

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

THUNDERING HERD DEVELOPMENT,
L.L.C., a West Virginia Limited Liability
Company, and THD INVESTORS 7, L.L.C.,
a West Virginia Limited Liability Company,

Plaintiffs,

v.

Civil Action No. 03-C-0490
Honorable John L. Cummings

S & ME, INC., a Corporation, and
J. A. STREET & ASSOCIATES, INC., a
Corporation,

Defendants.

AMENDED COMPLAINT

The Complaint of Thundering Herd Development, L.L.C. (hereinafter "THD"),
and THD Investors 7, L.L.C. ("THD Investors 7"), against S&ME, Inc. (hereinafter
"S&ME"), and J. A. Street & Associates, Inc. ("J. A. Street"), alleges upon information
and belief as follows:

Parties

1. Plaintiff THD is a West Virginia limited liability company with operations
located within Cabell County, West Virginia. THD is the developer of a commercial
shopping development known as Merritt Creek Farm. Merritt Creek Farm is located in
Barboursville, Cabell County, West Virginia.

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ADELL CHAPLER
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EXHIBIT

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2. Plaintiff THD Investors 7 is a West Virginia limited liability company with property located within Cabell County, West Virginia. THD Investors 7 is the owner of a certain tract or parcel of land located within the Merritt Creek Farm development identified as Tract 7.

3. Upon information and belief, defendant S&ME is a North Carolina corporation authorized to do business within the State of West Virginia. The corporate offices of S&ME are located at 3109 Springforest Road, Raleigh, NC 27616.

4. Upon information and belief, defendant J. A. Street is a Tennessee corporation authorized to do business within the State of West Virginia. The corporate offices of J. A. Street are located at 245 Birch Street, Blountville, TN 37617.

Jurisdiction and Venue

5. This Court has jurisdiction over defendants S&ME and J. A. Street for the reason that said defendants do business within the state of West Virginia. Further, the transactions giving rise to this cause of action occurred within the State of West Virginia.

6. Venue is proper in this Court for the reason that the actions giving rise to this cause of action occurred within Cabell County, West Virginia.

Background Facts

7. Plaintiff THD is the developer of the Merritt Creek Farm commercial shopping development located in Barboursville, West Virginia. As part of the development, THD entered into an agreement with Target Corporation for the development of a site for a Target store to be located within the shopping center. Pursuant to its agreement with Target Corporation, THD was responsible for preparing a "pad" upon which the Target

store was to be constructed. Prior to the completion of the pad, THD was to convey this real estate and a defined area for parking to Target Corporation for further development.

8. In order to comply with its agreement with Target Corporation, THD was responsible for preparing the land in such a manner as to provide a stable base for the construction of the Target store. The obligation of THD included substantial site preparation work.

9. In addition to the Target store area of the development, the plans of THD further included that other land adjacent to the Target site was to be developed with commercial structures. In order to develop the adjacent land, THD had to conduct substantial additional site preparation operations to provide a sufficient base for construction.

10. On or about January 3, 2001, defendant S&ME submitted a proposal to THD for a geotechnical exploration of the Target site and the remainder of the planned Merritt Creek Farm site. Concerning the Target site and the remaining development site, S&ME proposed to conduct drilling and other operations in order to make recommendations that would specify the requirements to prepare the sites for construction of the Target store and the remaining structures on the commercial development.

11. A short time after the proposal was submitted, THD and S&ME entered into an agreement whereby S&ME would provide the services set forth in the proposal.

12. On or about January 17, 2001, S&ME submitted a report to THD setting forth its recommendations with respect to site preparation for both the Target store site and the remainder of the development. Among other things, the report of S&ME contained recommendations as to the construction of the slope on the rear of the Target store site as

well as fill composition and construction on the remainder of the site. Some recommendations and omissions of S&ME resulted in a substandard geotechnical report.

13. On or about June 5, 2001, THD entered into four written agreements with J. A. Street pursuant to which J. A. Street would serve as the general contractor on the Merritt Creek Farm site. Pursuant to the contracts, J. A. Street assumed the responsibility and obligation of preparing the site for construction in general, preparing the Target site for construction of the Target building, constructing various buildings and structures on the site, and performing such other work related to the Merritt Creek Farm project as set forth in the contract documents.

14. Pursuant to the written agreements, J. A. Street covenanted and warranted to THD that it would perform all of the work required under said agreements in a good and workmanlike manner, that it would provide competent supervision during all phases of the work, and that all work would be performed with a high degree of expertise and workmanship so as to provide THD with improvements constructed for the general and specific uses to which the improvements were to be put. Further, a right of indemnity for damages to third parties caused by J. A. Street is implied in the written agreement and inures to the benefit of THD.

15. Upon receipt of the S&ME report, THD, working through its general contractor, J. A. Street, prepared the Target site and the remainder of the development site in accordance with the recommendations for site preparation contained in the report from S&ME. In some instances, J. A. Street deviated from the recommendations set forth in the report.

16. Upon information and belief, J. A. Street, in discharging its obligations as general contractor under the written agreement with THD, failed to perform the work in a good and workmanlike manner, failed to provide competent supervision, and failed to perform the work with a high degree of expertise and workmanship, thereby breaching its agreement with THD.

17. THD, by and through J. A. Street, completed the Target store site during the early part of the month of September, 2001. On or about September 21, 2001, the slope at the rear of the Target store site failed, causing a landslide extending across the development's eastern property line.

18. As a result of the slope failure, THD was required to expend in excess of \$750,000 to repair the slope, reconstruct the Target store site to acceptable standards in accordance with the Target/THD agreement, and to compensate an adjacent property owner for damage to his property. As a result of the actions of S&ME and J. A. Street, THD was further required to compensate other third parties for damages to their property.

19. In addition to damages directly related to the slope failure at the Target site, plaintiffs have also incurred damages related to slides, sloughing and land movement at other locations in the development, including, but not limited to, the Shop "A" building and surrounding area, the Shop "C" building [A. C. Moore building] and surrounding area, the Office Depot building and surrounding area, and the storm drainage and sanitary sewer systems.

20. THD Investors 7 acquired Tract 7 of the subject Merritt Creek Farm Development from THD on or about December 16, 2003. To the extent it is applicable to

Tract 7, THD has assigned its rights under its contract with J. A. Street and Associates, Inc., dated June 5, 2001, for the general grading and site preparation work.

First Cause Of Action Against S&ME, Inc. - Negligence, Target Store Area

21. THD incorporates each and every allegation contained in Paragraphs 1 through 20 as if each had been set forth herein in its entirety.

22. In undertaking the performance of the work set forth in the proposal, S&ME owed THD a duty of due care in performing the geotechnical survey and in making its recommendations for site preparation to THD.

23. S&ME breached its duty of due care by negligently preparing its report and negligently making findings and recommendations that resulted in site preparation that led to the failure of the slope along the eastern property line of the development.

24. The negligence of S&ME included the following:

- a. S&ME failed to drill sufficient test borings, both in number and location, to adequately advise THD as to site preparation.
- b. S&ME failed to drill test borings in the location of the eastern slope of the property in order to formulate informed recommendations with respect to the construction of the slope.
- c. S&ME failed to conduct a detailed stability analysis of the proposed fill slope in order to adequately advise THD with respect to site preparation and slope construction.
- d. S&ME failed to adequately advise THD with respect to site preparation and slope construction by failing to make recommendations with respect to the preparation

of the fill embankment foundation; failing to make recommendations for sidehill fill; and failing to make recommendations for underdrains below the fill embankment.

- e. S&ME failed to account for local soil conditions by approving a slope of 1.75H:1V.
- f. S&ME failed to conduct a stability analysis and drill test borings in the area of the slope in order to determine whether a 1.75H:1V slope would be of sufficient stability.
- g. S&ME negligently approved a 1.75H:1V slope in an area where local conditions dictate that the slope have a minimum ratio of 2H:1V absent special construction techniques.
- h. S&ME negligently indicated in its report that the fill embankment design had an acceptable factor of safety when in actuality, the factor of safety was less than that which is acceptable for slopes where a structure is situated on top of the embankment and failure of the slope could cause significant economic loss.

25. The negligence of S&ME was the proximate cause of the slope failure and the resulting damages and liabilities incurred by THD.

26. THD is entitled to recover all damages directly and consequentially caused by the negligence of defendant S&ME in failing to make appropriate findings and recommendations related to the fill embankment.

Second Cause of Action Against S&ME, Inc. - Breach Of Contract, Target Store Area

27. THD incorporates each and every allegation contained in Paragraphs 1 through 26 as if each had been set forth herein in its entirety.

28. By an undated agreement executed on or about January 3, 2001, defendant S&ME was obligated to perform services for THD as set forth in a "Proposal For Geotechnical Exploration" dated January 3, 2001. The proposal provided that S&ME would issue a report that would provide detailed findings and requirements for site preparation for the Target Store area and the remainder of the Merritt Creek Farm development.

29. On or about January 17, 2001, S&ME issued a report to THD setting forth its recommendations for site preparation to meet the requirements of the Target Corporation and for site preparation to construct the remainder of the Merritt Creek Farm development.

30. THD and its contractors relied on the recommendations of S&ME to prepare the site of the Target store and the remainder of the development.

31. THD fulfilled all of its obligations with respect to the agreement and paid the fees charged by S&ME as set forth in the agreement.

32. Shortly after completion of the site preparation work for the Target store area and the remainder of the development, the slope on the eastern line of the development area failed, causing damage to the Target store site.

33. S&ME failed to make findings and recommendations that would instruct THD and its contractors as to the proper site preparations necessary to prepare the Target store area. The damages to the Target store area resulting from the slope failure were proximately caused by the failure of S&ME to fully comply with the terms of the

agreement relating to findings and recommendations for the site preparation of the Target store area.

34. S&ME breached its agreement with THD by failing to make appropriate findings and recommendations in its report for the preparation of the Target store area.

35. As a result of the breach of the agreement, THD has incurred damages and liabilities in excess of \$750,000.

36. S&ME is liable to THD for the damages incurred as a result of the breach of the agreement.

Third Cause Of Action Against S&ME, Inc. - Negligence, Remainder Of Development

37. THD incorporates each and every allegation contained in Paragraphs 1 through 36 as if each had been set forth herein in its entirety.

38. S&ME breached its duty of due care by negligently preparing its report and negligently making findings and recommendations for site preparation that resulted in the unanticipated settling of the fill material on certain portions of the development site.

39. As a result of the unanticipated settling of the fill material, buildings constructed on the development have sustained damage.

40. Upon information and belief, the fill area where the unanticipated settling occurred was constructed in accordance with the recommendations contained in the report that was negligently prepared by S&ME.

41. The negligence of S&ME was the proximate cause of the unanticipated settling and the resulting damages incurred by THD.

42. THD is entitled to recover all damages directly and consequentially caused by the negligence of defendant S&ME in failing to make appropriate findings and recommendations related to site preparation.

**Fourth Cause of Action Against S&ME, Inc. - Breach Of Contract,
Remainder Of Development**

43. THD incorporates each and every allegation contained in Paragraphs 1 through 42 as if each had been set forth herein in its entirety.

44. Pursuant to the agreement between S&ME and THD, S&ME had the obligation to make findings and recommendations in its report for the proper procedure for preparing the site of the development with fill material.

45. S&ME made recommendations to THD with respect to the placement of fill material and site preparation that did not appropriately anticipate settling of the fill material used in the site preparation.

46. As a result of the failure of S&ME to make appropriate recommendations concerning the placement of fill material and site preparation, areas of the development settled after the construction of buildings on the site. The buildings in the location of the unanticipated settling of the fill were damaged as a result of the settling.

47. S&ME breached its agreement with THD by failing to make appropriate findings and recommendations with respect to the amount of settlement that would occur on the site.

48. The damage to the buildings on the site from the unanticipated settling of the fill were a direct result of the breach of the agreement by S&ME with THD.

49. As a result of the breach of the agreement, THD has incurred expenses and damages from the diminution in value of the buildings, costs for repairs and loss of rents and leases.

50. S&ME is liable to THD for the damages incurred as a result of the breach of the agreement.

Fifth Cause Of Action Against S&ME, Inc. - Breach Of Warranty

51. THD incorporates each and every allegation contained in Paragraphs 1 through 50 as if each had been set forth herein in its entirety.

52. The agreement between S&ME and THD as set forth herein expressly provides that S&ME warrants its workmanship as to the services to be performed.

53. In performing the requirements of the agreement, S&ME breached its express warranty with respect to the findings and recommendations related to the fill embankment and the site preparation using fill material.

54. S&ME is liable to THD for all damages resulting from the breach of the express warranty set forth in the agreement.

55. As a result of the agreement between S&ME and THD, there existed an implied warranty on the part of S&ME that it would perform its obligations and issue its recommendations in a manner consistent with the level of skill reasonably required for the profession in which S&ME is engaged.

56. S&ME breached its implied warranty of workmanship by issuing findings and recommendations that resulted in damages to THD from the slope failure and the unanticipated settling of the fill material.

57. Any limitations set forth in the agreement with respect to warranties are void for the reason that they are unconscionable, contrary to public policy and because S&ME did not comply with its remedial obligations to refund the amount paid by THD under the agreement.

58. THD was damaged by the breach of the express and implied warranties by S&ME.

59. S&ME is liable to THD for all damages resulting from the breach of the express and implied warranties.

Sixth Cause Of Action Against S&ME, Inc. - Express Indemnity

60. THD incorporates each and every allegation contained in Paragraphs 1 through 59 as if each had been set forth herein in its entirety.

61. The agreement between S&ME and THD contains a provision pursuant to which S&ME shall indemnify THD for any losses or liabilities resulting from the negligence of S&ME.

62. As a result of the negligence of S&ME, THD incurred liability to a private property owner whose property was damaged by the slope failure. THD further incurred liability to Target Corporation pursuant to its agreement with that entity to provide a construction pad in compliance with Target Corporation's requirements. THD further incurred liability for repairs to leased premises to tenants of Merritt Creek Farm as a result of the unanticipated settling of the fill material. Also as a result of the negligence of S&ME, THD incurred its own damages.

63. Pursuant to the express indemnity provision of the agreement, S&ME must indemnify THD for its liabilities and damages.

Seventh Cause Of Action Against S&ME, Inc.- Declaratory Judgment

64. THD incorporates each and every allegation contained in Paragraphs 1 through 63 as if each had been set forth herein in its entirety.

65. This cause of action is brought pursuant to the Uniform Declaratory Judgment Act, W. Va. Code §55-13-1, whereby THD seeks a judicial determination that the "Limitation Of Liability" provisions of the agreement between S&ME and THD are void. THD contends that the provisions are unconscionable and contrary to established public policy.

66. The Limitation Of Liability provision of the agreement states as follows:

LIMITATION OF LIABILITY - Consultant and Client mutually agree that the services provided pursuant to this Agreement involve risks of liability which cannot be adequately compensated for by the payments client will make under this Agreement. Therefore, the total cumulative liability of Consultant, its agents, employees and subcontractors whether in contract, tort including negligence (whether sole or concurrent) and strict liability, or otherwise arising out of connected with or resulting from the services provided pursuant to this Agreement shall not exceed the total fee paid by Client or fifty thousand dollars, whichever is greater. At an additional cost, Client may obtain a higher limit of liability prior to commencement of services. The additional cost is compensation to Consultant for increasing the Consultant's limit of liability. The additional cost is not an insurance cost. Consultant's consideration to Client for the limit of liability is specifically reflected in Consultant's fees for services under this Agreement as such fees are less than consultant would be paid for services under an Agreement without a limitation of liability. Client is cautioned that this is a limited liability Agreement limiting the liability of Consultant; therefore, Client is advised to carefully review client's risks of liability related to this contract and address such risks through Client's insurance or other means.

67. The agreement was prepared and provided by S&ME as a form contract. Under applicable West Virginia law, the contract would be considered a contract of adhesion.

68. The limitation of liability provision of the agreement is exculpatory in nature and would deprive THD and others of rights otherwise protected by public policy.

69. Because the agreement is a contract of adhesion and it would limit the rights of THD and others to recover damages due to the negligence or breach of contract of S&ME, rights generally protected by the public policy of this state, the portion of the agreement limiting S&ME's liability is unconscionable.

70. Plaintiff THD seeks a declaration of the Court that the limitation of liability provision of the agreement is void.

**First Cause Of Action Against J. A. Street & Associates, Inc. - Breach Of Contract,
Target Store Area**

71. THD incorporates each and every allegation contained in Paragraphs 1 through 70 as if each had been set forth herein in its entirety.

72. Pursuant to the written agreement between THD and J. A. Street applicable to the Target store site, J. A. Street had the obligation to discharge its responsibilities under the agreement in a competent manner as set forth herein.

73. Acting individually and by and through its subcontractors, J. A. Street failed to comply with the requirements of the written agreement, thereby resulting in a breach of the terms of said agreement.

74. THD complied with all requirements placed upon it by the agreements, and it paid all amounts due under the agreement.

75. As a direct and proximate result of the breach of the agreement, THD has suffered damages from the land movement and slide that occurred on the Target store site on or about September 21, 2001, in an amount in excess of \$750,000.00.

76. J. A. Street is liable to THD for the damages incurred as a result of the breach of the agreement.

Second Cause Of Action Against J. A. Street & Associates, Inc. - Breach Of Contract, Remainder Of Development

77. THD and THD Investors 7 incorporate each and every allegation contained in Paragraphs 1 through 76 as if each had been set forth herein in its entirety.

78. Pursuant to the written agreements between THD and J. A. Street applicable to the remainder of the Merritt Creek Farm site, and to the extent that a certain said agreement has been assigned to THD Investors 7, J. A. Street had the obligation to discharge its responsibilities under the agreements in a competent manner as set forth herein.

79. Subsequent to completion of the project by J. A. Street, numerous areas within the Merritt Creek Farm site have experienced unanticipated land movement and settlement, sloughing and slides.

80. Acting individually and by and through its subcontractors, J. A. Street failed to comply with the requirements of the written agreements, thereby resulting in a breach of the terms of said agreements.

81. As a direct and proximate result of the breach of the agreements, THD and THD Investors 7 have suffered substantial damages to various areas of the site, including, but not limited to, the Shop "A" building and surrounding area, the Shop "C" buildings

[A. C. Moore building] and surrounding area, and the Office Depot building and surrounding area.

82. J. A. Street is liable to THD and THD Investors 7 for the damages incurred as a result of the breach of the agreement.

Third Cause Of Action Against J. A. Street & Associates, Inc. - Breach of Warranty

83. THD and THD Investors 7 incorporate each and every allegation contained in Paragraphs 1 through 82 as if each had been set forth herein in its entirety.

84. The agreements between THD and J. A. Street, and to the extent that certain agreement has been assigned to THD Investors 7, as set forth herein expressly provide that JAS warrants its workmanship as to the services to be performed.

85. In performing the requirements of the agreements, J. A. Street breached its express warranty with respect to the work performed on both the Target store site and the remainder of the Merritt Creek Farm site, which resulted in the damages alleged herein.

86. J. A. Street is liable to THD and THD Investors 7 for all damages resulting from the breach of the express warranty set forth in the agreement.

87. As a result of the agreements between J. A. Street and THD, and to the extent that certain agreement was assigned to THD Investors 7, there existed an implied warranty on the part of J. A. Street that it would perform its obligations in a manner consistent with the level of skill reasonably required for the business in which J. A. Street is engaged.

88. J. A. Street breached its implied warranty of workmanship by performing work under the contracts that resulted in the damages to THD and THD Investors 7 described herein.

89. THD was damaged by the breach of the implied warranties provided by J. A. Street.

90. J. A. Street is liable to THD and THD Investors 7 for all damages resulting from the breach of the implied warranties arising under the written contract.

Fourth Cause Of Action Against J. A. Street & Associates, Inc. - Indemnify

91. THD and incorporates each and every allegation contained in Paragraphs 1 through 90 as if each had been set forth herein in its entirety.

92. Pursuant to the written agreement between THD and J. A. Street, J. A. Street has agreed both expressly and by implication, that it will indemnify THD for any losses or damages payable by THD that result from the negligence or wrongful acts of J. A. Street and/or its subcontractors.

93. As a result of the slope failure on the Target store site occurring on or about September 21, 2001, THD was required to repair the damages to the slope and other Target property resulting from said failure.

94. As a result of the slope failure on the Target store site occurring on or about September 21, 2001, THD was required to compensate a third-party property owner for damages to his property.

95. The damages or payments made by THD to or on behalf of Target Corporation and to a third party were the direct and proximate result of the negligence or other wrongful acts of J. A. Street and/or its subcontractors.

96. Pursuant to the covenants of express and implied indemnity arising out of the written agreement between THD and J. A. Street, J. A. Street is liable to THD for the amounts paid as set forth herein.

WHEREFORE, plaintiffs Thundering Herd Development, L.L.C., and THD Investors 7, L.L.C., do hereby demand judgment against defendants S&ME, Inc., and J.

A. Street & Associates, Inc., as to all Counts, and further demand the following relief:

- a. As to Counts 1 through 6 against S&ME, Inc., damages in an amount that will reasonably compensate THD for its losses, all in excess of the jurisdictional minimum;
- b. As to Count 6 against S&ME, Inc., damages in an amount that will indemnify THD for all liability that it has incurred as a result of the negligence of said defendant, an amount that is excess of the jurisdictional minimum;
- c. As to Count 7, a judicial declaration that the limitation of liability provisions of the agreement are void;
- d. As to Counts 1 through 4 against J. A. Street & Associates, Inc., damages in an amount that will reasonably compensate the plaintiffs for their losses, all in excess of the jurisdictional minimum;
- e. As to Count 4 against J. A. Street & Associates, Inc., damages in an amount that will indemnify THD for all liabilities that it has incurred as a result of the negligence of said defendant, an amount that is excess of the jurisdictional minimum;
- f. Liability is joint and several where applicable;
- g. As to all counts, costs, including reasonable attorney fees; and
- h. Such other and further relief as this Court might deem proper.


A JURY TRIAL IS DEMANDED ON ALL ISSUES.

THUNDERING HERD DEVELOPMENT, L.L.C.

By Counsel

THD INVESTORS 7, L.L.C.

By Counsel



Scott A. Damron (S.B. No. 935)
DAMRON LAW OFFICE PLLC
P.O. Box 1822
Huntington, WV 25719
Ph. (304)522-7110

John H. Mahaney II (S.B. No. 6993)
HUDDLESTON BOLEN, PLLC
P.O. Box 2185
Huntington, WV 25722-2185
Ph. (304)691-8320

OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

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Betty Ireland
Secretary of State

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, West Virginia 25305
Telephone: 304-558-6000
Toll Free: 866-SOS-VOTE
www.wvsos.com

LEGAL NOTICE

****COPY****

J. A. Street & Associates, Inc.
245 Birch Street
Bountville, TN 37617

December 13, 2007

Civil Action: 03-C-0490

I am enclosing:

- | | |
|---|---|
| <input type="checkbox"/> summons | <input type="checkbox"/> original |
| <input type="checkbox"/> notice | <input type="checkbox"/> affidavit |
| <input type="checkbox"/> order | <input type="checkbox"/> answer |
| <input type="checkbox"/> petition | <input type="checkbox"/> cross-claim |
| <input type="checkbox"/> motion | <input type="checkbox"/> counterclaim |
| <input type="checkbox"/> interrogatories | <input type="checkbox"/> request |
| <input type="checkbox"/> suggestions | <input type="checkbox"/> certified return receipt |
| <input type="checkbox"/> subpoena duces tecum | <input type="checkbox"/> request for production |
| <input type="checkbox"/> summons and complaint | <input type="checkbox"/> request for admissions |
| <input type="checkbox"/> summons returned from post office | <input type="checkbox"/> no return from post office |
| <input checked="" type="checkbox"/> summons and amended complaint | <input type="checkbox"/> notice of mechanic's lien |
| <input type="checkbox"/> 3rd party summons and complaint | <input type="checkbox"/> suggestee execution |

which was served on the Secretary at the State Capitol in her capacity as your statutory attorney-in-fact. According to law, I have accepted service of process in the name and on behalf of your corporation.

Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in your name and on your behalf as your attorney-in-fact. Please address any questions about these documents directly to the court or to the plaintiff's attorney, shown in the enclosed paper. Please do not call the Secretary of State's office.

Sincerely,

Penney Barker

Penney Barker, Manager
Business & Licensing Division

SUMMONS

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

**THUNDERING HERD DEVELOPMENT,
L.L.C., a West Virginia Limited Liability
Company, and THD INVESTORS 7, L.L.C.,
a West Virginia Limited Liability Company,**

Plaintiffs,

v.

Civil Action No. 03-C-0490

**S&ME, INC., a Corporation, and
J. A. STREET & ASSOCIATES,
INC., a Corporation,**

Defendants.

To the above-named Defendants:

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby Summoned and required to serve upon Scott A. Damron, plaintiffs' attorney, whose address is Damron Law Offices, PLLC, P.O. Box 1822, Huntington, WV 25719, and John H. Mahaney, plaintiff's attorney, whose address is Huddleston Bolen, PLLC, P.O. Box 2185, Huntington, WV 25722-2185 an answer including any related counterclaim you may have to the amended complaint, Interrogatories and Request for Documents, filed against you in the above styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within thirty (30) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above styled civil action.

DEC 11 2007

Dated: _____

