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6 Attorneys for Defendants
MJB/BIXBY CONSTRUCTION, INC.;
7 DPA Associates, LP; and Honeywell International, Inc.

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LEGAL PROCESS #3 mi

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SACRAMENTO

10 Limited Civil Case

11 CAPITAL COMMERCIAL FLOORING,)
12 INC., a California Corporation.)

CASE NO.: 05AM00618

13 Plaintiff,)

ANSWER TO COMPLAINT TO FORECLOSE
MECHANIC'S LIEN; FOR BREACH OF
CONTRACT; AND COMMON COUNTS

14 vs.)

15 MJB/BIXBY CONSTRUCTION, INC.,)
a California corporation; DPA Associates, a)
16 California Limited Partnership; Honeywell)
International, Inc. a Delaware Corporation.;)
17 and DOES 1 through 50, inclusive)

18 Defendants.)

19
20 Defendants MJB/BIXBY CONSTRUCTION, INC., a California Corporation; DPA Associates,
21 a California Limited Partnership, and Honeywell International, Inc., a Delaware Corporation, answer the
22 unverified Complaint of CAPITAL COMMERCIAL FLOORING, INC. as follows:

23 **GENERAL DENIAL**

24 Pursuant to Section 431.30(d) of the California Code of Civil Procedure, Defendants
25 MJB/BIXBY CONSTRUCTION, INC., a California Corporation, DPA Associates, a California Limited
26 Partnership, and Honeywell International, Inc., a Delaware Corporation, specifically and generally deny
27 each and every allegation contained in the unverified Complaint of Capital Commercial Flooring, Inc.,
28 a California Corporation and further deny that any damages have been sustained by Plaintiff.

946.50-(3)

1 Further answering the Complaint of Plaintiff, Defendants affirmatively allege as follows:

2 **FIRST AFFIRMATIVE DEFENSE**
3 (Failure to Allege Facts)

4 1. As a first, separate, distinct and affirmative defense, Defendants allege that said Complaint fails
5 to allege facts sufficient to constitute a cause of action against these answering Defendants.

6 **SECOND AFFIRMATIVE DEFENSE**
7 (Unclean Hands)

8 2. As a second, separate, distinct and affirmative defense, Defendants allege that Plaintiff is
9 barred by the doctrine of unclean hands from seeking recovery from these Defendants.

10 **THIRD AFFIRMATIVE DEFENSE**
11 (Comparative Fault)

12
13 3. As a third, separate, distinct and affirmative defense, Defendants allege that at the time and
14 place of the events described in Plaintiff's Complaint, persons and entities as yet unknown to Defendants
15 were careless, negligent, in breach of contract, in breach of fiduciary duty, in breach of warranty, express
16 or implied, strictly liable and/or otherwise legally at fault in and about the matters and things alleged in
17 Plaintiff's Complaint which comparative negligence, breach of contract, breach of fiduciary duty, breach
18 of warranty, strict liability and/or other legal fault proximately caused or contributed to the injuries and
19 damages complained of, if any there were or are, and that liability should be apportioned among
20 Defendants and said persons and entities based upon their respective percentages of comparative fault.

21
22 **FOURTH AFFIRMATIVE DEFENSE**
23 (Plaintiff's Negligence & Intentional Misconduct)

24 4. As a fourth, separate, distinct and affirmative defense, Defendants allege that the damages, if
25 any, suffered by Plaintiff were as a proximate result of Plaintiff's negligence and intentional misconduct
26 and by said conduct and failure Plaintiff's damages, if any, are barred.

27 ///

28 ///

1 **FIFTH AFFIRMATIVE DEFENSE**

2 (Waiver)

3 5. As for a fifth, separate, distinct and affirmative defense, Defendants allege that Defendants at
4 no time breached any contract with Plaintiff, but that if such a breach did occur, Plaintiff, by its own
5 conduct, waived any such breach and waived any alleged damages resulting from such breach.

6 **SIXTH AFFIRMATIVE DEFENSE**

7 (Set Off)

8 6. As a sixth, separate, distinct and affirmative defense, Defendants allege that Plaintiff failed
9 to perform the work required by the contract in a timely and workmanlike manner thereby damaging
10 Defendant MJB/Bixby Construction, Inc., and DPA Associates, for which Defendants MJB/Bixby
11 Construction, Inc., and DPA Associates, are entitled to a set off against the amount due, if any.

12 WHEREFORE, Defendants pray for judgment as follows:

- 13 1. That Plaintiff takes nothing by way of its Complaint; and,
14 2. For such other and further relief as the court may deem just and proper.

15 DATED: March 10, 2005

16 **MOYER, PARSHALL & TWEEDY, LLP**

17
18 By: _____

19 **CHARLES A. TWEEDY**
20 **Attorneys for Defendants**
MJB/BIXBY CONSTRUCTION, INC.,
DPA ASSOCIATES, and
Honeywell International, Inc.,

1 CASE NAME: Capital Commercial Flooring, Inc. vs. MJB/Bixby Construction, Inc.
2 Sacramento Superior Court Case No.: 05AM00618 - (Limited Civil- Claim for \$11,000.00)

3 **PROOF OF SERVICE**

4 I, BETSY TAYLOR, declare that:

5 1. I am a citizen of the United States and am employed in Sacramento County, California; I am
6 over the age of eighteen (18) years and not a party to the within action; my business address is 11341
7 Gold Express Drive, Suite 110, Gold River, CA 95670.

8 2. I am familiar with this Company's practice whereby the mail, after being placed in a
9 designated area, is given the appropriate postage and deposited in a U.S. mail box in the City of
10 Sacramento, California, after the close of the day's business. I served the following:

11 **REQUEST FOR PRODUCTION OF DOCUMENTS**

12 XX on all parties in the action by placing a true copy thereof enclosed in a sealed envelope
13 in the designated area for U.S. mail addressed as set forth below.

14 _____ by personally delivering a true copy thereof to the person and at the address set forth
15 below.

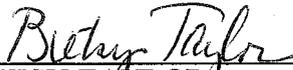
16 _____ by Federal Express Overnight on all parties as indicated below.

17 _____ on all parties in the action by telefaxing the above listed document(s) as follows:

18 William Baker, Esq.
19 GREVE, CLIFFORD, WENGEL & PARAS, LLP
20 2870 Gateway Oaks Drive, Suite 210
21 Sacramento, CA 95833-4324

22 Fax: (916) 441-7457

23 I declare under penalty of perjury under the laws of the State of California that the foregoing
24 is true and correct. Executed on March 10, 2005, at Gold River, California.

25 
26 _____
27 BETSY TAYLOR
28