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14 Southeast 4<sup>th</sup> Street, Boca Raton, Florida, 33432  
Tel: 561.347.8700  
Fax: 561.409.2341

**Scott A. Weires, Esq.**  
E-Mail: [sweires@mwnlegal.com](mailto:sweires@mwnlegal.com)

December 18, 2017

**EMAIL TO [HNRINC@GMAIL.COM](mailto:HNRINC@GMAIL.COM)**

Mr. Harry Dorvilier

**Re: Consent and Direction to File Complaint**

Dear Harry,

As mentioned in my email today, please read, sign and return the following consent and direction so that we may proceed with filing the lawsuit against Property Consulting Group, Inc. ("PCG").

Consent and Direction

I, Harry Dorvilier, have directed my attorneys to file a lawsuit against PCG. The claims to be asserted are breach of contract, negligence, and fraud.

I understand that there are significant defenses that are likely to be asserted by PCG, which could result in the dismissal of the claim and/or summary judgment in favor of PCG.

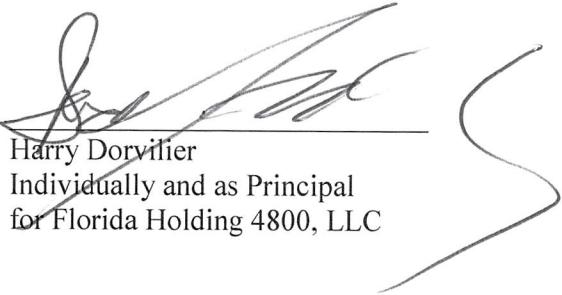
I also understand that there is a 2-year statute of limitation that applies to negligence claims against professional engineers that is likely applicable in this case (and may apply against all of the claims asserted). We are more than 2 years from March 2014, the date that Southern Coatings sealed the entire roof and thus the most favorable date that we could assert for when we discovered that the entire roof needed to be replaced.

I understand that the contract with PCG limits their liability to \$4,000, the amount that was paid to PCG for the inspection work performed. The PCG contract also disclaims all liability associated with any errors, omissions or inaccuracies, whether attributable to inadherence or otherwise, and for any consequences arising therefrom. These limitations and disclaimers may apply against all of the claims asserted).

Nonetheless, I hereby direct my attorneys to file the lawsuit and proceed against PCG.

Mr. Harry Dorvilier  
December 18, 2017  
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Harry Dorvilier  
Individually and as Principal  
for Florida Holding 4800, LLC

1.

# **Property Consulting Group, Inc.**

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## **AUDIT SCHEDULE**

PCG proposes to inspect the subject property within five (5) business days from receipt of signed contract and retainer check, and prepare a draft report of findings within ten (10) business days from the date of inspection. The draft report will be conclusive in regard to due diligence concerning environmental issues at the subject property. Final signed and sealed copies complete with appendices and color photographs will be delivered within ten (10) additional business days of the issuance of the draft reports. If this time frame needs to be adjusted, please contact our office for expedited project costs.

## **DELAY AND/OR CANCELLATION**

If after authorization to proceed has been given, Client requests that work as outlined in this agreement be postponed or canceled, Client agrees to reimburse PCG for all costs incurred plus time spent on the job at the rate of \$75 per hour. PCG shall furnish Client with a detailed invoice outlining said charges, with payment due upon receipt.

Should Client in the future desire to resume work as outlined in this agreement, any monies paid by Client as described in the preceding paragraph shall be considered as an advance and subsequently deducted from the total amount due under this agreement.

## **LIMITATION OF LIABILITY**

PCG assumes liability only for damages caused by or resulting from the sole negligence of its personnel and representatives. It is expressly agreed that to the fullest extent permitted by law, the total maximum aggregate recovery for claims against PCG concerning provided professional services, including negligence or breach of this agreement shall be the amount paid PCG for said professional services. Although great care will be taken by PCG in compiling and checking the information contained in the report to insure that it is current and accurate, PCG disclaims any and all liability for any errors, omissions or inaccuracies in such information and data, whether attributable to inadvertence or otherwise, and for any consequences arising therefrom.

## **REPORTS, RECOMMENDATIONS, AND OWNERSHIP OF DOCUMENTS**

Reports, recommendations, and other materials resulting from PCG's efforts are intended solely for the purposes of this agreement; any reuse by Client or others for purposes outside of this agreement or any failure to follow PCG's recommendations, without written permission, shall be at the Client's or user's sole risk.

IN THE CIRCUIT COURT OF THE  
17<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
BROWARD COUNTY, FLORIDA

FLORIDA HOLDING 4800, LLC,

CASE NO. \_\_\_\_\_

Plaintiff,

v.

PROPERTY CONSULTING GROUP,  
INC.,

Defendant.

**COMPLAINT FOR DAMAGES  
AND DEMAND FOR JURY TRIAL**

COMES NOW the Plaintiff, FLORIDA HOLDING 4800, LLC, by and through her undersigned attorneys, and hereby sues the Defendant, PROPERTY CONSULTING GROUP, INC., and states as follows:

**The Parties, Jurisdiction and Venue**

1. This is an action for damages in excess of \$15,000.00, exclusive of interest and costs.
2. Plaintiff, FLORIDA HOLDING 4800, LLC (“FH 4800”), is a corporation duly organized under the laws of the State of Florida, has its principal place of business in Broward County, Florida, and is otherwise *sui juris*.
3. Defendant, PROPERTY CONSULTING GROUP, INC. (“PCG”), is a corporation organized under the laws of the State of Florida, has its principal place of business in Broward

County, Florida, and is otherwise *sui juris*. PCG may be served through its registered agent James Hanskat at 2722 NE 1<sup>st</sup> Street, Suite 2, Pompano Beach, FL 33062.

4. Venue is proper in this Court as Broward County, Florida is where the breaches at issue herein took place and where the causes of action pled below arose.

5. All conditions precedent to the filing of this action have occurred, been waived, or otherwise performed.

#### Factual Background

6. This action arises from the inspection of commercial real property located at 4200 NW 16<sup>th</sup> Street, Lauderhill, Florida (hereinafter the “Property”).

7. Prior to April 2013, Plaintiff considered purchasing the Property from the prior owner.

8. On April 11, 2013, and during the course of performing its due diligence relating to the Property, Plaintiff engaged PCG and the parties entered into an agreement (the “Contract”) whereby PCG agreed to perform a Property Condition Assessment and Phase I Environmental Site Assessment (the “Inspection”). A copy of the Contract is attached hereto as **Exhibit A**.

9. The Contract provided a scope of work to be conducted by PCG (the “Proposed Scope”).

10. The Proposed Scope included determining the “efficiency of the Structural, Mechanical, and Electrical systems.” Contract at Page 1.

11. The Contract states that a report will be generated which “will address sufficiency of the structural, mechanical, electrical, plumbing, and roofing systems and estimated remaining life of these components.” *Id.* at 2.

12. The Contract also states that “the report will be prepared for the purpose of disclosing the conditions of the improvements in general conditions of the subject property.... this report may be utilized for due diligence purposes during the inspection.” *Id.*

13. The Contract includes a prevailing party attorney fee provision by virtue of §57.105, Fla. Stat., which states that Plaintiff “agrees to pay for all costs of collection, as well as reasonable attorney fees incurred by PCG.” *Id.* at 3.

14. Plaintiff paid \$4,000 to PCG to conduct the Inspection.

15. On April 12, 2013, PCG conducted the Inspection.

16. On April 23, 2013, PCG issued its report of findings associated with the Inspection (the “Report”). A copy of the Report is attached hereto as **Exhibit B**.

17. The Report states that it is “based upon careful evaluation of the observed conditions.” Report at Introductory Summary.

18. The Report states that it “may be relied upon by [Plaintiff] in determining whether to make a purchase [of the Property].” Report at Page 2.

19. The Report states that “the purpose of this [Report] is to evaluate the present condition and anticipated engineering needs of the [Property].” *Id.*

20. The Report also states that PCG conducted a document review and interviewed the then-current property owner/manager to inquire about and review “historical repairs and replacements and their costs, level of preventative maintenance exercise, pending repairs and improvements, frequency of repairs and replacements, and existence of ongoing or pending litigation related to subject property’s physical condition.” Report at Page 3.

21. The Report states that it “is based on observations made during the property “walk-through.” *Id.* at pg. 4.

22. The Report also states that “accessible areas of the roof” were physically observed.

*Id.*

23. The Report states that “observations were conducted at the property as to the type, condition and adequacy of the following items: substructure, superstructure, facade, and roofing.” *Id.* (emphasis added).

24. The Report also states that “no significant structural problems with the building were noted and all construction techniques and materials appear to be properly installed and adequate for the current and anticipated near-term use of the building.” *Id.* at pg. 7.

25. The Report also states that “it would appear that the roof is approximately twenty (20) years old and appeared to be in good overall condition with no signs of active leaks noted.” *Id.* at pg. 8.

26. The Report also states that “the expected useful life of the roof of this type is typically be 25-30 years with proper maintenance. Therefore, the roof has an estimated remaining useful life of approximately 5-10 years with continued proper maintenance.” *Id.*

27. The Report goes further and specifies that no substantive costs will be required with respect to the roof for 7 years. *Id.* at pg. 27.

28. The Report states that “observations were conducted at the property as to the type, condition and adequacy of the following items: plumbing, heating, ventilation and air-conditioning, electrical, and elevators/escalators.” *Id.* at pg. 4.

29. The Report also states that “the chillers and split-coil units ranged in age from approximately 3-7 years old and were noted to be in good condition.” *Id.* at pg. 9.

30. The Report also states that “the HVAC equipment should have a significant amount of remaining useful life and no replacements are anticipated over the term.” *Id.*

31. The Report provides that there are no “immediate needs” or “near term needs” relating to the roof and chillers/HVAC system for at least 7 more years. *Id.* at pgs. 5, 27.

32. In or about June 2013, and based upon the representing findings of the Inspection as set forth within the Report provided by PCG, Plaintiff purchased the Property.

33. Thereafter, leaks associated with the roof and cooling problems associated with the HVAC system were reported by tenants to the Plaintiff.

34. In or about March 2014, Plaintiff discovered that the true condition of the roof was not as indicated in the Report.

35. Specifically, Plaintiff learned from a roofing contractor performing work at the Property that the entire roof was in poor condition, did not have any additional useful life, and required a complete replacement.

36. In or about March 2014, Plaintiff discovered that the true condition of the HVAC system was not as indicated in the Report.

37. Specifically, Plaintiff learned from an HVAC contractor performing work at the Property that the chillers were in poor condition and required replacement.

38. The leaks associated with the roof, and the problems associated with the HVAC system, resulted in mold growth within the building.

39. As a result, several tenants left the Property.

40. Plaintiff has retained the law firm of Murdoch, Weires & Neuman to protect its rights.

#### **COUNT I – BREACH OF CONTRACT**

41. Plaintiff restates the allegations set forth above in paragraphs 1 through 26 as if set forth in full herein.

42. This is a claim for breach of contract against PCG relating to the Contract.
43. The parties entered into the Contract.
44. Pursuant to the Contract, PCG agreed to perform the work set forth within the Proposed Scope which included, without limitation, adequate interviews of the then-current property owner and/or manager, and tenants, make reasonable review of the maintenance and repair records for the Property, and conduct a sufficient physical inspection of various areas of the Property as set forth in the Proposed Scope relating to its Inspection.
45. PCG breached the Contract by failing to provide the work specified within the Proposed Scope including, without limitation, the following:
  - a. Failing to perform interviews of the then-current property owner and/or manager, and tenants;
  - b. Failing to review the maintenance and repair records for the Property;
  - c. Failing to conduct a physical inspection of the Property as specified in the Proposed Scope; and
  - d. Creating the Report which was not based upon the Proposed Scope.
46. As a direct, foreseeable, and proximate result of the breach by the Defendant, Plaintiff has suffered substantial damage including, but not limited to, overpaying for the true condition of the Property, lost use of the Property, lost income from the Property, and damages resulting from claims made against the Property by tenants.

WHEREFORE, Plaintiff demands judgment for damages against Defendant for breach of contract, in an amount to be determined at trial, as well as attorney's fees, interest and the

costs of bringing this action as allowed by law, and any other and further relief as is just and proper.

**COUNT II – NEGLIGENCE**  
**(Failing to discover the Roof condition)**

47. Plaintiff restates the allegations set forth above in paragraphs 1 through 26 as if set forth in full herein.

48. This is an alternative claim to Count I, the breach of contract claim such that, if it is demonstrated that PCG complied with the obligations set forth within the Contract and its related Proposed Scope, then it performed those responsibilities in a negligent manner and failed to reasonably discover the true condition of the roof.

49. Defendant owed Plaintiff a duty of care to exercise diligence and to otherwise perform its work in a manner reasonably expected within the industry regarding the performance of the Inspection.

50. The roof of any structure is one of the most important items requiring the inspection of a professional.

51. Defendant held itself out as being a qualified inspector of such items.

52. Defendant breached its duty of care in performing the Inspection as follows:

- e. Failed to fully and properly inspect the roof;
- f. Failed to obtain a proper understanding of the history of the roof by failing to inquire with building personnel about prior repair and maintenance records of the roof;
- g. Failed to inspect the areas directly beneath the roof for evidence of water intrusion;

- h. Failed to follow up with respect to any evidence of water intrusion to determine whether the leak remained active;
- i. Failed to follow up with respect to any evidence of water intrusion to determine what work had been performed to remedy the condition;
- j. Failed to exercise reasonable care in the performance of its duties and obligations as a certified inspector of commercial property; and
- k. In other respects not now known to the Plaintiff but which may become known prior to or at the time of trial.

53. As a direct, foreseeable, and proximate result of the breach by the Defendant, Plaintiff has suffered substantial damage including, but not limited to, overpaying for the true condition of the Property, lost use of the Property, lost income from the Property, and damages resulting from claims made against the Property by tenants.

54. All of Plaintiff's losses were, are and will be due solely to and by reason of the recklessness and negligence of the Defendant without any negligence or want of due care on the Plaintiff's part contributing thereto.

WHEREFORE, Plaintiff demands judgment for damages against Defendant for failure to discover the roof condition, in excess of the minimal jurisdictional limits of this Court, in an amount to be determined at trial, as well as attorney's fees, interest and the costs of bringing this action as allowed by law, and any other and further relief as is just and proper.

**COUNT III – NEGLIGENCE**  
(Failing to discover the HVAC conditions)

55. Plaintiff restates the allegations set forth above in paragraphs 1 through 26 as if set forth in full herein.

56. This is an alternative claim to Count I, the breach of contract claim, such that if it is demonstrated that PCG complied with the obligations set forth within the Contract and its related Proposed Scope, then it performed those responsibilities in a negligent manner and failed to reasonably discover the true condition of the chillers and HVAC system.

57. Defendant owed Plaintiff a duty of care to exercise diligence and to otherwise perform its work in a manner reasonably expected within the industry regarding the performance of the Inspection.

58. The HVAC system of any structure is one of the most important items to be inspected by a professional.

59. Defendant held itself out as being a qualified inspector of such items.

60. Defendant breached its duty of care in performing the Inspection as follows:

- l. Failed to fully and properly inspect the chillers and HVAC system;
- m. Failed to obtain a proper understanding of the history of the chillers and HVAC system by failing to inquire with building personnel about prior repair and maintenance records of the chillers and HVAC system;
- n. Failed to adequately test and otherwise fully inspect the chillers for proper operation;
- o. Failed to inspect the chillers and HVAC system for leaks;

- p. Failed to follow up with respect to any evidence of improper operation or leaks to determine the cause of the conditions;
- q. Failed to follow up with respect to any evidence of improper operation or leaks to determine what work had been performed to remedy the conditions;
- r. Failed to exercise reasonable care in the performance of its duties and obligations as a certified inspector of commercial property; and
- s. In other respects not now known to the Plaintiff but which may become known prior to or at the time of trial.

61. As a direct, foreseeable, and proximate result of the breach by the Defendant, Plaintiff has suffered substantial damage including, but not limited to, overpaying for the true condition of the Property, lost use of the Property, lost income from the Property, and damages resulting from claims made against the Property by tenants.

62. All of Plaintiff's losses were, are and will be due solely to and by reason of the recklessness and negligence of the Defendant without any negligence or want of due care on the Plaintiff's part contributing thereto.

WHEREFORE, Plaintiff demands judgment for damages against Defendant for negligence relating to its failure to discover the HVAC conditions, in excess of the minimal jurisdictional limits of this Court, in an amount to be determined at trial, as well as attorney's fees, interest and the costs of bringing this action as allowed by law, and any other and further relief as is just and proper.

**COUNT IV – FRAUD/INTENTIONAL MISREPRESENTATION**  
(Misleading Representation about Work Performed)

63. Plaintiff restates the allegations set forth above in paragraphs 1 through 26 as if set forth in full herein.

64. This is a claim for intentional misrepresentation against PCG.

65. PCG within its Report claims that it undertook substantial efforts in order to property evaluate the Property and perform its Inspection.

66. The problem is that all such representations are qualified by the statement “if readily available” or “if provided” which intentionally creates ambiguity as to whether or not the work was actually performed and thus whether or not the work actually provided a basis for the Inspection and resulting Report.

67. The language is thus useless “filler” intended to artificially bloat the Report and make it appear that a comprehensive foundation exists to support the findings in the Report when, in fact, no such work may have been performed at all.

68. For example, PCG claims that it conducted substantial document reviews and thorough interviews.

69. With respect to document reviews, PCG claims that “efforts were made to review records or documents, *if readily available*, to specifically identify, or assist in the identification of, physical deficiencies, as well as any preceding or ongoing efforts, or costs to investigate or remediate the physical deficiencies, or a combination thereof including building certificates of occupancy, outstanding and recorded material building code violations, and recorded material fire code violations.” Report at Page 3.

70. PCG claims that, *if readily available*, it reviewed “the following documents and information that may be in the possession of or provided by the owner, owners’ representative,

user, or combination thereof, as appropriate: appraisal, Certificate of Occupancy, safety inspection records, warranty information (roofs, boilers, chillers, cooling towers, etc.), records indicating the age of material building systems such as roofing, paving, plumbing, heating, air conditioning, electrical, etc., historical costs incurred for repairs, improvements, recurring replacements, etc., pending proposals or executed contracts for material repairs or improvements and descriptions of future work planned, outstanding citations for building, fire and zoning code violations.” *Id.*

71. PCG also claims that “if readily available, PCG reviewed an ADA survey and status of any improvements implemented to effect physical compliance, previously prepared property condition reports or studies pertaining to any aspect of the subject property’s physical condition, records indicating building occupancy percentage, records indicating building turnover percentage, building rent roll, leasing literature, listing for sale, marketing/promotional literature such as photographs, descriptive information, reduced floor plans, etc., and drawings and specifications (as-built or construction).” *Id.*

72. PCG represents that “if provided, PCG interviewed the property manager or agent of the owner so as to inquire about the subject property’s historical repairs and replacements and their costs, level of preventative maintenance exercised, pending repairs and improvements, frequency of repairs and replacements, and existence of ongoing or pending litigation related to subject property’s physical condition.” *Id.*

73. Each and every one of the foregoing representations about document reviews and interviews were of paramount importance to the Plaintiff because, if performed as stated, they would have identified the true condition of the Property.

74. The representations about document reviews and interviews are also important because they provided the basis in the Report to satisfy other various items of the “walk-through survey” that allegedly occurred – “reliance was placed on the accuracy and disclosure of property representatives.” *Id.* at 4.

75. The language was intended to confuse the Plaintiff, and did confuse the Plaintiff regarding what work was performed and what basis supported the findings in the Report.

76. Indeed, there is no sound reason for including so much qualifying language other than to intentionally confuse the Plaintiff.

77. That is, if the work was performed, PCG could have simply said that – and, if the work was not performed, PCG could have simply said that.

78. There is no other language in the Report which clearly identifies what documents were reviewed (or not reviewed), or who was interviewed (or not interviewed).

79. Plaintiff relied upon the misrepresentations and believed that there was substantial support for the findings in the Report.

80. As a result, Plaintiff purchased the Property in reliance upon the Inspection and Report.

81. Plaintiff now understands that very little documentation, if any at all, about prior repair and maintenance history of the roof and HVAC system was ever reviewed.

82. Plaintiff now understands that few, if any, interviews were conducted that would have revealed the problems with the roof and HVAC system.

83. Plaintiff would not have purchased the Property had the Report been properly accurate in its representations about the lack of information supporting the findings with respect to the roof and HVAC system.

84. As a direct, foreseeable, and proximate result of the intentional misrepresentation by the Defendant, Plaintiff has suffered substantial damage including, but not limited to, overpaying for the true condition of the Property, lost use of the Property, lost income from the Property, and damages resulting from claims made against the Property by tenants.

WHEREFORE, Plaintiff demands judgment for damages against Defendant for intentional misrepresentation, in excess of the minimal jurisdictional limits of this Court, in an amount to be determined at trial, as well as attorney's fees, interest and the costs of bringing this action as allowed by law, and any other and further relief as is just and proper.

**JURY DEMAND**

Plaintiff hereby requests trial by jury on all matters so triable as a matter of law.

Dated: December 18, 2017.

By: \_\_\_\_\_

Scott A. Weires, Esq.  
Florida Bar No. 113761  
Murdoch, Weires & Neuman, PLLC  
14 Southeast 4<sup>th</sup> Street  
Boca Raton, FL 33432  
Tel: (561) 347-8700  
[sweires@mwnlegal.com](mailto:sweires@mwnlegal.com)  
[jliotta@mwnlegal.com](mailto:jliotta@mwnlegal.com)