, SC 29805

Date	Reference	PO / REF	Due Date	Credit	Debit
5/25/2009	**Previous Balance**				**$599.01**
06/06/2009	Payment Received			($599.01)	
06/10/2009	B50784		07/05/2009		$46.65
06/16/2009	A52058		07/05/2009		$3,322.40
06/24/2009	A52601		07/05/2009		$21.39
		Totals:		**($599.01)**	**$3,390.44**
		Current Activity:			**$2,791.43**

Account Summary

Previous Balance:	**$599.01**
Payments, Credits	**($599.01)**
Purchases, Charges	**$3,390.44**
New Balance:	**$3,390.44**

Aging Report by Due Date

PAST DUE:	**$0.00**
Current:	$3,390.44
1 to 30 Days:	$0.00
31 to 60 Days:	$0.00
61 to 90 Days:	$0.00
Over 90 Days:	$0.00

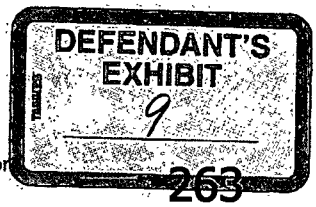
New Balance:

$3,390.44

Invoices on Reverse Side

ELITE CONSTRUCTION, INC.

PURCHASE CONTRACT



This fax was received by GFI FAXmaker fax server. For more information, visit: http://www.gfi.com

Name Doris Tummillo Date 7-18-08

Address Shiloh Church Road State, Zip S.C.

Directions to Site

Building Use Barn Building Size W 64' L 204' H 10'

Wall Color _____ Gable _____ Roof _____ Trim _____ Doors _____

Power on site? X Yes ___ No

Miscellaneous Building has three 72' long by 24' wide extensions with five stalls centered in each. Building permitted will be provided by Elite Construction. Electrical, plumbing, and two coats of polyurethane will be included in the price.

Building permit – Grading – Fill furnishing by owner unless specified.
We shall furnish all labor and material as described above and in accordance with the specifications and conditions shown on reverse side of this contract unless otherwise specified.

Total Contract $358,379.00

Financing by

Terms

30% of total cost of project due upon signing.
30% of total cost of project due after roof completion.
30% of total cost of project due after exterior walls completed
10% of total cost will be due when job is completed, and be paid within 10 days of completion.
If amount due is not paid within 10 days of completion, there will be a 5% late charge added to the total.
Any change orders shall be in writing and approved by the builder.

Amount due at signing $107,513.70 30%

Amount due after roof completion $107,513.70 30%

Amount due at completion of exterior walls $107,513.70 30%

Amount due at completion of job $35,837.90 10%

Buyer

Tummillo
Printed Name

Signed Name

Elite Construction Representative

Chris Key
Printed Name

Chris Key
Signed Name

This fax was received by GFI FAXmaker fax server. For more information, visit: http://www.gfi.com

GENERAL SPECIFICATIONS CUSTOM POLE BUILDINGS

1. Foundation columns and other lumber which comes in contact with the ground will be pressure treated to resist rot, decay and insect damage
2. Standard spacing of side wall columns is 10' on center.
3. Truss lumber will be stress rated 1600 F.
4. Each building will have pressure treated splash boards at the bottom of the wall.
5. Truss designs are by licensed professional engineers and are certified as to load capacity. Standard spacing is 10' on center.
6. All trusses to be bolted as well as spiked into wall columns.
7. Hardware items such as door track, hinges, bolts, connector plates, door handles, hooks, etc., will be plated with zinc or equal.
8. Minor changes, which would not adversely affect the strength or appearance, may be made without notification.
9. Walls of this building are not designed to withstand the lateral loads imposed by the contact storage of bulk goods, such as fertilizer, grain, chopped or baled hay, or any loads that tend to settle or spread in storage.
10. All untreated lumber on the building exterior will be covered with pre-formed moldings.
11. Guarantee on pressure treated wood, workmanship and material becomes effective upon full payment of invoice. Craftsmanship and all other materials not covered under any other warranties will be covered for six months after completion date of the job.

TERMS OF SALE

1. Building will be Custom Structure and will be erected according to the above specifications. Builder will furnish all materials, labor and supervision for the building, but will not perform, furnish or install any electrical wiring, plumbing, heating, painting, glazing, concrete work, grading or filling, unless otherwise specified.
2. A service charge of 5% per month shall accrue to all accounts more than 30 days past invoice date. Should it be necessary to force collection of any monies due under this agreement, buyer shall be liable for service charges and reasonable attorney fees.
3. Buyer agrees to insure building for the amount of the contract price with the following coverage: fire, lightning, windstorm and hail. Such coverage is to be put into effect on date material is delivered to site and will remain in effect until contract price has been paid in full. The risk of any such casualty is assumed by the owner. In the event of loss, payment will be made to the owner and/or builder as their interests may appear.
4. Builder will carry adequate insurance to protect owner against any negligence by builder or his workmen.
5. Builder will carry workers' compensation on all workmen he employs on the job.
6. Builder is responsible for obtaining any required building permits prior to erection.
7. If possible, buyer will be at the building site at the start and finish of construction.
8. Buyer is responsible for and agrees to clear and level building site prior to scheduled date of erection. Leveling shall be performed so the site will not vary more than 6 inches from high to low points.
9. Buyer and builder assume that the building site is free from underground obstructions. Where rock, stumps, concrete or other unforeseen obstruction hinder digging holes for foundation columns, a charge will be made in accordance with additional time required. The builder reserves the right to decline jobs where underground obstructions are too severe, unless buyer can have site prepared.
10. Builder is not responsible for damage to underground utilities, such as tile, water lines, electric lines, etc.
11. Certain construction items such as ventilators, roof hatches, eave troughs, doors, windows, etc., are to be installed in a workmanlike manner in proper adjustment. However, such items are not sold with the understanding that they will never leak or need adjustment. This future maintenance and adjustment is the responsibility of the buyer.
12. If buyer or his agent requests change from specifications, any extra costs for such changes will be added to the purchase price.
13. This agreement is subject to verification by office of the builder.
14. This quotation is automatically withdrawn and is void after 30 days.
15. Occupancy or use of the building by purchase before completion will constitute acceptance of the building and payment in full is required at that time.

This fax was received by GFI FAXmaker fax server. For more information, visit: http://www.gfi.com

Building Specifications

Size

1. Length 204'
2. Width 64'
3. Overhang N/A
4. Other (3) 24' x 72' wings

Concrete and Insulation

1. Aisle way 14'
2. Aprons N/A
3. Bags N/A
4. Insulation Roof
5. Other

Color and Material

1. Roof 40 yr. Ag panel
2. Exterior Walls 40 yr. Ag panel (where applicable)
3. Stalls T&G
4. Bars (will be included in change order)
5. Doors Double Dutch 4' x 4' wood with cross bucks
6. Windows Dutch 4' x 4' wood with cross bucks
7. Interior Walls T&G
8. Other

INITIALS

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Exterior

1. Cupolas N/A
2. Windows N/A
3. Doors N/A
4. Sky Lights 24" ridge
5. Front Posts N/A
6. Hydrants N/A
7. Other

Interior

1. Hydrants 9 frost freeze
2. Water Heaters N/A
3. Washer/Dryer N/A
4. Other

Stalls

1. Automatic Water Dispensers N/A
2. Feeder N/A
3. Mats N/A
4. Fans 45
5. Cribbing Metal Yes
6. Doors 4' x 4' Wooden Dutch with cross bucks
7. Divider Grill Work (will be included in change order)
8. Aisle Way Grill Work (will be included in change order)
9. Other

INITIALS

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DEFENDANT'S EXHIBIT 16

JAN 12 APPROX 1PM

CHRIS - HOW CAN WE GET THINGS BACK ON TRACK
YOU HAVE BEEN LOVE TOO LONG

~~WE ARE LOOSING MENTAL INCOME~~

WE NEED THIS BARN DONE ASAP AND WE NEED YOU TO FINISH IT. WE ARE LOOSE MENTAL INCOME FOR EVERY DAY IT IS UNFINISHED

WE NEED THIS BARN DONE IN A WEEK AND A HALF
CHRIS SAID HE CANT DO IT WITHOUT PAYING HIS PEOPLE OVERTIME - IT WILL COST YOU MORE MONEY.
I HAVE BILLS TO PAY AND I WANT ~~BE~~ RE 3RD DRAW NOW
CHRIS: JUST COME BACK WITH YOUR FULL CREW TOMORROW AND STAY UNTIL THE BARN IS FINISHED AND I WILL HAVE

JAN-13 A CHECK TOMORROW EVENING - CALL ME TONIGHT AND LET ME KNOW
(HE NEVER CALLED ME)

7:00 A - TO LOANS
LET ME CALL CHRIS THIS AFTERNOON AND TRY TO
MEASON WITH HIM ALAN

9:30 AM CHRIS WAS AT THE SITE REMOVING
MATERIALS AND ~~TOOLS~~ EQUIPMENT
HE SAID HE IS LEAVING AND GOING TO ANOTHER JOB
WHERE HE CAN MAKE MONEY.
I SAID CHRIS - WHAT DID WE TALK ABOUT YESTERDAY
I NEED YOU TO LEAVE THAT OTHER JOB AND YOU JUST
STARTED AND ~~BE ON FINISH~~ THIS JOB ONE WITH A FULL CREW AND YOU
WOULD HAVE GOTTEN YOUR MONEY THIS EVENING
CHRIS SAID IT COST HIM TOO MUCH MONEY TO MOVE HIS CREW
FROM THAT JOB.

[redacted]

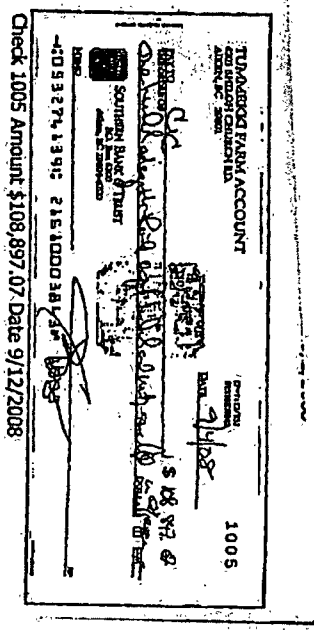
TLAMERICO FARM ACCOUNT
1005
SOUTHERN BANK & TRUST
Check 1005 Amount $108,897.07 Date 9/12/2008

EXHIBIT
D-17

CEILO TO CEILI WIDTH

STALL		STALL	
1	11 - 10 3/4"	21	11 - 7 7/8
2	11 - 11 3/8"	22	11 - 9 1/8
3	11 - 9"	23	10 - 1/2"
4	11 - 8 5/8	24	11 - 9 3/8
5	12 - 1"	25	11 - 8 7/8
6	11 - 8 1/2"	26	11 - 11 3/8
7	11 - 9"	27	11 - 9 5/8
8	12 - 1/4"	28	11 - 9 1/4
9	11 - 9"	29	11 - 11 3/8
10	11 - 8 5/8"	30	11 - 9 1/2
11	11 - 11 5/8	31	11 - 6 1/2
12	11 - 9 3/4	32	11 - 6 1/2
13	11 - 9 1/4	33	11 - 6 1/4
14	11 - 11 1/8	34	11 - 6 1/4
15	11 - 9 1/4	35	11 - 6 1/4
16	11 - 9 1/2	36	11 - 3 7/8
17	11 - 11 3/8	37	11 - 6"
18	11 - 9 7/8	38	11 - 6"
19	11 - 8 1/2	39	11 - 6 1/4
20	12 - 2 1/8	40	11 - 3 7/8 6 1/8

EXHIBIT D-18

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
James Martin Harvey, Jr., Special Referee

RECEIVED
MAR 21 2014
SC Court of Appe

Case No. 2009-CP-02-000958

Elite Construction, Inc., Respondent

v.

Doris E. Tummillo and Georgia Bank and Trust Company of Augusta, Defendants,

Of Whom Doris E. Tummillo is the Appellant,

And

Georgia Bank and Trust Company of Augusta is a Respondent.

Appellate Case No. 2013-001624

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material in accordance with Rule 201(g), SCACR.

March 19, 2014

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Hull Barrett, PC
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Augusta, Georgia 30901-1564
(706) 722-4481
Attorneys for Appellant, Doris E. Tummillo

THE STATE OF SOUTH CAROLINA
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APPEAL FROM AIKEN COUNTY
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Of Whom Doris E. Tummillo is the Appellant,

And

Georgia Bank and Trust Company of Augusta is a Respondent.

Appellate Case No. 2013-001624

PROOF OF SERVICE

I certify that I have served the ***Record on Appeal*** on Elite Construction, Inc. by hand-delivery on March 19, 2014, addressed to its attorney of record: Mr. Clarke W. McCants, III, Esq.; Nance McCants & Massey; 218 Newberry Street, S.W.; Aiken, South Carolina; 29801.

March 19, 2014

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MAR 21 2014
SC Court of Appeals