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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Judge

Case No. 2016-000584

CJR Resources, Inc. f/k/a Ron's Building Materials, Inc.....Respondent,
v.
Commercial & Industrial Floors, Inc., and Dabney Maides.....Appellants,
v.
Christopher M. Keel Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA FILED-CLERK OF THE COURT OF COMMON PLEAS
GREENVILLE CO. THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE PAUL B. WICKENSIMER ^{MO}

C.A. NO: 2013-CP-23-05778

2015 JUL 9 AM 10 26

CJR Resources, Inc. f/k/a Ron's Building
Materials, Inc.,

Plaintiff,

v.

Commercial & Industrial Floors, Inc., et al,

Defendant/Third Party Plaintiff,

v.

Christopher M. Keel,
Third Party Defendant.

**CONSENT ORDER COMPELLING
PRODUCTION OF DISCOVERY
RESPONSES FROM
DEFENDANT/THIRD-PARTY
PLAINTIFF**

This matter now comes before the Court as to the relief requested by way of Third-Party Defendant's Motion to Compel and pursuant to the consent of the parties as indicated by their signatures below. In regard thereto, the parties agree that (1) Defendant/Third-Party Plaintiff has failed to answer Third-Party Defendant's first discovery requests that were served on Defendant/Third-Party Plaintiff in August of 2014 and (2) Defendant/Third-Party Plaintiff should now be compelled to respond to Third-Party Defendant's First Interrogatories and First Requests for Production within thirty (30) days of entry of this Order.

AND IT IS SO ORDERED.

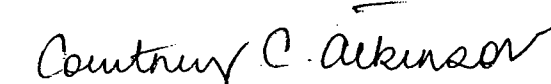
Date:

June 29, 2015
Greenville, South Carolina

Paul B. Wickensimer
Judge, Thirteenth Judicial Circuit

WE SO CONSENT:


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Attorney for Third-Party Defendant,
Christopher M. Keel

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

FILED-CLERK OF COURT CASE NO: 2013CP2305778
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

CJR Resources The DEC Commercial & Industrial Floors Inc

CHECK ONE:

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 16th day of December, 2015, and a copy mailed first class this 16th day of December, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

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Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

CJR Resources, Inc. f/k/a Ron's Building
Materials, Inc.,

Plaintiff,

v.

Commercial & Industrial Floors, Inc. and
Dabney Maides,

Defendant/Third Party Plaintiff,

v.

Christopher M. Keel,

Third Party Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. NO: 2013-CP-23-05778

ORDER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 DEC 16 PM 2 42

This matter comes before the Court upon the following motions: (1) Plaintiff CJR Resources, Inc.'s ("Plaintiff" or "CJR") Motion for Summary Judgment on all causes of action it has asserted against Defendants Commercial & Industrial Floors, Inc. ("CIF") and Dabney Maides ("Maides") and on all causes of action asserted against Plaintiff by CIF and Maides; and (2) Third-Party Defendant Christopher M. Keel's ("Keel") Motion for Summary Judgment on all causes of action asserted against Keel by Defendants/Third-Party Plaintiffs CIF and Maides.

A hearing on these motions was held on November 3, 2015. Present at that hearing were counsel for Plaintiff CJR Resources, Inc. ("CJR"), M. Stokely Holder, Esq. of Kenison, Dudley & Crawford, LLC; counsel for Defendant/Third-Party Plaintiffs, William R. McKibbon, Esq., and counsel for Third-Party Defendant, Courtney C. Atkinson, Esq. of Metcalfe & Atkinson, LLC. Based upon the entire record in this case, including the pleadings, the Memoranda, exhibits and deposition testimony submitted in support of the above-referenced motions, and the arguments

presented to the Court at the November 3 hearing, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

Plaintiff CJR is a privately held South Carolina corporation that previously owned and operated Ron's Building Materials (hereinafter "the Business"), a business located in Greenville County whose primary business is the sale and installation of flooring materials. CJR is a family-owned business and Third Party Defendant Keel is one of the shareholders, together with his mother and father. Defendant CIF is also a South Carolina corporation, which was incorporated by Defendant Maides in 2008 for the purpose of purchasing the assets of the Business from CJR.

In July of 2008, CJR agreed to sell all of the Business's assets to CIF and Maides pursuant to an Asset Purchase Agreement (hereinafter "the APA"). Pursuant to the APA, CIF agreed to pay CJR the total purchase price of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) for the Business. Of the total purchase price, One Million Fifty Thousand Dollars (\$1,050,000.00) was to be paid at closing, with the remaining Two Hundred Thousand Dollars (\$200,000.00) to be financed by way of a promissory note, personally secured by Maides via an unconditional Guarantee of Payment (the "Personal Guarantee").

The APA contained both a non-compete clause and a non-solicitation clause. The non-compete clause covers the entire State of South Carolina and prohibits CJR and its shareholders from engaging in a "Competing Business," which is defined as the same business that "(CJR) is engaged in as of the Closing Date," for a period of five (5) years after closing of the APA. The APA's non-solicitation clause prohibits CJR and its shareholders from soliciting CIF's customers for a competing business, inducing customers to cease doing business with CIF and from hiring any employee of CIF for five years after "the Last Date of Employment."

As a material term of the APA, Keel was required to enter into an at-will employment relationship with CIF and to sign an Employment Agreement ("the Employment Agreement") with CIF, dated July 22, 2008, which was incorporated into the APA. Pursuant thereto, CIF agreed to pay Keel a base monthly salary along with other compensation and benefits. In addition to the APA's restrictive covenants referenced above, the Employment Agreement contains a separate non-compete provision¹, providing that, while employed by the Company and for five (5) years thereafter, Keel could not "become in engaged in, or render services for, any business that competes with the business in which Company is engaged...anywhere in the state of South Carolina." Otherwise, the Employment Agreement made clear that "[Keel]'s employment with [CIF] is 'at will' and may be terminated at any time by either Employee or Company".

The parties all acknowledge and agree that the original employment relationship between CIF and Keel was terminated by Keel in August of 2008 when Keel moved to Charleston, South Carolina. Accordingly, even assuming that any such obligations are enforceable as a matter of law, both the Employment Agreement's non-compete obligations as well as the APA's non-solicitation provision began to run in August of 2013 when the initial at-will employment relationship between CIF and Keel was terminated, whereas the non-compete obligations in the APA began to run on the July 2008 APA closing date.

In January of 2009, almost six (6) months after the original employment relationship between CIF and Keel ended, Keel decided to move back to Greenville and agreed to enter into a new employment relationship with CIF in consideration for CIF's new promise to eventually pay him an increased monthly salary of up to Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three cents (\$8,333.33) (hereinafter "the 2009 Agreement"). At the time he

¹ Unlike the APA, the Employment Agreement does not include any non-solicitation language.

entered into this new agreement, Keel was not asked to and did not sign a written agreement containing any non-compete or non-solicitation obligations.

Keel was employed by CIF pursuant to the new 2009 Agreement from January of 2009 until resigning on May 31, 2013. Keel resigned at that time because CIF did not continue paying Keel the agreed upon monthly salary of Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$8,333.33) and unilaterally decided it would only pay Keel Two Thousand Six Hundred Forty-Two Dollars (\$2,642.00) per month, less than a third of the agreed upon monthly amount. CIF notified Keel of the intended decrease in his pay on May 31, 2013, but made the decrease in his pay retroactive for two weeks prior such that the decrease in pay was reflected in the paycheck Keel received on June 1, 2013 for the two prior weeks. CIF has never paid Keel the difference in pay for work he performed for CIF prior to June 1, 2013. Additionally, and immediately prior to Keel's resignation on May 31, CIF also refused to pay, and has to date never paid, Keel the full commissions he earned prior to that date.

Following Keel's resignation on May 31, 2013, CIF ceased making the required payments due to CJR under the APA and related promissory note. Despite additional demand by CJR to Maides for the same payments pursuant to the Personal Guarantee, Maides has also failed to make the payments.

PROCEDURAL HISTORY

CJR instituted this action by filing its Complaint on October 28, 2013, alleging that CIF breached the APA by failing to make all payments required under the APA and related promissory note, and alleging that Maides failed to make all such payments as required by the Personal Guarantee. CIF filed its Answer, Counterclaim, and Third Party Complaint on December 18, 2013, denying CJR's claims and counterclaiming against Plaintiff for breach of contract and fraud in the inducement. The Defendants agree that all of CIF's counterclaims

against the Plaintiff, as well as all of CIF's defenses against Plaintiff's claims, rely on the same evidence CIF has in support of its third-party claims against Keel.

CIF's third-party claims against Keel were for breach of contract as to the APA, breach of contract as to the Employment Agreement, breach of duty of loyalty, promissory estoppel, fraud in the inducement, breach of contract accompanied by fraudulent act, and injunctive relief. In essence, CIF asserts that Keel breached the Employment Agreement by competing with CIF, and that Keel entered into the Employment Agreement by fraud because he never intended to abide by the terms of the Employment Agreement or work for the benefit of CIF; rather, he intended to "surreptitiously ... start another business venture of his own" and "complete with CIF and to engage in conduct designed to defeat the intent of the APA, the intent of the Employment Agreement, for the sole benefit of himself in competition with CIF."

CIF Answer, Counterclaims and Third-Party Claims.

Keel filed his Answer on March 26, 2014 along with a Motion to Dismiss, pursuant to Rule 12(b)(6), denying all of CIF's claims and arguing that all such claims were barred by the statute of limitations. Keel also asserted various counterclaims against CIF, including breach of contract as to both the APA and the 2009 Employment Agreement, violation of the South Carolina Wage payment act for failure to pay all wages owed and failure to provide mandated notice of change in pay, and defamation. On May 20, 2014, CIF filed its Answer thereto, denying each counterclaim asserted against it by Keel. At the hearing thereon, the Honorable Robin B. Stillwell denied Keel's Motion to Dismiss so as to allow the parties additional time to conduct more discovery on the issue of when Defendants' alleged claims against Keel began to run and further flesh out what Judge Stillwell recognized on the record to be a potentially troublesome issue for the Defendants.

In August of 2014, Keel served CIF with his first discovery requests. When CIF failed to respond, Keel filed a Motion to Compel and, thereafter, upon admission by CIF that it owed discovery responses to Keel, the Court filed a Consent Order, dated July 9, 2015, compelling CIF to provide responses to Keel's discovery requests within thirty (30) days of entry of the Consent Order. CIF provided its responses with all alleged evidence in support of its claims against Keel, almost a year after being served with Keel's discovery requests, on August 9, 2015. Thereafter, CIF's owner, Defendant Dabney Maides, was deposed on August 19, 2015 before the August 31, 2015 discovery deadline set forth in the Consent Scheduling Order that was entered in this case on June 12, 2015. Keel consented to being deposed and was deposed on October 1, 2015 despite the fact that the discovery deadline set forth in the Consent Scheduling Order had already passed. Discovery in this matter was complete prior to the hearing at issue on the motions now before the Court.

STANDARD OF REVIEW

Summary judgment is proper where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. S.C. R. Civ. P. 56(c); *see also Sumter Dairies, Inc. v. J.C. Pelfrey*, 268 S.C. 437, 234 S.E.2d 490 (1977). Rule 56(c) provides that a trial court may grant a motion for summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Robinson v. Est. of Harris*, 389 S.C. 360, 367, 698 S.E.2d 801, 805 (2010). Summary judgment is appropriate where "plain, palpable and undisputed facts exist on which reasonable minds cannot differ." *Main v. Corley*, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984), *citing Williams v. Chesterfield Lumber Co.*, 267 S.C. 607, 230 S.E.2d 447 (1976). Summary judgment serves the important function of expediting "disposition of cases which do not require the services of a fact

finder." *Cox & Floyd Grading, Inc. v. Kajima Constr. Servs., Inc.*, 356 S.C. 512, 517, 589 S.E.2d 789, 792 (2003).

Where the plaintiff cannot meet the burden of proof as to every essential element of the causes of action alleged, summary judgment in favor of the defendant is properly granted. See *Oblachinski v. Reynolds*, 391 S.C. 557, 706 S.E.2d 844 (2011) (upholding grant summary judgment against plaintiff where plaintiff failed to prove an essential element of his claim). A fraud claim requires proof by clear and convincing evidence; thus, more than a mere scintilla of evidence must be presented to withstand a motion for summary judgment. *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011). Likewise, a grant of summary judgment is appropriate when a plaintiff does not commence an action within the applicable statute of limitations. *McMaster v. Dewitt*, 411 S.C. 138, 143, 767 S.E.2d 451, 453 (Ct. App. 2014).

LEGAL ANALYSIS

Keel and CJR are entitled to summary judgment as a matter of law as to all causes of action asserted against them by CIF and Maides for the following reasons: (1) CIF's claims are time-barred by the applicable provisions of the APA; (2) CIF's claims are barred by the applicable statute of limitations; (3) the contract on which all of CIF's claims are premised is unenforceable as a matter of law; and (4) CIF cannot prove the essential elements of each claim against Keel. In addition thereto, and as a result thereof, CJR is entitled to summary judgment as a matter of law on its claims against Defendants CIF and Maides.

I. Claims asserted by CIF and Maides

1. CIF's claims are time-barred by the applicable provisions of the APA.

Article VIII of the APA is titled "Indemnification; Remedies". Under Section 8.1 of the APA, it states in pertinent part that:

All representations, warranties, covenants and obligations in this Agreement and Ancillary Documents² and any other certificate or document delivered pursuant to this Agreement shall survive the Closing, only to the extent provided in Section 8.4(a) and (b).

(emphasis added).

Section 8.2 of the APA is titled 'Indemnification and Reimbursement by Seller and Shareholder', and states, in pertinent part:

Seller and Shareholder³ ... will indemnify and hold harmless Buyer ... and will reimburse the Buyer Indemnified Persons for any loss ... incurred or sustained by Buyer (collectively, 'Damages'), arising from or in connection with:

(a) any breach of any representation or warranty or any covenant or obligation made by Seller or Shareholder in this Agreement or Ancillary Document ... delivered by Seller pursuant to this Agreement.

In addition, Section 8.4 of the APA is titled 'Time Limitations and Notice of Claim' and states, in pertinent part:

(a) Seller and Shareholder will have liability (for indemnification or otherwise) with respect to *any breach* of (i) a covenant or obligation to be performed or complied with prior to the Closing Date or (ii) *a representation or warranty, only if on or before one (1) year after the Closing Date, Buyer shall provide Seller and Shareholder with a written notice indicating that Buyer is making a claim against the Seller or Shareholder as permitted under this Agreement and specifying the factual and legal basis for such claim in reasonable detail and the amount of such claim*

(emphasis added).

Furthermore, Section 8.7 of the APA is titled "*Exclusive Remedy*" (emphasis added) and states, in whole: "*The indemnification provisions set forth in this Article VIII shall be the sole and exclusive basis for a monetary remedy of Buyer with respect to any matter related to this Agreement.*"

(emphasis added). Section 8.10 of the APA further states under its title of "Damages Limitation", in pertinent part: "in no event will Seller or Shareholder be liable for any incidental, consequential or punitive damages."

² The definition of "Ancillary Document" in the APA specifically incorporates the Employment Agreement.

³ Defined as Keel in APA.

Lastly, Section 9.3 of the APA makes clear that "Buyer and Seller have participated jointly in the negotiation and drafting of this Agreement and the preparation of all Ancillary Documents. In the event any ambiguity, question of intent or interpretation arises, this Agreement including all Ancillary Documents thereto shall be construed as if drafted jointly by Buyer and Seller, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement."

In summary, the APA makes it clear that any claims brought by CIF against CJR and Keel that are related to the APA had to be brought pursuant to the provisions of Article 8 of the APA. The provisions of Article 8 make it clear that the claims brought by CIF against both CJR and Keel had to be brought only after providing CJR and Keel notice in writing of the claims within one (1) year of the July 2008 APA closing date. The claims brought by CIF were filed December 18, 2013, and there is nothing in the record establishing or otherwise evidencing CIF providing any written notification of its claims to CJR or Keel prior to July 2009. Therefore, the claims brought by CIF against Keel and CJR are time-barred by the provisions of the APA.

2. CIF's claims are barred by the statute of limitations.

Each and every one of CIF's claims against Keel and CJR, as pled, relate back to the agreements signed between CIF and Keel in July of 2008 and Keel's alleged breaches thereof. Specifically, CIF claims that Keel breached the agreements by competing with CIF and soliciting its clients, that Keel entered into the agreements by fraud and that Keel never intended to abide by the terms of the agreements. Accordingly, the three-year statute of limitations set forth in S.C. Code Ann. § 15-3-530, providing that an action upon a contract must be brought within three years from the date the action accrues, applies to all of CIF's claims. *See* S.C. Code Ann. § 15-3-530(1) (2013). Pursuant to the discovery rule, an action accrues on the date that the aggrieved party either discovered the breach or should have discovered the breach through the exercise of

reasonable diligence. *See Dillon County Sch. Dist. No. Two v. Lewis Sheet Metal Works, Inc.*, 286 S.C. 207, 332 S.E.2d 555 (Ct. App. 1985). Accordingly, the three-year statute of limitations on all of CIF's claims against Keel and CJR accrued when CIF discovered or should have reasonably discovered the alleged breaches of the agreements at issue by Keel.

A plain reading of CIF's Third Party Complaint demonstrates that all of CIF's claims against Keel and CJR accrued in 2008 and CIF has acknowledged that it either discovered or should have reasonably discovered the alleged breaches of the Employment Agreement by Keel in 2008, more than five years prior to the filing of CIF's claims against Keel and CJR. Specifically, CIF alleges that a material term of the Employment Agreement was Keel's "promises and obligations to use (his) contacts and customer base for the benefit of CIF," but that "from the outset of Keel's employment, it became clear that Keel did not intend to lend his expertise of contacts and customer base for the benefit of CIF." Since Keel's employment with CIF began in July of 2008, CIF's pleadings and testimony acknowledge that it knew or should have known of Keel's alleged breaches of the agreements at issue in 2008.⁴ Since CIF did not bring its claims against Keel and CJR until more than five years later in December of 2013, all of CIF's claims are now barred by the applicable statute of limitations, entitling Keel and CJR to judgment thereon as a matter of law.

3. The Employment Agreement is unenforceable under South Carolina law.

Keel and CJR are also entitled to judgment as a matter of law on each of CIF's claims against them because the restrictive covenants in the agreements at issue, on which all of CIF's claims are premised, are, on their face, unenforceable and, therefore, void as a matter of public policy. Specifically, the non-compete provision of the Employment Agreement, which is

⁴ Evidence was also submitted to show that CIF had sought legal counsel in regard to Keel's employment in August of 2010. Even if that date were accepted as the discovery date, CIF's claims were still not filed until three years later and would still be time-barred.

essentially the same as the non-compete provision contained in the APA, provides that, while employed by the Company and for five (5) years thereafter, Keel could not "become in engaged in, or render services for, any business that competes with the business in which Company is engaged...anywhere in the state of South Carolina."

For a restrictive covenant to be deemed enforceable under South Carolina law, an employer seeking enforcement thereof must demonstrate that it is "(1) necessary for the protection of the legitimate interest of the employer; (2) reasonably limited in its operation with respect to time and place; (3) not unduly harsh and oppressive in curtailing the legitimate efforts of the employee to earn a livelihood; (4) reasonable from the standpoint of sound public policy; and (5) supported by a valuable consideration." *Faces Boutique, Ltd. v. Gibbs*, 318 S.C. 39, 42, 455 S.E.2d 2d 707, 708 (Ct. App. 1995). Restrictive covenants are to be strictly construed against employers and if a restrictive covenant is deficient in even one of the above-listed respects, it must fail as a matter of law. *Id.* Applying the criteria set forth in *Faces*, the Court finds that the non-compete provisions contained in the Employment Agreement and the APA, when construed strictly against CIF, are defective in regard to both the second and third requirements and, therefore, unenforceable as being against the public policy of South Carolina.

First, the non-compete provisions are not narrowly tailored as to time and geography. See *Faces Boutique, Ltd. v. Gibbs*, 318 S.C. at 42. The non-compete period of five (5) years goes several years beyond what South Carolina courts have generally considered as reasonable and narrowly tailored. See *Rental Uniform Serv. v. Dudley*, 278 S.C. 674, 301 S.E.2d 142 (1983) (holding three year non-compete enforceable in noting that "a limitation of two or three years, may not be obnoxious in the context of a noncompetition agreement"); see also *Standard Register Co. v. Kerrigan*, 238 S.C. 54, 119 S.E.2d 533 (1961) (upholding two year non-compete as reasonable). Likewise, the geographic limitation of both provisions is also overly broad in

covering the entire state of South Carolina, not just where Keel worked for CIF. The South Carolina Supreme Court has noted that "(a)ny covenant should have been limited to the area where he worked...(and) (e)xtending it to the entire State rendered it unenforceable." *Oxman v. Sherman*, 239 S.C. 218, 122 S.E.2d 559 (1961).

The non-compete provisions at issue also fail to satisfy the third requirement set forth in *Faces* as they are both unduly harsh and oppressive in curtailing the legitimate efforts of Keel to earn a livelihood, especially in light of the provisions' overly broad temporal and geographic scope. Keel worked as a sales person in the construction industry in Greenville County for most of his working life. This field is where Keel has the bulk of his work knowledge and experience, and CIF has not presented any argument or evidence that Keel's role and/or experience in the industry is so specialized as to justify prohibiting Keel from earning a living to support himself and his family anywhere in the entire State of South Carolina for a period of five years.

Because the non-compete provisions of the APA and the Employment Agreement, when construed against CIF as the employer, do not satisfy the criteria set forth in *Faces*, the Court finds that the non-compete provision in the Employment Agreement and the almost identical restrictive covenants in the APA are unenforceable as matter of law. Accordingly, and because CIF's claims against Keel and CJR are based thereon, any such claims must fail as a matter of law, entitling Keel and CJR to summary judgment thereon.

4. CIF cannot prove every essential element of each of its claims against Keel.

The Court also finds that Keel is entitled to judgment as a matter of law on all claims asserted against him by CIF because CIF cannot prove the essential elements of each and every such cause of action. Since all such claims against CJR depend on the exact same evidence, CJR is, likewise, entitled to summary judgment thereon.

A. Breach of Contract

To survive a motion for summary judgment on a claim for breach of contract, the party alleging such claim must point to the existence of actual evidence sufficient to prove each and every one of the following elements: (1) a binding contract entered into by the parties, (2) breach of that contract and (3) damage suffered by the plaintiff as a direct and proximate result of the breach. See *Fuller v. Eastern Fire & Cas. Ins. Co.*, 240 S.C. 75, 124 S.E.2d 602 (1962). CIF has not and cannot meet that burden in the instant action because it has not and cannot point to any actual evidence to prove either that Keel breached the agreements at issue or that CIF suffered any damages as a direct and proximate result of any such alleged breach by Keel.

In regard to the alleged breaches of the Employment Agreement and APA by Keel, CIF's Complaint alleges in a nonspecific conclusory fashion that "Keel breached the APA by violating Article VII of the APA relating to Noncompetition, Nonsolicitation, and Nondisparagement," and goes on to allege in a likewise conclusory fashion that "Keel breached the (Employment Agreement) both during and after his period of employ...in competing with CIF." In support thereof, and when directly asked upon what it based such allegation, CIF's owner testified that it previously "looked like (Keel) was in competition" with CIF. However, CIF has submitted no actual proof of any such alleged competition or solicitation. Instead, CIF's owner testified that, although it "looked like" Keel was violating the Agreement by installing Duradek on a project outside of his work for CIF in 2013, nothing in either the ADA or the Employment Agreement prohibited Keel from providing services that CIF did not provide and that CIF was not even licensed to install Duradek in June of 2013. Accordingly, even if the non-compete provisions were enforceable, Keel's installation of the Duradek project in 2013 would not have been prohibited competition. CIF's owner also admitted that, despite its claims and various allegations that Keel breached the APA by soliciting CIF's customers, CIF has no actual

proof of any such solicitation. When directly asked "(d)o you have proof that Mr. Keel solicited any of those customers," Mr. Maides responded "(w)ell, I don't have - no, I don't have anything other than to say that *we believe* he has done jobs for them." Regardless, CIF's belief without actual proof is mere speculation, which is insufficient for CIF to meet its burden of proving that Keel breached the APA by soliciting CIF's customers.

CIF also cannot meet its burden of presenting actual evidence of damages suffered as a direct and proximate result of any breach of the agreements by Keel. While CIF's claims that its business has suffered due to Keel's alleged conduct, CIF's owner has admitted that CIF has no actual proof that Keel is the cause of any loss of business suffered by CIF. Instead, CIF's owner has repeatedly testified that CIF's claimed downturn in business may simply have been the result of the recent economic recession and that CIF, like most construction businesses at the time, was hit by the recession and that some of CIF's lower sales, including those attributed to Keel, were the result of that recession. CIF's owner also admits that he is merely speculating that Keel is the reason CIF's business is not what it used to be because CIF no longer has any of its predecessor's "legacy customers" and has not been asked to bid on certain jobs. Again, however, speculation alone is insufficient to meet CIF's burden of proof that any damages suffered by CIF are the direct and proximate result of any act by Keel.

B. Breach of Contract Accompanied by a Fraudulent Act

To prove its claim for breach of contract accompanied by a fraudulent act, CIF must prove each of the following: (1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach. *Rotec Servs. v. Encompass Servs.*, 359 S.C. 467, 470, 597 S.E.2d 881, 883 (Ct. App. 2004). The Court finds that CIF has not and cannot meet that burden because it cannot present any actual evidence of any of the required elements for that claim against Keel.

As outlined above, CIF has not and cannot prove that Keel breached the Employment Agreement or the APA, a fact repeatedly acknowledged by CIF's owner. Likewise, CIF cannot prove by clear and convincing evidence either a fraudulent act or fraudulent intent in Keel's part. Rather, CIF's owner has specifically admitted that he has no evidence at all to prove that Keel's alleged breaches were committed with any fraudulent intent or by any fraudulent act. Instead, and in stark contrast to its allegation that Keel never acted for the benefit of CIF and never intended to satisfy his obligations under the agreements, CIF's owner directly acknowledged the falsity of such allegation at his deposition by acknowledging that Keel did work for the benefit of the CIF and that he wanted to retain Keel because he was "making money for the company." Accordingly, CIF's claim for breach of contract accompanied by a fraudulent act fails as a matter of law.

C. Breach of Duty of Loyalty

South Carolina law recognizes a cause of action for breach of duty of loyalty on behalf of an employee in holding that it is implicit in any contract for employment that the employee shall remain faithful to the employer's interest throughout the term of employment. *See Foreign Acad. & Cultural Exch. Servs. v. Tripon*, 394 S.C. 197, 205, 715 S.E.2d 331, 335 (2011). South Carolina courts have specifically recognized an action for breach of the duty of loyalty when an employee works to compete against the employer while still working for the employer. *Id.*; citing *Lowndes Prods., Inc. v. Brower*, 259 S.C. 322, 335-39, 191 S.E.2d 761, 767-70 (1972) (finding that key employees who contacted and met with investors and customer of current employer to start a competing company, left without notice, and leased space and ordered materials to build manufacturing equipment were guilty of disloyalty to employer). To make out such a claim, the alleging party must prove that the employee acted against the employer's interests or in competition therewith while still employed by the employer. *See Futch v. McAllister Towing of*

Georgetown, Inc., 335 S.C 598, 518 S.E.2d 591 (1999)(discussing when employee's alleged actions constitute breach of duty of loyalty to employer). In the instant action, CIF cannot prove that Keel ever acted against CIF's interests or in competition with CIF while employed by CIF.

CIF's Third-Party Complaint alleges Keel breached his duty of loyalty to CIF by "failing to provide his skills, contacts, customers, and other benefits uniquely maintained by Keel...and in actively planning and conducting detrimental activities against CIF, and competing against CIF, and in willfully failing to exercise any efforts to assist CIF in succeeding in the flooring business." Regardless, CIF's owner Maides acknowledged at his deposition that he has no evidence that Keel acted in competition with CIF or against CIF's interests while employed by CIF. Likewise, and despite CIF's allegation that Keel worked in competition with CIF while still employed there, when specifically asked whether he could "specifically point to anything that would prove that (Keel) was competing with (CIF)," Maides specifically acknowledged "I don't know that I have anything." Instead, Maides referred to a carpet invoice and several checks Keel received for a non-competing wall panel installation job as evidence of such competition, while acknowledging that he was not even sure what the documents he referenced as his "evidence" really were or whether or not they proved any competition.

Maides also acknowledged that CIF has no proof that Keel acted against CIF's interests or that he did not work for the benefit of CIF. In fact, when asked about that specific contention, Maides acknowledged "I would think that was probably a pretty strong statement there," before admitting that he wouldn't even agree with that allegation. Instead, Maides testified that Keel was, in fact, making money for CIF, that he wanted to keep him as an employee for that reason and that although "Keel may have not been putting in full effort...he was working for (CIF)." Notably, Maides also testified that the main basis for his claim for breach of duty of loyalty was his belief that CIF was not asked to submit bids for various jobs

because of Keel. However, and when asked if that belief was based on mere speculation, Maides responded "yes." Such speculation is insufficient, however, to meet CIF's burden of proof.

D. Fraud in the Inducement

To meet its burden of proof in regard to its claim against Keel for fraud in the inducement, CIF must establish through actual evidence the following: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011). Additionally, a claim involving fraud requires proof by clear and convincing evidence and, thus, more than a mere scintilla of evidence must be presented to withstand a motion for summary judgment. *Id.*

CIF has not and cannot meet its heightened burden of proof in regard to its claim for fraud in the inducement because it cannot establish, as a most basic requirement, that any representation made by Keel was false or that Keel had knowledge that any statement he made was false. CIF's Third Party Complaint alleges that Keel "represented to (CIF) that (he) would not engage in competitive practices of solicitation of customers, contacts, or competing business" and that "Keel knew such representations were false or made such representations with reckless disregard for their truth or falsity." However, when specifically asked what proof CIF has that Keel never intended to work for the benefit of CIF and always intended to work in competition with CIF in opposition to his representation otherwise, CIF's owner repeatedly testified that he has no proof that Keel never intended to work for the benefit of CIF or that Keel made any fraudulent statement to him. In fact, when specifically asked if he had any direct

proof of fraud other than hearsay statements by Keel's disgruntled ex-wife and the claimed downturn in CIF's profits, Maides expressly stated "(n)o, I don't know that there's any proof of fraud, you know, other than, you know, the things we've talked about."

E. Injunction

The party seeking an injunction has the burden of demonstrating facts and circumstances warranting an injunction. *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). In regard thereto, it is well recognized that the remedy of an injunction is a drastic one and ought to be applied with caution. *Id.* In order for the seeking party to establish that such a drastic remedy is warranted, that party has the burden of establishing "irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law." *Denman v. City of Columbia*, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010). In the instant action, CIF has not established and cannot establish any of those three elements, entitling Keel and CJR to judgment as a matter of law on that claim.

First, and as outlined above, CIF is without sufficient evidence to prove that it has suffered any harm as a result of any conduct on the part of Keel. Rather, CIF's owner has repeatedly testified that any downturn in CIF's profits was likely due to the recession. Second, and because CIF cannot establish through actual evidence any wrongful act on the part of Keel or any directly relatable harm to CIF, CIF cannot establish that it is likely to succeed on the merits of its claims. Indeed, the admitted basis for any and all such claims by CIF is speculation, which is insufficient for CIF to meet its burden of proving the need for an injunction. Finally, and despite CIF's allegation that "there is no immediate adequate remedy at law," there is an adequate remedy available to CIF in the form of monetary damages if CIF were able to prove any of its claims. In regard thereto, CIF's owner expressly testified that the damages he is seeking against Keel are the return of the purchase price he paid for the business.

II. Plaintiff's Claims

Summary Judgment is also appropriate as against the Defendants CJR and Maides for the following claims asserted against each by Plaintiff CIF: Breach of Promissory Note against CJR; and Breach of Personal Guarantee against Maides. As aforesaid, the Defendants agree that all of CIF's counterclaims against the Plaintiff, as well as all of CIF's defenses against Plaintiff's claims, rely on the same evidence CIF has in support of its third-party claims against Keel. As outlined above, the claims and defenses asserted by CIF and Maides as against Keel and CJR fail as a matter of law. Therefore, CIF and Maides are liable for the claims filed against them by CJR. A damages hearing shall be scheduled to determine the amount of damages owing to CJR.

CONCLUSION

For all the reasons set forth above, the Court hereby grants the Plaintiff's Motion for Summary Judgment on all causes of action it has asserted against Defendants Commercial & Industrial Floors, Inc. and Dabney Maides and on all causes of action asserted against it by Defendants. The Court also hereby grants Third-Party Defendant Christopher M. Keel's Motion for Summary Judgment on all causes of action asserted against Keel by Defendants/Third-Party Plaintiffs Commercial & Industrial Floors, Inc. and Dabney Maides.

IT IS SO ORDERED.

December 16, 2015
Greenville, SC



Edward W. Miller, Judge
Thirteenth Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

CJR Resources, Inc. f/k/a Ron's Building
Materials, Inc.,

Plaintiff,

v.

Commercial & Industrial Floors, Inc. and
Dabney Maides,

Defendants/Third Party Plaintiffs,

v.

Christopher M. Keel,

Third Party Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. NO: 2013-CP-23-05778

**ORDER DENYING DEFENDANTS'
MOTION TO ALTER OR AMEND**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2016 FEB 23 PM 2 44

This matter came before the Court on Defendants' Motion to Alter or Amend the Court's December 16, 2015 Order granting summary judgment to Plaintiff CJR Resources, Inc. ("CJR") and Third Party Defendant Christopher M. Keel ("Keel") as to all claims alleged against them by Defendants Commercial & Industrial Floors, Inc. ("CIF") and Dabney Maides ("Maides") (collectively hereinafter "Defendants"), and also granting summary judgment in favor of CJR as to all of its claims against Defendants. That Order was entered following a hearing held on November 3, 2015, at which counsel for all parties were present and presented extensive argument on the underlying Motions for Summary Judgment filed by CJR and Keel. Based upon the entire record in this case, including the pleadings, memoranda, exhibits and deposition testimony submitted by the parties on the underlying Motions and Defendants' Motion to Alter or Amend, I make the following findings of fact and conclusions of law.

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PROCEDURAL BACKGROUND

CJR filed its Complaint on October 28, 2013, alleging that Defendants breached an Asset Purchase Agreement (hereinafter "the APA") by failing to make all payments required thereunder and a related promissory note. Defendants filed their Answer and Third Party Complaint on December 18, 2013, denying CJR's claims and alleging various claims against Keel based on the APA and a 2008 Employment Agreement between CIF and Keel. Specifically, Defendants claim Keel breached both agreements by competing with CIF and soliciting CIF's clients, entered into the Employment Agreement by fraud and never intended to abide by the terms of the agreements. Keel filed his Answer and a Motion to Dismiss on March 26, 2014, denying all claims, arguing all claims were barred by the statute of limitations and asserting various counterclaims against CIF related to its failure to pay him all wages he was due. CIF filed its Answer on May 20, 2014, denying Keel's counterclaims.

Following the close of discovery¹ in this case, Keel filed his Motion for Summary Judgment on September 25, 2015 and CJR filed its Motion for Summary Judgment thereafter on September 29, 2015. Both Motions were heard by the Court on November 3, 2015 and the Court entered an Order thereon, dated December 16, 2015, granting both Motions on grounds that (1) Defendants' claims are barred by the statute of limitations and the limitations provision set forth in the APA at issue, (2) the restrictive covenants sought to be enforced against Keel are unenforceable as a matter of law and (3) Defendants cannot prove the essential elements of their claims. The Order also granted judgment to CJR on all of its claims against Defendants since Defendants admit to the underlying allegations of said claims and all of their defenses thereto rest on their claims against CJR and Keel, all of which fail as a matter of law.

¹ The Court entered a Consent Scheduling Order in this case on June 12, 2015, setting August 31, 2015 as the discovery deadline.

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ANALYSIS

For all those reasons set forth below, Plaintiff's Motion to Alter or Amend the Court's December 16, 2015 Order should be denied.

1. **The Court's Order is supported by the evidence and arguments submitted to and considered by the Court as outlined in great detail in the Order.**

The Court's December 16, 2015 Order is supported by the evidence and arguments submitted to the Court at the November 3, 2016 hearing on CJR and Keel's Motions for Summary Judgment and in the parties' memoranda and exhibits filed prior thereto.

A. Statute of Limitations

The Court's ruling that Defendants' claims against Keel are barred by the applicable three year statute of limitations² is clearly supported by Defendants' own allegations and admissions that they knew or should have known of their claims against Keel in July of 2008, more than five years prior to Defendants bringing their claims against Keel. This includes Defendants' own allegation that Keel's alleged conduct was apparent "from the outset of Keel's employment" in 2008. Defendants offer no sufficient justification for their failure to act timely, but instead ask the Court to excuse that failure by way of an analogy, arguing that a party should not be barred from seeking recovery after being punched in the face just because his friend previously punched him in the face years ago before making up. However, that analogy is wholly inapplicable to the instant case where Defendants have not alleged separate and distinct "punches," but have, instead, sought to recover from ongoing conduct they expressly allege began in 2008. Regardless, analogy alone does not excuse Defendants' admitted failure to timely pursue their claims. The same is true of any argument by Defendants that the Court should disregard evidence that Defendants had actual knowledge of their claims more than three

² Defendants have conceded that the three-year statute of limitations is applicable.

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years prior to bringing them because Keel allegedly “stole” the document presented as evidence of said knowledge. Regardless of the merits of such claim, which has been directly disputed by Keel, such allegation in no way excuses the Defendants’ failure to timely pursue their claims against Keel and CJR.

B. Unenforceability of Restrictive Covenants

The Court properly ruled that the restrictive covenants sought to be enforced against Keel are unenforceable as a matter of law as they are not narrowly tailored as to time and geographic scope as required by South Carolina law. As noted in the Court’s Order, five years is longer than typically enforced in South Carolina and a restrictive covenant that prevents an individual from working anywhere in the entire State of South Carolina is also overly broad. As specifically noted in the Order, the South Carolina Supreme Court has specifically held that “(a)ny covenant should have been limited to the area where he worked...(and) (e)xtending it to the entire State rendered it unenforceable.” *Oxman v. Sherman*, 239 S.C. 218, 122 S.E.2d 559 (1961). Despite Defendants’ arguments otherwise, language contained in the covenants as to the reasonableness of their scope, does not cure these defects in the covenants at issue. Likewise, and despite Defendants’ suggestion that the Court reform the covenants in question, any such argument must also fail as the South Carolina Supreme Court has specifically rejected “blue-penciling” of restrictive covenants to cure such defects. *Poynter Inves., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 587 (2010).

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C. Complete Lack of Evidence as to Defendants' Claims

As to the Court's ruling that Defendants were unable to meet their burden of proof in pointing to the existence of evidence sufficient to overcome summary judgment on their claims against Keel and CJR³, the Court properly considered Defendants' own repeated testimony and admissions that Defendants do not have evidence to prove all essential elements of such claims. As outlined in great detail in the December 6, 2015 Order, Defendants' own testimony makes it clear that they have no direct proof of their claims against Keel and CJR but, instead, rely on their "beliefs" about Keel and his alleged conduct. However, speculation alone is insufficient to meet Defendants' burden or proof in overcoming summary judgment.

The same is true in regard to the "summary" of the evidence and of testimony offered now by Defendants for the first time. This document is nothing more than unsupported commentary, without any actual evidence or testimony attached, and continues to offer nothing more than speculation and unsupported beliefs, which the Court has already noted is insufficient for purposes of overcoming a motion for summary judgment. Accordingly, such new commentary should not be substituted for the Court's well-reasoned decision on the extensive evidence and testimony properly presented to the Court at the November 3 hearing in this matter and in the materials filed prior thereto.

2. APA's limitation period applies to all claims against Keel.

Defendants' argument that the one-year limitations period set forth in the APA does not apply to all of Defendants' claims because that provision only applies to certain claims, including those related to (1) a covenant or obligation to be performed or complied with prior to the Closing Date; and (2) a representation or warranty, also fails. Defendants' Third Party

³ Defendants have conceded that all of their claims against CJR rest on their allegations about Keel.

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Complaint clearly alleges conduct on the part of Keel relating back to representations made in connection with the execution of the APA and the July 2008 Employment Agreement. Specifically, Defendants' allege that Keel never intended to abide by his contractual obligations to CIF, that he made false representations to Defendants in regard thereto and that he made certain promises in connection with execution of the APA and Employment that he never intended to abide by. Accordingly, all such claims fall within the second category of claims covered by the APA's one-year limitation provision and were required to have been brought within that period of time. Regardless, and even if it were determined that the APA's one year claims limitation does not apply to all claims alleged against Keel, such claims are still barred by the applicable three-year statute of limitations as noted in the December 16, 2015 Order.

3. Defendants' financial difficulties and indebtedness to Wells Fargo are irrelevant.

In a footnote included in their Motion to Alter or Amend, Defendants note both their indebtedness to Wells Fargo in the amount of \$700,000.00 for financing they obtained to purchase the business at issue and the fact that Wells Fargo is threatening collection action against Defendants thereon. In so noting, Defendants seem to ask the Court to consider the financial condition of Defendants in taking the extraordinary remedy of reversing the Court's December 16, 2015 Order. However, the Court is not persuaded by any such suggestion as Defendants' finances bear no relevance to the issue of whether the Court properly ruled in granting summary judgment against Defendants on grounds that (1) Defendants cannot meet their burden of proof, (2) the restrictive covenants sought to be enforced are unenforceable as a matter of law, and (3) Defendants' claims are time-barred pursuant to the applicable statute of limitations and the limitation period set forth in the APA.

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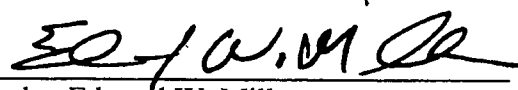
4. The Court's Order properly cited *Oblachinski*.

Despite Defendants' assertion otherwise, the Court properly cited *Oblachinski v. Reynolds*, 391 S.C. 557, 706 S.E.2d 844 (2011) as standing for the proposition that summary judgment is properly granted where a party cannot meet its burden of proof as to each essential element of the causes of action alleged by that party. At issue in *Oblachinski* was the trial court's grant of summary judgment on grounds that the plaintiff had failed in its burden of proof as to every essential element of its claim for negligence against the defendant. In considering that issue and applying the summary judgment standard under Rule 56, the South Carolina Supreme Court upheld the trial court's grant of summary judgment and, in so doing, specifically noted that said grant of summary judgment was proper because the plaintiff had failed to prove "an essential element" of its negligence claim – namely that defendant owed any duty to the plaintiff.

CONCLUSION

For all those reasons set forth above, the Court hereby denies Defendants' Motion to Alter or Amend the Court's December 16, 2015 Order.

AND IT IS SO ORDERED.



Judge Edward W. Miller
Thirteenth Judicial Circuit

Date: 2/23/16
Greenville, South Carolina

COUNTY OF GREENVILLE

CJR Resources, Inc. f/k/a Ron's Building
Materials, Inc.,

CIVIL ACTION COVERSHEET

FILED-CLERK OF COURT

Plaintiff(s)

PAUL B. WICKENSIMER

2013 - CP - 23 - 05778

vs.

2013 OCT 28 PM 2 46

Commercial & Industrial Floors, Inc., et al

Defendant(s)

(Please Print)

Submitted By: Townes B. Johnson, III

Address: 704 E. McBee Ave.

Greenville, SC 29601

SC Bar #: 75412

Telephone #: (864) 242-4899

Fax #: (864) 242-4844

Other:

E-mail: johnson@conlaw.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 Circuit Court Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR (certificate 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) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ 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) ☐ Sexual Predator (510) ☐ 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) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture (840) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Administrative Law Judge (980) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
-
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Other (699)

Submitting Party Signature:



Date: October 28, 2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, 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
Florence, Horry, Lexington, Richland, Greenville**, and Anderson**
** Contact Respective County Clerk of Court for modified ADR Program Rules

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 within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Case 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. Cases which are appellate in nature such as appeals or writs of certiorari;
 - c. Post Conviction relief matters;
 - d. Contempt of Court proceedings;
 - e. Forfeiture proceedings brought by the State;
 - f. Cases involving mortgage foreclosures; and
 - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. 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 had 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 GREENVILLE

CJR Resources, Inc. f/k/a Ron's Building
Materials, Inc.,

Plaintiff,

v.

Commercial & Industrial Floors, Inc.,
and Dabney R. Maides, Individually,

Defendants.

) IN THE COURT OF COMMON PLEAS

) THIRTEENTH JUDICIAL CIRCUIT

) C. A. No. 2013-CP-23-05778

SUMMONS

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2013 OCT 28 PM 2 45

ENTERED
COMPUTER

Verified

TO THE ABOVE NAMED DEFENDANT(S):

YOU ARE HEREBY summoned and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscribers at their offices, 704 East McBee Avenue, Greenville, South Carolina, 29601, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court and judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted this 28th day of October, 2013,



Townes B. Johnson, III (SC Bar No. 75412)

KENISON, DUDLEY & CRAWFORD, LLC

704 E. McBee Ave.

Greenville, SC 29601

Phone: (864) 242-4899

Fax: (864) 242-4844

Greenville, SC

Attorneys for the Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

CJR Resources, Inc. f/k/a Ron's Building
Materials, Inc.,

Plaintiff,

v.

Commercial & Industrial Floors, Inc.,
and Dabney R. Maides, Individually,

Defendants.

) IN THE COURT OF COMMON PLEAS

) THIRTEENTH JUDICIAL CIRCUIT

) C. A. No. 2013-CP-23-

05798

COMPLAINT

2013 OCT 28 PM 2 46

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

COMES NOW, the plaintiff, CJR Resources, Inc. f/k/a Ron's Building Materials, Inc. ("Plaintiff"), complaining of the defendants, Commercial & Industrial Floors, Inc. ("CIF") and Dabney R. Maides, Individually ("Guarantor") (collectively hereinafter "Defendants"), and would show the following:

1. Plaintiff is a South Carolina corporation duly licensed, organized and existing under the laws of the State of South Carolina and has its principal place of business in Greenville, South Carolina.

2. Upon information and belief, CIF is a South Carolina corporation, licensed, organized and existing under the laws of the State of South Carolina.

3. Upon information and belief, Guarantor is an individual and a citizen and resident of the State of South Carolina.

4. Upon information and belief, Defendants purposely availed themselves of the jurisdiction of the State of South Carolina, such that this Court has jurisdiction over the Defendants with respect to the causes of action set forth herein.

5. On July 22, 2008, CIF made a certain promissory note wherein CIF promised to pay Plaintiff the principal sum of Two Hundred Thousand and 0/100ths Dollars, plus interest (hereinafter "Promissory Note"). A true and correct copy of the Promissory Note is attached hereto and incorporated herein by reference as "**Exhibit A**".

The Promissory Note is valid and binding and deemed to have been executed under, and governed by, the laws of the State of South Carolina. *Id.*

6. In the event of any breach of the Promissory Note, the Promissory Note provides that:

- (a) all interest not paid when due shall bear interest at the rate of Six percent (6%) per annum;
- (b) the holder of the Promissory Note is entitled to recover the whole amount evidenced by the Promissory Note, plus interest, costs, and expenses if the breach is not cured within ten (10) days after being notified thereof; and
- (c) the holder of the Promissory Note is entitled to recover reasonable attorneys' fees and for costs of collection.

Id.

7. In connection with the Promissory Note, and in partial consideration for the Promissory Note, on July 22, 2008, Guarantor executed a guarantee of payment agreement in favor of Plaintiff which is deemed to have been executed in the State of South Carolina (hereinafter referred to as "Guaranty Agreement"). A true and correct copy of the Guaranty Agreement is attached hereto and incorporated herein by reference as "**Exhibit B**".

By signing the Guaranty Agreement, Guarantor personally guaranteed the payment of any and all amounts due and owing under the Promissory Note. *Id.*

8. In the event of any breach of Promissory Note on the part of CIF, the Guaranty Agreement provides for the Guarantor to be liable for reasonable attorneys' fees and for costs of collection. *Id.*

9. To date, CIF has failed and refused to make multiple payments in accordance with the Promissory Note.

10. This failure to pay Plaintiff constitutes a breach of Promissory Note.

11. Despite Plaintiff's notice of CIF's breach to both CIF and Guarantor, CIF and Guarantor have failed and refused to cure CIF's arrearages on the Promissory Note. A true and correct copy of the Plaintiff's Notices are attached hereto and incorporated herein by reference as "**Exhibit C**".

12. As the direct and proximate result of CIF's breach of the Promissory Note and failure to cure same within ten (10) days of being notified of same, the whole amount evidenced by the Promissory Note plus interest, in the amount of One Hundred Seventy-One, Seven Hundred Sixty-Nine and 73/100ths (\$171,769.73), as set forth in the Statement of Account, attached hereto as "**Exhibit D**" and incorporated herein by reference, is due and owing.

13. Jurisdiction and venue are proper in this Court.

**FOR A FIRST CAUSE OF ACTION
(Breach of Promissory Note)**

14. Plaintiff realleges the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

15. CIF made a valid and binding Promissory Note wherein CIF promised to pay Plaintiff the principal sum of Two Hundred Thousand and 0/100ths Dollars, plus interest. *See Exhibit A.*

16. CIF has wrongfully failed and refused to pay Plaintiff pursuant to the Promissory Note.

17. In the event of any breach of the Promissory Note, the Promissory Note provides that:

- (a) all interest not paid when due shall bear interest at the rate of Six percent (6%) per annum;
- (b) the holder of the Promissory Note is entitled to recover the whole amount evidenced by the Promissory Note, plus interest, costs, and expenses if the breach is not cured within ten (10) days after being notified thereof; and
- (c) the holder of the Promissory Note is entitled to recover reasonable attorneys' fees and for costs of collection.

Id.

18. CIF has no defenses to its payment obligations owed to Plaintiff under the Promissory Note.

19. This failure to pay Plaintiff constitutes a breach of Promissory Note.

20. As the direct and proximate result of CIF's breach of the Promissory Note and failure to cure same within ten (10) days of being notified of same, Plaintiff has been damaged in the amount of One Hundred Seventy-One, Seven Hundred Sixty-Nine and 73/100ths (\$171,769.73), for which it hereby sues together with costs and attorneys' fees. *See Exhibit D.*

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

21. Plaintiff alleges its Second Cause of Action as an alternative claim to its First Cause of Action, and Plaintiff realleges the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

22. Plaintiff conferred a benefit upon CIF in the form of a transfer of an equity stake in a certain business.

23. CIF realized the benefit of the transfer of the equity stake.

24. The equity stake was transferred under such circumstances that it was clear that Plaintiff expected to be reimbursed for the transfer. CIF will be unjustly enriched if it is allowed to retain the benefits conferred upon it by Plaintiff without repaying fair value to Plaintiff, including interest on the equity transfer and costs associated therewith.

25. The reasonable value of the equity transfer is at least One Hundred Seventy-One, Seven Hundred Sixty-Nine and 73/100ths (\$171,769.73), for which Plaintiff hereby sues in quantum meruit or other equitable theory for the reasonable value of the equity transfer. *See Exhibit D.*

**FOR A THIRD CAUSE OF ACTION
(Breach of Personal Guaranty)**

26. Plaintiff realleges the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

27. CIF made a valid and binding Promissory Note wherein CIF promised to pay Plaintiff the principal sum of Two Hundred Thousand and 0/100ths Dollars, plus interest.

28. In connection with the Promissory Note, Guarantor signed a guarantee of payment agreement in favor of Plaintiff, wherein he unconditionally guaranteed the payment of the Promissory Note. *See Exhibit B.*

29. In the event of any breach of the Promissory Note on the part of CIF, the Guaranty Agreement provides for the guarantor to be liable for reasonable attorneys' fees and for costs of collection. *Id.*

30. Despite promising to pay Plaintiff pursuant to the Promissory Note, CIF has not performed and refuses to perform its requirements under the Promissory Note.

31. Because CIF breached the Promissory Note and has failed to pay Plaintiff pursuant to the Promissory Note, Guarantor, pursuant to the Guaranty Agreement, is personally liable for such debt. *Id.*

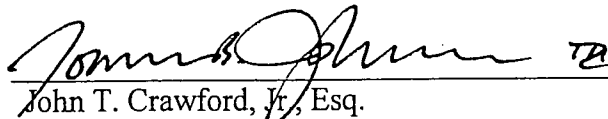
32. Guarantor has no defenses to its payment obligations owed to Plaintiff under the Guaranty Agreement.

33. Plaintiff has not received full payment on the Promissory Note from either CIF or from Guarantor and now hereby sues Guarantor for the sum of One Hundred Seventy-One, Seven Hundred Sixty-Nine and 73/100ths (\$171,769.73), together with attorneys' fees and costs. *See Exhibit D.*

WHEREFORE, the plaintiff, CJR Resources, Inc. f/k/a Ron's Building Materials, Inc., prays for:

- (a) Judgment against Commercial & Industrial Floors, Inc. in the amount of One Hundred Seventy-One, Seven Hundred Sixty-Nine and 73/100ths (\$171,769.73), together with costs and attorneys' fees;
- (b) Judgment against Dabney R. Maides, Individually, in the amount of One Hundred Seventy-One, Seven Hundred Sixty-Nine and 73/100ths (\$171,769.73), together with costs and attorneys' fees;
- (c) Attorneys' fees;
- (d) Costs of this action;
- (e) Such other and further relief that this Court deems just and proper.

Respectfully submitted this 28th day of October, 2013,



John T. Crawford, Jr., Esq.
Townes B. Johnson, III (SC Bar# 75412)
KENISON, DUDLEY & CRAWFORD, LLC
704 E. McBee Avenue
Greenville, South Carolina 29601
PH: (864) 242-4899
FAX: (864) 242-4844

Attorneys for Plaintiff CJR Resources, Inc.
f/k/a Ron's Building Materials, Inc.,

Greenville, South Carolina

Exhibit A

EXHIBIT
A

PROMISSORY NOTE

\$200,000.00

ORIGINAL

Greenville, South Carolina

7/22, 2008

FOR VALUE RECEIVED, Commercial and Industrial Floors, Inc., (the "Maker") promises to pay to Ron's Building Materials, Inc., or its order, the sum of Two Hundred Thousand and No/100ths (\$200,000.00) Dollars, plus interest at the rate of Two and No/100ths (2.00%) percent per annum for the first year, and interest at the rate of Six and No/100ths (6.00%) percent per annum for the next nine years on the balance remaining unpaid. During the first year of this Note, the Maker shall make monthly interest-only payments of Three Hundred Nineteen and 44/100ths (\$319.44) Dollars. During the next nine years of this Note, the Maker shall make monthly principal and interest payments of Two Thousand Four Hundred One and 15/100ths (\$2,401.15) Dollars. At the end of the third year of this Note, if the Maker (or Dabney R. Maides) has successfully refinanced his Wachovia Bank loan, the Maker shall make a balloon payment of One Hundred Sixty-Four Thousand Three Hundred Sixty-Six and 02/100ths (\$164,366.02) Dollars. All interest not paid when due shall bear interest at the same rate as the principal.

It is hereby agreed that if at any time any portion of the principal or interest shall be past due and unpaid, and such breach is not cured within ten (10) days after notice thereof to the Maker, the whole amount evidenced by this Note shall, at the option of the holder hereof, become immediately due, and the holder shall have the right to institute any proceedings upon this Note for the purpose of collecting the principal and interest, with costs and expenses. Forbearance to exercise this right with respect to any failure of payment by the Maker shall not constitute a waiver of the right as to any subsequent failure.

It is hereby agreed that if this Note be placed in the hands of an attorney for collection, or if this debt or any part thereof, be collected by an attorney or legal proceedings of any kind, an attorney's fee of a reasonable amount as well as all costs and expenses incident upon such collection, shall be added to the amount due upon this Note, and be collectible as a part thereof.

It is hereby further agreed that the maker hereof shall have the right to prepay all or any part of the principal of this Note at any time without penalty.

The Maker of this Note hereby waives presentment, demand, protest and notice of dishonor. This Note is made and executed under and in all respects is to be construed by the laws of the State of South Carolina.

IN WITNESS WHEREOF, the Maker has executed and scaled this Note as of the date written above.

COMMERCIAL AND INDUSTRIAL FLOORS,
INC.

By: Dabney R. Maides

Its: TEC/SEC/ROA

Exhibit B

EXHIBIT
B

ORIGINAL

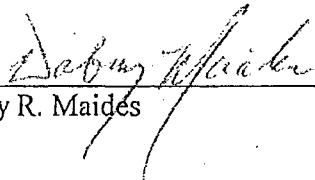
GUARANTEE OF PAYMENT

Greenville, South Carolina

FOR VALUE RECEIVED, Dabney R. Maides, the undersigned (who shall be liable as guarantor hereunder) hereby unconditionally guarantees the payment of the Promissory Note (a copy of which is attached hereto), made by Commercial and Industrial Floors, Inc. and payable to Ron's Building Materials, Inc., or order, in the amount of two hundred thousand and No/100ths (\$200,000.00) Dollars, plus interest, including all extensions or renewals of said Note, and all expenses (including attorney's fees) incurred in the collection thereof, the enforcement of rights under any security therefor and the enforcement hereof, and waives presentment, demand, notice of dishonor, protest and all other notices whatsoever. The undersigned agrees that the holder of said Note may from time to time extend or renew said Note for any period (whether or not longer than the original period of said Note) and may grant any releases, compromises or indulgences with respect to said Note or any extension or renewal thereof or any security therefor or to any party liable thereunder or hereunder (including but not limited to failure or refusal to exercise one or more of the rights or remedies provided by said Note), all without notice to or consent of the undersigned and without affecting the liability of the undersigned hereunder, who may be sued by the holder hereof with or without joining any other endorsers of the maker of said Note and without first or contemporaneously suing such other persons, or otherwise seeking or proceeding to collect from them.

GIVEN under the hands and seals of the undersigned this 27th day of

JULY, 2008.



Dabney R. Maides

Exhibit C

EXHIBIT
C

KENISON DUDLEY & CRAWFORD, LLC
ATTORNEYS AT LAW

KEVEN K. KENISON

THOMAS E. DUDLEY, III

JOHN E. CRAWFORD, JR.

M. STOKELY HOLDER

TOWNES B. JOHNSON, III

F. LEE PRICKETT, III

September 20, 2013

Via Certified Mail 7010 0290 0001 5478 6680

Commercial & Industrial Floors, Inc.

c/o Dabney R. Maides

59 C Concourse Way

Greer, SC 29650

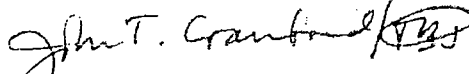
RE: Demand for payment on amounts past due and owing Ron's Building
Materials, Inc.

Dear Mr. Maides:

Enclosed, please find my September 18, 2013 correspondence to Commercial &
Industrial Floors, Inc. and you, as personal guarantor, in regard to that certain Promissory
Note dated July 22, 2008 made by Commercial & Industrial Floors, Inc. and that certain
Guarantee of Payment made by you, personally.

Sincerely,

KENISON DUDLEY & CRAWFORD, LLC


John T. Crawford, Jr.

cc: Ron's Building Materials, Inc.

701 East McBee Avenue • Greenville, South Carolina 29601
Phone 864 242-8399 • Fax 864 242-8811

5511 Ocrisio Ridge • Edisto Beach, South Carolina 29538
Phone 843 869-1000

1130 Hurricane Shoals Road • Suite 600 • Lawrenceville, Georgia 30045
Phone 770 513-6100 • Fax 770 518-6577

KENISON, DUDLEY & CRAWFORD, LLC

A T T O R N E Y S A T L A W

KEVEN K. KENISON
(1964-2013)

THOMAS E. DUDLEY, III
Practicing Attorney in South Carolina and North Carolina

JOHN T. CRAWFORD, JR.
Practicing Attorney in South Carolina

M. STOKELY HOLDER
Practicing Attorney in South Carolina

TOWNES B. JOHNSON, III
Practicing Attorney in South Carolina

F. LEE PRICKETT, III
Practicing Attorney in South Carolina

September 18, 2013

Via Certified Mail 7010 0290 0001 5478 6673

Commercial & Industrial Floors, Inc.
c/o Dabney R. Maides, Registered Agent
212 Transit Dr.
Greenville, SC 29607

Commercial & Industrial Floors, Inc.
303 Woodway Drive
Greer, SC 29651

Temple, Mann Briggs & Hill
ATTN: S. Allan Hill, Esq.
819 E. North Street
Greenville, SC 29601

RE: Demand for payment on amounts past due and owing CJR Resources, Inc.
f/k/a Ron's Building Materials, Inc.

Dear Mr. Maides:

This firm represents CJR Resources, Inc. f/k/a Ron's Building Materials, Inc. ("CJR") in regard to that certain Promissory Note dated July 22, 2008 made by Commercial & Industrial Floors, Inc. ("CIF") and that certain Guarantee of Payment made by you, personally.

Please be advised that CIF is in breach of the Promissory Note for failing and refusing to make its monthly payment of Two Thousand, Four Hundred One and 15/100ths Dollars (\$2,401.15) to CJR for the months of June 2013, July 2013, and August 2013. Accordingly, notice is hereby given to CIF and you, as personal guarantor, that if the arrearages, including interest on these payments from their respective due dates, are not cured within **ten (10) days** of your receipt of this letter, CJR will initiate a civil action against CIF and you, personally, to recover same.

The only communication CJR is willing to have with you is a correspondence containing the immediate remittance of the aforementioned sums. Direct all other

GREENVILLE
704 East McBee Avenue • Greenville, South Carolina 29601
Phone 864.242.4899 • Fax 864.242.4844

CHARLESTON
534 B Oristo Ridge • Edisto Beach, South Carolina 29438
Phone 843.869.1000

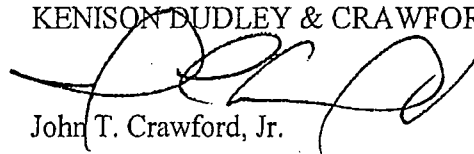
ATLANTA
1130 Hurricane Shoals Road • Suite 600 • Lawrenceville, Georgia 30043
Phone 770.513.6400 • Fax 770.518.6577

Demand Letter
Wednesday, September 18, 2013
Page 2

communications to Townes Johnson or me at our Greenville, South Carolina office. Thank you for your prompt attention to this matter. Hopefully, your immediate payment will forgo the need for litigation.

Sincerely,

KENISON DUDLEY & CRAWFORD, LLC

A handwritten signature in black ink, appearing to be "John T. Crawford, Jr.", written over the printed name.

John T. Crawford, Jr.

cc: CJR Resources, Inc. f/k/a Ron's Building Materials, Inc.

Exhibit D

EXHIBIT
D

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
CJR Resources, Inc. f/k/a Ron's Building Materials, Inc.,	)	C. A. No. 2013-CP-23- <u>0578</u>
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Commercial & Industrial Floors, Inc., and Dabney R. Maides, Individually,	)	
	)	
Defendants.	)	
	)	

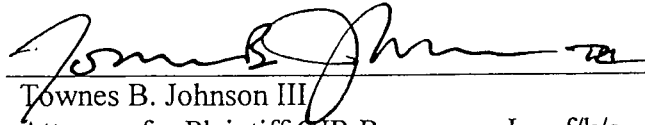
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2013 OCT 28 PM 2 46

STATEMENT OF ACCOUNT

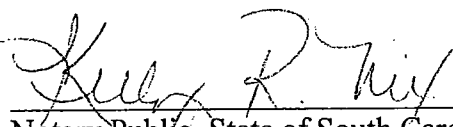
PERSONALLY APPEARED before me, Townes Johnson, who first being duly sworn, deposes and says:

1. My name is Townes Johnson and I am competent in all respects to testify regarding the matters set forth herein.
2. I am and have been during at all relevant times herein the Attorney of record for CJR Resources, Inc. f/k/a Ron's Building Materials, Inc., ("Plaintiff"), the plaintiff in the above-styled action.
3. I have personal knowledge of the facts stated herein and know them to be true. I give this Affidavit voluntarily.
4. The current amount due and owing on that certain Promissory Note, dated July 22, 2008, is One Hundred Seventy-One, Seven Hundred Sixty-Nine and 73/100ths (\$171,769.73).
5. This sum represents the whole amount evidenced by the Promissory Note, plus interest pursuant to the Promissory Note.

FURTHER AFFIANT SAYETH NAUGHT.


Townes B. Johnson III
Attorney for Plaintiff CJR Resources, Inc. f/k/a
Ron's Building Materials, Inc.,

Sworn to and subscribed before
me this 28 day of October, 2013


Notary Public, State of South Carolina

My Commission Expires: 4-15-2015

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-23-05778

CJR Resources, Inc. f/k/a Ron's Building Materials, Inc., Plaintiff, v. Commercial & Industrial Floors, Inc. et al, Defendant/Third Party Plaintiffs, v. Christopher M. Keel, Third Party Defendant.	ANSWER, COUNTERCLAIM, AND THIRD-PARTY COMPLAINT FILED-CLERK OF COURT GREENVILLE CO. S.C. PAUL D. JOHNSON DEC 18 PM 4 05

Defendants, by and through their undersigned attorney, hereby respond to Plaintiffs'

Complaint as follows:

1. Paragraphs 1 through 4 are admitted.
2. Paragraphs 5 through 8 are denied.
3. Responding to paragraphs 9 through 12, Defendants admit that certain payments under the alleged note have not been paid; however, Defendants deny that such payments were due and owing due to acts of the Plaintiff and Third Party Defendant ("Keel") justifying nonpayment and that the referenced agreements are void *ab initio*, non-binding, and invalid. The remaining allegations of these referenced paragraphs are denied.

4. Paragraph 13 is admitted.
5. Paragraphs 14-20 are denied, except to the extent that Defendants admit the existence of the referenced documents.
6. Paragraphs 21-15 are denied.
7. Responding to paragraphs 27 and 28, Defendants admit the existence, while denying the validity, of the referenced documents. The remaining allegations are denied.
8. Responding to paragraph 29, the referenced agreement speaks for itself, though its validity is denied, and the remaining allegations are denied.
9. Responding to paragraph 30, Defendants admit nonpayment of certain amounts under the note, but affirmatively alleges such nonpayment is justified, defensible, and due to the acts of the Plaintiff and Keel.

FOR A FIRST AFFIRMATIVE DEFENSE

10. The plaintiff has failed to state a cause of action for which relief may be granted.

FOR A SECOND AFFIRMATIVE DEFENSE

11. The plaintiff is barred from recovery due to the doctrines of unclean hands or equitable estoppel.

FOR A THIRD AFFIRMATIVE DEFENSE

12. The alleged note and guaranty are void as a matter of law.

FOR A FOURTH AFFIRMATIVE DEFENSE

13. Defendants were fraudulently induced into entering the alleged note and guaranty.

FOR A FIFTH AFFIRMATIVE DEFENSE AND BY WAY OF FIRST COUNTERCLAIM
AND FIRST CAUSE OF ACTION AGAINST KEEL
(General Allegations)

14. Upon information and belief, Keel is an individual and resident of Greenville, South Carolina.

15. On or about, July 17, 2008, Plaintiff, Keel, and Defendant CIF entered into an Asset Purchase Agreement ("APA") whereby CIF agreed to purchase certain assets of Plaintiff for the purchase price of \$1,250,000.00. Of that purchase price, \$1,050,000.00 was paid by CIF to Plaintiff at closing, with the remaining \$200,000.00 purchase price to be paid pursuant to the promissory note referenced by Plaintiff in its Complaint. The APA is attached as Exhibit A.

16. As a shareholder of Plaintiff, Keel was a party and signatory to the APA and bound by its terms.

17. As a condition of the APA, Keel was required to enter into an employment agreement with CIF, whereby Keel would serve in a sales capacity for CIF. The "Employment Agreement" is attached as Exhibit B.

18. The Employment Agreement was a necessary and material term to the APA, as CIF's agreement as to the purchase itself and the price was in large part induced by Plaintiff and Keel's contacts within the industry and Keel's promises and obligations to utilize such contacts and customer base for the benefit of CIF.

19. From the outset of Keel's employment with CIF, it became apparent that Keel did not intend to lend his expertise or contacts or customer base to the benefit of CIF, and that Keel had always so intended. Despite being employed by CIF, Keel did not exert any efforts for the benefit of CIF, and in fact, quit the employ of CIF within several months of entering his

Employment Agreement.

20. Upon information and belief, Keel surreptitiously intended to start another business venture of his own; however, after having quit CIF's employ, he returned to CIF seeking to resume his employment, which CIF allowed, and Keel thereafter resumed his employment with CIF.

21. As part of the Employment Agreement, Keel was subject to a non-competition clause, specifically stated in paragraph 6 of the Employment Agreement, which prohibited him from engaging with any competing business during his employ or for five years following his employ.

22. Keel owed CIF a duty of loyalty during his employ.

23. Upon information and belief, Keel did wilfully and deceitfully engage in competing business interests both during his employ and following his employ, having secured contracts and revenues within the same industry for his own benefit and to the detriment of CIF.

24. Upon information and belief, Keel never intended to work for the benefit of CIF, and in fact intended to compete with CIF and to engage in conduct designed to defeat the intent of the APA, the intent of the Employment Agreement, for the sole benefit of himself in competition with CIF. CIF is informed and believes that Keel's agreement to be employed by CIF was merely a subterfuge purposefully offered for the sole purpose to secure the purchase price for the APA and to enjoy the monetary gain therefrom.

25. Upon information and belief, Plaintiff knew, at the time of the closing of the APA, of Keel's plan and intention with regard to his employment and competition against CIF both during and after his employment.

**FOR A SIXTH AFFIRMATIVE DEFENSE AND BY WAY OF SECOND
COUNTERCLAIM AND SECOND CAUSE OF ACTION AGAINST KEEL**

(Breach of Contract as to APA)

26. The foregoing allegations are incorporated herein.
27. The APA is a valid and binding contract between Plaintiff, Keel, and CIF.
28. Plaintiff and Keel breached the APA by violating Article VII of the APA relating to Noncompetition, Nonsolicitation, and Nondisparagement in Keel's conduct in the years following the closing of the APA.

29. As a direct and proximate result of said breach, CIF has been damaged and is entitled to recover the full purchase price under the APA from Plaintiff and Keel.

**FOR A SEVENTH AFFIRMATIVE DEFENSE AND BY WAY OF THIRD CAUSE OF
ACTION AGAINST KEEL**

(Breach of Contract as to Employment Agreement)

30. The foregoing allegations are incorporated herein.
31. The Employment Agreement is a valid and binding contract between CIF and Keel.
32. Keel breached the contract both during and after his period of employ by violating paragraph 6 thereof relating to "Other Businesses" in competing with CIF in its business services.

33. As a direct and proximate result of Keel's breach of the Employment Agreement, CIF has been damaged and is entitled to recover its actual and consequential damages arising therefrom.

**FOR AN EIGHTH AFFIRMATIVE DEFENSE AND BY WAY OF FOURTH CAUSE OF
ACTION AGAINST KEEL**

(Breach of Duty of Loyalty)

34. The foregoing allegations are incorporated herein.

35. As an employee of CIF, Keel owed CIF a duty of loyalty.

36. In failing to provide his skills, contacts, customers, and other benefits uniquely maintained by Keel for the benefit of CIF, and in actively planning and conducting detrimental activities against CIF, and competing against CIF, and in wilfully failing to exercise any efforts to assist CIF in succeeding in the flooring business, Keel breached his duty of loyalty.

37. As a direct and proximate result of his breach, Keel caused severe damage to CIF and CIF is entitled to recover all actual and consequential damages proximately caused therefrom, in an amount to be fully proven in trial.

**FOR A NINTH AFFIRMATIVE DEFENSE AND BY WAY OF FIFTH CAUSE OF
ACTION AGAINST KEEL**
(Promissory Estoppel)

38. The foregoing allegations are incorporated herein.

39. Keel did promise, in the APA and in the Employment Agreement, to both work for the benefit of CIF and to not engage in competing interests, as particularly enumerated in the APA and Employment Agreement.

40. Keel intended that Defendants rely upon those promises such that Defendants would enter into the APA and agree to a purchase price of 1.25 million dollars.

41. Defendants did so rely, and entered into the APA and Employment Agreement with Keel with the reliance and belief that Keel would work as an employee for the benefit of CIF and that he would not violate his obligations of noncompetition.

42. CIF relied upon Keel's promises to its detriment, and has suffered damages in excess of \$1,000,000.00 as a direct and proximate result of such reliance. CIF is therefore

entitled to recover all such damages from Keel, to be fully proven at trial.

**FOR A TENTH AFFIRMATIVE DEFENSE AND BY WAY OF THIRD
COUNTERCLAIM AND SIXTH CAUSE OF ACTION AGAINST KEEL**

(Fraud in the inducement)

43. The foregoing allegations are incorporated herein.

44. In negotiating the APA, Plaintiff and Keel represented to Defendants that it they would not engage in competitive practices or solicitation of customers, contacts, or competing business pursuant to the terms contained therein.

45. Plaintiff and Keel knew such representations were false or made such representations with reckless disregard for their truth or falsity because upon information and belief, Plaintiff and Keel knew that Keel would not work for the benefit of CIF or assist in the building and furtherance of its business, but rather that Keel would be employed solely for the purposes of planning to compete against CIF.

46. Plaintiff and Keel intended for Defendants to rely upon such representations, as Plaintiffs and Keel knew that the purchase price was largely contingent on Keel bringing his contacts and expertise to the benefit of CIF following the purchase. The fraudulent representations were also material, as it was Keel's abilities and contacts and prior customers in the industry that were of top importance to CIF in making its determination to purchase the Plaintiff's assets and in agreeing to the sale price.

47. Defendants had no knowledge of the falsity of these representations and had a right to rely on the representations as a party to the APA.

48. As a direct and proximate cause of these fraudulent representations, Defendants have been damaged, having been fraudulently induced to enter the APA and having suffered the

loss of the purchase price as well as substantial business loss as a result of Keel's conduct post-closing. The Defendants are thereby entitled to recover their actual, consequential, and punitive damages against Plaintiff and Keel.

**FOR AN ELEVENTH AFFIRMATIVE DEFENSE AND BY WAY OF SEVENTH CAUSE
OF ACTION AGAINST KEEL**

(Breach of Contract Accompanied by a Fraudulent Act)

49. The foregoing allegations are incorporated herein.

50. Keel not only breached the APA and the Employment Agreement as alleged above, but he also engaged in fraudulent conduct accompanying such breaches.

51. Keel acted fraudulently by representing to Defendants that he would work for the benefit of CIF, by purposefully withholding information and business opportunities from CIF, and by executing long term plans against CIF to compete against CIF in direct violation of all promises made in the APA and the Employment Agreement. He further acted fraudulently by trying to circumvent his noncompetition obligations by quitting employment soon after beginning with CIF only to return a few months later to resume his employment.

52. As a direct and proximate result of Keel's breach accompanied by fraudulent acts, Defendants are entitled to recover their actual, consequential, and punitive damages against Keel.

**FOR A TWELFTH AFFIRMATIVE DEFENSE AND BY WAY OF EIGHTH CAUSE OF
ACTION AGAINST KEEL**

(Injunctive Relief)

53. The foregoing allegations are incorporated herein.

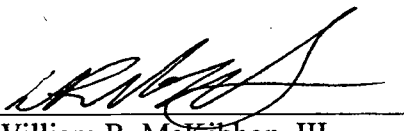
54. Keel is engaged in competing interests in violation of his Employment Agreement.

55. Keel's ongoing competition damages CIF, and there being no immediate adequate

remedy at law for such violation and continued damage, CIF is entitled to have Keel enjoined from such competitive activities, both *pendente lite* and permanently.

WHEREFORE, Defendants/Third-party Plaintiffs pray that the Court inquire into the matters alleged hereinabove, and award the following relief:

1. The purchase price in the APA to be repaid in full to CIF/Maides;
2. Actual and consequential damages against Plaintiff and Keel;
3. Punitive damages against Keel;
4. Defendants/Third party Plaintiffs' attorney's fees;
5. Costs of this action; and
6. Such other and further relief as the Court may deem just and proper.



William R. McKibbin, III
Attorney for Defendants/Third-party Plaintiffs
601 E. McBee Ave. Ste 204
Greenville, South Carolina 29601
(864) 235-0071, F: (864) 235-0072

December 17, 2013

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, SECTION 15-48-10, ET. SEQ., CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED.

ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** ("Agreement") is made and entered into this 17th day of July, 2008 by and among **Commercial & Industrial Floors, Inc.** a South Carolina corporation ("Buyer"), **Ron's Building Materials, Inc.**, a South Carolina Corporation ("Seller"), and **Ronald D. Keel, Joyce J. Keel, and Christopher M. Keel** (referred to sometimes individually and collectively as "Shareholder").

PRELIMINARY STATEMENT:

Seller is engaged in the business of selling commercial flooring products (the "Business"). Shareholder owns one hundred (100%) percent of the outstanding stock of Seller. The Seller desires to sell and Buyer desires to purchase the Assets related to the Business.

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements contained herein and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I

SALE AND PURCHASE OF ASSETS

1.1 Purchased Assets. Upon and subject to the terms and conditions set forth in this Agreement, as of the Closing Date (as hereinafter defined), Seller shall sell to Buyer, and Buyer shall purchase from Seller, free and clear of all liens, claims and encumbrances (except as disclosed herein and except those Assumed Liabilities as hereafter defined), all of Seller's right, title and interest in and to all of the assets, properties and rights used and/or owned in connection with the Business (other than Excluded Assets) (such assets, properties and rights being conveyed are hereinafter collectively referred to as the "Purchased Assets" or "Assets"), including, but not limited to, the following assets:

(a) Tangible Personal Property. All equipment, machinery, rolling stock, furniture, and other personal property, including, but not limited to, those items listed on Schedule 1.1(a) (the "Personal Property");

(b) Inventories and Supplies. All inventories and supplies of Seller including, without limitation, raw materials, and finished goods, components, and office, operating and other supplies including, but not limited to, those items listed on Schedule 1.1(b) (collectively, the "Inventory");

(c) Accounts Receivable. Schedule 1.1(c) sets forth those jobs which have been completed as of the Closing Date but payment is still due and owing to Seller ("Accounts Receivable"). Seller is selling \$300,000.00 worth of its Accounts Receivable to Buyer and retaining the remainder. Buyer shall bill and collect all Accounts Receivable (including the \$300,000.00 of Accounts Receivable sold to Buyer hereunder). After the Closing, payments will continue to be received at 212 Transit Drive and then deposited into Buyer's bank account. All collections will be accounted for using Schedule 1.1(c) and the first \$300,000 of Seller's Accounts Receivable to be collected will be retained by Buyer. Any amount received after that time which is applicable to the remaining Accounts Receivable on Schedule 1.1(c) will be immediately forwarded to Seller. Buyer and Seller will cooperate to collect all Accounts Receivable and any receivables on the Schedule that have not been collected within 90 days after closing will be assigned from Buyer to Seller and become the sole responsibility of Seller to collect.

(d) Prepays; Deposits. All credits, prepaid expenses, deferred charges, advance payments, security deposits and deposits owned, used or held for use by Seller, with respect to the Business, including, but not limited to, property and other taxes, and those items listed on Schedule 1.1(d) (collectively, the "Prepaid Expenses");

(e) Intellectual Property. Any telephone and telecopier numbers, customer lists and addresses, e-mail addresses, websites, inventions, trade secrets, designs, licenses, patents, trademarks, names (including "Ron's Building Materials" and derivations thereof) and applications of Seller, including, but not limited to, those items listed on Schedule 1.1(e) (collectively, the "Intellectual Property");

(f) Assigned Leases. All of Seller's right, title and interest under all leases of personal property (the "Personal Property Leases"), together with all of Seller's right, title and interest under all leases of real property ("Real Property Leases") (collectively referred to herein as the "Assigned Leases") listed on Schedule 1.1(f);

(g) Assigned Contracts. All rights that Seller may have under any and all agreements, contracts, purchase orders and purchase contracts, sales orders and sales contracts, quotations and bids, distribution agreements, licenses or arrangements including, but not limited to, those items listed on Schedule 1.1(g) (collectively, the "Assigned Contracts");

(h) Records. All of Seller's books, records, ledgers, files, documents (including originally executed copies of written contracts, customer and supplier lists) correspondence, memoranda, promotional materials, reports, sales and purchase correspondence, photographs, to the extent used or held for use with respect to the Business and currently in Seller's possession or accessible by Seller.

(i) Other Assets. All other assets used in the Business (except the Excluded Assets as defined herein) including, but not limited to names, permits (including any applications or renewals thereof) and third party claims.

1.2 Excluded Assets. The following assets of Seller are expressly excluded from the purchase and sale contemplated by this Agreement (collectively, the "Excluded Assets"), and shall be retained by Seller and/or Shareholder:

- (a) All taxpayer and other identification numbers, and minute books, stock transfer books and other documents relating to the organization, maintenance, and existence of Seller as a corporation;
- (b) Cash;
- (c) Accounts Receivable over \$300,000.00 (as provided in Section 1.1(c));
- (d) All rights under this Agreement and any agreements ancillary hereto;
- (e) 2005 Chevy Z71;
- (f) 2005 Porsche Boxster S;
- (g) Boat slip in Charleston, South Carolina;
- (h) The assets listed on Schedule 1.2(h);
- (i) The rights to any income tax or other tax refunds.

All Excluded Assets shall be removed by Shareholder within thirty (30) days after Closing unless Shareholder makes other arrangements with Buyer which will be acknowledged in writing. Any Excluded Assets not timely removed may be disposed of by Buyer.

1.3 Title Transfer. Subject to the provisions of this Agreement, Seller shall transfer to Buyer at Closing the Purchased Assets, with good and valid title, free and clear of all liens, claims and encumbrances (except the Assumed Liabilities as defined herein).

1.4 Assumed Liabilities; Non-Assumed Liabilities. At the Closing, Buyer agrees to assume and discharge or perform when due only the following (the "Assumed Liabilities"):

(a) any purchase orders of Inventory to the extent they relate to Inventory which has not yet been received and paid for by Seller and such undelivered Inventory has not been included on Schedule 1.1(b); Buyer agrees to pay the supplier of such undelivered Inventory in accordance with the terms of Seller's purchase thereof;

(b) all liabilities and obligations required to be performed pursuant to the Assigned Leases and the Assigned Contracts after the Closing Date;

No liabilities other than the liabilities described in 1.4(a) and 1.4(b) shall be assumed by Buyer. Any payables, including payroll, utilities and other expenses accrued to the Closing Date will be paid by Seller when due.

1.5 Work in Process. All work in process as of the Closing Date, which relate to any jobs which are in process but have not yet been fully completed shall be considered goodwill, and completed by Buyer at Buyer's expense. Schedule 1.5 is a list which sets forth Seller's work in process as of the Closing Date as well as each project's estimated profit and percentage of completion as of the Closing Date as mutually agreed to by Seller and Buyer. Payments constituting profit for each project received by Buyer after the Closing Date shall be divided between Buyer and Seller in accordance with the project's percentage of completion set forth on Schedule 1.5.

1.6 Post Closing Adjustments. Within 60 days after the Closing Date, Seller and Buyer shall determine and pro-rate as of the Closing Date any expenses the invoice for which relates to services and/or products provided prior to the Closing, but which is received after Closing ("Pre-Closing Expenses"). In addition, Seller and Buyer shall work together to pro-rate as of the Closing Date all Pre-Paid Expenses including property taxes. Seller and Buyer shall use their best efforts to agree on a final determination of such amounts. Such determination shall be committed to writing and signed by Buyer and Seller. To the extent the Pre-Paid Expenses exceed the Pre-Closing Expenses, Buyer shall pay the difference to Seller within 10 days in cash. To the extent the pre-Closing Expenses exceed the Pre-Paid Expenses, Seller shall pay such amount to Buyer within 10 days in cash.

ARTICLE II

CLOSING; CONSIDERATION AND MANNER OF PAYMENT

2.1 Purchase Price. The aggregate purchase price (the "Purchase Price") for the Purchased Assets (to include consideration for the non-competition agreements under Article VII) shall be equal to One Million Two Hundred Fifty Thousand (\$1,250,000.00) Dollars.

2.2 Payment of Purchase Price. The Purchase Price shall be payable at Closing by Buyer as follows:

(a) One Million Fifty Thousand (\$1,050,000.00) Dollars of the Purchase Price shall be paid by certified check or wire transfer from Buyer to Seller at Closing.

(b) Two Hundred Thousand (\$200,000.00) Dollars of the Purchase Price shall be evidenced by a promissory note (the "Note") in the form of Exhibit 2.2(b) which shall provide that the during the first twelve months interest only shall be due monthly at the rate of two (2%) percent per annum for the first year and then the remaining principal due after one year shall be amortized based on nine years with interest at the rate of six (6%) percent per annum with a final balloon payment due on or before the tenth anniversary of the date of the Note. The Note will be personally guaranteed by Dabney R. Maides, and contain provisions which provide that the Note must be paid in the event of a sale of the Business by Buyer, or a refinancing of Buyer's bank debt. Dabney R. Maides shall obtain a life insurance policy on his life in the amount of the Note and name Ronald D. and Joyce J. Keel, or the survivor of them, and Christopher M. Keel as the beneficiary of such policy.

2.3 Transfer of Assets. Seller shall execute any and all documents that are necessary or advisable in order to accomplish the transfer, or evidence the transfer, of the Assets to Buyer, including but not limited to, a Bill of Sale in form and substance reasonably acceptable to Buyer.

2.4 Purchase Price Allocation. The Purchase Price shall be allocated among the Purchased Assets, as set forth on Schedule 2.4. The parties agree to report on their respective tax returns and represent to the IRS on any subsequent communications, either oral or written, the transactions which are subject to this Agreement in a manner consistent with the allocation set forth on Schedule 2.4. Buyer shall prepare, consistent with the allocation set forth in Schedule 2.4, and deliver IRS Form 8594 to Seller within sixty (60) days after the Closing Date to be filed by Seller with the IRS.

2.5 Closing Date. The closing of the sale and purchase of the Assets and related transactions (the "Closing Date") shall take place at such date and time as the parties agree, but not later than July 25, 2008.

2.6 Transactions at Closing.

2.6.1 In addition to any other documents to be delivered under other provisions of this Agreement, at the Closing, the Seller shall deliver:

(a) the bill(s) of sale for tangible personal property composing portions of the Assets;

(b) valid written assignment(s), in a form and substance satisfactory to Buyer, of each Assigned Contract and Assigned Lease;

(c) certificates and other instruments required to effect the sale of Assets contemplated hereby, in form and substance reasonably acceptable to Buyer;

(d) copies of such duly filed UCC termination statements, lease termination statements, mortgage or other lien satisfactions, and other documents (including payoff letters), as are reasonably required by Buyer to evidence Seller's clear and marketable title to the Assets;

(e) a Certificate of Good Standing of Seller from the South Carolina Secretary of State within ten (10) days prior to Closing Date;

(f) all of the books and records of the Business, including, but not limited to, all computer related software and data which shall include the customer lists, correspondence, financial records and other proprietary information;

(g) the Employment Agreement between Buyer and Christopher M. Keel provided for herein;

(h) Articles of Amendment changing the name of Seller to CJR Resources, Inc.;

(i) the Lease Agreement between Buyer and Joyce J. and Ronald D. Keel provided for herein.

2.6.2 The Buyer shall deliver:

(a) The Purchase Price;

(b) a Certificate of Good Standing of Buyer from the South Carolina Secretary of State within ten (10) days prior to Closing Date;

(c) a valid written assignment(s) in a form and substance satisfactory to Seller and its legal counsel whereby Buyer assumes the Assumed Liabilities, the Assigned Contracts and Assigned Leases, (the "Assignment and Assumption Agreement");

(d) the Note;

(e) the Employment Agreement between Buyer and Chris Keel provided for herein;

(f) the Lease Agreement between Buyer and Joyce J. and Ronald D. Keel provided for herein.

(g) a certificate of insurance documenting a life insurance policy on the life of Dabney R. Maides in the amount of the Note with Ronald D. Keel, Joyce J. Keel, or the survivor of them, and Christopher M. Keel named as beneficiaries of such policy.

2.6.3 The parties will take such other actions called for at Closing by this Agreement.

ARTICLE III

OTHER AGREEMENTS

3.1 Employees. As of the Closing Date, all employees of Seller directly and primarily associated with the Business operations (other than the Shareholders) will cease to be employees of Seller, and Buyer may, subject to the exercise of Buyer's sole discretion, offer immediately or thereafter to hire any or all of such persons. Buyer shall be entitled to hire only those employees of Seller which Buyer elects in its sole discretion to hire; provided however, Buyer shall not assume any liability whatsoever which arose through Seller's employment of any employee, and Buyer shall not assume any liability whatsoever to any employee of Seller not hired by Buyer. Buyer will not be responsible for paying or reporting any costs or liabilities associated with Seller's employees that were incurred or accrued prior to the Closing Date, including but not limited to compensation, vacation pay, federal and state withholding taxes, federal and state unemployment taxes, employee benefit costs, and worker's compensation claims. Seller will release all employees subsequently hired by Buyer from any employment and/or confidentiality or non-competition agreement previously entered into by Seller and such employees, subject to any rights or claims existing as of the Closing Date.

3.2 Employment Agreement. Christopher M. Keel and Buyer shall have entered into an employment agreement in the form attached as Exhibit 3.2, which agreement shall provide for a one year term of employment at a salary of \$781.00 per week, plus incentive compensation based on quarterly profits, and which shall provide for a car allowance of \$635.00 per month and a gasoline allowance of \$550.00 per month.

3.3 Responsibility for Taxes. Seller shall be responsible for all taxes in connection with, relating to or arising out of the Business or the ownership of the Purchased Assets attributable to taxable periods, or portions thereof, ending on or before the Closing Date, which taxes shall be a Non-Assumed Liability. Buyer shall be responsible for all taxes in connection with, relating to or arising out of the Business or ownership of the Purchased Assets attributable to taxable periods, or portions thereof, after the Closing Date. Any property taxes paid by Seller shall be prorated to the Closing Date and taken into account under Section 1.6. Seller shall be responsible for any sales or use taxes imposed on the sale of the Purchased Assets.

3.4 Tax Cooperation. After the Closing Date, Seller and Buyer shall (i) provide the other with such assistance as may reasonably be requested by either of them in connection with the preparation of any tax return, any audit or other examination by any taxing authority or any judicial or administrative proceeding with respect to taxes, (ii) retain and provide the other with any records or other information which may be relevant to such return, audit, examination or proceeding, and (iii) provide the other with any final determination of any such audit or examination proceeding or determination that affects any amount required to be shown on any tax return of the other for any period (which shall be maintained confidentially).

3.5 Customer and Other Business Relationships. For a period of up to 4 weeks after the Closing, Seller and Shareholder will cooperate with Buyer in its efforts to continue and maintain for the benefit of Buyer those business relationships of Seller existing prior to the Closing and relating to the Business to be operated by Buyer after the Closing, including relationships with lessors, employees, regulatory authorities, licensors, customers, suppliers and others. Seller and Shareholder will refer to Buyer all inquiries relating to such Business. Neither Seller nor Shareholder shall take any action that could reasonably be expected to diminish the value of the Assets after the Closing or that would interfere with the Business of Buyer to be engaged in after the Closing, including disparaging the name or Business of Buyer.

3.6 Retention of and Access to Records. After the Closing Date, Buyer shall retain for a reasonable period those records of Seller delivered to Buyer. Buyer also shall provide Seller and Seller's legal and accounting counsel (collectively "Seller's Representatives") reasonable access thereto, during normal business hours and on at least three days' prior written notice, to enable them to prepare financial statements or tax returns or deal with tax audits.

3.7 Further Assurances. Buyer and Seller shall cooperate reasonably with each other and with their respective Representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement, and shall (a) furnish upon request to each other such further information; (b) execute and deliver to each other such other documents; and (c) do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement.

3.8 Lease Agreement. Buyer and Joyce J. and Ronald D. Keel shall enter into the Lease Agreement in the form of Exhibit 3.8.

3.9 Transition Period. As part of the Goodwill compensation, Sellers shall train, orient and otherwise advise Buyer for a period up to four (4) weeks after closing, without additional expense to Buyer.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF SELLER AND SHAREHOLDER

Seller and Shareholder jointly and severally hereby represent and warrant to Buyer as follows:

4.1 Organization. Seller is a corporation duly organized, validly existing, and in good standing under the laws of South Carolina and has all requisite power and authority to own, operate and lease its properties, to carry on its business substantially as it is being conducted on the date hereof and to consummate the transactions contemplated hereby to be performed by it. Seller is duly qualified to do business as a foreign corporation and is in good standing under the laws of each state or other

jurisdiction in which either the ownership or use of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification. Seller has no subsidiaries and does not have ownership in any other entity. Seller has made available to Buyer for inspection the minute books of Seller.

4.2 Authorization. Seller has requisite corporate power and authority to execute, deliver and perform this Agreement, including the written consent of the voting stockholders, the other agreements and documents contemplated hereby and consummate the transactions contemplated hereby. Seller has taken all actions required of Seller to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby. This Agreement, the Employment Agreements, the Lease Agreement and each other Agreement to be executed or delivered by Seller and Shareholder at the Closing (collectively, the "Ancillary Documents") hereto have been duly and validly executed and delivered by Seller and Shareholder and constitute valid and binding agreements of Seller and Shareholder enforceable in accordance with their terms. The execution and delivery of this Agreement and the Ancillary Documents by Seller and the performance by Seller of the transactions contemplated herein and therein will not constitute an act of bankruptcy, preference, insolvency or fraudulent conveyance under any bankruptcy act or other law for the protection of debtors or creditors. Shareholder knows of no approval, consent, waiver, order or authorization of, or registration, qualification, declaration, or filing with, or notice to, any federal, state or local court, arbitration tribunal or governmental agency or other third party that is required on the part of Seller in connection with the execution of this Agreement or the Ancillary Documents, or the consummation of the transactions contemplated hereby or thereby.

4.3 Assigned Contracts; Assigned Leases.

(a) Schedule 4.3(a) contains a complete and accurate list setting forth as of a recent date all written contracts, commitments, agreements or obligations, to which Seller is a party as obligor, or to which it or any of its owned assets or properties is subject, which potentially involve the payment by Seller of more than One Thousand (\$1,000.00) Dollars with respect to any one contract or commitment or Five Thousand (\$5,000.00) Dollars in the aggregate. True and complete copies of all documents specifically and reasonably requested by Buyer and referred to in such list will be provided or made available to Buyer and its counsel upon request.

(b) All leases wherein Seller is either lessor or lessee or otherwise has an interest or obligation are described on Schedule 4.3(b).

(c) Each of the Assigned Contracts and Assigned Leases is a valid and binding agreement of Seller and is in full force and effect in accordance with its terms, and that as of the Closing Date, Seller is not in material default, and to Seller's knowledge no other party is in material default with respect to the Assigned Leases and the Assigned Contracts. Each of the Assigned Contracts and Assigned Leases is fully assignable to Buyer, and all third-party consents, approvals or waivers regarding such

assignments have either been obtained, or Buyer has waived the requirement that such assignments be obtained.

(d) Seller owns no real estate other than the boat slip in Charleston, South Carolina which is an Excluded Asset.

4.4 Capitalization. The authorized equity securities of Seller consist of One Hundred Thousand (100,000) shares of common stock of which One Thousand (1,000) shares are issued and outstanding, and one hundred (100%) percent of which are owned by Shareholder. Shareholder is and will be on the Closing Date the record and beneficial owner and holder of the shares owned by Shareholder, free and clear of all encumbrances. There are no agreements relating to the issuance, sale or transfer of any stock or other equity interests of Seller except as set forth on Schedule 4.4.

4.5 Financial Statements. Seller has delivered to Buyer: (a) a compiled balance sheet of Seller as of February 29, 2008 (including the notes thereto, the "Balance Sheet"), and the related compiled statement of income; (b) compiled balance sheets of Seller as of December 31st in each of the fiscal years December 31, 2005 through December 31, 2006, and the related compiled statements of income. Such financial statements fairly present the financial condition and the results of operations of Seller at the respective dates of and for the periods referred to in such financial statements, all in accordance with Seller's regular accounting practices consistently applied. Since the date of the Balance Sheet, there have not been any material adverse events with respect to the Business.

4.6 All Assets. Except for the Excluded Assets, and the building where the Business is located, the Purchased Assets constitute all the assets, properties and rights owned in connection with the conduct of the Business. None of the Purchased Assets are owned, in whole or in part, by any person or entity other than Seller. Except as otherwise provided herein, at the Closing, Seller shall convey to Buyer possession of the Assets free and clear of any liens, claims, encumbrances, leases or rental agreements, or claims of possession. Except for the building where the Business is located, and except with respect to Shareholder, no officer, director or shareholder or any relative of any such officer, director, or shareholder is a party to any material agreement with Seller or owns a material interest (except in the capacity as a shareholder, director or employee) in any property, real, personal or mixed, tangible or intangible, which is used in the Business.

4.7 Condition of Property. All items of tangible personal property being sold herein is in good repair and good operating condition, ordinary wear and tear excepted, and is suitable for immediate use in the ordinary course of business. No item of tangible personal property is in need of repair or replacement other than as part of routine maintenance in the ordinary course of business. All tangible personal property used in the business is in the possession of Seller.

4.8 Tax Returns Filed and Taxes Paid. Seller has filed or caused to be filed on a timely basis all tax returns and all reports with respect to taxes that are or were

required to be filed. To the knowledge of Shareholder and Seller, all tax returns and reports filed by Seller are true, correct and complete. To the knowledge of Seller and Shareholder, Seller has paid, or made provision for the payment of, all taxes that have or may have become due for all periods covered by the tax returns.

4.9 Employment Benefits. Set forth in Schedule 4.9 is a complete and correct list of all "employee benefit plans" as defined by Section 3(3) of the Employee Retirement Income Security Act ("ERISA"), and all other bonus, incentive-compensation, deferred-compensation, profit-sharing, stock-option, stock-appreciation-right, stock-bonus, stock-purchase, employee-stock-ownership, savings, severance, change-in-control, supplemental-unemployment, layoff, salary-continuation, retirement, pension, health, life-insurance, disability, accident, group-insurance, vacation, holiday, sick-leave, fringe-benefit or welfare plan, and any other employee compensation or benefit plan, agreement, policy, practice, commitment, contract or understanding (whether qualified or nonqualified, currently effective or terminated, written or unwritten) and any trust, escrow or other agreement related thereto ("Employee Plans") that is maintained or contributed to by Seller.

4.10 Insurance.

(a) Seller has delivered to Buyer:

(i) accurate and complete copies of all policies of insurance (and correspondence relating to coverage thereunder) to which Seller is a party or under which Seller is covered as of Closing, a list of which is included in Schedule 4.10(a)(i); and

(ii) accurate and complete copies of all pending applications by Seller for policies of insurance.

(b) To the knowledge of Seller, except as set forth in Schedule 4.10(b):

(i) all policies of insurance to which Seller is a party or that provide coverage to Seller:

(A) are valid, outstanding and enforceable;

(B) are issued by an insurer that is financially sound and reputable; and

(C) taken together, provide adequate insurance coverage for the Assets and the Business.

(ii) Seller has not received (A) any refusal of coverage or any notice that a defense will be afforded with reservation of rights or (B) any notice of cancellation or any other indication that any policy of insurance is no longer in full force or effect or that the issuer of any policy of insurance is not willing or able to perform its obligations thereunder;

(iii) Seller has paid all premiums due, and has otherwise performed all of its obligations, under each policy of insurance to which it is a party or that provides coverage to Seller; and

(iv) Seller has given notice to the insurer of all claims that may be insured thereby.

(c) Seller has maintained workers' compensation coverage as required by applicable state law through purchase of insurance and not by self-insurance or otherwise.

4.11 No Breach. To the knowledge of Shareholder and Seller the execution and delivery by Seller and Shareholder of this Agreement and Ancillary Documents contemplated hereby to which Sellers is a party, the performance by Seller and Shareholder of its obligations hereunder and thereunder and the consummation by Seller and Shareholder of the transactions contemplated herein will not violate in any material respect, any statute or law or any judgment, decree, order, regulation or rule of any court or governmental authority to which Seller or Shareholder are subject or any contract, instrument or other agreement to which Seller or Shareholder is a party.

4.12 Compliance with Laws. To the knowledge of Seller and Shareholder Seller is in compliance with all laws, ordinances, and regulations that govern Seller's ownership and use of the Assets and the violation of which would have a material adverse effect on the Assets or Business.

4.13 Litigation. Except as provided in Schedule 4.13, there are no judicial, arbitration, or administrative actions or other legal proceedings pending, or to the knowledge of Seller and Shareholder, threatened that question the validity of this Agreement or any transaction contemplated hereby or that relate to the Assets, or to the conduct of the Business, including but not limited to condemnation or bankruptcy proceedings. To the knowledge of Seller and Shareholder, there is no material judgment, decree, injunction, ruling or order of any court, governmental department, commission, agent or instrumentality or arbitrator outstanding against Seller and to the knowledge of Seller and Shareholder, Seller is not bound by any material judgment, decree, injunction, ruling or order of any court, governmental department, commission, agency or instrumentality, arbitrator or any other person.

4.14 Workers' Compensation. There are no workers' compensation or similar claims or actions pending or, to the knowledge of Seller and Shareholder threatened, by past or present employees of Seller. Except as provided in Schedule 4.14, to the knowledge of Seller and Shareholder there have been no worker's compensation or similar claims made subsequent to January 1, 2003.

4.15 Brokerage. Seller has not dealt with a broker in connection with this transaction other than Dan Lemanski/Lemans, Inc. Seller shall be responsible for the payment of all fees to Dan Lemanski/Lemans, Inc., and Buyer shall not be obligated to Dan Lemanski or Lemans, Inc. in any manner. No brokerage commission or claim

therefore shall accrue or become payable to any person or entity other than Dan Lemanski/Lemans, Inc. respecting this transaction.

ARTICLE V

COVENANTS OF SELLER

5.1 Change of Name. On or before the Closing Date, Seller shall (a) amend its South Carolina Articles of Incorporation and take all other actions necessary to change its name and (b) take all actions requested by Buyer to enable Buyer to change its name to Seller's present name, if Buyer so elects.

5.2 Payment of Liabilities. Seller shall pay or otherwise satisfy in the ordinary course of business all of its liabilities and obligations as of the Closing Date.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to the Seller and Shareholder as follows:

6.1 Organization and Good Standing. Buyer is a corporation duly organized, validly existing, and in good standing under the laws of South Carolina.

6.2 Authorization. Buyer has full power and authority to execute, deliver and perform this Agreement and any Ancillary Documents, and the execution, delivery and performance by Buyer of this Agreement and any Ancillary Documents have been duly authorized, executed and delivered by Buyer as of the Closing Date. This Agreement and the Ancillary Documents hereto, have been properly authorized by Buyer and are legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their terms. The execution and delivery of this Agreement and the Ancillary Documents by Buyer and the performance by Buyer of the transactions contemplated herein and therein will not constitute an act of bankruptcy, preference, insolvency or fraudulent conveyance under any bankruptcy act or other law for the protection of debtors or creditors. Buyer knows of no approval, consent, waiver, order or authorization of, or registration, qualification, declaration, or filing with, or notice to, any federal, state or local court, arbitration tribunal or governmental agency or other third party that is required on the part of Seller in connection with the execution of this Agreement or the Ancillary Documents, or the consummation of the transactions contemplated hereby or thereby.

6.3 No Violation of Laws or Agreements. The execution, delivery and performance by Buyer of this Agreement and any other documents to which Buyer is a party do not, and the consummation by Buyer of the transactions contemplated hereby and thereby, will not violate any agreements or law, ordinance, regulation, order, policy or guideline of any governmental entity.

6.4 Consents. No consent, approval or authorization of, or registration or filing with, any person or entity (government or private) is required in connection with the execution, delivery and performance by Buyer of this Agreement, and other documents to which Buyer is a party, or the consummation by Buyer of the transactions contemplated hereby or thereby.

6.5 Brokers or Finders. Neither Buyer nor any of Buyer's representatives have incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement.

ARTICLE VII

NONCOMPETITION, NONSOLICITATION AND NONDISPARAGEMENT

7.1 Noncompetition, Nonsolicitation and Nondisparagement.

(a) Noncompetition. In consideration of Five Thousand (\$5,000.00) Dollars of the Purchase Price, for a period of five (5) years after the Closing, Seller and Shareholder, shall not directly or indirectly invest in, own, manage, operate, finance, control, advise, render services to or guarantee the obligations of any person or entity engaged in or planning to become engaged in the building supply and flooring installation lines of business that Seller is engaged in as of the Closing Date, ("Competing Business") within the State of South Carolina except for or on behalf of Buyer.

(b) Nonsolicitation. For a period of five (5) years after the Last Date of Employment, Seller and Shareholder, shall not, directly or indirectly, except for or on behalf of Buyer:

(i) solicit the Competing Business of any person or entity who is a customer or client of Buyer;

(ii) cause, induce or attempt to cause or induce any customer, supplier, licensee, licensor, franchisee, employee, consultant or other business relation of Buyer with respect to the Competing Business to cease doing business with Buyer, to deal with any competitor of Buyer in the Competing Business or in any way interfere with its relationship with Buyer in the Competing Business;

(iii) cause, induce or attempt to cause or induce any customer, supplier, licensee, licensor, franchisee, employee, consultant or other business relation of Seller on the Closing Date or within the year preceding the Closing Date to cease doing Competing Business with Buyer, to deal with any competitor of Buyer in the Competing Business, or in any way interfere with its relationship with Buyer in the Competing Business; or

(iv) hire, retain or attempt to hire or retain any employee or former employee or independent contractor of Buyer or in any way interfere with the relationship between Buyer and any of its employees or independent contractors.

(c) Nondisparagement. After the Closing Date, Seller and Shareholder will not knowingly disparage Buyer or any of Buyer's members, directors, officers, employees or agents.

(d) Modification of Covenant. If a final judgment of a court or tribunal of competent jurisdiction determines that any term or provision contained in Section 7.1(a) through (c) is invalid or unenforceable, then the parties agree that the court or tribunal will have the power to reduce the scope, duration or geographic area of the term or provision, to delete specific words or phrases or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision. This Article VII will be enforceable as so modified after the expiration of the time within which the judgment may be appealed. This Article VII is reasonable and necessary to protect and preserve Buyer's legitimate business interests and the value of the Assets and to prevent any unfair advantage conferred on Seller.

ARTICLE VIII

INDEMNIFICATION; REMEDIES

8.1 Survival. All representations, warranties, covenants and obligations in this Agreement and Ancillary Documents and any other certificate or document delivered pursuant to this Agreement shall survive the Closing, only to the extent provided in Section 8.4(a) and (b). The waiver of any condition based upon the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, will not affect the right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations.

8.2 Indemnification and Reimbursement by Seller and Shareholder. Seller and Shareholder, jointly and severally, will indemnify and hold harmless Buyer, and Buyer's Representatives, members, owners, subsidiaries and any affiliated persons or entities (collectively, the "Buyer Indemnified Persons"), and will reimburse the Buyer Indemnified Persons for any loss, liability, claim, damage, expense (including costs of investigation and defense and reasonable attorneys' fees and expenses) actually incurred or sustained by Buyer (collectively, "Damages"), arising from or in connection with:

(a) any breach of any representation or warranty or any covenant or obligation made by Seller or Shareholder in this Agreement or Ancillary Document or any transfer instrument or any other certificate, document, writing or instrument delivered by Seller pursuant to this Agreement to the extent not covered by insurance or otherwise;

- (b) any Non-Assumed Liabilities.

8.3 Indemnification and Reimbursement by Buyer. Buyer will indemnify and hold harmless Seller and Shareholder and their shareholders, owners, subsidiaries and any affiliated persons or entities (collectively, the "Seller Indemnified Persons") and will reimburse Seller Indemnified Persons, for any Damages arising from or in connection with:

(a) any breach of any representation or warranty or any covenant made by Buyer in this Agreement or in any certificate, document, writing or instrument delivered by Buyer pursuant to this Agreement;

(b) any liability arising from the Assumed Liabilities, Assigned Contracts or Assigned Leases; or

(c) any liability arising out of Buyer's conduct of the Business.

8.4 Time Limitations and Notice of Claim.

(a) Seller and Shareholder will have liability (for indemnification or otherwise) with respect to any breach of (i) a covenant or obligation to be performed or complied with prior to the Closing Date or (ii) a representation or warranty, only if on or before one (1) year after the Closing Date, Buyer shall provide Seller and Shareholder with a written notice indicating that Buyer is making a claim against the Seller or Shareholder as permitted under this Agreement and specifying the factual and legal basis for such claim in reasonable detail and the amount of such claim (a "Notice of Claim"). Except with respect to Third-Party Claims, as provided below, Buyer, Seller and Shareholder shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, Buyer, Seller and Shareholder shall endeavor to settle the dispute through mediation pursuant to the South Carolina Rules of Arbitration before having recourse to arbitration. Buyer, Seller and Shareholder agree to conclude such mediation within forty-five (45) days of the filing of the request for mediation. Any dispute not resolved by mediation shall be decided by arbitration in accordance with the South Carolina Rules of Arbitration. Judgment on any arbitration award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof.

(b) Buyer will have liability (for indemnification or otherwise) to any or all of the Seller Indemnified Parties with respect to any (i) covenant or obligation to be performed or complied with by Buyer pursuant to this Agreement or (ii) a representation or warranty, only if on or before one (1) year after the Closing Date such Seller Indemnified Part(ies) provide Buyer with a Notice of Claim. Except with respect to Third-Party Claims, as provided below, Buyer and Seller shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, Buyer and Seller shall endeavor to settle the dispute through mediation pursuant to the South Carolina Rules of Arbitration before having recourse to arbitration. Buyer and Seller agree to conclude such mediation within forty-five (45) days of the

filing of the request for mediation. Any dispute not resolved by mediation shall be decided by arbitration in accordance with the South Carolina Rules of Arbitration. Judgment on any arbitration award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof.

(c) In the case of a claim by a third-party against an indemnified party ("Third Party Claim"), the indemnified party shall give a Notice of Claim to the indemnifying party, of the assertion of any claim, or the commencement of any suit, action or proceeding in respect of which indemnity may be sought hereunder. The indemnifying party may, at its own expense, (a) participate in and (b) upon notice to the indemnified party, assume the defense thereof; provided that the indemnifying party shall thereafter consult with the indemnified party upon the indemnified party's request for such consultation from time to time with respect to such claim, suit, action or proceeding. If the indemnifying party assumes such defense, the indemnified party shall have the right (but not the duty) to participate in the defense thereof and to employ counsel, at its own expense, separate from the counsel employed by the indemnifying party. Whether or not the indemnifying party chooses to defend or prosecute any such claim, suit, action or proceeding, all of the parties hereto shall cooperate in the defense or prosecution thereof. In the event that the indemnifying party elects not to assume the defense of any claim, suit, action or proceeding, such election shall not relieve the indemnifying party of its obligations hereunder.

No party shall settle or compromise any claim, suit, action or proceeding without the prior written consent of the other party, which shall not be unreasonably withheld or delayed.

8.5 [Intentionally Omitted]

8.6 Insurance. In the event that insurance proceeds are paid to the Indemnified Person respecting an event to which an indemnification right applies hereunder, such indemnification right shall apply only to the extent that the amount of damages indemnified against exceeds such insurance proceeds actually paid to the Indemnified Person; provided however, that: (a) this Section 8.6 shall not apply to the extent it conflicts with, is prohibited by, or would invalidate, any such insurance policy; and (b) collection of such insurance proceeds shall not be a condition precedent to asserting or collecting such indemnification. Notwithstanding the other provisions in this Section 8.6, it is understood and agreed that any insurance proceeds or tax benefits benefiting the Buyer will offset any indemnification claims against the Seller.

8.7 Exclusive Remedy. The indemnification provisions set forth in this Article VIII shall be the sole and exclusive basis for a monetary remedy of Buyer with respect to any matter related to this Agreement.

8.8 Aggregate Limitation. Seller and Shareholder's aggregate indemnity obligations under this Agreement shall not exceed the amount of the Purchase Price actually received by Seller and/or Shareholder, minus all federal and state income taxes paid by Seller and/or Shareholder as a result of the sale and purchase of the Assets.

8.9 Basket Limitation. Seller shall not be required to indemnify Buyer pursuant to this Article VIII except to the extent that the aggregate amount of Damages for which Buyer is otherwise entitled to indemnification hereunder exceeds \$2,000.

8.10 Damages Limitation. Except with respect to Third-Party Claims in which such damages are awarded, in no event will Seller or Shareholder be liable for any incidental, consequential or punitive damages.

ARTICLE IX

ADDITIONAL PROVISIONS

9.1 Entire Agreement; Amendments; Waivers. This Agreement and the documents referred to herein and to be delivered pursuant hereto constitute the entire agreement of the parties hereto pertaining to the subject matter hereof, and supersede all prior and contemporaneous agreements, understandings, negotiations, and discussions of the parties, whether oral or written. No amendment, supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision or breach of this Agreement, whether or not similar, unless otherwise expressly provided.

9.2 Benefit. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns.

9.3 No Presumption. Buyer and Seller have participated jointly in the negotiation and drafting of this Agreement and the preparation of all Ancillary Documents. In the event any ambiguity question of intent or interpretation arises, this Agreement including all Ancillary Documents thereto shall be construed as if drafted jointly by Buyer and Seller, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

9.4 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but such counterparts shall altogether constitute one and the same Agreement.

9.5 Notices. All notices, requests, approvals, consents, demands and other communication provides for or permitted hereunder shall be in writing, signed by an authorized representative of the sender and addressed to the respective party at the address set forth below:

Buyer: Commercial & Industrial Floors, Inc.
303 Woodway Drive
Greer, SC 29651

Copy To: Temple, Mann, Briggs & Hill
819 E. North Street
Greenville, SC 29601
ATTN.: S. Allan Hill, Esquire

Seller: Ronald D. Keel and Joyce K. Keel
724 Hudson Road
Greenville, SC 29615

Copy To: Merline & Meacham, PA
812 East North Street
Greenville, SC 29601
ATTN: Robert E. August, Esq.

A party hereto may change its respective address by notice in writing given to the other parties to this Agreement. Any notice, request, approval, consent, demand or other communication shall be effective upon the first to occur of the following: (i) when delivered to the party to whom such notice, request, approval, consent, demand or other communication is being given, or (ii) three (3) Business Days after being duly deposited in the U.S. mail, certified, return receipt requested.

9.6 Severability of Provisions. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

9.7 Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

9.8 Jurisdiction. The parties hereto consent to jurisdiction (regarding any disputes arising hereunder), subject to proper service of process, in the State of South Carolina.

9.9 Further Instruments and Acts. From time to time at a party's request, whether at or after Closing and without further consideration, the other party(ies) shall execute and deliver such further instruments of conveyance, transfer and assignment and upon reimbursement for actual reasonable out-of-pocket expenses take such other action as the requesting party reasonably may require to more effectively convey and transfer to the requesting party the properties to be conveyed, transferred and assigned hereunder, and, if necessary, will assist the requesting party in the collection or reduction to possession of such property. In addition, each party agrees to provide reasonable access to records respecting the Business as are requested by the other party(ies) for proper purpose with good cause shown (subject to appropriate confidentiality agreements to be negotiated at such time) and agree to reasonably cooperate in resolving any matters resulting from the transactions contemplated hereby.

9.10 Fees and Expenses. Each of the parties hereto will pay its own fees and expenses (including its attorneys' fees and expenses) and any fees, commissions and expenses of its financial advisors, investment bankers or brokers.

9.11 Signatures. Buyer and Seller agree that the Agreement and all Ancillary Documents and instruments contemplated herein can be signed by facsimile and facsimile copies shall be binding on such signing party as if an original executed copy.

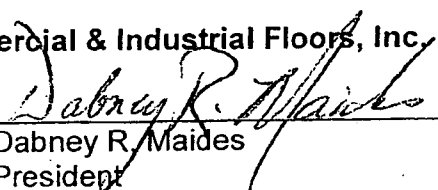
9.12 Mediation and Arbitration. If a dispute arises out of or relating to this Agreement, or its breach, the parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, the parties shall endeavor to settle the dispute through mediation pursuant to the South Carolina Rules of Arbitration before having recourse to arbitration. The parties agree to conclude such mediation within forty-five (45) days of the filing of the Request for Mediation. Any dispute not resolved by mediation shall be decided by arbitration in accordance with the South Carolina Rules of Arbitration. Judgment on the arbitration award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof. The location of any mediation or arbitration shall be Greenville, South Carolina unless the parties mutually agree to another location.

[Signature Page Attached]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

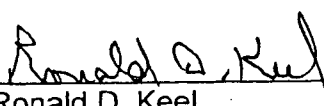
BUYER:

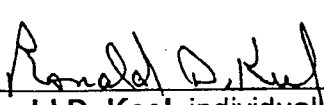
Commercial & Industrial Floors, Inc.

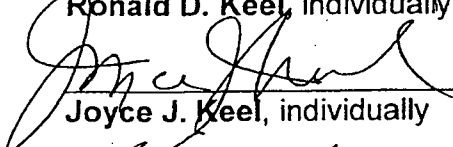
By: 
Dabney R. Maides
Its: President

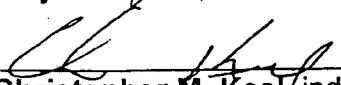
SELLER:

Ron's Building Materials, Inc.

By: 
Ronald D. Keel
Its: President


Ronald D. Keel, individually


Joyce J. Keel, individually


Christopher M. Keel, individually

EMPLOYMENT AGREEMENT

This **EMPLOYMENT AGREEMENT** (this "Agreement") is made and entered into this 22 day of July, 2008, by and between **Christopher M. Keel** ("Employee") and **Commercial & Industrial Floors, Inc.**, a South Carolina corporation ("Company").

RECITALS

The Company and the Employee desire to enter into this Agreement on the terms and conditions set forth herein. In consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are true and correct and are deemed to be a part of this Agreement.

2. Employment. The Company shall employ the Employee, and the Employee hereby accepts employment with the Company, upon the terms and conditions set forth in this Agreement for the period beginning on the date hereof and ending as provided in Paragraph 5 hereof (the "Employment Period").

3. Position and Duties. During the Employment Period, the Employee shall serve as a sales representative for the Company and shall perform such normal duties and responsibilities of a sales representative as may be from time to time designated by the Company, subject to the direction and authority of the Company's President or his designee.

4. Base Salary and Benefits.

(a) During the Employment Period, the Employee's base salary shall be \$781 per week or such higher rate as the board of directors of the Company may designate from time to time (the "Base Salary"). The Base Salary shall be payable in regular installments, no less frequently than weekly, in accordance with the Company's general payroll practices and shall be subject to customary withholding.

(b) The Company shall pay to Employee a car allowance of \$635 per month and a gasoline allowance of \$550 per month. Said amounts shall be paid within 10 days after the end of each calendar month during the Employment Period. In addition, Company shall reimburse the Employee for all reasonable expenses incurred by him in the course of performing his duties under this Agreement which are consistent with the Company's policies in effect from time to time with respect to travel, entertainment and other business expenses, subject to the Company's requirements with respect to reporting and documentation of such expenses. All such reimbursements shall be paid to Employee no later than 10 days after the end of each calendar month during the Employment Period.

(c) The Employee shall be entitled to 2 weeks vacation per year, eligible to be taken after on year of employment. The Employee shall also be entitled to holidays in the same manner as provided to other similarly situated employees of the Company.

(d) The Employee shall be permitted to participate in any pension or welfare benefit plan of Company upon satisfaction of the eligibility requirements as specified in each particular plan. Specifically, Company shall provide health insurance coverage for Employee, provided, however, that Employee in his sole discretion may decline such coverage in favor of receiving a cash payment in the amount of such coverage. For example, if Company would pay \$350/ month to provide health insurance to Employee, Employee may choose to either accept such health insurance coverage from Company or to decline such coverage and receive a monthly cash payment of \$350.

5. Termination.

(a) Employee's employment with Company is "at will" and may be terminated at any time by either Employee or Company.

(b) If the Employment Period is terminated by either party, the Employee shall be entitled to receive his Base Salary through the date of termination as well as a pro-rated share of all allowances and all reimbursements to which Employee is entitled through the date of termination.

6. Other Businesses. As long as the Employee is employed by the Company, and for a period of 5 years thereafter, the Employee agrees that he will not, except with the express written consent of the Company's President or his designee, become engaged in, or render services for, any business that competes with the business in which Company is engaged at the time his employment with Company is terminated anywhere within the state of South Carolina; provided, however, nothing herein shall prohibit Employee from owning not more than 10% of the outstanding shares of stock in a publicly traded company.

7. Return of Company Property. The Employee shall deliver to the Company at the termination of the Employment Period, or at any other time thereafter as the Company may reasonably request, all memoranda, notes, papers, plans, records, reports, computer discs or tapes, printouts and software and other documents and data (and copies thereof), (a) prepared by or on behalf of the Company, (b) purchased with Company funds or (c) in any way relating to the business of the Company which the Employee may then possess or have under his control.

8. Survival. Paragraphs 6 and 7 shall survive and continue in full force in accordance with its terms notwithstanding any termination of the Employment Period.

9. Notices. Any notice provided for in this Agreement must be in writing and must be either personally delivered, mailed by first class mail (postage prepaid and return receipt requested) or sent by reputable overnight courier service (charges prepaid) to the recipient at the recipient's last known address. Any notice under this Agreement will be deemed to have been given when so delivered or sent or, if mailed, three days after deposit in the U.S. mail.

10. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or any other jurisdiction, but this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

11. No Strict Construction. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party.

12. Successors and Assigns. This Agreement is intended to bind and inure to the benefit of and be enforceable by the Employee, the Company and their respective heirs, successors and assigns, except that the Employee may not assign his rights or delegate his obligations hereunder without the prior written consent of the Company.

13. Waivers. The waiver by the Company or the Employee of any action, right or condition in this Agreement, or any breach of a provision of this Agreement, shall not constitute a waiver of any other occurrences of the same event. Continuation of payments hereunder by the Company following a breach by the Employee of any provision of this Agreement shall not preclude the Company from thereafter terminating or reclaiming said payments based upon the same violation.

14. Governing Law. This Agreement shall be deemed to have been made in the State of South Carolina and shall be governed by and construed in accordance with the substantive law of the State of South Carolina, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of South Carolina or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of South Carolina.

15. Captions. The captions used in this Agreement are for convenience of reference only and do not constitute a part of this Agreement and shall not be deemed to limit, characterize or in any way affect any provision of this Agreement, and all provisions of this Agreement shall be enforced and construed as if no caption had been used in this Agreement.

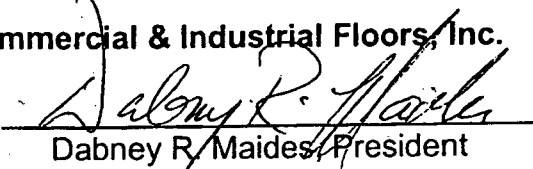
16. Counterparts. This Agreement may be executed in separate counterparts, each of which when so executed and delivered shall be an original and all of which taken together constitute one and the same agreement.

17. Entire Agreement; Amendments. This Agreement constitutes the entire understanding between the Employee and the Company with respect to its subject matter, supersedes any prior communication or understanding with respect thereto, and no modification or waiver or any provision hereof shall be valid unless made in writing and signed by the parties. No course of dealing between the parties to this Agreement shall be deemed to affect or to modify, amend or discharge any provision or term of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Employment Agreement as of the day and year first above written.

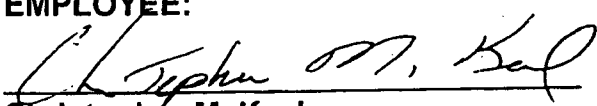
EMPLOYER:

Commercial & Industrial Floors, Inc.

By: 

Dabney R. Maides, President

EMPLOYEE:



Christopher M. Keel

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
CJR Resources, Inc. f/k/a Ron's Building	)	C. A. No. 2013-CP-23-05778
Materials, Inc.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	REPLY TO DEFENDANTS'
	)	COUNTERCLAIM
Commercial & Industrial Floors, Inc.,	)	
and Dabney R. Maides, Individually,	)	
	)	
Defendants/Third Party	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
Christopher M. Keel,	)	
	)	
Third Party Defendant.	)	
	)	

TO: WILLIAM R. MCKIBBON, III, ESQ., ATTORNEY FOR DEFENDANTS

COMES NOW, the plaintiff, CJR Resources, Inc. f/k/a Ron's Building Materials, Inc. ("Plaintiff"), by and through its undersigned counsel and hereby replies to the Counterclaims of Defendants Commercial & Industrial Floors, Inc., and Dabney R. Maides, Individually (collectively hereinafter "Defendants"), by denying each and every allegation not hereinafter specifically admitted, demanding strict proof thereof, and further respond as follows:

14. Paragraphs 1 through 14 of Defendant's Answer, Counterclaim, and Third Party Complaint ("Counterclaim") do not require a response from this answering Plaintiff, but to the extent that they do, Plaintiff denies same and demands strict proof thereof.

15. Plaintiff admits so much of Paragraph 15 of Defendant's Counterclaim that it entered into an asset purchase agreement with Defendant. Plaintiff denies any allegations not consistent with the written asset purchase agreement.

16. Paragraph 16 of Defendant's Counterclaim does not require a response from this answering Plaintiff, but to the extent that it does, Plaintiff denies same and demands strict proof thereof.

17. Paragraph 17 of Defendant's Counterclaim does not require a response from this answering Plaintiff, but to the extent that it does, Plaintiff denies same and demands strict proof thereof.

18. Plaintiff denies the allegations of Paragraph 18 of Defendant's Counterclaim and demands strict proof thereof.

19. Paragraph 19 of Defendant's Counterclaim does not require a response from this answering Plaintiff, but to the extent that it does, Plaintiff denies same and demands strict proof thereof.

20. Paragraph 20 of Defendant's Counterclaim does not require a response from this answering Plaintiff, but to the extent that it does, Plaintiff denies same and demands strict proof thereof.

21. Paragraph 21 of Defendant's Counterclaim does not require a response from this answering Plaintiff, but to the extent that it does, Plaintiff denies same and demands strict proof thereof.

22. Paragraph 22 of Defendant's Counterclaim does not require a response from this answering Plaintiff, but to the extent that it does, Plaintiff denies same and demands strict proof thereof.

23. Paragraph 23 of Defendant's Counterclaim does not require a response from this answering Plaintiff, but to the extent that it does, Plaintiff denies same and demands strict proof thereof.

24. Paragraph 24 of Defendant's Counterclaim does not require a response from this answering Plaintiff, but to the extent that it does, Plaintiff denies same and demands strict proof thereof.

25. Plaintiff denies the allegations of Paragraph 25 of Defendant's Counterclaim and demands strict proof thereof.

26. Paragraph 26 of Defendant's Counterclaim does not require a response from this answering Plaintiff, but to the extent that it does, Plaintiff denies same and demands strict proof thereof.

27. Plaintiff admits the allegations of Paragraph 27 of Defendant's Counterclaim.

28. Plaintiff denies the allegations of Paragraph 28 of Defendant's Counterclaim and demands strict proof thereof.

29. Plaintiff denies the allegations of Paragraph 29 of Defendant's Counterclaim and demands strict proof thereof.

30. Paragraphs 30 through 55 of Defendant's Counterclaim do not require a response from this answering Plaintiff, but to the extent that they do, Plaintiff denies same and demands strict proof thereof.

31. Plaintiff denies the allegations of the WHEREFORE Paragraph of Defendant's Counterclaim and demands strict proof thereof.

FOR A SECOND DEFENSE
(Failure to state a claim or cause of action)

32. This Plaintiff alleges that Defendant's Counterclaim fails to sufficiently constitute a cause of action against this answering Plaintiff or fails to state facts upon which a claim can be based.

FOR A THIRD DEFENSE
(Full performance by Plaintiff)

33. This Plaintiff alleges that it performed all of the actions required of it under the subject agreement and that the only additional action required to carry out the agreement was performance by others.

FOR A FOURTH DEFENSE
(Breach of contract by Defendants)

34. This Plaintiff alleges that to the extent Defendants seek recovery in contract, Defendants materially breached the terms and conditions of said agreement and are entitled to no relief thereon.

FOR A FIFTH DEFENSE
(Recovery reduced or eliminated by failure to mitigate)

35. This Plaintiff alleges that any recovery by Defendants is barred by their failure to mitigate damages, or that any recovery must be reduced by those damages that Defendants failed to mitigate.

FOR A SIXTH DEFENSE
(Unclean Hands)

36. This Plaintiff alleges that the Defendants' action is barred under the equitable doctrine of unclean hands.

FOR A SEVENTH DEFENSE
(Recovery reduced by setoff)

37. This Plaintiff alleges that any recovery by Defendants must be set off or reduced, abated, or apportioned to the extent that any other party's actions caused or contributed to damages, if any, and must be set off or reduced, abated, or apportioned to the extent that the amount of any judgment against it is paid to Defendants for the alleged defects by others (or the value of goods and services provided by others).

FOR AN EIGHTH DEFENSE
(Estoppel)

38. This Plaintiff alleges that Defendant's conduct, including, but not limited to, his/her failure to notify this Plaintiff of the occurrences complained of, operated as estoppel and waiver of any rights to file the action herein.

FOR A NINTH DEFENSE
(Plaintiff's obligations void or excused)

39. This Plaintiff alleges that, to the extent Defendant alleges this Plaintiff had any obligation as to which full performance has not been rendered or excused, that obligation did not exist or was based upon acts or omissions that were void or otherwise extinguished.

FOR A DEFENSE
(Recovery barred by parol evidence)

40. This Plaintiff alleges that Defendants cannot seek the recovery pleaded herein because such recovery is expressly contrary to the evidence that this court may consider under the parol evidence rule.

FOR A DEFENSE
(Statute of limitations)

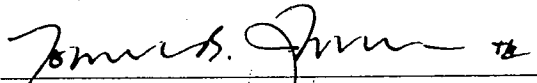
41. This Plaintiff alleges that the Counterclaim and each cause of action is barred by the applicable statute of limitations.

FOR A DEFENSE
(Right to add additional affirmative defenses)

42. This Plaintiff alleges that because the Counterclaim herein is couched in conclusionary terms, this answering Plaintiff cannot fully anticipate all affirmative defenses that may be applicable to the within action. Accordingly, the right to assert additional affirmative defenses, if and to the extent that such affirmative defenses are applicable, is hereby reserved.

WHEREFORE, having fully replied to Defendants' Counterclaims, Plaintiff prays that the same be dismissed, for costs of this action, and for such other and further relief as this Court may deem just and proper.

Respectfully submitted this 17th day of January, 2014,



John T. Crawford, Jr., Esq.
Townes B. Johnson, III (SC Bar# 75412)
KENISON, DUDLEY & CRAWFORD, LLC
704 E. McBee Avenue
Greenville, South Carolina 29601
PH: (864) 242-4899
FAX: (864) 242-4844

Attorneys for Plaintiff CJR Resources, Inc.
f/k/a Ron's Building Materials, Inc.,

Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

FILED-CLERK OF THE COURT OF COMMON PLEAS
GREENVILLE CO. THIRTEENTH JUDICIAL CIRCUIT
PAUL D. WICKENSINER

2014 MAR 26 PM 2 23

C.A. NO: 2013-CP-23-05778

CJR Resources, Inc. f/k/a Ron's Building
Materials, Inc.,

Plaintiff,

v.

Commercial & Industrial Floors, Inc., et al,

Defendant/Third Party Plaintiff,

v.

Christopher M. Keel,
Third Party Defendant.

ANSWER OF
CHRISTOPHER M. KEEL
TO DEFENDANT'S
THIRD-PARTY COMPLAINT

Third Party Defendant, Christopher M. Keel, answering Third Party Plaintiff's Third-Party Complaint and asserting his own counterclaims against Third Party Plaintiff, would respectfully allege and show unto this Honorable Court as follows:

FOR A FIRST DEFENSE
TO COUNTERCLAIM OF THIRD PARTY PLAINTIFF

1. Third Party Defendant believes that no response is required to Paragraphs 1-13 of Third Party Plaintiff's Answer, Counterclaim, and Third Party Complaint.
2. Third Party Defendant admits the allegations contained in Paragraph 14 of Third Party Plaintiff's Counterclaim.
3. Third Party Defendant admits the allegations contained in Paragraph 15 of Third Party Plaintiff's Counterclaim.
4. Third Party Defendant admits the allegations contained in Paragraph 16 of Third Party Plaintiff's Counterclaim.

5. Third Party Defendant admits only so much of the allegations contained in Paragraph 17 of Third Party Plaintiff's Counterclaim as allege that the APA signed by Third Party Plaintiff and Third Party Defendant contains a provision stating that Third Party Plaintiff and Third Party Defendant "shall have entered into an employment agreement," whereby Third Party Plaintiff agreed to provide Third Party Defendant with a position of employment for a period of one year and to pay Third Party Defendant certain compensation therefore. Third Party Defendant further admits that a copy of the employment agreement referenced in the APA is the document attached as Exhibit B to Third Party Plaintiff's Answer, Counterclaim and Third Party Complaint.

6. Third Party Defendant admits only so much of the allegations contained in Paragraph 18 of Third Party Plaintiff's Counterclaim as allege that the Employment Agreement referenced therein was made a term of the APA and incorporated therein by reference. However, Third Party Defendant is without sufficient information or knowledge to admit or deny what Third Party Plaintiff's motives or inducements were so far as its decision to enter into the APA or to agree to the sales price set forth therein. Accordingly, Third Party Defendant denies all remaining allegations contained in Paragraph 18 of Third Party Plaintiff's Counterclaim and demands strict proof thereof.

7. Third Party Plaintiff admits only so much of the allegations contained in Paragraph 19 of Third Party Plaintiff's Complaint as allege that the original employment relationship between Third Party Plaintiff and Third Party Plaintiff ended in August of 2008. Third Party Defendant denies all remaining allegations contained in Paragraph 19 of Third Party Plaintiff's Counterclaim.

8. Third Party Defendant admits only so much of the allegations contained in Paragraph 20 of Third Party Plaintiff's Counterclaim as allege that Third Party Plaintiff entered into a second and new employment relationship with Third Party Plaintiff in January of 2009, almost six (6) months after the original employment relationship between Third Party Plaintiff and Third Party Defendant had ended. Third Party Defendant denies all remaining allegations contained in Paragraph 20 of Third Party Plaintiff's Counterclaim.

9. Third Party Defendant admits only so much of the allegations contained in Paragraph 21 of Third Party Plaintiff's Counterclaim as allege that the Employment Agreement executed in July of 2008 contained the terms set forth therein that were applicable to the original employment relationship between Third Party Plaintiff and Third Party Defendant, same having ended in August of 2008. Third Party Defendants denies all remaining allegations contained therein, including any allegation that the terms of the Employment Agreement were in any way renewed and/or made a part of the second employment relationship between Third Party Plaintiff and Third Party Defendant that began in January of 2009.

10. Third Party Defendant admits the allegations contained in Paragraph 22 of Third Party Plaintiff's Counterclaim.

11. Third Party Defendant denies the allegations contained in Paragraph 23 of Third Party Plaintiff's Counterclaim.

12. Third Party Defendant denies the allegations contained in Paragraph 24 of Third Party Plaintiff's Counterclaim.

13. Responding to the allegations contained in Paragraph 25 of Third Party Plaintiff's Counterclaim, Third Party Defendant is without sufficient information or knowledge to admit or deny what knowledge Third Party Plaintiff claims it or any other party had at the time of the

closing of the APA. However, Third Party Defendant denies any allegations or inference that he ever had and/or acted with any improper “plan and intention with regard to his employment and competition against CIF” at any time either during or after any periods of employment with Third Party Plaintiff.

AS TO THE “SECOND CAUSE OF ACTION”
(Breach of Contract as to APA)

14. Third Party Defendant believes that no response is needed to Paragraph 26 of Third Party’s Plaintiff’s Counterclaim.

15. Third Party Defendant admits the allegations contained in Paragraph 27 of Third Party Plaintiff’s Counterclaim.

16. Third Party Defendant denies the allegations contained in Paragraph 28 of Third Party Plaintiff’s Counterclaim.

17. Third Party Defendant denies the allegations contained in Paragraph 29 of Third Party Plaintiff’s Counterclaim.

AS TO THE “THIRD CAUSE OF ACTION”
(Breach of Contract as to Employment Agreement)

18. Third Party Defendant believes that no response is needed to Paragraph 30 of Third Party Plaintiff’s Counterclaim.

19. Responding to the allegations contained in Paragraph 31 of Third Party Plaintiff’s Counterclaim, Third Party Defendant admits only that the Employment Agreement is valid and binding on the parties thereto to the extent that it is enforceable as a matter of law.

20. Third Party Defendant denies the allegations contained in Paragraph 32 of Third Party Plaintiff’s Counterclaim.

21. Third Party Defendant denies the allegations contained in Paragraph 33 of Third Party Plaintiff's Counterclaim.

AS TO THE "FOURTH CAUSE OF ACTION"
(Breach of Duty of Loyalty)

20. Third Party Defendant believes that no response is needed to Paragraph 34 of Third Party Plaintiff's Counterclaim.

21. Third Party Defendant admits the allegations contained in Paragraph 35 of Third Party Plaintiff's Counterclaim.

22. Third Party Defendant denies the allegations contained in Paragraph 36 of Third Party Plaintiff's Counterclaim.

23. Third Party Defendant denies the allegations contained in Paragraph 37 of Third Party Plaintiff's Counterclaim.

AS TO THE "FIFTH CAUSE OF ACTION"
(Promissory Estoppel)

24. Third Party Defendant believes that no response is needed to Paragraph 38 of Third Party Plaintiff's Counterclaim.

25. Third Party Defendant admits the allegations contained in Paragraph 39 of Third Party Plaintiff's Counterclaim to the extent they are consistent with the express terms of the Employment Agreement Third Party Plaintiff signed in respect to his first employment relationship with Third Party Plaintiff.

26. Third Party Defendant denies the allegations contained in Paragraph 40 of the Third Party Plaintiff's Complaint to the extent that they imply that Third Party Defendant made any false representations in an attempt at inducing Third Party Plaintiff to enter into the APA.

27. Responding to the allegations contained in Paragraph 41 of Third Party Plaintiff's Counterclaim, Third Party Defendant is without information or knowledge sufficient to admit or deny upon what Third Party Plaintiff relied upon or believed at the time it entered into the APA and Employment Agreement.

28. Responding to the allegations contained in Paragraph 42 of Third Party Plaintiff's Counterclaim, Third Party Defendant is without information or knowledge sufficient to admit or deny what Third Party Plaintiff relied on, but denies that any action of Third Party Defendant acted in any improper manner, that any such alleged conduct resulted in any damage to Third Party Plaintiff or that Third Party Plaintiff is entitled to recover any damages from Third Party Defendant.

AS TO THE SIXTH COUNTERCLAIM
(Fraud in the inducement)

29. Third Party Defendant believes that no response is needed to Paragraph 43 of Third Party Plaintiff's Counterclaim.

30. Third Party Defendant admits the allegations contained in Paragraph 44 of Third Party Plaintiff's Counterclaim.

31. Third Party Defendant denies the allegations contained in Paragraph 45 of Third Party Plaintiff's Counterclaim.

32. Third Party Defendant admits only so much of the allegations set forth in Paragraph 46 of Third Party Plaintiff's Counterclaim as allege that Third Party Defendant made certain true representations during negotiations over the APA. Third Party Defendant is without information or knowledge sufficient to admit or deny what was of "top importance" to Third Party Defendant and therefore denies same. All remaining allegations contained therein are denied.

33. Third Party Defendant admits only so much of the allegations contained in Paragraph 47 of Third Party Plaintiff's Complaint as allege that the parties to the APA had a right to rely on the representations made to one another in the course of negotiations over the APA. Third Party Defendant denies all remaining allegations contained therein, including any allegation that Third Party Defendant made any false representations to Third Party Plaintiff.

34. Third Party Defendant denies the allegations contained in Paragraph 48 of Third Party Plaintiff's Counterclaim.

AS TO THE "SEVENTH COUNTERCLAIM"
(Breach of Contract Accompanied by a Fraudulent Act)

35. Third Party Defendant believes that no response is needed to Paragraph 49 of Third Party Plaintiff's Counterclaim.

36. Third Party Defendant denies the allegations contained in Paragraph 50 of Third Party Plaintiff's Counterclaim.

37. Third Party Defendant denies the allegations contained in Paragraph 51 of Third Party Plaintiff's Counterclaim.

38. Third Party Defendant denies the allegations contained in Paragraph 52 of Third Party Plaintiff's Counterclaim.

AS TO THE "EIGHTH COUNTERCLAIM"
(Injunctive Relief)

39. Third Party Defendant believes that no response is needed to Paragraph 53 of Third Party Plaintiff's Counterclaim.

40. Third Party Defendant denies the allegations contained in Paragraph 54 of Third Party Plaintiff's Counterclaim.

41. Third Party Defendant denies the allegations contained in Paragraph 55 of Third Party Plaintiff's Counterclaim.

42. All allegations of Third Party Plaintiff's Counterclaims not expressly admitted are hereby denied.

FOR A SECOND DEFENSE
(Failure to State a Claim)

43. Third Party Defendant incorporates the above-referenced allegations as if set forth verbatim herein to the extent they are consistent herewith.

44. Third Party Plaintiff's Counterclaim fails to state a claim upon which relief may be granted.

FOR A THIRD DEFENSE
(Unclean Hands)

45. Third Party Defendant incorporates the above-referenced allegations as if set forth verbatim herein to the extent they are consistent herewith.

46. Third Party Plaintiff's Counterclaim is barred in whole or in part by the equitable doctrine of unclean hands.

FOR A FOURTH DEFENSE
(Failure to Mitigate)

47. Third Party Defendant incorporates the above-referenced allegations as if set forth verbatim herein to the extent they are consistent herewith.

48. Third Party Plaintiff's claims in this case are barred, in whole or in part, because it failed to take reasonable steps, which would have mitigated or eliminated Third Party Plaintiff's alleged damages.

FOR A FIFTH DEFENSE
(Anticipatory Breach)

49. Third Party Defendant incorporates the above-reference allegations as if set forth verbatim herein to the extent they are consistent herewith.

50. Third Party Plaintiff's claims against Third Party Defendant are barred as Third Party Plaintiff first materially breached the contract Third Party Plaintiff now seeks to enforce against Third Party Defendant.

FOR A SIXTH DEFENSE
(Unenforceable Contract)

51. Third Party Defendant incorporates the above-referenced allegations as if set forth verbatim herein to the extent they are consistent herewith.

52. The Employment Agreement upon which some of Third Party Plaintiff's claims against Third Party Defendant are premised is unenforceable under South Carolina law.

FOR A SEVENTH DEFENSE
(Statute of Limitations)

53. Third Party Defendant incorporates the above-referenced allegations as if set forth verbatim herein to the extent they are consistent herewith.

54. Some or all of Third Party Plaintiff's claims against Third Party Defendant are barred by the applicable statute of limitations.

AS AN ADDITIONAL DEFENSE AND BY WAY OF COUNTERCLAIMS
(General Allegations)

55. Third Party Defendant incorporates the above-referenced allegations as if set forth verbatim herein to the extent they are consistent herewith.

56. Third Party Defendant was originally employed with Third Party Plaintiff pursuant to the Employment Agreement referenced in Third Party Plaintiff's Counterclaim in July of 2008.

57. Third Party Defendant's original employment relationship with Third Party Plaintiff pursuant to the Employment Agreement referenced in Third Party Plaintiff's Counterclaim ended in August of 2008.

58. Almost six months later, in January of 2009, Third Party Plaintiff and Third Party Defendant entered into a new employment agreement with entirely new terms. Specifically, Third Party Plaintiff agreed to employ Third Party Defendant and to pay him a monthly salary of Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$8,333.33).

59. At the time he entered into the new employment agreement with Third Party Plaintiff in January of 2009, Third Party Defendant was not asked to and did not sign a written employment agreement containing any non-compete or non-solicitation obligations. Additionally, Defendant never agreed to renew the terms of the 2008 Employment Agreement.

60. Third Party Defendant was employed by Third Party Plaintiff pursuant to the new employment agreement entered into in January of 2009 until resigning on May 31, 2013.

61. Third Party Defendant was forced to resign in May of 2013 because Third Party Plaintiff had breached its agreement to pay Third Party Defendant the agreed upon monthly salary of Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$8,333.33), unilaterally deciding it would only pay Third Party Defendant Two Thousand Six Hundred Forty-Two Dollars (\$2,642.00) per month, less than a third of the agreed upon monthly amount.

62. Third Party Plaintiff notified Third Party Plaintiff of the intended decrease in his pay on May 31, 2009, but made the decrease in his pay retroactive for two weeks prior to the notification such that the decrease in pay was reflected in the paycheck Third Party Defendant received on June 1, 2009 for the two prior weeks.

63. To date, Third Party Plaintiff has never paid Third Party Defendant the difference in pay he was entitled to receive for work performed for Third Party Plaintiff prior to June 1, 2009.

64. Following Third Party Defendant's resignation on March 31, 2009, Third Party Plaintiff and its owner, Dabney Maides, have made negative and untrue statements about Third Party Defendant to various businesses and individuals.

65. Upon information and belief, the defamatory comments made about Third Party Defendant by Third Party Plaintiff and Dabney Maides were made with the intention of causing harm and loss of business to Third Party Defendant.

66. As a result of the conduct of Third Party Plaintiff and its owner, Dabney Maides, Third Party Defendant has suffered damages that it is entitled to recover from Third Party Plaintiff.

FOR AN EIGHTH DEFENSE
TO THIRD PARTY PLAINTIFF'S COUNTERCLAIM AND
BY WAY OF COUNTERCLAIM
(Breach of Contract – employment agreement)

67. Third Party Defendant incorporates the above-referenced allegations as if set forth verbatim herein to the extent they are consistent herewith.

68. Pursuant to the offer of employment and resulting employment agreement referenced in Paragraph 58 above, Third Party Plaintiff entered into a binding agreement with Third Party Defendant whereby Third Party Plaintiff agreed to employ Third Party Defendant and to pay him a salary of Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$8,333.33) per month.

69. Despite Third Party Defendant's fulfillment of his obligations under the agreement set forth above, Third Party Plaintiff breached same by decreasing Third Party Defendant's monthly pay to Two Thousand Six Hundred Forty-Two Dollars (\$2,642.00) per month and by refusing to pay Third Party Defendant the previously agreed upon salary for his work through May 31, 209.

70. As a direct and proximate cause of Third Party Plaintiff's breach of the above-referenced agreement, Third Party Defendant suffered actual and consequential damages, entitling him to an award thereof from Third Party Plaintiff.

FOR AN NINTH DEFENSE
TO THIRD PARTY PLAINTIFF'S COUNTERCLAIM AND
BY WAY OF COUNTERCLAIM
(Breach of Contract - APA)

71. Third Party Defendant incorporates the above-referenced allegations as if set forth verbatim herein to the extent they are consistent herewith.

72. As more fully set forth in Plaintiff's Complaint, and pursuant to the APA and the related promissory noted referenced in Third Party Plaintiff's Counterclaim, Third Party Plaintiff entered into a valid and binding agreement to pay Third Party Defendant and others certain monies.

73. Despite Third Party Defendant's fulfillment of his obligations under the agreement set forth above, Third Party Plaintiff has breached same by failing and/or refusing to pay all amounts due to Third Part Defendants and others under the promissory note.

74. As a direct and proximate cause of Third Party Plaintiff's breach of the above-referenced agreement, Third Party Defendant has suffered actual and consequential damages, entitling him to an award thereof from Third Party Plaintiff.

FOR A TENTH DEFENSE

TO THIRD PARTY PLAINTIFF'S COUNTERCLAIM AND
BY WAY OF COUNTERCLAIM
(Violation of S.C. Wage Payment Act – Failure to Pay Wages Owed)

75. Third Party Defendant incorporates the above-referenced allegations as if set forth verbatim herein and to the extent they are consistent herewith.

76. As set forth in greater detail above, Third Party Plaintiff has willfully and intentionally refused to pay all agreed upon wages owed to Third Party Defendant for the work he performed for Third Party Plaintiff before June of 2009.

77. In willfully and/or intentionally failing to pay all Third Party Defendant all wages he is owed, Third Party Plaintiff has violated the South Carolina Payment of Wages Act and Third Party Defendant is entitled to an award of damages from Third Party Plaintiff therefore, including all such unpaid wages, treble damages and attorneys' fees.

FOR AN ELEVENTH DEFENSE
TO THIRD PARTY PLAINTIFF'S COUNTERCLAIM AND
BY WAY OF COUNTERCLAIM
(Violation of S.C. Wage Payment Act – Failure to Provide Notice of Change in Pay)

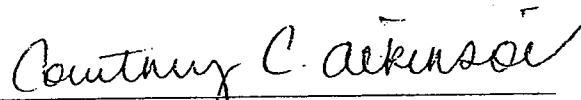
78. Third Party Defendant incorporates the above-referenced allegations as if set forth verbatim herein and to the extent they are consistent herewith.

79. As set forth in greater detail above, Third Party Plaintiff notified Third Party Defendant on May 31, 2009 that his salary was being decreased to less than one third (1/3) of his agreed upon monthly salary.

80. Third Party Plaintiff made the decrease retroactive for the two weeks prior to the date of the notification, such that the paycheck Third Party Defendant received from Third Party Plaintiff on June 1, 2009 reflected the decrease in pay.

Order dismissing Third Party Plaintiff's Counterclaim, finding in Third Party Defendant's favor on his Counterclaims against Third Party Plaintiff, and awarding Third Party Defendant all available damages, attorneys' fees, and any such other and further relief the Court may deem just and proper.

METCALFE & ATKINSON, LLC



Courtney C. Atkinson, S.C. Bar #71992

9 Toy Street

Greenville, South Carolina 29601

Telephone: 864-214-2319

Facsimile: 864-214-3067

catkinson@malawfirmssc.com

Attorneys for Christopher M. Keel

March 26, 2014
Greenville, South Carolina

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	FOR THE
	THIRTEENTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-23-05778

CJR Resources, Inc. f/k/a Ron's Building Materials, Inc.,	
Plaintiff,	
v.	
Commercial & Industrial Floors, Inc. et al,	
Defendant/Third Party Plaintiffs,	
v.	
Christopher M. Keel,	
Third Party Defendant.	

**REPLY TO THIRD-PARTY
DEFENDANT'S COUNTERCLAIMS
AS RECITED IN THIRD-PARTY
DEFENDANT'S ANSWER TO
DEFENDANTS' THIRD-PARTY
COMPLAINT**

FILED--CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKER
2014 MAY 20 PM 4 50

Defendants (collectively referred to as "CIF"), by and through their undersigned attorneys, hereby reply to Third-Party Defendant's ("Keel") counterclaims as follows:

1. Paragraph 56 is admitted.
2. Paragraph 57 is denied.
3. Paragraph 58 is denied except that CIF admits that CIF and Keel did enter into a new compensation arrangement in approximately January 2009.
4. Paragraph 59 is denied, except that CIF admits it has no signed employment agreement in 2009.
5. Paragraph 60 is denied, except that CIF admits the said date of resignation being

May 31, 1013.

6. Paragraph 61 is denied.

7. CIF is without sufficient information at this time to form a belief as to the allegations in Paragraph 62, and they are therefore denied.

8. Paragraphs 63-71 are denied.

9. Paragraph 72 is denied based upon CIF's averment that CIF bears no contractual obligation to Keel or other parties based upon those parties' breaching conduct.

10. Paragraphs 73-85 are denied.

FOR A FIRST AFFIRMATIVE DEFENSE

11. Any statements made about Keel, if any, were true.

FOR SECOND AFFIRMATIVE DEFENSE

12. Keel has failed to state a cause of action, pursuant to Rule 12(b)6, for which relief may be granted.

FOR A THIRD AFFIRMATIVE DEFENSE

13. Keel's claims are barred by the doctrine of unclean hands.

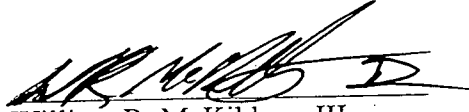
FOR A FOURTH AFFIRMATIVE DEFENSE

14. Keel's claims are barred by the doctrines of fraud or illegality or misrepresentation.

FOR A FIFTH AFFIRMATIVE DEFENSE

15. Keel's claims are barred by payment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'WR McKibbon III', written over a horizontal line.

William R. McKibbon, III
Attorney for Defendants/Third-party Plaintiffs
601 E. McBee Ave. Ste 204
Greenville, South Carolina 29601
(864) 235-0071, F: (864) 235-0072

May 20, 2014

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
PAUL B. WICKENS, CLERK
THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE 2014 MAR 26 PM 2 21
C.A. NO: 2013-CP-23-05778

CJR Resources, Inc. f/k/a Ron's Building
Materials, Inc.,

Plaintiff,

v.

Commercial & Industrial Floors, Inc., et al,

Defendant/Third Party Plaintiff,

v.

Christopher M. Keel,
Third Party Defendant.

MOTION TO DISMISS

Third Party Defendant Christopher M. Keel, by and through his undersigned counsel, hereby moves the Court, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, for an Order dismissing Plaintiff's causes of action in the above-referenced matter for breach of contract, breach of contract accompanied by a fraudulent act, fraud in the inducement, breach of duty of loyalty and for an injunction. Defendant's Motion is made on grounds that Plaintiff's Third Party Complaint fails to state facts sufficient to constitute each and every one of those causes of action as any such causes of action because those causes of action, as pled in Plaintiff's Third Party Complaint, are barred by the applicable statute of limitations.

(Signature page follows)

METCALFE & ATKINSON, LLC

Courtney C. Atkinson

Courtney C. Atkinson, S.C. Bar #71992

Hannah Rogers Metcalfe, S.C. Bar #73046

9 Toy Street

Greenville, South Carolina 29601

864-214-2319

catkinson@malawfirmssc.com

Attorneys for Third Party Defendant

March 26, 2014
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

CJR Resources, Inc. f/k/a Ron's Building
Materials, Inc.

vs.

Commercial & Industrial Floors, Inc., Dabney
Maides

Defendant.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

FILED-CLERK OF COURT

GREENVILLE CO. S.C.

PAUL D. WICKENHOFER

CASE NO.: 2013-CP-23-5778

MOTION AND ORDER INFORMATION

2013 SEP 25 PM 12:47
FORM AND COVERSHEET

Third Party

Plaintiff's Attorney:

William R. McKibbin, III, Bar No. _____

Address:

601 East McBee Avenue, Greenville, SC 29601

Phone: (864) 235-0071 Fax (864) 235-0072

E-mail: will@legalcarolina.com Other: _____

Third Party

Defendant's Attorney:

Courtney C. Atkinson, Bar No. 73046

Address:

9 Toy Street, Greenville, SC 29601

Phone: (864) 214-2319 Fax (864) 214-3067

E-mail: catkinson@malawfirmssc.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 for Summary Judgment

Estimated Time Needed: 30 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.

Courtney C. Atkinson

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

9/25/15

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, 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: \$ _____

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

CJR Resources, Inc. f/k/a Ron's Building
Materials, Inc.,

Plaintiff,

v.

Commercial & Industrial Floors, Inc. and
Dabney Maides,

Defendant/Third Party Plaintiffs,

v.

Christopher M. Keel,

Third Party Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. NO: 2013-CP-23-05778

**THIRD PARTY DEFENDANT'S
MOTION FOR
SUMMARY JUDGMENT**

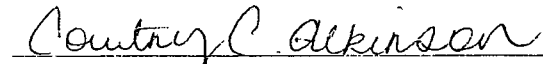
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. WILKINSON
2015 SEP 25 PM 12 47

**TO: WILLIAM R. MCKIBBON, III, COUNSEL FOR DEFENDANT/THIRD PARTY
PLAINTIFFS:**

PLEASE TAKE NOTICE that Third Party Defendant Christopher M. Keel (hereinafter "Keel") hereby moves the Court, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an Order granting summary judgment in his favor on all causes of action asserted against him by Defendant/Third Party Plaintiffs Commercial & Industrial Floors, Inc. and Dabney Maides (collectively hereinafter "CIF") in the above-captioned action. Keel's Motion is made on the following grounds: (1) CIF has not proven and cannot prove facts sufficient to make out the essential elements of each and every one of its third party claims against Keel; (2) The contract on which each and every one of CIF's claims are premised is unenforceable as a matter of law; and (3) Some or all of CIF's claims against Keel are barred by the applicable statute of

limitations. This Motion is supported by all of the pleadings, discovery and testimony in the case, as well as any supporting memorandum that may be filed prior to a hearing on this Motion.

METCALFE & ATKINSON, LLC



Courtney C. Atkinson, S.C. Bar #71992

9 Toy Street

Greenville, South Carolina 29601

864-214-2319

catkinson@malawfirm.com

*Attorneys for Third Party Defendant Christopher
M. Keel*

September 25, 2015
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

CJR Resources, Inc.,

Plaintiff,

vs.

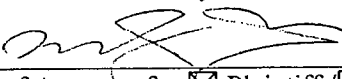
Commercial & Industrial Floors, Inc., et al.,

Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-23-05778

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: John T. Crawford, Jr., Bar No. 69682 Address: 704 East McBee Avenue, Greenville, SC 29601 Phone: 864-242-4899 Fax 864-242-4844 E-mail: crawford@conlaw.com Other: _____		Defendant's Attorney: See Attached List, 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 for Summary Judgment Estimated Time Needed: 30 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		4:24.15 Date submitted	
SECTION III: Motion Fee			
☒ PAID – AMOUNT: \$ 25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED – AMOUNT DUE: \$ _____			

RE: CJR Resources, Inc. f/k/a Ron's Building Materials, Inc. vs. Commercial Industrial Floors, Inc., et al.

Case No. 2013-CP-23-05778

Attorney Information for Motion and Order Information Form and Cover Sheet

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

CJR Resources, Inc. f/k/a Ron's Building
Materials, Inc.,

Plaintiff,

v.

Commercial & Industrial Floors, Inc. and
Dabney Maides,

Defendant/Third Party Plaintiffs,

v.

Christopher M. Keel,

Third Party Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. NO: 2013-CP-23-05778

**PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

**TO: WILLIAM R. MCKIBBON, III, COUNSEL FOR DEFENDANT/THIRD PARTY
PLAINTIFFS:**

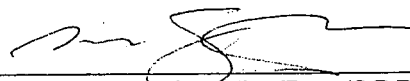
PLEASE TAKE NOTICE that Plaintiff CJR Resources, Inc., (hereinafter "Plaintiff") hereby moves the Court, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an Order granting summary judgment in its favor on all causes of action it has asserted against Defendant Commercial & Industrial Floors, Inc. and Dabney Maides; and for an Order granting summary judgment in Plaintiff's favor on all cause of action asserted against it by Defendant Commercial & Industrial Floors, Inc. and Dabney Maides (collectively hereinafter "CIF") in the above-captioned action.

Plaintiff's Motion is made on the following grounds: (1) There exists no genuine issue of material fact regarding the claims made by Plaintiff against Defendant, such that Defendant's liability under such claims is clear as a matter of law; (2) CIF has not proven and cannot prove

facts sufficient to make out the essential elements of each and every one of its counterclaims against Plaintiff; and (3) Some or all of CIF's counterclaims against Plaintiff are barred by the applicable statute of limitations.

This Motion is supported by all of the pleadings, discovery and deposition testimony in the case, as well as any supporting memorandum and affidavits that may be filed prior to a hearing on this Motion.

Respectfully submitted,



John T. Crawford, Jr., Esq. (SC Bar # 69682)
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*Attorneys for Plaintiff CJR Resources, Inc. f/k/a
Ron's Building Materials, Inc.,*

September 24, 2015
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

CJR Resources, Inc. f/k/a Ron's Building
Materials, Inc.,

Plaintiff,

v.

Commercial & Industrial Floors, Inc. and
Dabney Maides,

Defendant/Third Party Plaintiff,

v.

Christopher M. Keel,

Third Party Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. NO: 2013-CP-23-05778

**MEMORANDUM IN SUPPORT OF
THIRD PARTY DEFENDANT'S
MOTION FOR
SUMMARY JUDGMENT**

FILED-2013-07-29
GREENVILLE, S.C.
PAUL E. WICKENS
2015 OCT 29 PM 12:30

Third Party Defendant Christopher M. Keel (hereinafter "Keel") hereby submits this Memorandum in Support of his Motion for Summary Judgment as to all claims of Third Party Plaintiffs, Commercial & Industrial Floors, Inc. and Dabney Maides (collectively hereinafter "CIF") against Keel, including CIF's claims for breach of contract, breach of contract accompanied by a fraudulent act, fraud in the inducement, breach of duty of loyalty, and for an injunction pursuant to South Carolina Rule of Civil Procedure 12(b)(6). Keel's Motion is made on the grounds that (1) CIF's claims are barred by the applicable statute of limitations; (2) the contract on which CIF's claims are premised is unenforceable as a matter of law; and (3) CIF cannot prove the essential elements of each and every cause of action asserted against Keel.

STATEMENT OF FACTS

Plaintiff CJR Resources, Inc. (hereinafter "CJR") is a South Carolina corporation that previously owned and operated Ron's Building Materials (hereinafter "the Business"), a business located in Greenville County whose primary business is the sale and installation of flooring. CJR is a family-owned business and Keel is one of the shareholders. Defendant CIF is a South Carolina corporation that, upon information and belief, was incorporated by Defendant Dabney Maides in 2008 for the sole purpose of purchasing the Business from CJR and its shareholders.

In July of 2008, CJR sold the Business and its assets to CIF pursuant to an Asset Purchase Agreement (hereinafter "the APA"). See Asset Purchase Agreement, dated July 17, 2008 and attached hereto as **Exhibit A**. Pursuant thereto, CIF agreed to pay CJR the total purchase price of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) for the Business. *Id.* Of the total purchase price, One Million Fifty Thousand Dollars (\$1,050,000.00) was to be paid at closing, with the remaining Two Hundred Thousand Dollars (\$200,000.00) financed by a promissory note personally secured by Maides. *Id.* The APA provides that CIF would employ Keel for one year following closing at a weekly salary of Seven Hundred Eighty-One Dollars (\$781.00) and contains both a non-compete clause and a non-solicitation clause. The non-compete clause covers the entire State of South Carolina and prohibits CJR and its shareholders from engaging in a "Competing Business," which is defined as the same business that "(CJR) is engaged in as of the Closing Date," for five (5) years after closing of the APA. The non-solicitation clause prohibits CJR and its shareholders from soliciting CIF's customers for a competing business, inducing customers to cease doing business with CIF and from hiring any employee of CIF for five years after "the Last Date of Employment."

Ancillary to the APA, CIF entered into an employment relationship with Keel and required him to sign an Employment Agreement ("the Employment Agreement"), dated July 22, 2008 and attached hereto as **Exhibit B**. Pursuant thereto, CIF agreed to pay Keel a base monthly salary and other compensation and benefits. Extending the APA's already geographically broad and lengthy restrictive covenants, the Employment Agreement contains a non-compete provision,¹ providing that, while employed by the Company and for five (5) years thereafter, Keel could not "become in engaged in, or render services for, any business that competes with the business in which Company is engaged...anywhere in the state of South Carolina." The original employment relationship between CIF and Keel was unsuccessful, however, and Keel ended that relationship in August of 2008. Accordingly, both the Employment Agreement's non-compete obligations and the APA's non-solicitation provision began to run at that time and, to the extent that either obligation is enforceable, both expired in August of 2013.²

In January of 2009, almost six (6) months after the original employment relationship between CIF and Keel ended, Keel agreed to enter into a new employment relationship with CIF in exchange for CIF's new promise to eventually pay him an increased base monthly salary of up to Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three cents (\$8,333.33). See January 2009 Employment Offer Letter (hereinafter "the 2009 Agreement"), attached hereto as **Exhibit C**. At the time he entered into this new agreement, Keel was not asked to and did not sign a written agreement containing any non-compete or non-solicitation obligations, and, likewise, never agreed to renew the terms of the original 2008 Employment Agreement.

¹ Unlike the APA, the Employment Agreement does not include any non-solicitation language.

² The APA's non-compete provision expired in July of 2013, five (5) years following closing of the APA transaction.

Keel was employed by CIF under the new agreement from January of 2009 until resigning on May 31, 2013 after CIF notified Keel that it had unilaterally decided it would only pay Keel Two Thousand Six Hundred Forty-Two Dollars (\$2,642.00) per month, less than a third of the agreed upon base monthly amount. CIF notified Keel of the intended decrease in his pay on May 31, 2013, but made the decrease in his pay retroactive for two weeks prior to the notification such that the decrease in pay was reflected in the paycheck Keel received on June 1, 2013 for the two prior weeks. CIF never paid Keel the difference in pay he was entitled to receive for work performed for CIF prior to June 1, 2013. Additionally, and immediately prior to tendering his resignation on May 31, CIF also refused to pay Keel the full commissions he had earned prior to that date.

Following Keel's resignation in May of 2013, CIF ceased making the required payments due to CJR under the APA and related promissory note. Additionally, CIF and its owner, Dabney Maides, have made negative and false statements about Keel to various businesses and individuals, and, upon information and belief, those defamatory comments made by CIF and Dabney Maides were intended to harm Keel's personal and professional reputation.

PROCEDURAL HISTORY

CJR instituted this action by filing its Complaint on October 28, 2013, alleging that CIF breached the APA by failing to make all payments required under the APA and related promissory note. CIF filed its Answer and Third Party Complaint on December 18, 2013, denying CJR's claims and alleging claims against Keel for breach of contract, breach of contract accompanied by a fraudulent act, fraud in the inducement, breach of duty of loyalty and for an injunction, all based on the APA and the July 2008 Employment Agreement. Specifically, CIF claims that Keel breached those agreements by competing with CIF and soliciting CIF's clients,

entered into the Employment Agreement by fraud and never intended to abide by the terms of the agreements. Keel filed his Answer on March 26, 2014 along with a Motion to Dismiss, denying all of CIF's claims and arguing that said claims were barred by the statute of limitations. Keel also asserted various counterclaims against CIF, including breach of contract as to both the APA and the 2009 Employment Agreement, violation of the South Carolina Wage Payment Act for failure to both pay all wages owed and to provide mandated notice of change in pay, and defamation. On May 20, 2014, CIF filed its Answer, denying each and every counterclaim.

In August of 2014, Keel served CIF with his first discovery requests. Despite repeated requests that CIF respond thereto, CIF repeatedly failed to do so and Keel was ultimately required to file a Motion to Compel. Thereafter, upon admission by CIF that it owed discovery responses to Keel, the Court filed a Consent Order on July 9, 2015, compelling CIF to provide responses within thirty (30) days of entry of that Order. CIF finally provided responses on August 9, 2015, producing no actual evidence of CIF's claims against Keel, failing to provide all information requested and producing less than thirty pages of documents in support of its claims against Keel. CIF's owner Dabney Maides was then deposed on August 19, 2015 before the August 31, 2015 discovery deadline³ and the case is now on the November 16, 2015 trial roster.

STANDARD OF REVIEW

Summary judgment is properly granted where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. S.C. R. Civ. P. 56(c); *see also Sumter Dairies, Inc. v. J.C. Pelfrey*, 268 S.C. 437, 234 S.E.2d 490 (1977). Rule 56(c) provides that a trial court may grant a motion for summary judgment if the pleadings,

³ The Court signed a Consent Scheduling Order in this case on June 12, 2015, a copy of which is attached hereto as **Exhibit D**. The parties agreed to the Scheduling Order understanding the short time remaining before trial.

depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Robinson v. Est. of Harris*, 389 S.C. 360, 367, 698 S.E.2d 801, 805 (2010). Summary judgment serves the important function of expediting “disposition of cases which do not require the services of a fact finder.” *Cox & Floyd Grading, Inc. v. Kajima Constr. Servs., Inc.*, 356 S.C. 512, 517, 589 S.E.2d 789, 792 (2003).

Where the plaintiff cannot meet the burden of proof as to every essential element of the causes of action alleged, summary judgment in favor of the defendant is properly granted. See *Oblachinski v. Reynolds*, 391 S.C. 557, 706 S.E.2d 844 (2011) (upholding grant summary judgment against plaintiff where plaintiff failed to prove an essential element of his claim). A fraud claim requires proof by clear and convincing evidence; thus, more than a mere scintilla of evidence must be presented to withstand a motion for summary judgment. *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011). Likewise, a grant of summary judgment is appropriate when a plaintiff does not commence an action within the applicable statute of limitations. *McMaster v. Dewitt*, 411 S.C. 138, 143, 767 S.E.2d 451, 453 (Ct. App. 2014).

ARGUMENT

Keel is entitled to summary judgment as a matter of law as to all causes of action asserted against him by CIF for the following reasons: (1) CIF’s claims are barred by the statute of limitations; (2) the contract on which all of CIF’s claims are premised is unenforceable as a matter of law; and (3) CIF cannot prove the essential elements of each claim against Keel.

1. CIF’s claims are barred by the statute of limitations.

Each and every one of CIF’s claims against Keel, as pled, relate back to the agreements signed between CIF and Keel in July of 2008 and Keel’s alleged breaches thereof. Specifically,

CIF claims that Keel breached the agreements by competing with CIF and soliciting its clients, that Keel entered into the agreements by fraud and that Keel never intended to abide by the terms of the agreements. Accordingly, the three-year statute of limitations set forth in S.C. Code Ann. § 15-3-530, providing that an action upon a contract must be brought within three years from the date the action accrues, applies to all of CIF's claims. *See* S.C. Code Ann. § 15-3-530(1) (2013). As for the date an action actually accrues, the discovery rule applies such that an action accrues on the date that the aggrieved party either discovered the breach or should have discovered the breach through the exercise of reasonable diligence. *See Dillon County Sch. Dist. No. Two v. Lewis Sheet Metal Works, Inc.*, 286 S.C. 207, 332 S.E.2d 555 (Ct. App. 1985). Accordingly, the three-year statute of limitations on all of CIF's claims against Keel on the agreements at issue accrued when CIF discovered or should have reasonably discovered the alleged breaches thereof by Keel.

A plain reading of CIF's Third Party Complaint demonstrates that all of CIF's claims against Keel accrued in 2008. In fact, CIF has directly acknowledged that it either discovered or reasonably should have discovered the alleged breaches of the Employment Agreement by Keel in 2008, more than five years prior to the filing of CIF's claims against Keel. *See* CIF's Answer and Third Party Complaint, ¶¶19 and 24. Specifically, CIF alleges that a material term of the Employment Agreement was Keel's "promises and obligations to use (his) contacts and customer base for the benefit of CIF," but "from the outset of Keel's employment, it became clear that Keel did not intend to lend his expertise or contacts and customer base for the benefit of CIF." *Id.* at ¶¶18-19. Since Keel's employment with CIF began in July of 2008, CIF's pleadings and testimony acknowledge that it knew or should have known of Keel's alleged breaches of the agreements at issue in 2008. Since CIF did not bring its claims against Keel until

more than five years after accrual thereof, those claims are now barred by the applicable three-year statute of limitations and Keel is entitled to judgment thereon as a matter of law.

Even if CIF now claims that its original allegations are untrue and that it did not know of Keel's alleged breaches at the beginning of Keel's employment in 2008, there is certainly documentary evidence that CIF would have known of its potential claims against Keel in July of 2010 when it asked a law firm to review its agreements with Keel and to, apparently, provide legal advice in regard thereto and in regard to a possible termination of Keel's employment with CIF. See Invoice from Smith Moore Leatherwood, dated August 10, 2010 and attached hereto as **Exhibit E.**⁴ Even if CIF's claims accrued at that time, instead of 2008, CIF's claims still were not filed within three years and are therefore barred as a matter of law.

2. The Employment Agreement is unenforceable under South Carolina law.

Keel is also entitled to judgment as a matter of law on each of CIF's claims against him because the Employment Agreement on which CIF's claims is premised is, on its face, unenforceable and, therefore, void as a matter of public policy. Specifically, the Employment Agreement provides that, while employed by the Company and for five (5) years thereafter, Keel could not "become engaged in, or render services for, any business that competes with the business in which Company is engaged...*anywhere in the state of South Carolina.*" Exhibit B (emphasis added).

For a restrictive covenant to be deemed enforceable under South Carolina law, an employer seeking enforcement thereof must demonstrate that it is "(1) necessary for the protection of the legitimate interest of the employer; (2) reasonably limited in its operation with respect to time and place; (3) not unduly harsh and oppressive in curtailing the legitimate efforts

⁴ This document was left out in the open in CIF's office and readily accessible while Keel was still an employee of CIF.

of the employee to earn a livelihood; (4) reasonable from the standpoint of sound public policy; and (5) supported by a valuable consideration.” *Faces Boutique, Ltd. v. Gibbs*, 318 S.C. 39, 42, 455 S.E.2d 2d 707, 708 (Ct. App. 1995). If a restrictive covenant is deficient in even one of these respects, it must fail as a matter of law. *Id.* It is also well established that restrictive covenants should be strictly construed against the employer. *Id.* The Employment Agreement at issue, when construed strictly against CIF, is defective on its face in regard to both the second and third requirements set forth by the South Carolina Court of Appeals in the *Faces* case.

First, the Employment Agreement’s non-compete provision is not narrowly tailored as to time and geography as required. *See Faces Boutique, Ltd. v. Gibbs*, 318 S.C. at 42. In regard to time, the Employment Agreement’s non-compete period of five (5) years goes several years beyond what South Carolina courts have generally considered as reasonable and narrowly tailored. *See Rental Uniform Serv. v. Dudley*, 278 S.C. 674, 301 S.E.2d 142 (1983) (holding three year non-compete enforceable and noting that “a limitation of two or three years, may not be obnoxious in the context of a noncompetition agreement”); *see also Standard Register Co. v. Kerrigan*, 238 S.C. 54, 119 S.E.2d 533 (1961) (upholding two year non-compete as reasonable). Likewise, the non-compete’s geographic limitation is overly broad in that it covers the entire state of South Carolina instead of only where Keel worked for CIF. In specific regard thereto, the South Carolina Supreme Court has previously noted that “(a)ny covenant should have been limited to the area where he worked...(and) (e)xtending it to the entire State rendered it unenforceable.” *Oxman v. Sherman*, 239 S.C. 218, 122 S.E.2d 559 (1961).

The Employment Agreement’s non-compete provision also fails to satisfy the third requirement set forth in *Faces* as it is certainly unduly harsh and oppressive in curtailing the legitimate efforts of the employee to earn a livelihood. This is certainly the case in light of the

non-compete provision's overly broad time and geographic scope. Keel worked as a sales person in the construction industry in Greenville County for most of his working life. This field is where Mr. Keel has the bulk of his work knowledge and experience and this is not such a specialized role and/or industry that justifies prohibiting Keel from earning a living to support himself and his family anywhere in the State of South Carolina for a period of five years.

3. CIF cannot prove every essential element of each of its claims against Keel.

Keel is also entitled to judgment as a matter of law because, as has been repeatedly acknowledged by CIF's owner, CIF cannot prove the essential elements of each cause of action asserted against Keel.

A. Breach of Contract

In order to survive a motion for summary judgment on a claim for breach of contract, the party alleging such claim must point to the existence of actual evidence sufficient to prove each and every one of the following elements: (1) a binding contract entered into by the parties, (2) breach of that contract and (3) damage suffered by the plaintiff as a direct and proximate result of the breach. *See Fuller v. Eastern Fire & Cas. Ins. Co.*, 240 S.C. 75, 124 S.E.2d 602 (1962). CIF has not and cannot meet that burden in the instant action because it cannot prove either that Keel breached the agreements at issue or that CIF suffered any damages as a direct and proximate result of any such alleged breach by Keel.

First, CIF cannot prove any breach of the Employment Agreement or APA by Keel. CIF's Complaint alleges in a nonspecific conclusory fashion that "Keel breached the APA by violating Article VII of the APA relating to Noncompetition, Nonsolicitation, and Nondisparagement," and goes on to allege in a likewise conclusory fashion that "Keel breached the (Employment Agreement) both during and after his period of employ...in competing with

CIF.” See CIF’s Answer and Third Party Complaint, ¶¶28. And 32. In support thereof, and when directly asked upon what it based such allegation, CIF’s owner testified that it previously “looked like (Keel) was in competition” with CIF. Deposition of Dabney Maides, attached hereto as **Exhibit F**, p.61, ll.7-11. However, there is absolutely no proof of any such alleged competition or solicitation in this action.

CIF’s owner testified that, although it “looked like” Keel was violating the Agreement by installing Duradek on a project outside of his work for CIF in 2013, nothing in either the ADA or the Employment Agreement prohibited Keel from working for a business that provides different services than CIF or from providing services that CIF does not provide, including wall panel installation and/or installing Duradek products. *Id.* at p.17, ll.19-21, p.37, ll.7-25 and p.38, ll.1-14. In specific regard thereto, CIF’s owner admitted that CIF was not even licensed to install Duradek in June of 2013. *Id.* at p.63, ll.11-25 and p.64, ll.1-13. Accordingly, Keel’s installation of the Duradek project in 2013 would not have been competition prohibited by either the APA or the Employment Agreement.

CIF’s owner also admitted that, despite its claims and various allegations that Keel breached the APA by soliciting CIF’s customers, CIF has no actual proof of any such solicitation. In fact, when directly asked “(d)o you have proof that Mr. Keel solicited any of those customers, Mr. Maides initially responded “(w)ell, I don’t have – no, I don’t have anything other than to say that *we believe* he has done jobs for them.” *Id.* at p.78, ll.16-20 (emphasis added). Regardless, CIF’s belief without proof thereof is mere speculation, which is insufficient for CIF to meet its burden of proving that Keel breached the APA by soliciting CIF’s customers. Likewise, even if CIF can prove that Keel did perform work for CIF’s customers, merely performing work is not sufficient to prove any solicitation by or on behalf of Keel.

CIF also cannot meet its burden of presenting actual evidence of damages suffered as a direct and proximate result of any breach of the agreements by Keel. While CIF's claims that its business has suffered due to Keel's alleged conduct, CIF's owner has admitted that CIF has no actual proof that Keel is the cause of any loss of business suffered by CIF. Instead, CIF's owner has repeatedly conceded that the claimed downturn in business may simply have been the result of the recent economic recession and that CIF, like most construction businesses at the time, was hit by the recession and that some of CIF's lower sales, including those attributed to Keel, were the result of that recession. *Id.* at p.45, ll.8-13, p.46, ll.14-22, p.67, ll.6-20. Additionally, CIF's owner admits that he is merely speculating that Keel is the reason CIF's business is not what it used to be because CIF no longer has any of its predecessor's "legacy customers" and has not been asked to bid on certain jobs. *Id.* at p.76, ll.20-25, p.77, ll.1-20, p.80, ll.22-25 and p.81, ll.11-14. Again, however, speculation alone is insufficient to meet CIF's burden of proof through actual evidence that any damages suffered by CIF are the direct and proximate result of any act by Keel.

B. Breach of Contract Accompanied by a Fraudulent Act

In order to prove a cause of action for breach of contract accompanied by a fraudulent act, a plaintiff must prove each of the following elements: "(1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach." *Rotec Servs. v. Encompass Servs.*, 359 S.C. 467, 470, 597 S.E.2d 881, 883 (Ct. App. 2004). CIF cannot meet that burden of proof in the instant action.

As outlined above, CIF has no actual evidence to prove that Keel breached the Employment Agreement or the APA, a fact repeatedly acknowledged by CIF's owner. Likewise, CIF cannot prove by clear and convincing evidence either a fraudulent act or fraudulent intent.

In fact, CIF's owner has specifically admitted that he has no evidence at all to prove that Keel's alleged breaches were committed with any fraudulent intent or by any fraudulent act. Instead, and in stark contrast to the allegation in its Third Party Complaint that Keel never acted for the benefit of CIF and never intended to satisfy his obligations under the agreements, CIF's owner directly acknowledged the falsity of such allegation at his deposition by acknowledging that Keel did, in fact, work for the benefit of the CIF and that he wanted to retain Keel because he was "making money for the company." Exhibit F, p.55, ll.2-12, p.56, ll.4-6, and p.67, ll.21-25

B. Breach of Duty of Loyalty

South Carolina law recognizes a cause of action for breach of duty of loyalty on behalf of an employee in holding that it is implicit in any contract for employment that the employee shall remain faithful to the employer's interest throughout the term of employment. *See Foreign Acad. & Cultural Exch. Servs. v. Tripon*, 394 S.C. 197, 205, 715 S.E.2d 331, 335 (2011). Based thereon, South Carolina courts have recognized an action for breach of the duty of loyalty when an employee works to compete against the employer while still working for the employer. *Id.*; citing *Lowndes Prods., Inc. v. Brower*, 259 S.C. 322, 335-39, 191 S.E.2d 761, 767-70 (1972) (finding that key employees who contacted and met with investors and customer of current employer to start a competing company, left without notice, and leased space and ordered materials to build manufacturing equipment were guilty of disloyalty to employer). The alleging party must prove that the employee acted against the employer's interests or in competition therewith while still employed by the employer. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C 598, 518 S.E.2d 591 (1999)(discussing when employee's alleged actions constitute breach of duty of loyalty to employer). In the instant action, there is absolutely no evidence that Keel ever acted against CIF's interests or in competition with CIF while employed by CIF.

CIF's Third-Party Complaint alleges that Keel breached his duty of loyalty to CIF by "failing to provide his skills, contacts, customers, and other benefits uniquely maintained by Keel...and in actively planning and conducting detrimental activities against CIF, and competing against CIF, and in willfully failing to exercise any efforts to assist CIF in succeeding in the flooring business." See CIF's Answer and Third Party Complaint, ¶36. Notably, however, CIF's owner acknowledged at his deposition that he has no evidence that Keel acted in competition with CIF or against CIF's interests while Keel was employed with CIF.

As to CIF's allegation that Keel worked in competition with CIF while still employed there, and when specifically asked whether he could "specifically point to anything that would prove that (Keel) was competing with (CIF)," Maides specifically acknowledged "I don't know that I have anything." Exhibit F, p.73, ll.20-23. Instead, Mr. Maides referred to a sole carpet invoice and several checks Keel received for a non-competing wall panel installation job as evidence of such competition. *Id.* at p.13, ll.13-25, p.69, ll.1-25, p.72, ll.15-25, p.73, ll.1-6. In regard to those documents, however, Maides testified that he was not even sure what the documents he referenced as his "evidence" really were or whether or not they proved any competition, also acknowledging that he had obtained the documents from Keel's ex-wife, who obtained them in a very contentious divorce from Keel. *Id.* at p.71, l.25, p.72, ll.1-2 and 7-11.

Maides also acknowledged that CIF has no proof that Keel acted against CIF's interests or never intended to work for the benefit of CIF. In fact, when asked about that specific contention, Maides acknowledged "I would think that was probably a pretty strong statement there" before admitting that he wouldn't even agree with any such allegation. *Id.* at p.73, ll.23-25 and p.74, ll.1-14. Instead, Maides testified that Keel was, in fact, making money for CIF, that he wanted to keep him as an employee for that reason and that although "Keel may have not

been putting in full effort...he was working for (CIF).” *Id.* at p.55, ll.2-12, p.56, ll.4-6 and p.74, ll.15-23, p.85, ll.14-25. Notably, Maides also admitted at his deposition that the main basis for his claim for breach of duty of loyalty was the fact that CIF was not asked to work submit bids for various jobs. However, and when asked if that belief was based on mere speculation, Maides responded “yes.” *Id.* at p.80, ll.17-25 and p.81, ll.1-14.

C. Fraud in the Inducement

In order to establish a claim for fraud in the inducement to enter a contract, a party must establish the following: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011). Additionally, a claim involving fraud requires proof by clear and convincing evidence and, thus, more than a mere scintilla of evidence must be presented to withstand a motion for summary judgment. *Id.*

In the instant action CIF cannot meet its heightened burden of proof in regard to its claim for fraud in the inducement because it cannot establish, as a most basic requirement, that any representation made by Keel was false or that Keel had knowledge that any statement he made was false. As to CIF's claim for fraud in the inducement, CIF's Third Party Complaint alleges that Keel “represented to (CIF) that (he) would not engage in competitive practices of solicitation of customers, contacts, or competing business” and that “Keel new such representations were false or made such representations with reckless disregard for their truth or falsity.” CIF's Answer and Third Party Complaint, ¶45. However, when specifically asked at his deposition what proof CIF has that Keel never intended to work for the benefit of CIF and always intended

to work in competition with CIF in opposition to his representation otherwise, CIF's owner again repeatedly acknowledged at this deposition that he has no proof that Keel never intended to work for the benefit of CIF, that Keel may any fraudulent statement to him, either in regard to entry of the contracts at issue or in regard to Keel's employment with CIF. *Id.* at p.55, 11.2-12, p.56, 11.4-6 and p.74, 11.15-23. In fact, when specifically asked if he had any direct proof of fraud other than hearsay statements by Keel's disgruntled ex-wife⁵ and the claimed downturn in CIF's profits, Maides expressly stated "(n)o, I don't know that there's any proof of fraud, you know, other than, you know, the things we've talked about." *Id.* at p. 84, 11.7-12.

C. Injunction

The party seeking an injunction has the burden of demonstrating facts and circumstances warranting an injunction. *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). In regard thereto, it is well recognized that the remedy of an injunction is a drastic one and ought to be applied with caution. *Id.* In order for the party seeking to injunction to prove such a drastic remedy is warranted, that party has the burden of establishing "irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law." *Denman v. City of Columbia*, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010). In the instant action, CIF cannot establish any of the three elements and Keel is, therefore, entitled to summary judgment on Plaintiff's claim for an injunction.

As a first matter, and as outlined in great detail above, Plaintiff is without sufficient evidence to prove that it has suffered any harm as a result of any conduct on the part of Keel. Rather, CIF's owner acknowledged repeatedly at his deposition that any claim that any downturn in profits was likely due to the recession. Second, and because CIF cannot establish through

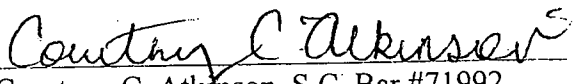
⁵ Maides has acknowledged his understanding that the Keels' divorce was contentious and that Ms. Keel is still very angry at Mr. Keel. Exhibit F, p.89, 11.4-16.

actual evidence any wrongful act on the part of Keel or any directly relatable harm to CIF, CIF certainly cannot establish that it likely to success on the merits of its claims at trial of this case. Indeed, the admitted basis for any and all such claims by CIF is mere speculation, which should be insufficient for CIF to meet its burden of proof in regard to the drastic remedy of an injunction. Finally, and despite the bare assertion in CIF's Third Party Complaint that "there is no immediate adequate remedy at law," there is most certainly an adequate remedy available to CIF in the form of monetary damages if CIF can somehow prove any of its claims against Keel. See CIF's Answer and Third Party Complaint, ¶55. CIF's owner acknowledged same in testifying that the damages he is seeking by way of his claims against Keel are the return of the purchase price he paid for the business. Exhibit F, p.86, ll.19-25.

CONCLUSION

For all of those reasons set forth above, Keel respectfully requests that the Court enter an Order granting Keel summary judgment on each and every one of CIF's third-party claims against Keel in the above-referenced matter.

METCALFE & ATKINSON, LLC



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Attorneys for Christopher M. Keel

October 29 2015
Greenville, South Carolina

EXHIBIT A

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, SECTION 15-48-10, ET. SEQ., CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED.

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT ("Agreement") is made and entered into this 17th day of July, 2008 by and among Commercial & Industrial Floors, Inc. a South Carolina corporation ("Buyer"), Ron's Building Materials, Inc., a South Carolina Corporation ("Seller"), and Ronald D. Keel, Joyce J. Keel, and Christopher M. Keel (referred to sometimes individually and collectively as "Shareholder").

PRELIMINARY STATEMENT:

Seller is engaged in the business of selling commercial flooring products (the "Business"). Shareholder owns one hundred (100%) percent of the outstanding stock of Seller. The Seller desires to sell and Buyer desires to purchase the Assets related to the Business.

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements contained herein and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I

SALE AND PURCHASE OF ASSETS

1.1 Purchased Assets. Upon and subject to the terms and conditions set forth in this Agreement, as of the Closing Date (as hereinafter defined), Seller shall sell to Buyer, and Buyer shall purchase from Seller, free and clear of all liens, claims and encumbrances (except as disclosed herein and except those Assumed Liabilities as hereafter defined), all of Seller's right, title and interest in and to all of the assets, properties and rights used and/or owned in connection with the Business (other than Excluded Assets) (such assets, properties and rights being conveyed are hereinafter collectively referred to as the "Purchased Assets" or "Assets"), including, but not limited to, the following assets:

(a) Tangible Personal Property. All equipment, machinery, rolling stock, furniture, and other personal property, including, but not limited to, those items listed on Schedule 1.1(a) (the "Personal Property");

(b) Inventories and Supplies. All inventories and supplies of Seller, including, without limitation, raw materials, and finished goods, components, and office, operating and other supplies including, but not limited to, those items listed on Schedule 1.1(b) (collectively, the "Inventory");

(c) Accounts Receivable. Schedule 1.1(c) sets forth those jobs which have been completed as of the Closing Date but payment is still due and owing to Seller ("Accounts Receivable"). Seller is selling \$300,000.00 worth of its Accounts Receivable to Buyer and retaining the remainder. Buyer shall bill and collect all Accounts Receivable (including the \$300,000.00 of Accounts Receivable sold to Buyer hereunder). After the Closing, payments will continue to be received at 212 Transit Drive and then deposited into Buyer's bank account. All collections will be accounted for using Schedule 1.1(c) and the first \$300,000 of Seller's Accounts Receivable to be collected will be retained by Buyer. Any amount received after that time which is applicable to the remaining Accounts Receivable on Schedule 1.1(c) will be immediately forwarded to Seller. Buyer and Seller will cooperate to collect all Accounts Receivable and any receivables on the Schedule that have not been collected within 90 days after closing will be assigned from Buyer to Seller and become the sole responsibility of Seller to collect.

(d) Prepays; Deposits. All credits, prepaid expenses, deferred charges, advance payments, security deposits and deposits owned, used or held for use by Seller, with respect to the Business, including, but not limited to, property and other taxes, and those items listed on Schedule 1.1(d) (collectively, the "Prepaid Expenses");

(e) Intellectual Property. Any telephone and telecopier numbers, customer lists and addresses, e-mail addresses, websites, inventions, trade secrets, designs, licenses, patents, trademarks, names (including "Ron's Building Materials" and derivations thereof) and applications of Seller, including, but not limited to, those items listed on Schedule 1.1(e) (collectively, the "Intellectual Property");

(f) Assigned Leases. All of Seller's right, title and interest under all leases of personal property (the "Personal Property Leases"), together with all of Seller's right, title and interest under all leases of real property ("Real Property Leases") (collectively referred to herein as the "Assigned Leases") listed on Schedule 1.1(f);

(g) Assigned Contracts. All rights that Seller may have under any and all agreements, contracts, purchase orders and purchase contracts, sales orders and sales contracts, quotations and bids, distribution agreements, licenses or arrangements including, but not limited to, those items listed on Schedule 1.1(g) (collectively, the "Assigned Contracts");

(h) Records. All of Seller's books, records, ledgers, files, documents (including originally executed copies of written contracts, customer and supplier lists) correspondence, memoranda, promotional materials, reports, sales and purchase correspondence, photographs, to the extent used or held for use with respect to the Business and currently in Seller's possession or accessible by Seller.

(i) Other Assets. All other assets used in the Business (except the Excluded Assets as defined herein) including, but not limited to names, permits (including any applications or renewals thereof) and third party claims.

1.2 Excluded Assets. The following assets of Seller are expressly excluded from the purchase and sale contemplated by this Agreement (collectively, the "Excluded Assets"), and shall be retained by Seller and/or Shareholder:

- (a) All taxpayer and other identification numbers, and minute books, stock transfer books and other documents relating to the organization, maintenance, and existence of Seller as a corporation;
- (b) Cash;
- (c) Accounts Receivable over \$300,000.00 (as provided in Section 1.1(c));
- (d) All rights under this Agreement and any agreements ancillary hereto;
- (e) 2005 Chevy Z71;
- (f) 2005 Porsche Boxster S;
- (g) Boat slip in Charleston, South Carolina;
- (h) The assets listed on Schedule 1.2(h);
- (i) The rights to any income tax or other tax refunds.

All Excluded Assets shall be removed by Shareholder within thirty (30) days after Closing unless Shareholder makes other arrangements with Buyer which will be acknowledged in writing. Any Excluded Assets not timely removed may be disposed of by Buyer.

1.3 Title Transfer. Subject to the provisions of this Agreement, Seller shall transfer to Buyer at Closing the Purchased Assets, with good and valid title, free and clear of all liens, claims and encumbrances (except the Assumed Liabilities as defined herein).

1.4 Assumed Liabilities; Non-Assumed Liabilities. At the Closing, Buyer agrees to assume and discharge or perform when due only the following (the "Assumed Liabilities"):

(a) any purchase orders of Inventory to the extent they relate to Inventory which has not yet been received and paid for by Seller and such undelivered Inventory has not been included on Schedule 1.1(b); Buyer agrees to pay the supplier of such undelivered Inventory in accordance with the terms of Seller's purchase thereof;

(b) all liabilities and obligations required to be performed pursuant to the Assigned Leases and the Assigned Contracts after the Closing Date;

No liabilities other than the liabilities described in 1.4(a) and 1.4(b) shall be assumed by Buyer. Any payables, including payroll, utilities and other expenses accrued to the Closing Date will be paid by Seller when due.

1.5 Work in Process. All work in process as of the Closing Date, which relate to any jobs which are in process but have not yet been fully completed shall be considered goodwill, and completed by Buyer at Buyer's expense. Schedule 1.5 is a list which sets forth Seller's work in process as of the Closing Date as well as each project's estimated profit and percentage of completion as of the Closing Date as mutually agreed to by Seller and Buyer. Payments constituting profit for each project received by Buyer after the Closing Date shall be divided between Buyer and Seller in accordance with the project's percentage of completion set forth on Schedule 1.5.

1.6 Post Closing Adjustments. Within 60 days after the Closing Date, Seller and Buyer shall determine and pro-rate as of the Closing Date any expenses the invoice for which relates to services and/or products provided prior to the Closing, but which is received after Closing ("Pre-Closing Expenses"). In addition, Seller and Buyer shall work together to pro-rate as of the Closing Date all Pre-Paid Expenses including property taxes. Seller and Buyer shall use their best efforts to agree on a final determination of such amounts. Such determination shall be committed to writing and signed by Buyer and Seller. To the extent the Pre-Paid Expenses exceed the Pre-Closing Expenses, Buyer shall pay the difference to Seller within 10 days in cash. To the extent the pre-Closing Expenses exceed the Pre-Paid Expenses, Seller shall pay such amount to Buyer within 10 days in cash.

ARTICLE II

CLOSING; CONSIDERATION AND MANNER OF PAYMENT

2.1 Purchase Price. The aggregate purchase price (the "Purchase Price") for the Purchased Assets (to include consideration for the non-competition agreements under Article VII) shall be equal to One Million Two Hundred Fifty Thousand (\$1,250,000.00) Dollars.

2.2 Payment of Purchase Price. The Purchase Price shall be payable at Closing by Buyer as follows:

(a) One Million Fifty Thousand (\$1,050,000.00) Dollars of the Purchase Price shall be paid by certified check or wire transfer from Buyer to Seller at Closing.

(b) Two Hundred Thousand (\$200,000.00) Dollars of the Purchase Price shall be evidenced by a promissory note (the "Note") in the form of Exhibit 2.2(b) which shall provide that during the first twelve months interest only shall be due monthly at the rate of two (2%) percent per annum for the first year and then the remaining principal due after one year shall be amortized based on nine years with interest at the rate of six (6%) percent per annum with a final balloon payment due on or before the tenth anniversary of the date of the Note. The Note will be personally guaranteed by Dabney R. Maides, and contain provisions which provide that the Note must be paid in the event of a sale of the Business by Buyer, or a refinancing of Buyer's bank debt. Dabney R. Maides shall obtain a life insurance policy on his life in the amount of the Note and name Ronald D. and Joyce J. Keel, or the survivor of them, and Christopher M. Keel as the beneficiary of such policy.

2.3 Transfer of Assets. Seller shall execute any and all documents that are necessary or advisable in order to accomplish the transfer, or evidence the transfer, of the Assets to Buyer, including but not limited to, a Bill of Sale in form and substance reasonably acceptable to Buyer.

2.4 Purchase Price Allocation. The Purchase Price shall be allocated among the Purchased Assets, as set forth on Schedule 2.4. The parties agree to report on their respective tax returns and represent to the IRS on any subsequent communications, either oral or written, the transactions which are subject to this Agreement in a manner consistent with the allocation set forth on Schedule 2.4. Buyer shall prepare, consistent with the allocation set forth in Schedule 2.4, and deliver IRS Form 8594 to Seller within sixty (60) days after the Closing Date to be filed by Seller with the IRS.

2.5 Closing Date. The closing of the sale and purchase of the Assets and related transactions (the "Closing Date") shall take place at such date and time as the parties agree, but not later than July 25, 2008.

2.6 Transactions at Closing.

2.6.1 In addition to any other documents to be delivered under other provisions of this Agreement, at the Closing, the Seller shall deliver:

(a) the bill(s) of sale for tangible personal property composing portions of the Assets;

(b) valid written assignment(s), in a form and substance satisfactory to Buyer, of each Assigned Contract and Assigned Lease;

(c) certificates and other instruments required to effect the sale of Assets contemplated hereby, in form and substance reasonably acceptable to Buyer;

(d) copies of such duly filed UCC termination statements, lease termination statements, mortgage or other lien satisfactions, and other documents (including payoff letters), as are reasonably required by Buyer to evidence Seller's clear and marketable title to the Assets;

(e) a Certificate of Good Standing of Seller from the South Carolina Secretary of State within ten (10) days prior to Closing Date;

(f) all of the books and records of the Business, including, but not limited to, all computer related software and data which shall include the customer lists, correspondence, financial records and other proprietary information;

(g) the Employment Agreement between Buyer and Christopher M. Keel provided for herein;

(h) Articles of Amendment changing the name of Seller to CJR Resources, Inc.;

(i) the Lease Agreement between Buyer and Joyce J. and Ronald D. Keel provided for herein.

2.6.2 The Buyer shall deliver:

(a) The Purchase Price;

(b) a Certificate of Good Standing of Buyer from the South Carolina Secretary of State within ten (10) days prior to Closing Date;

(c) a valid written assignment(s) in a form and substance satisfactory to Seller and its legal counsel whereby Buyer assumes the Assumed Liabilities, the Assigned Contracts and Assigned Leases (the "Assignment and Assumption Agreement");

(d) the Note;

(e) the Employment Agreement between Buyer and Chris Keel provided for herein;

(f) the Lease Agreement between Buyer and Joyce J. and Ronald D. Keel provided for herein.

(g) a certificate of insurance documenting a life insurance policy on the life of Dabney R. Maides in the amount of the Note with Ronald D. Keel, Joyce J. Keel, or the survivor of them, and Christopher M. Keel named as beneficiaries of such policy.

2.6.3 The parties will take such other actions called for at Closing by this Agreement.

ARTICLE III

OTHER AGREEMENTS

3.1 Employees. As of the Closing Date, all employees of Seller directly and primarily associated with the Business operations (other than the Shareholders) will cease to be employees of Seller, and Buyer may, subject to the exercise of Buyer's sole discretion, offer immediately or thereafter to hire any or all of such persons. Buyer shall be entitled to hire only those employees of Seller which Buyer elects in its sole discretion to hire; provided however, Buyer shall not assume any liability whatsoever which arose through Seller's employment of any employee, and Buyer shall not assume any liability whatsoever to any employee of Seller not hired by Buyer. Buyer will not be responsible for paying or reporting any costs or liabilities associated with Seller's employees that were incurred or accrued prior to the Closing Date, including but not limited to compensation, vacation pay, federal and state withholding taxes, federal and state unemployment taxes, employee benefit costs, and worker's compensation claims. Seller will release all employees subsequently hired by Buyer from any employment and/or confidentiality or non-competition agreement previously entered into by Seller and such employees, subject to any rights or claims existing as of the Closing Date.

3.2 Employment Agreement. Christopher M. Keel and Buyer shall have entered into an employment agreement in the form attached as Exhibit 3.2, which agreement shall provide for a one year term of employment at a salary of \$781.00 per week, plus incentive compensation based on quarterly profits, and which shall provide for a car allowance of \$635.00 per month and a gasoline allowance of \$550.00 per month.

3.3 Responsibility for Taxes. Seller shall be responsible for all taxes in connection with, relating to or arising out of the Business or the ownership of the Purchased Assets attributable to taxable periods, or portions thereof, ending on or before the Closing Date, which taxes shall be a Non-Assumed Liability. Buyer shall be responsible for all taxes in connection with, relating to or arising out of the Business or ownership of the Purchased Assets attributable to taxable periods, or portions thereof, after the Closing Date. Any property taxes paid by Seller shall be prorated to the Closing Date and taken into account under Section 1.6. Seller shall be responsible for any sales or use taxes imposed on the sale of the Purchased Assets.

3.4 Tax Cooperation. After the Closing Date, Seller and Buyer shall (i) provide the other with such assistance as may reasonably be requested by either of them in connection with the preparation of any tax return, any audit or other examination by any taxing authority or any judicial or administrative proceeding with respect to taxes, (ii) retain and provide the other with any records or other information which may be relevant to such return, audit, examination or proceeding, and (iii) provide the other with any final determination of any such audit or examination proceeding or determination that affects any amount required to be shown on any tax return of the other for any period (which shall be maintained confidentially).

3.5 Customer and Other Business Relationships. For a period of up to 4 weeks after the Closing, Seller and Shareholder will cooperate with Buyer in its efforts to continue and maintain for the benefit of Buyer those business relationships of Seller existing prior to the Closing and relating to the Business to be operated by Buyer after the Closing, including relationships with lessors, employees, regulatory authorities, licensors, customers, suppliers and others. Seller and Shareholder will refer to Buyer all inquiries relating to such Business. Neither Seller nor Shareholder shall take any action that could reasonably be expected to diminish the value of the Assets after the Closing or that would interfere with the Business of Buyer to be engaged in after the Closing, including disparaging the name or Business of Buyer.

3.6 Retention of and Access to Records. After the Closing Date, Buyer shall retain for a reasonable period those records of Seller delivered to Buyer. Buyer also shall provide Seller and Seller's legal and accounting counsel (collectively "Seller's Representatives") reasonable access thereto, during normal business hours and on at least three days' prior written notice, to enable them to prepare financial statements or tax returns or deal with tax audits.

3.7 Further Assurances. Buyer and Seller shall cooperate reasonably with each other and with their respective Representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement, and shall (a) furnish upon request to each other such further information; (b) execute and deliver to each other such other documents; and (c) do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement.

3.8 Lease Agreement. Buyer and Joyce J. and Ronald D. Keel shall enter into the Lease Agreement in the form of Exhibit 3.8.

3.9 Transition Period. As part of the Goodwill compensation, Sellers shall train, orient and otherwise advise Buyer for a period up to four (4) weeks after closing, without additional expense to Buyer.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF SELLER AND SHAREHOLDER

Seller and Shareholder jointly and severally hereby represent and warrant to Buyer as follows:

4.1 Organization. Seller is a corporation duly organized, validly existing, and in good standing under the laws of South Carolina and has all requisite power and authority to own, operate and lease its properties, to carry on its business substantially as it is being conducted on the date hereof and to consummate the transactions contemplated hereby to be performed by it. Seller is duly qualified to do business as a foreign corporation and is in good standing under the laws of each state or other

jurisdiction in which either the ownership or use of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification. Seller has no subsidiaries and does not have ownership in any other entity. Seller has made available to Buyer for inspection the minute books of Seller.

4.2 Authorization. Seller has requisite corporate power and authority to execute, deliver and perform this Agreement, including the written consent of the voting stockholders, the other agreements and documents contemplated hereby and consummate the transactions contemplated hereby. Seller has taken all actions required of Seller to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby. This Agreement, the Employment Agreements, the Lease Agreement and each other Agreement to be executed or delivered by Seller and Shareholder, at the Closing (collectively, the "Ancillary Documents") hereto have been duly and validly executed and delivered by Seller and Shareholder and constitute valid and binding agreements of Seller and Shareholder enforceable in accordance with their terms. The execution and delivery of this Agreement and the Ancillary Documents by Seller and the performance by Seller of the transactions contemplated herein and therein will not constitute an act of bankruptcy, preference, insolvency or fraudulent conveyance under any bankruptcy act or other law for the protection of debtors or creditors. Shareholder knows of no approval, consent, waiver, order or authorization of, or registration, qualification, declaration, or filing with, or notice to, any federal, state or local court, arbitration tribunal or governmental agency or other third party that is required on the part of Seller in connection with the execution of this Agreement or the Ancillary Documents, or the consummation of the transactions contemplated hereby or thereby.

4.3 Assigned Contracts; Assigned Leases.

(a) Schedule 4.3(a) contains a complete and accurate list setting forth as of a recent date all written contracts, commitments, agreements or obligations, to which Seller is a party as obligor, or to which it or any of its owned assets or properties is subject, which potentially involve the payment by Seller of more than One Thousand (\$1,000.00) Dollars with respect to any one contract or commitment or Five Thousand (\$5,000.00) Dollars in the aggregate. True and complete copies of all documents specifically and reasonably requested by Buyer and referred to in such list will be provided or made available to Buyer and its counsel upon request.

(b) All leases wherein Seller is either lessor or lessee or otherwise has an interest or obligation are described on Schedule 4.3(b).

(c) Each of the Assigned Contracts and Assigned Leases is a valid and binding agreement of Seller and is in full force and effect in accordance with its terms, and that as of the Closing Date, Seller is not in material default, and to Seller's knowledge no other party is in material default with respect to the Assigned Leases and the Assigned Contracts. Each of the Assigned Contracts and Assigned Leases is fully assignable to Buyer, and all third-party consents, approvals or waivers regarding such

assignments have either been obtained, or Buyer has waived the requirement that such assignments be obtained.

(d) Seller owns no real estate other than the boat slip in Charleston, South Carolina which is an Excluded Asset.

4.4 Capitalization. The authorized equity securities of Seller consist of One Hundred Thousand (100,000) shares of common stock of which One Thousand (1,000) shares are issued and outstanding, and one hundred (100%) percent of which are owned by Shareholder. Shareholder is and will be on the Closing Date the record and beneficial owner and holder of the shares owned by Shareholder, free and clear of all encumbrances. There are no agreements relating to the issuance, sale or transfer of any stock or other equity interests of Seller except as set forth on Schedule 4.4.

4.5 Financial Statements. Seller has delivered to Buyer: (a) a compiled balance sheet of Seller as of February 29, 2008 (including the notes thereto, the "Balance Sheet"), and the related compiled statement of income; (b) compiled balance sheets of Seller as of December 31st in each of the fiscal years December 31, 2005 through December 31, 2006, and the related compiled statements of income. Such financial statements fairly present the financial condition and the results of operations of Seller at the respective dates of and for the periods referred to in such financial statements, all in accordance with Seller's regular accounting practices consistently applied. Since the date of the Balance Sheet, there have not been any material adverse events with respect to the Business.

4.6 All Assets. Except for the Excluded Assets, and the building where the Business is located, the Purchased Assets constitute all the assets, properties and rights owned in connection with the conduct of the Business. None of the Purchased Assets are owned, in whole or in part, by any person or entity other than Seller. Except as otherwise provided herein, at the Closing, Seller shall convey to Buyer possession of the Assets free and clear of any liens, claims, encumbrances, leases or rental agreements, or claims of possession. Except for the building where the Business is located, and except with respect to Shareholder, no officer, director or shareholder or any relative of any such officer, director, or shareholder is a party to any material agreement with Seller or owns a material interest (except in the capacity as a shareholder, director or employee) in any property, real, personal or mixed, tangible or intangible, which is used in the Business.

4.7 Condition of Property. All items of tangible personal property being sold herein is in good repair and good operating condition, ordinary wear and tear excepted, and is suitable for immediate use in the ordinary course of business. No item of tangible personal property is in need of repair or replacement other than as part of routine maintenance in the ordinary course of business. All tangible personal property used in the business is in the possession of Seller.

4.8 Tax Returns Filed and Taxes Paid. Seller has filed or caused to be filed on a timely basis all tax returns and all reports with respect to taxes that are or were

required to be filed. To the knowledge of Shareholder and Seller, all tax returns and reports filed by Seller are true, correct and complete. To the knowledge of Seller and Shareholder, Seller has paid, or made provision for the payment of, all taxes that have or may have become due for all periods covered by the tax returns.

4.9 Employment Benefits. Set forth in Schedule 4.9 is a complete and correct list of all "employee benefit plans" as defined by Section 3(3) of the Employee Retirement Income Security Act ("ERISA"), and all other bonus, incentive-compensation, deferred-compensation, profit-sharing, stock-option, stock-appreciation-right, stock-bonus, stock-purchase, employee-stock-ownership, savings, severance, change-in-control, supplemental-unemployment, layoff, salary-continuation, retirement, pension, health, life-insurance, disability, accident, group-insurance, vacation, holiday, sick-leave, fringe-benefit or welfare plan, and any other employee compensation or benefit plan, agreement, policy, practice, commitment, contract or understanding (whether qualified or nonqualified, currently effective or terminated, written or unwritten) and any trust, escrow or other agreement related thereto ("Employee Plans") that is maintained or contributed to by Seller.

4.10 Insurance.

(a) Seller has delivered to Buyer:

(i) accurate and complete copies of all policies of insurance (and correspondence relating to coverage thereunder) to which Seller is a party or under which Seller is covered as of Closing, a list of which is included in Schedule 4.10(a)(i); and

(ii) accurate and complete copies of all pending applications by Seller for policies of insurance.

(b) To the knowledge of Seller, except as set forth in Schedule 4.10(b):

(i) all policies of insurance to which Seller is a party or that provide coverage to Seller:

(A) are valid, outstanding and enforceable;

(B) are issued by an insurer that is financially sound and reputable; and

(C) taken together, provide adequate insurance coverage for the Assets and the Business.

(ii) Seller has not received (A) any refusal of coverage or any notice that a defense will be afforded with reservation of rights or (B) any notice of cancellation or any other indication that any policy of insurance is no longer in full force or effect or that the issuer of any policy of insurance is not willing or able to perform its obligations thereunder;

(iii) Seller has paid all premiums due, and has otherwise performed all of its obligations, under each policy of insurance to which it is a party or that provides coverage to Seller; and

(iv) Seller has given notice to the insurer of all claims that may be insured thereby.

(c) Seller has maintained workers' compensation coverage as required by applicable state law through purchase of insurance and not by self-insurance or otherwise.

4.11 No Breach. To the knowledge of Shareholder and Seller the execution and delivery by Seller and Shareholder of this Agreement and Ancillary Documents contemplated hereby to which Sellers is a party, the performance by Seller and Shareholder of its obligations hereunder and thereunder and the consummation by Seller and Shareholder of the transactions contemplated herein will not violate in any material respect, any statute or law or any judgment, decree, order, regulation or rule of any court or governmental authority to which Seller or Shareholder are subject or any contract, instrument or other agreement to which Seller or Shareholder is a party.

4.12 Compliance with Laws. To the knowledge of Seller and Shareholder Seller is in compliance with all laws, ordinances, and regulations that govern Seller's ownership and use of the Assets and the violation of which would have a material adverse effect on the Assets or Business.

4.13 Litigation. Except as provided in Schedule 4.13, there are no judicial, arbitration, or administrative actions or other legal proceedings pending, or to the knowledge of Seller and Shareholder, threatened that question the validity of this Agreement or any transaction contemplated hereby or that relate to the Assets, or to the conduct of the Business, including but not limited to condemnation or bankruptcy proceedings. To the knowledge of Seller and Shareholder, there is no material judgment, decree, injunction, ruling or order of any court, governmental department, commission, agent or instrumentality or arbitrator outstanding against Seller and to the knowledge of Seller and Shareholder, Seller is not bound by any material judgment, decree, injunction, ruling or order of any court, governmental department, commission, agency or instrumentality, arbitrator or any other person.

4.14 Workers' Compensation. There are no workers' compensation or similar claims or actions pending or, to the knowledge of Seller and Shareholder threatened, by past or present employees of Seller. Except as provided in Schedule 4.14, to the knowledge of Seller and Shareholder there have been no worker's compensation or similar claims made subsequent to January 1, 2003.

4.15 Brokerage. Seller has not dealt with a broker in connection with this transaction other than Dan Lemanski/Lemans, Inc. Seller shall be responsible for the payment of all fees to Dan Lemanski/Lemans, Inc., and Buyer shall not be obligated to Dan Lemanski or Lemans, Inc. in any manner. No brokerage commission or claim

therefore shall accrue or become payable to any person or entity other than Dan Lemanski/Lemans, Inc. respecting this transaction.

ARTICLE V

COVENANTS OF SELLER

5.1 Change of Name. On or before the Closing Date, Seller shall (a) amend its South Carolina Articles of Incorporation and take all other actions necessary to change its name and (b) take all actions requested by Buyer to enable Buyer to change its name to Seller's present name, if Buyer so elects.

5.2 Payment of Liabilities. Seller shall pay or otherwise satisfy in the ordinary course of business all of its liabilities and obligations as of the Closing Date.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to the Seller and Shareholder as follows:

6.1 Organization and Good Standing. Buyer is a corporation duly organized, validly existing, and in good standing under the laws of South Carolina.

6.2 Authorization. Buyer has full power and authority to execute, deliver and perform this Agreement and any Ancillary Documents, and the execution, delivery and performance by Buyer of this Agreement and any Ancillary Documents have been duly authorized, executed and delivered by Buyer as of the Closing Date. This Agreement and the Ancillary Documents hereto, have been properly authorized by Buyer and are legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their terms. The execution and delivery of this Agreement and the Ancillary Documents by Buyer and the performance by Buyer of the transactions contemplated herein and therein will not constitute an act of bankruptcy, preference, insolvency or fraudulent conveyance under any bankruptcy act or other law for the protection of debtors or creditors. Buyer knows of no approval, consent, waiver, order or authorization of, or registration, qualification, declaration, or filing with, or notice to, any federal, state or local court, arbitration tribunal or governmental agency or other third party that is required on the part of Seller in connection with the execution of this Agreement or the Ancillary Documents, or the consummation of the transactions contemplated hereby or thereby.

6.3 No Violation of Laws or Agreements. The execution, delivery and performance by Buyer of this Agreement and any other documents to which Buyer is a party do not, and the consummation by Buyer of the transactions contemplated hereby and thereby, will not violate any agreements or law, ordinance, regulation, order, policy or guideline of any governmental entity.

6.4 Consents. No consent, approval or authorization of, or registration or filing with, any person or entity (government or private) is required in connection with the execution, delivery and performance by Buyer of this Agreement, and other documents to which Buyer is a party, or the consummation by Buyer of the transactions contemplated hereby or thereby.

6.5 Brokers or Finders. Neither Buyer nor any of Buyer's representatives have incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement.

ARTICLE VII

NONCOMPETITION, NONSOLICITATION AND NONDISPARAGEMENT

7.1 Noncompetition, Nonsolicitation and Nondisparagement.

(a) Noncompetition. In consideration of Five Thousand (\$5,000.00) Dollars of the Purchase Price, for a period of five (5) years after the Closing, Seller and Shareholder, shall not directly or indirectly invest in, own, manage, operate, finance, control, advise, render services to or guarantee the obligations of any person or entity engaged in or planning to become engaged in the building supply and flooring installation lines of business that Seller is engaged in as of the Closing Date, ("Competing Business") within the State of South Carolina except for or on behalf of Buyer.

(b) Nonsolicitation. For a period of five (5) years after the Last Date of Employment, Seller and Shareholder, shall not, directly or indirectly, except for or on behalf of Buyer:

(i) solicit the Competing Business of any person or entity who is a customer or client of Buyer;

(ii) cause, induce or attempt to cause or induce any customer, supplier, licensee, licensor, franchisee, employee, consultant or other business relation of Buyer with respect to the Competing Business to cease doing business with Buyer, to deal with any competitor of Buyer in the Competing Business or in any way interfere with its relationship with Buyer in the Competing Business;

(iii) cause, induce or attempt to cause or induce any customer, supplier, licensee, licensor, franchisee, employee, consultant or other business relation of Seller on the Closing Date or within the year preceding the Closing Date to cease doing Competing Business with Buyer, to deal with any competitor of Buyer in the Competing Business, or in any way interfere with its relationship with Buyer in the Competing Business; or

(iv) hire, retain or attempt to hire or retain any employee or former employee or independent contractor of Buyer or in any way interfere with the relationship between Buyer and any of its employees or independent contractors.

(c) Nondisparagement. After the Closing Date, Seller and Shareholder will not knowingly disparage Buyer or any of Buyer's members, directors, officers, employees or agents.

(d) Modification of Covenant. If a final judgment of a court or tribunal of competent jurisdiction determines that any term or provision contained in Section 7.1(a) through (c) is invalid or unenforceable, then the parties agree that the court or tribunal will have the power to reduce the scope, duration or geographic area of the term or provision, to delete specific words or phrases or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision. This Article VII will be enforceable as so modified after the expiration of the time within which the judgment may be appealed. This Article VII is reasonable and necessary to protect and preserve Buyer's legitimate business interests and the value of the Assets and to prevent any unfair advantage conferred on Seller.

ARTICLE VIII

INDEMNIFICATION; REMEDIES

8.1 Survival. All representations, warranties, covenants and obligations in this Agreement and Ancillary Documents and any other certificate or document delivered pursuant to this Agreement shall survive the Closing, only to the extent provided in Section 8.4(a) and (b). The waiver of any condition based upon the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, will not affect the right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations.

8.2 Indemnification and Reimbursement by Seller and Shareholder. Seller and Shareholder, jointly and severally, will indemnify and hold harmless Buyer, and Buyer's Representatives, members, owners, subsidiaries and any affiliated persons or entities (collectively, the "Buyer Indemnified Persons"), and will reimburse the Buyer Indemnified Persons for any loss, liability, claim, damage, expense (including costs of investigation and defense and reasonable attorneys' fees and expenses) actually incurred or sustained by Buyer (collectively, "Damages"), arising from or in connection with:

(a) any breach of any representation or warranty or any covenant or obligation made by Seller or Shareholder in this Agreement or Ancillary Document or any transfer instrument or any other certificate, document, writing or instrument delivered by Seller pursuant to this Agreement to the extent not covered by insurance or otherwise;

- (b) any Non-Assumed Liabilities.

8.3 Indemnification and Reimbursement by Buyer. Buyer will indemnify and hold harmless Seller and Shareholder and their shareholders, owners, subsidiaries and any affiliated persons or entities (collectively, the "Seller Indemnified Persons") and will reimburse Seller Indemnified Persons, for any Damages arising from or in connection with:

(a) any breach of any representation or warranty or any covenant made by Buyer in this Agreement or in any certificate, document, writing or instrument delivered by Buyer pursuant to this Agreement;

(b) any liability arising from the Assumed Liabilities, Assigned Contracts or Assigned Leases; or

(c) any liability arising out of Buyer's conduct of the Business.

8.4 Time Limitations and Notice of Claim.

(a) Seller and Shareholder will have liability (for indemnification or otherwise) with respect to any breach of (i) a covenant or obligation to be performed or complied with prior to the Closing Date or (ii) a representation or warranty, only if on or before one (1) year after the Closing Date, Buyer shall provide Seller and Shareholder with a written notice indicating that Buyer is making a claim against the Seller or Shareholder as permitted under this Agreement and specifying the factual and legal basis for such claim in reasonable detail and the amount of such claim (a "Notice of Claim"). Except with respect to Third-Party Claims, as provided below, Buyer, Seller and Shareholder shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, Buyer, Seller and Shareholder shall endeavor to settle the dispute through mediation pursuant to the South Carolina Rules of Arbitration before having recourse to arbitration. Buyer, Seller and Shareholder agree to conclude such mediation within forty-five (45) days of the filing of the request for mediation. Any dispute not resolved by mediation shall be decided by arbitration in accordance with the South Carolina Rules of Arbitration. Judgment on any arbitration award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof.

(b) Buyer will have liability (for indemnification or otherwise) to any or all of the Seller Indemnified Parties with respect to any (i) covenant or obligation to be performed or complied with by Buyer pursuant to this Agreement or (ii) a representation or warranty, only if on or before one (1) year after the Closing Date such Seller Indemnified Part(ies) provide Buyer with a Notice of Claim. Except with respect to Third-Party Claims, as provided below, Buyer and Seller shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, Buyer and Seller shall endeavor to settle the dispute through mediation pursuant to the South Carolina Rules of Arbitration before having recourse to arbitration. Buyer and Seller agree to conclude such mediation within forty-five (45) days of the

filing of the request for mediation. Any dispute not resolved by mediation shall be decided by arbitration in accordance with the South Carolina Rules of Arbitration. Judgment on any arbitration award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof.

(c) In the case of a claim by a third-party against an indemnified party ("Third Party Claim"), the indemnified party shall give a Notice of Claim to the indemnifying party, of the assertion of any claim, or the commencement of any suit, action or proceeding in respect of which indemnity may be sought hereunder. The indemnifying party may, at its own expense, (a) participate in and (b) upon notice to the indemnified party, assume the defense thereof; provided that the indemnifying party shall thereafter consult with the indemnified party upon the indemnified party's request for such consultation from time to time with respect to such claim, suit, action or proceeding. If the indemnifying party assumes such defense, the indemnified party shall have the right (but not the duty) to participate in the defense thereof and to employ counsel, at its own expense, separate from the counsel employed by the indemnifying party. Whether or not the indemnifying party chooses to defend or prosecute any such claim, suit, action or proceeding, all of the parties hereto shall cooperate in the defense or prosecution thereof. In the event that the indemnifying party elects not to assume the defense of any claim, suit, action or proceeding, such election shall not relieve the indemnifying party of its obligations hereunder.

No party shall settle or compromise any claim, suit, action or proceeding without the prior written consent of the other party, which shall not be unreasonably withheld or delayed.

8.5 [Intentionally Omitted]

8.6 Insurance. In the event that insurance proceeds are paid to the Indemnified Person respecting an event to which an indemnification right applies hereunder, such indemnification right shall apply only to the extent that the amount of damages indemnified against exceeds such insurance proceeds actually paid to the Indemnified Person; provided however, that: (a) this Section 8.6 shall not apply to the extent it conflicts with, is prohibited by, or would invalidate, any such insurance policy; and (b) collection of such insurance proceeds shall not be a condition precedent to asserting or collecting such indemnification. Notwithstanding the other provisions in this Section 8.6, it is understood and agreed that any insurance proceeds or tax benefits benefiting the Buyer will offset any indemnification claims against the Seller.

8.7 Exclusive Remedy. The indemnification provisions set forth in this Article VIII shall be the sole and exclusive basis for a monetary remedy of Buyer with respect to any matter related to this Agreement.

8.8 Aggregate Limitation. Seller and Shareholder's aggregate indemnity obligations under this Agreement shall not exceed the amount of the Purchase Price actually received by Seller and/or Shareholder, minus all federal and state income taxes paid by Seller and/or Shareholder as a result of the sale and purchase of the Assets.

8.9 Basket Limitation. Seller shall not be required to indemnify Buyer pursuant to this Article VIII except to the extent that the aggregate amount of Damages for which Buyer is otherwise entitled to indemnification hereunder exceeds \$2,000.

8.10 Damages Limitation. Except with respect to Third-Party Claims in which such damages are awarded, in no event will Seller or Shareholder be liable for any incidental, consequential or punitive damages.

ARTICLE IX

ADDITIONAL PROVISIONS

9.1 Entire Agreement: Amendments: Waivers. This Agreement and the documents referred to herein and to be delivered pursuant hereto constitute the entire agreement of the parties hereto pertaining to the subject matter hereof, and supersede all prior and contemporaneous agreements, understandings, negotiations, and discussions of the parties, whether oral or written. No amendment, supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision or breach of this Agreement, whether or not similar, unless otherwise expressly provided.

9.2 Benefit. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective, heirs, successors and permitted assigns.

9.3 No Presumption. Buyer and Seller have participated jointly in the negotiation and drafting of this Agreement and the preparation of all Ancillary Documents. In the event any ambiguity question of intent or interpretation arises, this Agreement including all Ancillary Documents thereto shall be construed as if drafted jointly by Buyer and Seller, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

9.4 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but such counterparts shall altogether constitute one and the same Agreement.

9.5 Notices. All notices, requests, approvals, consents, demands and other communication provides for or permitted hereunder shall be in writing, signed by an authorized representative of the sender and addressed to the respective party at the address set forth below:

<u>Buyer:</u>	Commercial & Industrial Floors, Inc.
	303 Woodway Drive
	Greer, SC 29651

Copy To: Temple, Mann, Briggs & Hill
819 E. North Street
Greenville, SC 29601
ATTN.: S. Allan Hill, Esquire

Seller: Ronald D. Keel and Joyce K. Keel
724 Hudson Road
Greenville, SC 29615

Copy To: Merline & Meacham, PA
812 East North Street
Greenville, SC 29601
ATTN: Robert E. August, Esq.

A party hereto may change its respective address by notice in writing given to the other parties to this Agreement. Any notice, request, approval, consent, demand or other communication shall be effective upon the first to occur of the following: (i) when delivered to the party to whom such notice, request, approval, consent, demand or other communication is being given, or (ii) three (3) Business Days after being duly deposited in the U.S. mail, certified, return receipt requested.

9.6 Severability of Provisions. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

9.7 Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

9.8 Jurisdiction. The parties hereto consent to jurisdiction (regarding any disputes arising hereunder), subject to proper service of process, in the State of South Carolina.

9.9 Further Instruments and Acts. From time to time at a party's request, whether at or after Closing and without further consideration, the other party(ies) shall execute and deliver such further instruments of conveyance, transfer and assignment and upon reimbursement for actual reasonable out-of-pocket expenses take such other action as the requesting party reasonably may require to more effectively convey and transfer to the requesting party the properties to be conveyed, transferred and assigned hereunder, and, if necessary, will assist the requesting party in the collection or reduction to possession of such property. In addition, each party agrees to provide reasonable access to records respecting the Business as are requested by the other party(ies) for proper purpose with good cause shown (subject to appropriate confidentiality agreements to be negotiated at such time) and agree to reasonably cooperate in resolving any matters resulting from the transactions contemplated hereby.

9.10 Fees and Expenses. Each of the parties hereto will pay its own fees and expenses (including its attorneys' fees and expenses) and any fees, commissions and expenses of its financial advisors, investment bankers or brokers.

9.11 Signatures. Buyer and Seller agree that the Agreement and all Ancillary Documents and instruments contemplated herein can be signed by facsimile and facsimile copies shall be binding on such signing party as if an original executed copy.

9.12 Mediation and Arbitration. If a dispute arises out of or relating to this Agreement, or its breach, the parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, the parties shall endeavor to settle the dispute through mediation pursuant to the South Carolina Rules of Arbitration before having recourse to arbitration. The parties agree to conclude such mediation within forty-five (45) days of the filing of the Request for Mediation. Any dispute not resolved by mediation shall be decided by arbitration in accordance with the South Carolina Rules of Arbitration. Judgment on the arbitration award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof. The location of any mediation or arbitration shall be Greenville, South Carolina unless the parties mutually agree to another location.

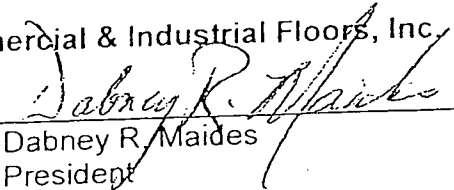
[Signature Page Attached]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

BUYER:

Commercial & Industrial Floors, Inc.

By:


Dabney R. Maides

Its: President

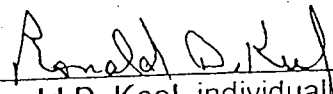
SELLER:

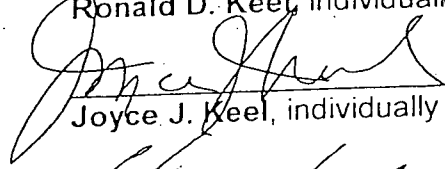
Ron's Building Materials, Inc.

By:


Ronald D. Keel

Its: President


Ronald D. Keel, individually


Joyce J. Keel, individually


Christopher M. Keel, individually

EXHIBIT B

EMPLOYMENT AGREEMENT

This **EMPLOYMENT AGREEMENT** (this "Agreement") is made and entered into this 22 day of July, 2008, by and between **Christopher M. Keel** ("Employee") and **Commercial & Industrial Floors, Inc.**, a South Carolina corporation ("Company").

RECITALS

The Company and the Employee desire to enter into this Agreement on the terms and conditions set forth herein. In consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are true and correct and are deemed to be a part of this Agreement.

2. Employment. The Company shall employ the Employee, and the Employee hereby accepts employment with the Company, upon the terms and conditions set forth in this Agreement for the period beginning on the date hereof and ending as provided in Paragraph 5 hereof (the "Employment Period").

3. Position and Duties. During the Employment Period, the Employee shall serve as a sales representative for the Company and shall perform such normal duties and responsibilities of a sales representative as may be from time to time designated by the Company, subject to the direction and authority of the Company's President or his designee.

4. Base Salary and Benefits.

(a) During the Employment Period, the Employee's base salary shall be \$781 per week or such higher rate as the board of directors of the Company may designate from time to time (the "Base Salary"). The Base Salary shall be payable in regular installments, no less frequently than weekly, in accordance with the Company's general payroll practices and shall be subject to customary withholding.

(b) The Company shall pay to Employee a car allowance of \$635 per month and a gasoline allowance of \$550 per month. Said amounts shall be paid within 10 days after the end of each calendar month during the Employment Period. In addition, Company shall reimburse the Employee for all reasonable expenses incurred by him in the course of performing his duties under this Agreement which are consistent with the Company's policies in effect from time to time with respect to travel, entertainment and other business expenses, subject to the Company's requirements with respect to reporting and documentation of such expenses. All such reimbursements shall be paid to Employee no later than 10 days after the end of each calendar month during the Employment Period.

(c) The Employee shall be entitled to 2 weeks vacation per year, eligible to be taken after on year of employment. The Employee shall also be entitled to holidays in the same manner as provided to other similarly situated employees of the Company.

(d) The Employee shall be permitted to participate in any pension or welfare benefit plan of Company upon satisfaction of the eligibility requirements as specified in each particular plan. Specifically, Company shall provide health insurance coverage for Employee, provided, however, that Employee in his sole discretion may decline such coverage in favor of receiving a cash payment in the amount of such coverage. For example, if Company would pay \$350/ month to provide health insurance to Employee, Employee may choose to either accept such health insurance coverage from Company or to decline such coverage and receive a monthly cash payment of \$350.

5. Termination.

(a) Employee's employment with Company is "at will" and may be terminated at any time by either Employee or Company.

(b) If the Employment Period is terminated by either party, the Employee shall be entitled to receive his Base Salary through the date of termination as well as a pro-rated share of all allowances and all reimbursements to which Employee is entitled through the date of termination.

6. Other Businesses. As long as the Employee is employed by the Company, and for a period of 5 years thereafter, the Employee agrees that he will not, except with the express written consent of the Company's President or his designee, become engaged in, or render services for, any business that competes with the business in which Company is engaged at the time his employment with Company is terminated anywhere within the state of South Carolina; provided, however, nothing herein shall prohibit Employee from owning not more than 10% of the outstanding shares of stock in a publicly traded company.

7. Return of Company Property. The Employee shall deliver to the Company at the termination of the Employment Period, or at any other time thereafter as the Company may reasonably request, all memoranda, notes, papers, plans, records, reports, computer discs or tapes, printouts and software and other documents and data (and copies thereof), (a) prepared by or on behalf of the Company, (b) purchased with Company funds or (c) in any way relating to the business of the Company which the Employee may then possess or have under his control.

8. Survival. Paragraphs 6 and 7 shall survive and continue in full force in accordance with its terms notwithstanding any termination of the Employment Period.

9. Notices. Any notice provided for in this Agreement must be in writing and must be either personally delivered, mailed by first class mail (postage prepaid and return receipt requested) or sent by reputable overnight courier service (charges prepaid) to the recipient at the recipient's last known address. Any notice under this Agreement will be deemed to have been given when so delivered or sent or, if mailed, three days after deposit in the U.S. mail.

10. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or any other jurisdiction, but this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

11. No Strict Construction. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party.

12. Successors and Assigns. This Agreement is intended to bind and inure to the benefit of and be enforceable by the Employee, the Company and their respective heirs, successors and assigns, except that the Employee may not assign his rights or delegate his obligations hereunder without the prior written consent of the Company.

13. Waivers. The waiver by the Company or the Employee of any action, right or condition in this Agreement, or any breach of a provision of this Agreement, shall not constitute a waiver of any other occurrences of the same event. Continuation of payments hereunder by the Company following a breach by the Employee of any provision of this Agreement shall not preclude the Company from thereafter terminating or reclaiming said payments based upon the same violation.

14. Governing Law. This Agreement shall be deemed to have been made in the State of South Carolina and shall be governed by and construed in accordance with the substantive law of the State of South Carolina, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of South Carolina or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of South Carolina.

15. Captions. The captions used in this Agreement are for convenience of reference only and do not constitute a part of this Agreement and shall not be deemed to limit, characterize or in any way affect any provision of this Agreement, and all provisions of this Agreement shall be enforced and construed as if no caption had been used in this Agreement.

16. Counterparts. This Agreement may be executed in separate counterparts, each of which when so executed and delivered shall be an original and all of which taken together constitute one and the same agreement.

17. Entire Agreement; Amendments. This Agreement constitutes the entire understanding between the Employee and the Company with respect to its subject matter, supersedes any prior communication or understanding with respect thereto, and no modification or waiver or any provision hereof shall be valid unless made in writing and signed by the parties. No course of dealing between the parties to this Agreement shall be deemed to affect or to modify, amend or discharge any provision or term of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Employment Agreement as of the day and year first above written.

EMPLOYER:

Commercial & Industrial Floors, Inc.

By: _____

Dabney R. Maides
Dabney R. Maides, President

EMPLOYEE:

Christopher M. Keel
Christopher M. Keel

EXHIBIT C

Ron's Building Materials
212 Transit Drive
Greenville, SC 29607



Commercial & Industrial
Floors, Inc

Chris Keel
113 Hartsdale Court
Greer, SC 29650

Dear Chris,

Welcome to Commercial & Industrial Floors, Inc dba Ron's Building Materials!

We are so excited to have you join our team and look forward to the opportunity to work with you! As we discussed, you will be reporting to Dabney Maides (Owner). Your start date will be January 26, 2009 at 8:00 am.

Your salary will be paid as follows \$4583.33 for the first 30 days, then \$6250.00 for the next 30 days; this will be contingent on meeting monthly sales goals that will be laid out under separate cover. On your 90th day you will receive a review. Upon the successful completion of review and pending 100% of quota being met you will receive a salary of \$8333.33 a month. This will be subject to change based on performance and meeting 100% of monthly quota.

This agreement refers to an additional non-compete agreement previously signed.

Expenses can be turned in for reimbursement and charged to your jobs. You will receive mileage at current rate up to \$400.00 a month after the completion of required expense reports and a mileage log. A mobile phone will be provided for business use and charged to your jobs.

Vacation time of 1 week is exercisable after completion of 1 year of service. Going forward after the first year of service the accrual rate will be 1.17 hours per month equaling 2 weeks vacation per year.

As the acting Professional Employer Organization for Ron's Building Supplies, Ideal Business Solutions offers this position on behalf of them. All offers are contingent on the successful completion of required background screening.

Please see the attached for all of the other benefits the company provides.

Please contact me at 864.286.9009 at any time. We are thrilled to work with you and look forward to a long lasting partnership!

Best wishes,

Johanna Kane
Director of Talent
Ideal Business Solutions
The Ideal Candidate

EXHIBIT D

FILED-CLERK OF COURT
STATE OF SOUTH CAROLINA GREENVILLE CO. S.C. IN THE COURT OF COMMON PLEAS
PAUL B. WICKENSIMMER THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE

2015 JUN 12 PM 4:22

C.A. NO: 2013-CP-23-05778

CJR Resources, Inc. f/k/a Ron's Building
Materials, Inc.,

Plaintiff,

v.

Commercial & Industrial Floors, Inc., Dabney R.
Maides,

Defendants/Third Party Plaintiffs,

v.

Christopher M. Keel,
Third Party Defendant.

CONSENT
SCHEDULING ORDER

WHEREAS, the parties have jointly moved for a consent scheduling order pursuant to Rules 40(e) and 16(b), SCRCP; and

1. Discovery shall be completed on or before August 31, 2015. All discovery requests shall be served in time for the responses thereto to be served by this date. However, a party who properly serves a Notice of Deposition prior to that date may conduct the deposition of the witness identified in the Notice after this date provided that such witness cannot be reasonably made available prior to that date, and/or counsel for the parties cannot reasonably accommodate the date of the Notice. The parties may mutually agree to continue discovery beyond this deadline.
2. Deadline for a second mediation by mutual consent of the parties to be completed: September 15, 2015.
3. Deadline for filing dispositive motions: September 30, 2015.
4. Motions in limine must be filed at least one week prior to date of trial.
5. Parties shall furnish the Court pretrial briefs seven (7) days prior to the date set for jury selection. Attorneys shall meet at least seven (7) days prior to the date set for submission of pretrial briefs for the purpose of exchanging and marking all exhibits.
6. This case is subject to being called for jury selection and trial on or after October 30, 2015.

1 RBT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

SEP 11 1963

TO DIRECTOR
FROM SAC, NEW YORK

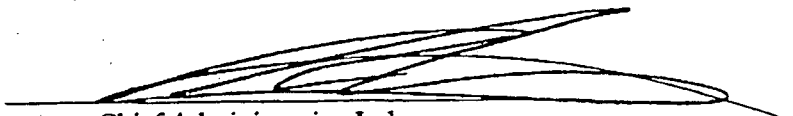
RE: [Illegible]

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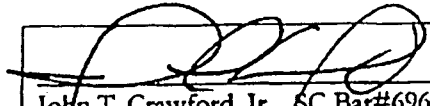
IT IS SO ORDERED.

This 10 day of June, 2015
Greenville, South Carolina

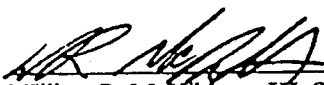

Chief Administrative Judge
Thirteenth Judicial Circuit

2188

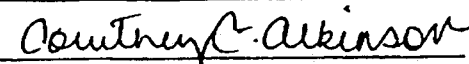
WE SO CONSENT:


John T. Crawford, Jr., SC Bar#69682
Townes B. Johnson, III, SC Bar#75412
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Greenville, SC 29601

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*Commercial & Industrial Floors, Inc.
and Dabney Maides*


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Attorney for Third-Party Defendant, Christopher M. Keel

EXHIBIT E



SMITH MOORE LEATHERWOOD

Post Office Box 87
Greenville, SC 29602
Identification # 56-1493364

To: Commercial & Industrial Floors, Inc.
Attention: Dabney R. Maides
212 Transit Drive
Greenville, SC 29607

8/10/10
0615

Re: CJR Resources, Inc. f/k/a Ron's
Building Materials, Inc. v. Commercial
Our File Number: 05010799.000001

Invoice : 487186

INVOICE FOR PROFESSIONAL SERVICES RENDERED THROUGH 07/31/2010

FEES

			Hours
07/14/2010	MCDUFF RH	Review of Asset Purchase Agreement, Loan Documents and promissory notes, and Employment Agreement; analyze non-compete issues; office conference and telephone conference with client.	2.10
07/15/2010	MCDUFF RH	Telephone conference with client regarding termination issue.	.10
			2.20
		Total Fees Through 07/31/2010	\$660.00

TIME AND FEE SUMMARY

	Rate	Hours	Fees
MCDUFF RH	300.00	2.20	660.00
		2.20	\$660.00

CURRENT INVOICE TOTALS

Total Fees This Invoice	\$660.00
Total Expenses This Invoice	\$0.00
Total Due This Invoice	\$660.00

Total Amount Due Now \$660.00

Net Due Upon Receipt

Please Remit Payment To:

Smith Moore Leatherwood LLP
Post Office Box 87
Greenville, SC 29602

RICHARD

MCDUFF

EXHIBIT F

Copy and Index

Dabney Ragland

STATE OF SOUTH CAROLINA

IN THE COURT OF
COMMON PLEAS OF THE

COUNTY OF GREENVILLE

THIRTEENTH JUDICIAL CIRCUIT

CJR RESOURCES, INC.,
f/k/a RON'S BUILDING
MATERIALS, INC.,
Plaintiff,

CIVIL ACTION NO.
2013-CP-23-05778

vs.

COMMERCIAL & INDUSTRIAL FLOORS,
INC., et al.,
Defendants.

vs.

CHRISTOPHER M. KEEL,
Third-Party Defendants.

DEPOSITION OF DABNEY RAGLAND MAIDES

DATE TAKEN: August 19, 2015

TIME BEGAN: 9:11 a.m.

TIME ENDED: 11:45 a.m.

LOCATION: Metcalfe & Atkinson, LLC
9 Toy Street
Greenville, South Carolina

REPORTED BY: Eileen Thompson, CCR
EveryWord, Inc.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

1 engineering for a long time?

2 A. A long time.

3 Q. So what did you do after that company?

4 A. I came to Greenville County, went to work
5 for a company called Sauer Danfoss. They made
6 hydraulic valves.

7 Q. And how long did you work for that
8 company?

9 A. Almost two years.

10 Q. And what was your last position with that
11 company?

12 A. Global manufacturing engineer.

13 Q. And what did you do after that period of
14 employment?

15 A. That's when I purchased Ron's Building
16 Materials.

17 Q. So that's a good question. What are you
18 doing for work today, as we sit here today?

19 A. I'm doing flooring work.

20 Q. And is that the company you just referred
21 to?

22 A. Yes.

23 Q. And what's the name of that business
24 again?

25 A. Well, I purchased Ron's Building

1 Q. Okay. Other than flooring, do you do any
2 other kind of construction, or sales, or
3 installation, or is it limited to flooring?

4 A. We've done some other things like cleaning
5 of floors, you know, after we sell materials, that
6 kind of thing, but for the most part, it's really
7 trivial other than that.

8 Q. All right. Do those ancillary services
9 you were talking about mostly deal with floors?

10 A. Yeah, they pretty much revolve around
11 that.

12 Q. Now, what about decks? Do you guys do
13 decks?

14 A. We traditionally -- well, Ron's Building
15 Materials had a history of doing Duradek, which is
16 not really building decks, but covering them with a
17 floor covering type material that acts as a roofing
18 material as well.

19 Q. So you mentioned Duradek. Are you an
20 authorized Duradek dealer?

21 A. At this point, we're not.

22 Q. And why are you not an authorized Duradek
23 dealer?

24 A. Well, it's my understanding that the
25 authorized installer is really, I think, the key

1 about Pat Magee?

2 A. I am.

3 Q. And was Pat Magee a subcontractor
4 employee?

5 A. He was.

6 Q. Have you contacted Pat and asked him to
7 provide services to your business?

8 A. Early on, maybe a couple calls here and
9 there, but no, not in a long time. In fact, he
10 lives in Wyoming now.

11 Q. And when was the last time Mr. Magee did
12 any installation for your business?

13 A. That would have been right before Chris
14 left, I think, yeah.

15 Q. When was that?

16 A. Let's see. Chris left in -- at the end of
17 May of 2013, I believe.

18 Q. Mr. Maides, I want to turn and talk a
19 little bit more about the business and your
20 acquisition of that, if that's all right.

21 A. Yes.

22 Q. Do you have any knowledge as to whether or
23 not Ron's previously operated under any other names?

24 A. I don't know that.

25 Q. And who was the owner of Ron's at the time

1 for five years. So it's your understanding or your
2 belief that the agreements contained that noncompete
3 provision?

4 A. The agreements, yes, they did. One of
5 them referenced after employment, and the other one
6 referenced after closing.

7 Q. Do you recall whether or not those
8 agreements referenced what competing business was
9 defined to be?

10 A. I believe it mentioned commercial
11 flooring. I don't know what else it mentioned -- I
12 don't recall anyway.

13 Q. Do you recall if those agreements only
14 prohibited Chris from working for businesses that
15 did the same thing that your business does?

16 A. I don't recall.

17 Q. Do you recall whether or not either of
18 those agreements said that Chris couldn't go out and
19 work for somebody who does things you don't do?

20 A. I don't know that it said anything like
21 that. I would think no.

22 Q. Would you have any understanding that if
23 Chris wanted to go put up walls, for instance,
24 whether or not you would consider that to be
25 competing with your business?

1 A. I wouldn't consider that competing with
2 the business.

3 Q. And that's because you don't do walls, is
4 that correct?

5 A. Right.

6 Q. So if he went out and put up walls for
7 somebody, you wouldn't consider that a competing
8 business?

9 A. Right.

10 Q. And under the terms of the APA and the
11 Employment Agreement, then you wouldn't consider
12 that a breach of those agreements if he were to put
13 up walls for someone?

14 A. I think that's probably true.

15 Q. Mr. Maides, I know you mentioned some
16 nonsolicitation language that was in the agreement.
17 Do you know whether that language appeared in the
18 APA and the noncompete agreement?

19 A. I don't recall.

20 Q. Is it possible it appeared in one and not
21 the other?

22 A. It is.

23 Q. Do you recall the date the actual
24 Employment Agreement was signed by Mr. Keel?

25 A. I think it would have been at closing.

1 sales quotas to be that once he started meeting
2 certain quotas, his salaries would go up certain
3 amounts?

4 A. Yes.

5 Q. And did he ultimately -- was he going to
6 max out at a certain salary for certain goals?

7 A. Yes.

8 Q. Did Mr. Keel meet his goals?

9 A. No, he did not.

10 Q. When did he not meet his goals?

11 A. It was -- we had a recession going on, and
12 I don't know that he ever really met the goals for
13 the full amount. We started him out at -- I think,
14 that's what it was, yes. We were starting him out
15 at a lower salary, moving him up. And then he
16 didn't meet the goals to go higher, and I told him
17 at the time that I would go ahead and agree to pay
18 him at this level, you know, anyway, even though he
19 didn't really -- he didn't really even meet those
20 sales numbers when it came to the profit was the
21 bottom line, he didn't meet those levels so, you
22 know, I paid him that salary anyway --

23 Q. So your testimony is --

24 A. -- but we never went above that.

25 Q. So your testimony is that you ultimately

1 did agree to pay him the top level of salary?

2 A. No, not the top level. No. Whatever it
3 was -- I don't even remember what it was, but I
4 remember there was a tiered amount, and I believe it
5 was -- it started out at a lower amount and moved
6 up, you know, within a fairly short period of time
7 to higher amounts, but it was also based on the
8 quotes. And he never met the quotas, so instead of
9 bumping him back down to the lower amount, I kept
10 him at sort of the mid tier.

11 Q. All right. So your testimony is that Mr.
12 Keel wasn't meeting his quotas?

13 A. Well --

14 Q. Do you have any knowledge as to whether or
15 not he ever did meet his quotas with you?

16 A. Well, he didn't -- no, he didn't make the
17 profit levels, sales levels that we had put in
18 place, you know, we thought maybe because of the
19 recession.

20 Q. So did you attribute that failure to meet
21 the goals to the recession?

22 A. That's kind of what we thought.

23 Q. What period of time would you say Mr. Keel
24 wasn't meeting his sales goals?

25 A. I don't know that he ever did meet them, I

1 anything yet about it, I don't really recall. I
2 mean it's been so long ago. I do remember having
3 the discussion with him after he said, "I can't do
4 that," you know, I do remember saying to him, "I
5 want to keep you, so what would it take?" I mean
6 because basically I wanted us to be aligned so that
7 we're on the same track, you know. He's making
8 money for the company, the company is, you know,
9 doing right by him, that was the idea, that was the
10 intent, and his full efforts would be rewarded, you
11 know, according to, you know, that effort that he
12 put in. So if he was making the company a lot of
13 money, he would make more money, whereas, you know,
14 being on a straight salary, you don't participate in
15 that.

16 Q. So your testimony is Mr. Keel was not
17 happy. Did he express his displeasure to you about
18 the decrease in his monthly salary?

19 A. I'm sure he did, but that's when he was
20 telling me he was going to leave, I think.

21 Q. Did you want to keep him in your
22 employment?

23 A. Yes.

24 Q. And did Chris do a good job?

25 A. Well, I mean he was -- he was selling what

1 we sold. I mean, you know, that was -- he was, you
2 know, he was -- I felt like that's what we needed to
3 have, absolutely, his sales abilities.

4 Q. Was he making money for the business?

5 A. He was making some money for the business,
6 yes.

7 Q. Ultimately, did Mr. Keel tell you that he
8 was going to be resigning his employment after you
9 provided him with notice of decrease in his salary?

10 A. I believe he did, yes.

11 Q. Do you recall when that was?

12 A. I don't recall when that was.

13 Q. After Mr. Keel turned in his resignation,
14 do you know if any further payments were made to Mr.
15 Keel by the business?

16 A. Yes, there were more payments made.

17 Q. And what payments were made to Mr. Keel
18 after his resignation?

19 A. Whatever was left over, so whatever his
20 salary was, and, I think, we paid in arrears by
21 week, I think -- and then there was also, I think,
22 he had some -- I don't recall if he had possible
23 vacation time or any of that, I don't remember.

24 Q. Would it be fair to say that the last pay
25 he received from the business was his last paycheck

1 A. Right.

2 Q. And are you aware that under the terms of
3 the Promissory Note, that the sellers can recover
4 attorneys' fees and costs from you if they are
5 successful in litigation for nonpayment on the
6 Promissory Note?

7 A. Yeah. Maybe I should clarify the stop
8 payment thing a little further. It wasn't just that
9 he left, it was also discussion at that point --
10 discovery at the point where it looked like he was
11 in competition with us.

12 Q. When you say "It looked like he was in
13 competition with us," what do you mean?

14 A. Well, I think, it was during June that we
15 found out that there was a Duradek job that was
16 going to be begun that month, and that it wasn't us
17 that was doing it, so that was how that kind of
18 progressed.

19 Q. And what specifically were you told?

20 A. I was told that Pat needed to go to work
21 by the superintendent.

22 Q. Maybe you can -- give me a better idea of
23 maybe you can tell me in a little more detail of how
24 those conversations came about and how you allegedly
25 made that discovery.

1 doing that job down there for Chris.

2 Q. So Pat Magee told you he was doing the job
3 for Chris?

4 A. Yeah.

5 Q. Okay. At the time, did you have a
6 licensed installer on staff for Duradek?

7 A. Just Pat.

8 Q. Okay. But Pat wasn't your employee, was
9 he?

10 A. He was a subcontractor, so no.

11 Q. My question is did you have a licensed
12 installer -- authorized installer employed with your
13 business at that time that could do it?

14 A. No, neither did Chris.

15 Q. But did your business have a licensed
16 installer at that time?

17 A. No.

18 Q. And I believe you testified earlier that
19 in order to be an authorized dealer, you have to
20 have a licensed installer to do the work?

21 A. The installer, yeah, that would have been
22 Pat.

23 Q. So accordingly in June of 2013, your
24 business would not have been a licensed authorized
25 Duradek dealer at that time?

1 A. I don't know how that works actually,
2 because I mean really if we had to have it in-house,
3 then we never did, and we were doing Duradek jobs
4 even before Chris left.

5 Q. But just to go back very simply, in June
6 of 2013, you didn't have anybody working for you who
7 was a licensed installer for Duradek, did you?

8 A. Just Pat.

9 Q. But my question to you, did you have any
10 employees --

11 A. No.

12 Q. -- who were licensed to do Duradek?

13 A. No.

14 Q. All right. Mr. Maides, subsequent to
15 stopping payment on the promissory note, were you
16 made aware that a lawsuit had been filed against
17 your business?

18 A. Right. Yes.

19 Q. And when were you made aware of that?

20 A. I don't recall exactly when that was. It
21 was after that soon.

22 Q. All right. And in response to that
23 lawsuit, did you then file certain claims against
24 Mr. Keel?

25 A. Yes.

1 you?

2 A. Well, there has been discovery since then
3 that indicates something like that, but again, those
4 are not my words that from the beginning he was like
5 that, you know.

6 Q. I believe you testified earlier that while
7 Mr. Keel was employed by you, you were going through
8 a recession?

9 A. We were, yes.

10 Q. And did that recession hit the
11 construction industry particularly hard?

12 A. Sure.

13 Q. And did it hit the commercial construction
14 industry particularly hard?

15 A. Yes.

16 Q. And I believe you yourself testified
17 earlier that it was your belief that some of Mr.
18 Keel's failure to meet sales quotas was related to
19 the economy and the recession, is that correct?

20 A. I'm sure, yes.

21 Q. And I believe you also testified earlier
22 that Mr. Keel was still making money for your
23 business during that time, is that correct?

24 A. Yeah, he was making some money for the
25 business. Yes.

1 A. Shaw Industries.

2 Q. And what was the bill for?

3 A. Some carpet.

4 Q. And do you have any idea what the carpet
5 was used for?

6 A. It has a side mark of a business, and also
7 it was shipped to Sherman Construction.

8 Q. And what side mark does it have on the
9 business?

10 A. I don't recall.

11 Q. Other than that one bill that you're
12 talking about, what proof do you have that Mr. Keel
13 was engaging in a competing business while he was
14 employed by your business?

15 A. I think we have some things from, I guess,
16 Bon Secours. There was some kind of -- there's some
17 checks made from Bon Secours to Mr. Keel.

18 Q. Those checks you're talking about, where
19 did you get those checks from?

20 A. Well, they were -- again, they were an
21 accounting thing that was done by a forensic
22 accountant.

23 Q. Were those checks -- who were those checks
24 written to?

25 A. Mr. Keel.

1 A. Right, she allowed him to give us the
2 checks. Yes.

3 Q. And when we're talking about Mrs. Keel,
4 who is Mr. Keel's --

5 A. His ex-wife now, I believe.

6 Q. So it's your understanding this is Tami
7 Keel we're talking about, correct?

8 A. Yes.

9 Q. Do you know when Mrs. Keel and Mr. Keel
10 divorced?

11 A. It would have been after closing. I don't
12 recall exactly when that was.

13 Q. So it was around the same time you bought
14 the business?

15 A. Probably.

16 Q. Were you aware that the Keels were going
17 through a divorce at that time?

18 A. Oh, yeah, I knew they were.

19 Q. Was it pretty public?

20 A. You know, I don't know.

21 Q. Did you have any discussions with Mr. Keel
22 about the divorce at that time?

23 A. Not a lot. I mean other than just, you
24 know, general -- I didn't really know her.

25 Q. Were you made aware that the divorce

1 litigation was pretty litigious?

2 A. Yeah, I remember that. Yeah.

3 Q. So no love lost between Mr. Keel and his
4 ex-wife?

5 A. That's probably true. It was a while,
6 too, I would think.

7 Q. So the proof you were talking about that
8 Mr. Keel allegedly engaged in competing business
9 while he was employed by you are these checks
10 provided by his ex-wife?

11 A. Well, yeah, by Mr. Meilinger actually.

12 Q. But those documents were provided to Mr.
13 Meilinger by Mr. Keel's ex-wife?

14 A. I don't recall. I don't know.

15 Q. And I believe you testified you believe
16 those checks to say that they were written to an
17 entity named as WPI?

18 A. I think some of them were for sure.

19 Q. Do you know what WPI stands for?

20 A. No, I don't.

21 Q. Would it surprise you to know that that is
22 a wall business?

23 A. At this point, it wouldn't.

24 Q. And I believe you testified earlier that
25 if Mr. Keel was engaging in a wall business, that

1 that wouldn't be competing with your business that
2 does flooring, is that correct? Is that what you
3 just testified to earlier?

4 A. I would think that that would probably be
5 true as long as it's not during employment, you
6 know, I would think.

7 Q. Other than those checks and the one bill
8 you were talking about from Shaw Industries, I
9 believe, do you have any other proof that Mr. Keel
10 was engaged in a competing business while he was
11 employed by your business?

12 A. I don't know. I don't know if I have
13 that. That's kind of a bad answer.

14 Q. As you sit here today, can you point to
15 anything that's proof that he competed with your
16 business while he was still employed by you?

17 A. I don't -- I wish I was a little bit more
18 prepared for that type of statement, but I don't
19 know what I have. I have a lot of stuff, you know.

20 Q. But you can't specifically point to
21 anything that would prove that he was competing with
22 your business?

23 A. I don't know that I have anything.

24 Q. Are you aware that your Third-Party
25 Complaint includes allegation that is Mr. Keel never

1 intended to work for the benefit of your business?

2 A. Again, not my words.

3 Q. Sitting here today, are you contending
4 that he never intended to work for the benefit of
5 your business?

6 A. I would think that was probably a pretty
7 strong statement there.

8 Q. So you wouldn't necessarily agree with
9 that statement?

10 A. Probably not.

11 Q. And that would be a no, correct?

12 A. I think so yeah, that would be -- I
13 believe that's worded a little stronger than it
14 should have been.

15 Q. So you do believe, sitting here today,
16 that Mr. Keel was working for the benefit of your
17 business while he was employed there?

18 MR. MCKIBBON: Object to the form.

19 THE WITNESS: I believe that in
20 retrospect, I can see that maybe perhaps Mr.
21 Keel may not have been putting in full effort
22 for the benefit of the company. However, he
23 was working for the company. So, you know, and
24 it was -- so I guess in the gray end of things,
25 he was working for the company, so, yeah, sure

1 A. Yeah, that may be true, you know, I don't
2 know, and the testimony of others perhaps.

3 Q. Do you know who any of those others would
4 be?

5 A. No, I don't.

6 Q. So sitting here today, you don't know of
7 any other witnesses other than Tami Keel who could
8 testify to that?

9 A. That's right.

10 Q. Sitting here today, do you have any
11 documents that you could point to as proof of that?

12 A. I don't -- other than the ones we've
13 mentioned, I don't know that I have.

14 Q. By way of your Third-Party Complaint, you
15 also claim that Mr. Keel has breached the Asset
16 Purchase Agreement he signed, is that correct?

17 A. Yes.

18 Q. And in what specific manner do you contend
19 he breached the Asset Purchase Agreement?

20 A. I wish I had those in front of me, but I
21 believe it has to do with the use of the
22 subcontractors, the association of business from the
23 current business -- or the business base customers
24 and -- just as a sort of a common sense logical kind
25 of viewpoint, the fact that we have virtually no

1 business from the legacy customers of Ron's Building
2 Materials would tell you that that's kind of the
3 case.

4 Q. Now, Ron's Building was previously owned
5 by Mr. Keel and his family, is that correct?

6 A. Yeah, but Chris was the main salesperson.

7 Q. And I believe you testified earlier that
8 you didn't have any industry contacts prior to
9 purchasing that business, is that correct?

10 A. Why would I? The idea was -- yes, that's
11 correct, you know. This was a -- this was an
12 investment, so, you know, that's what it is.

13 Q. And was it important to you to maintain an
14 employee who did have industry contacts?

15 A. Sure, absolutely.

16 Q. And regardless, you decided to decrease
17 Mr. Keel's pay and put him on commission after he
18 told you he didn't want to be on commissions?

19 A. Right, with the open-ended discussion that
20 never really happened.

21 Q. And those would be the discussions that
22 you said you had after you gave him written notice
23 of the decrease in his monthly salary?

24 A. Not written notice, but just because of
25 the fact that we immediately needed to do something

1 in order to accomplish the idea of putting him on
2 commission. That's just a matter of employment law
3 kind of thing, as you well know.

4 Q. I believe you testified just a minute ago
5 that you felt that Mr. Keel had breached the Asset
6 Purchase Agreement by soliciting customers. What
7 customers do you have knowledge of Mr. Keel
8 soliciting in violation of the Asset Purchase
9 Agreement?

10 A. Well, I would think whatever customers
11 he's currently using now.

12 Q. Do you know who those customers are?

13 A. I would think it would be Sherman
14 Construction, Creative Builders, Triangle
15 Construction.

16 Q. Do you have proof that Mr. Keel solicited
17 any of those customers?

18 A. Well, I don't have -- no, I don't have
19 anything other than to say that we believe he has
20 done jobs for them.

21 Q. All right. But sitting here today, you
22 just now testified you have no evidence to show that
23 Mr. Keel solicited those customers?

24 A. Are you asking -- I mean well, okay, so
25 you're saying technically the solicitation, I don't

1 lower than they traditionally were. And even as the
2 economy recovered in 2012 and '13, we didn't see a
3 huge increase in sales.

4 Q. But that period of time where you're
5 talking about where Mr. Keel was working for you,
6 there was a recession, correct?

7 A. Not in '12 and '13. They were actually
8 pretty good years in the economy.

9 Q. But I believe your testimony earlier was
10 that some less in sales you attribute to the economy
11 and the recession, is that correct?

12 A. Right, that would have been during the
13 depth of that 2009.

14 Q. My question is was that your testimony
15 earlier?

16 A. No.

17 Q. And so your claim in regard to your
18 allegation that Mr. Keel breached his duty of
19 loyalty to you is that the sales weren't what they
20 should have been -- or what you felt they should
21 have been, is that correct?

22 A. Well, that and then, also, just, I think,
23 in retrospect, again, the fact that we haven't been
24 solicited -- or we have not received -- been asked
25 to bid on projects from Creative Builders or anyone

1 like that might be the reason, also, you know, the
2 hospital, which we were doing business with, there
3 could be reasons for that in terms of -- I mean why
4 would they just go away? Why would they not contact
5 us and ask for, you know, us to bid?

6 Q. But when you say there could be reasons,
7 do you have proof that Mr. Keel was the reason you
8 weren't asked to bid on those?

9 A. No, that's just looking at it from a
10 common sense standpoint.

11 Q. So it's just speculation that Mr. Keel was
12 the reason you haven't been asked to bid on these
13 jobs?

14 A. Yes.

15 Q. Yes?

16 A. Yes. Also, again, we do have testimony of
17 his ex-wife.

18 Q. Okay.

19 A. And actually I was told by Mr. Magee again
20 that, you know, he actually told me that Chris never
21 really -- in his words, never really gave me his
22 full -- his full efforts.

23 Q. That was Mr. Magee's opinion?

24 A. That's right.

25 Q. Did Mr. Magee tell you that Chris told him

1 that correct?

2 A. Right.

3 Q. And that ultimately Chris terminated his
4 employment -- voluntarily terminated his employment
5 in 2013 when his salary was decreased, correct?

6 A. He did.

7 Q. Any other direct proof that he acted with
8 fraud when he entered into the Asset Purchase
9 Agreement with you in 2008?

10 A. No, I don't know that there's any proof of
11 fraud, you know, other than, you know, the things
12 we've talked about.

13 Q. But as you sit here today, what you just
14 talked about is not actual proof of that fraud, is
15 that correct?

16 A. I don't know.

17 Q. Again, Mr. Maides, I believe your
18 Complaint includes allegation that Mr. Keel failed
19 to use his contacts and expertise for the benefit of
20 your business. Is that your allegation?

21 A. Well, I think he kept the, as he calls
22 them, contacts and relationships very personal, and
23 did not allow the business to participate in the
24 growth of those relationships with the business.

25 Q. Do you have any proof of that, or are you

1 just guessing?

2 A. No, that's just -- I mean the proof is in
3 the fact that we don't do any business with the
4 legacy business base.

5 Q. That legacy business base you're talking
6 about, they've got the choice of who they use in
7 business, is that correct?

8 A. Of course they do, yeah.

9 Q. So if someone is no longer working at a
10 business, they can choose to walk away and no longer
11 continue doing business, is that correct?

12 A. That is correct. The same with
13 subcontractors, you know.

14 Q. And Mr. Keel was employed by your business
15 for approximately four years, wasn't he?

16 A. Yes.

17 Q. And during that time, you testified he was
18 making sales for your business?

19 A. He was.

20 Q. And were those sales with his industry
21 contacts?

22 A. Sure.

23 Q. So he did, in fact, work for the benefit
24 of the business using his expertise and contacts?

25 A. Well, I would think, yeah, to that level.

1 Q. Mr. Maides, one of your other allegations
2 contained in your Complaint against Mr. Keel is that
3 Mr. Keel executed long-term plans to compete against
4 your company improperly. What proof do you have
5 that he made those long-term plans?

6 A. I think that's pretty much, again, going
7 back to the testimony of Ms. Keel.

8 Q. So hearsay comments Ms. Keel has made
9 against her ex-husband?

10 A. I think a lot of it has to do with that,
11 yes.

12 Q. Mr. Maides, at any time prior to filing
13 your Third-Party Complaint, have you sought any
14 injunction against Mr. Keel?

15 A. No.

16 Q. By way of your lawsuit, you are claiming
17 against Mr. Keel, is that correct?

18 A. Probably so, yes.

19 Q. And what specific damages are you claiming
20 against Mr. Keel?

21 A. I think it was the purchase price.

22 Q. So the damages you're saying seeking in
23 this case are in regard to the purchase price for
24 the business you currently own?

25 A. That's probably correct.

1 Q. Tami Keel, I believe we talked about that.
2 You understand that's Mr. Keel's ex-wife?

3 A. I do.

4 Q. Okay. How did you come to be in contact
5 with Ms. Keel?

6 A. She contacted me.

7 Q. Do you know why she contacted you?

8 A. I don't know why. She said it was her
9 conscience, and it was like after Chris left that
10 she did that.

11 Q. So this is the ex-wife you understand that
12 they went through a litigious divorce?

13 A. I understood that.

14 Q. Is there an understanding on your part
15 that Mrs. Keel is still angry with Mr. Keel?

16 A. I don't know, but I would think so, yeah.

17 Q. I believe you also listed Robert Brooks as
18 a witness in this case. What specifically do you
19 contend Mr. Brooks is a witness to?

20 A. Robert Brooks?

21 Q. Do you know who Robert Brooks is -- or
22 Brooks Roberts, sorry. Who is Mr. Roberts?

23 A. Robertson.

24 Q. Robertson?

25 A. Yes, he was just an ex-employee of the

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

CJR Resources, Inc. f/k/a Ron's Building
Materials, Inc.

Plaintiff,

v.

Commercial & Industrial Floors, Inc., et al,

Defendant/Third Party Plaintiff,

v.

Christopher M. Keel,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

C.A. NO: 2013-CP-23-05778

**MOTION AND ORDER INFORMATION
FORM AND COVER SHEET**

FILED
GREENVILLE, S.C.
PAUL D. JENSEN
2015 DEC 31
PM 4 20
CLERK OF COURT

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☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**

☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**

☐ **PROPOSED ORDER/ CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type☒ Written Motion Attached☐ Form Motion/Order

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

Signature of Attorney for 317074 ☐ Plaintiff / ☒ Defendant 12/31/2015 Date Submitted**SECTION III: Motion Fee PLAINTIFF**☒ PAID - AMOUNT: \$ 25.00☐ EXEMPT:☐☐☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication☐ 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: _____ Dated Filed: _____

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

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
CJR Resources, Inc. f/k/a Ron's Building)
Materials Inc.,)
Plaintiff,)
v.)
Commercial & Industrial Floors, Inc., et al,)
v.)
Christopher M. Keel,)
Third-Party Defendant,)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C.A. NO: 2013-CP-23-05778

MOTION TO ALTER OR AMEND
JUDGMENT

FILED
GREENVILLE CO. S.C.
PAUL R. MILLER
2015 DEC 31 PM 4 20
CLERK OF COURT

Defendants/Third-party Plaintiffs, Commercial & Industrial Floors, Inc. and Dabney R. Maides (collectively, "CIF"), pursuant to Rule 59(e), South Carolina Rules of Civil Procedure, hereby file this Motion to Alter or Amend Judgment. A hearing was held before the Honorable Edward W. Miller on November 3, 2015 on Plaintiff and Third-party Defendant's motions for summary judgment. On December 16, 2015, the court entered an Order granting those motions. CIF received written notice of said entry by mail on December 21, 2015. CIF respectfully requests the court to reconsider its grant of summary judgment and to reverse its previous ruling upon review of the entire record and particularly the matters taken up in this motion.

CIF submits the following for the court's consideration¹:

¹ This case is a dispute of a \$1,250,000.00 contract for the purchase of Mr. Keel's former company, as well as many thousands of dollars lost from contracts awarded to Mr. Keel's company instead of CIF. Dabney Maides is personally indebted to Wells Fargo for that purchase money, over \$700,000 still owed, and with Wells Fargo currently threatening imminent collection efforts through its attorneys at Parker Poe. This lawsuit turns upon the disputed facts on the record as a whole, and given these extraordinary consequences at issue, CIF and Mr. Maides

Standard of Review

"The grant of summary judgment is proper only when it is clear there's no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. In determining whether any triable issues of fact exist, the court should construe all ambiguities, conclusions, and inferences arising from the evidence most strongly against the moving party. Even when there is no dispute as to evidentiary facts, but only as to conclusions or inferences to be drawn from them, summary judgment should be denied. It is dependent upon the existence of plain and undisputable facts upon which reasonable minds cannot differ." *Allen v. Long*

Therefore, the **only** way summary judgment can be granted is if

- 1) it is **clear** that there is **no** genuine issue of material fact; **and**
- 2) the moving party is entitled to judgment as a matter of law.

From that two-prong requirement, the standard provides further instruction upon how to determine whether there are triable issues of fact under the first prong:

All 1) ambiguities, 2) conclusions, and 3) inferences from the record are to be construed most strongly against the moving party (the Plaintiff/Third-party Defendant in this case). And the moving party must show **plain and undisputable facts upon which reasonable minds cannot differ**.

CIF 'breaks down' the standard with certain emphasis added because CIF respectfully asserts that an application of the summary judgment standard, which is very burdensome against a moving party, necessitates a different result. CIF respectfully submits that the court may have inadvertently overlooked some key facts and inferences addressed in oral argument, CIF's sworn testimony by affidavits, certain affidavit exhibits, and Chris Keel's sworn testimony by deposition, all of which contain various facts or evidence leading to reasonable inferences which require denial of summary judgment.

The Order, of course, addresses the standard of review on page 6 and 7. In large part, CIF agrees with the court's legal framework. The court cites that it must find there is *no* genuine issues of material fact (emphasis added). The court cites the requirement that the court must find that plain, palpable, and undisputed facts exist on which reasonable minds cannot differ

implore the court to examine the 2 sworn affidavits of Mr. Maides, the transcript of the hearing, and Mr. Keel's deposition in this decidedly complex case, while examining whether no reasonable minds could differ as to the facts.

(emphasis added). The court also cites that the function of summary judgment is to expedite cases where the services of a fact finder aren't necessary. CIF agrees with all of these citations and rules of law as consistent with its analysis above, with specific additional reference to its strong opinion that a fact finder is absolutely necessary to this case.

On the other hand, the court cites *Oblachinski v. Reynolds*, 391 S.C. 557, 706 S.E.2d 844 (2011) for the proposition that summary judgment is appropriate when a Plaintiff cannot meet the burden of proof as to every essential element of the causes of action alleged. CIF respectfully submits to the court that the Oblachinski court did not state that in any fashion. Specifically, the Oblachinski court was concerned with one issue only – a question of law as to whether a particular individual owed a legal duty to another individual. The standard of review was specifically stated as follows in its entirety (begin exact quotation from opinion):

STANDARD OF REVIEW

When reviewing the trial court's decision to grant summary judgment, an appellate court applies the same standard applied by the circuit court. *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002). Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law. Rule 56(c), SCRCP; *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). "In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the nonmoving party." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). A motion for summary judgment on the basis of the absence of a duty is a question of law for the court to determine. See *Doe v. Greenville County Sch. Dist.*, 375 S.C. 63, 72, 651 S.E.2d 305, 309 (2007) (recognizing that whether a duty exists is a question of law for the courts).

CIF therefore respectfully disagrees with the Order's recitation of *Oblachinski* and submits that it was inadvertently cited (understanding, of course, that the Order was prepared by CIF's opposition).

In sum, CIF requests that the court review the following and referenced documents in hopes that the court will recognize numerous genuine issues of material fact and the conclusions and inferences drawn in favor of CIF that could have easily been overlooked in this substantial record with numerous issues.

Initially, CIF requests the court review the attached Exhibit A. Exhibit A is an outline prepared by CIF's counsel highlighting numerous facts as well as legal support addressed in oral argument. This is provided for ease of reference as the court reconsiders the matters ruled upon. CIF respectfully asserts that when a most favorable view to CIF is given, with ALL conclusions and reasonable inferences resolved in CIF's favor, and when all disputes of fact are construed most strongly against the moving parties, this record requires that the case be held over for trial and not summarily adjudicated against CIF at this stage. In addition to the outline of Exhibit A, CIF attaches the filed transcript from the hearing. Because the transcript is only prepared upon request of a party, CIF requests its consideration as well given the length and complexity of the issues that were before the court in the November hearing.

Having addressed the significance of the standard of review and calling attention to the outline and transcript attached, CIF now turns to the primary issues and addresses certain factual and inferential support located throughout the record.

1. Breach of Duty of Loyalty

In the court's Order granting summary judgment, it comprehensively addresses the law on an employee's duty of loyalty. The court rightfully states that a party may recover from an employee who fails to "remain faithful to the employer's interest throughout the term of employment," or when an employee "works to compete against the employer while still working for the employer," or when key employees "...contacted...customers of current employer to start a competing company...." However, following the legal framework, the Order continues further to find facts against CIF. The Order, in substantial detail, not only does not recognize the existence of disputed fact, but it actually FINDS FACTS in favor of the Plaintiff/Third-party Defendant. (Order, p. 16). This was inadvertent error, as the court overlooked the following:

a. Maides' Affidavit filed October 30, 2015 contains testimony and exhibits that require denial of summary judgment for his cause of action for breach of duty of loyalty.

i. Exhibit 3 to the affidavit. Mr. Keel worked for CIF until May 31, 2013 as an employee. On May 21, 2013, Keel bid (and was awarded soon after) a job through Triangle Construction for the Bavarian Pretzel Factory. Also on that date he was communicating with Triangle Construction regarding at least 2 other flooring jobs (he was awarded those jobs, too, as well as 2 others after that). The documents prove this occurred before he quit CIF. This is conclusive fact and substantial inferential evidence of disloyal conduct and summary judgment should have been denied.

ii. Paragraph 8 of that affidavit refers to a Duradek job that CIF was working on getting before Keel left CIF's employ. When Keel left, CIF didn't end up with the job – Keel did, as evidenced by Exhibit 5 to the affidavit, an email from Timothy Shepherd confirming that he worked on that job for Keel's company. From these facts, reasonable minds certainly can infer disloyalty when applying the standard of review which highly favors the non-moving party. All must be resolved in CIF's favor.

iii. In paragraph 15 of the same affidavit, Mr. Maides asserts that his primary installers/subcontractors became unavailable to him immediately upon Keel's quitting CIF, another adverse consequence to CIF. And Keel stated in his deposition that he uses the same installers and always has (Keel deposition p. 93, ln 11-16). The immediacy of these consequences makes an inference of Keel's disloyalty reasonable as well.

Clearly, the first instance above is the most apparent and glaring, but every example cited alone should have required this cause of action to proceed beyond summary judgment.

2. Breach of Contract

The Order's treatment of CIF's cause of action for breach of contract is similar to its treatment of the duty of loyalty cause of action, and CIF requests the grant of summary judgment be reversed. The Order, on pages 13 and 14, FINDS FACT based upon the opposition's recitation of facts they wanted adopted by the court. The Order suggests that the entire case has been heard as if a full trial and that the fact finder has ruled upon the evidence and determined what facts were true. On these pages of the Order, material facts are adopted by the court when there is clear dispute of those facts on the record. Specifically, the Order states "CIF has submitted no actual proof of any such alleged competition or solicitation." The record reflects that is simply incorrect and an inadvertent oversight of the court.

Maides' affidavit and its exhibits offer documentary evidence of competition/solicitation (see exhibit 3 and Triangle Construction as discussed fully in (1) above). Also, virtually every paragraph in that affidavit is evidentiary as to this cause of action. It is best referred to in its entirety rather than re-quoted in full. Notwithstanding that fact, the affidavit specifically references damages by losing a Duradek job and a Triangle job. Mr. Maides also references a number of jobs Keel received after soliciting them while still an employee. Mr. Maides also testified that he lost his installers due to Keel. Any one of these facts should be enough to withstand summary judgment under its highly burdensome standard against the moving party. In contrast, in a trial on the merits, the burden of proving facts to the adoption of the fact-finder will be paramount, after live testimony, cross examination, documentary examination and the like,

but at this stage and under this standard, with all conclusions and inferences from the entire record to be resolved in CIF's favor, this cause of action should have survived the motion.

3. Fraud in the inducement/Breach Accompanied by Fraudulent Act

CIF addresses both of these causes of action because the Order granted summary judgment primarily on its conclusion that the record contained no evidence sufficient to meet the summary judgment standard for fraudulent intent, fraudulent act, or fraudulent representation (Order p. 14-15, 17). CIF submits that several key pieces of evidence on the record from which conclusions and reasonable inferences could be drawn to show fraudulent acts, intent, and representation. Taken in turn:

- a. The Asset Purchase Agreement (APA) of July 17, 2008, Article 3.2 specifically states that Keel shall be subject to a one year employment contract. That language is undisputed. It is further undisputed that Keel quit employment barely more than a month after that, in late August, 2008 as stated in the Order. It is also undisputed that Keel knew he was subject to a 5 year noncompete, that he agreed he was bound by that noncompete, and that he knew he had to stay until the 5 years expired (Keel deposition, p. 98 ln 17-21). Keel also admittedly took his installers from CIF immediately to work for him, contracted in competition before even quitting his employment, and immediately had numerous contracts after quitting (see details in Duty of Loyalty section above, and Maides' affidavit and exhibits).

From all of these facts on the record, with all reasonable inferences drawn and viewed most strongly against the moving party, a fact finder could reasonably infer a fraudulent intent from the very beginning, and that his

representations under his APA noncompete and his employment agreement were false and knowingly so made.

- b. August 10, 2010 invoice from Smith Moore Leatherwood to CIF. This document was admittedly STOLEN by Mr. Keel, as Keel's attorney states in footnote 4 of Keel's brief: "This document was left out in the open in CIF's office and readily accessible while Keel was still an employee of CIF."

In this litigation, this document was not in CIF's possession; rather, this document was produced by Keel only two days before the summary judgment hearing. Counsel for Keel downplayed the theft by justifying it – "was left out in the open." That does not matter. Mr. Keel, while an employee, not only STOLE a legal bill that was not his, but he also has held that legal bill for over 4 years only to produce it at this time.

Why would a person steal a legal bill in 2010, a bill which also made no reference to you personally, and then purposefully save it for years? A reasonable inference of fraudulent intent and action can and should be drawn in CIF's favor here under the applicable standard, particularly combined with all of the above attendant evidence on the record.

- c. Maides' October 20, 2015 affidavit paragraph 10 – Tami Keel, Mr. Keel's ex-wife, called Maides and specifically told him Keel intended to just "ride out his time." From this statement, an inference of Mr. Keel's intent may be reasonably drawn when viewed most strongly against the moving parties. (The Order suggests 'hearsay'; however, when subpoenaed as a witness, Ms.

Keel's statement is not hearsay but a statement of a party opponent, and admissibility is not at issue at this stage).

In light of the above, CIF respectfully suggests that the record evidence presents numerous genuine issues of material facts, and the inferences derived from all the evidence noted should satisfy the summary judgment standard.

4. Noncompetition Agreements

There are two noncompetition agreements in this case – one contained in the APA, and one separately contained in the Employment Agreement. The Order finds as fact that the APA noncompete and the Employment Agreement are “essentially the same.” (Order, p. 10-11). That finding is incorrect. The Noncompetition Agreement of 7.1(a) states that the Seller and Shareholder covenant not to”own, manage, operate...the building supply and flooring installation lines of business....” All of the law cited in the Order relates to employer/employee relationships, not Buyer/Seller relationships. South Carolina law clearly has recognized as valid both 5 and even 10 year noncompetes in sales of businesses. *Smoak v. Carpenter Enterprises, Inc.*, 460 S.E.2d 381, 319 S.C. 222 (S.C., 1995); *Condon v. Best View Cable Vision, Inc.*, 355 S.E.2d 7, 292 S.C. 117 (S.C. App. 1986). As a matter of pure precedent, CIF respectfully submits that the court erred in granting judgment as a matter of law that such covenant in the APA was unenforceable. Further, Mr. Keel stated that he was subject to these noncompete/nonsolicitation terms and did not dispute their enforceability (Keel deposition, p. 35, ln 15-19; p. 98, ln 19-21).

Further, in section 7.1(b), the Seller and Shareholder agree to specific restrictive covenants against solicitation for a period of 5 years after Last Date of Employment. It is undisputed that the last date of employment for Chris Keel was May 31, 2013. Again, this

restrictive covenant is made between the Seller (Ron's Building Materials, Inc.) and the Shareholder (Ron Keel, Joyce Keel, and Christ Keel). It was binding upon all those parties, and all parties are subject to the consequences of violation. The 7.1(a) and 7.1(b) covenants are part of the sale of the business, not part of the employment agreement. Thus, because SC law does not forbid 5 year restrictive covenants in sales of business, and because the record reflects agreement to those terms, again with the standard requiring all conclusions and reasonable inferences to be resolved in favor of CIF, CIF suggests the motion should have been denied.

It is also critical to note section 7.1(d) of the APA states that "This Article VII is reasonable and necessary to protect and preserve Buyer's legitimate business interests and the value of the Assets and to prevent any unfair advantage conferred to the Seller." Both parties equally participated in the negotiation and drafting of the APA (See APA 9.3). And the parties, in freedom of contract, contractually AGREED to the noncompete/nonsolicitation's REASONABLENESS. Yet the moving parties then came to the court requesting the court to hold that the terms were unreasonable.

Also in 7.1(d), the parties agreed that the court had the power to make modifications to the terms of 7.1(a) through (c) if the court determined as a matter of law that any term would otherwise be unenforceable. It allows for the court to reduce scope or duration to make the covenants enforceable. Thus, the covenants should not have been entirely and summarily dismissed as unenforceable for the following reasons: 1) the law supports these terms as enforceable; 2) the agreements were binding to Seller and the Shareholders per the APA, NOT the Employment Agreement; 3) the parties specifically contracted their agreement as to the reasonableness of the covenants; and 4) in the face of last resort, the court was contractually authorized to modify the covenants to a point of enforceability.

All of these facts and evidentiary points of reference, at the very least, raise critical disputes of material fact. And as reasonableness is a key determinative factor, and because these covenants should be able to be deemed unenforceable as a matter of law per precedent and per the APA language, under the standard of review exceptionally favoring CIF in all conclusions, inferences, or ambiguities, any and all must be resolved in CIF's favor. CIF therefore requests the court reconsider these matters.

The Employment Agreement was agreed to by Mr. Keel and he admitted to being bound by its terms (Keel deposition p. 35, ln 11-14). Thus, he admitted and agreed to be bound by the 5 year noncompete contained within that employment agreement. As 'reasonableness' is a critical component of a noncompete's analysis, CIF submits that 1) his unqualified agreement that he was bound by the terms; and 2) the fact that he received \$500,000.00 at the closing table in selling his business easily allow inferences or conclusions to satisfy the reasonableness test for purposes of the motion. Further, as argued at the hearing, there is no SC law, and none cited in the Order, which expressly makes 5 year noncompetes unenforceable; rather, they are considered on a case by case basis.

Secondly, the Employment Agreement, which is a part of the record, has very important provisions which CIF submits requires the denial of summary judgment. First, section 11 ("No Strict Construction") states "The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party." By this language, there is complete mutuality of intent in the language. That is a very different situation from an employee who must sign a non-negotiable noncompete as a condition of employment. The inclusion of this term leads to the following: 1) the indisputable fact that the parties intended all of the language and the terms in

the Employment Agreement; 2) a strong inference that “No Strict Construction” was included for the purposes of eliminating the normal “strict construction” applied against employers. In any event, any conclusions, ambiguities, or reasonable inferences must be resolved in CIF’s favor.

Section 10, “Severability”, not unlike in the APA, specifically provides the court with authority to “reform” the restrictive covenants if it deems necessary to make them legally enforceable, such that the noncompete should not have been determined invalid as a matter of law.

Section 8, “Survival”, states that the noncompete and its terms shall survive and continue in full force and effect notwithstanding any termination of Employment. Read in connection with Section 8, Section 6 states that the noncompete applies as long as the employee is employed by the Company. Keel was employed by CIF until May 31, 2013. Despite him quitting only one month after the sale of his business, he returned to work four months later, in January, 2009, and per Section 8, the noncompete survived.

Also, Mr. Maides affidavit, exhibit 4, is a letter from Ideal Business Solutions to Mr. Keel stating his new compensation terms of employment upon his return in 2009. The letter specifically reads, “This agreements refer to an additional non-compete previously signed.” Certainly CIF’s opposition asserted that such language did not make the previous non-compete part of the new terms of employment, and the Order so found. However, at the very least, there is an ambiguity when any reasonable mind COULD conclude from that language that the earlier non-compete would be in effect and incorporated into the terms stated in that letter. And all ambiguities, certainly contained here, must be resolved in CIF’s favor for the motion. The inferences and conclusions reasonably drawn, particularly when combined with the other

sections of the agreement noted above, when resolved in CIF's favor, should have required a denial of summary judgment.

5. APA time-barring of remedies

CIF submits that the court inadvertently ruled that the APA's limitation on claims time-barred all of CIF's claims. The Order holds that Article VIII of the APA barred any claim of CIF against Seller or Shareholder (including Keel) of any sort unless such claim was brought within 1 year from July 2008. CIF submits that the findings of fact and law were not sustainable under a summary judgment standard.

Article VIII provides two sets of claims that it states are subject to a one-year time period following the closing: 1) a covenant or obligation to be performed or complied with **prior** to the Closing Date; and 2) a **representation or warranty**.... (See Order p. 8, or APA p. 15). As to (1), that term clearly applies only to claims related to things to be performed before the closing date. CIF has not alleged any obligations before the Closing Date were violated, so that section has no application here. As to (2), it refers to "representation or warranty." Representations or warranties are a specific section in the APA – Article IV (see p. 8-13 of the APA). CIF is also not suing on any of those representations or warranties. CIF's actions relate to the noncompete in section VII and every other claim relates to common law actions resulting from Keel's conduct years later. Thus the limitations in Article VIII are not applicable.

Here again, for purposes of summary judgment and the applicable standard, all inferences or ambiguities must be resolved in CIF's favor. As a practical matter and logically, the parties certainly didn't intend to create a situation where Keel was 'legally allowed' to injure CIF after 1 year without any concern for liability, thus lending further inferential value to the evidence in favor of CIF. At the least, the APA language creates questions of fact and intent which must be

resolved in CIF's favor insofar as the motion itself is concerned. In conclusion, such matters are for the services of the fact finder after full exploration of the evidence in a trial on the merits.

6. Statute of Limitations

CIF respectfully submits that the record contains numerous pieces of evidence that would disallow a grant of summary judgment to the moving parties. CIF accepts the 3 year statute of limitations and the application of the discovery rule. Prior to addressing the record evidence directly, however, consider this analogy throughout the court's consideration of the issue. An individual is physically punched by 'a friend' today, and a few months later, the friend apologized, and they proceeded to get along for several years with nothing adverse. More than 3 years later, the 'friend' punches him again, and then punches him again days later, and then again, and so on. Does it follow, then that the 'friend' that punched one time years ago and wasn't sued for it was then allowed freedom from any consequences to punch the fellow whenever he chose at the expiration of 3 years? Of course not, and the same is true in the present case.

Dabney Maides affidavits and exhibits repeatedly allege injurious action on the part of Mr. Keel occurring from May 21, 2013 moving forward, breaching loyalties by contracting with other parties, breaching solicitation covenants and competition by engaging in a competing business and by taking CIF's installers, and by continuing an ongoing competing business, with every new contract, every theft of customer or subcontractor constituting a new injury and new cause of action.

One may argue that when Mr. Keel quit his employment only one month after July 2008, a statute of limitations began to run. Had Mr. Keel not come back to work for CIF, if CIF suffered damages from his quitting, then he would have had a cause of action. But Keel DID

come back to work only a few months later and stayed until May 2013. As the Order states, the allegations of CIF were that Keel competed and solicited labor and customers and contracts (see Order p. 9). Maides' affidavits clearly state 1) he learned of competition ONLY after this lawsuit began, 2) Tami Keel told Maides' of Keel's intent from the beginning ONLY after this lawsuit began, and 3) the injurious actions complained of relate to breaches of loyalty and competition that occurred immediately prior to his quitting in May, 2013, or after May 2013 subject to a noncompete, which CIF asserts to be valid.

Again, there was no cause of action in 2008, and certainly not by 2009. Mr. Keel left work after a month, and he certainly could have caused damages to CIF had he so chosen. But at that time, Mr. Maides had absolutely no knowledge or nor reason to believe he had yet been damaged, and even if he had, such damage would only have related to that particular time period. However, Mr. Keel came back to work in 2009 and, insofar as Mr. Maides knew, worked for CIF until he quit. Mr. Maides was punched and punched and punched again, and every punch began a new statute of limitations, and because Mr. Maides of Mr. Keel's previous intentions and his ultimate conduct in 2013 arose in the spring and summer of 2013 (see paragraphs 5-16 of Maides' Oct. 30, 2015 affidavit, and paragraphs 1-7 of Maides' affidavit of May 14, 2014). Every one of these portions of sworn testimony offer conclusions and reasonable inferences to be drawn that CIF's causes of action against the parties arose in 2013, not 2008.²

7. Plaintiff's claims and Third-party Defendant's Counterclaims

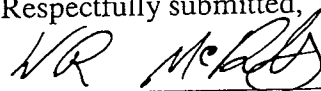
² The Order contains as a footnote the conclusion that a legal bill from 2010 would also have begun the statute of limitations. As a first matter, injurious and legally actionable conduct occurring after 2010 could not have any statute of limitations retroactively applied, as argued in the body above. Each civil wrong would constitute its own statute of limitations. More importantly, however, the legal bill submitted shows nothing more than a meeting with an attorney regarding the APA, the noncompete, and the termination documents. Two reasonable inferences may be drawn from that which would prevent a statute of limitations from beginning on any claim. First, one may infer that Mr. Maides was consulting about the details of those documents for explanation only. Second, one may infer that even if he were seeking advice regarding a potential claim, that he could have been advised that he had no actionable claims. Either inference must defeat summary judgment as to that issue and the statute of limitations.

In short, based upon all of the above, CIF submits that summary judgment should not be granted to the opposition on any cause of action due to CIF's defenses and counterclaims which it asserts should not have been dismissed by summary judgment. If its defenses/counterclaims are proven, they would necessarily serve as defenses to the opposition's affirmative claims. As such, CIF respectfully suggests to the court that summary judgment to such claims must necessarily be reversed if the court's reconsideration also determines to alter the judgment previously granted as requested.

8. Conclusion

CIF submits that the record more than sufficiently demonstrated conclusions, reasonable inferences, and ambiguities, all required to be resolved in CIF's favor, thus requiring the case to carry forward to a trial on the merits before a fact finder who will be charged with deciding whose versions of facts are right and whether each of the parties involved can meet their respective burdens of proof necessary for recovery. At this stage, however, CIF believes certain and critical evidentiary matters were inadvertently overlooked which would have, if noticed, led to a different decision on the motion. CIF therefore request such reconsideration and a reversal of the grant of summary judgment.

Respectfully submitted,



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Commercial & Industrial Floors, Inc., and Dabney Maides*

December 31, 2015
Greenville, South Carolina

Summary Judgment Transcript Summary of Material Facts Offered By CIF

I. Mr. Maides' Affidavits (pg. 17, lines 2-6)

- There were two affidavits submitted by Mr. Maides in this case: one submitted with regard to the motion to dismiss, and one submitted in response to the summary judgment motion that included certain attachments.

A.) Mr. Maides' First Affidavit (pg. 17, lines 8-25; pg. 18, lines 1-4)

**As background, please note that as part of his employment agreement Mr. Keel could not engage in a competitive business for a period of five years after he quit working for Mr. Maides (CIF).*

1.) It stated that "I was not being awarded contracts nor requested to provide services of any legacy customers."

- Chris Keel was the sole employee who had been working with these customers.
- At the same time, primary subcontractors became significantly less available to CIF.
- This led Mr. Maides to investigate further, and he learned that Chris Keel had taken on a Duradek contract in Columbia - this was one of the contracts Mr. Keel had been working on securing for CIF prior to quitting.
- Mr. Maides learned all of this information in June of 2013.

II. Noncompete Agreement (Temporal Breadth Thereof) (pgs. 18-25)

A.) If there was an absolute limit, there would be an absolute law. But there is not. It is to be interpreted per case. AND, it is a reasonableness standard - reasonableness of that time period. (pg. 18, lines 12-15, 18-19)

B.) Reasonableness (pg. 18, lines 20-25; pg. 19, line 1)

1.) As a practical matter, we would submit that reasonableness is a question of fact as a practical matter because it is a determination based upon the circumstances and facts as presented to them as to whether or not it would be reasonable.

C.) Supporting Case Law (pgs. 19-21)

*Both cases involved installment contracts where the buyer ended up stopping paying installment contracts, which is what happened in this case. Seller sells business, buyer buys business, buyer agrees to pay whatever he is going to pay. As part of the deal, a noncompete on the part of the seller is entered into - obviously there are good reasons behind this: why buy a business and spend all of that money if the seller is going to be able to go right out and compete? You're buying that protection, that goodwill. You're buying the ability to keep that

company going and making the money the way it was that gave it the value for sale in the first place. (pg. 19, lines 4-20)

1.) Smoak v. Carpenter Enterprises, Inc. (pg. 19, lines 21-25; pg. 20, line 1)

- Noncompete was 5 years
- Case turned on other issues - one can only assume that this was because the case was dealing with a unique situation, i.e. the sale of a business.

2.) Condon v. Best View Cablevision, Inc. (pg. 20, lines 1-9)

- Noncompete was 10 years
- Buyer stopped paying because they felt the noncompete was being breached.
- The Court reviewed everything and upheld the 10 year noncompete, but ended up finding in favor of the seller. The court applied the 10 year limitation, but could not find any evidence of breach of noncompete during the 10 year time period.

3.) Important Points Regarding These Two Cases

- It is reasonable to see (in these two cases) that there is a difference between hiring a guy who learns everything about the company and pricing, and quits or gets fired, and the situation we have here of the sale of a business and the noncompete is against the seller. (pg. 20, lines 12-16)
- Court's Position (pgs. 20-21)
 - Courts are concerned about impeding someone's ability to make a living. (pg. 20, lines 17-21)
 - In this particular case, Chris Keel took approximately \$500,000 from the table when the sale of the business took place, and had a guarantee for ½ of another \$200,000 to come to him in time. (pg. 20, lines 21-25)
 - Chris Keel said that he wanted out of the flooring business altogether, and he even started a wall business that he was having success with (which was not in competition with CIF). So upholding the 5 year noncompete would not be hindering Mr. Keel's ability to make money or exist. Additionally, Chris Keel admits that he is extremely well-connected with some very successful contractors, so getting business would not have been an issue for him. (pg. 21, lines 5-13)

D.) Severability of Noncompete (pgs. 21-23)

1.) We must separate the APA and the employment agreement

- The APA, in section 7, 7.1 addresses the noncompete nonsolicitation.

- The APA includes a direct noncompete clause from date of closing - July 2008, which would extend until July of 2013.
 - It doesn't matter if he quit and came back to work a hundred times, Chris Keel was always subject to the terms of the APA and as such, he was subject to the 5 year noncompete therein.
 - In his deposition, Chris Keel admits that he was subject to the APA, that he was subject to the employment agreement, and that he was subject to the noncompete of 5 years.
 - The APA also addresses the unemployment situation by stating that for a period of five years after the last date of employment the shareholder (Chris Keel) shall not directly or indirectly accept on behalf of Mr. Maides solicit competing business, cause, induce or attempt to cause any customer, etc. not to deal with him (which Chris did)
 - The APA also states that the shareholder shall not hire, retain, or attempt to retain any employee, former employee, or independent contractor of the buyer.
 - Chris Keel violated this one greatly as you can see from Mr. Maides' affidavit in which he states that he could not get any help from the usual contractors (who were all friends with Chris Keel) after Mr. Keel quit.
 - Mr. Keel also admitted this in his deposition. When asked who he currently uses as contractors he stated, "The same guys I've used for the last 20 years." When asked what their names were he replied, "They're the same ones he [Dabney Maides] had." (i.e. they're the ones who refused to work with Mr. Maides/CIF after Mr. Keel quit).

E.) Noncompete Severance Argument (pg. 23, lines 24-25; pg. 24, lines 1-7)

1.) We would argue that to the degree that that applies at all, any severance argument would only apply to the employment agreement that Mr. Keel signed independently (i.e. not the APA)

- Interesting to note that he signed, went to work for a month and a half, quit out of the blue, and came back to work two months later.
- Some inferences can be drawn from that, including intent, as a matter of fact.

F.) Letter From Ideal Business Solutions (pg. 24, lines 8-24)

1.) Goes into new numbers regarding Chris Keel's employment, but states that "This agreement refers to an additional noncompete agreement previously signed."

- If opposing counsel wants to argue that it says "refers" as opposed to "incorporates" and there is an intent situation there, the inference must be made in our favor.

G.) Issues of Fact (pg. 25, lines 4-6)

- 1.) Regardless of the disputes of fact as to whether or not the employment agreement cut off when Chris Keel quit, it is our position that it did not cut off, that it continued.

H.) Survival Clause (pg. 25, lines 6-11)

- 1.) Chris Keel's employment agreement had a survival clause in it which stated that notwithstanding any termination, the noncompete would survive. And he DID come back to work (after quitting, NOT being fired).

- It also says "From the end of employment," which was May of 2013.

III. Tami Keel Statements (pg. 25, lines 19-25; pg. 26, line 1)

- That Chris Keel planned "to do this" from the beginning.
- Opposing counsel will argue that she was just bitter over the divorce, but we argue otherwise. Regardless, it is a fact on the record that the statement(s) was made

IV. Evidence of Competition (pgs. 26-30)

1.) Subpoenas served to: Sherman Construction, Triangle Construction, Creative Builders, Bon Secours, and Cameron Construction.

- We were never able to serve Cameron Construction
- Bon Secours refused to reply
- Creative Builders said they couldn't access the files (software conversion issue)

2.) Chris Keel's Relationships with the above companies

- Sherman Construction - Chris has known that company his whole career - it was the first family he knew in the business from dad's relationship over 20 years ago
- Cameron Construction (Mike Mason) - Chris Keel has had a relationship with them for years, and Mr. Keel's mom still does their accounting.
- Bon Secours - came from Susan Crocker and Mike Mason, who Mr. Keel has known for years.
- Creative Builders - Will McCauley (owner) has been pals with Chris Keel since their days at Clemson

*By virtue of agreement between all counsel of record on this case (which is temporary and somewhat dependent on this motion), the parties agreed to limit my subpoena to records from 2008 to August 2013.

- For the record we do believe there's relevance going further out (to present), because we believe the noncompete is still in play

3.) Exhibit 1 - Letter from Creative Builders (owner Will McCauley has been friends with Chris Keel since college) and list of contracts awarded to Mr. Keel from November 2013 through September 2015.

a.) The letter states that due to a software conversion in July of 2013, they do not have the ability to access electronic records for their projects prior to 2013. It went on to state that they might be able to find paper records in a warehouse somewhere, but that it would cost a lot and they would expect to be compensated.

b.) List of contracts from November 2013 through September 2013

- o Please note: There is one contract awarded to Chris Keel that is dated September 1st - this is when the contract was awarded. The contract would have been bid plenty in advance of that date to be reviewed and awarded by September 1st.
- o Counting 5 years from the first time Chris Keel quit working for CIF and was subject to the 5 year noncompete would put us at August 13, 2013 (although we maintain that the clock starts on the noncompete on May 31, 2013). We believe this is evidence of a violation of the noncompete as Mr. Keel was bidding projects for CIF's customers during the period of time when he was subject to the noncompete.

4.) Exhibit 2 - Shaw Industries Purchase Order From Early 2009

a.) This purchase order has nothing to do with CIF

b.) The purchase order is for Sherman Construction and specifically references Chris Keel on it.

c.) This purchase order is from early 2009, a period of time when Chris Keel was not working for Dabney Maides (CIF). It appears (from this purchase order) that he was doing flooring work for Sherman Construction, or it could at least be reasonably inferred that he apparently did a flooring order for Sherman

Construction at this time.

5.) Exhibit 3 - Triangle Construction Contracts Awarded to Chris Keel

1.) Bavarian Pretzel Company - On May 21, 2013 Mr. Keel submits a bid for this job. He is still employed by CIF at this time. On June 18, 2013, less than a month after he quit working for CIF, he was awarded the job.

2.) Chicken Salad Chick - On May 21, 2013 Mr. Keel submits a bid for the job (which is for multiple locations), while he's still working for CIF. On June 18, 2013, there is more correspondence regarding his bid for this job. On June 27th he is awarded the contract for the Augusta Commons location of Chicken Salad Chick, and on September 5th he is awarded the contract for the Lexington location.

3.) Legacy Charter Gym - On May 22, 2013 Mr. Keel submits a bid for it, and on June 27th he is awarded the contract.

4.) Carolina Golf Association Office Building - On May 22, 2013 Mr. Keel solicits the work, and on June 27th he is awarded the job.

5.) East McBee - Mr. Keel is emailing about the job on September 19th, and was awarded the job on October 7th.

*In the above exhibits there are five communications for work from before he even left his employment with CIF, and that right there is really a motion for summary judgment for breach of duty of loyalty on our part because it's clear. We've got it in writing. He was working for them and cheating on them. There's five he was awarded less than three months after he left CIF in 2013.

6.) Other Evidence Still Out There

*Note: What we have presented is what we have received so far. There are still things out there from subpoenaed parties that haven't sent us anything back yet.

- o We believe that these documents, along with the cases that presented the standard of review that must be applied to this case, make it a jury case and we ask you to deny their motion.

1 State of South Carolina
2 County of Greenville

In the Court of Common Pleas

3
4 CJR Resources,)
5 Plaintiff,)
6 -vs-)
7 Commercial Industrial)
8 Flooring, et al.,)
9 Defendants.)

2013-CP-23-05778

November 3, 2015

Transcript of Record

10

11

12 B E F O R E:

13 The Honorable Edward W. Miller, Judge

14

A P P E A R A N C E S:

15

M. Stokely Holder, Esquire
16 Attorney for Plaintiff

17

William R. McKibbon, III, Esquire
18 Attorney for Defendant CIF

18

Courtney Celeste Atkinson, Esquire
19 Attorney for Third-Party Defendant Christopher Keel

20

21

22

23

Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

24

25

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 10:27 a.m.)

4 MS. ATKINSON: Good morning, your Honor. I'm
5 appearing on behalf of the third-party defendant in
6 this case, Christopher M. Keel.

7 Just by way of a little housekeeping, to start
8 with, your Honor, I think we had a few other motions on
9 the roster -- a motion to quash, motion for protection
10 from, I believe from the plaintiff and the third-party
11 defendant. Both of those have been resolved, so I
12 believe the only motions we actually have before the
13 Court this morning are the motions for summary judgment
14 by third-party defendant, Chris Keel, and the
15 plaintiff, CJR Resources, your Honor.

16 THE COURT: Okay.

17 MS. ATKINSON: Your Honor, in regard to the motion
18 for summary judgment filed by Mr. Keel, the third-party
19 defendant, just by way of a little background
20 information, your Honor, this entire case relates back
21 to the sale of a business previously known as Ron's
22 Building Materials that was sold in July of 2008. The
23 owner of Ron's Building Materials was a company named
24 CJR Resources, who is technically the plaintiff in this
25 action. The shareholders of CJR Resources were the

1 family members who owned the business, one of whom is
2 the third-party defendant, Christopher Keel.

3 In any event, that business was purchased by the
4 defendant third-party plaintiff CIF, Commercial
5 Industrial Floors, and its owner, Dabney Maides,
6 pursuant to an asset purchase agreement in July of
7 2008.

8 By way of that asset purchase agreement, it was
9 agreed that part of the sale price was going to be paid
10 up front with the remaining part secured by promissory
11 note to be paid out over a number of years. The asset
12 purchase agreement also contemplated the third-party
13 defendant, Mr. Keel, continuing to work with the
14 business in some fashion and also have some noncompete
15 nonsolicitation provisions that, your Honor, provided
16 for a period of five years that Mr. Keel and the other
17 shareholders could not compete or solicit business
18 anywhere in the state of South Carolina.

19 In any event, in addition to the asset purchase
20 agreement, the asset purchase agreement also referenced
21 an employment agreement that they had Mr. Keel sign as
22 part of his employment with the business. Mr. Keel
23 did, in fact, go to work for the business but left
24 within a few months. That employment relationship
25 severed, and it's our position that at that time the

1 noncompete that was in the employment agreement began
2 to run. That would have been in August of 2008.

3 Your Honor, the noncompete provisions set forward
4 in the asset purchase agreement itself, it's a little
5 confusing because there are restrictive covenants in
6 both of those documents that aren't exactly even in
7 regard to their terms, but the noncompete set forth in
8 the asset purchase agreement began to run, or at least
9 one of them did, from the date of closing, which would
10 have been July of 2008.

11 In any event, your Honor, Mr. Keel ultimately came
12 back to work for the business about six, seven months
13 later in January or February of 2009. He came back
14 under completely new terms, under new salary. They
15 offered him more money. And that was his reason to
16 come back. He had been going through a divorce and had
17 moved and just needed a change. But they offered him
18 more money, new terms, and he came back. When he came
19 back, he did not and was not asked to sign a new
20 noncompete or new nonsolicitation of any kind.

21 In any event, your Honor, the employment
22 relationship ended again in May of 2013 after the
23 defendant notified Mr. Keel that they were going to
24 decrease his salary to about a third of what they had
25 promised to pay him, and at that time he resigned his

1 employment, again at the end of May of 2013.

2 Almost immediately afterwards, CIF, the defendant,
3 stopped making payments on the promissory note that
4 were still due from the asset purchase agreement and
5 have not paid. Based on that, CJR Resources, the
6 plaintiff in this action, filed suit, I believe in
7 October of 2013, for breach of contract for the
8 defendant's failure to make those payments. And then
9 two months later, I believe in December of 2013, the
10 Defendant, CIF, and Mr. Maides filed their answer and
11 counterclaims and third-party claims bringing in claims
12 against Mr. Keel. And it is those claims against
13 Mr. Keel that Keel's motion for summary judgment are
14 related to, your Honor.

15 Specifically, they filed claims against Mr. Keel
16 for breach of contract, breach of contract accompanied
17 by fraudulent act, fraudulent inducement or fraud in
18 the inducement of the contract, breach of the duty of
19 loyalty, and I believe there was also a cause of action
20 for an injunction. And all the claims sought against
21 Mr. Keel relate back to the asset purchase agreement,
22 the original employment agreement that he signed back
23 in 2008, your Honor.

24 Your Honor, as the first grounds for our motion
25 for summary judgment in regard to the third-party

1 claims, that the statute of limitations on all of those
2 claims against Mr. Keel has run. As a very most basic
3 matter, the claims themselves that were filed in
4 December of 2013 specifically note throughout the
5 claims that Mr. Keel was breaching the agreements from
6 the very beginning of his employment. That tells us
7 that they knew or should have known and should have
8 discovered any claims they had against Mr. Keel back in
9 July or August of 2008. Regardless, their claims
10 against him were not filed until December of 2013, more
11 than five years later.

12 We did address -- we did address that matter in a
13 motion to dismiss early in this case. The Court said
14 that some discovery should move forward. We have now
15 completed discovery in this case. I understand that
16 the defendants are claiming that they didn't actually
17 know until later, didn't actually discover what was
18 going on until later.

19 Mr. Keel, when he was employed there, had a
20 document that was left on a work area that I believe we
21 have provided to the Court that shows that the
22 defendants did actually seek counsel about Mr. Keel and
23 his employment back in 2010. I believe it was in
24 August of 2010. So even if there's an argument that
25 they had backed off in their complaint that he began

1 breaching the agreement immediately upon beginning his
2 employment in 2008, certainly they understood in 2010
3 or they believed in 2010 that there was something
4 wrong, and they should have acted at that time.

5 In any event, even if you go from that date, it
6 was about three and a half years after that time that
7 they actually filed their claims against Mr. Keel. So,
8 again, we would argue that those are barred by the
9 statute of limitations.

10 In addition to that, your Honor, I would note that
11 in the -- I believe it's in the asset purchase
12 agreement, there is actually a remedy section. And I
13 believe the asset purchase agreement is attached to our
14 memorandum, your Honor.

15 THE COURT: Give me a second. Would that be
16 Exhibit A?

17 MS. ATKINSON: Yes, your Honor.

18 THE COURT: What page are you looking at?

19 MS. ATKINSON: Your Honor, it begins, I believe,
20 on page 16.

21 THE COURT: Okay.

22 MS. ATKINSON: And, actually, Section 8 begins on
23 page 15, your Honor.

24 In any event, Section 8 is in regard to remedies.
25 And it specifically, Section 8.4, sets forth time

1 limitations for certain claims that can be brought
2 under the asset purchase agreement. Specifically,
3 Sections A and B of 8.4 spell out that in the event
4 that the parties are bringing any suits or any claims
5 in regard to misrepresentations of any type made in
6 regard to the entry of this document, that notice of
7 those claims must have been made within one year of the
8 closing date. So, obviously, that would have been
9 before July of 2009.

10 Your Honor, I didn't note this in my brief, but I
11 do think it's important because the parties understood
12 when they signed the asset purchase agreement that any
13 claims related to representations or warranties at that
14 time had to be brought within a year. So any of the
15 claims that have been brought against Mr. Keel for
16 fraud in the inducement or for breach of contract
17 accompanied by a fraudulent act alleging that he
18 engaged in fraud in representations in signing this
19 agreement, they would have only had a year to do that.
20 Again, it's certainly been five years since the
21 agreement was signed, your Honor, so we do believe that
22 the statute of limitations bars all of the claims
23 against Mr. Keel at this point.

24 THE COURT: Without me reading the whole thing,
25 you're saying there's no statute of repose, no

1 discovery date? Is it a year from the date of the
2 signing of the agreement or date of discovery?

3 MS. ATKINSON: Yes, your Honor. The asset
4 purchase agreement says that they have got one year
5 from closing of the agreement, which was in July of
6 2008, to bring those claims.

7 THE COURT: Okay. All right.

8 MS. ATKINSON: All right. So, your Honor, that is
9 our motion on grounds of -- on that ground.

10 The second ground for our motion for summary
11 judgment on behalf of Mr. Keel would be that the
12 noncompete nonsolicitation provisions that are sought
13 to be enforced against Mr. Keel pursuant to these
14 claims are -- that those agreements are unenforceable
15 as a matter of law. As the Court is, I'm sure, well
16 aware, South Carolina disfavors noncompetes strongly
17 and requires that in order for them to be enforceable,
18 they must be reasonably limited and tailored in regard
19 to time and geography.

20 We would argue in this case that is certainly not
21 the case. Five years is certainly quite on the long
22 end, especially for a field like the construction
23 industry that is not such a specific, specialized
24 industry that you would need to cover for five years.
25 And, additionally, covering the entire state, his

1 inability to work in a field that he's only ever worked
2 in his entire professional life seems somewhat
3 unreasonable as well, your Honor. And there is case
4 law that we have cited that covering the entire state
5 is just, you know, that is just not what is seen as
6 reasonably limited in regard to geography.

7 Your Honor, in addition to that, our third ground
8 would be that we don't believe that there is evidence
9 to support each and every essential cause of action
10 that have been alleged against Mr. Keel. At his
11 deposition, CIS' own owner repeatedly noted throughout
12 that he doesn't know that he has evidence of things,
13 that he believes that Mr. Keel did certain things but
14 he doesn't know for sure, that he suspected, but it
15 could be just a downturn in the economy that resulted
16 in less.

17 With regard to saying that Mr. Keel was the reason
18 they weren't getting bids and that he was competing and
19 that's why they weren't getting bids, Mr. Maides
20 repeatedly acknowledged that it could certainly be an
21 entirely different reason. Instead, your Honor, their
22 entire case seems to be built on statements made
23 several months ago by Mr. Keel's former wife with whom
24 there was somewhat of a contentious divorce and some
25 hearsay statements she has made.

1 In any event, your Honor, we don't believe that
2 there's proof of any breach or any fraud. I can go
3 through all that individually, your Honor, but I do
4 believe it's in our memorandum. But, again, Mr. Maides
5 repeatedly acknowledged at his deposition that he has
6 no actual proof of most of the things.

7 When asked about certain claims and language
8 included in his complaint against Mr. Keel, he agreed
9 that the language was somewhat strong and that he would
10 not agree with certain allegations included in his own
11 complaint against Mr. Keel. In any event, your Honor,
12 we don't believe that the -- there is evidence to
13 support all of the claims against Mr. Keel, and we'd
14 ask for a summary judgment on those grounds as well.

15 Your Honor, I would note that I believe that the
16 deposition transcript from Mr. Keel's deposition has
17 recently been filed by the defendant in this case, and
18 I most certainly think they will try to argue that
19 Mr. Keel acknowledged that he does work for some former
20 clients of the business. In any event, your Honor, I
21 don't believe any questions were ever asked of him what
22 time frame that work was done. So certainly the mere
23 fact that he does work for former customers from the
24 business does not render him in violation of the
25 agreements, especially if they cannot prove that any

1 such work was done within the period of time where
2 these agreements would have been in place.

3 THE COURT: Well, is it your position that the
4 rehire --

5 MS. ATKINSON: Yes, your Honor.

6 THE COURT: -- I'm new to this, the rehire in
7 January 2009 severed the --

8 MS. ATKINSON: Absolutely, your Honor. He was not
9 asked to sign anything at that time invoking any new
10 noncompete nonsolicitation provisions at that time.
11 And also the terms of his employment were entirely
12 different. He was paid under an entirely different
13 setup. It was an entirely different employment.

14 THE COURT: What are the alleged violations?

15 MS. ATKINSON: Well, we're still trying to figure
16 out. At first they filed a document that said, look,
17 we've got these checks that say WPI. WPI was a wall
18 panel installation business that Mr. Keel did that the
19 plaintiff or the defendant acknowledged was not
20 competitive because they did not provide wall
21 installation.

22 The other allegation was that he installed a
23 Duradek project that the defendant again acknowledged
24 they did not have anybody authorized, and they were not
25 an authorized installer through Duradek to do that

1 work. So since they didn't provide that service, that
2 would not have been competitive either.

3 Beyond that, they're just saying, "We think he's
4 out there doing these things. We're not getting bids
5 anymore," you know, but they haven't put forward
6 anything to show that he actually did work in violation
7 within the period of time where he would have been
8 covered by the noncompetes to the extent they were even
9 enforceable, your Honor.

10 THE COURT: Okay. All right.

11 Mr. McKibbon.

12 MR. McKIBBON: May it please the Court, your
13 Honor.

14 THE COURT: Yep.

15 MR. McKIBBON: I think, your Honor, from
16 Ms. Atkinson's story, there is a lot of stuff in play
17 here.

18 THE COURT: Uh-huh.

19 MR. McKIBBON: I'm going to do my best to
20 compartmentalize the issues. The initial facts, as
21 stated by Ms. Atkinson, we agree. I'd like to just add
22 a couple more to flesh that out.

23 THE COURT: Sure.

24 MR. McKIBBON: This purchase, from Mr. Keel's
25 deposition, he and his parents started talking about

1 selling their business from around 2006. He did
2 ultimately sell in July of 2008. They had listed it
3 with a business broker, and my client, Mr. Maides, had
4 found it interesting and approached them. They had
5 their discussions. It took some time. He decided he
6 wanted to buy it.

7 He ultimately did so through loans with the SBA,
8 which are substantially underwater as we sit here
9 today. But the purchase price ended up being
10 \$1.25 million. So at the date of closing, \$1,050,000
11 was paid in cash, so Chris Keel left the closing table
12 with 49 percent of that money, and his parents left
13 that table with 51 percent of that money in cash. So a
14 little bit of difference, but, you know, about 500,000
15 apiece at closing. It was that remaining 200,000 that
16 was to be paid in installments over the years to come.

17 Ms. Atkinson did state correctly that Mr. Maides
18 stopped making payments on his installments in the
19 summer of 2013 shortly after Mr. Keel quit. And she
20 correctly stated that a couple months later her clients
21 sued Mr. Maides.

22 THE COURT: Not her client.

23 MR. McKIBBON: I'm sorry. I'm sorry.

24 THE COURT: Mr. Holder.

25 MR. McKIBBON: Mr. Holder's client, CJR

1 Resources --

2 THE COURT: Okay.

3 MR. McKIBBON: -- sued Mr. Maides for the balance.

4 And Mr. Keel -- Ms. Keel -- this doesn't really
5 come into play in the motion -- she testified in her
6 deposition that CJR Resources has maintained since the
7 sale of the company purely for the purposes of
8 accounting to measure the receipt of his payments, as
9 well as part of the sale deal was they were going to
10 get some accounts receivable that existed at the time.
11 So that's what CJR Resources did. It doesn't engage in
12 any active business functions.

13 And I should also state, too, with regard to our
14 counterclaims, to the degree that they relate to CJR
15 Resources, it's really only to the degree that Chris
16 Keel was a shareholder and owned the company with them
17 that sold such that he had the ability by his actions
18 to bind the company, agents of the company, therefore,
19 the counterclaims we felt had to go against Mr. and
20 Mrs. Keel as well. But that's the extent of the
21 relation there. This is really about us and
22 Mr. Christopher Keel.

23 THE COURT: Okay.

24 MR. McKIBBON: Okay. The -- I think -- I always
25 think it's very important in these matters that we just

1 review the standard of review of these, your Honor, and
2 I know that you're very familiar. But I really can't
3 say it any better than this. I'm just going to hand a
4 case up and just -- may I approach, your Honor?

5 THE COURT: Sure.

6 MR. McKIBBON: And it simply reads, your Honor,
7 that, "The grant of summary judgment is proper only
8 when it is clear there's no genuine issue of material
9 fact and the moving party is entitled to judgment as a
10 matter of law. In determining whether any triable
11 issues of fact exist, the Court should construe all
12 ambiguities, conclusions and inferences arising from
13 the evidence most strongly against the moving party.
14 Even when there is no dispute as to evidentiary facts,
15 but only as to conclusions or inferences to be drawn
16 from them, summary judgment should be denied. It is
17 dependent upon the existence of plain and undisputable
18 facts upon which reasonable minds cannot differ." And,
19 of course, mentioning that, your Honor, for the
20 purposes that I believe a lot of the things that we're
21 going to be talking about today, some are undisputable
22 facts, some require inferences, and all of those must
23 be looked at against the moving party in favor of my
24 client, which I think it's very important to point out
25 throughout this argument.

1 First, your Honor, Ms. Atkinson related to an
2 earlier motion to dismiss. There are two affidavits
3 submitted by my client in this case. There was one
4 submitted with regard to the motion to dismiss, and
5 there was one submitted in response to this motion with
6 certain attachments.

7 With regard to the first affidavit, I will point
8 out the following provisions: As a part of his
9 employment agreement, Mr. Keel could not engage in a
10 competitive business for a period of five years after
11 he quit. "I was not being awarded contracts nor
12 requested to provide services of any Legacy customers."
13 Mr. Keel was the sole employee who had been working
14 with these customers. At the time primary
15 subcontractors became significantly less available to
16 the company, being CIF.

17 This led me to investigate a bit further, and I
18 learned Mr. Keel had taken on an Duradek contract in
19 Columbia. This was one of the contracts Mr. Keel had
20 been working on securing for our company prior to his
21 quitting. I learned this in June of 2013. And at the
22 end he says, "I did discovery as -- undertaken until
23 after he quit." That's an affidavit from early on in
24 this case, your Honor. And it is the words and sworn
25 testimony of Mr. Maides. Therefore, and you will see

1 throughout this, there are tons of facts when it
2 relates to when Mr. Keel quit, the end of May 2013.
3 There's no doubt about him ending his employment
4 May 31st, 2013.

5 THE COURT: Well, I tell you what. Let's talk
6 about the overbreadth of the temporal and geographic
7 nature of the noncompete.

8 MR. McKIBBON: Yes, your Honor. Let's talk about
9 that. That's a very good point. Admittedly, when I
10 saw this, the temporal breadth caused me some concern.
11 I have done a lot of these cases. I point out, your
12 Honor, however, that if there was an absolute limit, it
13 would be an absolute law, and it is not. It is to be
14 interpreted per case. And it's a reasonableness
15 standard. And I would agree with some of the things
16 that Ms. Atkinson cited in her brief, some of these
17 cases. You see a lot of two and three's upheld.
18 That's for sure. Nevertheless, it is a question of
19 reasonableness of that time period.

20 We would submit that the reasonableness is
21 absolutely substantial enough and a question thereof to
22 submit this to a jury. As a practical matter, we would
23 submit that reasonableness is a question for the jury
24 as a practical matter because it is a determination
25 based upon the circumstances and facts as presented to

1 them as to whether or not it would be reasonable. That
2 being said, your Honor, we have got a couple of
3 interesting cases that I would also like to pass up.

4 Your Honor, these are two cases that involve a
5 sale of businesses and noncompetes. The first one is
6 *Smoke*. It involved a sale of business which
7 included -- these cases are pretty interesting because
8 they also involved installment contracts where the
9 buyer ended up stopping paying installment contracts,
10 which is exactly what we have here, after a period of
11 time. Seller sells a business. Buyer buys a business.
12 Buyer agrees to pay whatever he's going to pay. As
13 part of the deal, a noncompete on the part of the
14 seller is entered into. Obviously, there is reasons
15 behind this. Why buy a business and spend all that
16 money if the person is going to be able to go out there
17 and compete? You're buying that protection. You're
18 buying that goodwill. You're buying your ability to
19 keep that company going and making the money the way it
20 was that gave it the value in the first place.

21 The noncompete in the *Smoke* case was five years,
22 your Honor. The noncompete in the other was ten.
23 Neither of those issues was even blinked at. The cases
24 turned on other issues. And the reason for that, one
25 can only assume is it has to do with the fact that it

1 was a sale of a business. The court in the *Condon*
2 case, it went to -- it actually included the ten years.
3 It actually found for the seller, but the reason is it
4 went ten years out and said, We don't see anything
5 until after the ten years. It applied the ten-year
6 limitation to a sale of business and regards to an
7 installment contract that stopped paying. The reason
8 these people stopped paying is because they believed
9 that the noncompetes were being breached.

10 So those are two cases in South Carolina, your
11 Honor, that have a five- and a ten-year with regard to
12 sale of business, and I think that it is reasonable to
13 see the difference there between hiring a guy that
14 comes in, you know, applies for a job to be in sales
15 and learns your pricing, learns your customers, and he
16 quits or gets fired. It's different.

17 You know, there is another real big part here,
18 Judge, and that's a huge part of this is the Court
19 doesn't like them because the Court doesn't want to
20 take the ability away from somebody to earn a living
21 afterwards. Well, first thing, Chris Keel took
22 \$500,000 off the table when he left and had half of
23 200- coming to him. Of course payments got stopped.
24 That's number one.

25 Number two, through Alan's deposition, when asked

1 why he wanted to sell the business, he said he wanted
2 out of it. He was sick of that business. He wanted
3 out of commercial flooring. Now, he changed his mind,
4 but that's what he said.

5 Also Ms. Atkinson referenced the WPI business.
6 While he was doing this, he started a wall business and
7 got business doing that. And that was noncompeteable.
8 So he could have done other things. And some other
9 things I'm going to go into, you're going to learn how
10 he is extremely good friends and has some incredible
11 relationships with some very successful contractors
12 around here, and I'm sure he could have gotten business
13 with them, too.

14 THE COURT: Let me ask you about the severability
15 of the noncompete agreement when he was rehired in
16 January of '09.

17 MR. McKIBBON: Yes, your Honor. There are a few
18 things that really need to be addressed here because we
19 have got to separate the APA and the employment
20 agreement. This gets a little bit confusing.

21 The APA, in Section 7, 7.1, addresses the
22 noncompete nonsolicitation. And it does say, it has a
23 five-year -- says a couple things. There is a direct
24 noncompete of five years from the date of closing.
25 Okay. That's July 2008. To July of 2013. I don't

1 care if he quit and came back to work one hundred
2 times, he was always subject to the terms of the APA.
3 And he admitted that in his deposition. He admitted
4 that he was subject to the APA, and he admitted that he
5 was subject to the employment agreement, and he
6 admitted that he was subject to the noncompete of five
7 years. And I can make specific references if we need
8 to in the depositions. I've got those.

9 So you have got the APA, and it's got that part,
10 five from closing, which Mr. Keel mistakenly believed
11 that was the only thing he was liable for was that five
12 years from closing, which, incidentally, is when he
13 incorporated his new business in 2013. But further in
14 the APA, after you go from that part down below that,
15 it does address unemployment situation. And it says,
16 For a period of five years after the last date of
17 employment, shareholder, who was Chris in this, shall
18 not directly or indirectly accept on behalf of
19 Mr. Maides solicit competing business, cause, induce or
20 attempt to cause any customer, so on and so forth, to
21 compete, customer not deal with him, there's several of
22 those things.

23 And then there is another important one, too, on
24 the other page: Hire, retain, or attempt to hire or
25 retain any employee, former employee, or independent

1 contractor of the buyer. Well, he violated that one
2 like crazy because Mr. Maides used the subcontractors,
3 a group of four or five guys. In Chris' deposition --
4 well, in Mr. Maides' affidavit, he says that after
5 Chris quit, he couldn't get any help from these
6 independent contractors. That's in his affidavit. In
7 Chris' deposition, I asked him who he uses as
8 independent contractors. He says, "The same guys I've
9 used for the last 20 years." What's their names?
10 "They're the same ones he had." They're the same ones
11 he couldn't get in touch with the day Chris quit. Your
12 Honor, I've got some real --

13 THE COURT: Which was May of 2013; is that right?

14 MR. McKIBBON: He -- I'm sorry, I missed the first
15 part of your question.

16 THE COURT: You say he quit.

17 MR. McKIBBON: May 31st, 2013, is the agreed upon
18 date with his final paycheck being sent June 7th.

19 THE COURT: And the agreement was in August of
20 '08, right?

21 MR. McKIBBON: July. That was the APA. But I
22 need to get back to your original question about the
23 severance.

24 First of all, to the degree that that applies at
25 all, we would assert that any severance argument would

1 only apply to the employment agreement that he signed
2 independently. Of course, I have always found it
3 interesting that he signed this thing, went to work for
4 a month and a half and just quit out of the blue and
5 came back in two months. That seems a little bit
6 strange to us and still does. I think some inferences
7 can be drawn from that and intent, as a matter of fact.

8 But in the affidavit we filed last week, your
9 Honor, under Exhibit 4, this was a letter from Ideal
10 Business Solutions. You may be familiar with that
11 company. They provide certain services for businesses.
12 I think they do payroll and do talent searches and
13 things like that. I'm not sure of everything. But
14 this is a letter to Chris Keel saying your start date
15 will be January 26, 2009. It goes into new numbers.
16 You heard Ms. Atkinson reflect him going back to work
17 at the end of January and early February with new
18 numbers. And it also says, "This agreement refers to
19 an additional noncompete agreement previously signed."

20 Now, I know what they are going to say. They are
21 going to say, "This thing says 'refers.' It doesn't
22 say 'incorporates.'" But if there is an intent
23 situation there, it's going to be -- it will absolutely
24 be inferred from that what it meant.

25 Chris Keel doesn't fully agree that he -- that

1 this was the letter in his deposition that was given.
2 He said there were several iterations. I've looked for
3 several iterations. I've got about ten copies of the
4 same one. But, regardless, those are disputes of fact
5 as to whether it did or did not cut it off. Our
6 position is it did not, it continued. Not only that,
7 his employment agreement had a survival clause in it
8 which says notwithstanding any termination, the
9 noncompete would survive. And he did come back to
10 work. And let's not forget that it says, "From the end
11 of employment." End of his employment was May 2013.

12 Now, your Honor, Ms. Atkinson was also correct
13 about Mr. Maides' testimony of the limited evidence
14 that he had at the time of his deposition. In fact, we
15 were a little nervous about that because when he got
16 sued, he came to see me and we looked at things, and I
17 asked him questions. It's when this Duradek thing came
18 up, and that appeared like it was competition, and
19 that's how it kind of started. Then he talked about
20 Tammy Keel, Chris' ex-wife, calling him and saying that
21 Chris had planned to do this from the beginning. We
22 understand their position on that. It was a divorce.
23 She didn't like him. There was no love lost. Doesn't
24 matter. That was a statement that's been put in. It's
25 on the record, and it's a position that we believe

1 started this.

2 Now, post deposition of Dabney, we found out more
3 things. These were through subpoenas to contractors --
4 Sherman Construction, Triangle Construction, Creative
5 Builders. We tried to send one to Cameron
6 Construction. Could never get them served. They
7 wouldn't accept service personally, and we didn't use a
8 process server. And Bon Secours, who, for some reason,
9 still hasn't responded to us. But we did get some
10 responses. We got some from Creative Builders, we got
11 some from Sherman, we got some from Triangle.

12 This is particularly interesting. Within the
13 deposition, Mr. Keel's deposition, with regard to
14 relationships, when it came to Sherman Construction,
15 he's known that whole family and has -- it's the first
16 family he knew in the business from dad's relationship
17 with them over 20 years ago. Cameron Construction,
18 Mike Mason, the relationship goes back for years, and
19 Ron's Building Materials, all the way since the
20 beginning.

21 Incidentally, Chris' mom still does Mike Mason's,
22 Cameron Construction's, accounting. Bon Secours came
23 from a Susan Crocker and Mike Mason, known for years.
24 Creative Builders, Will McCauley is the owner. He
25 testified he's been pals with him since back in their

1 college days in Clemson. We didn't get much from these
2 folks. Triangle Construction said, "I don't have any
3 relationship with that owner." And, strangely,
4 Triangle gave us some really useful things. I'm going
5 to turn to those right now, your Honor, the affidavit
6 that we submitted, to show specific facts.

7 Exhibit 1, what we received from Creative
8 Builders. Oh, and I should state this. By virtue of
9 agreement, which is a temporary agreement sort of
10 dependent on this motion, the parties all agreed that
11 we would limit my subpoena to records from 2008 to
12 August 13. I believe there's relevance going further
13 out to the present because we believe the noncompete is
14 still in play. But for purposes of ease of gathering
15 those documents and so on and so forth, we agreed that
16 we would put that on hold unless and until it became
17 relevant. So this is what these are limited to.

18 Creative Builders sent us a strange letter the day
19 before we got it from the chief financial officer which
20 said, Due to a software conversion in July 2013, we
21 don't have ability to access records to our projects
22 before 2013 electronically. We might be able to, but
23 they would be in a paper warehouse and it would cost a
24 lot and we expect to be compensated. Nevertheless,
25 here is a piece of paper. And then they give us one

1 piece of paper, and I don't think they meant to give us
2 something to help us. And this shows all the contracts
3 they have given him since or presumably. And you've
4 got November 2013 to September 2015. But,
5 interestingly, there's one that's September 1st of
6 2013. That's a construction contract, your Honor. You
7 bid these things before. That's when it was awarded.
8 And we've got out to August 13th if the five years is
9 going to be granted from the time he quit the first
10 time, even though we believe it's from May 31st, 2013.
11 August -- before August 31st of 2013 everything is
12 game. So there's one violation because he was bidding,
13 seeking, prior to September 1st.

14 Next is Shaw Industries, your Honor. Shaw, we
15 didn't subpoena. In the course of this case, we found
16 a document which presumes to be a purchase order, has
17 nothing to do with CIF. It has only to do with Sherman
18 Construction, and it has Chris Keel's name on it. And
19 this was a period of time, that early 2009, where he
20 wasn't working for Dabney but he was doing work for
21 Sherman, or it could be reasonably inferred that he was
22 because it appears that he did a flooring order for
23 Sherman.

24 Exhibit 3, your Honor, and this is Triangle. I've
25 done an index, but it's all right behind it. Number 1,

1 Bavarian Pretzel Company, May 21st, 2013. Mr. Keel is
2 still employed by CIF. He's bidding that job.
3 June 18, 2013, less than a month after he quit my
4 client, he got that contract. Chick Salad Chick,
5 May 21, 2013, he's bidding that job while he's working
6 for my client. June 18th, more correspondence. He
7 gets the subcontract for Augusta Commons on June 27th.
8 He gets the contract for CSC Lexington September 5th.
9 Legacy Charter Gym, he's bidding it, soliciting it
10 May 22, 2013, gets it June 27th. Office building,
11 Carolina Golf Association, June 25th, gets it
12 October -- August 19th. East Magny (phonetic) he's
13 e-mailing September 19th. He got it awarded
14 October 7th. At least in there there's five
15 communications before he even left the employment, and
16 that right there really is a motion for summary
17 judgment for breach of duty and loyalty on our part
18 because it's clear. I've got it in writing. He was
19 working for them and cheating on them. But there's
20 five he was awarded less than three months after he
21 left in 2013.

22 Your Honor, that's just the evidence we've got
23 from them. There's still things out there from
24 subpoenaed parties that haven't sent us things back.
25 But we believe that all of those documents and the

1 cases that presented the standard of review that has to
2 be applied in this case, it makes it a tough case for
3 my client, but we certainly believe it's a jury case.
4 We'd ask you to deny their motion.

5 THE COURT: All right.

6 MS. ATKINSON: Your Honor, just very brief
7 response. What I would like to do is just read real
8 briefly just one sentence from the defendant's own
9 claims against Mr. Keel and specifically claiming that
10 he never -- basically the gist of all of their claims
11 against him were that he never intended to work for the
12 benefit of CIF and that he always intended to start a
13 competing business, despite the fact that he remained
14 employed there for a period of four years during which
15 time Mr. Maides testified he brought in business, made
16 money for them and was working for their benefit.

17 I would note that in regard to all this evidence
18 we've heard about he was bidding these jobs, competing
19 with while he was still working there, Chris was
20 bidding all these jobs for the benefit of his employer
21 while he was working there. At the end of May they
22 told him, "We're going to pay you a third less of what
23 our contract with you says we're going to pay you.
24 We're going to breach that contract and no longer pay
25 you that." He left. Admittedly at his deposition,

1 Mr. Maides admitted that he had no experience in the
2 construction field, that Chris did. Why in the world
3 they cut his pay and let him go and angered any of his
4 contacts out in the industry, that's on their company,
5 but wouldn't prove any act on the part of Mr. Keel in
6 competing or trying to take business from them.

7 But in any event, based on that, again, they note
8 in their allegations, "From the outset of Keel's
9 employment with CIF," which again was in July of 2008,
10 "It became apparent that Keel did not intend to lend
11 his expertise or contacts or customer base to the
12 benefit of CIF and that Keel had always so intended."
13 That puts us right back in 2008, five years before any
14 of their claims were filed, your Honor.

15 I would also note that in regard to the
16 reasonableness of the noncompete and the
17 nonsolicitation, your Honor, they're written in an
18 awkward way that creates this stacking position that
19 could have put presumably Mr. Keel, depending on how
20 long he worked for them, in a situation where they
21 extended for ten, 15 years.

22 Outside of this 30-year-old case that we looked at
23 that gave a ten-year, I have never seen that anywhere
24 else in South Carolina. In fact, recent trends towards
25 the court is to make sure these are reasonably limited

1 towards time, and specifically in regard to the entire
2 state, you know, we would have serious concerns with
3 that, your Honor.

4 THE COURT: Okay. All right.

5 Mr. Holder.

6 MR. HOLDER: Just briefly, your Honor. As the
7 Court and Ms. Atkinson mentioned, we also have our
8 motion, and I'll be very brief. In our opinion, your
9 Honor, the claims at issue or the counterclaims at
10 issue, I should state, against our client, plaintiff
11 CJR Resources, really start and stop, in our
12 estimation, with the asset purchase agreement.

13 If may I approach, I have highlighted the
14 pertinent sections. I flagged, as you can see, in
15 order starting from the top, and I think it's well made
16 clear and as it's stated in their general allegations
17 that are highlighted on that first noted page, the
18 employment agreement was made a part of and it states
19 here by the defendant themselves was a material -- a
20 necessary and material term to the asset purchase
21 agreement which is abbreviated as APA.

22 Going forward, your Honor, this is -- again, this
23 is the answer and counterclaim filed by the defendant.
24 And this is what Ms. Atkinson touched on earlier, but I
25 think it's important to flesh out. Under the section

1 3.2, employment agreement, there you can see the
2 reference to it, that being incorporated by virtue of
3 the exhibit noted there. Importantly, though, flipping
4 forward to the next tab, under 8.4, which is, again,
5 what Ms. Atkinson brought your attention to earlier, it
6 makes it very clear in there under Section A that --
7 and I'll state it: "Seller and shareholder will have
8 liability for indemnification or otherwise, in other
9 words any claim with respect to any breach of, one, a
10 covenant or obligation to be performed or complied with
11 prior to the closing date; or, two, representation or
12 warranty only if on or before one year after the
13 closing date. Buyer shall provide seller and
14 shareholder with a written notice indicating the buyer
15 is making a claim against the seller or shareholder
16 submitted under this agreement and sets forth the
17 factual and legal basis for such claim in reasonable
18 detail and the amount of such claim."

19 One other page, under the same Article 8, Section
20 8.7, it states very succinctly and clearly, 8.7,
21 Exclusive Remedy, "The indemnification provision set
22 forth in this Article 8 shall be the sole and exclusive
23 basis for a monetary remedy of buyer with respect to
24 any matter related to this agreement."

25 Flip forward one more section. I have it

1 highlighted there just to drill down on the same point
2 that the entire agreement also included the -- or, I'm
3 sorry, the employment agreement. Also, importantly,
4 under 9.3 under that same Article 9, it makes it clear
5 that both parties were represented by counsel during
6 the negotiations of this asset purchase agreement such
7 that both parties had the opportunity to negotiate on
8 all these provisions, but notably they didn't.

9 In fact, if you go back and look at the same
10 Article 8 Section A that I referenced earlier, the
11 converse of that would be Section B, which would be the
12 buyer's liability. And I think it's important to note
13 under Subsection B, note the distinction between
14 Subsection B(1) -- or, I'm sorry, Subsection B(2)
15 and -- I'm sorry. Just the difference between
16 Subsection B and Subsection A, there is no time
17 limitation that would come into play with respect to
18 the claims that the seller has made against the buyer.
19 I think that's important. Again, it drills down to the
20 fact that these provisions were negotiated with the
21 counsel of their separate attorneys. And, again, I
22 think that the claim starts and stops here, especially
23 with respect to my client, the plaintiff. I think it's
24 been admitted by defendant that all the evidence to the
25 extent there is any admissible evidence that's been

1 presented today in support of the claims against my
2 client, the plaintiff, would be that evidence that the
3 defendants have in support of their claims against the
4 third-party defendant, which I don't even think you get
5 to in a lot of these contractual provisions that all
6 the parties were part of. Other than that, your Honor,
7 I incorporate by reference Ms. Atkinson's arguments.

8 THE COURT: Anything else?

9 MR. McKIBBON: Briefly in response, as it applies
10 to that claim on the limitation of liability and the
11 APA, it says, "Liability for a covenant or obligation
12 to be performed or complied with prior to the closing
13 date." That's typical. That's saying if you did
14 something wrong before we closed. We're not saying
15 anything about before closing, so that's not there.
16 And other than that, it says, "Or a representation or
17 warranty." Well, the representation or warranty
18 section is Section 4, not Section 7. That's
19 noncompetition, noncompete. It's a totally different
20 section. That wouldn't apply.

21 Your Honor, I have to put one more thing on the
22 record and that's it. And that relates to something
23 from Mr. Keel's brief. I'll just go into it. The
24 document they referred to as this legal bill, a legal
25 bill from Smith Moore to my client, in a footnote

1 Mr. Keel admits that he got that because it was open
2 and accessible at the CIF office while he was employed
3 there. He absolutely -- he actually admitted stealing
4 a document that was a legal bill while he was working
5 there. But I just want that on the record.

6 THE COURT: Okay. Anything?

7 MS. ATKINSON: Your Honor, I would say any
8 argument about stealing when something is left on a
9 desk and it has your name on it and it's clearly
10 addressing you --

11 MR. McKIBBON: His name is not on it.

12 MS. ATKINSON: Your Honor, it was clear from this
13 document. Mr. Maides testified he was the key
14 employee. They all work in the same office. There was
15 nothing improper done in looking at a document that
16 clearly referenced him that was left out for him.

17 THE COURT: Okay. Well, guess what. I'm going to
18 take some time to review all that and get back to you.
19 Okay?

20 MR. McKIBBON: Thank you, your Honor.

21 MS. ATKINSON: Thank you, your Honor.

22 (WHEREUPON, the hearing ended at 11:13 a.m.)

23 ***END OF REQUESTED TRANSCRIPT OF RECORD***

24

25

FILED-CLERK OF COURT
STATE OF SOUTH CAROLINA GREENVILLE IN THE COURT OF COMMON PLEAS
PAUL B. WICKENS
COUNTY OF GREENVILLE
2016 JAN 14 PM 3:04
C.A. NO: 2013-CP-23-05778

CJR Resources, Inc. f/k/a Ron's Building
Materials, Inc.,

Plaintiff,

v.

Commercial & Industrial Floors, Inc. and
Dabney Maides,

Defendant/Third Party Plaintiff,

v.

Christopher M. Keel,

Third Party Defendant.

**JOINT REPLY OF PLAINTIFF AND
THIRD PARTY DEFENDANT
IN OPPOSITION TO
DEFENDANTS' MOTION TO ALTER OR
AMEND JUDGMENT**

Plaintiff CJR Resources, Inc. f/k/a Ron's Building Materials, Inc. ("CJR") and Third Party Defendant Christopher M. Keel ("Keel") hereby submit this Joint Reply in Opposition to Defendants' Motion to Alter or Amend the Court's December 16, 2015 Order granting summary judgment to CJR and Keel as to all claims alleged against them by Defendants Commercial & Industrial Floors, Inc. ("CIF") and Dabney Maides ("Maides") (collectively referred to hereinafter as "Defendants"), and further granting summary judgment in favor of CJR on all of its claims against Defendants.¹

¹ The only claims remaining following entry of said Order are Keel's claims against Defendants for breach of contract, violation of the South Carolina Wage Payment Act for failure to both pay all wages owed and to provide mandated notice of change in pay, and defamation, which are set to be heard during the February 29, 2016 non-jury term.

PROCEDURAL BACKGROUND

CJR filed its Complaint on October 28, 2013, alleging that CIF breached an Asset Purchase Agreement (hereinafter “APA”) between CJR and CIF by failing to make all payments required under the APA and a related promissory note. CIF filed its Answer, Counterclaim, and Third Party Complaint on December 18, 2013, denying CJR’s claims and alleging various claims against CJR and Keel based on the APA and a 2008 Employment Agreement between CIF and Keel. Specifically, CIF claims Keel breached both agreements by competing with CIF and soliciting CIF’s clients, fraudulently induced CIF to enter into the Employment Agreement, and never intended to abide by the terms of the agreements. By their own admission, Defendants’ counterclaims against CJR arise out of CIF’s allegations against Keel.

CJR filed its Reply to Defendants’ counterclaims on January 22, 2014, denying all of Defendants’ counterclaims and arguing that they were barred by the applicable statute of limitations. Keel filed his Answer and a Motion to Dismiss on March 26, 2014, denying all of CIF’s claims and arguing all were barred by the statute of limitations. Keel also asserted various counterclaims against CIF related to its failure to pay him all wages he was due. CIF filed its Reply to Keel’s counterclaims on May 20, 2014, denying all of Keel’s counterclaims.

In August 2014, Keel served CIF with his first discovery requests. After repeated requests for CIF to respond thereto, Keel was forced to file a Motion to Compel and, upon admission by CIF that it owed discovery responses to Keel, the Court filed a Consent Order on July 9, 2015, compelling CIF to provide responses within thirty (30) days of entry of that Order. CIF finally provided its discovery responses on August 9, 2015, producing no actual evidence of CIF’s claims against Keel, failing to provide all information requested and producing less than thirty pages of documents in support of its claims against Keel.

Following the deposition of CIF's owner Maides and the close of discovery², Keel filed his Motion for Summary Judgment on September 25, 2015 and CJR filed its Motion for Summary Judgment on September 29, 2015. Both motions were heard by this Court on November 3, 2015. This Court issued its Order granting summary judgment on December 16, 2015 (the "Order").

ARGUMENT

For all those reasons set forth below, Plaintiff's Motion to Alter or Amend the Order should be denied.

- 1. The Order is supported by the evidence and arguments submitted to and considered by the Court.**

Defendants' Motion to Alter or Amend should be denied as the Order is supported by all of the evidence and arguments submitted to the Court at the November 3, 2016 hearing on CJR and Keel's Motions for Summary Judgment and as set forth in the parties' memoranda and supporting exhibits filed prior thereto.

A. Statute of Limitations

The Court's ruling that Defendants' claims against CJR and Keel are barred by the applicable statute of limitations³ is clearly supported by Defendants' own allegations and admissions that they knew or should have known of such claims against CJR and Keel in July 2008, more than five years prior to Defendants bringing their claims against CJR and Keel, including Defendants' own allegation that Keel's alleged conduct was apparent "from the outset of Keel's employment" in 2008. Defendants offer no sufficient justification for their failure to

² The Court entered a Consent Scheduling Order in this case on June 12, 2015, setting August 31, 2015 as the discovery deadline. Regardless, Keel consented to the taking of his deposition by Defendants in October of 2015 after the discovery deadline had already passed and after his Motion for Summary Judgment had already been filed.

³ Defendants concede in their Motion that the three-year statute of limitations is applicable.

act timely, but now ask the Court to excuse that failure by way of an analogy whereby counsel argues a party should not be barred from seeking recovery after being punched in the face just because his friend previously punched him in the face years ago before making up. Aside from not being legal or evidentiary support for Defendants' Motion, said analogy is wholly inapplicable to the instant case where Defendants have not alleged separate and distinct "punches," but have, instead, sought to recover from ongoing conduct they claim began in 2008. While Defendants' analogy paints a colorful picture, it does not excuse Defendants' admitted failure to timely pursue their claims.

The same is true of any argument by Defendants that the Court should disregard evidence that Defendants had actual knowledge of their claims more than three years prior to bringing them because Keel allegedly "stole" the document at issue. Aside from being wholly inaccurate, such allegation in no way excuses the Defendants' failure to bring their claims in the time period required. Finally, as discussed below and in the Order, Defendants have produced no evidence whatsoever of any continuing harm caused by CJR or Keel.

B. Unenforceability of Restrictive Covenants

The Court properly ruled that the restrictive covenants sought to be enforced against Keel are unenforceable as they are not narrowly tailored as to time and geographic scope as required by South Carolina law. As noted in case law cited by the Court, five years is longer than typically enforced and a restrictive covenant that prevents an individual from working anywhere in the entire State of South Carolina is also overly broad. As noted in the Order, the South Carolina Supreme Court has specifically held that "(a)ny covenant should have been limited to the area where he worked...(and) (e)xtending it to the entire State rendered it unenforceable." *Oxman v. Sherman*, 239 S.C. 218, 122 S.E.2d 559 (1961). Despite Defendants' arguments

otherwise, language contained in the covenants as to the reasonableness of their scope does not cure these defects. The South Carolina Supreme Court has specifically rejected “blue-penciling” of restrictive covenants to cure such defects. *Poynter Inves., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 587 (2010). This prevents the Court from reforming the covenants in question, as suggested by Defendants.

C. Complete Lack of Evidence as to Defendants’ Claims

As to the inability of Defendants to meet their burden of proof in pointing to the existence of evidence sufficient to overcome summary judgment on their claims against CJR and Keel, the Court properly considered Defendants’ own repeated testimony and admissions that Defendants do not have evidence to prove all essential elements of such claims. As noted throughout the Order, Defendants’ own testimony makes it clear that they have no direct proof of their claims against CJR and Keel but, instead, rely on their “beliefs” about Keel and his alleged conduct. However, and as correctly stated in the Order, speculation alone is insufficient to meet Defendants’ burden or proof in overcoming summary judgment.

The same is true in regard to the “summary” of the evidence and of testimony offered now by Defendants for the first time. This document is nothing more than unsupported commentary and editorializing, without any actual evidence or testimony attached. Defendants continue to offer nothing more than speculation and unsupported beliefs, which the Court has already stated are insufficient for purposes of overcoming a motion for summary judgment. Accordingly, such new commentary should not be substituted for the Court’s well-reasoned decision on the extensive evidence and testimony properly presented to the Court at the November 3 hearing in this matter and in the memoranda and exhibits filed prior thereto.

2. APA's limitation period applies to all claims against CJR and Keel.

Defendants attempt now to argue for the first time that the one-year limitations period set forth in the APA does not apply to all of Defendants' claims because that provision only applies to two types of claims: those related to (1) a covenant or obligation to be performed or complied with prior to the Closing Date; and (2) a representation or warranty. However, Defendants' Third Party Complaint makes it clear that Defendants relate Keel's alleged conduct back to representations made in connection with the execution of the APA and the July 2008 Employment Agreement. Specifically, Defendants' allege that Keel never intended to abide by his contractual obligations to CIF, that he made false representations to Defendants in that regard, and that he made certain promises in connection with execution of the APA and the Employment Agreement that he never intended to honor. Accordingly, all such claims fall within the second category of claims covered by the APA's one-year limitation provision and were required to have been brought within that period of time.

Regardless, and even if it were determined that the APA's one year claims limitation does not apply to all claims alleged against CJR and Keel, such claims are still barred by the applicable three-year statute of limitations as set forth in the Order and discussed above.

3. Defendants' financial difficulties and indebtedness to Wells Fargo are irrelevant.

In a footnote to their Motion to Alter or Amend, Defendants state that Defendants are indebted to Wells Fargo in the amount of \$700,000.00 for financing Defendants obtained to purchase CJR's assets and that Wells Fargo is threatening collection action against Defendants thereon. In so noting, Defendants seem to ask the Court to consider the financial condition of Defendants in ruling on Defendants' Motion to Alter or Amend and in taking the extraordinary remedy of reversing the Court's finding in the Order.

Defendants' finances bear absolutely no relevance to the issue before the Court – whether the Court properly ruled in granting summary judgment against Defendants on grounds that (1) Defendants cannot meet their burden of proof, (2) the restrictive covenants sought to be enforced are unenforceable as a matter of law, and (3) Defendants' claims are time-barred pursuant to the applicable statute of limitations and the limitation period set forth in the APA.

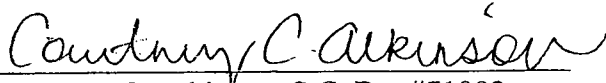
4. The Court's Order properly cited *Oblachinski*.

Despite Defendants' assertion otherwise, the Court properly cited *Oblachinski v. Reynolds*, 391 S.C. 557, 706 S.E.2d 844 (2011) as standing for the proposition that summary judgment is properly granted where a party cannot meet its burden of proof as to each essential element of the causes of action alleged by that party. At issue in *Oblachinski* was the trial court's grant of summary judgment on grounds that the plaintiff had failed in its burden of proof as to every essential element of its claim for negligence against the defendant. In considering that issue and applying the summary judgment standard under Rule 56, the South Carolina Supreme Court upheld the trial court's grant of summary judgment and, in so doing, specifically noted that said grant of summary judgment was proper because the plaintiff had failed to prove "an essential element" of its negligence claim – namely that defendant owed any duty to the plaintiff.

CONCLUSION

For all of the reasons stated above, CJR and Keel respectfully request that this Court deny Defendants' Motion to Alter or Amend.

METCALFE & ATKINSON, LLC



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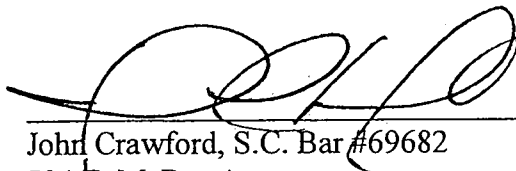
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*Attorneys for Third Party Defendant Christopher
M. Keel*

1/13/2016

Greenville, South Carolina

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Attorneys for Plaintiff CJR Resources, Inc.

1/13/2016

Greenville, South Carolina

1 Q. Do you agree that when you executed this document --
2 well, first of all, would you agree that this agreement
3 said it was entered into July 22, 2008?

4 MR. HOLDER:

5 You're looking at Exhibit?

6 MR. MCKIBBON:

7 I'm sorry. Exhibit 2. Employment Agreement.

8 EXAMINATION RESUMED BY MR. MCKIBBON:

9 Q. That one.

10 A. Correct.

11 Q. When you signed this agreement, would you agree that
12 you were subject to the terms contained in this
13 agreement?

14 A. Yes.

15 Q. So to clarify and bring these together, both the Asset
16 Purchase Agreement, which we had marked as Exhibit 1,
17 and the Employment Agreement, Exhibit 2, as a signatory
18 to those documents, you agree that you were subject to
19 the terms contained within them?

20 A. Yes.

21 Q. Okay. Go back to the SBA part. Why is it your belief
22 that the SBA required that?

23 A. I just remember a discussion about that, but I don't
24 know the details. I had nothing to do with his
25 financing at all.

1 A. I do not.

2 Q. Who would you say the five most consistent or largest
3 revenue customers would be at Upstate?

4 A. I probably only have five.

5 Q. Okay. Who?

6 A. Sherman, Creative, the hospital, Cameron.

7 Q. Triangle? Did you say that?

8 A. I didn't, but that's -- that's probably them.

9 Q. Do you have primary installers that you utilize? Do
10 you have your go-to guys?

11 A. I have basically the same group of five I've been using
12 for the last 20 years, Ron's days, CIF days, and now
13 days.

14 Q. Just for the record, since we're on that line, can you
15 name those five?

16 A. Tim Shepard, Paul Fazzzone, Pat McGee, Phil Schumacher.
17 That's it.

18 Q. That's four?

19 A. That's four.

20 Q. What is your cell phone number?

21 A. 303-4273.

22 Q. Thank you. Would you agree that Upstate as a company
23 is a competitor to CIF?

24 A. I would. You know, I'm going to -- I'm going to -- no,
25 I would not.

1 anything that he was doing to me personally.

2 Q. well, you said he cut your pay three times.

3 A. He did do that.

4 Q. And you also stated that was the reason you left.

5 A. That is true. I was not going to work for, I don't
6 know, was it \$500 a week or \$300 a week? whatever it
7 was.

8 Q. well, the combination of that and you not liking the
9 way he did business and the people that you do work
10 with now saying they would never do business with him,
11 why did you stay?

12 A. It's what I've done all my life is that type of
13 business. I really didn't want to take the time to go
14 to Avionics or anybody else, and actually at that time
15 I don't think I could have.

16 Q. why?

17 A. I had a non-compete, as you know, that expired five
18 years after the date of sale. so really I couldn't.
19 So if I wanted to stay in the industry that I knew, my
20 only option was to stay at CIF until after my non-
21 compete expired.

22 Q. All right. I want to show you what's been marked as
23 Defendant's Exhibit 6, and it says Shaw on the top. It
24 appears to be an invoice. Do you recognize this?

25 A. This invoice? No.

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, SECTION 15-48-10, ET. SEQ., CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED.

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT ("Agreement") is made and entered into this 17th day of July, 2008 by and among Commercial & Industrial Floors, Inc. a South Carolina corporation ("Buyer"), Ron's Building Materials, Inc., a South Carolina Corporation ("Seller"), and Ronald D. Keel, Joyce J. Keel, and Christopher M. Keel (referred to sometimes individually and collectively as "Shareholder").

PRELIMINARY STATEMENT:

Seller is engaged in the business of selling commercial flooring products (the "Business"). Shareholder owns one hundred (100%) percent of the outstanding stock of Seller. The Seller desires to sell and Buyer desires to purchase the Assets related to the Business.

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements contained herein and intending to be legally bound hereby, the parties hereto agree as follows:

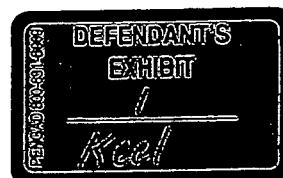
ARTICLE I

SALE AND PURCHASE OF ASSETS

1.1 Purchased Assets. Upon and subject to the terms and conditions set forth in this Agreement, as of the Closing Date (as hereinafter defined), Seller shall sell to Buyer, and Buyer shall purchase from Seller, free and clear of all liens, claims and encumbrances (except as disclosed herein and except those Assumed Liabilities as hereafter defined), all of Seller's right, title and interest in and to all of the assets, properties and rights used and/or owned in connection with the Business (other than Excluded Assets) (such assets, properties and rights being conveyed are hereinafter collectively referred to as the "Purchased Assets" or "Assets"), including, but not limited to, the following assets:

(a) Tangible Personal Property. All equipment, machinery, rolling stock, furniture, and other personal property, including, but not limited to, those items listed on Schedule 1.1(a) (the "Personal Property");

(b) Inventories and Supplies. All inventories and supplies of Seller including, without limitation, raw materials, and finished goods, components, and office, operating and other supplies including, but not limited to, those items listed on Schedule 1.1(b) (collectively, the "Inventory");



(c) Accounts Receivable. Schedule 1.1(c) sets forth those jobs which have been completed as of the Closing Date but payment is still due and owing to Seller ("Accounts Receivable"). Seller is selling \$300,000.00 worth of its Accounts Receivable to Buyer and retaining the remainder. Buyer shall bill and collect all Accounts Receivable (including the \$300,000.00 of Accounts Receivable sold to Buyer hereunder). After the Closing, payments will continue to be received at 212 Transit Drive and then deposited into Buyer's bank account. All collections will be accounted for using Schedule 1.1(c) and the first \$300,000 of Seller's Accounts Receivable to be collected will be retained by Buyer. Any amount received after that time which is applicable to the remaining Accounts Receivable on Schedule 1.1(c) will be immediately forwarded to Seller. Buyer and Seller will cooperate to collect all Accounts Receivable and any receivables on the Schedule that have not been collected within 90 days after closing will be assigned from Buyer to Seller and become the sole responsibility of Seller to collect.

(d) Prepays; Deposits. All credits, prepaid expenses, deferred charges, advance payments, security deposits and deposits owned, used or held for use by Seller, with respect to the Business, including, but not limited to, property and other taxes, and those items listed on Schedule 1.1(d) (collectively, the "Prepaid Expenses");

(e) Intellectual Property. Any telephone and telecopier numbers, customer lists and addresses, e-mail addresses, websites, inventions, trade secrets, designs, licenses, patents, trademarks, names (including "Ron's Building Materials" and derivations thereof) and applications of Seller, including, but not limited to, those items listed on Schedule 1.1(e) (collectively, the "Intellectual Property");

(f) Assigned Leases. All of Seller's right, title and interest under all leases of personal property (the "Personal Property Leases"), together with all of Seller's right, title and interest under all leases of real property ("Real Property Leases") (collectively referred to herein as the "Assigned Leases") listed on Schedule 1.1(f);

(g) Assigned Contracts. All rights that Seller may have under any and all agreements, contracts, purchase orders and purchase contracts, sales orders and sales contracts, quotations and bids, distribution agreements, licenses or arrangements including, but not limited to, those items listed on Schedule 1.1(g) (collectively, the "Assigned Contracts");

(h) Records. All of Seller's books, records, ledgers, files, documents (including originally executed copies of written contracts, customer and supplier lists) correspondence, memoranda, promotional materials, reports, sales and purchase correspondence, photographs, to the extent used or held for use with respect to the Business and currently in Seller's possession or accessible by Seller.

(i) Other Assets. All other assets used in the Business (except the Excluded Assets as defined herein) including, but not limited to names, permits (including any applications or renewals thereof) and third party claims.

1.2 Excluded Assets. The following assets of Seller are expressly excluded from the purchase and sale contemplated by this Agreement (collectively, the "Excluded Assets"), and shall be retained by Seller and/or Shareholder:

- (a) All taxpayer and other identification numbers, and minute books, stock transfer books and other documents relating to the organization, maintenance, and existence of Seller as a corporation;
- (b) Cash;
- (c) Accounts Receivable over \$300,000.00 (as provided in Section 1.1(c));
- (d) All rights under this Agreement and any agreements ancillary hereto;
- (e) 2005 Chevy Z71;
- (f) 2005 Porsche Boxster S;
- (g) Boatslip in Charleston, South Carolina;
- (h) The assets listed on Schedule 1.2(h);
- (i) The rights to any income tax or other tax refunds.

All Excluded Assets shall be removed by Shareholder within thirty (30) days after Closing unless Shareholder makes other arrangements with Buyer which will be acknowledged in writing. Any Excluded Assets not timely removed may be disposed of by Buyer.

1.3 Title Transfer. Subject to the provisions of this Agreement, Seller shall transfer to Buyer at Closing the Purchased Assets, with good and valid title, free and clear of all liens, claims and encumbrances (except the Assumed Liabilities as defined herein).

1.4 Assumed Liabilities; Non-Assumed Liabilities. At the Closing, Buyer agrees to assume and discharge or perform when due only the following (the "Assumed Liabilities"):

(a) any purchase orders of Inventory to the extent they relate to Inventory which has not yet been received and paid for by Seller and such undelivered Inventory has not been included on Schedule 1.1(b); Buyer agrees to pay the supplier of such undelivered Inventory in accordance with the terms of Seller's purchase thereof;

(b) all liabilities and obligations required to be performed pursuant to the Assigned Leases and the Assigned Contracts after the Closing Date;

No liabilities other than the liabilities described in 1.4(a) and 1.4(b) shall be assumed by Buyer. Any payables, including payroll, utilities and other expenses accrued to the Closing Date will be paid by Seller when due.

1.5 Work in Process. All work in process as of the Closing Date, which relate to any jobs which are in process but have not yet been fully completed shall be considered goodwill, and completed by Buyer at Buyer's expense. Schedule 1.5 is a list which sets forth Seller's work in process as of the Closing Date as well as each project's estimated profit and percentage of completion as of the Closing Date as mutually agreed to by Seller and Buyer. Payments constituting profit for each project received by Buyer after the Closing Date shall be divided between Buyer and Seller in accordance with the project's percentage of completion set forth on Schedule 1.5.

1.6 Post Closing Adjustments. Within 60 days after the Closing Date, Seller and Buyer shall determine and pro-rate as of the Closing Date any expenses the invoice for which relates to services and/or products provided prior to the Closing, but which is received after Closing ("Pre-Closing Expenses"). In addition, Seller and Buyer shall work together to pro-rate as of the Closing Date all Pre-Paid Expenses including property taxes. Seller and Buyer shall use their best efforts to agree on a final determination of such amounts. Such determination shall be committed to writing and signed by Buyer and Seller. To the extent the Pre-Paid Expenses exceed the Pre-Closing Expenses, Buyer shall pay the difference to Seller within 10 days in cash. To the extent the pre-Closing Expenses exceed the Pre-Paid Expenses, Seller shall pay such amount to Buyer within 10 days in cash.

ARTICLE II

CLOSING; CONSIDERATION AND MANNER OF PAYMENT

2.1 Purchase Price. The aggregate purchase price (the "Purchase Price") for the Purchased Assets (to include consideration for the non-competition agreements under Article VII) shall be equal to One Million Two Hundred Fifty Thousand (\$1,250,000.00) Dollars.

2.2 Payment of Purchase Price. The Purchase Price shall be payable at Closing by Buyer as follows:

(a) One Million Fifty Thousand (\$1,050,000.00) Dollars of the Purchase Price shall be paid by certified check or wire transfer from Buyer to Seller at Closing.

(b) Two Hundred Thousand (\$200,000.00) Dollars of the Purchase Price shall be evidenced by a promissory note (the "Note") in the form of Exhibit 2.2(b) which shall provide that the during the first twelve months interest only shall be due monthly at the rate of two (2%) percent per annum for the first year and then the remaining principal due after one year shall be amortized based on nine years with interest at the rate of six (6%) percent per annum with a final balloon payment due on or before the tenth anniversary of the date of the Note. The Note will be personally guaranteed by Dabney R. Maides, and contain provisions which provide that the Note must be paid in the event of a sale of the Business by Buyer, or a refinancing of Buyer's bank debt. Dabney R. Maides shall obtain a life insurance policy on his life in the amount of the Note and name Ronald D. and Joyce J. Keel, or the survivor of them, and Christopher M. Keel as the beneficiary of such policy.

2.3 Transfer of Assets. Seller shall execute any and all documents that are necessary or advisable in order to accomplish the transfer, or evidence the transfer, of the Assets to Buyer, including but not limited to, a Bill of Sale in form and substance reasonably acceptable to Buyer.

2.4 Purchase Price Allocation. The Purchase Price shall be allocated among the Purchased Assets, as set forth on Schedule 2.4. The parties agree to report on their respective tax returns and represent to the IRS on any subsequent communications, either oral or written, the transactions which are subject to this Agreement in a manner consistent with the allocation set forth on Schedule 2.4. Buyer shall prepare, consistent with the allocation set forth in Schedule 2.4, and deliver IRS Form 8594 to Seller within sixty (60) days after the Closing Date to be filed by Seller with the IRS.

2.5 Closing Date. The closing of the sale and purchase of the Assets and related transactions (the "Closing Date") shall take place at such date and time as the parties agree, but not later than July 25, 2008.

2.6 Transactions at Closing.

2.6.1 In addition to any other documents to be delivered under other provisions of this Agreement, at the Closing, the Seller shall deliver:

(a) the bill(s) of sale for tangible personal property composing portions of the Assets;

(b) valid written assignment(s), in a form and substance satisfactory to Buyer, of each Assigned Contract and Assigned Lease;

(c) certificates and other instruments required to effect the sale of Assets contemplated hereby, in form and substance reasonably acceptable to Buyer;

(d) copies of such duly filed UCC termination statements, lease termination statements, mortgage or other lien satisfactions, and other documents (including payoff letters), as are reasonably required by Buyer to evidence Seller's clear and marketable title to the Assets;

(e) a Certificate of Good Standing of Seller from the South Carolina Secretary of State within ten (10) days prior to Closing Date;

(f) all of the books and records of the Business, including, but not limited to, all computer related software and data which shall include the customer lists, correspondence, financial records and other proprietary information;

(g) the Employment Agreement between Buyer and Christopher M. Keel provided for herein;

(h) Articles of Amendment changing the name of Seller to CJR Resources, Inc.;

(i) the Lease Agreement between Buyer and Joyce J. and Ronald D. Keel provided for herein.

2.6.2 The Buyer shall deliver:

(a) The Purchase Price;

(b) a Certificate of Good Standing of Buyer from the South Carolina Secretary of State within ten (10) days prior to Closing Date;

(c) a valid written assignment(s) in a form and substance satisfactory to Seller and its legal counsel whereby Buyer assumes the Assumed Liabilities, the Assigned Contracts and Assigned Leases (the "Assignment and Assumption Agreement");

(d) the Note;

(e) the Employment Agreement between Buyer and Chris Keel provided for herein;

(f) the Lease Agreement between Buyer and Joyce J. and Ronald D. Keel provided for herein.

(g) a certificate of insurance documenting a life insurance policy on the life of Dabney R. Maides in the amount of the Note with Ronald D. Keel, Joyce J. Keel, or the survivor of them, and Christopher M. Keel named as beneficiaries of such policy.

2.6.3 The parties will take such other actions called for at Closing by this Agreement.

ARTICLE III

OTHER AGREEMENTS

3.1 Employees. As of the Closing Date, all employees of Seller directly and primarily associated with the Business operations (other than the Shareholders) will cease to be employees of Seller, and Buyer may, subject to the exercise of Buyer's sole discretion, offer immediately or thereafter to hire any or all of such persons. Buyer shall be entitled to hire only those employees of Seller which Buyer elects in its sole discretion to hire; provided however, Buyer shall not assume any liability whatsoever which arose through Seller's employment of any employee, and Buyer shall not assume any liability whatsoever to any employee of Seller not hired by Buyer. Buyer will not be responsible for paying or reporting any costs or liabilities associated with Seller's employees that were incurred or accrued prior to the Closing Date, including but not limited to compensation, vacation pay, federal and state withholding taxes, federal and state unemployment taxes, employee benefit costs, and worker's compensation claims. Seller will release all employees subsequently hired by Buyer from any employment and/or confidentiality or non-competition agreement previously entered into by Seller and such employees, subject to any rights or claims existing as of the Closing Date.

3.2 Employment Agreement. Christopher M. Keel and Buyer shall have entered into an employment agreement in the form attached as Exhibit 3.2, which agreement shall provide for a one year term of employment at a salary of \$781.00 per week, plus incentive compensation based on quarterly profits, and which shall provide for a car allowance of \$635.00 per month and a gasoline allowance of \$550.00 per month.

3.3 Responsibility for Taxes. Seller shall be responsible for all taxes in connection with, relating to or arising out of the Business or the ownership of the Purchased Assets attributable to taxable periods, or portions thereof, ending on or before the Closing Date, which taxes shall be a Non-Assumed Liability. Buyer shall be responsible for all taxes in connection with, relating to or arising out of the Business or ownership of the Purchased Assets attributable to taxable periods, or portions thereof, after the Closing Date. Any property taxes paid by Seller shall be prorated to the Closing Date and taken into account under Section 1.6. Seller shall be responsible for any sales or use taxes imposed on the sale of the Purchased Assets.

3.4 Tax Cooperation. After the Closing Date, Seller and Buyer shall (i) provide the other with such assistance as may reasonably be requested by either of them in connection with the preparation of any tax return, any audit or other examination by any taxing authority or any judicial or administrative proceeding with respect to taxes, (ii) retain and provide the other with any records or other information which may be relevant to such return, audit, examination or proceeding, and (iii) provide the other with any final determination of any such audit or examination proceeding or determination that affects any amount required to be shown on any tax return of the other for any period (which shall be maintained confidentially).

3.5 Customer and Other Business Relationships. For a period of up to 4 weeks after the Closing, Seller and Shareholder will cooperate with Buyer in its efforts to continue and maintain for the benefit of Buyer those business relationships of Seller existing prior to the Closing and relating to the Business to be operated by Buyer after the Closing, including relationships with lessors, employees, regulatory authorities, licensors, customers, suppliers and others. Seller and Shareholder will refer to Buyer all inquiries relating to such Business. Neither Seller nor Shareholder shall take any action that could reasonably be expected to diminish the value of the Assets after the Closing or that would interfere with the Business of Buyer to be engaged in after the Closing, including disparaging the name or Business of Buyer.

3.6 Retention of and Access to Records. After the Closing Date, Buyer shall retain for a reasonable period those records of Seller delivered to Buyer. Buyer also shall provide Seller and Seller's legal and accounting counsel (collectively "Seller's Representatives") reasonable access thereto, during normal business hours and on at least three days' prior written notice, to enable them to prepare financial statements or tax returns or deal with tax audits.

3.7 Further Assurances. Buyer and Seller shall cooperate reasonably with each other and with their respective Representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement, and shall (a) furnish upon request to each other such further information; (b) execute and deliver to each other such other documents; and (c) do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement.

3.8 Lease Agreement. Buyer and Joyce J. and Ronald D. Keel shall enter into the Lease Agreement in the form of Exhibit 3.8.

3.9 Transition Period. As part of the Goodwill compensation, Sellers shall train, orient and otherwise advise Buyer for a period up to four (4) weeks after closing, without additional expense to Buyer.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF SELLER AND SHAREHOLDER

Seller and Shareholder jointly and severally hereby represent and warrant to Buyer as follows:

4.1 Organization. Seller is a corporation duly organized, validly existing, and in good standing under the laws of South Carolina and has all requisite power and authority to own, operate and lease its properties, to carry on its business substantially as it is being conducted on the date hereof and to consummate the transactions contemplated hereby to be performed by it. Seller is duly qualified to do business as a foreign corporation and is in good standing under the laws of each state or other

jurisdiction in which either the ownership or use of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification. Seller has no subsidiaries and does not have ownership in any other entity. Seller has made available to Buyer for inspection the minute books of Seller.

4.2 Authorization. Seller has requisite corporate power and authority to execute, deliver and perform this Agreement, including the written consent of the voting stockholders, the other agreements and documents contemplated hereby and consummate the transactions contemplated hereby. Seller has taken all actions required of Seller to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby. This Agreement, the Employment Agreements, the Lease Agreement and each other Agreement to be executed or delivered by Seller and Shareholder at the Closing (collectively, the "Ancillary Documents") hereto have been duly and validly executed and delivered by Seller and Shareholder and constitute valid and binding agreements of Seller and Shareholder enforceable in accordance with their terms. The execution and delivery of this Agreement and the Ancillary Documents by Seller and the performance by Seller of the transactions contemplated herein and therein will not constitute an act of bankruptcy, preference, insolvency or fraudulent conveyance under any bankruptcy act or other law for the protection of debtors or creditors. Shareholder knows of no approval, consent, waiver, order or authorization of, or registration, qualification, declaration, or filing with, or notice to, any federal, state or local court, arbitration tribunal or governmental agency or other third party that is required on the part of Seller in connection with the execution of this Agreement or the Ancillary Documents, or the consummation of the transactions contemplated hereby or thereby.

4.3 Assigned Contracts; Assigned Leases.

(a) Schedule 4.3(a) contains a complete and accurate list setting forth as of a recent date all written contracts, commitments, agreements or obligations, to which Seller is a party as obligor, or to which it or any of its owned assets or properties is subject, which potentially involve the payment by Seller of more than One Thousand (\$1,000.00) Dollars with respect to any one contract or commitment or Five Thousand (\$5,000.00) Dollars in the aggregate. True and complete copies of all documents specifically and reasonably requested by Buyer and referred to in such list will be provided or made available to Buyer and its counsel upon request.

(b) All leases wherein Seller is either lessor or lessee or otherwise has an interest or obligation are described on Schedule 4.3(b).

(c) Each of the Assigned Contracts and Assigned Leases is a valid and binding agreement of Seller and is in full force and effect in accordance with its terms, and that as of the Closing Date, Seller is not in material default, and to Seller's knowledge no other party is in material default with respect to the Assigned Leases and the Assigned Contracts. Each of the Assigned Contracts and Assigned Leases is fully assignable to Buyer, and all third-party consents, approvals or waivers regarding such

assignments have either been obtained, or Buyer has waived the requirement that such assignments be obtained.

(d) Seller owns no real estate other than the boat slip in Charleston, South Carolina which is an Excluded Asset.

4.4 Capitalization. The authorized equity securities of Seller consist of One Hundred Thousand (100,000) shares of common stock of which One Thousand (1,000) shares are issued and outstanding, and one hundred (100%) percent of which are owned by Shareholder. Shareholder is and will be on the Closing Date the record and beneficial owner and holder of the shares owned by Shareholder, free and clear of all encumbrances. There are no agreements relating to the issuance, sale or transfer of any stock or other equity interests of Seller except as set forth on Schedule 4.4.

4.5 Financial Statements. Seller has delivered to Buyer: (a) a compiled balance sheet of Seller as of February 29, 2008 (including the notes thereto, the "Balance Sheet"), and the related compiled statement of income; (b) compiled balance sheets of Seller as of December 31st in each of the fiscal years December 31, 2005 through December 31, 2006, and the related compiled statements of income. Such financial statements fairly present the financial condition and the results of operations of Seller at the respective dates of and for the periods referred to in such financial statements, all in accordance with Seller's regular accounting practices consistently applied. Since the date of the Balance Sheet, there have not been any material adverse events with respect to the Business.

4.6 All Assets. Except for the Excluded Assets, and the building where the Business is located, the Purchased Assets constitute all the assets, properties and rights owned in connection with the conduct of the Business. None of the Purchased Assets are owned, in whole or in part, by any person or entity other than Seller. Except as otherwise provided herein, at the Closing, Seller shall convey to Buyer possession of the Assets free and clear of any liens, claims, encumbrances, leases or rental agreements, or claims of possession. Except for the building where the Business is located, and except with respect to Shareholder, no officer, director or shareholder or any relative of any such officer, director, or shareholder is a party to any material agreement with Seller or owns a material interest (except in the capacity as a shareholder, director or employee) in any property, real, personal or mixed, tangible or intangible, which is used in the Business.

4.7 Condition of Property. All items of tangible personal property being sold herein is in good repair and good operating condition, ordinary wear and tear excepted, and is suitable for immediate use in the ordinary course of business. No item of tangible personal property is in need of repair or replacement other than as part of routine maintenance in the ordinary course of business. All tangible personal property used in the business is in the possession of Seller.

4.8 Tax Returns Filed and Taxes Paid. Seller has filed or caused to be filed on a timely basis all tax returns and all reports with respect to taxes that are or were

required to be filed. To the knowledge of Shareholder and Seller, all tax returns and reports filed by Seller are true, correct and complete. To the knowledge of Seller and Shareholder, Seller has paid, or made provision for the payment of, all taxes that have or may have become due for all periods covered by the tax returns.

4.9 Employment Benefits. Set forth in Schedule 4.9 is a complete and correct list of all "employee benefit plans" as defined by Section 3(3) of the Employee Retirement Income Security Act ("ERISA"), and all other bonus, incentive-compensation, deferred-compensation, profit-sharing, stock-option, stock-appreciation-right, stock-bonus, stock-purchase, employee-stock-ownership, savings, severance, change-in-control, supplemental-unemployment, layoff, salary-continuation, retirement, pension, health, life-insurance, disability, accident, group-insurance, vacation, holiday, sick-leave, fringe-benefit or welfare plan, and any other employee compensation or benefit plan, agreement, policy, practice, commitment, contract or understanding (whether qualified or nonqualified, currently effective or terminated, written or unwritten) and any trust, escrow or other agreement related thereto ("Employee Plans") that is maintained or contributed to by Seller.

4.10 Insurance.

(a) Seller has delivered to Buyer:

(i) accurate and complete copies of all policies of insurance (and correspondence relating to coverage thereunder) to which Seller is a party or under which Seller is covered as of Closing, a list of which is included in Schedule 4.10(a)(i); and

(ii) accurate and complete copies of all pending applications by Seller for policies of insurance.

(b) To the knowledge of Seller, except as set forth in Schedule 4.10(b):

(i) all policies of insurance to which Seller is a party or that provide coverage to Seller:

(A) are valid, outstanding and enforceable;

(B) are issued by an insurer that is financially sound and reputable; and

(C) taken together, provide adequate insurance coverage for the Assets and the Business.

(ii) Seller has not received (A) any refusal of coverage or any notice that a defense will be afforded with reservation of rights or (B) any notice of cancellation or any other indication that any policy of insurance is no longer in full force or effect or that the issuer of any policy of insurance is not willing or able to perform its obligations thereunder;

(iii) Seller has paid all premiums due, and has otherwise performed all of its obligations, under each policy of insurance to which it is a party or that provides coverage to Seller; and

(iv) Seller has given notice to the insurer of all claims that may be insured thereby.

(c) Seller has maintained workers' compensation coverage as required by applicable state law through purchase of insurance and not by self-insurance or otherwise.

4.11 No Breach. To the knowledge of Shareholder and Seller the execution and delivery by Seller and Shareholder of this Agreement and Ancillary Documents contemplated hereby to which Sellers is a party, the performance by Seller and Shareholder of its obligations hereunder and thereunder and the consummation by Seller and Shareholder of the transactions contemplated herein will not violate in any material respect, any statute or law or any judgment, decree, order, regulation or rule of any court or governmental authority to which Seller or Shareholder are subject or any contract, instrument or other agreement to which Seller or Shareholder is a party.

4.12 Compliance with Laws. To the knowledge of Seller and Shareholder Seller is in compliance with all laws, ordinances, and regulations that govern Seller's ownership and use of the Assets and the violation of which would have a material adverse effect on the Assets or Business.

4.13 Litigation. Except as provided in Schedule 4.13, there are no judicial, arbitration, or administrative actions or other legal proceedings pending, or to the knowledge of Seller and Shareholder, threatened that question the validity of this Agreement or any transaction contemplated hereby or that relate to the Assets, or to the conduct of the Business, including but not limited to condemnation or bankruptcy proceedings. To the knowledge of Seller and Shareholder, there is no material judgment, decree, injunction, ruling or order of any court, governmental department, commission, agent or instrumentality or arbitrator outstanding against Seller and to the knowledge of Seller and Shareholder, Seller is not bound by any material judgment, decree, injunction, ruling or order of any court, governmental department, commission, agency or instrumentality, arbitrator or any other person.

4.14 Workers' Compensation. There are no workers' compensation or similar claims or actions pending or, to the knowledge of Seller and Shareholder threatened, by past or present employees of Seller. Except as provided in Schedule 4.14, to the knowledge of Seller and Shareholder there have been no worker's compensation or similar claims made subsequent to January 1, 2003.

4.15 Brokerage. Seller has not dealt with a broker in connection with this transaction other than Dan Lemanski/Lemans, Inc. Seller shall be responsible for the payment of all fees to Dan Lemanski/Lemans, Inc., and Buyer shall not be obligated to Dan Lemanski or Lemans, Inc. in any manner. No brokerage commission or claim

therefore shall accrue or become payable to any person or entity other than Dan Lemanski/Lemans, Inc. respecting this transaction.

ARTICLE V

COVENANTS OF SELLER

5.1 Change of Name. On or before the Closing Date, Seller shall (a) amend its South Carolina Articles of Incorporation and take all other actions necessary to change its name and (b) take all actions requested by Buyer to enable Buyer to change its name to Seller's present name, if Buyer so elects.

5.2 Payment of Liabilities. Seller shall pay or otherwise satisfy in the ordinary course of business all of its liabilities and obligations as of the Closing Date.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to the Seller and Shareholder as follows:

6.1 Organization and Good Standing. Buyer is a corporation duly organized, validly existing, and in good standing under the laws of South Carolina.

6.2 Authorization. Buyer has full power and authority to execute, deliver and perform this Agreement and any Ancillary Documents, and the execution, delivery and performance by Buyer of this Agreement and any Ancillary Documents have been duly authorized, executed and delivered by Buyer as of the Closing Date. This Agreement and the Ancillary Documents hereto, have been properly authorized by Buyer and are legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their terms. The execution and delivery of this Agreement and the Ancillary Documents by Buyer and the performance by Buyer of the transactions contemplated herein and therein will not constitute an act of bankruptcy, preference, insolvency or fraudulent conveyance under any bankruptcy act or other law for the protection of debtors or creditors. Buyer knows of no approval, consent, waiver, order or authorization of, or registration, qualification, declaration, or filing with, or notice to, any federal, state or local court, arbitration tribunal or governmental agency or other third party that is required on the part of Seller in connection with the execution of this Agreement or the Ancillary Documents, or the consummation of the transactions contemplated hereby or thereby.

6.3 No Violation of Laws or Agreements. The execution, delivery and performance by Buyer of this Agreement and any other documents to which Buyer is a party do not, and the consummation by Buyer of the transactions contemplated hereby and thereby, will not violate any agreements or law, ordinance, regulation, order, policy or guideline of any governmental entity.

6.4 Consents. No consent, approval or authorization of, or registration or filing with, any person or entity (government or private) is required in connection with the execution, delivery and performance by Buyer of this Agreement, and other documents to which Buyer is a party, or the consummation by Buyer of the transactions contemplated hereby or thereby.

6.5 Brokers or Finders. Neither Buyer nor any of Buyer's representatives have incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement.

ARTICLE VII

NONCOMPETITION, NONSOLICITATION AND NONDISPARAGEMENT

7.1 Noncompetition, Nonsolicitation and Nondisparagement.

(a) Noncompetition. In consideration of Five Thousand (\$5,000.00) Dollars of the Purchase Price, for a period of five (5) years after the Closing, Seller and Shareholder, shall not directly or indirectly invest in, own, manage, operate, finance, control, advise, render services to or guarantee the obligations of any person or entity engaged in or planning to become engaged in the building supply and flooring installation lines of business that Seller is engaged in as of the Closing Date, ("Competing Business") within the State of South Carolina except for or on behalf of Buyer.

(b) Nonsolicitation. For a period of five (5) years after the Last Date of Employment, Seller and Shareholder, shall not, directly or indirectly, except for or on behalf of Buyer:

(i) solicit the Competing Business of any person or entity who is a customer or client of Buyer;

(ii) cause, induce or attempt to cause or induce any customer, supplier, licensee, licensor, franchisee, employee, consultant or other business relation of Buyer with respect to the Competing Business to cease doing business with Buyer, to deal with any competitor of Buyer in the Competing Business or in any way interfere with its relationship with Buyer in the Competing Business;

(iii) cause, induce or attempt to cause or induce any customer, supplier, licensee, licensor, franchisee, employee, consultant or other business relation of Seller on the Closing Date or within the year preceding the Closing Date to cease doing Competing Business with Buyer, to deal with any competitor of Buyer in the Competing Business, or in any way interfere with its relationship with Buyer in the Competing Business; or

(iv) hire, retain or attempt to hire or retain any employee or former employee or independent contractor of Buyer or in any way interfere with the relationship between Buyer and any of its employees or independent contractors.

(c) Nondisparagement. After the Closing Date, Seller and Shareholder will not knowingly disparage Buyer or any of Buyer's members, directors, officers, employees or agents.

(d) Modification of Covenant. If a final judgment of a court or tribunal of competent jurisdiction determines that any term or provision contained in Section 7.1(a) through (c) is invalid or unenforceable, then the parties agree that the court or tribunal will have the power to reduce the scope, duration or geographic area of the term or provision, to delete specific words or phrases or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision. This Article VII will be enforceable as so modified after the expiration of the time within which the judgment may be appealed. This Article VII is reasonable and necessary to protect and preserve Buyer's legitimate business interests and the value of the Assets and to prevent any unfair advantage conferred on Seller.

ARTICLE VIII

INDEMNIFICATION; REMEDIES

8.1 Survival. All representations, warranties, covenants and obligations in this Agreement and Ancillary Documents and any other certificate or document delivered pursuant to this Agreement shall survive the Closing, only to the extent provided in Section 8.4(a) and (b). The waiver of any condition based upon the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, will not affect the right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations.

8.2 Indemnification and Reimbursement by Seller and Shareholder. Seller and Shareholder, jointly and severally, will indemnify and hold harmless Buyer, and Buyer's Representatives, members, owners, subsidiaries and any affiliated persons or entities (collectively, the "Buyer Indemnified Persons"), and will reimburse the Buyer Indemnified Persons for any loss, liability, claim, damage, expense (including costs of investigation and defense and reasonable attorneys' fees and expenses) actually incurred or sustained by Buyer (collectively, "Damages"), arising from or in connection with:

(a) any breach of any representation or warranty or any covenant or obligation made by Seller or Shareholder in this Agreement or Ancillary Document or any transfer instrument or any other certificate, document, writing or instrument delivered by Seller pursuant to this Agreement to the extent not covered by insurance or otherwise;

- (b) any Non-Assumed Liabilities.

8.3 Indemnification and Reimbursement by Buyer. Buyer will indemnify and hold harmless Seller and Shareholder and their shareholders, owners, subsidiaries and any affiliated persons or entities (collectively, the "Seller Indemnified Persons") and will reimburse Seller Indemnified Persons, for any Damages arising from or in connection with:

(a) any breach of any representation or warranty or any covenant made by Buyer in this Agreement or in any certificate, document, writing or instrument delivered by Buyer pursuant to this Agreement;

(b) any liability arising from the Assumed Liabilities, Assigned Contracts or Assigned Leases; or

(c) any liability arising out of Buyer's conduct of the Business.

8.4 Time Limitations and Notice of Claim.

(a) Seller and Shareholder will have liability (for indemnification or otherwise) with respect to any breach of (i) a covenant or obligation to be performed or complied with prior to the Closing Date or (ii) a representation or warranty, only if on or before one (1) year after the Closing Date, Buyer shall provide Seller and Shareholder with a written notice indicating that Buyer is making a claim against the Seller or Shareholder as permitted under this Agreement and specifying the factual and legal basis for such claim in reasonable detail and the amount of such claim (a "Notice of Claim"). Except with respect to Third-Party Claims, as provided below, Buyer, Seller and Shareholder shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, Buyer, Seller and Shareholder shall endeavor to settle the dispute through mediation pursuant to the South Carolina Rules of Arbitration before having recourse to arbitration. Buyer, Seller and Shareholder agree to conclude such mediation within forty-five (45) days of the filing of the request for mediation. Any dispute not resolved by mediation shall be decided by arbitration in accordance with the South Carolina Rules of Arbitration. Judgment on any arbitration award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof.

(b) Buyer will have liability (for indemnification or otherwise) to any or all of the Seller Indemnified Parties with respect to any (i) covenant or obligation to be performed or complied with by Buyer pursuant to this Agreement or (ii) a representation or warranty, only if on or before one (1) year after the Closing Date such Seller Indemnified Part(ies) provide Buyer with a Notice of Claim. Except with respect to Third-Party Claims, as provided below, Buyer and Seller shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, Buyer and Seller shall endeavor to settle the dispute through mediation pursuant to the South Carolina Rules of Arbitration before having recourse to arbitration. Buyer and Seller agree to conclude such mediation within forty-five (45) days of the

filing of the request for mediation. Any dispute not resolved by mediation shall be decided by arbitration in accordance with the South Carolina Rules of Arbitration. Judgment on any arbitration award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof.

(c) In the case of a claim by a third-party against an indemnified party ("Third Party Claim"), the indemnified party shall give a Notice of Claim to the indemnifying party, of the assertion of any claim, or the commencement of any suit, action or proceeding in respect of which indemnity may be sought hereunder. The indemnifying party may, at its own expense, (a) participate in and (b) upon notice to the indemnified party, assume the defense thereof; provided that the indemnifying party shall thereafter consult with the indemnified party upon the indemnified party's request for such consultation from time to time with respect to such claim, suit, action or proceeding. If the indemnifying party assumes such defense, the indemnified party shall have the right (but not the duty) to participate in the defense thereof and to employ counsel, at its own expense, separate from the counsel employed by the indemnifying party. Whether or not the indemnifying party chooses to defend or prosecute any such claim, suit, action or proceeding, all of the parties hereto shall cooperate in the defense or prosecution thereof. In the event that the indemnifying party elects not to assume the defense of any claim, suit, action or proceeding, such election shall not relieve the indemnifying party of its obligations hereunder.

No party shall settle or compromise any claim, suit, action or proceeding without the prior written consent of the other party, which shall not be unreasonably withheld or delayed.

8.5 [Intentionally Omitted]

8.6 Insurance. In the event that insurance proceeds are paid to the Indemnified Person respecting an event to which an indemnification right applies hereunder, such indemnification right shall apply only to the extent that the amount of damages indemnified against exceeds such insurance proceeds actually paid to the Indemnified Person; provided however, that: (a) this Section 8.6 shall not apply to the extent it conflicts with, is prohibited by, or would invalidate, any such insurance policy; and (b) collection of such insurance proceeds shall not be a condition precedent to asserting or collecting such indemnification. Notwithstanding the other provisions in this Section 8.6, it is understood and agreed that any insurance proceeds or tax benefits benefiting the Buyer will offset any indemnification claims against the Seller.

8.7 Exclusive Remedy. The indemnification provisions set forth in this Article VIII shall be the sole and exclusive basis for a monetary remedy of Buyer with respect to any matter related to this Agreement.

8.8 Aggregate Limitation. Seller and Shareholder's aggregate indemnity obligations under this Agreement shall not exceed the amount of the Purchase Price actually received by Seller and/or Shareholder, minus all federal and state income taxes paid by Seller and/or Shareholder as a result of the sale and purchase of the Assets.

8.9 Basket Limitation. Seller shall not be required to indemnify Buyer pursuant to this Article VIII except to the extent that the aggregate amount of Damages for which Buyer is otherwise entitled to indemnification hereunder exceeds \$2,000.

8.10 Damages Limitation. Except with respect to Third-Party Claims in which such damages are awarded, in no event will Seller or Shareholder be liable for any incidental, consequential or punitive damages.

ARTICLE IX

ADDITIONAL PROVISIONS

9.1 Entire Agreement: Amendments: Waivers. This Agreement and the documents referred to herein and to be delivered pursuant hereto constitute the entire agreement of the parties hereto pertaining to the subject matter hereof, and supersede all prior and contemporaneous agreements, understandings, negotiations, and discussions of the parties, whether oral or written. No amendment, supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision or breach of this Agreement, whether or not similar, unless otherwise expressly provided.

9.2 Benefit. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective, heirs, successors and permitted assigns.

9.3 No Presumption. Buyer and Seller have participated jointly in the negotiation and drafting of this Agreement and the preparation of all Ancillary Documents. In the event any ambiguity question of intent or interpretation arises, this Agreement including all Ancillary Documents thereto shall be construed as if drafted jointly by Buyer and Seller, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

9.4 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but such counterparts shall altogether constitute one and the same Agreement.

9.5 Notices. All notices, requests, approvals, consents, demands and other communication provides for or permitted hereunder shall be in writing, signed by an authorized representative of the sender and addressed to the respective party at the address set forth below:

<u>Buyer:</u>	Commercial & Industrial Floors, Inc.
	303 Woodway Drive
	Greer, SC 29651

Copy To: Temple, Mann, Briggs & Hill
819 E. North Street
Greenville, SC 29601
ATTN.: S. Allan Hill, Esquire

Seller: Ronald D. Keel and Joyce K. Keel
724 Hudson Road
Greenville, SC 29615

Copy To: Merline & Meacham, PA
812 East North Street
Greenville, SC 29601
ATTN: Robert E. August, Esq.

A party hereto may change its respective address by notice in writing given to the other parties to this Agreement. Any notice, request, approval, consent, demand or other communication shall be effective upon the first to occur of the following: (i) when delivered to the party to whom such notice, request, approval, consent, demand or other communication is being given, or (ii) three (3) Business Days after being duly deposited in the U.S. mail, certified, return receipt requested.

9.6 Severability of Provisions. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

9.7 Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

9.8 Jurisdiction. The parties hereto consent to jurisdiction (regarding any disputes arising hereunder), subject to proper service of process, in the State of South Carolina.

9.9 Further Instruments and Acts. From time to time at a party's request, whether at or after Closing and without further consideration, the other party(ies) shall execute and deliver such further instruments of conveyance, transfer and assignment and upon reimbursement for actual reasonable out-of-pocket expenses take such other action as the requesting party reasonably may require to more effectively convey and transfer to the requesting party the properties to be conveyed, transferred and assigned hereunder, and, if necessary, will assist the requesting party in the collection or reduction to possession of such property. In addition, each party agrees to provide reasonable access to records respecting the Business as are requested by the other party(ies) for proper purpose with good cause shown (subject to appropriate confidentiality agreements to be negotiated at such time) and agree to reasonably cooperate in resolving any matters resulting from the transactions contemplated hereby.

9.10 Fees and Expenses. Each of the parties hereto will pay its own fees and expenses (including its attorneys' fees and expenses) and any fees, commissions and expenses of its financial advisors, investment bankers or brokers.

9.11 Signatures. Buyer and Seller agree that the Agreement and all Ancillary Documents and instruments contemplated herein can be signed by facsimile and facsimile copies shall be binding on such signing party as if an original executed copy.

9.12 Mediation and Arbitration. If a dispute arises out of or relating to this Agreement, or its breach, the parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, the parties shall endeavor to settle the dispute through mediation pursuant to the South Carolina Rules of Arbitration before having recourse to arbitration. The parties agree to conclude such mediation within forty-five (45) days of the filing of the Request for Mediation. Any dispute not resolved by mediation shall be decided by arbitration in accordance with the South Carolina Rules of Arbitration. Judgment on the arbitration award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof. The location of any mediation or arbitration shall be Greenville, South Carolina unless the parties mutually agree to another location.

[Signature Page Attached]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

BUYER:

Commercial & Industrial Floors, Inc.

By: Dabney R. Maides
Dabney R. Maides
Its: President

SELLER:

Ron's Building Materials, Inc.

By: Ronald D. Keel
Ronald D. Keel
Its: President

Ronald D. Keel
Ronald D. Keel, individually
Joyce J. Keel
Joyce J. Keel, individually
Christopher M. Keel
Christopher M. Keel, individually

EMPLOYMENT AGREEMENT

This **EMPLOYMENT AGREEMENT** (this "Agreement") is made and entered into this 22 day of July, 2008, by and between **Christopher M. Keel** ("Employee") and **Commercial & Industrial Floors, Inc.**, a South Carolina corporation ("Company").

RECITALS

The Company and the Employee desire to enter into this Agreement on the terms and conditions set forth herein. In consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are true and correct and are deemed to be a part of this Agreement.

2. Employment. The Company shall employ the Employee, and the Employee hereby accepts employment with the Company, upon the terms and conditions set forth in this Agreement for the period beginning on the date hereof and ending as provided in Paragraph 5 hereof (the "Employment Period").

3. Position and Duties. During the Employment Period, the Employee shall serve as a sales representative for the Company and shall perform such normal duties and responsibilities of a sales representative as may be from time to time designated by the Company, subject to the direction and authority of the Company's President or his designee.

4. Base Salary and Benefits.

(a) During the Employment Period, the Employee's base salary shall be \$781 per week or such higher rate as the board of directors of the Company may designate from time to time (the "Base Salary"). The Base Salary shall be payable in regular installments, no less frequently than weekly, in accordance with the Company's general payroll practices and shall be subject to customary withholding.

(b) The Company shall pay to Employee a car allowance of \$635 per month and a gasoline allowance of \$550 per month. Said amounts shall be paid within 10 days after the end of each calendar month during the Employment Period. In addition, Company shall reimburse the Employee for all reasonable expenses incurred by him in the course of performing his duties under this Agreement which are consistent with the Company's policies in effect from time to time with respect to travel, entertainment and other business expenses, subject to the Company's requirements with respect to reporting and documentation of such expenses. All such reimbursements shall be paid to Employee no later than 10 days after the end of each calendar month during the Employment Period.

(c) The Employee shall be entitled to 2 weeks vacation per year, eligible to be taken after on year of employment. The Employee shall also be entitled to holidays in the same manner as provided to other similarly situated employees of the Company.

(d) The Employee shall be permitted to participate in any pension or welfare benefit plan of Company upon satisfaction of the eligibility requirements as specified in each particular plan. Specifically, Company shall provide health insurance coverage for Employee, provided, however, that Employee in his sole discretion may decline such coverage in favor of receiving a cash payment in the amount of such coverage. For example, if Company would pay \$350/ month to provide health insurance to Employee, Employee may choose to either accept such health insurance coverage from Company or to decline such coverage and receive a monthly cash payment of \$350.

5. Termination.

(a) Employee's employment with Company is "at will" and may be terminated at any time by either Employee or Company.

(b) If the Employment Period is terminated by either party, the Employee shall be entitled to receive his Base Salary through the date of termination as well as a pro-rated share of all allowances and all reimbursements to which Employee is entitled through the date of termination.

6. Other Businesses. As long as the Employee is employed by the Company, and for a period of 5 years thereafter, the Employee agrees that he will not, except with the express written consent of the Company's President or his designee, become engaged in, or render services for, any business that competes with the business in which Company is engaged at the time his employment with Company is terminated anywhere within the state of South Carolina; provided, however, nothing herein shall prohibit Employee from owning not more than 10% of the outstanding shares of stock in a publicly traded company.

7. Return of Company Property. The Employee shall deliver to the Company at the termination of the Employment Period, or at any other time thereafter as the Company may reasonably request, all memoranda, notes, papers, plans, records, reports, computer discs or tapes, printouts and software and other documents and data (and copies thereof), (a) prepared by or on behalf of the Company, (b) purchased with Company funds or (c) in any way relating to the business of the Company which the Employee may then possess or have under his control.

8. Survival. Paragraphs 6 and 7 shall survive and continue in full force in accordance with its terms notwithstanding any termination of the Employment Period.

9. Notices. Any notice provided for in this Agreement must be in writing and must be either personally delivered, mailed by first class mail (postage prepaid and return receipt requested) or sent by reputable overnight courier service (charges prepaid) to the recipient at the recipient's last known address. Any notice under this Agreement will be deemed to have been given when so delivered or sent or, if mailed, three days after deposit in the U.S. mail.

10. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or any other jurisdiction, but this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

11. No Strict Construction. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party.

12. Successors and Assigns. This Agreement is intended to bind and inure to the benefit of and be enforceable by the Employee, the Company and their respective heirs, successors and assigns, except that the Employee may not assign his rights or delegate his obligations hereunder without the prior written consent of the Company.

13. Waivers. The waiver by the Company or the Employee of any action, right or condition in this Agreement, or any breach of a provision of this Agreement, shall not constitute a waiver of any other occurrences of the same event. Continuation of payments hereunder by the Company following a breach by the Employee of any provision of this Agreement shall not preclude the Company from thereafter terminating or reclaiming said payments based upon the same violation.

14. Governing Law. This Agreement shall be deemed to have been made in the State of South Carolina and shall be governed by and construed in accordance with the substantive law of the State of South Carolina, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of South Carolina or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of South Carolina.

15. Captions. The captions used in this Agreement are for convenience of reference only and do not constitute a part of this Agreement and shall not be deemed to limit, characterize or in any way affect any provision of this Agreement, and all provisions of this Agreement shall be enforced and construed as if no caption had been used in this Agreement.

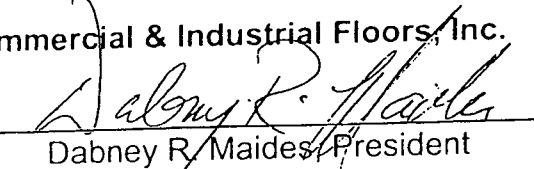
16. Counterparts. This Agreement may be executed in separate counterparts, each of which when so executed and delivered shall be an original and all of which taken together constitute one and the same agreement.

17. Entire Agreement; Amendments. This Agreement constitutes the entire understanding between the Employee and the Company with respect to its subject matter, supersedes any prior communication or understanding with respect thereto, and no modification or waiver or any provision hereof shall be valid unless made in writing and signed by the parties. No course of dealing between the parties to this Agreement shall be deemed to affect or to modify, amend or discharge any provision or term of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Employment Agreement as of the day and year first above written.

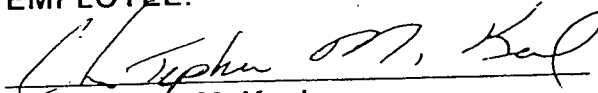
EMPLOYER:

Commercial & Industrial Floors, Inc.

By: 

Dabney R. Maides, President

EMPLOYEE:



Christopher M. Keel

EMPLOYMENT AGREEMENT

This **EMPLOYMENT AGREEMENT** (this "Agreement") is made and entered into this 27 day of July, 2008, by and between **Christopher M. Keel** ("Employee") and **Commercial & Industrial Floors, Inc.**, a South Carolina corporation ("Company").

RECITALS

The Company and the Employee desire to enter into this Agreement on the terms and conditions set forth herein. In consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are true and correct and are deemed to be a part of this Agreement.

2. Employment. The Company shall employ the Employee, and the Employee hereby accepts employment with the Company, upon the terms and conditions set forth in this Agreement for the period beginning on the date hereof and ending as provided in Paragraph 5 hereof (the "Employment Period").

3. Position and Duties. During the Employment Period, the Employee shall serve as a sales representative for the Company and shall perform such normal duties and responsibilities of a sales representative as may be from time to time designated by the Company, subject to the direction and authority of the Company's President or his designee.

4. Base Salary and Benefits.

(a) During the Employment Period, the Employee's base salary shall be \$781 per week or such higher rate as the board of directors of the Company may designate from time to time (the "Base Salary"). The Base Salary shall be payable in regular installments, no less frequently than weekly, in accordance with the Company's general payroll practices and shall be subject to customary withholding.

(b) The Company shall pay to Employee a car allowance of \$635 per month and a gasoline allowance of \$550 per month. Said amounts shall be paid within 10 days after the end of each calendar month during the Employment Period. In addition, Company shall reimburse the Employee for all reasonable expenses incurred by him in the course of performing his duties under this Agreement which are consistent with the Company's policies in effect from time to time with respect to travel, entertainment and other business expenses, subject to the Company's requirements with respect to reporting and documentation of such expenses. All such reimbursements shall be paid to Employee no later than 10 days after the end of each calendar month during the Employment Period.



(c) The Employee shall be entitled to 2 weeks vacation per year, eligible to be taken after on year of employment. The Employee shall also be entitled to holidays in the same manner as provided to other similarly situated employees of the Company.

(d) The Employee shall be permitted to participate in any pension or welfare benefit plan of Company upon satisfaction of the eligibility requirements as specified in each particular plan. Specifically, Company shall provide health insurance coverage for Employee, provided, however, that Employee in his sole discretion may decline such coverage in favor of receiving a cash payment in the amount of such coverage. For example, if Company would pay \$350/ month to provide health insurance to Employee, Employee may choose to either accept such health insurance coverage from Company or to decline such coverage and receive a monthly cash payment of \$350.

5. Termination.

(a) Employee's employment with Company is "at will" and may be terminated at any time by either Employee or Company.

(b) If the Employment Period is terminated by either party, the Employee shall be entitled to receive his Base Salary through the date of termination as well as a pro-rated share of all allowances and all reimbursements to which Employee is entitled through the date of termination.

6. Other Businesses. As long as the Employee is employed by the Company, and for a period of 5 years thereafter, the Employee agrees that he will not, except with the express written consent of the Company's President or his designee, become engaged in, or render services for, any business that competes with the business in which Company is engaged at the time his employment with Company is terminated anywhere within the state of South Carolina; provided, however, nothing herein shall prohibit Employee from owning not more than 10% of the outstanding shares of stock in a publicly traded company.

7. Return of Company Property. The Employee shall deliver to the Company at the termination of the Employment Period, or at any other time thereafter as the Company may reasonably request, all memoranda, notes, papers, plans, records, reports, computer discs or tapes, printouts and software and other documents and data (and copies thereof), (a) prepared by or on behalf of the Company, (b) purchased with Company funds or (c) in any way relating to the business of the Company which the Employee may then possess or have under his control.

8. Survival. Paragraphs 6 and 7 shall survive and continue in full force in accordance with its terms notwithstanding any termination of the Employment Period.

9. Notices. Any notice provided for in this Agreement must be in writing and must be either personally delivered, mailed by first class mail (postage prepaid and return receipt requested) or sent by reputable overnight courier service (charges prepaid) to the recipient at the recipient's last known address. Any notice under this Agreement will be deemed to have been given when so delivered or sent or, if mailed, three days after deposit in the U.S. mail.

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13. Waivers. The waiver by the Company or the Employee of any action, right or condition in this Agreement, or any breach of a provision of this Agreement, shall not constitute a waiver of any other occurrences of the same event. Continuation of payments hereunder by the Company following a breach by the Employee of any provision of this Agreement shall not preclude the Company from thereafter terminating or reclaiming said payments based upon the same violation.

14. Governing Law. This Agreement shall be deemed to have been made in the State of South Carolina and shall be governed by and construed in accordance with the substantive law of the State of South Carolina, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of South Carolina or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of South Carolina.

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16. Counterparts. This Agreement may be executed in separate counterparts, each of which when so executed and delivered shall be an original and all of which taken together constitute one and the same agreement.

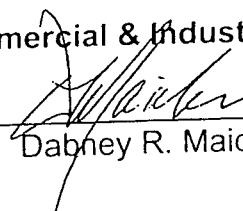
17. Entire Agreement; Amendments. This Agreement constitutes the entire understanding between the Employee and the Company with respect to its subject matter, supersedes any prior communication or understanding with respect thereto, and no modification or waiver or any provision hereof shall be valid unless made in writing and signed by the parties. No course of dealing between the parties to this Agreement shall be deemed to affect or to modify, amend or discharge any provision or term of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Employment Agreement as of the day and year first above written.

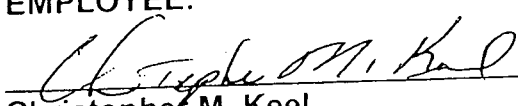
EMPLOYER:

Commercial & Industrial Floors, Inc.

By: _____


Dabney R. Maides, President

EMPLOYEE:


Christopher M. Keel

Accounts Receivable Open Invoice Report

Inv #	Date	Description	Due Date	Original Amount	Activity to Date	Current Balance
LE INC.		BITTLE INCORPORATED				
12392	07/02/08	081439	08/01/08	2950.00	0.00	2950.00
		Customer Total		2950.00	0.00	2950.00
CAMERON		CAMERON CONSTRUCTION CO.				
12357	05/30/08	081399	06/29/08	3525.00	-450.00	3075.00
12359	05/30/08	081401	06/29/08	300.00	0.00	300.00
12370	06/18/08	081404	07/18/08	10300.00	0.00	10300.00
12371	06/23/08	071081	07/23/08	127.20	0.00	127.20
12380	06/27/08	MATL	07/27/08	103.35	0.00	103.35
12394	07/02/08	081436	08/01/08	397.50	-22.50	375.00
12400	07/02/08	081422	08/01/08	4850.00	0.00	4850.00
12403	07/03/08	071347	08/02/08	4540.00	0.00	4540.00
12409	07/09/08	MATL	08/08/08	636.00	0.00	636.00
12426	07/17/08	081443	08/16/08	665.56	0.00	665.56
12427	07/17/08	071347	08/16/08	13620.00	0.00	13620.00
		Customer Total		39064.61	-472.50	38592.11
		Less Open Credits				-1840.00
		Net Balance Due				36752.11
CANNON MEM		CANNON MEM HOSPITAL				
12382	06/27/08	081438	07/12/08	798.22	0.00	798.22
12422	07/17/08	081451	08/01/08	452.78	0.00	452.78
		Customer Total		1251.00	0.00	1251.00
CHEROKEE IN		Cherokee Indian Hospital				
12399	07/02/08	081424	07/12/08	5964.96	0.00	5964.96
		Customer Total		5964.96	0.00	5964.96
CREATIVE		CREATIVE BUILDERS				
12343	05/22/08	108022	06/21/08	16016.00	-14414.40	1601.60
		Customer Total		16016.00	-14414.40	1601.60
FRAZOR		FRAZOR QUALITY				
12416	07/16/08		07/16/08	126.00	0.00	126.00
		Customer Total		126.00	0.00	126.00
G M K		G M K ASSOCIATES				
12378	06/26/08	MATL	07/26/08	388.73	0.00	388.73
		Customer Total		388.73	0.00	388.73



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ROLL'S Building Materials, Inc. Accounts Receivable Open Invoice Report

Inv #	Date	Description	Due Date	Original Amount	Activity to Date	Current Balance
HARPER 12415	07/15/08	HARPER CONSTRUCTION CO. MATL	08/14/08	77.17	0.00	77.17
Customer Total				77.17	0.00	77.17
LAURENS HEAL 12321	04/23/08	LAURENS COUNTY 081389	05/08/08	429.30	0.00	429.30
Customer Total				429.30	0.00	429.30
LOFTIS 12308	04/14/08	LOFTIS CORP. matl	05/14/08	96.46	0.00	96.46
12330	05/05/08	MATL	06/04/08	1000.43	0.00	1000.43
Customer Total				1096.89	0.00	1096.89
MADISON POSS 12290	04/01/08	MADISON POSS THOMAS' GIRLFRIEND	05/01/08	1664.00	-1100.00	564.00
Customer Total				1664.00	-1100.00	564.00
MARTIN ENGIN 12278	03/10/08	MARTIN ENGINEERING, INC B08199	04/09/08	33000.00	-29700.00	3300.00
12376	06/23/08	B08199	07/23/08	4050.00	0.00	4050.00
12413	07/15/08	B08199	08/14/08	1950.00	0.00	1950.00
Customer Total				39000.00	-29700.00	9300.00
MATRIX 12199	02/07/08	MATRIX CONST. CO. B07169	03/08/08	96665.00	-91831.75	4833.25
12268	03/17/08	B07169	04/16/08	32200.00	-30590.00	1610.00
12314	04/18/08	b08169	05/18/08	12097.00	-11492.15	604.85
12337	05/20/08	B08169	06/19/08	28072.90	-26669.26	1403.64
12377	06/23/08	b08169	07/23/08	2665.10	0.00	2665.10
Customer Total				171700.00	-160583.16	11116.84
MELLOUL 12139	12/06/07	MELLOUL BLAMEY CONST. B06156	01/05/08	7208.18	-4008.18	3200.00
12265	03/17/08	b07174	04/16/08	72921.08	-65628.97	7292.11
12266	03/17/08	B07174	04/16/08	52200.00	-46980.00	5220.00
12267	03/17/08	B07174	04/16/08	12076.76	-10869.08	1207.68
12310	04/18/08	B08182	05/18/08	54990.00	-49491.00	5499.00
12312	04/18/08	B08174	05/18/08	17912.00	-16120.80	1791.20
12311	04/24/08	B08174	05/24/08	8566.08	-7709.47	856.61
12338	05/20/08	B08182	06/19/08	11250.00	-10125.00	1125.00
12339	05/20/08	B08174	06/19/08	20372.84	0.00	20372.84
12372	06/23/08	b08174	07/23/08	9888.00	0.00	9888.00
12373	06/23/08	B08174	07/23/08	20372.84	0.00	20372.84

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Accounts Receivable Open Invoice Report

Inv #	Date	Description	Due Date	Original Amount	Activity to Date	Current Balance
						7923.24
2374	06/23/08	B08174	07/23/08	7923.24	0.00	16560.00
12375	06/23/08	B08182	07/23/08	16560.00	0.00	11790.00
12412	07/15/08	B08182	08/14/08	11790.00	0.00	
				324031.02	-210932.50	113098.52
		Customer Total				-783.00
		Less Open Credits				
		Net Balance Due				112315.52
RAE		RAE PROPERTIES				12090.00
12405	07/02/08	M08015	07/12/08	12090.00	0.00	
				12090.00	0.00	12090.00
		Customer Total				
RUTHERFORD H		RUTHERFORD HOSPITAL				2468.19
12393	07/02/08	081445	08/01/08	2468.19	0.00	
				2468.19	0.00	2468.19
		Customer Total				
SHERMAN		SHERMAN CONSTRUCTION CO.				680.00
12157	12/27/07	071343	01/26/08	6800.00	-6120.00	1550.00
12170	12/31/07	B07178	01/30/08	15500.00	-13950.00	65.00
12236	02/11/08	081373	03/12/08	650.00	-585.00	943.03
12261	02/13/08	071343	03/14/08	9430.32	-8487.29	315.00
12245	02/22/08	b07178	03/23/08	3150.00	-2835.00	35.00
12298	04/01/08	081397	05/01/08	350.00	-315.00	3354.40
12304	04/04/08	B08190	05/04/08	33544.00	-30189.60	447.00
12315	04/21/08	B08201	05/21/08	4470.00	-4023.00	42575.00
12389	07/02/08	M081434	08/01/08	42575.00	0.00	815.40
12391	07/02/08	081440	08/01/08	815.40	0.00	22110.00
12411	07/15/08	B08190	08/14/08	22110.00	0.00	5300.00
12417	07/16/08	T08033	08/15/08	5300.00	0.00	8525.00
12423	07/17/08	081447	08/16/08	8525.00	0.00	
				153219.72	-66504.89	86714.83
		Customer Total				
SPART REG ME		SPARTANBURG REGIONAL				1300.00
12358	05/30/08	081413	06/14/08	1300.00	0.00	2225.00
12365	05/30/08	081417	06/14/08	2225.00	0.00	610.56
12381	06/27/08	081415	07/12/08	610.56	0.00	1995.00
12395	07/02/08	081435	07/17/08	1995.00	0.00	2905.00
12396	07/02/08	081430	07/17/08	2905.00	0.00	221.00
12401	07/02/08	081412	07/17/08	221.00	0.00	1230.00
12402	07/02/08	081409	07/17/08	1230.00	0.00	
				10486.56	0.00	10486.56
		Customer Total				
SPART DIST 1		SPARTANBURG SCHOOL				4800.00
12414	07/15/08	B08207	08/14/08	4800.00	0.00	

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Accounts Receivable Open Invoice Report

Inv #	Date	Description	Due Date	Original Amount	Activity to Date	Current Balance
		Customer Total		4800.00	0.00	4800.00
ST. FRANCIS		BON SECOURS HEALTH				
12419	07/17/08	081448	08/01/08	1410.00	0.00	1410.00
		Customer Total		1410.00	0.00	1410.00
ST. FRANCIS		BON SECOURS HEALTH				
12291	04/01/08	T08018	05/01/08	1460.00	0.00	1460.00
12341	05/22/08	t08028	06/21/08	15000.00	0.00	15000.00
12344	05/22/08	T08026	06/21/08	5890.00	0.00	5890.00
12346	05/28/08	T08029	06/27/08	760.00	0.00	760.00
12348	05/30/08	T08028	06/29/08	1600.00	0.00	1600.00
12352	05/30/08	081429	06/29/08	650.00	0.00	650.00
12362	05/30/08	081420	06/29/08	350.00	0.00	350.00
12424	07/17/08	081446	08/16/08	157.18	0.00	157.18
		Customer Total		25867.18	0.00	25867.18
STRANGE		STRANGE BROTHERS GRADING				
12420	07/17/08	MATL	08/16/08	1457.50	0.00	1457.50
		Customer Total		1457.50	0.00	1457.50
TRIANGLE		TRIANGLE CONSTRUCTION				
12237	02/11/08	081368	03/12/08	12760.00	-12122.00	638.00
12276	03/19/08	071238	04/18/08	95584.87	-90805.63	4779.24
12299	04/01/08	081368	05/01/08	1385.00	-1315.75	69.25
12326	04/23/08	071238	05/23/08	74185.73	-70363.94	3821.79
12429	07/17/08	071238	08/16/08	13627.95	0.00	13627.95
		Customer Total		197543.55	-174607.32	22936.23
TRIDENT		TRIDENT CONSTRUCTION				
12127	11/26/07	M07012	12/26/07	134730.00	-121257.00	13473.00
12155	12/19/07	M07012	01/18/08	176270.00	-158643.00	17627.00
12183	01/22/08	M07012	02/21/08	104599.50	-94139.55	10459.95
12246	02/22/08	m07012	03/23/08	21284.60	-19156.14	2128.46
12279	03/27/08	M07012	04/26/08	28100.00	-25254.00	2846.00
12320	04/23/08	m07012	05/23/08	22952.00	-20656.80	2295.20
12340	05/22/08	M07012	06/21/08	176183.90	-158565.51	17618.39
12384	06/30/08	M07012	07/30/08	2052.00	0.00	2052.00
		Customer Total		666172.00	-597672.00	68500.00
W-3		W-3				
12379	06/26/08	MATL	07/26/08	231.50	0.00	231.50

22 08 03 22 P

il 22, 2008

Ron's Building Materials, Inc.

Accounts Receivable Open Invoice Report

38 pm

Inv #	Date	Description	Due Date	Original Amount	Activity to Date	Current Balance
		Customer Total		231.50	0.00	231.50
WESTIN		WESTIN POINSETT				
12360	05/30/08	081400	06/14/08	65.00	0.00	65.00
12425	07/17/08	081448	08/01/08	4845.00	0.00	4845.00
		Customer Total		4910.00	0.00	4910.00
		Report Total		1684415.88	-1255986.77	428429.11
		Less Open Credits				-2623.00
		Net Balance Due				425806.11




JUL 22 08 03:22P



O-U-N-S NO.
76-837-1383

INVOICE

SHIPPING POINT:

26 DC EAST
DALTON GA

This invoice and the Products provided hereunder are subject to Shaw Industries, Inc. Standard Terms and Conditions of Sale, which appear on the reverse side of this invoice and apply to all orders. Buyer agrees to hold Shaw Industries, Inc. harmless from all claims, damages, losses and expenses, including attorney's fees, arising out of this transaction and all future orders.

CONFIRMING GUARANTEE UNDER THE TEXTILE FIBER IDENTIFICATION ACT AND THE FLAMMABLE FABRICS ACT FILED WITH CONSUMER PRODUCT SAFETY COMMISSION

0197896	2685495	01/13/09	8Y	SHAW/COLUMBIA/MD
5% 20 3% 30 NET 40				NO ANTICIPATION ALLOWED

SHIPPED TO:

SOLD TO:
000711**020**005*****MIXED AADC 373
SHERMAN CONSTRUCTION CO INC
1300 PIEDMONT HWY
PIEDMONT SC 29673-8505

SHERMAN CONSTRUCTION CO INC
185 COMMERCE CENTER
INTERNATIONAL PLASTICS
GREENVILLE SC 29615

ATTN:

RECEIVED

JAN 16 2009

PO		CHRIS	DEPT	ORDER DATE 01/09/09				
MBOL 911866								
001	HGV52 FASHION EXPE 00102 CATTAIL	15.00 X 10.00	15000ST	2.17CA	325.50			
STOCK		0						
002	HGB22 HIGH PERSPEC 00200 RAFFIA	15.00 X 64.00	96000ST	2.15CA	2064.00			
CHRIS KEEL								
FREIGHT CHARGES								50.56
		TOT SQ FT		111000				

SEND PAYMENT AND COUPON TO:

SHAW INDUSTRIES, INC.
P.O. BOX 100775
ATLANTA, GA 30384-0775

REMITTANCE IS TO BE MADE ONLY TO US IN
FAR FUNDS, F.O.B. SHIPPING POINT
PLEASE MAKE SOME OF CASH/SEA MARCH ON G.D.C.

NOTE: NOT ALL INVOICED ITEMS ARE
SUBJECT TO CASH DISCOUNTS. DISCOUNTS
MAY ONLY BE TAKEN IF YOUR PAYMENT IS
RECEIVED BY THE DATES SHOWN ON THE
REQUIRED PAYMENTS SCHEDULE.

UNITS OF MEASURE			
16-POUNDS	EA-PAIRS		
SY-SQUARE YARDS	PC-PIECE		
SF-SQUARE FEET	CS-CASES		
SM-SQUARE METERS	CF-CUBIC FEET		
ROLL	CHOT		
DRAWN	SAMPLES		

5.00	119.48	02/02/2009	2330.94
3.00	71.69	02/12/2009	2378.73
		02/22/2009	2450.42



Ron's Building Materials
212 Transit Drive
Greenville, SC 29607

Commercial & Industrial
Floors, Inc

Chris Keel
113 Hartsdale Court
Greer, SC 29650

Dear Chris,

Welcome to Commercial & Industrial Floors, Inc dba Ron's Building Materials!

We are so excited to have you join our team and look forward to the opportunity to work with you! As we discussed, you will be reporting to Dabney Maides (Owner). Your start date will be January 26, 2009 at 8:00 am.

Your salary will be paid as follows \$4583.33 for the first 30 days, then \$6250.00 for the next 30 days; this will be contingent on meeting monthly sales goals that will be laid out under separate cover. On your 90th day you will receive a review. Upon the successful completion of review and pending 100% of quota being met you will receive a salary of \$8333.33 a month. This will be subject to change based on performance and meeting 100% of monthly quota.

This agreement refers to an additional non-compete agreement previously signed.

Expenses can be turned in for reimbursement and charged to your jobs. You will receive mileage at current rate up to \$400.00 a month after the completion of required expense reports and a mileage log. A mobile phone will be provided for business use and charged to your jobs.

Vacation time of 1 week is exercisable after completion of 1 year of service. Going forward after the first year of service the accrual rate will be 1.17 hours per month equaling 2 weeks vacation per year.

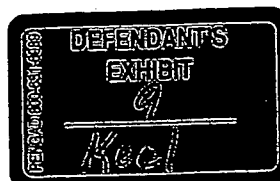
As the acting Professional Employer Organization for Ron's Building Supplies, Ideal Business Solutions offers this position on behalf of them. All offers are contingent on the successful completion of required background screening.

Please see the attached for all of the other benefits the company provides.

Please contact me at 864.286.9009 at any time. We are thrilled to work with you and look forward to a long lasting partnership!

Best wishes,

Johanna Kane
Director of Talent
Ideal Business Solutions
The Ideal Candidate



212 Transit Drive

R311



BON SECOURS HEALTH SYSTEM, INC.

BON SECOURS HEALTH SYSTEM, INC.
P.O. BOX 6189
ELLCOTT CITY, MD 21042-6189

CHECK NO. 0001316744

AUGUST 26, 2010
641275/011

TO THE ORDER OF WPI
118 CASTELLAN DR
GREER, SC 29650

*****140.00***
VOID AFTER 90 DAYS

PAY EXACTLY **ONE HUNDRED FORTY AND NO/100 DOLLARS**

Bank of America
Atlanta, DeKalb County, GA

Katherine DeBuckler

AUTHORIZED SIGNATURE

⑈0001316744⑈

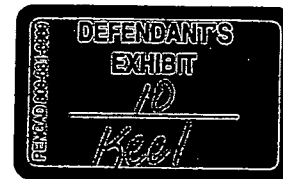
10678762

14532611214 881T #6226
1251 ARROWLINE DR PKT610
CHARLOTTE, NC 28226-1214

77044501220

✓
CPI
Ten dynd. of

Aug?



4. At that time, the primary subcontractors of Ron's Building Materials that had been consistently utilized since closing, became significantly less available to the company.

5. These things led to my investigating a bit further, and I learned that Mr. Keel had taken on a "Duradek" contract in Columbia. This was precisely one of the contracts Mr. Keel had been working on securing for our company prior to his quitting. I learned this information in June, because I had already written a check to the Plaintiff on my installment contract for that month. When I found this out, I did not send that payment, because I believed Mr. Keel and the Plaintiffs had breached their contract.

6. I suspended payments on the installment contract thereafter, and several months later I was sued by the Plaintiffs for non-payment, to which I countersued.

7. If I had any knowledge of Mr. Keel competing against me anytime earlier than May 2013 when he quit working for me, I would have stopped paying the Plaintiff, on the one hand, and I would have also fired Mr. Keel. But I did not discover his misdeeds and competitive undertakings until after he quit.

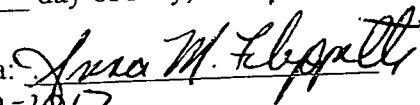
FURTHER AFFIANT SAYETH NAUGHT.


Dabney Maides

Subscribed before me this 14th day of May, 2014.

Notary Public of South Carolina:

My commission expires: 1-22-2017



STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	FOR THE THIRTEENTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-23-05778

CJR Resources, Inc. f/k/a Ron's Building Materials, Inc., Plaintiff, v. Commercial & Industrial Floors, Inc. et al, Defendant/Third Party Plaintiffs, v. Christopher M. Keel, Third Party Defendant.	AFFIDAVIT OF DABNEY MAIDES 2015 OCT 30 AM 8 59 FILED CLERK OF COURT GREENVILLE, S.C. PAUL E. WICKHAMMER

The Affiant, Dabney Maides, individually and as agent/owner of Commercial and Industrial Flooring (CIF), avers the following:

1. My name is Dabney Maides. I am over the age of 18 and am testifying as to the facts of which I have personal knowledge.
2. In July 2008, I bought a company called Ron's Building Materials. Ron's was owned by Ron and Joyce Keel, and their son, Chris Keel. It is my understanding that Ron and Joyce owned a total of 51% of the company and Chris owned 49%. Ron's originally sold building materials, but at some point, Chris Keel (son of Ron and Joyce) began to build a commercial flooring business and by closing date, Ron's flooring business was doing something around \$4

million a year. In fact, I know that there was over \$400,000.00 just in accounts receivable when we closed because the sellers kept those A/R as part of the deal.

3. Chris and his expertise were key and critical to the purchase. Chris knew the business, he had the contacts, and he had the subcontractors. He had long term relationships with most of the contractors in town, both business and personal. He was personally friends years prior with folks at Creative Builders, Triangle Construction, Cameron Construction, and Sherman Construction to name a few that he still does a lot of business with today.

4. We closed on the sale and as part of the contract terms, Chris entered into an employment agreement with CIF. The closing documents of the asset purchase agreement and his employment contract set forth all the terms of our deal. Chris agreed to all the terms by his signature, and even in this lawsuit, he has agreed in his deposition that he was subject to all the terms in the asset purchase agreement and the employment contract, including his noncompete.

5. Chris was only working for me for a month and a half when I received a voicemail in October 2008 from him saying he was at his Charleston house (he owns a home on Goat Island in the waterway behind the Isle of Palms) and that he was going to stay there and not come back. But he said that he would be available for anything I needed and to call him if there was anything he could do to help. This was a surprise to say the least, and it scared me for the business because he was so important to learning the business, building the contacts with me and transitioning out of the business (because he said he ultimately wanted out of the business). Anyway, I thought maybe things were just temporary because I knew he was going through a separation/divorce that was hard on him.

6. As it turned out, he did get back in touch just a couple months after, in January, and we

started talking about him coming back to work. He wanted to change some things about compensation, and so we talked about that and agreed to a new compensation plan for his return to work, with all the other terms including his noncompete remaining in effect. (Exhibit 4).

7. Chris came back to work and over the next years we did business with a number of companies including the contractors I mentioned earlier, and did some hospital work too, with Bon Secours and Laurens County Hospital to name a couple.

8. Chris suddenly quit CIF on May 31, 2013 and his last paycheck was sent June 7. Soon after that, things started to get bad. As I said in an earlier affidavit, I found out he started working on a "Duradek" job in Columbia, which was one of the contracts we were working on getting right before he left. Because of this lawsuit, I recently got that confirmed by Timothy Shepherd in an email when I asked him if he could verify doing installation for Upstate Commercial on that job and he said yes. (Exhibit 5).

9. When I found that out, it made me think he had been working behind my back for his own purposes when he was working for me and that he was violating his noncompete. And that's when I stopped paying my monthly payment to Chris and his parents (CJR) on the money I still owed for the purchase of the company. I felt like I was getting cheated so I quit paying. I got sued a few months later.

10. After this lawsuit started, I was contacted by Chris' ex-wife who told me she remembered the business sale, and that Chris was excited about the money he was going to make on the business sale and that he was just going to ride out his time.

11. In June 2013, I received a contract from Triangle construction for the Bavarian Pretzel Works, but when I called them about it, they said it was a mistake. I wasn't sure, but I thought it

might have been for Chris.

12. Recently, I found out why that contract was a 'mistake.' I now know Chris was working against me before he left CIF and has never looked back. We sent subpoenas to Triangle Construction, Sherman Construction, Creative Builders, and Bon Secours seeking information about their work with Chris and his company. We received some documents in response (except from Bon Secours, who still has not given us any response).

13. In Exhibit 3, you can see that Chris' company was awarded 5 different contracts from Triangle Construction right after he left CIF. Three of the contracts were awarded less than 1 month after he quit, and on all three of those contracts, he was bidding them or working on bidding them even before he quit as shown by the emails May 21 and 22 on three projects and the bid dates on the contracts. Of course, in the documents I was given, they didn't include any dollar figures. They also didn't include anything after August 31, 2013, but Chris openly agrees and said in his deposition that he has done many jobs for Triangle since then and still does. He said that about all of the contractors we sent subpoenas to, as well as Cameron Construction. His business is apparently booming as he continues to violate his noncompete after he quit.

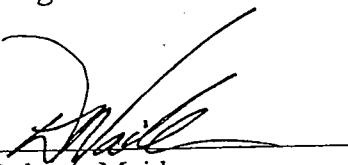
14. In Exhibit 1, Creative Builders' CFO sent a letter responding to the subpoena claiming that due to an "accounting software conversion" that was coincidentally completed in July of 2013, the company's "ability to access records related to Upstate Flooring, Inc....is extremely limited from the time period of August 2008 to July 2013." Then he suggested if they were to really look for any records, it would take a long time because it would be in paper files in a warehouse and they would expect to be compensated. I found that very strange, particularly because Chris said in his deposition that he and the owner of Creative Builders have known each

other since college. And how would a contractor their size not still have easily accessible project records from the last 5 years? Creative Builders only gave me one more piece of paper, showing contracts they awarded Chris' company after August 31, 2013, including an award September 1, 2013, which he would have bid before September 1 – bids are always submitted before being awarded. And there are then at least seven more awarded from then until now according to that sheet, but Chris testified there may be even more that he has done.

15. Another thing I need to mention is that all of my primary installers/subcontractors I used suddenly became very unavailable after Chris quit. I now know why – they all went to work for him. He said in his deposition that he uses the same guys now that he's used for 20 years. Right after he said that, he said he couldn't be considered a competitor of CIF because none of the guys he works with would ever work with CIF. That really showed me what he thought of me. I'm apparently a joke to Chris, because he completely discredits my flooring company even though he worked for me for almost five years; even though it was his and his parents' former company; and even though he and his parents gladly accepted over \$1 million dollars at the closing table from me to own the flooring company.

16. Also during this lawsuit, a document surfaced that seems to show that Chris was competing long before he ever quit, all the way back to 2009. Exhibit 2 is an invoice from Shaw Industries selling carpet to Sherman Construction. It indicates that the carpet was ordered by Chris Keel for Sherman Construction (one of Chris' long time relationships and current customers). And the dates on the invoice are January of 2009, while Chris was not doing any active work for CIF because he had been at his island home, so he was competing even then, not six months after I bought the company.

17. I still don't know the depths of this, but Chris knew and admits that he was subject to the terms of our sale agreement. In this lawsuit, things line up from where he is now and go all the way back to the beginning it seems. He has his subcontractors and his contracts and his business is booming. I've now seen documents that reveal him planning his departure and working for himself while on my payroll and the flood of contracts he received after walking out the CIF door. Through this, I also found out he was doing work for Sherman (at least) after barely working for CIF before going to Goat Island and leaving me a voicemail, then coming back to be paid for 4 more years before he thought he could just quit again and steal all the business he could, and I've suffered immense financial damage because of it, beyond anything I could have imagined.


Dabney Maides

Subscribed before me this 30th day of October, 2015.

Notary Public of South Carolina: 

My commission expires: 4-15-2025

EXHIBIT 1 - CREATIVE BUILDERS, INC.

1-1: Letter dated October 21, 2015, written by the Chief Financial Officer of Creative Builders

1-2: Partial list of Creative Builders' subcontracts awarded to Upstate Commercial Flooring & Paint



Creative Builders, Inc.

200 East Broad Street Suite 150
Greenville, South Carolina 29601
Tel: 864.233.1631 Fax: 864.235.1176

October 21, 2015

William R. McKibbin III
601 E. McBee Ave., Ste 204
Greenville, SC 29601

Dear Mr. McKibbin:

Due to an accounting software conversion completed in July 2013, our ability to access specific records related to Upstate Flooring, Inc. (and related parties named in subpoena) is extremely limited from the time period of August 2008 to July 2013. While we have scanned copies of paperwork to support tax return and financial data records at a high level, we do not have the ability to search for records specific to Upstate Flooring, Inc. (and related parties named in subpoena).

If we were to undertake the process, this search would involve long hours of going through a shop warehouse of paper records and would not guarantee complete results since there is no database to search for records. We would also expect to be compensated accordingly for our time conducting this search. Fortunately, our current accounting software would allow such a search and this would not be an issue going forward.

Please let me know if you need additional information or have questions.

Sincerely,

Jim White
Chief Financial Office

jim@creativebuilders.net

Cell 864-350-3914

CREATIVE_001

Building a better tomorrow ...today!

1-1
R32

Subcontracts

10/21/15

CREATIVE BUILDERS, INC.

Subcontracts

(Upstate Flooring)

Record#	Subcontract#	Job	Phase	Description	Subcontract Date	Original Subcontract
131	201361.9680	201361 - SCB&T FIVE FORKS		Carpet	09/01/2013	
158	201367.9300	201367 - SPRING PARK		Flooring	11/15/2013	
490	201452-9300-S	201452 - SEA PALMS		FLOORING	10/15/2014	
499	201419.9300	201418 - SOUTH RIDGE (SW, PG, 1 & 2)		Flooring	10/16/2014	
521	201423.9680	201423 - SOUTH RIDGE TYP I&II (3,4,5,6)		Flooring	10/16/2014	
696	201462.9680	201462 - SC TELCO FCU-VERDAE BLVD		Floor Covering	05/11/2015	
738	201463.9300	201463 - WATERFORD TERRACE APTS		Flooring	06/17/2015	
897	201464.9300	201464 - KEENAN SMITH DENTAL		Flooring	09/01/2015	

Note: No information relevant to the time period August 2008 through August 31, 2013 can be located. We changed accounting systems in July 2013 and can no longer access our old software.

In addition, paper records are filed in our warehouse for that time period, but we do not have specific records for Upstate Flooring.

James M. White, CFO

James M. White

CREATIVE_002

10/21/2015
02:03 PM

EXHIBIT 2 - SHAW INDUSTRIES, INC.

2-1: Invoice dated 1/13/09 indicating that "Chris Keel" ordered carpet from Shaw Industries, Inc. for the benefit of Sherman Construction Company, Inc.

Shaw

O-U-N-S MO.
78-637-1783

INVOICE

SHIPPING POINT:

26 DC EAST
DALTON GA

This invoice and the Proforma provided hereunder are subject to Shaw Industries, Inc. Standard Terms and Conditions of Sale, which appear on the reverse side of this invoice and which constitute an integral part of this transaction and all future orders.

CONTINUING GUARANTEE UNDER THE TEXTILE FIBER IDENTIFICATION ACT, AND THE FLAMMABLE FABRICS ACT FILED WITH CONSUMER PRODUCT SAFETY COMMISSION

SHIPPED TO:

0197896	2685495	01/13/09	8Y	SHAW/COLUMBIA/MD
5% 20 32 30 NET 40				NO ANTICIPATION ALLOWED

SOLD TO:

000711**020**005**NIXED AADC 373
SHERMAN CONSTRUCTION CO INC
1300 PIEDMONT HWY
PIEDMONT SC 29673-8505

SHERMAN CONSTRUCTION CO INC
185 COMMERCE CENTER
INTERNATIONAL PLASTICS
GREENVILLE SC 29615

ATTN:

RECEIVED

JAN 16 2009

PO		CHRIS	DEPT	ORDER DATE 01/09/09				
MOOL 911866								
001	HGV52 FASHION EXPE 00102 CATTAIL			15.00 X 10.00	15000SF	2.17CA		325.50
	STOCK							
002	HGR22 HIGH PERSPEC 00200 RAFFIA			15.00 X 64.00	96000SF	2.15CA		2064.00
	CHRIS KEEL							50.56
	FREIGHT CHARGES							
	TOT SQ FT				111000			

SEND PAYMENT AND COUPON TO:

SHAW INDUSTRIES, INC.
P.O. BOX 100775
ATLANTA, GA 30384-0775

REMITTANCE IS TO BE MADE ONLY TO US IN
FAR FUNDS, F.O.B. SHIPPING POINT
PLEASE HAVE NAME OF PAYOR CLEARLY SHOWN ON C.D.U.

NOTE: NOT ALL INVOICED ITEMS ARE
SUBJECT TO EARLY DISCOUNTS. DISCOUNTS
MAY ONLY BE TAKEN IF YOUR PAYMENT IS
RECEIVED BY THE DATES SHOWN ON THE
REQUIRED PAYMENTS SCHEDULE.

IN-UNIT OF MEASUREMENT		DISCOUNT	
LB-POUNDS	GA-METRE		
SY-SQUARE YARDS	PC-PIECE		
SF-SQUARE FEET	CS-CASES		
SM-SQUARE METERS	CF-CUBIC FEET		
R-ROLL	CS-CASES		
B-BUNDLE	S-SAMPLES		

\$5.00	119.48	02/02/2009	2330.94
3.00	71.69	02/12/2009	2378.73
		02/22/2009	2450.42

EXHIBIT 3 - TRIANGLE CONSTRUCTION COMPANY, INC.

Documents showing Chris Keel's flooring company's work with Triangle Construction Company, Inc. from May 21, 2013 –October 7, 2013.

3-1: Bavarian Pretzel Factory

3-1, A: Email correspondence dated May 21, 2013

3-1, B: Standard Sub-Contract Agreement dated June 18, 2013 - Bavarian Pretzel Factory

3-2: Chicken Salad Chick

3-2, A: Email correspondence dated May 21, 2013

3-2, B: Email correspondence dated June 18, 2013

3-3, C: Standard Sub-Contract Agreement dated June 27, 2013 - CSC - Augusta Commons

3-4, D: Standard Sub-Contract Agreement dated September 5, 2013 - CSC - Lexington

3-3: Legacy Charter Gym

3-3, A: Email correspondence dated May 22, 2013

3-3, B: Standard Sub-Contract Agreement dated June 27, 2013 - Legacy Charter Gym

3-4: Office Building for Carolina Golf Association

3-4, A: Email correspondence dated June 25, 2013

3-4, B: Email correspondence and quote submission dated June 25, 2013

3-4, C: Standard Sub-Contract Agreement dated August 19, 2013 - Office Building for Carolina Golf Association

3-5: 98 East McBee

3-5, A: Email correspondence dated September 19, 2013

3-5, B: Standard Sub-Contract Agreement dated October 7, 2013 - 98 East McBee

Subject: Re: Bavarian Pretzel

Date: Tuesday, May 21, 2013 2:17:32 PM Eastern Daylight Time

From: Chris Keel <coastalair@gmail.com>

To: Matthew Praytor <MPraytor@triangleconstruction.com>

Matthew,

2800/s.f. or : I will be bringing samples by shortly. One is a direct glue down product and the other is a floating floor.

Did you get the pricing on Chicken Salad Chick?

Thanks,

Chris

On Tue, May 21, 2013 at 8:34 AM, Matthew Praytor <MPraytor@triangleconstruction.com> wrote:
I need a price on this also.

Matthew B. Praytor
Triangle Construction Company, INC.
864-770-1712 o
864-449-6876 m
www.triangleconstruction.com

Please sign and return to us the pink copy of this contract.
STANDARD SUB-CONTRACT AGREEMENT
TRIANGLE CONSTRUCTION COMPANY
Box 6266
Greenville, South Carolina 29606

JOB NO. 1883
Subcontract No. 1883-05s

JOB: Bavarian Pretzel Factory
534 Woods Lake Road, Greenville, SC 29607

THIS SUB-CONTRACT AGREEMENT Made and entered into this 18th day of June 20 13 by and between
Triangle Construction Company hereinafter called Prime

and Update Commercial Floors
Commercial-Industrial-Floors--
59-C Concourse Way- 212 Transit
Greer, SC-29650-- 29607

Attn: Chris Keel

P: 864-879-3322 303-47273

F: 864-879-3395 271-5600

hereinafter called Sub-Contractor,

WITNESSETH: WHEREAS, Prime has entered into a contract with Bavarian Pretzel Factory, hereinafter referred to as the Owner, to perform certain work specified therein, and

WHEREAS, It is agreed that a part of said work is to be performed by Sub-Contractor under the terms and conditions hereinafter set forth;

NOW, THEREFORE, In consideration of the premises and the covenants and conditions herein contained, it is mutually agreed as follows:

1. Hereby made a part of this Sub-Contract Agreement by reference thereto are the aforesaid Contract between Owner and Prime including all plans, specifications, general conditions, special conditions, agreements and documents pertaining thereto and all regulations, rulings, specifications pertaining to said work, all of which are hereinafter referred to collectively as Contract and Included Agreements, and Sub-Contractor shall be bound thereby in the performance of this Sub-Contract and agrees to comply therewith and perform said work in accordance therewith.

2. Sub-Contractor acknowledges and agrees that he has examined sufficiently to his satisfaction the site of the work and is fully familiar with the aforesaid Contract and agrees to perform the following part of said Contract between Owner and Prime

Furnish all required labor, material, taxes, insurance, supervision and equipment for a complete installation of Flooring as per your attached proposal dated 05/21/13 for the lump sum of \$

NOTES:

Triangle's Supplementary Conditions (ATTACHMENT "A") are attached to and are a binding part of this agreement.

Please forward your current certificate of insurance with the limits as described in Attachment "A" to our office as soon as possible.

Also, please note that we are unable to process invoices that do not include a partial release of lien (copy attached).

Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorney's fees, arising directly or indirectly out of the obligations herein undertaken or resulting out of operations conducted by the Subcontract, Subcontractor's Subcontractors, anyone directly or indirectly employed by them or anyone whose acts they be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder, save and except claims or litigation caused by or resulting from the sole negligence of the party indemnified hereunder. Such obligation shall not negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph. Three copies of certificates of the above insurance shall be filed with the Prime prior to starting work and shall be subject to his approval as to adequacy. Sub-Contractor assumes full responsibility for securing necessary permits and licenses and for payment of all State and Federal and local Taxes, including, but not limited to Federal Unemployment Insurance, Old Age Benefits, Sales Taxes, Property Taxes and Income Taxes and agrees to meet and comply with all laws, ordinances, regulations or requirements applicable to Sub-Contractor promulgated by Federal, State or Municipal Governments or agencies.

6. Prime may, but shall not be required to, advance sums to Sub-Contractor for the purpose of financing the work and meeting payroll and may offset such sums advanced against any Sub-Contract earnings, including final retainage, without the consent of and free of any claim of unauthorized prepayment by any Surety and such shall not release the Surety in whole or in part.

7. Upon request of Prime, Sub-Contractor shall before each payment furnish an affidavit setting forth the names of and amounts due to all persons furnishing materials, labor and equipment. Sub-Contractor gives to Prime the right to pay any or all such persons directly or to retain a sufficient sum from amounts due Sub-Contractor to protect Prime against any such indebtedness. Prior to final payment, Sub-Contractor agrees to sign and deliver to Prime waivers of liens as to this job.

8. In the event Sub-Contractor fails at any time to comply with the terms of this Sub-Contract or fails to furnish satisfactory material, labor or equipment or facilities in performance of the work covered by this Agreement or refuses, neglects or fails to prosecute the work with promptness and diligence, or fails to make prompt payment for materials, labor, equipment or taxes or becomes involved in a labor dispute that delays or impedes Sub-Contractor's part or any other part of the Contract, this Contract may be terminated immediately by Prime. It is recognized that time is of the essence of this Agreement and that delays in the prosecution of said work by Sub-Contractor or improper performance of said Agreement are prejudicial to the interest of Prime.

flooring as per your attached proposal dated 05/21/13
for the lump sum of \$

NOTES:

Triangle's Supplementary Conditions (ATTACHMENT "A") are attached to and are a binding part of this agreement.

Please forward your current certificate of insurance with the limits as described in Attachment "A" to our office as soon as possible.

Also, please note that we are unable to process invoices that do not include a partial release of lien (copy attached).

3. Sub-Contractor shall furnish at his own expense all labor, equipment, materials, apparatus, fuel, tools and other facilities necessary for the expeditious execution of and completion of said work, including Sub-Contractor's own clean up.

4. Sub-Contractor is to commence the work immediately after notification by Prime and shall complete the same no later than as required and shall maintain such rate of progress in performance of said work as to not impede Prime or any other Sub-Contractor in the performance of its work and so as to satisfy Owner or its authorized representative of the rate of progress of such work. Upon request by Prime, certain parts of the work covered by this Sub-Contract Agreement shall be prosecuted in preference to others. Prime or another Sub-Contractor may, upon agreement of Sub-Contractor, perform certain parts of the work herein contracted for without affecting the validity of this Agreement.

5. Sub-Contractor assumes toward prime all the obligations, duties and responsibilities that Prime assumes toward Owner under said Contract and Included Agreements. Sub-Contractor agrees to maintain adequate insurance so as to protect him and Prime from claims and liability under Workmen's Compensation Acts, claims for injury or damage to person or property covering all contracting operations, Independent Contractors, Specified Hold Harmless and/or Contractual Liability claims and any other liability. To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the

ordinances, regulations or requirements applicable to Sub-Contractor promulgated by Federal, State or Municipal Governments or agencies.

6. Prime may, but shall not be required to, advance sums to Sub-Contractor for the purpose of financing the work and meeting payroll and may offset such sums advanced against any Sub-Contract earnings, including final retainage, without the consent of and free of any claim of unauthorized prepayment by any Surety and such shall not release the Surety in whole or in part.

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8. In the event Sub-Contractor fails at any time to comply with the terms of this Sub-Contract or fails to furnish satisfactory material, labor or equipment or facilities in performance of the work covered by this Agreement or refuses, neglects or fails to prosecute the work with promptness and diligence, or fails to make prompt payment for materials, labor, equipment or taxes or becomes involved in a labor dispute that delays or impedes Sub-Contractor's part or any other part of the Contract, this Contract may be terminated immediately by Prime. It is recognized that time is of the essence of this Agreement and that delays in the prosecution of said work by Sub-Contractor or improper performance of said Agreement are prejudicial to the interest of Prime.

9. In the event of termination of this Contract for any reason Prime may take over the performance of the work covered by this Agreement and complete the same or may sub-contract all or any part thereof, retaining any money that may otherwise have been due Sub-Contractor so far as is necessary to defray the costs of completing the work covered under this Agreement. Any excess of the amount retained after defraying the costs of completing the work covered under this Agreement and any damages sustained by Prime by reason of breach of this Agreement by Sub-Contractor shall be paid over to Sub-Contractor after completion and acceptance of the work; in the event the amount retained is not sufficient to cover such costs, expenses and damages, and profit, Sub-Contractor shall pay upon demand the balance due to Prime.

10. Sub-Contractor agrees to turn over and deliver to Prime, said work completed within the aforesaid time in good condition and free and clear of any liens, encumbrances or claims and shall protect and save harmless Prime and Owner from any and all claims, encumbrances and liens made against said work or against Prime or Owner. Any delay caused by Sub-Contractor, which results in a penalty being assessed against Prime under its contract with owner shall be paid by Sub-Contractor.

TRIANGLE-001

11. Sub-Contractor agrees to deliver to Prime upon demand a properly executed bond in a form satisfactory to Prime in the penal sum of the total amount of this Sub-Contract, with surety or sureties satisfactory to Prime, conditioned upon the faithful performance of this Agreement and of said Contract and Included Agreements and payment of all sums due for the performance of said work and which may be due under this Sub-Contract agreement, the premium of such bond to be paid Sub-Contractor and reimbursed by Prime. Failure to deliver such bond to Prime shall be deemed to be a breach of this Agreement and at the option of Prime, this Agreement may be terminated and Sub-Contractor shall be responsible for any and all damages which Prime may sustain in performing said work or in having it performed by another Sub-Contractor.

12. Sub-Contractor shall not assign all or any part of this Sub-Contract or sub-let all or any part of the work provided for hereunder without the prior written consent of the Prime, but in any event and without regard to whether such contract is given or not, Sub-Contractor agrees to indemnify and save Prime harmless, as hereinafter above set forth, although claims are based upon terms supplied to an assignee or Sub-Contractor of the undersigned Sub-Contractor or to any other party (no matter how remote or disconnected) performing or having any connection whatever with the performance of the Sub-Contract work and for which Prime may be liable.

13. Sub-Contractor shall remain liable for correcting any defects or replacing any part of said work to the same extent that Prime is liable to Owner under said Contract and Included Agreements. Sub-Contractor shall remedy any defects in said work and pay for any damages due to other work resulting from failure to perform said work.

14. a. Sub-Contractor shall not discharge or fail or refuse to hire any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin. Nor shall Sub-Contractor limit, segregate or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

b. The Sub-Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, or national origin in the selection of and retention of Sub-Contractors, including procurements of materials and leases of equipment. The Sub-Contractor will not participate either directly or indirectly in the discrimination prohibited by any applicable Regulations, including employment practices.

c. In all solicitations either by competitive bidding or negotiation made by the Sub-Contractor for work to be performed under a Sub-Contract, including procurements of materials or equipment, each potential Sub-Contractor or supplier shall be notified by the Sub-contractor of the Sub-Contractor's obligation under this Contract and any applicable Regulations relative to non-discrimination on the ground of race, color or national origin.

d. The Sub-Contractor will provide all information and reports required by any applicable Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Sub-Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Sub-Contractor shall so certify to the Prime, and shall set forth what efforts it has made to obtain the information.

e. The Sub-Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of these nondiscrimination clauses.

f. The Sub-Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color or national origin.

g. The Sub-Contractor will comply with all provisions of any applicable Executive Order and of the valid rules, regulations and relevant orders of the President's Committee on Equal Employment Opportunity.

h. The Sub-Contractor will furnish all information and reports required by any applicable Executive Order, and by the rules, regulations and orders of the said Committee, or pursuant thereto, and will permit access to his books, records and accounts by any authorized government agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations and orders.

i. In the event of the Sub-Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or in part.

j. The Sub-Contractor will include the provisions of the foregoing paragraphs in every Sub-Contract or Purchase Order unless exempted by rules, regulations or orders of the President's Committee on Equal Employment Opportunity, so that such provisions will be binding upon each Sub-Contractor or vendor.

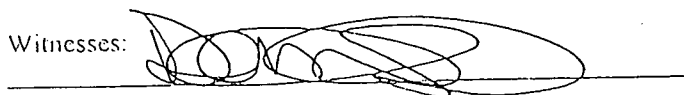
15. Without limitation upon the obligations herein generally assumed for compliance with prime-contract provisions, but for purposes of complying with the labor requirements as set forth in the prime contract, it is further provided that: All of the provisions, if any, of the prime contract relating to the hiring, handling, selection, use and payment of employees on the project involved and in the imposition of penalties, sanctions or liabilities for non-compliance with such labor provisions shall all be in all respects applicable to and binding upon Sub-Contractor to the same extent that same are or would be applicable to and binding upon Prime and said provisions are incorporated by reference as a part hereof as if set out at length herein. (Every reference therein to "Prime" shall be considered as referring also to "Sub-Contractor".) Sub-Contractor agrees to comply with such directions as may be given by Prime (as may be required by the Owner) as a means by enforcing such labor provisions and to be bound by such penalties, sanctions and liabilities for non-compliance with such provisions and directions as may be lawfully imposed and in all such respects to indemnify and save harmless the Prime from any and all penalties, forfeitures, sanctions, liabilities, loss, cost, expense and attorneys' fees imposed upon or incurred by Prime because of or arising out of any failure of Sub-Contractor to comply with such provisions or directions or to discharge any of same as whole or in part, with or without the consent of Prime, any such Sub-Contract shall include the same obligations as set forth in this paragraph.

16. Neither Sub-Contractor nor any of the Sub-Contractor's agents or contractors shall imply or keep any workman whose employment on the work covered by the Sub-Contract is objected to by the Owner or by Prime.

17. The failure of either party to invoke any provision hereof or assert any right given hereunder on any one occasion or on any series of occasions shall not amount to or be interpreted as a waiver of release of any such provision or right.

WITNESS our hands and seals the day and year first above written.

Witnesses:



requirements of materials or equipment, each potential Sub-Contractor or supplier shall be notified by the Sub-contractor of the Sub-Contractor's obligation under this Contract and any applicable Regulations relative to non-discrimination on the ground of race, color or national origin.

hereof as if set out at length herein. (Every reference therein to "Prime" shall be considered as referring also to "Sub-Contractor".) Sub-Contractor agrees to comply with such directions as may be given by Prime (as may be required by the Owner) as a means by enforcing such labor provisions and to be bound by such penalties, sanctions and liabilities for non-compliance with such provisions and directions as may be lawfully imposed and in all such respects to indemnify and save harmless the Prime from any and all penalties, forfeitures, sanctions, liabilities, loss, cost, expense and attorneys' fees imposed upon or incurred by Prime because of or arising out of any failure of Sub-Contractor to comply with such provisions or directions or to discharge any of same as whole or in part, with or without the consent of Prime, any such Sub-Contract shall include the same obligations as set forth in this paragraph.

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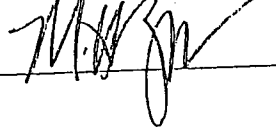
WITNESS our hands and seals the day and year first above written.

Witnesses: 

As to Prime

As to Sub-Contractor

TRIANGLE CONSTRUCTION COMPANY, INC.

BY: 

COMMERCIAL INDUSTRIAL FLOORS

BY:

TRIANGLE-002

Subject: Re: Bavarian Pretzel

Date: Tuesday, May 21, 2013 2:17:32 PM Eastern Daylight Time

From: Chris Keel <coastalair@gmail.com>

To: Matthew Praytor <MPraytor@triangleconstruction.com>

Matthew,

2800/s.f. or : I will be bringing samples by shortly. One is a direct glue down product and the other is a floating floor.

Did you get the pricing on Chicken Salad Chick?

Thanks,

Chris

On Tue, May 21, 2013 at 8:34 AM, Matthew Praytor <MPraytor@triangleconstruction.com> wrote:
I need a price on this also.

Matthew B. Praytor
Triangle Construction Company, INC.
864-770-1712 o
864-449-6876 m
www.triangleconstruction.com

3-2A
TRIANGLE-003

Dottie Lawson

From: Matthew Praytor
Sent: Tuesday, June 25, 2013 3:54 PM
To: Dottie Lawson
Subject: FW: LVT flooring spec change

Matthew B. Praytor
Triangle Construction Company, INC.
864-770-1712 o
864-449-6876 m
www.triangleconstruction.com

From: Chris Keel <coastalair@gmail.com>
Date: Tuesday, June 25, 2013 3:52 PM
To: Matthew Praytor <mpraytor@triangleconstruction.com>
Subject: Fwd: LVT flooring spec change

Matthew,

This is the latest quote on Chicken Salad Chick.

Chris

----- Forwarded message -----

From: Chris Keel <coastalair@gmail.com>
Date: Tue, Jun 18, 2013 at 10:46 AM
Subject: Re: LVT flooring spec change
To: Chris Keel <coastalair@gmail.com>

Matthew,

The first drawing for this project had the overall building size at approx. 35'x43.5' the last drawing I received with the latest finish plan has the overall building size increasing to 38.5' x 48.5' an increase of approx 350/sf. With the new finish plan and selections the base bid is now.

S Floors

Thanks,

Chris

Sent from my iPad

On Jun 17, 2013, at 3:32 PM, Chris Keel <coastalair@gmail.com> wrote:

Didn't have it but now I do. Vct Azrock V223, LVT, Mannington Natures Path American Walnut color 12126- and Shaw carpet flies style Tangle color ? Sorry will you send that again. I will order all of it today.

3-2-B

Please sign and return to us the pink copy of this contract.
STANDARD SUB-CONTRACT AGREEMENT
TRIANGLE CONSTRUCTION COMPANY
Box 6266
Greenville, South Carolina 29606

JOB NO.
Subcontract No.



JOB: CSC – Augusta Commons
2222 Augusta Street, Unit 6, Greenville, SC 29605

THIS SUB-CONTRACT AGREEMENT Made and entered into this 27th day of June 20 13 by and between
Triangle Construction Company hereinafter called Prime

and Upstate Commercial Flooring & Paint, LLC
212 Transit Drive
Greenville, SC 29607

Attn: Chris Keel
P: 864-303-4273
F: 864-627-3600

hereinafter called Sub-Contractor,

WITNESSETH WHEREAS, Prime has entered into a contract with Sing Bev Hospitality, hereinafter referred
to as the Owner, to perform certain work specified therein, and

WHEREAS, It is agreed that a part of said work is to be performed by Sub-Contractor under the terms and conditions
hereinafter set forth;

NOW, THEREFORE, In consideration of the premises and the covenants and conditions herein contained, it is
mutually agreed as follows:

1. Hereby made a part of this Sub-Contract Agreement by reference
thereto are the aforesaid Contract between Owner and Prime including all plans,
specifications, general conditions, special conditions, agreements and documents
pertaining thereto and all regulations, rulings, specifications pertaining to said
work, all of which are hereinafter referred to collectively as Contract and
Included Agreements, and Sub-Contractor shall be bound thereby in the
performance of this Sub-Contract and agrees to comply therewith and perform
said work in accordance therewith.

2. Sub-Contractor acknowledges and agrees that he has examined
sufficiently to his satisfaction the site of the work and is fully familiar with the
aforesaid Contract and agrees to perform the following part of said Contract
between Owner and Prime

Furnish all required labor, material, taxes, insurance,
supervision and equipment for a complete installation of
Flooring as per your attached proposal dated 6/25/13 for
the lump sum of \$.

NOTES:

Triangle's Supplementary Conditions (ATTACHMENT "A") are
attached to and are a binding part of this agreement.

Please forward your current certificate of insurance with the
limits as described in Attachment "A" to our office as soon as
possible.

Also, please note that we are unable to process invoices that do
not include a partial release of lien (copy attached)."

3. Sub-Contractor shall furnish at his own expense all labor, equipment,
materials, apparatus, fuel, tools and other facilities necessary for the expeditious
execution of and completion of said work, including Sub-Contractor's own clean
up.

4. Sub-Contractor is to commence the work immediately after notification
by Prime and shall complete the same no later than

including but not limited to attorney's fees, arising directly or indirectly out of
the obligations herein undertaken or resulting out of operations conducted by the
Subcontract, Subcontractor's Subcontractors, anyone directly or indirectly
employed by them or anyone whose acts they be liable, regardless of whether or
not such claim, damage, loss or expense is caused in part by a party indemnified
hereunder, save and except claims or litigation caused by or resulting from the
sole negligence of the party indemnified hereunder. Such obligation shall not
negate, abridge, or otherwise reduce other rights or obligations of indemnity
which would otherwise exist as to a party or person described in this paragraph.
Three copies of certificates of the above insurance shall be filed with the Prime
prior to starting work and shall be subject to his approval as to adequacy. Sub-
Contractor assumes full responsibility for securing necessary permits and
licenses and for payment of all State and Federal and local Taxes, including, but
not limited to Federal Unemployment Insurance, Old Age Benefits, Sales Taxes,
Property Taxes and Income Taxes and agrees to meet and comply with all laws,
ordinances, regulations or requirements applicable to Sub-Contractor
promulgated by Federal, State or Municipal Governments or agencies.

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the purpose of financing the work and meeting payroll and may offset such sums
advanced against any Sub-Contract earnings, including final retainage, without
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right to pay any or all such persons directly or to retain a sufficient sum from
amounts due Sub-Contractor to protect Prime against any such indebtedness.
Prior to final payment, Sub-Contractor agrees to sign and deliver to Prime
waivers of liens as to this job.

8. In the event Sub-Contractor fails at any time to comply with the terms
of this Sub-Contract or fails to furnish satisfactory material, labor or equipment
or facilities in performance of the work covered by this Agreement or refuses,
neglects or fails to prosecute the work with promptness and diligence, or fails to
make prompt payment for materials, labor, equipment or taxes or becomes
involved in a labor dispute that delays or impedes Sub-Contractor's part or any
other part of the Contract, this Contract may be terminated immediately by
Prime. It is recognized that time is of the essence of this Agreement and that
delays in the prosecution of said work by Sub-Contractor or improper
performance of said Agreement are prejudicial to the interest of Prime.

9. In the event of termination of this Contract for any reason Prime may
take over the performance of the work covered by this Agreement and complete

3-21C
R334

NOTES:

Triangle's Supplementary Conditions (ATTACHMENT "A") are attached to and are a binding part of this agreement.

Please forward your current certificate of insurance with the limits as described in Attachment "A" to our office as soon as possible.

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5. Sub-Contractor assumes toward prime all the obligations, duties and responsibilities that Prime assumes toward Owner under said Contract and included Agreements. Sub-Contractor agrees to maintain adequate insurance so as to protect him and Prime from claims and liability under Workmen's Compensation Acts, claims for injury or damage to person or property covering all contracting operations, Independent Contractors, Specified Hold Harmless and/or Contractual Liability claims and any other liability. To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses.

the consent of and free of any claim of unauthorized prepayment by any Surety and such shall not release the Surety in whole or in part.

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11. Sub-Contractor agrees to deliver to Prime upon demand a properly executed bond in a form satisfactory to Prime in the penal sum of the bond.

TRIANGLE-006

amount of this Sub-Contract, with surety or sureties satisfactory to Prime, conditioned upon the faithful performance of this Agreement and of said Contract and Included Agreements and payment of all sums due for the performance of said work and which may be due under this Sub-Contract Agreement, the premium of such bond to be paid Sub-Contractor and reimbursed by Prime. Failure to deliver such bond to Prime shall be deemed to be a breach of this Agreement and at the option of Prime, this Agreement may be terminated and Sub-Contractor shall be responsible for any and all damages which Prime may sustain in performing said work or in having it performed by another Sub-Contractor.

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13. Sub-Contractor shall remain liable for correcting any defects or replacing any part of said work to the same extent that Prime is liable to Owner under said Contract and Included Agreements. Sub-Contractor shall remedy any defects in said work and pay for any damages due to other work resulting from failure to perform said work.

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b. The Sub-Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, or national origin in the selection of and retention of Sub-Contractors, including procurements of materials and leases of equipment. The Sub-Contractor will not participate either directly or indirectly in the discrimination prohibited by any applicable Regulations, including employment practices.

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e. The Sub-Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of these nondiscrimination clauses.

f. The Sub-Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color or national origin.

g. The Sub-Contractor will comply with all provisions of any applicable Executive Order and of the valid rules, regulations and relevant orders of the President's Committee on Equal Employment Opportunity.

h. The Sub-Contractor will furnish all information and reports required by any applicable Executive Order, and by the rules, regulations and orders of the said Committee, or pursuant thereto, and will permit access to his books, records and accounts by any authorized government agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations and orders.

i. In the event of the Sub-Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or in part.

j. The Sub-Contractor will include the provisions of the foregoing paragraphs in every Sub-Contract or Purchase Order unless exempted by rules, regulations or orders of the President's Committee on Equal Employment Opportunity, so that such provisions will be binding upon each Sub-Contractor or vendor.

15. Without limitation upon the obligations herein generally assumed for compliance with prime-contract provisions, but for purposes of complying with the labor requirements as set forth in the prime contract, it is further provided that: All of the provisions, if any, of the prime contract relating to the hiring, handling, selection, use and payment of employees on the project involved and in the imposition of penalties, sanctions or liabilities for non-compliance with such labor provisions shall all be in all respects applicable to and binding upon Sub-Contractor to the same extent that same are or would be applicable to and binding upon Prime and said provisions are incorporated by reference as a part hereof as if set out at length herein. (Every reference therein to "Prime" shall be considered as referring also to "Sub-Contractor".) Sub-Contractor agrees to comply with such directions as may be given by Prime (as may be required by the Owner) as a means by enforcing such labor provisions and to be bound by such penalties, sanctions and liabilities for non-compliance with such provisions and directions as may be lawfully imposed and in all such respects to indemnify and save harmless the Prime from any and all penalties, forfeitures, sanctions, liabilities, loss, cost, expense and attorneys' fees imposed upon or incurred by Prime because of or arising out of any failure of Sub-Contractor to comply with such provisions or directions or to discharge any of same as whole or in part, with or without the consent of Prime, any such Sub-Contract shall include the same obligations as set forth in this paragraph.

16. Neither Sub-Contractor nor any of the Sub-Contractor's agents or contractors shall imply or keep any workman whose employment on the work covered by the Sub-Contract is objected to by the Owner or by Prime.

17. The failure of either party to invoke any provision hereof or assert any right given hereunder on any one occasion or on any series of occasions shall not amount to or be interpreted as a waiver of release of any such provision or right.

WITNESS our hands and seals the day and year first above written.

Witnesses:

As to Prime

TRIANGLE CONSTRUCTION COMPANY, INC.

BY:

R336

c. In an solicitations either by competitive bidding or negotiation made by the Sub-Contractor for work to be performed under a Sub-Contract, including procurements of materials or equipment, each potential Sub-Contractor or supplier shall be notified by the Sub-contractor of the Sub-Contractor's obligation under this Contract and any applicable Regulations relative to non-discrimination on the ground of race, color or national origin.

and, all of the provisions of any contract for handling, selection, use and payment of employees on the project involved and in the imposition of penalties, sanctions or liabilities for non-compliance with such labor provisions shall all be in all respects applicable to and binding upon Sub-Contractor to the same extent that same are or would be applicable to and binding upon Prime and said provisions are incorporated by reference as a part hereof as if set out at length herein. (Every reference therein to "Prime" shall be considered as referring also to "Sub-Contractor".) Sub-Contractor agrees to comply with such directions as may be given by Prime (as may be required by the Owner) as a means by enforcing such labor provisions and to be bound by such penalties, sanctions and liabilities for non-compliance with such provisions and directions as may be lawfully imposed and in all such respects to indemnify and save harmless the Prime from any and all penalties, forfeitures, sanctions, liabilities, loss, cost, expense and attorneys' fees imposed upon or incurred by Prime because of or arising out of any failure of Sub-Contractor to comply with such provisions or directions or to discharge any of same as whole or in part, with or without the consent of Prime, any such Sub-Contract shall include the same obligations as set forth in this paragraph.

16. Neither Sub-Contractor nor any of the Sub-Contractor's agents or contractors shall imply or keep any workman whose employment on the work covered by the Sub-Contract is objected to by the Owner or by Prime.

17. The failure of either party to invoke any provision hereof or assert any right given hereunder on any one occasion or on any series of occasions shall not amount to or be interpreted as a waiver of release of any such provision or right.

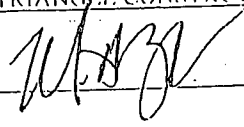
WITNESS our hands and seals the day and year first above written.

Witnesses:

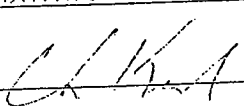

As to Prime

As to Sub-Contractor

TRIANGLE CONSTRUCTION COMPANY, INC.

BY: 

UPSTATE COMMERCIAL FLOORING & PAINT, LLC

BY: 

TRIANGLE-007

3-211
R397

Please sign and return to us the pink copy of this contract.
STANDARD SUB-CONTRACT AGREEMENT
TRIANGLE CONSTRUCTION COMPANY
Box 6266
Greenville, South Carolina 29606

TRIANGLE
FILE
COPY

JOB NO. 1888
Subcontract No. 1888-02s

IOB: CSC - Lexington
5109 Sunset Blvd., Lexington, SC 29072

THIS SUB-CONTRACT AGREEMENT Made and entered into this 5th day of September 20 13 by and
between Triangle Construction Company hereinafter called Prime

and Upstate Commercial Flooring & Paint
212 Transit Drive
Greenville, SC 29607

Attn: Chris Keel
P: 864-303-4273
F: 864-627-3600

hereinafter called Sub-Contractor,

WITNESSETH: WHEREAS, Prime has entered into a contract with Sing Bev Hospitality, hereinafter referred
to as the Owner, to perform certain work specified therein, and

WHEREAS, It is agreed that a part of said work is to be performed by Sub-Contractor under the terms and conditions
hereinafter set forth;

NOW, THEREFORE, In consideration of the premises and the covenants and conditions herein contained, it is
mutually agreed as follows:

1. Hereby made a part of this Sub-Contract Agreement by reference
hereto are the aforesaid Contract between Owner and Prime including all plans,
specifications, general conditions, special conditions, agreements and documents
pertaining thereto and all regulations, rulings, specifications pertaining to said
work, all of which are hereinafter referred to collectively as Contract and
included Agreements, and Sub-Contractor shall be bound thereby in the
performance of this Sub-Contract and agrees to comply therewith and perform
said work in accordance therewith.

2. Sub-Contractor acknowledges and agrees that he has examined
sufficiently to his satisfaction the site of the work and is fully familiar with the
aforesaid Contract and agrees to perform the following part of said Contract
between Owner and Prime

Furnish all required labor, material, taxes, insurance,
supervision and equipment for a complete installation of
Flooring as per your attached proposal dated 08/26/13
for the lump sum of \$

NOTES:

Triangle's Supplementary Conditions (ATTACHMENT "A") are
attached to and are a binding part of this agreement.

Please forward your current certificate of insurance with the
limits as described in Attachment "A" to our office as soon as
possible.

Also, please note that we are unable to process invoices that do
not include a partial release of lien (copy attached).

3. Sub-Contractor shall furnish at his own expense all labor, equipment,
materials, apparatus, fuel, tools and other facilities necessary for the expeditious
execution of and completion of said work, including Sub-Contractor's own clean
up.

Owner, Contractor, Architect, Architect's consultants, and agents and employees
of any of them from and against claims, damages, losses, and expenses,
including but not limited to attorney's fees, arising directly or indirectly out of
the obligations herein undertaken or resulting out of operations conducted by the
Subcontract, Subcontractor's Subcontractors, anyone directly or indirectly
employed by them or anyone whose acts they be liable, regardless of whether or
not such claim, damage, loss or expense is caused in part by a party indemnified
hereunder, save and except claims or litigation caused by or resulting from the
sole negligence of the party indemnified hereunder. Such obligation shall not
negate, abridge, or otherwise reduce other rights or obligations of indemnity
which would otherwise exist as to a party or person described in this paragraph.
Three copies of certificates of the above insurance shall be filed with the Prime
prior to starting work and shall be subject to his approval as to adequacy. Sub-
Contractor assumes full responsibility for securing necessary permits and
licenses and for payment of all State and Federal and local Taxes, including, but
not limited to Federal Unemployment Insurance, Old Age Benefits, Sales Taxes,
Property Taxes and Income Taxes and agrees to meet and comply with all laws,
ordinances, regulations or requirements applicable to Sub-Contractor
promulgated by Federal, State or Municipal Governments or agencies.

6. Prime may, but shall not be required to, advance sums to Sub-Contractor for
the purpose of financing the work and meeting payroll and may offset such sums
advanced against any Sub-Contract earnings, including final retainage, without
the consent of and free of any claim of unauthorized prepayment by any Surety
and such shall not release the Surety in whole or in part.

7. Upon request of Prime, Sub-Contractor shall before each payment
furnish an affidavit setting forth the names of and amounts due to all persons
furnishing materials, labor and equipment. Sub-Contractor gives to Prime the
right to pay any or all such persons directly or to retain a sufficient sum from
amounts due Sub-Contractor to protect Prime against any such indebtedness.
Prior to final payment, Sub-Contractor agrees to sign and deliver to Prime
waivers of liens as to this job.

8. In the event Sub-Contractor fails at any time to comply with the terms
of this Sub-Contract or fails to furnish satisfactory material, labor or equipment
or facilities in performance of the work covered by this Agreement or refuses,
neglects or fails to prosecute the work with promptness and diligence, or fails to
make prompt payment for materials, labor, equipment or taxes or becomes
involved in a labor dispute that delays or impedes Sub-Contractor's part or any
other part of the Contract, this Contract may be terminated immediately by
Prime. It is recognized that time is of the essence of this Agreement and that

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R338

or the lump sum of \$

NOTE:

Triangle's Supplementary Conditions (ATTACHMENT "A") are attached to and are a binding part of this agreement.

Please forward your current certificate of insurance with the limits as described in Attachment "A" to our office as soon as possible.

Also, please note that we are unable to process invoices that do not include a partial release of lien (copy attached).

3. Sub-Contractor shall furnish at his own expense all labor, equipment, materials, apparatus, fuel, tools and other facilities necessary for the expeditious execution of and completion of said work, including Sub-Contractor's own clean up.

4. Sub-Contractor is to commence the work immediately after notification by Prime and shall complete the same no later than as required. Sub-Contractor shall maintain such rate of progress in performance of said work as to not impede Prime or any other Sub-Contractor in the performance of its work and so to satisfy Owner or its authorized representative of the rate of progress of such work. Upon request by Prime, certain parts of the work covered by this Sub-Contract Agreement shall be prosecuted in preference to others. Prime or any other Sub-Contractor may, upon agreement of Sub-Contractor, perform certain parts of the work herein contracted for without affecting the validity of this agreement.

5. Sub-Contractor assumes toward prime all the obligations, duties and responsibilities that Prime assumes toward Owner under said Contract and included Agreements. Sub-Contractor agrees to maintain adequate insurance so as to protect him and Prime from claims and liability under Workmen's Compensation Acts, claims for injury or damage to person or property covering contracting operations, Independent Contractors, Specified Hold Harmless and Contractual Liability claims and any other liability. To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the

promulgated by Federal, State or Municipal Governments or agencies.

6. Prime may, but shall not be required to, advance sums to Sub-Contractor for the purpose of financing the work and meeting payroll and may offset such sums advanced against any Sub-Contract earnings, including final retainage, without the consent of and free of any claim of unauthorized prepayment by any Surety and such shall not release the Surety in whole or in part.

7. Upon request of Prime, Sub-Contractor shall before each payment furnish an affidavit setting forth the names of and amounts due to all persons furnishing materials, labor and equipment. Sub-Contractor gives to Prime the right to pay any or all such persons directly or to retain a sufficient sum from amounts due Sub-Contractor to protect Prime against any such indebtedness. Prior to final payment, Sub-Contractor agrees to sign and deliver to Prime waivers of liens as to this job.

8. In the event Sub-Contractor fails at any time to comply with the terms of this Sub-Contract or fails to furnish satisfactory material, labor or equipment or facilities in performance of the work covered by this Agreement or refuses, neglects or fails to prosecute the work with promptness and diligence, or fails to make prompt payment for materials, labor, equipment or taxes or becomes involved in a labor dispute that delays or impedes Sub-Contractor's part or any other part of the Contract, this Contract may be terminated immediately by Prime. It is recognized that time is of the essence of this Agreement and that delays in the prosecution of said work by Sub-Contractor or improper performance of said Agreement are prejudicial to the interest of Prime.

9. In the event of termination of this Contract for any reason Prime may take over the performance of the work covered by this Agreement and complete the same or may sub-contract all or any part thereof, retaining any money that may otherwise have been due Sub-Contractor so far as is necessary to defray the costs of completing the work covered under this Agreement. Any excess of the amount retained after defraying the costs of completing the work covered under this Agreement and any damages sustained by Prime by reason of breach of this Agreement by Sub-Contractor shall be paid over to Sub-Contractor after completion and acceptance of the work; in the event the amount retained is not sufficient to cover such costs, expenses and damages, and profit, Sub-Contractor shall pay upon demand the balance due to Prime.

10. Sub-Contractor agrees to turn over and deliver to Prime, said work completed within the aforesaid time in good condition and free and clear of any liens, encumbrances or claims and shall protect and save harmless Prime and Owner from any and all claims, encumbrances and liens made against said work or against Prime or Owner. Any delay caused by Sub-Contractor, which results

TRIANGLE-0038

in a penalty being assessed against Prime under its contract with owner shall be paid by Sub-Contractor.

11. Sub-Contractor agrees to deliver to Prime upon demand a properly executed bond in a form satisfactory to Prime in the penal sum of the total amount of this Sub-Contract, with surety or sureties satisfactory to Prime, conditioned upon the faithful performance of this Agreement and of said Contract and Included Agreements and payment of all sums due for the performance of said work and which may be due under this Sub-Contract Agreement, the premium of such bond to be paid Sub-Contractor and reimbursed by Prime. Failure to deliver such bond to Prime shall be deemed to be a breach of this Agreement and at the option of Prime, this Agreement may be terminated and Sub-Contractor shall be responsible for any and all damages which Prime may sustain in performing said work or in having it performed by another Sub-Contractor.

12. Sub-Contractor shall not assign all or any part of this Sub-Contract or sub-let all or any part of the work provided for hereunder without the prior written consent of the Prime, but in any event and without regard to whether such contract is given or not, Sub-Contractor agrees to indemnify and save Prime harmless, as hereinafter above set forth, although claims are based upon items supplied to an assignee or Sub-Contractor of the undersigned Sub-Contractor or to any other party (no matter how remote or disconnected) performing or having any connection whatever with the performance of the Sub-Contract work and for which Prime may be liable.

13. Sub-Contractor shall remain liable for correcting any defects or replacing any part of said work to the same extent that Prime is liable to Owner under said Contract and Included Agreements. Sub-Contractor shall remedy any defects in said work and pay for any damages due to other work resulting from failure to perform said work.

14. a. Sub-Contractor shall not discharge or fail or refuse to hire any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin. Nor shall Sub-Contractor limit, segregate or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

b. The Sub-Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, or national origin in the selection of and retention of Sub-Contractors, including procurements of materials and leases of equipment. The Sub-Contractor will not participate either directly or indirectly in the discrimination prohibited by any applicable Regulations, including employment practices.

c. In all solicitations either by competitive bidding or negotiation made by the Sub-Contractor for work to be performed under a Sub-Contract, including procurements of materials or equipment, each potential Sub-Contractor or supplier shall be notified by the Sub-contractor of the Sub-Contractor's obligation under this Contract and any applicable Regulations relative to non-discrimination on the ground of race, color or national origin.

d. The Sub-Contractor will provide all information and reports required by any applicable Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Sub-Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Sub-Contractor shall so certify to the Prime, and shall set forth what efforts it has made to obtain the information.

e. The Sub-Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of these nondiscrimination clauses.

f. The Sub-Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color or national origin.

g. The Sub-Contractor will comply with all provisions of any applicable Executive Order and of the valid rules, regulations and relevant orders of the President's Committee on Equal Employment Opportunity.

h. The Sub-Contractor will furnish all information and reports required by any applicable Executive Order, and by the rules, regulations and orders of the said Committee, or pursuant thereto, and will permit access to his books, records and accounts by any authorized government agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations and orders.

i. In the event of the Sub-Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or in part.

j. The Sub-Contractor will include the provisions of the foregoing paragraphs in every Sub-Contract or Purchase Order unless exempted by rules, regulations or orders of the President's Committee on Equal Employment Opportunity, so that such provisions will be binding upon each Sub-Contractor or vendor.

15. Without limitation upon the obligations herein generally assumed for compliance with prime-contract provisions, but for purposes of complying with the labor requirements as set forth in the prime contract, it is further provided that: All of the provisions, if any, of the prime contract relating to the hiring, handling, selection, use and payment of employees on the project involved and in the imposition of penalties, sanctions or liabilities for non-compliance with such labor provisions shall all be in all respects applicable to and binding upon Sub-Contractor to the same extent that same are or would be applicable to and binding upon Prime and said provisions are incorporated by reference as a part hereof as if set out at length herein. (Every reference therein to "Prime" shall be considered as referring also to "Sub-Contractor".) Sub-Contractor agrees to comply with such directions as may be given by Prime (as may be required by the Owner) as a means by enforcing such labor provisions and to be bound by such penalties, sanctions and liabilities for non-compliance with such provisions and directions as may be lawfully imposed and in all such respects to indemnify and save harmless the Prime from any and all penalties, forfeitures, sanctions, liabilities, loss, cost, expense and attorneys' fees imposed upon or incurred by Prime because of or arising out of any failure of Sub-Contractor to comply with such provisions or directions or to discharge any of same as whole or in part, with or without the consent of Prime, any such Sub-Contract shall include the same obligations as set forth in this paragraph.

16. Neither Sub-Contractor nor any of the Sub-Contractor's agents or contractors shall imply or keep any workman whose employment on the work covered by the Sub-Contract is objected to by the Owner or by Prime.

17. The failure of either party to invoke any provision hereof or assert any right given hereunder on any one occasion or on any series of occasions shall not amount to or be interpreted as a waiver of release of any such provision or right.

WITNESS our hands and seals the day and year first above written.

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R340

procurements of materials or equipment, each potential Sub-Contractor or supplier shall be notified by the Sub-contractor of the Sub-Contractor's obligation under this Contract and any applicable Regulations relative to non-discrimination on the ground of race, color or national origin.

considered as referring to the Prime Contractor. The Sub-Contractor shall comply with such directions as may be given by Prime (as may be required by the Owner) as a means by enforcing such labor provisions and to be bound by such penalties, sanctions and liabilities for non-compliance with such provisions and directions as may be lawfully imposed and in all such respects to indemnify and save harmless the Prime from any and all penalties, forfeitures, sanctions, liabilities, loss, cost, expense and attorneys' fees imposed upon or incurred by Prime because of or arising out of any failure of Sub-Contractor to comply with such provisions or directions or to discharge any of same as whole or in part, with or without the consent of Prime, any such Sub-Contract shall include the same obligations as set forth in this paragraph.

16. Neither Sub-Contractor nor any of the Sub-Contractor's agents or contractors shall imply or keep any workman whose employment on the work covered by the Sub-Contract is objected to by the Owner or by Prime.

17. The failure of either party to invoke any provision hereof or assert any right given hereunder on any one occasion or on any series of occasions shall not amount to or be interpreted as a waiver of release of any such provision or right.

WITNESS our hands and seals the day and year first above written.

Witnesses:

Dorothy Gannon

As to Prime

As to Sub-Contractor

TRIANGLE CONSTRUCTION COMPANY, INC.

BY: M. H. Brown

UPSTATE COMMERCIAL FLOORING & PAINT

BY: Al Kull

TRIANGLE-0039

3-2, D
R341

1974

Wednesday, May 22, 2013 3:10:54 PM Eastern Daylight Time

Subject: Legacy

Date: Wednesday, May 22, 2013 3:06:10 PM Eastern Daylight Time

From: Chris Keel <coastalair@gmail.com>

To: Matthew Praytor <MPraytor@triangleconstruction.com>

Legacy

Matthew,

To furnish Labor and Materials to install the following:

Carpet -- Using a \$ 22.00/yl installed allowance

Base -- Using Roppe 4" standard cove base

Vct -- Using Armstrong Standard Excelon, one color.

All installed per drawings

Base Bid \$. Flooring

Thanks,

Chris Keel

*5/22/13 CONCOURSE 1/111
GREENVILLE
29607
864-427-3600*

Upstate Commercial Flooring & Paint, LLC
212 Transit Drive
Greenville, SC 29607
864.303.4273
864.627.3600 Fax

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TRIANGLE-0015

R342

Please sign and return to us the pink copy of this contract.
STANDARD SUB-CONTRACT AGREEMENT
TRIANGLE CONSTRUCTION COMPANY
PO Box 6266
Greenville, South Carolina 29606

TRIANGLE
FILE
COPY

JOB NO.
Subcontract No.

1874
1874-25s

JOB: Legacy Charter Gym
900 Woodside Avenue, Greenville, SC 29611

THIS SUB-CONTRACT AGREEMENT Made and entered into this 27th day of June 20 13 by and between Triangle Construction Company hereinafter called Prime

and Upstate Commercial Flooring & Paint, LLC
212 Transit Drive
Greenville, SC 29607

Attn: Chris Keel
P: 864-303-4273
F: 864-627-3600

hereinafter called Sub-Contractor,

WITNESSETH: WHEREAS, Prime has entered into a contract with Family Legacy hereinafter referred to as the Owner, to perform certain work specified therein; and

WHEREAS, It is agreed that a part of said work is to be performed by Sub-Contractor under the terms and conditions hereinafter set forth;

NOW, THEREFORE, In consideration of the premises and the covenants and conditions herein contained, it is mutually agreed as follows:

1. Hereby made a part of this Sub-Contract Agreement by reference hereto are the aforesaid Contract between Owner and Prime including all plans, specifications, general conditions, special conditions, agreements and documents pertaining thereto and all regulations, rulings, specifications pertaining to said work, all of which are hereinafter referred to collectively as Contract and included Agreements, and Sub-Contractor shall be bound thereby in the performance of this Sub-Contract and agrees to comply therewith and perform said work in accordance therewith.

2. Sub-Contractor acknowledges and agrees that he has examined efficiently to his satisfaction the site of the work and is fully familiar with the foresaid Contract and agrees to perform the following part of said Contract between Owner and Prime

furnish all required labor, material, taxes, insurance, supervision and equipment for a complete installation of flooring as per plans and specifications and your attached proposal dated 05/22/13 for the lump sum price of \$

of any of them from and against claims, damages, losses, and expenses, including but not limited to attorney's fees, arising directly or indirectly out of the obligations herein undertaken or resulting out of operations conducted by the Subcontract, Subcontractor's Subcontractors, anyone directly or indirectly employed by them or anyone whose acts they be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder, save and except claims or litigation caused by or resulting from the sole negligence of the party indemnified hereunder. Such obligation shall not negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph. Three copies of certificates of the above insurance shall be filed with the Prime prior to starting work and shall be subject to his approval as to adequacy. Sub-Contractor assumes full responsibility for securing necessary permits and licenses and for payment of all State and Federal and local Taxes, including, but not limited to Federal Unemployment Insurance, Old Age Benefits, Sales Taxes, Property Taxes and Income Taxes and agrees to meet and comply with all laws, ordinances, regulations or requirements applicable to Sub-Contractor promulgated by Federal, State or Municipal Governments or agencies.

6. Prime may, but shall not be required to, advance sums to Sub-Contractor for the purpose of financing the work and meeting payroll and may offset such sums advanced against any Sub-Contract earnings, including final retainage, without the consent of and free of any claim of unauthorized prepayment by any Surety and such shall not release the Surety in whole or in part.

7. Upon request of Prime, Sub-Contractor shall before each payment furnish an affidavit setting forth the names of and amounts due to all persons furnishing materials, labor and equipment. Sub-Contractor gives to Prime the right to pay any or all such persons directly or to retain a sufficient sum from amounts due Sub-Contractor to protect Prime against any such indebtedness. Prior to final payment, Sub-Contractor agrees to sign and deliver to Prime waivers of liens as to this job.

8. In the event Sub-Contractor fails at any time to comply with the terms of this Sub-Contract or fails to furnish satisfactory material, labor or equipment or facilities in performance of the work covered by this Agreement or refuses, neglects or fails to prosecute the work with promptness and diligence, or fails to make prompt payment for materials, labor, equipment or taxes or becomes involved in a labor dispute that delays or impedes Sub-Contractor's part or any other part of the Contract, this Contract may be terminated immediately by Prime. It is recognized that time is of the essence of this Agreement and that delays in the prosecution of said work by Sub-Contractor or improper performance of said Agreement are prejudicial to the interest of Prime.

NOTES:

Triangle's Supplementary Conditions (ATTACHMENT "A") are attached to and are a binding part of this agreement.

Please forward your current certificate of insurance with the limits as described in Attachment "A" to our office as soon as possible.

Also, please note that we are unable to process invoices that do not include a partial release of lien (copy attached).

3. Sub-Contractor shall furnish at his own expense all labor, equipment, materials, apparatus, fuel, tools and other facilities necessary for the expeditious execution of and completion of said work, including Sub-Contractor's own clean

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R343

furnish all required labor, material, taxes, insurance, supervision and equipment for a complete installation of flooring as per plans and specifications and your attached proposal dated 05/22/13 for the lump sum price \$.

TES:

Triangle's Supplementary Conditions (ATTACHMENT "A") are attached to and are a binding part of this agreement.

Please forward your current certificate of insurance with the details as described in Attachment "A" to our office as soon as possible.

Also, please note that we are unable to process invoices that do not include a partial release of lien (copy attached).

3. Sub-Contractor shall furnish at his own expense all labor, equipment, materials, apparatus, fuel, tools and other facilities necessary for the expeditious execution of and completion of said work, including Sub-Contractor's own clean

4. Sub-Contractor is to commence the work immediately after notification from Prime and shall complete the same no later than as required shall maintain such rate of progress in performance of said work as to not delay Prime or any other Sub-Contractor in the performance of its work and so as to satisfy Owner or its authorized representative of the rate of progress of such work. Upon request by Prime, certain parts of the work covered by this Sub-Contract Agreement shall be prosecuted in preference to others. Prime or any other Sub-Contractor may, upon agreement of Sub-Contractor, perform any parts of the work herein contracted for without affecting the validity of this Agreement.

5. Sub-Contractor assumes toward prime all the obligations, duties and responsibilities that Prime assumes toward Owner under said Contract and under Agreements. Sub-Contractor agrees to maintain adequate insurance so as to protect him and Prime from claims and liability under Workmen's Compensation Acts, claims for injury or damage to person or property covering contracting operations, Independent Contractors, Specified Hold Harmless or Contractual Liability claims and any other liability. To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees

licenses and for payment of all State and Federal and local Taxes, including, but not limited to Federal Unemployment Insurance, Old Age Benefits, Sales Taxes, Property Taxes and Income Taxes and agrees to meet and comply with all laws, ordinances, regulations or requirements applicable to Sub-Contractor promulgated by Federal, State or Municipal Governments or agencies.

6. Prime may, but shall not be required to, advance sums to Sub-Contractor for the purpose of financing the work and meeting payroll and may offset such sums advanced against any Sub-Contract earnings, including final retainage, without the consent of and free of any claim of unauthorized prepayment by any Surety and such shall not release the Surety in whole or in part.

7. Upon request of Prime, Sub-Contractor shall before each payment furnish an affidavit setting forth the names of and amounts due to all persons furnishing materials, labor and equipment. Sub-Contractor gives to Prime the right to pay any or all such persons directly or to retain a sufficient sum from amounts due Sub-Contractor to protect Prime against any such indebtedness. Prior to final payment, Sub-Contractor agrees to sign and deliver to Prime waivers of liens as to this job.

8. In the event Sub-Contractor fails at any time to comply with the terms of this Sub-Contract or fails to furnish satisfactory material, labor or equipment or facilities in performance of the work covered by this Agreement or refuses, neglects or fails to prosecute the work with promptness and diligence, or fails to make prompt payment for materials, labor, equipment or taxes or becomes involved in a labor dispute that delays or impedes Sub-Contractor's part or any other part of the Contract, this Contract may be terminated immediately by Prime. It is recognized that time is of the essence of this Agreement and that delays in the prosecution of said work by Sub-Contractor or improper performance of said Agreement are prejudicial to the interest of Prime.

9. In the event of termination of this Contract for any reason Prime may take over the performance of the work covered by this Agreement and complete the same or may sub-contract all or any part thereof, retaining any money that may otherwise have been due Sub-Contractor so far as is necessary to defray the costs of completing the work covered under this Agreement. Any excess of the amount retained after defraying the costs of completing the work covered under this Agreement and any damages sustained by Prime by reason of breach of this Agreement by Sub-Contractor shall be paid over to Sub-Contractor after completion and acceptance of the work; in the event the amount retained is not sufficient to cover such costs, expenses and damages, and profit, Sub-Contractor shall pay upon demand the balance due to Prime.

10. Sub-Contractor agrees to turn over and deliver to Prime, said work completed within the aforesaid time in good condition and free and clear of any liens, encumbrances or claims and shall protect and save harmless Prime and Owner from any and all claims, encumbrances and liens made against said work or against Prime or Owner. Any delay caused by Sub-Contractor, which results in a penalty being assessed against Prime under its contract with owner shall be paid by Sub-Contractor.

TRIANGLE-0013

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11. Sub-Contractor agrees to deliver to Prime upon demand a properly executed bond in a form satisfactory to Prime in the penal sum of the total amount of this Sub-Contract, with surety or sureties satisfactory to Prime, conditioned upon the faithful performance of this Agreement and of said Contract and Included Agreements and payment of all sums due for the performance of said work and which may be due under this Sub-Contract Agreement, the premium of such bond to be paid Sub-Contractor and reimbursed by Prime. Failure to deliver such bond to Prime shall be deemed to be a breach of this Agreement and at the option of Prime, this Agreement may be terminated and Sub-Contractor shall be responsible for any and all damages which Prime may sustain in performing said work or in having it performed by another Sub-Contractor.

12. Sub-Contractor shall not assign all or any part of this Sub-Contract or sub-let all or any part of the work provided for hereunder without the prior written consent of the Prime, but in any event and without regard to whether such contract is given or not, Sub-Contractor agrees to indemnify and save Prime harmless, as hereinafter above set forth, although claims are based upon items supplied to an assignee or Sub-Contractor of the undersigned Sub-Contractor or to any other party (no matter how remote or disconnected) performing or having any connection whatever with the performance of the Sub-Contract work and for which Prime may be liable.

13. Sub-Contractor shall remain liable for correcting any defects or replacing any part of said work to the same extent that Prime is liable to Owner under said Contract and Included Agreements. Sub-Contractor shall remedy any defects in said work and pay for any damages due to other work resulting from failure to perform said work.

14. a. Sub-Contractor shall not discharge or fail or refuse to hire any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin. Nor shall Sub-Contractor limit, segregate or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

b. The Sub-Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, or national origin in the selection of and retention of Sub-Contractors, including procurements of materials and leases of equipment. The Sub-Contractor will not participate either directly or indirectly in the discrimination prohibited by any applicable Regulations, including employment practices.

c. In all solicitations either by competitive bidding or negotiation made by the Sub-Contractor for work to be performed under a Sub-Contract, including procurements of materials or equipment, each potential Sub-Contractor or supplier shall be notified by the Sub-contractor of the Sub-Contractor's obligation under this Contract and any applicable Regulations relative to non-discrimination on the ground of race, color or national origin.

WITNESS our hands and seals the day and year first above written.

Witnesses:



d. The Sub-Contractor will provide all information and reports required by any applicable Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Sub-Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Sub-Contractor shall so certify to the Prime, and shall set forth what efforts it has made to obtain the information.

e. The Sub-Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of these nondiscrimination clauses.

f. The Sub-Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color or national origin.

g. The Sub-Contractor will comply with all provisions of any applicable Executive Order and of the valid rules, regulations and relevant orders of the President's Committee on Equal Employment Opportunity.

h. The Sub-Contractor will furnish all information and reports required by any applicable Executive Order, and by the rules, regulations and orders of the said Committee, or pursuant thereto, and will permit access to his books, records and accounts by any authorized government agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations and orders.

i. In the event of the Sub-Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or in part.

j. The Sub-Contractor will include the provisions of the foregoing paragraphs in every Sub-Contract or Purchase Order unless exempted by rules, regulations or orders of the President's Committee on Equal Employment Opportunity, so that such provisions will be binding upon each Sub-Contractor or vendor.

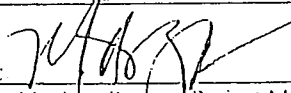
15. Without limitation upon the obligations herein generally assumed for compliance with prime-contract provisions, but for purposes of complying with the labor requirements as set forth in the prime contract, it is further provided that: All of the provisions, if any, of the prime contract relating to the hiring, handling, selection, use and payment of employees on the project involved and in the imposition of penalties, sanctions or liabilities for non-compliance with such labor provisions shall all be in all respects applicable to and binding upon Sub-Contractor to the same extent that same are or would be applicable to and binding upon Prime and said provisions are incorporated by reference as a part hereof as if set out at length herein. (Every reference therein to "Prime" shall be considered as referring also to "Sub-Contractor".) Sub-Contractor agrees to comply with such directions as may be given by Prime (as may be required by the Owner) as a means by enforcing such labor provisions and to be bound by such penalties, sanctions and liabilities for non-compliance with such provisions and directions as may be lawfully imposed and in all such respects to indemnify and save harmless the Prime from any and all penalties, forfeitures, sanctions, liabilities, loss, cost, expense and attorneys' fees imposed upon or incurred by Prime because of or arising out of any failure of Sub-Contractor to comply with such provisions or directions or to discharge any of same as whole or in part, with or without the consent or Prime, any such Sub-Contract shall include the same obligations as set forth in this paragraph.

16. Neither Sub-Contractor nor any of the Sub-Contractor's agents or contractors shall imply or keep any workman whose employment on the work covered by the Sub-Contract is objected to by the Owner or by Prime.

17. The failure of either party to invoke any provision hereof or assert any right given hereunder on any one occasion or on any series of occasions shall not amount to or be interpreted as a waiver of release of any such provision or right

TRIANGLE CONSTRUCTION COMPANY, INC.

BY:



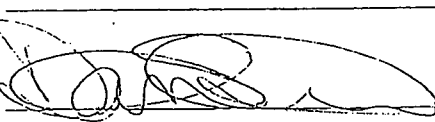
3-3-B

R345

c. In all solicitations either by competitive bidding or negotiation made by the Sub-Contractor for work to be performed under a Sub-Contract, including procurements of materials or equipment, each potential Sub-Contractor or supplier shall be notified by the Sub-contractor of the Sub-Contractor's obligation under this Contract and any applicable Regulations relative to non-discrimination on the ground of race, color or national origin.

WITNESS our hands and seals the day and year first above written.

Witnesses:



As to Sub-Contractor

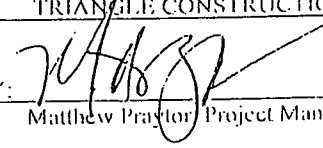
handling, selection, use and payment of employees on the project involved and in the imposition of penalties, sanctions or liabilities for non-compliance with such labor provisions shall all be in all respects applicable to and binding upon Sub-Contractor to the same extent that same are or would be applicable to and binding upon Prime and said provisions are incorporated by reference as a part hereof as if set out at length herein. (Every reference therein to "Prime" shall be considered as referring also to "Sub-Contractor".) Sub-Contractor agrees to comply with such directions as may be given by Prime (as may be required by the Owner) as a means by enforcing such labor provisions and to be bound by such penalties, sanctions and liabilities for non-compliance with such provisions and directions as may be lawfully imposed and in all such respects to indemnify and save harmless the Prime from any and all penalties, forfeitures, sanctions, liabilities, loss, cost, expense and attorneys' fees imposed upon or incurred by Prime because of or arising out of any failure of Sub-Contractor to comply with such provisions or directions or to discharge any of same as whole or in part, with or without the consent of Prime, any such Sub-Contract shall include the same obligations as set forth in this paragraph.

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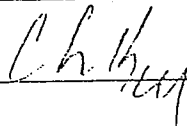
TRIANGLE CONSTRUCTION COMPANY, INC.

BY:


Matthew Praytor Project Manager

UPSTATE COMMERCIAL FLOORING & PAINTING, LLC

BY:



TRIANGLE-0014

3-3.B
R346

1. 8/5 GMP

Tuesday, June 25, 2013 4:44:38 PM Eastern Daylight Time

Subject: Re: Golf House

Date: Tuesday, June 25, 2013 4:41:26 PM Eastern Daylight Time

From: Chris Keel <upstatecommercial@gmail.com>

To: Matthew Praytor <MPraytor@triangleconstruction.com>

Matthew,

If I change the wood to Mullican Ponte Vedra, 3/8"x5" walnut and the carpet to Interface S105 Sew Straight for CPT1 and Interface S302 Tongue and Groove for CPT2 the price will drop to \$. Not sure what else I can do to get it under \$. Maybe changing some of the wood areas to carpet would save more.

Chris

On Tue, Jun 25, 2013 at 2:02 PM, Chris Keel <upstatecommercial@gmail.com> wrote:
Matthew,

Attached is the quote for the Golf House in Pinehurst.

Thanks,

Chris

3-4, A
TRIANGLE-0027

R347

14 8/5 GMI

Tuesday, June 25, 2013 4:44:38 PM Eastern Daylight Time

Subject: Re: Golf House

Date: Tuesday, June 25, 2013 4:41:26 PM Eastern Daylight Time

From: Chris Keel <upstatecommercial@gmail.com>

To: Matthew Praytor <MPraytor@triangleconstruction.com>

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Chris

On Tue, Jun 25, 2013 at 2:02 PM, Chris Keel <upstatecommercial@gmail.com> wrote:
Matthew,

Attached is the quote for the Golf House in Pinehurst.

Thanks,

Chris

3-4,B

TRIANGLE-0037

RECEIVED

OCT 21 2013
TRIANGLE
CONSTRUCTION

Please sign and return to us the pink copy of this contract.
STANDARD SUB-CONTRACT AGREEMENT
TRIANGLE CONSTRUCTION COMPANY
PO Box 6266
Greenville, South Carolina 29606

JOB NO.
Subcontract No.

1880-095
1880-095
COPY

JOB: Office Building for Carolina Golf Association
140 Ridge Road, Southern Pines, NC 28387

THIS SUB-CONTRACT AGREEMENT Made and entered into this 19th day of August 20 13 by
and between Triangle Construction Company hereinafter called Prime

and Upstate Commercial Flooring
212 Transit Drive
Greenville, SC 29607

Attn: Chris Keel
P: 864-303-4273
F: 864-627-3600

hereinafter called Sub-Contractor,

WITNESSETH: WHEREAS, Prime has entered into a contract with Carolina Golf Association hereinafter
referred to as the Owner, to perform certain work specified therein, and

WHEREAS, It is agreed that a part of said work is to be performed by Sub-Contractor under the terms and conditions
hereinafter set forth;

NOW, THEREFORE, In consideration of the premises and the covenants and conditions herein contained, it is
mutually agreed as follows:

1. Herby made a part of this Sub-Contract Agreement by reference
hereto are the aforesaid Contract between Owner and Prime including all plans,
specifications, general conditions, special conditions, agreements and documents
pertaining thereto and all regulations, rulings, specifications pertaining to said
work, all of which are hereinafter referred to collectively as Contract and
included Agreements, and Sub-Contractor shall be bound thereby in the
performance of this Sub-Contract and agrees to comply therewith and perform
aid work in accordance therewith.

2. Sub-Contractor acknowledges and agrees that he has examined
efficiently to his satisfaction the site of the work and is fully familiar with the
foresaid Contract and agrees to perform the following part of said Contract
between Owner and Prime

Furnish all required labor, material, taxes, insurance,
upervision and equipment for a complete installation of
flooring as per plans and specifications and your
attached email dated 6/25/13 for the lump sum of

NOTES:

Triangle's Supplementary Conditions (ATTACHMENT "A") are
attached to and are a binding part of this agreement.

Please forward your current certificate of insurance with the
limits as described in Attachment "A" to our office as soon as
possible.

so, please note that we are unable to process invoices that do
not include a partial release of lien (copy attached).

3. Sub-Contractor shall furnish at his own expense all labor, equipment,
materials, apparatus, fuel, tools and other facilities necessary for the expeditious
execution of and completion of said work, including Sub-Contractor's own clean

and/or Contractual Liability claims and any other liability. To the fullest extent
permitted by law, the Subcontractor shall indemnify and hold harmless the
Owner, Contractor, Architect, Architect's consultants, and agents and employees
of any of them from and against claims, damages, losses, and expenses,
including but not limited to attorney's fees, arising directly or indirectly out of
the obligations herein undertaken or resulting out of operations conducted by the
Subcontract, Subcontractor's Subcontractors, anyone directly or indirectly
employed by them or anyone whose acts they be liable, regardless of whether or
not such claim, damage, loss or expense is caused in part by a party indemnified
hereunder, save and except claims or litigation caused by or resulting from the
sole negligence of the party indemnified hereunder. Such obligation shall not
negate, abridge, or otherwise reduce other rights or obligations of indemnity
which would otherwise exist as to a party or person described in this paragraph.
Three copies of certificates of the above insurance shall be filed with the Prime
prior to starting work and shall be subject to his approval as to adequacy. Sub-
Contractor assumes full responsibility for securing necessary permits and
licenses and for payment of all State and Federal and local Taxes, including, but
not limited to Federal Unemployment Insurance, Old Age Benefits, Sales Taxes,
Property Taxes and Income Taxes and agrees to meet and comply with all laws,
ordinances, regulations or requirements applicable to Sub-Contractor
promulgated by Federal, State or Municipal Governments or agencies.

6. Prime may, but shall not be required to, advance sums to Sub-
Contractor for the purpose of financing the work and meeting payroll and may
offset such sums advanced against any Sub-Contract earnings, including final
retainage, without the consent of and free of any claim of unauthorized
prepayment by any Surety and such shall not release the Surety in whole or in
part.

7. Upon request of Prime, Sub-Contractor shall before each payment
furnish an affidavit setting forth the names of and amounts due to all persons
furnishing materials, labor and equipment. Sub-Contractor gives to Prime the
right to pay any or all such persons directly or to retain a sufficient sum from
amounts due Sub-Contractor to protect Prime against any such indebtedness.
Prior to final payment, Sub-Contractor agrees to sign and deliver to Prime
waivers of liens as to this job.

8. In the event Sub-Contractor fails at any time to comply with the terms
of this Sub-Contract or fails to furnish satisfactory material, labor or equipment
or facilities in performance of the work covered by this Agreement or refuses,
neglects or fails to prosecute the work with promptness and diligence, or fails to
make prompt payment for materials, labor or equipment furnished by him, Prime
may, without notice, suspend or stop work on this job.

3-4, C
R349

furnish all required labor, material, taxes, insurance, supervision and equipment for a complete installation of flooring as per plans and specifications and your attached email dated 6/25/13 for the lump sum of _____.

NOTES:

Triangle's Supplementary Conditions (ATTACHMENT "A") are attached to and are a binding part of this agreement.

Please forward your current certificate of insurance with the bids as described in Attachment "A" to our office as soon as possible.

Also, please note that we are unable to process invoices that do not include a partial release of lien (copy attached).

3. Sub-Contractor shall furnish at his own expense all labor, equipment, materials, apparatus, fuel, tools and other facilities necessary for the expeditious execution of and completion of said work, including Sub-Contractor's own clean

4. Sub-Contractor is to commence the work immediately after notification by Prime and shall complete the same no later than as required. Sub-Contractor shall maintain such rate of progress in performance of said work as to not delay Prime or any other Sub-Contractor in the performance of its work and so as to satisfy Owner or its authorized representative of the rate of progress of such work. Upon request by Prime, certain parts of the work covered by this Sub-Contract Agreement shall be prosecuted in preference to others. Prime or other Sub-Contractor may, upon agreement of Sub-Contractor, perform certain parts of the work herein contracted for without affecting the validity of this Agreement.

5. Sub-Contractor assumes toward prime all the obligations, duties and responsibilities that Prime assumes toward Owner under said Contract and related Agreements. Sub-Contractor agrees to maintain adequate insurance so to protect him and Prime from claims and liability under Workmen's Compensation Acts, claims for injury or damage to person or property covering contracting operations, Independent Contractors, Specified Hold Harmless

Contractor assumes full responsibility for securing necessary permits and licenses and for payment of all State and Federal and local Taxes, including, but not limited to Federal Unemployment Insurance, Old Age Benefits, Sales Taxes, Property Taxes and Income Taxes and agrees to meet and comply with all laws, ordinances, regulations or requirements applicable to Sub-Contractor promulgated by Federal, State or Municipal Governments or agencies.

6. Prime may, but shall not be required to, advance sums to Sub-Contractor for the purpose of financing the work and meeting payroll and may offset such sums advanced against any Sub-Contract earnings, including final retainage, without the consent of and free of any claim of unauthorized prepayment by any Surety and such shall not release the Surety in whole or in part.

7. Upon request of Prime, Sub-Contractor shall before each payment furnish an affidavit setting forth the names of and amounts due to all persons furnishing materials, labor and equipment. Sub-Contractor gives to Prime the right to pay any or all such persons directly or to retain a sufficient sum from amounts due Sub-Contractor to protect Prime against any such indebtedness. Prior to final payment, Sub-Contractor agrees to sign and deliver to Prime waivers of liens as to this job.

8. In the event Sub-Contractor fails at any time to comply with the terms of this Sub-Contract or fails to furnish satisfactory material, labor or equipment or facilities in performance of the work covered by this Agreement or refuses, neglects or fails to prosecute the work with promptness and diligence, or fails to make prompt payment for materials, labor, equipment or taxes or becomes involved in a labor dispute that delays or impedes Sub-Contractor's part or any other part of the Contract, this Contract may be terminated immediately by Prime. It is recognized that time is of the essence of this Agreement and that delays in the prosecution of said work by Sub-Contractor or improper performance of said Agreement are prejudicial to the interest of Prime.

9. In the event of termination of this Contract for any reason Prime may take over the performance of the work covered by this Agreement and complete the same or may sub-contract all or any part thereof, retaining any money then may otherwise have been due Sub-Contractor so far as is necessary to defray the costs of completing the work covered under this Agreement. Any excess of the amount retained after defraying the costs of completing the work covered under this Agreement and any damages sustained by Prime by reason of breach of this Agreement by Sub-Contractor shall be paid over to Sub-Contractor after completion and acceptance of the work; in the event the amount retained is not sufficient to cover such costs, expenses and damages, and profit, Sub-Contractor shall pay upon demand the balance due to Prime.

TRIANGLE-0021

3-4, C

10. Sub-Contractor agrees to turn over and deliver to Prime, said work completed within the aforesaid time in good condition and free and clear of any liens, encumbrances or claims and shall protect and save harmless Prime and Owner from any and all claims, encumbrances and liens made against said work or against Prime or Owner. Any delay caused by Sub-Contractor, which results in a penalty being assessed against Prime under its contract with owner shall be paid by Sub-Contractor.

11. Sub-Contractor agrees to deliver to Prime upon demand a properly executed bond in a form satisfactory to Prime in the penal sum of the total amount of this Sub-Contract, with surety or sureties satisfactory to Prime, conditioned upon the faithful performance of this Agreement and of said Contract and Included Agreements and payment of all sums due for the performance of said work and which may be due under this Sub-Contract Agreement, the premium of such bond to be paid Sub-Contractor and reimbursed by Prime. Failure to deliver such bond to Prime shall be deemed to be a breach of this Agreement and at the option of Prime, this Agreement may be terminated and Sub-Contractor shall be responsible for any and all damages which Prime may sustain in performing said work or in having it performed by another Sub-Contractor.

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b. The Sub-Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, or national origin in the selection of and retention of Sub-Contractors, including procurements of materials and leases of equipment. The Sub-Contractor will not participate either directly or indirectly in the discrimination prohibited by any applicable Regulations, including employment practices.

c. In all solicitations either by competitive bidding or negotiation made by the Sub-Contractor for work to be performed under a Sub-Contract, including procurements of materials or equipment, each potential Sub-Contractor or supplier shall be notified by the Sub-contractor of the Sub-Contractor's obligation under this Contract and any applicable Regulations relative to non-discrimination on the ground of race, color or national origin.

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g. The Sub-Contractor will comply with all provisions of any applicable Executive Order and of the valid rules, regulations and relevant orders of the President's Committee on Equal Employment Opportunity.

h. The Sub-Contractor will furnish all information and reports required by any applicable Executive Order, and by the rules, regulations and orders of the said Committee, or pursuant thereto, and will permit access to his books, records and accounts by any authorized government agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations and orders.

i. In the event of the Sub-Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or in part.

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WITNESS our hands and seals the day and year first above written.

Witnesses:

Anthony Gaur

TRIANGLE CONSTRUCTION COMPANY, INC.

BY:

Matthew Praytor

Matthew Praytor, Project Manager

UPSTATE COMMERCIAL FLOORING

BY:

M. Keel

As to Sub-Contractor

TRIANGLE-0022

3-4, C

William Trammell

From: Chris Keel <upstatecommercial@gmail.com>
Sent: Thursday, September 19, 2013 4:58 PM
To: William Trammell
Subject: 98 East Mcbee

William,

If you delete the Stair Treads from Stair one and Stair two and use only Stair Nosing you could deduct \$
from the base bid.

Thanks,

Chris

3-5, A

TRIANGLE-0048
R353

Please sign and return to us the pink copy of this contract.
STANDARD SUB-CONTRACT AGREEMENT
TRIANGLE CONSTRUCTION COMPANY
Box 6266
Greenville, South Carolina 29606

JOB NO. 1871
Subcontract No. 1871-30s

JOB: 98 East McBee
98 East McBee Ave, Greenville, SC 29601

THIS SUB-CONTRACT AGREEMENT Made and entered into this 7th day of October 20 13 by and between Triangle Construction Company hereinafter called Prime

and Upstate Commercial Flooring & Paint
212 Transit Drive
Greenville, SC 29607

Attn: Chris Keel
P: 864-303-7273
F: 864-627-3600

hereinafter called Sub-Contractor,

WITNESSETH: WHEREAS, Prime has entered into a contract with 98 East McBee LLC, hereinafter referred to as the Owner, to perform certain work specified therein, and

WHEREAS, It is agreed that a part of said work is to be performed by Sub-Contractor under the terms and conditions hereinafter set forth;

NOW, THEREFORE, In consideration of the premises and the covenants and conditions herein contained, it is mutually agreed as follows:

1. Hereby made a part of this Sub-Contract Agreement by reference hereto are the aforesaid Contract between Owner and Prime including all plans, specifications, general conditions, special conditions, agreements and documents pertaining thereto and all regulations, rulings, specifications pertaining to said work, all of which are hereinafter referred to collectively as Contract and Included Agreements, and Sub-Contractor shall be bound thereby in the performance of this Sub-Contract and agrees to comply therewith and perform said work in accordance therewith.

2. Sub-Contractor acknowledges and agrees that he has examined efficiently to his satisfaction the site of the work and is fully familiar with the aforesaid Contract and agrees to perform the following part of said Contract between Owner and Prime

urnish all required labor, material, taxes, insurance, supervision and equipment for a complete installation of floorcovering as per plans and specifications, your attached quote and attached scope of work for the lump sum of \$

NOTES:

Triangle's Supplementary Conditions (ATTACHMENT "A") are attached to and are a binding part of this agreement.

Please forward your current certificate of insurance with the details as described in Attachment "A" to our office as soon as possible.

So, please note that we are unable to process invoices that do not include a partial release of lien (copy attached).

5. Sub-Contractor assumes toward prime all the obligations, duties and responsibilities that Prime assumes toward Owner under said Contract and Included Agreements, Sub-Contractor agrees to maintain adequate insurance so as to protect him and Prime from claims and liability under Workmen's Compensation Acts, claims for injury or damage to person or property covering all contracting operations, Independent Contractors, Specified Hold Harmless and/or Contractual Liability claims and any other liability. To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorney's fees, arising directly or indirectly out of the obligations herein undertaken or resulting out of operations conducted by the Subcontract, Subcontractor's Subcontractors, anyone directly or indirectly employed by them or anyone whose acts they be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder, save and except claims or litigation caused by or resulting from the sole negligence of the party indemnified hereunder. Such obligation shall not negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph. Three copies of certificates of the above insurance shall be filed with the Prime prior to starting work and shall be subject to his approval as to adequacy. Sub-Contractor assumes full responsibility for securing necessary permits and licenses and for payment of all State and Federal and local Taxes, including, but not limited to Federal Unemployment Insurance, Old Age Benefits, Sales Taxes, Property Taxes and Income Taxes and agrees to meet and comply with all laws, ordinances, regulations or requirements applicable to Sub-Contractor promulgated by Federal, State or Municipal Governments or agencies.

6. Prime may, but shall not be required to, advance sums to Sub-Contractor for the purpose of financing the work and meeting payroll and may offset such sums advanced against any Sub-Contract earnings, including final retainage, without the consent of and free of any claim of unauthorized prepayment by any Surety and such shall not release the Surety in whole or in part.

7. Upon request of Prime, Sub-Contractor shall before each payment furnish an affidavit setting forth the names of and amounts due to all persons furnishing materials, labor and equipment. Sub-Contractor gives to Prime the right to pay any or all such persons directly or to retain a sufficient sum from

3-5, B
R354

efficiently to his satisfaction the site of the work and is fully familiar with the
foresaid Contract and agrees to perform the following part of said Contract
between Owner and Prime

furnish all required labor, material, taxes, insurance,
supervision and equipment for a complete installation of
floorcovering as per plans and specifications, your
attached quote and attached scope of work for the lump
sum of \$

NOTES:

Triangle's Supplementary Conditions (ATTACHMENT "A") are
attached to and are a binding part of this agreement.

Please forward your current certificate of insurance with the
limits as described in Attachment "A" to our office as soon as
possible.

Also, please note that we are unable to process invoices that do
not include a partial release of lien (copy attached).

3. Sub-Contractor shall furnish at his own expense all labor, equipment,
materials, apparatus, fuel, tools and other facilities necessary for the expeditious
execution of and completion of said work, including Sub-Contractor's own clean

4. Sub-Contractor is to commence the work immediately after notification
by Prime and shall complete the same no later than as required
and shall maintain such rate of progress in performance of said work as to not
impede Prime or any other Sub-Contractor in the performance of its work and so
as to satisfy Owner or its authorized representative of the rate of progress of such
work. Upon request by Prime, certain parts of the work covered by this Sub-
contract Agreement shall be prosecuted in preference to others. Prime or
other Sub-Contractor may, upon agreement of Sub-Contractor, perform certain
parts of the work herein contracted for without affecting the validity of this
agreement.

including but not limited to attorney's fees, arising directly or indirectly out of
the obligations herein undertaken or resulting out of operations conducted by the
Subcontract, Subcontractor's Subcontractors, anyone directly or indirectly
employed by them or anyone whose acts they be liable, regardless of whether or
not such claim, damage, loss or expense is caused in part by a party indemnified
hereunder, save and except claims or litigation caused by or resulting from the
sole negligence of the party indemnified hereunder. Such obligation shall not
negate, abridge, or otherwise reduce other rights or obligations of indemnity
which would otherwise exist as to a party or person described in this paragraph.
Three copies of certificates of the above insurance shall be filed with the Prime
prior to starting work and shall be subject to his approval as to adequacy. Sub-
Contractor assumes full responsibility for securing necessary permits and
licenses and for payment of all State and Federal and local Taxes, including, but
not limited to Federal Unemployment Insurance, Old Age Benefits, Sales Taxes,
Property Taxes and Income Taxes and agrees to meet and comply with all laws,
ordinances, regulations or requirements applicable to Sub-Contractor
promulgated by Federal, State or Municipal Governments or agencies.

6. Prime may, but shall not be required to, advance sums to Sub-
Contractor for the purpose of financing the work and meeting payroll and may
offset such sums advanced against any Sub-Contract earnings, including final
retainage, without the consent of and free of any claim of unauthorized
prepayment by any Surety and such shall not release the Surety in whole or in
part.

7. Upon request of Prime, Sub-Contractor shall before each payment
furnish an affidavit setting forth the names of and amounts due to all persons
furnishing materials, labor and equipment. Sub-Contractor gives to Prime the
right to pay any or all such persons directly or to retain a sufficient sum from
amounts due Sub-Contractor to protect Prime against any such indebtedness.
Prior to final payment, Sub-Contractor agrees to sign and deliver to Prime
waivers of liens as to this job.

8. In the event Sub-Contractor fails at any time to comply with the terms
of this Sub-Contract or fails to furnish satisfactory material, labor or equipment
or facilities in performance of the work covered by this Agreement or refuses,
neglects or fails to prosecute the work with promptness and diligence, or fails to
make prompt payment for materials, labor, equipment or taxes or becomes
involved in a labor dispute that delays or impedes Sub-Contractor's part or any
other part of the Contract, this Contract may be terminated immediately by
Prime. It is recognized that time is of the essence of this Agreement and that
delays in the prosecution of said work by Sub-Contractor or improper
performance of said Agreement are prejudicial to the interest of Prime.

9. In the event of termination of this Contract for any reason Prime may
take over the performance of the work covered by this Agreement and complete
the same or may sub-contract all or any part thereof, retaining any money that
may otherwise have been due Sub-Contractor so far as is necessary to defray the
costs of completing the work covered under this Agreement. Any excess of the

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amount retained after defraying the costs of completing the work covered under this Agreement and any damages sustained by Prime by reason of breach of this Agreement by Sub-Contractor shall be paid over to Sub-Contractor after completion and acceptance of the work; in the event the amount retained is not sufficient to cover such costs, expenses and damages, and profit, Sub-Contractor shall pay upon demand the balance due to Prime.

10. Sub-Contractor agrees to turn over and deliver to Prime, said work completed within the aforesaid time in good condition and free and clear of any liens, encumbrances or claims and shall protect and save harmless Prime and Owner from any and all claims, encumbrances and liens made against said work or against Prime or Owner. Any delay caused by Sub-Contractor, which results in a penalty being assessed against Prime under its contract with owner shall be paid by Sub-Contractor.

11. Sub-Contractor agrees to deliver to Prime upon demand a properly executed bond in a form satisfactory to Prime in the penal sum of the total amount of this Sub-Contract, with surety or sureties satisfactory to Prime, conditioned upon the faithful performance of this Agreement and of said Contract and Included Agreements and payment of all sums due for the performance of said work and which may be due under this Sub-Contract Agreement, the premium of such bond to be paid Sub-Contractor and reimbursed by Prime. Failure to deliver such bond to Prime shall be deemed to be a breach of this Agreement and at the option of Prime, this Agreement may be terminated and Sub-Contractor shall be responsible for any and all damages which Prime may sustain in performing said work or in having it performed by another Sub-Contractor.

12. Sub-Contractor shall not assign all or any part of this Sub-Contract or sub-let all or any part of the work provided for hereunder without the prior written consent of the Prime, but in any event and without regard to whether such contract is given or not, Sub-Contractor agrees to indemnify and save Prime harmless, as hereinafter above set forth, although claims are based upon items supplied to an assignee or Sub-Contractor of the undersigned Sub-Contractor or to any other party (no matter how remote or disconnected) performing or having any connection whatever with the performance of the Sub-Contract work and for which Prime may be liable.

13. Sub-Contractor shall remain liable for correcting any defects or replacing any part of said work to the same extent that Prime is liable to Owner under said Contract and Included Agreements. Sub-Contractor shall remedy any defects in said work and pay for any damages due to other work resulting from failure to perform said work.

14. a. Sub-Contractor shall not discharge or fail or refuse to hire any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin. Nor shall Sub-Contractor limit, segregate or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

b. The Sub-Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, or national origin in the selection of and retention of Sub-Contractors, including procurements of materials and leases of equipment. The Sub-Contractor will not participate either directly or indirectly in the discrimination prohibited by any applicable Regulations, including employment practices.

c. In all solicitations either by competitive bidding or negotiation made by the Sub-Contractor for work to be performed under a Sub-Contract, including procurements of materials or equipment, each potential Sub-Contractor or supplier shall be notified by the Sub-Contractor of the Sub-Contractor's obligation under this Contract and any applicable Regulations relative to non-discrimination on the ground of race, color or national origin.

d. The Sub-Contractor will provide all information and reports required by any applicable Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Sub-Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Sub-Contractor shall so certify to the Prime, and shall set forth what efforts it has made to obtain the information.

e. The Sub-Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of these nondiscrimination clauses.

f. The Sub-Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color or national origin.

g. The Sub-Contractor will comply with all provisions of any applicable Executive Order and of the valid rules, regulations and relevant orders of the President's Committee on Equal Employment Opportunity.

h. The Sub-Contractor will furnish all information and reports required by any applicable Executive Order, and by the rules, regulations and orders of the said Committee, or pursuant thereto, and will permit access to his books, records and accounts by any authorized government agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations and orders.

i. In the event of the Sub-Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or in part.

j. The Sub-Contractor will include the provisions of the foregoing paragraphs in every Sub-Contract or Purchase Order unless exempted by rules, regulations or orders of the President's Committee on Equal Employment Opportunity, so that such provisions will be binding upon each Sub-Contractor or vendor.

15. Without limitation upon the obligations herein generally assumed for compliance with prime-contract provisions, but for purposes of complying with the labor requirements as set forth in the prime contract, it is further provided that: All of the provisions, if any, of the prime contract relating to the hiring, handling, selection, use and payment of employees on the project involved and in the imposition of penalties, sanctions or liabilities for non-compliance with such labor provisions shall all be in all respects applicable to and binding upon Sub-Contractor to the same extent that same are or would be applicable to and binding upon Prime and said provisions are incorporated by reference as a part hereof as if set out at length herein. (Every reference therein to "Prime" shall be considered as referring also to "Sub-Contractor".) Sub-Contractor agrees to comply with such directions as may be given by Prime (as may be required by the Owner) as a means by enforcing such labor provisions and to be bound by such penalties, sanctions and liabilities for non-compliance with such provisions and directions as may be lawfully imposed and in all such respects to indemnify and save harmless the Prime from any and all penalties, forfeitures, sanctions, liabilities, loss, cost, expense and attorneys' fees imposed upon or incurred by Prime because of or arising out of any failure of Sub-Contractor to comply with such provisions or directions or to discharge any of same as whole or in part, with or without the consent of Prime, any such Sub-Contract shall include the same obligations as set forth in this paragraph.

16. Neither Sub-Contractor nor any of the Sub-Contractor's agents or contractors shall imply or keep any workman whose employment on the work covered by the Sub-Contract is objected to by the Owner or by Prime.

17. The failure of either party to invoke any provision hereof or assert any right given hereunder on any one occasion or on any series of occasions shall not amount to or be interpreted as a waiver of release of any such provision or right.

3-5, B

Ron's Building Materials
212 Transit Drive
Greenville, SC 29607



Commercial & Industrial
Floors, Inc

Chris Keel
113 Hartsdale Court
Greer, SC 29650

Dear Chris,

Welcome to Commercial & Industrial Floors, Inc dba Ron's Building Materials!

We are so excited to have you join our team and look forward to the opportunity to work with you! As we discussed, you will be reporting to Dabney Maides (Owner). Your start date will be January 26, 2009 at 8:00 am.

Your salary will be paid as follows \$4583.33 for the first 30 days, then \$6250.00 for the next 30 days; this will be contingent on meeting monthly sales goals that will be laid out under separate cover. On your 90th day you will receive a review. Upon the successful completion of review and pending 100% of quota being met you will receive a salary of \$8333.33 a month. This will be subject to change based on performance and meeting 100% of monthly quota.

This agreement refers to an additional non-compete agreement previously signed.

Expenses can be turned in for reimbursement and charged to your jobs. You will receive mileage at current rate up to \$400.00 a month after the completion of required expense reports and a mileage log. A mobile phone will be provided for business use and charged to your jobs.

Vacation time of 1 week is exercisable after completion of 1 year of service. Going forward after the first year of service the accrual rate will be 1.17 hours per month equaling 2 weeks vacation per year.

As the acting Professional Employer Organization for Ron's Building Supplies, Ideal Business Solutions offers this position on behalf of them. All offers are contingent on the successful completion of required background screening.

Please see the attached for all of the other benefits the company provides.

Please contact me at 864.286.9009 at any time. We are thrilled to work with you and look forward to a long lasting partnership!

Best wishes,

Johanna Kane
Director of Talent
Ideal Business Solutions
The Ideal Candidate

212 Transit Drive

EXHIBIT 4
R357

----- Forwarded message -----

From: "Timothy Sheperd" <tsheperd4504@gmail.com>

To: <dabney@cifloorsinc.com>

Subject: Duradek

Date: Wed, Oct 7, 2015 4:25 PM

Yes I did that job.

Thanks

On Oct 7, 2015 3:57 PM, <dabney@cifloorsinc.com> wrote:

Tim,

Can you verify that your guys installed Duradek sheet vinyl on the Hammock Bay balconies of Lexington SC, in summer 2013 for Upstate Commercial Flooring & Paint?
If you have done other installations of Duradek in the past five years, please reference them also.

Kind regards,

Dabney Maides

Commercial & Industrial Floors, Inc.

Ron's Building Materials

59C Concourse Way

Greer, SC 29650

Ph [864.879.3322](tel:864.879.3322)

Fax [864.879.3395](tel:864.879.3395)

Mobile [864.303.4272](tel:864.303.4272)

<http://cifloorsinc.com>

Please consider making a positive difference for a hospitalized child. Any size contributions are gratefully appreciated. Click here to brighten a day...<http://www.virtualtoydrive.org/home.php?sponsor=281>

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Judge

Case No. 2016-000584

CJR Resources, Inc. f/k/a Ron's Building Materials, Inc.....Respondent,

v.

Commercial & Industrial Floors, Inc., and Dabney Maides.....Appellants,

v.

Christopher M. Keel Respondent.

CERTIFICATION

I hereby certify, pursuant to Rule 210(g), South Carolina Appellate Court Rules, that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

August 5, 2016


William R. McKibbin III
SC Bar No. 68454
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Greenville, SC 29601
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will@legalcarolina.com
Attorney for Appellants

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AUG 15 2016
SC Court of Appeals