

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

J. C. Nicholson, Jr., Circuit Court Judge

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SC Court of Appeals

Trial Case No.'s 2009-CP-08-1068, 2009-CP-08-3916,
2009-CP-08-1413, 2008-CP-08-2714
Appellate Case No. 2014-002390

THE OAKS AT RIVERS EDGE PROPERTY OWNERS ASSOCIATION, INC.,
JOHN E. ATKINSON, JOAN D. STRANDQUIST, JOSEPH E. CHIOVAROU,
JR., PEYTON H. COOK, JR., BRENDA COOK, JOHN W. EDELEN, KAREN
A. NELSON, ROBERT J. GRAHAM, MAUREEN S. GRAHAM, NANCY K.
JOHNSON as trustee for the Nancy K. Johnson Revocable Trust, WILLIAM
JUNG, CHARLES MARAZITI, PATRICIA MARAZITI, GEORGE S.
POLLARD, ELEANOR J. POLLARD, ROBERT REECE, GERARD M. RUVO
AND SUE S. RUVO as trustees for the Ruvo 2006 Living Trust, CAROLYN M.
JENNINGS, THOMAS EDWARD KEANE, EDWARD WALLACE BARR, III,
RICHARD B. PEKRUHN, PAULINE PEKRUHN, MATTHEW J.
SEVERANCE, and ELIZABETH ASHLEY PHILLIPS SEVERANCE,

Respondents,

v.

DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC, and CARRIAGE HILL
ASSOCIATES OF CHARLESTON, LLC,

Appellants.

RECORD ON APPEAL
Vol. I of VI

Charles S. Altman
Meredith L. Coker
Melissa A. Fried
575 King Street, Suite A
Charleston, SC 29403
(843) 853-9907
Attorneys for Appellant

Roy P. Maybank
Amanda Maybank
531 Savannah Highway
Charleston, SC 29407
(843) 766-8101
Attorneys for Appellant

W.H. Bundy
M. Brent McDonald
Post Office Box 1542
Mt. Pleasant, SC 29465
(843) 881-1623
Attorneys for Respondent

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) NINTH JUDICIAL CIRCUIT
)

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, and CARRIAGE HILL ASSOCIATES OF
CHARLESTON, LLC,

Plaintiffs,

vs.

WEATHER SHIELD MANUFACTURING, INC.,
THE MUHLER CO., INC., and A.C.
CONSTRUCTION, INC.,

Defendants.

C/A. No.: 2009-CP-08-1068

PLAINTIFFS THE OAKS
AT RIVERS EDGE
PROPERTY OWNERS
ASSOCIATION, INC. ET.AL.'S
PROPOSED ORDER

A.C. CONSTRUCTION, INC.,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, and TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA,

Defendants.

C/A. No.: 2009-CP-08-1413

2013 OCT 25 PM 12:59
CLERK OF COURT
BERKELEY COUNTY, SC

GEOFFREY C. CIPKALA and SAMUEL C.
AGEE, as tenants in common of the common
elements of the Oaks at River's Edge Horizontal
Property Regime and on behalf of themselves and
all other tenants in common,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, CARRIAGE HILL ASSOCIATES OF
CHARLESTON, LLC, CARRIAGE HILL
ASSOCIATES, INC.,

Defendants.

C/A. No.: 2008-CP-08-2714

THE OAKS AT RIVERS EDGE PROPERTY)
OWNERS ASSOCIATION, INC., JOHN E.)
ATKINSON, JOAN D. STRANDQUIST, JOSEPH)
E. CHIOVAROU, JR., PEYTON H. COOK, JR.,)
BRENDA COOK, JOHN W. EDELEN, KAREN)
A. NELSON, ROBERT J. GRAHAM, MAUREEN)
S. GRAHAM, KEVIN O. HUX, NANCY K.)
JOHNSON as trustee for the Nancy K. Johnson)
Revocable Trust, WILLIAM JUNG, CHARLES)
MARAZITI, PATRICIA MARAZITI, DONNA)
DEE MORAN, GEORGE S. POLLARD,)
ELEANOR J. POLLARD, ROBERT REECE,)
GERARD M. RUVO AND SUE S. RUVO as)
trustees for the Ruvo 2006 Living Trust, ROBERT)
FARINA, MARY ANN FARINA, CAROLYN M.)
JENNINGS, THOMAS EDWARD KEANE,)
EDWARD WALLACE BARR, III, RICHARD B.)
PEKRUHN, PAULINE PEKRUHN, GREGORY)
B. NATHAN, RICHARD JENNINGS,)
MATTHEW J. SEVERANCE, and ELIZABETH)
ASHLEY PHILLIPS SEVERANCE,)

Plaintiffs,)

vs.)

DANIEL ISLAND RIVERSIDE DEVELOPERS,)
LLC, CARRIAGE HILL ASSOCIATES OF)
CHARLESTON, LLC, CARRIAGE HILL)
ASSOCIATES, INC., WEATHER SHIELD)
MANUFACTURING, INC., THE MUHLER CO.,)
INC., A.C. CONSTRUCTION, INC., COASTAL)
ROOFING, CO., INC., COASTAL CAULKING,)
INC., MIKE PHILLIPS d/b/a MIKE PHILLIPS)
MASONRY, GERALD RUMPLICK, EDWARD J.)
D'ORAZIO, and RICH BEHRINGER,)

Defendants.)

C/A. No.: 2009-CP-08-3916

This matter came before the Court for a non-jury trial on April 8, 2013 through April 11, 2013. Appearing before the Honorable J.C. Nicholson, Jr. were W.H. Bundy, Jr., Esq. and M. Brent McDonald, Esq. for the Plaintiffs and Charles Altman, Esq. and Roy P. Maybank for the

Defendants. Based upon careful examination of the evidence and weighing the credibility and testimony of each of the witnesses, I find as follows:

Findings of Fact

(1) This is a case involving allegations of construction defects arising out of the development, design, construction, and sale of condominium units located on Daniel Island in South Carolina and known as the Oaks at Rivers Edge Horizontal Property Regime (the "Project"). The Project consists of six buildings with four floors in each building with the first floor constituting a garage for parking. Each building contains six (6) units. The Project was developed, designed and constructed from 2004 to 2006.

(2) Plaintiff The Oaks at Rivers Edge Homeowner's Association, Inc. ("HOA") is a non-profit corporation organized for the purposes of repairing and maintaining the common elements, among other responsibilities dictated in the Master Deed for the Oaks at Rivers Edge Horizontal Property Regime and the amendments thereto, the South Carolina Horizontal Property Regime Act, and the By-Laws of The Oaks at Rivers Edge Homeowner's Association, Inc. The HOA made a claim for damages as a result of the cost to repair the construction defects and the cost to relocate the occupants of individual units during the repairs.

(3) Plaintiffs John E. Atkinson, Joan D. Strandquist, Joseph E. Chiovarou, Jr., Peyton H. Cook, Jr., Brenda Cook, John W. Edelen, Karen A. Nelson, Robert J. Graham, Maureen S. Graham, Nancy K. Johnson as trustee for the Nancy K. Johnson Revocable Trust, William Jung, Charles Maraziti, Patricia Maraziti, George S. Pollard, Eleanor J. Pollard, Robert Reece, Gerard M. Ruvo and Sue S. Ruvo as trustees for the Ruvo 2006 Living Trust, Carolyn M. Jennings, Thomas Edward Keane, Edward Wallace Barr, III, Richard B. Pekruhn, Pauline Pekruhn, Matthew J. Severance, and Elizabeth Ashley Phillips Severance (sometimes collectively referred to herein as "Unit Owners") are or were at one time individual unit owners at the Project. The individuals made a claim for damages arising out of loss rent, damages arising out of the denial

of market access, damages arising from out of pocket costs, damages arising out of the inability to refinance, damages arising out of a deficiency judgment, and damages arising out of costs to repair and replace wood flooring for the unit owners on the second floor. The Unit Owners also claimed inconvenience and loss of enjoyment arising out to their ownership and use of the units.

(4) Plaintiffs John E. Atkinson, Joan D. Strandquist, Joseph E. Chiovarou, Jr., Peyton H. Cook, Jr., John W. Edelen, Karen A. Nelson, Charles Maraziti, Patricia Maraziti, George S. Pollard, Eleanor J. Pollard, Robert Reece, Richard B. Pekruhn, Pauline Pekruhn occupied, used and lived in their units from March 28, 2008 until December 31, 2011.

(5) Plaintiffs Robert J. Graham, Maureen S. Graham, William Jung, Gerard M. Ruvo and Sue S. Ruvo as trustees for the Ruvo 2006 Living Trust, Carolyn M. Jennings, Thomas Edward Keane, Edward Wallace Barr, III, and Matthew J. Severance, and Elizabeth Ashley Phillips Severance owned their units but did not occupy their units from March 28, 2008 until December 31, 2011.

 (6) Plaintiff Nancy K. Johnson as trustee for the Nancy K. Johnson Revocable Trust did not occupy her unit from March 28, 2008 to July 22, 2010 when she sold the unit. Plaintiffs Peyton H. Cook, Jr., Brenda Cook did not occupy their unit from March 28, 2008 until April 8, 2011 when it was sold in a short sale.

(7) Plaintiffs John E. Atkinson, Joan D. Strandquist, Joseph E. Chiovarou, Jr., William Jung, Charles Maraziti, Patricia Maraziti, George S. Pollard, Eleanor J. Pollard, Gerard M. Ruvo and Sue S. Ruvo as trustees for the Ruvo 2006 Living Trust, Carolyn M. Jennings, Thomas Edward Keane, Edward Wallace Barr, III, Richard B. Pekruhn, Pauline Pekruhn, Matthew J. Severance, and Elizabeth Ashley Phillips Severance still own their unit at the time of trial.

(8) Plaintiffs Peyton H. Cook, Jr., Brenda Cook, John W. Edelen, Karen A. Nelson, Robert J. Graham, Maureen S. Graham, Nancy K. Johnson as trustee for the Nancy K. Johnson Revocable Trust, and Robert Reece no longer owned their units at the time of trial.

(9) Defendant Daniel Island Riverside Developers, LLC ("Developer") was the developer of the Project, as identified by the Master Deed, and originally placed into the stream of commerce each of the units at the Project as well as organized and created the HOA by drafting and recording the required documents. The Developer also appointed board members to the board of the HOA until control of the HOA was turned over to the unit owner controlled board on or after December 7, 2006.

(10) Defendant Carriage Hill Associates of Charleston, LLC ("Construction Manager") was the construction manager during the design, development, and construction of the Project. The Construction manager also pulled the permits for the construction of the Project for each of the six buildings pursuant to its general contracting license number G107574.

(11) The Project was marketed as "luxury condominiums." Beginning in 2004 Developer sold the units prior to the completion pursuant to marketing materials and representations made to the purchasers regarding the superior quality of the Project. In the marketing materials Developer represented, among other things, that there was sound proofing between units, that the second and third floor units had ten (10) foot high ceilings, that the expected association dues would be 470.47 per unit/per month, that there would be a brick and stucco façade, and hardwood flooring throughout the units.

(12) During and after the time Developer was entering into contracts of sale, Developer and Construction Manager used and employed an architect named Gerald R. Rumplick to perform design, development, and construction related services for the Project. Rumplick was not a licensed architect in South Carolina during the design, development and construction of the Project. Developer and Construction Manager were aware thereof and recklessly and consciously disregarded the fact that Rumplick was not licensed and allowed Rumplick, notwithstanding said knowledge, to perform a significant role in the design, development and construction of the Project for which a license to practice architecture in South Carolina was

required. Rumplick was affiliated with Developer and Construction Manager and performed services that should have been performed by a licensed South Carolina architect or engineer for this Project. The conscious decision of Developer and Construction Manager not to employ a licensed South Carolina architect or engineer proximately caused and contributed to the construction defects that must be repaired as discussed herein. Tom Scholtens, chief building official for the City of Charleston, testified that the City relies implicitly on licensed South Carolina architects and engineers to perform construction administration and supervision before and during construction. Plaintiffs presented credible and uncontested expert testimony that many of the defects, discussed below, would have been discovered by a qualified and licensed South Carolina architect or engineer during construction.

(13) On January 31, 2007, the Board of Architectural Examiners of South Carolina found that Rumplick practiced architecture without a license on this Project without a license and ordered him to cease and desist the practice of architecture in South Carolina until April 15, 2007 at which time he may be eligible for a license.

(14) All units were completed and sold by Developer in 2006. Unit owners either purchased directly from the Developer or within a short time from a intervening purchaser. Pursuant to the terms of the Master Deed, Developer was required to "turn over" control of the HOA to a unit owner controlled HOA Board of Directors.

(15) On December 6-7, 2007 at the time of the turnover meeting, Developer and the Construction Manager were made aware of significant sound transmission problems between the units. In response, Developer and Construction Manager represented to HOA and Unit Owners that the sound transmission problems would be addressed so that the quality of construction would be consistent with the selling price, industry standards, and as advertised—namely, luxury condominiums.

(16) At turnover, Developer failed to provide HOA any funds necessary for repairs to the common elements or necessary for capital reserves for the common elements. Developer never funded an amount of \$19,440.00 that they represented was in the capital reserve account for the HOA at the time of turnover.

(17) In January and February of 2007, Developer and Construction Manager hired Noral Stewart, an acoustics expert, to evaluate the sound problems. Stewart, after testing, informed Developer and Construction Manager that the as-built construction failed to meet the applicable acoustical building code requirements.

gm
(18) Stewart informed Developer and Construction Manager that this wood framed construction should have been constructed with a light weight concrete called gypcrete poured on the sub-floor along with an acoustical mat under the finished floor. Moreover, Stewart informed Developer and Construction Manager that the ceilings in the units had sheet rock connected directly to the wood floor trusses which should have been constructed as a suspending ceiling hung from resilient channels. Stewart informed Developer and Construction Manager that he would have expected the sound problems experienced by the Unit Owners due to the as-built construction.

(19) Stewart testified that repairs to the floors and the ceilings could have been made to achieve the correct sound attenuation and that he had explained to Developer and Construction Manager that a complete repair would require demolition due to the necessity to access the sub floor on the fourth and third floors and to remove the sheetrock ceilings on the second and third floors.

(20) Stewart testified that Developer and Construction Manager decided not to perform the work necessary to achieve the correct sound attenuation and that this decision was driven by the pecuniary interests of Developer and Construction Manager. Stewart testified that the sound repair implemented only improved bad situation rather than to achieve what should have done

originally. Specifically, the repair did not include gypcrete nor did it include the removal of all of the sheetrock on the ceiling as this work (while necessary) was determined to be too expensive to Developer and Construction Manager.

(21) Neither HOA nor Unit Owners were informed that the original sound transmission as constructed did not meet the applicable building code. Construction Manager and Developer did not disclose to HOA or Unit Owners that any repairs that they intended to make were not going to utilize construction methods that would achieve sound attenuation results that should have been accomplished during original construction.

(22) In March of 2007, Stewart reviewed the design of Developer, Construction Manager, and Rumplick for the proposed acoustical repairs. Stewart testified that Rumplick was involved in this design because Stewart was not a licensed South Carolina architect or engineer. Notwithstanding that Rumplick had been ordered to cease and desist the practice of architecture during this time, Developer and Construction Manager, both of whom were aware of the fact that Rumplick was not licensed and had been ordered to cease and desist practicing architecture in South Carolina, allowed and aided Rumplick in completing the proposed repairs that failed to meet industry standards and presale representations.

(23) The repairs that were proposed included dropping the ceilings of the second and third floor units to add materials that would reduce sound transmission, though not to a level that would have been attainable had the original design and construction been proper. Gypcrete was not installed and the sheetrock attached directly to the wood floor trusses was only partially removed.

(24) In the spring of 2007, Construction Manager and Developer represented to HOA and Unit Owners that it would be fixing all of the sound transmission problems and informed at least some of the Unit Owners that if they did not have their unit repaired, Construction Manager

and Developer would not perform the repairs for any putative purchasers as a further inducement to make owners accept their repair.

(25) Construction Manager and Developer did not disclose to HOA or Unit Owners that the repairs to be performed were not meant to achieve the sound attenuation results required by industry standards, but were meant to simply improve a bad situation. Developer and Construction Manager misled the HOA and the Unit Owners by representing to the HOA and Unit Owners that the remediation was in fact going to bring the Project to a level consistent with the sales price, industry standards, and marketing materials.

 (26) From 2007 to 2008 the remediation was performed by Construction Manager and Developer on the ceilings of the second and third floor units of all of the second and third floor units except three. Developer and Construction Manager refused to disclose the results of the testing performed by Stewart but continued to misrepresent to HOA and Unit Owners that the necessary repairs were being made to make the condominiums consistent with the purchase price, industry standards, and marketing materials.

(27) Subsequent to the remediation, the sound transmission problems continued to be experienced by Unit Owners and/or their tenants or occupants. All Unit Owners named as Plaintiffs in this action testified at trial and each of them testified regarding the significant noise transmission between the units both before and after the remediation. In fact, the parties stipulated that every owner was going to testify as to the egregiousness of the sound issues as they experienced them both before and after the remediation. Some of the Unit Owners testified that they could not sleep as a result of the sound. Some of the Unit Owners testified that they even tried to put down rugs over the hardwood floors and were asked by their adjacent neighbors to wear socks when at home to attempt to address the sound transfer. Unit Owners sustained significant discomfort and inconvenience as a result of the construction defects, including the

sound problems. Unit Owners had to endure almost constant disruption of their right o quiet enjoyment of the units.

(28) Theodore Padgett, a licensed professional engineer in South Carolina with over 30 years of experience in multifamily and condominium design and construction, was qualified without objection as an expert on industry standards for multifamily construction. He testified that the original design and construction relative to sound and the repairs that were made during the sound repairs did not meet industry standards because of the significant sound transfer between units, the absence of gypcrete, and the sheetrock attached directly to the wood floor trusses. Padgett testified that representatives of Developer and Construction Manager informed him after the construction of the Project that they simply did not know that gypcrete and suspended ceilings was the industry standard in construction of this type. The testimony Padgett was credible and based upon significant experience in the Charleston area as well as his experience with the Project. Padgett was the only witness to testify as to industry standards for condominium construction in South Carolina and the only witness to testify as to the requirements for gypcrete on wood framed multi-family construction. Stewart testified he was not qualified to give an opinion as to industry standards in construction of multi-family condominiums in South Carolina, though he did acknowledge that gypcrete was included in his recommendations to any client seeking to use wood floor joists in multi family construction.

(29) On the heels of the ongoing sound problems, moisture intrusion into the buildings began to be observed by HOA and Unit Owners. As a result of the moisture intrusion, Padgett inspected the property in May of 2008. The investigation discovered significant construction defects including building code violations and violation of industry standards relating to the brick facade, the stucco facade, as well as other problems. Padgett issued a report on May 14,

2008 regarding the defects. This report was provided to Developer and Construction Manager in 2008.¹

(30) Padgett testified that the stucco construction and brick veneer construction violated the applicable building code and violated industry standards. He testified that the violations of the building code and industry standards has led to water infiltration damaging the structural components of the buildings, the sheathing of the buildings, the exterior trim of the buildings, the porches of the buildings, and other interior portions of the buildings. He testified that the brick failed to have the proper ties and lateral supports required by the building code and industry standards as this Project is in a seismic zone. Padgett testified that engineers licensed in South Carolina who regularly design buildings in Charleston, South Carolina are extremely familiar with the seismic code requirements as well as other code requirements and industry standards. He also testified the construction containing the defects was not done in a good and workmanlike manner and that the violations and shoddy construction should have been discovered during construction by proper supervision and coordination by Construction Manager of the individuals or entities performing the work. Padgett testified that the poor coordination and lack of proper supervision by Construction Manager of the trades caused the defects related to the required waterproofing of the buildings.

(31) In 2008, Construction Manager and Developer hired a licensed professional engineer in South Carolina, Michael Parker. Parker did not evaluate the stucco or brick veneer and offered no opinions thereon. Padgett's testimony is uncontradicted that the stucco and brick veneer at the project contains defects in violation of industry standards, the building code and is not good and workmanlike work. Padgett testified that it all must be removed and replaced as a result of the defects and to repair the damage caused by the defects.

¹ Some of the defects noted in the report were no longer an issue at the trial of this case due to settlement with other parties formerly in the case. The HOA made no claims for those defects and they are not included in the damage award hereinafter set forth.

(32) Parker did testify that he determined in 2008 that all of the windows and doors were defective, needed to be replaced, and that he so advised Developer and Construction Manager in 2008.

(33) Neither Developer and Construction Manager informed the HOA or Unit Owners of Parker's determination in 2008 that the windows and doors needed to be replaced.

(34) Padgett also discovered defects related to exterior waterproofing, exterior finishes and trim, wall insulation, brick entry stairs, garage slabs, parapet wall returns, shower waterproofing, wood floor buckling, flooding in the elevator pit in one of the buildings, interior sheetrock mold, HVAC for entry lobbies, carpet, and roof access ladders. Padgett testified that these defects were violations of applicable building codes and industry standards. Padgett testified that he determined that the defects caused consequential property damage to property other than the defective construction. He also testified that the violations and shoddy construction should have been discovered during construction by proper coordination and supervision by Construction Manager of the individuals or entities performing the work.

(35) Padgett described the necessary scope of repairs and testified that each of the repairs were necessary and caused by the shoddy construction that violated industry standards, the applicable building code, and was not good and workmanlike work. The scope of work to repair the defects in the buildings and the property damage caused by the defects was uncontradicted, necessary, and reasonable in light of all of the evidence.

(36) Plaintiffs offered the testimony of A. David Willis, Jr. of Southeastern Construction Company of Summerville, Inc. Southeastern is a licensed general contractor and construction manager in the state of South Carolina. Willis was offered without objection as an expert in general contracting and construction management. Willis was a knowledgeable and credible witness. Willis provided an estimate to repair the defects and the resulting property damage identified by Padgett. The cost of repair estimate relating to the common elements was in the

amount of seven million nine hundred and thirty four thousand seven hundred and four dollars and six cents. (\$7,934,704.06). The repairs will take sixteen (16) months and construction must be performed sequentially on the buildings.

(37) Willis testified that he had inspected the Project and found that it was constructed using high-end finishes such as trim, countertops and appliances, but the structural components and exterior cladding was not consistent with luxury condominium construction. Willis testified that a construction manager is responsible to supervise and coordinate the construction of a project.

(38) Willis also provided an estimate for the cost to repair the wood floors on the second floor of each of the buildings based upon the testimony of Padgett that the floors were defectively installed. The estimate to repair an "A" unit was sixteen thousand ninety six dollars and eighty cents (\$16,096.80). The estimate to repair the a "B" unit was fifteen thousand nine hundred and ninety four dollars and twenty cents (\$15,994.20).

(39) Padgett testified that he reviewed the estimates and concluded that they conformed to his scope of work and the prices were reasonable and customary in the industry in Charleston, South Carolina. The cost to repair the buildings is reasonable in light of the evidence presented and was the only evidence introduced. Padgett also testified that he had accepted estimates to repair the elevator pit for fifteen thousand dollars (\$15,000.00).

(40) Padgett testified that the hiring of an engineer to perform engineering services to complete the repairs was necessary, and that the cost of the engineer would be ten (10%) percent of the cost to repair.

(41) Padgett testified that the repairs would require the individual unit owners to move out for a period of at least 60 days per building and that all personal goods and furniture in each unit to be moved out and stored during the 60 day period and then be moved back into the unit. Joseph Chivarou, the president of the HOA, testified that the HOA would be responsible for the

replacement housing, storage, and move out/move in costs necessitated by the repairs pursuant to the terms of the Master Deed. Chivarou researched moving costs, storage costs, and alternate lodging costs on behalf of HOA and testified that HOA would more likely than not have to budget for and incur six hundred and forty one thousand five hundred and twenty (\$641,520.00) dollars as a result of the relocation activities caused by the repairs necessary to address the construction defects. This included \$250.00 dollars a day for replacement housing, \$500.00 a month for storage, and \$1,820.00 for moving costs, these amounts are reasonable and uncontraverted.

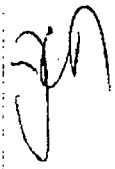
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(42) Each of the Unit Owners also presented testimony at the hearing regarding damages they claimed as a result of construction defects. The parties stipulated that Unit Owners presented claimed damages as depicted on Exhibit A to this order. The claimed damages on Exhibit A are as follows: (1) loss of rent attributed by the Individual Unit Owner to the construction defects; (2) out of pocket expenses attributed by the Individual Unit Owner to the construction defects; (3) damages related to the defective wood floor on the second floor units; (4) expenses related to the inability to refinance a unit attributed by the Individual Unit Owner to the construction defects (*See* Plaintiffs John E. Atkinson and Joan D. Strandquist, only); (5) damages in the amount of a deficiency judgment and payments made on the deficiency judgment attributed by Unit Owner to the inability to sell the unit (*See* Plaintiffs Peyton H. Cook, Jr., Brenda Cook, only). Unit Owners also testified as to the significant inconvenience and loss of enjoyment they experienced having to live in and own defective condominiums.

(43) I find the damages presented by the Unit Owners are reasonable, foreseeable, and not speculative and were proximately caused by the defective construction. Unit Owners sustained significant inconvenience and loss of enjoyment as a result of the construction defects.

(44) Christopher Donato, MAI, a real estate appraiser qualified without objection as an expert. Defendants did not offer any testimony as to real estate values. Donato offered opinions

relating to two separate classes of Unit Owners. The first class contained Unit Owners who still owned their unit at the time of the trial (hereinafter sometimes "Class I Unit Owners"). These Unit Owners include John E. Atkinson, Joan D. Strandquist, Joseph E. Chiovarou, Jr., William Jung, Charles Maraziti, Patricia Maraziti, George S. Pollard, Eleanor J. Pollard, Gerard M. Ruvo and Sue S. Ruvo as trustees for the Ruvo 2006 Living Trust, Carolyn M. Jennings, Thomas Edward Keane, Edward Wallace Barr, III, Richard B. Pekruhn, Pauline Pekruhn, Matthew J. Severance, and Elizabeth Ashley Phillips Severance.

(45) Donato performed three separate appraisals for each of the units owned by these Unit Owners. A chart depicting the appraisal amounts and the claimed damages testified to by Donato is attached hereto Exhibit B.

 (46) The first appraisal used the date of March 28, 2008 and assumed no defects. The second and third appraisals used the date of appraisal as December 31, 2011. The second appraisal assumed no defects, and the third appraisal appraised the units as constructed with defects.

(47) Donato then testified that Class I Unit Owners were denied access to the real estate market from 2008 until 2011 due to the construction defects and Class I Unit Owners were unable to sell their units at the market price. Donato testified to a reasonable degree of certainty that the inability to sell at a time when the market was going down prevented Class I Unit Owners from selling their units as prices continued to decline due to the real estate market. Donato testified that condominium ownership is different from single family residential ownership because the individual Unit Owner cannot repair the common elements. Donato concluded, therefore, that the Class I Unit Owners were damaged because they could not sell their unit as an owner of a non-defective condominium could have and did from 2008 to 2011.

(48) It is foreseeable that the inability to sell a defective condominium unit in a collapsing real estate market would proximately result in damage to the owner of a defective unit.

(49) Donato testified that if (when) the Project is completely repaired, the value of the unit will only return to the 2011 value without defects. The Class I Unit Owners, therefore, have sustained damages in that they have suffered the loss in value from the 2008 value without defects to the 2011 value without defects as a result of the lost opportunity to enter the market and sell the unit from 2008 to 2011. These individual damages have already been sustained by the Class I Unit Owners because of the denial of market access and could have been prevented by Developer and Construction Manager who were aware as early as 2006 and no later than 2008 that the buildings were defective and in need of repair. On March 28, 2008, Developer and Construction Manager sent a letter to all of the unit owners acknowledging problems. He testified this date then represented the date that the public became aware of the defects and the market reflected the defects. This date is also significant in that Parker testified that in 2008 he informed Developer and Construction Manager that all the windows were defective and needed to be replaced.

(50) Many Unit Owners testified that they lost potential sales as a result of the construction defects becoming public knowledge. Donato testified that the lost sale testimony was consistent with his opinion, experience and common sense that a purchaser will not pay market value for a condominium that is known to be defective.

(51) Class I Unit Owners Peckruhn testified he was unable to sell his Unit in 2008 as a result of the construction defects. Peckruhn testified that he believed the value of his unit in 2008 to be \$800,000.00 without defects. This amount was based on his purchase price and other sales known to him to have occurred prior to 2008. Peckruhn then testified that he believed the value of his unit in 2011 without defects to be \$600,000.00. His claimed damages were the

difference between the 2011 value without defects and the 2008 value without defects because even if the buildings are ultimately repaired he lost the opportunity to sell his unit in 2008 through 2011. Peckruhn had a reasonable basis for his claimed damages and that they were not speculative.

(52) The second class of individual Unit Owners according to Mr. Donato included owners who sold their Unit prior to the time of trial (hereinafter Class II Unit Owners). This class included John W. Edelen, Karen A. Nelson, Robert J. Graham, Maureen S. Graham, Nancy K. Johnson as trustee for the Nancy K. Johnson Revocable Trust and Robert Reece.

(53) Donato testified that Class II Unit Owners also sustained damages as a result of the denial of access to the market at fair market price. Donato testified that the Class II Unit Owners sustained damages equivalent to the difference between the December 31, 2011 appraisal with defects and the December 31, 2011 appraisal without defects. He opined to a reasonable degree of certainty that even if the buildings are ultimately fixed, these individuals would not receive the benefit of the repairs as they had to sell their unit a significantly below market value without defects. These damages are depicted on Exhibit B. The recovery by the HOA of damages herein and any subsequent repair of the Project will not compensate Class II Unit Owners for their loss.

(54) The damages testified to by Mr. Donato and depicted on Exhibit B for the current Unit Owners and for the former Unit Owners are not speculative and were proven to a reasonable degree of certainty. The Defendants did not present a real estate appraiser to dispute the testimony of Donato and did not put in any evidence otherwise to dispute the testimony of Donato.

CONCLUSIONS OF LAW

(55) The Plaintiff HOA brought claims against the Developer for Negligence, including gross negligence and recklessness, Negligent Misrepresentation, and Breach of Fiduciary Duty. The Plaintiff HOA also brought claims against the Construction Manager for

Negligence, including gross negligence and recklessness, Negligent Misrepresentation, and breach of implied warranty of workmanlike service.

(56) The Individual Unit Owner Plaintiffs brought claims against the Developer for Negligence, including gross negligence and recklessness, Negligent Misrepresentation, Breach of Implied Warranty of Habitability, and Breach of Contract. Finally, the Individual Unit Owners also brought claims against the Construction Manager for Negligence, including gross negligence and recklessness, Negligent Misrepresentation, and breach of implied warranty of workmanlike service.

I. Negligence as to Developer and Construction Manager by Unit Owners and HOA.

(57) In order to prove a negligence claim a party must prove (1) The defendant owes a duty of care to the plaintiff; (2) defendant breached the duty by a negligent act or omission; (3) defendant's breach was the actual or proximate cause of the plaintiff's injury; and (4) plaintiff suffered an injury or damages. Doe ex re. Doe v. Wal-Mart Stores, Inc., 711 S.E.2d 908 (S.C. 2011).

(58) Here, Developer and Construction Manager owed HOA and Unit Owners legal duties to develop, construct and sell a project consistent with industry standards and the applicable building code. See Kennedy v. Columbia Lumber and Mfg. Co., Inc., 299 S.C. 335, 384 S.E.2d 730 (1989)(establishing common law duties to purchasers of residences regardless of privity). Developer and Construction Manager also had the duty to exercise due care during the development and construction of the Project. See Fields v. J. Haynes Waters Builders, Inc. 376 S.C. 545, 560 658 S.E.2d 80, 88 (2008)(a builder owes a duty to exercise due care); Hart v. Doe, 261 S.C. 116, 122, 198 S.E.2d 526, 529 (1973); ("[N]egligence is the failure to use due care," i.e., "that degree of care which a person of ordinary prudence and reason would exercise under the same circumstances."). Developer undertook to develop the Project. Developer put the residential Project and units in the stream of commerce. Developer also undertook to establish

the HOA, an entity which would be responsible for the future repair and maintenance of the common elements. Therefore, Developer undertook legal duties to the HOA and the Unit Owners.

(59) Developer owed further duties to the HOA to transfer the common areas of the Project in good repair or to supply the HOA with sufficient funds to bring the common elements into good repair. *See Concerned Dunes West Residences, Inc. v. Georgia Pacific Corporation*, 349 S.C. 251, 562 S.E.2d 633 (2002). As will be explained below, this is a fiduciary duty, but a legal duty none the less.

(60) Construction Manager also owed common law duties due because as the construction manager it undertook to coordinate and supervise the construction. *Fields*, 658 S.E.2d 80, 88 (2008) ("a builder who undertakes to supervise the construction is under a duty to exercise reasonable care and supervision to see that the work is done in conformity with the applicable building code.").

(61) Developer and Construction Manager breached the duties owed to the HOA and the Unit Owners by putting buildings in the stream of commerce which failed to comply with the applicable building code and failed to meet industry standards. Developer and Construction Manager also breached their duties as they failed to act reasonably under the circumstances. Developer breached his duty to HOA by failing to turn over the common elements in good repair and failing to supply the HOA with the funds necessary to put the common elements in good repair. The uncontradicted testimony is that there are construction defects in the common elements at the Project. The uncontradicted testimony is that Developer did not give the HOA any funds for capital repairs at the time of turnover.

(62) I further find that Construction Manager breached the duties it owed to the HOA and the Unit Owners due and owing to its failure to coordinate and supervise the construction in

a manner as to ensure that the work was done in conformity with the applicable building codes and industry standards.



(63) I also find that Developer and Construction Manager were grossly negligent in their breach of the duties owed to the Plaintiffs. Gross negligence is the intentional conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." Etheredge v. Richland Sch. Dist. One, 341 S.C. 307, 310, 534 S.E.2d 275, 277 (2000). "Gross negligence has also been defined as a relative term, and means the absence of care that is necessary under the circumstances." Id. First, Developer and Construction Manager used the services throughout the development and construction of the Project of an unlicensed architect they new was unlicensed and consciously disregarded this fact during development, construction, and, as will be shown below, during the attempted sound remediation. I find that Developer and Construction Manager used the services of Rumplick to avoid hiring a licensed architect or engineer which was required on this Project. This was a conscious failure to do something as basic as hiring a licensed design professional for this Project which was required by the law. I further find that Developer's and Construction Manager's continued use of Rumplick after he was ordered to cease and desist from performing any architectural services for the design of a repair to a defect, the sound problem, of which they were aware was grossly negligent. Second, I find that the number of code violations identified by Padgett accompanied with his testimony regarding the totality of the defects at the project arises to a level of gross negligence on the part of Developer and Construction Manager.

(64) I find that the HOA claimed actual damages calculated by the cost of repair of the Project, including engineering fees. I find the cost of repair damages were not speculative, were reasonable, foreseeable, and proximately caused by the negligence and gross negligence of the Developer and Construction Manager and are appropriate under the law. See Scott v. Fort Roofing and Sheet Metal Works, Inc., 299 S.C. 449, 385 S.E.2d 826 (1989)("cost of repair or

restoration is a valid measure of damages for injury to a building..."). The HOA also suffered actual damages for the amount Developer represented it was going to fund for the HOA at the time of turnover. I further find that the HOA claimed consequential damages for costs associated with the move out of the occupants of the buildings during the repairs. I find that these costs to be reasonable and not speculative and to be proximately caused by the breach of the duties owned by the Developer and the Construction Manager to the HOA.

(65) I find that the breaches of the Developer and the Construction Manager of duties owed to the Plaintiff HOA have combined to proximately cause damages to the HOA and that amount is in the conclusion section of this opinion. As such, I find the Developer and Construction Manager to be jointly and severally liable for the damages stated therein.

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(66) I find that the individual Unit Owners presented damages as depicted on Exhibit A and Exhibit B to this Order. I find that the damages presented by the Individual Unit Owners were not speculative, were reasonable, foreseeable, and were proximately caused by the negligence of the Developer and the Construction Manager. I further find that the damages were based on the uncontradicted testimony of each of the Unit Owner and of Donato. With regard to the testimony of the Individual Unit Owner Plaintiffs, I find that their testimony as to their damages had a reasonable basis and that a property owner is capable of testifying as to his or her damages. Moreover, I find that the damages presented by the Unit Owners through Donato are separate and distinct from the damages claimed by the HOA as the repair of the common elements will not make the Individual Plaintiffs whole. As described by Donato, even if the buildings are repaired, the damages claimed by the Unit Owners will not be rectified as those damages regardless of whether the buildings are fully repaired have already been sustained. I do however find that any Unit Owner claiming lost rent must elect between the recovery of lost rent damages and the damages attributed to the lost opportunity to sell their unit from 2008 to 2011 as those damages are mutually exclusive.

(67) I find that the inconvenience and loss of enjoyment suffered by the Unit Owners to be proximately caused by the construction defects and the negligence of Developer and Construction Manager. The Plaintiffs presented evidence that a comparable replacement housing for the units would cost \$250.00 a day. I find that the loss of enjoyment and in convenience for the Unit Owners to be half of that (\$125.00 a day) from March 28, 2008 until December 31, 2011.²

(68) I find that the breaches of the Developer and the Construction Manager of duties owed to the Unit Owner Plaintiffs have combined to proximately cause damages to each of the Unit Owners in an amount outlined in the conclusion section of this opinion. As such, I find the Developer and Construction Manager to be jointly and severally liable for the damages stated therein.

II. Negligent Misrepresentation as to Developer and Construction Manager by Unit Owners and HOA.

(69) With regard to the negligent misrepresentation claim, to establish a negligent misrepresentation claim, the claimant must prove the following elements:

- (1) the defendant made a false representation to the plaintiff;
- (2) the defendant had a pecuniary interest in making the statement;
- (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff;
- (4) the defendant breached that duty by failing to exercise due care;
- (5) the plaintiff justifiably relied on the representation;
- (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance upon the representation.

AMA Management Corp. v. Strasburger, 309 S.C. 213, 420 S.E.2d 868 (S.C.App. 1992).

(70) I find that Developer and Construction Manager made numerous false representations to HOA and Unit Owners. Developer and Construction Manager represented to HOA and Unit Owners that the Project would be and was constructed pursuant to luxury

² Since Plaintiff Nancy K. Johnson Revocable Trust sold her unit on July 22, 2010, any inconvenience and loss of enjoyment damages would stop as of that date. Plaintiffs Peyton H. Cook, Jr., Brenda Cook sold their unit as of April 8, 2011 and any inconvenience and loss of enjoyment damages would stop as of that date.

standards with high quality construction and materials. The only evidence in the record, from both Plaintiffs and Defendants, is that the construction, other than the countertops and the interior finishes, was not high quality and did not meet industry standards much less a luxury standard. Developer and the Construction Manager represented to HOA and Unit Owners that the sound remediation was being done to accomplish luxury standards. The testimony of Defendants' expert, Stewart, was that the goal of the remediation was simply to make the best of the defective situation rather than perform a remediation that would meet industry standards. The testimony of Plaintiffs' expert was that the remediation did not meet industry standards and that Developer and Construction Manager represented to him that they did not even know what the industry standards were for the Project. Moreover, by turning over the HOA to the unit owner controlled board, especially in light of the fact that it failed to turn over in funds for repairs or even the funds it represented it was going to turn over, Developer represented to HOA that the common elements were in good repair. The uncontradicted testimony is that the common elements are not in good repair.

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(71) Developer and Construction Manager had a pecuniary interest making the false statements. The expert for Defendants, Stewart, testified that the sound remediation was performed specifically to save money by Developer and Construction Manager. Developer and Construction Manager did not want the extra costs of adding gypcrete to the floors or for tearing out the original sheetrock. Developer also had a pecuniary interest in the false statement regarding the high quality construction and materials. Willis testified that the most important part of a construction project is the structural components or the parts of construction that are covered up during construction, though the purchaser does not see that construction or those materials. Therefore, Developer saved money on cheap construction and materials on the "bones" of the Project.

(72) As discussed above, Developer and Construction Manager owed duties to the Plaintiffs, including the duty to convey truthful information. The Developers duty is further heightened to to its position as a fiduciary. Developer and Construction Manager undertook to convey information about the quality of construction, about the sufficiency of the sound remediation, and the condition of the common elements. Upon such undertaking, given the relationship of the parties (i.e. Developer to Purchaser/HOA and Construction Manager to Purchaser/HOA), Developer and Construction Manager undertook the duty to convey truthful and accurate information.

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(73) Defendant and Construction Manager did not exercise due care in making the false statements to Plaintiffs. First, Developer and Construction Manager were in the best position to know the quality of the materials and construction. Developer paid for the construction and materials and knew or should have known the quality and type of construction and materials. Construction Manager was responsible for the supervision and coordination of the construction and, as such, had knew or should have known of the type of construction and materials. Therefore, either Developer and Construction Manager had no basis for the representations made as a result of their inability to determine high quality and low quality or they were aware of the quality and mistakenly believed for whatever reason that it was high quality construction. In either case, based upon the evidence presented, they failed to exercise appropriate care to make sure that they were conveying truthful information.

(74) Each of the Plaintiffs and the various board members and former board members for the HOA testified that they relied on the representations of Developer and Construction Manager. I find that given the relationship of the parties that this reliance was reasonable.

(75) HOA has suffered a pecuniary loss as a result of the negligent misrepresentations in that it is responsible for the repair and maintenance of the common elements. The only evidence

in this record is that the common elements are not high quality and do not meet industry standards and must be repaired.

(76) Unit Owners have suffered a pecuniary loss in that they purchased the units that have now proximately caused them monetary damages.

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(77) I find that HOA claimed actual damages calculated by the cost of repair of the Project, including engineering fees. I find the cost of repair damages were not speculative, were reasonable, foreseeable, and proximately caused by the negligent misrepresentation of Developer Construction Manager and are appropriate under the law. See Scott v. Fort Roofing and Sheet Metal Works, Inc., 299 S.C. 449, 385 S.E.2d 826 (1989) ("cost of repair or restoration is a valid measure of damages for injury to a building..."). The HOA also suffered actual damages for the amount Developer represented it was going to fund for the HOA at the time of turnover. I further find that the HOA claimed consequential damages for costs associated with the move out of the occupants of the buildings during the repairs. I find that these costs to be reasonable and not speculative and to be proximately caused by the breach of the duties owed by the Developer and the Construction Manager to the HOA.

(78) I find that the negligent misrepresentation of the Developer and the Construction Manager of to the Plaintiff HOA have combined to proximately cause damages to the HOA and that amount is in the conclusion section of this opinion. As such, I find the Developer and Construction Manager to be jointly and severally liable for the damages stated therein.

(79) I find that the individual Unit Owners presented damages as depicted on Exhibit A and Exhibit B to this Order. I find that the damages presented by the Individual Unit Owners were not speculative, were reasonable, and were proximately caused by the negligent misrepresentations of the Developer and the Construction Manager. I further find that the damages were based on the uncontradicted testimony of each of the Individual Unit Owner Plaintiffs and of Mr. Donato. With regard to the testimony of the Individual Unit Owner

Plaintiffs, I find that their testimony as to their damages had a reasonable basis and that a property owner is capable of testifying as to his or her damages. Moreover, I find that the damages presented by the Individual Unit Owners through Mr. Donato are separate and distinct from the damages claimed by the HOA as the repair of the common elements will not make the Individual Plaintiffs whole. As described by Mr. Donato, even if the buildings are repaired, the damages claimed by the Individual Unit Owners will not be rectified as those damages regardless of whether the buildings are fully repaired have already been sustained. I do however find that any Individual Unit Owner claiming lost rent must elect between the recovery of lost rent damages and the damages attributed to the lost opportunity to sell their unit from 2008 to 2011 as those damages are mutually exclusive.

(80) I find that the inconvenience and loss of enjoyment suffered by the Unit Owners to be proximately caused by the construction defects and the negligent misrepresentations of the Developer and Construction Manager. The Plaintiffs presented evidence that a comparable replacement housing for the units would cost \$250.00 a day. I find that the loss of enjoyment and in convenience for the Unit Owners to be half of that (\$125.00 a day) from March 28, 2008 until December 31, 2011.³

(81) I find that the negligent misrepresentations of the Developer and the Construction Manager to the Unit Owner Plaintiffs have combined to proximately cause damages to each of the Unit Owners in an amount outlined in the conclusion section of this opinion. As such, I find the Developer and Construction Manager to be jointly and severally liable for the damages stated therein.

III. Breach of Fiduciary Duty as to Developer by HOA.

³ Since Plaintiff Nancy K. Johnson Revocable Trust sold her unit on July 22, 2010, any inconvenience and loss of enjoyment damages would stop as of that date. Plaintiffs Peyton H. Cook, Jr., Brenda Cook sold their unit as of April 8, 2011 and any inconvenience and loss of enjoyment damages would stop as of that date.

(82) In South Carolina, a "developer has a fiduciary duty to the POA to transfer common areas that are in good repair; if the developer transfers substandard common areas, the developer must, at the time of transfer, provide the POA with funds necessary to bring the common areas up to a standard of reasonably good repair. The developer who breaches this duty, by transferring common areas that are not in reasonably good repair and without the funds necessary to bring the common areas up to standard, is liable to the POA for all damages proximately flowing from the breach, including damages for the continued deterioration of these areas." See Concerned Dunes West Residences, Inc., 562 S.E.2d 633, 638.

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(83) In the present case, it is uncontradicted that Developer did not turn over the common elements in good repair. The only evidence in the record is the scope of repair offered by Padgett and the testimony of Stewart that the sound attenuation at the time of turnover failed to meet the building code. It is uncontradicted that Developer did not turn over any funds to HOA at the time of turnover. In Fact, the Developer did not even turn over the \$19,440.00 it represented that it would turnover. The HOA has an uncontradicted estimate of repairs in the amount of \$7,934,704.06 plus 10% engineering fees to put the common elements in good repair. Developer's failure to fund the HOA and turnover common elements in good repair is a breach of the fiduciary duty owed to the HOA.

(84) During the course of the sound remediation the Developer failed to disclose to the HOA that it would not be performing an actual remediation of the sound construction but would be completing a repair to make the best of the bad situation. Parties in a fiduciary relationship must fully disclose to each other all known information that is significant and material. See Anthony v. Padmar, Inc., 320 S.C. 436, 465 S.E.2d 745 (Ct. App. 1995). The Developers failure to disclose this information to the HOA constituted an additional breach of its fiduciary duty to the HOA.

(85) I find that HOA claimed actual damages calculated by the cost of repair of the Project, including engineering fees. I find the cost of repair damages were not speculative and proximately caused by the breach of the fiduciary duty of Developer and are appropriate under the law. HOA also suffered actual damages for the amount Developer represented it was going to fund for HOA at the time of turnover. I further find that HOA claimed consequential damages for costs associated with the move out of the occupants of the buildings during the repairs. I find that these costs to be reasonable and not speculative and to be proximately caused by the breach of the duties owed by Developer to HOA.

(86) I find that the breach of the fiduciary duty of Developer to HOA has proximately caused damages to HOA and that amount is in the conclusion section of this opinion.

IV. Breach of Implied Warranty of Habitability as to Developer by Unit Owners.

(87) In South Carolina, an implied warranty of habitability springs from the sale of a new dwelling. Kirkman v. Parex, Inc., 632 S.E.2d 854, 856-57 (2006). The determining factor is not whether the defendant actually builds the defective house, but that he places it, by the initial sale, into the stream of commerce. Id. Judge Ralph King Anderson, Jr.'s S.C. Request to Charge explains the implied warranty of habitability as follows:

The implied warranty of habitability for a condominium means that the condominium is reasonably fit for the ordinary and general purposes intended; i.e., as living quarters. A breach therefore would be that the condominium is not so fit for living quarters. The test of the breach of the implied warranty of habitability is an objective standard. The standard is whether the condominium meets ordinary, reasonable, and normal uses, reasonably to be expected of living quarters of comparable kind and comparable quality.

Andersons SC Requests to Charge §11-8 (emphasis supplied) citing Kirkman v. Parex, Inc., 632 S.E.2d 854 (S.C. 2006); Terlinde v. Neeley, 275 S.C. 395, 271 S.E.2d 768 (1980); Lane v. Trenholm Building Co., *infra*; Rutledge v. Dodenhoff, 254 S.C. 407, 175 S.E.2d 792 (1970); Carolina Winds Owners' Ass'n v. Joe Harden Builder, Inc., 297 S. C. 74, 374 S.E.2d 897 (Cl.

App. 1988), overruled on other grounds by Kennedy v. Columbia Lumber and Mfg. Co., 299 S.C. 335, 384 S.E.2d 730 (1989).

(88) The Lane v. Trenholm Building Co., 267 S.C. 497, 229 S.E.2d 728 (1976) case is instructive in this matter. The Lane Court held that an implied warranty of habitability extends from the sale of a residence because "a sound price warrants a sound commodity." 229 S.E.2d at 730. "Selling for a sound price raises an implied warranty that the thing sold is free from defects, known and unknown to the seller." Id. "The law should not orphan the purchaser of a house, who has likely invested his life savings..." 229 S.E.2d at 731.



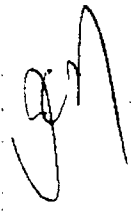
(89) In the present case, each of Unit Owners purchased what was represented to be a "luxury" and high quality condominium. The purchase prices varied from \$633,766.00 to \$889,900.00. The record is clear that Unit Owners did not get a residence for which they paid a sound price. Indeed, Defendants stipulated that each of the Unit Owners testified or were going to testify that the sound problem was detrimental to their use of the condominium unit. Indeed, the Defendants' expert, Stewart, testified he would not live in the units knowing what he knows now. In addition to the sound problems are the other defects that are a daily inconvenience to the purchasers of the units at the Project. Even those unit owners who did not purchase directly from the Developer have a proper claim for breach of the implied warranty of habitability. In Terlinde v. Neeley, 275 S.C. 395, 271 S.E.2d 768 (1980), a subsequent purchaser brought an action for breach of implied warranty of habitability against the original seller of a residence. The trial court found that the implied warranty of habitability did not apply because the Terlindes were subsequent purchasers and the house was "about three years old." 271 S.E.2d at 769. The Supreme Court overruled the trial court and held as follows:

"The length of time for latent defects to surface, so as to place subsequent purchasers on equal footing should be controlled by the standard of reasonableness and not an arbitrary time limit created by the Court. The aforementioned policy considerations aside, the literal holdings of our precedents require reversal of the trial judge on the question of privity. In Lane, supra, we held that when a "new building is sold, there

is an implied warranty of fitness for its intended use which springs from the sale itself." Recently, we overruled a privity objection and allowed a suit by a subsequent purchaser of a warehouse against a manufacturer of materials used in its construction. See JKT Company, Inc. v. Hardwick et al., S.C., 265 S.E.2d 510, 1980. **In so ruling, we indicated the concept of privity is no longer viable in this jurisdiction. The only logical application of these principles requires a holding that an implied warranty for latent defects extends to subsequent home purchasers for a reasonable amount of time."**

271 S.E.2d at 769-70 (emphasis supplied).

(90) I find that Developer breached the implied warranty of habitability as to the Individual Unit Owners.

 (91) I find that Unit Owners presented damages as depicted on Exhibit A and Exhibit B to this Order. I find that the damages presented by Unit Owners were not speculative, were reasonable, foreseeable and were proximately caused by the breach of the implied warranty of habitability of Developer. I further find that the damages were based on the uncontradicted testimony of each of the Unit Owners, Padgett, Stewart, and Donato. With regard to the testimony of Unit Owners, I find that their testimony as to their damages had a reasonable basis and that a property owner is capable of testifying as to his or her damages. Moreover, I find that the damages presented by Unit Owners through Donato are separate and distinct from the damages claimed by HOA as the repair of the common elements will not make the Unit Owners whole. As described by Donato, even if the buildings are repaired, the damages claimed by Unit Owners will not be rectified as those damages regardless of whether the buildings are fully repaired have already been sustained. I do however find that any Unit Owner claiming lost rent must elect between the recovery of lost rent damages and the damages attributed to the lost opportunity to sell their unit from 2008 to 2011 as those damages are mutually exclusive.

V. Breach of Implied Warranty of Workmanlike Service by Unit Owners and HOA as to Construction Manager.

(92) A Builder who undertakes to design or construct a dwelling impliedly warrants that work undertaken will be performed: (1) in careful, diligent, workmanlike manner; (2) creating

implied warranty of workmanlike service that is distinct from implied warranty of habitability.

Kennedy v. Columbia Lumber and Mfg. Co., Inc., 384 S.E.2d 730 (S.C.1989).

(93) In the present case, the only testimony in the record regarding the construction of the Project is that the defects complained of by the Plaintiffs arose out of work that failed to be good and workmanlike. Padgett testified that the defects outlined in his scope of repairs resulted from construction work that was unworkmanlike in addition to the fact that it violated applicable buildings codes and industry standards. The engineer for the Defendants, Parker, did not offer any testimony as to the defects identified by Padgett and sought to be repaired in the estimate of Willis.

 (94) As such, I find that Construction Manager breached his implied warranty of workmanlike service.

(95) I find that HOA claimed actual damages calculated by the cost of repair of the Project, including engineering fees. I find the cost of repair damages were not speculative and proximately caused by the breach of the implied warranty of workmanlike service by the Construction Manager and are appropriate under the law. See Scott v. Fort Roofing and Sheet Metal Works, Inc., 299 S.C. 449, 385 S.E.2d 826 (1989) ("cost of repair or restoration is a valid measure of damages for injury to a building..."). I further find that the HOA claimed consequential damages for costs associated with the move out of the occupants of the buildings during the repairs. I find these costs to be reasonable and not speculative and to be proximately caused by the breach of Construction Manager's implied warranty of workmanlike service.

(96) I find that Unit Owners presented damages as depicted on Exhibit A and Exhibit B to this Order. I find that the damages presented by Unit Owners were not speculative, were reasonable, foreseeable and were proximately caused by the breach of the implied warranty of workmanlike service by Construction Manager. I further find that the damages were based on the uncontradicted testimony of each of the Unit Owners, Padgett, and Donato. With regard to

the testimony of Unit Owners, I find that their testimony as to their damages had a reasonable basis and that a property owner is capable of testifying as to his or her damages. Moreover, I find that the damages presented by Unit Owners through Donato are separate and distinct from the damages claimed by HOA as the repair of the common elements will not make the Unit Owners whole. As described by Donato, even if the buildings are repaired, the damages claimed by Unit Owners will not be rectified as those damages regardless of whether the buildings are fully repaired have already been sustained. I do however find that any Unit Owner claiming lost rent must elect between the recovery of lost rent damages and the damages attributed to the lost opportunity to sell their unit from 2008 to 2011 as those damages are mutually exclusive.

VI. Breach of Contract as to the Developer by the Unit Owners who purchased from the Developer.



(97) The Unit Owners also brought a claim for breach of contract against the Developer. I find that any contract entered into by the Unit Owners with the Developer was merged into the deed at the time of sale, and, as such the Unit Owners' claims are in the nature of breach of implied warranty of habitability and tort and no claim for breach of contract can stand.

Conclusion

Pursuant to the foregoing, I find Developer and Construction Manager jointly and severally liable to the Plaintiffs for negligence, gross negligence, and negligent misrepresentation. I find Developer liable to HOA for breach of fiduciary duty. I find the Developer liable to the Unit Owners for breach of implied warranty of habitability. I find the Construction Manager liable to the HOA and the Unit Owners for breach of the implied warranty of Workmanlike Service. I find that the HOA and Unit Owners have sustained damages proximately caused by the liability of Developer and Construction Manager as follows:

HOA: \$7,934,704.06 (cost of repair)
 \$793,470.41 (engineering fees at 10% of cost to repair)
 \$641,520.00 (moving, storage, and replacement lodging)

I find that the Developer is also liable to the HOA for an additional \$19,440.00 for the failure to fund the reserves actually promised.

Joseph E. Chiovarou, Jr.: \$235,000.00 (Loss of Market Access)
 \$171,625.00 (Inconvenience (1373 days x \$125)
 \$16,096.80 (defective floors of 2nd floor).

William Jung:⁴ \$245,000.00 (Loss of Market Access)
 \$171,625.00 (Inconvenience (1373 days x \$125)
 \$17,800.00 (lost rent)
 \$1,887.92 (out of pocket costs)

 **Charles Maraziti, Patricia Maraziti:** \$235,000.00 (Loss of Market Access)
 \$171,625.00 (Inconvenience (1373 days x \$125)
 \$16,096.80 (defective floors of 2nd floor).

George S. Pollard, Eleanor J. Pollard: \$235,000.00 (Loss of Market Access)
 \$171,625.00 (Inconvenience (1373 days x \$125)
 \$16,096.80 (defective floors of 2nd floor)
 \$3,175.00 (out of pocket costs)

Robert Reece: \$280,000.00 (Loss of Market Access)
 \$171,625.00 (Inconvenience (1373 days x \$125)

Nancy K. Johnson as trustee for the Nancy K. Johnson Revocable Trust:⁵ \$290,000.00 (Loss of Market Access)
 \$105,750.00 (Inconvenience (846 days x \$125)
 \$23,125.00 (lost rent)

Gerard M. Ruvo and Sue S. Ruvo as trustees for the Ruvo 2006 Living Trust:⁶ \$240,000.00 (Loss of Market Access)

⁴ Plaintiff Jung must make an election between damages for lost rent and damages for loss of market access.

⁵ Plaintiff Johnson must make an election between damages for lost rent and damages for loss of market access.

⁶ Plaintiff Ruvo must make an election between damages for lost rent and damages for loss of market access.

\$171,625.00 (Inconvenience (1373 days x \$125)
\$15,000.00 (lost rent)
\$11,117.00 (out of pocket costs)

**John E. Atkinson, Joan D.
Strandquist:**⁷

\$245,000.00 (Loss of Market Access)
\$171,625.00 (Inconvenience (1373 days x \$125)
\$100,000.00 (inability to refinance)

Carolyn M. Jennings:⁸

\$290,000.00 (Loss of Market Access)
\$171,625.00 (Inconvenience (1373 days x \$125)
\$26,400.00 (lost rent)
\$6,640.00 (out of pocket costs)


**Peyton H. Cook, Jr., Brenda
Cook:**

\$250,000.00 (Loss of Market Access and judgment)
\$138,250.00 (Inconvenience (1106 days x \$125)

**John W. Edelen, Karen A.
Nelson:**

\$275,000.00 (Loss of Market Access)
\$171,625.00 (Inconvenience (1373 days x \$125)

**Robert J. Graham, Maureen
S. Graham:**⁹

\$280,000.00 (Loss of Market Access)
\$171,625.00 (Inconvenience (1373 days x \$125)
\$43,000.00 (lost rent)
\$2,008.00 (out of pocket costs)

**Thomas Edward Keane,
Edward Wallace Barr, III:**

\$235,000.00 (Loss of Market Access)
\$171,625.00 (Inconvenience (1373 days x \$125)
\$16,096.80 (defective floors of 2nd floor)

**Richard B. Pekruhn, Pauline
Pekruhn:**

\$200,000.00 (Loss of Market Access)
\$171,625.00 (Inconvenience (1373 days x \$125)
\$3,200.00 (out of pocket expenses)

⁷ Plaintiff Atkinson/Strandquist must make an election between damages for inability to refinance and damages for loss of market access.

⁸ Plaintiff Jennings must make an election between damages for lost rent and damages for loss of market access.

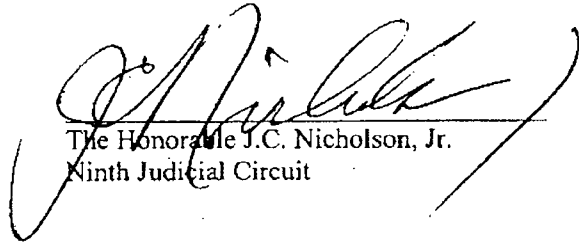
⁹ Plaintiff Graham must make an election between damages for lost rent and damages for loss of market access.

**Matthew J. Severance, and
Elizabeth Ashley Phillips
Severance:**¹⁰

\$235,000.00 (Loss of Market Access)
\$171,625.00 (Inconvenience (1373 days x \$125)
\$23,400.00 (lost rent)
\$15,994.20 (defective floors of 2nd floor)
\$1,085.00 (out of pocket costs)

IT IS SO ORDERED!

10/11, 2013
CHARLES TCM, South Carolina


The Honorable J.C. Nicholson, Jr.
Ninth Judicial Circuit

¹⁰ Plaintiff Severance must make an election between damages for lost rent and damages for loss of market access.

Individual Damages Outside of Atlantic Appraisal Damages

Individual Plaintiff	Lost Rent	Out of Pocket
Maraziti	N/A	Floors \$16,096.80
Barr/Keane	N/A	Floors \$16,096.80
Cook	N/A	Note/Judgment \$250,000
Nelson/Edelen	N/A	N/A
Pollard	N/A	Floors \$16,096.80 and \$3,175.00
Graham	43,000.00	\$2,008.00
Pekruhn	N/A	\$3,200.00
Reece	N/A	N/A
Chivarou	N/A	Floors \$16,096.80
Atkinson/Stranquist	N/A	Re-finance Inability \$100,000.00
Ruvo	\$15,000.00	\$11,117.00
Johnson	\$23,125.00	N/A
Severance	\$23,400.00	Floors \$15,994.20 and \$1,085
Jung	\$17,800.00	\$1,887.92
C. Jennings	\$26,400.00	\$6,640.00



**The Oaks at Rivers Edge
Fairbanks Oaks Allee
Summary of All Values**

Address	Size(SF)	Owner	Purchase Price	2008 Value No Defects	2011 Value No Defects	2011 Value With Defects	Value Loss
Current Owners							
124 Fairbanks Oak Allee #2-A	2,644	Maraziti	\$889,900	\$840,000	\$605,000	\$330,000	\$235,000
124 Fairbanks Oak Allee #2-B	2,644	Severance	\$753,176	\$840,000	\$605,000	\$330,000	\$235,000
130 Fairbanks Oak Allee #2-A	2,644	Barr/Keane	\$690,450	\$800,000	\$565,000	\$300,000	\$235,000
136 Fairbanks Oak Allee #2-A	2,644	Pollard	\$870,000	\$840,000	\$605,000	\$330,000	\$235,000
140 Fairbanks Oak Allee #2-A	2,644	Chiovarou	\$621,179	\$800,000	\$565,000	\$285,000	\$235,000
136 Fairbanks Oak Allee #3-A	2,888	Jung	\$726,519	\$865,000	\$620,000	\$350,000	\$245,000
136 Fairbanks Oak Allee #3-B	2,888	Strandquist	\$730,562	\$865,000	\$620,000	\$350,000	\$245,000
144 Fairbanks Oak Allee #3-A	2,888	Ruvo	\$647,740	\$790,000	\$550,000	\$270,000	\$240,000
144 Fairbanks Oak Allee #4-A	2,888	Jennings	\$670,208	\$880,000	\$590,000	\$310,000	\$290,000
136 Fairbanks Oak Allee #4-B*	2,888	Pekruhn	\$746,300	N/A	\$600,000	\$385,000	N/A
Owners who Sold							
136 Fairbanks Oak Allee #2-B	2,644	Nelson	\$686,863	\$840,000	\$605,000	\$330,000	\$275,000
144 Fairbanks Oak Allee #4-B	2,888	Graham	\$667,750	\$880,000	\$590,000	\$310,000	\$280,000
140 Fairbanks Oak Allee #4-B	2,888	Reece	\$716,850	\$940,000	\$650,000	\$370,000	\$280,000
140 Fairbanks Oak Allee #3-A	2,888	Johnson	\$670,633	\$865,000	\$620,000	\$330,000	\$290,000

* Surles Appraisal Dated 3/8/2011



STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-08-3916

THE OAKS AT RIVERS EDGE PROPERTY OWNERS
ASSOCIATION, INC., et. al.

DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC, and
CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

DUE TO THE NUMBER OF PLAINTIFFS, EXHIBIT A IS ATTACHED AND INCORPORATED HEREIN

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
SEE EXHIBIT A		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

Form 4C (10/2011)

Page 1 of 2

For Clerk of Court Office Use Only

This judgment was entered on the 25 day of Oct, 20B and a copy mailed first class or placed in the appropriate attorney's box on this 25 day of Oct, 20B to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Mary P. Browning
CLERK OF COURT

Court Reporter:

EXHIBIT A

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the Judgment affects title to real property or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below

Judgment in favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be Enrolled (List amount(s) below)
Oaks at Rivers Edge Property Owners Association, Inc.	Daniel Island Riverside Developers, LLC and Carriage Hill Associates of Charleston, LLC, Jointly and Severally	\$9,389,134.47
John E. Atkinson and Joan D. Strandquist	Daniel Island Riverside Developers, LLC and Carriage Hill Associates of Charleston, LLC, Jointly and Severally	\$416,625.00
Joseph E. Chiovarou, Jr.	Daniel Island Riverside Developers, LLC and Carriage Hill Associates of Charleston, LLC, Jointly and Severally	\$422,721.80
Edward Wallace Barr, III and Thomas E. Keene	Daniel Island Riverside Developers, LLC and Carriage Hill Associates of Charleston, LLC, Jointly and Severally	\$422,721.80
Peyton H. Cook and Brenda J Cook	Daniel Island Riverside Developers, LLC and Carriage Hill Associates of Charleston, LLC, Jointly and Severally	\$388,250.00
John W. Edelen and Karen A. Nelson	Daniel Island Riverside Developers, LLC and Carriage Hill Associates of Charleston, LLC, Jointly and Severally	\$446,625.00
Robert J. Graham and Maureen S. Graham	Daniel Island Riverside Developers, LLC and Carriage Hill Associates of Charleston, LLC, Jointly and Severally	\$453,633.00
Carolyn M. Jennings	Daniel Island Riverside Developers, LLC and Carriage Hill Associates of Charleston, LLC, Jointly and Severally	\$468,265.00
Nancy K. Johnson, as trustee for the Nancy K. Johnson Revocable Trust	Daniel Island Riverside Developers, LLC and Carriage Hill Associates of Charleston, LLC, Jointly And Severally	\$395,750.00
William Jung	Daniel Island Riverside Developers, LLC and Carriage Hill Associates of Charleston, LLC, Jointly and Severally	\$418,512.92
Charles Maraziti and Patricia Maraziti	Daniel Island Riverside Developers, LLC and Carriage Hill Associates of Charleston, LLC, Jointly and Severally	\$422,721.80
Richard B. Pekrubn and Pauline Pekrubn	Daniel Island Riverside Developers, LLC and Carriage Hill Associates of Charleston, LLC, Jointly and Severally	\$374,825.00
George S. Pollard and Eleanor J. Pollard	Daniel Island Riverside Developers, LLC and Carriage Hill Associates of Charleston, LLC, Jointly and Severally	\$425,896.80
Robert Reece	Daniel Island Riverside Developers, LLC and Carriage Hill Associates of Charleston, LLC, Jointly and Severally	\$451,625.00
Gerard M. Ruvo and Sue S. Ruvo, as trustees for the Ruvo 2006 Living Trust	Daniel Island Riverside Developers, LLC and Carriage Hill Associates of Charleston, LLC, Jointly and Severally	\$422,742.00
Matthew J. Severance and Elizabeth Ashley Phillips Severance	Daniel Island Riverside Developers, LLC and Carriage Hill Associates of Charleston, LLC, Jointly and Severally	\$423,704.20

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-08-3916

The Oaks at Rivers Edge Property Owners
Association, Inc., et al.,

Daniel Island Riverside Developers,
LLC, and Carriage Hill Associates of
Charleston, LLC, et al.,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: The Court's order of October 11, 2013, is titled "Plaintiff's the Oaks at Rivers Edge Property Owner's Association, Inc., et. al.'s Proposed Order." This was scrivener's error and the Court revises the Order to be titled as "Final Order" and reinstates its judgment therein.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2117

Judge Code

Date

10/31/13

SCRPC Form 4C (12/2011)

Page 1

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-08-1068

The Oaks at River's Edge Property

Owners Association, Inc., et. al.

PLAINTIFF(S)

Daniel Island Riverside Developers, LLC, et al.

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This matter came before this Court on Defendant's Motion for JNOV, Motion for New Trial, Motion for Remittitur, Motion for Set-Off, Motion for Allocation of Damages, and Motion for Election of Remedies, each argued before this Court on May 23, 2014. After taking the matter under advisement and careful review, this Court hereby **DENIES** each of Defendant's Motions.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$

If applicable, describe the property, including tax map information and address, referenced in the order:
N/A

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2117

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the 7 day of Oct, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 7 day of Oct, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Mary P. Brown/DW
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

AC CONSTRUCTION,

Plaintiff,

vs.

DANIEL ISLAND RIVERSIDE
DEVELOPERS, LLC, AND
TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: **20_07-CP-08-/01**

**COMPLAINT FOR FORECLOSURE
MECHANIC'S LIEN
(Non-Jury Trial Demanded)
Mechanic's Lien and Quantum
Meruit**

FILED
JAN 12 PM 1:52
CLERK OF COURT
BERKELEY COUNTY, SC

The Plaintiff complaining of the Defendants above named, alleges and would show unto this Honorable Court as follows:

**FOR A FIRST CAUSE OF ACTION
(Mechanic's Lien)**

1. That the Plaintiff is a business duly organized and existing pursuant to the law of the State of South Carolina and having its principal place of business in the County of Berkeley, State of South Carolina aforesaid.

2. That upon information and belief the Defendant, Daniel Island Riverside Developers, LLC, is a limited liability company duly organized and existing under the laws of the State of South Carolina.

3. That upon information and belief, Defendant Travelers Casualty and Surety Company of America, is a corporation organized and existing under the laws of the State of Connecticut.

4. This court has jurisdiction and the venue is proper.

5. That upon information and belief, the Defendant, Daniel Island Riverside Developers, LLC, is the owner of the real property more particularly described in Exhibit

"A", which is attached hereto and made a part hereof which property is located in the County of Berkeley, State of South Carolina.

6. That the Plaintiff and Carriage Hill and Associates entered into an agreement for the Plaintiff to provide materials for improvements which include but are not limited to framing and structural tie downs on the property which is described above.

7. That the Plaintiff furnished such materials under the agreement with Carriage Hill and Associates, who had authority from or acted rightly for the Defendant Daniel Island Riverside Developers, LLC.

8. That the Plaintiff has furnished all materials required by the Defendant in a workmanlike matter and no complaints have been made to the Plaintiff regarding the quality and quantity of materials furnished.

9. That the Defendant Daniel Island Riverside Developers, LLC, knew and was aware of the materials furnished by the Plaintiff and has in the past made certain payments of monies to Carriage Hill and Associates, on the account of the materials furnished by the Plaintiff.

10. That the Plaintiff timely recorded a Statement for Mechanic's Lien in the Register of Deeds for Berkeley County in Book R.VI-6032 at Page 47 and served a copy of the same on the Defendant through Aubrey J. Woody, Esquire, registered agent for Daniel Island Riverside Developers, LLC, and a copy of the same is attached hereto as Exhibit "B" and made a part hereof by reference.

11. That the Defendant Daniel Island Riverside Developers, LLC, as principle and Defendant Travelers Casualty and Surety Company of America, as surety, have posted a "Bond for Discharge of Mechanics Lien," Bond No. 104806709, filed with the

Register of Deeds, Berkeley County, South Carolina, Document Number 2006-00081301, B-R, Volume 6051, page 228, on October 16, 2006, with the stated purpose to become bound to Plaintiff in the amount of \$110,580.60 Dollars for the payment to Plaintiff of such sum as may be found due upon trial of an action to foreclose upon a mechanic's lien, (Exhibit "C", attached).

12. That six months has not expired since the last day that materials/labor were furnished by the Plaintiff.

13. That there is a balance due and owing to the Plaintiff upon the agreement in the amount of Eighty Two Thousand Nine Hundred Thirty Five and 00/100 Dollars (\$82,935.00) together with a reasonable attorney's fees and other costs and disbursements of this action, and interest on the amount so due, and despite due demand the Defendant has failed to pay same to the Plaintiff.

FOR A SECOND CAUSE OF ACTION
(Quantum Meruit)

14. That the Plaintiff reiterates and re-alleges the allegations contained in paragraphs 1 through 13 above as fully as if the same were set forth here verbatim.

15. That the Plaintiff furnished framing and structural tie downs which materials were incorporated into the construction on the property owned by the Defendant, Daniel Island Riverside Developers, LLC, and Plaintiff thereby conferred a benefit upon the Defendant, Daniel Island Riverside Developers, LLC.

16. That the materials and labor so furnished by the Plaintiff were of a reasonable value of Eighty Two Thousand Nine Hundred Thirty Five and 00/100 Dollars (\$82,935.00) and that such materials were appreciated by Defendant, Daniel Island Riverside Developers, LLC, and utilized in such construction, and the Defendant Daniel

Island Riverside Developers, LLC, thereby realized the value of such materials.

17. That Daniel Island Riverside Developers, LLC, has accepted the materials so furnished and retained those materials and improvements and under the circumstances of this case it would be inequitable for Daniel Island Riverside Developer, LLC to retain such benefit without paying the reasonable value thereof.

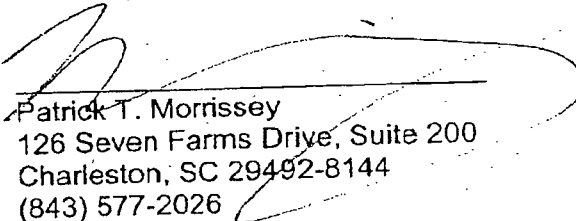
WHEREFORE, THE Plaintiff PRAYS JUDGMENT:

(a) against the Defendants, Daniel Island Riverside Developers, LLC and Travelers Casualty and Surety Company of America for foreclosure of the above Mechanic's Lien in the amount of Eighty Two Thousand Nine Hundred Thirty Five and 00/100 Dollars (\$82,935.00) together with reasonable attorney's fees and other costs and disbursements of this action and interest on the amount so due, and further, directing the bond be applied to payment and satisfaction of the debt; or

(b) in the alternative, against the Defendant, Daniel Island Riverside Developers, LLC, in the amount of \$82,935.00 together with the costs and disbursements of this action for quantum meruit;

(c) for such other relief as this court deems just and proper.

CLAWSON & STAUBES, LLC


Patrick T. Morrissey
126 Seven Farms Drive, Suite 200
Charleston, SC 29402-8144
(843) 577-2026

Attorneys for the Plaintiff
AC Construction

Charleston, South Carolina

January 11, 2007

Exhibit "A"

All that certain Units 200, 201, 202, 203, 204 and 205, Building 2, The Oaks at River's Edge Horizontal Property Regime established by Master Deed dated January 6, 2006 and recorded January 10, 2006 in the ROD Office for Berkeley County in Book 5287, Page 028 and all Exhibits and Amendments thereto, if any.

TOGETHER WITH an undivided percentage interest in the common elements described in said Master Deed and the rights to any limited common elements assigned to said Unit by said Master Deed.

Being a portion of the property conveyed to the grantor herein by deed of Daniel Island Associates, L.L.C. dated May 1, 2002 and recorded in the Register of deeds for Berkeley County in Book 2724, page 116.

TMS #	276-05-01-015	Lot 200
	276-05-01-016	Lot 201
	276-05-01-017	Lot 202
	276-05-01-018	Lot 203
	276-05-01-019	Lot 204
	276-05-01-020	Lot 205

Plat Book 5287 Plat Page 028

Property Address: 124 Fairbanks Oak Allee

Berkeley County
Cynthia B. Forte
Register of Deeds
Moncks Corner 294616120

00080329 Vol: 6032 Pg: 47



53 2006 00080329

Instrument Number: 2006- 00080329

As

Mechanics Lien

Recorded On: October 09, 2006

Parties: DANIEL ISLAND RIVERSIDE DEVELOPERS LLC

To

AC CONSTRUCTION

Billable Pages: 1

Recorded By: CLAWSON & STAUBES

Num Of Pages: 6

Comment:

** Examined and Charged as Follows: **

Mechanics Lien 11.00

Recording Charge: 11.00

** THIS PAGE IS PART OF THE INSTRUMENT **

I hereby certify that the within and foregoing was recorded in the Clerk's Office For: Berkeley County, SC

File Information:

Document Number: 2006- 00080329

Receipt Number: 80780

Recorded Date/Time: October 09, 2006 11:08:56A

Book-Vol/Pg: Bk-R VI-6032 Pg-47

Cashier / Station: D. Smith / Cash Station 9

Record and Return To:

CLAWSON & STAUBES
126 SEVEN FARMS DRIVE
SUITE 200
CHARLESTON SC 29492



Cynthia B. Forte

Cynthia B Forte - Register of Deeds

STATE OF SOUTH CAROLINA
 COUNTY OF CHARLESTON
 AC CONSTRUCTION,

Plaintiff,

vs.

DANIEL ISLAND RIVERSIDE
 DEVELOPERS, LLC,

Defendant.

STATEMENT FOR MECHANIC'S LIEN

NOTICE IS HEREBY GIVEN that AC Construction, is due the sum Eighty Two Thousand Nine Hundred Thirty Five and 00/100 (\$82,935.00) Dollars from Carriage Hill and Associates, a statement of a just and true account of said indebtedness being attached hereto and made a part hereof.

That said debt is due to the Plaintiff for materials and labor furnished and actually used in the improvement of the real estate herein described and owned by Daniel Island Riverside Developers, LLC, by virtue of an agreement with, or by the consent of such owner(s) or a person or persons authorized by or rightly acting for said owner(s), or the debt is due because such improvements have been authorized by such owner(s). That as shown by the attached statement the Plaintiff furnished materials and labor for such buildings, structures, or improvements within ninety (90) days of the date hereon, on or after the 12th day of July 2006.

That by virtue thereof, by the service and filing of this Notice and Affidavit, pursuant to the provisions of the statutes in such cases made and provided, the undersigned has and claims a lien to secure the payment of the debt so due and the costs of enforcing said lien including a reasonable attorneys fees all as provided by law upon the buildings or

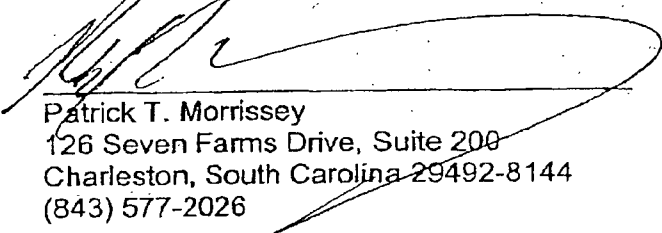
(5)

Jan 15 2007 2:44PM THE WOODY LHM FIRM

structures hereinafter mentioned and upon the following described real estate:

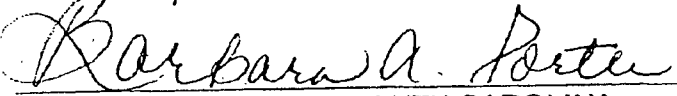
See Attached Exhibit "A"

CLAWSON & STAUBES, LLC


Patrick T. Morrissey
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
(843) 577-2026

ATTORNEYS FOR THE PLAINTIFF

SWORN AND SUBSCRIBED BEFORE
ME THIS 9 DAY OF October, 2006.

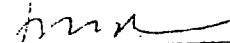

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 10/20/2015

VERIFICATION

PERSONALLY appeared before me Jennifer Ruiz, who, being duly sworn, deposes and says that she is the office manager at AC Construction, the Plaintiff, in the foregoing action; that she has read the foregoing Statement for Mechanic's Lien and the allegations contained therein are true and correct of her own knowledge, save and except those matters alleged upon information and belief, and as to those matters she believes the same to be true.

AC CONSTRUCTION

By 
Jennifer Ruiz

SWORN AND SUBSCRIBED BEFORE
ME THIS 15 DAY OF OCTOBER, 2006.


NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 7-16-2016

STATEMENT OF ACCOUNT

PERSONALLY appeared before me Jennifer Ruiz, who being duly sworn deposes and says that she is the office manager of AC Construction the Plaintiff, and authorized to make the within Statement of Account.

That the sum Eighty Two Thousand Nine Hundred Thirty Five and 00/100 (\$82,935.00) Dollars is currently due and owing upon the following invoice is currently due and owing along with any interest adjudged:

<u>INVOICE DATE</u>	<u>INVOICE NUMBER</u>	<u>AMOUNT</u>
10/28/05	21239	\$82,935.00
Total Balance Due and Owing		\$82,935.00

That the foregoing statement is a true and just account of all sums due and owing and no part thereof has been paid by discount or otherwise.

AC CONSTRUCTION

By

Jennifer Ruiz, its Office Manager

SWORN AND SUBSCRIBED BEFORE
ME THIS 17 DAY OF October, 2006.

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 7-16-2016

Exhibit "A"

All that certain Units 200, 201, 202, 203, 204 and 205, Building 2, The Oaks at River's Edge Horizontal Property Regime established by Master Deed dated January 6, 2006 and recorded January 10, 2006 in the ROD Office for Berkeley County in Book 5287, Page 028 and all Exhibits and Amendments thereto, if any.

TOGETHER WITH an undivided percentage interest in the common elements described in said Master Deed and the rights to any limited common elements assigned to said Unit by said Master Deed.

Being a portion of the property conveyed to the grantor herein by deed of Daniel Island Associates, L.L.C. dated May 1, 2002 and recorded in the Register of deeds for Berkeley County in Book 2724, page 116.

TMS #	276-05-01-015	Lot 200
	276-05-01-016	Lot 201
	276-05-01-017	Lot 202
	276-05-01-018	Lot 203
	276-05-01-019	Lot 204
	276-05-01-020	Lot 205

Plat Book 5287 Plat Page 028

Property Address: 124 Fairbanks Oak Allee

Nov 07 2006 3:28PM

THI

WOODY LAW FIRM

843 81 2511

P.2

Berkeley County
Cynthia B. Forte
Register of Deeds
Moncks Corner 294616120

00081301 Vol: 6051 Pg: 228



53 2006 00081301

Instrument Number: 2006-00081301

As
Cash Bond

Recorded On: October 16, 2006

Parties: DANIEL ISLAND RIVERSIDE DEVELOPERS LLC

To
AC CONSTRUCTION

Recorded By: WOODY LAW FIRM

Comment:

Billable Pages: 1

Num Of Pages: 5

** Examined and Charged as Follows: **

Cash Bond 11.00

Recording Charge: 11.00

** THIS PAGE IS PART OF THE INSTRUMENT **

I hereby certify that the within and foregoing was recorded in the Clerk's Office For: Berkeley County, SC

File Information:

Document Number: 2006-00081301

Receipt Number: 82310

Recorded Date/Time: October 16, 2006 04:34:08P

Book-Vol/Pg: Bk-R VI-6051 Pg-228

Cashier / Station: R McMakin / Cash Super Station 5

Record and Return To:

WOODY LAW FIRM

8310 RIVERS AVENUE

CHARLESTON SC 29418



Cynthia B. Forte

Cynthia B Forte - Register of Deeds

Jan 15 2007 2:45PM THE WOODY LAW FIRM

00081301 Vol: 6051 Pg: 229

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

AC CONSTRUCTION
Petitioner

VS

DANIEL ISLAND RIVERSIDE
DEVELOPERS, LLC
Defendant

BOND FOR DISCHARGE OF
MECHANICS LIEN

Bond No. 104806709

WHEREAS, a Notice and Certificate of Mechanic's Lien dated October 09, 2006
Filed in Book Number R, Volume 6032, Page 47, Instrument Number 2006-00080329 claiming a
mechanics lien in the amount of \$82,935.00 was filed with the Register of Deeds for Superior Court, State
of South Carolina and served on the above named defendant, and

WHEREAS, the Defendant desires to have the said Mechanic's Lien removed from the public
records of Superior Court, and

WHEREAS, DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC, is the Defendant on this
project and

WHEREAS, the South Carolina Mechanic's Lien statute, S.C. Code 29-5-110 permits the posting
of a bond equal to one and one-third times the lien amount in lieu of said lien.

NOW THEREFORE, we DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC, as principle
and Travelers Casualty and Surety Company of America, a surety company licensed to do business in
this State, as Surety, hereby become bound unto the said Plaintiff in the sum of One Hundred Ten
Thousand Five Hundred Eighty and 00/100— (\$110,580.00) dollars for the payment to said Plaintiff
of such sum as may be found to be due to said Plaintiff upon trial of an action to foreclose upon a
mechanic's lien. But when that obligation is paid and no further action can be pursued to enforce the
mechanic's lien, then this Bond shall become null and void. The filing of this Bond to discharge the
above referenced Mechanics Lien shall not be construed as an admission that the Plaintiff is entitled to a
Mechanic's Lien under the laws of the State of South Carolina.

The Woody Law Firm
207 Old Market Street, Suite 200
Clemson, South Carolina 29634

Nov 07 2006 3:28PM

THE WOODY LAW FIRM

84 81 2511

P. 4

00081301 Vol: 6051 Pg: 230

WHEREFORE, upon the filing of this bond, the lien filed against the property described as follows - See Exhibit "A" - shall be released and discharged.

Signed and sealed the 11th day of October, 2006

WITNESSES:

[Signature]
Stacy G. Zoolin

[Signature]
Gloria Loyd
[Signature]
Sofia Reis

DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC

by: [Signature]
its: member

Travelers Casualty and Surety
Company of America

by: [Signature]
its: Theresa J. Foley, Attorney-in-Fact

Jan 15 2007 2:45PM THE WOODY LAW FIRM

00081301 Vol: 6051 Ps: 231

Exhibit "A"

All that certain Units 200, 201, 202, 203, 204 and 205, Building 2, The Oaks at River's Edge Horizontal Property Regime established by Master Deed dated January 6, 2006 and recorded January 10, 2006 in the ROD Office for Berkeley County in Book 5287, Page 028 and all Exhibits and Amendments thereto, if any.

TOGETHER WITH an undivided percentage interest in the common elements described in said Master Deed and the rights to any limited common elements assigned to said Unit by said Master Deed.

Being a portion of the property conveyed to the grantor herein by deed of Daniel Island Associates, L.L.C. dated May 1, 2002 and recorded in the Register of deeds for Berkeley County in Book 2724, page 116.

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	276-05-01-018	Lot 203
	276-05-01-019	Lot 204
	276-05-01-020	Lot 205

Plat Book 5287 Plat Page 028

Property Address: 124 Fairbanks Oak Alley

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
Case No. 2007-CP-08-101

AC CONSTRUCTION)
Plaintiff,)

vs.)

DANIEL ISLAND RIVERSIDE)
DEVELOPERS, LLC, AND)
TRAVELERS CASUALTY AND)
SURETY COMPANY OF)
AMERICA)

Defendants.)

FILED
2007 APR 9 PM 1:48
CLERK OF COURT
JAMES C. HARRIS, JR.
CLERK OF COURT

ANSWER AND COUNTERCLAIM

The Defendant, Daniel Island Riverside Developers, LLC ("Daniel Island"),
responding to the Complaint herein, alleges as follows:

1. It denies each and every allegation of the complaint not hereinafter specifically
admitted.

**AS AND FOR A FIRST DEFENSE TO
PLAINTIFF FIRST AND SECOND
CAUSES OF ACTION**

2. As to the allegations of Paragraph 1 of the Complaint, it does not have sufficient
information to form a belief as to the allegations contained therein and therefore demands strict
proof thereof.

3. As to the allegations of Paragraph 2 of the Complaint, it admits the same.

4. As to the allegations of Paragraph 3 of the Complaint, it admits the same upon
information and belief.

5. As to the allegations of Paragraph 4 of the Complaint, it admits the same.

6. As to the allegations of Paragraph 5 of the Complaint, it admits the same.

7. As to the allegations of Paragraph 6 of the Complaint, it admits a contract was entered into between Plaintiff and Carriage Hill Associates of Charleston, LLC for the Plaintiff to provide labor and materials for the construction for improvements on real property owned by Daniel Island.

8. As to the allegations of Paragraph 7 of the Complaint, it admits, upon information and belief, that the work performed and the materials supplied by Plaintiff were pursuant to the contract it had entered into, Carriage Hill Associates of Charleston, LLC, however, it denies the labor and materials were furnished in accordance with the terms and conditions of the contract.. As to the remaining allegations of said Paragraph 7, said allegations are a legal conclusion and require no response.

9. As to the allegations of Paragraph 8 of the Complaint, it denies the labor and materials to be furnished by Plaintiff were furnished in accordance with the terms and conditions of the contract or that the work performed by Plaintiff was performed in a workman like manner.

10. As to the allegations of Paragraph 9 of the Complaint, it admits it made payments to Carriage Hill Associates of Charleston, LLC based on terms of its agreement with Carriage Hill Associates of Charleston, LLC, however, it denies it made any payments to Plaintiff.

11. As to the allegations of Paragraph 10 of the Complaint, it denies the same. Further, responding to said allegations, it denies Plaintiff had any right to file the Mechanic's Lien.

12. As to the allegations of Paragraph 11 of the Complaint, it admits the same.

13. As to the allegations of Paragraph 12 of the Complaint, it denies the same.

14. As to the allegations of Paragraph 13 of the Complaint, it denies the same.

15. As to the allegations of Paragraph 14 of the Complaint, it reasserts and realleges the allegations of Paragraphs 1 through 15, inclusive of this Answer and Counterclaims as fully and completely as if set forth herein verbatim.

16. As to the allegations of Paragraph 15 of the Complaint, it admits Plaintiff furnished framing and structural tie downs as alleged, however, it alleges, Plaintiff, in addition furnished labor in regard to the installation of the framing and structural tie downs. Further, it alleges the labor and materials furnished by Plaintiff were not in conformance with Plaintiff's obligations under the contract with Carriage Hill Associates of Charleston, LLC and therefore, were not beneficial to Daniel Island Riverside Developers, LLC.

17. As to the allegations of Paragraph 16 of the Complaint, it denies the same.

18. As to the allegations of Paragraph 17 of the Complaint, it denies the same.

AS AND FOR A SECOND DEFENSE TO THE FIRST CAUSE OF ACTION

It reasserts and realleges the allegations of paragraphs 1 through 18 of this Answer and Counterclaim as fully and completely as if set forth herein verbatim.

19. Pursuant to SC Code §29-5-90 any lien not served on the owner of the property and filed in the county records office within ninety (90) days of the date on which the party claiming the lien last provided labor or materials for the improvements on the property, the lien is dissolve.

20. Pursuant to SC Code §29-5-120: "Unless a suit for enforcing the lien is commenced, and notice of pendency of the action is filed, within six months after the person desiring to avail himself thereof ceases to labor on or furnish labor or material for such building or structures, the lien shall be dissolved."

21. According to the Statement of Account attached to the Mechanics Lien which the Plaintiff filed, the claim Plaintiff makes is based on an invoice dated October 28, 2005 a date that was more than ninety (90) days prior to the date of the filing of the Mechanic's Lien and more than six (6) months prior to the date of the filing of the captioned matter.

22. At the time of the filing and service of the Summons and Complaint in this matter no Lis Pendens was filed in the Court or served on the Defendants.

23. Plaintiff is not entitled to maintain the Mechanics Lien it filed nor is entitled to maintain an action to foreclose the Mechanics lien.

**AS AND FOR A THIRD DEFENSE
TO THE FIRST CAUSE OF ACTION**

It reasserts and realleges the allegations of paragraphs 1 through 23 of this Answer and Counterclaim as fully and completely as if set forth herein verbatim.

24. At the time Plaintiff filed and served its Summons and Complaint in this matter it failed to file or serve a Lis Pendens.

25. SC Code §29-5-120 (1976, as amended) requires in order to maintain an action to foreclose a Mechanics Lien, the Plaintiff must file and serve, not only the Summons and Complaint, but also, must file and serve a Lis Pendens.

26. Plaintiff is not entitled to maintain its claim for the foreclosure of Mechanic's Lien as it did not comply with the provisions of SC Code §29-5-120 (1976, as amended).

**AS AND FOR A FOURTH DEFENSE
TO THE FIRST CAUSE OF ACTION
AND A SECOND DEFENSE
TO THE SECOND CAUSE OF ACTION AND
BY WAY OF COUNTERCLAIM**

It reasserts and realleges the allegations of paragraphs 1 through 26 of this Answer and Counterclaim as fully and completely as if set forth herein verbatim.

27. Plaintiff entered into a contract with Carriage Hill Associates of Charleston, LLC to provide certain labor and materials in connection with a construction project for the benefit of the Defendant, Daniel Island Developers, LLC.

28. Plaintiff was to provide the materials and labor for framing of the buildings to be constructed, including the framing for the installation of doors and windows and it was to install the doors and windows at the buildings being constructed for Daniel Island Developers, LLC.

29. Plaintiff failed to properly construct the framing for the building, including the framing for the installation of the doors and windows or properly install the doors and windows according to the plans and specifications or in a workmanlike manner.

30. After Plaintiff left the job without having properly performing the work it was hired to do, it was necessary for Daniel Island Riverside Developers, LLC to hire another contractor to correct the defective work of Plaintiff.

31. The additional cost to correct the defective work of Plaintiff was approximately \$52,000.00.

32. According to the terms of the contract entered into by Plaintiff, Plaintiff is responsible for the cost of correcting the its defective work.

33. According to the terms of the contract entered into by Plaintiff, Plaintiff is responsible for any costs incurred by Daniel Island Riverside Developers, LLC in protecting its interest, including reasonable attorneys fees.

**AS AND FOR A FIFTH DEFENSE
TO THE FIRST CAUSE OF ACTION
AND BY WAY OF A SECOND COUNTERCLAIM**

It reasserts and realleges the allegations of paragraphs 1 through 33 of this Answer and Counterclaim as fully and completely as if set forth herein verbatim.

34. As a result of the filing of an improper Mechanic's Lien and Mechanic's Lien foreclosure action by Plaintiff, Daniel Island Riverside Developers, LLC has been forced to defend the against the lien and foreclosure action.

35. Pursuant to the terms of SC Code §25-9-10, a party who successfully defends against a Mechanic's Lien and Mechanic's Lien foreclosure action is entitled to recover the costs, including reasonable attorney's fees, incurred in doing so.

36. In order to protect its interest in the action brought by Plaintiff, Daniel Island Riverside Developers, LLC has been required to retain the services of Altman & Coker, LLC to represent it.

37. Plaintiff is responsible to reimburse Daniel Island Riverside Developers, LLC for the costs, including reasonable attorney's fees.

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

38. Plaintiff has failed to state facts sufficient to constitute a cause of action against Defendant pursuant to Rule 12 (b)(6), SCRCp, and Plaintiffs claim should be dismissed.

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

39. Plaintiff failed to mitigate its damages as required by law.

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

40. Plaintiffs claim may be barred by the doctrines of waiver, estoppel and/or laches.

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

41. Defendant asserts that some or all of the claims against them are barred by applicable statutes of limitation or statutes of repose.

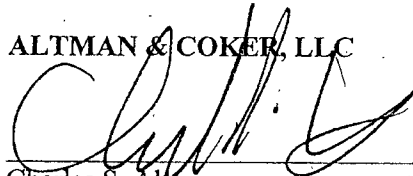
WHEREFORE, Daniel Island Riverside Developers, LLC prays as follows:

- (a) The mechanic's lien be dissolved and the mechanic's lien foreclosure action be dismissed with prejudice and the bond be terminated.
- (b) The complaint of the Plaintiff be dismissed with prejudice.
- (c) The Defendant, Daniel Island Riverside Developers, LLC be awarded a judgment against the Plaintiff in the amount of \$52,000.00 or such other amount as Daniel Island Riverside Developers, LLC may prove at trial.
- (d) The Defendant, Daniel Island Riverside Developers, LLC be awarded a judgment against the Plaintiff for attorneys' fees in an amount determined by the court and the cost of defending the Mechanics' Lien action.

(e) The Defendant, Daniel Island Riverside Developers, LLC be awarded a judgment against the Plaintiff for attorneys' fees in an amount determined by the court and the costs of this action pursuant to the terms of the Agreement.

(f) For such other and further relief as the court may deem just and proper.

ALTMAN & COKER, LLC



Charles S. Altman

Post Office Box 265

Charleston, South Carolina 29402

843 853 9907

843 853 9907

caltman@altmancoker.com

Attorneys for the Defendant, Daniel Island Riverside
Developers, LLC

April 4, 2007

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
AC CONSTRUCTION)
Plaintiff,)
vs.)
DANIEL ISLAND RIVERSIDE)
DEVELOPERS, LLC, AND)
TRAVELERS CASUALTY AND)
SURETY COMPANY OF)
AMERICA)
Defendant.)

IN THE COURT OF COMMON PLEAS
Case No. 2007-CP-08-101

FILED
07 NOV -1 PM 2:49
HARRY R. BOGARD
CLERK OF COURT
BERKELEY COUNTY, S.C.

ANSWER AND COUNTERCLAIM

The Defendant, Travelers Casualty and Surety Company of American ("Travelers"), responding to the Complaint herein, alleges as follows:

1. It denies each and every allegation of the complaint not hereinafter specifically admitted.

AS AND FOR A FIRST DEFENSE TO PLAINTIFF FIRST AND SECOND CAUSES OF ACTION

2. As to the allegations of Paragraph 1 of the Complaint, it does not have sufficient information to form a belief as to the allegations contained therein and therefore demands strict proof thereof.

3. As to the allegations of Paragraph 2 of the Complaint, it admits the same on information and belief.

4. As to the allegations of Paragraph 3 of the Complaint, it admits the same.

5. As to the allegations of Paragraph 4 of the Complaint, it admits the same.

6. As to the allegations of Paragraph 5 of the Complaint, it admits the same on information and belief.

7. As to the allegations of Paragraph 6 of the Complaint, it admits a contract was entered into between Plaintiff and Carriage Hill Associates of Charleston, LLC for the Plaintiff to provide labor and materials for the construction for improvements on real property owned by Daniel Island on information and belief.

8. As to the allegations of Paragraph 7 of the Complaint, it does not have sufficient information with which to form a belief as to the allegations contained therein and demands strict proof thereof.

9. As to the allegations of Paragraph 8 of the Complaint, it does not have sufficient information with which to form a belief as to the allegations contained therein and demands strict proof thereof.

10. As to the allegations of Paragraph 9 of the Complaint, it does not have information with which to form a belief as to the allegations contained therein and demands strict proof thereof.

11. As to the allegations of Paragraph 10 of the Complaint, it does not have sufficient information with which to form a belief as to the allegations contained therein and demands strict proof thereof.

12. As to the allegations of Paragraph 11 of the Complaint, it admits the same.

13. As to the allegations of Paragraph 12 of the Complaint, it does not have sufficient information with which to form a belief as to the allegations contained therein and demands strict proof thereof.

14. As to the allegations of Paragraph 13 of the Complaint, it does not have sufficient information with which to form a belief as to the allegations contained therein and demands strict proof thereof.

15. As to the allegations of Paragraph 14 of the Complaint, it reasserts and realleges the allegations of Paragraphs 1 through 14, inclusive of this Answer and Counterclaims as fully and completely as if set forth herein verbatim.

16. As to the allegations of Paragraph 15 of the Complaint, it does not have sufficient information with which to form a belief as to the allegations contained therein and demands strict proof thereof..

17. As to the allegations of Paragraph 16 of the Complaint, it does not have sufficient information with which to form a belief as to the allegations contained therein and demands strict proof thereof.

18. As to the allegations of Paragraph 17 of the Complaint, it does not have sufficient information with which to form a belief as to the allegations contained therein and demands strict proof thereof.

AS AND FOR A SECOND DEFENSE
TO THE FIRST CAUSE OF ACTION

It reasserts and realleges the allegations of paragraphs 1 through 18 of this Answer and Counterclaim as fully and completely as if set forth herein verbatim.

19. Pursuant to SC Code §29-5-90 any lien not served on the owner of the property and filed in the county records office within ninety (90) days of the date on which the party claiming the lien last provided labor or materials for the improvements on the property, the lien is dissolved.

20. Pursuant to SC Code §29-5-120: "Unless a suit for enforcing the lien is commenced, and notice of pendency of the action is filed, within six months after the person desiring to avail himself thereof ceases to labor on or furnish labor or material for such building or structures, the lien shall be dissolved."

21. According to the Statement of Account attached to the Mechanics Lien which the Plaintiff filed, the claim Plaintiff makes is based on an invoice dated October 28, 2005 a date that was more than ninety (90) days prior to the date of the filing of the Mechanic's Lien and more than six (6) months prior to the date of the filing of the captioned matter.

22. Plaintiff is not entitled to maintain the Mechanics Lien it filed nor is entitled to maintain an action to foreclose the Mechanics lien.

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

23. Plaintiff has failed to state facts sufficient to constitute a cause of action against Defendant pursuant to Rule 12 (b)(6), SCRPC, and Plaintiffs claim should be dismissed.

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

24. Plaintiff failed to mitigate its damages as required by law.

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

25. Plaintiffs claim may be barred by the doctrines of waiver, estoppel and/or laches.

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

26. Defendant asserts that some or all of the claims against them are barred by applicable statutes of limitation or statutes of repose.

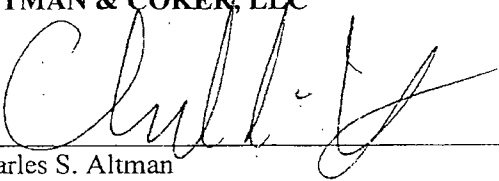
FOR A NINTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Contributory/Comparative Negligence)

27. Any damage suffered by the Plaintiff 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.

WHEREFORE, Travelers Casualty and Surety Company of America prays as follows:

- (a) The mechanic's lien be dissolved and the mechanic's lien foreclosure action be dismissed with prejudice.
- (b) The complaint of the Plaintiff be dismissed with prejudice.
- (c) For such other and further relief as the court may deem just and proper.

ALTMAN & COKER, LLC



Charles S. Altman
Post Office Box 265
Charleston, South Carolina 29402
843 853 9907
caltman@altmancoker.com
Attorneys for the Defendant Travelers Casualty and
Surety Company of America

October 31, 2007

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

GEOFFREY C. CIPKALA, and)
SAMUEL C. AGEE, as tenants-in-common)
of the common elements of The Oaks at)
River's Edge Horizontal Property Regime)
and on behalf of themselves and all other)
tenants-in-common,)

Plaintiffs,)

vs.)

DANIEL ISLAND RIVERSIDE)
DEVELOPERS, LLC; CARRIAGE HILL)
ASSOCIATES OF CHARLESTON, LLC;)
and CARRIAGE HILL ASSOCIATES,)
INC.,)

Defendants.)

IN THE COURT OF COMMON PLEAS
C/A NO. 08-CP-08-2714

**NOTICE OF MOTION AND MOTION
TO INTERVENE**

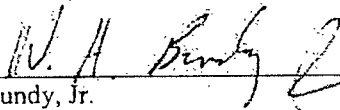
FILED
JUN 20 10 16 AM '08
CLERK OF COURT
BERKELEY COUNTY, SC

The Oaks at River's Edge Horizontal Property Regime, LLC, Bobby Reece, Joe Chiovarou, and Bill Jung, hereinafter the moving parties hereby move pursuant to Rule 24(a)(2) of the South Carolina Rules of Civil Procedure, to intervene in the above referenced action for the limited purpose, at this time, to present evidence and argue in opposition to the pending Motion to Certify a Class Action in this matter.

Upon information and belief, this action was filed approximately four months ago and during that period of time, the interveners attempted to persuade the Plaintiff herein to withdraw its application for Class Action certification. This litigation is in its very earliest stages and, in fact, upon information and belief, no discovery has taken place and little more has happened than responsive pleadings have been filed. The interveners would suffer prejudice if they were not allowed to intervene in as much as they constitute all of duly authorized board of directors of the

HOA and are owners of three of the thirty-six units in the project. If a Class Action is certified, the effect will be, among others, that the ongoing negotiations between the developer and the HOA to continue to remedy construction problems without a need for litigation will be prejudiced, and further, that duly elected board of directors will be prevented from performing its duties under the By-laws to maintain and repair the common elements. Furthermore, if a class is certified there will be less than 100% participation and, as such, a class certification in this matter will result in piecemeal litigation, a large waste of money and resources, and in protracted litigation and additional expenses to not only the interveners but the other homeowners.

SMITH, BUNDY, BYBEE AND BARNETT, P.C.



W.H. Bundy, Jr.
Post Office Box 1542
Mount Pleasant, SC 29465
Phone: 843-881-1623
Fax: 843-881-4406
Attorney for the Interveners, The Oaks at River's
Edge Board of Directors

January 20, 2009
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

) IN THE COURT OF COMMON PLEAS
)
) C/A NO.: 2009-CP-08-453

THE OAKS AT RIVERS EDGE PROPERTY)
OWNERS ASSOCIATION, INC., JOE)
CHIOVAROU, ROBERT REECE, and WILLIAM)
JUNG, in their capacity as board members of the)
Oaks at Rivers Edge Homeowners Association, Inc.)
and/or their capacity as Unit Owners)

Plaintiffs,

v.

GEOFFREY C. CIPKALA, and SAMUEL C.
AGEE

Defendants.

COMPLAINT

(Declaratory Judgment)
(Jury Trial Demanded on Causes
of Action Triable to a Jury)

Plaintiffs The Oaks at Rivers Edge Property Owners Association, Inc., Joe Chiovarou, Robert Reece, and William Jung, in their capacity as board members of the Oaks at Rivers Edge Property Owners Association, Inc. and as individual Unit Owners at The Oaks at Rivers Edge Horizontal Property Regime (collectively the "Association") bring this action pursuant to the South Carolina Declaratory Judgment Act, codified at S.C. Code Ann. § 15-53-10 et seq., seeking a declaration of rights between the Oaks Property Owners Association and Defendants Geoffrey C. Cipkala ("Cipkala") and Samuel C. Agee ("Agee").

The Association alleges as follows:

PARTIES

1. Plaintiff, The Oaks at Rivers Edge Property Owners Association, Inc. is a non-profit corporation organized and existing under the laws of South Carolina being an association of and limited to owners of the units located at the Oaks at Rivers Edge Horizontal Property Regime located in Berkeley County, State of South Carolina.

2. Plaintiffs Joe Chiovarou, Robert Reece, and William Jung are duly elected board members on the Board of the Association, they are each individual members of the Association and each are Unit Owners at the Oaks at Rivers Edge Horizontal Property Regime located in Berkeley County, State of South Carolina.

3. Defendants Geoffrey C. Cipkala and Samuel C. Agee are individuals who own a single Unit (less than 3% of the total 36 units) which make up the Oaks at Rivers Edge Horizontal Property Regime located in Berkeley County, state of South Carolina.

JURISDICTION AND VENUE

4. This Court has jurisdiction of the matter and over the parties, S.C. Ann. §§ 15-53-20 and 15-53-30; S.C. Code Ann. §§ 36-2-802 and 36-2-803; 42 U.S.C. § 1983.

5. Venue is proper in this County. S.C. Code Ann. §§ 15-7-10, -20, and -30.

BACKGROUND

6. The Defendants named herein purchased a unit located at the Oaks at Rivers Edge Horizontal Property Regime. That subsequent to Defendants purchase of their unit the Defendants participated in the election of Plaintiffs Chivarou, Reece, and Jung to the Board of the Association.

7. The deeds conveying each unit (including the defendants) incorporated the Master Deed of the Oaks at Rivers Edge Horizontal Property Regime, the By-Laws of said Regime and any amendments thereto.

8. Pursuant to the Master Deed, the "administration of the Regime will be the responsibility of the Association, which will be made up of all the Owners of Units in the Regime."

9. Pursuant to the Master Deed, the Association through its Board of Directors was authorized to enter into contractual arrangements for the administration and operation of the Regime.

10. Pursuant to the Master Deed, no exterior construction, modification or alteration of any nature whatsoever may take place in or upon the Regime without the express consent of the Board of Directors.

11. Pursuant to the Master Deed, the association must maintain the common area and perform all repairs and replacements. Moreover, the Association has the right and the duty to continue to perform all or any of its maintenance and repair responsibilities.

12. Pursuant to the Master Deed, only the Association has the right of entry into each of the individual units to perform repairs and maintenance.

13. That the responsibilities, duties, fiduciary or otherwise, and obligations of the Association and its Board of Directors are owed to each of the Unit Owners and each of the Unit Owners are protected by a Directors and Officers Insurance policy, mandated by the Master Deed, issued to the Association for any acts and/or omissions undertaken by the Association, by and through its Board of Directors, in the execution of their duties.

14. Each Unit Owner consents to, is bound by, and is legally on notice of, the duties, responsibilities, fiduciary or otherwise, operations, and legal obligations of the Association, by and through its duly elected Board of Directors, and the covenants, conditions and restrictions running with each individual unit. The Master Deed states:

"Each Owner will comply strictly with the By-Laws and with the Rules and Regulations of the Association, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Master Deed and in the deed to his Unit. Failure to comply with any of the same will be grounds for an action to recover sums due, for damages or injunctive relief, or for all three, maintainable by the Board of Directors on behalf of the Association or by any aggrieved Owner. In addition, the rights of any Owner or lessee of an Owner, their families, invitees or guests to use and to enjoy the Common Area may be suspended by the Board of Directors for continued violation of the Rules and Regulations. Failure by the Association or any Owner to enforce any of the foregoing will in no event be deemed a waiver of the right to do so thereafter."

15. In addition to the terms of the Master Deed, the By-Laws of the Regime state, in pertinent part, as follows:

"C. Powers and Duties.

3.17. Powers. The Board of Directors shall have all the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Master deed, these By-Laws, the Articles, and as provided by law. The Board of Directors may do or cause to be done all acts and things as are not directed by the Master Deed, Articles, these By-Laws, or South Carolina law to be done and exercised exclusively by the membership generally.

3.18. Duties. The duties of the Board shall include, without limitation:

- (a) preparing and adopting, in accordance with the Master Deed, an annual budget establishing each Owners share of the Common Expenses;
- (b) levying and collecting such assessments from the Owners, as set forth in the Master Deed;
- (c) providing for the operation, care, upkeep, and maintenance of those portions of the Condominium as provided in the Master Deed;
- (d) designating, hiring and dismissing the personnel necessary to carry out the rights and

responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies and materials to be used by such personnel in the performance of their duties;

(e) depositing all funds received on behalf of the Association in a bank depository which it shall approve and using such funds to operate the Association; provided, any reserve fund may be deposited, in the director's best judgment, in depositories other than banks;

(f) making and amending rules in accordance with the Master Deed;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, replacements and improvements to or alterations of the Common Elements in accordance with the Master Deed and these By-Laws including the maintenance of any roads, lakes, pond, retention ponds, and drainage ditches located on the Common Property;

(i) enforcing by legal means the provisions of the Master Deed, these By-Laws, and the rules of the Association and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board of Directors reasonably determines is, or, is likely to be construed as, inconsistent with applicable law, or in a case in which the Board of Directors reasonably determines that the Association's position is not strong enough to justify taking enforcement action;

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Master Deed, paying the cost thereof, and filing and adjusting claims to the Association;

(k) paying the cost of all services rendered to the Association;

(l) keeping books with detailed accounts of the receipts and expenditures of the Association;

(m) making available to any Owner, and the holder, insurer, and guarantors of any mortgage on any Unit, current copies of the Master Deed, the Articles of Incorporation, the Bylaws, rules and all other books, records and financial statements of the Association, as provided in Article 6, Section 6.4;

(n) permitting utility suppliers to use portions of the Common Elements reasonably necessary for the ongoing development or operation of the Condominium;

(o) granting utility or other easements upon, over or across the Common Elements; and

(p) indemnifying a director, officer or committee member or former director, officer or

committee member of the Association to the extent such indemnity is required by South Carolina law, the Articles of the Incorporation or the Master Deed."

16. That each of the individual Unit Owners relinquished, waived, consented to, and/or gave up those certain rights, obligations, and duties, more thoroughly outlined above, when they accepted their respective deeds to the units as those duties were assigned to the Association for the benefit of all Unit Owners and as necessitated by the reality of Horizontal Property. The Master Deed states:

"In accepting a deed to any Unit, the grantee will be deemed to have accepted and agreed to all terms and conditions contained in this Master Deed and the Exhibits, as amended, and further agrees to execute any and all documents reasonably requested by the Developer or the Association from time to time to expressly evidence the foregoing."

17. Subsequent to the Defendants' acceptance of their respective deeds to their individual units, the Association, by and through its duly elected Board, discovered certain construction defects located in and throughout the Regime property. Upon information and belief, these defects exist in the common elements and the limited common elements.

18. That the Association, by and through its duly elected Board, and pursuant to its duties, obligations, and responsibilities outlined in the Master Deed immediately proceeded to contact the Developer of the property and all other potentially culpable parties in order to have the defects repaired and/or replaced.

19. That in order to promptly effectuate the mandated repairs and to protect the legal rights of the Association and its individual Unit Owner members, as required by the Master Deed, the By-Laws, and South Carolina law, the Association, by and through its Board of Directors signed a contract fee agreement with an experienced construction attorney. The Association also contracted with experts to determine the full extent of the

defects and the necessary repairs. The Board of the Association was solely authorized by the Master Deed to contract on behalf of the Regime and the individual Unit Owners.

20. At that time, without resort to filing a legal action, the Association, by and through its Board of Directors, was dutifully facilitating the repair of the defects and protecting the rights and property of the individual Unit Owners as required by the Master Deed, the By-Laws and South Carolina law.

21. That at no time has it been alleged that the Association was not upholding its duty to pursue a proper recovery for and repair of the alleged construction defects.

22. That Defendant Cipkala was present at an Association meeting where the hiring of the construction attorney and the selected course of action relative to the repair of the construction defects was discussed.

23. Despite the Associations' prompt and reasonable execution of its prescribed duties and obligations, despite the Defendants acceptance of deeds and, thereby, their assignment of repair duties to the Association, and despite Defendant Cipkala's presence at the Association meeting where the ongoing remedies and repairs were discussed, the individual Defendants, Cipkala and Agee, filed an action (Civil Action No. 08-CP-08-2714) against the developer and the contractor(s)—the very developer and contractor(s) who were engaged in the repair of the Regime at the behest of the Association and the individual Unit Owners. A copy of said complaint is attached as exhibit A and incorporated by reference herein as if fully set forth.

24. That the individual Defendants actions have jeopardized and continue to jeopardize the Associations' facilitation of the repair of the Regime.

25. That the individual Defendants actions are in clear violation of the Master Deed, the By-Laws and the terms, conditions, covenants, and restrictions therein.

FOR A FIRST CAUSE OF ACTION
(Injunctive Relief as to all Defendants)

26. That Plaintiffs repeat and reallege Paragraphs 1 through 25, above, as if fully set forth herein verbatim.

27. That the Master Deed and the Bylaws of the Regime allow the Association to seek injunctive relief for the failure to comply with the Master Deed and the By-Laws, the covenants, conditions, and restrictions located therein and running with each individual Unit, by a Unit Owner.

28. That the actions of the Defendants, to wit: filing the legal action against the developer and the contractor(s), have violated the Master Deed and the By-Laws, the covenants, conditions, and restrictions located therein and running with each individual Unit, and have caused and continue to cause irreparable harm to the Plaintiffs.

29. That the Plaintiffs are without a remedy at law.

30. That the actions of the Defendants have and continue to damage the Plaintiffs.

31. Plaintiffs hereby seek a declaratory judgment that:

(1) That the Plaintiffs are entitled to an injunction pursuant to South Carolina Law as well as the Master Deed, By-Laws, and the covenants and restrictions located therein. That the injunction shall issue preventing the Defendants from maintaining their current suit against the Developer and Contractor(s) of the Regime (Civil Action No. 08-CP-08-2714).

FOR A SECOND CAUSE OF ACTION

(Violation of the Master Deed, By-Laws and the covenants and restrictions located therein as against all Defendants)

32. That Plaintiffs repeat and reallege Paragraphs 1 through 32, above, as if fully set forth herein verbatim.

33. That the Defendants owed a contractual duty under the Master Deed, By-Laws, and the covenants and restrictions contained therein to the Association, and all remaining 35 unit owners, to allow and permit and/or refrain from interfering with or preventing the Board from performing its management duties as aforesaid. That the Defendants' have breached said contractual duties owed to the plaintiffs as well as the remaining 32 unit owners, by *inter alia* filing and prosecuting the claims outlined in the complaint, exhibit A.

33. That the Defendants actions, more fully described above, have proximately caused damage to the Plaintiffs and continue to proximately cause damage to the Plaintiffs in one or more of the following particulars, to wit:

- (1) Hinder and interfere with the Boards ability to have the construction defects repaired at the least cost to the unit owners;
- (2) Deprive Plaintiffs and the remaining unit owners of the benefits arising out of potential alternate solutions with the developer, not requiring litigation and;
- (3) Deprive Plaintiffs and the remaining unit owners of the benefits of the attorney and experts employed by the Board;
- (4) Cause the Association to expend funds fees to bring this action; and
- (5) Other damages that continue to become apparent.

34. That each of the aforementioned damages are recoverable under the Master Deed;

35. Plaintiffs hereby seek a declaratory judgment that:

- (1) The Plaintiffs are entitled to damages in an amount to be shown at trial;
- (2) Plaintiffs are entitled to attorneys fees; and
- (3) That Plaintiffs are entitled to all other relief that the Court deems just and proper.

WHEREFORE, Plaintiffs pray for judgment against Defendants declaring:

- (1) That the Plaintiffs are entitled to an injunction pursuant to South Carolina Law as well as the Master Deed, By-Laws, and the covenants and restrictions located therein. That the injunction shall issue preventing the Defendants from maintaining their current suit against the Developer and Contractor(s) of the Regime (Civil Action No. 08-CP-08-2714);
- (2) The Plaintiffs are entitled to damages in an amount to be shown at trial;
- (3) Plaintiffs are entitled to attorneys fees; and
- (4) That Plaintiffs are entitled to all other relief that the Court deems just and proper.

[signature page follows]

SMITH, BUNDY, BYBEE & BARNETT, P.C.



W. F. Bundy, Jr., Esquire
M. Brent McDonald, Esquire
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
Telephone: (843) 881-1623
Attorneys for the Plaintiffs

Mt. Pleasant, South Carolina
February 9, 2009

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) C/A NO. 08-CP-08-2714

GEOFFREY C. CIPKALA, and
SAMUEL C. AGEE, as tenants-in-common
of the common elements of The Oaks at
River's Edge Horizontal Property Regime
and on behalf of themselves and all other
tenants-in-common,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE
DEVELOPERS, LLC; CARRIAGE HILL
ASSOCIATES OF CHARLESTON, LLC; and
CARRIAGE HILL ASSOCIATES, INC.,

Defendants.

AMENDED SUMMONS

Negligence, Breach of Warranty,
Breach of Fiduciary Duty,
Unfair Trade Practices

(Class Action Certification requested
pursuant to SCRCP, Rule 23(a))

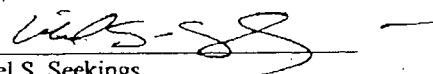
(Jury Trial Demanded)

TO: THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Amended
Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of
your Answer to the said Amended Complaint on the subscribers, at their offices, 92 Broad Street,
Charleston, South Carolina, 29401, within thirty (30) days after the service hereof, exclusive of the
day of such service. If you fail to do so, judgment by default will be taken against you for the relief
demanded in the Amended Complaint.



LEATH, BOUCH, CRAWFORD & von KELLER, LLP

By: 

Michael S. Seekings
92 Broad Street
P.O. Box 59
Charleston, SC 29402
(843) 937-8811
(843) 937-0606 facsimile

Attorneys for the Plaintiffs

Charleston, South Carolina

Dated: December 10, 2008

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) C/A NO. 08-CP-08-2714

GEOFFREY C. CIPKALA, and)
SAMUEL C. AGEE, as tenants-in-common)
of the common elements of The Oaks at)
River's Edge Horizontal Property Regime)
and on behalf of themselves and all other)
tenants-in-common,)

Plaintiffs,)

vs.)

DANIEL ISLAND RIVERSIDE)
DEVELOPERS, LLC; CARRIAGE HILL)
ASSOCIATES OF CHARLESTON, LLC; and)
CARRIAGE HILL ASSOCIATES, INC.)

Defendants.)

AMENDED COMPLAINT

**Negligence, Breach of Warranty,
Breach of Fiduciary Duty,
Unfair Trade Practices**

**(Class Action Certification requested
pursuant to SCRPC, Rule 23(a))**

(Jury Trial Demanded)

The Plaintiffs, by and through their undersigned counsel, bring this Action individually and pursuant to Rule 23(a) of the South Carolina Rules of Civil Procedure as tenants-in-common on behalf of themselves and as representatives for all other tenants-in-common of the common elements of The Oaks at River's Edge Horizontal Property Regime, and allege and show unto the Honorable Court as follows:

FACTUAL ALLEGATIONS

1. The Plaintiffs, Geoffrey C. Cipkala and Samuel C. Agee, are unit owners in The Oaks at River's Edge condominiums.
2. Pursuant to the Master Deed of the Oaks at River's Edge Horizontal Property Regime ("Master Deed") dated January 6, 2006, and filed in Volume 5287, Page 29, of the office

of the Register of Deeds for Berkeley County, South Carolina, individual condominium unit owners have exclusive ownership and possession of their units.

3. The Master Deed provides in Section 3.4 that the common elements of the Oaks at River's Edge condominiums are owned by all unit owners as tenants-in-common. Section 3.4(b) of the Master Deed further provides that the percentage interest in the common areas cannot be separated from the unit to which it appertains and will be automatically conveyed or encumbered with the unit even though such percentage interest is not expressly mentioned or described in the deed or other instruments.

4. Defendant, Daniel Island Riverside Developers, LLC, 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 the developer and seller of the condominium units at The Oaks at River's Edge and at all times have been and are in control of The Oaks at River's Edge Property Owners Association, Inc.

5. As such, this Defendant, Daniel Island Riverside Developers, LLC, (hereinafter referred to as "Developer"), commenced to market the condominiums as a luxury condominium development and developed and sold the individual condominium units to, among others, the Plaintiffs in this action, and are continuing to market and sell units at The Oaks at River's Edge, despite the fact that this Defendant has been put on notice of numerous construction and design defects of the subject building, and without disclosing these defects to new homeowners.

6. The Developer's representatives drafted and filed the Master Deed dated January 6, 2006, and all amendments thereto.

7. From the time the Oaks at River's Edge Property Owners Association was formed and up until recently, the Developer controlled the Board of Directors through its appointment

of the members of the Board.

8. Defendant, Carriage Hill Associates of Charleston, LLC, (hereinafter "Carriage Hill") is, upon information and belief, a corporation organized and existing under the laws of the State of South Carolina and is authorized to conduct business in this State. Carriage Hill was the general contractor of The Oaks at River's Edge Condominiums and was responsible for the proper construction of this project in strict accordance with the Contract documents and with all applicable building codes and within industry standards of good and workmanlike practice. Carriage Hill Associates of Charleston, LLC, was at all times acting as agent of Defendant Carriage Hill Associates, Inc. which is, upon information and belief, a corporation organized and existing under the laws of the State of New York and is authorized to conduct business in the State of South Carolina through its affiliate, Carriage Hill Associates of Charleston, LLC.

9. The class of Plaintiffs consists of all persons, corporations, partnerships, unincorporated associations or other entities that own, in whole or in part, any unit in the buildings as tenants-in-common of the common elements, having indivisible ownership of the common elements.

10. This Court has jurisdiction over the parties and subject matters hereto and the allegations out of which this action arises involve the development, construction, repair and sale of units of the buildings at issue in the County of Berkeley, State of South Carolina.

CLASS ACTION ALLEGATIONS

11. Plaintiffs, as representatives of the Class defined herein pursuant to Rule 23(a) of the South Carolina Rules of Civil Procedure, seek to recover monetary damages from the Defendants for breaches of fiduciary duties, negligence, breach of express and implied

warranties, unfair trade practices, with respect to their duties as a developer in the development, sale of administration, care, and maintenance and/or repair of the buildings and units at issue.

12. As described in Paragraph 9 above, the class of Plaintiffs consists of individuals, corporations, partnerships, unincorporated associates or other entities that currently or in the future will own, in whole or in part, any unit in the buildings as tenants-in-common of the common elements (hereinafter "Class"), having indivisible ownership of the common elements.

13. The Class does not include any former owner of a unit in the Regime.

14. The Class is sufficiently numerous that joinder of all members is impractical, and unnecessary in light of indivisible common ownership of the common elements.

15. Plaintiffs, Geoffrey C. Cipkala and Samuel C. Agee, will fairly and adequately protect the interests of the Class as Class representatives. The interests of the Class representative are coincident with, and not antagonistic to, those of the other Class members and Plaintiffs are represented by experienced and able counsel.

16. There are questions of law and fact common to the Class. Common questions of law include the liability of Defendants for, among other things as more particularly described below, negligence, breach of warranties, unfair trade practices and whether these wrongful acts or omissions of all of the Defendants caused or will cause the Class to suffer damages.

17. Plaintiffs' claims are typical of the Class members' claims and derive from a common nucleus of operative facts in that the Defendants, at all times relevant, are or were either charged with duties as a developer and/or in the sale and disclosure of conditions and/or repair of the buildings and units at issue. Each Class member has been or will be similarly injured by the Defendants' wrongful acts or omissions in the development, sale, and/or repair of the buildings

and units at issue and the interests and rights of the members, such that the interest of the Plaintiffs, as Class representatives, are consistent with those of the members of the Class.

18. Plaintiffs, for the class claim pursuant to Rule 23(a) of the South Carolina Rules of Civil Procedure as Class members, envision no unusual difficulty in the management of this action as a class action.

19. Certification of this action as a class action under Rule 23(a) of the South Carolina Rules of Civil Procedure is appropriate.

FACTUAL ALLEGATIONS

20. The Oaks at River's Edge, consists of six, four-story condominium buildings with ground level parking. The exteriors are finished with stucco and brick veneer. Due to water intrusion/leaking problems experienced by several homeowners, an engineering investigation was performed on the subject buildings to determine all construction deficiencies and/or unsatisfactory performance conditions in the exterior cladding or exterior wall components which would lead to this water intrusion and deterioration of the exterior wall envelopes.

21. By the investigation of the subject buildings and subsequent report provided by an engineer, the homeowners and/or Plaintiffs learned that the subject buildings have been deficiently designed and have significant construction defects, particularly the stucco cladding system which was improperly installed and will have to be completely removed and replaced. In addition, the engineer noted other construction, design and stucco deficiencies to the subject buildings, including, but not limited to, the following:

- (a) Improper stucco installation in that no mechanism for weep had been installed at any location in the four-story wall, which is a violation of Industry Standard ASTM C926 and ASTM C1063;

- (b) Improper and/or no installation of sealant joints;
- (c) No head flashings at any of the window or door installations;
- (d) Improper control joint installation around windows;
- (e) Cracking at window corners due to lack of proper stress relief which will promote water intrusion;
- (f) Improper installation and intersection of the single ply roof membrane with the roof eave and sidewall;
- (g) Lack of flashing or weep screed at any window head location within the stucco system;
- (h) Inadequate spacing and installation of control joints;
- (i) Improper installation of all of the exterior architectural trim at the sill of windows which will promote water intrusion;
- (j) Improper installation of the exterior cladding system by evidence of staining and damage;
- (k) Improper construction of the guardrails, handrails and balusters on the balconies which have evidence of deterioration;
- (l) Improper material selection of the guardrails, handrails and balusters on the balconies;
- (m) Improper installation of the exterior cladding that is not in accordance with the IBC and code referenced industry standards;
- (n) Water intrusion damage resulting from improper installation of the exterior cladding; and

- (o) Deterioration of the subject buildings due to water intrusion from the failed Exterior Cladding System.

22. As a direct and proximate result and consequence of the numerous stucco installation, construction and design problems and defects as noted above, the Plaintiffs have and will continue to spend substantial sums of money for the repairs and reconstruction of their condominium units and will be subject to loss of use, enjoyment, and depreciation of value of property.

23. The water damage to common elements and condominium units is a result of defects and deficiencies in the design and construction of the Oaks at River's Edge, specifically including, but not limited to, the following:

- (a) Lack of weep screed or weeping mechanism along the stucco wall bases at the perimeter of the balcony slabs as required by building codes and proper construction practices;
- (b) Lack of weeps at window heads;
- (c) Failure of weep or water management systems to manage seepage water, which gets past the façade cladding, has resulted in wetting of exterior sheathing behind moisture barriers and into the wall cavity and metal framework within the wall cavity;
- (d) Improper splicing at roof edges;
- (e) Improper intersection of roof membrane with exterior walls;
- (f) Inadequate spacing and installation of control joints;
- (g) Improper installation of sealants around windows, doors, and cladding terminations;

- (h) Lack of head and sill flashing;
- (i) Improper installation of control joint accessories;
- (j) Failure to install proper sealant joints around penetrations in exterior cladding;

24. Plaintiffs are informed and believe that the exterior wall sheathing was observed to be in an advanced stage of deterioration and not in compliance with the building codes and standards which were applicable to this project at the time of design and construction and will have to be replaced to comply with current building codes and standards applicable to this project.

25. In addition to the construction defects, the Defendants, Daniel Island Riverside Developers, LLC, in their capacity as head of The Oaks at River's Edge Horizontal Property Owners Association, Inc. have:

- (a) Failed and omitted to act in a fiduciary capacity towards the owners of the condominium units;
- (b) Negligently maintained the property;
- (c) Failed to act as competent managers;
- (d) Acted at all times in their own interests and in contravention of their fiduciary duty towards the condominium unit owners;
- (e) Covered up and concealed defects and damage from the unit owners, and
- (f) Acted in violation of all fiduciary duty concepts.

26. Due to the actions of Daniel Island Riverside Developers, LLC, as stated above, the Plaintiffs are facing significant damage repairs, deteriorating property, significant immediate expenses for investigation, destructive testing, and an analysis of construction defects, repairs defects, damages, rot deterioration, and a generally overall dilapidated condition which is the direct

and proximate result of defective construction, management, maintenance, and abandonment of generally accepted fiduciary principles on the part of Daniel Island Riverside Developers, LLC.

FOR A FIRST CAUSE OF ACTION
(Negligence-Developer)

27. The Plaintiffs repeat and reallege their allegations in Paragraphs 1 through 26 set forth above as if set forth herein verbatim.

28. The damages and injuries caused to the Plaintiffs, their property, and derivatively on behalf of The Oaks at River's Edge Property Owners Association, Inc., are the direct and proximate result of the negligence, willfulness, wantonness, carelessness and recklessness of the Defendant Daniel Island Riverside Developers, LLC, in one or more of the following particulars to wit:

- (a) In their capacity as developer in defectively overseeing the construction of the subject Buildings;
- (b) In failing to inspect, repair and maintain the Buildings;
- (c) In negligently effecting repairs to the Buildings;
- (d) In failing and omitting to exercise that degree of care and caution of a reasonably prudent manager of a homeowners association;
- (e) In failing and omitting to retain proper experts and to effectively inspect and repair the premises; and
- (f) In placing their interests ahead of the owners and thereby, breaching their fiduciary duty.

29. As a direct and proximate result of the above stated negligent actions on behalf of Defendant Daniel Island Riverside Developers, LLC, the Plaintiffs will have to spend

substantial sums of money for the repairs and reconstruction of their condominium units and will be subject to loss of use, enjoyment, and depreciation of value of property.

FOR A SECOND CAUSE OF ACTION
(Negligence/General Contractor)

30. The Plaintiffs repeat and reallege their allegations in Paragraphs 1 through 29 set forth above as if set forth herein verbatim.

31. The construction of the subject buildings by Defendant Carriage Hill deviated from the normal standards of good and workmanlike practice in the construction field in the following particulars, to-wit:

- (a) In failing and omitting to construct the subject Buildings in conformity with the plans and specifications and construction documents;
- (b) In failing and omitting to construct the subject Buildings pursuant to good and workmanlike construction practices;
- (c) In failing and omitting to properly install the exterior cladding system on the subject Buildings to ensure that water intrusion would not occur;
- (d) In failing and omitting to install proper flashing throughout the subject Buildings;
- (e) In failing and omitting to properly seal the subject Buildings' exterior to prevent water infiltration and intrusion;
- (f) In failing to provide a weather-resistant envelope; and
- (g) By additional improper construction practices as outlined above.

32. As a direct, foreseeable and proximate result of Defendant Carriage Hill's

negligence, the Plaintiffs have suffered damages in the amount equal to the extraordinary, repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, diminution in value of the condominium units and loss of use.

FOR A THIRD CAUSE OF ACTION
(Negligence Per Se/General Contractor)

33. Plaintiffs reassert and reallege the allegations contained in the above paragraphs 1 through 32 set forth above as if set forth herein verbatim.

34. By undertaking construction work on the Oaks at River's Edge, Defendant Carriage Hill owed a duty to Plaintiffs to use reasonable care during the performance of their work on the building and to perform their scope of work in accordance with all applicable building codes, applicable industry standards, and to ensure that construction conformed to the design documents when such documents reflected good design practice, conformed to the applicable standard of care, and conformed to industry standards.

35. Defendant Carriage Hill breached the duty of care it owed to Plaintiffs and members of the class.

36. Defendant Carriage Hill's work violated the applicable building codes in effect at the time of construction, specifically including, but not limited to the following:

- (a) Failure to install weep mechanisms;
- (b) Failure to furnish and install exterior windows and doors which were in compliance with all applicable building codes and industry standards;
- (c) Failure to install head flashings;
- (d) Failure to properly install exterior cladding; and

(e) Such additional building code violations which may be discovered during ongoing investigations of design and construction deficiencies.

37. The violation of the building codes by the general contractor and subcontractors constitutes negligence per se.

38. The construction deficiencies stated above have and will continue to damage the property of the Plaintiffs and the construction work of other contractors and/or subcontractors.

39. As a direct and proximate result of the contractors' violation of the applicable building codes, the Plaintiffs have suffered damages in that they have and in the future will be forced to expend funds to repair damage that has already occurred, are subject to future assessments from the Oaks at River's Edge Property Owners Association, Inc. to pay for professional fees to investigate the full extent of the problems, to design remediation plans and specifications to correct the design and construction deficiencies and to implement the remediation plan to their units and to the building.

40. Additionally, the Plaintiffs will suffer loss of use of their condominium units, the interference with the use and enjoyment of their units during the time in which construction repairs are undertaken to their individual units and to the common elements of the Oaks at River's Edge, and diminution in the value of their property.

41. As a result of the negligence per se of Defendant Carriage Hill, the Plaintiffs are entitled to a judgment against said Defendants in an amount to be determined at trial.

**FOR A FOURTH CAUSE OF ACTION
(Breach of Implied Warranty of Habitability/
Developer and General Contractor)**

42. The Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 41 as set forth above as if set forth herein verbatim.

43. The Defendants impliedly warranted as a matter of law that the subject Buildings at The Oaks at River's Edge which they developed and built was habitable and fit for its intended use.

44. That this implied warranty was breached by the Defendants in that the work performed by Defendant Carriage Hill was in a manner below ordinary workmanship and the subject buildings at The Oaks at River's Edge were neither habitable nor fit for their intended use causing damage to Plaintiffs.

45. As a direct, foreseeable and proximate result of the Defendants breach of implied warranty of habitability, the Plaintiffs have suffered physical damage to their condominium units as well as loss of use and diminution in value.

FOR A FIFTH CAUSE OF ACTION
(Breach of Implied Warranty of Good and Workmanlike Service/General Contractor)

46. The Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 45 as set forth above as if set forth herein verbatim.

47. In undertaking to complete its construction work on the subject buildings at The Oaks at River's Edge, the Defendant Carriage Hill impliedly warranted that all work would be of good quality, free from faults and defects, of good and workmanlike quality, and in conformance with the contract documents and industry standards.

48. That this implied warranty of good and workmanlike service was breached by Defendant Carriage Hill in that the work was performed in a manner below ordinary workmanlike quality causing damage to the Plaintiffs.

49. That as a direct and proximate result of the breach of implied warranty of good and workmanlike service, the Plaintiffs have suffered physical damage to their condominium units as

FOR A SIXTH CAUSE OF ACTION
(Breach of Express Warranty/General Contractor)

50. Plaintiffs and the members of the class reassert and reallege the allegations contained in the above paragraphs 1 through 49.

51. Defendant Carriage Hill, pursuant to the Section 3.5.1 of the General Conditions of its contract with Developer to serve as the general contractor for the construction of the Oaks at River's Edge, expressly warranted that its work would be of good quality, free from defects, and would conform to the contract documents.

52. As the ultimate and foreseeable owners of the Oaks at River's Edge condominium units, the Plaintiffs are beneficiaries of the express warranties provided by these Defendants.

53. This Defendant has breached its express warranties by failing to design and construct the Oaks at River's Edge such that it would be free from defects and in compliance with the applicable building codes and industry standards.

54. Because of the Defendant's breach of its express warranties the Plaintiffs have proximately suffered damages in that they have and in the future will be forced to expend funds to repair damage that has already occurred, are subject to future assessments from the Oaks at River's Edge Property Owners Association, Inc. to pay for professional fees to investigate the full extent of the problems, to design remediation plans and specifications to correct the design and construction deficiencies and to implement the remediation plan to their units and to the building.

55. Additionally, the Plaintiffs will suffer loss of use of their condominium units, the interference with the use and enjoyment of their units during the time in which construction repairs are undertaken to their individual units and to the common elements of the Oaks at River's Edge, and diminution in the value of their property.

56. The Plaintiffs are entitled to a judgment against this Defendant for the breach of its express warranties for an amount to be proven at trial as well as loss of use and diminution in value.

FOR A SEVENTH CAUSE OF ACTION
(Breach of Fiduciary Duty-Developer)

57. The Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 56 as set forth above as if set forth herein verbatim.

58. In their capacity as developer of the condominium project at The Oaks at River's Edge and as head of The Oaks at River's Edge Property Owners Association, Inc., the Defendant Daniel Island Riverside Developers, LLC, as a matter of law, undertook a fiduciary duty towards the Plaintiffs and The Oaks at River's Edge Property Owners Association, Inc.

59. The Defendant, in its capacity set forth above, breached their duty as fiduciaries towards the Plaintiffs and towards The Oaks at River's Edge Property Owners Association, Inc. in failing to act in a reasonable prudent manner, and in placing their interests ahead of the interests of those to whom they owed a clear fiduciary duty. Rather than acting in the highest possible degree of good faith and fair dealing concerning the Plaintiffs and The Oaks at River's Edge Property Owners Association, Inc., this Defendant acted exactly to the contrary in acting in their own interests at all times, in all aspects of the development and sales of the condominium units, maintenance, and showed lack of concern of the construction defects and failed to disclose these construction defects to new homeowners.

60. As a direct and proximate result of these breaches of fiduciary duty, the Plaintiffs

and The Oaks at River's Edge Property Owners Association, Inc. have suffered damages in the amount equal to the extraordinary, repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, diminution in value of the condominium units and loss of use.

FOR AN EIGHTH CAUSE OF ACTION
(Unfair Trade Practices/Developer)

61. The Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 60 as set forth above as if repeated verbatim herein.

62. The Plaintiffs and Daniel Island Riverside Developers, LLC, are "persons" within the meaning of S.C. Code § 39-5-10(a).

63. Daniel Island Riverside Developers, LLC, by developing, selling and marketing the condominium units at The Oaks at River's Edge, were engaged in commerce within the meaning of S.C. Code § 39-5-10(b).

64. Daniel Island Riverside Developers, LLC's actions, described hereinabove, constitute unfair and deceptive practices within the meaning of S.C. Code § 39-5-20(a).

65. Daniel Island Riverside Developers, LLC's acts are capable of repetition, and, upon information and belief, have been repeated.

66. Daniel Island Riverside Developers, LLC's conduct affects the public interest of South Carolina.

67. Daniel Island Riverside Developers, LLC, knew, or reasonably should have known, that their conduct violated the Unfair Trade Practices Act.

68. As a direct foreseeable and proximate result of Daniel Island Riverside Developers, LLC's unfair and deceptive practices, the Plaintiffs have suffered an ascertainable

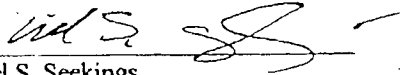
loss of money and property.

69. The Plaintiffs are entitled to recover their actual damages, which amount should be trebled, together with interest and attorney's fees.

WHEREFORE, the Plaintiffs pray that this Court issue an Order granting judgment for the Plaintiffs against the Defendants, jointly and severally, for the following relief:

- (a) for Class Certification;
- (b) for actual damages in an amount to be proven at trial;
- (c) for trebled damages under S.C. Code § 39-5-110;
- (d) for punitive damages;
- (e) for prejudgment and postjudgment interest on Plaintiffs' damages,
- (f) for attorney's fees and costs; and
- (g) for such other and further relief as this Court may deem just and proper.

LEATH, BOUCH, CRAWFORD & von KELLER, LLP

By: 

Michael S. Seekings

92 Broad Street

P.O. Box 59

Charleston, SC 29402

(843) 937-8811

(843) 937-0606 facsimile

Attorneys for the Plaintiffs

Charleston, South Carolina

Dated: December 8, 2008

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NUMBER: 08-CP-08-2714

GEOFFREY C. CIPKALA, and)
SAMUEL C. AGEE, as tenants in)
common of the common elements)
of The Oaks at River's Edge)
Horizontal Property Regime and on)
behalf of themselves and all other)
tenants in common,)

Plaintiffs,)

vs.)

DANIEL ISLAND RIVERSIDE)
DEVELOPERS, LLC, CARRIAGE)
HILL ASSOCIATES OF)
CHARLESTON, LLC and)
CARRIAGE HILL ASSOCIATES,)
INC.,)

Defendants.)

FILED
2009 FEB 20 11:10:02
BERKELEY COUNTY

ANSWER OF DEFENDANT DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC

The Defendant, Daniel Island Riverside Developers, LLC, by and through its undersigned counsel, answering the Amended Complaint herein alleges as follows. Said answer and allegations are made subject to Defendant's Motion to Dismiss or Stay filed concurrently herewith and the resolution of Defendant's Motion for Reconsideration filed January 30, 2009.

**FOR A FIRST DEFENSE
(SCRCP RULE 12(b)(6) - Failure to State a Claim)**

1. Pursuant to SCRCP Rule 12(b)(6), Defendant moves to dismiss the action, on the grounds that Plaintiffs have failed to state a cause of action upon which relief may be granted..

Page 1 of 10

FOR A SECOND DEFENSE
(Standing)

2. Defendant moves to dismiss Plaintiffs' Complaint on the grounds that Plaintiffs do not have the standing to bring the action, pursuant to the South Carolina Rules of Civil Procedure and the grounds set forth in *The Oaks at Rivers Edge POA, et al., v. Cipkala, et al.*, C.A. No. 09-CP-08-453.

FOR A THIRD DEFENSE
(General Denial)

3. Defendant denies each and every allegation within the Amended Complaint not herein admitted, modified, or explained.

4. Defendant admits the allegations contained in Paragraph 1.

5. Responding to the allegations contained in Paragraph 2, to the extent the allegations reference provisions of a document, said document speaks for itself.

6. Responding to the allegations contained in Paragraph 3, to the extent the allegations reference provisions of a document, said document speaks for itself.

7. Responding to the allegations contained in Paragraph 4, Defendant denies the allegations as stated. The Defendant 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. BY way of further response, Defendant admits it was the developer of the condominium units at The Oaks at Rivers Edge.

8. Responding to the allegations contained in Paragraph 5, Defendant denies the allegations as stated.

9. Responding to the allegations contained in Paragraph 6, Defendant admits attorney

Aubrey J. Woody, Jr., drafted and filed the Master Deed dated January 6, 2006. Defendant is without sufficient information to respond to the allegation relating to the filing of any amendments.

10. Responding to the allegations contained in Paragraph 7, Defendant denies the allegations as stated.

11. Responding to the allegations contained in Paragraph 8, the allegations refer to another Defendant and no response is required.

12. The allegations contained in Paragraph 9 are conclusions of law and require no response. To the extent a response is required, Defendant is without sufficient information to admit or deny the allegations. By way of further response, Defendant objects to any certification of class based on the allegations of this Complaint.

13. Defendant denies the allegations of Paragraph 10. By way of further response, Plaintiffs have failed to comply with the statutory requirements of S.C. Code Ann. § 40-59-840 and/or S.C. Code Ann. § 40-11-510.

14. To the extent the allegations of Paragraphs 11 through 69 inclusive refer to another Defendant, this Defendant is not required to respond. To the extent a response is necessary with regard to same, Defendant denies such allegations except as set forth specifically hereinbelow.

15. The allegations contained in Paragraph 11 are conclusions of law and require no response. To the extent a response is required, Defendant denies (a) it committed any breach of duty or warranty, (b) it was negligent and (c) it committed any violation of the Unfair Trade Practices Act. Defendant further denies the existence of a proper class and objects to any certification of the same.

16. The allegations contained in Paragraph 12 are conclusions of law and require no response. To the extent a response is required, Defendant is without sufficient information to admit

or deny the allegations.

17. Defendant is without sufficient information to admit or deny the allegations contained in Paragraph 13.

18. Defendant denies the allegations contained in Paragraph 14.

19. Defendant denies the allegations contained in Paragraph 15 and demand strict proof thereof.

20. Defendant denies the allegations contained in Paragraph 16.

21. Defendant denies the allegations contained in Paragraph 17.

22. Defendant denies the allegation contained in Paragraph 18 and demands strict proof thereof.

23. Defendant denies the allegation contained in Paragraph 19 and objects to class certification.

24. Responding to Paragraph 20, Defendant denies the allegations as stated. The Oaks at River's Edge consists of six, three-story condominium units with ground level parking that are finished, in part, with stucco and brick veneer.

25. Defendant denies the allegations of Paragraph 20 as stated, and is further without sufficient information to admit or deny certain allegations contained in Paragraph 21(a) - (o) and demands strict proof thereof.

26. Defendant denies the allegations of Paragraph 22.

27. Defendant denies the allegations of Paragraph 23 as stated, and is further without sufficient information to admit or deny certain allegations contained in Paragraph 23(a) - (j) and demands strict proof thereof.

28. Defendant is without sufficient information to admit or deny the allegations

contained in Paragraph 24 and demands strict proof thereof.

29. Defendant denies the allegations contained in Paragraph 25. Defendant turned over control of the HOA in December 2006. At all times Defendant served as the head of the HOA it acted in a reasonable and prudent manner and did not breach the standard of care owed Plaintiffs.

30. Defendant denies the allegations contained in Paragraph 26.

31. Responding to the allegations of Paragraph 27, Defendant reasserts and realleges the allegations of Paragraphs 1 through 30 inclusive as though fully set forth herein.

32. Defendant denies the allegations contained in Paragraph 28.

33. Defendant denies the allegations of Paragraph 29.

34. The allegations in Paragraphs 30 to 32 require no response from Defendant as the allegations are directed to a Co-Defendant. To the extent a response is required, Defendant is without sufficient information to admit or deny the allegations.

35. The allegations in Paragraphs 33 to 41 require no response from Defendant as the allegations are directed to a Co-Defendant. To the extent a response is required, Defendant is without sufficient information to admit or deny the allegations.

36. Responding to the allegations of Paragraph 40, Defendant reasserts and realleges the allegations of Paragraphs 1 through 36 inclusive as though fully set forth herein.

37. The allegations contained in Paragraph 43 are conclusions of law and require no response from Defendant. To the extent a response is required, Defendant denies the allegations and demands strict proof thereof.

38. Defendant denies the allegations contained in Paragraph 44.

39. Defendant denies the allegations contained in Paragraph 45.

40. The allegations in Paragraph 46 through 49 require no response from Defendant as

the allegations are directed to a Co-Defendant. To the extent a response is required, Defendant is without sufficient information to admit or deny the allegations.

41. Responding to the allegations of Paragraph 50, Defendant reasserts and realleges the allegations of Paragraphs 1 through 40 inclusive as though fully set forth herein.

42. The allegations of Paragraph 51 through 56 are directed to another Defendant and as such no response from this defendant is required.

43. Responding to the allegations of Paragraph 57, Defendant reasserts and realleges the allegations of Paragraphs 1 through 42 inclusive as though fully set forth herein.

44. The allegations contained in Paragraph 58 are conclusions of law and require no response.

45. Defendant denies the allegations contained in Paragraph 59.

46. Defendant denies the allegation contained in Paragraph 60.

47. Responding to the allegations of Paragraph 61, Defendant reasserts and realleges the allegations of Paragraphs 1 through 46 inclusive as though fully set forth herein.

48. The allegations contained in Paragraph 62 are conclusions of law and require no response.

49. The allegations contained in Paragraph 63 are conclusions of law and require no response.

50. Defendant denies the allegations contained in Paragraph 64.

51. Defendant denies the allegations contained in Paragraph 65.

52. Defendant denies the allegations contained in Paragraph 66.

53. Defendant denies the allegations contained in Paragraph 67. Further responding, Defendant denies any of its conduct violated the Unfair Trade Practices Act.

54. Defendant denies the allegations contained in Paragraph 68.

55. Defendant denies the allegations contained in Paragraph 69.

**AS AND FOR A FOURTH DEFENSE
(Failure to Mitigate Damages)**

56. Upon information and belief, Plaintiffs left the condominium unit vacant for extended periods of time.

57. Due to the fact Plaintiffs left the condominium units were vacant, Plaintiffs failed to exercise reasonable care in the maintenance of the condominium units and failed to provide prompt notice to Defendant of any possible problem with the units.

58. Plaintiffs have failed to mitigate their alleged damages, the existence of which is specifically denied.

**AS AND FOR A FIFTH DEFENSE
(Comparative Negligence)**

59. Plaintiffs' negligence is greater than any alleged negligence of Defendant, the existence of which is specifically denied.

60. Plaintiffs' claims are barred by the doctrine of comparative negligence.

**AS AND FOR A SIXTH DEFENSE
(Waiver, Estoppel and Laches)**

61. Plaintiffs' claims are barred by the doctrines of waiver, estoppel and laches.

**AS AND FOR A SEVENTH DEFENSE
(Unclean Hands)**

62. Plaintiffs' claims are barred by the doctrine of unclean hands.

**AS AND FOR A EIGHTH DEFENSE
(Unconstitutionality of Punitive Damages)**

63. An award of punitive damages would violate the Fifth Amendment and the Due

Process and Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and Article 1, Section 3 of the South Carolina Constitution, in that there is no objective standard to gauge or limit the amount of punitive damages that can be awarded with sufficient instruction provided in determining the amount of punitive damages that should be awarded. Further, any award of punitive damages serving a compensatory function is inconsistent with due process guarantees; any award of punitive damages based upon the wealth of the Defendant violates due process and equal protection guarantees; the jury's unfettered power to award punitive damages in a discretionary amount completely lacks meaningful standards, is unconstitutionally vague, and is inconsistent with due process guarantees; and even if a standard governing the imposition of punitive damages exists, such "standard" is void for vagueness.

**AS AND FOR A NINTH DEFENSE
(Lack of Subject Matter Jurisdiction)**

64. S.C. Code Ann. § § 40-59-810 *et seq.* and 40-11-510 *et. seq.* require plaintiffs give notice they claim a construction defect, give a description of any claim(s) with reasonable detail sufficient to determine the general nature of the defect and a description of any results of the defect before bringing a suit.

65. Plaintiffs have failed to comply with the statutory requirements, therefore this Court lack subject matter jurisdiction over this case and it should be dismissed.

**AS AND FOR A TENTH DEFENSE
(Incorporation of Defenses Raised By Other Defendants)**

66. Defendant incorporates the defenses of any other defendants as they may be applicable to this Defendant.

AS AND FOR AN ELEVENTH DEFENSE
(Intervening Tortfeasor)

67. Any damages caused to Plaintiffs, which damages are denied, were caused by a Third Party.

AS AND FOR A TWELFTH DEFENSE
(Lack of Proximate Cause and Cause in Fact)

68. The acts of Defendant were not the proximate cause nor cause in fact of any damages suffered by Plaintiffs, which damages are denied.

AS AND FOR A THIRTEENTH DEFENSE
(Absence of Duty)

69. Defendant did not have a fiduciary duty to Plaintiffs.

AS AND FOR A FOURTEENTH DEFENSE
(Failure to Exhaust Statutory Remedies)

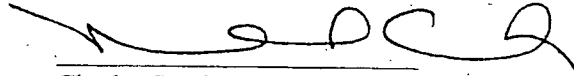
70. Plaintiffs failed to exhaust their statutory remedies by failing to comply with S.C. Code Ann. § § 40-59-810 *et seq.* and 40-11-510 *et. seq.*

AS AND FOR A FIFTEENTH DEFENSE
(Reservation of Right to Add Defenses)

71. Defendant reserves the right to allege additional defenses and additional facts and circumstances in support of its defenses as the facts become available.

[Remainder of page left intentionally blank]

WHEREFORE, having fully answered the Complaint of Plaintiffs, Defendant Daniel Island Riverside Developers LLC, prays this Court make a determination of the applicable law and facts of the case and enter such an order to include an award of attorneys fees and costs to Defendant, as the Court may deem just and equitable.



Charles S. Altman, Esquire
Meredith L. Coker
M. Wesley Meetze
Altman & Coker, LLC
P.O. Box 265
Charleston, SC 29402
Phone: 843 853 9907
Fax: 843 853 9838
Email: caltman@altmancoker.com

AND

Roy P. Maybank, Esquire
Amanda Maybank, Esquire
MAYBANK LAW FIRM, LLC
531 Savannah Highway
P.O. Box 12579
Charleston, SC 29422
P: (843) 766-8101
F: (843) 766-8102
Email: Roy@maybanklaw.com

February 19, 2009

Attorneys for Defendant Daniel Island
Riverside Developers, LLC

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NUMBER: 08-CP-08-2714

GEOFFREY C. CIPKALA, and)
SAMUEL C. AGEE, as tenants in)
common of the common elements)
of The Oaks at River's Edge)
Horizontal Property Regime and on)
behalf of themselves and all other)
tenants in common,)

Plaintiffs,)

vs.)

DANIEL ISLAND RIVERSIDE)
DEVELOPERS, LLC, CARRIAGE)
HILL ASSOCIATES OF)
CHARLESTON, LLC and)
CARRIAGE HILL ASSOCIATES,)
INC.,)

Defendants.)

FILED
2009 FEB 20 PM 12:02
CLERK OF COURT, SC
BERKELEY COUNTY, SC

ANSWER OF DEFENDANT CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC

The Defendant, Carriage Hill Associates of Charleston, LLC, by and through its undersigned counsel, answering the Amended Complaint herein alleges as follows. Said answer and allegations are made subject to Defendant's Motion to Dismiss or Stay filed concurrently herewith and the resolution of Defendant's Motion for Reconsideration filed January 30, 2009.

**FOR A FIRST DEFENSE
(SCRCP RULE 12(b)(6) - Failure to State a Claim)**

1. Pursuant to SCRCP Rule 12(b)(6), Defendant moves to dismiss the action, on the grounds that Plaintiffs have failed to state a cause of action upon which relief may be granted.

Page 1 of 10

FOR A SECOND DEFENSE
(Standing)

2. Defendant moves to dismiss Plaintiffs' Complaint on the grounds that Plaintiffs do not have the standing to bring the action, pursuant to the South Carolina Rules of Civil Procedure and the grounds set forth in *The Oaks at Rivers Edge POA, et al., v. Cipkala, et al.*, C.A. No. 09-CP-08-453.

FOR A THIRD DEFENSE
(General Denial)

3. Defendant denies each and every allegation within the Amended Complaint not herein admitted, modified, or explained.

4. Defendant admits the allegations contained in Paragraph 1.

5. Responding to the allegations contained in Paragraph 2, to the extent the allegations reference provisions of a document, said document speaks for itself.

6. Responding to the allegations contained in Paragraph 3, to the extent the allegations reference provisions of a document, said document speaks for itself.

7. The allegations of Paragraph 4 refer to another Defendant and as such do not require a response.

8. The allegations of Paragraph 5 refer to another Defendant and as such do not require a response.

9. Responding to the allegations contained in Paragraph 6, Defendant admits attorney Aubrey J. Woody, Jr., drafted and filed the Master Deed dated January 6, 2006. Defendant is without sufficient information to respond to the allegation relating to the filing of any amendments.

10. The allegations of Paragraph 7 are denied as stated.

11. Responding to the allegations contained in Paragraph 8, Defendant denies the allegations and demands strict proof thereof. Defendant does admit that it is a limited liability company organized and existing under the laws of the State of South Carolina and is authorized to do business in this state, and Defendant was the construction manager of the Oaks at Rivers Edge.

12. The allegations contained in Paragraph 9 are conclusions of law and require no response. To the extent a response is required, Defendant denies the allegations and by way of further response objects to any certification of a class under the allegations pled by Plaintiffs.

13. Responding to the allegations contained in Paragraph 10, the allegations are denied and Defendant demands strict proof thereof. By way of further response, Defendant denies this Court has subject matter jurisdiction as Plaintiffs have failed to comply with the statutory requirements of S.C. Code Ann. § 40-59-840 and/or S.C. Code Ann. § 40-11-510.

14. To the extent the allegations of Paragraphs 11 through 69 inclusive refer to another Defendant, this Defendant is not required to respond. To the extent a response is necessary with regard to same, Defendant denies such allegations except as set forth specifically hereinbelow.

15. The allegations contained in Paragraph 11 are conclusions of law and require no response. To the extent a response is required, Defendant denies (a) it committed any breach of duty or warranty, (b) it was negligent and (c) it committed any violation of the Unfair Trade Practices Act.

16. The allegations contained in Paragraph 12 are conclusions of law and require no response. To the extent a response is required, Defendant denies same.

17. Defendant is without sufficient information to admit or deny the allegations contained in Paragraph 13.

18. Defendant denies the allegations contained in Paragraph 14.

19. Defendant denies the allegations contained in Paragraph 15 and demands strict proof thereof.
20. Defendant denies the allegations contained in Paragraph 16.
21. Defendant denies the allegations contained in Paragraph 17.
22. Defendant denies the allegation contained in Paragraph 18 and demands strict proof thereof.
23. Defendant denies the allegation contained in Paragraph 19.
24. Responding to Paragraph 20, Defendant denies the allegations as stated. Defendant does admit that The Oaks at Rivers Edge consists of six, three-story condominium units with ground level parking that are finished, in part, with stucco and brick veneer.
25. Defendant denies the allegations of Paragraph 21 as stated and demands strict proof thereof.
26. Defendant denies the allegations of Paragraph 22 and demands strict proof thereof.
27. Defendant denies the allegations of Paragraph 23 as stated and demands strict proof thereof.
28. Defendant is without sufficient information to admit or deny the allegations contained in Paragraph 24 and demands strict proof thereof.
29. The allegations of Paragraph 25(a) - (f) require no response from Defendant as the allegations are directed to a Co-Defendant. To the extent a response is required, Defendant denies the allegations. Upon information and belief, Defendant Daniel Island Riverside Developers, LLC turned over control of the HOA in December 2006.
30. The allegations of Paragraph 26 require no response from Defendant as the allegations are directed to a Co-Defendant. To the extent a response is required, Defendant denies

the allegations.

31. Responding to the allegations of Paragraph 27, Defendant reasserts and realleges the allegations of Paragraphs 1 through 30 inclusive as though fully set forth herein.

32. The allegations in Paragraph 28 and 29 require no response from Defendant as the allegations are directed to a Co-Defendant. To the extent a response is required, Defendant is without sufficient information to admit or deny the allegations.

33. Responding to the allegations of Paragraph 30, Defendant reasserts and realleges the allegations of Paragraphs 1 through 32 inclusive as though fully set forth herein.

34. Defendant denies the allegations contained in Paragraph 31 (a) - (g).

35. Responding to the allegations contained in Paragraph 32, Defendant denies said allegations and demands strict proof thereof.

36. Responding to the allegations of Paragraph 33, Defendant reasserts and realleges the allegations of Paragraphs 1 through 35 inclusive as though fully set forth herein.

37. The allegations in Paragraph 34 are legal conclusions and require no response from Defendant.

38. Defendant denies the allegations in Paragraph 35.

39. Defendant denies the allegations in Paragraph 36 (a) - (e).

40. Defendant denies the allegations of Paragraph 37.

41. Defendant denies the allegations in Paragraph 38.

42. Defendant denies the allegations in Paragraph 39. Further responding, Defendant denies the Plaintiffs have suffered damages in that they have not been, nor will in the future be, forced to expend funds to repair any alleged damage that has already occurred.

43. Defendant denies the allegations in Paragraph 40.

44. Defendant denies the allegations in Paragraph 41.

45. Responding to the allegations of Paragraph 42, Defendant reasserts and realleges the allegations of Paragraphs 1 through 44 inclusive as though fully set forth herein.

46. The allegations contained in Paragraph 43 are conclusions of law and require no response from Defendant. To the extent a response is required, Defendant denies the allegations and demands strict proof thereof.

47. Defendant denies the allegations contained in Paragraph 44.

48. Defendant denies the allegations contained in Paragraph 45.

49. Responding to the allegations of Paragraph 46, Defendant reasserts and realleges the allegations of Paragraphs 1 through 48 inclusive as though fully set forth herein.

50. The allegations contained in Paragraph 47 are conclusions of law and require no response from Defendant.

51. Defendant denies the allegations in Paragraph 48.

52. Defendant denies the allegations in Paragraph 49.

53. Responding to the allegations of Paragraph 50, Defendant reasserts and realleges the allegations of Paragraphs 1 through 52 inclusive as though fully set forth herein.

54. The allegations of Paragraph 51 refer to a documents which speaks for itself. Defendant denies all allegations of Paragraph 51 which are not expressly set forth in said document.

55. Defendant admits the allegations contained in Paragraph 52.

56. Defendant denies the allegations contained in Paragraph 53.

57. Defendant denies the allegations in Paragraph 54. Further responding, Defendant denies the Plaintiffs have suffered damages in that they have not been, nor will in the future be, forced to expend funds to repair any alleged damage that has already occurred.

58. Defendant denies the allegations in Paragraph 55.

59. Defendant denies the allegations in Paragraph 56.

60. Responding to the allegations of Paragraph 57, Defendant reasserts and realleges the allegations of Paragraphs 1 through 59 inclusive as though fully set forth herein.

61. The allegations in Paragraph 58 through 60 require no response from Defendant as the allegations are directed to a Co-Defendant. To the extent a response is required, Defendant denies same.

62. Responding to the allegations of Paragraph 61, Defendant reasserts and realleges the allegations of Paragraphs 1 through 61 inclusive as though fully set forth herein.

63. The allegations contained in Paragraph 62 through 69 require no response from Defendant as the allegations are directed to a Co-Defendant. To the extent a response is required, Defendant denies same.

**AS AND FOR A FOURTH DEFENSE
(Failure to Mitigate Damages)**

64. Upon information and belief, Plaintiffs left the condominium unit vacant for extended periods of time.

65. Due to the fact Plaintiffs left the condominium units were vacant, Plaintiffs failed to exercise reasonable care in the maintenance of the condominium units and failed to provide prompt notice to Defendant of any possible problem with the units.

66. Plaintiffs have failed to mitigate their alleged damages, the existence of which is specifically denied.

**AS AND FOR A FIFTH DEFENSE
(Comparative Negligence)**

67. Plaintiffs' negligence is greater than any alleged negligence of Defendant, the existence of which is specifically denied.

68. Plaintiffs' claims are barred by the doctrine of comparative negligence.

AS AND FOR A SIXTH DEFENSE
(Waiver, Estoppel and Laches)

69. Plaintiffs' claims are barred by the doctrines of waiver, estoppel and laches.

AS AND FOR A SEVENTH DEFENSE
(Unclean Hands)

70. Plaintiffs' claims are barred by the doctrine of unclean hands.

AS AND FOR A EIGHTH DEFENSE
(Unconstitutionality of Punitive Damages)

71. An award of punitive damages would violate the Fifth Amendment and the Due Process and Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and Article 1, Section 3 of the South Carolina Constitution, in that there is no objective standard to gauge or limit the amount of punitive damages that can be awarded with sufficient instruction provided in determining the amount of punitive damages that should be awarded. Further, any award of punitive damages serving a compensatory function is inconsistent with due process guarantees; any award of punitive damages based upon the wealth of the Defendant violates due process and equal protection guarantees; the jury's unfettered power to award punitive damages in a discretionary amount completely lacks meaningful standards, is unconstitutionally vague, and is inconsistent with due process guarantees; and even if a standard governing the imposition of punitive damages exists, such "standard" is void for vagueness.

AS AND FOR A NINTH DEFENSE
(Lack of Subject Matter Jurisdiction)

72. S.C. Code Ann. § § 40-59-810 *et seq.* and 40-11-510 *et. seq.* require plaintiffs give notice they claim a construction defect, give a description of any claim(s) with reasonable detail sufficient to determine the general nature of the defect and a description of any results of the defect before bringing a suit.

73. Plaintiffs have failed to comply with the statutory requirements, therefore this Court lack subject matter jurisdiction over this case and it should be dismissed.

AS AND FOR A TENTH DEFENSE
(Incorporation of Defenses Raised By Other Defendants)

74. Defendant incorporates the defenses of any other defendants as they may be applicable to this Defendant.

AS AND FOR AN ELEVENTH DEFENSE
(Intervening Tortfeasor)

75. Any damages caused to Plaintiffs, which damages are denied, were caused by a Third Party.

AS AND FOR A TWELFTH DEFENSE
(Lack of Proximate Cause and Cause in Fact)

76. The acts of Defendant were not the proximate cause nor cause in fact of any damages suffered by Plaintiffs, which damages are denied.

AS AND FOR A THIRTEENTH DEFENSE
(Absence of Duty)

77. Defendant did not have a fiduciary duty to Plaintiffs.

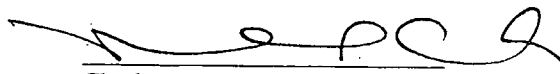
AS AND FOR A FOURTEENTH DEFENSE
(Failure to Exhaust Statutory Remedies)

78. Plaintiffs failed to exhaust their statutory remedies by failing to comply with S.C. Code Ann. § § 40-59-810 *et seq.* and 40-11-510 *et seq.*

**AS AND FOR A FIFTEENTH DEFENSE
(Reservation of Right to Add Defenses)**

79. Defendant reserves the right to allege additional defenses and additional facts and circumstances in support of its defenses as the facts become available.

WHEREFORE, having fully answered the Complaint of Plaintiffs, Defendant Carriage Hill Associates of Charleston, LLC, prays this Court make a determination of the applicable law and facts of the case and enter such an order, to include an award of attorneys' fees and costs to Defendant, as the Court may deem just and equitable.



Charles S. Altman, Esquire
Meredith L. Coker
M. Wesley Meetze
Altman & Coker, LLC
P.O. Box 265
Charleston, SC 29402
Phone: 843 853 9907
Fax: 843 853 9838
Email: caltman@altmancoker.com

AND

Roy P. Maybank, Esquire
Amanda Maybank, Esquire
MAYBANK LAW FIRM, LLC
531 Savannah Highway
P.O. Box 12579
Charleston, SC 29422
P: (843) 766-8101
F: (843) 766-8102
Email: Roy@maybanklaw.com

February 19, 2009

Attorneys for Defendant Carriage Hill Associates
of Charleston LLC

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NUMBER: 08-CP-08-2714

GEOFFREY C. CIPKALA, and)
SAMUEL C. AGEE, as tenants in)
common of the common elements)
of The Oaks at River's Edge)
Horizontal Property Regime and on)
behalf of themselves and all other)
tenants in common,)

Plaintiffs,)

vs.)

DANIEL ISLAND RIVERSIDE)
DEVELOPERS, LLC, CARRIAGE)
HILL ASSOCIATES OF)
CHARLESTON, LLC and)
CARRIAGE HILL ASSOCIATES,)
INC.,)

Defendants.)

2009 FEB 20 PM 12:02
CLERK OF COURT
BERKELEY COUNTY, SC

ANSWER OF DEFENDANT CARRIAGE HILL ASSOCIATES, INC.

The Defendant, Carriage Hill Associates, Inc., by and through its undersigned counsel, answering the Amended Complaint herein alleges as follows. Said answer and allegations are made subject to Defendant's Motion to Dismiss or Stay filed concurrently herewith and the resolution of Defendant's Motion for Reconsideration filed January 30, 2009.

**FOR A FIRST DEFENSE
(SCRCP RULE 12(b)(6) - Failure to State a Claim)**

1. Pursuant to SCRCP Rule 12(b)(6), Defendant moves to dismiss the action, on the grounds that Plaintiffs have failed to state a cause of action upon which relief may be granted.

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FOR A SECOND DEFENSE
(Standing)

2. Defendant moves to dismiss Plaintiffs' Complaint on the grounds that Plaintiffs do not have the standing to bring the action, pursuant to the South Carolina Rules of Civil Procedure and the grounds set forth in *The Oaks at Rivers Edge POA, et al., v. Cipkala, et al.*, C.A. No. 09-CP-08-453.

FOR A THIRD DEFENSE
(Lack of Personal Jurisdiction)

3. Pursuant to SCRCP Rule 12(b)(2), Defendant moves to dismiss this action for lack of personal jurisdiction.

FOR A FOURTH DEFENSE
(General Denial)

4. Defendant denies each and every allegation within the Amended Complaint not herein admitted, modified, or explained.

5. Defendant is without sufficient information or knowledge to admit or deny the allegations of Paragraphs 1 through 3.

6. The allegations of Paragraphs 4 through 7 are directed to another Defendant, and as such no response is necessary.

7. Responding to the allegations contained in Paragraph 8, Defendant denies the allegations and demands strict proof thereof. Defendant is a corporation organized under the laws of the State of New York, and Defendant Carriage Hill Associates of Charleston, LLC, is neither an agent nor affiliate of Carriage Hill Associates, Inc.

8. The allegations contained in Paragraph 9 are conclusions of law and require no response. To the extent a response is required, Defendant denies the allegations and by way of

further response objects to any certification of a class under the allegations pled by Plaintiffs.

9. Responding to the allegations contained in Paragraph 10, the allegations are denied and Defendant demands strict proof thereof. By way of further response, Defendant denies this Court has subject matter jurisdiction as Plaintiffs have failed to comply with the statutory requirements of S.C. Code Ann. § 40-59-840 and/or S.C. Code Ann. § 40-11-510.

10. To the extent the allegations of Paragraphs 11 through 69 inclusive refer to another Defendant, this Defendant is not required to respond. To the extent a response is necessary with regard to same, Defendant is without sufficient information to admit or deny and as such denies the same and demands strict proof thereof.

**AS AND FOR A FIFTH DEFENSE
(Failure to Mitigate Damages)**

11. Upon information and belief, Plaintiffs left the condominium unit vacant for extended periods of time.

12. Due to the fact Plaintiffs left the condominium units were vacant, Plaintiffs failed to exercise reasonable care in the maintenance of the condominium units and failed to provide prompt notice to Defendant of any possible problem with the units.

13. Plaintiffs have failed to mitigate their alleged damages, the existence of which is specifically denied.

**AS AND FOR A SIXTH DEFENSE
(Absence of Respondeat Superior / Agency Relationship)**

14. There is no agency or affiliate relationship between Carriage Hill Associates of Charleston LLC and Carriage Hill Associates, Inc., nor was Carriage Hill Associates of Charleston LLC acting as an agent or affiliate of Carriage Hill Associates, Inc., with regard to the allegations

set forth by Plaintiff.

15. As such, Defendant Carriage Hill Associates, Inc., cannot be held liable for any acts or omissions performed by Carriage Hill Associates of Charleston LLC.

AS AND FOR A SEVENTH DEFENSE
(No privity of contract / relationship)

16. No contract nor other relationship existed between Defendant Carriage Hill Associates, Inc., and the Plaintiffs.

AS AND FOR A EIGHTH DEFENSE
(Comparative Negligence)

17. Plaintiffs' negligence is greater than any alleged negligence of Defendant, the existence of which is specifically denied.

18. Plaintiffs' claims are barred by the doctrine of comparative negligence.

AS AND FOR A NINTH DEFENSE
(Waiver, Estoppel and Laches)

19. Plaintiffs' claims are barred by the doctrines of waiver, estoppel and laches.

AS AND FOR A TENTH DEFENSE
(Unclean Hands)

20. Plaintiffs' claims are barred by the doctrine of unclean hands.

AS AND FOR A ELEVENTH DEFENSE
(Unconstitutionality of Punitive Damages)

21. An award of punitive damages would violate the Fifth Amendment and the Due Process and Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and Article 1, Section 3 of the South Carolina Constitution, in that there is no objective standard to gauge or limit the amount of punitive damages that can be awarded with sufficient instruction provided in determining the amount of punitive damages that should be awarded

Further, any award of punitive damages serving a compensatory function is inconsistent with due process guarantees; any award of punitive damages based upon the wealth of the Defendant violates due process and equal protection guarantees; the jury's unfettered power to award punitive damages in a discretionary amount completely lacks meaningful standards, is unconstitutionally vague, and is inconsistent with due process guarantees; and even if a standard governing the imposition of punitive damages exists, such "standard" is void for vagueness.

AS AND FOR A TWELFTH DEFENSE
(Lack of Subject Matter Jurisdiction)

22. S.C. Code Ann. § § 40-59-810 *et seq.* and 40-11-510 *et. seq.* require plaintiffs give notice they claim a construction defect, give a description of any claim(s) with reasonable detail sufficient to determine the general nature of the defect and a description of any results of the defect before bringing a suit.

23. Plaintiffs have failed to comply with the statutory requirements, therefore this Court lack subject matter jurisdiction over this case and it should be dismissed.

AS AND FOR A THIRTEENTH DEFENSE
(Incorporation of Defenses Raised By Other Defendants)

24. Defendant incorporates the defenses of any other defendants as they may be applicable to this Defendant.

AS AND FOR AN FOURTEENTH DEFENSE
(Intervening Tortfeasor)

25. Any damages caused to Plaintiffs, which damages are denied, were caused by a Third Party.

AS AND FOR A FIFTEENTH DEFENSE
(Lack of Proximate Cause and Cause in Fact)

26. The acts of Defendant were not the proximate cause nor cause in fact of any damages suffered by Plaintiffs, which damages are denied.

AS AND FOR A SIXTEENTH DEFENSE
(Absence of Duty)

27. Defendant did not have a fiduciary duty to Plaintiffs.

AS AND FOR A SEVENTEENTH DEFENSE
(Failure to Exhaust Statutory Remedies)

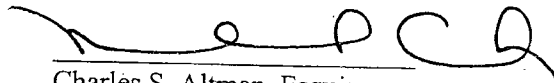
28. Plaintiffs failed to exhaust their statutory remedies by failing to comply with S.C. Code Ann. § § 40-59-810 *et seq.* and 40-11-510 *et. seq.*

AS AND FOR A EIGHTEENTH DEFENSE
(Reservation of Right to Add Defenses)

29. Defendant reserves the right to allege additional defenses and additional facts and circumstances in support of its defenses as the facts become available.

[The Remainder of this page left intentionally blank]

WHEREFORE, having fully answered the Complaint of Plaintiffs, Defendant Carriage Hill Associates Inc., prays this Court make a determination of the applicable law and facts of the case and enter such an order, to include an award of attorneys' fees and costs to Defendant, as the Court may deem just and equitable.



Charles S. Altman, Esquire
Meredith L. Coker
M. Wesley Meetze
Altman & Coker, LLC
P.O. Box 265
Charleston, SC 29402
Phone: 843 853 9907
Fax: 843 853 9838
Email: caltman@altmancoker.com

AND

Roy P. Maybank, Esquire
Amanda Maybank, Esquire
MAYBANK LAW FIRM, LLC
531 Savannah Highway
P.O. Box 12579
Charleston, SC 29422
P: (843) 766-8101
F: (843) 766-8102
Email: Roy@maybanklaw.com

Attorneys for Defendant Carriage Hill
Associates, Inc.

February 19, 2009

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Daniel Island Riverside Developers, LLC)
and Carriage Hill Associates of)
Charleston, LLC,)

Plaintiffs,)

v.)

Weather Shield Manufacturing, Inc.,)
The Muhler Company, Inc. and AC)
Construction, Inc.)

Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Civil Action Number: 08-CP-_____

COMPLAINT
(Jury Trial Demanded)

The Plaintiffs, Daniel Island Riverside Developers, LLC ("DIR") and Carriage Hill Associates of Charleston, LLC ("Carriage Hill") complaining of the Defendants, allege the following:

PARTIES AND JURISDICTION

1. Plaintiff DIR is a limited liability company organized and existing under the laws of the State of South Carolina with it principal office in Berkeley County.
2. Plaintiff Carriage Hill is a limited liability company organized and existing under the laws of the State of South Carolina and conducts business in Berkeley County, South Carolina
3. Upon information and belief, Defendant Weather Shield Manufacturing, Inc. ("Weather Shield"), is a corporation organized and existing under the laws of the State of Wisconsin and is registered and authorized to do business in South Carolina. Weather Shield

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directed its products and/or materials for sale in South Carolina and has had employees and/or agents perform work in the state of South Carolina.

4. Weather Shield has intentionally availed itself of the jurisdiction of this Court.

5. Defendant The Muhler Company, Inc. ("Muhler") is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston County, South Carolina. Upon information and belief, Muhler was the supplier of the windows and window systems and doors which were installed at The Oaks at River's Edge, a condominium complex located in Berkeley County, South Carolina ("The Oaks"). In addition, Muhler installed and/or worked on the installation of exterior window systems and doors at The Oaks.

6. A.C. Construction, Inc. ("A.C.") is a corporation organized and existing under the laws of the State of South Carolina. Upon information and belief, A.C. maintains its principal place of business in Ladson, South Carolina. A.C., pursuant to contracts with Carriage Hill¹, agreed to, among other things, install exterior windows and doors at The Oaks.

7. Venue and jurisdiction are proper in this Court.

**FOR A FIRST CAUSE OF ACTION
(Breach of Contract as to Muhler and A.C.)**

8. On or about August 27, 2004, Carriage Hill as construction manager for DIR contracted with Muhler. The contract provided that Muhler, through its agents and/or employees, would obtain windows and doors manufactured by Weather Shield ("the "Subject Windows" and the "Subject Doors") for installation at The Oaks. In exchange, Plaintiffs agreed to pay and subsequently paid for the Subject Windows and the Subject Doors.

9. On or about September 28, 2004, Carriage Hill, as construction manager for DIR, contracted with A.C. to, among other things, properly install the Subject Windows and Subject Doors at The Oaks.

10. The contract with A.C. explicitly and/or implicitly stated that A.C. would competently install the Subject Windows and the Subject Doors.

11. A.C. failed to competently, skillfully, carefully, and/or diligently install the Subject Windows in a workmanlike manner. These defects in installation have caused severe leaking, leading to damaged wall structures and flooring.

12. Due to A.C.'s failure to competently install the windows, Plaintiffs have incurred actual, incidental, special, and consequential damages.

13. On or about April 27, 2006, Carriage Hill, as construction manager for DIR, contracted with Muhler to correct the deficiencies in the work performed by A.C. in the installation of the Subject Windows at The Oaks. The contract provided in part that Muhler, through its agents and/or employees, would correct any installation defects involving the Subject Windows. In exchange, Plaintiffs agreed to pay and subsequently paid Muhler to correct the deficiencies.

14. The contract explicitly and/or implicitly stated that Muhler would competently perform the work to correct the deficiencies in the work performed by A.C.

15. Muhler failed to competently, skillfully, carefully, and/or diligently perform the work to correct the deficiencies in a workmanlike manner. The deficiencies in installation and the subsequent failure to remedy the deficiencies have caused severe leaking, leading to damaged

⁹Defendant was aware that all contracts entered into by Carriage Hill were for the benefit of DIR.

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wall structures and flooring.

16. Due to Muhler's failure to competently perform the work to correct the deficiencies in the work performed by A.C. in the installation of the Subject Windows at The Oaks, Plaintiffs have incurred actual, incidental, special, and consequential damages.

FOR A SECOND CAUSE OF ACTION
(Breach of Express Warranty as to Weather Shield, Muhler and A.C.)

17. Plaintiffs specifically incorporate and restate verbatim the allegations above.

18. Weather Shield, Muhler and A.C. made express and/or implied affirmations of fact and/or promise in the description of the Subject Windows and/or through oral and written statements about the Subject Windows in a manner contemplated by S.C. Code Ann. § 36-2-313 (1976).

19. Weather Shield, Muhler and A.C. breached the express or implied warranties by failing to conform the Subject Windows to either the warranted description or the affirmations of fact and/or promise.

20. Plaintiffs notified Weather Shield, Muhler and A.C. Construction of the breach within a reasonable period of time.

21. Weather Shield, Muhler and A.C. are unwilling or unable to repair or replace the Subject Windows. Further, to the extent Weather Shield and/or Muhler and/or A.C. were willing or able to repair or replace the Subject Windows, they have not done so in a reasonable period of time. Accordingly, the warranty fails of its essential purpose.

22. Weather Shield, Muhler and A.C.'s breach of their express warranties caused Plaintiffs actual, incidental, special, and consequential damages. Furthermore, due to the failure

of the warranties' essential purpose, Plaintiffs seek damages exceeding that which is provided by the warranties.

**FOR A THIRD CAUSE OF ACTION
(Breach of Implied Warranty of Merchantability)**

23. Plaintiffs specifically incorporate and restate verbatim the allegations above.

24. Weather Shield and Muhler regularly sell the Subject Windows, and other windows substantially similar to the Subject Windows, as a primary portion of their business. In that respect and in other respects, both Weather Shield and Muhler are merchants within the meaning of S.C. Code Ann. § 36-2-314 (1976).

25. The Subject Windows do not pass without objection in the window trade under the contract description, as their defects in construction, design, manufacturing, and/or production cause them to inherently break and/or leak.

26. The Subject Windows are not fit for their ordinary purpose.

27. Weather Shield and Muhler's breach caused Plaintiffs' actual, incidental, special, and consequential damages.

**FOR A FOURTH CAUSE OF ACTION
(Negligence as to Weather Shield)**

28. Plaintiffs specifically incorporate and restate verbatim the allegations above.

29. Weather Shield had a duty to test and inspect its windows prior to introducing them into the stream of commerce.

30. Weather Shield introduced the Subject Windows into the stream of commerce without adequate testing and/or inspection.

31. The Subject Windows, when installed, were in the same condition they were in

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when Weather Shield introduced them into the stream of commerce.

32. Due to Weather Shield's failure to adequately test and inspect the windows, Plaintiffs have sustained actual, incidental, special, and consequential damages.

33. Weather Shield's failure to adequately test and inspect the Subject Windows was the direct and proximate cause of Plaintiffs' damages.

**FOR A FIFTH CAUSE OF ACTION
(Negligence as to A.C.)**

34. Plaintiffs specifically incorporate and restate verbatim the allegations above.

35. A.C. had a duty to install the Subject Windows in a competent manner.

36. A.C. breached that duty by failing to exercise due care in the installation of the Subject Windows.

37. Due to A.C.'s failure to adequately install the Subject Windows, Plaintiffs have sustained actual, incidental, special, and consequential damages.

38. A.C.'s failure to adequately install the Subject Windows was the actual and proximate cause of Plaintiffs' damages.

**FOR A SIXTH CAUSE OF ACTION
(Negligence as to Muhler)**

39. Plaintiffs specifically incorporate and restate verbatim the allegations above.

40. Muhler had a duty to perform the work to correct the deficiencies in the work performed by A.C. in the installation of the Subject Windows at The Oaks in a competent manner.

41. Muhler breached that duty by failing to exercise due care in performing the work to correct the deficiencies.

42. Due to Muhler's failure to adequately perform the work to correct the deficiencies, Plaintiffs have sustained actual, incidental, special, and consequential damages.

43. Muhler's failure to adequately perform the work to correct the deficiencies was the direct and proximate cause of Plaintiffs' damages.

**FOR A SEVENTH CAUSE OF ACTION
(Gross Negligence as to Weather Shield)**

44. Plaintiffs specifically incorporate and restate verbatim the allegations above.

45. Weather Shield had a duty to construct, design, manufacture, and/or produce the Subject Windows in a competent manner.

46. Weather Shield knowingly, intentionally, and/or consciously failed to construct, design, manufacture, and/or produce the Subject Windows in a competent manner.

47. Due to Weather Shield's failure to competently construct, design, manufacture, and/or produce the Subject Windows, Plaintiffs have sustained actual, incidental, special, and consequential damages. Furthermore, Plaintiffs are seeking punitive damages.

48. Weather Shield's failure to competently construct, design, manufacture, and/or produce the Subject Windows was the actual and proximate cause of Plaintiffs' damages.

**FOR A EIGHTH CAUSE OF ACTION
(Gross Negligence as to AC)**

49. Plaintiffs specifically incorporate and restate verbatim the allegations above.

50. A.C. had a duty to install the Subject Windows in a competent manner.

51. A.C. knowingly, intentionally, and/or consciously failed to install the Subject Windows in a competent manner.

52. Due to A.C.'s failure to competently install the Subject Windows, Plaintiffs have

Page 7 of 14

sustained actual, incidental, special, and consequential damages. Furthermore, Plaintiffs are seeking punitive damages.

53. A.C.'s failure to competently install the Subject Windows was the direct and proximate cause of Plaintiffs' damages.

**FOR A NINTH CAUSE OF ACTION
(Gross Negligence as to Muhler)**

54. Plaintiffs specifically incorporate and restate verbatim the allegations above.

55. Muhler had a duty to perform the work to correct the deficiencies in the work performed by A.C. in the installation of the Subject Windows at The Oaks in a competent manner.

56. Muhler knowingly, intentionally, and/or consciously failed to perform the work to correct the deficiencies in a competent manner.

57. Due to Muhler's failure to competently perform the work to correct the deficiencies, Plaintiffs have sustained actual, incidental, special, and consequential damages. Furthermore, Plaintiffs are seeking punitive damages.

58. Muhler's failure to competently perform the work to correct the deficiencies was the direct and proximate result of Plaintiffs' damages.

**FOR A TENTH CAUSE OF ACTION
(Defective Product/Products Liability—Common Law— as to Weather Shield)**

59. Plaintiffs specifically incorporate and restate verbatim the allegations above.

60. Weather Shield constructed, designed, manufactured, and/or produced the Subject Windows.

61. At the time Weather Shield introduced the Subject Windows into the stream of

commerce, the Subject Windows were in an unreasonably defective condition due to negligent construction, design, manufacturing, and/or production, causing the windows to both break and leak.

62. At the time the Subject Windows were installed, the Subject Windows were in the same condition as when they were introduced into the stream of commerce.

63. Due to Weather Shield's negligent construction, design, manufacturing, and/or production, the Subject Windows have leaked, causing Plaintiffs actual, incidental, special, and consequential damages. Alternatively, Weather Shield is strictly liable.

64. Weather Shield's defective construction, design, manufacturing, and/or production was the actual and proximate cause of Plaintiffs' damages.

FOR A ELEVENTH CAUSE OF ACTION
(Defective Products/Products Liability—Statutory—as to Weather Shield)

65. Plaintiffs specifically incorporate and restate verbatim the allegations above.

66. Weather Shield is in the business of selling windows. More specifically, Weather Shield is in the business of selling windows identical to the Subject Windows.

67. Weather Shield sold the Subject Windows in a manner contemplated by S.C. Code Ann. § 15-73-10 (1976).

68. At the time Weather Shield sold the Subject Windows, the Subject Windows were unreasonably dangerous to Plaintiffs, due to improper construction, design, manufacturing, and/or production.

69. At the time Weather Shield introduced the Subject Windows into the stream of commerce, Weather Shield intended that the Subject Windows would be delivered to Plaintiffs in

the same condition which existed when Weather Shield introduced the Subject Windows into the stream of commerce.

70. The Subject Windows ultimately reached Plaintiffs in the same condition which existed when Weather Shield introduced the Subject Windows into the stream of commerce.

71. Due to Weather Shield's negligent construction, design, manufacturing, and/or production, the Subject Windows have leaked, causing Plaintiffs actual, incidental, special, and consequential damages. Alternatively, Weather Shield is strictly liable.

72. Weather Shield's defective construction, design, manufacturing, and/or production was the actual and proximate cause of Plaintiffs' damages.

**FOR A TWELFTH CAUSE OF ACTION
(Violation of the Unfair Trade Practices Act)**

73. Plaintiffs specifically incorporate and restate verbatim the allegations above.

74. Weather Shield, Muhler and A.C. are engaged in the trade of selling and/or installing windows. Weather Shield, Muhler and A.C. are merchants within the meaning contained within S.C. Code Ann. § 39-5-10, *et seq.* (1976).

75. The sale and installation of the Subject Windows have both a direct and indirect affect on the citizens of South Carolina.

76. Weather Shield and Muhler sold the Subject Windows with actual and constructive knowledge that the Subject Windows were defective.

77. Weather Shield and Muhler intentionally, knowingly, and/or consciously sold the Subject Windows in a defective condition with the intent to reduce expenses and increase their profits.

78. A.C. installed the Subject Windows with actual and constructive knowledge that the Subject Windows were defective.

79. Weather Shield, Muhler and A.C. had an intent to deceive the Plaintiffs about the quality, construction, and installation of the Subject Windows.

80. Due to Weather Shield, Muhler and A.C.'s intentional deception, Plaintiffs have incurred actual, incidental, special, consequential, and statutory damages. Additionally, Plaintiffs are seeking attorneys' fees.

**FOR A THIRTEENTH CAUSE OF ACTION
(Fraud)**

81. Plaintiffs specifically incorporate and restate verbatim the allegations above.

82. Both Weather Shield and Muhler made express and/or implied representations about the quality of the construction, design, manufacturing, and/or production of the Subject Windows.

83. A.C. made express and/or implied representations about the quality of the Subject Window's installation.

84. All of the representations were materially false.

85. Weather Shield, Muhler and A.C. knew the representations were materially false both at the time the representations were made and during every point up to and including the time of the filing of this action.

86. Weather Shield, Muhler and A.C. knew or should have known the representations were materially false both at the time the representations were made and during every point up to and including the time of the filing of this action.

Page 11 of 14

87. Weather Shield, Muhler and A.C. acted in reckless disregard of the truth.
88. Weather Shield, Muhler and A.C. intended that Plaintiffs would act on their representations.
89. Plaintiffs relied and acted on the representations from Weather Shield, Muhler and A.C.
90. Plaintiffs had a right to rely on Weather Shield, Muhler and A.C.'s representations.
91. Due to Weather Shield, Muhler and A.C.'s intentional, knowing, and/or conscious misrepresentations, Plaintiffs have incurred actual, incidental, special, and consequential damages. Furthermore, Plaintiffs are seeking punitive damages.

**FOR A FOURTEENTH CAUSE OF ACTION
(Breach of Contract Accompanied by a Fraudulent Act)**

92. Plaintiffs specifically incorporate and restate verbatim the allegations above.
93. Weather Shield, Muhler and A.C. breached their contracts with Plaintiffs.
94. Weather Shield, Muhler and A.C. had fraudulent intent immediately before, during, and immediately after the breach. Furthermore, Weather Shield, Muhler and A.C. used fraud to accomplish the breach. Specifically, both Weather Shield and Muhler actively used misrepresentations about the product to deceive Plaintiffs into purchasing the products. A.C. actively used misrepresentations about the quality of the installation of the Subject Windows to deceive the Plaintiffs.
95. Due to Weather Shield, Muhler and A.C.'s intentional, knowing, and/or conscious misrepresentations, Plaintiffs have incurred actual, incidental, special, and consequential

damages. Furthermore, Plaintiffs are seeking punitive damages.

**FOR A FIFTEENTH CAUSE OF ACTION
(Negligence *Per Se* as to Muhler and A.C.)**

96. Plaintiffs specifically incorporate and restate verbatim the allegations above.

97. By undertaking construction work on The Oaks, A.C. and Muhler owed a duty to Plaintiffs to use reasonable care during the performance of their work on the building and to perform their scope of work in accordance with all applicable building codes, applicable industry standards, and to ensure that construction conformed to good design practices and industry standards.

98. A.C. and Muhler breached the duty of care they owed to Plaintiffs.

99. A.C. and Muhler's work violated the applicable building codes in effect at the time of construction.

100. The violation of the building codes by A.C. and Muhler constitutes negligence *per se*.

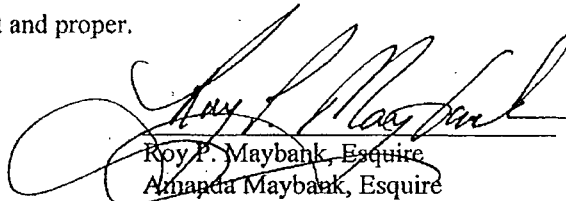
101. As a direct and proximate result of the contractors' violation of the applicable building codes, Plaintiffs have incurred actual, incidental, special, and consequential damages.

WHEREFORE, the Plaintiffs pray that:

- a. This Court summarily determine the liability of Weather Shield, Muhler and A.C. Construction;
- b. Judgment for actual damages against the Defendants jointly and severally with regard to all causes of action;
- c. Treble damages against Weather Shield, Muhler and A.C. pursuant to S.C. Code

Ann. § 39-5-110, *et seq.* (1976), for the violation of the South Carolina Unfair Trade Practices Act;

- d. Order Weather Shield, Muhler and A.C. to pay actual, incidental, special, consequential, statutory, and punitive damages;
- e. Order Weather Shield, Muhler and A.C. to pay Plaintiffs' attorneys' fees; and
- f. Order other remedies that are fit and proper.



Roy P. Maybank, Esquire
Amanda Maybank, Esquire
MAYBANK LAW FIRM, LLC
P.O. Box 12579
Charleston, SC 29422
P: (843) 766-8101
F: (843) 766-8102

AND

ALTMAN & COKER, LLC

Charles S. Altman, Esquire
Meredith L. Coker, Esquire
Post Office Box 265
Charleston, South Carolina 29402
T: (843) 853-9907
F: (843) 853-9838

Attorneys for the Plaintiff

2/16, 2009

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF BERKELEY)
)

THE OAKS AT RIVERS EDGE PROPERTY)
OWNERS ASSOCIATION, INC., JOE)
CHIOVAROU, ROBERT REECE, and WILLIAM)
JUNG, in their capacity as board members of the)
Oaks at Rivers Edge Homeowners Association, Inc.)
and/or their capacity as Unit Owners)

Plaintiffs,)

v.)

GEOFFREY C. CIPKALA, and SAMUEL C.)
AGEE)

Defendants.)

C/A No.: 2009-CP-08-453

**NOTICE OF MOTION AND
MOTION TO CONSOLIDATE
CASES PURSUANT TO RULE
42, SCRPC**

GEOFFREY C. CIPKALA, and SAMUEL C.)
AGEE, as tenants-in-common of the common)
elements of the Oaks at River's Edge Horizontal)
Property Regime and on behalf of themselves and)
all other tenants-in-common,)

Plaintiffs,)

v.)

DANIEL ISLAND RIVERSIDE DEVELOPERS,)
LLC, CARRIAGE HILL ASSOCIATES OF)
CHARLESTON, LLC, and CARRIAGE HILL)
ASSOCIATES, INC.)

Defendants.)

C/A NO.: 2008-CP-08-2714

TO: MICHAEL SEEKINGS, ESQ., ATTORNEY FOR CIPKALA AND AGEE and
CHARLES ALTMAN, ESQ., ROY P. MAYBANK, ESQUIRE, AND AMANDA
MAYBANK, ESQUIRE, ATTORNEYS FOR DANIEL ISLAND RIVERSIDE
DEVELOPERS, LLC, CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC and
CARRIAGE HILL ASSOCIATES, INC.

YOU WILL TAKE NOTICE THAT The Oaks at River's Edge Property Association, Inc., Robert Reece, Joe Chiovarou, and William Jung, hereinafter the moving parties, will move no earlier than ten (10) days from the filing of this motion pursuant to Rule 42 of the South Carolina Rules of Civil Procedure, for an Order from this Honorable Court to consolidate the above captioned cases. The grounds for this motion are that the above captioned cases pending before this Court involve common questions of law and/or facts. Moreover, the consolidation of the above referenced cases will tend to avoid unnecessary costs or delay.

SMITH, BUNDY, BYBEE AND BARNETT, P.C.



W.H. Bundy, Jr., Esquire
M. Brent McDonald, Esquire
Post Office Box 1542
Mount Pleasant, SC 29465
Phone: 843-881-1623
Fax: 843-881-4406
Attorneys for Movants

5/11, 2009
Mt. Pleasant, South Carolina

5/1/09

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
DANIEL ISLAND RIVERSIDE	)	Civil Action No. 2009-CP-08-1068
DEVELOPERS, LLC and CARRIAGE	)	
HILL ASSOCIATES OF CHARLESTON,	)	
LLC,	)	
	)	
Plaintiffs,	)	DEFENDANT THE MUHLER
	)	COMPANY, INC.'S ANSWER TO
vs.	)	PLAINTIFFS' COMPLAINT
	)	(Jury Trial Demanded)
	)	
WEATHER SHIELD	)	
MANUFACTURING, INC., THE	)	
MUHLER COMPANY, INC., and AC	)	
CONSTRUCTION, INC.,	)	
	)	
Defendants.	)	

The Defendant, The Muhler Company, Inc. (hereinafter "this Defendant" or "Muhler"), answering the Complaint in the above-captioned case does allege the following:

FOR A FIRST DEFENSE

1. This Defendant denies each and every allegation of the Complaint that is not specifically and unconditionally admitted hereinafter.

FOR A SECOND DEFENSE

2. This Defendant admits upon information and belief the allegations of Paragraphs 1 and 2 of the Complaint.

3. The allegations of Paragraphs 3 and 4 do not concern this Defendant and no response is required.

4. In response to Paragraph 5, this Defendant admits the first two sentences and denies the final sentence of Paragraph 5 of the Complaint.

5. The allegations of Paragraph 6 do not concern this Defendant and no response is required.

6. The allegations of Paragraph 7 of the Complaint state conclusions of law to which no response is required.

ANSWERING THE FIRST CAUSE OF ACTION

7. In response to Paragraph 8, this Defendant craves reference to the contractual documents between Muhler and the Plaintiffs and denies each and every allegation of the paragraphs that is inconsistent with said contractual documents.

8. This Defendant lacks sufficient information to admit or deny the allegations of Paragraphs 9, 10, 11, and 12 of the Complaint and, therefore, denies the same.

9. In response to Paragraph 13 and 14 of the Complaint, this Defendant craves reference to any contractual documents between Muhler and the Plaintiffs and denies each and every allegation of Paragraph 13 and 14 that are inconsistent with those documents.

10. This Defendant denies the allegations of Paragraphs 15 and 16 of the Complaint.

ANSWERING THE SECOND CAUSE OF ACTION

11. In response to Paragraph 17 of the Complaint, this Defendant repeats and realleges Paragraphs 1 through 10 of its Answer as if repeated herein verbatim.

12. The allegations of Paragraph 18 of the Complaint state conclusions of law to which no response is required. To the extent a response is required, this Defendant denies the allegations of Paragraph 18 as it applies to it.

13. This Defendant denies the allegations of Paragraphs 19, 20, 21, and 22 as they apply to Muhler.

ANSWERING THE THIRD CAUSE OF ACTION

14. In response to Paragraph 23 of the Complaint, this Defendant repeats and realleges Paragraphs 1 through 13 of its Answer as if repeated herein verbatim.

15. In response to Paragraph 24, this Defendant admits that it is in the business of selling windows. The remaining allegations of Paragraph 24 state conclusions of law to which no response is required.

16. This Defendant denies the allegations of Paragraphs 25, 26, and 27 as they apply to Muhler.

ANSWERING THE FOURTH CAUSE OF ACTION

17. In response to Paragraph 28 of the Complaint, this Defendant repeats and realleges Paragraphs 1 through 16 of its Answer as if repeated herein verbatim.

18. The allegations of Paragraphs 29, 30, 31, 32, and 33 of the Complaint do not concern this Defendant and no response is required.

ANSWERING THE FIFTH CAUSE OF ACTION

19. In response to Paragraph 34 of the Complaint, this Defendant repeats and realleges Paragraphs 1 through 18 of its Answer as if repeated herein verbatim.

20. The allegations of Paragraphs 35, 36, 37, and 38 of the Complaint do not concern this Defendant and no response is required.

ANSWERING THE SIXTH CAUSE OF ACTION

21. In response to Paragraph 39 of the Complaint, this Defendant repeats and realleges Paragraphs 1 through 20 of its Answer as if repeated herein verbatim.

22. The allegations of Paragraph 40 state conclusions of law to which no response is required.

23. This Defendant denies the allegations of Paragraphs 41, 42, and 43 of the Complaint.

ANSWERING THE SEVENTH CAUSE OF ACTION

24. In response to Paragraph 44 of the Complaint, this Defendant repeats and realleges Paragraphs 1 through 23 of its Answer as if repeated herein verbatim.

25. The allegations of Paragraphs 45, 46, 47, and 48 do not concern this Defendant and no response is required.

ANSWERING THE EIGHTH CAUSE OF ACTION

26. In response to Paragraph 49 of the Complaint, this Defendant repeats and realleges Paragraphs 1 through 25 of its Answer as if repeated herein verbatim.

27. The allegations of Paragraphs 50, 51, 52, and 53 do not concern this Defendant and no response is required.

ANSWERING THE NINTH CAUSE OF ACTION

28. In response to Paragraph 54 of the Complaint, this Defendant repeats and realleges Paragraphs 1 through 27 of its Answer as if repeated herein verbatim.

29. The allegations of Paragraph 55 of the Complaint states conclusions of law to which no response is required.

30. This Defendant denies the allegations of Paragraphs 56, 57, and 58 of the Complaint.

ANSWERING THE TENTH CAUSE OF ACTION

31. In response to Paragraph 59 of the Complaint, this Defendant repeats and realleges Paragraphs 1 through 30 of its Answer as if repeated herein verbatim.

32. The allegations of Paragraphs 60, 61, 62, 63, and 64 do not concern this Defendant and no response is required.

ANSWERING THE ELEVENTH CAUSE OF ACTION

33. In response to Paragraph 65 of the Complaint, this Defendant repeats and realleges Paragraphs 1 through 32 of its Answer as if repeated herein verbatim.

34. The allegations of Paragraphs 66, 67, 68, 69, 70, 71, and 72 do not concern this Defendant and no response is required.

ANSWERING THE TWELFTH CAUSE OF ACTION

35. In response to Paragraph 73 of the Complaint, this Defendant repeats and realleges Paragraphs 1 through 34 of its Answer as if repeated herein verbatim.

36. This Defendant admits the first sentence of Paragraph 74 as it relates to Muhler. The remaining allegations of Paragraph 74 state conclusions of law to which no response is required.

37. The allegations of Paragraph 75 state conclusions of law to which no response is required.

38. This Defendant denies the allegations of Paragraph 76 as it relates to Muhler.

39. This Defendant denies the allegations of Paragraph 77 as it relates to Muhler.

40. The allegations of Paragraph 78 do not concern this Defendant and no response is required.

41. This Defendant denies the allegations of Paragraph 79 as it relates to Muhler.

42. This Defendant denies the allegations of Paragraph 80 of the Complaint as it relates to Muhler.

ANSWERING THE THIRTEENTH CAUSE OF ACTION

43. In response to Paragraph 81 of the Complaint, this Defendant repeats and realleges Paragraphs 1 through 42 of its Answer as if repeated herein verbatim.

44. This Defendant denies the allegations of Paragraph 82 of the Complaint.

45. The allegations of Paragraph 83 of the Complaint do not concern this Defendant and no response is required.

46. This Defendant denies the allegations of Paragraph 84 of the Complaint.

47. This Defendant denies the allegations of Paragraph 85 of the Complaint as they relate to Muhler.

48. This Defendant denies the allegations of Paragraphs 86, 87, 88, 89, 90, and 91 of the Complaint as they relate to Muhler.

ANSWERING THE FOURTEENTH CAUSE OF ACTION

49. In response to Paragraph 92 of the Complaint, this Defendant repeats and realleges Paragraphs 1 through 48 of its Answer as if repeated herein verbatim.

50. This Defendant denies the allegations of Paragraphs 93, 94, and 95 of the Complaint as they relate to Muhler.

ANSWERING THE FIFTEENTH CAUSE OF ACTION

51. In response to Paragraph 96 of the Complaint, this Defendant repeats and realleges Paragraphs 1 through 50 of its Answer as if repeated herein verbatim.

52. The allegations of Paragraph 97 state conclusions of law to which no response is required.

53. This Defendant denies the allegations of Paragraphs 98 and 99 of the Complaint as they relate to Muhler.

54. This Defendant denies the allegations of Paragraphs 100 and 101 of the Complaint as they relate to Muhler.

FOR A THIRD DEFENSE

55. Plaintiff's claims against this Defendant are barred by the doctrine of waiver and estoppel.

FOR A FOURTH DEFENSE

56. If this Defendant acted or failed to act as alleged in the Complaint, which is specifically denied, there were separate and intervening acts or failure to act on the part of persons or entities other than this Defendant which are the sole and proximate cause of Plaintiff's damages and serve as a complete bar to any recovery against this Defendant.

FOR A FIFTH DEFENSE

57. Plaintiff's claims against this Defendant are barred or must be reduced because even if this Defendant was negligent, grossly negligent, reckless and willful as alleged, which is specifically denied, any negligence, gross negligence, recklessness and willfulness by this Defendant must be measured against the negligence, gross negligence, recklessness, wantonness, willfulness of one or more of the entities other than this Defendant to include Plaintiff, over whom This Defendant had no control, in failing or refusing to exercise reasonable care in the design, development and construction of the project.

FOR A SIXTH DEFENSE

58. This Defendant reserves all rights it may have to demand binding arbitration.

FOR A SEVENTH DEFENSE

59. This Defendant would allege that Plaintiffs have failed to state a claim sufficient to constitute a cause of action against this Defendant upon which relief can be granted, and therefore, Plaintiffs' Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR AN EIGHTH DEFENSE

60. Plaintiffs have failed to mitigate their damages as required by law.

FOR A NINTH DEFENSE

61. This Defendant would allege that Plaintiffs' Complaint is barred by the doctrine of waiver and/or laches.

FOR A TENTH DEFENSE

62. Plaintiffs' claims are barred by applicable statute of limitations or statute of repose.

FOR AN ELEVENTH DEFENSE

63. Plaintiffs have failed to mitigate their damages; therefore, their claims are barred in whole or in part.

FOR A TWELFTH DEFENSE

64. Plaintiffs' claims are barred in whole or in part by the doctrine of estoppel.

FOR A THIRTEENTH DEFENSE

65. These claims are barred in whole or in part by the doctrine of unclean hands.

FOR A FOURTEENTH DEFENSE

66. This Defendant would allege that any injury and damage sustained by Plaintiffs were due to and caused by the sole and negligent acts or omissions of some person or persons

other than this Defendant, and over whom this Defendant exercised no authority or control and for that reason, this Defendant is not liable to Plaintiffs in any sum whatsoever.

FOR A FIFTEENTH DEFENSE

67. This Defendant would show that Plaintiffs and/or its agents inspected, approved and ratified all work performed by this Defendant. Furthermore, Plaintiffs knew or should have known if any of this Defendant's work was not in accordance with the plans and specifications and in a workmanlike manner. Accordingly, this Defendant pleads the applicable statute of limitations or statutes of repose as a complete bar to all of Plaintiffs' claims.

FOR A SIXTEENTH DEFENSE

68. Any express warranty allegedly provided by this Defendant has expired.

FOR A SEVENTEENTH DEFENSE

69. This Defendant would show the materials and workmanship of this Defendant at all times and in all manners met applicable plans, specifications, building code requirements, and industry standards and that this Defendant is, therefore, not liable to Plaintiffs in any sum whatsoever.

FOR AN EIGHTEENTH DEFENSE

70. This Defendant would show that any warranties provided by this Defendant have expired.

FOR A NINETEENTH DEFENSE

71. Plaintiff's claims are barred by the Statute of Frauds.

FOR A TWENTIETH DEFENSE

72. 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 this Defendant's

domain or control.

FOR A TWENTY-FIRST DEFENSE

73. Plaintiffs may have failed to join a party necessary to this litigation as required by Rule 19, SCRCP, and Plaintiffs' Complaint should be dismissed pursuant to Rule 12(b)(7), SCRCP.

FOR A TWENTY-SECOND DEFENSE

74. Plaintiffs' claims are barred to the extent that Plaintiffs and/or Plaintiffs' members and agents discovered, or should have discovered, or were aware of any defects and nevertheless unreasonably proceeded to pay for this Defendant's services.

FOR A TWENTY-THIRD DEFENSE

75. Any damage suffered by Plaintiffs are the direct and proximate result of their comparative and contributory negligence and Plaintiffs' recover should be barred or, alternatively, reduced proportionately to Plaintiffs' comparative negligence or others unrelated and not under the control of this Defendant.

FOR A TWENTY-FOURTH DEFENSE

76. That even if Plaintiffs were damaged as alleged, which is denied, the claims are barred pursuant to the doctrine of spoliation.

FOR A TWENTY-FIFTH DEFENSE

77. This Defendant alleges Plaintiffs failed and refused to comply with the contractual conditions precedent to this action, including but not limited to, timely written notice and detailed statements of the amounts claimed, thereby extinguishing the right to maintain the action herein.

FOR A TWENTY-SIXTH DEFENSE

78. Plaintiffs' claims are barred and this Defendant's obligation to Plaintiffs is void as a result of Plaintiffs' breach of warranty to provide plans and specifications to this Defendant that were sufficient for this Defendant to properly perform its work.

FOR A TWENTY-SEVENTH DEFENSE

79. Plaintiffs' claims are barred to the extent that Plaintiffs or Plaintiffs' members and agents discovered, or should have discovered, or were aware of any defects and failed to allow this Defendant an opportunity to investigate and cure any alleged defect.

FOR A TWENTY-EIGHTH DEFENSE

80. This Defendant reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

FOR A TWENTY-NINTH DEFENSE
(Punitive Damages)

81. Defendant would show the claim of Plaintiffs for punitive damages against Defendant cannot be sustained, because any award of punitive damages under South Carolina law by a jury that (1) is not provided standards of sufficient clarity for determining the appropriateness, and the appropriate size, of the punitive damages award, (2) is not adequately instructed on the limits of punitive damages imposed by the applicable principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages, or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics, including the resident, wealth, and corporate status of Defendant, (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible, and (5) is not subject to trial court and

appellate judicial review for reasonableness and furtherance of legitimate purposes on the basis of objective standards, would violate Defendant's due process and equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the South Carolina constitutional provisions providing for due process and equal protection, and would be improper under the common law and public policies of the State of South Carolina.

FOR A THIRTIETH DEFENSE
(Improper Claim for Punitive Damages)

82. Punitive damages are inappropriate in this case since the Defendant did not engage in any malicious, reckless, wrongful or intentional conduct upon which an award of punitive damages would be based.

FOR A THIRTY-FIRST DEFENSE
(Economic Loss Rule)

83. Plaintiffs claims against Muhler are barred to the extent they seek to recover a tort for purely economic loss.

FOR A THIRTY-SECOND DEFENSE

84. Plaintiffs' cause of action for breach of express warranty and derivative causes of action for unfair trade practices and fraud must be dismissed because Plaintiffs have failed to comply with conditions precedent set forth in said warranty.

FOR A THIRTY-THIRD DEFENSE
(Disclaimer of Implied Warranties)

85. Plaintiffs cannot recover under the theory of an implied warranty because all implied warranties have been explicitly disclaimed by this Defendant.

FOR A THIRTY-FOURTH DEFENSE
(Exclusive Warranty)

86. If this Court finds that an express warranty was given by Muhler which it denies, Plaintiffs' remedy must be limited to the remedies available under the warranty as its sole and exclusive remedy.

FOR A THIRTY-FIFTH DEFENSE
(Public Interest)

87. Plaintiffs' allegations of a violation of the South Carolina Unfair Trade Practices Act against Muhler should be dismissed as Muhler's actions do not adversely affect the public interest.

WHEREFORE, having fully answered, Defendant prays that the Complaint be dismissed, for the costs of defending this action, and for such other relief as the Court and jury deem just and proper.

McANGUS GOUDELOCK & COURIE, LLC



Peter Gunnar Nistad
Post Office Box 877

78 Wentworth Street, Suite 200 (29401)
Charleston, South Carolina 29402
(843) 576-2900

ATTORNEYS FOR DEFENDANT,
THE MUHLER COMPANY, INC.

May 7, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this 1st day of May, 2009 served a copy of **Answer to Plaintiffs' Complaint**, on behalf of Defendant, The Muhler Company, Inc. by mailing copies of same, postage prepaid, in the United States mail, with sufficient postage affixed as follows:

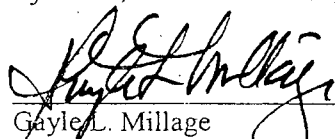
Roy P. Maybank, Esquire
Amanda R. Maybank, Esquire
Maybank Law Firm, LLC
Post Office Box 12579
Charleston, South Carolina 29422

AND

Charles S. Altman, Esquire
Meredith L. Coker, Esquire
Altman & Coker, LLC
Post Office Box 265
Charleston, South Carolina 29402
Attorneys for Plaintiffs

Christine Companion Varnado, Esquire
Kernodle, Root, Varnado & Coleman
Post Office Box 13897
Charleston, South Carolina 29422
Attorney for Defendant, Weather Shield Manufacturing, Inc.

Patrick T. Morrissey, Esquire
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-7595
Attorney for Defendant, AC Construction, Inc.



Gayle L. Millage
Legal Assistant to Peter Gunnar Nistad

5-4-09

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	CASE NO. 09-CP-08-1068
	)	
DANIEL ISLAND RIVERSIDE	)	
DEVELOPERS, LLC AND CARRIAGE	)	
HILL ASSOCIATES OF CHARLESTON,	)	
LLC,	)	ANSWER OF DEFENDANT
	)	WEATHER SHIELD MFG., INC.
Plaintiffs,	)	(Jury Trial Demanded)
	)	
v.	)	
	)	
WEATHER SHIELD MANUFACTURING,	)	
INC., THE MUHLER COMPANY, INC	)	
AND AC CONSTRUCTION, INC.,	)	
	)	
Defendants.	)	

Weather Shield, Mfg., Inc., ("Weather Shield"), responds to Plaintiffs' Complaint as follows:

1. Every allegation of Plaintiffs' Complaint not specifically admitted below is denied.

FOR A FIRST DEFENSE

2. Weather Shield is without knowledge or information sufficient to form a belief as to the allegations of Paragraphs 1 and 2 and, therefore, denies the same.
3. Weather Shield denies as written the allegations of Paragraph 3; by way of further answer, Weather Shield admits that it is a corporation organized and existing under the laws of the State of Wisconsin.
4. The allegations of Paragraph 4 constitute conclusions of law which require no response. To the extent that a response is required, Weather Shield admits that it is a foreign corporation that may be subject to jurisdiction in the courts of South Carolina by virtue of its business activities in the state.
5. Weather Shield lacks information or knowledge sufficient to form a belief as to the

allegations of Paragraphs 5 and 6 and, therefore denies the same.

6. The allegations of Paragraph 7 constitute conclusions of law which require no response.

**FOR A FIRST DEFENSE
TO THE FIRST CAUSE OF ACTION**

7. Weather Shield lacks information or knowledge sufficient to form a belief as to the allegations of Paragraphs 8, 9, 10, 11, 12, 13, 14, 15, and 16 and, therefore denies the same.

**FOR A FIRST DEFENSE
TO THE SECOND CAUSE OF ACTION**

8. In response to Paragraph 17, Weather Shield repeats its responses above.

9. Weather Shield denies as written the allegations of Paragraph 18, as to it; by way of further answer, Weather Shield craves reference to any written limited warranties and disclaimers of warranties that were provided with its products.

10. Weather Shield denies the allegations of Paragraph 19, as to it; by way of further answer, Weather Shield craves reference to any written limited warranties and disclaimers of warranties that were provided with its products.

11. Weather Shield denies the allegations of Paragraphs 20, 21, and 22, as to it; by way of further answer, Weather Shield craves reference to any written limited warranties and disclaimers of warranties that were provided with its products.

**FOR A FIRST DEFENSE
TO THE THIRD CAUSE OF ACTION**

12. In response to Paragraph 23, Weather Shield repeats its responses above.

13. Weather Shield admits so much of Paragraph 24 as alleges that it sells windows as a primary portion of its business. The remainder of the allegations as to it contained in Paragraph 24 constitute

conclusions of law which require no response.

14. Weather Shield denies the allegations of Paragraphs 25, 26, and 27.

**FOR A FIRST DEFENSE
TO THE FOURTH CAUSE OF ACTION**

15. In response to Paragraph 28, Weather Shield repeats its responses above.

16. The allegations of Paragraph 29 constitute conclusions of law which require no response. To the extent that a response is required, Weather Shield denies as written the allegations contained in Paragraph 29.

17. Weather Shield denies the allegations of Paragraphs 30, 31, 32, and 33.

**FOR A FIRST DEFENSE
TO THE FIFTH CAUSE OF ACTION**

18. In response to Paragraph 34, Weather Shield repeats its responses above.

19. The allegations of Paragraphs 35, 36, 37, and 38 are directed towards another Defendant and therefore require no response; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, it denies those allegations.

**FOR A FIRST DEFENSE
TO THE SIXTH CAUSE OF ACTION**

20. In response to Paragraph 39, Weather Shield repeats its responses above.

21. The allegations of Paragraphs 40, 41, 42, and 43 are directed towards another Defendant and therefore require no response; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, it denies those allegations.

**FOR A FIRST DEFENSE
TO THE SEVENTH CAUSE OF ACTION**

22. In response to Paragraph 44, Weather Shield repeats its responses above.

23. The allegations of Paragraph 45 constitute conclusions of law which require no response. To the extent that a response is required, Weather Shield denies as written the allegations contained in Paragraph 45.

24. Weather Shield denies the allegations of Paragraphs 46, 47, and 48.

**FOR A FIRST DEFENSE
TO THE EIGHTH CAUSE OF ACTION**

25. In response to Paragraph 49, Weather Shield repeats its responses above.

26. The allegations of Paragraphs 50, 51, 52, and 53 are directed towards another Defendant and therefore require no response; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, it denies those allegations.

**FOR A FIRST DEFENSE
TO THE NINTH CAUSE OF ACTION**

27. In response to Paragraph 54, Weather Shield repeats its responses above.

28. The allegations of Paragraphs 55, 56, 57, and 58 are directed towards another Defendant and therefore require no response; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, it denies those allegations.

**FOR A FIRST DEFENSE
TO THE TENTH CAUSE OF ACTION**

29. In response to Paragraph 59, Weather Shield repeats its responses above.

30. Weather Shield admits so much of Paragraph 60 as asserts that it manufactured some windows that, upon information and belief, were installed at the subject project.

31. Weather Shield denies the allegations of Paragraphs 61, 62, 63, and 64.

**FOR A FIRST DEFENSE
TO THE ELEVENTH CAUSE OF ACTION**

32. In response to Paragraph 65, Weather Shield repeats its responses above.

33. Weather Shield admits so much of Paragraph 66 that alleges that it engages in the business of selling windows and that some of its windows upon information and belief, were installed at the subject project.

34. The allegations of Paragraph 67 constitute conclusions of law which require no response. To the extent that a response is required, Weather Shield admits that it sold some windows that were, upon information and belief, installed at the subject project.

35. Weather Shield denies the allegations of Paragraphs 68, 69, 70, 71, and 72.

**FOR A FIRST DEFENSE
TO THE TWELFTH CAUSE OF ACTION**

36. In response to Paragraph 73, Weather Shield repeats its responses above.

37. The allegations of Paragraph 74 constitute conclusions of law which require no response. To the extent that a response is required, Weather Shield admits that it is the trade of selling windows. To the extent that the remaining allegations are directed towards another Defendant, those allegations require no response; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, it denies those allegations.

38. Weather Shield denies the allegations of Paragraphs 75, 76, 77, 78, 79, and 80.

**FOR A FIRST DEFENSE
TO THE THIRTEENTH CAUSE OF ACTION**

39. In response to Paragraph 81, Weather Shield repeats its responses above.

40. Weather Shield denies as written the allegations of Paragraph 82, as to it; by way of further answer, Weather Shield craves reference to any written limited warranties and disclaimers of warranties that were provided with its products.

41. Weather Shield lacks information or knowledge sufficient to form a belief as to the allegations of Paragraph 83 and therefore denies same.

42. Weather Shield denies the allegations of Paragraphs 84, 85, 86, 87, 88, 89, 90, and 91 as to it, and states that it lacks information or knowledge sufficient to form a belief as to the allegations of Paragraphs 84, 85, 86, 87, 88, 89, 90, and 91 as to other parties, and therefore denies same.

**FOR A FIRST DEFENSE
TO THE FOURTEENTH CAUSE OF ACTION**

43. In response to Paragraph 92, Weather Shield repeats its responses above.

44. Weather Shield denies the allegations of Paragraphs 93, 94, and 95 as to it, and states that it lacks information or knowledge sufficient to form a belief as to the allegations of Paragraphs 93, 94, and 95 as to other parties, and therefore denies same.

**FOR A FIRST DEFENSE
TO THE FIFTEENTH CAUSE OF ACTION**

45. In response to Paragraph 96, Weather Shield repeats its responses above.

46. The allegations of Paragraphs 97, 98, 99, 100, and 101 are directed towards other Defendants, those allegations require no response; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, it denies those allegations, thus being the remainder of Plaintiffs' Complaint.

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

47. The Complaint, or parts of it, fail to state a claim for which relief can be granted against Weather Shield and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

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

48. Upon information and belief, Plaintiffs' recovery of any amount from Weather Shield must be reduced or barred in its entirety due to Plaintiffs' own comparative negligence.

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

49. Upon information and belief, some or all of Plaintiffs' claims must be reduced or are barred by the applicable statute of limitations or statute of repose.

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

50. Upon information and belief, some or all of Plaintiffs' claims are barred by the doctrines of laches, waiver and/or estoppel.

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

51. Upon information and belief, any right to recover damages against Weather Shield is barred by the independent and intervening negligent actions of others. Whatever damages or injuries, if any, which may have been sustained by Plaintiffs in this action were the result of, were due solely to, caused solely by, and were the direct and proximate result of the intervening, superceding, and unforeseeable negligence of others over whom this Defendant had no control or which occurred so as to bar Plaintiffs' recovery against this Defendant.

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

52. Upon information and belief, Plaintiffs right to recover damages from Weather Shield is barred, in whole or in part, due to Plaintiffs' failure to mitigate damages.

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

53. Upon information and belief, Plaintiffs or other parties have assumed the risk that would otherwise have resulted in a finding against Defendant Weather Shield, which is denied, and any right to recover for damages against this Defendant is barred by the doctrine of assumption of the risk..

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

54. If windows or other products that may have been sold by Weather Shield are found to be the cause of damages suffered by Plaintiffs, which Weather Shield denies, Plaintiffs cannot recover against this Defendant if the condition of the products as installed in the subject project was substantially changed and materially altered from the condition in which they were sold, as provided in S.C. Code § 15-73-10.

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

55. If windows or other products that may have been sold by Weather Shield were defective, which is denied, Plaintiffs discovered such defect and was aware of the danger and nevertheless proceeded to make use of the product, such that Plaintiffs' recovery is barred or limited from this Defendant, as provided in S.C. Code §15-73-20.

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

56. Plaintiffs' right to recover damages from Weather Shield is barred, in whole or in part, due to the economic loss doctrine.

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

57. Weather Shield specifically pleads and incorporates herein the terms of any limitations of remedy in any applicable warranty, if any, in bar of any recovery.

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

58. If windows or other products that may have been sold by Weather Shield were defective, which is denied, failure to give reasonable notice is pled in bar of any recovery under a warranty claim and otherwise.

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

59. Plaintiffs lack standing to make the claims asserted against Weather Shield in this action.

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

60. Plaintiffs' right to recover damages from Weather Shield is barred, in whole or in part, due to Plaintiffs' spoliation of evidence.

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

61. Plaintiffs' claim for punitive damages against Weather Shield cannot be sustained because any award of punitive damages under South Carolina law without bifurcating the trial of all punitive damages issues would violate Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process provisions of the South Carolina Constitution.

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

62. Plaintiffs' claim for punitive damages against Weather Shield cannot be sustained because an award of punitive damages under South Carolina law subject to no predetermined limit, such as a maximum multiple of compensatory damages or a maximum on the amount of punitive damages that a jury may impose, would violate Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process provisions of the South Carolina Constitution.

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

63. Plaintiffs' claim for punitive damages against Weather Shield cannot be sustained because an award of punitive damages under South Carolina law by a jury that (1) is not provided a standard of sufficient clarity for determining the appropriateness, or the appropriate size, of a punitive damages award, (2) is not instructed on the limits on punitive damages imposed by the applicable principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics, including the alleged corporate status of Defendant, (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible, and (5) is not subject to judicial review on the basis of objective standards, would violate Defendant's due process and equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution and the double jeopardy clause of the Fifth Amendment and by the South Carolina Constitution's provisions providing due process, equal protection, and a guaranty against double jeopardy.

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

64. Plaintiffs' claim for punitive damages against Weather Shield cannot be sustained because an award of punitive damages for the purpose of compensating Plaintiff for elements of damage not otherwise recognized by South Carolina law would violate Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process provisions of the South Carolina Constitution.

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

65. Plaintiffs' claim for punitive damages against Weather Shield cannot be sustained because an award of punitive damages under South Carolina law without proof of every element beyond a reasonable doubt would violate Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process provisions of the South Carolina Constitution.

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

66. Plaintiffs' claim for punitive damages cannot be sustained because an award of punitive damages under state law without the same protections that are accorded to all criminal defendants, including protection against unreasonable searches and seizures, double jeopardy and self-incrimination and the rights to confront adverse witnesses, a speedy trial and the effective assistance of counsel would violate Defendant's rights under the Fourteenth Amendment to the United States Constitution and the Fourth, Fifth, and Sixth Amendments as incorporated into the Fourteenth Amendment and the South Carolina Constitution's provisions providing for due process and the

rights to confront witnesses, a speedy trial and effective assistance of counsel and protection against unreasonable searches and seizures, double jeopardy and compelled self-incrimination.

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

67. Any award of damages, punitive or otherwise, based on anything other than Weather Shield's conduct in connection with the specific incident that is the subject of this lawsuit would violate the due process clause of the Fourteenth Amendment to the United States Constitution and the double jeopardy clause of the Fifth Amendment as incorporated into the Fourteenth Amendment and the South Carolina Constitution's provisions providing for due process and a guaranty against double jeopardy, because a judgment for punitive damages in this case cannot protect Defendant against impermissible multiple punishment for the same wrong.

WHEREFORE, having fully answered Plaintiffs' Complaint, Weather Shield prays that the same be dismissed with costs. Further this Defendant prays for all relief that this Honorable Court finds just and proper.

KERNODLE, ROOT, VARNADO & COLEMAN

By:



Christine Companion Varnado
914 Folly Road, Suite 2 (29412)
Post Office Box 13897
Charleston, SC 29422
(843) 795-7800
(843) 795-3032 fax
cvarnado@kernoddelelaw.com

ATTORNEY FOR WEATHER SHIELD MFG., INC.

May 4, 2009
Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned, Attorney for Defendant Weather Shield Mfg., Inc., hereby certifies that a copy of the attached pleading was placed in an envelope, with first-class postage pre-paid, and mailed to:

Roy P. Maybank, Esquire
Amanda R. Maybank, Esquire
P.O. Box 12579
531 Savannah Hwy
Charleston, SC 29422

Attorneys for Plaintiffs

AND

Charles S. Altman, Esquire
Meredith L. Coker, Esquire
Altman & Coker, LLC
P.O. Box 265
Charleston, SC 29402

Attorney for The Muhler Company

Peter Gunnar Nistad, Esquire
McAngus, Goudelock, & Courie, LLC
78 Wentworth Street, Suite 200 (29401)
P.O. Box 877
Charleston, SC 29402

Attorney for AC Construction, Inc.

Patrick T. Morrissey, Esquire
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144

May 4, 2009


Christine Companion Varnado

5/15/09

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	CASE NO.: 2009-CP-08-1068
	)	
Daniel Island Riverside Developers, LLC	)	
and Carriage Hill Associates of	)	
Charleston, LLC,	)	
	)	
Plaintiffs,	)	ANSWER OF DEFENDANT
vs.	)	AC CONSTRUCTION, INC.
	)	(Jury Trial Demanded)
	)	
Weather Shield Manufacturing, Inc., The	)	
Muhler Company, Inc. and AC	)	
Construction, Inc.,	)	
	)	
Defendants.	)	

The Defendant, AC Construction, Inc. (hereinafter "AC"), above named, answering the Complaint of the Plaintiffs, above named, alleges and says as follows:

1. That upon information and belief, AC admits the allegations of paragraphs 1 through 5 of the Complaint.
2. That AC admits the allegations contained in paragraph 6 of the Complaint.
3. That the allegations of paragraph 7 are conclusions of law, and the AC is not required to answer the same.
4. That AC is not required to admit or deny the truth of the allegations of paragraph 8 of the Complaint because, upon information and belief, such allegations are not intended to state a claim against AC. If and to the extent that such allegations are later held or taken to state a claim against AC then such allegations together with all inferences to be derived therefrom are denied.
5. That AC craves reference to its contract with the Plaintiffs and denies all allegations within paragraphs 9 and 10 of the Complaint inconsistent therewith.

6. That AC denies the allegations contained in paragraphs 11 and 12 of the Complaint.

7. That AC lacks sufficient information to respond to the allegations of paragraphs 13, 14, 15 and 16 of the Complaint which are directed against Co-Defendant Muhler and requests proof of same.

8. That answering the allegations of paragraph 17, AC would re-allege its answers to the allegations of paragraphs 1 through 7 above as fully as if the same were here set forth verbatim.

9. That AC denies the allegations contained in paragraphs 18, 19, 20, 21 and 22 of the Complaint.

10. That answering the allegations of paragraph 23, AC would re-allege its answers to the allegations of paragraphs 1 through 9 above as fully as if the same were here set forth verbatim.

11. That AC is not required to admit or deny the truth of the allegations of paragraphs 24, 25, 26 and 27 of the Complaint because, upon information and belief, such allegations are not intended to state a claim against AC. If and to the extent that such allegations are later held or taken to state a claim against AC then such allegations together with all inferences to be derived therefrom are denied.

12. That answering the allegations of paragraph 28, AC would re-allege its answers to the allegations of paragraphs 1 through 11 above as fully as if the same were here set forth verbatim.

13. That AC is not required to admit or deny the truth of the allegations of paragraphs 29, 30, 31, 32 and 33 of the Complaint because, upon information and belief, such allegations are not intended to state a claim against AC. If and to the extent that such

allegations are later held or taken to state a claim against AC then such allegations together with all inferences to be derived therefrom are denied.

14. That answering the allegations of paragraph 34, AC would re-allege its answers to the allegations of paragraphs 1 through 13 above as fully as if the same were here set forth verbatim.

15. That the allegations of paragraph 35 are conclusions of law, and AC is not required to answer the same.

16. That AC denies the allegations contained in paragraphs 36, 37 and 38 of the Complaint.

17. That answering the allegations of paragraph 39, AC would re-allege its answers to the allegations of paragraphs 1 through 16 above as fully as if the same were here set forth verbatim.

18. That AC is not required to admit or deny the truth of the allegations of paragraphs 40, 41, 42 and 43 of the Complaint because, upon information and belief, such allegations are not intended to state a claim against AC. If and to the extent that such allegations are later held or taken to state a claim against AC then such allegations together with all inferences to be derived therefrom are denied.

19. That answering the allegations of paragraph 44, AC would re-allege its answers to the allegations of paragraphs 1 through 18 above as fully as if the same were here set forth verbatim.

20. That AC is not required to admit or deny the truth of the allegations of paragraphs 45, 46, 47 and 48 of the Complaint because, upon information and belief, such allegations are not intended to state a claim against AC. If and to the extent that such allegations are

later held or taken to state a claim against AC then such allegations together with all inferences to be derived therefrom are denied.

21. That answering the allegations of paragraph 49, AC would re-allege its answers to the allegations of paragraphs 1 through 20 above as fully as if the same were here set forth verbatim.

22. That the allegations of paragraph 50 are conclusions of law, and AC is not required to answer the same.

23. That AC denies the allegations contained in paragraphs 51, 52 and 53 of the Complaint.

24. That answering the allegations of paragraph 54, AC would re-allege its answers to the allegations of paragraphs 1 through 23 above as fully as if the same were here set forth verbatim.

25. That AC is not required to admit or deny the truth of the allegations of paragraphs 55, 56, 57 and 58 of the Complaint because, upon information and belief, such allegations are not intended to state a claim against AC. If and to the extent that such allegations are later held or taken to state a claim against AC then such allegations together with all inferences to be derived therefrom are denied.

26. That answering the allegations of paragraph 59, AC would re-allege its answers to the allegations of paragraphs 1 through 25 above as fully as if the same were here set forth verbatim.

27. That AC is not required to admit or deny the truth of the allegations of paragraphs 60, 61, 62, 63 and 64 of the Complaint because, upon information and belief, such allegations are not intended to state a claim against AC. If and to the extent that such

allegations are later held or taken to state a claim against AC then such allegations together with all inferences to be derived therefrom are denied.

28. That answering the allegations of paragraph 65, AC would re-allege its answers to the allegations of paragraphs 1 through 27 above as fully as if the same were here set forth verbatim.

29. That AC is not required to admit or deny the truth of the allegations of paragraphs 66, 67, 68, 69, 70, 71 and 72 of the Complaint because, upon information and belief, such allegations are not intended to state a claim against AC. If and to the extent that such allegations are later held or taken to state a claim against AC then such allegations together with all inferences to be derived therefrom are denied.

30. That answering the allegations of paragraph 73, AC would re-allege its answers to the allegations of paragraphs 1 through 29 above as fully as if the same were here set forth verbatim.

31. That AC denies the allegations contained in paragraphs 74 and 75 of the Complaint.

32. That AC is not required to admit or deny the truth of the allegations of paragraphs 76 and 77 of the Complaint because, upon information and belief, such allegations are not intended to state a claim against AC. If and to the extent that such allegations are later held or taken to state a claim against AC then such allegations together with all inferences to be derived therefrom are denied.

33. That AC denies the allegations contained in paragraphs 78, 79 and 80 of the Complaint.

34. That answering the allegations of paragraph 81, AC would re-allege its answers to the allegations of paragraphs 1 through 33 above as fully as if the same were here set forth

verbatim.

35. That AC is not required to admit or deny the truth of the allegations of paragraph 82 of the Complaint because, upon information and belief, such allegations are not intended to state a claim against AC. If and to the extent that such allegations are later held or taken to state a claim against AC then such allegations together with all inferences to be derived therefrom are denied.

36. That AC denies the allegations contained in paragraphs 83, 84, 85, 86, 87, 88, 89, 90 and 91 of the Complaint.

37. That answering the allegations of paragraph 92, AC would re-allege its answers to the allegations of paragraphs 1 through 36 above as fully as if the same were here set forth verbatim.

38. That AC denies the allegations contained in paragraphs 93, 94 and 95 of the Complaint.

39. That answering the allegations of paragraph 96, AC would re-allege its answers to the allegations of paragraphs 1 through 38 above as fully as if the same were here set forth verbatim.

40. That the allegations of paragraph 97 are conclusions of law, and AC is not required to answer the same.

41. That AC denies the allegations contained in paragraphs 98, 99, 100 and 101 of the Complaint.

42. That AC denies each and every allegation of the Complaint not hereinabove specifically admitted or modified.

FURTHER ANSWERING THE COMPLAINT

AND AS AN AFFIRMATIVE DEFENSE THERETO,
THE DEFENDANT ALLEGES AND SAYS:
(Prior Action Pending)

43. That there is presently pending another cause of action between the same parties for the same claim, such action being AC Construction v. Daniel Island Riverside Developers, LLC, Carriage Hill Associates of Charleston, LLC, and Travelers Casualty and Surety Company of America and being designated at Case No.: 09-CP-08-1413 and, therefore, the within action should be dismissed pursuant to the provisions of SCRPC Rule 12(b)(8) or joined.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THE DEFENDANT ALLEGES AND SAYS:
(Waiver and Estoppel)

44. Plaintiffs claims against AC are barred by the doctrine of waiver and estoppel.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THE DEFENDANT ALLEGES AND SAYS:
(Intervening Cause)

45. If AC acted or failed to act as alleged in the Complaint, which is specifically denied, there were separate and intervening acts or failure to act on the part of persons or entities other than AC which are the sole and proximate cause of Plaintiffs' damages and serve as a complete bar to any recovery against AC.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THE DEFENDANT ALLEGES AND SAYS:
(Comparative Negligence)

46. Plaintiffs' claims against AC are barred or must be reduced because even if AC was negligent, grossly negligent, reckless and willful as alleged, which is specifically denied,

any negligence, gross negligence, recklessness and willfulness by AC must be measured against the negligence, gross negligence, recklessness, wantonness, willfulness of one or more of the entities other than AC to include Plaintiffs, over whom AC had no control, in failing or refusing to exercise reasonable care in the design, development and construction of the project.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THE DEFENDANT ALLEGES AND SAYS:

47. AC reserves all rights it may have to demand binding arbitration.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THE DEFENDANT ALLEGES AND SAYS:
(Failure to State facts Sufficient)

48. AC would allege that Plaintiffs have failed to state a claim sufficient to constitute a cause of action against AC upon which relief can be granted, and therefore, Plaintiffs' Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THE DEFENDANT ALLEGES AND SAYS:
(Improper Process)

49. That the process issued in the within action is insufficient and, therefore, the within action should be dismissed pursuant to the provisions of SCRCP Rule 12(b)(4).

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THE DEFENDANT ALLEGES AND SAYS:
(Improper Service of Process)

50. That service of process was insufficient in the within action and, therefore, the within

action should be dismissed pursuant to the provisions of SCRPC Rule 12(b)(5)

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THE DEFENDANT ALLEGES AND SAYS:
(Lack of Proper Service)

51. That the court lacks jurisdiction over the person of AC because the Plaintiffs have not obtained proper service in the manner required by law and therefore the Plaintiffs' Complaint should be dismissed pursuant to the provisions of SCRPC Rule 12(b)(2).

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THE DEFENDANT ALLEGES AND SAYS:
(Failure to Maintain)

52. That plaintiff was obligated to maintain the structure against normal wear, tear and deterioration due to age and the elements and plaintiff failed to do so and such is the direct and proximate cause of the damages suffered by the plaintiff and such constitutes a complete defense to the claims of the plaintiff.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THE DEFENDANT ALLEGES AND SAYS:
(Mitigation)

53. Plaintiffs have failed to mitigate their damages as required by law.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THE DEFENDANT ALLEGES AND SAYS:
(Statute of Limitations)

54. Plaintiffs' claims are barred by applicable statute of limitations.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THE DEFENDANT ALLEGES AND SAYS:
(Sole Negligence of Others)

55. AC would allege that any injury and damage sustained by Plaintiffs were due to and caused by the sole and negligent acts or omissions of some person or persons other than AC, and over whom AC exercised an authority or control and for that reason, AC is not liable to Plaintiffs in any sum whatsoever.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THE DEFENDANT ALLEGES AND SAYS:
(Intervening and Superseding Acts)

56. Plaintiffs' damages, if any, are the direct and proximate result of intervening and superseding acts of third parties not affiliated with AC and not under AC's domain or control.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THE DEFENDANT ALLEGES AND SAYS:
(Spoliation)

57. That even if Plaintiffs were damaged as alleged, which is denied, the claims are barred pursuant to the doctrine of spoliation.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THE DEFENDANT ALLEGES AND SAYS:
(Breach of Warranty as to Plans and Specifications)

58. Plaintiffs' claims are barred and AC obligation to Plaintiffs is void as a result of Plaintiffs' breach of warranty to provide plans and specification to AC that were sufficient for AC to properly perform its work.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THE DEFENDANT ALLEGES AND SAYS:
(Notice and Opportunity to Cure)

59. Plaintiffs' claims are barred to the extent that Plaintiffs or Plaintiffs' members and agents discovered, or should have discovered, or were aware of any defects and failed to allow AC an opportunity to investigate and cure any alleged defect.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THE DEFENDANT ALLEGES AND SAYS:
(Punitive Damages Unconstitutional - Due Process)

60. That the plaintiffs' Complaint to the extent that it seeks punitive or exemplary damages violates the right of AC to procedural and substantive due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina, and therefore fails to state a cause of action upon which either exemplary or punitive damages can be awarded.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THE DEFENDANT ALLEGES AND SAYS:
(Improper Claim for Punitive Damages)

61. Punitive damages are inappropriate in this case since AC did not engage in any malicious, reckless, wrongful or intentional conduct upon which an award of punitive damages would be based.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THE DEFENDANT ALLEGES AND SAYS:
(Economic Loss Rule)

62. Plaintiffs claims against AC are barred to the extent they seek to recover a tort for purely economic loss.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,

THE DEFENDANT ALLEGES AND SAYS:
(Exclusive Warranty and Exclusion)

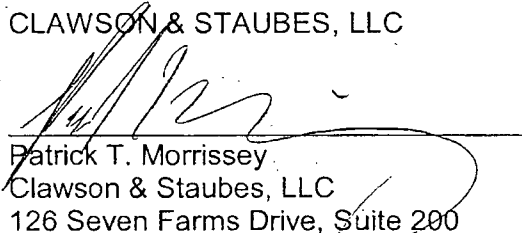
63. If this Court finds that an express warranty was given by AC which it denies, Plaintiffs' remedy must be limited to the remedies available under the warranty as its sole and exclusively remedy and further, exclusion from the warranty applies for modification to contractors work, which has been plead by Plaintiffs.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THE DEFENDANT ALLEGES AND SAYS:
(Reservation and Non-Waiver)

64. AC reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

WHEREFORE, having fully answered the Complaint of the Plaintiffs, AC prays for a trial by jury and that the plaintiffs' Complaint be dismissed, together with costs and disbursements of this action and for such other and further relief as this Court may deem just and proper.

CLAWSON & STAUBES, LLC



Patrick T. Morrissey
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, South 29492-7595
(843) 577-2026

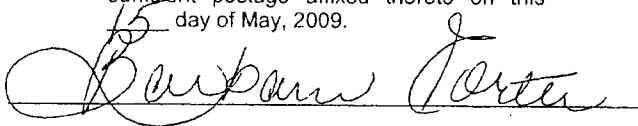
Attorneys for Defendant
AC Construction, Inc.

Charleston, South Carolina

May 15, 2009

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading has been served upon opposing counsel by mailing a copy properly addressed and with sufficient postage affixed thereto on this 15 day of May, 2009.

A handwritten signature in cursive script, appearing to read "Barbara J. Porter", is written over a horizontal line.

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY

) C/A NO.: 2009-CP-08-

3916

THE OAKS AT RIVERS EDGE PROPERTY
OWNERS ASSOCIATION, INC., and JOE
CHIOVAROU, ROBERT REECE, WILLIAM
JUNG, and JOSEPH T. MORAN
in their capacity as board members of the
Oaks at Rivers Edge Homeowners Association, Inc.
and, individually in their capacity as Unit Owners,
and on behalf of all others similarly situated,

Plaintiffs,

v.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, CARRIAGE HILL ASSOCIATES OF
CHARLESTON, LLC, CARRIAGE HILL
ASSOCIATES, INC., WEATHER SHIELD
MANUFACTURING, INC., THE MUHLER CO.,
INC., A.C. CONSTRUCTION, INC., COASTAL
ROOFING, CO., INC.,

Defendants.

COMPLAINT

(Jury Trial Demanded on Causes
of Action triable to a Jury)

FILED
2009 DEC -3 PM 12:10
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

Plaintiffs The Oaks at Rivers Edge Property Owners Association, Inc., (the
"Association") Joe Chiovarou, Robert Reece, William Jung, and Joseph T. Moran
(collectively the "Individual Plaintiffs" or "Class Representatives) in their capacity as
board members of the Oaks at Rivers Edge Property Owners Association, Inc. and as
individual unit owners at The Oaks at Rivers Edge Horizontal Property Regime (the
"Property" or "Regime") and on behalf of all others similarly situated bring this action
and allege as follows:

PARTIES

1. Plaintiff, The Oaks at Rivers Edge Property Owners Association, Inc. is a non-profit corporation organized and existing under the laws of South Carolina being an association of and limited to owners of the units located at the Property in Berkeley County, State of South Carolina.

2. Plaintiffs Joe Chiovarou, Robert Reece, William Jung, and Joseph T. Moran are duly elected board members on the Board of the Association. They are each individual members of the Association, which is governed by the Master Deed and By-Laws, and each own units at the Property located in Berkeley County, State of South Carolina. The Individual Plaintiffs each purchased their respective units from the Defendant/Developer, more particularly described below.

3. Defendant Daniel Island Riverside Developers, LLC ("Defendant/Developer") is upon information and belief a South Carolina limited liability corporation authorized to conduct business in this state. The Defendant/Developer is the developer and the seller of the Property which is the subject of this action. Additionally, the Defendant/Developer was at times in control of the Association, through the appointment and control of the Board of Directors of the Association, while constructing, marketing, selling, and developing the Property. The Property was marketed as luxury condominiums both before and after the Defendant/Developer was put on notice of numerous construction and design defects in the Property. Upon information and belief, the Defendant/Developer failed to disclose some or all of the construction and/or design defects to the purchasers—including the Individual Plaintiffs.

4. Defendant Carriage Hill Associates of Charleston, LLC is, upon information and belief, a South Carolina limited liability corporation authorized to do business in this state. Carriage Hill Associates of Charleston, LLC was the general contractor for the property and was responsible for the proper construction of this project in accordance with the contract documents, all applicable building codes, and within industry standards of good and workmanlike practice for luxury condominiums.

5. Defendant Carriage Hill Associates of Charleston, LLC was at all times acting as the agent of Defendant Carriage Hill Associates, Inc. which is, upon information and belief, a corporation organized and existing under the laws of the state of New York and is authorized to conduct business in the State of South Carolina through its agent, subsidiary, alter-ego, partner, associate, joint venturer, servant and/or representative Carriage Hill Associates of Charleston, LLC.

6. Upon information and belief, at all times relevant to this Complaint, there existed an agency relationship by and between Defendants Carriage Hill Associates of Charleston, LLC and Carriage Hill Associates, Inc., with Carriage Hill Associates, Inc. acting both individually and as the principal for Carriage Hill Associates of Charleston, LLC acting by and through Carriage Hill Associates, Inc.

7. The Plaintiffs are informed and believe, and thereupon allege, that Defendants Carriage Hill Associates of Charleston, LLC and Carriage Hill Associates, Inc., and each of them, are, and at all times mentioned herein were the alter-egos, successors in interest, parents, subsidiaries, agents, partners, associates, joint venturers, servants, employees and/or other authorized representatives of each other and in doing the things herein alleged were acting within the course and scope of their respective

authority, agency, employment, and/or other representation, and with the knowledge, consent, approval and/or ratification of each other.

8. Defendant Carriage Hill Associates of Charleston, LLC, at all times relevant hereto, was subject to the dominion and control of Defendant Carriage Hill Associates, Inc. and/or the dominion and control of others acting under Defendant Carriage Hill Associates, Inc. direction and control, and that each of the Defendants Carriage Hill Associates of Charleston, LLC and Carriage Hill Associates, Inc. is an alter-ego of the other.

9. That Defendant Carriage Hill Associates, Inc. is personally responsible in an individual capacity for the acts, omissions, debts, obligations, and liabilities, stated herein, of Defendant Carriage Hill Associates of Charleston, LLC.

10. Defendant Carriage Hill Associates of Charleston, LLC and Defendant Carriage Hill Associates, Inc. will hereinafter collectively be referred to as the Carriage Hill Defendants.

11. Defendant Weather Shield Manufacturing, Inc. ("Weather Shield") is a corporation organized and existing under the laws of the state of Wisconsin and is authorized to do business in the state of South Carolina. Weather Shield directs its products and/or materials for sale in the state of South Carolina and has had employees and/or agents perform work in South Carolina. At all times material hereto, Weather Shield manufactured, provided, designed, sold, and/or placed into the stream of commerce certain windows and doors that were incorporated into, installed, constructed, and/or used in or on the Property.

12. Defendant Muhler Co., Inc. ("Muhler") is a corporation organized and existing under the laws of the State of South Carolina. Upon information and belief, Muhler was the supplier of windows, window systems, and doors which were installed at the Property. Additionally, Muhler installed and/or supervised the installation of the exterior window systems and doors at the Property.

13. A.C. Construction, Inc., ("A.C.") is a corporation organized and existing under the laws of the State of South Carolina. A.C., pursuant to a contract with the Carriage Hill Defendants and/or the Defendant/Developers, installed windows and doors at the Property.

14. Coastal Roofing Co., Inc. ("Coastal") is, upon information and belief, a corporation organized and existing under the laws of the State of South Carolina. At all times material hereto, Coastal Roofing installed, provided materials and labor for, designed, and/or constructed the roof and roofing system at the Property pursuant to a contract with the Carriage Hill Defendants and/or the Defendant/Developers.

JURISDICTION AND VENUE

15. This Court has jurisdiction of the matter and over the parties. S.C. Ann. §§ 15-53-20 and 15-53-30; S.C. Code Ann. §§ 36-2-802 and 36-2-803.

16. Venue is proper in this County. S.C. Code Ann. §§ 15-7-10, -20, and -30.

BACKGROUND

17. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

18. The Regime consists of six, four story condominium buildings with ground level parking constructed in 2004, 2005, and 2006. The exteriors are finished with stucco and brick veneer. The roofs are single ply membrane.

19. The Defendant/Developers contracted with the Carriage Hill Defendants to perform general contracting duties. The Carriage Hill Defendants then contracted with Defendant Muhler to install and/or supply windows and doors designed and manufactured by Defendant Weather Shield. The Carriage Hill Defendants then contracted with Defendant A.C. to perform the actual installation of the windows and doors under the supervision of Defendant Muhler.

20. The contract with A.C. as well as South Carolina law required, among other things, that A.C. would competently and properly install the windows and doors. On or about August 27, 2006, the Defendant/Developer and/or the Carriage Hill Defendants determined that the work of A.C. in installing the windows and doors at the property was defective, improper, incompetent, unskillful, unworkmanlike, and/or uncareful. Despite the fact that Muhler had been tasked with supervising the improper work of A.C., the Defendant/Developers and/or the Carriage Hill Defendants contracted again with Muhler to repair the deficiencies in the work performed by A.C. and/or to complete the work. Muhler was required by the contract and the law of the State of South Carolina to competently and properly correct the deficiencies in the work performed by A.C.

21. Muhler failed to competently, skillfully, carefully, and/or diligently perform the work to correct the deficiencies and/or complete the work.

22. The deficiencies in the installation and/or work to install the windows and doors at the property and the deficiencies in the attempted correction of the work have caused severe leaking and exposure to harmful elements and materials leading to property damage.

23. Though the Defendant/Developers and/or the Carriage Hill Defendants were aware of these defects, such defects and deficiencies were not disclosed to the Plaintiffs herein and were, upon information and belief, concealed from the Plaintiffs named herein.

24. The Defendant/Developers and/or the Carriage Hill Defendants contracted with Defendant Coastal to design, construct, and/or install the roof or roofing system on the Property.

25. As a result of water intrusion and leaks experienced by the Plaintiffs or other homeowners, an engineering investigation was performed in 2008 when the buildings were only 2 or 3 years old. The investigation sought to establish whether or not the Regime buildings were deficiently designed or had significant construction defects.

26. By the investigation of the subject buildings and subsequent report provided by an engineer, the homeowners and/or Plaintiffs learned that the subject buildings have been deficiently designed and have significant construction defects, particularly the stucco cladding system which was improperly installed and will have to be completely removed and replaced. In addition, the engineer noted other construction, design and stucco deficiencies to the subject buildings, including, but not limited to, the following:

- (a) Improper stucco installation in that no mechanism for weep had been installed at any location in the four-story wall, which is a violation of Industry Standard ASTM C926 and ASTM C1063;
- (b) Improper and/or no installation of sealant joints;
- (c) No head flashings at any of the window or door installations;
- (d) Improper control joint installation around windows;
- (e) Cracking at window corners due to lack of proper stress relief which will promote water intrusion;
- (f) Improper installation and intersection of the single ply roof membrane with the roof eave and sidewall;
- (g) Lack of flashing or weep screed at any window head location within the stucco system;
- (h) Inadequate spacing and installation of control joints;
- (i) Improper installation of all of the exterior architectural trim at the sill of windows which will promote water intrusion;
- (j) Improper installation of the exterior cladding system by evidence of staining and damage;
- (k) Improper construction of the guardrails, handrails and balusters on the balconies which have evidence of rot and deterioration;
- (l) Improper material selection of the guardrails, handrails and balusters on the balconies;
- (m) Improper installation of the exterior cladding that is not in accordance with the IBC and code referenced industry standards;
- (n) Water intrusion damage resulting from improper installation of the exterior cladding; and
- (o) Deterioration of the subject buildings due to water intrusion from the failed Exterior Cladding System.

27. As a direct and proximate result and consequence of the numerous stucco installation, construction and design problems and defects as noted above, the Plaintiffs

have and will continue to spend substantial sums of money for the repairs and reconstruction of their condominium units and will be subject to loss of use, enjoyment, and depreciation of value of property.

28. The water damage to common elements and condominium units is a result of defects and deficiencies in the design and construction of the Regime, specifically including, but not limited to, the following:

(a) Lack of weep screed or weeping mechanism along the stucco wall bases at the perimeter of the balcony slabs as required by building codes and proper construction practices;

(b) Lack of weeps at window heads;

(c) Failure of weep or water management systems to manage seepage water, which gets past the façade cladding, has resulted in wetting of exterior sheathing behind moisture barriers and into the wall cavity and metal framework within the wall cavity;

(d) Improper splicing at roof edges;

(e) Improper intersection of roof membrane with exterior walls;

(f) Inadequate spacing and installation of control joints;

(g) Improper installation of sealants around windows, doors, and cladding terminations;

(h) Lack of head and sill flashing;

(i) Improper installation of control joint accessories;

(j) Failure to install proper sealant joints around penetrations in exterior cladding;

29. Plaintiffs are informed and believe that the exterior wall sheathing was observed to be in an advanced stage of deterioration and not in compliance with the building codes and standards which were applicable to this project at the time of design

and construction and will have to be replaced to comply with current building codes and standards applicable to this project.

30. In addition to the construction defects, the Defendant/Developers, in their capacity as head of the Association have:

(a) Failed and omitted to act in a fiduciary capacity towards the owners of the condominium units;

(b) Negligently maintained the property

(c) Failed to act as competent managers;

(d) Acted at all times in their own interests and in contravention of their fiduciary duty towards the condominium unit owners;

(e) Covered up and concealed defects and damage from the unit owners, and

(f) Acted in violation of all fiduciary duty concepts.

31. Due to the actions of the Defendant/Developers, as stated above, the Plaintiffs are facing significant damage repairs, deteriorating property, significant immediate expenses for investigation, destructive testing, and an analysis of construction defects, repairs defects, damages, rot deterioration, and a generally overall dilapidated condition which is the direct and proximate result of defective construction, management, maintenance, and abandonment of generally accepted fiduciary principles on the part of the Defendant/Developers.

FIRST CAUSE OF ACTION
(Negligence as to all Defendants)

32. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

33. Defendants owed a duty to the Plaintiffs and breached the same because they were negligent, careless, reckless, willful and wanton in one or more of the following particulars, to-wit:

- (a) in failing to properly repair the structures;
- (b) in selling, constructing, and/or repairing the units with defective windows and doors;
- (c) in selling, constructing, and/or repairing units with inadequate flashings and weep screeds;
- (d) in selling, constructing, and/or repairing units with defective siding;
- (e) in selling, constructing, and/or repairing units with inadequate water barriers;
- (f) in selling, constructing, and/or repairing units without weather proof building envelopes and exteriors;
- (g) in failing to properly warn purchasers and/or ultimate users or consumers;
- (h) in misrepresenting the condition of the units to purchasers and/or owners;
- (i) in making inadequate repairs;
- (j) in covering up deficiencies;
- (k) in failing to give proper disclosure;
- (l) in selling and/or constructing defective units;
- (m) in failing to properly supervise its contractors and/or subcontractors;
- (n) in failing to perform repairs and construction in accordance with applicable building codes and industry standards;
- (o) in tendering common elements to the Homeowners' Association in a deficient condition;

- (p) 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;
- (q) in failing to comply the applicable Fire and Safety Codes;
- (r) in failing to perform a meaningful evaluation of the property or the products or materials;
- (s) in selling, manufacturing, marketing, and/or designing defective and/or dangerous products;
- (t) in failing to exercise due care;
- (u) in violating the manufacturer's industry standards;
- (v) in improperly designing and constructing the roof, roof to wall intersections, and roof slopes;
- (w) inadequate spacing and installation of control joints;
- (x) in improperly exposing and/or installing the weather resistive barrier;
- (y) in failing to install weep mechanisms and head flashing in violation of the building code;
- (z) failure to furnish and install windows and doors that are in compliance with industry standards and the applicable building codes;
- (aa) failure to properly install exterior cladding; and
- (bb) such other defects and breaches of duty that may become apparent during the discovery phase of this action;
- (cc) in failing to construct the buildings with adequate sound and noise barriers that are compliant with industry standards and/or building codes.

34. Said failures above-described have proximately damaged Plaintiffs in an amount of actual, incidental, special, and consequential damages and in addition thereto by virtue of the negligence per se in the violation of applicable building codes, gross negligence and willfulness of the Defendants and reckless disregard for the rights of others, Plaintiffs are entitled to an award of punitive damages.

FOR A SECOND CAUSE OF ACTION

(Breach of Implied Warranties as to Defendant/Developers and the Carriage Hill Defendants)

35. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

36. That the sale of the units by the Defendant/Developers and the Carriage Hill Defendants, their affiliates, agents, joint venturers, parent companies, and/or partners whether named or unnamed in the Deeds of Transfer, contained, as a matter of law, implied warranties of fitness for a particular purpose and habitability, which warranties were not effectively disclaimed pursuant to the case law in such cases made and provided.

37. That the Defendant/Developers and the Carriage Hill Defendants, their affiliates, associates and joint venturers, whether named or unnamed, on the Deeds of Transfer have breached the aforesaid implied warranties proximately resulting in damage to the Plaintiffs and all others similarly situated, in an amount to be determined and, in addition thereto, Defendant/Developers are liable for incidental, special and consequential damages as a direct and proximate result thereof in an amount to be determined by the Trier of Fact.

FOR A THIRD CAUSE OF ACTION

(Unfair Trade Practices Act, S.C. Code Section 39-5-10, *et seq.*, as to Defendants/Developers, Defendant Muhler, and the Carriage Hill Defendants)

38. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

39. The above-described conduct, to-wit, the construction, sale, investigation, repair and subsequent conduct by the Defendants were part of conduct and trade and commerce within the meaning of S.C. Code Section 39-5-20(a).

40. That the conduct described hereinabove including, but not limited to, failing to provide adequate information to the prospective purchasers; failing to repair the defects about which these Defendants were or should have been aware; breaches of various fiduciary duties; failure to properly investigate the true conditions of the buildings and/or concealing such defective condition(s) as found or discovered; and such other conduct as revealed during discovery, are deceptive and unfair practices within the meaning of S.C. Code Section 39-5-140(a) S.C. Code of Laws as amended.

41. That the conduct described above was knowing and willful and the Defendants knew or should have known that such conduct was a violation of S.C. Code Section 39-5-20. Plaintiffs are persons within the meaning of S.C. Code Section 39-5-140(a) which have suffered as a direct and proximate result of unfair and deceptive acts of Defendants above described and ascertained loss of money in the form of the above-described damages.

42. That the aforesaid acts of Defendants were unfair and deceptive acts and are susceptible of repetition and, as such, are acts which can, have and will affect the public, generally, by repetition.

43. Said unfair and deceptive acts are acts which will affect members of the public beyond the parties to the above-described action in the form of other consumers who may purchase condominiums.

44. Plaintiffs are entitled to be compensated pursuant to S.C. Code Section 39-5-140(a) for its above-described damages and to recover three (3) times these damages by reason of the knowing and willful nature of the unfair and deceptive acts by Defendants and Plaintiffs are entitled to attorney's fees and costs.

FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty as to Defendant/Developers)

45. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

46. The Defendant/Developers were required to use good judgment and act in the utmost good faith to complete the formation of and operate the Regime until it was turned over to the Association's control.

47. The Defendant/Developers prior to turning the Regime over to the control of the homeowners, had the unilateral ability to determine the assessments against individual owners and the pecuniary maintenance and repair requirements of the Regime. The Defendant/Developers were required to fund shortfalls between the assessments necessary to perform the duties and obligations of the Master Deed and By-laws and the assessments actually collected from individual unit owners.

48. The Defendant/Developers provided some maintenance, construction, and repair of the common areas prior to turning the Association over to the homeowners; however, the repairs, construction and maintenance done were substandard and inadequate and were intended to and, in fact did, conceal instead of correct the latent

defects that existed in the common areas and in the units of which Defendant/Developers were or should have been aware.

49. That the Defendant/Developers owed a fiduciary duty to the Association and its members to insure that the common areas were in good repair at the time they were conveyed to the Association or to provide the Association with funds sufficient to effectuate any needed repairs to those common areas as required by the law in South Carolina in such cases made and provided.

50. Further, the Defendant/Developers owed a duty to the Plaintiffs to turn over common areas that were not substandard and that were in good repair.

51. That the Defendant/Developers negligently, carelessly, recklessly, willfully and wantonly failed to turn over common areas that were in good repair and were not substandard and failed to protect property interests of the Plaintiffs in conformity with the customary and normal standards in the condominium management industry.

52. That the Defendant/Developers failed to provide sufficient capital replacement reserves at the time of the turn over to effectuate the necessary repairs and to bring the substandard common elements up to a state of good repair.

53. That the Defendant/Developers had a pecuniary interest in their own profits that was irreconcilable with the interest of the individual unit owners and the association.

54. That as a direct a proximate result of the reckless, willful, negligent and wanton conduct of said Defendant/Developers, Plaintiffs have and will be required to expend substantial sums of money in order to investigate, design the repair and implement the necessary repairs and alterations to bring the units and the common

elements to a state or condition which is consistent with the price paid for the units and with the numerous representations made by the Defendant/Developers all in an amount of actual, special, incidental, consequential, and punitive damages to be determined.

FOR A FIFTH CAUSE OF ACTION

(Breach of Implied Warranties including Workmanlike Service
as to Defendant Muhler, Defendant A.C., the Carriage Hill Defendants, and Defendant Coastal)

55. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

56. That Defendants Muhler, A.C., Carriage Hill, and Coastal are, upon information and belief, contractors and hold themselves out to the general public as qualified to perform construction work and therefore impliedly warrant as a matter of law that any work they undertake and any material they supply in the construction or repair of a dwelling will be performed in a careful, diligent and workmanlike manner in accordance with the industry standards and the applicable building code and in conformity with the plans and specifications for the project. Additionally, these Defendants impliedly warranted as a matter of law that the building would be habitable and fit for its intended purpose.

57. That in the performance of their work Defendants Muhler, A.C., Carriage Hill, and Coastal breached the aforesaid implied warranties, including the implied warranty of workmanlike service, in that the work they did was not fit for its intended purpose and was not done with quality materials and, in fact, any "repair" which was performed was done in such a fashion as to hide or otherwise conceal the true nature of the defects which existed.

58. That as a direct and proximate cause of the breach of the implied warranties the Plaintiffs have suffered actual, direct, consequential, special, and incidental damages all in an amount to be shown at trial.

FOR AN SIXTH CAUSE OF ACTION
(Negligent Misrepresentation as to Defendant/Developers)

59. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

60. That as more particularly described herein the Defendant/Developers made numerous representations to the Plaintiffs in the form of direct representations and marketing representations.

61. That Plaintiffs have determined that the representations made by Defendants were false and that the 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 property. That the Defendants had a pecuniary interest in making such false representations despite the duty of care the Defendants owed to the Plaintiffs. As a result, Plaintiffs have suffered pecuniary loss as a direct and proximate result of their reliance on the representations and/or omissions in its communications.

62. In justifiable reliance on numerous false representations of fact made by the Defendants, *inter alia*, that the buildings and site were in overall good condition and that the deficiencies, if any, were minor deferred maintenance concerns that were being addressed and that the buildings were constructed, as marketed, with sound and noise barriers contributing to the luxuriousness of the condominium units, the Individual Plaintiffs and others similarly situated purchased the aforesaid damaged units and continue to suffer damages and the Association is now required to expend substantial

sums to repair the common elements as is hereinabove set forth, all proximately causing damage to the Plaintiffs.

FOR A SEVENTH CAUSE OF ACTION
(Aiding and Abetting a Breach of Fiduciary Duty
as to the Carriage Hill Defendants)

63. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

64. That Defendant/Developers breached their fiduciary duty to the Plaintiffs as aforesaid.

65. That the Carriage Hill Defendants knowingly participated in the breach of Defendant/Developers fiduciary duties as aforesaid.

66. That as a direct and proximate result thereof, Plaintiffs have and will suffer actual, incidental, special and consequential damages as aforesaid in an amount to be determined and, in addition thereto, are entitled to punitive damages.

FOR AN EIGHTH CAUSE OF ACTION
(Breach of Contract Accompanied by a Fraudulent Act
as to Defendant/Developers)

67. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

68. That a fiduciary relationship existed between the Defendant/Developers and Association.

69. That under the Master Deed and By-laws, the Defendant/Developer, when it turned over the common elements to the Association, owed a contractual and fiduciary obligation to turnover the common elements without defects or, in the alternative, to fund sufficient reserves to repair any defects.

70. That in breach of these obligations and in breach of the Master Deed, the Defendant/Developers failed to disclose the existence of the known defects in the common elements and in the stead of any such disclosure sought to and did so engage in the concealment activities discussed herein. This constitutes a breach of the agreement between the Association and the Defendant/Developer under the Master Deed and By-laws and accompanying this breach was the fraudulent act of failing to disclose the true condition of the common elements about which the Defendant/Developers sought to conceal and, further, that Defendant/Developers either knew or should have known of said defects, all of which proximately caused the damage hereinabove and hereinafter described and entitles the Plaintiffs to punitive damages.

FOR A NINTH CAUSE OF ACTION
(Breach of Warranty as to Defendant Weather Shield)

71. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

72. That as hereinabove stated, the Plaintiffs were injured and continue to be injured by Defendant Weather Shield's product, the windows, window system, and doors.

73. That the injury was proximately caused by Defendant Weather Shield because the product was in a defective condition, unreasonably dangerous to the Plaintiffs.

74. That the product at the time of the accident was in essentially the same condition as when it left the control of Defendant Weather Shield.

75. That as a direct result of Defendant Weather Shield's manufacture, sale, design, installation, and/or construction of the windows, window system, and doors certain express and implied warranties arose as a matter of law and out of representations

made by Defendant Weather Shield and disclosures made by the Plaintiffs, their representatives, agents, predecessors or assigns. That the implied warranties include, but are not limited to, the implied warranty of merchantability and implied warranty of fitness for a particular purpose. Additionally, certain express warranties were made on numerous occasions that include but are not limit to statements made contemporaneous with the sale of the product and statements made subsequent to the inspection of the product.

76. That none of the express or implied warranties were properly disclaimed as a matter of law.

77. That in the performance of this work Defendant Weather Shield breached the aforesaid warranties in that the windows, window system, and doors were defective, dangerous, and not fit for its intended use or ordinary purpose. Moreover, the windows, window system, and doors could not pass without objection under the product description, *inter alia*, the windows, window system and doors failed to prevent water infiltration and in fact led to increased water infiltration into the subject property.

78. That as a direct and proximate cause of the Defendant Weather Shield's breach of the warranties stated herein the Plaintiffs have sustained actual, direct, consequential, incidental, and special damages in an amount to be shown at trial. Further, as a result of Defendant Weather Shield's reckless, knowing, and/or wanton breach of the implied warranties Plaintiffs are entitled to punitive damages.

FOR A TENTH CAUSE OF ACTION

(Common Law and Statutory Strict Liability as to Defendant Weather Shield)

79. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

80. That Defendant Weather Shield has engaged and continues at the time of filing of this action to be engaged in the business of selling, manufacturing, designing, and/or marketing windows, window systems, and doors.

81. That Defendant Weather Shield expects the windows, window systems, and doors and the windows, window systems, and doors in fact reach the user or consumer without substantial change in the condition in which they were sold. That Weather Shield sold the products in a manner contemplated by S.C. Code Ann. § 15-73-10.

82. That, as stated above, the windows, window systems, and doors are unreasonably dangerous to the ordinary consumer in the community considering their characteristics and propensity for leading to significant property damage.

83. That as a direct and proximate cause of the Defendant Weather Shield's sale, design, manufacture, and/or marketing of the product stated herein the Plaintiffs have sustained actual, direct, consequential, incidental, and special damages in an amount to be shown at trial and the Defendant Weather Shield is strictly liable therefore.

CLASS ACTION ALLEGATIONS

84. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

85. Plaintiffs, Joe Chiovarou, Robert Reece, William Jung, and Joseph T. Moran, individually, and on behalf of themselves and all others similarly situated, bring this action as members of a proposed Plaintiff Class, defined below, pursuant to Rule 23 of the South Carolina Rules of Civil Procedure. The Class that the Plaintiff seeks to represent is defined as:

All current owners of individual units located in The Oaks at Rivers Edge Horizontal Property Regime located in Berkeley County, South Carolina, who have or will incur damages in excess of one hundred (\$100.00) dollars due to, caused by, or arising out of loss rental income, storage costs, moving costs, and/or loss of use attributable to any construction, restoration and/or repair of the common elements at the Oaks at Rivers Edge Horizontal Property Regime and/or the individual's specific unit.

86. This action satisfies the numerosity, commonality, typicality, adequacy of representation and amount in controversy requirements of Rule 23(a) of the South Carolina Rules of Civil Procedure.

87. The proposed Class definition is sufficiently definite so that it is administratively feasible for the Court to determine whether a particular individual is a member of the Class.

88. The Plaintiff Class satisfies the numerosity standards. The Class is believed to potentially be a large number of persons from geographically diverse regions. As a result, joinder of all the class members is impracticable.

89. The claims of the representative Plaintiffs are typical of the claims of the Class in that the representative Plaintiffs, like all class members, purchased a condominium unit at the Oaks at Rivers Edge Horizontal Property Regime and have suffered and will continue to suffer injuries as a result of that purchase and the continued ownership of the unit.

90. There are questions of law and fact common to the Class. Common questions of law include, but are not limited to, the liability of the Defendants for the claims alleged herein. Common questions of fact include, but are not limited to, the Defendants' misrepresentations, omissions and acts of concealment. Moreover, the numerous common questions of law and fact common to all Class members predominate over any

questions that may affect only individual Class members, and a Class action is superior with respect to considerations of consistency, economy, efficiency, fairness and equity, to other available methods for the fair and efficient adjudication of the controversy.

91. The Plaintiffs are adequate representatives of the Class because they are members of the Class and their interests do not conflict with the interests of the members of the Class they seek to represent.

92. Plaintiffs have retained counsel highly experienced in construction defect litigation and in prosecuting class actions. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the Class members and have the resources to do so. Neither the Plaintiffs nor their counsel have any known interest adverse to those of the Class.

93. The amount in controversy exceeds one hundred (\$100.00) dollars for each Class member.

94. The presentation of separate actions by the individual Class members could create the risk of prohibiting any action by the individual Class members. Because of the relatively small size of the individual Class members' claims, absent a Class Action, most Class members would likely find the cost of litigating their claims against Defendants to be prohibitively expensive. Class treatment of common questions of law and fact is also superior to numerous individual actions or piecemeal litigation in that it conserves the resources of the Court and the litigants, and promotes finality for all parties as a result of litigation or settlement.

WHEREFORE, the Plaintiffs pray that this Court issue an Order granting judgment for the Plaintiffs against the Defendants, jointly and severally, for the following relief:

- (a) for Class Certification;
- (b) for actual damages in an amount to be proven at trial;
- (c) for treble damages under S.C. Code § 39-5-110;
- (d) for punitive damages;
- (e) for prejudgment and post judgment interest on Plaintiffs' damages;
- (f) for attorneys' fees and costs;
- (g) for such other relief as the Court deems just and proper.

SMITH, BUNDY, BYBEE & BARNETT, P.C.



W. H. Bundy, Jr., Esquire
M. Brent McDonald, Esquire
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
Telephone: (843) 881-1623
Attorneys for the Plaintiffs

Mt. Pleasant, South Carolina
12/3, 2009

Pd 2

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) NINTH JUDICIAL CIRCUIT
)

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, and CARRIAGE HILL ASSOCIATES OF
CHARLESTON, LLC,

Plaintiffs,

vs.

WEATHER SHIELD MANUFACTURING, INC.,
THE MUHLER CO., INC., and A.C.
CONSTRUCTION, INC.,

Defendants.

C/A. No.: 2009-CP-08-1068

FILED
2010 MAY -5 AM 8:28
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

A.C. CONSTRUCTION, INC.,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, and TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA,

Defendants.

C/A. No.: 2009-CP-08-1413

GEOFFREY C. CIPKALA and SAMUEL C.
AGEE, as tenants in common of the common
elements of the Oaks at River's Edge Horizontal
Property Regime and on behalf of themselves and
all other tenants in common,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, CARRIAGE HILL ASSOCIATES OF

C/A. No.: 2008-CP-08-2714

PARTIES

1. Plaintiff, The Oaks at Rivers Edge Property Owners Association, Inc. is a non-profit corporation organized and existing under the laws of South Carolina being an association of and limited to owners of the units located at the Property in Berkeley County, State of South Carolina.

2. Plaintiffs, John E. Atkinson and Joan D. Strandquist, are citizens and residents of the State of Pennsylvania and are the owners of Unit 3B, 136 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

3. Plaintiff, Joseph E. Chiovarou, Jr., is a citizen and resident of the State of South Carolina, County of Berkeley, and is the owner of Unit 2A, 140 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

4. Plaintiffs, Peyton H. Cook, Jr. and Brenda Cook, are citizens and residents of the State of South Carolina, County of Berkeley, and are the owners of Unit 3B, 130 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

5. Plaintiffs, John W. Edelen and Karen A. Nelson, are citizens and residents of the States of South Carolina and Illinois and are the owners of Unit 2B, 136 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

6. Plaintiffs, Robert J. Graham and Maureen S. Graham, are citizens and residents of the State of South Carolina, County of Charleston and are the owners of Unit 4B, 144 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

7. Plaintiff, Kevin O. Hux, is a citizen and resident of the State of South Carolina, County of Berkeley and is the owner of Unit 4B, 118 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

8. Plaintiff, Nancy K. Johnson as trustee for the Nancy K. Johnson Revocable Trust, is a citizen and resident of the State of South Carolina, County of Berkeley and is the owner of Unit 3A, 140 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

9. Plaintiff, William Jung, is a citizen and resident of the State of South Carolina, County of Charleston, and is the owner of Unit 3A, 136 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

10. Plaintiffs, Charles Maraziti and Patricia Maraziti, are citizens and residents of the States of South Carolina and New Jersey and are the owners of Unit 2A, 124 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

11. Plaintiff, Donna Dee Moran, is a citizen and resident of the State of South Carolina, County of Berkeley, and is the owner of Unit 4A, 124 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

12. Plaintiffs, George S. Pollard and Eleanor J. Pollard, are citizens and residents of the State of South Carolina, County of Berkeley, and are the owners of Unit 2A, 136 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

13. Plaintiff, Robert Reece, is a citizen and resident of the State of South Carolina, County of Berkeley, and is the owner of Unit 4B, 140 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

14. Plaintiffs, Gerard M. Ruvo and Sue S. Ruvo as trustees for the Ruvo 2006 Living Trust, are citizens and residents of the State of California and are the owners of Unit 3A, 144 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

15. Plaintiffs, Robert Farina and Mary Ann Farina, are citizens and residents of the State of South Carolina, County of Berkeley, and are the owners of Unit 4B, 124 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

16. Plaintiff, Carolyn M. Jennings, is a citizen and resident of the State of North Carolina, and is the owner of Unit 4A, 144 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

17. Plaintiffs, Thomas Edward Keane and Edward Wallace Barr, III, are citizens and residents of the State of South Carolina, County of Charleston, and are the owners of Unit 2A, 130 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

18. Plaintiffs, Richard B. Pekruhn and Pauline Pekruhn, are citizens and residents of the State of South Carolina, County of Berkeley, and are the owners of Unit 4B, 136 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

19. Plaintiffs, Gregory B. Nathan and Richard Jennings, are citizens and residents of the State of California, and are the owners of Unit 3B, 144 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

20. Plaintiffs John E. Atkinson, Joan D. Strandquist, Joseph E. Chiovarou, Jr., Peyton H. Cook, Jr., Brenda Cook, John W. Edelen, Karen A. Nelson, Robert J. Graham, Maureen S. Graham, Kevin O. Hux, Nancy K. Johnson as trustee for the Nancy K. Johnson Revocable Trust, William Jung, Charles Maraziti, Patricia Maraziti, Donna Dee Moran, George S. Pollard, Eleanor J. Pollard, Robert Reece, Gerard M. Ruvo and Sue S. Ruvo as trustees for the Ruvo 2006 Living Trust, Robert Farina, Mary Ann Farina, Carolyn M. Jennings, Thomas Edward Keane, Edward Wallace Barr, III, Richard B. Pekruhn, Pauline Pekruhn, Gregory B. Nathan and Richard Jennings will sometimes herein be referred to as the "unit owners" or "Individual Plaintiffs."

21. Defendant Daniel Island Riverside Developers, LLC ("Defendant/Developer") is upon information and belief a South Carolina limited liability corporation authorized to conduct business in this state. The Defendant/Developer is the developer and the seller of the Property which is the subject of this action. Additionally, the Defendant/Developer was at times in control of the Association, through the appointment and control of the Board of Directors of the Association, while constructing, marketing, selling, and developing the Property. The Property was marketed as luxury condominiums both before and after the Defendant/Developer was put on notice of numerous construction and design defects in the Property. Upon information and belief, the Defendant/Developer failed to disclose some or all of the construction and/or design defects to the purchasers—including the Individual Plaintiffs.

22. Defendant Carriage Hill Associates of Charleston, LLC is, upon information and belief, a South Carolina limited liability corporation authorized to do business in this state.

Carriage Hill Associates of Charleston, LLC was the general contractor for the property and was responsible for the proper construction of this project in accordance with the contract documents, all applicable building codes, and within industry standards of good and workmanlike practice for luxury condominiums.

23. Defendant Carriage Hill Associates of Charleston, LLC was at all times acting as the agent of Defendant Carriage Hill Associates, Inc. which is, upon information and belief, a corporation organized and existing under the laws of the state of New York and is authorized to conduct business in the State of South Carolina through its agent, subsidiary, alter-ego, partner, associate, joint venturer, servant and/or representative Carriage Hill Associates of Charleston, LLC.

24. Upon information and belief, at all times relevant to this Complaint, there existed an agency relationship by and between Defendants Carriage Hill Associates of Charleston, LLC and Carriage Hill Associates, Inc., with Carriage Hill Associates, Inc. acting both individually and as the principal for Carriage Hill Associates of Charleston, LLC acting by and through Carriage Hill Associates, Inc.

25. The Plaintiffs are informed and believe, and thereupon allege, that Defendants Carriage Hill Associates of Charleston, LLC and Carriage Hill Associates, Inc., and each of them, are, and at all times mentioned herein were the alter-egos, successors in interest, parents, subsidiaries, agents, partners, associates, joint venturers, servants, employees and/or other authorized representatives of each other and in doing the things herein alleged were acting within the course and scope of their respective authority, agency, employment, and/or other representation, and with the knowledge, consent, approval and/or ratification of each other.

26. Defendant Carriage Hill Associates of Charleston, LLC, at all times relevant hereto, was subject to the dominion and control of Defendant Carriage Hill Associates, Inc. and/or the dominion and control of others acting under Defendant Carriage Hill Associates, Inc. direction and control, and that each of the Defendants Carriage Hill Associates of Charleston, LLC and Carriage Hill Associates, Inc. is an alter-ego of the other.

27. That Defendant Carriage Hill Associates, Inc. is personally responsible in an individual capacity for the acts, omissions, debts, obligations, and liabilities, stated herein, of Defendant Carriage Hill Associates of Charleston, LLC.

28. Defendant Carriage Hill Associates of Charleston, LLC and Defendant Carriage Hill Associates, Inc. will hereinafter collectively be referred to as the Carriage Hill Defendants.

29. Defendant Weather Shield Manufacturing, Inc. ("Weather Shield") is a corporation organized and existing under the laws of the state of Wisconsin and is authorized to do business in the state of South Carolina. Weather Shield directs its products and/or materials for sale in the state of South Carolina and has had employees and/or agents perform work in South Carolina. At all times material hereto, Weather Shield manufactured, provided, designed, sold, and/or placed into the stream of commerce certain windows and doors that were incorporated into, installed, constructed, and/or used in or on the Property.

30. Defendant Muhler Co., Inc. ("Muhler") is a corporation organized and existing under the laws of the State of South Carolina. Upon information and belief, Muhler was the supplier of windows, window systems, and doors which were installed at the Property. Additionally, Muhler installed and/or supervised the installation of the exterior window systems and doors at the Property.

31. A.C. Construction, Inc., ("A.C.") is a corporation organized and existing under the laws of the State of South Carolina. A.C., pursuant to a contract with the Carriage Hill Defendants and/or the Defendant/Developers, installed windows and doors at the Property.

32. Coastal Roofing Co., Inc. ("Coastal") is, upon information and belief, a corporation organized and existing under the laws of the State of South Carolina. At all times material hereto, Coastal Roofing installed, provided materials and labor for, designed, and/or constructed the roof and roofing system at the Property pursuant to a contract with the Carriage Hill Defendants and/or the Defendant/Developers.

JURISDICTION AND VENUE

33. This Court has jurisdiction of the matter and over the parties. S.C. Ann. §§ 15-53-20 and 15-53-30; S.C. Code Ann. §§ 36-2-802 and 36-2-803.

34. Venue is proper in this County. S.C. Code Ann. §§ 15-7-10, -20, and -30.

BACKGROUND

35. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

36. The Regime consists of six, four story condominium buildings with ground level parking constructed in 2004, 2005, and 2006. The exteriors are finished with stucco and brick veneer. The roofs are single ply membrane.

37. The Defendant/Developers contracted with the Carriage Hill Defendants to perform general contracting duties. The Carriage Hill Defendants then contracted with Defendant Muhler to install and/or supply windows and doors designed and manufactured by Defendant Weather Shield. The Carriage Hill Defendants then contracted with Defendant A.C. to perform the actual installation of the windows and doors under the supervision of Defendant Muhler.

38. The contract with A.C. as well as South Carolina law required, among other things, that A.C. would competently and properly install the windows and doors. On or about August 27, 2006, the Defendant/Developer and/or the Carriage Hill Defendants determined that the work of A.C. in installing the windows and doors at the property was defective, improper, incompetent, unskillful, unworkmanlike, and/or uncareful. Despite the fact that Muhler had been tasked with supervising the improper work of A.C., the Defendant/Developers and/or the Carriage Hill Defendants contracted again with Muhler to repair the deficiencies in the work performed by A.C. and/or to complete the work. Muhler was required by the contract and the law of the State of South Carolina to competently and properly correct the deficiencies in the work performed by A.C.

39. Muhler failed to competently, skillfully, carefully, and/or diligently perform the work to correct the deficiencies and/or complete the work.

40. The deficiencies in the installation and/or work to install the windows and doors at the property and the deficiencies in the attempted correction of the work have caused severe leaking and exposure to harmful elements and materials leading to property damage.

41. Though the Defendant/Developers and/or the Carriage Hill Defendants were aware of these defects, such defects and deficiencies were not disclosed to the Plaintiffs herein and were, upon information and belief, concealed from the Plaintiffs named herein.

42. The Defendant/Developers and/or the Carriage Hill Defendants contracted with Defendant Coastal to design, construct, and/or install the roof or roofing system on the Property.

43. As a result of water intrusion and leaks experienced by the Plaintiffs, an engineering investigation was performed in 2008 when the buildings were only 2 or 3 years old. The

investigation sought to establish whether or not the Regime buildings were deficiently designed or had significant construction defects.

44. By the investigation of the subject buildings and subsequent report provided by an engineer, the Plaintiffs learned that the subject buildings have been deficiently designed and have significant construction defects, particularly the stucco cladding system which was improperly installed and will have to be completely removed and replaced. In addition, the engineer noted other construction, design and stucco deficiencies to the subject buildings, including, but not limited to, the following:

- (a) Improper stucco installation in that no mechanism for weep had been installed at any location in the four-story wall, which is a violation of Industry Standard ASTM C926 and ASTM C1063;
- (b) Improper and/or no installation of sealant joints;
- (c) No head flashings at any of the window or door installations;
- (d) Improper control joint installation around windows;
- (e) Cracking at window corners due to lack of proper stress relief which will promote water intrusion;
- (f) Improper installation and intersection of the single ply roof membrane with the roof eave and sidewall;
- (g) Lack of flashing or weep screed at any window head location within the stucco system;
- (h) Inadequate spacing and installation of control joints;
- (i) Improper installation of all of the exterior architectural trim at the sill of windows which will promote water intrusion;

- (j) Improper installation of the exterior cladding system by evidence of staining and damage;
- (k) Improper construction of the guardrails, handrails and balusters on the balconies which have evidence of rot and deterioration;
- (l) Improper material selection of the guardrails, handrails and balusters on the balconies;
- (m) Improper installation of the exterior cladding that is not in accordance with the IBC and code referenced industry standards;
- (n) Water intrusion damage resulting from improper installation of the exterior cladding; and
- (o) Deterioration of the subject buildings due to water intrusion from the failed Exterior Cladding System.

45. As a direct and proximate result and consequence of the numerous stucco installation, construction and design problems and defects as noted above, the Plaintiffs have and will continue to spend substantial sums of money for the repairs and reconstruction of their condominium units and will be subject to loss of use, enjoyment, and depreciation of value of property.

46. The water damage to common elements and condominium units is a result of defects and deficiencies in the design and construction of the Regime, specifically including, but not limited to, the following:

- (a) Lack of weep screed or weeping mechanism along the stucco wall bases at the perimeter of the balcony slabs as required by building codes and proper construction practices;

- (b) Lack of weeps at window heads;
- (c) Failure of weep or water management systems to manage seepage water, which gets past the façade cladding, has resulted in wetting of exterior sheathing behind moisture barriers and into the wall cavity and metal framework within the wall cavity;
- (d) Improper splicing at roof edges;
- (e) Improper intersection of roof membrane with exterior walls;
- (f) inadequate spacing and installation of control joints;
- (g) Improper installation of sealants around windows, doors, and cladding terminations;
- (h) Lack of head and sill flashing;
- (i) Improper installation of control joint accessories;
- (j) Failure to install proper sealant joints around penetrations in exterior cladding;

47. Plaintiffs are informed and believe that the exterior wall sheathing was observed to be in an advanced stage of deterioration and not in compliance with the building codes and standards which were applicable to this project at the time of design and construction and will have to be replaced to comply with current building codes and standards applicable to this project.

48. In addition to the construction defects, the Defendant/Developers, in their capacity as head of the Association have:

- (a) Failed and omitted to act in a fiduciary capacity towards the owners of the condominium units;
- (b) Negligently maintained the property

- (c) Failed to act as competent managers;
- (d) Acted at all times in their own interests and in contravention of their fiduciary duty towards the condominium unit owners;
- (e) Covered up and concealed defects and damage from the unit owners, and
- (f) Acted in violation of all fiduciary duty concepts.

49. Due to the actions of the Defendant/Developers, as stated above, the Plaintiffs are facing significant damage repairs, deteriorating property, significant immediate expenses for investigation, destructive testing, and an analysis of construction defects, repairs defects, damages, rot deterioration, and a generally overall dilapidated condition which is the direct and proximate result of defective construction, management, maintenance, and abandonment of generally accepted fiduciary principles on the part of the Defendant/Developers.

FIRST CAUSE OF ACTION
(Negligence as to all Defendants)

50. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

51. Defendants owed a duty to the Plaintiffs and breached the same because they were negligent, careless, reckless, willful and wanton in one or more of the following particulars, to-wit:

- (a) in failing to properly repair the structures;
- (b) in selling, constructing, and/or repairing the units with defective windows and doors;
- (c) in selling, constructing, and/or repairing units with inadequate flashings and weep screeds;
- (d) in selling, constructing, and/or repairing units with defective siding;
- (e) in selling, constructing, and/or repairing units with inadequate water barriers;

- (f) in selling, constructing, and/or repairing units without weather proof building envelopes and exteriors;
- (g) in failing to properly warn purchasers and/or ultimate users or consumers;
- (h) in misrepresenting the condition of the units to purchasers and/or owners;
- (i) in making inadequate repairs;
- (j) in covering up deficiencies;
- (k) in failing to give proper disclosure;
- (l) in selling and/or constructing defective units;
- (m) in failing to properly supervise its contractors and/or subcontractors;
- (n) in failing to perform repairs and construction in accordance with applicable building codes and industry standards;
- (o) in tendering common elements to the Homeowners' Association in a deficient condition;
- (p) 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;
- (q) in failing to comply the applicable Fire and Safety Codes;
- (r) in failing to perform a meaningful evaluation of the property or the products or materials;
- (s) in selling, manufacturing, marketing, and/or designing defective and/or dangerous products;
- (t) in failing to exercise due care;
- (u) in violating the manufacturer's industry standards;
- (v) in improperly designing and constructing the roof, roof to wall intersections, and roof

slopes;

(w) inadequate spacing and installation of control joints;

(x) in improperly exposing and/or installing the weather resistive barrier;

(y) in failing to install weep mechanisms and head flashing in violation of the building code;

(z) failure to furnish and install windows and doors that are in compliance with industry standards and the applicable building codes;

(aa) failure to properly install exterior cladding; and

(bb) such other defects and breaches of duty that may become apparent during the discovery phase of this action;

(cc) in failing to construct the buildings with adequate sound and noise barriers that are compliant with industry standards and/or building codes.

52. Said failures above-described have proximately damaged Plaintiffs in an amount of actual, incidental, special, and consequential damages and in addition thereto by virtue of the negligence per se in the violation of applicable building codes, gross negligence and willfulness of the Defendants and reckless disregard for the rights of others, Plaintiffs are entitled to an award of punitive damages.

FOR A SECOND CAUSE OF ACTION

(Breach of Implied Warranties as to Defendant/Developers and the Carriage Hill Defendants)

53. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

54. That the sale of the units by the Defendant/Developers and the Carriage Hill Defendants, their affiliates, agents, joint venturers, parent companies, and/or partners whether named or unnamed in the Deeds of Transfer, contained, as a matter of law, implied warranties of

fitness for a particular purpose and habitability, which warranties were not effectively disclaimed pursuant to the case law in such cases made and provided.

55. That the Defendant/Developers and the Carriage Hill Defendants, their affiliates, associates and joint venturers, whether named or unnamed, on the Deeds of Transfer have breached the aforesaid implied warranties proximately resulting in damage to the Plaintiffs and all others similarly situated, in an amount to be determined and, in addition thereto, Defendant/Developers are liable for incidental, special and consequential damages as a direct and proximate result thereof in an amount to be determined by the Trier of Fact.

FOR A THIRD CAUSE OF ACTION

(Unfair Trade Practices Act, S.C. Code Section 39-5-10, *et seq.*; as to
Defendants/Developers, Defendant Muhler, and the Carriage Hill Defendants)

56. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

57. The above-described conduct, to-wit, the construction, sale, investigation, repair and subsequent conduct by the Defendants were part of conduct and trade and commerce within the meaning of S.C. Code Section 39-5-20(a).

58. That the conduct described hereinabove including, but not limited to, failing to provide adequate information to the prospective purchasers; failing to repair the defects about which these Defendants were or should have been aware; breaches of various fiduciary duties; failure to properly investigate the true conditions of the buildings and/or concealing such defective condition(s) as found or discovered; and such other conduct as revealed during discovery, are deceptive and unfair practices within the meaning of S.C. Code Section 39-5-140(a) S.C. Code of Laws as amended.

59. That the conduct described above was knowing and willful and the Defendants knew or should have known that such conduct was a violation of S.C. Code Section 39-5-20. Plaintiffs are persons within the meaning of S.C. Code Section 39-5-140(a) which have suffered as a direct and proximate result of unfair and deceptive acts of Defendants above described and ascertained loss of money in the form of the above-described damages.

60. That the aforesaid acts of Defendants were unfair and deceptive acts and are susceptible of repetition and, as such, are acts which can, have and will affect the public, generally, by repetition.

61. Said unfair and deceptive acts are acts which will affect members of the public beyond the parties to the above-described action in the form of other consumers who may purchase condominiums.

62. Plaintiffs are entitled to be compensated pursuant to S.C. Code Section 39-5-140(a) for its above-described damages and to recover three (3) times these damages by reason of the knowing and willful nature of the unfair and deceptive acts by Defendants and Plaintiffs are entitled to attorney's fees and costs.

FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty as to Defendant/Developers)

63. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

64. The Defendant/Developers were required to use good judgment and act in the utmost good faith to complete the formation of and operate the Regime until it was turned over to the Association's control.

65. The Defendant/Developers prior to turning the Regime over to the control of the homeowners, had the unilateral ability to determine the assessments against individual owners

and the pecuniary maintenance and repair requirements of the Regime. The Defendant/Developers were required to fund shortfalls between the assessments necessary to perform the duties and obligations of the Master Deed and By-laws and the assessments actually collected from individual unit owners.

66. The Defendant/Developers provided some maintenance, construction, and repair of the common areas prior to turning the Association over to the homeowners; however, the repairs, construction and maintenance done were substandard and inadequate and were intended to and, in fact did, conceal instead of correct the latent defects that existed in the common areas and in the units of which Defendant/Developers were or should have been aware.

67. That the Defendant/Developers owed a fiduciary duty to the Association and its members to insure that the common areas were in good repair at the time they were conveyed to the Association or to provide the Association with funds sufficient to effectuate any needed repairs to those common areas as required by the law in South Carolina in such cases made and provided.

68. Further, the Defendant/Developers owed a duty to the Plaintiffs to turn over common areas that were not substandard and that were in good repair.

69. That the Defendant/Developers negligently, carelessly, recklessly, willfully and wantonly failed to turn over common areas that were in good repair and were not substandard and failed to protect property interests of the Plaintiffs in conformity with the customary and normal standards in the condominium management industry.

70. That the Defendant/Developers failed to provide sufficient capital replacement reserves at the time of the turn over to effectuate the necessary repairs and to bring the substandard common elements up to a state of good repair.

71. That the Defendant/Developers had a pecuniary interest in their own profits that was irreconcilable with the interest of the individual unit owners and the association.

72. That as a direct a proximate result of the reckless, willful, negligent and wanton conduct of said Defendant/Developers, Plaintiffs have and will be required to expend substantial sums of money in order to investigate, design the repair and implement the necessary repairs and alterations to bring the units and the common elements to a state or condition which is consistent with the price paid for the units and with the numerous representations made by the Defendant/Developers all in an amount of actual, special, incidental, consequential, and punitive damages to be determined.

FOR A FIFTH CAUSE OF ACTION

(Breach of Implied Warranties including Workmanlike Service
as to Defendant Muhler, Defendant A.C., the Carriage Hill Defendants, and Defendant Coastal)

73. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

74. That Defendants Muhler, A.C., Carriage Hill, and Coastal are, upon information and belief, contractors and hold themselves out to the general public as qualified to perform construction work and therefore impliedly warrant as a matter of law that any work they undertake and any material they supply in the construction or repair of a dwelling will be performed in a careful, diligent and workmanlike manner in accordance with the industry standards and the applicable building code and in conformity with the plans and specifications for the project. Additionally, these Defendants impliedly warranted as a matter of law that the building would be habitable and fit for its intended purpose.

75. That in the performance of their work Defendants Muhler, A.C., Carriage Hill, and Coastal breached the aforesaid implied warranties, including the implied warranty of

workmanlike service, in that the work they did was not fit for its intended purpose and was not done with quality materials and, in fact, any "repair" which was performed was done in such a fashion as to hide or otherwise conceal the true nature of the defects which existed.

76. That as a direct and proximate cause of the breach of the implied warranties the Plaintiffs have suffered actual, direct, consequential, special, and incidental damages all in an amount to be shown at trial.

FOR AN SIXTH CAUSE OF ACTION
(Negligent Misrepresentation as to Defendant/Developers)

77. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

78. That as more particularly described herein the Defendant/Developers made numerous representations to the Plaintiffs in the form of direct representations and marketing representations.

79. That Plaintiffs have determined that the representations made by Defendants were false and that the 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 property. That the Defendants had a pecuniary interest in making such false representations despite the duty of care the Defendants owed to the Plaintiffs. As a result, Plaintiffs have suffered pecuniary loss as a direct and proximate result of their reliance on the representations and/or omissions in its communications.

80. In justifiable reliance on numerous false representations of fact made by the Defendants, *inter alia*, that the buildings and site were in overall good condition and that the deficiencies, if any, were minor deferred maintenance concerns that were being addressed and that the buildings were constructed, as marketed, with sound and noise barriers contributing to

the luxuriousness of the condominium units, the Individual Plaintiffs and others similarly situated purchased the aforesaid damaged units and continue to suffer damages and the Association is now required to expend substantial sums to repair the common elements as is hereinabove set forth, all proximately causing damage to the Plaintiffs.

FOR A SEVENTH CAUSE OF ACTION

(Aiding and Abetting a Breach of Fiduciary Duty as to the Carriage Hill Defendants)

81. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

82. That Defendant/Developers breached their fiduciary duty to the Plaintiffs as aforesaid.

83. That the Carriage Hill Defendants knowingly participated in the breach of Defendant/Developers fiduciary duties as aforesaid.

84. That as a direct and proximate result thereof, Plaintiffs have and will suffer actual, incidental, special and consequential damages as aforesaid in an amount to be determined and, in addition thereto, are entitled to punitive damages.

FOR AN EIGHTH CAUSE OF ACTION

(Breach of Contract Accompanied by a Fraudulent Act as to Defendant/Developers)

85. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

86. That a fiduciary relationship existed between the Defendant/Developers and Association.

87. That under the Master Deed and By-laws, the Defendant/Developer, when it turned over the common elements to the Association, owed a contractual and fiduciary obligation to

turnover the common elements without defects or, in the alternative, to fund sufficient reserves to repair any defects.

88. That in breach of these obligations and in breach of the Master Deed, the Defendant/Developers failed to disclose the existence of the known defects in the common elements and in the stead of any such disclosure sought to and did so engage in the concealment activities discussed herein. This constitutes a breach of the agreement between the Association and the Defendant/Developer under the Master Deed and By-laws and accompanying this breach was the fraudulent act of failing to disclose the true condition of the common elements about which the Defendant/Developers sought to conceal and, further, that Defendant/Developers either knew or should have known of said defects, all of which proximately caused the damage hereinabove and hereinafter described and entitles the Plaintiffs to punitive damages.

FOR A NINTH CAUSE OF ACTION

(Breach of Warranty as to Defendant Weather Shield)

89. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

90. That as hereinabove stated, the Plaintiffs were injured and continue to be injured by Defendant Weather Shield' product, the windows, window system, and doors.

91. That the injury was proximately caused by Defendant Weather Shield because the product was in a defective condition, unreasonably dangerous to the Plaintiffs.

92. That the product at the time of the accident was in essentially the same condition as when it left the control of Defendant Weather Shield.

93. That as a direct result of Defendant Weather Shield's manufacture, sale, design, installation, and/or construction of the windows, window system, and doors certain express and implied warranties arose as a matter of law and out of representations made by Defendant

Weather Shield and disclosures made by the Plaintiffs, their representatives, agents, predecessors or assigns. That the implied warranties include, but are not limited to, the implied warranty of merchantability and implied warranty of fitness for a particular purpose. Additionally, certain express warranties were made on numerous occasions that include but are not limit to statements made contemporaneous with the sale of the product and statements made subsequent to the inspection of the product.

94. That none of the express or implied warranties were properly disclaimed as a matter of law.

95. That in the performance of this work Defendant Weather Shield breached the aforesaid warranties in that the windows, window system, and doors were defective, dangerous, and not fit for its intended use or ordinary purpose. Moreover, the windows, window system, and doors could not pass without objection under the product description, *inter alia*, the windows, window system and doors failed to prevent water infiltration and in fact led to increased water infiltration into the subject property.

96. That as a direct and proximate cause of the Defendant Weather Shield's breach of the warranties stated herein the Plaintiffs have sustained actual, direct, consequential, incidental, and special damages in an amount to be shown at trial. Further, as a result of Defendant Weather Shield's reckless, knowing, and/or wanton breach of the implied warranties Plaintiffs are entitled to punitive damages.

FOR A TENTH CAUSE OF ACTION

(Common Law and Statutory Strict Liability as to Defendant Weather Shield)

97. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

98. That Defendant Weather Shield has engaged and continues at the time of filing of this action to be engaged in the business of selling, manufacturing, designing, and/or marketing windows, window systems, and doors.

99. That Defendant Weather Shield expects the windows, window systems, and doors and the windows, window systems, and doors in fact reach the user or consumer without substantial change in the condition in which they were sold. That Weather Shield sold the products in a manner contemplated by S.C. Code Ann. § 15-73-10.

100. That, as stated above, the windows, window systems, and doors are unreasonably dangerous to the ordinary consumer in the community considering their characteristics and propensity for leading to significant property damage.

101. That as a direct and proximate cause of the Defendant Weather Shield's sale, design, manufacture, and/or marketing of the product stated herein the Plaintiffs have sustained actual, direct, consequential, incidental, and special damages in an amount to be shown at trial and the Defendant Weather Shield is strictly liable therefore.

WHEREFORE, the Plaintiffs pray that this Court issue an Order granting judgment for the Plaintiffs against the Defendants, jointly and severally, for the following relief:

- (a) for actual, special, incidental, and consequential damages in an amount to be proven at trial;
- (b) for treble damages under S.C. Code § 39-5-110;
- (c) for punitive damages;
- (d) for prejudgment and post judgment interest on Plaintiffs' damages;
- (e) for attorneys' fees and costs;

(f) for such other relief as the Court deems just and proper.

SMITH, BUNDY, BYBEE & BARNETT, P.C.

A handwritten signature in black ink, appearing to be "W. H. Bundy, Jr.", written over a horizontal line.

W. H. Bundy, Jr., Esquire
M. Brent McDonald, Esquire
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
Telephone: (843) 881-1623
Attorneys for the Plaintiffs

Mt. Pleasant, South Carolina
May 3, 2010

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) NINTH JUDICIAL CIRCUIT
)

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, and CARRIAGE HILL ASSOCIATES OF
CHARLESTON, LLC,

Plaintiffs,

vs.

WEATHER SHIELD MANUFACTURING, INC.,
THE MUHLER CO., INC., and A.C.
CONSTRUCTION, INC.,

Defendants.

A.C. CONSTRUCTION, INC.,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, and TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA,

Defendants.

GEOFFREY C. CIPKALA and SAMUEL C.
AGEE, as tenants in common of the common
elements of the Oaks at River's Edge Horizontal
Property Regime and on behalf of themselves and
all other tenants in common,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, CARRIAGE HILL ASSOCIATES OF
CHARLESTON, LLC, CARRIAGE HILL
ASSOCIATES, INC.,

Defendants.

C/A. No.: 2009-CP-08-1068

THIRD AMENDED
COMPLAINT
(Jury Trial Demanded)

C/A. No.: 2009-CP-08-1413

C/A. No.: 2008-CP-08-2714

2010 DEC 20 AM 9:15

FILED

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

THE OAKS AT RIVERS EDGE PROPERTY
OWNERS ASSOCIATION, INC., JOHN E.
ATKINSON, JOAN D. STRANDQUIST, JOSEPH
E. CHIOVAROU, JR., PEYTON H. COOK, JR.,
BRENDA COOK, JOHN W. EDELEN, KAREN
A. NELSON, ROBERT J. GRAHAM, MAUREEN
S. GRAHAM, KEVIN O. HUX, NANCY K.
JOHNSON as trustee for the Nancy K. Johnson
Revocable Trust, WILLIAM JUNG, CHARLES
MARAZITI, PATRICIA MARAZITI, DONNA
DEE MORAN, GEORGE S. POLLARD,
ELEANOR J. POLLARD, ROBERT REECE,
GERARD M. RUVO AND SUE S. RUVO as
trustees for the Ruvo 2006 Living Trust, ROBERT
FARINA, MARY ANN FARINA, CAROLYN M.
JENNINGS, THOMAS EDWARD KEANE,
EDWARD WALLACE BARR, III, RICHARD B.
PEKRUHN, PAULINE PEKRUHN, GREGORY
B. NATHAN, RICHARD JENNINGS,
MATTHEW J. SEVERANCE, and ELIZABETH
ASHLEY PHILLIPS SEVERANCE,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, CARRIAGE HILL ASSOCIATES OF
CHARLESTON, LLC, CARRIAGE HILL
ASSOCIATES, INC., WEATHER SHIELD
MANUFACTURING, INC., THE MUHLER CO.,
INC., A.C. CONSTRUCTION, INC., COASTAL
ROOFING, CO., INC., COASTAL CAULKING,
INC., MIKE PHILLIPS d/b/a MIKE PHILLIPS
MASONRY, GERALD RUMPLICK, EDWARD J.
D'ORAZIO, and RICH BEHRINGER,

Defendants.

C/A. No.: 2008-CP-08-3916

Plaintiffs complaining of the Defendants herein, would allege and show as follows:

PARTIES

1. Plaintiff, The Oaks at Rivers Edge Property Owners Association, Inc. ("Oaks at Rivers Edge HOA") is a non-profit corporation organized and existing under the laws of South Carolina

being an association of and limited to owners of the units located at the property known as The Oaks at Rivers Edge Horizontal Property Regime (the "Regime" or the "Property") in Berkeley County, State of South Carolina.

2. Plaintiffs, John E. Atkinson and Joan D. Strandquist, are citizens and residents of the State of Pennsylvania and are the owners of Unit 3B, 136 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

3. Plaintiff, Joseph E. Chiovarou, Jr., is a citizen and resident of the State of South Carolina, County of Berkeley, and is the owner of Unit 2A, 140 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

4. Plaintiffs, Peyton H. Cook, Jr. and Brenda Cook, are citizens and residents of the State of South Carolina, County of Berkeley, and are the owners of Unit 3B, 130 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

5. Plaintiffs, John W. Edelen and Karen A. Nelson, are citizens and residents of the States of South Carolina and Illinois and are the owners of Unit 2B, 136 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

6. Plaintiffs, Robert J. Graham and Maureen S. Graham, are citizens and residents of the State of South Carolina, County of Charleston and are the owners of Unit 4B, 144 Fairbanks Oak

Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

7. Plaintiff, Kevin O. Hux, is a citizen and resident of the State of South Carolina, County of Berkeley and is the owner of Unit 4B, 118 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

8. Plaintiff, Nancy K. Johnson as trustee for the Nancy K. Johnson Revocable Trust, is a citizen and resident of the State of South Carolina, County of Berkeley and is the owner of Unit 3A, 140 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

9. Plaintiff, William Jung, is a citizen and resident of the State of South Carolina, County of Charleston, and is the owner of Unit 3A, 136 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

10. Plaintiffs, Charles Maraziti and Patricia Maraziti, are citizens and residents of the States of South Carolina and New Jersey and are the owners of Unit 2A, 124 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

11. Plaintiff, Donna Dee Moran, is a citizen and resident of the State of South Carolina, County of Berkeley, and is the owner of Unit 4A, 124 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

12. Plaintiffs, George S. Pollard and Eleanor J. Pollard, are citizens and residents of the State of South Carolina, County of Berkeley, and are the owners of Unit 2A, 136 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

13. Plaintiff, Robert Reece, is a citizen and resident of the State of South Carolina, County of Berkeley, and is the owner of Unit 4B, 140 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

14. Plaintiffs, Gerard M. Ruvo and Sue S. Ruvo as trustees for the Ruvo 2006 Living Trust, are citizens and residents of the State of California and are the owners of Unit 3A, 144 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

15. Plaintiffs, Robert Farina and Mary Ann Farina, are citizens and residents of the State of South Carolina, County of Berkeley, and are the owners of Unit 4B, 124 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

16. Plaintiff, Carolyn M. Jennings, is a citizen and resident of the State of North Carolina, and is the owner of Unit 4A, 144 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

17. Plaintiffs, Thomas Edward Keane and Edward Wallace Barr, III, are citizens and residents of the State of South Carolina, County of Charleston, and are the owners of Unit 2A,

130 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

18. Plaintiffs, Richard B. Pekruhn and Pauline Pekruhn, are citizens and residents of the State of South Carolina, County of Berkeley, and are the owners of Unit 4B, 136 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

19. Plaintiffs, Gregory B. Nathan and Richard Jennings, are citizens and residents of the State of California, and are the owners of Unit 3B, 144 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

20. Plaintiffs, Matthew J. Severance and Elizabeth Ashley Phillips Severance, are citizens and residents of the State of South Carolina, County of Charleston and are the owners of Unit 2B, 124 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

21. Plaintiffs John E. Atkinson, Joan D. Strandquist, Joseph E. Chiovarou, Jr., Peyton H. Cook, Jr., Brenda Cook, John W. Edelen, Karen A. Nelson, Robert J. Graham, Maureen S. Graham, Kevin O. Hux, Nancy K. Johnson as trustee for the Nancy K. Johnson Revocable Trust, William Jung, Charles Maraziti, Patricia Maraziti, Donna Dee Moran, George S. Pollard, Eleanor J. Pollard, Robert Reece, Gerard M. Ruvo and Sue S. Ruvo as trustees for the Ruvo 2006 Living Trust, Robert Farina, Mary Ann Farina, Carolyn M. Jennings, Thomas Edward Keane, Edward Wallace Barr, III, Richard B. Pekruhn, Pauline Pekruhn, Gregory B. Nathan, Richard Jennings,

Matthew J. Severance and Elizabeth Ashley Phillips Severance will sometimes herein be referred to as the "unit owners" or "Individual Plaintiffs."

22. Defendant Daniel Island Riverside Developers, LLC ("Defendant/Developer") is upon information and belief a South Carolina limited liability corporation authorized to conduct business in this state. The Defendant/Developer is the developer and the seller of the Property which is the subject of this action. Additionally, the Defendant/Developer was at times in control of the Association, through the appointment and control of the Board of Directors of the Association, while constructing, marketing, selling, and developing the Property. The Property was marketed as luxury condominiums both before and after the Defendant/Developer was put on notice of numerous construction and design defects in the Property. Upon information and belief, the Defendant/Developer failed to disclose some or all of the construction and/or design defects to the purchasers—including the Individual Plaintiffs.

23. Defendant Carriage Hill Associates of Charleston, LLC is, upon information and belief, a South Carolina limited liability corporation authorized to do business in this state. Carriage Hill Associates of Charleston, LLC was the general contractor for the property and was responsible for the proper construction of this project in accordance with the contract documents, all applicable building codes, and within industry standards of good and workmanlike practice for luxury condominiums.

24. Defendant Carriage Hill Associates of Charleston, LLC was at all times acting as the agent of Defendant Carriage Hill Associates, Inc. which is, upon information and belief, a corporation organized and existing under the laws of the state of New York and is authorized to conduct business in the State of South Carolina through its agent, subsidiary, alter-ego, partner, associate, joint venturer, servant and/or representative Carriage Hill Associates of Charleston, LLC.

25. Upon information and belief, at all times relevant to this Complaint, there existed an agency relationship by and between Defendants Carriage Hill Associates of Charleston, LLC and Carriage Hill Associates, Inc., with Carriage Hill Associates, Inc. acting both individually and as the principal for Carriage Hill Associates of Charleston, LLC acting by and through Carriage Hill Associates, Inc.

26. The Plaintiffs are informed and believe, and thereupon allege, that Defendants Carriage Hill Associates of Charleston, LLC and Carriage Hill Associates, Inc., and each of them, are, and at all times mentioned herein were the alter-egos, successors in interest, parents, subsidiaries, agents, partners, associates, joint venturers, servants, employees and/or other authorized representatives of each other and in doing the things herein alleged were acting within the course and scope of their respective authority, agency, employment, and/or other representation, and with the knowledge, consent, approval and/or ratification of each other.

27. Defendant Carriage Hill Associates of Charleston, LLC, at all times relevant hereto, was subject to the dominion and control of Defendant Carriage Hill Associates, Inc. and/or the dominion and control of others acting under Defendant Carriage Hill Associates, Inc. direction and control, and that each of the Defendants Carriage Hill Associates of Charleston, LLC and Carriage Hill Associates, Inc. is an alter-ego of the other.

28. That Defendant Carriage Hill Associates, Inc. is personally responsible in an individual capacity for the acts, omissions, debts, obligations, and liabilities, stated herein, of Defendant Carriage Hill Associates of Charleston, LLC.

29. Defendant Carriage Hill Associates of Charleston, LLC and Defendant Carriage Hill Associates, Inc. will hereinafter collectively be referred to as the Carriage Hill Defendants.

30. Defendant Weather Shield Manufacturing, Inc. ("Weather Shield") is a corporation organized and existing under the laws of the state of Wisconsin and is authorized to do business in the state of South Carolina. Weather Shield directs its products and/or materials for sale in the

state of South Carolina and has had employees and/or agents perform work in South Carolina. At all times material hereto, Weather Shield manufactured, provided, designed, sold, and/or placed into the stream of commerce certain windows and doors that were incorporated into, installed, constructed, and/or used in or on the Property.

31. Defendant Muhler Co., Inc. ("Muhler") is a corporation organized and existing under the laws of the State of South Carolina. Upon information and belief, Muhler was the supplier of windows, window systems, and doors which were installed at the Property. Additionally, Muhler installed and/or supervised the installation of the exterior window systems and doors at the Property.

32. A.C. Construction, Inc., ("A.C.") is a corporation organized and existing under the laws of the State of South Carolina. A.C., pursuant to a contract with the Carriage Hill Defendants and/or the Defendant/Developers, installed windows and doors at the Property.

33. Coastal Roofing Co., Inc. ("Coastal Roofing") is, upon information and belief, a corporation organized and existing under the laws of the State of South Carolina. At all times material hereto, Coastal Roofing installed, provided materials and labor for, designed, and/or constructed the roof and roofing system at the Property pursuant to a contract with the Carriage Hill Defendants and/or the Defendant/Developers.

34. Coastal Caulking, Inc. ("Coastal Caulking") is, upon information and belief, a corporation organized and existing under the laws of the State of South Carolina. At all times material hereto, Coastal Caulking installed, provided materials and labor for, and/or supervised the execution of exterior caulking including, but not limited to, the installation of caulking materials and accessories, including backer rod, primer, cleaners, add agents, color, etc., for the construction of the brick veneer exterior walls, stucco systems, windows, doors, exterior trim, porches, roof locations, pipe penetrations, and fireplace shrouds.

35. Mike Phillips d/b/a Mike Phillips Masonry ("Phillips") is, upon information and belief an individual residing and domiciled in the State of Texas. At all times material hereto, Phillips, installed, provided materials and labor for, and/or supervised the installation and construction of the masonry walls and stucco walls, including, but not limited to, the supply and installation of all mortar and masonry accessories, including ties, lintels, reinforcing, flashing, mortar sand, cleaners, add agents, mortar color, etc., for the construction of the brick exterior walls and accessory walls/buildings, installation of brick masonry units and cmu walls, preparing mortar mix, installing and designing weep holes and weep flashing, reinforcement of walls and columns, grouting, provision and installation of tie backs and wall anchors, the supply and installation of all materials for the construction of stucco veneer of all exterior walls, and the provision and installation of flashing at the Property.

36. Upon information and belief, Defendant Edward J. D'Orazio ("D'Orazio") is a citizen and resident of the State of New York and is an architect licensed to do business in the State of South Carolina under license number AR .6546 and was in fact engaged in the architectural and/or engineering business in Berkeley County, South Carolina. At all relevant times hereto D'Orazio designed, signed and stamped plans and specifications, engineered, consulted, and agreed to perform contract administration and inspection duties at the Property.

37. Upon information and belief, Defendant Gerald Rumplick ("Rumplick") is a citizen and resident of the State of New York and is now an architect licensed to do business in the State of South Carolina under license number AR .7536. Upon information and belief, this license was first issued on April 16, 2007. Notwithstanding the date of the issuance of the license, Rumplick was in fact engaged in the architectural and/or engineering business in Berkeley County, South Carolina at all relevant times hereto and designed, signed and stamped plans and specifications, engineered, consulted, and/or agreed to perform contract administration and inspection duties at the Property.

38. D'Orazio and Rumplick will sometimes hereinafter be collectively referred to as the "Architect Defendants."

39. Defendant, Rich Behringer, is, upon information and belief, a citizen and resident of a state other than South Carolina, and is or was, upon information and belief, an employee of one or more of the Defendant/Developers and/or the Carriage Hill Defendants, and served as a Director of the Oaks at Rivers Edge HOA from its inception until his resignation and/or removal by the Defendant/Developers and/or the Carriage Hill Defendants in late 2006.

40. Defendant Behringer will sometimes hereinafter be referred to as Defendant/Developers/Director. That the Defendant/Developers/Director at various times while on the Board of Oaks at Rivers Edge HOA was in breach of his fiduciary duties to the Oaks at Rivers Edge HOA in that he owed multiple and conflicting loyalties to the Defendant/Developers and the Carriage Hill Defendants and to the Oaks at Rivers Edge HOA and the individual Plaintiffs and, further that said Defendant/Developers/Director had irreconcilable conflicts of interest by virtue of the multiple and conflicting loyalties he owed to the Defendant/Developers, Carriage Hill Defendants, Individual Plaintiffs and to the Oaks at Rivers Edge HOA, whose interests were diverse and adverse, one to the other, and, as such, the Defendant/Developers/Director did not act in good faith or in a manner he could reasonably believe to be in or not opposed to the best interests of the Oaks at Rivers Edge HOA. That said Defendant/Developers, Carriage Hill Defendants and the Defendant/Developers/Director all participated in self-dealing by sacrificing the interests of the Oaks at Rivers Edge HOA and of the individual members thereof, including, but not limited to, the named Plaintiffs herein, by sacrificing their interests for the interests of the Defendant/Developers, Carriage Hill Defendants and the Defendant/Developers/Director. Upon information and belief, the Defendant/Developers/Director received either direct or indirect personal benefits from the Defendant/Developers and/or the Carriage Hill Defendants which were contrary to the fiduciary

obligations owed to the Oaks at Rivers Edge HOA by the Defendant/Developers/Director, all as is more fully set forth herein. The Defendant/Developer/Director is personally and individually liable for his conduct and breaches of his fiduciary duties.

JURISDICTION AND VENUE

41. This Court has jurisdiction of the matter and over the parties. S.C. Ann. §§ 15-53-20 and 15-53-30; S.C. Code Ann. §§ 36-2-802 and 36-2-803.

42. Venue is proper in this County. S.C. Code Ann. §§ 15-7-10, -20, and -30.

BACKGROUND

43. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

44. The Regime consists of six, four story condominium buildings with ground level parking constructed in 2004, 2005, and 2006. The exteriors are finished with stucco and brick veneer. The roofs are single ply membrane.

45. The Defendant/Developers contracted with the Carriage Hill Defendants to perform general contracting duties and contracted with the Architect Defendants to perform architectural and/or engineering duties at the Property.

46. The Carriage Hill Defendants contracted with Defendant Coastal Caulking, to perform exterior caulking work.

47. The Carriage Hill Defendants contracted with Defendant Phillips to install and provide materials for the brick veneer exterior walls and the stucco veneer exterior walls at the Property.

48. The Carriage Hill Defendants also contracted with Defendant Muhler to install and/or supply windows and doors designed and manufactured by Defendant Weather Shield. The Carriage Hill Defendants then contracted with Defendant A.C. to perform the actual installation of the windows and doors under the supervision of Defendant Muhler.

49. The contract with A.C., as well as South Carolina law, required, among other things, that A.C. would competently and properly install the windows and doors. On or about August 27, 2006, the Defendant/Developer and/or the Carriage Hill Defendants determined that the work of A.C. in installing the windows and doors at the property was defective, improper, incompetent, unskillful, unworkmanlike, and/or uncareful. Despite the fact that Muhler had been tasked with supervising the improper work of A.C., the Defendant/Developers and/or the Carriage Hill Defendants contracted again with Muhler to repair the deficiencies in the work performed by A.C. and/or to complete the work. Muhler was required by the contract and the law of the State of South Carolina to competently and properly correct the deficiencies in the work performed by A.C.

50. Muhler failed to competently, skillfully, carefully, and/or diligently perform the work to correct the deficiencies and/or complete the work.

51. The deficiencies in the installation and/or work to install the windows and doors at the property and the deficiencies in the attempted correction of the work have caused severe leaking and exposure to harmful elements and materials leading to property damage.

52. Though the Defendant/Developers and/or the Carriage Hill Defendants were aware of these defects, such defects and deficiencies were not disclosed to the Plaintiffs herein and were, upon information and belief, concealed from the Plaintiffs named herein.

53. The Defendant/Developers and/or the Carriage Hill Defendants contracted with Defendant Coastal to design, construct, and/or install the roof or roofing system on the Property.

54. Thereafter the Defendant/Developers, through the Defendant/Developers/Director created Plaintiff non-profit corporation known as the Oaks at Rivers Edge HOA, which has been charged since its inception and through the date of this filing by the Master Deed and By-laws with its obligations to, *inter alia*, maintain and repair the common elements of the regime as outlined in the Master Deed and By-laws drafted and filed by the Defendant/Developers.

55. The Defendant/Developers controlled and managed the Oaks at Rivers Edge HOA and its Board of Directors through the use of its Defendant/Developers/Director prior to the tender of the Oaks at Rivers Edge HOA to the unit owners.

56. As a result of water intrusion and leaks experienced by the Plaintiffs, an engineering investigation was performed in mid 2008 when the buildings were only 2 or 3 years old. The investigation sought to establish whether or not the Regime buildings were deficiently designed or had significant construction defects.

57. By the investigation of the subject buildings and subsequent report provided by an engineer, the Plaintiffs learned that the subject buildings have been deficiently designed and have significant construction defects, particularly the stucco and brick cladding system which was improperly installed and will have to be completely removed and replaced. In addition, the engineer noted other construction, design and stucco deficiencies to the subject buildings, including, but not limited to, the following:

- (a) Improper stucco installation in that no mechanism for weep had been installed at any location in the four-story wall, which is a violation of Industry Standard ASTM C926 and ASTM C1063;
- (b) Improper and/or no installation of sealant joints;
- (c) No head flashings at any of the window or door installations;
- (d) Improper control joint installation around windows;
- (e) Cracking at window corners due to lack of proper stress relief which will promote water intrusion;
- (f) Improper installation and intersection of the single ply roof membrane with the roof eave and sidewall;
- (g) Lack of flashing or weep screed at any window head location within the stucco system;

- (h) Inadequate spacing and installation of control joints;
- (i) Improper installation of all of the exterior architectural trim at the sill of windows which will promote water intrusion;
- (j) Improper installation of the exterior cladding system by evidence of staining and damage;
- (k) Improper construction of the guardrails, handrails and balusters on the balconies which have evidence of rot and deterioration;
- (l) Improper material selection of the guardrails, handrails and balusters on the balconies;
- (m) Improper installation of the exterior cladding that is not in accordance with the IBC and code referenced industry standards;
- (n) Water intrusion damage resulting from improper installation of the exterior cladding; and
- (o) Deterioration of the subject buildings due to water intrusion from the failed Exterior Cladding System;
- (p) improper design and/or installation of the of the brick veneer exterior wall;
- (q) improper caulking and sealing of the windows, control joints, flashings, doors, and/or exterior trim.

58. As a direct and proximate result and consequence of the numerous stucco design and/or installation, masonry, construction and design problems and defects as noted above, the Plaintiffs have and will continue to spend substantial sums of money for the repairs and reconstruction of their condominium units and will be subject to loss of use, enjoyment, and depreciation of value of property.

59. The water damage to common elements and condominium units is a result of defects and deficiencies in the design and construction of the Regime, specifically including, but not limited to, the following:

- (a) Lack of weep screed or weeping mechanism along the stucco wall bases at the perimeter of the balcony slabs as required by building codes and proper construction practices;
- (b) Lack of weeps at window heads;
- (c) Failure of weep or water management systems to manage seepage water, which gets past the façade cladding, has resulted in wetting of exterior sheathing behind moisture barriers and into the wall cavity and metal framework within the wall cavity;
- (d) Improper splicing at roof edges;
- (e) Improper intersection of roof membrane with exterior walls;
- (f) inadequate spacing and installation of control joints;
- (g) Improper installation of sealants around windows, doors, and cladding terminations;
- (h) Lack of head and sill flashing;
- (i) Improper installation of control joint accessories;
- (j) Failure to install proper sealant joints around penetrations in exterior cladding;
- (k) failure to properly design or install the brick veneer;
- (l) failure to select proper materials for the handrails, balusters and balconies;
- (m) Failure to properly construct and/or manufacture the handrails, balusters and balconies;
- (n) Failure to properly caulk the project to prevent water intrusion.

60. Plaintiffs are informed and believe that the property was observed to be in an advanced stage of deterioration and not in compliance with the building codes and standards which were applicable to this project at the time of design and construction and will have to be replaced to comply with current building codes and standards applicable to this project.

61. In addition to the construction defects, the Defendant/Developers and the Defendant/Developer/Director, in their capacity as head of the Association, have:

- (a) Failed and omitted to act in a fiduciary capacity towards the owners of the condominium units;
- (b) Negligently maintained the property;
- (c) Failed to act as competent managers;
- (d) Acted at all times in their own interests and in contravention of their fiduciary duty towards the condominium unit owners;
- (e) Covered up and concealed defects and damage from the unit owners, and
- (f) Acted in violation of all fiduciary duty concepts.

62. Due to the actions of the Defendant/Developers and the Defendant/Developer/Directors, as stated above, the Plaintiffs are facing significant damage repairs, deteriorating property, significant immediate expenses for investigation, destructive testing, and an analysis of construction defects, repairs defects, damages, rot deterioration, and a generally overall dilapidated condition which is the direct and proximate result of defective construction, management, maintenance, and abandonment of generally accepted fiduciary principles on the part of the Defendant/Developers and the Defendant/Developer/Director.

63. The actions and/or inactions of the Defendants have led to significant property damage caused by an occurrence that began at the time of substantial completion of these Defendants' work and was not discoverable despite reasonable efforts by the Plaintiffs until only recently.

FIRST CAUSE OF ACTION
(Negligence as to all Defendants)

64. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

65. Defendants owed a duty to the Plaintiffs and breached the same because they were negligent, careless, reckless, willful and wanton in one or more of the following particulars, to-wit:

- (a) in failing to properly repair the structures;
- (b) in selling, constructing, and/or repairing the units with defective windows and doors;
- (c) in selling, constructing, and/or repairing units with inadequate flashings and weep screeds;
- (d) in selling, constructing, and/or repairing units with defective siding;
- (e) in selling, constructing, and/or repairing units with inadequate water barriers;
- (f) in selling, constructing, and/or repairing units without weather proof building envelopes and exteriors;
- (g) in failing to properly warn purchasers and/or ultimate users or consumers;
- (h) in misrepresenting the condition of the units to purchasers and/or owners;
- (i) in making inadequate repairs;
- (j) in covering up deficiencies;
- (k) in failing to give proper disclosure;
- (l) in selling and/or constructing defective units;
- (m) in failing to properly supervise its contractors and/or subcontractors;
- (n) in failing to perform repairs and construction in accordance with applicable building codes and industry standards;
- (o) in tendering common elements to the Homeowners' Association in a deficient

condition;

- (p) 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;
- (q) in failing to comply the applicable Fire and Safety Codes;
- (r) in failing to perform a meaningful evaluation of the property or the products or materials;
- (s) in selling, manufacturing, marketing, and/or designing defective and/or dangerous products;
- (t) in failing to exercise due care;
- (u) in violating the manufacturer's industry standards;
- (v) in improperly designing and constructing the roof, roof to wall intersections, and roof slopes;
- (w) inadequate spacing and installation of control joints;
- (x) in improperly exposing and/or installing the weather resistive barrier;
- (y) in failing to install weep mechanisms and head flashing in violation of the building code;
- (z) failure to furnish and install windows and doors and other building components that are in compliance with industry standards and the applicable building codes;
- (aa) failure to properly install exterior cladding; and
- (bb) such other defects and breaches of duty that may become apparent during the discovery phase of this action;
- (cc) in failing to construct the buildings with adequate sound and noise barriers that are compliant with industry standards and/or building codes;
- (dd) in failing to properly caulk and seal the buildings;
- (ee) in failing to properly design and/or construct the brick veneer;

(ff) in failing to properly fund the Oaks at Rivers Edge HOA and its reserves;

(gg) in tendering common elements to the Oaks at Rivers Edge HOA in a deficient condition;

(hh) in placing defective and inferior construction into the stream of commerce.

66. Said failures above-described have proximately damaged Plaintiffs in an amount of actual, incidental, special, and consequential damages and in addition thereto by virtue of the negligence per se in the violation of applicable building codes, gross negligence and willfulness of the Defendants and reckless disregard for the rights of others, Plaintiffs are entitled to an award of punitive damages.

FOR A SECOND CAUSE OF ACTION

(Breach of Implied Warranties as to Defendant/Developers and the Carriage Hill Defendants)

67. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

68. That the sale of the units by the Defendant/Developers and the Carriage Hill Defendants, their affiliates, agents, joint venturers, parent companies, and/or partners whether named or unnamed in the Deeds of Transfer, contained, as a matter of law, implied warranties of fitness for a particular purpose and habitability, which warranties were not effectively disclaimed pursuant to the case law in such cases made and provided.

69. That the Defendant/Developers and the Carriage Hill Defendants, their affiliates, associates and joint venturers, whether named or unnamed, on the Deeds of Transfer have breached the aforesaid implied warranties proximately resulting in damage to the Plaintiffs and all others similarly situated, in an amount to be determined and, in addition thereto, Defendant/Developers are liable for incidental, special and consequential damages as a direct and proximate result thereof in an amount to be determined by the Trier of Fact.

FOR A THIRD CAUSE OF ACTION

(Unfair Trade Practices Act, S.C. Code Section 39-5-10, *et seq.*, as to

Defendants/Developers, Defendant Muhler, and the Carriage Hill Defendants)

70. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

71. The above-described conduct, to-wit, the construction, sale, investigation, repair and subsequent conduct by the Defendants were part of conduct and trade and commerce within the meaning of S.C. Code Section 39-5-20(a).

72. That the conduct described hereinabove including, but not limited to, failing to provide adequate information to the prospective purchasers; failing to repair the defects about which these Defendants were or should have been aware; breaches of various fiduciary duties; failure to properly investigate the true conditions of the buildings and/or concealing such defective condition(s) as found or discovered; and such other conduct as revealed during discovery, are deceptive and unfair practices within the meaning of S.C. Code Section 39-5-140(a) S.C. Code of Laws as amended.

73. That the conduct described above was knowing and willful and the Defendants knew or should have known that such conduct was a violation of S.C. Code Section 39-5-20. Plaintiffs are persons within the meaning of S.C. Code Section 39-5-140(a) which have suffered as a direct and proximate result of unfair and deceptive acts of Defendants above described and ascertained loss of money in the form of the above-described damages.

74. That the aforesaid acts of Defendants were unfair and deceptive acts and are susceptible of repetition and, as such, are acts which can, have and will affect the public, generally, by repetition.

75. Said unfair and deceptive acts are acts which will affect members of the public beyond the parties to the above-described action in the form of other consumers who may purchase condominiums.

76. Plaintiffs are entitled to be compensated pursuant to S.C. Code Section 39-5-140(a) for its above-described damages and to recover three (3) times these damages by reason of the knowing and willful nature of the unfair and deceptive acts by Defendants and Plaintiffs are entitled to attorney's fees and costs.

FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty as to Defendant/Developers)

77. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

78. The Defendant/Developers were required to use good judgment and act in the utmost good faith to complete the formation of and operate the Regime until it was turned over to the Oak at Rivers Edge HOA's control.

79. The Defendant/Developers prior to turning the Regime over to the control of the homeowners, had the unilateral ability to determine the assessments against individual owners and the pecuniary maintenance and repair requirements of the Regime. The Defendant/Developers were required to fund shortfalls between the assessments necessary to perform the duties and obligations of the Master Deed and By-laws and the assessments actually collected from individual unit owners.

80. The Defendant/Developers provided some maintenance, construction, and repair of the common areas prior to turning the Oak at Rivers Edge HOA over to the homeowners; however, the repairs, construction and maintenance done were substandard and inadequate and were intended to and, in fact did, conceal instead of correct the latent defects that existed in the common areas and in the units of which Defendant/Developers were or should have been aware.

81. That the Defendant/Developers owed a fiduciary duty to the Oak at Rivers Edge HOA and its members to insure that the common areas were in good repair at the time they were conveyed to the Oak at Rivers Edge HOA or to provide the Oak at Rivers Edge HOA with funds

sufficient to effectuate any needed repairs to those common areas as required by the law in South Carolina in such cases made and provided.

82. Further, the Defendant/Developers owed a duty to the Plaintiffs to turn over common areas that were not substandard and that were in good repair.

83. That the Defendant/Developers negligently, carelessly, recklessly, willfully and wantonly failed to turn over common areas that were in good repair and were not substandard and failed to protect property interests of the Plaintiffs in conformity with the customary and normal standards in the condominium management industry.

84. That the Defendant/Developers failed to provide sufficient capital replacement reserves at the time of the turn over to effectuate the necessary repairs and to bring the substandard common elements up to a state of good repair.

85. That the Defendant/Developers had a pecuniary interest in their own profits that was irreconcilable with the interest of the individual unit owners and the association.

86. That as a direct a proximate result of the reckless, willful, negligent and wanton conduct of said Defendant/Developers, Plaintiffs have and will be required to expend substantial sums of money in order to investigate, design the repair and implement the necessary repairs and alterations to bring the units and the common elements to a state or condition which is consistent with the price paid for the units and with the numerous representations made by the Defendant/Developers all in an amount of actual, special, incidental, consequential, and punitive damages to be determined.

FOR A FIFTH CAUSE OF ACTION

(Individual Liability as to Defendant/Developers/Director)

87. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

88. In addition to the Defendant/Developers/Director's liability for their participation in the wrongs above-described, the Defendant/Developers/Director is directly liable for his actions during the time he was on the Board of Directors of the Oaks at Rivers Edge HOA in that he breached his fiduciary duties, particularly of good faith, undivided loyalty and fair dealing to the Plaintiffs, proximately resulting in the damage to the Plaintiffs as hereinabove and hereinafter set forth.

FOR A SIXTH CAUSE OF ACTION

(Breach of Fiduciary Duty as to Defendant/Developer/Director)

89. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

90. Defendant/Developers/Director, at all times during which he was a Director of the Oaks at Rivers Edge HOA, was 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 and unit owners or he undertook such duties. Nevertheless, Defendant/Developers/Director acted and failed to act such that he has committed breaches of fiduciary duties, negligence, gross negligence, recklessness, willfulness, wantonness, bad faith, mismanagement, self-dealing and waste with respect to his duty of administration, care and maintenance of the Regime property and his duty to protect the interests and rights of the individual members of the Oaks at Rivers Edge HOA and his duty to protect with respect to the Regime property. These wrongful acts and omissions have caused and will cause the Plaintiffs to incur and continue to incur substantial monetary damages.

91. That the Defendant/Developers/Director 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.

92. As a direct and proximate result and consequence of the aforementioned negligent, grossly negligent and reckless acts or omissions of the Defendant/Developers/Director, Plaintiffs will and have continued to spend substantial sums of money for the extraordinary repairs and reconstruction of major portions of the regime's common elements and the individual units.

93. The Defendant/Developers/Director's negligent, reckless and willful conduct includes, but is not necessarily limited to:

(a) 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;

(b) failing to properly oversee the Regime in order to insure that all defects discovered by the Defendant/Developers/Director or which should have been discovered by the Defendant/Developers/Director, were reported to the unit owners so that repairs could proceed in accordance with the customary and ordinary standards of construction at the expense of the Defendant/Developers and/or the Carriage Hill Defendants;

(c) failing to report the defective conditions of the units to the individual unit owners and the new Board at the time of turnover;

(d) failing to inform the Board and the individual unit owners of the true nature of the defective conditions of the Regime property at the time of turnover;

(e) allowing and permitting the Carriage Hill Defendants and/or Defendant/Developers to pursue inadequate measures to repair known, both actual and constructive, defective conditions;

(f) placing their loyalties to their employer the Carriage Hill Defendants and Defendant/Developers and/or their subsidiaries above the loyalties he owed to Plaintiffs as Director;

(g) failing to assess the Defendant/Developers so that adequate funds would be available to mitigate the substantial damages which were and are resulting from the aforementioned significant design and construction defects and deficiencies;

(h) in participating in self-dealing, sacrificing the Oaks at Rivers Edge HOA and the Individual Homeowners' interests for his own interests and the interests of Carriage Hill Defendants and/or Defendant/Developers.

94. The acts attributable to the Defendant/Developers/Director as set out above caused no physical injury to tangible property nor did these acts result in a loss of use of that property, however, Defendant/Developers/Director's actions will result in Plaintiffs being subject to money damages, not property damages, due to budget deficits and special assessments directly resulting from the Defendant/Developers/Director's negligence and recklessness and as a direct and proximate result thereof, together with punitive damages, as may be appropriate. These money damages are the direct and proximate result of Defendant/Developers/Director's errors and omissions and breaches of duty directly related to the management of the regime by the Defendant/Developer/Director when he was in control of the HOA.

95. Each of the wrongful acts as described above that occurred in connection with the management of the regime property and affairs were more than momentary thoughtlessness, inadvertence or error in judgment on the part of the Defendant/Developers/Director with regard to representations consisting of either affirmative statements or silence when there was a duty to speak made to the Plaintiffs. Instead, these wrongful acts or omissions constitute an entire want of care and conscious indifference to the rights, welfare or property of the Plaintiffs and were

intended to cause financial harm to the Plaintiffs and the individual unit owners such that these acts constituted gross negligence.

96. The Defendant/Developers/Director as described above had a fiduciary relationship and owed fiduciary obligations and duties to Plaintiffs.

FOR A SEVENTH CAUSE OF ACTION

(Breach of Implied Warranties including Workmanlike Service
as to Defendant Muhler, Defendant A.C., the Carriage Hill Defendants, Defendant Coastal,
Defendant Phillips, and Defendant Coastal Caulking)

97. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

98. That Defendants Muhler, A.C., Carriage Hill, Coastal, Phillips, and Coastal Caulking are, upon information and belief, contractors and hold themselves out to the general public as qualified to perform construction work and therefore impliedly warrant as a matter of law that any work they undertake and any material they supply in the construction or repair of a dwelling will be performed in a careful, diligent and workmanlike manner in accordance with the industry standards and the applicable building code and in conformity with the plans and specifications for the project. Additionally, these Defendants impliedly warranted as a matter of law that the building would be habitable and fit for its intended purpose.

99. That in the performance of their work Defendants Muhler, A.C., Carriage Hill, Coastal, Phillips, and Coastal Caulking breached the aforesaid implied warranties, including the implied warranty of workmanlike service, in that the work they did was not fit for its intended purpose and was not done with quality materials and, in fact, any "repair" which was performed was done in such a fashion as to hide or otherwise conceal the true nature of the defects which existed.

100. That as a direct and proximate cause of the breach of the implied warranties the Plaintiffs have suffered actual, direct, consequential, special, and incidental damages all in an amount to be shown at trial.

FOR A EIGHTH CAUSE OF ACTION
(Negligent Misrepresentation as to all Defendants)

101. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

102. That as more particularly described herein the Defendants made numerous representations to the Plaintiffs in the form of direct representations and marketing representations.

103. That Plaintiffs have determined that the representations made by Defendants were false and that the 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 property. That the Defendants had a pecuniary interest in making such false representations despite the duty of care the Defendants owed to the Plaintiffs. As a result, Plaintiffs have suffered pecuniary loss as a direct and proximate result of their reliance on the representations and/or omissions in its communications:

104. In justifiable reliance on numerous false representations of fact made by the Defendants, *inter alia*, that the buildings and site were in overall good condition and that the deficiencies, if any, were minor deferred maintenance concerns that were being addressed and that the buildings were designed and constructed in accordance with the plans and specifications, applicable building codes, industry standards, that any known deficiencies were repaired and alleviated, that substituted materials were of like kind and quality and sufficient to perform as represented, that the buildings were constructed with sound and noise barriers contributing to the luxuriousness of the condominium units, that pay requests and/or invoices were submitted for

work performed and materials supplied that were proper and without deficiencies, that the doors and windows properly manufactured and installed in accordance with industry standards and/or the plans and specifications and manufacturer's instructions, the Individual Plaintiffs purchased the aforesaid damaged units and continue to suffer damages and the Oaks at Rivers Edge HOA is now required to expend substantial sums to repair the common elements as is hereinabove set forth; all proximately causing damage to the Plaintiffs.

FOR A NINTH CAUSE OF ACTION

(Aiding and Abetting a Breach of Fiduciary Duty as to the Carriage Hill Defendants)

105. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

106. That Defendant/Developers and the Defendant/Developer/Director breached their fiduciary duties to the Plaintiffs as aforesaid.

107. That the Carriage Hill Defendants knowingly participated in the breach of Defendant/Developers' fiduciary duties and/or the Defendant/Developer/Director's fiduciary duties as aforesaid.

108. That as a direct and proximate result thereof, Plaintiffs have and will suffer actual, incidental, special and consequential damages as aforesaid in an amount to be determined and, in addition thereto, are entitled to punitive damages.

FOR AN TENTH CAUSE OF ACTION

(Breach of Contract Accompanied by a Fraudulent Act as to Defendant/Developers)

109. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

110. That a fiduciary relationship existed between the Defendant/Developers and Association.

111. That under the Master Deed and By-laws, the Defendant/Developer, when it turned over the common elements to the Association, owed a contractual and fiduciary obligation to

turnover the common elements without defects or, in the alternative, to fund sufficient reserves to repair any defects.

112. That in breach of these obligations and in breach of the Master Deed, the Defendant/Developers failed to disclose the existence of the known defects in the common elements and in the stead of any such disclosure sought to and did so engage in the concealment activities discussed herein. This constitutes a breach of the agreement between the Association and the Defendant/Developer under the Master Deed and By-laws and accompanying this breach was the fraudulent act of failing to disclose the true condition of the common elements about which the Defendant/Developers sought to conceal and, further, that Defendant/Developers either knew or should have known of said defects, all of which proximately caused the damage hereinabove and hereinafter described and entitles the Plaintiffs to punitive damages.

FOR A ELEVENTH CAUSE OF ACTION
(Breach of Warranty as to Defendant Weather Shield)

113. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

114. That as hereinabove stated, the Plaintiffs were injured and continue to be injured by Defendant Weather Shield' product, the windows, window system, and doors.

115. That the injury was proximately caused by Defendant Weather Shield because the product was in a defective condition, unreasonably dangerous to the Plaintiffs.

116. That the product at the time of the accident was in essentially the same condition as when it left the control of Defendant Weather Shield.

117. That as a direct result of Defendant Weather Shield's manufacture, sale, design, installation, and/or construction of the windows, window system, and doors certain express and implied warranties arose as a matter of law and out of representations made by Defendant Weather Shield and disclosures made by the Plaintiffs, their representatives, agents, predecessors

or assigns. That the implied warranties include, but are not limited to, the implied warranty of merchantability and implied warranty of fitness for a particular purpose. Additionally, certain express warranties were made on numerous occasions that include but are not limit to statements made contemporaneous with the sale of the product and statements made subsequent to the inspection of the product.

118. That none of the express or implied warranties were properly disclaimed as a matter of law.

119. That in the performance of this work Defendant Weather Shield breached the aforesaid warranties in that the windows, window system, and doors were defective, dangerous, and not fit for its intended use or ordinary purpose. Moreover, the windows, window system, and doors could not pass without objection under the product description, *inter alia*, the windows, window system and doors failed to prevent water infiltration and in fact led to increased water infiltration into the subject property.

120. That as a direct and proximate cause of the Defendant Weather Shield's breach of the warranties stated herein the Plaintiffs have sustained actual, direct, consequential, incidental, and special damages in an amount to be shown at trial. Further, as a result of Defendant Weather Shield's reckless, knowing, and/or wanton breach of the implied warranties Plaintiffs are entitled to punitive damages.

FOR A TWELFTH CAUSE OF ACTION

(Common Law and Statutory Strict Liability as to Defendant Weather Shield)

121. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

122. That Defendant Weather Shield has engaged and continues at the time of filing of this action to be engaged in the business of selling, manufacturing, designing, and/or marketing windows, window systems, and doors.

123. That Defendant Weather Shield expects the windows, window systems, and doors and the windows, window systems, and doors in fact reach the user or consumer without substantial change in the condition in which they were sold. That Weather Shield sold the products in a manner contemplated by S.C. Code Ann. § 15-73-10.

124. That, as stated above, the windows, window systems, and doors are unreasonably dangerous to the ordinary consumer in the community considering their characteristics and propensity for leading to significant property damage.

125. That as a direct and proximate cause of the Defendant Weather Shield's sale, design, manufacture, and/or marketing of the product stated herein the Plaintiffs have sustained actual, direct, consequential, incidental, and special damages in an amount to be shown at trial and the Defendant Weather Shield is strictly liable therefore.

FOR A THIRTEENTH CAUSE OF ACTION
(Professional Negligence as to the Architect Defendants)

126. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

127. The Architect Defendants owed a duty to the Plaintiffs and breached the same because they were negligent, careless, reckless, willful and wanton in one or more of the following particulars, to-wit:

- (a) in failing to exercise due care in the production and design of architectural and/or engineering plans and specifications;
- (b) in failing to exercise due care in the performance of contract administration duties;
- (c) in failing to design the project to ensure that it was free of design defects;
- (d) in failing to review the construction to ensure that the project was free of construction defects and that it was built in substantial accordance with the design plans and specifications;

(e) in approving and/or allowing the substitution of materials that were not of like kind and quality as the materials originally specified and/or not fit for the intended purpose of the project;

(f) in violating the applicable building codes.

128. That each of the foregoing constitutes a breach of the professional standard of care due and owing the Plaintiffs by the Architect Defendants. (A copy of an Affidavit alleging an act of professional negligence against Architect Defendants is attached hereto as Exhibit A).

129. Said failures above-described have proximately damaged Plaintiffs in an amount of actual, incidental, special, and consequential damages and in addition thereto by virtue of the negligence per se in the violation of applicable building codes, gross negligence and willfulness of the Architect Defendants and reckless disregard for the rights of others, Plaintiffs are entitled to an award of punitive damages.

FOR A FOURTEENTH CAUSE OF ACTION

(Breach of Express Warranties and Implied Warranties of Fitness for Intended Use and Plans and Specifications as to the Architect Defendants)

130. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

131. That as hereinabove stated, the Plaintiffs are injured and continue to be injured by defective construction and design of the buildings.

132. That as a direct result of Architect Defendants' design, plans and specifications, and/or contract administration for the construction of the buildings, certain express and implied warranties arose as a matter of law and out of representations made by the Architect Defendants and the production of plans and specifications by the Architect Defendants. That the implied warranties include, but are not limited to, the implied warranty of fitness for a particular purpose and the implied warranty of plans and specifications.

133. That none of the express or implied warranties were properly disclaimed as a matter of law.

134. That in the performance of this work the Architect Defendants breached the aforesaid warranties in that the design of the buildings and the plans and specifications therefore were defective, dangerous, unsuitable, would not pass without objection, failed to comply with industry standards, and were not fit for its intended use or ordinary purpose. Moreover, the design failed to prevent water infiltration and in fact led to increased water infiltration into the subject property.

135. That as a direct and proximate cause of the Architect Defendants' breach of the warranties stated herein the Plaintiff has sustained actual, direct, consequential, incidental, and special damages in an amount to be shown at trial.

FOR A FIFTEENTH CAUSE OF ACTION
(Negligence per se as to Defendant Rumplick)

136. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

137. Defendant Rumplick owed a duty to the Plaintiffs and breached the same by violating S.C. Code Ann. § 40-3-30 (1976), as amended, by practicing architecture in the state of South Carolina without being properly licensed and in violating the applicable building codes.

138. That each of the foregoing constitutes negligence per se.

139. Said failures above-described have proximately damaged Plaintiffs in an amount of actual, incidental, special, and consequential damages and in addition thereto by virtue of the negligence per se in the violation of applicable building codes, gross negligence and willfulness of Defendant Rumplick and reckless disregard for the rights of others, Plaintiffs are entitled to an award of punitive damages.

FOR A SIXTEENTH CAUSE OF ACTION

(Aiding and Abetting as to the Defendant/Developers, the Carriage Hill Defendants and
Architect Defendants)

140. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

141. The Defendant/Developers, the Carriage Hill Defendants, and the Architect Defendants were acting in concert with each other and/or pursuant to a common design with each other, heretofore described, that has resulted in tortious conduct and harm to the Plaintiffs.

142. That each of the Defendants knew or should have known that the other's conduct and the conduct of the Defendants collectively constituted and/or encouraged the breach of a duty or duties owed to the Plaintiffs by the Defendants. Each Defendant gave substantial assistance, advice, direction, and/or encouragement to the other so as to knowingly bring about the other's tortious conduct.

143. Each of the Defendants' substantial assistance to the others accomplished the tortious result sought by each of the Defendants and such substantial assistance combined with each of the Defendants' own tortious conduct, separately considered, to constitute a breach of the duty or duties owed to the Plaintiffs.

144. As a direct and proximate result of the Defendants' aiding and abetting the tortious conduct, hereinabove described, the Plaintiffs have suffered direct, incidental, actual, special, and consequential damages, all in an amount to be shown at trial. Moreover, the Defendants wanton and willful aid of the tortious conduct entitles the Plaintiffs to an award of punitive damages.

FOR A SEVENTEENTH CAUSE OF ACTION

(Breach of Implied Warranty of Merchantability under S.C. Code § 36-2-314 as to Defendant
Muhler and Defendant Weather Shield)

145. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

146. Defendant Muhler and/ or Defendant Weather Shield contracted to sell the windows and/or doors installed at the Property.

147. Defendant Muhler and/ or Defendant Weather Shield were merchants with respect to goods of that kind and, therefore, in the sale of the windows and/or doors installed at the property there contained an implied warranty of merchantability with respect to the goods which was not excluded or modified pursuant to South Carolina law.

148. The Plaintiffs are now aware that the windows and/or doors do not pass without objection in the trade, are not of fair and average quality within the description, are not fit for the ordinary purpose for which they were sold, and/or do not run with even kind or quality. The foregoing insufficiencies constitute a breach of the implied warranty of merchantability by Defendant Muhler and/ or Defendant Weather Shield.

149. As a direct and proximate cause of the breach of the implied warranty of merchantability, the Plaintiffs have suffered actual, direct, incidental, special, and consequential damages all in an amount to be shown at trial.

FOR AN EIGHTEENTH CAUSE OF ACTION

(Breach of Implied Warranty of Fitness For a Particular Purpose under S.C. Code § 36-2-315 as to Defendant Muhler and Defendant Weather Shield)

150. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

151. Defendant Muhler and/ or Defendant Weather Shield contracted to sell the windows and/or doors installed at the Property.

152. Defendant Muhler and/ or Defendant Weather Shield were merchants with respect to goods of that kind and held themselves out to the general public as qualified to sell such goods.

153. At the time of the sale of the windows and/or doors, Defendant Muhler and/ or Defendant Weather Shield knew or had reason to know the particular purpose for which the

windows and/or doors were required, to wit: for use in luxury condominiums that were situated on the coast of Charleston, South Carolina.

154. The Plaintiffs relied on the skill and and/or judgment of Defendant Muhler and/ or Defendant Weather Shield to select and furnish suitable goods and at the time of sale an implied warranty of fitness for a particular purpose arose in favor of the Plaintiffs.

155. The Plaintiffs are no aware that that the windows and/or doors sold and supplied are not fit for their intended purpose.

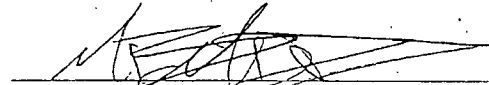
156. As a direct and proximate cause of the breach of the implied warranty of fitness for a particular purpose, the Plaintiffs have suffered actual, direct, incidental, special, and consequential damages all in an amount to be shown at trial.

WHEREFORE, the Plaintiffs pray that this Court issue an Order granting judgment for the Plaintiffs against the Defendants, jointly and severally, for the following relief:

- (a) for actual, special, direct, incidental, and consequential damages in an amount to be proven at trial;
- (b) for treble damages under S.C. Code § 39-5-110;
- (c) for punitive damages;
- (d) for prejudgment and post judgment interest on Plaintiffs' damages;
- (e) for attorneys' fees and costs;
- (f) for such other relief as the Court deems just and proper.

[signature page follows]

SMITH, BUNDY, BYBEE & BARNETT, P.C.



W. H. Bundy, Jr., Esquire
M. Brent McDonald, Esquire
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
Telephone: (843) 881-1623

*Attorney for Plaintiff The Oaks at River's Edge Property
Owners Association, Inc., John E. Atkinson, Joan D.
Strandquist, Joseph E. Chiovarou, Jr., Peyton H. Cook,
Jr., Brenda Cook, John W. Edelen, Karen A. Nelson,
Robert J. Graham, Maureen S. Graham, Kevin O. Hux,
Nancy K. Johnson as trustee for the Nancy K. Johnson
Revocable Trust, William Jung, Charles Maraziti,
Patricia Maraziti, Donna Dee Moran, George S. Pollard,
Eleanor J. Pollard, Robert Reece, Gerard M. Ruvo and
Sue S. Ruvo as trustees for the Ruvo 2006 Living Trust,
Robert Farina, Mary Ann Farina, Carolyn M. Jennings,
Thomas Edward Keane, Edward Wallace Barr, III,
Richard B. Pekruhn, Pauline Pekruhn, Matthew J.
Severance, and Elizabeth Ashley Phillips Severance*

Mt. Pleasant, South Carolina

12/9, 2010

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) NINTH JUDICIAL CIRCUIT
)

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, and CARRIAGE HILL ASSOCIATES OF
CHARLESTON, LLC,

Plaintiffs,

vs.

WEATHER SHIELD MANUFACTURING, INC.,
THE MUHLER CO., INC., and A.C.
CONSTRUCTION, INC.,

Defendants.

C/A. No.: 2009-CP-08-1068

FOURTH AMENDED
COMPLAINT
(Jury Trial Demanded)

A.C. CONSTRUCTION, INC.,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, and TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA,

Defendants.

C/A. No.: 2009-CP-08-1413

FILED
2012 JUN -6 PM 12:46
MARY P. GORDON
CLERK OF COURT
BERKELEY COUNTY, SC

GEOFFREY C. CIPKALA and SAMUEL C.
AGEE, as tenants in common of the common
elements of the Oaks at River's Edge Horizontal
Property Regime and on behalf of themselves and
all other tenants in common,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, CARRIAGE HILL ASSOCIATES OF
CHARLESTON, LLC, CARRIAGE HILL
ASSOCIATES, INC.,

Defendants.

C/A. No.: 2009-CP-08-2714

THE OAKS AT RIVERS EDGE PROPERTY
OWNERS ASSOCIATION, INC., JOHN E.
ATKINSON, JOAN D. STRANDQUIST, JOSEPH
E. CHIOVAROU, JR., PEYTON H. COOK, JR.,
BRENDA COOK, JOHN W. EDELEN, KAREN
A. NELSON, ROBERT J. GRAHAM, MAUREEN
S. GRAHAM, KEVIN O. HUX, NANCY K.
JOHNSON as trustee for the Nancy K. Johnson
Revocable Trust, WILLIAM JUNG, CHARLES
MARAZITI, PATRICIA MARAZITI, DONNA
DEE MORAN, GEORGE S. POLLARD,
ELEANOR J. POLLARD, ROBERT REECE,
GERARD M. RUVO AND SUE S. RUVO as
trustees for the Ruvo 2006 Living Trust, ROBERT
FARINA, MARY ANN FARINA, CAROLYN M.
JENNINGS, THOMAS EDWARD KEANE,
EDWARD WALLACE BARR, III, RICHARD B.
PEKRUHN, PAULINE PEKRUHN, GREGORY
B. NATHAN, RICHARD JENNINGS,
MATTHEW J. SEVERANCE, and ELIZABETH
ASHLEY PHILLIPS SEVERANCE,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, CARRIAGE HILL ASSOCIATES OF
CHARLESTON, LLC, CARRIAGE HILL
ASSOCIATES, INC., WEATHER SHIELD
MANUFACTURING, INC., THE MUHLER CO.,
INC., A.C. CONSTRUCTION, INC., COASTAL
ROOFING, CO., INC., COASTAL CAULKING,
INC., MIKE PHILLIPS d/b/a MIKE PHILLIPS
MASONRY, GERALD RUMPLICK, EDWARD J.
D'ORAZIO, and RICH BEHRINGER,

Defendants.

C/A. No.: 2009-CP-08-3916

Plaintiffs, described herein, complaining of the Defendants herein, would allege and
show as follows:

PARTIES

1. Plaintiff, The Oaks at Rivers Edge Property Owners Association, Inc. ("Oaks at Rivers Edge HOA") is a non-profit corporation organized and existing under the laws of South Carolina being an association of and limited to owners of the units located at the property known as The Oaks at Rivers Edge Horizontal Property Regime (the "Regime" or the "Property") in Berkeley County, State of South Carolina.

2. Plaintiffs, John E. Atkinson and Joan D. Strandquist, are citizens and residents of the State of Pennsylvania and are the owners of Unit 3B, 136 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

3. Plaintiff, Joseph E. Chiovarou, Jr., is a citizen and resident of the State of South Carolina, County of Berkeley, and is the owner of Unit 2A, 140 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

4. Plaintiffs, Peyton H. Cook, Jr. and Brenda Cook, are citizens and residents of the State of South Carolina, County of Berkeley, and are the owners of Unit 3B, 130 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

5. Plaintiffs, John W. Edelen and Karen A. Nelson, are citizens and residents of the States of South Carolina and Illinois and are the owners of Unit 2B, 136 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

6. Plaintiffs, Robert J. Graham and Maureen S. Graham, are citizens and residents of the State of South Carolina, County of Charleston and are the owners of Unit 4B, 144 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

7. Plaintiff, Kevin O. Hux, is a citizen and resident of the State of South Carolina, County of Berkeley and is the owner of Unit 4B, 118 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

8. Plaintiff, Nancy K. Johnson as trustee for the Nancy K. Johnson Revocable Trust, is a citizen and resident of the State of South Carolina, County of Berkeley and is the owner of Unit 3A, 140 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

9. Plaintiff, William Jung, is a citizen and resident of the State of South Carolina, County of Charleston, and is the owner of Unit 3A, 136 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

10. Plaintiffs, Charles Maraziti and Patricia Maraziti, are citizens and residents of the States of South Carolina and New Jersey and are the owners of Unit 2A, 124 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

11. Plaintiff, Donna Dee Moran, is a citizen and resident of the State of South Carolina, County of Berkeley, and is the owner of Unit 4A, 124 Fairbanks Oak Alee, in the Oaks at Rivers

Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

12. Plaintiffs, George S. Pollard and Eleanor J. Pollard, are citizens and residents of the State of South Carolina, County of Berkeley, and are the owners of Unit 2A, 136 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

13. Plaintiff, Robert Reece, is a citizen and resident of the State of South Carolina, County of Berkeley, and is the owner of Unit 4B, 140 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

14. Plaintiffs, Gerard M. Ruvo and Sue S. Ruvo as trustees for the Ruvo 2006 Living Trust, are citizens and residents of the State of California and are the owners of Unit 3A, 144 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

15. Plaintiffs, Robert Farina and Mary Ann Farina, are citizens and residents of the State of South Carolina, County of Berkeley, and are the owners of Unit 4B, 124 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

16. Plaintiff, Carolyn M. Jennings, is a citizen and resident of the State of North Carolina, and is the owner of Unit 4A, 144 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

17. Plaintiffs, Thomas Edward Keane and Edward Wallace Barr, III, are citizens and residents of the State of South Carolina, County of Charleston, and are the owners of Unit 2A, 130 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

18. Plaintiffs, Richard B. Pekruhn and Pauline Pekruhn, are citizens and residents of the State of South Carolina, County of Berkeley, and are the owners of Unit 4B, 136 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

19. Plaintiffs, Gregory B. Nathan and Richard Jennings, are citizens and residents of the State of California, and are the owners of Unit 3B, 144 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

20. Plaintiffs, Matthew J. Severance and Elizabeth Ashley Phillips Severance, are citizens and residents of the State of South Carolina, County of Charleston and are the owners of Unit 2B, 124 Fairbanks Oak Alee, in the Oaks at Rivers Edge Condominiums located at Daniel Island, South Carolina, which is governed by the Oaks at River's Edge Property Owners Association, Inc. pursuant to the Master Deed and By-laws.

21. Plaintiffs John E. Atkinson, Joan D. Strandquist, Joseph E. Chiovarou, Jr., Peyton H. Cook, Jr., Brenda Cook, John W. Edelen, Karen A. Nelson, Robert J. Graham, Maureen S. Graham, Kevin O. Hux, Nancy K. Johnson as trustee for the Nancy K. Johnson Revocable Trust, William Jung, Charles Maraziti, Patricia Maraziti, Donna Dee Moran, George S. Pollard, Eleanor J. Pollard, Robert Reece, Gerard M. Ruvo and Sue S. Ruvo as trustees for the Ruvo 2006 Living

Trust, Robert Farina, Mary Ann Farina, Carolyn M. Jennings, Thomas Edward Keane, Edward Wallace Barr, III, Richard B. Pekruhn, Pauline Pekruhn, Gregory B. Nathan, Richard Jennings, Matthew J. Severance and Elizabeth Ashley Phillips Severance will sometimes herein be referred to as the "unit owners" or "Individual Plaintiffs."

22. Defendant Daniel Island Riverside Developers, LLC ("Defendant/Developer") is upon information and belief a South Carolina limited liability corporation authorized to conduct business in this state. The Defendant/Developer is the developer and the seller of the Property which is the subject of this action. Additionally, the Defendant/Developer was at times in control of the Association, through the appointment and control of the Board of Directors of the Association, while constructing, marketing, selling, and developing the Property. The Property was marketed as luxury condominiums both before and after the Defendant/Developer was put on notice of numerous construction and design defects in the Property. Upon information and belief, the Defendant/Developer failed to disclose some or all of the construction and/or design defects to the purchasers—including the Individual Plaintiffs.

23. Defendant Carriage Hill Associates of Charleston, LLC is, upon information and belief, a South Carolina limited liability corporation authorized to do business in this state. Carriage Hill Associates of Charleston, LLC was the general contractor for the property and was responsible for the proper construction of this project in accordance with the contract documents, all applicable building codes, and within industry standards of good and workmanlike practice for luxury condominiums.

24. Defendant Carriage Hill Associates of Charleston, LLC was at all times acting as the agent of Defendant Carriage Hill Associates, Inc. which is, upon information and belief, a corporation organized and existing under the laws of the state of New York and is authorized to conduct business in the State of South Carolina through its agent, subsidiary, alter-ego, amalgamated entity, partner, associate, joint venturer, servant and/or representative Carriage Hill

Associates of Charleston, LLC. Moreover, Defendant Carriage Hill Associates, Inc. was directly involved in the design, development, construction and sale of the Property.

25. Upon information and belief, at all times relevant to this Complaint, there existed an agency relationship by and between Defendant/Developer, Carriage Hill Associates of Charleston, LLC and Carriage Hill Associates, Inc., with Carriage Hill Associates, Inc. acting both individually and as the principal for Defendant/Developer and Carriage Hill Associates of Charleston, LLC which were acting by and through Carriage Hill Associates, Inc.

26. The Plaintiffs are informed and believe, and thereupon allege, that the Defendant/Developer, Defendant Carriage Hill Associates of Charleston, LLC and Defendant Carriage Hill Associates, Inc., and each of them, are, and at all times mentioned herein were the alter-egos, amalgamated entities, successors in interest, parents, subsidiaries, agents, partners, associates, joint venturers, servants, employees and/or other authorized representatives of each other and in doing the things herein alleged were acting within the course and scope of their respective authority, agency, employment, and/or other representation, and with the knowledge, consent, approval and/or ratification of each other.

27. Defendant Carriage Hill Associates of Charleston, LLC and Defendant/Developer, at all times relevant hereto, was subject to the dominion and control of Defendant Carriage Hill Associates, Inc. and/or the dominion and control of others acting under Defendant Carriage Hill Associates, Inc. direction and control, and that each of the Defendants Carriage Hill Associates of Charleston, LLC and Carriage Hill Associates, Inc. and the Defendant/Developer is an alter-ego of the other and an amalgamated entity.

28. That Defendant Carriage Hill Associates, Inc. is personally responsible in an individual capacity for its own acts and for the acts, omissions, debts, obligations, and liabilities, stated herein, of Defendant Carriage Hill Associates of Charleston, LLC and Defendant/Developer and vice versa.

29. Defendant Carriage Hill Associates of Charleston, LLC and Defendant Carriage Hill Associates, Inc. will hereinafter collectively be referred to as the "Carriage Hill Defendants."

30. Defendant Weather Shield Manufacturing, Inc. ("Weather Shield") is a corporation organized and existing under the laws of the state of Wisconsin and is authorized to do business in the state of South Carolina. Weather Shield directs its products and/or materials for sale in the state of South Carolina and has had employees and/or agents perform work in South Carolina. At all times material hereto, Weather Shield manufactured, milled, constructed, provided, designed, sold, and/or placed into the stream of commerce certain windows and doors that were incorporated into, installed, constructed, and/or used in or on the Property.

31. Defendant Muhler Co., Inc. ("Muhler") is a corporation organized and existing under the laws of the State of South Carolina. Upon information and belief, Muhler was the supplier of windows, window systems, and doors which were installed at the Property. Additionally, Muhler installed, milled and/or supervised the installation of the exterior window systems and doors constructed other aspects of the Property and supplied materials therefore.

32. A.C. Construction, Inc., ("A.C.") is a corporation organized and existing under the laws of the State of South Carolina. A.C., pursuant to a contract with the Carriage Hill Defendants and/or the Defendant/Developers, installed windows and doors at the Property and performed framing work at the Property.

33. Coastal Roofing Co., Inc. ("Coastal Roofing") is, upon information and belief, a corporation organized and existing under the laws of the State of South Carolina. At all times material hereto, Coastal Roofing installed, provided materials and labor for, designed, and/or constructed the roof and roofing system at the Property pursuant to a contract with the Carriage Hill Defendants and/or the Defendant/Developers.

34. Coastal Caulking, Inc. ("Coastal Caulking") is, upon information and belief, a corporation organized and existing under the laws of the State of South Carolina. At all times

material hereto, Coastal Caulking installed; provided materials and labor for, and/or supervised the execution of exterior caulking including, but not limited to, the installation of caulking materials and accessories, including backer rod, primer, cleaners, add agents, color, etc., for the construction of the brick veneer exterior walls, stucco systems, windows, doors, exterior trim, porches, roof locations, pipe penetrations, and fireplace shrouds.

35. Mike Phillips d/b/a Mike Phillips Masonry ("Phillips") is, upon information and belief an individual residing and domiciled in the State of Texas. At all times material hereto, Phillips, installed, provided materials and labor for, and/or supervised the installation and construction of the masonry walls and stucco walls, including, but not limited to, the supply and installation of all mortar and masonry accessories, including ties, lintels, reinforcing, flashing, mortar sand, cleaners, add agents, mortar color, etc., for the construction of the brick exterior walls and accessory walls/buildings, installation of brick masonry units and cmu walls, preparing mortar mix, installing and designing weep holes and weep flashing, reinforcement of walls and columns, grouting, provision and installation of tie backs and wall anchors, the supply and installation of all materials for the construction of stucco veneer of all exterior walls, and the provision and installation of flashing at the Property.

36. Upon information and belief, Defendant Edward J. D'Orazio ("D'Orazio") is a citizen and resident of the State of New York and is an architect licensed to do business in the State of South Carolina under license number AR .6546 and was in fact engaged in the architectural and/or engineering business in Berkeley County, South Carolina. At all relevant times hereto D'Orazio designed, signed and stamped plans and specifications, engineered, consulted, and agreed to perform contract administration and inspection duties at the Property.

37. Upon information and belief, Defendant Gerald Rumplick ("Rumplick") is a citizen and resident of the State of New York and is now an architect licensed to do business in the State of South Carolina under license number AR .7536. Upon information and belief, this

license was first issued on April 16, 2007. Notwithstanding the date of the issuance of the license, Rumplick was in fact engaged in the architectural and/or engineering business in Berkeley County, South Carolina at all relevant times hereto and designed, signed and stamped plans and specifications, engineered, consulted, and/or agreed to perform contract administration and inspection duties at the Property:

38. D'Orazio and Rumplick will sometimes hereinafter be collectively referred to as the "Architect Defendants."

39. Defendant, Rich Behringer, is, upon information and belief, a citizen and resident of a state other than South Carolina, and is or was, upon information and belief, an employee of one or more of the Defendant/Developers and/or the Carriage Hill Defendants, and served as a Director of the Oaks at Rivers Edge HOA from its inception until his resignation and/or removal by the Defendant/Developers and/or the Carriage Hill Defendants in late 2006.

40. Defendant Behringer will sometimes hereinafter be referred to as Defendant/Developers/Director. That the Defendant/Developers/Director at various times while on the Board of Oaks at Rivers Edge HOA was in breach of his fiduciary duties to the Oaks at Rivers Edge HOA in that he owed multiple and conflicting loyalties to the Defendant/Developers and the Carriage Hill Defendants and to the Oaks at Rivers Edge HOA and the individual Plaintiffs and, further that said Defendant/Developers/Director had irreconcilable conflicts of interest by virtue of the multiple and conflicting loyalties he owed to the Defendant/Developers, Carriage Hill Defendants, Individual Plaintiffs and to the Oaks at Rivers Edge HOA, whose interests were diverse and adverse, one to the other, and, as such, the Defendant/Developers/Director did not act in good faith or in a manner he could reasonably believe to be in or not opposed to the best interests of the Oaks at Rivers Edge HOA. That said Defendant/Developers, Carriage Hill Defendants and the Defendant/Developers/Director all participated in self-dealing by sacrificing the interests of the Oaks at Rivers Edge HOA and of

the individual members thereof, including, but not limited to, the named Plaintiffs herein, by sacrificing their interests for the interests of the Defendant/Developers, Carriage Hill Defendants and the Defendant/Developers/Director. Upon information and belief, the Defendant/Developers/Director received either direct or indirect personal benefits from the Defendant/Developers and/or the Carriage Hill Defendants which were contrary to the fiduciary obligations owed to the Oaks at Rivers Edge HOA by the Defendant/Developers/Director, all as is more fully set forth herein. The Defendant/Developer/Director is personally and individually liable for his conduct and breaches of his fiduciary duties.

JURISDICTION AND VENUE

41. This Court has jurisdiction of the matter and over the parties. S.C. Ann. §§ 15-53-20 and 15-53-30; S.C. Code Ann. §§ 36-2-802 and 36-2-803.

42. Venue is proper in this County. S.C. Code Ann. §§ 15-7-10, -20, and -30.

BACKGROUND

43. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

44. The Regime consists of six, four story condominium buildings with ground level parking constructed in 2004, 2005, and 2006. The exteriors are finished with stucco and brick veneer. The roofs are single ply membrane.

45. The Defendant/Developers and the Carriage Hill Defendants performed general contracting duties and the Architect Defendants performed architectural and/or engineering duties at the Property.

46. The Carriage Hill Defendants and Defendant/Developers contracted with Defendant Coastal Caulking, to perform exterior caulking work.

47. The Carriage Hill Defendants and Defendant/Developers contracted with Defendant Phillips to install and provide materials for the brick veneer exterior walls and the stucco veneer exterior walls at the Property.

48. The Carriage Hill Defendants and Defendant/Developers also contracted with Defendant Muhler to install and/or supply windows and doors designed and manufactured by Defendant Weather Shield. Upon information and belief, Defendant Muhler and Defendant Weather Shield knew the windows and doors were defective and did not comply with the purpose for which they were intended prior to shipping, installing, and selling the windows and doors. The Carriage Hill Defendants and Defendant/Developers then contracted with Defendant A.C. to perform the actual installation of the defective windows and doors under the supervision of Defendant Muhler.

49. The contract with A.C., as well as South Carolina law, required, among other things, that A.C. would competently and properly install the windows and doors. On or about August 27, 2006, the Defendant/Developer and/or the Carriage Hill Defendants determined that the work of A.C. in installing the windows and doors at the property was defective, improper, incompetent, unskillful, unworkmanlike, and/or uncareful. Despite the fact that Muhler had been tasked with supervising the improper work of A.C., the Defendant/Developers and/or the Carriage Hill Defendants contracted again with Muhler to repair the deficiencies in the work performed by A.C. and/or to complete the work. Muhler was required by the contract and the law of the State of South Carolina to competently and properly correct the deficiencies in the work performed by A.C.

50. Muhler failed to competently, skillfully, carefully, and/or diligently perform the work to correct the deficiencies and/or complete the work.

51. The deficiencies in the design, manufacture, installation and/or work to install the windows and doors at the property and the deficiencies in the attempted correction of the work

have caused severe leaking and exposure to harmful elements and materials leading to property damage.

52. Though Defendant Muhler, Defendant Weather Shield, Defendant/Developers and/or the Carriage Hill Defendants were aware of these defects, such defects and deficiencies were not disclosed to the Plaintiffs herein and were, upon information and belief, concealed from the Plaintiffs named herein.

53. The Defendant/Developers and/or the Carriage Hill Defendants contracted with Defendant Coastal to design, construct, and/or install the roof or roofing system on the Property.

54. Thereafter the Defendant/Developers, through the Defendant/Developers/Director created Plaintiff non-profit corporation known as the Oaks at Rivers Edge HOA, which has been charged since its inception and through the date of this filing by the Master Deed and By-laws with its obligations to, *inter alia*, maintain and repair the common elements of the regime as outlined in the Master Deed and By-laws drafted and filed by the Defendant/Developers.

55. The Defendant/Developers controlled and managed the Oaks at Rivers Edge HOA and its Board of Directors through the use of its Defendant/Developers/Director prior to the tender of the Oaks at Rivers Edge HOA to the unit owners.

56. As a result of water intrusion and leaks experienced by the Plaintiffs, an engineering investigation was performed in mid 2008 when the buildings were only 2 or 3 years old. The investigation sought to establish whether or not the Regime buildings were deficiently designed or had significant construction defects.

57. By the investigation of the subject buildings and subsequent report provided by an engineer, the Plaintiffs learned that the subject buildings have been deficiently designed and have significant construction defects, particularly the stucco and brick cladding system which was improperly installed and will have to be completely removed and replaced. In addition, the

engineer noted other construction, design and stucco deficiencies to the subject buildings, including, but not limited to, the following:

- (a) Improper stucco installation in that no mechanism for weep had been installed at any location in the four-story wall, which is a violation of Industry Standard ASTM C926 and ASTM C1063;
- (b) Improper and/or no installation of sealant joints;
- (c) No head flashings at any of the window or door installations;
- (d) Improper control joint installation around windows;
- (e) Cracking at window corners due to lack of proper stress relief which will promote water intrusion;
- (f) Improper installation and intersection of the single ply roof membrane with the roof eave and sidewall;
- (g) Lack of flashing or weep screed at any window head location within the stucco system;
- (h) Inadequate spacing and installation of control joints;
- (i) Improper installation of all of the exterior architectural trim at the sill of windows which will promote water intrusion;
- (j) Improper installation of the exterior cladding system by evidence of staining and damage;
- (k) Improper construction of the guardrails, handrails and balusters on the balconies which have evidence of rot and deterioration;
- (l) Improper material selection of the guardrails, handrails and balusters on the balconies;
- (m) Improper installation of the exterior cladding that is not in accordance with the IBC and code referenced industry standards;

- (n) Water intrusion damage resulting from improper installation of the exterior cladding; and
- (o) Deterioration of the subject buildings due to water intrusion from the failed Exterior Cladding System;
- (p) improper design and/or installation of the of the brick veneer exterior wall;
- (q) improper caulking and sealing of the windows, control joints, flashings, doors, and/or exterior trim.

58. As a direct and proximate result and consequence of the numerous stucco design and/or installation, masonry, construction and design problems and defects as noted above, the Plaintiffs have and will continue to spend substantial sums of money for the repairs and reconstruction of their condominium units and will be subject to loss of use, enjoyment, and depreciation of value of property.

59. The water damage to common elements and condominium units is a result of defects and deficiencies in the design and construction of the Regime, specifically including, but not limited to, the following:

- (a) Lack of weep screed or weeping mechanism along the stucco wall bases at the perimeter of the balcony slabs as required by building codes and proper construction practices;
- (b) Lack of weeps at window heads;
- (c) Failure of weep or water management systems to manage seepage water, which gets past the façade cladding, has resulted in wetting of exterior sheathing behind moisture barriers and into the wall cavity and metal framework within the wall cavity;
- (d) Improper splicing at roof edges;
- (e) Improper intersection of roof membrane with exterior walls;

- (f) inadequate spacing and installation of control joints;
- (g) Improper installation of sealants around windows, doors, and cladding terminations;
- (h) Lack of head and sill flashing;
- (i) Improper installation of control joint accessories;
- (j) Failure to install proper sealant joints around penetrations in exterior cladding;
- (k) failure to properly design or install the brick veneer;
- (l) failure to select proper materials for the handrails, balusters and balconies;
- (m) Failure to properly construct and/or manufacture the handrails, balusters and balconies;
- (n) Failure to properly caulk the project to prevent water intrusion.

60. Plaintiffs are informed and believe that the property was observed to be in an advanced stage of deterioration and not in compliance with the building codes and standards which were applicable to this project at the time of design and construction and will have to be replaced to comply with current building codes and standards applicable to this project.

61. In addition to the construction defects, the Defendant/Developers and the Defendant/Developer/Director, in their capacity as head of the Association, have:

- (a) Failed and omitted to act in a fiduciary capacity towards the owners of the condominium units;
- (b) Negligently maintained the property;
- (c) Failed to act as competent managers;
- (d) Acted at all times in their own interests and in contravention of their fiduciary duty towards the condominium unit owners;
- (e) Covered up and concealed defects and damage from the unit owners, and
- (f) Acted in violation of all fiduciary duty concepts.

62. Due to the actions of the Defendant/Developers and the Defendant/Developer/Directors, as stated above, the Plaintiffs are facing significant damage repairs, deteriorating property, significant immediate expenses for investigation, destructive testing, and an analysis of construction defects, repairs defects, damages, rot deterioration, and a generally overall dilapidated condition which is the direct and proximate result of defective construction, management, maintenance, and abandonment of generally accepted fiduciary principles on the part of the Defendant/Developers and the Defendant/Developer/Director.

63. The actions and/or inactions of the Defendants have led to significant property damage caused by an occurrence that began at the time of substantial completion of these Defendants' work and was not discoverable despite reasonable efforts by the Plaintiffs until only recently.

FIRST CAUSE OF ACTION
(Negligence as to all Defendants)

64. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

65. Defendants owed a duty to the Plaintiffs and breached the same because they were negligent, careless, reckless, willful and wanton in one or more of the following particulars, to-wit:

- (a) in failing to properly repair the structures;
- (b) in selling, constructing, and/or repairing the units with defective windows and doors;
- (c) in selling, constructing, and/or repairing units with inadequate flashings and weep screeds;
- (d) in selling, constructing, and/or repairing units with defective siding;
- (e) in selling, constructing, and/or repairing units with inadequate water barriers;
- (f) in selling, constructing, and/or repairing units without weather proof building

envelopes and exteriors;

- (g) in failing to properly warn purchasers and/or ultimate users or consumers;
- (h) in misrepresenting the condition of the units to purchasers and/or owners;
- (i) in making inadequate repairs;
- (j) in covering up deficiencies;
- (k) in failing to give proper disclosure;
- (l) in selling and/or constructing defective units;
- (m) in failing to properly supervise its contractors and/or subcontractors;
- (n) in failing to perform repairs and construction in accordance with applicable building codes and industry standards;
- (o) in tendering common elements to the Homeowners' Association in a deficient condition;
- (p) 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;
- (q) in failing to comply the applicable Fire and Safety Codes;
- (r) in failing to perform a meaningful evaluation of the property or the products or materials;
- (s) in selling, manufacturing, marketing, and/or designing defective and/or dangerous products;
- (t) in failing to exercise due care;
- (u) in violating the manufacturer's industry standards;
- (v) in improperly designing and constructing the roof, roof to wall intersections, and roof slopes;
- (w) inadequate spacing and installation of control joints;
- (x) in improperly exposing and/or installing the weather resistive barrier;

(y) in failing to install weep mechanisms and head flashing in violation of the building code;

(z) failure to furnish and install windows and doors and other building components that are in compliance with industry standards and the applicable building codes;

(aa) failure to properly install exterior cladding; and

(bb) such other defects and breaches of duty that may become apparent during the discovery phase of this action;

(cc) in failing to construct the buildings with adequate sound and noise barriers that are compliant with industry standards and/or building codes;

(dd) in failing to properly caulk and seal the buildings;

(ee) in failing to properly design and/or construct the brick veneer;

(ff) in failing to properly fund the Oaks at Rivers Edge HOA and its reserves;

(gg) in tendering common elements to the Oaks at Rivers Edge HOA in a deficient condition;

(hh) in placing defective and inferior construction into the stream of commerce.

66. Said failures above-described have proximately damaged Plaintiffs in an amount of actual, incidental, special, and consequential damages and in addition thereto by virtue of the negligence per se in the violation of applicable building codes, gross negligence and willfulness of the Defendants and reckless disregard for the rights of others, Plaintiffs are entitled to an award of punitive damages.

FOR A SECOND CAUSE OF ACTION

(Breach of Implied Warranties as to Defendant/Developers and the Carriage Hill Defendants)

67. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

68. That the sale of the units by the Defendant/Developers and the Carriage Hill Defendants, their affiliates, agents, joint venturers, parent companies, and/or partners whether named or unnamed in the Deeds of Transfer, contained, as a matter of law, implied warranties of fitness for a particular purpose and habitability, which warranties were not effectively disclaimed pursuant to the case law in such cases made and provided.

69. That the Defendant/Developers and the Carriage Hill Defendants, their affiliates, associates and joint venturers, whether named or unnamed, on the Deeds of Transfer have breached the aforesaid implied warranties proximately resulting in damage to the Plaintiffs and all others similarly situated, in an amount to be determined and, in addition thereto, Defendant/Developers are liable for incidental, special and consequential damages as a direct and proximate result thereof in an amount to be determined by the Trier of Fact.

FOR A THIRD CAUSE OF ACTION

(Unfair Trade Practices Act, S.C. Code Section 39-5-10, *et seq.*, as to
Defendants/Developers, Defendant Muhler, Defendant Weather Shield and the Carriage Hill
Defendants)

70. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

71. The above-described conduct, to-wit, the design, manufacture, construction, sale, investigation, repair and subsequent conduct by the Defendants were part of conduct and trade and commerce within the meaning of S.C. Code Section 39-5-20(a).

72. That the conduct described hereinabove including, but not limited to, failing to provide adequate information to the prospective purchasers; failing to repair the defects about which these Defendants were or should have been aware; breaches of various fiduciary duties; failure to properly investigate the true conditions of the buildings and/or concealing such defective condition(s) as found or discovered; in selling products and property the Defendants knew were unfit for their intended purpose and unreasonably dangerous to the ultimate user; in

covering up deficiencies and defects under the guise of "warranty" work", and such other conduct as revealed during discovery, are deceptive and unfair practices within the meaning of S.C. Code Section 39-5-140(a) S.C. Code of Laws as amended.

73. That the conduct described above was knowing and willful and the Defendants knew or should have known that such conduct was a violation of S.C. Code Section 39-5-20. Plaintiffs are persons within the meaning of S.C. Code Section 39-5-140(a) which have suffered as a direct and proximate result of unfair and deceptive acts of Defendants above described and ascertained loss of money in the form of the above-described damages.

74. That the aforesaid acts of Defendants were unfair and deceptive acts and are susceptible of repetition and, as such, are acts which can, have and will affect the public, generally, by repetition.

75. Said unfair and deceptive acts are acts which will affect members of the public beyond the parties to the above-described action in the form of other consumers who may purchase condominiums.

76. Plaintiffs are entitled to be compensated pursuant to S.C. Code Section 39-5-140(a) for its above-described damages and to recover three (3) times these damages by reason of the knowing and willful nature of the unfair and deceptive acts by Defendants and Plaintiffs are entitled to attorney's fees and costs.

FOR A FOURTH CAUSE OF ACTION

(Breach of Fiduciary Duty as to Defendant/Developers)

77. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

78. The Defendant/Developers were required to use good judgment and act in the utmost good faith to complete the formation of and operate the Regime until it was turned over to the Oak at Rivers Edge HOA's control.

79. The Defendant/Developers prior to turning the Regime over to the control of the homeowners, had the unilateral ability to determine the assessments against individual owners and the pecuniary maintenance and repair requirements of the Regime. The Defendant/Developers were required to fund shortfalls between the assessments necessary to perform the duties and obligations of the Master Deed and By-laws and the assessments actually collected from individual unit owners.

80. The Defendant/Developers provided some maintenance, construction, and repair of the common areas prior to turning the Oak at Rivers Edge HOA over to the homeowners; however, the repairs, construction and maintenance done were substandard and inadequate and were intended to and, in fact did, conceal instead of correct the latent defects that existed in the common areas and in the units of which Defendant/Developers were or should have been aware.

81. That the Defendant/Developers owed a fiduciary duty to the Oak at Rivers Edge HOA and its members to insure that the common areas were in good repair at the time they were conveyed to the Oak at Rivers Edge HOA or to provide the Oak at Rivers Edge HOA with funds sufficient to effectuate any needed repairs to those common areas as required by the law in South Carolina in such cases made and provided.

82. Further, the Defendant/Developers owed a duty to the Plaintiffs to turn over common areas that were not substandard and that were in good repair.

83. That the Defendant/Developers negligently, carelessly, recklessly, willfully and wantonly failed to turn over common areas that were in good repair and were not substandard and failed to protect property interests of the Plaintiffs in conformity with the customary and normal standards in the condominium management industry.

84. That the Defendant/Developers failed to provide sufficient capital replacement reserves at the time of the turn over to effectuate the necessary repairs and to bring the substandard common elements up to a state of good repair.

85. That the Defendant/Developers had a pecuniary interest in their own profits that was irreconcilable with the interest of the individual unit owners and the association.

86. That as a direct a proximate result of the reckless, willful, negligent and wanton conduct of said Defendant/Developers, Plaintiffs have and will be required to expend substantial sums of money in order to investigate, design the repair and implement the necessary repairs and alterations to bring the units and the common elements to a state or condition which is consistent with the price paid for the units and with the numerous representations made by the Defendant/Developers all in an amount of actual, special, incidental, consequential, and punitive damages to be determined.

FOR A FIFTH CAUSE OF ACTION

(Individual Liability as to Defendant/Developers/Director)

87. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

88. In addition to the Defendant/Developers/Director's liability for their participation in the wrongs above-described, the Defendant/Developers/Director is directly liable for his actions during the time he was on the Board of Directors of the Oaks at Rivers Edge HOA in that he breached his fiduciary duties, particularly of good faith, undivided loyalty and fair dealing to the Plaintiffs, proximately resulting in the damage to the Plaintiffs as hereinabove and hereinafter set forth.

FOR A SIXTH CAUSE OF ACTION

(Breach of Fiduciary Duty as to Defendant/Developer/Director)

89. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

90. Defendant/Developers/Director, at all times during which he was a Director of the Oaks at Rivers Edge HOA, was 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 and unit owners or he undertook such duties. Nevertheless, Defendant/Developers/Director acted and failed to act such that he has committed breaches of fiduciary duties, negligence, gross negligence, recklessness, willfulness, wantonness, bad faith, mismanagement, self-dealing and waste with respect to his duty of administration, care and maintenance of the Regime property and his duty to protect the interests and rights of the individual members of the Oaks at Rivers Edge HOA and his duty to protect with respect to the Regime property. These wrongful acts and omissions have caused and will cause the Plaintiffs to incur and continue to incur substantial monetary damages.

91. That the Defendant/Developers/Director 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.

92. As a direct and proximate result and consequence of the aforementioned negligent, grossly negligent and reckless acts or omissions of the Defendant/Developers/Director, Plaintiffs will and have continued to spend substantial sums of money for the extraordinary repairs and reconstruction of major portions of the regime's common elements and the individual units.

93. The Defendant/Developers/Director's negligent, reckless and willful conduct includes, but is not necessarily limited to:

(a) 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;

(b) failing to properly oversee the Regime in order to insure that all defects discovered by the Defendant/Developers/Director or which should have been discovered by the Defendant/

Developers/Director, were reported to the unit owners so that repairs could proceed in accordance with the customary and ordinary standards of construction at the expense of the Defendant/Developers and/or the Carriage Hill Defendants;

(c) failing to report the defective conditions of the units to the individual unit owners and the new Board at the time of turnover;

(d) failing to inform the Board and the individual unit owners of the true nature of the defective conditions of the Regime property at the time of turnover;

(e) allowing and permitting the Carriage Hill Defendants and/or Defendant/Developers to pursue inadequate measures to repair known, both actual and constructive, defective conditions;

(f) placing their loyalties to their employer the Carriage Hill Defendants and Defendant/Developers and/or their subsidiaries above the loyalties he owed to Plaintiffs as Director;

(g) failing to assess the Defendant/Developers so that adequate funds would be available to mitigate the substantial damages which were and are resulting from the aforementioned significant design and construction defects and deficiencies;

(h) in participating in self-dealing, sacrificing the Oaks at Rivers Edge HOA and the Individual Homeowners' interests for his own interests and the interests of Carriage Hill Defendants and/or Defendant/Developers.

94. The acts attributable to the Defendant/Developers/Director as set out above caused no physical injury to tangible property nor did these acts result in a loss of use of that property; however, Defendant/Developers/Director's actions will result in Plaintiffs being subject to money damages, not property damages, due to budget deficits and special assessments directly resulting from the Defendant/Developers/Director's negligence and recklessness and as a direct and proximate result thereof, together with punitive damages, as may be appropriate.

These money damages are the direct and proximate result of Defendant/Developers/Director's errors and omissions and breaches of duty directly related to the management of the regime by the Defendant/Developer/Director when he was in control of the HOA.

95. Each of the wrongful acts as described above that occurred in connection with the management of the regime property and affairs were more than momentary thoughtlessness, inadvertence or error in judgment on the part of the Defendant/Developers/Director with regard to representations consisting of either affirmative statements or silence when there was a duty to speak made to the Plaintiffs. Instead, these wrongful acts or omissions constitute an entire want of care and conscious indifference to the rights, welfare or property of the Plaintiffs and were intended to cause financial harm to the Plaintiffs and the individual unit owners such that these acts constituted gross negligence.

96. The Defendant/Developers/Director as described above had a fiduciary relationship and owed fiduciary obligations and duties to Plaintiffs.

FOR A SEVENTH CAUSE OF ACTION

(Breach of Implied Warranties including Workmanlike Service
as to Defendant Muhler, Defendant A.C., the Carriage Hill Defendants, Defendant Coastal,
Defendant Phillips, and Defendant Coastal Caulking)

97. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

98. That Defendants Muhler, A.C., Carriage Hill, Coastal, Phillips, and Coastal Caulking are, upon information and belief, contractors and hold themselves out to the general public as qualified to perform construction work and therefore impliedly warrant as a matter of law that any work they undertake and any material they supply in the construction or repair of a dwelling will be performed in a careful, diligent and workmanlike manner in accordance with the industry standards and the applicable building code and in conformity with the plans and

specifications for the project. Additionally, these Defendants impliedly warranted as a matter of law that the building would be habitable and fit for its intended purpose.

99. That in the performance of their work Defendants Muhler, A.C., Carriage Hill, Coastal, Phillips, and Coastal Caulking breached the aforesaid implied warranties, including the implied warranty of workmanlike service, in that the work they did was not fit for its intended purpose and was not done with quality materials and, in fact, any "repair" which was performed was done in such a fashion as to hide or otherwise conceal the true nature of the defects which existed.

100. That as a direct and proximate cause of the breach of the implied warranties the Plaintiffs have suffered actual, direct, consequential, special, and incidental damages all in an amount to be shown at trial.

FOR A EIGHTH CAUSE OF ACTION
(Negligent Misrepresentation as to all Defendants)

101. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

102. That as more particularly described herein the Defendants made numerous representations to the Plaintiffs in the form of direct representations and marketing representations.

103. That Plaintiffs have determined that the representations made by Defendants were false and that the 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 property. That the Defendants had a pecuniary interest in making such false representations despite the duty of care the Defendants owed to the Plaintiffs. As a result, Plaintiffs have suffered pecuniary loss as a direct and proximate result of their reliance on the representations and/or omissions in its communications.

104. In justifiable reliance on numerous false representations of fact made by the Defendants, *inter alia*, that the buildings and site were in overall good condition and that the deficiencies, if any, were minor deferred maintenance concerns that were being addressed and that the buildings were designed and constructed in accordance with the plans and specifications, applicable building codes, industry standards, that any known deficiencies were repaired and alleviated, that substituted materials were of like kind and quality and sufficient to perform as represented, that the buildings were constructed with sound and noise barriers contributing to the luxuriousness of the condominium units, that pay requests and/or invoices were submitted for work performed and materials supplied that were proper and without deficiencies, that the doors and windows properly manufactured and installed in accordance with industry standards and/or the plans and specifications and manufacturer's instructions, the Individual Plaintiffs purchased the aforesaid damaged units and continue to suffer damages and the Oaks at Rivers Edge HOA is now required to expend substantial sums to repair the common elements as is hereinabove set forth, all proximately causing damage to the Plaintiffs.

FOR A NINTH CAUSE OF ACTION

(Aiding and Abetting a Breach of Fiduciary Duty as to the Carriage Hill Defendants)

105. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

106. That Defendant/Developers and the Defendant/Developer/Director breached their fiduciary duties to the Plaintiffs as aforesaid.

107. That the Carriage Hill Defendants knowingly participated in the breach of Defendant/Developers' fiduciary duties and/or the Defendant/Developer/Director's fiduciary duties as aforesaid.

108. That as a direct and proximate result thereof, Plaintiffs have and will suffer actual, incidental, special and consequential damages as aforesaid in an amount to be determined and, in addition thereto, are entitled to punitive damages.

FOR AN TENTH CAUSE OF ACTION

(Breach of Contract Accompanied by a Fraudulent Act as to Defendant/Developers)

109. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

110. That a fiduciary relationship existed between the Defendant/Developers and Association.

111. That under the Master Deed and By-laws, the Defendant/Developer, when it turned over the common elements to the Association, owed a contractual and fiduciary obligation to turnover the common elements without defects or, in the alternative, to fund sufficient reserves to repair any defects.

112. That in breach of these obligations and in breach of the Master Deed, the Defendant/Developers failed to disclose the existence of the known defects in the common elements and in the stead of any such disclosure sought to and did so engage in the concealment activities discussed herein. This constitutes a breach of the agreement between the Association and the Defendant/Developer under the Master Deed and By-laws and accompanying this breach was the fraudulent act of failing to disclose the true condition of the common elements about which the Defendant/Developers sought to conceal and, further, that Defendant/Developers either knew or should have known of said defects, all of which proximately caused the damage hereinabove and hereinafter described and entitles the Plaintiffs to punitive damages.

FOR A ELEVENTH CAUSE OF ACTION

(Breach of Warranty as to Defendant Weather Shield)

113. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

114. That as hereinabove stated, the Plaintiffs were injured and continue to be injured by Defendant Weather Shield' product, the windows, window system, and doors.

115. That the injury was proximately caused by Defendant Weather Shield because the product was in a defective condition, unreasonably dangerous to the Plaintiffs.

116. That the product at the time of the accident was in essentially the same condition as when it left the control of Defendant Weather Shield.

117. That as a direct result of Defendant Weather Shield's manufacture, sale, design, installation, and/or construction of the windows, window system, and doors certain express and implied warranties arose as a matter of law and out of representations made by Defendant Weather Shield and disclosures made by the Plaintiffs, their representatives, agents, predecessors or assigns. That the implied warranties include, but are not limited to, the implied warranty of merchantability and implied warranty of fitness for a particular purpose. Additionally, certain express warranties were made on numerous occasions that include but are not limit to statements made contemporaneous with the sale of the product and statements made subsequent to the inspection of the product.

118. That none of the express or implied warranties were properly disclaimed as a matter of law.

119. That in the performance of this work Defendant Weather Shield breached the aforesaid warranties in that the windows, window system, and doors were defective, dangerous, and not fit for its intended use or ordinary purpose. Moreover, the windows, window system, and doors could not pass without objection under the product description, *inter alia*, the windows, window system and doors failed to prevent water infiltration and in fact led to increased water infiltration into the subject property.

120. That as a direct and proximate cause of the Defendant Weather Shield's breach of the warranties stated herein the Plaintiffs have sustained actual, direct, consequential, incidental,

and special damages in an amount to be shown at trial. Further, as a result of Defendant Weather Shield's reckless, knowing, and/or wanton breach of the implied warranties Plaintiffs are entitled to punitive damages.

FOR A TWELFTH CAUSE OF ACTION

(Common Law and Statutory Strict Liability as to Defendant Weather Shield)

121. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

122. That Defendant Weather Shield has engaged and continues at the time of filing of this action to be engaged in the business of selling, manufacturing, designing, and/or marketing windows, window systems, and doors.

123. That Defendant Weather Shield expects the windows, window systems, and doors and the windows, window systems, and doors in fact reach the user or consumer without substantial change in the condition in which they were sold. That Weather Shield sold the products in a manner contemplated by S.C. Code Ann. § 15-73-10.

124. That, as stated above, the windows, window systems, and doors are unreasonably dangerous to the ordinary consumer in the community considering their characteristics and propensity for leading to significant property damage.

125. That as a direct and proximate cause of the Defendant Weather Shield's sale, design, manufacture, and/or marketing of the product stated herein the Plaintiffs have sustained actual, direct, consequential, incidental, and special damages in an amount to be shown at trial and the Defendant Weather Shield is strictly liable therefore.

FOR A THIRTEENTH CAUSE OF ACTION

(Professional Negligence as to the Architect Defendants)

126. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

127. The Architect Defendants owed a duty to the Plaintiffs and breached the same because they were negligent, careless, reckless, willful and wanton in one or more of the following particulars; to-wit:

- (a) in failing to exercise due care in the production and design of architectural and/or engineering plans and specifications;
- (b) in failing to exercise due care in the performance of contract administration duties;
- (c) in failing to design the project to ensure that it was free of design defects;
- (d) in failing to review the construction to ensure that the project was free of construction defects and that it was built in substantial accordance with the design plans and specifications;
- (e) in approving and/or allowing the substitution of materials that were not of like kind and quality as the materials originally specified and/or not fit for the intended purpose of the project;
- (f) in violating the applicable building codes.

128. That each of the foregoing constitutes a breach of the professional standard of care due and owing the Plaintiffs by the Architect Defendants. (A copy of an Affidavit alleging an act of professional negligence against Architect Defendants is attached hereto as Exhibit A).

129. Said failures above-described have proximately damaged Plaintiffs in an amount of actual, incidental, special, and consequential damages and in addition thereto by virtue of the negligence per se in the violation of applicable building codes, gross negligence and willfulness of the Architect Defendants and reckless disregard for the rights of others, Plaintiffs are entitled to an award of punitive damages.

FOR A FOURTEENTH CAUSE OF ACTION

(Breach of Express Warranties and Implied Warranties of Fitness for Intended Use and Plans and Specifications as to the Architect Defendants)

130. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

131. That as hereinabove stated, the Plaintiffs are injured and continue to be injured by defective construction and design of the buildings.

132. That as a direct result of Architect Defendants' design, plans and specifications, and/or contract administration for the construction of the buildings, certain express and implied warranties arose as a matter of law and out of representations made by the Architect Defendants and the production of plans and specifications by the Architect Defendants. That the implied warranties include, but are not limited to, the implied warranty of fitness for a particular purpose and the implied warranty of plans and specifications.

133. That none of the express or implied warranties were properly disclaimed as a matter of law.

134. That in the performance of this work the Architect Defendants breached the aforesaid warranties in that the design of the buildings and the plans and specifications therefore were defective, dangerous, unsuitable, would not pass without objection, failed to comply with industry standards, and were not fit for its intended use or ordinary purpose. Moreover, the design failed to prevent water infiltration and in fact led to increased water infiltration into the subject property.

135. That as a direct and proximate cause of the Architect Defendants' breach of the warranties stated herein the Plaintiff has sustained actual, direct, consequential, incidental, and special damages in an amount to be shown at trial.

FOR A FIFTEENTH CAUSE OF ACTION
(Negligence per se as to Defendant Rumplick)

136. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

137. Defendant Rumplick owed a duty to the Plaintiffs and breached the same by violating S.C. Code Ann. § 40-3-30 (1976), as amended, by practicing architecture in the state of South Carolina without being properly licensed and in violating the applicable building codes.

138. That each of the foregoing constitutes negligence per se.

139. Said failures above-described have proximately damaged Plaintiffs in an amount of actual, incidental, special, and consequential damages and in addition thereto by virtue of the negligence per se in the violation of applicable building codes, gross negligence and willfulness of Defendant Rumplick and reckless disregard for the rights of others, Plaintiffs are entitled to an award of punitive damages.

FOR A SIXTEENTH CAUSE OF ACTION

(Aiding and Abetting as to the Defendant/Developers, the Carriage Hill Defendants and Architect Defendants)

140. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

141. The Defendant/Developers, the Carriage Hill Defendants, and the Architect Defendants were acting in concert with each other and/or pursuant to a common design with each other, heretofore described, that has resulted in tortious conduct and harm to the Plaintiffs.

142. That each of the Defendants knew or should have known that the other's conduct and the conduct of the Defendants collectively constituted and/or encouraged the breach of a duty or duties owed to the Plaintiffs by the Defendants. Each Defendant gave substantial assistance, advice, direction, and/or encouragement to the other so as to knowingly bring about the other's tortious conduct.

143. Each of the Defendants' substantial assistance to the others accomplished the tortious result sought by each of the Defendants and such substantial assistance combined with

each of the Defendants' own tortious conduct, separately considered, to constitute a breach of the duty or duties owed to the Plaintiffs.

144. As a direct and proximate result of the Defendants' aiding and abetting the tortious conduct, hereinabove described, the Plaintiffs have suffered direct, incidental, actual, special, and consequential damages, all in an amount to be shown at trial. Moreover, the Defendants' wanton and willful aid of the tortious conduct entitles the Plaintiffs to an award of punitive damages.

FOR A SEVENTEENTH CAUSE OF ACTION

(Breach of Implied Warranty of Merchantability under S.C. Code § 36-2-314 as to Defendant Muhler and Defendant Weather Shield)

145. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

146. Defendant Muhler and/ or Defendant Weather Shield contracted to sell the windows and/or doors installed at the Property.

147. Defendant Muhler and/ or Defendant Weather Shield were merchants with respect to goods of that kind and, therefore, in the sale of the windows and/or doors installed at the property there contained an implied warranty of merchantability with respect to the goods which was not excluded or modified pursuant to South Carolina law.

148. The Plaintiffs are now aware that the windows and/or doors do not pass without objection in the trade, are not of fair and average quality within the description, are not fit for the ordinary purpose for which they were sold, and/or do not run with even kind or quality. The foregoing insufficiencies constitute a breach of the implied warranty of merchantability by Defendant Muhler and/ or Defendant Weather Shield.

149. As a direct and proximate cause of the breach of the implied warranty of merchantability, the Plaintiffs have suffered actual, direct, incidental, special, and consequential damages all in an amount to be shown at trial.

FOR AN EIGHTEENTH CAUSE OF ACTION

(Breach of Implied Warranty of Fitness For a Particular Purpose under S.C. Code § 36-2-315 as to Defendant Muhler and Defendant Weather Shield)

150. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

151. Defendant Muhler and/ or Defendant Weather Shield contracted to sell the windows and/or doors installed at the Property.

152. Defendant Muhler and/ or Defendant Weather Shield were merchants with respect to goods of that kind and held themselves out to the general public as qualified to sell such goods.

153. At the time of the sale of the windows and/or doors, Defendant Muhler and/ or Defendant Weather Shield knew or had reason to know the particular purpose for which the windows and/or doors were required, to wit: for use in luxury condominiums that were situated on the coast of Charleston, South Carolina.

154. The Plaintiffs relied on the skill and and/or judgment of Defendant Muhler and/ or Defendant Weather Shield to select and furnish suitable goods and at the time of sale an implied warranty of fitness for a particular purpose arose in favor of the Plaintiffs.

155. The Plaintiffs are not aware that that the windows and/or doors sold and supplied are not fit for their intended purpose.

156. As a direct and proximate cause of the breach of the implied warranty of fitness for a particular purpose, the Plaintiffs have suffered actual, direct, incidental, special, and consequential damages all in an amount to be shown at trial.

FOR AN NINETEENTH CAUSE OF ACTION

(Fraud as Defendant Weather Shield and Defendant Muhler)

157. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

158. Defendant Muhler and/ or Defendant Weather Shield sold windows and doors that were installed at the Property. Defendant Muhler and/ or Defendant Weather Shield knew prior to the shipping, delivery and sale of the windows and doors that the windows and doors were defective and that Plaintiffs would be the ultimate user of the windows and doors. Defendant Muhler and/ or Defendant Weather Shield possessed superior knowledge of the inherent defects in the windows and doors as compared to the Plaintiffs.

159. Notwithstanding this knowledge, Defendant Muhler and/ or Defendant Weather Shield caused the windows and doors to be manufactured, shipped, delivered, sold and installed at the Property. Plaintiffs were without any fault or lack of diligence and were unaware and ignorant of the true character, nature and quality of the windows and doors.

160. Upon the actual installation of the windows and doors into the Property, but prior to the sale and/or transfer of the Property to Plaintiffs, Defendant Muhler and/ or Defendant Weather Shield became aware of additional defects in the windows and doors. These defects were likewise undisclosed to Plaintiffs.

161. Subsequent to the sale and/or transfer of the Property to Plaintiffs, Defendant Muhler and/ or Defendant Weather Shield attempted to conceal the known defects in the windows and doors from Plaintiffs under a guise of performing "warranty" or "punch list" type work and service. The true nature of the defective windows and doors was concealed from Plaintiffs.

162. That the material representations, non-disclosures, and concealments made by Defendant Muhler and/ or Defendant Weather Shield, as aforesaid, were false and contributed to the deception of Plaintiffs and that these Defendants either knew these representations and non-disclosures were false, should have known they were false, or made them with reckless disregard to their truth or falsity and intended that Plaintiffs rely on such false material representations, non-disclosures, and concealment.

163. That Plaintiffs were entitled to and did, in fact, rely upon said material representations, non-disclosures and concealments as aforesaid, and were ignorant of the falsity thereof. Plaintiffs justifiably and reasonably relied on Defendant Muhler and/ or Defendant Weather Shield to make such disclosures relating to material facts.

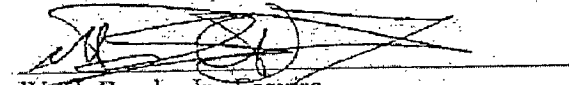
164. As a direct and proximate result thereof, Plaintiffs have suffered actual, special, incidental and consequential damages and, in addition thereto, are entitled to punitive damages.

WHEREFORE, the Plaintiffs pray that this Court issue an Order granting judgment for the Plaintiffs against the Defendants, jointly and severally, for the following relief:

- (a) for actual, special, direct, incidental, and consequential damages in an amount to be proven at trial;
- (b) for treble damages under S.C. Code § 39-5-110;
- (c) for punitive damages;
- (d) for prejudgment and post judgment interest on Plaintiffs' damages;
- (e) for attorneys' fees and costs;
- (f) for such other relief as the Court deems just and proper.

[SIGNATURE PAGE FOLLOWS]

SMITH, BUNDY, BYBEE & BARNETT, P.C.



W. H. Bundy, Jr., Esquire

M. Brent McDonald, Esquire

Post Office Box 1542

Mt. Pleasant, South Carolina 29465-1542

Telephone: (843) 881-1623

*Attorney for Plaintiff The Oaks at River's Edge Property
Owners Association, Inc., John E. Atkinson, Joan D.
Strandquist, Joseph E. Chioyrou, Jr., Peyton H. Cook,
Jr., Brenda Cook, John W. Edelen, Karen A. Nelson,
Robert J. Graham, Maureen S. Graham, Kevin O. Hux,
Nancy K. Johnson as trustee for the Nancy K. Johnson
Revocable Trust, William Jung, Charles Maraziti,
Patricia Maraziti, Donna Dee Moran, George S. Pollard,
Eleanor J. Pollard, Robert Reece, Gerard M. Ruvo and
Sue S. Ruvo as trustees for the Ruvo 2006 Living Trust,
Robert Farina, Mary Ann Farina, Carolyn M. Jennings,
Thomas Edward Keane, Edward Wallace Barr, III,
Richard B. Pekruhn, Pauline Pekruhn, Matthew J.
Severance, and Elizabeth Ashley Phillips Severance*

Mt. Pleasant, South Carolina
June 5, 2012

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) NINTH JUDICIAL CIRCUIT
)

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, and CARRIAGE HILL ASSOCIATES OF
CHARLESTON, LLC,

Plaintiffs,

vs.

WEATHER SHIELD MANUFACTURING, INC.,
THE MUHLER CO., INC., and A.C.
CONSTRUCTION, INC.,

Defendants.

C/A. No.: 2009-CP-08-1068

Affidavit of Gary Freeman,
AIA, CCS

A.C. CONSTRUCTION, INC.,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, and TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA,

Defendants.

C/A. No.: 2009-CP-08-1413

GEOFFREY C. CIPKALA and SAMUEL C.
AGEE, as tenants in common of the common
elements of the Oaks at River's Edge Horizontal
Property Regime and on behalf of themselves and
all other tenants in common,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, CARRIAGE HILL ASSOCIATES OF

C/A. No.: 2008-CP-08-2714

CHARLESTON, LLC, CARRIAGE HILL
ASSOCIATES, INC.,

Defendants.

THE OAKS AT RIVERS EDGE PROPERTY
OWNERS ASSOCIATION, INC., et al.

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, et al.

Defendants.

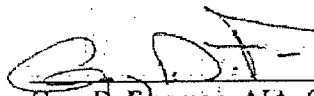
C/A. No.: 2008-CP-08-3916

Personally appeared before me, the undersigned, who being duly sworn, states as follows:

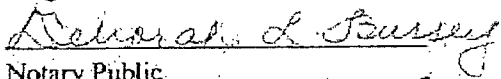
1. I am a Registered Architect in South Carolina.
2. I have actual professional knowledge and experience in the area of architecture as a result of having been regularly engaged in the active practice of architecture and design for the past 30 years.
3. I am routinely responsible for existing facility condition surveys and failure analysis of building components as well as analysis of contracts, building codes, and life safety issues. I have broad experience in the evaluation and research of industry standards as they relate to building violations.
4. My education, training, and experience are set forth in the attached CV (Exhibit A).
5. It is my belief that my education, training, and experience qualify me to render expert opinions with regard to the Architectural Drawings titled "The Oaks at River's Edge Luxury Condominiums" at Daniel Island, South Carolina, by Jerry Rumplick, AIA and stamped by Edward J. D'Orazio.
6. I am familiar with the standard of care for a reasonably prudent architect in the design, and review of building applications from a life safety, as well as industry standard aspect, in both residential and commercial settings.

7. I have reviewed the architectural design drawings for The Oaks at Rivers Edge Luxury Condominiums, Daniel Island, South Carolina, as well as photographs and on site conditions of the as-built conditions. The documents and data I have reviewed are the type of documents and data which I would consider in rendering an expert opinion in this case. After my review of these documents and data, it is my opinion to a reasonable degree of architectural certainty that there was a breach of the standard of care provided by Jerry Rumplick, AIA and Edward J. D'Orazio in the design and construction at The Oaks.
8. Based upon my review of the architectural design drawings and for The Oaks at Rivers Edge Luxury Condominiums, Daniel Island, South Carolina, as well as photographs and on site conditions of the as-built conditions, I find deficiencies related to the performance of Jerry Rumplick, AIA and Edward J. D'Orazio to include, but not limited to, the following:
- a. Improper water control and water management system design in both the stucco and brick veneer;
 - b. Violation of ASTM Standards C 926 and C 1063;
 - c. Design deficiencies which violate the applicable building codes;
 - d. Omission of required flashing systems.
9. I reserve the right to supplement or amend this affidavit and/or my professional opinion after reviewing additional design drawings, records, data, depositions, or other information relating to the construction and design of The Oaks at Rivers Edge Luxury Condominiums, Daniel Island, South Carolina.

FURTHER AFFIANT SAYETH NOT.


Gary D. Freeman, AIA, CCS

Sworn to before me this 5 day of
November 2010.


Notary Public
My Commission Expires: 3.9.19

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) NINTH JUDICIAL CIRCUIT
)

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, and CARRIAGE HILL ASSOCIATES OF
CHARLESTON, LLC,

Plaintiffs,

vs.

WEATHER SHIELD MANUFACTURING, INC.,
THE MUHLER CO., INC., and A.C.
CONSTRUCTION, INC.,

Defendants.

A.C. CONSTRUCTION, INC.,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, and TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA,

Defendants.

GEOFFREY C. CIPKALA and SAMUEL C.
AGEE, as tenants in common of the common
elements of the Oaks at River's Edge Horizontal
Property Regime and on behalf of themselves and
all other tenants in common,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, CARRIAGE HILL ASSOCIATES OF
CHARLESTON, LLC, CARRIAGE HILL
ASSOCIATES, INC.,

Defendants.

C/A. No.: 2009-CP-08-1068

CERTIFICATE OF
SERVICE OF
FOURTH AMENDED
SUMMONS AND THIRD
AMENDED COMPLAINT

C/A. No.: 2009-CP-08-1413

C/A. No.: 2009-CP-08-2714

THE OAKS AT RIVERS EDGE PROPERTY
 OWNERS ASSOCIATION, INC., JOHN E.
 ATKINSON, JOAN D. STRANDQUIST, JOSEPH
 E. CHIOVAROU, JR., PEYTON H. COOK, JR.,
 BRENDA COOK, JOHN W. EDELEN, KAREN
 A. NELSON, ROBERT J. GRAHAM, MAUREEN
 S. GRAHAM, KEVIN O. HUX, NANCY K.
 JOHNSON as trustee for the Nancy K. Johnson
 Revocable Trust, WILLIAM JUNG, CHARLES
 MARAZITI, PATRICIA MARAZITI, DONNA
 DEE MORAN, GEORGE S. POLLARD,
 ELEANOR J. POLLARD, ROBERT REECE,
 GERARD M. RUVO AND SUE S. RUVO as
 trustees for the Ruvo 2006 Living Trust, ROBERT
 FARINA, MARY ANN FARINA, CAROLYN M.
 JENNINGS, THOMAS EDWARD KEANE,
 EDWARD WALLACE BARR, III, RICHARD B.
 PEKRUHN, PAULINE PEKRUHN, GREGORY
 B. NATHAN, RICHARD JENNINGS,
 MATTHEW J. SEVERANCE and ELIZABETH
 ASHLEY PHILLIPS SEVERANCE,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
 LLC, CARRIAGE HILL ASSOCIATES OF
 CHARLESTON, LLC, CARRIAGE HILL
 ASSOCIATES, INC., WEATHER SHIELD
 MANUFACTURING, INC., THE MUHLER CO.,
 INC., A.C. CONSTRUCTION, INC., and
 COASTAL ROOFING, CO., INC., COASTAL
 CAULKING, INC., MIKE PHILLIPS d/b/a MIKE
 PHILLIPS MASONRY, GERALD RUMPLICK,
 EDWARD J. D'ORAZIO, and RICH
 BEHRINGER,

Defendants.

C/A. No.: 2009-CP-08-3916

I, Sarah Foster Rock, an employee of Smith, Bundy, Bybee & Barnett, P.C., hereby
 certify that true and correct copies of the Fourth Amended Summons and Fourth Amended
 Complaint were served on all parties via Electronic Mail this 8th day of June, 2012, as follows:

Charles S. Altman, Esquire

Meredit Coker, Esquire

Altman & Coker, LLC

PO Box 265

Charleston, SC 29402

Attorneys for Daniel Island Riverside Developers,

Carriage Hill Associates of Charleston, LLC,

Carriage Hill Associates, Inc. and Rich Behringer

caltman@altmancoker.com

mcoker@altmancoker.com

Robert Michael Etheridge, Esquire

Laura E. Paris, Esquire

Carlock Copeland & Stair, LLP

40 Calhoun Street, Suite 400

Charleston, SC 29401

Attorneys for Carriage Hill Associates of NY

rmetheridge@carlockcopeland.com

lparis@carlockcopeland.com

Christine C. Varnado, Esquire

T. Scott Forster, Esquire

Seibels Law Firm

127 King Street, Suite 100

Charleston, SC 29401

Attorneys for Weather Shield Manufacturing,

cvarnado@seibelsfirm.com

tforster@seibelsfirm.com

Patrick C. Morrissey, Esquire

Clawson & Staubes, LLC

126 Seven Farms Drive, Suite 200

Charleston, SC 29492-8144

Attorney for AC Construction

pmorrissey@clawsonandstaubes.com

Michael S. Seekings, Esquire

Leath, Bouch & Seekings, LLP

92 Broad Street

Charleston, SC 29401

Attorney for the Plaintiffs Geoffrey C.

Cipkala & Samuel C. Agee

mseekings@leathbouchlaw.com

Roy P. Maybank, Esquire

Amanda Maybank, Esquire

Maybank Law Firm, LLC

P.O. Box 12579

Charleston, SC 29422

Attorneys for the Daniel Island Riverside

Developers, Carriage Hill Associates of

Charleston, LLC, Carriage Hill Associates,

Inc. and Rich Behringer

roy@maybanklaw.com

amanda@maybanklaw.com

Eugene P. Corrigan III, Esquire

Harry V. Ragsdale, Esquire

Corrigan & Chandler, PLLC

P.O. Box 547

Charleston, SC

Attorneys Rich Behringer

rick@corriganhandler.com

harry@corriganhandler.com

Peter Gunnar Nistad, Esquire

McAngus Goudelock & Courie, LLC

735 Johnnie Dodds Blvd, Suite 200

P.O. Box 650007

Mt. Pleasant, SC 29465

Attorney for The Muhler Company

gunnar.nistad@mgclaw.com

Davis S. Cobb, Esquire

Turner Padgett Graham & Laney, P.A.

P.O. Box 22129

40 Calhoun Street, Suite 200

Charleston, SC 29413-2129

Attorney for Coastal Caulking

DCobb@TurnerPadgett.com

Michael B. T. Wilkes, Esquire

C. Daniel Atkinson, Esquire

Wilkes Law Firm

127 Dunbar Street, Suite 200

Spartanburg, SC 29306

Attorneys for Gerald Rumplick & Edward

J. D'Orazio

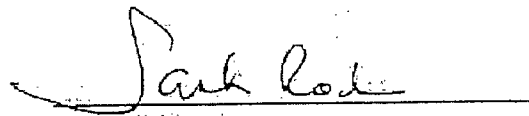
mwilkes@wilkeslaw.com

datkinson@wilkeslaw.com

Gaines W. Smith, Esquire
Legare Hare & Smith
720 St. Andrews Blvd.
Charleston, South Carolina 29407-7141
Attorney for Coastal Roofing
gwsmith@legareharsmith.com

Mark D. Cahill, Esquire
Choate Hall & Stewart, LLP
Two International Place
Boston, MA 02110
Attorney for Mt. Hawleys Insurance Co.
mcahill@choate.com

Robert A. McKenzie, Esquire
McDonald, McKenzie, Rubin, Miller and
Lybrand, LLP
P.O. Box 58
Columbia, SC 29202
Attorney for Mt. Hawleys Insurance Co.
mckenzie@mmrml.com



Sarah Foster Rock

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) NINTH JUDICIAL CIRCUIT
)

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, and CARRIAGE HILL ASSOCIATES OF
CHARLESTON, LLC,

Plaintiffs,

vs.

WEATHER SHIELD MANUFACTURING, INC.,
THE MUHLER CO., INC., and A.C.
CONSTRUCTION, INC.,

Defendants.

C/A. No.: 2009-CP-08-1068

FOURTH AMENDED
SUMMONS

A.C. CONSTRUCTION, INC.,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, and TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA,

Defendants.

C/A. No.: 2009-CP-08-1413

GEOFFREY C. CIPKALA and SAMUEL C.
AGEE, as tenants in common of the common
elements of the Oaks at River's Edge Horizontal
Property Regime and on behalf of themselves and
all other tenants in common,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, CARRIAGE HILL ASSOCIATES OF

C/A. No.: 2009-CP-08-2714

FILED
2012 JUN -6 PM 12:46
CLERK OF COURT
BERKELEY COUNTY, SC

CHARLESTON, LLC, CARRIAGE HILL
ASSOCIATES, INC.,

Defendants.

THE OAKS AT RIVERS EDGE PROPERTY
OWNERS ASSOCIATION, INC., JOHN E.
ATKINSON, JOAN D. STRANDQUIST, JOSEPH
E. CHIOVAROU, JR., PEYTON H. COOK, JR.,
BRENDA COOK, JOHN W. EDELEN, KAREN
A. NELSON, ROBERT J. GRAHAM, MAUREEN
S. GRAHAM, KEVIN O. HUX, NANCY K.
JOHNSON as trustee for the Nancy K. Johnson
Revocable Trust, WILLIAM JUNG, CHARLES
MARAZITI, PATRICIA MARAZITI, DONNA
DEE MORAN, GEORGE S. POLLARD,
ELEANOR J. POLLARD, ROBERT REECE,
GERARD M. RUVO AND SUE S. RUVO as
trustees for the Ruvo 2006 Living Trust, ROBERT
FARINA, MARY ANN FARINA, CAROLYN M.
JENNINGS, THOMAS EDWARD KEANE,
EDWARD WALLACE BARR, III, RICHARD B.
PEKRUHN, PAULINE PEKRUHN, GREGORY
B. NATHAN, RICHARD JENNINGS,
MATTHEW J. SEVERANCE, and ELIZABETH
ASHLEY PHILLIPS SEVERANCE,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, CARRIAGE HILL ASSOCIATES OF
CHARLESTON, LLC, CARRIAGE HILL
ASSOCIATES, INC., WEATHER SHIELD
MANUFACTURING, INC., THE MUHLER CO.,
INC., A.C. CONSTRUCTION, INC., and
COASTAL ROOFING, CO., INC., COASTAL
CAULKING, INC., MIKE PHILLIPS d/b/a MIKE
PHILLIPS MASONRY, GERALD RUMPLICK,
EDWARD J. D'ORAZIO, and RICH
BEHRINGER,

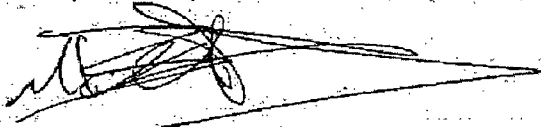
Defendants

C/A. No.: 2009-CP-08-3916

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Fourth Amended Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your answer to the said Fourth Amended Complaint upon the subscriber, W. H. Bundy, Jr., Esquire, of Smith, Bundy, Bybee & Barnett, P.C., Post Office Box 1542, Mt. Pleasant, South Carolina 29465-1542, within thirty (30) days after service thereof, exclusive of the day of service; and if you fail to do so judgment by default will be rendered against you for the relief demanded in the Fourth Amended Complaint.

SMITH, BUNDY, BYBEE & BARNETT, P.C.



W. H. Bundy, Jr., Esquire
M. Brent McDonald, Esquire
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
Telephone: (843) 881-1623

Attorney for Plaintiff The Oaks at River's Edge Property Owners Association, Inc., John E. Atkinson, Joan D. Strandquist, Joseph E. Chiovarou, Jr., Peyton H. Cook, Jr., Brenda Cook, John W. Edelen, Karen A. Nelson, Robert J. Graham, Maureen S. Graham, Kevin O. Hux, Nancy K. Johnson as trustee for the Nancy K. Johnson Revocable Trust, William Jung, Charles Maraziti, Patricia Maraziti, Donna Dee Moran, George S. Pollard, Eleanor J. Pollard, Robert Reece, Gerard M. Ruvo and Sue S. Ruvo as trustees for the Ruvo 2006 Living Trust, Robert Farina, Mary Ann Farina, Carolyn M. Jennings, Thomas Edward Keane, Edward Wallace Barr, III, Richard B. Pekruhn, Pauline Pekruhn, Matthew J. Severance, and Elizabeth Ashley Phillips Severance.

Mt. Pleasant, South Carolina
June 5, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Daniel Island Riverside Developers, LLC, *et al.*,)

Plaintiffs,)

v.)

Weather Shield Manufacturing, Inc., *et al.*,)

Defendants.)

CA No. 09-CP-08-1068

A.C. Construction, Inc.,)

Plaintiff,)

v.)

Daniel Island Riverside Developers, LLC, *et al.*,)

Defendants.)

CA No. 09-CP-08-1413

Geoffrey C. Cipkala, *et al.*,)

Plaintiffs,)

v.)

Daniel Island Riverside Developers, LLC, *et al.*,)

Defendants.)

CA No. 08-CP-08-2714

The Oaks at Riversedge Property Owners
Association, Inc., *et al.*,)

Plaintiffs,)

v.)

Daniel Island Riverside Developers, LLC, *et al.*,)

Defendants.)

CA No. 08-CP-08-3916

FILED
2012 JUN 13 PM 12:32
HARRY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

FILE COPY

DEFENDANT DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC'S ANSWER TO THE MUHLER CO., INC.'S AMENDED ANSWER TO THE PLAINTIFFS' THIRD AMENDED COMPLAINT AND CROSS-CLAIMS AGAINST WEATHER SHIELD MANUFACTURING, INC., DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC, CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC, AND CARRIAGE HILL ASSOCIATES, INC. AND THIRD PARTY COMPLAINT AGAINST CASTLE SIDING, INC., AND CAOBA DOORS

Defendant Daniel Island Riverside Developers, LLC, ("DIRD"), by and through its undersigned counsel, answers The Muhler Co., Inc.'s Amended Answer to the Plaintiffs' Third Amended Complaint and Cross-claims Against Weather Shield Manufacturing, Inc., Daniel Island Riverside Developers, LLC, Carriage Hill Associates of Charleston, LLC, and Carriage Hill Associates, Inc. and Third Party Complaint Against Castle Siding, Inc., and CAOBA Doors (hereinafter "the Complaint") as follows.

**FOR A FIRST DEFENSE
(General Denial)**

1. DIRD denies all allegations of the Complaint not specifically admitted to herein.

**FOR A SECOND DEFENSE
(Failure to state a Claim)**

2. DIRD moves to dismiss the Complaint pursuant to SCRPC Rule 12(b)(6) for failure to state a claim for which a remedy can be granted.

**FOR A THIRD DEFENSE
(Specific Denial)**

3. The allegations of Paragraphs 1 through 115, inclusive, constitute Defendant The Muhler Company, Inc.'s, ("Muhler"), Answer to Plaintiffs' Third Amended Complaint and as such do not constitute a response from DIRD. To the extent that said allegations assert any liability on

the part of DIRD, such allegations are denied.

4. The allegations of Paragraphs 116 through 131, inclusive, are directed to Defendant Weather Shield Manufacturing, Inc., and as such do not require a response from DIRD.

5. As to the allegations of Paragraph 132, DIRD reasserts and restates its allegations in Paragraphs 1 through 4 as though fully set forth herein.

6. DIRD admits, upon information and belief, the allegations of Paragraph 133.

7. DIRD admits the allegations of Paragraph 134.

8. DIRD admits the allegations of Paragraph 135.

9. DIRD admits the allegations of Paragraph 136 to the extent it alleges that Carriage Hill Associates, Inc., is a New York corporation, and denies the remaining allegations of said Paragraph.

10. The allegations of Paragraph 137 call for a legal conclusion and as such no response is required; to the extent a response is required as to DIRD, DIRD admits the allegations.

11. As to the allegations of Paragraph 138, DIRD admits that DIRD was the developer of the property; by way of further response, DIRD denies it sold units to all of the Plaintiffs and/or current unit owners of the Property.

12. The allegations of Paragraph 139 are directed to another party and as such no response from DIRD is required. By way of further response, DIRD admits that it contracted with Carriage Hill Associates of Charleston, LLC, to act as construction manager for the Property.

13. The allegations of Paragraph 140 are directed to other parties and as such no response from DIRD is required. To the extent a response is required, DIRD denies same.

14. DIRD denies the allegations of Paragraphs 141 and 142.

15. DIRD is without sufficient information to admit or deny the allegations of Paragraphs 143 and 144; to the extent a response is required, DIRD denies same.

16. DIRD denies the allegations of Paragraph 145.

17. DIRD is without sufficient information to admit or deny the allegations of Paragraphs 146 through 151, inclusive; to the extent a response is required, DIRD denies same.

18. DIRD denies the allegations of Paragraphs 152 through 156, inclusive, to the extent that the allegations reference DIRD; to the extent the remaining allegations reference parties other than DIRD and as a result no response is required; to the extent a response is required, DIRD is without sufficient information to admit or deny said allegations and as such denies same.

19. As to the allegations of Paragraph 157, DIRD reasserts and restates its allegations in Paragraphs 1 through 18 as though fully set forth herein.

20. To the extent the allegations of Paragraphs 158 through 161, inclusive, reference DIRD, DIRD denies same; to the extent the remaining allegations reference parties other than DIRD and as a result no response is required; to the extent a response is required, DIRD is without sufficient information to admit or deny said allegations and as such denies same.

21. As to the allegations of Paragraph 162, DIRD reasserts and restates its allegations in Paragraphs 1 through 20 as though fully set forth herein.

22. To the extent the allegations of Paragraphs 163 and 164 reference DIRD, DIRD denies same; to the extent the remaining allegations reference parties other than DIRD and as a result no response is required; to the extent a response is required, DIRD is without sufficient information to admit or deny said allegations and as such denies same.

23. As to the allegations of Paragraph 165, DIRD reasserts and restates its allegations in

Paragraphs 1 through 22 as though fully set forth herein.

24. To the extent the allegations of Paragraph 166 reference DIRD, DIRD denies same; to the extent the remaining allegations reference parties other than DIRD and as a result no response is required; to the extent a response is required, DIRD is without sufficient information to admit or deny said allegations and as such denies same.

25. As to the allegations of Paragraph 167, DIRD reasserts and restates its allegations in Paragraphs 1 through 24 as though fully set forth herein.

26. To the extent the allegations of Paragraphs 168 through 171, inclusive, reference DIRD, DIRD denies same; to the extent the remaining allegations reference parties other than DIRD no response is required; to the extent a response is required, DIRD is without sufficient information to admit or deny said allegations and as such denies same.

27. The allegations of Paragraphs 172 through 207 are directed to parties other than DIRD, and specifically to Third-Party Defendants Castle Siding, Inc., and Caoba Doors, and as such do not require a response from DIRD.

AS AND FOR A FOURTH DEFENSE
(Statute of Limitations / Statute of Repose)

28. Muhler's claims are barred by the applicable statute of limitations and/or statute of repose.

AS AND FOR A FIFTH DEFENSE
(Setoff)

29. To the extent Muhler is successful in proving its damages, which damages are denied by DIRD, DIRD has a right to setoff with regard to any judgment rendered in favor of Muhler.

**AS AND FOR A SIXTH DEFENSE
(Economic Loss Rule)**

30. Muhler's claims and any damages resulting therefrom are limited by the economic loss rule.

**AS AND FOR A SEVENTH DEFENSE
(Failure to Mitigate)**

31. Muhler has failed to mitigate any damages they may have or are suffering.

**AS AND FOR AN EIGHTH DEFENSE
(Estoppel, Laches and Waiver)**

32. Muhler's claims are barred by the Doctrines of Estoppel, Laches and Waiver.

**AS AND FOR A NINTH DEFENSE
(Contributory and Comparative Negligence)**

33. Muhler's claims are barred by the Doctrines of Contributory and Comparative Negligence.

**AS AND FOR A TENTH DEFENSE
(Intervening Acts or Failures of Others)**

34. The damages, if any, suffered by Muhler were caused by the acts or failures of persons other than DIRD.

**AS AND FOR A ELEVENTH DEFENSE
(Punitive Damages Not Allowed)**

35. Muhler's damages are barred under applicable law.

**AS AND FOR A TWELFTH DEFENSE
(Failure to Give Timely Notice)**

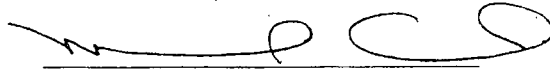
36. Muhler's claims are barred by the failure to give timely and reasonable notice of any and all claims.

AS AND FOR A THIRTEENTH DEFENSE
(Incorporation of Defenses Raised By Other Defendants)

37. DIRD reserves the right to amend to add additional defenses as discovery progresses throughout the course of the litigation. DIRD further incorporates the defenses of any other defendants as they may be applicable to this DIRD.

Respectfully submitted,

ALTMAN & COKER, LLC



Charles S. Altman
Meredith L. Coker
575 King Street, Suite A
Charleston, South Carolina 29403
T: (843) 853-9907
F: (843) 853-9838

And

Roy P. Maybank
Amanda Maybank
MAYBANK LAW FIRM, LLC
531 Savannah Highway
Post Office Box 12579
Charleston, South Carolina 29422
T: (843) 766-8101
F: (843) 766-8102

Attorneys for Daniel Island Riverside
Developers, LLC; and Carriage Hill Associates of
Charleston, LLC

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Daniel Island Riverside Developers, LLC, *et al.*,
Plaintiffs,
v.
Weather Shield Manufacturing, Inc., *et al.*,
Defendants.

CA No. 09-CP-08-1068

A.C. Construction, Inc.,
Plaintiff,
v.
Daniel Island Riverside Developers, LLC, *et al.*,
Defendants.

CA No. 09-CP-08-1413

Geoffrey C. Cipkala, *et al.*,
Plaintiffs,
v.
Daniel Island Riverside Developers, LLC, *et al.*,
Defendants.

CA No. 08-CP-08-2714

The Oaks at Riversedge Property Owners
Association, Inc., *et al.*,
Plaintiffs,
v.
Daniel Island Riverside Developers, LLC, *et al.*,
Defendants.

CA No. 08-CP-08-3916

FILED
2012 JUN 13 PM 12:32
HARRY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

Page 1 of 7



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**DEFENDANT CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC'S ANSWER TO
THE MUHLER CO., INC.'S AMENDED ANSWER TO THE PLAINTIFFS' THIRD
AMENDED COMPLAINT AND CROSS-CLAIMS AGAINST WEATHER SHIELD
MANUFACTURING, INC., DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC,
CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC, AND CARRIAGE HILL
ASSOCIATES, INC. AND THIRD PARTY COMPLAINT AGAINST CASTLE SIDING,
INC., AND CAOBA DOORS**

Defendant Carriage Hill Associates of Charleston, LLC, ("CHAC"), by and through its undersigned counsel, answers The Muhler Co., Inc.'s Amended Answer to the Plaintiffs' Third Amended Complaint and Cross-claims Against Weather Shield Manufacturing, Inc., Daniel Island Riverside Developers, LLC, Carriage Hill Associates of Charleston, LLC, and Carriage Hill Associates, Inc. and Third Party Complaint Against Castle Siding, Inc., and CAOBA Doors (hereinafter "the Complaint") as follows.

**FOR A FIRST DEFENSE
(General Denial)**

1. CHAC denies all allegations of the Complaint not specifically admitted to herein.

**FOR A SECOND DEFENSE
(Failure to state a Claim)**

2. CHAC moves to dismiss the Complaint pursuant to SCRCP Rule 12(b)(6) for failure to state a claim for which a remedy can be granted.

**FOR A THIRD DEFENSE
(Specific Denial)**

3. The allegations of Paragraphs 1 through 115, inclusive, constitute Defendant The Muhler Company, Inc.'s, ("Muhler"), Answer to Plaintiffs' Third Amended Complaint and as such do not constitute a response from CHAC. To the extent that said allegations assert any liability on

the part of CHAC, such allegations are denied.

4. The allegations of Paragraphs 116 through 131, inclusive, are directed to Defendant Weather Shield Manufacturing, Inc., and as such do not require a response from CHAC.

5. As to the allegations of Paragraph 132, CHAC reasserts and restates its allegations in Paragraphs 1 through 4 as though fully-set forth herein.

6. CHAC admits, upon information and belief, the allegations of Paragraph 133.

7. CHAC admits the allegations of Paragraph 134.

8. CHAC admits the allegations of Paragraph 135.

9. CHAC admits the allegations of Paragraph 136 to the extent it alleges that Carriage Hill Associates, Inc., is a New York corporation, and denies the remaining allegations of said Paragraph.

10. The allegations of Paragraph 137 call for a legal conclusion and as such no response is required; to the extent a response is required as to CHAC, CHAC admits the allegations.

11. As to the allegations of Paragraph 138, CHAC admits that Daniel Island Riverside Developers, LLC, was the developer and original seller of the Property.

12. As to the allegations of Paragraph 139, CHAC denies that it was the general contractor; by way of further response, CHAC admits that it was the construction manager for the Property at issue; the remaining allegations of Paragraph 139 call for a legal conclusion and as such no response is required; to the extent a response is required, CHAC denies same.

13. To the extent the allegations of Paragraphs 140 through 142, inclusive, reference CHAC, CHAC denies the same.

14. CHAC denies the allegations of Paragraph 143 and 144.

15. CHAC is without sufficient information to admit or deny the allegations of Paragraph 145; to the extent a response is required, CHAC denies the same.

16. To the extent that the allegations of Paragraphs 146, 147, 148, 150, 151 reference written offers or bids, CHAC craves references to said documents and denies all allegations not specifically set forth therein. CHAC denies all remaining allegations of said Paragraphs.

17. CHAC denies the allegations of Paragraph 149.

18. CHAC denies the allegations of Paragraphs 152 through 156, inclusive.

19. As to the allegations of Paragraph 157, CHAC reasserts and restates its allegations in Paragraphs 1 through 18 as though fully set forth herein.

20. To the extent the allegations of Paragraphs 158 through 161, inclusive, reference CHAC, CHAC denies same; to the extent the remaining allegations reference parties other than CHAC and as a result no response is required; to the extent a response is required, CHAC is without sufficient information to admit or deny said allegations and as such denies same.

21. As to the allegations of Paragraph 162, CHAC reasserts and restates its allegations in Paragraphs 1 through 20 as though fully set forth herein.

22. CHAC admits that it entered into contracts with Muhler and would crave reference to said contracts and deny all allegations in Paragraphs 163 and 164 not specifically set forth therein; CHAC denies the remaining allegations of Paragraphs 163 and 164.

23. As to the allegations of Paragraph 165, CHAC reasserts and restates its allegations in Paragraphs 1 through 22 as though fully set forth herein.

24. To the extent the allegations of Paragraph 166 reference CHAC, CHAC denies same; to the extent the remaining allegations reference parties other than CHAC and as a result no

response is required; to the extent a response is required, CHAC is without sufficient information to admit or deny said allegations and as such denies same.

25. As to the allegations of Paragraph 167, CHAC reasserts and restates its allegations in Paragraphs 1 through 24 as though fully set forth herein.

26. To the extent the allegations of Paragraphs 168 through 171, inclusive, reference CHAC, CHAC denies same; to the extent the remaining allegations reference parties other than CHAC no response is required; to the extent a response is required, CHAC is without sufficient information to admit or deny said allegations and as such denies same.

27. The allegations of Paragraphs 172 through 207 are directed to parties other than CHAC, and specifically to Third-Party Defendants Castle Siding, Inc., and Caoba Doors, and as such do not require a response from CHAC.

AS AND FOR A FOURTH DEFENSE
(Statute of Limitations / Statute of Repose)

28. Muhler's claims are barred by the applicable statute of limitations and/or statute of repose.

AS AND FOR A FIFTH DEFENSE
(Setoff)

29. To the extent Muhler is successful in proving its damages, which damages are denied by CHAC, CHAC has a right to setoff with regard to any judgment rendered in favor of Muhler.

AS AND FOR A SIXTH DEFENSE
(Economic Loss Rule)

30. Muhler's claims and any damages resulting therefrom are limited by the economic loss rule.

AS AND FOR A SEVENTH DEFENSE
(Failure to Mitigate)

31. Muhler has failed to mitigate any damages they may have or are suffering.

AS AND FOR AN EIGHTH DEFENSE
(Estoppel, Laches and Waiver)

32. Muhler's claims are barred by the Doctrines of Estoppel, Laches and Waiver.

AS AND FOR A NINTH DEFENSE
(Contributory and Comparative Negligence)

33. Muhler's claims are barred by the Doctrines of Contributory and Comparative Negligence.

AS AND FOR A TENTH DEFENSE
(Intervening Acts or Failures of Others)

34. The damages, if any, suffered by Muhler were caused by the acts or failures of persons other than CHAC.

AS AND FOR A ELEVENTH DEFENSE
(Punitive Damages Not Allowed)

35. Muhler's damages are barred under applicable law.

AS AND FOR A TWELFTH DEFENSE
(Failure to Give Timely Notice)

36. Muhler's claims are barred by the failure to give timely and reasonable notice of any and all claims.

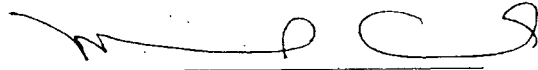
AS AND FOR A THIRTEENTH DEFENSE
(Incorporation of Defenses Raised By Other Defendants)

37. CHAC reserves the right to amend to add additional defenses as discovery progresses throughout the course of the litigation. CHAC further incorporates the defenses of any other defendants

as they may be applicable to CHAC.

Respectfully submitted,

ALTMAN & COKER, LLC



Charles S. Altman
Meredith L. Coker
575 King Street, Suite A
Charleston, South Carolina 29403
T: (843) 853-9907
F: (843) 853-9838

And

Roy P. Maybank
Amanda Maybank
MAYBANK LAW FIRM, LLC
531 Savannah Highway
Post Office Box 12579
Charleston, South Carolina 29422
T: (843) 766-8101
F: (843) 766-8102

Attorneys for Daniel Island Riverside
Developers, LLC; and Carriage Hill Associates of
Charleston, LLC



FILE COPY

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC AND CARRIAGE HILL ASSOCIATES OF
CHARLESTON, LLC,

Plaintiffs,

vs.

WEATHER SHIELD MANUFACTURING, INC.,
THE MUHLER COMPANY, INC., AND AC
CONSTRUCTION, INC.,

Defendants.

AC CONSTRUCTION,

Plaintiff,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, AND TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA,

Defendants.

GEOFFREY C. CIPKALA, and SAMUEL C.
AGEE, as tenants in common of the common
elements of The Oaks at River's Edge
Horizontal Property Regime and on behalf
of themselves and all other tenants in
common,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, CARRIAGE HILL ASSOCIATES OF
CHARLESTON, LLC, and CARRIAGE HILL
ASSOCIATES, INC.,

Defendants.

THE OAKS AT RIVERS EDGE PROPERTY
OWNERS ASSOCIATION, INC., JOHN E.

IN THE COURT OF COMMON PLEAS

C.A. No. 2009-CP-08-1068

**THIRD-PARTY DEFENDANT CAOBA
DOORS' ANSWER TO THE MUHLER
COMPANY, INC.'S THIRD-PARTY
COMPLAINT**

ATKINSON, JOAN D. STRANDQUIST, JOSEPH E. CHIVAROU, JR., PEYTON H. COOK, JR., BRENDA COOK, JOHN W. EDELEN, KAREN A. NELSON, ROBERT J. GRAHAM, MAUREEN S. GRAHAM, KEVIN O. HUX, NANCY K. JOHNSON as trustee for the Nancy K. Johnson Revocable Trust, WILLIAM JUNG, CHARLES MARAZITI, PATRICIA MARAZITI, DONNA DEE MORAN, GOERGE S. POLLARD, ELEANOR J. POLLARD, ROBERT REECE, GERARD M. RUVO AND SUE S. RUVO as trustees for the Ruvo 2006 Living Trust, ROBERT FARINA, MARY ANN FARINA, CAROLYN M. JENNINGS, THOMAS EDWARD KEANE, EDWARD WALLACE BARR, III, RICHARD B. PEKRUHN, PAULINE PEKRUHN, GREGORY B. NATHAN, RICHARD JENNINGS, MATTHEW J. SEVERANCE and ELIZABETH ASHLEY PHILLIPS SEVERANCE,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC, CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC, CARRIGAE HILL ASSOCIATES, INC., WEATHER SHIELD MANUFACTURING, INC., THE MUHLER CO., INC., A.C. CONSTRUCTION, INC., COASTAL ROOFING CO., INC., COASTAL CAULKING, INC., MIKE PHILLIPS D/B/A MIKE PHILLIS MASONRY, GERALD RUMPLICK, EDWARD J. D'ORAZIO and RICH BEHRINGER,

Defendants.

THE MUHLER COMPANY, INC.,

Third-Party Plaintiff,

vs.

CASTLE SIDING, INC. and CAOBA DOORS

Third-Party Defendant.

Third-Party Defendant Caoba Doors (hereinafter "Caoba"), answering the Mulher Company's Third-Party Complaint (hereinafter the "TPC") in the above-captioned case, does allege the following:

FOR A FIRST DEFENSE

1. Caoba denies each and every allegation of the TPC that is not specifically and unconditionally admitted hereinafter.

FOR A SECOND DEFENSE

2. Paragraph 1 of the TPC does not require a response from Caoba.

3. Paragraphs 2 through 189 of the TPC do not pertain to Caoba and, as such, no response is required. To the extent any allegation in paragraphs 2 through 189 of the TPC could possibly be construed as making any allegations toward Caoba, those allegations are denied.

**FOR A FIRST DEFENSE TO THE FIFTY-SIXTH DEFENSE
AND THE THIRD-PARTY CLAIM AGAINST CAOBA**

4. In response to Paragraph 190, Caoba hereby repeats and realleges each of the preceding paragraphs of this Answer as if set forth verbatim herein.

5. Caoba admits the allegations of Paragraph 191 of the TPC upon information and belief.

6. Caoba admits so much of Paragraph 192 of the TPC as alleges that Caoba is a company organized and existing under the laws of a state other than South Carolina. Caoba denies that it is presently "conducting business in Berkeley County, South Carolina." Further, subject matter and personal jurisdiction as well as venue are matters of law for the Court and cannot be conferred by parties.

7. Caoba admits the allegations of Paragraph 193 of the TPC upon information and belief.

8. Caoba denies the allegations of Paragraph 194 of the TPC as stated and would crave reference to the contract between it and Muhler, if any such agreement actually exists.

9. Caoba admits the allegations of Paragraph 195 of the TPC only to the extent it reflects the allegations of the Plaintiff. Caoba lacks sufficient information to form an opinion or belief as to the truth of the Plaintiffs' allegations as set forth in Paragraph 195 and, as such, they are denied to that extent.

10. Caoba admits the allegations of Paragraph 196 of the TPC.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION AGAINST CAOBA

11. In response to Paragraph 197, Caoba hereby repeats and realleges each of the preceding paragraphs of this Answer as if set forth verbatim herein.

12. Caoba denies the allegations of Paragraph 198 of the TPC as stated and would crave reference to the contract between it and Muhler, if any such agreement actually exists.

13. Caoba denies the allegations of Paragraphs 199, 200 and 201 of the TPC.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION AGAINST CAOBA

14. In response to Paragraph 202, Caoba hereby repeats and realleges each of the preceding paragraphs of this Answer as if set forth verbatim herein.

15. Caoba denies the allegations of Paragraphs 203 and 204 of the TPC.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION AGAINST CAOBA

16. In response to Paragraph 205, Caoba hereby repeats and realleges each of the preceding paragraphs of this Answer as if set forth verbatim herein.

15. Caoba denies the allegations of Paragraphs 206 and 207 of the TPC. Further, Caoba denies that it had any contractual duty to indemnify Muhler whatsoever.

FOR A SECOND DEFENSE

16. Further answering, Caoba would show that the claims asserted against it by Muhler are barred by the applicable statute of limitations.

FOR A THIRD DEFENSE

17. Further answering, Caoba would show that any potential recovery by Muhler should be barred due to Muhler's conscious and willful failure to mitigate its damages, the existence of which Caoba strictly denies.

FOR A FOURTH DEFENSE

18. Further answering, Caoba would show that at all times material to this case, any services and/or work of Caoba conformed to the standards of the industry and profession at the time their work was done and by reason of which they are not liable for the matters asserted against it in the TPC.

FOR AN FIFTH DEFENSE

19. Further answering, Caoba would show that any injuries or damages sustained by Muhler were due to and caused by the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of Muhler, combining, concurring and contributing with the negligence of Caoba, such negligence being strictly denied, without which contributory negligence, Muhler's alleged injuries and damages would not have been incurred or sustained.

20. Should the negligence of Muhler be determined to be greater than that of Caoba, such negligence being strictly denied, Muhler is entitled to no recovery.

21. Should the negligence of Muhler be determined to be not greater than that of Caoba, such negligence being strictly denied, Muhler's recovery is to be reduced by the percentage of Muhler's fault.

FOR A SIXTH DEFENSE

22. Further answering, Caoba would show that any injuries and damages sustained by Muhler, if any, were due to and caused by the sole and negligent acts or omissions of Muhler. As such, Caoba pleads the sole negligence of Muhler as a complete bar to this action.

FOR A SEVENTH DEFENSE

23. Further answering, Caoba would show that any injuries or damages sustained by Muhler were due to and caused by the intervening and/or superseding negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of some other party or parties over whom Caoba had no authority or control. Therefore, Caoba is not liable to Muhler in any amount.

FOR AN EIGHTH DEFENSE

24. Further answering, Caoba would show that any recovery by Muhler should be completely barred due to its assumption of the risk.

25. In the alternative, any recovery by Muhler should be appropriately reduced by the percentage of its fault that can be attributed to its assumption of the risk.

FOR A NINTH DEFENSE

26. Further answering, Caoba would show that Muhler's claims are barred by the doctrines of laches, waiver, estoppel, and unclean hands.

FOR A TENTH DEFENSE

27. Further answering, Caoba would show that should Muhler be entitled to recovery against it, such entitlement being strictly denied, Caoba respectfully requests and moves that such liability be assessed in accordance with S.C. Code Ann. § 15-38-15, which allows for the apportionment of liability among all parties and nonparties.

FOR AN ELEVENTH DEFENSE

28. Further answering, Caoba would show that an award of punitive damages in this case would violate the 5th, 6th, and 14th Amendments to the United States Constitution and Article One, Section 3 of the South Carolina Constitution in that:

(a) The judiciary's ability to correct a punitive damage award at the appellate level only upon a finding of passion, prejudice, or caprice is inconsistent with the due process guarantees;

(b) Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;

(c) To the extent an award of punitive damages is excessive, such award violates due process guarantees;

(d) The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;

(e) Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness; and

(f) Muhler' claim for punitive damages violates the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth and status of Caoba.

FOR A TWELFTH DEFENSE

29. Further answering, Caoba would show that it is entitled to a set-off at trial of any settlement amount reached between Muhler and any of the other Third-Party Defendants.

FOR A THIRTEENTH DEFENSE

30. Further answering, Caoba would show that if Muhler is not the sole tortfeasor whose conduct proximately caused damages of the plaintiff, Muhler is at least a joint tortfeasor; that under South Carolina law there can be no indemnity among joint tortfeasors; and since Muhler owed a duty of care to the plaintiff which they breached, they have no right of indemnification against Caoba because Muhler was at the very least a joint tortfeasor.

FOR A FOURTEENTH DEFENSE

31. Further answering, Caoba would show that Muhler failed to give reasonable notice of any claimed deficiencies in any plans and/or services allegedly furnished by this defendant, and by reason of which Muhler is barred from recovering from this defendant.

FOR AN EIGHTEENTH DEFENSE

32. Further answering, Caoba would show that Muhler's claims are barred by any other matter constituting an avoidance or affirmative defense and Caoba specifically reserves the right to amend its Answer to assert any such defense that may become available or appear during discovery proceedings or otherwise in this case.

FOR A NINETEENTH DEFENSE

33. Punitive damages are inappropriate in this case since this Caoba did not engage in any malicious, reckless, wrongful or intentional conduct upon which an award of punitive damages would be based.

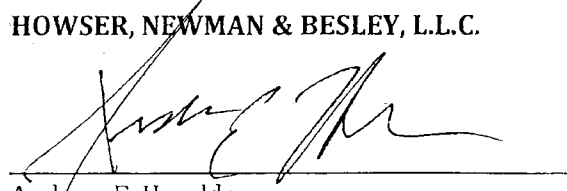
FOR A TWENTIETH DEFENSE

34. Muhler's claims against Caoba are barred to the extent they seek to recover a tort for purely economic loss.

WHEREFORE, having fully answered the TPC herein, Caoba respectfully requests

that the TPC against it be dismissed, with costs, and that it have such other and further relief as this Court deems just and proper.

HOWSER, NEWMAN & BESLEY, L.L.C.

A handwritten signature in black ink, appearing to read 'Andrew E. Haselden', is written over a horizontal line.

Andrew E. Haselden
James P. Sullivan
215 East Bay Street, Suite 303
Charleston, South Carolina 29401
(843) 216-6940 (telephone)
(877) 216-6970 (toll free)
(843) 216-6942 (facsimile)
ahaselden@hnblaw.com
jsullivan@hnblaw.com
***Attorneys for Third-Party Defendant
Caoba Doors***

June 20, 2012



STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-08-1068

DANIEL ISLAND RIVERSIDE
DEVELOPERS, LLC., and CARRIAGE
HILL ASSOCIATES OF CHARLESTON,
LLC.,

Plaintiffs,

vs.

WEATHER SHIELD
MANUFACTURING, INC., THE
MUHLER CO., INC., and A.C.
CONSTRUCTION, INC.,

Defendants.

**DEFENDANT CARRIAGE HILL
ASSOCIATES, INC.'S ANSWER TO
PLAINTIFFS' FOURTH AMENDED
COMPLAINT**

A.C. CONSTRUCTION, INC.,

Plaintiffs

vs.

DANIEL ISLAND RIVERSIDE
DEVELOPERS, LLC., and TRAVELERS
CASUALTY AND SURETY COMPANY
OF AMERICA,

Defendants

GEOFFREY C. CIPKALA and SAMUEL
C. AGEE, as tenants in common of the
common elements of the Oaks at River's
Edge Horizontal Property Regime and on
behalf of themselves and all other tenants
in common,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE
DEVELOPERS, LLC., CARRIAGE HILL

ASSOCIATES OF CHARLESTON, LLC.,)
CARRIAGE HILL ASSOCIATES, INC.,)

Defendants.)

THE OAKS AT RIVERS EDGE)
PROPERTY OWNERS ASSOCIATION,)
INC., JOHN E. ATKINSON, JOAN D.)
STRANDQUIST, JOSEPH E.)
CHIOVAROU, JR., PEYTON H. COOK,)
JR., BRENDA COOK, JOHN W.)
EDELLEN, KAREN A. NELSON,)
ROBERT J. GRAHAM, MAUREEN S.)
GRAHAM. KEVIN O. HUX, NANCY K.)
JOHNSON as trustee for the Nancy K.)
Johnson Revocable Trust, WILLIAM)
JUNG, CHARLES MARAZITI,)
PATRICIA MARAZITI, DONNA DEE)
MORAN, GEORGE S. POLLARD,)
ELEANOR J. POLLARD, ROBERT)
REECE, GERARD M. RUVO AND SUE)
S. RUVO as trustees for the Ruvo 2006)
Living Trust, ROBERT FARINA, MARY)
ANN FARINA, CAROLYN M.)
JENNINGS, THOMAS EDWARD)
KEANE, EDWARD WALLACE BARR,)
III, RICHARD B. PEKRUHN, PAULINE)
PEKRUHN, GREGORY B. NATHAN,)
RICHARD JENNINGS, MATTHEW J.)
SEVERANCE, AND ELIZABETH)
ASHLEY PHILLIPS SEVERANCE,)

Plaintiffs,)

vs.)

DANIEL ISLAND RIVERSIDE)
DEVELOPERS, LLC., CARRIAGE HILL)
ASSOCIATES OF CHARLESTON, LLC.,)
CARRIAGE HILL ASSOCIATES, INC.,)
WEATHER SHIELD)
MANUFACTURING, INC., THE)
MUHLER CO., INC., A.C.)
CONSTRUCTION, INC., COASTAL)
ROOFING CO., INC., COASTAL)
CAULKING, INC., MIKE PHILLIPS)

d/b/a MIKE PHILLIPS MASONRY,	)
GERALD RUMPLICK, EDWARD J.	)
D'ORAZIO, and RICH BEHRINGER	)
	)
Defendants.	)
	)
THE MUHLER COMPANY, INC.,	)
	)
Third-Party Plaintiffs,	)
vs.	)
	)
CASTLE SIDING, INC.	)
	)
Third-Party Defendant.	)
	)

Defendant Carriage Hill Associates, Inc. ("CHNY") by and through its undersigned counsel, hereby answers the Plaintiffs' Fourth Amended Complaint. CHNY denies each and every allegation of Plaintiffs' Fourth Amended Complaint not specifically admitted herein.

1. CHNY denies each and every allegation of the Complaint not hereinafter specifically admitted.

2. Responding to Paragraph 1, Defendant CHNY admits, upon information and belief, the allegations contained in Paragraph 1.

3. Responding to Paragraph 2 through 21, Defendant CHNY & is without sufficient information to respond to allegations contained therein and, therefore, denies same.

4. Responding to Paragraph 22, to the extent that these allegations suggest or imply any liability on the part of Defendant CHNY, those allegations are denied. Further responding, those allegations refer to a Defendant other than Defendant CHNY, Defendant CHNY is without sufficient information to respond to allegations directed at Defendants other than itself and, therefore, denies the same.

5. Responding to Paragraph 23, to the extent that these allegations suggest or imply any

liability on the part Defendant CHNY, those allegations are denied. Further responding, those allegations refer to a Defendant other than Defendant CHNY. Defendant CHNY is without sufficient information to respond to allegations directed at Defendants other than itself and, therefore, denies the same.

6. Responding to Paragraph 24, Defendant CHNY admits so much as it is a corporation organized and existing under the laws of New York that has done business in South Carolina. The remaining allegations are denied as stated.

7. Responding to Paragraphs 25, 26, 27, and 28, to the extent that those allegations are refer to CHNY, those allegations are denied as stated.

8. Responding to Paragraph 29, Defendant CHNY admits so much as references the language utilized in Plaintiffs' 4th Amended Complaint, which speaks for itself. Further responding, Defendant CHNY answers this pleading only on behalf of itself.

9. Responding to Paragraph 30, Defendant CHNY admits so much as alleges that Weather Shield was hired to perform certain work and / or provide certain products at The Oaks. Defendant CHNY is without sufficient information to further respond to the allegations contained in Paragraph 30.

10. Responding to Paragraph 31, Defendant CHNY admits so much as alleges that Muhler was hired to perform certain work and / or provide certain products at The Oaks. Defendant CHNY is without sufficient information to further respond to the allegations contained in Paragraph 31.

11. Responding to Paragraph 32, Defendant CHNY admits so much as alleges that A.C. was hired to perform certain work and / or provide certain products at The Oaks. Further responding, to the extent that the allegations contained in Paragraph 32 suggest or imply any

contract with Defendant CHNY, those allegations are denied. Further responding, to the extent that these allegations suggest or imply any liability on the part Defendant CHNY, those allegations are denied. Defendant CHNY is without sufficient information to further respond to the allegations contained in Paragraph 32 and, therefore, denies same.

12. Responding to Paragraph 33, Defendant CHNY admits so much as alleges that Coastal Roofing, was hired to perform certain work and / or provide certain products at The Oaks. Further responding, to the extent that the allegations contained in Paragraph 33 suggest or imply any contract with Defendant CHNY, those allegations are denied. Further responding, to the extent that these allegations suggest or imply any liability on the part Defendant CHNY, those allegations are denied. Defendant CHNY is without sufficient information to further respond to the allegations contained in Paragraph 33 and, therefore, denies same.

13. Responding to Paragraph 34, Defendant CHNY admits so much as alleges that Coastal Caulking was hired to perform certain work and / or provide certain products at The Oaks. Further responding, to the extent that these allegations suggest or imply any liability on the part Defendant CHNY, those allegations are denied. Defendant CHNY is without sufficient information to further respond to the allegations contained in Paragraph 34 and, therefore, denies same.

14. Responding to Paragraph 35, Defendant CHNY admits so much as alleges that Phillips was hired to perform certain work and / or provide certain products at The Oaks. Further responding, to the extent that these allegations suggest or imply any liability on the part Defendant CHNY, those allegations are denied. Defendant CHNY is without sufficient information to further respond to the allegations contained in Paragraph 35 and, therefore, denies same.

15. Responding to Paragraph 36, the allegations contained therein are, upon information and belief, admitted.

16. Responding to Paragraph 37, Defendant CHNY admits upon information and belief the Rumplick is a citizen of New York licensed to do business in the State of South Carolina. Defendant CHNY is without sufficient information to further respond to the allegations contained in Paragraph 37.

17. Responding to Paragraph 38, Defendant CHNY admits so much as references language contained in Plaintiffs' 4th Amended Complaint, which speaks for itself.

18. Responding to Paragraph 39, Defendant CHNY is without sufficient information to respond to allegations directed at Defendants other than itself and, therefore, denies the same.

19. Responding to Paragraph 40, to the extent that the allegations refer to Defendant CHNY, those allegations are expressly denied.

20. Responding to Paragraphs 41 and 42, Defendant CHNY is without sufficient information to respond to the allegations contained therein.

21. Responding to Paragraph 43, CHNY reasserts and realleges its responses to Paragraphs 1 through 42 as if restated verbatim herein.

22. Responding to Paragraph 44, Defendant CHNY is without sufficient information to respond to the allegations contained therein.

23. Responding to Paragraph 45 through 49, to the extent that the allegations therein refer to CHNY, those allegations are denied. Further responding, Defendant CHNY craves reference to the referenced contract documents and admits to the scope of work and parties included therein. Further responding, Defendant CHNY is without sufficient information to respond to the remaining allegations contained in Paragraphs 45 through 49 and, therefore,

denies same.

24. Responding to Paragraph 50, Defendant CHNY is without sufficient information to respond to the allegations contained in Paragraph 50.

25. Responding to Paragraph 51, those allegations are denied as stated.

26. Responding to Paragraph 52, to the extent that the allegations contained therein refer to Defendant CHNY, those allegations are denied. Defendant CHNY is without sufficient information to respond to allegations directed at parties other than itself.

27. Responding to Paragraph 53 through 55, to the extent that the allegations therein refer to CHNY or suggest or imply any liability on the part Defendant CHNY, those allegations are expressly denied. Further responding, Defendant CHNY craves reference to the referenced contract documents and admits to the language contained therein, which speaks for itself. Further responding, Defendant CHNY is without sufficient information to respond to the remaining allegations contained in Paragraphs 53 through 55 and, therefore, denies same.

28. Responding to Paragraph 56, Defendant CHNY admits so much as alleges that an inspection was performed at The Oaks in mid 2008 several years after initial construction. The remaining allegations are denied as stated.

29. Responding to Paragraph 57, Defendant CHNY admits so much as alleges that as a result of the mid 2008 inspection, an engineer provided a report; Defendant CHNY craves reference to said report, the opinions of which engineer are contained in that document and speak for themselves. The remaining allegations contained in Paragraph 57 are denied as stated.

30. Responding to Paragraph 58 and 59, including all subparts, those allegations are denied as stated.

31. Responding to Paragraph 60, Defendant CHNY is without sufficient information to

form a belief as to what the Plaintiffs have been advised and, therefore, denies same. Further responding, to the extent that such allegations suggest or imply any liability on the part of Defendant CHNY, those allegations are expressly denied.

32. Responding to Paragraphs 61 and 62, Defendant CHNY is without sufficient information to respond to allegations directed at Defendants other than itself and, therefore, denies the same.

33. Responding to Paragraph 63, to the extent that those allegations refer to Defendant CHNY, those allegations are expressly denied. Further responding, Defendant CHNY is without sufficient information to respond to allegations directed at Defendants other than itself and, therefore, denies the same.

34. Responding to Paragraph 64, CHNY reasserts and realleges its responses to Paragraphs 1 through 63 as if restated verbatim herein.

35. Responding to Paragraphs 65 and 66, including all subparts, to the extent that these allegations refer to Defendant CHNY or suggest or imply any liability on the part of Defendant CHNY, those allegations are expressly denied. Further responding, to the extent that the allegations refer to a Defendant other than Defendant CHNY, Defendant CHNY is without sufficient information to respond to allegations directed at Defendants other than itself and, therefore, denies the same.

36. Responding to Paragraph 67, CHNY reasserts and realleges its responses to Paragraphs 1 through 66 as if restated verbatim herein.

37. Responding to Paragraphs 68 and 69, to the extent that these allegations refer to Defendant CHNY or suggest or imply any liability on the part of Defendant CHNY, those allegations are expressly denied. Further responding, to the extent that the allegations refer to a

Defendant other than Defendant CHNY, Defendant CHNY is without sufficient information to respond to allegations directed at Defendants other than itself and, therefore, denies the same.

38. Responding to Paragraph 70, CHNY reasserts and realleges its responses to Paragraphs 1 through 69 as if restated verbatim herein.

39. Responding to Paragraphs 71 through 76, to the extent that these allegations refer to Defendant CHNY or suggest or imply any liability on the part of Defendant CHNY, those allegations are expressly denied. Further responding, to the extent that the allegations refer to a Defendant other than Defendant CHNY, Defendant CHNY is without sufficient information to respond to allegations directed at Defendants other than itself and, therefore, denies the same.

40. Responding to Paragraph 77, CHNY reasserts and realleges its responses to Paragraphs 1 through 76 as if restated verbatim herein.

41. Responding to Paragraphs 78 through 86, to the extent that these allegations suggest or imply any liability on the part of Defendant CHNY, those allegations are expressly denied. Further responding, to the extent that the allegations refer to a Defendant other than Defendant CHNY, Defendant CHNY is without sufficient information to respond to allegations directed at Defendants other than itself and, therefore, denies the same.

42. Responding to Paragraph 87, CHNY reasserts and realleges its responses to Paragraphs 1 through 86 as if restated verbatim herein.

43. Responding to Paragraph 88, to the extent that these allegations suggest or imply any liability on the part of Defendant CHNY, those allegations are expressly denied. Further responding, to the extent that the allegations refer to a Defendant other than Defendant CHNY, Defendant CHNY is without sufficient information to respond to allegations directed at Defendants other than itself and, therefore, denies the same.

44. Responding to Paragraph 89, CHNY reasserts and realleges its responses to Paragraphs 1 through 88 as if restated verbatim herein.

45. Responding to Paragraphs 90 through 96, including all subparts, to the extent that these allegations refer to Defendant CHNY or suggest or imply any liability on the part of Defendant CHNY, those allegations are expressly denied. Further responding, to the extent that the allegations refer to a Defendant other than Defendant CHNY, Defendant CHNY is without sufficient information to respond to allegations directed at Defendants other than itself and, therefore, denies the same.

46. Responding to Paragraph 97, CHNY reasserts and realleges its responses to Paragraphs 1 through 96 as if restated verbatim herein.

47. Responding to Paragraphs 98 through 100, including all subparts, to the extent that these allegations refer to Defendant CHNY or suggest or imply any liability on the part of Defendant CHNY, those allegations are expressly denied. Further responding, to the extent that the allegations refer to a Defendant other than Defendant CHNY, Defendant CHNY is without sufficient information to respond to allegations directed at Defendants other than itself and, therefore, denies the same.

48. Responding to Paragraph 101, CHNY reasserts and realleges its responses to Paragraphs 1 through 100 as if restated verbatim herein.

49. Responding to Paragraphs 102 through 104, to the extent that these allegations refer to Defendant CHNY or suggest or imply any liability on the part of Defendant CHNY, those allegations are expressly denied. Further responding, to the extent that the allegations refer to a Defendant other than Defendant CHNY, Defendant CHNY is without sufficient information to respond to allegations directed at Defendants other than itself and, therefore, denies the same.

50. Responding to Paragraph 105, CHNY reasserts and realleges its responses to Paragraphs 1 through 104 as if restated verbatim herein.

51. Responding to Paragraphs 106 through 108, those allegations are denied.

52. Responding to Paragraph 109, CHNY reasserts and realleges its responses to Paragraphs 1 through 108 as if restated verbatim herein.

53. Responding to Paragraphs 110 through 112, to the extent that these allegations refer to Defendant CHNY or suggest or imply any liability on the part of Defendant CHNY, those allegations are expressly denied. Further responding, to the extent that the allegations refer to a Defendant other than Defendant CHNY, Defendant CHNY is without sufficient information to respond to allegations directed at Defendants other than itself and, therefore, denies the same.

54. Responding to Paragraph 113, CHNY reasserts and realleges its responses to Paragraphs 1 through 112 as if restated verbatim herein.

55. Responding to Paragraphs 114 through 120, to the extent that these allegations refer to Defendant CHNY or suggest or imply any liability on the part of Defendant CHNY, those allegations are expressly denied. Further responding, to the extent that the allegations refer to a Defendant other than Defendant CHNY, Defendant CHNY is without sufficient information to respond to allegations directed at Defendants other than itself and, therefore, denies the same.

56. Responding to Paragraph 121, CHNY reasserts and realleges its responses to Paragraphs 1 through 120 as if restated verbatim herein.

57. Responding to Paragraphs 122 through 125, to the extent that these allegations suggest or imply any liability on the part of Defendant CHNY, those allegations are expressly denied. Further responding, to the extent that the allegations refer to a Defendant other than Defendant CHNY, Defendant CHNY is without sufficient information to respond to allegations

directed at Defendants other than itself and, therefore, denies the same.

58. Responding to Paragraph 126, CHNY reasserts and realleges its responses to Paragraphs 1 through 125 as if restated verbatim herein.

59. Responding to Paragraphs 127 through 129, those allegations are denied.

60. Responding to Paragraph 130, CHNY reasserts and realleges its responses to Paragraphs 1 through 129 as if restated verbatim herein

61. Responding to Paragraph 131, those allegations are denied as stated.

62. Responding to Paragraph 132, to the extent that the allegations include any duty other than those arising at law, those allegations are denied.

63. Responding to Paragraph 133, those allegations are denied as stated.

64. Responding to Paragraphs 134 and 135, those allegations are denied.

65. Responding to Paragraph 136, CHNY reasserts and realleges its responses to Paragraphs 1 through 135 as if restated verbatim herein.

66. Responding to Paragraph 137, to the extent that the allegations include any duty or obligation other than those arising at law, those allegations are denied.

67. Responding to Paragraph 138, those allegations are denied as stated.

68. Responding to Paragraphs 139, those allegations are expressly denied.

69. Responding to Paragraph 140, CHNY reasserts and realleges its responses to Paragraphs 1 through 139 as if restated verbatim herein.

70. Responding to Paragraph 141 through 144, those allegations are expressly denied.

71. Responding to Paragraph 145, CHNY reasserts and realleges its responses to Paragraphs 1 through 144 as if restated verbatim herein.

72. Responding to Paragraphs 146 through 149, to the extent that these allegations

suggest or imply any liability on the part of Defendant CHNY, those allegations are expressly denied. Further responding, to the extent that the allegations refer to a Defendant other than Defendant CHNY, Defendant CHNY is without sufficient information to respond to allegations directed at Defendants other than itself and, therefore, denies the same.

73. Responding to Paragraph 150, CHNY reasserts and realleges its responses to Paragraphs 1 through 149 as if restated verbatim herein.

74. Responding to Paragraphs 151 through 156, to the extent that these allegations suggest or imply any liability on the part of Defendant CHNY, those allegations are expressly denied. Further responding, to the extent that the allegations refer to a Defendant other than Defendant CHNY, Defendant CHNY is without sufficient information to respond to allegations directed at Defendants other than itself and, therefore, denies the same.

75. Responding to Paragraph 157, CHNY reasserts and realleges its responses to Paragraphs 1 through 156 as if restated verbatim herein.

76. Responding to Paragraphs 158 through 163, to the extent that these allegations suggest or imply any liability on the part of Defendant CHNY, those allegations are expressly denied. Further responding, to the extent that the allegations refer to a Defendant other than Defendant CHNY, Defendant CHNY is without sufficient information to respond to allegations directed at Defendants other than itself and, therefore, denies the same.

FURTHER RESPONDING AND AS A
AS A FIRST AFFIRMATIVE DEFENSE
(No Privity of Contract / Relationship)

77. No contract nor other relationship existed between CHNY and Plaintiffs.

**FURTHER RESPONDING AND AS A
AS A SECOND AFFIRMATIVE DEFENSE**
(Estoppel, Laches and Waiver)

78. Plaintiffs' claims are barred by the Doctrines of Estoppel, Laches and Waiver.

**FURTHER RESPONDING AND
AS A THIRD AFFIRMATIVE DEFENSE**
(Statute of Limitations)

79. Plaintiffs may have failed to commence this action within the time required by the applicable Statute of Limitations, and the failure of Plaintiffs to timely commence this action constitutes a bar and complete defense to the claims of Plaintiffs.

**FURTHER RESPONDING AND
AS A FOURTH AFFIRMATIVE DEFENSE**
(Statute of Repose)

80. Plaintiffs may have failed to commence this action within the time regarded by the applicable Statute of Repose, and the failure of Plaintiffs to timely commence the action constitutes a bar and complete defense to the claims of Plaintiffs.

**FURTHER RESPONDING AND
AS A FIFTH AFFIRMATIVE DEFENSE**
(Comparative Negligence)

81. That the injuries and damages sustained by Plaintiffs, if any, may have been due to and caused by and may have been the direct and proximate result of the negligence, carelessness, recklessness, willfulness and wantonness of Plaintiffs, and recovery should be barred or reduced in proportion to Plaintiffs' negligence as provided by law.

**FURTHER RESPONDING AND
AS A SIXTH AFFIRMATIVE DEFENSE**
(Unclean Hands)

82. To the extent that Plaintiffs may have been negligent, grossly negligent, willful, wanton and reckless, resulting in damages allegedly sustained by Plaintiffs, Plaintiffs comes to

Court with unclean hands.

FURTHER RESPONDING AND
AS A SEVENTH AFFIRMATIVE DEFENSE
(Intervening and Superseding Negligence)

83. That the injury or damage suffered by Plaintiffs, if any, may have been due to and caused by and may be the direct and proximate result of the intervening and superseding negligence, willfulness, wantonness and recklessness of other Defendants or Parties and, as such, constitutes a complete defense to the claims of Plaintiffs against this Defendant.

FURTHER RESPONDING AND
AS AN EIGHTH AFFIRMATIVE DEFENSE
(Responsibility Limited by Scope of Agreement)

84. That the conditions and deficiencies alleged to exist in Plaintiffs' Complaint may not be within the scope of services (if any) which were requested of this Defendant, and this Defendant's responsibility (if any) is limited only to those conditions and deficiencies, if any, which are within the scope of services described in the agreement; and such constitutes a complete defense to the claims of Plaintiffs.

FURTHER RESPONDING AND
AS A NINTH AFFIRMATIVE DEFENSE
(Completion and Acceptance Bars Claims)

85. That the work undertaken by this Defendant (if any) on the project was fully and finally completed and such work was previously accepted by the owner as fully and finally complete and in full compliance with the contract documents (if any), putting an end to all further obligations of this Defendant pursuant to the contract and such completion and acceptance constitutes a complete defense to all claims.

FURTHER RESPONDING AND
AS A TENTH AFFIRMATIVE DEFENSE
(Breach of Warranty as to Plans and Specifications)

86. Plaintiffs may have furnished plans, specifications and drawings for the use of this Defendant in the construction of the project and thereby impliedly warranted the sufficiency of the plans, specifications and drawings for the purpose in view and impliedly warranted that they fully and accurately disclosed all information necessary for the property construction of the project. That the plans, specifications and drawings furnished by Plaintiffs may have been defective, insufficient, conflicting and incomplete and Plaintiffs thereby breached the foregoing warranties which are implied by law and such constitute a complete defense of all claims.

FURTHER RESPONDING AND
AS AN ELEVENTH AFFIRMATIVE DEFENSE
(Notice of Claim)

87. Plaintiffs may have failed to comply with the requirements of S.C. Code Ann. §40-59-840 and this case must be stayed until such time as the Plaintiffs has fulfilled their statutory requirements.

FURTHER RESPONDING AND
AS A TWELFTH AFFIRMATIVE DEFENSE
(Failure to Maintain)

88. Plaintiffs was obligated to maintain the structure against normal wear, tear and deterioration due to age and the elements and Plaintiffs may have failed to do so and such is the direct and proximate cause of the damages suffered by Plaintiffs and such constitutes a complete defense to the claims of Plaintiffs.

FURTHER RESPONDING AND
AS A THIRTEENTH AFFIRMATIVE DEFENSE
(No Joint and Several Liability)

89. There was no concert of action between this Defendant and any other Defendant and,

therefore, this Defendant is not a joint tortfeasors and this Defendant may not be held jointly and severally liable with other Defendants pursuant to S.C. Code Ann. §15-38-15, as amended, and all other applicable common law and statutory provisions.

FURTHER RESPONDING AND
AS A FOURTEENTH AFFIRMATIVE DEFENSE
(Setoff)

90. Upon information and belief, other Defendants alleged in Plaintiffs' Complaint to be joint tortfeasors with this Defendant, which is denied, have or may in the future compromise and settle all matters and things at issue between them and Plaintiffs. Pursuant to South Carolina law, in cases where defendants are alleged to be joint and several tortfeasors, any amount paid on behalf of one joint and several tortfeasors in settlement of claims is a setoff against any claim or judgment that might be rendered against any remaining joint or several tortfeasors. Pursuant to those provisions, this Defendant is entitled to have any judgment rendered against it setoff by any funds paid in settlement on behalf of other joint and several tortfeasors.

FURTHER RESPONDING AND
AS A FIFTEENTH AFFIRMATIVE DEFENSE
(Lack of Jurisdiction 12(b)(1))

91. That the Court may lack jurisdiction over the subject matter of Plaintiffs' claims and, therefore, those claims should be dismissed pursuant to the provisions of SCRPC Rule 12(b)(1).

FURTHER RESPONDING AND
AS A SIXTEENTH AFFIRMATIVE DEFENSE
(No Personal Jurisdiction 12(b)(2))

92. That this Defendant may be a resident of a county other than Berkeley and has a right to engage in this action in a county where he resided at the time of the commencement of this action, and this Defendant is informed and believes that the venue of this action should be

changed to his county of residence pursuant to SCRPC 12(b)(2) and Rule 82(b).

FURTHER RESPONDING AND
AS A SEVENTEENTH AFFIRMATIVE DEFENSE
(Failure of Service Rule 12(b)(5))

93. That the Court may lack jurisdiction over the person of this Defendant because Plaintiffs may not have obtained proper service in the manner required by law and, therefore, Plaintiffs' Complaint should be dismissed pursuant to the provisions of SCRPC Rule 12(b)(5).

FURTHER RESPONDING AND
AS AN EIGHTEENTH AFFIRMATIVE DEFENSE
(Failure to State a Claim (12)(b)(6))

94. The allegations contained in Plaintiffs' Complaint fail to state a claim upon which relief can be granted.

FURTHER RESPONDING AND
AS A NINETEENTH AFFIRMATIVE DEFENSE
(Punitive and Multiple Damages Not Allowed)

95. The various claims set forth herein seek both punitive damages and multiple damages on different theories for the same loss, and Plaintiffs is not entitled to recover both punitive damages and multiple damages for the same loss, as such constitutes a double recovery.

FURTHER RESPONDING AND
AS A TWENTIETH AFFIRMATIVE DEFENSE
(Punitive Damages Unconstitutional)

96. Plaintiffs' Complaint, to the extent that it seeks punitive or exemplary damages, violates the rights of this Defendant to procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina, and, therefore, fails to state a cause of action upon which either exemplary or punitive damages can be awarded.

FURTHER RESPONDING AND
AS A TWENTY-FIRST AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

97. Plaintiffs has failed to mitigate their damages as required by law.

FURTHER RESPONDING AND
AS A TWENTY-SECOND AFFIRMATIVE DEFENSE
(Failure of Conditions Precedent or Subsequent)

98. Failure of conditions precedent or subsequent may bar Plaintiffs' claims against this Defendant.

FURTHER RESPONDING AND
AS A TWENTY-THIRD AFFIRMATIVE DEFENSE
(Economic Loss Rule)

99. Plaintiffs' claims are or may be blocked by the "economic loss rule."

FURTHER RESPONDING AND
AS A TWENTY-FOURTH AFFIRMATIVE DEFENSE
(Failure to Take Prompt and Reasonable Action)

100. Plaintiffs has failed to take prompt and reasonable action under the circumstances to avoid the occurrence of additional damage to the structure and such failure to mitigate damages constitutes a complete defense as to that portion of damages which could have been otherwise avoided by reasonable and prompt action on the part of the Plaintiffs.

FURTHER RESPONDING AND
AS A TWENTY-FIFTH AFFIRMATIVE DEFENSE
(Conformity with Industry Standards)

101. The work and services provided by this Defendant (if any) was, at all time applicable to the subject contract (if any), in conformity with industry standards at that time.

FURTHER RESPONDING AND
AS A TWENTY-SIXTH AFFIRMATIVE DEFENSE
(Patent Defect)

102. That any defect found in the Plaintiffs' property, which is strictly denied, may have

been revealed and accepted at purchase and, therefore, the subsequent purchaser/Plaintiffs are precluded from bringing any cause of action relating to the known defect.

FURTHER RESPONDING AND
AS A TWENTY-SEVENTH AFFIRMATIVE DEFENSE
(No Breach of Contract)

103. This Defendant did not breach any alleged contract with Plaintiffs.

FURTHER RESPONDING AND
AS A TWENTY-EIGHTH AFFIRMATIVE DEFENSE
(Negligence of Others)

104. Any alleged injury Plaintiffs sustained may have been due to and proximately caused by the sole and intervening negligence, recklessness, willfulness and/or wantonness of some persons or entities other than this Defendant over which this Defendant had no control and which occurred prior or subsequent to any acts or omissions by this Defendant, if any (which is expressly denied), and, therefore, the sole and intervening acts of other third-parties may be the real and proximate cause of any alleged injuries to the Plaintiffs, therefore, Plaintiffs may not recover from this Defendant.

FURTHER RESPONDING AND
AS A TWENTY-NINTH AFFIRMATIVE DEFENSE
(Unreasonable Delay/Laches)

105. Plaintiffs neglected for an unreasonable and unexplained length of time to provide notice of such alleged deficiencies to this Defendant who has been prejudiced by the delay and such unreasonable delay and resulting prejudice constitute a complete defense to the claims of the Plaintiffs.

FURTHER RESPONDING AND
AS A THIRTIETH AFFIRMATIVE DEFENSE
(Warranty of Merchantability Not Applicable - No Merchant)

106. The thrust of this Defendant's work, if any, on the project was for services, not goods

and this Defendant is not a merchant as defined by S.C. Code Ann. § 36-2-104(1) and such constitutes a complete defense to all claims of Plaintiffs regarding breach of warranty of merchantability.

FURTHER RESPONDING AND
AS A THIRTY-FIRST AFFIRMATIVE DEFENSE
(UCC Does Not Apply - Contract Not For Goods)

107. The predominant factor, thrust, or purpose of the alleged subcontract agreement, if any, was one for the delivery of services accompanied by the acquisition and furnishing of the necessary materials, and it is therefore not a contract for the purchase and sale of goods in which the warranties or merchantability and fitness for a particular purpose may be implied; and such constitutes a complete defense to any claims of Plaintiffs for breach of implied warranty.

FURTHER RESPONDING AND
AS A THIRTY-SECOND AFFIRMATIVE DEFENSE
(Warranty of Fitness Not Applicable - No Reliance)

108. Plaintiffs placed no reliance upon this Defendant's skill or judgment in selecting and furnishing the materials which were incorporated in the construction, but rather, relied upon the judgment, skill and approval of others, and themselves, as to the selection and suitability of such materials; and such constitutes a complete defense to claims for breach of warranty of fitness for use.

FURTHER RESPONDING AND
AS A THIRTY-THIRD AFFIRMATIVE DEFENSE
(Statute of Frauds)

109. Plaintiffs' claims are or may be barred by the statute of frauds.

FURTHER RESPONDING AND
AS A THIRTY-FOURTH AFFIRMATIVE DEFENSE
(South Carolina Code Ann. §27-1-15 (1976))

110. South Carolina Code Ann. §27-1-15 (1976) makes no provision for an award of

attorney's fees and interest to prevailing Plaintiffs and/or cross-claimants and, therefore, constitutes an unconstitutional denial or equal protection of the laws pursuant to the provisions of the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution.

FURTHER RESPONDING AND
AS A THIRTY-FIFTH AFFIRMATIVE DEFENSE
(Accord and Satisfaction)

111. All issues between the parties hereto may have been previously resolved by agreement that a Defendant would pay and the Plaintiffs would accept a specific sum in full settlement of all claims and a Defendant thereafter made full payment and satisfaction of the agreed amount; and such constitutes a complete defense to the claims of the Plaintiffs.

FURTHER RESPONDING AND
AS A THIRTY-SIXTH AFFIRMATIVE DEFENSE
(Estoppel)

112. Plaintiffs by their actions, conduct, words or silence which amounts to a representation or other concealment of material facts, may have caused this Defendant to alter its position to its prejudice or injury and Plaintiffs should, therefore, be stopped from bringing the within claims by their own conduct; and such constitutes a complete defense to the claims of the Plaintiffs.

FURTHER RESPONDING AND
AS A THIRTY-SEVENTH AFFIRMATIVE DEFENSE
(Final Payment as Waiver or Release)

113. That the owner of the project has previously made final payment to this contractor for all work performed pursuant to the agreement, if any, between the parties and such final payment constitutes a waiver and release of all claims of the nature set forth in Plaintiffs' Complaint and, therefore, such final payment constitutes a defense to the claims of Plaintiffs.

FURTHER RESPONDING AND
AS A THIRTY-EIGHTH AFFIRMATIVE DEFENSE
(Parole Evidence)

114. That the alleged contract made by the parties (if any) was intended to be a final embodiment of their agreement and cannot be modified by evidence that adds to, varies, or contradicts the writing.

FURTHER RESPONDING AND
AS A THIRTY-NINTH AFFIRMATIVE DEFENSE
(Best Evidence)

115. That to prove the contents of a contract (if any) a party must produce the original writing.

FURTHER RESPONDING AND
AS A FORTIETH AFFIRMATIVE DEFENSE
(No Notice)

116. Plaintiffs may have failed to give any reasonable and meaningful notice to the Defendant as to the existence of the alleged breach and failed to give the Defendant a reasonable opportunity to correct such alleged defects, (the existence of which is denied) and such failure to give notice constitutes a complete defense to the claims of the Plaintiffs for breach of warranty of workmanship.

FURTHER RESPONDING AND
AS A FORTY-FIRST AFFIRMATIVE DEFENSE
(Rule 8(c) SCRCP)

117. To the extent applicable, this Defendant raises all affirmative defenses required by Rule 8(c) SCRCP.

FURTHER RESPONDING AND
AS A FORTY-SECOND AFFIRMATIVE DEFENSE
(Right to Amend)

118. This Defendant has not had an opportunity to conduct a sufficient investigation or to

engage in adequate discovery regarding the circumstances of Plaintiffs' allegations. This Defendant intends to act as best it can to inform itself of the pertinent facts and prevailing circumstances surrounding any alleged injury or damage to Plaintiffs as alleged in Plaintiffs' Complaint and gives notice of its intent to assert any further affirmative defenses that its investigation gathering process may indicate as supported by fact and law. This Defendant reserves the right to amend this Answer and assert such additional defenses.

FURTHER RESPONDING AND AS
A FORTY-THIRD AFFIRMATIVE DEFENSE
(Incorporation of Defenses Raised By Other Defendants Prior Pleadings)

119. CHNY incorporates the defenses of any other defendants as they may be applicable to this Defendant and incorporates those defenses which it has raised in its prior pleadings as if restated herein.

FURTHER RESPONDING AND AS
A FORTY-FOURTH AFFIRMATIVE DEFENSE

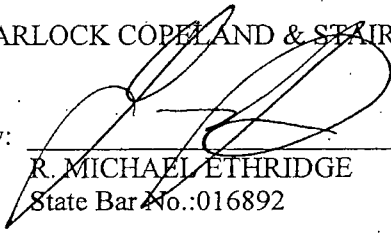
120. CHNY demands a trial by jury as to all issues in this matter.

WHEREFORE, having fully answered the allegations of Plaintiffs' Fourth Amended Complaint, Defendant CHNY prays that Plaintiffs' Fourth Amended Complaint be dismissed with prejudice as to Defendant CHNY, for all costs to be cast upon Plaintiffs' and for such other relief as this Court may deem just and proper

SIGNATURE PAGE TO FOLLOW

Respectfully submitted,

CARLOCK COPELAND & STAIR, LLP

By: 

R. MICHAEL ETHRIDGE

State Bar No.:016892

LAURA E. PARIS
State Bar No.:74125

40 Calhoun Street, Suite 400
Charleston, SC 29401-3531
843-727-0307

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-08-1068

DANIEL ISLAND RIVERSIDE
DEVELOPERS, LLC., and CARRIAGE
HILL ASSOCIATES OF CHARLESTON,
LLC.,

Plaintiffs,

vs.

WEATHER SHIELD
MANUFACTURING, INC., THE
MUHLER CO., INC., and A.C.
CONSTRUCTION, INC.,

Defendants.

CERTIFICATE OF SERVICE

A.C. CONSTRUCTION, INC.,

Plaintiffs

vs.

DANIEL ISLAND RIVERSIDE
DEVELOPERS, LLC., and TRAVELERS
CASUALTY AND SURETY COMPANY
OF AMERICA,

Defendants

GEOFFREY C. CIPKALA and SAMUEL
C. AGEE, as tenants in common of the
common elements of the Oaks at River's
Edge Horizontal Property Regime and on
behalf of themselves and all other tenants
in common,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE

DEVELOPERS, LLC., CARRIAGE HILL)
ASSOCIATES OF CHARLESTON, LLC.,)
CARRIAGE HILL ASSOCIATES, INC.,)

Defendants.)

THE OAKS AT RIVERS EDGE)
PROPERTY OWNERS ASSOCIATION,)
INC., JOHN E. ATKINSON, JOAN D.)
STRANDQUIST, JOSEPH E.)
CHIOVAROU, JR., PEYTON H. COOK,)
JR., BRENDA COOK, JOHN W.)
EDELLEN, KAREN A. NELSON,)
ROBERT J. GRAHAM, MAUREEN S.)
GRAHAM. KEVIN O. HUX, NANCY K.)
JOHNSON as trustee for the Nancy K.)
Johnson Revocable Trust, WILLIAM)
JUNG, CHARLES MARAZITI,)
PATRICIA MARAZITI, DONNA DEE)
MORAN, GEORGE S. POLLARD,)
ELEANOR J. POLLARD, ROBERT)
REECE, GERARD M. RUVO AND SUE)
S. RUVO as trustees for the Ruvo 2006)
Living Trust, ROBERT FARINA, MARY)
ANN FARINA, CAROLYN M.)
JENNINGS, THOMAS EDWARD)
KEANE, EDWARD WALLACE BARR,)
III, RICHARD B. PEKRUHN, PAULINE)
PEKRUHN, GREGORY B. NATHAN,)
RICHARD JENNINGS, MATTHEW J.)
SEVERANCE, AND ELIZABETH)
ASHLEY PHILLIPS SEVERANCE,)

Plaintiffs,)

vs.)

DANIEL ISLAND RIVERSIDE)
DEVELOPERS, LLC., CARRIAGE HILL)
ASSOCIATES OF CHARLESTON, LLC.,)
CARRIAGE HILL ASSOCIATES, INC.,)
WEATHER SHIELD)
MANUFACTURING, INC., THE)
MUHLER CO., INC., A.C.)
CONSTRUCTION, INC., COASTAL)

ROOFING CO., INC., COASTAL)
 CAULKING, INC., MIKE PHILLIPS)
 d/b/a MIKE PHILLIPS MASONRY,)
 GERALD RUMPLICK, EDWARD J.)
 D'ORAZIO, and RICH BEHRINGER)
)
 Defendants.)
 THE MUHLER COMPANY, INC.,)
)
 Third-Party Plaintiffs,)
 vs.)
)
 CASTLE SIDING, INC.)
)
 Third-Party Defendant.)

I hereby certify that I have this day served a copy of the within and foregoing pleading upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Charles S. Altman, Esq.
 Meredith L. Coker, Esq.
 Altman & Coker, LLC
 P.O. Box 265
 Charleston, SC 29402

Roy P. Maybank, Esq.
 Amanda R. Maybank, Esq.
 Maybank Law Firm, LLC
 P.O. Box 12579
 Charleston, SC 29422

W.H. Bundy, Jr., Esq.
 M. Brent McDonald, Esq.
 Smith Bundy Bybee & Barnett, PC
 P.O. Box 1542
 Mt. Pleasant, SC 29465

Gaines W. Smith, Esq.
 Legare Hare & Smith
 720 St. Andrews Boulevard
 Charleston, SC 29407

Christine Companion Varnado, Esq.
 T. Scott Forster, Esq.
 The Seibels Law Firm, P.A.
 127 King Street, Suite 100
 Charleston, SC 29401

Michael B.T. Wilkes, Esq.
 C. Daniel Atkinson, Esq.
 Wilkes Law Firm, P.A.
 127 Dunbar Street, Suite 200
 Spartanburg, SC 29306

Michael S. Seekings, Esq.
 Leath Bouch & Seekings, LLP
 92 Broad Street
 Charleston, SC 29401

Peter Gunnar Nistad, Esq.
 McAngus Goudelock & Courie, LLC
 78 Wentworth Street, Suite 200
 Charleston, SC 29401

David Cobb, Esq.
Turner Padget Graham Laney, P.A.
P.O. Box 22129
Charleston, SC 29413

Rick Corrigan, Esq.
Harry Ragsdale, Esq.
Corrigan & Chandler
P.O. Box 547
Charleston, SC 29402

Patrick T. Morrissey, Esq.
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492

This 21 day of June, 2012.

Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
(843)-727-0307

Kathy Jo Wentland
Kathy Jo Wentland
Paralegal to Laura E. Paris

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY.)

C.A. No: 2009-CP-08-1068

Daniel Island Riverside Developers, LLC,)
and Carriage Hill Associates of Charleston,)
LLC,)

Plaintiffs,)

v.)

Weather Shield Manufacturing, Inc., The)
Muhler Co., Inc., and A.C. Construction,)
Inc.,)

Defendants.)

**ANSWER OF DEFENDANTS GERALD
RUMPLICK AND EDWARD D'ORAZIO TO
PLAINTIFFS' FOURTH AMENDED
COMPLAINT**

A.C. Construction, Inc.,)

C.A. No.: 2009-CP-08-1413

Plaintiffs,)

v.)

Daniel Island Riverside Developers, LLC)
and Travelers Casualty and Surety)
Company of America,)

Defendants..)

Geoffrey C. Cipkala and Samuel C. Agee,)
as tenants in common of the common)
elements of the Oaks at River's Edge)
Horizontal Property Regime and on behalf)
of themselves and all other tenants in)
common,)

C.A. No.: 2008-CP-08-2714

Plaintiffs,)

v.)

Daniel Island Riverside Developers, LLC,)

Carriage Hill Associates of Charleston,
LLC and Carriage Hill Associates, LLC,

Defendants.

C.A. No.: 2008-CP-08-3916

The Oaks at Rivers Edge Property Owners
Association, Inc., John E. Atkinson, Joan
D. Strandquist, Joseph E. Chiovarou, Jr.,
Peyton H. Cook, Jr., Brenda Cook, John W.
Edelen, Karen A. Nelson, Robert J.
Graham, Maureen S. Graham, Kevin O.
Hux, Nancy K. Johnson as trustee for the
Nancy K. Johnson Revocable Trust,
William Jung, Charles Maraziti, Patricia
Maraziti, Donna Dee Moran, George S.
Pollard, Eleanor J. Pollard, Robert Reece,
Gerard M. Ruvo and Sue S. Ruvo as
trustees for the Ruvo 2006 Living Trust,
Roebt Farina, Mary Ann Farina, Carolyn
M. Jennings, Thomas Edward Keane,
Edward Wallace Barr, III, Richard B.
Pekruhn, Pauline Pekruhn, Gregory B.
Nathan, Richard Jennings, Matthew J.
Severance, and Elizabeth Ashley Phillips
Severance,

Plaintiffs,

v.

Daniel Island Riverside Developers, LLC,
Carriage Hill Associates of Charleston,
LLC, Carriage Hill Associates, Inc.,
Weather Shield Manufacturing, Inc., The
Muhler Co., Inc., A.C. Construction, Inc.,
Coastal Roofing, Co., Inc., Coastal
Caulking, Inc., Mike Phillips d/b/a Mike
Phillips Masonry, Gerald Rumplick,
Edward J. D'Orazio and Rich Behringer,

Defendants.

Defendants Gerald Rumplick ("Rumplick") and Edward J. D'Orazio ("D'Orazio") respond to the Fourth Amended Complaint of Plaintiffs as follows:

FIRST DEFENSE

(Paragraphs 1 – 156 Correspond to the Allegations of Plaintiffs' Fourth Amended Complaint)

1. Admitted upon information and belief.

2-20. Admitted upon information and belief.

21. Paragraph 21 does not allege any facts. It merely serves to explain an abbreviation used by Plaintiffs. Accordingly, no response is required from Rumplick and/or D'Orazio.

22. Rumplick and D'Orazio admit that Daniel Island Riverside Developers, LLC is a South Carolina limited liability company authorized to conduct business in South Carolina. As to the remaining allegations of Paragraph 22, Rumplick and D'Orazio are without information sufficient to admit the remaining allegations of Paragraph 22, and they therefore deny same.

23. Rumplick and D'Orazio admit that Carriage Hill Associates of Charleston, LLC, is a South Carolina limited liability company authorized to do business in South Carolina. Rumplick and D'Orazio further state that Carriage Hill Associates of Charleston, LLC, acted as the construction manager for the construction of the property. The remaining allegations of Paragraph 23 state legal conclusions which require no response from Rumplick and D'Orazio. To the extent a further response is deemed to be required from Rumplick and D'Orazio, Rumplick and D'Orazio are without information sufficient to admit or deny the remaining allegations of Paragraph 23 and therefore deny same.

24. Rumplick and D'Orazio admit that Carriage Hill Associates, Inc., is a corporation

organized and existing under the laws of the State of New York. The remaining allegations of Paragraph 24 state legal conclusions which require no response from Rumplick and D'Orazio. To the extent a further response is deemed to be required from Rumplick and D'Orazio, Rumplick and D'Orazio are without information sufficient to admit or deny the remaining allegations of Paragraph 24 and therefore deny same.

25. Paragraph 25 states a legal conclusion which requires no response from Rumplick and/or D'Orazio. To the extent a response is deemed to be required from Rumplick and D'Orazio, Rumplick and D'Orazio are without information sufficient to admit or deny the allegations of Paragraph 25 and therefore deny same.

26. Paragraph 26 states a legal conclusion which requires no response from Rumplick and/or D'Orazio. To the extent a response is deemed to be required from Rumplick and D'Orazio, Rumplick and D'Orazio are without information sufficient to admit or deny the allegations of Paragraph 26 and therefore deny same.

27. Paragraph 27 states a legal conclusion which requires no response from Rumplick and/or D'Orazio. To the extent a response is deemed to be required from Rumplick and D'Orazio, Rumplick and D'Orazio are without information sufficient to admit or deny the allegations of Paragraph 27 and therefore deny same.

28. Paragraph 28 states a legal conclusion which requires no response from Rumplick and/or D'Orazio. To the extent a response is deemed to be required from Rumplick and D'Orazio, Rumplick and D'Orazio are without information sufficient to admit or deny the allegations of Paragraph 28 and therefore deny same.

29. Paragraph 29 does not allege any facts. It merely serves to explain an abbreviation used by Plaintiffs. Accordingly, no response is required from Rumplick or

D'Orazio.

30-35. Admitted upon information and belief.

36. D'Orazio admits that he is a citizen and resident of the State of New York. He further admits that he is licensed to practice architecture in South Carolina. D'Orazio admits that he provided certain architectural services in Berkeley County, South Carolina. These services did not include site visits or on-site supervision of construction.

37. Rumplick admits that he is a citizen and resident of the State of New York. He admits that he is licensed to practice architecture in South Carolina, and he admits that he obtained his South Carolina licensure in or around April, 2007. Rumplick admits that he performed some work at the Property, but he denies that his work could be defined as "practicing architecture."

38. Paragraph 38 does not state any facts. It merely serves to explain an abbreviation used by Plaintiffs. Accordingly, no response is required from Rumplick and D'Orazio.

39. Rumplick and D'Orazio are without information sufficient to admit or deny the allegations of Paragraph 39 and therefore deny same.

40. Rumplick and D'Orazio are without information sufficient to admit or deny the allegations of Paragraph 40 and therefore deny same.

41. Paragraph 41 states a legal conclusion which requires no response from Rumplick and/or D'Orazio. To the extent a response is deemed to be required from Rumplick and D'Orazio, Rumplick and D'Orazio are without information sufficient to admit or deny the allegations of Paragraph 41 and therefore deny same.

42. Paragraph 42 states a legal conclusion which requires no response from Rumplick and/or D'Orazio. To the extent a response is deemed to be required from Rumplick and

D'Orazio, Rumplick and D'Orazio are without information sufficient to admit or deny the allegations of Paragraph 42 and therefore deny same.

43. Rumplick and D'Orazio incorporate their responses to Paragraphs 1 through 43 to the extent consistent herewith.

44. Admitted upon information and belief.

45. D'Orazio admits that he contracted to perform certain architectural services regarding the Property. Rumplick was an employee of Carriage Hill Associates of Charleston, LLC. He did not contract to perform any work, and he denies having provided any services that constitute "architectural services."

46. Admitted upon information and belief.

47. Admitted upon information and belief.

48. Admitted upon information and belief.

49. Rumplick and D'Orazio are without information sufficient to admit or deny the allegations of Paragraph 49 and therefore deny same.

50. Rumplick and D'Orazio are without information sufficient to admit or deny the allegations of Paragraph 50 and therefore deny same.

51. Rumplick and D'Orazio are without information sufficient to admit or deny the allegations of Paragraph 51 and therefore deny same.

52. Rumplick and D'Orazio are without information sufficient to admit or deny the allegations of Paragraph 52 and therefore deny same.

53. Rumplick and D'Orazio are without information sufficient to admit or deny the allegations of Paragraph 53 and therefore deny same.

54. Rumplick and D'Orazio are without information sufficient to admit or deny the

allegations of Paragraph 54 and therefore deny same.

55. Rumplick and D'Orazio are without information sufficient to admit or deny the allegations of Paragraph 55 and therefore deny same.

56. Rumplick and D'Orazio are without information sufficient to admit or deny the allegations of Paragraph 56 and therefore deny same.

57. Rumplick and D'Orazio deny that the buildings have been deficiently designed. As to the remaining claims of Paragraph 57, Rumplick and D'Orazio are without information sufficient to admit or deny the remaining allegations of Paragraph 57 and therefore deny same.

58. Rumplick and D'Orazio deny that Plaintiffs have incurred any damages caused by design deficiencies. As to the remaining allegations of Paragraph 58, Rumplick and D'Orazio are without information sufficient to admit or deny the remaining allegations of Paragraph 58 and therefore deny same.

59. Rumplick and D'Orazio deny any defects or deficiencies in the design of the Property. As to the remaining allegations of Paragraph 59, Rumplick and D'Orazio are without information sufficient to admit or deny the remaining allegations of Paragraph 59 and therefore deny same.

60. Rumplick and D'Orazio state that the Property was designed to comply with applicable building codes in place at the time of design and permitting. As to the remaining allegations of Paragraph 60, D'Orazio and Rumplick are without information sufficient to admit or deny the remaining allegations of Paragraph 60 and therefore deny same.

61. Rumplick and D'Orazio are without information sufficient to admit or deny the allegations of Paragraph 61 and therefore deny same.

62. Rumplick and D'Orazio are without information sufficient to admit or deny the

allegations of Paragraph 62 and therefore deny same.

63. Denied.

64. Rumplick and D'Orazio incorporate their responses to Paragraphs 1 through 63 to the extent consistent herewith.

65. Rumplick and D'Orazio crave reference to South Carolina law for their duties thereunder. Rumplick and D'Orazio deny having breached any duties owed to Plaintiffs.

66. Denied as to Rumplick and D'Orazio.

67. Rumplick and D'Orazio incorporate their responses to Paragraphs 1 through 66 to the extent consistent herewith.

68-69. Paragraphs 68 and 69 assert a cause of action against parties other than Rumplick and D'Orazio; therefore, no response is required from Rumplick and D'Orazio. To the extent a response is deemed to be required from Rumplick and D'Orazio, Rumplick and D'Orazio are without information sufficient to admit or deny the allegations of Paragraphs 69 and 70 and therefore deny same.

70. Rumplick and D'Orazio incorporate their responses to Paragraphs 1 through 69 to the extent consistent herewith.

71-76. Paragraphs 71 through 76 assert a cause of action against parties other than Rumplick and D'Orazio; therefore, no response is required from Rumplick and D'Orazio. To the extent a response is deemed to be required from Rumplick and D'Orazio, Rumplick and D'Orazio are without information sufficient to admit or deny the allegations of Paragraphs 71 through 76 and therefore deny same.

77. Rumplick and D'Orazio incorporate their responses to Paragraphs 1 through 76 to the extent consistent herewith.

78-86. Paragraphs 78 through 86 assert a cause of action against parties other than Rumplick and D'Orazio; therefore, no response is required from Rumplick and D'Orazio. To the extent a response is deemed to be required from Rumplick and D'Orazio, Rumplick and D'Orazio are without information sufficient to admit or deny the allegations of Paragraphs 78 through 86 and therefore deny same.

87. Rumplick and D'Orazio incorporate their responses to Paragraphs 1 through 86 to the extent consistent herewith.

88. Paragraph 88 asserts a cause of action against a party other than Rumplick and D'Orazio; therefore, no response is required from Rumplick and D'Orazio. To the extent a response is deemed to be required from Rumplick and D'Orazio, Rumplick and D'Orazio are without information sufficient to admit or deny the allegations of Paragraph 88 and therefore deny same.

89. Rumplick and D'Orazio incorporate their responses to Paragraphs 1 through 88 to the extent consistent herewith.

90-96. Paragraphs 90 through 96 assert a cause of action against a party other than Rumplick and D'Orazio; therefore, no response is required from Rumplick and D'Orazio. To the extent a response is deemed to be required from Rumplick and D'Orazio, Rumplick and D'Orazio are without information sufficient to admit or deny the allegations of Paragraphs 90 through 96 and therefore deny same.

97. Rumplick and D'Orazio incorporate their responses to Paragraphs 1 through 96 to the extent consistent herewith.

98-100. Paragraphs 98 through 100 assert a cause of action against parties other than Rumplick and D'Orazio; therefore, no response is required from Rumplick and D'Orazio.

To the extent a response is deemed to be required from Rumplick and D'Orazio, Rumplick and D'Orazio are without information sufficient to admit or deny the allegations of Paragraphs 98 through 100 and therefore deny same.

101. Rumplick and D'Orazio incorporate their responses to Paragraphs 1 through 100 to the extent consistent herewith.

102. Denied as to Rumplick and D'Orazio.

103. Denied as to Rumplick and D'Orazio.

104. Denied as to Rumplick and D'Orazio.

105. Rumplick and D'Orazio incorporate their responses to Paragraphs 1 through 104 to the extent consistent herewith.

106-108. Paragraphs 106 through 108 assert a cause of action against parties other than Rumplick and D'Orazio; therefore, no response is required from Rumplick and D'Orazio. To the extent a response is deemed to be required from Rumplick and D'Orazio, Rumplick and D'Orazio are without information sufficient to admit or deny the allegations of Paragraphs 106 through 108 and therefore deny same.

109. Rumplick and D'Orazio incorporate their responses to Paragraphs 1 through 108 to the extent consistent herewith.

110-112. Paragraphs 110 through 112 assert a cause of action against a party other than Rumplick and D'Orazio; therefore, no response is required from Rumplick and D'Orazio. To the extent a response is deemed to be required from Rumplick and D'Orazio, Rumplick and D'Orazio are without information sufficient to admit or deny the allegations of Paragraphs 110 through 112 and therefore deny same.

113. Rumplick and D'Orazio incorporate their responses to Paragraphs 1 through 112

to the extent consistent herewith.

114-120. Paragraphs 114 through 120 assert a cause of action against a party other than Rumplick and D'Orazio; therefore, no response is required from Rumplick and D'Orazio. To the extent a response is deemed to be required from Rumplick and D'Orazio, Rumplick and D'Orazio are without information sufficient to admit or deny the allegations of Paragraphs 114 through 120 and therefore deny same.

121. Rumplick and D'Orazio incorporate their responses to Paragraphs 1 through 120 to the extent consistent herewith.

122-125. Paragraphs 122 through 125 assert a cause of action against a party other than Rumplick and D'Orazio; therefore, no response is required from Rumplick and D'Orazio. To the extent a response is deemed to be required from Rumplick and D'Orazio, Rumplick and D'Orazio are without information sufficient to admit or deny the allegations of Paragraphs 122 through 125 and therefore deny same.

126. Rumplick and D'Orazio incorporate their responses to Paragraphs 1 through 125 to the extent consistent herewith.

127. Rumplick denies having acted as an architect with regard to the Property; therefore, he denies owing any duties to Plaintiffs. D'Orazio craves reference to South Carolina law to determine any duties he owed to Plaintiffs. Both Rumplick and D'Orazio deny having breached any duties owed to Plaintiffs.

128. Denied by D'Orazio. Rumplick denies owing any professional standard of due care to Plaintiffs.

129. Denied.

130. Rumplick and D'Orazio incorporate their responses to Paragraphs 1 through 129

to the extent consistent herewith.

131. Rumplick and D'Orazio deny that there is any defective design of the buildings.

132. Rumplick and D'Orazio deny making any express warranties, and they crave reference to South Carolina law for warranties implied thereunder.

133. Rumplick and D'Orazio deny making any express warranties. As to the remaining allegations of Paragraph 133, Rumplick and D'Orazio are without information sufficient to admit or deny the remaining allegations of Paragraph 133 and therefore deny same.

134. Denied.

135. Denied.

136. Rumplick and D'Orazio incorporate their responses to Paragraphs 1 through 135 to the extent consistent herewith.

137. Denied.

138. Denied.

139. Denied.

140. Rumplick and D'Orazio incorporate their responses to Paragraphs 1 through 139 to the extent consistent herewith.

141. Denied as to Rumplick and D'Orazio.

142. Denied as to Rumplick and D'Orazio.

143. Denied as to Rumplick and D'Orazio.

144. Denied as to Rumplick and D'Orazio.

145. Rumplick and D'Orazio incorporate their responses to Paragraphs 1 through 144 to the extent consistent herewith.

146-149. Paragraphs 146 through 149 assert a cause of action against parties other

than Rumplick and D'Orazio; therefore, no response is required from Rumplick and D'Orazio. To the extent a response is deemed to be required from Rumplick and D'Orazio, Rumplick and D'Orazio are without information sufficient to admit or deny the allegations of Paragraphs 146 through 149 and therefore deny same.

150. Rumplick and D'Orazio incorporate their responses to Paragraphs 1 through 149 to the extent consistent herewith.

151-156. Paragraphs 151 through 156 assert a cause of action against parties other than Rumplick and D'Orazio; therefore, no response is required from Rumplick and D'Orazio. To the extent a response is deemed to be required from Rumplick and D'Orazio, Rumplick and D'Orazio are without information sufficient to admit or deny the allegations of Paragraphs 151 through 156 and therefore deny same.

157. Rumplick and D'Orazio incorporate their responses to Paragraphs 1 through 156 to the extent consistent herewith.

158-164. Paragraphs 158 through 164 assert a cause of action against parties other than Rumplick and D'Orazio; therefore, no response is required from Rumplick and D'Orazio. To the extent a response is deemed to be required from Rumplick and D'Orazio, Rumplick and D'Orazio are without information sufficient to admit or deny the allegations of Paragraphs 158 through 164 and therefore deny same.

165. Rumplick and D'Orazio deny each and every allegation of Plaintiffs' Fourth Amended Complaint not expressly admitted above.

SECOND DEFENSE

158. Plaintiffs' claims may be barred by the doctrine of waiver.

THIRD DEFENSE

159. Plaintiffs' claims may be barred by the doctrine of estoppel.

FOURTH DEFENSE

160. Plaintiffs' claims may be barred by the doctrine of laches.

FIFTH DEFENSE

161. Plaintiff's claims may be barred by the Statute of Limitations.

SIXTH DEFENSE

162. If Plaintiffs were at fault in causing the damages complained of in the Fourth Amended Complaint, such fault is pled as a complete defense to Plaintiffs' claims, or in the alternative, in proportionate reduction of Plaintiffs' claims.

SEVENTH DEFENSE

163. D'Orazio denies having committed any negligent acts in providing design services for the subject property.

164. Rumplick denies having committed any negligent acts in performing work for Carriage Hill Associates of Charleston, LLC.

165. If either Rumplick or D'Orazio is deemed to have acted negligently, Plaintiffs are barred from recovering from Rumplick and/or D'Orazio, because Plaintiffs' damages are a product of the intervening or superseding negligence of some persons or entities other than Rumplick and/or D'Orazio.

EIGHTH DEFENSE

166. Punitive damages as currently awarded in the State of South Carolina are violative of United States and South Carolina Constitutions.

NINTH DEFENSE

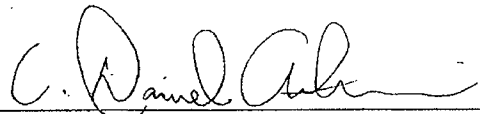
167. Plaintiffs' negligence claims may be barred by the economic loss doctrine.

TENTH DEFENSE

167. Rumplick and D'Orazio adopt and incorporate by reference any affirmative defenses or other defenses, to the extent applicable, that have been pled by any of the Defendants in this action.

WHEREFORE, having fully answered, Rumplick and D'Orazio pray that Plaintiffs' claims against Rumplick and D'Orazio be dismissed with prejudice, for a trial by jury on all issues of law, for the costs of this action, and for such other and further relief as the Court deems just and proper.

June 21, 2012



Michael B.T. Wilkes (S.C. Bar #6107)

mwilkes@wilkeslaw.com

C. Daniel Atkinson (S.C. Bar #72721)

datkinson@wilkeslaw.com

WILKES LAW FIRM, P.A.
127 Dunbar Street, Suite 200
Spartanburg, SC 29306
Telephone 864.591.1113
Facsimile 864.591.1767

ATTORNEYS FOR DEFENDANTS
GERALD RUMPLICK AND EDWARD J.
D'ORAZIO

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY)

CASE NO.: 2009-CP-08-1068

Daniel Island Riverside Developers, LLC)
and Carriage Hill Associates of)
Charleston, LLC,)

Plaintiffs,)

vs.)

Weather Shield Manufacturing, Inc., The)
Muhler Company, Inc. and AC)
Construction, Inc.,)

Defendants.)

A.C. Construction, Inc.,)

CASE NO.: 2009-CP-08-1413

Plaintiffs,)

vs.)

Daniel Island Riverside Developers, LLC,)
and Travelers Casualty and Surety)
Company of America,)

Defendants.)

Geoffrey C. Cipkala and Samuel C.)
Agee, as tenants in common of the)
common elements of the Oaks at)
River's Edge Horizontal Property)
Regime and on behalf of themselves)
and all other tenants in common,)

CASE NO.: 2008-CP-08-2714

Plaintiffs,)

vs.)

Daniel Island Riverside Developers, LLC,)
Carriage Hill Associates of Charleston,)
LLC, Carriage Hill Associates, Inc.,)

Defendants.)

The Oaks at Rivers Edge Property
Owners Association, Inc., John E.
Atkinson, Joan D. Strandquist, Joseph
E. Chiovarou, Jr., Peyton H. Cook, Jr.,
Brenda Cook, John W. Edelen, Karen
A. Nelson, Robert J. Graham, Maureen
S. Graham, Kevin O. Hux, Nancy K.
Johnson as trustee for the Nancy K.
Johnson Revocable Trust, William
Jung, Charles Maraziti, Patricia
Maraziti, Donna Dee Moran, George S.
Pollard, Eleanor J. Pollard, Robert
Reece, Gerard M. Ruvo and Sue S.
Ruvo, as trustees for the Ruvo 2006
Living Trust, Robert Farina, Mary Ann
Farina, Carolyn M. Jennings, Thomas
Edward Keane, Edward Wallace Barr,
III, Richard B. Pekruhn, Pauline
Pekruhn, Gregory B. Nathan and
Richard Jennings,

Plaintiffs,

vs.

Daniel Island Riverside Developers, LLC,
Carriage Hill Associates of Charleston,
LLC, Carriage Hill Associates, Inc.,
Weather Shield Manufacturing, Inc.,
The Muhler Co., Inc., A.C. Construction,
Inc., and Coastal Roofing, Co., Inc.,

Defendants.

CASE NO.: 2008-CP-08-3916

**AC CONSTRUCTION, INC'S ANSWER
TO THE FOURTH AMENDED
COMPLAINT
(Jury Trial Demanded)**

The Defendant, AC Construction, Inc., (hereinafter "AC"), answering the Fourth Amended Complaint of the Plaintiff, above named, alleges and says as follows:

1. That AC is not required to admit or deny the truth of the allegations of paragraphs 1 through 31 of the Fourth Amended Complaint because, upon information and belief, such allegations are not intended to state a claim against AC. If and to the extent that such allegations are later held or taken to state a claim against AC then such allegations

together with all inferences to be derived therefrom are denied.

2. Responding to the allegations within paragraph 32 of the Fourth Amended Complaint, AC admits it is a South Carolina Corporation that contracted with the alleged parties to perform framing work, to include window and door installation at the project, but that, upon information and belief, the Carriage Hill Defendants and/or the Defendant Developers subsequently contracted with others to perform some of this work and to modify work of AC.

3. That AC is not required to admit or deny the truth of the allegations of paragraphs 33 through 40 of the Fourth Amended Complaint because, upon information and belief, such allegations are not intended to state a claim against AC. If and to the extent that such allegations are later held or taken to state a claim against AC then such allegations together with all inferences to be derived therefrom are denied.

4. That the allegations of paragraphs 41 and 42 are conclusions of law, and AC is not required to answer the same.

5. In response to the allegations of paragraph 43 of the Fourth Amended Complaint. AC hereby realleges and incorporates by reference its responses to paragraphs 1 through 42 as fully and effectively as if set forth herein verbatim.

6. Upon information and belief, AC admits the allegations contained in paragraphs 44, 45, 46 and 47 of the Fourth Amended Complaint.

7. That AC admits so much of the allegations of paragraphs 48 and 49 of the Fourth Amended Complaint as alleges that AC installed some of the windows and doors, craves reference to its contract and denies all allegations inconsistent therewith, and affirmatively states that the Carriage Hill Defendants informed AC that Carriage Hill retained some other

entity to rework the windows and doors after AC's work and denies the remaining allegations of paragraphs 48 and 49 of the Fourth Amended Complaint that are directed at AC.

8. That AC is not required to admit or deny the truth of the allegations of paragraph 50 of the Fourth Amended Complaint because, upon information and belief, such allegations are not intended to state a claim against AC. If and to the extent that such allegations are later held or taken to state a claim against AC then such allegations together with all inferences to be derived therefrom are denied.

9. That AC denies the allegations contained in paragraph 51 of the Fourth Amended Complaint attributing deficiencies, leaks and property damage to its scope of work.

10. That AC is not required to admit or deny the truth of the allegations of paragraphs 52 and 53 of the Fourth Amended Complaint because, upon information and belief, such allegations are not intended to state a claim against AC. If and to the extent that such allegations are later held or taken to state a claim against AC then such allegations together with all inferences to be derived therefrom are denied.

11. That AC lacks sufficient information to form a belief as to the allegations of paragraphs 54, 55, 56 and 57 of the Fourth Amended Complaint and would crave reference to the cited reports for their content without offering any affirmation of their accuracy.

12. That AC is not required to admit or deny the truth of the allegations of paragraphs 58 through 62 of the Fourth Amended Complaint because, upon information and belief, such allegations are not intended to state a claim against AC. If and to the extent that such allegations are later held or taken to state a claim against AC then such allegations

together with all inferences to be derived therefrom are denied.

13. That AC denies the allegations contained in paragraph 63 of the Fourth Amended Complaint.

14. In response to the allegations of paragraph 64, AC hereby realleges and incorporates by reference its responses to paragraphs 1 through 63 as fully and effectively as if set forth herein verbatim.

15. That AC denies the allegations contained in paragraphs 65 and 66 of the Fourth Amended Complaint.

16. In response to the allegations of paragraph 67, AC hereby realleges and incorporates by reference its responses to paragraphs 1 through 66 as fully and effectively as if set forth herein verbatim.

17. That AC is not required to admit or deny the truth of the allegations of paragraphs 68 through 96 of the Fourth Amended Complaint because, upon information and belief, such allegations are not intended to state a claim against AC. If and to the extent that such allegations are later held or taken to state a claim against AC then such allegations together with all inferences to be derived therefrom are denied.

18. In response to the allegations of paragraph 97, AC hereby realleges and incorporates by reference its responses to paragraphs 1 through 96 as fully and effectively as if set forth herein verbatim.

19. That AC denies the allegations contained in paragraphs 98, 99 and 100 of the Fourth Amended Complaint.

20. In response to the allegations of paragraph 101, AC hereby realleges and incorporates by reference its responses to paragraphs 1 through 100 as fully and

effectively as if set forth herein verbatim.

21. That AC denies the allegations contained in paragraphs 102, 103 and 104 of the Fourth-Amended Complaint.

22. In response to the allegations of paragraph 105, AC hereby realleges and incorporates by reference paragraphs 1 through 104 as fully and effectively as if set forth herein verbatim.

23. That AC is not required to admit or deny the truth of the allegations of paragraphs 106 through 164 of the Fourth Amended Complaint because, upon information and belief, such allegations are not intended to state a claim against AC. If and to the extent that such allegations are later held or taken to state a claim against AC then such allegations together with all inferences to be derived therefrom are denied.

24. That AC repeats, realleges and herein incorporates its answers, defenses, claims and cross claims raised in all its previous pleadings in this matter, and all cases consolidated by order of Judge Dennis in open court on February 16, 2010.

25. That AC denies each and every allegation of the Fourth Amended Complaint not herein above specifically admitted or modified.

FURTHER ANSWERING FOURTH AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
AC ALLEGES AND SAYS:
(Intervening and Superceding Cause)

26. If AC acted or failed to act as alleged in the Fourth Amended Complaint, which is specifically denied, there were separate and intervening acts or failures to act on the part of persons or entities other than AC which are the sole and proximate cause of Plaintiffs' damages and serve as a complete bar to any recovery against AC.

FURTHER ANSWERING FOURTH AMENDED COMPLAINT

AND AS AN AFFIRMATIVE DEFENSE THERETO,
AC ALLEGES AND SAYS:
(Failure to State Facts Sufficient)

27. That the Complaint fails to state facts sufficient to constitute a cause of action and the Complaint should be dismissed pursuant to the provisions of SCRCP Rule 12(b)(6).

FURTHER ANSWERING FOURTH AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
AC ALLEGES AND SAYS:
(Estoppel, Laches and Waiver)

28. AC reasserts and realleges the previous allegations of this answer as fully and completely as if restate herein verbatim.

FURTHER ANSWERING FOURTH AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
AC ALLEGES AND SAYS:
(Limitation and/or Expiration of Warranty)

29. AC specifically pleads and incorporates herein the terms of any limitation of remedy in any applicable warranty, if any, as a bar to recovery, and further asserts that it effectively disclosed or limited all express warranties, if any and all implied warranties.

FURTHER ANSWERING FOURTH AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
AC ALLEGES AND SAYS:
(Failure to Give Notice of Warranty Claim)

30. If work performed by AC was defective, which is denied, failure to give reasonable notice is pled in bar of any recovery under a warranty claim and otherwise.

FURTHER ANSWERING FOURTH AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
AC ALLEGES AND SAYS:
(Economic Loss Rule)

31. That the damages suffered by the plaintiffs, if any, were limited solely to the product itself and/or to diminution in value thereof, and therefore the plaintiffs have no right of

action in tort, and such constitutes a complete defense to all claims other than those sounding in contract.

FURTHER ANSWERING FOURTH AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,

AC ALLEGES AND SAYS:
(Comparative Negligence)

32. Plaintiffs' claims against AC are barred or must be reduced because even if AC was negligent, grossly negligent, reckless and willful as alleged, which is specifically denied, any negligence, gross negligence, recklessness and willfulness by AC must be measured against the negligence, gross negligence, recklessness, wantonness, willfulness of one or more of the entities other than AC to include Plaintiffs, over whom AC had no control, in failing or refusing to exercise reasonable care in the design, development, construction, repair of the project, or in the mitigation of damages, and recovery should be barred or reduced in proportion to Plaintiffs' negligence as provided by law.

FURTHER ANSWERING FOURTH AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,

AC ALLEGES AND SAYS:
(Failure to Maintain)

33. That plaintiffs were obligated to maintain the structure against normal wear, tear and deterioration due to age and the elements and plaintiff failed to do so and such is the direct and proximate cause of the damages suffered by the plaintiff and such constitutes a complete defense to the claims of the plaintiff.

FURTHER ANSWERING FOURTH AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,

AC ALLEGES AND SAYS:
(Mitigation)

34. Plaintiffs have failed to mitigate their damages as required by law.

FURTHER ANSWERING FOURTH AMENDED COMPLAINT

AND AS AN AFFIRMATIVE DEFENSE THERETO,
AC ALLEGES AND SAYS:
(Statute of Limitations)

35. Plaintiffs' claims are barred by applicable statute of limitations.

FURTHER ANSWERING FOURTH AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
AC ALLEGES AND SAYS:
(Sole Negligence of Others)

36. AC would allege that any injury and damage sustained by Plaintiffs were due to and caused by the sole and negligent acts or omissions of some person or persons other than AC, and over whom AC exercised an authority or control and for that reason, AC is not liable to Plaintiffs in any sum whatsoever.

FURTHER ANSWERING FOURTH AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
AC ALLEGES AND SAYS:
(Intervening and Superseding Acts)

37. Plaintiffs' damages, if any, are the direct and proximate result of intervening and superseding acts of Fourth parties not affiliated with AC and not under AC's domain or control.

FURTHER ANSWERING FOURTH AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
AC ALLEGES AND SAYS:
(Spoliation)

38. That even if Plaintiffs were damaged as alleged, which is denied, the claims are barred pursuant to the doctrine of spoliation.

FURTHER ANSWERING FOURTH AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
AC ALLEGES AND SAYS:
(Notice and Opportunity to Cure)

39. That, to the extent that the Plaintiffs have 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), including the provision of the required notice to AC, and the provisions to AC of an opportunity to cure, the Plaintiffs' action must be stayed and/or otherwise barred.

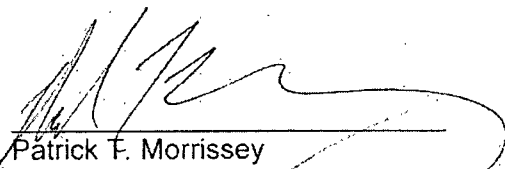
FURTHER ANSWERING FOURTH AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
AC ALLEGES AND SAYS:
(Improper Claim for Punitive Damages)

40. Punitive damages are inappropriate in this case since AC did not engage in any malicious, reckless, wrongful or intentional conduct upon which an award of punitive damages would be based.

FURTHER ANSWERING FOURTH AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
AC ALLEGES AND SAYS:
(Reservation and Non-Waiver and Adoption)

41. AC specifically reserves any additional defenses, including affirmative defenses, as may be available or revealed to it during the course of its investigation and/or discovery in the case, and as are consistent with the South Carolina Rules of Civil Procedure. Further, AC adopts by reference all defenses, including affirmative defenses, where relevant and consistent with AC's position, as alleged by other defendants in this action.

WHEREFORE, having fully answered the Fourth Amended Complaint of the plaintiff, AC prays for a trial by jury and that the plaintiff's Fourth Amended Complaint be dismissed, together with the costs and disbursements of this action and for such other and further relief as this Court may deem just and proper.



Patrick F. Morrissey
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
(843) 577-2026

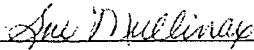
Attorneys for Defendant,
AC Construction, Inc.

Charleston, South Carolina

July 2, 2012

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading has been served upon opposing counsel by mailing, hand delivering or electronically forwarding a copy properly addressed and with sufficient postage affixed thereto on this 2nd day of July, 2012.



Sue Mullinax

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

DANIEL ISLAND RIVERSIDE
DEVELOPERS, LLC AND CARRIAGE
HILL ASSOCIATES OF CHARLESTON,
LLC,

Plaintiffs,

vs.

WEATHER SHIELD
MANUFACTURING, INC., THE
MUHLER COMPANY, INC., AND AC
CONSTRUCTION, INC.,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2009-CP-08-1068

**DEFENDANT THE MUHLER
COMPANY, INC.'S ANSWER TO THE
PLAINTIFFS' FOURTH AMENDED
COMPLAINT AND CROSS-CLAIMS
AGAINST WEATHER SHIELD
MANUFACTURING, INC., DANIEL
ISLAND RIVERSIDE DEVELOPERS,
CARRIAGE HILL ASSOCIATES OF
CHARLESTON, LLC AND CARRIAGE
HILL ASSOCIATES, INC. AND THIRD
PARTY COMPLAINT AGAINST
CASTLE SIDING, INC. AND CAOBA
DOORS**

AC CONSTRUCTION,

Plaintiff,

vs.

DANIEL ISLAND RIVERSIDE
DEVELOPERS, LLC, AND TRAVELERS
CASUALTY AND SURETY COMPANY
OF AMERICA,

Defendants.

GEOFFREY C. CIPKALA, and SAMUEL
C. AGEE, as tenants in common of the
common elements of The Oaks at River's
Edge Horizontal Property Regime and on
behalf of themselves and all other tenants in
common,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE
DEVELOPERS, LLC, CARRIAGE HILL
ASSOCIATES OF CHARLESTON, LLC,
and CARRIAGE HILL ASSOCIATES,
INC.,

Defendants.

THE OAKS AT RIVERS EDGE)
PROPERTY OWNERS ASSOCIATION,)
INC., JOHN E. ATKINSON, JOAN D.)
STRANDQUIST, JOSEPH E.)
CHIVAROU, JR., PEYTON H. COOK,)
JR., BRENDA COOK, JOHN W.)
EDELLEN, KAREN A. NELSON, ROBERT)
J. GRAHAM, MAUREEN S. GRAHAM,)
KEVIN O. HUX, NANCY K. JOHNSON)
as trustee for the Nancy K. Johnson)
Revocable Trust, WILLIAM JUNG,)
CHARLES MARAZITI, PATRICIA)
MARAZITI, DONNA DEE MORAN,)
GOERGE S. POLLARD, ELEANOR J.)
POLLARD, ROBERT REECE, GERARD)
M. RUVO AND SUE S. RUVO as trustees)
for the Ruvo 2006 Living Trust, ROBERT)
FARINA, MARY ANN FARINA,)
CAROLYN M. JENNINGS, THOMAS)
EDWARD KEANE, EDWARD)
WALLACE BARR, III, RICHARD B.)
PEKRUHN, PAULINE PEKRUHN,)
GREGORY B. NATHAN, RICHARD)
JENNINGS, MATTHEW J. SEVERANCE)
and ELIZABETH ASHLEY PHILLIPS)
SEVERANCE,)

Plaintiffs,)

vs.)

DANIEL ISLAND RIVERSIDE)
DEVELOPERS, LLC, CARRIAGE HILL)
ASSOCIATES OF CHARLESTON, LLC,)
CARRIGAE HILL ASSOCIATES, INC.,)
WEATHER SHIELD)
MANUFACTURING, INC., THE)
MUHLER CO., INC., A.C.)
CONSTRUCTION, INC., COASTAL)
ROOFING CO., INC., COASTAL)
CAULKING, INC., MIKE PHILLIPS)
D/B/A MIKE PHILLIS MASONRY,)
GERALD RUMPLICK, EDWARD J.)
D'ORAZIO and RICH BEHRINGER,)

Defendants.)

THE MUHLER COMPANY, INC.,	)
	)
Third-Party Plaintiff,	)
	)
vs.	)
	)
CASTLE SIDING, INC. and CAOBA	)
DOORS	)
	)
Third-Party Defendant.	)

The Defendant, The Muhler Company, Inc. (hereinafter "this Defendant" or "Muhler"), answering the Fourth Amended Complaint in the above-captioned case does allege the following:

FOR A FIRST DEFENSE

1. This Defendant denies each and every allegation of the Fourth Amended Complaint that is not specifically and unconditionally admitted hereinafter.

FOR A SECOND DEFENSE

2. This Defendant admits upon information and belief the allegations of Paragraph 1 of the Fourth Amended Complaint.

3. Defendant Muhler lacks sufficient information to admit or deny the allegations of Paragraphs 2 through 20 of the Fourth Amended Complaint and, therefore, denies the same.

4. No response is required to Paragraph 21 of the Fourth Amended Complaint.

5. The allegations of Paragraphs 22, 23, 24, 25, 26, 27, 28, 29 and 30 of the Fourth Amended Complaint do not concern this Defendant and no response is required.

6. In response to Paragraph 31 of the Fourth Amended Complaint, Defendant Muhler admits it is a corporation organized and existing under the laws of the state of South Carolina and that it was the supplier of windows and doors which were installed at the property. Muhler craves reference to Muhler's Project File for a complete and accurate account of the products

that were supplied by Muhler and denies any allegation of Paragraph 31 that is inconsistent with those documents. Muhler denies the remaining allegations of Paragraph 31 and demands strict proof thereof.

7. The allegations of Paragraphs 32, 33, 34, 35, 36, 37, 38, 39 and 40 of the Fourth Amended Complaint do not concern this Defendant and no response is required.

8. The allegations of Paragraphs 41 and 42 of the Fourth Amended Complaint state conclusions of law to which no response is required.

9. In response to Paragraph 43, Defendant Muhler repeats and realleges each of the preceding paragraphs of this Answer as if set forth verbatim herein.

10. Defendant Muhler admits upon information and belief the allegations of Paragraph 44 of the Fourth Amended Complaint.

11. This Defendant admits upon information and belief the allegations of Paragraph 45 of the Fourth Amended Complaint.

12. This Defendant lacks sufficient information to admit or deny the allegations of Paragraphs 46 and 47 of the Fourth Amended Complaint.

13. In response to Paragraph 48, Defendant Muhler craves reference to the contract documents between Muhler and Carriage Hill for a complete and accurate account of the agreement between the parties and denies each and every allegation of Paragraph 48 that is inconsistent therewith. In further response to Paragraph 48, this Defendant admits that it supplied windows and doors manufactured by Defendant Weather Shield, and admits upon information and belief that Carriage Hill contracted with AC Construction to perform installation of the windows and doors. This Defendant denies the remaining allegations of Paragraph 48 of the Fourth Amended Complaint.

14. To the extent that the allegations of Paragraph 49 of the Fourth Amended Complaint concern other parties, no response is required. Furthermore, Defendant Muhler

craves reference to contract documents between Muhler and Carriage Hill and/or AC for a full and accurate account of the agreements between the parties. Muhler denies any allegations of Paragraph 49 of the Fourth Amended Complaint to the extent that the allegations contained therein are inconsistent with those contract documents. Finally, Defendant Muhler denies any allegation of Paragraph 49 that states that Muhler failed to competently and properly correct the deficiencies in the work performed by AC.

15. Defendant Muhler denies the allegations of Paragraphs 50 and 51 of the Fourth Amended Complaint as they apply to Muhler.

16. Defendant Muhler denies the allegations of Paragraph 52 of the Fourth Amended Complaint.

17. The allegations of Paragraph 53 do not concern this Defendant, and no response is required.

18. This Defendant lacks sufficient information to admit or deny the allegations of Paragraphs 54 and 55 of the Fourth Amended Complaint and therefore deny the same.

19. In response to Paragraph 56 of the Fourth Amended Complaint, Defendant Muhler admits upon information and belief the Plaintiffs performed some investigation of the buildings in 2008. Defendant Muhler lacks sufficient information to admit or deny the remaining allegations of Paragraph 56, and therefore, denies the same.

20. This Defendant denies the allegations of Paragraph 57, including subparts (a) through (o), 58, 59, including subparagraphs (a) through (n), 60 and 61, including subparagraphs (a) through (f) of the Fourth Amended Complaint as they apply to Muhler.

21. The allegations of Paragraph 62 of the Fourth Amended Complaint do not concern this Defendant and no response is required.

22. This Defendant denies the allegations of Paragraph 63 of the Fourth Amended Complaint.

ANSWERING THE FIRST CAUSE OF ACTION

23. In response to Paragraph 64, Defendant Muhler repeats and realleges each of the preceding paragraphs of this Answer as if set forth verbatim herein.

24. Defendant Muhler denies the allegations of Paragraph 65, including subparts (a) through (hh) of the Fourth Amended Complaint as it applies to Muhler.

25. Defendant Muhler denies the allegations of Paragraph 66 of the Fourth Amended Complaint.

ANSWERING THE SECOND CAUSE OF ACTION

26. In response to Paragraph 67, Defendant Muhler repeats and realleges each of the preceding paragraphs of this Answer as if set forth verbatim herein.

27. Paragraphs 68 and 69 do not concern this Defendant and no response is required.

ANSWERING THE THIRD CAUSE OF ACTION

28. In response to Paragraph 70, Defendant Muhler repeats and realleges each of the preceding paragraphs of this Answer as if set forth verbatim herein.

29. The allegations of Paragraph 71 of the Fourth Amended Complaint state conclusions of law to which no response is required.

30. Defendant Muhler denies the allegations of Paragraphs 72 through 76 of the Fourth Amended Complaint.

ANSWERING THE FOURTH CAUSE OF ACTION

31. In response to Paragraph 77 of the Fourth Amended Complaint, Defendant Muhler repeats and realleges each of the preceding paragraphs of this Answer as if set forth verbatim herein.

32. The allegations of Paragraphs 78 through 86 of the Fourth Amended Complaint do not concern this Defendant and no response is required.

ANSWERING THE FIFTH CAUSE OF ACTION

33. In response to Paragraph 87 of the Fourth Amended Complaint, Defendant Muhler repeats and realleges each of the preceding paragraphs of this Answer as if set forth verbatim herein.

34. The allegations of Paragraph 88 of the Fourth Amended Complaint do not concern this Defendant and no response is required.

ANSWERING THE SIXTH CAUSE OF ACTION

35. In response to Paragraph 89 of the Fourth Amended Complaint, Defendant Muhler repeats and realleges each of the preceding paragraphs of this Answer as if set forth verbatim herein.

36. The allegations of Paragraphs 90, 91, 92, 39, 94, 95 and 96 of the Fourth Amended Complaint do not concern this Defendant and no response is required.

ANSWERING THE SEVENTH CAUSE OF ACTION

37. In response to Paragraph 97, Defendant Muhler repeats and realleges each of the preceding paragraphs of this Answer as if set forth verbatim herein.

38. The allegations of Paragraph 98 state conclusions of law to which no response is required.

39. Defendant Muhler denies the allegations of Paragraph 99 and 100 of the Fourth Amended Complaint.

ANSWERING THE EIGHTH CAUSE OF ACTION

40. In response to Paragraph 101, Defendant Muhler repeats and realleges each of the preceding paragraphs of this Answer as if set forth verbatim herein.

41. Defendant Muhler denies the allegations of Paragraphs 102, 103 and 104 of the Fourth Amended Complaint.

ANSWERING THE NINTH CAUSE OF ACTION

42. In response to Paragraph 105, Defendant Muhler repeats and realleges each of the preceding paragraphs of this Answer as if set forth verbatim herein.

43. The allegations of Paragraphs 106 through 108 of the Fourth Amended Complaint do not concern this Defendant and no response is required.

ANSWERING THE TENTH CAUSE OF ACTION

44. In response to Paragraph 109, Defendant Muhler repeats and realleges each of the preceding paragraphs of this Answer as if set forth verbatim herein.

45. The allegations of Paragraphs 110 through 112 of the Fourth Amended Complaint do not concern this Defendant and no response is required.

ANSWERING THE ELEVENTH CAUSE OF ACTION

46. In response to Paragraph 113, Defendant Muhler repeats and realleges each of the preceding paragraphs of this Answer as if set forth verbatim herein.

47. The allegations of Paragraphs 114 through 120 of the Fourth Amended Complaint do not concern this Defendant and no response is required.

ANSWERING THE TWELFTH CAUSE OF ACTION

48. In response to Paragraph 121, Defendant Muhler repeats and realleges each of the preceding paragraphs of this Answer as if set forth verbatim herein.

49. The allegations of Paragraphs 122 through 125 of the Fourth Amended Complaint do not concern this Defendant and no response is required.

ANSWERING THE THIRTEENTH CAUSE OF ACTION

50. In response to Paragraph 126 of the Fourth Amended Complaint, Defendant Muhler repeats and realleges each of the preceding paragraphs of this Answer as if set forth verbatim herein.

51. The allegations of Paragraphs 127 through 129 of the Fourth Amended Complaint do not concern this Defendant and no response is required.

ANSWERING THE FOURTEENTH CAUSE OF ACTION

52. In response to Paragraph 130 of the Fourth Amended Complaint, Defendant Muhler repeats and realleges each of the preceding paragraphs of this Answer as if set forth verbatim herein.

53. The allegations of Paragraphs 131 through 135 of the Fourth Amended Complaint do not concern this Defendant and no response is required.

ANSWERING THE FIFTEENTH CAUSE OF ACTION

54. In response to Paragraph 136 of the Fourth Amended Complaint, Defendant Muhler repeats and realleges each of the preceding paragraphs of this Answer as if set forth verbatim herein.

55. The allegations of Paragraphs 137 through 139 of the Fourth Amended Complaint do not concern this Defendant and no response is required.

ANSWERING THE SIXTEENTH CAUSE OF ACTION

56. In response to Paragraph 140 of the Fourth Amended Complaint, Defendant Muhler repeats and realleges each of the preceding paragraphs of this Answer as if set forth verbatim herein.

57. The allegations of Paragraphs 141 through 144 do not concern this Defendant and no response is required.

ANSWERING THE SEVENTEENTH CAUSE OF ACTION

58. In response to Paragraph 145 of the Fourth Amended Complaint, Defendant Muhler repeats and realleges each of the preceding paragraphs of this Answer as if set forth verbatim herein.

59. This Defendant admits the allegations of Paragraph 146 of the Fourth Amended Complaint.

60. The allegations of Paragraph 147 of the Fourth Amended Complaint state conclusions of law to which no response is required.

61. This Defendant denies the allegations of Paragraphs 148 and 149 of the Fourth Amended Complaint.

ANSWERING THE EIGHTEENTH CAUSE OF ACTION

62. In response to Paragraph 150 of the Fourth Amended Complaint, Defendant Muhler repeats and realleges each of the preceding paragraphs of this Answer as if set forth verbatim herein.

63. This Defendant admits the allegations of Paragraph 151 of the Fourth Amended Complaint.

64. The allegations of Paragraph 152 of the Fourth Amended Complaint state conclusions of law to which no response is required.

65. This Defendant denies the allegations of Paragraphs 153, 154, 155 and 156, of the Fourth Amended Complaint.

ANSWERING THE NINETEENTH CAUSE OF ACTION

66. In response to Paragraph 157, Defendant Muhler repeats and realleges all the proceeding paragraphs of this Answer as if set forth verbatim herein.

67. This Defendant admits the first sentence and denies the second and third sentences of Paragraph 158 of the Fourth Amended Complaint.

68. This Defendant denies the allegations of Paragraph 159 of the Fourth Amended Complaint.

69. This Defendant denies the allegation of Paragraph 160 of the Fourth Amended Complaint.

70. This Defendant denies the allegation of Paragraph 161 of the Fourth Amended Complaint.

71. This Defendant denies the allegation of Paragraph 162 of the Fourth Amended Complaint.

72. This Defendant denies the allegation of Paragraph 163 of the Fourth Amended Complaint.

73. This Defendant denies the allegation of Paragraph 164 of the Fourth Amended Complaint being all the remaining allegations.

FOR A THIRD DEFENSE

74. Plaintiffs' claims against this Defendant are barred by the doctrine of waiver and estoppel.

FOR A FOURTH DEFENSE

75. If this Defendant acted or failed to act as alleged in the Fourth Amended Complaint, which is specifically denied, there were separate and intervening acts or failure to act on the part of persons or entities other than this Defendant which are the sole and proximate cause of Plaintiffs' damages and serve as a complete bar to any recovery against this Defendant.

FOR A FIFTH DEFENSE

76. Plaintiffs' claims against this Defendant are barred or must be reduced because even if this Defendant were negligent, grossly negligent, reckless and willful as alleged, which is specifically denied, any negligence, gross negligence, recklessness and willfulness by this Defendant must be measured against the negligence, gross negligence, recklessness, wantonness, willfulness of one or more of the entities other than this Defendant to include Plaintiff, over whom this Defendant had no control, in failing or refusing to exercise reasonable care in the design, development and construction of the project.

FOR A SIXTH DEFENSE

77. This Defendant reserves all rights it may have to demand binding arbitration.

FOR A SEVENTH DEFENSE

78. This Defendant would allege that Plaintiffs have failed to state a claim sufficient to constitute a cause of action against this Defendant upon which relief can be granted, and therefore, Plaintiffs' Fourth Amended Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR AN EIGHTH DEFENSE

79. Plaintiff has failed to mitigate its damages as required by law.

FOR A NINTH DEFENSE

80. This Defendant would allege that Plaintiffs' Fourth Amended Complaint is barred by the doctrine of waiver and/or laches.

FOR A TENTH DEFENSE

81. Plaintiffs' claims are barred by applicable statute of limitations or statute of repose.

FOR AN ELEVENTH DEFENSE

82. Plaintiffs have failed to mitigate their damages; therefore, their claims are barred in whole or in part.

FOR A TWELFTH DEFENSE

83. Plaintiffs' claims are barred in whole or in part by the doctrine of estoppel.

FOR A THIRTEENTH DEFENSE

84. These claims are barred in whole or in part by the doctrine of unclean hands.

FOR A FOURTEENTH DEFENSE

85. This Defendant would allege that any injury and damage sustained by Plaintiffs were due to and caused by the sole and negligent acts or omissions of some person or persons

other than this Defendant, and over whom this Defendant exercised no authority or control and for that reason, this Defendant is not liable to Plaintiffs in any sum whatsoever.

FOR A FIFTEENTH DEFENSE

86. This Defendant would show that Plaintiffs and/or their agents inspected, approved and ratified all work performed by this Defendant. Furthermore, Plaintiffs knew or should have known if any of this Defendant's work was not in accordance with the plans and specifications and in a workmanlike manner. Accordingly, this Defendant pleads the applicable statute of limitations or statutes of repose as a complete bar to all of Plaintiffs' claims.

FOR A SIXTEENTH DEFENSE

87. Any express warranty allegedly provided by this Defendant has expired.

FOR A SEVENTEENTH DEFENSE

88. This Defendant would show the materials and workmanship of this Defendant at all times and in all manners met applicable plans, specifications, building code requirements, and industry standards and that this Defendant are, therefore, not liable to Plaintiffs in any sum whatsoever.

FOR AN EIGHTEENTH DEFENSE

89. This Defendant would show that any warranties provided by this Defendant have expired.

FOR A NINETEENTH DEFENSE

90. Plaintiffs' claims are barred by the Statute of Frauds.

FOR A TWENTIETH DEFENSE

91. 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 this Defendant's domain or control.

FOR A TWENTY-FIRST DEFENSE

92. Plaintiffs may have failed to join a party necessary to this litigation as required by Rule 19, SCRCP, and Plaintiffs' Fourth Amended Complaint should be dismissed pursuant to Rule 12(b)(7), SCRCP.

FOR A TWENTY-SECOND DEFENSE

93. Plaintiffs' claims are barred to the extent that Plaintiffs and/or Plaintiffs' members and agents discovered, or should have discovered, or were aware of any defects and nevertheless unreasonably proceeded to pay for this Defendant's services.

FOR A TWENTY-THIRD DEFENSE

94. Any damage suffered by Plaintiffs are the direct and proximate result of her comparative and contributory negligence and Plaintiffs' recovery should be barred or, alternatively, reduced proportionately to Plaintiffs' comparative negligence or others unrelated and not under the control of this Defendant.

FOR A TWENTY-FOURTH DEFENSE

95. That even if Plaintiffs were damaged as alleged, which is denied, the claims are barred pursuant to the doctrine of spoliation.

FOR A TWENTY-FIFTH DEFENSE

96. This Defendant alleges Plaintiffs failed and refused to comply with the contractual conditions precedent to this action, including but not limited to, timely written notice and detailed statements of the amounts claimed, thereby extinguishing the right to maintain the action herein.

FOR A TWENTY-SIXTH DEFENSE

97. Plaintiffs' claims are barred and this Defendant's obligation to Plaintiffs is void as a result of Plaintiffs' breach of warranty to provide plans and specifications to this Defendant that were sufficient for this Defendant to properly perform its work.

FOR A TWENTY-SEVENTH DEFENSE

98. Plaintiffs' claims are barred to the extent that Plaintiffs or Plaintiffs' members and agents discovered, or should have discovered, or were aware of any defects and failed to allow this Defendant an opportunity to investigate and cure any alleged defect.

FOR A TWENTY-EIGHTH DEFENSE

99. This Defendant reserve and do not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

FOR A TWENTY-NINTH DEFENSE

100. This Defendant would show the claim of Plaintiffs for punitive damages against this Defendant cannot be sustained, because any award of punitive damages under South Carolina law by a jury that (1) is not provided standards of sufficient clarity for determining the appropriateness, and the appropriate size, of the punitive damages award, (2) is not adequately instructed on the limits of punitive damages imposed by the applicable principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages, or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics, including the resident, wealth, and corporate status of Defendants, (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible, and (5) is not subject to trial court and appellate judicial review for reasonableness and furtherance of legitimate purposes on the basis of objective standards, would violate Defendants' due process and equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the South Carolina constitutional provisions providing for due process and equal protection, and would be improper under the common law and public policies of the State of South Carolina.

FOR A THIRTIETH DEFENSE

101. Punitive damages are inappropriate in this case since this Defendant did not engage in any malicious, reckless, wrongful or intentional conduct upon which an award of punitive damages would be based.

FOR A THIRTY-FIRST DEFENSE

102. Plaintiffs' claims against this Defendant are barred to the extent they seek to recover a tort for purely economic loss.

FOR A THIRTY-SECOND DEFENSE

103. Plaintiffs' cause of action for breach of express warranty and derivative causes of action for unfair trade practices and fraud must be dismissed because Plaintiffs have failed to comply with conditions precedent set forth in said warranty.

FOR A THIRTY-THIRD DEFENSE

104. Plaintiffs cannot recover under the theory of an implied warranty because all implied warranties have been explicitly disclaimed by this Defendant.

FOR A THIRTY-FOURTH DEFENSE

105. If this Court finds that an express warranty was given by this Defendant, which it denies, Plaintiffs' remedy must be limited to the remedies available under the warranty as its sole and exclusive remedy.

FOR A THIRTY-FIFTH DEFENSE

106. Plaintiffs' allegations of a violation of the South Carolina Unfair Trade Practices Act against this Defendant should be dismissed as this Defendant's actions do not adversely affect the public interest.

FOR A THIRTY-SIXTH DEFENSE

107. This Defendant had no duty to warn about possible dangers or hazards, if any, which are denied, in using the product which were not known or which were not capable of being known or discoverable by reasonable inspection.

FOR A THIRTY-SEVENTH DEFENSE

108. The Plaintiffs' claims are barred by the doctrine of assumption of the risk and/or applicable statutory law of the State of South Carolina in that assuming, but not admitting, the equipment in question was dangerous, the Plaintiffs discovered and were aware of such, assumed such risk and proceeded unreasonably, thus resulting in the alleged injury.

FOR A THIRTY-EIGHTH DEFENSE

109. This Defendant would allege and show that the Plaintiffs were, at all times, fully aware of the alleged dangers as set forth in the Plaintiffs' Fourth Amended Complaint, and that the Plaintiffs were negligent and careless in failing to take any reasonable caution for their own safety in that they assumed the alleged risk as set forth in the Plaintiffs' Fourth Amended Complaint, and that this negligent, careless, reckless, heedless, willful and wanton assumption of the risk was the proximate cause of the Plaintiffs' alleged injuries and damages as set forth in the Fourth Amended Complaint; therefore, the Plaintiffs are herein barred from recovery.

FOR A THIRTY-NINTH DEFENSE

110. This Defendant would allege and show that they have substantially performed all requirements, contractual or otherwise, in a reasonable manner.

FOR A FOURTIETH DEFENSE

111. Any injuries and damages sustained by Plaintiffs may have been the result of the misuse and/or abuse of the product in question. Additionally, the Plaintiff and/or other parties may have failed to use the product properly and may have abused the product and subjected it to abnormal use at the time or times and places alleged in the Fourth Amended Complaint. Further,

the product may have been used and handled contrary to the normal method of using the same, which was well known or ought to have been well known to the Plaintiffs and/or other parties.

FOR A FORTY-FIRST DEFENSE

112. Assuming that this Defendant manufactured the product in question, which is denied at this time, if, after the product left the possession of this Defendant, and without this Defendant's knowledge or approval, the product was modified or altered or subjected to treatment that substantially changed its character and condition, then the alleged defect, as set forth in the Fourth Amended Complaint, resulted from the modification, alteration, or treatment or other change of the product after this Defendant relinquished possession and control over it and not from any act or omission of this Defendant.

FOR A FORTY-SECOND DEFENSE

113. The Plaintiffs' claims are barred, in whole or in part, by the doctrine(s) contained in Restatement (Fourth) of Torts §402(a), Comment k.

FOR A FORTY-THIRD DEFENSE

114. Plaintiffs have failed to exercise reasonable diligence in mitigating the damages they claim to have suffered at the hands of this Defendant.

FOR A FORTY-FOURTH DEFENSE

115. This Defendant would allege and show that the Fourth Amended Complaint is barred pursuant to S.C. Code Ann. §15-73-20.

FOR A FORTY-FIFTH DEFENSE

116. On information and belief, any and all alleged warranties were effectively excluded, modified and/or disclaimed.

FOR A FORTY- SIXTH DEFENSE

117. This Defendant would allege and show that they made no warranties of any kind, express or implied, or any representation of any nature to the Plaintiffs, and such constitutes a complete defense to the Plaintiffs' Fourth Amended Complaint.

FOR A FORTY-SEVENTH DEFENSE

118. If this Defendant made any warranties to the Plaintiffs, which is denied, Plaintiffs' claims for breach of warranties are barred because Plaintiffs did not rely on any warranties allegedly made by this Defendant.

FOR A FORTY- EIGHTH DEFENSE

119. This Defendant pleads the state-of-the-art doctrine as a complete defense to the Plaintiffs' Fourth Amended Complaint.

FOR A FORTY-NINTH DEFENSE

120. This Defendant 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 reserve the right to amend its Answer to assert any such defenses.

FOR A FIFTIETH DEFENSE

121. Plaintiffs' alleged injuries are a result of subsequent and intervening negligence of others that bars recovery against this Defendant.

FOR A FIFTY-FIRST DEFENSE

122. The claims by Carriage Hill Associates of Charleston, LLC and Daniel Island Riverside Developers are barred by the Doctrine of Res Judicata.

**FOR A FIFTY-SECOND DEFENSE AND BY WAY OF
CROSS-CLAIM AGAINST DEFENDANT
WEATHER SHIELD MANUFACTURING, INC.**

123. The Defendant Muhler expressly incorporates all responses to the allegations of the Fourth Amended Complaint, including all other defenses and motions related to the Answer and Cross-Claims, as if set forth herein verbatim, by reference, where relevant.

124. The Defendant Muhler is a corporation organized and existing under the laws of the State of South Carolina.

125. Defendant Weather Shield Manufacturing, Inc. is a foreign corporation doing business in the State of South Carolina.

126. Subject matter jurisdiction and personal jurisdiction as well as venue, are proper in this Court.

127. Defendant Muhler and Defendant Weather Shield entered into an agreement whereby Weather Shield agreed to supply windows and doors of a certain kind and quality for use at the condominium complex in question.

128. Plaintiff alleges that the windows and doors supplied by Weather Shield were not of the kind and quality that Weather Shield represented to Defendant Muhler.

FOR A FIRST CAUSE OF ACTION
(BREACH OF CONTRACT)

129. The Defendant Muhler expressly incorporates all responses to the allegations of the Fourth Amended Complaint, including all other defenses and motions related to the Answer and Cross-Claims, as if set forth herein verbatim, by reference, where relevant.

130. The agreement between Defendant Muhler and Defendant Weather Shield is supported by valuable consideration and contains binding contractual obligations.

131. If and to the extent Plaintiffs' allegations as set forth are true, which Defendant Muhler expressly denies, Defendant Weather Shield's failure to supply the windows and doors of a certain kind and quality constitutes a breach of contract.

132. If and to the extent Plaintiffs' allegations as set forth are true, the damages claimed by Plaintiff resulted directly from Defendant Weather Shield's breach of its agreement with Defendant Muhler, and Defendant Weather Shield is liable to Defendant Muhler for breach of contract.

FOR A SECOND CAUSE OF ACTION
(NEGLIGENCE)

133. The Defendant Muhler expressly incorporates all responses to the allegations of the Fourth Amended Complaint, including all other defenses and motions related to the Answer and Cross-Claims, as if set forth herein verbatim, by reference, where relevant.

134. Defendant Weather Shield owed a duty to Defendant Defendant Muhler and breached the same because it was negligent, careless, or reckless in failing to manufacture and supply the windows and doors of a certain kind and quality ordered and required by Defendant Muhler for use at the condominium complex in question.

135. If and to the extent Plaintiffs' allegations as set forth are true, which Defendant Muhler expressly denies, then the negligent acts and omissions of Defendant Weather Shield are the sole cause of Plaintiffs' damages, and led to the Plaintiffs' claims of damages being asserted against Defendant Muhler without any fault or wrongdoing by Muhler.

FOR A THIRD CAUSE OF ACTION
(INDEMNITY)

136. The Defendant Muhler expressly incorporates all responses to the allegations of the Fourth Amended Complaint, including all other defenses and motions related to the Answer and Cross-Claims, as if set forth herein verbatim, by reference, where relevant.

137. If and to the extent Plaintiffs' allegations as set forth are true, which Defendant Muhler expressly denies, then the acts and omissions of Defendant Weather Shield are the sole cause of Plaintiffs' damages, and led to the Plaintiffs' claims of damages being asserted against Defendant Muhler without any fault or wrongdoing by Muhler.

138. Defendant Muhler is entitled to equitable indemnification or contractual indemnification, or both, from Defendant Weather Shield for any amounts it may be required to pay Plaintiffs, plus attorney's fees and costs.

**FOR A FIFTY-THIRD DEFENSE AND BY WAY OF
CROSS-CLAIM AGAINST DEFENDANT
CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC, DANIEL ISLAND
RIVERSIDE DEVELOPERS, LLC, AND CARRIAGE HILL ASSOCIATES, INC.**

139. The Defendant Muhler expressly incorporates all the responses to the Fourth Amended Complaint, including all defenses and motions related to its Answer and Cross-Claims, as if set-forth herein verbatim, by reference, where relevant.

140. The Defendant Muhler is a corporation organized and existing under the laws of the State of South Carolina.

141. The Defendant Carriage Hill Associates of Charleston, LLC ("CHAC") is a Limited Liability Company organized and existing under the laws of the state of South Carolina and doing business in Berkeley County.

142. The Defendant Daniel Island Riverside Developers, LLC ("DIRD") is a Limited Liability Company organized and existing under the laws of the state of South Carolina and doing business in Berkeley County.

143. The Defendant Carriage Hill Associates, Inc. ("CHA") is a Corporation organized and existing under the laws of New York, but doing business in Berkeley County, South Carolina.

144. The subject matter and personal jurisdiction as well as venue are proper in this Court.

145. Defendant DIRD, is upon information and belief, the developer and the seller of the Property that is the subject matter of this lawsuit.

146. Defendant CHAC is upon information and belief the general contractor of the Property that is the subject matter of this lawsuit, and was responsible for the proper construction of the Property, in accordance with the contract document, applicable building codes, and within industry standards of good and workman like practice.

147. Defendant CHAC was at all times acting as an agent of Defendant CHA.

148. Upon information and belief CHA exerted total domination and control over DIRD and CHAC and that control resulted in inequitable consequences caused by that control, such that CHA, DIRD and CHAC perpetrated injustices, and mandate the conclusion that DIRD and CHAC were alter-egos of CHA.

149. CHA, DIRD and CHAC upon information and belief shared officers, shareholders, locations, employees, and acted in such a way so as to blur the legal distinction between the corporations and amalgamate their interests into a common goal.

150. Defendant Muhler entered into contracts with CHA for the supply of windows and doors, and for the supply and installation of the trim package, that included the balustrade system on interior porches.

151. As a result of the contracts identified in Paragraph 142, Muhler had a special relationship with CHAC.

152. As a result of the allegations of Paragraphs 140 and 141 above, Muhler had a special relationship with CHA and DIRD.

153. Initially, Muhler submitted bids to supply and install the windows and doors at the Property. CHAC rejected that bid and hired Defendant AC Construction to install the windows and doors in order to, upon information and belief, save money on construction costs.

154. Initially, Muhler submitted bids to sell and install a balustrade system made of artificial components that were resistant to water. Upon information and belief, CHAC rejected artificial components because of the expense of the components.

155. Muhler then submitted a second bid to sell and install a balustrade system made of pressure treated wood.

156. Upon information and belief, CHAC rejected the pressure treated components because of the expense of the components.

157. Finally, Muhler submitted a bid to sell and install balustrade components made of Spanish Cypress. Muhler's installation bid included services for painting the balustrade system.

158. CHAC accepted the bid for Spanish Cypress balustrades, but hired an independent contractor to paint the railings after the installation, instead of awarding that work to Muhler.

159. At all times relevant, Muhler relied on CHAC and/or DIRD and CHA to provide architectural drawings, specifications, and other construction documents that complied with building codes and standard construction practices, and were free from defect.

160. At all times relevant, Muhler relied on CHAC and/or DIRD and CHA to coordinate subcontractors and the work at the Project to produce a final product that complied with building codes and was free from defects.

161. Upon information and belief, the architectural plans and specifications and other construction documents which were provided by CHA, DIRD and CHAC were created by Gerry Rumplick, a CHA employee, who is not licensed to practice architecture in South Carolina, and those plans, specifications, and contract documents were insufficient. As a result, the Plaintiffs allege that the buildings that make up the Project failed to meet code and suffer from numerous construction defects.

162. Upon information and belief, CHA, DIRD and CHAC submitted plans for approval to local Governments that were signed and sealed by Defendant Edward J. D'Orazio, a New York architect who is also licensed in South Carolina. Upon information and belief, these plans were submitted by CHA, DIRD and CHAC despite the knowledge that the plan and

specifications were created by Gerry Rumplick with little or no supervision from Defendant D'Orazio.

163. Upon information and belief, CHA, DIRD and CHAC utilized contract administration services of Gerry Rumplick that qualify as the practice of architecture when Mr. Rumplick was not a licensed architect in South Carolina.

FOR A FIRST CAUSE OF ACTION
(NEGLIGENCE)

164. The Defendant Muhler expressly incorporates all the responses to the Fourth Amended Complaint, including all defenses and motions related to its Answer and Cross-Claims, as if set-forth herein verbatim, by reference, where relevant.

165. Defendants CHA, DIRD and CHAC owed a duty to Defendant Muhler.

166. Defendants CHA, DIRD and CHAC breached the same because it was negligent, careless, reckless, willful and wanton in the follow:

- a. Failing to obtain the services of a qualified or licensed architect to design the Project;
- b. In failing to provide architectural drawings that were free from defects;
- c. In failing to provide specifications that were free from defects;
- d. In providing architectural drawings that violated building codes;
- e. In providing specifications that violated building codes;
- f. In selecting products, materials or components that were inappropriate for the designated use or installation;
- g. In failing to provide construction coordination services that were appropriate;
- h. Failing to fund the project so that the appropriate materials or services were utilized;
- i. In failing to communicate with subcontractors so that appropriate

construction methods were utilized and coordinated among the subcontractors;

- j. In failing to correct design deficiencies during the construction process;
- k. In failing to hire qualified subcontractors, who would not harm, alter or damage the work completed by Muhler;
- l. In failing to supervise subcontractors to insure that work by subcontractors would not harm, alter or damage the work completed by Muhler;
- m. In undertaking a project without requisite, experience or skill;
- n. In failing to provide consistent and adequately trained supervision of the construction process; and
- o. Such other particulars that may be discovered or proved at trial.

167. If and to the extent that the Plaintiffs' allegations are true, which Defendant Muhler expressly denies, the negligent acts and omissions of CHA, DIRD and CHAC are the sole cause of the Plaintiffs' damages and led to the Plaintiffs' claims of damages being asserted by Defendant Muhler, without any fault or wrongdoing by Muhler.

168. As a direct and approximate result of the negligence of CHA, DIRD and CHAC, defendant Muhler has suffered injury in the form of litigation expenses, attorney fees, lost revenue, and conversion of resources.

FOR A SECOND CAUSE OF ACTION
(BREACH OF CONTRACT)

169. The Defendant Muhler expressly incorporates all the responses to the Fourth Amended Complaint, including all defenses and motions related to its Answer and Cross-Claims, as if set-forth herein verbatim, by reference, where relevant.

170. Defendant Muhler entered into contracts with CHAC and by implication of the amalgamation of interest theory and the alter-ego theory alleged above, CHA and DIRD. The

contracts were supported by valuable consideration and contained binding obligations. Defendant Muhler, performed, completed and sufficiently satisfied all of its obligations. DIRD, CHAC and CHA breached its constructional obligations by failing to provide adequate plans and appropriate supervision.

171. As a direct and approximate result, Defendant Muhler suffered injuries in the form of litigation expenses, attorney fees, lost revenues and conversion of resources.

FOR A THIRD CAUSE OF ACTION
(INDEMNITY)

172. The Defendant Muhler expressly incorporates all the responses to the Fourth Amended Complaint, including all defenses and motions related to its Answer and Cross-Claims, as if set-forth herein verbatim, by reference, where relevant.

173. Defendant Muhler has a special relationship with CHA, DIRD and CHAC. Defendant Muhler is entitled to equitable and contractual indemnification or both, from CHA, DIRD and CHAC for any amounts it may be required to pay Plaintiffs, plus attorneys fees and costs, because Muhler is free from fault.

FOR A FOURTH CAUSE OF ACTION
(BREACH OF IMPLIED WARRANTY OF SUFFICIENCY
OF PLANS AND SPECIFICATIONS)

174. The Defendant Muhler expressly incorporates all the responses to the Fourth Amended Complaint, including all defenses and motions related to its Answer and Cross-Claims, as if set-forth herein verbatim, by reference, where relevant.

175. Defendant Muhler was bound by contract with CHAC and, by virtue of the Amalgamated Interest Doctrine and the Alter-ego Doctrine, with DIRD and CHA to perform its work in accordance with the plans and specifications provided by CHA, DIRD and CHAC. In supplying said construction documents to Muhler and requiring conformance therewith, CHA, DIRD and CHAC impliedly warranted to Muhler that the plans, specification and other design

documents provided were accurate, suitable, reliable and sufficient for the purpose of building the Project.

176. Defendant Muhler's work CHA, DIRD and CHAC in all respects to the claims of the Plaintiffs, substantially complied with the plans and specifications provided, and any alleged defect in construction of the subject property as claimed by the Plaintiff (which is denied) directly results from the defects in the design and construction documents provided by CHA, DIRD and CHAC.

177. Defendant Muhler has been directly damaged by the breach of CHA, DIRD and CHAC's implied warranty of sufficiency of its plans and specifications in the form of litigation expenses, attorney fees, lost revenue and conversion of resources.

178. Therefore, in accordance with United States v. Spearin 248 U.S. 132 (1918) and Hill v. Polar Pantries 219 S.C. 263, 64 S.C. 2d 885 (1951), CHA, DIRD and CHAC should indemnify Muhler for all its losses that have occurred as a result of the developers breach of warranty; included but not limited to litigation expenses, attorney fees, lost revenue, conversion of resources and any damages against Muhler in favor of the Plaintiffs.

**FOR A FIFTY-FOURTH DEFENSE AND A
THIRD-PARTY CLAIM AGAINST CASTLE SIDING, INC.**

179. The Defendant Muhler expressly incorporates all the responses to the Fourth Amended Complaint, including all defenses and motions related to its Answer and Cross-Claims, as if set-forth herein verbatim, by reference, where relevant.

180. The Defendant/Third-Party Plaintiff Muhler is a corporation organized and existing under the laws of the state of South Carolina.

181. Third-Party Defendant Castle Siding, Inc. is a corporation organized and existing under the laws of the state of South Carolina and conducting business in Berkeley County, South

Carolina. The subject matter and personal jurisdiction, as well as venue, are proper with this Court.

182. Defendant Muhler had a contract to supply and install a balustrade system on the exterior porches of the Project.

183. Muhler and Castle Siding entered into an agreement, whereby Castle Siding agreed to install the balustrades at the Project.

184. Plaintiffs allege that the balustrades were improperly installed and that the balustrades are causing consequential damages to other elements of the buildings.

185. Muhler has denied these allegations.

FOR A FIRST CAUSE OF ACTION
(BREACH OF CONTRACT)

186. The Defendant Muhler expressly incorporates all the responses to the Fourth Amended Complaint, including all defenses and motions related to its Answer and Cross-Claims, as if set forth herein verbatim, by reference, where relevant.

187. The agreement between Muhler and Castle Siding is supported by viable consideration and contains binding and contractual obligations.

188. If and to the extent Plaintiffs allegations as set forth are true, which Muhler expressly denies, Castle Siding's failure to properly install the balustrades constitutes a breach of contract.

189. If and to the extent Plaintiffs' allegations as set forth are true, the damages claimed by the Plaintiff resulted directly from Castle Sidings breach of its agreement with Muhler and Castle Siding is liable to Muhler for the breach of contract.

190. As a direct and approximate result of Castle Sidings breach of contract, Muhler has suffered injuries in the form of litigation expenses, attorney fees, lost revenue and conversion of resources.

FOR A SECOND CAUSE OF ACTION
(NEGLIGENCE)

191. The Defendant Muhler expressly incorporates all the responses to the Fourth Amended Complaint, including all defenses and motions related to its Answer and Cross-Claims, as if set-forth herein verbatim, by reference, where relevant.

192. Castle Siding owed a duty to Muhler and breached the same, because it was negligent, careless, or reckless in failing to properly install the balustrade system. If and to the extent Plaintiffs' allegations as set forth are true, which Muhler expressly denies, then the negligent acts and omissions of Castle Siding are the sole cause of Plaintiffs' damages and led to Plaintiffs' claims of damages being asserted against Muhler without any fault or wrong doing by Muhler.

193. As a direct and approximate result of the negligence of Castle Siding, Muhler has been injured in the form of litigation costs, attorney fees, loss of revenue and conversion of resources.

FOR A THIRD CAUSE OF ACTION
(INDEMNITY)

194. The Defendant Muhler expressly incorporates all the responses to the Fourth Amended Complaint, including all defenses and motions related to its Answer and Cross-Claims, as if set-forth herein verbatim, by reference, where relevant.

195. If and to the extent Plaintiffs' allegations as set forth are true, which Defendant Muhler expressly denies, and the acts and omissions of Castle Siding are the sole cause of Plaintiffs' damages, that led to the Plaintiffs' claims of damages being asserted against Muhler without any fault or wrong doing by Muhler.

196. Muhler is entitled to an equitable indemnification or contractual indemnification or both, from Castle Siding for any amounts it may be required to pay to Plaintiffs, plus attorney fees and costs.

**FOR A FIFTY-FIFTH DEFENSE AND A
THIRD-PARTY CLAIM AGAINST CAOBA DOORS**

197. The Defendant Muhler expressly incorporates all the responses to the Fourth Amended Complaint, including all defenses and motions related to its Answer and Cross-Claims, as if set-forth herein verbatim, by reference, where relevant.

198. The Defendant/Third-Party Plaintiff Muhler is a corporation organized and existing under the laws of the state of South Carolina.

199. Third-Party Defendant Caoba Doors is a company organized and existing under the laws of a state other than South Carolina but conducting business in Berkeley County, South Carolina. The subject matter and personal jurisdiction, as well as venue, are proper with this Court.

200. Defendant Muhler had a contract to supply and install a balustrade system on the exterior porches of the Project.

201. Muhler and Caoba Doors entered into an agreement, whereby Caoba Doors agreed to supply the components of the balustrade system.

202. Plaintiffs allege that the balustrades are defective and that the balustrades are causing consequential damages to other elements of the buildings.

203. Muhler has denied these allegations.

**FOR A FIRST CAUSE OF ACTION
(BREACH OF CONTRACT)**

204. The Defendant Muhler expressly incorporates all the responses to the Fourth Amended Complaint, including all defenses and motions related to its Answer and Cross-Claims, as if set-forth herein verbatim, by reference, where relevant.

205. The agreement between Muhler and Caoba Doors is supported by viable consideration and contains binding and contractual obligations.

206. If and to the extent Plaintiffs' allegations as set forth are true, which Muhler expressly denies, Caoba Door's failure to properly manufacture the balustrades constitutes a breach of contract.

207. If and to the extent Plaintiffs' allegations as set forth are true, the damages claimed by the Plaintiff resulted directly from Caoba Door's breach of its agreement with Muhler and Caoba Door's is liable to Muhler for the breach of contract.

208. As a direct and approximate result of Caoba Door's breach of contract, Muhler has suffered injuries in the form of litigation expenses, attorney fees, lost revenue and conversion of resources.

FOR A SECOND CAUSE OF ACTION
(NEGLIGENCE)

209. The Defendant Muhler expressly incorporates all the responses to the Fourth Amended Complaint, including all defenses and motions related to its Answer and Cross-Claims, as if set-forth herein verbatim, by reference, where relevant.

210. Caoba Doors owed a duty to Muhler and breached the same, because it was negligent, careless, or reckless in failing to properly install the balustrade system. If and to the extent Plaintiffs' allegations as set forth are true, which Muhler expressly denies, then the negligent acts and omissions of Caoba Doors are the sole cause of Plaintiffs' damages and led to Plaintiffs' claims of damages being asserted against Muhler without any fault or wrong doing by Muhler.

211. As a direct and approximate result of the negligence of Caoba Doors, Muhler has been injured in the form of litigation costs, attorney fees, loss of revenue and conversion of resources.

FOR A THIRD CAUSE OF ACTION
(INDEMNITY)

212. The Defendant Muhler expressly incorporates all the responses to the Fourth Amended Complaint, including all defenses and motions related to its Answer and Cross-Claims, as if set-forth herein verbatim, by reference, where relevant.

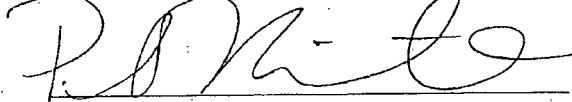
213. If and to the extent Plaintiffs' allegations as set forth are true, which Defendant Muhler expressly denies, and the acts and omissions of Caoba Doors are the sole cause of Plaintiffs' damages, that led to the Plaintiffs' claims of damages being asserted against Muhler without any fault or wrong doing by Muhler.

214. Muhler is entitled to an equitable indemnification or contractual indemnification or both, from Caoba Doors for any amounts it may be required to pay to Plaintiffs, plus attorney fees and costs.

WHEREFORE, Defendant/Cross-Claimant, Third-Party Plaintiff, Muhler requests that this Court issue and Order granting the following relief:

1. Dismiss the Plaintiffs' Complaint with Prejudice as to this Defendant;
2. declare that the Plaintiffs are not entitled to recovery from this Defendant;
3. tax the costs of this action against the Plaintiffs and/or award this Defendant its claims against the above-referenced Co-defendants and Third-Party Defendants, including Muhler's attorney fees;
4. grant such other relief in favor of Muhler as the Court may deem just and appropriate.

McANGUS GOUDELOCK & COURIE, LLC



Peter Gunnar Nistad

PO Box 650007

Mt. Pleasant, SC 29465

(843) 576-2900

ATTORNEYS FOR DEFENDANT, THIRD-
PARTY PLAINTIFF, THE MUHLER COMPANY,
INC.

July 5, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have this 5 day of July, 2012, served a copy of *Defendant The Muhler Company, Inc.'s Answer to the Plaintiffs' Fourth Amended Complaint and Cross-Claims Against Weather Shield Manufacturing, Inc., Daniel Island Riverside Developers, Carriage Hill Associate of Charleston, LLC and Carriage Hill Associates, Inc. AND Third-Party Complaint Against Castle Siding, Inc. and Caoba Doors* by mailing copies of same, electronically and/or postage prepaid, in the United States mail, with sufficient postage affixed as follows:

W.H. Bundy, Jr., Esquire
M. Brent McDonald, Esquire
Smith, Bundy, Bybee & Barnett, P.C.
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
Attorneys for Plaintiffs

Roy P. Maybank, Esquire
Amanda R. Maybank, Esquire
Maybank Law Firm, LLC
Post Office Box 12579
Charleston, South Carolina 29422

AND

Charles S. Altman, Esquire
Meredith L. Coker, Esquire
Altman & Coker, LLC
Post Office Box 265
Charleston, South Carolina 29402
Attorneys for Daniel Island Riverside Developers and Carriage Hill Associates of Charleston, LLC, and Rich Behringer

Gaines W. Smith, Esquire
Legare Hare & Smith.
720 St. Andrews Blvd.
Charleston, South Carolina 29407
Attorney for Coastal Roofing Co., Inc.

Christine Companion Varnado, Esquire
T. Scott Forster, Esquire
The Seibels Law Firm, PA
165-A King Street
Charleston, SC 29401
Attorney for Weather Shield Manufacturing, Inc.

Patrick T. Morrissey, Esquire
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-7595
Attorney for AC Construction, Inc.

Michael B.T. Wilkes, Esquire
C. Daniel Atkinson, Esquire
Wilkes Bowers, P.A.
127 Dunbar Street, Suite 200
Spartanburg, South Carolina 29306
Attorneys for Edward J. D'Orazio and Gerald Rumplick

Michael S. Seekings, Esquire
Leath, Bouch & Seekings, LLP
Post Office Box 59
Charleston, South Carolina 29402
Attorney for Geoffrey C. Cipkala and Samuel C. Agee

R. Michael Ethridge
Laura E. Paris, Esquire
Carlock Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
Attorneys for Carriage Hill Associates, Inc.

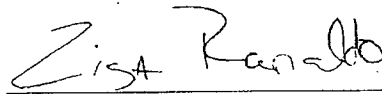
Robert A. McKenzie, Esquire
McDonald, McKenzie, Rubin Miller &
Lybrand, L.L.P.
1704 Main Street
Columbia, South Carolina 29201
AND

Mark D. Cahill, Esquire
Choate Hall & Stewart, LLP
Two International Place
Boston, Massachusetts 02110
Attorneys for Mt. Hawleys Insurance Co.

E. Mitchell Griffith, Esquire
Griffith, Sadler, & Sharp, PA
Post Office Drawer 570
Beaufort, South Carolina 29901-0570
Attorney for Castle Siding

Andrew E. Haselden, Esquire
Howser, Newman & Besley, LLC
215 East Bay Street
Suite 303
Charleston, SC 29401
Attorneys for Caoba Doors

Eugene P. Corrigan, III, Esquire
Harry V. Ragsdale, Esquire
Corrigan & Chandler, LLC
12 Exchange Street
Charleston, South Carolina 29401
Attorneys for Mr. Rich Behringer



Lisa D. Ranaldo
Legal Assistant to Peter Gunnar Nistad

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	
	)	
DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC and CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC,	)	CASE NO.: 2009-CP-08-1068
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
WEATHER SHIELD MFG., INC., THE MUHLER CO., INC. and AC CONSTRUCTION, INC.,	)	
Defendants.	)	
	)	
A.C. CONSTRUCTION, INC.	)	CASE NO.: 2009-CP-08-1413
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC, and TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA,	)	
	)	
Defendants.	)	
	)	
GEOFFREY C. CIPKALA and SAMUEL C. AGEE, as tenants in common of the common Elements of the Oaks at River's Edge Horizontal Property Regime and on behalf of themselves and All other tenants in common,	)	CASE NO.: 2009-CP-08-2714
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC, CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC, CARRIAGE HILL ASSOCIATES, INC.,	)	
Defendants.	)	

THE OAKS AT RIVERS EDGE PROPERTY
OWNERS ASSOCIATION, INC., JOHN E.
ATKINSON, JOAN D. STRANDQUIST, JOSEPH
E. CHIOVAROU, JR., PEYTON H. COOK, JR.,
BRENDA COOK, JOHN W. EDELEN, KAREN
A. NELSON, ROBERT J. GRAHAM, MAUREEN
S. GRAHAM, KEVIN O. HUX, NANCY K.
JOHNSON as trustee for the Nancy K. Johnson
Revocable Trust, WILLIAM JUNG, CHARLES
MARAZITI, PATRICIA MARAZITI, DONNA
DEE MORAN, GEORGE S. POLLARD,
ELEANOR J. POLLARD, ROBERT REECE,
GERARD M. RUVO AND SUE S. RUVO as
Trustees for the Ruvo 2006 Living Trust, ROBERT
FARINA, MARY ANN FARINA, CAROLYN M.
JENNINGS, THOMAS EDWARD KEANE,
EDWARD WALLACE BARR, III, RICHARD B.
PEKRUHN, PAULINE PEKRUHN, GREGORY
B. NATHAN, RICHARD JENNINGS,
MATTHEW J. SEVERANCE, and ELIZABETH
ASHLEY PHILLIPS SEVERANCE,

Plaintiffs,

v.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, CARRIAGE HILL ASSOCIATES OF
CHARLESTON, LLC, CARRIAGE HILL
ASSOCIATES, INC., WEATHER SHIELD
MFG., INC., THE MUHLER CO., INC., A.C.
CONSTRUCTION, INC., COASTAL
ROOFING CO., INC., COASTAL CAULKING,
INC., MIKE PHILLIPS d/b/a MIKE PHILLIPS
MASONRY, GERALD RUMPLICK,
EDWARD J. D'ORAZIO, and RICH
BEHRINGER,

Defendants.

THE MUHLER COMPANY, INC.,

Third-Party Plaintiff,

CASE NO.: 2008-CP-08-3916

**WEATHER SHIELD MFG.,
INC.'S ANSWER AND
MOTION TO DISMISS
PLAINTIFFS' FOURTH
AMENDED COMPLAINT &
CROSS-CLAIMS AGAINST
THE MUHLER COMPANY, INC.**

(Jury Trial Demanded)

CASTLE SIDING, INC. and CAOBA DOORS)
)
 Third-Party Defendant.)
)
 _____)

1. Every allegation of Plaintiffs' Fourth Amended Complaint not specifically admitted below is denied.

2. Weather Shield lacks knowledge and information sufficient to form a belief as to the allegations of Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21 and, therefore, denies the same.

4. The allegations of Paragraph 29 constitute a definition of "Carriage Hill Defendants" as the term is used in the Fourth Amended Complaint and, as such, require no response from Weather Shield; however, to the extent that Paragraph implies or infers liability or fault on the part of Weather Shield, those allegations are denied.

6. Weather Shield admits the allegations of Paragraphs 31 and 32, upon information and belief.

7. Weather Shield lacks knowledge and information sufficient to form a belief as to the allegations of Paragraphs 33, 34, 35, and 36 and, therefore, denies the same.

8. Weather Shield admits the allegations of Paragraph 37, upon information and belief.

9. The allegations of Paragraph 38 constitute a definition of "Architect Defendants" as the term is used in the Fourth Amended Complaint and, as such, require no response from Weather Shield; however, to the extent that Paragraph implies or infers liability or fault on the part of Weather Shield, those allegations are denied.

10. Weather Shield lacks knowledge and information sufficient to form a belief as to the allegations of Paragraphs 39 and 40 and, therefore, denies the same.

11. The allegations of Paragraphs 41 and 42 constitute conclusions of law, which require no response from Weather Shield; however, to the extent a response is required, Weather Shield admits that the Court has jurisdiction of the matter and venue is proper in this county.

12. In response to Paragraph 43, Weather Shield repeats its responses above.

13. Weather Shield admits so much of Paragraph 44 that asserts that the Regime consists of six, four story condominium buildings with ground level parking; that construction took place on the buildings in 2005 and 2006; and that some of the exteriors are finished with stucco and brick veneer. Weather Shield lacks knowledge and information sufficient to form a belief as to the remainder of the allegations of Paragraph 44 and, therefore, denies the same.

14. The allegations of Paragraphs 45, 46, and 47 are directed solely toward other parties to this action and, as such, require no response from Weather Shield; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied.

15. Weather Shield denies as written the allegations of Paragraph 48 as to it and its products. By way of further answer, Weather Shield admits that it manufactured some doors and windows that were installed at the subject residence by others.

16. The allegations of Paragraphs 49 and 50 are directed solely toward other parties to this action and, as such, require no response from Weather Shield; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied.

17. Weather Shield denies the allegations of Paragraphs 51 and 52 as to it and its products. Weather Shield lacks knowledge and information sufficient to form a belief as to the remaining allegations of those Paragraphs and, therefore, denies the same.

18. The allegations of Paragraphs 53, 54, 55, and 56 are directed solely toward the other parties to this action and, as such, require no response from Weather Shield; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied.

19. The allegations of Paragraphs 57 (including its subparts), 58, and 59 (including its subparts) are directed solely toward other parties to this action and, as such, require no response from Weather Shield; however, to the extent those Paragraphs make any allegations concerning Weather Shield or its products or imply or infer liability or fault on the part of Weather Shield, those allegations are denied.

20. Weather Shield denies the allegations of Paragraph 60 as to it and its products. As to allegations against other parties, Weather Shield lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 60 and, therefore, denies the same.

21. The allegations of Paragraphs 61 and 62 are directed solely toward other parties to this action and, as such, require no response from Weather Shield; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied.

22. Weather Shield denies the allegations of Paragraph 63 as to it and its products. As to allegations against other parties, Weather Shield lacks knowledge and information sufficient to form a belief as to the allegations of Paragraph 63 and, therefore, denies the same.

**FOR A FIRST DEFENSE
TO THE FIRST CAUSE OF ACTION**

23. In response to Paragraph 64, Weather Shield repeats its responses above.

24. Weather Shield denies the allegations of Paragraphs 65 (including its subparts) and 66 as to it and its products. The remaining allegations of those Paragraphs are directed solely toward other parties to this action and, as such, require no response from Weather Shield; however, to the extent the remaining allegations of those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied.

**FOR A FIRST DEFENSE
TO THE SECOND CAUSE OF ACTION**

25. In response to Paragraph 67, Weather Shield repeats its responses above.

26. The allegations of Paragraphs 68 and 69 are directed solely toward other parties to this action and, as such, require no response from Weather Shield; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied.

**FOR A FIRST DEFENSE
TO THE THIRD CAUSE OF ACTION**

27. In response to Paragraph 70, Weather Shield repeats its responses above.

28. Weather Shield denies the allegations of Paragraphs 71, 72, 73, 74, 75, and 76 as to it and its products. The remaining allegations of those Paragraphs are directed solely toward other parties to this action and, as such, require no response from Weather Shield; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied.

**FOR A FIRST DEFENSE
TO THE FOURTH CAUSE OF ACTION**

29. In response to Paragraph 77, Weather Shield repeats its responses above.

30. The allegations of Paragraphs 78, 79, 80, 81, 82, 83, 84, 85, and 86 are directed solely toward other parties to this action and, as such, require no response from Weather Shield; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied.

**FOR A FIRST DEFENSE
TO THE FIFTH CAUSE OF ACTION**

31. In response to Paragraph 87, Weather Shield repeats its responses above.

32. The allegations of Paragraph 88 are directed solely toward other parties to this action and, as such, require no response from Weather Shield; however, to the extent that Paragraph implies or infers liability or fault on the part of Weather Shield, those allegations are denied.

**FOR A FIRST DEFENSE
TO THE SIXTH CAUSE OF ACTION**

33. In response to Paragraph 89, Weather Shield repeats its responses above.

34. The allegations of Paragraphs 90, 91, 92, 93 (including its subparts), 94, 95, and 96 are directed solely toward other parties to this action and, as such, require no response from Weather Shield; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied.

**FOR A FIRST DEFENSE
TO THE SEVENTH CAUSE OF ACTION**

35. In response to Paragraph 97, Weather Shield repeats its responses above.

36. The allegations of Paragraphs 98, 99, and 100 are directed solely toward other parties to this action and, as such, require no response from Weather Shield; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied.

**FOR A FIRST DEFENSE
TO THE EIGHTH CAUSE OF ACTION**

37. In response to Paragraph 101, Weather Shield repeats its responses above.

38. Weather Shield denies the allegations of Paragraphs 102, 103, and 104 as to it and its products. The remaining allegations of those Paragraphs are directed solely toward other parties to this action and, as such, require no response from Weather Shield; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied.

**FOR A FIRST DEFENSE
TO THE NINTH CAUSE OF ACTION**

39. In response to Paragraph 105, Weather Shield repeats its responses above.

40. The allegations of Paragraphs 106, 107, and 108 are directed solely toward other parties to this action and, as such, require no response from Weather Shield; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied.

**FOR A FIRST DEFENSE
TO THE TENTH CAUSE OF ACTION**

41. In response to Paragraph 109, Weather Shield repeats its responses above.

42. The allegations of Paragraphs 110, 111, and 112 are directed solely toward other parties to this action and, as such, require no response from Weather Shield; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied.

**FOR A FIRST DEFENSE
TO THE ELEVENTH CAUSE OF ACTION**

43. In response to Paragraph 113, Weather Shield repeats its responses above.

44. Weather Shield denies the allegations of Paragraphs 114, 115, 116, 117, 118, 119, and 120.

**FOR A FIRST DEFENSE
TO THE TWELFTH CAUSE OF ACTION**

45. In response to Paragraph 121, Weather Shield repeats its responses above.

46. Weather Shield denies as written the allegations of Paragraph 122. By way of further answer, Weather Shield admits that it is in the business of manufacturing and designing windows and doors.

47. Weather Shield denies the allegations of Paragraphs 123, 124, and 125.

**FOR A FIRST DEFENSE
TO THE THIRTEENTH CAUSE OF ACTION**

48. In response to Paragraph 126, Weather Shield repeats its responses above.

49. The allegations of Paragraphs 127 (including its subparts), 128, and 129 are directed solely toward other parties to this action and, as such, require no response from Weather Shield; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied.

**FOR A FIRST DEFENSE
TO THE FOURTEENTH CAUSE OF ACTION**

50. In response to Paragraph 130, Weather Shield repeats its responses above.

51. The allegations of Paragraphs 131, 132, 133, 134, and 135 are directed solely toward other parties to this action and, as such, require no response from Weather Shield; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied.

**FOR A FIRST DEFENSE
TO THE FIFTEENTH CAUSE OF ACTION**

52. In response to Paragraph 136, Weather Shield repeats its responses above.

53. The allegations of Paragraphs 137, 138, and 139 are directed solely toward other parties to this action and, as such, require no response from Weather Shield; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied.

**FOR A FIRST DEFENSE
TO THE SIXTEENTH CAUSE OF ACTION**

54. In response to Paragraph 140, Weather Shield repeats its responses above.

55. The allegations of Paragraphs 141, 142, 143, and 144 are directed solely toward other parties to this action and, as such, require no response from Weather Shield; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied.

**FOR A FIRST DEFENSE
TO THE SEVENTEENTH CAUSE OF ACTION**

56. In response to Paragraph 145, Weather Shield repeats its responses above.

57. Weather Shield denies the allegations of Paragraphs 146, 147, 148, and 149.

**FOR A FIRST DEFENSE
TO THE EIGHTEENTH CAUSE OF ACTION**

58. In response to Paragraph 150, Weather Shield repeats its responses above.

59. Weather Shield denies the allegations of Paragraphs 151, 152, 153, 154, 155, and 156.

**FOR A FIRST DEFENSE
TO THE NINETEENTH CAUSE OF ACTION**

60. In response to Paragraph 157, Weather Shield repeats its responses above.

61. Weather Shield denies the allegations of Paragraphs 158, 159, 160, 161, 162, 163, and 164, thus being the remainder of Plaintiffs' Fourth Amended Complaint.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Failure to State a Claim under Rule 12(b)(6))**

62. The Fourth Amended Complaint, or parts of it, fails to state a claim for which relief can be granted against Weather Shield and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Comparative Negligence)**

63. Upon information and belief, Plaintiffs' recovery of any amount from Weather Shield must be reduced or barred in its entirety due to Plaintiffs' or their agents' own comparative negligence and/or recklessness.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Statute of Limitations/Repose)**

64. Upon information and belief, some or all of Plaintiffs' claims must be reduced or are barred by the applicable statutes of limitations and/or statute of repose.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL**

AND AFFIRMATIVE DEFENSE
(Laches, Waiver, and Estoppel)

65. Upon information and belief, some or all of Plaintiffs' claims are barred by the doctrines of laches, waiver, and/or estoppel.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Independent/Intervening Negligence of Others)**

66. Upon information and belief, any right to recover damages against Weather Shield is barred by the independent and intervening negligent, willful, wanton, and/or reckless actions or omissions of others.

67. Whatever damages or injuries, if any, which may have been sustained by Plaintiffs in this action were the result of, were due solely to, caused solely by, and were the direct and proximate result of the intervening, superseding, and unforeseeable negligence, willfulness, wantonness, and/or recklessness of others over whom this Defendant had no control or which occurred so as to bar Plaintiffs' recovery against this Defendant.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Assumption of the Risk)**

68. Upon information and belief, Plaintiffs or other parties have assumed the risk that would otherwise have resulted in a finding against Weather Shield, which is denied, and any right to recover damages against this Defendant is barred by the doctrine of assumption of the risk.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(S.C. Code Ann. §15-73-10)**

69. If products that may have been sold by Weather Shield are found to be the cause of

damages suffered by Plaintiffs, which Weather Shield denies, Plaintiffs cannot recover against this Defendant if the condition of the products was substantially changed or materially altered from the condition in which they were sold, as provided in S.C. Code Ann. § 15-73-10.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Economic Loss Doctrine)**

70. Plaintiffs' right to recover damages from Weather Shield is barred, in whole or in part, due to the economic loss doctrine.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Written Warranty)**

71. Weather Shield specifically pleads and incorporates herein the terms of any limitations of remedy in any applicable warranty in bar of any recovery. Weather Shield effectively disclaimed or limited all express or implied warranties, if any, including but not limited to any warranty of merchantability or fitness for particular purpose, as to the products installed at the subject house.

72. Plaintiffs' claims are barred as they have failed to make a claim against Weather Shield within any applicable warranty period. Plaintiffs' failure to give notice of or make any claim for alleged deficiencies in the workmanship and/or materials provided by Weather Shield within the applicable warranty period constitutes a complete defense to all claims asserted by Plaintiffs.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Failure to Give Reasonable Notice/Opportunity to Cure)**

73. If products that may have been sold and/or manufactured by Weather Shield were defective, which is denied, Plaintiffs' failure to give reasonable notice of the alleged defect and reasonable opportunity to cure or correct such alleged defect is pled in bar of any recovery under

a warranty or product liability claim and otherwise.

74. Plaintiffs' failure to provide notice and/or reasonable opportunity to cure or correct constitutes a complete defense to all claims asserted by Plaintiffs.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Statute of Frauds)**

75. Upon information and belief, some or all of Plaintiffs' claims, including warranty claims, are barred by the Statute of Frauds under S.C. Code Ann. § 32-3-10 and/or § 36-2-201.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(S.C. Code Ann. § 36-2-202)**

76. To the extent that Plaintiffs' claims, including warranty claims, are based on prior and/or oral agreements, those claims are barred under S.C. Code Ann. § 36-2-202.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Lack of Privity of Contract)**

77. Plaintiffs' claims, including warranty claims and negligence claims, are barred by lack of privity between Plaintiffs and Weather Shield.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Ratification)**

78. To the extent Plaintiffs assented to and/or adopted any work performed by Weather Shield at the site, Plaintiffs' claims, including warranty claims, are barred by the doctrine of ratification.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL**

AND AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

79. Upon information and belief, Plaintiffs' right to recover damages from Weather Shield is barred, in whole or in part, due to Plaintiffs' or their agents' failure to mitigate damages.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Failure to Maintain the Property)**

80. Upon information and belief, Plaintiffs' right to recover damages from Weather Shield is barred, in whole or in part, due to Plaintiffs' or their agents' failure to properly maintain the property.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Spoliation of Evidence)**

81. Plaintiffs' right to recover damages from Weather Shield is barred, in whole or in part, due to Plaintiffs' or their agents' spoliation of evidence, including but not limited to, the repair of alleged deficiencies without notice to Weather Shield and/or without giving Weather Shield the opportunity to observe the alleged deficiencies.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Doctrine of Unclean Hands)**

82. Plaintiffs' right to recover damages from Weather Shield is barred, in whole or in part, due to Plaintiffs' or their agents' unclean hands.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Lack of Standing)**

83. To the extent Plaintiffs lack standing with respect to any claim against Weather Shield,

that claim should be dismissed.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(S.C. Code Ann. § 15-38-15)**

84. Weather Shield reserves and asserts all rights under S.C. Code Ann §15-38-15.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(State of the Art)**

85. Products manufactured by Weather Shield conformed to the current state of the art at all relevant times, and the products were reasonably designed.

86. Upon information and belief, Plaintiffs' claims of alleged defects in the products, which are expressly denied, are based upon an inherent characteristic of such products that cannot be eliminated without substantially compromising the product's usefulness or desirability, which is recognized by the ordinary person with the ordinary knowledge common to the community, such that Plaintiffs cannot recover anything from Weather Shield.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(S.C. Code Ann. § 15-73-20)**

87. If products that may have been sold by Weather Shield were defective, which is denied, Plaintiffs or their agents, discovered (or through exercise of reasonable diligence should have discovered) such defect and were aware of the danger and, nevertheless, proceeded to make use of the product, such that Plaintiffs' recovery is barred or limited from this Defendant, as provided in S.C. Code Ann. § 15-73-20.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL**

AND AFFIRMATIVE DEFENSE
(Punitive Damages are Unconstitutional)

88. The imposition of punitive or exemplary damages against Weather Shield would violate its constitutional rights under the Due Process clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America ("United States Constitution"), the Excessive Fines clause of the Eighth Amendment to the United States Constitution, the Double Jeopardy clause in the Fifth Amendment to the United States Constitution, similar and other provisions in the South Carolina Constitution, and would violate the common law and public policies of South Carolina, and applicable South Carolina statutes and court rules. Such violations include but are not limited to:

a. Plaintiffs' claim for punitive damages against Weather Shield cannot be sustained because any award of punitive damages under South Carolina law without bifurcating the trial of all punitive damages issues would violate Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process provisions of the South Carolina Constitution.

b. Plaintiffs' claim for punitive damages against Weather Shield cannot be sustained because an award of punitive damages under South Carolina law subject to no predetermined limit, such as a maximum multiple of compensatory damages or a maximum on the amount of punitive damages that a jury may impose, would violate Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process provisions of the South Carolina Constitution.

c. Plaintiffs' claim for punitive damages against Weather Shield cannot be sustained because an award of punitive damages under South Carolina law by a jury that (1) is not provided a standard of sufficient clarity for determining the appropriateness, or the

appropriate size, of a punitive damages award, (2) is not instructed on the limits on punitive damages imposed by the applicable principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics, including the alleged corporate status of Defendant, (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible, and/or (5) is not subject to judicial review on the basis of objective standards, would violate Defendant's due process and equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution and the double jeopardy clause of the Fifth Amendment and by the South Carolina Constitution's provisions providing due process, equal protection, and a guaranty against double jeopardy.

d. Plaintiffs' claim for punitive damages against Weather Shield cannot be sustained because an award of punitive damages for the purpose of compensating Plaintiffs for elements of damage not otherwise recognized by South Carolina law would violate Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process provisions of the South Carolina Constitution.

e. Plaintiffs' claim for punitive damages against Weather Shield cannot be sustained because an award of punitive damages under South Carolina law without proof of every element beyond a reasonable doubt would violate Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process provisions of the South Carolina Constitution.

f. Plaintiffs' claim for punitive damages cannot be sustained because an award of punitive damages under state law without the same protections that are afforded to all criminal defendants, including protection against unreasonable searches and seizures, double jeopardy and self-incrimination and the rights to confront adverse witnesses, a speedy trial and the effective assistance of counsel would violate Defendant's rights under the Fourteenth Amendment to the United States Constitution and the Fourth, Fifth, and Sixth Amendments as incorporated into the Fourteenth Amendment and the South Carolina Constitution's provisions providing for due process and the rights to confront witnesses, a speedy trial and effective assistance of counsel and protection against unreasonable searches and seizures, double jeopardy and compelled self-incrimination.

g. Any award of damages, punitive or otherwise, based on anything other than Weather Shield's conduct in connection with the specific incident that is the subject of this lawsuit would violate the due process clause of the Fourteenth Amendment to the United States Constitution and the double jeopardy clause of the Fifth Amendment as incorporated into the Fourteenth Amendment and the South Carolina Constitution's provisions providing for due process and a guaranty against double jeopardy, because a judgment for punitive damages in this case cannot protect Defendant against impermissible multiple punishment for the same wrong.

**BY WAY OF FURTHER
ANSWER AND AS A
RESERVATION OF DEFENSES**

89. Weather Shield specifically reserves any additional and/or affirmative defenses as may be available to it or revealed to it during the course of the investigation and/or discovery and thus reserves the right to amend its Answer to assert any such defense.

**BY WAY OF FURTHER
ANSWER AND MOTION TO DISMISS**

90. The Fourth Amended Complaint, or parts of it, fails to state a claim for which relief can be granted against Weather Shield and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

**AS TO CROSS-CLAIMS AGAINST
THE MUHLER COMPANY, INC.**

91. Weather Shield is a corporation formed under the laws of Wisconsin.

92. The Muhler Company, Inc. ("Muhler") is a South Carolina corporation, which at all times relevant to this action has conducted business within Berkeley County, South Carolina.

93. This cross-claim arises out of Muhler's failure to pay Weather Shield for quantities of construction materials ordered from Weather Shield by Muhler, received by Muhler, and used by Muhler in furtherance of its business in connection with the project which is the subject of this lawsuit.

94. Based on the foregoing, this Court has personal jurisdiction over the parties and subject-matter jurisdiction over the causes of action pleaded herein. Venue is proper within Berkeley County.

**FOR A FIRST CAUSE OF ACTION
IN THE CROSS-CLAIM AGAINST MUHLER**
(Breach of Contract/Action on Open Account)

95. Weather Shield manufactures, and sells windows and doors for use in the building industry.

96. At all times relevant to this action, Muhler has engaged in the business of marketing, distribution, sale, and installation of products used in the building industry, including windows and doors.

97. On or about March 12, 2003, Mr. David L. Searcy, identified as the controller of Muhler, executed a commercial credit application with Weather Shield with the intent to establish a credit account to make purchases of product from Weather Shield.

98. Under the terms of the commercial credit application, Muhler agreed to make payment to Weather Shield on the designated due date following date of purchase as indicated on the invoice. In addition, Muhler agreed to pay a delinquency charge on all orders placed with Weather Shield if all or any portion of the invoice amount relating to the order was past due 60 days from the due date. The delinquency charge is deemed to be the greater of 18% per annum or the highest lawful rate which may be allowed under South Carolina law on the date the order was acknowledged by Weather Shield. Further, Muhler agreed that if any legal action was instituted to collect amounts owing for the materials purchased under the credit application, Weather Shield shall be entitled to recover in addition to all other damages, reasonable attorneys' fees.

99. On or about November 23, 2004, Mr. Ron Sykora of Muhler submitted to Weather Shield a "New Project Information Sheet" pertaining to Order number 319241992 and subsequent orders for the project, known as The Oaks at Riverside, to be built by Carriage Hill Associates d/b/a Daniel Island Riverside Development.

100. Under the terms of the agreements, Muhler agreed that payment for all invoices was due and owing ten (10) days from the date the products were received or otherwise it would be past due.

101. In addition, per Weather Shield's dealer policies and procedures and the terms and conditions of the credit application, Muhler had ten (10) calendar days from the date of delivery of goods from Weather Shield to reject them as non-conforming, with such rejection required to

be in writing setting forth the specific non-conformity, and requesting return of the goods; otherwise, the goods not so rejected are conclusively deemed as accepted.

102. In addition, unless written objection to any invoice was received within ten (10) calendar days of delivery, any dispute as to the invoice would be deemed waived.

103. Based on this agreement and its previous course of dealing with Weather Shield, Muhler commenced ordering construction materials from Weather Shield for the subject project and Weather Shield manufactured and delivered the materials ordered.

104. All goods duly ordered by Muhler for the project were actually delivered to Muhler and, upon information and belief, were used by Muhler in furtherance of Muhler's business in conjunction with the project.

105. As of February 2007, Muhler owes and has failed to pay to Weather Shield Fifteen Thousand, Six Hundred and Five and 79/100 (\$15,605.79) Dollars in past due invoices for products delivered by Weather Shield to Muhler for this project.

106. Neither Muhler nor anyone acting on its behalf, timely notified Weather Shield that the goods were undelivered, non-conforming, defective or otherwise unsuitable for use by Muhler or that the goods were rejected.

107. Based on the foregoing, a valid and enforceable contract for the delivery of goods on credit exists between Weather Shield and Muhler secured by good and valuable consideration, on terms memorialized in the commercial credit application and the new project information sheet.

108. Despite due demand, however, Muhler has refused to furnish full payment due and owing to Weather Shield for the goods ordered by Muhler and received by Muhler.

109. Muhler is in breach of its contractual obligations to pay Weather Shield, as well as in breach of the covenant of good faith and fair dealing implicit in every contract, causing Weather

Shield to be damaged in the amount of Fifteen Thousand, Six Hundred and Five and 79/100 (\$15,605.79) Dollars, plus interest, delinquency charges, attorneys' fees, and costs.

110. Alternatively, a valid and enforceable open account existed between Weather Shield and Muhler, whereby Muhler is lawfully indebted to Weather Shield in the amount of Fifteen Thousand, Six Hundred and Five and 79/100 (\$15,605.79) Dollars, representing the value of the goods delivered on account to Muhler, plus interest, delinquency charges, attorneys' fees, and costs.

111. Muhler has failed to comply with relevant provisions of the credit application and the new project information sheet and/or the applicable Uniform Commercial Code in seasonably rejecting any non-conforming products or services, and/or has failed to identify any errors in connection with the invoices, and/or Muhler's rationales for refusing payment are pretextual and based on false or incorrect information. Weather Shield has not directly or indirectly received any part of the money or goods charged herein as due or received any security or satisfaction for which credit has not already been given.

112. Based on the foregoing, Muhler is in material breach of its contractual obligations to Weather Shield and/or is lawfully indebted to Weather Shield, without having provided full payment to Weather Shield, causing Weather Shield to incur monetary damages of Fifteen Thousand, Six Hundred and Five and 70/100 (\$15,605.79) Dollars, plus interest, delinquency charges, attorneys' fees, and costs, as Weather Shield may be entitled to receive.

113. Weather Shield is entitled to judgment against Muhler in such amount or in other such amount as the trier of fact may decide.

**FOR A SECOND CAUSE OF ACTION
IN THE CROSS-CLAIM AGAINST MUHLER**
(Quasi-Contract/*Quantum Meruit*/Unjust Enrichment)

114. Weather Shield restates and re-alleges each of the foregoing allegations as if fully set forth herein verbatim.

115. Weather Shield has contributed to Muhler a valuable commercial benefit in the amount of goods delivered to Muhler, all of which is of direct benefit to Muhler.

116. In failing to pay Weather Shield, despite due demand, Muhler has realized and retained the benefit of Weather Shield's valuable commercial benefit and/or contributions.

117. Muhler has furthermore retained the benefits, as established above, under such circumstances that make it unjust and inequitable for said contributions to be retained without paying Weather Shield their full value.

118. The foregoing constitutes a breach of quasi-contract on the part of Muhler, for which Weather Shield has been damaged in an amount not less than Fifteen Thousand, Six Hundred and Five and 79/100 (\$15,605.79) Dollars, plus interest, delinquency charges, attorneys' fees, and costs as Weather Shield may be entitled to receive. Thus, Weather Shield is entitled to judgment against Muhler in such amount or in other such amount as the trier of fact may decide, under theories of quasi-contract and/or quantum meruit and/or unjust enrichment.

WHEREFORE, having fully answered and moved to dismiss Plaintiffs' Fourth Amended Complaint, Weather Shield prays that the same be dismissed with costs. In addition, having complained of Muhler, Weather Shield requests that the Court enter judgment in its favor on all causes of action in the cross-claims and grant it such actual and/or consequential damages as it may be entitled, in an amount not less than Fifteen Thousand, Six Hundred and Five and 79/100 (\$15,605.79) Dollars, plus interest, delinquency charges, attorneys' fees, and costs as Weather Shield may be entitled to receive. Further this Defendant prays for all relief that this Honorable Court finds just and proper.

THE SEIBELS LAW FIRM, P.A.

By: Christine C. Varnado
Christine Companion Varnado
cvarnado@seibelsfirm.com
Scott Forster
sforster@seibelsfirm.com
127 King Street, Suite 100
Charleston, SC 29401
843.722.6777
843.722.6781 (fax)

ATTORNEYS FOR WEATHER SHIELD MFG., INC.

July 6, 2012

Charleston, South Carolina

CERTIFICATE OF SERVICE

I, Sharon D. Harris, of Seibels Law Firm, P.A., hereby certify that a copy of *Weather Shield Mfg., Inc.'s Answer to Plaintiffs' Fourth Amended Complaint and Cross-Claims against The Muhler Company, Inc.* was properly addressed and sent via electronic mail to:

W.H. Bundy, Jr., Esquire
M. Brent McDonald, Esquire
PO Box 1542
Mount Pleasant, SC 29465-1542
whbesq@s3blaw.com
bmcDonald@s3blaw.com

Attorneys for Plaintiffs

Roy P. Maybank, Esquire
Amanda R. Maybank, Esquire
531 Savannah Hwy.
P. O. Box 12579
Charleston, SC 29422
roy@maybanklaw.com
amanda@maybanklaw.com

Attorneys for Daniel Island Riverside
Developers, LLC, Carriage Hill
Associates of Charleston, LLC, and Rich
Behringer

AND

Charles S. Altman, Esquire
Meredith L. Coker, Esquire
Altman & Coker, LLC
P. O. Box 265
Charleston, SC 29402
caltman@altmancoker.com
mcoker@altmancoker.com

Peter Gunnar Nistad, Esquire
McAngus, Goudelock & Courie, LLC
78 Wentworth Street, Suite 200 (29401)
P. O. Box 877
Charleston, SC 29402
gunnar.nistad@mgclaw.com

Attorneys for The Muhler Company, Inc.

Patrick T. Morrissey, Esquire
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
pmorrissey@clawsonandstaubes.com

Attorneys for AC Construction, Inc.

W. Jefferson Leath, Esquire
Michael S. Seekings, Esquire
Leath Bouch & Crawford, LLP
P.O. Box 59
Charleston, SC 29402
jl@leathbouchlaw.com
mseekings@leathbouchlaw.com

Attorneys for Plaintiffs Cipkala
and Agee

Gaines W. Smith, Esquire
Legare Hare & Smith
720 St. Andrews Blvd.
Charleston, SC 29407
gwsmith@legareharsmith.com

Attorneys for Coastal Roofing Co., Inc.

Michael B.T. Wilkes, Esquire
C. Daniel Atkinson, Esquire
Wilkes Bowers, P.A.
127 Dunbar Street, Suite 200
Spartanburg, SC 29306
mwilkes@wilkesbowers.com

Attorneys for Gerald Rumplick, AIA &
Edward J. D'Orazio, AIA

David S. Cobb, Esquire
Turner Padgett Graham & Lacey, PA
PO Box 2219
Charleston, SC 29413-2129
dcobb@turnerpadgett.com

Attorney for Coastal Caulking, Inc.

R. Michael Etheridge, Esquire
Laura E. Paris, Esquire
Carlock Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401-3531
methridge@carlockcopeland.com
lparis@carlockcopeland.com

Attorneys for Carriage Hill Associates,
Inc.

Rick Corrigan, Esquire
Harry Ragsdale, Esquire
Corrigan & Chandler
P. O. Box 547
Charleston, SC 29402
rick@corriganhandler.com
harry@corriganhandler.com

Attorneys for Rich Behringer

Robert A. McKenzie, Esquire
McDonald, McKenzie, Rubin, Miller and Lybrand
P.O. Box 58
Columbia, SC 29202
mckenzie@mmrml.com

Attorneys for Mt. Hawleys Insurance Co.

AND

Mark D. Cahill, Esquire
Choate Hall & Stewart, LLP
Two International Place
Boston, MA 02110
mcahill@choate.com

Andrew E. Haselden, Esquire
Howser, Newman & Besley, LLC
215 East Bay Street
Suite 303
Charleston, SC 29401

Attorney for Caoba Doors

E. Mitchell Griffith, Esquire
Griffith, Sadler, & Sharp, PA
Post Office Drawer 570
Beaufort, SC 29901

Attorney for Castle Siding

July 6, 2012


Sharon D. Harris

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC and CARRIAGE HILL ASSOCIATES OF
CHARLESTON, LLC,

Plaintiffs,

v.

WEATHER SHIELD MFG., INC.,
THE MUHLER CO., INC. and AC
CONSTRUCTION, INC.,

Defendants.

CASE NO.: 2009-CP-08-1068

**WEATHER SHIELD MFG.,
INC.'S REPLY TO THE
MUHLER COMPANY, INC.'S
CROSS-CLAIM**

(Jury Trial Demanded)

A.C. CONSTRUCTION, INC.

Plaintiffs,

v.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, and TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA,

Defendants.

CASE NO.: 2009-CP-08-1413

GEOFFREY C. CIPKALA and SAMUEL C.
AGEE, as tenants in common of the common
Elements of the Oaks at River's Edge Horizontal
Property Regime and on behalf of themselves and
All other tenants in common,

Plaintiffs,

v.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, CARRIAGE HILL ASSOCIATES OF
CHARLESTON, LLC, CARRIAGE HILL
ASSOCIATES, INC.,

Defendants.

CASE NO.: 2009-CP-08-1068

THE OAKS AT RIVERS EDGE PROPERTY
OWNERS ASSOCIATION, INC., JOHN E.
ATKINSON, JOAN D. STRANDQUIST, JOSEPH
E. CHIOVAROU, JR., PEYTON H. COOK, JR.,
BRENDA COOK, JOHN W. EDELEN, KAREN
A. NELSON, ROBERT J. GRAHAM, MAUREEN
S. GRAHAM, KEVIN O. HUX, NANCY K.
JOHNSON as trustee for the Nancy K. Johnson
Revocable Trust, WILLIAM JUNG, CHARLES
MARAZITI, PATRICIA MARAZITI, DONNA
DEE MORAN, GEORGE S. POLLARD,
ELEANOR J. POLLARD, ROBERT REECE,
GERARD M. RUVO AND SUE S. RUVO as
Trustees for the Ruvo 2006 Living Trust, ROBERT
FARINA, MARY ANN FARINA, CAROLYN M.
JENNINGS, THOMAS EDWARD KEANE,
EDWARD WALLACE BARR, III, RICHARD B.
PEKRUHN, PAULINE PEKRUHN, GREGORY
B. NATHAN, RICHARD JENNINGS,
MATTHEW J. SEVERANCE, and ELIZABETH
ASHLEY PHILLIPS SEVERANCE,

Plaintiffs,

v.

DANIEL ISLAND RIVERSIDE DEVELOPERS,
LLC, CARRIAGE HILL ASSOCIATES OF
CHARLESTON, LLC, CARRIAGE HILL
ASSOCIATES, INC., WEATHER SHIELD
MFG., INC., THE MUHLER CO., INC., A.C.
CONSTRUCTION, INC., COASTAL
ROOFING CO., INC., COASTAL CAULKING,
INC., MIKE PHILLIPS d/b/a MIKE PHILLIPS
MASONRY, GERALD RUMPLICK,
EDWARD J. D'ORAZIO, and RICH
BEHRINGER,

Defendants.

THE MUHLER COMPANY, INC.,

Third-Party Plaintiff,

CASE NO.: 2008-CP-08-3916

v.

CASTLE SIDING, INC. and CAOBA DOORS,

Third-Party Defendants.

Defendant Weather Shield Mfg., Inc. ("Weather Shield"), by and through its undersigned attorneys, replies to the Cross-Claims of The Muhler Company, Inc. ("Muhler") contained in its Answer to Plaintiffs' Fourth Amended Complaint and Cross-Claims against Weather Shield Mfg., Inc., Daniel Island Riverside Developers, Carriage Hill Associates of Charleston, LLC, and Carriage Hill Associates, Inc. and Third-Party Complaint against Castle Siding, Inc. and Caoba Doors as follows:

1. Every allegation of Muhler's Cross-Claim against Weather Shield, whether contained in the above-mentioned pleading or some other previously-filed pleading, which is not specifically admitted below is denied.

FOR A FIRST DEFENSE

2. The allegations of Paragraphs 1 through 122 contain Muhler's Answer to Plaintiffs' Fourth Amended Complaint and Affirmative Defenses and, as such, require no response from Weather Shield; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied.

**FOR A FIRST DEFENSE
TO THE CROSS-CLAIM
AGAINST WEATHER SHIELD**

3. In response to Paragraph 123, Weather Shield repeats its responses above.

4. Weather Shield admits the allegations of Paragraph 124 and 125.

5. The allegations of Paragraph 126 are a conclusion of law and require no response from

Weather Shield; however, to the extent a response is required, Weather Shield admits that the suit is properly sited in this Court.

6. Weather Shield denies as written the allegations of Paragraph 127 and by way of further answer admits that Defendant Muhler and Weather Shield entered into an agreement whereby Weather Shield agreed to manufacture and deliver some window and door products that were ordered by Defendant Muhler, which Muhler then sold for use at the subject condominium complex.

7. Weather Shield denies the allegations of Paragraph 128.

**FOR A FIRST DEFENSE
TO THE FIRST CAUSE OF ACTION
IN THE CROSS-CLAIM AGAINST WEATHER SHIELD**

8. In response to Paragraph 129, Weather Shield repeats its responses above.

9. Weather Shield denies as written the allegations of Paragraphs 130.

10. Weather Shield denies the allegations of Paragraphs 131 and 132.

**FOR A FIRST DEFENSE
TO THE SECOND CAUSE OF ACTION
IN THE CROSS-CLAIM AGAINST WEATHER SHIELD**

11. In response to Paragraph 133, Weather Shield repeats its responses above.

12. Weather Shield denies the allegations of Paragraphs 134 and 135.

**FOR A FIRST DEFENSE
TO THE THIRD CAUSE OF ACTION
IN THE CROSS-CLAIM AGAINST WEATHER SHIELD**

13. In response to Paragraph 136, Weather Shield repeats its responses above.

14. Weather Shield denies the allegations of Paragraphs 137 and 138.

**FOR A FIRST DEFENSE
TO THE CROSS-CLAIM AGAINST
DEFENDANTS CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC,
DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC AND**

CARRIAGE HILL ASSOCIATES, INC.

15. In response to Paragraph 139, Weather Shield repeats its responses above.
16. Weather Shield admits the allegations of Paragraph 140.
17. Weather Shield admits, upon information and belief, the allegations of Paragraphs 141, 142, and 143.
18. The allegations of Paragraph 144 are a conclusion of law and require no response from Weather Shield; however, to the extent a response is required, Weather Shield admits that the suit is properly sited in this Court.
19. Weather Shield admits, upon information and belief, the allegations of Paragraphs 145, 146, 147, 148, 149, 150, 151, 152, and 153.
20. The allegations of Paragraphs 154, 155, 156, 157, 158, 159, and 160 are directed solely toward other parties to this action and, as such, require no response from Weather Shield; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied.
21. Weather Shield admits, upon information and belief, the allegations of Paragraphs 161, 162, and 163.

**FOR A FIRST DEFENSE
TO THE FIRST CAUSE OF ACTION IN THE CROSS-CLAIM AGAINST
DEFENDANTS CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC,
DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC AND
CARRIAGE HILL ASSOCIATES, INC.**

22. In response to Paragraph 164, Weather Shield repeats its responses above.
23. The allegations of Paragraphs 165, 166 (including its subparts), 167, and 168 are directed solely toward other parties to this action and, as such, require no response from Weather Shield;

however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied.

**FOR A FIRST DEFENSE
TO THE SECOND CAUSE OF ACTION IN THE CROSS-CLAIM AGAINST
DEFENDANTS CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC,
DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC AND
CARRIAGE HILL ASSOCIATES, INC.**

24. In response to Paragraph 169, Weather Shield repeats its responses above.
25. The allegations of Paragraphs 170 and 171 are directed solely toward other parties to this action and, as such, require no response from Weather Shield; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied.

**FOR A FIRST DEFENSE
TO THE THIRD CAUSE OF ACTION IN THE CROSS-CLAIM AGAINST
DEFENDANTS CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC,
DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC AND
CARRIAGE HILL ASSOCIATES, INC.**

26. In response to Paragraph 172, Weather Shield repeats its responses above.
27. The allegations of Paragraph 173 are directed solely toward other parties to this action and, as such, require no response from Weather Shield; however, to the extent that Paragraph implies or infers liability or fault on the part of Weather Shield, those allegations are denied.

**FOR A FIRST DEFENSE
TO THE FOURTH CAUSE OF ACTION IN THE CROSS-CLAIM AGAINST
DEFENDANTS CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC,
DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC AND
CARRIAGE HILL ASSOCIATES, INC.**

28. In response to Paragraph 174, Weather Shield repeats its responses above.
29. The allegations of Paragraphs 175, 176, 177, and 178 are directed solely toward other parties to this action and, as such, require no response from Weather Shield; however, to the

extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied.

**FOR A FIRST DEFENSE
TO THE THIRD-PARTY CLAIM AGAINST
CASTLE SIDING, INC.**

30. In response to Paragraph 179, Weather Shield repeats its responses above.

31. Weather Shield admits the allegations of Paragraph 180.

32. Weather Shield lacks knowledge and information sufficient to form a belief as to the portion of Paragraph 181 that alleges that Third-Party Defendant Castle Siding is a corporation organized and existing under the laws of South Carolina and conducting business in Berkeley County and, therefore, denies the same. The remaining allegations of Paragraph 181 constitute conclusions of law, which require no response from Weather Shield, but to the extent a response is required, Weather Shield admits that this case is properly sited in this Court.

33. The allegations of Paragraphs 182, 183, 184, and 185 are directed solely toward other parties to this action and, as such, require no response from Weather Shield; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied.

**FOR A FIRST DEFENSE
TO THE FIRST CAUSE OF ACTION
IN THE THIRD-PARTY COMPLAINT AGAINST
CASTLE SIDING, INC.**

34. In response to Paragraph 186, Weather Shield repeats its responses above.

35. The allegations of Paragraphs 187, 188, 189, and 190 are directed solely toward other parties to this action and, as such, require no response from Weather Shield; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied.

**FOR A FIRST DEFENSE
TO THE SECOND CAUSE OF ACTION
IN THE THIRD-PARTY COMPLAINT AGAINST
CASTLE SIDING, INC.**

36. In response to Paragraph 191, Weather Shield repeats its responses above.
37. The allegations of Paragraphs 192 and 193 are directed solely toward other parties to this action and, as such, require no response from Weather Shield; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied.

**FOR A FIRST DEFENSE
TO THE THIRD CAUSE OF ACTION
IN THE THIRD-PARTY COMPLAINT AGAINST
CASTLE SIDING, INC.**

38. In response to Paragraph 194, Weather Shield repeats its responses above.
39. The allegations of Paragraphs 195 and 196 are directed solely toward other parties to this action and, as such, require no response from Weather Shield; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied.

**FOR A FIRST DEFENSE
TO THE THIRD-PARTY CLAIM AGAINST
CAOBA DOORS**

40. In response to Paragraph 197, Weather Shield repeats its responses above.
41. Weather Shield admits the allegations of Paragraph 198.
42. Weather Shield lacks knowledge and information sufficient to form a belief as to the portion of Paragraph 199 that alleges that Third-Party Defendant Caoba Doors is a corporation organized and existing under the laws of a state other than South Carolina but conducts business in Berkeley County, and, therefore, denies the same. The remaining allegations of Paragraph

199 constitute conclusions of law, which require no response from Weather Shield but to the extent a response is required, Weather Shield admits that this case is properly sited in this Court.

43. The allegations of Paragraphs 200, 201, 202, and 203 are directed solely toward other parties to this action and, as such, require no response from Weather Shield; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied.

**FOR A FIRST DEFENSE
TO THE FIRST CAUSE OF ACTION
IN THE THIRD-PARTY COMPLAINT AGAINST
CAOBA DOORS**

44. In response to Paragraph 204, Weather Shield repeats its responses above.

45. The allegations of Paragraphs 205, 206, 207, and 208 are directed solely toward other parties to this action and, as such, require no response from Weather Shield; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied.

**FOR A FIRST DEFENSE
TO THE SECOND CAUSE OF ACTION
IN THE THIRD-PARTY COMPLAINT AGAINST
CAOBA DOORS**

46. In response to Paragraph 209, Weather Shield repeats its response above.

47. The allegations of Paragraphs 210 and 211 are directed solely toward other parties to this action and, as such, require no response from Weather Shield; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied.

**FOR A FIRST DEFENSE
TO THE THIRD CAUSE OF ACTION
IN THE THIRD-PARTY COMPLAINT AGAINST
CAOBA DOORS**

48. In response to Paragraph 212, Weather Shield repeats its responses above.

49. The allegations of Paragraphs 213 and 214 are directed solely toward other parties to this action and, as such; require no response from Weather Shield; however, to the extent those Paragraphs imply or infer liability or fault on the part of Weather Shield, those allegations are denied, thus being the remainder of Muhler's Cross-Claims and Third-Party Complaint.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Failure to State a Claim under Rule 12(b)(6))**

50. The Cross-Claim, or parts of it, fail to state a claim for which relief can be granted against Weather Shield and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Comparative Negligence)**

51. Upon information and belief, Muhler's recovery of any amount from Weather Shield must be reduced or barred in its entirety due to Muhler's own comparative negligence and/or recklessness.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Statute of Limitations/Repose)**

52. Upon information and belief, some or all of Muhler's claims must be reduced or are barred by the applicable statutes of limitations and/or statute of repose.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Laches, Waiver, and Estoppel)**

53. Upon information and belief, some or all of Muhler's claims are barred by the doctrines of laches, waiver, and/or estoppel.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Independent/Intervening Negligence of Others)**

54. Upon information and belief, any right to recover damages against Weather Shield is barred by the independent and intervening negligent, willful, wanton, and/or reckless actions or omissions of others.

55. Whatever damages or injuries, if any, which may have been sustained by Muhler in this action were the result of, were due solely to, caused solely by, and were the direct and proximate result of the intervening, superseding, and unforeseeable negligence, willfulness, wantonness, and/or recklessness of others over whom this Defendant had no control or which occurred so as to bar Muhler's recovery against this Defendant.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Assumption of the Risk)**

56. Upon information and belief, Muhler or other parties have assumed the risk that would otherwise have resulted in a finding against Weather Shield, which is denied, and any right to recover damages against this Defendant is barred by the doctrine of assumption of the risk.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(S.C. Code Ann. §15-73-10)**

57. If products that may have been sold by Weather Shield are found to be the cause of damages suffered by Muhler, which Weather Shield denies, Muhler cannot recover against this

Defendant if the condition of the products was substantially changed or materially altered from the condition in which they were sold; as provided in S.C. Code Ann. § 15-73-10.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Economic Loss Doctrine)**

58. Muhler's right to recover damages from Weather Shield is barred, in whole or in part, due to the economic loss doctrine.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Written Warranty)**

59. Weather Shield specifically pleads and incorporates herein the terms of any limitations of remedy in any applicable warranty, if any, in bar of any recovery. Weather Shield effectively disclaimed or limited all express or implied warranties, if any, including, but not limited to, any warranty of merchantability or fitness for particular purpose, as to the products installed at the subject house.

60. Muhler's claims are barred as it has failed to make a claim against Weather Shield within any applicable warranty period. Muhler's failure to give notice of or make any claim for alleged deficiencies in the workmanship and/or materials provided by Weather Shield within the applicable warranty period constitutes a complete defense to all claims asserted by Muhler.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Failure to Give Reasonable Notice/Opportunity to Cure)**

61. If products that may have been sold and/or manufactured by Weather Shield were defective, which is denied, Muhler's failure to give reasonable notice of the alleged defect and

reasonable opportunity to cure or correct such alleged defect is pled in bar of any recovery under a warranty or product liability claim and otherwise.

62. Muhler's failure to provide notice and/or reasonable opportunity to cure or correct constitutes a complete defense to all claims asserted by Muhler.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Statute of Frauds)**

63. Upon information and belief, some or all of Muhler's claims, including warranty claims, are barred by the Statute of Frauds under S.C. Code Ann. § 32-3-10 and/or § 36-2-201.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(S.C. Code Ann. § 36-2-202)**

64. To the extent that Muhler's claims, including warranty claims, are based on prior and/or oral agreements, those claims are barred under S.C. Code Ann. § 36-2-202.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Ratification)**

65. To the extent Muhler assented to and/or adopted any work performed by Weather Shield at the site, Muhler's claims, including warranty claims, are barred by the doctrine of ratification.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)**

66. Upon information and belief, Muhler's right to recover damages from Weather Shield is barred, in whole or in part, due to Muhler's failure to mitigate damages.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL**

AND AFFIRMATIVE DEFENSE
(Failure to Maintain the Property)

67. Upon information and belief, Muhler's right to recover damages from Weather Shield is barred, in whole or in part, due to Muhler's or its agents' failure to properly maintain the property.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**
(Spoliation of Evidence)

68. Muhler's right to recover damages from Weather Shield is barred, in whole or in part, due to Muhler's or its agents' spoliation of evidence, including but not limited to the repair of alleged deficiencies without notice to Weather Shield and/or without giving Weather Shield the opportunity to observe the alleged deficiencies.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**
(Doctrine of Unclean Hands)

69. Muhler's right to recover damages from Weather Shield is barred, in whole or in part, due to Muhler's or its agents' unclean hands.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**
(Lack of Standing)

70. To the extent Muhler lacks standing with respect to any claim against Weather Shield, that claim should be dismissed.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE**
(S.C. Code Ann. § 15-38-15)

71. Weather Shield reserves and asserts all rights under S.C. Code Ann §15-38-15.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(State of the Art)**

72. Products manufactured by Weather Shield conformed to the current state of the art at all relevant times, and the products were reasonably designed.

73. Upon information and belief, Muhler's claims of alleged defects in the products, which are expressly denied, are based upon an inherent characteristic of such products that cannot be eliminated without substantially compromising the product's usefulness or desirability, which is recognized by the ordinary person with the ordinary knowledge common to the community, such that Muhler cannot recover anything from Weather Shield.

**BY WAY OF FURTHER
ANSWER AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(S.C. Code Ann. § 15-73-20)**

74. If products that may have been sold by Weather Shield were defective, which is denied, Muhler or its agents discovered (or through exercise of reasonable diligence should have discovered) such defect and were aware of the danger and, nevertheless, proceeded to make use of the product, such that Muhler's recovery is barred or limited from this Defendant, as provided in S.C. Code Ann. § 15-73-20.

**BY WAY OF FURTHER
ANSWER AND AS A
RESERVATION OF DEFENSES**

75. Weather Shield specifically reserves any additional and/or affirmative defenses as may be available to it or revealed to it during the course of the investigation and/or discovery and thus reserves the right to amend its Reply to Cross-Claims to assert any such defense.

WHEREFORE, having fully answered Muhler's Cross-Claim, Weather Shield prays that the same be dismissed with costs. Further this Defendant prays for all relief that this Honorable Court finds just and proper.

THE SEIBELS LAW FIRM, P.A.

By: 
Christine Companion Varnado
cvarnado@seibelsfirm.com
Scott Forster
sforster@seibelsfirm.com
127 King Street, Suite 100
Charleston, SC 29401
843.722.6777
843.722.6781 (fax)

ATTORNEYS FOR WEATHER SHIELD MFG., INC.

Charleston, South Carolina

July 17, 2012

CERTIFICATE OF SERVICE

I, Katharina Garvin, of Seibels Law Firm, P.A., hereby certify that a copy of *Weather Shield Mfg., Inc.'s Reply to Muhler's Cross-Claim in its Answer to Plaintiffs' Fourth Amended Complaint* was properly addressed and sent via electronic mail to:

W.H. Bundy, Jr., Esquire
M. Brent McDonald, Esquire
PO Box 1542
Mount Pleasant, SC 29465-1542
whbesq@s3blaw.com
bmcdonald@s3blaw.com

Attorneys for Plaintiffs

Roy P. Maybank, Esquire
Amanda R. Maybank, Esquire
531 Savannah Hwy.
P. O. Box 12579
Charleston, SC 29422
roy@maybanklaw.com
amanda@maybanklaw.com

Attorneys for Daniel Island Riverside
Developers, LLC, Carriage Hill
Associates of Charleston, LLC, and Rich
Behringer

AND

Charles S. Altman, Esquire
Meredith L. Coker, Esquire
Altman & Coker, LLC
P. O. Box 265
Charleston, SC 29402
caltman@altmancoker.com
mcoker@altmancoker.com

Peter Gunnar Nistad, Esquire
McAngus, Goudelock & Courie, LLC
78 Wentworth Street, Suite 200 (29401)
P. O. Box 877
Charleston, SC 29402
gunnar.nistad@mgclaw.com

Attorneys for The Muhler Company, Inc.

Patrick T. Morrissey, Esquire
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
pmorrissey@clawsonandstaubes.com

Attorneys for AC Construction, Inc.

W. Jefferson Leath, Esquire
Michael S. Seekings, Esquire
Leath Bouch & Crawford, LLP
P.O. Box 59
Charleston, SC 29402
jl@leathbouchlaw.com
mseekings@leathbouchlaw.com

Gaines W. Smith, Esquire
Legare Hare & Smith
720 St. Andrews Blvd.
Charleston, SC 29407
gwsmith@legareharesmith.com

Michael B.T. Wilkes, Esquire
C. Daniel Atkinson, Esquire
Wilkes Bowers, P.A.
127 Dunbar Street, Suite 200
Spartanburg, SC 29306
mwilkes@wilkesbowers.com

David S. Cobb, Esquire
Turner Padgett Graham & Lacey, PA
PO Box 2219
Charleston, SC 29413-2129
dcobb@turnerpadget.com

R. Michael Etheridge, Esquire
Laura E. Paris, Esquire
Carlock Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401-3531
methridge@carlockcopeland.com
lparis@carlockcopeland.com

Rick Corrigan, Esquire
Harry Ragsdale, Esquire
Corrigan & Chandler
P. O. Box 547
Charleston, SC 29402
rick@corriganhandler.com
harry@corriganhandler.com

Attorneys for Plaintiffs Cipkala
and Agee

Attorneys for Coastal Roofing Co., Inc.

Attorneys for Gerald Rumplick, AIA &
Edward J. D'Orazio, AIA

Attorney for Coastal Caulking, Inc.

Attorneys for Carriage Hill Associates,
Inc.

Attorneys for Rich Behringer

Robert A. McKenzie, Esquire
McDonald, McKenzie, Rubin, Miller and Lybrand
P.O. Box 58
Columbia, SC 29202
mckenzie@mmrml.com

Attorneys for Mt. Hawleys Insurance Co.

AND

Mark D. Cahill, Esquire
Choate Hall & Stewart, LLP
Two International Place
Boston, MA 02110
mcahill@choate.com

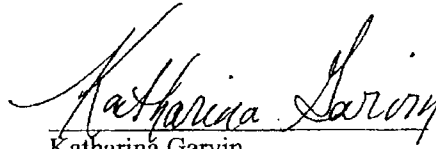
Andrew E. Haselden, Esquire
Howser, Newman & Besley, LLC
215 East Bay Street
Suite 303
Charleston, SC 29401

Attorney for Caoba Doors

E. Mitchell Griffith, Esquire
Griffith, Sadler, & Sharp, PA
Post Office Drawer 570
Beaufort, SC 29901

Attorney for Castle Siding, Inc.

July 17, 2012


Katharina Garvin

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

DANIEL ISLAND RIVERSIDE
DEVELOPERS, LLC., and CARRIAGE
HILL ASSOCIATES OF CHARLESTON,
LLC.,

Plaintiffs,

vs.

WEATHER SHIELD
MANUFACTURING, INC., THE
MUHLER CO., INC., and A.C.
CONSTRUCTION, INC.,

Defendants.

A.C. CONSTRUCTION, INC.,

Plaintiffs

vs.

DANIEL ISLAND RIVERSIDE
DEVELOPERS, LLC., and TRAVELERS
CASUALTY AND SURETY COMPANY
OF AMERICA,

Defendants

GEOFFREY C. CIPKALA and SAMUEL
C. AGEE, as tenants in common of the
common elements of the Oaks at River's
Edge Horizontal Property Regime and on
behalf of themselves and all other tenants
in common,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-08-1068

DEFENDANT CARRIAGE HILL
ASSOCIATES, INC.'S ANSWER TO THE
MUHLER CO. INC.'S AMENDED ANSWER
TO THE PLAINTIFFS' FOURTH AMENDED
COMPLAINT AND CROSS-CLAIMS
AGAINST WEATHER SHIELD
MANUFACTURING, INC., DANIEL ISLAND
RIVERSIDE DEVELOPERS, CARRIAGE
HILL ASSOCIATES OF CHARLESTON,
LLC AND CARRIAGE HILL ASSOCIATES,
INC. AND THIRD PARTY COMPLAINT
AGAINST CASTLE SIDING, INC. AND
CAOBA DOORS

2012 AUG -3 AM 11:29
CLERK OF COURT
BERKELEY COUNTY

DEVELOPERS, LLC., CARRIAGE HILL)
ASSOCIATES OF CHARLESTON, LLC.,)
CARRIAGE HILL ASSOCIATES, INC.,)

Defendants.)

THE OAKS AT RIVERS EDGE)
PROPERTY OWNERS ASSOCIATION,)
INC., JOHN E. ATKINSON, JOAN D.)
STRANDQUIST, JOSEPH E.)
CHIOVAROU, JR., PEYTON H. COOK,)
JR., BRENDA COOK, JOHN W.)
EDELEN, KAREN A. NELSON,)
ROBERT J. GRAHAM, MAUREEN S.)
GRAHAM. KEVIN O. HUX, NANCY K.)
JOHNSON as trustee for the Nancy K.)
Johnson Revocable Trust, WILLIAM)
JUNG, CHARLES MARAZITI,)
PATRICIA MARAZITI, DONNA DEE)
MORAN, GEORGE S. POLLARD,)
ELEANOR J. POLLARD, ROBERT)
REECE, GERARD M. RUVO AND SUE)
S. RUVO as trustees for the Ruvo 2006)
Living Trust, ROBERT FARINA, MARY)
ANN FARINA, CAROLYN M.)
JENNINGS, THOMAS EDWARD)
KEANE, EDWARD WALLACE BARR,)
III, RICHARD B. PEKRUHN, PAULINE)
PEKRUHN, GREGORY B. NATHAN,)
RICHARD JENNINGS, MATTHEW J.)
SEVERANCE, AND ELIZABETH)
ASHLEY PHILLIPS SEVERANCE,)

Plaintiffs,)

vs.)

DANIEL ISLAND RIVERSIDE)
DEVELOPERS, L.L.C., CARRIAGE HILL)
ASSOCIATES OF CHARLESTON, LLC.,)
CARRIAGE HILL ASSOCIATES, INC.,)
WEATHER SHIELD)
MANUFACTURING, INC., THE)
MUHLER CO., INC., A.C.)
CONSTRUCTION, INC., COASTAL)
ROOFING CO., INC., COASTAL)

CAULKING, INC., MIKE PHILLIPS	)
d/b/a MIKE PHILLIPS MASONRY,	)
GERALD RUMPLICK, EDWARD J.	)
D'ORAZIO, and RICH BEHRINGER	)
	)
Defendants.	)
THE MUHLER COMPANY, INC.,	)
	)
Third-Party Plaintiff,	)
vs.	)
	)
CASTLE SIDING, INC.	)
	)
Third-Party Defendant.	)
	)

Defendant Carriage Hill Associates, Inc. ("CHNY") by and through its undersigned counsel, hereby answers Muhler Co. Inc.'s ("Muhler") Amended Answer to the Plaintiffs' Fourth Amended Complaint and Cross-Claims Against Weather Shield Manufacturing, Inc., Daniel Island Riverside Developers, Carriage Hill Associates of Charleston, LLC and Carriage Hill Associates, Inc. And Third Party Complaint Against Castle Siding, Inc. and Caoba Doors (hereinafter "Muhler's Cross-Claim"). CHNY denies each and every allegation of Muhler's Cross-Claim not specifically admitted herein.

1. Paragraphs 1 through 122 represent Muhler's Answers and Affirmative Defenses to Plaintiffs' Third Amended Complaint. To the extent that Paragraphs 1 through 122 suggest or imply any liability on the part of CHNY, those allegations are denied. Further responding, CHNY is without sufficient information to further respond to Paragraphs 1 through 122 and, therefore, denies the same.

2. Responding to Paragraph 123 CHNY reasserts and realleges its responses to Paragraphs 1 through 122 of Muhler's Answer and Cross Claims as if reinstated verbatim herein.

3. Paragraphs 124 through 138 represent Muhler's Cross-Claims against Defendant

Weather Shield Manufacturing, Inc. To the extent that these allegations suggest or imply any liability on the party of CHNY, those allegations are denied. Further responding, CHNY is without sufficient information to respond to allegations directed at Defendants other than itself and, therefore, denies the same.

4. Responding to Paragraph 139, CHNY reasserts and realleges its responses to Paragraphs 1 through 138 of Muhler's Cross-Claims as if reinstated verbatim herein.

5. Defendant CHNY lacks sufficient information to respond to allegations of Paragraph 140 and, therefore, denies the same.

6. Paragraphs 141 and 142 contain allegations directed at Defendants other than CHNY. Further responding, CHNY lacks sufficient information to respond to the allegations directed at parties other than itself and, therefore, denies the same.

7. Responding to Paragraph 143, CHNY admits so much as alleges it is a New York corporation.

8. CHNY lacks sufficient information to respond to allegations of Paragraph 144 and, therefore, denies the same.

9. Responding to Paragraphs 145 and 146, CHNY lacks sufficient information to respond to the allegations as stated, and therefore, denies as stated.

10. CHNY denies the allegations contained in Paragraphs 147, 148, and 149.

11. Upon information and belief, CHNY denies the allegations contained in Paragraphs 150 and 151.

12. CHNY denies the allegations contained in Paragraphs 152.

13. CHNY lacks sufficient information to respond to the allegations contained in Paragraphs 153 through 158 and, therefore, denies the same.

14. To the extent that the allegations contained in Paragraphs 159 and 160 refer to CHNY, those allegations are denied as stated. CHNY is without sufficient information to respond to allegations directed at parties other than CHNY and, therefore, denies the same.

15. CHNY admits so much of Paragraph 161 as reference language in Plaintiffs' Complaint, which speaks for itself. Further responding, to the extent that the allegations contained in Paragraph 161 suggest or imply any liability on the part of CHNY, those allegations are denied. Further responding, CHNY is without sufficient information to respond to allegations directed at parties other than CHNY and, therefore denies same.

16. To the extent that the allegations contained in Paragraphs 162 and 163 are directed at CHNY, those allegations are denied as stated. Further responding, CHNY is without sufficient information to respond to allegations directed at parties other than itself and, therefore, denies same.

17. Responding to Paragraph 164, CHNY reasserts and realleges its responses to Paragraphs 1 through 163 of Muhler's Answer and Cross-Claims as if reinstated verbatim herein.

18. To the extent that the allegations contained in Paragraphs 165 and 166 are directed at CHNY, those allegations are denied. Further responding, CHNY is without sufficient information to respond to allegations directed at parties other than itself and, therefore, deny same.

19. To the extent that the allegations contained in Paragraphs 167 and 168 are directed at CHNY, those allegations are denied. Further responding, CHNY is without sufficient information to respond to allegations directed at parties other than itself and, therefore, denies same.

20. Responding to Paragraph 169, CHNY reasserts and realleges its responses to

Paragraphs 1 through 168 of Muhler's Answer and Cross-Claims as if reinstated verbatim herein.

21. To the extent that the allegations contained in Paragraphs 170 and 171 are directed at CHNY, those allegations are denied as stated. Further responding, CHNY is without sufficient information to respond to allegations directed at parties other than itself and, therefore, denies same.

22. Responding to Paragraph 172, CHNY reasserts and realleges its responses to Paragraphs 1 through 171 of Muhler's Answer and Cross-Claims as if reinstated verbatim herein.

23. To the extent that the allegations contained in Paragraph 173 are directed at CHNY, those allegations are denied. Further responding, CHNY is without sufficient information to respond to allegations directed at parties other than itself and, therefore, denies same.

24. Responding to Paragraph 174, CHNY reasserts and realleges its responses to Paragraphs 1 through 173 of Muhler's Answer and Cross Claims as if reinstated verbatim herein.

25. To the extent that the allegations contained in Paragraph 175 are directed at CHNY, those allegations are denied as stated. Further responding, CHNY is without sufficient information to respond to allegations directed at parties other than itself and, therefore, denies same.

26. To the extent that the allegations contained in Paragraph 176 are directed at CHNY, those allegations are denied. Further responding, CHNY is without sufficient information to respond to allegations directed at parties other than itself and, therefore denies the same.

27. To the extent that the allegations contained in Paragraph 177 are directed at CHNY, those allegations are denied as stated. Further responding, CHNY is without sufficient

information to respond to allegations directed at parties other than itself and, therefore, denies the same.

28. To the extent that the allegations contained in Paragraph 178 are directed at CHNY, those allegations are denied. Further responding, CHNY is without sufficient information to respond to allegations directed at parties other than itself and, therefore, denies same.

29. Responding to Paragraph 179, CHNY reasserts and realleges its responses to Paragraphs 1 through 178 of Muhler's Answer and Cross-Claims as if reinstated verbatim herein.

30. Paragraphs 180 through 214 represent Muhler's Cross-Claims against Defendants other than CHNY. To the extent that the allegations contained therein suggest or imply any liability on the part of CHNY, those allegations are denied. CHNY lacks sufficient information to respond to allegations directed at parties other than itself and, therefore, denies the same.

**FURTHER RESPONDING AND AS A
FIRST AFFIRMATIVE DEFENSE**
(Failure to Give Timely Notice)

31. The claims of Cross-Claimant Muhler are barred by the failure to give timely and reasonable notice of any and all claims.

**FURTHER RESPONDING AND AS A
SECOND AFFIRMATIVE DEFENSE**
(No Privity of Contract / Relationship)

32. No contract nor other relationship existed between CHNY and Cross-Claimant Muhler.

**FURTHER RESPONDING AND AS A
THIRD AFFIRMATIVE DEFENSE**
(Estoppel, Laches and Waiver)

33. Cross-Claimant Muhler's claims are barred by the Doctrines of Estoppel, Laches

and Waiver.

FURTHER RESPONDING AND
AS A FOURTH AFFIRMATIVE DEFENSE
(Statute of Limitations)

34. Cross-Claimant Muhler may have failed to commence this action within the time required by the applicable Statute of Limitations, and the failure of Cross-Claimant Muhler to timely commence this action constitutes a bar and complete defense to the claims of Cross-Claimant Muhler.

FURTHER RESPONDING AND
AS A FIFTH AFFIRMATIVE DEFENSE
(Statute of Repose)

35. Cross-Claimant Muhler may have failed to commence this action within the time regarded by the applicable Statute of Repose, and the failure of Cross-Claimant Muhler to timely commence the action constitutes a bar and complete defense to the claims of Cross-Claimant Muhler.

FURTHER RESPONDING AND
AS A SIXTH AFFIRMATIVE DEFENSE
(Comparative Negligence)

36. That the injuries and damages sustained by Cross-Claimant Muhler, if any, may have been due to and caused by and may have been the direct and proximate result of the negligence, carelessness, recklessness, willfulness and wantonness of Cross-Claimant Muhler, and recovery should be barred or reduced in proportion to Cross-Claimant Muhler's negligence as provided by law.

FURTHER RESPONDING AND
AS A SEVENTH AFFIRMATIVE DEFENSE
(Unclean Hands)

37. To the extent that Cross-Claimant Muhler may have been negligent, grossly negligent, willful, wanton and reckless, resulting in damages allegedly sustained by Cross-Claimant Muhler, Cross-Claimant Muhler comes to Court with unclean hands.

FURTHER RESPONDING AND
AS AN EIGHTH AFFIRMATIVE DEFENSE
(Intervening and Superseding Negligence)

38. That the injury or damage suffered by Cross-Claimant Muhler, if any, may have been due to and caused by and may be the direct and proximate result of the intervening and superseding negligence, willfulness, wantonness and recklessness of other Defendants or Parties and, as such, constitutes a complete defense to the claims of Cross-Claimant Muhler against this Defendant.

FURTHER RESPONDING AND
AS A NINTH AFFIRMATIVE DEFENSE
(Responsibility Limited by Scope of Agreement)

39. That the conditions and deficiencies alleged to exist in Muhler's Cross-Claims may not be within the scope of services (if any) which were requested of this Defendant, and this Defendant's responsibility (if any) is limited only to those conditions and deficiencies, if any, which are within the scope of services described in the agreement; and such constitutes a complete defense to the claims of Cross-Claimant Muhler.

FURTHER RESPONDING AND
AS A TENTH AFFIRMATIVE DEFENSE
(Completion and Acceptance Bars Claims)

40. That the work undertaken by this Defendant (if any) on the project was fully and finally completed and such work was previously accepted by the owner as fully and finally

complete and in full compliance with the contract documents (if any), putting an end to all further obligations of this Defendant pursuant to the contract and such completion and acceptance constitutes a complete defense to all claims.

FURTHER RESPONDING AND
AS AN ELEVENTH AFFIRMATIVE DEFENSE
(Breach of Warranty as to Plans and Specifications)

41. Cross-Claimant Muhler may have furnished plans, specifications and drawings for the use of this Defendant in the construction of the project and thereby impliedly warranted the sufficiency of the plans, specifications and drawings for the purpose in view and impliedly warranted that they fully and accurately disclosed all information necessary for the property construction of the project. That the plans, specifications and drawings furnished by Cross-Claimant Muhler may have been defective, insufficient, conflicting and incomplete and Cross-Claimant Muhler thereby breached the foregoing warranties which are implied by law and such constitute a complete defense of all claims.

FURTHER RESPONDING AND
AS A TWELFTH AFFIRMATIVE DEFENSE
(Notice of Claim)

42. Cross-Claimant Muhler may have failed to comply with the requirements of S.C. Code Ann. §40-59-840 and this case must be stayed until such time as the Cross-Claimant Muhler has fulfilled their statutory requirements.

FURTHER RESPONDING AND
AS A THIRTEENTH AFFIRMATIVE DEFENSE
(Failure to Maintain)

43. Cross-Claimant Muhler was obligated to maintain the structure against normal wear, tear and deterioration due to age and the elements and Cross-Claimant Muhler may have failed to do so and such is the direct and proximate cause of the damages suffered by Cross-

Claimant Muhler and such constitutes a complete defense to the claims of Cross-Claimant Muhler.

FURTHER RESPONDING AND
AS A FOURTEENTH AFFIRMATIVE DEFENSE
(No Joint and Several Liability)

44. There was no concert of action between this Defendant and any other Defendant and, therefore, this Defendant is not a joint tortfeasors and this Defendant may not be held jointly and severally liable with other Defendants pursuant to S.C. Code Ann. §15-38-15, as amended, and all other applicable common law and statutory provisions.

FURTHER RESPONDING AND
AS A FIFTEENTH AFFIRMATIVE DEFENSE
(Setoff)

45. Upon information and belief, other Defendants alleged in Muhler's Cross-Claims to be joint tortfeasors with this Defendant, which is denied, have or may in the future compromise and settle all matters and things at issue between them and Cross-Claimant Muhler. Pursuant to South Carolina law, in cases where defendants are alleged to be joint and several tortfeasors, any amount paid on behalf of one joint and several tortfeasors in settlement of claims is a setoff against any claim or judgment that might be rendered against any remaining joint or several tortfeasors. Pursuant to those provisions, this Defendant is entitled to have any judgment rendered against it setoff by any funds paid in settlement on behalf of other joint and several tortfeasors.

FURTHER RESPONDING AND
AS A SIXTEENTH AFFIRMATIVE DEFENSE
(Lack of Jurisdiction 12(b)(1))

46. That the Court may lack jurisdiction over the subject matter of Cross-Claimant Muhler's claims and, therefore, those claims should be dismissed pursuant to the provisions of

SCRCP Rule 12(b)(1).

FURTHER RESPONDING AND
AS A SEVENTEENTH AFFIRMATIVE DEFENSE
(No Personal Jurisdiction 12(b)(2))

47. That this Defendant may be a resident of a county other than Charleston and has a right to engage in this action in a county where he resided at the time of the commencement of this action, and this Defendant is informed and believes that the venue of this action should be changed to his county of residence pursuant to SCRCP 12(b)(2) and Rule 82(b).

FURTHER RESPONDING AND
AS AN EIGHTEENTH AFFIRMATIVE DEFENSE
(Failure of Service Rule 12(b)(5))

48. That the Court may lack jurisdiction over the person of this Defendant because Cross-Claimant Muhler may not have obtained proper service in the manner required by law and, therefore, Muhler's Cross-Claims should be dismissed pursuant to the provisions of SCRCP Rule 12(b)(5).

FURTHER RESPONDING AND
AS A NINETEENTH AFFIRMATIVE DEFENSE
(Failure to State a Claim (12)(b)(6))

49. The allegations contained in Muhler's Cross-Claims fail to state a claim upon which relief can be granted.

FURTHER RESPONDING AND
AS A TWENTIETH AFFIRMATIVE DEFENSE
(Punitive and Multiple Damages Not Allowed)

50. The various claims set forth herein seek both punitive damages and multiple damages on different theories for the same loss, and Cross-Claimant Muhler is not entitled to recover both punitive damages and multiple damages for the same loss, as such constitutes a double recovery.

FURTHER RESPONDING AND
AS A TWENTY-FIRST AFFIRMATIVE DEFENSE
(Punitive Damages Unconstitutional)

51. Muhler's Cross-Claims, to the extent that it seeks punitive or exemplary damages, violates the rights of this Defendant to procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina, and, therefore, fails to state a cause of action upon which either exemplary or punitive damages can be awarded.

FURTHER RESPONDING AND
AS A TWENTY-SECOND AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

52. Cross-Claimant Muhler has failed to mitigate their damages as required by law.

FURTHER RESPONDING AND
AS A TWENTY-THIRD AFFIRMATIVE DEFENSE
(Failure of Conditions Precedent or Subsequent)

53. Failure of conditions precedent or subsequent may bar Cross-Claimant Muhler's claims against this Defendant.

FURTHER RESPONDING AND
AS A TWENTY-FOURTH AFFIRMATIVE DEFENSE
(Economic Loss Rule)

54. Cross-Claimant Muhler' claims are or may be blocked by the "economic loss rule."

FURTHER RESPONDING AND
AS A TWENTY-FIFTH AFFIRMATIVE DEFENSE
(Failure to Take Prompt and Reasonable Action)

55. Cross-Claimant Muhler has failed to take prompt and reasonable action under the circumstances to avoid the occurrence of additional damage to the structure and such failure to mitigate damages constitutes a complete defense as to that portion of damages which could have

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

JUL 07 2015

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

SC Court of Appeals

J. C. Nicholson, Jr., Circuit Court Judge

Trial Case No.'s 2009-CP-08-1068, 2009-CP-08-3916,
2009-CP-08-1413, 2008-CP-08-2714
Appellate Case No. 2014-002390

THE OAKS AT RIVERS EDGE PROPERTY OWNERS ASSOCIATION, INC., JOHN E. ATKINSON, JOAN D. STRANDQUIST, JOSEPH E. CHIOVAROU, JR., PEYTON H. COOK, JR., BRENDA COOK, JOHN W. EDELEN, KAREN A. NELSON, ROBERT J. GRAHAM, MAUREEN S. GRAHAM, NANCY K. JOHNSON as trustee for the Nancy K. Johnson Revocable Trust, WILLIAM JUNG, CHARLES MARAZITI, PATRICIA MARAZITI, GEORGE S. POLLARD, ELEANOR J. POLLARD, ROBERT REECE, GERARD M. RUVO AND SUE S. RUVO as trustees for the Ruvo 2006 Living Trust, CAROLYN M. JENNINGS, THOMAS EDWARD KEANE, EDWARD WALLACE BARR, III, RICHARD B. PEKRUHN, PAULINE PEKRUHN, MATTHEW J. SEVERANCE, and ELIZABETH ASHLEY PHILLIPS SEVERANCE,

Respondents,

v.

DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC, CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC,

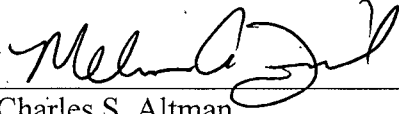
Appellants.

PROOF OF SERVICE

I certify that I have served the Record on Appeal Vol. I through Vol. VI, pursuant to the Order entered June 12, 2015, on Respondents on July 6, 2015, addressed to its attorneys of record,

W.H. Bundy, Jr., Esquire, and M. Brent McDonald, Esquire, Smith, Bundy, Bybee & Barnett,
P.C., 1037 Chuck Dawley Blvd., Building F, Suite 100, Mt. Pleasant, South Carolina 29464.

July 6, 2015



Charles S. Altman
Meredith L. Coker
Melissa A. Fried
ALTMAN & COKER, LLC
575 King Street, Suite A
Charleston, SC 29403
T: (843) 853-9907
F: (843) 853-9838

Roy P. Maybank
Amanda Maybank
MAYBANK LAW FIRM, LLC
531 Savannah Highway
Post Office Box 12579
Charleston, South Carolina 29422
T: (843) 766-8101
F: (843) 766-8102

Attorneys for Appellants