

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Mark J. Hayes, II

Case No. 2015-CP-07-02047

Appellant Case No. 2019-000200

RECEIVED
DEC 11 2019
SC Court of Appeals

James R. Brady Respondent.

v.

Hilton Head Homes at Allenwood, LLC,
Village Square Development Company, LLC,
Lancaster Redevelopment Corp. and
Gary Grossman Appellants.

RECORD ON APPEAL

G. Hamlin O'Kelley, III
S.C. Bar No. 15491
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
Attorney for the Appellants

Glynn L. Capell
SC Bar No. 16552
Charles W. Thomson
SC Bar No. 101471
Capell Thomson, LLC
The Blake-Grimke House
321 East Bay Street
Charleston, SC 29401
(843) 501-0423
Attorneys for the Respondent

INDEX

ORDERS

03.01.19	Order Granting Summary Judgment.....	1
02.08.19	Form 4 Order Granting Summary Judgment.....	4
09.19.18	Consent Order of Continuance.....	7
06.16.15	Order Denying Motion to Refer to Special Referee.....	10

PLEADINGS AND MOTIONS

02.08.19	Notice of Appeal.....	12
02.04.19	Memorandum in Support of Motion for Summary Judgment with Exhibits.....	13
02.04.19	Memorandum in Opposition for Motion for Summary Judgment with Exhibits.....	30
02.04.19	Affidavit of James Rod Brady with Exhibits.....	102
01.08.19	Motion for Summary Judgment as to Counterclaims.....	114
01.23.19	Consent Motion for an Order of Protection and for a Status Conference and to Set a Trial Date Certain.....	117
01.05.17	Motion for Summary Judgment.....	119
07.27.15	Reply to Counterclaim.....	122
09.14.15	Answer and Counterclaim.....	130
08.25.15	Summons and Complaint.....	140
06.05.09	Summons and Complaint.....	149

TRANSCRIPTS

02.06.19	Transcript of Hearing held Feb. 6, 2019, in the Circuit Court for Beaufort County.....	155

12.19.18	Transcript of Ginger Griffith.....	174
12.20.18	Transcript of Ginger Griffith.....	221

CORPORATE DOCUMENTS

07.08.04	Operating Agreement for Hilton Head Homes at Allenwood, LLC.....	276
07.08.04	Operating Agreement for Village Square Development, LLC.....	300

EXHIBITS

09.13.07	Letter to James Brady from Ginger Griffith.....	324
02.04.204	Letter to James Brady from Gary Grossman.....	328

I certify that this designation contains no matter which is irrelevant to this appeal.

Mt. Pleasant, South Carolina
Nov. 7, 2019

Respectfully submitted



 G. Hamlin O'Kelley, II

S.C. Bar No. 15491
 Buist, Byars & Taylor, LLC
 652 Coleman Blvd., Suite 200
 Mt. Pleasant, SC 29464
 (843) 856-4488

Attorneys for the Appellants

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

James R. Brady,

Plaintiff,

v.

Hilton Head Homes at Allenwood, LLC;
Village Square Development Company,
LLC; Lancaster Redevelopment Corp.;
and Gary L. Grossman,

Defendants.

COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C.A. No. 2015-CP-07-02047

**ORDER GRANTING SUMMARY
JUDGMENT AS TO
COUNTERCLAIMS**

This matter came before the Court on the Plaintiff's motion for summary judgment as to the counterclaims asserted against the Plaintiff by the Defendants. According to SCRCP 56, summary judgment shall be granted when there is no genuine issue as to any material of fact. Once the moving party has come forth with evidence to support its motion, the non-moving party must offer some evidence that a genuine issue of material fact exists as to each element of the claim. It is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.

In ruling on this summary judgment motion, the court has viewed all of the evidence offered to it and viewed that evidence, and the inferences therefrom, in a light most favorable to the non-moving party. Having reviewed all of the evidence and considering the arguments presented, this Court will grant the Plaintiff's motion for summary judgment as to the counterclaims asserted by the defendant.

The defendants rely solely upon the deposition testimony of Ginger Griffith. In their memorandum opposing the motion, the defendants make general references to the Answer and Counterclaim. The Counterclaims seeks damages in the amount of "in excess of \$600,000.00" based on assertions that the plaintiff, generally, failed to perform services he should have, invokes equitable theories against the plaintiff, that plaintiff breached a valid a contract for services he failed to provide, and asserts that the plaintiff should not have relied upon a letter from a Mr. Grossman to support his claim. Again, the defendant submitted only the deposition of Ms. Griffith. The Plaintiff also relied upon the deposition of Ms. Griffith but also submitted the affidavit testimony of the plaintiff, Rod Brady.

The defendants make reference in its memorandum to only pages 7, 37, and 38 to 39, of Ms. Griffith's deposition. The references do not support the assertions made in the counterclaims. Ms. Griffith's testimony was secured as *de bene esse* deposition for use at trial. After being examined by Plaintiff's attorney, her cross examination simply dealt with issue involving the arrangement of how fees were paid, the difficult housing market in 2007, the housing inventory, the banks threatening foreclosures or actual foreclosures, that Mr. Grossman's being a guarantor, the plaintiff not being a guarantor, and that the plaintiff might not have been an employee of Lancaster Redevelopment. Nowhere in her deposition are the issues raised in the counterclaims mentioned. When viewed in a light most favorable to the defendants, her deposition, at best for the defendants, may explain why the Plaintiff was not paid. No affidavit was submitted to counter Mr. Brady's affidavit.

With respect to an issue upon which the non-moving party has the burden of proof, the moving party may meet its initial responsibility of demonstrating that the absent of a genuine issue of material fact by pointing out to the trial court that there is an absence of evidence to support the non-moving party's case. As referenced in *Hedgepath v. AT&T*, 348 S.C. 340, 559 S.E.2d 327) (Ct App. 2001), once the moving party carries its initial burden, the opposing party must, under Rule 56, do more than simply show a metaphysical doubt as to the material facts but must come forward with specific facts showing a genuine issue for trial. The party opposing summary judgment cannot simply rest on mere allegations or denials contained in the pleadings.

Based on the documents and arguments presented to this Court and applying the required standard of review, the present motion for summary judgment is granted.

The Honorable Mark Hayes

ELECTRONIC SIGNATURE ON FOLLOWING PAGE



Beaufort Common Pleas

Case Caption: James R Brady VS Hilton Head Homes At Allenwood Llc ,
defendant, et al
Case Number: 2015CP0702047
Type: Order/Summary Judgment

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2019-03-01 15:01:06 page 3 of 3

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015CP0702047

James R Brady
PLAINTIFF(S)

Hilton Head Homes At Allenwood Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

See Additional Order Information.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/08/2019 .

Gary L Grossman for Gary L Grossman
Gary L Grossman for Gary L Grossman

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

This matter came before the Court on the Plaintiff's motion for summary judgment as to the counterclaim asserted against the Plaintiff by the Defendants. According to SCRCP 56, summary judgment shall be granted when there is no genuine issue as to any material of fact. Once the moving party has come forth with evidence to support its motion, the non-moving party must offer some evidence that a genuine issue of material fact exists as to each element of the claim. It is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.

In ruling on this summary judgment motion, the court has viewed all of the evidence offered to it and viewed that evidence, and the inferences therefrom, in a light most favorable to the non-moving party. Having reviewed all of the evidence and considering the arguments presented, this Court will grant the Plaintiff's motion for summary judgment as to the counterclaims asserted by the Defendant. Plaintiff's counsel is asked to prepare a formal order granting the motion. The formal Order, once signed and filed with the clerk's office, will be final order of this Court on this motion. This email will be incorporated into a form 4 for filing with the Clerk's office.

The Defendants rely solely upon the deposition testimony of Ginger Griffith. In their memorandum opposing the motion, the Defendants make general references to the Answer and Counterclaim. The Counterclaims seeks damages in an amount "in excess of \$600,000.00" based on assertions that the plaintiff, generally, failed to perform services he should have, invokes equitable theories against the plaintiff, that plaintiff breached a valid a contract for services he failed to provide, and asserts that the plaintiff should not have relied upon a letter from a Mr. Grossman to support his claim. Again, the defendant submitted only the deposition of Ms. Griffith. The Plaintiff also relied upon the deposition of Ms. Griffith but also submitted the affidavit testimony of the plaintiff, Rod Brady.

The Defendants make reference in its memorandum to only pages 7, 37, and 38 to 39, of Ms. Griffith's deposition. The references do not support the assertions made in the counterclaims. Ms. Griffith's testimony was secured as de bene esse deposition for use at trial. After being examined by Plaintiff's attorney, her cross examination simply dealt with issues involving the arrangement of how fees were paid, the difficult housing market in 2007, the housing inventory, the banks threatening foreclosures, actual foreclosures, Mr. Grossman's being a guarantor, the plaintiff not being a guarantor, and the plaintiff's not being an employee of Lancaster Redevelopment. Nowhere in her deposition are the issues raised in the counterclaims mentioned. When viewed in a light most favorable to the defendants, her deposition, at best for the defendants, may explain why the Plaintiff was not paid. No affidavit was submitted to counter Mr. Brady's affidavit.

With respect to an issue upon which the non-moving party has the burden of proof, the moving party may meets its initial responsibility of demonstrating that the absent of a genuine issue of material fact by pointing out to the trial court that there is an absence of evidence to support the non-moving party's case. As referenced in *Hedgepath v. AT&T*, 348 S.C. 340, 559 S.E.2d 327 (Ct App. 2001), once the moving party carries its initial burden, the opposing party must, under Rule 56, do more than simply show a metaphysical doubt as to the material facts but must come forward with specific facts showing a genuine issue for trial. The party opposing summary judgment cannot simply rest on mere allegations or denials contained in the pleadings.

Based on the documents and arguments presented to this Court and applying the required standard of review, the present motion for summary judgment is granted.

Again, this email will be incorporated into a form 4 for filing with the Clerk's office and this Court requests a formal order be submitted to the Court for signing.



Beaufort Common Pleas

Case Caption: James R Brady VS Hilton Head Homes At Allenwood Llc ,
defendant, et al
Case Number: 2015CP0702047
Type: Order/Electronic Form 4

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2019-02-08 11:28:03 page 3 of 3

ELECTRONICALLY FILED - 2019 Feb 08 1:36 PM - BEAUFORT - COMMON PLEAS - CASE#2015CP0702047

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

James R. Brady,

Plaintiff,

vs.

Hilton Head Homes at Allenwood, LLC,
Village Square Development Company,
LLC, Lancaster Redevelopment Corp., and
Gary L. Grossman,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2015-CP-07-2047

**CONSENT ORDER OF
CONTINUANCE**

The Plaintiff and the Defendants in this matter hereby consent to a continuance of this case currently scheduled for a motion hearing on Tuesday, September 18, 2018, in Beaufort County, South Carolina.

Both parties request the need for more time due to scheduling conflicts and the mandatory evacuation from Hurricane Florence.

ORDERED that the matter in the above-captioned case scheduled for a motion hearing on Tuesday, September 18, 2018, in Beaufort County, South Carolina is hereby continued, and

IT IS SO ORDERED!

The Honorable Marvin H. Dukes, III
Beaufort County Master in Equity

Beaufort, South Carolina
September _____, 2018

WE SO MOVE AND CONSENT:

BUIST, BYARS & TAYLOR, LLC

s/ G. Hamlin O'Kelley, III

G. Hamlin O'Kelley, III, Esq.

652 Coleman Blvd., Suite 200

Mount Pleasant, SC 29464

843.856.4488

Hamlin.okelley@buistbyars.com

Attorney for the Defendants

THE CAPELL LAW FIRM, LLC

s/Charles W. Thompson

Charles W. Thompson

321 E. Bay Street

Charleston, SC 29401

843.501.0423

cthompson@capelllaw.com

Attorney for the Plaintiff



Beaufort Common Pleas

Case Caption: James R Brady VS Hilton Head Homes At Allenwood Llc ,
defendant, et al
Case Number: 2015CP0702047
Type: Order/Continuance

It is so Ordered

s/ Perry M Buckner III 2122

Electronically signed on 2018-09-19 09:33:36 page 3 of 3

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-07-02690

2009060153

James R. Brady

Hilton Head Homes at Allenwood LLC et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Megan White

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: After a hearing on May 15, 2015, Plaintiff's Motion to Refer to a Special Referee is denied. Upon the consent of counsel, this case shall be dismissed pursuant to 40(j) and immediately refiled with a new case number.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

2142
Judge Code

6/15/15
Date

For Clerk of Court Office Use Only

This judgment was entered on the 16th day of June, 20 15 and a copy mailed first class or placed in the appropriate attorney's box on this 23rd day of June, 20 15 to attorneys of record or to parties (when appearing pro se) as follows:

Glynn Lindsey Capell, Esq

ATTORNEY(S) FOR THE PLAINTIFF(S)

George Hamlin O'Kelly, III
Gary L. Grossman

ATTORNEY(S) FOR THE DEFENDANT(S)

Dana Patterson / Staff
CLERK OF COURT

Court Reporter:

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

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Mark J. Hayes, II

Case No. 2015-CP-07-02047

Hilton Head Homes at Allenwood, LLC,
Village Square Development Company, LLC,
Lancaster Redevelopment Corp. and
Gary Grossman Appellants,

v.

James R. Brady, is the Respondent.

NOTICE OF APPEAL

Hilton Head Homes at Allenwood, LLC, Village Square Development, LLC, Lancaster Redevelopment Corp. and Gary Grossman appeal the Order of the Honorable Mark J. Hayes, II, copies of which are attached hereto, dated February 8, 2019, which the Appellants received written notice of on February 8, 2019.

Mt. Pleasant, South Carolina
February 8, 2019

s/G. Hamlin O'Kelley, III
G. Hamlin O'Kelley, III
S.C. Bar No. 15491
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
Attorneys for the Appellants

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

James R. Brady,

Plaintiff,

v.

Hilton Head Homes at Allenwood,
LLC; Village Square Development
Company, LLC; Lancaster
Redevelopment Corp.; and Gary L.
Grossman;

Defendants.

COURT OF COMMON PLEAS
FOURTEENTH CIRCUIT

C.A. No. 2015-CP-07-02047

**Memorandum in Support of
Plaintiff's Motion for
Summary Judgment as to
Defendants' Counterclaims**

To: G. Hamlin O'Kelley, Counsel for Defendants

The Plaintiff, by and through his undersigned attorneys, submit this Memorandum in Support of Plaintiff's Motion for Summary Judgment as to Defendants' Counterclaims.

FACTUAL AND PROCEDURAL BACKGROUND

This litigation is a simple payment claim with a complicated procedural history. Plaintiff entered into a contract with Defendants in 2004. Plaintiff was to provide construction, marketing, and real estate sales services in connection with the development of the Allenwood neighborhood on Hilton Head Island. In exchange, Defendants were to pay Plaintiff for those services and to share the profits made after the residential units were sold to the public. The project continued for approximately three years. Plaintiff oversaw the construction and sale of 103 residential units. As of September 2007, Defendants admitted to owing Plaintiff \$711,027 for profit sharing and for construction, marketing, and sales services. (See Affidavit of James Rod Brady and Exhibits A & B thereto, all of which attached as Exhibit 1 to this memo). After that, Defendants failed to pay Plaintiff any of this amount owed, and as a result, Plaintiff stopped working on the project. *Id.*

Plaintiff filed this lawsuit back in 2009, seeking payment of this debt. Despite having clearly admitted liability, Defendants filed counterclaims against Plaintiff. This case stalled for several years while Defendants were

involved with several other federal lawsuits that impeded their ability to pay the claim. Pursuant to Rule 40(j), SCRCP, this case was dismissed and subsequently restored.

Subsequent to the restoration, Plaintiff filed an identical version of this Motion for Summary Judgment as to Counterclaims more than two years ago, on January 5, 2017. The parties then mediated this case later in January 2017, before this motion was ever heard. At mediation, the parties entered into a provisional settlement agreement. As a result of the provisional settlement agreement, Plaintiff requested that the Clerk remove the hearing for this previously-filed Motion for Summary Judgment from the motions hearings roster, under the belief that the parties had reached a settlement. Unfortunately, however, the final settlement agreement was never signed.

After discovering that Defendants would never sign any reasonable iteration of the settlement agreement, Plaintiff filed a Motion for Status Conference, on May 10, 2018. Plaintiff's purpose for requesting the status conference was to obtain a hearing for this previously-filed Motion for Summary Judgment and to place this case back on track for trial. Evidence that Plaintiffs have been requesting a hearing for this motion for quite some time is shown on the body of that motion, attached as Exhibit 2 to this memo. The Honorable Carmen T. Mullen presided over the status conference. Although Plaintiff sought a hearing date for the older version of this motion during the status conference, the parties ultimately agreed to wait until the deposition of Defendants' employee Ginger Griffith took place, after which time Plaintiff was to refile this motion. That deposition took place on December 19–20, 2018. Plaintiff wasted little time afterward and filed this present version of the motion on January 8, 2019.

Subsequent to Plaintiff filing the present version of this Motion for Summary Judgment, this case was placed on the February 11 jury trial roster. Plaintiff respectfully requests that this motion be decided prior to that trial. In over nine years of litigation, Defendants have presented no evidence in support of their counterclaims. Those counterclaims should be

summarily dismissed. The infusion of the counterclaims into the trial would create unnecessary complications and likely confuse the jury.

LEGAL STANDARD

“When a motion for summary judgment is made and supported as provided in this rule, **an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.** If he does not so respond, summary judgment, if appropriate, shall be entered against him.” Rule 56(e), SCRCP (emphasis added). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. *McCall v. State Farm Mut. Auto. Ins. Co.*, 359 S.C. 372, 597 S.E.2d 181 (Ct.App.2004). “Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent’s case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings.” *Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 220, 616 S.E.2d 722, 730 (Ct. App. 2005). “Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial.” *Id.*

ARGUMENT

Defendants’ counterclaims are for breach of contract and unjust enrichment. Both causes of action rest upon two separate factual theories. The evidence in this case does not support either one of those theories.

Defendants’ first factual theory is that the money Defendants paid Plaintiff were mere “loans” and “advances” rather than payments for services rendered and profit-sharing promises. Yes, Defendants did pay Plaintiff money. Per Defendants’ own admission, however, this money was paid to Plaintiff for work that was already performed and for profits that had already been realized. (See Affidavit of James Rod Brady, including exhibits). Defendants never paid any loans or advances to Plaintiff. *Id.* More

importantly, Defendants have not presented a single piece of evidence suggesting any of their payments to Plaintiff was a loan or an advance.

Defendants' second factual theory is that Defendants had to pay third parties for services Plaintiff had contracted to perform. The parties here did contemplate that Plaintiff would need to hire third party contractors to help complete the large volume of work. Plaintiff did do that. And Defendants did pay those third parties. But Defendants already took a full accounting of all money paid for third party contractors, and still determined that they owed Plaintiff \$711,027 after deducting the money paid to third parties. (See Affidavit of James Rod Brady and Exhibits).

To recap, Defendants have shown evidence that they *paid* money to Plaintiff and to third parties. But they have shown no evidence whatsoever that Plaintiff *owes* Defendants anything in connection with these payments. To the contrary, Defendants submitted evidence of their own admission that *they* owe Plaintiffs money. *Id.*

Both of Defendants' factual theories of recovery consist of mere allegations. Mere allegations alone cannot defeat a motion for summary judgment. Defendants must support those allegations with some kind of testimony or affidavit. See Rule 56, SCRCP (quoted more fully above). Proving that Plaintiff would actually owe Defendants for the amounts that Defendants paid is a necessary element of Defendants' counterclaims. In over nine years of litigation, Defendants have not produced a single piece of evidence supporting their contention that Plaintiff owes them money for the amounts Defendants paid. Instead, Defendants produced evidence that they admitted liability to Plaintiff. (See Affidavit of James Rod Brady, Exhibits A & B). These counterclaims are an insult to the integrity of this Court.

CONCLUSION

Plaintiff respectfully requests that this Court issue an order granting Plaintiff's Motion for Summary Judgment as to Defendants' Counterclaims before Monday, February 11, 2019, when the trial of this case is scheduled to begin.

Respectfully submitted,
THE CAPELL LAW FIRM, LLC

s/ Charles W. Thomson
Glynn L. Capell (16552)
GCapell@CapellLaw.com
Charles W. Thomson (101471)
CThomson@CapellLaw.com
321 East Bay St.
Charleston, SC 29401
(843) 501-0423
Attorneys for Plaintiffs

February 4, 2019
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

James R. Brady,
Plaintiff,

v.

Hilton Head Homes at Allenwood,
LLC; Village Square Development
Company, LLC; Lancaster
Redevelopment Corp.; and Gary L.
Grossman,

Defendants.

COURT OF COMMON PLEAS
FOURTEENTH CIRCUIT

C.A. No. 2015-CP-07-02047

Affidavit of James Rod Brady



Before me, the undersigned authority, personally appeared James Rod Brady, who, being duly sworn, deposes and states as follows:

1. I am over the age of 18 and give this affidavit based upon my own personal knowledge.

2. I am the Plaintiff in the above-referenced matter.

3. In or around 2004, I contracted with Defendants to construct, market, and sell residences in two separate developments within the Allenwood neighborhood on Hilton Head Island. In addition to being paid for providing these services, I was also promised a share of the profits generated from the sale of the residences.

4. As of September 2007, I had overseen the construction of a total of 103 residential units in these two developments. I also participated in the marketing and sales of those units.

**AS TO DEFENDANTS' THEORY THAT AMOUNTS
THEY PAID ME WERE "LOANS" OR "ADVANCES"**

5. Ginger Griffith is an employee and staff accountant and treasurer of Defendants.

6. Ms. Griffith sent me a letter dated September 13, 2007. This letter is attached as Exhibit A to this Affidavit.

7. The September 13, 2007 letter demonstrates four separate amounts that, added together, represent the total amount that Defendants alleged to have paid me as of that date. Adding those four numbers together,

Defendants allege they had paid me a total of \$509,261.00 for services performed and profit sharing from the two developments.

8. All of these payments were made in connection with residential units that had already been completed and sold, not for future work or expenses.

9. After receiving Ms. Griffith's letter in September 2007, I retained an accountant, T. Gardiner Brower, to check behind the Defendants' numbers. Mr. Brower has since passed away.

10. I made a good faith effort to transmit to Mr. Brower any and all documents that would evidence any payment that Defendants made to me.

11. From the materials I gave him, Mr. Brower determined that Defendants had paid me a total of \$453,411.00—an amount slightly less than the \$509,261.00 that Defendants alleged to have paid me.

12. Whatever amount Defendants paid me for my services and profit sharing, the amounts paid were for work that was already complete. My construction work was complete. The houses had been sold. The single-purpose developer LLCs who owned the residential units had sold the units and made a profit, even after paying all accounts payable. None of the payments that Defendants made to me could be classified as a "loan" or an "advance."

13. I understand that Defendants alleged in this lawsuit that the amounts they paid to me constituted "loans" or "advances." This is patently not true, and Defendants' allegations in that regard constitute the utmost bad faith conduct. Defendants acknowledged at the time they made the payments that the payments were for services and profits already earned and realized. Defendants' September 13, 2007 letter corroborates the fact that these payments were not loans or advances. Ginger Griffith's testimony in this matter does as well. Ms. Griffith's testimony is attached as Exhibit B to this Affidavit.

14. If Gary L. Grossman or Lancaster Redevelopment Corp. made any "loans" or "advances" on this project, those loans or advances were not made to me. The two single-purpose developer LLC Defendants—Hilton Head Homes at Allenwood, LLC; Village Square Development Company, LLC—took out loans to cover construction costs. I recall that those loans came from banks. Regardless, these two single-purpose entities had sold their

residential units, repaid all money loaned to them for construction costs, and had made a profit even after paying all accounts payable. This is my recollection, and it is also corroborated by the testimony of Ginger Griffith.

**AS TO DEFENDANTS' THEORY THAT I OWE THEM
FOR MONEY THEY PAID TO THIRD PARTIES**

15. Under the 2004 agreement, I was entitled to engage other contractors to assist me in constructing the residences at the two subject developments. I did end engage several contractors to assist me: Nick Grossman, Dan Clore, Rich Raven, and R.S. Davis.

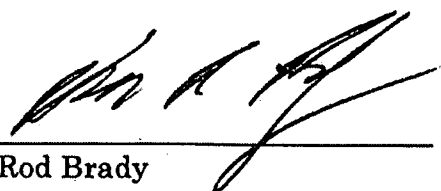
16. I understand that Defendants alleged in this lawsuit that I still owe Defendants money for the reimbursement of Defendants' payments to these contractors. As demonstrated below, this is not true.

17. The September 13, 2007 letter accounts for all payments I owed Defendants for those four contractors. I did not engage these contractors subsequent to when that letter was drafted. The testimony of Ginger Griffith, attached as Exhibit B, corroborates that there are no amounts that I owe Defendants for the services of these contractors that have not already been reimbursed and accounted for.

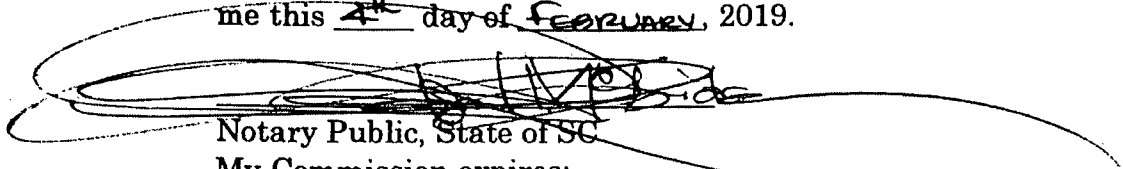
18. Even after accounting for the \$509,261.00 Defendants allege to have paid to me, and accounting for all amounts Defendants paid to the four contractors who helped me construct the subject residences, Defendants still admitted in the September 13, 2007 letter that the total unpaid amount due to me was a total of \$711,027.00.

19. After that time, I never received another payment from Defendants for work completed and sold. As a result of Defendants breach of their agreement to pay me, I stopped working at the subject developments. Thus, it is not possible that I would have incurred additional expenses for which Defendants would be entitled to reimbursement after September 2007. It shocks the conscience that Defendants would allege that I owe them money.

The affiant says nothing further.


James Rod Brady

SWORN TO AND SUBSCRIBED before
me this 4th day of FEBRUARY, 2019.


Notary Public, State of SC
My Commission expires: _____

ANNETTE KAY MCBRIDE
Notary Public-State of South Carolina
My Commission Expires
May 19, 2026





Lancaster Redevelopment Corp.

2138 Route 522

Selinsgrove, PA 17870

570-374-0131 (Fax 570-374-6093)

September 13, 2007

James R. Brady
36 Timber Marsh Lane
Hilton Head, SC 29926-2787

Dear Rod,

Pursuant to your discussion with Mr. Grossman, I am transmitting our analysis of the Allenwood compensation to you under our February 2, 2004 letter of agreement.

As you are aware, there are two separate entities operating at Allenwood. Our analysis isolates compensation by company.

Village Square Development Co. LLC (townhomes)

2005 Income	\$708,890
2006 Income	\$247,495
Total to date	\$956,385

~~(To date there was one distribution~~

~~(Paid to you on 4/10/07)~~

~~\$36,000)~~

This distribution was based on cash available at the time of distribution. As you know, our cash is invested in standing inventory.

Under the February 2, 2004 letter of Agreement you are scheduled to be paid a construction management fee of \$1,250 per townhouse unit. According to our records we have built and delivered 26 townhouses to date. I interpret the February 2, 2004 letter of Agreement to make the construction fees payable at the time each unit settles.

It is my understanding that the expenses associated with hiring Nick Grossman and/or Dan Clore for supervisory work on your behalf are to be deducted. Mr. Grossman did advise me that expenses for Dan Clore would not be counted after a certain date, but I do not know what that date was, so I picked 5/31/07 which is when Nick went to Battery Creek.

The February 2, 2004 letter of Agreement also provides for a \$2,000 per townhouse sales commission to either you or Joy Walker depending on who actually sold the unit. I was subsequently informed that you and Joy agreed to split this commission at \$1,000 each for all sales made by you or her. I made all payments and constructed all commission accounting in accordance with that directive.

The construction management fee on the 26 sold and settled townhomes totals	\$32,500

The commissions on the 26 sold and Settled townhomes totals	\$26,000

~~Less the commission paid to date~~	~~((9,415))~~
~~Less Nick Grossman salary/benefits/expenses 6/6 to 1/7~~	~~((29,845))~~
~~Less Dan Cloré salary/benefits/expenses 6/6 to 1/7~~	~~((30,746))~~
~~Less Nick Grossman salary/benefits/expenses 1/1/07-5/31/07~~	~~((24,870))~~
~~Less Dan Cloré salary/benefits/expenses 1/1/07-5/31/07~~	~~((25,620))~~

Current balance as of this date	(61,996)

There are construction management fees Due on 29 additional units @\$1,250	\$36,250

The net balance is a negative For your sales commissions and construction management Fees for Village Square Development Co. LLC	(25,746)

The net income for tax year 2005 was \$708,890 and \$247,495 in 2006 for a total taxable income of \$956,385. The LRC allocated income on this \$956,385 is 88% or \$841,619.

Under the terms of the February 2, 2004 letter of Agreement, Mr. Grossman was to be paid a priority distribution of 500 basis points for his guarantee. The average debt in 2005 was \$2,970,097 from January 1 until December 31, 2005 which calculates to a pro-rated guarantee fee of \$148,504.85 for 2005.

The average VSD to LLC debt balance for 2006 was \$5,402,733, which calculates to a guarantee fee of \$270,137.

The guarantee fee totals \$418,642 which reduces the LRC allocated pretax profits from \$841,619 to \$422,977.

Your allocated share of 50% would be \$211,488.

~~(To date I have advanced \$128,000)~~

The balance of the 2005/2006 "incentive management fee" due to you is \$83,488.

Under the terms of the February 2, 2004 letter of Agreement, 100% of LRC loans or accounts receivables are to be paid as a priority distribution.

Mr. Grossman recently loaned Village Square Development Co. LLC \$124,750 and forest homes has past due receivables of \$173,700.

We must repay the \$173,700 past due receivables as a first priority. Mr. Grossman has indicated his intentions to allow funds to be paid to you ahead of his recent loans.

As to Hilton Head Homes at Allenwood

Your construction management fees on the 44 single family homes sold and settled total	\$220,000

The construction management fees on the 4 remaining single family homes total	\$ 20,000

~~The expenses associated with Rich Raven~~	~~\$(17,941)~~

~~The expenses associated with RS Davis~~	~~\$(58,611)~~

The 10% commission on the 44 single family Homes sold and settled to date total	<u>\$192,000</u>

Total earned as of this date	\$355,475

~~Total paid as of this date~~	~~\$335,846~~

Balance due on contribution fees and commissions	\$ 19,629

Mr. Grossman advises that this amount can be paid from the very next S.F. settlement if Art Long will consent.

The 2005 net taxable income was	\$1,212,191

The 2006 net taxable income was	<u>400,592</u>

Total taxable income of	\$1,612,783

The allocated income on this \$1,612,783 is 88% or	\$1,419,249

The average debt balance for 2005 was	\$1,993,865

The 500 basis point guarantee fee calculating to	\$ 99,693

The average debt balance for 2006 was	\$1,267,311

The 500 basis point guarantee fee calculating to	\$ 52,244

Therefore, net taxable income after the guarantee Fees for 2005/2006 is	<u>\$1,267,312</u>

Your 50% incentive management fee is	\$ 633,656

~~Of this writing, the total amount due to you is~~	~~\$ 711,027~~

Mr. Grossman directed me to access our ability to fund a \$10,000 a month draw against these funds. Given the carrying costs of the inventory, and past due receivables to Forest Homes from Allenwood, the monthly carrying costs at Cypress Harbor and our massive increase in overhead associated with the new plant, LRC simply cannot fund any additional monthly expenses.

I have attached a summary of the above information. If you have any questions or need any details, please feel free to call me anytime.

Very truly yours,

Ginger Griffith
Treasurer

Cc: Gary L. Grossman

EXHIBIT B

Excerpts from the Depositions of Ginger Griffith,
staff accountant for Defendants

1 the last paragraph I'm asking about here it starts with
2 "This distribution was based." That group of
3 paragraphs seems pretty straightforward to me. Do you
4 have any additional context or any reason that part
5 wouldn't be clear?

6 A. No.

7 Q. Next paragraph under that, it starts "Under
8 the February 2, 2004 letter of agreement." In the
9 middle of that paragraph, it says "I interpret February
10 2, 2004 letter." The "I" there, I assume that's you?

11 A. Yes.

12 Q. And all that says is "I interpret the
13 February 2, 2004 letter of agreement to construction
14 fees payable at the time each unit settles." I
15 interrupt that, and correct me if I'm wrong here, all
16 the fees, the earned fees that are laid out in this
17 letter forthcoming, we're talking about units here that
18 were all completed and sold, right?

19 A. Correct.

20 Q. All right. The next paragraph talks about
the expenses associated with hiring Nick Grossman and
Dan Clore are to be deducted. You are accounting
for -- it looks like, Nick Grossman and Dan Clore did
work on some of these units.
But you are accounting for the fees paid to

them in your calculations in this letter, right?

A. If they were paid any fees, I believe that

they were only paid their salary, not any additional

fees.

Q. Okay. On page 2 there's a group of -- I

hate to jump out of order here, but it's relevant to

the last paragraph. You see "Less the commission paid

to date," and then there's about four different items?

A. Yes.

Q. So it says "Salary, benefits and expenses

for Nick Grossman and Dan Clore," right?

A. Right.

13 Q. And I don't know if you have a calculator
14 handy, but I added up those four numbers. And it looks
15 like \$111,081 is being deducted from the amount that
16 you are calculating that Rod is owed?

17 A. Yes.

Q. Back to the last paragraph on the first

page, any -- would there have been anything owed to

Nick Grossman or Dan Clore for work performed on these

town homes that were already completed and sold that

would not have been taken account for in this letter?

A. I don't believe so.

24 Q. Top photograph on the next page, I know this
25 is tedious, but just any reason that it doesn't clearly

1 state what it says? Is there any additional context or
2 anything we need to understand that paragraph?

3 A. No.

4 Q. For the record, we don't have to get that
5 detailed tomorrow. This is my one chance to flesh out
6 everything there is to know about this letter. The
7 paragraph after that, you start to lay out some
8 numbers. We already went over this:

"The construction management fee on the 26

sold and settled town homes, we're talking about units

that are already closed out here, right?

A. Right.

Q. There wouldn't have been any reason for Nick

or Dan to have to go back out to these units to your

knowledge?

A. Not to my knowledge.

17 Q. Okay. We added up the total monies paid to
18 Nick and Dan for the services. This is my words, not
19 yours. But I added them up myself. Those four numbers
20 added to \$111,081. That number exceeds what Rod is
21 even being paid for his construction management fees,
22 right?

23 A. It exceeds, is that what you said?

24 Q. Correct.

25 A. Yes.

1 Q. On the rest of this page, same question: Is
2 there -- I mean, we can read it and see what the letter
3 says. But is there any assistance you can offer or
4 additional context that would clarify what's being said
5 in there or just the letter says what it says?

6 A. I believe it says what it says. There's a
7 lot of numbers to take in.

8 Q. The bottom, it says that "The balance of
9 2005/2006 incentive management fee," what does
10 incentive management fee mean to you here? What
11 services is it for?

12 A. To me, it means Rod managing the whole
13 property and the construction of the units. He would
14 be offered a fee.

15 Q. The same process on the next page, it starts
16 with "Under the terms," and all the way down to
17 "Balance due on contribution fees and commissions," is
18 there anything in there that needs clarification or
19 just the letter says what it says?

20 A. The letter says what it says.

21 Q. Okay. Below that it says "Mr. Grossman
22 advises that this amount can be paid from the very next
23 S.F. settlement if Art Long will consent." Do you know
24 if that balance was ever paid to Mr. Brady?

25 A. I don't know without looking into further

1 A. Yes.

2 Q. Okay. Let's go back and summarize that more

3 distinctly in a second. But first, look at the next

4 page, top paragraph of, I believe, that's the third

5 page of the letter -- fourth page. I'm sorry. It

6 says, "Mr. Grossman directed me to access our ability,"

7 right?

8 A. Yes.

9 Q. Do you see that paragraph? And what's going

10 on here is that, if I can distinctly paraphrase that,

11 that paragraph is, yes, Mr. Brady, you're owed money,

12 the \$711,000 and change, but Lancaster Redevelopment

13 Corporation is having financial troubles. And we can't

14 -- we don't have the funds to pay it all to you right

15 now. So what we are going to do is pay you \$10,000 a

16 month.

17 Is that essentially what that paragraph is

18 saying?

19 A. Yes.

20 Q. And you don't recall one way or the other

21 whether any of those monthly payments were made to Rod

22 after September of 2007?

23 A. I don't recall, no.

24 Q. Okay. So Rod was already owed the money,

25 right? He'd already earned it, right?

1 A. Yes.

2 Q. And the purpose of getting on this payment

3 plan was because Lancaster Redevelopment Corporation

4 had financial issues, right?

5 A. Yes.

6 Q. And the purpose of those financial -- or the

7 source of those financial issues were projects other

8 than the two at issue here, correct?

9 A. One of the issues was past due receivables

10 from the Allenwood project.

11 Q. ~~Would those past due receivables, would~~

12 ~~those have been accounted for when you calculated the~~

13 ~~net income of that LLC?~~

14 A. Yes.

15 Q. ~~Okay. So we've already accounted for those~~

16 ~~past due receivables within the number owed to Rod.~~

17 ~~right?~~

18 A. Yes.

19 Q. Okay. And then the other reason listed, it

20 says, it seems as if the Lancaster Redevelopment

21 Corporation is having problems with carrying costs of

22 Cypress Harbor. That project had nothing to do with

23 Village Square Development, right?

24 A. No.

25 Q. And it had nothing to do with the Allenwood

1 project, right?

2 A. No.

3 Q. And it had nothing to do with Rod Brady,

4 right?

5 A. I don't believe so. I personally don't

6 remember the Cypress Harbor project.

7 Q. Right. And it doesn't appear to be relevant

8 to this case, I don't think, other than the fact that

9 it seems to be the source of why Lancaster

10 Redevelopment Corporation was having trouble paying Mr.

11 Brady. And this was written in the letter by you,

12 right?

13 A. Yes.

14 Q. And you just don't remember all the complete

15 details of -- behind that -- those problems, right?

16 A. Correct.

17 Q. And it also mentions a "massive increase in

18 overhead associated with the new plant." That didn't

19 have anything to do with Rod Brady, right?

20 A. No.

21 Q. Okay. So to recap, the sales have been

22 final, right, of the properties built on these two

23 neighborhoods, right?

24 A. Yes.

25 Q. And the LLC's, that money from the

1 purchasers of the homes, right?

2 A. Yes.

3 Q. And there was a profit after that, right?

4 A. Yes.

5 Q. Okay. Lancaster Redevelopment's portion of

6 that profit got accounted for, right?

7 A. Right.

8 Q. And Mr. Grossman's individual profits from

9 those transactions got accounted for, right?

10 A. Yes.

11 Q. And after all that, Mr. Brady was still owed

12 a big chunk of money out of those profits, right?

13 A. Right.

14 Q. For work that has already been earned,

15 right?

16 A. Right.

17 Q. We're not projecting future profits here,

18 right?

19 A. Correct.

20 Q. Okay. And Mr. Brady was not paid that money

21 because Lancaster Redevelopment Corporation had

22 problems on other projects that had nothing to do with

23 Rod Brady, right?

24 A. Some of the problems had nothing to do with

25 Allenwood.

1 Q. Okay. Okay. All right. So and let's
 2 summarize the specific numbers really quickly. So the
 3 total was 711,024 or 27 or I'm sorry. Right?
 4 A. Yes.
 5 Q. And of that 633,656, that was owed to Rod as
 6 an incentive management fee or basically a profit
 7 sharing from the Allenwood project, right?
 8 A. Right.
 9 Q. Already earned, correct?
 10 A. Correct.
 11 Q. Homes already sold, right?
 12 A. Right.
 13 Q. LLCs are already paid by the home
 14 purchasers, right?
 15 A. Yes.
 16 Q. And the LLCs made a profit, right?
 17 A. Yes.
 18 Q. Okay. And then there is an amount 19,629
 19 owed to Rod as a construction management fee at
 20 Allenwood. And that money was already earned, right?
 21 A. Right.
 22 Q. And the construction was already completed
 23 at those homes, too, correct?
 24 A. Correct.
 25 Q. All right. And the 83,488 portion was owed

1 to Rod as his incentive management fee for the Village
 2 Square Development project, right?
 3 A. Yes.
 4 Q. And just like in Allenwood, those fees are
 5 already earned, right?
 6 A. Yes.
 7 Q. And the homes are already sold?
 8 A. Yes.
 9 Q. Okay. And to be fair, Rod owed Lancaster
 10 Redevelopment Corporation or whoever the contracting
 11 parties were, \$25,746. And that was for the difference
 12 between his construction management fees and the money
 13 he owed for the help he retained to assist him with
 14 that construction, right, at the Village Square
 15 Development project, right?
 16 A. Correct.
 17 Q. Okay. But the number that he owed to other
 18 people was put into the total, right?
 19 A. Yes.
 20 Q. And that total, again, that was owed to Rod
 21 was \$711,027 as of September 13, 2007?
 22 A. Right.
 23 Q. And the amount accounted for for his help
 24 totalled between Nick Grossman, Dan Clore, Rich Raven
 25 and RS Davis we've accounted for \$187,633 between the

1 four of them if you add up all the individual numbers.
 2 Does that sound about right to you?
 3 A. Yes, it does.
 4 Q. Yeah. I'm not asking you to do math on the
 5 spot. But that's the numbers that I came up with
 6 anyhow. That number also took into account that
 7 Mr. Grossman was getting consideration in exchange for
 8 a personal guarantee. And he had -- we had accounted
 9 for \$300,441.85 to be owed to him, right?
 10 A. Yes.
 11 Q. Already accounted for within the number owed
 12 to Rod?
 13 A. Yes -- owed to Gary.
 14 Q. Okay. Yeah, so, essentially just to drive
 15 the point home one last time, you concluded on
 16 September 13, 2007 that the contracting parties owed
 17 Rod \$711,027, right?
 18 A. Yes.
 19 Q. And you didn't just throw that letter
 20 together, right?
 21 A. No.
 22 Q. And you're a professional in the accounting
 23 business, right?
 24 A. Right.
 25 Q. And you made a good faith effort to get

1 these numbers right, didn't you?
 2 A. Yes.
 3 Q. And you haven't discovered any errors in
 4 here, now since the time you wrote that letter?
 5 A. No.
 6 Q. Okay. And you do not have any evidence
 7 showing that Lancaster Redevelopment Corporation, Gary
 8 Grossman or any other affiliated entity, paid any money
 9 to Rod subsequent to this September 13, 2007?
 10 A. I don't know if anything has been paid to
 11 Rod or not.
 12 Q. Right. But the question is, you don't have
 13 any evidence showing it, right?
 14 A. Right.
 15 MR. THOMSON: Okay. Those are all the
 16 questions I have. Mr. O'Kelley, if would like to
 17 interview Ms. Griffith, you have may take that
 18 opportunity now.
 19 MR. O'KELLEY: I thought this is a
 20 deposition, not an interview.
 21 MR. THOMSON: It's a de bene esse deposition
 22 for purpose for use at trial.
 23 *****
 24 EXAMINATION
 25 BY MR. O'KELLEY:

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

James R. Brady,

Plaintiff,

vs.

Hilton Head Homes at Allenwood, LLC,
Village Square Development Company,
LLC, Lancaster Redevelopment Corp., and
Gary L. Grossman,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2015-CP-07-2047

**THE DEFENDANTS MEMORANDUM
IN OPPOSITION TO THE
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

TO: CHARLES W. THOMPSON, ESQ.

The Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp., and Gary L. Grossman, by and through undersigned counsel, submit this Memorandum in Opposition to Plaintiff's Motion for Summary Judgment.

STANDARD OF REVIEW

Under Rule 56(c) of the South Carolina Rules of Civil Procedure, summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See Pittman v. Grand Strand Entm't, Inc.*, 363 S.C. 531, 611 S.E.2d 922 (2005); *South Carolina Electric and Gas Co. v. Town of Awendaw*, 359 S.C. 29, 596 S.E.2d 482 (2004). In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the nonmoving party. *See Medical Univ. of South Carolina v. Arnaud*, 360 S.C. 615, 602 S.E.2d 747 (2004); *Lt. J.A. Fleming, Jr. v. Boykin Rose and James Caulder*, 350 S.C. 488, 567 S.E.2d 857 (2002). The Court in South Carolina has long recognized that summary judgment is a "...drastic remedy" that must be carefully invoked as to not improperly deprive any person of a trial of the disputed facts in a case.

Frank Joe Baughman, et al. v. American Telephone and Telegraph Co., et al., 306 S.C. 101, 410 S.E.2d 537 (1991).

FACTS AND ARGUMENT

This matter comes before the Court upon the motion of the Plaintiff that there are no triable issue of facts in this matter regarding the Defendants Counterclaim as set forth in their motion. A copy of the Defendants' Answer and Counterclaim is attached hereto as Exhibit "A". Granting summary judgment in this matter would not be appropriate.

The Defendants Hilton Head Homes at Allenwood, LLC, and Village Square Development Company, LLC, are limited liability companies organized and existing pursuant to the laws of the State of South Carolina, which formerly developed two neighborhoods on Hilton Head. (*Id.*)

The Defendant Lancaster Redevelopment Corporation is a corporation organized and existing pursuant to the laws of the State of Pennsylvania and authorized to conduct business in South Carolina, and the Defendant Gary L. Grossman is a citizen and resident of the State of Pennsylvania.

Pursuant to the terms and conditions of an agreement with Lancaster Redevelopment Corporation, the Plaintiff was to have provided services to Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation in connection with the construction, sales, and marketing of a certain development in Beaufort County, South Carolina. The Plaintiff was given sums as loans and as advances for work that should have been performed by the Plaintiff, which work as not performed by the Plaintiff, prior to any distributions being made or prior to any commissions or payments being given to the Plaintiff. *Id.*

The Plaintiff often informed the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation that he could not cover the workload required of him in order to receive commissions and other compensation.

While he was to have been furthering the business of Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation, the Plaintiff failed to perform work required of him and third parties had to be employed to complete the work the Plaintiff was going to allegedly complete. The Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation made numerous payments to the Plaintiff in spite of his inability to perform as promised and as relied upon by Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation.

Because of his failure to perform, the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation seek to recover all payments made to the Plaintiff in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars. *Id.*

Ginger Griffith, who worked as the treasurer for Lancaster Redevelopment Corporation gave her deposition in this matter on December 20, 2018. (Depo., p. 7). A copy of her deposition transcript is attached hereto as Exhibit "B" and incorporated by reference herein.

Ms. Griffith testified that as of September of 2007, the housing marking was falling apart and there was standing inventory that could not be sold (Depo. p. 37). There were foreclosures against the Defendants around this time. (Depo. p. 38). There could be no payments to Mr. Brady accordingly.

Ms. Griffith testified that Mr. Brody was advanced sums during his employment by Hilton Head Homes and by Village Square against fees earned. *Id.* He was never an employee of Lancaster Redevelopment Corporation. *Id.* at 38-39. These advances were never repaid to the Defendants. Any incentive management fees were to be paid after the initial debts from Lancaster Redevelopment or Mr. Grossman were repaid. (Depo., p. 37)

The Plaintiff's conclusory statements that the amounts claimed by the Defendants are not loans are advances are just that: his opinion. This is the ultimate issue of fact. Were these payments loans, as the Defendants contend, or were these payments due?

The Defendants have acknowledged that due to the larger economic problems, there could be no payments made to Mr. Brady.

In correspondence to Mr. Brady of September 13, 2007, Ms. Griffith wrote

Given the carrying costs of the inventory, and past due receivables to Forest Homes from Allenwood, the monthly carrying costs at Cypress Harbor and our massive increase in overhead associated with the new plant, LRC [Lancaster Redevelopment Corporation] simply cannot fund any additional monthly expenses.

(Letter of 9/13/2007, Ex. "A" to Brady Affidavit)

There were numerous advances made include "monthly expenses" as set forth in the letter which the Defendants contend are indeed loans and advances made, for which Mr. Brady is now responsible for reimbursing the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation. A difference of opinion as to what those matters are called does not warrant the granting of judgment as a matter of law as to these Defendant's counterclaims.

The Defendants would respectfully request that this Court deny the Plaintiff's motion accordingly and allow the matter to proceed to trial instead of invoking a drastic, appealable remedy. The Plaintiff seems greatly concerned about any future delay. Should the Court grant the

Plaintiff's motion, there will have to be an appeal, which the Defendants hope will not be necessary.

Respectfully submitted,

Feb. 4, 2019
Mt. Pleasant, SC

s/ G. Hamlin O'Kelley, III
BUIST BYARS & TAYLOR LLC
G. Hamlin O'Kelley, III
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
Hamlin.okelley@buistbyars.com
Attorneys for the Defendants

EXHIBIT "A"

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

C/A NO.: 2015-CP-07-2047

James R. Brady,
Plaintiff,

vs.

Hilton Head Homes at Allenwood, LLC,
Village Square Development Company,
LLC, Lancaster Redevelopment Corp., and
Gary L. Grossman,

Defendants.

**SUMMONS
FOR THE DEFENDANTS' ANSWER
AND COUNTERCLAIM**

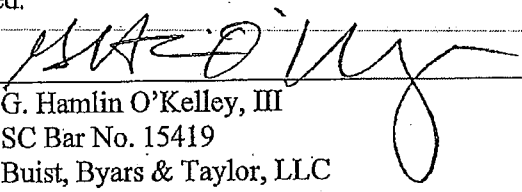
2015 SEP 14 PM 3:33
JENNIFER ROSENEAL
BEAUFORT COUNTY, S.C.
CLERK OF COURT

TO: *THE ABOVE-NAMED PLAINTIFF*

YOU ARE HEREBY SUMMONED and required to reply to the Defendants' Answer and Counterclaim in this action a copy of which is herewith served upon you, and to serve a copy of your Reply upon the undersigned attorneys at 652 Coleman Boulevard, Suite 200, Mt. Pleasant, South Carolina 29464, within thirty (30) days from service hereof, exclusive of the day of such service; and, if you fail to reply to the Answer and Counterclaim within the time aforesaid, judgment by default will be rendered against you, and the Defendants in this action will apply to the Court for the relief demanded.

Mt. Pleasant, SC

September 1, 2015


G. Hamlin O'Kelley, III
SC Bar No. 15419
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, South Carolina 29464
(843) 856-4488
Hamlin.okelley@buistbyars.com

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

) CASE NO. 2015-CP-07-2047

James R. Brady,

Plaintiff,

vs.

Hilton Head Homes at Allenwood, LLC,
Village Square Development Company,
LLC, Lancaster Redevelopment Corp.
and Gary L. Grossman,

Defendants.

**ANSWER AND COUNTERCLAIM OF THE
DEFENDANTS**2015 SEP 14 PM 3:33
CLERK OF COURT
BEAUFORT COUNTY
S.C.TO: GLYNN L. CAPELL, ESQ.
CHARLES W. THOMPSON, ESQ.

The Defendant(S) Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp. and Gary L. Grossman (the "Defendants") by and through their undersigned counsel, answering the Complaint of the Plaintiff James R. Brady and setting forth their Counterclaims against James R. Brady allege and state as follows:

1. Each and every allegation of the Plaintiff's Complaint not admitted, denied, or otherwise qualified herein is hereby deemed denied, and the Defendants deny same and demand strict proof thereof.
2. The Defendants admit Paragraph 1 of the Plaintiff's Complaint.
3. The Defendants admit the allegations of Paragraphs 2, 3, and 4 of the Plaintiff's Complaint.
4. The Defendants admit only so much of Paragraph 5 of the Plaintiff's Complaint that alleges the Defendant Gary L. Grossman is a resident of the State of Pennsylvania. The Defendants deny the remaining allegations of said Paragraph and would allege and show that he never conducted business in Beaufort County regarding this matter in his individual capacity.

5. The Defendants are not required to answer the allegations contained in Paragraph 6 of the Plaintiff's Complaint as said allegations constitute legal conclusions.

6. The Defendants deny the allegations of Paragraphs 7, 8, and 9 and demand strict proof thereof.

7. The Defendants are without sufficient information to form a belief as to the allegations of Paragraph 10 of the Plaintiff's Complaint, and, therefore, denies same and demands strict proof thereof.

8. In answering Paragraph 11 of the Plaintiff's Complaint, the Defendants repeat and reallege Paragraphs 1 through 7 above as though repeated herein verbatim.

9. The Defendants admit only so much of Paragraph 12 of the Plaintiff's Complaint that alleges the Plaintiff at one time worked for the Defendant Hilton Head Homes at Allenwood, LLC. The Defendants deny the remaining allegations of Paragraph 8 of the Plaintiff's Complaint and demand strict proof thereof.

10. The Defendants deny the allegations of Paragraphs 13, 14, and 15 of the Plaintiff's Complaint and demand strict proof thereof.

11. In answering Paragraph 16 of the Plaintiff's Complaint, the Defendants repeat and reallege Paragraphs 1 through 10 above as though repeated herein verbatim.

12. The Defendants deny the allegations of Paragraphs 17, 18, 19, 20, and 21 of the Plaintiff's Complaint and demand strict proof thereof.

13. In answering Paragraph 22 of the Plaintiff's Complaint, the Defendants repeat and reallege Paragraphs 1 through 10 above as though repeated herein verbatim.

14. The Defendants deny the allegations of Paragraphs 23, 24, 25, and 26 of the Plaintiff's Complaint and demand strict proof thereof.

FOR A FURTHER ANSWER
AND BY WAY OF AN AFFIRMATION DEFENSE AND
MOTION TO DISMISS

15. The Defendants would allege and show that the Plaintiff's Complaint fails to state facts sufficient upon which relief can be granted, and, as such, the Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(6) SCRCF.

FOR A FURTHER ANSWER
AND BY WAY OF A SECOND AFFIRMATIVE DEFENSE

16. The Defendants would allege and show that the Plaintiff's own inequitable actions, including non-performance of the duties of his job, act as a complete bar to recover, and, as such, the Plaintiff's Complaint should be dismissed.

FOR A FURTHER ANSWER
AND BY WAY OF A THIRD AFFIRMATIVE DEFENSE

17. The Defendants would allege and show that the Plaintiff's Complaint is barred by the doctrines of waiver, estoppel, and laches as the Plaintiff failed to act when he should have acted in protecting any interest he may have had regarding these claims, if any, and none of which are admitted, as set forth in his Complaint.

FOR A FURTHER ANSWER
AND BY WAY OF A FOURTH AFFIRMATIVE DEFENSE

18. The Defendants would allege and show that the Plaintiff knew or should have known that no fees, compensation, remuneration, or payment of any kind would be paid to him for work not performed by him and that he would only be paid for work in furtherance of the business of Hilton Head Homes at Allenwood, LLC.

FOR A FURTHER ANSWER
AND BY WAY OF A FIFTH AFFIRMATIVE DEFENSE

19. The Defendants would allege and show that the Plaintiff had no reliance upon Gary L. Grossman as any employer and bases his entire baseless case on one letter from Mr. Grossman knowing that he was to further the business of Hilton Head Homes at Allenwood, LLC, and not that of Mr. Grossman, individually.

FOR A FURTHER ANSWER
AND BY WAY OF A SIXTH AFFIRMATIVE DEFENSE
AND BY WAY OF A COUNTERCLAIM

20. The Defendants repeat and reallege Paragraphs 1 through 19 above as though repeated herein verbatim.

21. The Defendants Hilton Head Homes at Allenwood, LLC, and Village Square Development Company, LLC, are limited liability companies organized and existing pursuant to the laws of the State of South Carolina.

22. The Defendant Lancaster Redevelopment Corporation is a corporation organized and existing pursuant to the laws of the State of Pennsylvania and authorized to conduct business in South Carolina.

23. The Defendant Gary L. Grossman is a citizen and resident of the State of Pennsylvania.

24. The Plaintiff James R. Brady is a resident of Beaufort County, South Carolina.

25. Pursuant to the terms and conditions of an agreement with Lancaster Redevelopment Corporation, the Plaintiff was to have provided services to Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation in connection with the construction, sales, and marketing of a certain development in Beaufort County, South Carolina.

26. The Plaintiff was given sums as loans and as advances for work that should have been performed by the Plaintiff, which work as not performed by the Plaintiff, prior to any distributions being made or prior to any commissions or payments being given to the Plaintiff.

27. The Plaintiff often informed the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation that he could not cover the workload required of him in order to receive commissions and other compensation.

28. While he was to have been furthering the business of Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation, the Plaintiff failed to perform work required of him and third parties had to be employed to complete the work the Plaintiff was going to allegedly complete.

29. The Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation made numerous payments to the Plaintiff in spite of his inability to perform as promised and as relied upon by Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation.

30. Such a failure to perform constitutes a breach of contract entitling the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation to recover all payments made to the Plaintiff in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars.

31. The Plaintiff is not entitled to retain the benefit of these payments and advancements due to his breach of his agreement with Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation, and these Defendants

are entitled to actual damages in excess of Six Hundred Thousand and No/100 (\$600,000.00)

-----Dollars in amounts to be determined at the trial of this case.-----

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

32. The Defendants repeat and reallege Paragraphs 1 through 31 above as though repeated herein verbatim.

33. The Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation had valid contract with the Plaintiff for services which the Plaintiff failed to provide.

34. Such a failure constitutes a breach of contract for which the Plaintiff has no legal excuse and which breach has caused the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation to suffer damages in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars.

35. As a direct and proximate result of the Plaintiff's breach of contract, the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation are entitled to actual damages in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars in amounts to be determined at trial.

FOR A SECOND CAUSE OF ACTION
(Unjust Enrichment)

36. The Defendants repeat and reallege Paragraphs 1 through 35 above as though repeated herein verbatim.

37. ~~Despite receiving payments, the Plaintiff failed and refused to perform pursuant to his~~
agreement with the Defendants Hilton Head Homes at Allenwood, LLC, Village Square

Development Company, LLC, and Lancaster Redevelopment Corporation and was compensated in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars.

38. The Plaintiff has been unjustly enriched by having received these payments and it would be inequitable and unjust for the Plaintiff to retain the value of the payments made in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars.

39. As a direct and proximate result of this unjust enrichment, the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation are entitled to recover damages against the Plaintiff in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars in amounts to be determined at trial of this case.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corporation, and Gary L. Grossman pray this Court enter its Order as follows:

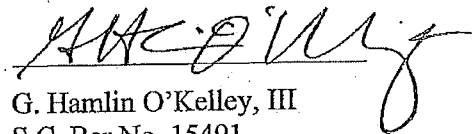
1. Dismissing the Plaintiff's Complaint;
2. Awarding the Defendants all reasonable attorneys' fees and costs;
3. Awarding the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corporation, damages in the minimum amount of Six Hundred Thousand and No/100 (\$600,000.00) Dollars and other amounts to be determined at trial; and
4. Awarding any and all such further relief as this Court may deem just and proper.

BUIST, BYARS & TAYLOR, LLC

Mount Pleasant, South Carolina

Sept. 1, 2015

By:



G. Hamlin O'Kelley, III

S.C. Bar No. 15491

652 Coleman Blvd., Suite 200

Mt. Pleasant, SC 29464

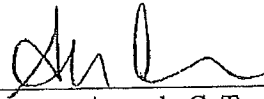
(843) 856-4488

Hamlin.okelley@buistbyars.com

CERTIFICATE OF MAILING

I hereby certify that on September 1, 2015, a copy of the foregoing *Summons, Answer and Counterclaim of the Defendants* was mailed, postage prepaid, to all counsel of record in this matter, as follows.

Mr. Glynn L. Capell, Esq.
The Capell Law Firm, LLC
PO Box 6628
Hilton Head, SC 29938



Amanda C. Taylor
Paralegal to G. Hamlin O'Kelley, III

EXHIBIT "B"

Deposition of Ginger Griffith

1 STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS
2 COUNTY OF BEAUFORT * FOURTEENTH CIRCUIT
3 * C.A. No. 2015-CP-07-02047
4 James R. Brady, *
5 Plaintiff, *
6 v. *
7 Hilton Head Homes at *
Allenwood, LLC; Village
8 Square Development Company, *
LLC; Lancaster Redevelopment
9 Corp.; and Gary L. *
Grossman,
10 *
Defendants.

11 *
12
13 * * * * *
14 December 20, 2018
15 * * * * *

16 Videotaped deposition of GINGER GRIFFITH,
17 held in the offices of Premier Reporting, LLC, 112
18 Market Street, Suite 406, Harrisburg, Pennsylvania
19 17101, commencing at 9:10 a.m., on the above date,
20 before Tracy Dominico, a Professional Court Reporter
21 and Notary Public of the Commonwealth of Pennsylvania.

22
23
24
25

Deposition of Ginger Griffith

1 APPEARANCES:

2 THE CAPELL LAW FIRM, LLC
321 East Bay Street
3 Charleston, South Carolina 29401
BY: CHARLES W. THOMSON, ESQUIRE
4 (Via videoconference)
(843) 501-0423

5 Counsel for the Plaintiff
6 BUIST, BYARS & TAYLOR, LLC
652 Coleman Boulevard, Suite 200
7 Mt. Pleasant, South Carolina 29464
BY: G. HAMLIN O'KELLEY, III, ESQUIRE
8 (Via telephone)
(843) 284-1408

9 Counsel for the Defendants

10

Also Present:

11

Kenneth Haase, Videographer

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Deposition of Ginger Griffith

1	INDEX		
2	DEPONENT	EXAMINATION	PAGE
3	GINGER GRIFFITH	By Mr. Thomson	4, 39
4		By Mr. O'Kelley	36

5			
6			
7	EXHIBITS		
8	NO.	DESCRIPTION	PAGE
9	(None.)		

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Deposition of Ginger Griffith

P R O C E E D I N G S

(Proceedings commenced at 9:10 a.m.)

* * * * *

THE VIDEOGRAPHER: Time on the video monitor is 9:10 a.m. My name is Ken Haase for Clark and Associates. This begins the videotaped deposition of Ginger L. Griffith testifying in the matter of James Rod Brady versus Hilton Head Homes at Allenwood, LLC, et al. In the Court of Common Pleas, Fourteenth Circuit, Beaufort County, South Carolina, Case Number 2015-CP-07-02047, taken at Premier Reporting, 8 South Hanover Street, Suite 201, Carlisle, Pennsylvania. Today's date is December 20, 2018.

Will counsel please identify yourselves and state who you represent.

MR. THOMSON: Charles Thomson. I represent the Plaintiff James Rod Brady.

MR. O'KELLEY: And this is Hamlin O'Kelley. I represent the Defendants in this matter.

THE VIDEOGRAPHER: Will the court reporter please identify herself and swear in or affirm the witness.

THE COURT REPORTER: Tracy Dominico. Will you raise your right hand?

* * * * *

Deposition of Ginger Griffith

1 GINGER GRIFFITH, after having been duly
2 sworn/affirmed to tell the truth, the whole truth and
3 nothing but the truth, testified as follows:

4 THE VIDEOGRAPHER: Please begin.

5 MR. THOMSON: Ready to go?

6 THE VIDEOGRAPHER: Yep.

7 * * * * *

8 EXAMINATION

9 BY MR. THOMSON:

10 Q. Ms. Griffith, as you know, I'm Charles
11 Thomson. I represent James Rod Brady. Mr. Brady has
12 brought suit against Gary Grossman, Lancaster
13 Redevelopment Corporation and two other single-purpose
14 LLCs in South Carolina for failure to pay money owed to
15 him on two development projects down there, two
16 neighborhood development projects.

17 Can you please, to start out, state your
18 full name for the record?

19 A. Ginger L. Griffith.

20 Q. Okay. Ms. Griffith, thank you for coming
21 today. The main purpose is there's a piece of evidence
22 in this matter, a 2007 letter written by you. And I
23 would like for you to authenticate that letter and
24 educate the jury about the contents.

25 But before we get going on that, just a

Deposition of Ginger Griffith

1 reminder: You're under oath subject to the penalty of
2 perjury. This, again, the purpose is to educate the
3 jury today, so they are our audience here. We are
4 doing this by video because you being in Selinsgrove,
5 Pennsylvania, this seemed to be a better option than
6 forcing you to travel to South Carolina for -- to
7 testify at the trial in this matter.

8 So we'll get started by briefly going
9 through your background. You were born and raised in
10 Selinsgrove, right?

11 A. Correct.

12 Q. And you went to high school there in
13 Pennsylvania?

14 A. Yes.

15 Q. Okay. And then after high school, you went
16 to Williamsport Community College, right?

17 A. That's correct.

18 Q. And you earned an associate degree in
19 accounting there in 1985?

20 A. That is correct.

21 Q. Okay. And from 1985 to 1998, you worked
22 accounting jobs for two separate companies?

23 A. Yes, yes.

24 Q. Then in 1998, you began working for Gary
25 Grossman's company, Lancaster Redevelopment

Deposition of Ginger Griffith

1 Corporation, right?

2 A. That is correct.

3 Q. And that was 20 years ago obviously. And
4 both Mr. Grossman and Lancaster Redevelopment
5 Corporation are Defendants in this matter, right?

6 A. Yes.

7 Q. And you continued to be -- you were a
8 treasurer for Lancaster Redevelopment Corporation?

9 A. Yes, I held that position.

10 Q. Okay. And you held that position until June
11 of 2010, right?

12 A. Yes.

13 Q. That position expired because Lancaster
14 Redevelopment Corporation just went under?

15 A. Basically, yes.

16 Q. It's not a technical term, but it's probably
17 parlance at least. Okay. And then after June 2010,
18 you continued to be employed by one of Mr. Grossman's
19 companies. But it had a new name of Building Solutions
20 Since 1977, LLC, right?

21 A. That's correct.

22 Q. And that Since 1977 is part of the company
23 name, not a descriptive -- not something I was saying
24 to be descriptive, right?

25 A. Correct, it's part of the company name.

Deposition of Ginger Griffith

1 Q. Right. Okay. So you're not a CPA?

2 A. No.

3 Q. Right?

4 A. No.

5 Q. But you are a professional in the accounting
6 field?

7 A. Yes.

8 Q. And just to repeat, you've been working
9 under the direction of Mr. Grossman since 1998 for 20
10 years, first under Lancaster Redevelopment Corporation,
11 now under a different company name, right?

12 A. That is correct.

13 Q. Why did Lancaster Redevelopment Corporation
14 go out of business?

15 A. The housing market had gone downhill. And
16 the company just did not have enough income to pay
17 debts. It just -- it was failing. And Gary felt it
18 best to shut down that company. The property was sold
19 by the bank that held the mortgage to another
20 individual.

21 So Gary reorganized as a new company.

22 Q. Okay. So is it a correct summary that
23 pretty much the debts outweighed the assets, right?

24 A. Correct.

25 Q. All right. So you were treasurer for

Deposition of Ginger Griffith

1 Lancaster Redevelopment Corporation and also for the
2 new company. And you do the accounting for those
3 companies, right?

4 A. Yes.

5 Q. And as part of your job for those companies,
6 you also serve doing the accounting for various
7 single-purpose LLCs owned and directed by either
8 Lancaster Redevelopment Corporation or the Building
9 Solutions company?

10 A. Yes. Most of them are not under the
11 umbrella of Building Solutions. They are Gary
12 Grossman's individual companies that he may have other
13 partners in.

14 Q. Okay. And let's clarify this for the jury:
15 And I'm speaking in generalities here just for
16 background purposes. When a developer develops a
17 specific neighborhood, it might form a single-purpose
18 company for that project. And then when that project
19 is done, that single-purpose company might shut down.

20 But the parent company or other investors
21 might own that single-purpose company. Is that --

22 A. That's correct, yes.

23 Q. -- the general?

24 A. Yes.

25 Q. Yeah. Okay. And that's what we have here

Deposition of Ginger Griffith

1 on these two Hilton Head projects at issue in this
2 case, right?

3 A. Yes.

4 Q. Okay. And the two LLCs there are Hilton
5 Head Homes at Allenwood, LLC and Village Square
6 Development Company, LLC?

7 A. Yes.

8 Q. And those companies serve no purpose other
9 than the respected neighborhood development that they
10 were designed to serve?

11 A. Correct.

12 Q. When those two companies were active, you
13 did the accounting for them, right?

14 A. Yes, I did.

15 Q. And while those development projects were
16 active, you did the accounting for Lancaster
17 Redevelopment Corporation?

18 A. Yes.

19 Q. Is that correct?

20 A. Yes, that's correct.

21 Q. Okay. And so you specifically did the
22 accounting on these two projects, Allenwood and Village
23 Square?

24 A. Yes.

25 Q. All right. I would like to place two

Deposition of Ginger Griffith

1 separate letters before you.

2 MR. THOMSON: And, Madam Court Reporter,
3 these were identified as Exhibit 2 and Exhibit 4 at
4 yesterday's deposition.

5 THE COURT REPORTER: Okay. She has them.

6 BY MR. THOMSON:

7 Q. Okay. For the jury, there are two of these
8 letters. One is the September 13, 2007 letter that I
9 will want you to authenticate. And the other letter is
10 dated February 2, 2004. You didn't write the 2004
11 letter, right?

12 A. No, I did not.

13 Q. Okay. But you did reference that letter
14 when writing the September 13, 2007 letter, right?

15 A. Yes.

16 Q. Okay. So, I guess, first, would you please
17 verify that the September 13, 2007 letter in your
18 possession right now, that that is a genuine copy of
19 the letter that you wrote?

20 A. Yes, it is.

21 MR. THOMSON: And at this time I would like
22 to formally enter that as a trial exhibit whenever we
23 do have a judge assigned to this matter. Any
24 objections, Hamlin?

25 MR. O'KELLEY: I'll reserve my objections as

Deposition of Ginger Griffith

1 to admissibility with any judge. But she's
2 authenticated it as it's her's. So subject to any
3 later objection to be taken up with the Court, none at
4 this time.

5 MR. THOMSON: Okay.

6 BY MR. THOMSON:

7 Q. All right. And after the 2004 letter, I
8 know you didn't write that, so I'm not asking you to
9 authenticate the authorship, but I do want you to
10 please authenticate that this is indeed a genuine copy
11 of the February 2, 2004 letter that you referenced
12 within your 2007 letter which you just previously
13 authenticated?

14 A. Yes, it is.

15 Q. Okay.

16 MR. THOMSON: And similarly, I would like to
17 formally enter this 2004 letter as a trial exhibit.

18 MR. O'KELLEY: Same response as to the
19 prior.

20 MR. THOMSON: Sure. Okay.

21 BY MR. THOMSON:

22 Q. Let me start with the 2004 letter. As I
23 explained earlier, my purpose here is to get you to
24 explain the 2007 letter. And I know you didn't write
25 this 2004 letter. But I want to go through this

Deposition of Ginger Griffith

1 briefly because it provides important background that I
2 think would be helpful to the jury in understanding
3 what's before them in the 2007 letter.

4 So, okay, this 2004 letter, generally the
5 subject is about the beginning of two separate
6 developments in the Hilton Head area, Allenwood and
7 Village Square Development, right.

8 A. Yes.

9 Q. And Mr. Brady and Mr. Grossman are teaming
10 up to fund the development of these neighborhoods. And
11 I'm not asking you to verify the contracting parties
12 from this letter. But generally that's what's going on
13 with this letter, right?

14 A. Yes.

15 Q. Okay. And involved with the development of
16 those neighborhoods, there's various services that need
17 to be performed, we have construction services that
18 need to be performed. And marketing services and real
19 estate sales, right?

20 A. That's correct.

21 Q. On page two of the letter, there's a bunch
22 of bullet points full of terms, right?

23 A. Correct.

24 Q. These are the terms you -- this is your
25 reference points for the 2007 letter. You go to this

Deposition of Ginger Griffith

1 letter to see what the terms are, and then you
2 calculate the numbers based on these terms, right?

3 A. That's correct.

4 Q. Okay. Without getting into the details,
5 some of these terms have to do with Rod Brady being
6 compensated for his fees earned for his construction
7 management work, right?

8 A. Yes.

9 Q. And Rod is to market and sell these houses,
10 right?

11 A. Yes.

12 Q. And in exchange for those services he gets
13 certain fees?

14 A. Yes.

15 Q. And Rod is entitled to hire others to help
16 him with the construction of these projects. But if he
17 does hire the help, that money comes out of his fees
18 that he earns on the project, right?

19 A. Yes, that's correct.

20 Q. Okay. And on top of the construction and
21 marketing and real estate services, there is also
22 what's called an incentive management fee, which is
23 pretty much an overall sharing of profits that these
24 single-purpose LLCs make with Rod, right?

25 A. Yes, that is in here.

Deposition of Ginger Griffith

1 Q. Okay. And some last terms on this: Before
2 Rod is paid that profit sharing portion, and, again,
3 that's an incentive management fee which is the profit
4 sharing, before Rod gets paid that, Lancaster
5 Redevelopment Corporation gets a cut, a 1 percent
6 return per month on the money it loans to the project,
7 right?

8 A. Yes.

9 Q. And Gary Grossman, personally in his
10 individual capacity, gets 500 points for guaranteeing
11 funds, right?

12 A. Yes.

13 Q. Okay. And that 500 points comes to a 15
14 percent per annum?

15 A. Yes.

16 Q. Okay.

17 A. Okay.

18 Q. At the top of page 3 of the letter, before
19 we move on, it mentions the words of Gary Grossman here
20 that says "I would like all the accounting and debt
21 management to take place from my office so I can stay
22 on top of things."

23 In that sentence when he says he would like
24 his office to take care of accounting, that's talking
25 about a job you would handle, right?

Deposition of Ginger Griffith

1 A. Yes, it is.

2 Q. Hopefully that provides some background
3 framework of the letter we're about to go into. So,
4 now, looking at trial Exhibit 1, that is the September
5 13, 2007 letter. Please verify that this is a letter
6 to James Rod Brady written from you?

7 A. Yes, that's correct.

8 Q. And then in the first paragraph of that
9 letter it says "Pursuant to your discussion with
10 Mr. Grossman, I'm transmitting our analysis of the
11 Allenwood compensation to you under our February 2,
12 2004 letter of agreement."

13 That February 2 letter is the letter that we
14 just went through in greater detail, right?

15 A. Yes, it is.

16 Q. Okay. And as a reminder, this is for two
17 separate developments, right? We have the Village
18 Square Development neighborhood and we have the
19 Allenwood neighborhood, right?

20 A. Yes.

21 Q. Okay. And so let's just hit the main
22 numbers on this letter real quick. So the first
23 development, Village Square, it looks like the -- you
24 calculated the income of those two -- of that company
25 for the years 2005 and 2006 as 956,385, right?

Deposition of Ginger Griffith

1 A. Yes.

2 Q. And that's net income?

3 A. Yes, I believe so.

4 Q. Okay. And that income means your income
5 after you take into account money that this LLC owes to
6 other entities, right?

7 A. I believe it's net profit after expenses of
8 building the homes.

9 Q. Right. And the expenses of building homes,
10 that would include money owed to vendors or other
11 companies, right, third parties?

12 A. Yes. You're not including banks or anything
13 like that, correct, in your statement?

14 Q. Right.

15 A. Okay.

16 Q. Correct. And then you note on the letter
17 that Rod was paid a 36,000 distribution out of the 2005
18 and 2006 income, right?

19 A. Correct.

20 Q. Okay. So from looking at the paragraph that
21 starts with "Under the February 2, 2004 letter of

22 agreement you are scheduled to be paid" -- the end of
23 that paragraph says -- "I interpret the February 2,
24 2004 letter of agreement to make the construction fees
25 payable at the time each unit sells."

Deposition of Ginger Griffith

1 Do you see that?

2 A. Yes.

3 Q. And so what that is telling us here is the
4 fees discussed in this letter, we're talking about
5 houses that the construction is already complete,
6 right?

7 A. Yes.

8 Q. And they've been sold to the owners -- to
9 homeowners, whoever they may be, correct?

10 A. Correct.

11 Q. And the LLC has been paid money for those
12 homes, right?

13 A. Right.

14 Q. Okay. All right. The next paragraph it
15 talks about, you understand that the expenses
16 associated with hiring Nick Grossman and Dan Clore for
17 supervisory work on your behalf are to be deducted.
18 And we went through that on the 2004 letter, right?

19 A. Yes.

20 Q. And, again, we look on the next page, and
21 you were taking into account funds due to Mr. Nick

22 Grossman and Dan Clore as part of this analysis, right?

23 A. That's correct.

24 Q. Okay. And these are for houses that are
25 already completed, right?

Deposition of Ginger Griffith

1 A. Yes.

2 Q. Okay. So no need for Mr. -- for Nick
3 Grossman or Dan Clore to incur any additional expenses,
4 right?

5 A. That is correct.

6 Q. All right. Let's go to the numbers on -- we
7 have a construction management fee of 32,500 for the
8 Village Square Development. Then there is a \$1,000
9 real estate fee per unit sold, and that comes to
10 26,000, right?

11 A. Yes.

12 Q. All right. It looks like Mr. Brady was paid
13 a portion of those commissions, 9,415, right?

14 A. Yes.

15 Q. And so your -- you got parentheses here.
16 And that means you were deducting that money that's
17 already paid. The money that's already been paid to
18 Rod, you're deducting that from what you are
19 calculating to be owed to him, right?

20 A. Right.

21 Q. And that's fair, right?

22 A. Yes.

23 Q. The fees for Nick Grossman and Dan Clore,
24 we've got four different numbers in there. I've added
25 those numbers up, and it comes to \$111,81. Any reason

Deposition of Ginger Griffith

1 to believe that's incorrect?

2 A. No.

3 Q. So we are taking into account that Nick
4 Grossman and Dan Clore helped Mr. Brady. Mr. Brady
5 agrees to pay people for their help with the
6 construction of these projects.

7 And so after we go through the numbers of
8 what Mr. Brady earned on his construction management
9 fee and what he had to pay out, and the status as of
10 September 13, 2007, is that Mr. Brady was owing to
11 Lancaster Redevelopment Corporation or whoever those
12 contracting parties may be, Mr. Brady, after taking
13 into account all of those things was owed -- or owed
14 the company \$25,746, right?

15 A. That's right.

16 Q. Okay. All right. So that portion all had
17 to do with construction management and real estate
18 services, right?

19 A. Yes.

20 Q. Okay. And then moving on to the next part
21 of the letter, the next few paragraphs, that has to do
22 with the incentive management fee, basically profit
23 sharing type fees and calculations, right?

24 A. Yes.

25 Q. Okay. And just as a remainder, Rod gets a

Deposition of Ginger Griffith

1 -- is to receive an incentive management fee profit
2 sharing in the tune of 50 percent of the profits of the
3 LLCs, right?

4 A. Yes.

5 Q. Okay. And but before Rod gets paid,
6 Lancaster Redevelopment Corporation gets a cut, right?

7 A. Yes.

8 Q. And then Gary Grossman individually also
9 gets a cut, right?

10 A. Yes.

11 Q. And so the next three paragraphs, that's
12 what's going on here, right? We're calculating what
13 the profit is. We're seeing what Mr. Grossman's is.
14 We're seeing what Lancaster Redevelopment Corporation's
15 cut is. And then finally from there we're seeing what
16 portion would be due to Mr. Brady, correct?

17 A. Correct.

18 Q. Okay. All right. And it looks like
19 Lancaster Redevelopment Corporation's cut under this
20 section we were just talking about is 841,619. Is that
21 correct? The paragraph starts with the net income.

22 Take the time to read it if you need to.

23 Do you need me to repeat the question?

24 A. I'm just trying to follow our calculations
25 on this letter. It was a long time ago that I wrote

Deposition of Ginger Griffith

1 it, so I don't remember everything. Okay. So what was
2 your question again now?

3 Q. You know what, can you just strike that
4 question there? I think that's not LRC's cut. That
5 would be the allocated income.

6 A. Okay. Correct.

7 Q. Let's move on to Mr. Grossman's cut of this
8 profit sharing. The next paragraph where it starts
9 "Under the terms of the February 2, 2004 letter" --

10 A. Yes.

11 Q. -- okay, the last portion of the sentence
12 says "which calculates to a prorated guarantee fee of
13 148,504.85 for 2005."

14 A. Yes.

15 Q. That -- that is what is due to Mr. Grossman
16 personally, right?

17 A. Yes.

18 Q. And if we could, please, connect the dots
19 back to the 2004 letter, I just want to connect this
20 calculation and where it pertains to on the 2004
21 letter. So this 148,504.84 due to Gary Grossman, if we
22 want to see how Mr. Grossman is justified to that fee,
23 we go to page 2 at the bottom paragraph, is that
24 right --

25 A. That's correct.

Deposition of Ginger Griffith

1 Q. -- in the 2004 letter? And this is
2 basically he's earning this fee in exchange for him
3 giving a personal guarantee, right?

4 A. Right.

5 Q. All right. And so that fee, we're still
6 just talking about the Village Square neighborhood,
7 right?

8 A. Yes.

9 Q. Okay. And we're separately going to go
10 through what that fee is for Allenwood, right?

11 A. Correct.

12 Q. Just a remainder: We can get lost in the
13 weeds here. Sometimes we need a reminder of where we
14 are locally. Okay. And then the next few paragraphs,
15 you're starting to calculate what Rod's incentive
16 management fee is. And he's already been paid a
17 certain amount of money on his incentive management
18 fee.

19 But after you take into consideration all
20 that he's earned versus all that he's been paid, the
21 net balance due to Rod for an incentive management fee,
22 which is profit sharing on the Village Square
23 Development project only, is \$83,488. Is that correct?

24 A. That is correct.

25 Q. And -- and -- and that money has already

Deposition of Ginger Griffith

1 been earned, right?

2 A. Yes.

3 Q. As of September 13, 2007?

4 A. Yes.

5 Q. And the LLCs have already been paid the
6 money that generated the profits from which this
7 calculation was made, right?

8 A. Yes.

9 Q. Okay. And you've already accounted for
10 Lancaster Redevelopment Corporation's portion of
11 profits out of that, right?

12 A. In the calculation, yes.

13 Q. Yes. And you had already accounted for
14 Mr. Grossman's individual cut of that, right?

15 A. Yes.

16 Q. And so in the end Rod's incentive management
17 fee is exactly what it says; it's money due and owing
18 to him after accounting for everything that needs to be
19 accounted for. And that amount due to him is 83,488,
20 right?

21 A. Yes.

22 Q. Okay. All right. That is -- we've gone
23 through the calculations of the Village Square
24 Development neighborhood. And I would like to move on
25 to the second neighborhood here, the Allenwood

Deposition of Ginger Griffith

1 neighborhood. So if we go through, it's kind of the
2 same process again, right?

3 A. Yes.

4 Q. Different neighborhood, different numbers to
5 calculate, but the -- and the fees under the agreement
6 might be slightly different, but it's generally the
7 same type of calculations, right?

8 A. That's correct.

9 Q. Okay. All right. So first, looking at the
10 construction management fees for Allenwood, it appears
11 that Mr. Brady has earned about \$240,000 in some fees
12 before taking out other things that you might need to
13 take out, right?

14 A. Yes.

15 Q. Okay. And, again, Mr. Brady was entitled
16 hire help. And it looks like that money just had to
17 come out of his fees, and it looks like he has done
18 that here again with the Allenwood project, right?

19 A. Yes.

20 Q. And he had Rich Raven and RS Davis to help
21 him, right?

22 A. Correct.

23 Q. Okay. And if you add up the two numbers
24 owing to them, and they're both in parentheses there,
25 I'm coming up with \$76,552, correct?

Deposition of Ginger Griffith

1 A. Correct.

2 Q. And those numbers are in parentheses because
3 we're saying Rod owes money back for that, right?

4 A. Yes.

5 Q. So it's to be subtracted from the end result
6 of whatever money Rod is owed, right?

7 A. Right.

8 Q. Okay. So after we take all of that into
9 account, and we also add in the real estate fees, and
10 we also take into account money that has already been
11 paid to Rod, we are left with a balance of \$19,629,
12 right?

13 A. Yes.

14 Q. And that is money that is owed to Mr. Brady
15 after accounting for all of these other amounts he
16 owes, right?

17 A. Yes.

18 Q. Okay. And this is just for construction
19 management fees and real estate services, right?

20 A. Correct.

21 Q. And it's just for the Allenwood project,
22 right?

23 A. Correct.

24 Q. Okay. All right. Let's move on to the next
25 set of calculations. We're moving on here to the

Deposition of Ginger Griffith

1 calculations for the incentive management fee and the
2 more profit sharing portion of the fees are, right?

3 A. Yes.

4 Q. Okay. And let's go to the line that says
5 "The 500 basis point guarantee fee calculating to,"
6 and it says 99,693, right?

7 A. Yes.

8 Q. Again, we connected the dots on this 500
9 basis point fee. We previously connected the dots to
10 the last paragraph of page 2 of the 2004 letter, right?

11 A. Yes.

12 Q. And that's the same thing we're doing here,
13 right?

14 A. Yes.

15 Q. Okay. And this is for 2005 only. And it's
16 for the Allenwood project only, right?

17 A. Right.

18 Q. And Mr. Grossman is being paid \$99,693 for
19 that portion, right?

20 A. Yes.

21 Q. In exchange for his personal guarantee,
22 correct?

23 A. Correct.

24 Q. Okay. Let's move on down. The 2006, where
25 it says "The 500 basis point guarantee fee," same set

Deposition of Ginger Griffith

1 of scenarios, right? We don't need to go back and
2 connect the dots again. But it is the same principle
3 here, right? It's just for 2006 incentive?

4 A. Yes.

5 Q. Okay. And Mr. Grossman's fee in exchange
6 for personally guaranteeing the funds in 2006 for the
7 Allenwood neighborhood is 52,244?

8 A. Yes.

9 Q. Okay. So after taking into account the
10 money owed to Lancaster Redevelopment Corporation, and
11 the money owed to Mr. Grossman individually, we would
12 could then calculate what Mr. Brady's incentive
13 management fee is for the Allenwood project, right?

14 A. Yes.

15 Q. And that number comes to 633,656, right?

16 A. Yes.

17 Q. Owed to Mr. Brady, right?

18 A. Correct.

19 Q. Okay. So now we've -- after we gotten to
20 that point, we made all the preliminary calculations
21 that we need to make to determine the total amount that
22 is owed to Mr. Brady as of September 13, 2007, correct?

23 A. Correct.

24 Q. And that number owed to Mr. Brady as of
25 September 13, 2007 is \$711,027, right?

Deposition of Ginger Griffith

1 A. Yes.

2 Q. Okay. Let's go back and summarize that more
3 distinctly in a second. But first, look at the next
4 page, top paragraph of, I believe, that's the third
5 page of the letter -- fourth page. I'm sorry. It
6 says, "Mr. Grossman directed me to access our ability,"
7 right?

8 A. Yes.

9 Q. Do you see that paragraph? And what's going
10 on here is that, if I can distinctly paraphrase that,
11 that paragraph is, yes, Mr. Brady, you're owed money,
12 the \$711,000 and change, but Lancaster Redevelopment
13 Corporation is having financial troubles. And we can't
14 -- we don't have the funds to pay it all to you right
15 now. So what we are going to do is pay you \$10,000 a
16 month.

17 Is that essentially what that paragraph is
18 saying?

19 A. Yes.

20 Q. And you don't recall one way or the other
21 whether any of those monthly payments were made to Rod
22 after September of 2007?

23 A. I don't recall, no.

24 Q. Okay. So Rod was already owed the money,
25 right? He'd already earned it, right?

Deposition of Ginger Griffith

1 A. Yes.

2 Q. And the purpose of getting on this payment
3 plan was because Lancaster Redevelopment Corporation
4 had financial issues, right?

5 A. Yes.

6 Q. And the purpose of those financial -- or the
7 source of those financial issues were projects other
8 than the two at issue here, correct?

9 A. One of the issues was past due receivables
10 from the Allenwood project.

11 Q. Would those past due receivables, would
12 those have been accounted for when you calculated the
13 net income of that LLC?

14 A. Yes.

15 Q. Okay. So we've already accounted for those
16 past due receivables within the number owed to Rod,
17 right?

18 A. Yes.

19 Q. Okay. And then the other reason listed, it
20 says, it seems as if the Lancaster Redevelopment
21 Corporation is having problems with carrying costs of
22 Cypress Harbor. That project had nothing to do with
23 Village Square Development, right?

24 A. No.

25 Q. And it had nothing to do with the Allenwood

Deposition of Ginger Griffith

1 project, right?

2 A. No.

3 Q. And it had nothing to do with Rod Brady,
4 right?

5 A. I don't believe so. I personally don't
6 remember the Cypress Harbor project.

7 Q. Right. And it doesn't appear to be relevant
8 to this case, I don't think, other than the fact that
9 it seems to be the source of why Lancaster
10 Redevelopment Corporation was having trouble paying Mr.
11 Brady. And this was written in the letter by you,
12 right?

13 A. Yes.

14 Q. And you just don't remember all the complete
15 details of -- behind that -- those problems, right?

16 A. Correct.

17 Q. And it also mentions a "massive increase in
18 overhead associated with the new plant." That didn't
19 have anything to do with Rod Brady, right?

20 A. No.

21 Q. Okay. So to recap, the sales have been
22 final, right, of the properties built on these two
23 neighborhoods, right?

24 A. Yes.

25 Q. And the LLC's, that money from the

Deposition of Ginger Griffith

1 purchasers of the homes, right?

2 A. Yes.

3 Q. And there was a profit after that, right?

4 A. Yes.

5 Q. Okay. Lancaster Redevelopment's portion of
6 that profit got accounted for, right?

7 A. Right.

8 Q. And Mr. Grossman's individual profits from
9 those transactions got accounted for, right?

10 A. Yes.

11 Q. And after all that, Mr. Brady was still owed
12 a big chunk of money out of those profits, right?

13 A. Right.

14 Q. For work that has already been earned,
15 right?

16 A. Right.

17 Q. We're not projecting future profits here,
18 right?

19 A. Correct.

20 Q. Okay. And Mr. Brady was not paid that money
21 because Lancaster Redevelopment Corporation had

22 problems on other projects that had nothing to do with
23 Rod Brady, right?

24 A. Some of the problems had nothing to do with
25 Allenwood.

Deposition of Ginger Griffith

1 Q. Okay. Okay. All right. So and let's
2 summarize the specific numbers really quickly. So the
3 total was 711,024 -- or 27 -- I'm sorry. Right?

4 A. Yes.

5 Q. And of that 633,656, that was owed to Rod as
6 an incentive management fee or basically a profit
7 sharing from the Allenwood project, right?

8 A. Right.

9 Q. Already earned, correct?

10 A. Correct.

11 Q. Homes already sold, right?

12 A. Right.

13 Q. LLCs are already paid by the home
14 purchasers, right?

15 A. Yes.

16 Q. And the LLCs made a profit, right?

17 A. Yes.

18 Q. Okay. And then there is an amount 19,629
19 owed to Rod as a construction management fee at
20 Allenwood. And that money was already earned, right?

21 A. Right.

22 Q. And the construction was already completed
23 at those homes, too, correct?

24 A. Correct.

25 Q. All right. And the 83,488 portion was owed

Deposition of Ginger Griffith

1 to Rod as his incentive management fee for the Village
2 Square Development project, right?

3 A. Yes.

4 Q. And just like in Allenwood, those fees are
5 already earned, right?

6 A. Yes.

7 Q. And the homes are already sold?

8 A. Yes.

9 Q. Okay. And to be fair, Rod owed Lancaster
10 Redevelopment Corporation, or whoever the contracting
11 parties were, \$25,746. And that was for the difference
12 between his construction management fees and the money
13 he owed for the help he retained to assist him with
14 that construction, right, at the Village Square
15 Development project, right?

16 A. Correct.

17 Q. Okay. But the number that he owed to other
18 people was put into the total, right?

19 A. Yes.

20 Q. And that total, again, that was owed to Rod
21 was \$711,027 as of September 13, 2007?

22 A. Right.

23 Q. And the amount accounted for for his help
24 totalled between Nick Grossman, Dan Clore, Rich Raven
25 and RS Davis we've accounted for \$187,633 between the

Deposition of Ginger Griffith

1 four of them if you add up all the individual numbers.
2 Does that sound about right to you?

3 A. Yes, it does.

4 Q. Yeah. I'm not asking you to do math on the
5 spot. But that's the numbers that I came up with
6 anyhow. That number also took into account that
7 Mr. Grossman was getting consideration in exchange for
8 a personal guarantee. And he had -- we had accounted
9 for \$300,441.85 to be owed to him, right?

10 A. Yes.

11 Q. Already accounted for within the number owed
12 to Rod?

13 A. Yes -- owed to Gary.

14 Q. Okay. Yeah, so, essentially just to drive
15 the point home one last time, you concluded on
16 September 13, 2007 that the contracting parties owed
17 Rod \$711,027, right?

18 A. Yes.

19 Q. And you didn't just throw that letter
20 together, right?

21 A. No.

22 Q. And you're a professional in the accounting
23 business, right?

24 A. Right.

25 Q. And you made a good faith effort to get

Deposition of Ginger Griffith

1 these numbers right, didn't you?

2 A. Yes.

3 Q. And you haven't discovered any errors in
4 here now since the time you wrote that letter?

5 A. No.

6 Q. Okay. And you do not have any evidence
7 showing that Lancaster Redevelopment Corporation, Gary
8 Grossman or any other affiliated entity paid any money
9 to Rod subsequent to this September 13, 2007?

10 A. I don't know if anything has been paid to
11 Rod or not.

12 Q. Right. But the question is, you don't have
13 any evidence showing it, right?

14 A. Right.

15 MR. THOMSON: Okay. Those are all the
16 questions I have. Mr. O'Kelley, if would like to
17 interview Ms. Griffith, you have may take that
18 opportunity now.

19 MR. O'KELLEY: I thought this is a
20 deposition, not an interview.

21 MR. THOMSON: It's a de bene esse deposition
22 for purpose for use at trial.

23 * * * * *

24 EXAMINATION

25 BY MR. O'KELLEY:

Deposition of Ginger Griffith

1 Q. Ms. Griffith, you have the exhibits that Mr.
2 Thomson was asking you about in front of you, correct?

3 A. Yes, I do.

4 Q. All right. What was the arrangement as to
5 how Mr. Brady was to be paid? Mr. Thomson asked you
6 earlier about that, but it's my understanding that Mr.
7 Brady was to be paid after all the debts of the company
8 were to be paid, correct?

9 A. The incentive management fees were to be
10 after the initial debts from Lancaster Redevelopment or
11 Mr. Grossman were repaid.

12 Q. And remind the folks who are listening to
13 you what was going on with the greater economy in 2007?

14 A. I believe that's when the housing market
15 started to take a nose dive.

16 Q. And was Lancaster Redevelopment company in
17 September of the fall of 2007, was it suffering from
18 the falling apart of the housing market?

19 A. Yes. We --

20 Q. And was --

21 A. Go ahead.

22 Q. Go ahead, explain.

23 A. In some of the developments, we had standing
24 inventory that we couldn't sell.

25 Q. And were banks threatening foreclosure

Deposition of Ginger Griffith

1 against these developments in the fall of 2007 or had
2 foreclosures actually been filed, if you remember?

3 A. I don't remember exactly when. I know that
4 that came shortly into that time period into early
5 2008.

6 Q. And you're aware that there was a
7 foreclosure against Village Square Development Company,
8 correct?

9 A. Correct.

10 Q. And there was a foreclosure against Hilton
11 Head Homes at Allenwood, correct?

12 A. That's correct.

13 Q. And Mr. Rod Brady had nothing to lose in
14 those foreclosures, did he?

15 A. I don't believe he was a guarantee -- or a
16 guarantor on any debt.

17 Q. And was Mr. Grossman a guarantor on debt?

18 A. Yes, he was.

19 Q. And Mr. Brady was advanced sums during his
20 employment by Hilton Head Homes and by Village Square,
21 correct?

22 A. Yes, against his fees earned.

23 Q. That's correct. And then was he ever an
24 employee of Lancaster Redevelopment Corporation to your
25 knowledge?

Deposition of Ginger Griffith

1 A. I'm trying to remember. I know Gary and Rod
2 talked about it, but I don't recall if he ever became
3 an actual employee.

4 Q. And if I were to represent to you that he
5 was never an employee of Lancaster Redevelopment
6 Corporation, do you have any reason to doubt that?

7 A. No, no.

8 MR. O'KELLEY: Thank you, ma'am. That's all
9 I've got.

10 THE WITNESS: Okay.

11 THE VIDEOGRAPHER: Anything else?

12 MR. THOMSON: Just some quick follow-up.

13 * * * * *

14 EXAMINATION (CONT'D.)

15 BY MR. THOMSON:

16 Q. Ms. Griffith, Mr. O'Kelley was just talking
17 to you about how Mr. Brady was to be paid after
18 everyone else got paid, correct?

19 A. For the incentive management fee, yes.

20 Q. Right. I think I've just got that question
21 backwards. I'll re-ask so it's clear for the record.

22 Hamlin asked you about how Lancaster Redevelopment
23 Corporation and Mr. Grossman were to be paid prior to
24 Mr. Brady being paid for the incentive management fee,
25 right?

Deposition of Ginger Griffith

1 A. For their initial investment in the
2 development companies.

3 Q. Right. And Mr. O'Kelley asked you a series
4 of questions that basically go into the fact that the
5 company didn't have the funds to pay, right?

6 A. Correct.

7 Q. And we went through this during my direct
8 examination, but the last paragraph -- or on the last
9 page of your 2007 letter on the top paragraph, it talks
10 about some of Lancaster Redevelopment's financial
11 issues, right?

12 A. Yes.

13 Q. And some of those troubles have nothing to
14 do with the two projects at issue here, right?

15 A. That's correct.

16 Q. So even though there might have been an
17 agreement for Mr. Grossman and the Lancaster
18 Redevelopment Corporation to be paid first, that
19 wouldn't necessary excuse some excuse of outside forces
20 taking precedence over payments to Mr. Brady, right?

21 A. Can you repeat that?

22 Q. That wasn't the best-worded question. So
23 even though Lancaster Redevelopment Corporation and
24 Mr. Grossman were to be paid before Rod was to be paid,
25 the confusion of outside economic forces has no bearing

Deposition of Ginger Griffith

1 on the amount owed to Mr. Brady, right?

2 A. That's correct.

3 MR. THOMSON: Okay. That's the last
4 question I have. Any more Hamlin?

5 MR. O'KELLEY: That's all.

6 THE VIDEOGRAPHER: This concludes today's
7 deposition. The time on the monitor is 10:00 a.m.

8 THE COURT REPORTER: Do you both want PDFs
9 like yesterday?

10 MR. O'KELLEY: Yes.

11 MR. THOMSON: Yes.

12 (Whereas, the deposition concluded at 10:00
13 a.m.)

14

15

16

17

18

19

20

21

22

23

24

25

1 COMMONWEALTH OF PENNSYLVANIA)
 2 COUNTY OF CUMBERLAND) SS.
 3

4 I, Tracy Dominico, a Court
 5 Reporter-Notary Public authorized to administer
 6 oaths and take depositions in the trial of causes
 7 and having an office in Mechanicsburg,
 8 Pennsylvania, do hereby certify that the
 9 foregoing is a true record to the testimony
 10 given; that before the taking of said deposition,
 11 the witness was duly sworn/affirmed; that the
 12 questions and answers were taken down stenotype
 13 by said Reporter-Notary and afterwards reduced to
 14 computer printout under the direction of said
 15 Reporter.

16 I further certify that the proceedings
 17 and evidence are contained fully and accurately
 18 in the notes taken by me of the within deposition
 19 to the best of my ability; and that this copy is
 20 a correct transcript of the same.

21 In testimony whereof, I have hereunto
 22 inscribed my hand this 20th day of December,

23 2018 COMMONWEALTH OF PENNSYLVANIA
 24 NOTARIAL SEAL
 TRACY DOMINICO
 Notary Public
 25 HAMPDEN TWP, CUMBERLAND COUNTY
 My Commission Expires Nov 12, 2019

Tracy Dominico
 Tracy Dominico
 Court Reporter-Notary Public

Deposition of Ginger Griffith

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Deposition of Ginger Griffith

WORD INDEX

< \$ >

\$1,000 19:8
\$10,000 29:15
\$111,81 19:25
\$187,633 34:25
\$19,629 26:11
\$240,000 25:11
\$25,746 20:14 34:11
\$300,441.85 35:9
\$711,000 29:12
\$711,027 28:25
34:21 35:17
\$76,552 25:25
\$83,488 23:23
\$99,693 27:18

< 1 >

1 15:5 16:4
10:00 41:7, 12
112 1:17
13 11:8, 14, 17 16:5
20:10 24:3 28:22,
25 34:21 35:16
36:9
148,504.84 22:21
148,504.85 22:13
15 15:13
17101 1:19
19,629 33:18
1977 7:20, 22
1985 6:19, 21
1998 6:21, 24 8:9

< 2 >

2 11:3, 10 12:11
16:11, 13 17:21, 23
22:9, 23 27:10
20 1:14 4:13 7:3
8:9
200 2:6
2004 11:10, 10 12:7,
11, 17, 22, 25 13:4
16:12 17:21, 24
18:18 22:9, 19, 20
23:1 27:10
2005 16:25 17:17
22:13 27:15

2006 16:25 17:18
27:24 28:3, 6
2007 5:22 11:8, 14,
17 12:12, 24 13:3,
25 16:5 20:10 24:3
28:22, 25 29:22
34:21 35:16 36:9
37:13, 17 38:1 40:9
2008 38:5
201 4:12
2010 7:11, 17
2015-CP-07-02047
1:3 4:11
2018 1:14 4:13
26,000 19:10
27 33:3
284-1408 2:8
29401 2:3
29464 2:7

< 3 >

3 15:18
32,500 19:7
321 2:2
36 3:4
36,000 17:17
39 3:3

< 4 >

4 3:3 11:3
406 1:18

< 5 >

50 21:2
500 15:10, 13 27:5,
8, 25
501-0423 2:4
52,244 28:7

< 6 >

633,656 28:15 33:5
652 2:6

< 7 >

711,024 33:3

< 8 >

8 4:11
83,488 24:19 33:25

841,619 21:20

843 2:4, 8

< 9 >

9,415 19:13
9:10 1:19 4:2, 5
956,385 16:25
99,693 27:6

< A >

a.m 1:19 4:2, 5
41:7, 13
ability, 29:6
access 29:6
account 17:5 18:21
20:3, 13 26:9, 10
28:9 35:6
accounted 24:9, 13,
19 30:12, 15 32:6, 9
34:23, 25 35:8, 11
accounting 6:19, 22
8:5 9:2, 6 10:13, 16,
22 15:20, 24 24:18
26:15 35:22
active 10:12, 16
actual 39:3
add 25:23 26:9
35:1
added 19:24
additional 19:3
admissibility 12:1
advanced 38:19
affiliated 36:8
affirm 4:21
affirmed 5:2
ago 7:3 21:25
agreement 16:12
17:22, 24 25:5
40:17
agrees 20:5
ahead 37:21, 22
al 4:9
Allenwood 1:7 4:8
10:5, 22 13:6 16:11,
19 23:10 24:25
25:10, 18 26:21
27:16 28:7, 13
30:10, 25 32:25
33:7, 20 34:4 38:11
allocated 22:5

amount 23:17

24:19 28:21 33:18
34:23 41:1

amounts 26:15

analysis 16:10
18:22

annum 15:14

apart 37:18

appear 31:7

APPEARANCES

2:1

appears 25:10

area 13:6

arrangement 37:4

asked 37:5 39:22
40:3

asking 12:8 13:11

35:4 37:2

assets 8:23

assigned 11:23

assist 34:13

associate 6:18

associated 18:16
31:18

Associates 4:6

audience 6:3

authenticate 5:23
11:9 12:9, 10

authenticated 12:2,
13

authorship 12:9

aware 38:6

< B >

back 22:19 26:3
28:1 29:2

background 6:9

9:16 13:1 16:2

backwards 39:21

balance 23:21 26:11

bank 8:19

banks 17:12 37:25

based 14:2

Basically 7:15

20:22 23:2 33:6
40:4

basis 27:5, 9, 25

Bay 2:2

bearing 40:25

Deposition of Ginger Griffith

BEAUFORT 1:2
4:10
began 6:24
beginning 13:5
begins 4:6
behalf 18:17
believe 17:3, 7 20:1
29:4 31:5 37:14
38:15
bene 36:21
best 8:18
best-worded 40:22
better 6:5
big 32:12
born 6:9
bottom 22:23
Boulevard 2:6
Brady 1:4 4:8, 17
5:11, 11 13:9 14:5
16:6 19:12 20:4, 4,
8, 10, 12 21:16
25:11, 15 26:14
28:17, 22, 24 29:11
31:3, 11, 19 32:11,
20, 23 37:5, 7 38:13,
19 39:17, 24 40:20
41:1
Brady's 28:12
briefly 6:8 13:1
brought 5:12
Building 7:19 9:8,
11 17:8, 9
built 31:22
BUIST 2:6
bullet 13:22
bunch 13:21
business 8:14 35:23
BYARS 2:6

< C >

C.A 1:3
calculate 14:2
23:15 25:5 28:12
calculated 16:24
30:12
calculates 22:12
calculating 19:19
21:12 27:5
calculation 22:20
24:7, 12

calculations 20:23
21:24 24:23 25:7
26:25 27:1 28:20
called 14:22
capacity 15:10
CAPELL 2:2
care 15:24
Carlisle 4:12
CAROLINA 1:1
2:3, 7 4:10 5:14
6:6
carrying 30:21
Case 4:10 10:2
31:8
certain 14:13 23:17
change 29:12
CHARLES 2:3
4:16 5:10
Charleston 2:3
chunk 32:12
CIRCUIT 1:2 4:10
clarify 9:14
Clark 4:5
clear 39:21
Clore 18:16, 22
19:3, 23 20:4 34:24
Coleman 2:6
College 6:16
come 25:17
comes 14:17 15:13
19:9, 25 28:15
coming 5:20 25:25
commenced 4:2
commencing 1:19
commissions 19:13
COMMON 1:1 4:9
Commonwealth 1:21
Community 6:16
companies 6:22
7:19 9:3, 5, 12 10:8,
12 17:11 40:2
Company 1:8 6:25
7:22, 25 8:11, 16, 18,
21 9:2, 9, 18, 19, 20,
21 10:6 16:24
20:14 37:7, 16 38:7
40:5
compensated 14:6
compensation 16:11
complete 18:5 31:14

completed 18:25
33:22
concluded 35:15
41:12
concludes 41:6
confusion 40:25
connect 22:18, 19
28:2
connected 27:8, 9
consideration 23:19
35:7
construction 13:17
14:6, 16, 20 17:24
18:5 19:7 20:6, 8,
17 25:10 26:18
33:19, 22 34:12, 14
CONT'D 39:14
contents 5:24
continued 7:7, 18
contracting 13:11
20:12 34:10 35:16
copy 11:18 12:10
Corp 1:9
Corporation 5:13
7:1, 5, 8, 14 8:10, 13
9:1, 8 10:17 15:5
20:11 21:6 28:10
29:13 30:3, 21
31:10 32:21 34:10
36:7 38:24 39:6, 23
40:18, 23
Corporation's 21:14,
19 24:10
Correct 6:11, 17, 20
7:2, 21, 25 8:12, 22,
24 9:22 10:11, 19,
20 13:20, 23 14:3,
19 16:7 17:13, 16,
19 18:9, 10, 23 19:5
21:16, 17, 21 22:6,
25 23:11, 23, 24
25:8, 22, 25 26:1, 20,
23 27:22, 23 28:18,
22, 23 30:8 31:16
32:19 33:9, 10, 23,
24 34:16 37:2, 8
38:8, 9, 11, 12, 21, 23
39:18 40:6, 15 41:2
costs 30:21

Counsel 2:5, 9 4:14
COUNTY 1:2 4:10
COURT 1:1, 20
4:9, 20, 23 11:2, 5
12:3 41:8
CPA 8:1
cut 15:5 21:6, 9, 15,
19 22:4, 7 24:14
Cypress 30:22 31:6

< D >

Dan 18:16, 22 19:3,
23 20:4 34:24
date 1:19 4:13
dated 11:10
Davis 25:20 34:25
de 36:21
debt 15:20 38:16,
17
debts 8:17, 23 37:7,
10
December 1:14 4:13
deducted 18:17
deducting 19:16, 18
Defendants 1:10
2:9 4:19 7:5
degree 6:18
DEPONENT 3:2
deposition 1:16 4:6
11:4 36:20, 21 41:7,
12
DESCRIPTION 3:4
descriptive 7:23, 24
designed 10:10
detail 16:14
details 14:4 31:15
determine 28:21
developer 9:16
Development 1:8
5:15, 16 10:6, 9, 15
13:7, 10, 15 16:18,
23 19:8 23:23
24:24 30:23 34:2,
15 38:7 40:2
developments 13:6
16:17 37:23 38:1
develops 9:16
difference 34:11
different 8:11

Deposition of Ginger Griffith

19:24 25:4, 4, 6
direct 40:7
directed 9:7 29:6
direction 8:9
discovered 36:3
discussed 18:4
discussion 16:9
distinctly 29:3, 10
distribution 17:17
dive 37:15
doing 6:4 9:6
 27:12
Dominico 1:20 4:23
dots 22:18 27:8, 9
 28:2
doubt 39:6
downhill 8:15
drive 35:14
due 18:21 21:16
 22:15, 21 23:21
 24:17, 19 30:9, 11,
 16
duly 5:1

< E >

earlier 12:23 37:6
early 38:4
earned 6:18 14:6
 20:8 23:20 24:1
 25:11 29:25 32:14
 33:9, 20 34:5 38:22
earning 23:2
earns 14:18
East 2:2
economic 40:25
economy 37:13
educate 5:24 6:2
effort 35:25
either 9:7
employed 7:18
employee 38:24
 39:3, 5
employment 38:20
enter 11:22 12:17
entities 17:6
entitled 14:15 25:15
entity 36:8
errors 36:3
ESQUIRE 2:3, 7
esse 36:21

essentially 29:17
 35:14
estate 13:19 14:21
 19:9 20:17 26:9, 19
et 4:9
evidence 5:21 36:6,
 13
exactly 24:17 38:3
EXAMINATION
 3:2 5:8 36:24
 39:14 40:8
exchange 14:12
 23:2 27:21 28:5
 35:7
excuse 40:19, 19
Exhibit 11:3, 3, 22
 12:17 16:4
EXHIBITS 3:4 37:1
expenses 17:7, 9
 18:15 19:3
expired 7:13
explain 12:24 37:22
explained 12:23

< F >

fact 31:8 40:4
failing 8:17
failure 5:14
fair 19:21 34:9
faith 35:25
fall 37:17 38:1
falling 37:18
February 11:10
 12:11 16:11, 13
 17:21, 23 22:9
fee 14:22 15:3
 19:7, 9 20:9, 22
 21:1 22:12, 22 23:2,
 5, 10, 16, 18, 21
 24:17 27:1, 5, 9
 28:5, 13 33:6, 19
 34:1 39:19, 24
fee, 27:25
fees 14:6, 13, 17
 17:24 18:4 19:23
 20:23 25:5, 10, 11,
 17 26:9, 19 27:2
 34:4, 12 37:9 38:22
felt 8:17

field 8:6
filed 38:2
final 31:22
finally 21:15
financial 29:13
 30:4, 6, 7 40:10
FIRM 2:2
first 8:10 11:16
 16:8, 22 25:9 29:3
 40:18
folks 37:12
follow 21:24
follows 5:3
follow-up 39:12
forces 40:19, 25
forcing 6:6
foreclosure 37:25
 38:7, 10
foreclosures 38:2, 14
form 9:17
formally 11:22
 12:17
four 19:24 35:1
FOURTEENTH 1:2
 4:9
fourth 29:5
framework 16:3
front 37:2
full 5:18 13:22
fund 13:10
funds 15:11 18:21
 28:6 29:14 40:5
future 32:17

< G >

Gary 1:9 5:12
 6:24 8:17, 21 9:11
 15:9, 19 21:8 22:21
 35:13 36:7 39:1
general 9:23
generalities 9:15
generally 13:4, 12
 25:6
generated 24:6
genuine 11:18 12:10
getting 14:4 30:2
 35:7
GINGER 1:16 3:3
 4:7 5:1, 19
giving 23:3

go 5:5 8:14 12:25
 13:25 16:3 19:6
 20:7 22:23 23:9
 25:1 27:4 28:1
 29:2 37:21, 22 40:4
going 5:25 6:8
 13:12 21:12 23:9
 29:9, 15 37:13
good 35:25
gotten 28:19
greater 16:14 37:13
GRIFFITH 1:16
 3:3 4:7 5:1, 10, 19,
 20 36:17 37:1
 39:16
Grossman 1:9 5:12
 7:4 8:9 13:9 15:9,
 19 16:10 18:16, 22
 19:3, 23 20:4 21:8
 22:15, 21, 22 27:18
 28:11 29:6 34:24
 35:7 36:8 37:11
 38:17 39:23 40:17,
 24
Grossman's 6:25
 7:18 9:12 21:13
 22:7 24:14 28:5
 32:8
guarantee 22:12
 23:3 27:5, 21, 25
 35:8 38:15
guaranteeing 15:10
 28:6
guarantor 38:16, 17
guess 11:16

< H >

Haase 2:9 4:5
HAMLIN 2:7 4:18
 11:24 39:22 41:4
hand 4:24
handle 15:25
Hanover 4:12
Harbor 30:22 31:6
Harrisburg 1:18
Head 1:7 4:8 10:1,
 5 13:6 38:11, 20
He'd 29:25
held 1:17 7:9, 10
 8:19

Deposition of Ginger Griffith

help 14:15, 17 20:5
25:16, 20 34:13, 23
helped 20:4
helpful 13:2
her's 12:2
high 6:12, 15
Hilton 1:7 4:8
10:1, 4 13:6 38:10,
20
hire 14:15, 17 25:16
hiring 18:16
hit 16:21
home 33:13 35:15
homeowners 18:9
Homes 1:7 4:8
10:5 17:8, 9 18:12
32:1 33:11, 23 34:7
38:11, 20
Hopefully 16:2
houses 14:9 18:5, 24
housing 8:15 37:14,
18

<I>
identified 11:3
identify 4:14, 21
III 2:7
important 13:1
incentive 14:22
15:3 20:22 21:1
23:15, 17, 21 24:16
27:1 28:3, 12 33:6
34:1 37:9 39:19, 24
include 17:10
including 17:12
income 8:16 16:24
17:2, 4, 4, 18 21:21
22:5 30:13
incorrect 20:1
increase 31:17
incur 19:3
INDEX 3:1
individual 8:20
9:12 15:10 24:14
32:8 35:1
individually 21:8
28:11
initial 37:10 40:1
interpret 17:23

interview 36:17, 20
inventory 37:24
investment 40:1
investors 9:20
involved 13:15
issue 10:1 30:8
40:14
issues 30:4, 7, 9
40:11

<J>
James 1:4 4:7, 17
5:11 16:6
job 9:5 15:25
jobs 6:22
judge 11:23 12:1
June 7:10, 17
jury 5:24 6:3 9:14
11:7 13:2
justified 22:22

<K>
Ken 4:5
Kenneth 2:9
kind 25:1
know 5:10 12:8, 24
22:3 36:10 38:3
39:1
knowledge 38:25

<L>
Lancaster 1:8 5:12
6:25 7:4, 8, 13 8:10,
13 9:1, 8 10:16
15:4 20:11 21:6, 14,
19 24:10 28:10
29:12 30:3, 20 31:9
32:5, 21 34:9 36:7
37:10, 16 38:24
39:5, 22 40:10, 17,
23
LAW 2:2
left 26:11
letter 5:22, 23 11:8,
9, 11, 13, 14, 17, 19
12:7, 11, 12, 17, 22,
24, 25 13:3, 4, 12, 13,
21, 25 14:1 15:18
16:3, 5, 5, 9, 12, 13,
13, 22 17:16, 21, 24

18:4, 18 20:21
21:25 22:9, 19, 21
23:1 27:10 29:5
31:11 35:19 36:4
40:9
letters 11:1, 8
line 27:4
listed 30:19
listening 37:12
LLC 1:7, 8, 17 2:2,
6 4:8 7:20 10:5, 6
17:5 18:11 30:13
LLCs 5:14 9:7
10:4 14:24 21:3
24:5 33:13, 16
LLC's 31:25
loans 15:6
locally 23:14
long 21:25
look 18:20 29:3
looking 16:4 17:20
25:9
looks 16:23 19:12
21:18 25:16, 17
lose 38:13
lost 23:12
LRC's 22:4

<M>
ma'am 39:8
Madam 11:2
main 5:21 16:21
management 14:7,
22 15:3, 21 19:7
20:8, 17, 22 21:1
23:16, 17, 21 24:16
25:10 26:19 27:1
28:13 33:6, 19 34:1,
12 37:9 39:19, 24
Market 1:18 8:15
14:9 37:14, 18
marketing 13:18
14:21
massive 31:17
math 35:4
matter 4:7, 19 5:22
6:7 7:5 11:23
means 17:4 19:16
mentions 15:19
31:17

money 5:14 14:17
15:6 17:5, 10 18:11
19:16, 17 23:17, 25
24:6, 17 25:16 26:3,
6, 10, 14 28:10, 11
29:11, 24 31:25
32:12, 20 33:20
34:12 36:8
monitor 4:4 41:7
month 15:6 29:16
monthly 29:21
mortgage 8:19
move 15:19 22:7
24:24 26:24 27:24
moving 20:20 26:25
Mt 2:7

<N>
name 4:5 5:18
7:19, 23, 25 8:11
necessary 40:19
need 13:16, 18 19:2
21:22, 23 23:13
25:12 28:1, 21
needs 24:18
neighborhood 5:16
9:17 10:9 16:18, 19
23:6 24:24, 25 25:1,
4 28:7
neighborhoods
13:10, 16 31:23
net 17:2, 7 21:21
23:21 30:13
never 39:5
new 7:19 8:21 9:2
31:18
Nick 18:16, 21 19:2,
23 20:3 34:24
nose 37:15
Notary 1:21
note 17:16
Number 4:10 28:15,
24 30:16 34:17
35:6, 11
numbers 14:2
16:22 19:6, 24, 25
20:7 25:4, 23 26:2
33:2 35:1, 5 36:1

Deposition of Ginger Griffith

<O>

oath 6:1
objection 12:3
objections 11:24, 25
obviously 7:3
office 15:21, 24
offices 1:17
Okay 5:20 6:15, 21
7:10, 17 8:1, 22
9:14, 25 10:4, 21
11:5, 7, 13, 16 12:5,
15, 20 13:4, 15 14:4,
20 15:1, 13, 16, 17
16:16, 21 17:4, 15,
20 18:14, 24 19:2
20:16, 20, 25 21:5,
18 22:1, 6, 11 23:9,
14 24:9, 22 25:9, 15,
23 26:8, 18, 24 27:4,
15, 24 28:5, 9, 19
29:2, 24 30:15, 19
31:21 32:5, 20 33:1,
1, 18 34:9, 17 35:14
36:6, 15 39:10 41:3
O'KELLEY 2:7
3:4 4:18, 18 11:25
12:18 36:16, 19, 25
39:8, 16 40:3 41:5,
10
opportunity 36:18
option 6:5
outside 40:19, 25
outweighed 8:23
overall 14:23
overhead 31:18
owed 5:14 17:10
19:19 20:13, 13
26:6, 14 28:10, 11,
17, 22, 24 29:11, 24
30:16 32:11 33:5,
19, 25 34:9, 13, 17,
20 35:9, 11, 13, 16
41:1
owes 17:5 26:3, 16
owing 20:10 24:17
25:24
owned 9:7
owners 18:8

<P>

PAGE 3:2, 4 13:21
15:18 18:20 22:23
27:10 29:4, 5, 5
40:9
paid 15:2, 4 17:17,
22 18:11 19:12, 17,
17 21:5 23:16, 20
24:5 26:11 27:18
32:20 33:13 36:8,
10 37:5, 7, 8 39:17,
18, 23, 24 40:18, 24,
24
paragraph 16:8
17:20, 23 18:14
21:21 22:8, 23
27:10 29:4, 9, 11, 17
40:8, 9
paragraphs 20:21
21:11 23:14
paraphrase 29:10
parent 9:20
parentheses 19:15
25:24 26:2
parlance 7:17
part 7:22, 25 9:5
18:22 20:20
parties 13:11 17:11
20:12 34:11 35:16
partners 9:13
pay 5:14 8:16 20:5,
9 29:14, 15 40:5
payable 17:25
paying 31:10
payment 30:2
payments 29:21
40:20
PDFs 41:8
penalty 6:1
Pennsylvania 1:18,
21 4:12 6:5, 13
people 20:5 34:18
percent 15:5, 14
21:2
performed 13:17, 18
period 38:4
perjury 6:2
personal 23:3
27:21 35:8
personally 15:9

22:16 28:6 31:5
pertains 22:20
piece 5:21
place 10:25 15:21
Plaintiff 1:5 2:5
4:17
plan 30:3
plant 31:18
PLEAS 1:1 4:9
Pleasant 2:7
please 4:14, 21 5:4,
17 11:16 12:10
16:5 22:18
point 27:5, 9, 25
28:20 35:15
points 13:22, 25
15:10, 13
portion 15:2 19:13
20:16 21:16 22:11
24:10 27:2, 19 32:5
33:25
position 7:9, 10, 13
possession 11:18
precedence 40:20
preliminary 28:20
Premier 1:17 4:11
Present 2:9
pretty 8:23 14:23
previously 12:12
27:9
principle 28:2
prior 12:19 39:23
probably 7:16
problems 30:21
31:15 32:22, 24
Proceedings 4:2
process 25:2
Professional 1:20
8:5 35:22
profit 15:2, 3 17:7
20:22 21:1, 13 22:8
23:22 27:2 32:3, 6
33:6, 16
profits 14:23 21:2
24:6, 11 32:8, 12, 17
project 9:18, 18
14:18 15:6 23:23
25:18 26:21 27:16
28:13 30:10, 22

31:1, 6 33:7 34:2,
15
projecting 32:17
projects 5:15, 16
10:1, 15, 22 14:16
20:6 30:7 32:22
40:14
properties 31:22
property 8:18
prorated 22:12
provides 13:1 16:2
Public 1:21
purchasers 32:1
33:14
purpose 5:21 6:2
10:8 12:23 30:2, 6
36:22
purposes 9:16
Pursuant 16:9
put 34:18
<Q>
question 21:23
22:2, 4 36:12 39:20
40:22 41:4
questions 36:16
40:4
quick 16:22 39:12
quickly 33:2
<R>
raise 4:24
raised 6:9
Raven 25:20 34:24
read 21:22
Ready 5:5
real 13:18 14:21
16:22 19:9 20:17
26:9, 19
really 33:2
re-ask 39:21
reason 19:25 30:19
39:6
recall 29:20, 23
39:2
recap 31:21
receivables 30:9, 11,
16
receive 21:1
record 5:18 39:21

Deposition of Ginger Griffith

Redevelopment 1:8 5:13 6:25 7:4, 8, 14 8:10, 13 9:1, 8 10:17 15:5 20:11 21:6, 14, 19 24:10 28:10 29:12 30:3, 20 31:10 32:21 34:10 36:7 37:10, 16 38:24 39:5, 22 40:18, 23 Redevelopment's 32:5 40:10 reference 11:13 13:25 referenced 12:11 relevant 31:7 remainder 20:25 23:12 remember 22:1 31:6, 14 38:2, 3 39:1 remind 37:12 reminder 6:1 16:16 23:13 reorganized 8:21 repaid 37:11 repeat 8:8 21:23 40:21 Reporter 1:20 4:20, 23 11:2, 5 41:8 Reporting 1:17 4:11 represent 4:15, 16, 19 5:11 39:4 reserve 11:25 respected 10:9 response 12:18 result 26:5 retained 34:13 return 15:6 Rich 25:20 34:24 right 4:24 6:10, 16 7:1, 5, 11, 20, 24 8:1, 3, 11, 23, 25 9:3 10:2, 13, 25 11:11, 14, 18 12:7 13:7, 13, 19, 22 14:2, 7, 10, 18, 24 15:7, 11, 25 16:14, 17, 19, 25 17:6, 9, 11, 14, 18 18:6, 12, 13, 14, 18,	22, 25 19:4, 6, 10, 12, 13, 19, 20, 21 20:14, 15, 16, 18, 23 21:3, 6, 9, 12, 18 22:16, 24 23:3, 4, 5, 7, 10 24:1, 7, 11, 14, 20, 22 25:2, 7, 9, 13, 18, 21 26:3, 6, 7, 12, 16, 19, 22, 24 27:2, 6, 10, 13, 16, 17, 19 28:1, 3, 13, 15, 17, 25 29:7, 14, 25, 25 30:4, 17, 23 31:1, 4, 7, 12, 15, 19, 22, 23 32:1, 3, 6, 7, 9, 12, 13, 15, 16, 18, 23 33:1, 3, 7, 8, 11, 12, 14, 16, 20, 21, 25 34:2, 5, 14, 15, 18, 22 35:2, 9, 17, 20, 23, 24 36:1, 12, 13, 14 37:4 39:20, 25 40:3, 5, 11, 14, 20 41:1 Rod 4:8, 17 5:11 14:5, 9, 15, 24 15:2, 4 16:6 17:17 19:18 20:25 21:5 23:21 26:3, 6, 11 29:21, 24 30:16 31:3, 19 32:23 33:5, 19 34:1, 9, 20 35:12, 17 36:9, 11 38:13 39:1 40:24 Rod's 23:15 24:16 RS 25:20 34:25 <S> sales 13:19 31:21 saying 7:23 26:3 29:18 says 15:20, 23 16:9 17:23 22:12 24:17 27:4, 6, 25 29:6 30:20 scenarios 28:1 scheduled 17:22 school 6:12, 15 second 24:25 29:3 section 21:20 see 14:1 18:1	22:22 29:9 seeing 21:13, 14, 15 Selinsgrove 6:4, 10 sell 14:9 37:24 sells 17:25 sentence 15:23 22:11 separate 6:22 11:1 13:5 16:17 separately 23:9 September 11:8, 14, 17 16:4 20:10 24:3 28:22, 25 29:22 34:21 35:16 36:9 37:17 series 40:3 serve 9:6 10:8, 10 services 13:16, 17, 18 14:12, 21 20:18 26:19 set 26:25 27:25 sharing 14:23 15:2, 4 20:23 21:2 22:8 23:22 27:2 33:7 shortly 38:4 showing 36:7, 13 shut 8:18 9:19 similarly 12:16 single-purpose 5:13 9:7, 17, 19, 21 14:24 slightly 25:6 sold 8:18 18:8 19:9 33:11 34:7 Solutions 7:19 9:9, 11 sorry 29:5 33:3 sound 35:2 source 30:7 31:9 SOUTH 1:1 2:3, 7 4:10, 11 5:14 6:6 speaking 9:15 specific 9:17 33:2 specifically 10:21 spot 35:5 Square 1:8 10:5, 23 13:7 16:18, 23 19:8 23:6, 22 24:23 30:23 34:2, 14 38:7, 20	standing 37:23 start 5:17 12:22 started 6:8 37:15 starting 23:15 starts 17:21 21:21 22:8 STATE 1:1 4:15 5:17 statement 17:13 status 20:9 stay 15:21 Street 1:18 2:2 4:12 strike 22:3 subject 6:1 12:2 13:5 subsequent 36:9 subtracted 26:5 suffering 37:17 suit 5:12 Suite 1:18 2:6 4:12 summarize 29:2 33:2 summary 8:22 sums 38:19 supervisory 18:17 Sure 12:20 swear 4:21 sworn 5:2 <T> take 15:21, 24 17:5 21:22 23:19 25:13 26:8, 10 36:17 37:15 taken 4:11 12:3 talked 39:2 talking 15:24 18:4 21:20 23:6 39:16 talks 18:15 40:9 TAYLOR 2:6 teaming 13:9 technical 7:16 telephone 2:8 tell 5:2 telling 18:3 term 7:16 terms 13:22, 24 14:1, 2, 5 15:1 22:9

Deposition of Ginger Griffith

testified 5:3	30:8 31:22 40:14	working 6:24 8:8
testify 6:7	type 20:23 25:7	write 11:10 12:8, 24
testifying 4:7	<U>	writing 11:14
thank 5:20 39:8	umbrella 9:11	written 5:22 16:6
thing 27:12	understand 18:15	31:11
things 15:22 20:13	understanding 13:2	wrote 11:19 21:25
25:12	37:6	36:4
think 13:2 22:4	unit 17:25 19:9	<Y>
31:8 39:20	use 36:22	Yeah 9:25 35:4, 14
third 17:11 29:4	<V>	years 7:3 8:10
THOMSON 2:3	various 9:6 13:16	16:25
3:3 4:16, 16 5:5, 9,	vendors 17:10	Yep 5:6
11 11:2, 6, 21 12:5,	verify 11:17 13:11	yesterday 41:9
6, 16, 20, 21 36:15,	16:5	yesterday's 11:4
21 37:2, 5 39:12, 15	versus 4:8 23:20	
41:3, 11	video 4:4 6:4	
thought 36:19	videoconference 2:4	
threatening 37:25	Videographer 2:9	
three 21:11	4:4, 20 5:4, 6 39:11	
throw 35:19	41:6	
Time 4:4 11:21	Videotaped 1:16	
12:4 17:25 21:22,	4:6	
25 35:15 36:4 38:4	Village 1:7 10:5, 22	
41:7	13:7 16:17, 23 19:8	
to, 27:5	23:6, 22 24:23	
today 5:21 6:3	30:23 34:1, 14 38:7,	
Today's 4:13 41:6	20	
top 14:20 15:18, 22	<W>	
29:4 40:9	want 11:9 12:9, 25	
total 28:21 33:3	22:19, 22 41:8	
34:18, 20	way 29:20	
totalled 34:24	weeds 23:13	
Tracy 1:20 4:23	went 6:12, 15 7:14	
transactions 32:9	16:14 18:18 40:7	
transmitting 16:10	we're 16:3 18:4	
travel 6:6	21:12, 13, 14, 15	
treasurer 7:8 8:25	23:5, 9 26:3, 25	
trial 6:7 11:22	27:12 32:17	
12:17 16:4 36:22	we've 19:24 24:22	
trouble 31:10	28:19 30:15 34:25	
troubles 29:13	Williamsport 6:16	
40:13	witness 4:22 39:10	
truth 5:2, 2, 3	words 15:19	
trying 21:24 39:1	work 14:7 18:17	
tune 21:2	32:14	
two 5:13, 15, 15	worked 6:21	
6:22 10:1, 4, 12, 22,		
25 11:7 13:5, 21		
16:16, 24 25:23		

Deposition of Ginger Griffith

WORD LIST

< \$ >

\$1,000 (I)
\$10,000 (I)
\$111,81 (I)
\$187,633 (I)
\$19,629 (I)
\$240,000 (I)
\$25,746 (2)
\$300,441.85 (I)
\$711,000 (I)
\$711,027 (3)
\$76,552 (I)
\$83,488 (I)
\$99,693 (I)

< 1 >

1 (2)
10:00 (2)
112 (I)
13 (1I)
148,504.84 (I)
148,504.85 (I)
15 (I)
17101 (I)
19,629 (I)
1977 (2)
1985 (2)
1998 (3)

< 2 >

2 (10)
20 (4)
200 (I)
2004 (17)
2005 (4)
2006 (5)
2007 (2I)
2008 (I)
201 (I)
2010 (2)
2015-CP-07-02047
(2)
2018 (2)
26,000 (I)
27 (I)
284-1408 (I)
29401 (I)

29464 (I)

< 3 >

3 (I)
32,500 (I)
321 (I)
36 (I)
36,000 (I)
39 (I)

< 4 >

4 (2)
406 (I)

< 5 >

50 (I)
500 (5)
501-0423 (I)
52,244 (I)

< 6 >

633,656 (2)
652 (I)

< 7 >

711,024 (I)

< 8 >

8 (I)
83,488 (2)
841,619 (I)
843 (2)

< 9 >

9,415 (I)
9:10 (3)
956,385 (I)
99,693 (I)

< A >

a.m (5)
ability, (I)
access (I)
account (8)
accounted (1I)
accounting (13)
active (2)
actual (I)
add (3)

added (I)
additional (I)
admissibility (I)
advanced (I)
affiliated (I)
affirm (I)
affirmed (I)
ago (2)
agreement (5)
agrees (I)
ahead (2)
al (I)
Allenwood (22)
allocated (I)
amount (6)
amounts (I)
analysis (2)
annum (I)
apart (I)
appear (I)
APPEARANCES (I)
appears (I)
area (I)
arrangement (I)
asked (3)
asking (4)
assets (I)
assigned (I)
assist (I)
associate (I)
associated (2)
Associates (I)
audience (I)
authenticate (4)
authenticated (2)
authorship (I)
aware (I)

< B >

back (4)
background (4)
backwards (I)
balance (2)
bank (I)
banks (2)
based (I)
Basically (5)
basis (3)
Bay (I)

bearing (I)
BEAUFORT (2)
began (I)
beginning (I)
begins (I)
behalf (I)
believe (7)
bene (I)
best (I)
best-worded (I)
better (I)
big (I)
born (I)
bottom (I)
Boulevard (I)
Brady (36)
Brady's (I)
briefly (2)
brought (I)
Building (5)
built (I)
BUIST (I)
bullet (I)
bunch (I)
business (2)
BYARS (I)

< C >

C.A (I)
calculate (4)
calculated (2)
calculates (I)
calculating (3)
calculation (3)
calculations (7)
called (I)
capacity (I)
CAPELL (I)
care (I)
Carlisle (I)
CAROLINA (6)
carrying (I)
Case (3)
certain (2)
change (I)
CHARLES (3)
Charleston (I)
chunk (I)
CIRCUIT (2)

Deposition of Ginger Griffith

clarify (1)
Clark (1)
clear (1)
Clore (6)
Coleman (1)
College (1)
come (1)
comes (5)
coming (2)
commenced (1)
commencing (1)
commissions (1)
COMMON (2)
Commonwealth (1)
Community (1)
companies (9)
Company (21)
compensated (1)
compensation (1)
complete (2)
completed (2)
concluded (2)
concludes (1)
confusion (1)
connect (3)
connected (2)
consideration (2)
construction (16)
CONT'D (1)
contents (1)
continued (2)
contracting (4)
copy (2)
Corp (1)
Corporation (26)
Corporation's (3)
Correct (64)
costs (1)
Counsel (3)
COUNTY (2)
COURT (9)
CPA (1)
cut (8)
Cypress (2)

< D >
Dan (6)
date (2)
dated (1)

Davis (2)
de (1)
debt (3)
debts (4)
December (2)
deducted (1)
deducting (2)
Defendants (4)
degree (1)
DEPONENT (1)
deposition (7)
DESCRIPTION (1)
descriptive (2)
designed (1)
detail (1)
details (2)
determine (1)
developer (1)
Development (19)
developments (4)
develops (1)
difference (1)
different (5)
direct (1)
directed (2)
direction (1)
discovered (1)
discussed (1)
discussion (1)
distinctly (2)
distribution (1)
dive (1)
doing (3)
Dominico (2)
dots (4)
doubt (1)
downhill (1)
drive (1)
due (10)
duly (1)

< E >
earlier (2)
early (1)
earned (12)
earning (1)
earns (1)
East (1)
economic (1)

economy (1)
educate (2)
effort (1)
either (1)
employed (1)
employee (3)
employment (1)
enter (2)
entities (1)
entitled (2)
entity (1)
errors (1)
ESQUIRE (2)
esse (1)
essentially (2)
estate (6)
et (1)
evidence (3)
exactly (2)
EXAMINATION (5)
exchange (5)
excuse (2)
Exhibit (5)
EXHIBITS (2)
expenses (4)
expired (1)
explain (2)
explained (1)

< F >
fact (2)
failing (1)
failure (1)
fair (2)
faith (1)
fall (2)
falling (1)
February (7)
fee (26)
fee, (1)
fees (18)
felt (1)
field (1)
filed (1)
final (1)
finally (1)
financial (5)
FIRM (1)
first (7)

folks (1)
follow (1)
follows (1)
follow-up (1)
forces (2)
forcing (1)
foreclosure (3)
foreclosures (2)
form (1)
formally (2)
four (2)
FOURTEENTH (2)
fourth (1)
framework (1)
front (1)
full (2)
fund (1)
funds (5)
future (1)

< G >
Gary (13)
general (1)
generalities (1)
generally (3)
generated (1)
genuine (2)
getting (3)
GINGER (5)
giving (1)
go (16)
going (8)
good (1)
gotten (1)
greater (2)
GRIFFITH (10)
Grossman (28)
Grossman's (8)
guarantee (7)
guaranteeing (2)
guarantor (2)
guess (1)

< H >
Haase (2)
HAMLIN (5)
hand (1)
handle (1)
Hanover (1)

Deposition of Ginger Griffith

Harbor (2)
Harrisburg (1)
Head (7)
He'd (1)
held (4)
help (7)
helped (1)
helpful (1)
her's (1)
high (2)
Hilton (7)
hire (3)
hiring (1)
hit (1)
home (2)
homeowners (1)
Homes (12)
Hopefully (1)
houses (3)
housing (3)

< I >

identified (1)
identify (2)
III (1)
important (1)
incentive (16)
include (1)
including (1)
income (9)
incorrect (1)
increase (1)
incur (1)
INDEX (1)
individual (6)
individually (2)
initial (2)
interpret (1)
interview (2)
inventory (1)
investment (1)
investors (1)
involved (1)
issue (3)
issues (4)

< J >

James (5)
job (2)

jobs (1)
judge (2)
June (2)
jury (5)
justified (1)

< K >
Ken (1)
Kenneth (1)
kind (1)
know (7)
knowledge (1)

< L >

Lancaster (34)
LAW (1)
left (1)
letter (49)
letters (2)
line (1)
listed (1)
listening (1)
LLC (12)
LLCs (8)
LLC's (1)
loans (1)
locally (1)
long (1)
look (2)
looking (3)
looks (5)
lose (1)
lost (1)
LRC's (1)

< M >

ma'am (1)
Madam (1)
main (2)
management (24)
Market (5)
marketing (2)
massive (1)
math (1)
matter (6)
means (2)
mentions (2)
money (27)
monitor (2)

month (2)
monthly (1)
mortgage (1)
move (5)
moving (2)
Mt (1)

< N >
name (6)
necessary (1)
need (9)
needs (1)
neighborhood (11)
neighborhoods (3)
net (5)
never (1)
new (4)
Nick (6)
nose (1)
Notary (1)
note (1)
Number (7)
numbers (13)

< O >

oath (1)
objection (1)
objections (2)
obviously (1)
office (2)
offices (1)
Okay (75)
O'KELLEY (14)
opportunity (1)
option (1)
outside (2)
outweighed (1)
overall (1)
overhead (1)
owed (28)
owes (3)
owing (3)
owned (1)
owners (1)

< P >
PAGE (11)
paid (28)
paragraph (14)

paragraphs (3)
paraphrase (1)
parent (1)
parentheses (3)
parlance (1)
part (5)
parties (5)
partners (1)
pay (7)
payable (1)
paying (1)
payment (1)
payments (2)
PDFs (1)
penalty (1)
Pennsylvania (5)
people (2)
percent (3)
performed (2)
period (1)
perjury (1)
personal (3)
personally (4)
pertains (1)
piece (1)
place (2)
Plaintiff (3)
plan (1)
plant (1)
PLEAS (2)
Pleasant (1)
please (8)
point (5)
points (4)
portion (10)
position (3)
possession (1)
precedence (1)
preliminary (1)
Premier (2)
Present (1)
pretty (2)
previously (2)
principle (1)
prior (2)
probably (1)
problems (4)
Proceedings (1)
process (1)

Deposition of Ginger Griffith

Professional (3)
profit (13)
profits (7)
project (16)
projecting (1)
projects (10)
properties (1)
property (1)
prorated (1)
provides (2)
Public (1)
purchasers (2)
purpose (7)
purposes (1)
Pursuant (1)
put (1)

< Q >

question (7)
questions (2)
quick (2)
quickly (1)

< R >

raise (1)
raised (1)
Raven (2)
read (1)
Ready (1)
real (7)
really (1)
re-ask (1)
reason (3)
recall (3)
recap (1)
receivables (3)
receive (1)
record (2)
Redevelopment (32)
Redevelopment's (2)
reference (2)
referenced (1)
relevant (1)
remainder (2)
remember (6)
remind (1)
reminder (3)
reorganized (1)
repaid (1)

repeat (3)
Reporter (6)
Reporting (2)
represent (5)
reserve (1)
respected (1)
response (1)
result (1)
retained (1)
return (1)
Rich (2)
right (169)
Rod (36)
Rod's (2)
RS (2)

< S >

sales (2)
saying (3)
says (11)
scenarios (1)
scheduled (1)
school (2)
second (2)
section (1)
see (4)
seeing (3)
Selinsgrove (2)
sell (2)
sells (1)
sentence (2)
separate (4)
separately (1)
September (13)
series (1)
serve (3)
services (7)
set (2)
sharing (9)
shortly (1)
showing (2)
shut (2)
similarly (1)
single-purpose (6)
slightly (1)
sold (5)
Solutions (3)
sorry (2)
sound (1)

source (2)
SOUTH (7)
speaking (1)
specific (2)
specifically (1)
spot (1)
Square (15)
standing (1)
start (2)
started (2)
starting (1)
starts (3)
STATE (3)
statement (1)
status (1)
stay (1)
Street (3)
strike (1)
subject (3)
subsequent (1)
subtracted (1)
suffering (1)
suit (1)
Suite (3)
summarize (2)
summary (1)
sums (1)
supervisory (1)
Sure (1)
swear (1)
sworn (1)

< T >

take (10)
taken (2)
talked (1)
talking (5)
talks (2)
TAYLOR (1)
teaming (1)
technical (1)
telephone (1)
tell (1)
telling (1)
term (1)
terms (7)
testified (1)
testify (1)
testifying (1)

thank (2)
thing (1)
things (3)
think (4)
third (2)
THOMSON (23)
thought (1)
threatening (1)
three (1)
throw (1)
Time (10)
to, (1)
today (2)
Today's (2)
top (5)
total (4)
totalled (1)
Tracy (2)
transactions (1)
transmitting (1)
travel (1)
treasurer (2)
trial (5)
trouble (1)
troubles (2)
truth (3)
trying (2)
tune (1)
two (18)
type (2)

< U >

umbrella (1)
understand (1)
understanding (2)
unit (2)
use (1)

< V >

various (2)
vendors (1)
verify (3)
versus (2)
video (2)
videoconference (1)
Videographer (7)
Videotaped (2)
Village (15)

Deposition of Ginger Griffith

< W >

want (6)

way (1)

weeds (1)

went (6)

we're (12)

we've (5)

Williamsport (1)

witness (2)

words (1)

work (3)

worked (1)

working (2)

write (3)

writing (1)

written (3)

wrote (3)

< Y >

Yeah (3)

years (3)

Yep (1)

yesterday (1)

yesterday's (1)

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

James R. Brady,

Plaintiff,

v.

Hilton Head Homes at Allenwood,
LLC; Village Square Development
Company, LLC; Lancaster
Redevelopment Corp.; and Gary L.
Grossman,

Defendants.

COURT OF COMMON PLEAS
FOURTEENTH CIRCUIT

C.A. No. 2015-CP-07-02047

Affidavit of James Rod Brady



Before me, the undersigned authority, personally appeared James Rod Brady, who, being duly sworn, deposes and states as follows:

1. I am over the age of 18 and give this affidavit based upon my own personal knowledge.

2. I am the Plaintiff in the above-referenced matter.

3. In or around 2004, I contracted with Defendants to construct, market, and sell residences in two separate developments within the Allenwood neighborhood on Hilton Head Island. In addition to being paid for providing these services, I was also promised a share of the profits generated from the sale of the residences.

4. As of September 2007, I had overseen the construction of a total of 103 residential units in these two developments. I also participated in the marketing and sales of those units.

**AS TO DEFENDANTS' THEORY THAT AMOUNTS
THEY PAID ME WERE "LOANS" OR "ADVANCES"**

5. Ginger Griffith is an employee and staff accountant and treasurer of Defendants.

6. Ms. Griffith sent me a letter dated September 13, 2007. This letter is attached as Exhibit A to this Affidavit.

7. The September 13, 2007 letter demonstrates four separate amounts that, added together, represent the total amount that Defendants alleged to have paid me as of that date. Adding those four numbers together,

Defendants allege they had paid me a total of \$509,261.00 for services performed and profit sharing from the two developments.

8. All of these payments were made in connection with residential units that had already been completed and sold, not for future work or expenses.

9. After receiving Ms. Griffith's letter in September 2007, I retained an accountant, T. Gardiner Brower, to check behind the Defendants' numbers. Mr. Brower has since passed away.

10. I made a good faith effort to transmit to Mr. Brower any and all documents that would evidence any payment that Defendants made to me.

11. From the materials I gave him, Mr. Brower determined that Defendants had paid me a total of \$453,411.00—an amount slightly less than the \$509,261.00 that Defendants alleged to have paid me.

12. Whatever amount Defendants paid me for my services and profit sharing, the amounts paid were for work that was already complete. My construction work was complete. The houses had been sold. The single-purpose developer LLCs who owned the residential units had sold the units and made a profit, even after paying all accounts payable. None of the payments that Defendants made to me could be classified as a "loan" or an "advance."

13. I understand that Defendants alleged in this lawsuit that the amounts they paid to me constituted "loans" or "advances." This is patently not true, and Defendants' allegations in that regard constitute the utmost bad faith conduct. Defendants acknowledged at the time they made the payments that the payments were for services and profits already earned and realized. Defendants' September 13, 2007 letter corroborates the fact that these payments were not loans or advances. Ginger Griffith's testimony in this matter does as well. Ms. Griffith's testimony is attached as Exhibit B to this Affidavit.

14. If Gary L. Grossman or Lancaster Redevelopment Corp. made any "loans" or "advances" on this project, those loans or advances were not made to me. The two single-purpose developer LLC Defendants—Hilton Head Homes at Allenwood, LLC; Village Square Development Company, LLC—took out loans to cover construction costs. I recall that those loans came from banks. Regardless, these two single-purpose entities had sold their

residential units, repaid all money loaned to them for construction costs, and had made a profit even after paying all accounts payable. This is my recollection, and it is also corroborated by the testimony of Ginger Griffith.

**AS TO DEFENDANTS' THEORY THAT I OWE THEM
FOR MONEY THEY PAID TO THIRD PARTIES**

15. Under the 2004 agreement, I was entitled to engage other contractors to assist me in constructing the residences at the two subject developments. I did end engage several contractors to assist me: Nick Grossman, Dan Clore, Rich Raven, and R.S. Davis.

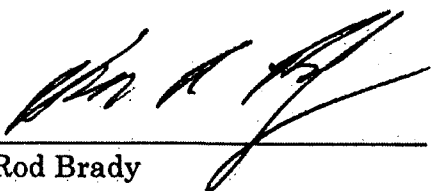
16. I understand that Defendants alleged in this lawsuit that I still owe Defendants money for the reimbursement of Defendants' payments to these contractors. As demonstrated below, this is not true.

17. The September 13, 2007 letter accounts for all payments I owed Defendants for those four contractors. I did not engage these contractors subsequent to when that letter was drafted. The testimony of Ginger Griffith, attached as Exhibit B, corroborates that there are no amounts that I owe Defendants for the services of these contractors that have not already been reimbursed and accounted for.

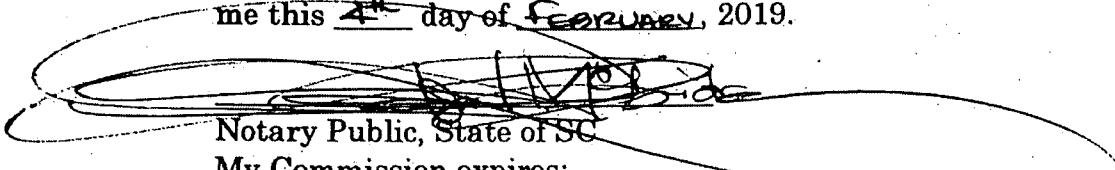
18. Even after accounting for the \$509,261.00 Defendants allege to have paid to me, and accounting for all amounts Defendants paid to the four contractors who helped me construct the subject residences, Defendants still admitted in the September 13, 2007 letter that the total unpaid amount due to me was a total of \$711,027.00.

19. After that time, I never received another payment from Defendants for work completed and sold. As a result of Defendants breach of their agreement to pay me, I stopped working at the subject developments. Thus, it is not possible that I would have incurred additional expenses for which Defendants would be entitled to reimbursement after September 2007. It shocks the conscience that Defendants would allege that I owe them money.

The affiant says nothing further.


James Rod Brady

SWORN TO AND SUBSCRIBED before
me this 4th day of FEBRUARY, 2019.


Notary Public, State of SC
My Commission expires: _____

ANNETTE KAY MCBRIDE
Notary Public-State of South Carolina
My Commission Expires
May 19, 2026





Lancaster Redevelopment Corp.

2138 Route 522

Selinsgrove, PA 17870

570-374-0131 (Fax 570-374-6093)

September 13, 2007

James R. Brady
36 Timber Marsh Lane
Hilton Head, SC 29926-2787

Dear Rod,

Pursuant to your discussion with Mr. Grossman, I am transmitting our analysis of the Allenwood compensation to you under our February 2, 2004 letter of agreement.

As you are aware, there are two separate entities operating at Allenwood. Our analysis isolates compensation by company.

Village Square Development Co. LLC (townhomes)

2005 Income	\$708,890
2006 Income	\$247,495
Total to date	\$956,385

To date there was one distribution

Paid to you on 4/10/07 \$ 36,000

This distribution was based on cash available at the time of distribution. As you know, our cash is invested in standing inventory.

Under the February 2, 2004 letter of Agreement you are scheduled to be paid a construction management fee of \$1,250 per townhouse unit. According to our records we have built and delivered 26 townhouses to date. I interpret the February 2, 2004 letter of Agreement to make the construction fees payable at the time each unit settles.

It is my understanding that the expenses associated with hiring Nick Grossman and/or Dan Clore for supervisory work on your behalf are to be deducted. Mr. Grossman did advise me that expenses for Dan Clore would not be counted after a certain date, but I do not know what that date was, so I picked 5/31/07 which is when Nick went to Battery Creek.

The February 2, 2004 letter of Agreement also provides for a \$2,000 per townhouse sales commission to either you or Joy Walker depending on who actually sold the unit. I was subsequently informed that you and Joy agreed to split this commission at \$1,000 each for all sales made by you or her. I made all payments and constructed all commission accounting in accordance with that directive.

The construction management fee on the 26 sold and settled townhomes totals	\$32,500

The commissions on the 26 sold and Settled townhomes totals	\$26,000

<u>Less the commission paid to date</u>	<u>(9,415)</u>
<u>Less Nick Grossman salary/benefits/expenses 6/6 to 1/7</u>	<u>(29,845)</u>
<u>Less Dan Clore salary/benefits/expenses 6/6 to 1/7</u>	<u>(30,746)</u>
<u>Less Nick Grossman salary/benefits/expenses 1/1/07-5/31/07</u>	<u>(24,870)</u>
<u>Less Dan Clore salary/benefits/expenses 1/1/07-5/31/07</u>	<u>(25,620)</u>

Current balance as of this date	(61,996)

There are construction management fees Due on 29 additional units @\$1,250	\$36,250

The net balance is a negative For your sales commissions and construction management Fees for Village Square Development Co. LLC	(25,746)

The net income for tax year 2005 was \$708,890 and \$247,495 in 2006 for a total taxable income of \$956,385. The LRC allocated income on this \$956,385 is 88% or \$841,619.

Under the terms of the February 2, 2004 letter of Agreement, Mr. Grossman was to be paid a priority distribution of 500 basis points for his guarantee. The average debt in 2005 was \$2,970,097 from January 1 until December 31, 2005 which calculates to a pro-rated guarantee fee of \$148,504.85 for 2005.

The average VSD to LLC debt balance for 2006 was \$5,402,733, which calculates to a guarantee fee of \$270,137.

The guarantee fee totals \$418,642 which reduces the LRC allocated pretax profits from \$841,619 to \$422,977.

Your allocated share of 50% would be \$211,488.

To date I have advanced \$128,000.

The balance of the 2005/2006 "incentive management fee" due to you is \$83,488.

Under the terms of the February 2, 2004 letter of Agreement, 100% of LRC loans or accounts receivables are to be paid as a priority distribution.

Mr. Grossman recently loaned Village Square Development Co. LLC \$124,750 and forest homes has past due receivables of \$173,700.

We must repay the \$173,700 past due receivables as a first priority. Mr. Grossman has indicated his intentions to allow funds to be paid to you ahead of his recent loans.

As to Hilton Head Homes at Allenwood

Your construction management fees on the 44 single family homes sold and settled total	\$220,000

The construction management fees on the 4 remaining single family homes total	\$ 20,000

<u>The expenses associated with Rich Raven</u>	<u>\$(17,941)</u>

<u>The expenses associated with RS Davis</u>	<u>\$(58,611)</u>

The 10% commission on the 44 single family Homes sold and settled to date total	<u>\$192,000</u>

Total earned as of this date	\$355,475

<u>Total paid as of this date</u>	<u>\$335,846</u>

Balance due on contribution fees and commissions	\$ 19,629

Mr. Grossman advises that this amount can be paid from the very next S.F. settlement if Art Long will consent.

The 2005 net taxable income was	\$1,212,191

The 2006 net taxable income was	<u>400,592</u>

Total taxable income of	\$1,612,783

The allocated income on this \$1,612,783 is 88% or	\$1,419,249

The average debt balance for 2005 was	\$1,993,865

The 500 basis point guarantee fee calculating to	\$ 99,693

The average debt balance for 2006 was	\$1,267,311

The 500 basis point guarantee fee calculating to	\$ 52,244

Therefore, net taxable income after the guarantee Fees for 2005/2006 is	\$1,267,312

Your 50% incentive management fee is	\$ 633,656

<u>Of this writing, the total amount due to you is</u>	<u>\$ 711,027</u>

Mr. Grossman directed me to access our ability to fund a \$10,000 a month draw against these funds. Given the carrying costs of the inventory, and past due receivables to Forest Homes from Allenwood, the monthly carrying costs at Cypress Harbor and our massive increase in overhead associated with the new plant, LRC simply cannot fund any additional monthly expenses.

I have attached a summary of the above information. If you have any questions or need any details, please feel free to call me anytime.

Very truly yours,

Ginger Griffith
Treasurer

Cc: Gary L. Grossman

EXHIBIT B

Excerpts from the Depositions of Ginger Griffith,
staff accountant for Defendants

1 the last paragraph I'm asking about here it starts with
 2 "This distribution was based." That group of
 3 paragraphs seems pretty straightforward to me. Do you
 4 have any additional context or any reason that part
 5 wouldn't be clear?
 6 A. No.
 7 Q. Next paragraph under that, it starts "Under
 8 the February 2, 2004 letter of agreement." In the
 9 middle of that paragraph, it says "I interpret February
 10 2, 2004 letter." The "I" there, I assume that's you?
 11 A. Yes.
 12 Q. And all that says is "I interpret the
 13 February 2, 2004 letter of agreement to construction
 14 fees payable at the time each unit settles." I
 15 interrupt that, and correct me if I'm wrong here, all
 16 the fees, the earned fees that are laid out in this
 17 letter forthcoming, we're talking about units here that
 18 were all completed and sold, right?
 19 A. Correct.
 20 Q. All right. The next paragraph talks about
 21 the expenses associated with hiring Nick Grossman and
 22 Dan Clore are to be deducted. You are accounting
 23 for it looks like, Nick Grossman and Dan Clore did
 24 work on some of these units.
 25 But you are accounting for the fees paid to

1 them in your calculations in this letter, right?
 2 A. If they were paid any fees. I believe that
 3 they were only paid their salary, not any additional
 4 fees.
 5 Q. Okay. On page 2 there's a group of -- I
 6 hate to jump out of order here, but it's relevant to
 7 the last paragraph. You see "Less the commission paid
 8 to date," and then there's about four different items?
 9 A. Yes.
 10 Q. So it says "Salary, benefits and expenses
 11 for Nick Grossman and Dan Clore," right?
 12 A. Right.
 13 Q. And I don't know if you have a calculator
 14 handy, but I added up those four numbers. And it looks
 15 like \$111,081 is being deducted from the amount that
 16 you are calculating that Rod is owed?
 17 A. Yes.
 18 Q. Back to the last paragraph on the first
 19 page, any -- would there have been anything owed to
 20 Nick Grossman or Dan Clore for work performed on these
 21 town homes that were already completed and sold that
 22 would not had been taken account for in this letter?
 23 A. I don't believe so.
 24 Q. Top photograph on the next page, I know this
 25 is tedious, but just any reason that it doesn't clearly

1 state what it says? Is there any additional context or
 2 anything we need to understand that paragraph?
 3 A. No.
 4 Q. For the record, we don't have to get that
 5 detailed tomorrow. This is my one chance to flesh out
 6 everything there is to know about this letter. The
 7 paragraph after that, you start to lay out some
 8 numbers. We already went over this:
 9 "The construction management fee on the 26
 10 sold and settled town homes, we're talking about units
 11 that are already closed out here, right?
 12 A. Right.
 13 Q. There wouldn't have been any reason for Nick
 14 or Dan to have to go back out to these units to your
 15 knowledge?
 16 A. Not to my knowledge.
 17 Q. Okay. We added up the total monies paid to
 18 Nick and Dan for the services. This is my words, not
 19 yours. But I added them up myself. Those four numbers
 20 added to \$111,081. That number exceeds what Rod is
 21 even being paid for his construction management fees,
 22 right?
 23 A. It exceeds, is that what you said?
 24 Q. Correct.
 25 A. Yes.

1 Q. On the rest of this page, same question: Is
 2 there -- I mean, we can read it and see what the letter
 3 says. But is there any assistance you can offer or
 4 additional context that would clarify what's being said
 5 in there or just the letter says what it says?
 6 A. I believe it says what it says. There's a
 7 lot of numbers to take in.
 8 Q. The bottom, it says that "The balance of
 9 2005/2006 incentive management fee," what does
 10 incentive management fee mean to you here? What
 11 services is it for?
 12 A. To me, it means Rod managing the whole
 13 property and the construction of the units. He would
 14 be offered a fee.
 15 Q. The same process on the next page, it starts
 16 with "Under the terms," and all the way down to
 17 "Balance due on contribution fees and commissions," is
 18 there anything in there that needs clarification or
 19 just the letter says what it says?
 20 A. The letter says what it says.
 21 Q. Okay. Below that it says "Mr. Grossman
 22 advises that this amount can be paid from the very next
 23 S.F. settlement if Art Long will consent." Do you know
 24 if that balance was ever paid to Mr. Brady?
 25 A. I don't know without looking into further

1 A. Yes.
 2 Q. Okay. Let's go back and summarize that more
 3 distinctly in a second. But first, look at the next
 4 page, top paragraph of, I believe, that's the third
 5 page of the letter -- fourth page. I'm sorry. It
 6 says, "Mr. Grossman directed me to access our ability,"
 7 right?
 8 A. Yes.
 9 Q. Do you see that paragraph? And what's going
 10 on here is that, if I can distinctly paraphrase that,
 11 that paragraph is, yes, Mr. Brady, you're owed money,
 12 the \$711,000 and change, but Lancaster Redevelopment
 13 Corporation is having financial troubles. And we can't
 14 -- we don't have the funds to pay it all to you right
 15 now. So what we are going to do is pay you \$10,000 a
 16 month.
 17 Is that essentially what that paragraph is
 18 saying?
 19 A. Yes.
 20 Q. And you don't recall one way or the other
 21 whether any of those monthly payments were made to Rod
 22 after September of 2007?
 23 A. I don't recall, no.
 24 Q. Okay. So Rod was already owed the money,
 25 right? He'd already earned it, right?

1 A. Yes.
 2 Q. And the purpose of getting on this payment
 3 plan was because Lancaster Redevelopment Corporation
 4 had financial issues, right?
 5 A. Yes.
 6 Q. And the purpose of those financial -- or the
 7 source of those financial issues were projects other
 8 than the two at issue here, correct?
 9 A. One of the issues was past due receivables
 10 from the Allenwood project.
 11 Q. Would those past due receivables, would
 12 those have been accounted for when you calculated the
 13 net income of that LLC?
 14 A. Yes.
 15 Q. Okay. So we've already accounted for those
 16 past due receivables within the number owed to Rod,
 17 right?
 18 A. Yes.
 19 Q. Okay. And then the other reason listed, it
 20 says, it seems as if the Lancaster Redevelopment
 21 Corporation is having problems with carrying costs of
 22 Cypress Harbor. That project had nothing to do with
 23 Village Square Development, right?
 24 A. No.
 25 Q. And it had nothing to do with the Allenwood

1 project, right?
 2 A. No.
 3 Q. And it had nothing to do with Rod Brady,
 4 right?
 5 A. I don't believe so. I personally don't
 6 remember the Cypress Harbor project.
 7 Q. Right. And it doesn't appear to be relevant
 8 to this case, I don't think, other than the fact that
 9 it seems to be the source of why Lancaster
 10 Redevelopment Corporation was having trouble paying Mr.
 11 Brady. And this was written in the letter by you,
 12 right?
 13 A. Yes.
 14 Q. And you just don't remember all the complete
 15 details of -- behind that -- those problems, right?
 16 A. Correct.
 17 Q. And it also mentions a "massive increase in
 18 overhead associated with the new plant." That didn't
 19 have anything to do with Rod Brady, right?
 20 A. No.
 21 Q. Okay. So to recap, the sales have been
 22 final, right, of the properties built on these two
 23 neighborhoods, right?
 24 A. Yes.
 25 Q. And the LLC's, that money from the

1 purchasers of the homes, right?
 2 A. Yes.
 3 Q. And there was a profit after that, right?
 4 A. Yes.
 5 Q. Okay. Lancaster Redevelopment's portion of
 6 that profit got accounted for, right?
 7 A. Right.
 8 Q. And Mr. Grossman's individual profits from
 9 those transactions got accounted for, right?
 10 A. Yes.
 11 Q. And after all that, Mr. Brady was still owed
 12 a big chunk of money out of those profits, right?
 13 A. Right.
 14 Q. For work that has already been earned,
 15 right?
 16 A. Right.
 17 Q. We're not projecting future profits here,
 18 right?
 19 A. Correct.
 20 Q. Okay. And Mr. Brady was not paid that money
 21 because Lancaster Redevelopment Corporation had
 22 problems on other projects that had nothing to do with
 23 Rod Brady, right?
 24 A. Some of the problems had nothing to do with
 25 Allenwood.

1 Q Okay. Okay. All right. So and let's
 2 summarize the specific numbers really quickly. So the
 3 total was 711,024 -- or 27 -- I'm sorry. Right?
 4 A Yes.
 5 Q And of that 633,656, that was owed to Rod as
 6 an incentive management fee or basically a profit
 7 sharing from the Allenwood project, right?
 8 A Right.
 9 Q Already earned, correct?
 10 A Correct.
 11 Q Homes already sold, right?
 12 A Right.
 13 Q LLCs are already paid by the home
 14 purchasers, right?
 15 A Yes.
 16 Q And the LLCs made a profit, right?
 17 A Yes.
 18 Q Okay. And then there is an amount 19,629
 19 owed to Rod as a construction management fee at
 20 Allenwood. And that money was already earned, right?
 21 A Right.
 22 Q And the construction was already completed
 23 at those homes, too, correct?
 24 A Correct.
 25 Q All right. And the 83,488 portion was owed

1 to Rod as his incentive management fee for the Village
 2 Square Development project, right?
 3 A Yes.
 4 Q And just like in Allenwood, those fees are
 5 already earned, right?
 6 A Yes.
 7 Q And the homes are already sold?
 8 A Yes.
 9 Q Okay. And to be fair, Rod owed Lancaster
 10 Redevelopment Corporation, or whoever the contracting
 11 parties were, \$25,746. And that was for the difference
 12 between his construction management fees and the money
 13 he owed for the help he retained to assist him with
 14 that construction, right, at the Village Square
 15 Development project, right?
 16 A Correct.
 17 Q Okay. But the number that he owed to other
 18 people was put into the total, right?
 19 A Yes.
 20 Q And that total, again, that was owed to Rod
 21 was \$711,027 as of September 13, 2007?
 22 A Right.
 23 Q And the amount accounted for for his help
 24 totalled between Nick Grossman, Dan Clore, Rich Raven
 25 and RS Davis we've accounted for \$187,633 between the

1 four of them if you add up all the individual numbers.
 2 Does that sound about right to you?
 3 A Yes, it does.
 4 Q Yeah. I'm not asking you to do math on the
 5 spot. But that's the numbers that I came up with
 6 anyhow. That number also took into account that
 7 Mr. Grossman was getting consideration in exchange for
 8 a personal guarantee. And he had -- we had accounted
 9 for \$300,441.85 to be owed to him, right?
 10 A Yes.
 11 Q Already accounted for within the number owed
 12 to Rod?
 13 A Yes -- owed to Gary.
 14 Q Okay. Yeah, so essentially just to drive
 15 the point home one last time, you concluded on
 16 September 13, 2007 that the contracting parties owed
 17 Rod \$711,027, right?
 18 A Yes.
 19 Q And you didn't just throw that letter
 20 together, right?
 21 A No.
 22 Q And you're a professional in the accounting
 23 business, right?
 24 A Right.
 25 Q And you made a good faith effort to get

1 these numbers right, didn't you?
 2 A Yes.
 3 Q And you haven't discovered any errors in
 4 here now since the time you wrote that letter?
 5 A No.
 6 Q Okay. And you do not have any evidence
 7 showing that Lancaster Redevelopment Corporation, Gary
 8 Grossman or any other affiliated entity paid any money
 9 to Rod subsequent to this September 13, 2007?
 10 A I don't know if anything has been paid to
 11 Rod or not.
 12 Q Right. But the question is, you don't have
 13 any evidence showing it, right?
 14 A Right.
 15 MR. THOMSON: Okay. Those are all the
 16 questions I have. Mr. O'Kelley, if would like to
 17 interview Ms. Griffith, you have may take that
 18 opportunity now.
 19 MR. O'KELLEY: I thought this is a
 20 deposition, not an interview.
 21 MR. THOMSON: It's a de bene esse deposition
 22 for purpose for use at trial.
 23 *****
 24 EXAMINATION
 25 BY MR. O'KELLEY:

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

James R. Brady,

Plaintiff,

v.

Hilton Head Homes at Allenwood,
LLC; Village Square Development
Company, LLC; Lancaster
Redevelopment Corp.; and Gary L.
Grossman,

Defendants.

COURT OF COMMON PLEAS
FOURTEENTH CIRCUIT

C.A. No. 2015-CP-07-02047

**Motion for Summary
Judgment as to Defendants'
Counterclaims**

To: All Defendants above-named

Plaintiff James R. Brady, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure and any other applicable South Carolina law, will move before this Honorable Court for an order granting summary judgment as to Defendants' counterclaims against Plaintiff. Plaintiff will so move ten days after the date of service hereof or at such time as counsel may be heard.

This matter is a payment claim. Defendants retained Plaintiff to construct, sale, and market many single-family residences. Plaintiff began to perform under the contract, but Defendants failed to pay for all of the work Plaintiff performed, leaving a balance in excess of \$700,000. Plaintiff brought claims against Defendants for breach of contract, unjust enrichment, and conversion. In response, Defendants filed counterclaims of breach of contract and unjust enrichment against Plaintiff, alleging that Plaintiff did not fully perform its contractual duties and that Defendants had to hire third parties to complete the work.

The evidence that has been discovered in this matter casts serious doubt upon Defendants' counterclaim allegations. But more importantly as to this motion, after a full and fair opportunity to complete discovery, Defendants have failed to produce any evidence in support of the allegations asserted in their counterclaims. Thus, there are no genuine issues as to any

material fact that Plaintiff is entitled to summary judgment as to those counterclaims

Plaintiff prays that the Court issue an order holding Plaintiffs are entitled to judgment as a matter of law as to each and every counterclaim asserted by each and every Defendant, and for such further relief as the Court sees fit.

Respectfully submitted,

THE CAPELL LAW FIRM, LLC

s/ Charles W. Thomson

Glynn L. Capell (16552)

GCapell@CapellLaw.com

Charles W. Thomson (101471)

CThomson@CapellLaw.com

321 East Bay St.

Charleston, SC 29401

(843) 501-0423

Attorneys for Plaintiff

January 8, 2019

Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned certifies having served a copy of the foregoing **Motion for Summary Judgment as to Defendants' Counterclaims** to all counsel of record on **January 5, 2017** by eFiling a copy of same, with the following attorney being on the eFiling service list:

G. Hamlin O'Kelley, III, Esq.
BUIST, BYARS & TAYLOR, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464

Per explicit instructions from G. Hamlin O'Kelley, attorney for Defendants, Plaintiff is not serving Gary L. Grossman directly with this notice, despite that the Clerk lists Mr. Grossman as *pro se* counsel.

s/ Charles W. Thomson
Charles W. Thomson

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

James R. Brady,

Plaintiff,

vs.

Hilton Head Homes at Allenwood, LLC,
Village Square Development Company,
LLC, Lancaster Redevelopment Corp., and
Gary L. Grossman,

Defendants.

IN THE COURT OF COMMON PLEAS
C/A NO.: 2015-CP-07-2047

**CONSENT MOTION FOR AN ORDER
OF PROTECTION AND FOR A
STATUS CONFERENCE TO SET A
TRIAL DATE CERTAIN**

Plaintiff James R. Brady and Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp., and Gary L. Grossman, by and through undersigned counsel, hereby jointly move this Honorable Court for an Order granting protection for Defendants' counsel, G. Hamlin O'Kelley, III, on the grounds that he has long-standing plans to be out of town from February 11, 2019 through February 15, 2019.

Counsel also hereby move for a status conference for a day certain trial in March 2019 or later, in the above-captioned case.

Respectfully submitted,

WE SO MOVE:

s/ Charles W. Thomson, Esq.
THE CAPELL LAW FIRM LLC
Charles W. Thomson, PE, Esq.
The Blake House
321 East Bay Street
Charleston, South Carolina 29401
cthompson@capelllaw.cm
Attorney for Plaintiff

WE CONSENT:

s/ G. Hamlin O'Kelley, III
BUIST BYARS & TAYLOR LLC
G. Hamlin O'Kelley, III
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
Hamlin.okelley@buistbyars.com
Attorney for Defendants

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

James R. Brady,
Plaintiff,

v.

Hilton Head Homes at Allenwood,
LLC; Village Square Development
Company, LLC; Lancaster
Redevelopment Corp.; and Gary L.
Grossman,

Defendants.

COURT OF COMMON PLEAS
FOURTEENTH CIRCUIT

C.A. No. 2015-CP-07-02047

**Motion for Summary
Judgment as to Defendants'
Counterclaims**

**To: G. Hamlin O'Kelley, III, Attorney for Hilton Head Homes at
Allenwood, LLC; Village Square Development Company, LLC;
and Lancaster Redevelopment Corp.**

Gary L. Grossman, *Pro Se*

Plaintiff James R. Brady, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure and any other applicable South Carolina law, will move before this Honorable Court for an order granting summary judgment as to Defendants' counterclaims against Plaintiff. Plaintiff will so move ten (10) days after the date of service hereof or at such time as counsel may be heard.

This matter is a payment claim. Defendants retained Plaintiff to construct, sale, and market many single-family residences. Plaintiff began to perform under the contract, but Defendants failed to pay for all of the work Plaintiff performed, leaving a balance in excess of \$700,000. Plaintiff brought claims against Defendants for breach of contract, unjust enrichment, and conversion. In response, Defendants filed counterclaims of breach of contract and unjust enrichment against Plaintiff, alleging that Plaintiff did not fully perform its contractual duties and that Defendants had to hire third parties to complete the work.

The basis of this motion is that Defendants have failed to produce evidence in support of the allegations asserted in their counterclaims. As

such, there are no genuine issues as to any material fact that Plaintiff is entitled to summary judgment as to those counterclaims

Plaintiff prays that the Court issue an order holding Plaintiffs are entitled to judgment as a matter of law as to each and every counterclaim asserted by each and every Defendant, and for such further relief as the Court sees fit.

Respectfully submitted,

THE CAPELL LAW FIRM, LLC

s/ Charles W. Thomson

Glynn L. Capell (16552)

GCapell@CapellLaw.com

Charles W. Thomson (101471)

CThomson@CapellLaw.com

174 Meeting Street, Suite 200

Charleston, SC 29401

(843) 689-4280

Attorneys for Plaintiff

January 5, 2017

Hilton Head Island, South Carolina

CERTIFICATE OF SERVICE

The undersigned certifies having served a copy of the foregoing **Motion for Summary Judgment as to Defendants' Counterclaims** to all counsel of record on **January 5, 2017** by mailing a copy of same, electronically or with proper postage affixed thereto as follows:

G. Hamlin O'Kelley, III, Esq.
BUIST, BYARS & TAYLOR, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464

Gary L. Grossman
2138 Route 522
Selinsgrove, PA 17870

s/ Charles W. Thomson
Charles W. Thomson

Charleston, South Carolina

The Capell Law Firm, LLC

17 Executive Park Road, Suite 5B (29928)
Post Office Box 6628
Hilton Head Island, SC 29938

Glynn L. Capell
Licensed also in NC & FL
Email: gcapell@capelllaw.com

Charles W. Thomson
Email: cthomson@capelllaw.com

www.capelllaw.com
Phone: 843.689.4280
Facsimile: 843.689.4281

July 25, 2016

The Honorable Jerri Ann Roseneau
Clerk of Court, Beaufort County
P.O. Drawer 1128
Beaufort, South Carolina 29901

RE: *James R. Brady v. Hilton Head Homes at Allenwood, LLC, Village Square
Development Company, LLC, Lancaster Redevelopment Corp. and Gary L.
Grossman*
C.A. 2015-CP-072047

Dear Ms. Roseneau:

Enclosed please find an original and (1) copy of a Reply to Counterclaim in the above-referenced matter. Please file the original and return a stamped copy in the self-addressed, stamped envelope.

With kind regards, I remain

Very truly yours,

THE CAPELL LAW FIRM, LLC



Charles W. Thomson

CWT/bsf
Enclosures
cc: Hamlin O'Kelley via U.S. Mail

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

James R. Brady,

Plaintiff,

v.

Hilton Head Homes at Allenwood,
LLC; Village Square Development
Company, LLC; Lancaster
Redevelopment Corp.; and Gary L.
Grossman,

Defendants.

COURT OF COMMON PLEAS
FOURTEENTH CIRCUIT

C.A. No. 2015-CP-07-02047

REPLY TO COUNTERCLAIM

To: G. Hamlin O'Kelley, III, Esq.

The Plaintiff James R. Brady replies to the Counterclaims asserted by Defendants as follows:

FOR A FIRST DEFENSE
(Reply to Counterclaim)

1. Each and every allegation as to Plaintiff in the Answer and Counterclaim of Defendants (hereinafter "Answer & Counterclaim") is denied, unless hereinafter admitted, qualified or explained.

2. The allegations contained in Paragraphs 1 to 20 of Answer & Counterclaim are not directed toward Plaintiff and, therefore, do not require a response. To the extent a response is required, Plaintiff denies the allegations.

3. Plaintiff admits the allegations in Paragraphs 21, 22, 23, & 24 of the Answer & Counterclaim.

4. Regarding the allegations contained in Paragraph 25, Plaintiff craves referene to the terms of the Agreement referred to therein.

5. Plaintiff denies the allegations in Paragraphs 26, 27, 28, 29, 30, & 31 of the Answer & Counterclaim.

6. Regarding the allegations contained in Paragraph 32, each and every allegation set forth above is fully incorporated here.

7. Plaintiff denies the allegations in Paragraphs 33, 34, & 35 of the Answer & Counterclaim.

8. Regarding the allegations contained in Paragraph 36, each and every allegation set forth above is fully incorporated here.

9. Plaintiff denies the allegations in Paragraphs 37, 38, & 39 of the Answer & Counterclaim.

FOR A SECOND DEFENSE

(Reply to Counterclaim)

10. Defendants failed to state claims upon which relief can be granted pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

(Laches)

11. Plaintiff would show, upon information and belief, that there was an unreasonable delay by Defendants in asserting their claims and such claims are therefore barred by laches.

FOR A FOURTH DEFENSE

(Unclean Hands)

12. Upon information and belief, Defendants' claims are barred by the doctrine of unclean hands.

FOR A FIFTH DEFENSE

(Waiver)

13. Plaintiff would show, upon information and belief, that Defendants waived any known right and are therefore barred from any recovery from Plaintiff.

FOR A SIXTH DEFENSE

(Estoppel)

14. Plaintiff would show, upon information and belief, that Defendants are estopped from all claims against Plaintiff.

FOR A SEVENTH DEFENSE
(Mistake)

15. Upon information and belief, a unilateral and/or mutual mistake occurred regarding the terms of the alleged Agreement and, therefore, Defendants are not entitled to recovery.

FOR A EIGHTH DEFENSE
(Statute of Limitations)

16. Defendants are barred from recovery against Plaintiff based upon the applicable statute of limitations.

FOR A NINTH DEFENSE
(Failure to Mitigate)

17. Defendants failed to mitigate their alleged damages and therefore are barred from recovery.

FOR A TENTH DEFENSE
(Breach of Agreement)

18. To the extent there was any Agreement, Defendants breached such Agreement to such a degree that Plaintiff was excused from performance under such Agreement.

FOR A ELEVENTH DEFENSE
(Failure to Comply with Condition Precedent)

19. Defendants failed to comply with conditions precedent in the Agreement and, therefore, are barred from asserting their claims.

FOR A TWELFTH DEFENSE
(Set-Off)

20. Plaintiff is entitled to a set-off for any amounts paid against Defendants' alleged claims.

FOR A THIRTEENTH DEFENSE
(Acceptance)

21. Defendants accepted performance by Plaintiff and therefore are denied recovery from Plaintiff.

FOR A FOURTEENTH DEFENSE
(Intervening Cause or Action by Third Party)

22. The amounts Defendants are allegedly owed, if true, are owed by third parties and/or other parties not a party to this lawsuit and are not owed by Plaintiff.

FOR A FIFTEENTH DEFENSE
(Sole Negligence)

23. Plaintiff will show that the damages alleged by Defendants, which damages are specifically denied, were the sole and proximate result fo the intervening and/or superseding negligence and/or superseding willful acts and/or recklessness of third persons or parties, which intervening and/or superseding negligence and/or willful acts and/or other actions are a bar to the causes of action asserted by Plaintiff.

FOR A SIXTEENTH DEFENSE
(Contributory Negligence)

24. Plaintiff would show that the damages alleged by Defendants, which are specifically denied, were due to and caused by the reckless, willful, wanton, negligent, careless and grossly negligent acts and conduct of Defendants, which actions combined and concurred with any negligence on the part of Plaintiff, which negligence is hereby specifically denied, to produce such damages, without which the same would not have occurred.

FOR A SEVENTEENTH DEFENSE
(Comparative Negligence)

25. Plaintiff would show that the injuries and/or damages alleged by Defendants, which injuries and damages are hereby specifically denied, were due to and caused by the reckless, willful, wanton, negligent careless and grossly negligent acts and conduct of Defendants, which acts were greater than any acts of negligence on the part of Plaintiff, which acts on the part of Plaintiff are hereby specifically denied, to produce such injury and/or damages, and without which the same would not have occurred.

FOR A EIGHTEENTH DEFENSE

(Assumption of the Risk)

26. Plaintiff would show that Defendants, by and through their actions and/or inactions with regard to the subject alleged in the Counterclaim, have assumed the risk and/or accepted all portions of any damages alleged by Defendants and such assumption of risk and/or acceptance is a bar to claims against Plaintiff.

FOR A NINETEENTH DEFENSE

(Economic Loss Rule)

27. Plaintiff would show that the claims of Defendants are barred by the economic loss rule.

FOR A TWENTIETH DEFENSE

(Reservation and Non-waiver)

28. Plaintiff does not waive, and hereby specifically reserves, any additional and/or further defenses, the propriety of which may be indicated by additional information which may be acquired by Plaintiff or its counsel during the course of discovery or otherwise.

FOR A TWENTY-FIRST DEFENSE

(Statute of Repose)

29. Plaintiff would show that Defendants' claims are barred by the applicable statute and/or statutes of repose.

Wherefore, Plaintiff prays all claims against him be dismissed with prejudice and for such other and further relief as this Court may deem just and proper.

Respectfully submitted,

THE CAPELL LAW FIRM, LLC



Glynn L. Capell (16552)

GCapell@CapellLaw.com

Charles W. Thomson (101471)

CThomson@CapellLaw.com

Post Office Box 6628

Hilton Head Island, SC 29938

(843) 689-4280

Attorneys for Plaintiff

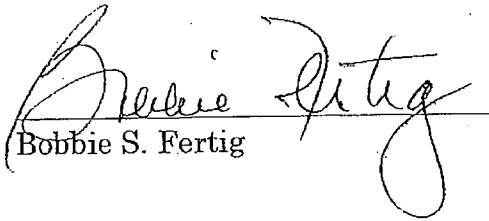
July 25, 2016

Hilton Head Island, South Carolina

CERTIFICATE OF SERVICE

The undersigned certifies having served a copy of the foregoing **Reply to Counterclaim** to all counsel of record on **July 25, 2016** by mailing a copy of same, electronically or with proper postage affixed thereto as follows:

G. Hamlin O'Kelley, III, Esq.
BUIST, BYARS & TAYLOR, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464


Bobbie S. Fertig

Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
C/A NO.: 2015-CP-07-2047

James R. Brady,
Plaintiff,

vs.

Hilton Head Homes at Allenwood, LLC,
Village Square Development Company,
LLC, Lancaster Redevelopment Corp., and
Gary L. Grossman,
Defendants.

**SUMMONS
FOR THE DEFENDANTS' ANSWER
AND COUNTERCLAIM**

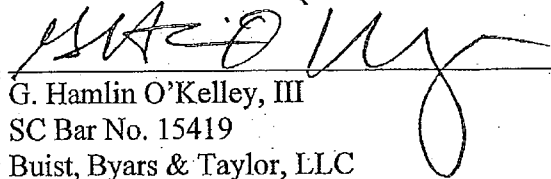
2015 SEP 14 PM 3:33
JENNIFER ROSE
CLERK OF COURT
BEAUFORT COUNTY, S.C.

TO: THE ABOVE-NAMED PLAINTIFF

YOU ARE HEREBY SUMMONED and required to reply to the Defendants' Answer and Counterclaim in this action a copy of which is herewith served upon you, and to serve a copy of your Reply upon the undersigned attorneys at 652 Coleman Boulevard, Suite 200, Mt. Pleasant, South Carolina 29464, within thirty (30) days from service hereof, exclusive of the day of such service; and, if you fail to reply to the Answer and Counterclaim within the time aforesaid, judgment by default will be rendered against you, and the Defendants in this action will apply to the Court for the relief demanded.

Mt. Pleasant, SC

September 1, 2015


G. Hamlin O'Kelley, III
SC Bar No. 15419
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, South Carolina 29464
(843) 856-4488
Hamlin.okelley@buistbyars.com

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

) CASE NO. 2015-CP-07-2047

James R. Brady,

)
)
) Plaintiff,

)
) vs.

)
) Hilton Head Homes at Allenwood, LLC,
) Village Square Development Company,
) LLC, Lancaster Redevelopment Corp.
) and Gary L. Grossman,
)

) Defendants.
)

**ANSWER AND COUNTERCLAIM OF THE
DEFENDANTS**

RECEIVED IN
CLERK OF COURT
BEAUFORT COUNTY
SOUTH CAROLINA
JAN 14 2016
PM 3:33

TO: GLYNN L. CAPELL, ESQ.
CHARLES W. THOMPSON, ESQ.

The Defendant(S) Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corp. and Gary L. Grossman (the "Defendants") by and through their undersigned counsel, answering the Complaint of the Plaintiff James R. Brady and setting forth their Counterclaims against James R. Brady allege and state as follows:

1. Each and every allegation of the Plaintiff's Complaint not admitted, denied, or otherwise qualified herein is hereby deemed denied, and the Defendants deny same and demand strict proof thereof.
2. The Defendants admit Paragraph 1 of the Plaintiff's Complaint.
3. The Defendants admit the allegations of Paragraphs 2, 3, and 4 of the Plaintiff's Complaint.
4. The Defendants admit only so much of Paragraph 5 of the Plaintiff's Complaint that alleges the Defendant Gray L. Grossman is a resident of the State of Pennsylvania. The Defendants deny the remaining allegations of said Paragraph and would allege and show that he never conducted business in Beaufort County regarding this matter in his individual capacity.

5. The Defendants are not required to answer the allegations contained in Paragraph 6 of the Plaintiff's Complaint as said allegations constitute legal conclusions.

6. The Defendants deny the allegations of Paragraphs 7, 8, and 9 and demand strict proof thereof.

7. The Defendants are without sufficient information to form a belief as to the allegations of Paragraph 10 of the Plaintiff's Complaint, and, therefore, denies same and demands strict proof thereof.

8. In answering Paragraph 11 of the Plaintiff's Complaint, the Defendants repeat and reallege Paragraphs 1 through 7 above as though repeated herein verbatim.

9. The Defendants admit only so much of Paragraph 12 of the Plaintiff's Complaint that alleges the Plaintiff at one time worked for the Defendant Hilton Head Homes at Allenwood, LLC. The Defendants deny the remaining allegations of Paragraph 8 of the Plaintiff's Complaint and demand strict proof thereof.

10. The Defendants deny the allegations of Paragraphs 13, 14, and 15 of the Plaintiff's Complaint and demand strict proof thereof.

11. In answering Paragraph 16 of the Plaintiff's Complaint, the Defendants repeat and reallege Paragraphs 1 through 10 above as though repeated herein verbatim.

12. The Defendants deny the allegations of Paragraphs 17, 18, 19, 20, and 21 of the Plaintiff's Complaint and demand strict proof thereof.

13. In answering Paragraph 22 of the Plaintiff's Complaint, the Defendants repeat and reallege Paragraphs 1 through 10 above as though repeated herein verbatim.

14. The Defendants deny the allegations of Paragraphs 23, 24, 25, and 26 of the Plaintiff's Complaint and demand strict proof thereof.

FOR A FURTHER ANSWER
AND BY WAY OF AN AFFIRMATION DEFENSE AND
MOTION TO DISMISS

15. The Defendants would allege and show that the Plaintiff's Complaint fails to state facts sufficient upon which relief can be granted, and, as such, the Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(6) SCRPC.

FOR A FURTHER ANSWER
AND BY WAY OF A SECOND AFFIRMATIVE DEFENSE

16. The Defendants would allege and show that the Plaintiff's own inequitable actions, including non-performance of the duties of his job, act as a complete bar to recover, and, as such, the Plaintiff's Complaint should be dismissed.

FOR A FURTHER ANSWER
AND BY WAY OF A THIRD AFFIRMATIVE DEFENSE

17. The Defendants would allege and show that the Plaintiff's Complaint is barred by the doctrines of waiver, estoppel, and laches as the Plaintiff failed to act when he should have acted in protecting any interest he may have had regarding these claims, if any, and none of which are admitted, as set forth in his Complaint.

FOR A FURTHER ANSWER
AND BY WAY OF A FOURTH AFFIRMATIVE DEFENSE

18. The Defendants would allege and show that the Plaintiff knew or should have known that no fees, compensation, remuneration, or payment of any kind would be paid to him for work not performed by him and that he would only be paid for work in furtherance of the business of Hilton Head Homes at Allenwood, LLC.

FOR A FURTHER ANSWER
AND BY WAY OF A FIFTH AFFIRMATIVE DEFENSE

19. The Defendants would allege and show that the Plaintiff had no reliance upon Gary L. Grossman as any employer and bases his entire baseless case on one letter from Mr. Grossman knowing that he was to further the business of Hilton Head Homes at Allenwood, LLC, and not that of Mr. Grossman, individually.

FOR A FURTHER ANSWER
AND BY WAY OF A SIXTH AFFIRMATIVE DEFENSE
AND BY WAY OF A COUNTERCLAIM

20. The Defendants repeat and reallege Paragraphs 1 through 19 above as though repeated herein verbatim.

21. The Defendants Hilton Head Homes at Allenwood, LLC, and Village Square Development Company, LLC, are limited liability companies organized and existing pursuant to the laws of the State of South Carolina.

22. The Defendant Lancaster Redevelopment Corporation is a corporation organized and existing pursuant to the laws of the State of Pennsylvania and authorized to conduct business in South Carolina.

23. The Defendant Gary L. Grossman is a citizen and resident of the State of Pennsylvania.

24. The Plaintiff James R. Brady is a resident of Beaufort County, South Carolina.

25. Pursuant to the terms and conditions of an agreement with Lancaster Redevelopment Corporation, the Plaintiff was to have provided services to Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation in connection with the construction, sales, and marketing of a certain development in Beaufort County, South Carolina.

26. The Plaintiff was given sums as loans and as advances for work that should have been performed by the Plaintiff, which work was not performed by the Plaintiff, prior to any distributions being made or prior to any commissions or payments being given to the Plaintiff.

27. The Plaintiff often informed the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation that he could not cover the workload required of him in order to receive commissions and other compensation.

28. While he was to have been furthering the business of Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation, the Plaintiff failed to perform work required of him and third parties had to be employed to complete the work the Plaintiff was going to allegedly complete.

29. The Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation made numerous payments to the Plaintiff in spite of his inability to perform as promised and as relied upon by Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation.

30. Such a failure to perform constitutes a breach of contract entitling the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation to recover all payments made to the Plaintiff in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars.

31. The Plaintiff is not entitled to retain the benefit of these payments and advancements due to his breach of his agreement with Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation, and these Defendants

are entitled to actual damages in excess of Six Hundred Thousand and No/100 (\$600,000.00)

-----Dollars in amounts to be determined at the trial of this case.-----

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

32. The Defendants repeat and reallege Paragraphs 1 through 31 above as though repeated herein verbatim.

33. The Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation had valid contract with the Plaintiff for services which the Plaintiff failed to provide.

34. Such a failure constitutes a breach of contract for which the Plaintiff has no legal excuse and which breach has caused the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation to suffer damages in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars.

35. As a direct and proximate result of the Plaintiff's breach of contract, the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation are entitled to actual damages in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars in amounts to be determined at trial.

FOR A SECOND CAUSE OF ACTION
(Unjust Enrichment)

36. The Defendants repeat and reallege Paragraphs 1 through 35 above as though repeated herein verbatim.

37. Despite receiving payments, the Plaintiff failed and refused to perform pursuant to his agreement with the Defendants Hilton Head Homes at Allenwood, LLC, Village Square

Development Company, LLC, and Lancaster Redevelopment Corporation and was compensated in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars.

38. The Plaintiff has been unjustly enriched by having received these payments and it would be inequitable and unjust for the Plaintiff to retain the value of the payments made in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars.

39. As a direct and proximate result of this unjust enrichment, the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, and Lancaster Redevelopment Corporation are entitled to recover damages against the Plaintiff in excess of Six Hundred Thousand and No/100 (\$600,000.00) Dollars in amounts to be determined at trial of this case.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corporation, and Gary L. Grossman pray this Court enter its Order as follows:

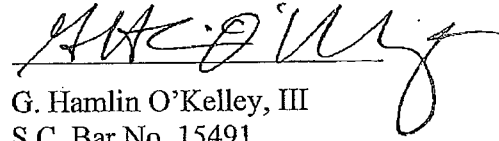
1. Dismissing the Plaintiff's Complaint;
2. Awarding the Defendants all reasonable attorneys' fees and costs;
3. Awarding the Defendants Hilton Head Homes at Allenwood, LLC, Village Square Development Company, LLC, Lancaster Redevelopment Corporation, damages in the minimum amount of Six Hundred Thousand and No/100 (\$600,000.00) Dollars and other amounts to be determined at trial; and
4. Awarding any and all such further relief as this Court may deem just and proper.

BUIST, BYARS & TAYLOR, LLC

Mount Pleasant, South Carolina

Sept. 1, 2015

By:



G. Hamlin O'Kelley, III

S.C. Bar No. 15491

652 Coleman Blvd., Suite 200

Mt. Pleasant, SC 29464

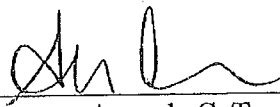
(843) 856-4488

Hamlin.okelley@buistbyars.com

CERTIFICATE OF MAILING

I hereby certify that on September 1, 2015, a copy of the foregoing *Summons, Answer and Counterclaim of the Defendants* was mailed, postage prepaid, to all counsel of record in this matter, as follows.

Mr. Glynn L. Capell, Esq.
The Capell Law Firm, LLC
PO Box 6628
Hilton Head, SC 29938



Amanda C. Taylor
Paralegal to G. Hamlin O'Kelley, III

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

JAMES R. BRADY,
Plaintiff,

vs.

HILTON HEAD HOMES AT
ALLENWOOD, LLC, VILLAGE
SQUARE DEVELOPMENT
COMPANY, LLC, LANCASTER
REDEVELOPMENT CORP. and
GARY L. GROSSMAN

Defendants.

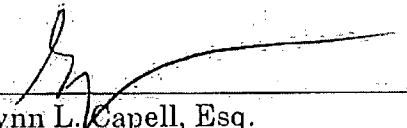
) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) C.A. No.: 2015-CP-07-2047

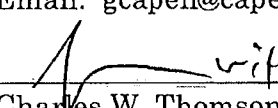
) **SUMMONS**
) (Jury Trial Demanded)

2015 AUG 25 PM 4:00
FILED
CLERK OF COURT

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to said Complaint on the subscriber at his office, Post Office Box 6628, Hilton Head Island, South Carolina 29938, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to appear and defend the action as required by law, judgment by default will be rendered against you for the relief demanded in the Complaint.

THE CAPELL LAW FIRM, LLC


Glynn L. Capell, Esq.
SC Bar #: 16552
Email: gcapell@capelllaw.com

 with permission
Charles W. Thomson, Esq.
SC Bar #: 101471
Email: cthomson@capelllaw.com

Post Office Box 6628
Hilton Head Island, SC 29938
Telephone: (843) 689-4280
Facsimile: (843) 689-4281
Attorneys for Plaintiffs

August____, 2015
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
C.A. No.: 2015-CP-07-2047

JAMES R. BRADY,)
Plaintiff,)

vs.)

COMPLAINT
(Jury Trial Demanded)

HILTON HEAD HOMES AT)
ALLENWOOD, LLC, VILLAGE)
SQUARE DEVELOPMENT)
COMPANY, LLC, LANCASTER)
REDEVELOPMENT CORP. and)
GARY L. GROSSMAN)
Defendants.)

2015 AUG 26 PM 4:00
FILED
CLERK OF COURT
JULIA A. BROWN

The Plaintiff, James R. Brady ("Plaintiff"), complaining of the Defendants above-named, would respectfully show unto the Court as follows:

PARTIES AND JURISDICTION

1. The Plaintiff is a citizen and resident of Beaufort County, South Carolina.
2. Defendant Hilton Head Homes at Allenwood, LLC ("Hilton Head Homes") is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.
3. Defendant Village Square Development Company, LLC ("Village Square") is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

4. Defendant Lancaster Redevelopment Corporation ("Lancaster") is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of Pennsylvania and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

5. Defendant Gary L. Grossman ("Grossman") is a citizen and resident the State of Pennsylvania and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina

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

FACTUAL ALLEGATIONS

7. On or about February 2, 2004, Grossman entered into a "Letter of Agreement" with Plaintiff wherein Hilton Head Homes, Village Square, Lancaster and Grossman engaged Plaintiff as an independent contractor to perform sales and marketing and construction management services and agreed to compensate Brady as set forth herein.

8. Over the course of the next several years, Brady performed the work as set forth in the February 2, 2004 "Letter of Agreement".

9. On or about September 13, 2007, Plaintiff received a letter from Lancaster setting forth the Defendants' calculations of the amount of money due to Plaintiff for the services he provided to the Defendants since the February 2, 2004 "Letter of Agreement". The September 13, 2007 letter states Plaintiff is due the total amount of \$711,027.00.

10. Plaintiff has retained an accountant to analyze the September 13, 2007 letter and has determined that the actual amount of monies due Plaintiff is \$724,114.00.

FOR A FIRST CAUSE OF ACTION

(Breach of Contract)

11. Each and every allegation set forth above is fully incorporated herein.
12. As set forth more fully above, Plaintiff and Defendants entered into an Agreement wherein Defendants agreed to provide compensation to Plaintiff for providing sales and marketing and construction management services in the construction and sale of single family homes and townhouses in the Allenwood Development ("Allenwood") on Hilton Head Island.
13. Plaintiff performed his obligations of the Agreement and is entitled to compensation for such services as set forth herein.
14. Defendants have breached the Agreement by failing to compensate Plaintiff the amounts admittedly owed.
15. As a direct and proximate result, Plaintiff is entitled to judgment against Defendants in the amount of \$724,114.00, consequential damages, plus costs, prejudgment interest and postjudgment interest.

FOR A SECOND CAUSE OF ACTION
(Quantum Meruit)

16. Each and every allegation set forth above is fully incorporated herein.
17. As set forth above, Plaintiff provided valuable services to the Defendants in the form of sales and marketing activities as well as construction management services.
18. Defendants accepted, used and enjoyed the services provided by Plaintiff.
19. Defendants were aware Plaintiff expected to be compensated for such services and Defendants have valued such services at \$711,027.00.

20. In light of the above, it would be inequitable for Defendants to retain the value of the services provided by Plaintiff without just compensation to Plaintiff in the amount of at least \$711,027.00.

21. As a direct and proximate result, Plaintiff is entitled to judgment against Defendants in the amount of \$724,114.00, consequential damages, plus costs, prejudgment interest and postjudgment interest.

FOR A THIRD CAUSE OF ACTION
(Conversion)

22. Each and every allegation set forth above is fully incorporated herein.

23. As set forth above, Defendants have exercised the unauthorized assumption and right of ownership over \$711,027.00 to the exclusion of Plaintiff's rights of such amount.

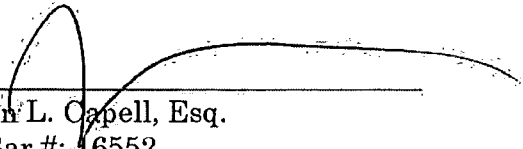
24. Plaintiff has an interest in the \$711,027.00 and Defendants converted the property to their own use without the permission of Plaintiff.

25. Upon information and belief, Defendants knowingly or with reckless intent converted the \$711,027.00 to their own use.

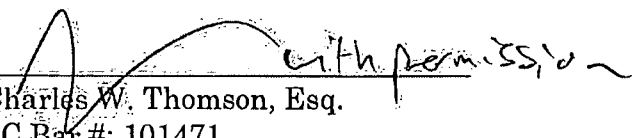
26. As a direct and proximate result, Plaintiff is entitled to judgment against Defendants in the amount of \$724,114.00, consequential damages, plus costs, punitive damages where applicable, prejudgment interest and postjudgment interest.

WHEREFORE, the Plaintiff prays for judgment against Defendants in the amount of \$724,114.00, plus consequential damages, costs, punitive damages where applicable, and prejudgment interest and postjudgment interest, and for such other and further relief as this Court may deem just and proper.

THE CAPELL LAW FIRM, LLC



Glynn L. Capell, Esq.
SC Bar #: 16552
Email: gcapell@capelllaw.com



Charles W. Thomson, Esq.
SC Bar #: 101471
Email: cthomson@capelllaw.com

Post Office Box 6628
Hilton Head Island, SC 29938
Telephone: (843) 689-4280
Facsimile: (843) 689-4281
Attorneys for Plaintiffs

August 21, 2015
Hilton Head Island, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-07-02690

James R. Brady

Hilton Head Homes at Allenwood LLC et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Megan White

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: After a hearing on May 15, 2015, Plaintiff's Motion to Refer to a Special Referee is denied. Upon the consent of counsel, this case shall be dismissed pursuant to 40(j) and immediately refiled with a new case number.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

2142
Judge Code6/15/15
Date

For Clerk of Court Office Use Only

This judgment was entered on the 16th day of June, 20 15 and a copy mailed first class or placed in the appropriate attorney's box on this 23rd day of June, 20 15 to attorneys of record or to parties (when appearing pro se) as follows:

Glynn Lindsey Cepell, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

George Hamlin O'Kelly, III
Gary L. Gossman

ATTORNEY(S) FOR THE DEFENDANT(S)

Diana S. Hession / Staff
CLERK OF COURT

Court Reporter:

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

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

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
C.A. No.: 2009-CP-07- 02490

JAMES R. BRADY,)

Plaintiff,)

vs.)

SUMMONS
(Jury Trial Demanded)

HILTON HEAD HOMES AT
ALLENWOOD, LLC, VILLAGE
SQUARE DEVELOPMENT
COMPANY, LLC, LANCASTER
REDEVELOPMENT CORP. and
GARY L. GROSSMAN)

Defendants.)

2009 JUN -5 AM 11:46
ELIZABETH H. SMITH
BEAUFORT COUNTY, S.C.
CLERK OF COURT

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to said Complaint on the subscriber at his office, 70 Arrow Road, Ste. 1, Post Office Box 5969, Hilton Head Island, South Carolina 29938, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to appear and defend the action as required by law, judgment by default will be rendered against you for the relief demanded in the Complaint.

MULLEN WYLIE, LLC

By: _____

Glynn L. Capell (S.C. Bar No. 16552)
70 Arrow Road, Suite 1
P.O. Box 5969
Hilton Head Island, SC 29938
(843) 785-6969
Attorneys for the Plaintiff

June 4, 2009
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

JAMES R. BRADY,)

Plaintiff,)

vs.)

HILTON HEAD HOMES AT
ALLENWOOD, LLC, VILLAGE
SQUARE DEVELOPMENT
COMPANY, LLC, LANCASTER
REDEVELOPMENT CORP. and
GARY L. GROSSMAN)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
C.A. No.: 2009-CP-07- 02690

COMPLAINT
(Jury Trial Demanded)

2009 JUN -5 AM 11:46
CLERK OF COURT
BEAUFORT COUNTY
SOUTH CAROLINA

The Plaintiff, James R. Brady ("Plaintiff"), complaining of the Defendants above-named, would respectfully show unto the Court as follows:

PARTIES AND JURISDICTION

1. The Plaintiff is a citizen and resident of Beaufort County, South Carolina.
2. Defendant Hilton Head Homes at Allenwood, LLC ("Hilton Head Homes") is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.
3. Defendant Village Square Development Company, LLC ("Village Square") is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

4. Defendant Lancaster Redevelopment Corporation ("Lancaster") is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of Pennsylvania and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina.

5. Defendant Gary L. Grossman ("Grossman") is a citizen and resident the State of Pennsylvania and conducted business, in whole or in part, at all times relevant hereto in Beaufort County, South Carolina

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

FACTUAL ALLEGATIONS

7. On or about February 2, 2004, Grossman entered into a "Letter of Agreement" with Plaintiff wherein Hilton Head Homes, Village Square, Lancaster and Grossman engaged Plaintiff as an independent contractor to perform sales and marketing and construction management services and agreed to compensate Brady as set forth herein.

8. Over the course of the next several years, Brady performed the work as set forth in the February 2, 2004 "Letter of Agreement".

9. On or about September 13, 2007, Plaintiff received a letter from Lancaster setting forth the Defendants' calculations of the amount of money due to Plaintiff for the services he provided to the Defendants since the February 2, 2004 "Letter of Agreement". The September 13, 2007 letter states Plaintiff is due the total amount of \$711,027.00.

10. Plaintiff has retained an accountant to analyze the September 13, 2007 letter and has determined that the actual amount of monies due Plaintiff is \$724,114.00.

FOR A FIRST CAUSE OF ACTION

(Breach of Contract)

11. Each and every allegation set forth above is fully incorporated herein.
12. As set forth more fully above, Plaintiff and Defendants entered into an Agreement wherein Defendants agreed to provide compensation to Plaintiff for providing sales and marketing and construction management services in the construction and sale of single family homes and townhouses in the Allenwood Development ("Allenwood") on Hilton Head Island.
13. Plaintiff performed his obligations of the Agreement and is entitled to compensation for such services as set forth herein.
14. Defendants have breached the Agreement by failing to compensate Plaintiff the amounts admittedly owed.
15. As a direct and proximate result, Plaintiff is entitled to judgment against Defendants in the amount of \$724,114.00, consequential damages, plus costs, prejudgment interest and postjudgment interest.

FOR A SECOND CAUSE OF ACTION

(Quantum Meruit)

16. Each and every allegation set forth above is fully incorporated herein.
17. As set forth above, Plaintiff provided valuable services to the Defendants in the form of sales and marketing activities as well as construction management services.
18. Defendants accepted, used and enjoyed the services provided by Plaintiff.
19. Defendants were aware Plaintiff expected to be compensated for such services and Defendants have valued such services at \$711,027.00.

20. In light of the above, it would be inequitable for Defendants to retain the value of the services provided by Plaintiff without just compensation to Plaintiff in the amount of at least \$711,027.00.

21. As a direct and proximate result, Plaintiff is entitled to judgment against Defendants in the amount of \$724,114.00, consequential damages, plus costs, prejudgment interest and postjudgment interest.

FOR A THIRD CAUSE OF ACTION
(Conversion)

22. Each and every allegation set forth above is fully incorporated herein.

23. As set forth above, Defendants have exercised the unauthorized assumption and right of ownership over \$711,027.00 to the exclusion of Plaintiff's rights of such amount.

24. Plaintiff has an interest in the \$711,027.00 and Defendants converted the property to their own use without the permission of Plaintiff.

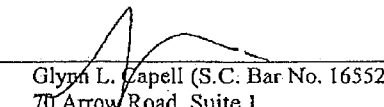
25. Upon information and belief, Defendants knowingly or with reckless intent converted the \$711,027.00 to their own use.

26. As a direct and proximate result, Plaintiff is entitled to judgment against Defendants in the amount of \$724,114.00, consequential damages, plus costs, punitive damages where applicable, prejudgment interest and postjudgment interest.

WHEREFORE, the Plaintiff prays for judgment against Defendants in the amount of \$724,114.00, plus consequential damages, costs, punitive damages where applicable, and

prejudgment interest and postjudgment interest, and for such other and further relief as this Court may deem just and proper.

MULLEN WYLIE, LLC

By: 
Glynn L. Zapell (S.C. Bar No. 16552)
70 Arrow Road, Suite 1
P.O. Box 5969
Hilton Head Island, SC 29938
(843) 785-6969
Attorneys for the Plaintiff

June 4, 2008
Hilton Head Island, South Carolina

1 In the Court of Common Pleas for the
2 State of South Carolina, County of Beaufort

3

4 Case No.: 2015CP0702047

5 James R. Brady,

6 Plaintiff,

7 vs. Transcript of Record

8 Hilton Head Homes At Allenwood, LLC,

9 Defendant(s).

10

11

12

13

14

15 February 6, 2019

16 Beaufort, South Carolina

17

18

19

20

21 BEFORE:

22 The Honorable J. Mark Hayes, II

23

24

25

1 APPEARANCES

2

3

REPRESENTING PLAINTIFF(S) :

4

Charles Whaley Thomson, Esquire

5

843-501-0423

6

7

8

REPRESENTING DEFENDANT(S) :

9

10

Hamlin O'Kelley, III, Esquire

11

843-856-4488

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 PROCEEDINGS

2 THE COURT: All right. I have that this Brady
3 versus Hilton Head Homes.

4 MR. THOMSON: Yes, Your Honor.

5 THE COURT: And I have that this is the
6 plaintiff's Motion for Summary Judgment as to the
7 Defendant's counterclaims?

8 MR. THOMSON: Yes, Your Honor. And your law clerk
9 requested that I bring a hard copy of our brief. We
10 filed it on Monday.

11 MR. O'KELLEY: And, Your Honor, Hamlin O'Kelley
12 for the Defendants. Your law clerk also requested that
13 we bring the hard copy, as we filed ours on Monday as
14 well. So we've got hard copies for Your Honor, as does
15 the Plaintiff.

16 THE COURT: Ready.

17 MR. THOMSON: Your Honor, I'll get the bad part
18 out of the way right off the bat. This case is on the
19 trial roster for Monday, and we are respectfully
20 requesting that you rule on this prior to Monday to
21 prevent prejudice to our client.

22 And I want to briefly touch on the procedural
23 history briefly, so we know why you are -- why we put
24 you in this jam.

25 We first filed this motion more than two years

1 ago.

2 THE COURT: The Motion for Summary Judgment?

3 MR. THOMSON: Yes, Your Honor. And the same exact
4 motion we had to refile it.

5 So we filed this Motion for Summary Judgment.
6 There was a mediation. We provisionally settled the
7 settlement document back and forth, and basically we
8 discovered there was going to be no reasonable
9 iteration of the settlement agreement that the
10 Defendants were going to sign.

11 So we filed a motion to get a Motion for Status
12 Conference, basically asking for three things. We want
13 our Motion for Summary Judgment heard. We have one
14 more depo to take. And we want to be on the trial
15 roster.

16 And basically we all agreed during the hearing
17 with Judge Mullen, Hamlin, and I, let's do the depo
18 first and then refile your Motion for Summary Judgment
19 after that.

20 So I took the depo, immediately filed this motion,
21 and then in the meantime we got placed on the trial
22 roster. So I don't want you to think this is a matter
23 where we got put on the trial roster and I rushed to
24 file some last minute Hail Mary summary judgment
25 motion. This has been in the works for a while, and

1 it's just an unfortunate set of circumstances that
2 leads us to where we need a fast ruling.

3 So with that out of the way, this case involves
4 the development of a neighborhood. Hamlin's client was
5 a developer in the neighborhood, my client was a
6 builder.

7 My client built approximately 130 houses in that
8 neighborhood. All of them were marketed and sold. The
9 developer made a handsome profit off of those houses.
10 A certain amount of money obviously was owed to my
11 client for those services. He was paid some of the
12 money, but not all of it, so he asked for an
13 accounting.

14 This process started in 2004. This was in 2007 by
15 the time he had built 103 houses. He asked for an
16 accounting. The Defendant's employee, their treasurer,
17 wrote him a letter with the accounting.

18 It basically said, the letter said, "So far we
19 have paid you \$500,000, we paid a hundred and some
20 thousand dollars to some other third parties. We are
21 accounting for that. And even after we account for all
22 that, you are owed all this money on the these houses
23 that have already sold, profit is already made, and the
24 balance owed to you is \$711,000."

25 So it's pretty cut and dry. They admitted they

1 owed my client \$711,000.

2 I submitted that letter to you with my memo, also
3 submitted an affidavit for my client that essentially
4 verifies that that letter says exactly what it says.
5 Also submitted some testimony from the lady, Ginger
6 Griffith, the treasurer, who wrote the letter, and the
7 testimony is pretty damning.

8 On their side, they submitted no affidavits, no
9 documents. They sent evidence that, Hey, they paid my
10 client some money, and plenty of third parties, but
11 none of those payments -- they were all included within
12 the letter and accounted for, and then after they got
13 accounted for, they admitted they owed my client
14 \$711,000.

15 So these are not -- those payments are not
16 evidence of anything, as far as he being entitled to
17 any money.

18 Let me back up. They filed counterclaims saying
19 that we owed them in excess of \$600,000. These were
20 just allegations thrown at the wall. They have no
21 basis.

22 Basically, what they're saying is, all the money
23 we did pay you for building those 130 houses, we didn't
24 pay you half of what you earned, and all the money we
25 did pay you, we want that back.

1 So basically he was supposed to have worked for
2 free? A, this is a disgusting counterclaim. I just
3 don't have much respect for it.

4 If they -- I notice he didn't submit an affidavit
5 from Mr. Grossman's client. If they produced any
6 testimony showing that they -- these counterclaims are
7 substantiated, the witness would be impeached because
8 the evidence just doesn't back up the allegations. So
9 they are just mere allegations.

10 Rule 56 is clear that mere allegations are not
11 enough. You need to have some kind of affidavit, or
12 document, or other way to substantiate that. And I'll
13 just -- let me read a clip from Ms. Grossman's
14 testimony. This is who wrote the letter saying he was
15 owed \$711,000.

16 THE COURT: Do I have Ms. Grossman's testimony?

17 MR. O'KELLEY: Ms. Griffith, Your Honor.

18 MR. THOMSON: Yeah. Ms. Griffith. I'm sorry.

19 Not Ms. Grossman.

20 THE COURT: And when you read it, tell me what
21 page and line.

22 MR. THOMSON: It's Page 35 through 36, and is
23 Exhibit B in my memo. So towards the end, the very
24 last part that is highlighted.

25 I asked the question: "Just to drive this point

1 home one last time, you concluded on September 13th,
2 2007, that the contracting parties owed Rod \$711,027.
3 \$711,027, right?"

4 Answer: "Yes."

5 Question: "And you didn't just throw that letter
6 together, right?"

7 Answer: "No."

8 Question: "And you are a professional in the
9 accounting business, right?"

10 Answer: "Right."

11 Question: "And you made a good faith effort to
12 get those numbers right, didn't you?"

13 Answer: "Yes."

14 Question: "And you haven't discovered any errors
15 here now since the time you wrote that letter?"

16 Answer: "No."

17 Question: "Okay. And you don't have any evidence
18 showing that Lancaster Redevelopment Corporation, Gary
19 Grossman, or any other affiliated entity paid any money
20 to Rod subsequent to this September 13th, 2007 letter?"

21 Answer: She said, "I don't know if anything has
22 been paid Rod or not, right."

23 Question: "But the question is, you don't have
24 any evidence showing it, right?"

25 Answer: "Right."

1 Question: "And no other evidence has been
2 produced in this matter showing there are any payments
3 after 2007."

4 So if they can't show that, it's pretty cut and
5 dry summary judgment should be granted. They're
6 basically wanting our client to give back the half
7 money -- the less than half money that he earned, they
8 want that back, and it's just...

9 Out of personal respect for Hamlin, I'm not
10 bringing up a Rule 11 issue, but that's how bad these
11 counterclaims are, Your Honor.

12 MR. O'KELLEY: Thank you, Your Honor. Hamlin
13 O'Kelley for the Defendants.

14 And by way of (inaudible), Your Honor, we have
15 submitted all of Ms. Griffith's deposition to you, not
16 just the portion that was just read, Your Honor.

17 Your Honor, I'm here on behalf of Hilton Head
18 Homes at Allenwood, LLC; Village Square Development
19 Company, LLC; Lancaster Redevelopment Corporation; and
20 a fellow named Gary Grossman individually.

21 Hilton Head Homes at Allenwood and Village Square
22 Development Company were two South Carolina LLCs that
23 were developing neighborhoods on Hilton Head Island
24 back in the early part of the 2000s. They were
25 actually approached by the town of Hilton Head to

1 create what was then euphemistically called Work Force
2 Housing. It was going to be all the rage, and new
3 urbanism. And my clients were gung ho to build.

4 Lancaster Redevelopment Corporation is a
5 Pennsylvania corporation that is owned by my client,
6 Gary Grossman. Gary Grossman was also a member of the
7 two LLCs that were building out on Hilton Head.

8 Ms. Griffith has served as their treasurer for
9 years. That is true. Our counterclaims, Your Honor,
10 and this is the first I've heard that I am somehow
11 disingenuous or that these rise to some Rule 11
12 sanctionable event is today in this courtroom.

13 We filed counterclaims in this matter based on the
14 fact that Mr. Brady, the Plaintiff, was to be paid
15 incentive fees and management fees, but those were to
16 be paid after the debts of the company were paid back.
17 And Ms. Griffith states that clearly in her deposition,
18 on Page 37, Your Honor.

19 You asked what page, and in questioning her, I
20 asked her: "All right. What was the arrangement as to
21 how Mr. Brady was to be paid? Mr. Thompson asked you
22 earlier about that. But it's my understanding that
23 Mr. Brady was to be paid after all the debts of the
24 company were to be paid, correct?"

25 Her answer: "The incentive management fees were

1 to be paid after the initial debts from Lancaster
2 Redevelopment or Mr. Grossman were repaid."

3 My next question to her was this: "And remind the
4 folks who are listening to you what was going on with
5 the greater economy in 2007."

6 Answer: "I believe that's when the housing market
7 started to take a nose-dive, and we'll all remember
8 what was going on with the greater economy during that
9 time."

10 Mr. Thompson just cited a letter from Ms. Griffith
11 where he is trying to make a bunch of hay out of the
12 fact that Mr. Grossman and Village Square and Hilton
13 Head owns now with Lancaster Redevelopment promised to
14 pay Mr. Brady, but I don't think that's what the letter
15 states, Your Honor.

16 If you go to the last page of that letter, which
17 is Exhibit A to Mr. Brady's affidavit, Ms. Griffith
18 specifically states that LRC, which is Lancaster
19 Redevelopment Corporation, "Simply cannot fund any
20 additional monthly expenses," and that was part of the
21 larger economy.

22 Your Honor, they have sought summary judgment in
23 this case. That's correct, it's been a while. No one
24 is citing that Mr. Thompson is doing anything, a gotcha
25 moment or anything like that procedurally. But if this

1 case is scheduled for trial in the not-distant future,
2 and he says, Your Honor, you got to rule quickly
3 because otherwise his client's rights will be
4 prejudiced, the converse is true for my client.

5 Summary judgment is a drastic remedy not to be
6 invoked lightly. If Your Honor grants it, there will
7 be an appeal. There just has to be.

8 So, Your Honor, I would suggest that this motion
9 be denied and the case proceed accordingly. If the
10 motion is denied, there is no appeal from that, and
11 that the ultimate finder of fact can decide whether or
12 not Mr. Brady was given these sums as a loan for future
13 profits against the company, or whether he's actually
14 owed the money. Because that's the ultimate issue in
15 the case, and I think a ten-minute argument here on a
16 Wednesday afternoon in Beaufort short circuits both
17 side's rights to have this matter fully tried and
18 fleshed out at the time the trier of fact hears the
19 case, Your Honor.

20 Thank you.

21 MR. THOMSON: Your Honor, I didn't hear any
22 evidence suggesting that my client owes his client any
23 money. I heard reasons why my client didn't get paid,
24 and that's it. That evidence doesn't exist.

25 The letter is an admission. They were having

1 trouble paying it because they had recession problems
2 with projects other than the ones that Mr. Brady worked
3 on.

4 The money that was earned here, the houses were
5 already sold, profits were already made. You can dive
6 into the accounting of the letter. Each one of these
7 LLCs turned a profit. They took that money and paid
8 off debts on projects that Mr. Brady had nothing to do
9 with, and he is supposed to sit there and solicit for
10 his money.

11 Again, there's no evidence that he would owe them
12 anything. And if there's a document, please show it to
13 us. There is nothing. I do not want the jury to hear
14 those allegations. It's not right.

15 MR. O'KELLEY: Your Honor, whether it's right or
16 not, we are entitled to bring them, and it's my
17 client's, even though Mr. Thompson says it's
18 disrespectful to the Court, it's my client's right to
19 bring those.

20 THE COURT: Not without evidence.

21 MR. O'KELLEY: That's true, Your Honor, but to
22 short circuit by this case, to do it now, Mr. Thompson
23 just injected some facts into the case himself, about
24 other developments, and carrying costs, and whether
25 things -- I'm allowed to finish, Mr. Thomson -- whether

1 things are truly existed or not, Your Honor.

2 So you have heard our argument, Your Honor.

3 THE COURT: The purpose of summary judgment is
4 also to be able to assist the trier of fact. And so
5 summary judgment, the proper purpose of a summary
6 judgment motion is to narrow the issue so that the
7 trier of fact can get to the truth of matters.

8 What I read in those letters, in that letter
9 though, it sounds more like you wanting me to grant
10 summary judgment as to your claim against the Defendant
11 verses the counterclaims.

12 MR. THOMSON: Yes, Your Honor. I ask on the
13 counterclaims. We are owed \$711,000, and we are going
14 to try that issue on whether we are owed that money or
15 not, but there's a separate allegation that, hey, not
16 only are you not entitled to that, you owe us \$600,000.
17 And that's what the counterclaims are.

18 They are basically asking for the money they paid,
19 the partial payments they made, they want those back,
20 and there's no evidence that they are entitled to that
21 whatsoever.

22 THE COURT: You referenced, during your argument,
23 you referenced me to the letter and a paragraph in that
24 letter. I couldn't find that paragraph. Tell me again
25 where that is.

1 MR. O'KELLEY: I'm sorry, Your Honor. I'll pass
2 it up.

3 In the affidavit of Mr. Brady, it is the very last
4 paragraph that states -- and I'll just read it into the
5 record one more time.

6 That states from Ms. Griffith that "LRC, meaning
7 Lancaster Redevelopment, simply cannot fund any
8 additional monthly expenses. I've attached a summary.
9 Kind regards."

10 But it is exhibit -- the last page of Exhibit A to
11 Mr. Brady's affidavit. And here's a copy, Your Honor.

12 THE COURT: Well, that's just part of a sentence.
13 It wasn't even all of it.

14 MR. THOMSON: It is not evidence that my client
15 owes them any money, it's evidence that they are having
16 a hard time paying. And we fleshed that paragraph out
17 with Ms. Griffith, and basically what she was saying is
18 what I said earlier. Yeah, we owe you \$711,000, but
19 the money is not there to pay you. Even though the
20 LLCs you worked on made a profit, and the houses are
21 already sold, profits were gained, but we have these
22 expenses elsewhere that we owe money for on projects
23 that have nothing to do with the project at hand, and
24 that's why we can't pay you.

25 That is what that paragraph says.

1 THE COURT: In your complaint against the
2 Defendants, are you seeking both actual and punitive
3 damages?

4 MR. THOMSON: Yes, Your Honor. We have a Cause of
5 Action Conversion, and punitive can be a part of that.

6 THE COURT: Well, why would you not want the jury
7 to hear -- I mean, if what you say is true, and they
8 have no merit to their claim, why would you not want to
9 make that argument to the jury and have them walk in
10 front of a jury and make defenseless claims against
11 your client and say, "Look what they are doing, they're
12 disparaging my client with absolutely no evidence," and
13 sort of get the jury enraged.

14 Because if, by chance, I grant your Summary
15 Judgment Motion, that would take, I guess, some of the
16 fuel out of your argument?

17 MR. THOMSON: Well, Your Honor, we still -- it is
18 a 12-person jury. Who knows what they might latch
19 onto? We just don't -- there's no facts to support it,
20 and we don't want the allegation smeared, even if -- if
21 that hurts our chances of punitive, so be it.

22 But we want a good, fair result, and we don't want
23 smeared allegations to taint the trial.

24 THE COURT: Best I can do is to tell y'all that I
25 will do my best to take a look at it. But as you sat

1 in the courtroom all afternoon, almost nothing has
2 resolved itself. I have a lot under advisement now, as
3 well as other matters.

4 MR. O'KELLEY: And, Your Honor, just so you know,
5 for housekeeping purposes, we have been in touch with
6 Judge Perry Buckner, who is the administrative judge,
7 and his law clerk was asking what happened here today,
8 and we haven't written him back.

9 So obviously we have actually made a motion, a
10 consent motion for a date certain trial. So if we tell
11 His Honor that it's under advisement, I think there
12 will be some -- I don't know how that will work with
13 the Clerk's office.

14 THE COURT: Well, y'all could tell me, and then I
15 wouldn't have to rush.

16 MR. THOMSON: Well, Your Honor, I don't -- I have
17 a feeling, a strong suspicion, that this trial is going
18 forward.

19 THE COURT: Monday?

20 MR. THOMSON: Well, Mr. O'Kelley doesn't have a
21 conflict. His conflict starts on Wednesday, and this
22 is a two-day trial. I don't think there's any reason
23 why we can't get it done.

24 THE COURT: I'll do my best. I mean, you know,
25 I've got a lot of things under advisement. I will do

1 my best, I will try to move this to the front, but I
2 also have to travel back.

3 Friday I've got -- I am a business court judge,
4 I'm already scheduling things for my business court
5 cases on Friday, so I have other things as well.

6 MR. THOMSON: And, Your Honor, and it's completely
7 out of character for me to put a judge in this
8 position, and I'm sorry I'm doing that, but it's just a
9 critical item for my client.

10 MR. O'KELLEY: Thank you, Your Honor.

11 THE COURT: Okay.

12 (Hearing concluded.)
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 15th day of May, 2019.

Mona L. Manley /s/

MONA L. MANLEY

Official South Carolina Court Reporter

Circuit Reporter for the 14th Circuit

(850) 893-6662

mmanley@sccourts.org

1 STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS
2 COUNTY OF BEAUFORT * FOURTEENTH CIRCUIT
3 * C.A. No. 2015-CP-07-02047
4 James R. Brady, *
5 Plaintiff, *
6 v. *
7 Hilton Head Homes at *
Allenwood, LLC; Village
8 Square Development Company, *
LLC; Lancaster Redevelopment
9 Corp.; and Gary L. *
Grossman, *
10 *
Defendants.

11 *

12

13 * * * * *

14 December 19, 2018

15 * * * * *

16 Deposition of GINGER GRIFFITH, held in the
17 offices of Premier Reporting, LLC, 112 Market Street
18 Suite 406, Harrisburg, Pennsylvania 17101,
19 commencing at 10:06 a.m., on the above date, before
20 Tracy Dominico, a Professional Court Reporter and
21 Notary Public of the Commonwealth of Pennsylvania.

22

23

24

25

1 APPEARANCES:

2 THE CAPELL LAW FIRM, LLC

321 East Bay Street

3 Charleston, South Carolina 29401

BY: CHARLES W. THOMSON, ESQUIRE

4 (Via videoconference)

(843) 501-0423

5 Counsel for the Plaintiff

6 BUIST BYARS & TAYLOR, LLC

652 Coleman Boulevard, Suite 200

7 Mt. Pleasant, South Carolina 29464

BY: G. HAMLIN O'KELLEY, III, ESQUIRE

8 (Via telephone)

(843) 284-1408

9 Counsel for the Defendants

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

INDEX

1			
2	DEPONENT	EXAMINATION	PAGE
3	GINGER GRIFFITH	By Mr. Thomson	4
4		By Mr. O'Kelley	--
5			
6			

EXHIBITS

7			
	NO.	DESCRIPTION	PAGE
8			
	1	Two Notices of	10
9		Depositions, Two	
		Subpoenas	
10			
	2	Letter of 9/13/07	13
11			
	3	Copy of Letter of	4
12		9/13/07	
13	4	Letter of 2/2/04	15
14	5	Letter of 12/12/07	30
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 P R O C E E D I N G S

2 (Proceedings commenced at 10:06 a.m.)

3 (Deposition Exhibit Nos. 1 through 5 were
4 premarked for identification.)

5 * * * * *

6 GINGER GRIFFITH, after having been duly
7 sworn/affirmed to tell the truth, the whole truth and
8 nothing but the truth, testified as follows:

9 * * * * *

10 EXAMINATION

11 BY MR. THOMSON:

12 Q. Ms. Griffith, my name is Charles Thomson. I
13 represent James Rod Brady in this South Carolina
14 matter. Have you ever had your deposition taken
15 before?

16 A. No.

17 Q. Okay. There's just a couple of ground rules
18 to go over. So if I ask you a yes or no question, make
19 sure you answer with a yes or a no, not an uh-huh or
20 uh-uh. I might understand if you say uh-huh, but we
21 have a court reporter transcribing the proceedings
22 today.

23 And it doesn't make a very clear record when
24 you say things other than yes or no, including nods of
25 your head. And make sure you say yes or no if you nod

1 your head too.

2 A. Okay.

3 Q. Also when I ask you a question, please wait
4 until I finish the question before you answer even if
5 you know where I'm going. I don't consider that always
6 to be rude. But, again, we have a court reporter
7 transcribing this, and if we both talk at the same
8 time, it makes it difficult for her.

9 The last ground rule is, if I ask you a
10 question and you answer it, I'm going to assume that
11 you understood the question. Is that fair?

12 A. Yes.

13 Q. And if at any time you don't understand my
14 question, feel free to ask me to rephrase or whatever I
15 need to do to make it more clear.

16 A. Okay.

17 Q. Finally, I noticed two of these depositions
18 today and tomorrow. Do you understand the difference
19 between them? Tomorrow is a deposition de bene esse.
20 It's a Latin term. Do you understand the difference in
21 today and tomorrow?

22 A. No, not really.

23 Q. Okay. So it might seem like a pain to you
24 to drive there two days in a row, and I understand that
25 and I appreciate it. But the alternative is if we

1 didn't do tomorrow's deposition, you would have to come
2 to South Carolina for a trial. And it's a lot easier
3 to do this by video tomorrow. So in terms of today's
4 deposition, it's a discovery depo. It's exploratory.
5 The lights are not on. I just want to know what you
6 know and what you don't know. It's a little more free
7 flowing.

8 Whereas, tomorrow's videotaped deposition is
9 our performance at trial so to speak. I know we're not
10 in the middle of a trial, but we will preserve the
11 video of tomorrow for future use at trial.

12 But the video we're on now today is not
13 going to be used at trial. Tomorrow there will be a
14 videographer making a permanent video to be used at
15 trial. So that's the two differences.

16 Again, I know it's a hassle to travel at a
17 depo. But, again, we did it that way for your
18 convenience ultimately because traveling to South
19 Carolina is a lot harder than traveling there.

20 A. Okay.

21 MR. O'KELLEY: And note for the record, Ms.
22 Griffith may be in South Carolina regardless depending
23 on where this case goes.

24 MR. THOMSON: Okay.

25 BY MR. THOMSON:

1 Q. You're certainly welcome to travel to trial
2 if you want to. We can address that in the future if
3 we have to. All right. I just want to briefly first
4 get into your background. What is your educational
5 level after high school?

6 A. I have an associate degree in accounting.

7 Q. Okay. Where did you achieve that? Where
8 did you earn that degree?

9 A. Williamsport Community College in
10 Williamsport, Pennsylvania.

11 Q. And where did you go to high school before
12 that?

13 A. Selinsgrove High School.

14 Q. So you were born and raised in Selinsgrove?

15 A. Correct.

16 Q. Do you still live there now?

17 A. Yes.

18 Q. Ever lived anywhere else?

19 A. No.

20 Q. Do you have any contacts in Beaufort County,
21 South Carolina?

22 A. No.

23 Q. Let me get your work history. What is your
24 position right now?

25 A. Accounting manager.

1 Q. Who are you accounting manager for?

2 A. Building Solutions Since 1977, LLC.

3 Q. Since '77, is that part of the company name
4 or are you being descriptive there?

5 A. That's part of the company name.

6 Q. Okay. So how long have you held that
7 position?

8 A. Since June of 2010.

9 Q. If we could just work our way backwards, so
10 before 2010, what position did you hold then?

11 A. I was the accounting manager for Lancaster
12 Redevelopment Corp.

13 Q. When did you start that position?

14 A. November 1998.

15 Q. Okay. And that went on until June of 2010?

16 A. Correct.

17 Q. Okay. What year did you graduate from,
18 Williamsport Community College?

19 A. 1985.

20 Q. All right. And before 1998, November 1998
21 when you started with Lancaster Redevelopment
22 Corporation, what was your position before that?

23 A. From 1995 until -- or 1985 until 19 -- let
24 me think -- 88 I was an accounting clerk for Neal
25 Lewis, CPA.

1 Q. Okay.

2 A. And then from 1988 until 1998, I was
3 accounting manager for Bilger Fuels Incorporated.

4 Q. Bilger Fuels Incorporated, was that a
5 company associated with Gary Grossman or was that a
6 completely different employer?

7 A. Completely different.

8 Q. Okay. So your dealings with Mr. Grossman's
9 company began in 1998 and then to the present?

10 A. Correct.

11 Q. Your position at Building Solutions Since
12 1977, LLC and Lancaster Redevelopment Corporation, are
13 they essentially the same position for a different
14 company or is your work --

15 A. Same position.

16 Q. Okay. Can you describe in detail to me what
17 that position is? What tasks are you in charge of
18 taken care of?

19 A. I handle all accounting functions, payroll,
20 Human Resources, insurance, risk management. I'm
21 trying to think what else I do. I do all billings to
22 our customers for work completed. I handle all
23 receivables, all payables, general ledger.

24 Q. Okay.

25 A. I don't know how more detailed you want.

1 Q. I think that gives me a general idea. Your
2 background is -- you're not a CPA, though?

3 A. No.

4 Q. Okay. You definitely have a professional
5 degree in the accounting field, and you've handled all
6 accounting tasks for Mr. Grossman's two construction
7 companies over the years?

8 A. Correct.

9 Q. I should say two of Mr. Grossman's
10 construction entities. Do some of your tasks -- I know
11 often in the development business, and it happens in
12 South Carolina, the parent development company might
13 make, sort of, single-purpose companies or
14 limited-purpose companies for certain developments.

15 Do you also do the accounting for those
16 companies that are under the umbrella of, say, Building
17 Solutions Since 1977 or Lancaster Redevelopment
18 Corporation?

19 A. Yes.

20 Q. Okay.

21 MR. THOMSON: I'm going to enter Exhibit 1,
22 please.

23 (Deposition Exhibit No. 1 was entered into
24 the record.)

25 BY MR. THOMSON:

1 Q. I'm not going ask you about everything in
2 here. But on page 5, I'm going to have a question
3 about that. This is a subpoena, a South Carolina
4 subpoena. Have you seen this document before?

5 A. Yes.

6 Q. Okay. The documents command you two
7 different things. The first thing is to appear at this
8 site that you're at right now, which you have done.
9 Thank you very much. The second request is and says
10 that you were commanded to produce certain documents.

11 Did you review that request of documents?

12 A. Did I review it?

13 Q. Yes.

14 A. Yes.

15 Q. Do you have any documents in response to
16 those requests?

17 A. No, I do not.

18 Q. Okay. The Defendants in this case produced
19 certain documents that came from the company's
20 possession. So I take it any document that you have
21 would have been included in what was in the company's
22 possession, correct?

23 A. That is correct.

24 Q. There's no possible electronic files on a
25 personal computer of yours that Lancaster Redevelopment

1 Corporation, for instance, would have access to?

2 A. No.

3 Q. Lancaster Redevelopment Corporation, do they
4 still do business?

5 A. No.

6 Q. What type of business did they do?

7 A. They were a manufacturer of panelized
8 building components that were then sold to companies
9 that erected them to become complete houses or
10 commercial buildings.

11 Q. Okay. And Building Solutions Since 1977,
12 LLC, do they perform that same task?

13 A. Yes.

14 Q. Do you know off the top of your head
15 Building Solutions Since 1977, LLC -- that's a mouthful
16 -- do they have any officers or directors other than
17 Mr. Grossman?

18 A. Michael Grossman and Matthew Grossman are
19 some, sort of, very minority partners. But I don't
20 know if I would consider them to be directors.

21 Q. Are those Mr. Grossman's sons, Gary
22 Grossman's sons?

23 A. Correct.

24 Q. Would you characterize them as passive
25 partners?

1 A. Yes.

2 Q. Do you know of any lawsuit Lancaster
3 Redevelopment Corporation was involved in over the
4 years?

5 A. I don't have a number.

6 Q. Was it more than 100?

7 A. I don't think so.

8 Q. Okay. Do you know if it was more than 50?

9 A. By lawsuit, does that include if somebody
10 filed collection procedures?

11 Q. Right.

12 A. No. I would think it's under 50.

13 Q. Did Lancaster Redevelopment Corporation ever
14 file for bankruptcy?

15 A. No, not that I recall.

16 MR. THOMSON: I'm going to enter Exhibit 2.

17 (Deposition Exhibit No. 2 was entered into
18 the record.)

19 BY MR. THOMSON:

20 Q. Exhibit 2 is a letter dated September 13,
21 2007. We'll go to the fourth page. It appears to be
22 this letter is from you. You're named as treasurer. I
23 guess that is treasurer of Lancaster Redevelopment
24 Corporation?

25 A. Yes.

1 Q. You wrote this letter?

2 A. Yes.

3 Q. Are you aware if there's a signed version of
4 this letter anywhere?

5 A. No, I'm not aware if there is or is not a
6 signed version.

7 Q. When we say signed version, we mean
8 something -- sometimes there's different technical
9 legal definitions. I just want to clarify that we're
10 talking about common parlance. There's no inked
11 signature on this letter, correct?

12 A. I don't know if we just e-mailed it or if we
13 actually printed it, signed it with ink, and sent it to
14 Mr. Brady.

15 Q. Do you still have an original copy of this
16 letter on a computer?

17 A. No. The computer that I was using in 2007
18 had a hard drive failure and was discarded. And I got
19 a new computer. A lot of the documents that I had
20 personal on there were lost.

21 Q. You don't have any -- you can reserve this
22 -- you can reserve the right to update your response to
23 this question after we go through this letter in more
24 detail. But as of now, you're not aware of any --

25 A. Your question was all garbled. There was

1 a computer glitch or something. I didn't hear what you
2 asked.

3 Q. Okay. Sure. You may reserve the right to
4 supplement your response here as we dive into more
5 detail in this letter. But my question is, are you
6 aware of any version of this letter that might be more
7 final or might have been edited since the version that
8 is sitting in front of you as Exhibit 2?

9 A. No, I'm not aware.

10 Q. All right. I would like to go through this
11 letter paragraph by paragraph or a group of paragraphs
12 by paragraphs just to verify that the letter speaks for
13 itself or is additional context needed that might
14 illuminate what your communicating in this letter.

15 So the first paragraph says "Dear Rod,
16 pursuant to your discussion with Mr. Grossman, I am
17 transmitting our analysis of the Allenwood compensation
18 to you under our February 2, 2004 letter of agreement."

19 That's pretty self-explanatory, right?

20 A. Yes.

21 Q. And I'm going to sidetrack here and go to
22 the next letter that's Exhibit 4.

23 MR. THOMSON: And, Madam Court Reporter, if
24 you wouldn't mind entering that.

25 (Deposition Exhibit No. 4 was entered into

1 the record.)

2 BY MR. THOMSON:

3 Q. Exhibit 4 is a letter from Gary Grossman
4 dated February 2, 2004. If you can please look at that
5 and tell me if this is what you're referring to here in
6 your September 13, 2007 letter that we just looked at
7 previously in Exhibit 2.

8 A. Yes, it is.

9 Q. Just a couple of questions about this one
10 before we actually move back to Exhibit 2. Two
11 paragraphs down on the first page, it says "Please make
12 a note that the 64 single family lot agreement has
13 Hilton Head Homes, LLC not Hilton Head Homes, Inc. As
14 the purchaser. I do not want any creditor of Hilton
15 Head Homes, Inc. To be able to take hostile action
16 against the Allenwood project."

17 Is that common practice to start a new
18 company name to prevent the possibility of lawsuits?

19 A. I believe Hilton Head Homes, Inc. Had a
20 different owner. I don't know if Rod was involved in
21 that. But Gary wanted his company to be completely
22 separate from any other.

23 Q. Okay. And moving on to the second page of
24 that letter, you see there are roughly eight bullet
25 points there that lay out some terms. I think these

1 are the terms that you used to base your opinion in the
2 September 13, 2007 letter, correct?

3 A. Correct.

4 Q. All right. Let's mostly start with the term
5 "We." Do you plan to offer any opinion one way or the
6 other on what Gary might have meant in this letter when
7 he said "We"?

8 A. I can only assume he meant he and Rod
9 together.

10 Q. Okay. In one of the terms it says "We pay
11 you a flat fee construction management fee." You don't
12 have any outside insight into what Gary meant here,
13 right?

14 A. No.

15 Q. Did you defer to Gary on what it means here?

16 A. I'm sorry. Can you repeat what you're
17 asking?

18 Q. You said you thought "We" meant Gary and
19 Rod. But I noticed that in one of these terms, at
20 least, says "We pay you a flat fee construction
21 management fee." So we're not trying to determine who
22 this "We" means.

23 And I'm just wondering, do you plan to get
24 any insight on who "We" might mean?

25 A. To me, "We" would mean Gary and Rod as

1 Hilton Head Homes, LLC.

2 Q. Okay.

3 A. That's how I would interpret that.

4 Q. All right. And then the last term isn't a
5 bullet point, but it is the paragraph under. It says
6 "In addition to the sales and construction management
7 fees as described, I would like to pay you an incentive
8 management fee of 50 percent."

9 That's an additional term you calculated
10 into your letter, right?

11 A. Yes.

12 Q. Other than that, it says that he gets that
13 fee after "a 1 percent per month interest on cash
14 investment to Lancaster Redevelopment Corporation and
15 500 basis points to me individually for my guarantee."

16 Do you have any idea on what Mr. Grossman is
17 talking about here with the term "my guarantee"?

18 A. He generally did not ever give a personal
19 guarantee on any loans or bank financing. And I
20 believe this one it might have been required for the
21 bank. So he wanted some compensation for giving his
22 personal guarantee.

23 Q. Okay. So 500 basis points, first of all,
24 that's about 15 percent, right?

25 A. Right.

1 Q. And that money was paid to Gary Grossman
2 individually?

3 A. Yes.

4 Q. I want to give you an interpretation of that
5 sentence, and I want you to tell me if you agree or
6 disagree with that interpretation.

7 A. Okay.

8 Q. It seems to me what he might be saying is,
9 in exchange for me, individually, Gary Grossman
10 guaranteeing this payment to you, I get 500 basis
11 points on top of what Lancaster Redevelopment
12 Corporation gets?

13 A. Yes, I agree.

14 Q. And the last sentence of that paragraph
15 says, "However, I am asking that 100 percent of cash
16 invested by Forest Homes, Lancaster Redevelopment
17 Corporation and/or myself be repaid prior to any profit
18 distribution."

19 I noticed one of those "and/or myself" is
20 giving him a priority of repayment. So I would take
21 that to mean there's extra consideration in
22 Mr. Grossman providing his guarantee, correct?

23 MR. O'KELLEY: Object to the form. You can
24 answer it.

25 A. I'm not sure I understand what you're

1 asking.

2 BY MR. THOMSON:

3 Q. The last sentence of this paragraph, it
4 mentions how three different people or companies get
5 paid before any profits get paid to Rod. And those
6 three people are Forest Homes, Lancaster Redevelopment
7 Corporation and myself, meaning Gary Grossman.

8 So that is something additional that
9 Mr. Grossman gets in exchange for this guarantee.
10 Would you agree with that?

11 MR. O'KELLEY: Objection to the form.

12 A. Yeah, he would get his initial investment
13 returned to him first.

14 BY MR. THOMSON:

15 Q. Right.

16 A. Yes.

17 Q. Okay. At the top of the page, it says "I
18 would like all accounting and debt management to take
19 place from my office so I can stay on top of things."
20 That would be your task, right?

21 A. Correct.

22 Q. That's all I have on Exhibit 4. Let's go
23 back to Exhibit 2. All that just for the first
24 paragraph. So let's move down to the next two
25 paragraphs. It starts with "As you are aware." And

1 the last paragraph I'm asking about here it starts with
2 "This distribution was based." That group of
3 paragraphs seems pretty straightforward to me. Do you
4 have any additional context or any reason that part
5 wouldn't be clear?

6 A. No.

7 Q. Next paragraph under that, it starts "Under
8 the February 2, 2004 letter of agreement." In the
9 middle of that paragraph, it says "I interpret February
10 2, 2004 letter." The "I" there, I assume that's you?

11 A. Yes.

12 Q. And all that says is "I interpret the
13 February 2, 2004 letter of agreement to construction
14 fees payable at the time each unit settles." I
15 interrupt that, and correct me if I'm wrong here, all
16 the fees, the earned fees that are laid out in this
17 letter forthcoming, we're talking about units here that
18 were all completed and sold, right?

19 A. Correct.

20 Q. All right. The next paragraph talks about
21 the expenses associated with hiring Nick Grossman and
22 Dan Clore are to be deducted. You are accounting
23 for -- it looks like, Nick Grossman and Dan Clore did
24 work on some of these units.

25 But you are accounting for the fees paid to

1 them in your calculations in this letter, right?

2 A. If they were paid any fees. I believe that
3 they were only paid their salary, not any additional
4 fees.

5 Q. Okay. On page 2 there's a group of -- I
6 hate to jump out of order here, but it's relevant to
7 the last paragraph. You see "Less the commission paid
8 to date," and then there's about four different items?

9 A. Yes.

10 Q. So it says "Salary, benefits and expenses
11 for Nick Grossman and Dan Clore," right?

12 A. Right.

13 Q. And I don't know if you have a calculator
14 handy, but I added up those four numbers. And it looks
15 like \$111,081 is being deducted from the amount that
16 you are calculating that Rod is owed?

17 A. Yes.

18 Q. Back to the last paragraph on the first
19 page, any -- would there have been anything owed to
20 Nick Grossman or Dan Clore for work performed on these
21 town homes that were already completed and sold that
22 would not had been taken account for in this letter?

23 A. I don't believe so.

24 Q. Top photograph on the next page, I know this
25 is tedious, but just any reason that it doesn't clearly

1 state what it says? Is there any additional context or
2 anything we need to understand that paragraph?

3 A. No.

4 Q. For the record, we don't have to get that
5 detailed tomorrow. This is my one chance to flesh out
6 everything there is to know about this letter. The
7 paragraph after that, you start to lay out some
8 numbers. We already went over this:

9 "The construction management fee on the 26
10 sold and settled town homes," we're talking about units
11 that are already closed out here, right?

12 A. Right.

13 Q. There wouldn't have been any reason for Nick
14 or Dan to have to go back out to these units to your
15 knowledge?

16 A. Not to my knowledge.

17 Q. Okay. We added up the total monies paid to
18 Nick and Dan for the services. This is my words, not
19 yours. But I added them up myself. Those four numbers
20 added to \$111,081. That number exceeds what Rod is
21 even being paid for his construction management fees,
22 right?

23 A. It exceeds, is that what you said?

24 Q. Correct.

25 A. Yes.

1 Q. On the rest of this page, same question: Is
2 there -- I mean, we can read it and see what the letter
3 says. But is there any assistance you can offer or
4 additional context that would clarify what's being said
5 in there or just the letter says what it says?

6 A. I believe it says what it says. There's a
7 lot of numbers to take in.

8 Q. The bottom, it says that "The balance of
9 2005/2006 incentive management fee," what does
10 incentive management fee mean to you here? What
11 services is it for?

12 A. To me, it means Rod managing the whole
13 property and the construction of the units. He would
14 be offered a fee.

15 Q. The same process on the next page, it starts
16 with "Under the terms," and all the way down to
17 "Balance due on contribution fees and commissions," is
18 there anything in there that needs clarification or
19 just the letter says what it says?

20 A. The letter says what it says.

21 Q. Okay. Below that it says "Mr. Grossman
22 advises that this amount can be paid from the very next
23 S.F. settlement if Art Long will consent." Do you know
24 if that balance was ever paid to Mr. Brady?

25 A. I don't know without looking into further

1 details somewhere.

2 Q. Do you have that information?

3 A. Do I?

4 Q. Yes.

5 A. Repeat that.

6 Q. Do you or anyone or company that you know of
7 have access to that information to where we would be
8 able to look and see if Rod was paid that money?

9 A. It would have to be in the records of
10 Village Square Development, LLC, I believe, and Hilton
11 Head Homes at Allenwood, in the financial records of
12 that.

13 Q. Okay. Let me sidetrack to one, two, three
14 pages ahead. There it looks like a computer printout
15 from a computer program. Was that done in QuickBooks?

16 A. It was Peachtree. We used Peachtree
17 Accounting.

18 Q. Okay. And what's the status -- is it on
19 your new computers as well?

20 A. No. I no longer have any access to
21 Peachtree Accounting Software.

22 Q. Okay. So if we wanted to dig up records in
23 Peachtree for this project, we're stuck with whatever
24 has been printed out and produced in this matter.
25 You're not aware of any means or methods to find

1 additional documents, correct?

2 A. Correct.

3 Q. If we go back on Exhibit 4, page 2, bottom
4 paragraph --

5 A. Yes.

6 Q. Moving down the list, there's a line going
7 towards the bottom of the page -- well, there's two
8 different lines that say "The 500 basis points
9 guarantee." That would be the amount that was due to
10 Gary Grossman, correct?

11 A. Correct.

12 Q. Just to connect the dots here, that 500
13 basis points, if we go back to Exhibit 4, page 2,
14 bottom paragraph --

15 A. Yes.

16 Q. -- that line item pertains to the term in
17 that paragraph, right?

18 A. Right.

19 Q. On the bottom it says "Your 50 percent
20 incentive management fee is \$633,656." That would be
21 for units already sold and settled, correct?

22 A. Correct.

23 Q. So that money was already earned as of the
24 date of this letter?

25 A. Correct.

1 Q. The bottom number -- and do you have a
2 calculator handy?

3 A. On my phone.

4 Q. Okay. I think I figured out how you came up
5 with the bottom number on this page, but I just want to
6 make sure I've connected the dots correctly. If you
7 want, I can walk you through how I calculated it, and
8 you can just verify it.

9 A. I figured it out.

10 Q. Okay. So we can start with the incentive
11 management fee of 633,656?

12 A. Right.

13 Q. You add the balance due on contribution fees
14 and commissions. That's the 19,629?

15 A. Yes.

16 Q. You add the incentive management fee for the
17 Village Square project. That amount is 83,488?

18 A. Correct.

19 Q. And then we subtract the net negative
20 balance on the construction management fees for Village
21 Square Development. And that amount was \$25,746?

22 A. Correct.

23 Q. And it says "Of this writing, the total
24 amount to you," Rod Brady is \$711,027. That's how you
25 calculated that?

1 A. Correct.

2 Q. That's, again, for properties that were
3 already sold and settled?

4 A. Yes.

5 Q. And it's taking into account the
6 construction services of other parties who assisted
7 Rod, right?

8 A. Correct.

9 Q. So do you know of any information to suggest
10 that that is not a valid debt owed to Rod Brady?

11 A. No.

12 Q. Top paragraph page 4, it says, "Mr. Grossman
13 directed me to access our ability to fund a \$10,000 a
14 month draw against these funds." And then it says
15 "Given the carrying costs of the inventory, and past
16 due receivable to Forest Homes from Allenwood, the
17 monthly carrying costs at Cypress Harbor and our
18 massive increase in overhead associated with the new
19 plant, LRC simply cannot fund any additional monthly
20 expenses."

21 It appears to me, and excuse me if this is
22 wrong, but it appears that Rod is owed 711,000 and
23 change, but we're having trouble paying that all to you
24 due to a variety of reasons. And we're offering to pay
25 that to you in lump sums. Is that correct?

1 A. Yes.

2 Q. Do you know if the \$10,000 monthly payments
3 were paid to Rod?

4 A. I cannot say for certain. I think that we
5 did make some, but I don't have any proof of it in
6 front of me.

7 Q. We're stuck with the same issue, right,
8 where you're -- how would you verify what payments were
9 made? I take it Peachtree would be one way?

10 A. Yes.

11 Q. Is there any other way of looking that
12 information up?

13 A. If we have any kind of bank statements that
14 might be check images on them. I don't know if we have
15 those or not.

16 Q. But you, sitting here today, you don't have
17 any records to show one way or the other if Rod was
18 paid monthly payments or not?

19 A. No, I do not.

20 Q. Also, I want to note for these lists of
21 troubles to get some more clarity on those. First
22 issue that's mentioned is past due receivables to
23 Forest Homes to Allenwood. Was Rod or Brady involved
24 in that project to your knowledge?

25 A. In the Forest Homes project?

1 Q. Yes, from Allenwood.

2 A. This statement I think means that Hilton
3 Head Homes at Allenwood owes Forest Homes money.

4 Q. What about the monthly carrying costs of
5 Cypress Harbor? Rod wasn't involved in Cypress Harbor,
6 was he?

7 A. I don't think so. I don't know for sure.

8 Q. It also says "Massive increase in overhead
9 associate with the new plant." Would Rod have had
10 anything to do with that increase in overhead?

11 A. No.

12 Q. At the bottom it says Gary Grossman was in
13 receipt of this letter. I take it you probably did
14 send him this letter, correct?

15 A. Correct.

16 MR. THOMSON: Let me enter Exhibit 5,
17 please.

18 (Deposition Exhibit No. 5 was entered into
19 the record.)

20 BY MR. THOMSON:

21 Q. Exhibit 5 is a letter from T. Gardiner
22 Brower, an accountant in Bluffton, South Carolina, to
23 Rod and Joyce Brady. It's dated December 12, 2007. My
24 question is, did Rod ever send this letter to you?

25 A. I've never seen this letter.

1 Q. Okay. So I'll represent to you what this is
2 -- so your letter came in September 2007. This letter
3 is dated December of 2007. Mr. Brady just visited a
4 local accountant to request him to look behind your
5 calculations and see if he came up with any different
6 numbers or if your calculations were correct. That
7 appears to be what this is.

8 If you look at item 3 on that list, "My
9 analysis of the monies due you at 9/13/07, based on the
10 limited amount of data available to us, is 724,114."
11 Do you see that?

12 A. Yes, I see that.

13 Q. By the way, a side note: Mr. Brower has
14 passed away. So unfortunately this is the best that we
15 have to pick his brain.

16 A. Okay.

17 Q. But regardless, he's coming up with a
18 slightly different number than yours. But it's in the
19 same ballpark, right?

20 A. Yes.

21 Q. This calculation he come up with his
22 numbers, and a lot of these are exactly as yours. Some
23 are slightly higher. Some are slightly lower. The
24 only one I really got into right now is the biggest
25 discrepancy of what the two numbers comes to. If you

1 move down to where it says "Total Cash
2 Disbursed/Received, the left column says "Per Gary."
3 The right says "Per Rod." It looks as if he had two
4 different methods to get Gary's numbers, and he came up
5 with two slightly different numbers. And then Rod had
6 a record that he was paid less than that. Rod has
7 records showing that he was paid 417,411. And Gary's
8 are in between 455,00 and 473,000.

9 Do you have any insight into why these two
10 numbers might be different? What could lead to
11 confusion on what Rod was paid?

12 A. I have no idea why Rod would have a
13 different amount.

14 Q. Okay. Mr. Grossman testified something
15 about \$600,000 and change and cancelled checks. Do you
16 know what he's talking about there? I guess checks to
17 Ron? Checks from Ron?

18 A. No, I don't know what Mr. Grossman is
19 referring to without more information.

20 Q. Well, I personally know I'm having trouble
21 connecting the dots to any theory as to how those
22 cancelled checks would mean that Rod owes any money to
23 Lancaster Redevelopment Corporation. If there's any
24 information that you could provide me that would shed
25 any light on that --

1 A. I'm not sure I follow what you're asking.

2 Q. My preface was, you know, I was giving you
3 my point of view, and I'm not representing that it's
4 your point of view. But I'm asking if there's anything
5 that you could say, any information you have, that
6 might illuminate my point of view.

7 I'm personally having trouble connecting the
8 dots as to any theory as to how these cancelled checks
9 would mean that Rod owes money to Lancaster
10 Redevelopment Corporation.

11 Is there any information that you would have
12 that would shed any light on my point of view there?

13 A. No, I have no idea.

14 Q. Okay. Do you recall anything about a trip
15 to Louisiana by Mr. Grossman and Mr. Brady?

16 A. No.

17 Q. I will represent to you Mr. Brady said they
18 went down there to scout some properties. You don't
19 have any information to suggest that anything for that
20 trip would have any bearing on the money that Rod was
21 owed for these Hilton Head projects?

22 MR. O'KELLEY: Object to the form.

23 A. No.

24 MR. THOMSON: That's all I have. Hamlin, do
25 you have anything?

1 MR. O'KELLEY: I don't have anything. You
2 have the right to read and sign your transcript. You
3 can't change your testimony, but you have the right to
4 read and sign it to make sure there are no spelling
5 errors. A lot of people waive that right, unless it's
6 something hyper-technical like a medical.

7 THE WITNESS: I don't need to read it.

8 THE COURT REPORTER: Do you both want a copy
9 of the transcript?

10 MR. O'KELLEY: Yes, ma'am.

11 THE COURT REPORTER: PDF?

12 MR. O'KELLEY: Yes, PDF.

13 MR. THOMSON: PDF for me.

14 (Whereas, the deposition concluded at 11:04
15 a.m.)

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WORD INDEX

< S >

\$10,000 28:13 29:2

\$111,081 22:15

23:20

\$25,746 27:21

\$600,000 32:15

\$633,656 26:20

\$711,027 27:24

< 0 >

04 3:13

07 3:9, 12, 14 31:9

< 1 >

1 3:4 4:3 10:21, 23
18:13

10 3:4

10:06 1:19 4:2

100 13:6 19:15

11:04 34:14

112 1:17

12 3:14, 14 30:23

13 3:9, 9, 12 13:20

16:6 17:2 31:9

15 3:13 18:24

17101 1:18

19 1:14 8:23

19,629 27:14

1977 8:2 9:12

10:17 12:11, 15

1985 8:19, 23

1988 9:2

1995 8:23

1998 8:14, 20, 20

9:2, 9

< 2 >

2 3:9, 13, 13 13:16,

17, 20 15:8, 18 16:4,

7, 10 20:23 21:8, 10,

13 22:5 26:3, 13

200 2:6

2004 15:18 16:4

21:8, 10, 13

2005 24:9

2006 24:9

2007 13:21 14:17

16:6 17:2 30:23

31:2, 3

2010 8:8, 10, 15

2015-CP-07-02047

1:3

2018 1:14

26 23:9

284-1408 2:8

29401 2:3

29464 2:7

< 3 >

3 3:9 31:8

30 3:14

321 2:2

< 4 >

4 3:3, 9, 13 15:22,
25 16:3 20:22 26:3,

13 28:12

406 1:18

417,411 32:7

455,00 32:8

473,000 32:8

< 5 >

5 3:14 4:3 11:2

30:16, 18, 21

50 13:8, 12 18:8

26:19

500 18:15, 23 19:10

26:8, 12

501-0423 2:4

< 6 >

633,656 27:11

64 16:12

652 2:6

< 7 >

711,000 28:22

724,114 31:10

77 8:3

< 8 >

83,488 27:17

843 2:4, 8

88 8:24

< 9 >

9 3:9, 12 31:9

< A >

a.m 1:19 4:2 34:15

ability 28:13

able 16:15 25:8

access 12:1 25:7, 20

28:13

account 22:22 28:5

accountant 30:22

31:4

accounting 7:6, 25

8:1, 11, 24 9:3, 19

10:5, 6, 15 20:18

21:22, 25 25:17, 21

achieve 7:7

action 16:15

add 27:13, 16

added 22:14 23:17,

19, 20

addition 18:6

additional 15:13

18:9 20:8 21:4

22:3 23:1 24:4

26:1 28:19

address 7:2

advises 24:22

affirmed 4:7

agree 19:5, 13 20:10

agreement 15:18

16:12 21:8, 13

ahead 25:14

Allenwood 1:7

15:17 16:16 25:11

28:16 29:23 30:1, 3

alternative 5:25

amount 22:15

24:22 26:9 27:17,

21, 24 31:10 32:13

analysis 15:17 31:9

answer 4:19 5:4, 10

19:24

appear 11:7

APPEARANCES

2:1

appears 13:21

28:21, 22 31:7

appreciate 5:25

Art 24:23

asked 15:2

asking 17:17 19:15

20:1 21:1 33:1, 4

assistance 24:3

assisted 28:6

associate 7:6 30:9

associated 9:5

21:21 28:18

assume 5:10 17:8

21:10

available 31:10

aware 14:3, 5, 24

15:6, 9 20:25 25:25

< B >

back 16:10 20:23

22:18 23:14 26:3,

13

background 7:4

10:2

backwards 8:9

balance 24:8, 17, 24

27:13, 20

ballpark 31:19

bank 18:19, 21

29:13

bankruptcy 13:14

base 17:1

based 21:2 31:9

basis 18:15, 23

19:10 26:8, 13

Bay 2:2

bearing 33:20

BEAUFORT 1:2

7:20

began 9:9

believe 16:19 18:20

22:2, 23 24:6 25:10

bene 5:19

benefits 22:10

best 31:14

biggest 31:24

Bilger 9:3, 4

billings 9:21

Bluffton 30:22

born 7:14

bottom 24:8 26:3, 7,

14, 19 27:1, 5 30:12
Boulevard 2:6
Brady 1:4 4:13
 14:14 24:24 27:24
 28:10 29:23 30:23
 31:3 33:15, 17
brain 31:15
briefly 7:3
Brower 30:22 31:13
Building 8:2 9:11
 10:16 12:8, 11, 15
buildings 12:10
BUIST 2:6
bullet 16:24 18:5
business 10:11 12:4,
 6
BYARS 2:6

< C >

C.A 1:3
calculated 18:9
 27:7, 25
calculating 22:16
calculation 31:21
calculations 22:1
 31:5, 6
calculator 22:13
 27:2
cancelled 32:15, 22
 33:8
CAPELL 2:2
care 9:18
CAROLINA 1:1
 2:3, 7 4:13 6:2, 19,
 22 7:21 10:12 11:3
 30:22
carrying 28:15, 17
 30:4
case 6:23 11:18
cash 18:13 19:15
 32:1
certain 10:14 11:10,
 19 29:4
certainly 7:1
chance 23:5
change 28:23 32:15
 34:3
characterize 12:24
charge 9:17

CHARLES 2:3 4:12
Charleston 2:3
check 29:14
checks 32:15, 16, 17,
 22 33:8
CIRCUIT 1:2
clarification 24:18
clarify 14:9 24:4
clarity 29:21
clear 4:23 5:15
 21:5
clearly 22:25
clerk 8:24
Clore 21:22, 23
 22:20
Clore, 22:11
closed 23:11
Coleman 2:6
collection 13:10
College 7:9 8:18
column 32:2
come 6:1 31:21
comes 31:25
coming 31:17
command 11:6
commanded 11:10
commenced 4:2
commencing 1:19
commercial 12:10
commission 22:7
commissions 27:14
commissions, 24:17
COMMON 1:1
 14:10 16:17
Commonwealth 1:21
communicating
 15:14
Community 7:9
 8:18
companies 10:7, 13,
 14, 16 12:8 20:4
Company 1:8 8:3,
 5 9:5, 9, 14 10:12
 16:18, 21 25:6
company's 11:19, 21
compensation 15:17
 18:21
complete 12:9
completed 9:22
 21:18 22:21

completely 9:6, 7
 16:21
components 12:8
computer 11:25
 14:16, 17, 19 15:1
 25:14, 15
computers 25:19
concluded 34:14
confusion 32:11
connect 26:12
connected 27:6
connecting 32:21
 33:7
consent 24:23
consider 5:5 12:20
consideration 19:21
construction 10:6,
 10 17:11, 20 18:6
 21:13 23:9, 21
 24:13 27:20 28:6
contacts 7:20
context 15:13 21:4
 23:1 24:4
contribution 24:17
 27:13
convenience 6:18
Copy 3:9 14:15
 34:8
Corp 1:9 8:12
Corporation 8:22
 9:12 10:18 12:1, 3
 13:3, 13, 24 18:14
 19:12, 17 20:7
 32:23 33:10
Correct 7:15 8:16
 9:10 10:8 11:22, 23
 12:23 14:11 17:2, 3
 19:22 20:21 21:15,
 19 23:24 26:1, 2, 10,
 11, 21, 22, 25 27:18,
 22 28:1, 8, 25 30:14,
 15 31:6
correctly 27:6
costs 28:15, 17 30:4
Counsel 2:5, 9
COUNTY 1:2 7:20
couple 4:17 16:9
COURT 1:1, 20
 4:21 5:6 15:23

34:8, 11
CPA 8:25 10:2
creditor 16:14
customers 9:22
Cypress 28:17 30:5,
 5
 < D >
Dan 21:22, 23
 22:11, 20 23:14, 18
data 31:10
date 1:19 26:24
date, 22:8
dated 13:20 16:4
 30:23 31:3
days 5:24
de 5:19
dealings 9:8
Dear 15:15
debt 20:18 28:10
December 1:14
 30:23 31:3
deducted 21:22
 22:15
Defendants 1:10
 2:9 11:18
defer 17:15
definitely 10:4
definitions 14:9
degree 7:6, 8 10:5
depending 6:22
depo 6:4, 17
DEPONENT 3:2
Deposition 1:16 4:3,
 14 5:19 6:1, 4, 8
 10:23 13:17 15:25
 30:18 34:14
Depositions 3:9
 5:17
describe 9:16
described 18:7
DESCRIPTION 3:4
descriptive 8:4
detail 9:16 14:24
 15:5
detailed 9:25 23:5
details 25:1
determine 17:21

Development 1:8
 10:11, 12 25:10
 27:21
developments 10:14
difference 5:18, 20
differences 6:15
different 9:6, 7, 13
 11:7 14:8 16:20
 20:4 22:8 26:8
 31:5, 18 32:4, 5, 10,
 13
difficult 5:8
dig 25:22
directed 28:13
directors 12:16, 20
disagree 19:6
Disbursed 32:2
discarded 14:18
discovery 6:4
discrepancy 31:25
discussion 15:16
distribution 19:18
 21:2
dive 15:4
document 11:4, 20
documents 11:6, 10,
 11, 15, 19 14:19
 26:1
Dominico 1:20
dots 26:12 27:6
 32:21 33:8
draw 28:14
drive 5:24 14:18
due 24:17 26:9
 27:13 28:16, 24
 29:22 31:9
duly 4:6

< E >
earn 7:8
earned 21:16 26:23
easier 6:2
East 2:2
edited 15:7
educational 7:4
eight 16:24
electronic 11:24
e-mailed 14:12
employer 9:6

enter 10:21 13:16
 30:16
entered 10:23
 13:17 15:25 30:18
entering 15:24
entities 10:10
erected 12:9
errors 34:5
ESQUIRE 2:3, 7
esse 5:19
essentially 9:13
exactly 31:22
EXAMINATION
 3:2 4:10
exceeds 23:20, 23
exchange 19:9 20:9
excuse 28:21
Exhibit 4:3 10:21,
 23 13:16, 17, 20
 15:8, 22, 25 16:3, 7,
 10 20:22, 23 26:3,
 13 30:16, 18, 21
EXHIBITS 3:4
expenses 21:21
 22:10 28:20
exploratory 6:4
extra 19:21

< F >
failure 14:18
fair 5:11
family 16:12
February 15:18
 16:4 21:8, 9, 13
fee 17:11, 11, 20, 21
 18:8, 13 23:9 24:10,
 14 26:20 27:11, 16
fee, 24:9
feel 5:14
fees 18:7 21:14, 16,
 16, 25 22:2, 4 23:21
 24:17 27:13, 20
field 10:5
figured 27:4, 9
file 13:14
filed 13:10
files 11:24
final 15:7
Finally 5:17

financial 25:11
financing 18:19
find 25:25
finish 5:4
FIRM 2:2
first 7:3 11:7
 15:15 16:11 18:23
 20:13, 23 22:18
 29:21
flat 17:11, 20
flesh 23:5
flowing 6:7
follow 33:1
follows 4:8
Forest 19:16 20:6
 28:16 29:23, 25
 30:3
form 19:23 20:11
 33:22
forthcoming 21:17
four 22:8, 14 23:19
FOURTEENTH 1:2
fourth 13:21
free 5:14 6:6
front 15:8 29:6
Fuels 9:3, 4
functions 9:19
fund 28:13, 19
funds 28:14
further 24:25
future 6:11 7:2

< G >
garbled 14:25
Gardiner 30:21
Gary 1:9 9:5
 12:21 16:3, 21 17:6,
 12, 15, 18, 25 19:1, 9
 20:7 26:10 30:12
 32:2
Gary's 32:4, 7
general 9:23 10:1
generally 18:18
GINGER 1:16 3:3
 4:6
give 18:18 19:4
Given 28:15
gives 10:1
giving 18:21 19:20

33:2
glitch 15:1
go 4:18 7:11 13:21
 14:23 15:10, 21
 20:22 23:14 26:3,
 13
goes 6:23
going 5:5, 10 6:13
 10:21 11:1, 2 13:16
 15:21 26:6
graduate 8:17
GRIFFITH 1:16
 3:3 4:6, 12 6:22
Grossman 1:9 9:5
 12:17, 18, 18 15:16
 16:3 18:16 19:1, 9,
 22 20:7, 9 21:21, 23
 22:11, 20 24:21
 26:10 28:12 30:12
 32:14, 18 33:15
Grossman's 9:8
 10:6, 9 12:21, 22
ground 4:17 5:9
group 15:11 21:2
 22:5
guarantee 18:15, 17,
 19, 22 19:22 20:9
 26:9
guaranteeing 19:10
guess 13:23 32:16

< H >
HAMLIN 2:7 33:24
handle 9:19, 22
handled 10:5
handy 22:14 27:2
happens 10:11
Harbor 28:17 30:5,
 5
hard 14:18
harder 6:19
Harrisburg 1:18
hassle 6:16
hate 22:6
Head 1:7 4:25 5:1
 12:14 16:13, 13, 15,
 19 18:1 25:11 30:3
 33:21
hear 15:1

held 1:16 8:6
 high 7:5, 11, 13
 higher 31:23
 Hilton 1:7 16:13,
 13, 14, 19 18:1
 25:10 30:2 33:21
 hiring 21:21
 history 7:23
 hold 8:10
 Homes 1:7 16:13,
 13, 15, 19 18:1
 19:16 20:6 22:21
 25:11 28:16 29:23,
 25 30:3, 3
 homes, 23:10
 hostile 16:15
 houses 12:9
 Human 9:20
 hyper-technical 34:6

< I >

idea 10:1 18:16
 32:12 33:13
 identification 4:4
 III 2:7
 illuminate 15:14
 33:6
 images 29:14
 incentive 18:7 24:9,
 10 26:20 27:10, 16
 include 13:9
 included 11:21
 including 4:24
 Incorporated 9:3, 4
 increase 28:18 30:8,
 10
 INDEX 3:1
 individually 18:15
 19:2, 9
 information 25:2, 7
 28:9 29:12 32:19,
 24 33:5, 11, 19
 initial 20:12
 ink 14:13
 inked 14:10
 insight 17:12, 24
 32:9
 instance 12:1
 insurance 9:20
 interest 18:13

interpret 18:3 21:9,
 12
 interpretation 19:4,
 6
 interrupt 21:15
 inventory 28:15
 invested 19:16
 investment 18:14
 20:12
 involved 13:3
 16:20 29:23 30:5
 issue 29:7, 22
 item 26:16 31:8
 items 22:8

< J >

James 1:4 4:13
 Joyce 30:23
 jump 22:6
 June 8:8, 15

< K >

kind 29:13
 know 5:5 6:5, 6, 6,
 9, 16 9:25 10:10
 12:14, 20 13:2, 8
 14:12 16:20 22:13,
 24 23:6 24:23, 25
 25:6 28:9 29:2, 14
 30:7 32:16, 18, 20
 33:2
 knowledge 23:15, 16
 29:24

< L >

laid 21:16
 Lancaster 1:8 8:11,
 21 9:12 10:17
 11:25 12:3 13:2, 13,
 23 18:14 19:11, 16
 20:6 32:23 33:9
 Latin 5:20
 LAW 2:2
 lawsuit 13:2, 9
 lawsuits 16:18
 lay 16:25 23:7
 lead 32:10
 ledger 9:23
 left 32:2
 legal 14:9

Letter 3:9, 9, 13, 14
 13:20, 22 14:1, 4, 11,
 16, 23 15:5, 6, 11, 12,
 14, 18, 22 16:3, 6, 24
 17:2, 6 18:10 21:8,
 10, 13, 17 22:1, 22
 23:6 24:2, 5, 19, 20
 26:24 30:13, 14, 21,
 24, 25 31:2, 2
 level 7:5
 Lewis 8:25
 light 32:25 33:12
 lights 6:5
 limited 31:10
 limited-purpose
 10:14
 line 26:6, 16
 lines 26:8
 list 26:6 31:8
 lists 29:20
 little 6:6
 live 7:16
 lived 7:18
 LLC 1:7, 8, 17 2:2,
 6 8:2 9:12 12:12,
 15 16:13 18:1
 25:10
 loans 18:19
 local 31:4
 long 8:6 24:23
 longer 25:20
 look 16:4 25:8
 31:4, 8
 looked 16:6
 looking 24:25 29:11
 looks 21:23 22:14
 25:14 32:3
 lost 14:20
 lot 6:2, 19 14:19
 16:12 24:7 31:22
 34:5
 Louisiana 33:15
 lower 31:23
 LRC 28:19
 lump 28:25
 < M >
 ma'am 34:10
 Madam 15:23
 making 6:14

management 9:20
 17:11, 21 18:6, 8
 20:18 23:9, 21 24:9,
 10 26:20 27:11, 16,
 20
 manager 7:25 8:1,
 11 9:3
 managing 24:12
 manufacturer 12:7
 Market 1:17
 massive 28:18 30:8
 matter 4:14 25:24
 Matthew 12:18
 mean 14:7 17:24,
 25 19:21 24:2, 10
 32:22 33:9
 meaning 20:7
 means 17:15, 22
 24:12 25:25 30:2
 meant 17:6, 8, 12, 18
 medical 34:6
 mentioned 29:22
 mentions 20:4
 methods 25:25 32:4
 Michael 12:18
 middle 6:10 21:9
 mind 15:24
 minority 12:19
 money 19:1 25:8
 26:23 30:3 32:22
 33:9, 20
 monies 23:17 31:9
 month 18:13 28:14
 monthly 28:17, 19
 29:2, 18 30:4
 mouthful 12:15
 move 16:10 20:24
 32:1
 moving 16:23 26:6
 Mt 2:7

< N >

name 4:12 8:3, 5
 16:18
 named 13:22
 Neal 8:24
 need 5:15 23:2
 34:7
 needed 15:13

needs 24:18
 negative 27:19
 net 27:19
 never 30:25
 new 14:19 16:17
 25:19 28:18 30:9
 Nick 21:21, 23
 22:11, 20 23:13, 18
 nod 4:25
 nods 4:24
 Nos 4:3
 Notary 1:21
 note 6:21 16:12
 29:20 31:13
 noticed 5:17 17:19
 19:19
 Notices 3:4
 November 8:14, 20
 number 13:5 23:20
 27:1, 5 31:18
 numbers 22:14
 23:8, 19 24:7 31:6,
 22, 25 32:4, 5, 10

 < O >
 Object 19:23 33:22
 Objection 20:11
 offer 17:5 24:3
 offered 24:14
 offering 28:24
 office 20:19
 officers 12:16
 offices 1:17
 Okay 4:17 5:2, 16,
 23 6:20, 24 7:7 8:6,
 15, 17 9:1, 8, 16, 24
 10:4, 20 11:6, 18
 12:11 13:8 15:3
 16:23 17:10 18:2,
 23 19:7 20:17 22:5
 23:17 24:21 25:13,
 18, 22 27:4, 10 31:1,
 16 32:14 33:14
 O'KELLEY 2:7
 3:4 6:21 19:23
 20:11 33:22 34:1,
 10, 12
 opinion 17:1, 5
 order 22:6

original 14:15
 outside 17:12
 overhead 28:18
 30:8, 10
 owed 22:16, 19
 28:10, 22 33:21
 owes 30:3 32:22
 33:9
 owner 16:20

 < P >
 PAGE 3:2, 4 11:2
 13:21 16:11, 23
 20:17 22:5, 19, 24
 24:1, 15 26:3, 7, 13
 27:5 28:12
 pages 25:14
 paid 19:1 20:5, 5
 21:25 22:2, 3, 7
 23:17, 21 24:22, 24
 25:8 29:3, 18 32:6,
 7, 11
 pain 5:23
 panelized 12:7
 paragraph 15:11, 11,
 15 18:5 19:14 20:3,
 24 21:1, 7, 9, 20
 22:7, 18 23:2, 7
 26:4, 14, 17 28:12
 paragraphs 15:11,
 12 16:11 20:25
 21:3
 parent 10:12
 parlance 14:10
 part 8:3, 5 21:4
 parties 28:6
 partners 12:19, 25
 passed 31:14
 passive 12:24
 pay 17:10, 20 18:7
 28:24
 payable 21:14
 payables 9:23
 paying 28:23
 payment 19:10
 payments 29:2, 8, 18
 payroll 9:19
 PDF 34:11, 12, 13
 Peachtree 25:16, 16,
 21, 23 29:9

Pennsylvania 1:18,
 21 7:10
 people 20:4, 6 34:5
 percent 18:8, 13, 24
 19:15 26:19
 perform 12:12
 performance 6:9
 performed 22:20
 permanent 6:14
 personal 11:25
 14:20 18:18, 22
 personally 32:20
 33:7
 pertains 26:16
 phone 27:3
 photograph 22:24
 pick 31:15
 place 20:19
 Plaintiff 1:5 2:5
 plan 17:5, 23
 plant 28:19 30:9
 PLEAS 1:1
 Pleasant 2:7
 please 5:3 10:22
 16:4, 11 30:17
 point 18:5 33:3, 4,
 6, 12
 points 16:25 18:15,
 23 19:11 26:8, 13
 position 7:24 8:7,
 10, 13, 22 9:11, 13,
 15, 17
 possession 11:20, 22
 possibility 16:18
 possible 11:24
 practice 16:17
 preface 33:2
 premarked 4:4
 Premier 1:17
 present 9:9
 preserve 6:10
 pretty 15:19 21:3
 prevent 16:18
 previously 16:7
 printed 14:13 25:24
 printout 25:14
 prior 19:17
 priority 19:20
 probably 30:13

procedures 13:10
 Proceedings 4:2, 21
 process 24:15
 produce 11:10
 produced 11:18
 25:24
 Professional 1:20
 10:4
 profit 19:17
 profits 20:5
 program 25:15
 project 16:16 25:23
 27:17 29:24, 25
 projects 33:21
 proof 29:5
 properties 28:2
 33:18
 property 24:13
 provide 32:24
 providing 19:22
 Public 1:21
 purchaser 16:14
 pursuant 15:16

< Q >
 question 4:18 5:3,
 4, 10, 11, 14 11:2
 14:23, 25 15:5 24:1
 30:24
 questions 16:9
 QuickBooks 25:15

< R >
 raised 7:14
 read 24:2 34:2, 4, 7
 really 5:22 31:24
 reason 21:4 22:25
 23:13
 reasons 28:24
 recall 13:15 33:14
 receipt 30:13
 receivable 28:16
 receivables 9:23
 29:22
 Received 32:2
 record 4:23 6:21
 10:24 13:18 16:1
 23:4 30:19 32:6
 records 25:9, 11, 22
 29:17 32:7

Redevelopment 1:8 8:12, 21 9:12 10:17 11:25 12:3 13:3, 13, 23 18:14 19:11, 16 20:6 32:23 33:10 referring 16:5 32:19 regardless 6:22 31:17 relevant 22:6 repaid 19:17 repayment 19:20 repeat 17:16 25:5 rephrase 5:14 Reporter 1:20 4:21 5:6 15:23 34:8, 11 Reporting 1:17 represent 4:13 31:1 33:17 representing 33:3 request 11:9, 11 31:4 requests 11:16 required 18:20 reserve 14:21, 22 15:3 Resources 9:20 response 11:15 14:22 15:4 rest 24:1 returned 20:13 review 11:11, 12 right 7:3, 24 8:20 11:8 13:11 14:22 15:3, 10, 19 17:4, 13 18:4, 10, 24, 25 20:15, 20 21:18, 20 22:1, 11, 12 23:11, 12, 22 26:17, 18 27:12 28:7 29:7 31:19, 24 32:3 34:2, 3, 5 risk 9:20 Rod 4:13 15:15 16:20 17:8, 19, 25 20:5 22:16 23:20 24:12 25:8 27:24 28:7, 10, 22 29:3, 17, 23 30:5, 9, 23, 24	32:3, 5, 6, 11, 12, 22 33:9, 20 Ron 32:17, 17 roughly 16:24 row 5:24 rude 5:6 rule 5:9 rules 4:17 < S > S.F 24:23 salary 22:3, 10 sales 18:6 saying 19:8 says 11:9 15:15 16:11 17:10, 20 18:5, 12 19:15 20:17 21:9, 12 22:10 23:1 24:3, 5, 5, 6, 6, 8, 19, 19, 20, 20, 21 26:19 27:23 28:12, 14 30:8, 12 32:1, 2, 3 school 7:5, 11, 13 scout 33:18 second 11:9 16:23 see 16:24 22:7 24:2 25:8 31:5, 11, 12 seen 11:4 30:25 self-explanatory 15:19 Selinsgrove 7:13, 14 send 30:14, 24 sent 14:13 sentence 19:5, 14 20:3 separate 16:22 September 13:20 16:6 17:2 31:2 services 23:18 24:11 28:6 settled 23:10 26:21 28:3 settlement 24:23 settles 21:14 shed 32:24 33:12 show 29:17 showing 32:7 side 31:13	sides 15:21 25:13 sign 34:2, 4 signature 14:11 signed 14:3, 6, 7, 13 simply 28:19 single 16:12 single-purpose 10:13 site 11:8 sitting 15:8 29:16 slightly 31:18, 23, 23 32:5 Software 25:21 sold 12:8 21:18 22:21 23:10 26:21 28:3 Solutions 8:2 9:11 10:17 12:11, 15 somebody 13:9 sons 12:21, 22 sorry 17:16 sort 10:13 12:19 SOUTH 1:1 2:3, 7 4:13 6:2, 18, 22 7:21 10:12 11:3 30:22 speak 6:9 speaks 15:12 spelling 34:4 Square 1:8 25:10 27:17, 21 start 8:13 16:17 17:4 23:7 27:10 started 8:21 starts 20:25 21:1, 7 24:15 STATE 1:1 23:1 statement 30:2 statements 29:13 status 25:18 stay 20:19 straightforward 21:3 Street 1:17 2:2 stuck 25:23 29:7 subpoena 11:3, 4 Subpoenas 3:9 subtract 27:19 suggest 28:9 33:19 Suite 1:18 2:6	sums 28:25 supplement 15:4 sure 4:19, 25 15:3 19:25 27:6 30:7 33:1 34:4 sworn 4:7 < T > take 11:20 16:15 19:20 20:18 24:7 29:9 30:13 taken 4:14 9:18 22:22 talk 5:7 talking 14:10 18:17 21:17 23:10 32:16 talks 21:20 task 12:12 20:20 tasks 9:17 10:6, 10 TAYLOR 2:6 technical 14:8 tedious 22:25 telephone 2:8 tell 4:7 16:5 19:5 term 5:20 17:4 18:4, 9, 17 26:16 terms 6:3 16:25 17:1, 10, 19 terms, 24:16 testified 4:8 32:14 testimony 34:3 Thank 11:9 theory 32:21 33:8 thing 11:7 things 4:24 11:7 20:19 think 8:24 9:21 10:1 13:7, 12 16:25 27:4 29:4 30:2, 7 THOMSON 2:3 3:3 4:11, 12 6:24, 25 10:21, 25 13:16, 19 15:23 16:2 20:2, 14 30:16, 20 33:24 34:13 thought 17:18 three 20:4, 6 25:13 time 5:8, 13 21:14 today 4:22 5:18, 21

6:12 29:16
 today's 6:3
 tomorrow 5:18, 19,
 21 6:3, 11, 13 23:5
 tomorrow's 6:1, 8
 top 12:14 19:11
 20:17, 19 22:24
 28:12
 total 23:17 27:23
 32:1
 town 22:21 23:10
 Tracy 1:20
 transcribing 4:21
 5:7
 transcript 34:2, 9
 transmitting 15:17
 travel 6:16 7:1
 traveling 6:18, 19
 treasurer 13:22, 23
 trial 6:2, 9, 10, 11,
 13, 15 7:1
 trip 33:14, 20
 trouble 28:23
 32:20 33:7
 troubles 29:21
 truth 4:7, 7, 8
 trying 9:21 17:21
 Two 3:4, 9 5:17, 24
 6:15 10:6, 9 11:6
 16:10 20:24 25:13
 26:7 31:25 32:3, 5,
 9
 type 12:6

< U >

uh-huh 4:19, 20
 uh-uh 4:20
 ultimately 6:18
 umbrella 10:16
 understand 4:20
 5:13, 18, 20, 24
 19:25 23:2
 understood 5:11
 unfortunately 31:14
 unit 21:14
 units 21:17, 24
 23:10, 14 24:13
 26:21
 update 14:22

use 6:11

< V >

valid 28:10
 variety 28:24
 verify 15:12 27:8
 29:8
 version 14:3, 6, 7
 15:6, 7
 video 6:3, 11, 12, 14
 videoconference 2:4
 videographer 6:14
 videotaped 6:8
 view 33:3, 4, 6, 12
 Village 1:7 25:10
 27:17, 20
 visited 31:3

< W >

wait 5:3
 waive 34:5
 walk 27:7
 want 6:5 7:2, 3
 9:25 14:9 16:14
 19:4, 5 27:5, 7
 29:20 34:8
 wanted 16:21
 18:21 25:22
 way 6:17 8:9 17:5
 24:16 29:9, 11, 17
 31:13
 welcome 7:1
 well 25:19 26:7
 32:20
 went 8:15 23:8
 33:18
 we're 6:9, 12 14:9
 17:21 21:17 23:10
 25:23 28:23, 24
 29:7
 Williamsport 7:9,
 10 8:18
 WITNESS 34:7
 wondering 17:23
 words 23:18
 work 7:23 8:9
 9:14, 22 21:24
 22:20
 writing 27:23

wrong 21:15 28:22
 wrote 14:1

< Y >

Yeah 20:12
 year 8:17
 years 10:7 13:4
 you, 27:24

WORD LIST

< \$ >

\$10,000 (2)

\$111,081 (2)

\$25,746 (1)

\$600,000 (1)

\$633,656 (1)

\$711,027 (1)

< 0 >

04 (1)

07 (4)

< 1 >

1 (5)

10 (1)

10:06 (2)

100 (2)

11:04 (1)

112 (1)

12 (3)

13 (7)

15 (2)

17101 (1)

19 (2)

19,629 (1)

1977 (5)

1985 (2)

1988 (1)

1995 (1)

1998 (5)

< 2 >

2 (18)

200 (1)

2004 (5)

2005 (1)

2006 (1)

2007 (7)

2010 (3)

2015-CP-07-02047

(1)

2018 (1)

26 (1)

284-1408 (1)

29401 (1)

29464 (1)

< 3 >

3 (2)

30 (1)

321 (1)

< 4 >

4 (10)

406 (1)

417,411 (1)

455,00 (1)

473,000 (1)

< 5 >

5 (6)

50 (4)

500 (5)

501-0423 (1)

< 6 >

633,656 (1)

64 (1)

652 (1)

< 7 >

711,000 (1)

724,114 (1)

77 (1)

< 8 >

83,488 (1)

843 (2)

88 (1)

< 9 >

9 (3)

< A >

a.m (3)

ability (1)

able (2)

access (4)

account (2)

accountant (2)

accounting (15)

achieve (1)

action (1)

add (2)

added (4)

addition (1)

additional (9)

address (1)

advises (1)

affirmed (1)

agree (3)

agreement (4)

ahead (1)

Allenwood (8)

alternative (1)

amount (8)

analysis (2)

answer (4)

appear (1)

APPEARANCES (1)

appears (4)

appreciate (1)

Art (1)

asked (1)

asking (6)

assistance (1)

assisted (1)

associate (2)

associated (3)

assume (3)

available (1)

aware (7)

< B >

back (6)

background (2)

backwards (1)

balance (5)

ballpark (1)

bank (3)

bankruptcy (1)

base (1)

based (2)

basis (5)

Bay (1)

bearing (1)

BEAUFORT (2)

began (1)

believe (6)

bene (1)

benefits (1)

best (1)

biggest (1)

Bilger (2)

billings (1)

Bluffton (1)

born (1)

bottom (8)

Boulevard (1)

Brady (11)

brain (1)

briefly (1)

Brower (2)

Building (6)

buildings (1)

BUIST (1)

bullet (2)

business (3)

BYARS (1)

< C >

C.A (1)

calculated (3)

calculating (1)

calculation (1)

calculations (3)

calculator (2)

cancelled (3)

CAPELL (1)

care (1)

CAROLINA (11)

carrying (3)

case (2)

cash (3)

certain (4)

certainly (1)

chance (1)

change (3)

characterize (1)

charge (1)

CHARLES (2)

Charleston (1)

check (1)

checks (5)

CIRCUIT (1)

clarification (1)

clarify (2)

clarity (1)

clear (3)

clearly (1)

clerk (1)

Clare (3)

Clare, (1)

closed (1)

Coleman (1)	COUNTY (2)	Disbursed (1)	fair (1)
collection (1)	couple (2)	discarded (1)	family (1)
College (2)	COURT (7)	discovery (1)	February (5)
column (1)	CPA (2)	discrepancy (1)	fee (12)
come (2)	creditor (1)	discussion (1)	fee, (1)
comes (1)	customers (1)	distribution (2)	feel (1)
coming (1)	Cypress (3)	dive (1)	fees (11)
command (1)	< D >	document (2)	field (1)
commanded (1)	Dan (6)	documents (7)	figured (2)
commenced (1)	data (1)	Dominico (1)	file (1)
commencing (1)	date (2)	dots (4)	filed (1)
commercial (1)	date, (1)	draw (1)	files (1)
commission (1)	dated (4)	drive (2)	final (1)
commissions (1)	days (1)	due (7)	Finally (1)
commissions, (1)	de (1)	duly (1)	financial (1)
COMMON (3)	dealings (1)	< E >	financing (1)
Commonwealth (1)	Dear (1)	earn (1)	find (1)
communicating (1)	debt (2)	earned (2)	finish (1)
Community (2)	December (3)	easier (1)	FIRM (1)
companies (6)	deducted (2)	East (1)	first (9)
Company (10)	Defendants (3)	edited (1)	flat (2)
company's (2)	defer (1)	educational (1)	flesh (1)
compensation (2)	definitely (1)	eight (1)	flowing (1)
complete (1)	definitions (1)	electronic (1)	follow (1)
completed (3)	degree (3)	e-mailed (1)	follows (1)
completely (3)	depending (1)	employer (1)	Forest (6)
components (1)	depo (2)	enter (3)	form (3)
computer (7)	DEPONENT (1)	entered (4)	forthcoming (1)
computers (1)	Deposition (12)	entering (1)	four (3)
concluded (1)	Depositions (2)	entities (1)	FOURTEENTH (1)
confusion (1)	describe (1)	erected (1)	fourth (1)
connect (1)	described (1)	errors (1)	free (2)
connected (1)	DESCRIPTION (1)	ESQUIRE (2)	front (2)
connecting (2)	descriptive (1)	esse (1)	Fuels (2)
consent (1)	detail (3)	essentially (1)	functions (1)
consider (2)	detailed (2)	exactly (1)	fund (2)
consideration (1)	details (1)	EXAMINATION (2)	funds (1)
construction (11)	determine (1)	exceeds (2)	further (1)
contacts (1)	Development (5)	exchange (2)	future (2)
context (4)	developments (1)	excuse (1)	< G >
contribution (2)	difference (2)	Exhibit (19)	garbled (1)
convenience (1)	differences (1)	EXHIBITS (1)	Gardiner (1)
Copy (3)	different (15)	expenses (3)	Gary (16)
Corp (2)	difficult (1)	exploratory (1)	Gary's (2)
Corporation (14)	dig (1)	extra (1)	general (2)
Correct (30)	directed (1)	< F >	generally (1)
correctly (1)	directors (2)	failure (1)	GINGER (3)
costs (3)	disagree (1)		give (2)
Counsel (2)			

Given (1)
 gives (1)
 giving (3)
 glitch (1)
 go (10)
 goes (1)
 going (9)
 graduate (1)
GRIFFITH (5)
 Grossman (24)
 Grossman's (5)
 ground (2)
 group (3)
 guarantee (7)
 guaranteeing (1)
 guess (2)

 < H >
HAMLIN (2)
 handle (2)
 handled (1)
 handy (2)
 happens (1)
 Harbor (3)
 hard (1)
 harder (1)
 Harrisburg (1)
 hassle (1)
 hate (1)
 Head (12)
 hear (1)
 held (2)
 high (3)
 higher (1)
 Hilton (9)
 hiring (1)
 history (1)
 hold (1)
 Homes (15)
 homes, (1)
 hostile (1)
 houses (1)
 Human (1)
 hyper-technical (1)

< I >
 idea (4)
 identification (1)
 III (1)

illuminate (2)
 images (1)
 incentive (6)
 include (1)
 included (1)
 including (1)
 Incorporated (2)
 increase (3)
INDEX (1)
 individually (3)
 information (9)
 initial (1)
 ink (1)
 inked (1)
 insight (3)
 instance (1)
 insurance (1)
 interest (1)
 interpret (3)
 interpretation (2)
 interrupt (1)
 inventory (1)
 invested (1)
 investment (2)
 involved (4)
 issue (2)
 item (2)
 items (1)

< J >
 James (2)
 Joyce (1)
 jump (1)
 June (2)

< K >
 kind (1)
 know (28)
 knowledge (3)

< L >
 laid (1)
 Lancaster (16)
 Latin (1)
 LAW (1)
 lawsuit (2)
 lawsuits (1)
 lay (2)
 lead (1)

ledger (1)
 left (1)
 legal (1)
 Letter (43)
 level (1)
 Lewis (1)
 light (2)
 lights (1)
 limited (1)
 limited-purpose (1)
 line (2)
 lines (1)
 list (2)
 lists (1)
 little (1)
 live (1)
 lived (1)
 LLC (12)
 loans (1)
 local (1)
 long (2)
 longer (1)
 look (4)
 looked (1)
 looking (2)
 looks (4)
 lost (1)
 lot (7)
 Louisiana (1)
 lower (1)
 LRC (1)
 lump (1)

< M >
 ma'am (1)
 Madam (1)
 making (1)
 management (14)
 manager (4)
 managing (1)
 manufacturer (1)
 Market (1)
 massive (2)
 matter (2)
 Matthew (1)
 mean (8)
 meaning (1)
 means (5)
 meant (4)

medical (1)
 mentioned (1)
 mentions (1)
 methods (2)
 Michael (1)
 middle (2)
 mind (1)
 minority (1)
 money (7)
 monies (2)
 month (2)
 monthly (5)
 mouthful (1)
 move (3)
 moving (2)
 Mt (1)

< N >
 name (4)
 named (1)
 Neal (1)
 need (3)
 needed (1)
 needs (1)
 negative (1)
 net (1)
 never (1)
 new (5)
 Nick (6)
 nod (1)
 nods (1)
 Nos (1)
 Notary (1)
 note (4)
 noticed (3)
 Notices (1)
 November (2)
 number (5)
 numbers (10)

< O >
 Object (2)
 Objection (1)
 offer (2)
 offered (1)
 offering (1)
 office (1)
 officers (1)
 offices (1)

Okay (39)
 O'KELLEY (9)
 opinion (2)
 order (1)
 original (1)
 outside (1)
 overhead (3)
 owed (5)
 owes (3)
 owner (1)

< P >

PAGE (17)
 pages (1)
 paid (17)
 pain (1)
 panelized (1)
 paragraph (19)
 paragraphs (5)
 parent (1)
 parlance (1)
 part (3)
 parties (1)
 partners (2)
 passed (1)
 passive (1)
 pay (4)
 payable (1)
 payables (1)
 paying (1)
 payment (1)
 payments (3)
 payroll (1)
 PDF (3)
 Peachtree (5)
 Pennsylvania (3)
 people (3)
 percent (5)
 perform (1)
 performance (1)
 performed (1)
 permanent (1)
 personal (4)
 personally (2)
 pertains (1)
 phone (1)
 photograph (1)
 pick (1)
 place (1)

Plaintiff (2)
 plan (2)
 plant (2)
 PLEAS (1)
 Pleasant (1)
 please (5)
 point (5)
 points (6)
 position (9)
 possession (2)
 possibility (1)
 possible (1)
 practice (1)
 preface (1)
 premarked (1)
 Premier (1)
 present (1)
 preserve (1)
 pretty (2)
 prevent (1)
 previously (1)
 printed (2)
 printout (1)
 prior (1)
 priority (1)
 probably (1)
 procedures (1)
 Proceedings (2)
 process (1)
 produce (1)
 produced (2)
 Professional (2)
 profit (1)
 profits (1)
 program (1)
 project (5)
 projects (1)
 proof (1)
 properties (2)
 property (1)
 provide (1)
 providing (1)
 Public (1)
 purchaser (1)
 pursuant (1)

< Q >

question (12)
 questions (1)

QuickBooks (1)

< R >

raised (1)
 read (4)
 really (2)
 reason (3)
 reasons (1)
 recall (2)
 receipt (1)
 receivable (1)
 receivables (2)
 Received (1)
 record (8)
 records (5)
 Redevelopment (16)
 referring (2)
 regardless (2)
 relevant (1)
 repaid (1)
 repayment (1)
 repeat (2)
 rephrase (1)
 Reporter (6)
 Reporting (1)
 represent (3)
 representing (1)
 request (3)
 requests (1)
 required (1)
 reserve (3)
 Resources (1)
 response (3)
 rest (1)
 returned (1)
 review (2)
 right (36)
 risk (1)
 Rod (30)
 Ron (2)
 roughly (1)
 row (1)
 rude (1)
 rule (1)
 rules (1)

< S >

S.F. (1)
 salary (2)

sales (1)
 saying (1)
 says (33)
 school (3)
 scout (1)
 second (2)
 see (7)
 seen (2)
 self-explanatory (1)
 Selinsgrove (2)
 send (2)
 sent (1)
 sentence (3)
 separate (1)
 September (4)
 services (3)
 settled (3)
 settlement (1)
 settles (1)
 shed (2)
 show (1)
 showing (1)
 side (1)
 sidetrack (2)
 sign (2)
 signature (1)
 signed (4)
 simply (1)
 single (1)
 single-purpose (1)
 site (1)
 sitting (2)
 slightly (4)
 Software (1)
 sold (6)
 Solutions (5)
 somebody (1)
 sons (2)
 sorry (1)
 sort (2)
 SOUTH (11)
 speak (1)
 speaks (1)
 spelling (1)
 Square (4)
 start (5)
 started (1)
 starts (4)
 STATE (2)

statement (1)
 statements (1)
 status (1)
 stay (1)
 straightforward (1)
 Street (2)
 stuck (2)
 subpoena (2)
 Subpoenas (1)
 subtract (1)
 suggest (2)
 Suite (2)
 sums (1)
 supplement (1)
 sure (8)
 sworn (1)

< T >

take (7)
 taken (3)
 talk (1)
 talking (5)
 talks (1)
 task (2)
 tasks (3)
 TAYLOR (1)
 technical (1)
 tedious (1)
 telephone (1)
 tell (3)
 term (6)
 terms (5)
 terms, (1)
 testified (2)
 testimony (1)
 Thank (1)
 theory (2)
 thing (1)
 things (3)
 think (10)
 THOMSON (18)
 thought (1)
 three (3)
 time (3)
 today (5)
 today's (1)
 tomorrow (7)
 tomorrow's (2)
 top (6)

total (3)
 town (2)
 Tracy (1)
 transcribing (2)
 transcript (2)
 transmitting (1)
 travel (2)
 traveling (2)
 treasurer (2)
 trial (7)
 trip (2)
 trouble (3)
 troubles (1)
 truth (3)
 trying (2)
 Two (16)
 type (1)

< U >

uh-huh (2)
 uh-uh (1)
 ultimately (1)
 umbrella (1)
 understand (7)
 understood (1)
 unfortunately (1)
 unit (1)
 units (6)
 update (1)
 use (1)

< V >

valid (1)
 variety (1)
 verify (3)
 version (5)
 video (4)
 videoconference (1)
 videographer (1)
 videotaped (1)
 view (4)
 Village (4)
 visited (1)

< W >

wait (1)
 waive (1)
 walk (1)
 want (12)

wanted (3)
 way (8)
 welcome (1)
 well (3)
 went (3)
 we're (10)
 Williamsport (3)
 WITNESS (1)
 wondering (1)
 words (1)
 work (6)
 writing (1)
 wrong (2)
 wrote (1)

< Y >

Yeah (1)
 year (1)
 years (2)
 you, (1)

1 STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS
2 COUNTY OF BEAUFORT * FOURTEENTH CIRCUIT
3 * C.A. No. 2015-CP-07-02047
4 James R. Brady, *
5 Plaintiff, *
6 v. *
7 Hilton Head Homes at *
Allenwood, LLC; Village
8 Square Development Company, *
LLC; Lancaster Redevelopment
9 Corp.; and Gary L. *
Grossman,

10 *
Defendants.

11 *

12
13 * * * * *

14 December 20, 2018

15 * * * * *

16 Videotaped deposition of GINGER GRIFFITH,
17 held in the offices of Premier Reporting, LLC, 112
18 Market Street, Suite 406, Harrisburg, Pennsylvania
19 17101, commencing at 9:10 a.m., on the above date,
20 before Tracy Dominico, a Professional Court Reporter
21 and Notary Public of the Commonwealth of Pennsylvania.

22

23

24

25

1 APPEARANCES:

2 THE CAPELL LAW FIRM, LLC

321 East Bay Street

3 Charleston, South Carolina 29401

BY: CHARLES W. THOMSON, ESQUIRE

4 (Via videoconference)

(843) 501-0423

5 Counsel for the Plaintiff

6 BUIST, BYARS & TAYLOR, LLC

652 Coleman Boulevard, Suite 200

7 Mt. Pleasant, South Carolina 29464

BY: G. HAMLIN O'KELLEY, III, ESQUIRE

8 (Via telephone)

(843) 284-1408

9 Counsel for the Defendants

10

Also Present:

11

Kenneth Haase, Videographer

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

DEPONENT	EXAMINATION	PAGE
GINGER GRIFFITH	By Mr. Thomson	4, 39
	By Mr. O'Kelley	36

EXHIBITS

NO.	DESCRIPTION	PAGE
(None.)		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

(Proceedings commenced at 9:10 a.m.)

* * * * *

THE VIDEOGRAPHER: Time on the video monitor is 9:10 a.m. My name is Ken Haase for Clark and Associates. This begins the videotaped deposition of Ginger L. Griffith testifying in the matter of James Rod Brady versus Hilton Head Homes at Allenwood, LLC, et al. In the Court of Common Pleas, Fourteenth Circuit, Beaufort County, South Carolina, Case Number 2015-CP-07-02047, taken at Premier Reporting, 8 South Hanover Street, Suite 201, Carlisle, Pennsylvania. Today's date is December 20, 2018.

Will counsel please identify yourselves and state who you represent.

MR. THOMSON: Charles Thomson. I represent the Plaintiff James Rod Brady.

MR. O'KELLEY: And this is Hamlin O'Kelley. I represent the Defendants in this matter.

THE VIDEOGRAPHER: Will the court reporter please identify herself and swear in or affirm the witness.

THE COURT REPORTER: Tracy Dominico. Will you raise your right hand?

* * * * *

1 GINGER GRIFFITH, after having been duly
2 sworn/affirmed to tell the truth, the whole truth and
3 nothing but the truth, testified as follows:

4 THE VIDEOGRAPHER: Please begin.

5 MR. THOMSON: Ready to go?

6 THE VIDEOGRAPHER: Yep.

7 * * * * *

8 EXAMINATION

9 BY MR. THOMSON:

10 Q. Ms. Griffith, as you know, I'm Charles
11 Thomson. I represent James Rod Brady. Mr. Brady has
12 brought suit against Gary Grossman, Lancaster
13 Redevelopment Corporation and two other single-purpose
14 LLCs in South Carolina for failure to pay money owed to
15 him on two development projects down there, two
16 neighborhood development projects.

17 Can you please, to start out, state your
18 full name for the record?

19 A. Ginger L. Griffith.

20 Q. Okay. Ms. Griffith, thank you for coming
21 today. The main purpose is there's a piece of evidence
22 in this matter, a 2007 letter written by you. And I
23 would like for you to authenticate that letter and
24 educate the jury about the contents.

25 But before we get going on that, just a

1 reminder: You're under oath subject to the penalty of
2 perjury. This, again, the purpose is to educate the
3 jury today, so they are our audience here. We are
4 doing this by video because you being in Selinsgrove,
5 Pennsylvania, this seemed to be a better option than
6 forcing you to travel to South Carolina for -- to
7 testify at the trial in this matter.

8 So we'll get started by briefly going
9 through your background. You were born and raised in
10 Selinsgrove, right?

11 A. Correct.

12 Q. And you went to high school there in
13 Pennsylvania?

14 A. Yes.

15 Q. Okay. And then after high school, you went
16 to Williamsport Community College, right?

17 A. That's correct.

18 Q. And you earned an associate degree in
19 accounting there in 1985?

20 A. That is correct.

21 Q. Okay. And from 1985 to 1998, you worked
22 accounting jobs for two separate companies?

23 A. Yes, yes.

24 Q. Then in 1998, you began working for Gary
25 Grossman's company, Lancaster Redevelopment

1 Corporation, right?

2 A. That is correct.

3 Q. And that was 20 years ago obviously. And
4 both Mr. Grossman and Lancaster Redevelopment
5 Corporation are Defendants in this matter, right?

6 A. Yes.

7 Q. And you continued to be -- you were a
8 treasurer for Lancaster Redevelopment Corporation?

9 A. Yes, I held that position.

10 Q. Okay. And you held that position until June
11 of 2010, right?

12 A. Yes.

13 Q. That position expired because Lancaster
14 Redevelopment Corporation just went under?

15 A. Basically, yes.

16 Q. It's not a technical term, but it's probably
17 parlance at least. Okay. And then after June 2010,
18 you continued to be employed by one of Mr. Grossman's
19 companies. But it had a new name of Building Solutions
20 Since 1977, LLC, right?

21 A. That's correct.

22 Q. And that Since 1977 is part of the company
23 name, not a descriptive -- not something I was saying
24 to be descriptive, right?

25 A. Correct, it's part of the company name.

1 Q. Right. Okay. So you're not a CPA?

2 A. No.

3 Q. Right?

4 A. No.

5 Q. But you are a professional in the accounting
6 field?

7 A. Yes.

8 Q. And just to repeat, you've been working
9 under the direction of Mr. Grossman since 1998 for 20
10 years, first under Lancaster Redevelopment Corporation,
11 now under a different company name, right?

12 A. That is correct.

13 Q. Why did Lancaster Redevelopment Corporation
14 go out of business?

15 A. The housing market had gone downhill. And
16 the company just did not have enough income to pay
17 debts. It just -- it was failing. And Gary felt it
18 best to shut down that company. The property was sold
19 by the bank that held the mortgage to another
20 individual.

21 So Gary reorganized as a new company.

22 Q. Okay. So is it a correct summary that
23 pretty much the debts outweighed the assets, right?

24 A. Correct.

25 Q. All right. So you were treasurer for

1 Lancaster Redevelopment Corporation and also for the
2 new company. And you do the accounting for those
3 companies, right?

4 A. Yes.

5 Q. And as part of your job for those companies,
6 you also serve doing the accounting for various
7 single-purpose LLCs owned and directed by either
8 Lancaster Redevelopment Corporation or the Building
9 Solutions company?

10 A. Yes. Most of them are not under the
11 umbrella of Building Solutions. They are Gary
12 Grossman's individual companies that he may have other
13 partners in.

14 Q. Okay. And let's clarify this for the jury:
15 And I'm speaking in generalities here just for
16 background purposes. When a developer develops a
17 specific neighborhood, it might form a single-purpose
18 company for that project. And then when that project
19 is done, that single-purpose company might shut down.

20 But the parent company or other investors
21 might own that single-purpose company. Is that --

22 A. That's correct, yes.

23 Q. -- the general?

24 A. Yes.

25 Q. Yeah. Okay. And that's what we have here

1 on these two Hilton Head projects at issue in this
2 case, right?

3 A. Yes.

4 Q. Okay. And the two LLCs there are Hilton
5 Head Homes at Allenwood, LLC and Village Square
6 Development Company, LLC?

7 A. Yes.

8 Q. And those companies serve no purpose other
9 than the respected neighborhood development that they
10 were designed to serve?

11 A. Correct.

12 Q. When those two companies were active, you
13 did the accounting for them, right?

14 A. Yes, I did.

15 Q. And while those development projects were
16 active, you did the accounting for Lancaster
17 Redevelopment Corporation?

18 A. Yes.

19 Q. Is that correct?

20 A. Yes, that's correct.

21 Q. Okay. And so you specifically did the
22 accounting on these two projects, Allenwood and Village
23 Square?

24 A. Yes.

25 Q. All right. I would like to place two

1 separate letters before you.

2 MR. THOMSON: And, Madam Court Reporter,
3 these were identified as Exhibit 2 and Exhibit 4 at
4 yesterday's deposition.

5 THE COURT REPORTER: Okay. She has them.

6 BY MR. THOMSON:

7 Q. Okay. For the jury, there are two of these
8 letters. One is the September 13, 2007 letter that I
9 will want you to authenticate. And the other letter is
10 dated February 2, 2004. You didn't write the 2004
11 letter, right?

12 A. No, I did not.

13 Q. Okay. But you did reference that letter
14 when writing the September 13, 2007 letter, right?

15 A. Yes.

16 Q. Okay. So, I guess, first, would you please
17 verify that the September 13, 2007 letter in your
18 possession right now, that that is a genuine copy of
19 the letter that you wrote?

20 A. Yes, it is.

21 MR. THOMSON: And at this time I would like
22 to formally enter that as a trial exhibit whenever we
23 do have a judge assigned to this matter. Any
24 objections, Hamlin?

25 MR. O'KELLEY: I'll reserve my objections as

1 to admissibility with any judge. But she's
2 authenticated it as it's her's. So subject to any
3 later objection to be taken up with the Court, none at
4 this time.

5 MR. THOMSON: Okay.

6 BY MR. THOMSON:

7 Q. All right. And after the 2004 letter, I
8 know you didn't write that, so I'm not asking you to
9 authenticate the authorship, but I do want you to
10 please authenticate that this is indeed a genuine copy
11 of the February 2, 2004 letter that you referenced
12 within your 2007 letter which you just previously
13 authenticated?

14 A. Yes, it is.

15 Q. Okay.

16 MR. THOMSON: And similarly, I would like to
17 formally enter this 2004 letter as a trial exhibit.

18 MR. O'KELLEY: Same response as to the
19 prior.

20 MR. THOMSON: Sure. Okay.

21 BY MR. THOMSON:

22 Q. Let me start with the 2004 letter. As I
23 explained earlier, my purpose here is to get you to
24 explain the 2007 letter. And I know you didn't write
25 this 2004 letter. But I want to go through this

1 briefly because it provides important background that I
2 think would be helpful to the jury in understanding
3 what's before them in the 2007 letter.

4 So, okay, this 2004 letter, generally the
5 subject is about the beginning of two separate
6 developments in the Hilton Head area, Allenwood and
7 Village Square Development, right.

8 A. Yes.

9 Q. And Mr. Brady and Mr. Grossman are teaming
10 up to fund the development of these neighborhoods. And
11 I'm not asking you to verify the contracting parties
12 from this letter. But generally that's what's going on
13 with this letter, right?

14 A. Yes.

15 Q. Okay. And involved with the development of
16 those neighborhoods, there's various services that need
17 to be performed, we have construction services that
18 need to be performed. And marketing services and real
19 estate sales, right?

20 A. That's correct.

21 Q. On page two of the letter, there's a bunch
22 of bullet points full of terms, right?

23 A. Correct.

24 Q. These are the terms you -- this is your
25 reference points for the 2007 letter. You go to this

1 letter to see what the terms are, and then you
2 calculate the numbers based on these terms, right?

3 A. That's correct.

4 Q. Okay. Without getting into the details,
5 some of these terms have to do with Rod Brady being
6 compensated for his fees earned for his construction
7 management work, right?

8 A. Yes.

9 Q. And Rod is to market and sell these houses,
10 right?

11 A. Yes.

12 Q. And in exchange for those services he gets
13 certain fees?

14 A. Yes.

15 Q. And Rod is entitled to hire others to help
16 him with the construction of these projects. But if he
17 does hire the help, that money comes out of his fees
18 that he earns on the project, right?

19 A. Yes, that's correct.

20 Q. Okay. And on top of the construction and
21 marketing and real estate services, there is also
22 what's called an incentive management fee, which is
23 pretty much an overall sharing of profits that these
24 single-purpose LLCs make with Rod, right?

25 A. Yes, that is in here.

1 Q. Okay. And some last terms on this: Before
2 Rod is paid that profit sharing portion, and, again,
3 that's an incentive management fee which is the profit
4 sharing, before Rod gets paid that, Lancaster
5 Redevelopment Corporation gets a cut, a 1 percent
6 return per month on the money it loans to the project,
7 right?

8 A. Yes.

9 Q. And Gary Grossman, personally in his
10 individual capacity, gets 500 points for guaranteeing
11 funds, right?

12 A. Yes.

13 Q. Okay. And that 500 points comes to a 15
14 percent per annum?

15 A. Yes.

16 Q. Okay.

17 A. Okay.

18 Q. At the top of page 3 of the letter, before
19 we move on, it mentions the words of Gary Grossman here
20 that says "I would like all the accounting and debt
21 management to take place from my office so I can stay
22 on top of things."

23 In that sentence when he says he would like
24 his office to take care of accounting, that's talking
25 about a job you would handle, right?

1 A. Yes, it is.

2 Q. Hopefully that provides some background
3 framework of the letter we're about to go into. So,
4 now, looking at trial Exhibit 1, that is the September
5 13, 2007 letter. Please verify that this is a letter
6 to James Rod Brady written from you?

7 A. Yes, that's correct.

8 Q. And then in the first paragraph of that
9 letter it says "Pursuant to your discussion with
10 Mr. Grossman, I'm transmitting our analysis of the
11 Allenwood compensation to you under our February 2,
12 2004 letter of agreement."

13 That February 2 letter is the letter that we
14 just went through in greater detail, right?

15 A. Yes, it is.

16 Q. Okay. And as a reminder, this is for two
17 separate developments, right? We have the Village
18 Square Development neighborhood and we have the
19 Allenwood neighborhood, right?

20 A. Yes.

21 Q. Okay. And so let's just hit the main
22 numbers on this letter real quick. So the first
23 development, Village Square, it looks like the -- you
24 calculated the income of those two -- of that company
25 for the years 2005 and 2006 as 956,385, right?

1 A. Yes.

2 Q. And that's net income?

3 A. Yes, I believe so.

4 Q. Okay. And that income means your income
5 after you take into account money that this LLC owes to
6 other entities, right?

7 A. I believe it's net profit after expenses of
8 building the homes.

9 Q. Right. And the expenses of building homes,
10 that would include money owed to vendors or other
11 companies, right, third parties?

12 A. Yes. You're not including banks or anything
13 like that, correct, in your statement?

14 Q. Right.

15 A. Okay.

16 Q. Correct. And then you note on the letter
17 that Rod was paid a 36,000 distribution out of the 2005
18 and 2006 income, right?

19 A. Correct.

20 Q. Okay. So from looking at the paragraph that
21 starts with "Under the February 2, 2004 letter of
22 agreement you are scheduled to be paid" -- the end of
23 that paragraph says -- "I interpret the February 2,
24 2004 letter of agreement to make the construction fees
25 payable at the time each unit sells."

1 Do you see that?

2 A. Yes.

3 Q. And so what that is telling us here is the
4 fees discussed in this letter, we're talking about
5 houses that the construction is already complete,
6 right?

7 A. Yes.

8 Q. And they've been sold to the owners -- to
9 homeowners, whoever they may be, correct?

10 A. Correct.

11 Q. And the LLC has been paid money for those
12 homes, right?

13 A. Right.

14 Q. Okay. All right. The next paragraph it
15 talks about, you understand that the expenses
16 associated with hiring Nick Grossman and Dan Clore for
17 supervisory work on your behalf are to be deducted.
18 And we went through that on the 2004 letter, right?

19 A. Yes.

20 Q. And, again, we look on the next page, and
21 you were taking into account funds due to Mr. Nick
22 Grossman and Dan Clore as part of this analysis, right?

23 A. That's correct.

24 Q. Okay. And these are for houses that are
25 already completed, right?

1 A. Yes.

2 Q. Okay. So no need for Mr. -- for Nick
3 Grossman or Dan Clore to incur any additional expenses,
4 right?

5 A. That is correct.

6 Q. All right. Let's go to the numbers on -- we
7 have a construction management fee of 32,500 for the
8 Village Square Development. Then there is a \$1,000
9 real estate fee per unit sold, and that comes to
10 26,000, right?

11 A. Yes.

12 Q. All right. It looks like Mr. Brady was paid
13 a portion of those commissions, 9,415, right?

14 A. Yes.

15 Q. And so your -- you got parentheses here.
16 And that means you were deducting that money that's
17 already paid. The money that's already been paid to
18 Rod, you're deducting that from what you are
19 calculating to be owed to him, right?

20 A. Right.

21 Q. And that's fair, right?

22 A. Yes.

23 Q. The fees for Nick Grossman and Dan Clore,
24 we've got four different numbers in there. I've added
25 those numbers up, and it comes to \$111,81. Any reason

1 to believe that's incorrect?

2 A. No.

3 Q. So we are taking into account that Nick
4 Grossman and Dan Clore helped Mr. Brady. Mr. Brady
5 agrees to pay people for their help with the
6 construction of these projects.

7 And so after we go through the numbers of
8 what Mr. Brady earned on his construction management
9 fee and what he had to pay out, and the status as of
10 September 13, 2007, is that Mr. Brady was owing to
11 Lancaster Redevelopment Corporation or whoever those
12 contracting parties may be, Mr. Brady, after taking
13 into account all of those things was owed -- or owed
14 the company \$25,746, right?

15 A. That's right.

16 Q. Okay. All right. So that portion all had
17 to do with construction management and real estate
18 services, right?

19 A. Yes.

20 Q. Okay. And then moving on to the next part
21 of the letter, the next few paragraphs, that has to do
22 with the incentive management fee, basically profit
23 sharing type fees and calculations, right?

24 A. Yes.

25 Q. Okay. And just as a remainder, Rod gets a

1 -- is to receive an incentive management fee profit
2 sharing in the tune of 50 percent of the profits of the
3 LLCs, right?

4 A. Yes.

5 Q. Okay. And but before Rod gets paid,
6 Lancaster Redevelopment Corporation gets a cut, right?

7 A. Yes.

8 Q. And then Gary Grossman individually also
9 gets a cut, right?

10 A. Yes.

11 Q. And so the next three paragraphs, that's
12 what's going on here, right? We're calculating what
13 the profit is. We're seeing what Mr. Grossman's is.
14 We're seeing what Lancaster Redevelopment Corporation's
15 cut is. And then finally from there we're seeing what
16 portion would be due to Mr. Brady, correct?

17 A. Correct.

18 Q. Okay. All right. And it looks like
19 Lancaster Redevelopment Corporation's cut under this
20 section we were just talking about is 841,619. Is that
21 correct? The paragraph starts with the net income.
22 Take the time to read it if you need to.

23 Do you need me to repeat the question?

24 A. I'm just trying to follow our calculations
25 on this letter. It was a long time ago that I wrote

1 it, so I don't remember everything. Okay. So what was
2 your question again now?

3 Q. You know what, can you just strike that
4 question there? I think that's not LRC's cut. That
5 would be the allocated income.

6 A. Okay. Correct.

7 Q. Let's move on to Mr. Grossman's cut of this
8 profit sharing. The next paragraph where it starts
9 "Under the terms of the February 2, 2004 letter" --

10 A. Yes.

11 Q. -- okay, the last portion of the sentence
12 says "which calculates to a prorated guarantee fee of
13 148,504.85 for 2005."

14 A. Yes.

15 Q. That -- that is what is due to Mr. Grossman
16 personally, right?

17 A. Yes.

18 Q. And if we could, please, connect the dots
19 back to the 2004 letter, I just want to connect this
20 calculation and where it pertains to on the 2004
21 letter. So this 148,504.84 due to Gary Grossman, if we
22 want to see how Mr. Grossman is justified to that fee,
23 we go to page 2 at the bottom paragraph, is that
24 right --

25 A. That's correct.

1 Q. -- in the 2004 letter? And this is
2 basically he's earning this fee in exchange for him
3 giving a personal guarantee, right?

4 A. Right.

5 Q. All right. And so that fee, we're still
6 just talking about the Village Square neighborhood,
7 right?

8 A. Yes.

9 Q. Okay. And we're separately going to go
10 through what that fee is for Allenwood, right?

11 A. Correct.

12 Q. Just a remainder: We can get lost in the
13 weeds here. Sometimes we need a reminder of where we
14 are locally. Okay. And then the next few paragraphs,
15 you're starting to calculate what Rod's incentive
16 management fee is. And he's already been paid a
17 certain amount of money on his incentive management
18 fee.

19 But after you take into consideration all
20 that he's earned versus all that he's been paid, the
21 net balance due to Rod for an incentive management fee,
22 which is profit sharing on the Village Square
23 Development project only, is \$83,488. Is that correct?

24 A. That is correct.

25 Q. And -- and -- and that money has already

1 been earned, right?

2 A. Yes.

3 Q. As of September 13, 2007?

4 A. Yes.

5 Q. And the LLCs have already been paid the
6 money that generated the profits from which this
7 calculation was made, right?

8 A. Yes.

9 Q. Okay. And you've already accounted for
10 Lancaster Redevelopment Corporation's portion of
11 profits out of that, right?

12 A. In the calculation, yes.

13 Q. Yes. And you had already accounted for
14 Mr. Grossman's individual cut of that, right?

15 A. Yes.

16 Q. And so in the end Rod's incentive management
17 fee is exactly what it says; it's money due and owing
18 to him after accounting for everything that needs to be
19 accounted for. And that amount due to him is 83,488,
20 right?

21 A. Yes.

22 Q. Okay. All right. That is -- we've gone
23 through the calculations of the Village Square
24 Development neighborhood. And I would like to move on
25 to the second neighborhood here, the Allenwood

1 neighborhood. So if we go through, it's kind of the
2 same process again, right?

3 A. Yes.

4 Q. Different neighborhood, different numbers to
5 calculate, but the -- and the fees under the agreement
6 might be slightly different, but it's generally the
7 same type of calculations, right?

8 A. That's correct.

9 Q. Okay. All right. So first, looking at the
10 construction management fees for Allenwood, it appears
11 that Mr. Brady has earned about \$240,000 in some fees
12 before taking out other things that you might need to
13 take out, right?

14 A. Yes.

15 Q. Okay. And, again, Mr. Brady was entitled
16 hire help. And it looks like that money just had to
17 come out of his fees, and it looks like he has done
18 that here again with the Allenwood project, right?

19 A. Yes.

20 Q. And he had Rich Raven and RS Davis to help
21 him, right?

22 A. Correct.

23 Q. Okay. And if you add up the two numbers
24 owing to them, and they're both in parentheses there,
25 I'm coming up with \$76,552, correct?

1 A. Correct.

2 Q. And those numbers are in parentheses because
3 we're saying Rod owes money back for that, right?

4 A. Yes.

5 Q. So it's to be subtracted from the end result
6 of whatever money Rod is owed, right?

7 A. Right.

8 Q. Okay. So after we take all of that into
9 account, and we also add in the real estate fees, and
10 we also take into account money that has already been
11 paid to Rod, we are left with a balance of \$19,629,
12 right?

13 A. Yes.

14 Q. And that is money that is owed to Mr. Brady
15 after accounting for all of these other amounts he
16 owes, right?

17 A. Yes.

18 Q. Okay. And this is just for construction
19 management fees and real estate services, right?

20 A. Correct.

21 Q. And it's just for the Allenwood project,
22 right?

23 A. Correct.

24 Q. Okay. All right. Let's move on to the next
25 set of calculations. We're moving on here to the

1 calculations for the incentive management fee and the
2 more profit sharing portion of the fees are, right?

3 A. Yes.

4 Q. Okay. And let's go to the line that says
5 "The 500 basis point guarantee fee calculating to,"
6 and it says 99,693, right?

7 A. Yes.

8 Q. Again, we connected the dots on this 500
9 basis point fee. We previously connected the dots to
10 the last paragraph of page 2 of the 2004 letter, right?

11 A. Yes.

12 Q. And that's the same thing we're doing here,
13 right?

14 A. Yes.

15 Q. Okay. And this is for 2005 only. And it's
16 for the Allenwood project only, right?

17 A. Right.

18 Q. And Mr. Grossman is being paid \$99,693 for
19 that portion, right?

20 A. Yes.

21 Q. In exchange for his personal guarantee,
22 correct?

23 A. Correct.

24 Q. Okay. Let's move on down. The 2006, where
25 it says "The 500 basis point guarantee fee," same set

1 of scenarios, right? We don't need to go back and
2 connect the dots again. But it is the same principle
3 here, right? It's just for 2006 incentive?

4 A. Yes.

5 Q. Okay. And Mr. Grossman's fee in exchange
6 for personally guaranteeing the funds in 2006 for the
7 Allenwood neighborhood is 52,244?

8 A. Yes.

9 Q. Okay. So after taking into account the
10 money owed to Lancaster Redevelopment Corporation, and
11 the money owed to Mr. Grossman individually, we would
12 could then calculate what Mr. Brady's incentive
13 management fee is for the Allenwood project, right?

14 A. Yes.

15 Q. And that number comes to 633,656, right?

16 A. Yes.

17 Q. Owed to Mr. Brady, right?

18 A. Correct.

19 Q. Okay. So now we've -- after we gotten to
20 that point, we made all the preliminary calculations
21 that we need to make to determine the total amount that
22 is owed to Mr. Brady as of September 13, 2007, correct?

23 A. Correct.

24 Q. And that number owed to Mr. Brady as of
25 September 13, 2007 is \$711,027, right?

1 A. Yes.

2 Q. Okay. Let's go back and summarize that more
3 distinctly in a second. But first, look at the next
4 page, top paragraph of, I believe, that's the third
5 page of the letter -- fourth page. I'm sorry. It
6 says, "Mr. Grossman directed me to access our ability,"
7 right?

8 A. Yes.

9 Q. Do you see that paragraph? And what's going
10 on here is that, if I can distinctly paraphrase that,
11 that paragraph is, yes, Mr. Brady, you're owed money,
12 the \$711,000 and change, but Lancaster Redevelopment
13 Corporation is having financial troubles. And we can't
14 -- we don't have the funds to pay it all to you right
15 now. So what we are going to do is pay you \$10,000 a
16 month.

17 Is that essentially what that paragraph is
18 saying?

19 A. Yes.

20 Q. And you don't recall one way or the other
21 whether any of those monthly payments were made to Rod
22 after September of 2007?

23 A. I don't recall, no.

24 Q. Okay. So Rod was already owed the money,
25 right? He'd already earned it, right?

1 A. Yes.

2 Q. And the purpose of getting on this payment
3 plan was because Lancaster Redevelopment Corporation
4 had financial issues, right?

5 A. Yes.

6 Q. And the purpose of those financial -- or the
7 source of those financial issues were projects other
8 than the two at issue here, correct?

9 A. One of the issues was past due receivables
10 from the Allenwood project.

11 Q. Would those past due receivables, would
12 those have been accounted for when you calculated the
13 net income of that LLC?

14 A. Yes.

15 Q. Okay. So we've already accounted for those
16 past due receivables within the number owed to Rod,
17 right?

18 A. Yes.

19 Q. Okay. And then the other reason listed, it
20 says, it seems as if the Lancaster Redevelopment
21 Corporation is having problems with carrying costs of
22 Cypress Harbor. That project had nothing to do with
23 Village Square Development, right?

24 A. No.

25 Q. And it had nothing to do with the Allenwood

1 project, right?

2 A. No.

3 Q. And it had nothing to do with Rod Brady,
4 right?

5 A. I don't believe so. I personally don't
6 remember the Cypress Harbor project.

7 Q. Right. And it doesn't appear to be relevant
8 to this case, I don't think, other than the fact that
9 it seems to be the source of why Lancaster
10 Redevelopment Corporation was having trouble paying Mr.
11 Brady. And this was written in the letter by you,
12 right?

13 A. Yes.

14 Q. And you just don't remember all the complete
15 details of -- behind that -- those problems, right?

16 A. Correct.

17 Q. And it also mentions a "massive increase in
18 overhead associated with the new plant." That didn't
19 have anything to do with Rod Brady, right?

20 A. No.

21 Q. Okay. So to recap, the sales have been
22 final, right, of the properties built on these two
23 neighborhoods, right?

24 A. Yes.

25 Q. And the LLC's, that money from the

1 purchasers of the homes, right?

2 A. Yes.

3 Q. And there was a profit after that, right?

4 A. Yes.

5 Q. Okay. Lancaster Redevelopment's portion of
6 that profit got accounted for, right?

7 A. Right.

8 Q. And Mr. Grossman's individual profits from
9 those transactions got accounted for, right?

10 A. Yes.

11 Q. And after all that, Mr. Brady was still owed
12 a big chunk of money out of those profits, right?

13 A. Right.

14 Q. For work that has already been earned,
15 right?

16 A. Right.

17 Q. We're not projecting future profits here,
18 right?

19 A. Correct.

20 Q. Okay. And Mr. Brady was not paid that money
21 because Lancaster Redevelopment Corporation had
22 problems on other projects that had nothing to do with
23 Rod Brady, right?

24 A. Some of the problems had nothing to do with
25 Allenwood.

1 Q. Okay. Okay. All right. So and let's
2 summarize the specific numbers really quickly. So the
3 total was 711,024 -- or 27 -- I'm sorry. Right?

4 A. Yes.

5 Q. And of that 633,656, that was owed to Rod as
6 an incentive management fee or basically a profit
7 sharing from the Allenwood project, right?

8 A. Right.

9 Q. Already earned, correct?

10 A. Correct.

11 Q. Homes already sold, right?

12 A. Right.

13 Q. LLCs are already paid by the home
14 purchasers, right?

15 A. Yes.

16 Q. And the LLCs made a profit, right?

17 A. Yes.

18 Q. Okay. And then there is an amount 19,629
19 owed to Rod as a construction management fee at
20 Allenwood. And that money was already earned, right?

21 A. Right.

22 Q. And the construction was already completed
23 at those homes, too, correct?

24 A. Correct.

25 Q. All right. And the 83,488 portion was owed

1 to Rod as his incentive management fee for the Village
2 Square Development project, right?

3 A. Yes.

4 Q. And just like in Allenwood, those fees are
5 already earned, right?

6 A. Yes.

7 Q. And the homes are already sold?

8 A. Yes.

9 Q. Okay. And to be fair, Rod owed Lancaster
10 Redevelopment Corporation, or whoever the contracting
11 parties were, \$25,746. And that was for the difference
12 between his construction management fees and the money
13 he owed for the help he retained to assist him with
14 that construction, right, at the Village Square
15 Development project, right?

16 A. Correct.

17 Q. Okay. But the number that he owed to other
18 people was put into the total, right?

19 A. Yes.

20 Q. And that total, again, that was owed to Rod
21 was \$711,027 as of September 13, 2007?

22 A. Right.

23 Q. And the amount accounted for for his help
24 totalled between Nick Grossman, Dan Clore, Rich Raven
25 and RS Davis we've accounted for \$187,633 between the

1 four of them if you add up all the individual numbers.

2 Does that sound about right to you?

3 A. Yes, it does.

4 Q. Yeah. I'm not asking you to do math on the
5 spot. But that's the numbers that I came up with
6 anyhow. That number also took into account that
7 Mr. Grossman was getting consideration in exchange for
8 a personal guarantee. And he had -- we had accounted
9 for \$300,441.85 to be owed to him, right?

10 A. Yes.

11 Q. Already accounted for within the number owed
12 to Rod?

13 A. Yes -- owed to Gary.

14 Q. Okay. Yeah, so, essentially just to drive
15 the point home one last time, you concluded on
16 September 13, 2007 that the contracting parties owed
17 Rod \$711,027, right?

18 A. Yes.

19 Q. And you didn't just throw that letter
20 together, right?

21 A. No.

22 Q. And you're a professional in the accounting
23 business, right?

24 A. Right.

25 Q. And you made a good faith effort to get

1 these numbers right, didn't you?

2 A. Yes.

3 Q. And you haven't discovered any errors in
4 here now since the time you wrote that letter?

5 A. No.

6 Q. Okay. And you do not have any evidence
7 showing that Lancaster Redevelopment Corporation, Gary
8 Grossman or any other affiliated entity paid any money
9 to Rod subsequent to this September 13, 2007?

10 A. I don't know if anything has been paid to
11 Rod or not.

12 Q. Right. But the question is, you don't have
13 any evidence showing it, right?

14 A. Right.

15 MR. THOMSON: Okay. Those are all the
16 questions I have. Mr. O'Kelley, if would like to
17 interview Ms. Griffith, you have may take that
18 opportunity now.

19 MR. O'KELLEY: I thought this is a
20 deposition, not an interview.

21 MR. THOMSON: It's a de bene esse deposition
22 for purpose for use at trial.

23 * * * * *

24 EXAMINATION

25 BY MR. O'KELLEY:

1 Q. Ms. Griffith, you have the exhibits that Mr.
2 Thomson was asking you about in front of you, correct?

3 A. Yes, I do.

4 Q. All right. What was the arrangement as to
5 how Mr. Brady was to be paid? Mr. Thomson asked you
6 earlier about that, but it's my understanding that Mr.
7 Brady was to be paid after all the debts of the company
8 were to be paid, correct?

9 A. The incentive management fees were to be
10 after the initial debts from Lancaster Redevelopment or
11 Mr. Grossman were repaid.

12 Q. And remind the folks who are listening to
13 you what was going on with the greater economy in 2007?

14 A. I believe that's when the housing market
15 started to take a nose dive.

16 Q. And was Lancaster Redevelopment company in
17 September of the fall of 2007, was it suffering from
18 the falling apart of the housing market?

19 A. Yes. We --

20 Q. And was --

21 A. Go ahead.

22 Q. Go ahead, explain.

23 A. In some of the developments, we had standing
24 inventory that we couldn't sell.

25 Q. And were banks threatening foreclosure

1 against these developments in the fall of 2007 or had
2 foreclosures actually been filed, if you remember?

3 A. I don't remember exactly when. I know that
4 that came shortly into that time period into early
5 2008.

6 Q. And you're aware that there was a
7 foreclosure against Village Square Development Company,
8 correct?

9 A. Correct.

10 Q. And there was a foreclosure against Hilton
11 Head Homes at Allenwood, correct?

12 A. That's correct.

13 Q. And Mr. Rod Brady had nothing to lose in
14 those foreclosures, did he?

15 A. I don't believe he was a guarantee -- or a
16 guarantor on any debt.

17 Q. And was Mr. Grossman a guarantor on debt?

18 A. Yes, he was.

19 Q. And Mr. Brady was advanced sums during his
20 employment by Hilton Head Homes and by Village Square,
21 correct?

22 A. Yes, against his fees earned.

23 Q. That's correct. And then was he ever an
24 employee of Lancaster Redevelopment Corporation to your
25 knowledge?

1 A. I'm trying to remember. I know Gary and Rod
2 talked about it, but I don't recall if he ever became
3 an actual employee.

4 Q. And if I were to represent to you that he
5 was never an employee of Lancaster Redevelopment
6 Corporation, do you have any reason to doubt that?

7 A. No, no.

8 MR. O'KELLEY: Thank you, ma'am. That's all
9 I've got.

10 THE WITNESS: Okay.

11 THE VIDEOGRAPHER: Anything else?

12 MR. THOMSON: Just some quick follow-up.

13 * * * * *

14 EXAMINATION (CONT'D.)

15 BY MR. THOMSON:

16 Q. Ms. Griffith, Mr. O'Kelley was just talking
17 to you about how Mr. Brady was to be paid after
18 everyone else got paid, correct?

19 A. For the incentive management fee, yes.

20 Q. Right. I think I've just got that question
21 backwards. I'll re-ask so it's clear for the record.
22 Hamlin asked you about how Lancaster Redevelopment
23 Corporation and Mr. Grossman were to be paid prior to
24 Mr. Brady being paid for the incentive management fee,
25 right?

1 A. For their initial investment in the
2 development companies.

3 Q. Right.. And Mr. O'Kelley asked you a series
4 of questions that basically go into the fact that the
5 company didn't have the funds to pay, right?

6 A. Correct.

7 Q. And we went through this during my direct
8 examination, but the last paragraph -- or on the last
9 page of your 2007 letter on the top paragraph, it talks
10 about some of Lancaster Redevelopment's financial
11 issues, right?

12 A. Yes.

13 Q. And some of those troubles have nothing to
14 do with the two projects at issue here, right?

15 A. That's correct.

16 Q. So even though there might have been an
17 agreement for Mr. Grossman and the Lancaster
18 Redevelopment Corporation to be paid first, that
19 wouldn't necessary excuse some excuse of outside forces
20 taking precedence over payments to Mr. Brady, right?

21 A. Can you repeat that?

22 Q. That wasn't the best-worded question. So
23 even though Lancaster Redevelopment Corporation and
24 Mr. Grossman were to be paid before Rod was to be paid,
25 the confusion of outside economic forces has no bearing

1 on the amount owed to Mr. Brady, right?

2 A. That's correct.

3 MR. THOMSON: Okay. That's the last
4 question I have. Any more Hamlin?

5 MR. O'KELLEY: That's all.

6 THE VIDEOGRAPHER: This concludes today's
7 deposition. The time on the monitor is 10:00 a.m.

8 THE COURT REPORTER: Do you both want PDFs
9 like yesterday?

10 MR. O'KELLEY: Yes.

11 MR. THOMSON: Yes.

12 (Whereas, the deposition concluded at 10:00
13 a.m.)

14

15

16

17

18

19

20

21

22

23

24

25

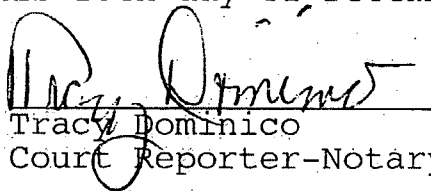
1 COMMONWEALTH OF PENNSYLVANIA)
2 COUNTY OF CUMBERLAND) SS.
3)

4 I, Tracy Dominico, a Court
5 Reporter-Notary Public authorized to administer
6 oaths and take depositions in the trial of causes
7 and having an office in Mechanicsburg,
8 Pennsylvania, do hereby certify that the
9 foregoing is a true record to the testimony
10 given; that before the taking of said deposition,
11 the witness was duly sworn/affirmed; that the
12 questions and answers were taken down stenotype
13 by said Reporter-Notary and afterwards reduced to
14 computer printout under the direction of said
15 Reporter.

16 I further certify that the proceedings
17 and evidence are contained fully and accurately
18 in the notes taken by me of the within deposition
19 to the best of my ability; and that this copy is
20 a correct transcript of the same.

21 In testimony whereof, I have hereunto
22 inscribed my hand this 20th day of December,

23 2018
24 NOTARIAL SEAL
25 TRACY DOMINICO
Notary Public
HAMPDEN TWP, CUMBERLAND COUNTY
My Commission Expires Nov 12, 2019


Tracy Dominico
Court Reporter-Notary Public

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WORD INDEX

< \$ >

\$1,000 19:8

\$10,000 29:15

\$111,81 19:25

\$187,633 34:25

\$19,629 26:11

\$240,000 25:11

\$25,746 20:14 34:11

\$300,441.85 35:9

\$711,000 29:12

\$711,027 28:25

34:21 35:17

\$76,552 25:25

\$83,488 23:23

\$99,693 27:18

< 1 >

1 15:5 16:4

10:00 41:7, 12

112 1:17

13 11:8, 14, 17 16:5

20:10 24:3 28:22,

25 34:21 35:16

36:9

148,504.84 22:21

148,504.85 22:13

15 15:13

17101 1:19

19,629 33:18

1977 7:20, 22

1985 6:19, 21

1998 6:21, 24 8:9

< 2 >

2 11:3, 10 12:11

16:11, 13 17:21, 23

22:9, 23 27:10

20 1:14 4:13 7:3

8:9

200 2:6

2004 11:10, 10 12:7,

11, 17, 22, 25 13:4

16:12 17:21, 24

18:18 22:9, 19, 20

23:1 27:10

2005 16:25 17:17

22:13 27:15

2006 16:25 17:18

27:24 28:3, 6

2007 5:22 11:8, 14,

17 12:12, 24 13:3,

25 16:5 20:10 24:3

28:22, 25 29:22

34:21 35:16 36:9

37:13, 17 38:1 40:9

2008 38:5

201 4:12

2010 7:11, 17

2015-CP-07-02047

1:3 4:11

2018 1:14 4:13

26,000 19:10

27 33:3

284-1408 2:8

29401 2:3

29464 2:7

< 3 >

3 15:18

32,500 19:7

321 2:2

36 3:4

36,000 17:17

39 3:3

< 4 >

4 3:3 11:3

406 1:18

< 5 >

50 21:2

500 15:10, 13 27:5,

8, 25

501-0423 2:4

52,244 28:7

< 6 >

633,656 28:15 33:5

652 2:6

< 7 >

711,024 33:3

< 8 >

8 4:11

83,488 24:19 33:25

841,619 21:20

843 2:4, 8

< 9 >

9,415 19:13

9:10 1:19 4:2, 5

956,385 16:25

99,693 27:6

< A >

a.m 1:19 4:2, 5

41:7, 13

ability, 29:6

access 29:6

account 17:5 18:21

20:3, 13 26:9, 10

28:9 35:6

accounted 24:9, 13,

19 30:12, 15 32:6, 9

34:23, 25 35:8, 11

accounting 6:19, 22

8:5 9:2, 6 10:13, 16,

22 15:20, 24 24:18

26:15 35:22

active 10:12, 16

actual 39:3

add 25:23 26:9

35:1

added 19:24

additional 19:3

admissibility 12:1

advanced 38:19

affiliated 36:8

affirm 4:21

affirmed 5:2

ago 7:3 21:25

agreement 16:12

17:22, 24 25:5

40:17

agrees 20:5

ahead 37:21, 22

al 4:9

Allenwood 1:7 4:8

10:5, 22 13:6 16:11,

19 23:10 24:25

25:10, 18 26:21

27:16 28:7, 13

30:10, 25 32:25

33:7, 20 34:4 38:11

allocated 22:5

amount 23:17

24:19 28:21 33:18

34:23 41:1

amounts 26:15

analysis 16:10

18:22

annum 15:14

apart 37:18

appear 31:7

APPEARANCES

2:1

appears 25:10

area 13:6

arrangement 37:4

asked 37:5 39:22

40:3

asking 12:8 13:11

35:4 37:2

assets 8:23

assigned 11:23

assist 34:13

associate 6:18

associated 18:16

31:18

Associates 4:6

audience 6:3

authenticate 5:23

11:9 12:9, 10

authenticated 12:2,

13

authorship 12:9

aware 38:6

< B >

back 22:19 26:3

28:1 29:2

background 6:9

9:16 13:1 16:2

backwards 39:21

balance 23:21 26:11

bank 8:19

banks 17:12 37:25

based 14:2

Basically 7:15

20:22 23:2 33:6

40:4

basis 27:5, 9, 25

Bay 2:2

bearing 40:25

BEAUFORT 1:2
 4:10
began 6:24
beginning 13:5
begins 4:6
behalf 18:17
believe 17:3, 7 20:1
 29:4 31:5 37:14
 38:15
bene 36:21
best 8:18
best-worded 40:22
better 6:5
big 32:12
born 6:9
bottom 22:23
Boulevard 2:6
Brady 1:4 4:8, 17
 5:11, 11 13:9 14:5
 16:6 19:12 20:4, 4,
 8, 10, 12 21:16
 25:11, 15 26:14
 28:17, 22, 24 29:11
 31:3, 11, 19 32:11,
 20, 23 37:5, 7 38:13,
 19 39:17, 24 40:20
 41:1
Brady's 28:12
briefly 6:8 13:1
brought 5:12
Building 7:19 9:8,
 11 17:8, 9
built 31:22
BUIST 2:6
bullet 13:22
bunch 13:21
business 8:14 35:23
BYARS 2:6

< C >

C.A 1:3
calculate 14:2
 23:15 25:5 28:12
calculated 16:24
 30:12
calculates 22:12
calculating 19:19
 21:12 27:5
calculation 22:20
 24:7, 12

calculations 20:23
 21:24 24:23 25:7
 26:25 27:1 28:20
called 14:22
capacity 15:10
CAPELL 2:2
care 15:24
Carlisle 4:12
CAROLINA 1:1
 2:3, 7 4:10 5:14
 6:6
carrying 30:21
Case 4:10 10:2
 31:8
certain 14:13 23:17
change 29:12
CHARLES 2:3
 4:16 5:10
Charleston 2:3
chunk 32:12
CIRCUIT 1:2 4:10
clarify 9:14
Clark 4:5
clear 39:21
Clore 18:16, 22
 19:3, 23 20:4 34:24
Coleman 2:6
College 6:16
come 25:17
comes 14:17 15:13
 19:9, 25 28:15
coming 5:20 25:25
commenced 4:2
commencing 1:19
commissions 19:13
COMMON 1:1 4:9
Commonwealth 1:21
Community 6:16
companies 6:22
 7:19 9:3, 5, 12 10:8,
 12 17:11 40:2
Company 1:8 6:25
 7:22, 25 8:11, 16, 18,
 21 9:2, 9, 18, 19, 20,
 21 10:6 16:24
 20:14 37:7, 16 38:7
 40:5
compensated 14:6
compensation 16:11
complete 18:5 31:14

completed 18:25
 33:22
concluded 35:15
 41:12
concludes 41:6
confusion 40:25
connect 22:18, 19
 28:2
connected 27:8, 9
consideration 23:19
 35:7
construction 13:17
 14:6, 16, 20 17:24
 18:5 19:7 20:6, 8,
 17 25:10 26:18
 33:19, 22 34:12, 14
CONT'D 39:14
contents 5:24
continued 7:7, 18
contracting 13:11
 20:12 34:10 35:16
copy 11:18 12:10
Corp. 1:9
Corporation 5:13
 7:1, 5, 8, 14 8:10, 13
 9:1, 8 10:17 15:5
 20:11 21:6 28:10
 29:13 30:3, 21
 31:10 32:21 34:10
 36:7 38:24 39:6, 23
 40:18, 23
Corporation's 21:14,
 19 24:10
Correct 6:11, 17, 20
 7:2, 21, 25 8:12, 22,
 24 9:22 10:11, 19,
 20 13:20, 23 14:3,
 19 16:7 17:13, 16,
 19 18:9, 10, 23 19:5
 21:16, 17, 21 22:6,
 25 23:11, 23, 24
 25:8, 22, 25 26:1, 20,
 23 27:22, 23 28:18,
 22, 23 30:8 31:16
 32:19 33:9, 10, 23,
 24 34:16 37:2, 8
 38:8, 9, 11, 12, 21, 23
 39:18 40:6, 15 41:2
costs 30:21

Counsel 2:5, 9 4:14
COUNTY 1:2 4:10
COURT 1:1, 20
 4:9, 20, 23 11:2, 5
 12:3 41:8
CPA 8:1
cut 15:5 21:6, 9, 15,
 19 22:4, 7 24:14
Cypress 30:22 31:6

< D >

Dan 18:16, 22 19:3,
 23 20:4 34:24
date 1:19 4:13
dated 11:10
Davis 25:20 34:25
de 36:21
debt 15:20 38:16,
 17
debts 8:17, 23 37:7,
 10
December 1:14 4:13
deducted 18:17
deducting 19:16, 18
Defendants 1:10
 2:9 4:19 7:5
degree 6:18
DEPONENT 3:2
deposition 1:16 4:6
 11:4 36:20, 21 41:7,
 12
DESCRIPTION 3:4
descriptive 7:23, 24
designed 10:10
detail 16:14
details 14:4 31:15
determine 28:21
developer 9:16
Development 1:8
 5:15, 16 10:6, 9, 15
 13:7, 10, 15 16:18,
 23 19:8 23:23
 24:24 30:23 34:2,
 15 38:7 40:2
developments 13:6
 16:17 37:23 38:1
develops 9:16
difference 34:11
different 8:11

19:24 25:4, 4, 6
direct 40:7
directed 9:7 29:6
direction 8:9
discovered 36:3
discussed 18:4
discussion 16:9
distinctly 29:3, 10
distribution 17:17
dive 37:15
doing 6:4 9:6
 27:12
Dominico 1:20 4:23
dots 22:18 27:8, 9
 28:2
doubt 39:6
downhill 8:15
drive 35:14
due 18:21 21:16
 22:15, 21 23:21
 24:17, 19 30:9, 11,
 16
duly 5:1

< E >
earlier 12:23 37:6
early 38:4
earned 6:18 14:6
 20:8 23:20 24:1
 25:11 29:25 32:14
 33:9, 20 34:5 38:22
earning 23:2
earns 14:18
East 2:2
economic 40:25
economy 37:13
educate 5:24 6:2
effort 35:25
either 9:7
employed 7:18
employee 38:24
 39:3, 5
employment 38:20
enter 11:22 12:17
entities 17:6
entitled 14:15 25:15
entity 36:8
errors 36:3
ESQUIRE 2:3, 7
esse 36:21

essentially 29:17
 35:14
estate 13:19 14:21
 19:9 20:17 26:9, 19
et 4:9
evidence 5:21 36:6,
 13
exactly 24:17 38:3
EXAMINATION
 3:2 5:8 36:24
 39:14 40:8
exchange 14:12
 23:2 27:21 28:5
 35:7
excuse 40:19, 19
Exhibit 11:3, 3, 22
 12:17 16:4
EXHIBITS 3:4 37:1
expenses 17:7, 9
 18:15 19:3
expired 7:13
explain 12:24 37:22
explained 12:23

< F >
fact 31:8 40:4
failing 8:17
failure 5:14
fair 19:21 34:9
faith 35:25
fall 37:17 38:1
falling 37:18
February 11:10
 12:11 16:11, 13
 17:21, 23 22:9
fee 14:22 15:3
 19:7, 9 20:9, 22
 21:1 22:12, 22 23:2,
 5, 10, 16, 18, 21
 24:17 27:1, 5, 9
 28:5, 13 33:6, 19
 34:1 39:19, 24
fee, 27:25
fees 14:6, 13, 17
 17:24 18:4 19:23
 20:23 25:5, 10, 11,
 17 26:9, 19 27:2
 34:4, 12 37:9 38:22
felt 8:17

field 8:6
filed 38:2
final 31:22
finally 21:15
financial 29:13
 30:4, 6, 7 40:10
FIRM 2:2
first 8:10 11:16
 16:8, 22 25:9 29:3
 40:18
folks 37:12
follow 21:24
follows 5:3
follow-up 39:12
forces 40:19, 25
forcing 6:6
foreclosure 37:25
 38:7, 10
foreclosures 38:2, 14
form 9:17
formally 11:22
 12:17
four 19:24 35:1
FOURTEENTH 1:2
 4:9
fourth 29:5
framework 16:3
front 37:2
full 5:18 13:22
fund 13:10
funds 15:11 18:21
 28:6 29:14 40:5
future 32:17

< G >
Gary 1:9 5:12
 6:24 8:17, 21 9:11
 15:9, 19 21:8 22:21
 35:13 36:7 39:1
general 9:23
generalities 9:15
generally 13:4, 12
 25:6
generated 24:6
genuine 11:18 12:10
getting 14:4 30:2
 35:7
GINGER 1:16 3:3
 4:7 5:1, 19
giving 23:3

go 5:5 8:14 12:25
 13:25 16:3 19:6
 20:7 22:23 23:9
 25:1 27:4 28:1
 29:2 37:21, 22 40:4
going 5:25 6:8
 13:12 21:12 23:9
 29:9, 15 37:13
good 35:25
gotten 28:19
greater 16:14 37:13
GRIFFITH 1:16
 3:3 4:7 5:1, 10, 19,
 20 36:17 37:1
 39:16
Grossman 1:9 5:12
 7:4 8:9 13:9 15:9,
 19 16:10 18:16, 22
 19:3, 23 20:4 21:8
 22:15, 21, 22 27:18
 28:11 29:6 34:24
 35:7 36:8 37:11
 38:17 39:23 40:17,
 24
Grossman's 6:25
 7:18 9:12 21:13
 22:7 24:14 28:5
 32:8
guarantee 22:12
 23:3 27:5, 21, 25
 35:8 38:15
guaranteeing 15:10
 28:6
guarantor 38:16, 17
guess 11:16

< H >
Haase 2:9 4:5
HAMLIN 2:7 4:18
 11:24 39:22 41:4
hand 4:24
handle 15:25
Hanover 4:12
Harbor 30:22 31:6
Harrisburg 1:18
Head 1:7 4:8 10:1,
 5 13:6 38:11, 20
He'd 29:25
held 1:17 7:9, 10
 8:19

help 14:15, 17 20:5
 25:16, 20 34:13, 23
helped 20:4
helpful 13:2
her's 12:2
high 6:12, 15
Hilton 1:7 4:8
 10:1, 4 13:6 38:10,
 20
hire 14:15, 17 25:16
hiring 18:16
hit 16:21
home 33:13 35:15
homeowners 18:9
Homes 1:7 4:8
 10:5 17:8, 9 18:12
 32:1 33:11, 23 34:7
 38:11, 20
Hopefully 16:2
houses 14:9 18:5, 24
housing 8:15 37:14,
 18

< I >

identified 11:3
identify 4:14, 21
III 2:7
important 13:1
incentive 14:22
 15:3 20:22 21:1
 23:15, 17, 21 24:16
 27:1 28:3, 12 33:6
 34:1 37:9 39:19, 24
include 17:10
including 17:12
income 8:16 16:24
 17:2, 4, 4, 18 21:21
 22:5 30:13
incorrect 20:1
increase 31:17
incur 19:3
INDEX 3:1
individual 8:20
 9:12 15:10 24:14
 32:8 35:1
individually 21:8
 28:11
initial 37:10 40:1
interpret 17:23

interview 36:17, 20
inventory 37:24
investment 40:1
investors 9:20
involved 13:15
issue 10:1 30:8
 40:14
issues 30:4, 7, 9
 40:11

< J >

James 1:4 4:7, 17
 5:11 16:6
job 9:5 15:25
jobs 6:22
judge 11:23 12:1
June 7:10, 17
jury 5:24 6:3 9:14
 11:7 13:2
justified 22:22

< K >

Ken 4:5
Kenneth 2:9
kind 25:1
know 5:10 12:8, 24
 22:3 36:10 38:3
 39:1
knowledge 38:25

< L >

Lancaster 1:8 5:12
 6:25 7:4, 8, 13 8:10,
 13 9:1, 8 10:16
 15:4 20:11 21:6, 14,
 19 24:10 28:10
 29:12 30:3, 20 31:9
 32:5, 21 34:9 36:7
 37:10, 16 38:24
 39:5, 22 40:10, 17,
 23
LAW 2:2
left 26:11
letter 5:22, 23 11:8,
 9, 11, 13, 14, 17, 19
 12:7, 11, 12, 17, 22,
 24, 25 13:3, 4, 12, 13,
 21, 25 14:1 15:18
 16:3, 5, 5, 9, 12, 13,
 13, 22 17:16, 21, 24

18:4, 18 20:21
 21:25 22:9, 19, 21
 23:1 27:10 29:5
 31:11 35:19 36:4
 40:9
letters 11:1, 8
line 27:4
listed 30:19
listening 37:12
LLC 1:7, 8, 17 2:2,
 6 4:8 7:20 10:5, 6
 17:5 18:11 30:13
LLCs 5:14 9:7
 10:4 14:24 21:3
 24:5 33:13, 16
LLC's 31:25
loans 15:6
locally 23:14
long 21:25
look 18:20 29:3
looking 16:4 17:20
 25:9
looks 16:23 19:12
 21:18 25:16, 17
lose 38:13
lost 23:12
LRC's 22:4

< M >
ma'am 39:8
Madam 11:2
main 5:21 16:21
management 14:7,
 22 15:3, 21 19:7
 20:8, 17, 22 21:1
 23:16, 17, 21 24:16
 25:10 26:19 27:1
 28:13 33:6, 19 34:1,
 12 37:9 39:19, 24
Market 1:18 8:15
 14:9 37:14, 18
marketing 13:18
 14:21
massive 31:17
math 35:4
matter 4:7, 19 5:22
 6:7 7:5 11:23
means 17:4 19:16
mentions 15:19
 31:17

money 5:14 14:17
 15:6 17:5, 10 18:11
 19:16, 17 23:17, 25
 24:6, 17 25:16 26:3,
 6, 10, 14 28:10, 11
 29:11, 24 31:25
 32:12, 20 33:20
 34:12 36:8
monitor 4:4 41:7
month 15:6 29:16
monthly 29:21
mortgage 8:19
move 15:19 22:7
 24:24 26:24 27:24
moving 20:20 26:25
Mt 2:7

< N >

name 4:5 5:18
 7:19, 23, 25 8:11
necessary 40:19
need 13:16, 18 19:2
 21:22, 23 23:13
 25:12 28:1, 21
needs 24:18
neighborhood 5:16
 9:17 10:9 16:18, 19
 23:6 24:24, 25 25:1,
 4 28:7
neighborhoods
 13:10, 16 31:23
net 17:2, 7 21:21
 23:21 30:13
never 39:5
new 7:19 8:21 9:2
 31:18
Nick 18:16, 21 19:2,
 23 20:3 34:24
nose 37:15
Notary 1:21
note 17:16
Number 4:10 28:15,
 24 30:16 34:17
 35:6, 11
numbers 14:2
 16:22 19:6, 24, 25
 20:7 25:4, 23 26:2
 33:2 35:1, 5 36:1

< O >

oath 6:1
 objection 12:3
 objections 11:24, 25
 obviously 7:3
 office 15:21, 24
 offices 1:17
 Okay 5:20 6:15, 21
 7:10, 17 8:1, 22
 9:14, 25 10:4, 21
 11:5, 7, 13, 16 12:5,
 15, 20 13:4, 15 14:4,
 20 15:1, 13, 16, 17
 16:16, 21 17:4, 15,
 20 18:14, 24 19:2
 20:16, 20, 25 21:5,
 18 22:1, 6, 11 23:9,
 14 24:9, 22 25:9, 15,
 23 26:8, 18, 24 27:4,
 15, 24 28:5, 9, 19
 29:2, 24 30:15, 19
 31:21 32:5, 20 33:1,
 1, 18 34:9, 17 35:14
 36:6, 15 39:10 41:3
 O'KELLEY 2:7
 3:4 4:18, 18 11:25
 12:18 36:16, 19, 25
 39:8, 16 40:3 41:5,
 10
 opportunity 36:18
 option 6:5
 outside 40:19, 25
 outweighed 8:23
 overall 14:23
 overhead 31:18
 owed 5:14 17:10
 19:19 20:13, 13
 26:6, 14 28:10, 11,
 17, 22, 24 29:11, 24
 30:16 32:11 33:5,
 19, 25 34:9, 13, 17,
 20 35:9, 11, 13, 16
 41:1
 owes 17:5 26:3, 16
 owing 20:10 24:17
 25:24
 owned 9:7
 owners 18:8

< P >

PAGE 3:2, 4 13:21
 15:18 18:20 22:23
 27:10 29:4, 5, 5
 40:9
 paid 15:2, 4 17:17,
 22 18:11 19:12, 17,
 17 21:5 23:16, 20
 24:5 26:11 27:18
 32:20 33:13 36:8,
 10 37:5, 7, 8 39:17,
 18, 23, 24 40:18, 24,
 24
 paragraph 16:8
 17:20, 23 18:14
 21:21 22:8, 23
 27:10 29:4, 9, 11, 17
 40:8, 9
 paragraphs 20:21
 21:11 23:14
 paraphrase 29:10
 parent 9:20
 parentheses 19:15
 25:24 26:2
 parlance 7:17
 part 7:22, 25 9:5
 18:22 20:20
 parties 13:11 17:11
 20:12 34:11 35:16
 partners 9:13
 pay 5:14 8:16 20:5,
 9 29:14, 15 40:5
 payable 17:25
 paying 31:10
 payment 30:2
 payments 29:21
 40:20
 PDFs 41:8
 penalty 6:1
 Pennsylvania 1:18,
 21 4:12 6:5, 13
 people 20:5 34:18
 percent 15:5, 14
 21:2
 performed 13:17, 18
 period 38:4
 perjury 6:2
 personal 23:3
 27:21 35:8
 personally 15:9

22:16 28:6 31:5
 pertains 22:20
 piece 5:21
 place 10:25 15:21
 Plaintiff 1:5 2:5
 4:17
 plan 30:3
 plant 31:18
 PLEAS 1:1 4:9
 Pleasant 2:7
 please 4:14, 21 5:4,
 17 11:16 12:10
 16:5 22:18
 point 27:5, 9, 25
 28:20 35:15
 points 13:22, 25
 15:10, 13
 portion 15:2 19:13
 20:16 21:16 22:11
 24:10 27:2, 19 32:5
 33:25
 position 7:9, 10, 13
 possession 11:18
 precedence 40:20
 preliminary 28:20
 Premier 1:17 4:11
 Present 2:9
 pretty 8:23 14:23
 previously 12:12
 27:9
 principle 28:2
 prior 12:19 39:23
 probably 7:16
 problems 30:21
 31:15 32:22, 24
 Proceedings 4:2
 process 25:2
 Professional 1:20
 8:5 35:22
 profit 15:2, 3 17:7
 20:22 21:1, 13 22:8
 23:22 27:2 32:3, 6
 33:6, 16
 profits 14:23 21:2
 24:6, 11 32:8, 12, 17
 project 9:18, 18
 14:18 15:6 23:23
 25:18 26:21 27:16
 28:13 30:10, 22

31:1, 6 33:7 34:2,
 15
 projecting 32:17
 projects 5:15, 16
 10:1, 15, 22 14:16
 20:6 30:7 32:22
 40:14
 properties 31:22
 property 8:18
 prorated 22:12
 provides 13:1 16:2
 Public 1:21
 purchasers 32:1
 33:14
 purpose 5:21 6:2
 10:8 12:23 30:2, 6
 36:22
 purposes 9:16
 Pursuant 16:9
 put 34:18

< Q >

question 21:23
 22:2, 4 36:12 39:20
 40:22 41:4
 questions 36:16
 40:4
 quick 16:22 39:12
 quickly 33:2

< R >

raise 4:24
 raised 6:9
 Raven 25:20 34:24
 read 21:22
 Ready 5:5
 real 13:18 14:21
 16:22 19:9 20:17
 26:9, 19
 really 33:2
 re-ask 39:21
 reason 19:25 30:19
 39:6
 recall 29:20, 23
 39:2
 recap 31:21
 receivables 30:9, 11,
 16
 receive 21:1
 record 5:18 39:21

Redevelopment 1:8 5:13 6:25 7:4, 8, 14 8:10, 13 9:1, 8 10:17 15:5 20:11 21:6, 14, 19 24:10 28:10 29:12 30:3, 20 31:10 32:21 34:10 36:7 37:10, 16 38:24 39:5, 22 40:18, 23 Redevelopment's 32:5 40:10 reference 11:13 13:25 referenced 12:11 relevant 31:7 remainder 20:25 23:12 remember 22:1 31:6, 14 38:2, 3 39:1 remind 37:12 reminder 6:1 16:16 23:13 reorganized 8:21 repaid 37:11 repeat 8:8 21:23 40:21 Reporter 1:20 4:20, 23 11:2, 5 41:8 Reporting 1:17 4:11 represent 4:15, 16, 19 5:11 39:4 reserve 11:25 respected 10:9 response 12:18 result 26:5 retained 34:13 return 15:6 Rich 25:20 34:24 right 4:24 6:10, 16 7:1, 5, 11, 20, 24 8:1, 3, 11, 23, 25 9:3 10:2, 13, 25 11:11, 14, 18 12:7 13:7, 13, 19, 22 14:2, 7, 10, 18, 24 15:7, 11, 25 16:14, 17, 19, 25 17:6, 9, 11, 14, 18 18:6, 12, 13, 14, 18,	22, 25 19:4, 6, 10, 12, 13, 19, 20, 21 20:14, 15, 16, 18, 23 21:3, 6, 9, 12, 18 22:16, 24 23:3, 4, 5, 7, 10 24:1, 7, 11, 14, 20, 22 25:2, 7, 9, 13, 18, 21 26:3, 6, 7, 12, 16, 19, 22, 24 27:2, 6, 10, 13, 16, 17, 19 28:1, 3, 13, 15, 17, 25 29:7, 14, 25, 25 30:4, 17, 23 31:1, 4, 7, 12, 15, 19, 22, 23 32:1, 3, 6, 7, 9, 12, 13, 15, 16, 18, 23 33:1, 3, 7, 8, 11, 12, 14, 16, 20, 21, 25 34:2, 5, 14, 15, 18, 22 35:2, 9, 17, 20, 23, 24 36:1, 12, 13, 14 37:4 39:20, 25 40:3, 5, 11, 14, 20 41:1 Rod 4:8, 17 5:11 14:5, 9, 15, 24 15:2, 4 16:6 17:17 19:18 20:25 21:5 23:21 26:3, 6, 11 29:21, 24 30:16 31:3, 19 32:23 33:5, 19 34:1, 9, 20 35:12, 17 36:9, 11 38:13 39:1 40:24 Rod's 23:15 24:16 RS 25:20 34:25 < S > sales 13:19 31:21 saying 7:23 26:3 29:18 says 15:20, 23 16:9 17:23 22:12 24:17 27:4, 6, 25 29:6 30:20 scenarios 28:1 scheduled 17:22 school 6:12, 15 second 24:25 29:3 section 21:20 see 14:1 18:1	22:22 29:9 seeing 21:13, 14, 15 Selinsgrove 6:4, 10 sell 14:9 37:24 sells 17:25 sentence 15:23 22:11 separate 6:22 11:1 13:5 16:17 separately 23:9 September 11:8, 14, 17 16:4 20:10 24:3 28:22, 25 29:22 34:21 35:16 36:9 37:17 series 40:3 serve 9:6 10:8, 10 services 13:16, 17, 18 14:12, 21 20:18 26:19 set 26:25 27:25 sharing 14:23 15:2, 4 20:23 21:2 22:8 23:22 27:2 33:7 shortly 38:4 showing 36:7, 13 shut 8:18 9:19 similarly 12:16 single-purpose 5:13 9:7, 17, 19, 21 14:24 slightly 25:6 sold 8:18 18:8 19:9 33:11 34:7 Solutions 7:19 9:9, 11 sorry 29:5 33:3 sound 35:2 source 30:7 31:9 SOUTH 1:1 2:3, 7 4:10, 11 5:14 6:6 speaking 9:15 specific 9:17 33:2 specifically 10:21 spot 35:5 Square 1:8 10:5, 23 13:7 16:18, 23 19:8 23:6, 22 24:23 30:23 34:2, 14 38:7, 20	standing 37:23 start 5:17 12:22 started 6:8 37:15 starting 23:15 starts 17:21 21:21 22:8 STATE 1:1 4:15 5:17 statement 17:13 status 20:9 stay 15:21 Street 1:18 2:2 4:12 strike 22:3 subject 6:1 12:2 13:5 subsequent 36:9 subtracted 26:5 suffering 37:17 suit 5:12 Suite 1:18 2:6 4:12 summarize 29:2 33:2 summary 8:22 sums 38:19 supervisory 18:17 Sure 12:20 swear 4:21 sworn 5:2 < T > take 15:21, 24 17:5 21:22 23:19 25:13 26:8, 10 36:17 37:15 taken 4:11 12:3 talked 39:2 talking 15:24 18:4 21:20 23:6 39:16 talks 18:15 40:9 TAYLOR 2:6 teaming 13:9 technical 7:16 telephone 2:8 tell 5:2 telling 18:3 term 7:16 terms 13:22, 24 14:1, 2, 5 15:1 22:9

testified 5:3 testify 6:7 testifying 4:7 thank 5:20 39:8 thing 27:12 things 15:22 20:13 25:12 think 13:2 22:4 31:8 39:20 third 17:11 29:4 THOMSON 2:3 3:3 4:16, 16 5:5, 9, 11 11:2, 6, 21 12:5, 6, 16, 20, 21 36:15, 21 37:2, 5 39:12, 15 41:3, 11 thought 36:19 threatening 37:25 three 21:11 throw 35:19 Time 4:4 11:21 12:4 17:25 21:22, 25 35:15 36:4 38:4 41:7 to, 27:5 today 5:21 6:3 Today's 4:13 41:6 top 14:20 15:18, 22 29:4 40:9 total 28:21 33:3 34:18, 20 totalled 34:24 Tracy 1:20 4:23 transactions 32:9 transmitting 16:10 travel 6:6 treasurer 7:8 8:25 trial 6:7 11:22 12:17 16:4 36:22 trouble 31:10 troubles 29:13 40:13 truth 5:2, 2, 3 trying 21:24 39:1 tune 21:2 two 5:13, 15, 15 6:22 10:1, 4, 12, 22, 25 11:7 13:5, 21 16:16, 24 25:23	30:8 31:22 40:14 type 20:23 25:7 < U > umbrella 9:11 understand 18:15 understanding 13:2 37:6 unit 17:25 19:9 use 36:22 < V > various 9:6 13:16 vendors 17:10 verify 11:17 13:11 16:5 versus 4:8 23:20 video 4:4 6:4 videoconference 2:4 Videographer 2:9 4:4, 20 5:4, 6 39:11 41:6 Videotaped 1:16 4:6 Village 1:7 10:5, 22 13:7 16:17, 23 19:8 23:6, 22 24:23 30:23 34:1, 14 38:7, 20 < W > want 11:9 12:9, 25 22:19, 22 41:8 way 29:20 weeds 23:13 went 6:12, 15 7:14 16:14 18:18 40:7 we're 16:3 18:4 21:12, 13, 14, 15 23:5, 9 26:3, 25 27:12 32:17 we've 19:24 24:22 28:19 30:15 34:25 Williamsport 6:16 witness 4:22 39:10 words 15:19 work 14:7 18:17 32:14 worked 6:21	working 6:24 8:8 write 11:10 12:8, 24 writing 11:14 written 5:22 16:6 31:11 wrote 11:19 21:25 36:4 < Y > Yeah 9:25 35:4, 14 years 7:3 8:10 16:25 Yep 5:6 yesterday 41:9 yesterday's 11:4

WORD LIST

< \$ >

\$1,000 (1)

\$10,000 (1)

\$111,81 (1)

\$187,633 (1)

\$19,629 (1)

\$240,000 (1)

\$25,746 (2)

\$300,441.85 (1)

\$711,000 (1)

\$711,027 (3)

\$76,552 (1)

\$83,488 (1)

\$99,693 (1)

< 1 >

1 (2)

10:00 (2)

112 (1)

13 (11)

148,504.84 (1)

148,504.85 (1)

15 (1)

17101 (1)

19,629 (1)

1977 (2)

1985 (2)

1998 (3)

< 2 >

2 (10)

20 (4)

200 (1)

2004 (17)

2005 (4)

2006 (5)

2007 (21)

2008 (1)

201 (1)

2010 (2)

2015-CP-07-02047
(2)

2018 (2)

26,000 (1)

27 (1)

284-1408 (1)

29401 (1)

29464 (1)

< 3 >

3 (1)

32,500 (1)

321 (1)

36 (1)

36,000 (1)

39 (1)

< 4 >

4 (2)

406 (1)

< 5 >

50 (1)

500 (5)

501-0423 (1)

52,244 (1)

< 6 >

633,656 (2)

652 (1)

< 7 >

711,024 (1)

< 8 >

8 (1)

83,488 (2)

841,619 (1)

843 (2)

< 9 >

9,415 (1)

9:10 (3)

956,385 (1)

99,693 (1)

< A >

a.m (5)

ability, (1)

access (1)

account (8)

accounted (11)

accounting (13)

active (2)

actual (1)

add (3)

added (1)

additional (1)

admissibility (1)

advanced (1)

affiliated (1)

affirm (1)

affirmed (1)

ago (2)

agreement (5)

agrees (1)

ahead (2)

al (1)

Allenwood (22)

allocated (1)

amount (6)

amounts (1)

analysis (2)

annum (1)

apart (1)

appear (1)

APPEARANCES (1)

appears (1)

area (1)

arrangement (1)

asked (3)

asking (4)

assets (1)

assigned (1)

assist (1)

associate (1)

associated (2)

Associates (1)

audience (1)

authenticate (4)

authenticated (2)

authorship (1)

aware (1)

< B >

back (4)

background (4)

backwards (1)

balance (2)

bank (1)

banks (2)

based (1)

Basically (5)

basis (3)

Bay (1)

bearing (1)

BEAUFORT (2)

began (1)

beginning (1)

begins (1)

behalf (1)

believe (7)

bene (1)

best (1)

best-worded (1)

better (1)

big (1)

born (1)

bottom (1)

Boulevard (1)

Brady (36)

Brady's (1)

briefly (2)

brought (1)

Building (5)

built (1)

BUIST (1)

bullet (1)

bunch (1)

business (2)

BYARS (1)

< C >

C.A (1)

calculate (4)

calculated (2)

calculates (1)

calculating (3)

calculation (3)

calculations (7)

called (1)

capacity (1)

CAPELL (1)

care (1)

Carlisle (1)

CAROLINA (6)

carrying (1)

Case (3)

certain (2)

change (1)

CHARLES (3)

Charleston (1)

chunk (1)

CIRCUIT (2)

clarify (1)
 Clark (1)
 clear (1)
 Clore (6)
 Coleman (1)
 College (1)
 come (1)
 comes (5)
 coming (2)
 commenced (1)
 commencing (1)
 commissions (1)
 COMMON (2)
 Commonwealth (1)
 Community (1)
 companies (9)
 Company (21)
 compensated (1)
 compensation (1)
 complete (2)
 completed (2)
 concluded (2)
 concludes (1)
 confusion (1)
 connect (3)
 connected (2)
 consideration (2)
 construction (16)
 CONT'D (1)
 contents (1)
 continued (2)
 contracting (4)
 copy (2)
 Corp (1)
 Corporation (26)
 Corporation's (3)
 Correct (64)
 costs (1)
 Counsel (3)
 COUNTY (2)
 COURT (9)
 CPA (1)
 cut (8)
 Cypress (2)

< D >

Dan (6)
 date (2)
 dated (1)

Davis (2)
 de (1)
 debt (3)
 debts (4)
 December (2)
 deducted (1)
 deducting (2)
 Defendants (4)
 degree (1)
 DEPONENT (1)
 deposition (7)
 DESCRIPTION (1)
 descriptive (2)
 designed (1)
 detail (1)
 details (2)
 determine (1)
 developer (1)
 Development (19)
 developments (4)
 develops (1)
 difference (1)
 different (5)
 direct (1)
 directed (2)
 direction (1)
 discovered (1)
 discussed (1)
 discussion (1)
 distinctly (2)
 distribution (1)
 dive (1)
 doing (3)
 Dominico (2)
 dots (4)
 doubt (1)
 downhill (1)
 drive (1)
 due (10)
 duly (1)

< E >

earlier (2)
 early (1)
 earned (12)
 earning (1)
 earns (1)
 East (1)
 economic (1)

economy (1)
 educate (2)
 effort (1)
 either (1)
 employed (1)
 employee (3)
 employment (1)
 enter (2)
 entities (1)
 entitled (2)
 entity (1)
 errors (1)
 ESQUIRE (2)
 esse (1)
 essentially (2)
 estate (6)
 et (1)
 evidence (3)
 exactly (2)
 EXAMINATION (5)
 exchange (5)
 excuse (2)
 Exhibit (5)
 EXHIBITS (2)
 expenses (4)
 expired (1)
 explain (2)
 explained (1)

< F >

fact (2)
 failing (1)
 failure (1)
 fair (2)
 faith (1)
 fall (2)
 falling (1)
 February (7)
 fee (26)
 fee, (1)
 fees (18)
 felt (1)
 field (1)
 filed (1)
 final (1)
 finally (1)
 financial (5)
 FIRM (1)
 first (7)

folks (1)
 follow (1)
 follows (1)
 follow-up (1)
 forces (2)
 forcing (1)
 foreclosure (3)
 foreclosures (2)
 form (1)
 formally (2)
 four (2)
 FOURTEENTH (2)
 fourth (1)
 framework (1)
 front (1)
 full (2)
 fund (1)
 funds (5)
 future (1)

< G >

Gary (13)
 general (1)
 generalities (1)
 generally (3)
 generated (1)
 genuine (2)
 getting (3)
 GINGER (5)
 giving (1)
 go (16)
 going (8)
 good (1)
 gotten (1)
 greater (2)
 GRIFFITH (10)
 Grossman (28)
 Grossman's (8)
 guarantee (7)
 guaranteeing (2)
 guarantor (2)
 guess (1)

< H >

Haase (2)
 HAMLIN (5)
 hand (1)
 handle (1)
 Hanover (1)

Harbor (2)	jobs (1)	month (2)	paragraphs (3)
Harrisburg (1)	judge (2)	monthly (1)	paraphrase (1)
Head (7)	June (2)	mortgage (1)	parent (1)
He'd (1)	jury (5)	move (5)	parentheses (3)
held (4)	justified (1)	moving (2)	parlance (1)
help (7)		Mt (1)	part (5)
helped (1)	< K >		parties (5)
helpful (1)	Ken (1)	< N >	partners (1)
her's (1)	Kenneth (1)	name (6)	pay (7)
high (2)	kind (1)	necessary (1)	payable (1)
Hilton (7)	know (7)	need (9)	paying (1)
hire (3)	knowledge (1)	needs (1)	payment (1)
hiring (1)		neighborhood (11)	payments (2)
hit (1)	< L >	neighborhoods (3)	PDFs (1)
home (2)	Lancaster (34)	net (5)	penalty (1)
homeowners (1)	LAW (1)	never (1)	Pennsylvania (5)
Homes (12)	left (1)	new (4)	people (2)
Hopefully (1)	letter (49)	Nick (6)	percent (3)
houses (3)	letters (2)	nose (1)	performed (2)
housing (3)	line (1)	Notary (1)	period (1)
	listed (1)	note (1)	perjury (1)
< I >	listening (1)	Number (7)	personal (3)
identified (1)	LLC (12)	numbers (13)	personally (4)
identify (2)	LLCs (8)		pertains (1)
III (1)	LLC's (1)	< O >	piece (1)
important (1)	loans (1)	oath (1)	place (2)
incentive (16)	locally (1)	objection (1)	Plaintiff (3)
include (1)	long (1)	objections (2)	plan (1)
including (1)	look (2)	obviously (1)	plant (1)
income (9)	looking (3)	office (2)	PLEAS (2)
incorrect (1)	looks (5)	offices (1)	Pleasant (1)
increase (1)	lose (1)	Okay (75)	please (8)
incur (1)	lost (1)	O'KELLEY (14)	point (5)
INDEX (1)	LRC's (1)	opportunity (1)	points (4)
individual (6)		option (1)	portion (10)
individually (2)	< M >	outside (2)	position (3)
initial (2)	ma'am (1)	outweighed (1)	possession (1)
interpret (1)	Madam (1)	overall (1)	precedence (1)
interview (2)	main (2)	overhead (1)	preliminary (1)
inventory (1)	management (24)	owed (28)	Premier (2)
investment (1)	Market (5)	owes (3)	Present (1)
investors (1)	marketing (2)	owing (3)	pretty (2)
involved (1)	massive (1)	owned (1)	previously (2)
issue (3)	math (1)	owners (1)	principle (1)
issues (4)	matter (6)		prior (2)
	means (2)	< P >	probably (1)
< J >	mentions (2)	PAGE (11)	problems (4)
James (5)	money (27)	paid (28)	Proceedings (1)
job (2)	monitor (2)	paragraph (14)	process (1)

Professional (3)
 profit (13)
 profits (7)
 project (16)
 projecting (1)
 projects (10)
 properties (1)
 property (1)
 prorated (1)
 provides (2)
 Public (1)
 purchasers (2)
 purpose (7)
 purposes (1)
 Pursuant (1)
 put (1)

< Q >

question (7)
 questions (2)
 quick (2)
 quickly (1)

< R >

raise (1)
 raised (1)
 Raven (2)
 read (1)
 Ready (1)
 real (7)
 really (1)
 re-ask (1)
 reason (3)
 recall (3)
 recap (1)
 receivables (3)
 receive (1)
 record (2)
 Redevelopment (32)
 Redevelopment's (2)
 reference (2)
 referenced (1)
 relevant (1)
 remainder (2)
 remember (6)
 remind (1)
 reminder (3)
 reorganized (1)
 repaid (1)

repeat (3)
 Reporter (6)
 Reporting (2)
 represent (5)
 reserve (1)
 respected (1)
 response (1)
 result (1)
 retained (1)
 return (1)
 Rich (2)
 right (169)
 Rod (36)
 Rod's (2)
 RS (2)
 < S >
 sales (2)
 saying (3)
 says (11)
 scenarios (1)
 scheduled (1)
 school (2)
 second (2)
 section (1)
 see (4)
 seeing (3)
 Selinsgrove (2)
 sell (2)
 sells (1)
 sentence (2)
 separate (4)
 separately (1)
 September (13)
 series (1)
 serve (3)
 services (7)
 set (2)
 sharing (9)
 shortly (1)
 showing (2)
 shut (2)
 similarly (1)
 single-purpose (6)
 slightly (1)
 sold (5)
 Solutions (3)
 sorry (2)
 sound (1)

source (2)
 SOUTH (7)
 speaking (1)
 specific (2)
 specifically (1)
 spot (1)
 Square (15)
 standing (1)
 start (2)
 started (2)
 starting (1)
 starts (3)
 STATE (3)
 statement (1)
 status (1)
 stay (1)
 Street (3)
 strike (1)
 subject (3)
 subsequent (1)
 subtracted (1)
 suffering (1)
 suit (1)
 Suite (3)
 summarize (2)
 summary (1)
 sums (1)
 supervisory (1)
 Sure (1)
 swear (1)
 sworn (1)

< T >

take (10)
 taken (2)
 talked (1)
 talking (5)
 talks (2)
 TAYLOR (1)
 teaming (1)
 technical (1)
 telephone (1)
 tell (1)
 telling (1)
 term (1)
 terms (7)
 testified (1)
 testify (1)
 testifying (1)

thank (2)
 thing (1)
 things (3)
 think (4)
 third (2)
 THOMSON (23)
 thought (1)
 threatening (1)
 three (1)
 throw (1)
 Time (10)
 to, (1)
 today (2)
 Today's (2)
 top (5)
 total (4)
 totalled (1)
 Tracy (2)
 transactions (1)
 transmitting (1)
 travel (1)
 treasurer (2)
 trial (5)
 trouble (1)
 troubles (2)
 truth (3)
 trying (2)
 tune (1)
 two (18)
 type (2)

< U >

umbrella (1)
 understand (1)
 understanding (2)
 unit (2)
 use (1)

< V >

various (2)
 vendors (1)
 verify (3)
 versus (2)
 video (2)
 videoconference (1)
 Videographer (7)
 Videotaped (2)
 Village (15)

< W >

want (6)

way (1)

weeds (1)

went (6)

we're (12)

we've (5)

Williamsport (1)

witness (2)

words (1)

work (3)

worked (1)

working (2)

write (3)

writing (1)

written (3)

wrote (3)

< Y >

Yeah (3)

years (3)

Yep (1)

yesterday (1)

yesterday's (1)

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

HILTON HEAD HOMES AT ALLENWOOD, LLC

OPERATING AGREEMENT

MEMBERSHIP SHARES IN HILTON HEAD HOMES AT ALLENWOOD, LLC, HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE. MEMBERSHIP SHARES ACQUIRED BY MEMBERS MAY NOT BE SOLD OR OFFERED FOR SALE IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT OF THE MEMBERSHIP SHARES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND SUCH STATE LAWS AS MAY BE APPLICABLE, OR DELIVERY TO THE COMPANY OF AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED. ADDITIONAL RESTRICTIONS ON TRANSFER OF THE MEMBERSHIP SHARES ARE SET FORTH IN THIS AGREEMENT.

THIS OPERATING AGREEMENT ("Agreement") is made and entered into as of the 8th day of July, 2004, by its Manager and Member, Lancaster Redevelopment Corporation, a Pennsylvania corporation (collectively referred to as the "Members" and individually as a "member").

WHEREAS, the Company has been formed as a limited liability company under South Carolina law for the limited purposes hereinafter set forth; and

WHEREAS, the Members wish to adopt this Agreement as the operating agreement of the Company.

NOW, THEREFORE, in consideration of the sum of Ten (\$10.00) Dollars, to each paid in hand, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members and the Company covenant and agree as follows:

ARTICLE I. Definitions

Definitions. Whenever used in this Agreement, or any amendment hereof, the following terms shall have the meanings set forth below:

- (a) "Act" shall mean the South Carolina Uniform Limited Liability Company Act of 1996, Sections 33-44-101 et seq. of the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.
- (b) "Agreement" shall mean this Operating Agreement, together with any amendments hereto.
- (c) "Articles of Organization" shall mean the Articles of Organization filed with the South Carolina Secretary of State by which the Company was organized as a South Carolina limited liability company pursuant to the Act, together with any amendments thereto.
- (d) "Capital Account" shall mean the account established and maintained for each Member on the books of the Company pursuant to this Agreement.
- (e) "Capital Contribution" or "Contribution to Capital" shall mean the amount of cash and net fair market value (at the time of the contribution) of any property contributed to the Company by or on behalf of a Member.
- (f) "Code" shall mean the Internal Revenue Code of 1986, as amended, and any corresponding provisions of future laws.
- (g) "Company" shall mean Hilton Head Homes at Allenwood, LLC.
- (h) "Company Liability" shall mean any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.
- (i) "Company Property" shall mean any and all property, real, personal, tangible and intangible, either contributed by a Member as capital, transferred to, or otherwise acquired by the Company.
- (j) "Control" or "Controlled" shall mean with respect to any legal entity, the actual or constructive ownership of more than fifty (50%) percent of all the voting rights in the entity, determined using the constructive ownership rules under Section 318 of the Code, regardless of whether the legal entity in question is a corporation or other legal entity.

(k) **"Disinterested"** shall mean with respect to any Member, a Member who (1) is not a party to a particular transaction or other undertaking, (2) has no material financial interest in any organization that is a party to that undertaking, and (3) is not a Family member of any Person who is either a party to that undertaking or has a material financial interest in any organization that is a party to that undertaking.

(l) **"Dissociation"** shall mean only the action of a Member deemed to be a Dissociation by the Member pursuant to ARTICLE XIV, and shall not have the meaning given it in the Act.

(m) **"Family"** shall mean (1) the spouse, lineal descendants and ancestors of an individual; (2) any estate, trust, guardianship, conservatorship, custodianship or other fiduciary arrangement for the benefit of any one or more of the individuals described in (1) above; and (3) any corporation, partnership, limited liability company or other business organization Controlled by any one or more individuals or entities described in (1) or (2) above.

(n) **"Financial Rights"** shall mean the right to share in the Profits and Losses of the Company and the right to share in distributions.

(o) **"Losses"** shall mean the losses of the Company as determined under ARTICLE XII hereof.

(p) **"Management Committee"** shall mean Lancaster Redevelopment Corporation, or any subsequent Managers, collectively, who are elected from time to time pursuant to ARTICLE VIII.

(q) **"Manager"** shall mean Lancaster Redevelopment Corporation, or any subsequent individual elected to the Management Committee from time to time pursuant to ARTICLE VIII.

(r) **"Member"** shall mean the parties to this Agreement from time to time.

(s) **"Membership Share"** shall mean all of the rights of a Member under this Agreement and under the Act, including, but not limited to, a Member's Financial Rights and Voting Rights.

(t) **"Person"** shall mean an individual, general partnership, limited liability company, limited liability partnership, limited partnership, trust, estate, corporation, custodian, trustee, executor, personal representative, legal representative, administrator, nominee or any other entity or person, and any individual or entity acting in a representative capacity.

(u) **"Profits"** shall mean the profits of the Company as determined under ARTICLE XII hereof.

(v) **"Voting Rights"** shall mean the right of a Member to vote on any matter as provided in this Agreement or under the Act. Any reference to a Member's Voting Rights shall mean the percentage of Voting Rights in the Company held by the Member.

(w) **"Voting Rights in the Company"** shall mean the Voting Rights held by the Members, collectively. Unless otherwise specifically provided herein, reference to a percentage of Voting Rights in the Company shall mean a percentage of the total Voting Rights held by all the Members.

ARTICLE II. Formation, Purposes and Powers

- 2.01 Formation.** The parties to this Agreement hereby agree to and adopt the terms and conditions set forth in this Agreement as the operating agreement of the Company. The Company shall exist under and be governed by the provisions of the Act, except as otherwise provided or modified by the Articles of Organization or this Agreement. The Company shall exist only for the purposes specified in this Agreement and shall not be deemed to create a partnership, joint venture, or any other relationship between the Members.
- 2.02 Name.** The name of the Company shall be Hilton Head Homes at Allenwood, LLC. The Company's name may only be changed by an amendment to the Articles of Organization.
- 2.03 Articles of Organization.** The Articles of Organization have been filed with the South Carolina Secretary of State, and the Company shall remain in compliance with all applicable provisions of the Act necessary to maintain its existence as a South Carolina limited liability company.
- 2.04 Designated Office.** The Company shall maintain a designated office in South Carolina in accordance with the Act. The designated office shall be at the address set forth in the Articles of Organization.
- 2.05 Registered Agent and Address.** The registered agent for service of process on the Company and the street address of the registered agent for service of process on the Company shall be the Person and address set forth in the Articles of Organization.
- 2.06 At-Will Company.** The Company shall be an at-will Company, as that term is defined in the Act. The Company's existence shall commence on the date the Articles of Organization were filed with the South Carolina Secretary of State, unless a later effective date is specified in said Articles of Organization.
- 2.07 Purposes.** The purposes of the Company shall be the acquisition and development of real property, and any such other activities as the Members deem necessary or appropriate.
- 2.08 Construction.** Unless otherwise required by law, if and to the extent the provisions of this Agreement conflict with the Act, this Agreement shall control. If and to the extent the provisions of this Agreement do not conflict with the Act, the Act shall control.

ARTICLE III. Membership and Capitalization

- 3.01 Members.** Each Member's Capital Contribution to the Company, Financial Rights and Voting Rights are shown on EXHIBIT A attached hereto.
- 3.02 Admission of New Members.** Additional Members (including transferees) may be admitted to the Company only with the consent of the Management Committee. The Management Committee shall indicate its consent to the admission of a new Member by executing with the new Member and the Company an amendment to EXHIBIT A of this Agreement setting

forth the names, addresses, and percentage ownership of Financial Rights and Voting Rights of all the Members as a result of the new Member's admission.

(a) Except as otherwise provided in the next paragraph, no creditor of a Member who obtains any portion of a Membership Share by charging order pursuant to the Act, or otherwise, or any Person, including any creditor, receiver, or bankruptcy estate that obtains any rights in the Company by reason of a security interest, pledge or the filing of an action for foreclosure, bankruptcy, receivership, divorce, or any similar proceeding may become a Member in the Company without the unanimous written consent of the Members, obtained after the transfer.

(b) Notwithstanding anything herein to the contrary, if at any time the Company has only one Member, and if that Member's entire Membership Share, or all of that Member's Financial Rights, are transferred voluntarily by the Member by sale, exchange or gift, or involuntarily by reason of the Member's death, incompetence, insolvency, bankruptcy, or dissolution, then the transferee(s) of such Membership Share or Financial Rights shall automatically become full Member(s) of the Company.

3.03 Transferee of Membership Share Admitted as a Member. Upon the transferee(s) of a transferor Member's entire Membership Share or all of the transferor Member's Financial Rights in the Company becoming Member(s), the transferor ceases to be a Member.

3.04 Transferee of Membership Share not Admitted as a Member. If the transferee of all or any part of a Membership Share is not admitted as a Member, he shall be entitled to retain the Financial Rights transferred to him, but he shall not have any Voting Rights and shall not be entitled to participate in the management of the Company or to exercise any other rights of a Member. The transferee is subject to any claims or offsets the Company has against the transferor, regardless of whether those claims or offsets exist at the time of the transfer or arise afterwards. An amendment to this Agreement may change the rights of a transferee, even if the amendment is made after the transfer. A transferee who is not admitted as a Member shall not have the right to seek a judicial determination that it is equitable to dissolve and wind up the Company's business under the Act. The transferor continues to be a Member, entitled to all rights of a Member, other than the rights transferred. Notwithstanding anything herein to the contrary, a transferee who is not admitted as a Member shall not be entitled to receive any distributions from the Company until such transferee delivers to the Management Committee written notice of the transfer, proof of the transfer deemed sufficient by the Management Committee, the transferee's federal and state tax identification numbers, and/or social security number, current legal address and telephone number, and such other information as the Management Committee may reasonably require.

3.05 Redemption of Member's Financial Rights Subjected to Charging Order. In the event a Member's Financial Rights are subjected to a charging order under the Act, the Company may redeem the Member's Financial Rights so charged, with Company Property, at any time prior to foreclosure of said Financial Rights in accordance with the Act. Nothing in this Section shall be construed as affecting or limiting the rights of the judgment debtor and the other Members to redeem any Financial Rights subjected to a charging order with their own property in accordance with the Act.

ARTICLE IV. Mandatory Capital Calls

- 4.01 Mandatory Capital Calls.** The Management Committee may make a mandatory capital call, in whatever amount it deems appropriate, by giving notice to all the Members of the amount each is required to contribute to the Company's capital. Any additional capital shall be contributed by the Members in the same ratio as each Member's Financial Rights bears to the total of all the Financial Rights in the Company. Solely for purposes of this Section, a Member who has transferred his Financial Rights, but whose transferee has not become a Member, shall be deemed to hold the Financial Rights so transferred.

ARTICLE V. Deficit Loan

- 5.01** If any Member fails to make his required Capital Contribution within 30 days after notice of a mandatory capital call ("Defaulting Member"), the amount which the Defaulting Member fails to contribute shall be considered a loan made by the Company to the Defaulting Member ("Deficit Loan"). A Defaulting Member's Deficit Loan shall be payable on demand of the Company as well as out of any distributions from the Company otherwise payable to the Defaulting Member. Said loan shall bear interest, per annum, at the rate of two (2%) percent above the prime rate as published in the *Wall Street Journal* at the date of the loan or, if greater, the rate of interest applicable under Section 1274 of the Code, adjusted each January 1 the Deficit Loan is outstanding. The Defaulting Member shall not be entitled to receive any distributions from the Company until the Deficit Loan of the Defaulting Member has been paid in full.
- 5.02** The Defaulting Member hereby grants to the Company a security interest in his Membership Share to the extent of the Defaulting Member's Deficit Loan. If the Defaulting Member fails to satisfy his Deficit Loan within ten (10) days after the Company's demand for payment, the Defaulting Member shall forfeit his Membership Share, to the extent of any unpaid obligations. The other Members shall not be required to make any additional Capital Contributions by reason of the Defaulting Member's forfeiture. To the extent a Defaulting Member's Deficit Loan remains unsatisfied, the Deficit Loan of the Defaulting Member shall be a personal debt obligation of the Defaulting Member, and the Company may resort to any available legal or equitable remedy to enforce said obligation.

ARTICLE VI. Representations and Warranties

- 6.01 Representations and Warranties of Members.** Each Member hereby represents and warrants to the Company and each other Member, and covenants with the Company and each other Member that:
- (a) the Member is acquiring such Member's Membership Share in the Company for the Member's own account as an investment and without an intent to distribute the Membership Share;

- (b) the Member acknowledges that such Member's Membership Share has not been registered under the Securities Act of 1933 or any state securities laws;
- (c) the Member acknowledges that such Member's Membership Share is subject also to the restrictions on transfer contained in this Agreement and the Act, and may not be resold or transferred by the Member without appropriate registration under applicable securities laws or the availability of an exemption from such requirements and compliance with the restrictions herein;
- (d) the financial capacity of the Member is such that the investment in the Company is not material to the Member's total financial capacity, and the Member has the financial ability to bear the economic risk of the investment and has means for providing for the Member's current needs and personal contingencies and has no need for liquidity with respect to the Member's investment in the Company;
- (e) the Member has such knowledge and experience in financial and business matters that the Member is capable of evaluating the merits and risks of investment in the Company, understands that investment in the Company constitutes a speculative investment with substantial market, operational, competitive, management, economic, tax, interest rate, and other risks, has evaluated the risks associated with investment in the Company AND HAS HAD OPPORTUNITY TO SEEK THE ADVICE OF THE MEMBER'S OWN INDEPENDENT LEGAL COUNSEL AND OTHER INDEPENDENT EXPERTS REGARDING THE TRANSACTION;
- (f) the Member acknowledges that, to the best of the Member's knowledge, the purchase of the Member's Membership Share in the Company was not solicited by the use of general advertising or solicitation, and that no brokerage or similar commission was paid to anyone relating to the Member's acquisition of an interest in the Company;
- (g) the Member has been given sufficient opportunity to ask questions, and receive answers with respect to the Company concerning the terms and conditions of the Member's investment and has been given the opportunity to obtain such additional information necessary to verify the accuracy of the information provided to such Member in order for the Member to evaluate the merits and risks of investment in the Company;
- (h) in the event such Member is not a natural person, the Member is duly organized, validly existing and in good standing under the laws of the state of its formation and has full power to carry on its business and to own and operate its properties and assets as presently owned and operated;
- (i) such Member has taken all action necessary to approve and authorize the execution of this Agreement and to consummate the transaction contemplated hereby; and
- (j) when executed and delivered, this Agreement shall constitute the valid and binding obligations of the Member, enforceable in accordance with its terms and conditions.

The inclusion of the foregoing does not constitute an acknowledgment that an interest in the Company is a security under applicable law, and the Company reserves the right to contest whether an interest in the Company constitutes a security.

6.02 Indemnification. Each Member shall and does hereby agree to indemnify and hold harmless the Company and the other Members from any and all liabilities, losses, costs, damages or expenses (including, without limitation, the costs of litigation and reasonable

7 

attorneys' fees) arising out of, resulting from, or in any way related to the misrepresentation or breach of any representation or warranty of such Member set forth in this Agreement.

ARTICLE VII. Member Meetings

- 7.01 Place of Meetings.** All meetings of the Members shall be held at the Company's principal place of business, or at such other place as shall be decided by the Management Committee.
- 7.02 Time of Meeting.** Meetings of the Members may be called at any time by the Management Committee or any Member by delivery to all Members of written notice at least seven (7) days in advance of the proposed meeting date. The notice shall contain the time, date and place of the meeting.
- 7.03 Member Voting and Quorum.** Each Member shall be entitled to vote in proportion to his Voting Rights in the Company. In order for any vote of the Members to be valid, a quorum must be represented at the meeting either in person or by proxy. 66% percent of the Voting Rights in the Company constitutes a quorum. Unless otherwise provided in this Agreement or the Articles of Organization, once a quorum is established, the affirmative vote of those Members who own 66% percent of the Voting Rights in the Company shall constitute a valid decision of the Members.
- 7.04 Voting by Certain Members.** Voting Rights owned by a corporation or other business entity may be voted by the officer, agent or proxy as the by-laws of that corporation or other governing instruments of the business entity prescribe, or, in the absence of such provision, as the board of directors or other governing body of the corporation or entity may determine.
- (a) Voting Rights owned by an administrator, executor, personal representative, guardian, or conservator may be voted by him, either in person or by proxy, without a transfer of such Voting Rights into his name. Voting Rights owned by a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to exercise any Voting Rights held by him without a transfer of the Voting Rights into his name.
- (b) Voting Rights owned by a receiver may be voted by the receiver, and Voting Rights owned by or under the control of a receiver may be voted by the receiver without the transfer thereof into his name if authority so to do is contained in an appropriate order of the court by which such receiver was appointed.
- (c) A Member whose Membership Shares or Voting Rights are pledged (if otherwise permitted hereunder) shall be entitled to vote such Voting Rights until the Voting Rights have been transferred into the name of the pledgee and thereafter the pledgee shall be entitled to vote the Voting Rights so transferred.
- 7.05 Proxies.** Members may vote by proxy appointed by an instrument in writing. A proxy shall be delivered to the other Members before the meeting at which it is to be voted and shall not be valid after the final adjournment of the meeting.

- 7.06 **Waiver of Notice.** A Member may waive notice of any meeting by a signed writing. In addition, a Member who attends a meeting waives his right to assert any lack of notice, or defect in notice, of the meeting unless he states such objection at the outset of the meeting.
- 7.07 **Manner of Meetings.** Members may participate in meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting.
- 7.08 **Action without Meeting.** The Members may take action without notice and a meeting if all the Members consent to such action and sign a Consent of the Members which sets forth the action to be taken.
- 7.09 **Personal Services.** No Member shall be required to perform any services for the Company by virtue of being a Member or Manager of the Company.

ARTICLE VIII. Management and Control

- 8.01 **General Authority.** The Company shall be manager managed, as defined in the Act. Except as otherwise expressly provided by this Agreement, any matter relating to the business and affairs of the Company shall be decided by the Management Committee. The Management Committee, or their authorized delegates, shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business. Without limiting the generality of the foregoing, they shall have the power and authority on behalf of the Company to:
- (a) Acquire property, real, personal, tangible and intangible;
 - (b) Borrow money for the Company from banks, other lending institutions, and other Persons and to hypothecate, encumber and grant security interests in the assets of the Company to secure payment of the borrowed sums;
 - (c) Purchase liability and other insurance to protect the Company and the Members;
 - (d) Hold, own, invest and reinvest, purchase and sell, any property, real, personal, tangible and intangible, in the name of the Company, including, but not limited to, deeds, mortgages, leasehold interests, general partnerships, limited partnerships, limited liability companies, common trust funds, mutual funds, stocks, Options, warrants, rights, puts, calls, contracts, futures, bonds, debentures, securities (public and private), and other debt and equity interests of any kind or nature, and to actively trade, speculate on, maintain and manage the same;
 - (e) Enter into, make, and perform contracts, agreements, and other undertakings binding on the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company and make all decisions and waivers thereunder;
 - (f) Employ accountants, legal counsel, managing agents, money managers, property managers, investment advisors and other advisors to perform services for the Company and to compensate them out of Company Property;

- (g) Screen, interview, and examine staff and personnel to be employed by the Company;
- (h) Open and maintain bank and investment accounts and arrangements, draw checks, letters of credit, and other orders for payment of money and designate individuals with authority to sign or give instructions with respect to those accounts and arrangements;
- (i) Pay debts and obligations of the Company to the extent that Company Property is available;
- (j) Sell, purchase, lease, loan, borrow, rent, repair, partition, mortgage, pledge, encumber develop, improve, subdivide or otherwise deal with any property, including Company Property;
- (k) Collect sums due the Company and bring suit on the Company's behalf or defend the Company in any action, and compromise, settle, collect, and otherwise represent, prosecute and defend the legal rights and interests of the Company;
- (l) File on behalf of the Company a voluntary petition for bankruptcy, or bring an action on behalf of the Company for receivership, insolvency or other similar relief in any court of competent jurisdiction, and to defend, answer, respond and otherwise represent the Company in any such action or proceeding; and
- (m) Perform all other acts as may be necessary or appropriate to the conduct of the Company's business, and to execute, acknowledge, verify and deliver any or all instruments desirable to effectuate any of the foregoing.

8.02 Members Approval Required for Certain Major Decisions. Notwithstanding anything herein to the contrary, the following major decisions shall require approval of the Members in the percentages designated:

- (a) Any amendment to this Agreement or the Articles of Organization shall require the approval of those Members who own 66% percent of the Voting Rights in the Company.
- (b) The Company shall not compromise, settle, waive or limit the obligation of any Member to make a Capital Contribution to the Company without the consent of those Disinterested Members who own 66% percent of the Voting Rights owned by all Disinterested Members.
- (c) The Company shall not sell, or contract to sell, or otherwise dispose of all or substantially all of the Company Property without the approval of those Members who own 66% percent of the Voting Rights in the Company. For purposes of this subsection, all or substantially all of the Company Property means 75% percent of such property by value.
- (d) The Company shall not enter into any merger, or any profit sharing, joint venture, or other such arrangement without the approval of those Members who own 66% percent of the Voting Rights in the Company.
- (e) The Company shall not hire anyone who is a member of a Member's Family without the approval of those Members who own 100% percent of the Voting Rights in the Company.

8.03 No Authority of Members. Except as otherwise provided in this Agreement, or as authorized by the Management Committee, no Member is an agent of the Company or has the authority to make any contracts, enter into any transactions, or make any commitments on behalf of the Company.

ARTICLE IX. Managers.

- 9.01 Number and Qualifications.** The number of Managers on the Management Committee shall be at least 1, but not more than 3. As of the date of this Agreement, the number of Managers on the Management Committee shall be 1, and the following are hereby elected to the Management Committee:

(a) Lancaster Redevelopment Corporation

The number of Managers on the Management Committee may be changed by those Members who own 100% percent of the Voting Rights in the Company. Each Manager shall hold office until his successor shall have been elected and qualified, or until his earlier death, resignation or removal from office. Managers need not be residents of the State of South Carolina or Members in the Company or natural persons.

- 9.02 Election of Managers.** The Managers shall be elected by the affirmative vote of those Members who own 66% percent of the Voting Rights in the Company.

- 9.03 Removal.** Managers may be removed from office with or without cause by a vote of those Members who own 66% percent of the Voting Rights in the Company.

- 9.04 Vacancies.** A vacancy occurring in the Management Committee may be filled by a vote of 66% percent of the remaining Managers, or by the sole remaining Manager. Notwithstanding the foregoing, a vacancy created by an increase in the authorized number of Managers shall be filled only by the Members. The Members may elect a Manager at any time to fill any vacancy not filled by the Management Committee.

9.05 Management Committee Meetings.

(a) Quorum. 66% percent of the Managers constitute a quorum. Except as otherwise provided in this Agreement, in order for any vote of the Managers to be valid and constitute an action of the Management Committee, a quorum must be represented at the meeting either in person or by proxy.

(b) Voting. Each Manager shall be entitled to one (1) vote. Once a quorum is established, the affirmative vote of 66% percent of the Managers represented at the meeting shall constitute a valid decision of the Management Committee.

(c) Place. All meetings of the Management Committee shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by 66% percent of the Managers.

(d) Notice. Meetings of the Management Committee may be called at any time by any Manager of the Company, by delivery to all Managers of written notice at least two (2) business days in advance of the proposed meeting date. The notice shall contain the time, date and place of the meeting.

(e) Waiver of Notice. A Manager may waive notice of any meeting by a signed writing. In addition, a Manager who attends a meeting waives his right to assert any lack of notice, or defect in notice, of the meeting unless he states such objection at the outset of the meeting.

- 9.06 Proxy.** Managers may vote by proxy appointed by an instrument in writing. A proxy shall be delivered to the other Managers before the meeting at which it is to be voted and shall not be valid after the final adjournment of the meeting.
- 9.07 Manner of Meetings.** Managers may participate in meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting.
- 9.08 Action without Meeting.** The Management Committee may take action without notice and a meeting if all of the Managers consent to such action by signing a Consent of the Managers which sets forth the action to be taken and contains the signature of each Manager.
- 9.09 Delegation of Powers.** From time to time, the Management Committee may authorize, or delegate any of its authority to a subcommittee of Persons, or a single Person, whom it shall name, to act on its behalf regarding any matter over which the Management Committee has authority.
- 9.10 Ratification.** The Management Committee may ratify and adopt any and all acts of any Person done on behalf of the Company.
- 9.11 Compensation for Services.** Those Managers who provide services to the Company shall be entitled to reasonable compensation from the Company in an amount to be determined by the Management Committee. Also, the Managers shall be entitled to reimbursement for all expenses reasonably incurred by them on behalf of the Company.

ARTICLE X. Fiduciary Duties; Right to Rely; Indemnification

- 10.01 Duties of Members.** A Member who is not also a Manager owes no duties to the Company or to the Members solely by reason of being a Member; provided, however, that a Member who, pursuant to this Agreement, exercises some or all of the rights of a Manager in the management and conduct of the Company's business is held to the standards of conduct applicable to Managers under this Agreement and the Act to the extent that the Member exercises the managerial authority vested in a Manager by this Agreement or the Act.
- 10.02 Duty of Loyalty.** A Manager's duty of loyalty to the Company and the Members is limited to the following:
- (a) To account to the Company and to hold as trustee for the Company any property, profit or benefit derived by the Manager in the conduct or winding up of the Company's business or derived from a use by the Manager of the Company's property, including the appropriation of a Company opportunity;
 - (b) To refrain from dealing with the Company in the conduct or winding up of the Company's business as or on behalf of a party having an interest adverse to the Company;
- and

(c) Notwithstanding anything herein to the contrary, the Members and the Company acknowledge and agree that some or all of the Managers, and/or their Family members, either directly or indirectly through other Persons, are engaged in other business and investment activities which may be considered to compete with or be adversarial to the business conducted by the Company; however, the Members and the Company intend and agree that they shall have no interest or rights with respect to any business, investment or other activities of the Managers or their Family members carried on outside the Company. The Members are sophisticated investors and are aware of the extent of the Managers' business and investment activities. No Manager shall be under any obligation to disclose any business opportunity to the Company or the Members. The fiduciary duties of the Managers shall be limited to their dealings with the Company Property.

(i) The Members and the Company further acknowledge that Gary L. Grossman, in his capacity as President and sole shareholder of Lancaster Redevelopment Corporation, has historically and will continue to routinely engage in the development and construction of residential homes and residential development projects, which may compete with activities of the Company.

(ii) The Members and the Company further acknowledge that Lancaster Redevelopment Corporation owns and operates "Forest Homes", located at Rt. 522, RD#1, Box 131K, Selinsgrove, PA 17870, and that Forest Homes manufactures the Engineering Building Systems product that will be purchased by the Company for the Allenwood project.

(iii) Certain Forest Homes Authorized Builders hold protected territory agreements. Forest Homes by Hilton Head Homes, Inc. co-owned by Gary L. Grossman and James R. Brady holds one such protected territory, which includes Beaufort County, South Carolina. On behalf of Hilton Homes, Inc., Gary L. Grossman hereby consents to the sale of Forest Home Engineered Building Systems directly to the Company at the then current wholesale cost. Any volume discounts and/or order incentives accruing under the terms of the Forest Homes Authorized Builder Agreement by and between Forest Homes by Hilton Head Homes, Inc. and Forest Homes a Division of Lancaster Redevelopment Corporation shall remain the property of Forest Homes by Hilton Head Homes, Inc. and not inure to the benefit of the Company.

(iv) James R. Brady of Hilton Head Homes, Inc. holds a South Carolina Contractor's license and may act as the building permit holder for and on behalf of the Company.

(v) In the event James R. Brady and/or Hilton Head Homes, Inc. acts as a building permit holder, it shall be reimbursed for all costs related to this function, including but not limited to insurance costs attributable to the project.

(vi) In order to effectively market the project and control the cost of construction, it is the intention of the Manager to enroll the company in the Forest Homes Business Management System, which will require an initial set-up fee of \$500 and an access fee of \$200 per calendar quarter, these fees will be paid by the Company.

10.03 Fiduciary Duties. Each Manager shall discharge his duties and exercise any of his rights consistently with the obligation of good faith and fair dealing which he owes to the Company and the Members. A Manager does not violate a duty or obligation to the Company merely because the Manager's conduct furthers the Manager's own interest. A Manager may lend money to and transact other business with the Company. As to each loan or transaction, the

rights and obligations of the Manager are the same as those of a Person who is not a Manager, subject to other applicable law.

- 10.04 Right to Rely.** The Managers shall not be held liable to the Company, or to the Members, for relying in good faith upon the records required to be maintained by this Agreement and upon such information, opinions, reports or statements by any of the other Managers, Members, attorneys, accountants, agents, advisors or any other Person who has been selected with reasonable care by or on behalf of the Company, as to matters the Manager reasonably believes are within such other Person's professional or expert competence.
- 10.05 Indemnification of Managers.** To the fullest extent allowed by law, the Managers shall be indemnified and held harmless by the Company for any liability resulting from any act performed or omission made by them in good faith on behalf of the Company, except for acts or omissions of gross negligence, reckless conduct, intentional misconduct, or knowing violation of the law.
- 10.06 Duty of Confidentiality.** Each Manager hereby warrants, covenants and agrees that he will not furnish, divulge, communicate, use to the detriment of the Company or use for the business of any other Person, any of the Company's confidential information, including but not limited to pricing information, data, sales methods, know how, processes, licenses, trade secrets, names of customers, customer lists, names of Members, or the partners, shareholders, members or other principals of any Member, future plans, accounting, marketing, financial data, or contract information.

ARTICLE XI. Capital Accounts and Accounting

- 11.01 Capital Accounts.** The Company shall establish for each Member a Capital Account, which shall be maintained in accordance with Section 704 of the Code and the capital account rules set forth in Treasury Regulations Section 1.704-1(b).
- 11.02 Compliance with Section 704(b) of the Code.** The provisions of this Agreement as they relate to the maintenance of Capital Accounts and allocations of Profits and Losses are intended, and shall be construed, and, if necessary, modified to cause the allocations of Profits, Losses, income, gain, deductions, credit and other items pursuant to this Agreement to have substantial economic effect within the meaning of the Treasury Regulations promulgated under Section 704(b) of the Code. Notwithstanding anything herein to the contrary, this Agreement shall not be construed as creating a deficit restoration obligation.
- 11.03 Tax Matters Partner.** Lancaster Redevelopment Corporation is designated the initial tax matters partner of the Company, as defined in Section 6231(a)(7) of the Code. The Management Committee may designate a new tax matters partner from time to time without amending this Agreement.

ARTICLE XII. Interim Distributions and Allocations

12.01 Interim Distributions. Interim distributions to the Members shall be made in accordance with the following:

(a) From time to time the Management Committee shall determine to what extent, if any, the Company's cash on hand ("Company Cash") exceeds the current and anticipated needs of the Company's business, including, but not limited to, operating expenses, debt service, acquisitions, payments under Section 707(c) of the Code, all amounts necessary to preserve, maintain and repair any Company Property, reserves against future contingent liabilities, and the retention of funds for future investments and activities. Any Company Cash in excess of such amounts shall be distributed to the Members.

12.02 (a) Except as otherwise provided in this Agreement, all distributions to the Members must be made simultaneously to each of the Members and must be made in proportion to the Members' Financial Rights. Such distributions may be in cash or Company Property or partly in both. Items of Company Property need not be distributed proportionately, provided the Members agree upon the value of the property being distributed and the value of the property and the cash received by each Member is proportionate to his Financial Rights.

(b) Subject to the Act, at the time that a Member becomes entitled to receive a distribution, the Member has the status of and is entitled to all remedies available to a creditor of the Company with respect to the distribution.

12.03 Restrictions on Distributions. Notwithstanding anything herein to the contrary, no distribution to any Member may be made if after giving effect to the distribution either (a) the Company would not be able to pay its debts as they become due in the ordinary course of business, or (b) the Company's total assets would be less than the sum of its total liabilities plus the amount that would be needed if the Company were to be dissolved, wound up and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up and termination of Members whose preferential rights are superior to those receiving the distribution. The provisions of Section 33-44-406 of the Act shall apply in construing this Section.

12.04 Calculation of Profits and Losses. The Profits and Losses of the Company for each fiscal year or other period shall be the taxable income or loss of the Company for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be separately stated pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any Company income which is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be added to such taxable income or loss.

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) (expenditures of the Company not deductible in computing its taxable income and not properly chargeable to a capital account) or treated as such expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i)(2) and (3) (organizational expenditures which the Company elects not to amortize under Code Section 709(b) and certain disallowed losses)

and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be subtracted from such taxable income or loss.

(c) Gain or loss with respect to the disposition of Company Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Code Section 704) of such property without regard to the adjusted basis.

(d) Depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss shall, for purposes of this subsection, be based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Section 704) of Company Property.

12.05 Allocation of Profits and Losses. The Profits and Losses of the Company for any fiscal year of the Company shall be allocated among the Members in accordance with their Financial Rights. The proceeds of any life insurance policy insuring the life of a Member which are received by the Company shall be allocated to the surviving Member(s), and the deceased Member, his estate, successors, or legal representatives shall have no interest in or distributive share of such proceeds.

12.06 Code Section 704(c). In accordance with the provisions of Code Section 704(c), income, gain, loss and deductions with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated to the Members so as to take account of any variation between the adjusted basis of such property and the fair market value at the time of contribution.

12.07 Distributions Subject to Set-Off. Except as otherwise provided in this Agreement, all distributions are subject to set-off by the Company for any past-due obligation of a Member to the Company.

ARTICLE XIII. Dissolution, Winding Up, and Termination

13.01 Dissolution. Except as otherwise provided herein, the Company shall dissolve, its affairs shall be wound up, and the Company shall terminate only upon the happening of one or more of the following events:

(a) The written consent of those Members who own 66% percent of the Voting Rights in the Company;

(b) Any event occurs that makes it unlawful for all or substantially all of the business of the Company to be continued, but any cure of illegality within ninety (90) days after notice to the Company of the event is effective retroactively to the date of the event for purposes of this subsection;

(c) The filing by the Secretary of State of a certificate administratively dissolving the Company pursuant to the Act, unless the Company is reinstated in accordance with the Act.

ARTICLE XIV. Dissociation

14.01 Events of Dissociation. The provisions of the Act relating to dissociation shall not apply to the Company. No Member shall have the power to withdraw from the Company except as provided herein. Only the occurrence of one or more of the following events with respect to a Member shall constitute the Dissociation of such Member:

- (a) Withdrawing, retiring or resigning from the Company by giving written notice to the Company; or
- (b) Withdrawing, retiring or resigning from the Company with the consent of those Members who own 50% percent of the Voting Rights in the Company; or
- (c) If the Member files a voluntary petition for bankruptcy, is adjudicated a bankrupt or has a bankruptcy petition filed against him which is not dismissed within ninety (90) days; or
- (d) On application by the Company or another Member, the Member's expulsion by judicial determination under Section 33-44-601(6) of the Act because the Member:
- (e) Engaged in wrongful conduct that adversely and materially affected the Company's business; or
- (f) Willfully or persistently committed a material breach of this Agreement or of a duty owed to the Company or the other Members under Section 33-44-409 of the Act; or
- (g) Engaged in conduct relating to the Company's business which makes it not reasonably practicable to carry on the business with the Member; or
- (h) Entry of an order by a court of competent jurisdiction adjudicating the Member to be insane, the appointment of a guardian or general conservator for the Member, or a judicial determination that the Member has otherwise become incapable of performing his duties under this Agreement; or
- (i) The giving by a Member of notice to the Company that the Member desires to transfer all or any portion of his Membership Share; or
- (j) The death of the Member; or
- (k) The Disability of the Member (Disability shall mean totally and permanently disabled for a period of twelve (12) months during a fifteen (15) consecutive month period so that a Member is unable to engage in his usual Company duties as determined by a doctor selected and paid by the Company).

ARTICLE XV. Restrictions on Transfer and Buy-Sell Provisions

15.01 Restrictions on Transfer.

- (a) Except for Permitted Transfers as set forth in this Agreement, no Member may voluntarily or involuntarily sell, transfer, gift, assign, pledge, mortgage, hypothecate, or otherwise convey or encumber any portion or all of his Membership Share to any Person without the prior written consent of the Management Committee. If such consent is obtained, the provisions of ARTICLE III shall govern the rights of the transferor and transferee. Any attempted conveyance or encumbrance of all or a portion of a Membership Share not expressly permitted herein shall be null, void and without effect.

15.02 Right to Buy.

(a) **Dissociation.** If a Member Dissociates within the meaning of ARTICLE XIV (a "Triggering Event"), then such Member ("Dissociating Member") is deemed to have offered to the Company all of his Membership Share at the price determined in accordance with this Section.

(b) If the Company does not accept said offer within ten (10) days after receiving written notice of the Triggering Event from the Dissociating Member (or his estate or other legal representative, as the case may be) and the determination of the purchase price, then such Member's Membership Share shall be offered in writing, at the same price and upon the same terms, to the other Members (the "Remaining Members") by delivery of written notice to them. The Company and/or the Remaining Members may accept the offer by delivering written notice to the Dissociating Member. If the Company and/or the Remaining Members accept the offer, then all of the Membership Share offered for sale must be purchased by the Company and/or the Remaining Members. In the event more than one offeree accepts the offer, those accepting shall purchase in proportion to their Membership Shares, unless they agree otherwise.

(c) If none of the Remaining Members accept the offer to purchase the Dissociating Member's Membership Share within ten (10) days after receipt of written notice by them, then the Membership Share may be offered for sale to any Person, provided that such Membership Share shall be sold for at least the same price and upon the same terms at which it was offered to the Company and the Remaining Members. The rights of the transferee of such Membership Share shall be determined in accordance with ARTICLE III.

15.03 Purchase Price. Unless the Member offering or selling his Membership Share hereunder and the Management Committee on behalf of the Company agree otherwise, the purchase price shall be determined in accordance with the following:

(a) The purchase price of the Membership Share shall be the Appraised Value of the Company (as defined herein) multiplied by the Financial Rights associated with the Membership Share being offered hereunder. The Appraised Value of the Company shall be the Fair Market Value (as defined below) of all Company Property less the Fair Market Value of all Company Liabilities obtained by agreement of two (2) appraisers, one appointed by the seller and one appointed by the Management Committee on behalf of the Company. The seller and Company must appoint their respective appraisers by delivering notice of the identity of their respective appraisers to each other within thirty (30) days after Company receives written notice of the Triggering Event from the Dissociating Member (or his estate or other legal representative, as the case may be). If the two (2) appraisers cannot agree on an Appraised Value of the Company within thirty (30) days after the last of them is appointed, then within five (5) days, they shall appoint a third appraiser. The third appraiser shall determine the Appraised Value of the Company within thirty (30) days after his appointment. The Appraised Value shall be the average of the two (2) appraisals which are closest to each other. Fair Market Value is defined as the cash equivalent price at which property would change hands between a hypothetical willing buyer and a hypothetical willing seller, neither being under a compulsion to buy or sell and both having reasonable knowledge of relevant facts. The hypothetical buyer and seller are assumed to be able, as well as willing, to trade and are assumed to be well-informed about the property and concerning the market for such property. The seller and the Company shall each pay the

costs of the appraiser appointed by them, and one-half (1/2) of the cost of the third appraiser.

The purchase price as determined herein shall be conclusive and binding on the parties, their personal representatives, legal representatives, heirs, successors and assigns. If any party fails to appoint an appraiser within the time required herein, the purchase price determined by the appraiser appointed by the other party shall be conclusive and binding upon the seller and purchaser(s), their personal representatives, legal representatives, heirs, successors, and assigns.

- 15.04 Payment of Purchase Price.** The closing of the purchase shall take place at the principal place of business of the Company within sixty (60) days after the purchase price has been determined and an offer accepted, or at such other date and place as the parties may agree.
- 15.05 Installments.** Unless the parties mutually agree otherwise, the purchase price shall be paid in 12 equal and consecutive monthly installments of principal and interest beginning 30 days after the date of the closing. The purchaser(s) shall execute and deliver to the seller a promissory note made payable to the order of the seller which shall bear interest, per annum, at the prime rate as published in the Wall Street Journal at the date of the sale or, if greater, the rate of interest applicable under Section 1274 of the Code. Payments may be anticipated, in whole or in part, at any time and from time to time, without penalty. The note shall provide that upon ten (10) days default of any payment of interest or principal, the note shall become due and payable immediately, at the Option of the holder of the note.
- 15.06** Upon execution and delivery of the note, the Membership Share (or any portion thereof) shall be conveyed to the purchaser(s). Until the note is paid in full, the Membership Share shall be held by the purchaser(s), but shall be pledged to the seller as collateral security for payment of the note. The seller shall have no right to exercise any Financial Rights or Voting Rights associated with the Membership Share unless and until there is a default on the note.

ARTICLE XVI. Miscellaneous Provisions

16.01 Members' Rights To Receive Information.

- (a) The Company shall provide Members and their agents and attorneys access to its records, if any, at the Company's principal office. The Company shall provide former Members and their agents and attorneys access for proper purposes to records pertaining to the period during which they were Members. The right of access provides the opportunity to inspect and copy records during ordinary business hours. The Company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.
- (b) The Company shall furnish to a Member, and to the legal representative of a deceased Member or Member under legal disability:
- (c) Without demand, information concerning the Company's business or affairs reasonably required for the proper exercise of the Member's rights and performance of the Member's duties under this Agreement and the Act; and
- (d) On demand, other information concerning the Company's business or affairs, except to the extent the demand or the information is unreasonable or otherwise improper under the circumstances.

(e) A Member has the right upon written demand given to the Company to obtain at the Company's expense a copy of this Agreement.

16.02 Notices. All notices, consents, requests, demands, offers, reports or other communications required or permitted hereunder shall be in writing and hand delivered or sent by certified or registered mail, postage prepaid, and return receipt requested, to the Management Committee and the Company at the Company's principal place of business and to a Member at the address on EXHIBIT A attached hereto, or to such other address as may hereafter be designated by the giving of notice in accordance with this Section. All notices, consents or other communications shall be deemed given when actually hand delivered, or upon the date of mailing in accordance with this Section.

16.03 Time of Essence. Time is of the essence of this Agreement.

16.04 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina regardless of the residence or domicile, now or in the future, of any party hereto and notwithstanding any conflicts of laws.

16.05 Consent to Jurisdiction. Except as otherwise required by law, the parties to this Agreement hereby agree that the courts of the State of South Carolina shall have sole and exclusive jurisdiction over any matter arising from the interpretation, purpose, effect, or operation of this Agreement, and with regard to all matters associated with operation of the Company's business. Except as otherwise required by law, the parties consent to venue in Charleston County, South Carolina, and waive any rights they may have to assert jurisdiction or venue in any other court, administrative forum, or other adjudicative body.

16.06 Waiver. No waiver of any breach of any covenant, agreement or undertaking contained herein shall operate as a waiver of any subsequent breach of the same covenant, agreement or undertaking or as a waiver of any breach of any other covenant, agreement or undertaking. In the case of a breach by any party of any covenant, agreement or undertaking, the nonbreaching party may nevertheless accept from the other, any payment or performance without waiving its right to exercise any right or remedy provided herein or otherwise, with respect to any such breach which was in existence at the time such payment or performance was accepted by it. No failure of any party to exercise any power given herein or to insist upon strict compliance with any covenant, agreement or undertaking contained herein, or to object to any custom or practice which varies from the terms hereof, shall constitute a waiver of such party's right to demand exact compliance with the terms of this Agreement. The waiver by any party of a breach of any covenant, agreement or undertaking contained herein shall be made only by a written waiver in each case, and no such waiver shall operate or be construed as a waiver of any prior or subsequent breach.

16.07 Severability. If any provision of this Agreement shall, to any extent, be held invalid, illegal or unenforceable, in whole or in part, the validity, legality, and enforceability of the remaining part of such provision, and the validity, legality and enforceability of the other provisions hereof, shall not be affected thereby and each term, covenant or condition shall be valid and enforceable to the fullest extent permitted by law. If any such invalidity shall be

caused by the length of any period of time, the size of any area or the scope of activities set forth in any provision hereof, such period of time, such area or scope or all, shall be considered to be reduced to a period, area, or scope which would cure such invalidity. Any provision of this Agreement which is held invalid, illegal or unenforceable in any jurisdiction shall not be deemed invalid, illegal or unenforceable in any other jurisdiction.

- 16.08 Counterparts.** This Agreement may be executed in more than one counterpart, each such counterpart shall be deemed an original, and all such counterparts shall constitute one and the same agreement. This Agreement shall be effective when executed by all parties, but all parties need not execute the original or the same counterpart.
- 16.09 Captions.** The headings, titles and captions of the Articles and Sections of this Agreement are inserted only to facilitate reference. They shall not define, limit, extend or describe the scope or intent of this Agreement or any provision hereof, and they shall not constitute a part hereof or affect the meaning or interpretation of this Agreement or any part hereof.
- 16.10 Entire Agreement.** This Agreement embodies the entire understanding and agreement among the parties pertaining to the subject matter hereof, and all prior agreements and understandings of the parties, whether written or oral, are terminated and superseded by this Agreement and shall be deemed merged herein.
- 16.11 Remedies Cumulative.** Except as otherwise expressly provided herein, all rights, powers and privileges conferred hereunder upon any party shall be cumulative and not restrictive of those given by law. No remedy herein conferred is exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given by agreement or now or hereafter existing at law or in equity or by statute.
- 16.12 Binding Effect.** This Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by and against all the parties and their respective heirs, legal representatives, personal representatives, successors and permitted assigns. Nothing in this Agreement, expressed or implied, is intended to or shall confer upon any Person other than the parties, and their respective heirs, legal representatives, personal representatives, successors and permitted assigns, any rights, remedies, obligations or liabilities.
- 16.13 Use of Terms.** Use of the terms "herein", "hereby", "hereunder", "hereof", "hereinbefore", "hereinafter", and other equivalent words refer to this Agreement in its entirety and not solely to the particular portion of the Agreement in which such word is used. Reference to "this Article", "this Section", or a similar reference to a specific part of this Agreement shall refer to the particular Article, Section or specific part in which such reference appears. Whenever used herein, any pronoun shall be deemed to include both the singular and plural and all genders.
- 16.14 Further Assurances.** Each of the parties will execute, deliver, acknowledge or supply such further documents, instruments and assurances as shall be reasonably necessary or appropriate to carry out the full intent and purposes of this Agreement, including but not limited to

the filing of either a copy of this Agreement or a Memorandum of this Agreement with the applicable government authorities.

- 16.15 Equitable Remedies.** The rights and remedies of the Members, Managers and the Company hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. The parties confirm that damages at law may be an inadequate remedy for a breach or threatened breach of this Agreement and agree that in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction (temporary and/or permanent), without posting bond, or other equitable remedy, but nothing herein contained is limited to, nor shall it limit or affect any right or rights at law or by statute or otherwise of any aggrieved party against any other party for a breach or threatened breach of any provision hereof, it being the intention of this Section to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.
- 16.16 Exhibits.** The exhibits attached to this Agreement are hereby made a part hereof and incorporated herein by reference. All such exhibits shall read as of the date of this Agreement or, as to any of the exhibits bearing a particular date, as of any other date specified therein.
- 16.17 Effective Date.** This Agreement shall become effective upon the later of the execution of this Agreement by all the Members or the filing of Articles of Organization with the South Carolina Secretary of State.
- 16.18 Arbitration.** Any dispute or controversy arising under or in connection with this Agreement shall be submitted to binding arbitration in accordance with the requirements of the South Carolina Uniform Arbitration Act as then in effect ("SCUAA"). All arbitration proceedings shall be conducted in Charleston, South Carolina. The arbitrators shall be selected as provided in the SCUAA, and the arbitrators shall render a decision on any dispute within one hundred twenty (120) days after the last of the arbitrators has been selected. If any party to this Agreement fails to select an arbitrator with regard to any dispute submitted to arbitration under this Section, within thirty (30) days after receiving notice of the submission to arbitration of such dispute, then the other party shall select an arbitrator for such non-selecting party, and the decision of the arbitrators shall be binding upon all the parties to the dispute, their personal representatives, legal representatives, heirs, successors and assigns. Each party to an arbitration proceeding under this Section shall pay an equal portion of all arbitrators' expenses and fees, together with other expenses of arbitration, except that the parties shall bear their own respective expert witness, professional and attorneys' fees.
- 16.19 Conflict of Interest.** The parties all acknowledge that the law firm of Buist, Byars, Pearce & Taylor, LLC prepared this Agreement on behalf of and in the course of its representation of the Company and that:



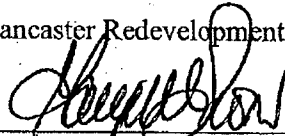
- (a) The parties have been advised by Gray B. Taylor that a conflict exists among their individual interests;
- (b) The parties have been advised by Gray B. Taylor to seek the advice of independent counsel; and
- (c) The parties have had the opportunity to seek the advice of independent counsel.

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

WITNESSES:

MEMBER

Lancaster Redevelopment Corporation



(SEAL)

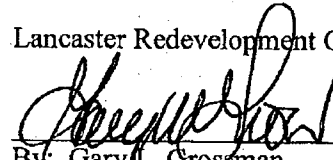
By: Gary L. Grossman

Its: President

WITNESSES:

MANAGER

Lancaster Redevelopment Corporation



(SEAL)

By: Gary L. Grossman

Its: President

EXHIBIT A

Initial Capital Contributions and Voting Rights

Member	Capital Contribution	Voting Rights
Lancaster Redevelopment Corporation	\$1,000	100%
Total	\$1,000	100%

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

VILLAGE SQUARE DEVELOPMENT COMPANY, LLC

OPERATING AGREEMENT

MEMBERSHIP SHARES IN VILLAGE SQUARE DEVELOPMENT COMPANY, LLC, HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE. MEMBERSHIP SHARES ACQUIRED BY MEMBERS MAY NOT BE SOLD OR OFFERED FOR SALE IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT OF THE MEMBERSHIP SHARES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND SUCH STATE LAWS AS MAY BE APPLICABLE, OR DELIVERY TO THE COMPANY OF AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED. ADDITIONAL RESTRICTIONS ON TRANSFER OF THE MEMBERSHIP SHARES ARE SET FORTH IN THIS AGREEMENT.



THIS OPERATING AGREEMENT ("Agreement") is made and entered into as of the 8th day of July, 2004, by its Manager and Member, Lancaster Redevelopment Corporation, a Pennsylvania corporation (collectively referred to as the "Members" and individually as a "member").

WHEREAS, the Company has been formed as a limited liability company under South Carolina law for the limited purposes hereinafter set forth; and

WHEREAS, the Members wish to adopt this Agreement as the operating agreement of the Company.

NOW, THEREFORE, in consideration of the sum of Ten (\$10.00) Dollars, to each paid in hand, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members and the Company covenant and agree as follows:

ARTICLE I. Definitions

Definitions. Whenever used in this Agreement, or any amendment hereof, the following terms shall have the meanings set forth below:

- (a) "Act" shall mean the South Carolina Uniform Limited Liability Company Act of 1996, Sections 33-44-101 et seq. of the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.
- (b) "Agreement" shall mean this Operating Agreement, together with any amendments hereto.
- (c) "Articles of Organization" shall mean the Articles of Organization filed with the South Carolina Secretary of State by which the Company was organized as a South Carolina limited liability company pursuant to the Act, together with any amendments thereto.
- (d) "Capital Account" shall mean the account established and maintained for each Member on the books of the Company pursuant to this Agreement.
- (e) "Capital Contribution" or "Contribution to Capital" shall mean the amount of cash and net fair market value (at the time of the contribution) of any property contributed to the Company by or on behalf of a Member.
- (f) "Code" shall mean the Internal Revenue Code of 1986, as amended, and any corresponding provisions of future laws.
- (g) "Company" shall mean Village Square Development Company, LLC.
- (h) "Company Liability" shall mean any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.
- (i) "Company Property" shall mean any and all property, real, personal, tangible and intangible, either contributed by a Member as capital, transferred to, or otherwise acquired by the Company.
- (j) "Control" or "Controlled" shall mean with respect to any legal entity, the actual or constructive ownership of more than fifty (50%) percent of all the voting rights in the entity, determined using the constructive ownership rules under Section 318 of the Code, regardless of whether the legal entity in question is a corporation or other legal entity.

(k) **"Disinterested"** shall mean with respect to any Member, a Member who (1) is not a party to a particular transaction or other undertaking, (2) has no material financial interest in any organization that is a party to that undertaking, and (3) is not a Family member of any Person who is either a party to that undertaking or has a material financial interest in any organization that is a party to that undertaking.

(l) **"Dissociation"** shall mean only the action of a Member deemed to be a Dissociation by the Member pursuant to ARTICLE XIV, and shall not have the meaning given it in the Act.

(m) **"Family"** shall mean (1) the spouse, lineal descendants and ancestors of an individual; (2) any estate, trust, guardianship, conservatorship, custodianship or other fiduciary arrangement for the benefit of any one or more of the individuals described in (1) above; and (3) any corporation, partnership, limited liability company or other business organization Controlled by any one or more individuals or entities described in (1) or (2) above.

(n) **"Financial Rights"** shall mean the right to share in the Profits and Losses of the Company and the right to share in distributions.

(o) **"Losses"** shall mean the losses of the Company as determined under ARTICLE XII hereof.

(p) **"Management Committee"** shall mean Lancaster Redevelopment Corporation, or any subsequent Managers, collectively, who are elected from time to time pursuant to ARTICLE VIII.

(q) **"Manager"** shall mean Lancaster Redevelopment Corporation, or any subsequent individual elected to the Management Committee from time to time pursuant to ARTICLE VIII.

(r) **"Member"** shall mean the parties to this Agreement from time to time.

(s) **"Membership Share"** shall mean all of the rights of a Member under this Agreement and under the Act, including, but not limited to, a Member's Financial Rights and Voting Rights.

(t) **"Person"** shall mean an individual, general partnership, limited liability company, limited liability partnership, limited partnership, trust, estate, corporation, custodian, trustee, executor, personal representative, legal representative, administrator, nominee or any other entity or person, and any individual or entity acting in a representative capacity.

(u) **"Profits"** shall mean the profits of the Company as determined under ARTICLE XII hereof.

(v) **"Voting Rights"** shall mean the right of a Member to vote on any matter as provided in this Agreement or under the Act. Any reference to a Member's Voting Rights shall mean the percentage of Voting Rights in the Company held by the Member.

(w) **"Voting Rights in the Company"** shall mean the Voting Rights held by the Members, collectively. Unless otherwise specifically provided herein, reference to a percentage of Voting Rights in the Company shall mean a percentage of the total Voting Rights held by all the Members.

ARTICLE II. Formation, Purposes and Powers

- 2.01 Formation.** The parties to this Agreement hereby agree to and adopt the terms and conditions set forth in this Agreement as the operating agreement of the Company. The Company shall exist under and be governed by the provisions of the Act, except as otherwise provided or modified by the Articles of Organization or this Agreement. The Company shall exist only for the purposes specified in this Agreement and shall not be deemed to create a partnership, joint venture, or any other relationship between the Members.
- 2.02 Name.** The name of the Company shall be Village Square Development Company, LLC. The Company's name may only be changed by an amendment to the Articles of Organization.
- 2.03 Articles of Organization.** The Articles of Organization have been filed with the South Carolina Secretary of State, and the Company shall remain in compliance with all applicable provisions of the Act necessary to maintain its existence as a South Carolina limited liability company.
- 2.04 Designated Office.** The Company shall maintain a designated office in South Carolina in accordance with the Act. The designated office shall be at the address set forth in the Articles of Organization.
- 2.05 Registered Agent and Address.** The registered agent for service of process on the Company and the street address of the registered agent for service of process on the Company shall be the Person and address set forth in the Articles of Organization.
- 2.06 At-Will Company.** The Company shall be an at-will Company, as that term is defined in the Act. The Company's existence shall commence on the date the Articles of Organization were filed with the South Carolina Secretary of State, unless a later effective date is specified in said Articles of Organization.
- 2.07 Purposes.** The purposes of the Company shall be the acquisition and development of real property, and any such other activities as the Members deem necessary or appropriate.
- 2.08 Construction.** Unless otherwise required by law, if and to the extent the provisions of this Agreement conflict with the Act, this Agreement shall control. If and to the extent the provisions of this Agreement do not conflict with the Act, the Act shall control.

ARTICLE III. Membership and Capitalization

- 3.01 Members.** Each Member's Capital Contribution to the Company, Financial Rights and Voting Rights are shown on EXHIBIT A attached hereto.
- 3.02 Admission of New Members.** Additional Members (including transferees) may be admitted to the Company only with the consent of the Management Committee. The Management Committee shall indicate its consent to the admission of a new Member by executing with

the new Member and the Company an amendment to EXHIBIT A of this Agreement setting forth the names, addresses, and percentage ownership of Financial Rights and Voting Rights of all the Members as a result of the new Member's admission.

(a) Except as otherwise provided in the next paragraph, no creditor of a Member who obtains any portion of a Membership Share by charging order pursuant to the Act, or otherwise, or any Person, including any creditor, receiver, or bankruptcy estate that obtains any rights in the Company by reason of a security interest, pledge or the filing of an action for foreclosure, bankruptcy, receivership, divorce, or any similar proceeding may become a Member in the Company without the unanimous written consent of the Members, obtained after the transfer.

(b) Notwithstanding anything herein to the contrary, if at any time the Company has only one Member, and if that Member's entire Membership Share, or all of that Member's Financial Rights, are transferred voluntarily by the Member by sale, exchange or gift, or involuntarily by reason of the Member's death, incompetence, insolvency, bankruptcy, or dissolution, then the transferee(s) of such Membership Share or Financial Rights shall automatically become full Member(s) of the Company.

3.03 Transferee of Membership Share Admitted as a Member. Upon the transferee(s) of a transferor Member's entire Membership Share or all of the transferor Member's Financial Rights in the Company becoming Member(s), the transferor ceases to be a Member.

3.04 Transferee of Membership Share not Admitted as a Member. If the transferee of all or any part of a Membership Share is not admitted as a Member, he shall be entitled to retain the Financial Rights transferred to him, but he shall not have any Voting Rights and shall not be entitled to participate in the management of the Company or to exercise any other rights of a Member. The transferee is subject to any claims or offsets the Company has against the transferor, regardless of whether those claims or offsets exist at the time of the transfer or arise afterwards. An amendment to this Agreement may change the rights of a transferee, even if the amendment is made after the transfer. A transferee who is not admitted as a Member shall not have the right to seek a judicial determination that it is equitable to dissolve and wind up the Company's business under the Act. The transferor continues to be a Member, entitled to all rights of a Member, other than the rights transferred. Notwithstanding anything herein to the contrary, a transferee who is not admitted as a Member shall not be entitled to receive any distributions from the Company until such transferee delivers to the Management Committee written notice of the transfer, proof of the transfer deemed sufficient by the Management Committee, the transferee's federal and state tax identification numbers, and/or social security number, current legal address and telephone number, and such other information as the Management Committee may reasonably require.

3.05 Redemption of Member's Financial Rights Subjected to Charging Order. In the event a Member's Financial Rights are subjected to a charging order under the Act, the Company may redeem the Member's Financial Rights so charged, with Company Property, at any time prior to foreclosure of said Financial Rights in accordance with the Act. Nothing in this Section shall be construed as affecting or limiting the rights of the judgment debtor and the

other Members to redeem any Financial Rights subjected to a charging order with their own property in accordance with the Act.

ARTICLE IV. Mandatory Capital Calls

- 4.01 Mandatory Capital Calls.** The Management Committee may make a mandatory capital call, in whatever amount it deems appropriate, by giving notice to all the Members of the amount each is required to contribute to the Company's capital. Any additional capital shall be contributed by the Members in the same ratio as each Member's Financial Rights bears to the total of all the Financial Rights in the Company. Solely for purposes of this Section, a Member who has transferred his Financial Rights, but whose transferee has not become a Member, shall be deemed to hold the Financial Rights so transferred.

ARTICLE V. Deficit Loan

- 5.01** If any Member fails to make his required Capital Contribution within 30 days after notice of a mandatory capital call ("Defaulting Member"), the amount which the Defaulting Member fails to contribute shall be considered a loan made by the Company to the Defaulting Member ("Deficit Loan"). A Defaulting Member's Deficit Loan shall be payable on demand of the Company as well as out of any distributions from the Company otherwise payable to the Defaulting Member. Said loan shall bear interest, per annum, at the rate of two (2%) percent above the prime rate as published in the *Wall Street Journal* at the date of the loan or, if greater, the rate of interest applicable under Section 1274 of the Code, adjusted each January 1 the Deficit Loan is outstanding. The Defaulting Member shall not be entitled to receive any distributions from the Company until the Deficit Loan of the Defaulting Member has been paid in full.
- 5.02** The Defaulting Member hereby grants to the Company a security interest in his Membership Share to the extent of the Defaulting Member's Deficit Loan. If the Defaulting Member fails to satisfy his Deficit Loan within ten (10) days after the Company's demand for payment, the Defaulting Member shall forfeit his Membership Share, to the extent of any unpaid obligations. The other Members shall not be required to make any additional Capital Contributions by reason of the Defaulting Member's forfeiture. To the extent a Defaulting Member's Deficit Loan remains unsatisfied, the Deficit Loan of the Defaulting Member shall be a personal debt obligation of the Defaulting Member, and the Company may resort to any available legal or equitable remedy to enforce said obligation.

ARTICLE VI. Representations and Warranties

- 6.01 Representations and Warranties of Members.** Each Member hereby represents and warrants to the Company and each other Member, and covenants with the Company and each other Member that:

- (a) the Member is acquiring such Member's Membership Share in the Company for the Member's own account as an investment and without an intent to distribute the Membership Share;
- (b) the Member acknowledges that such Member's Membership Share has not been registered under the Securities Act of 1933 or any state securities laws;
- (c) the Member acknowledges that such Member's Membership Share is subject also to the restrictions on transfer contained in this Agreement and the Act, and may not be resold or transferred by the Member without appropriate registration under applicable securities laws or the availability of an exemption from such requirements and compliance with the restrictions herein;
- (d) the financial capacity of the Member is such that the investment in the Company is not material to the Member's total financial capacity, and the Member has the financial ability to bear the economic risk of the investment and has means for providing for the Member's current needs and personal contingencies and has no need for liquidity with respect to the Member's investment in the Company;
- (e) the Member has such knowledge and experience in financial and business matters that the Member is capable of evaluating the merits and risks of investment in the Company, understands that investment in the Company constitutes a speculative investment with substantial market, operational, competitive, management, economic, tax, interest rate, and other risks, has evaluated the risks associated with investment in the Company AND HAS HAD OPPORTUNITY TO SEEK THE ADVICE OF THE MEMBER'S OWN INDEPENDENT LEGAL COUNSEL AND OTHER INDEPENDENT EXPERTS REGARDING THE TRANSACTION;
- (f) the Member acknowledges that, to the best of the Member's knowledge, the purchase of the Member's Membership Share in the Company was not solicited by the use of general advertising or solicitation, and that no brokerage or similar commission was paid to anyone relating to the Member's acquisition of an interest in the Company;
- (g) the Member has been given sufficient opportunity to ask questions, and receive answers with respect to the Company concerning the terms and conditions of the Member's investment and has been given the opportunity to obtain such additional information necessary to verify the accuracy of the information provided to such Member in order for the Member to evaluate the merits and risks of investment in the Company;
- (h) in the event such Member is not a natural person, the Member is duly organized, validly existing and in good standing under the laws of the state of its formation and has full power to carry on its business and to own and operate its properties and assets as presently owned and operated;
- (i) such Member has taken all action necessary to approve and authorize the execution of this Agreement and to consummate the transaction contemplated hereby; and
- (j) when executed and delivered, this Agreement shall constitute the valid and binding obligations of the Member, enforceable in accordance with its terms and conditions.

The inclusion of the foregoing does not constitute an acknowledgment that an interest in the Company is a security under applicable law, and the Company reserves the right to contest whether an interest in the Company constitutes a security.

- 6.02 Indemnification.** Each Member shall and does hereby agree to indemnify and hold harmless the Company and the other Members from any and all liabilities, losses, costs, damages or expenses (including, without limitation, the costs of litigation and reasonable attorneys' fees) arising out of, resulting from, or in any way related to the misrepresentation or breach of any representation or warranty of such Member set forth in this Agreement.

ARTICLE VII. Member Meetings

- 7.01 Place of Meetings.** All meetings of the Members shall be held at the Company's principal place of business, or at such other place as shall be decided by the Management Committee.
- 7.02 Time of Meeting.** Meetings of the Members may be called at any time by the Management Committee or any Member by delivery to all Members of written notice at least seven (7) days in advance of the proposed meeting date. The notice shall contain the time, date and place of the meeting.
- 7.03 Member Voting and Quorum.** Each Member shall be entitled to vote in proportion to his Voting Rights in the Company. In order for any vote of the Members to be valid, a quorum must be represented at the meeting either in person or by proxy. 66% percent of the Voting Rights in the Company constitutes a quorum. Unless otherwise provided in this Agreement or the Articles of Organization, once a quorum is established, the affirmative vote of those Members who own 66% percent of the Voting Rights in the Company shall constitute a valid decision of the Members.
- 7.04 Voting by Certain Members.** Voting Rights owned by a corporation or other business entity may be voted by the officer, agent or proxy as the by-laws of that corporation or other governing instruments of the business entity prescribe, or, in the absence of such provision, as the board of directors or other governing body of the corporation or entity may determine.
- (a) Voting Rights owned by an administrator, executor, personal representative, guardian, or conservator may be voted by him, either in person or by proxy, without a transfer of such Voting Rights into his name. Voting Rights owned by a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to exercise any Voting Rights held by him without a transfer of the Voting Rights into his name.
- (b) Voting Rights owned by a receiver may be voted by the receiver, and Voting Rights owned by or under the control of a receiver may be voted by the receiver without the transfer thereof into his name if authority so to do is contained in an appropriate order of the court by which such receiver was appointed.
- (c) A Member whose Membership Shares or Voting Rights are pledged (if otherwise permitted hereunder) shall be entitled to vote such Voting Rights until the Voting Rights have been transferred into the name of the pledgee and thereafter the pledgee shall be entitled to vote the Voting Rights so transferred.
- 7.05 Proxies.** Members may vote by proxy appointed by an instrument in writing. A proxy shall be delivered to the other Members before the meeting at which it is to be voted and shall not be valid after the final adjournment of the meeting.

- 7.06 **Waiver of Notice.** A Member may waive notice of any meeting by a signed writing. In addition, a Member who attends a meeting waives his right to assert any lack of notice, or defect in notice, of the meeting unless he states such objection at the outset of the meeting.
- 7.07 **Manner of Meetings.** Members may participate in meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting.
- 7.08 **Action without Meeting.** The Members may take action without notice and a meeting if all the Members consent to such action and sign a Consent of the Members which sets forth the action to be taken.
- 7.09 **Personal Services.** No Member shall be required to perform any services for the Company by virtue of being a Member or Manager of the Company.

ARTICLE VIII. Management and Control

- 8.01 **General Authority.** The Company shall be manager managed, as defined in the Act. Except as otherwise expressly provided by this Agreement, any matter relating to the business and affairs of the Company shall be decided by the Management Committee. The Management Committee, or their authorized delegates, shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business. Without limiting the generality of the foregoing, they shall have the power and authority on behalf of the Company to:
- (a) Acquire property, real, personal, tangible and intangible;
 - (b) Borrow money for the Company from banks, other lending institutions, and other Persons and to hypothecate, encumber and grant security interests in the assets of the Company to secure payment of the borrowed sums;
 - (c) Purchase liability and other insurance to protect the Company and the Members;
 - (d) Hold, own, invest and reinvest, purchase and sell, any property, real, personal, tangible and intangible, in the name of the Company, including, but not limited to, deeds, mortgages, leasehold interests, general partnerships, limited partnerships, limited liability companies, common trust funds, mutual funds, stocks, Options, warrants, rights, puts, calls, contracts, futures, bonds, debentures, securities (public and private), and other debt and equity interests of any kind or nature, and to actively trade, speculate on, maintain and manage the same;
 - (e) Enter into, make, and perform contracts, agreements, and other undertakings binding on the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company and make all decisions and waivers thereunder;

- (f) Employ accountants, legal counsel, managing agents, money managers, property managers, investment advisors and other advisors to perform services for the Company and to compensate them out of Company Property;
- (g) Screen, interview, and examine staff and personnel to be employed by the Company;
- (h) Open and maintain bank and investment accounts and arrangements, draw checks, letters of credit, and other orders for payment of money and designate individuals with authority to sign or give instructions with respect to those accounts and arrangements;
- (i) Pay debts and obligations of the Company to the extent that Company Property is available;
- (j) Sell, purchase, lease, loan, borrow, rent, repair, partition, mortgage, pledge, encumber develop, improve, subdivide or otherwise deal with any property, including Company Property;
- (k) Collect sums due the Company and bring suit on the Company's behalf or defend the Company in any action, and compromise, settle, collect, and otherwise represent, prosecute and defend the legal rights and interests of the Company;
- (l) File on behalf of the Company a voluntary petition for bankruptcy, or bring an action on behalf of the Company for receivership, insolvency or other similar relief in any court of competent jurisdiction, and to defend, answer, respond and otherwise represent the Company in any such action or proceeding; and
- (m) Perform all other acts as may be necessary or appropriate to the conduct of the Company's business, and to execute, acknowledge, verify and deliver any or all instruments desirable to effectuate any of the foregoing.

8.02 Members Approval Required for Certain Major Decisions. Notwithstanding anything herein to the contrary, the following major decisions shall require approval of the Members in the percentages designated:

- (a) Any amendment to this Agreement or the Articles of Organization shall require the approval of those Members who own 66% percent of the Voting Rights in the Company.
- (b) The Company shall not compromise, settle, waive or limit the obligation of any Member to make a Capital Contribution to the Company without the consent of those Disinterested Members who own 66% percent of the Voting Rights owned by all Disinterested Members.
- (c) The Company shall not sell, or contract to sell, or otherwise dispose of all or substantially all of the Company Property without the approval of those Members who own 66% percent of the Voting Rights in the Company. For purposes of this subsection, all or substantially all of the Company Property means 75% percent of such property by value.
- (d) The Company shall not enter into any merger, or any profit sharing, joint venture, or other such arrangement without the approval of those Members who own 66% percent of the Voting Rights in the Company.
- (e) The Company shall not hire anyone who is a member of a Member's Family without the approval of those Members who own 100% percent of the Voting Rights in the Company.

8.03 No Authority of Members. Except as otherwise provided in this Agreement, or as authorized by the Management Committee, no Member is an agent of the Company or has

the authority to make any contracts, enter into any transactions, or make any commitments on behalf of the Company.

ARTICLE IX. Managers.

- 9.01 Number and Qualifications.** The number of Managers on the Management Committee shall be at least 1, but not more than 3. As of the date of this Agreement, the number of Managers on the Management Committee shall be 1, and the following are hereby elected to the Management Committee:

(a) Lancaster Redevelopment Corporation

The number of Managers on the Management Committee may be changed by those Members who own 100% percent of the Voting Rights in the Company. Each Manager shall hold office until his successor shall have been elected and qualified, or until his earlier death, resignation or removal from office. Managers need not be residents of the State of South Carolina or Members in the Company or natural persons.

- 9.02 Election of Managers.** The Managers shall be elected by the affirmative vote of those Members who own 66% percent of the Voting Rights in the Company.

- 9.03 Removal.** Managers may be removed from office with or without cause by a vote of those Members who own 66% percent of the Voting Rights in the Company.

- 9.04 Vacancies.** A vacancy occurring in the Management Committee may be filled by a vote of 66% percent of the remaining Managers, or by the sole remaining Manager. Notwithstanding the foregoing, a vacancy created by an increase in the authorized number of Managers shall be filled only by the Members. The Members may elect a Manager at any time to fill any vacancy not filled by the Management Committee.

- 9.05 Management Committee Meetings.**

(a) Quorum. 66% percent of the Managers constitute a quorum. Except as otherwise provided in this Agreement, in order for any vote of the Managers to be valid and constitute an action of the Management Committee, a quorum must be represented at the meeting either in person or by proxy.

(b) Voting. Each Manager shall be entitled to one (1) vote. Once a quorum is established, the affirmative vote of 66% percent of the Managers represented at the meeting shall constitute a valid decision of the Management Committee.

(c) Place. All meetings of the Management Committee shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by 66% percent of the Managers.

(d) Notice. Meetings of the Management Committee may be called at any time by any Manager of the Company, by delivery to all Managers of written notice at least two (2) business days in advance of the proposed meeting date. The notice shall contain the time, date and place of the meeting.

- (e) **Waiver of Notice.** A Manager may waive notice of any meeting by a signed writing. In addition, a Manager who attends a meeting waives his right to assert any lack of notice, or defect in notice, of the meeting unless he states such objection at the outset of the meeting.
- 9.06 **Proxy.** Managers may vote by proxy appointed by an instrument in writing. A proxy shall be delivered to the other Managers before the meeting at which it is to be voted and shall not be valid after the final adjournment of the meeting.
- 9.07 **Manner of Meetings.** Managers may participate in meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting.
- 9.08 **Action without Meeting.** The Management Committee may take action without notice and a meeting if all of the Managers consent to such action by signing a Consent of the Managers which sets forth the action to be taken and contains the signature of each Manager.
- 9.09 **Delegation of Powers.** From time to time, the Management Committee may authorize, or delegate any of its authority to a subcommittee of Persons, or a single Person, whom it shall name, to act on its behalf regarding any matter over which the Management Committee has authority.
- 9.10 **Ratification.** The Management Committee may ratify and adopt any and all acts of any Person done on behalf of the Company.
- 9.11 **Compensation for Services.** Those Managers who provide services to the Company shall be entitled to reasonable compensation from the Company in an amount to be determined by the Management Committee. Also, the Managers shall be entitled to reimbursement for all expenses reasonably incurred by them on behalf of the Company.

ARTICLE X. Fiduciary Duties; Right to Rely; Indemnification

- 10.01 **Duties of Members.** A Member who is not also a Manager owes no duties to the Company or to the Members solely by reason of being a Member; provided, however, that a Member who, pursuant to this Agreement, exercises some or all of the rights of a Manager in the management and conduct of the Company's business is held to the standards of conduct applicable to Managers under this Agreement and the Act to the extent that the Member exercises the managerial authority vested in a Manager by this Agreement or the Act.
- 10.02 **Duty of Loyalty.** A Manager's duty of loyalty to the Company and the Members is limited to the following:
- (a) To account to the Company and to hold as trustee for the Company any property, profit or benefit derived by the Manager in the conduct or winding up of the Company's business or derived from a use by the Manager of the Company's property, including the appropriation of a Company opportunity;

(b) To refrain from dealing with the Company in the conduct or winding up of the Company's business as or on behalf of a party having an interest adverse to the Company; and

(c) Notwithstanding anything herein to the contrary, the Members and the Company acknowledge and agree that some or all of the Managers, and/or their Family members, either directly or indirectly through other Persons, are engaged in other business and investment activities which may be considered to compete with or be adversarial to the business conducted by the Company; however, the Members and the Company intend and agree that they shall have no interest or rights with respect to any business, investment or other activities of the Managers or their Family members carried on outside the Company. The Members are sophisticated investors and are aware of the extent of the Managers' business and investment activities. No Manager shall be under any obligation to disclose any business opportunity to the Company or the Members. The fiduciary duties of the Managers shall be limited to their dealings with the Company Property.

(i) The Members and the Company further acknowledge that Gary L. Grossman, in his capacity as President and sole shareholder of Lancaster Redevelopment Corporation, has historically and will continue to routinely engage in the development and construction of residential homes and residential development projects, which may compete with activities of the Company.

(ii) The Members and the Company further acknowledge that Lancaster Redevelopment Corporation owns and operates "Forest Homes", located at Rt. 522, RD#1, Box 131K, Selinsgrove, PA 17870, and that Forest Homes manufactures the Engineering Building Systems product that will be purchased by the Company for the Allenwood project.

(iii) Certain Forest Homes Authorized Builders hold protected territory agreements. Forest Homes by Hilton Head Homes, Inc. co-owned by Gary L. Grossman and James R. Brady holds one such protected territory, which includes Beaufort County, South Carolina. On behalf of Hilton Homes, Inc., Gary L. Grossman hereby consents to the sale of Forest Home Engineered Building Systems directly to the Company at the then current wholesale cost. Any volume discounts and/or order incentives accruing under the terms of the Forest Homes Authorized Builder Agreement by and between Forest Homes by Hilton Head Homes, Inc. and Forest Homes a Division of Lancaster Redevelopment Corporation shall remain the property of Forest Homes by Hilton Head Homes, Inc. and not inure to the benefit of the Company.

(iv) James R. Brady of Hilton Head Homes, Inc. holds a South Carolina Contractor's license and may act as the building permit holder for and on behalf of the Company.

(v) In the event James R. Brady and/or Hilton Head Homes, Inc. acts as a building permit holder, it shall be reimbursed for all costs related to this function, including but not limited to insurance costs attributable to the project.

(vi) In order to effectively market the project and control the cost of construction, it is the intention of the Manager to enroll the company in the Forest Homes Business Management System, which will require an initial set-up fee of \$500 and an access fee of \$200 per calendar quarter, these fees will be paid by the Company.

10.03 Fiduciary Duties. Each Manager shall discharge his duties and exercise any of his rights consistently with the obligation of good faith and fair dealing which he owes to the Company and the Members. A Manager does not violate a duty or obligation to the Company merely

because the Manager's conduct furthers the Manager's own interest. A Manager may lend money to and transact other business with the Company. As to each loan or transaction, the rights and obligations of the Manager are the same as those of a Person who is not a Manager, subject to other applicable law.

- 10.04 Right to Rely.** The Managers shall not be held liable to the Company, or to the Members, for relying in good faith upon the records required to be maintained by this Agreement and upon such information, opinions, reports or statements by any of the other Managers, Members, attorneys, accountants, agents, advisors or any other Person who has been selected with reasonable care by or on behalf of the Company, as to matters the Manager reasonably believes are within such other Person's professional or expert competence.
- 10.05 Indemnification of Managers.** To the fullest extent allowed by law, the Managers shall be indemnified and held harmless by the Company for any liability resulting from any act performed or omission made by them in good faith on behalf of the Company, except for acts or omissions of gross negligence, reckless conduct, intentional misconduct, or knowing violation of the law.
- 10.06 Duty of Confidentiality.** Each Manager hereby warrants, covenants and agrees that he will not furnish, divulge, communicate, use to the detriment of the Company or use for the business of any other Person, any of the Company's confidential information, including but not limited to pricing information, data, sales methods, know how, processes, licenses, trade secrets, names of customers, customer lists, names of Members, or the partners, shareholders, members or other principals of any Member, future plans, accounting, marketing, financial data, or contract information.

ARTICLE XI. Capital Accounts and Accounting

- 11.01 Capital Accounts.** The Company shall establish for each Member a Capital Account, which shall be maintained in accordance with Section 704 of the Code and the capital account rules set forth in Treasury Regulations Section 1.704-1(b).
- 11.02 Compliance with Section 704(b) of the Code.** The provisions of this Agreement as they relate to the maintenance of Capital Accounts and allocations of Profits and Losses are intended, and shall be construed, and, if necessary, modified to cause the allocations of Profits, Losses, income, gain, deductions, credit and other items pursuant to this Agreement to have substantial economic effect within the meaning of the Treasury Regulations promulgated under Section 704(b) of the Code. Notwithstanding anything herein to the contrary, this Agreement shall not be construed as creating a deficit restoration obligation.
- 11.03 Tax Matters Partner.** Lancaster Redevelopment Corporation is designated the initial tax matters partner of the Company, as defined in Section 6231(a)(7) of the Code. The Management Committee may designate a new tax matters partner from time to time without amending this Agreement.

ARTICLE XII. Interim Distributions and Allocations

12.01 Interim Distributions. Interim distributions to the Members shall be made in accordance with the following:

(a) From time to time the Management Committee shall determine to what extent, if any, the Company's cash on hand ("Company Cash") exceeds the current and anticipated needs of the Company's business, including, but not limited to, operating expenses, debt service, acquisitions, payments under Section 707(c) of the Code, all amounts necessary to preserve, maintain and repair any Company Property, reserves against future contingent liabilities, and the retention of funds for future investments and activities. Any Company Cash in excess of such amounts shall be distributed to the Members.

12.02 (a) Except as otherwise provided in this Agreement, all distributions to the Members must be made simultaneously to each of the Members and must be made in proportion to the Members' Financial Rights. Such distributions may be in cash or Company Property or partly in both. Items of Company Property need not be distributed proportionately, provided the Members agree upon the value of the property being distributed and the value of the property and the cash received by each Member is proportionate to his Financial Rights.

(b) Subject to the Act, at the time that a Member becomes entitled to receive a distribution, the Member has the status of and is entitled to all remedies available to a creditor of the Company with respect to the distribution.

12.03 Restrictions on Distributions. Notwithstanding anything herein to the contrary, no distribution to any Member may be made if after giving effect to the distribution either (a) the Company would not be able to pay its debts as they become due in the ordinary course of business, or (b) the Company's total assets would be less than the sum of its total liabilities plus the amount that would be needed if the Company were to be dissolved, wound up and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up and termination of Members whose preferential rights are superior to those receiving the distribution. The provisions of Section 33-44-406 of the Act shall apply in construing this Section.

12.04 Calculation of Profits and Losses. The Profits and Losses of the Company for each fiscal year or other period shall be the taxable income or loss of the Company for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be separately stated pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any Company income which is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be added to such taxable income or loss.

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) (expenditures of the Company not deductible in computing its taxable income and not properly chargeable to a capital account) or treated as such expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i)(2) and (3) (organizational expenditures which the Company elects not to amortize under Code Section 709(b) and certain disallowed losses)

and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be subtracted from such taxable income or loss.

(c) Gain or loss with respect to the disposition of Company Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Code Section 704) of such property without regard to the adjusted basis.

(d) Depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss shall, for purposes of this subsection, be based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Section 704) of Company Property.

12.05 Allocation of Profits and Losses. The Profits and Losses of the Company for any fiscal year of the Company shall be allocated among the Members in accordance with their Financial Rights. The proceeds of any life insurance policy insuring the life of a Member which are received by the Company shall be allocated to the surviving Member(s), and the deceased Member, his estate, successors, or legal representatives shall have no interest in or distributive share of such proceeds.

12.06 Code Section 704(c). In accordance with the provisions of Code Section 704(c), income, gain, loss and deductions with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated to the Members so as to take account of any variation between the adjusted basis of such property and the fair market value at the time of contribution.

12.07 Distributions Subject to Set-Off. Except as otherwise provided in this Agreement, all distributions are subject to set-off by the Company for any past-due obligation of a Member to the Company.

ARTICLE XIII. Dissolution, Winding Up, and Termination

13.01 Dissolution. Except as otherwise provided herein, the Company shall dissolve, its affairs shall be wound up, and the Company shall terminate only upon the happening of one or more of the following events:

(a) The written consent of those Members who own 66% percent of the Voting Rights in the Company;

(b) Any event occurs that makes it unlawful for all or substantially all of the business of the Company to be continued, but any cure of illegality within ninety (90) days after notice to the Company of the event is effective retroactively to the date of the event for purposes of this subsection;

(c) The filing by the Secretary of State of a certificate administratively dissolving the Company pursuant to the Act, unless the Company is reinstated in accordance with the Act.

ARTICLE XIV. Dissociation

14.01 Events of Dissociation. The provisions of the Act relating to dissociation shall not apply to the Company. No Member shall have the power to withdraw from the Company except as provided herein. Only the occurrence of one or more of the following events with respect to a Member shall constitute the Dissociation of such Member:

- (a) Withdrawing, retiring or resigning from the Company by giving written notice to the Company; or
- (b) Withdrawing, retiring or resigning from the Company with the consent of those Members who own 50% percent of the Voting Rights in the Company; or
- (c) If the Member files a voluntary petition for bankruptcy, is adjudicated a bankrupt or has a bankruptcy petition filed against him which is not dismissed within ninety (90) days; or
- (d) On application by the Company or another Member, the Member's expulsion by judicial determination under Section 33-44-601(6) of the Act because the Member:
- (e) Engaged in wrongful conduct that adversely and materially affected the Company's business; or
- (f) Willfully or persistently committed a material breach of this Agreement or of a duty owed to the Company or the other Members under Section 33-44-409 of the Act; or
- (g) Engaged in conduct relating to the Company's business which makes it not reasonably practicable to carry on the business with the Member; or
- (h) Entry of an order by a court of competent jurisdiction adjudicating the Member to be insane, the appointment of a guardian or general conservator for the Member, or a judicial determination that the Member has otherwise become incapable of performing his duties under this Agreement; or
- (i) The giving by a Member of notice to the Company that the Member desires to transfer all or any portion of his Membership Share; or
- (j) The death of the Member; or
- (k) The Disability of the Member (Disability shall mean totally and permanently disabled for a period of twelve (12) months during a fifteen (15) consecutive month period so that a Member is unable to engage in his usual Company duties as determined by a doctor selected and paid by the Company).

ARTICLE XV. Restrictions on Transfer and Buy-Sell Provisions

15.01 Restrictions on Transfer.

- (a) Except for Permitted Transfers as set forth in this Agreement, no Member may voluntarily or involuntarily sell, transfer, gift, assign, pledge, mortgage, hypothecate, or otherwise convey or encumber any portion or all of his Membership Share to any Person without the prior written consent of the Management Committee. If such consent is obtained, the provisions of ARTICLE III shall govern the rights of the transferor and transferee. Any attempted conveyance or encumbrance of all or a portion of a Membership Share not expressly permitted herein shall be null, void and without effect.

15.02 Right to Buy.

(a) **Dissociation.** If a Member Dissociates within the meaning of ARTICLE XIV (a "Triggering Event"), then such Member ("Dissociating Member") is deemed to have offered to the Company all of his Membership Share at the price determined in accordance with this Section.

(b) If the Company does not accept said offer within ten (10) days after receiving written notice of the Triggering Event from the Dissociating Member (or his estate or other legal representative, as the case may be) and the determination of the purchase price, then such Member's Membership Share shall be offered in writing, at the same price and upon the same terms, to the other Members (the "Remaining Members") by delivery of written notice to them. The Company and/or the Remaining Members may accept the offer by delivering written notice to the Dissociating Member. If the Company and/or the Remaining Members accept the offer, then all of the Membership Share offered for sale must be purchased by the Company and/or the Remaining Members. In the event more than one offeree accepts the offer, those accepting shall purchase in proportion to their Membership Shares, unless they agree otherwise.

(c) If none of the Remaining Members accept the offer to purchase the Dissociating Member's Membership Share within ten (10) days after receipt of written notice by them, then the Membership Share may be offered for sale to any Person, provided that such Membership Share shall be sold for at least the same price and upon the same terms at which it was offered to the Company and the Remaining Members. The rights of the transferee of such Membership Share shall be determined in accordance with ARTICLE III.

15.03 Purchase Price. Unless the Member offering or selling his Membership Share hereunder and the Management Committee on behalf of the Company agree otherwise, the purchase price shall be determined in accordance with the following:

(a) The purchase price of the Membership Share shall be the Appraised Value of the Company (as defined herein) multiplied by the Financial Rights associated with the Membership Share being offered hereunder. The Appraised Value of the Company shall be the Fair Market Value (as defined below) of all Company Property less the Fair Market Value of all Company Liabilities obtained by agreement of two (2) appraisers, one appointed by the seller and one appointed by the Management Committee on behalf of the Company. The seller and Company must appoint their respective appraisers by delivering notice of the identity of their respective appraisers to each other within thirty (30) days after Company receives written notice of the Triggering Event from the Dissociating Member (or his estate or other legal representative, as the case may be). If the two (2) appraisers cannot agree on an Appraised Value of the Company within thirty (30) days after the last of them is appointed, then within five (5) days, they shall appoint a third appraiser. The third appraiser shall determine the Appraised Value of the Company within thirty (30) days after his appointment. The Appraised Value shall be the average of the two (2) appraisals which are closest to each other. Fair Market Value is defined as the cash equivalent price at which property would change hands between a hypothetical willing buyer and a hypothetical willing seller, neither being under a compulsion to buy or sell and both having reasonable knowledge of relevant facts. The hypothetical buyer and seller are assumed to be able, as well as willing, to trade and are assumed to be well-informed about the property and concerning the market for such property. The seller and the Company shall each pay the

costs of the appraiser appointed by them, and one-half (1/2) of the cost of the third appraiser.

The purchase price as determined herein shall be conclusive and binding on the parties, their personal representatives, legal representatives, heirs, successors and assigns. If any party fails to appoint an appraiser within the time required herein, the purchase price determined by the appraiser appointed by the other party shall be conclusive and binding upon the seller and purchaser(s), their personal representatives, legal representatives, heirs, successors, and assigns.

15.04 Payment of Purchase Price. The closing of the purchase shall take place at the principal place of business of the Company within sixty (60) days after the purchase price has been determined and an offer accepted, or at such other date and place as the parties may agree.

15.05 Installments. Unless the parties mutually agree otherwise, the purchase price shall be paid in 12 equal and consecutive monthly installments of principal and interest beginning 30 days after the date of the closing. The purchaser(s) shall execute and deliver to the seller a promissory note made payable to the order of the seller which shall bear interest, per annum, at the prime rate as published in the Wall Street Journal at the date of the sale or, if greater, the rate of interest applicable under Section 1274 of the Code. Payments may be anticipated, in whole or in part, at any time and from time to time, without penalty. The note shall provide that upon ten (10) days default of any payment of interest or principal, the note shall become due and payable immediately, at the Option of the holder of the note.

15.06 Upon execution and delivery of the note, the Membership Share (or any portion thereof) shall be conveyed to the purchaser(s). Until the note is paid in full, the Membership Share shall be held by the purchaser(s), but shall be pledged to the seller as collateral security for payment of the note. The seller shall have no right to exercise any Financial Rights or Voting Rights associated with the Membership Share unless and until there is a default on the note.

ARTICLE XVI. Miscellaneous Provisions

16.01 Members' Rights To Receive Information.

(a) The Company shall provide Members and their agents and attorneys access to its records, if any, at the Company's principal office. The Company shall provide former Members and their agents and attorneys access for proper purposes to records pertaining to the period during which they were Members. The right of access provides the opportunity to inspect and copy records during ordinary business hours. The Company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

(b) The Company shall furnish to a Member, and to the legal representative of a deceased Member or Member under legal disability:

(c) Without demand, information concerning the Company's business or affairs reasonably required for the proper exercise of the Member's rights and performance of the Member's duties under this Agreement and the Act; and

(d) On demand, other information concerning the Company's business or affairs, except to the extent the demand or the information is unreasonable or otherwise improper under the circumstances.

(e) A Member has the right upon written demand given to the Company to obtain at the Company's expense a copy of this Agreement.

16.02 Notices. All notices, consents, requests, demands, offers, reports or other communications required or permitted hereunder shall be in writing and hand delivered or sent by certified or registered mail, postage prepaid, and return receipt requested, to the Management Committee and the Company at the Company's principal place of business and to a Member at the address on EXHIBIT A attached hereto, or to such other address as may hereafter be designated by the giving of notice in accordance with this Section. All notices, consents or other communications shall be deemed given when actually hand delivered, or upon the date of mailing in accordance with this Section.

16.03 Time of Essence. Time is of the essence of this Agreement.

16.04 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina regardless of the residence or domicile, now or in the future, of any party hereto and notwithstanding any conflicts of laws.

16.05 Consent to Jurisdiction. Except as otherwise required by law, the parties to this Agreement hereby agree that the courts of the State of South Carolina shall have sole and exclusive jurisdiction over any matter arising from the interpretation, purpose, effect, or operation of this Agreement, and with regard to all matters associated with operation of the Company's business. Except as otherwise required by law, the parties consent to venue in Charleston County, South Carolina, and waive any rights they may have to assert jurisdiction or venue in any other court, administrative forum, or other adjudicative body.

16.06 Waiver. No waiver of any breach of any covenant, agreement or undertaking contained herein shall operate as a waiver of any subsequent breach of the same covenant, agreement or undertaking or as a waiver of any breach of any other covenant, agreement or undertaking. In the case of a breach by any party of any covenant, agreement or undertaking, the nonbreaching party may nevertheless accept from the other, any payment or performance without waiving its right to exercise any right or remedy provided herein or otherwise, with respect to any such breach which was in existence at the time such payment or performance was accepted by it. No failure of any party to exercise any power given herein or to insist upon strict compliance with any covenant, agreement or undertaking contained herein, or to object to any custom or practice which varies from the terms hereof, shall constitute a waiver of such party's right to demand exact compliance with the terms of this Agreement. The waiver by any party of a breach of any covenant, agreement or undertaking contained herein shall be made only by a written waiver in each case, and no such waiver shall operate or be construed as a waiver of any prior or subsequent breach.

16.07 Severability. If any provision of this Agreement shall, to any extent, be held invalid, illegal or unenforceable, in whole or in part, the validity, legality, and enforceability of the remaining part of such provision, and the validity, legality and enforceability of the other provisions hereof, shall not be affected thereby and each term, covenant or condition shall be valid and enforceable to the fullest extent permitted by law. If any such invalidity shall be

caused by the length of any period of time, the size of any area or the scope of activities set forth in any provision hereof, such period of time, such area or scope or all, shall be considered to be reduced to a period, area, or scope which would cure such invalidity. Any provision of this Agreement which is held invalid, illegal or unenforceable in any jurisdiction shall not be deemed invalid, illegal or unenforceable in any other jurisdiction.

- 16.08 Counterparts.** This Agreement may be executed in more than one counterpart, each such counterpart shall be deemed an original, and all such counterparts shall constitute one and the same agreement. This Agreement shall be effective when executed by all parties, but all parties need not execute the original or the same counterpart.
- 16.09 Captions.** The headings, titles and captions of the Articles and Sections of this Agreement are inserted only to facilitate reference. They shall not define, limit, extend or describe the scope or intent of this Agreement or any provision hereof, and they shall not constitute a part hereof or affect the meaning or interpretation of this Agreement or any part hereof.
- 16.10 Entire Agreement.** This Agreement embodies the entire understanding and agreement among the parties pertaining to the subject matter hereof, and all prior agreements and understandings of the parties, whether written or oral, are terminated and superseded by this Agreement and shall be deemed merged herein.
- 16.11 Remedies Cumulative.** Except as otherwise expressly provided herein, all rights, powers and privileges conferred hereunder upon any party shall be cumulative and not restrictive of those given by law. No remedy herein conferred is exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given by agreement or now or hereafter existing at law or in equity or by statute.
- 16.12 Binding Effect.** This Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by and against all the parties and their respective heirs, legal representatives, personal representatives, successors and permitted assigns. Nothing in this Agreement, expressed or implied, is intended to or shall confer upon any Person other than the parties, and their respective heirs, legal representatives, personal representatives, successors and permitted assigns, any rights, remedies, obligations or liabilities.
- 16.13 Use of Terms.** Use of the terms "herein", "hereby", "hereunder", "hereof", "hereinbefore", "hereinafter", and other equivalent words refer to this Agreement in its entirety and not solely to the particular portion of the Agreement in which such word is used. Reference to "this Article", "this Section", or a similar reference to a specific part of this Agreement shall refer to the particular Article, Section or specific part in which such reference appears. Whenever used herein, any pronoun shall be deemed to include both the singular and plural and all genders.
- 16.14 Further Assurances.** Each of the parties will execute, deliver, acknowledge or supply such further documents, instruments and assurances as shall be reasonably necessary or appropriate to carry out the full intent and purposes of this Agreement, including but not limited to

the filing of either a copy of this Agreement or a Memorandum of this Agreement with the applicable government authorities.

- 16.15 Equitable Remedies.** The rights and remedies of the Members, Managers and the Company hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. The parties confirm that damages at law may be an inadequate remedy for a breach or threatened breach of this Agreement and agree that in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction (temporary and/or permanent), without posting bond, or other equitable remedy, but nothing herein contained is limited to, nor shall it limit or affect any right or rights at law or by statute or otherwise of any aggrieved party against any other party for a breach or threatened breach of any provision hereof, it being the intention of this Section to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.
- 16.16 Exhibits.** The exhibits attached to this Agreement are hereby made a part hereof and incorporated herein by reference. All such exhibits shall read as of the date of this Agreement or, as to any of the exhibits bearing a particular date, as of any other date specified therein.
- 16.17 Effective Date.** This Agreement shall become effective upon the later of the execution of this Agreement by all the Members or the filing of Articles of Organization with the South Carolina Secretary of State.
- 16.18 Arbitration.** Any dispute or controversy arising under or in connection with this Agreement shall be submitted to binding arbitration in accordance with the requirements of the South Carolina Uniform Arbitration Act as then in effect ("SCUAA"). All arbitration proceedings shall be conducted in Charleston, South Carolina. The arbitrators shall be selected as provided in the SCUAA, and the arbitrators shall render a decision on any dispute within one hundred twenty (120) days after the last of the arbitrators has been selected. If any party to this Agreement fails to select an arbitrator with regard to any dispute submitted to arbitration under this Section, within thirty (30) days after receiving notice of the submission to arbitration of such dispute, then the other party shall select an arbitrator for such non-selecting party, and the decision of the arbitrators shall be binding upon all the parties to the dispute, their personal representatives, legal representatives, heirs, successors and assigns. Each party to an arbitration proceeding under this Section shall pay an equal portion of all arbitrators' expenses and fees, together with other expenses of arbitration, except that the parties shall bear their own respective expert witness, professional and attorneys' fees.
- 16.19 Conflict of Interest.** The parties all acknowledge that the law firm of Buist, Byars, Pearce & Taylor, LLC prepared this Agreement on behalf of and in the course of its representation of the Company and that:

- (a) The parties have been advised by Gray B. Taylor that a conflict exists among their individual interests;
- (b) The parties have been advised by Gray B. Taylor to seek the advice of independent counsel; and
- (c) The parties have had the opportunity to seek the advice of independent counsel.

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

WITNESSES:

MEMBER

Lancaster Redevelopment Corporation



(SEAL)

By: Gary L. Grossman
Its: President

WITNESSES:

MANAGER

Lancaster Redevelopment Corporation



(SEAL)

By: Gary L. Grossman
Its: President



EXHIBIT A

Initial Capital Contributions and Voting Rights

Member	Capital Contribution	Voting Rights
Lancaster Redevelopment Corporation	\$1,000	100%
Total	\$1,000	100%

Lancaster Redevelopment Corp.

2138 Route 522

Selinsgrove, PA 17870

570-374-0131 (Fax 570-374-6093)

September 13, 2007

James R. Brady
36 Timber Marsh Lane
Hilton Head, SC 29926-2787

Dear Rod,

Pursuant to your discussion with Mr. Grossman, I am transmitting our analysis of the Allenwood compensation to you under our February 2, 2004 letter of agreement.

As you are aware, there are two separate entities operating at Allenwood. Our analysis isolates compensation by company.

Village Square Development Co. LLC (townhomes)

2005 Income	\$708,890
2006 Income	<u>\$247,495</u>
Total to date	\$956,385

To date there was one distribution
Paid to you on 4/10/07 \$ 36,000

This distribution was based on cash available at the time of distribution. As you know, our cash is invested in standing inventory.

Under the February 2, 2004 letter of Agreement you are scheduled to be paid a construction management fee of \$1,250 per townhouse unit. According to our records we have built and delivered 26 townhouses to date. I interpret the February 2, 2004 letter of Agreement to make the construction fees payable at the time each unit settles.

It is my understanding that the expenses associated with hiring Nick Grossman and/or Dan Clore for supervisory work on your behalf are to be deducted. Mr. Grossman did advise me that expenses for Dan Clore would not be counted after a certain date, but I do not know what that date was, so I picked 5/31/07 which is when Nick went to Battery Creek.

The February 2, 2004 letter of Agreement also provides for a \$2,000 per townhouse sales commission to either you or Joy Walker depending on who actually sold the unit. I was subsequently informed that you and Joy agreed to split this commission at \$1,000 each for all sales made by you or her. I made all payments and constructed all commission accounting in accordance with that directive.

The construction management fee on the 26 sold and settled townhomes totals	\$32,500

The commissions on the 26 sold and Settled townhomes totals	\$26,000

Less the commission paid to date	(9,415)

Less Nick Grossman salary/benefits/expenses 6/6 to 1/7	(29,845)

Less Dan Clore salary/benefits/expenses 6/6 to 1/7	(30,746)

Less Nick Grossman salary/benefits/expenses 1/1/07-5/31/07	(24,870)

Less Dan Clore salary/benefits/expenses 1/1/07-5/31/07	(25,620)

Current balance as of this date	(61,996)

There are construction management fees Due on 29 additional units @\$1,250	\$36,250

The net balance is a negative For your sales commissions and construction management Fees for Village Square Development Co. LLC	(25,746)

The net income for tax year 2005 was \$708,890 and \$247,495 in 2006 for a total taxable income of \$956,385. The LRC allocated income on this \$956,385 is 88% or \$841,619.

Under the terms of the February 2, 2004 letter of Agreement, Mr. Grossman was to be paid a priority distribution of 500 basis points for his guarantee. The average debt in 2005 was \$2,970,097 from January 1 until December 31, 2005 which calculates to a pro-rated guarantee fee of \$148,504.85 for 2005.

The average VSD to LLC debt balance for 2006 was \$5,402,733, which calculates to a guarantee fee of \$270,137.

The guarantee fee totals \$418,642 which reduces the LRC allocated pretax profits from \$841,619 to \$422,977.

Your allocated share of 50% would be \$211,488.

To date I have advanced \$128,000.

The balance of the 2005/2006 "incentive management fee" due to you is **\$83,488**.

Under the terms of the February 2, 2004 letter of Agreement, 100% of LRC loans or accounts receivables are to be paid as a priority distribution.

Mr. Grossman recently loaned Village Square Development Co. LLC \$124,750 and forest homes has past due receivables of \$173,700.

We must repay the \$173,700 past due receivables as a first priority. Mr. Grossman has indicated his intentions to allow funds to be paid to you ahead of his recent loans.

As to Hilton Head Homes at Allenwood

Your construction management fees on the 44 single family homes sold and settled total	\$220,000

The construction management fees on the 4 remaining single family homes total	\$ 20,000

The expenses associated with Rich Raven	\$(17,941)
The expenses associated with RS Davis	\$(58,611)

The 10% commission on the 44 single family Homes sold and settled to date total	<u>\$192,000</u>

Total earned as of this date	\$355,475
Total paid as of this date	<u>\$335,846</u>

Balance due on contribution fees and commissions	\$ 19,629

Mr. Grossman advises that this amount can be paid from the very next S.F. settlement if Art Long will consent.

The 2005 net taxable income was	\$1,212,191
The 2006 net taxable income was	<u>400,592</u>
Total taxable income of	\$1,612,783
The allocated income on this \$1,612,783 is 88% or	\$1,419,249

The average debt balance for 2005 was	\$1,993,865
The 500 basis point guarantee fee calculating to	\$ 99,693

The average debt balance for 2006 was	\$1,267,311
The 500 basis point guarantee fee calculating to	\$ 52,244
Therefore, net taxable income after the guarantee Fees for 2005/2006 is	\$1,267,312

Your 50% incentive management fee is	\$ 633,656
Of this writing, the total amount due to you is	\$ 711,027

Mr. Grossman directed me to access our ability to fund a \$10,000 a month draw against these funds. Given the carrying costs of the inventory, and past due receivables to Forest Homes from Allenwood, the monthly carrying costs at Cypress Harbor and our massive increase in overhead associated with the new plant, LRC simply cannot fund any additional monthly expenses.

I have attached a summary of the above information. If you have any questions or need any details, please feel free to call me anytime.

Very truly yours,

Ginger Griffith
Treasurer

Cc: Gary L. Grossman

**GARY L. GROSSMAN
419 COFFEE GOSS ROAD
MARIETTA, PA 17547**

February 2, 2004

James R. Brady
29 Otter Hole Road
Bld. #1, Unit #11
Hilton Head Island, SC 29926

Dear Rod,

As you know, I have been in direct negotiations with Chris Gannon to keep us in the single-family lot takedown transaction by agreeing to purchase the 92 townhouse lots in a 3 phase bulk buy.

This past weekend, I convinced Chris to separate these transactions by using Lancaster Redevelopment Corporation as the purchaser of the townhouse lots.

Chris Gannon and I went back and forth all weekend by e-mail, which resulted in the enclosed contracts.

Please make note that the 64 single family lot agreement has Hilton Head Homes LLC not Hilton Head Homes, Inc. as the purchaser.

I do not want any creditor of Hilton Head Homes, Inc. to be able to take hostile action against the Allenwood project (i.e.: subcontractor vendors).

At this point in our business relationship, I am somewhat torn between trying to help you as a friend, and making prudent business decisions on my own behalf.

The two Allenwood transactions require an absolute minimum of \$110,000 in cash equity (probably more) and recourse positions on a minimum of \$3,000,000 in debt.

From a business only standpoint of view, I have a problem putting up all the cash, funding the interest expense by myself and taking all the real risk of recourse on a 50/50 basis.

I also have some concern about the unresolved problem at Cypress Harbour. At some point in time the bank will move through the foreclosure process, seize the assets, sell the asset and most likely come up with a loss.

In which case, I believe there is a high probability the bank will pursue a deficiency action against you. Unless and until this threat is resolved, I do not believe it in my best interest to be "joined at the hip" on a 3 or 4 year project that involves 3,000,000 plus dollars of debt.

Having said all of this, I value our friendship highly. I want to work through these difficult issues and move on to better times.

I would like to proceed with both transactions in separate limited liability companies wherein, Lancaster Redevelopment Corporation owns 100% of the companies, but engages you and Joy Walker as independent contractors under the following terms and conditions:

- We move the entire Hilton Head Homes operation into the Allenwood model home. This will keep someone on site at all times.
- We do our own sales and marketing through you and Joy Walker and offer a 3% co-broker commission on all products.
- We pay Joy Walker a flat rate of \$2500 per single family home and \$500 per townhouse for her administrative assistance/sales work as and when homes are settled as her sales compensation.
- We pay you a flat fee construction management fee of \$5000 for each single family home and \$1250 per unit for each townhouse, as and when homes are settled as her sales compensation.
- The 3% sales fee should be paid to you or Joy Walker for any sale of single family homes and a flat \$2000 fee for townhouses, either of you write and close, as and when each home settles.
- If we build 24 single family homes and 36 townhouses a year (which is what our contract takedown schedule is) this arrangement provides you with \$174,000 in construction management fees per year.
- If you can sell 50% of this without paying a broker you can earn an additional \$108,000 per year in commission.
- If you elect to hire people to fulfill these roles I want you to pay them out of the fees set forth above!

In addition to the sales and construction management fees as described, I would like to pay you an "incentive management fee" of 50% of pre-tax profits after a 1% per month interest on cash investment to Lancaster Redevelopment Corporation and 500 basis points to me individually for my guarantee. However, I am asking that 100% of cash

invested by Forest Homes, Lancaster Redevelopment Corporation and/or myself be repaid prior any profit distribution.

I would like all accounting and debt management to take place from my office so I can stay on top of things.

I believe this arrangement fairly balances the scales, makes our initial financing easier, isolates me, and the deals from any trouble that may arise from Cypress Harbour and lowers your personal risk!

I am hopeful you are not in anyway insulted or upset. I simply need to feel totally comfortable because of the level of debt exposure involved with this undertaking.

Please give my concerns and my proposed solution your immediate attention and advise your thoughts. I want to make immediate application to Jeff Heidt at National Bank of Commerce in Savannah.

Very truly yours,

Gary L. Grossman

GLG/sa
HHH/brady 2 2 04