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IN THE DISTRICT COURT FOR DOUGLAS COUNTY, NEBRASKA

NEALE FARMS, INC., **a Nebraska corporation,** **Plaintiff,** **v.** **TRIBEDO, LLC, A Nebraska l**imited liability company, **GEORGE TAYLOR D/B/A TAYLOR GRADING, and JV5 SOLUTIONS, LLC, an Iowa limited liability company,** **Defendants.**	**Case Number: 14-9471** **ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIM AND CROSS CLAIMS**

COMES NOW, the Defendant Tribedo,LLC, (hereinafter "Defendant" or "Tribedo"), by and through its undersigned attorney of record and for its Answer to the Complaint of the Plaintiff hereby states to this Court as follows:

<u>FACTS COMMON TO ALL CLAIMS FOR RELIEF</u>

1) Defendant generally denies each and every allegation of the Plaintiff's Complaint except those hereinafter specifically admitted, if any, and except those allegations constituting admissions against its own interest.
2) Defendant admits Paragraph 1.
3) Defendant admits Paragraph 2.
4) Defendant lacks sufficient knowledge to admit or deny Paragraph 3.
5) Defendant lacks sufficient knowledge to admit or deny Paragraph 4.
6) Defendant admits Paragraph 5.

7) Defendant denies Paragraph 6.

8) Defendant admits Paragraph 7.

9) Defendant lacks sufficient knowledge to admit or deny Paragraph 8.

10) Defendant lacks sufficient knowledge to admit or deny Paragraph 9.

11) Defendant lacks sufficient knowledge to admit or deny Paragraph 10.

12) Defendant lacks sufficient knowledge to admit or deny Paragraph 11.

13) Defendant lacks sufficient knowledge to admit or deny Paragraph 12.

14) Defendant lacks sufficient knowledge to admit or deny Paragraph 13.

15) Defendant lacks sufficient knowledge to admit or deny Paragraph 14.

16) Defendant lacks sufficient knowledge to admit or deny Paragraph 15.

17) Defendant lacks sufficient knowledge to admit or deny Paragraph 16.

18) Defendant lacks sufficient knowledge to admit or deny Paragraph 17.

19) Defendant lacks sufficient knowledge to admit or deny the first sentence of Paragraph 18. Defendant admits the second sentence of Paragraph 18.

20) Defendant lacks sufficient knowledge to admit or deny Paragraph 19.

THIRD CLAIM FOR RELIEF

FORECLOSURE OF CONSTRUCTION LIEN

21) Defendant incorporates, by reference herein, the above paragraphs.

22) Defendant neither admits nor denies Paragraph 28 as it does not merit an admission or denial.

23) Defendant denies Paragraph 29.

24) Defendant lacks sufficient knowledge to admit or deny Paragraph 30.

25) With respect to Paragraph 31, Defendant admits that Neale Farms has a construction lien but denies that said lien relates to the payment of a "contract price."

26) With respect to Paragraph 32, Defendant admits that it is a "contracting owner" with respect to Taylor Grading but denies that it is a "contracting owner" with respect to Neale Farms.

27) Defendant admits Paragraph 33.

28) Defendant denies Paragraph 34.

29) Defendant denies Paragraph 35.

30) Defendant lacks sufficient knowledge to admit or deny Paragraph 36

31) Defendant lacks sufficient knowledge to admit or deny Paragraph 37.

FOURTH CLAIM FOR RELIEF

QUANTUM MERUIT

32) Defendant incorporates, by reference herein, the above paragraphs.

33) Defendant neither admits nor denies Paragraph 38 as it does not merit an admission or denial.

34) Defendant admits Paragraph 39.

35) Defendant denies Paragraph 40.

36) Defendant denies Paragraph 41.

37) Defendant denies Paragraph 42.

FIRST AFFIRMATIVE DEFENSE- NO VALID CONTRACT

38) Defendant incorporates, by reference herein, the above paragraphs.

39) Plaintiff did not have a valid real estate improvement contract with JV5 Solutions.

40) Plaintiff did not have a valid real estate improvement contract with Taylor Grading.

41) Plaintiff did not have a valid real estate improvement contract with Defendant.

42) Plaintiff's construction liens referenced in Exhibits A-C of Plaintiff's Complaint are unenforceable because Plaintiff was not a party to a valid real estate improvement contract.

SECOND AFFIRMATIVE DEFENSE- PAYMENT IN FULL

43) Defendant incorporates, by reference herein, the above paragraphs.

44) Defendant entered into a prime contract ("Prime Contract") with Taylor Grading.

45) The contract price for the Prime Contract is approximately $260,000.00.

46) Defendant has paid Taylor Grading over $140,000 ("Paid Amount") per the Prime Contract.

47) The majority of the Paid Amount was meant by Defendant to be paid to Neale Farms for services Neale Farms performed at the Property ("Services").

48) There is insufficient evidence of a "contract price" for the Services.

49) The maximum value of the Services is approximately $120,000.00.

50) Defendant has paid the maximum value of the Services.

THIRD AFFIRMATIVE DEFENSE- AMOUNT OF LIEN

51) Defendant incorporates, by reference herein, the above paragraphs.

52) Plaintiff is misrepresenting the cost and value of said services.

53) The value of the Services is, at most, approximately $120,000.

54) There is insufficient evidence that the Services are valued at to $174,167.33.

55) There is insufficient evidence that there was a valid contract price between any of the parties for Services equal to $174,167.33.

FOURTH AFFIRMATIVE DEFENSE- UNJUST ENRICHMENT

56) Defendant incorporates, by reference herein, the above paragraphs.

57) Plaintiff would be unjustly enriched if the Court granted Plaintiff's prayer because the amount Plaintiff alleges is owed per Exhibit C to Plaintiff's Complaint is false and is considerably more than what is owed to Plaintiff .

FIFTH AFFIRMATIVE DEFENSE- UNCLEAN HANDS

58) Defendant incorporates, by reference herein, the above paragraphs.

59) Plaintiff has acted inequitably because it knowingly and intentionally provided the Services and Plaintiff is knowingly and intentionally misrepresenting their cost and value.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant prays that this Court dismiss the complaint with prejudice and that Plaintiff take nothing thereby; that all costs of this proceeding be taxed to the plaintiff; and for such other further relief as may be just and equitable under the circumstances.

FIRST COUNTERCLAIM- BAD FAITH CLAIMANT

60) Defendant incorporates, by reference herein, the above paragraphs.

61) Plaintiff has acted in bad faith because it overstated the amount it is entitled to in the construction lien attached to Plaintiff's Complaint as Exhibits A.

62) Plaintiff has acted in bad faith because it overstated the amounts it is entitled to in the construction lien attached to Plaintiff's Complaint as Exhibits C.

WHEREFORE, Defendant prays that this Court dismiss the complaint with prejudice and that Plaintiff take nothing thereby, that the Court declare all the liens referenced in the Complaint void; that all costs of this proceeding and any bond costs be taxed to the plaintiff; and for such other further relief as may be just and equitable under the circumstances.

FIRST CROSS-CLAIM FOR RELIEF

BREACH OF CONTRACT VS. TAYLOR GRADING

63) Defendant incorporates, by reference herein, the above paragraphs.

64) Taylor Grading breached its Prime Contract with Defendant by failing to cause the removal of the liens filed by Neale Farms.

65) Taylor Grading breached its Prime Contract by failing to provide partial lien and/or claim waivers and affidavits from JV5 Solutions.

66) Taylor Grading breached its Prime Contract by failing to provide partial lien and/or claim waivers and affidavits from Neale Farms.

WHEREFORE, Defendant prays for judgment against Taylor Grading in favor of Defendant in the $174,176.33, plus prejudgment and post-judgment interest, bond costs, attorney's fees, fees and costs of pursuing this action, and for such other relief as the Court deems just and equitable.

SECOND CROSS-CLAIM FOR RELIEF

BREACH OF CONTRACT VS. JV5 SOLUTIONS

67) Defendant incorporates, by reference herein, the above paragraphs.

68) Per the terms of the Prime Contract, JV5 Solutions was bound by the provisions of the Prime Contract.

69) Per the terms of the subcontract agreement between Taylor Grading and JV5 Solutions, JV5 Solutions was bound by the provisions of the Prime Contract.

70) JV5 Solutions breached the Prime Contract with Defendant by failing to cause the removal of the liens filed by Neale Farms.

71) JV5 Solutions breached its Prime Contract by failing to provide Defendant partial lien and/or claim waivers and affidavits from Neale Farms.

WHEREFORE, Defendant prays for judgment against JV5 Solutions in favor of Defendant in the $77,750.00, plus prejudgment and post-judgment interest, bond costs, attorney's fees, fees and costs of pursuing this action, and for such other relief as the Court deems just and equitable.

Dated this 17th day of December, 2014.

TRIBEDO,LLC
Defendant

By: */s/ Neeraj Agarwal*

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Attorney for Defendant

Certificate of Service

The undersigned hereby certifies that the foregoing Answer to the Plaintiff's Complaint was served upon parties in interest on December 17, 2014, and by mailing a true and accurate copy of same to Counsel for Plaintiff at his address of record on the same date by regular U.S. first class mail, postage prepaid, as set forth below:

DAVID DREW
DREW LAW FIRM
PO BO 462-1555 WASHINGTON ST.
BLAIR, NE 68008

JV5 SOLUTIONS, LLC
DAVID W. OVERHOLTZER, REGISTERED AGENT
532 1ST AVENUE, SUITE 312
COUNCIL BLUFFS, IA 51503

TAYLOR GRADING
ATTN: GEORGE TAYLOR
1905 CLAY STREET
FORT CALHOUN, NE 68023

By: */s/ Neeraj Agarwal*

Certificate of Service

I hereby certify that on Tuesday, January 27, 2015 I provided a true and correct copy of the Cross Petition/Counter Claim to the following:

Lots 1, 2, 3, 6, 7, and 8 and Outlo service method: No Service

JV5 Solutions LLC service method: Personal or Residential Service

Neale Farms Inc represented by David Drew (Bar Number: 23153) service method: Electronic Service to dvdrew@drewlawfirm.net

Taylor,George, service method: No Service

Signature: /s/ Neeraj Agarwal (Bar Number: 24648)