

IN THE CIRCUIT COURT OF _____ COUNTY, _____
FOR THE _____ DISTRICT OF _____
_____ DIVISION

NAME OF PLAINTIFF)	
)	
V.)	
)	NO. _____
)	
NAME OF DEFENDANTS)	
)	

COMPLAINT

Plaintiffs, _____ and _____, _____ corporations with their principal places of business in _____, _____ County, _____, file this their suit against Defendants, _____ and _____ .

Parties and Venue

1. Plaintiffs are _____ corporations with their principal offices in _____, _____ County, _____.
2. _____ is a _____ corporation having its principal place of business in _____, _____ and may be served with process by serving its agent for process, _____, _____, _____. _____ and _____ are adult resident citizens of _____, _____, who may be served with process at _____.
3. This cause of action arises out of a contract to be performed in _____ County, _____, and a tort which occurred in said county.
4. In _____, _____ was the general contractor for the construction of Interstate _____ between _____ Drive and _____ Drive in _____, _____. _____, a real estate developer, owned 11 1/2 acres located on _____ Drive in _____ County, _____, which required filling to a certain elevation to be commercially developed. _____ contacted _____ and requested that _____ allow it to use the property to dump construction debris, but _____ declined, stating that the property was to be developed as a retail center, which would preclude the use of such fill materials as construction debris.
5. _____ and _____ executed a Letter Agreement under date of _____, _____, Exhibit A attached, which provided that _____, in consideration of an ownership interest, would fill the property to the agreed elevation by _____, _____ with soil materials which would "contain no construction debris or refuse." Subsequently, the

parties entered into a Limited Partnership Agreement dated _____, _____, a copy of which is attached as Exhibit B.

6. Said Limited Partnership Agreement specified that the Partnership was organized to "own, improve, and hold for investment or development certain real property to be contributed to the partnership by the General Partner" (_____) and that the fill material would "consist solely of native soil materials and not include any type of construction debris or refuse."

7. Shortly after the execution of said letter, _____ commenced filling the property, but, unknown to _____, _____, _____, and _____ caused _____'s land to be filled with construction debris, broken concrete pavement, broken asphalt pavement, steel reinforcing bars, bridge members, timbers, bricks, tree stumps, and other unsuitable material, which made the land completely unfit for economical commercial development of any kind. Said Defendants fraudulently caused said improper construction debris to be covered with soil material, thus concealing said gross, wanton, and intentional breach of contract in order fraudulently to induce _____ to accept said performance.

8. _____ deliberately used _____'s land as a dump for the tons of construction debris generated as a result of _____ performance of its contract for the construction of the new I-____ Highway Project from _____ Drive to _____ Drive. Said illegal, unauthorized and fraudulent misuse of _____'s property not only destroyed the ability of _____ to develop the property in an economically feasible manner, but also resulted in huge savings for _____ in its cost of completing said highway construction project by eliminating the need to purchase dumping privileges for unwanted construction debris and avoiding potentially expensive longer hauls to sites where the debris from said construction project could be legally dumped.

9. _____ and _____ falsely represented to _____ that _____ had properly completed its duties under the Limited Partnership Agreement; and, relying on said representation, _____ paid \$00.00 to _____ in consideration of _____ release of its rights in the Partnership property.

10. Further relying on _____' assurances of performance, and believing that _____ had completed the performance, _____ purchased 3 1/2 acres on the northwest corner of said property from _____ and entered a lease with _____ requiring _____ to build a building and parking lot to the specifications of said tenant on said 3 1/2 acre tract.

11. As a result of tests conducted by soil engineers employed by said tenant, _____ and _____ first became aware of the concealed construction debris buried on the site and, accordingly, were required to completely excavate the building site at its own expense and, to date, has expended approximately \$00.00 to do so. Additionally, said tenant has made demand on _____ for substantial unspecified expenses incurred by said tenant rectifying the problems in the fill caused by the construction debris in the tenant's parking lot area. Also, as a direct and proximate result of the actions of Defendants, the value of _____'s remaining property has been reduced by at least _____ Dollars (\$00.00). The curative work required to be done resulted in a delay of five months in opening the store which resulted in a loss of approximately \$00.00 rent to date. Said fill condition also caused

substantial questions to be raised as to the suitability of the remaining site for development, thus resulting in further damages to _____. Negotiations with other prospective tenants have been terminated or suspended due to uncertainty as to the condition of the site and the cost of curative action necessary to render said site suitable for commercial development. The resultant inability of _____ and _____ to pursue further development caused additional damages.

12. _____, and _____ personally, fraudulently and, with intent to deceive _____, deliberately placed, or caused to be placed, the organic material, rubble, broken concrete pavement, broken asphalt pavement, steel reinforcing bars, bridge members, timbers, bricks and other unacceptable materials on _____'s property and concealed their actions from _____. Said fraudulent concealment was done with the intent to defraud _____ into believing that _____ was properly performing its duties under the Letter Agreement and the Limited Partnership Agreement, so that _____ would not require Defendants to cease said flagrant destruction of _____ property values, and to believe that it had completed its contract with _____ and thus to obtain the compensation it claimed was due under its agreement with _____. _____, acting in reliance on said fraudulent concealment, failed to stop Defendants from the continued dumping on its land and also executed a release under the terms of which _____ paid _____ \$00.00 in exchange for its interest in the land. If _____ had been aware of the condition of said soil, it would not have executed said release and paid said \$00.00.

13. Defendants knew full well that their actions in using _____'s valuable commercial property on _____ Drive as a dumpsite for their construction debris would substantially destroy the commercial value of said property. Not only is the soil rendered too unstable for construction, but the presence of tons of chunks of concrete and other debris prevent the economical construction of foundations, utility lines, streets, parking areas and other excavation required by a commercial development. Said wanton and deliberate destruction of the value of _____'s property, along with the intentional and fraudulent concealment thereof, constitutes a separate tort for which Defendants are liable in actual and punitive damages.

COUNT I

Breach of Contract

14. _____, under the Letter Agreement attached as Exhibit A and the Limited Partnership Agreement attached as Exhibit B, had a duty to fill _____'s land with native soil materials only and not with construction debris or refuse. _____ deliberately and intentionally breached its agreement and did, in fact, place tons of construction debris on the said land. As a direct and proximate result of said breach of contract, _____ has been damaged in the amount of not less than \$00.00.

Wherefore, _____ demands judgment against _____ for all damages suffered as a result of said breach of contract in the sum of at least \$00.00, plus prejudgment interest and costs.

COUNT II

Intentional Tort

15. _____, _____ and _____ fraudulently, deliberately, intentionally, and with actual malice destroyed the value of _____'s land by burying and concealing large amounts of construction debris and refuse on said land which rendered it unsuitable for commercial development without the expenditure of large sums of money for rectification. Said _____, _____ and _____ fraudulently and with the intent to deceive Plaintiffs, then caused said construction debris to be concealed from _____ and its agents. Said unauthorized and concealed placing of construction debris on said property without their consent constitutes a trespass and was accompanied by such flagrant, malicious and outrageous conduct as to constitute a separate and independent tort for which said Defendants are liable for actual damages in the amount of _____ and No/100 Dollars (\$00.00) and punitive damages in the same amount, _____ and No/100 Dollars (\$00.00).

COUNT III

Breach of Fiduciary Duty

16. As a result of the execution of Exhibits A and B, and the trust and confidence _____ placed in _____ in the joint development of the property as partners, _____ owed a fiduciary duty to _____ in this matter. _____ concealed, deliberate, and malicious destruction of the value of _____'s property for its own gain constitutes a breach of said fiduciary duty, for which _____ is liable for actual and punitive damages.

COUNT IV

Damages and Indemnity for Curative Work

17. As a direct and proximate result of their wrongful actions herein, Defendants jointly and severally are liable to indemnify _____ for its expenses to date for the curative work on said 3 1/2 acre tract in the amount of _____ Dollars (\$00.00) and for any further payments it may be required to make to _____ for curative work on said soil, which is estimated to be _____ Dollars (\$00.00). In the alternative, Defendants are liable to _____ for indemnity to _____ for all expenses which _____ incurred in said curative work.