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IN THE  
**SUPREME COURT OF VIRGINIA**

AT RICHMOND

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Record No. 961324

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JUN 20 1997  
CLERK OF COURT  
RICHMOND, VIRGINIA

MOORE & MOORE GENERAL CONTRACTORS, INC.,

Defendant/Appellant,

v.

BASEPOINT, INC.,

Plaintiff/Appellee.

---

On Appeal from the  
Circuit Court of Spotsylvania County

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APPENDIX

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WILLIAM B. CAVE  
FELTON & CAVE, P.C.  
BOULDERS IV, SUITE 625  
7501 BOULDERS VIEW DRIVE  
RICHMOND, VIRGINIA 23225

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direct - L. S. Gutshall

1 Q Who did you have contact with with Moore  
2 & Moore General Contractors, Inc.?

3 A Allen Lyle.

4 Q And who is Mr. Lyle?

5 A It was my understanding he was a project  
6 manager for Moore & Moore and was specifically the project  
7 manager for the Red Lobster project that they were involved  
8 with at the time.

9 Q Where did you meet him?

10 A I met him in Rocky Mount at our office.  
11 He came by back in somewhere around the first of December, I  
12 think it was, first week in December. He came by our office,  
13 moving into that office, he stopped by and he was in town  
14 looking at the Rocky Mount project.

15 Q What Rocky Mount projects?

16 A The Rocky Mount Red Lobster project that  
17 he said they were going to be involved in bidding and he said  
18 he had plans, also had the plans for the Fredericksburg  
19 project and he wanted us to get him a quote on, if we were  
20 interested in giving him a quote on doing the casework and  
21 trim for the project in Fredericksburg.

22 Q And did he leave something with you?



direct - L. S. Gutshall

1                   A           Yes, sir. He left the plans that had  
2                   been prepared by Vision III, the architect, and the instruc-  
3                   tion manual prepared by Vision III.

4                   Q           Are these the plans?

5                   A           Yes, sir.

6                   Q           And is this the project manual?

7                   A           Yes, sir.

8                   MR. ASHBY: We will go ahead and intro-  
9                   duce those and maybe just introduce them as a  
10                  packet, plans and project manual.

11                  MR. CAVE: I would prefer that we mark  
12                  them each one individually because I'm going to be  
13                  referring to them back and forth, but we don't have  
14                  any objection to their admission.

15                  MR. ASHBY: Introduce plans as --

16                  THE COMMISSIONER: Plaintiff's One.

17                               NOTE: The above referred to  
18                  plans are now being marked and filed by the Commis-  
19                  sioner as Plaintiff's Exhibit One.

20                  THE COMMISSIONER: Okay.

21                  MR. ASHBY: That would be Plaintiff's  
22                  Two.  
23

direct - L. S. Gutshall

1 NOTE: The above referred to  
2 manual is now being marked and filed by the Commis-  
3 sioner as Plaintiff's Exhibit Two.

4 THE COMMISSIONER: Okay I have marked as  
5 Plaintiff's Two the project manual. And I under-  
6 stand that is being accepted into evidence.

7 MR. CAVE: Yes.

8  
9  
10  
11 BY MR. ASHBY: (continuing)

12 Q Did you respond to, did you give them a  
13 proposal?

14 A Yes, sir.

15 Q And is that the proposal that you dated  
16 December 19, 1990 that you sent to them?

17 A Yes, sir.

18 MR. ASHBY: I would like to have that  
19 marked as Plaintiff's Three.

20 NOTE: The above referred to  
21 proposal is now being marked and filed by the  
22 Commissioner as Plaintiff's Exhibit Three.

23 Q Referring to page two of the proposal,

direct - L. S. Gutshall

1 called for shop drawings, is that correct?

2 A Yes, sir.

3 Q It also called for the approval of shop  
4 drawings returned to you, is that correct?

5 A Yes, sir.

6 Q And thereafter with that, you could  
7 proceed, is that correct?

8 A Proceed with the fabrications and order-  
9 ing of materials.

10 THE COMMISSIONER: Is Plaintiff's Three.

11 MR. CAVE: Acceptable.

12 THE COMMISSIONER: Plaintiff's Three is  
13 accepted into evidence. I would like to look at it  
14 for one minute.

15  
16  
17 BY MR. ASHBY: (continuing)

18 Q Did there come a time when shop drawings  
19 were prepared?

20 A Yes, sir.

21 Q Are those the shop drawings?

22 A Yes, sir. These are the shop drawings  
23 that were prepared and submitted on February the 1st, I



direct - L. S. Gutshall

1 believe it was, three sets were submitted.

2 THE COMMISSIONER: Do you have an objec-  
3 tion to Plaintiff's Four?

4 MR. CAVE: No objection, Your Honor.

5 THE COMMISSIONER: Accepted into evi-  
6 dence.

7 NOTE: The above referred to  
8 shop drawings are now being marked and filed by the  
9 Commissioner as Plaintiff's Exhibit Four.

10  
11 BY MR. ASHBY: (continuing)

12 Q Did there come a time when you submitted  
13 supplemental shop drawings?

14 A Yes, sir, on February the 11th, we sub-  
15 mitted supplemental shop drawings that had been overlooked in  
16 the original drawings. These were sent, submitted to Mr.  
17 Lyle for his use and notation for him to please fax them on  
18 to the architect for approval.

19 Q Is that the submittal that went to Mr.  
20 Lyle?

21 A Yes, sir, it is.

22 THE COMMISSIONER: Mark this document  
23

direct - L. S. Gutshall

1 dated February 11, 1991 stapled together as Plain-  
2 tiff's Five.

3 NOTE: The above referred to  
4 document is now being marked and filed by the  
5 Commissioner as Plaintiff's Exhibit Five.  
6  
7

8 BY MR. ASHBY: (continuing)

9 Q Between February the 1st --

10 THE COMMISSIONER: Excuse me.

11 MR. ASHBY: I apologize.

12 MR. CAVE: No objection, Your Honor.

13 THE COMMISSIONER: Plaintiff's Exhibit  
14 Five is accepted into evidence.

15 Q Between February 1st and February 11th,  
16 had you received the shop drawings back?

17 A No, sir.

18 Q Did there come a time when you received  
19 the shop drawings back?

20 A We were called by Mr. Lyle on about,  
21 approximately the first of March, and he had asked me where  
22 we were on production of the trim for the project because  
23 they needed the trim and the paneling for the job, and I

direct - L. S. Gutshall

1 reminded Mr. Lyle at that time that we had not received yet  
2 the shop drawings, and we needed to get the shop drawings  
3 back so then we could release the job. He told me at that  
4 time that he would get the shop drawings in to me very quick-  
5 ly but for me, there was no problems with it, to go ahead and  
6 proceed with getting all of the trim and the paneling in  
7 motion for the job, which we did. And we got the shop draw-  
8 ings in our office approximately March the 8th.

9 Q Now, regarding Exhibit Four, the shop  
10 drawings, are these the ones you received back from Mr. Lyle?  
11

12 A That's correct, yes, sir.

13 Q Now, there are a number of red markings  
14 on most of those pages, who made the red markup on the shop  
15 drawings?

16 A The red markups were made by Mr. Lyle at  
17 the job site, as my understanding, in conjunction with Donnie  
18 Moore, the superintendent on the site.

19 Q Who?

20 A Donnie Moore, the superintendent on the  
21 job.

22 Q Is it Donnie Hall?

23 A Excuse me, Donnie Hall, Donnie Hall,



direct - L. S. Gutshall

1                   A           Yes, sir. We proceeded basically immedi-  
2 ately into the production of the casework items for the  
3 project; and the trim was, had already been ordered based  
4 upon the telephone call that we received prior to March the  
5 8th, to proceed on that.

6                   Q           Do you recall your first delivery date?

7                   A           Yes, sir, we delivered basically the trim  
8 package was delivered on March the 19th, 1991, to the job  
9 site.

10                  Q           Would that have been all the trim, or was  
11 that a portion of the trim?

12                  A           That was all of the trim that was consid-  
13 ered loose trim. There was other trim that was permanently  
14 attached to casework. This was all the standing, what we  
15 typically refer to standing and running trim. Loose trim  
16 that was delivered was delivered on that shipment, I think,  
17 with the exception of three window stools that was in the  
18 next shipment. It also, excuse me, it also was the paneling.

19                               THE COMMISSIONER: Can I, just a second,  
20 Mr. Ashby, do you have a picture of any of this  
21 trim?

22                               MR. ASHBY: Yes, sir.

23                               THE COMMISSIONER: Because it is not

direct - L. S. Gutshall

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lem.

Q What was the next items you shipped?

A The next item that we shipped was the partial shipment on the casework, which represented approximately seventy-five percent of the balance of the project.

Q When was that shipped?

A Excuse me, when?

Q When was it shipped?

A It was shipped on April the 12th, '91.

Q And what type of items go into casework?

A This would be the balance of the interior work that we were involved with, which would have included the bar in its entirety, with all of the drink rail, the end drink rails that are now located in the bar area that are attached to the wall. It included the bar cabinets, two one foot eight inch, I believe, back cabinet, base cabinets at the back bar. Included a counter top across those back bar cabinets. It included some drink, what they call, excuse me, they call them the bottle step units that set on the back bar cabinet. Included two other base cabinets that were in the bar area, they are called, I believe, a FS-1. It included the two overhead cabinets that were in the bar area that had

direct - L. S. Gutshall

1 THE COMMISSIONER: Okay, I would like to  
2 mark this invoice as Plaintiff's Exhibit Number  
3 Seven, Eight. Am I correct, my understanding that  
4 you have offered this for evidence and there is no  
5 objection to it, so therefore it is accepted into  
6 evidence.

7 MR. ASHBY: Yes.

8 NOTE: The above referred to  
9 invoice is now being marked and filed by the  
10 Commissioner as Plaintiff's Exhibit Eight.

11  
12 BY MR. ASHBY: (continuing)

13 Q Now after receiving seventy-five percent  
14 of the casework, did there come a time when you had contact  
15 with Mr. Lyle concerning other items he wished to order?

16 A Yes.

17 Q I'm referring you to a document dated  
18 April 23, 1991.

19 A Yes, sir. Mr. Lyle called our office and  
20 asked us to furnish twenty-one window grills to be located on  
21 the interior of those exterior windows, and for us to proceed  
22 with that as part of the project as a change order, and we  
23 proceeded to do that also, yes, sir.

direct - L. S. Gutshall

1                   Q           Now, did you actually talk with Mr. Lyle  
2 on that occasion?

3                   A           Yes, sir.

4                   Q           Did Mr. Lyle complain about any of the  
5 casework he had received on the 12th?

6                   A           No, sir.

7                   Q           Did Mr. Lyle complain about any shortages  
8 of materials that he had received on the 19th?

9                   A           No, sir.

10                  Q           Did he have any complaints at all on  
11 April 23rd when he called to ask for these additional items?

12                  A           No, sir.

13                               MR. ASHBY: Your Honor I would like to  
14 introduce this April 23rd --

15                               THE COMMISSIONER: Which will be marked  
16 Plaintiff's Exhibit Number Nine.

17                               MR. CAVE: No objection.

18                               THE COMMISSIONER: Plaintiff's Exhibit  
19 Number Nine will be accepted into evidence.

20                                       NOTE: The above referred to  
21 document is now being marked and filed as Plain-  
22 tiff's Exhibit Nine.  
23

direct - L. S. Gutshall

1  
2 BY MR. ASHBY: (continuing)

3 Q Thereafter, did you all ship, and approx-  
4 imately when did you ship the rest of the casework and the  
5 other items that had been ordered by change order?

6 A I don't remember the exact date, but it  
7 was in the late April, the last week in April I believe we  
8 shipped the last portion of the items to the project.

9 Q I show you an invoice dated May 2nd, '91,  
10 and ask if you can identify that?

11 A Yes, sir, that's the invoice we prepared  
12 at the completion of the project for the work that we were  
13 performing.

14 Q Did you have other items that were still  
15 required for that job?

16 A As we had indicated on the invoice, there  
17 were twenty-one columns that we were giving credit back for  
18 and we were not producing those columns. I believe Mr. Lyle  
19 had indicated that we had made a sample for him based on his  
20 instructions based upon how they had been building those  
21 columns in the past, and we made a sample of the column and  
22 we had shown it to Mr. Lyle at the job site, and he --

23 Q You had the sample delivered to the job

direct - L. S. Gutshall

1 with him on the phone, I believe, sir, yes.

2 Q Did he have any problem with the amount  
3 of the credit?

4 A No.

5 Q Was it Mr. -- do you recall whether it  
6 was Mr. Lyle who called about the base shortage?

7 A No, sir. I do not know if it was Mr.  
8 Lyle or Mr. Hall, the superintendent.

9 Q Now, on May 2nd, did there come a time  
10 that an employee of yours called you from Fredericksburg or  
11 from Spotsylvania County?

12 A Yes, sir. Mr. Mickey Nines.

13 MR. CAVE: I'm going to object to the  
14 discussion between him and his employee.

15 MR. ASHBY: I haven't asked him that, I  
16 asked him whether he had a call from an employee.

17 MR. CAVE: I know, and he said yes. And  
18 I am just going to object to him asking questions  
19 about the substance of that telephone call.

20 MR. ASHBY: I haven't asked him about the  
21 substance of the phone call.

22 MR. CAVE: I know you haven't, but I'm  
23 making any objection in advance.

direct - L. S. Gutshall

1  
2 THE COMMISSIONER: Let me say with this  
3 type of a question, I'm not sure whether we are  
4 going to have a hearsay problem. And I have got to  
5 hear where we are before -- if some statement is  
6 being offered for the truth of the contents, then  
7 we will address the hearsay objection, but we are  
8 not at a point right now, counsel, where I can even  
9 determine whether we even have a problem.

10 MR. CAVE: Very well. I will withdraw my  
11 objection.

12  
13 BY MR. ASHBY: (continuing)

14 Q Following your conversation with Mr.  
15 Nines, did you have a conversation with Mr. Lyle?

16 A Yes.

17 Q And would you tell the commissioner and  
18 the court what that conversation involved?

19 A Mr. Lyle called me at the office and said  
20 that he had a problem with the cabinets that we had built on  
21 the project; that on a walk through inspection with a repre-  
22 sentative from General Mills, that the representative had an  
23 objection to the use of melamine in certain cabinets on the



direct - L. S. Gutshall

1 project, and that he said that they had to be replaced and he  
2 wanted them to be replaced by Tuesday morning at the job  
3 site.

4 Q This was on a Thursday?

5 A Yes, sir.

6 Q What did you tell Mr. Lyle concerning the  
7 use of melamine in certain cabinets?

8 A I reminded Mr. Lyle that only a certain  
9 portion of the casework, approximately twenty percent of the  
10 casework, or I think it was thirteen actual units, were con-  
11 structed of some, had some melamine components in it.

12 THE COMMISSIONER: I don't know how to  
13 spell that word, please spell that.

14 THE WITNESS: M-E-L-A-M-I-N-E.

15 THE COMMISSIONER: Thank you.

16  
17 A And that the, we would be glad to work  
18 with him in some way on the project to try to resolve this  
19 issue, but it would be an impossibility to have this done by  
20 Tuesday morning because of the manpower that I had in my  
21 employment at that time, and the lack of the raw materials  
22 necessary to replace any laminate that I did not have in my  
23 shop. That I would be glad to work with him but I couldn't

direct - L. S. Gutshall

1 Q Were you surprised by this request?

2 THE COMMISSIONER: What was your response  
3 to this request?

4 Q What was your response to this request?

5 A I asked Mr. Lyle did he not already have  
6 the drawings.

7 MR. CAVE: I don't think that's his  
8 response, and that's what his response was .

9 THE COMMISSIONER: Excuse me, he is  
10 saying what his response to that question was. It  
11 is a proper question. He had already started his  
12 answer, and counsel if you are going to object,  
13 please object with the appropriate objection at the  
14 appropriate time. Please, do you want to ask the  
15 question, Mr. Ashby, again?

16 Q If you just continue with what your  
17 response was to Mr. Lyle's request?

18 A Yes, sir. I asked Mr. Lyle did Mr. Hoke  
19 not already have drawings for the project because it was my  
20 understanding that the shop drawings had all been submitted  
21 to the owner for approval on this project. And he said no,  
22 he did not have drawings, would I mind sending him a set.  
23

direct - L. S. Gutshall

1 And I said yes, sir, I would be glad to, and I Fed Exed him a  
2 set of drawings.

3 Q Did he mention sending any to the archi-  
4 tect?

5 A No, sir.

6 Q Did you determine from Mr. Lyle whether  
7 or not the architect had reviewed the shop drawings?

8 A Mr. Lyle did not indicate to me that  
9 anyone had reviewed the shop drawings other than himself.

10 Q When you sent the original three sets of  
11 shop drawings, you thereafter were requested to, you thereaf-  
12 ter sent some supplemental shop drawings and I believe that  
13 is already into evidence, is that correct?

14 A That's correct, yes, sir.

15 Q Did you request that they go to the  
16 architect?

17 A Yes, sir.

18 Q Is this the transmission of the shop  
19 drawings to General Mills and Mr. Hoke, their representative?

20 A Yes, sir, that's correct.

21 MR. CAVE: No objection.

22 THE COMMISSIONER: And you sent that on  
23

direct - L. S. Gutshall

1                   Q           On the original Vision III plans, was  
2 melamine called for?

3                   A           No, sir.

4                   Q           Did you suggest melamine as a substitute  
5 on your shop drawings?

6                   A           Yes, sir.

7                   Q           Does melamine show as being a component  
8 to be used which was not called for?

9                               MR. CAVE: Objection to the form of the  
10 question.

11                           THE COMMISSIONER: Frankly, we are get-  
12 ting to absurdity. The obvious question he's going  
13 to ask him is to show him the shop drawings, where  
14 they call for melamine and I don't want to get  
15 bogged down with a hundred objections. So, sir, if  
16 the shop drawings are modified to show the melamine  
17 was used or an acceptable component, please show on  
18 those shop drawings where that material could be  
19 used.

20                           MR. CAVE: Thank you.

21  
22 BY MR. ASHBY: (continuing)

23                   Q           I'm directing your attention to Plain-

direct - L. S. Gutshall

1 tiff's Exhibit Four and ask you if melamine is shown as a  
2 component to be used?

3 A Yes, sir.

4 Q And where is it shown?

5 A On the cover, on the front sheet page one  
6 of twenty.

7 THE COMMISSIONER: Okay what we are going  
8 to do here at this particular point in time is we  
9 are going to mark with these tabs where these  
10 particular items are shown on these shop drawings,  
11 because there is no way that Judge Farmer is going  
12 to be able to understand this testimony today  
13 unless we do something to show him exactly where on  
14 these drawings. Now we are going to mark these  
15 like A, B, C, and D, and we are also going to refer  
16 to the page on which we are referring to a drawing  
17 because if he has to go through this file, he is  
18 going to have to be able to do it with not too much  
19 inconvenience.

20 I'm going to hand you tabs and  
21 if you could mark those A, B, C, etc., and refer to  
22 the page on which you are placing them and where  
23 you are placing them.

direct - L. S. Gutshall

1 looking at section C-19, which is cut through the base unit  
2 at the woman's vanity, that is to be constructed with mela-  
3 mine. This will be marked as notation I. I'm on page twenty  
4 of twenty. This is the office area. Section F-20, an upper  
5 wall cabinet that's to be constructed with melamine, marking  
6 it as designation J. And I am looking at section G-20,  
7 another upper wall cabinet over another section in the office  
8 that was to be constructed of melamine, and marking that as  
9 notation K.

10 Those are the total of the  
11 notations of the use of melamine on the project.

12 Q What is melamine?

13 A Melamine is a building product that is a  
14 composite material of which a film is attached to a particle  
15 board core by means of a heat transfer. This work is done by  
16 manufacture set up to produce this product.

17 Q I show you this and ask you what that is?

18 MR. CAVE: I'm going to object, Your  
19 Honor. It is not anything that's part of this job  
20 and as a result, I don't believe it is a proper  
21 introduction of the materials used on this job.  
22 That's my objection.

23 THE COMMISSIONER: I'm at a loss to know

direct - L. S. Gutshall

1  
2 BY MR. ASHBY: (continuing)

3 Q Now, when these, when the casework that  
4 was made of melamine were delivered, was the melamine, was  
5 the core hidden from view?

6 A No, sir.

7 Q I mean, anybody examining --

8 MR. CAVE: Objection to anybody.

9 Q Was it visible to the naked eye, the  
10 core?

11 A Yes, sir.

12 Q Of the melamine?

13 A Yes, sir.

14 Q Do you have any pictures that demonstrate  
15 how it would have looked coming off the shipment?

16 A Yes, sir.

17 Q And where are those pictures if you  
18 would, just show?

19 A These photographs here are photographs of  
20 the units that were, we were told had been removed from the  
21 Red Lobster. This is exactly how the unit is shipped.

22 THE COMMISSIONER: Before we start refer-  
23 ring to pictures, we are going to have to mark



direct - L. S. Gutshall

1 MR. CAVE: Very well.

2 Q What has Mr. Hall represented to you  
3 concerning what they knew, what Moore & Moore understood  
4 melamine mean on these plans when they reviewed them before  
5 they returned them to you?  
6

7 A Mr. Hall stated to me that he and Mr.  
8 Lyle went over the shop drawings together at the job site,  
9 they verified dimensions and they were aware that there was  
10 melamine being proposed on this project; and Mr. Hall indi-  
11 cated that when the drawings were being returned in his  
12 discussion with Mr. Lyle, that he said that Mr. Lyle said not  
13 to worry about the use of melamine, they were saving some  
14 cost anyway, and no one would ever know the difference.  
15 That's what he told, what Mr. Lyle told me. Excuse me, Mr.  
16 Hall told me.

17 Q Now, what did Mr. Hall tell you about  
18 whether or not he and Mr. Lyle, when they inspected the  
19 product off of your shipment, what did they know about the  
20 melamine?

21 A Mr. Hall stated to me that he and Mr.  
22 Lyle both were aware that there was these thirteen components  
23 were constructed of melamine when they unloaded them from the

direct - L. S. Gutshall

1 truck and they were aware they were constructed of melamine  
2 when they attached them to the walls in the installation  
3 process of the project.

4 Q Now, Mr. Gutshall, other than the trans-  
5 mittal of one set of shop drawings to General Mills, did you  
6 ever have any direct contact with General Mills?

7 A No, sir.

8 Q Other than your request that the supple-  
9 mental shop drawings be sent to the architect, did you have  
10 any contact with the architect?

11 A Yes, I think during the location, trying  
12 to locate paneling for this project here, the wainscot panel-  
13 ing, we were having some difficulty in locating the paneling  
14 and we called the architect and he gave us the, we talked to  
15 a representative of an architect and he gave us the name of a  
16 company that he said was familiar with providing the paneling  
17 and we got the information from him where to obtain the  
18 panels and said we would be purchasing the paneling that they  
19 were looking for, so we contacted that company.

20 Q Do you remember who at the company you  
21 contacted?

22 A I do not recollect as I sit here, sir.  
23

cross - L. S. Gutshall

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MR. ASHBY: Your Honor, if this would  
speed it along, we will stipulate that everywhere  
--

MR. CAVE: We are not going to stipulate.  
We are going to go through the drawings.

Q Now let me show you six, ID6?

A Yes, sir.

Q Now look with me if you would at section  
ten D6, or it is ID6. Ten ID6?

A Yes, sir.

Q I'm looking on the right-hand side at the  
note that says three-quarter inch birch plywood bypass doors  
with plastic laminate PL2 both sides in vertical edges. Were  
the cabinets that you produced made with three-eighths inch  
birch plywood?

A As previously stated, this was also one  
of the thirteen that was identified as constructed with mela-  
mine. With regard to the door, it is three-eighths plywood,  
and the doors could have been made out of that. I believe  
these were made out of plywood because it called for the  
plastic laminate on both sides, but I'm not sure about the  
door panel. The body was made of melamine.

cross - L. S. Gutshall

1 you not?

2 A Yes, sir.

3 Q I'm going to ask you to look at some  
4 sections of this with me and we will tab those as well.

5 Let me show you Exhibit Number  
6 Two and I am going to ask you first to turn to the section  
7 06402?

8 A Yes, sir.

9 Q Now, this is entitled interior architec-  
10 tural wood work, is this the section that would apply to the  
11 casework which you were to produce for the job?

12 A Yes, sir.

13 Q Indeed under this section it says wood  
14 cabinets and laminated clad cabinets, does it not?

15 A Yes, sir.

16 Q All right, now.

17 A Do you want me to mark that?

18 THE COMMISSIONER: Wait until he asks  
19 you.

20 Q Mark that with a tab.

21 THE COMMISSIONER: Mark what with a tab.

22 If you want to, you can go

cross - L. S. Gutshall

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Q And then read us the next paragraph?

A "Samples for verification purposes of the following: Lumber with transparent finish, fifty square inches for each species and cut finished on one side and one edge."

Q Go on.

A "Laminate clad panel product, eight and a half inches by eleven inches for each type. Color, pattern and surface finish with separate samples of unfaced panel product used for core."

Q All right, sir, now, you have previously testified that you submitted shop drawings on this job, and they in fact have been introduced into evidence, have you not?

A Yes, sir.

Q Did you submit samples of the laminate clad products which you intended to use on this job?

A No, sir, I asked Mr. Lyle did I need the samples and he said no.

Q All right, and specifically where it says unfaced panel product used for core, did you submit to him any samples of core products?

cross - L. S. Gutshall

1  
2 Q Refer with me, if you would, to the first  
3 paragraph of your quotation and would you please read that  
4 into the record beginning Basepoint, Inc.?

5 A "Basepoint, Inc., proposes to furnish  
6 mill work items in accordance with plans and specifications  
7 prepared by Vision III, dated 11-30-90."

8 Q Are the plans and specifications that you  
9 refer to that are prepared by Vision III, are they the Vision  
10 III drawings that we have just looked at and the project  
11 manual that we have just reviewed?

12 A Yes, sir.

13 Q All right, now, let us look at Exhibit  
14 Number Four, the shop drawings which you prepared for this  
15 project?

16 Now, I'm referring to page  
17 number one, tab A, which is a tab that you have earlier put  
18 on this particular drawing in your direct examination and  
19 that tab is underneath a designation on this drawing that  
20 says key. A key is a designation of items used in the plans,  
21 is it not, or in the products when they are fabricated?

22 A Yes, sir.

23 Q And there are two headings to this par-

cross - L. S. Gutshall

1 ticular key and I am going to ask you to mark the first one  
2 A-1 and the second one A-2. Now, A-1 has a heading that says  
3 plastic laminate, does it not?

4 A Yes, sir.

5 Q And under plastic laminate, you have  
6 listed at the end cab liner, which I'm assuming means cabinet  
7 liner?

8 A Yes, sir.

9 Q And under cabinet liner, under the head-  
10 ing laminate, you have in parenthesis the word melamine, is  
11 that correct?

12 A Yes, sir.

13 Q Now, the second heading in the key is  
14 typical materials, is there any designation under typical  
15 materials of the use of a product called melamine?

16 A No, sir.

17 Q Is there any designation under typical  
18 materials of the use of particle board?

19 A No, sir.

20 Q Let me move on -- let me ask you this,  
21 other than the word melamine in the key, is there anywhere  
22 else on these drawings where you have used the word melamine?

23 A I believe there is one section somewhere



cross - L. S. Gutshall

1  
2 Q Now what are those components made out  
3 of?

4 A They are made out of melamine.

5 Q They are not made out of plywood, are  
6 they?

7 A They are made out of melamine as previ-  
8 ously stated.

9 Q And in fact throughout these shop draw-  
10 ings, wherever you have included the phrase three-quarter  
11 inch plywood covered with cabinet liner, you have used parti-  
12 cle board covered with melamine, isn't that true?

13 A The phrase cabinet liner is stated.

14 Q Would you answer my question, please,  
15 isn't that true?

16 A Please restate the question.

17 Q Read it back.

18 NOTE: At this time the follow-  
19 ing testimony is read back by the Court Reporter:

20 "Q And in fact throughout these shop draw-  
21 ings, wherever you have included the phrase three-  
22 quarter inch plywood covered with cabinet liner,  
23 you have used particle board covered with melamine,

cross - L. S. Gutshall

1                   isn't that true?"

2                   A           It is true that I used melamine, which I  
3 have already defined what melamine was.

4                   Q           The note doesn't say melamine, does it?  
5

6                   A           No, sir, it says cabinet liner, which is  
7 back to the key on page one.

8                   Q           And the key was the laminate key, wasn't  
9 it, not the typical materials key, isn't that correct?

10                  A           That's the cabinet liner key. Its key  
11 referenced to cabinet line.

12                  Q           Under the heading laminate.

13                  A           Yes, sir.

14                  Q           It is true, isn't it, that you never  
15 discussed with Allen Lyle that you would be using particle  
16 board?

17                  A           I never discussed that I was using parti-  
18 cle board and I did not use particle board.

19                  Q           Isn't it true that you never discussed  
20 with Allen Lyle that you were going to use melamine on this  
21 job?

22                  A           I did not discuss with Allen Lyle that.  
23 He was fully aware of what he was getting.

cross - L. S. Gutshall

1                   A           It was the difference between the trim  
2 and the total contract multiplied at seventy-five percent.  
3 It is the approximation of where we were on the job at that  
4 time.

5                   Q           That's not my question. Was the value of  
6 seventy-five percent of the casework sixteen thousand one  
7 hundred and seventy-one dollars?

8                   A           Approximately, yes, sir.

9                   Q           All right, I just want to be sure we  
10 understand.

11                                       So your drawings were approved  
12 on March the 8th, and your shipment of the cabinets was on  
13 April the 12th, is that correct?

14                   A           Yes, sir.

15                   Q           You don't have any packing list for that  
16 shipment or any other shipment other than the first shipment  
17 of trim, is that correct?

18                   A           Yes, sir.

19                   Q           What day did Mr. Lyle call you and tell  
20 you that the casework had been rejected by General Mills?

21                   A           On May the 2nd.

22                   Q           And on that day, you wrote him a letter  
23

cross - L. S. Gutshall

1 feet of trim and we delivered that to the job that same day.

2 Q You were a supplier, you didn't install  
3 the cabinets, isn't that correct?

4 A That's correct.

5 Q You sent the cabinets and Moore & Moore  
6 installed the cabinets?

7 A They unloaded them and they installed  
8 them.

9 Q And the fact that your man was there was  
10 only for that specific purpose, which you mentioned in your  
11 letter, which was to fit a cabinet?

12 A Yes, sir.

13 Q And to deliver the trim?

14 A And to deliver the trim.

15 Q Now, let me show you what has previously  
16 been marked Plaintiff's Exhibit Number Twelve, a letter to  
17 you from Mr. Moore, and you received this letter, did you  
18 not?

19 A We received it by fax, yes, sir.

20 Q And is it fair for me to assume that you  
21 received it on May the 2nd?

22 A Yes, sir.

23 Q I want you to read the first two para-

cross - L. S. Gutshall

1 graphs of the letter into the record for me.

2  
3 A "On Wednesday, May 1st, 1991, it was  
4 discovered that most of your casework was constructed of  
5 particle board. Since the plans we provided you were for the  
6 above referenced job called for plywood, all of the casework  
7 that has particle board does not conform and must be re-  
8 placed. The nonconforming casework must be removed and the  
9 new conforming casework installed in all related work com-  
10 pleted by May 10, 1991. To accomplish this we must have the  
11 new casework on the job by May 7, 1991. You informed my  
12 general superintendent, Allen Lyle on Thursday morning May  
13 2nd, 1991 that it would be impossible for your company to  
14 meet this deadline. Please be advised that we are going to  
15 have the nonconforming casework replaced and you will be  
16 liable for cost on the new casework and the cost of removing  
17 the nonconforming casework and installing the new casework  
18 and all the other related work required."

19 Q And in fact that's exactly what happened,  
20 isn't it?

21 A Yes, sir.

22 THE COMMISSIONER: Do you think this  
23 would be an appropriate time to take the lunch

cross - L. S. Gutshall

1 cabinets, you can't finish the job, can you?

2 A You have to have everything that, I  
3 assume, that needs to be there to finish the job, whether it  
4 is the cabinets or anything on the job. Lock sets or doors  
5 or anything.

6 Q You said earlier that the last invoice  
7 which you sent, which was marked Plaintiff's Exhibit Ten for  
8 four thousand nine hundred, pardon me, four thousand nine  
9 hundred and seventy dollars, represented the last twenty-five  
10 percent of the casework, is that true?

11 A Approximately.

12 Q So if I took those, if I took the four  
13 thousand nine hundred and seventy dollars and the sixteen  
14 thousand one hundred and seventy-one dollars and I put those  
15 two together, would I have the approximate value of the  
16 casework?

17 A Excuse me if you took the --

18 Q Not the sixty-nine, forty-nine seventy  
19 and the sixteen one seventy-one and put those two together,  
20 that would represent essentially a hundred percent of the  
21 casework?

22 A Uh-huh.

23 Q So the casework then was worth something

cross - L. S. Gutshall

1 in the neighborhood of twenty-two thousand dollars?

2 A Twenty-one something.

3 Q Approximately?

4 A Yes, sir.

5 MR. CAVE: I have no further questions  
6 for this witness, Your Honor.

7 MR. ASHBY: Your Honor, can we break for  
8 lunch and come back, maybe I will have a couple of  
9 questions on redirect.

10 THE COMMISSIONER: Yes, can we go off the  
11 record for just a minute.

12 -----  
13  
14 DISCUSSION OFF THE RECORD

15  
16  
17 NOTE: At this time a lunch  
18 recess was taken. After which, all parties present  
19 as before, the matter continues as follows:



REDIRECT EXAMINATION

BY MR. ASHBY:

Q Mr. Gutshall, I just have one question for you. How long have you been involved in the construction industry?

A Since 1969.

Q And are you familiar with common construction practices?

A Yes, sir.

Q And is it a common construction practice to suggest substitution of materials?

A Yes, sir.

Q Was the item melamine put on the front key of that to advise of the substitution of materials?

MR. CAVE: I'm going to object. The document has to speak for itself.

MR. ASHBY: I asked him why he put it on the front of the document.

THE COMMISSIONER: I think it is a proper question as to why the document was prepared the way it was and so therefore he will be permitted to answer.

redirect - L. S. Gutshall

1

2

A Yes.

3

Q And when you got the construction, shop

4

drawings back, there was no question raised about melamine,

5

is that correct?

6

A No, sir.

7

Q Though there were red markings all over

8

the document in places?

9

A Yes, sir.

10

MR. ASHBY: I have no further questions.

11

THE COMMISSIONER: That finishes this

12

witness.

13

MR. CAVE: Redirect, if I may.

14

THE COMMISSIONER: You are talking about

15

recross.

16

MR. CAVE: Yes, on just --

17

THE COMMISSIONER: We will let it go one

18

time but we can't be doing recrosses here very

19

much.

20

MR. CAVE: Well the information that this

21

witness was just asked to elicit is new material.

22

THE COMMISSIONER: To the extent it is

23

new material, you can go to that but no other

direct - D. R. Hall

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A Yes, I was.

Q And what was your job title and responsibility?

A I was job superintendent for them on the project of the Red Lobster there on Route 3, responsible for building of the building, oversee the direction of the work and stuff being done on the job site.

Q Who did you work under?

A Allen Lyle.

Q And who was Mr. Lyle?

A He was a field superintendent that would visit the project once, maybe twice a week, sometimes be there at the project a full week, all depends what stages we were in what was going on.

Q Did there come a time, did you ever have any direct dealings with Bryan Moore?

A I have talked to him by telephone conversation a couple times, but actually direct meeting him or seeing him, first time I ever really met Mr. Moore.

Q Now, getting back to some of your expertise, if you don't mind, what type of construction work do you do?

direct - D. R. Hall

1 are those made by you and Mr. Lyle?

2 A Yes. This is when we got these shop  
3 drawings in, we sat down and actually went in to the job site  
4 from my office trailer and took the physical measurements and  
5 laid out the exact sizes and marked on these drawings and  
6 reviewed these drawings, you know, at this time these red  
7 markings was done.

8 Q Why was that necessary if you had re-  
9 viewed these plans?

10 A Well, you have got to field measure to  
11 make sure once these drawings come in, you haven't made  
12 changes in walls or you had to make adjustments to the build-  
13 ing for some reason or another that's not on these drawings,  
14 where the cabinetry will work when you get them in place.  
15 Since this was a remodel job, not a new building, you can  
16 have more variations in sizes than what you would have if it  
17 was a new structure being built.

18 Q I note on page one a note concerning  
19 melamine under tab A?

20 A Okay.

21 Q Did you and Mr. Lyle see that and did you  
22 discuss melamine in reviewing these shop drawings?  
23

direct - D. R. Hall

1                   A           Yes, we did. We looked at it and we  
2 talked about it, melamine being a product with a particle  
3 board core in it, and that he felt that it was a product that  
4 would be just as well as when they said the plywood and it  
5 was something that could be used and done without any prob-  
6 lems, he felt, and it was something that they would not know  
7 the difference, could find any difference in using it.

8                   Q           That they wouldn't know any difference,  
9 who are we talking about?

10                  A           Talking about Red Lobster or General  
11 Mills. Ken Hoke was the inspector that was coming to the  
12 project making the field inspections for General Mills.

13                  Q           And that was discussed before the shop  
14 drawings went back to --

15                  A           Definitely was discussed. It was some-  
16 thing he knew of and made comment and we talked about that,  
17 that was particle board used in-between there.

18                  Q           And that would be a substitution of  
19 materials that was suggested on those shop drawings?

20                               MR. CAVE: Objection.

21  
22                  Q           Is that correct?

23                               THE COMMISSIONER: Wait a second, don't

direct - D. R. Hall

1                   A           Actual date and times, I cannot tell you  
2 when the actual delivery was, but it was probably a week to  
3 ten days before we really needed the work they delivered it  
4 to the job because we put a call in to them when the products  
5 were needed and I just cannot tell you exactly the dates and  
6 times when it was delivered.

7                   Q           When the product, when the casework  
8 arrived, did you, was Mr. Lyle there and did you and Mr. Lyle  
9 have an opportunity to review it and inspect it to make  
10 certain that it conformed with what you believed was coming?  
11

12                  A           Yeah, we was there and checked it to make  
13 sure when it was unloaded it wasn't broken or damaged or  
14 would have any bad parts; and we were there to inspect it and  
15 look at it.

16                  Q           Did you and Mr. Lyle discuss the melamine  
17 issue?

18                  A           Well, he stated in looking at it that we  
19 did see it was particle boards, melamine with the ends all  
20 open, that we had to get that somewhere and get it covered  
21 up, because he was scared of Ken Hoke seeing these products  
22 prior to installing it, which we did put it inside and put  
23 big drop clothes over it and cover it up until it was put in

direct - D. R. Hall

1 place.

2 Q So he was concerned about Mr. Hoke seeing  
3 it?

4 A Seeing the products, yes.

5 Q Why was he concerned if he didn't think  
6 it made any difference?

7 A I guess he thought he was saving money or  
8 some reason or another because one reason he stated to me of  
9 getting the products in there because he was cutting them  
10 short of a product that they was expecting, they was going to  
11 get.

12 Q Did you or did Mr. Lyle have any hand in  
13 installing the cabinets?

14 A Yeah, he was there when the cabinets were  
15 there and we got a lift and we was so pushed for time and  
16 things were scheduled that everybody worked on them. He  
17 helped hold and he helped to direct and make sure that we was  
18 getting everything into place along with the guys that was  
19 employed or subcontractors to Moore & Moore from Louisiana.

20 Q Now are we talking about these cabinets  
21 being installed, are we talking about the cabinets delivered  
22 by Basepoint?

23 A Basepoint cabinets, yes. That's right.

direct - D. R. Hall

1 Basepoint used anywhere but on the interior?

2 A Some of the trims went outside was used.  
3 Some of the products was used outside. The guys from Louisi-  
4 ana claiming they didn't know. The trim around the boards or  
5 even trims under stuff was used on the exterior of the build-  
6 ing.

7 Q So while the Basepoint material list and  
8 Basepoint shop drawings and the like was all for interior  
9 trim, some of that trim got used outside?

10 A Yes, it did.

11 Q Now, did there come a time when all of  
12 the cabinetry was installed?

13 A Yes, it did.

14 Q And casework?

15 A Yes.

16 Q And did there come a time when Mr. Hoke  
17 from General Mills came to inspect?

18 A Yes, it did.

19 Q Do you remember the date of that?

20 A No, I don't.

21 Q What was it about the casework that  
22 called his attention to it?

23 A To what?



direct - D. R. Hall

1  
2 Q To the fact that it was melamine instead  
3 of --

4 A He had, one thing of it is in your mela-  
5 mine, he thumped it, and the hardness of it, he could detect  
6 it, thought it was a problem and he had one of the workers  
7 remove a hinge off the door and look at the bore in the door  
8 itself to see what it was made of.

9 Q Could he, I assume at that point, this  
10 issue came to the fore?

11 A Yes.

12 Q Prior to that, could he have gone around  
13 and looked where things had been caulked and like to see  
14 exposed melamine?

15 A There was some areas of ends possibility  
16 he could have seen some edges after where it wasn't complete-  
17 ly sealed and stuff but we went through a process before this  
18 inspection and making sure that everything was caulked and  
19 sealed and was a concern of Allen's that he would see that it  
20 was the melamine used, that we had to seal and paint and make  
21 sure that we had everything sealed where it wouldn't be a  
22 concern of him maybe finding this product used.

23 Q Did Mr. Lyle instruct you to do any touch

direct - D. R. Hall

1 up or anything else anywhere on the product itself?

2 A I had a couple areas of edge where I used  
3 a heat tape I have in my shop to cover some melamine edges,  
4 of white tapes to seal a couple of edges that was exposed.

5 Q And you did that at the direction of --

6 A Yes.

7 Q Other than the fact that these, this  
8 casework or these thirteen items were made of melamine, how  
9 did the product appear to you?

10 A The product was in A-1 shape. Nice made,  
11 no problems with it, other than the product or what it was  
12 made of. Which you know, I did not know, not being familiar  
13 with Red Lobster and their inspections and stuff, that it was  
14 really going to be a problem other than I knew it was a  
15 concern to Allen that he was a little concerned about this  
16 possibility it could be a problem for him, but I have not  
17 worked in Red Lobsters or done any other work on any of the  
18 other buildings. Like Allen had told me he was very much  
19 experienced with and numbers of how many he had worked on, I  
20 don't know, but seem to be familiar and knew all the products  
21 that was used for Red Lobster. I know he directed me a lot  
22 of different things and told me of doing things because of  
23 his familiarity of doing that work prior to that job in

direct - D. R. Hall

Fredericksburg.

Q Now, did there come a time when you had a discussion with Brian Moore over the telephone concerning this very case?

A Yes, I did.

Q And did the subject of this case come up in that conversation?

A Yes. It did.

Q And what did Mr. Moore tell you about what his feeling was about the subject?

A He told me he thought that Allen Lyle had made a big mistake and they had used the wrong products, they had approved the wrong products to be used in the cabinets. So something of this nature had been said and he felt that his man was really at fault and had made a mistake in this.

Q What did he say about what he thought whether monies were owed to Basepoint?

A He, the monies that was owed to Basepoint? I don't know whether he actually had any comments to me about that monies or remember any monies about this.

Q Now, getting back to the Ken Hoke inspections, once he took that hinge off, what did Hoke have to say

direct - D. R. Hall

1 to you and Mr. Lyle?

2                   A           Ken Hoke is the type man that he has  
3 there watching the product and watching stuff being done that  
4 once he found a product wrong like this he flies off to no  
5 end. He slapped his fist down, he says, "I don't care what  
6 it takes or what it takes to be done, when my inspection is  
7 next week back up here, these GD cabinets will be gone and I  
8 will have the proper cabinets in place. I don't care what it  
9 takes. If it means you to work your butt twenty-four hours a  
10 day to get this done, it will be done because I'm not delay-  
11 ing this opening anymore." That's how he put it.

12                   Q           What did Mr. Lyle say after Mr. Hoke had  
13 expressed his opinion?

14                   A           He told, me said, "It looks like I have  
15 been caught with this product that I have got no choice to  
16 get them out and get them corrected and get it done." He  
17 said, "Let's go in and call Basepoint." I know some conver-  
18 sation went on with Basepoint. Who at Basepoint, I don't  
19 know.

20                   Q           You weren't a party to the conversation?

21                   A           I was in the trailer there with him and  
22 talking to him. I know he gets off the phone and he tells me  
23 he will not, cannot, or is unable to do the cabinets to get

cross - D. R. Hall

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A Melamine is a material.

Q Excuse me?

A This is a material.

Q But this says laminate, this says materials under A-2?

A Yes, that's materials there, yes.

Q And there is no listing under this typical materials of any particle board substrate or any melamine is there?

A Not in this column over here. Anybody in the industry, anybody in the building industry knows what a melamine product is.

Q Isn't it true that you can apply melamine over other things than particle board?

A No where in the industry that you will find that this is done. You cannot find one manufacturer that will apply melamine over any other raw products other than this hard plywood, I mean hard sawdust products of particle board. This stuff is something that cannot be applied by hand. It is such a thin product it has to be special equipment to hold and heat and dry this product on.

Q Do you have any understanding of what the

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A. SYDNEY BUFORD, a

witness, being called for examination by  
counsel for the defendant, first being  
duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CAVE:

Q Give us your full name.

A A. Sydney Buford.

Q Tell us your educational background, Mr.  
Buford?

A I have an BS degree, a BS in civil engi-  
neering from Old Dominion University, 1980.

Q Where are you currently employed?

A Froehling & Robertson in Richmond, Vir-  
ginia.

Q Are you in engineering today?

A Yes, I am.

Q How long have you been practicing as an  
engineer?

A Since 1980.

Q And is part of your employment to review  
plans and specifications and check products next to those

direct - A. S. Buford

1 plans for quality?

2 A Yes, it is.

3 Q How much of what you do on a daily basis  
4 for Froehling & Robertson involves that kind of work?

5 A Typically it is a fairly daily thing.  
6 It's been less so since I have been in management.

7 Q I'm going to ask you --

8 MR. CAVE: I'm going to ask the court to  
9 accept Mr. Buford as an expert witness for the  
10 purposes of reviewing, giving us his opinion as to  
11 the plans and specifications and the products  
12 involved in this particular job.

13 THE COMMISSIONER: Mr. Ashby, do you have  
14 a position on that?

15 MR. ASHBY: I have no problem with him  
16 reviewing the plans and specs. I do have a problem  
17 with him reviewing the materials used on the job,  
18 unless it is just to identify the materials used on  
19 the job. Is he there to do any more than identify  
20 the materials used on the job?

21 MR. CAVE: He is going to give us his  
22 opinion whether or not the materials conform with  
23

direct - A. S. Buford

1 the plans and specs.

2 MR. ASHBY: Which plans and specs?

3 MR. CAVE: All the plans and specs.

4 MR. ASHBY: I will accept him.

5 THE COMMISSIONER: Fine.

6

7 BY MR. CAVE: (continuing)

8 Q Let me first show you some documents that  
9 have been previously admitted into evidence in this case.

10 MR. ASHBY: If it will help move along,  
11 we will stipulate that melamine is not called for  
12 nor shown on the Vision III plans.

13 MR. CAVE: I understand that, but let's  
14 see what he's reviewed and then he can tell us what  
15 his opinions are as to what he's reviewed and the  
16 products he's seen.

17 MR. ASHBY: All right. I was just trying  
18 to move along.

19

20 Q Have you had an opportunity to review the  
21 architectural plans for this particular job?

22 THE COMMISSIONER: Is this our actual  
23 exhibit?





direct - A. S. Buford

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Q I'm showing you what has previously been marked as Plaintiff's Exhibit Number One, which are architectural plans prepared by Vision III for the Red Lobster of Spotsylvania Mall. I will ask you if you have had an opportunity to review those plans?

A Yes.

Q I'm going to show you what has been marked Plaintiff's Exhibit Number Two, which is a project manual for the Red Lobster restaurant and ask you if you have had an opportunity to review that project manual?

A Yes, I have.

Q I'm going to show you what has previously been marked as Plaintiff's Exhibit Number Four, the shop drawings prepared by Basepoint, and I am going to ask you if you have had an opportunity to review those drawings?

A Yes, I have.

Q Now, in addition to reviewing the drawings, have you had occasion to inspect and take samples from the cabinets?

A Yes, I have.

Q And before we go any further, could you bring us those samples so we can look at them?

direct - A. S. Buford

1                   A           Do you want all of them?

2                   Q           Not the big one that's in your back seat.  
3 I don't think we need that.

4                   MR. ASHBY: If this involves the thirteen  
5 items, which we are prepared to stipulate are made  
6 of melamine, I don't know what he needs the sample  
7 for.

8                   THE COMMISSIONER: He certainly has a  
9 right to have his witness show the samples to the  
10 commissioner and to the court.

11                   MR. ASHBY: Sure, no question.

12

13

14 BY MR. CAVE: (continuing)

15                   Q           Now, do you recall when you first in-  
16 spected the cabinets?

17                   A           Yes, I do.

18                   Q           Tell us when that was.

19                   A           I can't remember the specific date, but  
20 actually I went to the site originally and then met with a  
21 superintendent, Mr. Moore's superintendent, and then he set  
22 up a time and we went out to the trailers to look at the  
23 cabinets out at the storage yard, DSI storage yard, and I

direct - A. S. Buford

1 will have to refer to my original letter to remember the  
2 specific date.

3 Q Was it in 1991?

4 A That sounds right.

5 Q Now, let me show you, and I am looking at  
6 Plaintiff's Exhibit Four page five and were going to look at  
7 a couple of tabs that have already been placed on this.  
8 First I want to ask you to look at tab B and just above tab B  
9 is the door of a cabinet, and would you read the note that's  
10 just above that door?

11 A "Door of five-eighths inch plywood cov-  
12 ered with plastic laminate PL-2 both sides oak trim."

13 Q Now, is this the door that's referred to  
14 in the drawing just above the tab B?

15 A Yes, it is.

16 MR. CAVE: I'm going to ask that this be  
17 marked as the next numbered exhibit, which I think  
18 is Defendant's Five.

19 THE COMMISSIONER: Defendant's Four.

20 NOTE: The above referred to  
21 sample is now being marked and filed by the Commis-  
22 sioner as Defendant's Exhibit Four.  
23

direct - A. S. Buford

1  
2 BY MR. CAVE: (continuing)

3 Q Now, does this door, as it is construct-  
4 ed, conform with this note?

5 A No, it does not.

6 Q Why does it not?

7 A It is not made out of plywood.

8 Q What is it made out of?

9 A Appears to be made out of particle board  
10 with oak trim.

11 Q Is there, did you also inspect these  
12 particular cabinets to determine what the various structures,  
13 and I will reference B-1 as one of those structures, what  
14 they were made out of?

15 A Yes, I did.

16 Q What were they made out of?

17 A They were also made out of the particle  
18 board.

19 Q And what does the note say that they are  
20 going to be made out of?

21 A Out of plywood covered with plywood  
22 cabinet liner.

23 Q The symbol that we see here for these

direct - A. S. Buford

1 components, the one with the line drawn on it, what is that a  
2 symbol of in drawing technology?

3 A Plywood.

4 Q All right, now, can you tell me whether  
5 in your opinion the plans that you see here, the shop draw-  
6 ings that are prepared by Basepoint, whether they call for  
7 the cabinetry that we have looked at to be made from plywood  
8 or particle board?

9 A The plans call for the cabinets to be  
10 made of plywood.

11 Q Can you tell me what cabinet this partic-  
12 ular section comes from?

13 A Base cabinet.

14 Q Base cabinet where?

15 A Specifically I can't tell you because  
16 they have gotten fairly jumbled up recently. I would have to  
17 --

18 Q Are all of the components of this cabinet  
19 made from particle board?

20 A Yes, they are.

21 THE COMMISSIONER: We need Defendant's  
22 Exhibit Number Four over here.

23 MR. CAVE: Can we substitute?

direct - T. B. Moore, Jr.

1 Moore's contract with General Mills, was there a delay, a  
2 penalty delay clause?

3 A It is called liquidated damages and there  
4 was.

5 Q And for days that you were late in com-  
6 pleting the job, can you tell us what penalty would have been  
7 assessed Moore & Moore?

8 A It was a little over thirteen hundred  
9 dollars a day.

10 Q And in fact was the job brought in on  
11 time?

12 A No, it was a little bit late getting in.

13 Q When you say a little bit late, can you  
14 tell me how many number of days?

15 A I'm not sure. I think we completed the  
16 job around the 10th or 12th. We weren't assessed liquidated  
17 damages on it. They did waive the liquidated damages.

18 MR. CAVE: I don't have anything further  
19 for this witness.  
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1           A.     The specifications of General Mills for  
2     the Red Lobsters and Olive Gardens are specific  
3     on using plywood.

4           Q.     (BY MR. CAVE) All right. And was it  
5     your understanding, from your review of these  
6     plans, that the cabinets would be made from  
7     plywood?

8           A.     Yes.

9           Q.     I'm going to ask you to look at sheet 5  
10    with me of these 20 pages. In the upper  
11    left-hand corner, there's a detail that is detail  
12    C-6, and there's a note with reference to this  
13    upper bar cabinet that says, "three-quarter-inch  
14    plywood covered with cabinet liner," and then in  
15    parentheses, "white or almond mill option," close  
16    parentheses. Can you tell us what you understood  
17    that note to mean?

18          A.     Exactly what it said, three-quarter  
19    plywood covered with a plastic laminate.

20          Q.     Did there come a time, Mr. Lyle, when  
21    you were informed that there were some problems  
22    with the cabinets that had been shipped to the  
23    job by Basepoint?

24          A.     Yes. I was called at home one night  
25    about 6:30 or 7:00 o'clock by the inspector for

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1 General Mills, and he told me that they had found  
2 that some of the cabinets were made out of  
3 particle board. He didn't know to what extent.  
4 And he was real concerned about it and told me  
5 that all -- anything that had particle board had  
6 to come out. And there was not going to be a  
7 time extension allowed for this removing --

8 MR. ASHBY: I'm going to state an  
9 objection now and -- a continuing objection to  
10 him stating what a representative of General  
11 Mills told him.

12 MR. CAVE: I understand.

13 MR. ASHBY: A continuing objection.

14 MR. CAVE: Okay.

15 Q. (BY MR. CAVE) As a result of -- is it  
16 your recollection, Mr. Lyle, that General Mills  
17 rejected the cabinets?

18 MR. ASHBY: I would object.

19 A. Yes. General Mills rejected the  
20 cabinets.

21 MR. ASHBY: Note my objection.

22 MR. CAVE: I understand.

23 Q. (BY MR. CAVE) And as a result of that,  
24 what action did you take?

25 A. I called Basepoint the following

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1 morning, and I talked to what's his name,  
2 Larry -- Larry Gutshall, and I told him that the  
3 cabinets had been rejected, and we had to remove  
4 them, build new cabinets and have them installed  
5 within -- in ten days. And he told me that there  
6 was no way he could do it; plus that he wasn't  
7 going to build new cabinets anyhow. He -- he  
8 indicated to me that he was not going to build  
9 any new cabinets. So the only alternative we had  
10 was to find another millwork company that could  
11 produce the cabinets for us and get them to us on  
12 time to be installed because they have a -- I  
13 think about an 1800-dollar-a-day penalty if  
14 you're not complete.

15 MR. ASHBY: I object to him stating  
16 what General Mills did. There's no contracts in  
17 evidence.

18 Q. (BY MR. CAVE) Tell me what you did  
19 then in order to secure cabinets.

20 A. I talked to Brian Moore, the owner of  
21 Moore & Moore Construction, the following  
22 morning. He told me --

23 MR. ASHBY: I object as to what Brian  
24 Moore said. Brian Moore can speak for himself.  
25 He's a party and an employee.

00060

1 MR. CAVE: He's not a party. Moore &  
2 Moore is an employee (sic), and this man was an  
3 employee of Moore & Moore.

4 MR. ASHBY: It would be hearsay.

5 MR. CAVE: It isn't hearsay, but  
6 we'll note your objection.

7 A. I was told to find another source of  
8 cabinets and get them in -- and have them built  
9 and installed in ten days and the job completed  
10 in ten days. That was my instructions.

11 Q. (BY MR. CAVE) And did you carry that  
12 out?

13 A. I did.

14 Q. Can you tell us who you purchased the  
15 replacement cabinets from?

16 A. It's a company called Fine Touch in  
17 Houston.

18 Q. I'm going to show you what appears to  
19 be an invoice of Fine Touch, Inc. that's dated  
20 May the 8th of 1991 and see if you can identify  
21 that as the invoice for the replacement  
22 cabinets.

23 A. Yes, \$35,919.65.

24 Q. Now, did that include the Virginia  
25 state sales tax on that?

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1 A. No, it did not.

2 Q. Now, I note --

3 MR. CAVE: And I'm going to ask the  
4 court reporter to please mark this as the next  
5 exhibit, which I believe is No. 5, the Fine Touch  
6 invoice of May the 8th, 1991.

7 (Lyle Exhibit No. 5  
8 marked for identification.)

9 Q. (BY MR. CAVE) Can you tell me by  
10 looking at this invoice when you gave them a  
11 contract to do this work?

12 A. It was on a Friday, May the 3rd.

13 Q. And can you tell me the date that they  
14 delivered the cabinets to the job?

15 A. It would be on the following Tuesday,  
16 Tuesday or Wednesday, one. I'm not sure. I was  
17 thinking it was on a Tuesday that they brought  
18 them.

19 Q. Okay. Now, at the conclusion of this  
20 job, did you make a handwritten list of the cost  
21 that was incurred as a result of the rejection  
22 and removal and replacement of these cabinets?

23 A. Yes, I did.

24 Q. I'm going to show you a document that's  
25 entitled "Fredericksburg, Virginia, Red Lobster,

1 MR. CAVE: He's looking at the  
2 summary that he had wrote when the job was over.  
3 That's Exhibit No. 6.

4 A. Oh, I know what it is now. The time  
5 limit on getting these cabinets built and to the  
6 job was so crucial that they didn't have time to  
7 actually stain and varnish some cabinets. So  
8 they sent them unfinished. We had to do them on  
9 the job. And \$1,000 was the charge from the  
10 painter -- paint contractor to stain and finish  
11 these cabinets.

12 Q. (BY MR. CAVE) Now, I noticed, when  
13 we -- when I looked at the invoice for the lift  
14 that was marked Exhibit No. 10, that the lift was  
15 only rented through May the 9th of 1991. Is it  
16 fair for me to assume from that invoice that by  
17 May the 9th, 1991, that the old cabinets had been  
18 removed from the job?

19 A. Yes.

20 Q. What did you do with those cabinets  
21 after you removed them?

22 A. I was instructed to rent a trailer,  
23 store them in the trailer and lock -- have the  
24 trailer locked.

25 Q. And did you do that?

1 Q. In the key it speaks in terms, at the  
2 very bottom, "melamine." What is melamine?

3 A. It's a plastic coating.

4 Q. Are you familiar with it?

5 A. Well, enough I can tell it when I see  
6 it.

7 Q. You can tell it when you see it?

8 A. Yeah.

9 Q. And it's a plastic coating that goes on  
10 what?

11 A. On plywood, wood or particle board.

12 Q. So you've seen it applied to plywood.  
13 Is that correct?

14 A. Correct.

15 Q. Now, when you got your shipment of the  
16 casework -- and I assume that's cabinets, right?

17 A. Yes.

18 Q. When you got that in, did you inspect  
19 it?

20 A. I really didn't myself. I saw them  
21 after they were installed.

22 Q. When were they installed?

23 A. You're talking about the dates?

24 Q. Yes.

25 A. I don't have the slightest idea. They

# Red Lobster.

SPOTSYLVANIA MALL  
BRAGG ROAD  
FREDERICKSBURG, VA.

PROJECT MANUAL

<u>LYLE</u>
EXHIBIT NO. <u>1</u>
M. HENDRICKS
00065

## SECTION 06402 - INTERIOR ARCHITECTURAL WOODWORK

### PART 1 - GENERAL

#### RELATED DOCUMENTS

Drawings and general provisions of Contract, including General Conditions and Division 0 and 1 Specification Sections, apply to this Section.

#### SUMMARY

This Section includes the following:

Wood cabinets (casework).

Laminate clad cabinets (plastic-covered casework).

Cabinet tops (countertops).

Interior miscellaneous ornamental items such as bar, back bar, glass racks, suggestion box, wood screens, hostess stations, cashier station, menu holders, etc.

Custom window grilles.

Interior door frames (jambs).

Closet and utility shelving.

Miscellaneous hardware for architectural woodwork, and ornamental hardware items not included as work of other Sections.

Related Sections: The following sections contain requirements that relate to this section:

Division 6 Section "Rough Carpentry" for furring, blocking, and other carpentry work that is not exposed to view.

Division 6 Section "Finish Carpentry" for carpentry exposed to view that is not specified in this section.

Division 8 Section "Flush Wood Doors" for doors specified by reference to architectural woodwork standards.

00066

Division 8 Section "Wood Windows" for stock wood windows.

Division 9 Section "Painting" for final finishing of installed architectural woodwork.

#### SUBMITTALS

General: Submit the following in accordance with Conditions of Contract and Division 1 Specification Sections.

Product data for each type of product and process specified in this section and incorporated into items of architectural woodwork during fabrication, finishing, and installation.

Fire-retardant treatment data for material required to be impregnated by pressure process to reduce combustibility. Include certification by treating plant that treated materials comply with requirements.

Shop drawings showing location of each item, dimensioned plans and elevations, large-scale details, attachment devices, and other components.

Samples for verification purposes of the following:

Lumber with or for transparent finish, 50 square inches, for each species and cut, finished on one side and one edge.

Laminate clad panel products, 8-1/2 inches, by 11 inches for each type, color, pattern, and surface finish, with separate samples of unfaced panel product used for core.

Exposed cabinet hardware, one unit of each type and finish.

Product certificates signed by woodwork manufacturer certifying that products comply with specified requirements.

Qualification data for firms and persons specified in "Quality Assurance" article to demonstrate their capabilities and experience. Include list of completed projects with project names, addresses, names of Architects and Owners, and other information specified.



## QUALITY ASSURANCE

Manufacturer Qualifications: Firm experienced in successfully producing architectural woodwork similar to that indicated for this Project, with sufficient production capacity to produce required units without causing delay in the Work.

Installer Qualifications: Arrange for installation of architectural woodwork by a firm that can demonstrate successful experience in installing architectural woodwork items similar in type and quality to those required for this project.

AWI Quality Standard: Comply with applicable requirements of "Architectural Woodwork Quality Standards" published by the Architectural Woodwork Institute (AWI) except as otherwise indicated.

## DELIVERY, STORAGE, AND HANDLING

Protect woodwork during transit, delivery, storage, and handling to prevent damage, soilage, and deterioration.

Do not deliver woodwork until painting, wet work, grinding, and similar operations that could damage, soil, or deteriorate woodwork have been completed in installation areas. If woodwork must be stored in other than installation areas, store only in areas whose environmental conditions meet requirements specified in "Project Conditions."

## PROJECT CONDITIONS

Environmental Conditions: Obtain and comply with Woodwork Manufacturer's and Installer's coordinated advice for optimum temperature and humidity conditions for woodwork during its storage and installation. Do not install woodwork until these conditions have been attained and stabilized so that woodwork is within plus or minus 1.0 percent of optimum moisture content from date of installation through remainder of construction period.

Field Measurements: Where woodwork is indicated to be fitted to other construction, check actual dimensions of other construction by accurate field measurements before manufacturing woodwork; show recorded measurements on fina'

00068

shop drawings. Coordinate manufacturing schedule with construction progress to avoid delay of work.

Where field measurements cannot be made without delaying the work, guarantee dimensions and proceed with manufacture of woodwork without field measurements. Coordinate other construction to ensure that actual dimensions correspond to guaranteed dimensions.

## PART 2 - PRODUCTS

### HIGH PRESSURE DECORATIVE LAMINATE MANUFACTURERS

Manufacturer: Subject to compliance with requirements, provide high pressure decorative laminates as scheduled on the drawings.

### MATERIALS

General: Provide materials that comply with requirements of the AWI woodworking standard for each type of woodwork and quality grade indicated and, where the following products are part of woodwork, with requirements of the referenced product standards, that apply to product characteristics indicated:

Hardboard: ANSI/AHA A135.4

High Pressure Laminate: NEMA LD 3.

Medium Density Fiberboard: ANSI A208.2.

Softwood Plywood: PS 1.

Hardwood Plywood: HPMA FE.

### FABRICATION, GENERAL

Wood Moisture Content: Comply with requirements of referenced quality standard for moisture content of lumber in relation to relative humidity conditions existing during time of fabrication and in installation areas.

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Fabricate woodwork to dimensions, profiles, and details indicated. Ease edges to radius indicated for the following, except where shown otherwise:

Corners of cabinets and edges of solid wood (lumber) members less than 1 inch in nominal thickness: 1/16 inch.

Edges of rails and similar members more than 1 inch in nominal thickness: 1/8 inch.

Complete fabrication, including assembly, finishing, and hardware application, before shipment to project site to maximum extent possible. Disassemble components only as necessary for shipment and installation. Where necessary for fitting at site, provide ample allowance for scribing, trimming, and fitting.

Factory-cut openings, to maximum extent possible, to receive hardware, appliances, plumbing fixtures, electrical work, and similar items. Locate openings accurately and use templates or roughing-in diagrams to produce accurately sized and shaped openings. Smooth edges of cutouts and, where located in countertops and similar exposures, seal edges of cutouts with a water-resistant coating.

#### FIRE-RETARDANT-TREATED WOOD PRODUCTS

General: Where indicated, or required by local codes, pressure impregnate wood products with fire-retardant chemicals of formulation indicated to produce materials with fire performance characteristics specified.

Fire-Retardant Chemicals: Use chemical formulations specified that do not bleed through or otherwise adversely affect finishes. Do not use colorants in solution to distinguish treated lumber from untreated lumber.

Organic Resin-Based Formulation: Exterior type per AWPA C20 consisting of organic-resin solution, relatively insoluble in water, thermally set in wood by kiln drying.

Mill Wood Products after treatment, within limits set for wood removal that does not affect listed fire performance characteristics, using a woodworking plant certified by testing and inspecting organization.

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Kiln-dry woodwork after treatment to levels required for untreated woodwork. Maintain moisture content required by kiln drying before and after treatment.

Discard treated lumber that does not comply with requirements of referenced woodworking standard. Do not use twisted, warped, bowed, discolored, or otherwise damaged or defective lumber.

Products: Subject to compliance with requirements, provide one of the following:

Organic-Resin-Based Formulation (Exterior Type):

"NCX"; Koppers Co., Inc.

LAMINATE CLAD CABINETS (PLASTIC-COVERED CASEWORK)

Quality Standard: Comply with AWI Section 400 and its Division 400B "Laminate Clad Cabinets."

- Grade: Custom, except only all plywood construction allowed for panels.

AWI Type of Cabinet Construction: As indicated.

Laminate Cladding: High pressure decorative laminate complying with the following requirements:

Colors, Patterns, and Finishes: Provide materials and products that result in colors and textures of exposed laminate surfaces complying with the following requirements:

Match color, pattern, and finish indicated by reference to laminate manufacturer's standard designations for this these characteristics.

Laminate Grade for Exposed Surfaces: Provide laminate cladding complying with the following requirements for type of surface and grade.

Horizontal Surfaces Other Than Tops: GP-50 (0.050-inch nominal thickness).

Vertical Surfaces: GP-50 (0.050-inch nominal thickness).

# BASEPOINT

DESIGN • BUILDERS

December 19, 1990

Moore & Moore General Contractors  
Post Office Box 1517  
LaPorte, TX 77572

ATTENTION: MS. ANN MOORE

RE: Red Lobster  
Fredricksburg, VA

\*\*\*\*\*

BASEPOINT, INC. proposes to furnish millwork items in accordance with plans and specifications, prepared by Vision III, dated 11-30-90.

## CASEWORK:

Provide casework, including round decor columns and multi-lite divider windows.

## INTERIOR TRIM:

Provide interior millwork trim items, consisting of baseboard, crown moulding, planter cap, door and window casing, brass trim strips, and beaded paneling.

## COST:

The cost of the above described casework and interior trim items to be provided, FOB jobsite and tailgate delivery for the sum of  
\$ 28,500.00.

## EXCLUSIONS:

1. Ceramic tile work.
2. FRP Panels.
3. Blocking.
4. Windows (except for multi-lite divider) or doors, including frames.
5. Glass.
6. Mirrors.
7. Brass railing.
8. Exterior wood trim.
9. Plywood planter boxes.
10. Installation.

00072

Moore & Moore Gen. Contr.  
December 19, 1990  
Page Two

TIME SCHEDULE:

Shop drawings - (2) weeks

Delivery, upon receipt of approved shop drawings - (3) weeks

TERMS:

Net 30 days upon individual invoice.

BASEPOINT, INC.

By: 

Larry S. Gutshall

Date: 12-19-90

00073



## Design • Builders

P.O. Box 178044 KRAMERSPOK N90X 27618

(919) ~~878-5438~~ 977-7549

DATE	JOB NO.
2-1-91	9503
ATTENTION	
Allen Lyle	
RE:	
Red Lobster	
Fredricksburg, VA	

LaPorte, Texas 77572-1517

[illegible]☐

☐ FOR BIDS DUE \_\_\_\_\_ 19\_\_\_\_ ☐ PRINTS RETURNED AFTER LOAN TO US

[illegible]

**COPY TO** \_\_\_\_\_ **File**

SIGNED:



**BASEPOINT SHOP DRAWINGS, SHEETS 1 THROUGH 20 ARE  
SUBMITTED UNDER SEPARATE COVER**

# BASEPOINT

DESIGN • BUILDERS

PLEASE REMIT PAYMENT TO:

NO. 1463

☐ Post Office Box ~~17801X~~ 6195  
~~Rocky Mount, NC 27802~~  
 919/878-9133 977-7549

Sold To:

Ship To:

Moore & Moore Gen. Contr., Inc.  
 Post Office Box 1517  
 La Porte, Texas 77571  
 ATTN: MR. ALLEN LYLE

Red Lobster  
 3109 Mall Road  
 Fredericksburg, VA 23401

Customer No.:

State and County Code:

DATE	OUR JOB NO.	YOUR JOB NO.	TERMS
5-2-91	9503	P.O. #5201	Net 10 days

## BUILDING DESCRIPTION

Project complete less (21) columns\*\*

Contract Price .....	28,500.00
Change Order NO. 1 .....	1,680.00
Change Order NO. 2 .....	
Change Order NO. 3 .....	
Change Order NO. 4 .....	
Change Order NO. 5 .....	
Change Order NO. 6 .....	

Revised Contract Price .....	30,180.00
------------------------------	-----------

Total Contract Price .....	30,180.00
----------------------------	-----------

\$ Amount of Work Completed to Date	30,180.00
**Less (21) columns	-2,100.00

\$ Amount Due for Delivery of Materials  
 Less: Retainage

\*\*\*Billed but not yet received

Downpayment		
Invoice No. 1424 (3-20-91)	6,939.00	***
Invoice No. 1446 (4-15-91)	16,171.00	***
Invoice No. ....		
Invoice No. ....		
Invoice No. ....		

Amount Due This Invoice

4,970.00

This amount is due and payable within 10 days following date of invoice. Interest at the rate of 1 1/4% per month (15% A.P.R.) or the maximum allowed by state law will be added on any balance not paid within 30 days and each successive 30 day period the invoice remains unpaid.

00077

Thank You



CONTRACT FILE

1463

# Moore & Moore General Contractors, Inc.

530 So. BROADWAY  
LA PORTE, TEXAS 77572-1517



POST OFFICE BOX 1517  
PHONE (713) 471-0145

May 2, 1991

Basepoint  
320 Cooley Road  
Rocky Mount, NC 27801  
Attn: Mr. Larry S. Gutshell

Re: Red Lobster Restaurant  
Fredericksburg, VA

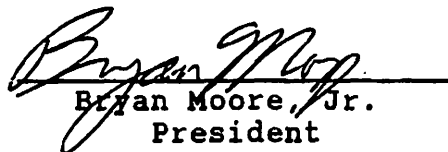
Mr. Larry S. Gutshall;

On Wednesday, May 1, 1991, it was discovered that most of your casework is constructed of particle board. Since the plans, we provided you for the above referenced job, call for plywood, all of the casework that has particle board does not conform and must be replaced. The non-conforming casework must be removed and new conforming casework installed and all related work completed by May 10, 1991. To accomplish this we must have the new casework on the job by May 7, 1991. You informed my General Superintendent, Allen Lyle, on Thursday morning, May 2, 1991, that it would be impossible for your company to meet this dead line.

Please be advised that we are going to have the non-conforming casework replaced and you will be liable for cost of the new casework and the cost of removing the non-conforming casework and installing the new casework and all other related work required.

Due to the extreme severity of this problem and the cost in resolving it, I am stopping payment on the check for \$6,939.00, that we mailed to you on May 1, 1991. When you receive that check please return it to us.

This problem is very serious in that it questions the integrity and the capability of Moore & Moore General Contractors, Inc. and it has definitely affected our relationship with the Owner, General Mills Restaurants, Inc.

  
Bryan Moore, Jr.  
President

00078

# **BASEPOINT**

DESIGN • BUILDERS

May 2, 1991

Moore & Moore General Contr., Inc.  
Post Office Box 1517  
La Porte, Texas 77571

ATTENTION: MR. ALLEN LYLE

RE: Red Lobster  
Fredericksburg, VA  
Your P. O. #5201

Dear Allen:

To follow-up on our conversation this date, we have constructed the cabinets for this project as per our submitted and approved shop drawings, which called for melamine interiors. These cabinets were the same cabinets that were observed by yourself and project superintendent, Mr. Donnie Hall, over the last several weeks during delivery and installation.

Today, we had two of our employees on the job making minor corrections to the cashier counter as requested.

We have now completed the entire project, with the exception of the (21) columns of which a sample was submitted to Mr. Hall for approval. These columns can be on the jobsite Tuesday, May 7th, if approved as submitted.

As we also discussed, we have yet to receive any payment to date on this project, which includes our Invoice #1424 of March 20th in the amount of \$6,939.00 and Invoice #1446 of April 15th in the amount of \$16,171.00. We are submitting our Invoice #1463 this date for \$4,970.00, which represents the remainder of the contract less the (21) columns.

We will be happy to sign lien releases as required by General Mills, but only upon receipt of our payment.

With regard to further modification to the cabinets that have been constructed, we will be happy to perform any additional work as an extra to the contract, upon written authorization to proceed accordingly.

Sincerely,

BASEPOINT, INC.



00079

FINE TOUCH, INC.

MAY 8, 1991

MOORE & MOORE GENERAL CONTRACTORS, INC.  
P.O. BOX 1517 LA PORTE, TEXAS 77571

RE: RED LOBSTER RESTAURANT, 3109 MALL ROAD, FREDERICKSBURG, VA.  
P.O. NUMBER 5269

ACCORDING TO THE SHOP DRAWING THAT WAS GIVEN TO FINE TOUCH FROM MOORE & MOORE BY MR. ALLEN LYLE ON FRIDAY MAY 3, 1991 THE LIST OF SCOPE OF WORK BY MR. ALLEN LYLE APPROVAL AS FOLLOWS:

- 1) OVER HEAD CABINET ABOVE FRONT BAR (RE: A/4)
- 2) OVER HEAD CABINET ABOVE PICK-UP STATION (RE: A/8)
- 3) CABINET BELOW ( PLASTIC LAMINATE) (RE: D/8)
- 4) BACK BAR SIDE CABINETS BELOW (QTY. TWO) (RE: F/4)
- 5) TWO F.S. CABINETS (RE: C/4, B/4)
- 6) UPPER CABINETS IN THE OFFICE (RE: A/20, B/20)
- 7) TWO CASE WORK IN RESTROOMS (NO TOPS) (RE: A/19, B/19)
- 8) DECORATIVE COLUMNS (QTY. 21) 5 MADE OF WOOD AND SPLIT IN HALF AND 16 MADE WOOD END WITH PVC CENTER PIECE.
- 9) 36 X 41 1/2 X 3/4 PLASTIC LAMINATE CLAD ALL AROUND
- 10) BEADED PANELING 32" HIGHT X 48" WIDE

LABOR HOURS :

TOTAL OF 21 EMPLOYEES START AT 12.00 P.M. FRIDAY  
MAY 3, 1991.

TOTAL OF REGULAR HOURS.....360

TOTAL OF OVER TIME HOURS.....1,050

LABOR COST :

TOTAL OF REGULAR COST 360 X \$ 9.50 = \$ 3,420.00

TOTAL OF O.T. COST 1,050 X \$ 13.75 = \$14,437.50

TOTAL LABOR COST.....\$17,857.50

MATERIAL COST:

TOTAL MATERIAL FOR PROJECT:.....\$ 5,898.00

SHIPMENT & DELIVERY COST :

TOTAL DELIVERY DRIVER (ALL EXPENSES).....\$ 3,875.00

TOTAL COST OF PROJECT.....\$27,630.50

OVERHEAD & PROFIT : (TOTAL OF 30%)

OVER HEAD INCLUDING: GENERAL LIABILITY, WORKER'S COMPENSATION  
SHOP OVERHEAD, EMPLOYEE'S TAXES, ALL  
MATERIAL NOT SHOT DELIVERY, SUPERVISION,

TOTAL OF OVERHEAD & PROFIT.....\$ 8,289.15

TOTAL F.O.B. ON TAIL GATE (TAX NOT INCLUDED).....\$35,919.65

FABRICATION, DELIVERY INCLUDED

SINCERELY,

FARA SALAHSHOUR  
VICE PRESIDENT

EXHIBIT NO. 5

M. HENDRICKS

FINE TOUCH, INC.

MAY 8, 1991

MOORE & MOORE GENERAL CONTRACTORS, INC.  
P.O. BOX 1517, LA PORTE, TEXAS 77571

RE: RED LOBSTER RESTAURANT, 3109 MALL ROAD, FREDERICKSBURG, VA.  
P.O. NUMBER 5269

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SHOP OVERHEAD, EMPLOYEE'S TAXES, ALL  
MATERIAL NOT SHOT DELIVERY, SUPERVISION,

TOTAL OF OVERHEAD & PROFIT.....\$ 8,289.15

TOTAL F.O.B. ON TAIL GATE (TAX NOT INCLUDED).....\$35,919.65

FABRICATION, DELIVERY INCLUDED

SINCERELY,

FARA SALAHSHOUR  
VICE PRESIDENT

EXHIBIT NO. 5

M. HENDRICKS

MEMORANDUM FOR MECHANICS'S LIEN  
CLAIMED BY SUBCONTRACTOR

NAME OF OWNER: General Mills Restaurants, Inc.,  
a Florida Corporation,  
Attention: Ken Hoke

ADDRESS OF OWNER: 5900 Lake Ellenor Drive  
Orlando, FL 32809

NAME OF GENERAL CONTRACTOR: Moore & Moore General Contractors, Inc.

ADDRESS OF GENERAL CONTRACTOR: P. O. Box 1517  
LaPorte, Texas 77572-1517

NAME OF CLAIMANT: Basepoint, Inc.

ADDRESS OF CLAIMANT: 320 Cooley Road  
Rocky Mount, NC 27801

1. Type of materials or services furnished:  
Casework, cabinets, trim, columns, moldings  
and window grills.
2. Amount of Claim: \$28,080.00
3. Type of structure on which materials furnished:  
Restaurant known as Red Lobster
4. Brief description and location of real property on  
which lien is claimed:

All that certain real estate with all  
improvements situate thereon, lying and being  
in Chancellor District, Spotsylvania County,  
Virginia, containing 1.675 acres as shown on  
the Boundary & Topographic Survey prepared by  
Reid, Bagby and Caldwell, P. C., dated  
November 2, 1990 and recorded in Plat File 3,  
at page 93 along with the Deed to General  
Mills Restaurants, Inc., dated December 13,  
1990 and recorded in the Office of the Clerk  
of the Circuit Court of Spotsylvania County,  
Virginia in Deed Book 948 at page 636.

5. Date from which interest on above amount is claimed:

May 2, 1991

DATE: May 10, 1991

Defendant's Exhibit 9  
BASEPOINT v Moore & Moore  
March 6, 1995

00082

1712

BASEPOINT, INC.

BY James Ashby III  
JAMES ASHBY, III, their agent  
and attorney

AFFIDAVIT

STATE OF VIRGINIA  
CITY OF FREDERICKSBURG, to-wit:

I, Beatrice Lee Brooks, a Notary Public for the jurisdiction aforesaid, do hereby certify that James Ashby, III, agent and attorney for Claimant, this day made oath before me in my jurisdiction aforesaid that Moore & Moore General Contractors, Inc. is indebted to Claimant in the sum of \$28,080.00 for the consideration stated in the foregoing Memorandum and that the same is payable as therein stated and Claimant does declare its intention to claim the benefit of a lien against the real estate described herein.

GIVEN under my hand this 10<sup>th</sup> day of May, 1991.

Beatrice Lee Brooks  
Notary Public

My commission expires: August 31, 1994.



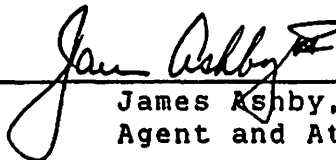
NOTICE

TO: General Mills Restaurants, Inc.  
5900 Lake Ellenor Drive  
Orlando, FL 32809  
Attention: Ken Hoke

You are hereby notified that Moore & Moore General Contractors, Inc., is indebted to me in the sum of \$28,080.00 with interest thereon from May 2, 1991, for materials furnished in and about the construction of a Restaurant known as Red Lobster which he has contracted to construct for you or on property owned by you in the County of Spotsylvania, Virginia, and that I have duly recorded a mechanic's lien for the same and claim a lien against the real estate described in the memorandum.

GIVEN under my hand this 10<sup>TH</sup> day of May, 1991.

BASEPOINT, INC.

By:   
James Ashby, III  
Agent and Attorney

James Ashby, III  
ROBERTS, SOKOL, ASHBY & JONES  
P. O. Box 7166  
Fredericksburg, VA 22404  
(703) 373-3500

00084

**RECEIPT FOR CERTIFIED MAIL**  
NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to Ken Hoke, General Mills Restaurants, Inc.  
Street and No. 5900 Lake Ellenor Dr  
P.O. State and ZIP Code Orlando, FL 32809

Postage ✓

Certified Fee ✓

Special Delivery Fee

Restricted Delivery Fee

Return Receipt showing to whom and Date Delivered ✓

Return Receipt showing to whom, Date, and Address of Delivery

TOTAL Postage and Fees ✓

Postmark or Date 5/10/90

PS Form 3800, June 1985 U.S.G.P.O. 1985-234-555

**SENDER:** Complete Items 1 and 2 when additional services are desired, and complete Items 3 and 4.  
Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

☐ Show to whom delivered, date, and addressee's address. ☐ Restricted Delivery †(Extra charge)†

Article Addressed to:  
Mr. Ken Hoke  
General Mills Restaurants, Inc.  
5900 Lake Ellenor Drive  
Orlando, FL 32809

4. Article Number  
P 489 324 936

Type of Service:  
☐ Registered ☐ Insured  
☒ Certified ☐ COD  
☐ Express Mail

Always obtain signature of addressee or agent and **DATE DELIVERED.**

Signature — Addressee

Signature — Agent Ken Hoke

Date of Delivery 5-10-90

8. Addressee's Address (ONLY if requested and fee paid)

Form 3811, Mar. 1987 ★ U.S.G.P.O. 1987-178-268 DOMESTIC RETURN RECEIPT

**SENDER:** Complete Items 1 and 2 when additional services are desired, and complete Items 3 and 4.  
Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

☐ Show to whom delivered, date, and addressee's address. ☐ Restricted Delivery †(Extra charge)†

3. Article Addressed to:  
Moore & Moore General Contractors, Inc.  
P. O. Box 1517  
LaPorte, Texas 77572-1517

4. Article Number  
P 489 324 935

Type of Service:  
☐ Registered ☐ Insured  
☐ Certified ☐ COD  
☐ Express Mail

Always obtain signature of addressee or agent and **DATE DELIVERED.**

5. Signature — Addressee  
X

6. Signature — Agent James McCallum

7. Date of Delivery

8. Addressee's Address (ONLY if requested and fee paid)

PS Form 3811, Mar. 1987 ★ U.S.G.P.O. 1987-178-268 DOMESTIC RETURN RECEIPT

**RECEIPT FOR CERTIFIED MAIL**  
NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL  
(See Reverse)

Sent to Moore & Moore Gen. Cont. Inc.  
Street and No. P.O. Box 1517  
P.O. State and ZIP Code LaPorte, Texas 77572-1517

Postage ✓

Certified Fee ✓

Special Delivery Fee

Restricted Delivery Fee

Return Receipt showing to whom and Date Delivered ✓

Return Receipt showing to whom, Date, and Address of Delivery

TOTAL Postage and Fees ✓

Postmark or Date 5-10-90

PS Form 3800, June 1985 U.S.G.P.O. 1985-234-555

00085



## FROEHLING & ROBERTSON, INC.

FULL SERVICE LABORATORIES • ENGINEERS & CHEMISTS

**"OVER ONE HUNDRED YEARS OF SERVICE"**

10909 Houser Drive  
Fredericksburg, Virginia 22408  
Tel (703) 891-2771  
Fax (703) 891-2776

May 16, 1991

Moore & Moore  
Attn: Mr. Allen Lyle  
P.O. Box 1517  
Laporte, Texas 77512-1517

Re: Red Lobster  
Spotsylvania Mall  
Spotsylvania County, Virginia  
F&R NO. R-74-297

Dear Mr. Lyle:

At your request, an engineer from F&R accompanied you to the DSI Storage Yard located off the Route 17 Bypass in Spotsylvania County, Virginia. The purpose of the trip was to observe the cabinets being stored in a trailer at this location.

It is our understanding that the cabinets stored at the DSI facility were removed from the Red Lobster restaurant currently under construction at Spotsylvania Mall. The project plans by Visions III, dated January 1, 1991, drawn for Basepoint, Inc. of Rocky Mount, North Carolina, indicate that all cabinets are to be constructed of 1/2 to 3/4 inch plywood. As far as F&R can determine, there are no provisions in the plans for cabinets to be constructed of particle board.

During our visit to the DSI facility, F&R observed that the cabinets stored there were constructed of a combination of solid woods and particle board. The following is a list of the cabinets we understand are stored at the DSI facility. The list appears to correspond with the cabinets we observed at DSI.

- 2 ea. upper bar cabinets
- 2 ea. upper bar pick-up cabinets
- 2 ea. lower back bar cabinets
- 2 ea. bar food service cabinets (slush machine)
- 1 ea. check register stand-up bar cabinet
- 2 ea. overhead office cabinets
- 2 ea. vanity cabinets (1 ea. men and 1 ea. women restrooms)

HEADQUARTERS: 3015 DUMBARTON ROAD • BOX 27524 • RICHMOND, VA. 23261 •  
TELEPHONE AREA CODE (804) 264-2701

BRANCHES: ASHEVILLE, NC • BALTIMORE, MD • CHARLOTTE, NC • CHESAPEAKE, VA •  
CROZET, VA • FAYETTEVILLE, NC • FREDERICKSBURG, VA • GREENVILLE, SC •  
RALEIGH, NC • ROANOKE, VA • STERLING, VA • SALISBURY, MD

00086



CHARTER MEMBER



CHARTER MEMBER



MEMBER SINCE 1904



A sample of the cabinets was returned to our office.

Our observations and recommendations do not relieve the contractor of his responsibility for conformance to the contract documents.

If you have any questions or we can be of additional services, please contact either of the undersigned.

Very Truly yours,

**Froehling & Robertson, Inc.**

Timothy E. Harris, P.E.  
Geotechnical Engineer

A. Sidney Buford  
Manager, Fredericksburg, Va.

00087



# FROEHLING & ROBERTSON, INC.

FULL SERVICE LABORATORIES • ENGINEERS & CHEMISTS

"OVER ONE HUNDRED YEARS OF SERVICE"

10909 Houser Drive  
Fredericksburg, Virginia 22408  
Tel (703) 891-2771  
Fax (703) 891-2776

May 16, 1991

Revised June 7, 1991

Moore & Moore  
Attn: Mr. Allen Lyle  
P.O. Box 1517  
Laporte, Texas 77512-1517

Re: Red Lobster  
Spotsylvania Mall  
Spotsylvania County, Virginia  
F&R No. R-74-297

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During our visit to the DSI facility, F&R observed that the cabinets stored there were constructed of a combination of solid woods and particle board. The following is a list of the cabinets we understand are stored at the DSI facility. The list appears to correspond with the cabinets we observed at DSI.

- 2 ea. upper bar cabinets, Sheet 5 - Details A5, B5, C5, D5
- 2 ea. upper bar pick-up cabinets, Sheets 8-9 - Details A8, B8, E8, A9
- 2 ea. lower back bar cabinets, Sheet 4 - Detail F4, Sheet 12 - Detail E12
- 2 ea. bar food service cabinets (slush machine), Sheet 9 - Detail F9

HEADQUARTERS: 3015 DUMBARTON ROAD • BOX 27524 • RICHMOND VA. 23261 •  
TELEPHONE AREA CODE 804 264-2701  
BRANCHES: ASHEVILLE NC • BALTIMORE MD • CHARLOTTE NC • CHESAPEAKE VA •  
CROZET VA • FAYETTEVILLE NC • FREDERICKSBURG VA • GREENVILLE SC •  
RALEIGH NC • ROANOKE VA • STERLING VA • SALISBURY MD



CHARTER MEMBER



CHARTER MEMBER



MEMBER SINCE 1904

00088



- 1 ea. check register stand-up bar cabinet, Sheet 8 - Detail D8,  
Sheet 9 - Details D9, E9
- 2 ea. overhead office cabinets, Sheet 20 - Details A20, B20,  
F20, G20
- 2 ea. vanity cabinets (1 ea. men and 1 ea. women restrooms),  
Sheet 19 - Details A19, B19, C19

A sample of the cabinets was returned to our office.

We have performed our services in accordance with generally accepted engineering practices. No other warranties are expressed nor implied. Our observations and recommendations do not relieve the contractor of his responsibility for conformance to the contract documents.

If you have any questions or we can be of additional services, please contact either of the undersigned.

Very Truly yours,

Fruehling & Robertson, Inc.

Timothy E. Harris, P.E.  
Geotechnical Engineer

A. Sidney Buford  
Manager, Fredericksburg, Va.

**COST INCURRED TO CORRECT, REMOVE  
AND REPLACE BASEPOINT'S CABINETS**

Purchase Replace Cabinets (Fine Touch, Inc.)	\$35,919.65
Sales Tax	<u>\$ 1,615.71</u>
Subtotal	\$37,535.36
Labor to Remove and Replace Cabinets (J&M Matle Contractor)	\$ 2,150.00
Labor to Remove and Replace Tile (The Carpet House, Inc.)	\$ 550.00
Mill Trim Shorted by Basepoint (D. R. Hall Construction)	\$ 825.00
Duct Lift Used to Remove and Replace Cabinets (D. R. Hall Construction)	\$ 104.36
Labor to Stain and Varnish Replacement Cabinets	<u>\$ 1,000.00</u>
Total	42,164.72

BILL OF COMPLAINT TO ENFORCE MECHANIC'S LIEN

TO THE HONORABLE JUDGES OF SAID COURT:

COMES NOW the Plaintiff, Basepoint, Inc., by counsel, and for its Bill of Complaint states as follows:

1. That the Plaintiff, Basepoint, Inc., entered into an agreement with the Defendant, Moore & Moore General Contractors, Inc. to furnish trim and casework for a Red Lobster Restaurant in Spotsylvania County, Virginia.

2. That the Plaintiff was a subcontractor for the Defendant, Moore & Moore General Contractors, Inc. who it is believed had a contract with the Defendant, General Mills Restaurants, Inc.

3. That the Defendant, General Mills Restaurants, Inc. owns the real estate where the trim and casework were installed, which real estate is more particularly described in the Memorandum of



real estate is more particularly described in the Memorandum of Mechanics' Lien attached hereto, to be read as a part hereof, and marked Exhibit "A".

4. That the Plaintiff, as sub-contractor did provide materials and services to the Defendant, for the improvements situated on the aforesaid real estate and an itemized statement of account is attached hereto, to be read as a part hereof, and marked Exhibit "B".

5. That on or about May 10, 1991, the Plaintiff caused to be recorded in the Circuit Court Clerk's Office of this Court a Memorandum of Mechanics' Lien in Deed Book 970 at page 303, which lien was duly recorded within ninety days of the date the Plaintiff last provided services to the real estate and Plaintiff claimed a lien in the amount of \$28,080.00, a copy of said Memorandum of Mechanic's Lien is attached hereto, to be read as a part hereof, and marked Exhibit "A".

6. That your Plaintiff gave written notice to the Defendants of its claim by certified mail return receipt and a copy of the Notice and return receipt is attached hereto and marked Exhibit "C".

7. That this suit to enforce the mechanics' lien was commenced within six months from the filing of said lien.

8. That your Plaintiff is owed the sum of \$28,080.00, together with interest, that no part thereof has been paid by Moore & Moore General Contractors, Inc. and that the same is a

valid lien against the land, property and appurtenances thereof as described above.

WHEREFORE, the Plaintiff prays (1) that the named Defendants be made parties to the suit and be required to answer under oath; (2) that its debt be fully ascertained; (3) that the lien of the Plaintiff described herein be determined to be a valid lien on the above described real estate and the improvements thereon; (4) that all other liens on the real estate and their respective priorities be determined; (5) that judgment be entered against Moore and Moore General Contractors, Inc., and that the Plaintiff be permitted such further relief as to equity shall seem meet.

BASEPOINT, INC.

By James Ashby III  
Of Counsel

James Ashby III, Esq.  
ROBERTS, SOKOL, ASHBY & JONES  
701 Kenmore Avenue, Suite 100  
P. O. Box 7166  
Fredericksburg, VA 22404

STATE OF VIRGINIA  
CITY OF FREDERICKSBURG, to-wit:

This day personally appeared before me James Ashby III, agent and attorney for Basepoint, Inc., who made oath that the foregoing Bill of Complaint is true and correct to his best knowledge and belief.

Given under my hand this 9th day of August, 1991.

My commission expires: August 31, 1994.

Beatrice Lee Brook  
Notary Public

A COPY TESTE:  
Margarett M. Cooke, Clerk

3

By: Bonnie M. McEachern  
Deputy Clerk

00093

MEMORANDUM FOR MECHANICS'S LIEN  
CLAIMED BY SUBCONTRACTOR

NAME OF OWNER: General Mills Restaurants, Inc.,  
a Florida Corporation,  
Attention: Ken Hoke

ADDRESS OF OWNER: 5900 Lake Ellenor Drive  
Orlando, FL 32809

NAME OF GENERAL CONTRACTOR: Moore & Moore General Contractors, Inc.

ADDRESS OF GENERAL CONTRACTOR: P. O. Box 1517  
LaPorte, Texas 77572-1517

NAME OF CLAIMANT: Basepoint, Inc.

ADDRESS OF CLAIMANT: 320 Cooley Road  
Rocky Mount, NC 27801

1. Type of materials or services furnished:  
Casework, cabinets, trim, columns, moldings  
and window grills.
2. Amount of Claim: \$28,080.00
3. Type of structure on which materials furnished:  
Restaurant known as Red Lobster
4. Brief description and location of real property on  
which lien is claimed:

All that certain real estate with all  
improvements situate thereon, lying and being  
in Chancellor District, Spotsylvania County,  
Virginia, containing 1.675 acres as shown on  
the Boundary & Topographic Survey prepared by  
Reid, Bagby and Caldwell, P. C., dated  
November 2, 1990 and recorded in Plat File 3,  
at page 93 along with the Deed to General  
Mills Restaurants, Inc., dated December 13,  
1990 and recorded in the Office of the Clerk  
of the Circuit Court of Spotsylvania County,  
Virginia in Deed Book 948 at page 636.

5. Date from which interest on above amount is claimed:

May 2, 1991

DATE: May 10, 1991

EXHIBIT 9

00094

BASEPOINT, INC.

BY James Ashby III  
JAMES ASHBY, III, their agent  
and attorney

AFFIDAVIT

STATE OF VIRGINIA  
CITY OF FREDERICKSBURG, to-wit:

I, Beatrice Lee Brooks, a Notary Public for the jurisdiction aforesaid, do hereby certify that James Ashby, III, agent and attorney for Claimant, this day made oath before me in my jurisdiction aforesaid that Moore & Moore General Contractors, Inc. is indebted to Claimant in the sum of \$28,080.00 for the consideration stated in the foregoing Memorandum and that the same is payable as therein stated and Claimant does declare its intention to claim the benefit of a lien against the real estate described herein.

GIVEN under my hand this 10<sup>th</sup> day of May, 1991.

Beatrice Lee Brooks  
Notary Public

My commission expires: August 31, 1994.

ITEMIZED STATEMENT OF ACCOUNTAS OF JULY 19, 1991

\*\*\*\*\*

Contract Amount.....	\$ 28,500.00
Change Order #1.....	<u>1,680.00</u>
Revised Contract Amount.....	\$ 30,180.00
Less (21) Columns.....	<u>-2,100.00</u>
Total Contract Amount.....	<u>\$ 28,080.00</u>

CURRENT RECEIVABLES TO MOORE & MOORE:

Invoice #1424 (3-20-91).....	\$ 6,939.00
Invoice #1446 (4-5-91).....	16,171.00
Invoice #1463 (5-2-91).....	<u>4,970.00</u>
Total.....	<u>\$ 28,080.00</u>

BREAKDOWN OF AMOUNT OWED TO BASEPOINT:

Total Amount Invoiced by Basepoint.....	\$ 28,080.00
Amount Received by Moore & Moore.....	-0-
Interest for March Invoice.....	273.76
Interest for April Invoice.....	390.76
Interest for May Invoice.....	<u>46.57</u>

TOTAL AMOUNT DUE BASEPOINT.....	<u>\$ 28,791.09</u>
---------------------------------	---------------------

ROBERTS, SOKOL, ASHBY & JONES

ATTORNEYS AT LAW

P.O. BOX 7168

FREDERICKSBURG, VIRGINIA 22404

(703) 373-3500

WILLIAM M. SOKOL  
RUSSELL H. ROBERTS  
KEVIN S. JONES  
JAMES ASHBY, III  
WILLIAM E. GLOVER  
JOSEPH A. VANCE, IV  
V.A.B. WILLIS  
RONALD P. HERBERT  
JEANNIE P. DAHNK  
JENNIFER LEE PARRISH

MILL RACE COMMONS  
701 KENMORE AVENUE  
SUITE 100  
FREDERICKSBURG, VA 22401  
TELEX: 151274389  
ATT MAIL: IRASHBYFR  
TELECOPIER: 703-899-8394

May 10, 1991

CERTIFIED, RETURN RECEIPT

Mr. Ken Hoke  
General Mills Restaurants, Inc.  
5900 Lake Ellenor Drive  
Orlando, FL 32809

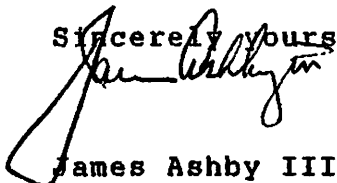
Re: Mechanics' Lien  
Basepoint, Inc. v.  
Moore & Moore General Contractors, Inc.  
Red Lobster Restaurant  
Spotsylvania County, Va.

Dear Mr. Hoke:

I enclose herewith a copy of the Memorandum of Mechanics' Lien recorded this date in the Office of the Clerk of the Circuit Court of Spotsylvania County, Virginia. My client hopes this matter can be resolved quickly, and I believe you have received from him a copy of the approved detailed plans.

With kindest regards, I am

Sincerely yours,



James Ashby III

JAIII/blb

cc: Moore & Moore General Contractors, Inc.  
Basepoint, Inc.  
J. McClain Wallace, Jr., Esq.

Enclosure

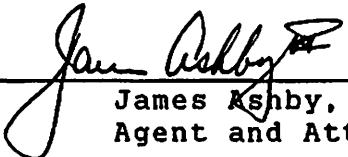
NOTICE

TO: General Mills Restaurants, Inc.  
5900 Lake Ellenor Drive  
Orlando, FL 32809  
Attention: Ken Hoke

You are hereby notified that Moore & Moore General Contractors, Inc., is indebted to me in the sum of \$28,080.00 with interest thereon from May 2, 1991, for materials furnished in and about the construction of a Restaurant known as Red Lobster which he has contracted to construct for you or on property owned by you in the County of Spotsylvania, Virginia, and that I have duly recorded a mechanic's lien for the same and claim a lien against the real estate described in the memorandum.

GIVEN under my hand this 10<sup>TH</sup> day of May, 1991.

BASEPOINT, INC.

By:   
James Ashby, III  
Agent and Attorney

James Ashby, III  
ROBERTS, SOKOL, ASHBY & JONES  
P. O. Box 7166  
Fredericksburg, VA 22404  
(703) 373-3500

SENDER: Complete Items 1 and 2 when additional services are desired, and complete Items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery  
†(Extra charge)†

Article Addressed to: Mr. Ken Hoke General Mills Restaurants, Inc. 5900 Lake Ellenor Drive Orlando, FL 32809	4. Article Number P 489 324 936
	Type of Service: <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail
	Always obtain signature of addressee or agent and DATE DELIVERED.
Signature - Addressee <i>Ken Hoke</i>	8. Addressee's Address (ONLY if requested and fee paid)
Signature - Agent <i>Ken Hoke</i>	
Date of Delivery 5-15-91	

Form 3811, Mar. 1987 ★ U.S.G.P.O. 1987-178-268 DOMESTIC RETURN RECEIPT

SENDER: Complete Items 1 and 2 when additional services are desired, and complete Items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery  
†(Extra charge)†

3. Article Addressed to: Moore & Moore General Contractors, Inc. P. O. Box 1517 LaPorte, Texas 77572-1517	4. Article Number P 489 324 935
	Type of Service: <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail
	Always obtain signature of addressee or agent and DATE DELIVERED.
5. Signature - Addressee X	8. Addressee's Address (ONLY if requested and fee paid)
6. Signature - Agent X <i>Ken Hoke</i>	
7. Date of Delivery	

PS Form 3811, Mar. 1987 ★ U.S.G.P.O. 1987-178-268 DOMESTIC RETURN RECEIPT

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to Ken Hoke, General Mills Restaurants, Inc.
Street and No. 5900 Lake Ellenor Dr
P.O. State and ZIP Code Orlando FL 32809
Postage ✓
Certified Fee ✓
Special Delivery Fee
Restricted Delivery Fee
Return Receipt showing to whom and Date Delivered ✓
Return Receipt showing to whom, Date, and Address of Delivery
TOTAL Postage and Fees \$
Postmark or Date 5/10/90

PS Form 3800, June 1985 U.S.G.P.O. 1985-234-555

P 489 324 935

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to Moore & Moore Gen. Cont. Inc.
Street and No. P.O. Box 1517
P.O. State and ZIP Code LaPorte, Texas 77572-1517
Postage \$15.17
Certified Fee ✓
Special Delivery Fee
Restricted Delivery Fee
Return Receipt showing to whom and Date Delivered ✓
Return Receipt showing to whom, Date, and Address of Delivery
TOTAL Postage and Fees \$
Postmark or Date 5-10-91

PS Form 3800, June 1985 U.S.G.P.O. 1985-234-555



ANSWER AND CROSS-BILL

Comes now defendant Moore & Moore General Contractors, Inc. ("Moore"), and for its Answer to the Bill of Complaint filed herein by Basepoint, Inc. ("Basepoint"), states as follows:

1. Moore admits that it entered an agreement with Basepoint wherein Basepoint was to provide trim and case work for a restaurant being constructed in Spotsylvania County, Virginia, and is without sufficient knowledge or information to either admit or deny the remaining allegations contained in paragraph 1 of the Bill of Complaint and, therefore, denies the same.

2. Moore admits that it is a general contractor to General Mills Restaurants, Inc., in the construction of a restaurant in Spotsylvania County, Virginia, and that the plaintiff herein, Basepoint, was a subcontractor to it.

3. Moore believes that General Mills Restaurants, Inc., is the owner of the real estate upon which the

restaurant building was erected, and its without sufficient knowledge or information to either admit or deny the remaining allegations contained in paragraph 3 of the Bill of Complaint and, therefore, denies the same.

4. Moore admits that Basepoint provided certain materials and services incident to construction of the restaurant referred to herein, affirmatively avers that such materials and services were defective and had to be removed and replaced by Moore, and denies the remaining allegations contained in paragraph 4 of the Bill of Complaint.

5. Moore is without sufficient knowledge or information to either admit or deny the allegations contained in paragraph 5 of the Bill of Complaint and, therefore, denies the same.

6. Moore is without sufficient knowledge or information to either admit or deny the allegations contained in paragraph 6 of the Bill of Complaint and, therefore, denies the same.

7. Moore is without sufficient knowledge or information to either admit or deny the allegations contained in paragraph 7 of the Bill of Complaint and, therefore, denies the same.

8. Moore denies that it is indebted to Basepoint in the amount of \$28,080.00, together with interest, or for any sum, and affirmatively avers that Basepoint is indebted to it as a result of its defective and inferior work, and

denies the remaining allegations contained in paragraph 8 of the Bill of Complaint.

9. Each and every allegation contained in the Bill of Complaint not specifically admitted is hereby denied, including any reference in the Bill of Complaint to exhibits attached thereto.

CROSS-BILL

Comes now Moore & Moore General Contractors, Inc. ("Moore"), and for its Cross-Bill against Basepoint, Inc. ("Basepoint"), states as follows:

1. Moore contracted with Basepoint to provide trim and case work in the erection of a restaurant building which Moore was constructing for General Mills Restaurants, Inc., in Spotsylvania County, Virginia.

2. The case work to be provided by Basepoint, as subcontractor to Moore, was to be in accordance with plans and specs prepared by Visions III, Architects, dated November 30, 1990.

3. The case work provided by Basepoint did not conform to the plans and specs as required, and notice of such deficiencies and demands for removal and repair were made by Moore upon Basepoint.

4. Despite repeated requests by Moore to Basepoint, Basepoint failed and refused to remove and correct the defective case work which it had supplied in the construction of the restaurant.


5. As a result of Basepoint's failure and refusal to correct its defective work, Moore was required to and did engage the services of another contractor to remove Basepoint's defective case work, rebuild the case work and finish the remaining work on Basepoint's contract all at a cost to Moore of \$47,006.36.

6. Basepoint has breached its contract with Moore by its failure to provide material in accordance with the plans and specs required under its contract, and to respond to Moore's request that defective material be removed and conforming material placed in the restaurant building.

WHEREFORE, Moore & Moore General Contractors, Inc., moves this Honorable Court to dismiss the Bill of Complaint filed herein by Basepoint, Inc., and to grant it judgment against Basepoint, Inc., in the amount of \$47,006.36 with prejudgment interest thereon from June 26, 1991 until judgment and judgment interest from the date of judgment until paid, together with its costs and expenses incurred herein including reasonable attorneys fees, and for such other relief as equity deems meet.

MOORE & MOORE GENERAL CONTRACTORS, INC.

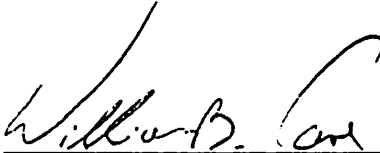
By Counsel



William B. Cave, Esquire  
Felton & Cave, a Professional Corporation  
701 North Fifth Street, Suite 100  
Richmond, Virginia 23219

CERTIFICATE

I hereby certify that a true copy of the foregoing Answer was mailed postage prepaid to James Ashby, III, Esquire, Roberts, Sokol, Ashby & Jones, P. O. Box 7166, Fredericksburg, Virginia 22404, this 28th day of August, 1991.

  
\_\_\_\_\_  
William B. Cave

ANSWER TO CROSS-BILL

COMES NOW, Basepoint, Inc., by Counsel, and for it's answer to the Cross-Bill states as follows:

1. Basepoint, Inc. admits that it entered into a contract as alleged in numbered paragraph 1.

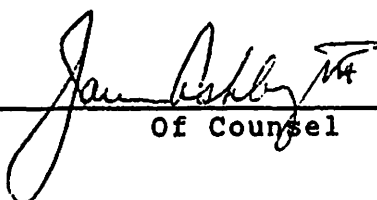
2. Basepoint, Inc. denies that the contract was to be in strict accordance with the plans and specs prepared by Visions III, Architects, dated November 30, 1990.

3. Basepoint, Inc. denies the allegations contained in numbered paragraphs 3, 4, 5 and 6.

WHEREFORE, Basepoint, Inc. moves this Honorable Court to dismiss the Cross-Bill against Basepoint, Inc. and moves for judgment against Moore & Moore General Contractors, Inc. as set forth in the Bill of Complaint, together with its costs and expenses incurred including reasonable attorney's fees and for such other relief as equity may deem meet.

BASEPOINT, INC.

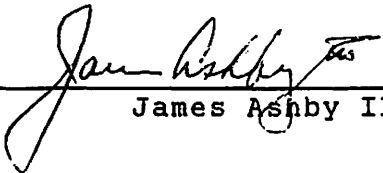
By

  
Of Counsel

James Ashby III, Esq.  
ROBERTS, SOKOL, ASHBY & JONES  
P. O. Box 7166  
Fredericksburg, VA 22404

CERTIFICATE OF MAILING

30<sup>th</sup> I hereby certify that I have mailed, postage prepaid, on the  
day of August, 1991, a copy of the foregoing Answer to  
Cross-Bill to William B. Cave, Counsel for Moore & Moore General  
Contractors, Inc. and General Mills Restaurants, Inc., at 701  
North Fifth Street, Suite 100, Richmond, VA 23219.

  
\_\_\_\_\_  
James Ashby III

ROBERTS, SOKOL, ASHBY & JONES • ATTORNEYS AT LAW  
P. O. BOX 7166 • FREDERICKSBURG, VIRGINIA 22404 • (703) 373-3500

**ANSWER**

Comes now defendant General Mills Restaurants, Inc., and for its Answer to the Bill of Complaint filed herein by Basepoint, Inc., states as follows:

1. General Mills Restaurants, Inc., is without sufficient knowledge or information to either admit or deny the allegations contained in paragraphs 1, 2, 4, 5, 6, 7, or 8, and, therefore, denies the same.

2. General Mills Restaurants, Inc., admits that it is the owner of real estate in Spotsylvania County conveyed to it by deed dated December 13, 1990 and recorded in the Office of the Clerk of the Circuit Court of Spotsylvania County, Virginia, in Deed Book 948 at page 636 and is without sufficient knowledge or information to either admit or deny the remaining allegations contained in paragraph 3 of the Bill of Complaint and, therefore, denies the same.

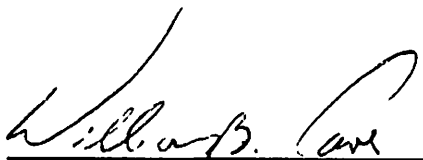


3. Each and every allegation not specifically admitted herein is hereby denied, including the reference in the Bill of Complaint to any exhibits attached thereto.

WHEREFORE, General Mills Restaurants, Inc., moves this Honorable Court to dismiss the Bill of Complaint as to it and to grant it its costs and expenses incurred herein including reasonable attorneys fees.

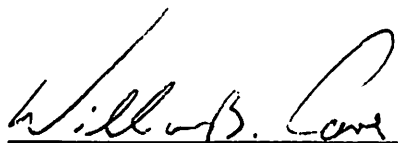
GENERAL MILLS RESTAURANTS, INC.

By Counsel

  
\_\_\_\_\_  
William B. Cave, Esquire  
Felton & Cave, a Professional Corporation  
701 North Fifth Street, Suite 100  
Richmond, Virginia 23219

CERTIFICATE

I hereby certify that a true copy of the foregoing Answer was mailed postage prepaid to James Ashby, III, Esquire, Roberts, Sokol, Ashby & Jones, P. O. Box 7166, Fredericksburg, Virginia 22404, this 28th day of August, 1991.

  
\_\_\_\_\_  
William B. Cave

DECREE

This day came Moore & Moore General Contractors, Inc. ("Moore"), by counsel, on its Petition for permission to file with the Court a bond in the amount of money sufficient to discharge the mechanic's lien filed herein by Basepoint, Inc. ("Basepoint"), and for release of such lien.

It appearing to the Court that Basepoint had notice of this Petition, that the five (5) day notice as required by Virginia Code § 43-70 has been afforded Basepoint, and that by its endorsement of this Decree Basepoint does not object to the posting of the bond as requested by Moore, it is accordingly;

DECREED that Moore be permitted to file with the Court a bond in the amount of \$56,173.00 with United States Fidelity and Guaranty Company as surety, and Moore as obligee, in the form attached to this Decree as Exhibit A.

*Copy to  
Wm. B. Cave  
9-3-91*

Upon the bond having been filed with the Clerk of this Court, the mechanic's lien filed in the Clerk's Office by Basepoint, on May 10, 1991, in Deed Book 970 at page 303, shall be released in accordance with the provisions of Virginia Code § 43-70. The release of the lien shall be indexed in the name of the grantor of the lien, General Mills Restaurants, Inc.

ENTER: 9, 3, 91

W. H. Ledbetter  
Judge

I ask for this:

William B. Cave  
William B. Cave, Esquire  
Felton & Cave, a Professional Corporation  
701 North Fifth Street, Suite 100  
Richmond, Virginia 23219  
Counsel for Moore & Moore General Contractors, Inc.

Seen and not objected to:

James Ashby  
James Ashby, III, Esquire  
Roberts, Sokol, Ashby & Jones  
P. O. Box 7166  
Fredericksburg, Virginia 22404  
Counsel for Basepoint, Inc.

A COPY TESTED  
MARGARET M. COCKE, CLERK

BY Beverly M. McEachern  
DEPUTY CLERK

00110

EXHIBIT A

**VIRGINIA:**

**IN THE CIRCUIT COURT OF THE COUNTY OF SPOTSYLVANIA**

**BASEPOINT, INC.,**

**Plaintiff,**

**v.**

**Chancery**  
**No. CH91-635**

MOORE & MOORE GENERAL  
CONTRACTORS, INC., et als.,

**Defendants.]**

**BOND**

KNOW ALL MEN BY THESE PRESENTS, that we, Moore & Moore General Contractors, Inc., as principal, and United States Fidelity and Guaranty Company, a Maryland insurance corporation, as surety, are held and firmly bound unto the Clerk of this Court int he sum of FIFTY SIX THOUSAND ONE HUNDRED SEVENTY THREE and no/100 DOLLARS (\$56,173.00) lawful money of the United States of America, for which payment well and truly to be made we bind ourselves, our successors and assigns, joint and severally, firmly by these presents, to well and truly pay any final judgment of the Court in this proceeding adjudicating the lien of Basepoint, Inc., to be valid and determining the amount for which the same would have been enforceable against the real estate..

Sealed with our seals and dated this 29<sup>th</sup> day of  
August, 1991.

WHEREAS, on the 10th day of May, 1991, there was filed in the Clerk's Office of the Circuit Court of the County of Spotsylvania, Virginia, a Memorandum of Mechanic's Lien claimed by Subcontractor by Basepoint, Inc., in the sum of \$28,080.00, a copy of which was recorded in the Clerk's Office of this Court on that date as Deed No. 6662; and

WHEREAS, on August 7, 1991, Basepoint, Inc., filed its Bill of Complaint herein seeking the enforcement of the mechanic's lien referred to above; and

WHEREAS, Moore & Moore General Contractors, Inc., desires to discharge the mechanic's lien pursuant to the provisions of Virginia Code § 43-70, by giving bond with surety, as provided therein; and

WHEREAS, by decree of the Circuit Court of Spotsylvania County, Virginia, duly entered the 3rd day of SEPTEMBER, 1991, the amount of the bond with adequate surety for the purpose of so discharging the aforesaid lien was fixed in the sum of \$56,173.00.

NOW, THEREFORE, the condition of this obligation is that if Moore & Moore General Contractors, Inc., shall well and truly pay any final judgment of the Court in this proceeding adjudicating the lien of Basepoint Inc., to be valid and determining the amount for which the same would have been enforceable against the real estate, then this obligation of United States Fidelity and Guaranty Company to be void, otherwise to remain in full force and effect.

UNITED STATES FIDELITY  
AND GUARANTY COMPANY

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

Authorized Agent

MOORE & MOORE GENERAL  
CONTRACTORS, INC.

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

William B. Cave, Its Attorney at Law

STATE OF VIRGINIA

CITY/COUNTY OF Fredricksburg, to-wit:

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that C. W. Bell, Jr. whose name, as Authorized Agent for United States Fidelity and Guaranty Company is signed to the foregoing document dated this 29<sup>th</sup> day of August, 1991, has acknowledged the same before me in my jurisdiction aforesaid.

Given under my hand and seal this 29<sup>th</sup> day of

August, 1991.

My commission expires: 6-30-95.

John M. White  
Notary Public

00113

STATE OF VIRGINIA

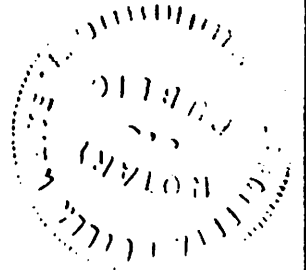
CITY/COUNTY OF Fredricksburg, to-wit:

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that William B. Cave whose name, as Attorney at Law for Moore & Moore General Contractors, Inc., is signed to the foregoing document dated this 29<sup>th</sup> day of August, 1991, has acknowledged the same before me in my jurisdiction aforesaid.

Given under my hand and seal this 29<sup>th</sup> day of August, 1991.

My commission expires: 6-30-95.

John M. White  
Notary Public



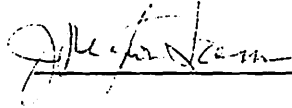
ORDER

This day came the defendants, Moore & Moore General Contractors, Inc., and General Mills Restaurants, Inc., by counsel, and moved the Court to dismiss as a party to this proceeding General Mills Restaurants, Inc., the owner of the property which is the subject of this suit to enforce mechanic's lien, filed by Basepoint, Inc., on the ground that a Bond, having been posted pursuant to Va. Code § 43-70, and the lien upon the real estate released, the owner is no longer a necessary party to this proceeding, nor can the owner's interest in the real estate be affected thereby. The Court finding that there exists good cause to dismiss General Mills Restaurants, Inc., it is hereby ORDERED that General Mills Restaurants, Inc., be and hereby is dismissed as a party defendant to these proceedings.

*Copies to  
Mr. Cave  
and Ashby III*

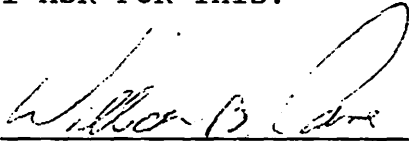


ENTER: 514,192



Judge

I ASK FOR THIS:



William B. Cave, Esquire  
Felton & Cave, a Professional Corporation  
701 North Fifth Street, Suite 100  
Richmond, Virginia 23219  
(804) 343-1931  
Counsel for Moore & Moore General Contractors,  
Inc. and General Mills Restaurants, Inc.

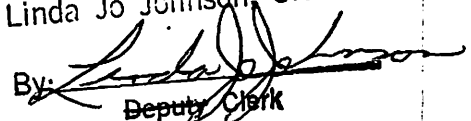
SEEN AND <sup>JO.</sup>~~NOT~~ OBJECTED TO:



James Ashby, III, Esquire  
Roberts, Sokol, Ashby & Jones  
P. O. Box 7166  
Fredericksburg, Virginia 22404  
Counsel for Basepoint, Inc.

A COPY TESTE:

Linda Jo Johnson, Clerk

By:   
Deputy Clerk

DECREE OF REFERENCE

This cause, which has been regularly matured, set for hearing and docketed, came on this day to be heard upon the Bill to Enforce Mechanic's Lien upon the Answer and Cross-Bill; and was argued by counsel.

Upon consideration whereof, this cause is referred to Scott Pugh, one of the Commissioners in Chancery to this Court who will inquire and report as follows:

1. Who is the fee simple owner of that parcel of land lying and being in the County of Spotsylvania, Virginia, commonly referred to as Red Lobster Restaurant, as more particularly described in the Bill to Enforce Mechanic's Lien.
2. What liens of the plaintiff are against the property, and their priorities, vis-a-vis other liens of record.
3. The nature and extent of the labor and materials furnished by the plaintiff to Moore & Moore General Contractors, Inc. ("Moore") and the owner.

4. The amount of the debt owed by the defendant to plaintiff, and the time from which interest is claimed.

5. If the plaintiff filed in the appropriate Clerk's Office a valid mechanic's lien against the real estate and the owners thereof.

6. If the plaintiff filed its mechanic's lien within the time prescribed by law and gave timely notice thereof.

7. If suit to enforce the mechanic's lien was commenced within the time prescribed by law.

8. The extent of the plaintiff's claim against the property of the owner and whether and the extent to which said claim is a valid and existing lien against the real estate.

9. If the plaintiff breached its contract with Moore by failing to perform its work in a good and workmanlike manner, or by failing to complete work in a timely manner and, if so, whether Moore has been damaged thereby and the amount of such damage.

10. The extent to which plaintiff is entitled to a personal judgment against defendant Moore and the extent to which Moore is entitled to a personal judgment against the plaintiff.

11. Whether all necessary parties are before the Court.

12. Any other matters not specifically stated which the Commissioner may deem pertinent or which any party may request to be so stated.

But before proceeding to execute this reference, the Commissioner shall give notice as required by law of the time and place fixed for executing the same.

ENTER: 5, 26, 194

  
Judge

I ASK FOR THIS:



William B. Cave, Esquire  
Felton & Cave, a Professional Corporation  
701 North Fifth Street, Suite 100  
Richmond, Virginia 23219  
(804) 343-1931

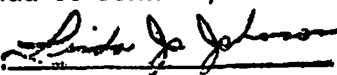
SEEN AND AGREED:



James Ashby, III, Esquire  
Roberts, Sokol, Ashby & Jones  
P. O. Box 7166  
Fredericksburg, Virginia 22404  
(703) 373-3500

A COPY TESTE:

Linda Jo Johnson, Clerk

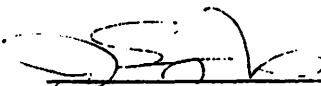
By:  Clerk  
Deputy Clerk

NOTICE OF FILING REPORT OF THE COMMISSIONER IN CHANCERY

TO COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on January 2, 1996, the undersigned will file in the Clerk's Office of the Circuit Court of Spotsylvania County, Virginia, a Report of the Commissioner in Chancery in this cause.

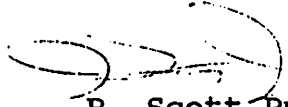
Given under my hand this 26th day of December, 1995.

  
\_\_\_\_\_  
R. Scott Pugh  
Commissioner in Chancery

R. Scott Pugh  
Attorney at Law  
9108 Courthouse Road  
Post Office Box 999  
Spotsylvania, VA 22553  
(540)-582-5438

Certificate

I, R. Scott Pugh, do hereby certify that I mailed a copy of the foregoing to counsel for the parties, this 26th day of December, 1995.

  
\_\_\_\_\_  
R. Scott Pugh

00120

REPORT OF THE COMMISSIONER IN CHANCERY

TO THE HONORABLE JUDGES OF SAID COURT:

Pursuant to a decree made on May 26, 1994, whereby the said cause was referred to the undersigned Commissioner in Chancery, the undersigned gave due notice as required by the terms of the decree that he would proceed to execute the said decree, and thereupon a Commissioner's Hearing was conducted. Whereupon your Commissioner has duly examined the witnesses and exhibits produced by the parties on the matters in inquiry before him and has reviewed the parties' memoranda.

Upon due consideration of all which your Commissioner respectfully submits the following report:

The plaintiff Basepoint, Inc. (Basepoint), a subcontractor, seeks to enforce a mechanic's lien against the Red Lobster Restaurant in Spotsylvania County, Virginia. The defendant Moore & Moore General Contractors, Inc., the general contractor, states that it owes no money to the plaintiff. The defendant General Mills Restaurants, Inc. has been released from litigation by Order.

Your Commissioner makes the following factual findings:

Basepoint makes and sells woodwork. Moore & Moore provided Basepoint with plans and specifications prepared by Vision III and dated November 30, 1990. Plaintiff's Exhibits Nos. 1 and 2. . On December 19, 1990, Basepoint made a proposal "to furnish millwork items in accordance with plans and specification, prepared by Vision III, dated 11-30-90", which items included custom-made cabinets: Plaintiff's Exhibit No. 3. Moore & Moore accepted Basepoint's proposal. Thereupon, shop drawings were prepared for and accepted by the parties. Plaintiff's Exhibits Nos. 4 & 5.

Between March 19, 1991 and April 12, 1991, the millwork constructed by Basepoint was delivered to the jobsite. The millwork, including the custom-made cabinets, was installed by Moore & Moore. On or about May 1, 1991, the owner conducted an inspection and rejected the cabinets, stating that they did not conform to the plans and specifications. Moore & Moore sent a letter, dated May 2, 1991 to Basepoint which provides in part as follows:

"On Wednesday, May 1, 1993, it was discovered that most of your casework is constructed of particle board. Since the plans we provided you for the above referenced job, call for plywood, all of the casework that has particle board does not conform and must be replaced."  
(Plaintiff's Exhibit No. 12)

Basepoint did not replace the particle board, and it submitted a claim of \$28,500.00, under its contract. Moore & Moore replaced the particle board, and it has submitted a counterclaim for the replacement of the cabinets in the amount of \$42,165.72. See Defendant's Exhibits Nos. 8, 9, 10 and 11.

Photographs of the custom-made cabinets were submitted into evidence. Plaintiff's Exhibit No. 18 (A-H). The custom-made cabinets which were installed included bar cabinets, food service cabinets, check register bar cabinet, overhead office cabinets and vanity cabinets for the restrooms. Defendant's Exhibit Nos. 5 and 6.

Samples of the product used in the custom-made cabinets were submitted into evidence Plaintiff's Exhibit No. 17 and Defendant's Exhibit No. 4. The product is made of particle board and is covered by a glossy hard surface.

The parties submitted evidence and argument on the issue as to whether the cabinets "conformed to the contract". The original plans for the restaurant provide that all of the cabinets would be made out of wood. The approved shop drawings make reference to the use of "melamine".

Basepoint contends that the word "melamine", when used in the shop drawings, refers to a composite product with a particular type of finish. Basepoint contends that when Moore & Moore approved the shop drawings, Basepoint was then permitted to provide composite material covered with a material known as "melamine".

Moore & Moore contends that the word "melamine", when used in the shop drawings, refers only to a finish, which can be placed on composite material or wood. Basepoint contends that reference in the shop drawings to "melamine" meant that Basepoint was authorized to provide wood covered with "melamine".



The parties agree that this case is controlled by Article 2 ("Sales") of the Virginia Commercial Code. The following sections are of primary importance.

Virginia Code § 8.2-601 ("Buyer's rights on improper delivery) provides in pertinent part as follows:

"[I]f goods ... fail in any respect to conform to the contract, the buyer may  
    (a) reject the whole; or  
    (b) accept the whole; or  
    (c) accept any commercial unit or units and reject the rest."

Virginia Code § 8.2-606 ("What constitutes acceptance of goods.") provides in pertinent part as follows:

(1) Acceptance of goods occurs when the buyer  
    (a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their nonconformity;  
    (b) fails to make an effective rejection ... but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or  
    (c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is acceptance only if ratified by him."

Virginia Code § 8.2-607 ("Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over") provides in pertinent part as follows:

"(1) The buyer must pay at the contract rate for any goods accepted.  
    (2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with the knowledge of a nonconformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this title for nonconformity."

Virginia Code § 8.2-608 ("Revocation of acceptance n

whole or in part") provides in pertinent part as follows:

"(1) The buyer may revoke his acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to him if he has accepted it

(a) on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) without discovery of such nonconformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances."

In applying these Code sections, your Commissioner accepts the testimony of Donnie Ray Hall. Mr. Hall has been a contractor and has been doing millwork and carpentry work since 1968. In 1990, Mr. Hall was employed by Moore & Moore as the project superintendent for the Red Lobster Restaurant. Mr. Hall testified as follows: he worked under a field superintendent employed by Moore & Moore by the name of Allen L. Lyle; he and Mr. Lyle were aware that the Vision III plans called for plywood and that the shop drawings for "melamine", "melamine being a product with a particle board core in it" (Transcript, p. 136); he and Mr. Lyle decided that melamine "would be just as well as ... the plywood" (Transcript, p. 136); when the cabinets arrived, both Mr. Hall and Mr. Lyle were fully aware that the cabinets contained particle board (Transcript, pp. 139-41); Mr Hall found that "The product was in A-1 shape ... other than the product ... it was made of." (Transcript, p. 144); Mr. Lyle directed the installation of the cabinets (Transcript, p. 143-44); every cabinet was then installed prior to the inspection by the owner's representative (Transcript, p. 164); and Mr. Hall later discussed this matter with a vice president for the defendant who said that

"they had approved the wrong products to be used in the cabinets" (Transcript, p. 145).

Based on Mr. Hall's testimony, Moore & Moore installed the cabinets. Under the Virginia Commercial Code, the installation of the cabinets by Moore & Moore constituted an "acceptance" of the cabinets. On brief, Moore & Moore acknowledges that its "installation of the cabinets constitutes an act inconsistent with Basepoint's ownership thereof and constitutes acceptance."

Moore & Moore makes the argument that it "rightfully revoked its acceptance of the cabinets due to their non-conformity to plans and specifications". Defendant's Post-Hearing Memorandum, pp. 11-14. Under the Virginia Commercial Code, Moore & Moore had no right to revoke its acceptance. Moore & Moore installed the cabinets with knowledge of the alleged nonconformity. The consequences of "acceptance" with knowledge of an alleged nonconformity is clearly set forth in Virginia Code § 8.2-607(2), which states as follows: "Acceptance of goods by the buyer precludes rejection of the goods accepted and *if made with the knowledge of a nonconformity cannot be revoked because of it.*" (Emphasis added) Accord, Virginia Code § 8.2-608(1).

Moore & Moore makes the argument that "Basepoint's refusal to cure justifies [its] move to cover by the purchase of replacement conforming goods". Defendant's Post-Hearing Memorandum, pp. 15-18.

The "acceptance" of "goods" "does not of itself impair

any other remedy provided by this title for nonconformity". Virginia Code § 8.2-607(2). Accordingly, the issue arises whether Moore & Moore is entitled to recover under its counterclaim.

Moore & Moore claims that it is entitled to the "cover" remedy, that is, the right to obtain substitute goods at Basepoint's expense, pursuant to Virginia Code § 8.2-712 ("Cover"; buyer's procurement of substitute goods." Under Virginia Code § 8.2-711, a buyer has a right to the "cover" remedy in four situations (1) where the seller fails to make delivery; (2) where the seller repudiates the contract; (3) where the buyer rightfully rejects the goods; and (4) where the buyer rightfully revokes acceptance of goods". None of the four situations exists in the present case. Accordingly, Moore & Moore is not entitled to the "cover" remedy.

The Virginia Commercial Code generally permits other remedies, see, e.g., Virginia Code § 8.2-714(1). However, Moore & Moore based its counterclaim on the "cover remedy" only, and it has not submitted proof for the recovery of any other remedies [For example, a recovery based upon the difference in cost between plywood shelves and particle board shelves when purchased under nonemergency conditions.] Furthermore, even if an alternative remedy is now being claimed by Moore & Moore, the doctrines of waiver and estoppel would normally bar such a remedy. See, e.g., 67 Am.Jur.2d, Sales, § 635 (1985), wherein the authors state as follows: "The buyer cannot recover damages

for any nonconformity of which he was aware when he accepted the goods."

Accordingly, for the reasons stated, the counterclaim filed by Moore & Moore should be denied.

Moore & Moore makes the argument that "a mechanic's lien filed for materials not included in the building upon which the lien is filed is unenforceable". Defendant's Post-Hearing Memorandum, pp. 18-19. Moore & Moore states that the mechanic's lien is invalid because the cabinets, constituting \$21,141.00 of the \$28,080.00 claim, were removed from the building and the jobsite prior to the recordation of the memorandum of lien on May 9, 1991.

Virginia Code § 43-3 ("Lien for work done and materials furnished; waiver of right to file or enforce lien") states in part as follows:

"All persons ... furnishing materials ... for the improvement of any building ... shall have a lien, if perfected ..., upon such building ...".

Under the express language of this statute, Basepoint had a right to file "a lien" against the Red Lobster Restaurant because it "furnished material ... for the improvement of" the Red Lobster Restaurant. In the present case, the "materials" were actually incorporated into the building but were subsequently removed. If the General Assembly wants to add an exception to the language of the Code which excludes the present case from the express language of the Code section, then the General Assembly certainly can add such an exception. It would

be inappropriate for your Commissioner to recommend that the Court disregard the express language of the Code section. Moore & Moore does not otherwise challenge the validity of the mechanic's lien.

For the reasons stated, your Commissioner recommends that a judgment and a mechanic's lien be awarded to the plaintiff and against the defendant in the amount of \$28,080.00, plus interest from May 2, 1991, at the legal rate of 8% per annum, until the entry of judgment and thereafter at the judgment rate of 9% per annum (See Virginia Code §§ 8.01-382; 6.1-330.53; and 6.1-330.54), plus the costs of this proceeding.

In response to the specific inquiries, your Commissioner states as follows:

1. Who is the fee simple owner of that parcel of land lying and being in the County of Spotsylvania, Virginia, commonly referred to as Red Lobster Restaurant, as more particularly described in the Bill to Enforce Mechanic's Lien? General Mills Restaurants, Inc.

2. What liens of the plaintiff are against the property and their priorities, vis-a-vis other liens of record? Basepoint's lien is the only lien of record.

3. The nature and extent of the labor and materials furnished by the plaintiff to Moore & Moore General Contractors, Inc. ("Moore") and the owner. Millwork was furnished as described in the contract proposal, Plaintiff's Exhibit No. 3.

4. The amount of the debt owed by the defendant to

plaintiff, and the time from which interest is claimed.

Basepoint is owed \$28,080.00, and interest is claimed from May 2, 1991.

5. If the plaintiff filed in the appropriate Clerk's Office a valid mechanic's lien against the real estate and the owners thereof. Basepoint recorded a valid memorandum of lien.

6. If the plaintiff filed its mechanic's lien within the time prescribed by law and gave timely notice thereof. Basepoint recorded its memorandum of lien in a timely manner.

7. If suit to enforce the mechanic's lien was commenced within the time prescribed by law. Basepoint filed this mechanic's lien suit in a timely manner.

8. The extent of the plaintiff's claim against the property of the owner and whether and the extent to which said claim is a valid and existing lien against the real estate? Basepoint has a valid lien in the amount of \$28,080.00.

9. If the plaintiff breached its contract with Moore by failing to perform its work in a good and workmanlike manner, or by failing to complete work in a timely manner and, if so, whether Moore has been damaged thereby and the amount of such damage. According to the evidence, Basepoint performed its work in a good and workmanlike manner and in a timely manner.

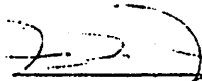
10. The extent to which plaintiff is entitled to a personal judgment against defendant Moore and the extent to which Moore is entitled to a personal judgment against the Plaintiff. Basepoint is entitled to a judgment against Moore & Moore in the

amount of \$28,080.00. Moore & Moore is not entitled to a judgment against Basepoint.

11. Whether all necessary parties are before the Court.  
Correct. All necessary parties are before the Court.

12. Any other matters not specifically stated which the Commissioner may deem pertinent or which any party may request to be so stated. Your Commissioner's fee in this case is \$1,971.25, based on Twenty and 3/4 hours at \$95.00 per hour, of which \$1,140.00 has been advanced by the parties hereto, leaving a balance due in the amount of \$831.25.

Respectfully submitted this 26th day of December, 1995.

  
\_\_\_\_\_  
R. Scott Pugh  
Commissioner in Chancery

R. Scott Pugh  
Attorney at Law  
9108 Courthouse Road  
Post Office Box 999  
Spotsylvania, VA 22553  
(540)-582-5438

Certificate

I, R. Scott Pugh, do hereby certify that I mailed a copy of the foregoing to counsel for the parties, this 26th day of December, 1995.

  
R. Scott Pugh



### EXCEPTIONS TO THE REPORT OF THE COMMISSIONER

Come now Moore & Moore General Contractors, Inc. ("Moore") and United States Fidelity and Guaranty Company ("USF&G") pursuant to the provisions of Virginia Code 8.01-615 and take exception to certain designated portions of the Commissioner's report (the "Report") filed with the Court on January 2, 1996. In these exceptions, Moore and USF&G will refer to the pages of the Report containing the material to which exception is taken.

1. Moore and USF&G except to the Commissioner's conclusion that Mr. Allen Lyle, Moore's superintendent on the project, was aware that melamine was a product with a particle board core rather than a mere finish; and that Mr. Lyle had decided melamine would be just as well to use as plywood. Report at page 5.

2. Moore and USF&G except to the commissioner's conclusion that Mr. Lyle was fully aware upon delivery that the cabinets were made of particle board rather than plywood as set forth in the report at page 5.

3. Moore and USF&G except to the conclusion of the Commissioner that Mr. Lyle directed the installation of the cabinets as set forth in the Report at page 5.

4. Moore and USF&G except to the conclusion of the Commissioner that Moore had no right to revoke its acceptance of the cabinets when it was discovered that the cabinets were made of particle board as set forth in the Report at page 6.

5. Moore and USF&G except to the Commissioner's conclusion that Moore installed the cabinets with knowledge of their nonconformity; specifically that they were manufactured from particle board rather than plywood as set forth in the Report at page 6.

6. Moore and USF&G except to the Commissioner's conclusion that Basepoint's goods were not rightfully rejected and that Moore did not rightfully revoke its acceptance of the goods as set forth in the Report at page 7.

7. Moore and USF&G except to the Commissioner's conclusion that Moore was not entitled to exercise its right to "cover" and procure conforming goods as set forth in the Report at page 7.

8. Moore and USF&G except to the Commissioner's conclusion that Moore is not entitled to judgment on its counterclaim against Basepoint for the cost of cover, as set forth in the Report at page 8.

9. Moore and USF&G except to the Commissioner's conclusion that Basepoint may file a lien against real estate merely by furnishing materials for inclusion thereon whether or not such goods are incorporated into the building at the time the lien is filed, as set forth in the Report at page 8.

10. Moore and USF&G except to the Commissioner's conclusion that they do not otherwise challenge the validity of Basepoint's mechanic's lien as is set forth in the Report at page 9.

11. Moore and USF&G except to the Commissioner's recommendation that Basepoint be awarded judgment and mechanic's lien rights against the defendant, together with interest and costs as is set forth in the Report at page 9.

12. Moore and USF&G except to the Commissioner's conclusion contained at paragraph 3, page 9 of the Report, specifically that the mill work furnished by Basepoint was as described in the contract proposal, plaintiff's exhibit 3.

13. Moore and USF&G except to the Commissioner's conclusion at paragraph 8, page 10 of the Report, that Basepoint has a valid lien against the real estate in any amount.


14. Moore and USF&G except to the Commissioner's conclusions contained in paragraph 9, at page 10 of the Report that Basepoint performed its work in a good and workman like and timely manner.

15. Moore and USF&G except to the Commissioner's conclusion as contained in paragraph 10, at page 10 of the Report that Basepoint is entitled to judgment against Moore and Moore and further that Moore and Moore is not entitled to judgment against Basepoint.

Respectfully Submitted

MOORE & MOORE GENERAL CONTRACTORS, INC.  
UNITED STATES FIDELITY AND GUARANTY COMPANY

By Counsel



---

William B. Cave, Esquire  
Felton & Cave, a Professional Corporation  
7501 Boulders View Drive, Suite 625  
Richmond, Virginia 23225  
(804) 272-4900

CERTIFICATE

I hereby certify that a true copy of the foregoing Exceptions to the Report of the Commissioner was mailed postage prepaid to James Ashby, III, Esquire, Roberts, Sokol, Ashby & Jones, P. O. Box 7166, Fredericksburg, Virginia 22404, this 4th day of January, 1996.



---

William B. Cave

### DECREE

This cause came on the 5th day of February, 1996 to be heard on the papers formerly read, the report of R. Scott Pugh, Commissioner in Chancery appointed specially to hear the matter and to report to the Court, together with transcripts of evidence and exhibits considered by the Commissioner, exceptions to the report of the Commissioner filed in a timely manner by Moore & Moore General Contractors, Inc. and United States Fidelity and Guaranty Company, oral argument of counsel on the said exceptions, on the Memorandum in Support of Exceptions to the Commissioner's Report filed February 5, 1996, the Memorandum in Support of the Commissioner's Report filed February 28, 1996 and the Reply Memorandum filed March 8, 1996.

29-96  
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And it appearing to the Court that the exceptions are not well taken they are hereby OVERRULED.

Accordingly, the Plaintiff shall recover of the Defendant, or its surety United State Guaranty Company should the Defendant not pay as ordered herein, the sum of TWENTY EIGHT THOUSAND and EIGHTY (\$28,080.00) DOLLARS, plus interest from May 2, 1991 at the rate of eight (8%) per cent per annum until the date hereof, and thereafter at the judgement rate of interest, until paid, together with the

costs of this action including the fee of the Commissioner In Chancery in the total amount of \$1,971.25, which fee the Court approves.

All of which is ADJUDGED, ORDERED and DECREED.

Counsel for defendant excepts to the Court's ruling for reasons stated in the memorandums filed herein.

The Clerk shall forthwith certify a copy of this decree to all counsel of record.

Enter:

Stephen Lamm

Judge

Date:

March 29, 1996

I certify that this document to which this authentication is affixed is a true copy of a record in the Spotsylvania Circuit Court, that I have custody of the record, and that I am the custodian of that record.

3/29/96

Date

Walter Helms

Deputy Clerk

00137

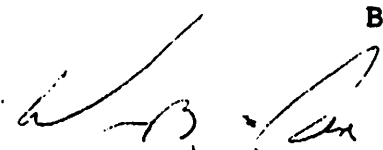
**NOTICE OF APPEAL  
AND FILING OF TRANSCRIPT**

Pursuant to the provisions of Rule 5:9 of the Rules of the Supreme Court of Virginia, the defendant, Moore & Moore General Contractors, Inc., hereby gives notice of its appeal of the Final Decree of the Court entered in this matter on March 29, 1996.

The Transcript of the hearing of his matter held on April 21, 1995, before R. Scott Pugh, Commissioner in Chancery, is filed with this Notice of Appeal as permitted by Rule 5:11 of the Rules of the Supreme Court of Virginia and notice is hereby given of its filing.

MOORE & MOORE GENERAL CONTRACTORS, INC.

By Counsel


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William B. Cave, Esquire

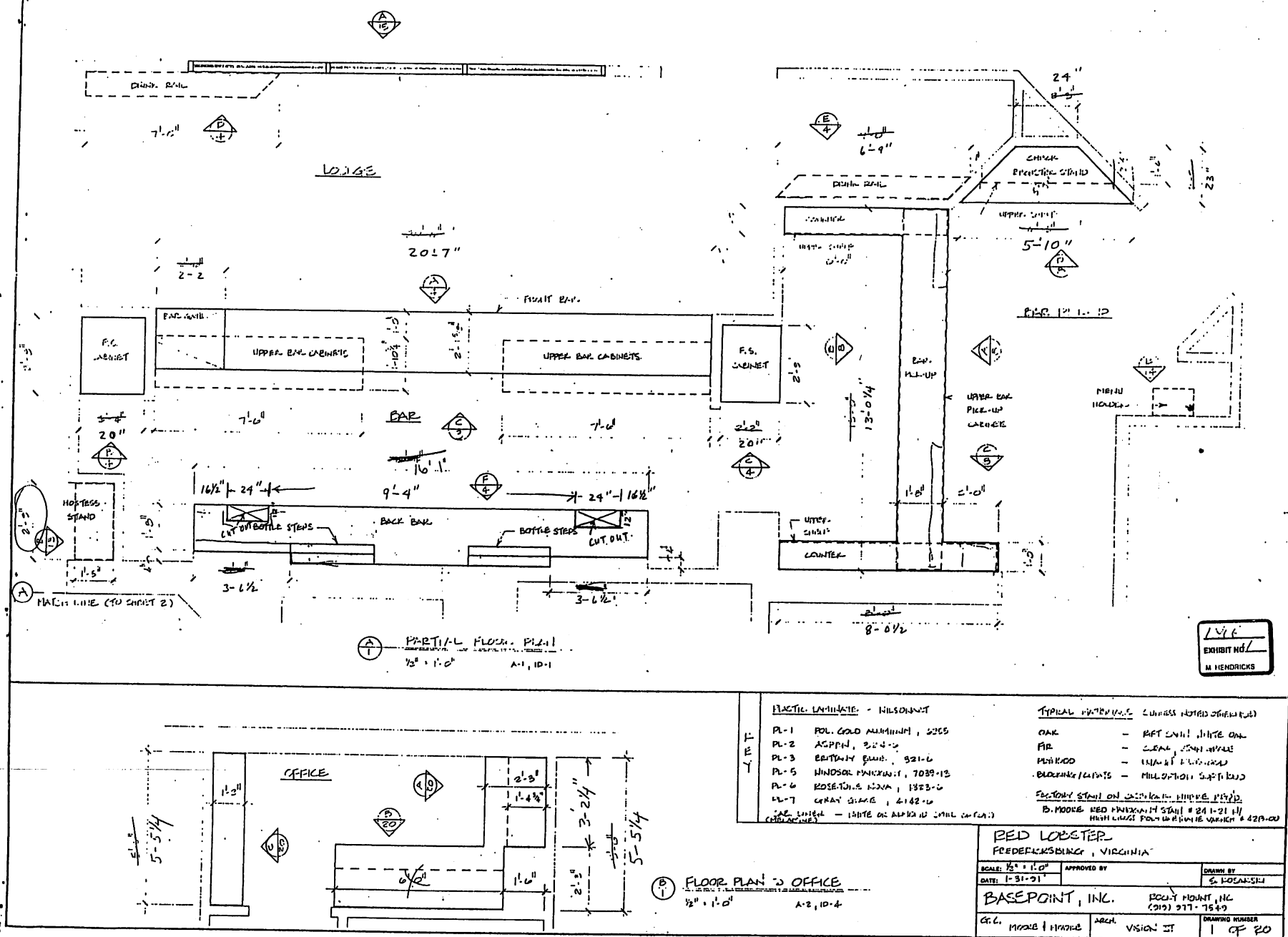
Felton & Cave, a Professional Corporation  
7501 Boulders View Drive, Suite 625  
Richmond, Virginia 23225

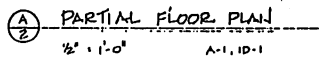
CERTIFICATE

I hereby certify that a true copy of the foregoing  
Notice of Appeal and Filing of Transcript was mailed postage  
prepaid to Russell H. Roberts, Esquire, counsel for Basepoint,  
Inc., P. O. Box 7166, Fredericksburg, Virginia, 22404, on this  
17th day of April, 1995.

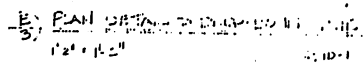
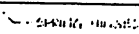
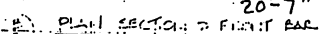
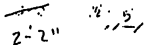
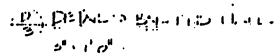
  
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William B. Cave



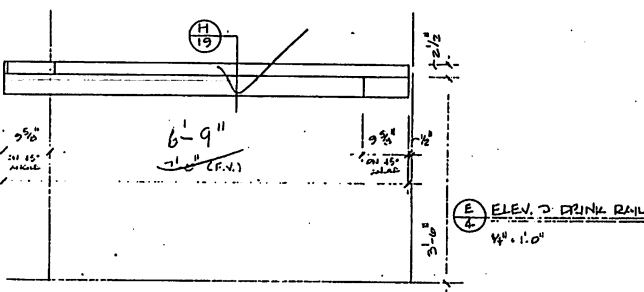
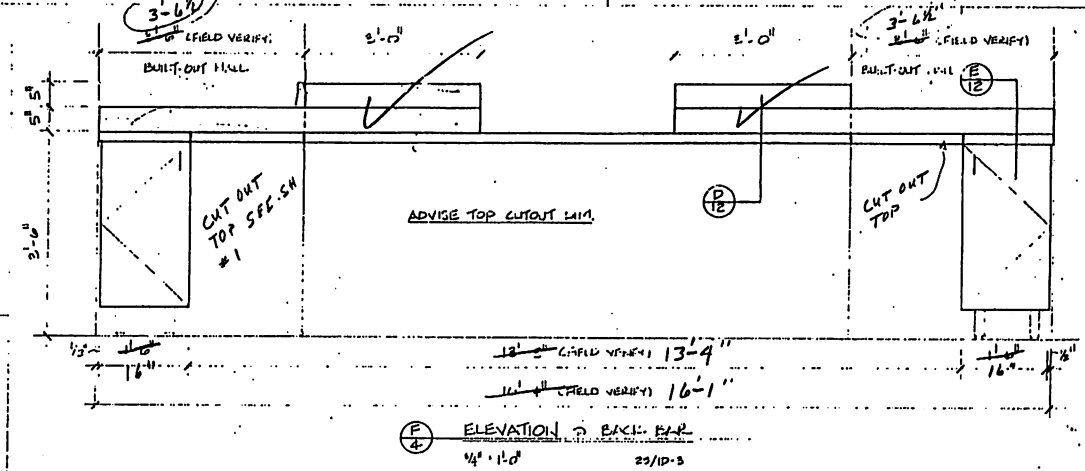
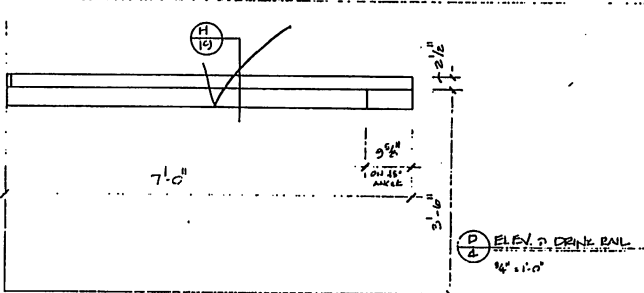
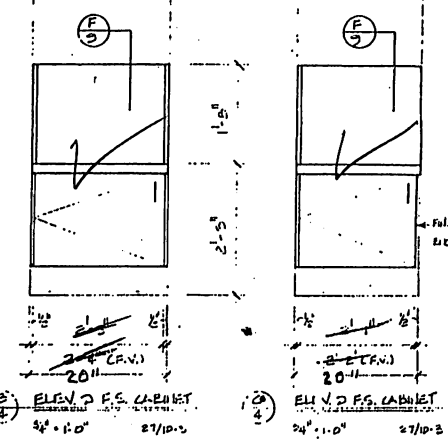
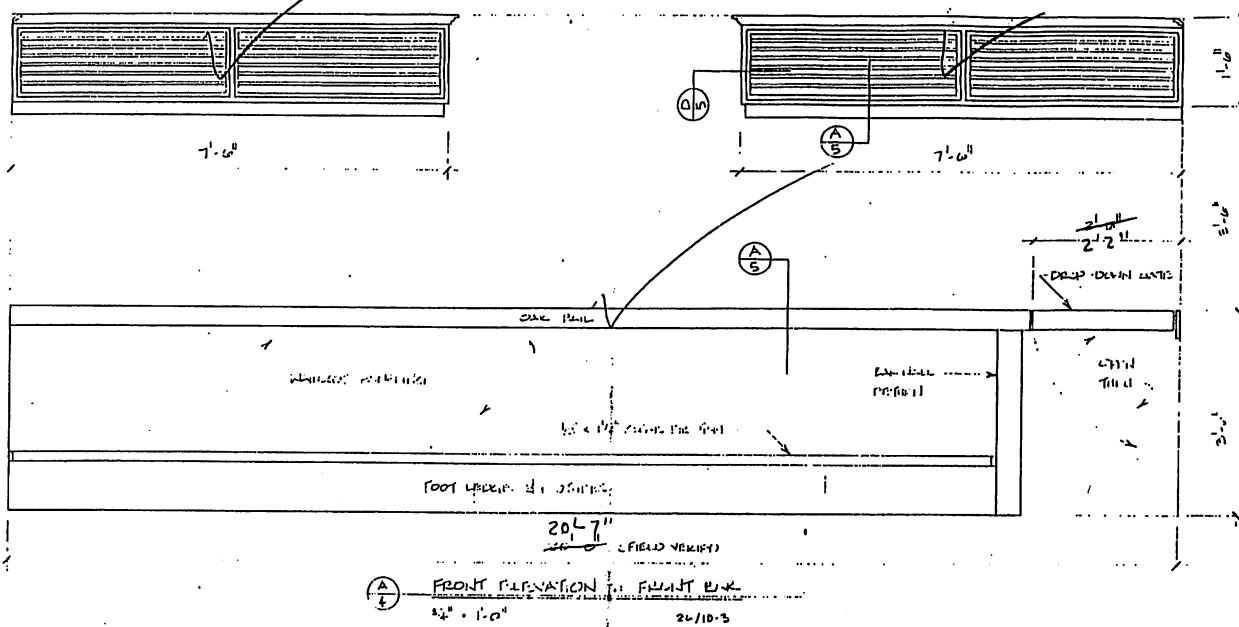




<p><b>RED LOBSTER</b>  <b>FREDERICKSBURG, VIRGINIA</b></p>			
<p>SCALE: 1/2" = 10'-0"</p>	<p>APPROVED BY</p>		<p>DRAWN BY</p>
<p>DATE: 1-31-91</p>			<p>S. KOSAREK</p>
<p><b>BASEPOINT, INC.</b></p>		<p>ROCKY MOUNT, NC          (919) 977-7543</p>	
<p>C.C. MOORE &amp; MOORE</p>	<p>ARCH.</p>	<p>VISION III</p>	<p>DRAWING NUMBER          2 OF 20</p>



RED LOBSTER FREDERICKSBURG, VIRGINIA		
SCALE: AS NOTED	APPROVED BY	DRAWN BY S. K. JONES
DATE: 1-31-91		
BASEPOINT, INC.		ROCKY MOUNT, NC (712) 377-7543
C.E. JAMES J. JONES	ARCH. JAMES J. JONES	DRAWING NUMBER

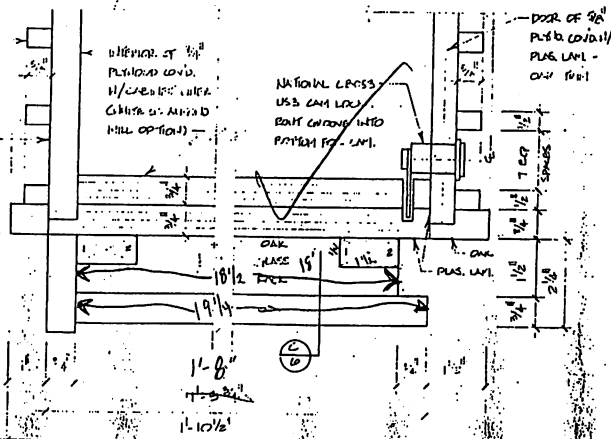


RED LOBSTER.		
FREDERICKSBURG, VIRGINIA		
SCALE: AS NOTED	APPROVED BY	DRAWN BY
DATE: 1-31-91		S. KORASKE
BASEPOINT, INC.		ROCKY MOUNT, INC.
(919) 977-7649		
DR. MOORE & MOORE	ARCH. VISION III	DRAWING NUMBER
		4 CF 20

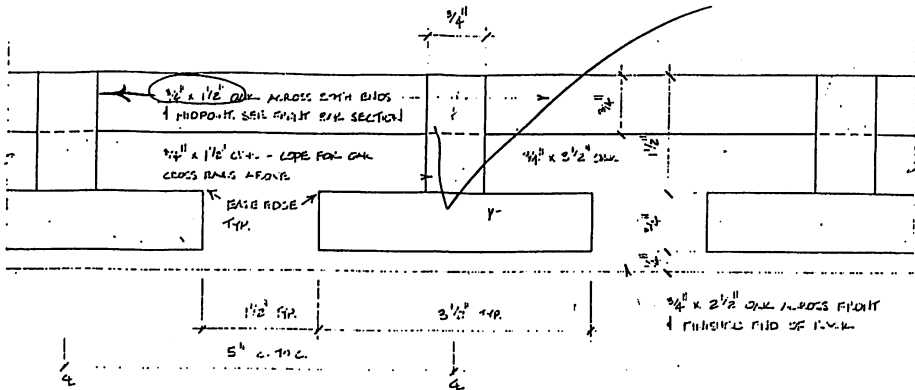


S&B 5/41

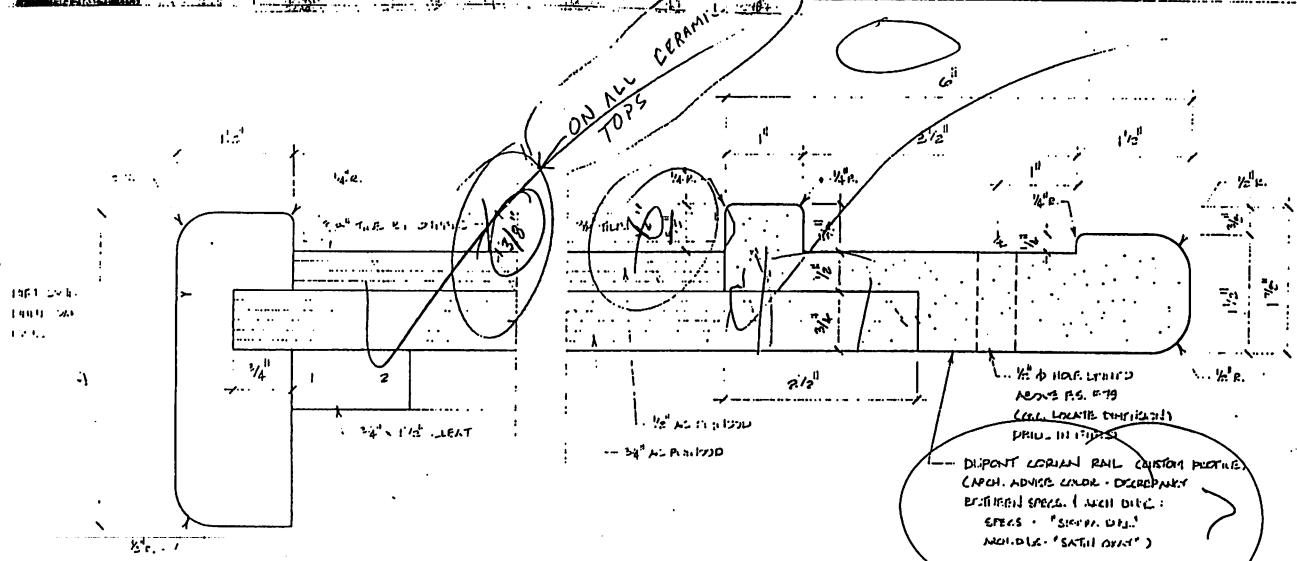
3/4" PLY. 1/1  
PUG. LVL. 1/1-2  
2" PLY. 1/1-2



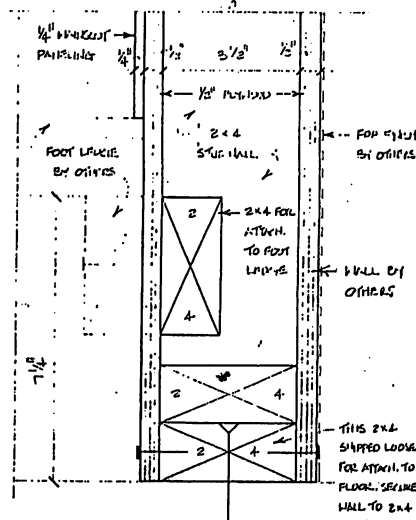
SECTION DETAILS 2 UPPER RAIL - ELEVATION  
HALF SCALE  
3/15-7, 7/10-7



SECTION 2 - GLASS PANEL  
FULL SCALE  
3/15-7

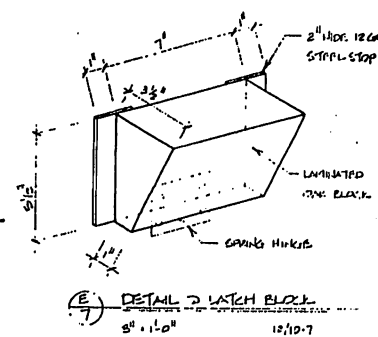
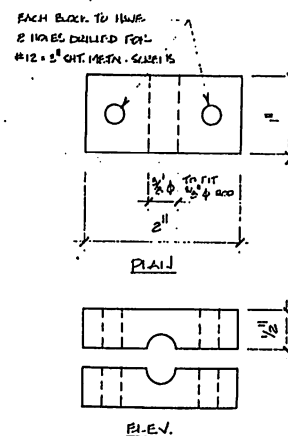
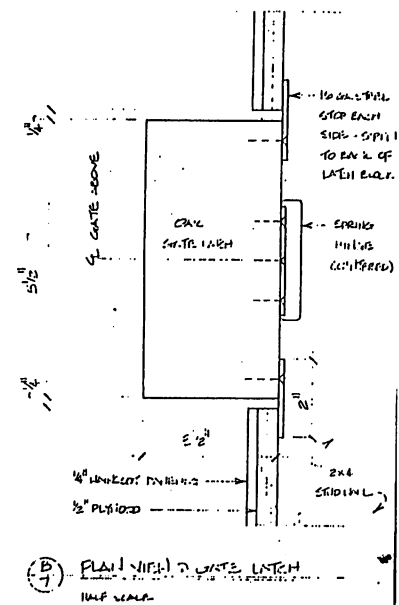


SECTION 2 - BAR TOP  
FULL SCALE  
4/10-7, 5/10-7

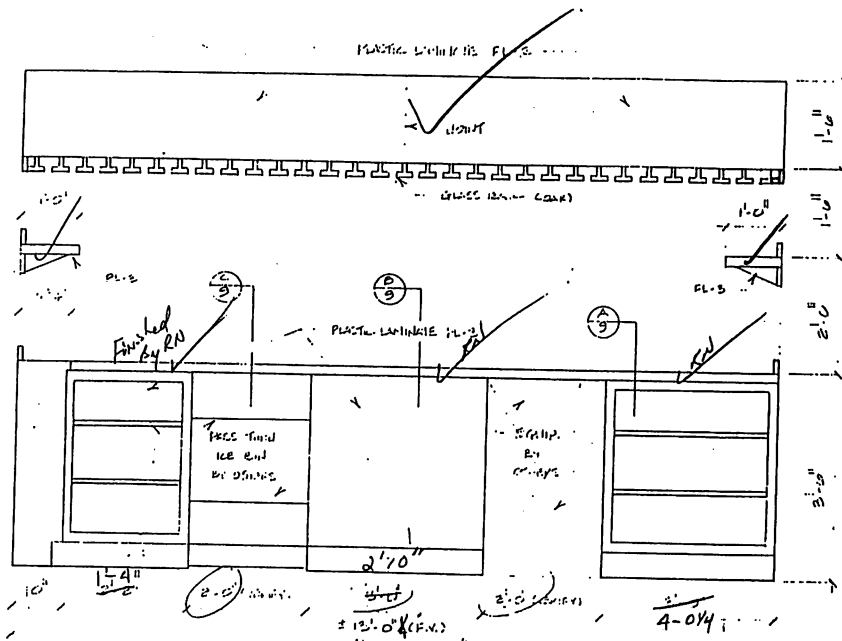


DETAIL 2 - BAR HALL  
HALF SCALE

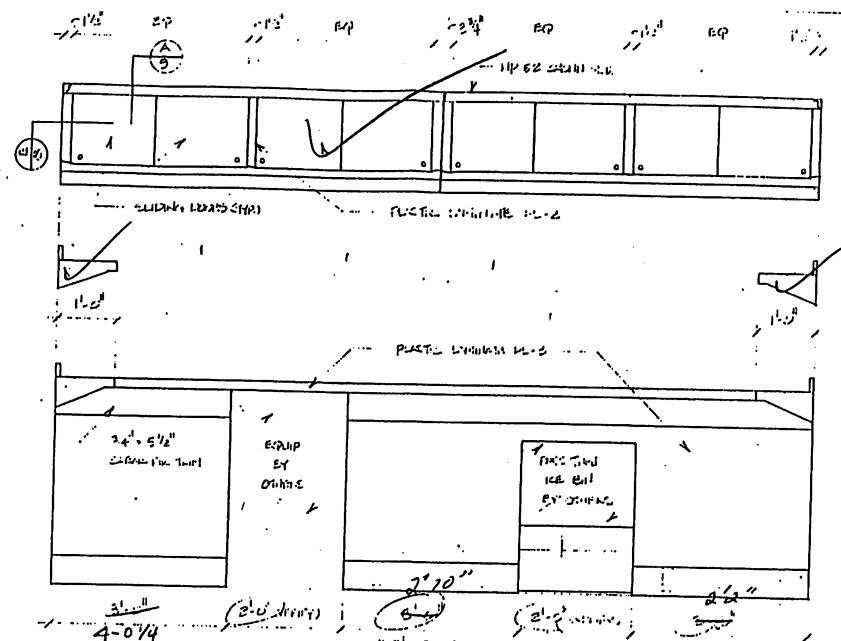
RED LOBSTER FREDERICKSBURG, VIRGINIA		
SCALE: AS NOTED	APPROVED BY	DRAWN BY
DATE: 1-31-91		S. KOSMIGEL
BASE POINT, INC.		ROCKY MOUNT, NC (919) 977-7549
FILE: MOORE & MOORE	ARCH: VISION III	DRAWING NUMBER 6 OF 20



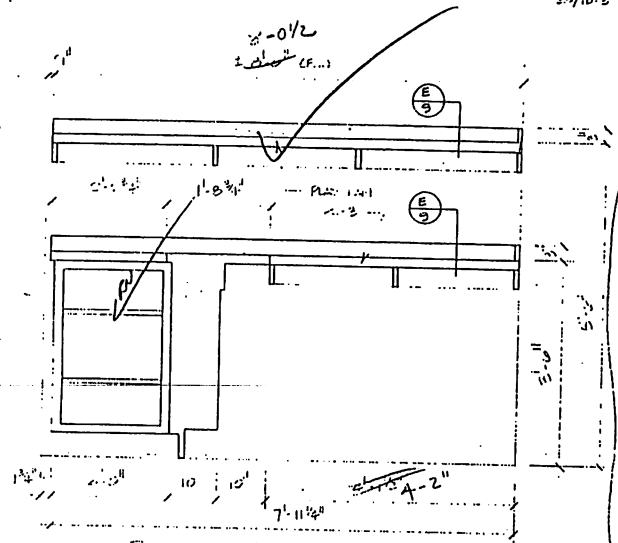
RED LOBSTER FREDERICKSBURG, VIRGINIA			
SCALE: AS NOTED	DRAWN BY G. KOSAREKI		
DATE: 1-31-91	APPROVED BY		
BASEPOINT, INC.		ROCKY MOUNT, INC. (913) 977-7549	
CRG: MOORE & MOORE	ARCH: VISION III	DRAWING NUMBER 7 OF 20	



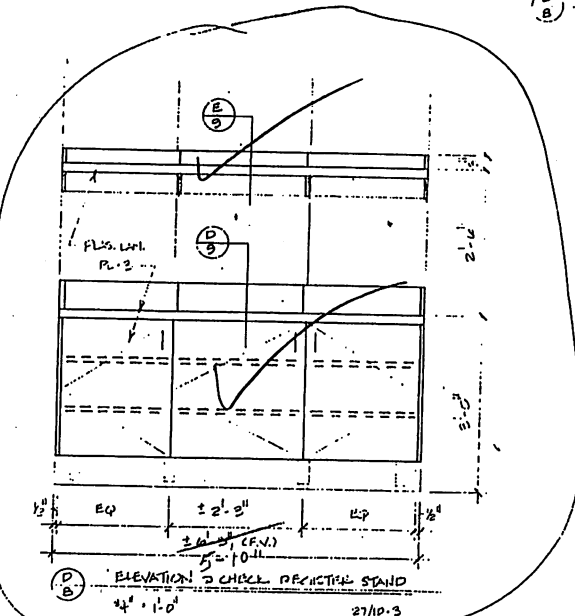
A ELEVATION - FRONT ELEVATION (SEE ELEVATION 13-01/4)



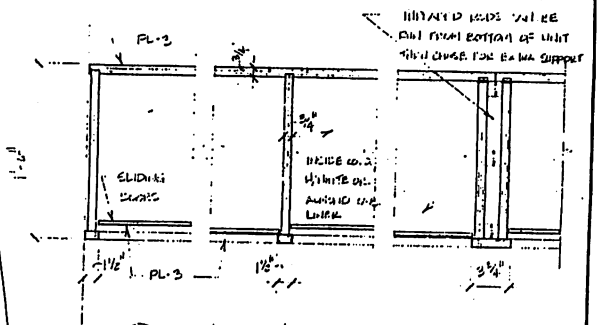
B ELEVATION - SIDE ELEVATION (SEE ELEVATION 13-01/4)



C ELEVATION - FRONT ELEVATION (SEE ELEVATION 13-01/4)



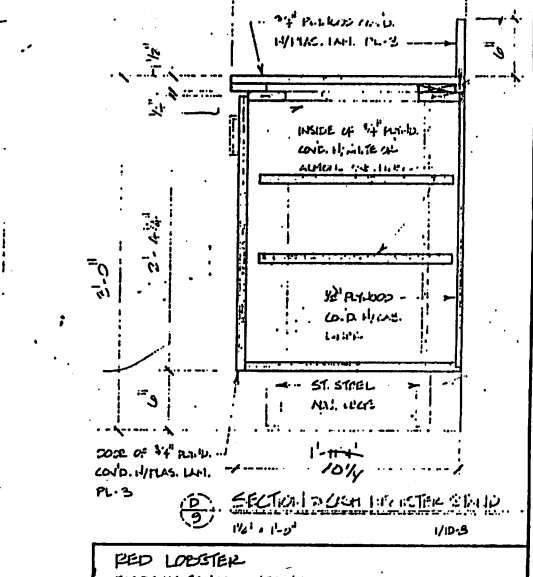
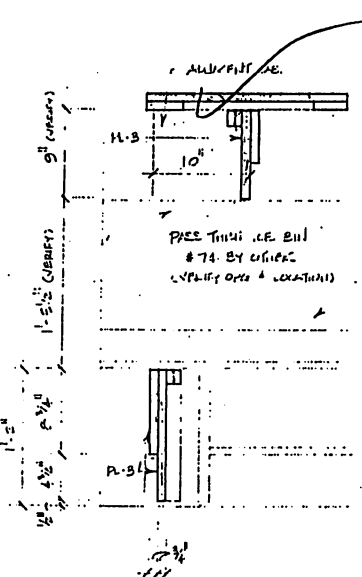
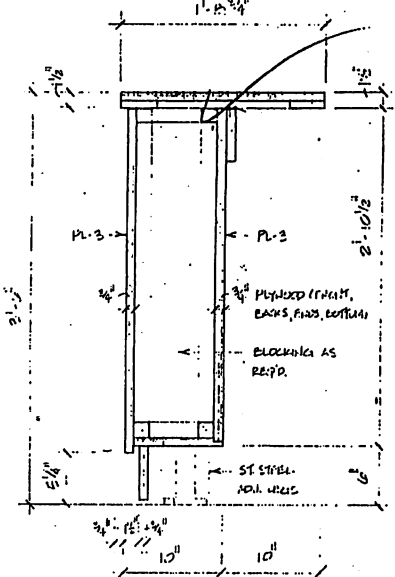
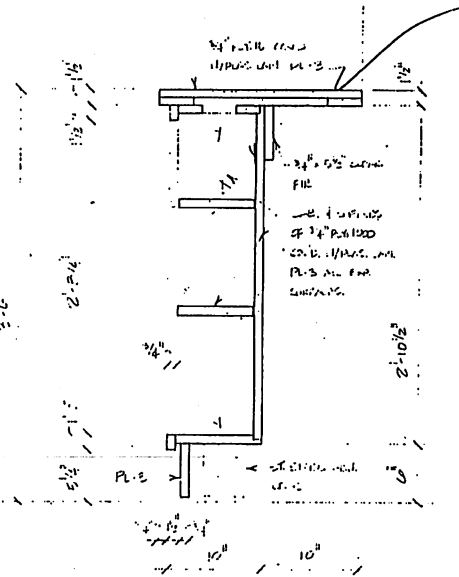
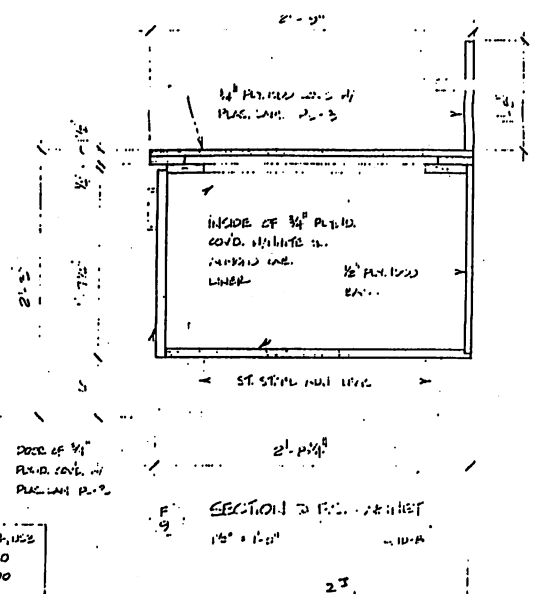
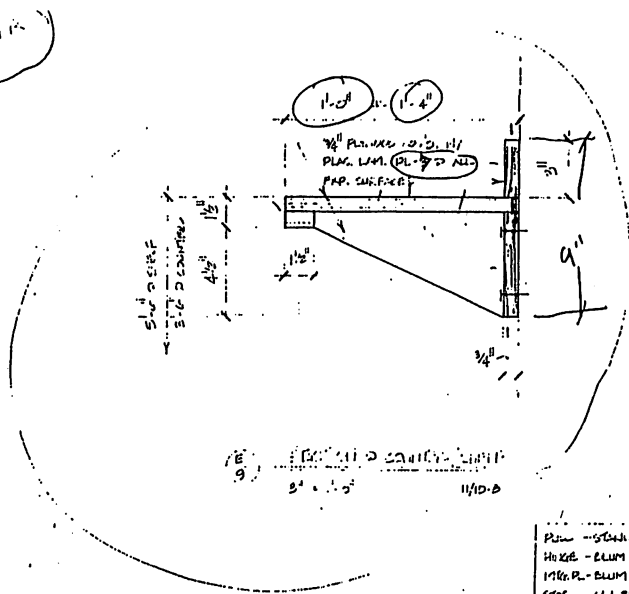
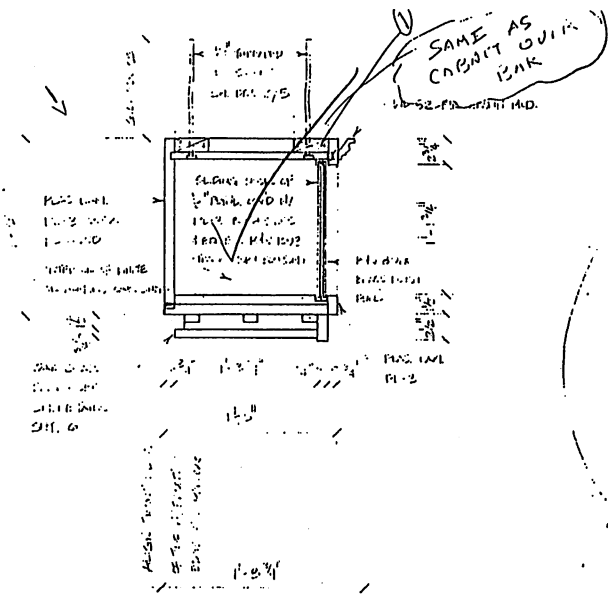
D ELEVATION - FRONT ELEVATION (SEE ELEVATION 13-01/4)



E PLAN SECTION - FRONT ELEVATION (SEE ELEVATION 13-01/4)

RED LOBSTER		
FREDERICKSBURG, VIRGINIA		
SCALE: AS NOTED	APPROVED BY	DRAWN BY
DATE: 1-31-01		E. KOSARELI
BASEPOINT, INC.		
ROCKY MOUNT, NC		
(919) 977-7849		
CEL: MOORE & MOORE	ARCH: VISION II	DRAWING NUMBER
		8 OF 20



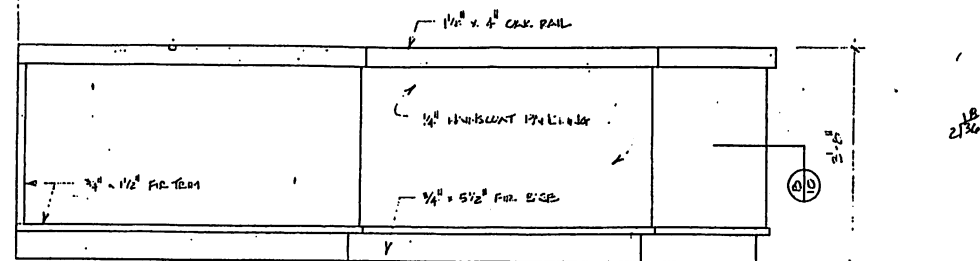


SECTION A-A END VIEW  
1/2\" x 1'-0\" 1/10\" x 1/10\" (AD-1/12)

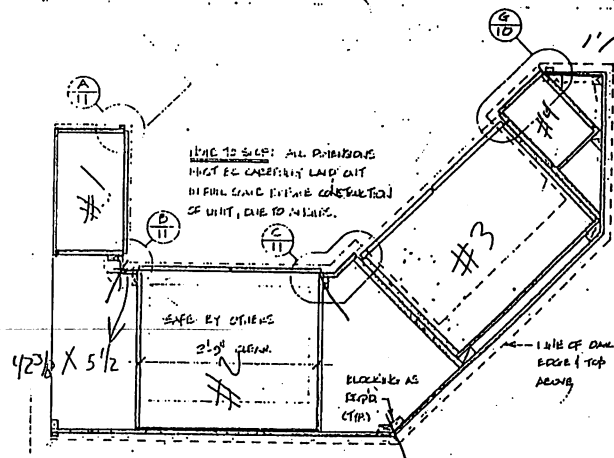
SECTION B-B  
1/2\" x 1'-0\" 1/10\" x 1/10\" (AD-1/12)

SECTION C-C  
1/2\" x 1'-0\" 1/10\" x 1/10\" (AD-1/12)

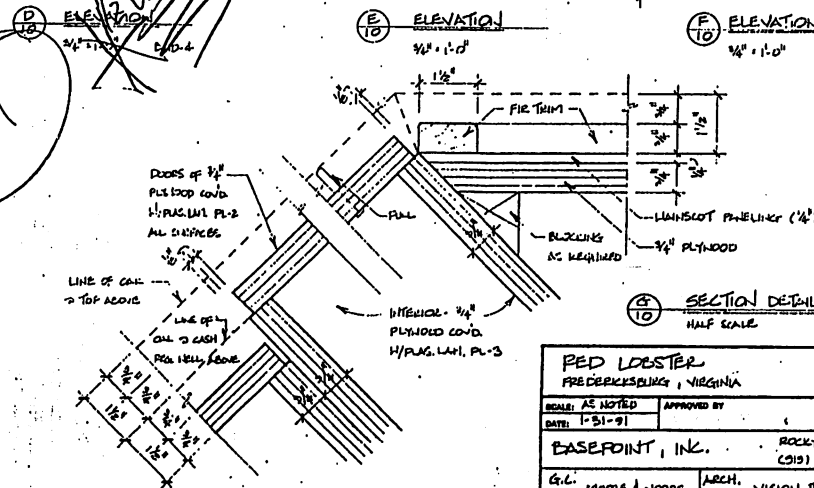
RED LOBSTER FREDERICKSBURG, VIRGINIA		
SCALE: AS NOTED	APPROVED BY	DRAWN BY
DATE: 1-31-91		S. KOSANSEKI
BASEPOINT, INC.		ROCKY MOUNT, NC (919) 977-7543
G.C. MOORE & NOBLE	ARCH. VISION III	DRAWING NUMBER 9 OF 20



② FRONT ELEVATION  
4" x 1" 0"



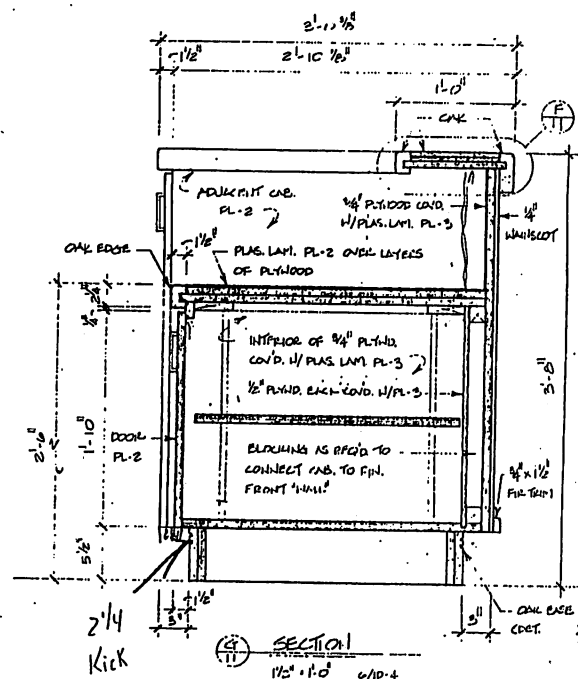
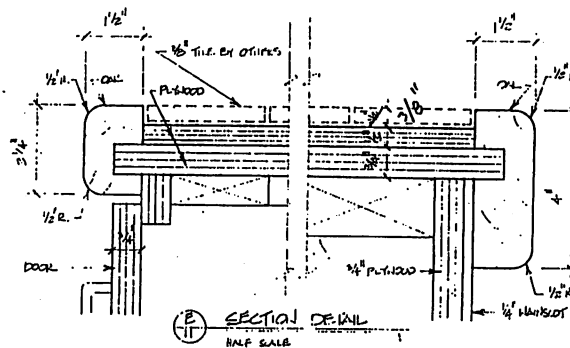
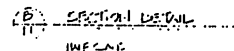
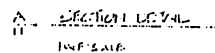
⊙  $\frac{F}{10}$  - ELEVATION  
 $\frac{3}{4}'' = 1'-0''$



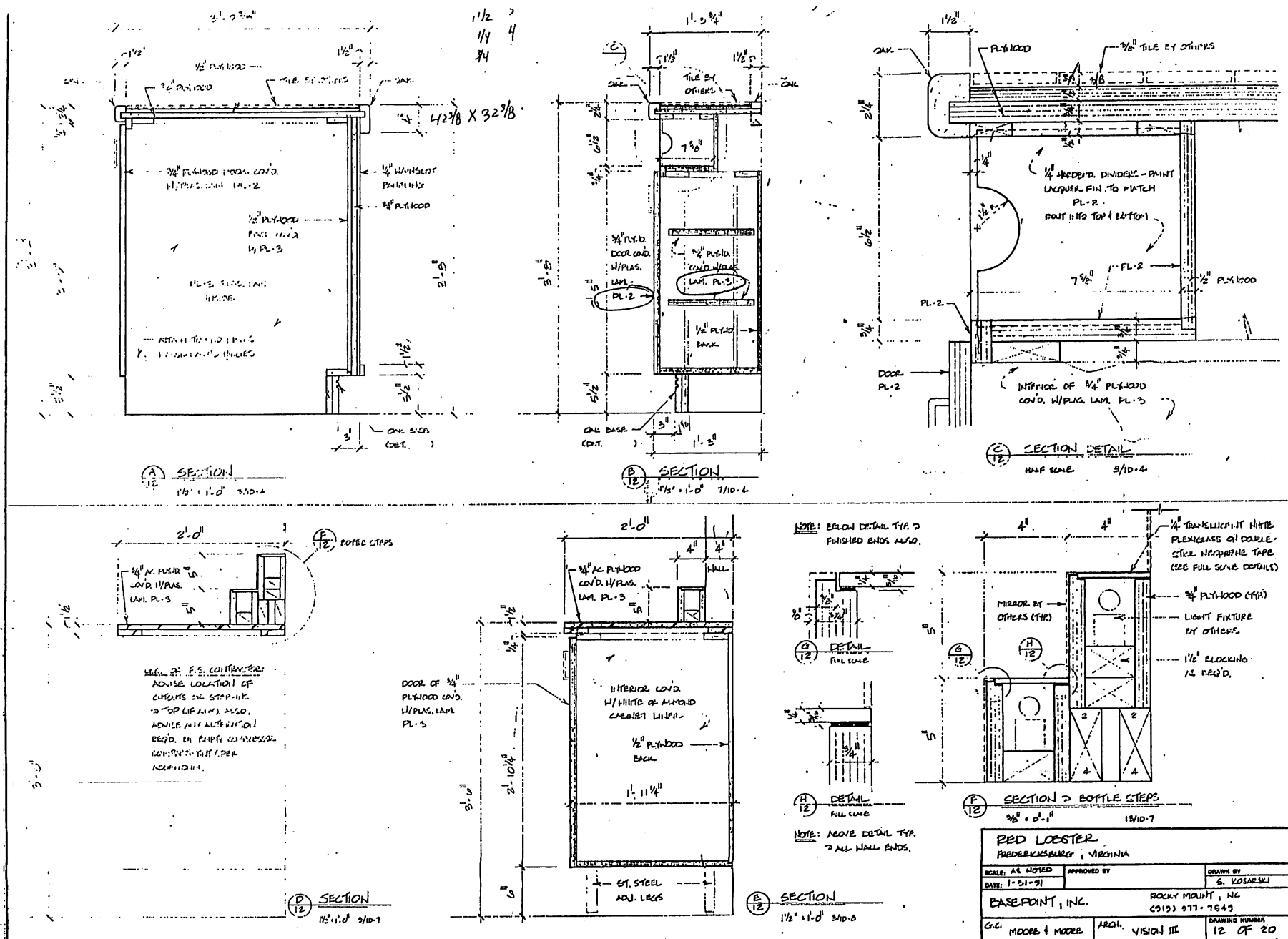
SECTION DETAIL  
HALF SCALE

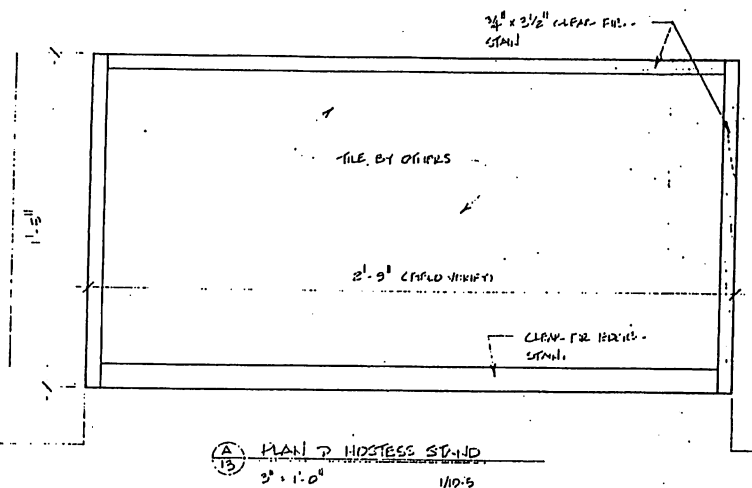
PED LOBSTER  
FREDERICKSBURG, VIRGINIA

SCALE: AS NOTED	APPROVED BY	DRAWN BY
DATE: 1-31-91		S. LOZANSKI
BASEPOINT, INK.		
ROCKY MOUNT, NC (919) 977-7849		
G.C. MOORE & MOORE	ARCH.	DRAWING NUMBER
VISION III		10 OF 2

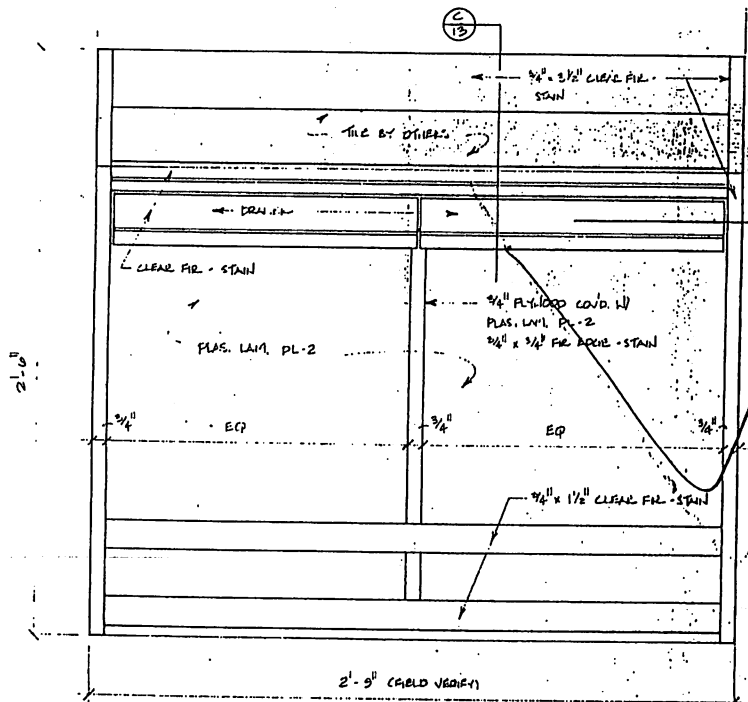


11 of 21

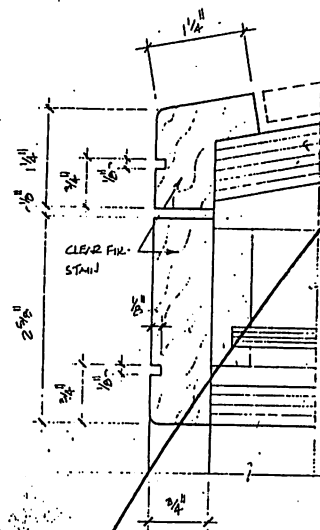




(A) PLAN 1 HOSTESS STAND  
1/10-5  
3' x 1'-0"

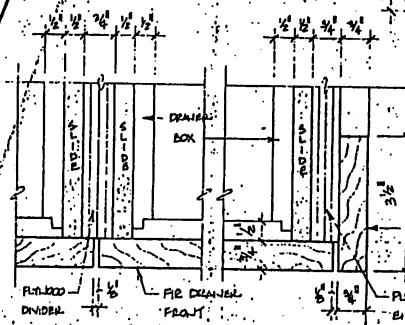


(B) ELEVATION 1 HOSTESS STAND  
3' x 1'-0"  
2/10-5

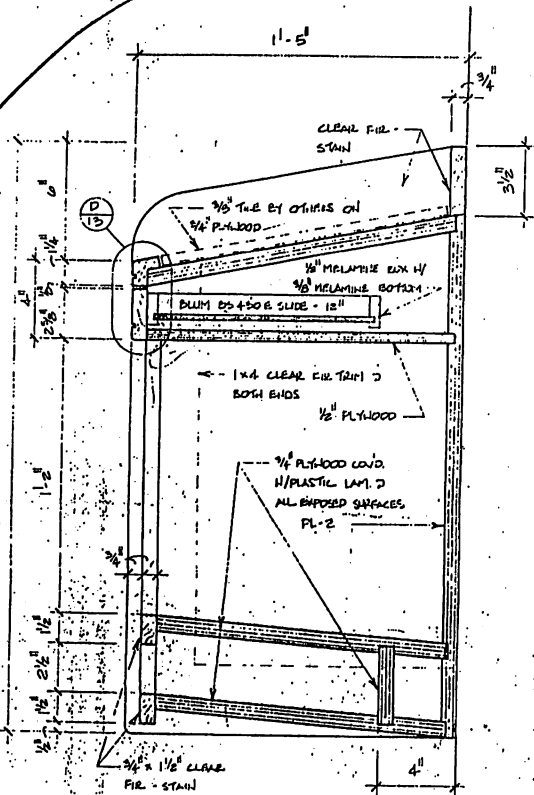


SECTION DETAIL  
FULL SCALE

NOTE: FACE ALL EXPOSED  
WIMBER. EDGES

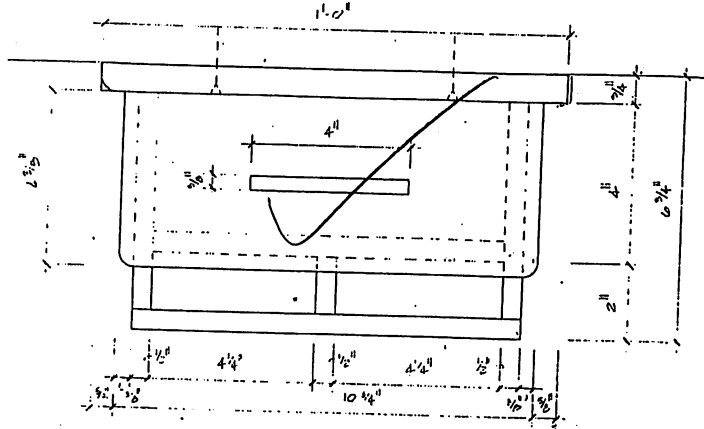


(C) PLAN SECTION DETAIL  
HALF SCALE

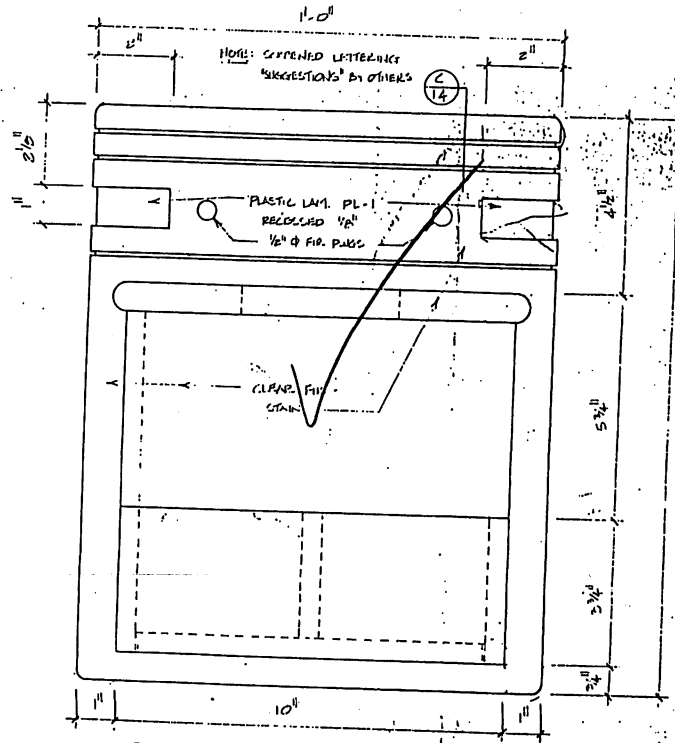


(D) SECTION 2 HOSTESS STAND  
3' x 1'-0"  
6/10-5

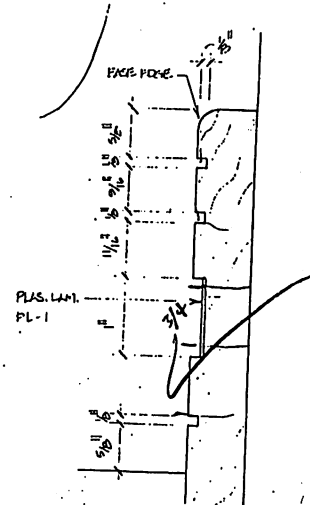
RED LOEBSTER FREDERICKSBURG, VIRGINIA			
SCALE: AS NOTED	APPROVED BY	DRAWN BY	
DATE: 1-21-91		S. KOSARESKI	
BASEPOINT, INC.		ROCKY MOUNT, N.C. (919) 877-7649	
CHK: MOORE	ADCH: VISION III	DRAWING NUMBER	
		15 OF 20	



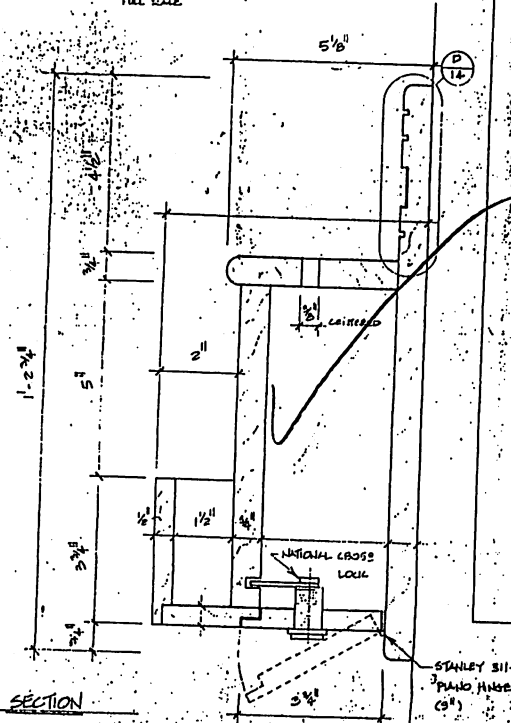
A PLAN - SUGGESTION BOX  
1/4" SCALE  
10/10/5



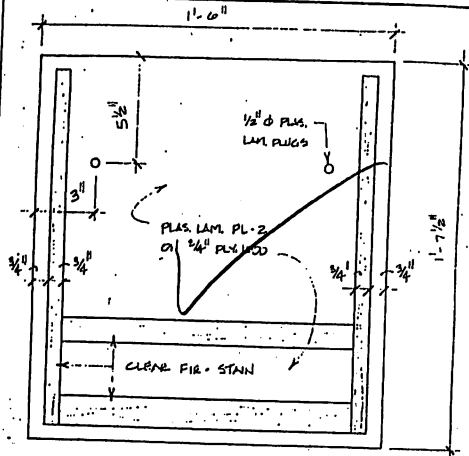
D ELEVATION - SUGGESTION BOX  
1/4" SCALE  
10/10/5



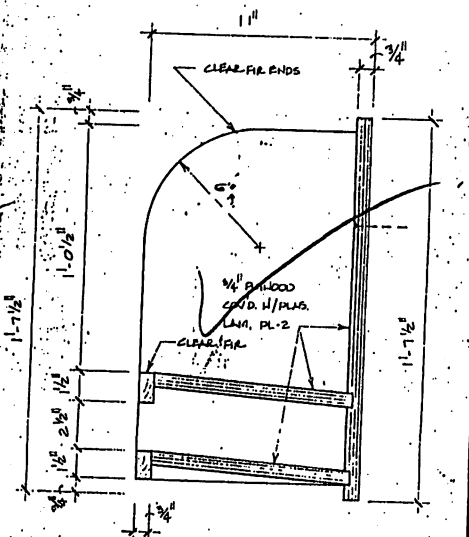
B SECTION DETAIL  
1/4" SCALE



C SECTION  
1/4" SCALE, 10/10/5



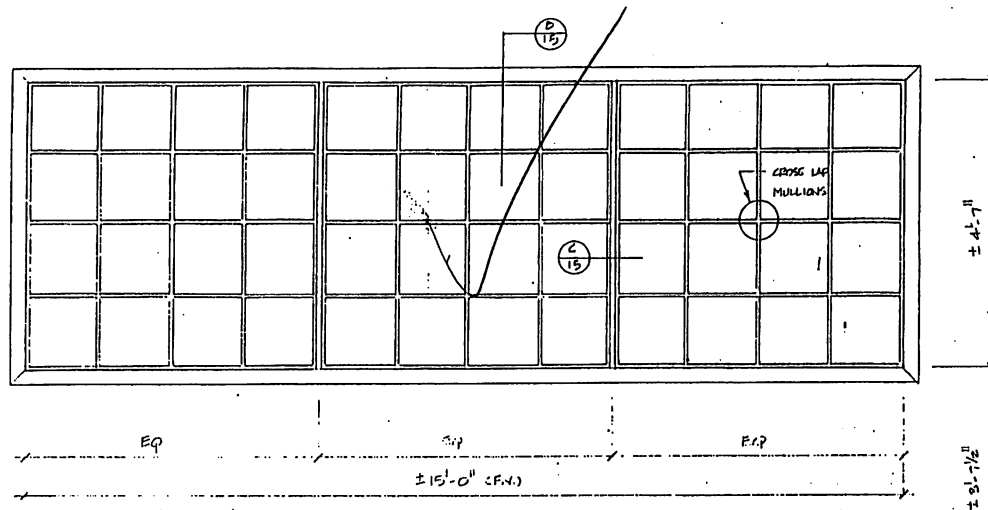
E ELEVATION - MENU HOLDER  
1/4" SCALE  
10/10/5



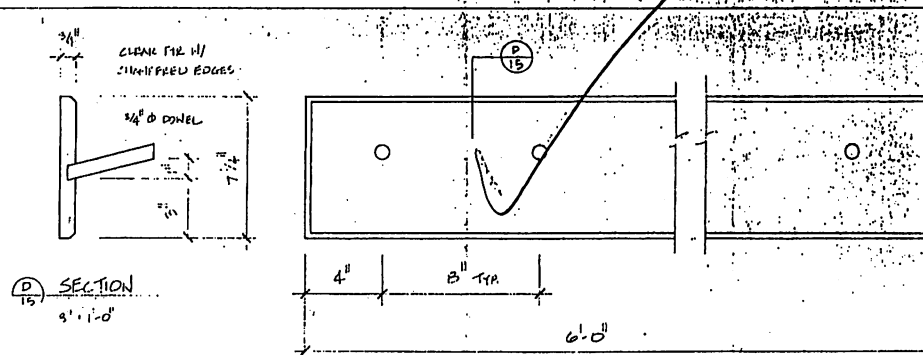
F SECTION - MENU HOLDER  
1/4" SCALE  
10/10/5

RED LOBSTER  
FREDERICKSBURG, VIRGINIA

SCALE: AS NOTED	APPROVED BY	DRAWN BY
DATE: 1-31-91		S. KOSAREK
BASEPOINT, INC.		ROCKY MOUNT, NC
TEL: 919.977.7549		DRAWING NUMBER

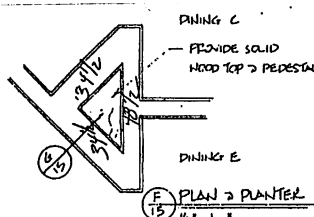
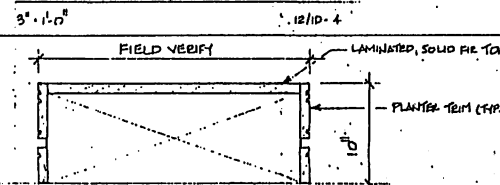


(B) ELEVATION 2 LOUNGE WINDOW (INTERIOR CORRIDOR SIDE)



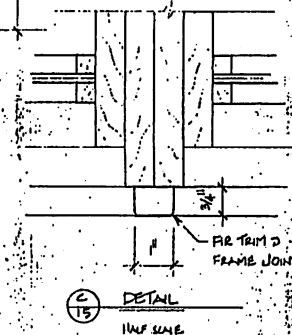
(D) SECTION  
9'-1'-0"

(E) ELEVATION 2 COAT HOOK (KITCHEN HALL)



(G) SECTION 2 PEDESTAL  
1'-0"-0"

ARCHITECT  
ADVISE CASING TYPE  
FOR THIS SIDE OF  
WINDOW - DOES NOT  
CLEAR (ALSO,  
INTERFERENCE 1/1  
DUAL RAIL RAILING)

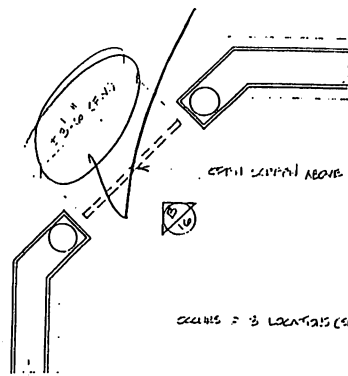


(C) DETAIL  
1/4" SCALE

(B) SECTION

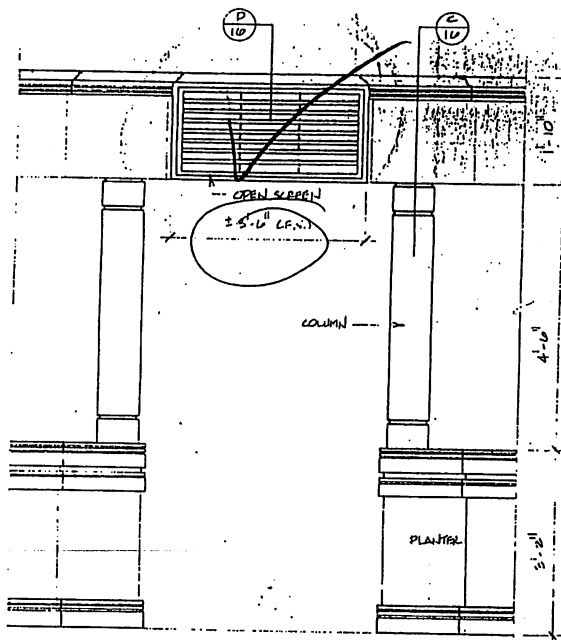
9'-1'-0" 16'-10"-4"

RED LOBSTER FREDERICKSBURG, VIRGINIA			
SCALE: AS NOTED	APPROVED BY:	DRAWN BY:	
DATE: 1-31-91		S. KOSARSKI	
BASEPOINT, INC.		ROCKY MOUNT, IN.	
G.C. MOORE & MOORE		ARCH. VISION III	
		DRAWING NUMBER	
		15 OF 20	

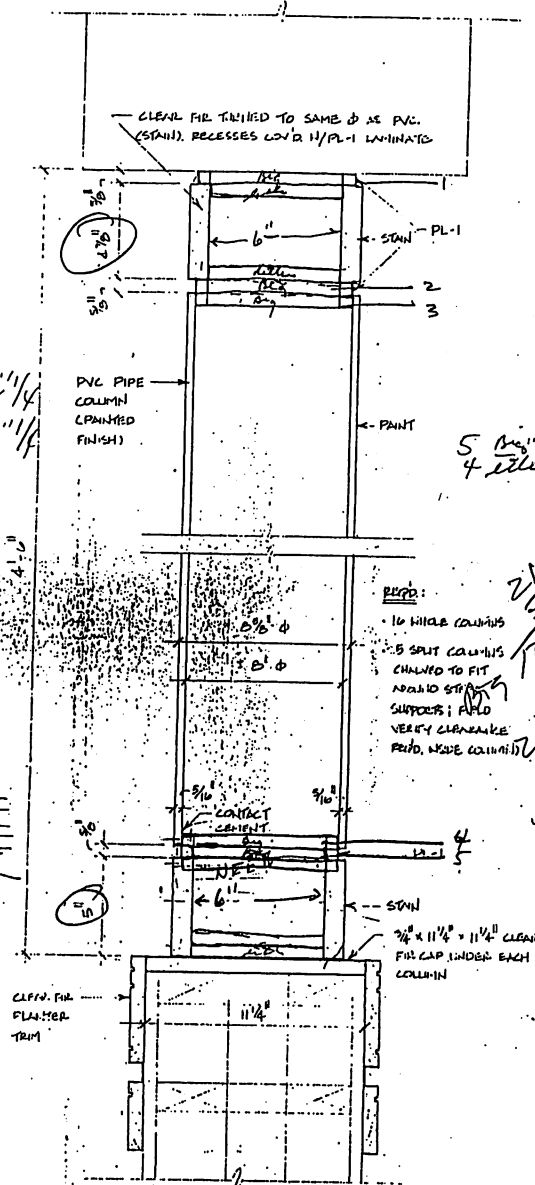


(A) PLAN TO DRINK ROOM CORNER  
3\"/>

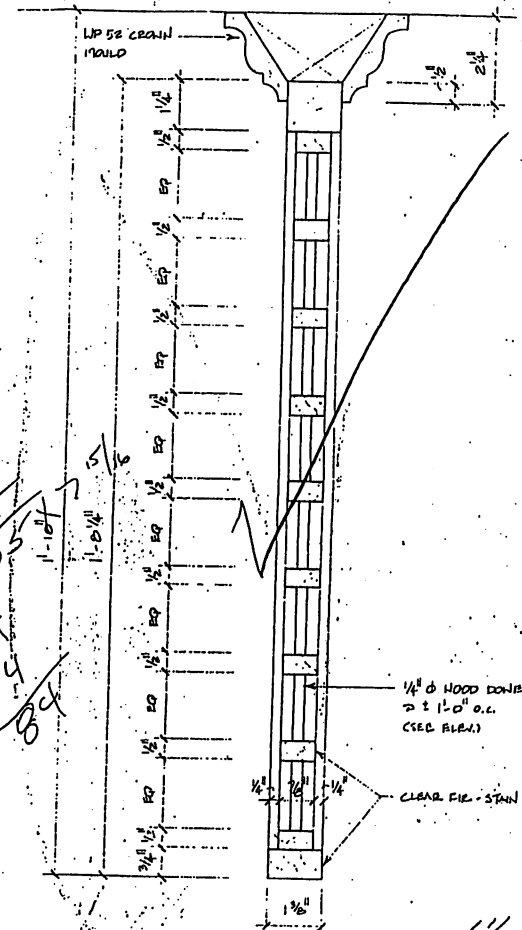
2-46 1/2 x 1'8 1/4  
1-43 1/4 1'8 1/4



(B) ELEVATION TO PLANTERS/COLUMNS/OPEN SCREEN  
3/4\"/>



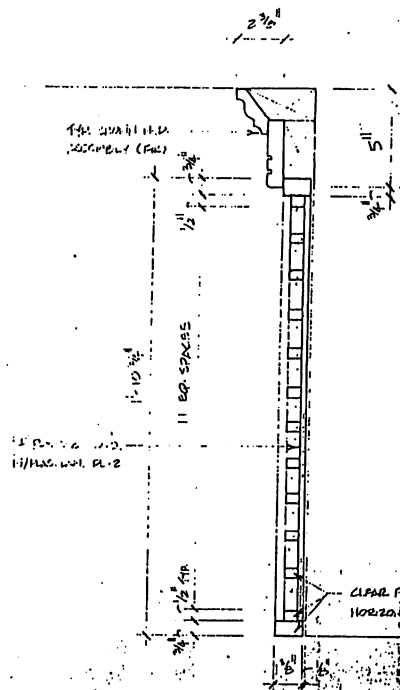
(C) SECTION TO COLUMN (TYP)  
3\"/>



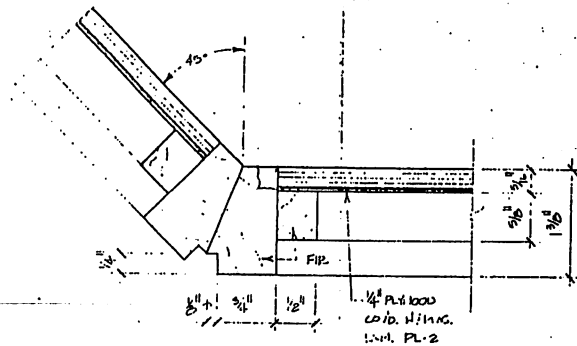
(D) SECTION TO OPEN SCREEN  
1/2\"/>

RED LOBSTER FREDERICKSBURG, VIRGINIA		
SCALE: AS NOTED	APPROVED BY	DRAWN BY
DATE: 1-31-91		S. KOSARSKI
BASEPOINT, INC.		ROCK MOUNT, INC. (919) 977-7843
C.L. MOORE & MOORE	ARCH. VISION III	DRAWING NUMBER 16 OF 20

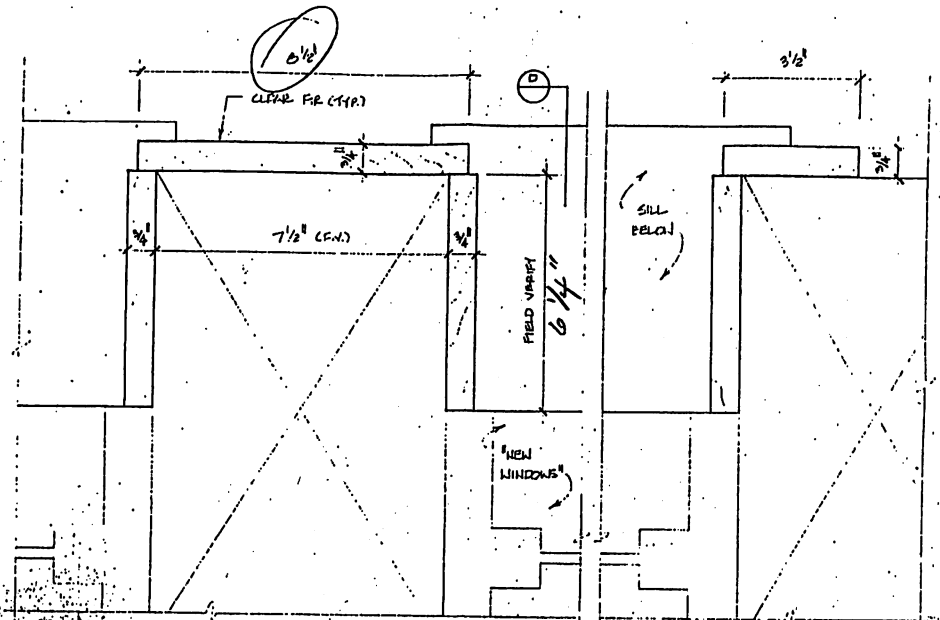




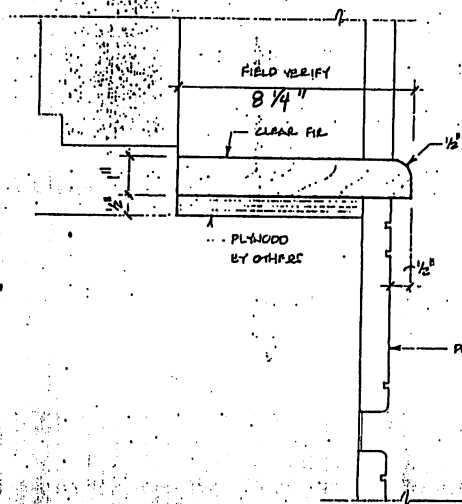
SECTION D LOBBY SCREEN  
3'-1-0" 10/10-A



SECTION DETAIL D ANGLED JOINT  
FULL SCALE 10/10-A



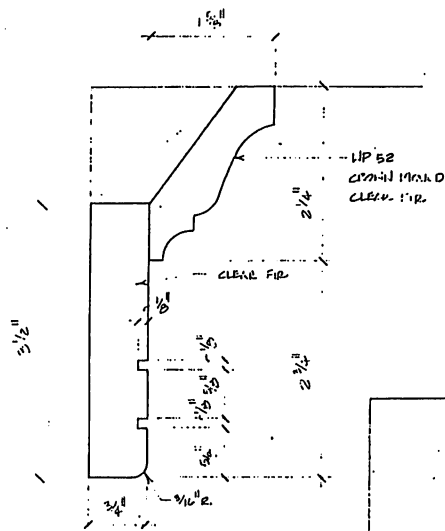
PLAN SECTION D WINDOW MILLION TRELLIS CASING  
HALF SCALE A-B



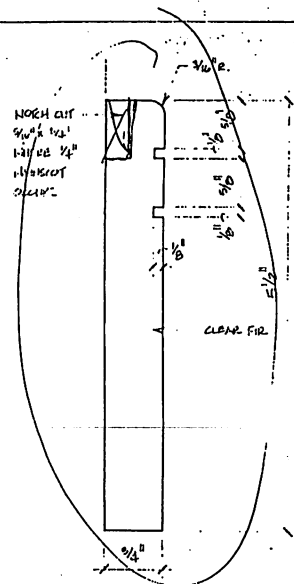
SECTION D TYP WINDOW SILL  
HALF SCALE A-B

DINING RM C  
2 WINDOWS 5'-1" X 3'-10"  
JAMBS 10 5/8"  
SILL 12 5/8"  
THESE TWO WINDOWS ONLY

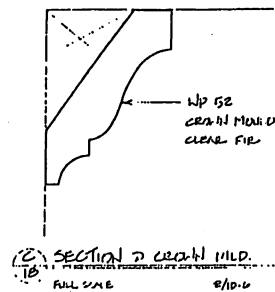
RED LOBSTER FREDERICKSBURG, VIRGINIA		
SCALE: AS NOTED	APPROVED BY	DRAWN BY
DATE: 1-31-91		S. KOSARSKI
BASEPOINT, INC.		ROCKY MOUNT, NC
		(919) 977-7569
CLL	MOORE & MOORE	ARCH. VISION III
		DRAWING NUMBER
		17 OF 20



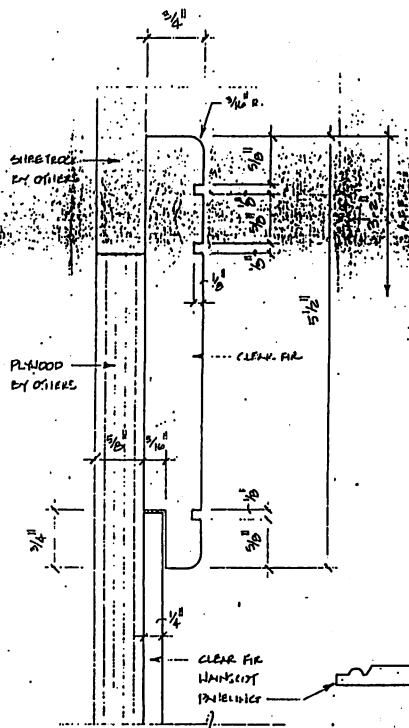
A SECTION OF CROWN MOLD  
FULL SCALE 1/10-6



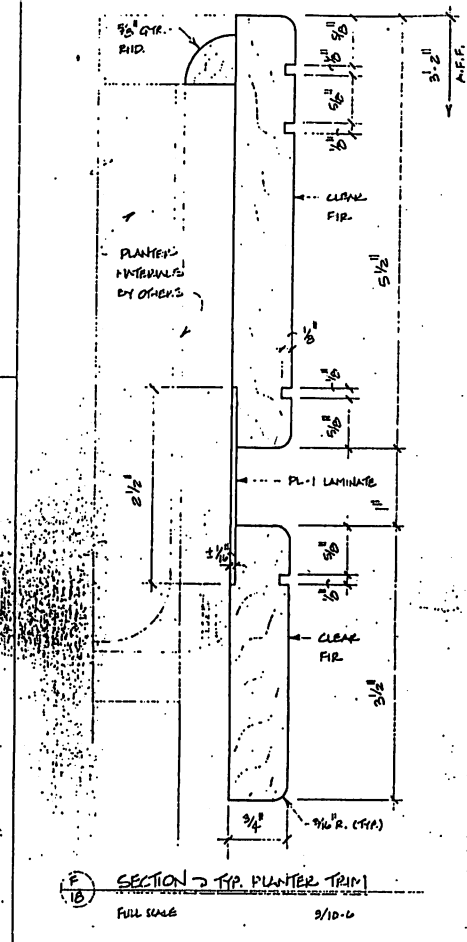
B SECTION OF TIP CASE  
FULL SCALE 6/10-6



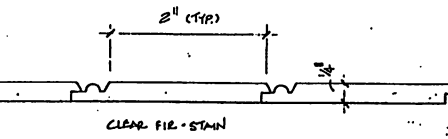
C SECTION OF CROWN MOLD  
FULL SCALE 8/10-6



D SECTION OF WAISLOT / TRIM  
FULL SCALE 8/10-6

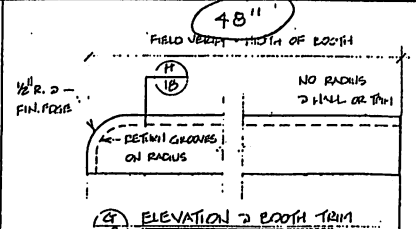


E SECTION OF TIP PLANTER TRIM  
FULL SCALE 9/10-6

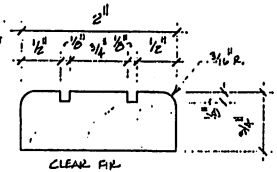


F SECTION OF WAISLOT PANELING  
FULL SCALE

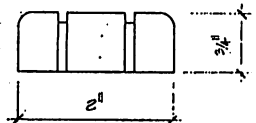
NOTE: GROOVES RUN VERTICAL  
ALL LOCATIONS



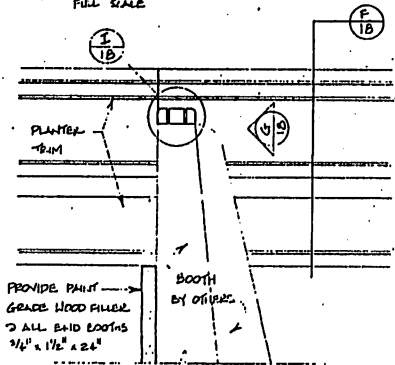
G ELEVATION OF BOOTH TRIM  
FULL SCALE



H SECTION OF BOOTH TRIM  
FULL SCALE 10/10-5

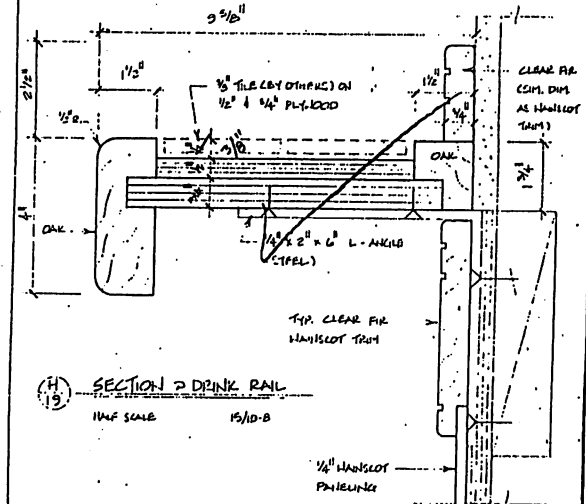
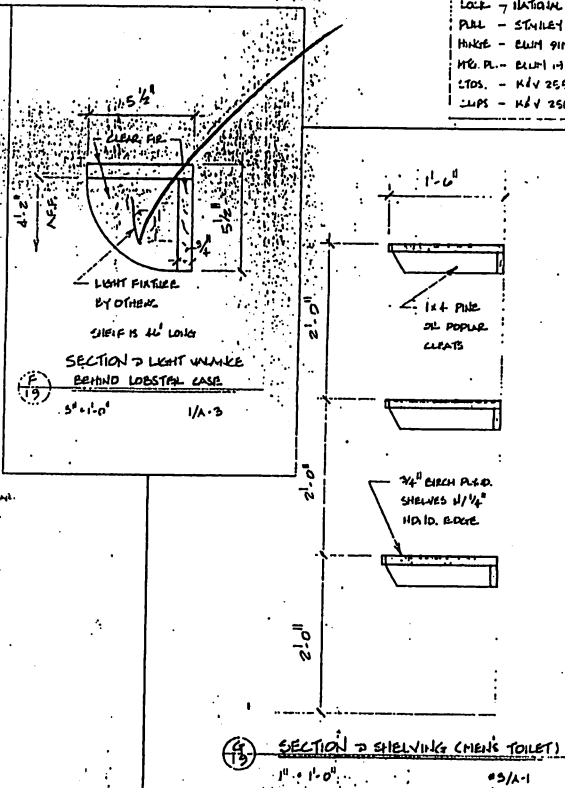
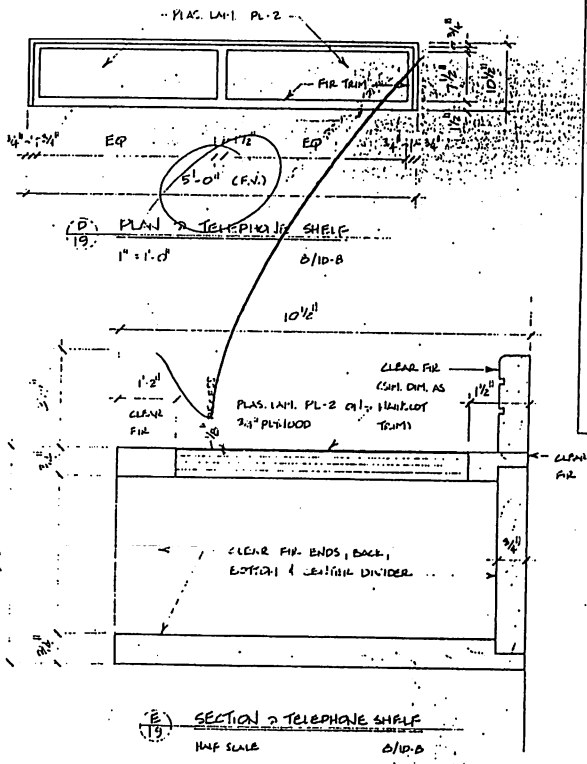
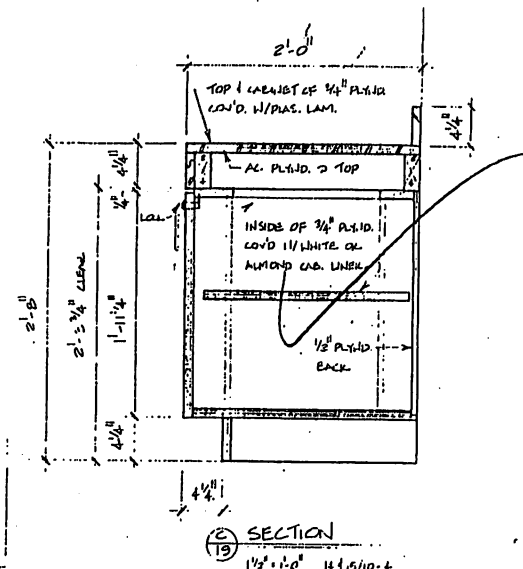
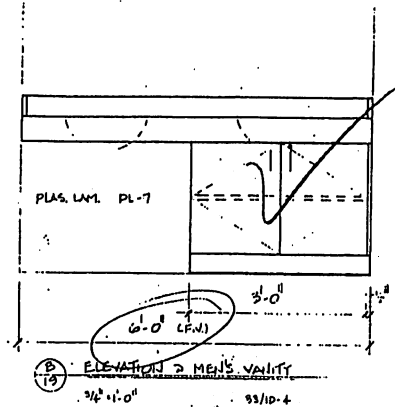
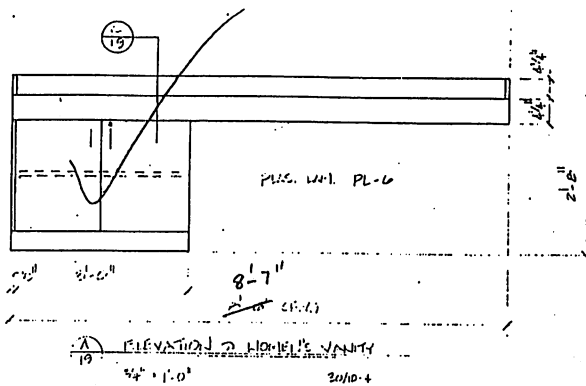


I FRONT ELEVATION OF BOOTH TRIM  
FULL SCALE

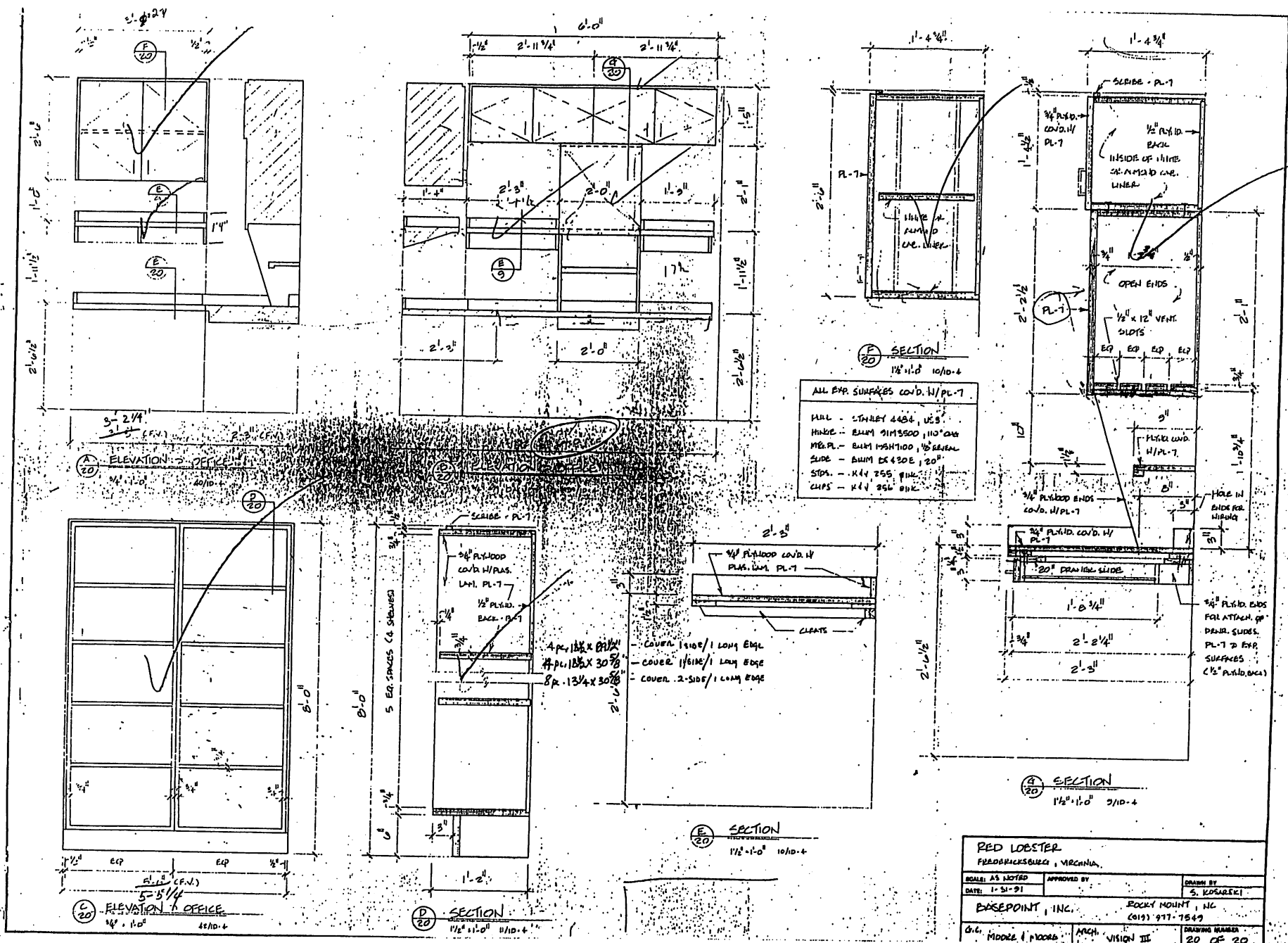


J PARTIAL ELEVATION OF END BOOTH  
1/10-5

RED LOBSTER FREDERICKSBURG, VIRGINIA	
SCALE: AS NOTED	APPROVED BY
DATE: 1-31-91	DATE: 1-31-91
BASEPOINT, INC.	ROCKY MOUNT, NC (919) 977-7543
DR. L. MAYER & MAYER ARCH. VIRGINIA	DR. L. MAYER & MAYER ARCH. VIRGINIA



RED LOBSTER FREDERICKSBURG, VIRGINIA		
SCALE AS NOTED	APPROVED BY	DRAWN BY
DATE: 1-31-91		S. KOSARSKI
BASEPOINT, INC.		PROJECT MOUNTAIN, NC
		C9191 977-7549
3-6 MOORE & MOORE	ARCHITECT	DRAWING NUMBER
VISION II		19 OF 20



ALL EXP. SURFACES COV'D. W/ PL-7

PL-7 - STAINLESS STEEL, 16 GA.  
 HINGE - BUSH 1/2" DIA. 110° ANG  
 MFG. PL. - BUSH 1/2" DIA. 110° ANG  
 SLIDE - BUSH 1/2" DIA. 110° ANG  
 STOPS - K&N 255 BUSH  
 CHIPS - K&N 256 BUSH

RED LOBSTER FREDERICKSBURG, VIRGINIA		
SCALE: AS NOTED	APPROVED BY	DRAWN BY
DATE: 1-31-91		S. KOSAREKI
BASEPOINT, INC.		ROCKY MOUNT, NC
		(919) 977-7549
DATE: MIDDLE 1 DOORS	ARCH: VISION III	DRAWING NUMBER
		20 OF 20