

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO: 2014-CP-08-02424

Patricia Damico, Lenna Lucas, and)
Brianna Moon, individually and on)
behalf of all others similarly situated,)
Joshua and Brettany Buetow, Edward)
and Sylvia Dengg, Czara and Chad)
England,)

Plaintiffs,)

vs.)

Lennar Carolinas, LLC, Spring Grove)
Plantation Development, Inc., Super)
Concrete of SC, Inc. Southern Green,)
Inc., TJB Trucking/Leasing, LLC,)
Paragon Site Constructors, Inc.,)

Defendants.)

Lennar Carolinas, LLC,)
Third-Party Plaintiff,)

vs.)

Super Concrete of SC, Inc. Southern)
Green, Inc., and TJB Trucking/Leasing,)
LLC,)

Third-Party Defendants.)

THIRD AMENDED SUMMONS
(Jury Trial Demanded)
(Class Action)

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S.C. SUPREME COURT

YOU ARE HEREBY SUMMONED and required to answer the Third Amended
Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your
Answer upon the subscribers, at their offices at 304 Meeting Street, Suite 200, Charleston, South

Carolina 29401 within fifteen (15) days after the service thereof, exclusive of the day of such service; and if you fail to answer the Third Amended Complaint within the time aforesaid judgment by default will be rendered against you for the relief demanded in the Third Amended Complaint.

HAYES LAW FIRM, LLC

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June 1, 2026
Charleston, South Carolina

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COUNTY OF BERKELEY)

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England,

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Plantation Development, Inc., Super
Concrete of SC, Inc. Southern Green,
Inc., TJB Trucking/Leasing, LLC,
Paragon Site Constructors, Inc.,

Defendants.

Lennar Carolinas, LLC,
Third-Party Plaintiff,

vs.

Super Concrete of SC, Inc. Southern
Green, Inc., and TJB Trucking/Leasing,
LLC,

Third-Party Defendants.

THIRD AMENDED COMPLAINT
(Jury Trial Demanded)
(Class Action)

The Plaintiffs, Patricia Damico, Lenna Lucas, and Brianna Moon as Class Representatives,
individually and on behalf of similarly situated owners of homes in a residential community named
the Abbey at Spring Grove Plantation, and the above-named Plaintiffs (hereinafter collectively

referred to as “Plaintiffs”), complaining of the above-mentioned Defendants, allege and state as follows:

1. Plaintiffs Lenna Lucas, Patricia Damico, and Brianna Moon are citizens and residents of Berkeley County, South Carolina, who at all times relevant hereto live in a residential community known as The Abbey at Spring Grove Plantation (“the Project”), located in Berkeley County, South Carolina. Plaintiffs Lenna Lucas, Patricia Damico, and Brianna Moon further allege and state that they are bringing this action pursuant to Rule 23, SCRCP, as representing a class composed of each and every homeowner in The Abbey at Spring Grove Plantation, and that:

- a. The class is so numerous that joinder of all members is impracticable;
- b. There are questions of law and fact common to the class;
- c. The claims of Plaintiffs Lucas, Damico, and Moon are typical of the claims of the class;
- d. Plaintiffs Lucas, Damico, and Moon will fairly and adequately protect the interest of the class; and
- e. The amount in controversy exceeds One Hundred Dollars (\$100.00) for each member of the class.

2. Plaintiffs Damico, Lucas, Moon and the other similarly situated homeowners, including Joshua and Brettany Buetow, Edward and Sylvia Dengg, Czara and Chad England own homes in The Abbey and/or Spring Grove Plantation.

3. Pursuant to the common law of South Carolina and Rule 23 of the South Carolina Rules of Civil Procedure (“SCRCP”), Plaintiffs Damico, Lucas, and Moon bring this action both individually and as a proposed class action against the Defendants on behalf of themselves and all other similarly situated persons and entities, that own homes within The Abbey (hereinafter referred to collectively as the “Class”). The Class is more particularly defined as follows:

All persons and/or entities that own homes/property within The Abbey.

Excluded from the Class are:

- a. Any Judge presiding over this action and members of their families;
- b. Defendants and any entity in which Defendants have a controlling interest or which have a controlling interest in Defendants and Defendants' current or former employees investors, members, or officers;
- c. Any former owner of a home; and
- d. All persons who properly execute and file a timely request for exclusion from the Class.

4. As representatives of the Class defined herein pursuant to Rule 23(a) of the South Carolina Rules of Civil Procedure, the Plaintiffs seek to recover monetary damages from the Defendants, for negligence, gross negligence, recklessness, wantonness, and willfulness, with respect to their duties as a developer/contractor in The Abbey, as well as their duties to design and construct The Abbey free from defects and in accordance with all applicable building and dwelling codes.

5. *Numerosity*: The Class is composed of in excess of sixty nine (69) persons or entities geographically dispersed throughout the State of South Carolina and other states, the joinder of whom in one action is impractical. When spouses and co-owners are considered, the Class is expected to be in excess of sixty nine (69) persons or entities.

6. *Typicality*: Plaintiffs Damico, Lucas, and Moon's claims are typical of the claims of the members of the Class, as all claims arise out of Defendants' wrongful conduct in the design, development, construction, marketing, selling, management and repair of The Abbey.

7. *Adequate Representation*: Plaintiffs Damico, Lucas, and Moon will fairly and adequately protect the interests of the members of the Class and have no interests antagonistic to those of the Class. Plaintiffs have retained counsel experienced in the prosecution of construction defect claims and complex litigation, including home defect claims and class actions.

8. *Predominance and Superiority*: This class action is appropriate for certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy, since, among other things, individual joinder of all members of the Class is impracticable. Should individual Class Members be required to bring separate actions, this Court would be confronted with a multiplicity of lawsuits burdening the court systems while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single Court.

9. Defendants have acted on grounds generally applicable to the Class. Class certification is appropriate under South Carolina law because Defendants engaged in uniform and common practices vis-à-vis each class member. All Class Members have the same legal right to, and interest in, redress for damages associated with the defective conditions existing within The Abbey.

10. Plaintiffs Damico, Lucas, and Moon do not envision unusual difficulty in the management of this action as a class action.

11. Each Class Member has an interest of more than \$100.00.

12. The amount of money at stake for each Class Member is not sufficient for each member to hire their own counsel, forensic engineers and architects and bring their own action.

13. The individual Plaintiffs are citizens and residents of Berkeley County, South Carolina, who at all times relevant hereto live in a residential community known as The Abbey at Spring Grove Plantation, located in Berkeley County, South Carolina.

14. The Abbey is a section of the residential community, Spring Grove Plantation, located in Berkeley County, South Carolina and, upon information and belief, was owned, developed, marketed and constructed by the Defendants.

15. The Defendants are, upon information and belief, corporations organized and existing under the laws of the State of South Carolina or some other state and are authorized to conduct business in this state, and have a principal place of business in Berkeley County or have conducted business in Berkeley County.

16. Upon assuming the roles as stated above, the Defendants assumed the duties thereof to develop, construct, and market the property and sell parcels thereof to the general public.

17. Furthermore, in assuming the roles stated above, the Defendants undertook to make certain that the Abbey was developed and constructed in a workmanlike fashion according to industry standards meeting all applicable codes, guidelines, restrictions, of any and all state, county, and municipal authorities.

18. That pursuant to this marketing scheme, Defendant Lennar Carolinas, LLC (hereinafter referred to as "Lennar"), extensively advertised to the general public and represented to the general public that *inter alia*, the property and homes built would be of the highest quality, with substantial amenities.

19. This Court has jurisdiction over the parties and subject matter hereto.

20. The construction of The Abbey was performed by one or more of the Defendants. The Defendants represented they were competent, knowledgeable and experienced in performing such construction work as to properly build The Abbey according to the normal standards of good and workmanlike practice in the construction field.

21. Construction defects in The Abbey have recently been discovered. A recent inspection of the subject Homes resulted in the discovery of major problems and deficiencies including but not limited to the following:

- a. Lack of proper foundation work;
- b. Lack of proper foundation slabs;
- c. Structural damage to the homes;
- d. Water damage resulting from defects; and
- e. Improper soils, grading, and drainage.¹

22. Defendant Lennar is a corporation organized and existing under the laws of the State of South Carolina and, at all times relevant hereto, was authorized to and did conduct business in the State of South Carolina, County of Berkeley for the purpose of planning, developing, marketing, owning, maintaining, leasing, selling, and constructing the homes in a manner for sale to the public.

23. Defendant Spring Grove Plantation Development, Inc. (hereinafter SGPD), upon information and belief, is a corporation organized and existing under the laws of the State of South Carolina and is authorized to conduct business in this State; upon information and belief, this Defendant was the initial owner/developer and seller of the neighborhood.

24. Upon information and belief, Lennar and SGPD were, in various capacities, individually and collectively engaged in the planning, developing, and construction of the Project, and contracted with various entities for the design and construction of the Project.

¹In this lawsuit, Plaintiffs do not allege defects in the installation or original construction of the roofs, framing, flashing, sheathing, drywall, painting, floor coverings, siding, masonry, electrical or mechanical systems, plumbing or sewer systems, windows, or doors. Plaintiffs allege and seek recovery for damage, resulting damage, and consequential damage, to the roofs, framing, flashing, sheathing, drywall, painting, floor coverings, siding, masonry, electrical or mechanical systems, plumbing or sewer systems, windows, or doors and other components and/or areas of the homes, caused by or arising from the defects and claims asserted in this Third Amended Complaint, including but not limited to foundations, soils, and grading.

25. Defendant Super Concrete of SC, Inc. (hereinafter Super Concrete), upon information and belief, is a corporation organized and existing under the laws of the State of South Carolina and is authorized to conduct business in this State; this Defendant is a concrete contracting business that provided concrete, flatwork, driveways, walkways, and foundation slabs at The Abbey.

26. Defendant TJB Trucking/Leasing, LLC (hereinafter TJB), upon information and belief, is a limited liability company organized and existing under the laws of the State of South Carolina and is authorized to conduct business in this state; this Defendant is a business that provided grading and pads at The Abbey.

27. Defendant Southern Green, Inc. (hereinafter Southern Green), upon information and belief, is a corporation organized and existing under the laws of the State of South Carolina and is authorized to conduct business in this state; this Defendant is a landscaping business that provided landscaping and grading at The Abbey.

28. Defendant Paragon Site Constructors, Inc. (hereinafter Paragon), upon information and belief, is a corporation organized and existing under the laws of the State of South Carolina and is authorized to conduct business in this State; Paragon performed site preparation and/or grading work for the building pads at the lots now known as The Abbey that is the subject of this litigation.

29. At the time of the incidents giving rise to the Plaintiffs' Complaints, Defendants Lennar, SGPD, Super Concrete, TJB, Southern Green, and Paragon acted by and through their agents, contractors, and employees for the purpose of carrying on its business and therefore, is liable for the negligent acts of its agents, contractors, and employees under the theory of *respondeat superior*.

30. Defendant Lennar commenced to design, construct, develop, and sell the single family homes in The Abbey to, among others, the Plaintiffs in this action, and marketed and sold homes

in The Abbey despite the fact that they have been put on notice of numerous construction and design defects within the subject neighborhood and without disclosing those defects to any of the homeowners, including the Plaintiffs as well as new homeowners.

31. The Abbey is a neighborhood development started by Defendant SGPD; it was then sold to Defendant Lennar, who then took control over the development of the neighborhood and hired contractors.

32. By investigation of the subject structures, premises, roads, and property, the homeowners and/or Plaintiffs learned that said subject structures, premises, roads, and property have been deficiently designed and have significant construction defects. Construction was improperly performed and will have to be completely removed and replaced. The design, grading deficiencies, and construction to the subject structures and property include, but are not limited to, the following;

- a. Water accumulation on the property of the Plaintiffs and homeowners;
- b. Improper grading of the property of the Plaintiffs and homeowners;
- c. Improper installation of drainage pipes;
- d. Improper foundations, driveways and garage slabs;
- e. Improper soils; and
- f. Deterioration and damage of the subject structures relating to or stemming from the above-referenced deficiencies.

33. As a direct and proximate result and consequence of the numerous construction, design, installation, and implementation of the above defects, the Plaintiffs have and will continue to spend substantial sums of money for the repairs and reconstruction of the structures and property and will be subject to loss of use, enjoyment, and depreciation of value of their property.

34. Due to the actions of the Defendants, as stated above, the Plaintiffs are facing significant damage repairs, deteriorating property, significant and immediate expenses for investigation, destructive testing, and an analysis of construction defects, repairs defects, soil and grading defects, drainage problems, damages deterioration, and a generally overall dilapidated condition which is the direct and proximate result of defective construction, management, maintenance, and abandonment of generally accepted principles and/or duties on the part of the Defendants.

35. All Defendants were instrumental in carrying out duties and actions relating to the construction of the Project, and each of these defendants had independent duties under South Carolina law to perform their duties in a good and workmanlike manner and in accordance with applicable building codes and accepted building practices.

JURISDICTION

36. Personal jurisdiction is vested and exists in the Court of Common Pleas, County of Berkeley, State of South Carolina, and venue is proper in the County of Berkeley, State of South Carolina, by virtue of, among other things, the fact that the property which is the subject matter of the Complaint is located in Berkeley County, South Carolina, and the great majority of the activities relating to the Project and the claims herein occurred in this jurisdiction.

BACKGROUND

37. The Plaintiffs repeat and reallege their allegations in all of the paragraphs set forth above as if set forth herein verbatim.

38. Plaintiffs are informed and believe that Defendants Lennar and SGPD engaged contractors to construct the Project including 69 properties, and related facilities and amenities, collectively known as The Abbey at Spring Grove Plantation, which were thereafter substantially completed, and contained various homes. The Developer Defendants, by and through various instrumentalities

and alter-egos and other Defendants were the original developers of the Project and/or are liable for the actions of the original Developer of the Project.

39. Defendants Lennar and SGPD directed and oversaw those listed as Defendants herein and contractors who performed insufficient, shoddy, negligent work which failed to comply with applicable building codes and industry standards, all of which has contributed to and resulted in the premature deterioration and/or failure of the structures and building systems in the Project.

40. The Defendants began the process of constructing the homes by engaging and directing the actions of the various contractors and/or subcontractors named as Defendants herein, and participated in the negligent, deficient, and shoddy workmanship which ignored and/or covered up design and construction defects then in existence and, thereafter, placed the homes into the stream of commerce for sale, which they did sell to the general public.

41. At the time the homes were offered for sale and placed into the stream of commerce, the homes contained numerous defects and/or property damage which has been recently and is currently being discovered by Plaintiffs, all as a direct and proximate result of an investigation initiated by Plaintiffs, as a direct and proximate result of defects and deficiencies heretofore hidden and concealed through the acts and omissions of the Developer Defendants.

42. The Defendants knew or should have known of the existence of the said building defects and deficiencies and property damage, which were latent and unknown to the Plaintiffs.

43. These latent building defects have, unbeknownst to Plaintiffs, regularly resulted in damage, including but not limited to, resulting and consequential damage to the buildings and property damage and continue to do so through the date of this filing.

44. The latent building defects and property damage have regularly resulted in the deterioration and failure of the structures and building systems, along with the attendant resulting actual, incidental, consequential and special damages, and continue to do so through the date of this filing.

45. The Plaintiffs suffered damages when Defendants put these homes into the stream of commerce and continue to be damaged through the date of this filing.

46. Defendants Lennar and SGPD caused, directed, participated in, or acted in willful, reckless, heedless, negligent and grossly negligent disregard of their collective and respective acts and omissions in the planning, development, design, construction, management and sale of the homes in the Project, all as more fully described herein.

47. Defendant Lennar represented to the public over the internet and through various publications and other media that they, by and through their various affiliates, entities, venturers, and agents referenced herein, were qualified, experienced, and would in fact be directing, managing, and otherwise facilitating the construction and selling of the homes, and these representations were relied upon by the Plaintiffs.

48. These collective and respective wrongful acts and omissions of Defendants Lennar and SGPD and such other Defendants as set forth in the causes of action below, represent unfair trade practices and have resulted in substantial deterioration and/or failure of structures and building systems, building deficiencies, actual, incidental, special and consequential damages and loss of use. Remedying the above wrongful acts will result in actual, incidental, consequential, and special damages including loss of use to the Plaintiffs and entitle Plaintiffs to punitive damages and attorney's fees. Further, these wrongful acts and omissions have directly and proximately caused substantial diminution in value, both pre- and post-repair.

49. The acts and omissions of the Defendants were contrary to the duties they owed, individually and collectively, to the Plaintiffs and actually caused damages to the Plaintiffs including, but not limited to, damages which did not result from the acts and omissions of other defendants and including, but not limited to, damages other than damages which resulted in physical injury or damage to tangible real and personal property in connection with this Project.

AS A FIRST CAUSE OF ACTION
Negligence and Gross Negligence
(Against All Defendants)

50. The Plaintiffs repeat and reallege their allegations in all of the paragraphs set forth above as if set forth herein verbatim.

51. Defendants, and each of them, owed a duty to Plaintiffs to act in a manner compliant with the reasonable standard of care, good faith, and fair dealing recognized under South Carolina law, and Defendants violated this duty to the Plaintiff and were negligent and grossly negligent, careless, reckless, willful and wanton in one or more of the following particulars:

- a. In failing to properly design, construct, develop and repair the homes;
- b. In failing to comply with the applicable Building Codes of the County of Berkeley and the State of South Carolina;
- c. In failing to comply with the applicable Fire and Safety Codes of the County and of Berkeley and the State of South Carolina;
- d. In failing to properly supervise the project developer entities and individuals, project architects and engineers, as well as contractors, subcontractors, suppliers and/or agents or employees of any of them in connection with the planning, development, design and construction of the homes offered for sale to the public;
- e. In manufacturing, fabricating, preparing for the incorporation into a residential building, reviewing, approving, procuring, and incorporating into the construction of this project such items which were defective, deficient, inferior, inadequate, unsafe, dangerous, inappropriate for the use intended, noncompliant with approved design or design intent, non-compliant with applicable codes and standards in the industry, and otherwise improper for use in the project including, but not limited to, standard systems, foundations, soils, grading, drainage systems, and/or other

issues; waterproofing systems, and other building materials and supplies, finishes, and other items relating to the construction and ultimate use of this residential project;

- f. In designing, constructing, marketing, selling, homes and/or property which were defective, deficient, inadequate, unsafe, dangerous, or otherwise non-compliant with codes and standards;
 - g. In placing defective and inferior construction into the stream of commerce;
 - h. In failing to permit and facilitate a proper evaluation of the condition of the Project prior to and during the process of offering homes and other property for the use and sale to the general public and, further, to obstruct and/or hinder efforts to conduct a proper evaluation of the Project by intended purchasers or users;
 - i. In misrepresenting the condition of the homes, common elements, garages and other property to prospective and actual purchasers and other users, and in making representations in negligent and/or intentional disregard of whether these representations were false or inaccurate;
 - j. In failing to undertake sufficient actions to develop a plan for repairs and otherwise failing to make adequate repairs to conditions at the Project which were unsafe, dangerous, or otherwise not in compliance with applicable building codes or other authorities or standards of care;
 - k. In negligently and/or intentionally covering up deficiencies prior to construction of the homes and other property for sale or use by the general public;
 - l. In failing to act as reasonable persons would in circumstances then and there prevailing and in such other failures as will be shown during discovery and at trial.
52. Said failures above-described, as well as the Defendants' negligence, gross negligence, willfulness, and reckless disregard for the rights of Plaintiff and others, have actually and proximately caused damages to Plaintiffs, and the Defendants are liable to the Plaintiffs in an amount of actual, incidental, consequential, special, and punitive damages in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

AS A SECOND CAUSE OF ACTION
Negligent Misrepresentation
(Against All Defendants)

53. The Plaintiffs repeat and reallege their allegations in all of the paragraphs set forth above as if set forth herein verbatim.

54. Despite the fact that the homes were suffering from construction defects and resulting damage, the Defendants sold the homes and falsely represented that the homes in the Abbey were properly constructed and in good condition.

55. As the builders and developers of the homes in the Abbey, Defendants owed a duty of care to Plaintiffs to communicate the actual condition of the homes in the Abbey.

56. These representations were actually published and presented to the general public by these Defendants, and these representations were actually received by, and relied upon by, the prospective and actual purchasers of the homes.

57. At the time of the sale of the homes, Plaintiffs were not aware of the falsity of the representations or the lack of investigation and lack of candor by these Defendants in connection with the homes.

58. Plaintiffs subsequently determined that the representations made by these Defendants were false and that these Defendants failed to exercise due care, not only in failing to discover defects in the Project, but also in failing to communicate information about the true condition of the Project. As a result of its justifiable reliance on the representations, reports, and other documents presented by these Defendants, Plaintiffs purchased the homes and have thereby suffered pecuniary losses in an amount to be determined by the trier of fact.

59. As a direct and proximate result of its justifiable reliance on numerous false representations made by these Defendants in connection with the Project, Plaintiffs have suffered, and for which

these Defendants are liable, actual, incidental, consequential, and special damages, all in an amount to be determined by the trier of fact and any attempts for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

AS A THIRD CAUSE OF ACTION
(Breach of Implied Warranties)
(Against All Defendants)

60. The Plaintiffs repeat and reallege their allegations in all of the paragraphs set forth above as if set forth herein verbatim.

61. The design, construction, development and sale of the homes in the Abbey by Defendants contained, as a matter of law, implied warranties of good faith and fair dealing, fitness for use, merchantability, and workmanship with respect to construction, which warranties were not effectively disclaimed under South Carolina law.

62. The Developer Defendants and Contractor Defendants through their acts and/or omissions, have breached the aforesaid implied warranties, which directly, actually, and proximately caused and resulted in damage which the Plaintiffs have suffered and continues to suffer in an amount to be determined by the trier of fact.

63. These Defendants are therefore liable to the Plaintiffs for actual, incidental, special, and consequential damages in an amount to be determined by the trier of fact and any attempts in any contractual agreement for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

AS A FOURTH CAUSE OF ACTION
(Breach of Implied Warranty of Fitness for Particular Purpose)
(Against All Defendants)

64. The Plaintiffs repeat and reallege their allegations in all of the paragraphs set forth above as if set forth herein verbatim.

65. The Defendants had the duty to develop, market and construct the subject homes according to applicable building codes and industry standards and in a good and workmanlike manner, and an implied warranty of fitness attached to the sales of these homes.

66. At the time of the sale of the subject homes to the Plaintiffs, the Defendants had reason to know if any or all parts of the construction of the subject homes were not completed according to applicable building codes and industry standards or and in a good workmanship manner.

67. The Defendants, at the time of the sale of the subject homes to the Plaintiffs, had reason to know that the Plaintiffs were relying on the skill and/or judgment of the Defendants to properly construct the homes and adjacent facilities according to applicable building codes and industry standards and in a good and workmanlike manner. Plaintiffs, in fact, relied on the Defendants' skill and judgment.

68. The Defendants did not properly construct the subject homes and facilities according to applicable building codes and industry standards or in a good and workmanlike manner, causing major defects to the homes.

69. As a result of the Defendants' breach of its implied warranties, Plaintiffs' homes have suffered physical damages.

AS A FIFTH CAUSE OF ACTION
(Breach of Implied Warranties as to the Project's Development and Construction)
(Against All Defendants)

70. The Plaintiffs repeat and reallege their allegations in all of the paragraphs set forth above as if set forth herein verbatim.

71. These Defendants engaged in conduct during the period of development and construction of the Project which gave rise to duties and implied warranties to the public including, but not limited to, tenants, purchasers and other users of the Project, in that by their conduct these Defendants placed the Project, which constitutes defective, deleterious, and dangerous property, into the stream of commerce.

72. The placement of the Project into the stream of commerce by these Defendants, contained as a matter of law implied warranties of fitness, merchantability, and workmanship which warranties were not effectively disclaimed pursuant to South Carolina law.

73. As a direct and proximate result of the breaches of the above-described implied warranties by these Defendants, their affiliates and associates, whether named or unnamed on any documents transferring interest in the Project, the Plaintiffs have suffered and will continue to suffer damages, injuries and other losses.

74. These Defendants are therefore liable to the Plaintiffs for actual, incidental, special, and consequential damages in an amount to be determined by the trier of fact and any attempts for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

AS A SIXTH CAUSE OF ACTION

**(Violation of the South Carolina Unfair Trade Practices Act, S.C. Code § 39-5-10, *et seq.*)²
(Against All Defendants)**

75. The Plaintiffs repeat and reallege their allegations in all of the paragraphs set forth above as if set forth herein verbatim.

² This lawsuit has been filed as a putative class action. Should the Court certify this lawsuit as a class action, the cause of action for violation of the S.C Unfair Trade Practices Act shall be moot.

76. At the time of construction, Defendants were in the business of selling homes, designing homes and/or constructing homes and/or providing products to be used in the construction of homes and placing them into the stream of commerce.

77. Defendants were engaged in commerce as defined by the South Carolina Unfair Trade Practices Act and their conduct and actions were in violation of the Act.

78. These Defendants' construction and the subsequent offering and sale of the homes, along with the issuance of the property condition reports and other representations to homeowners, purchasers, and the public at large, constituted the conduct of trade and commerce within the meaning of S.C. Code Section 39-5-20(a).

79. The Defendants, and each of them, through their acts and omissions including, but not limited to, the following particulars, conducted unfair and deceptive practices within the meaning of S.C. Code Section 39-5-140(a) and 27-31-430, S.C. Code of Laws as amended:

- a. In failing to properly evaluate the plans and specifications for the Project prior to construction;
- b. In failing to conduct a reasonable inquiry into the conditions existing at the Project and marketing the homes, and other property at the Project to the public for sale and use;
- c. In failing to properly construct the homes, including but not limited to, the soils, grading, drainage, and foundation systems of the homes;
- d. In failing to comply with the applicable building codes and standards of care;
- e. In failing to repair the latent defects about which these Defendants were or should have been aware;
- f. In failing to carry out duties owed to prospective and actual purchasers and other members of the public in their special relationships of trust and confidence by virtue of their role in the process of offering these homes, and other property for sale and use by the general public, as design, construction, and sellers according to South Carolina law.

- g. In attempting to disclaim implied warranties in documents contrary to South Carolina law;
 - h. In failing to provide any additional consideration for these purported efforts to waive implied warranties;
 - i. In failing to properly investigate the true conditions of the Project and putting them into the stream of commerce; and
 - j. In making false representations as to the condition of the Project and/or representations as to the condition of the Project in reckless disregard as to the truth of the representations.
80. The conduct of the Defendants as described above was knowing and willful, and Defendants knew or should have known that such conduct was a violation of S.C. Code Section 39-5-20 and 27-31-430.
81. Plaintiffs are persons within the meaning of S.C. Code Section 39-5-140(a) and Plaintiffs have suffered actual, direct, and proximate damages as a direct and proximate result of unfair and deceptive acts of these Defendants, in an amount to be determined by the trier of fact.
82. The aforesaid acts of Defendants impact the public interest in that they constituted unfair and deceptive acts and have the potential for repetition and, in fact, occurred at each and every sale of the homes of this Project and, as such, are acts which can, have and will affect the public at large by repetition.
83. These unfair and deceptive acts are acts which will affect members of the public, beyond the parties to the above-described transactions, in the form of other consumers who may be injured by purchasing homes by the Defendants and/or rely upon the actions and representations of these Defendants thereby placing members of the public in danger of physical harm and other injuries.
84. Plaintiffs are entitled to be compensated pursuant to S.C. Code Section 39-5-140(a) for the above-described actual, incidental, consequential, and special damages, as well as costs, interest, and attorney's fees, and to recover treble damages by reason of the knowing and willful nature of

the unfair and deceptive acts by Defendants and any attempts for the limitation or disclaimer of warranties, or any other waiver or other limitation, are null, void, unenforceable, and subject to rescission as a matter of law.

85. WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

- a. Enter judgment in favor of the Plaintiffs and against all Defendants, jointly and severally, and/or individually, in an amount to be determined for actual, incidental, consequential, special, and punitive damages;
- b. Find that the Defendants have engaged in unfair trade practices and knowingly did so thereby entitling Plaintiffs to treble damages;
- c. Award attorneys' fees and costs to the Plaintiffs; and
- d. Award such other and further relief as the Court may deem just and proper.

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