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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

RECEIVED

JUN 03 2015

G. Thomas Cooper, Jr., Circuit Court Judge
Alison R. Lee, Circuit Court Judge

SC Court of Appeals

Case No. 2011-CP-40-4111
APPELLATE CASE NO.: 2014-001799

Coastal Pi, LLC d/b/a Primarily Pi and James Bigby Respondents.

vs.

Danville Business Advisors, LLC and Marion D. Turbeville. Defendants,

Of whom Marion D. Turbeville is Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Coastal Pi, LLC d/b/a Primarily Pi and James
Bigby,

Plaintiff,

vs.

C.G.I. Development, Inc., Danville Business
Advisors, LLC, Marion D. Turbeville and FRS,
Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2011-CP-40-4111

CONSENT ORDER STRIKING CASE
FROM DOCKET BY AGREEMENT
UNDER RULE 40(j)

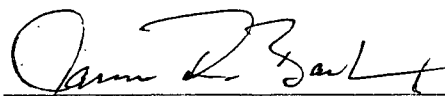
JEANETTE W. McBRIDE
CLERK OF COURT
NOV - 6 PM 1:01

RICHLAND COUNTY
FILED

NOW COME the Plaintiffs, Coastal Pi, LLC d/b/a Primarily Pi and James Bigby, pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure requesting an Order striking this case from the docket by agreement and consent of all parties involved. The parties have represented to the Court their agreement that if the case is restored to the docket upon motion made within one (1) year of the date the case was stricken, the statute of limitations shall not bar the Plaintiffs' claim asserted in this matter. The parties have agreed to conduct discovery while the case remains on 40(j) status. The parties have further agreed that the case shall retain the old civil action number once it is restored so that the parties can have the case set for trial as quickly as possible.

Accordingly, this case is stricken from the docket pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure and shall be given the same civil action number if the case is restored within one year of the date the case is stricken.

This the 6 day of NOVEMBER, 2012.



Judge James R. Barber, III
Chief Administrative Judge

SCANNED

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Coastal Pi, LLC d/b/a Primarily Pi and James
Bigby,

Plaintiff,

vs.

C.G.I. Development, Inc., Danville Business
Advisors, LLC, Marion D. Turbeville and FRS,
Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2011-CP-40-4111

**STIPULATION STRIKING CASE
FROM DOCKET BY AGREEMENT
UNDER RULE 40(j)**

RICHLAND COUNTY
FILED
2012 NOV -2 AM 10:51
JANETTE W. McBRIDE
C.C.P. & G.S.

NOW COME the Plaintiffs, Coastal Pi, LLC d/b/a Primarily Pi and James Bigby, pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure, striking their Complaint from the docket by agreement and consent of all parties involved. All parties further consent and agree that if the claim is restored upon motion made within 1 year of the date stricken, the statute of limitations shall be tolled as to all consenting parties during the time the case is stricken, and any unexpired portion of the statute of limitations on the date the case was stricken shall remain and begin to run on the date that the claim is restored. The parties have agreed to conduct discovery while the case remains on 40(j) status. The parties have further agreed that the case shall retain the old civil action number once it is restored so that the parties can have the case set for trial as quickly as possible.

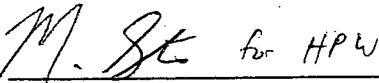
Accordingly, Plaintiffs strike this case from the docket pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure.

Signature Pages to Follow

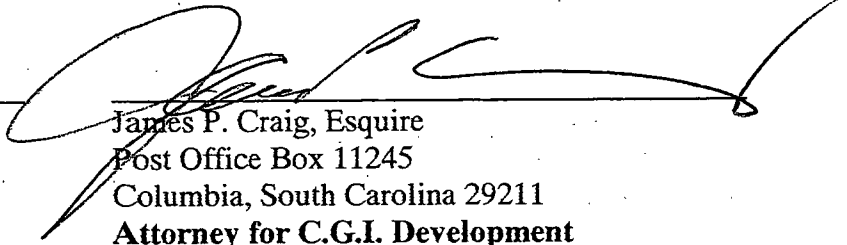
WE SO CONSENT:

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Attorney for FRS, Inc.

WE SO CONSENT:

Bruner Powell Wall & Mullins, LLC

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WE SO CONSENT:

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Craig Law Firm, PC

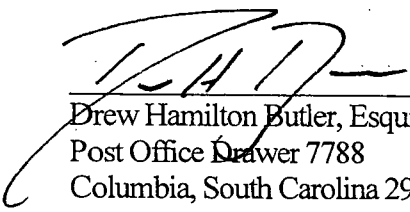
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Attorney for Plaintiff

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Post Office Box 11245
Columbia, South Carolina 29211
Attorney for C.G.I. Development

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and Marion D. Turbeville**



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Columbia, South Carolina 29202
Attorney for FRS, Inc.

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4004111

Coastal Pi LLC

C G I Development

Primarily Pi

Danville Business Advisor, LLC

PLAINTIFF(S)

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.☒ TRIAL OR HEARING: This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.☐ REASON: ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Settled; ☐ Other _____☐ REASON: ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____☐ THE CIRCUIT COURT (CHECK APPLICABLE BOX):☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: PARTIES 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 : Plaintiff's Motion to Amend Second Amended Complaint Granted

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
		\$
		\$
		\$

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 2161

Date 08/28/2013

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 17 day of Sept, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Henry Pickett Wall Benjamin C. Bruner

ATTORNEY(S) FOR THE PLAINTIFF(S)

James P. Craig

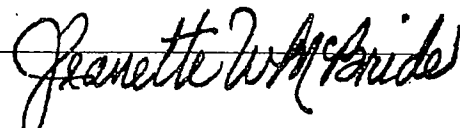
Drew Hamilton Butler

ATTORNEY(S) FOR THE DEFENDANT(S)

Robert McNair Peele III

Court Reporter Debbie McCurdy

Clerk of Court



FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4004111

Coastal PI LLC

C G I Development

Primarily Pi

Danville Business Advisor, LLC

PLAINTIFF(S)

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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ 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 : Motion to Restore is granted

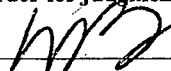
INFORMATION FOR THE PUBLIC INDEX

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
		\$
		\$
		\$

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 2161

Date 08/28/2013

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 17 day of Sept, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE PLAINTIFF(S)

James P. Craig

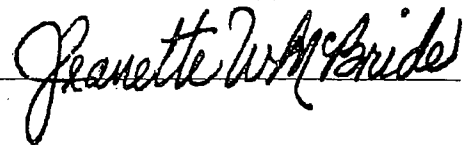
Robert McNair Peele III

Drew Hamilton Butler

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter Debbie McCurdy

Clerk of Court



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Civil Action No.: 2011-CP-40-04111

Coastal Pi, LLC d/b/a Primarily
Pi and James Bigby

Plaintiffs,

v.

Danville Business Advisors, LLC and
Marion D. Turbeville,

Defendants.

ORDER

RICHLAND COUNTY
FILED
2014 MAY 14 PM 3:48
JEANETTE W. McBRIDE
C.C.P. & G.S.

THIS MATTER came before me for a hearing on April 23, 2014 for argument on Defendant Marion D. Turbeville's ("Turbeville") Motion to Dismiss all claims asserted against him individually by Plaintiffs pursuant to Rule 12(b)(6), SCRCP. Robert M. Peele, III, Esquire appeared on behalf of Turbeville. Matthew H. Stabler, Esquire appeared on behalf of Plaintiffs. Based upon the allegations of the Second Amended Complaint¹, applicable law, and arguments of counsel, Turbeville's Motion to Dismiss is DENIED.

FACTUAL AND PROCEDURAL BACKGROUND

This action arises out of Plaintiffs' efforts to open a pizza restaurant in Lexington, South Carolina. Plaintiffs entered into an agreement with Danville Business Advisors, LLC ("Danville"), whereby Danville, for a monthly fee, would manage and oversee the design and construction of Plaintiffs' restaurant. Turbeville is principal or member of Danville. Plaintiffs allege that Danville and Turbeville, in addition to the monthly fee paid by Plaintiffs, negotiated and received leasing commissions and certain "finder's fees" from Plaintiffs' landlord and contractor without Plaintiffs' knowledge. Plaintiffs' also allege that during their administration of the construction process, Turbeville and Danville agreed to substitute the HVAC units

¹ All references hereinafter to the "Complaint" shall refer to the Second Amended Complaint.

specified in the contract documents for cheaper HVAC units without Plaintiffs' knowledge or any approval from the architect or engineer. Plaintiffs allege that this undisclosed substitution along with a plumbing issue eventually rendered the restaurant unusable and ultimately forced its closure.

Plaintiffs allege seven causes of action against Turbeville individually: equitable indemnity, negligence, breach of fiduciary duty, violation of the South Carolina Unfair Trade Practices Act, constructive fraud, fraud, and negligent misrepresentation. Plaintiffs have also alleged these same seven causes of action, as well as causes of action for breach of contract and breach of contract accompanied by a fraudulent act, against Danville.

STANDARD OF REVIEW

"Under Rule 12(b)(6), SCRCF, a party may move to dismiss a complaint against him based on a failure to state facts sufficient to constitute a cause of action." *Cole Vision Corp. v. Hobbs*, 394 S.C. 144, 148, 714 S.E.2d 537, 539 (S.C. 2011) (internal citations omitted). "A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true." *Disabato v. South Carolina Ass'n of School Adm'rs* 404 S.C. 433, 441, 746 S.E.2d 329, 333 (2013) (internal citations omitted).

DISCUSSION

Turbeville moves for dismissal based on S.C. Code Ann. § 33-44-303(a), entitled "Liability of members and managers," which reads,

Except as otherwise provided in subsection (c), the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company. A member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager.

Turbeville contends that all actions and inactions that are the basis of Plaintiffs' Complaint against him were performed in his capacity as a member of Danville, and, as such, he is shielded

from personal liability by S.C. Code Ann. § 33-44-303(a). I do not find this argument persuasive.

Recently, the Supreme Court of South Carolina addressed the issue of whether the Uniform Limited Liability Company Act (the “Act”) shielded an LLC member from personal liability for his own torts in *16 Jade St., LLC v. R. Design Constr. Co., LLC*, 398 S.C. 338, 728 S.E.2d 448 (2012) (hereinafter “*Jade Street I*”). The Court held that “the General Assembly did not intend the LLC act to shield a member from liability for his own torts.” *Id.* at 340, 728 S.E.2d at 449. However, the Court subsequently withdrew its opinion in *Jade Street I* on rehearing, because it found that the individual whose liability was in question did not commit any actionable tort. *16 Jade St., LLC v. R. Design Constr. Co., LLC*, 405 S.C. 384, 386, 747 S.E.2d 770, 771 (2013) (hereinafter “*Jade Street II*”). Although *Jade Street I* is no longer binding on this Court, I find its reasoning persuasive. I also note that nothing in *Jade Street II* indicates that the Supreme Court found fault in its prior reasoning regarding the protection afforded to members of LLCs for liability as a result of their own torts.

As noted by the Court in *Jade Street I*, the language of the Act relied upon by Turbeville appears to insulate a member of an LLC from liability for his own torts. *Jade Street I*, 398 S.C. at 343, 728 S.E.2d at 450. However, “the right to sue one’s tortfeasor is a long-standing right in our legal system, and [a court] will only find it abrogated by statute through ‘clear legislative intent.’” *Id.* at 347, 728 S.E.2d at 453 (citation omitted). I therefore find that such a sweeping liability shield could not have been intended by the legislature. *See id.* at 343, 728 S.E.2d at 450. This conclusion is supported by the Comment to S.C. Code Ann. § 33-44-303, which reads in part,

A member or manager, as an agent of the company, is not liable for the debts, obligations, and liabilities of the company simply because of the agency. A member or manager is responsible for acts or omissions to the extent those

CT-3

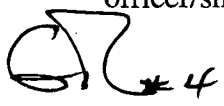
acts or omissions would be actionable in contract or tort against the member or manager if that person were acting in an individual capacity.

(Emphasis added). In this action, it is clear that without the existence of Danville, Turbeville would be personally liable for the damages alleged by Plaintiffs if proven. The mere existence of Danville as an LLC and Turbeville's status as a member does not alter that result. The Complaint does not allege that Turbeville is liable *because* he is a member of Danville; rather, it alleges that Turbeville is liable for torts he committed. This conclusion is supported by the majority of states that have addressed the issue of an LLC member's liability for his own torts under similar statutory language, *Jade Street I*, 398 S.C. at 344, 728 S.E.2d at 451 (collecting cases), as well as by many scholarly publications on the issue, *id.* at 344-45, 728 S.E.2d at 451 (collecting works). As the Supreme Court reasoned in *Jade Street I*,

we find this interpretation reasonable and no clear intent by the General Assembly to restrict the common law. While the language of the statute may be subject to other interpretations, we believe it is highly questionable whether the General Assembly intended to limit a member's personal liability for his torts. Therefore, given the principle that we strictly construe statutes in derogation of common law rights and they only do so through clear legislative intent, we hold section 33-44-303(a) does not limit the right of a plaintiff to sue his tortfeasor.

Id. at 349, 728 S.E.2d at 453-54.

The ruling of the Supreme Court in *Jade Street I* and the ruling of this Court regarding an LLC member's liability for his own torts "also has long been the rule with respect to shareholders and officers of corporations, an organizational structure from which LLCs borrow heavily." *Id.* at 348, 728 S.E.2d at 453 (referencing S.C. Code Ann. § 33-6-220(b) ("[A] shareholder of a corporation is not personally liable for the acts or debts of the corporation except that he may become personally liable by reason of his own acts or conduct.")); *see also* *Plantation A.D., LLC v. Gerald Builders of Conway, Inc.*, 386 S.C. 198, 208-09, 687 S.E.2d 714, 720 (Ct. App. 2009) (reversing summary judgment and finding factual issue existed as to officer/shareholder's individual liability). The Court of Appeals has held that in respect to

 4

claims for violation of the South Carolina Unfair Trade Practices Act, a cause of action alleged by Plaintiffs in the present case, “directors and officers are not liable for the corporation’s unfair trade practices *unless* they personally commit, participate in, direct, or authorize the commission of a violation of the UTPA.” *BPS, Inc. v. Worthy*, 362 S.C. 319, 328, 608 S.E.2d 155, 160 (2005) (quoting *Plowman v. Bagnal*, 316 S.C. 283, 286, 450 S.E.2d 36, 38 (1994) (emphasis in original)). This Court finds no reason to treat members of an LLC any differently than officers and directors of a corporation in this context.

Conclusion

For the above stated reasons, Marion D. Turbeville’s Motion to Dismiss all claims asserted against him individually by Plaintiffs is **DENIED**.

AND IT IS SO ORDERED.



G. Thomas Cooper, Jr.
Presiding Judge, Fifth Judicial Circuit

May 14, 2014

COLUMBIA, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Coastal Pi, LLC d/b/a Primarily Pi and)
James Bigby,)
)
Plaintiff,)

Civil Action No. 2011-CP-40-4111

vs.)

Danville Business Advisors, LLC and)
Marion D. Turbeville,)
)
Defendants.)

ORDER OF JUDGMENT

RICHLAND COUNTY
FILED
2014 JUL 25 AM 11:43
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

THIS MATTER is before the Court by way of a Motion for Election of Remedies by the Defendants, Danville Business Advisors, LLC and Marion D. Turbeville ("Defendants"), made on May 29, 2014 upon discharge of the jury, which returned verdicts against both Defendants.

IT APPEARING that the jury returned verdicts against the Defendants on all of the Plaintiffs' causes of action;

IT FURTHER APPEARING that the Defendants moved for the Plaintiffs to elect their remedies;

IT FURTHER APPEARING that the parties have negotiated and resolved the issues raised by the Defendants' Motion; and

IT FURTHER APPEARING that the parties consent to entry of judgment as set forth below;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that judgment be entered against Danville Business Advisors, LLC on the Plaintiffs' breach of fiduciary duty claim in the amount of \$521,000, plus taxable costs under Rule 54, SCRCP, in the amount of \$581.12, for a

total judgment in favor of the Plaintiffs against Danville Business Advisors, LLC in the amount of \$521,581.12.

IT IS FURTHER ORDERED that judgment be entered against Marion Turbeville on the Plaintiffs' claim for violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10 to 550, in the amount of \$39,200 actual damages, plus any and all treble damages, attorneys' fees and costs as this Court may ~~deem proper~~ ^{award} under S.C. Code Ann. § 39-5-140 after considering Plaintiffs' Motion for Attorneys' Fees and Treble Damages.¹ *and by separate order.*

AND IT IS SO ORDERED.

July 25, 2014


Alison Renee Lee
Presiding Judge, Fifth Judicial Circuit

WE CONSENT:


Henry P. Wall
Benjamin C. Bruner
Matthew H. Stabler
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
803-252-7693
Attorneys for Plaintiffs


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William A. Collins, Esquire
Robert M. Peele, III, Esquire
Dougall & Collins
1700 Woodcreek Farms Road
Elgin, South Carolina 29045
803-865-8858
Attorneys for the Defendants

¹ Upon Defendants' Motion for Election of Remedies, Plaintiffs requested ten (10) days to file their response and, in addition, asked this Court to indicate whether it would award treble damages and attorney's fees under the South Carolina Unfair Trade Practices Act. I therefore find it proper to consider Plaintiffs' Motion for Attorneys' Fees and Treble Damages upon entry of this Order.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Coastal Pi, LLC d/b/a Primarily Pi and)
James Bigby,)

Civil Action No. 2011-CP-40-4111

Plaintiff,)

ORDER

vs.)

Danville Business Advisors, LLC and)
Marion D. Turbeville,)

Defendants.)

RICHLAND COUNTY
FILED
2014 AUG -5 PM 12:23
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

This matter is before the Court upon motion by the Plaintiffs, Coastal Pi, LLC d/b/a Primarily Pi and James Bigby (hereinafter, "Plaintiffs"), for attorneys' fees and for treble damages against Defendant Marion Turbeville pursuant to the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 to 550 ("UTPA"). Having carefully considered the submissions of the parties, Plaintiffs' motion is **GRANTED**.

"The purpose of the UTPA is to discourage unfair methods of competition and unfair or deceptive acts in the conduct of any trade or commerce." Taylor v. Medenica, 331 S.C. 575, 579, 503 S.E.2d 458, 460 (1998) (citing S.C. Code Ann. § 39-5-20). In furtherance of its purpose, the UTPA allows a private party to bring a cause action, collect his attorneys' fees if he is successful and, under certain circumstances, collect three times his actual damages. S.C. Code Ann. § 39-5-140(a). Plaintiffs are entitled to recover reasonable attorneys' fee and costs because they prevailed on their claim against Mr. Turbeville for violation of the UTPA. See S.C. Code Ann. § 39-5-140(a). This lawsuit involved both construction defects and unfair trade practices. Plaintiffs prosecuted their claims for months before they discovered and began to unravel the Defendants' practice of taking undisclosed "finder's fees" from contractors. In addition, the Plaintiffs' investigation into the ultimate cause of the construction defects and Plaintiffs' losses—the Defendants' conduct—required a substantial amount of work. All of the attorneys who have appeared on behalf of the Plaintiffs are in good standing and devote their practice to civil litigation. Plaintiffs' counsel has obtained a beneficial result because the jury found in the Plaintiffs' favor on all causes of action. Finally, the hourly rates for the services rendered are in conformity with hourly

rates for this work. Furthermore, Plaintiffs identified Dr. Perry Woodside and Jeffrey Hass as experts when Danville Business Advisors, LLC and Mr. Turbeville were the only remaining parties in the case and it was apparent the case would not be settled. The amount of attorneys' fees and costs submitted by Plaintiffs included costs and fees attributable to other defendants not relating to the issues asserted against Marion Turbeville. Therefore, those costs and fees are not included in the amount awarded to Plaintiffs arising out of the unfair trade practices claims against Turbeville. Having carefully considered the submissions of the parties in light of the six factors enumerated in Jackson v. Speed, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997), Plaintiffs entitled to recover reasonable attorneys' fees in the amount of \$64,418 and costs in the amount of \$20,489.85 for a total of \$84,907.85.

The facts and circumstances of this case warrant an award of treble damages under the UTPA. Such an award is appropriate when a defendant engages in conduct that he knew or should have known violated the UTPA. S.C. Code Ann. § 39-5-140(a), (d). "The statutory definition of willful has been construed by our Court of Appeals to mean: 'if, in the exercise of due diligence, a person of ordinary prudence engaged in trade or commerce could have ascertained that his conduct violates the Act, then such conduct is willful.'" Haley Nursery Co., Inc. v. Forrest, 298 S.C. 520, 525, 381 S.E.2d 906, 909 (1989) (quoting State v. Nest Egg Soc. Today, Inc., 290 S.C. 124, 348 S.E.2d 381 (Ct. App. 1986)).

In this case, this Court finds no evidence in the record that the Defendants' practice of negotiating for commissions at their clients' expense without disclosing those payments to the clients is a common, accepted practice. Although Mr. Turbeville continued to claim that the secret commissions were part of Danville's business model, he could not name one other business that engages in the same practice or employs the same business model. At no time did the Defendant present any evidence that it is common practice to negotiate and collect these payments without telling their clients. Nor did the Defendant present any testimony that the Plaintiffs or any of their other clients knew about the secret finder's fees and commissions.

Mr. Turbeville testified unapologetically that he would negotiate for commissions and finder's fees - in addition to what his clients paid him - and these payments increased the cost to his clients and that Mr. Turbeville would disclose those payments to clients only if they asked. Mr. Turbeville's testimony at trial simply proved Danville had a practice of negotiating for and concealing commissions that had a direct and adverse impact on their clients. Any person of

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ordinary prudence engaged in trade or commerce could have ascertained that such a deceptive and unfair business model violated the UTPA. See Haley Nursery, 298 S.C. at 525, 381 S.E.2d at 909. Mr. Turbeville's testimony also proved without question that he personally participated in, directed or authorized that Danville's unfair and deceptive practice. See BPS, Inc. v. Worthy, 362 S.C. 319, 328-29, 608 S.E.2d 155, 160-61 (Ct. App. 2005). I therefore find Mr. Turbeville knew or should have known his wrongful conduct violated the UTPA. As a result, this Court finds it proper to grant the Plaintiffs' motion and award Plaintiffs damages in the amount of \$117,600, or three times the actual damages the jury awarded.

IT IS THEREFORE ORDERED:

1. that Plaintiff's Motion for Attorney's Fees and for Treble Damages is **GRANTED;**
2. that Plaintiffs' is awarded Attorney's Fees and Costs in the amount of \$84,907.85;
3. that Plaintiff is awarded three times the actual damages awarded by the jury (\$39,200) for a total award of actual damages in the amount of \$117,600;
4. that judgment entered against Defendant Marion Turbeville for a total in the amount of \$202,507.85.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge, Fifth Judicial Circuit

August 4, 2014
Columbia, South Carolina


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

JUDGMENT IN A CIVIL CASE

CASE NO 2011 CP-40-04111

Coastal Pi LLC, et al.

Danville Business Advisors, LLC

Marion Turbeville

PLAINTIFF(S)

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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **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:

Plaintiff to file motions/memoranda relating to election of remedies within 10 days (June 9). Jury verdict for plaintiff held until election of remedies issue decided.

This order ☐ ends ☐ does not end the case.

Additional Information for the 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)
		\$
		\$
		\$

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.

Al Greenlee
Circuit Court Judge

Judge Code

5/29/2017
Date

For Clerk of Court Office Use Only

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

Benjamin C. Bruner

ATTORNEY(S) FOR THE PLAINTIFF(S)

Robert McNair Peele III
Thomas Dougall

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Coastal Pi, LLC d/b/a Primarily Pi and
James Bigby,

Plaintiffs,

v.

Danville Business Advisors, LLC, and
Marion D. Turbeville,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2011-CP-40-04111

VERDICT

2014 JUN -4 PM 2:57
C.C.P. & C.S.

1. On the Breach of Fiduciary Duty claim against Defendant Marion Turbeville, we, the jury, unanimously find in favor of:

☒ The **PLAINTIFFS**

\$ 39,200.00

Actual damages

(\$ 39,200.00)

☐ The **DEFENDANT Marion Turbeville**

2. On the Unfair Trade Practices claim against Defendant Marion Turbeville, we, the jury, unanimously find in favor of:

☒ The **PLAINTIFFS**

\$ 39,200.00

Actual damages

(\$ 39,200.00)

Thirty-nine thousand, ~~twenty~~ ^{two hundred} dollars

☐ The **DEFENDANT Marion Turbeville**

Aifeia M. Garrison
Foreperson

Date:

5/29/14

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Coastal Pi, LLC d/b/a Primarily Pi and
James Bigby,

Plaintiffs,

v.

Danville Business Advisors, LLC, and
Marion D. Turbeville,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2011-CP-40-04111

VERDICT

2011 JUN -14 PM 2:57
CLERK'S OFFICE
CCH, SCS.

1. On the Plaintiffs' breach of contract claim against Danville Business Advisors, LLC, we, the jury, unanimously find in favor of:

✓ Plaintiffs Defendant

On the Plaintiffs' breach of fiduciary duty claim against Danville Business Advisors, LLC, we, the jury, unanimously find in favor of:

✓ Plaintiffs Defendant

IF YOU FIND FOR THE PLAINTIFFS ON ANY OF THE TWO CLAIMS ABOVE, GO TO QUESTION 2.

IF YOU FIND FOR THE DEFENDANT ON ALL OF THE ABOVE CLAIMS, GO TO QUESTION 3.

2. We, the jury, unanimously award to the Plaintiffs against Danville Business Advisors, LLC the amount of:

\$ 521,000⁰⁰ (\$ 521,000⁰⁰)
Actual Damages

Five hundred, twenty-one thousand dollars

GO TO QUESTION 3.

3. On the Unfair Trade Practices claim against Defendant, Danville Business Advisors, LLC, we, the jury, unanimously find for:

✓ PLAINTIFFS

Five hundred twenty one - (\$ 521,000)⁰⁰
Actual Damages
thousand dollars

____ DEFENDANT Danville Business Advisors, LLC.

Ryfeia M. Jamison
Foreperson

Date: 5/29/14

C/A No. 2011-CP-40-04111

JUDGE

Lee

REPORT OF JURY VERDICT

Plaintiff: Coastal Pi LLC, et al. Defendant: Danville Business Advisors, LLC

Marion Turbeville

Attorney: Benjamin C. Bruner

Attorney: Robert McNair Peele II

Thomas Dougall

TYPE OF CASE (Please circle)

- I. Automobile
a. Personal Injury
b. Property Damage
c. Combination
d. Death
e. _____
- II. Personal Injury
a. Products Liability
b. Medical Malpractice
c. Slip and Fall
d. False Imprisonment
e. Emotional Distress
f. Criminal Conversation
g. Malicious Prosecution
h. Libel and Slander
i. Assault
j. _____

III. Contract

- a. Insurance
b. Warranty
c. _____

IV. Property

- a. Property damage
b. Condemnation
c. Mechanics Lien
d. _____

V. Other

- a. Unfair Trade Practice
b. _____

MEDICAL EXPENSES: (only if personal injury)

Doctor _____

Hospital _____

Drugs _____

Lost Wages _____

VERDICT:

For Plaintiff ✓

For Defendant _____

Actual Damages 521,000 + 39,000

Punitive Damages _____

DATE TRIAL STARTED 5-27-14

DATE TRIAL ENDED 5-29-14

COUNTY OF RICHLAND

Coastal Pi, LLC d/b/a Primarily Pi and
James Bigby

CIVIL ACTION COVERSHEET

Plaintiff(s)

2011 CP4004111

vs.

C.G.I Development, Inc.

Defendant(s)

(Please Print)

Submitted By: Henry P. Wall, Esq.

Address: P. O. Box 61110

Columbia, SC 29204

SC Bar #: 5797

Telephone #: 803-252-7693

Fax #: 888-726-8347

Other:

E-mail: hwall@brunerpowell.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) Previous Notice of Intent Case # _____ 20 ____ -CP- ____ ☐ 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) ☐ 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) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature:

Date: 6-23-11

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.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Andeson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Coastal Pi, LLC d/b/a Primarily
Pi and James Bigby)

Plaintiff,)

Vs.)

C.G.I. Development, Inc.)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No.:

SUMMONS
(Jury Trial Demanded)

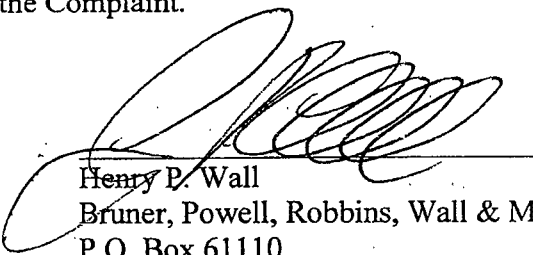
JEANNE M. HARRIS
C.C.P. & S.

2011 JUN 27 PM 12:18

RICHLAND COUNTY
FILED

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint upon the undersigned subscriber at Post Office Box 61110, Columbia, South Carolina 29260, within thirty (30) days after service upon you, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.


Henry P. Wall
Bruner, Powell, Robbins, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Attorneys for the Plaintiff

Columbia, South Carolina
June 23, 2011

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Coastal Pi, LLC d/b/a Primarily
Pi and James Bigby

Plaintiff,

Vs.

C.G.I. Development, Inc.

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.:

COMPLAINT
(Jury Trial Demanded)

RECEIVED
CLARK COUNTY
C.C.P. & C.S.
CLARK COUNTY

2011 JUN 27 PM 12:18

FILED

The Plaintiffs, Coastal Pi, LLC d/b/a Primarily Pi and James Bigby, complaining of the Defendant, C.G.I. Development, Inc. ("CGI"), would show:

General Factual and Jurisdictional Allegations

1. Coastal Pi, LLC ("Coastal") is a limited liability company organized and existing under the laws of the State of South Carolina. At all times relevant hereto, Coastal was engaged in the business of planning and operating a pizza restaurant in Lexington County, South Carolina. James Bigby is the principal of Coastal and, during the course of Coastal's operations, Bigby executed various indemnity and guarantee agreements for the operation and success of Coastal.
2. CGI is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Columbia. At all times relevant hereto, CGI was engaged in the business of general construction contracting.
3. In 2009, CGI, pursuant to a construction contract with Coastal, completed various improvements to Coastal's leased space and location in Lexington County, South Carolina. Coastal paid in excess of \$300,000.00 to CGI to perform this work. In undertaking and

performing this work, CGI expressly and impliedly warranted that the work would be of good and workmanlike quality, that it would be suitable for the purpose for which it was intended, that it would conform to applicable building codes, customs, and regulations, that it would comply with the terms and conditions of the contract, and that the resulting construction work would be habitable and fit for its purpose as a restaurant.

4. Coastal faithfully and properly completed all of its obligations under the contract and paid CGI in full for the work.

5. After Coastal occupied the project and began its restaurant operations, Coastal discovered numerous latent defects and deficiencies in CGI's work. Among other things, Coastal discovered that the plumbing and mechanical systems which were within CGI's responsibilities under the contract were defective and deficient. In particular, the manner in which the plumbing system was installed allowed odious and noxious sewer gas to vent and escape into the restaurant, thus making employees and patrons of the restaurant nauseous and ill, and making the facility unfit and unusable as a public restaurant. The refrigeration units were installed improperly which resulted in excessive heat and humidity in the kitchen making the area unsanitary, unusable and unfit for its purpose. Due to these errors, deficiencies, and defects, the leased space could not be properly cooled with the existing air conditioning system. Patrons and employees who visited the restaurant were unable to eat or work in the environment as a consequence of the noxious odors and high temperatures.

6. Coastal notified CGI of the deficiencies and CGI refused to correct or cure the deficiencies. As a consequence of these problems and deficiencies, the restaurant lost customers and ultimately failed. Coastal defaulted on its lease, lost revenues and investments of in excess

of four hundred thousand dollars, and Plaintiff Bigby, as loan and lease guarantor, incurred substantial and significant losses and damages.

By Way of a First Cause of Action Against CGI
(Breach of Contract)

7. CGI breached its contract with Coastal by failing to:
- a. Install and complete the work in a good and workmanlike manner;
 - b. Install and complete the work in accordance with the plans and specifications and contract;
 - c. Install and complete the work in accordance with the customs, standards, codes and regulations of the construction industry;
 - d. Provide and furnish a completed project which was fit for its intended purpose, suitable and habitable as a restaurant.
8. As a consequence of the foregoing breaches of contract Plaintiffs have been damaged in an amount in excess of \$400,000.00 for which CGI is liable.

By Way of a Second Cause of Action Against CGI
(Breach of Warranty)

9. CGI breached its implied warranty with Coastal that the work would be of good and workmanlike quality, that it would be suitable for the purpose for which it was intended, that it would conform to applicable building codes, customs, and regulations, that it would comply with the terms and conditions of the contract and that the resulting construction work would be habitable and fit for its purpose as a restaurant.
10. As a consequence of the foregoing breaches of warranty Plaintiffs have been damaged in an amount in excess of \$400,000.00 for which CGI is liable.

By Way of a Third Cause of Action Against CGI
(Equitable Indemnity)

11. CGI negligently, carelessly and recklessly installed the plumbing and mechanical systems in the Project in failing to protect the occupants of the facility from noxious gasses and odors, and in failing to install the refrigeration units properly.

12. As a consequence and proximate cause of this negligence, carelessness and recklessness, Plaintiffs have been damaged in an amount in excess of \$400,000.00 on account of the actions ~~and/or omissions of CGI~~ and are therefore entitled equitable indemnity from CGI for the losses paid to others.

By Way of a Fourth Cause of Action Against CGI
(Negligence)

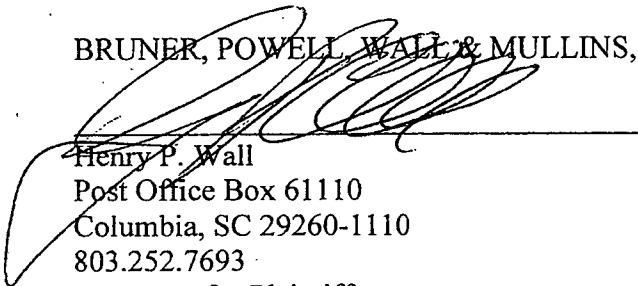
13. CGI owed Plaintiffs a duty of care to complete the work so that it could be used in a reasonable and safe manner and to supervise the work of its mechanical and plumbing subcontractors.

14. CGI breached this duty in failing to complete the work so that it could be used in a reasonable and safe manner and in failing to supervise, oversee and direct the work of its subcontractors.

15. As a direct and proximate cause of the breach of these duties, Plaintiffs incurred loss of use of the facility and consequent property damages, loss of the business profits and loss of goodwill and a business investment in excess of \$400,000.00 for which CGI is liable.

Wherefore, Plaintiff prays for judgment in its favor against CGI on all causes of action, for actual, consequential and special damages in an amount in excess of \$300,000.00, (the exact amount to be proven at trial), for attorney's fees, for prejudgment interest and statutory interest, for the costs of this action, for a trial by jury on all issues of fact, and for such other and further relief as is just and proper.

BRUNER, POWELL, WALL & MULLINS, LLC



Henry P. Wall
Post Office Box 61110
Columbia, SC 29260-1110
803.252.7693
Attorneys for Plaintiff

June 23, 2011

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Coastal Pi, LLC d/b/a Primarily Pi and
James Bigby

Plaintiff(s)

vs.

C.G.I. Development, Inc., Danville Business
Advisors, LLC, Marion D. Turbeville, and FRS, Inc.

Defendant(s)

IN THE COURT OF COMMON PLEAS

AMENDED
CIVIL ACTION COVERSHEET

2011-CP - 40- 04111

COPY

(Please Print)

Submitted By: Henry P. Wall, Esq.

Address: P. O. Box 61110

Columbia, SC 29204

SC Bar #: 5797

Telephone #: 803-252-7693

Fax #: 888-726-8347

Other:

E-mail: hwall@brunerpower.com

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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.

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☐ 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)
Previous Notice of Intent Case #
20____-CP-_____
☐ 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)

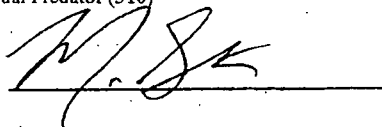
Appeals

- ☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ 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)
☐ Motion to Quash Subpoena in
an Out-of-County Action (660)
☐ Sexual Predator (510)

Submitting Party Signature:



Date: May 7, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE
DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Coastal Pi, LLC d/b/a Primarily
Pi and James Bigby)

Plaintiff,)

Vs.)

C.G.I. Development, Inc., Danville Business)
Advisors, LLC, Marion D. Turbeville, and)
FRS, Inc.)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2011-CP-40-04111

AMENDED SUMMONS
(Jury Trial Demanded)

JEANETTE W. GLENDE
C.C.P. & S.S.

2012 MAY -7 PM 4:19

FILED

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Amended Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint upon the undersigned subscriber at Post Office Box 61110, Columbia, South Carolina 29260, within thirty (30) days after service upon you, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

 for HPW

Henry P. Wall
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Attorneys for the Plaintiff

Columbia, South Carolina
May 7, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Coastal Pi, LLC d/b/a Primarily
Pi and James Bigby)

Plaintiff,)

Vs.)

C.G.I. Development, Inc., Danville Business
Advisors, LLC, Marion D. Turbeville, and)
FRS, Inc.)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2011-CP-40-04111

AMENDED COMPLAINT
(Jury Trial Demanded)

JEANETTE H. HARRIS
CLERK OF COURT
& G.S.

2012 MAY -7 PM 4:19

LEXINGTON COUNTY
FILED

The Plaintiffs, Coastal Pi, LLC d/b/a Primarily Pi and James Bigby, complaining of the Defendants, C.G.I. Development, Inc. ("CGI"), Danville Business Advisors, LLC ("Danville"), Marion D. Turbeville ("Turbeville"), and FRS, Inc. ("FRS"), would show:

General Factual and Jurisdictional Allegations

1. Coastal Pi, LLC ("Coastal") is a limited liability company organized and existing under the laws of the State of South Carolina. At all times relevant hereto, Coastal was engaged in the business of planning and operating a pizza restaurant in Lexington County, South Carolina. James Bigby is the principal of Coastal and, during the course of Coastal's operations, Bigby executed various indemnity and guarantee agreements for the operation and success of Coastal.
2. CGI is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Columbia. At all times relevant hereto, CGI was engaged in the business of general construction contracting.

3. Danville is a limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County, South Carolina.
4. Turbeville, upon information and belief, is a citizen and resident of Richland County.
5. FRS is a corporation organized and existing under the laws of the State of South Carolina doing business in Richland County, South Columbia.
6. In 2008, Coastal and Danville entered into an agreement whereby Danville would manage and oversee the design and construction of a restaurant for Coastal in Lexington County.
7. Turbeville is, upon information and belief, a principal and employee of Danville.
8. Danville, through Turbeville, would be the principal point of contact for all contractors, architects, engineers, suppliers, and trade crafts on the Project.
9. Danville, through Turbeville, presented Coastal with the architect and contractor for the Project.
10. In 2009, CGI, pursuant to a construction contract with Coastal, completed various improvements to Coastal's leased space and location in Lexington County, South Carolina. Coastal paid in excess of \$300,000.00 to CGI to perform this work. In undertaking and performing this work, CGI expressly and impliedly warranted that the work would be of good and workmanlike quality, that it would be suitable for the purpose for which it was intended, that it would conform to applicable building codes, customs, and regulations, that it would comply with the terms and conditions of the contract, and that the resulting construction work would be habitable and fit for its purpose as a restaurant.
11. Danville, through Turbeville, managed the entire construction process, giving direction to Coastal as well as other contractors working on the Project.

12. Coastal faithfully and properly completed all of its obligations under the contract with CGI and paid CGI in full for the work.

13. Coastal faithfully and properly completed all of its obligations under its agreement with Danville and paid Danville in full for the work.

14. After Coastal occupied the project and began its restaurant operations, Coastal discovered numerous latent defects and deficiencies in CGI's work. Among other things, Coastal discovered that the plumbing and mechanical systems which were within CGI's responsibilities under the contract were defective and deficient. In particular, the manner in which the plumbing system was installed allowed odious and noxious sewer gas to vent and escape into the restaurant, thus making employees and patrons of the restaurant nauseous and ill, and making the facility unfit and unusable as a public restaurant. The refrigeration units were installed improperly which resulted in excessive heat and humidity in the kitchen making the area unsanitary, unusable and unfit for its purpose. Due to these errors, deficiencies, and defects, the leased space could not be properly cooled with the existing air conditioning system. Patrons and employees who visited the restaurant were unable to eat or work in the environment as a consequence of the noxious odors and high temperatures.

15. Some or all of these deviations were at the direction or request of Danville.

16. Coastal notified CGI and Danville of the deficiencies and CGI and Danville refused to correct or cure the deficiencies. As a consequence of these problems and deficiencies, the restaurant lost customers and ultimately failed. Coastal defaulted on its lease, lost revenues and investments of in excess of four hundred thousand dollars, and Plaintiff Bigby, as loan and lease guarantor, incurred substantial and significant losses and damages.

By Way of a First Cause of Action Against CGI
(Breach of Contract)

17. CGI breached its contract with Coastal by failing to:
- a. Install and complete the work in a good and workmanlike manner;
 - b. Install and complete the work in accordance with the plans and specifications and contract;
 - c. Install and complete the work in accordance with the customs, standards, codes and regulations of the construction industry;
 - d. Provide and furnish a completed project which was fit for its intended purpose, suitable and habitable as a restaurant.
18. As a consequence of the foregoing breaches of contract Plaintiffs have been damaged in an amount in excess of \$400,000.00 for which CGI is liable.

By Way of a Second Cause of Action Against CGI
(Breach of Warranty)

19. CGI breached its implied warranty with Coastal that the work would be of good and workmanlike quality, that it would be suitable for the purpose for which it was intended, that it would conform to applicable building codes, customs, and regulations, that it would comply with the terms and conditions of the contract and that the resulting construction work would be habitable and fit for its purpose as a restaurant.
20. As a consequence of the foregoing breaches of warranty Plaintiffs have been damaged in an amount in excess of \$400,000.00 for which CGI is liable.

By Way of a Third Cause of Action Against CGI
(Equitable Indemnity)

21. CGI negligently, carelessly and recklessly installed the plumbing and mechanical systems in the Project in failing to protect the occupants of the facility from noxious gasses and odors, and in failing to install the refrigeration units properly.

22. As a consequence and proximate cause of this negligence, carelessness and recklessness, Plaintiffs have been damaged in an amount in excess of \$400,000.00 on account of the actions and/or omissions of CGI and are therefore entitled equitable indemnity from CGI for the losses paid to others.

By Way of a Fourth Cause of Action Against CGI
(Negligence)

23. CGI owed Plaintiffs a duty of care to complete the work so that it could be used in a reasonable and safe manner and to supervise the work of its mechanical and plumbing subcontractors.

24. CGI breached this duty in failing to complete the work so that it could be used in a reasonable and safe manner and in failing to supervise, oversee and direct the work of its subcontractors.

25. As a direct and proximate cause of the breach of these duties, Plaintiffs incurred loss of use of the facility and consequent property damages, loss of the business profits and loss of goodwill and a business investment in excess of \$400,000.00 for which CGI is liable.

By Way of a First Cause of Action Against Danville
(Breach of Contract)

26. Danville breached its contract with Coastal by failing to:

- a. Ensure work was installed and completed in a good and workmanlike manner;

- b. Ensure the installation of the work was in accordance with the plans and specifications and contract;
- c. Ensure the installation and completion of the work was in accordance with the customs, standards, codes and regulations of the construction industry;
- d. Provide and furnish a completed project which was fit for its intended purpose, suitable and habitable as a restaurant; and
- e. Ensure that the Project was completed in a timely manner and in accordance with the established budget for the Project.

27. As a consequence of the foregoing breaches of contract Plaintiffs have been damaged in an amount in excess of \$400,000.00 for which Danville is liable.

By Way of a Second Cause of Action Against Danville
(Equitable Indemnity)

28. Danville negligently, carelessly and recklessly oversaw and allowed the installation of the plumbing and mechanical systems in the Project in a way that failed to protect the occupants of the facility from noxious gasses and odors, and in allowing the improper installation of the refrigeration units properly.

29. As a consequence and proximate cause of this negligence, carelessness and recklessness, Plaintiffs have been damaged in an amount in excess of \$400,000.00 on account of the actions and/or omissions of Danville and are therefore entitled equitable indemnity from Danville for the losses paid to others.

By Way of a Third Cause of Action Against Danville
(Negligence)

30. Danville owed Plaintiffs a duty of care to ensure work on the Project was completed so that it could be used in a reasonable and safe manner as a restaurant and to supervise and oversee

the work relating to the mechanical and plumbing systems to ensure it complied with the plans and specifications.

31. Danville breached this duty in failing to ensure the work was completed so that it could be used in a reasonable and safe manner as a restaurant and in failing to supervise and oversee work relating to the mechanical and plumbing systems.

32. As a direct and proximate cause of the breach of these duties, Plaintiffs incurred loss of use of the facility and consequent property damages, loss of the business profits and loss of goodwill and a business investment in excess of \$400,000.00 for which Danville is liable.

By Way of a Fourth Cause of Action Against Danville
(Breach of Fiduciary Duty)

33. By assuming a managerial role in the Project, Coastal placed a high degree of trust and confidence in Danville.

34. Coastal relied on Danville's alleged experience, knowledge, and know-how in the construction process.

35. Coastal relied on the special skills and knowledge allegedly possessed by Danville as well as Danville's assurances that it would act in Coastal's best interest.

36. Danville assumed a fiduciary duty to Coastal to ensure that the Project was properly managed and scheduled.

37. Danville breached its fiduciary duties to Coastal by failing to ensure the Project was completed so that it could be used in a reasonable and safe manner as a restaurant.

38. As a direct and proximate cause of the breach of these fiduciary duties, Plaintiffs incurred loss of use of the facility and consequent property damages, loss of the business profits and loss of goodwill and a business investment in excess of \$400,000.00 for which Danville is liable.

By Way of a First Cause of Action Against Turbeville
(Negligence)

39. Turbeville owed Plaintiffs a duty of care to ensure work on the Project was completed so that it could be used in a reasonable and safe manner as a restaurant and to supervise and oversee the work relating to the mechanical and plumbing systems to ensure it complied with the plans and specifications.

40. Turbeville breached this duty in failing to ensure the work was completed so that it could be used in a reasonable and safe manner as a restaurant and in failing to supervise and oversee work relating to the mechanical and plumbing systems.

41. As a direct and proximate cause of the breach of these duties, Plaintiffs incurred loss of use of the facility and consequent property damages, loss of the business profits and loss of goodwill and a business investment in excess of \$400,000.00 for which Turbeville is liable.

By Way of a Second Cause of Action Against Turbeville
(Equitable Indemnity)

42. Turbeville negligently, carelessly and recklessly oversaw and allowed the installation of the plumbing and mechanical systems in the Project in a way that failed to protect the occupants of the facility from noxious gasses and odors, and in allowing the improper installation of the refrigeration units properly.

43. As a consequence and proximate cause of this negligence, carelessness and recklessness, Plaintiffs have been damaged in an amount in excess of \$400,000.00 on account of the actions and/or omissions of Turbeville and are therefore entitled equitable indemnity from Turbeville for the losses paid to others.

By Way of a Third Cause of Action Against Turbeville
(Breach of Fiduciary Duty)

44. By assuming a managerial role in the Project, Turbeville placed a high degree of trust and confidence in Turbeville.

45. Coastal relied on Turbeville's alleged experience, knowledge, and know-how in the construction process.

46. Coastal relied on the special skills and knowledge allegedly possessed by Turbeville as well as Turbeville's assurances that it would act in Coastal's best interest.

47. Turbeville assumed a fiduciary duty to Coastal to ensure that the Project was properly managed and scheduled.

48. Turbeville breached its fiduciary duties to Coastal by failing to ensure the Project was completed so that it could be used in a reasonable and safe manner as a restaurant.

49. As a direct and proximate cause of the breach of these fiduciary duties, Plaintiffs incurred loss of use of the facility and consequent property damages, loss of the business profits and loss of goodwill and a business investment in excess of \$400,000.00 for which Turbeville is liable.

By Way of a First Cause of Action Against FRS
(Breach of Contract)

50. Coastal and FRS entered into a contract whereby FRS would provide and install certain kitchen equipment, including refrigeration units, a pizza oven, and an exhaust hood for the pizza oven.

51. Coastal faithfully and properly completed all of its obligations under the contract with FRS and paid FRS in full for the work.

52. FRS breached its contract with Coastal by improperly providing and installing the various kitchen equipment, resulting in excessive temperatures and heat emission in the kitchen area.

53. As a direct and proximate result of this breach, Plaintiffs have been damaged in an amount in excess of \$400,000.00 for which FRS is liable.

By Way of a Second Cause of Action Against FRS
(Breach of Warranty)

54. By providing and installing kitchen equipment, FRS impliedly warranted that the equipment was merchantable, fit for a particular purpose, and that the work would be of good and workmanlike quality.

55. FRS breached these warranties.

56. As a consequence of the foregoing breaches of warranty Plaintiffs have been damaged in an amount in excess of \$400,000.00 for which FRS is liable.

By Way of a Third Cause of Action Against FRS
(Equitable Indemnity)

57. FRS negligently, carelessly and recklessly installed the kitchen equipment in the Project in failing to protect the occupants of the facility from excessive temperatures in the kitchen and in failing to install the kitchen equipment in accordance with the plans and specifications.

58. As a consequence and proximate cause of this negligence, carelessness and recklessness, Plaintiffs have been damaged in an amount in excess of \$400,000.00 on account of the actions and/or omissions of FRS and are therefore entitled equitable indemnity from FRS for the losses paid to others.

By Way of a Fourth Cause of Action Against FRS
(Negligence)

59. FRS owed Plaintiffs a duty of care to complete the work so that it could be used in a reasonable and safe manner and to ensure the work conformed to the plans and specifications.

60. FRS breached this duty in failing to complete the work so that it could be used in a reasonable and safe manner and in failing to ensure the work complied with the applicable plans and specifications.

61. As a direct and proximate cause of the breach of these duties, Plaintiffs incurred loss of use of the facility and consequent property damages, loss of the business profits and loss of goodwill and a business investment in excess of \$400,000.00 for which FRS is liable.

Wherefore, Plaintiff prays for judgment in its favor against CGI, Danville, Turbeville, and FRS on all causes of action, for actual, consequential and special damages in an amount in excess of \$400,000.00, (the exact amount to be proven at trial); for attorney's fees, for prejudgment interest and statutory interest, for the costs of this action, for a trial by jury on all issues of fact, and for such other and further relief as is just and proper.

BRUNER, POWELL, WALL & MULLINS, LLC



Henry P. Wall
Matthew H. Stabler
Post Office Box 61110
Columbia, SC 29260-1110
803.252.7693
Attorneys for Plaintiff.

May 7, 2011

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
COASTAL PI, LLC d/b/a PRIMARILY
PI AND JAMES BIGBY

Plaintiff,

v.

C.G.I. DEVELOPMENT, INC.;
DANVILLE BUSINESS ADVISORS,
LLC; MARION D. TUBREVILLE; AND
FRS, INC.

Defendants.

IN THE CIRCUIT COURT

Civil Action No.: 2011-CP-40-4111

**DANVILLE BUSINESS ADVISORS,
LLC AND MARION D. TURBEVILLE'S
ANSWER TO PLAINTIFF'S AMENDED
COMPLAINT**

(Jury Trial Demanded)

RICHLAND COUNTY
FILED
2012 MAY 24 AM 8:47
JENNIFER W. MCBRIDE
C.C.P. & G.S.

NOW COME the defendants, Danville Business Advisors, LLC (hereinafter "Danville") and Marion D. Turbeville (hereinafter "Turbeville"), by and through their undersigned counsel, specifically reserving all of their rights to make jurisdictional, Rule 12, or other motions and in answer to the plaintiff's Amended Complaint (hereinafter "Complaint"), and would respectfully show unto the Court that:

FOR A FIRST DEFENSE

1. Each and every paragraph of the Complaint not hereinafter admitted is denied.

FOR A SECOND DEFENSE

2. Upon information and belief paragraph 1 of the Complaint is admitted.
3. Upon information and belief paragraph 2 of the Complaint is admitted.

4. Paragraph 3 of the Complaint is admitted.
5. Paragraph 4 of the Complaint is admitted.
6. Upon information and belief paragraph 5 of the Complaint is admitted.
7. Paragraphs 6 through 9 of the Complaint are admitted.
8. Paragraph 10 of the Complaint contains no allegations against Danville or Turbeville which requires a responsive pleading. To the extent that paragraph 10 of the Complaint can be read to contain any allegations against Danville or Turbeville the allegations are denied.
9. Paragraphs 11 through 13 of the Complaint are denied.
10. Paragraph 14 of the Complaint contains no allegations against Danville or Turbeville which requires a responsive pleading. To the extent that paragraph 14 of the Complaint can be read to contain any allegations against Danville or Turbeville, the allegations are denied.
11. Paragraphs 15 and 16 of the Complaint are denied.
12. Paragraphs 17 and all of its subparts through 25 of the Complaint contain no allegations as to Danville or Turbeville which requires a responsive pleading. To the extent that paragraphs 17 and 25 of the Complaint can be read to contain any allegations against Danville or Turbeville, the allegations are denied.

ANSWERING THE FIRST CAUSE OF ACTION AGAINST DANVILLE
(Action against Danville for Breach of Contract)

13. As to Paragraph 26 and all of its subparts of the Complaint Danville and Turbeville repeat their foregoing answers in paragraphs 1 through 12 as if fully repeated verbatim herein.

14. Paragraphs 26 and all of its subparts through 27 of the Complaint are denied.

ANSWERING THE SECOND CAUSE OF ACTION AGAINST DANVILLE
(Action against Danville for Equitable Indemnity)

15. As to paragraph 28 of the Complaint Danville and Turbeville repeat their foregoing answers in paragraphs 1 through 14 as if fully repeated verbatim herein.

16. Paragraphs 28 and 29 of the Complaint are denied.

ANSWERING THE THIRD CAUSE OF ACTION AGAINST DANVILLE
(Action against Danville for Negligence)

17. As to paragraph 30 of the Complaint Danville and Turbeville repeat their foregoing answers in paragraphs 1 through 16 as if fully repeated verbatim herein.

18. Paragraphs 30 through 32 of the Complaint are denied.

ANSWERING THE FOURTH CAUSE OF ACTION AGAINST DANVILLE
(Action against Danville for Breach of Fiduciary Duty)

19. As to paragraph 33 of the Complaint Danville and Turbeville repeat their foregoing answers in paragraphs 1 through 18 as if fully repeated verbatim herein.

20. Paragraphs 33 through 38 of the Complaint are denied.

ANSWERING THE FIRST CAUSE OF ACTION AGAINST TURBEVILLE
(Action against Turbeville for Negligence)

21. As to paragraph 39 of the Complaint Danville and Turbeville repeat their foregoing answers in paragraphs 1 through 20 as if fully incorporated therein.

22. Paragraphs 39 through 41 of the Complaint are denied.

ANSWERING THE SECOND CAUSE OF ACTION AGAINST TURBEVILLE
(Action against Turbeville for Equitable Indemnity)

23. As to paragraph 42 of the Complaint Danville and Turbeville repeat their foregoing answers in paragraphs 1 through 22 as if fully incorporated therein.

24. Paragraphs 42 through 43 of the Complaint are denied.

ANSWERING THE THIRD CAUSE OF ACTION AGAINST TURBEVILLE
(Action against Turbeville for Breach of Fiduciary Duty)

25. As to paragraph 44 of the Complaint Danville and Turbeville repeat their foregoing answers in paragraphs 1 through 24 as if fully incorporated therein.

26. Paragraph 44 of the Complaint is unintelligible and therefore denied.

27. Paragraphs 45 through 49 of the Complaint are denied.

28. Paragraphs 50 through 61 of the Complaint contain no allegations as to Danville or Turbeville which requires a responsive pleading. To the extent that paragraphs 50 through 61 of the Complaint can be read to contain any allegations against Danville or Turbeville, the allegations are denied.

29. As to the prayer for relief in the Complaint Danville and Turbeville deny that the plaintiff is entitled to any of the relief sought in the Complaint.

FOR A THIRD DEFENSE

30. The plaintiff's claims are barred by the economic loss doctrine.

FOR A FOURTH DEFENSE

31. The plaintiff has failed to mitigate his damages and to the extent any damages could have been mitigated by the exercise of due care, the plaintiff cannot recover those damages from these defendants.

FOR A FIFTH DEFENSE

32. The plaintiff's claims are barred by the equitable doctrines of waiver, estoppel, and laches.

FOR A SIXTH DEFENSE

33. The plaintiff's claims are barred by the applicable statute of limitations, the applicable statute of repose, or the time limitations contained in the contract and any warranties provided to the plaintiff.

FOR A SEVENTH DEFENSE

34. Whatever damages, if any, that were sustained by the plaintiff were due to, caused solely or partly by, and were the direct and proximate result of the negligence of the plaintiff and therefore plaintiff's recovery, if any, should be barred, or reduced in proportion to the amount of his own negligence.

FOR AN EIGHTH DEFENSE

35. That whatever damages, if any, which may have been sustained by the plaintiff was the result of, were due solely to, caused solely by, and were the direct and proximate result of the intervening, superseding, and unforeseeable negligence of others over whom Danville and Turbeville had no control or which occurred after Danville and Turbeville had performed under their contracts so as to bar any recovery herein.

FOR A NINTH DEFENSE

36. Danville and Turbeville performed in accordance with the terms of their agreements with the plaintiff and the plaintiff accepted the same and plaintiff is therefore barred from relief under the doctrine of discharge by performance.

FOR A TENTH DEFENSE

37. To the extent that the plaintiff have made any warranty claims against Danville and / or Turbeville be they express or implied, Danville and / or Turbeville would show that such claims are barred by the express terms of the applicable warranties, either express or implied, if any, which are denied, or such alleged warranties, if any, have expired.

FOR AN ELEVENTH DEFENSE

38. Danville and Turbeville hereby adopt any defenses asserted by any other defendant to the extent that any such defenses are not inconsistent with any defenses asserted herein.

FOR A TWELFH DEFENSE

39. Danville and Turbeville reserve any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the plaintiff's Complaint, asserted its affirmative defenses, pray that they be dismissed from this lawsuit with prejudice, that they be awarded their costs and expenses and for such further relief as the court deems just and proper.

Respectfully submitted,

DOUGALL & COLLINS

A handwritten signature in dark ink, appearing to read "Dougall & Collins", is written over a horizontal line.

Thomas F. Dougall, Esq.
William A. Collins, Jr., Esq.
Robert M. Peele, III Esq.
1700 Woodcreek Farms Road
Elgin, South Carolina 29045
(803) 865-8858 (TEL)
(803) 865-8944 (FAX)

Attorneys for Defendants Danville Business
Advisors, LLC and Marion D. Turbeville

May 22, 2012

Columbia, South Carolina

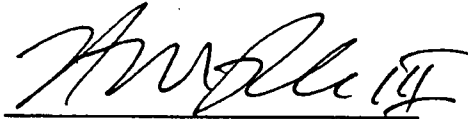
CERTIFICATE OF SERVICE

This is to certify that the foregoing Answer to Plaintiff's Amended Complaint was served in the above-referenced case by depositing a copy of the same in the United States mail, postage prepaid, on the 22nd day of May, 2012 addressed as follows:

Henry Pickett Wall, Esq.
Bruner Powell Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
Attorney for Plaintiff

James P. Craig, Esq.
Craig Law Firm, PC
P.O. Box 11245
Columbia, SC 29211
Attorney for C.G.I. Development, INC.

RICHLAND COUNTY
FILED
2012 MAY 24 AM 8:47
JEANETTE W. MCBRIDE
C.C.P. & G.S.



Robert M. Peele, III

13260.00
Mealy

BRUNER, POWELL, WALL & MULLINS, LLC

ATTORNEYS AND COUNSELORS AT LAW

1735 ST. JULIAN PLACE, SUITE 200

POST OFFICE BOX 61110

COLUMBIA, SOUTH CAROLINA 29260-1110

TELEPHONE 803-252-7693

FAX 803-254-5719

WWW.BRUNERPOWELL.COM

JAMES L. BRUNER, P.A.
WARREN C. POWELL, JR., P.A.*
HENRY P. WALL
E. WADE MULLINS, III, P.A.
BRIAN P. ROBINSON, P.A.

WESLEY D. PEEL, P.A.
JOEY R. FLOYD, P.A.
WILLIAM D. BRITT, JR., P.A.

BENJAMIN C. BRUNER
MATTHEW H. STABLER

* Also Admitted in District of Columbia

AUTHOR'S E-MAIL: MSTABLER@brunerpowell.com

September 24, 2013

The Honorable Jeanette W. McBride
Richland County Clerk of Court
P.O. Box 2766
1701 Main Street, Room 205
Columbia, SC 29202

Re: Coastal Pi, LLC d/b/a Primarily Pi and James Bigby v. C.G.I. Development, Inc., Danville Business Advisors, LLC, Marion D. Turbeville, and FRS, Inc.
C/A No: 2011-CP-40-0411
Our File No.: 9-2182.100

Dear Mrs. McBride:

Enclosed please find an original and two (2) copies of the *Second Amended Complaint* in the above-referenced action. Please file the original, clock-in the copies and return them to me in the enclosed envelope.

By copy of this letter, I am serving all counsel of record a copy of the same.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

Nancy Y. Stagg

Nancy Y. Stagg
Legal Assistant to Matthew H. Stabler

/nys
/Enclosure

cc: James Bigby
James P. Craig, Esquire
✓ Robert M. Peele, III, Esquire
Drew Hamilton Butler, Esquire

Coastal Pi, LLC d/b/a Primarily Pi and
James Bigby

Plaintiff(s)

vs.

C.G.I Development, Inc., Danville Business
Advisors, LLC, Marion D. Turbeville,

Defendant(s)

CIVIL ACTION COVERSHEET

SECOND AMENDED COMPLAINT

2011-CP - 40- 04111

(Please Print)

Submitted By: Matthew H. Stabler

Address: P. O. Box 61110

Columbia, SC 29204

SC Bar #: 78623

Telephone #: 803-252-7693

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Other:

E-mail: mstabler@brunerpowell.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)

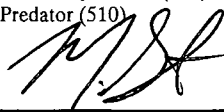
*If Action is Judgment/Settlement do not complete

- ☒ 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) Previous Notice of Intent Case # 20____-CP-_____ ☐ 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) ☐ 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) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)			

Submitting Party Signature:



Date: September 24, 2012

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.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	
Coastal Pi, LLC d/b/a Primarily Pi and	)	Civil Action No.: 2011-CP-40-04111
James Bigby,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	SECOND AMENDED COMPLAINT
	)	(Jury Trial Demanded)
C.G.I. Development, Inc., Danville	)	
Business Advisors, LLC, and Marion D.	)	
Turbeville,	)	
	)	
Defendants.	)	
	)	

The Plaintiffs, Coastal Pi, LLC d/b/a Primarily Pi and James Bigby, complaining of the Defendants, C.G.I. Development, Inc. ("CGI"), Danville Business Advisors, LLC ("Danville"), and Marion D. Turbeville ("Turbeville"), would show:

PARTIES AND JURISDICTION

1. Coastal Pi, LLC ("Coastal") is a limited liability company organized and existing under the laws of the State of South Carolina. At all times relevant hereto, Coastal was engaged in the business of planning and operating a pizza restaurant in Lexington County, South Carolina. James Bigby is the principal of Coastal and, during the course of Coastal's operations, Bigby executed various indemnity and guarantee agreements for the operation and success of Coastal.

2. CGI is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County. At all times relevant hereto, CGI was engaged in the business of general construction contracting.

3. Danville is a limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business in Richland County.

4. Turbeville, upon information and belief, is a citizen and resident of Richland County.

5. This Court has jurisdiction over the parties and the subject-matter. Venue is proper in Richland County.

GENERAL FACTUAL ALLEGATIONS

6. In 2008, Coastal and Danville entered into an agreement whereby Danville agreed to manage and oversee the design and construction of a restaurant for Coastal ("Project") located in a space commonly known as 2805 Sunset Boulevard, Suite D, Lexington, South Carolina ("Restaurant Space"). Further, Danville agreed to assist Coastal in lease negotiations for the Restaurant Space. In exchange, Coastal agreed to pay Danville \$1,500 per month.

7. Turbeville is a principal and employee of Danville and at all times relevant hereto was acting within his scope of employment and as an agent of Danville.

8. Danville and Turbeville agreed and undertook to negotiate a lease on Coastal's behalf for the Restaurant Space.

9. While negotiating the lease, Danville and Turbeville negotiated to receive \$23,067.58 in leasing commissions from the landlord.

10. Neither Turbeville nor Danville disclosed these commissions to Coastal.

11. Danville and Turbeville agreed and undertook to act as Coastal's agent and representative on the Project.

12. As Coastal's agents, Danville and Turbeville were the principal point of contact for all contractors, architects, engineers, suppliers, and trade crafts on the Project.

13. Danville, through Turbeville, procured bids for the Project and then presented Coastal with suggestions for the Project architect and contractor.

14. In 2009, Coastal entered into a construction contract with CGI whereby CGI would complete certain improvements to upfit the Restaurant Space. In exchange, Coastal agreed to pay CGI \$302,566.30.

15. CGI's contract price was based upon the bid CGI submitted to Danville and Turbeville.

16. Unbeknownst to Coastal, Danville and Turbeville instructed CGI to include a "finder's fee" in the amount of \$16,500 in its project bid, which amount CGI then paid directly to Danville.

17. Upon information and belief, Turbeville and/or Danville have instructed other contractors to include finder's fees in other bids, which amounts were paid to Danville with no knowledge of Danville's clients.

18. Upon information and belief, Turbeville and Danville contractors who agreed to pay the secret finder's fee were called "preferred" contractors to Danville's clientele.

19. Neither CGI nor Danville disclosed the "finder's fee" to Plaintiffs.

20. Danville, through Turbeville, undertook to manage the entire construction process of the Project, giving direction to CGI as well as to other contractors working on the Project.

21. Unbeknownst to Coastal or Bigby, Danville, Turbeville, and/or CGI substituted the HVAC units the contract documents specified and instead had cheaper HVAC units installed.

22. The Project engineer did not approve the installation of the cheaper HVAC units.

23. The Project architect did not approve the installation of the cheaper HVAC units.

24. Danville, Turbeville and CGI did not issue a deductive change order giving Coastal a credit for the cheaper HVAC units, nor did they tell Coastal or Bigby the HVAC units installed were not the units the Project engineer specified.

25. After Coastal occupied the Restaurant Space and opened the restaurant, Coastal encountered numerous problems due to the negligence and misconduct of CGI, Danville, and Turbeville.

26. The plumbing system allowed odious and noxious sewer gas to vent and escape into the restaurant, thus making employees and patrons of the restaurant nauseous and ill, and making the facility unfit and unusable as a public restaurant.

27. The temperature in both the kitchen and patron area of the restaurant was extremely high, making working conditions miserable and making it uncomfortable for patrons to enjoy their meals.

28. Although the HVAC units ran constantly, the temperature inside the restaurant continually exceeded the temperatures outside.

29. In the beginning, Coastal was forced to close on hot summer days, losing revenue and the use of the Restaurant Space.

30. Coastal and Bigby repeatedly notified CGI, Danville, and Turbeville of these problems, but the odor and temperature problems were never corrected.

31. At no point did CGI, Danville, or Turbeville ever inform Coastal or Bigby that the HVAC units installed were not the HVAC units the Project engineer specified for the Project.

32. For months, Coastal attempted to correct the odor and temperature problems.

33. Eventually, however, Coastal was forced to shut down because the leased property was unsuitable for its intended purpose due to these problems.

34. Coastal defaulted on its lease, lost profits, and lost investments made in the restaurant.

AS A FIRST CAUSE OF ACTION
AGAINST C.G.I. DEVELOPMENT, INC.
(Breach of Contract)

35. Plaintiffs reiterate and reallege all of the allegations contained herein above as if set forth verbatim to the extent required by, but not inconsistent with, the following allegations.

36. CGI breached its contract with Coastal by failing to:

- a. Install and complete the work in a good and workmanlike manner;
- b. Install and complete the work in accordance with the plans and specifications and contract;
- c. Install and complete the work in accordance with the customs, standards, codes and regulations of the construction industry; and
- d. Provide and furnish a completed project which was fit for its intended purpose, suitable and habitable as a restaurant.

37. CGI further breached the contract by violating the implied covenant of good faith and fair dealing.

38. Coastal faithfully and properly completed all of its obligations under the contract with CGI and paid CGI in full for the work.

39. As a direct consequence of the foregoing breaches of contract Plaintiffs have been damaged in an amount of at least \$873,641.78, for which CGI is liable.

AS A SECOND CAUSE OF ACTION
AGAINST C.G.I. DEVELOPMENT, INC.
(Breach of Implied Warranty)

40. Plaintiffs reiterate and reallege all of the allegations contained herein above as if set forth verbatim to the extent required by, but not inconsistent with, the following allegations.

41. In undertaking and performing its work, CGI impliedly warranted that the work would be of good and workmanlike quality, that it would be fit for its intended purpose as a restaurant, and that it would conform to applicable building codes, customs, regulations, and the contract specifications.

42. CGI breached its implied warranty by failing to perform the work in a good and workmanlike manner, failing to complete the Project so the Restaurant Space would be fit for its intended purpose as a restaurant, failing to perform the work in accordance with applicable building codes, customs, regulations, and the contract specifications.

43. As a direct consequence of the foregoing breaches of warranty Plaintiffs have been damaged in an amount of at least \$873,641.78, for which CGI is liable.

AS A THIRD CAUSE OF ACTION
AGAINST C.G.I. DEVELOPMENT, INC.
(Equitable Indemnity)

44. Plaintiffs reiterate and reallege all of the allegations contained herein above as if set forth verbatim to the extent required by, but not inconsistent with, the following allegations.

45. CGI negligently, carelessly, and recklessly installed the plumbing and mechanical systems in the Project.

46. As a direct and proximate cause of this negligence, carelessness and recklessness, Plaintiffs have been damaged in an amount of at least \$873,641.78 and, therefore, are entitled equitable indemnity from CGI for losses paid to others.

AS A FOURTH CAUSE OF ACTION
AGAINST C.G.I. DEVELOPMENT, INC.
(Negligence)

47. Plaintiffs reiterate and reallege all of the allegations contained herein above as if set forth verbatim to the extent required by, but not inconsistent with, the following allegations.

48. CGI undertook to complete the Project so it could be used in a reasonable and safe manner and to supervise the work of its agents and subcontractors.

49. CGI owed Plaintiffs a duty of care to complete the work so that it could be used in a reasonable and safe manner and to supervise the work of its agents and subcontractors.

50. CGI undertook to construct the Project in accordance with the construction documents.

51. CGI further owed Plaintiffs a duty to construct the Project in accordance with the construction documents.

52. CGI was negligent in failing to perform the work so the Project could be used in a reasonable and safe manner, in failing to supervise, oversee and direct the work of its agents and subcontractors, and in failing to construct the restaurant in accordance with the construction documents.

53. As a direct and proximate result of CGI's failure to follow the construction plans and install the specified HVAC units, the cheaper HVAC units failed to properly cool and ventilate the restaurant and caused it to be repeatedly and continuously exposed to substantially the same general harmful conditions of noxious odors and extremely high temperatures. This continuous and repeated exposure to noxious odors and extremely high temperatures caused Coastal to lose the use of its restaurant even though the restaurant premises was not physically injured.

54. As a direct and proximate result of CGI's negligence, Plaintiffs incurred loss of use of the facility and consequent property damages, loss of the business profits, and loss of goodwill and a business investment in excess of \$873,641.78, for which CGI is liable.

AS A FIFTH CAUSE OF ACTION
AGAINST C.G.I. DEVELOPMENT, INC.
(Breach of Contract Accompanied by a Fraudulent Act)

55. Plaintiffs reiterate and reallege all of the allegations contained herein above as if set forth verbatim to the extent required by, but not inconsistent with, the following allegations.

56. In connection with its breach of contract, as set forth in more detail above, CGI intentionally and deceitfully withheld from the Plaintiffs that it installed cheaper HVAC units and failed to credit the cost savings to Plaintiffs.

57. CGI's decision to install the cheaper HVAC units without Plaintiffs' knowledge or consent is a fraudulent act accompanying its breach of contract.

58. As a direct and proximate cause of CGI's breach of contract accompanied by a fraudulent act, Plaintiffs incurred loss of use of the facility and consequent property damages, loss of the business profits and loss of goodwill and a business investment in excess of \$873,641.78, for which CGI is liable.

59. Plaintiffs are further entitled to punitive damages against CGI.

AN A SIXTH CAUSE OF ACTION
AGAINST DANVILLE BUSINESS ADVISORS, LLC
(Breach of Contract)

60. Plaintiffs reiterate and reallege all of the allegations contained herein above as if set forth verbatim to the extent required by, but not inconsistent with, the following allegations.

61. Danville breached its contract with Coastal by failing to:

- a. Ensure work was installed and completed in a good and workmanlike manner;
- b. Ensure the installation of the work was in accordance with the plans and specifications and contract;
- c. Ensure the installation and completion of the work was in accordance with the customs, standards, codes and regulations of the construction industry;

- d. Provide and furnish a completed project which was fit for its intended purpose, suitable and habitable as a restaurant;
- e. Ensure that the Project was completed in a timely manner and in accordance with the established budget for the Project; and
- f. Represent and protect Coastal's interests at all times during the Project.

62. Danville further breached the contract by violating the implied covenant of good faith and fair dealing.

63. Coastal faithfully and properly completed all of its obligations under its agreement with Danville and paid Danville in full for the work.

64. As a direct consequence of the foregoing breaches of contract Plaintiffs have been damaged in an amount of at least \$873,641.78 for which Danville is liable.

AS A SEVENTH CAUSE OF ACTION
AGAINST DANVILLE BUSINESS ADVISORS, LLC AND MARION TURBEVILLE
(Equitable Indemnity)

65. Plaintiffs reiterate and reallege all of the allegations contained herein above as if set forth verbatim to the extent required by, but not inconsistent with, the following allegations.

66. Turbeville, both individually and on behalf of Danville, negligently, carelessly, and recklessly failed to properly oversee the installation of the plumbing and mechanical systems in the Project.

67. As a direct and proximate result of this negligence, carelessness and recklessness, Plaintiffs have been damaged in an amount in excess of \$873,641.78 and are therefore entitled equitable indemnity from Danville for the losses paid to others.

AS AN EIGHTH CAUSE OF ACTION
AGAINST DANVILLE BUSINESS ADVISORS, LLC AND MARION TURBEVILLE
(Negligence)

68. Plaintiffs reiterate and reallege all of the allegations contained herein above as if set forth verbatim to the extent required by, but not inconsistent with, the following allegations.

69. Turbeville and Danville owed Plaintiffs a duty of care when Turbeville, individually and on behalf of Danville, undertook manage the Project, to ensure work on the Project was completed so that it could be used in a reasonable and safe manner as a restaurant, and to supervise and oversee the work relating to the mechanical and plumbing systems to ensure it complied with the plans and specifications.

70. Turbeville failed to properly manage the Project, failed to ensure the work was completed so that it could be used in a reasonable and safe manner as a restaurant, and failed to properly supervise and oversee work relating to the mechanical and plumbing systems.

71. As a direct and proximate cause of the breach of these duties, Plaintiffs incurred loss of use of the facility and consequent property damages, loss of the business profits and loss of goodwill and a business investment in excess of \$873,641.78 for which Turbeville and Danville are liable.

AS A NINTH CAUSE OF ACTION
AGAINST DANVILLE BUSINESS ADVISORS, LLC AND MARION TURBEVILLE
(Breach of Fiduciary Duty)

72. Plaintiffs reiterate and reallege all of the allegations contained herein above as if set forth verbatim to the extent required by, but not inconsistent with, the following allegations.

73. Coastal placed a high degree of trust and confidence in Danville and in Turbeville to negotiate the lease for the Restaurant Space and to act on its behalf to oversee and manage the Project.

74. Coastal relied on Turbeville's and Danville's purported experience, knowledge, and know-how in the construction process.

75. In addition, Coastal relied on Turbeville's representations that he would act in Coastal's best interest.

76. Turbeville, individually and on behalf of Danville, assumed a fiduciary duty to Coastal in negotiating the lease for the Restaurant Space and in managing the Project.

77. Turbeville, individually and on behalf of Danville, further assumed a fiduciary duty to act exclusively in the best interests of Coastal with respect to the lease and the Project.

78. Turbeville and Danville breached their fiduciary duties of care and of loyalty to Coastal, as set forth in more detail above.

79. Turbeville instructed one or more contractors to increase their bids to include secret finder's fees to him or Danville and failed to disclose hidden commissions he collected from the landlord.

80. With respect to the HVAC units, Turbeville either negligently gave CGI approval to install the cheaper HVAC units without seeking review and approval by the Project architect or the Project engineer, or Turbeville negligently failed to ensure CGI's work conformed to the contract documents.

81. Danville is vicariously liable for Turbeville's misconduct because Turbeville was acting as an authorized agent of Danville at all times relevant hereto.

82. Additionally, Turbeville is individually liable for his own torts.

83. Turbeville's and Danville's conduct was reckless, willful, and wanton.

84. As a direct and proximate result, Plaintiffs incurred loss of use of the restaurant, loss of the business profits, loss of goodwill and of a business investment in excess of \$873,641.78 for which Turbeville and Danville are jointly and severally liable.

85. Plaintiffs are further entitled to punitive damages against Danville.

AS A TENTH CAUSE OF ACTION
AGAINST DANVILLE BUSINESS ADVISORS, LLC AND MARION TURBEVILLE
(Violation of S.C. Unfair Trade Practices Act)

86. Plaintiffs reiterate and reallege all of the allegations contained herein above as if set forth verbatim to the extent required by, but not inconsistent with, the following allegations.

87. Turbeville, individually and on behalf of Danville, performed the duties of a construction manager on the project.

88. At all times relevant hereto, neither Turbeville nor Danville held a license as a general contractor or as a construction manager issued by the South Carolina Department of Labor, Licensing and Regulation.

89. The performance of the duties of a construction manager without being licensed is an unfair method of competition and an unfair or deceptive act or practice in the conduct of a trade or commerce, as defined by law.

90. Turbeville's practice of secretly negotiating for kickbacks to be paid to Danville from contractors without disclosing those payments to his clients is an unfair method of competition and an unfair or deceptive act or practice in the conduct of a trade or commerce, as defined by law.

91. Danville's practice of secretly collecting kickbacks from contractors without disclosing those payments to its clients is an unfair method of competition and an unfair or deceptive act or practice in the conduct of a trade or commerce, as defined by law.

92. These actions constitute a violation of the South Carolina Unfair Trade Practices Act S.C. Code Ann. § 39-5-10 *et seq.* (the "Act").

93. Turbeville's and Danville's unfair and deceptive practices affect the public interest and have the potential for repetition, if it has not already been repeated.

94. The actions of varying parties holding themselves out as construction managers or performing the duties of construction managers despite the absence of proper licensing have occurred in the past and thus will likely continue to occur absent deterrence.

95. Additionally, Turbeville's and Danville's practice of secretly negotiating for kickbacks that increase the contract prices have, upon information and belief, already been repeated, and will likely continue to occur absent deterrence because the parties who gain from the arrangement keep it secret from owners.

96. Turbeville, individually and on behalf of Danville, used and employed the unfair or deceptive methods, acts, and practices willfully and knowing they violated the Act.

97. Plaintiffs suffered an ascertainable loss as a proximate result of Turbeville's and Danville's use or employment of the unfair or deceptive methods, acts, or practices.

98. Accordingly, Plaintiffs are entitled to their actual damages from Turbeville and Danville, jointly and severally, in an amount to be determined by the trier of fact.

99. Further, Plaintiffs are entitled to have their recovery of actual damages trebled in accordance with S.C. Code Ann. § 39-5-140, and to recover attorney's fees and costs.

AS AN ELEVENTH CAUSE OF ACTION
AGAINST DANVILLE BUSINESS ADVISORS, LLC
(Breach of Contract Accompanied by a Fraudulent Act)

100. Plaintiffs reiterate and reallege all of the allegations contained herein above as if set forth verbatim to the extent required by, but not inconsistent with, the following allegations.

101. Danville breached its contract with Coastal by failing to:

- a. Ensure work was installed and completed in a good and workmanlike manner;
- b. Ensure the installation of the work was in accordance with the plans and specifications and contract;
- c. Ensure the installation and completion of the work was in accordance with the customs, standards, codes and regulations of the construction industry;

- d. Provide and furnish a completed project which was fit for its intended purpose, suitable and habitable as a restaurant;
- e. Ensure that the Project was completed in a timely manner and in accordance with the established budget for the Project; and
- f. Represent and protect Coastal's interests at all times during the Project.

102. Danville possessed fraudulent intent related to the breach as evidenced by its failure to ever disclose the substitution of the HVAC units and by its failure to ever credit the cost savings to Plaintiffs.

103. Danville's decision to allow the substitution of the HVAC units without Plaintiffs' knowledge or consent is a fraudulent act accompanying its breach of contract.

104. As a direct and proximate cause of Danville's breach of contract accompanied by a fraudulent act, Plaintiffs incurred loss of use of the facility and consequent property damages, loss of the business profits and loss of goodwill and a business investment in excess of \$873,641.78 for which Danville is liable.

105. Plaintiffs are further entitled to punitive damages against Danville.

AS A TWELFTH CAUSE OF ACTION
AGAINST DANVILLE BUSINESS ADVISORS, LLC AND MARION TURBEVILLE
(Constructive Fraud)

106. Plaintiffs reiterate and reallege all of the allegations contained herein above as if set forth verbatim to the extent required by, but not inconsistent with, the following allegations.

107. Turbeville, as an employee and agent of Danville, represented to Plaintiffs that throughout the administration of the Project, he and Danville would protect Plaintiffs' interests and solely act for the benefit of Plaintiffs.

108. Turbeville's representations to Plaintiffs were false.

109. Turbeville ought to have known his representations were false as he intended to collect secret kickbacks and a secret commission from the lease to gain more money from the Project.

110. Turbeville's representations were material to Plaintiffs' decision to contract with Danville for the Project.

111. Turbeville intended for Plaintiffs to act upon its representations and to hire Danville and himself, which Plaintiffs did.

112. Plaintiffs were ignorant of the falsity of Turbeville's representations as these other arrangements were kept hidden from Plaintiffs.

113. Plaintiffs relied on Turbeville's representations by hiring Danville for the Project.

114. Plaintiffs had a right to rely on Turbeville's representations.

115. Danville's failure to disclose the substitution of the HVAC units to Plaintiffs, either at the time the substitution was made or when Plaintiffs were trying to determine the cause of the extremely high temperatures, further amounts to constructive fraud as Danville had a duty to disclose this material fact to Plaintiffs.

116. As a direct and proximate result of Plaintiffs' reliance on Turbeville's and Danville's constructively fraudulent representations, Plaintiffs incurred loss of use of the restaurant, loss of the business profits, loss of goodwill, and loss of a business investment in excess of \$873,641.78 for which Turbeville and Danville are jointly and severally liable.

117. Plaintiffs are further entitled to punitive damages against Turbeville's and Danville based upon their willful and intentional conduct.

AS A THIRTEENTH CAUSE OF ACTION
AGAINST DANVILLE BUSINESS ADVISORS, LLC AND MARION TURBEVILLE
(Fraud)

118. Plaintiffs reiterate and reallege all of the allegations contained herein above as if set forth verbatim to the extent required by, but not inconsistent with, the following allegations.

119. Turbeville represented to Plaintiffs that throughout the administration of the Project, he and Danville would protect Plaintiffs' interests and solely act for the benefit of Plaintiffs.

120. These representations to Plaintiffs were false.

121. These representations were material to Plaintiffs' decision to employ Danville on the Project.

122. Turbeville and Danville either knew that these representations were false or recklessly disregarded the truth or falsity of these representations as they intended to collect a secret kickback from one or more contractors and to collect a secret commission from the landlord for negotiating the lease.

123. Turbeville and Danville intended for Plaintiffs to act upon their representations and to hire Danville, which Plaintiffs did.

124. Plaintiffs were ignorant of the falsity of these representations, as these other arrangements were kept hidden from Plaintiffs.

125. Plaintiffs reasonably relied on the truth of these representations by hiring Danville for the Project.

126. Upon information and belief, Turbeville's and Danville's failure to disclose the substitution of the HVAC units to Plaintiffs, either at the time the substitution was made or when Plaintiffs were trying to determine the cause of the extremely high temperatures, further amounts

to fraud as Danville had a duty to disclose this material fact to Plaintiffs. Instead, Turbeville and Danville continued to conceal that cheaper HVAC units were installed without any credit given to the Plaintiffs.

127. As a direct and proximate result of these fraudulent acts, Plaintiffs incurred loss of use of the facility and consequent property damages, loss of the business profits and loss of goodwill and a business investment in excess of \$873,641.78, plus punitive damages, for which Turbeville and Danville are jointly and severally liable.

AS A FOURTEENTH CAUSE OF ACTION
AGAINST DANVILLE BUSINESS ADVISORS, LLC AND MARION TURBEVILLE
(Negligent Misrepresentation)

128. Plaintiffs reiterate and reallege all of the allegations contained herein above as if set forth verbatim to the extent required by, but not inconsistent with, the following allegations.

129. Turbeville and Danville falsely represented to Plaintiffs that throughout the administration of the Project, it would protect Plaintiffs' interests and solely act for the benefit of Plaintiffs.

130. Turbeville and Danville falsely represented to Plaintiffs that the proper HVAC units plumbing work, and other work conformed to the contract specifications.

131. Turbeville and Danville had a pecuniary interest in making these representations in that it stood to profit handsomely from the contract with Plaintiffs, the leasing commission, and the kickbacks.

132. Turbeville and Danville owed Plaintiffs a duty of care to ensue that truthful information was communicated to Plaintiffs.

133. Turbeville and Danville breached this duty to Plaintiffs by failing to exercise due care in ensuring all pertinent information was conveyed to Plaintiff.

134. Plaintiffs justifiably relied on these misrepresentations and hired Turbeville and Danville to oversee and coordinate the Project.

135. Plaintiff further reasonably relied on these misrepresentations by continuing to work with the Defendants for months to resolve the odor problem and high temperatures in the restaurant.

136. As a direct and proximate result of Plaintiffs' reliance on Danville's negligent representations, Plaintiffs incurred loss of use of the facility and consequent property damages, loss of the business profits and loss of goodwill and a business investment in excess of \$873,641.78 for which Danville is liable.

WHEREFORE, Plaintiffs pray for judgment in their favor against CGI, Danville, and Turbeville as follows:

- a. For judgment against CGI Development for actual and consequential damages in an amount in excess of \$873,641.78, the exact amount to be proven at trial, plus prejudgment interest, punitive damages, attorney's fees and costs as allowed by law;
- b. For judgment against Danville for actual, consequential and incidental damages in excess of \$873,641.78, the exact amount to be proven at trial, for prejudgment interest, punitive damages, attorney's fees and costs as allowed by law;
- c. For judgment against Danville and Turbeville, jointly and severally, for actual damages in excess of \$873,641.78, the exact amount to be proven at trial, plus punitive damages, special damages, treble damages, attorney's fees and costs as allowed by law;
- d. For a trial by jury on all issues of fact; and
- e. For such other and further relief as is just and proper.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

BRUNER, POWELL, WALL & MULLINS, LLC



Henry P. Wall
Benjamin C. Bruner
Matthew H. Stabler
Post Office Box 61110
Columbia, SC 29260-1110
803.252.7693
Attorneys for Plaintiffs

September 23, 2013

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Civil Action No.: 2011-CP-40-04111

Coastal Pi, LLC d/b/a Primarily
Pi and James Bigby)

Plaintiff,)

vs.)

CERTIFICATE OF SERVICE

C.G.I. Development, Inc., Danville Business)
Advisors, LLC, Marion D. Turbeville,)

Defendants.)

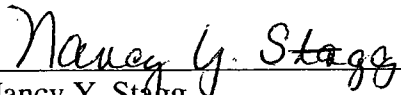
I, Nancy Y. Stagg, a Legal Assistant with the law firm of Bruner, Powell, Wall & Mullins, LLC, attorneys for Plaintiffs, do hereby certify that on this 24th day of September, 2013, I served the **Second Amended Complaint** upon the following parties by depositing a copy of same in the U.S. Mail, first class, postage prepaid, addressed as follows:

James P. Craig, Esquire
Craig Law Firm, PC
2001 Assembly Street, Suite 201
Columbia, SC 29201
Attorney for C.G.I. Development, Inc.

Robert M. Peele, III, Esquire
Law Office of Dougall & Collins
1700 Woodcreek Farms Road, Suite 100
Elgin, SC 29045
*Attorneys for Danville Business Advisors, LLC
and Marion D. Turbeville*

Drew Hamilton Butler, Esquire
Richardson, Plowden, Robinson, PA
P.O. Drawer 7788
Columbia, SC 29202
Attorneys for FRS, Inc.

Columbia, South Carolina


Nancy Y. Stagg

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
COASTAL PI, LLC d/b/a PRIMARILY
PI AND JAMES BIGBY

Plaintiff,

v.

C.G.I. DEVELOPMENT, INC.;
DANVILLE BUSINESS ADVISORS,
LLC; MARION D. TUBREVILLE; AND
FRS, INC.

Defendants.

IN THE CIRCUIT COURT

Civil Action No.: 2011-CP-40-4111

**DANVILLE BUSINESS ADVISORS,
LLC AND MARION D. TURBEVILLE'S
ANSWER TO PLAINTIFF'S SECOND
AMENDED COMPLAINT**

(Jury Trial Demanded)

RICHLAND COUNTY
FILED
2013 SEP 26 AM 11:45
JEANETTE W. HARRIS
C.C.P. & G.S.

NOW COME the defendants, Danville Business Advisors, LLC (hereinafter "Danville") and Marion D. Turbeville (hereinafter "Turbeville"), by and through their undersigned counsel, specifically reserving all of their rights to make jurisdictional, Rule 12, or other motions and in answer to the plaintiff's Second Amended Complaint, and would respectfully show unto the Court that:

FOR A FIRST DEFENSE

1. Each and every paragraph of the Second Amended Complaint not hereinafter admitted is denied.

FOR A SECOND DEFENSE

2. Upon information and belief paragraph 1 of the Second Amended Complaint is admitted.

3. Upon information and belief paragraph 2 of the Second Amended Complaint is admitted.

4. Paragraph 3 of the Second Amended Complaint is admitted.

5. Paragraph 4 of the Second Amended Complaint is admitted.

6. Upon information and belief paragraph 5 of the Second Amended Complaint is admitted.

7. Paragraph 6 and 7 of the Second Amended Complaint are admitted.

8. Paragraph 8 of the Second Amended Complaint is admitted to the extent that Danville agreed and undertook negotiations on behalf of Coastal for the Restaurant Space. All of paragraph 8 of the Second Amended Complaint is denied as it relates to Turbeville.

9. Upon information and belief, Paragraph 9 of the Second Amended Complaint is admitted to the extent that Danville, while negotiating the lease, negotiated to receive \$23,067.58 in leasing commissions from the landlord. All of paragraph 9 of the Second Amended Complaint is denied as it relates to Turbeville.

10. Paragraph 10 of the Second Amended Complaint is denied.

11. Paragraph 11 of the Second Amended Complaint is admitted to the extent that Danville agreed and undertook to act as Coastal's representative on the Project. The term "agent" calls for a legal conclusion and the allegation is denied. All of paragraph 11 of the Second Amended Complaint is denied as it relates to Turbeville.

12. Paragraph 12 of the Second Amended Complaint is only admitted to the extent that Danville was the principal point of contact for the general contractor,

architect and engineers. The principal point of contact for the trades and some suppliers was the general contractor. The principal point of contact for other trades was Mr. Bigby himself. All of paragraph 12 of the Second Amended Complaint is denied as it relates to Turbeville.

13. Paragraph 13 of the Second Amended Complaint is denied.

14. Paragraph 14 of the Second Amended Complaint contains no allegations against Danville or Turbeville, therefore no responsive pleading is required. To the extent that paragraph 14 of the Second Amended Complaint can be read to contain allegations against Danville or Turbeville, those allegations are denied.

15. Upon information and belief, paragraph 15 of the Second Amended Complaint is admitted to the extent that CGI's contract price was based upon the bid CGI submitted to Danville. All of paragraph 15 is denied as it relates to Turbeville.

16. Paragraph 16 of the Second Amended Complaint is denied.

17. Paragraph 17 of the Second Amended Complaint is denied.

18. Paragraph 18 of the Second Amended Complaint is denied.

19. Paragraph 19 of the Second Amended Complaint is denied.

20. Paragraph 20 of the Second Amended Complaint is denied.

21. Paragraph 21 of the Second Amended Complaint is denied as it relates to Danville or Turbeville.

22. At this point, Danville or Turbeville cannot admit or deny the truth or falsity of the allegations contained in paragraph 22, therefore it is denied.

23. At this point, Danville or Turbeville cannot admit or deny the truth or falsity

of the allegations contained in paragraph 23, therefore it is denied.

24. Paragraph 24 of the Second Amended Complaint is admitted to the extent that Danville or Turbeville did not issue a change order concerning the HVAC units as Danville or Turbeville.

25. Paragraph 25 of the Second Amended Complaint is denied as it relates to Danville or Turbeville.

26. Paragraph 26 of the Second Amended Complaint is denied as it relates to Danville or Turbeville.

27. Paragraph 27 of the Second Amended Complaint is denied as it relates to Danville or Turbeville.

28. At this point, Danville cannot admit or deny the truth or falsity of the allegations contained in paragraph 28 of the Second Amended Complaint, therefore it is denied.

29. At this point, Danville cannot admit or deny the truth or falsity of the allegations contained in paragraph 29 of the Second Amended Complaint, therefore it is denied.

30. In response to paragraph 30 of the Second Amended Complaint, Danville and Turbeville, who was acting as an agent of Danville, admits that Mr. Bigby contacted Danville several times concerning the odor and temperature issues. Danville, acting on the concern of Mr. Bigby, coordinated several meetings between CGI and the responsible subcontracting trade at the Restaurant Space in an attempt to locate and rectify the problem.

31. Paragraph 31 of the Second Amended Complaint is denied as it relates to Danville or Turbeville.

32. Upon information and belief, paragraph 32 is admitted.

33. Paragraph 33 of the Second Amended Complaint is denied as it relates to Danville and Turbeville.

34. Paragraph 34 of the Second Amended Complaint is admitted as it relates to Coastal's default on its lease, but denies the allegations of loss profits and lost investments.

**ANSWERING THE FIRST CAUSE OF ACTION AGAINST C.G.I.
DEVELOPMENT, INC.**
(Action against C.G.I. for Breach of Contract)

35. As to Paragraph 35 of the Second Amended Complaint Danville and Turbeville repeat their foregoing answers in paragraphs 1 through 34 as if fully repeated verbatim herein.

36. Paragraph 36 and all of its subparts through paragraph 39 of the Second Amended Complaint are directed at another party which requires no response from Danville or Turbeville. To the extent that a responsive pleading is required from Danville and Turbeville, the allegations in paragraph 36 and all of its subparts through paragraph 39 of the Second Amended Complaint are denied.

**ANSWERING THE SECOND CAUSE OF ACTION AGAINST C.G.I. DEVELOPMENT,
INC.**
(Action against C.G.I. for Breach of Implied Warranty)

37. As to paragraph 40 of the Second Amended Complaint Danville and Turbeville repeat their foregoing answers in paragraphs 1 through 36 as if fully repeated

verbatim herein.

38. Paragraphs 41 through paragraph 43 of the Second Amended Complaint are directed at another party which requires no response from Danville or Turbeville. To the extent that a responsive pleading is required from Danville and Turbeville, the allegations in paragraph 41 through paragraph 43 of the Second Amended Complaint are denied.

ANSWERING THE THIRD CAUSE OF ACTION AGAINST C.G.I. DEVELOPMENT, INC.

(Action against C.G.I. for Equitable Indemnity)

39. As to paragraph 44 of the Second Amended Complaint Danville and Turbeville repeat their foregoing answers in paragraphs 1 through 38 as if fully repeated verbatim herein.

40. Paragraph 45 and 46 of the Second Amended Complaint are directed at another party which requires no response from Danville or Turbeville. To the extent that a responsive pleading is required from Danville and Turbeville, the allegations in paragraph 45 through paragraph 46 of the Second Amended Complaint are denied.

ANSWERING THE FOURTH CAUSE OF ACTION AGAINST C.G.I. DEVELOPMENT, INC.

(Action against C.G.I. for Negligence)

41. As to paragraph 47 of the Second Amended Complaint Danville and Turbeville repeat their foregoing answers in paragraphs 1 through 40 as if fully repeated verbatim herein.

42. Paragraphs 48 through paragraph 54 of the Second Amended Complaint

are directed at another party which requires no response from Danville or Turbeville. To the extent that a responsive pleading is required from Danville and Turbeville, the allegations in paragraph 48 through paragraph 54 of the Second Amended Complaint are denied.

ANSWERING THE FIFTH CAUSE OF ACTION AGAINST C.G.I. DEVELOPMENT, INC.
(Action against C.G.I. for Breach of Contract Accompanied by a Fraudulent Act)

43. As to paragraph 55 of the Second Amended Complaint Danville and Turbeville repeat their foregoing answers in paragraphs 1 through 42 as if fully incorporated therein.

44. Paragraphs 56 through paragraph 59 of the Second Amended Complaint are directed at another party which requires no response from Danville or Turbeville. To the extent that a responsive pleading is required from Danville and Turbeville, the allegations in paragraph 56 through paragraph 59 of the Second Amended Complaint are denied.

ANSWERING THE SIXTH CAUSE OF ACTION AND THE FIRST CAUSE OF ACTION AGAINST DANVILLE BUSINESS ADVISORS, LLC
(Action against Danville for Breach of Contract)

45. As to paragraph 60 of the Second Amended Complaint Danville and Turbeville repeat their foregoing answers in paragraphs 1 through 44 as if fully incorporated therein.

46. Paragraph 61 and all of its subparts through paragraph 64 of the Second Amended Complaint are denied.

ANSWERING THE SEVENTH CAUSE OF ACTION AND THE SECOND CAUSE OF ACTION AGAINST DANVILLE BUSINESS ADVISORS, LLC AND THE

FIRST CAUSE OF ACTION AGAINST MARION TURBEVILLE
(Action against Danville and Turbeville for Breach of Fiduciary Duty)

47. As to paragraph 65 of the Second Amended Complaint Danville and Turbeville repeat their foregoing answers in paragraphs 1 through 46 as if fully incorporated therein.

48. Paragraphs 66 and 67 of the Second Amended Complaint are denied.

ANSERING THE EIGHTHTH CAUSE OF ACTION AND THE THIRD CAUSE OF ACTION AGAINST DANVILLE BUSINESS ADVISORS, LLC AND THE SECOND CAUSE OF ACTION AGAINST MARION TURBEVILLE
(Action against Danville and Turbeville for Negligence)

49. As to paragraph 68 of the Second Amended Complaint Danville and Turbeville repeat their foregoing answers in paragraphs 1 through 48 as if fully incorporated therein.

50. Paragraphs 69 through paragraph 71 of the Second Amended Complaint are denied.

ANSWERING THE NINTH CAUSE OF ACTION AND THE FOURTH CAUSE OF ACTION AGAINST DANVILLE BUSINESS ADVISORS, LLC AND THE THIRD CAUSE OF ACTION AGAINST MARION TURBEVILLE
(Action against Danville and Turbeville for Breach of Fiduciary Duty)

51. As to paragraph 72 of the Second Amended Complaint Danville and Turbeville repeat their foregoing answers in paragraphs 1 through 50 as if fully incorporated therein.

52. Paragraphs 73 through paragraph 85 of the Second Amended Complaint are denied.

ANSWERING TENTH CAUSE OF ACTION AND THE FIFTH CAUSE OF ACTION AGAINST DANVILLE BUSINESS ADVISORS, LLC AND THE FOURTH CAUSE OF ACTION AGAINST MARION TURBEVILLE

(Action against Danville and Turbeville for Violation of the S.C. Unfair Trade Practices Act)

53. As to paragraph 86 of the Second Amended Complaint Danville and Turbeville repeat their foregoing answers in paragraphs 1 through 52 as if fully incorporated therein.

54. Paragraphs 87 through paragraph 99 of the Second Amended Complaint are denied.

FOR A THIRD DEFENSE

55. The allegations in the plaintiffs' Second Amended Complaint fail set forth sufficient facts to constitute a cause of action against Marion Turbeville individually, and must be dismissed pursuant to 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE

56. The plaintiff's claims are barred by the economic loss doctrine.

FOR A FIFTH DEFENSE

57. The plaintiff's claims are barred by the doctrine of unclean hands.

FOR A SIXTH DEFENSE

58. The plaintiff has failed to mitigate his damages and to the extent any damages could have been mitigated by the exercise of due care, the plaintiff cannot recover those damages from these defendants.

FOR A SEVENTH DEFENSE

59. The plaintiff's claims are barred by the equitable doctrines of waiver, estoppel, and laches.

FOR AN EIGHTH DEFENSE

60. The plaintiff's claims are barred by the applicable statute of limitations, the applicable statute of repose, or the time limitations contained in the contract and any warranties provided to the plaintiff.

FOR A NINTH DEFENSE

61. Whatever damages, if any, that were sustained by the plaintiff were due to, caused solely or partly by, and were the direct and proximate result of the negligence of the plaintiff and therefore plaintiff's recovery, if any, should be barred, or reduced in proportion to the amount of his own negligence.

FOR A TENTH DEFENSE

62. Even if Danville or Turbeville were negligent in any respect, which is expressly denied, and such conduct operated as a proximate cause of Plaintiff's damage, if any, which is expressly denied, Danville and Turbeville alleges Plaintiff's negligent, grossly negligent, reckless, willful and wonton conduct contributed more than fifty percent (50%) to the cause of the accident and, therefore, Plaintiff's claims are barred.

FOR AN ELEVENTH DEFENSE

63. Plaintiff's claims which sound in indemnity are barred on the grounds that Plaintiff has not shown to be without fault in this matter.

FOR A TWELFTH DEFENSE

64. That whatever damages, if any, which may have been sustained by the plaintiff was the result of, were due solely to, caused solely by, and were the direct and

proximate result of the intervening, superseding, and unforeseeable negligence of others over whom Danville and Turbeville had no control or which occurred after Danville and Turbeville had performed under their contract so as to bar any recovery herein.

FOR A THIRTEENTH DEFENSE

65. Danville and Turbeville performed in accordance with the terms of their agreements with the plaintiff and the plaintiff accepted the same and plaintiff is therefore barred from relief under the doctrine of discharge by performance.

FOR FOURTEENTH DEFENSE

66. To the extent that the plaintiff have made any warranty claims against Danville and / or Turbeville be they express or implied, Danville and / or Turbeville would show that such claims are barred by the express terms of the applicable warranties, either express or implied, if any, which are denied, or such alleged warranties, if any, have expired.

FOR A FIFTEENTH DEFENSE

67. Plaintiff has failed to join all persons or entities needed for complete relief in this matter and without whom such relief cannot be accorded amount those already named as parties.

FOR A SIXTEENTH DEFENSE

68. Danville and Turbeville would show that to there is a claim for punitive damages, it cannot be had because any award of punitive damages under South Carolina law without bifurcation of the trial so that any punitive damages issues are tried

only after and if liability on the merits of this action has been found will violate Danville's and Turbeville's due process rights guaranteed by the United States Constitution and the South Carolina Constitution, and would violate the common law and public policy of the State of South Carolina.

69. Danville and Turbeville would show that to the extent there is a claim for punitive damages, it cannot be had because any award of punitive damages under South Carolina law without being subjected to a predetermined limit on the amount of punitive damages that a jury might impose would violate Danville's and Turbeville's due process rights guaranteed by the United States Constitution and the South Carolina Constitution, and would violate the common law and public policy of the State of South Carolina.

70. Danville and Turbeville would show that to the extent there is a claim for punitive damages, it cannot be had because an award of punitive damages under South Carolina law by jury that is not:

- a. Provided with sufficient clear standards for determining the appropriateness of punitive damage award or the size of such award;
- b. Provided with adequate instructions as to the limits of punitive damage awards as determined by the principles underlying such an award;
- c. Instructed that awarding punitive damages on invidiously discriminatory characteristics of Danville and Turbeville is improper;
- d. Instructed to consider punitive damages under a standard for determining the amount that is neither vague, arbitrary, nor capricious and that defines with

reasonable clarity the actions of Danville and Turbeville upon which an award of punitive damages may be based; and

e. Subjected to judicial review at both the trial and appellate court level under objected standards for determined appropriateness and reasonableness would violate Danville's and Turbeville's equal protection and due process rights as guaranteed by the United States Constitution and the South Carolina Constitution and would also violate the laws of the State of South Carolina.

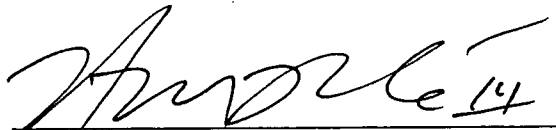
FOR A SEVENTEENTH DEFENSE

71. Danville and Turbeville reserve any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the plaintiff's Second Complaint, asserted its affirmative defenses, asserted its Motion to Dismiss claims against Marion Turbeville Individually, pray that they be dismissed from this lawsuit with prejudice, that they be awarded their costs and expenses and for such further relief as the court deems just and proper.

Respectfully submitted,

DOUGALL & COLLINS



Thomas F. Dougall, Esq.
Robert M. Peele, III Esq.
1700 Woodcreek Farms Road
Elgin, South Carolina 29045
(803) 865-8858 (TEL)
(803) 865-8944 (FAX)

Attorneys for Defendants Danville Business
Advisors, LLC and Marion D. Turbeville

September 25, 2013

Columbia, South Carolina

CERTIFICATE OF SERVICE

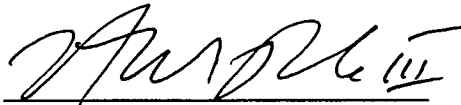
This is to certify that the foregoing Danville Business Advisors and Marion Turbeville's Answer to Plaintiff's Second Amended Complaint was served in the above-referenced case by depositing a copy of the same in the United States mail, postage prepaid, on the 25th day of September, 2012 addressed as follows:

Benjamin C. Bruner, Esq.
Bruner Powell Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
Attorney for Plaintiff

James P. Craig, Esq.
Craig Law Firm, PC
P.O. Box 11245
Columbia, SC 29211
Attorney for C.G.I. Development, Inc.

Caleb Martin Riser, Esq.
Richardson Plowden & Robinson, PA
P.O. Drawer 7788
Columbia, SC 29201
Attorney for FRS, Inc.

RICHLAND COUNTY
FILED
2013 SEP 26 MAIL: 45
JEANETTE W. JEBRON
C.C.P. & C.S.



Robert M. Peele, III

15760.00
Pleahy

BRUNER, POWELL, WALL & MULLINS, LLC

ATTORNEYS AND COUNSELORS AT LAW

1735 ST. JULIAN PLACE, SUITE 200

POST OFFICE BOX 61110

COLUMBIA, SOUTH CAROLINA 29260-1110

TELEPHONE 803-252-7693

FAX 803-254-5719

WWW.BRUNERPOWELL.COM

JAMES L. BRUNER, P.A.

WARREN C. POWELL, JR., P.A.*

HENRY P. WALL

E. WADE MULLINS, III, P.A.

BRIAN P. ROBINSON, P.A.

WESLEY D. PEEL, P.A.

JOEY R. FLOYD, P.A.

WILLIAM D. BRITT, JR., P.A.

BENJAMIN C. BRUNER

MATTHEW H. STABLER

* Also Admitted in District of Columbia

AUTHOR'S E-MAIL: NSTAGG@brunerpowell.com

June 19, 2013

The Honorable Jeanette W. McBride
Richland County Clerk of Court
P.O. Box 2766
1701 Main Street, Room 205
Columbia, SC 29202

Re: Coastal Pi, LLC d/b/a Primarily Pi and James Bigby v. C.G.I. Development, Inc., Danville Business Advisors, LLC, Marion D. Turbeville, and FRS, Inc.
C/A No: 2011-CP-40-0411
Our File No.: 9-2182.100

Dear Mrs. McBride:

Enclosed please find an original and two (2) copies of the *Notice of Motion and Motion to Restore Case* in the above-referenced action. Also enclosed is a check in the amount of \$25.00 for the filing fee. Please file the original, clock-in the copies and return them to me in the enclosed envelope. By copy of this letter, I am serving all counsel of record a copy of the same.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

Nancy Y. Stagg

Nancy Y. Stagg

Legal Assistant Matthew H. Stabler

/nys

Enclosures

cc: Mr. James Bigby

James P. Craig, Esquire

✓ Robert M. Peele, III, Esquire

Drew Hamilton Butler, Esquire

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Coastal PI, LLC d/b/a Primarily Pi and James
Bigby

Plaintiff,)

vs.)

C.G. I. Development, Inc., Danville Business
Advisors, LLC, Marion D. Turbeville, and
FRS, Inc.

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2011-CP-40-04111

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney:
Matthew H. Stabler, Bar No. 78623
Address:
PO Box 61110, Columbia, SC 29260
Phone: 803-252-7693 Fax 803-254-5719
E-mail: mstabler@brunerpowell.com Other:

Defendant's Attorney:

_____, Bar No. _____

Address:

Phone: _____ Fax _____

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: Motion to Restore Case

Estimated Time Needed: 15 minutes

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

June 19, 2013

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, SCRPC)

☐ 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: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED – AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Coastal Pi, LLC d/b/a Primarily Pi and)
James Bigby,)
)
Plaintiff,)

Civil Action No. 2011-CP-40-4111

vs.)

**NOTICE OF MOTION AND
MOTION TO RESTORE CASE**
(Rule 40(j), SCRCP)

C.G.I. Development, Inc., Danville)
Business Advisors, LLC, Marion D.)
Turbeville and FRS, Inc.,)
)
Defendants.)

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs, by and through their undersigned counsel, will move before the Presiding Judge for the Fifth Judicial Circuit at the Richland County Judicial Center, 701 Main Street in Columbia, South Carolina, on the 10th day after service hereof, or as soon thereafter as counsel can be heard, for an Order pursuant to South Carolina Rule of Civil Procedure Rule 40(j) restoring the above-captioned case to the trial docket. A copy of the Consent Order Striking this matter under Rule 40(j) is attached as **Exhibit A**.

Pursuant to Rule 11, SCRCP, the undersigned certifies that he consulted with opposing counsel in a good faith effort to resolve this issue prior to filing this motion.



Henry P. Wall
Benjamin C. Bruner
Matthew H. Stabler
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
803-252-7693
Attorneys for Plaintiffs

June 19, 2013

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Coastal Pi, LLC d/b/a Primarily Pi and James
Bigby,

Plaintiff,

vs.

C.G.I. Development, Inc., Danville Business
Advisors, LLC, Marion D. Turbeville and FRS,
Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2011-CP-40-4111

CONSENT ORDER STRIKING CASE
FROM DOCKET BY AGREEMENT
UNDER RULE 40(j)

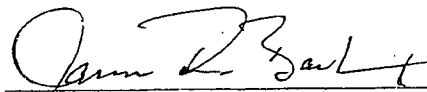
JEANETTE W. McBRIDE
C.P. & G.S.
NOV - 6 PM 1:01

RICHLAND COUNTY
FILED

NOW COME the Plaintiffs, Coastal Pi, LLC d/b/a Primarily Pi and James Bigby, pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure requesting an Order striking this case from the docket by agreement and consent of all parties involved. The parties have represented to the Court their agreement that if the case is restored to the docket upon motion made within one (1) year of the date the case was stricken, the statute of limitations shall not bar the Plaintiffs' claim asserted in this matter. The parties have agreed to conduct discovery while the case remains on 40(j) status. The parties have further agreed that the case shall retain the old civil action number once it is restored so that the parties can have the case set for trial as quickly as possible.

Accordingly, this case is stricken from the docket pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure and shall be given the same civil action number if the case is restored within one year of the date the case is stricken.

This the 6 day of NOVEMBER, 2012.



Judge James R. Barber, III
Chief Administrative Judge

SCANNED

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Civil Action No.: 2011-CP-40-04111

Coastal Pi, LLC d/b/a Primarily
Pi and James Bigby)

Plaintiff,)

vs.)

CERTIFICATE OF SERVICE

C.G.I. Development, Inc., Danville Business)
Advisors, LLC, Marion D. Turbeville, and)
FRS, Inc.)

Defendants.)

I, Nancy Y. Stagg, a Legal Assistant with the law firm of Bruner, Powell, Wall & Mullins, LLC, attorneys for Plaintiffs, do hereby certify that on this 19th day of June, 2013, I served the **Notice of Motion and Motion to Restore Case** upon the following parties by depositing a copy of same in the U.S. Mail, first class, postage prepaid, addressed as follows:

James P. Craig, Esquire
Craig Law Firm, PC
2001 Assembly Street, Suite 201
Columbia, SC 29201
Attorney for C.G.I. Development, Inc.

Robert M. Peele, III, Esquire
Law Office of Dougall & Collins
1700 Woodcreek Farms Road, Suite 100
Elgin, SC 29045
*Attorneys for Danville Business Advisors, LLC
and Marion D. Turbeville*

Drew Hamilton Butler, Esquire
Richardson, Plowden, Robinson, PA
P.O. Drawer 7788
Columbia, SC 29202
Attorneys for FRS, Inc.


Nancy Y. Stagg

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Coastal Pi, LLC d/b/a Primarily Pi and James Bigby

☐ Plaintiff

v.

Danville Business Advisors, Llc

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2011-CP-40-04111

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Benjamin C. Brunier, Bar No.
Address:
P.O. Box 61110, Columbia, SC 29260-110
phone: 803.252.7696 fax:
e-mail: other:

Defendant's Attorney:
Robert M. Peele, Iii, Bar No. 77569
Address:
1700 Woodcreek Farms Road, Suite 100, Elgin, SC
29045
phone: 803.865.8858 fax: 803.865.8944
e-mail: rpeele@dougallfirm.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: MOTION TO DISMISS

Estimated Time Needed: 30 MIN 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.

Robert M. Peele, Iii
Signature of Attorney for ☐ Plaintiff / ☒ Defendant

February 27, 2013

Date submitted

SECTION III: Motion Fee

- ☐ PAID - AMOUNT: \$25.00
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ 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

Date Filed:

Collected by: _____

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

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE CIRCUIT COURT

COASTAL PI, LCC d/b/a PRIMARILY
PI and JAMES BIGBY,

Civil Action Number: 2011-CP-40-0411

Plaintiff,

v.

**DEFENDANT MARION D.
TURBEVILLE'S NOTICE OF MOTION
TO DISMISS AND MOTION TO
DISMISS COMPLAINT PURSUANT TO
RULE 12(b)(6) SCRPC**

C.G.I. DEVELOPMENT, INC.;
DANVILLE BUSINESS ADVISORS,
LLC; MARION D. TURBEVILLE; and
FRS, INC.,

Defendants.

RICHLAND COUNTY
FILED
2014 APR - 11 AM 11:49
JEA
CLERK OF COURT
S.C.

TO: BENJAMIN C. BRUNER, ESQ. & MATTHEW H. STABLER, ESQ.;
ATTORNEYS FOR PLAINTIFF:

NOW COMES the defendant, Marion D. Turbeville, by and through his undersigned counsel and hereby moves before this Honorable Court pursuant to Rule 12(b)(6), SCRPC, for an order dismissing the plaintiff's seventh cause of action, eighth cause of action, ninth cause of action, tenth cause of action, twelfth cause of action, and thirteenth cause of action contained in plaintiff's Second Amended Complaint as to him individually, as the factual allegations are insufficient to constitute any cause of action against this defendant individually, and, therefore, the Complaint should be dismissed as a matter of law.

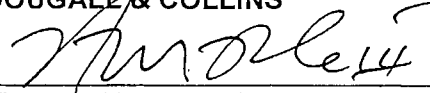
This motion is based on the South Carolina Rules of Civil Procedure, applicable case law, the pleadings, and any other material the Court may receive or review at the time of a hearing on this motion.

Alternatively, should the Court consider matters outside the pleadings, then the

defendant, Marion D. Turbeville, individually, would respectfully move before this Court for an order granting them summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

Respectfully submitted,

DOUGALL & COLLINS



Thomas F. Dougall
Robert M. Peele, III
1708 Woodcreek Farms Road
Elgin, South Carolina 29045
(803) 865-8858 (TEL)
(803) 865-8944 (FAX)

Attorneys Danville Business Advisors and
Marion D. Turbeville

February 27, 2014

Columbia, South Carolina

CERTIFICATE OF SERVICE

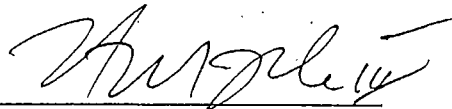
This is to certify that the foregoing Notice of Motion to Dismiss and Motion to Dismiss was served in the above-referenced case by depositing a copy of the same in the United States mail, postage prepaid, on the 27th day of February, 2014 addressed as follows:

Benjamin C. Bruner, Esq.
Bruner Powell Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
Attorney for Plaintiff

James P. Craig, Esq.
Craig Law Firm, PC
P.O. Box 11245
Columbia, SC 29211
Attorney for C.G.I. Development, Inc.

Jeffrey A. Ross, Esq.
Clawson & Staubes, LLC
126 Seven Farms Road, Suite 200
Charleston, SC 29492
Attorney for C.G.I. Development, Inc.

ROHLAND COUNTY
FILED
2014 MAR -4 AM 11:49
JEANETTE W. MCBRIDE
C.C.P. & G.S.



Robert M. Peele, III

BRUNER, POWELL, WALL & MULLINS, LLC

ATTORNEYS AND COUNSELORS AT LAW

1735 ST. JULIAN PLACE, SUITE 200

POST OFFICE BOX 61110

COLUMBIA, SOUTH CAROLINA 29260-1110

TELEPHONE 803-252-7693

FAX 803-753-0060

WWW.BRUNERPOWELL.COM

JAMES L. BRUNER, P.A.
WARREN C. POWELL, JR., P.A.*
HENRY P. WALL
E. WADE MULLINS, III, P.A.
BRIAN P. ROBINSON, P.A.

WESLEY D. PEEL, P.A.
JOEY R. FLOYD, P.A.
WILLIAM D. BRITT, JR., P.A.

BENJAMIN C. BRUNER
MATTHEW H. STABLER

* Also Admitted in District of Columbia

AUTHOR'S E-MAIL: BBRUNER@brunerpowell.com

June 6, 2014

VIA HAND DELIVERY

The Honorable Jeanette W. McBride
Richland County Clerk of Court
1701 Main Street, Second Floor
Columbia, SC 29202-2766

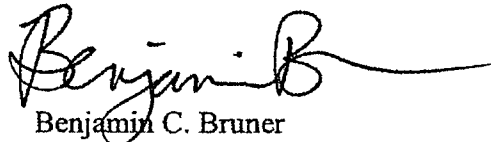
**Re: *Coastal Pi, LLC d/b/a Primarily Pi and James Bigby v. Danville Business
Advisors, LLC and Marion D. Turbeville***
C/A No: 2011-CP-40-0411
Our File No.: 9-2182.100

Dear Mrs. McBride:

Enclosed for filing please find an original and one copy of the Plaintiffs' Motion for Attorneys' Fees and for Treble Damages in the above referenced matter, together with a supporting memorandum and affidavit. Please file the original and return a clocked copy to my courier. By copy of this letter, I am serving opposing counsel a copy of the same.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to call.

Sincerely,



Benjamin C. Bruner

BCB/gh
Enclosures

cc: The Honorable Alison Renee Lee
Thomas F. Dougall, Esquire
Robert M. Peele, III, Esquire
Mr. James Bigby

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Coastal PI, LLC d/b/a Primarily Pi, et al.,)

Plaintiff,)

vs.)

Danville Business Advisors, LLC, et al.,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2011-CP-40-04111

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Benjamin C. Bruner, Bar No. 77544

Address:

PO Box 61110, Columbia, SC 29260

Phone: 803-252-7693 Fax 803-753-0060

E-mail: bbruner@brunerpowell.com Other: _____

Defendant's Attorney:

Thomas F. Dougall, Bar No. _____

Address:

1700 Woodcreek Farms Road, Elgin SC 29045

Phone: 803-865-8858 Fax _____

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: Motion for Attorneys' Fees and for Treble Damages

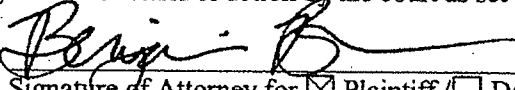
Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☐ NO

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

June 6, 2014

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$** _____

☐ **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: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$** _____

☐ **CONTESTED - AMOUNT DUE: \$** _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Coastal Pi, LLC d/b/a Primarily Pi and)
James Bigby,)
Plaintiff,)

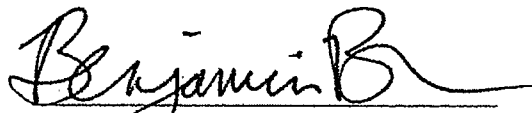
Civil Action No. 2011-CP-40-4111

vs.)

Danville Business Advisors, LLC and)
Marion D. Turbeville,)
Defendants.)

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR ATTORNEYS' FEES
AND FOR TREBLE DAMAGES**

NOW COME the Plaintiffs, Coastal Pi, LLC d/b/a Primarily Pi and James Bigby (hereinafter, "Plaintiffs"), who move this Court for an Order granting Attorneys' Fees and Treble Damages against Defendant Marion Turbeville pursuant to the S.C. Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 to 550 ("UTPA") because the jury found that Mr. Turbeville and his business, Danville Business Advisors, LLC, violated the UTPA and because Mr. Turbeville knew or should have known the practice of collecting secret commissions at his clients' expense without disclosing those payments to his clients violated the UTPA. See S.C. Code Ann. §§ 39-5-20, 140. Accordingly, Plaintiffs seek an Order awarding attorney's fees and costs in the amount of \$110,020.08, awarding Plaintiffs' three times their actual damages (or \$117,600), and entering judgment against Marion Turbeville in the total amount of \$227,620.08. This Motion is supported by the memorandum and affidavit filed contemporaneously herewith.



Henry P. Wall
Benjamin C. Bruner
Matthew H. Stabler
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
803-252-7693
Attorneys for Plaintiffs

June 6, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
Coastal Pi, LLC d/b/a Primarily Pi and	)	Civil Action No. 2011-CP-40-4111
James Bigby,	)	
	)	
Plaintiff,	)	
	)	PLAINTIFFS' MEMORANDUM
vs.	)	IN SUPPORT OF MOTION
	)	FOR ATTORNEYS' FEES AND
Danville Business Advisors, LLC and	)	FOR TREBLE DAMAGES
Marion D. Turbeville,	)	
	)	
Defendants.	)	
	)	

The Plaintiffs, Coastal Pi, LLC d/b/a Primarily Pi and James Bigby (hereinafter, "Plaintiffs"), by and through their undersigned counsel, submit this memorandum in support of their Motion for Attorneys' Fees and for Treble Damages pursuant to the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 to 550 ("UTPA"). For the reasons set forth below, Plaintiffs' motion should be granted, and the Court should enter an Order awarding attorneys' fees and three times the amount of Plaintiffs' actual damages against Defendant Marion Turbeville.

BACKGROUND

On May 29, 2014, the jury returned a verdict in this case for the Plaintiffs on all claims submitted to it, including Plaintiffs' claims based upon violations of the UTPA. After the Defendants moved for Plaintiffs to elect their remedy, the parties consented to an Order entering judgment against Danville in the amount of \$521,000 for breach of fiduciary duty and against Mr. Turbeville in the amount of \$39,200 for violation of the UTPA. The immediate motion before the Court is Plaintiffs' motion seeking attorneys' fees and three times their actual damages against Mr. Turbeville.

DISCUSSION

“The purpose of the UTPA is to discourage unfair methods of competition and unfair or deceptive acts in the conduct of any trade or commerce.” Taylor v. Medenica, 331 S.C. 575, 579, 503 S.E.2d 458, 460 (1998) (citing S.C. Code Ann. § 39-5-20). Furthering its purpose, the UTPA allows a private party to bring a cause action, to collect his attorneys’ fees if he prevails and, under certain circumstances, to collect three times his actual damages. S.C. Code Ann. § 39-5-140(a). The facts of this case warrant not only an award of attorneys’ fees and costs in the amount of \$110,020.08 but also an award of treble damages because the Defendants’ conduct was willful, as defined by the UTPA.

Plaintiffs should receive an award of reasonable attorneys’ fees and costs against Mr. Turbeville because the jury found he violated the UTPA. See S.C. Code Ann. § 39-5-140(a) (mandating an award of reasonable attorney’s fees and costs upon finding a violation of the UTPA). “[T]he court should consider the following six factors when determining a reasonable attorney’s fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services.” Jackson v. Speed, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997)

In this case, Plaintiffs’ counsel rendered 596.6 hours of service to the Plaintiffs in this case having a value of \$87,958.50 in the representation of the Plaintiffs. (See Aff. of Bruner dated June 6, 2014.) In addition to those attorneys’ fees, Plaintiffs incurred costs in the amount of \$22,061.58 to prove their claims against Mr. Turbeville and his business. Id. Of those services and costs, over half were rendered after the claims against all other defendants had been resolved. Id. Moreover, the amount of damages the jury awarded demonstrates that it was the unlawful conduct of Mr.

Turbeville and his business that ultimately caused the Plaintiffs' losses. Indeed, it was that unlawful conduct which required the Plaintiffs to engage counsel, investigate the cause of their losses and incur these fees and costs. Therefore, the Court should grant the Plaintiffs' motion and award Plaintiffs reasonable attorneys' fees and costs against Mr. Turbeville in the amount of \$110,020.08.

In addition, the facts and circumstances of this case show that the Plaintiffs should recover three times their actual damages against Mr. Turbeville. "If the court finds that the use or employment of the unfair or deceptive method, act or practice was a willful or knowing violation of Section 39-5-20, the court shall award three times the actual damages sustained and may provide such other relief as it deems necessary or proper." S.C. Code Ann. § 39-5-140(a). "For the purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of Section 39-5-20." S.C. Code Ann. § 39-5-140(d). "The statutory definition of willful has been construed by our Court of Appeals to mean: 'if, in the exercise of due diligence, a person of ordinary prudence engaged in trade or commerce could have ascertained that his conduct violates the Act, then such conduct is willful.'" Haley Nursery Co., Inc. v. Forrest, 298 S.C. 520, 525, 381 S.E.2d 906, 909 (1989) (quoting State v. Nest Egg Soc. Today, Inc., 290 S.C. 124, 348 S.E.2d 381 (Ct. App. 1986)).

South Carolina courts have held conduct was willful where a defendant committed an act expressly prohibited by the UTPA, Nest Egg, 298 S.C. at 525, 381 S.E.2d at 909, and where a defendant admitted he appropriated a competitor's mark and packaging. Global Protection Corp. v. Halbersberg, 332 S.C. 149, 157, 503 S.E.2d 483, 487 (1998). By contrast, in Haley Nursery, the Supreme Court held the trial court did not err in declining to award treble damages where there was evidence in the record that it was "common practice for a nursery to rely on the supplier's word that the buds supplied are the proper variety and not to inspect the budwood tree

itself.” Haley Nursery Co., Inc. v. Forrest, 298 S.C. 520, 525, 381 S.E.2d 906, 909 (1989). In other words, the trial court determined that a person of ordinary prudence engaged in trade or commerce would not have known that the nursery’s policy of relying on the supplier’s word violated the UTPA. That is not the case here.

In this case, there is no evidence in the record that it is a common, accepted practice for men in Mr. Turbeville’s businesses to negotiate for and to collect commissions at a client’s expense without disclosing those payments to the client. Although Mr. Turbeville continued to claim that the secret commissions were simply part of Danville’s business model, he could not name one other business that, while representing an owner on a project, directs contractors to increase their bids so it can collect a “finder’s fee.” Nor could Mr. Turbeville name any business that negotiates these “finder’s fees” without disclosing them to the client. Ben Kelly’s testimony further undermined Mr. Turbeville’s business model of negotiating and collecting commissions and finders fees without disclosing them to clients. When asked whether it was his practice as a licensed real estate agent to collect commissions without disclosing them to his clients, Mr. Kelly responded in the negative.

In contrast to Haley Nursery, the facts of this case are closer to those in Wright v. Craft, 372 S.C. 1, 640 S.E.2d 486 (Ct. App. 2006), in which a jury returned a verdict against a truck dealer who for violating the UTPA by failing to disclose that a vehicle had been wrecked. In that case, the defendant readily admitted that although he knew a vehicle had been wrecked, he would tell customers only if they asked. 372 S.C. at 27-28. In this case, Mr. Turbeville’s testimony at trial established that Danville’s business model was based on similar deceptive practices. Mr. Turbeville testified unapologetically that he would negotiate for commissions and

finder's fees—in addition what his clients paid him—that these payments increased the cost to his clients and that Mr. Turbeville would disclose those payments to clients only if they asked.

At no time did the Defendants present any evidence that it is common practice to negotiate and collect these payments without telling their clients. Nor did the Defendants present any testimony that the Plaintiffs or any of their other clients knew about the secret finder's fees and commissions. To the contrary, Mr. Turbeville's testimony alone proved Danville had a practice of negotiating for and concealing commissions that had a direct and adverse impact on their clients. Any person of ordinary prudence engaged in trade or commerce could have ascertained that such a deceptive and unfair business model violated the UTPA. See Haley Nursery, 298 S.C. at 525, 381 S.E.2d at 909. Mr. Turbeville's testimony also proved without question that he personally participated in, directed or authorized that Danville's unfair and deceptive practice. See BPS, Inc. v. Worthy, 362 S.C. 319, 328-29, 608 S.E.2d 155, 160-61 (Ct. App. 2005). Therefore, the UTPA, South Carolina jurisprudence and the facts of this case squarely support a finding that Mr. Turbeville's conduct was a willful violation of the UTPA. Accordingly, the Court should grant the Plaintiffs' motion and award Plaintiffs damages in the amount of \$117,600, or three times the actual damages the jury awarded.

CONCLUSION

Under the UTPA, the Plaintiffs are entitled to an award of reasonable attorneys' fees and costs because they prevailed on their claim against Mr. Turbeville. In addition, the Plaintiffs should also be awarded three times their actual damages because a person of ordinary prudence engaged in trade or commerce could have ascertained that Danville's practice of negotiating for secret commissions at their clients' expense without disclosing the payments to their clients violated the UTPA, and because Mr. Turbeville participated in, direct or authorized that practice.

Therefore, Plaintiffs move for an Order awarding them reasonable attorney's fees and costs in the amount of \$110,020.08, awarding damages of \$117,600, or three times the actual damages the jury awarded, and entering judgment against Marion Turbeville in the total amount of \$227,620.08.



Henry P. Wall
Benjamin C. Bruner
Matthew H. Stabler
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
803-252-7693
Attorneys for Plaintiffs

June 6, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Coastal Pi, LLC d/b/a Primarily Pi and
James Bigby,
Plaintiffs,)

Civil Action No. 2011-CP-40-4111

vs.)

**AFFIDAVIT
OF**

Danville Business Advisors, LLC and
Marion D. Turbeville,
Defendants.)

ATTORNEYS' FEES AND COSTS

PERSONALLY APPEARED BEFORE ME, Benjamin C. Bruner, who, being first duly sworn, deposes and says:

1. I am over eighteen (18) years old and have personal knowledge of the information contained herein.

2. I am an associate at the law firm of Bruner, Powell, Wall & Mullins, LLC.

3. Our firm represents Coastal Pi, LLC d/b/a Primarily Pi and James Bigby (collectively, "Plaintiffs"), the plaintiffs in this action.

4. In representing the Plaintiffs in this case, Plaintiffs' counsel has necessarily rendered the following services:

a. Henry P. Wall	20.75 hours @ \$300 per hour =	\$ 6,225.00
b. Benjamin C. Bruner	241.2 hours @ \$150 per hour =	\$36,180.00
c. Matthew H. Stabler	286.2 hours @ \$150 per hour =	\$42,930.00
d. Law Clerk	6.7 hours @ \$80 per hour =	\$ 536.00
e. Law Clerk	24.79 hours @ \$50 per hour =	\$ 1,239.50
f. Paralegal	16.96 hours @ \$50 per hour =	\$ 848.00

2. Thus, Plaintiffs' counsel has rendered 596.6 hours of service to the Plaintiffs in this case worth \$87,958.50.

3. In addition, Plaintiffs necessarily incurred costs in the amount of \$22,061.58, for a total value of attorneys' fee and costs of \$110,020.08.

4. Of these amounts, Plaintiffs' counsel rendered services having a reasonable value of \$39,035.50 and Plaintiffs incurred costs in the amount of \$19,047.58 after the Plaintiffs resolved their claims against all other defendants in this case.

5. Thus, of the \$110,020.08 in attorneys' fees and costs, \$58,083.08 was incurred after the only remaining claims to be resolved were the Plaintiffs' claims against Danville Business Advisors, LLC and Mr. Turbeville.

6. This nature of this lawsuit involved both construction defects and unfair trade practices. Plaintiffs prosecuted their claims for months before they discovered and began to unravel the Defendants' practice of taking undisclosed "finder's fees" from contractors. In addition, the Plaintiffs' investigation into the ultimate cause of the construction defects and Plaintiffs' losses—the Defendants' conduct—required a substantial amount of work. All of the attorneys who have appeared on behalf of the Plaintiffs are in good standing and devote their practice to civil litigation. Plaintiffs' counsel has obtained a very beneficial result because the jury found in the Plaintiffs' favor on all causes of action. Finally, the hourly rates on which the value of the services rendered is determined are in conformity with hourly rates for this work.

7. Furthermore, Plaintiffs identified Dr. Perry Woodside and Jeffrey Hass as experts when Danville Business Advisors, LLC and Mr. Turbeville were the only remaining parties in the case and it was apparent the case would not be settled.

8. Accordingly, the reasonable value of attorneys' fees and costs Plaintiffs incurred in this matter is \$110,020.08.

FURTHER AFFIANT SAYETH NOT.


Benjamin C. Bruner

SWORN TO and subscribed before me
This 6th day of June, 2014.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: 5-27-2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Coastal Pi, LLC d/b/a Primarily Pi and)
James Bigby,)
)
Plaintiff,)

Civil Action No. 2011-CP-40-4111

vs.)

Danville Business Advisors, LLC and)
Marion D. Turbeville,)
)
Defendants.)

ORDER

THIS MATTER is before the Court upon motion by the Plaintiffs, Coastal Pi, LLC d/b/a Primarily Pi and James Bigby (hereinafter, "Plaintiffs"), for attorneys' fees and for treble damages against Defendant Marion Turbeville pursuant to the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 to 550 ("UTPA"). Having carefully considered the submissions of the parties, I find Plaintiffs' motion should be granted as set for below.

"The purpose of the UTPA is to discourage unfair methods of competition and unfair or deceptive acts in the conduct of any trade or commerce." Taylor v. Medenica, 331 S.C. 575, 579, 503 S.E.2d 458, 460 (1998) (citing S.C. Code Ann. § 39-5-20). In furtherance of its purpose, the UTPA allows a private party to bring a cause action, collect his attorneys' fees if he is successful and, under certain circumstances, collect three times his actual damages. S.C. Code Ann. § 39-5-140(a).

I find Plaintiffs are entitled to recover reasonable attorneys' fee and costs because they prevailed on their claim against Mr. Turbeville for violation of the UTPA. See S.C. Code Ann. § 39-5-140(a). Having carefully considered the submissions of the parties in light of the six factors enumerated in Jackson v. Speed, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997), I find the

Plaintiffs entitled to recover reasonable attorneys' fees in the amount of \$_____ and costs in the amount of \$_____. I therefore find Plaintiffs' shall be and are entitled to recover reasonable attorneys' fees and costs against Mr. Turbeville in the amount of \$_____.

I also find that the facts and circumstances of this case warrant an award of treble damages under the UTPA. Such an award is appropriate when a defendant engages in conduct that he knew or should have known violated the UTPA. S.C. Code Ann. § 39-5-140(a), (d). "The statutory definition of willful has been construed by our Court of Appeals to mean: 'if, in the exercise of due diligence, a person of ordinary prudence engaged in trade or commerce could have ascertained that his conduct violates the Act, then such conduct is willful.'" Haley Nursery Co., Inc. v. Forrest, 298 S.C. 520, 525, 381 S.E.2d 906, 909 (1989) (quoting State v. Nest Egg Soc. Today, Inc., 290 S.C. 124, 348 S.E.2d 381 (Ct. App. 1986)).

In this case, this Court finds no evidence in the record that the Defendants' practice of negotiating for commissions at their clients' expense without disclosing those payments to the clients is a common, accepted practice. Although Mr. Turbeville continued to claim that the secret commissions were part of Danville's business model, he could not name one other business that engages in the same practice or employs the same business model. At no time did the Defendants present any evidence that it is common practice to negotiate and collect these payments without telling their clients. Nor did the Defendants present any testimony that the Plaintiffs or any of their other clients knew about the secret finder's fees and commissions.

Mr. Turbeville testified unapologetically that he would negotiate for commissions and finder's fees—in addition what his clients paid him—that these payments increased the cost to his clients and that Mr. Turbeville would disclose those payments to clients only if they asked.

Mr. Turbeville's testimony at trial simply proved Danville had a practice of negotiating for and concealing commissions that had a direct and adverse impact on their clients. Any person of ordinary prudence engaged in trade or commerce could have ascertained that such a deceptive and unfair business model violated the UTPA. See Haley Nursery, 298 S.C. at 525, 381 S.E.2d at 909. Mr. Turbeville's testimony also proved without question that he personally participated in, directed or authorized that Danville's unfair and deceptive practice. See BPS, Inc. v. Worthy, 362 S.C. 319, 328-29, 608 S.E.2d 155, 160-61 (Ct. App. 2005). I therefore find Mr. Turbeville knew or should have know his wrongful conduct violated the UTPA. As a result, this Court finds it proper to grant the Plaintiffs' motion and award Plaintiffs damages in the amount of \$117,600, or three times the actual damages the jury awarded.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion for Attorney's Feed and for Treble Damages is GRANTED. IT IS FURTHER ORDERED that judgment be entered in favor of the Plaintiffs and against Defendant Marion Turbeville for reasonable attorney's fees and costs in the amount of \$_____, plus three times Plaintiffs' actual damages (\$117,600), for a total judgment to be entered against Defendant Marion Turbeville in the amount of \$_____.

AND IT IS SO ORDERED.

Alison Renee Lee
Presiding Judge, Fifth Judicial Circuit

June ____, 2014

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2011-CP-40-04111
	)	
Coastal Pi, LLC d/b/a Primarily	)	
Pi and James Bigby	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
	)	
Danville Business Advisors, LLC, and	)	
Marion D. Turbeville,	)	
	)	
Defendants.	)	

I, Bridget S. Steele, a Legal Assistant with the law firm of Bruner, Powell, Wall & Mullins, LLC, attorneys for Plaintiffs, do hereby certify that on this 6th day of June, 2014, I served the **Plaintiff's Motion for Attorneys' Fees and for Treble Damages, and Order of Judgment**, upon the following parties by depositing a copy of same in the U.S. Mail, first class, postage prepaid, addressed as follows:

Robert M. Peele, III, Esquire
Thomas Dougall, Esquire
Law Office of Dougall & Collins
1700 Woodcreek Farms Road, Suite 100
Elgin, SC 29045
*Attorneys for Danville Business Advisors, LLC
and Marion D. Turbeville*

Bridget S. Steele
Bridget Steele

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
COASTAL PI, LCC d/b/a PRIMARILY)
PI and JAMES BIGBY,)
Plaintiffs,)
v.)
DANVILLE BUSINESS ADVISORS,)
LLC and MARION D. TURBEVILLE,)
Defendants.)

IN THE CIRCUIT COURT

Civil Action Number: 2011-CP-40-0411

**DEFENDANTS DANVILLE BUSINESS
ADVISORS, LLC'S & MARION D.
TURBEVILLE'S REPLY
MEMORANDUM IN OPPOSITION
TO PLAINTIFFS' MOTION FOR
ATTORNEY'S FEES AND TREBLE
DAMAGES**

RICHLAND COUNTY
FILED
JUN 29 AM 9:29
JESSICA C. PETERSON
CLERK

The Defendant, Marion D. Turbeville, by and through counsel, submits this reply memorandum in opposition to Plaintiffs' Motion for Attorney's Fees and Treble Damages. Plaintiffs bring this Motion pursuant to the South Carolina Unfair Trades Practices Act, S.C. Code Ann. § 39-5-10 to 550. For the reasons set forth below, Plaintiffs' motion should be denied.

BACKGROUND

On May 29, 2014, the jury returned a verdict in this case for the Plaintiffs against Marion Turbeville, in his individual capacity in the amount of \$39,200.00 for violation of the South Carolina Unfair Trades Practices Act. All evidence in the case showed that Marion Turbeville was, at all times, acting within the course and scope of his employment and all monies were paid directly to the co-defendant, Danville Business Advisors, LLC. Accordingly, while the weight of the evidence shows no verdict should have been rendered against Marion Turbeville, individually, certainly no evidence exists to support trebling damages as to Mr. Turbeville. Further, Plaintiffs, while merely

asserting a bald claim for attorney's fees, have totally failed to show the court that such fees are reasonable and related to the Unfair Trades Practice's verdict. Therefore no attorney's fees should be awarded to the Plaintiffs.

DISCUSSION

A. Treble Damages

The South Carolina Unfair Trades Practices Act (SCUTPA) prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." S.C. Code Ann. § 39-5-20. "If the court finds that the use or employment of the unfair or deceptive method, act or practice was a willful or knowing violation of Section 39-5-20, the court shall award three times the actual damages sustained and may provide such other relief as it deems necessary or proper. Upon the finding by the court of a violation of this article, the court shall award to the person bringing such action under this section reasonable attorney's fees and costs." S.C. Code Ann. § 39-5-140(a). Ultimately the decision rests with the Court to determine whether Mr. Turbeville's conduct was willful. The facts of this case do not support that Mr. Turbeville's conduct was willful and the damages should not be trebled.

"Willful violation is defined by statute as occurring "when the party committing the violation knew or should have known that his conduct was a violation of [the UTPA]." S.C. Code Ann. § 39-5-140(d), citing Haley Nursery Co. v. Forrest, 298 S.C. 520, 381 S.E.2d 906 (1989). The statutory definition of willful has been construed by our Court of Appeals to mean: "if, in the exercise of due diligence, a person of ordinary prudence engaged in trade or commerce could have ascertained that his conduct violates the Act, then such conduct is willful." State v. Nest Egg Society Today, Inc., 290 S.C. 124, 348

S.E.2d 381 (Ct. App. 1986). In *Nest Egg* the willful conduct was creation of a pyramid scheme which is expressly prohibited by statute. See S.C. Code Ann. § 39-5-30 (1985). Here, Turbeville's conduct was not prohibited by statute and the only evidence in the record is that the entity, Danville Business Advisors, LLC, has been in business for almost twenty years; and Mr. Turbeville was merely conducting the company's business in a manner. There is no evidence in the record that Mr. Turbeville knowingly violated the South Carolina's Unfair Trade Practices Act. Plaintiffs' counsel never elicited this testimony and Mr. Turbeville never admitted on the stand to any such conduct.

As for the real estate commissions that Mr. Turbeville received, those commissions were a part of the lease agreement that both Mr. Bigby and Mr. Turbeville signed. It is reasonable to assume that Mr. Bigby read the entire agreement and knew the terms of the agreement. It is certainly not Mr. Turbeville's fault that Mr. Bigby never questioned him or the landlord about the section of the contract concerning the commissions. Indeed the only testimony, from the landlord, was that the commissions were routine and were going to get paid in the normal course of a real estate transaction. Therefore, Mr. Turbeville's conduct, as a whole, cannot be deemed as a willful and knowing violation of the Act.

Plaintiffs' counsel sites both Haley Nursery v. Forrest, 298 S.C. 520, 381 S.C. 906, 909 (1989) and Wright v. Craft, 372 S.C. 1, 640 S.E.2d 486 (Ct. App. 2006) distinguishing between when Courts declined to treble the damage, Haley Nursery, and when they opted to do so, Wright v. Craft. Naturally, Plaintiffs' counsel believes that the facts of this case are closer Wright v. Craft, while the truth is that the case in front of the Court lies somewhere in the middle.

As Plaintiffs' counsel correctly points out, in Haley Nursery, the Supreme Court held that the trial court did not err in declining to award treble damages where there was evidence in the record that it was "common practice for a nursery to rely on the supplier's word that the buds supplied are the proper variety and not to inspect the budwood tree itself." Haley Nursery Co., Inc. v. Forrest, 298 S.C. 520, 525, 361 S.E.2d 906, 909. In other words, the trial court determined that a person of ordinary prudence engaged in trade and commerce would not have known that the nursery's policy of relying on the supplier's word violated the South Carolina Unfair Trades Practices Act.

In contrast Wright v. Craft was a case concerning a used 2001 Ford F-150 pickup truck that Mr. Wright bought from Craft Auto Mart in July 2002. In November 2001 the truck's first owner was involved in an accident where the truck rolled and flipped over. The incident damaged the right quarter panel and the hood of the truck, broke windows, and caused both air bags to deploy. State Farm Insurance Company bought the truck from the first owner and sold it at auction. Craft bought it at the auction and obtained some replacement parts from a Ford Dealership and received others from Keystone Automotive Industries.

Craft advertised the Truck for sale as a "one-owner vehicle" and did not reveal that the truck had been wrecked and repaired when specifically asked. Once Mr. Wright owned the truck the check engine light came on. Mr. Wright took it to a Ford Dealership where it was determined unsafe to operate. Mr. Wright successfully sued under SCUTPA because Craft's practices were determined to be deceptive and impacted the public interest.

Plaintiffs' counsel would have you believe that Mr. Craft and Mr. Turbeville are

two fish from the same pond. He cites Wright 372 S.C. at 27-28 improperly by stating that “the defendant readily admitted that although he knew a vehicle had been wrecked, he would tell customers only if they asked.” That is not what the testimony in Wright states. In this case, Mr. Turbeville did not lie to Mr. Bigby or conceal anything from him when Mr. Bigby asked him anything concerning his representation. Mr. Bigby never asked if Mr. Turbeville was receiving finder’s fees or commissions.

Simply stated while the jury concluded that Mr. Turbeville violated the South Carolina Unfair Trade Practices Act, Plaintiffs’ cannot prove that his conduct was willful. Therefore the Court should deny Plaintiffs’ Motion for Treble Damages.

B. Attorneys’ Fees

SCUPTA provides that, “[u]pon the finding by the court of a violation of this article, the court shall award to the person bringing such action under this section reasonable attorney’s fees and costs. S.C. Code Ann. § 39-5-140. The facts of this case do not support Plaintiffs’ contention that it/he should be awarded attorneys’ fees and costs in the amount of \$110,020.08.

Plaintiff first filed this action against C.G.I. Development, Inc. on June 27, 2011. Marion Turbeville was added to this lawsuit on May 7, 2012 along with FRS, Inc. As such, it would be inappropriate to charge Marion Turbeville for any time and expenses incurred in prosecuting this case against C.G.I Development, Inc. and FRS, Inc.

Secondly, Plaintiffs’ Affidavit of Attorneys’ Fees and Costs makes it impossible to ascertain amount of time spent on each task that the Plaintiffs’ are seeking to be reimbursed for at this point. The Affidavit lists individuals and their hourly rate along with the number of hours billed to the file. As such, if the Court is inclined to award

attorney's fees, it is the request of Marion Turbeville that the Plaintiffs' attorneys break down the time spent on each related time entry separately so that an evaluation can be made as to the time spent on each related time activity as to Turbeville. This is not to say that anybody in this case has over billed for any item, but merely to point out that there is no way for the Court to ascertain that the time billed is related to the Unfair Trades Practice's claim. If the Court is inclined to award any fees and costs then they must be limited to the claim under the Act. It would be oppressive to require Marion Turbeville to pay \$110,020.08 for all the work that Plaintiffs' performed on this case for the three-year pendency before prosecution and against other parties that is unrelated to the SCUPTA claim against Turbeville.

CONCLUSION

For the reasons set forth, these Marion Turbeville requests that Plaintiffs' Motion for Treble Damages and attorney's fees and costs be denied.

Respectfully submitted,

DOUGALL & COLLINS



Thomas F. Dougall, Esq.
Robert M. Peele, III, Esq.
1700 Woodcreek Farms Road
Elgin, South Carolina 29045
(803) 865-8858 (TEL)
(803) 865-8944 (FAX)

Attorneys for Marion D. Turbeville

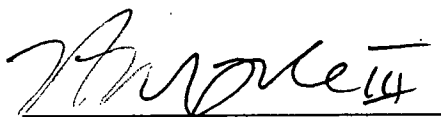
June 20, 2014

Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the foregoing Reply Memorandum in Opposition to Plaintiffs' Motion for Attorney's Fees and Treble Damages was served in the above-referenced case by depositing a copy of the same in the United States mail, postage prepaid, on the 20th day of June, 2014 addressed as follows:

Benjamin C. Bruner, Esq.
Bruner Powell Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
Attorney for Plaintiffs



Robert M. Peele, III

RICHLAND COUNTY
FILED
2014 JUN 20 AM 9:29
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
COASTAL PI, LLC d/b/a PRIMARILY)
PI and JAMES BIGBY,)
Plaintiff,)
v.)
C.G.I. DEVELOPMENT, INC.,)
DANVILLE BUSINESS ADVISORS,)
LLC, MARION D. TURBEVILLE, and)
FRS, INC.)
Defendants.)

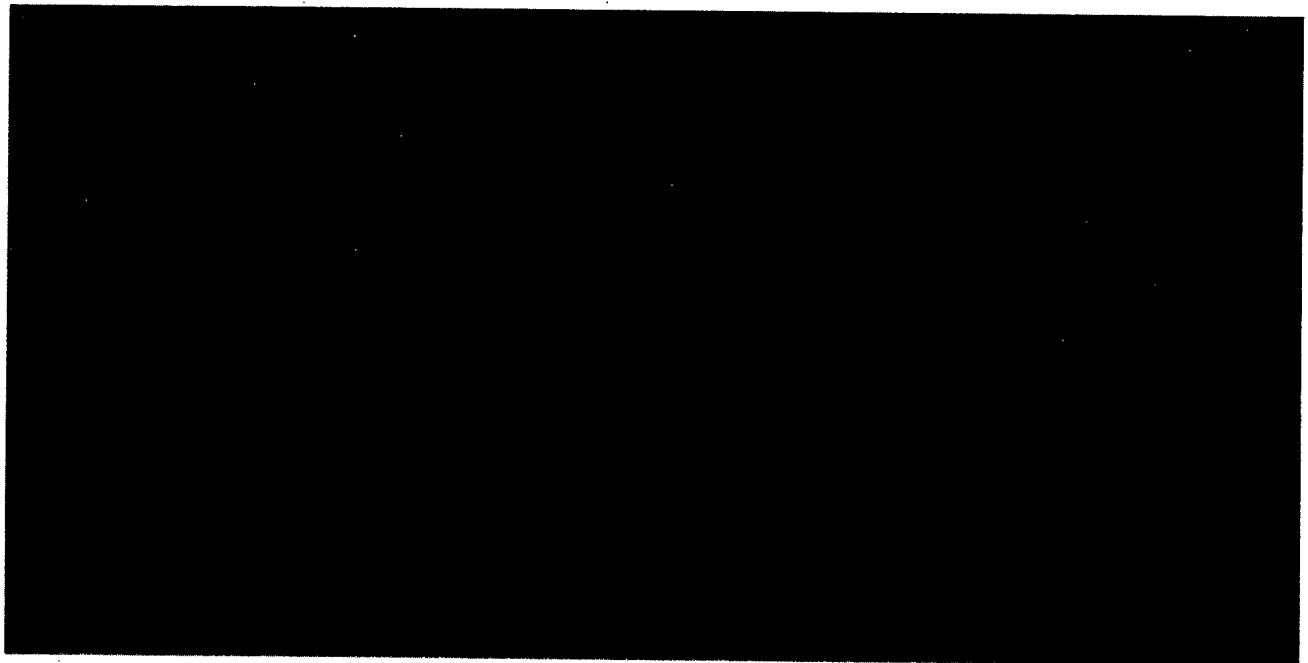
IN THE CIRCUIT COURT

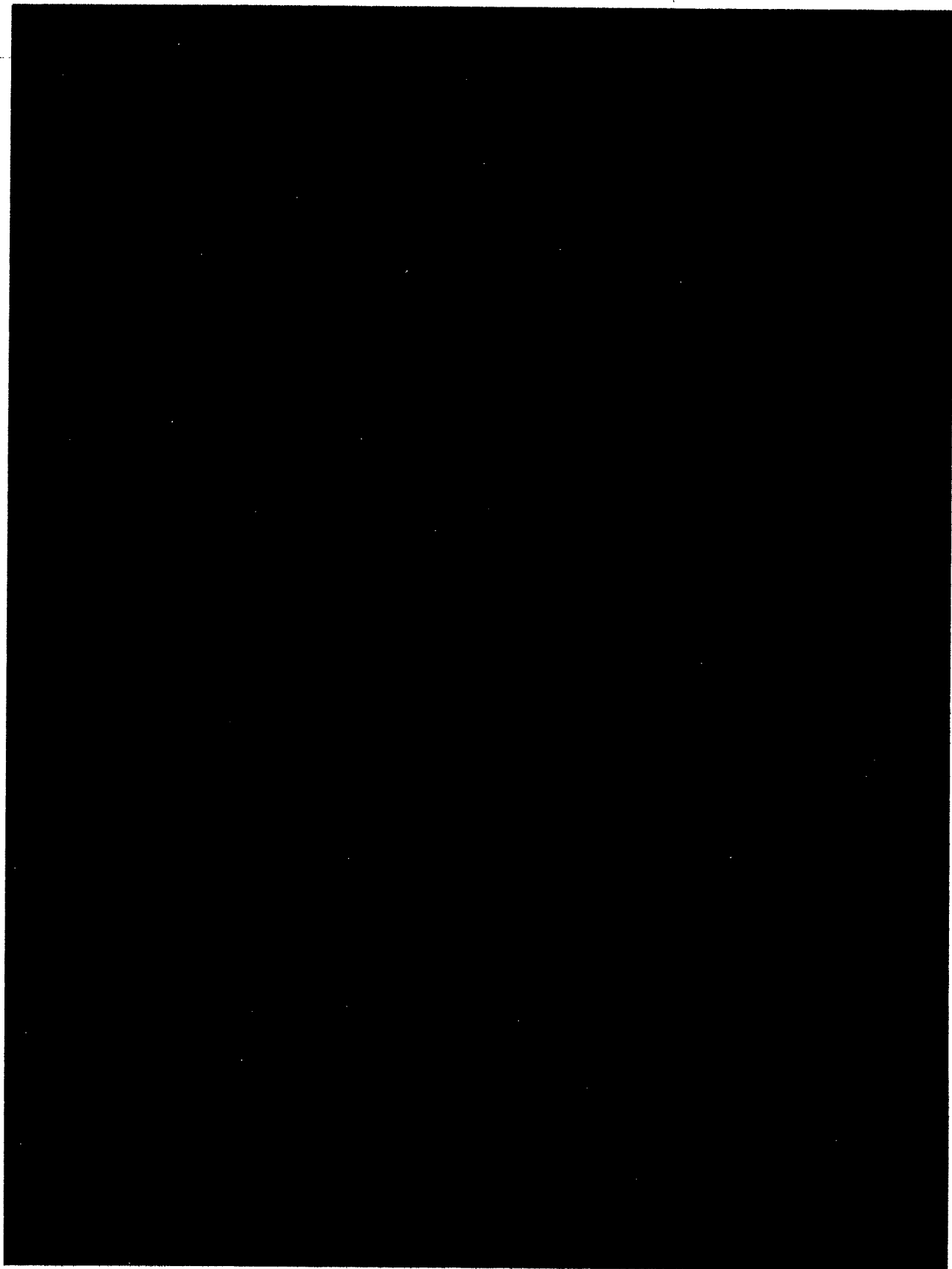
Civil Action No.: 2011-CP-40-04111

DEFENDANT DANVILLE
BUSINESS ADVISORS, LLC AND
MARION TURBEVILLE'S
SUPPLEMENTAL RESPONSES TO
COASTAL PI'S SECOND SET OF
INTERROGATORIES DATED 9.27.13

TO: HENRY P. WALL, ESQ., BENJAMIN C. BRUNER, ESQ. & MATTHEW H. STABLER ESQ.; ATTORNEYS FOR THE PLAINTIFF

Defendants Danville Business Advisors and Marion D. Turbeville, by and through their undersigned attorneys, hereby supplements submits their responses to Plaintiff Coastal Pi's Second Set of Interrogatories in accordance with Rules 26 and 33 of the South Carolina Rules of Civil Procedure.







19. List all "finder's fees" and "sales commissions" you have received or anticipate receiving from contractors from 2006 to present, and include in your response, the date, amount, project name, project owner, and contractor's name.

RESPONSE: This party objects because this interrogatory is irrelevant, and is not reasonably calculated to lead to the discovery of admissible evidence.

Furthermore, this information is proprietary in nature. Subject to the previous objections and the confidentiality agreement entered into, Danville Business

Advisors answers the interrogatory as follows:

2006

Dr. Merri M. Gandhi (Free Standing Dental Office Building)
116 Atlas Road
Columbia, SC

Contractor – Cohn Construction Company
Contact – Dr. Merri M. Gandhi

Project Management Fee -- \$20,000.00
Commission Paid by Contractor -- \$10,000.00

Dr. Austin B. Mears (Free Standing Dental Office Building Conversion)
529 Richland Street
Columbia, SC

Contractor – Cohn Construction Company

Contact – Dr. Austin B. Mears

Commission on Purchase of Building -- \$14,000.00

Commission Paid by Contractor -- \$10,000.00

Project Management Fee -- \$15,875.00

**Dr. Karen Johnson (Free Standing Dental Office Building)
10 Atrium Ridge Ct.
Columbia, SC**

Contractor – W.B. Walkup

Contact – Dr. Karen Johnson

Commission on Purchase of Lot -- \$10,000.00

Commission Paid by Contractor -- \$10,000.00

Project Management Fee -- \$12,000.00

2007

**South Carolina Autism Society (Purchase and Renovation of Office Building)
806 12th Street
West Columbia, SC**

Contractor – Cohn Construction Company

Contact – Craig Stocken (Deceased)

Commission Paid on Building Purchase -- \$8,850.00

Commission Paid by Contractor -- \$10,000.00

Project Management Fee -- \$12,000.00; Only netted \$8,000.00 because of donating \$4,000.00 to client.

**Mason Family Vision Center
141 Wildewood Park Drive
Columbia, SC**

Contractor – Cohn Construction Company

Contact – Dr. John Mason

Commission Paid by Contractor -- \$10,000.00

Project Management Fee -- \$17,500.00

**Dr. Michael W. Sturkie
3901 Edmond Highway
West Columbia, SC**

Contractor – Cohn Construction Company

Contact – Dr. Michael Sturkie

Commission Paid by Contractor -- \$10,000.00

Loan Fee -- \$4,000.00

Project Management Fee -- \$16,000.00

2007-2008

Columbia Investments, LLC (Interior Office Renovation and Upfit)

3517 Brandon Avenue

Roanoke, VA

Contractor – Martin Brothers Construction Company

Contact – David Hamlett

Loan Fees -- \$40,000.00

Project Management Fees -- \$22,500.00

2009

Dr. Frank M. Sawyer, DMD PC (Dental Office Interior Renovation)

7210-N Broad River Road

Irmo, SC

Contractor – Build Vision Construction

Contact – Dr. Frank M. Sawyer

Commission Paid by Contractor -- \$5,500.00

Project Management Fee -- \$15,500.00

2009-2010

Rice Creek Family Dentistry (Purchase and Upfit Dental Office Condominium)

101 Bent Creek Way, Unit #4

Columbia, SC

Contractor – Build Vision Construction

Contact – Andrew Schweiger, Practice Manager

Commission Paid on Purchase of Condominium -- \$6,150.00

Construction Management Fee -- \$12,000.00

2010

Southern Endodontics (Purchase Office Condominium and Interior Dental Office Upfit)

109 Broadbent Way

Anderson, SC

Contractor – Hemphill & Associates

Contact – Dr. Rodney Southern

Commission Paid by Contractor -- \$3,000.00

Commission Paid by Seller on Condominium Purchase -- \$4,406.50

Project Management Fee -- \$15,000.00

Perfecting Faith Church

279 Rimer Pond Road

Blythewood, SC

Contractor – Cohn Construction

Contact – Dr. Warren Robinson

Commission Paid by Contractor -- \$10,000.00

Loan Fee -- \$8,000.00

Project Management Fee -- \$6,000.00

Eagle Eye Analytics (Commercial Office Upfit)

500 Taylor Street, Suite 200

Columbia, SC

Contractor – Cohn Construction

Contact – Jacque McCormack

Commission Paid by Contractor -- \$10,000.00

Commission Paid by Landlord -- \$9,416.99

2011

Cunningham Allstate Insurance

7326 Broad River Road

Irmo, SC 29063

Contractor – Berry Builders

Contact – Pat Cunningham

Project Management Fee -- \$8,250.00

Loan Fee -- \$2,750.00

Fairfield Family Dentistry

123 US Highway 321 Bypass

Winnsboro, SC

Project Management Fee -- \$7,500.00

Contractor – Midlands Electrical d/b/a Palmetto Construction Associates

Contact – Dr. Neil Wrenn

**South Lake Family Dentistry
1223 South Lake Blvd
Lexington, SC**

**Contractor – Midlands Electrical d/b/a Palmetto Custom Creations
Contact – Andrew Schweiger**

**Project Management Fee -- \$12,000.00
Leasing Commission -- \$7,972.01**

2012

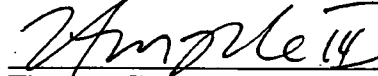
**Rice Creek Family Dentistry
101 Bent Creek Way, Unit #3
Columbia, SC**

**Contractor – None; Transaction Did Not Close
Contact – Andrew Schweiger**

Project Management Fee -- \$9,000.00

Respectfully submitted,

DOUGALL & COLLINS



Thomas F. Dougall
Robert M. Peele, III
1700 Woodcreek Farms Road, Suite 100
Elgin, South Carolina 29045
(803) 865-8858 (TEL)
(803) 865-8944 (FAX)

Attorneys for Danville Business Advisors and
Marion D. Turbeville

Columbia, South Carolina

September 27, 2013

CERTIFICATE OF SERVICE

This is to certify that the foregoing Marion D. Turbeville's and Danville Business Advisors, LLC's supplemental responses to the Plaintiff's second set of Interrogatories Revised on 9.4.13 was served in the above-referenced case by depositing a copy of the same in the United States mail, postage prepaid, on the 27th day of September, 2013 addressed as follows:

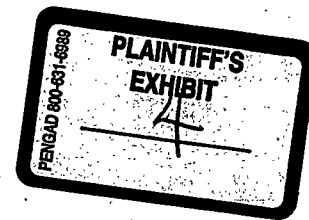
Hank P. Wall, Esq.
Benjamin C. Bruner, Esq.
Matthew Stabler, Esq.
Bruner Powell Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
Attorneys for Plaintiff

James P. Craig, Esq.
Craig Law Firm, PC
2001 Assembly St. Ste 201
Columbia, SC 29211
Attorney for C.G.I. Development, Inc.

Caleb M. Riser, Esq.
Richardson Plowden, PA
P.O. Box 7788
Columbia, SC 29202
Attorney for FRS, Inc.



Robert M. Peele, III



CONTRACT, SPECIFICATIONS, AND BUDGET
SHEETS
FOR
ZA'S PIZZA
LEXINGTON, SOUTH CAROLINA

PREPARED FOR
MR. JAMES BIGBY

BY
CGI DEVELOPMENT, INC.

JANUARY 12, 2009



Development, Inc.
General Contractor • Builder

January 12, 2009

CGI Development, Inc.
10120 Two Notch Rd Ste 2 PMB 400
Columbia, SC 29223
803.736.1951

Costal Pi, LLC.
Mr. James Bigby
Hwy 378
Lexington, SC

RE: Za's Pizza Interior Upfit Contract

We are pleased to have been awarded the contract for constructing The Project known as "Za's Pizza". The following contract was derived from the plans received on January 7, 2009. Please review the following specifications designed for your project. Any deviations from the original scope of work would be submitted in writing for approval prior to commencement of additional work.

Za's Pizza Interior Upfit Contract Amount:

(Three hundred two thousand, five hundred, sixty six and 30/100)

\$302,566.30

This contract includes interior finish work in accordance to architectural plans, budgetary sheets (2) and specification sheet (5) attached.

Specification sheet and budgetary sheet precede architectural drawings.

All Change Orders will be billed with time and materials plus fifteen percent (15%) markup.

Any and all task required for the completion of Za's Upfit not listed on the budgetary sheets shall be treated as "Change Orders". With the above stated markup.

Sewer Tap, Water Tap, and Restaurant Equipment/Furnishings are not included.

Contractor may change and/or withdraw this agreement if Contractor does not receive your signed acceptance within 15 days after the date listed above.

Payment Terms:

Initial draw of 15% for mobilization, and startup fees.

Progress payment structure based on performance with bi-weekly payments.

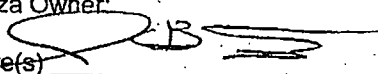
Subcontractor application for payment along with partial lien waivers must be received by 12:00 PM on the first and third Monday of each month prior to disbursement of funds to be released on the following Thursday AM.

See attached draw schedule sheet.

This draw schedule is intended to protect the owners, while providing the contractor with the necessary funds required to maintain progress in performance.

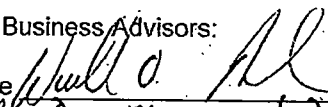
Acceptance of proposal- The above prices, specifications, and conditions are satisfactory and hereby accepted. Any additional work performed is subject to Contractor's then current pricing (unless Contractor otherwise agrees in writing) and to these terms and conditions. You are authorized to do the work as specified.

Za's Pizza Owner:

Signature(s) 

Date of acceptance 1/13/09

Danville Business Advisors:

Signature 

Date of acceptance 1/13/09

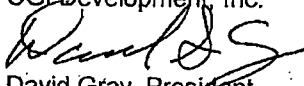
As. Dir. Manager & Disbursement Agent

Signature _____

Date of acceptance _____

Thank you for this opportunity to provide you with the finest in construction services and we look forward to our continuing relationship.

Sincerely,
CGI Development, Inc.



David Gray, President
G # 110070

DIVISION (01) 01100 GENERAL CONDITIONS

January 12, 2009

01.101 The Contractor shall provide all labor, materials, services, and equipment for the interior upfit build-out construction of one (1) 2601 square foot Pizzeria Restaurant facility (known as Za's Pizza) in accordance with these specifications.

01.103 The Contractor shall provide and pay for all necessary licenses permits *necessary for the herein described work only*, workers compensation insurance, and general liability insurance as required for this project.

01.104 The Contractor shall be responsible for builder's risk insurance in amounts adequate to cover his potential loss in the event of a natural disaster. Builder's Risk policy includes theft clause.

01.106 The Contractor's temporary job site sign shall be erected identifying his involvement in the project.

01.107 The Owner shall provide temporary utilities such as water and power.

01.110 The Contractor shall provide portable storage and temporary toilets as necessary.

01.112 The Owner shall provide and pay for all drawings including architectural, structural engineering, mechanical and electrical as required for completion of the work.

01.115 Site survey shall be provided by Owner if necessary or required by Lexington County.

01.116 Structural Engineered drawings for roof re-enforcement shall be provided by the contractor. An allowance of one thousand dollars (\$1000.00) has been issued for structural engineering drawings.

01.118 Owner shall pay for any and all testing services if required.

01.120 Subsurface analysis testing and reports if required shall be the owners' responsibility.

01.121 Grading plan and soil erosion control plan, as well as, on-site erosion control as may be required are not included.

01.131 The Owner acknowledges that if the Contractors operations are withheld or put on "hold" for reasons beyond Contractors control, i.e. an interrupting zoning regulation, delayed permitting process, engineering by local authorities, sewer or water line extensions, easements, etc., then additional compensation may be required including time for any meetings required by same.

01.133 The Contractor shall keep the project in a clean and orderly condition at all times.

01.134 The following items are not included: Any and all kitchen equipment, restaurant equipment, and supplies including but not limited to furnishings, freezers, conveyers, stoves, (materials and/or labor), or anything else not specifically mentioned or shown on the drawings or listed within these specifications.

01.135 Additional items or work not included in the contract:

- 1-Paving
- 2-Furniture
- 3-Concrete aprons or curb cuts

01.136 The Contractor is not responsible for soil density testing of bearing soils prior to placement of concrete foundations as required by Lexington County.

01.137 The safe soil bearing capacity of 2500 pounds per square foot has been assumed in foundation design.

01.138 The Owner acknowledges that subsurface soil conditions are unknown and if any unusual conditions such as rock, latent soils, springs, etc. are found to exist after the work has begun, the Owner will be notified at once. The Owner shall be responsible for any test, or any additional work made necessary by these conditions. No extra work shall be done without approval in writing by the Owner.

01.142 Owner to provide any and all items not specifically mentioned in these specifications or any items unforeseen as required by state, local or federal authorities.

01.143 Contractor's scope of work shall not include the identifications, detection, abatement, encapsulation or removal of asbestos or any other hazardous substances.

01.709 Contractor is not responsible for any sprinkler system/fire protection of any kind by any means.

DIVISION (01) 01200 CONTRACTOR EQUIPMENT

01.201 The Contractor, or sub-contractors working on behalf of the Contractor, shall provide necessary equipment and/or tools as required to perform all work in a proper manner.

DIVISION (01) 01700 CASH ALLOWANCES

None

DIVISION (02) 02000 DEMOLITION/EARTHWORK

02.513 Any ramps that may be required by Lexington County shall be the responsibility of the owner or landlord.

02.700 Termite Pretreatment to be applied prior to installation of vapor barrier.

DIVISION (03) 03000 CONCRETE

03.100 The strength of the concrete shall be 3000 PSI at 28 Days

03.109 Floor Slab to be 4"

- 03.100 Slab Finish to be smooth hard trowel
- 03.112 Concrete floors will have appropriate control joints to minimize cracking.
- 03.103 Vapor barrier under interior concrete slabs to consist of 6 mil. Clear polyethylene.
- 03.111 Sealed finish to be compound and sealer to consist of 1 coat of Kure-N-Seal clear acrylic

DIVISION (04) 04000 MASONRY

- 04.003 Standard face brick shall be used at rear storage room. Masonry walls with conventional framing shall be constructed for rear exterior storage room only.

DIVISION (05) 05000 STEEL

- 05.009 Bracing at roof for additional support shall be provided by the contractor, designed and approved by a structural engineer. A labor and material allowance of three thousand dollars (\$3000.00) has been included by the contractor into the contract.

DIVISION (06) 06000 CARPENTRY

- 06.019 All Framing materials to be supplied by Contractor in accordance with architectural plans within allowance (Refer to budget sheet attached).
- 06.020 Framing labor is to be supplied by Contractor in accordance with architectural plans within allowance (Refer to budget sheet attached).

DIVISION (07) 07000 WATERPROOFING/INSULATION//ROOFING

- 07.008 Walls to be insulated with R13 Kraft Faced
- 07.012 Ceiling to be insulated with R19

DIVISION (08) 08000 DOORS/WINDOWS/HARDWARE/GLASS

- 08.005 One (1) exterior double door to be supplied and installed by the contractor.
- 08.100 Two (2) interior doors to be supplied and installed by the Contractor.
- 08.205 One (1) Eliason or (like kind) door to be provided and installed by the Contractor
- 08.400 Door hardware to be supplied and installed by Contractor.
- 08.418 Restroom accessories are to be provided and install by the Contractor within allowance (Refer to budget sheet attached).
- 08.500 One (1) store front glass door is to be add along side of building provided and installed by the Contractor

DIVISION (09) 09000 FINISHES

- 09.200 All interior walls will receive ½" gypsum board, taped, mudded, sanded, 1 primer coat, and 2 finish coats of paint, unless covered by other finishing products(i.e. FRP, Tile, or Stainless Steel)
- Demising wall separating adjacent tenant is schedule to meet 2 hour rated fire wall to receive 2 layers of 5/8" type X drywall per plan
- 09.300 All floor finishes to be performed by the Contractor within allowance (Refer to budget sheet attached).

- 09.400 All ceilings to receive acoustical tiles by the Contractor per plans.
09.600 Patrons bar area floor covering to receive twenty eight (28) ounce commercial grade carpet
09.700 Interior walls shall receive 1 primer coat, and 2 finish coats of paint, unless covered by other finishing products (i.e. FRP, Tile, or Stainless Steel)
09.750 Kitchen walls to receive FRP (Fiberglass reinforced plastic)

DIVISION (10) 10000 SPECIALITIES

- 10.402 All restrooms to receive accessories per Lexington County requirements within allowance (Refer to budget sheet attached).

DIVISION (11) 11100 FURNISHINGS

- 11.003 All restaurant equipment shall be supplied by Owner
11.100 All restaurant furnishing shall be supplied by Owner

DIVISION (12) 12000 CASEWORK

None

DIVISION (13) 13000 PRE-ENGINEERED BUILDINGS/SPECIAL CONSTRUCTION

- 13.009 Additional awning panels are to be supplied and installed by the Contractor @ side door entry. The owner or landlord shall be responsible for the framework to support this awning.

DIVISION (14) 14000 ELEVATORS/CONVEYING

None

DIVISION (15) 15000 MECHANICAL (PLUMBING & HEATING

- 15.100 All plumbing shall meet code per plan, and within allowance (Refer to budget sheet attached)..
15.200 Fire protection system is not the responsibility of the Contractor.
15.300 HVAC Systems to meet code and approved by mechanical engineer.

DIVISION (16) 16000 ELECTRICAL

- 16.001 Electrical System to meet code and approved by electrical engineer.
16.002 Security system shall be under the responsibility of the owner
16.005 TV/Audio System shall be under the responsibility of the owner
16.006 Telephone wiring system shall be under the responsibility of the owner
16.007 Fire Alarm system shall be under the responsibility of the owner



Development, Inc.
General Contractor • Builder

Za's Pizza
January 12, 2009

CONTRACT SPECIFICATION COST SHEET

Total Labor, Materials, and Services as Noted

\$302,566.30

Three hundred two thousand, five hundred sixty six and 30/100

CGI Development, Inc.
David S. Gray, President
G: 110070

5 of 5

Project: Za's Pizza Upfit		1/12/2009		1 of 2	
Division	Work Description	% Amount	Performed By	Quantity	Source
1	General Conditions				
	Architectural Engineering Fees	N/A	Architectural Concer	1	
	Structural Engineer Fees	\$1,000.00	Kizzer & Timmermar	1	Estimate
	Permit Fees	\$1,250.00	Lexington County		Verbal
	Workers Compensation Insur	\$1,500.00	CGI Development, Inc.		
	General Liability Insurance	\$1,500.00	CGI Development, Inc.		
	Builders Risk Insurance	\$750.00	CGI Development, Inc.		Estimate
	Temporary Utilities	\$500.00			Estimate
	Port-a-jon	\$250.00	E & D		Estimate
	Supervision	\$16,250.00	Mike Hunt	13 Weeks	
	Project Management Fees	\$16,250.00	CGI Development, I	13 Weeks	
	Bond Fees	\$250.00			Estimate
	Dumpsters	\$1,500.00	Pasco		Estimate
2	Demolition/Sitework				
	Termite Pretreatment	\$300.00	Sandy Run		Estimate
3	Concrete				
	Labor and Material	\$9,665.00	Palmetto Concrete	2601	Verbal
	Pump	\$450.00	Carolina Pump	1	Verbal
4	Masonry				
	Rear Addition	\$2,000.00	Sanchez	1	Estimate
	Side Door Lintel L & M	\$1,500.00	Sanchez	1	Estimate
5	Steel				
	Reinforce Decking for HVAC	\$3,000.00		1	Estimate
6	Carpentry				
	Trim Work	\$4,000.00	Mike Hunt		Estimate
	Cabinets	\$10,000.00	Mike Hunt	LF	Estimate
	Countertops	\$2,500.00	Mike Hunt	LF	Estimate
7	Insulation/Roofing				
	Walls Insulation	Incl Below	Precision Walls		
	Ceiling Insulation R-19	Incl Below	Precision Walls		
	Roof Access Ladder	\$1,500.00		1	Estimate
8	Doors/Hardware/Glass				
	Interior Doors	\$1,500.00	Advanced Doors	2	Estimate
	Exterior Double Door	\$1,250.00	Advanced Doors	1	Estimate
	Eliason Door	\$850.00	Advanced Doors	1	Estimate
	Glass & Storefront	\$1,500.00	Kapassi Glass	1	Estimate
9	Finishes				
	Metal Stud Framing & Drywall	\$37,000.00	Precision Walls	289 LF	Estimate
	Floor Covering	\$22,500.00	Flooring Concepts, Inc.		Danville
	Bar Face Tile L&M	\$2,816.00			Estimate
	Accoustical Ceiling Class A	\$2,777.50	Precision Walls	1010	Estimate
	Accoustical Ceiling Non Direct	\$3,000.00	Precision Walls	1845	Estimate
	Painting	\$6,502.50	Tony Weeks		Verbal
	Staining/Lacquer	\$2,500.00	Tony Weeks		Estimate
	FRP	\$2,450.00		195 LF	Estimate

Cont.: Za's Pizza Estimate			1/12/2009	2 of 2
10	Specialties			
	Fire Extinguishers	\$750.00		Estimate
	Bathroom Accessories L&M	\$2,000.00		Estimate
11	Equipment			
	Resturant / Kitchen Equipment	N/A		
	Furnishings	N/A		
12	Casework			
13	Special Construction			
	Awnings	\$2,800.00	Billy Stanick	Estimate
14	Elevators/Conveying			
15	Mechanical			
	HVAC	\$40,000.00		
	Sprinkler System	N/A		
	Plumbing	\$39,000.00	Lewis Nics	Verbal
	Grease Trap	N/A		
16	Electrical			
	Electrical	\$40,034.00	Midlands Electrical, Inc.	Quote
	Total Estimated Cost	\$285,145.00		
	Overhead/Burden 3%	\$8,710.65		
	Profit 3%	\$8,710.65		
	Project Estimate	\$302,566.30		

The following Estimate is based on plans submitted on December 18, 2008.

Michael Hunt and CGI Development, Inc. have made all efforts possible to gather information for budgetary reasons with limited drawings and time. Once complete and final drawings are submitted, Michael Hunt and CGI Development, Inc. will be able to produce a complete and firm bid for Za's Pizza upfit project.

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Thank you for allowing our involvement in this project.
We look forward continuing our business relationship.



Development, Inc.
General Contractor • Builder

Division	Work Description	%	Amount	Performed By	Quantity	Source
1	General Conditions					
	Architectural Engineering Fees		N/A	Architectural Conce	1	
	Structural Engineer Fees		\$1,000.00	Kizzer & Timmerma	1	Estimate
	Permit Fees		\$1,250.00	Lexington County		Verbal
	Builders Risk Insurance		\$750.00			Estimate
	Temporary Utilities		\$500.00			Estimate
	Port-a-jon		\$250.00	E & D		Estimate
	Supervision		\$16,250.00	Mike Hunt	13 Weeks	
	Project Management Fees		\$16,250.00	CGI Development, I	13 Weeks	
	Bond Fees		\$250.00			Estimate
	Dumpsters		\$1,500.00	Pasco		Estimate
2	Demolition/Sitework					
	Termite Pretreatment		\$300.00	Sandy Run		Estimate
3	Concrete					
	Labor and Material		\$9,665.00	Palmetto Concrete	2601	Verbal
	Pump		\$450.00	Carolina Pump	1	Verbal
4	Masonry					
	Rear Addition		\$2,000.00	Sanchez	1	Estimate
	Side Door Lintel L & M		\$1,500.00	Sanchez	1	Estimate
5	Steel					
	Reinforce Decking for HVAC		\$3,000.00		1	Estimate
6	Carpentry					
	Trim Work		\$4,000.00	Mike Hunt		Estimate
	Cabinets		\$10,000.00	Mike Hunt	LF	Estimate
	Countertops		\$2,500.00	Mike Hunt	LF	Estimate
7	Insulation/Roofing					
	Walls Insulation		Incl Below	Precision Walls		
	Ceiling Insulation R-19		Incl Below	Precision Walls		
	Roof Access Ladder		\$1,500.00		1	Estimate
8	Doors/Hardware/Glass					
	Interior Doors		\$1,500.00	Advanced Doors	2	Estimate
	Exterior Double Door		\$1,250.00	Advanced Doors	1	Estimate
	Eliason Door		\$850.00	Advanced Doors	1	Estimate
	Glass & Storefront		\$1,500.00	Kapassi Glass	1	Estimate
9	Finishes					
	Metal Stud Framing & Drywall		\$37,000.00	Precision Walls	289 LF	Quote+
	Floor Covering		\$28,710.00	Flooring Concepts, Inc.		Quote
	Bar Face Tile L&M		\$2,816.00			Estimate
	Acoustical Ceiling Class A		\$2,777.50	Precision Walls	1010	Quote+
	Acoustical Ceiling Non Direct		\$3,000.00	Precision Walls	1845	Quote+
	Painting		\$6,502.50	Tony Weeks		Verbal
	Staining/Lacquer		\$2,500.00	Tony Weeks		Estimate
	FRP		\$2,450.00		195 LF	Estimate

	Cont.: Za's Pizza Estimate				
10	Specialties				
		Fire Extinguishers	\$750.00		Estimate
		Bathroom Accessories L&M	\$1,000.00		Estimate
11	Equipment				
		Resturant / Kitchen Equipment	N/A		
		Furnishings	N/A		
12	Casework				
13	Special Construction				
		Awnings	\$2,800.00	Billy Stanick	Estimate
14	Elevators/Conveying				
15	Mechanical				
		HVAC			
		Sprinkler System	N/A		
		Plumbing	\$39,000.00	Lewis Nics	Verbal
		Grease Trap	N/A		
16	Electrical				
		Electrical	\$40,034.00	Midlands Electrical, Inc.	Quote
		Total Estimated Cost	\$247,355.00		
		Overhead/Burden	+ mm e + 15 K		
		Profit			
		Project Estimate	\$247,355.00		

\$308,855

The following Estimate is based on plans submitted on December 18, 2008.

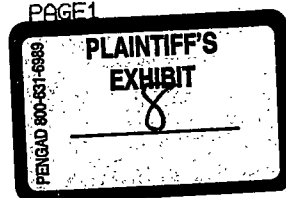
Michael Hunt and CGI Development, Inc. have made all efforts possible to gather information for budgetary reasons with limited drawings and time. Once complete and final drawings are submitted, Michael Hunt and CGI Development, Inc. will be able to produce a complete and firm bid for Za's Pizza upfit project.

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Thank you for allowing our involvment in this project.
We look forward continuing our business relationship.

- Rear addition, glass tile & accessories
- 14750
40000
16250
\$288855

Meyu
DBA



CGI DEVELOPMENT, INC.

GENERAL CONTRACTORS

FACSIMILE TRANSMITTAL SHEET

TO:	Mr. Turbeville	FROM:	David Gray
COMPANY:	Danville Business Advisors	DATE:	1/6/2009
FAX NUMBER:	765.0799	TOTAL NO. OF PAGES INCLUDING COVER:	3
PHONE NUMBER:	765.1230	SENDER'S REFERENCE NUMBER:	
RE:	Preliminary Budget #s on Za's Pizza	YOUR REFERENCE NUMBER:	803.736.1951

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Mr. Turbeville,

The following preliminary budget is based on the drawings supplied. As requested, we have added 3% for profit and 3% for overhead. We have also included money for workers comp and General Liability Insurance, as directed via Mr. Danielson during our meeting.

Please call if you need any additional numbers @ 803.736.1951 or my cell @ 309.4203

Thank you,

David Gray



Development, Inc.

General Contractor • Builder

Project: Za's Pizza Upfit					
Division	Work Description	% Amount	Performed By	Quantit	Source
1	General Conditions				
	Architectural Engineering Fees	N/A	Architectural Concep	1	
	Structural Engineer Fees	\$1,000.00	Kizzer & Timmermar	1	Estimate
	Permit Fees	\$1,250.00	Lexington County		Verbal
	Workers Compensation Insur	\$1,500.00	CGI Development, Inc.		
	General Liability Insurance	\$1,500.00	CGI Development, Inc.		
	Builders Risk Insurance	\$750.00	CGI Development, Inc.		Estimate
	Temporary Utilities	\$500.00			Estimate
	Port-a-Jon	\$250.00	E & D		Estimate
	Supervision	\$16,250.00	Mike Hunt	13 Weeks	
	Project Management Fees	\$16,250.00	CGI Development, Inc.	13 Weeks	
	Bond Fees	\$250.00			Estimate
	Dumpsters	\$1,500.00	Pasco		Estimate
2	Demolition/Sitework				
	Termite Pretreatment	\$300.00	Sandy Run		Estimate
3	Concrete				
	Labor and Material	\$9,665.00	Palmetto Concrete	2601	Verbal
	Pump	\$450.00	Carolina Pump	1	Verbal
4	Masonry				
	Rear Addition	\$2,000.00	Sanchez	1	Estimate
	Side Door Lintel L & M	\$1,500.00	Sanchez	1	Estimate
5	Steel				
	Reinforce Decking for HVAC	\$3,000.00		1	Estimate
6	Carpentry				
	Trim Work	\$4,000.00	Mike Hunt		Estimate
	Cabinets	\$10,000.00	Mike Hunt	LF	Estimate
	Countertops	\$2,500.00	Mike Hunt	LF	Estimate
7	Insulation/Roofing				
	Walls Insulation	Incl Below	Precision Walls		
	Ceiling Insulation R-19	Incl Below	Precision Walls		
	Roof Access Ladder	\$1,500.00		1	Estimate
8	Doors/Hardware/Glass				
	Interior Doors	\$1,500.00	Advanced Doors	2	Estimate
	Exterior Double Door	\$1,250.00	Advanced Doors	1	Estimate
	Ellason Door	\$850.00	Advanced Doors	1	Estimate
	Glass & Storefront	\$1,500.00	Kapassl Glass	1	Estimate
9	Finishes				
	Metal Stud Framing & Drywall	\$37,000.00	Precision Walls	289 LF	Quote+
	Floor Covering	\$28,710.00	Flooring Concepts, Inc.		Quote
	Bar Face Tile L&M	\$2,816.00			Estimate
	Acoustical Ceiling Class A	\$2,777.50	Precision Walls	1010	Quote+
	Acoustical Ceiling Non Direct	\$3,000.00	Precision Walls	1845	Quote+
	Painting	\$6,502.50	Tony Weeks		Verbal
	Staining/Lacquer	\$2,500.00	Tony Weeks		Estimate
	FRP	\$2,450.00		195 LF	Estimate

Cont.: Za's Pizza Estimate					
10	Specialties				
	Fire Extinguishers	\$750.00			Estimate
	Bathroom Accessories L&M	\$1,000.00			Estimate
11	Equipment				
	Resturant / Kitchen Equipment	N/A			
	Furnishings	N/A			
12	Casework				
13	Special Construction				
	Awnings <i>Shell + Sood</i>	\$2,800.00	Billy Stanlok		Estimate
14	Elevators/Conveying				
15	Mechanical				
	HVAC	\$40,000.00			
	Sprinkler System	N/A			
	Plumbing	\$39,000.00	Lewis Nics		Verbal
	Grease Trap	N/A			
16	Electrical				
	Electrical	\$40,034.00	Midlands Electrical, Inc.		Quote
	Total Estimated Cost	\$290,355.00			
	Overhead/Burden 3%	\$8,710.65			
	Profit 3%	\$8,710.65			
	Project Estimate	\$307,776.30			

The following Estimate is based on plans submitted on December 18, 2008.

Michael Hunt and CGI Development, Inc. have made all efforts possible to gather information for budgetary reasons with limited drawings and time. Once complete and final drawings are submitted, Michael Hunt and CGI Development, Inc. will be able to produce a complete and firm bid for Za's Pizza upfit project.

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Thank you for allowing our involvement in this project.
We look forward continuing our business relationship.



VISTA ENGINEERING, LLC

530 South Saluda Avenue
Columbia, S.C. 29205

Phone: (803-799-8900
Fax: (803-799-8960

August 3, 2009

Mr. Ray Cottrell
Architectural Concepts, Inc.
190 Stoneridge Drive
Suite 100
Columbia, S.C. 29210

Re: Za's Pizza

Dear Ray:

I am in receipt of the air balance report from Hall Technologies dated 7-30-09. We have never received a factory authorized start up report on the equipment. We did not receive any submittal data on the units to be installed. Also, please note this is an as is reading only air balance report. No attempt to adjust the final air flows appears to have been made. As you surely remember, we did not design the hood and make up air system, but showed the hood and make up air system as designed by the kitchen equipment designer. We verified the design met code and based our HVAC design on the relative values of exhaust and make up air for the kitchen along with our own calculations.

The system installed and described by the air balance report is not the system we designed. I will list the differences and briefly state the short comings of the installed system as follows:

We called for Carrier 48HJD rooftop units with hot gas reheat capability. The contractor installed Carrier 48TMD units. Hot gas reheat in is not available in this line.

We called for a "Cobra" fresh air pre conditioning system for the 48HJD012 but this was not installed and probably cannot be installed on the 48TMD unit.

We specified 3 HP for RTU-1 unit and 5 HP for RTU-2 unit. 2 HP and 3 HP respectively were installed.

The original kitchen equipment design called for 1-2500 CFM exhaust fan and 1-1200 CFM exhaust fan for the two type 1 hoods and a single make up air fan of 2960 CFM. This would have left a 740 CFM differential for our HVAC system to accommodate. Instead, the two exhaust fans of 2500 CFM and 1200 CFM were installed for the 2 hoods, but two make up air fans, one of 1225 CFM and one of 1020 CFM were installed. This

left a differential of 1455 CFM. This is almost twice the differential our system was designed to handle.

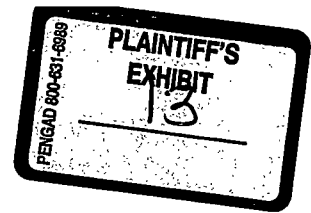
The bathroom fans were designed as required by code for 75 CFM each. The installed system produces 65 CFM per bathroom. This does not meet code requirements.

Ray, these are our findings based on the system as installed. Since the system was not installed as designed, we disavow all responsibility for its operations and indoor temperature and humidity control. We would have to be engaged by a new contract before we could make further recommendations or designs.

Sincerely,
Vista Engineering, LLC

Randy Cottrell

RRC/rrc



NET SHOPPING CENTER LEASE

THIS SHOPPING CENTER LEASE made and entered into as of the 15th day of September, 2008 by and between Saluda Ridge, LLC, Landlord as hereinafter defined and Coastal Pi, LLC, Tenant as hereinafter defined.

WITNESSETH

In consideration of the rent to be paid, the mutual covenants and agreements herein contained, and of other good and valuable considerations, the receipt and legal sufficiency of all of which are hereby acknowledged by both parties hereto, Landlord hereby demises and rents unto Tenant, and Tenant hereby leases from Landlord, certain premises in Landlord's Shopping Center named below and described in Exhibit "A" attached hereto, upon the terms, covenants and conditions hereinafter contain

ARTICLE I

FUNDAMENTAL LEASE PROVISIONS AND EXHIBITS

Section 1.1 Fundamental Lease Provisions.

- A. SHOPPING CENTER:
Sunset at Sunset Retail Center
2805 Sunset Boulevard
West Columbia, SC 29399
- B. LANDLORD (include mailing address):
Saluda Ridge, LLC
164 Lott Court
West Columbia, SC 29169
- C. TENANT (include mailing address):
Coastal Pi, LLC
2930 Devine Street
Columbia, South Carolina 29205
- D. LEASED PREMISES: A portion of the Shopping Center premises identified and/or outlined in red on Exhibit "B" hereto, having dimensions of approximately 37.2 feet by 70 feet, and containing approximately 2,601 square feet, known as Suite D. The mailing address of this space will be 2805-D Sunset Boulevard, West Columbia, SC 29169.

¹ *CEP*

E. PERMITTED USES: Tenant may use the Premises for the sale of prepared food, but its primary business may not be the sale of submarine or deli sandwiches. Primary business is defined as fifty percent (50%) of gross sales. Tenant shall be required to open for business and to continuously operate in the Premises. So long as Tenant continues to pay Rent, Tenant shall have the right to close for up to ninety (90) consecutive days on up to one (1) occasion during the initial Lease term, and once during each Option Period, for purposes of remodeling and reformatting the Premises consistent with the Use. Tenant shall also be entitled to be closed for business on Easter, New Year's Day, Thanksgiving, Christmas Eve and Christmas Day.

F. LEASE DURATION: Ten (10) years.

G. FIXED RENT:

	<i>Rent per Square Foot per year</i>	Annual Rent
Lease Year 1 through 5	\$27.50	\$71,527.50
Lease Years 6 through 10	\$31.63	\$82,269.63
Option Years 11 through 15	\$36.37	\$94,598.37
Option Years 16 through 20	\$41.83	\$108,799.83

H. BASE YEAR: The calendar year 2009.

I. COMMON AREA MAINTENANCE CONTRIBUTION BY TENANT: The first year is estimated to be \$1.50 per square foot per year, adjusted annually, payable in equal monthly installments of \$325.13. Tenant's Common Area Maintenance contribution will be adjusted annually as provided herein and shall be paid in equal monthly installments.

J. TAX AND INSURANCE CONTRIBUTION BY TENANT: The initial annual tax and insurance contribution will be \$2.00 per square foot and payable in equal monthly installments of \$433.50. Tenant's tax and insurance contribution will be adjusted annually as provided herein and shall be paid in equal monthly installments.

K. RENT COMMENCEMENT DATE: The rent shall commence ninety (90) days after Landlord delivers possession of the Leased Premises to Tenant.

L. RENTAL PAYMENT PLACE:

Mail: 164 Lott Court, West Columbia, SC 29169

Hand Delivery: 164 Lott Court, West Columbia, SC 29169

M. PRO RATA SHARE: The total number of square feet in the leased

² 

premises divided by the total number of square feet in the shopping center at the time of this lease.

- N. SECURITY DEPOSIT: Tenant shall provide a check payable to Saluda Ridge, LLC at the signing of the Lease as prepaid rent for the first month in lieu of a Security Deposit.

ARTICLE II

SHOPPING CENTER, LEASED PREMISES AND TERM

Section 2.1 Covenants of Landlord's Authority. Landlord represents and covenants that (1) prior to commencement of the Lease Term it will have either good title to or a valid leasehold interest in the land and building of which the leased premises form a part, and (2) upon performing all of its obligations hereunder, Tenant shall peacefully and quietly have, hold, and enjoy the premises for the term of this Lease.

Section 2.2 Leased Premises. For the purpose of this Lease, Leased Premises shall extend to the exterior faces of all walls or to the building line where there is no wall, or to the center line of those walls separating the Leased Premises from other leased premises in the Shopping Center, together with the appurtenances specifically granted in this Lease, but reserving and excepting to Landlord the use of the exterior walls and the roof and the right to install, maintain, use, repair and replace pipes, ducts, conduits and wires leading through the Leased Premises in locations which will not materially interfere with Tenant's use thereof and serving other parts of the Shopping Center.

Section 2.3 Term. The term of this Lease shall commence on the Rental Commencement Date set forth in ARTICLE I, Section 1.1 K, as may be extended pursuant to ARTICLE XIV in the event the premises are under construction. Lease Term shall continue until the expiration of a period equal to the Lease Duration (ARTICLE I, Section 1.1 F) after the end of the month in which the Lease Term commences (except that if the Lease Term commences on the first day of a month, the Lease Term shall end after the expiration of a period equal to said Lease Duration after such commencement). The Fractional Month, if any, between the commencement of the Lease Term and the end of the month in which the Lease Term begins is hereinafter referred to as "the Fractional Month."

Section 2.4 Statement as to Lease Term. After the commencement and termination dates of the Lease Term shall have been determined as provided in Section 2.3, Tenant, at Landlord's request, shall from time to time execute, acknowledge and deliver written statements in recordable form: (1) ratifying this Lease; (2) specifying the commencement and termination dates of the Lease Term; (3) certifying that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended (except by such writings as shall be so stated); (4) that all conditions under this Lease to be performed by Landlord have been satisfied or stating those not performed; (5) that there are no defenses or offsets against the enforcement of this Lease by Tenant or specifying any such

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defenses; (6) the date to which rental has been paid; (7) the actual number of square feet of floor space in the Leased Premises; and (8) that no rental has been paid in advance or specifying any such advance rental if it is unpaid.

If Tenant fails to execute, acknowledge and deliver to Landlord or a mortgagee or prospective mortgagee of Landlord a statement in accordance with the foregoing provisions of this Section within ten (10) business days, such shall constitute an acknowledgment by Tenant that this Lease is unmodified and in full force and effect and that all conditions under this Lease to be performed by Landlord have been satisfied. Tenant agrees to execute a Nondisturbance, Attornment And Subordination Agreement and Estoppel Letter as may be required by Landlord or Landlord's Lender, and to comply with all of the provisions in these agreements.

Section 2.5 Tenant To Open For Business. During the Lease Term, Tenant shall remain open for business and operate its business in accordance with the provisions hereof. However, as long as Tenant continues to pay rent, Tenant may close up to ninety (90) consecutive days on one (1) occasion during the initial term on the lease and once during each option term for purposes of remodeling and reformatting the Premises consistent with the Use. Tenant shall also be entitled to be closed for business on Easter, New Year's Day, Thanksgiving, Christmas Eve and Christmas Day.

ARTICLE III

RENTALS

Section 3.1 Fixed Minimum Annual Rent. Tenant shall pay to Landlord, without demand and without deduction or set-off, at the Rental Payment Place, or at such other address for the Rental Payment Place as Landlord by notice in writing to Tenant may from time to time direct, rent as follows:

(a) Fixed Rent shall be payable at the annual rate provided in ARTICLE I, Section 1.1 G, for each year of the Lease Term, in equal monthly installments in advance on the first day of each month during the Lease Term. The Fixed Rent for a Fractional Month (if any) shall be apportioned on a per diem basis, calculated on the basis of a thirty (30)-day month, and shall be payable upon the commencement of the Lease Term.

Section 3.2 Additional Rent. In addition to the foregoing minimum rent, all other payments to be made by Tenant to Landlord shall be deemed to be and shall become Additional Rent hereunder whether or not the same be designated as such; and shall be due and payable on demand or together with the next succeeding installment of rent, whichever shall first occur; and Landlord shall have the same remedies for failure to pay the same as for non-payment of rent. Landlord, at his election, shall have the right to pay or do any act which requires the expenditure of any sums of money by reason of the failure or neglect of Tenant to perform any of the provisions of this Lease, and in the event Landlord shall, at his election, pay such sums or do such acts requiring the expenditure of

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monies, Tenant agrees to pay Landlord, upon demand, all such sums, and the sum so paid by Landlord, together with interest thereon, shall be deemed additional rent and be payable as such.

A portion of the additional rent which will from time to time be payable shall be the Tenant's proportionate share, as hereinafter defined, of Landlord's (a) real property taxes and/or special assessments, and state rental taxes, if any; (b) insurance premium for multi-peril, liability, and rental insurance pertaining to the shopping center; and (c) cost of repairing, maintaining and replacing the common area of the shopping center, provided that any such repair or replacement necessitated by fire or other casualty shall be made in accordance with the provisions set forth in Article XI. Tenant's pro rata share of the preceding costs and expenses shall be based upon the ratio of the square feet of the Leased Premises to the total area of the shopping center. Tenant's proportionate share of the preceding expenses shall be paid to Landlord monthly in advance with the minimum rent commencing with the Rent Commencement Date and continuing through the term of this Lease and any renewals thereof. The amount of Tenant's monthly proportionate share shall be based upon an estimate made by Landlord of its costs to be incurred divided into twelve (12) equal monthly installments. Should the amount of Landlord's costs exceed the estimate provided Tenant at the commencement of each lease year, Tenant shall remit promptly to Landlord, upon demand, the amount of the excess costs; and should Landlord's actual costs at the end of each lease year be less than the amount estimated, Tenant shall be entitled to a credit against the ensuing year's contributions.

ARTICLE IV

COMMON AREAS, THEIR USE AND CHARGES

Section 4.1 Common Areas. Landlord shall make available within the Shopping Center such common areas, including but not limited to parking areas, driveways, truckways, delivery passages, pedestrian sidewalks and ramps, access and egress roads, landscaped and planted areas and other facilities, as Landlord in its sole discretion shall deem appropriate. It is hereby expressly understood and agreed by Landlord and Tenant that Landlord shall operate, manage, equip, light, repair and maintain said common areas for their intended purposes in such manner as Landlord in its sole discretion shall determine, and Landlord reserves the right to change from time to time the size, location, nature and use of any common area, to sell or lease any portion thereof, and to make additional installations therein and to move and remove the same.

Section 4.2 Use of Common Areas. Tenant and its concessionaires, officers, employees, agents, customers and invitees shall have the non-exclusive right, in common with Landlord and all others to whom Landlord has or may hereafter grant rights, to use the common areas as designated from time to time by Landlord subject to such reasonable rules and regulations as Landlord may from time to time impose, including the designation of specific areas in which cars owned by Tenant, its concessionaires, officers, employees and agents must be parked. Tenant agrees after notice thereof to abide by such rules and regulations and to use its best efforts to cause its concessionaires, officers, employees,

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agents, customers and invitees to conform thereto. Landlord may at any time close temporarily any common area to make repairs or changes, to prevent the acquisition of public rights in such area or to discourage non-customer parking; and Landlord may do such other acts in and to the common areas as in its judgment may be desirable to improve the convenience thereof. Tenant shall not at any time interfere with the rights of Landlord and other tenants, its and their concessionaires, officers, employees, agents, customers and invitees, to use any part of the parking areas and other common areas. Neither Tenant nor Tenant's employees, concessionaires or agents shall solicit business in the parking or other common areas or distribute any handbills or other advertising matter in such areas or place any such handbills or advertising matter in or on any automobiles parked therein without Landlord's written consent.

Landlord reserves the right to grant to third persons the non-exclusive right to cross over and use in common with Landlord and all tenants of the Shopping Center the common areas as designated from time to time by Landlord.

Section 4.3 Cost of Maintenance of Common Areas.

(a) In addition to the rental otherwise specified herein, Tenant shall pay to Landlord as a contribution towards "common areas maintenance" an annual sum as set forth in ARTICLE I, Section 1.1 I, such sum payable in equal monthly installments in advance on the first day of each month during the Lease Term. In addition, as of the end of each Fractional Calendar Year and each Full Calendar Year, Tenant shall pay to Landlord within thirty (30) days of receipt of invoice in a lump sum the amount by which Tenant's "Pro Rata Share" (as set forth in ARTICLE I, Section 1.1 M, of the total cost of common areas maintenance as defined in subparagraph (c) exceeds the amount paid by Tenant towards common areas maintenance during such period. In the event the period for which such amount is owed is a Fractional Year, the numerator of which is the number of days in such period, and the denominator of which is 365. The sum collected by Landlord for common area maintenance, as defined below, shall include an amount for reserves required to repair, replace and restore the Common Areas and capital components. Landlord will periodically evaluate the estimated useful life, the estimated remaining life, accumulated cash reserves set aside and anticipated repair and replacement costs of capital components.

(b) Effective as of the first day of each Calendar Year after the first Calendar Year or fraction thereof, the annual amount set forth in ARTICLE I, Section 1.1 I, shall be increased by an amount equal to the lump sum, if any, payable for the preceding Calendar Year or Fractional Calendar Year as determined in Subparagraph (a), and the monthly payments shall be increased by 1/12 thereof.

(c) For the purpose of this Section, "Common Areas Maintenance" means the cost and expenses incurred in operating, restoring, replacing and maintaining the common facilities (as hereinafter defined), actually used or available for use by Tenant and the employees, agents, servants, customers and other invitees of Tenant, including, but not by way of limitation, common area utility charges, landscaped maintenances and

parking area cleaning. "Common facilities" means all areas, space, equipment and special services provided by for the common or joint use and benefit of the occupants of the Shopping Center, their employees, agents, servants, customers and other invitees, and the building and grounds of which the Leased Premises are a part, including without limitation parking areas, access roads, driveways, retaining walls, landscaping areas, truck serviceways, roofs, exterior walls, foundations, floors, pipes and conduits leading to the Leased Premises, stairs, ramps, sidewalks and signage.

ARTICLE V

UTILITY SERVICES

Section 5.1 Utilities. Tenant shall promptly pay for all public utilities rendered or furnished to the Leased Premises from and after the date Tenant assumes possession of the Leased Premises (irrespective of whether Tenant shall have opened for business in the Leased Premises), including but not limited to water, gas, electricity and sewer charges and all taxes thereon. Landlord, at its election, may install re-registering meters and collect any and all charges aforesaid from Tenant, making returns to the proper utility company or governmental unit, provided that Tenant shall not be charged more than the rates it would be charged for the same services if furnished direct to the Leased Premises by such companies or governmental units.

ARTICLE VI

REPAIRS AND MAINTENANCE

Section 6.1 Repairs by Landlord. Landlord shall make and pay for all maintenance, repairs, restoration and replacement to the exterior of the building of which the Leased Premises are a part, including but not limited to repairs to roof (including drains, downspouts, flashing and parapets), exterior walls, foundations, floor construction, pipes and conduits leading to the Leased Premises from utility installments, sidewalks, malls, parking areas and curbs. Landlord may pay for said maintenance, repairs, restoration and replacement directly with common area maintenance funds and reserves or may pay for the same and receive reimbursement from such funds. If Landlord is required to make any repairs by reason of Tenant's negligent acts or omissions to act, Landlord may add the cost of such repairs to the rent which shall thereafter become due.

Section 6.2 Repairs and Maintenance by Tenant. Tenant shall make and pay for all repairs to the interior of the Leased Premises and shall replace all things necessary to keep the same in a good state of repair, such as (but not limited to) all fixtures, furnishings, lighting, doors and store signs of Tenant. Tenant shall also maintain, replace and keep in good repair all air-conditioning, plumbing, heating and electrical installations and floor surfaces within the Leased Premises. Tenant shall at all times keep the Leased Premises (including maintenance and cleaning of exterior entrances, all glass and show window moldings, signs and bulkheads) and all partitions, doors, floor surfaces, fixtures, equipment and appurtenances thereof in good order, condition and repair, and in a reasonably

satisfactory condition of cleanliness, including reasonably periodic painting of the interior of the Leased Premises, damage by unavoidable casualty excepted, and Tenant shall make such other necessary repairs in and to the Leased Premises.

If Tenant refuses or neglects to repair properly as required hereunder and to the reasonable satisfaction of Landlord as soon as reasonably possible after written demand, Landlord may make such repairs without liability to Tenant for any loss or damage that may accrue to Tenant's merchandise, fixtures, or other property or to Tenant's business by reason thereof, and upon completion thereof, Tenant shall pay Landlord's costs for making such repairs plus twenty (20%) percent for overhead, upon presentation of bill therefor, as additional rent. Such bill shall include interest at the highest permissible non-usurious rate, or, if there is none, then at fifteen (15%) percent per annum on the cost from the date of completion of repairs by Landlord.

Section 6.3 Inspection. Landlord or its representatives shall have the right to enter the Leased Premises at reasonable hours of any business day during the Lease Term to ascertain if the premises are in proper repair and condition.

Section 6.4 Trash, Ice and Snow. Tenant agrees to use reasonable diligence to keep the sidewalks and outside areas immediately adjoining the premises free from ice and snow, and at all times to broom-clean or otherwise keep said sidewalks and outside areas free of trash, litter or obstructions of any kind.

Section 6.5 Replacement of Glass. At the commencement of the Lease Term all glass in the Leased Premises shall be in good condition and undamaged. Tenant will, at its own expense, replace all glass thereafter broken or damaged.

ARTICLE VII

USE OF LEASED PREMISES

Section 7.1 Use of Leased Premises. Tenant covenants and agrees to use the Leased Premises only for the permitted uses set forth in ARTICLE I, Section 1.1 E, and for no other purpose. Landlord may enforce this provision by cancellation of this Lease, injunctive or other equitable relief, in addition to any other legal remedies available to Landlord and in the event of any such legal or equitable action, Landlord shall, among other things, be entitled to recover reasonable attorney's fees and costs.

Section 7.2 Rules and Regulations. Tenant's use of the Leased Premises shall be subject, at all times during the Lease Term, to Landlord's right to adopt from time to time, modify and/or rescind reasonable rules and regulations not in conflict with any of the express provisions hereof governing the use of the parking areas, walks, driveways, passageways, signs, exteriors of buildings, lighting and other matters affecting other tenants in and the general management and appearance of the Shopping Center of which the Leased Premises are a part, but no such rule or regulation shall discriminate against Tenant. Tenant agrees to comply with all such rules and regulations upon notice to Tenant from Landlord.

Section 7.3 Signs, Awnings and Canopies. Landlord may erect and maintain such suitable signs as it, in its sole discretion, may deem appropriate to advertise the Shopping Center. Tenant may erect and maintain on the exterior of the Leased Premises only a sign which shall be of such size, style and type and in such locations as Landlord may approve in writing. Tenant shall keep insured and shall maintain such signs in good condition and repair at all times. If any damage is done to Tenant's signs, Tenant shall repair same within five (5) days or Landlord shall have the right to repair such signs and bill Tenant for cost of the repairs.

Tenant will not place or suffer to be placed or maintained on any exterior door, wall or window of the Leased Premises any sign, awning or canopy, or advertising matter or other thing of any kind, and will not place or maintain any decoration, lettering or advertising matter on either the interior or exterior glass of any window or door of the Leased Premises without first obtaining Landlord's written approval and consent. Tenant further agrees to maintain such sign, awning, canopy, decoration, lettering, advertising matter or other things as may be approved by Landlord in good condition and repair at all times.

Tenant shall use their typical sign specification and Landlord will approve said sign prior to lease execution. During the first one hundred twenty (120) days of the Term, Tenant may also display promotional banners in and around the Premises and adjacent portions of the parking lot for its grand opening, subject to Landlord Approval. Tenant shall also submit signage for Shopping Center pylon to Landlord. Landlord, at Tenant's expense, will install signage on said pylon. Cost of installation will be determined prior to lease execution.

Section 7.4 Noise, Obstruction and Nuisances. Tenant covenants that it will not (i) display any merchandise or maintain any stands in front of the Leased Premises or of the line of buildings in the Shopping Center; (ii) erect or maintain any barricade or scaffolding which may obscure the signs, entrances or show window of any other tenant in the Shopping Center, or tend to interfere with any such other tenant's business; (iii) create or maintain, or allow others to create or maintain, any nuisances, including without limiting the foregoing general language, loud noises, sound effects, ~~offensive odors~~ and smoke or dust in or about the premises; (iv) place or maintain any signs or other such marketing devices in any parking area serving the Leased Premises other than approved by Landlord, such approval not to be unreasonably withheld, conditioned or delayed; (v) commit any waste; or (vi) maintain or allow to be maintained any excessively bright lights, changing, flashing, flickering or lighting services or similar devices, the effect of which will be visible from the exterior of the Leased Premises; or (vii) operate its business between the hours of 11:00 P.M. to 6:00A.M.

ARTICLE VIII

TENANT'S BUSINESS OPERATIONS

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Section 8.1 Intentionally Deleted.

Section 8.2 Relationship of the Parties. Nothing herein contained shall be deemed or construed as creating the relationship of principal and agent or of partnership or joint venture between the parties hereto; it being understood and agreed that neither the method of computing rent nor any other provision contained herein nor any acts of the parties hereto shall be deemed to create any relationship between the parties other than that of Landlord and Tenant.

ARTICLE IX

ADDITIONS, ALTERATIONS AND TRADE FIXTURES

Section 9.1 By Landlord. Landlord hereby reserves the right at any time to make alterations or additions to the building in which the Leased Premises are contained and to build additional stores thereon. Landlord also reserves the right to construct other buildings or improvements in the Shopping Center or common areas from time to time and to make alterations thereof or additions thereto and to build additional stories on any such building or buildings so constructed.

Section 9.2 By Tenant. Tenant may from time to time, with the prior written consent of the Landlord (which consent shall not be unreasonably withheld) at its own expense, alter, renovate or improve the interior of the Leased Premises provided the same be performed in a good and workmanlike manner, in accordance with accepted building practices and so as not to weaken or impair the strength or substantially lessen the value of the building in which the Leased Premises are located. Any work done by Tenant under the provisions of this Section shall not interfere with the use by the other tenants of their premises in the Shopping Center.

All alterations, decorations, additions and improvements made by Tenant, or made by Landlord on Tenant's behalf as provided in this Lease, shall remain the property of the Tenant for the Lease Term or any extension or renewal thereof, but they shall not be removed from the Leased Premises without the prior written consent of Landlord.

Upon termination of this Lease or upon the termination of any renewal term hereof, Landlord may require Tenant to remove such alterations, decorations, additions and improvements and restore the Leased Premises as provided in Section 9.5, and if Landlord requests the removal of the same and Tenant fails to do so and moves from the Leased Premises, all such alterations, decorations, additions and improvements shall become the property of Landlord.

Section 9.3 Indemnity and Insurance. Tenant shall indemnify and hold Landlord harmless from any and all claims for damage or otherwise based upon or in any manner growing out of any alterations or construction undertaken by Tenant under the terms of this Lease, including all costs, damages, expenses, court costs and attorney's fees incurred in or resulting from claims made by other tenants of premises in the Shopping Center, their

agents, employees, patrons and invitees.

Before undertaking any alterations or construction, Tenant shall obtain and pay for a public liability policy insuring Landlord and Tenant against any liability which may arise on account of such proposed alterations or construction work in limits of not less than \$1,000,000.00 for any one person, \$2,000,000.00 for more than one person in any one accident and \$100,000.00 for property damage and a certificate or copy of such policy shall be delivered to Landlord prior to the commencement of such proposed work. Tenant shall also maintain at all times fire insurance with extended coverage in the name of Landlord and Tenant as their interest may appear in an amount adequate to cover the cost of replacement of all alterations, decorations, additions or improvements in and to the Leased Premises, and all trade fixtures therein, in the event of fire or extended coverage loss. Tenant shall deliver to Landlord certificate of such fire insurance policies which shall contain a clause requiring the insurer to give Landlord ten (10) days notice of cancellation of such policies.

Section 9.4 Mechanic's Liens. If by reason of any alteration, repair, labor performed or materials furnished to the Leased Premises for or on behalf of Tenant any mechanic's or other lien shall be filed, claimed, perfected or otherwise established as provided by law against the Leased Premises, Tenant shall discharge or remove the lien by bonding or otherwise, within thirty (30) days after notice from Landlord to Tenant of the filing of same.

Section 9.5 Trade Fixtures. All trade fixtures and equipment installed by Tenant in the Leased Premises shall be new or completely reconditioned and shall remain the property of Tenant. Tenant shall obtain the written consent of Landlord before installing any fixtures or equipment.

Provided Tenant is not in default hereunder, Tenant shall have the right, at the termination of this Lease, to remove any and all trade fixtures, equipment and other items of personal property not constituting a part of the freehold which it may have stored or installed in the Leased Premises, including but not limited to counters, shelving, show cases, chairs and movable machinery purchased provided by Tenant and which are susceptible to being moved without damage to the building, provided this right is exercised before the Lease is terminated or during the ten (10) day period immediately following such termination and provided that Tenant shall repair any damage to the Leased Premises caused thereby. The right granted Tenant in this Section 9.5 shall not include the right to remove any plumbing or electrical fixtures or equipment, heating or air conditioning equipment, floor coverings (including wall-to-wall carpeting) glued or fastened to the floors or any paneling, tile or other materials fastened or attached to the walls or ceilings, all of which shall be deemed to constitute a part of the freehold, and, as a matter of course, shall not include the right to remove any fixtures or machinery that were furnished or paid for by Landlord. Buildings shall be left in a broom-clean condition. If Tenant shall fail to remove its trade fixtures or other property at the termination of this Lease or within ten (10) days thereafter, such fixtures and other property not removed by Tenant shall be deemed abandoned by Tenant, and, at the option of Landlord, shall become the property of Landlord.

ARTICLE X

TAXES AND INSURANCE

Section 10.1 Tenant's Taxes/Building Insurance. Tenant agrees to pay to Landlord, Tenant's pro rata share of all assessments or charges (hereinafter sometimes called "Impositions") incurred by Landlord during each calendar year for ad valorem taxes, for insurance, for real estate taxes, or for any other tax on rents or real estate as such (other than income taxes thereon) from time to time, directly or indirectly, assessed or imposed upon the building within which the premises are located and/or the real estate upon which it is situated.

The Landlord will procure, and keep in force during the term of this Lease, a policy or policies of fire and extended coverage insurance, in an amount not more or less than the replacement cost of the shopping center thereof, and the Tenant shall pay his pro rata share of the premiums on such insurance. In the event of a loss or damage, covered by such insurance, the Landlord shall be entitled to the proceeds of all insurance on the real estate.

Tenant's pro rata share of said Impositions and Insurance premiums shall be paid, along with monthly installments of rent in advance in monthly installments estimated by Landlord and subsequently adjusted, resulting from the actual Impositions exceeding or falling short of estimated payments. Tenant shall pay initial monthly installment for the calendar year during which the term begins according to Section 1.1 paragraph J, the same being based on Landlord's estimate of such Impositions at the commencement of the term. Estimated monthly installments shall be calculated rather than estimated by Landlord for each subsequent calendar year based upon one twelfth the actual Imposition paid for the preceding calendar year.

Following Landlord's receipt of all the bills of such Impositions and Insurance premiums for each such calendar year, Landlord shall deliver to Tenant a statement of the actual total amount thereof and the amount of Tenant's pro rata share. Tenant shall pay to Landlord within thirty (30) days of receipt of statement such amounts as may be necessary to effect adjustment of the amount paid or payable for the certified calendar year to the actual amount of Tenant's pro rata share of such Impositions for such year. Landlord shall credit any excess payments made by Tenant against future installments to be paid by Tenant hereunder.

If the term of this Lease shall begin or end on a date other than the first or last day of a calendar year, the first and/or final annual charges to Tenant with respect to the aforesaid Impositions shall be prorated on a daily basis on the basis of a three hundred and sixty-five (365) day calendar year.

The foregoing provisions to the contrary notwithstanding, it is understood and agreed that any and all assessments or charges for public betterment and improvements, ad valorem real estate taxes or other taxes on business or personal property or with

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respect to any alterations, additions or improvements made to the premises solely by Tenant or under its direction or with respect to any property of Tenant therein shall be borne and paid entirely by Tenant and if any of said items or any portion thereof shall be reasonably paid by Landlord, Tenant shall reimburse Landlord for the same promptly upon receipt by Tenant of written demand thereof from Landlord.

Section 10.2 Increase in Fire Insurance Premium. Tenant agrees that it will not keep, use, sell or offer for sale in or upon the Leased Premises any article which may be prohibited by the standard form of fire insurance policy. Tenant agrees to pay any increase in premiums for fire and extended coverage insurance which may be carried by Landlord on the Leased Premises or the building of which they are a part, resulting from the type of merchandise sold or services rendered by Tenant in the Leased Premises, whether or not Landlord has consented to the same. In determining whether increased premiums are the result of Tenant's use of the Leased Premises, a schedule, issued by the organization making the insurance rate on the Leased Premises, showing the various components of such rate, shall be conclusive evidence of the several items and charges which make up the fire insurance rate on the Leased Premises.

Tenant shall not knowingly use or occupy the Leased Premises or any part thereof, or suffer or permit the same to be used or occupied for any business or purpose deemed extra-hazardous on account of fire or otherwise. In the event Tenant's use and/or occupancy causes any increase of premium for the fire, boiler and/or casualty rates on the Leased Premises or any part thereof above the rate for the least hazardous type of occupancy legally permitted in the Leased Premises, Tenant shall pay such additional premium on the fire, boiler and/or casualty insurance policies. Tenant shall also pay in such event, any additional premium on the rent insurance policy that may be carried by landlord for its protection against rent loss through fire. Bills for such additional premiums shall be rendered by Landlord to Tenant at such times as Landlord may elect, and shall be due from and payable by Tenant when rendered, and the amount thereof shall be deemed to be, and be paid as, additional rent; but such increases in the rate of insurance shall not be deemed a breach of this covenant by Tenant.

Section 10.3 Tenant's Insurance. During the Lease Term, Tenant, at its own cost and expense, shall keep all furniture, fixtures, inventory and equipment; whether supplied or owned by Tenant or by Landlord, and all glass forming a part of the Leased Premises, including but not limited to plate glass insured to the extent of its full insurable value against loss or damage by fire and windstorm, with extended coverage. Tenant shall also carry business interruption coverage in amounts sufficient to pay the Fixed Rent hereunder. Landlord shall be named as an additional insured. Tenant agrees that this insurance and all other insurance carried by Tenant shall contain a waiver of subrogation against Landlord and Tenant does hereby waive all rights of recovery or causes of action against Landlord for any damage covered by Tenant's insurance, or by the type of insurance required by this Lease, or for which Tenant may otherwise be reimbursed. Tenant shall deliver certified copies of all insurance policies to Landlord together with proof that the premiums have been paid.

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Section 10.4 Liability Insurance. Tenant shall maintain at its own expense public liability insurance covering the Leased Premises for the joint benefit of Landlord and Tenant with coverage of not less than \$1,000,000.00 for personal injury, including death, for any one person, \$2,000,000.00 for more than one person in any one accident and \$100,000.00 for property damage. The policy of insurance may be in the form of a general coverage or floater policy covering these and other premises, provided that Landlord is specifically covered therein. A duplicate copy of the policy or certificate of such insurance shall be delivered to Landlord. Such liability insurance shall also cover and include 'all exterior signs maintained by Tenant. Landlord shall carry public liability insurance covering the exterior of the Leased Premises, including but not limited to the sidewalks, malls and parking lot.

ARTICLE XI

DAMAGES, DESTRUCTION OR CONDEMNATION OF THE LEASED PREMISES

Section 11.1 Damage or Destruction by Fire or other Casualty. If the Leased Premises is damaged or destroyed by fire, flood, tornado or by the elements, or through any casualty, or otherwise, after the commencement of the Lease Term, this Lease shall continue in full force and effect, and Landlord at its expense shall promptly restore, repair or rebuild the Leased Premises including but not limited to the store front, to the same condition as it existed when the possession of the Leased Premises were turned over to the Tenant at the commencement of the Lease Term, within one hundred eighty (180) days after such damage or destruction. In the event Landlord fails to restore the Leased Premises as aforesaid, Tenant's sole remedy against Landlord shall be to terminate this Lease as of the date of such casualty. Rent and additional rent, if any, shall abate from the date of such damage or destruction until ten (10) days after Landlord has repaired or restored the building in the manner and in the condition provided in this Section and notified Tenant of such fact. In the event that a part only of the Leased Premises is untenantable or incapable of use for the normal conduct of Tenant's business therein, a just and proportionate part of the rent shall be abated from the date of such damage until ten (10) days after Landlord has completely repaired same and notified Tenant of such fact.

In the event that the Leased Premises shall be damaged in whole or in substantial part within the last twenty-four (24) months of the Lease Term, Landlord or Tenant shall have the option, exercisable within ninety (90) days following such damage, of terminating this Lease, effective as of the date of mailing notice thereof. No damage or destruction to the Leased Premises shall allow Tenant to neither surrender possession of the Leased Premises nor affect Tenant's liability for the payment of rent or any other covenant contained herein, except as may be specifically provided in this Lease. Notwithstanding any of the provisions herein to the contrary, Landlord shall have no obligation to rebuild the premises unless the damage or destruction is a result of a casualty covered by Landlord's insurance policy.

Tenant shall give to Landlord prompt written notice of any damage to or destruction of any portion of the Leased Premises resulting from fire or other casualty.

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Section 11.2 Loss or Damage to Tenant's Property. Landlord shall not be liable for any damage to property of Tenant or of others located on the Leased Premises, nor for the loss of or damage to any property of Tenant or of others by theft or otherwise. Landlord shall not be liable for any injury or damage to persons or property resulting from Fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow or leaks from any part of the Leased Premises or from the pipes, appliances or plumbing works or from any other place or by dampness or by any other cause of whatsoever nature. Landlord shall not be liable for any such damage caused by other tenants or persons in the Leased Premises, occupants of property adjacent to the Shopping Center, or the public, or for damage caused by operations in construction of any private, public or quasi-public work. Landlord shall not be liable for any latent defect in the Leased Premises or in the building of which they form a part. All property of Tenant kept or stored on the Leased Premises shall be so kept or stored at the risk of Tenant only, and Tenant shall hold Landlord harmless from any claim arising out of damage to the same, including subrogation claims by Tenant's insurance carriers, unless such damage shall be caused by the willful act or gross neglect of Landlord.

Section 11.3 Condemnation. In the event the entire Leased Premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Lease shall terminate and expire as of the date of such taking, and Landlord and Tenant shall thereupon be released from any further liability hereunder.

In the event more than fifteen (15) percent of the floor area of the Leased Premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, Tenant and Landlord shall have the right to cancel and terminate this Lease as of the date of such taking upon giving Landlord or Tenant notice of such election within thirty (30) days after the receipt by Tenant from Landlord of notice that said Leased Premises have been so appropriated or taken. In the event of such cancellation, Landlord and Tenant shall thereupon be released from any further liability under this Lease. Immediately after any appropriation or taking, Landlord shall give Tenant notice thereof. If this Lease shall not be terminated as provided in this Section, then Landlord at its cost and expense shall immediately restore the building to a complete unit of like quality and character.

All compensation awarded or paid upon such a total or partial taking of the Leased Premises shall belong to and be the property of Landlord without any participation by Tenant; provided, however, that nothing contained herein shall be construed to preclude Tenant from prosecuting any claim directly against the condemning authority in such condemnation proceedings for loss of business, and/or depreciation to, damage to, and/or cost of removal of, and/or for the value of stock and/or trade fixtures, furniture and other personal property belonging to Tenant; provided further, however, that no such claim diminish or otherwise adversely affect Landlord's award or the award(s) of any and all ground and underlying lessor(s) and mortgagee(s).

ARTICLE XII

DEFAULT BY TENANT AND REMEDIES

Section 12.1 Default. If Tenant fails to pay any rental due hereunder or if Tenant defaults in fulfilling any of the covenants of this Lease, Landlord may give Tenant notice thereof. If such default is not remedied within five (5) days following such notice, all of Tenant's rights under this Lease shall terminate, and Tenant shall immediately quit and surrender the premises to Landlord, but Tenant shall continue liable for the payment of rent and other sums due hereunder. If the nature of the default is such that it cannot reasonably be cured within the period of five (5) days and work thereon shall be commenced within the period and diligently prosecuted to completion, Tenant's rights under this Lease shall not terminate as a result of such default being thus cured or corrected.

If at any time during the term there shall be filed by or against Tenant or against any successor tenant then in possession, in any court pursuant to any statute either of the United States or of any state, a petition (i) in bankruptcy, (ii) alleging insolvency, (iii) for reorganization, (iv) for the appointment of a receiver, or (v) for an arrangement under the Bankruptcy Acts, or if a similar type of proceeding shall be filed, Landlord may terminate Tenant's rights under this Lease by notice in writing to Tenant, and thereupon Tenant shall immediately quit and surrender the Leased Premises to Landlord, but Tenant shall continue liable for the payment of rent and all other sums due hereunder.

Section 12.2 Landlord's Rights on Default. If Tenant's rights under this Lease shall have terminated as above, Landlord may immediately, or at any time thereafter, re-enter the Leased Premises and remove all persons and all or any property therefrom, by any suitable action or proceeding by law, or by force or otherwise possess and enjoy the premises, together with all additions, alterations and improvements, and Landlord may, at its option, repair, alter, remodel and/or change the character of the premises as it may deem fit and/or at the time relet the Leased Premises or any part or parts thereof, as the agent of Tenant or otherwise. The exercise by Landlord of any right granted in the sentence immediately preceding shall not relieve Tenant from the obligation to make all rental payments, and to fulfill all other covenants required by this Lease, at the time and in the manner provided herein, and if Landlord so desires, Landlord may recover from Tenant all damages Landlord may incur by reason of such breach, including the cost of recovering the Premises, brokerage commissions for reletting, reasonable attorneys' fees, and the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of the term over the then reasonable rental value of the Premises for the remaining portion of the term, all of which amounts shall be immediately due and payable from Tenant to Landlord. Tenant throughout the remaining term hereof shall pay Landlord, no later than the last day of each month during the term, the then current excess, if any, of the sum of the unpaid rentals over the proceeds, if any, received by Landlord from such reletting, if any. If Landlord attempts to relet the Leased Premises, Landlord shall be the sole judge as to whether or not a proposed tenant is suitable and acceptable. Landlord's expenses incurred in

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connection with such repair, alteration, remodeling or change, together with any other expenses incurred by it in connection with the reletting of the Leased Premises (including but not limited to brokerage fees, if any) shall be deemed additional rentals payable hereunder.

No provision of this Lease shall be deemed to have been waived, unless such waiver be in writing signed by Landlord. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent shall be deemed to be other than on account of the earliest rent then unpaid nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in this Lease provided, and no waiver by Landlord in respect to one Tenant shall constitute a waiver in favor of any other Tenant in the shopping center. In the event of a breach by Tenant of any of the covenants or provisions hereof, Landlord shall have, in addition to any other remedies which it may have, the right to invoke any remedy allowed at law or in equity to enforce Landlord's rights or any of them, as if re-entry and other remedies were not herein provided for.

Section 12.3 Non-Waiver Provisions. The failure of Landlord to insist upon a strict performance of any of the terms, conditions and covenants herein shall not be deemed to be a waiver of any rights or remedies that Landlord may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained except as may be expressly waived in writing.

The maintenance of any action or proceeding to recover possession of the Leased Premises, or any installment or installments of rent or other monies that may be due or become due from Tenant to Landlord, shall not preclude Landlord from thereafter instituting and maintaining subsequent actions or proceedings for the recovery of possession of the premises or of any other monies that may be due or become due from Tenant. Any entry or re-entry by Landlord shall not be deemed to absolve or discharge Tenant from liability hereunder.

Section 12.4 Inability to Perform. If Landlord is delayed or prevented from performing any of its obligations under this Lease by reason of strike or labor troubles or any outside cause whatsoever beyond Landlord's reasonable control, the period of such delay or such prevention shall be deemed added to the time herein provided for the performance of any such obligation by Landlord.

Section 12.5 Landlord's Expenses. If Tenant shall at any time be in default hereunder, and if Landlord shall deem it necessary to engage attorneys to enforce Landlord's rights hereunder, the determination of such necessity to be in the sole discretion of Landlord, Tenant will reimburse Landlord for the reasonable expenses incurred thereby, including but not limited to court costs and reasonable attorney's fees. If Tenant's rights hereunder are not terminated, the amount of such expenses shall be deemed to be additional rent hereunder and shall forthwith be due and payable by Tenant to Landlord.

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ARTICLE XIII

MORTGAGE FINANCING AND SUBORDINATION

Section 13.1 Subordination. This lease and all of Tenant's rights hereunder are and shall be subordinate to any mortgages or deeds of trust which Landlord may place upon the Shopping Center. However, Tenant shall, upon request of either Landlord or the holder of any mortgage or deed of trust on the Shopping Center, execute any documents expressly subordinating this Lease to any mortgage or mortgages now or hereafter placed upon the Landlord's interest in the premises or future additions thereto, and Tenant shall execute and deliver upon demand, such further instruments subordinating this Lease to the lien of any such mortgage or mortgages, provided such subordination shall be upon the express condition that this Lease shall be recognized by the mortgagees and that the rights of Tenant shall remain in full force and effect during the term of this Lease and any extension thereof, notwithstanding any default by the mortgagors with respect to the mortgages or any foreclosure thereof, so long as Tenant shall perform all of the covenants and conditions of this Lease. Tenant agrees to execute all agreements required by Landlord's mortgagee or any purchaser at a foreclosure sale or sale in lieu of foreclosure by which agreements Tenant will attorn to the mortgagee or purchaser.

Section 13.2 Notice to Mortgagees of Landlord's Default. Tenant shall give prompt written notice to each mortgagee of record of any default of Landlord hereunder, and Tenant shall allow such mortgagee a reasonable length of time (in any event, not less than sixty (60) days from the date of such notice) in which to cure any such default. Any such notice shall be sent to the Mortgage Loan Department of any such mortgagee at its home office address.

ARTICLE XIV

CONSTRUCTION OF PREMISES

Section 14.1 Construction. Landlord shall construct the Leased Premises in accordance with the plans and specifications attached hereto as Exhibit C ("Landlord's Work"). Landlord agrees to perform Landlord's Work at its expense and to construct the improvements in a good and workmanlike manner. Such construction shall be in conformity with the building codes and the laws of such authorities having jurisdiction.

Tenant shall complete construction/renovation of the Leased Premises in a good and workmanlike manner in accordance with the plans and specifications which are attached hereto as Exhibit "D" ("Tenant's Work"). Such construction shall be in conformity with the building codes and the laws of such authorities having jurisdiction. Landlord shall deliver possession of the Lease Premises to Tenant at Lease Execution and Tenant shall have sixty (60) days to complete Tenant's Work. Notwithstanding anything to the contrary contained herein, it is mutually agreed by the Landlord and Tenant that the Landlord has no construction finish responsibilities beyond the present "as is" condition of the Leased

Premises.

All plans for Tenant's Work must be approved by Landlord prior to any Tenant's Work being done. Tenant shall be obligated to use the same HVAC contractor Landlord has used for the entire Shopping Center. Tenant shall have in its contractor's agreement that Tenant's contractor shall look solely to Tenant for payment and contractor may not put a lien on any portion of the Leased Premises and Tenant shall require contractor to have in a provision in its subcontracts prohibiting the placement of liens on the Leased Premise or any other property of Landlord. Tenant shall protect Landlord from its contractor in the event that contractor looks to Landlord for payment.

At the time Tenant takes possession of the Leased Premises, all manufacturers' warranties and guarantees which may exist will be made available for Tenant's benefit by Landlord. Tenant shall maintain a complete service contract by a certified representative on all heat and air conditioning equipment and furnish Landlord a copy of said contract. If Tenant fails to maintain such a contract, Landlord may take out a contract and bill Tenant for the cost.

Section 14.2 Allowances. Landlord shall provide Tenant \$50,000 as a buildout allowance ("Allowance"), and shall, until the Allowance has been paid out in full, make payment directly to Tenant's general contractor or subcontractors, as the case may be, as Tenant's Work is completed and upon receipt of (i) invoices and supporting documentation reasonably satisfactory to Landlord for the work completed, (ii) certification from Landlord's architect that such work has been performed, and (iii) lien waivers from the general contractor and/or subcontractor for the work completed. The Allowance shall only be used for Tenant's Work. All improvements made with the Allowance shall become property of the Landlord at the end of the Lease Term or any extension or renewal thereof.

ARTICLE XV

OTHER PROVISIONS

Section 15.1 Indemnity. Tenant during the term hereof shall indemnify and save harmless Landlord from and against any and all claims and demands whether for injuries to persons or loss of life, or damage to property, occurring within the Leased Premises and immediately adjoining the premises and arising out of the use and occupancy of the Leased Premises by Tenant, or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, servants, lessees or concessionaires, excepting however such claims and demands, whether for injuries of persons or loss of life, or damage to property, caused by acts or omissions of Landlord. Landlord during the term hereof shall indemnify and save harmless Tenant from and against any and all claims and demands, whether for injuries to persons or loss of life, or damage to property, arising out of acts or omissions of Landlord or arising out of the use of the Common Facilities (if any), as defined in the Lease. If, however, any liability arises in the common area because of the negligence of Tenant, Tenant's agents, employees, contractors, invitees or visitors then in such event Tenant shall hold Landlord harmless. In case Landlord shall, without fault on its part, be made a party to any litigation commenced by or against Tenant, then Tenant

shall protect and hold Landlord harmless and shall pay all costs, expenses, and reasonable attorneys' fees that may be incurred or paid by Landlord in connection with such litigation. Tenant shall also pay all costs, expenses and reasonable attorneys' fees that may be incurred or paid by Landlord in enforcing the covenants and agreements of this Lease.

Section 15.2 Definition and Liability of Landlord. The term "Landlord" as used in this Lease means only the owner for the time being of the building in which the Leased Premises are located or the owner of a leasehold interest in the building and/or the land thereunder so that in the event of sale of the building or an assignment of this Lease, or a demise of the building and/or land, Landlord shall be and hereby is entirely freed and relieved of all obligations of Landlord hereunder and it shall be deemed without further agreement between the parties and such purchaser(s), assignee(s) or lessee(s) that the purchaser, assignee or lessee has assumed and agreed to observe and perform all obligations of Landlord hereunder. It is specifically understood and agreed that there shall be no personal liability on Landlord in respect to any of the covenants, conditions or provisions of this Lease; in the event of a breach or default by Landlord of any of its obligations under this Lease, Tenant shall look solely to the equity of Landlord in the Shopping Center for the satisfaction of Tenant's remedies.

Section 15.3 Assignment or Subletting. All assignments of this Lease or subleases of the Leased Premises by Tenant shall be subject to and in accordance with all of the provisions of this Section. So long as Tenant is not in default under any of the provisions of this Lease and fulfills all of the terms and conditions of this Section 15.3:

(a) Tenant may assign this Lease or sublease the entire Leased Premises to a wholly owned corporation or controlled subsidiary of Tenant without the consent of Landlord.

(b) Tenant may assign this lease or sublease the entire Leased Premises to a party other than a wholly owned corporation or controlled subsidiary after first obtaining the prior written consent of Landlord, which shall not be unreasonably withheld.

Notwithstanding the foregoing provisions of subparagraphs (a) and (b) of this Section 15.3, any assignment or sublease by Tenant shall be only for the purposes specified in ARTICLE I, Section 1.1 E, and for no other purpose, and in no event shall any assignment or sublease of the premises release or relieve Tenant from any obligations of this Lease.

Any proposed assignee or subtenant of Tenant shall assume Tenant's obligations hereunder and deliver to Landlord an assumption agreement in form satisfactory to Landlord within ten (10) days after the effective date of the assignment.

Section 15.4 Notices. Whenever notice shall or may be given to either of the parties by the other, each such notice shall be by registered or certified mail with return receipt requested.

Notice to Landlord shall be addressed as specified in ARTICLE I, Section 1.1 B, and notice to Tenant shall be addressed as specified in ARTICLE I, Section 1.1 C, or, in each case, to such other address as either may from time to time designate in writing to the other. Any notice under this Lease shall be deemed to have been given at the time it is placed in the mails with sufficient postage prepaid.

Section 15.5 Interest on Late Payments. Should Tenant fail to pay when due any installment of fixed rent, additional percentage rent or any other sum payable to Landlord under the terms of this Lease, then interest at the maximum legal rate in effect in the State where the Shopping Center is situated or twelve (12%) percent per annum, whichever is higher, shall accrue from and after the tenth (10th) day following the date on which any such sum shall be due and payable, and such interest shall be paid by Tenant to Landlord at the time of payment of the sum upon which such interest shall have accrued.

Section 15.6 Short Form Lease. Tenant agrees not to record this Lease without the express written consent of Landlord, such consent not to be unreasonably withheld, and further agrees to execute, acknowledge and deliver at any time after the date of this Lease, at the request of Landlord, a short form lease suitable for recording.

Section 15.7 Tenant's Notice to Landlord of Default. Should Landlord be in default under any of the terms of this Lease, Tenant shall give Landlord prompt written notice thereof in the manner specified in Section 15.4 and Tenant shall allow Landlord a reasonable length of time (in any event, not less than thirty (30) days from the date of such notice) in which to cure such default.

Section 15.8 Surrender of Leased Premises and Holding Over. At the expiration of the tenancy hereby created, Tenant shall surrender the Leased Premises in the same condition as the Leased Premises were in upon delivery of possession thereof to Tenant, damage by unavoidable casualty excepted to the extent that the same is covered by Landlord's fire insurance policy with extended coverage endorsement, and Tenant shall surrender all keys for the Leased Premises to Landlord at the place then fixed for payment of rent and shall inform Landlord of all combinations on locks, safes and vaults, if any, in the Leased Premises. Tenant shall inform Landlord of all combinations on locks, safes and vaults, if any, in the Leased Premises. Tenant may remove all its trade fixtures as specified in ARTICLE IX, Section 9.5, and any alterations or improvements, before surrendering the Leased Premises, and shall repair any damage to the Leased Premises caused thereby. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of the Lease Term. If Tenant shall default in so surrendering the premises, Tenant's occupancy subsequent to such expiration, whether or not with the consent or acquiescence of Landlord, shall be deemed to be that of a tenancy at will and in no event from month to month or from year to year, and it shall be subject to all the terms, covenants and conditions of this Lease applicable thereto, and no extension or renewal of this Lease shall be deemed to have occurred by such holding over.

Section 15.9 Intentionally Deleted.

Section 15.10 Intentionally Deleted.

Section 15.11 Pro Rata Share. Wherever the term "Pro Rata Share" appears in this Lease the same shall be deemed to be the percentage or fraction determined by dividing the total square footage of all buildings in the Shopping Center into the square footage of the demised premises.

Section 15.12 Entire and Binding Agreement. This Shopping Center Lease contains all of the agreements between the parties hereto and may not be modified in any manner other than by agreement in writing by all parties hereto or their successors in interest. The terms, covenants and conditions contained herein shall inure to the benefit of and be binding upon Landlord and Tenant and their respective successors and assigns, except as may be otherwise expressly provided in this Lease.

Section 15.13 Provisions Severable. If any term or provision of this Lease or the application thereof to any person or circumstances shall to any extent, be invalid or unenforceable the remainder of this Lease or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 15.14 Captions. The captions contained herein are for convenience and reference on and shall not be deemed as part of this Lease or construed as in any manner limiting or amplifying the terms and provisions of this Lease to which they relate.

Section 15.15 Commissions. To be paid by Landlord by separate agreement with NAI Avant, LLC.

Section 15.16 Guaranty. Tenant shall personally guaranty this Lease by attaching a personal guaranty executed by James C. Bigby.

Section 15.17 Contingencies. The Tenant's obligations under the Lease shall be contingent upon (i) approval of Tenant's Leasehold improvement construction plans by Landlord and any governing municipalities, and (ii) Landlord shall have delivered to Tenant a non-disturbance agreement reasonably acceptable to Tenant from all lenders and other parties with an interest senior to Lease. Such contingencies must be satisfied or waived within sixty (60) days of the execution of this lease.

Section 15.18 Parking. Existing parking shall not be modified without Tenant's prior consent and Landlord shall represent and warrant to Tenant that parking at all times shall remain in compliance with applicable code. Tenant has the right to two (2) exclusive assigned parking spaces adjacent to the storefront and two (2) exclusive assigned parking spaces on the west side of the parking lot as shown on Exhibit "B" attached hereto and made a part hereof for use by Tenant's customers provided that Tenant shall be responsible for making and patrolling such parking spaces.

Section 15.19 Intentionally Deleted.

Section 15.20 Intentionally Deleted.

Section 15.21 Intentionally Deleted.

Section 15.22 Intentionally Deleted.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease as of the day and year first above written each acknowledging receipt of an executed copy hereof.

WITNESSES:

C. Peter Clark

[Signature]
As to Landlord

[Signature]
[Signature]

As to Tenant

LANDLORD:

Saluda Ridge, LLC

By: [Signature]
Its: MEMBER

TENANT: Coastal Pi, LLC

By: [Signature]
Its: MEMBER

GUARANTY OF LEASE

The undersigned James C. Bigby herein called Guarantor hereby unconditionally and irrevocably guarantees to Landlord (a) the due and punctual payment in full (and not merely the collectability) of all Rent, Additional Rent, and all other amounts due and payable by Tenant under the Lease dated September 15, 2008 by and between Saluda Ridge, LLC as Landlord and Coastal Pi, LLC as Tenant; and (b) the full and faithful performance and observance of all terms, covenants, and conditions contained in said Lease to be performed or observed by Tenant.

Guarantor expressly agrees that Landlord may, in its sole and absolute discretion, without notice to or further consent of Guarantor and without in any way releasing, affecting, or impairing the obligations and liabilities of Guarantor hereunder (a) waive compliance with any of the terms of the Lease; (b) modify, amend, or change any provisions of the Lease by agreement between Tenant and Landlord; (c) grant extensions or renewals of the Lease and/or effect any release, compromise, or settlement in connection therewith; (d) assign or otherwise transfer all or part of its interest in the Leased Premises, or this Guaranty or any interest therein or herein; and (e) consent to an assignment, subletting, conveyance, or other transfer of all or any part of the interest of Tenant in the Lease.

If Tenant holds over beyond the term of the Lease, Guarantor's obligations hereunder shall extend and apply with respect to the full and faithful performance and observance of all of the covenants, terms, and conditions of the Lease and of any such modification thereof. This Guaranty, and all of the terms hereof, shall be binding on Guarantor and the successors, assigns, and legal representatives of Guarantor. Guarantor does not require and hereby waives all notices of Tenant's nonpayment, nonperformance, or nonobservance of the covenants, terms, and conditions of the Lease. Guarantor hereby expressly waives all notices and demands otherwise required by law which Guarantor may lawfully waive.

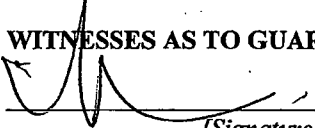
Insofar as the payment by Tenant of any sums of money to Landlord is involved, this Guaranty is a guaranty of payment and not of collection, and shall remain in full force and effect until payment in full to Landlord of all sums payable under the Lease. Guarantor waives any right to require that Landlord bring any legal action against Tenant before, simultaneously with, or after enforcing its rights and remedies hereunder against Guarantor. Landlord shall not be required to make any demand on Tenant, apply any security deposit being held by Landlord on behalf of Tenant or any other credit in favor of Tenant, or otherwise pursue or exhaust its remedies against Tenant before, simultaneously with, or after enforcing its rights and remedies hereunder against Guarantor. Neither Guarantor's obligation to make payment in accordance with the terms of the Guaranty nor any remedy for the enforcement thereof shall be impaired, modified, released, limited, or affected in any way by any impairment, modification, release, or limitation of the liability of Tenant or its estate in bankruptcy, resulting from (a) the operation of any present or future provision of the Bankruptcy Code of the United States or from the decision of any court interpreting the same; (b) the rejection, or disaffirmance, of the Lease in any such proceedings; or (c) the assumption and assignment or transfer of the Lease by Tenant or Tenant's bankruptcy trustee.

Guarantor represents and warrants that this Guaranty has been duly authorized by all necessary corporate action on Guarantor's part, has been duly executed and delivered by a duly authorized officer, and constitutes Guarantor's valid and legally binding agreement in accordance with its terms. The liability of Guarantor is coextensive with that of Tenant and also joint and several, and legal action may be brought against Guarantor and carried to final judgment either with or without making Tenant a party thereto. Until all of Tenant's obligations under the Lease are fully performed, Guarantor (a) waives any rights that Guarantor may have against Tenant by reason of any one or more payments or acts in compliance with the obligations of Guarantor under this Guaranty; and (b) subordinates any liability of indebtedness of Tenant held by Guarantor to the obligations of Tenant to Landlord under its Lease.

Guarantor waives the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty. This Guaranty shall be governed by and construed in accordance with the laws of the State in which the Leased Premises encumbered by the Lease shall exist. Guarantor hereby consents to the jurisdiction of any competent court within said State and in Landlord's discretion, including, without limitation, Federal courts of the United States. Guarantor hereby waives trial by jury in any action brought on or with respect to this Guaranty. Guarantor agrees to pay all costs and expenses incurred by Landlord in enforcing this Guaranty, including, without limitation, all legal fees and disbursements.

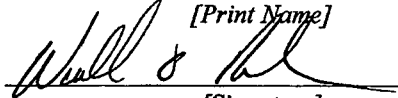
IN WITNESS WHEREOF, the undersigned has signed this Guaranty this 12th day of September 2008

WITNESSES AS TO GUARANTOR:


[Signature]

Marion D. Turbeville

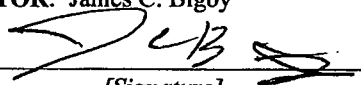
[Print Name]


[Signature]

William O. Danielson

[Print Name]

GUARANTOR: James C. Bigby


[Signature]

3229 Heyward Drive

[Address]

Columbia, SC 29205

[Address]

803-771-6770

[Phone Number]

251-92-7681

[Social Security Number]

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

PERSONALLY appeared before me Marion D. Turbeville, who being sworn,

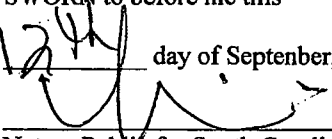
deposes and says that he saw the within named James C. Bigby sign, seal, and as

His act and Deed, deliver the document for the uses and purposes mentioned, and that

he, with William O. Danielson witnessed the execution thereof.

SWORN to before me this

12th day of September, 2008.


(L.S.)

Notary Public for South Carolina

My Commission Expires: July 20, 2016

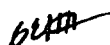


EXHIBIT A

SUNSET AT SUNSET SHOPPING CENTER
2805 SUNSET BOULEVARD

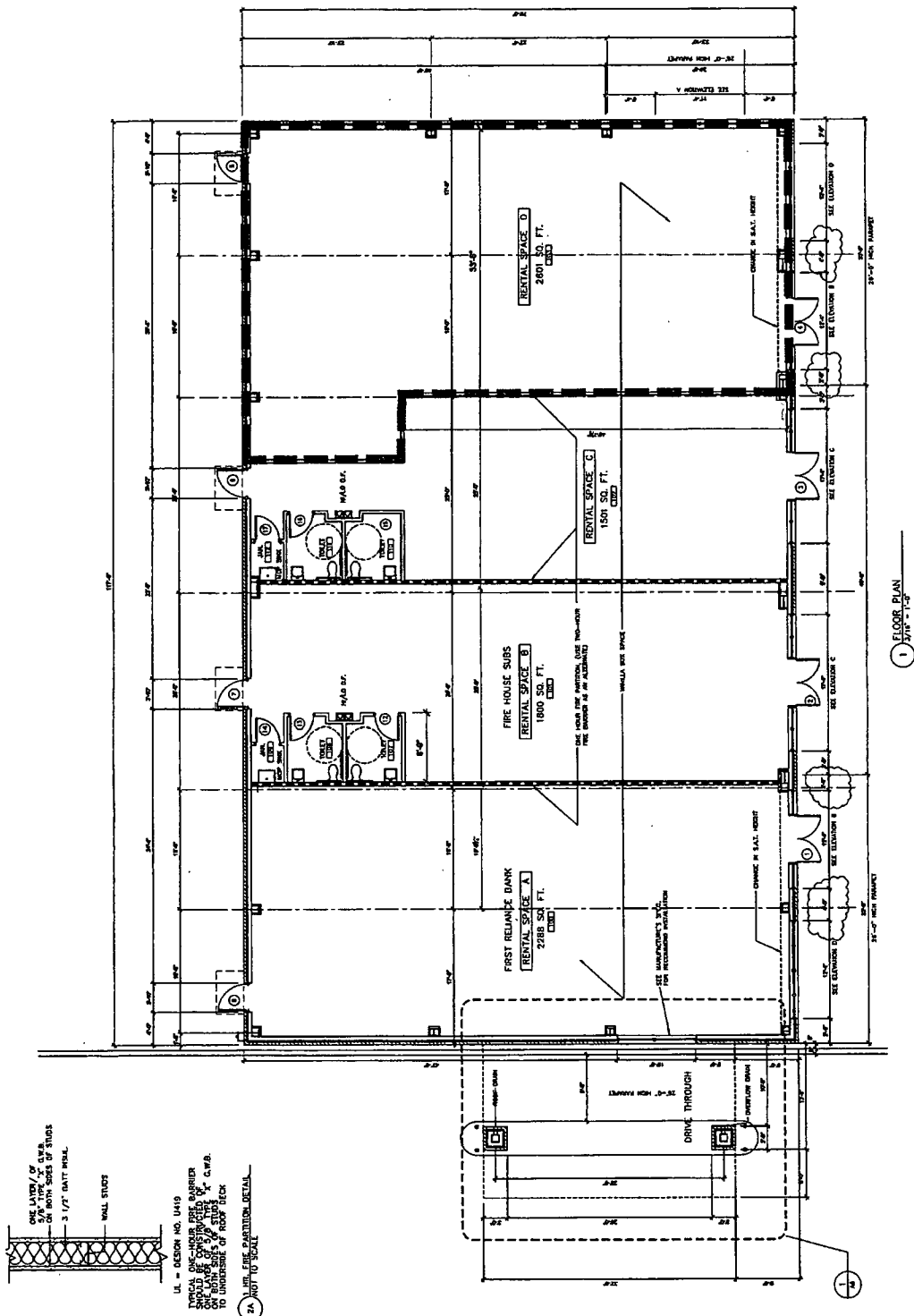
All that certain piece, parcel, lot or tract of land, with any improvements therein, situate, lying and being near the City of West Columbia, County of Lexington, State of South Carolina, being shown and delineated as Lot2, Phase 1-B of Sunset Medical Park, on a bonded plat of Sunset Medical Park Phases 1-B and 2, prepared for Sunset Properties Group, LLC by Civil Engineering of Columbia, dated July 8, 2005, last revised August 26, 2005, recorded August 30, 2005 in Record Book 10420 at Page 319 (Slide 839, Page 4), Office of the Register of Deeds for Lexington County, and having such boundaries and measurements as shown on the plat described herein, which is specifically incorporated by reference.

EXHIBIT B
LEASED PREMISES

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BLM

COASTALPI_000580

EXHIBIT B



6500

1 of 2

EXHIBIT C

SUNSET AT SUNSET SHOPPING CENTER
CONSTRUCTION SPECIFICATIONS

In addition to the attached plans and specifications Landlord agrees to construct the following:

Tenant agrees to accept premises to be demised in an "as is" condition, since the building shell and site improvements have been completed.

Handwritten signature

NEW BUILDING SUNSET AT SUNSET

CODE COMPLIANCE

BASED ON INTERNATIONAL BUILDING CODE - 2003 EDITION

New type construction: Type II-B, Unreinforced
Pre-engineered metal structure and masonry building
New roof construction: metal roof panels
1. **Geometry, Construction and Type Construction**
Group II - Unreinforced
2. **Strength, Stiffness and Building Area**
Allowable: 4 story - 12,500'
Actual: Floor area for Space "A" = 2285'
Actual: Floor area for Space "B" = 1710'
Actual: Floor area for Space "C" = 1747'
Actual: Floor area for Space "D" = 2406'
Actual: Total area = 8148'

4. **Occupancy Load (Table 1033.1.2)**
VacuumLife - Grade Floor - 10 gross
VacuumLife - Storage - 100 gross
Space "A" - Sales Area - 1801 sq ft (54 occupants)
Space "B" - Storage Area - 687 sq ft (2 occupants)
Space "C" - Sales Area - 1225 sq ft (37 occupants)
Space "D" - Storage Area - 525 sq ft (16 occupants)
Space "E" - Sales Area - 1273 sq ft (39 occupants)
Space "F" - Storage Area - 524 sq ft (16 occupants)
Space "G" - Sales Area - 1684 sq ft (51 occupants)
Space "H" - Storage Area - 727 sq ft (22 occupants)
Total Occupant Load = 203

5. **Wind-Resistant and Seismicity, etc.**
Group "II" - Unreinforced 210 ft. (Table 1015.1)
Minimum Corridor Width - 44 ft. (Table 1015.1)
Minimum Number of Cuts - 2 (Table 1015.1)
6. **Joint and Gap Sealant, Sealing, etc.**
Greater than 30 ft. Type I-B, Group II = 0

7. **Doors**
All doors shall be operable from the inside without the use of a key, tool, special knowledge or effort. All hardware shall be direct acting. Panic hardware as required by code.

8. **Fire Protection**
Fire extinguishers shall be installed in accordance with NFPA 10.
10. The local fire official shall assist in determining the extinguisher locations at final inspection.

9. **Interior Stairways, Egress**
Elevator shaft: 8 ft
Coping/railed: 12 ft

10. All construction shall be in accordance with all applicable codes and regulations including compliance with the Americans with Disabilities Act (ADA).

INDEX TO DRAWINGS

CIVIL

ARCHITECTURAL

STRUCTURAL

MECH./PLUMBING

ELECTRICAL

C0 COVER
A1 FLOOR PLAN
A11 BASE BID/FLOOR PLAN
A2 ELEVATIONS
A3 ELEVATIONS
A4 WALL SECTIONS
A5 WALL SECTIONS
A6 FINISH SCHEDULE / DETAILS

REVISIONS	
NO. 1	DATE: 08/22/08
APPROVALS	
DESIGNER	DATE
CHECKED	DATE
IN CHARGE	DATE
PROJECT NO. 000584	
JOB NO. 3017	
DATE: 08/22/08	

ARCHITECT: A. C. CONCEPTS
10000 Sunset Blvd., Suite 100, Los Angeles, CA 90045
Tel: (310) 341-1111 Fax: (310) 341-1112
www.acconcepts.com

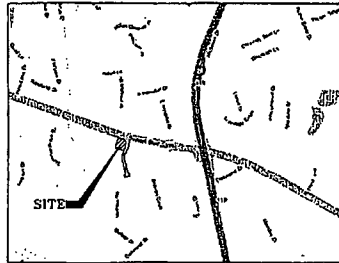
NEW BUILDING
SUNSET @ SUNSET

SHEET 103
CO

JOB NO. 3017
DATE: 08/22/08

SITE PLANS
SUNSET AT SUNSET RETAIL CENTER

PREPARED FOR
SALUDA RIDGE, LLC.
NEAR WEST COLUMBIA, LEXINGTON COUNTY, SOUTH CAROLINA
SEPTEMBER 28, 2007



VICINITY MAP SCALE: 1" = 800'

LIST OF DRAWINGS

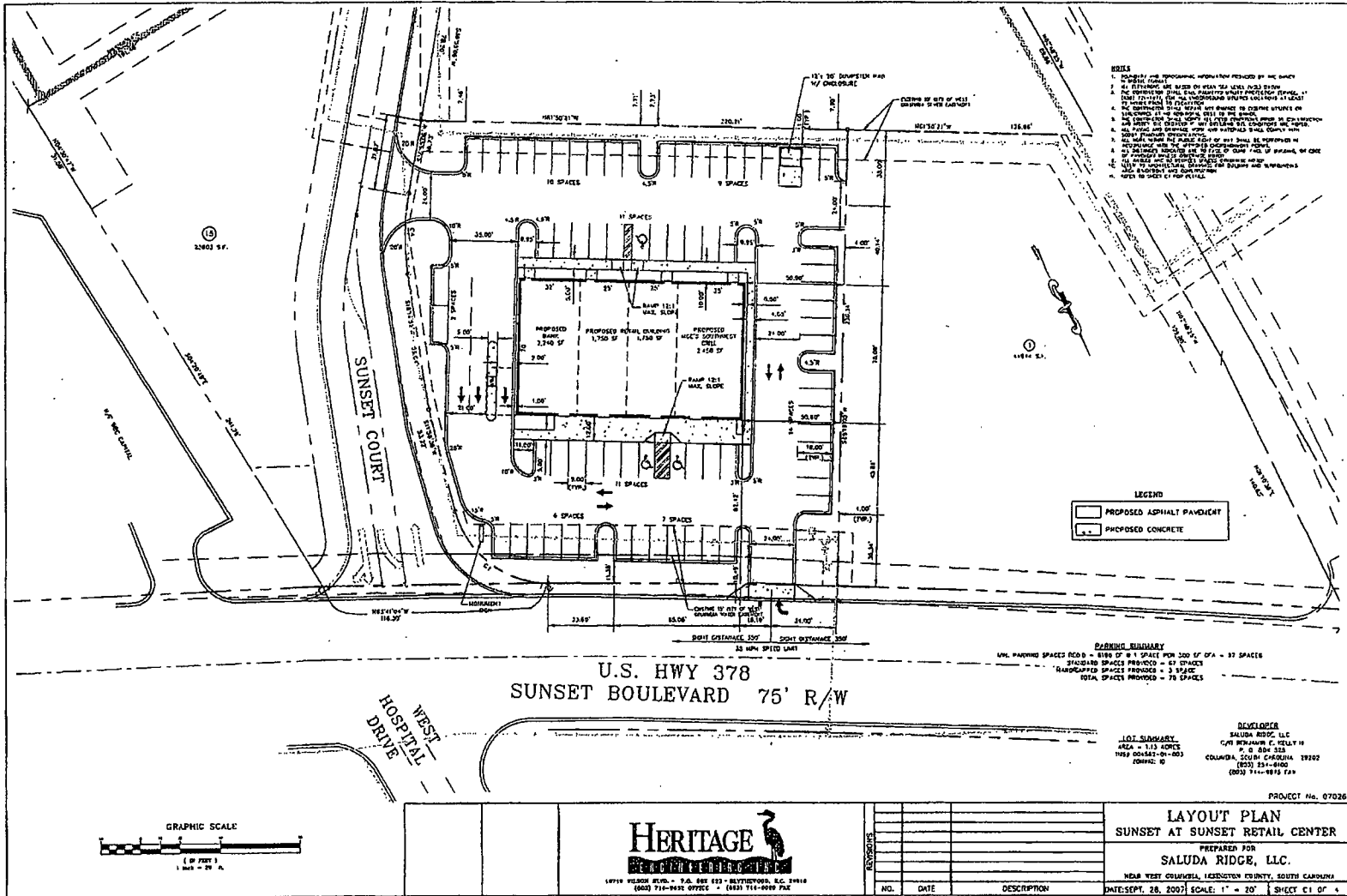
D0	COVER SHEET, VICINITY MAP, LIST OF DRAWINGS
C1	LAYOUT PLAN
C2	SITE PLAN
C3	LANDSCAPING PLAN
C4	DETAILS

DEVELOPER:
SALUDA RIDGE, LLC
C/O BENJAMIN E. KELLY III
P.O. BOX 528
COLUMBIA, SOUTH CAROLINA 29202
(803) 254-0100
(803) 744-8875 FAX

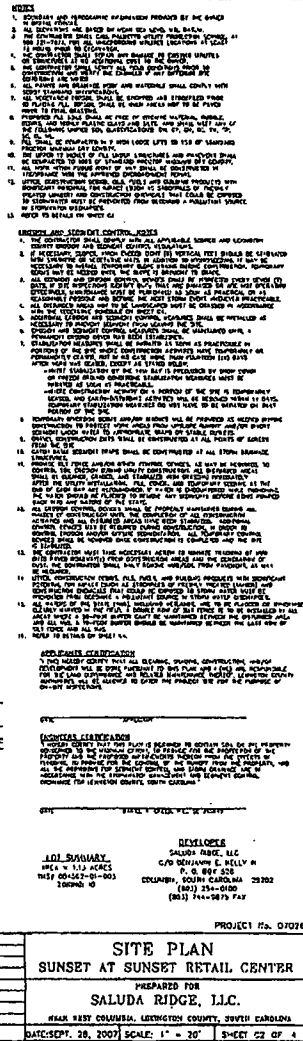
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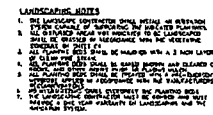


10750 KILBURN BLVD., 6 P.M. 800 853 • WALTERSVILLE, S.C. 29154
(803) 714-0625 OFFICE • (803) 714-0880 FAX

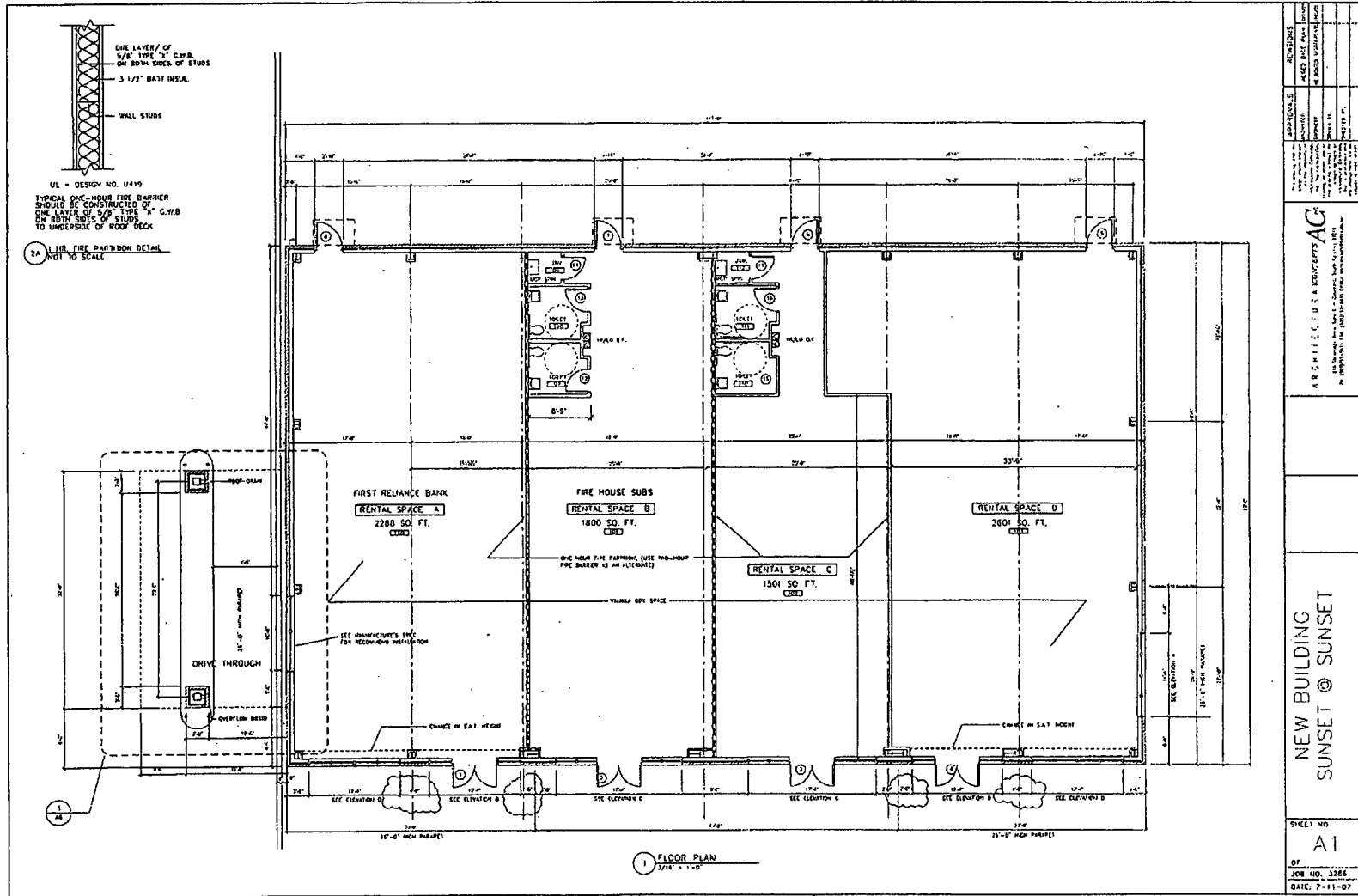


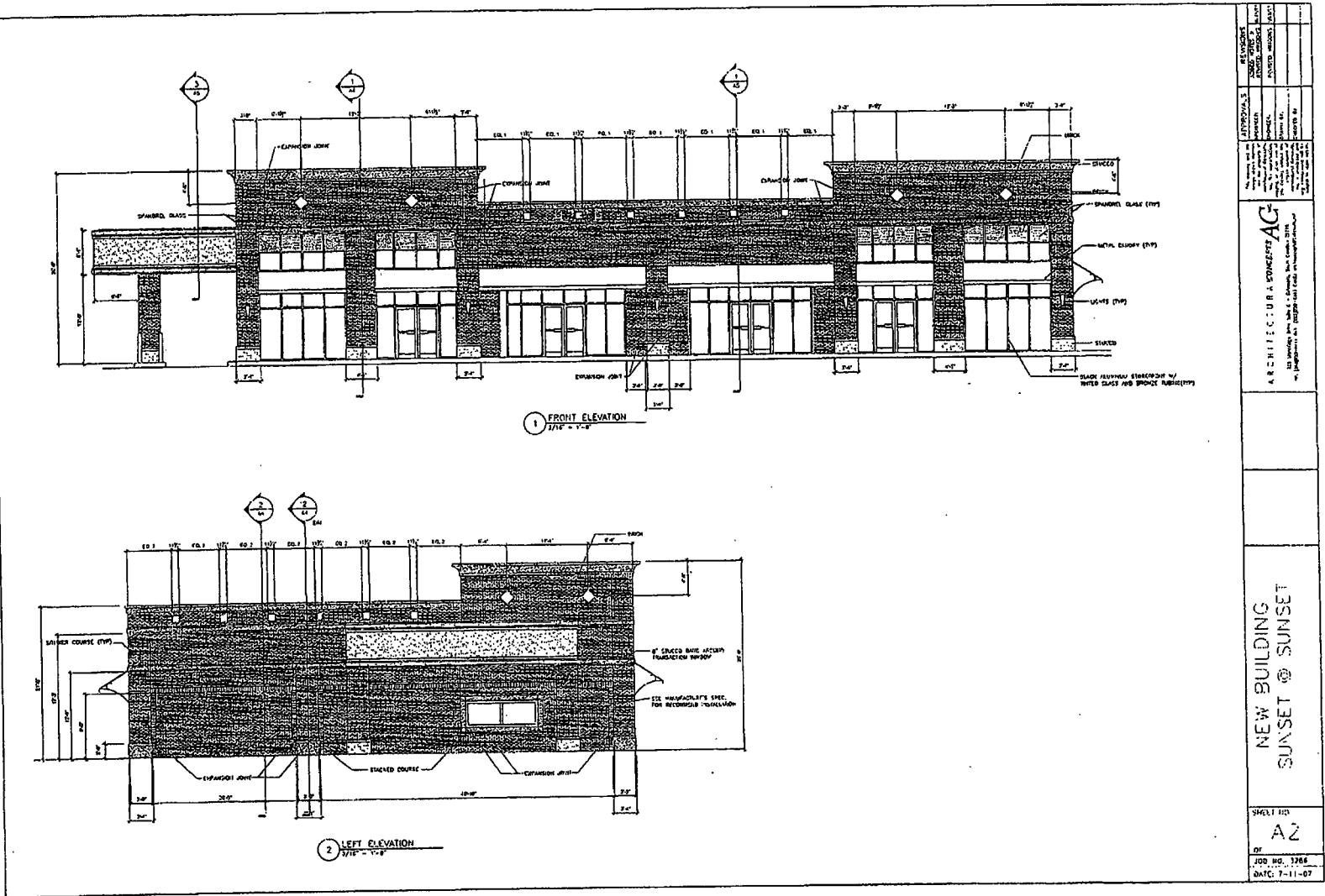
- NOTES**
1. THESE PLANS AND SPECIFICATIONS WERE PREPARED BY THE ENGINEER.
 2. ALL DIMENSIONS ARE BASED ON THE 1/4" = 1" SCALE UNLESS OTHERWISE NOTED.
 3. THE ENGINEER HAS NOT CONDUCTED A VISUAL SURVEY OF THE SITE.
 4. THE ENGINEER HAS NOT CONDUCTED A VISUAL SURVEY OF THE SITE.
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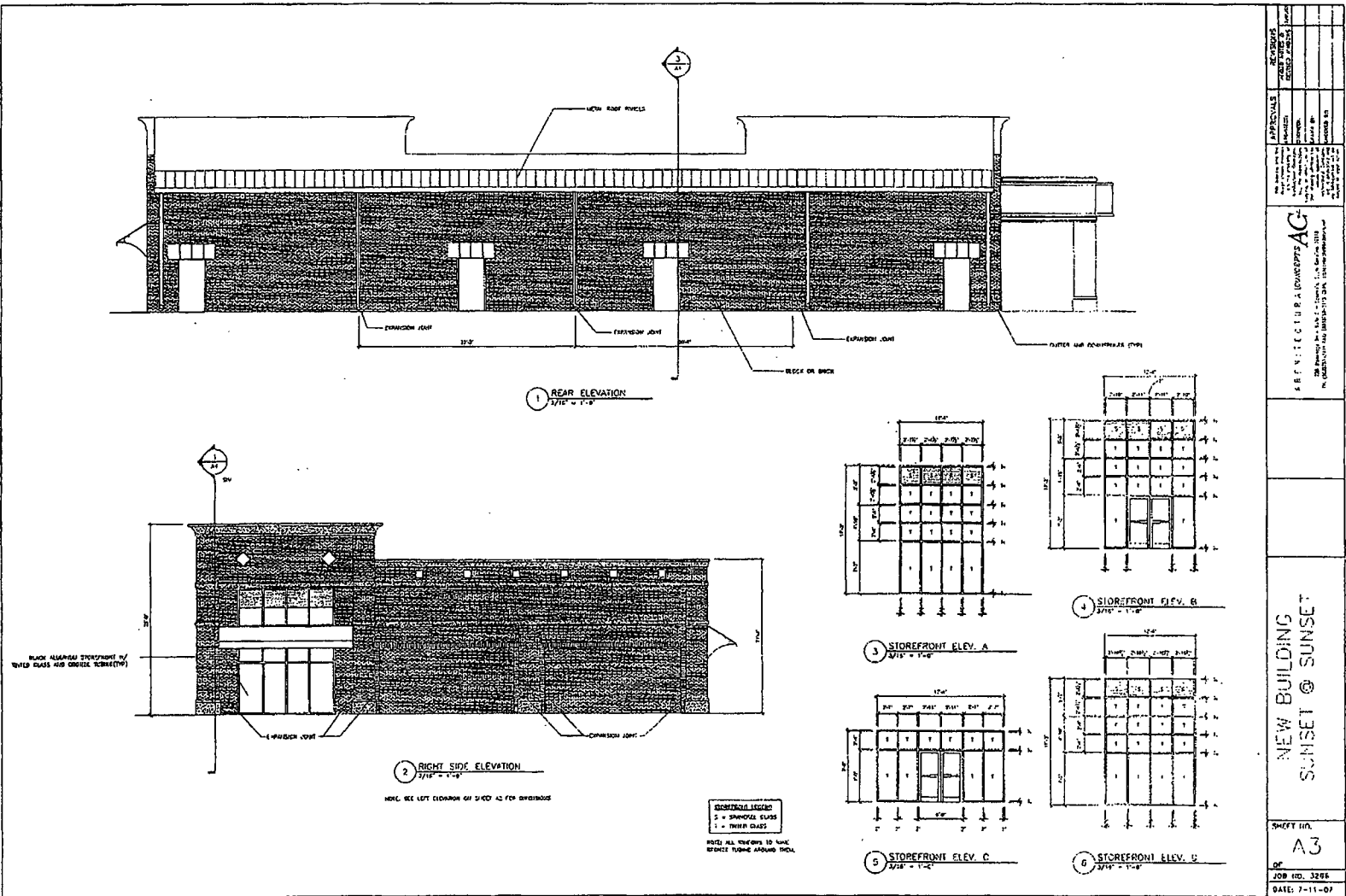




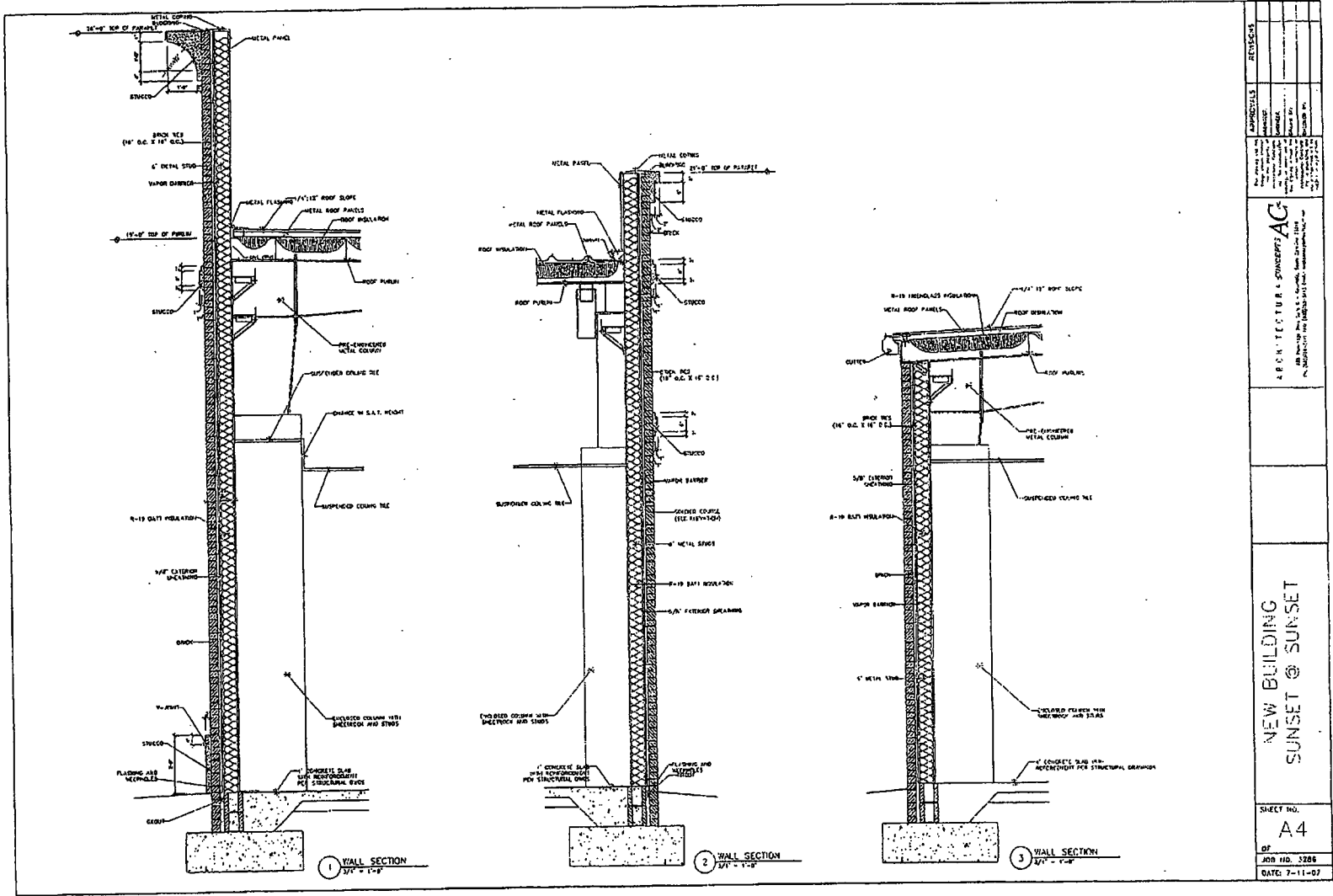


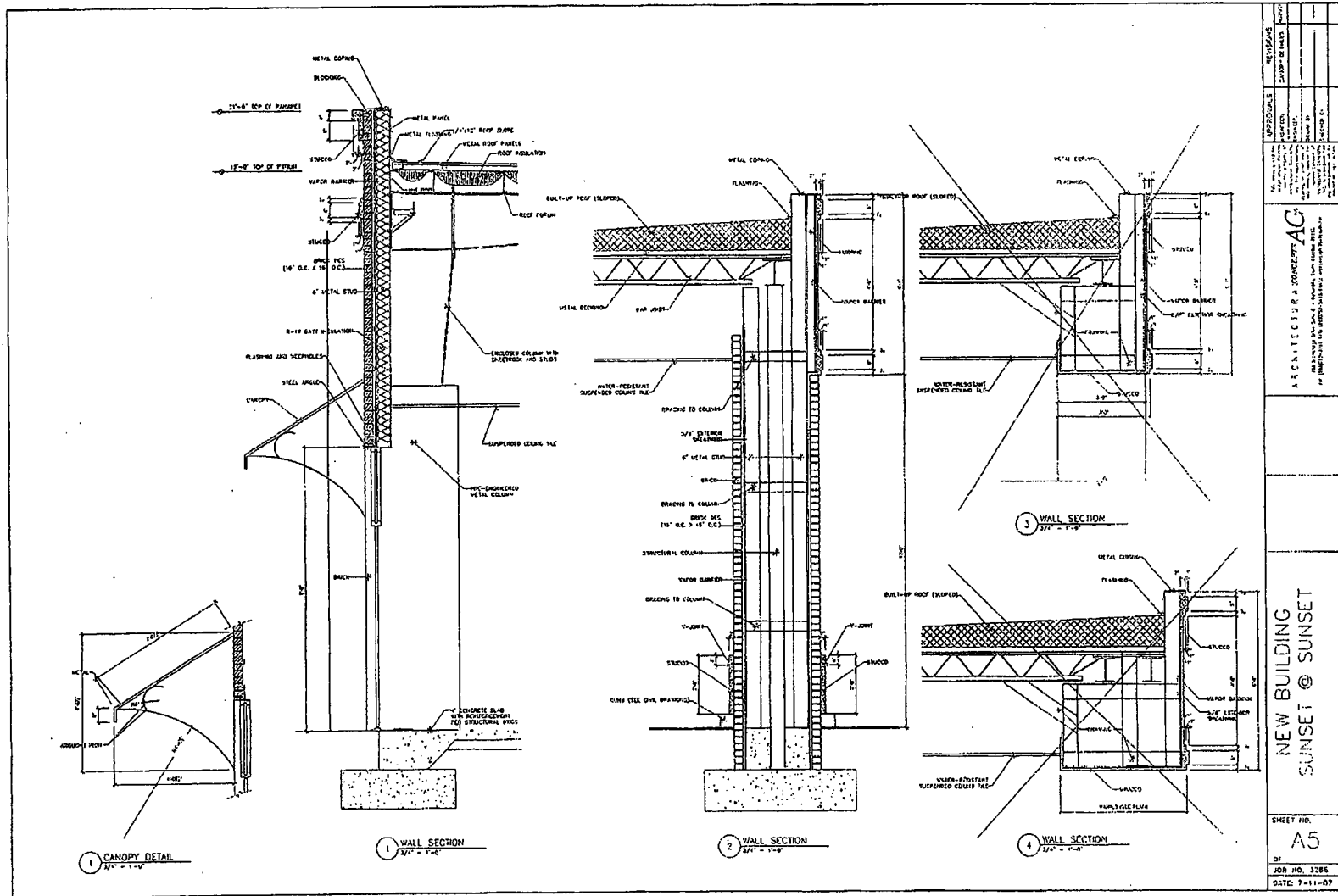






REVISIONS	NO. 1	DATE	7-11-07
DESCRIPTION	1	REVISION	REVISION
APPROVALS	ARCHITECT	ENGINEER	CONTRACTOR
DATE	7-11-07	DATE	7-11-07
PROJECT	NEW BUILDING @ SUNSET		
LOCATION	SUNSET @ SUNSET		
OWNER	SUNSET @ SUNSET		
DESIGNER	SUNSET @ SUNSET		
DATE	7-11-07		



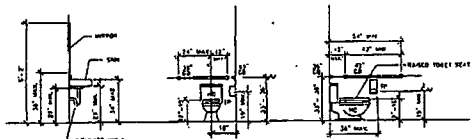


FINISH SCHEDULE									
RM. NO.	RM. NAME	FLOOR	WALL	CEILING	REMARKS				
			N	E	S	W	MAT.	HGT.	
100	SPACE "A"	CONC.	-	P11	P11	P11	SAT	11'-0"	12'-0" W STOREFRONT
101	SPACE "B"	CONC.	-	P11	P11	P11	SAT	11'-0"	
102	SPACE "C"	CONC.	-	P11	P11	P11	SAT	11'-0"	
103	SPACE "D"	CONC.	-	P11	P11	P11	SAT	11'-0"	12'-0" W STOREFRONT
104	TOILET	CONC.	-	P12	P12	P12	SAT	8'-0"	
105	TOILET	CONC.	-	P12	P12	P12	SAT	8'-0"	
106	JANITOR'S CLOSET	CONC.	-	P12	P12	P12	SAT	8'-0"	
107	TOILET	CONC.	-	P12	P12	P12	SAT	8'-0"	
108	TOILET	CONC.	-	P12	P12	P12	SAT	8'-0"	
109	JANITOR'S CLOSET	CONC.	-	P12	P12	P12	SAT	8'-0"	
110	TOILET	CONC.	-	P12	P12	P12	SAT	8'-0"	
111	TOILET	CONC.	-	P12	P12	P12	SAT	8'-0"	
112	JANITOR'S CLOSET	CONC.	-	P12	P12	P12	SAT	8'-0"	
113	TOILET	CONC.	-	P12	P12	P12	SAT	8'-0"	
114	TOILET	CONC.	-	P12	P12	P12	SAT	8'-0"	
115	JANITOR'S CLOSET	CONC.	-	P12	P12	P12	SAT	8'-0"	

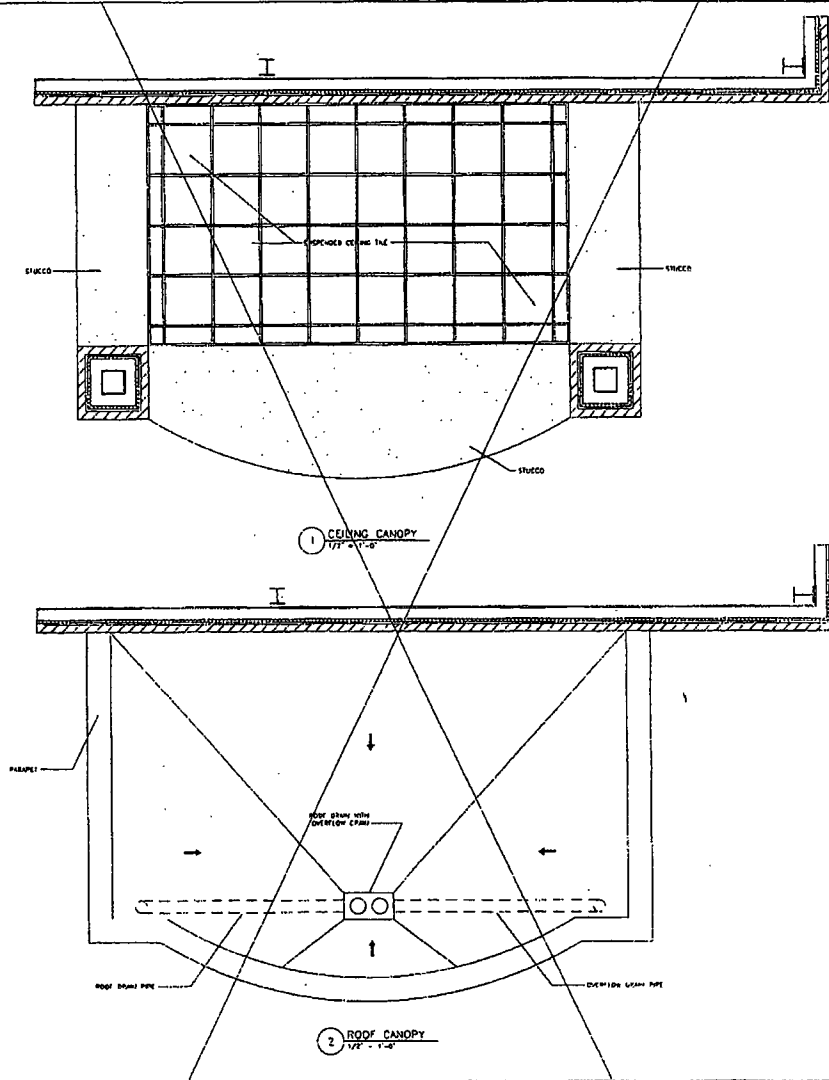
CPE GYPSIUM SAT ALL SURFACES
 VCT LAM. COMP. TIE P11 ONE COAT PAINTS & V.P. Joints - WHITE
 BRG 1" RUBBER FOOT P12 FINISH GAB GYPSIUM

DOOR SCHEDULE									
NO.	TYPE	SIZE	FRAME	FINISH	GLASS	THICK	COATS		
1	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2		
2	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2		
3	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2		
4	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2		
5	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2		
6	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2		
7	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2		
8	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2		
9	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2		
10	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2		
11	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2		
12	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2		
13	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2		
14	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2		
15	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2		
16	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2		
17	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2		
18	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2		
19	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2		
20	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2		

NO.	TYPE	SIZE	FRAME	FINISH	GLASS	THICK	COATS
1	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2
2	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2
3	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2
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7	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2
8	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2
9	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2
10	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2
11	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2
12	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2
13	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2
14	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2
15	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2
16	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2
17	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2
18	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2
19	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2
20	A	2'-0" x 7'-0"	AL. & GLASS	FF	ALUM.	1/2"	2



TYPICAL TOILET DETAILS



REVISIONS

NO.	DATE	DESCRIPTION

ARCHITECTURAL & CONCEPTS AG

1000 10th Ave. Suite 1000, San Francisco, CA 94103

TEL: (415) 774-1111 FAX: (415) 774-1112

NEW BUILDING

SUNSET © SUNSET

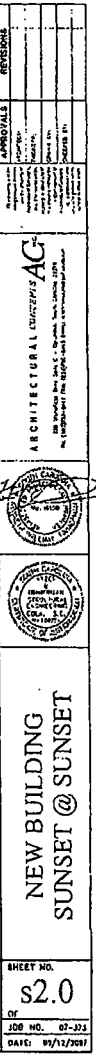
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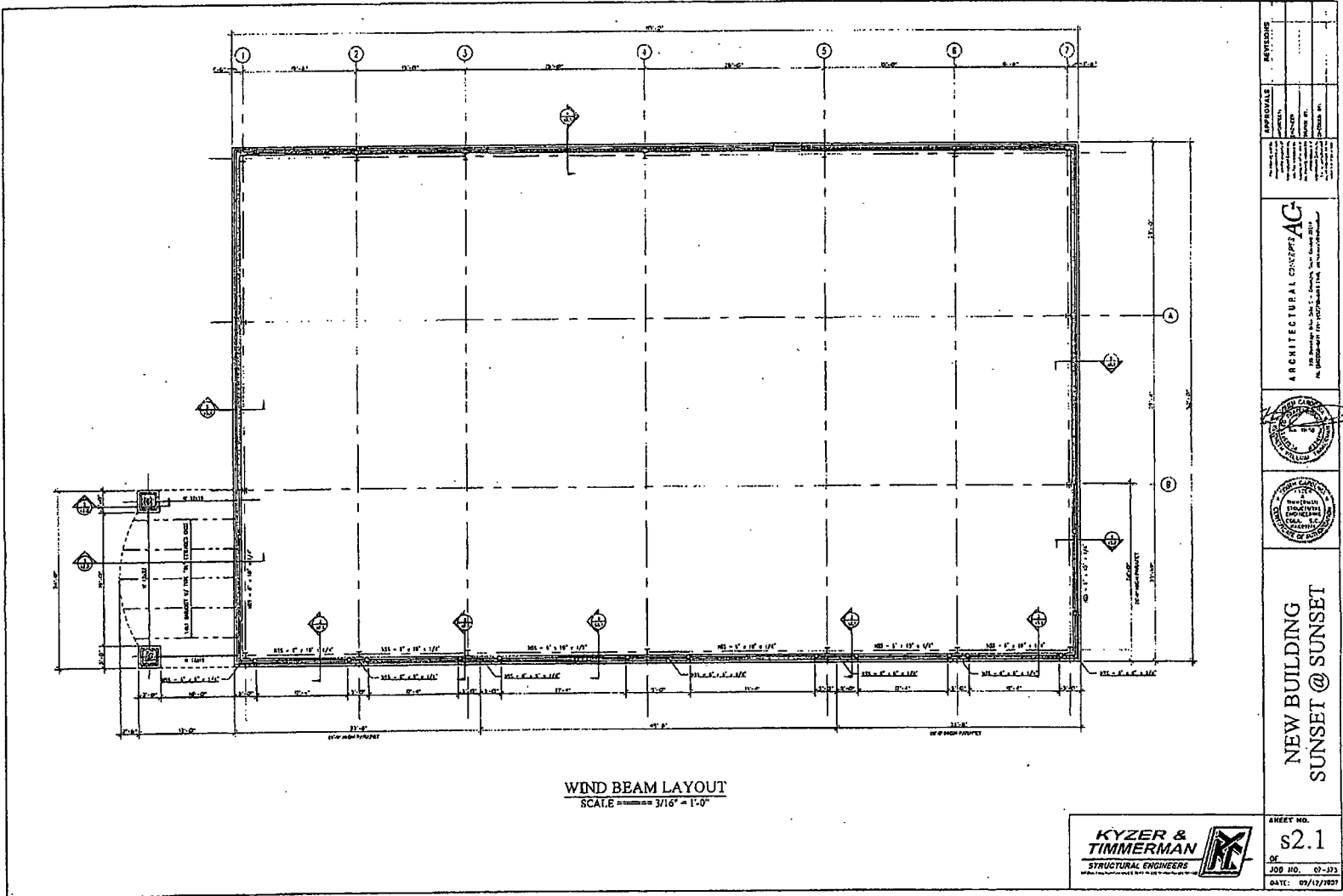
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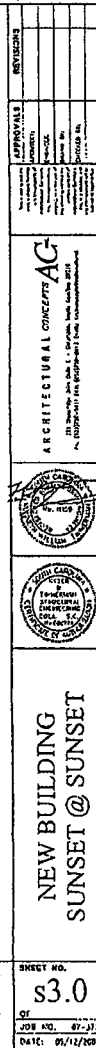
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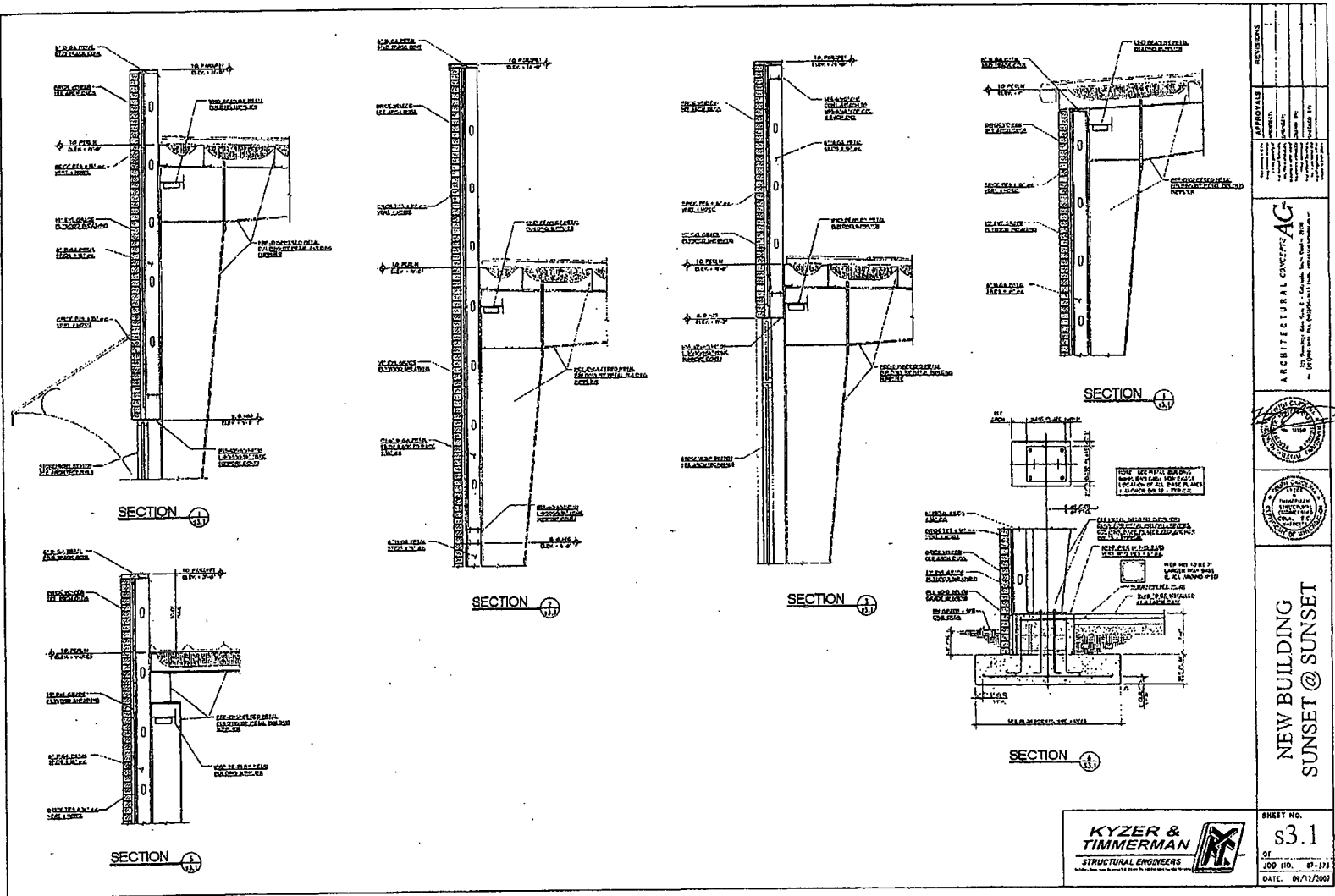
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DATE: 7-11-07



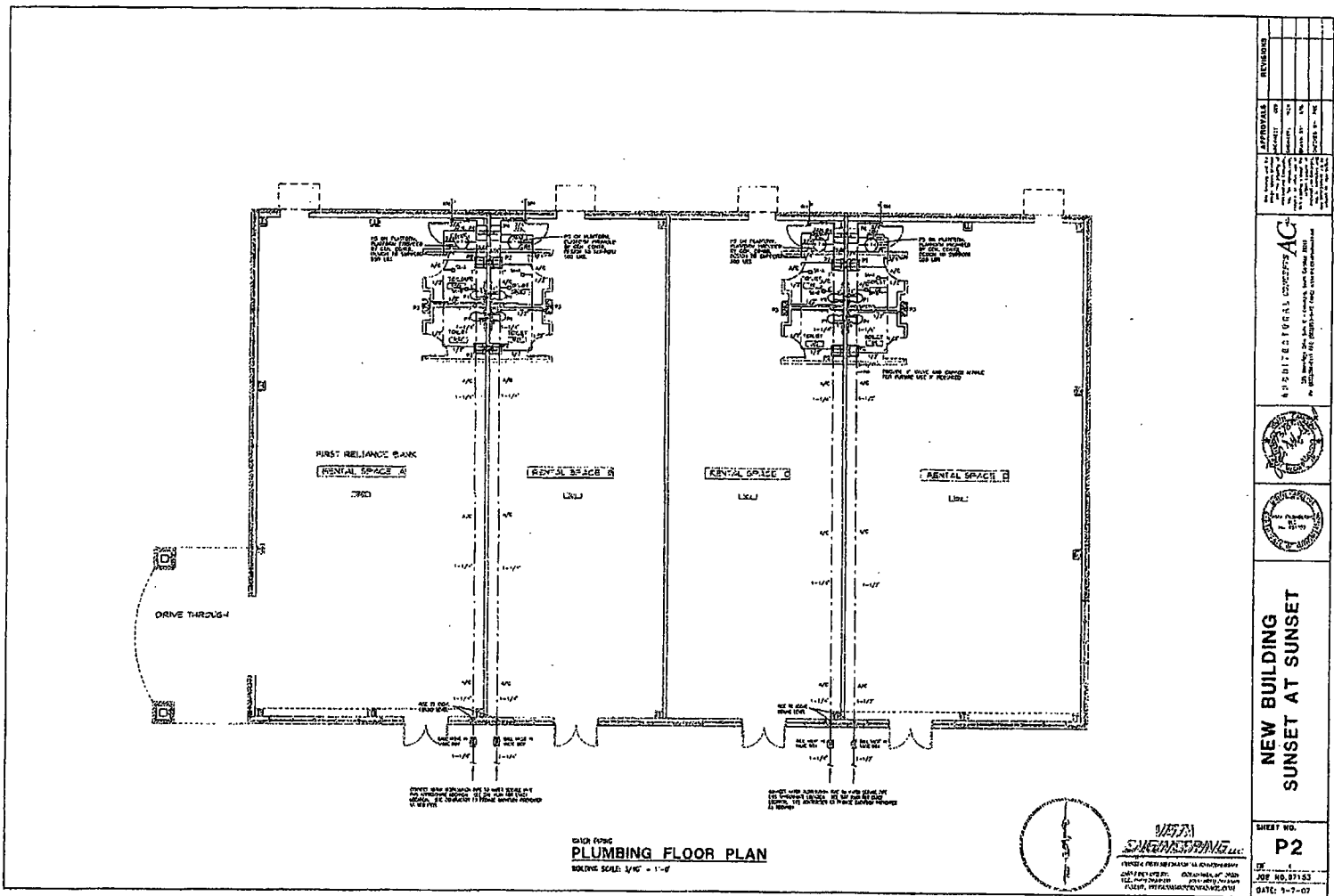




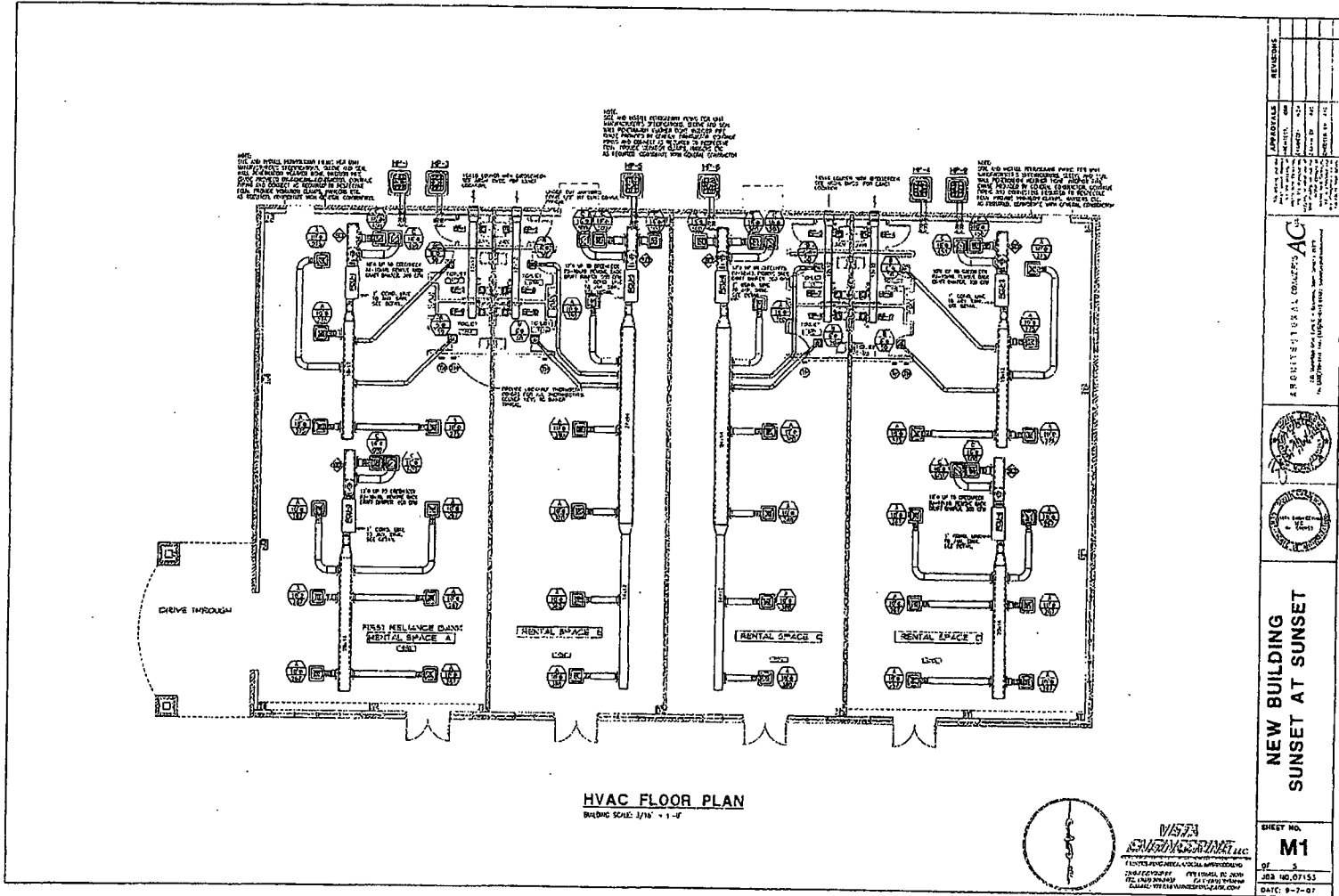








PD 01 INDOOR EQUIPMENT FOUNDATION N.T.S.	PD 02 SEISMIC PIPE BRACING DETAIL N.T.S.	PD 03 WATER HEATER RESTRAINT DETAIL N.T.S.	PD 04 WATER HEATER DETAIL N.T.S.	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42	44	10/1/00	REVISION 43	45	10/1/00	REVISION 44	46	10/1/00	REVISION 45	47	10/1/00	REVISION 46	48	10/1/00	REVISION 47	49	10/1/00	REVISION 48	50	10/1/00	REVISION 49	51	10/1/00	REVISION 50	52	10/1/00	REVISION 51	53	10/1/00	REVISION 52	54	10/1/00	REVISION 53	55	10/1/00	REVISION 54	56	10/1/00	REVISION 55	57	10/1/00	REVISION 56	58	10/1/00	REVISION 57	59	10/1/00	REVISION 58	60	10/1/00	REVISION 59	61	10/1/00	REVISION 60	62	10/1/00	REVISION 61	63	10/1/00	REVISION 62	64	10/1/00	REVISION 63	65	10/1/00	REVISION 64	66	10/1/00	REVISION 65	67	10/1/00	REVISION 66	68	10/1/00	REVISION 67	69	10/1/00	REVISION 68	70	10/1/00	REVISION 69	71	10/1/00	REVISION 70	72	10/1/00	REVISION 71	73	10/1/00	REVISION 72	74	10/1/00	REVISION 73	75	10/1/00	REVISION 74	76	10/1/00	REVISION 75	77	10/1/00	REVISION 76	78	10/1/00	REVISION 77	79	10/1/00	REVISION 78	80	10/1/00	REVISION 79	81	10/1/00	REVISION 80	82	10/1/00	REVISION 81	83	10/1/00	REVISION 82	84	10/1/00	REVISION 83	85	10/1/00	REVISION 84	86	10/1/00	REVISION 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SPLIT SYSTEM HEAT PUMP SCHEDULE (R-410A)

OUTDOOR UNIT										INDOOR UNIT										NOTES				
CONDENSER UNIT										EVAPORATOR UNIT														
REF	WALL TYPE	WALL THICK	WALL MAT	WALL INS	WALL FIN	WALL JOINT	WALL SEAL	WALL TYPE	WALL THICK	REF	WALL TYPE	WALL THICK	WALL MAT	WALL INS	WALL FIN	WALL JOINT	WALL SEAL	WALL TYPE	WALL THICK	WALL MAT	WALL INS	WALL FIN	WALL JOINT	WALL SEAL
1	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"
2	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	2	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"
3	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	3	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"
4	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	4	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"
5	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	5	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"
6	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	6	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"
7	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	7	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"
8	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	8	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"
9	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	9	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"
10	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	10	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"

NOTES:

1. CONDENSER UNIT: CONDENSER UNIT, 1/2" CONCRETE, 1/2" WALL THICK, 1/2" WALL MAT, 1/2" WALL INS, 1/2" WALL FIN, 1/2" WALL JOINT, 1/2" WALL SEAL.

2. EVAPORATOR UNIT: EVAPORATOR UNIT, 1/2" CONCRETE, 1/2" WALL THICK, 1/2" WALL MAT, 1/2" WALL INS, 1/2" WALL FIN, 1/2" WALL JOINT, 1/2" WALL SEAL.

3. CONDENSER UNIT: CONDENSER UNIT, 1/2" CONCRETE, 1/2" WALL THICK, 1/2" WALL MAT, 1/2" WALL INS, 1/2" WALL FIN, 1/2" WALL JOINT, 1/2" WALL SEAL.

4. EVAPORATOR UNIT: EVAPORATOR UNIT, 1/2" CONCRETE, 1/2" WALL THICK, 1/2" WALL MAT, 1/2" WALL INS, 1/2" WALL FIN, 1/2" WALL JOINT, 1/2" WALL SEAL.

5. CONDENSER UNIT: CONDENSER UNIT, 1/2" CONCRETE, 1/2" WALL THICK, 1/2" WALL MAT, 1/2" WALL INS, 1/2" WALL FIN, 1/2" WALL JOINT, 1/2" WALL SEAL.

6. EVAPORATOR UNIT: EVAPORATOR UNIT, 1/2" CONCRETE, 1/2" WALL THICK, 1/2" WALL MAT, 1/2" WALL INS, 1/2" WALL FIN, 1/2" WALL JOINT, 1/2" WALL SEAL.

7. CONDENSER UNIT: CONDENSER UNIT, 1/2" CONCRETE, 1/2" WALL THICK, 1/2" WALL MAT, 1/2" WALL INS, 1/2" WALL FIN, 1/2" WALL JOINT, 1/2" WALL SEAL.

8. EVAPORATOR UNIT: EVAPORATOR UNIT, 1/2" CONCRETE, 1/2" WALL THICK, 1/2" WALL MAT, 1/2" WALL INS, 1/2" WALL FIN, 1/2" WALL JOINT, 1/2" WALL SEAL.

9. CONDENSER UNIT: CONDENSER UNIT, 1/2" CONCRETE, 1/2" WALL THICK, 1/2" WALL MAT, 1/2" WALL INS, 1/2" WALL FIN, 1/2" WALL JOINT, 1/2" WALL SEAL.

10. EVAPORATOR UNIT: EVAPORATOR UNIT, 1/2" CONCRETE, 1/2" WALL THICK, 1/2" WALL MAT, 1/2" WALL INS, 1/2" WALL FIN, 1/2" WALL JOINT, 1/2" WALL SEAL.

EXHAUST FAN SCHEDULE

REF	WALL TYPE	WALL THICK	WALL MAT	WALL INS	WALL FIN	WALL JOINT	WALL SEAL	WALL TYPE	WALL THICK	WALL MAT	WALL INS	WALL FIN	WALL JOINT	WALL SEAL
1	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"
2	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	2" CONCRETE	2"	2"	2"	2"	2"	2"
3	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	3" CONCRETE	3"	3"	3"	3"	3"	3"
4	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	4" CONCRETE	4"	4"	4"	4"	4"	4"
5	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	5" CONCRETE	5"	5"	5"	5"	5"	5"
6	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	6" CONCRETE	6"	6"	6"	6"	6"	6"
7	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	7" CONCRETE	7"	7"	7"	7"	7"	7"
8	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	8" CONCRETE	8"	8"	8"	8"	8"	8"
9	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	9" CONCRETE	9"	9"	9"	9"	9"	9"
10	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	10" CONCRETE	10"	10"	10"	10"	10"	10"

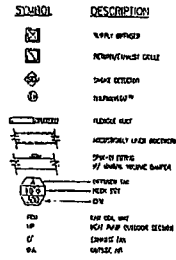
NOTES:
1. EXHAUST FAN SHALL BE INSTALLED OUTSIDE OF BUILDING.
2. EXHAUST FAN SHALL BE INSTALLED OUTSIDE OF BUILDING.
3. EXHAUST FAN SHALL BE INSTALLED OUTSIDE OF BUILDING.

AIR DISTRIBUTION SCHEDULE

REF	WALL TYPE	WALL THICK	WALL MAT	WALL INS	WALL FIN	WALL JOINT	WALL SEAL	REF	WALL TYPE	WALL THICK	WALL MAT	WALL INS	WALL FIN	WALL JOINT	WALL SEAL
1	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	1	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"
2	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	2	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"
3	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	3	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"
4	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	4	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"
5	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	5	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"
6	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	6	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"
7	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	7	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"
8	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	8	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"
9	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	9	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"
10	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"	10	1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"

NOTES:
1. AIR DISTRIBUTION SHALL BE INSTALLED OUTSIDE OF BUILDING.
2. AIR DISTRIBUTION SHALL BE INSTALLED OUTSIDE OF BUILDING.

LEGEND



SEQUENCE OF CONTROL

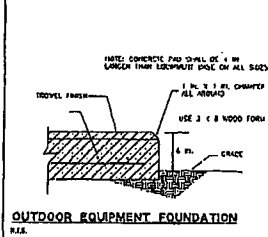
1. EXHAUST FAN SHALL BE INSTALLED OUTSIDE OF BUILDING.
2. EXHAUST FAN SHALL BE INSTALLED OUTSIDE OF BUILDING.
3. EXHAUST FAN SHALL BE INSTALLED OUTSIDE OF BUILDING.

HVAC NOTES

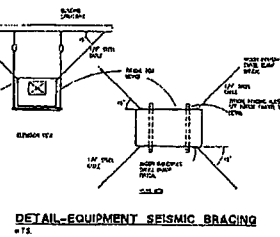
1. EXHAUST FAN SHALL BE INSTALLED OUTSIDE OF BUILDING.
2. EXHAUST FAN SHALL BE INSTALLED OUTSIDE OF BUILDING.
3. EXHAUST FAN SHALL BE INSTALLED OUTSIDE OF BUILDING.
4. EXHAUST FAN SHALL BE INSTALLED OUTSIDE OF BUILDING.
5. EXHAUST FAN SHALL BE INSTALLED OUTSIDE OF BUILDING.
6. EXHAUST FAN SHALL BE INSTALLED OUTSIDE OF BUILDING.
7. EXHAUST FAN SHALL BE INSTALLED OUTSIDE OF BUILDING.
8. EXHAUST FAN SHALL BE INSTALLED OUTSIDE OF BUILDING.
9. EXHAUST FAN SHALL BE INSTALLED OUTSIDE OF BUILDING.
10. EXHAUST FAN SHALL BE INSTALLED OUTSIDE OF BUILDING.

HVAC DESIGN CRITERIA

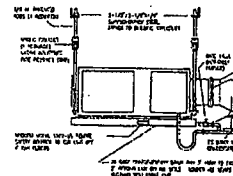
WALL TYPE	WALL THICK	WALL MAT	WALL INS	WALL FIN	WALL JOINT	WALL SEAL
1/2" CONCRETE	1/2"	1/2"	1/2"	1/2"	1/2"	1/2"
2" CONCRETE	2"	2"	2"	2"	2"	2"
3" CONCRETE	3"	3"	3"	3"	3"	3"
4" CONCRETE	4"	4"	4"	4"	4"	4"
5" CONCRETE	5"	5"	5"	5"	5"	5"
6" CONCRETE	6"	6"	6"	6"	6"	6"
7" CONCRETE	7"	7"	7"	7"	7"	7"
8" CONCRETE	8"	8"	8"	8"	8"	8"
9" CONCRETE	9"	9"	9"	9"	9"	9"
10" CONCRETE	10"	10"	10"	10"	10"	10"



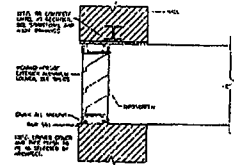
OUTDOOR EQUIPMENT FOUNDATION



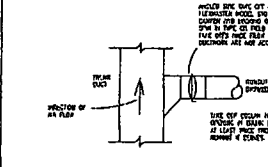
DETAIL-EQUIPMENT SEISMIC BRACING



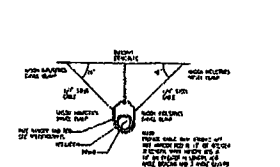
DETAIL-INDOOR FANCOIL UNIT



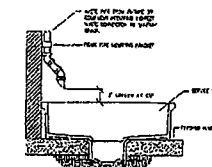
LOUVER DETAIL



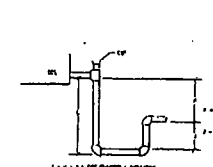
RUNOUT CONNECTION DETAIL (TYPICAL)



DETAIL-SEISMIC PIPE BRACING



INDIRECT WASTE PIPING DETAIL



DETAIL-CONDENSATE TRAP

COASTAL P1_000607

NEW BUILDING
SUNSET AT SUNSET

SHEET NO.
M2

DATE: 8-7-07

HVAC SPECIFICATIONS CONTINUED:

All exposed leading edges and traverse joints shall also be covered with caulk, in addition to the above, mechanical fasteners shall be used to secure the duct floor board to the duct according to the following:

For horizontal runs, when the duct width or height exceeds 24", the floor shall be additionally secured with fasteners starting with 3" at the upstream traverse edges at the duct floor board and shall be spaced at a maximum of 15" on center and 15" from longitudinal joints. On vertical runs, the fasteners shall be used when other dimension exceeds 12". Mechanical fasteners that conform to Mechanical Fasteners Submittal include from SMCM.

INSTALLATION NOTES:

In addition to duct fire as specified in previous sections:
All supply and return shall extend from heat pumps and supply and outside air ducts from energy recovery units shall be wrapped with 2" thick, having 0.75 in. per inch density glass fiber insulation with reinforced foil layer, flame retardant foil vapor barrier, insulation shall have a minimum R value of 6.0 at 75 degree mass temperature.

Insulation shall be secured with Chem-Bond-Glue AS-10 adhesive. All joints shall be sealed by covering a 2" sealing tape at all joints with 1/2" AS-10 adhesive and sealed approximately 6" on a center after surface cleaning stages. Joints shall then be sealed with 3 inch foil tape. Where rectangular ducts are 24" or greater in width, duct wrap shall be secured to the bottom of the duct with mechanical fasteners spaced 18" on center. Insulate logs of all cylinders and boots with insulation just on supply ductwork. Entire metal surfaces to be completely covered and sealed to prevent any leakage.

TESTING, ADJUSTING AND BALANCING

Check of testing, adjusting and balancing work required to define to include, but is not necessarily limited to, an air distribution system and associated equipment and components of mechanical work. The work consists of testing, adjusting and balancing (TAB), recording data, conducting tests, providing and submitting reports.

Component types of testing, adjusting, and balancing specified in this section includes the following as applied to mechanical equipment:

- FANS
- HEAT PUMP UNITS
- EXHAUST SYSTEMS

Comply with ASHRAE "Procedures Standards for Testing, Adjusting and Balancing of Environmental Systems" as applicable to mechanical air distribution systems, and associated equipment and equipment.

Comply with ASHRAE recommendations pertaining to measurements, instruments, and testing, adjusting and balancing, except as otherwise indicated.

Do not proceed with testing, adjusting, and balancing until work has been completed and is approved. Ensure that there is no latent residual risk to be completed.

Do not proceed with work indicated for testing, adjusting, and balancing in cases where there has been, delin, delin, and discarded building materials.

Except as otherwise indicated, use screw products as used by original supplier for matching holes in install, ductwork and hangers which have been cut or drilled for fasteners, including access for test instruments, attaching jigs and similar purposes.

Test, adjust and balance systems during summer season for air conditioning systems and during winter season for heating systems, including at least one period of operation at outdoor conditions when 3 degree F, and both temperature at maximum summer design condition, and when 18 degree F, dry bulb temperature at minimum winter design condition. These seasonal operation data and provide necessary test temperatures from other field temperature readings when seasonal operation does permit.

Prepare these reports of test results, including instrumentation calibration reports, to format recommended by applicable standards.

DUCTWORK

Fans shall be Direct Drive, Plain, Cast, Cast Iron, 115 or approved equal. Fan motor shall be accordance with applicable and performance characteristics shown on the drawings.

All fans shall be furnished complete with motor and drive components. All non-reversible, constant direct shall be furnished with factory built guards. Furnish all accessories and hardware necessary to properly install the fan. Fans shall allow accessories or options as indicated on the drawings or specified herein. They may include but are not limited to: document cabinet, belt drive, pressure, size or largest screen, some alternating drive, speed drive or construction, and hardware shall be checked sheet.

All fans shall meet the ASHRAE (ASHRAE) ratings for each sound and performance.

DUCTWORK NOTES

Galvanized steel duct shall be of the standard duct sheet type.

The fan housing shall be constructed of heavy gauge galvanized steel with expanded mounting brackets. The housing interior shall be steel with 1/2" thickness insulation. The metal duct shall meet minimum air resistance (ductwork) design and shall be suitable for horizontal or vertical ductwork. The access for wiring shall be secured.

For motor efficiency shall be indicated and of this plug type. The motor shall be mounted at vibration isolators.

For fan wheel(s) shall be of the forward curved centrifugal type, constructed of galvanized steel and dynamically balanced. Fans shall be designed to meet the ASHRAE Certified Building Code for sound and air performance and shall be UL listed.

Fans shall be furnished with exhaust ducts for exhaust mounting.

INSTALLATION

In general the equipment installation shall be in accordance with the manufacturer's recommendations for the specific unit or unit construction being used. Manufacturer's recommendations shall be considered a minimum and all safety precautions shall be properly followed and noted as to be completely understood and followed.

All fans shall be balanced and their shafts and subassembly should be free.

All duct connections to fans shall be made with flexible duct connections.

PIPEWORK, JOINTS AND FITTINGS

Pipe material for above ground installation shall be ASHRAE 30 type "C" hard drawn copper tubing with 250 psi stress joint AND D16.22 wrought copper fittings. Solder shall be 95-5 for pipe sizes 1/2 inch and over.

REFRIGERANT PIPE AND FITTINGS

System shall be complete and sized in conformance to current ASHRAE standards and refrigeration equipment manufacturer's recommendations. Piping shall be type "C" hard drawn copper ASHRAE refrigerant tubing with long radius wrought copper solder joint fittings. Joints shall be soldered with high temperature silver solder suitable for 300 psi working pressure.

Install refrigerant service valves in section and discharge lines adjacent to the compressor under built-in, double service valves are furnished. Refrigerant return shall be designed for refrigerant used and shall have no caps.

Install a three degree type filter over the inlet side of each thermodynamic expansion valve. After above up to be less than capacity shall be sealed type. Filter shall be heat pump systems that be designed for heat pump duty and shall be furnished by the heat pump manufacturer.

Refrigerant condenser design shall be 3/8", and refrigerant suction lines shall be 1/2". Automatic thermostatic expansion valve shall be installed in accordance with manufacturer's recommendations. Size and make of joints. Solder and joints shall be as light. Provide expansion of proper joints. Cover outside insulation with low grade of US American Insulation. See details.

HEAT PUMP AND FAN CONTROLS

Furnish and install a complete automatic temperature control system, including all logic, equipment, material and any necessary control and safe operating system. The system shall consist of, but not necessarily be limited to, all sensors, actuators, relays, switches, solenoids, and microprocessors necessary for a complete system. The system shall be factory type, and shall be the standard equipment provided of a single manufacturer. The system shall be installed in the control room or other suitable location. Products shall be by Honeywell Johnson Controls, Emerson/Johnson, or other heat pump manufacturers, or approved equal.

Refrigerant unit shall be installed in accordance with the National Electrical Code, all wiring, cable and bus wiring, shall be installed in conduit. The control sub-component shall coordinate on work with the electrical contractor.

Submit complete control drawings and wiring diagrams for approval. Indicate all connections to equipment and attach wires.

Provide a framed plastic display of the approved control drawings, which shall reflect any changes made during construction. Provide three (3) maintenance and operation manuals for the system.

System Requirements

The programming and manual control shall include humidity display, humidity control, the direct control of humidifier, dehumidifier, and control of variable speed compressor (VSC), OFF, COOL, HEAT, AUTO and DEHAT (emergency stop/stop control), fan ON and OFF, water, automatic changeover, heat exchanger display, highlighting on demand, non-demand, emergency manual control, fan (3) outdoor temperature flow speed, outdoor outdoor temperature setting capability and when (7) day per week programming capability. Thermostat shall be capable of manual control and shall function from unattended to manual control manually as dual control temperature shall be achieved with minimum use of standby heat of electrical energy line.

The thermostat shall be located where shown on plans and at 45 inches above finished floor unless otherwise specified. Provide emergency off all units mounted just below thermostat in cut off heat pump system in emergency. Provide emergency power management including function of each thermostat, system, etc., mounted on wall next to thermostat; wiring shall be visible on main equipment.

Sequence of Operation: Heat Pump System

Occupied Mode: Fan and coil compressor fan shall be set for ON. Thermostat shall cycle compressor unit as required to maintain space temperature and point. When humidity levels rise above set point, thermostat shall start the evaporator fan and maintain additional process and temperature as required to maintain latent capacity of system. Occupied cooling set point shall be set for 75 (F). Occupied heating set point shall be set for 70 (F).

Unoccupied Mode: Fan and coil compressor fan shall be set for OFF. Thermostat shall cycle compressor unit as required to maintain space temperature and point. When humidity levels rise above set point, thermostat shall start the evaporator fan and maintain additional process and temperature as required to maintain latent capacity of system. Unoccupied cooling set point shall be set for 65 (F). Unoccupied heating set point shall be set for 60 (F).

Sequence of Operation: Exhaust fans shall be controlled by thermostat or relays as indicated on plans. Unless otherwise indicated, exhaust fans shall be ON during occupied hours and OFF during unoccupied hours.

REVISIONS	
NO.	DESCRIPTION
1	AS BUILT

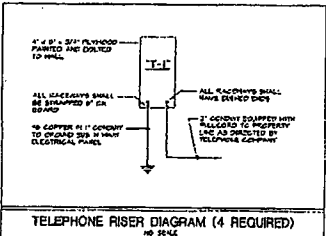
APPROVALS	
NO.	DESCRIPTION
1	AS BUILT

SHEET NO. M5	
DATE: 8-7-07	

WETA
WETA-TV
WETA-FM
WETA-AM
WETA-TV
WETA-FM
WETA-AM
WETA-TV
WETA-FM
WETA-AM

GENERAL NOTES

1. DO NOT SCALE THESE DRAWINGS. ALL DIMENSIONS IN BRACKETS ARE TAKEN FROM THE ARCHITECTURAL DRAWINGS AND DIMENSIONS.
2. CONSULT THE MECHANICAL DRAWINGS FOR SCHEDULES FOR THE EXACT LEGISLATION OF THE INTERNATIONAL BUREAU OF STANDARDS FOR ALL DIMENSIONS. MATERIALS SHALL BE OF THE BEST QUALITY AVAILABLE. ALL DIMENSIONS SHALL BE TO THE CENTER UNLESS OTHERWISE SPECIFIED. ALL DIMENSIONS SHALL BE TO THE CENTER UNLESS OTHERWISE SPECIFIED. ALL DIMENSIONS SHALL BE TO THE CENTER UNLESS OTHERWISE SPECIFIED.
3. DIMENSIONS AND SPECIFICATIONS AND COMPLIANCE TO FACE AND TO CENTER SHALL BE GIVEN BY THE DRAWING. USE A DIMENSION LINE FOR BOTH.
4. STATE GENERALLY THE LOCATION OF EQUIPMENT AND AS WELL AS CURRENT AND PROPOSED ELECTRICAL SERVICE. THE CONTRACTOR SHALL SHOW THE LOCATION OF SERVICE BAYS AND ALL NECESSARY ADDITIONAL WORK TO THE SERVICE AND CENTER.
5. ALL ALLIED MATERIALS MUST BE SUBJECT TO THE APPROVAL OF THE ARCHITECT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROPER INSTALLATION OF SERVICE BAYS AND ALL NECESSARY ADDITIONAL WORK TO THE SERVICE AND CENTER.



SCHEDULE FOR PANEL "HP"									
INSURANCE		DAMAGE INSURANCE		COST / JOB		VOLTAGE			
BUS SIZE		100 AMP		THREE PHASE 480V AC		PHASE			
WIRE		250 LB. LENGTH		250 LB. ONLY		WIRE			
CAT	DESCRIPTION	AMPS	POLE	POLE	AMPS	DESCRIPTION	AMPS		
1	PHASE 1	250	1	1	250	RECEIVER	250		
2	PHASE 2	250	1	1	250	PHASE 2	250		
3	PHASE 3	250	1	1	250	PHASE 3	250		
4	PHASE 4	250	1	1	250	PHASE 4	250		
5	PHASE 5	250	1	1	250	PHASE 5	250		
6	PHASE 6	250	1	1	250	PHASE 6	250		
7	PHASE 7	250	1	1	250	PHASE 7	250		
8	PHASE 8	250	1	1	250	PHASE 8	250		
9	PHASE 9	250	1	1	250	PHASE 9	250		
10	PHASE 10	250	1	1	250	PHASE 10	250		
11	PHASE 11	250	1	1	250	PHASE 11	250		

SCHEDULE FOR PANELS "B" & "C"									
IDENTIFY RMR SIZE		SPACE NUMBERED 233 APVS		120 / 200 233 APVS		FREE PANEL / FOUR PHASE W/IN LINE ONLY		VOLTAGE W/IN LINE ONLY	
ONLY	DESCRIPTION	AMPS	PHASE	POLE	W/IN LINE ONLY	DESCRIPTION	AMPS	PHASE	W/IN LINE ONLY
1	LIGHTS	25	1	1	20	LIGHTS	2		
2	LIGHTS	50	1	1	20	RECEIVABLES	2		
3	RECEIVABLES	25	1	1	20	FREE EXCISE	6		
4	RECEIVABLES	25	1	1	20	FREE EXCISE	6		
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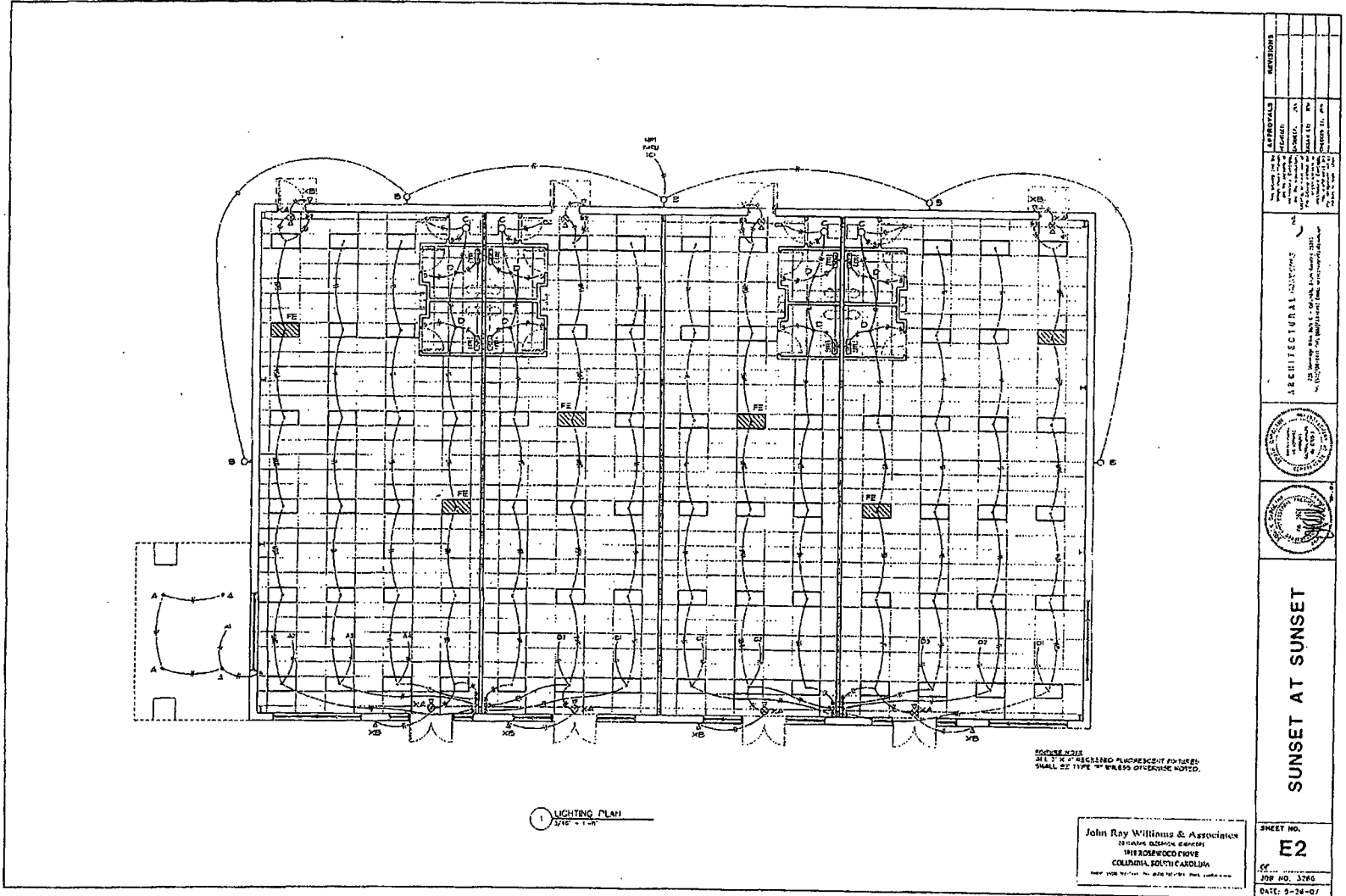
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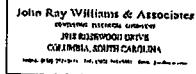
SCHEDULE FOR PANEL "A"									
MODERATOR	SURFACE MODIFIED				GP 2000	NOISES			
OUT 512	ADD APPS				GP 2000				
TYPE	LANDSCAPE				RAFFI PLANE / FIVE HSE	RAFFI			
					WASH PLANE / FIVE HSE	RAFFI			
CH	DESCRIPTION	DATE	FILE	NAME	DESCRIPTION				
1	EXPRESSIVE LANDSCAPE	50	1	1	20	LANDSCAPE			
2	LANDSCAPE	50	1	1	20	LANDSCAPE			
3	LANDSCAPE	50	1	1	20	LANDSCAPE			
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50	RECONSTRUCTED	50	1	1	20	RECONSTRUCTED			

SCHEDULE FOR PANEL "D"									
MOUNTING		SURFACE FINISHES		ASB JOINTS		120" BAR		W/ALUM	
BOL SIZE		TYPE		LOCATION		W/EEC FINISH / POLYURETHANE		W/EEC	
QTY	DESCRIPTION	W/EEC	POLY	POS	W/EEC	W/EEC	DESCRIPTION	W/EEC	QTY
1	LUMPS	20	1	1	20		LUMPS		1
2	LUMPS	20	1	1	20		LUMPS		2
3	REPLACEMENTS	20	1	1	20		REPLACEMENTS		3
4	WATER COOLER	20	1	1	20		REPLACEMENTS		4
5	WATER COOLER	20	1	1	20		REPLACEMENTS		5
6	REPLACEMENTS	20	1	1	20		REPLACEMENTS		6
11	SPACER	20	1	1	20		SPACER		11
12	SPACER	20	1	1	20		SPACER		12
13	SPACER	20	1	1	20		SPACER		13
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179	SPACER	20	1	1	20		SPACER		179
180	SPACER	20	1	1	20		SPACER		180
181	SPACER	20	1						

John Ray Williams & Associates
COMMERCIAL ELEVATOR SPECIALISTS
1014 ROSEWOOD DRIVE
COLUMBIA, SOUTH CAROLINA
PH: (803) 732-1441 FAX: (803) 732-1442

SHEET NO.		E1	
OF		JOB NO. 1228	
DATE: 9-26-07			
SUNSET AT SUNSET		 	
ARCHITECTURAL CONCERN AG 101 Ramsey Ave., Suite 5, Berkeley, CA 94704 Tel: (415) 861-1111 Fax: (415) 861-1100		THE FOLLOWING IS A SUMMARY OF THE PROJECT AND THE DESIGNER'S RESPONSIBILITY FOR THE PROJECT. IT IS THE DESIGNER'S RESPONSIBILITY TO OBTAIN ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.	
APPROVALS Design by: [Signature] Check by: [Signature] Date: 9/26/07 Title: [Blank]		REVISIONS No. Description 1. [Blank] 2. [Blank] 3. [Blank]	





ARCHITECTURAL CONCEPTS



SPECIFICATION MANUAL FOR

New Retail Center Located on Highway 378 @ Sunset Court

LEXINGTON, SOUTH CAROLINA

SEPTEMBER 26, 2007

235 Stoneridge Drive, Suite C • Columbia, SC 29210 • Tel 803-750-8411 • Fax 803-750-8413

COASTALPI_000614

ARCHITECTURAL CONCEPTS



Instructions to Bidders

1. Drawings, Specifications and Other Contract Documents

Enclosed are documents to be used for bidding on the new Sunset @ Sunset retail center. These documents include a bid form, outline specifications and construction documents with civil, architectural, structural, mechanical, plumbing and electrical drawings.

2. Bids

The owner is requesting that five separate bids be included. Please see below:

Bid A – Building shell on sheet A1.1 to include no interior partitions, do include stub in for plumbing and please note an area of concrete at rear of building to be left out for any additional plumbing.

Bid B – Interior upfits for basic vanilla retail spaces as shown on floor plan A.1. This bid does not include the drive thru. The left side of building is to match the right side on this bid.

Bid C – Include drive thru and left side elevation as shown of floor plan A1.

Bid D – Price a typical one hour fire wall

Price a typical two hour fire wall

Bid E – Specifications for Moe's Southwest Grill are included in bid packet, please include a price for an upfit on bid form.

3. Questions

Any questions concerning the bid process can be directed to:

Charlie Baker, AIA
Architectural Concepts, Inc.
(803) 750-8411

235 Stoneridge Drive, Suite C • Columbia, SC 29210 • Tel 803-750-8411 • Fax 803-750-8413

BID FORM
Section 00311

BID FROM:

BID TO:

Saluda Ridge LLC
C/O Ben Kelly
164 Lott Ct.
West Columbia, SC 29169

Project: Retail Center on Highway 378 @ Sunset Court
Lexington, South Carolina

Bid Date: October 19, 2007 12:00 PM
Please have sealed bids delivered to:

Architectural Concepts, Inc.
235 Stoneridge Dr. Suite C
Columbia, SC 29210
(Bids to be privately opened by owner)

Base Bid Agreement:

Bid A \$ _____

Bid B \$ _____

Bid C \$ _____

Bid D \$ _____

Bid E \$ _____

Date of Commencement of Work:

Date for Substantial Completion: _____ calendar
days after date of commencement; subject to adjustment of the Contract Time as
allowed in the Contract Documents.

Listing of Subcontractors:

<u>Trade</u>	<u>Subcontractor</u>	<u>Location</u>
Plumbing		
HVAC		
Electrical		
Civil		
Sprinkler		

Bid Holding Time and Acceptance:

The undersigned agrees that this bid may not be revoked or Withdrawn after the time set for the opening of bids, but shall remain open for acceptance for a period of sixty(60) days following the Bid date.

CONTRACTOR'S CLASSIFICATION AND SUBCLASSIFICATIONS WITH
LIMITATIONS:

(CLASSIFICATION) (SUBCLASSIFICATION) (LIMITATIONS)

(S.C. Bidder's License Number) (S.C. Contractor's License Number)

AUTHORIZATION:

(TYPE OR PRINT NAME OF CONTRACTOR)

(TYPE OR PRINT ADDRESS)

(TYPE OR PRINT CITY AND STATE)

(TYPE OR PRINT NAME (TITLE)

(SIGNATURE) (DATE)

End of Section

New Retail Center at Highway 378 and Sunset Court
Lexington, SC
September 26, 2007

01 - GENERAL CONDITIONS & START UP

A. ARCHITECTURE AND ENGINEERING

Owners Architect, Architectural Concepts, Inc. has prepared drawings for the project.

The Architect shall also provide sealed drawings for Structural, HVAC, plumbing and electrical for the building.

The Owner will provide Site Development civil drawings.

B. RIGHT TO BUILD

The Owner warrants that he has the right to construct the project on the property and said work will not violate any easements, restrictions, zoning or other laws. Adequate municipal services (water, sewer, storm drainage, electricity, etc. to the site) are the responsibility of the Owner.

The Owner will provide required corner irons to the subject property to assist Contractor in laying out building.

C. PERMITS, FEES, TAXES, TAPS BOND & INSURANCE

Permits - The Owner's Architect will apply for construction permits and licenses required for construction of this project. The cost of the building permit is included by the Contractor.

Applying for an occupancy permit will be the Contractor's responsibility.

If permits are required for highway access or other work on highway right of way, such permits and cost therefore will be the Owner's responsibility.

Performance and Payment Bond is not included.

Tap and impact fees as applicable will be paid for by the Owner. Contractor may assist Owner in applying for and expediting of these items as they may affect construction schedule.

New Retail Center at Highway 378 and Sunset Court
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C. PERMITS, FEES, TAXES, TAPS BOND & INSURANCE (cont'd)

Contractor to include all applicable sales taxes on material.

Contractor to provide general liability insurance and carry workmen's compensation.

Owner to carry Builder's Risk coverage and maintain throughout construction.

D. JOB MOBILIZATION, TEMPORARY SERVICES AND SAFETY

Construction Office - A construction office will be installed on the site as soon as site work permits.

Job Sign - It is Contractors intent to erect a "standard" job sign identifying the project, Contractor and Architect.

Temporary Telephone - A project telephone will be provided for use by construction management and the Architect.

Temporary Water - Water for use in the construction process shall be supplied by the Owner.

Temporary Sanitary Services - A portable toilet will be provided by Contractor for use by all construction related personnel.

Safety Precautions and Programs - Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work.

Drug Free Workplace - Contractor and his subcontractors shall make a good faith effort to provide a "drug-free workplace" while constructing the subject project.

"Drug-free" workplace means a site for the performance of work done in connection with a specific contract of an entity at which employees of the entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of alcohol, illegal drugs or any other controlled substance.

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E. PAYMENT

Terms of Payment - To be as called for in Contract.

Contractor will provide a projected billing schedule if requested by Owner.

Guarantees - Contractor is to guarantee all work for a period of one year from the date of substantial completion.

Materials and/or equipment warranted by the manufacturer for an extended period will also carry that guarantee.

Contractor will provide - at end of job - an Owner's Manual including applicable product, maintenance and warranty information.

F. PROJECT COORDINATION

A project manager will be assigned to your job for quality control, subcontract coordination, purchasing, schedule maintenance and communication with the Owner. The project manager will have a construction superintendent on site during all phases of construction. The project manager and superintendent will meet on site regularly.

It is Contractor's intent to schedule with the Owner & Architect periodic on-site meetings.

G. TESTS

Owner to provide all soil and compaction testing and any required environmental testing (and clean-up).

Owner to provide Contractor a copy of soil exploration testing report.

If any public authority having jurisdiction requires any portion of the work to be inspected, tested or approved, the Contractor shall do so as required. The Contractor shall bear all costs of inspections, tests or approvals conducted by public authorities.

If the Owner determines that any work requires special inspection, testing or approval, he will instruct the Contractor to order such special inspection, test or approval in writing. If such special inspection or testing reveals a

New Retail Center at Highway 378 and Sunset Court
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G. TESTS Cont'd

failure of the work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof made necessary by such failure; otherwise the Owner shall bear such costs, and an appropriate Change Order shall be issued.

Required Certificates of Inspection, testing or approval shall be secured by the Contractor.

Contractor to be responsible for quality control testing of ready-mixed concrete provided to job. Copies of strength and slump tests to be provided to Owner as required.

H. SCHEDULING & TIME FOR CONSTRUCTION.

A construction schedule is to be provided to Owner.

Time of commencement and time required for construction to be as called for in Contract.

02 - SITEWORK

A. SITEWORK AND EXCAVATION

Contractor's site subcontractor to provide clearing, layout, erosion control, cut, fill, haul-in fill, stockpiling, backfilling and respreading of topsoil.

Excavation - Excavation for all building foundations /footings to be provided by Contractor. This includes excavation by machine and/or hand.

Backfill Adjacent to Structures - Backfill adjacent to structures shall be placed and compacted uniformly in such manner as to prevent wedging action or eccentric loading upon or against the structures. During backfilling operations, equipment that will overload the structure in passing over and compacting these fills shall not be used.

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A. SITEWORK AND EXCAVATION Cont'd

Rock Removal - It is assumed that all excavation can be accomplished by normal machine methods. Should rock or unsuitable soil be encountered, the cost of its removal will be invoiced as an extra. The Owner to be consulted prior to beginning any extra work.

03 - CONCRETE

A. FORMWORK

General - Forms shall conform to shape, lines, and as detailed on the drawings and shall be braced or tied together to maintain position and shape. Forms shall be sufficiently tight to prevent leakage of mortar, and shall not deflect under weight of wet concrete or of construction loads.

Forms - Forms shall be of wood or metal so designed, constructed, braced, oiled and maintained that the finish concrete will be true to line and elevation, reasonably smooth, and will conform to the required dimensions or contours.

B. REINFORCING

Reinforcing Steel - Steel reinforcement shall be accurately placed and properly secured in position. Bars shall be bent cold. Bar size and placement shall be as shown on structural drawings. Bars shall be lapped a minimum of 24 times diameter and fastened with two ties.

Slab reinforcement shall be 6/6x10/10 wire mesh placed in the concrete as detailed on the drawings.

If not specifically indicated on the drawings, the details of reinforcing steel, including bending and splicing shall conform to building code requirements for reinforced concrete.

Concrete protection over steel reinforcement shall be not less than 3" between steel and ground in footings and 1 1/2" for exposed concrete above ground.

C. CONCRETE

Slabs on grade, Footings, and Elevated Slab - All poured in place concrete will be 3000 psi concrete, at 28 days, in dimensions as detailed on the drawings. Concrete shall be

✓

New Retail Center at Highway 378 and Sunset Court
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C. CONCRETE Cont'd

placed in forms so as not to displace them out of alignment. During placing, concrete shall be properly spaded or vibrated throughout the entire mass, so as not to have voids or honeycombs.

Concrete slab on grade thickness is to be 4".

Elevated slab to be 3".

D. FINISHES

Unless otherwise called for, concrete finishes to be as follows:

Floor slabs - machine trowelled
Exposed vertical surfaces - rubbed

E. CURING

One coat of Sonneborn Cure & Seal, liquid membrane curing compound to be applied at the manufacturer's recommended rate by means of power spray, hair broom or paint roller. Apply after slab is finished, still damp but cannot be marred by workmen's shoes.

JOINTS

Expansion Joints - 1/2" fiber expansion joint will be installed at edges of slabs between concrete piers, masonry walls and/or other concrete slabs as called for on drawings.

Sawed control joints to be located as shown on the drawings. Depth of sawed joints to be equal to 1/4 thickness of slabs.

G. ANCHOR BOLTS

All anchor bolts shall be diameter and length indicated on drawings and installed at correct elevations using template for correct alignment.

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04 - MASONRY

A. MASONS

Laying - All masonry shall be laid with horizontal joints level, and vertical joints on faces of the wall plumb and true. All anchors, ties, stays, etc., shall be as required and are to be installed as the wall progresses.

B. MORTAR

All materials shall be measured by volume unless otherwise indicated. No mortar that has stood more than one (1) hour shall be used. Mortar shall be composed of one part Type II Masonry Cement and not more than three parts sand by volume, mixed in accordance with manufacturer's directions. Masonry Cement shall meet Standard ASTM specifications C-91-49 for Type II masonry cement.

Type S mortar to be used below grade, Type N above grade.

Mortar color to match existing building.

C. JOINTS

Joints - Provide tooled joints with maximum thickness of 1/2". Lay solid masonry with full bed and head joints. Lay hollow masonry with mortar applied to bed and head joints of race shells, except first course to be laid in full mortar bed.

Expansion Joints - Joints shall be placed as required per masonry design and indicated on drawings.

D. MASONRY UNITS

CONCRETE BLOCK

Concrete block where called for on plans shall conform to ASTM C-90-52 specifications. They shall be of first quality, uniform in size and texture.

Masonry units shall be 8" and 12" thick as shown, standard weight aggregate or lightweight (Contractor's option).

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E. FACE BRICK

Brick Allowance - \$350.00 per thousand including delivery

Common brick may be used below grade and other areas which are not exposed to view.

F. RUBBING

All masonry work shall be kept clean and free of mortar as possible during progress of work. Scrape surfaces of exposed concrete masonry with a piece of flat concrete block to remove all excess mortar and dirty spots.

G. CLEANING

All excess mortar to be removed during placement of masonry units routinely to facilitate final cleaning. Masonry cleaning materials shall be "Sure Klean" Vana-Trol as manufactured by the Process Solvent Company or suitable equal.

Upon completion of work of this section, remove from job site mortar droppings, broken units, associated debris, and all tools and equipment of this work, leaving area in neat and orderly condition.

05 - METALS (STRUCTURAL STEEL)

A. SCOPE

Furnish, fabricate, ship and erect all structural and miscellaneous structural steel indicated on drawings including columns, beams, joists, deck, angle, anchor bolts, etc.

Also provide masonry lintels and reinforcing as called for on drawings.

06 - WOOD, PLASTICS

STUD WALLS AND GYPSUM WALLBOARD

A. FRAMING

All studs and/or Joist shall be of type, size, gauge, and spacing specified on plans. All stud walls are to be properly braced so as to provide a substantial installation.

All structural members shall be designed in accordance with

9

New Retail Center at Highway 378 and Sunset Court
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A. Framing (Continued)

American Iron and Steel Institute, "Specification for the Design of Cold Formed Structural Members" 1986 Edition.

Track shall be securely anchored to the supporting structure as shown on the plans.

Studs shall be plumbed, aligned and securely attached to flanges of both upper and lower tracks.

Framed wall openings shall include headers and supporting studs.

Wood blocking for toilet accessories, cabinets, etc. shall be installed as required.

07 - THERMAL AND MOISTURE PROTECTION

A. VAPOR BARRIER

Provide 6 mil polyethylene vapor barrier to be installed beneath all floor slabs on Grade. All joints to lap a minimum of 6"

B. INSULATION
See Drawings

C. CAULKING

Caulking is to be provided at all exterior door and window frames.

Additional caulking as required by good construction practice is to be provided as required and/or called for on construction drawings.

08 - DOORS AND WINDOWS

A. HOLLOW METAL DOORS AND FRAMES

Hollow Metal Frames - Hollow metal frames shall be 16 gage, knock-down type. Frames shall be mortised and reinforced for strikes and hinges. Provide

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adjustable jamb anchors, standard with manufacturer for type wall construction in which frame is to be installed.

Reinforce doors for hardware.

Hollow metal doors shall be protected from corrosion on both surfaces by Bonderizing and a full coat of zinc chromate rust inhibitive primer. Doors will be plain or glazed as indicated on drawings.

B. WOOD DOORS

Solid Core Wood Doors – All interior doors unless otherwise scheduled to be 7 ply birch pre-machined doors. Core shall be mat-formed particle board at 1 3/4" thick. Cross banding 1/16" thick extending full width and height of door. Face veneers of 1/24" thick minimum good grade rotary cut, natural birch, edges of hardwood. Pressure bond core lumber, cross banding face veneers, top, bottom and side edges together with 100% waterproof glue.

Allowance to be \$750.00 per leaf excluding storefront

C. FINISH HARDWARE

Door hardware to be Heavy Duty, Grad 2, Schlage AL, or equal

All hardware shall be installed in accordance with manufacturer's instructions and templates. Upon completion, hardware shall operate freely with proper tolerances to prevent binding and /or malfunctioning.

Keying to be as directed by owner

D. STOREFRONT, GLASS AND GLAZING

Systems to be aluminum tubing, bronze anodized finish, flush glazed with 1" tinted insulating glass. Glass is to be tempered as required by code.

Storefront doors to be aluminum, bronze finish, narrow style design, single acting with standard push/pull hardware. All exterior doors to receive threshold, weather-stripping and cylindrical lockset.

09 – FINISHES

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A. GYPSUM WALLBOARD

Gypsum wallboard to be 5/8" standard or rated as shown on drawings

Gypsum wallboard to be fastened with screws; exposed drywall surfaces to be finished joints, corners and exposed edges reinforced or trimmed. All joints, fastener heads, trim accessory flanges and surface defects shall be filled with joint compound in accordance with manufacturers recommendations for a smooth flush surface.

B. ACOUSTICAL CEILING

Suspended acoustical ceiling grid components shall be formed from commercial quality rolled steel and pre-painted. The ceiling pattern shall be 2'x4' and will be hung from galvanized, soft annealed steel wire. Lay-in panels shall be listed and labeled by Underwrites Laboratories, Inc. under Hazard Classification for flame spread of 25. Panels to be manufacturer's standard non-combustible Mineral Fiber Acoustical Panels for lay-in grid system not less than 5/8" thick; non-directional fissured design and medium coarse texture, laying flush in grid.

C. PAINTING

All paint shall be delivered to site in manufacturers sealed containers. Acceptable manufacturers will be the Glidden Company, Sherwin Williams Company, Duron Paint Company, Pittsburg Paints and Benjamin Moore. Prior to application, surfaces shall be clean, dry, smooth and free of any material which will adversely affect adhesion or appearance of applied coating.

Coverage and application for each type material to be painted or stained shall follow manufacturer's written instructions. Upon completion all spilled or splattered paint is to be removed without damage to the surface finish of area being cleaned. Painter is to repair all minor surface imperfections and fill all minor cracks, nail holes, etc., prior to application of finish.

All painted walls to be latex flat unless otherwise specified. Walls to receive a prime coat with two finish coats

D. FLOOR COVERING

New Retail Center at Highway 378 and Sunset Court
Lexington, SC
September 26, 2007

Vinyl Composition Tile – will be 12"x12"x1/8" thick in commercial thru-chip patterns. Color and pattern to be selected by Owner/Architect from samples submitted.

10 – SPECIALTIES

Toilet Accessories – Tissue holders, towel cabinets, mirrors, soap dispensers and grab bars (as required for handicapped rest rooms) as indicated on drawings. Manufacturer to be McKinney or equal. Towel disposal to be waste cans by owner.

11 – EQUIPMENT (not used)

12 – FURNISHINGS (not used)

13 – PRE-ENGINEERED CONSTRUCTION

Pre-engineered metal building to meet all local and national codes
Contractor to provide stamped and sealed erection drawings
Standing seam metal roof with 3" insulation

14 – CONVEYING SYSTEMS (not used)

15 – MECHANICAL

A. PLUMBING

The work included under this section consists of furnishing all materials, equipment, labor and the performing of all functions for the installation and placing into operation of a plumbing and piping system within and outside the building as shown on plumbing drawings for base bid.

The work shall comply with all State, Municipal and Federal safety laws, construction codes, ordinances and regulations relating to building and public health safety.

B. HVAC

The work included under this section consists of furnishing all materials, equipment, labor and performing of all functions for the installation and placing into operation an HVAC system.

New Retail Center at Highway 378 and Sunset Court
Lexington, SC
September 26, 2007

Split system heat pumps with automatic controls to be as shown on drawings.

The work shall comply with all State, Municipal and Federal safety laws, construction codes, ordinances and regulations relating to building and public health safety.

16 - ELECTRICAL

The work included under this section consists of furnishing all materials, equipment, labor and performing of all functions for the installation and placing into operation an electrical system as shown on drawings.

The work shall comply with all State, Municipal and Federal safety laws, construction codes, ordinances and regulations relating to building and public health safety

SYSTEMS CHECK AND CLEAN-UP

At the completion of the work, all systems will be tested for proper operation. During the work, various segments will be tested for proper workmanship as required by codes and good practice.

At the completion of the work, the premises will be swept broom clean on concrete floors and tile floors will be swept and damp mopped. Window glass and mirrors will have labels removed and be thoroughly cleaned. Plumbing fixtures will have labels removed and be cleaned.

EXHIBIT D

TENANT'S CONSTRUCTION DOCUMENTS

In addition to the floor plan schematic, wall finish plan, finished floor covering plan, and reflected ceiling plan attached hereto:

The Tenant agrees to provide a final set of construction plans and specifications to Landlord for his review and approval, which approval not to be unreasonably withheld.

Tenant also agrees to provide Landlord with a complete schedule of its final interior finishes for its review and approval, which review and approval not to unreasonably withheld.

It is mutually understood and agreed, that Tenant shall be responsible for the any expenses, including water and sewer tap fees, associated with its connection to public water and sewer facilities for the demised premises, it being understood that Landlord has provided connections to same on the exterior of the building.

The tenant will also be responsible for any expenses associated with its connection to private electrical and natural gas service to the demised premises, it being understood that Landlord has provided connections to same on the exterior of the building.

In the event the South Carolina Department of Health and Environmental Control requires an increase in capacity above and beyond the one that the Landlord has installed on the exterior of the building, Tenant shall be responsible for any expense associated with the installation of any interior grease trap to reach such capacity.

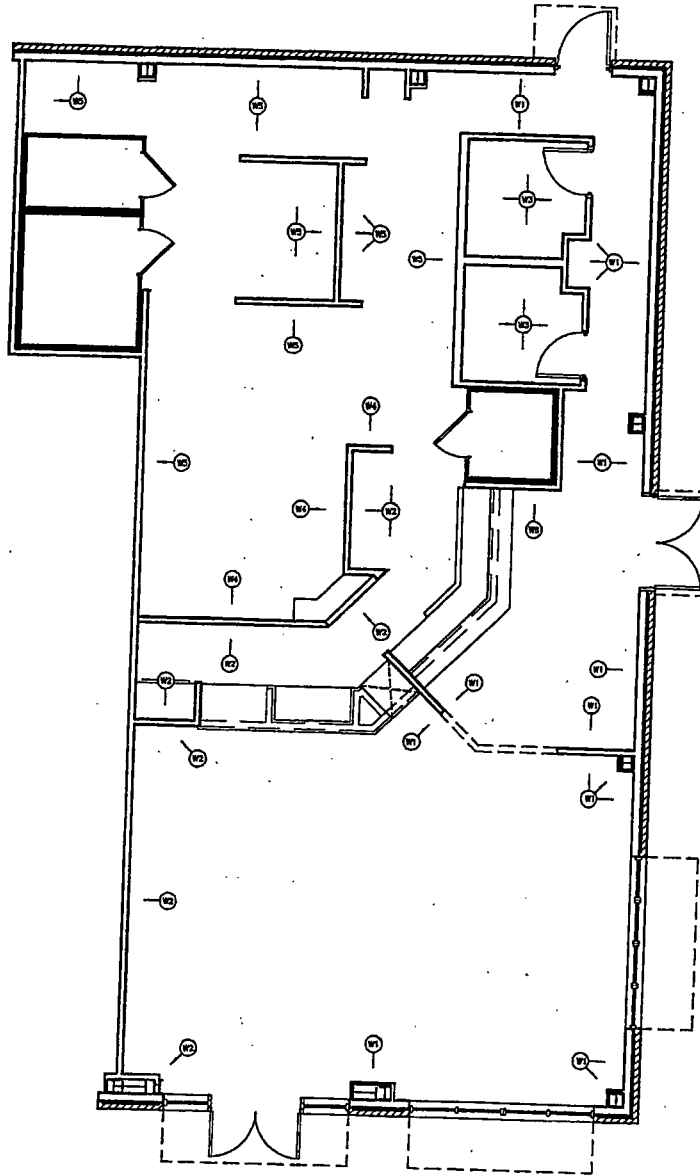
Tenant shall be responsible any cost and expenses for plumbing, electrical, heating, cooling, and ventilation (both systems and distribution) in the demised premises that are required in connection with its building plans and specifications for its intended use as a full service restaurant. Tenant agrees that its General Contractor will agree to use the same roofing sub-contractor that the Landlord used in the construction of the building for any roof penetrations required in the installation of its heating, cooling, and ventilation equipment.

The tenant shall be responsible for the cost and expense of installation of both the exterior signage on the building as well as the monument sign (second location from the top). Tenant acknowledges that it must provide Landlord for its review and approval plans that illustrate the design, color and location of the signage on the building as well as its

EXHIBIT D
PAGE 2

intended fascias for the monument sign.

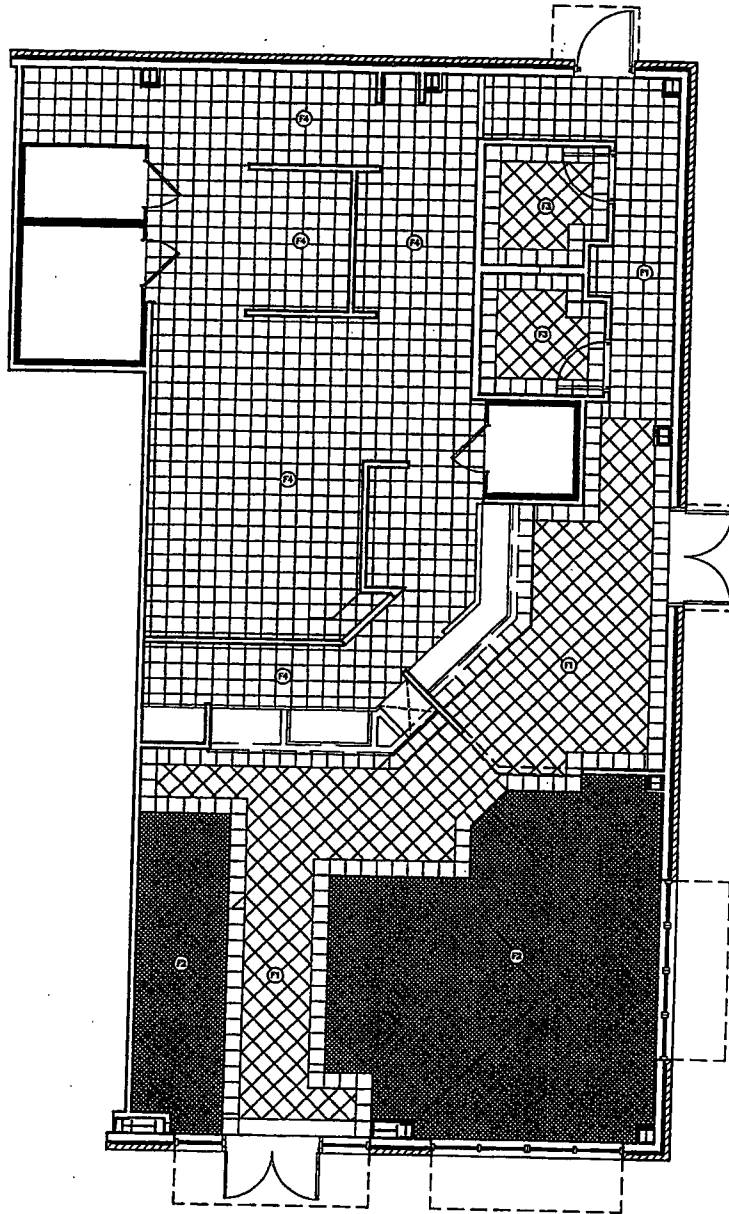
Tenant will provide Landlord copies of its Building Permit, Certificate of Occupancy, and final lien waiver from its General Contractor.



1 WALL FINISH PLAN
3/16" = 1'-0"

WALL FINISH / PAINT SCHEDULE				
NO.	WALL SURFACE	PAINT TYPE / COLOR	TRIM	UPPER WALL TRIM / COLOR
01	GYPSUM BOARD	GYPSUM-BENJAMIN MOORE TANGIERNE YELLOW	N/A	N/A
02	GYPSUM BOARD	GYPSUM-BENJAMIN MOORE MEDIUM TO DARK BLUE	N/A	N/A
03	TILE	N/A	BRASAZZA	PORCELAIN TILE TRAVERTINE COLOR
04	GYPSUM BOARD w/ 22 GAUGE S.S. SHEETS	GYPSUM-BENJAMIN MOORE MEDIUM TO DARK BLUE	N/A	N/A
05	GYPSUM BOARD w/ 22 GAUGE S.S. SHEETS	GYPSUM-BENJAMIN MOORE TANGIERNE YELLOW	N/A	N/A

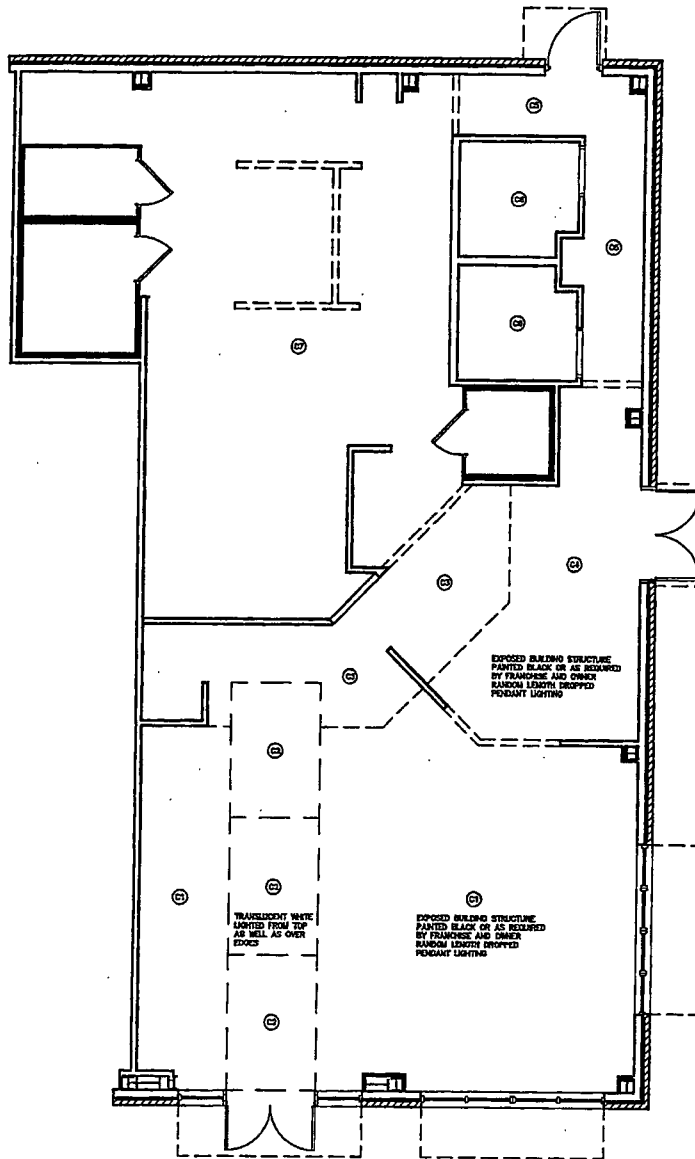
✓



1 FINISHED FLOOR COVERING PLAN
3/16" = 1'-0"

FLOOR SCHEDULE				
NO.	ROOM	FLOOR TYPE	COLOR	BASE MOLDING/TYPE
①	ENTRY, BAR AND HALLWAY	CROSVILLE PORCELAIN TILE	BLACK HIGH GLOSS	WOOD BASE
②	DINING AREA	CARPET	TAN W/BLUE	WOOD BASE
③	REST ROOM	CROSVILLE PORCELAIN TILE	BLACK MATT	TILE BASE, WALLS TO CHAIR RAIL
④	KITCHEN	CROSVILLE PORCELAIN TILE	GREY MATT	MATCHING TILE BASE

COASTALPI_000635



1 REFLECTED CEILING PLAN
3/16" = 1'-0"

CEILING SCHEDULE				
NO.	ROOM	CEILING TYPE	PAINT	CEILING HEIGHT
①	DINING AREA	OPEN TO ROOF STRUCTURE PAINTED w/ SPRAYED INSULATION	BLACK	OPEN
②	ENTRY PATH FROM FRONT DOOR TO COUNTERTOP	ACCOUSTIC SUSPENSION SYSTEM (WAIVE) THREE DIFFUSING ACCENT CANDLES TRANSLUCENT WHITE	N/A	13'-0"
③	SERVICE BAR	OPEN TO ROOF STRUCTURE PAINTED w/ SPRAYED INSULATION	BLACK	OPEN
④	BAR SEATING	OPEN TO ROOF STRUCTURE PAINTED w/ SPRAYED INSULATION	BLACK	OPEN
⑤	HALLWAY	2'-0" x 2'-0" LAY-IN TILES CLASS "A" WASHABLE w/ R-18 SOFT INSULATION ABOVE	N/A	9'-0"
⑥	REST ROOM	2'-0" x 2'-0" LAY-IN TILES CLASS "A" WASHABLE w/ R-18 SOFT INSULATION ABOVE	N/A	9'-0"
⑦	KITCHEN	2'-0" x 2'-0" LAY-IN TILES CLASS "A" WASHABLE w/ R-18 SOFT INSULATION ABOVE	N/A	9'-0"

COASTALPI_000636

1 STATE OF SOUTH CAROLINA) IN COMMON PEALS
2 COUNTY OF RICHLAND) COURT
3)
4 COASTAL PI, LLC D/B/A PRIMARILY,)
5 PI AND JAMES BIGBY) TRANSCRIPT
6 -V-) OF
7) RECORD
8 C.G.I. DEVELOPMENT, INC,) 2011-CP-40-04111
9 DANVILLE BUSINESS ADVISORS,)
10 LLC: MARION D. TURBEVILLE; AND)
11 FRS, INC.,)
12 DEFENDANTS.)

13 MAY 27 - 29, 2014

14 RICHLAND, SOUTH CAROLINA

15

16 B-E-F-O-R-E:

17 HONORABLE ALISON RENEE LEE, JUDGE;

18

19 A-P-P-E-A-R-A-N-C-E-S:

20 FOR THE PLAINTIFF:

21 BEN BURNER, ESQ.

22 MAT STABLER, ESQ.

23 FOR THE DEFENDANT:

24 THOMAS DOUGALL, ESQ.

25 ROBERT PEELE, ESQ.

1 THE COURT: You may ask the jury to come in,
2 please.

3 BAILIFF: Yes, Your Honor.

4 (Whereupon, the jury returned to the
5 courtroom at 2:08 p.m.)

6 BAILIFF: Your Honor, the jury's present.

7 THE COURT: Thank you.

8 Ms. Jamison, you've been selected as foreperson,
9 is that correct?

10 PROSPECTIVE JUROR: Yes, ma'am.

11 THE COURT: Thank you very much for serving in
12 that capacity.

13 PROSPECTIVE JUROR: You're welcome.

14 THE COURT: At this time, we're now ready to
15 proceed with the evidence to be presented in this matter.

16 You may call your first witness, Mr. Bruner.

17 MR. STABLER: Your Honor, the Plaintiffs call
18 Marion Turbeville.

19 THE COURT: Step forward, please, to be sworn.

20 THEREUPON,

21 MARION TURBEVILLE,

22 after having been duly sworn, testified as follows:

23 THE CLERK: Have a seat in the witness box, state
24 your name for the record and spell it, please.

25 THE WITNESS: My name is Marion Turbeville.

MARION TURBEVILLE DIRECT BY MR. STABLER

1 THE COURT: Yes, sir.

2 MR. STABLER: Thank you, Your Honor.

3 DIRECT EXAMINATION.

4 BY MR. STABLER::

5 Q. Good afternoon, Mr. Turbeville. Mr. Turbeville, you're
6 a member/owner of Danville Business Advisors, correct?

7 A. Yes, I am.

8 Q. And there's one other owner and that's Bill Danielson,
9 is that correct?

10 A. Yes.

11 Q. And you each own 50 percent?

12 A. Yes.

13 Q. Okay. And I believe you described Danville Business
14 Advisors as a boutique commercial real estate finance
15 company, is that correct?

16 A. That's the way I describe it.

17 Q. Okay. Mr. Turbeville, you've worked with Mr. Bigby on
18 projects other than the one we're here about today,
19 haven't you?

20 A. Yes.

21 Q. Okay. You worked with him on the expansion of his
22 restaurant Za's Pizza on Devine, is that correct?

23 A. Yes.

24 Q. And you also worked with him on opening up the Za's
25 location out on Bower Parkway, correct?

MARION TURBEVILLE DIRECT BY MR. STABLER

- 1 A. Yes.
- 2 Q. And you also assisted in the licensing the Za's concept
3 to bring --
- 4 A. Yes.
- 5 Q. Okay. Mr. Turbeville, on the project that we're here
6 about today, this is another pizza restaurant Mr. Bigby
7 was going to open, wasn't it?
- 8 A. Yes, sir, it was another pizza restaurant.
- 9 Q. And it was going to be called Primarily Pi, is that
10 right?
- 11 A. Yes.
- 12 Q. Okay. And it was going to be located on Highway 378
13 right across from Lexington Hospital, do you remember
14 that?
- 15 A. Yes.
- 16 Q. Okay. Now, as far as the services that Danville offers
17 to clients, on the real estate side, would you assist
18 clients in selling property?
- 19 A. I'm sorry, would you repeat the question.
- 20 Q. Sure. As far as what Danville does for clients,
21 services they provide, you will assist the client in a
22 real estate matter in selling a of property?
- 23 A. Occasionally.
- 24 Q. You will assist the client in buying a piece of
25 property?

MARION TURBEVILLE DIRECT BY MR. STABLER

- 1 A. Yes.
- 2 Q. You will assist a client's lease negotiation, is that
3 correct?
- 4 A. Yes.
- 5 Q. You also help your clients obtain financing from banks
6 from time to time, is that correct?
- 7 A. Yes.
- 8 Q. Okay. Now, as far construction, Danville will your
9 client pull together a development team, the
10 architects, engineers, contractors, is that correct?
- 11 A. Yes.
- 12 Q. All right. And you're not a licensed contractor, are
13 you?
- 14 A. No.
- 15 Q. You're not a licensed construction manager, are you?
- 16 A. No.
- 17 Q. Okay. But you'll assist clients in every step of the
18 process, right, the predevelopment, you'll get
19 financing together, you'll help them put the
20 development team together, is that correct?
- 21 A. Yes.
- 22 Q. And you'll also help with project coordination, is that
23 correct?
- 24 A. Yes.
- 25 Q. Okay. And when you do that for a client, they,

MARION TURBEVILLE DIRECT BY MR. STABLER

1 typically, compensate you on a monthly basis, is that
2 correct?

3 A. Yes.

4 Q. Okay. Now, on this project, Mr. Bigby had you involved
5 in every step of the way, didn't he?

6 A. Yes.

7 Q. You assisted in lease negotiation, is that correct?

8 A. Yes.

9 Q. And you also helped him pull together a development
10 team?

11 A. Yes.

12 Q. And you also helped with the construction process?

13 A. Yes.

14 Q. He agreed to pay you a monthly fee, didn't he?

15 A. Yes.

16 Q. That was 1500-dollars a month?

17 A. Yes.

18 Q. He paid you every month, didn't he?

19 A. Yes.

20 Q. All total, do you remember how much Mr. Bigby paid you?

21 A. No, it -- it was -- it's in the -- we put it in some of
22 our information that you got. I don't recall the exact
23 figure.

24 Q. Okay. Well, let's look at those then.

25 (Plaintiff's Exhibit No. 1 was marked

MARION TURBEVILLE DIRECT BY MR. STABLER

1 for identification.)

2 BY MR. STABLER::

3 Q. Mr. Danville [sic], I'm going to hand you a document.

4 Does that appear to be your response to Defendant

5 Danville Business Advisors, LLC, and Marion Turbeville

6 to Coastal PI first set of interrogatories? Is that

7 what this document is captioned?

8 A. I'm sorry, would you repeat that question?

9 Q. Right here, does it say Defendant Danville Business

10 Advisors, LLC, and Marion Turbeville's answer to

11 Coastal PI's first set of interrogatories?

12 A. Yes.

13 Q. And these are questions that your lawyer gave to you

14 that we sent to him, do you remember that?

15 A. Yes.

16 Q. Did you provide any information that went into these?

17 A. Yes.

18 Q. Okay. If you would, if you would flip to page eight in

19 those. I'm looking at number 14 and the interrogatory

20 reads, State how much money you were paid by the

21 Plaintiffs on this project? Response, 24,000-dollars.

22 Did I read that right?

23 A. Yes.

24 Q. Okay. Now, you also got some money from people other

25 than Mr. Bigby on this project, didn't you?

MARION TURBEVILLE DIRECT BY MR. STABLER

- 1 A. Yes.
- 2 Q. You received a leasing commission of 23,000-dollars --
- 3 \$23,067.58 from Mr. Bigby's landlord, didn't you?
- 4 A. Yes.
- 5 Q. And you never told Mr. Bigby that you would be getting
- 6 a leasing commission, did you?
- 7 A. I didn't tell him, but he should have known as a
- 8 licensed real estate broker.
- 9 Q. You didn't tell him, did you?
- 10 A. I thought it was clear to him we were getting
- 11 commission. That was --
- 12 Q. Mr. Turbeville --
- 13 A. That was for services I rendered.
- 14 Q. Did you tell Mr. Bigby you would be getting a leasing
- 15 commission?
- 16 A. Not directly.
- 17 Q. Thank you. Contractor on this project was C.G.I.
- 18 Development, is that correct?
- 19 A. Yes.
- 20 Q. And David Grey is the owner of C.G.I., is that correct?
- 21 A. Yes, sir.
- 22 Q. And you received a kickback from C.G.I. totaling --
- 23 MR. DOUGALL: Objection Your Honor.
- 24 THE COURT: Rephrase the question.
- 25 BY MR. STABLER::

MARION TURBEVILLE DIRECT BY MR. STABLER

1 Q. You received a finder's fee from C.G.I. Development for
2 16,500-dollars, correct?

3 A. It was 16,000 something, but I don't know if it was
4 500.

5 Q. Flip over to page nine in that document that you've got
6 in front of you. And, actually, it starts at the
7 bottom of page eight, I'll read it, State all amounts
8 you received from any third party relating to this
9 project, including but not limited to payment for
10 consulting work, commissions or referral fees. For
11 each amount, state the party paying you the amount and
12 the date it was paid and why it was paid. And
13 response, second one, C.G.I. Development, Inc., sales
14 commission, 5,000-dollars on January 15th, 2009,
15 2,500-dollars on March 5th, 2009, 2,500-dollars on
16 April 16th, 2009, 6,500-dollars on May 1 of 2009, is
17 that correct?

18 A. Yes.

19 Q. And that's what you received from C.G.I.?

20 A. Yes.

21 Q. And you didn't tell Mr. Bigby about that, did you?

22 A. No.

23 Q. So, Mr. Turbeville, do you know what a kickback is?

24 MR. DOUGALL: Objection, Your Honor. There's no
25 evidence there's been any kickback. The evidence is he

MARION TURBEVILLE DIRECT BY MR. STABLER

1 charged him with a finder's fee. Counsel's trying to put
2 words in his mouth.

3 MR. STABLER: Your Honor, I can read the
4 dictionary definition of kickback and find out which parts
5 of this is objectionable that I'm trying to characterize
6 these as.

7 THE COURT: You may rephrase the question.

8 BY MR. STABLER::

9 Q. Mr. Bigby didn't know about your sales commission, did
10 you?

11 A. With C.G.I.?

12 Q. With C.G.I.

13 A. No, he didn't know about the finder's fee.

14 Q. And you were paid a percentage of what C.G.I. was paid,
15 is that correct?

16 A. Yes.

17 Q. Okay. Now, these -- sale commission that you get --

18 MR. DOUGALL: Objection, Your Honor, again,
19 Counsel's trying to put his own words into the mouth of the
20 witness.

21 MR. STABLER: I'll rephrase.

22 THE COURT: Rephrase the question.

23 BY MR. STABLER:

24 Q. These sales commissions that are not disclosed to
25 owners, is this something you do on a lot of projects?

MARION TURBEVILLE DIRECT BY MR. STABLER

1 A. Not 100 percent of the time.

2 Q. But you do it?

3 A. Fairly frequently, yes.

4 THE COURT: Mr. Turbeville, would you push that
5 microphone away from you just a little bit?

6 (The witness complies.)

7 THE COURT: You need to speak up, but you don't
8 have to speak right on top of the microphone.

9 THE WITNESS: Okay.

10 BY MR. STABLER:

11 Q. You said fairly frequently, yes, is that what you said?

12 A. Yes.

13 Q. And it's your practice not to disclose your sales
14 commission to your clients, isn't it?

15 A. Not in all cases, in most, yes.

16 Q. In most cases, you do disclose or you don't disclose?

17 A. Do not.

18 Q. In most cases, you do not disclose?

19 A. No.

20 Q. In fact, you only disclose it if your clients ask you
21 about it, don't you?

22 A. Yes.

23 Q. Do many people ask if you're getting commissions they
24 don't know about?

25 A. No.

MARION TURBEVILLE DIRECT BY MR. STABLER

1 Q. Mr. Turbeville, you've gotten commissions from
2 contractors when you're working for a client on at
3 least 10 projects, haven't you?

4 A. I would have to look at the list, but that's probably
5 --

6 Q. Okay.

7 A. -- fairly accurate.

8 (Plaintiff's Exhibit No. 2 was marked
9 for identification.)

10 BY MR. STABLER::

11 Q. Mr. Turbeville, I'm going to hand you a document
12 entitled Defendant Danville Business Advisors, LLC, and
13 Marion Turbeville supplemental responses to Coastal PI
14 second set of interrogatories. Do you recall reading
15 questions from my law firm given to your lawyer that
16 you eventually got?

17 A. Yes.

18 Q. Did you provide any information to fill in these
19 answers?

20 A. Yes, I provided the information.

21 Q. All right. If you would for me, please flip to page
22 four. Number 19, question, List all finder's fees and
23 sales commissions that you have received or anticipate
24 receiving from contractors from 2006 to present,
25 include in your response the date, amount, project

MARION TURBEVILLE DIRECT BY MR. STABLER

1 name, project owner and contractor's name. Did I state
2 that correctly?

3 A. Yes.

4 Q. And then this information that's provided in the
5 response that's four or five pages long, is this a
6 complete answer to that question?

7 A. Yes.

8 Q. So it is true that you received a 10,000-dollar sales
9 commission from a project where you represented South
10 Carolina Autism Society?

11 A. Yes.

12 Q. And it's true you received a 10,000-dollar sales
13 commission from the contractor on a project where you
14 represented -- Faith Church?

15 A. Yes.

16 Q. Were any of these commissions you got from contractors
17 that are listed here, were any of these disclosed to
18 your clients?

19 A. Most of these clients were my partners.

20 Q. Did Danville Business Advisors disclose to any of these
21 clients that they were getting a commission from the
22 contractor?

23 A. I don't know if Bill did or not.

24 Q. On this project, Mr. Bigby first contacted you when he
25 saw a development sign, is that correct?

MARION TURBEVILLE DIRECT BY MR. STABLER

1 A. He did see a development sign.

2 Q. And he called you and ask you to contact the landlord
3 on his behalf, is that correct?

4 A. Yes.

5 Q. And then when you contacted the landlord, you got a
6 development package, basically, a brochure, you
7 remember that?

8 A. Yes.

9 Q. Okay. And the landlord was Saluda Ridge, LLC, is that
10 correct?

11 A. Yes.

12 Q. And you also assisted Mr. Bigby in getting a loan from
13 a bank, is that correct?

14 A. Yes.

15 Q. Do you recall what bank that was?

16 A. First Reliance.

17 Q. And you assisted Mr. Bigby in putting together the
18 package to send to First Reliance, correct?

19 A. Yes.

20 Q. And in doing so, do you recall preparing any sort of
21 budgets or estimates to obtain financing?

22 A. We -- we prepared a budget, yes.

23 Q. Okay.

24 (Plaintiff's Exhibit No. 3 was marked
25 for identification.)

MARION TURBEVILLE DIRECT BY MR. STABLER

1 BY MR. STABLER::

2 Q. Mr. Turbeville, I'm going to hand you a document and
3 this is a chain of e-mails and attachment that was with
4 it. Now, I'm more concerned about the second page of
5 what's been marked as Plaintiff's 3. Would you flip
6 over to the second page? This document states that it
7 was prepared by Marion Turbeville. Do you recall
8 preparing this document?

9 A. Yes.

10 Q. And this was a document that you prepared to submit to
11 First Reliance?

12 A. Yes.

13 Q. Okay. And this goes through and it list out how much
14 Mr. Bigby expects to spend on this project, is that
15 correct?

16 A. Yes.

17 Q. What did you come up with as the final number he would
18 be expected to invest?

19 A. \$473,086.75, I believe.

20 Q. 473,000 and little bit of change?

21 A. Yes.

22 Q. And you prepared this on November 19th, 2008, is that
23 correct?

24 A. Yes.

25 Q. And did Mr. Bigby get a loan from First Reliance?

MARION TURBEVILLE DIRECT BY MR. STABLER

- 1 A. Yes.
- 2 Q. That loan was for a little over 300,000-dollars, wasn't
3 it?
- 4 A. Yes.
- 5 Q. Now, you helped Mr. Bigby with his lease negotiations,
6 you helped him with his financing. You also helped him
7 get his contractor and his architect, didn't you?
- 8 A. I'm sorry, would you repeat that?
- 9 Q. Sure. You helped Mr. Bigby with his lease
10 negotiations, correct?
- 11 A. Yes.
- 12 Q. You helped him get his financing in place, correct?
- 13 A. Yes.
- 14 Q. Then you helped him select his architect and his
15 contractor, didn't you?
- 16 A. Yes.
- 17 Q. And Danville is the one that recommended C.G.I., the
18 contractor, to Mr. Bigby, aren't they?
- 19 A. Yes.
- 20 Q. And Danville told C.G.I., the contractor, that the
21 contractor would have to pay a fee to Danville, didn't
22 they?
- 23 A. Yes.
- 24 Q. And you told him to include it in his bid, didn't you?
- 25 A. My partner did, yes.

MARION TURBEVILLE DIRECT BY MR. STABLER

1 MR. STABLER: Your Honor, before I get too far
2 ahead of myself, I would move Plaintiff's 1 through 3 into
3 evidence at this time.

4 MR. DOUGALL: Objection, Your Honor.

5 THE COURT: I'm sorry?

6 MR. DOUGALL: May we approach?

7 THE COURT: Yes, sir.

8 (Whereupon, a bench conference was held
9 off the record, in the presence of the
10 jury, but out of the hearing of the
11 jury.)

12 THE COURT: Subject to the objection, they'll be
13 admitted.

14 MR. DOUGALL: Three's okay, Your Honor, just 1 and
15 2.

16 THE COURT: So 2 will be admitted and then subject
17 to the objection, 1 and 2.

18 (Plaintiff's Exhibit Nos. 1 through 3
19 were admitted into evidence.)

20 (Plaintiff's Exhibit No. 4 was marked
21 for identification.)

22 BY MR. STABLER::

23 Q. Mr. Turbeville, have you seen this document before?

24 A. Yes, sir, I have.

25 Q. This is Mr. Bigby's contract with C.G.I., isn't it?

MARION TURBEVILLE DIRECT BY MR. STABLER

- 1 A. Yes.
- 2 Q. Mr. Turbeville, if you will flip to page three of that
3 document. Danville Business Advisors is, actually,
4 listed as a party to this contract, is that correct?
- 5 A. Yes.
- 6 Q. Is that Mr. Danielson's signature in this contract?
- 7 A. Yes.
- 8 Q. And he signed for Danville Business Advisors as
9 development manager and disbursement agent, is that
10 correct?
- 11 A. Yes.
- 12 Q. And the total for this contract is 302,566-dollars, is
13 that correct?
- 14 A. Yes.
- 15 Q. Before Mr. Bigby began construction, this space was
16 incomplete, is that a fair statement?
- 17 A. I'm sorry, would you repeat that?
- 18 Q. Sure. Before Mr. Bigby did any work to his space that
19 the restaurant would go in, it was fairly incomplete,
20 wasn't it?
- 21 A. Yes, I was a cold shell.
- 22 Q. So it looked complete somewhat from the outside,
23 parking lot, store front, then you opened the door and
24 plumbing was just roughed in, dirt floors, does that
25 sound accurate?

MARION TURBEVILLE DIRECT BY MR. STABLER

1 A. It was subbed in, not roughed in.

2 Q. Subbed in, okay. So a lot of work had to go into a
3 fairly small space, is that a fair statement?

4 A. Yes.

5 Q. So 302,000-dollars worth of work. Is that Mr. Bigby's
6 signature on this contract as well?

7 A. Yes.

8 Q. Okay.

9 MR. STABLER: Your Honor, at this point, we would
10 move Plaintiff's 4 into evidence.

11 MR. DOUGALL: No objection, Your Honor.

12 THE COURT: It's admitted.

13 (Plaintiff's Exhibit No. 4 was admitted
14 into evidence.)

15 BY MR. STABLER::

16 Q. Mr. Turbeville, if you would, if you would flip to the
17 last two pages of this document. And this list out the
18 various aspects of the work that C.G.I. was going to
19 perform, is that correct?

20 A. Yes.

21 Q. And it list a price by each task that they were going
22 to perform, is this correct?

23 A. Yes.

24 Q. And on some of them, it list out who the subcontractor
25 was going to be, is that correct?

MARION TURBEVILLE DIRECT BY MR. STABLER

- 1 A. Yes.
- 2 Q. And Danville Business Advisors provided some of these
3 numbers to C.G.I., didn't they?
- 4 A. We had some budget numbers that my partner may have
5 given him.
- 6 Q. So you're unclear as to what -- is that a yes or a no,
7 did you provide some of these number?
- 8 A. I don't know because my partner negotiated this
9 contract.
- 10 Q. So your testimony is you did not provide any numbers?
- 11 A. I didn't, my partner may have.
- 12 Q. You didn't. You're sure?
- 13 A. We may have -- I may have had access to an HVAC bid
14 that was shared with David Gray. And I don't recall if
15 I gave David that number or if my partner did.
- 16 (Plaintiff's Exhibit No. 5 was marked
17 for identification.)
- 18 BY MR. STABLER::
- 19 Q. Mr. Turbeville, I'm going to hand you what's been
20 marked Plaintiff's 5, does this appear to be an early
21 quote or incomplete estimate from C.G.I. Development?
- 22 A. Yes.
- 23 Q. Okay. So this is before they reached their final
24 contract amount, is that correct?
- 25 A. Yes.

MARION TURBEVILLE DIRECT BY MR. STABLER

1 Q. And if you flip to the second page, there's some
2 handwriting on that page. That's your handwriting,
3 isn't it?

4 A. Yes.

5 MR. STABLER: Your Honor, we'd move Plaintiff's 5
6 into evidence.

7 THE COURT: Any objection?

8 MR. DOUGALL: Objection at this time, Your Honor.
9 I don't know what the basis is. He hasn't asked any
10 questions about it other than his handwriting on it.

11 THE COURT: In other words, you're objecting to
12 the foundation?

13 MR. DOUGALL: Yes, Your Honor.

14 MR. STABLER: Your Honor, it's his handwriting on
15 it. He's just acknowledged that.

16 MR. DOUGALL: Until he ask him some questions, we
17 don't know what he's trying to put in here. We've got the
18 final estimate. You've admitted that.

19 BY MR. STABLER::

20 Q. All right. Mr. Turbeville, we'll go through some of
21 the handwriting on it. DBA 1/6/250, what is that
22 notation for?

23 A. That was the finder's fee.

24 Q. DBA is Danville Business Advisors?

25 A. Yes.

MARION TURBEVILLE DIRECT BY MR. STABLER

1 Q. You're telling the contractor to put 16,250-dollars in
2 this bid, is that correct?

3 A. In the final contract, yes.

4 Q. Okay. And if you would for me on the first page, item
5 number nine, do you see where it says number nine
6 finishes?

7 A. Yes.

8 Q. Okay. And the second item under finishes is floor
9 covering, 28,710-dollars, you see that?

10 A. Yes.

11 Q. Okay. So at some point Flooring Concepts line item is
12 at 28,710-dollars, is that correct?

13 A. Yes.

14 (Plaintiff's Exhibit No. 6 was marked
15 for identification.)

16 BY MR. STABLER::

17 Q. Mr. Turbeville, this is a letter of January 8, 2009,
18 from Flooring Concepts to you, is that correct?

19 A. Yes.

20 Q. This is your handwriting down at the bottom, is that
21 correct?

22 A. Yes, sir.

23 Q. You received this letter from Flooring Concepts, didn't
24 you, Mr. Turbeville?

25 A. Yes.

MARION TURBEVILLE DIRECT BY MR. STABLER

- 1 Q. Now, you've got some addition and subtraction on this
2 page, don't you?
- 3 A. Yes.
- 4 Q. And the number at the top is 28,710-dollars, isn't it?
- 5 A. Yes.
- 6 Q. That's the same number we just saw as Flooring Concepts
7 original price, right?
- 8 A. Yes.
- 9 Q. Okay. So you subtract 8,830-dollars, you add in 910,
10 then you add in 1,375-dollars, is that correct?
- 11 A. Yes.
- 12 Q. The number you get is 22,165, right?
- 13 A. Yes.
- 14 Q. Now, read for me that second paragraph in this letter?
- 15 A. Savings have change from the original floor tile,
16 selected alternate amounts to savings of 1375.
- 17 Q. Amounts to a savings of 1375, right?
- 18 A. Yes.
- 19 Q. So if there's a savings of 1375, why are you adding
20 1375 to your contact price?
- 21 A. It was an honest mistake.
- 22 Q. It was a mistake, honest mistake, right?
- 23 A. Yes.
- 24 Q. And then the number you got, 22,165, you rounded that
25 up, didn't you, savings of 22,500?

MARION TURBEVILLE DIRECT BY MR. STABLER

- 1 A. Yes.
- 2 Q. Why would you round that number up?
- 3 A. Easier to deal with rounding numbers.
- 4 Q. You wouldn't want to round it down, 165-dollars, you'd
- 5 want to round it up 335, correct?
- 6 A. Yes.
- 7 Q. Okay. Mr. Turbeville, do you know what the difference
- 8 would have been if you had subtracted 1375 instead of
- 9 adding 1375?
- 10 A. 2,750-dollars.
- 11 Q. 2,750-dollars, that mistake.
- 12 (Plaintiff's Exhibit No. 7 was marked
- 13 for identification.)
- 14 BY MR. STABLER::
- 15 Q. Mr. Turbeville, I'm handing you a fax from David Grey
- 16 to you. Have you seen this document before?
- 17 A. Yes.
- 18 Q. Did you receive this fax from Mr. Grey?
- 19 A. I'm sorry, would you repeat that?
- 20 Q. Did you receive this fact from Mr. Grey?
- 21 (There was no response.)
- 22 Q. Can you --
- 23 A. I don't recall because I was out of the country during
- 24 this time and it could have come to my partner.
- 25 Q. Okay. Mr. Turbeville, I'm going to read this, tell me

MARION TURBEVILLE DIRECT BY MR. STABLER

- 1 if I get it right. Mr. Turbeville, per our
2 conversation today, January 9, 2009, we have lowered
3 the quote with Flooring Concepts to 22,500-dollars as
4 requested. Did I read that right?
- 5 A. Yes, sir. And I would have received it.
- 6 Q. So per your conversation with Mr. Grey, he plugged in
7 that 22,500-dollar number, right?
- 8 A. Yes.
- 9 Q. And if you flip to the second page, what's the number
10 he's got in there by floor covering now?
- 11 A. 22,500-dollars.
- 12 Q. So you gave him that number to plug into his bid,
13 didn't you?
- 14 A. Yes.
- 15 Q. That number wasn't an accident, was it?
- 16 A. No.
- 17 Q. Now, at any point during this project, is there ever a
18 change order or a credit to Mr. Bigby for your math
19 error?
- 20 A. Not that I call.
- 21 Q. So going through all the invoices when the work was
22 being performed, nobody ever caught the math error?
- 23 A. No.
- 24 Q. And that error cost Mr. Bigby 2,700-dollars, didn't it?
- 25 A. Yes.

MARION TURBEVILLE DIRECT BY MR. STABLER

1 Q. Are there any other numbers that you -- when you look
2 at this document that you may remember providing to Mr.
3 Bigby -- I mean, C.G.I., I apologize.

4 A. No, because he used different subcontractors than I was
5 accustomed to other than the Midlands Electric.

6 MR. STABLER: Your Honor, at the point, I would
7 move faxes and estimate from Mr. Grey into evidence.

8 THE COURT: Which exhibit numbers?

9 MR. STABLER: I believe it is five, six and seven.

10 THE COURT: Any objection?

11 MR. DOUGALL: No objection, Your Honor.

12 THE COURT: They're admitted.

13 (Plaintiff's Exhibit Nos. 5, 6 and 7
14 were admitted into evidence.)

15 (Plaintiff's Exhibit No. 8 was marked
16 for identification.)

17 BY MR. STABLER::

18 Q. Mr. Turbeville, is this a fax from David Grey to you
19 again?

20 A. Yes.

21 Q. Dated January 6th, 2009, correct?

22 A. Yes, sir.

23 Q. Mr. Turbeville, following the preliminary budgets based
24 on -- applied, as requested, we have added the three
25 percent for profit and three percent for the overhead.

MARION TURBEVILLE DIRECT BY MR. STABLER

- 1 Did I read that correctly?
- 2 A. Yes.
- 3 Q. Why would Danville be instructing the contractor to add
- 4 six percent tot heir contract?
- 5 A. That was the finder's fee.
- 6 Q. That was the finder's fee?
- 7 A. Yes, but it ended up being five percent not six.
- 8 Q. Is that looking out for your client's best interest?
- 9 A. We had already negotiated this contact down, yes.
- 10 Q. You had already negotiated this into it?
- 11 A. We got the best prison out in the marketplace for him.
- 12 Q. Plus six percent?
- 13 A. Yes, plus five percent.
- 14 Q. Plus a 2,700-dollars error, correct?
- 15 A. Yes.
- 16 Q. Which there was no change order ever issued for?
- 17 A. Not that I recall.
- 18 Q. If there had been a change order that reduced the
- 19 contract price, Danville Business Advisors would have
- 20 gotten less, too, wouldn't they?
- 21 A. We would have processed it, but we would have had Mr.
- 22 Bigby sign it.
- 23 Q. Let me ask that again. If there was a change order
- 24 that reduced C.G.I.'s contract price, that would have
- 25 meant that Danville Business Advisors got less money,

MARION TURBEVILLE DIRECT BY MR. STABLER

- 1 too, wouldn't it?
- 2 A. Oh, yes.
- 3 Q. Is there a change order anywhere on this project that
- 4 reduces the contract price for anything?
- 5 A. Not that I recall.
- 6 Q. Mr. Turbeville, once this project started, you were Mr.
- 7 Bigby's eyes and ears on the job, weren't you?
- 8 A. I checked the job on a regular basis, yes.
- 9 Q. You were his eyes and ears, right?
- 10 A. Yes.
- 11 Q. You had authority to speak for Mr. Bigby?
- 12 A. On certain things, yes, although he had -- he had
- 13 people from his own operation there, too.
- 14 Q. You had authority to speak for Mr. Bigby, didn't you?
- 15 A. Yes.
- 16 Q. And the contractor basically on Mr. Bigby's case had to
- 17 build everything from the walls in, right?
- 18 A. Yes.
- 19 Q. And if the contractor had any minor changes, questions,
- 20 you could answer them, couldn't you?
- 21 A. Yes.
- 22 Q. And you had authority to approve change orders, didn't
- 23 you?
- 24 A. Yes.
- 25 Q. And if you felt something was important or major, you

MARION TURBEVILLE DIRECT BY MR. STABLER

- 1 would contact Mr. Bigby to get his thoughts on it,
2 wouldn't you?
- 3 A. I'm sorry, would you repeat?
- 4 Q. Sure. You said you had authority to approve change
5 orders, correct?
- 6 A. Within a reason, I think I did.
- 7 Q. Right. And if it was something major, you would
8 contact Mr. Bigby and get him involved, is that
9 correct?
- 10 A. Yes.
- 11 Q. And your job, basically, once construction started was
12 to monitor the progress on behalf Mr. Bigby, wasn't it?
- 13 A. Yes.
- 14 Q. And once construction started, there was a change made
15 to the air conditioning units, wasn't there?
- 16 A. Yes.
- 17 Q. That's a pretty major part of the construction, isn't
18 it?
- 19 A. Yes.
- 20 Q. And different units were installed versus what were
21 shown on the plans, weren't they?
- 22 A. Yes.
- 23 Q. Mr. Bigby wasn't involved in that decision, was he?
- 24 A. No.
- 25 Q. He wasn't ever told that there were different units

MARION TURBEVILLE DIRECT BY MR. STABLER

1 installed, was he?

2 A. No.

3 Q. You approved this change, didn't you?

4 A. No, I -- my position always was to have approval from
5 an engineer, either his or a mechanical.

6 Q. So it's your testimony today to this jury (indicating)
7 that you did not approve that change order?

8 A. In my -- in my opinion, no, because he didn't never
9 provide me with the engineering support on the order.

10 Q. Mr. Turbeville, do you remember when I took your
11 deposition about a year ago?

12 A. Yes.

13 Q. And you were put under oath, weren't you?

14 A. Yes.

15 Q. And I asked you questions and you answered them, didn't
16 you?

17 A. Yes.

18 Q. You gave truthful answers there, didn't you?

19 A. Yes.

20 MR. STABLER: Your Honor, with the Court's
21 permission I would unseal Mr. Turbeville's original
22 deposition?

23 (Mr. Stabler hands deposition to the Court.)

24 BY MR. STABLER::

25 Q. Mr. Turbeville, I'm going to hand you a copy of your

MARION TURBEVILLE DIRECT BY MR. STABLER

1 deposition. And I believe you told me you gave
2 truthful answers in this deposition, didn't you?

3 A. Yes.

4 Q. All right. If you would, if you would flip to page 109
5 of your deposition?

6 A. Yes. All right. I'm there.

7 Q. All right. And I'm going to read beginning on page
8 109, at line 19 and ask you to follow and tell me if I
9 read this correctly. And in this part, we're talking
10 about some exhibits and, actually, those answers to
11 interrogatories that we talked about earlier. Number
12 10, state every change made or suggestion by you that
13 is not consistent with the plans and drawings for this
14 project. Now, you may not have suggested any changes
15 inconsistent with the plans and drawings, but you
16 approved, at least, one change inconsistent with the
17 plans and drawings, did you not?

18 Answer, Are you referring to the change in HVAC
19 system?

20 Question, Yes, sir.

21 Your answer, Yes, I agreed with that change.

22 Did you approve that change, Mr. Turbeville?

23 A. Yes, I didn't know the specific unit --

24 Q. You knew they were different units, didn't you?

25 A. Yes, but I still thought they had engineering approval.

MARION TURBEVILLE DIRECT BY MR. STABLER

- 1 Q. You still thought they had what?
- 2 A. I thought that they would have had engineering approval
3 as a substitute and that's what I didn't get from the
4 contractor.
- 5 Q. Did you send anything to the engineer for time to
6 approve?
- 7 A. Did I send what?
- 8 Q. Did you ever send anything to the engineer for him to
9 approve?
- 10 A. No, I was taking about the general contractor's
11 engineer, not the engineer that approved the system.
- 12 Q. So you approved it without knowing if the design
13 professional approved it?
- 14 A. Yes.
- 15 Q. And the engineer on this project never approved this
16 change, did he?
- 17 A. No.
- 18 Q. The units that went in, they were cheaper than the
19 units that were called for, weren't they?
- 20 A. I don't know the answer to that.
- 21 Q. Mr. Turbeville, are you familiar with the term value
22 engineering?
- 23 A. Yes.
- 24 Q. Now, I believe this is the definition that you gave me.
25 Value engineering is where the contractor will look at

MARION TURBEVILLE DIRECT BY MR. STABLER

1 a project and they may have ideas that are different
2 from the architects and engineers that result in cost
3 savings but don't compromise the integrity or quality
4 of the project. Is that a fair definition of value
5 engineering?

6 A. Yes.

7 Q. Value engineering is really just a way of saying costs,
8 isn't it?

9 A. Yes.

10 Q. It's a way to cut corners, isn't it?

11 MR. DOUGALL: Object to the form, Your Honor.

12 THE WITNESS: I wouldn't call it cutting corners.

13 BY MR. STABLER::

14 Q. You wouldn't call it cutting corners?

15 A. No.

16 Q. If it compromises the integrity of something, is that
17 cutting corners?

18 A. If it compromised the integrity, yes.

19 (Plaintiff's Exhibit No. 9 was marked
20 for identification.)

21 BY MR. STABLER::

22 Q. Mr. Turbeville, this is an e-mail from David Grey at
23 C.G.I. to you, is that correct?

24 A. Yes.

25 Q. Dated February 5, 2009, is that correct?

MARION TURBEVILLE DIRECT BY MR. STABLER

- 1 A. Yes.
- 2 Q. And it says, Marion, Mike, who's Mike?
- 3 A. That would have been the project superintendent Michael
- 4 Hunt.
- 5 Q. Marion, Mike had mentioned that you had called him
- 6 concerning the HVAC since I was having the value
- 7 engineering looked into. Did I read that correctly?
- 8 A. Yes.
- 9 Q. So you brought up value engineering these HVAC units,
- 10 didn't you?
- 11 A. If it's in my e-mail, yes.
- 12 Q. You were looking to save money on the air conditioning
- 13 units, weren't you?
- 14 A. Yes, we were looking at the value engineering.
- 15 Q. And you already had the air conditioning units over
- 16 budgeted any way, didn't you?
- 17 A. Yes, I think they were over budget.
- 18 Q. You had an excess built in, didn't you?
- 19 A. Yes.
- 20 Q. The amount David Grey had in his contract for air
- 21 conditioning, you knew it wasn't going to cost that
- 22 much to begin with, didn't you?
- 23 A. Yes.
- 24 Q. And, ultimately, the air conditioning units were value
- 25 engineered, weren't they?

MARION TURBEVILLE DIRECT BY MR. STABLER

- 1 A. Yes, they were.
- 2 Q. So the air conditioning unit were value engineered to
3 save money. There was already more money in the budget
4 for the air conditioning units that it would cost
5 anyway. Is there any change order or credit to Mr.
6 Bigby for those excess funds?
- 7 A. No, we used them for contingencies.
- 8 Q. You used them for contingencies?
- 9 A. Yes.
- 10 Q. Are there any documents in the project files to show
11 where that money went?
- 12 A. Not that I recall, other than there were some
13 contingencies that came up.
- 14 Q. Did Mr. Bigby know there was access in his air
15 conditioning budget?
- 16 A. I don't know.
- 17 Q. Mr. Bigby didn't know his air conditioning units were
18 being value engineered, did he?
- 19 A. No.
- 20 Q. There were never any submittals for the new air
21 conditioning units, were there?
- 22 A. Not that I recall.
- 23 Q. There was never anything that said these are what these
24 new units can do, here's the specifications? There's
25 nothing like that, is there?

MARION TURBEVILLE DIRECT BY MR. STABLER

- 1 A. No, I never got that from the contractor.
- 2 Q. Never got it from the contractor?
- 3 A. No.
- 4 Q. But you approved them without any of that information?
- 5 A. Based on the fact that he would get that information to
- 6 me, yes.
- 7 Q. The engineer didn't approve them, did he?
- 8 A. No.
- 9 Q. The architect didn't approve them either, did he?
- 10 A. Most of my discussions were not with the architect, but
- 11 with one of his staff members.
- 12 Q. The architect did not approve putting in the different
- 13 units, did he?
- 14 A. No, but he inspected them after they were put in?
- 15 Q. He didn't approve them, did he?
- 16 A. He approved the pay application that included them.
- 17 Q. Let's talk about the pay application. That's where the
- 18 contractor submits what all he's done, correct?
- 19 A. Yes.
- 20 Q. So he will submit what he's done up to a certain point,
- 21 then you pay him, right?
- 22 A. Yes.
- 23 Q. Then he submits what he does up to the next point,
- 24 right?
- 25 A. Yes.

MARION TURBEVILLE DIRECT BY MR. STABLER

- 1 Q. And on that contract that Mr. Bigby had with C.G.I.,
2 there's about 30 different line items, aren't they?
- 3 A. Yes.
- 4 Q. So he will put how much he's done on each one of those
5 line items, won't he?
- 6 A. Yes, but the pay application oftentimes is condensed
7 and not in as much detail as the attachment to the
8 contract.
- 9 Q. And the air conditionings units are one of those 30
10 items, isn't it?
- 11 A. Yes.
- 12 Q. And if you had signed off on a change order that gave
13 Mr. Bigby credit for a cheaper air conditioning unit
14 and for excess in the budget, Danville Business
15 Advisors would have gotten paid less, wouldn't they?
- 16 A. Yes.
- 17 Q. So it's not in your best interest to approve any change
18 orders that decrease the costs, is it?
- 19 A. We weren't talking about enough money that it would
20 have mattered to me.
- 21 Q. Not enough money that it matter to you?
- 22 A. As far as my fee.
- 23 Q. Mr. Bigby's got a contract were 302,000-dollars and
24 this doesn't matter to you?
- 25 A. You're taking about four or five percent when you're

MARION TURBEVILLE DIRECT BY MR. STABLER

- 1 talking about the difference in the price of the units.
- 2 Q. How much did that exhibit that you prepared say Mr.
- 3 Bigby was going to invest in this project, 472,000?
- 4 A. Yes.
- 5 Q. Mr. Bigby opened up his restaurant and he ran into a
- 6 bunch of problems, didn't he?
- 7 A. He ran in some problems, yes.
- 8 Q. He complained about the sewer smell, didn't he?
- 9 A. Yes.
- 10 Q. You were actually at the restaurant one time and
- 11 smelled it, didn't you?
- 12 A. Yes.
- 13 Q. Mr. Bigby also complained the restaurant was very hot,
- 14 didn't he?
- 15 A. He complained that the kitchen was hot.
- 16 Q. He complained that the dining room was hot, too, didn't
- 17 he?
- 18 A. Yes, one time.
- 19 Q. In fact, he told you his dining room was over 80
- 20 degrees and his kitchen was over 90, didn't he?
- 21 A. Yes, but he changed the thermostat in the dining room.
- 22 Q. That was fixed, wasn't it? The thermostat, that was
- 23 fixed, wasn't it?
- 24 A. Yeah, the heating and air conditioning guy came back
- 25 and fixed it.

MARION TURBEVILLE DIRECT BY MR. STABLER

1. Q. It was still hot, wasn't it?
2. A. Not that I recall, in the dining room, no.
3. Q. Was the heat issue at Mr. Bigby's restaurant ever
4. fixed?
5. A. No to his satisfaction.
6. Q. Did it ever get below 90 degrees in the kitchen?
7. A. I don't know.
8. Q. Was the smell in Mr. Bigby's restaurant ever fixed?
9. A. I don't know.
10. Q. You were told by the engineer -- or you found out from
11. the engineer on this project what was causing the heat
12. issue, didn't you?
13. A. Found out what?
14. Q. You were told why it was so hot in Mr. Bigby's
15. restaurant, weren't you?
16. A. I saw a report that an engineer did, yes.
17. Q. You received a copy of the engineer's report?
18. A. Yes.
19. Q. Did you ever forward a copy of that to Mr. Bigby?
20. A. No.
21. (Plaintiff's Exhibit No. 10 was marked
22. for identification.)
23. BY MR. STABLER::
24. Q. Mr. Turbeville, let me hand you a letter from August
25. 3rd of 2009, from Randy Cottrell to Raymond Cottrell.

MARION TURBEVILLE DIRECT BY MR. STABLER

1 Did you receive a copy of this letter, Mr. Turbeville?

2 A. Yes.

3 Q. And you received a copy of this e-mail that you
4 forwarded to Mr. Grey at C.G.I.?

5 A. Yes.

6 (Plaintiff's Exhibit No. 11 was marked
7 for identification.)

8 BY MR. STABLER::

9 Q. Mr. Turbeville, I'm going to hand you an e-mail chain,
10 August 3rd, 2009, same date as this letter. And
11 correct me if I'm wrong, but it looks like this went
12 from Randy Cottrell at Vista Engineering to Raymond
13 Cottrell at Architectural Concepts to you, then from
14 you to David Gray?

15 A. Yes.

16 Q. And when -- and you're sending an attachment, you see
17 that at the top to Mr. Grey?

18 A. Yes.

19 Q. Do you believe that attachment is this letter?

20 A. Yes.

21 Q. David, give me a call. I think a lot of the problems
22 is in the hood fans. That's what you told Mr. Grey,
23 correct?

24 A. Yes.

25 Q. So after reading Mr. Cottrell's August 3rd, 2009,

MARION TURBEVILLE DIRECT BY MR. STABLER

1 letter, you thought the issue was in the hood fans,
2 correct?

3 A. That would help some in my opinion, yes, if it was
4 addressed.

5 Q. Okay. Now, reading from Mr. Cottrell's letter, he
6 said, We called for Carrier 48 HJD roof top unit with
7 gas reheat capability. The contractor installed
8 Carrier 48 TMD units, gas reheat is not available in
9 this line. We called for a Cobra fresh air
10 reconditioning system for the 48 HJD 012, but this was
11 not installed and probably cannot be installed in the
12 48 TMD unit. So would it be fair to say that one of
13 Mr. Cottrell's concerns was the wrong air conditioning
14 units were installed?

15 A. Yes.

16 Q. You didn't mention that in your e-mail to Mr. Grey, did
17 you?

18 A. Mr. Grey already knew that.

19 Q. Mr. Turbeville, Mr. Bigby complained a lot about how
20 hot his restaurant was, didn't he?

21 A. Yes.

22 Q. Multiple times, he would tell you my kitchen is too
23 hot, wouldn't he?

24 A. Yes.

25 Q. Why did you never tell Mr. Bigby that there were

MARION TURBEVILLE DIRECT BY MR. STABLER

1 different air conditioning units in his restaurant than
2 what he paid for?

3 A. I was still working with David Grey to try to resolve
4 the problem at that point.

5 Q. You were trying to resolve it, but you didn't think
6 that was something Mr. Bigby should know?

7 A. He was -- he had a new restaurant he was trying to run
8 and I was still working for him for no fee at that
9 point.

10 Q. He had a new restaurant he was trying to run. He
11 couldn't do that very well, could he?

12 A. I'm sorry, repeat that.

13 Q. You said Mr. Bigby was trying to run a new restaurant,
14 he couldn't do that very well, could he?

15 A. In this case, no, it failed.

16 Q. And you acknowledged before that because of the
17 conditions in his restaurant that nobody could expect
18 him to run one, didn't you?

19 A. If it was as hot as he said it was all the time, it
20 would have been too hot, but there were other issues
21 besides the heating and air.

22 Q. Okay.

23 (Plaintiff's Exhibit No. 12 was marked
24 for identification.)

25

MARION TURBEVILLE DIRECT BY MR. STABLER

1 BY MR. STABLER::

2 Q. Mr. Turbeville, is this an e-mail from you to David
3 Grey on July 16th, 2009?

4 MR. DOUGALL: Has that been marked, Your Honor?

5 THE COURT: I believe it has.

6 MR. DOUGALL: What number is that?

7 THE COURT: 12.

8 THE WITNESS: Yes, I recall that.

9 BY MR. STABLER::

10 Q. Mr. Turbeville, if you would, please read the second
11 paragraph of that e-mail out loud?

12 A. In the meantime, Bigby is getting very frustrated and
13 considering a lawsuit, which is not the answer. We
14 know that he cannot continue to operate a kitchen at
15 the max should be at least 20 degrees less than outside
16 temperature.

17 Q. So you're saying you know that he can't operate
18 efficiently if it's, basically, too hot, don't you?

19 A. Yes.

20 Q. And in all of the things you were working hard to do
21 for Mr. Bigby, you never suggested putting in the right
22 air conditioning units, did you?

23 A. Not at that time.

24 Q. Not ever, did you?

25 A. No.

MARION TURBEVILLE DIRECT BY MR. STABLER

- 1 Q. Do you recall on some days it was so hot outside and it
2 would be so hot inside that Mr. Bigby couldn't even
3 open his restaurant?
- 4 A. He told me that he did that on a couple of occasions.
- 5 Q. Do you have any reason to doubt him?
- 6 A. No.
- 7 Q. And you recall Mr. Bigby telling you he was on the
8 verge of closing his restaurant because of the heat and
9 smell issue, don't you?
- 10 A. Yes.
- 11 Q. During all of that time when he's on the verge of
12 closing his restaurant, you still never thought it was
13 worth bringing up that they were different units?
- 14 A. No.
- 15 Q. Mr. Bigby, ultimately, closed his restaurant, didn't
16 he?
- 17 A. Yes.
- 18 Q. The sewer smell issue was never fixed, was it?
- 19 A. Never fixed. I'm not aware there was an ongoing
20 problem today.
- 21 Q. While Mr. Bigby restaurant was open, it was fixed, was
22 it?
- 23 A. Not to my knowledge, no.
- 24 Q. While Mr. Bigby's restaurant was opened, the heat issue
25 was next fixed, was it?

MARION TURBEVILLE DIRECT BY MR. STABLER

- 1 A. No.
- 2 Q. But you still made a little bit more money off of this
- 3 project, didn't you?
- 4 A. I made the money that I disclosed, yes, to you.
- 5 Q. And you also represented the tenant that moved into Mr.
- 6 Bigby's space, didn't you?
- 7 A. Yes.
- 8 Q. You got the leasing commission off of that, too, didn't
- 9 you?
- 10 A. Yes.
- 11 Q. Two leasing commissions in less than a year, right?
- 12 A. Yes.
- 13 MR. STABLER: Your Honor, before I let
- 14 Mr. Turbeville go, with the exception of exhibits one and
- 15 two, subject to Mr. Dougall's prior objection, I would move
- 16 all remaining Plaintiff's exhibits into evidence?
- 17 THE COURT: That's No. 8 on, is that correct?
- 18 MR. STABLER: It's a total of 3 through 12?
- 19 THE COURT: So it would be a total of 3 through
- 20 12?
- 21 MR. STABLER: That's right.
- 22 MR. DOUGALL: No objection.
- 23 THE COURT: Without objection will be admitted.
- 24 (Plaintiff's Exhibit Nos. 3 through 12
- 25 were admitted into evidence.)

MARION TURBEVILLE DIRECT BY MR. STABLER

1 MR. STABLER: That's all I have. Thank you, Mr.
2 Turbeville.

3 THE COURT: Before you begin, Mr. Dougall, let's
4 take a brief break.

5 MR. DOUGALL: Sure.

6 THE COURT: Ladies and gentlemen, this would be a
7 good time to take a break. Let me remind you that you
8 should not begin to discuss this matter among yourselves as
9 you've still not heard all the evidence that has to be
10 presented. Let's take a break and then we'll come back and
11 continue on.

12 (Whereupon, the jury left the courtroom
13 at 3:07 p.m.)

14 THE COURT: Mr. Turbeville, you may step down from
15 the witness stand, but during this break, you should not
16 discuss your testimony with anyone because you've not
17 completed it and it would be inappropriate to discuss it at
18 time.

19 THE WITNESS: Okay.

20 THE COURT: Anything we need to take up before we
21 take a break?

22 MR. DOUGALL: Not from the Defendant, Your Honor.

23 MR. BRUNER: Nothing from the Plaintiff, Your
24 Honor. My only question is for questioning purposes how
25 late the Court anticipates going. I know we have child care

MARION TURBEVILLE DIRECT BY MR. STABLER

1 issues. I've got a witness that needs an hour notice. We
2 have our second witness here, but if we get into a third, I
3 want to make sure I can give them an hour's notice.

4 THE COURT: We probably won't run a whole lot past
5 five, at least, not today.

6 MR. BRUNER: Okay. Thank you.

7 (Whereupon, a short recess was held.)

8 THE COURT: Mr. Turbeville, you may resume the
9 witness stand.

10 Anything we need to take up before we bring the
11 jury in?

12 MR. DOUGALL: Nothing from the Defendant, Your
13 Honor.

14 MR. BRUNER: Nothing from the Plaintiff, Your
15 Honor.

16 THE COURT: You may ask the jury to come in,
17 please.

18 BAILIFF: Yes, Your Honor.

19 (Whereupon, the jury returned to the
20 courtroom at 3:27 p.m.)

21 BAILIFF: Your Honor, the jury's present.

22 THE COURT: Yes, sir.

23 Mr. Dougall, you may proceed.

24 MR. DOUGALL: Thank you, Your Honor.

25 CROSS-EXAMINATION

MARION TURBEVILLE CROSS BY MR. DOUGALL

1 BY MR. DOUGALL:

2 Q. Mr. Turbeville, I just want to go over a few things
3 that Mr. Stabler questioned you on. You said you had
4 worked with Mr. Bigby on, at least, four occasions, is
5 that correct?

6 A. Yes.

7 Q. And the first one was with the expansion of his
8 restaurant called Za's on Devine?

9 A. Yes.

10 Q. And that's where he, basically, took over some space
11 next door to add onto the size of his Devine location,
12 correct?

13 A. Yes.

14 Q. Then the next one was Za's on Bower Parkway, do you
15 recall that project?

16 A. Yes.

17 Q. And what was that?

18 A. It was a Za's Pizza.

19 Q. And that was a new location and he went into an
20 existing retail location and it had to be up-fitted,
21 correct?

22 A. Yes, I was a cold shell.

23 Q. And you negotiated the lease for that property?

24 A. Yes.

25 Q. Did the landlord pay you a commission as a realtor for

MARION TURBEVILLE CROSS BY MR. DOUGALL

- 1 bringing him somebody to lease his property?
- 2 A. Yes.
- 3 Q. Is that normal in the real estate industry?
- 4 A. Yes.
- 5 Q. In fact, you know Mr. Bigby to be a realtor, don't you?
- 6 A. He has had a license before.
- 7 Q. So that wouldn't be an unusual concept to him based on
- 8 your knowledge of his experience, would it?
- 9 A. No.
- 10 Q. Is Za's on Bower Parkway still in business?
- 11 A. No.
- 12 Q. All right. Do you know what's there now?
- 13 A. Cooper River Grill I think.
- 14 Q. So Mr. Bigby's first attempt to take this Za's concept
- 15 to another location failed, but there's another
- 16 restaurant in that very same spot that's still open and
- 17 doing fine, isn't it?
- 18 A. As far as I know.
- 19 Q. Okay. And then he decided to try it again out in the
- 20 northeast on Sparkleberry Crossing, correct?
- 21 A. That was a license situation with a different
- 22 owner/operator.
- 23 Q. But that was Mr. Bigby's decision to try to put that
- 24 location out there, right?
- 25 A. Collective with the --

MARION TURBEVILLE CROSS BY MR. DOUGALL

- 1 Q. What year did you put the new tenant in there?
- 2 A. I don't recall, maybe, 2010.
- 3 Q. Okay. And Primarily PI closed in November of 2009?
- 4 A. Yes.
- 5 Q. So shortly thereafter, there's a new tenant and we're
- 6 now four years down the road. Do you know who the new
- 7 tenant is in that space?
- 8 A. La Begata.
- 9 Q. They're still operating?
- 10 A. As far as I know.
- 11 Q. And you testified you're not the general contractor,
- 12 correct?
- 13 A. I'm sorry?
- 14 Q. You don't have a general contractor's license?
- 15 A. No, I do not.
- 16 Q. You don't swing nails and build things, do you?
- 17 A. No.
- 18 Q. You're not a construction manager, you don't have a
- 19 license to do that?
- 20 A. No.
- 21 Q. But you do bring together people that can do that with
- 22 people like Mr. Bigby, correct?
- 23 A. Yes.
- 24 Q. And when you do that, you get a finder's fee, don't
- 25 you?

MARION TURBEVILLE CROSS BY MR. DOUGALL

- 1 originally planned on, wasn't it?
- 2 A. Yes.
- 3 Q. And did Mr. Bigby object when you saved him that money?
- 4 A. No.
- 5 Q. And these preliminary estimates that he showed you were
- 6 just that, weren't they, Exhibits 6 and 7 -- 7 and 8,
- 7 excuse me?
- 8 A. Yes, that was the original number.
- 9 Q. So if we look at Exhibit 8, that had the original
- 10 numbers of 28,710 floor covering, correct?
- 11 A. Yes.
- 12 Q. And we ended up with 22,500, didn't we?
- 13 A. Yes.
- 14 Q. Now, let's go to these HVAC changes that we spent so
- 15 much time on. Did you recommend changing out the HVAC?
- 16 A. No, the subcontractor did.
- 17 Q. Okay. So there's a subcontractor involved, that would
- 18 be Blackwelder Heating and Air conditioning, correct?
- 19 A. Yes.
- 20 Q. You didn't hire them, did you?
- 21 A. No.
- 22 Q. Who hired them?
- 23 A. The general contractor, David Grey.
- 24 Q. Okay. Which is also C.G.I.?
- 25 A. Yes.

MARION TURBEVILLE CROSS BY MR. DOUGALL

- 1 contractor before he started this job?
- 2 A. Yes.
- 3 Q. And Mr. Craig came to you and said we can change these
4 units out and save some money?
- 5 A. It was a recommendation to change them because there
6 was going to be a problem getting delivery of one of
7 the components of the original spec, too.
- 8 Q. Okay. And what did you tell Mr. Craig when he said I
9 recommend you change out these units?
- 10 A. My position with Mr. Grey was always if we're going to
11 change them we had to have some sort of engineers
12 approval, either his or the subcontractors.
- 13 Q. Was there an architect involved in this project?
- 14 A. Yes.
- 15 Q. Who's the architect?
- 16 A. Architectural Concepts, Inc.
- 17 Q. And what was the role of Architectural Concepts, Inc?
- 18 A. They designed the -- developed the plans and
19 specifications for the building, for the up fit and did
20 periodic inspections to approve the pay applications.
- 21 Q. All right. So when they would do periodic inspections,
22 the architect of record for this project would,
23 actually, come out to the site to inspect the work that
24 had been done, right?
- 25 A. Yes.

MARION TURBEVILLE CROSS BY MR. DOUGALL

- 1 Q. Was Architectural Concepts aware of the HVAC changes
2 when they went out to do a site inspection?
- 3 A. He inspected it. I don't know if he got on the roof
4 and looked at what was actually there or not.
- 5 Q. Did he ever withhold any payment for the HVACs?
- 6 A. No.
- 7 Q. There was some questioning about the heat in the
8 kitchen and some answer -- some questions and answers
9 about hoods. What hoods were you talking about in your
10 e-mail?
- 11 A. The hoods that -- the hood system that was over the
12 pizza oven.
- 13 Q. And what's your knowledge about the hood system over
14 the pizza oven?
- 15 A. It was installed by FRS, who was managed by -- the
16 heating and air guy.
- 17 Q. Okay. So FRS was another contractor on this job,
18 correct?
- 19 A. Yes.
- 20 Q. And did you work with them or did Mr. Bigby work with
21 them?
- 22 A. Mr. Bigby engaged them.
- 23 Q. So Mr. Bigby brought them to the job?
- 24 A. Yes, but they weren't included in the plan development?
- 25 Q. And FRS, basically, installed the kitchen equipment, is

MARION TURBEVILLE CROSS BY MR. DOUGALL

1 that a fair statement?

2 A. Kitchen equipment and front of the house -- too.

3 Q. Okay. Under the supervision of Mr. Bigby?

4 A. And his staff.

5 Q. That wasn't part of your scope?

6 A. No.

7 Q. That was outside the scope of what you had agreed to do
8 for Mr. Bigby?

9 A. Yes.

10 Q. And, in fact, do you have any knowledge as to what the
11 problem was with the pizza oven and the hood in the
12 kitchen?

13 A. The pizza oven didn't fit under the hood --

14 MR. STABLER: Objection, Your Honor. May we
15 approach?

16 THE COURT: Yes, sir.

17 (Whereupon, a bench conference was held
18 off the record, in the presence of the
19 jury, but out of the hearing of the
20 jury.)

21 BY MR. DOUGALL:

22 Q. All right. Mr. Turbeville, I believe your answer was
23 the --

24 A. The pizza oven didn't fit the hood.

25 MR. DOUGALL: Thank you. That's all the question

MARION TURBEVILLE REDIRECT BY MR. STABLER

1 I've got for you at this time.

2 THE COURT: Any redirect?

3 MR. PEELE STABLER: Yes, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. STABLER::

6 Q. Mr. Turbeville, you mentioned that it's ordinary and
7 customary for a real estate agent to receive a
8 commission on their work, didn't you?

9 A. On a lease or a sale, yes.

10 Q. And when you're negotiating for a client, you're acting
11 as their agent, correct?

12 A. I'm negotiating for the tenant, yes.

13 Q. You're the tenant's agent?

14 A. Yes.

15 Q. You have certain responsibilities to your client,
16 correct?

17 A. Yes.

18 Q. You have certain fiduciary obligations to your client,
19 correct?

20 A. Yes.

21 Q. And is it customary for the client to know that you're
22 going to receive a commission?

23 A. Yes.

24 Q. And it's customary to probably tell them that, isn't
25 it?

MARION TURBEVILLE REDIRECT BY MR. STABLER

- 1 A. Yes.
- 2 Q. And your attorney asked you in your commissions was how
3 you got paid for negotiating that lease, do you
4 remember that?
- 5 A. Yes.
- 6 Q. You also got paid 1,500-dollars a month while you were
7 negotiating that lease, didn't you?
- 8 A. Yes.
- 9 Q. That's all that Mr. Bigby agreed to pay you, isn't it?
- 10 A. I'm sorry?
- 11 Q. 1,500-dollars a month is all Mr. Bigby agreed to pay
12 you, correct?
- 13 A. Yes.
- 14 Q. And I believe you testified that in your business
15 receiving sales commissions from contractors is
16 commonplace, correct?
- 17 A. Yes.
- 18 Q. Can you name for me some other businesses, some other
19 entities that are in your line of business?
- 20 A. Not specifically doing what I do, but other real estate
21 agents get paid putting deals together, too, I know.
- 22 Q. I'm talking about sales commissions for contractors.
23 You're the only one -- you're the only one you know of
24 that does that, right, that offers the services that
25 you offer?

MARION TURBEVILLE REDIRECT BY MR. STABLER

- 1 A. We're one of the few integrated financial and real
2 estate firms in town.
- 3 Q. Do you know of anybody other than your firm that gets
4 sales commission from contractors?
- 5 A. I'm not privy to that information.
- 6 Q. So it's really not this is standard in the industry,
7 it's just standard for you, isn't it?
- 8 A. It's my business model, yes.
- 9 Q. And that model includes not telling your clients that
10 you're getting those commissions, does it?
- 11 A. If they don't ask me.
- 12 Q. And your attorney asked you about a location, a Za's
13 location in the northeast that ended up closing, do you
14 remember that?
- 15 A. Yes.
- 16 Q. Now, Mr. Bigby, he didn't own that restaurant, did he?
- 17 A. No.
- 18 Q. He didn't operate that restaurant, did he?
- 19 A. No.
- 20 Q. He licensed the concept to the owners, didn't he?
- 21 A. Yes.
- 22 Q. So how that restaurant did, Mr. Bigby couldn't control
23 that, could he?
- 24 A. No.
- 25 Q. And as far the Za's location on Bower Parkway, you said

MARION TURBEVILLE REDIRECT BY MR. STABLER

- 1 there's a Copper River Grill there now?
- 2 A. To the best of my knowledge.
- 3 Q. You know how long after Mr. Bigby closed his restaurant
- 4 at that location it was before Copper River moved in?
- 5 A. Not specifically.
- 6 Q. Do you know if there were any new businesses that came
- 7 into the area between Mr. Bigby closing and Copper
- 8 River going in?
- 9 A. There was one intervening that I recall.
- 10 Q. Now, you talked about, also -- or your attorney had you
- 11 pointed out that Mr. Bigby got a 50,000-dollar tenant
- 12 allowance for up fit cost, do you remember that?
- 13 A. Yes.
- 14 Q. Now, your client that went into that new space -- they
- 15 got a tenant up-fit allowance, too, didn't they?
- 16 A. Not that I recall..
- 17 Q. Your new client had their on in-house construction
- 18 team, too, didn't they?
- 19 A. Yes.
- 20 Q. And so did your new client do any work in that space
- 21 before they moved in?
- 22 A. I don't know.
- 23 Q. So you don't know if that building space is the same as
- 24 it was when Mr. Bigby moved out, do you?
- 25 A. No.

MARION TURBEVILLE REDIRECT BY MR. STABLER

- 1 Q. You don't know if they have to make any changes to fix
2 any problems, do you?
- 3 A. No.
- 4 Q. I believe when you were talking about the Flooring
5 Concepts quote with your attorney, you mentioned that
6 Mr. Bigby, ultimately, saved 6,000-dollars on the line
7 item, didn't he?
- 8 A. From the original quote, yes.
- 9 Q. And you could have saved him nine if you had done your
10 math correctly, couldn't you?
- 11 A. Yes, sir.
- 12 Q. When we were talking about changing out the air
13 conditioning units, you remember that e-mail we looked
14 where you brought up the value engineering the air
15 conditioning units?
- 16 A. I'm not sure that was my idea or if it was Mike Hunt's,
17 honestly, the more I think about it because Mike was on
18 the site and dealing with the subcontractors and that
19 idea could have originated with him, just from a
20 standpoint even though that -- his e-mails -- Mike and
21 I could have had that conversation in the field and
22 that e-mail resulted from that conversation, but,
23 honestly, Mike Hunt may have been the one that said you
24 may want to look at this.
- 25 Q. But you were on board with it, right?

MARION TURBEVILLE REDIRECT BY MR. STABLER

- 1 A. I'm not denying that I was, that information is
2 correct, yes.
- 3 Q. And so when you were testifying with your attorney a
4 second ago, you said there was an issue about lead time
5 and some of the equipment, but you were also value
6 engineering, weren't you?
- 7 A. Yes.
- 8 Q. That was why they were changed, wasn't it, you were
9 trying to save money, wasn't it?
- 10 A. I was also told that there was a significant lead time
11 on the Cobra component of the HVAC system that would
12 have impacted the construction schedule.
- 13 Q. And you just forgot about that earlier when I was
14 asking you about it, right?
- 15 A. No, but that was in my deposition, I believe.
- 16 Q. I believe you just testified that when it was brought
17 up about changing out these unit, you told the
18 contractor you had talked to the architect, do you
19 recall saying that?
- 20 A. I'm sorry, repeat the question.
- 21 Q. Just a minute ago when you were talking with your
22 attorney, you said that when they came to you about
23 changing out the air conditioning unit you told the
24 contractor you need to go talk to the architect to make
25 sure that's okay?

MARION TURBEVILLE REDIRECT BY MR. STABLER

- 1 A. No, I said he needed to talk to an engineer.
- 2 Q. He needed to talk to an engineer?
- 3 A. Yes.
- 4 Q. Did he ever tell you he talked to an engineer?
- 5 A. He never gave me that information.
- 6 Q. But you approved it any way?
- 7 A. Based on the fact he was going to get that information
- 8 that it was a suitable substitute.
- 9 Q. So you knew that an engineer needed to look at this
- 10 change, that's why you told him to go get an engineer
- 11 to look at it, right?
- 12 A. Yes.
- 13 Q. And then you approved it without him talking to an
- 14 engineer, didn't you?
- 15 A. Again, I said that -- my position was that he needed to
- 16 get it, I just never got it from him.
- 17 Q. And you never thought to bring it up or follow up on it
- 18 or call the engineer?
- 19 A. I asked him about it.
- 20 Q. And you also said that Architectural Concepts was aware
- 21 of this change to the HVAC units, but you never told
- 22 the architect of record that there's a change, did you?
- 23 A. I had a conversation with Raymond Cottrell that they
- 24 were contemplating a change.
- 25 Q. Hadn't made it yet, right?

MARION TURBEVILLE RECROSS BY MR. DOUGALL

1 A. At that time, no.

2 Q. So when they made it, you never followed up and said we
3 got the change over here, you should be on the look out
4 for that or is this okay, nothing like that?

5 A. Charlie Baker developed the plans so he should have
6 been aware of it before he inspected it.

7 Q. And your testimony about the oven is that the oven did
8 not fit under the hood?

9 A. There was something called an extender on either end of
10 the pizza oven that allowed you put the pizza on it
11 without putting your hand in the oven and for it to
12 come out on the other end after it was cooked and once
13 it was put in the field, the extenders were -- and it
14 just didn't fit like it should.

15 MR. STABLER: Thank you, Mr. Turbeville.

16 MR. DOUGALL: Just one quick follow-up.

17 RECROSS-EXAMINATION

18 BY MR. DOUGALL:

19 Q. Mr. Turbeville, did Mr. Bigby pay you the sales
20 commission for bringing this business to Saluda, LLC,
21 or did the developer pay you that commission?

22 A. The developer paid me the commission.

23 Q. Thank you.

24 THE COURT: You may step down. Thank you.

25 You may call your next witness.

RAYMOND COTTRELL BY MR. BURNER

1 properly cooled the restaurant with the hood that was
2 installed, right?

3 A. I am confident. I mean, the Cobra would have added
4 three more tons of cooling, basically.

5 MR. BRUNER: Thank you.

6 THE COURT: Anything further?

7 MR. BRUNER: No, Your Honor.

8 THE COURT: You may step down. Thank you.

9 MR. BRUNER: Your Honor, may the witness be
10 excused?

11 MR. DOUGALL: No objection.

12 THE COURT: You may be excused. Just leave the
13 exhibit there, yes, sir. Thank you.

14 You may call your next witness.

15 MR. STABLER: Your Honor, the Plaintiffs would
16 call James Bigby.

17 THEREUPON,

18 JAMES BIGBY,

19 after having been duly sworn, testified as follows:

20 THE CLERK: Have a seat in the witness box, state
21 your name for the record and spell last name, please.

22 THE WITNESS: My name is James Bigby, B-I-G-B-Y.

23 THE COURT: Yes, sir.

24 MR. STABLER: Thank you, Your Honor.

25 DIRECT EXAMINATION

JAMES BIGBY DIRECT MR. STABLER

- 1 Q. So it was a sketch of a building that was going to be
2 built?
- 3 A. Right.
- 4 Q. And who was the owner of this space?
- 5 A. Saluda Ridge, LLC.
- 6 Q. Okay. And did you hire Marion Turbeville and Danville
7 Business Advisors to assist you?
- 8 A. Yes, I did.
- 9 Q. In this project?
- 10 A. Uh-huh.
- 11 Q. Why did you hire Mr. Turbeville and Danville Business
12 Advisors?
- 13 A. I used them on past projects.
- 14 Q. What did you use them on before?
- 15 A. For the expansion of Za's on Divine Street and, also, a
16 project in Northeast Columbia as well as one on
17 Harbison.
- 18 Q. Do you recall when you first contacted Mr. Turbeville
19 about this project?
- 20 A. It was sometime in the middle of 2008, mid-2008.
- 21 Q. And was he your primary contact at Danville?
- 22 A. Yes, he was.
- 23 Q. What did you hire Mr. Turbeville and Danville Business
24 Advisors to do for you on this project?
- 25 A. Right. To -- to go ahead and engage the owners of the

JAMES BIGBY DIRECT MR. STABLER

1 piece of property to start negotiating a lease and then
2 coordinate an architect and go ahead and start the
3 process of getting bids for the construction companies.
4

5 Q. Okay. And did he also assist financing from the bank?

6 A. Yes, he did.

7 Q. What were your payment arrangements with Mr. Turbeville
8 for his services?

9 A. Pay a retainer of 1,500-dollars a month.

10 Q. And what did Mr. Turbeville and Danville Business
11 Advisors first do when you retained them on the
12 project?

13 A. Contacted vendors of Saluda Ridge to secure the lease.
14 And then he went head and started looking for an
15 architect and then, eventually, construction.

16 Q. And were they doing anything else while they were
17 negotiating the lease for you?

18 A. Well, they were trying to secure -- develop the loan
19 package for the bank, the financing.

20 (Plaintiff's Exhibit No. 13 was marked
21 for identification.)

22 BY MR. STABLER::

23 Q. Mr. Bigby, I'm going to hand you what's marked as
24 Plaintiff's Exhibit 13. Have you seen this document
25 before?

JAMES BIGBY DIRECT MR. STABLER

1 A. Yes, I have.

2 Q. What is this document?

3 A. It's the lease for the space in the shopping center.

4 Q. And did you sign this lease?

5 A. I did.

6 Q. And if you flip to page two of the exhibit, what are
7 the terms of your lease?

8 A. The original term was ten years with two five-year
9 options.

10 Q. And, also, on page two, what were your rent payments
11 going to be?

12 A. Sixty-seven twenty -- 6,720-dollars a month.

13 Q. Okay.

14 MR. STABLER: Your Honor, at this time, we'd move
15 Plaintiff's 13, the lease, into evidence.

16 MR. DOUGALL: No objection, Your Honor.

17 THE COURT: It's admitted.

18 (Plaintiff's Exhibit No. 13 was admitted
19 into evidence.)

20 BY MR. STABLER:

21 Q. Mr. Bigby, when did you first learn that Mr. Turbeville
22 and Danville Business Advisors received a leasing
23 commission for you signing that lease?

24 A. After I filed the lawsuit.

25 Q. After you filed this lawsuit?

JAMES BIGBY DIRECT MR. STABLER

- 1 A. Yeah, yes.
- 2 Q. And if you had known he was going to receive a leasing
3 commission, would you have paid him 1,500-dollars a
4 month to negotiate that lease?
- 5 A. No.
- 6 Q. Now, what role did Mr. Turbeville play in you getting
7 financing from the bank?
- 8 A. He developed a package to present to the bank through
9 information that -- financial information that I would
10 give to him and he would put it in the format that was
11 suitable for the bank.
- 12 Q. So you, basically, provided him some raw information
13 and he made it presentable for the bank, is that a fair
14 statement?
- 15 A. Yes.
- 16 Q. And was your business model and business plan, was that
17 included in the information provided?
- 18 A. Yes, I gave him an outline in the scope of what the
19 concept would be and he included that to put in his
20 plan as well for the banks.
- 21 Q. And did those documents include projected revenues,
22 sales and that sort of information?
- 23 A. Yes, they did.
- 24 Q. And you, also, did obtain financing from the bank,
25 correct?

JAMES BIGBY DIRECT MR. STABLER

- 1 A. Yes, I did.
- 2 Q. Do you recall what bank?
- 3 A. First Reliance.
- 4 Q. How much did you borrow?
- 5 A. 302,000.
- 6 Q. Now, Mr. Bigby, after you got your financing in place
- 7 and you had your lease in place, tell the jury what
- 8 happened next on this project?
- 9 A. Well, we secured an architect, then we -- after the
- 10 plans were drawn and submitted, I went ahead with the
- 11 development of the concept and then, ultimately,
- 12 started construction.
- 13 Q. And you hired a contractor in between there, correct?
- 14 A. Correct, yes.
- 15 Q. And who was the architect that you hired?
- 16 A. It was Architectural Concepts.
- 17 Q. And how did you decide to hire Architectural Concepts?
- 18 A. It was recommended through Marion Turbeville.
- 19 Q. And who was the contractor you hired?
- 20 A. C.G.I. Development.
- 21 Q. And how did you decide to hire C.G.I. Development?
- 22 A. They were also recommended through Marion Turbeville.
- 23 Q. Mr. Bigby, I'm going to hand you what's previously been
- 24 marked as Plaintiff's Exhibit 4. Have you seen that
- 25 document before?

JAMES BIGBY DIRECT MR. STABLER

- 1 A. Yes.
- 2 Q. What is that document?
- 3 A. This is the contract with C.G.I. Development.
- 4 Q. How much were you going to pay C.G.I. Development?
- 5 A. Little over 300,000-dollars.
- 6 Q. Did you pay them that much?
- 7 A. Yes.
- 8 Q. Mr. Bigby, before C.G.I. Development began any work on
- 9 your behalf, can you describe for the jury what the
- 10 restaurant space looked like?
- 11 A. Yes, it looked just like this sketch from the outside.
- 12 It was a brick building and then when you walked up,
- 13 there were two glass doors with glass plate, a roof.
- 14 And then when you walked into the door, there was no
- 15 floor. The concrete was not there because the plumbing
- 16 was subbed in, but had not been roughed in yet, so they
- 17 left that out so the plumbing could be easier completed
- 18 at a later date.
- 19 Q. Okay. And aside from the work that C.G.I. was going to
- 20 do on your contract with them, what other costs did you
- 21 anticipate in opening this restaurant?
- 22 A. You know, we had to buy equipment, we had to train the
- 23 staff, we had advertising and signage and just the
- 24 general cost of opening up a brand new restaurant.
- 25 Q. All right. And you had a loan from First Reliance for

JAMES BIGBY DIRECT MR. STABLER

1 happened during that process that you didn't know at
2 the time?

3 A. Yes.

4 Q. And what are those things?

5 A. Well, now, that I know that there were monies either
6 through commissions or monies that, I guess, finder's
7 fees that I didn't know about and there were also some
8 decisions that I made that affected my business.

9 Q. So decisions that you made?

10 A. I'm sorry, that were made without me knowing, without
11 my knowledge.

12 Q. And what decisions were made without your knowledge?

13 A. The main one was the installation of the inferior air
14 conditioning systems.

15 Q. And please tell the jury when you found out that that
16 decision had been made?

17 A. After I filed the lawsuit.

18 Q. So you didn't know about it until we filed this
19 lawsuit?

20 A. That's correct.

21 Q. And when did Primarily PI open?

22 A. It opened June 3, 19 -- of 2009.

23 Q. All right. Please tell the jury your experience once
24 the restaurant was opened?

25 A. Well, we had a series of issues from the plumbing,

JAMES BIGBY DIRECT MR. STABLER

1 toilets acting up. We had some issues with the
2 lighting and we also had some compressors not being put
3 on the roof within the kitchen. Then the two big ones
4 were we had an odor and, also, excessive heat in the
5 kitchen.

6 Q. All right. What did you do when you encountered these
7 problems?

8 A. Well, we contacted Marion and sometimes the contractor
9 or subcontractor here and there, but mostly through
10 Marion, we would discuss the problems and a way to get
11 them fixed.

12 Q. All right. And did these issues get fixed?

13 A. The plumbing issues eventually got fixed and the
14 lighting eventually got fixed, but the compressors were
15 never and the refrigeration units were never put on the
16 roof, but that was fairly minor. The two major ones
17 were the excessive heat and the odor.

18 Q. All right. When did this heat issue first arise?

19 A. Well, it was fairly noticeable at first, but it got
20 more and more intense as it got hot outside. And then
21 in June, July and August when the humidity rose, the
22 heat rose, the problem had compounded and you could
23 really start telling once it got hot.

24 Q. How hot did it get in your restaurant?

25 A. The kitchen, somewhere between 90 to 95 degree and

JAMES BIGBY DIRECT MR. STABLER

1 dining room was low 80's.

2 Q. And did this affect your ability to run your
3 restaurant?

4 A. Well, it did. It did. It -- it, certainly, wasn't the
5 pleasant place for the employees to work, but it also
6 affected customers in being comfortable in a restaurant
7 that would you expect to come in a fair comfortable
8 restaurant. I'm not sure too many people really want
9 to eat in a restaurant that hot that has an odor to it.

10 Q. And when did the odder issue arise?

11 A. It was noticeable at first, but just like the heat, as
12 the temperature outside heated up and the humidity
13 increased, it became more and more noticeable.

14 Q. And what did that odor -- what did it smell like?

15 A. It smelled like sewer gas.

16 Q. And if you would, please, tell the jury how that issue
17 affected your ability to run the restaurant?

18 A. Well, it -- it, basically -- our sales started
19 declining and the -- the smell was definitely something
20 that was unpleasant for the customers and the heat was
21 for everybody. And, eventually, sales started to drop
22 off.

23 Q. And the other issues that you described, the plumbing,
24 the roof leak, those issues, how did those affect your
25 ability to run your restaurant?

JAMES BIGBY DIRECT MR. STABLER

- 1 A. They were a nuisance and they were -- they took time
2 away from us running the restaurant. But once they
3 were fixed -- they were problems that we could
4 overcome.
- 5 Q. And did you, ultimately, Primarily PI?
- 6 A. We did. I did.
- 7 Q. When did you close?
- 8 A. November 3rd.
- 9 Q. How long was it opened?
- 10 A. Approximately five months.
- 11 Q. And during the time that it was opened, how did the
12 restaurant perform?
- 13 A. First month, it performed just like we thought it would
14 to perform. And then after that, the sales continually
15 dropped off and it -- it was to the point where we lost
16 the use of the restaurant.
- 17 Q. And why did you close your restaurant?
- 18 A. It was just simply not making money it was -- it just
19 was not -- it was to the point where the problems were
20 not being fixed and there was no light at the end of
21 the tunnel and we made the business decision to close
22 the restaurant.
- 23 Q. Mr. Bigby, at any point during this project, did you
24 ever compile a list of how much money you had invested
25 into this project?

JAMES BIGBY DIRECT MR. STABLER

- 1 A. It was at the time.
- 2 Q. At the time, so this was before -- this was done before
3 it was finished?
- 4 A. Right. It looks like it was compiled in early August.
- 5 Q. And HVAC refund, 50,000, that's the up fit?
- 6 A. That's correct.
- 7 Q. So at this point, total investment on this project
8 657,000-dollars?
- 9 A. That's correct.
- 10 Q. Mr. Bigby, why did your landlord change the locks on
11 your building space?
- 12 A. Well, we were not able to pay rent to his satisfaction.
- 13 Q. Why weren't you able to pay rent?
- 14 A. Because the place was not making money due to the fact
15 that sales were continually sliding in the decrease.
- 16 Q. And this 657,000-dollars that you had, at least, up
17 until that point invested; did you anticipate having to
18 put that much money into this restaurant?
- 19 A. No.
- 20 Q. Did you budget for having to put this much money into
21 that restaurant?
- 22 A. No.
- 23 Q. Other than this business, have you ever had to close
24 another restaurant that you started?
- 25 A. We had to close the Harbison location.

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1 A. I'm still paying on that to this day 2,800-dollars a
2 month.

3 Q. And the business Primarily PI wasn't able to repay
4 that, was it?

5 A. No.

6 Q. Mr. Bigby, what is it in this lawsuit that you contend
7 Marion Turbeville and Danville Business Advisors did
8 wrong?

9 A. They didn't -- well, they were taking funds from
10 avenues without my knowledge. They didn't properly
11 oversee the construction project and, quite frankly,
12 they didn't look after my best interest throughout the
13 project, which is something that I hired them to do.

14 Q. Mr. Bigby, please tell the jury what you are going to
15 ask them to award you?

16 A. Besides the money that they took without my knowledge,
17 I lost 725,000-dollars. And then, also, I lost the use
18 of the space, which, ultimately, would lead to having
19 future profits.

20 MR. STABLER: Thank you, Mr. Bigby. Please answer
21 any questions the other side may have.

22 THE COURT: Any cross?

23 MR. DOUGALL: Yes, Your Honor.

24 CROSS-EXAMINATION

25

JAMES BIGBY CROSS BY MR. DOUGALL

- 1 BY MR. DOUGALL:
- 2 Q. Good morning, Mr. Bigby?
- 3 A. Good morning.
- 4 Q. I would like for you to pull up the lease that your
5 attorney just showed you and ask you a couple of
6 questions about. You agree that that's the lease that
7 you signed on behalf of Primarily PI, correct?
- 8 A. Yes.
- 9 Q. Okay. That's your signature at the end of the lease?
- 10 A. Yes.
- 11 Q. Between you and the landlord, correct?
- 12 A. That's correct.
- 13 Q. Not between you and Danville Business Advisors?
- 14 A. That's correct.
- 15 Q. And this lease is about 23 pages long, correct?
- 16 A. Appears to be, yes.
- 17 Q. This is the lease that Danville Business Advisors
18 negotiated for you?
- 19 A. Yes.
- 20 Q. Did you read it?
- 21 A. I -- yes, I read through it, yes.
- 22 Q. You read the whole lease?
- 23 A. I didn't read the whole lease, but I read through it.
- 24 Q. Aren't you responsible for reading all contracts before
25 you sign it?

JAMES BIGBY CROSS BY MR. DOUGALL

- 1 A. We, generally, I have attorneys that will do that.
- 2 Q. Okay. Did you hire an attorney in this case?
- 3 A. I hired -- there was attorney that glanced at it, yes.
- 4 Q. Okay. Did that attorney direct you to page 22,
5 specifically, section 15.15?
- 6 A. I don't recall.
- 7 Q. Okay. What does that section 15.15 -- what's the title
8 of that paragraph?
- 9 A. Commissions to be paid by landlord by separate
10 agreement with NAI Avant, LLC.
- 11 Q. So if you had read your lease, you would have been
12 aware there were commissions being paid, correct?
- 13 A. Not necessarily.
- 14 Q. Well, what part of that didn't you understand?
- 15 A. Well, it says NAI Avant, LLC, it does not say Danville
16 Business Advisors.
- 17 Q. It says commissions to be paid by the landlord,
18 correct?
- 19 A. That's what it says.
- 20 Q. By Saluda Ridge, LLC?
- 21 A. It says NAI Avant, LLC.
- 22 Q. To be paid by the landlord is what it says, correct?
- 23 A. Right.
- 24 Q. And the landlord is Saluda Ridge, LLC, correct?
- 25 A. Yes, that's correct.

JAMES BIGBY CROSS BY MR. DOUGALL

- 1 Q. Okay. And tell the jury what Plaintiff's Exhibit No. 4
2 is?
- 3 A. It's the contract with C.G.I.
- 4 Q. And who was C.G.I.?
- 5 A. Contractor.
- 6 Q. And you said that you agreed to contract with them
7 based on the recommendation Danville Business Advisors,
8 correct?
- 9 A. Say this again.
- 10 Q. You said in your earlier testimony that you agreed to
11 contract with C.G.I. based on a recommendation by
12 Danville Business Advisors?
- 13 A. Oh, yes.
- 14 Q. And you as the owner, though, had the right to overrule
15 that recommendation at that time, didn't you?
- 16 A. I could have overruled it, yes.
- 17 Q. Okay. And, in fact, Danville Business Advisors got
18 bids from three contractors, C.G.I. was just one of
19 them, correct?
- 20 A. That's correct.
- 21 Q. And then you made the decision which of the three you
22 were going to use to do the up fit?
- 23 A. Based on his recommendation, Marion Turbeville's
24 recommendation that was the best contractor to go with.
- 25 Q. Did you disagree with him at the time?

JAMES BIGBY REDIRECT MR. STABLER

1 to help you out in resolving your problem, correct?

2 A. Well, we were still in -- we were still communicating
3 with the problem at hand, yes.

4 Q. And, in fact, they did that, didn't they?

5 A. Yes.

6 Q. When you were struggling the first few months you were
7 open to make revenue, Danville Business Advisors went
8 to Mr. Kelly, the landlord, Saluda Ridge, and worked
9 with them to get your rent reduced, didn't they?

10 A. I don't recall that.

11 Q. Okay. That's all I've got for you at this time.

12 A. All right.

13 THE COURT: Any redirect examination?

14 MR. STABLER: Yes, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. STABLER:

17 Q. Mr. Bigby, your real estate license had lapsed by the
18 time you started this project, hadn't it?

19 A. That's correct.

20 Q. Mr. Bigby, if you would, if you would pull out the
21 lease that you were talking about Mr. Dougall a few
22 minutes ago?

23 A. All right. Let me locate it. All right.

24 Q. If you would flip back to page 22, if you would?

25 A. Okay.

JAMES BIGBY REDIRECT MR. STABLER

- 1 Q. When you were discussing it earlier, you acknowledged
2 that Danville Business Advisors signed this contract,
3 correct?
- 4 A. Correct.
- 5 Q. Mr. Danielson signed it for C.G.I.?
- 6 A. Yes.
- 7 Q. This isn't your contract with Danville Business
8 Advisors, is it?
- 9 A. No.
- 10 Q. This is your contract with C.G.I., right?
- 11 A. That's correct.
- 12 Q. Was there any written agreement between you and
13 Danville Business Advisors?
- 14 A. There was in the first -- first project back in 2001,
15 2001 with the expansion of Za's, but not in this one.
- 16 Q. So everything is verbal in this case?
- 17 A. That's right.
- 18 Q. And I believe you testified earlier that you
19 anticipated this restaurant not being profitable
20 originally, losing some money in the first few months.
21 Do you call that?
- 22 A. That's correct.
- 23 Q. Did it end losing more money than you projected?
- 24 A. Yes, it did.
- 25 Q. And would you also pick up now Defendant's Exhibit 1?

1 you.

2 (Whereupon, a lunch break was taken.)

3 THE COURT: I received a note from the jury.

4 There's a juror who has to take her -- I assume, it's a her.

5 There's a juror that needs to take her daughter to a recital

6 this afternoon and she needs to leave at four o'clock in

7 order to be able to transport her daughter there. So that's

8 currently what we have this afternoon.

9 Is there anything we need to take up before we
10 bring the jury in?

11 MR. BRUNER: No, Your Honor. For the Court's
12 information, the Plaintiff is not planning on putting any
13 more witnesses up. We're going to rest and then I
14 anticipate some directed verdict motions. So the jury may
15 come in and may be touch and go for them.

16 THE COURT: Well, if you're not going to put up
17 any witnesses, let's go ahead and take up those motions or
18 we can work them at this particular point and continue on
19 with the testimony. The choice will be yours.

20 MR. BRUNER: That's fine, Your Honor. At this
21 time, the Plaintiffs rest. For the Court's information, at
22 this time -- I think for the sake of everyone's sanity and
23 based on the evidence that's been presented in this case,
24 the Plaintiffs are going to going release their claim and go
25 forward only on breach of fiduciary duty, unfair trade

1 practices, breach of contract and negligence.

2 THE COURT: I'm sorry, state those again, please.

3 MR. BRUNER: Breach of fiduciary duty, unfair
4 trade practices, breach of contract and negligence. Those
5 are the four claims that we intend to put to the jury
6 against both Defendants, Your Honor. Well, let me correct
7 that, we're not going to put the breach of contract claim as
8 to Mr. Turbeville individually. I think the evidence is
9 Danville had a contract. But we do believe there's evidence
10 in the record that he is individually liability -- the jury
11 may find him individually liable on breach of fiduciary
12 duty, negligence and unfair trade practices.

13 And I have e-mailed your law clerk proposed
14 verdict form that Mr. Dougall and I collaborated and put
15 together. If you haven't gotten it yet, I'll check my
16 internet connection. It does break down into liability and
17 damages versus each Defendant. It's a two-page verdict
18 form, Your Honor, that we've pulled together. We believe
19 it's clear, but, Your Honor, I'll try to get that to you as
20 soon as I can.

21 THE COURT: Do you wish to take up the motions at
22 this time or can we mark them simply as having been made at
23 this particular point and being able to continue with any
24 testimony since we have the jury here?

25 MR. DOUGALL: You're talking about my DV motions,

1 Your Honor?

2 THE COURT: Yes, Your Honor.

3 MR. DOUGALL: At this time, if we want to do that,
4 then I'll renew them at the end of the case.

5 THE COURT: All right. If you want to briefly
6 state them.

7 MR. DOUGALL: Yes, ma'am.

8 THE COURT: And then we can take up any full
9 argument on them. I understand that I have to consider it
10 based upon the evidence the Plaintiffs put up in making the
11 ruling on them, but if you just state what they are, then we
12 can go from there.

13 MR. DOUGALL: Your Honor, at the this time, we
14 would move -- well, obviously, there is no breach of
15 contract against Mr. Turbeville individually, but as to the
16 breach of fiduciary duty, the unfair trade practice act
17 claim and the negligence claim, we would move for a directed
18 verdict in Mr. Turbeville's favor based on several factors,
19 not the least of which being as they conceded their breach
20 of contract action. The agreement, whatever it was -- and
21 we understand there's a dispute as to what that agreement
22 may have been was between the Plaintiffs and Danville
23 Business Advisors. There's been no testimony that there was
24 -- that Mr. Turbeville was ever acting individually in any
25 agreement with the Plaintiffs, but as a member of the LLC,

1 he's shielded from individual liability by South Carolina
2 code 33-44-303. We also think that there's insufficient
3 evidence against him individually on the unfair trade
4 practices act over and above the fact that as a member of
5 the LLC, he should not be held individually liable.

6 As to Danville Business Advisors, we would move
7 for a directed verdict on all four of those causes of
8 action, breach of fiduciary duty, the unfair trade practices
9 act, breach of contract and negligence on the grounds that
10 while there may have been an alleged breach of a contract,
11 which has never been presented to the Court because there
12 wasn't a contract other than maybe an oral contract. If
13 there was a breach, it doesn't rise to the level of an
14 unfair trade practices act. Under the statute, not every
15 breach of a contract is an unfair trade practice act.
16 You've got no evidence that anything that they did in this
17 case has adversely affected the public. There may have been
18 a potential out there, but there, certainly, has been no
19 evidence that anything Danville Business Advisors or
20 Mr. Turbeville did, in fact, damaged the general public or
21 any other person or entity. So those would be the rough
22 grounds for the motions. If you want more, I'll be glad to
23 try to argue more or if you want to wait until after we've
24 presented our case, we can do that.

25 THE COURT: I'll just -- what I'll do is -- you've

1 stated them briefly for the record and we can just save any
2 arguments until -- since the juror needs to leave early
3 today, we can pick them up at that particular point.

4 MR. DOUGALL: All right, Your Honor.

5 THE COURT: Anything else we need to take up at
6 this particular point?

7 MR. BRUNER: Nothing from the Plaintiffs, Your
8 Honor.

9 THE COURT: Then you may ask for the jury to come
10 in, please.

11 BAILIFF: Yes, Your Honor.

12 (Whereupon, the jury returned to the
13 courtroom at 2:11 p.m.)

14 BAILIFF: The jury's seated, Your Honor.

15 THE COURT: Good afternoon, ladies and gentlemen.
16 At this time, we're ready to continue on.

17 Mr. Bruner, anything further from the Plaintiff?

18 MR. BRUNER: Nothing further from the Plaintiff,
19 Your Honor. At this time, the Plaintiffs rest their case.

20 THE COURT: Ladies and gentlemen, we've agreed
21 that because of this particular posture, we'll save the
22 legal arguments until later this afternoon when I believe
23 you may have to leave early. And so we'll be able to go
24 ahead and continue on with this matter so that you can hear
25 additional testimony.

WILLIAM DANIELSON CROSS BY MR. STABLER

- 1 Q. Did you sign it as a construction manager?
- 2 A. No.
- 3 Q. Did you sign it as an architect?
- 4 A. No.
- 5 Q. As a general contractor?
- 6 A. No.
- 7 Q. In fact, does Danville Business Advisors have a
- 8 contractor's license?
- 9 A. No.
- 10 Q. Does it have a construction manager's license?
- 11 A. No.
- 12 Q. Did Mr. Turbeville ever sign that document?
- 13 A. No, he did not.
- 14 MR. DOUGALL: That's all I've got for you. Thank
- 15 you.
- 16 THE COURT: Any cross?
- 17 MR. STABLER: Thank you, Your Honor.
- 18 CROSS-EXAMINATION
- 19 BY MR. STABLER:
- 20 Q. Good afternoon, Mr. Danielson.
- 21 A. Good afternoon.
- 22 Q. I believe you just told this jury it's fairly customary
- 23 for a real estate agent to get a commission when they
- 24 bring somebody to the table, is that correct?
- 25 A. That's correct.

WILLIAM DANIELSON CROSS BY MR. STABLER

- 1 Q. And, usually, isn't it customary for everybody to know
2 who's getting a commission?
- 3 A. Not on the commercial side, no.
- 4 Q. So nobody knows -- every commercial deal, people have
5 no idea where that money goes?
- 6 A. Not necessarily.
- 7 Q. Okay. Mr. Danielson, you also said there was no
8 contract in this case, do you recall that?
- 9 A. I do.
- 10 Q. That's not true, is it?
- 11 A. Well, I didn't see a contract.
- 12 Q. There's no written contract, is it?
- 13 A. There is no written contract to my knowledge, no.
- 14 Q. There's an agreement that Mr. Bigby is going to pay
15 Danville Business Advisors to look out for his best
16 interest and get this project done, isn't there?
- 17 A. I would believe there is an agreement there.
- 18 Q. And do you believe Danville Business Advisors held up
19 their end of the bargain?
- 20 A. Absolutely.
- 21 Q. Okay. Well, tell me this then, why was this restaurant
22 so hot in the kitchen?
- 23 A. I couldn't tell you that. I didn't handle the project
24 on a daily basis.
- 25 Q. Then you talked a little bit about the business model

WILLIAM DANIELSON CROSS BY MR. STABLER

- 1 of Danville Business Advisors, do you remember that?
- 2 A. Uh-huh.
- 3 Q. And you mentioned these finders's fee for bringing
4 contractors to the table. And I believe you said the
5 contractors were more than happy to share a percentage
6 of their profits, do you recall that?
- 7 A. Yes.
- 8 Q. Now, in this case, the contractor didn't share any of
9 his projects with Danville Business Advisors, did he?
- 10 A. I don't know what his profits were.
- 11 Q. I'm going to hand you what's previously been marked as
12 Plaintiff's Exhibit 8. This is fax from the contractor
13 to Mr. Turbeville at Danville Business Advisors, isn't
14 it?
- 15 A. Yes.
- 16 Q. And in it, Mr. Gray says he's added three percent for
17 overhead, three percent for profit, doesn't it?
- 18 A. Correct.
- 19 Q. And Mr. Turbeville has already testified that that was
20 your finder's fee, so he's adding in something for your
21 finder's fee. He's not sharing any of his profits, is
22 he?
- 23 A. I wouldn't -- I don't know whether he is or not.
- 24 Q. When Danville oversees a project for the client, is it
25 their policy to be open and honest about what's going

MARION TURBEVILLE REBUTTAL BY MR. DOUGALL

- 1 on in the project?
- 2 A. There is a policy, yes, there is. There's a policy to
- 3 represent our clients.
- 4 Q. That's what you're there for, right?
- 5 A. Uh-huh.
- 6 Q. You're supposed to look out for your clients' best
- 7 interest?
- 8 A. (The witness nodded head.)
- 9 Q. Are you familiar with this project that Danville
- 10 handled for Mr. Bigby?
- 11 A. No.
- 12 Q. You're not familiar with this project?
- 13 A. I'm not familiar with the details of the project, no.
- 14 Q. So you don't know whether everything that Mr. Bigby was
- 15 supposed to know, you don't know whether that
- 16 information was conveyed to him, do you?
- 17 A. No.
- 18 Q. Is it Danville's business model to not tell their
- 19 client's about the finder's fees they're getting from
- 20 contracts?
- 21 A. It's Danville's business model to get the best deal
- 22 available for the client with the less -- with the
- 23 least cost involved to the client.
- 24 Q. And involved in that model, is it your policy to tell
- 25 your clients that you're getting a commission from the

MARION TURBEVILLE REBUTTAL BY MR. DOUGALL

1 contractor?

2 A. Depends on the client.

3 Q. Is it your policy to tell them, yes or no?

4 A. No, it's not a policy.

5 Q. You don't tell them, do you?

6 (There was no response.)

7 MR. STABLER: That's all I have. Thank you.

8 THE COURT: Any redirect?

9 MR. DOUGALL: No, Your Honor.

10 THE COURT: You may step down. Thank you.

11 MR. DOUGALL: Your Honor, at this time, we would
12 call Marion Turbeville.

13 I'm sorry, can we release Mr. Danielson?

14 THE COURT: Any objection?

15 MR. STABLER: No objection, Your Honor.

16 THE COURT: You may be released. Thank you.

17 Mr. Turbeville, I will remind you that you are
18 still under oath to tell the truth in this matter. I will
19 not require that you be resworn at this particular time.

20 THE WITNESS: Okay.

21 REBUTTAL EXAMINATION

22 BY MR. DOUGALL:

23 Q. Marion, I'm not going to rehash all of your prior
24 testimony, but there are a few things I want to go over
25 based on some of the other testimony that has happened

MARION TURBEVILLE REBUTTAL BY MR. DOUGALL

1 so far. Do you recall the testimony of Plaintiff's
2 Exhibit 10, which I have put in front of you?

3 A. Yes.

4 Q. And that's the letter from Vista Engineering to
5 Architectural Concepts, Inc. concerning the HVAC,
6 correct?

7 A. Yes.

8 Q. When you found out about the problems being created by
9 the HVAC system, was that the last thing you did in
10 this case or did you continue to work for Mr. Bigby to
11 try to resolve that issue?

12 A. I continued to try to get the general contractor, the
13 mechanical subcontractor, FRS, and encourage the
14 contractor to get the engineer involved to try to
15 resolve the issues that were still outstanding at that
16 time.

17 Q. All right. So you had conversations with the actual
18 HVAC subcontractor, correct?

19 A. At that time, I probably was only communicating with
20 David Grey, the general contractor.

21 Q. All right. And what was Mr. Gray's response to your
22 entreaties to come out and help Mr. Bigby?

23 MR. STABLER: Objection, hearsay.

24 THE COURT: Rephrase the question.

25

BENJAMIN KELLY CROSS BY MR. BURNER

1 defects to you?

2 A. No.

3 Q. Do you know how long La Begata has been in this space?

4 A. I would have to add that up. I do not. They're still
5 there.

6 Q. You don't know if they're still there?

7 A. Pardon?

8 Q. You don't know if they're still there?

9 A. I said I believe they are still operating.

10 Q. Okay. So I take it from that answer you're not the
11 landlord of that space anymore?

12 A. I'm not.

13 Q. Okay. When did you sell that?

14 A. Last year.

15 Q. Sir?

16 A. Last year.

17 Q. You don't remember when?

18 A. December of 2012, I believe.

19 Q. December of 2012?

20 A. I believe so.

21 MR. PEELE: All right. Thank you, sir.

22 THE COURT: Any cross?

23 MR. BRUNER: Yes, Your Honor.

24 CROSS-EXAMINATION

25

BENJAMIN KELLY CROSS BY MR. BURNER

- 1 BY MR. BRUNER::
- 2 Q. Mr. Kelly, I'm going to try to keep this brief. You're
3 not a party to this case, are you?
- 4 A. I don't believe so.
- 5 Q. This is about Mr. Turbeville, isn't it?
- 6 A. It is.
- 7 Q. Now, when you dealt with Danville Business Advisors
8 when you were negotiating the lease for the restaurant
9 space, was your contact Marion Turbeville or was your
10 contact Bill Danielson?
- 11 A. Marion Turbeville.
- 12 Q. And he was the only contact at Danville you dealt with,
13 wasn't he?
- 14 A. Correct.
- 15 Q. Okay. And are you a licensed real estate agent?
- 16 A. I am.
- 17 Q. Okay. Is it common practice to conceal commissions
18 from your clients?
- 19 A. No.
- 20 Q. In fact, real estate agents tell their clients when
21 they're making a commission off something like this,
22 don't they?
- 23 A. Pardon?
- 24 Q. I can move on. I believe you've answered me question.
25 Now, as far as you know, did Mr. Bigby know that

BENJAMIN KELLY CROSS BY MR. BURNER

- 1 Danville Business Advisors was getting a leasing
2 commission on this deal?
- 3 A. As far as I know?
- 4 Q. Yes, sir. To your personal knowledge, did Mr. Bigby
5 know about the leasing commission Danville Business
6 Advisors got on this project?
- 7 A. I never thought about it.
- 8 Q. And that lease that Mr. Peele just had you read, the
9 section that says the commissions will be paid, that
10 doesn't say Danville Business Advisors, does it?
- 11 A. I had -- it did not.
- 12 Q. And that doesn't say Marion Turbeville, does it?
- 13 A. It did not.
- 14 Q. It just says commissions will be paid, right?
- 15 A. That's my recollection.
- 16 Q. And, in fact, the commission that you pay to real
17 estate agent, as the owner of the building that pays
18 the real estate agent is one of the things you take
19 into account when you determine the rate of rent, isn't
20 that right?
- 21 A. We -- we pay real estate commission on all of our --
22 all of our transactions.
- 23 Q. And that's something you try to recoup through the
24 rental agreement through the long term rents, isn't
25 that correct?

BENJAMIN KELLY CROSS BY MR. BURNER

1 A. I think that's a hypothetical question. I think the
2 market pays what the market will pay and from a
3 theoretical point of view, the commission is a part of
4 that market rent, so Mr. Bigby will pay no more than
5 market. If I can make a market deal, then I make it
6 and then I pay the commission out of that. So my job
7 is to get the market and pay the commission, which we
8 do.

9 Q. And the commission is a portion of that market rate?

10 A. Right.

11 Q. So it's all connected, isn't it?

12 A. Correct.

13 Q. And in this building where Primarily PI was opened for
14 a short term, it's a good location, isn't it?

15 A. I believe it is.

16 Q. Now, would agree with me that it's rough to keep a
17 restaurant very busy if it's hot and smells like a
18 sewer?

19 MR. DOUGALL: Objection, Your Honor. Beyond the
20 scope of expertise. He's not an expert witness.

21 MR. BRUNER: This layperson is kind of
22 knowledgeable, Your Honor.

23 THE COURT: Can counsel approach?

24 (Whereupon, a bench conference was held
25 off the record, in the presence of the

1 anything, so.

2 MR. DOUGALL: I think we've tried to e-mail it.

3 MR. BRUNER: I thought I would have the ability to
4 e-mail and I do not, but I can, certainly, get it to Your
5 Honor or to your law clerk before 4:30.

6 THE COURT: I need to get it before 4:30,
7 including -- and if there's a difference as to what's in a
8 verdict form, I need to receive proposal on both of those
9 and I will go from there.

10 MR. BRUNER: I think we've already agreed on the
11 verdict form and tried to e-mail it, it just hasn't come
12 through yet, but that's -- of course, that will be subject
13 to whatever rulings Your Honor makes. We can get that to
14 you as well.

15 THE COURT: Okay. All right. Then I'll see you
16 all at 9:30 tomorrow morning. Please make sure that all the
17 exhibits are here.

18 (The following proceedings were
19 concluded for May 28, 2014.)

20 (The following proceedings were held on
21 May 29, 2014.)

22 THE COURT: Good morning. I believe what I
23 indicated yesterday was that I would send the unfair trade
24 practices and the breach of contract to the jury as it
25 relates to Danville as well as the breach of fiduciary duty.

1 I've had the opportunity to review case law
2 relating to whether the Defendant, Marion Turbeville, those
3 claims, at least, as it relates to the breach of fiduciary
4 duty and the unfair trade practices could be submitted to
5 the jury for his personal liability. And I've read those
6 cases. And based upon the information that I have read
7 arising out of BPS, Incorporated v. Worthy, and -- I find
8 that if there's evidence that the Defendant individually
9 directed or participated in or engaged in conduct that would
10 create a tort, whether it's unfair trade practices or breach
11 of fiduciary duty, then he can be held individually liable.

12 I understand that there was some discussion as to
13 liability under the limited liability corporate statutes and
14 there's been -- there was some discussion about the Jade
15 Street cases. I noticed that in the 2012 case, the -- the
16 Supreme Court made the decision that a member was not
17 shielded under the limited liability act. In the rehearing,
18 which is a 2013 case, the Supreme Court specifically did not
19 address that issue and went so far as to state that although
20 the case poses a novel question of whether the uniform
21 limited liability act shields an LLC member from personal
22 liability from his own torts, we save that discussion for
23 another day. And that specific case found specifically that
24 there was no duty on the part of an individual and thus, did
25 not even reach the question as to whether or not there was

1 evidence that would allow you, the jury, to be able to
2 determine an amount that's fair and just and reasonable.

3 Once you've considered the breach of contract
4 claim, then you may consider the other claims that have been
5 raised by the Plaintiffs. And these other claims are
6 asserted against both Danville Business Advisors as well as
7 against Marion Turbeville individually. Those would
8 include -- that would be the breach of fiduciary duty and
9 the unfair trade practices claim.

10 In order to hold Marion Turbeville personally
11 liable under these claims, the Plaintiff must establish by
12 the greater weight or the preponderance of the evidence that
13 Mr. Turbeville personally committed, participated in,
14 directed or authorized the commission of acts in violation
15 of those fiduciary duties or in violation of the unfair
16 trade practices act. If you find that the Defendant Marion
17 Turbeville did so, whether or not it was also by or for the
18 corporation, Mr. Turbeville would be liable to the Plaintiff
19 and it does not matter what liability attached to the
20 corporation for the wrongful act.

21 So for breach of fiduciary duty, a fiduciary
22 relationship is founded on the trust and confidence that's
23 placed by one person in the integrity and fidelity of
24 another. A confidential or fiduciary relationship exist
25 when one imposes a special confidence in another so that the

1 MR. DOUGALL: Nothing from the Defense, Your
2 Honor.

3 MR. BRUNER: Nothing from the Plaintiffs, Your
4 Honor.

5 THE COURT: You may ask the jury to come in,
6 please.

7 BAILIFF: Yes, Your Honor.

8 (Whereupon, the jury returned to the
9 courtroom at 2:35 p.m.)

10 BAILIFF: The jury's present, Your Honor.

11 THE COURT: Madam Foreperson, I understand you all
12 have reached a verdict, is that correct?

13 THE FOREPERSON: Yes, ma'am, we have.

14 THE COURT: If you will please pass the forms to
15 the bailiff. Thank you.

16 Madam Clerk, if you will please publish the
17 verdicts.

18 THE CLERK: State of South Carolina, County of
19 Richland County, Coastal PI, LLC, doing business as
20 Primarily PI and James Bigby v. Danville Business Advisors,
21 LLC, and Marion B. Turbeville, case 2011-CP-40-04111.
22 Question one, on the Plaintiff's breach of contract claim
23 against Danville Business Advisors, LLC, we, the jury,
24 unanimously find in favor of Plaintiffs. On the Plaintiff's
25 breach of fiduciary duty claim against Danville Business

1 Advisors, LLC, we, the jury, unanimously find in favor of
2 the Plaintiffs.

3 Question two, we, the jury, unanimously award to
4 the Plaintiffs against Danville Business Advisors, LLC, the
5 amount of 521,000-dollars in actual damages.

6 On the unfair trade practices claim against
7 Defendant Danville Business Advisors, LLC, we, the jury,
8 unanimously find for Plaintiffs, 521,000, signed by the
9 foreperson, Rifeia Jamison, No. 304 on May 29th, 2014.

10 Second portion of the verdict form, again, State
11 of South Carolina, County of Richland, Coastal PI, LLC,
12 doing business as Primarily PI and James Bigby v. Danville
13 Business Advisors, LLC, and Marion B. Turbeville, case
14 number 2011-CP-40-04111. Question one on breach of
15 fiduciary claim against Defendant Marion Turbeville, we, the
16 jury, unanimously find in favor of the Plaintiffs in the
17 amount of 39,200-dollars in actual damages. On the unfair
18 trade practices claim against Defendant Marion Turbeville,
19 we, the jury, unanimously find in favor of the Plaintiffs,
20 39,200-dollars actual damages. Signed by the foreperson,
21 Rifeia Jamison, No. 304 on May 29th, 2014.

22 Madam Foreperson, is this the verdict of the
23 entire jury?

24 THE FOREPERSON: Yes, it is.

25 THE COURT: Do the parties wish to poll the

1 jurors?

2 MR. BRUNER: The Plaintiffs do not, Your Honor.

3 MR. DOUGALL: The Defendants do not, Your Honor.

4 THE COURT: Ladies and gentlemen, the Court is not
5 concerned with the verdict that you reached so much as I'm
6 concerned with the process by which you reach your verdict.
7 You listened to the evidence as was presented throughout the
8 course of this trial, you determined the facts in accordance
9 with your view of what that evidence showed, and you applied
10 the law as I instructed it to you and then you were able to
11 arrive at your verdict. And having done so, then no one can
12 complain about the verdict that you've reached and you have
13 fully discharged your duty and your responsibility as jurors
14 in this matter. On behalf of the state and Richland County,
15 I would like to thank you very much for your service in this
16 matter. I'm pleased to report your service is concluded for
17 the week.

18 I ask that you return to the jury room. The clerk
19 will bring you any return to work forms. Your check will be
20 in the mail. When you go back into the jury room, make sure
21 you collect all your personal belongings. If you will leave
22 for me the plastic portion of your badges, the white portion
23 is your souvenir for jury service. Thank you very much for
24 your service and have a good weekend.

25 (Whereupon, the jury left the courtroom)

1 at 2:40 p.m.)

2 THE COURT: Are there any post-trial motions at
3 this time?

4 MR. BRUNER: None from the Plaintiff, Your Honor,
5 other than to -- well, none from the Plaintiff, Your Honor.

6 MR. DOUGALL: Your Honor, we would to have the
7 Plaintiff select their remedy. Obviously, the verdict form
8 from the Plaintiff -- or the jury has awarded the same
9 amount of damages for the breach of contract and breach of
10 fiduciary duty and the unfair trade practices. And so that
11 would be a double recovery for that. We would ask to select
12 remedies.

13 THE COURT: Any response from the Plaintiff?

14 MR. BRUNER: Your Honor, since we do have -- we've
15 got one number against the business and one number against
16 the individual. If the Court wishes us to elect right now,
17 I need some time to consult with my client. I would ask
18 that you give us 10 days to respond to this, to have a
19 chance to look into this and research this issue.

20 THE COURT: Yes, sir, I will give you 10 days in
21 order to respond and to make an election as to remedies or
22 provide me reasonable argument why you need not make an
23 election.

24 MR. BRUNER: Your Honor, we would be interested to
25 know whether with respect to the judgment of the damages

1 that they awarded against Mr. Turbeville individually,
2 whether that would be -- I'm not sure if the Court's willing
3 to tell us how we would rule on unfair trade practices and
4 whether Mr. Turbeville's conduct was a willful violation of
5 the act -- have a bearing on our decision as to damages
6 against him.

7 THE COURT: You need to make those arguments to
8 me.

9 MR. BRUNER: Fair enough.

10 THE COURT: And I give the defense -- the
11 Plaintiffs' election or memorandum will be due June the 9th
12 and I'll give the Defense to June 16th to respond.

13 MR. DOUGALL: Your Honor, if I may, I'm on
14 vacation until June 16th, if I could have a couple of extra
15 days, June 18th or 19th.

16 MR. BRUNER: We don't have a problem with that,
17 Your Honor.

18 THE COURT: That's fine. I will give you to the
19 20th.

20 MR. DOUGALL: Thank you, Your Honor.

21 THE COURT: Any other post-trial motions?

22 MR. DOUGALL: Not at this time, Your Honor.

23 THE COURT: And what I will do with respect to the
24 verdict at this particular point, I will not enter a
25 judgment at this particular time. I'll note that motions

1 with respect to election of remedies would be filed within
2 the 10-day period memorandum, and then a decision will be
3 made thereafter. So there will be no entry of a judgment
4 until those issues have been resolved.

5 Anything further?

6 MR. DOUGALL: Just quick clarification, you said
7 10 days. You mean he's got --

8 THE COURT: He's got 10 days to --

9 MR. DOUGALL: And I've got until the 20th?

10 THE COURT: Yes, sir.

11 MR. BRUNER: I've got until June 9th.

12 MR. DOUGALL: Just wanted to make sure.

13 MR. BRUNER: Nothing further from the Plaintiffs,
14 Your Honor.

15 THE COURT: Okay. Thank you. Have a good week.

16 MR. DOUGALL: You, too.

17 (END OF PROCEEDINGS)

18

19

20

21

22

23

24

25

Rob Peele

From: "Lee, Alison Renee Law Clerk (Kathryn S. Mansfield)" <ALeeLC@sccourts.org>
To: "Ben Bruner" <BBruner@brunerpowell.com>
Cc: <rpeelee@dougallfirm.com>; "Tom Dougall" <tdougall@dougallfirm.com>; "Matt Stabler" <mstabler@brunerpowell.com>
Sent: Friday, July 18, 2014 4:27 PM
Subject: RE: Coastal Pi LLC , plaintiff, et al vs Danville Business Advisors; 2011-CP-40-4111
Ben,

Additionally, could you please send an itemized bill of attorney's fees beginning with the day that Turbeville was added to the lawsuit?

Thank you,
Kathryn

-----Original Message-----

From: Lee, Alison Renee Law Clerk (Kathryn S. Mansfield)
Sent: Friday, July 18, 2014 4:19 PM
To: 'Ben Bruner'
Cc: rpeelee@dougallfirm.com; Tom Dougall; Matt Stabler
Subject: RE: Coastal Pi LLC , plaintiff, et al vs Danville Business Advisors; 2011-CP-40-4111

Ben,

Judge Lee would like for you to please itemize your costs.

Thank you,
Kathryn

-----Original Message-----

From: Ben Bruner [mailto:BBruner@brunerpowell.com]
Sent: Friday, July 18, 2014 2:50 PM
To: Lee, Alison Renee Law Clerk (Kathryn S. Mansfield)
Subject: RE: Coastal Pi LLC , plaintiff, et al vs Danville Business Advisors; 2011-CP-40-4111

Good afternoon, Kathryn. I am writing to follow-up on the consent order entering judgment in this case. Unfortunately, this case is not going to settle, nor has any appeal been filed. At your convenience, could you please advise of the status of that order?

Thank you for your help,

Ben

Benjamin C. Bruner
BRUNERPOWELL
BRUNER, POWELL, WALL & MULLINS, LLC
P.O. Box 61110
1735 St. Julian Place, Suite 200 (29204) Columbia, SC 29260-1110
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Rob Peele

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To: "Lee, Alison Renee Law Clerk (Kathryn S. Mansfield)" <ALeeLC@sccourts.org>
Cc: <rpeelee@dougallfirm.com>; "Tom Dougall" <tdougall@dougallfirm.com>
Sent: Friday, July 25, 2014 11:11 AM
Attach: Order.doc; Aff. of Attorney Fees - UTPA.docx
Subject: RE: Coastal Pi LLC , plaintiff, et al vs Danville Business Advisors; 2011-CP-40-4111
 Kathryn,

You should find the requested documents attached. Please let me know if you need anything further from me.

Ben

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-----Original Message-----

From: Lee, Alison Renee Law Clerk (Kathryn S. Mansfield) [mailto:ALeeLC@sccourts.org]
Sent: Friday, July 25, 2014 11:03 AM
To: Ben Bruner
Cc: rpeelee@dougallfirm.com; Tom Dougall; Matt Stabler
Subject: RE: Coastal Pi LLC , plaintiff, et al vs Danville Business Advisors; 2011-CP-40-4111

Ben,

Could you please email me in Word format a copy of the Order you sent by hand delivery on June 6,

2014? It is simply entitled "Order." Also could you please email me in Word format a copy of your affidavit for attorney's fees?

Thank you,
Kathryn

-----Original Message-----

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Cc: rpeelee@dougallfirm.com; 'Tom Dougall'; 'Matt Stabler'
Subject: RE: Coastal Pi LLC , plaintiff, et al vs Danville Business Advisors; 2011-CP-40-4111

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Kathryn

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Coastal Pi, LLC d/b/a Primarily Pi and )  
James Bigby, )  
 )  
Plaintiffs, )

Civil Action No. 2011-CP-40-4111

vs. )

**AFFIDAVIT  
OF**

Danville Business Advisors, LLC and )  
Marion D. Turbeville, )  
 )  
Defendants. )

**ATTORNEYS' FEES AND COSTS**

PERSONALLY APPEARED BEFORE ME, Benjamin C. Bruner, who, being first duly sworn, deposes and says:

1. I am over eighteen (18) years old and have personal knowledge of the information contained herein.

2. I am an associate at the law firm of Bruner, Powell, Wall & Mullins, LLC.

3. Our firm represents Coastal Pi, LLC d/b/a Primarily Pi and James Bigby (collectively, "Plaintiffs"), the plaintiffs in this action.

4. In representing the Plaintiffs in this case, Plaintiffs' counsel has necessarily rendered the following services:

|                       |                                |             |
|-----------------------|--------------------------------|-------------|
| a. Henry P. Wall      | 20.75 hours @ \$300 per hour = | \$ 6,225.00 |
| b. Benjamin C. Bruner | 241.2 hours @ \$150 per hour = | \$36,180.00 |
| c. Matthew H. Stabler | 286.2 hours @ \$150 per hour = | \$42,930.00 |
| d. Law Clerk          | 6.7 hours @ \$80 per hour =    | \$ 536.00   |
| e. Law Clerk          | 24.79 hours @ \$50 per hour =  | \$ 1,239.50 |
| f. Paralegal          | 16.96 hours @ \$50 per hour =  | \$ 848.00   |

2. Thus, Plaintiffs' counsel has rendered 596.6 hours of service to the Plaintiffs in this case worth \$87,958.50.

3. In addition, Plaintiffs necessarily incurred costs in the amount of \$22,061.58, for a total value of attorneys' fee and costs of \$110,020.08.

4. Of these amounts, Plaintiffs' counsel rendered services having a reasonable value of \$39,035.50 and Plaintiffs incurred costs in the amount of \$19,047.58 after the Plaintiffs resolved their claims against all other defendants in this case.

5. Thus, of the \$110,020.08 in attorneys' fees and costs, \$58,083.08 was incurred after the only remaining claims to be resolved were the Plaintiffs' claims against Danville Business Advisors, LLC and Mr. Turbeville.

6. This nature of this lawsuit involved both construction defects and unfair trade practices. Plaintiffs prosecuted their claims for months before they discovered and began to unravel the Defendants' practice of taking undisclosed "finder's fees" from contractors. In addition, the Plaintiffs' investigation into the ultimate cause of the construction defects and Plaintiffs' losses—the Defendants' conduct—required a substantial amount of work. All of the attorneys who have appeared on behalf of the Plaintiffs are in good standing and devote their practice to civil litigation. Plaintiffs' counsel has obtained a very beneficial result because the jury found in the Plaintiffs' favor on all causes of action. Finally, the hourly rates on which the value of the services rendered is determined are in conformity with hourly rates for this work.

7. Furthermore, Plaintiffs identified Dr. Perry Woodside and Jeffrey Hass as experts when Danville Business Advisors, LLC and Mr. Turbeville were the only remaining parties in the case and it was apparent the case would not be settled.

8. Accordingly, the reasonable value of attorneys' fees and costs Plaintiffs incurred in this matter is \$110,020.08.

FURTHER AFFIANT SAYETH NOT.

\_\_\_\_\_  
Benjamin C. Bruner

SWORN TO and subscribed before me  
This \_\_\_\_\_ day of June, 2014.

\_\_\_\_\_(L.S.)  
Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_



STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Coastal Pi, LLC d/b/a Primarily Pi and  
James Bigby,

Civil Action No. 2011-CP-40-4111

Plaintiff,

vs.

Danville Business Advisors, LLC and  
Marion D. Turbeville,

Defendants.

**ORDER**

THIS MATTER is before the Court upon motion by the Plaintiffs, Coastal Pi, LLC d/b/a Primarily Pi and James Bigby (hereinafter, "Plaintiffs"), for attorneys' fees and for treble damages against Defendant Marion Turbeville pursuant to the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 to 550 ("UTPA"). Having carefully considered the submissions of the parties, I find Plaintiffs' motion should be granted as set for below.

"The purpose of the UTPA is to discourage unfair methods of competition and unfair or deceptive acts in the conduct of any trade or commerce." Taylor v. Medenica, 331 S.C. 575, 579, 503 S.E.2d 458, 460 (1998) (citing S.C. Code Ann. § 39-5-20). In furtherance of its purpose, the UTPA allows a private party to bring a cause action, collect his attorneys' fees if he is successful and, under certain circumstances, collect three times his actual damages. S.C. Code Ann. § 39-5-140(a).

I find Plaintiffs are entitled to recover reasonable attorneys' fee and costs because they prevailed on their claim against Mr. Turbeville for violation of the UTPA. See S.C. Code Ann. § 39-5-140(a). Having carefully considered the submissions of the parties in light of the six factors enumerated in Jackson v. Speed, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997), I find the

Plaintiffs entitled to recover reasonable attorneys' fees in the amount of \$\_\_\_\_\_ and costs in the amount of \$\_\_\_\_\_. I therefore find Plaintiffs' shall be and are entitled to recover reasonable attorneys' fees and costs against Mr. Turbeville in the amount of \$\_\_\_\_\_.

I also find that the facts and circumstances of this case warrant an award of treble damages under the UTPA. Such an award is appropriate when a defendant engages in conduct that he knew or should have known violated the UTPA. S.C. Code Ann. § 39-5-140(a), (d). "The statutory definition of willful has been construed by our Court of Appeals to mean: 'if, in the exercise of due diligence, a person of ordinary prudence engaged in trade or commerce could have ascertained that his conduct violates the Act, then such conduct is willful.'" Haley Nursery Co., Inc. v. Forrest, 298 S.C. 520, 525, 381 S.E.2d 906, 909 (1989) (quoting State v. Nest Egg Soc. Today, Inc., 290 S.C. 124, 348 S.E.2d 381 (Ct. App. 1986)).

In this case, this Court finds no evidence in the record that the Defendants' practice of negotiating for commissions at their clients' expense without disclosing those payments to the clients is a common, accepted practice. Although Mr. Turbeville continued to claim that the secret commissions were part of Danville's business model, he could not name one other business that engages in the same practice or employs the same business model. At no time did the Defendants present any evidence that it is common practice to negotiate and collect these payments without telling their clients. Nor did the Defendants present any testimony that the Plaintiffs or any of their other clients knew about the secret finder's fees and commissions.

Mr. Turbeville testified unapologetically that he would negotiate for commissions and finder's fees—in addition what his clients paid him—that these payments increased the cost to his clients and that Mr. Turbeville would disclose those payments to clients only if they asked.

Mr. Turbeville's testimony at trial simply proved Danville had a practice of negotiating for and concealing commissions that had a direct and adverse impact on their clients. Any person of ordinary prudence engaged in trade or commerce could have ascertained that such a deceptive and unfair business model violated the UTPA. See Haley Nursery, 298 S.C. at 525, 381 S.E.2d at 909. Mr. Turbeville's testimony also proved without question that he personally participated in, directed or authorized that Danville's unfair and deceptive practice. See BPS, Inc. v. Worthy, 362 S.C. 319, 328-29, 608 S.E.2d 155, 160-61 (Ct. App. 2005). I therefore find Mr. Turbeville knew or should have know his wrongful conduct violated the UTPA. As a result, this Court finds it proper to grant the Plaintiffs' motion and award Plaintiffs damages in the amount of \$117,600, or three times the actual damages the jury awarded.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion for Attorney's Feed and for Treble Damages is GRANTED. IT IS FURTHER ORDERED that judgment be entered in favor of the Plaintiffs and against Defendant Marion Turbeville for reasonable attorney's fees and costs in the amount of \$\_\_\_\_\_, plus three times Plaintiffs' actual damages (\$117,600), for a total judgment to be entered against Defendant Marion Turbeville in the amount of \$\_\_\_\_\_.

AND IT IS SO ORDERED.

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Alison Renee Lee  
Presiding Judge, Fifth Judicial Circuit

June \_\_\_\_\_, 2014

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED  
JUN 03 2015

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court Of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge  
Alison Renee Lee, Circuit Court Judge

CIVIL ACTION NO.: 2011-CP-40-4111  
APPELLATE CASE NO.: 2014-001799

Coastal Pi, LLC d/b/a Primarily Pi and James Bigby.....Respondents.

vs.

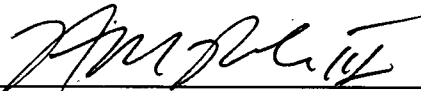
Danville Business Advisors, LLC and Marion D. Turbeville.....Defendants,

Of Whom Marion D. Turbeville is.....Appellant.

PROOF OF SERVICE

I, Robert M. Peele, III, an attorney of Dougall & Collins, attorney for Appellant, Marion D. Turbeville do hereby certify that on the 3<sup>rd</sup> day of June 2015, I served the **Record on Appeal** upon counsel of record by depositing copy of the same in the U.S. Mail, postage prepaid, and addressed as follows:

Henry P. Wall, Esq.  
Benjamin C. Bruner, Esq.  
Bruner Powell Wall & Mullins, LLC  
Post Office Box 61110  
Columbia, SC 29260-1110  
**Attorney for Respondents**



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Robert M. Peele, III  
DOUGALL & COLLINS  
1700 Woodcreek Farms Road, Suite 100  
Elgin, South Carolina 29405  
803.865.8858

June 3, 2015

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY  
Court Of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge  
Alison Renee Lee, Circuit Court Judge

CIVIL ACTION NO.: 2011-CP-40-4111  
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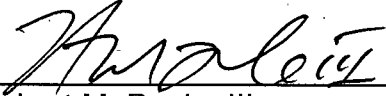
vs.

Danville Business Advisors, LLC and Marion D. Turbeville.....Defendants,

Of Whom Marion D. Turbeville is.....Appellant.

CERTIFICATION OF COUNSEL

I, Robert M. Peele, III, an attorney of Dougall & Collins, attorney for Appellant, Marion D. Turbeville do hereby certify that the Record on Appeal contains all material proposed to be included by all parties to this action and not any other material.

  
Robert M. Peele, III  
DOUGALL & COLLINS  
1700 Woodcreek Farms Road, Suite 100  
Elgin, South Carolina 29405  
803.865.8858

June 3, 2015

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY  
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G. Thomas Cooper, Jr., Circuit Court Judge  
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CIVIL ACTION NO.: 2011-CP-40-4111  
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vs.

Danville Business Advisors, LLC and Marion D. Turbeville..... Defendants,

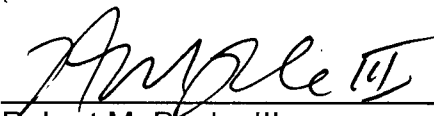
Of Whom Marion D. Turbeville is..... Appellant.

PROOF OF SERVICE

I, Robert M. Peele, III, an attorney of Dougall & Collins, attorney for Appellant, Marion D. Turbeville do hereby certify that on the 3<sup>rd</sup> day of June 2015, I served the **Record on Appeal** upon counsel of record by depositing copy of the same in the U.S. Mail, postage prepaid, and addressed as follows:

Robert G. Rikard, Esq.  
Rikard & Protopapas, LLC  
Post Office Box 5640  
Columbia, SC 29250  
**Attorney for Appellant**





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803.865.8858

June 3, 2015

Columbia, South Carolina