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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

2021-001050

The Retreat at Charleston National Country Club Home Owners Association, Inc.,
and The Retreat at Charleston National Country Club Horizontal Property
Regime..... Plaintiffs,

v.

Winston Carlyle Charleston National, LLC; Colin R. Campbell Construction, Inc.;
Colin Campbell, individually; Builders FirstSource-Southeast Group, LLC; Builders
FirstSource, Inc.; Americo Roofing Concepts, Inc.; DVS, Inc.; Advanced Building
Connection, LLC; Guy C. Lee Building Materials, LLC; WS Contractors, LLC; Dino
Schwartz, Individually; Charleston Exteriors, LLC; ECC Contracting, LLC; Hurley
Services, LLC; McDaniel Construction Co., LLC; AC Construction Corp.; AC
Construction, Inc.; L&G Construction Group, LLC; Liollo Architecture; JC
Contractors, LLC; Soto & Vasquez Construction, LLC; Costa De Oliveira
Construction, LLC; Solesmar Jesus De Oliveria; Wilson Lucas Sales d/b/a Miracle
Siding; Miracle Siding, LLC; Royal Homes of SC, Inc.; Collen Batissa; Christopher
Batissa; Norma Ferreira Bruno; Mendez Construction, LLC; Juan Garza Ramos,
individually; Juan Garza Ramos d/b/a Juan Constructors; Jessica Marroquin,
individually; Jessica Marroquin d/b/a Marroquin Construction; Carlos Marroquin,
individually; Carlos Marroquin Construction; Carlos and Jessica Marroquin d/b/a
Marroquin Construction; Feliciano Cruz Silva; Garcia Roofing, LLC; Givair De
Caris; and Mario Salgado..... Defendants,

Builders FirstSource-Southeast Group, LLC.....Third-Party Plaintiff, Appellant,

v.

Pohlman Quality Contractors; Pohlman Quality Exteriors; Palmetto Trim and
Renovation; Edward Bruce Witham; and East Coast
Carpentry.....Third-Party Defendants,

Of which Palmetto Trim and Renovation; Hurley Services, LLC; ECC Contracting,
LLC; East Coast Carpentry; AC Construction, Inc.; WS Contractors, LLC; Pohlman

Quality Exteriors, Inc.; and L&G Construction Group, LLC are the Respondents.

RECORD ON APPEAL
VOLUME II

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

The Retreat at Charleston National Country
Club Home Owners Association, Inc. and
The Retreat at Charleston National Country
Club Horizontal Property Regime,

Plaintiffs,

vs.

Winston Carlyle Charleston National, LLC;
Colin R. Campbell Construction, Inc.; Colin
Campbell, individually; Builders FirstSource-
Southeast Group, LLC; Americo Roofing
Concepts, Inc.; DVS, Inc.; Advanced
Building Connection, LLC; Guy C., Lee
Building Materials, LLC; WS Contractors,
LLC; Dino Schwartz, Individually,
Charleston Exteriors, LLC; ECC Contracting,
LLC; Hurley Services, LLC; McDaniel
Construction Co., LLC; AC Construction
Corp.; AC Construction, Inc.; L&G
Construction Group, LLC; Pohlman Quality
Contractors; Pohlman Quality Exteriors, Inc.,
and Liollo Architecture,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-10-03783

**ECC CONTRACTING, LLC'S ANSWER TO
SECOND AMENDED COMPLAINT**

FILED
2018 JUL -6 PM 12:20
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Defendant ECC Contracting, LLC ("ECC Contracting"), by and through its undersigned attorneys, hereby answering the Plaintiffs' Second Amended Complaint, states and alleges as follows:

AS TO PARTIES AND JURISDICTION

1. ECC Contracting is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14, and, therefore, denies the same and demands strict proof thereof.

2. Answering the allegations of Paragraph 15, ECC Contracting admits it is a Limited Liability Company engaged in business in the state of South Carolina and craves reference to the relevant written contracts. ECC Contracting denies the remaining allegations of said Paragraph and demands strict proof thereof.

3. ECC Contracting is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25, and, therefore, denies the same and demands strict proof thereof.

4. The allegations of Paragraphs 26 and 27 set forth conclusions of law which require no response from ECC Contracting. To the extent any response is required, ECC Contracting denies the same and demands strict proof thereof.

5. ECC Contracting denies the allegations of Paragraphs 28, 29, 30, 31, (and all its subparts), 32 (and all its subparts), 33 and 34, and demands strict proof thereof.

**AS TO THE FIRST CAUSE OF ACTION
(Negligence and Gross Negligence as to Defendant Developer(s) -
Winston Carlyle Charleston National, LLC)**

6. Answering the allegations of Paragraph 35, ECC Contracting incorporates by reference its previous responses as if repeated herein verbatim.

7. The allegations of Paragraphs 36, 37, (and all of its subparts), and 38, set forth an action against a party other than ECC Contracting and, therefore, require no response from ECC Contracting. To the extent any response is required, ECC Contracting denies the same and demands strict proof thereof.

**AS TO THE SECOND CAUSE OF ACTION
(Breach of Express Warranties as to Defendant Developer(s) -
Winston Carlyle Charleston National, LLC)**

8. Answering the allegations of Paragraph 39, ECC Contracting incorporates by

reference its previous responses as if repeated herein verbatim.

9. The allegations of Paragraphs 40, 41, and 42, set forth an action against a party other than ECC Contracting and, therefore, require no response from ECC Contracting. To the extent any response is required, ECC Contracting denies the same and demands strict proof thereof.

**AS TO THE THIRD CAUSE OF ACTION
(Breach of Implied Warranty as to Defendant Developer(s) -
Winston Carlyle Charleston National, LLC)**

10. Answering the allegations of Paragraph 43, ECC Contracting incorporates by reference its previous responses as if repeated herein verbatim.

11. The allegations of Paragraphs 44, 45, and 46, set forth an action against a party other than ECC Contracting and, therefore, require no response from ECC Contracting. To the extent any response is required, ECC Contracting denies the same and demands strict proof thereof.

**AS TO THE FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty as to Defendant Developer(s) -
Winston Carlyle Charleston National, LLC)**

12. Answering the allegations of Paragraph 47, ECC Contracting incorporates by reference its previous responses as if repeated herein verbatim.

13. The allegations of Paragraphs 48, 49, 50, 51, 52, 53, 54, 55, and 56, set forth an action against a party other than ECC Contracting and, therefore, require no response from ECC Contracting. To the extent any response is required, ECC Contracting denies the same and demands strict proof thereof.

AS TO THE FIFTH CAUSE OF ACTION
(Negligence/Gross Negligence as the General Contractor -
Winston Carlyle Defendants; Defendant Colin R. Campbell Construction, Inc. and
Defendant Colin Campbell, Individually/Campbell Defendants)

14. Answering the allegations of Paragraph 57, ECC Contracting incorporates by reference its previous responses as if repeated herein verbatim.

15. The allegations of Paragraphs 58, 59 (and all its subparts), 60, and 61, set forth an action against parties other than ECC Contracting and, therefore, require no response from ECC Contracting. To the extent any response is required, ECC Contracting denies the same and demands strict proof thereof.

AS TO THE SIXTH CAUSE OF ACTION
(Breach of Warranties as the General Contractor -
Winston Carlyle Defendants and Campbell Defendants)

16. Answering the allegations of Paragraph 62, ECC Contracting incorporates by reference its previous responses as if repeated herein verbatim.

17. The allegations of Paragraphs 63, 64, 65 (and all its subparts), and 66, set forth an action against parties other than ECC Contracting and, therefore, require no response from ECC Contracting. To the extent any response is required, ECC Contracting denies the same and demands strict proof thereof.

AS TO THE SEVENTH CAUSE OF ACTION
(Negligence/Gross Negligence/ Defendants Subcontractors - Builders Firstsource-Southeast
Group, LLC, Builders Firstsource, Inc., Americo Roofing Concepts, Inc., DVS, Inc.,
Advanced Building Connection, LLC, Guy C. Lee Building Materials, LLC, WS
Contractors, LLC, Dino Schwartz, Charleston Exteriors, LLC, ECC Contracting, LLC,
Hurley Services, LLC, McDaniel Construction Co., LLC, AC Construction Corp., AC
Construction, Inc., L&G Construction Group, LLC, Pohlman Quality Contractors, and
Pohlman Quality Exteriors, Inc.)

18. Answering the allegations of Paragraph 67, ECC Contracting incorporates by reference its previous responses as if repeated herein verbatim.

19. ECC Contracting denies the allegations of Paragraphs 68, 69 (and all its subparts), and 70, and demands strict proof thereof.

AS TO THE EIGHTH CAUSE OF ACTION

(Breach of Implied Warranty/Defendants Subcontractors - Builders Firstsource-Southeast Group, LLC, Builders Firstsource, Inc., Americo Roofing Concepts, Inc., DVS, Inc., Advanced Building Connection, LLC, Guy C. Lee Building Materials, LLC, WS Contractors, LLC, Dino Schwartz, Charleston Exteriors, LLC, ECC Contracting, LLC, Hurley Services, LLC, McDaniel Construction Co., LLC, AC Construction Corp., AC Construction, Inc., L&G Construction Group, LLC, Pohlman Quality Contractors, and Pohlman Quality Exteriors, Inc.)

20. Answering the allegations of Paragraph 71, ECC Contracting incorporates by reference its previous responses as if repeated herein verbatim.

21. ECC Contracting denies the allegations of Paragraphs 72, 73 (and all its subparts), and 74, and demands strict proof thereof.

AS TO THE NINTH CAUSE OF ACTION

(Negligence/Gross Negligence/Architect-Liollio Architecture)

22. Answering the allegations of Paragraph 75, ECC Contracting incorporates by reference its previous responses as if repeated herein verbatim.

23. The allegations of Paragraphs 76, 77, 78 (and all its subparts), and 79, set forth an action against parties other than ECC Contracting and, therefore, require no response from ECC Contracting. To the extent any response is required, ECC Contracting denies the same and demands strict proof thereof.

AS TO THE TENTH CAUSE OF ACTION

(Breach of Express and Implied Warranty/Architect-Liollio Architecture)

24. Answering the allegations of Paragraph 80, ECC Contracting incorporates by reference its previous responses as if repeated herein verbatim.

25. The allegations of Paragraphs 81, 82, 83 (and all its subparts), and 84, set forth an action against parties other than ECC Contracting and, therefore, require no response from ECC

Contracting. To the extent any response is required, ECC Contracting denies the same and demands strict proof thereof.

26. ECC Contracting denies the relief sought in the WHEREFORE paragraph.

27. ECC Contracting denies any and all allegations not specifically admitted hereinabove.

**FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Failure to State a Claim)**

28. Plaintiffs have failed to state facts sufficient to constitute a cause of action against this Defendant pursuant to Rule 12(b)(6), SCRCPP, and BFS's claims should be dismissed.

**FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Failure to Mitigate)**

29. Plaintiffs have failed to mitigate its damages as required by law.

**FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Waiver, Estoppel, Laches)**

30. Plaintiffs' claims may be barred by the doctrines of waiver, estoppel and/or laches.

**FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Statute of Frauds)**

31. Plaintiffs' claims are barred by the statute of frauds.

**FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Statute of Limitations)**

32. This Defendant asserts that some or all of the claims against it are barred by applicable statute of limitations or statute of repose.

**FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**

33. Plaintiffs' claims are barred to the extent that they discovered or should have discovered and were aware of any defects and nevertheless unreasonably proceeded to purchase or make use of the product.

**FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Intervening Acts of Third-Parties)**

34. Plaintiffs' damages, if any, are the direct and proximate result of intervening and superseding acts of third parties not affiliated with this Defendant and not under its domain or control.

**FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Contributory/Comparative Negligence)**

35. Any damage suffered by the Plaintiffs is the direct and proximate result of its comparative and contributory negligence and Plaintiffs' recovery should be barred or, alternatively, reduced proportionately to Plaintiffs' comparative negligence.

**FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Open and Obvious)**

36. Plaintiffs either knew or should have known of any alleged deficiencies in the allegedly purchased materials and accepted the same with such knowledge. As a result, Plaintiffs' recovery should be barred.

**FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Unclean Hands)**

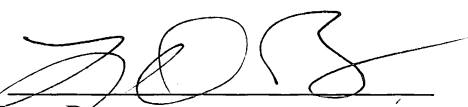
37. Plaintiffs have unclean hands and may not recover in indemnity.

RESERVATION AND NON-WAIVER

38. ECC Contracting hereby gives notice that it intends to rely upon such other

affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert any such defenses.

BEST HONEYCUTT, P.A.

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Attorneys for ECC Contracting, LLC

July 5, 2018

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

THE RETREAT AT CHARLESTON NATIONAL
COUNTRY CLUB HOME OWNERS ASSOCIATION,
INC. AND THE RETREAT AT CHARLESTON
NATIONAL COUNTRY CLUB HORIZONTAL
PROPERTY REGIME,

Plaintiffs,

vs.

WINSTON CARLYLE CHARLESTON NATIONAL,
LLC; COLIN R. CAMPBELL CONSTRUCTION,
INC.; COLIN CAMPBELL, INDIVIDUALLY,
BUILDERS FIRSTSOURCE-SOUTHEAST GROUP,
LLC; BUILDERS FIRSTSOURCE, INC.; AMERICO
ROOFING CONCEPTS, INC.; DVS, INC.;
ADVANCED BUILDING CONNECTION, LLC; GUY
C. LEE BUILDING MATERIALS, LLC; WS
CONTRACTORS, LLC; DINO SCHWARTZ,
Individually, CHARLESTON EXTERIORS, LLC; ECC
CONTRACTING, LLC; HURLEY SERVICES, LLC;
McDANIEL CONSTRUCTION CO., LLC; AC
CONSTRUCTION CORP.; A.C. CONSTRUCTION,
INC.; L&G CONSTRUCTION GROUP, LLC;
POHLMAN QUALITY CONTRACTORS; POHLMAN
QUALITY EXTERIORS, INC., LIOLLIO
ARCHITECTURE, JC CONTRACTORS, LLC; SOTO
& VAZQUEZ CONSTRUCTION, LLC; COSTA DE
OLIVEIRA CONSTRUCCION, LLC a/k/a COSTA DE
OLIVEIRA CONSTRUCTION, LLC; and SOLESMAR
JESUS DE OLIVEIRA.

Defendants.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
)

CASE NO. 2016-CP-10-3783

THIRD AMENDED COMPLAINT
(Negligence, Gross Negligence Breach
or Warranties, Breach of Fiduciary
Duty)

(Jury Trial Demanded)

FILED
2016 OCT 10 PM 4:31
JULIE J. ARMSTRONG
CLERK OF COURT

The Plaintiffs, complaining of the Defendants herein, would respectfully show unto this

Honorable Court as follows:

PARTIES AND JURISDICTION

1. The Retreat at Charleston National Country Club Home Owners Association, Inc., is a non-profit corporation organized and existing under the laws of the State of South Carolina with

its principal place of business in Charleston County, South Carolina. The Retreat at Charleston National Country Club Home Owners Association, Inc. was formed pursuant to the Master Deed and By-Laws for The Retreat at Charleston National Country Club Horizontal Property Regime to carry out the responsibilities of The Retreat at Charleston National Country Club Horizontal Property Regime and Home Owners Association, including but not limited to, the maintenance and repair of the Common Elements at The Retreat at Charleston National Country Club townhome / condominium project and to administer and enforce the covenants and restrictions of The Retreat at Charleston National Country Club Project (the "Community" or "Project"). (The Retreat at Charleston National Country Club Home Owners' Association, Inc. and The Retreat at Charleston National Country Club Horizontal Property Regime are collectively referred to as "Plaintiffs").

2. Defendant Winston Carlyle Charleston National, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina, which was, at all time relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, Winston Carlyle Charleston National, LLC, was responsible for the planning, development, and construction of the condominium project more commonly known as The Retreat at Charleston National Country Club.

3. Winston Carlyle Charleston National, LLC is hereinafter referred to as "Winston Carlyle Defendants" and/or Developers and/or General Contractors.

4. Defendant Colin R. Campbell Construction, Inc. is, upon information and belief, a business organized and existing pursuant to the laws of the State of South Carolina, which was, at all time relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, Colin R. Campbell Construction, Inc., was responsible for the construction of the condominium project more commonly known as The Retreat at Charleston

National Country Club.

5. Defendant Colin Campbell is, upon information and belief, an individual residing and/or doing business in Charleston County, South Carolina. Upon information and belief, Colin Campbell held a South Carolina Homebuilders License and was responsible for the construction of the condominium project more commonly known as The Retreat at Charleston National Country Club.

6. Defendant Colin R. Campbell Construction, Inc. and Defendant Colin Campbell, Individually are hereinafter collectively referred to as the "Campbell Defendants" and/or General Contractor.

7. Defendant Builders Firstsource-Southeast Group, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of Delaware, which was, at all time relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, Builders Firstsource-Southeast Group, LLC provided materials and/or labor, including but not limited to the framing, the windows and doors and all related components at all or a portion of the Project.

8. Defendant Builders Firstsource, Inc. is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of Delaware, which was, at all time relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, Builders Firstsource, Inc. provided materials and/or labor, including but not limited to the framing, the windows and doors and all related components at all or a portion of the Project.

9. Defendant Americo Roofing Concepts, Inc. is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina, which was, at all time relevant hereto, conducting business in Charleston County, South Carolina.

Upon information and belief, Defendant Americo Roofing Concepts, Inc. provided materials and/or labor, including but not limited to the installation of the roofing systems and decking systems and all related components at all or a portion of the Project.

10. Defendant DVS, Inc. is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina, which was, at all time relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, Defendant DVS, Inc. provided materials and/or labor, including but not limited to the installation of the exterior siding systems, railing, window and door systems and all related components at all or a portion of the Project.

11. Defendant Advanced Building Connection, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina, which was, at all time relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, Defendant Advanced Building Connection, LLC provided materials and/or labor, including but not limited to the framing systems and window and door systems and all related components at all or a portion of the Project.

12. Defendant Guy C. Lee Building Materials, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of North Carolina, which was, at all time relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, Guy C. Lee Building Materials, LLC provided materials and/or labor, including but not limited to the framing, the windows and doors and all related components at all or a portion of the Project.

13. Defendant WS Contractors, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina, which was, at all time relevant hereto, conducting business in Charleston County, South Carolina. Upon

information and belief, Defendant WS Contractors, LLC provided materials and/or labor, including but not limited to the exterior siding systems, railing, framing systems, window and door systems, and all related components at all or a portion of the Project.

14. Defendant Dino Schwartz is, upon information and belief, an individual residing and/or doing business in Charleston County, South Carolina. Upon information and belief, Dino Schwartz provided materials and/or labor, including but not limited to the framing systems and window and door systems, and all related components at all or a portion of the Project.

15. Defendant ECC Contracting, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina, which was, at all time relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief Defendant ECC Contracting LLC provided materials and/or labor, including but not limited to the framing systems, window and door systems and all related components at all or a portion of the Project.

16. Defendant Hurley Services, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina, which was, at all time relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief Defendant Hurley Services, LLC provided materials and/or labor, including but not limited to the framing systems, window and door systems and all related components at all or a portion of the Project.

17. Defendant McDaniel Construction Co., LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina, which was, at all time relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief Defendant McDaniel Construction Co., LLC provided materials and/or labor, including but not limited to the framing systems, window and door

systems and all related components at all or a portion of the Project.

18. Defendants AC Construction Corp. and AC Construction, Inc. are, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina, which was, at all time relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief Defendants AC Construction Corp. and AC Construction, Inc. provided materials and/or labor, including but not limited to the framing systems, window and door systems and all related components at all or a portion of the Project.

19. Defendant L&G Construction Group, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina, which was, at all time relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief Defendant L&G Construction Group, LLC provided materials and/or labor, including but not limited to the framing systems, window and door systems and all related components at all or a portion of the Project.

20. Defendant Charleston Exteriors, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina, which was, at all time relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief Defendant Charleston Exteriors, LLC provided materials and/or labor, including but not limited to the framing systems, window and door systems and all related components at all or a portion of the Project.

21. Defendant Pohlman Quality Contractors is, upon information and belief, a South Carolina business entity organized and existing pursuant to the laws of the State of South Carolina, which was, at all time relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief Defendant Pohlman Quality Contractors provided materials and/or labor, including but not limited to the framing systems, window and door systems and all related

components at all or a portion of the Project.

22. Defendant Pohlman Quality Exteriors, Inc. is, upon information and belief, a South Carolina corporation organized and existing pursuant to the laws of the State of South Carolina, which was, at all time relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief Defendant Pohlman Quality Exteriors, Inc. provided materials and/or labor, including but not limited to the framing systems, window and door systems and all related components at all or a portion of the Project.

23. Defendant Liollo Architecture is, upon information and belief, a South Carolina corporation organized and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, Defendant Liollo Architecture was the architect for the Project and provided architectural design and post-construction inspection services for the Project.

24. Defendant JC Contractors, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, Defendant JC Contractors, LLC provided materials and/or labor, including but not limited to the exterior siding systems, railing, framing systems, window and door systems, and all related components at all or a portion of the Project.

25. Defendant Soto & Vazquez Construction, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, Defendant Soto & Vazquez Construction, LLC provided materials and/or labor, including but not limited to the exterior siding systems, railing, framing systems, window and door systems, and all related components at all or a portion of the Project.

26. Defendant Costa De Oliveira Construcccion, LLC a/k/a Costa De Oliveira Construcccion, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting

business in Charleston County, South Carolina. Upon information and belief, Defendant Costa De Oliveira Construcccion, LLC a/k/a , Costa De Oliveira Construction, LLC provided materials and/or labor, including but not limited to the exterior siding systems, railing, framing systems, window and door systems, and all related components at all or a portion of the Project.

27. Defendant Solesmar Jesus de Oliveira is, upon information and belief, an individual or business organized and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, Defendant Solesmar Jesus de Oliveira provided materials and/or labor, including but not limited to the exterior siding systems, railing, framing systems, window and door systems, and all related components at all or a portion of the Project.

28. Defendants Builders Firstsource-Southeast Group, LLC, Builders Firstsource, Inc.

Americo Roofing Concepts, Inc., DVS, Inc., Advanced Building Connection, LLC, Guy C. Lee Building Materials, LLC, WS Contractors, LLC, Dino Schwartz, Charleston Exteriors, LLC, ECC Contracting, LLC, Hurley Services, LLC, McDaniel Construction Co., LLC, AC Construction Corp., AC Construction, Inc., L&G Construction Group, LLC, Pohlman Quality Contractors, Pohlman Quality Exteriors, Inc., JC Contractors, LLC, Soto & Vazquez Construction, LLC, Costa De Oliveira Construcccion, LLC a/k/a , Costa De Oliveira Construction, LLC, and Solesmar Jesus de Oliveira shall be referred to hereinafter collectively as "Subcontractor Defendants."

29. Upon information and belief, the Winston Carlyle held legal title to certain real estate in Charleston County, South Carolina, and developed and constructed The Retreat at Charleston National Country Club Project on that real estate.

30. Venue is proper because the property is located in Charleston County and the events giving rise to the claims against these Defendants occurred in Charleston County.

31. This Court has jurisdiction over the subject matter of this action and the parties to this action.

32. The collective actions, conduct and agreements of the Defendants at all times

contemplated the sale of the condominium units to individual purchasers and the formation of a property or homeowners' association to be charged with the responsibility for maintenance and repairs of the common elements of the residential units.

33. Upon information and belief, Defendants did collectively design, develop, construct and sell the Project. Developer(s), as grantor(s) and Declarant(s) of the Project, caused to be prepared and filed in the RMC Office for Charleston County, South Carolina, the Declaration of Covenants, Conditions and Restrictions for The Retreat at Charleston National Country Club Home Owners Association as well as By-laws for The Retreat at Charleston National Country Club Home Owners Association thereby committing the real estate with improvements thereon to be single-family attached residential units in the condominium form of ownership.

34. Since completion of the Project, problems with moisture and water infiltration into the interior of the buildings at the Project have occurred. An inspection of the Project site and the buildings located at the Project has resulted in the discovery of numerous construction defects impacting upon the structural integrity and safety of the Project. Upon information and belief, the problems or defects at the Project are a result of defective construction of the exteriors of the buildings.

35. The defects in and/or construction complained of include, but are not limited to, the following:

- a. Failure of the waterproofing system has caused severe damage to the structural components of the buildings by allowing water to infiltrate the buildings;
- b. Failure of the building envelope system has caused severe damage by allowing water to infiltrate the interior spaces;
- c. Improper installation of the windows;
- d. Improper fasteners and improper fastener installation and spacing;
- e. Improper application of and/or lack of sealants;

- f. Improper installation of and/or failure to install weather resistant barrier systems;
- g. Improper installation of the exterior vinyl siding;
- h. Improper application and/or lack of proper building paper
- i. Improper flashing and/or failure to install flashing throughout the project;
- j. Improper installation of and/or failure to install flashing at the wall to column termination;
- k. Lack of column supports;
- l. Improper installation of and/or failure to install blocking at sheathing panel joints;
- m. Lack of weather resistant barrier and integral flashing resulting in severe damage to the framing of porch roof and deck construction;
- n. Improper installation of and/or failure to install flashing at wall to deck intersections resulting in water intrusion into the ceiling/walkway construction and damage to framing members;
- o. Improper construction of stairs in violation of code requirements;
- p. Improper installation of and/or lack of flashing at dissimilar materials and throughout the project;
- q. Improper installation of the metal roofing system and related components;
- r. Improper installation of and/or lack of kick-out flashing in roofing systems;
- s. Improper installation of the asphalt shingle roofing system and related components;
- t. Use of improper roof nails and improper nail installation;
- u. Exposed nail heads;
- v. Holes in the roofing systems allowing water into the roofing system causing damage to the sheathing and structural components;
- w. Improper installation of and/or lack of waterproofing system(s) at decks and deck intersections;
- x. Improper installation of French doors and related components;
- y. Improper construction and installation of the exterior guard rail system and picket spacing in violation of code requirements;
- z. Improper installation of the PVC vent boots;
- aa. Use of non-galvanized fasteners;

- bb. Improper framing including cracked and buckled framing;
- cc. Decay of and damaged structural building components;
- dd. Defects causing decay of building components;
- ee. Interior damage and mold due to exterior water intrusion;
- ff. Failure to construct the Project in accordance with the applicable building codes and/or in conformance with accepted industry standards;
- gg. Failure of the building exteriors has compromised the integrity of the exterior building envelope and resulted in deterioration of the building structure;
- hh. Failure of the flashing and waterproofing systems which have caused severe damage and decay to the structural components of the Project by allowing water to infiltrate the building structure; and
- ii. Failure to construct the Project and its buildings in accordance with the applicable standard building codes and accepted construction practices.

36. Actual property damage to the Project has been caused by continuous and repeated exposure to moisture and water seeping into and around the walls, terminations, windows, doors, decks, porches and intersections, resulting from the negligent and grossly negligent construction, and development of the Project performed by the Defendants. Consequently, continuous and repeated water intrusion has resulted in physical property damage, including severe damage, rot and deterioration of the building and its structural components. Due to the construction deficiencies, continuous and repeated exposure to harmful conditions, including water intrusion, has occurred, resulting in physical and consequential damages, including but not limited to the following:

- a. physical injury to tangible property and/or the work of others caused by the continuous and repeated exposure to substantially the same harmful conditions including excessive moisture from water infiltration in and around improperly installed windows and doors, and through negligently constructed and installed exterior cladding, sealants, joints, caulk, roofing, and waterproofing systems.

- b. physical injury to tangible property and/or the work of others caused by the continuous and repeated exposure to substantially the same harmful conditions including excessive moisture from water infiltration in and around improperly installed decks and porches, windows and doors, roofing systems and through negligently constructed and installed flashing and waterproofing systems.

37. The negligent and grossly negligent acts of omission and commission by these parties and the damages that resulted therefrom were foreseeable.

38. As a direct and proximate result and consequence of the numerous construction defects and problems at the Project, the Project has suffered substantial water intrusion, rot and deterioration and the Plaintiffs have spent and will continue to spend substantial sums of money for the extraordinary repairs and reconstruction of major portions of the Project.

FOR A FIRST CAUSE OF ACTION
(Negligence and Gross Negligence as to Defendant Developer(s) -
Winston Carlyle Charleston National, LLC)

39. The Plaintiffs incorporate into this cause of action the allegations above as fully as if repeated verbatim herein.

40. Defendant Developers owed a duty to the Plaintiffs to exercise that degree of skill necessary to select an architect, engineer and contractor and to oversee the Project and otherwise deliver the Project free of construction defects and designed and built in conformity with the customary and ordinary standards of the building and construction industry.

41. The deficiencies and defects which exist at the Project are the proximate and direct result of the negligence and/or gross negligence of Developers in one or more of the following particulars:

- a. in failing to properly select a design professional and contractor so that the Project would be designed and built by methods of construction and design conforming with accepted industry standards;
- b. in allowing and/or accepting non-conforming or defective work;
- c. in failing to properly oversee the Project in order to ensure that all work proceeded in accordance with the plans and specifications and also in conformity with the customary and ordinary standards of the construction industry; and
- d. in failing to inform the architect, engineer and contractor of any defects found in the Project.
- e. In failing to properly inform the unit owners of the conditions known or which should have been known at the time each owner purchased a unit;
- f. In failing to turn the common elements over to the Association in good condition or with sufficient funds for the Association to repair the common elements; and
- g. In failing to act as a reasonable and prudent developer would have acted under the circumstances then and there existing.

42. As a direct and proximate result and consequence of the negligence and/or gross negligence of Developers, the Plaintiffs have suffered injuries and damages in the amount equal to the extraordinary repair, maintenance and reconstruction cost required and to be required over the expected life of the structure, the costs of experts, loss of use, depreciation in value, and such punitive damages as may be appropriate.

FOR A SECOND CAUSE OF ACTION
(Breach of Express Warranties as to Defendant Developer(s) –
Winston Carlyle Charleston National, LLC)

43. The Plaintiffs incorporate into this cause of action the allegations above as fully as if repeated verbatim herein.

44. Defendant Developers represented and warranted that the Project, including the project units and the general common elements, were of the highest quality. Those representations and warranties were made in connection with the sale of the units and formation of The Retreat at Charleston National Country Club Home Owners Association.

45. Defendant Developers breached their express warranty by producing, selling and turning over to the Plaintiffs, an inferior and rapidly deteriorating project, plagued with extensive and severe construction defects and problems.

46. As a direct and proximate result and consequence of Defendant Developers' breach of express warranty, the Plaintiffs have suffered injuries and damages in the amount equal to the extraordinary repair, maintenance and reconstruction cost required and to be required over the expected life of the structure, loss of use and depreciation in value, the costs of experts, and such punitive damages as may be appropriate.

FOR A THIRD CAUSE OF ACTION
(Breach of Implied Warranty as to Defendant Developer(s) –
Winston Carlyle Charleston National, LLC)

47. The Plaintiffs incorporate into this cause of action the allegations above as fully as if repeated verbatim herein.

48. Defendant Developers, as seller, grantor and developer, made implied warranties of habitability and fitness for intended use.

49. Defendant Developers have breached their implied warranty by producing, selling and turning over to the Plaintiffs an inferior and rapidly deteriorating project plagued with extensive and severe construction defects and problems.

50. As a direct and proximate result and consequence of Defendant Developers' breach of their implied warranty, the Plaintiffs have suffered injuries and damages in an amount equal to the extraordinary repairs, maintenance and reconstruction costs required and to be required over

the expected life of the structure, loss of use, the costs of experts, and depreciation in value.

FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty- as to Defendant Developer(s) –
Winston Carlyle Charleston National, LLC)

51. Plaintiffs incorporate into this cause of action the allegations above as fully as if repeated verbatim herein.

52. Defendants at all times during which they were or were in control of Directors of The Retreat at Charleston National Country Club Home Owners' Association, were charged with the duty of administration, care and maintenance of the regime property and its common elements according to the terms of the Master Deed and with safeguarding any interests and rights of the members, both present and future, of the regime as unit owners or they undertook such duties.

53. Upon information and belief, from its inception and for a period of time afterwards, Developers controlled The Retreat at Charleston National Country Club Home Owners' Association.

54. Developers, as a controlling entity, owed a fiduciary duty to the Plaintiffs to inform them of any deficiencies in the construction of The Retreat at Charleston National Country Club Project.

55. Developers, as a controlling entity, also owed a fiduciary duty to the Plaintiffs to disclose any defects in construction of The Retreat at Charleston National Country Club Project.

56. Developers breached their fiduciary duty to the Plaintiffs by failing to disclose construction defects to the Plaintiffs prior to relinquishing control of the Board of Directors to the owners.

57. Developers owed a fiduciary duty to Plaintiffs to turn over the common elements of the Regime to The Retreat at Charleston National Country Club Home Owners Association in good condition, or to provide funds to Plaintiffs to remedy any defects in the common areas.

58. Developers breached their fiduciary duty to Plaintiffs by turning over to Plaintiffs a deteriorating and defective townhome project without providing The Retreat at Charleston National Country Club Home Owners' Association with any funds to effectuate necessary repairs.

59. Defendants owed a duty to Plaintiffs to exercise that degree of skill necessary to insure that the regime property was properly maintained and to keep the owners informed of serious defects found or discovered and to protect the owners' property interest in conformity with customary and ordinary standards.

60. As a direct and proximate result and consequence of the aforementioned negligent, grossly negligent and reckless acts or omissions of Defendants, the Plaintiffs have suffered injuries and damages in an amount equal to the extraordinary repairs, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use, the costs of experts, and depreciation in value.

FOR A FIFTH CAUSE OF ACTION

**(Negligence/Gross Negligence as the General Contractor –
Winston Carlyle Defendants; Defendant Colin R. Campbell Construction, Inc. and
Defendant Colin Campbell, Individually/Campbell Defendants)**

61. Plaintiffs incorporate into this cause of action the allegations above as fully as if repeated verbatim herein.

62. Defendants as the general contractors owed a duty to the Plaintiffs to exercise that degree of skill necessary to construct, supervise and review the design and otherwise deliver the Project free of construction defects and to ensure that the Project was designed and built in conformity with the customary and ordinary standards of the building and construction industry.

63. The deficiencies and defects which exist at the Project are the proximate and direct result of the negligence and/or gross negligence of Defendants in more of the following

particulars:

- a. in failing to properly construct the Project by deviating from the plans and specifications and by failing to employ practices and methods of construction conforming with accepted industry standards; and/or using defective materials; and/or installing materials not in accordance with the plans and specifications, or in violation of the manufacturer's instructions;
- b. in using and supplying defective material;
- c. by installing materials not in accordance with the plans and specifications;
- d. by installing materials in violation of manufacturer's instructions;
- e. in failing to properly supervise the subcontractors and/or other trades in order to ensure that all work proceeded in accordance with the plans and specifications and in conformity with the customary and ordinary standards of the construction industry;
- f. in accepting non-conforming or defective material or labor;
- g. in accepting and performing deficient and/or defective workmanship and/or materials without proper inspection to ensure that the work was correct and in conformity with industry standards and in accordance with the plans and specifications and the manufacturer's instructions;
- h. in constructing the Project in violation of the applicable building codes;
- i. in failing to adequately construct a waterproofing system on the exterior of the building thereby allowing water to infiltrate the interior of the building;
- j. in failing to inform the architect and/or developer of the defects in the plans and specifications; and

k. In failing to act as a reasonable and prudent contractor would act under the circumstances then and there existing.

64. Defendants knew or should have known its actions and work were in breach of their duties owed to Plaintiffs.

65. As a direct and proximate result and consequence of the negligence and/or gross negligence of Defendants, the Plaintiffs have suffered injuries and damages in an amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use, costs of hiring experts, depreciation in value and such punitive damages as may be appropriate.

FOR A SIXTH CAUSE OF ACTION
(Breach of Warranties as the General Contractor –
Winston Carlyle Defendants and Campbell Defendants)

66. The Plaintiffs incorporate into this cause of action the allegations above as fully as if repeated verbatim herein.

67. Upon information and belief, Defendants made express warranties in connection with contracting to build the Project to the effect that the building would be free from construction defects.

68. Defendants also impliedly warranted that the Project would be constructed in a careful, diligent and workmanlike manner, free of construction deficiencies.

69. Defendants breached their express and implied warranties in the following particulars:

- a. in failing to properly construct the Project by deviating from the plans and specifications and/or failing to employ practices and methods of construction conforming to the customary and ordinary standards of the construction industry;
- b. in using and supplying defective material;
- c. by installing materials not in accordance with the plans and specifications;

- d. by installing materials in violation of manufacturer's instructions;
- e. in performing work which violated applicable building codes;
- f. in failing to properly supervise employees, agents and subcontractors to ensure that all work proceeded in accordance with the plans and specifications and in conformity with industry standards;
- g. in accepting defective and/or non-conforming materials and labor;

70. As a direct and proximate result and consequence of Defendant General Contractor's breach of warranties, the Plaintiffs have suffered injuries and damages in an amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use, costs of hiring experts, depreciation in value and such punitive damages as may be appropriate.

FOR A SEVENTH CAUSE OF ACTION

(Negligence/Gross Negligence/ Defendants Subcontractors - Builders Firstsource-Southeast Group, LLC, Builders Firstsource, Inc., Americo Roofing Concepts, Inc., DVS, Inc., Advanced Building Connection, LLC, Guy C. Lee Building Materials, LLC, WS Contractors, LLC, Dino Schwartz, Charleston Exteriors, LLC, ECC Contracting, LLC, Hurley Services, LLC, McDaniel Construction Co., LLC, AC Construction Corp., AC Construction, Inc., L&G Construction Group, LLC, Pohlman Quality Contractors, Pohlman Quality Exteriors, Inc., JC Contractors, LLC, Soto & Vazquez Construction, LLC, Costa De Oliveira Construcccion, LLC a/k/a , Costa De Oliveira Construction, LLC, and Solesmar Jesus de Oliveira)

71. Plaintiff references and incorporates every allegation set forth above as if fully repeated verbatim herein.

72. The Subcontractor Defendants, and each of them individually, owed a duty to Plaintiff to exercise that degree of skill necessary to construct, supervise and review their work, and the work of other trades and to otherwise deliver the building free of construction defects and ensure that the building was constructed in conformity with the customary and ordinary standards of the building and construction industry.

73. The deficiencies and defects which exist at the Project are the proximate and direct result of the negligence and/or gross negligence of the Subcontractor Defendants, and each of them individually, in one or more of the following particulars:

- a. in failing to properly construct the Project by deviating from the plans and specifications and by failing to employ practices and methods of construction conforming with accepted industry standards; and/or using defective material; and/or installing materials not in accordance with the plans and specifications, or in violation of the manufacturer's instructions;
- b. in failing to properly supervise their work and the work of other trades in order to ensure that all work proceeded in accordance with the plans and specifications and in conformity with the customary and ordinary standards of the construction industry;
- c. in accepting non-conforming or defective material;
- d. in using and supplying defective materials;
- e. in installing materials not in accordance with the plans and specifications;
- f. by installing materials in violation of manufacturer's instructions;
- g. in accepting and performing deficient and/or defective workmanship and/or materials without proper inspection to ensure that the work was correct and in conformity with industry standards and in accordance with the plans and specifications and the manufacturer's instructions;
- h. in constructing the Project in violation of the applicable building codes; and
- i. in failing to inform the architect, owner or general contractor of defects in the plans and specifications.

74. As a direct and proximate result and consequence of the negligence and/or gross negligence of the Subcontractor Defendants, Plaintiff has suffered injuries and damages in an amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use, depreciation in value and such punitive damages as may be appropriate.

FOR AN EIGHTH CAUSE OF ACTION

(Breach of Implied Warranty/Defendants Subcontractors - Builders Firstsource-Southeast Group, LLC, Builders Firstsource, Inc., Americo Roofing Concepts, Inc., DVS, Inc., Advanced Building Connection, LLC, Guy C. Lee Building Materials, LLC, WS Contractors, LLC, Dino Schwartz, Charleston Exteriors, LLC, ECC Contracting, LLC, Hurley Services, LLC, McDaniel Construction Co., LLC, AC Construction Corp., AC Construction, Inc., L&G Construction Group, LLC, Pohlman Quality Contractors, Pohlman Quality Exteriors, Inc., JC Contractors, LLC, Soto & Vazquez Construction, LLC, Costa De Oliveira Construcccion, LLC a/k/a , Costa De Oliveira Construction, LLC, and Solesmar Jesus de Oliveira)

75. Plaintiff references and incorporates every allegation set forth above as if fully repeated verbatim herein.

76. The Subcontractor Defendants impliedly warranted that the Project would be constructed in a careful, diligent and workmanlike manner, free of construction deficiencies.

77. The Subcontractor Defendants and each of them individually breached the implied warranties in one or more of the following particulars:

- a. in failing to properly construct the project by deviating from the plans and specifications and/or failing to employ practices and methods of construction conforming to the customary and ordinary standards of the construction industry;
- b. in using and supplying defective material;
- c. by installing materials not in accordance with the plans and specifications;
- d. by installing materials in violation of manufacturer's instructions;

- e. in performing work and constructing the Project in violation of the applicable building codes;
- f. in failing to properly supervise employees, agents and subcontractors to ensure that all work proceeded in accordance with the plans and specifications and in conformity with industry standards;
- g. in accepting defective and/or non-conforming materials and labor;
- h. in providing deficient and/or defective workmanship and/or materials, without proper inspections to ensure that the work was correct and in conformity with customary industry standards and in accordance with the plans and specifications and the manufacturer's instructions;
- i. in failing to adequately construct a waterproofing system on the exterior of the building such as to allow water to infiltrate the interior of the building; and
- j. in failing to advise the architect, owner or general contractor of defects in the plans and specifications.

78. As a direct and proximate result and consequence of the Subcontractor Defendants' breach of implied warranties, Plaintiff has suffered injuries and damages in an amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use and depreciation in value.

FOR A NINTH CAUSE OF ACTION
(Negligence/Gross Negligence/Architect – Liollo Architecture)

79. Plaintiff references and incorporates every allegation set forth above as if fully repeated verbatim herein.

80. Defendant Architect undertook to perform investigations of the construction work at the Project and to certify that the exterior construction was proper.

81. In undertaking to perform the inspections of the construction work, Defendant Liollo owed a duty to Plaintiffs to exercise that degree of skill necessary to inspect and review the design and construction of the Project to insure that the Project was built in conformity with the plans and specifications it provided for the Project and in accordance with the customary and ordinary standards of the building and constructions industry and applicable building codes.

82. Defendant was negligent, and/or grossly negligent in its design and/or inspection of the Project in one or more of the following particulars:

- a. Inadequate inspection and acceptance of defective or non-conforming construction work;
- b. Failure to design and insure construction in compliance with industry standards, applicable building codes and acceptable building practices;
- c. Failure to notify the owner, developer or general contractor that the materials supplied were (1) non-conforming or defective and/or (2) were not installed according to the plans and specifications and/or (3) were not installed according to manufacturer's instructions and industry standards; and
- d. In failing to act as a reasonable and prudent architect would act under the circumstances then and there existing.

See the affidavit of Gary Freeman (Exhibit 1) previously filed in this matter.

83. As a direct and proximate result and consequence of the negligence and gross negligence of Defendant Architect, Plaintiffs have suffered injuries and damages in an amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structures, loss of use, depreciation in value and such punitive damages as may be appropriate.

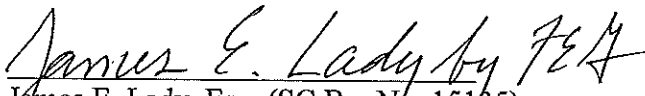
FOR A TENTH CAUSE OF ACTION
(Breach of Express and Implied Warranty/Architect – Liollo Architecture)

84. Plaintiff references and incorporates every allegation set forth above as if fully repeated verbatim herein.
85. Defendant Architect expressly and impliedly warranted that its design and inspection of the Project would be of the highest quality and in conformance with the generally accepted standards of the architectural and construction industry.
86. Defendant Architect further expressly and impliedly warranted that the construction work would be approved and inspected in a careful, diligent and workmanlike manner, assuring the work was in accordance with the contract documents and free of construction defects.
87. Defendant Architect breached its express and implied warranties in one or more of the following particulars:
- a. In failing to properly inspect the Project to insure that the construction work was performed in accordance with the plans and specifications and accepted industry standards;
 - b. In failing to notify the owner, developer or general contractor that the materials supplied were (1) non-conforming or defective and/or (2) were not installed according to the plans and specifications and/or (3) were not installed according to manufacturer's instructions and industry standards;
 - c. In failing to design and insure construction in compliance with industry standards, applicable building codes and acceptable building practices; and
 - d. In accepting defective and/or non-conforming materials and labor; and
 - e. In failing to act as a reasonable and prudent architect would act under the circumstances then and there existing.
88. As a result of the Architect's breach of the express and implied warranties, Plaintiffs are entitled to such actual and consequential damages as this Court may deem appropriate,

including but not limited to the amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use and depreciation in value.

WHEREFORE, Plaintiffs pray for judgment against the Defendants for such actual, consequential and punitive damages as this Court deems appropriate and for such other and further relief as is just and proper, including costs, pre-judgment interest and attorney's fees.

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ATTORNEYS FOR PLAINTIFFS

OCTOBER
September 10, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

THE RETREAT AT CHARLESTON NATIONAL
COUNTRY CLUB HOME OWNERS ASSOCIATION,
INC. AND THE RETREAT AT CHARLESTON
NATIONAL COUNTRY CLUB HORIZONTAL
PROPERTY REGIME,

Plaintiffs,

vs.

WINSTON CARLYLE CHARLESTON NATIONAL,
LLC; COLIN R. CAMPBELL CONSTRUCTION, INC.;
COLIN CAMPBELL, INDIVIDUALLY; C.R.
CAMPBELL CONSTRUCTION CO., INC.; COLIN
CAMPBELL CONSTRUCTION, LLC; BUILDERS
FIRSTSOURCE-SOUTHEAST GROUP, LLC;
BUILDERS FIRSTSOURCE, INC.; AMERICO
ROOFING CONCEPTS, INC.; DVS, INC.;
ADVANCED BUILDING CONNECTION, LLC; GUY
C. LEE BUILDING MATERIALS, LLC; WS
CONTRACTORS, LLC; DINO SCHWARTZ,
Individually; ECC CONTRACTING, LLC; HURLEY
SERVICES, LLC; McDANIEL CONSTRUCTION CO.,
LLC; AC CONSTRUCTION CORP.; AC
CONSTRUCTION, INC.; L&G CONSTRUCTION
GROUP, LLC; LIOLLIO ARCHITECTURE, JC
CONSTRUCTION d/b/a JC CONSTRUCTION, LLC
a/k/a JC CONTRACTORS a/k/a JC CONTRACTORS,
LLC; SOTO & VASQUEZ CONSTRUCTION, LLC
A/KA/ COSTA DE OLIVEIRA CONSTRUCTION,
LLC; SOLESMAR JESUS DE OLIVEIRA; WILSON
LUCAS SALES d/b/a MIRACLE SIDING; MIRACLE
SIDING, LLC; ROYAL HOMES OF SC, INC.;
COLLEEN BATISSA; CHRISTOPHER BATISSA;
NORMA FERREIRA BRUNO; MENDEZ
CONSTRUCTION, LLC; JUAN GARZA RAMOS;
JUAN GARZA RAMOS d/b/a JUAN
CONSTRUCTORS; JESSICA MARROQUIN;
JESSICA MARROQUIN d/b/a MARROQUIN
CONSTRUCTION; CARLOS MARROQUIN;
CARLOS MARROQUIN AND JESSICA
MARROQUIN d/b/a MARROQUIN
CONSTRUCTION; FELICIANO CRUZ SILVA;
GARCIA ROOFING, LLC; GIVAIR DE CARIS; and
MARIO SALGADO.

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2016-CP-10-3783

**FOURTH AMENDED
COMPLAINT**

**(Negligence, Gross Negligence
Breach or Warranties, Breach of
Fiduciary Duty)**

(Jury Trial Demanded)

FILED
2019 MAR 12 PM 1:14
JULIE A. HARRIS
CLERK OF COURT
BY _____

The Plaintiffs, complaining of the Defendants herein, would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. The Retreat at Charleston National Country Club Home Owners Association, Inc., is a non-profit corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina. The Retreat at Charleston National Country Club Home Owners Association, Inc. was formed pursuant to the Master Deed and By-Laws for The Retreat at Charleston National Country Club Horizontal Property Regime to carry out the responsibilities of The Retreat at Charleston National Country Club Horizontal Property Regime and Home Owners Association, including but not limited to, the maintenance and repair of the Common Elements at The Retreat at Charleston National Country Club townhome / condominium project and to administer and enforce the covenants and restrictions of The Retreat at Charleston National Country Club Project (the “Community” or “Project”). (The Retreat at Charleston National Country Club Home Owners’ Association, Inc. and The Retreat at Charleston National Country Club Horizontal Property Regime are collectively referred to as “Plaintiffs”).

2. Defendant Winston Carlyle Charleston National, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, Winston Carlyle Charleston National, LLC, was responsible for the planning, development, and construction of the condominium project more commonly known as The Retreat at Charleston National Country Club.

3. Winston Carlyle Charleston National, LLC is hereinafter referred to as “Winston Carlyle Defendants” and/or Developers and/or General Contractors.

4. Defendant Colin R. Campbell Construction, Inc. is, upon information and belief, a business organized and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, Colin R. Campbell Construction, Inc., was responsible for the construction of the condominium project more commonly known as The Retreat at Charleston National Country Club.

5. Defendant Colin Campbell is, upon information and belief, an individual residing and/or doing business in Charleston County, South Carolina. Upon information and belief, Colin Campbell held a South Carolina Homebuilders License and was responsible for the construction of the condominium project more commonly known as The Retreat at Charleston National Country Club.

6. Defendant C.R. Campbell Construction Co., Inc. is, upon information and belief, a business organized and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, C.R. Campbell Construction Co., Inc., was responsible for the construction of the condominium project more commonly known as The Retreat at Charleston National Country Club.

7. Defendant Colin Campbell Construction, LLC is, upon information and belief, a business organized and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, Colin Campbell Construction LLC, was responsible for the construction of the condominium project more commonly known as The Retreat at Charleston National Country Club.

8. Defendant Colin R. Campbell Construction, Inc.. Defendant Colin Campbell, Individually,

Defendant C.R. Campbell Construction Co., Inc. and Defendant Colin Campbell Construction, LLC are hereinafter collectively referred to as the “Campbell Defendants” and/or General Contractor.

9. Defendant Builders Firstsource-Southeast Group, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of Delaware, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, Builders Firstsource-Southeast Group, LLC provided materials and/or labor, including but not limited to the framing, the windows and doors and all related components at all or a portion of the Project.

10. Defendant Builders Firstsource, Inc. is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of Delaware, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, Builders Firstsource, Inc. provided materials and/or labor, including but not limited to the framing, the windows and doors and all related components at all or a portion of the Project.

11. Defendant Americo Roofing Concepts, Inc. is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, Defendant Americo Roofing Concepts, Inc. provided materials and/or labor, including but not limited to the installation of the roofing systems and decking systems and all related components at all or a portion of the Project.

12. Defendant DVS, Inc. is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief,

Defendant DVS, Inc. provided materials and/or labor, including but not limited to the installation of the exterior siding systems, railing, window and door systems and all related components at all or a portion of the Project.

13. Defendant Advanced Building Connection, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, Defendant Advanced Building Connection, LLC provided materials and/or labor, including but not limited to the framing systems and window and door systems and all related components at all or a portion of the Project.

14. Defendant Guy C. Lee Building Materials, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of North Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, Guy C. Lee Building Materials, LLC provided materials and/or labor, including but not limited to the framing, the windows and doors and all related components at all or a portion of the Project.

15. Defendant WS Contractors, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, Defendant WS Contractors, LLC provided materials and/or labor, including but not limited to the exterior siding systems, railing, framing systems, window and door systems, and all related components at all or a portion of the Project.

16. Defendant Dino Schwartz is, upon information and belief, an individual residing and/or doing business in Charleston County, South Carolina. Upon information and belief, Dino Schwartz provided materials and/or labor, including but not limited to the framing systems and

window and door systems, and all related components at all or a portion of the Project.

17. Defendant ECC Contracting, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief Defendant ECC Contracting LLC provided materials and/or labor, including but not limited to the framing systems, window and door systems and all related components at all or a portion of the Project.

18. Defendant Hurley Services, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief Defendant Hurley Services, LLC provided materials and/or labor, including but not limited to the framing systems, window and door systems and all related components at all or a portion of the Project.

19. Defendant McDaniel Construction Co., LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief Defendant McDaniel Construction Co., LLC provided materials and/or labor, including but not limited to the framing systems, window and door systems and all related components at all or a portion of the Project.

20. Defendants AC Construction Corp. and AC Construction, Inc. are, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief Defendants AC Construction Corp. and AC Construction, Inc. provided materials and/or labor, including but not limited to the framing systems, window and

door systems and all related components at all or a portion of the Project.

21. Defendant L&G Construction Group, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief Defendant L&G Construction Group, LLC provided materials and/or labor, including but not limited to the framing systems, window and door systems and all related components at all or a portion of the Project.

22. Defendant Liollo Architecture is, upon information and belief, a South Carolina corporation organized and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, Defendant Liollo Architecture was the architect for the Project and provided architectural design and post-construction inspection services for the Project.

23. Defendant JC Construction d/b/a JC Construction, LLC a/k/a JC Contractors a/k/a JC Contractors, LLC (hereinafter referred to as “JC Construction”) is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, Defendant JC Construction provided materials and/or labor, including but not limited to the exterior siding systems, railing, framing systems, window and door systems, and all related components at all or a portion of the Project.

24. Defendant Soto & Vazquez Construction, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, Defendant Soto & Vazquez Construction, LLC provided

materials and/or labor, including but not limited to the exterior siding systems, railing, framing systems, window and door systems, and all related components at all or a portion of the Project.

25. Defendant Costa De Oliveira Construcccion, LLC a/k/a Costa De Oliveira Construction, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, Defendant Costa De Oliveira Construcccion, LLC a/k/a Costa De Oliveira Construction, LLC provided materials and/or labor, including but not limited to the exterior siding systems, railing, framing systems, window and door systems, and all related components at all or a portion of the Project.

26. Defendant Solesmar Jesus de Oliveira is, upon information and belief, an individual or business organized and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, Defendant Solesmar Jesus de Oliveira provided materials and/or labor, including but not limited to the exterior siding systems, railing, framing systems, window and door systems, and all related components at all or a portion of the Project.

27. Defendant Wilson Lucas Sales d/b/a Miracle Siding is, upon information and belief, a business organized and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, Defendant Wilson Lucas Sales d/b/a Miracle Siding provided materials and/or labor, including but not limited to the exterior siding systems, railing, framing systems, window and door systems, and all related components at all or a portion of the Project.

28. Defendant Miracle Siding, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon

information and belief, Defendant Miracle Siding, LLC provided materials and/or labor, including but not limited to the exterior siding systems, railing, framing systems, window and door systems, and all related components at all or a portion of the Project.

29. Defendant Royal Homes of SC, Inc. is, upon information and belief, a company organized and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, Defendant Royal Homes of SC, Inc. provided services, materials and/or labor, including but not limited to construction supervision and construction management at all or a portion of the Project.

Defendant Colleen Batissa is, upon information and belief, an individual which was at all times relevant hereto conducting business in Charleston County, South Carolina. Upon information and belief, Defendant Colleen Batissa provided services, materials and/or labor, including but not limited to installation of the exterior siding systems, railings, screen porches, window and door systems and/or repair work and all related components at all or a portion of the Project.

30. Defendant Christopher Batissa is, upon information and belief, an individual which was at all times relevant hereto conducting business in Charleston County, South Carolina. Upon information and belief, Defendant Christopher Batissa provided services, materials and/or labor, including but not limited to installation of the exterior siding systems, railings, screen porches, window and door systems and/or repair work and all related components at all or a portion of the Project.

31. Defendant Norma Ferreira Bruno is, upon information and belief, an individual which was at all times relevant hereto conducting business in Charleston County, South Carolina. Upon information and belief, Defendant Norma Bruno provided services, materials and/or labor, including but not limited to installation of the exterior siding systems, railings, screen porches,

window and door systems and/or repair work and all related components at all or a portion of the Project.

32. Defendant Mendez Construction, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, Defendant Mendez Construction, LLC provided materials and/or labor, including but not limited to the exterior siding systems, railings, screen porches, window and door systems and/or repair work and all related components at all or a portion of the Project.

33. Defendant Juan Garza Ramos is, upon information and belief, an individual which was at all times relevant hereto conducting business in Charleston County, South Carolina. Upon information and belief, Defendant Juan Garza Ramos provided services, materials and/or labor, including but not limited to the installation of the roofing systems and decking systems and all related components at all or a portion of the Project.

34. Defendant Juan Garza Ramos d/b/a Juan Constructors is, upon information and belief, an individual and/or business which was at all times relevant hereto conducting business in Charleston County, South Carolina. Upon information and belief, Defendant Juan Garza Ramos d/b/a Juan Constructors provided services, materials and/or labor, including but not limited to the installation of the roofing systems and decking systems and all related components at all or a portion of the Project.

35. Defendant Jessica Marroquin is, upon information and belief, an individual which was at all times relevant hereto conducting business in Charleston County, South Carolina. Upon information and belief, Defendant Jessica Marroquin provided services, materials and/or labor, including but not limited to the installation of the roofing systems and decking systems and all related components at all or a portion of the Project.

36. Defendant Jessica Marroquin d/b/a Marroquin Construction is, upon information and belief, an individual and/or business which was at all times relevant hereto conducting business in Charleston County, South Carolina. Upon information and belief, Defendant Jessica Marroquin d/b/a Marroquin Construction provided services, materials and/or labor, including but not limited to the installation of the roofing systems and decking systems and all related components at all or a portion of the Project.

37. Defendant Carlos Marroquin is, upon information and belief, an individual which was at all times relevant hereto conducting business in Charleston County, South Carolina. Upon information and belief, Defendant Carlos Marroquin provided services, materials and/or labor, including but not limited to the installation of the roofing systems and decking systems and all related components at all or a portion of the Project.

38. Defendant Carlos and Jessica Marroquin d/b/a Marroquin Construction are, upon information and belief, individuals and/or a business which was at all times relevant hereto conducting business in Charleston County, South Carolina. Upon information and belief, Defendant Carlos and Jessica Marroquin d/b/a Marroquin Construction provided services, materials and/or labor, including but not limited to the installation of the roofing systems and decking systems and all related components at all or a portion of the Project.

39. Defendant Feliciano Cruz Silva is, upon information and belief, an individual which was at all times relevant hereto conducting business in Charleston County, South Carolina. Upon information and belief, Defendant Feliciano Cruz Silva provided services, materials and/or labor, including but not limited to the installation of the roofing systems and decking systems and all related components at all or a portion of the Project.

40. Defendant Garcia Roofing, LLC a limited liability company organized and existing

pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, Defendant Garcia Roofing, LLC provided services, materials and/or labor, including but not limited to the installation of the roofing systems and decking systems and all related components at all or a portion of the Project.

41. Defendant Givair De Caris is, upon information and belief, an individual which was at all times relevant hereto conducting business in Charleston County, South Carolina. Upon information and belief, Defendant Givair De Caris provided services, materials and/or labor, including but not limited to the installation of the roofing systems and decking systems and all related components at all or a portion of the Project.

42. Defendant Mario Salgado is, upon information and belief, an individual which was at all times relevant hereto conducting business in Charleston County, South Carolina. Upon information and belief, Defendant Mario Salgado provided services, materials and/or labor, including but not limited to the installation of the roofing systems and decking systems and all related components at all or a portion of the Project.

43. Defendants Builders Firstsource-Southeast Group, LLC, Builders Firstsource, Inc. Americo Roofing Concepts, Inc., DVS, Inc., Advanced Building Connection, LLC, Guy C. Lee Building Materials, LLC, WS Contractors, LLC, Dino Schwartz, ECC Contracting, LLC, Hurley Services, LLC, McDaniel Construction Co., LLC, AC Construction Corp., AC Construction, Inc., L&G Construction Group, LLC, JC Construction, Soto & Vazquez Construction, LLC, Costa De Oliveira Construcccion, LLC a/k/a , Costa De Oliveira Construction, LLC, Solesmar Jesus de Oliveira, Wilson Lucas Sales d/b/a Miracle Siding, Miracle Siding, LLC; Royal Homes of SC, Inc., Colleen Batissa, Christopher Batissa, Norma Bruno, Mendez Construction, LLC, Juan Garza Ramos; Juan Garza Ramos d/b/a Juan Constructors; Jessica Marroquin; Jessica Marroquin d/b/a

Marroquin Construction; Carlos Marroquin; Carlos and Jessica Marroquin d/b/a Marroquin Construction; Feliciano Cruz Silva; Garcia Roofing, LLC; Givair De Caris; and Mario Salgado shall be referred to hereinafter collectively as “Subcontractor Defendants.”

44. Upon information and belief, the Winston Carlyle held legal title to certain real estate in Charleston County, South Carolina, and developed and constructed The Retreat at Charleston National Country Club Project on that real estate.

45. Venue is proper because the property is located in Charleston County and the events giving rise to the claims against these Defendants occurred in Charleston County.

46. This Court has jurisdiction over the subject matter of this action and the parties to this action.

47. The collective actions, conduct and agreements of the Defendants at all times contemplated the sale of the condominium units to individual purchasers and the formation of a property or homeowners’ association to be charged with the responsibility for maintenance and repairs of the common elements of the residential units.

48. Upon information and belief, Defendants did collectively design, develop, construct and sell the Project. Developer(s), as grantor(s) and Declarant(s) of the Project, caused to be prepared and filed in the RMC Office for Charleston County, South Carolina, the Declaration of Covenants, Conditions and Restrictions for The Retreat at Charleston National Country Club Home Owners Association as well as By-laws for The Retreat at Charleston National Country Club Home Owners Association thereby committing the real estate with improvements thereon to be single-family attached residential units in the condominium form of ownership.

49. Since completion of the Project, problems with moisture and water infiltration into the interior of the buildings at the Project have occurred. An inspection of the Project site and the buildings located at the Project has resulted in the discovery of numerous construction defects

impacting upon the structural integrity and safety of the Project. Upon information and belief, the problems or defects at the Project are a result of defective construction of the exteriors of the buildings.

50. The defects in and/or construction complained of include, but are not limited to, the following:

- a. Failure of the waterproofing system has caused severe damage to the structural components of the buildings by allowing water to infiltrate the buildings;
- b. Failure of the building envelope system has caused severe damage by allowing water to infiltrate the interior spaces;
- c. Improper installation of the windows;
- d. Improper fasteners and improper fastener installation and spacing;
- e. Improper application of and/or lack of sealants;
- f. Improper installation of and/or failure to install weather resistant barrier systems;
- g. Improper installation of the exterior vinyl siding;
- h. Improper application and/or lack of proper building paper
- i. Improper flashing and/or failure to install flashing throughout the project;
- j. Improper installation of and/or failure to install flashing at the wall to column termination;
- k. Lack of column supports;
- l. Improper installation of and/or failure to install blocking at sheathing panel joints;
- m. Lack of weather resistant barrier and integral flashing resulting in severe damage to the framing of porch roof and deck construction;
- n. Improper installation of and/or failure to install flashing at wall to deck intersections resulting in water intrusion into the ceiling/walkway construction and damage to framing members;
- o. Improper construction of stairs in violation of code requirements;
- p. Improper installation of and/or lack of flashing at dissimilar materials and throughout the project;
- q. Improper installation of the metal roofing system and related components;
- r. Improper installation of and/or lack of kick-out flashing in roofing systems;

- s. Improper installation of the asphalt shingle roofing system and related components;
- t. Use of improper roof nails and improper nail installation;
- u. Exposed nail heads;
- v. Holes in the roofing systems allowing water into the roofing system causing damage to the sheathing and structural components;
- w. Improper installation of and/or lack of waterproofing system(s) at decks and deck intersections;
- x. Improper installation of French doors and related components;
- y. Improper construction and installation of the exterior guard rail system and picket spacing in violation of code requirements;
- z. Improper installation of the PVC vent boots;
- aa. Use of non-galvanized fasteners;
- bb. Improper framing including cracked and buckled framing;
- cc. Decay of and damaged structural building components;
- dd. Defects causing decay of building components;
- ee. Interior damage and mold due to exterior water intrusion;
- ff. Failure to construct the Project in accordance with the applicable building codes and/or in conformance with accepted industry standards;
- gg. Failure of the building exteriors has compromised the integrity of the exterior building envelope and resulted in deterioration of the building structure;
- hh. Failure of the flashing and waterproofing systems which have caused severe damage and decay to the structural components of the Project by allowing water to infiltrate the building structure; and
- ii. Failure to construct the Project and its buildings in accordance with the applicable standard building codes and accepted construction practices.

51. Actual property damage to the Project has been caused by continuous and repeated exposure to moisture and water seeping into and around the walls, terminations, windows, doors, decks, porches and intersections, resulting from the negligent and grossly negligent construction, and development of the Project performed by the Defendants. Consequently, continuous and repeated water intrusion has resulted in physical property damage, including severe damage, rot

and deterioration of the building and its structural components. Due to the construction deficiencies, continuous and repeated exposure to harmful conditions, including water intrusion, has occurred, resulting in physical and consequential damages, including but not limited to the following:

- a. physical injury to tangible property and/or the work of others caused by the continuous and repeated exposure to substantially the same harmful conditions including excessive moisture from water infiltration in and around improperly installed windows and doors, and through negligently constructed and installed exterior cladding, sealants, joints, caulk, roofing, and waterproofing systems.
- b. physical injury to tangible property and/or the work of others caused by the continuous and repeated exposure to substantially the same harmful conditions including excessive moisture from water infiltration in and around improperly installed decks and porches, windows and doors, roofing systems and through negligently constructed and installed flashing and waterproofing systems.

52. The negligent and grossly negligent acts of omission and commission by these parties and the damages that resulted therefrom were foreseeable.

53. As a direct and proximate result and consequence of the numerous construction defects and problems at the Project, the Project has suffered substantial water intrusion, rot and deterioration and the Plaintiffs have spent and will continue to spend substantial sums of money for the extraordinary repairs and reconstruction of major portions of the Project.

FOR A FIRST CAUSE OF ACTION
(Negligence and Gross Negligence as to Defendant Developer(s) -
Winston Carlyle Charleston National, LLC)

54. The Plaintiffs incorporate into this cause of action the allegations above as fully as if repeated verbatim herein.

55. Defendant Developers owed a duty to the Plaintiffs to exercise that degree of skill necessary to select an architect, engineer and contractor and to oversee the Project and otherwise deliver the Project free of construction defects and designed and built in conformity with the customary and ordinary standards of the building and construction industry.

56. The deficiencies and defects which exist at the Project are the proximate and direct result of the negligence and/or gross negligence of Developers in one or more of the following particulars:

- a. in failing to properly select a design professional and contractor so that the Project would be designed and built by methods of construction and design conforming with accepted industry standards;
- b. in allowing and/or accepting non-conforming or defective work;
- c. in failing to properly oversee the Project in order to ensure that all work proceeded in accordance with the plans and specifications and also in conformity with the customary and ordinary standards of the construction industry; and
- d. in failing to inform the architect, engineer and contractor of any defects found in the Project.
- e. In failing to properly inform the unit owners of the conditions known or which should have been known at the time each owner purchased a unit;
- f. In failing to turn the common elements over to the Association in good condition or with sufficient funds for the Association to repair the common elements; and
- g. In failing to act as a reasonable and prudent developer would have acted under the circumstances then and there existing.

57. As a direct and proximate result and consequence of the negligence and/or gross negligence of Developers, the Plaintiffs have suffered injuries and damages in the amount equal

to the extraordinary repair, maintenance and reconstruction cost required and to be required over the expected life of the structure, the costs of experts, loss of use, depreciation in value, and such punitive damages as may be appropriate.

FOR A SECOND CAUSE OF ACTION
(Breach of Express Warranties as to Defendant Developer(s) –
Winston Carlyle Charleston National, LLC)

58. The Plaintiffs incorporate into this cause of action the allegations above as fully as if repeated verbatim herein.

59. Defendant Developers represented and warranted that the Project, including the project units and the general common elements, were of the highest quality. Those representations and warranties were made in connection with the sale of the units and formation of The Retreat at Charleston National Country Club Home Owners Association.

60. Defendant Developers breached their express warranty by producing, selling and turning over to the Plaintiffs, an inferior and rapidly deteriorating project, plagued with extensive and severe construction defects and problems.

61. As a direct and proximate result and consequence of Defendant Developers' breach of express warranty, the Plaintiffs have suffered injuries and damages in the amount equal to the extraordinary repair, maintenance and reconstruction cost required and to be required over the expected life of the structure, loss of use and depreciation in value, the costs of experts, and such punitive damages as may be appropriate.

FOR A THIRD CAUSE OF ACTION
(Breach of Implied Warranty as to Defendant Developer(s) –
Winston Carlyle Charleston National, LLC)

62. The Plaintiffs incorporate into this cause of action the allegations above as fully as if repeated verbatim herein.

63. Defendant Developers, as seller, grantor and developer, made implied warranties of

habitability and fitness for intended use.

64. Defendant Developers have breached their implied warranty by producing, selling and turning over to the Plaintiffs an inferior and rapidly deteriorating project plagued with extensive and severe construction defects and problems.

65. As a direct and proximate result and consequence of Defendant Developers' breach of their implied warranty, the Plaintiffs have suffered injuries and damages in an amount equal to the extraordinary repairs, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use, the costs of experts, and depreciation in value.

FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty- as to Defendant Developer(s) –
Winston Carlyle Charleston National, LLC)

66. Plaintiffs incorporate into this cause of action the allegations above as fully as if repeated verbatim herein.

67. Defendants at all times during which they were or were in control of Directors of The Retreat at Charleston National Country Club Home Owners' Association, were charged with the duty of administration, care and maintenance of the regime property and its common elements according to the terms of the Master Deed and with safeguarding any interests and rights of the members, both present and future, of the regime as unit owners or they undertook such duties.

68. Upon information and belief, from its inception and for a period of time afterwards, Developers controlled The Retreat at Charleston National Country Club Home Owners' Association.

69. Developers, as a controlling entity, owed a fiduciary duty to the Plaintiffs to inform them of any deficiencies in the construction of The Retreat at Charleston National Country Club Project.

70. Developers, as a controlling entity, also owed a fiduciary duty to the Plaintiffs to

disclose any defects in construction of The Retreat at Charleston National Country Club Project.

71. Developers breached their fiduciary duty to the Plaintiffs by failing to disclose construction defects to the Plaintiffs prior to relinquishing control of the Board of Directors to the owners.

72. Developers owed a fiduciary duty to Plaintiffs to turn over the common elements of the Regime to The Retreat at Charleston National Country Club Home Owners Association in good condition, or to provide funds to Plaintiffs to remedy any defects in the common areas.

73. Developers breached their fiduciary duty to Plaintiffs by turning over to Plaintiffs a deteriorating and defective townhome project without providing The Retreat at Charleston National Country Club Home Owners' Association with any funds to effectuate necessary repairs.

74. Defendants owed a duty to Plaintiffs to exercise that degree of skill necessary to insure that the regime property was properly maintained and to keep the owners informed of serious defects found or discovered and to protect the owners' property interest in conformity with customary and ordinary standards.

75. As a direct and proximate result and consequence of the aforementioned negligent, grossly negligent and reckless acts or omissions of Defendants, the Plaintiffs have suffered injuries and damages in an amount equal to the extraordinary repairs, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use, the costs of experts, and depreciation in value.

FOR A FIFTH CAUSE OF ACTION

**(Negligence/Gross Negligence as the General Contractor –
Winston Carlyle Defendants; Defendant Colin R. Campbell Construction, Inc., Defendant
Colin Campbell, Individually, C.R. Campbell Construction Co., Inc. and Colin Campbell
Construction, LLC/Campbell Defendants)**

76. Plaintiffs incorporate into this cause of action the allegations above as fully as if repeated verbatim herein.

77. Defendants as the general contractors owed a duty to the Plaintiffs to exercise that degree of skill necessary to construct, supervise and review the design and otherwise deliver the Project free of construction defects and to ensure that the Project was designed and built in conformity with the customary and ordinary standards of the building and construction industry.

78. The deficiencies and defects which exist at the Project are the proximate and direct result of the negligence and/or gross negligence of Defendants in more of the following particulars:

- a. in failing to properly construct the Project by deviating from the plans and specifications and by failing to employ practices and methods of construction conforming with accepted industry standards; and/or using defective materials; and/or installing materials not in accordance with the plans and specifications, or in violation of the manufacturer's instructions;
- b. in using and supplying defective material;
- c. by installing materials not in accordance with the plans and specifications;
- d. by installing materials in violation of manufacturer's instructions;
- e. in failing to properly supervise the subcontractors and/or other trades in order to ensure that all work proceeded in accordance with the plans and specifications and in conformity with the customary and ordinary standards of the construction industry;
- f. in accepting non-conforming or defective material or labor;
- g. in accepting and performing deficient and/or defective workmanship and/or materials without proper inspection to ensure that the work was correct and in conformity with industry standards and in accordance with the plans and specifications and the manufacturer's instructions;
- h. in constructing the Project in violation of the applicable building codes;

- i. in failing to adequately construct a waterproofing system on the exterior of the building thereby allowing water to infiltrate the interior of the building;
- j. in failing to inform the architect and/or developer of the defects in the plans and specifications; and
- k. In failing to act as a reasonable and prudent contractor would act under the circumstances then and there existing.

79. Defendants knew or should have known its actions and work were in breach of their duties owed to Plaintiffs.

80. As a direct and proximate result and consequence of the negligence and/or gross negligence of Defendants, the Plaintiffs have suffered injuries and damages in an amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use, costs of hiring experts, depreciation in value and such punitive damages as may be appropriate.

FOR A SIXTH CAUSE OF ACTION
(Breach of Warranties as the General Contractor –
Winston Carlyle Defendants and Campbell Defendants)

81. The Plaintiffs incorporate into this cause of action the allegations above as fully as if repeated verbatim herein.

82. Upon information and belief, Defendants made express warranties in connection with contracting to build the Project to the effect that the building would be free from construction defects.

83. Defendants also impliedly warranted that the Project would be constructed in a careful, diligent and workmanlike manner, free of construction deficiencies.

84. Defendants breached their express and implied warranties in the following particulars:

- a. in failing to properly construct the Project by deviating from the plans and specifications and/or failing to employ practices and methods of construction conforming to the customary and ordinary standards of the construction industry;
- b. in using and supplying defective material;
- c. by installing materials not in accordance with the plans and specifications;
- d. by installing materials in violation of manufacturer's instructions;
- e. in performing work which violated applicable building codes;
- f. in failing to properly supervise employees, agents and subcontractors to ensure that all work proceeded in accordance with the plans and specifications and in conformity with industry standards;
- g. in accepting defective and/or non-conforming materials and labor;

85. As a direct and proximate result and consequence of Defendant General Contractor's breach of warranties, the Plaintiffs have suffered injuries and damages in an amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use, costs of hiring experts, depreciation in value and such punitive damages as may be appropriate.

FOR A SEVENTH CAUSE OF ACTION

(Negligence/Gross Negligence/ Defendants Subcontractors - Builders Firstsource-Southeast Group, LLC, Builders Firstsource, Inc., Americo Roofing Concepts, Inc., DVS, Inc., Advanced Building Connection, LLC, Guy C. Lee Building Materials, LLC, WS Contractors, LLC, Dino Schwartz, ECC Contracting, LLC, Hurley Services, LLC, McDaniel Construction Co., LLC, AC Construction Corp., AC Construction, Inc., L&G Construction Group, LLC, JC Construction, Soto & Vazquez Construction, LLC, Costa De Oliveira Construccin, LLC a/k/a , Costa De Oliveira Construction, LLC, Solesmar Jesus de Oliveira, Wilson Lucas Sales d/b/a Miracle Siding, Miracle Siding, LLC; Royal Homes of SC, Inc., Colleen Batissa, Christopher Batissa, Norma Bruno, Mendez Construction, LLC; Juan Garza Ramos; Juan Garza Ramos d/b/a Juan Constructors; Jessica Marroquin; Jessica Marroquin d/b/a Marroquin Construction; Carlos Marroquin; Carlos and Jessica Marroquin d/b/a Marroquin Construction; Feliciano Cruz Silva; Garcia Roofing, LLC; Givair De Caris; and Mario Salgado)

86. Plaintiff references and incorporates every allegation set forth above as if fully repeated verbatim herein.

87. The Subcontractor Defendants, and each of them individually, owed a duty to Plaintiff to exercise that degree of skill necessary to construct, supervise and review their work, and the work of other trades and to otherwise deliver the building free of construction defects and ensure that the building was constructed in conformity with the customary and ordinary standards of the building and construction industry.

88. The deficiencies and defects which exist at the Project are the proximate and direct result of the negligence and/or gross negligence of the Subcontractor Defendants, and each of them individually, in one or more of the following particulars:

- a. in failing to properly construct the Project by deviating from the plans and specifications and by failing to employ practices and methods of construction conforming with accepted industry standards; and/or using defective material; and/or installing materials not in accordance with the plans and specifications, or in violation of the manufacturer's instructions;
- b. in failing to properly supervise their work and the work of other trades in order to ensure that all work proceeded in accordance with the plans and specifications and in conformity with the customary and ordinary standards of the construction industry;
- c. in accepting non-conforming or defective material;
- d. in using and supplying defective materials;
- e. in installing materials not in accordance with the plans and specifications;
- f. by installing materials in violation of manufacturer's instructions;

- g. in accepting and performing deficient and/or defective workmanship and/or materials without proper inspection to ensure that the work was correct and in conformity with industry standards and in accordance with the plans and specifications and the manufacturer's instructions;
- h. in constructing the Project in violation of the applicable building codes; and
- i. in failing to inform the architect, owner or general contractor of defects in the plans and specifications.

89. As a direct and proximate result and consequence of the negligence and/or gross negligence of the Subcontractor Defendants, Plaintiff has suffered injuries and damages in an amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use, depreciation in value and such punitive damages as may be appropriate.

FOR AN EIGHTH CAUSE OF ACTION

(Breach of Implied Warranty/Defendants Subcontractors - Builders Firstsource-Southeast Group, LLC, Builders Firstsource, Inc., Americo Roofing Concepts, Inc., DVS, Inc., Advanced Building Connection, LLC, Guy C. Lee Building Materials, LLC, WS Contractors, LLC, Dino Schwartz, ECC Contracting, LLC, Hurley Services, LLC, McDaniel Construction Co., LLC, AC Construction Corp., AC Construction, Inc., L&G Construction Group, LLC, JC Construction, Soto & Vazquez Construction, LLC, Costa De Oliveira Construcccion, LLC a/k/a , Costa De Oliveira Construction, LLC, Solesmar Jesus de Oliveira, Wilson Lucas Sales d/b/a Miracle Siding, Miracle Siding, LLC; Royal Homes of SC, Inc., Colleen Batissa, Christopher Batissa, Norma Bruno, Mendez Construction, LLC; Juan Garza Ramos; Juan Garza Ramos d/b/a Juan Constructors; Jessica Marroquin; Jessica Marroquin d/b/a Marroquin Construction; Carlos Marroquin; Carlos and Jessica Marroquin d/b/a Marroquin Construction; Feliciano Cruz Silva; Garcia Roofing, LLC; Givair De Caris; and Mario Salgado)

90. Plaintiff references and incorporates every allegation set forth above as if fully repeated verbatim herein.

91. The Subcontractor Defendants impliedly warranted that the Project would be constructed in a careful, diligent and workmanlike manner, free of construction deficiencies.

92. The Subcontractor Defendants and each of them individually breached the implied warranties in one or more of the following particulars:

- a. in failing to properly construct the project by deviating from the plans and specifications and/or failing to employ practices and methods of construction conforming to the customary and ordinary standards of the construction industry;
- b. in using and supplying defective material;
- c. by installing materials not in accordance with the plans and specifications;
- d. by installing materials in violation of manufacturer's instructions;
- e. in performing work and constructing the Project in violation of the applicable building codes;
- f. in failing to properly supervise employees, agents and subcontractors to ensure that all work proceeded in accordance with the plans and specifications and in conformity with industry standards;
- g. in accepting defective and/or non-conforming materials and labor;
- h. in providing deficient and/or defective workmanship and/or materials, without proper inspections to ensure that the work was correct and in conformity with customary industry standards and in accordance with the plans and specifications and the manufacturer's instructions;
- i. in failing to adequately construct a waterproofing system on the exterior of the building such as to allow water to infiltrate the interior of the building; and
- j. in failing to advise the architect, owner or general contractor of defects in the plans and specifications.

93. As a direct and proximate result and consequence of the Subcontractor Defendants' breach of implied warranties, Plaintiff has suffered injuries and damages in an amount equal to the

extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use and depreciation in value.

FOR A NINTH CAUSE OF ACTION
(Negligence/Gross Negligence/Architect – Liollio Architecture)

94. Plaintiff references and incorporates every allegation set forth above as if fully repeated verbatim herein.
95. Defendant Architect undertook to perform investigations of the construction work at the Project and to certify that the exterior construction was proper.
96. In undertaking to perform the inspections of the construction work, Defendant Liollio owed a duty to Plaintiffs to exercise that degree of skill necessary to inspect and review the design and construction of the Project to insure that the Project was built in conformity with the plans and specifications it provided for the Project and in accordance with the customary and ordinary standards of the building and constructions industry and applicable building codes.
97. Defendant was negligent, and/or grossly negligent in its design and/or inspection of the Project in one or more of the following particulars:
- a. Inadequate inspection and acceptance of defective or non-conforming construction work;
 - b. Failure to design and insure construction in compliance with industry standards, applicable building codes and acceptable building practices;
 - c. Failure to notify the owner, developer or general contractor that the materials supplied were (1) non-conforming or defective and/or (2) were not installed according to the plans and specifications and/or (3) were not installed according to manufacturer's instructions and industry standards; and
 - d. In failing to act as a reasonable and prudent architect would act under the circumstances then and there existing.

See the affidavit of Gary Freeman (Exhibit 1) previously filed in this matter.

98. As a direct and proximate result and consequence of the negligence and gross negligence of Defendant Architect, Plaintiffs have suffered injuries and damages in an amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structures, loss of use, depreciation in value and such punitive damages as may be appropriate.

FOR A TENTH CAUSE OF ACTION
(Breach of Express and Implied Warranty/Architect – Liollo Architecture)

99. Plaintiff references and incorporates every allegation set forth above as if fully repeated verbatim herein.

100. Defendant Architect expressly and impliedly warranted that its design and inspection of the Project would be of the highest quality and in conformance with the generally accepted standards of the architectural and construction industry.

101. Defendant Architect further expressly and impliedly warranted that the construction work would be approved and inspected in a careful, diligent and workmanlike manner, assuring the work was in accordance with the contract documents and free of construction defects.

102. Defendant Architect breached its express and implied warranties in one or more of the following particulars:

- a. In failing to properly inspect the Project to insure that the construction work was performed in accordance with the plans and specifications and accepted industry standards;
- b. In failing to notify the owner, developer or general contractor that the materials supplied were (1) non-conforming or defective and/or (2) were not installed according to the plans and specifications and/or (3) were not installed according to manufacturer's instructions and industry standards;

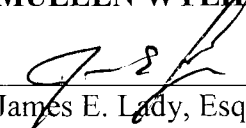
- c. In failing to design and insure construction in compliance with industry standards, applicable building codes and acceptable building practices; and
- d. In accepting defective and/or non-conforming materials and labor; and
- e. In failing to act as a reasonable and prudent architect would act under the circumstances then and there existing.

103. As a result of the Architect's breach of the express and implied warranties, Plaintiffs are entitled to such actual and consequential damages as this Court may deem appropriate, including but not limited to the amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use and depreciation in value.

WHEREFORE, Plaintiffs pray for judgment against the Defendants for such actual, consequential and punitive damages as this Court deems appropriate and for such other and further relief as is just and proper, including costs, pre-judgment interest and attorney's fees.

MULLEN WYLLIE, LLC

By:


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ATTORNEYS FOR PLAINTIFFS

March 12, 2019
Charleston, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF CHARLESTON) CIVIL ACTION NO: 2016-CP-10-03783

The Retreat at Charleston National
 Country Club Home Owners
 Association, Inc. and The Retreat at
 Charleston National Country Club
 Horizontal Property Regime,

Plaintiffs,

vs.

Winston Carlyle Charleston National,
 LLC; Colin R. Campbell Construction,
 Inc.; Colin Campbell, individually;
 Builders FirstSource-Southeast Group,
 LLC; Builders FirstSource, Inc.;
 Americo Roofing Concepts, Inc.; DVS,
 Inc.; Advanced Building Connection,
 LLC; Guy C., Lee Building Materials,
 LLC; WS Contractors, LLC; Dino
 Schwartz, Individually; Charleston
 Exteriors, LLC; ECC Contracting, LLC;
 Hurley Services, LLC; McDaniel
 Construction Co., LLC; AC
 Construction Corp.; AC Construction,
 Inc.; L&G Construction Group, LLC;
 Liollo Architecture, JC Contractors,
 LLC, Soto & Vazquez Construction,
 LLC, Costa De Oliveira Construction,
 LLC a/k/a Costa De Oliveira
 Construction, LLC and Solesmar
 Jesus De Oliveira, Wilson Lucas Sales
 d/b/a Miracle Siding; Miracle Siding,
 LLC; Royal Homes of SC, Inc.;
 Colleen Batissa; Christopher Batissa;
 Norma Ferreira Bruno; Mendez
 Construction, LLC; Juan Garza
 Ramos; Juan Garza Ramos d/b/a
 Juan Constructors; Jessica Marroquin;
 Jessice Marroquin d/b/a Marroquin
 Construction; Carlos Marroquin

AMENDED ANSWER OF
DEFENDANT BUILDERS
FIRSTSOURCE-SOUTHEAST
GOUP, LLC, AND BUILDERS
FIRSTSOURCE INC., TO THE
PLAINTIFFS FOURTH
AMENDED COMPLAINT, AND
REASSERTED AND/OR OTHER
CROSS CLAIMS OF BUILDERS
FIRSTSOURCE-SOUTHEAST
GROUP, LLC AGAINST WS
CONTRACTORS LLC, ECC
CONTRACTING, LLC, HURLEY
SERVICES, LLC, MCDANIEL
CONSTRUCTION COMPANY,
LLC, AC CONSTRUCTION CORP,
AC CONSTRUCTION INC, L&G
CONSTRUCTION GROUP, LLC
AND THIRD PARTY CLAIMS
AGAINST JASON M. POHLMAN;
JASON M. POHLMAN D/B/A
POHLMAN QUALITY
EXTERIORS, INC.; POHLMAN
QUALITY EXTERIORS, INC.;
PALMETTO TRIM AND
RENOVATIONS, LLC; EDWARD
BRUCE WITHAM, EAST COAST
CARPENTRY; EAST COAST
CARPENTRY COMPANY;

Construction; Carlos Marroquin;
 Carlos Marroquin and Jessica
 Marroquin d/b/a Marroquin
 Construction; Feliciano Cruz Silva;
 Garcia Roofing, LLC; Givair De Caris;
 and Mario Salgado,

RODRIGO ASSIS D/B/A EAST
 COAST CARPENTRY COMPANY
 N/K/A/ ECC CONTRACTING,
 LLC; RODRIGO ASSIS

Defendants.

Builders FirstSource-Southeast Group,
 LLC,

Third Party Plaintiff,

vs.

Jason M. Pohlman; Jason M. Pohlman
 d/b/a Pohlman Quality Exteriors, Inc.;
 Pohlman Quality Exteriors, Inc.;
 Palmetto Trim and Renovations, LLC;
 Edward Bruce Witham; East Coast
 Carpentry; East Coast Carpentry
 Company; Rodrigo Assis d/b/a East
 Coast Carpentry Company n/k/a ECC
 Contracting, LLC; Rodrigo Assis,

Third Party Defendants.

The Defendants, Builders FirstSource-Southeast Group, LLC, and Builders FirstSource Inc., (hereinafter sometimes collectively “these defendants”), answering the Fourth Amended Complaint of the Plaintiffs, asserting the cross claim of Builders FirstSource-Southeast Group, LLC, and reserving all rights under any and or all pending and/or hereinafter filed motions, would respectfully allege unto this Honorable court as follows:

FOR A FIRST DEFENSE

1. That each and every allegation set forth within the Fourth amended complaint, not hereinafter specifically admitted, is denied, and strict proof demanded thereof.
2. That these Defendants, are without knowledge or information sufficient to form an opinion or belief as to the truth the allegations set forth in Paragraph 1 through 8 of the Fourth amended complaint, and therefor deny the same and demand strict proof thereof.
3. That these defendants admit only so much of paragraph 9 of the Fourth amended complaint as alleges that the defendant, Builders FirstSource-Southeast Group, LLC, is a limited liability company organized and existing pursuant to the laws of the state of Delaware, and so much thereof as alleges that Builders FirstSource-Southeast Group, LLC was conducting business in Charleston County, South Carolina at all time relevant hereto.
4. That these defendants deny the allegations set forth in paragraph 10 of the Fourth amended complaint.
5. That these defendants would show that the allegations of paragraph 11 through 42 of the fourth amended complaint relate to parties other than these defendants, and require no response by these defendants: to the extent that the allegations of said paragraphs may be deemed to require a response by these defendants, such allegations are specifically denied.
6. That these defendants admit only so much of paragraph 43 of the Fourth amended complaint as alleges that the defendants designated therein will

be referred to collectively, within the Fourth amended complaint, as "Subcontractor Defendants".

7. That these defendants are without knowledge or information sufficient to form an opinion or belief as to the truth of the allegations set forth in paragraph 44 of the Fourth amended complaint.
8. That these defendants would show that the allegations of paragraphs 45 and 46 of the Fourth amended complaint set forth conclusions of law, which these defendants need neither admit or deny.
9. That these defendants deny so much of paragraph 47 of the Fourth amended complaint as asserts, or may be construed to assert, any allegation against these defendants, and demand strict proof thereof. These defendants are without knowledge or information sufficient to form an opinion or belief as to the truth of the remaining allegations of paragraph 47, and therefor deny the same and demand strict proof thereof.
10. That these defendants deny so much of paragraph 48 of the Fourth amended complaint as asserts, or maybe construed to assert, any allegation against these defendants, and specifically deny so much thereof as alleges that the defendant, Builders FirstSource, Inc., performed any action in connection with the design, development, construction, and/or sale of the subject structures. These defendants are without knowledge or information sufficient to form an opinion or belief as to the truth the

- remaining allegations of paragraph 48 of the Fourth amended complaint, and therefor deny the same and demand strict proof thereof.
11. That these defendants deny the allegations set forth in paragraphs 49, 50, 51, 52 and 53 of the Fourth amended complaint, and demand strict proof thereof.
 12. That these defendants, in responding to paragraph 54 of the Fourth amended complaint, would reallege and reiterate each and every allegation set forth in the preceding paragraphs hereof.
 13. That these defendants would show that the allegations of paragraphs 55, 56, and 57 of the Fourth amended complaint relate to parties other than these defendants, and require no response by these defendants; to the extent that the allegations of said paragraphs may be deemed to require a response by these defendants, such allegations are hereby specifically denied.
 14. That these defendants, in responding to paragraph 58 of the Fourth amended complaint, would reallege and reiterate each and every allegation set forth in the proceeding paragraphs hereof.
 15. That these defendants would show that the allegations of paragraphs 59, 60 and 61 of the Fourth amended complaint relate to parties other than these defendants, and require no response by these defendants; to the extent that the allegations of said paragraphs may be deemed to require a response by these defendants, such allegations are hereby specifically denied.

16. That these defendants, in responding to paragraph 62 of the Fourth amended complaint, would reallage and reiterate each and every allegation set forth in the preceding paragraphs hereof.
17. That these defendants would show that the allegations of paragraphs 63, 64 and 65 of the Fourth amended complaint relate to parties other than these defendants, and require no response by these defendants; to the extent that the allegations of said paragraphs may be deemed to require a response by these defendants, such allegations are hereby specifically denied.
18. That these defendants, in responding to paragraph 66 of the Fourth amended complaint, would reallege and reiterate each and every allegations set forth in the preceding paragraphs hereof.
19. That these defendants would show that the allegations of paragraphs 67 through 75 of the Fourth amended complaint relate to parties other than these defendants and require no response by these defendants; to the extent that the allegations of certain paragraphs may be deemed to require a response by these defendants, such allegations are hereby specifically denied.
20. That thee defendants, in responding to paragraph 76 of the Fourth amended complaint, would reallage and reiterate each and every allegation set forth in the preceding paragraphs hereof.
21. That these defendants would show that the allegations of paragraphs 77 through 80 of the Fourth amended complaint relate to parties other than

- these defendants, and require no response by these defendants; to the extent that the allegations of paragraphs may be deemed to require response by these defendants, such allegations are hereby specifically denied.
22. That these defendants, in responding to paragraph 81 of the Fourth amended complaint, would reallage and reiterate each and every allegation set forth in the preceding paragraphs hereof.
23. That these defendants would show that the allegations of paragraphs 82 through 85 of the Fourth amended complaint relate to parties other than these defendants, and require no response by these defendants; to the extent that the allegations of said paragraphs may be deemed to require a response by these defendants, such allegations are hereby specifically denied.
24. That these defendants, in responding to paragraphs 86 of the Fourth amended complaint, would reallege and reiterate each and every allegation set forth in the preceding paragraphs hereof.
25. That these defendants would show that the allegations of paragraph 87 of the Fourth amended complaint set forth conclusions of law, which these defendants neither admit nor deny; to the extent that the allegations of said paragraph may be deemed to require a response by this defendant, such allegations are hereby specifically denied.
26. That these defendants deny the allegations set forth in paragraphs 88 and 89 of the Fourth amended complaint.

27. That these defendants, in responding to paragraph 90 of the Fourth amended complaint, would reallage and reiterate each and every allegation set forth in the preceding paragraphs hereof.
28. That these defendants would show that the allegations of paragraph 91 of the Fourth amended complaint set forth conclusions of law, which these defendants need neither admit nor deny; to the extent that the allegations of said paragraph may be deemed to require a response by these defendants, such allegations are hereby specifically denied.
29. That these defendants deny the allegation set forth in paragraphs 92 and 93 of the Fourth amended complaint.
30. That these defendants, in responding to paragraph 94 of the Fourth amended complaint, would reallage and reiterate each and every allegation set forth in the preceding paragraphs hereof.
31. That these defendants would show that the allegations of paragraphs 95 through 98 relate to parties other than these defendants, and require no response by these defendants; to the extent that the allegations of said paragraphs may be deemed to require a response by these defendants, such allegations are hereby specifically denied.
32. That these defendants, in responding to paragraph 99 of the Fourth amended complaint would reallege and reiterate each and every allegation set forth in the preceding paragraphs hereof.
33. That these defendants would show that the allegations of paragraphs 100 through 105 of the Fourth amended complaint relate to parties other than

these defendants, and require no response by these defendants; to the extent that the allegations of said paragraphs may be deemed to require a response by these defendants, such allegations are hereby specifically denied.

FOR AN AFFIRMATIVE DEFENSE
(Statutes of Limitations)

- 34. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
- 35. That these Defendants would show that all claims asserted by the Plaintiffs are barred by the applicable statute and/or statutes of limitations.

FOR AN AFFIRMATIVE DEFENSE
(Notice)

- 36. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
- 37. That these Defendants would show that the Plaintiffs had constructive knowledge and/or actual knowledge of those conditions of which are alleged in the Fourth Amended Complaint, and nonetheless proceeded to purchase the subject property. Such circumstances constitute a complete bar to the Plaintiffs' claims.

FOR AN AFFIRMATIVE DEFENSE
(Insufficient Facts to Constitute Cause of Action)

- 38. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

39. That these Defendants would show that the allegations of the Fourth Amended Complaint fail to state facts sufficient to constitute a cause of action and/or causes of action against this Defendant.

FOR AN AFFIRMATIVE DEFENSE

40. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
41. That these Defendants would show that the Plaintiffs had no right or entitlement to rely upon any representations allegedly made by the Defendant, which representations are hereby specifically denied.

FOR AN AFFIRMATIVE DEFENSE
(Superseding Negligence)

42. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
43. That these Defendants would show that the damages alleged by the Fourth Amended Complaint, which damages are hereby specifically denied, were the sole and proximate result of the intervening and/or superseding negligence and/or intervening and/or superseding willful acts and/or recklessness of Fourth persons or parties, which intervening and/or superseding negligence and/or willful acts and/or other actions are a bar to the causes of action asserted against these Defendants.

FOR AN AFFIRMATIVE DEFENSE
(Contributory Negligence)

44. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

45. That these Defendants would show that the damages alleged by the Plaintiffs, which damages are hereby specifically denied, were due to and caused by the reckless, willful, wanton, negligent, careless and grossly negligent acts and conduct of the Plaintiffs, which actions combined and concurred with any negligence on the part of these Defendants, which negligence is hereby specifically denied, to produce such damages, without which the same would not have occurred.

FOR AN AFFIRMATIVE DEFENSE
(Comparative Negligence)

46. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
47. That these Defendants would show that the injuries and/or damages alleged by the Plaintiffs, which injuries and damages are hereby specifically denied, were due to and caused by the reckless, willful, wanton, negligent, careless and grossly negligent acts and conduct of the Plaintiffs, which acts were greater than any acts of negligence on the part of this Defendant, which acts on the part of these Defendants are hereby specifically denied, to produce such injury and/or damages, and without which the same would not have occurred.

FOR AN AFFIRMATIVE DEFENSE
(Doctrine of Laches)

48. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

49. That these Defendants would show that the claims of the Plaintiffs are barred by the doctrine of laches.

FOR AN AFFIRMATIVE DEFENSE
(Assumption of the Risk)

50. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

51. That these Defendants would show that the Plaintiffs, by and through their actions and/or inactions with regard to the subject alleged in the Amended Complaint, have assumed the risk and/or accepted all portions of any damages alleged by the Plaintiffs and such assumption of risk and/or acceptance is a bar to claims against this Defendant.

FOR AN AFFIRMATIVE DEFENSE
(Failure to Mitigate)

52. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

53. That these Defendants would show that the injuries and/or damages alleged by the Plaintiffs, which injuries and/or damages are hereby specifically denied, were due to and caused by the Plaintiffs' failure to mitigate, which failure is a complete bar to recovery by the Plaintiffs.

FOR AN AFFIRMATIVE DEFENSE
(Doctrine of Estoppel)

54. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

55. That these Defendants would show that the Plaintiffs are barred by the doctrine of estoppel from asserting claims against this Defendant.

FOR AN AFFIRMATIVE DEFENSE
(Doctrine of Waiver)

56. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
57. That these Defendants would show that the claims of the Plaintiffs are barred by the doctrine of waiver.

FOR AN AFFIRMATIVE DEFENSE
(Economic Loss Rule)

58. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
59. That these Defendants would show that the claims of the Plaintiffs are barred by the economic loss rule.

FOR AN AFFIRMATIVE DEFENSE
(Sole Negligence of Fourth Parties)

60. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
61. That these Defendants would show that the injuries and/or damages alleged by the Plaintiffs, which injuries and/or damages are hereby specifically denied, were due to and were the proximate result of the sole

negligence and/or recklessness of Fourth persons or parties, for whose conduct these Defendants are not liable.

FOR AN AFFIRMATIVE DEFENSE

62. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
63. That to the extent punitive damages are claimed, these Defendants demand a bifurcated jury trial pursuant to South Carolina Code Annotated §15-32-520, and demands that said damages, if any, be limited to three (3) times the amount of any compensatory damages, or the sum of \$500,000.00, whichever is greater, if any.

FOR AN AFFIRMATIVE DEFENSE
(Exclusion of Warranty)

64. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
65. That these Defendants would show that any and/or all applicable warranties have been properly and effectively excluded by these Defendants.

FOR AN AFFIRMATIVE DEFENSE
(Modification of Warranties)

66. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

67. That these Defendants would show that any and/or all applicable warranties have been properly and effectively modified by these Defendants.

FOR AN AFFIRMATIVE DEFENSE
(Limitation of Warranties)

68. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
69. That these Defendants would show that any and all applicable warranties have been properly and effectively limited by these Defendants.

FOR AN AFFIRMATIVE DEFENSE
(Expiration of Warranties)

70. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
71. That these Defendants would show that any relevant warranties have expired.

FOR AN AFFIRMATIVE DEFENSE
(Excluded Remedies)

72. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
73. That these Defendants would show that the available remedies have been properly and effectively excluded by this Defendant.

FOR AN AFFIRMATIVE DEFENSE
(Modification of Remedies)

74. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

75. That these Defendants would show that all applicable remedies have been properly and effectively modified by these Defendants.

FOR AN AFFIRMATIVE DEFENSE
(Limitation of Remedies)

76. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
77. That these Defendants would show that all available remedies have been properly and effectively limited by these Defendants.

FOR AN AFFIRMATIVE DEFENSE
(Disclaimer of Warranties)

78. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
79. That these Defendants would show that any and all applicable warranties have been properly and effectively disclaimed by these Defendants.

FOR AN AFFIRMATIVE DEFENSE
(Disclaimer of Remedies)

80. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
81. That these Defendants would show that any and all available remedies have been properly and effectively disclaimed by these Defendants.

FOR AN AFFIRMATIVE DEFENSE
(Resolution by Arbitration)

82. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

83. That these Defendants would show that, to the extent that the claims against these Defendants are subject to resolution by arbitration, the instant action against these Defendants should be dismissed.

FOR AN AFFIRMATIVE DEFENSE
(Failure to Comply with Contractual Conditions Precedent)

84. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
85. That these Defendants would show that the Plaintiffs have failed properly to comply with contractual conditions precedent to the assertion of those claims set forth in the Fourth Amended Complaint, which failure is a bar to all claims against these Defendants.

FOR AN AFFIRMATIVE DEFENSE
(Failure to comply with Statutory Conditions Precedent)

86. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
87. That these Defendants would show that the Plaintiffs have failed to comply with the statutory conditions precedent to the assertion of claims set forth in the Fourth Amended Complaint.

FOR AN AFFIRMATIVE DEFENSE
(Failure to give notice of breach of warranty)

88. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

89. That these Defendants would show that the Plaintiffs have failed to give reasonable notice of any alleged breach of any applicable warranty, which breach of warranty or warranties is hereby specifically denied.

FOR AN AFFIRMATIVE DEFENSE
(Insufficient Service of Process)

90. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
91. That this Defendant would show that there has been insufficient service of process upon the person of this Defendant, and the Plaintiffs' claims should therefore be dismissed.

FOR AN AFFIRMATIVE DEFENSE
(Reservation and Non-Waiver)

92. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
93. That these Defendants do not waive, and hereby specifically reserve, any additional and/or further defenses, the propriety of which may be indicated by additional information which may be acquired by these Defendants or their counsel during the course of discovery or otherwise.

FOR AN AFFIRMATIVE DEFENSE
(Joint Tort Feasors Act)

94. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

95. That these Defendants would show that, in the event of a verdict rendered jointly against these Defendants and the remaining Defendants, these Defendants are entitled to contribution from said remaining Defendants, pursuant to the provisions of the South Carolina Uniform Contribution Among Joint Tort Feasors Act and/or other provisions of law.

FOR AN AFFIRMATIVE DEFENSE

96. That each and every allegation set forth in preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
97. That these Defendants would allege that any recovery against these Defendants must be set off or reduced or abated or apportioned to the extent that any other party's actions caused or contributed to any damages, if any, or as otherwise provided pursuant to relevant sections of the South Carolina Contribution Among Joint Tort Feasors Act, Section 15-38-10, et seq. SC Code Amended.

FOR AN AFFIRMATIVE DEFENSE

98. That each and every allegation set forth in preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
99. That these Defendants would show that the design and materials used in the construction of subject property in question were developed, selected, and/or approved by other defendants, thereby reliving these Defendants of any liability or responsibility for damages resulting from design deficiencies or materials which may not have been suitable for incorporation into the subject property.

FOR AN AFFIRMATIVE DEFENSE

100. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
101. That these Defendants would show that the Plaintiffs' claims are barred by the applicable statute and/or statutes of repose.

FOR AN AFFIRMATIVE DEFENSE
(Statute of Frauds)

102. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
103. That these Defendants would show that the claims of the Plaintiffs are barred by the Statute of Frauds.

FOR AN AFFIRMATIVE DEFENSE
(Spoliation of Evidence)

104. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
105. Without admitting that its products were installed on the subject structure, these Defendants submit that repairs may have been made to the subject structure and further, that the alleged defective products may have been destroyed. To the extent that these Defendants have not been afforded the opportunity to inspect and examine the alleged defective products and/or their components, these Defendants plead the Spoliation of Evidence Doctrine as a complete defense to this action.

FOR AN AFFIRMATIVE DEFENSE

106. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
107. That any products designed, manufactured, and/or distributed by these Defendants are found to be the cause of damages suffered by Plaintiffs, which these Defendants hereby specifically deny, the Plaintiffs cannot recover against these Defendants if and to the extent that the use of such products was under circumstances constituting an alteration or modification of the products as provided in South Carolina Code Section 15-73-10, and/or otherwise.

FOR AN AFFIRMATIVE DEFENSE

108. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
109. In the event that the products designed, manufactured, and/or distributed by this Defendant are found to be the cause of damages suffered by Plaintiffs, which these Defendants specifically hereby deny, Plaintiffs cannot recover against these Defendants if and to the extent that the use of the products was under circumstances constituting a lack of reasonable or diligent care, and/or was an unreasonable use as defined in South Carolina Code Section 15-73-10, and/or otherwise.

FOR AN AFFIRMATIVE DEFENSE

110. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

111. To the extent that any petition in bankruptcy has been filed by or on behalf of this Defendant, this Defendant would plead discharge in bankruptcy as a complete defense to any and all claims.

FOR AN AFFIRMATIVE DEFENSE

112. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
113. That these Defendants would show that the Plaintiff lacks sufficient legal privity with these Defendants to permit imposition of liability.

FOR AN AFFIRMATIVE DEFENSE

114. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
115. That these Defendants would show that they have made no representations of warranties inducing the purchase for use of its products by Plaintiffs or others, except such warranties which may be express and in writing, and such express warranties are the only and best evidence of their content and legal effect, and include lawful disclaimers of implied warranties of merchantability and fitness for a particular purpose, and include limitations and responsibility to these Defendants. These Defendants are not responsible for any warranties or representations of purchases and resellers of its products.

FOR AN AFFIRMATIVE DEFENSE

116. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
117. That the Plaintiffs are without standing to assert those claims set forth within the relevant Amended Complaint, and the Plaintiffs' claims should therefore be dismissed.

FOR AN AFFIRMATIVE DEFENSE

118. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
119. That these Defendants would show that the Plaintiffs have failed to comply with those conditions precedent to litigation, as set forth within the relevant Master Deed, and the Plaintiffs' Fourth Amended Complaint, and all causes of action set forth therein, should therefore be dismissed.

FOR AN AFFIRMATIVE DEFENSE

120. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
121. That these Defendants are informed and believes that the Plaintiffs have failed to comply with the provisions of Sections 40-59-10 et seq., and/or Section 40-11-10 et seq., South Carolina Code of Laws (1976), as amended, and the Plaintiffs' Fourth Amended Complaint should, therefore, be stayed and/or dismissed.

FOR AN AFFIRMATIVE DEFENSE

122. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

123. That, to the extent that the Plaintiff has failed to comply with the requirements of the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act (Section 40-59-810 through 40-59-860), and/or Sections 40-11-500 through 40-11-570, South Carolina Codes of Laws (1976), including the provision of the required notice to the Defendant, and the provisions to the Defendant of an opportunity to cure, the Plaintiffs' action must be stayed and/or otherwise barred.

FOR AN ADDITIONAL AFFIRMATIVE DEFENSE AND BY WAY OF CROSS
CLAIMS AGAINST WS CONTRACTORS, LLC, ECC CONTRACTING, LLC,
HURLEY SERVICES, LLC, McDANIEL
CONSTRUCTION CO., LLC, AC CONSTRUCTION, CORP., AC
CONSTRUCTION, INC., L&G CONSTRUCTION GROUP, LLC

124. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
125. That Builders FirstSource-Southeast Group, LLC, (hereinafter sometimes "this defendant" and/or "BFS") is informed and believes that ECC Contracting, LLC is a limited liability corporation organized under and existing pursuant to the laws of the State of South Carolina, which corporation was, at all times relevant hereto, conducting business in Charleston County, South Carolina; this Defendant is further informed and believes that ECC Contracting, LLC provided materials and services in connection with framing, including, but not limited to the installation of windows, doors, and/or other components, during original construction of the subject structures within The Retreat at Charleston National Country Club townhome condominium complex.

126. That this Defendant is informed and believes that Hurley Services, LLC is a limited liability corporation organized under and existing pursuant to the laws of the State of South Carolina, which corporation was, at all times relevant hereto, conducting business in Charleston County, South Carolina; this Defendant is further informed and believes that Hurley Services, LLC provided materials and services in connection with framing, including, but not limited to the installation of windows, doors, and/or other components, during original construction of the subject structures within The Retreat at Charleston National Country Club townhome condominium complex.
127. That this Defendant is informed and believes that McDaniel Construction Co., LLC is a limited liability corporation organized under and existing pursuant to the laws of the State of South Carolina, which corporation was, at all times relevant hereto, conducting business in Charleston County, South Carolina; this Defendant is further informed and believes that McDaniel Construction Co., LLC provided materials and services in connection with framing, including, but not limited to the installation of windows, doors, and/or other components, during original construction of the subject structures within The Retreat at Charleston National Country Club townhome condominium complex.
128. That this Defendant is informed and believes that AC Construction, Corp. is a limited liability corporation organized under and existing pursuant to the laws of the State of South Carolina, which corporation was, at all times

- relevant hereto, conducting business in Charleston County, South Carolina; this Defendant is further informed and believes that AC Construction, Corp. provided materials and services in connection with framing, including, but not limited to the installation of windows, doors, and/or other components, during original construction of the subject structures within The Retreat at Charleston National Country Club townhome condominium complex.
129. That this Defendant is informed and believes that AC Construction, Inc. is a limited liability corporation organized under and existing pursuant to the laws of the State of South Carolina, which corporation was, at all times relevant hereto, conducting business in Charleston County, South Carolina; this Defendant is further informed and believes that AC Construction, Inc. provided materials and services in connection with framing, including, but not limited to the installation of windows, doors, and/or other components, during original construction of the subject structures within The Retreat at Charleston National Country Club townhome condominium complex.
130. That this Defendant is informed and believes that L&G Construction Group, LLC is a limited liability corporation organized under and existing pursuant to the laws of the State of South Carolina, which corporation was, at all times relevant hereto, conducting business in Charleston County, South Carolina; this Defendant is further informed and believes that L&G Construction Group, LLC provided materials and services in

connection with framing, including, but not limited to the installation of windows, doors, and/or other components, during original construction of the subject structures within The Retreat at Charleston National Country Club townhome condominium complex.

131. That these Defendants are informed and believes that WS Contractors, is a limited liability corporation organized under and existing pursuant to the laws of the State of South Carolina, which corporation was, at all times relevant hereto, conducting business in Charleston County, South Carolina; these Defendants are further informed and believes that WS Contractors provided materials and services in connection with framing, including, but not limited to the installation of windows, doors, and/or other components, during original construction of the subject structures within The Retreat at Charleston National Country Club townhome condominium complex.

FOR A FIRST CAUSE AS TO WS CONTRACTORS,
ECC CONTRACTING, LLC, HURLEY SERVICES, LLC, McDANIEL
CONSTRUCTION CO., LLC, AC CONSTRUCTION, CORP., AC
CONSTRUCTION, INC., L&G CONSTRUCTION GROUP, LLC

132. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
133. That the Plaintiff, The Retreat at Charleston National Country Club HOA, Inc., and The Retreat at Charleston National Country Club Horizontal Property Regime, have sued Builders FirstSource-Southeast Group, LLC (hereinafter sometimes "BFS"), asserting damages allegedly caused, inter

- alia, by deficiencies in framing, including but not limited to deficiencies in the installation of windows, doors, and related components, during original construction of the subject structures.
134. That BFS has denied the material allegations asserted against BFS in the Plaintiffs' Fourth Amended Complaint.
135. That the respective subcontracts between this Defendant and the Cross Claim Defendants, provide for contractual indemnification in favor of BFS.
136. That the Cross Claim Defendants served as subcontractors to BFS in connection with their services at the subject structures. Regardless, therefore, of any specific contractual obligation to indemnify, there exists a special relationship between this Defendant, and the Cross Claim Defendants, sufficient to impose obligations of indemnity against the aforesaid Cross Claim Defendants, in favor of BFS.
137. That to the extent, if any, that BFS may be held liable to the Plaintiffs, or to others in this action, such liability would be a direct and proximate result of the wrongful acts, omissions, negligence, gross negligence, and/or representations of the Cross Claim Defendants, which have damaged BFS, as BFS has been subjected to liability and has incurred consequential damages in having to expend attorneys' fees and costs in defending against the Plaintiffs' claims.
138. That BFS is entitled to full contractual and common law indemnification from the Cross Claim Defendants, for any liability BFS is found to have to the Plaintiffs or to others in this action, and BFS is also entitled to

damages for any negligence, as aforesaid, on the part of the Cross Claim Defendants, entitling BFS to recover from the Cross Claim Defendants, its attorneys' fees, costs, and other expenses incurred in defending this action, and further entitling BFS to recover from the Cross Claim Defendants any sums for which BFS may be held liable to the Plaintiffs or to others, or which Builders FirstSource-Southeast Group, LLC may pay in satisfaction of such claims.

FOR A SECOND CAUSE AS TO WS CONTRACTORS, ECC CONTRACTING, LLC, HURLEY SERVICES, LLC, McDANIEL CONSTRUCTION CO., LLC, AC CONSTRUCTION, CORP., AC CONSTRUCTION, INC., L&G CONSTRUCTION GROUP, LLC

139. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
140. That the Cross Claim Defendants made express warranties that materials, services, and/or workmanship provided in conjunction with their services at the subject structures, would be as required by and in accordance with the contract documents, applicable building codes, and industry standards.
141. That the respective sub-contract agreements between BFS and the Cross Claim Defendants include provisions, by which the Cross Claim Defendants expressly undertook to provide materials and services in accordance with the contract documents.

142. That in the event that the Plaintiffs prove that the materials and/or services provided by the Cross Claim Defendants are not in accordance with the requirements of the contract documents, industry standards, or relevant building requirements, then and in that event the Cross Claim Defendants have materially breached their express warranties.
143. That BFS is entitled to judgment against the Cross Claim Defendants in the amount of any judgment which the Plaintiffs may obtain against BFS, or which Builders FirstSource-Southeast Group, LLC may pay in satisfaction of such claims, for breach of any express warranties on the part of the Cross Claim Defendants, plus BFS costs for defense, inclusive of attorneys' fees.

FOR A THIRD CAUSE AS TO WS CONTRACTORS,
ECC CONTRACTING, LLC, HURLEY SERVICES, LLC, McDANIEL
CONSTRUCTION CO., LLC, AC CONSTRUCTION, CORP., AC
CONSTRUCTION, INC., L&G CONSTRUCTION GROUP, LLC

144. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
145. That the Cross Claim Defendants made implied warranties of workmanlike services, merchantability, and fitness for particular purpose, in connection with its services in renovation, repair, and/or construction at the subject residence.
146. That in the event that the Plaintiffs prove that the services of the respective Cross Claim Defendants were deficient, then and in that event

the Cross Claim Defendants have materially breached their implied warranties.

147. That BFS is entitled to judgment against the Cross Claim Defendants in the event, and to the extent that the Plaintiffs may obtain judgment against BFS, or which Builders FirstSource-Southeast Group, LLC may pay in satisfaction of such claims, for breach of implied warranties, including such warranty of workmanlike service.

FOR A FOURTH CAUSE AS TO WS CONTRACTORS,
ECC CONTRACTING, LLC, HURLEY SERVICES, LLC, McDANIEL
CONSTRUCTION CO., LLC, AC CONSTRUCTION, CORP., AC
CONSTRUCTION, INC., L&G CONSTRUCTION GROUP, LLC

148. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
149. That Cross Claim Defendants owed a duty of due care in providing services and materials in connection with construction and/or repair of the subject structures.
150. In the event that the Plaintiffs prove that due care was not exercised in the provision of materials and services by the Cross Claim Defendants, then and in that event the Cross Claim Defendants have breached their duties of due care.
151. In the event that the Plaintiffs obtains judgment against BFS as a direct, foreseeable and proximate result of the negligence and/or gross

negligence of the Cross Claim Defendants, then and in that event BFS is entitled to judgment against the Cross Claim Defendants for the amount of any such judgment, or any amount Builders FirstSource-Southeast Group, LLC may pay in satisfaction of claims, plus costs of defense, inclusive of attorneys' fees.

FOR A FIFTH CAUSE AS TO WS CONTRACTORS,
ECC CONTRACTING, LLC, HURLEY SERVICES, LLC, McDANIEL
CONSTRUCTION CO., LLC, AC CONSTRUCTION, CORP., AC
CONSTRUCTION, INC., L&G CONSTRUCTION GROUP, LLC

152. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
153. That the Cross Claim Defendants were contractually responsible for provision of adequate materials and services in connection with their respective undertakings regarding construction of the subject structures.
154. That in the event that the Plaintiffs prove that the BFS contract was breached due to improper or inadequate materials and/or services provided by the respective Cross Claim Defendants, then and in that event the Cross Claim Defendants have materially breached their sub-contracts, by failing properly and adequately to provide materials and services in connection with construction of the subject structures.
155. That BFS is entitled to judgment against the Cross Claim Defendants in the event, and to the extent that the Plaintiffs may obtain judgment against BFS for breach of contract, or for any amount Builders FirstSource-

Southeast Group, LLC may pay in satisfaction of claims, and BFS is further entitled to recover the costs of defense, inclusive of attorneys' fees.

FOR AN ADDITIONAL AFFIRMATIVE DEFENSE AND BY WAY OF THIRD PARTY CLAIMS AGAINST JASON M. POHLMAN, JASON M. POHLMAN D/B/A POHLMAN QUALITY EXTERIORS, INC., POHLMAN QUALITY EXTERIORS, INC., PALMETTO TRIM AND RENOVATIONS, LLC, EDWARD BRUCE WITHAM, EAST COAST CARPENTRY, EAST COAST CARPENTRY COMPANY, RODRIGO ASSIS D/B/A EAST COAST CARPENTRY COMPANY N/K/A ECC CONTRACTING, LLC, RODRIGO ASSIS

156. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
157. That this Defendant is informed and believes that Jason M. Pohlman, Jason M. Pohlman d/b/a Pohlman Quality Exteriors, Inc., Pohlman Quality Exteriors is organized under and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina; this Defendant is further informed and believes that Jason M. Pohlman, Jason M. Pohlman d/b/a Pohlman Quality Exteriors, Inc., Pohlman Quality Exteriors provided materials and services in connection with framing, including, but not limited to the installation of windows, doors, and/or other components, during original construction of the subject structures within The Retreat at Charleston National Country Club townhome condominium complex.
158. That this Defendant is informed and believes that Palmetto Trim and Renovations, LLC is organized under and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina; this Defendant

- is further informed and believes that Palmetto Trim and Renovations, LLC provided materials and services in connection with framing, including, but not limited to the installation of windows, doors, and/or other components, during original construction of the subject structures within The Retreat at Charleston National Country Club townhome condominium complex.
159. That this Defendant is informed and believes that Edward Bruce Witham is a sole proprietor and existing pursuant to the laws of the State of South Carolina, which was at all times relevant hereto, conducting business in Charleston County, South Carolina; this Defendant is further informed and believes that Edward Bruce Witham provided materials and services in connection with framing, including, but not limited to the installation of windows, doors, and/or other components, during original construction of the subject structures within The Retreat at Charleston National Country Club townhome condominium complex.
160. That this Defendant is informed and believes that East Coast Carpentry, East Coast Carpentry Company, Rodrigo Assis d/b/a East Coast Carpentry Company n/k/a ECC Contracting, LLC, Rodrigo Assis is organized under and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina; this Defendant is further informed and believes that East Coast Carpentry, East Coast Carpentry Company, Rodrigo Assis d/b/a East Coast Carpentry Company n/k/a ECC Contracting, LLC, Rodrigo Assis provided materials and services in

connection with framing, including, but not limited to the installation of windows, doors, and/or other components, during original construction of the subject structures within The Retreat at Charleston National Country Club townhome condominium complex.

FOR A FIRST CAUSE AS TO JASON M. POHLMAN, JASON M. POHLMAN D/B/A POHLMAN QUALITY EXTERIORS, INC., POHLMAN QUALITY EXTERIORS, INC., PALMETTO TRIM AND RENOVATIONS, LLC, EDWARD BRUCE WITHAM, EAST COAST CARPENTRY, EAST COAST CARPENTRY COMPANY, RODRIGO ASSIS D/B/A EAST COAST CARPENTRY COMPANY N/K/A ECC CONTRACTING, LLC, RODRIGO ASSIS

161. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
162. That the Plaintiff, The Retreat at Charleston National Country Club HOA, Inc., and The Retreat at Charleston National Country Club Horizontal Property Regime, have sued Builders FirstSource-Southeast Group, LLC (hereinafter sometimes "BFS"), asserting damages allegedly caused, inter alia, by deficiencies in framing, including but not limited to deficiencies in the installation of windows, doors, and related components, during original construction of the subject structures.
163. That BFS has denied the material allegations asserted against BFS in the Plaintiffs' Amended Complaint.
164. That the Third-Party Defendants, JASON M. POHLMAN, JASON M. POHLMAN D/B/A POHLMAN QUALITY EXTERIORS, INC., POHLMAN QUALITY EXTERIORS, INC., PALMETTO TRIM AND RENOVATIONS, LLC, EDWARD BRUCE WITHAM, EAST COAST CARPENTRY, EAST COAST CARPENTRY COMPANY, RODRIGO ASSIS D/B/A EAST

- COAST CARPENTRY COMPANY N/K/A ECC CONTRACTING, LLC, RODRIGO ASSIS (hereinafter "Third-Party Defendants") were responsible for provision of materials and services in connection with the installation of the aforesaid components of construction, for proper quality control, and for compliance with the contract documents, industry standards, and requirements of relevant building codes. In the event that the Plaintiffs establish that the materials and/or services of the Third-Party Defendants were not in compliance with the relevant contract documents, industry standards, and/or building code requirements, then and in that event the Third-Party Defendants have failed properly to execute their duties, which failure has allegedly caused the Plaintiffs' damages.
165. That the respective subcontracts between this Defendant and the Third-Party Defendants, provide for contractual indemnification in favor of BFS.
166. That the Third Party Defendants served as subcontractors to BFS in connection with their services at the subject structures. Regardless, therefore, of any specific contractual obligation to indemnify, there exists a special relationship between this Defendant, and the Third-Party Defendants, sufficient to impose obligations of indemnity against the aforesaid Third-Party Defendants, in favor of BFS.
167. That to the extent, if any, that BFS may be held liable to the Plaintiffs, or to others in this action, such liability would be a direct and proximate result of the wrongful acts, omissions, negligence, and/or representations of the Third-Party Defendants, which have damaged BFS, as BFS has been

subjected to liability and has incurred consequential damages in having to expend attorneys' fees and costs in defending against the Plaintiffs' claims.

168. That BFS is entitled to full contractual and common law indemnification from the Third-Party Defendants, for any liability BFS is found to have to the Plaintiffs or to others in this action, and BFS is also entitled to damages for any negligence, as aforesaid, on the part of the Third-Party Defendants, entitling BFS to recover from the Third-Party Defendants, its attorneys' fees, costs, and other expenses incurred in defending this action, and further entitling BFS to recover from the Third-Party Defendants any sums for which BFS may be held liable to the Plaintiffs or to others, or which Builders FirstSource-Southeast Group, LLC may pay in satisfaction of such claims.

FOR A SECOND CAUSE AS TO JASON M. POHLMAN, JASON M. POHLMAN
D/B/A POHLMAN QUALITY EXTERIORS, INC., POHLMAN QUALITY
EXTERIORS, INC., PALMETTO TRIM AND RENOVATIONS, LLC, EDWARD
BRUCE WITHAM, EAST COAST CARPENTRY, EAST COAST CARPENTRY
COMPANY, RODRIGO ASSIS D/B/A EAST COAST CARPENTRY COMPANY
N/K/A ECC CONTRACTING, LLC, RODRIGO ASSIS

169. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
170. That the Third Party Defendants made express warranties that materials, services, and/or workmanship provided in conjunction with their services at the subject structures, would be as required by and in accordance with the contract documents, applicable building codes, and industry standards.
171. That the respective sub-contract agreements between BFS and the Third Party Defendants include provisions, by which the Third-Party Defendants expressly undertook to provide materials and services in accordance with the contract documents.
172. That in the event that the Plaintiffs prove that the materials and/or services provided by the Third-Party Defendants are not in accordance with the requirements of the contract documents, industry standards, or relevant building requirements, then and in that event the Third-Party Defendants have materially breached their express warranties.
173. That BFS is entitled to judgment against the Third-Party Defendants in the amount of any judgment which the Plaintiffs may obtain against BFS, or which Builders FirstSource-Southeast Group, LLC may pay in satisfaction of such claims, for breach of any express warranties on the part of the

Third-Party Defendants, plus BFS costs for defense, inclusive of attorneys' fees.

FOR A THIRD CAUSE AS TO JASON M. POHLMAN, JASON M. POHLMAN D/B/A POHLMAN QUALITY EXTERIORS, INC., POHLMAN QUALITY EXTERIORS, INC., PALMETTO TRIM AND RENOVATIONS, LLC, EDWARD BRUCE WITHAM, EAST COAST CARPENTRY, EAST COAST CARPENTRY COMPANY, RODRIGO ASSIS D/B/A EAST COAST CARPENTRY COMPANY N/K/A ECC CONTRACTING, LLC, RODRIGO ASSIS

174. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
175. That the Third-Party Defendants made implied warranties of workmanlike services, merchantability, and fitness for particular purpose, in connection with its services in renovation, repair, and/or construction at the subject residence.
176. That in the event that the Plaintiffs prove that the services of the respective Third-Party Defendants were deficient, then and in that event the Third-Party Defendants have materially breached their implied warranties.
177. That BFS is entitled to judgment against the Third-Party Defendants in the event, and to the extent that the Plaintiffs may obtain judgment against BFS, or which Builders FirstSource-Southeast Group, LLC may pay in satisfaction of such claims, for breach of implied warranties, including such warranty of workmanlike service.

FOR A FOURTH CAUSE AS TO JASON M. POHLMAN, JASON M. POHLMAN D/B/A POHLMAN QUALITY EXTERIORS, INC., POHLMAN QUALITY EXTERIORS, INC., PALMETTO TRIM AND RENOVATIONS, LLC, EDWARD BRUCE WITHAM, EAST COAST CARPENTRY, EAST COAST CARPENTRY COMPANY, RODRIGO ASSIS D/B/A EAST COAST CARPENTRY COMPANY N/K/A ECC CONTRACTING, LLC, RODRIGO ASSIS

178. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
179. That Third-Party Defendants owed a duty of due care in providing services and materials in connection with construction and/or repair of the subject structures.
180. In the event that the Plaintiffs prove that due care was not exercised in the provision of materials and services by the Third-Party Defendants, then and in that event the Third-Party Defendants have breached their duties of due care.
181. In the event that the Plaintiffs obtains judgment against BFS as a direct, foreseeable and proximate result of the negligence of the Third-Party Defendants, then and in that event BFS is entitled to judgment against the Third-Party Defendants for the amount of any such judgment, or any amount Builders FirstSource-Southeast Group, LLC may pay in satisfaction of claims, plus costs of defense, inclusive of attorneys' fees.

FOR A FIFTH CAUSE AS TO JASON M. POHLMAN, JASON M. POHLMAN D/B/A POHLMAN QUALITY EXTERIORS, INC., POHLMAN QUALITY EXTERIORS, INC., PALMETTO TRIM AND RENOVATIONS, LLC, EDWARD BRUCE WITHAM, EAST COAST CARPENTRY, EAST COAST CARPENTRY COMPANY, RODRIGO ASSIS D/B/A EAST COAST CARPENTRY COMPANY N/K/A ECC CONTRACTING, LLC, RODRIGO ASSIS

182. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
183. That the Third-Party Defendants were contractually responsible for provision of adequate materials and services in connection with their respective undertakings regarding construction of the subject structures.
184. That in the event that the Plaintiffs prove that the BFS contract was breached due to improper or inadequate materials and/or services provided by the respective Third-Party Defendants, then and in that event the Third-Party Defendants have materially breached their sub-contract, by failing properly and adequately to provide materials and services in connection with construction of the subject structures.
185. That BFS is entitled to judgment against the Third-Party Defendants in the event, and to the extent that the Plaintiffs may obtain judgment against BFS for breach of contract, or for any amount Builders FirstSource-Southeast Group, LLC may pay in satisfaction of claims, and BFS is further entitled to recover the costs of defense, inclusive of attorneys' fees.
186. WHEREFORE, having fully answered the Fourth Amended Complaint of the Plaintiffs, and having set forth the Cross Claims and Third-Party Complaint of Builders FirstSource-Southeast Group, LLC and Builders FirstSource, Inc., these Defendants pray as follows:
- a. That the Plaintiff's Fourth Amended Complaint be dismissed, as to these Defendants, with costs to these Defendants;

- b. That Builders FirstSource-Southeast Group, LLC be granted judgment on its Cross Claims;
- c. That Builders FirstSource-Southeast Group, LLC be granted judgment on its Third-Party claims against Third Party Defendants;
- d. That these Defendants have jury trial on all matters so triable;
- e. That these Defendants be granted such other and further relief as this Court may deem just and proper.

HOWELL, GIBSON & HUGHES, P.A.

By: /s/William H. Cox, III
Stephen P. Hughes
William H. Cox, III
Post Office Box 40
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Attorneys for Builders FirstSource-
Southeast Group, LLC

Beaufort, South Carolina

November 11, 2019

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF CHARLESTON) CIVIL ACTION NO: 2016-CP-10-03783

The Retreat at Charleston National
 Country Club Home Owners
 Association, Inc. and The Retreat at
 Charleston National Country Club
 Horizontal Property Regime,

Plaintiffs,

vs.

Winston Carlyle Charleston National,
 LLC; Colin R. Campbell Construction,
 Inc.; Colin Campbell, individually;
 Builders FirstSource-Southeast Group,
 LLC; Builders FirstSource, Inc.;
 Americo Roofing Concepts, Inc.; DVS,
 Inc.; Advanced Building Connection,
 LLC; Guy C., Lee Building Materials,
 LLC; WS Contractors, LLC; Dino
 Schwartz, Individually; Charleston
 Exteriors, LLC; ECC Contracting, LLC;
 Hurley Services, LLC; McDaniel
 Construction Co., LLC; AC
 Construction Corp.; AC Construction,
 Inc.; L&G Construction Group, LLC;
 Liollo Architecture, JC Contractors,
 LLC, Soto & Vazquez Construction,
 LLC, Costa De Oliveira Construction,
 LLC a/k/a Costa De Oliveira
 Construction, LLC and Solesmar
 Jesus De Oliveira, Wilson Lucas Sales
 d/b/a Miracle Siding; Miracle Siding,
 LLC; Royal Homes of SC, Inc.;
 Colleen Batissa; Christopher Batissa;
 Norma Ferreira Bruno; Mendez
 Construction, LLC; Juan Garza
 Ramos; Juan Garza Ramos d/b/a
 Juan Constructors; Jessica Marroquin;
 Jessice Marroquin d/b/a Marroquin
 Construction; Carlos Marroquin

AMENDED ANSWER OF
DEFENDANT BUILDERS
FIRSTSOURCE SOUTHEAST
GROUP, LLC AND BUILDERS
FIRSTSOURCE, INC. TO
PLAINTIFFS' FOURTH
AMENDED COMPLAINT AND
REASSERTED and/or OTHER
CROSS CLAIMS OF BUILDERS
FIRSTSOURCE-SOUTHEAST
GROUP, LLC AGAINST WS
CONTRACTORS LLC, ECC
CONTRATING, LLC, HURLEY
SERVICES, LLC, MCDANIEL
CONSTRUCTION COMPANY,
LLC, AC CONSTRUCTION
CORP. AC CONSTRUCTION
INC., L&G CONSTRUCTION
GROUP, LLC AND THIRD
PARTY CLAIMS AGAINST
POHLMAN QUALITY
EXTERIORS, INC.; POHLMAN
QUALITY EXTERIORS, INC.;
PALMETTO TRIM AND
RENOVATIONS, LLC; EDWARD
BRUCE WITHAM, EAST COAST
CARPENTRY; EAST COAST
CARPENTRY COMPANY;

Construction; Carlos Marroquin;
 Carlos Marroquin and Jessica
 Marroquin d/b/a Marroquin
 Construction; Feliciano Cruz Silva;
 Garcia Roofing, LLC; Givair De Caris;
 and Mario Salgado

Defendants.

Builders FirstSource-Southeast Group,
 LLC,

Third Party Plaintiff,

vs.

Pohlman Quality Contractors,
 Pohlman Quality Exteriors, Palmetto
 Trim and Renovation, Edward Bruce
 Witham and East Coast Carpentry,

Third Party Defendants.

The Defendants, Builders FirstSource-Southeast Group, LLC, and Builders FirstSource Inc., (hereinafter sometimes collectively “these defendants”), answering the Fourth Amended Complaint of the Plaintiffs, asserting the cross claim of Builders FirstSource-Southeast Group, LLC, and reserving all rights under any and or all pending and/or hereinafter filed motions, would respectfully allege unto this Honorable court as follows:

FOR A FIRST DEFENSE

1. That each and every allegation set forth within the Fourth amended complaint, not hereinafter specifically admitted, is denied, and strict proof demanded thereof.

2. That these Defendants, are without knowledge or information sufficient to form an opinion or belief as to the truth the allegations set forth in Paragraph 1 through 8 of the Fourth amended complaint, and therefor deny the same and demand strict proof thereof.
3. That these defendants admit only so much of paragraph 9 of the Fourth amended complaint as alleges that the defendant, Builders FirstSource-Southeast Group, LLC, is a limited liability company organized and existing pursuant to the laws of the state of Delaware, and so much thereof as alleges that Builders FirstSource-Southeast Group, LLC was conducting business in Charleston County, South Carolina at all time relevant hereto.
4. That these defendants deny the allegations set forth in paragraph 10 of the Fourth amended complaint.
5. That these defendants would show that the allegations of paragraph 11 through 42 of the fourth amended complaint relate to parties other than these defendants, and require no response by these defendants: to the extent that the allegations of said paragraphs may be deemed to require a response by these defendants, such allegations are specifically denied.
6. That these defendants admit only so much of paragraph 43 of the Fourth amended complaint as alleges that the defendants designated therein will be referred to collectively, within the Fourth amended complaint, as "Subcontractor Defendants".

7. That these defendants are without knowledge or information sufficient to form an opinion or belief as to the truth of the allegations set forth in paragraph 44 of the Fourth amended complaint.
8. That these defendants would show that the allegations of paragraphs 45 and 46 of the Fourth amended complaint set forth conclusions of law, which these defendants need neither admit or deny.
9. That these defendants deny so much of paragraph 47 of the Fourth amended complaint as asserts, or may be construed to assert, any allegation against these defendants, and demand strict proof thereof. These defendants are without knowledge or information sufficient to form an opinion or belief as to the truth of the remaining allegations of paragraph 47, and therefor deny the same and demand strict proof thereof.
10. That these defendants deny so much of paragraph 48 of the Fourth amended complaint as asserts, or maybe construed to assert, any allegation against these defendants, and specifically deny so much thereof as alleges that the defendant, Builders FirstSource, Inc., performed any action in connection with the design, development, construction, and/or sale of the subject structures. These defendants are without knowledge or information sufficient to form an opinion or belief as to the truth the remaining allegations of paragraph 48 of the Fourth amended complaint, and therefor deny the same and demand strict proof thereof.

11. That these defendants deny the allegations set forth in paragraphs 49, 50, 51, 52 and 53 of the Fourth amended complaint, and demand strict proof thereof.
12. That these defendants, in responding to paragraph 54 of the Fourth amended complaint, would reallege and reiterate each and every allegation set forth in the preceding paragraphs hereof.
13. That these defendants would show that the allegations of paragraphs 55, 56, and 57 of the Fourth amended complaint relate to parties other than these defendants, and require no response by these defendants; to the extent that the allegations of said paragraphs may be deemed to require a response by these defendants, such allegations are hereby specifically denied.
14. That these defendants, in responding to paragraph 58 of the Fourth amended complaint, would reallege and reiterate each and every allegation set forth in the proceeding paragraphs hereof.
15. That these defendants would show that the allegations of paragraphs 59, 60 and 61 of the Fourth amended complaint relate to parties other than these defendants, and require no response by these defendants; to the extent that the allegations of said paragraphs may be deemed to require a response by these defendants, such allegations are hereby specifically denied.

16. That these defendants, in responding to paragraph 62 of the Fourth amended complaint, would reallage and reiterate each and every allegation set forth in the preceding paragraphs hereof.
17. That these defendants would show that the allegations of paragraphs 63, 64 and 65 of the Fourth amended complaint relate to parties other than these defendants, and require no response by these defendants; to the extent that the allegations of said paragraphs may be deemed to require a response by these defendants, such allegations are hereby specifically denied.
18. That these defendants, in responding to paragraph 66 of the Fourth amended complaint, would reallege and reiterate each and every allegations set forth in the preceding paragraphs hereof.
19. That these defendants would show that the allegations of paragraphs 67 through 75 of the Fourth amended complaint relate to parties other than these defendants and require no response by these defendants; to the extent that the allegations of certain paragraphs may be deemed to require a response by these defendants, such allegations are hereby specifically denied.
20. That thee defendants, in responding to paragraph 76 of the Fourth amended complaint, would reallage and reiterate each and every allegation set forth in the preceding paragraphs hereof.
21. That these defendants would show that the allegations of paragraphs 77 through 80 of the Fourth amended complaint relate to parties other than

- these defendants, and require no response by these defendants; to the extent that the allegations of paragraphs may be deemed to require response by these defendants, such allegations are hereby specifically denied.
22. That these defendants, in responding to paragraph 81 of the Fourth amended complaint, would reallage and reiterate each and every allegation set forth in the preceding paragraphs hereof.
23. That these defendants would show that the allegations of paragraphs 82 through 85 of the Fourth amended complaint relate to parties other than these defendants, and require no response by these defendants; to the extent that the allegations of said paragraphs may be deemed to require a response by these defendants, such allegations are hereby specifically denied.
24. That these defendants, in responding to paragraphs 86 of the Fourth amended complaint, would reallege and reiterate each and every allegation set forth in the preceding paragraphs hereof.
25. That these defendants would show that the allegations of paragraph 87 of the Fourth amended complaint set forth conclusions of law, which these defendants neither admit nor deny; to the extent that the allegations of said paragraph may be deemed to require a response by this defendant, such allegations are hereby specifically denied.
26. That these defendants deny the allegations set forth in paragraphs 88 and 89 of the Fourth amended complaint.

27. That these defendants, in responding to paragraph 90 of the Fourth amended complaint, would reallage and reiterate each and every allegation set forth in the preceding paragraphs hereof.
28. That these defendants would show that the allegations of paragraph 91 of the Fourth amended complaint set forth conclusions of law, which these defendants need neither admit nor deny; to the extent that the allegations of said paragraph may be deemed to require a response by these defendants, such allegations are hereby specifically denied.
29. That these defendants deny the allegation set forth in paragraphs 92 and 93 of the Fourth amended complaint.
30. That these defendants, in responding to paragraph 94 of the Fourth amended complaint, would reallage and reiterate each and every allegation set forth in the preceding paragraphs hereof.
31. That these defendants would show that the allegations of paragraphs 95 through 98 relate to parties other than these defendants, and require no response by these defendants; to the extent that the allegations of said paragraphs may be deemed to require a response by these defendants, such allegations are hereby specifically denied.
32. That these defendants, in responding to paragraph 99 of the Fourth amended complaint would reallege and reiterate each and every allegation set forth in the preceding paragraphs hereof.
33. That these defendants would show that the allegations of paragraphs 100 through 105 of the Fourth amended complaint relate to parties other than

these defendants, and require no response by these defendants; to the extent that the allegations of said paragraphs may be deemed to require a response by these defendants, such allegations are hereby specifically denied.

FOR AN AFFIRMATIVE DEFENSE
(Statutes of Limitations)

- 34. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
- 35. That these Defendants would show that all claims asserted by the Plaintiffs are barred by the applicable statute and/or statutes of limitations.

FOR AN AFFIRMATIVE DEFENSE
(Notice)

- 36. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
- 37. That these Defendants would show that the Plaintiffs had constructive knowledge and/or actual knowledge of those conditions of which are alleged in the Fourth Amended Complaint, and nonetheless proceeded to purchase the subject property. Such circumstances constitute a complete bar to the Plaintiffs' claims.

FOR AN AFFIRMATIVE DEFENSE
(Insufficient Facts to Constitute Cause of Action)

- 38. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

39. That these Defendants would show that the allegations of the Fourth Amended Complaint fail to state facts sufficient to constitute a cause of action and/or causes of action against this Defendant.

FOR AN AFFIRMATIVE DEFENSE

40. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
41. That these Defendants would show that the Plaintiffs had no right or entitlement to rely upon any representations allegedly made by the Defendant, which representations are hereby specifically denied.

FOR AN AFFIRMATIVE DEFENSE
(Superseding Negligence)

42. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
43. That these Defendants would show that the damages alleged by the Fourth Amended Complaint, which damages are hereby specifically denied, were the sole and proximate result of the intervening and/or superseding negligence and/or intervening and/or superseding willful acts and/or recklessness of Fourth persons or parties, which intervening and/or superseding negligence and/or willful acts and/or other actions are a bar to the causes of action asserted against these Defendants.

FOR AN AFFIRMATIVE DEFENSE
(Contributory Negligence)

44. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

45. That these Defendants would show that the damages alleged by the Plaintiffs, which damages are hereby specifically denied, were due to and caused by the reckless, willful, wanton, negligent, careless and grossly negligent acts and conduct of the Plaintiffs, which actions combined and concurred with any negligence on the part of these Defendants, which negligence is hereby specifically denied, to produce such damages, without which the same would not have occurred.

FOR AN AFFIRMATIVE DEFENSE
(Comparative Negligence)

46. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
47. That these Defendants would show that the injuries and/or damages alleged by the Plaintiffs, which injuries and damages are hereby specifically denied, were due to and caused by the reckless, willful, wanton, negligent, careless and grossly negligent acts and conduct of the Plaintiffs, which acts were greater than any acts of negligence on the part of this Defendant, which acts on the part of these Defendants are hereby specifically denied, to produce such injury and/or damages, and without which the same would not have occurred.

FOR AN AFFIRMATIVE DEFENSE
(Doctrine of Laches)

48. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

49. That these Defendants would show that the claims of the Plaintiffs are barred by the doctrine of laches.

FOR AN AFFIRMATIVE DEFENSE
(Assumption of the Risk)

50. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
51. That these Defendants would show that the Plaintiffs, by and through their actions and/or inactions with regard to the subject alleged in the Amended Complaint, have assumed the risk and/or accepted all portions of any damages alleged by the Plaintiffs and such assumption of risk and/or acceptance is a bar to claims against this Defendant.

FOR AN AFFIRMATIVE DEFENSE
(Failure to Mitigate)

52. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
53. That these Defendants would show that the injuries and/or damages alleged by the Plaintiffs, which injuries and/or damages are hereby specifically denied, were due to and caused by the Plaintiffs' failure to mitigate, which failure is a complete bar to recovery by the Plaintiffs.

FOR AN AFFIRMATIVE DEFENSE
(Doctrine of Estoppel)

54. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
55. That these Defendants would show that the Plaintiffs are barred by the doctrine of estoppel from asserting claims against this Defendant.

FOR AN AFFIRMATIVE DEFENSE
(Doctrine of Waiver)

56. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
57. That these Defendants would show that the claims of the Plaintiffs are barred by the doctrine of waiver.

FOR AN AFFIRMATIVE DEFENSE
(Economic Loss Rule)

58. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
59. That these Defendants would show that the claims of the Plaintiffs are barred by the economic loss rule.

FOR AN AFFIRMATIVE DEFENSE
(Sole Negligence of Fourth Parties)

60. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
61. That these Defendants would show that the injuries and/or damages alleged by the Plaintiffs, which injuries and/or damages are hereby specifically denied, were due to and were the proximate result of the sole negligence and/or recklessness of Fourth persons or parties, for whose conduct these Defendants are not liable.

FOR AN AFFIRMATIVE DEFENSE

62. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

63. That to the extent punitive damages are claimed, these Defendants demand a bifurcated jury trial pursuant to South Carolina Code Annotated §15-32-520, and demands that said damages, if any, be limited to three (3) times the amount of any compensatory damages, or the sum of \$500,000.00, whichever is greater, if any.

FOR AN AFFIRMATIVE DEFENSE
(Exclusion of Warranty)

64. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
65. That these Defendants would show that any and/or all applicable warranties have been properly and effectively excluded by these Defendants.

FOR AN AFFIRMATIVE DEFENSE
(Modification of Warranties)

66. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
67. That these Defendants would show that any and/or all applicable warranties have been properly and effectively modified by these Defendants.

FOR AN AFFIRMATIVE DEFENSE
(Limitation of Warranties)

68. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

69. That these Defendants would show that any and all applicable warranties have been properly and effectively limited by these Defendants.

FOR AN AFFIRMATIVE DEFENSE
(Expiration of Warranties)

70. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
71. That these Defendants would show that any relevant warranties have expired.

FOR AN AFFIRMATIVE DEFENSE
(Excluded Remedies)

72. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
73. That these Defendants would show that the available remedies have been properly and effectively excluded by this Defendant.

FOR AN AFFIRMATIVE DEFENSE
(Modification of Remedies)

74. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
75. That these Defendants would show that all applicable remedies have been properly and effectively modified by these Defendants.

FOR AN AFFIRMATIVE DEFENSE
(Limitation of Remedies)

76. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

77. That these Defendants would show that all available remedies have been properly and effectively limited by these Defendants.

FOR AN AFFIRMATIVE DEFENSE
(Disclaimer of Warranties)

78. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
79. That these Defendants would show that any and all applicable warranties have been properly and effectively disclaimed by these Defendants.

FOR AN AFFIRMATIVE DEFENSE
(Disclaimer of Remedies)

80. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
81. That these Defendants would show that any and all available remedies have been properly and effectively disclaimed by these Defendants.

FOR AN AFFIRMATIVE DEFENSE
(Resolution by Arbitration)

82. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
83. That these Defendants would show that, to the extent that the claims against these Defendants are subject to resolution by arbitration, the instant action against these Defendants should be dismissed.

FOR AN AFFIRMATIVE DEFENSE
(Failure to Comply with Contractual Conditions Precedent)

84. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

85. That these Defendants would show that the Plaintiffs have failed properly to comply with contractual conditions precedent to the assertion of those claims set forth in the Fourth Amended Complaint, which failure is a bar to all claims against these Defendants.

FOR AN AFFIRMATIVE DEFENSE
(Failure to comply with Statutory Conditions Precedent)

86. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
87. That these Defendants would show that the Plaintiffs have failed to comply with the statutory conditions precedent to the assertion of claims set forth in the Fourth Amended Complaint.

FOR AN AFFIRMATIVE DEFENSE
(Failure to give notice of breach of warranty)

88. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
89. That these Defendants would show that the Plaintiffs have failed to give reasonable notice of any alleged breach of any applicable warranty, which breach of warranty or warranties is hereby specifically denied.

FOR AN AFFIRMATIVE DEFENSE
(Insufficient Service of Process)

90. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
91. That this Defendant would show that there has been insufficient service of process upon the person of this Defendant, and the Plaintiffs' claims should therefore be dismissed.

FOR AN AFFIRMATIVE DEFENSE
(Reservation and Non-Waiver)

92. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
93. That these Defendants do not waive, and hereby specifically reserve, any additional and/or further defenses, the propriety of which may be indicated by additional information which may be acquired by these Defendants or their counsel during the course of discovery or otherwise.

FOR AN AFFIRMATIVE DEFENSE
(Joint Tort Feasors Act)

94. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
95. That these Defendants would show that, in the event of a verdict rendered jointly against these Defendants and the remaining Defendants, these Defendants are entitled to contribution from said remaining Defendants, pursuant to the provisions of the South Carolina Uniform Contribution Among Joint Tort Feasors Act and/or other provisions of law.

FOR AN AFFIRMATIVE DEFENSE

96. That each and every allegation set forth in preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
97. That these Defendants would allege that any recovery against these Defendants must be set off or reduced or abated or apportioned to the

extent that any other party's actions caused or contributed to any damages, if any, or as otherwise provided pursuant to relevant sections of the South Carolina Contribution Among Joint Tort Feasors Act, Section 15-38-10, et seq. SC Code Amended.

FOR AN AFFIRMATIVE DEFENSE

98. That each and every allegation set forth in preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
99. That these Defendants would show that the design and materials used in the construction of subject property in question were developed, selected, and/or approved by other defendants, thereby reliving these Defendants of any liability or responsibility for damages resulting from design deficiencies or materials which may not have been suitable for incorporation into the subject property.

FOR AN AFFIRMATIVE DEFENSE

100. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
101. That these Defendants would show that the Plaintiffs' claims are barred by the applicable statute and/or statutes of repose.

FOR AN AFFIRMATIVE DEFENSE
(Statute of Frauds)

102. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

103. That these Defendants would show that the claims of the Plaintiffs are barred by the Statute of Frauds.

FOR AN AFFIRMATIVE DEFENSE
(Spoliation of Evidence)

104. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
105. Without admitting that its products were installed on the subject structure, these Defendants submit that repairs may have been made to the subject structure and further, that the alleged defective products may have been destroyed. To the extent that these Defendants have not been afforded the opportunity to inspect and examine the alleged defective products and/or their components, these Defendants plead the Spoliation of Evidence Doctrine as a complete defense to this action.

FOR AN AFFIRMATIVE DEFENSE

106. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
107. That any products designed, manufactured, and/or distributed by these Defendants are found to be the cause of damages suffered by Plaintiffs, which these Defendants hereby specifically deny, the Plaintiffs cannot recover against these Defendants if and to the extent that the use of such products was under circumstances constituting an alteration or modification of the products as provided in South Carolina Code Section 15-73-10, and/or otherwise.

FOR AN AFFIRMATIVE DEFENSE

108. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
109. In the event that the products designed, manufactured, and/or distributed by this Defendant are found to be the cause of damages suffered by Plaintiffs, which these Defendants specifically hereby deny, Plaintiffs cannot recover against these Defendants if and to the extent that the use of the products was under circumstances constituting a lack of reasonable or diligent care, and/or was an unreasonable use as defined in South Carolina Code Section 15-73-10, and/or otherwise.

FOR AN AFFIRMATIVE DEFENSE

110. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
111. To the extent that any petition in bankruptcy has been filed by or on behalf of this Defendant, this Defendant would plead discharge in bankruptcy as a complete defense to any and all claims.

FOR AN AFFIRMATIVE DEFENSE

112. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
113. That these Defendants would show that the Plaintiff lacks sufficient legal privity with these Defendants to permit imposition of liability.

FOR AN AFFIRMATIVE DEFENSE

114. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
115. That these Defendants would show that they have made no representations of warranties inducing the purchase for use of its products by Plaintiffs or others, except such warranties which may be express and in writing, and such express warranties are the only and best evidence of their content and legal effect, and include lawful disclaimers of implied warranties of merchantability and fitness for a particular purpose, and include limitations and responsibility to these Defendants. These Defendants are not responsible for any warranties or representations of purchases and resellers of its products.

FOR AN AFFIRMATIVE DEFENSE

116. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
117. That the Plaintiffs are without standing to assert those claims set forth within the relevant Amended Complaint, and the Plaintiffs' claims should therefore be dismissed.

FOR AN AFFIRMATIVE DEFENSE

118. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
119. That these Defendants would show that the Plaintiffs have failed to comply with those conditions precedent to litigation, as set forth within the relevant

Master Deed, and the Plaintiffs' Fourth Amended Complaint, and all causes of action set forth therein, should therefore be dismissed.

FOR AN AFFIRMATIVE DEFENSE

120. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
121. That these Defendants are informed and believes that the Plaintiffs have failed to comply with the provisions of Sections 40-59-10 et seq., and/or Section 40-11-10 et seq., South Carolina Code of Laws (1976), as amended, and the Plaintiffs' Fourth Amended Complaint should, therefore, be stayed and/or dismissed.

FOR AN AFFIRMATIVE DEFENSE

122. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
123. That, to the extent that the Plaintiff has failed to comply with the requirements of the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act (Section 40-59-810 through 40-59-860), and/or Sections 40-11-500 through 40-11-570, South Carolina Codes of Laws (1976), including the provision of the required notice to the Defendant, and the provisions to the Defendant of an opportunity to cure, the Plaintiffs' action must be stayed and/or otherwise barred.

FOR AN ADDITIONAL AFFIRMATIVE DEFENSE AND BY WAY OF CROSS CLAIMS AGAINST WS CONTRACTORS, LLC, ECC CONTRACTING, LLC, HURLEY SERVICES, LLC, McDANIEL CONSTRUCTION CO., LLC, AC CONSTRUCTION, CORP., AC CONSTRUCTION, INC., L&G CONSTRUCTION GROUP, LLC

124. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
125. That Builders FirstSource-Southeast Group, LLC, (hereinafter sometimes “this defendant” and/or “BFS”) is informed and believes that ECC Contracting, LLC is a limited liability corporation organized under and existing pursuant to the laws of the State of South Carolina, which corporation was, at all times relevant hereto, conducting business in Charleston County, South Carolina; this Defendant is further informed and believes that ECC Contracting, LLC provided materials and services in connection with framing, including, but not limited to the installation of windows, doors, and/or other components, during original construction of the subject structures within The Retreat at Charleston National Country Club townhome condominium complex.
126. That this Defendant is informed and believes that Hurley Services, LLC is a limited liability corporation organized under and existing pursuant to the laws of the State of South Carolina, which corporation was, at all times relevant hereto, conducting business in Charleston County, South Carolina; this Defendant is further informed and believes that Hurley Services, LLC provided materials and services in connection with framing, including, but not limited to the installation of windows, doors, and/or other components, during original construction of the subject structures within The Retreat at Charleston National Country Club townhome condominium complex.

127. That this Defendant is informed and believes that McDaniel Construction Co., LLC is a limited liability corporation organized under and existing pursuant to the laws of the State of South Carolina, which corporation was, at all times relevant hereto, conducting business in Charleston County, South Carolina; this Defendant is further informed and believes that McDaniel Construction Co., LLC provided materials and services in connection with framing, including, but not limited to the installation of windows, doors, and/or other components, during original construction of the subject structures within The Retreat at Charleston National Country Club townhome condominium complex.
128. That this Defendant is informed and believes that AC Construction, Corp. is a limited liability corporation organized under and existing pursuant to the laws of the State of South Carolina, which corporation was, at all times relevant hereto, conducting business in Charleston County, South Carolina; this Defendant is further informed and believes that AC Construction, Corp. provided materials and services in connection with framing, including, but not limited to the installation of windows, doors, and/or other components, during original construction of the subject structures within The Retreat at Charleston National Country Club townhome condominium complex.
129. That this Defendant is informed and believes that AC Construction, Inc. is a limited liability corporation organized under and existing pursuant to the laws of the State of South Carolina, which corporation was, at all times

- relevant hereto, conducting business in Charleston County, South Carolina; this Defendant is further informed and believes that AC Construction, Inc. provided materials and services in connection with framing, including, but not limited to the installation of windows, doors, and/or other components, during original construction of the subject structures within The Retreat at Charleston National Country Club townhome condominium complex.
130. That this Defendant is informed and believes that L&G Construction Group, LLC is a limited liability corporation organized under and existing pursuant to the laws of the State of South Carolina, which corporation was, at all times relevant hereto, conducting business in Charleston County, South Carolina; this Defendant is further informed and believes that L&G Construction Group, LLC provided materials and services in connection with framing, including, but not limited to the installation of windows, doors, and/or other components, during original construction of the subject structures within The Retreat at Charleston National Country Club townhome condominium complex.
131. That these Defendants are informed and believes that WS Contractors, is a limited liability corporation organized under and existing pursuant to the laws of the State of South Carolina, which corporation was, at all times relevant hereto, conducting business in Charleston County, South Carolina; these Defendants are further informed and believes that WS Contractors provided materials and services in connection with framing,

including, but not limited to the installation of windows, doors, and/or other components, during original construction of the subject structures within The Retreat at Charleston National Country Club townhome condominium complex.

FOR A FIRST CAUSE AS TO WS CONTRACTORS,
ECC CONTRACTING, LLC, HURLEY SERVICES, LLC, McDANIEL
CONSTRUCTION CO., LLC, AC CONSTRUCTION, CORP., AC
CONSTRUCTION, INC., L&G CONSTRUCTION GROUP, LLC

132. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
133. That the Plaintiff, The Retreat at Charleston National Country Club HOA, Inc., and The Retreat at Charleston National Country Club Horizontal Property Regime, have sued Builders FirstSource-Southeast Group, LLC (hereinafter sometimes "BFS"), asserting damages allegedly caused, inter alia, by deficiencies in framing, including but not limited to deficiencies in the installation of windows, doors, and related components, during original construction of the subject structures.
134. That BFS has denied the material allegations asserted against BFS in the Plaintiffs' Fourth Amended Complaint.
135. That the respective subcontracts between this Defendant and the Cross Claim Defendants, provide for contractual indemnification in favor of BFS.
136. That the Cross Claim Defendants served as subcontractors to BFS in connection with their services at the subject structures. Regardless, therefore, of any specific contractual obligation to indemnify, there exists a

special relationship between this Defendant, and the Cross Claim Defendants, sufficient to impose obligations of indemnity against the aforesaid Cross Claim Defendants, in favor of BFS.

137. That to the extent, if any, that BFS may be held liable to the Plaintiffs, or to others in this action, such liability would be a direct and proximate result of the wrongful acts, omissions, negligence, gross negligence, and/or representations of the Cross Claim Defendants, which have damaged BFS, as BFS has been subjected to liability and has incurred consequential damages in having to expend attorneys' fees and costs in defending against the Plaintiffs' claims.
138. That BFS is entitled to full contractual and common law indemnification from the Cross Claim Defendants, for any liability BFS is found to have to the Plaintiffs or to others in this action, and BFS is also entitled to damages for any negligence, as aforesaid, on the part of the Cross Claim Defendants, entitling BFS to recover from the Cross Claim Defendants, its attorneys' fees, costs, and other expenses incurred in defending this action, and further entitling BFS to recover from the Cross Claim Defendants any sums for which BFS may be held liable to the Plaintiffs or to others, or which Builders FirstSource-Southeast Group, LLC may pay in satisfaction of such claims.

FOR A SECOND CAUSE AS TO WS CONTRACTORS, ECC CONTRACTING, LLC, HURLEY SERVICES, LLC, McDANIEL CONSTRUCTION CO., LLC, AC CONSTRUCTION, CORP., AC CONSTRUCTION, INC., L&G CONSTRUCTION GROUP, LLC

139. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
140. That the Cross Claim Defendants made express warranties that materials, services, and/or workmanship provided in conjunction with their services at the subject structures, would be as required by and in accordance with the contract documents, applicable building codes, and industry standards.
141. That the respective sub-contract agreements between BFS and the Cross Claim Defendants include provisions, by which the Cross Claim Defendants expressly undertook to provide materials and services in accordance with the contract documents.
142. That in the event that the Plaintiffs prove that the materials and/or services provided by the Cross Claim Defendants are not in accordance with the requirements of the contract documents, industry standards, or relevant building requirements, then and in that event the Cross Claim Defendants have materially breached their express warranties.
143. That BFS is entitled to judgment against the Cross Claim Defendants in the amount of any judgment which the Plaintiffs may obtain against BFS, or which Builders FirstSource-Southeast Group, LLC may pay in satisfaction of such claims, for breach of any express warranties on the

part of the Cross Claim Defendants, plus BFS costs for defense, inclusive of attorneys' fees.

FOR A THIRD CAUSE AS TO WS CONTRACTORS,
ECC CONTRACTING, LLC, HURLEY SERVICES, LLC, McDANIEL
CONSTRUCTION CO., LLC, AC CONSTRUCTION, CORP., AC
CONSTRUCTION, INC., L&G CONSTRUCTION GROUP, LLC

144. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
145. That the Cross Claim Defendants made implied warranties of workmanlike services, merchantability, and fitness for particular purpose, in connection with its services in renovation, repair, and/or construction at the subject residence.
146. That in the event that the Plaintiffs prove that the services of the respective Cross Claim Defendants were deficient, then and in that event the Cross Claim Defendants have materially breached their implied warranties.
147. That BFS is entitled to judgment against the Cross Claim Defendants in the event, and to the extent that the Plaintiffs may obtain judgment against BFS, or which Builders FirstSource-Southeast Group, LLC may pay in satisfaction of such claims, for breach of implied warranties, including such warranty of workmanlike service.

FOR A FOURTH CAUSE AS TO WS CONTRACTORS,
ECC CONTRACTING, LLC, HURLEY SERVICES, LLC, McDANIEL
CONSTRUCTION CO., LLC, AC CONSTRUCTION, CORP., AC
CONSTRUCTION, INC., L&G CONSTRUCTION GROUP, LLC

148. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
149. That Cross Claim Defendants owed a duty of due care in providing services and materials in connection with construction and/or repair of the subject structures.
150. In the event that the Plaintiffs prove that due care was not exercised in the provision of materials and services by the Cross Claim Defendants, then and in that event the Cross Claim Defendants have breached their duties of due care.
151. In the event that the Plaintiffs obtains judgment against BFS as a direct, foreseeable and proximate result of the negligence and/or gross negligence of the Cross Claim Defendants, then and in that event BFS is entitled to judgment against the Cross Claim Defendants for the amount of any such judgment, or any amount Builders FirstSource-Southeast Group, LLC may pay in satisfaction of claims, plus costs of defense, inclusive of attorneys' fees.

FOR A FIFTH CAUSE AS TO WS CONTRACTORS,
ECC CONTRACTING, LLC, HURLEY SERVICES, LLC, McDANIEL
CONSTRUCTION CO., LLC, AC CONSTRUCTION, CORP., AC
CONSTRUCTION, INC., L&G CONSTRUCTION GROUP, LLC

152. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
153. That the Cross Claim Defendants were contractually responsible for provision of adequate materials and services in connection with their respective undertakings regarding construction of the subject structures.
154. That in the event that the Plaintiffs prove that the BFS contract was breached due to improper or inadequate materials and/or services provided by the respective Cross Claim Defendants, then and in that event the Cross Claim Defendants have materially breached their sub-contracts, by failing properly and adequately to provide materials and services in connection with construction of the subject structures.
155. That BFS is entitled to judgment against the Cross Claim Defendants in the event, and to the extent that the Plaintiffs may obtain judgment against BFS for breach of contract, or for any amount Builders FirstSource-Southeast Group, LLC may pay in satisfaction of claims, and BFS is further entitled to recover the costs of defense, inclusive of attorneys' fees.

FOR AN ADDITIONAL AFFIRMATIVE DEFENSE AND BY WAY OF THIRD
PARTY CLAIMS AGAINST POHLMAN QUALITY EXTERIORS, INC.,
PALMETTO TRIM AND RENOVATIONS, EDWARD BRUCE WITHAM, EAST
COAST CARPENTRY

156. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
157. That this Defendant is informed and believes that Pohlman Quality Exteriors, Inc. is organized under and existing pursuant to the laws of the State of South Carolina, which corporation was, at all times relevant

hereto, conducting business in Charleston County, South Carolina; this Defendant is further informed and believes that Pohlman Quality Exteriors, Inc. provided materials and services in connection with framing, including, but not limited to the installation of windows, doors, and/or other components, during original construction of the subject structures within The Retreat at Charleston National Country Club townhome condominium complex.

158. That this Defendant is informed and believes that Palmetto Trim and Renovations is organized under and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina; this Defendant is further informed and believes that Palmetto Trim and Renovations provided materials and services in connection with framing, including, but not limited to the installation of windows, doors, and/or other components, during original construction of the subject structures within The Retreat at Charleston National Country Club townhome condominium complex.
159. That this Defendant is informed and believes that Edward Bruce Witham is an independent contractor organized under and existing pursuant to the laws of the State of South Carolina, which was at all times relevant hereto, conducting business in Charleston County, South Carolina; this Defendant is further informed and believes that Edward Bruce Witham provided materials and services in connection with framing, including, but not limited to the installation of windows, doors, and/or other components,

during original construction of the subject structures within The Retreat at Charleston National Country Club townhome condominium complex.

160. That this Defendant is informed and believes that East Coast Carpentry is organized under and existing pursuant to the laws of the State of South Carolina, which was, at all times relevant hereto, conducting business in Charleston County, South Carolina; this Defendant is further informed and believes that East Coast Carpentry provided materials and services in connection with framing, including, but not limited to the installation of windows, doors, and/or other components, during original construction of the subject structures within The Retreat at Charleston National Country Club townhome condominium complex.

FOR A FIRST CAUSE AS TO POHLMAN QUALITY EXTERIORS, INC.,
PALMETTO TRIM AND RENOVATIONS, EDWARD BRUCE WITHAM, EAST
COAST CARPENTRY

161. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
162. That the Plaintiff, The Retreat at Charleston National Country Club HOA, Inc., and The Retreat at Charleston National Country Club Horizontal Property Regime, have sued Builders FirstSource-Southeast Group, LLC (hereinafter sometimes "BFS"), asserting damages allegedly caused, inter alia, by deficiencies in framing, including but not limited to deficiencies in the installation of windows, doors, and related components, during original construction of the subject structures.

163. That BFS has denied the material allegations asserted against BFS in the Plaintiffs' Amended Complaint.
164. That the Third-Party Defendants, Pohlman Quality Exteriors, Inc., Palmetto Trim and Renovations, Edward Bruce Witham, and East Coast Carpentry (hereinafter sometimes "Third-Party Defendants") were responsible for provision of materials and services in connection with the installation of the aforesaid components of construction, for proper quality control, and for compliance with the contract documents, industry standards, and requirements of relevant building codes. In the event that the Plaintiffs establish that the materials and/or services of the Third-Party Defendants were not in compliance with the relevant contract documents, industry standards, and/or building code requirements, then and in that event the Third-Party Defendants have failed properly to execute their duties, which failure has allegedly caused the Plaintiffs' damages.
165. That the respective subcontracts between this Defendant and the Third-Party Defendants, provide for contractual indemnification in favor of BFS.
166. That the Third Party Defendants served as subcontractors to BFS in connection with their services at the subject structures. Regardless, therefore, of any specific contractual obligation to indemnify, there exists a special relationship between this Defendant, and the Third-Party Defendants, sufficient to impose obligations of indemnity against the aforesaid Third-Party Defendants, in favor of BFS.

167. That to the extent, if any, that BFS may be held liable to the Plaintiffs, or to others in this action, such liability would be a direct and proximate result of the wrongful acts, omissions, negligence, and/or representations of the Third-Party Defendants, which have damaged BFS, as BFS has been subjected to liability and has incurred consequential damages in having to expend attorneys' fees and costs in defending against the Plaintiffs' claims.
168. That BFS is entitled to full contractual and common law indemnification from the Third-Party Defendants, for any liability BFS is found to have to the Plaintiffs or to others in this action, and BFS is also entitled to damages for any negligence, as aforesaid, on the part of the Third-Party Defendants, entitling BFS to recover from the Third-Party Defendants, its attorneys' fees, costs, and other expenses incurred in defending this action, and further entitling BFS to recover from the Third-Party Defendants any sums for which BFS may be held liable to the Plaintiffs or to others, or which Builders FirstSource-Southeast Group, LLC may pay in satisfaction of such claims.

FOR A SECOND CAUSE AS TO POHLMAN QUALITY EXTERIORS,
INC., PALMETTO TRIM AND RENOVATIONS, EDWARD BRUCE
WITHAM, EAST COAST CARPENTRY

169. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
170. That the Third Party Defendants made express warranties that materials, services, and/or workmanship provided in conjunction with their services at the subject structures, would be as required by and in accordance with the contract documents, applicable building codes, and industry standards.
171. That the respective sub-contract agreements between BFS and the Third Party Defendants include provisions, by which the Third-Party Defendants expressly undertook to provide materials and services in accordance with the contract documents.
172. That in the event that the Plaintiffs prove that the materials and/or services provided by the Third-Party Defendants are not in accordance with the requirements of the contract documents, industry standards, or relevant building requirements, then and in that event the Third-Party Defendants have materially breached their express warranties.
173. That BFS is entitled to judgment against the Third-Party Defendants in the amount of any judgment which the Plaintiffs may obtain against BFS, or which Builders FirstSource-Southeast Group, LLC may pay in satisfaction of such claims, for breach of any express warranties on the part of the

Third-Party Defendants, plus BFS costs for defense, inclusive of attorneys' fees.

FOR A THIRD CAUSE AS TO POHLMAN QUALITY EXTERIORS, INC.,
PALMETTO TRIM AND RENOVATIONS, EDWARD BRUCE WITHAM,
EAST COAST CARPENTRY

174. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
175. That the Third-Party Defendants made implied warranties of workmanlike services, merchantability, and fitness for particular purpose, in connection with its services in renovation, repair, and/or construction at the subject residence.
176. That in the event that the Plaintiffs prove that the services of the respective Third-Party Defendants were deficient, then and in that event the Third-Party Defendants have materially breached their implied warranties.
177. That BFS is entitled to judgment against the Third-Party Defendants in the event, and to the extent that the Plaintiffs may obtain judgment against BFS, or which Builders FirstSource-Southeast Group, LLC may pay in satisfaction of such claims, for breach of implied warranties, including such warranty of workmanlike service.

FOR A FOURTH CAUSE AS TO POHLMAN QUALITY EXTERIORS,
INC., PALMETTO TRIM AND RENOVATIONS, EDWARD BRUCE
WITHAM, EAST COAST CARPENTRY

178. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
179. That Third-Party Defendants owed a duty of due care in providing services and materials in connection with construction and/or repair of the subject structures.
180. In the event that the Plaintiffs prove that due care was not exercised in the provision of materials and services by the Third-Party Defendants, then and in that event the Third-Party Defendants have breached their duties of due care.
181. In the event that the Plaintiffs obtains judgment against BFS as a direct, foreseeable and proximate result of the negligence of the Third-Party Defendants, then and in that event BFS is entitled to judgment against the Third-Party Defendants for the amount of any such judgment, or any amount Builders FirstSource-Southeast Group, LLC may pay in satisfaction of claims, plus costs of defense, inclusive of attorneys' fees.

FOR A FIFTH CAUSE AS TO POHLMAN QUALITY EXTERIORS, INC.,
PALMETTO TRIM AND RENOVATIONS, EDWARD BRUCE WITHAM,
EAST COAST CARPENTRY

182. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.
183. That the Third-Party Defendants were contractually responsible for provision of adequate materials and services in connection with their respective undertakings regarding construction of the subject structures.

184. That in the event that the Plaintiffs prove that the BFS contract was breached due to improper or inadequate materials and/or services provided by the respective Third-Party Defendants, then and in that event the Third-Party Defendants have materially breached their sub-contract, by failing properly and adequately to provide materials and services in connection with construction of the subject structures.
185. That BFS is entitled to judgment against the Third-Party Defendants in the event, and to the extent that the Plaintiffs may obtain judgment against BFS for breach of contract, or for any amount Builders FirstSource-Southeast Group, LLC may pay in satisfaction of claims, and BFS is further entitled to recover the costs of defense, inclusive of attorneys' fees.
186. WHEREFORE, having fully answered the Fourth Amended Complaint of the Plaintiffs, and having set forth the Cross Claims and Third-Party Complaint of Builders FirstSource-Southeast Group, LLC and Builders FirstSource, Inc., these Defendants pray as follows:
- a. That the Plaintiff's Fourth Amended Complaint be dismissed, as to these Defendants, with costs to these Defendants;
 - b. That Builders FirstSource-Southeast Group, LLC be granted judgment on its Cross Claims;
 - c. That Builders FirstSource-Southeast Group, LLC be granted judgment on its Third-Party claims against Third Party Defendants;
 - d. That these Defendants have jury trial on all matters so triable;

- e. That these Defendants be granted such other and further relief as this Court may deem just and proper.

HOWELL, GIBSON & HUGHES, P.A.

By: /s/ William H. Cox, III

Stephen P. Hughes

William H. Cox, III

Post Office Box 40

Beaufort, SC 29901-0040

(843) 522-2400

Attorneys for Builders FirstSource-
Southeast Group, LLC

Beaufort, South Carolina

November 11, 2019

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

The Retreat At Charleston National Country Club Home Owners Association, Inc. And The Retreat At Charleston National Country Club Horizontal Property Regime,

Plaintiffs,

v.

Winston Carlyle Charleston National, LLC; Colin R. Campbell Construction, Inc.; Colin Campbell, Individually, C.R. Campbell Construction Co., Inc., Colin Campbell Construction, LLC, Builders Firstsource-Southeast Group, LLC; Builders FirstSource, Inc., Americo Roofing Concepts, Inc.; DVS, Inc.; Advanced Building Connection, LLC; Guy C. Lee Building Materials, LLC; WS Contractors, LLC; Dino Schwartz, Individually, ECC Contracting, LLC, Hurley Services, LLC, McDaniel Construction Co., LLC, AC Construction Corp., AC Construction, Inc., L&G Construction Group, LLC, Liollio Architecture, JC Construction d/b/a JC Construction, LLC a/k/a JC Contractors a/k/a JC Contractors, LLC, Soto & Vasquez Construction, LLC a/k/a Costa De Oliveira Construction, LLC, Solesmar Jesus De Oliveira, Wilson Lucas Sales d/b/a Miracle Siding, Miracle Siding, LLC, Royal Hornes of SC, Inc., Colleen Batissa, Christopher Batissa, Norma Ferreira Bruno, Mendez Construction, LLC, Juan Garza Ramos, Juan Garza Ramos d/b/a Juan Constructors, Jessica Marroquin, Jessica Marroquin d/b/a Marroquin Construction, Carlos Marroquin, Carlos Marroquin and Jessica Marroquin d/b/a Marroquin Construction, Feliciano Cruz Silva, Garcia Roofing, LLC, Givair De Caris, and Mario Salgado,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 2016-CP-10-03783

**ECC CONTRACTING, LLC'S ANSWER
TO RENEWED CROSS-CLAIMS OF
BUILDERS FIRSTSOURCE-
SOUTHEAST GROUP, LLC ASSERTED
IN ITS PLEADING DATED
NOVEMBER 13, 2019
(Jury Trial Demanded)**

TO: STEPHEN P HUGHES, ESQ., ATTORNEY FOR BUILDERS-FIRSTSOURCE-SOUTHEAST GROUP, LLC:

The Defendant ECC Contracting, LLC, (hereinafter referred to as “this Defendant”), answering the renewed Cross-Claims of Builders FirstSource-Southeast Group, LLC asserted in its pleadings dated November 13, 2019, alleges and says as follows:

1. Each and every allegation of BFS’ Cross-Claims which is not specifically admitted, qualified or explained is denied and strict proof is demanded thereof.

FOR A FIRST DEFENSE

2. The allegations in Paragraphs 1 through 123 of the pleading are not directed at this Defendant; therefore a response is not required. To the extent the allegations can be interpreted as making a claim against this Defendant, they are hereby denied.

3. In answering the allegations in Paragraph 124 of the pleading, this Defendant repeats and re-alleges its responses in the above paragraphs as if fully set forth herein verbatim.

4. In answering the allegations of Paragraph 125 of the pleading, this Defendant admits inasmuch as it is a South Carolina Limited Liability Company engaged in business in the state of South Carolina. This Defendant denies all remaining allegations contained in Paragraph 125.

5. The allegations in Paragraphs 126 through 131 of the pleading are not directed at this Defendant; therefore a response is not required. To the extent the allegations can be interpreted as making a claim against this Defendant, they are hereby denied.

6. In answering the allegations in Paragraph 132 of the pleading, this Defendant repeats and re-alleges its responses in the above paragraphs as if fully set forth herein verbatim.

7. In answering the allegations in Paragraph 133 through 134 of BFS' Cross-Claims, this Defendant admits to the existence of an underlying Complaint, but denies it implicates any wrongdoing by this Defendant.

8. Paragraphs 135 of BFS' Cross-Claims are denied and strict proof is demanded thereof.

9. The allegations in Paragraph 136 are denied and strict proof is demanded thereof.

10. Paragraphs 137 and 138 of BFS' Cross-Claims are denied and strict proof is demanded thereof.

11. In answering the allegations in Paragraph 139 of the pleading, this Defendant repeats and re-alleges its responses in the above paragraphs as if fully set forth herein verbatim.

12. Paragraphs 140 through 143 of BFS' Cross-Claims are denied and strict proof is demanded thereof.

13. In answering the allegations in Paragraph 144 of the pleading, this Defendant repeats and re-alleges its responses in the above paragraphs as if fully set forth herein verbatim.

14. The allegations in Paragraph 145 of the pleading contain conclusions of law which this Defendant is required neither to admit nor deny. The remaining allegations are denied.

15. Paragraphs 146 and 147 of BFS' Cross-Claims are denied and strict proof is demanded thereof.

16. In answering the allegations in Paragraph 148 of the pleading, this Defendant repeats and re-alleges its responses in the above paragraphs as if fully set forth herein verbatim.

17. The allegations in Paragraph 149 of the pleading contain conclusions of law which this Defendant is required neither to admit nor deny. The remaining allegations are denied.

18. Paragraphs 150 and 151 of BFS' Cross-Claims are denied.

19. In answering the allegations in Paragraph 152 of the pleading, this Defendant repeats and re-alleges its responses in the above paragraphs as if fully set forth herein verbatim.

20. Paragraphs 153 through 155 of BFS' Cross-Claims are denied.

21. In answering the allegations in Paragraph 156 of the pleading, this Defendant repeats and re-alleges its responses in the above paragraphs as if fully set forth herein verbatim.

22. The allegations in Paragraphs 157 through 185 of the pleading are not directed at this Defendant; therefore a response is not required. To the extent the allegations can be interpreted as making a claim against this Defendant, they are hereby denied.

23. This Defendant denies the WHEREFORE paragraph and denies that BFS is entitled to the relief request against this Defendant.

FOR A SECOND DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to State a Claim)

22. BFS has failed to state facts sufficient to constitute a cause of action against this Defendant pursuant to Rule 12(b)(6), SCRCP, and BFS's claims should be dismissed.

FOR A THIRD DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to Mitigate)

23. BFS has failed to mitigate its damages as required by law.

FOR A FOURTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Waiver, Estoppel, Laches)

24. BFS's claims may be barred by the doctrines of waiver, estoppel and/or laches.

FOR A FIFTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Statute of Frauds)

25. BFS's claims are barred by the statute of frauds.

FOR A SIXTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Statute of Limitations)

26. This Defendant asserts that some or all of the claims against it are barred by applicable statute of limitations or statute of repose.

FOR A SEVENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Notice to Plaintiff)

27. BFS's claims are barred to the extent that they discovered or should have discovered and were aware of any defects and nevertheless unreasonably proceeded to purchase or make use of the product.

FOR AN EIGHTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Intervening Acts of Third-Parties)

28. BFS's damages, if any, are the direct and proximate result of intervening and superseding acts of third parties not affiliated with this Defendant and not under its domain or control.

FOR A TENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Contributory/Comparative Negligence)

29. Any damage suffered by the BFS is the direct and proximate result of its comparative and contributory negligence and BFS's recovery should be barred or, alternatively, reduced proportionately to BFS's comparative negligence.

FOR AN ELEVENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Open and Obvious)

30. BFS either knew or should have known of any alleged deficiencies in the allegedly purchased materials and accepted the same with such knowledge. As a result, BFS's recovery should be barred.

FOR A TWELFTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Unclean Hands)

31. BFS has unclean hands and may not recover in indemnity.

WHEREFORE, having fully answered BFS' renewed Cross-Claims, this Defendant prays that the same be dismissed with the cost of this action and for such other and further relief as this Honorable Court may deem just and proper.

RICHARDSON, PLOWDEN & ROBINSON, P.A.

s:/F.Heyward Grimball

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ATTORNEYS FOR ECC CONTRACTING, LLC

November 26, 2019
Charleston, South Carolina

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

**IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT**

The Retreat At Charleston National
Country Club Home Owners Association,
Inc. And The Retreat At Charleston
National Country Club Horizontal Property
Regime,

CIVIL ACTION NO.: 2016-CP-10-03783

Plaintiffs,

v.

**DEFENDANT, ECC CONTRACTING,
LLC'S ANSWER TO PLAINTIFF'S
FOURTH AMENDED COMPLAINT
(Jury Trial Demanded)**

Winston Carlyle Charleston National,
LLC; Colin R. Campbell Construction,
Inc.; Colin Campbell, Individually,
Builders Firstsource-Southeast Group,
LLC; Builders FirstSource, Inc.; Americo
Roofing Concepts, Inc.; DVS, Inc.;
Advanced Building Connection, LLC; Guy
C. Lee Building Materials, LLC; WS
Contractors, LLC; Dino Schwartz,
Individually, Charleston Exteriors, LLC;
ECC Contracting, LLC; Hurley Services,
LLC; McDaniel Construction Co., LLC;
AC Construction Corp.; AC Construction
Inc.; L&G Construction Group, LLC;
Pohlman Quality Contractors; and Pohlman
Quality Exteriors, Inc., Liollo
Architecture, JC Contractors, LLC; Soto
& Vasquez Construction, LLC a/k/a Costa
De Oliveria Construction, LLC; and
Solesmar Jesus De Oliveira; Royal Homes
of SC, Inc.; Colleen Bataissa; Christopher
Batissa; Norma Ferreira Brnno; Mendez
Construction, LLC; Juan Garz Ramos;
Jessica Marroquin; Garcia Roofing, LLC;
Givair De Caris; and Mario Salgado

Defendants.

FILED
2019 APR -1 PM 4:06
JULIE J. ARNOLD
CLERK OF COURT

**TO: JAMES E. LADY, ROBERT L WYLIE, IV, AND J. RYAN OATES, ATTORNEYS
FOR THE PLAINTIFFS**

Reserving all rights to amend this Answer within thirty (30) days pursuant to Rule 15 (a) of the South Carolina Rules of Civil Procedure, and reserving all rights to include in the Answer any defenses and/or objections under Rule 12 of the South Carolina Rules of Civil Procedure, and reserving all rights to make any motions under Rule 12 of the South Carolina Rules of Civil Procedure, Defendant ECC Contracting, LLC,. (hereinafter referred to as “this Defendant”) by and through its undersigned counsel, answers the Plaintiffs’ Fourth Amended Complaint, subject to any and all affirmative defenses, qualifications, and any other pleadings, as follows:

1. Each and every allegation not specifically admitted herein is denied.
2. The allegations in Paragraphs 1 through 16 of the pleading are not directed at this Defendant; therefore a response is not required. To the extent the allegations can be interpreted as making a claim against this Defendant, they are hereby denied.
3. In answering the allegations of Paragraph 17 of the pleading, this Defendant admits inasmuch as it is a South Carolina Limited Liability Company engaged in business in the state of South Carolina and craves reference to the relevant written contracts. This Defendant denies all remaining allegations contained in Paragraph 15 and demands strict proof at trial.
4. The allegations in Paragraphs 18-42 of the pleading are not directed at this Defendant; therefore a response is not required. To the extent the allegations can be interpreted as making a claim against this Defendant, they are hereby denied.
5. In answering the allegations in Paragraph 43 of the pleading, this Defendant admits only so much that Plaintiffs refer to multiple defendants as subcontractor defendants; but this

Defendants expressly denies any alleged liability, joint liability, or wrongdoing by ECC Contracting, LLC.

6. In answering the allegations in Paragraph 44 of the pleading, this Defendant is without sufficient information to form a belief as to the truth of the allegations in paragraph 44 and therefore denies the same and demands strict proof thereof.
7. The allegations in Paragraphs 45 and 46 of the pleading contain conclusions of law which this Defendant is required neither to admit nor deny. To the extent a response is required, this Defendants denies the allegations in Paragraphs 45 and 46 of the pleading
8. This Defendant is without sufficient information to form a belief as to the truth of the allegations in Paragraph 47 and 48 of the pleading and therefore denies the same and demands strict proof thereof.
9. This Defendant denies the allegations in Paragraphs 49 through 53 of the pleading, including all subparagraphs.
10. In answering the allegations in Paragraph 54 of the pleading, this Defendant repeats and re-alleges its responses in the above paragraphs as if fully set forth herein verbatim.
11. The allegations in Paragraphs 55, 56, and 57 of the pleading are not directed at this Defendant; therefore a response is not required. To the extent the allegations can be interpreted as making a claim against this Defendant, they are hereby denied.
12. In answering the allegations in Paragraph 58 of the pleading, this Defendant repeats and re-alleges its responses in the above paragraphs as if fully set forth herein verbatim.
13. The allegations in Paragraphs 59, 60, and 61 of the pleading are not directed at this Defendant; therefore a response is not required. To the extent the allegations can be interpreted as making a claim against this Defendant, they are hereby denied.

14. In answering the allegations in Paragraph 62 of the pleading, this Defendant repeats and re-alleges its responses in the above paragraphs as if fully set forth herein verbatim.
15. The allegations in Paragraphs 63-65 of the pleading are not directed at this Defendant; therefore a response is not required. To the extent the allegations can be interpreted as making a claim against this Defendant, they are hereby denied.
16. In answering the allegations in Paragraph 66 of the pleading, this Defendant repeats and re-alleges its responses in the above paragraphs as if fully set forth herein verbatim.
17. The allegations in Paragraphs 67-75 of the pleading are not directed at this Defendant; therefore a response is not required. To the extent the allegations can be interpreted as making a claim against this Defendant, they are hereby denied.
18. In answering the allegations in Paragraph 76 of the pleading, this Defendant repeats and re-alleges its responses in the above paragraphs as if fully set forth herein verbatim.
19. The allegations in Paragraph 77 of the pleading contain conclusions of law which this Defendant is required neither to admit nor deny. To the extent the allegations can be interpreted as making a claim against this Defendant, they are hereby denied.
20. This Defendant denies the allegations in Paragraph 78, 79, and 80 of the pleading, including all subparagraphs.
21. In answering the allegations in Paragraph 81 of the pleading, this Defendant repeats and re-alleges its responses in the above paragraphs as if fully set forth herein verbatim.
22. The allegations in Paragraph 82 of the pleading contain conclusions of law which this Defendant is required neither to admit nor deny. To the extent the allegations can be interpreted as making a claim against this Defendant, they are hereby denied.

23. This Defendant denies the allegations in Paragraphs 83, 84, and 85 of the pleading, including all subparagraphs.
24. In answering the allegations in Paragraph 86 of the pleading, this Defendant repeats and re-alleges its responses in the above paragraphs as if fully set forth herein verbatim.
25. The allegations in Paragraph 87 of the pleading contain conclusions of law which this Defendant is required neither to admit nor deny. To the extent the allegations can be interpreted as making a claim against this Defendant, they are hereby denied.
26. This Defendant denies the allegations in Paragraphs 88 and 89 of the pleading, including all subparagraphs.
27. In answering the allegations in Paragraph 90 of the pleading, this Defendant repeats and re-alleges its responses in the above paragraphs as if fully set forth herein verbatim.
28. The allegations in Paragraph 91 of the pleading contain conclusions of law which this Defendant is required neither to admit nor deny. To the extent the allegations can be interpreted as making a claim against this Defendant, they are hereby denied.
29. This Defendant denies the allegations in Paragraphs 92 and 93 of the pleading, including all subparagraphs.
30. In answering the allegations in Paragraph 90 of the pleading, this Defendant repeats and re-alleges its responses in the above paragraphs as if fully set forth herein verbatim.
31. The allegations in Paragraphs 95-98 of the pleading are not directed at this Defendant; therefore a response is not required. To the extent the allegations can be interpreted as making a claim against this Defendant, they are hereby denied.
32. In answering the allegations in Paragraph 99 of the pleading, this Defendant repeats and re-alleges its responses in the above paragraphs as if fully set forth herein verbatim.

33. The allegations in Paragraphs 100-103 of the pleading are not directed at this Defendant; therefore a response is not required. To the extent the allegations can be interpreted as making a claim against this Defendant, they are hereby denied.
34. This Defendant denies the prayer for relief.

FOR A SECOND DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to State a Claim)

35. Plaintiffs have failed to state facts sufficient to constitute a cause of action against this Defendant pursuant to Rule 12(b)(6), SCRCF, and Plaintiffs' claims should be dismissed.

FOR A THIRD DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to Mitigate)

36. Plaintiffs have failed to mitigate its damages as required by law.

FOR A FOURTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Waiver, Estoppel, Laches)

37. Plaintiffs' claims may be barred by the doctrines of waiver, estoppel and/or laches.

FOR A FIFTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Statute of Frauds)

38. Plaintiffs' claims are barred by the statute of frauds.

FOR A SIXTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Statute of Limitations)

39. This Defendant asserts that some or all of the claims against it are barred by applicable statute of limitations or statute of repose.

FOR A SEVENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Notice to Plaintiff)

40. Plaintiffs' claims are barred to the extent that they discovered or should have discovered and were aware of any defects and nevertheless unreasonably proceeded to purchase or make use of the product.

FOR AN EIGHTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Intervening Acts of Third-Parties)

41. Plaintiffs' damages, if any, are the direct and proximate result of intervening and superseding acts of third parties not affiliated with this Defendant and not under its domain or control.

FOR A TENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Contributory/Comparative Negligence)

42. Any damage suffered by the Plaintiffs is the direct and proximate result of its comparative and contributory negligence and Plaintiffs' recovery should be barred or, alternatively, reduced proportionately to Hay Construction's comparative negligence.

FOR AN ELEVENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Open and Obvious)

43. Plaintiffs either knew or should have known of any alleged deficiencies in the allegedly purchased materials and accepted the same with such knowledge. As a result, Plaintiffs recovery should be barred.

FOR A TWELFTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Unclean Hands)

44. Plaintiffs have unclean hands and may not recover in indemnity.

WHEREFORE, having fully answered the Fourth Amended Complaint, this Defendant prays that the same be dismissed with the cost of this action and for such other and further relief as this Honorable Court may deem just and proper.

RICHARDSON, PLOWDEN & ROBINSON, P.A.



James H. Elliott, Jr., Esq.

John H. Guerry, Esq.
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Charleston, SC 29401
(843) 805-6550 FAX (843) 805-6599
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and

L. Dean Best, Esq.

Best Honeycutt, PA

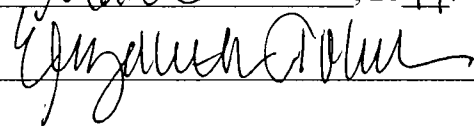
102 Wappoo Creek Drive, Suite 8
P.O. Box 13466 (29422)
Charleston, SC 29412
T: 843-991-6887
dean@besthoneycutt.com

ATTORNEYS FOR ECC CONTRACTING, LLC

March 29, 2019
Charleston, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing
pleading was served on all counsel of record
in this proceeding this 29th day of
March, 2019.



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

The Retreat At Charleston National Country
Club Home Owners Association, Inc. And
The Retreat At Charleston National Country
Club Horizontal Property Regime,

Plaintiffs,

v.

Builders Firstsource-Southeast Group, LLC;
et al.,

Defendants.

Builders FirstSource-Southeast Group, LLC,

Third-Party Plaintiff,

v.

East Coast Carpentry, et. al.,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 2016-CP-10-03783

**DEFENDANT EAST COAST
CARPENTRY'S ANSWER TO THE
CLAIMS OF BUILDERS
FIRSTSOURCE-SOUTHEAST GROUP,
LLC AND BUILDERS FIRSTSOURCE,
INC.**

**TO: BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC AND BUILDERS
FIRSTSOURCE, INC. AND STEPHEN HUGHES THEIR ATTORNEY**

Reserving all rights to amend this Answer within thirty (30) days pursuant to Rule 15 (a) of the South Carolina Rules of Civil Procedures, and reserving all rights to include in the Answer any defenses and/or objections under Rule 12 of the South Carolina Rules of Civil Procedure, and reserving all rights to make any motions under Rule 12 of the South Carolina Rules of Civil Procedure, and reserving all rights to dispute service of process, this Defendant, East Coast Carpentry, (hereinafter referred to as "this Defendant"), answering the Third-Party Claims of Builders FirstSource-Southeast Group, LLC and Builders FirstSource, Inc. asserted in its pleadings dated November 13, 2019, alleges and says as follows:

1. Each and every allegation of BFS' Cross-Claims which is not specifically admitted, qualified or explained is denied and strict proof is demanded thereof.

FOR A FIRST DEFENSE

2. The allegations in Paragraphs 1 through 159 of the pleading are not directed at this Defendant; therefore a response is not required. To the extent the allegations can be interpreted as making a claim against this Defendant, they are hereby denied.

3. This Defendant denies all allegations contained in Paragraph 160.

4. In answering the allegations in Paragraph 161 of the pleading, this Defendant repeats and re-alleges its responses in the above paragraphs as if fully set forth herein verbatim.

5. In answering the allegations in Paragraph 162 and 163 of BFS' Third-Party Claims, this Defendant admits to the existence of an underlying Complaint, but denies it implicates any wrongdoing by this Defendant.

6. Paragraphs 164 through 168 of the Pleading are denied and strict proof is demanded thereof.

7. In answering the allegations in Paragraph 169 of the pleading, this Defendant repeats and re-alleges its responses in the above paragraphs as if fully set forth herein verbatim.

8. The allegations in Paragraph 170 through 173 are denied and strict proof is demanded thereof.

9. In answering the allegations in Paragraph 174 of the pleading, this Defendant repeats and re-alleges its responses in the above paragraphs as if fully set forth herein verbatim.

10. Paragraphs 175 through 177 of the Pleading are denied and strict proof is demanded thereof.

11. In answering the allegations in Paragraph 178 of the pleading, this Defendant repeats and re-alleges its responses in the above paragraphs as if fully set forth herein verbatim.

12. Paragraphs 179 through 181 of the Pleading are denied and strict proof is demanded thereof.

13. In answering the allegations in Paragraph 182 of the pleading, this Defendant repeats and re-alleges its responses in the above paragraphs as if fully set forth herein verbatim.

14. Paragraphs 183 through 186 of the Pleading are denied and strict proof is demanded thereof.

15. This Defendant denies the WHEREFORE paragraph and denies that BFS is entitled to the relief request against this Defendant.

FOR A SECOND DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to State a Claim)

16. BFS has failed to state facts sufficient to constitute a cause of action against this Defendant pursuant to Rule 12(b)(6), SCRCP, and BFS's claims should be dismissed.

FOR A THIRD DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to Mitigate)

17. BFS has failed to mitigate its damages as required by law.

FOR A FOURTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Waiver, Estoppel, Laches)

18. BFS's claims may be barred by the doctrines of waiver, estoppel and/or laches.

FOR A FIFTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Statute of Frauds)

20. BFS's claims are barred by the statute of frauds.

FOR A SIXTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Statute of Limitations)

21. This Defendant asserts that some or all of the claims against it are barred by applicable statute of limitations or statute of repose.

FOR A SEVENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Notice to Plaintiff)

22. BFS's claims are barred to the extent that they discovered or should have discovered and were aware of any defects and nevertheless unreasonably proceeded to purchase or make use of the product.

FOR AN EIGHTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Intervening Acts of Third-Parties)

23. BFS's damages, if any, are the direct and proximate result of intervening and superseding acts of third parties not affiliated with this Defendant and not under its domain or control.

FOR A TENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Contributory/Comparative Negligence)

24. Any damage suffered by the BFS is the direct and proximate result of its comparative and contributory negligence and BFS's recovery should be barred or, alternatively, reduced proportionately to BFS's comparative negligence.

FOR AN ELEVENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Open and Obvious)

25. BFS either knew or should have known of any alleged deficiencies in the allegedly purchased materials and accepted the same with such knowledge. As a result, BFS's recovery should be barred.

FOR A TWELFTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Unclean Hands)

26. BFS has unclean hands and may not recover in indemnity.

WHEREFORE, having fully answered BFS' Third-Party Claims, this Defendant prays that the same be dismissed with the cost of this action and for such other and further relief as this Honorable Court may deem just and proper.

RICHARDSON PLOWDEN & ROBINSON, P.A.

By: s/F. Heyward Grimball

James H. Elliott, Jr., Esq.

F. Heyward Grimball, Esq.

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**ATTORNEYS FOR DEFENDANT EAST COAST
CARPENTRY**

January 7, 2020

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

The Retreat At Charleston National Country
Club Home Owners Association, Inc. And
The Retreat At Charleston National Country
Club Horizontal Property Regime,

Plaintiffs,

v.

Builders Firstsource-Southeast Group, LLC;
et al.,

Defendants.

Builders FirstSource-Southeast Group, LLC,

Third-Party Plaintiff,

v.

Palmetto Trim and Renovations, LLC, et.
al.,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 2016-CP-10-03783

**DEFENDANT PALMETTO TRIM AND
RENOVATIONS, LLC'S ANSWER TO
THE CLAIMS OF BUILDERS
FIRSTSOURCE-SOUTHEAST GROUP,
LLC AND BUILDERS FIRSTSOURCE,
INC.**

**TO: BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC AND BUILDERS
FIRSTSOURCE, INC. AND STEPHEN HUGHES THEIR ATTORNEY**

Reserving all rights to amend this Answer within thirty (30) days pursuant to Rule 15 (a) of the South Carolina Rules of Civil Procedures, and reserving all rights to include in the Answer any defenses and/or objections under Rule 12 of the South Carolina Rules of Civil Procedure, and reserving all rights to make any motions under Rule 12 of the South Carolina Rules of Civil Procedure, and reserving all rights to dispute service of process, this Defendant, Palmetto Trim and Renovations, LLC, (hereinafter referred to as "this Defendant"), answering the Third-Party Claims of Builders FirstSource-Southeast Group, LLC and Builders FirstSource, Inc. asserted in its pleadings dated November 13, 2019, alleges and says as follows:

1. Each and every allegation of BFS' Cross-Claims which is not specifically admitted, qualified or explained is denied and strict proof is demanded thereof.

FOR A FIRST DEFENSE

2. The allegations in Paragraphs 1 through 157 of the pleading are not directed at this Defendant; therefore a response is not required. To the extent the allegations can be interpreted as making a claim against this Defendant, they are hereby denied.

3. This Defendant denies all allegations contained in Paragraph 158.

4. The allegations in Paragraphs 159 through 160 of the pleading are not directed at this Defendant; therefore a response is not required. To the extent the allegations can be interpreted as making a claim against this Defendant, they are hereby denied.

5. In answering the allegations in Paragraph 161 of the pleading, this Defendant repeats and re-alleges its responses in the above paragraphs as if fully set forth herein verbatim.

6. In answering the allegations in Paragraph 162 and 163 of BFS' Third-Party Claims, this Defendant admits to the existence of an underlying Complaint, but denies it implicates any wrongdoing by this Defendant.

7. Paragraphs 164 through 168 of the Pleading are denied and strict proof is demanded thereof.

8. In answering the allegations in Paragraph 169 of the pleading, this Defendant repeats and re-alleges its responses in the above paragraphs as if fully set forth herein verbatim.

9. The allegations in Paragraph 170 through 173 are denied and strict proof is demanded thereof.

10. In answering the allegations in Paragraph 174 of the pleading, this Defendant repeats and re-alleges its responses in the above paragraphs as if fully set forth herein verbatim.

11. Paragraphs 175 through 177 of the Pleading are denied and strict proof is demanded thereof.

12. In answering the allegations in Paragraph 178 of the pleading, this Defendant repeats and re-alleges its responses in the above paragraphs as if fully set forth herein verbatim.

13. Paragraphs 179 through 181 of the Pleading are denied and strict proof is demanded thereof.

14. In answering the allegations in Paragraph 182 of the pleading, this Defendant repeats and re-alleges its responses in the above paragraphs as if fully set forth herein verbatim.

15. Paragraphs 183 through 186 of the Pleading are denied and strict proof is demanded thereof.

16. This Defendant denies the WHEREFORE paragraph and denies that BFS is entitled to the relief request against this Defendant.

FOR A SECOND DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to State a Claim)

17. BFS has failed to state facts sufficient to constitute a cause of action against this Defendant pursuant to Rule 12(b)(6), SCRCP, and BFS's claims should be dismissed.

FOR A THIRD DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to Mitigate)

18. BFS has failed to mitigate its damages as required by law.

FOR A FOURTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Waiver, Estoppel, Laches)

19. BFS's claims may be barred by the doctrines of waiver, estoppel and/or laches.

FOR A FIFTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Statute of Frauds)

20. BFS's claims are barred by the statute of frauds.

FOR A SIXTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Statute of Limitations)

21. This Defendant asserts that some or all of the claims against it are barred by applicable statute of limitations or statute of repose.

FOR A SEVENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Notice to Plaintiff)

22. BFS's claims are barred to the extent that they discovered or should have discovered and were aware of any defects and nevertheless unreasonably proceeded to purchase or make use of the product.

FOR AN EIGHTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Intervening Acts of Third-Parties)

23. BFS's damages, if any, are the direct and proximate result of intervening and superseding acts of third parties not affiliated with this Defendant and not under its domain or control.

FOR A TENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Contributory/Comparative Negligence)

24. Any damage suffered by the BFS is the direct and proximate result of its comparative and contributory negligence and BFS's recovery should be barred or, alternatively, reduced proportionately to BFS's comparative negligence.

FOR AN ELEVENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Open and Obvious)

25. BFS either knew or should have known of any alleged deficiencies in the allegedly purchased materials and accepted the same with such knowledge. As a result, BFS's recovery should be barred.

FOR A TWELFTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Unclean Hands)

26. BFS has unclean hands and may not recover in indemnity.

WHEREFORE, having fully answered BFS' renewed Cross-Claims, this Defendant prays that the same be dismissed with the cost of this action and for such other and further relief as this Honorable Court may deem just and proper.

RICHARDSON PLOWDEN & ROBINSON, P.A.

By: s/F. Heyward Grimball

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**ATTORNEYS FOR DEFENDANT PALMETTO
TRIM AND RENOVATIONS, LLC**

December 20, 2019

Mt. Pleasant, South Carolina

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March ²⁵~~20~~, 2019

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: The Retreat at Charleston National Country Club HOA and HPR v. AC Construction, Inc., et al.

Case Number: 2016-CP-10-03783
Claim Number: CPP001051727; 40-6975-S04
LM File Number: 113-20188141

Dear Julie:

Enclosed please find the original and one (1) copy of Defendant AC Construction, Inc. a/k/a and/or d/b/a AC Construction Corp's Answer to Plaintiffs' Fourth Amended Complaint in connection with the above-referenced matter. Please file the original and return a file-stamped copy to me in the envelope provided.

By copy of this correspondence to all counsel of record, they are being served with the aforementioned Answer. With kindest regards, I am

Sincerely,

LUZURIAGA MIMS, LLP


Terri L. James
Paralegal

TLJ/tlj

Enclosures

cc: All Counsel of Record (via email w/enclosure)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

The Retreat at Charleston National)
Country Club Home Owners Association,)
Inc. and The Retreat at Charleston)
National Country Club Horizontal)
Property Regime,)

CASE NO. 2016-CP-10-03783

Plaintiffs,)
)

v.)
)

Winston Carlyle Charleston National,)
LLC; Colin R. Campbell Construction,)
Inc.; Colin Campbell, Individually; C.R.)
Campbell Construction Co., Inc.; Colin)
Campbell Construction, LLC; Builders)
FirstSource-Southeast Group, LLC;)
Builders FirstSource, Inc.; Americo)
Roofing Concepts, Inc.; DVS, Inc.;)
Advanced Building Connection, LLC;)
Guy C. Lee Building Materials, LLC; WS)
Contractors, LLC; Dino Schwartz,)
Individually; ECC Contracting, LLC;)
Hurley Services, LLC; McDaniel)
Construction Co., LLC; AC Construction)
Corp.; AC Construction, Inc.; L&G)
Construction Group, LLC; Liollo)
Architecture; JC Construction d/b/a JC)
Construction, LLC a/k/a JC Contractors)
a/k/a JC Contractors, LLC; Soto &)
Vasquez Construction, LLC a/k/a Costa)
De Oliveira Construction, LLC a/k/a Costa)
De Oliveira Construction, LLC; Solesmar)
Jesus De Oliveira; Wilson Lucas Sales)
d/b/a Miracle Siding; Miracle Siding,)
LLC; Royal Homes of SC, Inc.; Colleen)
Batissa; Christopher Batissa; Norma)
Ferreira Bruno; Mendez Construction,)
LLC; Juan Garza Ramos; Juan Garza)
Ramos d/b/a Juan Constructors; Jessica)
Marroquin; Jessica Marroquin d/b/a)
Marroquin Construction; Carlos)
Marroquin; Carlos Marroquin and Jessica)

**DEFENDANTS AC CONSTRUCTION,
INC. AND AC CONSTRUCTION CORP'S
ANSWER TO PLAINTIFFS' FOURTH
AMENDED COMPLAINT**

(JURY TRIAL DEMANDED)

FILED
2019 MAR 27 PM 12:20
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Marroquin d/b/a Marroquin Construction;)
Feliciano Cruz Silva Garcia Roofing,)
LLC; Givair De Caris; and Mario Salgado,)
Defendants.)

**TO: JAMES E. LADY, ROBERT L. WYLIE, IV, AND J. RYAN OATES,
ATTORNEYS FOR PLAINTIFFS:**

Defendants, AC Construction, Inc. and AC Construction Corp. (hereinafter collectively, "Defendants"), by and through their undersigned counsel, hereby answer Plaintiffs' Fourth Amended Complaint as follows:

1. Each and every allegation not specifically admitted or modified below are hereby denied.

AS TO THE PARTIES AND JURISDICTION

2. Defendants are without sufficient knowledge or information in order to admit or deny the allegations contained in Paragraph 1 of Plaintiffs' Fourth Amended Complaint, and therefore, must deny same.

3. Paragraphs 2 through 19 of Plaintiffs' Fourth Amended Complaint do not contain allegations against these Defendants, and therefore, no response is required. To the extent allegations affecting or against these Defendants may be contained therein, they are denied.

4. Defendants admit only so much of Paragraph 20 of Plaintiffs' Fourth Amended Complaint to the extent it alleges Defendant AC Construction, Inc. was a corporation organized and existing pursuant to the laws of the State of South Carolina which conducted business in Charleston County, South Carolina. All remaining allegations of Paragraph 20 of Plaintiffs' Fourth Amended Complaint are denied.

5. Paragraphs 21 through 42 of Plaintiffs' Fourth Amended Complaint do not contain allegations against these Defendants, and therefore, no response is required. To the

extent allegations affecting or against these Defendants may be contained therein, they are denied.

6. Paragraph 43 of Plaintiffs' Fourth Amended Complaint contains conclusions of law to which no response is required. To the extent a response is required, Paragraph 43 of Plaintiffs' Fourth Amended Complaint is denied.

7. Paragraph 44 of Plaintiffs' Fourth Amended Complaint does not contain allegations against these Defendants, and therefore, no response is required. To the extent allegations affecting or against these Defendants may be contained therein, they are denied.

8. Paragraphs 45 and 46 of Plaintiffs' Fourth Amended Complaint contain conclusions of law to which no response is required. To the extent a response is required, Paragraphs 45 and 46 of Plaintiffs' Fourth Amended Complaint are denied.

9. Paragraphs 47 through 53 of Plaintiffs' Fourth Amended Complaint are denied, including all subparts.

AS TO THE FIRST CAUSE OF ACTION
**(Negligence and Gross Negligence as to Defendant Developer(s) – Winton Carlyle
Charleston National, LLC)**

10. Defendants repeat and reiterate the responses contained in the above-paragraphs as if fully set forth herein in response to Paragraph 54 of Plaintiffs' Fourth Amended Complaint.

11. Paragraphs 55 through 57 of Plaintiffs' Fourth Amended Complaint do not contain allegations against these Defendants, and therefore, no response is required. To the extent allegations affecting or against these Defendants may be contained therein, they are denied, including all subparts.

AS TO THE SECOND CAUSE OF ACTION
(Breach of Express Warranties as to Defendant Developer(s) – Winston Carlyle Charleston National, LLC)

12. Defendants repeat and reiterate the responses contained in the above-paragraphs as if fully set forth herein in response to Paragraph 58 of Plaintiffs' Fourth Amended Complaint.

13. Paragraphs 59 through 61 of Plaintiffs' Fourth Amended Complaint do not contain allegations against these Defendants, and therefore, no response is required. To the extent allegations affecting or against these Defendants may be contained therein, they are denied.

AS TO THE THIRD CAUSE OF ACTION
(Breach of Implied Warranty as to Defendant Developer(s) – Winston Carlyle Charleston National, LLC)

14. Defendants repeat and reiterate the responses contained in the above-paragraphs as if fully set forth herein in response to Paragraph 62 of Plaintiffs' Fourth Amended Complaint.

15. Paragraphs 63 through 65 of Plaintiffs' Fourth Amended Complaint do not contain allegations against these Defendants, and therefore, no response is required. To the extent allegations affecting or against these Defendants may be contained therein, they are denied.

AS TO THE FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty- as to Defendant Developer(s)- Winston Carlyle Charleston National, LLC)

16. Defendants repeat and reiterate the responses contained in the above-paragraphs as if fully set forth herein in response to Paragraph 66 of Plaintiffs' Fourth Amended Complaint.

17. Paragraphs 67 through 75 of Plaintiffs' Fourth Amended Complaint do not contain allegations against these Defendants, and therefore, no response is required. To the

extent allegations affecting or against these Defendants may be contained therein, they are denied.

AS TO THE FIFTH CAUSE OF ACTION

**(Negligence/Gross Negligence as to the General Contractor- Winston Carlyle Defendants;
Defendant Colin R. Campbell Construction, Inc. and Defendant Colin Campbell,
Individually/Campbell Defendants)**

18. Defendants repeat and reiterate the responses contained in the above-paragraphs as if fully set forth herein in response to Paragraph 76 of Plaintiffs' Fourth Amended Complaint.

19. Paragraphs 77 through 80 of Plaintiffs' Fourth Amended Complaint do not contain allegations against these Defendants, and therefore, no response is required. To the extent allegations affecting or against these Defendants may be contained therein, they are denied, including all subparts.

AS TO THE SIXTH CAUSE OF ACTION

(Breach of Warranties as to the General Contractor- Winston Carlyle and Campbell Defendants)

20. Defendants repeat and reiterate the responses contained in the above-paragraphs as if fully set forth herein in response to Paragraph 81 of Plaintiffs' Fourth Amended Complaint.

21. Paragraphs 82 through 85 of Plaintiffs' Fourth Amended Complaint do not contain allegations against these Defendants, and therefore, no response is required. To the extent allegations affecting or against these Defendants may be contained therein, they are denied, including all subparts.

AS TO THE SEVENTH CAUSE OF ACTION

(Negligence/Gross Negligence/Defendants Subcontractors – Builders FirstSource Southeast Group, LLC, Builders FirstSource, Inc., Americo Roofing Concepts, Inc., DVS, Inc., Advanced Building Connection, LLC, Guy C. Lee Building Materials, LLC, WS Contractors, LLC, Dino Schwartz, Charleston Exteriors, LLC, ECC Contracting, LLC, Hurley Services, LLC, McDaniel Construction Co., LLC, AC Construction Corp., AC Construction, Inc., L&G Construction Group, LLC, Pohlman Quality Contractors, Pohlman Quality Exteriors, Inc., JC Contractors, LLC, Soto & Vazquez Construction, LLC, Costa De Oliveira Construcccion, LLC a/k/a Costa De Oliveira Construction, LLC,

Solesmar Jesus de Oliveira, Wilson Lucas Sales d/b/a Miracle Siding, Miracle Siding, LLC, Royal Homes of SC, Inc., Colleen Batissa, Christopher Batissa, Norma Bruno, Mendez Construction, LLC, Juan Garza Ramos; Juan Garza Ramos d/b/a Juan Constructors, Jessica Marroquin, Jessica Marroquin d/b/a Marroquin Construction, Carlos Marroquin, Carlos and Jessica Marroquin d/b/a Marroquin Construction, Feliciano Cruz Silva, Garcia Roofing, LLC, Givair De Caris, and Mario Salgado)

22. Defendants repeat and reiterate the responses contained in the above-paragraphs as if fully set forth herein in response to Paragraph 86 of Plaintiffs' Fourth Amended Complaint.

23. Paragraphs 87 through 89 of Plaintiffs' Fourth Amended Complaint are denied, including all subparts.

AS TO THE EIGHTH CAUSE OF ACTION

(Breach of Implied Warranty/ Defendants Subcontractors – Builders FirstSource Southeast Group, LLC, Builders FirstSource, Inc., Americo Roofing Concepts, Inc., DVS, Inc., Advanced Building Connection, LLC, Guy C. Lee Building Materials, LLC, WS Contractors, LLC, Dino Schwartz, Charleston Exteriors, LLC, ECC Contracting, LLC, Hurley Services, LLC, McDaniel Construction Co., LLC, AC Construction Corp., AC Construction, Inc., L&G Construction Group, LLC, Pohlman Quality Contractors, Pohlman Quality Exteriors, Inc., JC Contractors, LLC, Soto & Vazquez Construction, LLC, Costa De Oliveira Construcccion, LLC a/k/a Costa De Oliveira Construction, LLC, Solesmar Jesus de Oliveira, Wilson Lucas Sales d/b/a Miracle Siding, Miracle Siding, LLC, Royal Homes of SC, Inc., Colleen Batissa, Christopher Batissa, Norma Bruno, Mendez Construction, LLC, Juan Garza Ramos; Juan Garza Ramos d/b/a Juan Constructors, Jessica Marroquin, Jessica Marroquin d/b/a Marroquin Construction, Carlos Marroquin, Carlos and Jessica Marroquin d/b/a Marroquin Construction, Feliciano Cruz Silva, Garcia Roofing, LLC, Givair De Caris, and Mario Salgado)

24. Defendants repeat and reiterate the responses contained in the above-paragraphs as if fully set forth herein in response to Paragraph 90 of Plaintiffs' Fourth Amended Complaint.

25. Paragraphs 91 through 93 of Plaintiffs' Fourth Amended Complaint are denied, including all subparts.

AS TO THE NINTH CAUSE OF ACTION

(Negligence/Gross Negligence as to Architect – Liollio Architecture)

26. Defendants repeat and reiterate the responses contained in the above-paragraphs as if fully set forth herein in response to Paragraph 94 of Plaintiffs' Fourth Amended Complaint.

27. Paragraphs 95 through 98 of Plaintiffs' Fourth Amended Complaint do not contain allegations against these Defendants, and therefore, no response is required. To the extent allegations affecting or against these Defendants may be contained therein, they are denied, including all subparts.

AS TO THE TENTH CAUSE OF ACTION
(Breach of Express and Implied Warranty as to Architect- Liollo Architecture)

28. Defendants repeat and reiterate the responses contained in the above-paragraphs as if fully set forth herein in response to Paragraph 99 of Plaintiffs' Fourth Amended Complaint.

29. Paragraphs 100 through 103 of Plaintiffs' Fourth Amended Complaint do not contain allegations against these Defendants, and therefore, no response is required. To the extent allegations affecting or against these Defendants may be contained therein, they are denied, including all subparts.

30. The Wherefore Paragraph of Plaintiffs' Fourth Amended Complaint is denied.

FOR A FIRST AFFIRMATIVE DEFENSE
(Comparative Negligence)

31. Plaintiffs' claims, if any, are barred, or should be reduced, by Plaintiffs' own contributory and comparative negligence and recklessness which combined, contributed, and concurred with any alleged negligence on the part of Defendants, if any, and which is expressly denied.

FOR A SECOND AFFIRMATIVE DEFENSE
(Negligent Acts and Omissions of Others)

32. Plaintiffs' claims, if any, are the result of negligent acts and omissions of other entities or persons over whom the Defendants had no control, barring Plaintiffs' claims against the Defendant.

FOR A THIRD AFFIRMATIVE DEFENSE
(Unconstitutionality of Punitive Damages)

33. The imposition of punitive or exemplary damages against the Defendants would violate their constitutional rights under the Due Process clauses in the Fifth and Fourteenth Amendments to the Constitution of the United States, the Excessive Fines clause in the Eighth Amendment to the Constitution of the United States, the Double Jeopardy clause in the Fifth Amendment to the Constitution of the United States, similar provisions in applicable State Constitutions, and/or the common law and public policies of pertinent States, and/or applicable statutes and court rules, in the circumstances of this litigation, including but not limited to:

a. imposition of such punitive damages by a jury which (1) is not provided standards of sufficient clarity for determining the appropriateness, and the appropriate size, of such a punitive damages award, (2) is not adequately and clearly instructed on the limits on punitive damages imposed by the principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages, or determining the amount of an award thereof, in whole or in part, on the basis of invidiously discriminatory characteristics, including the corporate status, wealth, or state or residence of the Defendants, (4) is permitted to award punitive damages under a standard for determining liability for such damages which is vague and arbitrary and does not define with sufficient clarity the conduct or mental state which makes punitive damages permissible, and (5) is not subject to trial court and appellate judicial review for reasonableness and the furtherance of legitimate purposes on the basis of objective standards;

b. imposition of such punitive damages, and determination of the amount of an award thereof, where applicable state law is impermissibly vague, imprecise, or inconsistent;

c. imposition of such punitive damages, and determination of the amount of an award thereof, employing a burden of proof less than clear and convincing evidence;

d. imposition of such punitive damages, and determination of the amount of an award thereof, without bifurcating the trial and trying all punitive damages issues only if and after the liability of Defendant has been found on the merits;

e. imposition of such punitive damages, and determination of the amount of an award thereof, under any state's law subject to no predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount;

f. imposition of such punitive damages, and determination of the amount of any award thereof, based on anything other than Defendants' conduct in connection the incident alleged in this litigation, or in any other way subjecting Defendants to impermissible multiple punishment for the same alleged wrong; and/or

g. imposition of punitive damages by the jury as opposed to the Court, as the issues of the imposition and amount of punitive damages are matters of constitutional fact that must be determined by the Court, not the jury.

FOR A FOURTH AFFIRMATIVE DEFENSE
(Intervening/Superseding Negligence of Others)

34. That the injury or damage suffered by Plaintiffs, if any, was due to, and caused by, and was the direct and proximate result of the intervening and superseding negligence, willfulness, wantonness and recklessness of Plaintiffs/others, and such constitutes a complete defense to the claims of Plaintiffs.

FOR A FIFTH AFFIRMATIVE DEFENSE
(Sole Negligence)

35. That the injury or damage sustained by Plaintiffs, if any, was due to, caused by and was the direct and proximate result of the sole negligence, recklessness, willfulness and wantonness of Plaintiffs or of others over whom Defendants had no control in the following particulars, to wit:

- a. In failing to maintain the property against normal wear, tear and deterioration due to age and the elements;
- b. In failing to take prompt and reasonable action under the circumstances to mitigate damages;
- c. In the particulars alleged in the Plaintiffs' Fourth Amended Complaint as to other parties;
- d. In furnishing drawings and specifications which were not sufficient for the purpose in view;
- e. In furnishing drawings and specifications which did not fully and accurately disclose all information necessary for the proper construction of the project;
- f. In otherwise failing to act with due and reasonable care, caution and prudence under the circumstances then and there prevailing in such further particulars as shall be determined through discovery;

and such constitutes a complete defense to any claims for negligence.

FOR A SIXTH AFFIRMATIVE DEFENSE
(Failure to State a Claim)

36. One or more causes of action of Plaintiffs' Fourth Amended Complaint fails to state any claim upon which relief can be granted as to the Defendants, and Plaintiffs' claims should, therefore, be dismissed pursuant to Rule 12(b)(6), *SCRCP*.

FOR A SEVENTH AFFIRMATIVE DEFENSE
(Spoliation of Evidence)

37. Plaintiffs' claims are barred by the doctrine of spoliation of evidence.

FOR AN EIGHTH AFFIRMATIVE DEFENSE
(Laches, Waiver, and Estoppel)

38. Plaintiffs' claims are barred by the doctrines of laches, waiver and/or estoppel.

FOR A NINTH AFFIRMATIVE DEFENSE
(Statute of Limitations/Statute of Repose)

39. That all claims asserted against the Defendants are barred by the applicable statute of limitations and/or the applicable statute of repose.

FOR A TENTH AFFIRMATIVE DEFENSE
(Acceptance)

40. That the final completion and acceptance of work undertaken by the Defendants pursuant to the original contract, if any, and all modifications thereto constitutes a complete defense to all claims asserted by Plaintiffs.

FOR AN ELEVENTH AFFIRMATIVE DEFENSE
(Mitigation of Damages)

41. Plaintiffs had an obligation to mitigate its damages but have failed to do so.

FOR A TWELFTH AFFIRMATIVE DEFENSE
(Failure to Join Parties)

42. This Fourth Amended Complaint is barred by Plaintiffs' failure to join as a party to this action a party or parties in whose absence complete relief cannot be accorded among those

already parties thereby subjecting the Defendants to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations.

FOR A THIRTEENTH AFFIRMATIVE DEFENSE
(Failure to offer the Right to Cure)

43. Plaintiffs had an obligation to offer the opportunity to cure any and all construction defects under the Opportunity to Cure Construction Dwelling Defects Act SC Code §40-59-810-860 and Plaintiffs have failed to comply with the requirements of the Act, and therefore, this action must be stayed and/or dismissed. Defendants reserve all of their statutory rights under the Act.

FOR A FOURTEENTH AFFIRMATIVE DEFENSE
(Economic Loss)

44. Plaintiffs cannot recover in tort for purely economic losses.

FOR A FIFTEENTH AFFIRMATIVE DEFENSE
(Setoff)

45. Any recovery by Plaintiffs must be reduced or offset by amounts Plaintiffs have received or will recover from others for the same injuries and/or damages claimed in this suit.

FOR A SIXTEENTH AFFIRMATIVE DEFENSE
(No Warranty Expressed)

46. That the agreement between the parties, if any, contains no such warranty as is alleged by Plaintiffs, and such constitutes a complete defense to Plaintiffs' claims for Breach of Warranty.

FOR A SEVENTEENTH AFFIRMATIVE DEFENSE
(Lack of Notice)

47. Any claim advanced as a warranty claim for which the claimant failed to give Defendants timely and reasonable notice as required by law is barred.

FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE
(Unclean Hands)

48. That to the extent Plaintiffs were negligent, grossly negligent, willful, wanton and reckless, resulting in damages allegedly sustained, Plaintiffs come to Court with unclean hands and such inequitable conduct on the part of Plaintiffs constitutes a bar and complete defense to any claim for equitable relief.

FOR A NINETEENTH AFFIRMATIVE DEFENSE
(Compliance with Standard of Care)

49. Defendants exercised that degree of skill and care required of it by law at all times relevant to the matters complained of in the Fourth Amended Complaint.

FOR A TWENTIETH AFFIRMATIVE DEFENSE
(Compliance with Standard of Care)

50. The work and services provided by Defendants was, at all times, applicable to the subject project, in conformity with the standard of care for that time.

FOR A TWENTY- FIRST AFFIRMATIVE DEFENSE
(Lack of Proximate Cause)

51. No act or omission by Defendants in the performance of its professional services proximately caused the alleged damages for which the Plaintiffs now seek to recover and, as a result, the Plaintiffs are not entitled to any recovery from Defendants.

FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE
(Scope of Work)

52. Any and all allegations of Plaintiffs as to construction deficiencies at the subject residence are not within the scope of work of this Defendants from original construction.

FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE
(Limited Warranty)

53. Plaintiffs' claims are barred or would be reduced to the extent Defendants provided a limited warranty to Plaintiffs which was in lieu of all other warranties or obligations, express or implied, including the warranty of workmanlike services, warranty of suitability for residential purposes, any warranties of marketability or fitness for particular purposes. Plaintiffs' claims and remedies are limited to claims and remedies under the limited warranty that was provided, if any, and any other claims are barred.

FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE
(Accord and Satisfaction)

54. Plaintiffs' claims are barred by the defense of accord and satisfaction.

FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE
(Beneficial Use)

55. The damages claimed must be reduced by the proportionate value of the beneficial use provided by the work or services of Defendants.

FOR A TWENTY-SIXTH AFFIRMATIVE DEFENSE
(Alteration/Modification)

56. The subject Project has been substantially altered or modified by persons other than Defendants after Defendants completed work, and the Plaintiffs' claims against Defendants are barred as a result.

FOR A TWENTY-SEVENTH AFFIRMATIVE DEFENSE
(Expiration of Warranty/Improper Notice)

57. Any express warranty allegedly provided by Defendants has expired. Defendants would show Plaintiffs failed to give Defendants timely notice of any alleged breach of warranty, and therefore, Plaintiffs may not recover against Defendants.

FOR A TWENTY-EIGHTH AFFIRMATIVE DEFENSE
(Incorporation of Defenses Raised By Others)

58. Defendants hereby incorporate the defenses raised by any other Defendants to the extent said defenses might be applicable to them.

FOR A TWENTY-NINTH AFFIRMATIVE DEFENSE
(Additional Defense)

59. The Defendants hereby gives notice that they intend to rely upon such other affirmative defenses as may become available or apparent during the course of discovery and thus reserves the right to amend this Answer to assert any such defenses.

WHEREFORE, Defendants, AC Construction, Inc. and AC Construction Corp, pray that this Court dismiss all claims against them with prejudice, grant them reasonable attorney's fees and costs, and for any such other and further relief this Court may deem just and proper. Defendants demand a trial by jury.

LUZURIAGA MIMS, LLP

By: _____

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*Attorneys for the Defendants AC Construction,
Inc. and AC Construction Corp.*

Charleston, South Carolina
March 22, 2019

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served on all counsel of record in this proceeding this 22nd day of

March, 2019.

JG

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

The Retreat at Charleston National) CASE NO. 2016-CP-10-03783
Country Club Home Owners Association,)
Inc. and The Retreat at Charleston)
National Country Club Horizontal)
Property Regime,)

Plaintiffs,)

v.)

Winston Carlyle Charleston National,)
LLC; Colin R. Campbell Construction,)
Inc.; Colin Campbell, Individually; C.R.)
Campbell Construction Co., Inc.; Colin)
Campbell Construction, LLC; Builders)
FirstSource-Southeast Group, LLC;)
Builders FirstSource, Inc.; Americo)
Roofing Concepts, Inc.; DVS, Inc.;)
Advanced Building Connection, LLC;)
Guy C. Lee Building Materials, LLC; WS)
Contractors, LLC; Dino Schwartz,)
Individually; ECC Contracting, LLC;)
Hurley Services, LLC; McDaniel)
Construction Co., LLC; AC Construction)
Corp.; AC Construction, Inc.; L&G)
Construction Group, LLC; Liollo)
Architecture; JC Construction d/b/a JC)
Construction, LLC a/k/a JC Contractors)
a/k/a JC Contractors, LLC; Soto &)
Vasquez Construction, LLC a/k/a Costa)
De Oliveira Construction, LLC a/k/a Costa)
De Oliveira Construction, LLC; Solesmar)
Jesus De Oliveira; Wilson Lucas Sales)
d/b/a Miracle Siding; Miracle Siding,)
LLC; Royal Homes of SC, Inc.; Colleen)
Batissa; Christopher Batissa; Norma)
Ferreira Bruno; Mendez Construction,)
LLC; Juan Garza Ramos; Juan Garza)
Ramos d/b/a Juan Constructors; Jessica)
Marroquin; Jessica Marroquin d/b/a)
Marroquin Construction; Carlos)
Marroquin; Carlos Marroquin and Jessica)

**DEFENDANTS AC CONSTRUCTION
CORP. AND AC CONSTRUCTION, INC.'S
ANSWER TO DEFENDANTS BUILDERS
FIRSTSOURCE-SOUTHEAST GROUP,
LLC AND BUILDERS FIRSTSOURCE,
INC.'S AMENDED ANSWER TO
PLAINTIFFS' FOURTH AMENDED
COMPLAINT, RE-ASSERTED CROSS-
CLAIMS AND THIRD PARTY-
COMPLAINT**

(JURY TRIAL DEMANDED)

Marroquin d/b/a Marroquin Construction;)
 Feliciano Cruz Silva Garcia Roofing,)
 LLC; Givair De Caris; and Mario Salgado,)

Defendants.)

Builders FirstSource-Southeast Group,)
 LLC,)

Third-Party Plaintiff,)

v.)

Jason M. Pohlman; Jason M. Pohlman)
 d/b/a Pohlman Quality Exteriors, Inc.;)
 Pohlman Quality Exteriors, Inc.; Palmetto)
 Trim and Renovations, LLC; Edward)
 Bruce Witham; East Coast Carpentry;)
 East Coast Carpentry Company; Rodrigo)
 Assis d/b/a East Coast Carpentry Company)
 n/k/a ECC Contracting, LLC; and Rodrigo)
 Assis;)

Third-Party Defendants.)

**TO: STEPHEN P. HUGHES AND WILLIAM H. COX, ATTORNEYS FOR
 DEFENDANTS BUILDERS FIRSTSOURCE SOUTHEAST GROUP, LLC AND
 BUILDERS FIRSTSOURCE, INC.:**

Defendants, AC Construction Corp. and AC Construction, Inc. (hereinafter collectively
 “Defendant” and/or “ACC”), by and through its undersigned counsel, hereby answer Defendants
 Builders FirstSource Southeast Group, LLC and Builders FirstSource, Inc.’s (hereinafter,
 collectively “BFS”) Amended Answer to Plaintiffs’ Fourth Amended Complaint and Reasserted
 Cross-Claims, and Third-Party Complaint as follows:

1. Each and every allegation not specifically admitted or modified below are hereby
 denied.

2. Paragraphs 1 through 123 of BFS' Amended Answer, Cross-Claims, and Third-Party Complaint do not contain allegations against this Defendant, and therefore, no response is required. To the extent allegations affecting or against this Defendant may be contained therein, they are denied.

AS TO THE CROSS-CLAIMS AGAINST WS CONTRACTORS, LLC, ECC CONTRACTING, LLC, HURLEY SERVICES, LLC, MCDANIEL CONSTRUCTION CO., LLC, AC CONSTRUCTION CORP., AC CONSTRUCTION, INC., AND L&G CONSTRUCTION GROUP, LLC

3. Defendant repeats and reiterates the responses contained in the above-paragraphs as if fully set forth herein in response to Paragraph 124 of BFS' Amended Answer, Cross-Claims, and Third-Party Complaint.

4. Paragraphs 125 through 127 of BFS' Amended Answer, Cross-Claims, and Third-Party Complaint do not contain allegations against this Defendant, and therefore, no response is required. To the extent allegations affecting or against this Defendant may be contained therein, they are denied.

5. Paragraph 128 of BFS' Amended Answer, Cross-Claims, and Third-Party Complaint is denied.

6. Defendant admits only so much of Paragraph 129 of BFS' Amended Answer, Cross-Claims, and Third-Party Complaint to the extent it alleges Defendant was a corporation organized and existing pursuant to the laws of the State of South Carolina which conducted business in the County of Charleston. All remaining allegations of Paragraph 129 of BFS' Amended Answer, Cross-Claims, and Third-Party Complaint are denied.

7. Paragraphs 130 and 131 of BFS' Amended Answer, Cross-Claims, and Third-Party Complaint do not contain allegations against this Defendant, and therefore, no response is

required. To the extent allegations affecting or against this Defendant may be contained therein, they are denied.

AS TO THE FIRST CROSS-CLAIM AGAINST WS CONTRACTORS, LLC, ECC CONTRACTING, LLC, HURLEY SERVICES, LLC, MCDANIEL CONSTRUCTION CO., LLC, AC CONSTRUCTION CORP., AC CONSTRUCTION, INC., AND L&G CONSTRUCTION GROUP, LLC

8. Defendant repeats and reiterates the responses contained in the above-paragraphs as if fully set forth herein in response to Paragraph 132 of BFS' Amended Answer, Cross-Claims, and Third-Party Complaint.

9. Paragraphs 133 and 134 of BFS' Amended Answer, Cross-Claims, and Third-Party Complaint contain conclusions of law to which no response is required. To the extent a response is required, Paragraphs 133 and 134 of BFS' Amended Answer, Cross-Claims, and Third-Party Complaint are denied.

10. Paragraphs 135 through 138 of BFS' Amended Answer, Cross-Claims, and Third-Party Complaint are denied.

AS TO THE SECOND CROSS-CLAIM AGAINST WS CONTRACTORS, LLC, ECC CONTRACTING, LLC, HURLEY SERVICES, LLC, MCDANIEL CONSTRUCTION CO., LLC, AC CONSTRUCTION CORP., AC CONSTRUCTION, INC., AND L&G CONSTRUCTION GROUP, LLC

11. Defendant repeats and reiterates the responses contained in the above-paragraphs as if fully set forth herein in response to Paragraph 139 of BFS' Amended Answer, Cross-Claims, and Third-Party Complaint.

12. Paragraphs 140 through 143 of BFS' Amended Answer, Cross-Claims, and Third-Party Complaint are denied.

AS TO THE THIRD CROSS-CLAIM AGAINST WS CONTRACTORS, LLC, ECC CONTRACTING, LLC, HURLEY SERVICES, LLC, MCDANIEL CONSTRUCTION CO., LLC, AC CONSTRUCTION CORP., AC CONSTRUCTION, INC., AND L&G CONSTRUCTION GROUP, LLC

13. Defendant repeats and reiterates the responses contained in the above-paragraphs as if fully set forth herein in response to Paragraph 144 of BFS' Amended Answer, Cross-Claims, and Third-Party Complaint.

14. Paragraphs 145 through 147 of BFS' Amended Answer, Cross-Claims, and Third-Party Complaint are denied.

AS TO THE FOURTH CROSS-CLAIM AGAINST WS CONTRACTORS, LLC, ECC CONTRACTING, LLC, HURLEY SERVICES, LLC, MCDANIEL CONSTRUCTION CO., LLC, AC CONSTRUCTION CORP., AC CONSTRUCTION, INC., AND L&G CONSTRUCTION GROUP, LLC

15. Defendant repeats and reiterates the responses contained in the above-paragraphs as if fully set forth herein in response to Paragraph 148 of BFS' Amended Answer, Cross-Claims, and Third-Party Complaint.

16. Paragraphs 149 through 151 of BFS' Amended Answer, Cross-Claims, and Third-Party Complaint are denied.

AS TO THE FIFTH CROSS-CLAIM AGAINST WS CONTRACTORS, LLC, ECC CONTRACTING, LLC, HURLEY SERVICES, LLC, MCDANIEL CONSTRUCTION CO., LLC, AC CONSTRUCTION CORP., AC CONSTRUCTION, INC., AND L&G CONSTRUCTION GROUP, LLC

17. Defendant repeats and reiterates the responses contained in the above-paragraphs as if fully set forth herein in response to Paragraph 152 of BFS' Amended Answer, Cross-Claims, and Third-Party Complaint.

18. Paragraphs 153 through 155 of BFS' Amended Answer, Cross-Claims, and Third-Party Complaint are denied.

AS TO THE ADDITIOANL THIRD-PARTY CLAIMS AGAINST JASON M. POHLMAN, JASON M. POHLMAN D/B/A POHLMAN QUALITY EXTERIORS, INC., POHLMAN QUALITY EXTERIORS, INC., PALMETTO TRIM AND RENOVATIONS, LLC, EDWARD BRUCE WITHAM, EAST COAST CARPENTRY, EAST COAST CARPENTRY

COMPANY, RODRIGO ASSIS D/B/A EAST COAST CARPENTRY COMPANY N/K/A ECC CONTRACTING, LLC, AND RODRIGO ASSIS

19. Defendant repeats and reiterates the responses contained in the above-paragraphs as if fully set forth herein in response to Paragraph 156 of BFS' Amended Answer, Cross-Claims, and Third-Party Claims.

20. Paragraphs 157 through 160 of BFS' Amended Answer, Cross-Claims, and Third-Party Claims do not contain allegations against this Defendant, and therefore, no response is required. To the extent allegations affecting or against this Defendant may be contained therein, they are denied.

AS TO THE FIRST CAUSE OF ACTION AGAINST JASON M. POHLMAN, JASON M. POHLMAN D/B/A POHLMAN QUALITY EXTERIORS, INC., POHLMAN QUALITY EXTERIORS, INC., PALMETTO TRIM AND RENOVATIONS, LLC, EDWARD BRUCE WITHAM, EAST COAST CARPENTRY, EAST COAST CARPENTRY COMPANY, RODRIGO ASSIS D/B/A EAST COAST CARPENTRY COMPANY N/K/A ECC CONTRACTING, LLC, AND RODRIGO ASSIS

21. Defendant repeats and reiterates the responses contained in the above-paragraphs as if fully set forth herein in responses to Paragraph 161 of BFS' Amended Answer, Cross-Claims, and Third-Party Complaint.

22. Paragraphs 162 through 168 of BFS' Amended Answer, Cross-Claims, and Third-Party Complaint do not contain allegations against this Defendant, and therefore, no response is required. To the extent allegations affecting or against this Defendant may be contained therein, they are denied.

AS TO THE SECOND CAUSE OF ACTION AGAINST JASON M. POHLMAN, JASON M. POHLMAN D/B/A POHLMAN QUALITY EXTERIORS, INC., POHLMAN QUALITY EXTERIORS, INC., PALMETTO TRIM AND RENOVATIONS, LLC, EDWARD BRUCE WITHAM, EAST COAST CARPENTRY, EAST COAST CARPENTRY COMPANY, RODRIGO ASSIS D/B/A EAST COAST CARPENTRY COMPANY N/K/A ECC CONTRACTING, LLC, AND RODRIGO ASSIS

23. Defendant repeats and reiterates the responses contained in the above-paragraphs as if fully set forth herein in response to Paragraph 169 of BFS' Amended Answer, Cross-Claims, and Third-Party Complaint.

24. Paragraphs 170 through 173 BFS' Amended Answer, Cross-Claims, and Third-Party Complaint do not contain allegations against this Defendant, and therefore, no response is required. To the extent allegations affecting or against this Defendant may be contained therein, they are denied.

AS TO THE THIRD CAUSE OF ACTION AGAINST JASON M. POHLMAN, JASON M. POHLMAN D/B/A POHLMAN QUALITY EXTERIORS, INC., POHLMAN QUALITY EXTERIORS, INC., PALMETTO TRIM AND RENOVATIONS, LLC, EDWARD BRUCE WITHAM, EAST COAST CARPENTRY, EAST COAST CARPENTRY COMPANY, RODRIGO ASSIS D/B/A EAST COAST CARPENTRY COMPANY N/K/A ECC CONTRACTING, LLC, AND RODRIGO ASSIS

25. Defendant repeats and reiterates the responses contained in the above-paragraphs as if fully set forth herein in response to Paragraph 174 of BFS' Amended Answer, Cross-Claims, and Third-Party Complaint.

26. Paragraphs 175 through 177 BFS' Amended Answer, Cross-Claims, and Third-Party Complaint do not contain allegations against this Defendant, and therefore, no response is required. To the extent allegations affecting or against this Defendant may be contained therein, they are denied.

AS TO THE FOURTH CAUSE OF ACTION AGAINST JASON M. POHLMAN, JASON M. POHLMAN D/B/A POHLMAN QUALITY EXTERIORS, INC., POHLMAN QUALITY EXTERIORS, INC., PALMETTO TRIM AND RENOVATIONS, LLC, EDWARD BRUCE WITHAM, EAST COAST CARPENTRY, EAST COAST CARPENTRY COMPANY, RODRIGO ASSIS D/B/A EAST COAST CARPENTRY COMPANY N/K/A ECC CONTRACTING, LLC, AND RODRIGO ASSIS

27. Defendant repeats and reiterates the responses contained in the above-paragraphs as if fully set forth herein in response to Paragraph 178 of BFS' Amended Answer, Cross-Claims, and Third-Party Complaint.

28. Paragraphs 179 through 181 BFS' Amended Answer, Cross-Claims, and Third-Party Complaint do not contain allegations against this Defendant, and therefore, no response is required. To the extent allegations affecting or against this Defendant may be contained therein, they are denied.

AS TO THE FIFTH CAUSE OF ACTION AGAINST JASON M. POHLMAN, JASON M. POHLMAN D/B/A POHLMAN QUALITY EXTERIORS, INC., POHLMAN QUALITY EXTERIORS, INC., PALMETTO TRIM AND RENOVATIONS, LLC, EDWARD BRUCE WITHAM, EAST COAST CARPENTRY, EAST COAST CARPENTRY COMPANY, RODRIGO ASSIS D/B/A EAST COAST CARPENTRY COMPANY N/K/A ECC CONTRACTING, LLC, AND RODRIGO ASSIS

29. Defendant repeats and reiterates the responses contained in the above-paragraphs as if fully set forth herein in response to Paragraph 182 of BFS' Amended Answer, Cross-Claims, and Third-Party Complaint.

30. Paragraphs 183 through 185 BFS' Amended Answer, Cross-Claims, and Third-Party Complaint do not contain allegations against this Defendant, and therefore, no response is required. To the extent allegations affecting or against this Defendant may be contained therein, they are denied.

31. Paragraph 186 (The Wherefore Paragraph) of BFS' Amended Answer, Cross-Claims, and Third-Party Complaint is denied, including all subparts.

FOR A FIRST AFFIRMATIVE DEFENSE
(Comparative Negligence)

32. BFS' claims, if any, are barred, or should be reduced, by BFS' own contributory and comparative negligence and recklessness which combined, contributed, and concurred with any alleged negligence on the part of ACC, if any, and which is expressly denied.

FOR A SECOND AFFIRMATIVE DEFENSE
(Negligent Acts and Omissions of Others)

33. BFS' claims, if any, are the result of negligent acts and omissions of other entities or persons over whom the ACC had no control, barring BFS' claims against ACC.

FOR A THIRD AFFIRMATIVE DEFENSE
(Unconstitutionality of Punitive Damages)

34. The imposition of punitive or exemplary damages against ACC would violate its constitutional rights under the Due Process clauses in the Fifth and Fourteenth Amendments to the Constitution of the United States, the Excessive Fines clause in the Eighth Amendment to the Constitution of the United States, the Double Jeopardy clause in the Fifth Amendment to the Constitution of the United States, similar provisions in applicable State Constitutions, and/or the common law and public policies of pertinent States, and/or applicable statutes and court rules, in the circumstances of this litigation, including but not limited to:

a. imposition of such punitive damages by a jury which (1) is not provided standards of sufficient clarity for determining the appropriateness, and the appropriate size, of such a punitive damages award, (2) is not adequately and clearly instructed on the limits on punitive damages imposed by the principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages, or determining the amount of an award thereof, in whole or in part, on the basis of invidiously discriminatory characteristics, including the corporate status, wealth, or state or residence of Defendant, (4) is permitted to award punitive

damages under a standard for determining liability for such damages which is vague and arbitrary and does not define with sufficient clarity the conduct or mental state which makes punitive damages permissible, and (5) is not subject to trial court and appellate judicial review for reasonableness and the furtherance of legitimate purposes on the basis of objective standards;

b. imposition of such punitive damages, and determination of the amount of an award thereof, where applicable state law is impermissibly vague, imprecise, or inconsistent;

c. imposition of such punitive damages, and determination of the amount of an award thereof, employing a burden of proof less than clear and convincing evidence;

d. imposition of such punitive damages, and determination of the amount of an award thereof, without bifurcating the trial and trying all punitive damages issues only if and after the liability of ACC has been found on the merits;

e. imposition of such punitive damages, and determination of the amount of an award thereof, under any state's law subject to no predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount;

f. imposition of such punitive damages, and determination of the amount of any award thereof, based on anything other than Defendant's conduct in connection the incident alleged in this litigation, or in any other way subjecting ACC to impermissible multiple punishment for the same alleged wrong; and/or

g. imposition of punitive damages by the jury as opposed to the Court, as the issues of the imposition and amount of punitive damages are matters of constitutional fact that must be determined by the Court, not the jury.

FOR A FOURTH AFFIRMATIVE DEFENSE
(Intervening/Superseding Negligence of Others)

35. That the injury or damage suffered by BFS, if any, was due to, and caused by, and was the direct and proximate result of the intervening and superseding negligence, willfulness, wantonness and recklessness of BFS/others, and such constitutes a complete defense to the claims of BFS.

FOR A FIFTH AFFIRMATIVE DEFENSE
(Sole Negligence)

36. That the injury or damage sustained by BFS, if any, was due to, caused by and was the direct and proximate result of the sole negligence, recklessness, willfulness and wantonness of BFS or of others over whom ACC had no control in the following particulars, to wit:

- a. In failing to maintain the property against normal wear, tear and deterioration due to age and the elements;
- b. In failing to take prompt and reasonable action under the circumstances to mitigate damages;
- c. In the particulars alleged in the Plaintiffs Fourth Amended Complaint as to other parties;
- d. In the particulars alleged in BFS' Amended Answer, Cross-Claims, and Third-Party Complaint as to other parties;
- e. In furnishing drawings and specifications which were not sufficient for the purpose in view;
- f. In furnishing drawings and specifications which did not fully and accurately disclose all information necessary for the proper construction of the project;

- g. In failing to properly coordinate the work of all trades on the job site;
- h. In failing to properly coordinate all materials in the field;
- i. In otherwise failing to act with due and reasonable care, caution and prudence under the circumstances then and there prevailing in such further particulars as shall be determined through discovery;

and such constitutes a complete defense to any claims for negligence.

FOR A SIXTH AFFIRMATIVE DEFENSE
(Failure to State a Claim)

37. One or more causes of action of BFS' Amended Answer, Cross-Claims, and Third-Party Complaint fails to state any claim upon which relief can be granted as to ACC, and BFS' Amended Answer, Cross-Claims, and Third-Party Complaint should, therefore, be dismissed pursuant to Rule 12(b)(6), *SCRPC*.

FOR A SEVENTH AFFIRMATIVE DEFENSE
(Spoliation of Evidence)

38. BFS' claims are barred by the doctrine of spoliation of evidence.

FOR AN EIGHTH AFFIRMATIVE DEFENSE
(Laches, Waiver, and Estoppel)

39. BFS' claims are barred by the doctrines of laches, waiver and/or estoppel.

FOR A NINTH AFFIRMATIVE DEFENSE
(Statute of Limitations/Statute of Repose)

40. That all claims asserted against ACC are barred by the applicable statute of limitations and/or the applicable statute of repose.

FOR A TENTH AFFIRMATIVE DEFENSE
(Acceptance)

41. That the final completion and acceptance of work undertaken by ACC pursuant to the original contract, if any, and all modifications thereto constitutes a complete defense to all claims asserted by BFS.

FOR AN ELEVENTH AFFIRMATIVE DEFENSE
(Mitigation of Damages)

42. BFS had an obligation to mitigate its damages but has failed to do so.

FOR A TWELFTH AFFIRMATIVE DEFENSE
(Failure to Join Parties)

43. This Amended Answer, Cross-Claims, and Third-Party Complaint is barred by BFS' failure to join as a party to this action a party or parties in whose absence complete relief cannot be accorded among those already parties thereby subjecting ACC to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations.

FOR A THIRTEENTH AFFIRMATIVE DEFENSE
(Failure to offer the Right to Cure)

44. BFS had an obligation to offer the opportunity to cure any and all construction defects under the Opportunity to Cure Construction Dwelling Defects Act SC Code §40-59-810-860 and BFS has failed to comply with the requirements of the Act, and therefore, this action must be stayed and/or dismissed. ACC reserves all of its statutory rights under the Act.

FOR A FOURTEENTH AFFIRMATIVE DEFENSE
(Economic Loss)

45. BFS cannot recover in tort for purely economic losses.

FOR A FIFTEENTH AFFIRMATIVE DEFENSE
(Setoff)

46. Any recovery by BFS must be reduced or offset by amounts BFS has received or will recover from others for the same injuries and/or damages claimed in this suit.

FOR A SIXTEENTH AFFIRMATIVE DEFENSE
(No Warranty Expressed)

47. That the agreement between the parties, if any, contains no such warranty as is alleged by BFS, and such constitutes a complete defense to BFS' claims for Breach of Warranty.

FOR A SEVENTEENTH AFFIRMATIVE DEFENSE
(Lack of Notice)

48. Any claim advanced as a warranty claim for which the claimant failed to give ACC timely and reasonable notice as required by law is barred.

FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE
(Unclean Hands)

49. That to the extent BFS was negligent, grossly negligent, willful, wanton and reckless, resulting in damages allegedly sustained, BFS comes to Court with unclean hands and such inequitable conduct on the part of BFS constitutes a bar and complete defense to any claim for equitable relief.

FOR A NINETEENTH AFFIRMATIVE DEFENSE
(Indemnity Not Allowed Between Joint Tortfeasors)

50. That BFS was negligent, grossly negligent, willful, wanton, and reckless in the particulars set forth in the Plaintiffs' Fourth Amended Complaint, and the damages sustained by the Plaintiffs, if any, were due to and caused by and were the direct and proximate result of the negligence, gross negligence, recklessness, willfulness, and wantonness of BFS, combining and concurring with the alleged negligence of ACC (the existence of which is expressly denied), and

therefore BFS is at best a joint tortfeasor, and such constitutes a complete defense to any claim for indemnity.

FOR A TWENTIETH AFFIRMATIVE DEFENSE
(Limited Warranty)

51. BFS' claims are barred or would be reduced to the extent ACC provided a limited warranty to BFS which was in lieu of all other warranties or obligations, express or implied, including the warranty of workmanlike service, warranty of suitability for residential purposes, any warranties of marketability or fitness for particular purposes. BFS' claims and remedies are limited to claims and remedies under the limited warranty that was provided, and any other claims are barred.

FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE
(Compliance with Standard of Care)

52. ACC exercised that degree of skill and care required of it by law at all times relevant to the matters complained of in the Amended Answer, Cross-Claims, and Third-Party Complaint.

FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE
(Compliance with Standard of Care)

53. The work and services provided by ACC were, at all times applicable to the subject project, in conformity with the standard of care for that time.

FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE
(Scope of Work)

54. Any and all allegations of BFS as to construction deficiencies at the subject residence are not within the scope of work of ACC from original construction.

FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE
(First to Breach Contract)

55. “Where a contract is not performed, the party who is guilty of the first breach is generally the one upon whom all liability for the nonperformance rests.” Willms Trucking Co., Inc. v. JW Constr. Co., Inc., 314 S.C. 170, 178, 442 S.E.2d 197, 201 (Ct.App.1994); *see also* Ellis v. Taylor, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994). Silver v. Aabstract Pools & Spas, Inc., 376 S.C. 585, 594, 658 S.E.2d 539, 543 (Ct. App. 2008). BFS’ failure to comply with the terms of the alleged contract relieves ACC of any further obligation to perform.

FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE
(Failure to Comply with Contractual Conditions Precedent)

44. That Defendant would show that BFS has failed to properly comply with contractual conditions precedent to the assertion of those claims set forth in the Amended Answer to Plaintiffs’ Fourth Amended Complaint, Cross-Claims, and Third-Party Complaint, which failure is a bar to all claims against this Defendant.

FOR A TWENTY-SIXTH AFFIRMATIVE DEFENSE
(Incorporation of Defenses Raised By Others)

45. ACC hereby incorporates the defenses raised by any other Defendant to the extent said defenses might be applicable to it.

FOR A TWENTY-SEVENTH AFFIRMATIVE DEFENSE
(Additional Defense)

46. ACC hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery and thus does not waive any defenses and reserves the right to amend its Answer to assert any such defenses.

WHEREFORE, Defendant, AC Construction, Inc. and Defendant AC Construction Corp, pray that this Court dismiss all claims against them with prejudice, grant them reasonable attorney's fees and costs, and for any such other and further relief this Court may deem just and proper. Defendants demand a trial by jury.

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Charleston, South Carolina

November 26, 2019

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

The Retreat At Charleston National Country
Club Home Owners Association, Inc. And
The Retreat At Charleston National Country
Club Horizontal Property Regime,

Plaintiffs,

v.

Builders Firstsource-Southeast Group, LLC;
et al.,

Defendants.

Builders FirstSource-Southeast Group, LLC,

Third-Party Plaintiff,

v.

Palmetto Trim and Renovations, LLC, et.
al.,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 2016-CP-10-03783

**DEFENDANT PALMETTO TRIM AND
RENOVATIONS, LLC'S NOTICE OF
MOTION FOR SUMMARY JUDGMENT
AGAINST THE CLAIMS OF BUILDERS
FIRSTSOURCE-SOUTHEAST GROUP,
LLC AND BUILDERS FIRSTSOURCE,
INC.**

**TO: BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC AND BUILDERS
FIRSTSOURCE, INC. AND STEPHEN HUGHES THEIR ATTORNEY**

You will please take notice that the undersigned, as counsel for the Third-Party Defendant Palmetto Trim and Renovations, LLC, ("PTR") by and through the undersigned counsel, and moves for an Order Dismissing Builders FirstSource-Southeast Group, LLC and Builders FirstSource, Inc.'s (collectively as "BFS") claims against PTR pursuant to Rule 12 of the South Carolina Rules of Civil Procedure. The grounds for the Motion are as follows:

1. All of BFS's claims are barred by the applicable Statute of Limitations, SC. Code § 15-3-530 et seq.;

2. BFS's claims for breach of contract, breach of express and implied warranty, and negligence are "merely disguised ... claims for equitable indemnity" and fail as a matter of law pursuant

to *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders FirstSource-Se. Grp.*, 413 S.C. 630, 634, (Ct. App. 2015); and

3. BFS's claims for contractual indemnity are based on contractual provisions that are neither clear nor unequivocal and thus they fail as a matter of law. *Concord and Cumberland HPR v. Concord and Cumberland, LLC*, 2018 WL 3748616 (S.C. Ct. App. 2018),

WHEREFORE for the foregoing reasons, PTR respectfully requests this Court enter an Order dismissing, Third-Party Plaintiff's claims. This Motion will be supported by a Memorandum of Law. PTR reserves the right to supplement this motion and present additional arguments.

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December 20, 2019

Mt. Pleasant, South Carolina