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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2012-CP-40-8512

Appellate Case No. 2015-000180

The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated,..... Respondents,

v.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co., Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Holding Corporation; Alenco Window GA, LLC; New Alenco Window, Ltd.; AWC Holding Company; Crosby Window, Inc., f/k/a Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex, Inc.; T&M Concrete, Inc.; Loveless Commercial Contracting, Inc.; Economy Waterproofing, Inc.; BMC West Corporation; Highway One Construction, Inc.; J.I. Windows LLC; Dietrich Industries, Inc. a/k/a Dietrich Metal Framing, Inc. n/k/a

Clarkwestern Dietrich Building Systems LLC; Best Masonry and its successor in interest, OldCastleAPG; Headwaters, Inc. d/b/a Best Masonry; and John Doe #1-10 ..... Defendants,

Of whom DDC Construction, Inc.; DMC Consolidated, Inc.; DMC Builders, Co., Inc., individually and improperly identified as d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Wyman Acoustics LLC; and Highway One Construction, Inc. are ..... Appellants.

RECORD ON APPEAL
VOLUME I

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Certificate of Counsel

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT
)
) CASE NO.: 2012-CP-40-8512
The Gates at Williams-Brice Condominium Association, et al)
Plaintiff,) **MOTION AND ORDER INFORMATION**
vs.) **FORM AND COVERSHEET**
)
DDC Constuction Inc., et al)
Defendant.)

2015 MAR -5 AM 11:24
JEANETTE W. McBRIDE C.C.P. & G.S.

Plaintiff's Attorney:	Defendant's Attorney:
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☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: ____
Estimated Time Needed: ____ Court Reporter Needed: ☐YES/☐NO

SECTION II: Motion/Order Type

☐Written motion attached
☒Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff /☐ Defendant — January 27, 2015 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: ____
- ☐ Other: ____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: ____	JUDGE CODE ____ Date: ____

CLERK'S VERIFICATION

Collected by: ____ Date Filed: ____
☐ MOTION FEE COLLECTED: $ ____
☐ CONTESTED – AMOUNT DUE: $ ____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-8512

The Gates At Williams-Brice Condominium Association And Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co. Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Holding Corporation, Alenco Window GA, LLC, New Alenco Window, Ltd.; AWC Holding Company; Crosby Window, Inc., f/k/a/ Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc.; T & M Concrete, Inc.; Loveless Commercial Contracting, Inc.; Economy Waterproofing, Inc.; BMC West Corporation; Highway One Construction, Inc.; J.I. Windows LLC; Dietrich Industries, Inc., a/k/a Dietrich

ORDER OF DISMISSAL WITH PREJUDICE AS TO CERTAIN SETTLING DEFENDANTS

RICHLAND COUNTY
FILED
2015 MAR -5 AM 11:24
JEANETTE W. WALDEN
C.C.P. & G.S.

Metal Framing, Inc., n/k/a Clarkwestern Dietrich Building Systems LLC; HCM Utah, LLC; Headwaters, Inc. d/b/a Best Masonry; Labrador Electric Company; AAA Accurate Plumbing, Heating & Air, LLC, f/k/a AAA Accurate Plumbing Solutions Division of AAA Accurate Backflow Testing & Repair, LLC; Time Warner Cable Southeast, LLC; Southern Equipment Company, Inc., d/b/a Ready Mixed Concrete Company; and John Doe #1-10.,

Defendants.

This matter comes before the Court on Motion of the Plaintiffs and with the consent of Settling Defendants DMC Consolidated, Inc.; DC Developers-Columbia Condos, Inc.; DMC Developers I, Ltd.; Highway One Construction, Inc.; 31-W Insulation Company, Inc.; Bailey Electric Company, LLC; Century Fire Protection, LLC; Cherokee, Inc.; The Clerkley Watkins Group; Faultless Hardware, individually and d/b/a Pamex Inc.; Geo-Systems Design & Testing, Inc.; Labrador Electric Company; Loveless Commercial Contracting, Inc.; Maintenance Builders Supply, Ltd.; Metal Construction Materials, Inc.; Time Warner Cable Southeast, LLC; and Wyman Acoustics LLC.

WHEREAS, Plaintiffs have settled with the below referenced, and undersigned parties, for good, valuable, fair, and adequate consideration;

WHEREAS, as the Plaintiff Homeowner Association is the Assignee of a super majority of its members (in excess of 80%), the owners of condominiums at the Gates at Williams Brice, and as the settlements principally concern common elements and building components for which the Association is responsible; and as the Homeowners Association has agreed to indemnify Settling Parties from all Homeowner claims, notice to potential class members is unnecessary; therefore,

IT IS HEREBY ORDERED that Plaintiffs' claims be dismissed and ended with prejudice as to the following Defendants only:

1. **DMC Consolidated, Inc.;**
2. **DC Developers-Columbia Condos, Inc.;**
3. **DMC Developers I, Ltd.;**
4. **Highway One Construction, Inc.**
5. **31-W Insulation Company, Inc.;**
6. **Bailey Electric Company, LLC;**
7. **Century Fire Protection, LLC;**
8. **Cherokee, Inc.;**
9. **The Clerkley Watkins Group;**
10. **Faultless Hardware, individually and d/b/a Pamex Inc.;**
11. **Geo-Systems Design & Testing, Inc.;**
12. **Labrador Electric Company;**
13. **Loveless Commercial Contracting, Inc.;**
14. **Maintenance Builders Supply, Ltd.;**
15. **Metal Construction Materials, Inc.;**
16. **Time Warner Cable Southeast, LLC; and**
17. **Wyman Acoustics LLC.**

IT IS FURTHER ORDERED that all actual and potential Cross-Claims in this suit between Settling Defendants and/or DDC Construction Inc., and and/or Columbia Condos, LP are dismissed with prejudice. As these settlements are being consummated with good and adequate consideration, this Order of Dismissal

IT IS SO ORDERED!

Presiding Judge, Court of Common Pleas

Charleston, South Carolina
~~December~~ January 30 2015

I SO MOVE:

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Yates Sol
5 January 2015

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Order of Dismissal with prejudice as to settled Defendants.

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June 19, 2014

Hand Delivered

The Honorable G. Thomas Cooper, Jr.
Active/Retired Circuit Court Judge
P O Box 192
1701 Main Street, Room 323
Columbia, SC 29202-0192

RE: The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated v. DDC Construction, Inc., et al.
Civil Action No. 2012-CP-40-8512
Our File No. 41087/01500

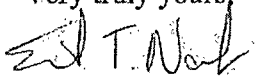
Dear Judge Cooper:

Pursuant to your instructions at the hearing in this matter on June 9, 2014, I have enclosed a Proposed Order on my clients' Motion for Non-Jury Trial and to Strike Plaintiffs' Class Action Allegations and Jury Trial Demand.

In addition, I have enclosed the Supplement to Record in Further Support of the Motion for Non-Jury Trial and to Strike Plaintiffs' Class Action Allegations and Jury Trial Demand, which includes copies of the various documents referenced in our briefing that may not previously have been included in the Court's file.

Thank you very much for consideration of these matters. Please let us know if you require anything else from us.

Very truly yours,



Erik T. Norton

ETN:ls
Enclosures
cc: All Counsel of Record (via email)

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated,	)	Civil Action No. 2012-CP-40-8512
Plaintiffs,	)	**ORDER GRANTING DEFENDANTS' MOTION FOR NON-JURY TRIAL AND TO STRIKE PLAINTIFFS' CLASS ACTION ALLEGATIONS AND JURY TRIAL DEMAND**
vs.	)	
DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co., Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Inc. d/b/a Ply Gem Window Group; Crosby Window, Inc., f/k/a Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc. and John Doe #1-10,	)	
Defendants.	)	

This matter is before the Court upon motion of DDC Construction, Inc., DMC Consolidated, Inc.; DMC Builders, Co., Inc. individually and as d/b/a The Dinerstein Companies; DC Developers-Columbia Condos, Inc.; Columbia Condos, LP, DMC Developers I, Ltd.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee, Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing, Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Wyman Acoustics, LLC and Highway One Construction, Inc. ("Defendants"). Defendants' motion was made pursuant to Rules 12(f), 23(d)(1), 38 and 39 of the South Carolina Rules of Civil Procedure, and asks this Court to order a non-jury trial in this matter and strike the class action allegations and jury trial demand of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated (collectively "Plaintiffs") based on the provisions of the Master Deed. A hearing was held on June 9, 2014 with counsel for both Plaintiffs and Defendants in attendance. This Court has considered all submissions and arguments from both parties and the entire record before it, having considered each argument raised, Defendants' Motion is hereby **GRANTED** for the reasons set forth below.

FINDINGS OF FACT

1. Plaintiffs' Second Amended Complaint ("Complaint") seeks damages related to various alleged construction defects at the Gates at Williams-Brice condominium complex ("Property" or "Condominiums").

2. The Condominiums were constructed by owner Defendant Columbia Condos, LP, ("Developer" or "Grantor") and general contractor Defendant DDC Construction, Inc.

("General Contractor"). The other Defendants are subcontractors who participated in construction of the Condominiums.[1]

3. Construction was substantially complete as of July 1, 2007, when the Certificate of Occupancy was issued.

4. As an integral part of the project, Developer filed a Master Deed with the Richland County Register of Deeds creating the Gates at Williams-Brice Horizontal Property Regime on July 11, 2007, and began closing on sales of the Condominium units soon thereafter.

5. The Master Deed contains a jury trial waiver and a class action waiver ("Waiver") located in section XXXV just before the signature pages of the Master Deed, which states as follows in bold print and all capital letters:

> **D. Waiver of Jury Trial (i): NEITHER CO-OWNER NOR ANY ASSIGNEE, SUCCESSOR, HEIR, OR LEGAL REPRESENTATIVE OF CO-OWNER OR GRANTOR, SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, OR ANY OTHER LITIGATION PROCEDURE ARISING FROM OR BASED UPON THE MATTERS SET FORTH HEREUNDER, OR TO THE DEALINGS OR RELATIONSHIP BETWEEN OR AMONG THE GRANTOR, ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, ARCHITECTS, ENGINEERS AND THE CO-OWNERS OR THE ASSOCIATION, INCLUDING WITHOUT LIMITATION WAIVER OF ANY TYPE OF CLASS ACTION SUIT.**

6. Section XXXV of the Master Deed identifies the parties bound by the Waiver, and includes all Defendants and Plaintiffs:

> Bound Party. Includes: Grantor; all co-owners; the Association and its officers, directors, and committee members, including any corporation or other entity formed to serve as the Association; all persons and entities subject to this Master Deed; any person or entity not otherwise subject to this Master Deed who agrees to submit to this Article; any person or entity that now has or hereafter acquires any interest in a Unit; the developer of the Regime; any person or entity that has previously or hereafter supplies (directly or indirectly) labor, materials, design services, equipment or other

[1] Other non-moving defendants include suppliers and other subcontractors represented by other counsel.

things of value in connection with the construction or maintenance of any Unit or Common Element in the Regime; any heir, successor, delegatee or assignee of any person or entity listed in this paragraph.

7. The Master Deed provides that the class action waiver and jury trial waiver, as well as other provisions related to mandatory alternative dispute resolution, are a "material inducement for the grantor" to create the Horizontal Property Regime.

8. Prior to filing of the Master Deed, Developer incorporated the Gates at Williams-Brice Homeowners Association ("Association") as a non-profit corporation under the laws of South Carolina.

9. Pursuant to the terms of the Master Deed, Developer maintained control of the Association while Condominium units were being sold.

10. Developer turned over control of the Association to homeowners on or about August 24, 2009, after all units owned by Developer had been sold.

11. Plaintiffs filed their initial Complaint on December 26, 2012, citing the Master Deed and alleging that they were entitled to proceed as a class and demanding a jury trial.

12. Defendants filed their responsive pleadings in response to the initial Complaint on March 7, 2012. Defendants denied Plaintiffs' class action allegations and denied Plaintiffs' allegation that they were entitled to a jury trial. Defendants further asserted waiver as an affirmative defense.

13. The Association subsequently filed an amendment to the Master Deed on June 5, 2013, approximately four years after the turnover and almost six months after filing of the initial Complaint. The amendment purported to remove the Waiver and certain warranty exclusions from the Master Deed.

14. Subsequently, Plaintiffs filed multiple Amended Complaints adding new claims and new parties, the last of which was filed on February 25, 2014. Defendants filed responsive pleadings to each Amended Complaint, continuing to deny Plaintiffs' right to a class action and a jury trial, raising waiver as a defense, and expressly referencing waivers and defenses provided in the Master Deed in their responsive pleadings.

15. On March 24, 2014, shortly after receiving Plaintiffs' Second Amended Complaint and the operative pleading in this case, Defendants filed the instant motion.

16. On June 2, 2014, Plaintiffs filed a motion seeking leave to file and serve a Third Amended Complaint adding even more claims and parties. The draft Amended Complaint continues to demand a class action and jury trial. This motion is still pending before the Court, and therefore no responsive pleading has been filed to this Motion.

CONCLUSIONS OF LAW

17. South Carolina recognizes that a party may waive its right to a jury trial by contract. See Wachovia Bank v. Blackburn, 407 S.C. 321, ___ S.E.2d ___ (2014); see also Beach Co. v. Twillman, Ltd., 351 S.C. 56, 64, 566 S.E.2d 863, 866 (Ct. App. 2002); Leasing Service Corp. v. Crane, 804 F.2d 828, 832-33 (4th Cir. 1986). Such a waiver must be strictly construed as the right to trial by jury is a substantial right. Twillman, 351 S.C. at 64, 566 S.E.2d at 866.

18. "Whether a party is entitled to a jury trial is a question of law." Verenes v. Alvanos, 387 S.C. 11, 15, 690 S.E.2d 771, 772 (2010).

19. It also well established that written class action waivers such as the one at issue here are enforceable under South Carolina law. See York v. Dodgeland of Columbia, Inc., 406 S.C. 67, 749 S.E.2d 139 (Ct. App. 2013); see also Muriithi v. Shuttle Exp., Inc., 712

F.3d 173, 180 (4th Cir. 2013); Patricia Rowe P.A. v. AT&T, Inc., CA 6:13-cv-01206-GRA, 2014 U.S. Dist. LEXIS 5102 (D.S.C. Jan. 15, 2014).

20. The Titles to Real Estate signed by unit owners and recorded with the Register of Deeds of Richland County expressly incorporate the terms of the Master Deed. In addition, Purchase Agreements signed by each Plaintiff incorporates the terms of the Master Deed.

21. In the real estate transactions context, South Carolina recognizes that references by incorporation among and between documents make the provisions binding on the parties. See Klutts Resort Realty, Inc. v. Down'round Dev. Corp., 268 S.C. 80, 232 S.E.2d 20 (1977).

22. It is undisputed that Katharine Swinson, the named class representative, and William Yarborough, chair of the Association Board, testified in their depositions that they and all other homeowners are bound by terms of the Master Deed.

23. The law concerning construction of a deed in South Carolina is as follows:

> In construing a deed, the intention of the grantor must be ascertained and effectuated unless that intention contravenes some well-settled rule of law or public policy. The intent of the grantor must be found within the four corners of the deed. The construction of a clear and unambiguous deed is a question of law for the court. The terms of an unambiguous deed may not be varied or contradicted by evidence drawn from sources other than the deed itself. When intention is not expressed accurately in the deed evidence *aliunde* may be admitted to supply or explain it. The instrument is not thereby varied or contradicted but is explained or corrected.

Gardner v. Mozingo, 293 S.C. 23, 25, 358 S.E.2d 390, 392 (1987).

24. In this case, the Master Deed unambiguously provides for a mutual waiver of the right to a jury trial and of the right to proceed as a class action. See Master Deed at § XXXV(D).

25. The Waiver is conspicuous because it is written in bold, all capitalized letters in a section entitled "Jury Trial Waiver" located just before the signature pages of the Master Deed. The language is unambiguous.

26. The Waiver covers the claims at issue because it expressly applies to any "lawsuit, proceeding or other litigation procedure arising from or based upon the matters set forth hereunder, or to the dealings or relationship between or among the grantor, its agents, contractors, subcontractors, architects, engineers and the co-owners, or the Association, including without limitation waiver of any type of class action suit."

27. The plain, broad language of the Waiver indicates the Grantor's intent that the Waiver applies to construction defect claims like those involved in the instant case. In addition, the inclusion of contractors and design professionals in the scope of parties covered provides additional evidence of the Grantor's intent that the Waiver cover construction defect claims like those of Plaintiff.

28. Pursuant to the express terms of the Master Deed, Plaintiffs agreed to waive their rights to a jury trial and to proceed as a class action "[b]y acceptance of a deed to any unit or other property" pursuant to the Master Deed. Therefore, Plaintiffs waived their right to a jury trial and to proceed as a class action at the time they accepted the deed to their Condominium unit.

29. This Court has considered each of the arguments raised by Plaintiffs. All are expressly addressed and rejected herein.

30. Plaintiffs argue that the Second Amendment to the Master Deed operates retroactively to un-waive their voluntary and knowing waiver. (See Ptfs. Mem. Opp. 9.) However, this argument fails for several reasons.

a. First, Plaintiffs did not record the Second Amendment to the Master Deed until almost four years after the turnover of the Association board to homeowner control and six months after they filed their Complaint and after Defendants filed their responsive pleading. Therefore, the Waiver was in effect at the time this lawsuit was filed and the Second Amendment to the Master Deed has no bearing on this action.

b. Second, even if the Second Amendment to the Master Deed had been filed prior to the Complaint, Plaintiff's waived their right to a jury trial and to proceed in a class action at the time they accepted the Deed. The Master Deed expressly states that the Developer relied on the Waiver as a **material inducement** to creating the Horizontal Property Regime. Therefore, the Waiver was effective at the time Plaintiffs accepted title to the Property and Plaintiffs may not un-waive their voluntary and knowing waiver by an amendment to the Master Deed. Certainly, Plaintiffs may not escape the effect of the Waiver without the consent of the other bound parties, including the Defendants.

c. Third, even if the Second Amendment to the Master Deed had been filed prior to the Complaint or it could apply retroactively, the Amendment is not effective because Plaintiffs did not secure the permission of mortgage holders as required by Section XIII(4) of the Master Deed.

d. Fourth, Plaintiffs argue that Defendants may not challenge the validity of the Second Amendment to the Master Deed under South Carolina's Uniform Non-Profit Corporation Act. (Ptfs. Mem. Opp. 11.). However, the Non-Profit Act does not apply since the Defendants are expressly identified as parties bound by

the sections of the Master Deed Plaintiffs are attempting to amend. Amendments to the Master Deed are made by the votes of property owners, not the Association. The Non-Profit Corporation Act does not apply to amendments to the Master Deed.

31. Plaintiffs also argue that Defendants' motion is not timely under Foggie v. CSX Transp., Inc., 313 S.C. 98, 431 S.E.2d 587 (1993), because Defendants did not file their motion prior to their initial responsive pleading. (Ptfs. Mem. Opp. 8.) This argument also is misplaced.

32. Foggie requires only that issues regarding mode of trial be *raised* at the first opportunity. It does not require that a motion be filed at that time, and S.C. R. Civ. P. 39 does not contain any time limitation as to when a motion may be made to demand a nonjury trial or strike a jury demand. Here, Defendants raised the issue regarding the right of Plaintiffs to a jury trial and to a class action in its initial responsive pleading by denying Plaintiffs' demands for a jury trial and for certification of a class action. Further, South Carolina law requires only that the jury trial issue be raised before trail and then appealed or else it is waived. See Lester v. Dawson, 327 S.C. 263, 264, 491 S.E.2d 240, 240 (1997). The critical time element is raising the issue prior to trial, as was done in Defendants' initial responsive pleading to this action and has been reiterated in each responsive pleading since. Moreover, under Rule 12, this motion was not one that had to be raised immediately or waived. (See, e.g., Rule 12(b)(1).

33. Further, Plaintiffs have continued to amend their pleadings by adding new claims and parties, with a third motion to amend their Complaint currently pending before the Court. Defendants filed their motion just after the Second Amended Complaint was filed and

just after conducting the depositions of the Association's board chair and the named class representative. Therefore, the filing of the motion was timely in that it was filed immediately after the necessary discovery was conducted to support the motion and was filed with the intent of giving all parties the opportunity to participate.

34. Plaintiffs further argue that the Waiver is not enforceable because Defendants elected not to arbitrate this matter. However, the Waiver is an entirely separate subsection within a larger section entitled "Alternative Dispute Resolution," and not related to the arbitration provision. The Waiver expressly contemplates litigation outside of the arbitration context by referencing "any lawsuit, proceeding, or any other litigation procedure." Reading the jury trial waiver to be intertwined with the arbitration provision would make the jury trial waiver superfluous since all arbitrations are non-jury. Plaintiffs offer no authority to suggest that declining to arbitrate should invalidate a wholly distinct jury trial waiver such as that in the Master Deed.

35. In addition, Plaintiffs argue that the Waiver is unconscionable. (Ptfs. Mem. Opp. 19.) This argument fails as a matter of South Carolina law.

36. In order for the Waiver to be unconscionable, Plaintiffs must show that it has oppressive and one-sided terms such that Plaintiffs had no meaningful choice. See Toler's Cove Homeowners Ass'n v. Trident Constr. Co., 355 S.C. 605, 586 S.E.2d 581, 585 (2003). Here, unlike in the case law cited by Plaintiffs,[2] the Waiver is mutual as to all bound parties and is entirely separate from any warranty or limitation of liability provisions. Moreover, the Waiver contains a jury trial waiver and class action waiver with language similar to that previously enforced by South Carolina Courts, even in adhesion contracts. See York, 406

[2] Smith v. D.R. Horton, Inc., 403 S.C. 10, 742 S.E.2d 37 (Ct. App. 2013).

S.C. at 94, 749 S.E.2d at 139 (holding that a class action waiver contained in an automobile retail installment contract was "valid and must be enforced according to its terms"); Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 543, 542 S.E.2d 360 (2001) (holding that a jury trial waiver contained in a home improvement installment contract was valid and enforceable.)

37. Moreover, the Waiver appears in the Master Deed, which was drafted by a South Carolina licensed attorney. The Master Deed was provided to Plaintiffs and explained to them at a loan closing supervised by a South Carolina licensed attorney selected by Plaintiffs. Under these circumstances, the Waiver is not unconscionable and is enforceable.

38. Plaintiff further argues that the Waiver violates the Horizontal Property Regime Act because it is not included in the Bylaws of the Association. However, pursuant to S.C. R. Civ. P. § 27-31-60, the bylaws govern the administration of the HOA, not the relationship between the Developer, as grantor of the property, and the property owners. The Master Deed, a publicly filed document required to be prepared by a South Carolina licensed attorney, clearly is the correct and better document to include provisions governing the relationship between the Grantor and property owners.

39. Moreover, the Waiver does not operate to divide the general and limited common elements. The Master Deed is clear that all limited and common elements belong to the unit owners. The Waiver does not affect this provision, and instead merely addresses the form of dispute resolution to be followed by the Parties.

40. The Master Deed does not create any ambiguity with the Association's Bylaws, which incorporate the Master Deed by reference. To the extent it does, then the Bylaws are "expressly subject to the terms, provisions, conditions, and authorizations contained in the Articles of Incorporation and which may be contained in the formal Master Deed..." The

Bylaws go on to say that the Master Deed will "be controlling wherever the same may be in conflict herewith."

41. Finally, this Court's prior Order filed on November 19, 2013 ("Kapasi Order") denying Defendant Kapasi Glass Mart's Motion to Dismiss Class Action allegations has no bearing on the instant motion. Kapasi moved to dismiss the class action allegations because of its limited scope of work at the Property, which was limited to work at the common areas. (Kapasi Order 2). As a result, Kapasi argued that only the Association, and not unit owners, could bring claims related to its scope of work. (Id.) Kapasi did not raise the issue of the class action bar found in the Master Deed, and did not raise the issue of the waiver of a jury trial at all. Therefore, the Kapasi Order is not relevant to the instant motion because Kapasi's motion was based solely its limited scope of work as it relates to Plaintiff's class action allegations. Moreover, the Kapasi Order does not become law of the case because it was not immediately appealable by the Defendants, and certainly not appealable by any defendants other than Kapasi. See Bone v. United States Food Serv., 399 S.C. 566, 576, 733 S.E.2d 200, 205 (2012) ("The law of the case doctrine applies where a party does not challenge an issue on appeal when there has been an opportunity to do so.").

CONCLUSION

As set forth above, the Waiver is valid and enforceable. Plaintiffs therefore have waived their right to a jury trial and to try their claims as a class action. Defendants have timely demanded a nonjury trial and are entitled to a non-jury trial. Therefore, Defendants' motion is **GRANTED**. Plaintiffs' class action claims as to Defendants are dismissed with prejudice and stricken from Plaintiffs' Second Amended Complaint. Plaintiffs' class action

allegations as to Defendants may not be included in any further amended pleadings filed by Plaintiff. This matter is to be transferred to the non-jury docket and tried by bench trial.

IT IS SO ORDERED.

_____
The Honorable G. Thomas Cooper, Jr.
South Carolina Circuit Court Judge
Fifth Judicial Circuit

Columbia, South Carolina

_____, 2014.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-8512

The Gates At Williams-Brice Condominium Association And Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co. Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Holding Corporation, Alenco Window GA, LLC, New Alenco Window, Ltd.; AWC Holding Company; Crosby Window, Inc., f/k/a/ Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc.; T & M Concrete, Inc.; Loveless Commercial Contracting, Inc.; Economy Waterproofing, Inc.; BMC West Corporation; Highway One Construction, Inc.; J.I. Windows LLC; Dietrich Industries, Inc., a/k/a Dietrich

ORDER DENYING DINERSTEIN AND OCIP DEFENDANTS' MOTION FOR NON-JURY TRIAL AND TO STRIKE PLAINTIFFS' CLASS ACTION ALLEGATIONS AND JURY TRIAL DEMAND

RICHLAND COUNTY
FILED
2014 JUL 18 AM 10:31
JEANNETTE W. WALKER
C.C.P. & G.S.

SCANNED

Metal Framing, Inc., n/k/a Clarkwestern Dietrich Building Systems LLC; Best Masonry and its successor in interest, OldCastleAPG; Headwaters, Inc. d/b/a Best Masonry; and John Doe #1-10.	)
Defendants.	)

This matter came before the Court on June 9, 2014 on the Dinerstein and OCIP Defendants[1] Motion for Non-Jury Trial and to Strike Plaintiffs[2] Class Action Allegations and Jury Trial Demand (hereinafter the "Motion") based on Rules 12(f), 23(d)(1), 38 and 39 of the South Carolina Rules of Civil Procedure ("SCRCP"). Attending for the Plaintiffs was Justin O'Toole Lucey, Esq., with Erik Norton, Esquire attending for the Defendants. Having heard oral arguments presented by counsel,[3] and for the reasons set forth below, this Court **DENIES** Defendants' Motion.

BRIEF PROCEDURAL AND FACTUAL BACKGROUND

This action arises out of alleged defects in the construction of a condominium complex, The Gates at Williams-Brice ("The Gates"), in Columbia, South Carolina. The Dinerstein and OCIP Defendants' Motion seeks to enforce provisions of the Master Deed of The Gates at

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[1] The Defendants who brought the Motion include the Dinerstein-affiliated Defendants and those subcontractors covered under the Dinerstein-affiliated Defendants' Owner Controlled Insurance Policy (hereinafter collectively referred to as the "Dinerstein and OCIP Defendants"). The Dinerstein affiliated Defendants include DDC Construction, Inc.; DMC Consolidated, Inc.; DMC Builders, Co., Inc., individually and d/b/a The Dinerstein Companies; DC Developers-Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; and Highway One Construction. The OCIP Defendants include Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee, Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing, Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; and Wyman Acoustics, LLC.

[2] The Plaintiffs include The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated (hereinafter collectively referred to as "Plaintiffs").

[3] Oral arguments were heard on June 9, 2014. Plaintiffs were represented by Justin O'Toole Lucey, Esquire; Defendants were represented by Erik Norton, Esquire.

Williams-Brice Horizontal Property Regime ("The Regime") that were drafted by the Dinerstein Defendants in their capacity as Developer.

The Dinerstein Defendants began construction of The Gates mid-2006 and received the Certificate of Occupancy on or about July 1, 2007. From July 2007 until approximately December 2009, the Dinerstein Defendants maintained control of The Gates' Horizontal Property Regime and Property Owners Association ("POA"). In July 2007, the Dinerstein Defendants drafted and recorded The Gates' Master Deed and By-Laws. Defendants amended the Master Deed in April 2009.[4] In December 2009, the Dinerstein Defendants transferred control of the POA to the homeowners. This transfer constituted a de facto surrender and termination of the developers' rights in the Regime pursuant to the terms of the Master Deed.

In November 2012, the homeowner-controlled POA was first notified of some of the construction deficiencies giving rise to this suit when a maintenance company, Watertight Systems, Inc., refused to place a bid in connection with an exterior caulking/sealant job because of perceived construction issues.

On December 26, 2012, approximately one month after the Watertight discovery, the Plaintiffs filed their initial Complaint against DDC Construction, Inc. ("DDC") and others, asserting negligence and gross negligence claims, breach of warranty claims, and strict liability claims. DDC filed its Answer on March 4, 2013. DDC's Answer failed to raise defenses regarding Plaintiffs' right to a jury trial or right to bring a class action. On May 15, 2013, Plaintiffs filed an Amended Complaint to add other Dinerstein Defendants as well as OCIP Defendants and asserted the same causes of action.

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[4] *See* First Amendment to The Gates' Master Deed and By-Laws, which related to conformance with lending approval requirements (attached as Exhibit C).

On May 23, 2013, the Homeowners passed a Second Amendment to The Gates' Master Deed and By-Laws, removing provisions of the Master Deed included by the Dinerstein Defendants that purported to limit the POA and Homeowners' rights. The deleted provisions purported to eliminate the POA and Homeowners' rights: (1) to bring suit and to demand a jury trial by requiring binding arbitration; and (2) to hold the developer/builder responsible in warranty, including the disclaimer of the warranties of merchantability, soundness, quality, workmanlike service, value, suitability, fitness, habitability and fitness for a particular purpose.[5] On June 5, 2013, the Second Amendment was recorded in Richland County, South Carolina in Deed Book 1867, page 408.

On July 5, 2013, DDC filed an Answer to Plaintiffs' Amended Complaint and again failed to raise defenses regarding Plaintiffs' right to a jury trial or right to bring a class action. On August 5, 2013, DDC filed an Amended Answer to Plaintiffs' Amended Complaint in which it again failed to raise any defenses regarding Plaintiffs' right to a jury trial or right to bring a class action. On August 5 and 15, 2013, respectively, the newly added Dinerstein Defendants and OCIP Defendants filed Answers to Plaintiffs' Amended Complaint in which they also failed to raise defenses regarding Plaintiffs' right to a jury trial or right to bring a class action. On August 8, 2013, former Defendant Kapasi Glass Mart, Inc. ("Kapasi") filed a Motion to Dismiss Plaintiffs' Class Action Claims,[6] a motion that this Court subsequently denied

On February 19, 2014, Plaintiffs filed a Second Amended Complaint, naming additional parties and asserting the same causes of action as previously pled. On March 21, 2014, one year after DDC filed its original Answer to the Complaint, the Dinerstein and OCIP Defendants filed

[5] The Second Amendment was prepared in accordance with the provisions required for amendment under the Master Deed in Section XXVII and Section XIII, subpart 4 and passed with a vote that complied with the Master Deed's requirements for amendment.

[6] Following this Court's denial of its motion, Defendant Kapasi subsequently settled with Plaintiffs.

Answers to the Second Amended Complaint in which they asserted that Plaintiffs had waived their right to a jury trial and the right to bring a class action for the first time. On March 24, 2014, approximately ten months after the Second Amendment to the Master Deed and By-Laws was recorded in Richland County, the Dinerstein and OCIP Defendants filed their Motion for Non-Jury Trial and To Strike Plaintiffs' Class Action Allegations and Jury Trial Demand.

BRIEF SUMMARY OF SECOND AMENDMENT TO WAIVER PROVISIONS

The Gates' Board of Directors has broad powers to manage and direct the affairs of the Association subject only to approval of the Association where such approval is specifically required by the Master Deed or By-Laws. These powers include the power to call for amendment of the Master Deed. Section 4(j) of the By-Laws provides the Board with powers to legally enforce the Master Deed, By-Laws and Articles of Incorporation, "to carry out the maintenance, care, upkeep, repair, replacements, operation, surveillance, and the management of the general and limited elements, services, and facilities of the Regime wherever the same is required to be done and accomplished by the Association for the benefit of its members," and "to otherwise carry out all other duties and responsibilities set forth in the Master Deed, By-Laws, and Rules and Regulations of the Association, explicitly stated or implied therein."[7] Using these powers, on May 23, 2013, the Board called for a vote on the Second Amendment to Master Deed and By-Laws to remove the anti-suit provisions and warranty limitations included by the Dinerstein Defendants in the Master Deed. On June 5, 2013, the Second Amendment was duly executed and recorded by the POA and its members pursuant to the Regime Instruments and the Horizontal Property Regime Act.

[7] The By-Laws set forth the Board of Director's powers (By-Laws at 7-9).

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The pertinent provisions deleted from The Gates' Master Deed attempted to restrict both the POA and its members' rights to bring suit and to receive a jury trial as well as to disclaim Defendants' liability and waive express and implied warranties:

> **Arbitration**[8]
>
> EACH AND EVERY CLAIM AND CAUSE OF ACTION ARISING OUT OF OR RELATED IN ANY WAY TO THE DESIGN, CONSTRUCTION, SALE, MAINTENANCE, HABITABILITY OF, OR CONDITION OF ANY UNIT OR ANY COMMON AREA THAT IS ASSERTED BY (I) ANY PERSON OR ENTITY THAT NOW HAS OR HEREAFTER ACQUIRES ANY INTEREST IN A UNIT, (II) THE GRANTOR OR EVELOPER, (III) THE UNIT OWNER'S ASSOCIATION (INCLUDING ANY CORPORATION OR OTHER ENTITY FORMED TO SERVE AS UNIT OWNERS' ASSOCIATION), (IV) ANY PERSON OR ENTITY THAT HAS PREVIOUSLY OR HEREAFTER SUPPLIES (DIRECTLY OR INDIRECTLY) LABOR, MATERIALS, DESIGN SERVICES, EQUIPMENT OR OTHER THINGS OF VALUE IN CONNECTION WITH THE CONSTRUCTION OR MAINTENANCE OF ANY UNIT OR THE COMMON AREA, OR (V) ANY HEIR, SUCCESSOR, DELEGATEE OR ASSIGNEE OF ANY SUCH PERSONS OR ENTITIES, SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION BEFORE A PANEL OF THREE ARBITRATORS PURSUANT TO THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION AS MODIFIED HEREIN.
>
> ***
>
> THE GRANTOR, DEVELOPER, CONTRACTOR, ARCHITECT, THE ASSOCIATION, AND THE INDIVIDUAL UNIT OWNERS EXPRESSLY WAIVE ALL RESORT TO TRIAL BY JURY OF ANY AND ALL ISSUES OTHERWISE SO TRIABLE. ANY CLAIM OR CAUSE OF ACTION NOT COVERED BY THIS ARBITRATION AGREEMENT SHALL BE COVERED BY ARTICLE XXXV HEREIN.
>
> Pre-amended Master Deed at 3-6, Ex. B (underscore added).

[8] The arbitration provisions of The Gates' Pre-Amended Master Deed are not recited in their entirety since the Dinerstein and OCIP Defendants' Motion is not one to compel arbitration.

The Master Deed later provides in a second "Alternative Dispute Resolution" section:

> **Waiver of Jury Trial**
>
> BY ACCEPTANCE OF A DEED TO ANY UNIT OR OTHER PROPERTY HEREUNDER COOWNER(S) HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY HEREBY AGREE, THAT:
>
> (i) NEITHER CO-OWNER NOR ANY ASSIGNEE, SUCCESSOR, HEIR, OR LEGAL REPRESENTATIVE OF CO-OWNER OR GRANTOR, SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, OR ANY OTHER LITIGATION PROCEDURE ARISING FROM OR BASED UPON THE MATTERS SET FORTH HEREUNDER, OR TO THE DEALINGS OR RELATIONSHIP BETWEEN OR AMONG THE GRANTOR, ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, ARCHITECTS, ENGINEERS AND THE CO-OWNERS OR THE ASSOCIATION, INCLUDING WITHOUT LIMITATION WAIVER OF ANY TYPE OF CLASS ACTION SUIT;
>
> (ii) NEITHER CO-OWNER NOR GRANTOR WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN OR CANNOT BE WAIVED;
>
> (iii) NEITHER OWNER NOR GRANTOR HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS SECTION WILL NOT BE FULLY ENFORCED IN ALL INSTANCES; AND
>
> (iv) THE PROVISIONS CONTAINED IN THIS ARTICLE ARE A MATERIAL INDUCEMENT FOR GRANTOR TO MAKE THE DECLARATIONS SET FORTH HEREIN.
>
> Pre-amended Master Deed at 40-41, Ex. B (underscore added).

In addition to the foregoing provisions, the pre-amended Master Deed contained other provisions, drafted and incorporated by the Dinerstein Defendants, which attempted to disclaim and abrogate other rights and remedies available to Plaintiffs such as: (a) express and implied warranties, including merchantability, soundness, quality, workmanlike service, value, suitability, fitness, habitability and fitness for a particular purpose; (b) Plaintiffs' right to receive

monetary damages; and (c) Plaintiffs' right to bring claims within statutorily prescribed time frames.

DISCUSSION

A. *The DDC[9] And OCIP Defendants Failed to Timely Raise Issues Relating to the Mode of Trial*

As set forth above, the Dinerstein and OCIP Defendants failed to insert defenses/objections to Plaintiffs' right to a jury trial or right to bring a class action in DDC's original Answer to Plaintiffs' Complaint filed March 4, 2013, DDC's Answer to Plaintiffs' Amended Complaint filed July 2, 2013, DDC's Amended Answer to Plaintiffs' Amended Complaint filed August 5, 2013, or the remaining Dinerstein Defendants and the OCIP Defendants' Answers to Plaintiffs' Amended Complaint filed August 5 and 15, 2013 respectively. On March 21, 2014, ten months after the recording of the Second Amendment, the Dinerstein and OCIP Defendants raised, for the first time, the defenses of waiver of right to jury trial and waiver of right to proceed as a class action.

It is well established "issues regarding mode of trial must be raised in the trial court *at the first opportunity*." *Foggie v. CSX Transp., Inc.*, 315 S.C. 17, 23, 431 S.E.2d 587, 590 (1993) (emphasis added). Here, the Dinerstein and OCIP Defendants' Motion is based upon issues "regarding the mode of trial," issues that they now raise eighteen months after the filing of Plaintiffs' Complaint and fifteen months after the Dinerstein and OCIP Defendants filed their Answer. Doing so now is not "at the first opportunity," thus rendering their Motion untimely.

Defendants' obligation to file either a Motion to Dismiss pursuant to Rule 12(b) *SCRCP*, or a Motion to Strike pursuant to Rule 12(f), *SCRCP*, prior to answering Plaintiffs' Complaint/Amended Complaint was the "first opportunity" to raise these issues. *See* Rule

[9] DDC was the Dinerstein-affiliated defendant named in the initial complaint and is the Dinerstein entity that constructed the buildings that comprise The Gates.

12(b)(7), *SCRCP* ("Every defense, in law or fact, to a cause of action in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion . . . (7) failure to join a party under Rule 19, . . ."); Rule 12(f), *SCRCP* (providing Motions to Strike must be made before responding to a pleading or within 30 days following the service of the pleading if no response is required).

B. The Gates' Master Deed Does Not Contain a Jury Trial or Class Action Waiver

The Dinerstein and OCIP Defendants' sole grounds for this Motion is that Plaintiffs waived the right to a jury trial and the right to bring a class action based on provisions no longer in the Master Deed. The Master Deed, via its Second Amendment, contains neither of these alleged waivers, and Defendants do not challenge the Second Amendment's validity. Accordingly, Defendants' Motion is procedurally precluded – Defendants failed to challenge the validity of the Second Amendment deleting the alleged waivers from the Master Deed, and thus, Defendants cannot maintain an argument as to the effectiveness of such waivers.

1. Amendments to The Gates' Master Deed Apply Retroactively

In spring 2008, the Dinerstein Defendants acted under the terms of the Master Deed to pass the First Amendment to the Master Deed and By-Laws. Since that time, the First Amendment has been held to be part of the original Master Deed. Following the Dinerstein Defendants' turnover of the Board to the Association, the current Board has been vested with the same right to amend the Master Deed, and their Second Amendment is also now part of the original Master Deed.

The amendment to a document establishing a condominium association is recognized as having "the same force and effect as if it had been part of the original Declaration." *Apple II Condo. Ass'n v. Worth Bank & Trust Co.*, 277 Ill.App.3d 345, 351, 659 N.E.2d 93, 98 (Ill. App.

Ct. 1995) *cf. Wayburn v. Smith*, 270 S.C. 38, 42, 239 S.E.2d 890, 892 (1977) (In South Carolina, "the deed must be construed as a whole, and effect given to every part thereof"); *see also* 15A Am. Jur. 2d §9 (2000) ("The power of a condominium's governing body to make amendments to the declaration is limited by a determination of whether the action is unreasonable, arbitrary, capricious, or discriminatory."). Thus, where a property owner's association enacts a valid amendment to the Master Deed, the amended Master Deed then controls the rights of the owner's association, the unit owners, and the developer. *Queens Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 365, 628 S.E.2d 902, 915 (S.C. Ct. App. 2006) *citing* S.C. Code Ann. § 27-31-100(f) (The Act requires that the master deed include a comprehensive list of particulars, including "a description of the full legal rights and obligations, both currently existing and which may occur, of the apartment owner, the co-owners, and the person establishing the regime.").

This is consistent with the rights of parties to a contract to give retroactive effect to contractual provisions. *See e.g., Frantz v. Piccadilly Place Condominium Ass'n*, 278 Ga. 103, 105, 597 S.E.2d 354, 357 (2004) (holding that an amendment to condominium declaration applied retroactively to condominium association's claims against a unit owner); *Crest Builders, Inc. v. Willow Falls Improvement Ass'n*, 74 Ill. App. 3d 420, 423, 393 N.E.2d 107, 109-10 (Ill. 1979) (holding a developer could not have a vested interest in right to advertise units under a declaration where the condominium association amended the declaration to remove those rights and the developer had not included a provision that prevented amendments to those rights and did not retain a veto power); *see also Easterby-Thackston, Inc. v. Chrysler Corp.*, 477 F. Supp. 954, 956 (D.S.C. 1979) (finding that a change to a contract that was contemplated in the language of the original contract was valid and binding and did not create a new contract

between the parties); *Fort Sumter Tours, Inc. v. Babbitt*, 66 F.3d 1324, 1331-32 (4th Cir. 1995) (upholding a contractual provision that permitted one party to the contract to retroactively modify the terms where the modification had to be done pursuant to the process outlined in the contract and the changes were contemplated by the parties at the time of execution).

2. The Dinerstein and OCIP Defendants Failed to Challenge the Second Amendment and Cannot Do So Within This Motion

As evidenced by its Motion and Memorandum in Support, the Dinerstein and OCIP Defendants failed to challenge the validity of the Second Amendment and may not do so here.

i. The Uniform Non-Profit Corporation Act Precludes Defendants From Challenging the Amendment.

First, Defendants are barred from challenging the Amendment by the applicable provisions of South Carolina's Uniform Non-Profit Corporation Act. *See* S.C. Code Ann. § 33-31-403(a)-(c). Specifically, Defendants are not a member of the POA, and thus, Defendants cannot meet the requirements of Section 33-31-403(b) of the Act, which mandates such proceedings must be brought by a "member or members" of the non-profit corporation.

Specifically, Section 33-31-403 of the South Carolina Code provides as follows:

> (a) Except as provided in subsection (b), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.
>
> (b) A corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act where a third party has not acquired rights. The proceeding may be brought by the Attorney General, a director, or by a member or members in a derivative proceeding.
>
> (c) A corporation's power to act may be challenged in a proceeding against an incumbent or former director, officer, employee, or agent of the corporation. The proceeding may be brought by a director, the corporation, directly, derivatively, or through a receiver, a trustee, or other legal representative, or in the case of a public benefit corporation, by the Attorney General.

S.C. Code Ann. § 33-31-403 (a)-(c) (underscore added).

Thus, according to above-referenced provisions of the Uniform Non-profit Corporation Act, the Dinerstein and OCIP Defendants lack the capacity to challenge both the Second Amendment as well as the POA's commencement of this action. Neither the Dinerstein Defendants nor the OCIP Defendants are members of the POA. Moreover, an affirmative defense is not a "derivative proceeding" as defined in the Non-profit Corporation Act, nor is it a suit to enjoin corporate action or a demonstrative action, the only two forms of action allowed under §33-31-403(b). Further, South Carolina courts have historically limited challenges to the actions of a corporation under the doctrine of *ultra vires* to only those persons who are members of the corporation. For example, in *Deborde* v. *St. Michaels and All Angels Church*, the S.C. Supreme Court confirmed that the doctrine of *ultra vires* "cannot be used as a sword by a third party to try and invalidate a corporate action." S.C. Code Ann. § 33-31-304, Reporters' cmt. (citing *Deborde v. St. Michaels and All Angels Church*, 272 S.C. 490, 252 S.E.2d 876 (1979)). In *Deborde*, third-party non-church members filed a lawsuit in which they argued that the church could not build a cemetery since there was not a specific provision setting forth the power to build a cemetery in its charter. *Id.* at 501. The S.C. Supreme Court stated that although the Plaintiffs were persons affected by the action of the corporation, they had no standing to raise the claim since they were not members of the church. *Id.*

C. ***There Has Been No Knowing, Voluntary Waiver By The Association Or The Owners***

Plaintiffs have not knowingly and voluntarily waived their right a jury trial or to proceed as a class action. Under South Carolina jurisprudence, "waiver" has been repeatedly defined as the intentional relinquishment of a known right. *See Sanford v. S.C. State Ethics Com'n*, 385 S.C. 483, 496, 685 S.E.2d 600, 607, *opinion clarified*, 386 S.C. 274, 688 S.E.2d 120 (2009); *Strickland v. Strickland*, 375 S.C. 76, 85, 650 S.E.2d 465, 470 (2007) ("Waiver requires a party

to have known of a right, and known that the party was abandoning that right."); *King v. James*, 388 S.C. 16, 30, 694 S.E.2d 35, 42 (S.C. Ct. App. 2010) (noting same). As noted by our Supreme Court in *Harvey v. Jefferson Standard Life Ins. Co.*, 165 S.C. 427, 164 S.E. 6, 8 (1932):

> The knowledge of the legal right is not limited to the knowledge that there exists such right in one's favor; *but it must be also a knowledge of the circumstances in which the parties are placed when the waiver is alleged to have occurred.* It must be a voluntary act, with knowledge of the conditions calling for action, or the voluntary refraining from action. One cannot relinquish his right voluntarily and knowingly *when he does not know that his right is in peril or in question.*

Based upon the foregoing definition, the Plaintiff POA waived none of its rights because the Plaintiff POA, as it was being formed, was controlled by the Dinerstein Defendants, and thus, independently had no way to "voluntarily" relinquish any rights. The South Carolina Court of Appeals has recognized that a POA lacks control during the period that a developer-controlled board is in place. *See Magnolia N. Prop. Owners' Ass'n, Inc. v. Heritage Communities, Inc.*, 397 S.C. 348, 372, 725 S.E.2d 112, 125 (S.C. Ct. App. 2012) (rejecting the developer's argument that the statute of limitations barred a property owners association's claims where the developer's officers comprised the POA's board of directors following the turnover of the properties and finding "unpersuasive [the developer's] claim that an organization they controlled would have initiated an action against itself during this period"). Here, Plaintiffs clearly had no choice or input as to any aspect of the pre-amended Master Deed, including the Deed's legal remedies provisions. The POA was created in part by this Master Deed and essentially did not exist prior to all predicates - incorporation, Master Deed, and adoption of By-Laws – and, as such, it could not have negotiated a waiver of rights or knowingly consented to waiver. Rather, the terms of the Master Deed were unilaterally imposed on it.

D. *The Alleged Jury Trial and Class Action Waivers are Integral to the Arbitration Provisions, which Defendants have Waived*

In South Carolina, it is generally held that the right to enforce an arbitration clause may be waived. *See, e.g., Davis v. KB Home of S.C., Inc.*, 394 S.C. 116, 131, 713 S.E.2d 799, 807 (S.C. Ct. App. 2011); *Hyload, Inc. v. Pre-Engineered Prods., Inc.*, 308 S.C. 277, 280, 417 S.E.2d 622, 624 (S.C. Ct. App. 1992) ("A party may waive the right to arbitrate given by a contract."). In fact, it is uniformly accepted in this State that a party who: (a) fails to timely request arbitration; (b) engages in deceptive conduct; or (c) fully avails itself of the Court's discovery processes by noticing multiple depositions and engaging in substantial written discovery has waived its right to invoke an arbitration clause.[10]

The Dinerstein and OCIP Defendants have: (a) participated in numerous depositions; (b) taken homeowner and Board Member depositions; (b) filed cross-claims against other defendants; (d) conducted written discovery of other defendants; (e) filed motions; and (f) actively litigated. Such actions over a lengthy period of time indicated that the Dinerstein and OCIP Defendants have waived their rights under the arbitration provisions of the Master Deed.

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[10] *Partain v. Upstate Automotive Group*, 386 S.C. 488, 494-495, 689 S.E.2d 602, 605 (2010) (arbitration clause held to be unenforceable where auto dealership's fraudulent conduct of substituting lesser quality car was unforeseeable to purchaser); *Aiken v. World Fin. Corp. of S.Carolina*, 373 S.C. 144, 151, 644 S.E.2d 705, 709 (2007)("because even the most broadly-worded arbitration agreements still have limits founded in general principles of contract law, this Court will refuse to interpret any arbitration agreement as applying to outrageous torts that are unforeseeable to a reasonable consumer in the context of normal business dealings."; *Rhodes v. Benson Chrysler–Plymouth, Inc.*, 374 S.C. 122, 128, 647 S.E.2d 249, 252 (S.C. Ct. App. 2007) (finding a ten-month period in which parties exchanged written interrogatories and requests to produce and took five depositions was sufficient to demonstrate waiver); *Evans v. Accent Manufactured Homes, Inc.*, 352 S.C. 544, 551, 575 S.E.2d 74, 77 (S.C. Ct. App. 2003) ("We find evidence in the record that Accent availed itself of discovery tools unavailable in arbitration, thereby prejudicing Evans by obtaining information from her it might not have been able to otherwise obtain. . . As the party seeking arbitration, Accent bore the onus to halt discovery by seeking the court's protection. Instead, Accent failed to seek court protection and continued to engage in discovery to its benefit."); *Liberty Builders, Inc. v. Horton*, 336 S.C. 658, 667, 521 S.E.2d 749, 754 (S.C. Ct. App. 1999) (holding the right to compel arbitration waived where plaintiff pursued litigation for two-and-a-half years before moving to stay action in favor of mediation); *see also Davis*, 394 S.C. at 131, 713 S.E.2d at 807 (noting the three factors to consider when determining whether a party has waived its right to compel arbitration include: (1) whether a substantial length of time transpired between the commencement of the action and the commencement of the motion to compel arbitration; (2) whether the party requesting arbitration engaged in extensive discovery before moving to compel arbitration; and (3) whether the non-moving party was prejudiced by the delay in seeking arbitration).

E. The Alleged Jury Trial and Class Action Wavier is Unconscionable

An additional sustaining ground supporting this Court's denial of Defendants' Motion is based upon the unconscionable waiver terms the Dinerstein and OCIP Defendants seek to enforce. Under our jurisprudence, "unconscionability" is defined to include both an absence of meaningful choice as well as oppressive, one-sided contractual provisions. *Simpson v. MSA of Myrtle Beach*, 373 S.C. 14, 28, 644 S.E.2d 663, 670 (2007); *Carolina Care Plan, Inc. v. United Health Care Servs., Inc.*, 361 S.C. 544, 554, 606 S.E.2d 752, 757 (2004) (defining unconscionability as "the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them."). Given the absence of meaningful choice necessarily involved in connection with boilerplate documents such as the Master Deed, coupled with the one-sided nature of the Master Deed's remedial provisions, this Court finds these provisions unenforceable.

1. The Waivers Contain Oppressive and One-Sided Terms.

The South Carolina Court of Appeals in *Smith v. D.R. Horton*[11] recently affirmed a trial court's decision finding that an arbitration provision contained in a D.R. Horton purchase contract unconscionable and unenforceable due to the "cumulative effect" of one-sided provisions that riddled the purchase contract. The trial court, confronted with a motion to compel arbitration brought by D.R. Horton, viewed the warranties and arbitration section of the purchase contract as a whole, finding it "referenced that certain disputes are to be resolved by mandatory binding arbitration along with an entire host of attempted waivers of important legal remedies. . ." *Id.*

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11 *Smith v. D.R. Horton, Inc.*, 403 S.C. 10, 15, 742 S.E.2d 37, 40.

Upon review, the trial court held the sections' collective attempt to disclaim implied warranty claims was oppressive and unconscionable. The trial court further found "perhaps even more stark [were] the provisions in the Limitations of Liability. . ." in which D.R. Horton claimed it could not be liable for monetary damages of any kind. Based upon the foregoing, the trial court concluded, and our Court of Appeals subsequently affirmed, the arbitration provision was "wholly unconscionable and unenforceable based on the cumulative effect of a number of oppressive and one-sided provisions." *Id.*

A review of the pre-amended Master Deed reveals similar warranty limitations and disclaimers to those addressed, and ultimately rejected, by the *D.R. Horton* Court. Thus, akin to *D.R. Horton,* all offending pre-amended Master Deed provisions should be read together, and ultimately rejected together (which, technically, Plaintiffs already accomplished via way of the Second Amendment). *See Smith v. D.R. Horton,* 742 S.E.2d at 42 ("We conclude the *arbitration clause in this case should not be severed from the numerous unconscionable provisions* (aka read together) and particularly [D.R.] Horton's attempt to waive any seller liability for monetary damages of any kind, including secondary, consequential, punitive, general, special or indirect damages.") (emphasis added); *see also Ingle v. Circuit City Stores, Inc.*, 328 F.3d 1165, 1180 (9th Cir. 2003) (finding arbitration agreement wholly unenforceable because of an "insidious pattern" of unconscionable provisions, and therefore "any earnest attempt to ameliorate the unconscionable aspects of [the] arbitration agreement would require [the] court to assume the role of contract author rather than interpreter").

In addition to their confusing language and inconspicuous placement, the deleted class action and jury waivers attempt to disclaim the Dinerstein Defendants' liability and unconscionably restrict both the POA and its members' right to bring suit and to receive a jury

trial. Moreover, the waivers are ambiguous on their face – they are embedded under an "Alternative Dispute Resolution" Heading; they reference only "jury trial" in its caption; and they are written in boilerplate language undecipherable to an unsophisticated party. The waiver caption makes no reference to "class action," and the language of the "jury trial" part of the waiver, itself, makes no reference to the POA.

CONCLUSION

Based upon the foregoing, this Court **DENIES** the Motion because the Dinerstein and OCIP Defendants: (a) failed to timely challenge the mode of trial at their first opportunity prior to submitting an answer (by way of a Rule 12(b) or Rule 39 motion or otherwise); (b) improperly seek to enforce class action and jury trial waivers that no longer exist in the Master Deed; (c) failed to timely challenge the Second Amendment to the Master Deed and By-Laws; (d) cannot overcome Plaintiffs' right to amend the Master Deed; (e) seek to enforce arbitration provisions that were waived by Defendants' failure to timely request arbitration; (f) and cannot enforce waivers that are apart of unconscionable arbitration and alternative dispute resolution provisions that contain oppressive, one-sided terms.

IT IS SO ORDERED.

Columbia, South Carolina
July 17, 2014

G. Thomas Cooper, Jr., Judge
Fifth Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-8512

The Gates At Williams-Brice Condominium Association And Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co. Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Holding Corporation, Alenco Window GA, LLC, New Alenco Window, Ltd.; AWC Holding Company; Crosby Window, Inc., f/k/a/ Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc.; T & M Concrete, Inc.; Loveless Commercial Contracting, Inc.; Economy Waterproofing, Inc.; BMC West Corporation; Highway One Construction, Inc.; J.I. Windows LLC; Dietrich Industries, Inc., a/k/a Dietrich

ORDER DENYING DEFENDANTS' MOTION TO RECONSIDER

2015 JAN 22 AM 8:58

Metal Framing, Inc., n/k/a Clarkwestern Dietrich Building Systems LLC; Best Masonry and its successor in interest, OldCastleAPG; Headwaters, Inc. d/b/a Best Masonry; and John Doe #1-10.

Defendants.

This matter comes before the Court by way of defendants' DDC Construction, Inc.; DMC Consolidated, Inc.; DMC Builders, Co., Inc., individually and improperly identified as d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Wyman Acoustics LLC; and Highway One Construction, Inc. (collectively, "Moving Defendants") Motion to Reconsider its Order filed July 18, 2014. Specifically, pursuant to Rule 59(e), SCRCP, Moving Defendants ask the Court to Reconsider its Order Denying Moving Defendants' Motion for Non-Jury Trial and To Strike Class Action Allegations and Jury Trial Demand.

After consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or facts not appropriately considered.

This Court notes as an additional sustaining ground for its Order that Moving Defendants failed to provide a copy of their Motion To Reconsider to the undersigned within ten days of filing the Motion as Rule 59(g), SCRCP mandates.

For these reasons, this Court hereby **DENIES** Moving Defendants' Motion under Rule 59(e), SCRCP, to Reconsider this Court's Order filed July 18, 2014. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

Columbia, South Carolina
January 14, 2015

G. Thomas Cooper, Jr., Judge
Fifth Judicial Circuit

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4008512

Gates At Williams Brice Condominium Association
Katharine Swinson
PLAINTIFF(S)

DDC Construction Inc
John 1-10 Doe
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 : _____

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
		$
		$
		$

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** _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ **day of** _____, **20** _____ and a copy mailed first class or placed in the appropriate attorney's box on this 22 January 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Justin O'Toole Lucey

ATTORNEY(S) FOR THE PLAINTIFF(S)

Howard A. Van Dine III
Norman Ward Lambert
Erik Tison Norton
Christina Agnes Bisset
Jason Alan Pittman
Christopher M. Adams
Michael B.T. Wilkes

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)

THE GATES AT WILLIAMS-BRICE CONDOMINIUM ASSOCIATION, et al
Plaintiff(s)

vs.

DDC CONSTRUCTION, INC, et al.
Defendant(s)

CIVIL ACTION COVERSHEET

2012-CP - 40- 8512

Submitted by:
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2012 DEC 26 P 3:13

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20___-CP-___-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☒ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: _____ **Date: December 21, 2012**

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

   a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

   b. Requests for temporary relief;

   c. Appeals

   d. Post Conviction relief matters;

   e. Contempt of Court proceedings;

   f. Forfeiture proceedings brought by governmental entities;

   g. Mortgage foreclosures; and

   h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-____

THE GATES AT WILLIAMS-BRICE CONDOMINIUM ASSOCIATION and KATHARINE SWINSON, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC CONSTRUCTION, INC.; KAPASI GLASS MART, INC., WINDOW WORLD, INC.; WINDOW WORLD OF THE MIDLANDS, INC.; AND JOHN DOE 1-20,

Defendants.

SUMMONS

2012 DEC 26 PM 3:13

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint upon the subscriber at his office at 415 Mill Street, Post Office Box 806, Mount Pleasant, South Carolina within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer within the prescribed time, a judgment by default will be rendered against you for the amount or other remedy requested in the attached Complaint plus interest and costs.

JUSTIN O'TOOLE LUCEY, P.A.

By: _____

Justin Lucey
Stephanie Drawdy
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806
(843) 849-8400 phone
(843) 849-8406 fax

December 21, 2012
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-_____

THE GATES AT WILLIAMS-BRICE CONDOMINIUM ASSOCIATION and KATHARINE SWINSON, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC CONSTRUCTION, INC.; KAPASI GLASS MART, INC., WINDOW WORLD, INC.; WINDOW WORLD OF THE MIDLANDS, INC.; AND JOHN DOE 1-20,

Defendants.

COMPLAINT
(Defective Construction)

(Jury Trial Demanded)

2012 DEC 26 PM 3:13
C.C.P. & G.S.

The Plaintiffs, The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually and on behalf of all others similarly situated, complaining of the Defendants named herein, would respectfully allege and show the Court as follows:

PARTIES AND JURISDICTIONAL STATEMENT

1. Plaintiff The Gates at Williams-Brice Condominium Association (the "Association") is a non-profit corporation organized and existing under the laws of the State of South Carolina.

2. The Association is the property owners association for the Williams-Brice Horizontal Property Regime.

3. The Williams-Brice Horizontal Property Regime is a Horizontal Property Regime that exists by virtue of a Master Deed dated July 2, 2007 and recorded July 11, 2007 in the RMC Office of Richland County, South Carolina in Book 1334-2002.

4. The Gates consists of one hundred fifty-eight (158) condominiums located in six (6) buildings and related common elements, which are located behind the Williams-Brice Stadium in Columbia, South Carolina. The condominiums and common and limited common elements are hereinafter referred to collectively as "The Gates."

5. By virtue of governing documents and the South Carolina Horizontal Property Regime Act, S.C. Code § 27-31-10, *et. seq.*, the Association is charged with certain duties, powers, rights and authority in connection with The Gates.

6. The Association is charged with, *inter alia*, the management and administration of The Gates, the investigation, maintenance and repair of The Gates's Common Elements and Areas of Responsibility, and has the right and obligation to bring this action on behalf of the Gates, the Association, and the respective owners and members.

7. Plaintiff Katharine Swinson (hereinafter "Plaintiff Swinson") is a citizen of Richland County, South Carolina and is an owner of a condominium within the Gates more particularly described as 1085 Shop Road, Unit 435, Columbia, South Carolina, 29201.

8. Plaintiff Swinson purchased the above-described real property in 2010.

9. By virtue of property ownership in the Gates, Plaintiff Swinson is a member of the Association, has been a member of the Association at all times relevant hereto, and has ownership and membership rights relating thereto.

10. Defendant DDC Construction, Inc. (hereinafter "DDC") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, DDC was engaged in the business of constructing, repairing and/or selling condominiums in Richland County, South Carolina.

11. Defendant Kapasi Glass Mart, Inc. (hereinafter "Kapasi") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this

action, Kapasi supplied materials, installed windows and window components and/or performed repairs, among other work, at The Gates.

12. Defendant Window World, Inc. (hereinafter "Window World") is a corporation organized and existing under the laws of the State of North Carolina. Window World manufactured and/or supplied the windows and/or doors and related components at The Gates.

13. Defendant Window World of the Midlands, Inc. (hereinafter "Midlands") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Midlands supplied materials, installed windows and related components and/or performed repairs, among other work, at The Gates.

14. The address and identity of all John Doe Defendants are unknown at this time.

15. Defendants John Doe #1-20 (hereinafter "John Doe Defendants") are subcontractors and/or other entities involved in the design, construction, product manufacturing and/or supplying, and/or repair of The Gates.

16. This Honorable Court has jurisdiction over all subject matter alleged herein and over all parties hereto and venue is proper in this forum.

FACTUAL ALLEGATIONS

17. This matter arises out of the construction, repair and sale of The Gates.

18. At the time the Certificates of Occupancy were issued, The Gates contained latent building defects.

19. Plaintiffs and class members have previously put DDC on notice of some or many of the manifestations of the deficiencies. However, DDC has denied the existence of or responsibility for the deficiencies and/or or their attempts at repair have failed.

20. The latent building defects in combination with fortuitous, weather, repeated water intrusion, and/or other events have resulted in consequential damage to non-defective building components and other property.

21. A preliminary inspection of The Gates evidences failure of one or more components of the exterior building envelopes; water intrusion into and through the exterior building envelope; and resulting consequential damage to non-defective building components, and other property. Inspection also reveals failure of other various building components, including widespread spalling, with consequential damages resulting therefrom.

22. Defendants had a duty to design, develop, construct, and repair The Gates in a workmanlike manner with suitable materials and free from all defects.

23. The aforementioned deficiencies and consequential damages evidence that Defendants breached their duties to Plaintiffs.

24. The Defendants' acts and omissions have resulted in building deficiencies, consequential damages, and partial loss of use and enjoyment.

25. Remedying the above-wrongs will result in additional consequential damages and loss of use.

26. As a direct and proximate result of Defendants' violation of their legal duties, Plaintiffs and class members have been proximately damaged in an amount to be determined by the trier of fact, and have had to incur reasonable attorney's fees and costs for the retention of experts to determine the damage and the scope of work for repair.

27. Upon information and belief, the water intrusion and resulting consequential damages have occurred and have been occurring in each and every year since the completion of construction and constitute "occurrences" and "property damage" under the standard and/or typical general liability policies.

CLASS ACTION ALLEGATIONS

28. Pursuant to the common law of South Carolina and Rule 23 of the South Carolina Rules of Civil Procedure ("SCRCP"), Plaintiff Swinson brings this action both individually and as a proposed class action against Defendants on behalf of herself and all other similarly situated persons and entities, who own a condominium within the Gates (hereinafter collectively referred to as the "Class"). The Class is more particularly defined as follows:

> All persons and entities that own a condominium within The Gates located in the City of Columbia, Richland County, South Carolina.
>
> Excluded from the Class are: (a) any Judge presiding over this action and members of their families; (b) Defendants and any entity in which Defendants have a controlling interest or which have a controlling interest in Defendants and their legal representatives, assigns and successors of Defendants and Defendants' current or former employees, investors, members, or officers; and (c) all persons who properly execute and file a timely request for exclusion from the Class.

29. *Numerosity*: The Class is composed of in excess of one hundred fifty persons geographically dispersed throughout the State of South Carolina and the United States, the joinder of whom in one action is impractical. When spouses and co-owners are considered, the Class is expected to be in excess of two hundred members.

30. *Commonality*: Questions of law and fact common to the Class exist as to all members of the Class and predominate over any questions affecting only individual members of the Class. These common legal and factual issues include the following:

(a) Whether the construction and/or repair of The Gates was defective;

(b) Whether Defendants knew or should have known of the defects;

(c) Whether Defendants negligently constructed The Gates;

(d) Whether Defendants have acted or refused to act on grounds generally

applicable to the Class;

(e) Whether Defendants are financially responsible to pay the full costs and expenses of repair of said defective conditions;

(f) Whether Plaintiffs and the Class are entitled to compensatory damages, including, among other things: (i) compensation for all out-of-pocket monies expended by other members of the Class for repair of their condominiums as well as repair/replacement of other property damage; (ii) temporary repairs; and (iii) compensation for loss of use.

(g) Whether the Plaintiffs are entitled to prejudgment interest, attorneys' fees and costs from Defendants.

31. *Typicality*: Plaintiffs' claims are typical of the claims of the members of the Class, as all such claims arise out of Defendants' wrongful conduct in constructing The Gates.

32. *Adequate Representation*: Plaintiff Swinson will fairly and adequately protect the interests of the members of the Class and has no interests antagonistic to those of the Class. Plaintiff Swinson has retained counsel experienced in the prosecution of construction defect claims and complex litigation, including consumer class actions involving product liability and product design defects.

33. *Predominance and Superiority*: This class action is appropriate for certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members, and a Class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable. Should individual Class Members be required to bring separate actions, this Court would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In

contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single Court.

34. Defendants have acted on grounds generally applicable to the Class. Class certification is appropriate under South Carolina law because Defendants engaged in a uniform and common practice. All Class Members have the same legal right to and interest in redress for damages associated with the defective conditions existing within The Gates.

35. Plaintiff Swinson and the Class envision no unusual difficulty in the management of this action as a class action.

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

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

ESTOPPEL FROM PLEADING AND TOLLING OF APPLICABLE STATUTES OF LIMITATIONS

38. Defendants are estopped from relying on any statutes of limitation or repose by virtue of its acts. Upon information and belief, Defendants should have known The Gates was defectively constructed and failed to alert the Plaintiffs of The Gates' defective condition.

39. Defendants had a duty to inform Plaintiffs of the defects described herein, which it should have known. Notwithstanding its duty, Defendants never disclosed the defects to Plaintiffs.

40. Despite exercising reasonable diligence, Plaintiffs could not have discovered the defective condition of The Gates.

41. Given Defendants' failure to disclose this non-public information about the

defective nature of The Gates - information over which it had exclusive control – and because Plaintiffs could not reasonably have known of The Gates's defective nature, Defendants are estopped from relying on any statutes of limitations or repose that might otherwise be applicable to the claims asserted herein.

42. Defendants are further estopped from relying upon any statute of limitations as they have repeatedly represented to Plaintiffs that they are only responsible for correcting work for a period of one year after sale.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

43. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

44. At all times relevant hereto, the Defendants, their agents, servants, employees, and subcontractors undertook and had a duty to Plaintiffs to exercise and use due care in the construction and repair of The Gates in a good, workmanlike manner and with suitable materials, in accordance with the applicable building codes, state law, and in conformance with the prevailing industry standards.

45. Defendants breached their duties to Plaintiffs and the Class in a manner that was negligent, careless, reckless, willful, and wanton in the following particulars:

(a) In failing to construct The Gates in accordance with due care and in accordance with standard building practices;

(b) In failing to construct The Gates in accordance with building code;

(c) In failing to properly supervise the work and construction of The Gates;

(d) In failing to properly coordinate the subcontractors;

(e) In failing to select proper building materials;

(f) In failing to construct The Gates with an adequate exterior building envelope;

(g) In failing to act as a reasonable person would in the circumstances then and there prevailing;

(h) In covering up their own defective work and/or the defective work of others;

(i) In failing to make repairs; and

(j) Such other failures to be proven at trial.

46. Plaintiffs have been damaged as a direct and proximate result of the negligence, carelessness, recklessness, willfulness, and wantonness of the Defendants.

47. If it is shown that said failures were committed with gross negligence and/or reckless disregard for the rights of others, and/or constituted negligence per se, Plaintiffs are entitled to an award of punitive damages against the Defendants.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

48. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

49. The construction, sale, and repair of The Gates came with express and implied warranties that the work would be performed in a careful, diligent and workmanlike manner and that The Gates would be constructed with suitable materials and components and free from all defects and be of superior quality befitting an upscale condominium complex.

50. The construction, sale and/or repair of The Gates, and the components used therein, came with implied warranties of fitness, merchantability, workmanship, and habitability.

51. Defendants have breached their warranties by constructing The Gates in a defective manner as set forth above.

52. As a direct and proximate result of the Defendants' breach of the implied warranty, Plaintiffs have suffered actual and consequential damages.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: *S.C. Code Ann.* § 15-73-10 *et seq.* as to Defendants Kapasi, Window World, Midlands and John Doe Manufacturing and Supplier Defendants)

53. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

54. The Defendants engaged in the business of manufacturing and supplying construction products, e.g. windows, doors, stucco system, and concrete system (s).

55. In manufacturing and supplying products for the construction of The Gates, Defendants Kapasi, Window World, Midlands and the manufacturer and supplier John Doe Defendants placed products into the stream of commerce.

56. By introducing their products into the stream of commerce, Defendants Kapasi, Window World, Midlands and the manufacturer and supplier John Doe Defendants represented said products were safe and suitable for their foreseeable use.

57. In the manufacture and supply of products to The Gates, Defendants Kapasi, Window World, Midlands and the manufacturer and supplier John Doe Defendants anticipate and expect that their products will reach the public in substantially the same condition in which they were designed, developed, constructed, and sold.

58. Defendants Kapasi, Window World, Midlands and the manufacturer and supplier John Doe Defendants have manufactured and/or supplied their products in a defective manner that has resulted in repeated water intrusion into and damage to The Gates and other building deficiencies.

59. The Defendants have marketed and sold their products for use as components in structures such as the Gates. The components are in substantially the same condition as at the time the Defendants sold them.

60. These products were unreasonably designed and manufactured and were defective at the time of sale.

61. The Plaintiff could not have discovered the product defects in the Buildings nor perceived their defective and dangerous condition through the exercise of reasonable care.

62. Because of the intended use involved, the likelihood and potential for serious injury to person and/or property is great. The defective nature of the products is dangerous to an extent beyond the ordinary knowledge common to the community and consuming public.

63. The cost of altering the design, construction and/or repair of the products supplied to The Gates to make them safe was substantially less than the resulting damage, cost, and injury suffered by the Plaintiff.

64. The products are defective and unreasonably dangerous, causing Plaintiff to have suffered damage.

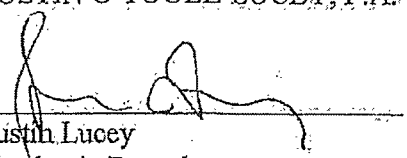
65. The design and manufacture of the products supplied to the Gates were inherently defective as sold and are a direct and proximate cause of the damages suffered by Plaintiffs.

66. Defendants Kapasi, Window World, Midlands and the manufacturer and supplier John Doe Defendants are therefore liable to Plaintiffs under the doctrine of strict liability in an amount to be determined by the trier of fact.

WHEREFORE, Plaintiffs demand a trial by jury and pray actual and consequential damages; statutory or punitive damages; reasonable attorneys' fees; costs of suit; prejudgment interest; and granting such further relief as the Court deems just and proper.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

By: 

Justin Lucey
Stephanie Drawdy
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806
(843) 849-8400 phone
(843) 849-8406 fax

December 21, 2012
Charleston, South Carolina



NATIONAL REGISTERED AGENTS, INC.

The Right Choice for Registered Agent Services

Cover Page for SC25912

This file contains **24** pages of graphic image of Legal Process received in the State of **SOUTH CAROLINA** on **1/10/2013** for **DDC CONSTRUCTION, INC.**.

The document(s) will be forwarded to the individual designated to receive Service of Process from NRAI. As this document(s) has been separated to enable scanning of the image, the Official Record on file with the Court of Jurisdiction should be relied on as the complete record. NRAI accepts no responsibility or liability for missing or incorrectly collated pages in the reassembly of the served document(s).

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; Window World, Inc.; Window World of the Midlands, Inc.; and John Doe 1-20,

Defendants.

Civil Action No. 2012-CP-40-8512

DEFENDANT DDC CONSTRUCTION, INC.'S ANSWER TO PLAINTIFFS' COMPLAINT

Defendant DDC Construction, Inc. ("DDC" or "Defendant") answers the Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Each and every allegation of the Plaintiffs' Complaint not specifically admitted herein is expressly denied.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

2. Defendant admits the allegations in Paragraph 1 on information and belief.

3. Defendant is without information sufficient to admit or deny the allegations in Paragraph 2 and therefore denies same and demands strict proof thereof.

4. Defendant admits the allegations in Paragraphs 3 through 4 on information and belief.

5. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 5 through 6 and therefore denies same and demands strict proof thereof.

6. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 7, 8 and 9 and therefore denies same and demands strict proof thereof.

7. Defendant admits the allegations in Paragraph 10 except insomuch as it alleges DDC sold condominium units which allegation is denied.

8. Defendant is without knowledge or information as to the corporate status of the entities mentioned in the allegations in Paragraphs 11 through 13 and therefore denies the same but admits on information and belief some or all of them provided materials and/or services at The Gates.

9. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 14 through 15 and therefore denies same and demands strict proof thereof.

10. Defendant admits the allegations in Paragraph 16.

(As to Factual Allegations)

11. Defendant admits the allegations in Paragraph 17 on information and belief.

12. Defendant denies the allegations in Paragraphs 18 through 21.

13. Defendant denies the allegations in Paragraph 22 and specifically denies any class is proper or that DDC is aware of any defects in the buildings.

14. Defendant denies the allegations in Paragraphs 23 through 27.

(As to Class Action Allegations)

15. Defendant denies the allegations in Paragraphs 28 through 37 and opposes the certification of a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

16. Defendant denies the allegations in Paragraphs 38 through 42 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

17. Answering Paragraph 43, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

18. The allegations in Paragraph 44 call for a legal conclusion to which no response is required. However, in the utmost caution DDC denies the allegations of Paragraph 44 and demands strict proof thereof.

19. Defendant denies the allegations in Paragraphs 45 through 47 and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

20. Answering Paragraph 48, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

21. In answering Paragraph 49, DDC admits it constructed The Gates for others but denies it provided any express or implied warranty to the Plaintiffs herein or that it made any representations as to the quality or suitability of materials or that it was an "upscale" project.

22. The allegations of Paragraph 50 are denied.

23. Defendant denies the allegations in Paragraphs 51 through 52, and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Defendants Kapasi, Window World, Midlands, and John Doe Manufacturing and Supplier Defendants)

24. Answering Paragraph 53, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

25. The allegations in Paragraphs 54 through 66 are not directed at this Defendant, and therefore, no response is required. To the extent a response is required, Defendant is

without information sufficient to admit or deny the allegations and therefore denies same and demands strict proof thereof.

26. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE
(Failure to State a Claim)

27. Plaintiffs' Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Complaint should be dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

28. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

29. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

30. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

31. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute

of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

32. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;
- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;
- 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;
- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and
- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

33. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

34. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can DDC be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

35. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

36. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

37. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

38. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations. Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by Fed. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

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

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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(803) 799-2000

Attorneys for DDC Construction, Inc.

Columbia, South Carolina

March 4, 2013

~#4813-6139-9571 v.1~

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Defendant DDC Construction, Inc.'s Answer to Plaintiffs' Complaint

Counsel Served:

Justin Lucey, Esquire
Stephanie Drawdy, Esquire
Justin O'Toole Lucey, P.A.
Post Office Box 806
Mt. Pleasant, SC 29465-0806

Debra C. Hair
Administrative Assistant

March 5, 2013

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-8512

The Gates At Williams-Brice Condominium Association And Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co. Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Inc. d/b/a Ply Gem Window Group; Crosby Window, Inc., f/k/a/ Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc. and John Doe #1-10.

Defendants.

AMENDED COMPLAINT
(Defective Construction)

(Jury Trial Demanded)

RICHLAND COUNTY
FILED
2013 MAY 15 AM 9:59
JEANETTE W. [illegible]
C.C.P. & G.S.

The Plaintiffs, The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually and on behalf of all others similarly situated, complaining of the Defendants named herein, would respectfully allege and show the Court as follows:

PARTIES AND JURISDICTIONAL STATEMENT

1. Plaintiff The Gates at Williams-Brice Condominium Association (the "Association") is a non-profit corporation organized and existing under the laws of the State of South Carolina.

2. The Association is the property owners association for the Williams-Brice Horizontal Property Regime.

3. The Williams-Brice Horizontal Property Regime is a Horizontal Property Regime that exists by virtue of a Master Deed dated July 2, 2007 and recorded July 11, 2007 in the RMC Office of Richland County, South Carolina in Book 1334-2002.

4. The Gates consists of one hundred fifty-eight (158) condominiums located in six (6) buildings and related common elements, which are located behind the Williams-Brice Stadium in Columbia, South Carolina. The condominiums and common and limited common elements are hereinafter referred to collectively as "The Gates."

5. By virtue of governing documents and the South Carolina Horizontal Property Regime Act, S.C. Code § 27-31-10, *et. seq.*, the Association is charged with certain duties, powers, rights and authority in connection with The Gates.

6. The Association is charged with, *inter alia*, the management and administration of The Gates, the investigation, maintenance and repair of The Gates' Common Elements and Areas of Responsibility, and has the right and obligation to bring this action on behalf of the Gates, the Association, and the respective owners and members and/or is the assignee of the members' rights being asserted hereunder.

7. Plaintiff Katharine Swinson (hereinafter "Plaintiff Swinson") is a citizen of Richland County, South Carolina and is an owner of a condominium within the Gates more particularly described as 1085 Shop Road, Unit 435, Columbia, South Carolina, 29201.

8. Plaintiff Swinson purchased the above-described real property in 2010.

9. By virtue of property ownership in the Gates, Plaintiff Swinson is a member of the Association, has been a member of the Association at all times relevant hereto, and has ownership and membership rights relating thereto.

10. Defendant DDC Construction, Inc. is a corporation organized and existing under the laws of the State of Texas.

11. Defendant DMC Consolidated, Inc. is a corporation organized and existing under the laws of the State of Texas.

12. Defendant DMC Builders, Co., Inc., individually and d/b/a the Dinerstein Companies is a corporation organized and existing under the laws of the State of Texas.

13. Defendant DC Developers – Columbia Condos, Inc. is a corporation organized and existing under the laws of the State of Texas and is the manager/general Partner of Columbia Condos, LP.

14. Defendant Columbia Condos, LP is a corporation organized and existing under the laws of the State of Delaware.

15. Defendant DMC Developers, I, Ltd. is a corporation organized and existing under the laws of the State of Texas.

16. The foregoing Defendants, and their divisions and affiliates, operated under the trade name Dinerstein Companies (hereinafter referred to collectively as the "Dinerstein Defendants") and at all times relevant to this action were engaged in the business of designing,

developing, marketing, constructing, repairing and/or selling condominiums in Richland County, South Carolina. The Dinerstein Defendants all use the Dinerstein trade name interchangeably.

17. The Dinerstein Defendants used, commingled, and combined their resources to design, develop, market, construct, repair, sell and/or place the condominiums into the stream of commerce.

18. The Dinerstein Defendants have been formed and operate so their legal distinction is blurred and they are amalgamated with each other and their principals.

19. At all times relevant herein, the Dinerstein Defendants were actual and/or de facto joint venturers in the development, construction, and sale of the condominiums.

20. Defendant Kapasi Glass Mart, Inc. (hereinafter "Kapasi") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Kapasi supplied materials, installed windows and window components and/or performed other work, at The Gates.

21. Defendant 31-W Insulation Company, Inc. (hereinafter "31-W") is a corporation organized and existing under the laws of the State of Tennessee. At all times relevant to this action, 31-W provided and/or installed insulation, among other work, at The Gates.

22. Defendant Associated Concrete Contractors, Inc. (hereinafter "Associated Concrete") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, Associated Concrete provided and/or installed concrete, among other work, at The Gates.

23. Defendant Bailey Electric Company, LLC (hereinafter "Bailey Electric") is a corporation organized and existing under the laws of the State of Mississippi. At all times relevant to this action, Bailey Electric provided and/or installed electrical, heating and air conditioning ("HVAC"), among other work, at The Gates.

24. Defendant C&B Utilities, LP (hereinafter "C&B") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, C&B provided and/or installed plumbing, among other work, at The Gates.

25. Defendant Carolina Floor Systems, Inc. (hereinafter "Carolina Floor") is a corporation organized and existing under the laws of the State of North Carolina. At all times relevant to this action, Carolina Floor provided and/or installed cement decks and floor underlayment, among other work, at The Gates.

26. Defendant Century Fire Protection, LLC (hereinafter "Century Fire") is a corporation organized and existing under the laws of the State of Delaware. At all times relevant to this action, Century Fire provided and/or installed firesafing and firestopping, among other work, at The Gates.

27. Defendant Cherokee Inc. (hereinafter "Cherokee") is a corporation organized and existing under the laws of the State of Delaware. At all times relevant to this action, Cherokee performed site work, among other work, at The Gates.

28. Defendant Coronado Stucco, LP (hereinafter "Coronado") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, Coronado provided and/or installed stucco, among other work, at The Gates.

29. Defendant Cross Plains Custom Tile, Inc. (hereinafter "Cross Plains") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, Cross Plains provided and/or installed tile, among other work, at The Gates.

30. Defendant Lowry Construction & Framing Inc. (hereinafter "Lowry") is a corporation organized and existing under the laws of the State of Florida At all times relevant to his action, Lowry provided and/or installed framing, among other work, at The Gates

31. Defendant LTB Construction, Inc. (hereinafter "LTB") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, LTB provided and/or installed drywall materials and firestopping, among other work, at The Gates.

32. Defendant Martin Morales Jr. Painting & Drywall, L.L.C (hereinafter "Martin Morales") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, Martin Morales provided and/or installed caulking and sealant, among other work, at The Gates.

33. Defendant Metal Construction Materials, Inc. (hereinafter "Metal Construction") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, Metal Construction provided and/or installed metal carports, among other work, at The Gates.

34. Defendant Southwest Ironworks, Inc. (hereinafter "Southwest Ironworks") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, Southwest Ironworks provided and/or installed metal stairs and rails, among other work, at The Gates.

35. Defendant The Clerkley/Watkins Group, LP, (hereinafter "Clerkley/Watkins") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, Clerkley/Watkins provided architectural and/or engineering services, among other work, at The Gates.

36. Defendant Tindall Corporation (hereinafter "Tindall") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Tindall provided and/or installed the precast concrete parking garage, among other work, at The Gates.

37. Defendant Triad Pest Control, Inc. (hereinafter "Triad") is a corporation organized and existing under the laws of the State of North Carolina. At all times relevant to this action, Triad provided termite treatment, among other work, at The Gates.

38. Defendant Wyman Acoustics LLC, (hereinafter "Wyman") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Wyman provided and/or installed drywall, among other work, at The Gates.

39. Defendant Alenco Inc. d/b/a Ply Gem Window Group (hereinafter "Alenco") is a corporation organized and existing under the laws of the State of Delaware. At all times relevant to this action, Alenco supplied vinyl doors, among other products, at The Gates.

40. Defendant Crosby Window, Inc., f/k/a/ Action WinDoor Technology, Inc. (hereinafter "AWT") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, AWT supplied vinyl windows, among other products, at The Gates.

41. Defendant Geo-Systems Design & Testing, Inc. (hereinafter "Geo-Systems") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Geo-Systems supplied testing and quality assurance inspections, among other work, at The Gates.

42. Defendant HGE Consulting, Inc. (hereinafter "HGE") is a corporation organized and existing under the laws of the State of Texas At all times relevant to this action, HGE provided architectural and/or engineering services, among other work, at The Gates.

43. Defendant Maintenance Builders Supply, Ltd. (hereinafter "MBS") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, MBS supplied finish hardware, among other products, at The Gates.

44. Defendant SCA Engineers, Inc. (hereinafter "SCA") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, SCA provided architectural and/or engineering services, among other work, at The Gates.

45. Defendant Sinclair & Associates, Inc., (hereinafter "Sinclair") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Sinclair provided architectural and/or engineering services, among other work, at The Gates.

46. Defendant Faultless Hardware, individually and d/b/a as Pamex Inc., (hereinafter "Pamex") is a corporation organized and existing under the laws of the State of California. At all times relevant to this action, Pamex supplied finish hardware, among other products, at The Gates.

47. The address and identity of John Doe Defendant #1-10 is unknown at this time.

48. Defendants John Doe #1-10 (hereinafter "John Doe Defendants") are subcontractors and/or other entities involved in the design, construction, product manufacturing and/or supplying, and/or repair of The Gates.

49. Defendants Kapasi Glass Mart, Inc., 31-W Insulation Company, Inc., Associated Concrete Contractors, Inc., Bailey Electric Company, LLC, C&B Utilities, LP, Carolina Floor Systems, Inc., Century Fire Protection, LLC, Cherokee Inc., Coronado Stucco, LP, Cross Plains Custom Tile, Inc., Lowry Construction & Framing Inc., LTB Construction, Inc., Martin Morales Jr. Painting & Drywall, LLC, Metal Construction Materials, Inc., Southwest Ironworks, Inc., The Clerkley/Watkins Group, LP, Tindall Corporation, Triad Pest Control, Inc., Wyman Acoustics LLC, Alenco Inc. d/b/a Ply Gem Window Group, Crosby Window, Inc., f/k/a/ Action WinDoor Technology, Inc., Geo-Systems Design & Testing, Inc., HGE Consulting, Inc., Maintenance Builders Supply, Ltd., SCA Engineers, Inc., Sinclair &

Associates, Inc., Faultless Hardware, individually and d/b/a Pamex Inc. and John Doe #1 are hereinafter referred to collectively as the "Manufacturing and/or Supplier Defendants"

50. This Honorable Court has jurisdiction over all subject matter alleged herein and over all parties hereto and venue is proper in this forum.

FACTUAL ALLEGATIONS

51. This matter arises out of the construction and sale of The Gates.

52. At the time the Certificates of Occupancy were issued, The Gates contained latent building defects.

53. Plaintiffs and class members have previously put the Dinerstein Defendants on notice of some or many of the manifestations of the deficiencies. However, the Dinerstein Defendants have denied the existence of or responsibility for the deficiencies and/or or their attempts at repair have failed.

54. The latent building defects in combination with fortuitous, weather, repeated water intrusion, and/or other events have resulted in consequential damage to non-defective building components and other property.

55. A preliminary inspection of The Gates evidences failure of one or more components of the exterior building envelopes; water intrusion into and through the exterior building envelope; and resulting consequential damage to non-defective building components, and other property. Inspection also reveals failure of other various building components, including widespread spalling, with consequential damages resulting therefrom.

56. Defendants had a duty to design, develop, construct, and repair The Gates in a workmanlike manner with suitable materials and free from all defects.

57. The aforementioned deficiencies and consequential damages evidence that Defendants breached their duties to Plaintiffs.

58. The Defendants' acts and omissions have resulted in building deficiencies, consequential damages, and partial loss of use and enjoyment.

59. Remedying the above-wrongs will result in additional consequential damages and loss of use.

60. As a direct and proximate result of Defendants' violation of their legal duties, Plaintiffs and class members have been proximately damaged in an amount to be determined by the trier of fact, and have had to incur reasonable attorney's fees and costs for the retention of experts to determine the damage and the scope of work for repair.

61. Upon information and belief, the water intrusion and resulting consequential damages have occurred and have been since shortly after the completion of construction and constitute "occurrences" and "property damage" under the standard and/or typical general liability policies.

CLASS ACTION ALLEGATIONS

62. Pursuant to the common law of South Carolina and Rule 23 of the South Carolina Rules of Civil Procedure ("SCRCP"), Plaintiff Swinson brings this action both individually and as a proposed class action against Defendants on behalf of herself and all other similarly situated persons and entities, who own a condominium within the Gates (hereinafter collectively referred to as the "Class"). The Class is more particularly defined as follows:

> All persons and entities that own a condominium within The Gates located in the City of Columbia, Richland County, South Carolina.
>
> Excluded from the Class are: (a) any Judge presiding over this action and members of their families; (b) Defendants and any entity in which Defendants have a controlling interest or which have a controlling interest in Defendants and their legal representatives, assigns and successors of Defendants and Defendants' current or former employees, investors, members, or officers; and (c) all persons who properly execute and file a timely

request for exclusion from the Class.

63. *Numerosity*: The Class is composed of in excess of one hundred fifty persons geographically dispersed throughout the State of South Carolina and the United States, the joinder of whom in one action is impractical. When spouses and co-owners are considered, the Class is expected to be in excess of two hundred members.

64. *Commonality*: Questions of law and fact common to the Class exist as to all members of the Class and predominate over any questions affecting only individual members of the Class. These common legal and factual issues include the following:

(a) Whether the construction and/or repair of The Gates was defective;

(b) Whether Defendants knew or should have known of the defects;

(c) Whether Defendants negligently constructed The Gates;

(d) Whether Defendants have acted or refused to act on grounds generally applicable to the Class;

(e) Whether Defendants are financially responsible to pay the full costs and expenses of repair of said defective conditions;

(f) Whether Plaintiffs and the Class are entitled to compensatory damages, including, among other things: (i) compensation for all out-of-pocket monies expended by other members of the Class for repair of their condominiums as well as repair/replacement of other property damage; (ii) temporary repairs; and (iii) compensation for loss of use.

(g) Whether the Plaintiffs are entitled to prejudgment interest, attorneys' fees and costs from Defendants.

65. *Typicality*: Plaintiffs' claims are typical of the claims of the members of the Class, as all such claims arise out of Defendants' wrongful conduct in constructing The Gates.

66. *Adequate Representation*: Plaintiff Swinson will fairly and adequately protect the interests of the members of the Class and has no interests antagonistic to those of the Class. Plaintiff Swinson has retained counsel experienced in the prosecution of construction defect claims and complex litigation, including consumer class actions involving product liability and product design defects.

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

68. Defendants have acted on grounds generally applicable to the Class. Class certification is appropriate under South Carolina law because Defendants engaged in a uniform and common practice. All Class Members have the same legal right to and interest in redress for damages associated with the defective conditions existing within The Gates.

69. Plaintiff Swinson and the Class envision no unusual difficulty in the management of this action as a class action.

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

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

ESTOPPEL FROM PLEADING AND TOLLING OF APPLICABLE STATUTES OF LIMITATIONS

72. Defendants are estopped from relying on any statutes of limitation or repose by virtue of its acts. Upon information and belief, Defendants were in a position of superior knowledge and should have known The Gates was defectively constructed and failed to alert the Plaintiffs of The Gates' defective condition.

73. Defendants had a duty to inform Plaintiffs of the defects described herein, which it should have known. Notwithstanding its duty, Defendants never disclosed the defects to Plaintiffs.

74. Despite exercising reasonable diligence, Plaintiffs could not have discovered the defective condition of The Gates.

75. Given Defendants' failure to disclose this non-public information about the defective nature of The Gates - information over which it had exclusive control – and because Plaintiffs could not reasonably have known of The Gates's defective nature, Defendants are estopped from relying on any statutes of limitations or repose that might otherwise be applicable to the claims asserted herein.

76. Defendants are further estopped from relying upon any statute of limitations as they have repeatedly represented to Plaintiffs that they are only responsible for correcting work for a period of one year after sale.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

77. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

78. At all times relevant hereto, the Defendants, their agents, servants, employees, and subcontractors undertook and had a duty to Plaintiffs to exercise and use due care in the construction and repair of The Gates in a good, workmanlike manner and with suitable materials, in accordance with the applicable building codes, state law, and in conformance with the prevailing industry standards.

79. Defendants breached their duties to Plaintiffs and the Class in a manner that was negligent, careless, reckless, willful, and wanton in the following particulars:

(a) In failing to construct The Gates in accordance with due care and in accordance with standard building practices;

(b) In failing to construct The Gates in accordance with building code;

(c) In failing to properly supervise the work and construction of The Gates;

(d) In failing to properly coordinate the subcontractors;

(e) In failing to select proper building materials;

(f) In failing to construct The Gates with an adequate exterior building envelope;

(g) In failing to act as a reasonable person would in the circumstances then and there prevailing;

(h) In covering up their own defective work and/or the defective work of others;

(i) In failing to make repairs; and

(j) Such other failures to be proven at trial.

80. Plaintiffs have been damaged as a direct and proximate result of the negligence, carelessness, recklessness, willfulness, and wantonness of the Defendants.

81. If it is shown that said failures were committed with gross negligence and/or reckless disregard for the rights of others, and/or constituted negligence per se, Plaintiffs are entitled to an award of punitive damages against the Defendants.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

82. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

83. The construction, sale, and repair of The Gates came with express and implied warranties that the work would be performed in a careful, diligent and workmanlike manner and that The Gates would be constructed with suitable materials and components and free from all defects and be of superior quality befitting an upscale condominium complex.

84. The construction, sale and/or repair of The Gates, and the components used therein, came with implied warranties of fitness, merchantability, workmanship, and habitability.

85. Defendants have breached their warranties by constructing The Gates in a defective manner as set forth above.

86. As a direct and proximate result of the Defendants' breach of the implied warranty, Plaintiffs have suffered actual and consequential damages.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: *S.C. Code Ann.* § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

87. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

88. The Manufacturing and/or Supplier Defendants engaged in the business of manufacturing and/or supplying construction products, e.g. framing system components, stucco,

siding, window and door packages, parking garage system, tile, carport system, stair systems, concrete, etc.

89. In manufacturing and/or supplying products for the construction of The Gates, the Manufacturing and/or Supplier Defendants placed products into the stream of commerce.

90. By introducing their products into the stream of commerce, the Manufacturing and/or Supplier Defendants represented said products were safe and suitable for their foreseeable use.

91. In the manufacture and/or supply of products to The Gates, the Manufacturing and/or Supplier Defendants anticipate and expect that their products will reach the public in substantially the same condition in which they were designed, developed, constructed, and sold.

92. The Manufacturing and/or Supplier Defendants have manufactured and/or supplied their products in a defective manner that has resulted in repeated water and/or air intrusion into and damage of the building components at The Gates.

93. The Manufacturing and/or Supplier Defendants have marketed and/or sold their products for use as components in structures such as The Gates. The components are in substantially the same condition as at the time the Manufacturing and/or Supplier Defendants sold them.

94. These products were unreasonably designed and manufactured and were defective at the time of sale.

95. The Plaintiff could not have discovered the product defects in the Buildings nor perceived their defective and/or dangerous condition through the exercise of reasonable care.

96. Because of the intended use involved, the likelihood and potential for serious injury to person and/or property is great. The defective nature of the products is dangerous to an extent beyond the ordinary knowledge common to the community and consuming public.

97. The cost of altering the design, construction and/or repair of the products supplied to The Gates to make them safe was substantially less than the resulting damage, cost, and injury suffered by the Plaintiff.

98. The products are defective and unreasonably dangerous, causing Plaintiff to have suffered damage.

99. The design and manufacture of the products supplied to the Gates were inherently defective as sold and are a direct and proximate cause of the damages suffered by Plaintiffs.

100. The Manufacturing and/or Supplier Defendants are therefore liable to Plaintiffs under the doctrine of strict liability in an amount to be determined by the trier of fact.

WHEREFORE, Plaintiffs demand a trial by jury and pray actual and consequential damages; statutory or punitive damages; reasonable attorneys' fees; costs of suit; prejudgment interest; and granting such further relief as the Court deems just and proper.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

By: _____

Justin Lucey
Stephanie Drawdy
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806
(843) 849-8400 phone
(843) 849-8406 fax

May 14, 2013
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-8512

The Gates At Williams-Brice Condominium Association And Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co. Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Inc. d/b/a Ply Gem Window Group; Crosby Window, Inc., f/k/a/ Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc. and John Doe #1-10.

Defendants.

AMENDED SUMMONS

RICHLAND COUNTY
FILED
2013 MAY 15 AM 9:59
JEANETTE W. McBRIDE
C.C.P. & G.S.

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Amended Complaint upon the subscriber at his office at 415 Mill Street, Post Office Box 806, Mount Pleasant, South Carolina within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer within the prescribed time, a judgment by default will be rendered against you for the amount or other remedy requested in the attached Amended Complaint plus interest and costs.

JUSTIN O'TOOLE LUCEY, P.A.

By: _____

Justin Lucey
Stephanie Drawdy
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806
(843) 849-8400 phone
(843) 849-8406 fax

May 14, 2013
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co., Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Inc. d/b/a Ply Gem Window Group; Crosby Window, Inc., f/k/a Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc. and John Doe #1-10,

Defendants.

Civil Action No. 2012-CP-40-8512

DEFENDANT DDC CONSTRUCTION, INC.'S ANSWER TO PLAINTIFFS' AMENDED COMPLAINT

JEANETTE W. McBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
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Defendant DDC Construction, Inc. ("DDC" or "Defendant") answers the Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Each and every allegation of the Plaintiffs' Amended Complaint not specifically admitted herein is expressly denied.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

2. Defendant admits the allegations in Paragraphs 1, 2, 3 and 4 on information and belief.

3. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

4. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 7through 9 and therefore denies same and demands strict proof thereof.

5. Defendant admits the allegations in Paragraph 10.

6. Defendant admits the allegations of Paragraphs 11 and 12, but denies that DMC Consolidated Inc or DMC Builders Co., Inc., individually and d/b/a the Dinerstein Companies had involvement in The Gates Project or that DMC Builders, Co. Inc. did business as the Dinerstein Companies.

7. Defendant admits that DC Developers- Columbia Condos, Inc. is a Texas corporation but denies it is the "manager/general Partner" of Columbia Condos, LP.

8. Defendant denies the allegations of Paragraphs 16, 17, 18 and 19.

9. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 20 through 46 relative to the corporate status of the referenced entities and

therefore denies same and demands strict proof thereof. However, Defendant admits some provided labor and/or materials for The Gates Project and were subcontractors or suppliers of Defendant or Defendant's subcontractors.

10. Defendant is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraphs 47 and 48 and denies the same.

11. The allegations of Paragraph 49 require no response. To the extent a response is required, the allegations are denied.

12. In answering Paragraph 50, Defendant admits it is subject to the jurisdiction of the Court but is without sufficient knowledge or information to admit or deny that the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

13. Defendant admits the allegations in Paragraph 51 on information and belief.

14. Defendant denies the allegations in Paragraphs 52 through 55, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts.

15. The allegations of Paragraphs 56 and 57 call for a legal conclusion to which no response is required. However, in the utmost caution, Defendant denies the allegations set forth therein.

16. Defendant denies the allegations in Paragraphs 58 through 61. Answering further, elements of Paragraph 61 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

17. Defendant denies the allegations in Paragraphs 62 through 71 and opposes the certification of a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

18. Defendant denies the allegations in Paragraphs 72 through 76 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

19. Answering Paragraph 77, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

20. The allegations in Paragraph 78 call for a legal conclusion to which no response is required. However, in the utmost caution DDC denies the allegations of Paragraph 78 and demands strict proof thereof.

21. Defendant denies the allegations in Paragraphs 79 through 81, including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

22. Answering Paragraph 82, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

23. Paragraphs 83 and 84 contain legal conclusions which require no response. However, in the utmost caution DDC denies the allegations of these Paragraphs and demands strict proof thereof.

24. Defendant denies the allegations in Paragraphs 85 and 86 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

25. Answering Paragraph 87, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

26. The allegations in Paragraphs 88 through 100 are not directed at this Defendant, and therefore, no response is required. To the extent a response is required, Defendant is without information sufficient to admit or deny the allegations and therefore denies same and demands strict proof thereof.

27. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE
(Failure to State a Claim)

28. Plaintiffs' Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Amended Complaint should be dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

29. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

30. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

31. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

32. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

33. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;
- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;
- 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;
- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and

- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

34. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

35. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can DDC be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

36. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

37. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

38. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

39. Defendant would show that the alleged class members did not have any relationship with DDC nor is there any typicality or commonality as related to the action or acts of DDC, and thus, DDC is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

40. Defendant would show that it used competent and qualified entities and individuals to conduct inspections of the construction, and thus, its actions were reasonable and neither negligent nor grossly negligent, and thus, any claim for punitive damages should be denied.

FOR A FIFTEENTH DEFENSE

41. Plaintiffs' claims should be dismissed because of disclaimers and other defenses specifically provided in the Master Deed.

FOR A SIXTEENTH DEFENSE

42. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations. Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

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

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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(803) 799-2000

Attorneys for DDC Construction, Inc.

Columbia, South Carolina

7/2, 2013

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Defendant DDC Construction, Inc.'s Answer to Plaintiffs' Amended Complaint

2013 JUL -5 AM 9:53
JEANETTE W. McBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

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(Attorneys for Century Fire Protection, LLC)

Debra C. Hair
Administrative Assistant

July 2, 2013

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated,	)	Civil Action No. 2012-CP-40-8512
Plaintiffs,	)	
vs.	)	**DEFENDANT DDC CONSTRUCTION, INC.'S AMENDED ANSWER TO PLAINTIFFS' AMENDED COMPLAINT**
DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co., Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Inc. d/b/a Ply Gem Window Group; Crosby Window, Inc., f/k/a Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc. and John Doe #1-10,	)	
Defendants.	)	

RICHLAND COUNTY
FILED
2012 AUG -5 AM 11:09
JEANNETTE W. MORRIS
C.C.P. & G.S.

Defendant DDC Construction, Inc. ("DDC" or "Defendant") answers the Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Each and every allegation of the Plaintiffs' Amended Complaint not specifically admitted herein is expressly denied.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

2. Defendant admits the allegations in Paragraphs 1, 2, 3 and 4 on information and belief.

3. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

4. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 7 through 9 and therefore denies same and demands strict proof thereof.

5. Defendant admits the allegations in Paragraph 10.

6. Defendant admits the allegations of Paragraphs 11 and 12, but denies that DMC Builders, Co. Inc. did business as the Dinerstein Companies.

7. Answering Paragraph 13, Defendant admits that DC Developers-Columbia Condos, Inc. is a Texas Corporation and the General partner of Columbia Condos, LP.

8. Defendant denies the allegations of Paragraph 14 because Columbia Condos, LP is a limited partnership and not a corporation.

9. Defendant admits the allegations of Paragraph 15.

10. Defendant denies the allegations of Paragraphs 16, 17, 18 and 19.

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

Paragraphs 20 through 46 relative to the corporate status of the referenced entities and therefore denies same and demands strict proof thereof. However, Defendant admits some provided labor and/or materials for The Gates Project and were subcontractors or suppliers of Defendant or Defendant's subcontractors.

12. Defendant is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraphs 47 and 48 and denies the same.

13. The allegations of Paragraph 49 require no response. To the extent a response is required, the allegations are denied.

14. In answering Paragraph 50, Defendant admits it is subject to the jurisdiction of the Court but is without sufficient knowledge or information to admit or deny that the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

15. Defendant admits the allegations in Paragraph 51 on information and belief.

16. Defendant denies the allegations in Paragraphs 52 through 55, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts.

17. The allegations of Paragraphs 56 and 57 call for a legal conclusion to which no response is required. However, in the utmost caution, Defendant denies the allegations set forth therein.

18. Defendant denies the allegations in Paragraphs 58 through 61. Answering further, elements of Paragraph 61 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

19. Defendant denies the allegations in Paragraphs 62 through 71 and opposes the certification of a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

20. Defendant denies the allegations in Paragraphs 72 through 76 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

21. Answering Paragraph 77, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

22. The allegations in Paragraph 78 call for a legal conclusion to which no response is required. However, in the utmost caution DDC denies the allegations of Paragraph 78 and demands strict proof thereof.

23. Defendant denies the allegations in Paragraphs 79 through 81, including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

24. Answering Paragraph 82, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

25. Paragraphs 83 and 84 contain legal conclusions which require no response. However, in the utmost caution DDC denies the allegations of these Paragraphs and demands strict proof thereof.

26. Defendant denies the allegations in Paragraphs 85 and 86 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

27. Answering Paragraph 87, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

28. The allegations in Paragraphs 88 through 100 are not directed at this Defendant, and therefore, no response is required. To the extent a response is required, Defendant is without information sufficient to admit or deny the allegations and therefore denies same and demands strict proof thereof.

29. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE
(Failure to State a Claim)

30. Plaintiffs' Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Amended Complaint should be dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

31. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

32. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

33. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

34. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

35. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;
- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;
- 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;
- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and

- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

36. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

37. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can DDC be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

38. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

39. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

40. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

41. Defendant would show that the alleged class members did not have any relationship with DDC nor is there any typicality or commonality as related to the action or acts of DDC, and thus, DDC is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

42. Defendant would show that it used competent and qualified entities and individuals to conduct inspections of the construction, and thus, its actions were reasonable and neither negligent nor grossly negligent, and thus, any claim for punitive damages should be denied.

FOR A FIFTEENTH DEFENSE

43. Plaintiffs' claims should be dismissed because of disclaimers and other defenses specifically provided in the Master Deed.

FOR A SIXTEENTH DEFENSE

44. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations. Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

FOR A SEVENTEENTH DEFENSE

45. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

FOR AN EIGHTEENTH DEFENSE

46. Defendant would show that its interests are diverse from, and dissimilar to, the interests of the alleged developer, designer and contractor and denies DC Condos is, or should be considered, amalgamated with any other Defendant in this matter.

FOR A NINETEENTH DEFENSE

47. Defendant denies it has ever done business as "The Dinerstein Companies" and as such any such reference should be dismissed as to it.

FOR A TWENTIETH DEFENSE

48. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

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

<signature block next page>

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ T. Norton

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Attorneys for DDC Construction, Inc.

Columbia, South Carolina

August 1, 2013

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co., Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Inc. d/b/a Ply Gem Window Group; Crosby Window, Inc., f/k/a Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc. and John Doe #1-10,

Defendants.

Civil Action No. 2012-CP-40-8512

DEFENDANT COLUMBIA CONDOS, LP'S ANSWER TO PLAINTIFFS' AMENDED COMPLAINT

RICHLAND COUNTY
FILED
2013 AUG -5 AM 11:10
JEANNETTE W. McBRIDE
C.C.P. & G.S.

Defendant Columbia Condos, LP ("Columbia Condos" or "Defendant") answers the Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Each and every allegation of the Plaintiffs' Amended Complaint not specifically admitted herein is expressly denied.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

2. Defendant admits the allegations in Paragraphs 1, 2, 3 and 4.

3. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

4. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 7 through 9 and therefore denies same and demands strict proof thereof.

5. Defendant admits the allegations in Paragraphs 10 and 11.

6. In answering Paragraph 12, Defendant admits only that DMC Builders Co., Inc. is a corporation organized and existing under the laws of Texas. Defendant denies that DMC Builders does business as the Dinerstein Companies, as alleged.

7. Answering Paragraph 13, Defendant admits that DC Developers-Columbia Condos, Inc. is a Texas Corporation and the General partner of Columbia Condos, LP.

8. Defendant denies the allegations of Paragraph 14 in that Columbia Condos, LP is a limited partnership and not a corporation.

9. Defendant admits the allegations of Paragraph 15.

10. Defendant denies the allegations of Paragraphs 16, 17, 18 and 19.

11. Defendant is without knowledge or information sufficient to admit or deny the

allegations in Paragraphs 20 through 46 relative to the corporate status of the referenced entities and therefore denies same and demands strict proof thereof. However, Defendant admits on information and belief that some may have provided labor and/or materials for The Gates Project and were subcontractors or suppliers of DDC Construction, Inc. or its sub-subcontractors.

12. Defendant is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraphs 47 and 48 and denies the same.

13. The allegations of Paragraph 49 require no response. To the extent a response is required, the allegations are denied.

14. In answering Paragraph 50, Defendant admits it is subject to jurisdiction of this Court but denies all entities referenced are subject to the jurisdiction of the Court or that they were authorized to do business in this state. Because Defendant is without sufficient knowledge or information to admit or deny that the other Defendants are subject to the Court's jurisdiction, it therefore denies this allegation.

(As to Factual Allegations)

15. Defendant admits the allegations in Paragraph 51 on information and belief.

16. Defendant denies the allegations in Paragraphs 52 through 55 as they relate to it, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts.

17. The allegations of Paragraphs 56 and 57 call for a legal conclusion to which no response is required. However, in the utmost caution, Defendant denies the allegations set forth therein.

18. Defendant denies the allegations in Paragraphs 58 through 61 as they relate to it.

Answering further, elements of Paragraph 61 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

19. Defendant denies the allegations in Paragraphs 62 through 71 as they relate to it and opposes the certification of a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

20. Defendant denies the allegations in Paragraphs 72 through 76 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

21. Answering Paragraph 77, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

22. The allegations in Paragraph 78 call for a legal conclusion to which no response is required. However, in the utmost caution Defendant denies it was the contractor or involved in the construction on The Gates Project and further denies the allegations of Paragraph 78 and demands strict proof thereof.

23. Defendant denies the allegations in Paragraphs 79 through 81 as they relate to it, including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

24. Answering Paragraph 82, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

25. Paragraphs 83 and 84 contain legal conclusions which require no response. However, in the utmost caution Defendant denies the allegations of these Paragraphs and

demands strict proof thereof.

26. Defendant denies the allegations in Paragraphs 85 and 86 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

27. Answering Paragraph 87, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

28. The allegations in Paragraphs 88 through 100 are not directed at this Defendant, and therefore, no response is required. To the extent a response is required, Defendant is without information sufficient to admit or deny the allegations and therefore denies same and demands strict proof thereof.

29. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE

30. Plaintiffs' Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and therefore the Amended Complaint should be dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

31. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

32. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

33. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

34. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

35. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;
- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;
- 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;
- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and

- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

36. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

37. Defendant would show it was not the constructor of the condominium units and therefore Plaintiffs may not recover on implied warranty of merchantability or workmanship.

FOR A TENTH DEFENSE

38. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

39. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

40. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

41. Defendant would show that the alleged class members did not have any

typicality or commonality as related to the action or acts of Defendant, and thus, Defendant is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

42. Plaintiffs' claims should be dismissed because of disclaimers and other defenses specifically provided in the Master Deed or other contractual agreements.

FOR A FIFTEENTH DEFENSE

43. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations. Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

FOR A SIXTEENTH DEFENSE

44. Defendant would show that it did not take part in the construction of this Project nor was it licensed as a builder in the State of South Carolina and therefore is not liable for any alleged deficiencies in the construction.

FOR A SEVENTEENTH DEFENSE

45. Defendant would show that its interests are diverse from, and dissimilar to, the interests of the alleged developer, designer and contractor and denies Columbia Condos is, or should be considered, amalgamated with any other Defendant in this matter.

FOR AN EIGHTEENTH DEFENSE

46. Defendant denies it has ever done business as "The Dinerstein Companies" and as such any such reference should be dismissed.

FOR A NINETEENTH DEFENSE

47. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

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

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Attorneys for Columbia Condos, LP

Columbia, South Carolina

August 1, 2013

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co., Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Inc. d/b/a Ply Gem Window Group; Crosby Window, Inc., f/k/a Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc. and John Doe #1-10,

Defendants.

Civil Action No. 2012-CP-40-8512

DEFENDANT DC DEVELOPERS – COLUMBIA CONDOS, INC.'S ANSWER TO PLAINTIFFS' AMENDED COMPLAINT

RICHLAND COUNTY
FILED
2013 AUG -5 AM 11:10
JEANNETTE W. McBRIDE
C.C.P. & G.S.

Defendant DC Developers – Columbia Condos, Inc. ("DC Condos" or "Defendant") answers the Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Each and every allegation of the Plaintiffs' Amended Complaint not specifically admitted herein is expressly denied.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

2. Defendant admits the allegations in Paragraphs 1, 2, 3 and 4.

3. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

4. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 7 through 9 and therefore denies same and demands strict proof thereof.

5. Defendant admits the allegations in Paragraphs 10 and 11.

6. In answering Paragraph 12, Defendant admits only that DMC Builders Co., Inc. is a corporation organized and existing under the laws of Texas. Defendant denies that it does business as the Dinerstein Companies, as alleged.

7. Answering Paragraph 13, Defendant admits that DC Developers-Columbia Condos, Inc. is a Texas Corporation and the General partner of Columbia Condos, LP.

8. Defendant denies the allegations of Paragraph 14 in that Columbia Condos, LP is a limited partnership and not a corporation.

9. Defendant admits, on information and belief, the allegations of Paragraph 15.

10. Defendant denies the allegations of Paragraphs 16, 17, 18 and 19.

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

Paragraphs 20 through 46 relative to the corporate status of the referenced entities and therefore denies same and demands strict proof thereof. However, Defendant admits on information and belief that some may have provided labor and/or materials for The Gates Project and were subcontractors or suppliers of DDC Construction, Inc. or its sub-subcontractors.

12. Defendant is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraphs 47 and 48 and denies the same.

13. The allegations of Paragraph 49 require no response. To the extent a response is required, the allegations are denied.

14. In answering Paragraph 50, Defendant admits it is subject to this Court's jurisdiction. Defendant is without sufficient knowledge or information to admit or deny that the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

15. Defendant admits the allegations in Paragraph 51 on information and belief.

16. Defendant denies the allegations in Paragraphs 52 through 55 as they relate to it, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts.

17. The allegations of Paragraphs 56 and 57 call for a legal conclusion to which no response is required. However, in the utmost caution, Defendant specifically denies the allegations set forth therein.

18. Defendant denies the allegations in Paragraphs 58 through 61 as they relate to it. Answering further, elements of Paragraph 61 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

19. Defendant denies the allegations in Paragraphs 62 through 71 as they relate to it and opposes the certification of a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

20. Defendant denies the allegations in Paragraphs 72 through 76 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

21. Answering Paragraph 77, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

22. The allegations in Paragraph 78 call for a legal conclusion to which no response is required. However, in the utmost caution Defendant denies the allegations of Paragraph 78 and demands strict proof thereof.

23. Defendant denies the allegations in Paragraphs 79 through 81 as they relate to it, including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

24. Answering Paragraph 82, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

25. Paragraphs 83 and 84 contain legal conclusions which require no response. However, in the utmost caution Defendant denies the allegations of these Paragraphs and demands strict proof thereof.

26. Defendant denies that it issued any warranty on The Gates, express or implied, and therefore denies the allegations in Paragraphs 85 and 86 and opposes all relief sought

therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

27. Answering Paragraph 87, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

28. The allegations in Paragraphs 88 through 100 are not directed at this Defendant, and therefore, no response is required. To the extent a response is required, Defendant is without information sufficient to admit or deny the allegations and therefore denies same and demands strict proof thereof.

29. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE

30. Plaintiffs' Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and therefore the Amended Complaint should be dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

31. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

32. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

33. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by

any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

34. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

35. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;
- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;
- 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;
- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and
- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

36. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

37. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can Defendant be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

38. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

39. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

40. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

41. Defendant would show that the alleged class members did not have any relationship with DC Condos nor is there any typicality or commonality as related to the action

or acts of Defendant, and thus, DC Condos is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

42. Defendant would show that it was not involved in the design, development, construction or sale of The Gates Project and all claims as to it should be denied.

FOR A FIFTEENTH DEFENSE

43. Plaintiffs' claims should be dismissed because of disclaimers and other defenses specifically provided in the Master Deed or other contractual agreements.

FOR A SIXTEENTH DEFENSE

44. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations. Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

FOR A SEVENTEENTH DEFENSE

45. Defendant would show that it did not take part in the construction of this Project nor was it licensed as a builder in the State of South Carolina and therefore is not liable for any alleged deficiencies in the construction.

FOR A EIGHTEENTH DEFENSE

46. Defendant would show that its interests are diverse from, and dissimilar to, the

interests of the alleged developer, designer and contractor and denies DC Condos is, or should be considered, amalgamated with any other Defendant in this matter.

FOR A NINETEENTH DEFENSE

47. Defendant denies it has ever done business as "The Dinerstein Companies" and as such any such reference should be dismissed as to it.

FOR A TWENTIETH DEFENSE

48. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

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

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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Attorneys for DC Developers – Columbia Condos, Inc.

Columbia, South Carolina

August 1, 2013

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co., Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Inc. d/b/a Ply Gem Window Group; Crosby Window, Inc., f/k/a Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc. and John Doe #1-10,

Defendants.

Civil Action No. 2012-CP-40-8512

DEFENDANT DMC BUILDERS CO., INC., INDIVIDUALLY AND D/B/A THE DINERSTEIN COMPANIES' ANSWER TO PLAINTIFFS' AMENDED COMPLAINT

RICHLAND COUNTY
FILED
2013 DEC -5 AM 11: 10

Defendant DMC Builders Co., Inc., individually and as improperly identified as d/b/a The Dinerstein Companies ("DMC Builders" or "Defendant") answers the Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Defendant is not subject to jurisdiction of this Court and expressly reserves and refuses to waive any arguments related to lack of jurisdiction and proper service. Plaintiffs' claims therefore should be dismissed pursuant to S.C. R. Civ. P. 12(b)(2), 12(b)(4) and 12(b)(5).

2. Each and every allegation of the Plaintiffs' Amended Complaint not specifically admitted herein is expressly denied.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

3. Defendant admits the allegations in Paragraphs 1, 2, 3 and 4 on information and belief.

4. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

5. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 7 through 9 and therefore denies same and demands strict proof thereof.

6. Defendant admits the allegations in Paragraphs 10 and 11, but denies that DMC Consolidated, Inc. had involvement in the Gates Project.

7. In answering Paragraph 12, Defendant admits only that it is a corporation organized and existing under the laws of Texas. Defendant denies that it does business as the Dinerstein Companies, as alleged. Defendant further states that it is not authorized to do business in South Carolina, did not do business in South Carolina, and is not subject to

jurisdiction of this Court.

8. Answering Paragraph 13, Defendant admits that DC Developers-Columbia Condos, Inc. is a Texas Corporation and the General partner of Columbia Condos, LP.

9. Defendant denies the allegations of Paragraph 14 in that Columbia Condos, LP is a limited partnership and not a corporation.

10. Defendant admits, on information and belief, the allegations of Paragraph 15.

11. Defendant denies the allegations of Paragraphs 16, 17, 18 and 19.

12. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 20 through 46 relative to the corporate status of the referenced entities and therefore denies same and demands strict proof thereof. However, Defendant admits on information and belief that some may have provided labor and/or materials for The Gates Project and were subcontractors or suppliers of DDC Construction, Inc. or its sub-subcontractors.

13. Defendant is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraphs 47 and 48 and denies the same.

14. The allegations of Paragraph 49 require no response. To the extent a response is required, the allegations are denied.

15. In answering Paragraph 50, Defendant denies it is subject to the jurisdiction of the Court or that it was authorized to do business in this state. DMC Builders is without sufficient knowledge or information to admit or deny that the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

16. Defendant admits the allegations in Paragraph 51 on information and belief.

17. Defendant denies the allegations in Paragraphs 52 through 55 as they relate to it, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts.

18. The allegations of Paragraphs 56 and 57 call for a legal conclusion to which no response is required. However, in the utmost caution, Defendant denies that it had any part in the design, development, construction or repair of The Gates and therefore specifically denies the allegations set forth therein.

19. Defendant denies the allegations in Paragraphs 58 through 61 as they relate to it. Answering further, elements of Paragraph 61 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

20. Defendant denies the allegations in Paragraphs 62 through 71 as they relate to it and opposes the certification of a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

21. Defendant denies the allegations in Paragraphs 72 through 76 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

22. Answering Paragraph 77, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

23. The allegations in Paragraph 78 call for a legal conclusion to which no response is required. However, in the utmost caution DMC Builders denies the allegations of Paragraph 78 and demands strict proof thereof.

24. Defendant denies the allegations in Paragraphs 79 through 81 as they relate to it,

including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

25. Answering Paragraph 82, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

26. Paragraphs 83 and 84 contain legal conclusions which require no response. However, in the utmost caution DMC Builders denies the allegations of these Paragraphs and demands strict proof thereof.

27. Defendant denies that it issued any warranty on The Gates, express or implied, and therefore denies the allegations in Paragraphs 85 and 86 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

28. Answering Paragraph 87, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

29. The allegations in Paragraphs 88 through 100 are not directed at this Defendant, and therefore, no response is required. To the extent a response is required, Defendant is without information sufficient to admit or deny the allegations and therefore denies same and demands strict proof thereof.

30. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE

31. Plaintiffs' Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and therefore the Amended Complaint should be dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

32. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

33. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

34. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

35. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

36. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;
- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;
- 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;
- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and
- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

37. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

38. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can DMC Builders be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

39. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

40. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

41. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

42. Defendant would show that the alleged class members did not have any relationship with DMC Builders nor is there any typicality or commonality as related to the action or acts of Defendant, and thus, DMC Builders is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

43. Defendant would show that did not design, develop, construction or sell any element of The Gates Project.

FOR A FIFTEENTH DEFENSE

44. Plaintiffs' claims should be dismissed because of disclaimers and other defenses specifically provided in the Master Deed or other contractual agreements.

FOR A SIXTEENTH DEFENSE

45. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations. Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

FOR A SEVENTEENTH DEFENSE

46. Defendant would show that it did not register with the South Carolina Secretary of State nor did it seek any authority to conduct business in the state; nor did it undertake to conduct business in the State of South Carolina, and thus, is not subject to the jurisdiction of this Court. As such, the Complaint should be dismissed pursuant to S.C. R. Civ. P. 12(b)(2). Moreover, Defendant is not subject to service through the Secretary of State, and therefore Defendant has not been properly served. Thus, the Complaint also should be dismissed pursuant to S.C. R. Civ. P. 12(b)(4) and (5).

FOR AN EIGHTEENTH DEFENSE

47. Defendant would show that it did not take part in the construction of this Project nor was it licensed as a builder in the State of South Carolina and therefore is not liable for any alleged deficiencies in the construction.

FOR A NINETEENTH DEFENSE

48. Defendant would show that its interests are diverse from, and dissimilar to, the interests of the alleged developer, designer and contractor and denies DMC Builders is, or should be considered, amalgamated with any other Defendant in this matter.

FOR A TWENTIETH DEFENSE

49. Defendant denies it is properly named in that it does not, nor has it ever, done business as "The Dinerstein Companies" and as such any such reference should be dismissed.

FOR A TWENY-FIRST DEFENSE

50. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

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

<signature block next page>

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Attorneys for DMC Builders Co., Inc.

Columbia, South Carolina

August 1, 2013

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co., Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Inc. d/b/a Ply Gem Window Group; Crosby Window, Inc., f/k/a Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc. and John Doe #1-10,

Defendants.

Civil Action No. 2012-CP-40-8512

DEFENDANT DMC CONSOLIDATED, INC.'S ANSWER TO PLAINTIFFS' AMENDED COMPLAINT

RICHLAND COUNTY
FILED
2012 AUG -5 AM 11:10
CLAIRETTE W. HOGGINS
CLK. C.P. & G.S.

Defendant DMC Consolidated, Inc., ("DMC Consolidated" or "Defendant") answers the Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Defendant is not subject to jurisdiction of this Court and expressly reserves and refuses to waive any arguments related to lack of jurisdiction and proper service. Plaintiffs' claims against Defendant therefore should be dismissed pursuant to S.C. R. Civ. P. 12(b)(2), 12(b)(4) and 12(b)(5), and further responses below are made solely out of an abundance of caution, expressly reserving and refusing to waive any defenses as to jurisdiction or service.

2. Each and every allegation of the Plaintiffs' Amended Complaint not specifically admitted herein is expressly denied.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

3. Defendant admits the allegations in Paragraphs 1, 2, 3 and 4 on information and belief.

4. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

5. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 7 through 9 and therefore denies same and demands strict proof thereof.

6. Defendant admits the allegations in Paragraph 10.

7. Defendant admits the allegations of Paragraph 11, but denies that it had involvement in The Gates Project, that it was authorized to do business in South Carolina, or that it did do business in South Carolina and is therefore not subject to jurisdiction of this Court.

8. In answering Paragraph 12, Defendant admits only that DMC Builders Co., Inc. is a corporation organized and existing under the laws of Texas. Defendant denies that DMC Builders Co., Inc. does business as the Dinerstein Companies.

9. Defendant admits, on information and belief, that DC Developers-Columbia Condos, Inc. is a Texas Corporation and the General Partner of Columbia Condos, LP.

10. Defendant denies the allegations of Paragraph 14 in that Columbia Condos, LP is a limited partnership and not a corporation.

11. Defendant admits, on information and belief, the allegations of Paragraph 15.

12. Defendant denies the allegations of Paragraphs 16, 17, 18 and 19.

13. Defendant is without knowledge or information sufficient to admit or deny the allegations in Paragraphs 20 through 46 relative to the corporate status of the referenced entities and therefore denies same and demands strict proof thereof. However, Defendant admits on information and belief that some may have provided labor and/or materials for The Gates Project and were subcontractors or suppliers of DDC Construction, Inc. or its sub-subcontractors.

14. Defendant is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraphs 47 and 48 and denies the same.

15. The allegations of Paragraph 49 require no response. To the extent a response is required, the allegations are denied.

16. In answering Paragraph 50, Defendant denies it is subject to the jurisdiction of the Court or that it was authorized to do business or did business in this state. DMC Consolidated is without sufficient knowledge or information to admit or deny that the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

17. Defendant admits the allegations in Paragraph 51 on information and belief.

18. Defendant denies the allegations in Paragraphs 52 through 55 as they relate to it, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts.

19. The allegations of Paragraphs 56 and 57 call for a legal conclusion to which no response is required. However, in the utmost caution, Defendant denies that it had any part in the design, development, construction or repair of The Gates and therefore specifically denies the allegations set forth therein.

20. Defendant denies the allegations in Paragraphs 58 through 61 as they relate to it. Answering further, elements of Paragraph 61 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

21. Defendant denies the allegations in Paragraphs 62 through 71 as they relate to it and opposes the certification of a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

22. Defendant denies the allegations in Paragraphs 72 through 76 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

23. Answering Paragraph 77, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

24. The allegations in Paragraph 78 call for a legal conclusion to which no response

is required. However, in the utmost caution DMC Consolidated denies it had any part in the design or construction of The Gates Project and further denies the allegations of Paragraph 78 as they relate to it and demands strict proof thereof.

25. Defendant denies the allegations in Paragraphs 79 through 81 as they relate to it, including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

26. Answering Paragraph 82, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

27. Paragraphs 83 and 84 contain legal conclusions which require no response. However, in the utmost caution DMC Consolidated denies the allegations of these Paragraphs and demands strict proof thereof.

28. Defendant denies that it performed any work at or supplied labor or materials to The Gates and denies it issued any warranty on The Gates, express or implied, and therefore denies the allegations in Paragraphs 85 and 86 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

29. Answering Paragraph 87, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

30. The allegations in Paragraphs 88 through 100 are not directed at this Defendant, and therefore, no response is required. To the extent a response is required, Defendant is without information sufficient to admit or deny the allegations and therefore denies same and demands strict proof thereof.

31. Defendant denies that Plaintiffs are entitled to any of the relief sought in the

WHEREFORE clause against it.

FOR A SECOND DEFENSE

32. Plaintiffs' Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and therefore the Amended Complaint should be dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

33. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

34. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

35. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

36. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

37. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;
- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;
- 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;
- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and
- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

38. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

39. Defendant would show it was not the seller of the condominium units or the developer or contractor of the project and therefore Plaintiffs may not recover in warranty nor can DMC Consolidated be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

40. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

41. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

42. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

43. Defendant would show that the alleged class members did not have any relationship with DMC Consolidated nor is there any typicality or commonality as related to the action or acts of Defendant, and thus, DMC Consolidated is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

44. Defendant would show that it was not involved in the design, development, construction or sale of The Gates Project nor did it possess any interest in the design, sale or development in the Project and all claims as to it should be denied.

FOR A FIFTEENTH DEFENSE

45. Plaintiffs' claims should be dismissed because of disclaimers and other defenses specifically provided in the Master Deed or other contractual agreements.

FOR A SIXTEENTH DEFENSE

46. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations. Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

FOR A SEVENTEENTH DEFENSE

47. Defendant would show that it did not register with the South Carolina Secretary of State nor did it seek any authority to conduct business in the state, nor did it undertake to conduct business in the State of South Carolina, and thus, is not subject to the jurisdiction of this Court. As such, the Complaint should be dismissed pursuant to S.C. R. Civ. P. 12(b)(2). Moreover, Defendant is not subject to service through the Secretary of State, and therefore Defendant has not been properly served. Thus, the Complaint also should be dismissed pursuant to S.C. R. Civ. P. 12(b)(4) and (5).

FOR AN EIGHTEENTH DEFENSE

48. Defendant would show that it did not take part in the construction of this Project nor was it licensed as a builder in the State of South Carolina and therefore is not liable for any alleged deficiencies in the construction.

FOR A NINETEENTH DEFENSE

49. Defendant would show that its interests are diverse from, and dissimilar to, the interests of the alleged developer, designer and contractor and denies DMC Consolidated is, or should be considered, amalgamated with any other Defendant in this matter.

FOR A TWENTIETH DEFENSE

50. Defendant denies that it does, or has ever done, business as "The Dinerstein Companies" or referred to itself as a "Dinerstein Company" and as such any such reference or implication to that title should be dismissed as to it.

FOR A TWENTY-FIRST DEFENSE

51. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

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

[Signature on Following Page]

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ T. Norton

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(803) 799-2000

Attorneys for DMC Consolidated, Inc.

Columbia, South Carolina

August, 1, 2013

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated,	)	Civil Action No. 2012-CP-40-8512
Plaintiffs,	)	
vs.	)	**DEFENDANT DMC DEVELOPERS I, LTD.'S ANSWER TO PLAINTIFFS' AMENDED COMPLAINT**
DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co., Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Inc. d/b/a Ply Gem Window Group; Crosby Window, Inc., f/k/a Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc. and John Doe #1-10,	)	
Defendants.	)	

RICHLAND COUNTY
FILED
2012 AUG -5 AM 11:10
JEANETTE W. MORROW
C.C.P. & G.S.

Defendant DMC Developers I, Ltd. ("DMC I" or "Defendant") answers the Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Defendant is not subject to jurisdiction of this Court and expressly reserves and refuses to waive any arguments related to lack of jurisdiction and proper service. Plaintiffs' claims against Defendant therefore should be dismissed pursuant to S.C. R. Civ. P. 12(b)(2), 12(b)(4) and 12(b)(5).

2. Each and every allegation of the Plaintiffs' Amended Complaint not specifically admitted herein is expressly denied.

GENERAL DENIAL

3. DMC Developers I, Ltd. denies it had any part in, role in or received any benefit from the construction or sale of The Gates Project nor did it have any relationship to any other entity in this suit and thus enters a general denial as to all allegations, inferences or implications arising from the allegations.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

DMC Developers I, Ltd., without waiving any objection to jurisdiction, improper service or denial of its involvement in the Project, answers as follows:

4. Defendant is without knowledge or information sufficient to admit or deny the allegations in Paragraphs 1, 2, 3 and 4 and therefore denies the same.

5. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

6. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 7 through 9 and therefore denies same and demands strict proof thereof.

7. Defendant admits the allegations of Paragraph 10.

8. Defendant admits the allegations of Paragraphs 11 and 12, but denies, on information and belief, that DMC Builders Co., Inc. did business as the Dinerstein Companies.

9. Defendant admits, on information and belief, the allegation of Paragraph 13 that DC Developers-Columbia Condos, Inc. is a Texas Corporation and the General Partner of Columbia Condos, LP.

10. Defendant denies the allegations of Paragraph 14 in that Columbia Condos, LP is a limited partnership and not a corporation.

11. In answering Paragraph 15, Defendant admits only that it is organized and existing under the laws of Texas. Defendant denies that it does business as the Dinerstein Companies and Defendant further states that while it was authorized to do business in South Carolina, it did not have any involvement in The Gates Project and has now been dissolved.

12. Defendant denies the allegations of Paragraphs 16, 17, 18 and 19 as they relate to it.

13. Defendant is without knowledge or information sufficient to admit or deny the allegations in Paragraphs 20 through 48 relative to the corporate status of the referenced entities and DOES and therefore denies same and demands strict proof thereof.

14. The allegations of Paragraph 49 require no response. To the extent a response is required, the allegations are denied and DMC I specifically denies it has any relationship to any of the referenced entities or DOES.

15. In answering Paragraph 50, Defendant denies it is subject to the jurisdiction of the Court. DMC I is without sufficient knowledge or information to admit or deny that the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

16. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 51 through 55 and therefore denies the same. Answering further, Defendant denies the allegations in Paragraphs 52 through 55 as they relate to it, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts or that it had any knowledge of the Project or its condition.

17. The allegations of Paragraphs 56 and 57 call for a legal conclusion to which no response is required. However, in the utmost caution, Defendant denies that it had any part in the design, development, construction, sale or repair of The Gates and therefore specifically denies the allegations set forth therein as they relate to it.

18. Defendant denies the allegations in Paragraphs 58 through 61 as they relate to it. Answering further, elements of Paragraph 61 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

19. Defendant denies the allegations in Paragraphs 62 through 71 as they relate to it and opposes the certification of a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

20. Defendant denies the allegations in Paragraphs 72 through 76 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

21. Answering Paragraph 77, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

22. The allegations in Paragraph 78 call for a legal conclusion to which no response

is required. However, in the utmost caution DMC I denies it had any part in The Gates Project and further denies it had any responsibility for or involvement in the design, construction, sale or repair of The Gates and demands strict proof thereof.

23. Defendant denies the allegations in Paragraphs 79 through 81 as they relate to it, including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

24. Answering Paragraph 82, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

25. Paragraphs 83 and 84 contain legal conclusions which require no response. However, in the utmost caution DMC I denies the allegations of these Paragraphs and demands strict proof thereof.

26. Defendant denies that it issued any warranty on The Gates, express or implied, and therefore denies the allegations in Paragraphs 85 and 86 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

27. Answering Paragraph 87, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

28. The allegations in Paragraphs 88 through 100 are not directed at this Defendant, and therefore, no response is required. To the extent a response is required, Defendant is without information sufficient to admit or deny the allegations and therefore denies same and demands strict proof thereof.

29. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE

30. Plaintiffs' Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and therefore the Amended Complaint should be dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

31. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

32. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

33. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

34. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

35. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;
- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;
- 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;
- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and
- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

36. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

37. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can DMC I be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

38. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

39. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

40. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

41. Defendant would show that the alleged class members did not have any relationship with DMC I nor is there any typicality or commonality as related to the action or acts of Defendant, and thus, DMC I is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

42. Defendant would show that it was not involved in the design, development, construction or sale of The Gates Project nor did it possess any interest in the design, sale or development in the Project and all claims as to it should be denied.

FOR A FIFTEENTH DEFENSE

43. Plaintiffs' claims should be dismissed because of disclaimers and other defenses specifically provided in the Master Deed or other contractual agreements.

FOR A SIXTEENTH DEFENSE

44. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations. Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

FOR A SEVENTEENTH DEFENSE

45. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

FOR AN EIGHTEENTH DEFENSE

46. Defendant would show that it did not take part in the construction of this Project nor was it licensed as a builder in the State of South Carolina and therefore is not liable for any alleged deficiencies in the construction.

FOR A NINETEENTH DEFENSE

47. Defendant would show that its interests are diverse from, and dissimilar to, the interests of the alleged developer, designer and contractor and denies DMC I is, or should be considered, amalgamated with any other Defendant in this matter.

FOR A TWENTIETH DEFENSE

48. Defendant would show that it is not subject to the jurisdiction of this Court and the Complaint should be dismissed pursuant to S.C. R. Civ. P. 12(b)(2). Moreover, Defendant is not subject to service through the Secretary of State, and therefore Defendant has not been properly served. Thus, the Complaint also should be dismissed pursuant to S.C. R. Civ. P. 12(b)(4) and (5).

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

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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(803) 799-2000

Attorneys for DMC Developers I, Ltd.

Columbia, South Carolina

August 1, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co., Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Inc. d/b/a Ply Gem Window Group; Crosby Window, Inc., f/k/a Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc. and John Doe #1-10,

Defendants.

Civil Action No. 2012-CP-40-8512

DEFENDANT ASSOCIATED CONCRETE CONTRACTORS, INC.'S ANSWER TO PLAINTIFFS' AMENDED COMPLAINT

FILED
2013 AUG 15 PM 3:47
CLERK OF COURT
RICHLAND COUNTY, S.C.

Defendant Associated Concrete Contractors, Inc. ("Associated Concrete" or "Defendant") answers the Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Each and every allegation of the Plaintiffs' Amended Complaint not specifically admitted herein is expressly denied.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

2. Defendant is without sufficient information or knowledge to admit the allegations in Paragraphs 1, 2 and 3 and demands strict proof thereof.

3. Defendant admits the allegations of Paragraph 4 on information and belief.

4. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

5. Defendant is without information or knowledge sufficient to admit or deny the allegations in Paragraphs 7 through 19 relative to the corporate status and/or operations of the entities designated therein and therefore denies same and demands strict proof thereof. Defendant admits only so much of Paragraphs 10 through 19 as allege that DDC Construction, Inc. was the general contractor of the project and that Columbia Condos, LP was the owner/developer of the project. Further, Defendant incorporates the responses of the entities identified in Paragraphs 7 through 19 by reference.

6. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 20 through 21 and 23 through 48 and therefore denies same and demands strict proof thereof.

7. Defendant admits only so much of Paragraph 22 as alleges Defendant is a corporation organized and existing under the laws of one of the states of the United States that provided certain concrete work with slab and garage foundations at The Gates. All other allegations contained in Paragraph 22 are denied.

8. The allegations of Paragraph 49 require no response. To the extent a response is required, the allegations are denied.

9. In answering Paragraph 50, Defendant admits it is subject to the jurisdiction of the Court but is without sufficient knowledge or information to admit or deny whether the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

10. Defendant admits the allegations in Paragraph 51 on information and belief.

11. Defendant denies the allegations in Paragraphs 52 through 55, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts. Answering further, Defendant is without knowledge or information sufficient to form a belief as to any contact with, or the knowledge of, the Dinerstein Defendants regarding alleged problems and therefore denies the same.

12. The allegations of Paragraph 56 calls for a legal conclusion to which no response is required. However, in the utmost caution, Defendant denies the allegations set forth therein.

13. Defendant denies the allegations in Paragraphs 57 through 61. Answering further, elements of Paragraph 61 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

14. Defendant denies the allegations in Paragraphs 62 through 71 and opposes the certification of a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

15. Defendant denies the allegations in Paragraphs 72 through 76 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

16. Answering Paragraph 77, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

17. The allegations in Paragraph 78 call for a legal conclusion to which no response is required. However, in the utmost caution Associated Concrete denies the allegations of Paragraph 78 as they relate to it and demands strict proof thereof.

18. Defendant denies the allegations in Paragraphs 79 through 81, including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

19. Answering Paragraph 82, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

20. Paragraphs 83 and 84 contain legal conclusions which require no response. However, in the utmost caution Associated Concrete denies the allegations of these Paragraphs and demands strict proof thereof.

21. Defendant denies the allegations in Paragraphs 85 and 86 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION

(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

22. Answering Paragraph 87, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

23. Defendant is without sufficient information or belief to admit or deny the allegations in Paragraphs 88 through 100 to the extent they relate to other Manufacturer and/or Supplier Defendants as that term is defined in the Amended Complaint and therefore denies any such allegations and demands strict proof thereof. Answering further, Defendant states that it provided only limited concrete work on the slab and garage foundations at The Gates, and has no knowledge of and is not liable for work performed by or supplies provided by any other entity on the project. Defendant further denies any allegations related to defects in or damages resulting from its slab and garage foundation concrete work at The Gates. All remaining allegations of Paragraphs 88 through 100 are denied.

24. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE

25. Plaintiffs' Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Amended Complaint should be dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

26. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

27. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

28. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

29. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

30. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;
- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;

- 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;

- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and

- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

31. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

32. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can Defendant be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

33. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

34. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

35. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

36. Defendant would show that the alleged class members did not have any relationship with Associated Concrete nor is there any typicality or commonality as related to the action or acts of Associated Concrete, and thus, Associated Concrete is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

37. Defendant would show that to the extent damages are sought for work performed by others or damage resulting from the acts of others, it is not liable for these damages and Associated Concrete demands an apportionment and/or allocation of damages to properly reflect its responsibility.

FOR A FIFTEENTH DEFENSE

38. Plaintiffs' claims should be dismissed because of disclaimers and other defenses specifically provided in the Master Deed.

FOR A SIXTEENTH DEFENSE

39. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations. Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus

expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

FOR A SEVENTEENTH DEFENSE

40. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

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

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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Attorneys for Associated Concrete Contractors, Inc.

Columbia, South Carolina

8/15, 2013

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified:

JEANETTE W. WALKER
C.C.P. & G.S.
2013 AUG 15 PM 3:47
FILED

Pleadings:

1. Defendant Associated Concrete Contractors, Inc.'s Answer to Plaintiffs' Amended Complaint;
2. Defendant C&B Utilities, LP's Answer to Plaintiffs' Amended Complaint;
3. Defendant Bailey Electric Company, LLC's Answer to Plaintiffs' Amended Complaint;
4. Defendant Coronado Stucco, LP's Answer to Plaintiffs' Amended Complaint;
5. Defendant Cherokee Inc.'s Answer to Plaintiffs' Amended Complaint;
6. Defendant Lowry Construction & Framing Inc.'s Answer to Plaintiffs' Amended Complaint;
7. Defendant LTB Construction Inc.'s Answer to Plaintiffs' Amended Complaint;
8. Defendant Wyman Acoustics LLC's Answer to Plaintiffs' Amended Complaint;
9. Defendant Cross Plains Custom Tile, Inc.'s Answer to Plaintiffs' Amended Complaint;
10. Defendant Metal Construction Materials, Inc.'s Answer to Plaintiffs' Amended Complaint;
11. Defendant Martin Morales Jr. Painting & Drywall, LLC's Answer to Plaintiffs' Amended Complaint; and
12. Defendant Carolina Floor Systems, Inc.'s Answer to Plaintiffs' Amended Complaint.

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Lisa S. Shumpert

August 15, 2013

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co., Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Inc. d/b/a Ply Gem Window Group; Crosby Window, Inc., f/k/a Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc. and John Doe #1-10,

Defendants.

Civil Action No. 2012-CP-40-8512

DEFENDANT BAILEY ELECTRIC COMPANY, LLC'S ANSWER TO PLAINTIFFS' AMENDED COMPLAINT

FILED
2013 AUG 15 PM 3:48
JEANETTE W. McBRIDE
C.C.P. & G.S.

Defendant Bailey Electric Company, LLC ("Bailey" or "Defendant") answers the Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Each and every allegation of the Plaintiffs' Amended Complaint not specifically admitted herein is expressly denied.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

2. Defendant is without sufficient information or knowledge to admit the allegations in Paragraphs 1, 2 and 3 and demands strict proof thereof.

3. Defendant admits the allegations of Paragraph 4 on information and belief.

4. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

5. Defendant is without information or knowledge sufficient to admit or deny the allegations in Paragraphs 7 through 19 relative to the corporate status and/or operations of the entities designated therein and therefore denies same and demands strict proof thereof. Defendant admits only so much of Paragraphs 10 through 19 as allege that DDC Construction, Inc. was the general contractor of the project and that Columbia Condos, LP was the owner/developer of the project. Further, Defendant incorporates the responses of the entities identified in Paragraphs 7 through 19 by reference.

6. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 20 through 22 and 24 through 48 and therefore denies same and demands strict proof thereof.

7. Defendant admits only so much of Paragraph 23 as alleges Defendant is a limited liability company organized and existing under the laws of the State of Mississippi that provided certain HVAC and electrical work at The Gates. All other allegations contained in Paragraph 23 are denied.

8. The allegations of Paragraph 49 require no response. To the extent a response is required, the allegations are denied.

9. In answering Paragraph 50, Defendant admits it is subject to the jurisdiction of the Court but is without sufficient knowledge or information to admit or deny whether the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

10. Defendant admits the allegations in Paragraph 51 on information and belief.

11. Defendant denies the allegations in Paragraphs 52 through 55, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts. Answering further, Defendant is without knowledge or information sufficient to form a belief as to any contact with, or the knowledge of, the Dinerstein Defendants regarding alleged problems and therefore denies the same.

12. The allegations of Paragraph 56 calls for a legal conclusion to which no response is required. However, in the utmost caution, Defendant denies the allegations set forth therein.

13. Defendant denies the allegations in Paragraphs 57 through 61. Answering further, elements of Paragraph 61 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

14. Defendant denies the allegations in Paragraphs 62 through 71 and opposes the certification of a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

15. Defendant denies the allegations in Paragraphs 72 through 76 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

16. Answering Paragraph 77, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

17. The allegations in Paragraph 78 call for a legal conclusion to which no response is required. However, in the utmost caution Bailey denies the allegations of Paragraph 78 as they relate to it and demands strict proof thereof.

18. Defendant denies the allegations in Paragraphs 79 through 81, including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

19. Answering Paragraph 82, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

20. Paragraphs 83 and 84 contain legal conclusions which require no response. However, in the utmost caution Bailey denies the allegations of these Paragraphs and demands strict proof thereof.

21. Defendant denies the allegations in Paragraphs 85 and 86 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

22. Answering Paragraph 87, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

23. Defendant is without sufficient information or belief to admit or deny the allegations in Paragraphs 88 through 100 to the extent they relate to other Manufacturer and/or Supplier Defendants as that term is defined in the Amended Complaint and therefore denies any such allegations and demands strict proof thereof. Answering further, Defendant states that it provided only limited HVAC and electrical work at The Gates, and has no knowledge of and is not liable for work performed by or supplies provided by any other entity on the project. Defendant further denies any allegations related to defects in or damages resulting from its HVAC and electrical work at The Gates. All remaining allegations of Paragraphs 88 through 100 are denied.

24. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE

25. Plaintiffs' Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Amended Complaint should be dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

26. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

27. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

28. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

29. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

30. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;
- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;

- 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;

- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and

- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

31. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

32. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can Defendant be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

33. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

34. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

35. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

36. Defendant would show that the alleged class members did not have any relationship with Bailey nor is there any typicality or commonality as related to the action or acts of Bailey, and thus, Bailey is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

37. Defendant would show that to the extent damages are sought for work performed by others or damage resulting from the acts of others, it is not liable for these damages and Bailey demands an apportionment and/or allocation of damages to properly reflect its responsibility.

FOR A FIFTEENTH DEFENSE

38. Plaintiffs' claims should be dismissed because of disclaimers and other defenses specifically provided in the Master Deed.

FOR A SIXTEENTH DEFENSE

39. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations. Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to

amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

FOR A SEVENTEENTH DEFENSE

40. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

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

NELSON MULLINS RILEY & SCARBOROUGH LLP

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(803) 799-2000

Attorneys for Bailey Electric Company, LLC

Columbia, South Carolina

8/15, 2013

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified:

FILED
2013 AUG 15 PM 3:48
CHARLESTON COUNTY
C.C.P. & G.S.

Pleadings:

1. Defendant Associated Concrete Contractors, Inc.'s Answer to Plaintiffs' Amended Complaint;
2. Defendant C&B Utilities, LP's Answer to Plaintiffs' Amended Complaint;
3. Defendant Bailey Electric Company, LLC's Answer to Plaintiffs' Amended Complaint;
4. Defendant Coronado Stucco, LP's Answer to Plaintiffs' Amended Complaint;
5. Defendant Cherokee Inc.'s Answer to Plaintiffs' Amended Complaint;
6. Defendant Lowry Construction & Framing Inc.'s Answer to Plaintiffs' Amended Complaint;
7. Defendant LTB Construction Inc.'s Answer to Plaintiffs' Amended Complaint;
8. Defendant Wyman Acoustics LLC's Answer to Plaintiffs' Amended Complaint;
9. Defendant Cross Plains Custom Tile, Inc.'s Answer to Plaintiffs' Amended Complaint;
10. Defendant Metal Construction Materials, Inc.'s Answer to Plaintiffs' Amended Complaint;
11. Defendant Martin Morales Jr. Painting & Drywall, LLC's Answer to Plaintiffs' Amended Complaint; and
12. Defendant Carolina Floor Systems, Inc.'s Answer to Plaintiffs' Amended Complaint.

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Lisa S. Shumpert

August 15, 2013

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co., Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Inc. d/b/a Ply Gem Window Group; Crosby Window, Inc., f/k/a Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc. and John Doe #1-10,

Defendants.

Civil Action No. 2012-CP-40-8512

DEFENDANT C&B UTILITIES, LP'S ANSWER TO PLAINTIFFS' AMENDED COMPLAINT

FILED
CLERK OF COURT
C.C.P. & G.S.
2013 AUG 15 PM 3:48

Defendant C&B Utilities, LP ("C&B Utilities" or "Defendant") answers the Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Each and every allegation of the Plaintiffs' Amended Complaint not specifically admitted herein is expressly denied.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

2. Defendant is without sufficient information or knowledge to admit the allegations in Paragraphs 1, 2 and 3 and demands strict proof thereof.

3. Defendant admits the allegations of Paragraph 4 on information and belief.

4. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

5. Defendant is without information or knowledge sufficient to admit or deny the allegations in Paragraphs 7 through 19 relative to the corporate status and/or operations of the entities designated therein and therefore denies same and demands strict proof thereof. Defendant admits only so much of Paragraphs 10 through 19 as allege that DDC Construction, Inc. was the general contractor of the project and that Columbia Condos, LP was the owner/developer of the project. Further, Defendant incorporates the responses of the entities identified in Paragraphs 7 through 19 by reference.

6. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 20 through 23 and 25 through 48 and therefore denies same and demands strict proof thereof.

7. Defendant admits only so much of Paragraph 24 as alleges Defendant provided certain plumbing work at The Gates. Defendant denies that it was a corporation organized under the laws of Texas. All other allegations contained in Paragraph 24 are denied.

8. The allegations of Paragraph 49 require no response. To the extent a response is required, the allegations are denied.

9. In answering Paragraph 50, Defendant admits it is subject to the jurisdiction of the Court but is without sufficient knowledge or information to admit or deny whether the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

10. Defendant admits the allegations in Paragraph 51 on information and belief.

11. Defendant denies the allegations in Paragraphs 52 through 55, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts. Answering further, Defendant is without knowledge or information sufficient to form a belief as to any contact with, or the knowledge of, the Dinerstein Defendants regarding alleged problems and therefore denies the same.

12. The allegations of Paragraph 56 calls for a legal conclusion to which no response is required. However, in the utmost caution, Defendant denies the allegations set forth therein.

13. Defendant denies the allegations in Paragraphs 57 through 61. Answering further, elements of Paragraph 61 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

14. Defendant denies the allegations in Paragraphs 62 through 71 and opposes the certification of a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

15. Defendant denies the allegations in Paragraphs 72 through 76 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

16. Answering Paragraph 77, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

17. The allegations in Paragraph 78 call for a legal conclusion to which no response is required. However, in the utmost caution C&B Utilities denies the allegations of Paragraph 78 as they relate to it and demands strict proof thereof.

18. Defendant denies the allegations in Paragraphs 79 through 81, including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

19. Answering Paragraph 82, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

20. Paragraphs 83 and 84 contain legal conclusions which require no response. However, in the utmost caution C&B Utilities denies the allegations of these Paragraphs and demands strict proof thereof.

21. Defendant denies the allegations in Paragraphs 85 and 86 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

22. Answering Paragraph 87, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

23. Defendant is without sufficient information or belief to admit or deny the allegations in Paragraphs 88 through 100 to the extent they relate to other Manufacturer and/or Supplier Defendants as that term is defined in the Amended Complaint and therefore denies any such allegations and demands strict proof thereof. Answering further, Defendant states that it provided only limited plumbing work at The Gates, and has no knowledge of and is not liable for work performed by or supplies provided by any other entity on the project. Defendant further denies any allegations related to defects in or damages resulting from its limited plumbing work at The Gates. All remaining allegations of Paragraphs 88 through 100 are denied.

24. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE

25. Plaintiffs' Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Amended Complaint should be dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

26. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

27. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

28. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

29. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

30. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;
- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;

- 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;

- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and

- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

31. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

32. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can Defendant be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

33. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

34. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

35. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

36. Defendant would show that the alleged class members did not have any relationship with C&B Utilities nor is there any typicality or commonality as related to the action or acts of C&B Utilities, and thus, C&B Utilities is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

37. Defendant would show that to the extent damages are sought for work performed by others or damage resulting from the acts of others, it is not liable for these damages and C&B Utilities demands an apportionment and/or allocation of damages to properly reflect its responsibility.

FOR A FIFTEENTH DEFENSE

38. Plaintiffs' claims should be dismissed because of disclaimers and other defenses specifically provided in the Master Deed.

FOR A SIXTEENTH DEFENSE

39. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations. Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus

expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

FOR A SEVENTEENTH DEFENSE

40. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

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

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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Attorneys for C&B Utilities, LP

Columbia, South Carolina

8/15, 2013

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified:

2013 AUG 15 PM 3:48
JEANETTE W. WALKER
C.C.P. & G.S.

Pleadings:

1. Defendant Associated Concrete Contractors, Inc.'s Answer to Plaintiffs' Amended Complaint;
2. Defendant C&B Utilities, LP's Answer to Plaintiffs' Amended Complaint;
3. Defendant Bailey Electric Company, LLC's Answer to Plaintiffs' Amended Complaint;
4. Defendant Coronado Stucco, LP's Answer to Plaintiffs' Amended Complaint;
5. Defendant Cherokee Inc.'s Answer to Plaintiffs' Amended Complaint;
6. Defendant Lowry Construction & Framing Inc.'s Answer to Plaintiffs' Amended Complaint;
7. Defendant LTB Construction Inc.'s Answer to Plaintiffs' Amended Complaint;
8. Defendant Wyman Acoustics LLC's Answer to Plaintiffs' Amended Complaint;
9. Defendant Cross Plains Custom Tile, Inc.'s Answer to Plaintiffs' Amended Complaint;
10. Defendant Metal Construction Materials, Inc.'s Answer to Plaintiffs' Amended Complaint;
11. Defendant Martin Morales Jr. Painting & Drywall, LLC's Answer to Plaintiffs' Amended Complaint; and
12. Defendant Carolina Floor Systems, Inc.'s Answer to Plaintiffs' Amended Complaint.

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Lisa S. Shumpert

August 15, 2013

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co., Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Defendant Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Inc. d/b/a Ply Gem Window Group; Crosby Window, Inc., f/k/a Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc. and John Doe #1-10,

Defendants.

Civil Action No. 2012-CP-40-8512

DEFENDANT CAROLINA FLOOR SYSTEMS, INC.'S ANSWER TO PLAINTIFFS' AMENDED COMPLAINT

FILED
2013 AUG 15 PM 3:46
CLERK OF COURT
RICHLAND COUNTY, S.C.

Defendant Carolina Floor Systems, Inc. ("Carolina" or "Defendant") answers the Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Each and every allegation of the Plaintiffs' Amended Complaint not specifically admitted herein is expressly denied.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

2. Defendant is without sufficient information or knowledge to admit the allegations in Paragraphs 1, 2 and 3 and demands strict proof thereof.

3. Defendant admits the allegations of Paragraph 4 on information and belief.

4. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

5. Defendant is without information or knowledge sufficient to admit or deny the allegations in Paragraphs 7 through 19 relative to the corporate status and/or operations of the entities designated therein and therefore denies same and demands strict proof thereof. Defendant admits only so much of Paragraphs 10 through 19 as allege that DDC Construction, Inc. was the general contractor of the project and that Columbia Condos, LP was the owner/developer of the project. Further, Defendant incorporates the responses of the entities identified in Paragraphs 7 through 19 by reference.

6. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 20 through 24 and 26 through 48 and therefore denies same and demands strict proof thereof.

7. Defendant admits only so much of Paragraph 25 as alleges Defendant is a corporation organized and existing under the laws of one of the states of the United States that provided and/or installed cement decks and floor underlayment work at The Gates. All other allegations contained in Paragraph 25 are denied.

8. The allegations of Paragraph 49 require no response. To the extent a response is required, the allegations are denied.

9. In answering Paragraph 50, Defendant admits it is subject to the jurisdiction of the Court but is without sufficient knowledge or information to admit or deny whether the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

10. Defendant admits the allegations in Paragraph 51 on information and belief.

11. Defendant denies the allegations in Paragraphs 52 through 55, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts. Answering further, Defendant is without knowledge or information sufficient to form a belief as to any contact with, or the knowledge of, the Dinerstein Defendants regarding alleged problems and therefore denies the same.

12. The allegations of Paragraph 56 calls for a legal conclusion to which no response is required. However, in the utmost caution, Defendant denies the allegations set forth therein.

13. Defendant denies the allegations in Paragraphs 57 through 61. Answering further, elements of Paragraph 61 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

14. Defendant denies the allegations in Paragraphs 62 through 71 and opposes the certification of a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

15. Defendant denies the allegations in Paragraphs 72 through 76 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

16. Answering Paragraph 77, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

17. The allegations in Paragraph 78 call for a legal conclusion to which no response is required. However, in the utmost caution Defendant denies the allegations of Paragraph 78 as they relate to it and demands strict proof thereof.

18. Defendant denies the allegations in Paragraphs 79 through 81, including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

19. Answering Paragraph 82, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

20. Paragraphs 83 and 84 contain legal conclusions which require no response. However, in the utmost caution Defendant denies the allegations of these Paragraphs and demands strict proof thereof.

21. Defendant denies the allegations in Paragraphs 85 and 86 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION

(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

22. Answering Paragraph 87, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

23. Defendant is without sufficient information or belief to admit or deny the allegations in Paragraphs 88 through 100 to the extent they relate to other Manufacturer and/or Supplier Defendants as that term is defined in the Amended Complaint and therefore denies any such allegations and demands strict proof thereof. Answering further, Defendant states that it provided only cement decks and floor underlayment related work at The Gates, and has no knowledge of and is not liable for work performed by or supplies provided by any other entity on the project. Defendant further denies any allegations related to defects in or damages resulting from its cement decks and floor underlayment work at The Gates. All remaining allegations of Paragraphs 88 through 100 are denied.

24. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE

25. Plaintiffs' Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Amended Complaint should be dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

26. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

27. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

28. Defendant asserts that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

29. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

30. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;
- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;

- 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;

- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and

- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

31. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

32. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can Defendant be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

33. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

34. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

35. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

36. Defendant would show that the alleged class members did not have any relationship with Defendant nor is there any typicality or commonality as related to the action or acts of Defendant, and thus, Defendant is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

37. Defendant would show that to the extent damages are sought for work performed by others or damage resulting from the acts of others, it is not liable for these damages and Defendant demands an apportionment and/or allocation of damages to properly reflect its responsibility.

FOR A FIFTEENTH DEFENSE

38. Plaintiffs' claims should be dismissed because of disclaimers and other defenses specifically provided in the Master Deed.

FOR A SIXTEENTH DEFENSE

39. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations. Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to

amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

FOR A SEVENTEENTH DEFENSE

40. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

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

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ T. Nor

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Columbia, SC 29201
(803) 799-2000

Attorneys for Defendant Carolina Floor Systems, Inc.

Columbia, South Carolina

8/15, 2013.

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified:

2013 AUG 15 PM 3:46
FILED
CLERK OF COURT
GREENVILLE CO. S.C.

Pleadings:

1. Defendant Associated Concrete Contractors, Inc.'s Answer to Plaintiffs' Amended Complaint;
2. Defendant C&B Utilities, LP's Answer to Plaintiffs' Amended Complaint;
3. Defendant Bailey Electric Company, LLC's Answer to Plaintiffs' Amended Complaint;
4. Defendant Coronado Stucco, LP's Answer to Plaintiffs' Amended Complaint;
5. Defendant Cherokee Inc.'s Answer to Plaintiffs' Amended Complaint;
6. Defendant Lowry Construction & Framing Inc.'s Answer to Plaintiffs' Amended Complaint;
7. Defendant LTB Construction Inc.'s Answer to Plaintiffs' Amended Complaint;
8. Defendant Wyman Acoustics LLC's Answer to Plaintiffs' Amended Complaint;
9. Defendant Cross Plains Custom Tile, Inc.'s Answer to Plaintiffs' Amended Complaint;
10. Defendant Metal Construction Materials, Inc.'s Answer to Plaintiffs' Amended Complaint;
11. Defendant Martin Morales Jr. Painting & Drywall, LLC's Answer to Plaintiffs' Amended Complaint; and
12. Defendant Carolina Floor Systems, Inc.'s Answer to Plaintiffs' Amended Complaint.

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Lisa S. Shumpert

August 15, 2013

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co., Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Inc. d/b/a Ply Gem Window Group; Crosby Window, Inc., f/k/a Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc. and John Doe #1-10,

Defendants.

Civil Action No. 2012-CP-40-8512

DEFENDANT CHEROKEE INC.'S ANSWER TO PLAINTIFFS' AMENDED COMPLAINT

2013 AUG 15 PM 3:48

Defendant Cherokee Inc. ("Cherokee" or "Defendant") answers the Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Each and every allegation of the Plaintiffs' Amended Complaint not specifically admitted herein is expressly denied.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

2. Defendant is without sufficient information or knowledge to admit the allegations in Paragraphs 1, 2 and 3 and demands strict proof thereof.

3. Defendant admits the allegations of Paragraph 4 on information and belief.

4. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

5. Defendant is without information or knowledge sufficient to admit or deny the allegations in Paragraphs 7 through 19 relative to the corporate status and/or operations of the entities designated therein and therefore denies same and demands strict proof thereof. Defendant admits only so much of Paragraphs 10 through 19 as allege that DDC Construction, Inc. was the general contractor of the project and that Columbia Condos, LP was the owner/developer of the project. Further, Defendant incorporates the responses of the entities identified in Paragraphs 7 through 19 by reference.

6. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 20 through 26 and 28 through 48 and therefore denies same and demands strict proof thereof.

7. Defendant admits only so much of Paragraph 27 as alleges Defendant is a corporation organized and existing under the laws of the State of Delaware that provided certain site work at The Gates. All other allegations contained in Paragraph 27 are denied.

8. The allegations of Paragraph 49 require no response. To the extent a response is required, the allegations are denied.

9. In answering Paragraph 50, Defendant admits it is subject to the jurisdiction of the Court but is without sufficient knowledge or information to admit or deny whether the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

10. Defendant admits the allegations in Paragraph 51 on information and belief.

11. Defendant denies the allegations in Paragraphs 52 through 55, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts. Answering further, Defendant is without knowledge or information sufficient to form a belief as to any contact with, or the knowledge of, the Dinerstein Defendants regarding alleged problems and therefore denies the same.

12. The allegations of Paragraph 56 calls for a legal conclusion to which no response is required. However, in the utmost caution, Defendant denies the allegations set forth therein.

13. Defendant denies the allegations in Paragraphs 57 through 61. Answering further, elements of Paragraph 61 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

14. Defendant denies the allegations in Paragraphs 62 through 71 and opposes the certification of a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

15. Defendant denies the allegations in Paragraphs 72 through 76 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

16. Answering Paragraph 77, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

17. The allegations in Paragraph 78 call for a legal conclusion to which no response is required. However, in the utmost caution Cherokee denies the allegations of Paragraph 78 as they relate to it and demands strict proof thereof.

18. Defendant denies the allegations in Paragraphs 79 through 81, including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

19. Answering Paragraph 82, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

20. Paragraphs 83 and 84 contain legal conclusions which require no response. However, in the utmost caution Cherokee denies the allegations of these Paragraphs and demands strict proof thereof.

21. Defendant denies the allegations in Paragraphs 85 and 86 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

22. Answering Paragraph 87, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

23. Defendant is without sufficient information or belief to admit or deny the allegations in Paragraphs 88 through 100 to the extent they relate to other Manufacturer and/or Supplier Defendants as that term is defined in the Amended Complaint and therefore denies any such allegations and demands strict proof thereof. Answering further, Defendant states that it provided only limited site work at The Gates, and has no knowledge of and is not liable for work performed by or supplies provided by any other entity on the project. Defendant further denies any allegations related to defects in or damages resulting from its site work at The Gates. All remaining allegations of Paragraphs 88 through 100 are denied.

24. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE

25. Plaintiffs' Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Amended Complaint should be dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

26. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

27. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

28. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

29. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

30. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;
- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;

- 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;

- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and

- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

31. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

32. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can Defendant be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

33. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

34. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

35. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

36. Defendant would show that the alleged class members did not have any relationship with Cherokee nor is there any typicality or commonality as related to the action or acts of Cherokee, and thus, Cherokee is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

37. Defendant would show that to the extent damages are sought for work performed by others or damage resulting from the acts of others, it is not liable for these damages and Cherokee demands an apportionment and/or allocation of damages to properly reflect its responsibility.

FOR A FIFTEENTH DEFENSE

38. Plaintiffs' claims should be dismissed because of disclaimers and other defenses specifically provided in the Master Deed.

FOR A SIXTEENTH DEFENSE

39. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations. Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to

amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

FOR A SEVENTEENTH DEFENSE

40. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

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

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ T. Norton

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Attorneys for Cherokee Inc.

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8/15, 2013

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified:

Pleadings:

1. Defendant Associated Concrete Contractors, Inc.'s Answer to Plaintiffs' Amended Complaint;
2. Defendant C&B Utilities, LP's Answer to Plaintiffs' Amended Complaint;
3. Defendant Bailey Electric Company, LLC's Answer to Plaintiffs' Amended Complaint;
4. Defendant Coronado Stucco, LP's Answer to Plaintiffs' Amended Complaint;
5. Defendant Cherokee Inc.'s Answer to Plaintiffs' Amended Complaint;
6. Defendant Lowry Construction & Framing Inc.'s Answer to Plaintiffs' Amended Complaint;
7. Defendant LTB Construction Inc.'s Answer to Plaintiffs' Amended Complaint;
8. Defendant Wyman Acoustics LLC's Answer to Plaintiffs' Amended Complaint;
9. Defendant Cross Plains Custom Tile, Inc.'s Answer to Plaintiffs' Amended Complaint;
10. Defendant Metal Construction Materials, Inc.'s Answer to Plaintiffs' Amended Complaint;
11. Defendant Martin Morales Jr. Painting & Drywall, LLC's Answer to Plaintiffs' Amended Complaint; and
12. Defendant Carolina Floor Systems, Inc.'s Answer to Plaintiffs' Amended Complaint.

JEANETTE W. WALKER
C.C.P. G.S.
2013 AUG 15 PM 3:48
FILED

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Lisa S. Shumpert

August 15, 2013

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co., Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Inc. d/b/a Ply Gem Window Group; Crosby Window, Inc., f/k/a Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc. and John Doe #1-10,

Defendants.

Civil Action No. 2012-CP-40-8512

DEFENDANT CORONADO STUCCO, LP'S ANSWER TO PLAINTIFFS' AMENDED COMPLAINT

2013 AUG 15 PM 3:47

Defendant Coronado Stucco, LP ("Coronado" or "Defendant") answers the Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Each and every allegation of the Plaintiffs' Amended Complaint not specifically admitted herein is expressly denied.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

2. Defendant is without sufficient information or knowledge to admit the allegations in Paragraphs 1, 2 and 3 and demands strict proof thereof.

3. Defendant admits the allegations of Paragraph 4 on information and belief.

4. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

5. Defendant is without information or knowledge sufficient to admit or deny the allegations in Paragraphs 7 through 19 relative to the corporate status and/or operations of the entities designated therein and therefore denies same and demands strict proof thereof. Defendant admits only so much of Paragraphs 10 through 19 as allege that DDC Construction, Inc. was the general contractor of the project and that Columbia Condos, LP was the owner/developer of the project. Further, Defendant incorporates the responses of the entities identified in Paragraphs 7 through 19 by reference.

6. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 20 through 27 and 29 through 48 and therefore denies same and demands strict proof thereof.

7. Defendant admits only so much of Paragraph 28 as alleges Defendant provided certain stucco work at The Gates. Coronado denies it was a corporation organized under the laws of the State of Texas. All other allegations contained in Paragraph 28 are denied.

8. The allegations of Paragraph 49 require no response. To the extent a response is required, the allegations are denied.

9. In answering Paragraph 50, Defendant admits it is subject to the jurisdiction of the Court but is without sufficient knowledge or information to admit or deny whether the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

10. Defendant admits the allegations in Paragraph 51 on information and belief.

11. Defendant denies the allegations in Paragraphs 52 through 55, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts. Answering further, Defendant is without knowledge or information sufficient to form a belief as to any contact with, or the knowledge of, the Dinerstein Defendants regarding alleged problems and therefore denies the same.

12. The allegations of Paragraph 56 calls for a legal conclusion to which no response is required. However, in the utmost caution, Defendant denies the allegations set forth therein.

13. Defendant denies the allegations in Paragraphs 57 through 61. Answering further, elements of Paragraph 61 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

14. Defendant denies the allegations in Paragraphs 62 through 71 and opposes the

certification of a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

15. Defendant denies the allegations in Paragraphs 72 through 76 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

16. Answering Paragraph 77, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

17. The allegations in Paragraph 78 call for a legal conclusion to which no response is required. However, in the utmost caution Coronado denies the allegations of Paragraph 78 as they relate to it and demands strict proof thereof.

18. Defendant denies the allegations in Paragraphs 79 through 81, including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

19. Answering Paragraph 82, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

20. Paragraphs 83 and 84 contain legal conclusions which require no response. However, in the utmost caution Coronado denies the allegations of these Paragraphs and demands strict proof thereof.

21. Defendant denies the allegations in Paragraphs 85 and 86 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

22. Answering Paragraph 87, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

23. Defendant is without sufficient information or belief to admit or deny the allegations in Paragraphs 88 through 100 to the extent they relate to other Manufacturer and/or Supplier Defendants as that term is defined in the Amended Complaint and therefore denies any such allegations and demands strict proof thereof. Answering further, Defendant states that it provided only stucco related work at The Gates, and has no knowledge of and is not liable for work performed by or supplies provided by any other entity on the project. Defendant further denies any allegations related to defects in or damages resulting from its stucco work at The Gates. All remaining allegations of Paragraphs 88 through 100 are denied.

24. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE

25. Plaintiffs' Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Amended Complaint should be dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

26. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

27. Plaintiffs' claims against Defendant are barred, in whole or in part, by the

doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

28. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

29. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

30. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;
- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;
- 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;

- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and

- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

31. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

32. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can Defendant be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

33. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

34. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

35. To the extent Plaintiffs' allegations based on contract and warranty are

applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

36. Defendant would show that the alleged class members did not have any relationship with Coronado nor is there any typicality or commonality as related to the action or acts of Coronado, and thus, Coronado is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

37. Defendant would show that to the extent damages are sought for work performed by others or damage resulting from the acts of others, it is not liable for these damages and Coronado demands an apportionment and/or allocation of damages to properly reflect its responsibility.

FOR A FIFTEENTH DEFENSE

38. Plaintiffs' claims should be dismissed because of disclaimers and other defenses specifically provided in the Master Deed.

FOR A SIXTEENTH DEFENSE

39. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations. Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

FOR A SEVENTEENTH DEFENSE

40. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

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

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Attorneys for Coronado Stucco, LP

Columbia, South Carolina

8/15, 2013

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified:

JEANETTE W. WALKER
C.C.P. & G.S.
2013 AUG 15 PM 3:47
FILED

Pleadings:

1. Defendant Associated Concrete Contractors, Inc.'s Answer to Plaintiffs' Amended Complaint;
2. Defendant C&B Utilities, LP's Answer to Plaintiffs' Amended Complaint;
3. Defendant Bailey Electric Company, LLC's Answer to Plaintiffs' Amended Complaint;
4. Defendant Coronado Stucco, LP's Answer to Plaintiffs' Amended Complaint;
5. Defendant Cherokee Inc.'s Answer to Plaintiffs' Amended Complaint;
6. Defendant Lowry Construction & Framing Inc.'s Answer to Plaintiffs' Amended Complaint;
7. Defendant LTB Construction Inc.'s Answer to Plaintiffs' Amended Complaint;
8. Defendant Wyman Acoustics LLC's Answer to Plaintiffs' Amended Complaint;
9. Defendant Cross Plains Custom Tile, Inc.'s Answer to Plaintiffs' Amended Complaint;
10. Defendant Metal Construction Materials, Inc.'s Answer to Plaintiffs' Amended Complaint;
11. Defendant Martin Morales Jr. Painting & Drywall, LLC's Answer to Plaintiffs' Amended Complaint; and
12. Defendant Carolina Floor Systems, Inc.'s Answer to Plaintiffs' Amended Complaint.

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Lisa S. Shumpert

August 15, 2013

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co., Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Inc. d/b/a Ply Gem Window Group; Crosby Window, Inc., f/k/a Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc. and John Doe #1-10,

Defendants.

Civil Action No. 2012-CP-40-8512

DEFENDANT CROSS PLAINS CUSTOM TILE, INC.'S ANSWER TO PLAINTIFFS' AMENDED COMPLAINT

2013 AUG 15 PM 3:49

Defendant Cross Plains Custom Tile, Inc. ("Cross Plains" or "Defendant") answers the Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Each and every allegation of the Plaintiffs' Amended Complaint not specifically admitted herein is expressly denied.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

2. Defendant is without sufficient information or knowledge to admit the allegations in Paragraphs 1, 2 and 3 and demands strict proof thereof.

3. Defendant admits the allegations of Paragraph 4 on information and belief.

4. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

5. Defendant is without information or knowledge sufficient to admit or deny the allegations in Paragraphs 7 through 19 relative to the corporate status and/or operations of the entities designated therein and therefore denies same and demands strict proof thereof. Defendant admits only so much of Paragraphs 10 through 19 as allege that DDC Construction, Inc. was the general contractor of the project and that Columbia Condos, LP was the owner/developer of the project. Further, Defendant incorporates the responses of the entities identified in Paragraphs 7 through 19 by reference.

6. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 20 through 28 and 30 through 48 and therefore denies same and demands strict proof thereof.

7. Defendant admits only so much of Paragraph 29 as alleges Defendant is a corporation organized and existing under the laws of the State of Texas that provided certain limited tile work at The Gates. All other allegations contained in Paragraph 29 are denied.

8. The allegations of Paragraph 49 require no response. To the extent a response is required, the allegations are denied.

9. In answering Paragraph 50, Defendant admits it is subject to the jurisdiction of the Court but is without sufficient knowledge or information to admit or deny whether the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

10. Defendant admits the allegations in Paragraph 51 on information and belief.

11. Defendant denies the allegations in Paragraphs 52 through 55, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts. Answering further, Defendant is without knowledge or information sufficient to form a belief as to any contact with, or the knowledge of, the Dinerstein Defendants regarding alleged problems and therefore denies the same.

12. The allegations of Paragraph 56 calls for a legal conclusion to which no response is required. However, in the utmost caution, Defendant denies the allegations set forth therein.

13. Defendant denies the allegations in Paragraphs 57 through 61. Answering further, elements of Paragraph 61 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

14. Defendant denies the allegations in Paragraphs 62 through 71 and opposes the certification of a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

15. Defendant denies the allegations in Paragraphs 72 through 76 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

16. Answering Paragraph 77, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

17. The allegations in Paragraph 78 call for a legal conclusion to which no response is required. However, in the utmost caution Cross Plains denies the allegations of Paragraph 78 as they relate to it and demands strict proof thereof.

18. Defendant denies the allegations in Paragraphs 79 through 81, including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

19. Answering Paragraph 82, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

20. Paragraphs 83 and 84 contain legal conclusions which require no response. However, in the utmost caution Cross Plains denies the allegations of these Paragraphs and demands strict proof thereof.

21. Defendant denies the allegations in Paragraphs 85 and 86 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

22. Answering Paragraph 87, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

23. Defendant is without sufficient information or belief to admit or deny the allegations in Paragraphs 88 through 100 to the extent they relate to other Manufacturer and/or Supplier Defendants as that term is defined in the Amended Complaint and therefore denies any such allegations and demands strict proof thereof. Answering further, Defendant states that it provided only limited tile work at The Gates, and has no knowledge of and is not liable for work performed by or supplies provided by any other entity on the project. Defendant further denies any allegations related to defects in or damages resulting from its limited tile work at The Gates. All remaining allegations of Paragraphs 88 through 100 are denied.

24. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE

25. Plaintiffs' Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Amended Complaint should be dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

26. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

27. Plaintiffs' claims against Defendant are barred, in whole or in part, by the

doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

28. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

29. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

30. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;
- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;
- 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;

- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and

- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

31. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

32. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can Defendant be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

33. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

34. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

35. To the extent Plaintiffs' allegations based on contract and warranty are

applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

36. Defendant would show that the alleged class members did not have any relationship with Cross Plains nor is there any typicality or commonality as related to the action or acts of Cross Plains, and thus, Cross Plains is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

37. Defendant would show that to the extent damages are sought for work performed by others or damage resulting from the acts of others, it is not liable for these damages and Cross Plains demands an apportionment and/or allocation of damages to properly reflect its responsibility.

FOR A FIFTEENTH DEFENSE

38. Plaintiffs' claims should be dismissed because of disclaimers and other defenses specifically provided in the Master Deed.

FOR A SIXTEENTH DEFENSE

39. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations. Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by

the Rules of Civil Procedure.

FOR A SEVENTEENTH DEFENSE

40. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

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

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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Columbia, South Carolina

8/15, 2013

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified:

JEANETTE W. McBRIDE C.C.P. & G.S.
2013 AUG 15 PM 3:49
FILED

Pleadings:

1. Defendant Associated Concrete Contractors, Inc.'s Answer to Plaintiffs' Amended Complaint;
2. Defendant C&B Utilities, LP's Answer to Plaintiffs' Amended Complaint;
3. Defendant Bailey Electric Company, LLC's Answer to Plaintiffs' Amended Complaint;
4. Defendant Coronado Stucco, LP's Answer to Plaintiffs' Amended Complaint;
5. Defendant Cherokee Inc.'s Answer to Plaintiffs' Amended Complaint;
6. Defendant Lowry Construction & Framing Inc.'s Answer to Plaintiffs' Amended Complaint;
7. Defendant LTB Construction Inc.'s Answer to Plaintiffs' Amended Complaint;
8. Defendant Wyman Acoustics LLC's Answer to Plaintiffs' Amended Complaint;
9. Defendant Cross Plains Custom Tile, Inc.'s Answer to Plaintiffs' Amended Complaint;
10. Defendant Metal Construction Materials, Inc.'s Answer to Plaintiffs' Amended Complaint;
11. Defendant Martin Morales Jr. Painting & Drywall, LLC's Answer to Plaintiffs' Amended Complaint; and
12. Defendant Carolina Floor Systems, Inc.'s Answer to Plaintiffs' Amended Complaint.

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Lisa S. Shumpert

August 15, 2013

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co., Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Inc. d/b/a Ply Gem Window Group; Crosby Window, Inc., f/k/a Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc. and John Doe #1-10,

Defendants.

Civil Action No. 2012-CP-40-8512

DEFENDANT LOWRY CONSTRUCTION & FRAMING INC.'S ANSWER TO PLAINTIFFS' AMENDED COMPLAINT

RICHLAND COUNTY
FILED
2013 AUG 15 PM 3:48
CLERK OF COURT
C.C.P. & G.S.

Defendant Lowry Construction & Framing Inc. ("Lowry" or "Defendant") answers the Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Defendant is not subject to jurisdiction of this Court and expressly reserves and refuses to waive any arguments related to lack of jurisdiction and proper service. Plaintiffs' claims against Defendant therefore should be dismissed pursuant to S.C. R. Civ. P. 12(b)(2), 12(b)(4) and 12(b)(5), and further responses below are made solely out of an abundance of caution, expressly reserving and refusing to waive any defenses as to jurisdiction or service.

2. Each and every allegation of the Plaintiffs' Amended Complaint not specifically admitted herein is expressly denied.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

3. Defendant is without sufficient information or knowledge to admit the allegations in Paragraphs 1, 2 and 3 and demands strict proof thereof.

4. Defendant admits the allegations of Paragraph 4 on information and belief.

5. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

6. Defendant is without information or knowledge sufficient to admit or deny the allegations in Paragraphs 7 through 19 relative to the corporate status and/or operations of the entities designated therein and therefore denies same and demands strict proof thereof. Defendant admits only so much of Paragraphs 10 through 19 as allege that DDC Construction, Inc. was the general contractor of the project and that Columbia Condos, LP was the

owner/developer of the project. Further, Defendant incorporates the responses of the entities identified in Paragraphs 7 through 19 by reference.

7. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 20 through 29 and 31 through 48 and therefore denies same and demands strict proof thereof.

8. Defendant admits only so much of Paragraph 30 as alleges Defendant is a corporation organized and existing under the laws of the State of Florida that provided certain framing and cornice work at The Gates. All other allegations contained in Paragraph 30 are denied.

9. The allegations of Paragraph 49 require no response. To the extent a response is required, the allegations are denied.

10. In answering Paragraph 50, Defendant admits it is subject to the jurisdiction of the Court but is without sufficient knowledge or information to admit or deny whether the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

11. Defendant admits the allegations in Paragraph 51 on information and belief.

12. Defendant denies the allegations in Paragraphs 52 through 55, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts. Answering further, Defendant is without knowledge or information sufficient to form a belief as to any contact with, or the knowledge of, the Dinerstein Defendants regarding alleged problems and therefore denies the same.

13. The allegations of Paragraph 56 calls for a legal conclusion to which no response is required. However, in the utmost caution, Defendant denies the allegations set forth therein.

14. Defendant denies the allegations in Paragraphs 57 through 61. Answering further, elements of Paragraph 61 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

15. Defendant denies the allegations in Paragraphs 62 through 71 and opposes the certification of a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

16. Defendant denies the allegations in Paragraphs 72 through 76 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

17. Answering Paragraph 77, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

18. The allegations in Paragraph 78 call for a legal conclusion to which no response is required. However, in the utmost caution Lowry denies the allegations of Paragraph 78 as they relate to it and demands strict proof thereof.

19. Defendant denies the allegations in Paragraphs 79 through 81, including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

20. Answering Paragraph 82, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

21. Paragraphs 83 and 84 contain legal conclusions which require no response. However, in the utmost caution Lowry denies the allegations of these Paragraphs and demands strict proof thereof.

22. Defendant denies the allegations in Paragraphs 85 and 86 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

23. Answering Paragraph 87, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

24. Defendant is without sufficient information or belief to admit or deny the allegations in Paragraphs 88 through 100 to the extent they relate to other Manufacturer and/or Supplier Defendants as that term is defined in the Amended Complaint and therefore denies any such allegations and demands strict proof thereof. Answering further, Defendant states that it provided only framing and cornice work at The Gates, and has no knowledge of and is not liable for work performed by or supplies provided by any other entity on the project. Defendant further denies any allegations related to defects in or damages resulting from its framing and cornice work at The Gates. All remaining allegations of Paragraphs 88 through 100 are denied.

25. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE

26. Plaintiffs' Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Amended Complaint should be dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

27. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

28. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

29. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

30. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

31. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;
- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;
- 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;
- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and
- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

32. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

33. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can Defendant be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

34. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

35. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

36. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

37. Defendant would show that the alleged class members did not have any relationship with Lowry nor is there any typicality or commonality as related to the action or acts of Lowry, and thus, Lowry is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

38. Defendant would show that to the extent damages are sought for work performed by others or damage resulting from the acts of others, it is not liable for these damages and Lowry demands an apportionment and/or allocation of damages to properly reflect its responsibility.

FOR A FIFTEENTH DEFENSE

39. Plaintiffs' claims should be dismissed because of disclaimers and other defenses specifically provided in the Master Deed.

FOR A SIXTEENTH DEFENSE

40. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations. Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

FOR A SEVENTEENTH DEFENSE

41. Defendant is not subject to jurisdiction of this Court and expressly reserves and refuses to waive any arguments related to lack of jurisdiction and proper service. Plaintiffs' claims against Defendant therefore should be dismissed pursuant to S.C. R. Civ. P. 12(b)(2), 12(b)(4) and 12(b)(5), and further responses below are made solely out of an abundance of caution, expressly reserving and refusing to waive any defenses as to jurisdiction or service.

FOR AN EIGHTEENTH DEFENSE

42. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

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

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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Attorneys for Lowry Construction & Framing Inc.

Columbia, South Carolina

8/15, 2013

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified:

JEANETTE W. WALKER
C.C.P. & G.S.
2013 AUG 15 PM 3:48
FILED

Pleadings:

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2. Defendant C&B Utilities, LP's Answer to Plaintiffs' Amended Complaint;
3. Defendant Bailey Electric Company, LLC's Answer to Plaintiffs' Amended Complaint;
4. Defendant Coronado Stucco, LP's Answer to Plaintiffs' Amended Complaint;
5. Defendant Cherokee Inc.'s Answer to Plaintiffs' Amended Complaint;
6. Defendant Lowry Construction & Framing Inc.'s Answer to Plaintiffs' Amended Complaint;
7. Defendant LTB Construction Inc.'s Answer to Plaintiffs' Amended Complaint;
8. Defendant Wyman Acoustics LLC's Answer to Plaintiffs' Amended Complaint;
9. Defendant Cross Plains Custom Tile, Inc.'s Answer to Plaintiffs' Amended Complaint;
10. Defendant Metal Construction Materials, Inc.'s Answer to Plaintiffs' Amended Complaint;
11. Defendant Martin Morales Jr. Painting & Drywall, LLC's Answer to Plaintiffs' Amended Complaint; and
12. Defendant Carolina Floor Systems, Inc.'s Answer to Plaintiffs' Amended Complaint.

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Lisa S. Shumpert

August 15, 2013

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated,	)	Civil Action No. 2012-CP-40-8512
Plaintiffs,	)	
vs.	)	**DEFENDANT MARTIN MORALES JR. PAINTING & DRYWALL, LLC'S ANSWER TO PLAINTIFFS' AMENDED COMPLAINT**
DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co., Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Inc. d/b/a Ply Gem Window Group; Crosby Window, Inc., f/k/a Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc. and John Doe #1-10,	)	
Defendants.	)	

2013 AUG 15 PM 3:48

Defendant Martin Morales Jr. Painting & Drywall, LLC ("Morales" or "Defendant") answers the Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Defendant is not subject to jurisdiction of this Court and expressly reserves and refuses to waive any arguments related to lack of jurisdiction and proper service. Plaintiffs' claims against Defendant therefore should be dismissed pursuant to S.C. R. Civ. P. 12(b)(2), 12(b)(4) and 12(b)(5), and further responses below are made solely out of an abundance of caution, expressly reserving and refusing to waive any defenses as to jurisdiction or service.

2. Each and every allegation of the Plaintiffs' Amended Complaint not specifically admitted herein is expressly denied.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

3. Defendant is without sufficient information or knowledge to admit the allegations in Paragraphs 1, 2 and 3 and demands strict proof thereof.

4. Defendant admits the allegations of Paragraph 4 on information and belief.

5. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

6. Defendant is without information or knowledge sufficient to admit or deny the allegations in Paragraphs 7 through 19 relative to the corporate status and/or operations of the entities designated therein and therefore denies same and demands strict proof thereof. Defendant admits only so much of Paragraphs 10 through 19 as allege that DDC Construction, Inc. was the general contractor of the project and that Columbia Condos, LP was the

owner/developer of the project. Further, Defendant incorporates the responses of the entities identified in Paragraphs 7 through 19 by reference.

7. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 20 through 31 and 33 through 48 and therefore denies same and demands strict proof thereof.

8. Defendant admits only so much of Paragraph 32 as alleges Defendant is a corporation organized and existing under the laws of one of the states of the United States that provided and/or installed certain caulking and sealant work at The Gates. All other allegations contained in Paragraph 32 are denied.

9. The allegations of Paragraph 49 require no response. To the extent a response is required, the allegations are denied.

10. In answering Paragraph 50, Defendant admits it is subject to the jurisdiction of the Court but is without sufficient knowledge or information to admit or deny whether the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

11. Defendant admits the allegations in Paragraph 51 on information and belief.

12. Defendant denies the allegations in Paragraphs 52 through 55, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts. Answering further, Defendant is without knowledge or information sufficient to form a belief as to any contact with, or the knowledge of, the Dinerstein Defendants regarding alleged problems and therefore denies the same.

13. The allegations of Paragraph 56 calls for a legal conclusion to which no response is required. However, in the utmost caution, Defendant denies the allegations set forth therein.

14. Defendant denies the allegations in Paragraphs 57 through 61. Answering further, elements of Paragraph 61 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

15. Defendant denies the allegations in Paragraphs 62 through 71 and opposes the certification of a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

16. Defendant denies the allegations in Paragraphs 72 through 76 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

17. Answering Paragraph 77, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

18. The allegations in Paragraph 78 call for a legal conclusion to which no response is required. However, in the utmost caution Morales denies the allegations of Paragraph 78 as they relate to it and demands strict proof thereof.

19. Defendant denies the allegations in Paragraphs 79 through 81, including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

20. Answering Paragraph 82, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

21. Paragraphs 83 and 84 contain legal conclusions which require no response. However, in the utmost caution Morales denies the allegations of these Paragraphs and demands strict proof thereof.

22. Defendant denies the allegations in Paragraphs 85 and 86 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

23. Answering Paragraph 87, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

24. Defendant is without sufficient information or belief to admit or deny the allegations in Paragraphs 88 through 100 to the extent they relate to other Manufacturer and/or Supplier Defendants as that term is defined in the Amended Complaint and therefore denies any such allegations and demands strict proof thereof. Answering further, Defendant states that it provided only caulking and sealant related work at The Gates, and has no knowledge of and is not liable for work performed by or supplies provided by any other entity on the project. Defendant further denies any allegations related to defects in or damages resulting from its caulking and sealant work at The Gates. All remaining allegations of Paragraphs 88 through 100 are denied.

25. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE

26. Plaintiffs' Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Amended Complaint should be dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

27. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

28. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

29. Defendant asserts that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

30. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional

information during the pendency of this action.

FOR A SEVENTH DEFENSE

31. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;
- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;
- 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;
- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and
- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

32. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

33. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can Defendant be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

34. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

35. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

36. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

37. Defendant would show that the alleged class members did not have any relationship with Morales nor is there any typicality or commonality as related to the action or acts of Morales, and thus, Morales is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

38. Defendant would show that to the extent damages are sought for work performed by others or damage resulting from the acts of others, it is not liable for these damages and Morales demands an apportionment and/or allocation of damages to properly reflect its responsibility.

FOR A FIFTEENTH DEFENSE

39. Plaintiffs' claims should be dismissed because of disclaimers and other defenses specifically provided in the Master Deed.

FOR A SIXTEENTH DEFENSE

40. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations. Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

FOR A SEVENTEENTH DEFENSE

41. Defendant would show that it is not subject to the jurisdiction of this Court. As such, the Complaint should be dismissed pursuant to S.C. R. Civ. P. 12(b)(2). Moreover, Defendant has not been properly served. Thus, the Complaint also should be dismissed pursuant to S.C. R. Civ. P. 12(b)(4) and (5).

FOR AN EIGHTEENTH DEFENSE

42. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

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

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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Attorneys for Martin Morales Jr. Painting and Drywall, LLC

Columbia, South Carolina

8/15, 2013

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified:

Pleadings:

1. Defendant Associated Concrete Contractors, Inc.'s Answer to Plaintiffs' Amended Complaint;
2. Defendant C&B Utilities, LP's Answer to Plaintiffs' Amended Complaint;
3. Defendant Bailey Electric Company, LLC's Answer to Plaintiffs' Amended Complaint;
4. Defendant Coronado Stucco, LP's Answer to Plaintiffs' Amended Complaint;
5. Defendant Cherokee Inc.'s Answer to Plaintiffs' Amended Complaint;
6. Defendant Lowry Construction & Framing Inc.'s Answer to Plaintiffs' Amended Complaint;
7. Defendant LTB Construction Inc.'s Answer to Plaintiffs' Amended Complaint;
8. Defendant Wyman Acoustics LLC's Answer to Plaintiffs' Amended Complaint;
9. Defendant Cross Plains Custom Tile, Inc.'s Answer to Plaintiffs' Amended Complaint;
10. Defendant Metal Construction Materials, Inc.'s Answer to Plaintiffs' Amended Complaint;
11. Defendant Martin Morales Jr. Painting & Drywall, LLC's Answer to Plaintiffs' Amended Complaint; and
12. Defendant Carolina Floor Systems, Inc.'s Answer to Plaintiffs' Amended Complaint.

C.C.P. & G.S.
2013 AUG 15 PM 3:48
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Lisa S. Shumpert

August 15, 2013

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co., Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Inc. d/b/a Ply Gem Window Group; Crosby Window, Inc., f/k/a Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc. and John Doe #1-10,

Defendants.

Civil Action No. 2012-CP-40-8512

DEFENDANT METAL CONSTRUCTION MATERIALS, INC.'S ANSWER TO PLAINTIFFS' AMENDED COMPLAINT

2013 AUG 15 PM 3:49

Defendant Metal Construction Materials, Inc. ("MCM" or "Defendant") answers the Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Each and every allegation of the Plaintiffs' Amended Complaint not specifically admitted herein is expressly denied.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

2. Defendant is without sufficient information or knowledge to admit the allegations in Paragraphs 1, 2 and 3 and demands strict proof thereof.

3. Defendant admits the allegations of Paragraph 4 on information and belief.

4. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

5. Defendant is without information or knowledge sufficient to admit or deny the allegations in Paragraphs 7 through 19 relative to the corporate status and/or operations of the entities designated therein and therefore denies same and demands strict proof thereof. Defendant admits only so much of Paragraphs 10 through 19 as allege that DDC Construction, Inc. was the general contractor of the project and that Columbia Condos, LP was the owner/developer of the project. Further, Defendant incorporates the responses of the entities identified in Paragraphs 7 through 19 by reference.

6. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 20 through 32 and 34 through 48 and therefore denies same and demands strict proof thereof.

7. Defendant admits only so much of Paragraph 33 as alleges Defendant is a corporation organized and existing under the laws of the State of Texas that provided certain metal carport work at The Gates. All other allegations contained in Paragraph 33 are denied.

8. The allegations of Paragraph 49 require no response. To the extent a response is required, the allegations are denied.

9. In answering Paragraph 50, Defendant admits it is subject to the jurisdiction of the Court but is without sufficient knowledge or information to admit or deny whether the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

10. Defendant admits the allegations in Paragraph 51 on information and belief.

11. Defendant denies the allegations in Paragraphs 52 through 55, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts. Answering further, Defendant is without knowledge or information sufficient to form a belief as to any contact with, or the knowledge of, the Dinerstein Defendants regarding alleged problems and therefore denies the same.

12. The allegations of Paragraph 56 calls for a legal conclusion to which no response is required. However, in the utmost caution, Defendant denies the allegations set forth therein.

13. Defendant denies the allegations in Paragraphs 57 through 61. Answering further, elements of Paragraph 61 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

14. Defendant denies the allegations in Paragraphs 62 through 71 and opposes the

certification of a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

15. Defendant denies the allegations in Paragraphs 72 through 76 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

16. Answering Paragraph 77, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

17. The allegations in Paragraph 78 call for a legal conclusion to which no response is required. However, in the utmost caution MCM denies the allegations of Paragraph 78 as they relate to it and demands strict proof thereof.

18. Defendant denies the allegations in Paragraphs 79 through 81, including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

19. Answering Paragraph 82, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

20. Paragraphs 83 and 84 contain legal conclusions which require no response. However, in the utmost caution MCM denies the allegations of these Paragraphs and demands strict proof thereof.

21. Defendant denies the allegations in Paragraphs 85 and 86 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

22. Answering Paragraph 87, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

23. Defendant is without sufficient information or belief to admit or deny the allegations in Paragraphs 88 through 100 to the extent they relate to other Manufacturer and/or Supplier Defendants as that term is defined in the Amended Complaint and therefore denies any such allegations and demands strict proof thereof. Answering further, Defendant states that it provided only limited metal carport work in the garage at The Gates, and has no knowledge of and is not liable for work performed by or supplies provided by any other entity on the project. Defendant further denies any allegations related to defects in or damages resulting from its metal carport work at The Gates. All remaining allegations of Paragraphs 88 through 100 are denied.

24. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE

25. Plaintiffs' Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Amended Complaint should be dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

26. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

27. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

28. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

29. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

30. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;
- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;
- 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;

- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and

- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

31. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

32. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can Defendant be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

33. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

34. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

35. To the extent Plaintiffs' allegations based on contract and warranty are

applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

36. Defendant would show that the alleged class members did not have any relationship with MCM nor is there any typicality or commonality as related to the action or acts of MCM, and thus, MCM is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

37. Defendant would show that to the extent damages are sought for work performed by others or damage resulting from the acts of others, it is not liable for these damages and MCM demands an apportionment and/or allocation of damages to properly reflect its responsibility.

FOR A FIFTEENTH DEFENSE

38. Plaintiffs' claims should be dismissed because of disclaimers and other defenses specifically provided in the Master Deed.

FOR A SIXTEENTH DEFENSE

39. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations. Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

FOR A SEVENTEENTH DEFENSE

40. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

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

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ T. Nat

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Attorneys for Metal Construction Materials, Inc.

Columbia, South Carolina

8/15, 2013

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified:

Pleadings:

1. Defendant Associated Concrete Contractors, Inc.'s Answer to Plaintiffs' Amended Complaint;
2. Defendant C&B Utilities, LP's Answer to Plaintiffs' Amended Complaint;
3. Defendant Bailey Electric Company, LLC's Answer to Plaintiffs' Amended Complaint;
4. Defendant Coronado Stucco, LP's Answer to Plaintiffs' Amended Complaint;
5. Defendant Cherokee Inc.'s Answer to Plaintiffs' Amended Complaint;
6. Defendant Lowry Construction & Framing Inc.'s Answer to Plaintiffs' Amended Complaint;
7. Defendant LTB Construction Inc.'s Answer to Plaintiffs' Amended Complaint;
8. Defendant Wyman Acoustics LLC's Answer to Plaintiffs' Amended Complaint;
9. Defendant Cross Plains Custom Tile, Inc.'s Answer to Plaintiffs' Amended Complaint;
10. Defendant Metal Construction Materials, Inc.'s Answer to Plaintiffs' Amended Complaint;
11. Defendant Martin Morales Jr. Painting & Drywall, LLC's Answer to Plaintiffs' Amended Complaint; and
12. Defendant Carolina Floor Systems, Inc.'s Answer to Plaintiffs' Amended Complaint.

2013 AUG 15 PM 3:49
JEANETTE W. WALKER
C.C.P. & G.S.

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Lisa S. Shumpert

August 15, 2013

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co., Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Inc. d/b/a Ply Gem Window Group; Crosby Window, Inc., f/k/a Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc. and John Doe #1-10,

Defendants.

Civil Action No. 2012-CP-40-8512

DEFENDANT WYMAN ACOUSTICS LLC'S ANSWER TO PLAINTIFFS' AMENDED COMPLAINT

2013 AUG 15 PM 3:48
JEANETTE W. WILLIAMS
C.C.P. & G.S.

Defendant Wyman Acoustics LLC ("Wyman Acoustics" or "Defendant") answers the Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Each and every allegation of the Plaintiffs' Amended Complaint not specifically admitted herein is expressly denied.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

2. Defendant is without sufficient information or knowledge to admit the allegations in Paragraphs 1, 2 and 3 and demands strict proof thereof.

3. Defendant admits the allegations of Paragraph 4 on information and belief.

4. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

5. Defendant is without information or knowledge sufficient to admit or deny the allegations in Paragraphs 7 through 19 relative to the corporate status and/or operations of the entities designated therein and therefore denies same and demands strict proof thereof. Defendant admits only so much of Paragraphs 10 through 19 as allege that DDC Construction, Inc. was the general contractor of the project and that Columbia Condos, LP was the owner/developer of the project. Further, Defendant incorporates the responses of the entities identified in Paragraphs 7 through 19 by reference.

6. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 20 through 37 and 39 through 48 and therefore denies same and demands strict proof thereof.

7. Defendant admits only so much of Paragraph 38 as alleges Defendant is a corporation organized and existing under the laws of the State of South Carolina that provided certain drywall work at The Gates. All other allegations contained in Paragraph 38 are denied.

8. The allegations of Paragraph 49 require no response. To the extent a response is required, the allegations are denied.

9. In answering Paragraph 50, Defendant admits it is subject to the jurisdiction of the Court but is without sufficient knowledge or information to admit or deny whether the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

10. Defendant admits the allegations in Paragraph 51 on information and belief.

11. Defendant denies the allegations in Paragraphs 52 through 55, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts. Answering further, Defendant is without knowledge or information sufficient to form a belief as to any contact with, or the knowledge of, the Dinerstein Defendants regarding alleged problems and therefore denies the same.

12. The allegations of Paragraph 56 calls for a legal conclusion to which no response is required. However, in the utmost caution, Defendant denies the allegations set forth therein.

13. Defendant denies the allegations in Paragraphs 57 through 61. Answering further, elements of Paragraph 61 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

14. Defendant denies the allegations in Paragraphs 62 through 71 and opposes the certification of a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

15. Defendant denies the allegations in Paragraphs 72 through 76 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

16. Answering Paragraph 77, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

17. The allegations in Paragraph 78 call for a legal conclusion to which no response is required. However, in the utmost caution Wyman Acoustics denies the allegations of Paragraph 78 as they relate to it and demands strict proof thereof.

18. Defendant denies the allegations in Paragraphs 79 through 81, including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

19. Answering Paragraph 82, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

20. Paragraphs 83 and 84 contain legal conclusions which require no response. However, in the utmost caution Wyman Acoustics denies the allegations of these Paragraphs and demands strict proof thereof.

21. Defendant denies the allegations in Paragraphs 85 and 86 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

22. Answering Paragraph 87, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

23. Defendant is without sufficient information or belief to admit or deny the allegations in Paragraphs 88 through 100 to the extent they relate to other Manufacturer and/or Supplier Defendants as that term is defined in the Amended Complaint and therefore denies any such allegations and demands strict proof thereof. Answering further, Defendant states that it provided only limited drywall work at The Gates, and has no knowledge of and is not liable for work performed by or supplies provided by any other entity on the project. Defendant further denies any allegations related to defects in or damages resulting from its drywall work at The Gates. All remaining allegations of Paragraphs 88 through 100 are denied.

24. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE

25. Plaintiffs' Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Amended Complaint should be dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

26. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

27. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

28. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

29. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

30. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;
- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;

- 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;

- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and

- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

31. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

32. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can Defendant be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

33. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

34. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

35. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

36. Defendant would show that the alleged class members did not have any relationship with Wyman Acoustics nor is there any typicality or commonality as related to the action or acts of Wyman Acoustics, and thus, Wyman Acoustics is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

37. Defendant would show that to the extent damages are sought for work performed by others or damage resulting from the acts of others, it is not liable for these damages and Wyman Acoustics demands an apportionment and/or allocation of damages to properly reflect its responsibility.

FOR A FIFTEENTH DEFENSE

38. Plaintiffs' claims should be dismissed because of disclaimers and other defenses specifically provided in the Master Deed.

FOR A SIXTEENTH DEFENSE

39. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations. Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus

expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

FOR A SEVENTEENTH DEFENSE

40. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

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

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Attorneys for Wyman Acoustics LLC

Columbia, South Carolina

8/15, 2013

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified:

Pleadings:

1. Defendant Associated Concrete Contractors, Inc.'s Answer to Plaintiffs' Amended Complaint;
2. Defendant C&B Utilities, LP's Answer to Plaintiffs' Amended Complaint;
3. Defendant Bailey Electric Company, LLC's Answer to Plaintiffs' Amended Complaint;
4. Defendant Coronado Stucco, LP's Answer to Plaintiffs' Amended Complaint;
5. Defendant Cherokee Inc.'s Answer to Plaintiffs' Amended Complaint;
6. Defendant Lowry Construction & Framing Inc.'s Answer to Plaintiffs' Amended Complaint;
7. Defendant LTB Construction Inc.'s Answer to Plaintiffs' Amended Complaint;
8. Defendant Wyman Acoustics LLC's Answer to Plaintiffs' Amended Complaint;
9. Defendant Cross Plains Custom Tile, Inc.'s Answer to Plaintiffs' Amended Complaint;
10. Defendant Metal Construction Materials, Inc.'s Answer to Plaintiffs' Amended Complaint;
11. Defendant Martin Morales Jr. Painting & Drywall, LLC's Answer to Plaintiffs' Amended Complaint; and
12. Defendant Carolina Floor Systems, Inc.'s Answer to Plaintiffs' Amended Complaint.

JEANETTE W. McBRIDE
C.C.P. & G.S.
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RICHLAND CO.
FILED

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Lisa S. Shumpert

August 15, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co., Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Inc. d/b/a Ply Gem Window Group; Crosby Window, Inc., f/k/a Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc. and John Doe #1-10,

Defendants.

Civil Action No. 2012-CP-40-8512

DEFENDANT LTB CONSTRUCTION, INC.'S ANSWER TO PLAINTIFFS' AMENDED COMPLAINT

2013 AUG 15 PM 3:47

Defendant LTB Construction, Inc. ("LTB" or "Defendant") answers the Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Defendant is not subject to jurisdiction of this Court and expressly reserves and refuses to waive any arguments related to lack of jurisdiction and proper service. Plaintiffs' claims against Defendant therefore should be dismissed pursuant to S.C. R. Civ. P. 12(b)(2), 12(b)(4) and 12(b)(5), and further responses below are made solely out of an abundance of caution, expressly reserving and refusing to waive any defenses as to jurisdiction or service.

2. Each and every allegation of the Plaintiffs' Amended Complaint not specifically admitted herein is expressly denied.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

3. Defendant is without sufficient information or knowledge to admit the allegations in Paragraphs 1, 2 and 3 and demands strict proof thereof.

4. Defendant admits the allegations of Paragraph 4 on information and belief.

5. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

6. Defendant is without information or knowledge sufficient to admit or deny the allegations in Paragraphs 7 through 19 relative to the corporate status and/or operations of the entities designated therein and therefore denies same and demands strict proof thereof. Defendant admits only so much of Paragraphs 10 through 19 as allege that DDC Construction, Inc. was the general contractor of the project and that Columbia Condos, LP was the owner/developer of the project. Further, Defendant incorporates the responses of the entities

identified in Paragraphs 7 through 19 by reference.

7. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 20 through 30 and 32 through 48 and therefore denies same and demands strict proof thereof.

8. Defendant admits only so much of Paragraph 31 as alleges Defendant is a corporation organized and existing under the laws of the State of Texas that provided certain drywall and texture work at The Gates. All other allegations contained in Paragraph 31 are denied.

9. The allegations of Paragraph 49 require no response. To the extent a response is required, the allegations are denied.

10. In answering Paragraph 50, Defendant admits it is subject to the jurisdiction of the Court but is without sufficient knowledge or information to admit or deny whether the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

11. Defendant admits the allegations in Paragraph 51 on information and belief.

12. Defendant denies the allegations in Paragraphs 52 through 55, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts. Answering further, Defendant is without knowledge or information sufficient to form a belief as to any contact with, or the knowledge of, the Dinerstein Defendants regarding alleged problems and therefore denies the same.

13. The allegations of Paragraph 56 calls for a legal conclusion to which no response is required. However, in the utmost caution, Defendant denies the allegations set forth therein.

14. Defendant denies the allegations in Paragraphs 57 through 61. Answering further, elements of Paragraph 61 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

15. Defendant denies the allegations in Paragraphs 62 through 71 and opposes the certification of a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

16. Defendant denies the allegations in Paragraphs 72 through 76 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

17. Answering Paragraph 77, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

18. The allegations in Paragraph 78 call for a legal conclusion to which no response is required. However, in the utmost caution LTB denies the allegations of Paragraph 78 as they relate to it and demands strict proof thereof.

19. Defendant denies the allegations in Paragraphs 79 through 81, including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

20. Answering Paragraph 82, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

21. Paragraphs 83 and 84 contain legal conclusions which require no response. However, in the utmost caution LTB denies the allegations of these Paragraphs and demands

strict proof thereof.

22. Defendant denies the allegations in Paragraphs 85 and 86 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION

(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

23. Answering Paragraph 87, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

24. Defendant is without sufficient information or belief to admit or deny the allegations in Paragraphs 88 through 100 to the extent they relate to other Manufacturer and/or Supplier Defendants as that term is defined in the Amended Complaint and therefore denies any such allegations and demands strict proof thereof. Answering further, Defendant states that it provided only limited drywall and texture work at The Gates, and has no knowledge of and is not liable for work performed by or supplies provided by any other entity on the project. Defendant further denies any allegations related to defects in or damages resulting from its drywall and texture work at The Gates. All remaining allegations of Paragraphs 88 through 100 are denied.

25. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE

26. Plaintiffs' Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Amended Complaint should be dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

27. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

28. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

29. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

30. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

31. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;

- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;
- 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;
- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and
- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

32. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

33. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can Defendant be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

34. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

35. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

36. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

37. Defendant would show that the alleged class members did not have any relationship with LTB nor is there any typicality or commonality as related to the action or acts of LTB, and thus, LTB is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

38. Defendant would show that to the extent damages are sought for work performed by others or damage resulting from the acts of others, it is not liable for these damages and LTB demands an apportionment and/or allocation of damages to properly reflect its responsibility.

FOR A FIFTEENTH DEFENSE

39. Plaintiffs' claims should be dismissed because of disclaimers and other defenses specifically provided in the Master Deed.

FOR A SIXTEENTH DEFENSE

40. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations. Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the

Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

FOR A SEVENTEENTH DEFENSE

41. Defendant would show that it is not subject to the jurisdiction of this Court. As such, the Complaint should be dismissed pursuant to S.C. R. Civ. P. 12(b)(2). Moreover, Defendant has not been properly served. Thus, the Complaint also should be dismissed pursuant to S.C. R. Civ. P. 12(b)(4) and (5).

FOR AN EIGHTEENTH DEFENSE

42. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

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

Signature Page Attached

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Attorneys for LTB Construction, Inc.

2013 AUG 15 PM 3:47

Columbia, South Carolina

8/15, 2013

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified:

Pleadings:

1. Defendant Associated Concrete Contractors, Inc.'s Answer to Plaintiffs' Amended Complaint;
2. Defendant C&B Utilities, LP's Answer to Plaintiffs' Amended Complaint;
3. Defendant Bailey Electric Company, LLC's Answer to Plaintiffs' Amended Complaint;
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8. Defendant Wyman Acoustics LLC's Answer to Plaintiffs' Amended Complaint;
9. Defendant Cross Plains Custom Tile, Inc.'s Answer to Plaintiffs' Amended Complaint;
10. Defendant Metal Construction Materials, Inc.'s Answer to Plaintiffs' Amended Complaint;
11. Defendant Martin Morales Jr. Painting & Drywall, LLC's Answer to Plaintiffs' Amended Complaint; and
12. Defendant Carolina Floor Systems, Inc.'s Answer to Plaintiffs' Amended Complaint.

JEANNETTE W. WALKER
C.C.P. & G.S.
2013 AUG 15 PM 3:47
FILED

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Lisa S. Shumpert

August 15, 2013

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-8512

The Gates At Williams-Brice Condominium Association And Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co. Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Holding Corporation, Alenco Window GA, LLC, New Alenco Window, Ltd.; AWC Holding Company; Crosby Window, Inc., f/k/a/ Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc.; T & M Concrete, Inc.; Loveless Commercial Contracting, Inc.; Economy Waterproofing, Inc.; BMC West Corporation; Highway One Construction, Inc.; J.I. Windows LLC; Dietrich Industries, Inc., a/k/a Dietrich

SECOND AMENDED SUMMONS

Metal Framing, Inc., n/k/a Clarkwestern Dietrich Building Systems LLC; Best Masonry and its successor in interest, OldCastleAPG; Headwaters, Inc. d/b/a Best Masonry; and John Doe #1-10.	)
Defendants.	)

YOU ARE HEREBY SUMMONED and required to answer the Second Amended Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Second Amended Complaint upon the subscriber at his office at 415 Mill Street, Post Office Box 806, Mount Pleasant, South Carolina within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer within the prescribed time, a judgment by default will be rendered against you for the amount or other remedy requested in the attached Second Amended Complaint plus interest and costs.

JUSTIN O'TOOLE LUCEY, P.A.

By: _____

Justin Lucey
Stephanie Drawdy
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806
(843) 849-8400 phone
(843) 849-8406 fax

February 11, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-8512

The Gates At Williams-Brice Condominium Association And Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co. Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Holding Corporation, Alenco Window GA, LLC, New Alenco Window, Ltd.; AWC Holding Company; Crosby Window, Inc., f/k/a/ Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc.; T & M Concrete, Inc.; Loveless Commercial Contracting, Inc.; Economy Waterproofing, Inc.; BMC West Corporation; Highway One Construction, Inc.; J.I. Windows LLC; Dietrich Industries, Inc., a/k/a Dietrich Metal Framing, Inc., n/k/a Clarkwestern

SECOND AMENDED COMPLAINT
(Defective Construction)

(Jury Trial Demanded)

Dietrich Building Systems LLC; Best Masonry and its successor in interest, OldCastleAPG; Headwaters, Inc. d/b/a Best Masonry; and John Doe #1-10.	)
Defendants.	)

The Plaintiffs, The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually and on behalf of all others similarly situated, complaining of the Defendants named herein, would respectfully allege and show the Court as follows:

PARTIES AND JURISDICTIONAL STATEMENT

1. Plaintiff The Gates at Williams-Brice Condominium Association (the "Association") is a non-profit corporation organized and existing under the laws of the State of South Carolina.

2. The Association is the property owners association for the Williams-Brice Horizontal Property Regime.

3. The Williams-Brice Horizontal Property Regime is a Horizontal Property Regime that exists by virtue of a Master Deed dated July 2, 2007 and recorded July 11, 2007 in the RMC Office of Richland County, South Carolina in Book 1334-2002.

4. The Gates consists of one hundred fifty-eight (158) condominiums located in six (6) buildings and related common elements, which are located behind the Williams-Brice Stadium in Columbia, South Carolina. The condominiums and common and limited common elements are hereinafter referred to collectively as "The Gates."

5. By virtue of governing documents and the South Carolina Horizontal Property Regime Act, S.C. Code § 27-31-10, *et. seq.*, the Association is charged with certain duties, powers, rights and authority in connection with The Gates.

6. The Association is charged with, *inter alia*, the management and administration of The Gates, the investigation, maintenance and repair of The Gates' Common Elements and Areas of Responsibility, and has the right and obligation to bring this action on behalf of the Gates, the Association, and the respective owners and members and/or is the assignee of the members' rights being asserted hereunder.

7. Plaintiff Katharine Swinson (hereinafter "Plaintiff Swinson") is a citizen of Richland County, South Carolina and is an owner of a condominium within the Gates more particularly described as 1085 Shop Road, Unit 435, Columbia, South Carolina, 29201.

8. Plaintiff Swinson purchased the above-described real property in 2010.

9. By virtue of property ownership in the Gates, Plaintiff Swinson is a member of the Association, has been a member of the Association at all times relevant hereto, and has ownership and membership rights relating thereto.

10. Defendant DDC Construction, Inc. is a corporation organized and existing under the laws of the State of Texas.

11. Defendant DMC Consolidated, Inc. is a corporation organized and existing under the laws of the State of Texas.

12. Defendant DMC Builders, Co., Inc., individually and d/b/a the Dinerstein Companies is a corporation organized and existing under the laws of the State of Texas.

13. Defendant DC Developers – Columbia Condos, Inc. is a corporation organized and existing under the laws of the State of Texas and is the manager/general Partner of Columbia Condos, LP.

14. Defendant Columbia Condos, LP is a corporation organized and existing under the laws of the State of Delaware.

15. Defendant DMC Developers, I, Ltd. is a corporation organized and existing under the laws of the State of Texas.

16. Defendant Highway One Construction, Inc. is a corporation organized and existing under the laws of the State of Texas.

17. The foregoing Defendants, and their divisions and affiliates, operated under the trade name Dinerstein Companies (hereinafter referred to collectively as the "Dinerstein Defendants") and at all times relevant to this action were engaged in the business of designing, developing, marketing, constructing, repairing and/or selling condominiums in Richland County, South Carolina. The Dinerstein Defendants all use the Dinerstein trade name interchangeably.

18. The Dinerstein Defendants used, commingled, and combined their resources to design, develop, market, construct, repair, sell and/or place the condominiums into the stream of commerce.

19. The Dinerstein Defendants have been formed and operate so their legal distinction is blurred and they are amalgamated with each other and their principals.

20. At all times relevant herein, the Dinerstein Defendants were actual and/or de facto joint venturers in the development, construction, and sale of the condominiums.

21. Defendant Kapasi Glass Mart, Inc. (hereinafter "Kapasi") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Kapasi supplied materials, installed windows and window components and/or performed other work, at The Gates.

22. Defendant 31-W Insulation Company, Inc. (hereinafter "31-W") is a corporation organized and existing under the laws of the State of Tennessee. At all times relevant to this action, 31-W provided and/or installed insulation, among other work, at The Gates.

23. Defendant Associated Concrete Contractors, Inc. (hereinafter "Associated Concrete") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, Associated Concrete provided and/or installed concrete, among other work, at The Gates.

24. Defendant Bailey Electric Company, LLC (hereinafter "Bailey Electric") is a corporation organized and existing under the laws of the State of Mississippi. At all times relevant to this action, Bailey Electric provided and/or installed electrical, heating and air conditioning ("HVAC"), among other work, at The Gates.

25. Defendant C&B Utilities, LP (hereinafter "C&B") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, C&B provided and/or installed plumbing, among other work, at The Gates.

26. Defendant Carolina Floor Systems, Inc. (hereinafter "Carolina Floor") is a corporation organized and existing under the laws of the State of North Carolina. At all times relevant to this action, Carolina Floor provided and/or installed cement decks and floor underlayment, among other work, at The Gates.

27. Defendant Century Fire Protection, LLC (hereinafter "Century Fire") is a corporation organized and existing under the laws of the State of Delaware. At all times relevant to this action, Century Fire provided and/or installed firesafing and firestopping, among other work, at The Gates.

28. Defendant Cherokee Inc. (hereinafter "Cherokee") is a corporation organized and existing under the laws of the State of Delaware. At all times relevant to this action, Cherokee performed site work, among other work, at The Gates.

29. Defendant Coronado Stucco, LP (hereinafter "Coronado") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, Coronado provided and/or installed stucco, among other work, at The Gates.

30. Defendant Cross Plains Custom Tile, Inc. (hereinafter "Cross Plains") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, Cross Plains provided and/or installed tile, among other work, at The Gates.

31. Defendant Lowry Construction & Framing Inc. (hereinafter "Lowry") is a corporation organized and existing under the laws of the State of Florida At all times relevant to his action, Lowry provided and/or installed framing, among other work, at The Gates

32. Defendant LTB Construction, Inc. (hereinafter "LTB") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, LTB provided and/or installed drywall materials and firestopping, among other work, at The Gates.

33. Defendant Martin Morales Jr. Painting & Drywall, L.L.C (hereinafter "Martin Morales") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, Martin Morales provided and/or installed caulking and sealant, among other work, at The Gates.

34. Defendant Metal Construction Materials, Inc. (hereinafter "Metal Construction") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, Metal Construction provided and/or installed metal carports, among other work, at The Gates.

35. Defendant Southwest Ironworks, Inc. (hereinafter "Southwest Ironworks") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, Southwest Ironworks provided and/or installed metal stairs and rails, among other work, at The Gates.

36. Defendant The Clerkley/Watkins Group, LP (hereinafter "Clerkley/Watkins") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, Clerkley/Watkins provided architectural and/or engineering services, among other work, at The Gates.

37. Defendant Tindall Corporation (hereinafter "Tindall") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Tindall provided and/or installed the precast concrete parking garage, among other work, at The Gates.

38. Defendant Triad Pest Control, Inc. (hereinafter "Triad") is a corporation organized and existing under the laws of the State of North Carolina. At all times relevant to this action, Triad provided termite treatment, among other work, at The Gates.

39. Defendant Wyman Acoustics LLC (hereinafter "Wyman") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Wyman provided and/or installed drywall, among other work, at The Gates.

40. Defendants Alenco Holding Corporation, Alenco Window GA, LLC, AWC Holding Company; and New Alenco Window, Ltd. (hereinafter "Alenco") all d/b/a Ply Gem Windows, combine and comingle their efforts and resources in the design, manufacture, distribution, and sale of Alenco Window and Door products are corporations organized and existing under the laws of the State of Delaware. At all times relevant to this action, Alenco supplied vinyl doors, among other products, at The Gates.

41. Defendant Crosby Window, Inc., f/k/a/ Action WinDoor Technology, Inc. (hereinafter "AWT") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, AWT supplied vinyl windows, among other products, at The Gates.

42. Defendant Geo-Systems Design & Testing, Inc. (hereinafter "Geo-Systems") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Geo-Systems supplied testing and quality assurance inspections, among other work, at The Gates.

43. Defendant HGE Consulting, Inc. (hereinafter "HGE") is a corporation organized and existing under the laws of the State of Texas At all times relevant to this action, HGE provided architectural and/or engineering services, among other work, at The Gates.

44. Defendant Maintenance Builders Supply, Ltd. (hereinafter "MBS") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, MBS supplied finish hardware, among other products, at The Gates.

45. Defendant SCA Engineers, Inc. (hereinafter "SCA") is a corporation organized and existing under the laws of the State of Texas. At all times relevant to this action, SCA provided architectural and/or engineering services, among other work, at The Gates.

46. Defendant Sinclair & Associates, Inc., (hereinafter "Sinclair") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Sinclair provided architectural and/or engineering services, among other work, at The Gates.

47. Defendant Faultless Hardware, individually and d/b/a as Pamex Inc., (hereinafter "Pamex") is a corporation organized and existing under the laws of the State of California. At all times relevant to this action, Pamex supplied finish hardware, among other products, at The Gates.

48. Defendant T & M Concrete, Inc. (hereinafter "T & M") is a corporation organized and existing under the laws of the State of North Carolina. At all times relevant to this action,

T&M provided and/or installed precast/prestressed concrete products, among other work, at The Gates.

49. Defendant Loveless Commercial Contracting, Inc. (hereinafter "Loveless") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Loveless provided and/or installed pour strips in the garage, among other work, at The Gates.

50. Defendant Economy Waterproofing, Inc. (hereinafter "Economy") is a corporation organized and existing under the laws of the State of North Carolina. At all times relevant to this action, Economy provided and/or installed caulking in the garage, among other work, at The Gates.

51. Defendant BMC West Corporation (hereinafter "BMC") is a corporation organized and existing under the laws of the State of Delaware. At all times relevant to this action, BMC supplied hinged doors, among other products, at The Gates.

52. Defendant J.I. Windows LLC (hereinafter "J.I.") is a corporation organized and existing under the laws of the State of Arizona. At all times relevant to this action, J.I. supplied window products, among other products, at The Gates.

53. Dietrich Industries, Inc., a/k/a Dietrich Metal Framing, Inc., n/k/a Clarkwestern Dietrich Building Systems LLC (hereinafter "Dietrich') is a corporation organized and existing under the laws of the State of Ohio. At all times relevant to this action, Dietrich supplied metal lath and stucco accessories, among other products, at The Gates.

54. Defendant Best Masonry and its successor in interest, OldCastleAPG ("hercinafter Best Masonry") is a corporation organized and existing under the laws of the State of Delaware. At all times relevant to this action, Best Masonry supplied stucco and accessories, among other products, at The Gates.

55. Defendant Headwaters, Inc. d/b/a Best Masonry (hereinafter "Headwaters") is a corporation organized and existing under the laws of the State of Delaware, which supplied stucco and accessories, among other products, at The Gates.

56. The address and identity of John Doe Defendant #1-10 is unknown at this time.

57. Defendants John Doe #1-10 (hereinafter "John Doe Defendants") are subcontractors and/or other entities involved in the design, construction, product manufacturing and/or supplying, and/or repair of The Gates.

58. Defendants Kapasi Glass Mart, Inc., Cross Plains Custom Tile, Inc., LTB Construction, Inc., Metal Construction Materials, Inc., Southwest Ironworks, Inc., Tindall Corporation, Triad Pest Control, Inc., Alenco Holding Corporation, Alenco Window GA, LLC, New Alenco Window, Ltd., AWC Holding Company, Crosby Window, Inc., f/k/a/ Action WinDoor Technology, Inc., Maintenance Builders Supply, Ltd., Faultless Hardware, individually and d/b/a Pamex Inc.; BMC West Corporation, J.I. Windows LLC, Dietrich Industries, Inc., a/k/a Dietrich Metal Framing, Inc., n/k/a Clarkwestern Dietrich Building Systems LLC; Best Masonry and its successor in interest OldCastleAPG, Headwaters, Inc. d/b/a Best Masonry; and John Doe #1 are hereinafter referred to collectively as the "Manufacturing and/or Supplier Defendants"

59. This Honorable Court has jurisdiction over all subject matter alleged herein and over all parties hereto and venue is proper in this forum.

FACTUAL ALLEGATIONS

60. This matter arises out of the construction and sale of The Gates.

61. At the time the Certificates of Occupancy were issued, The Gates contained latent building defects.

62. Plaintiffs and class members have previously put the Dinerstein Defendants on notice of some or many of the manifestations of the deficiencies. However, the Dinerstein

Defendants have denied the existence of or responsibility for the deficiencies and/or or their attempts at repair have failed.

63. The latent building defects in combination with fortuitous, weather, repeated water intrusion, and/or other events have resulted in consequential damage to non-defective building components and other property.

64. A preliminary inspection of The Gates evidences failure of one or more components of the exterior building envelopes; water intrusion into and through the exterior building envelope; and resulting consequential damage to non-defective building components, and other property. Inspection also reveals failure of other various building components, including widespread spalling, with consequential damages resulting therefrom.

65. Defendants had a duty to design, develop, construct, and repair The Gates in a workmanlike manner with suitable materials and free from all defects.

66. The aforementioned deficiencies and consequential damages evidence that Defendants breached their duties to Plaintiffs.

67. The Defendants' acts and omissions have resulted in building deficiencies, consequential damages, and partial loss of use and enjoyment.

68. Remedying the above-wrongs will result in additional consequential damages and loss of use.

69. As a direct and proximate result of Defendants' violation of their legal duties, Plaintiffs and class members have been proximately damaged in an amount to be determined by the trier of fact, and have had to incur reasonable attorney's fees and costs for the retention of experts to determine the damage and the scope of work for repair.

70. Upon information and belief, the water intrusion and resulting consequential damages have occurred and have been since shortly after the completion of construction and

constitute "occurrences" and "property damage" under the standard and/or typical general liability policies.

CLASS ACTION ALLEGATIONS

71. Pursuant to the common law of South Carolina and Rule 23 of the South Carolina Rules of Civil Procedure ("SCRCP"), Plaintiff Swinson brings this action both individually and as a proposed class action against Defendants on behalf of herself and all other similarly situated persons and entities, who own a condominium within the Gates (hereinafter collectively referred to as the "Class"). The Class is more particularly defined as follows:

> All persons and entities that own a condominium within The Gates located in the City of Columbia, Richland County, South Carolina.
>
> Excluded from the Class are: (a) any Judge presiding over this action and members of their families; (b) Defendants and any entity in which Defendants have a controlling interest or which have a controlling interest in Defendants and their legal representatives, assigns and successors of Defendants and Defendants' current or former employees, investors, members, or officers; and (c) all persons who properly execute and file a timely request for exclusion from the Class.

72. *Numerosity:* The Class is composed of in excess of one hundred fifty persons geographically dispersed throughout the State of South Carolina and the United States, the joinder of whom in one action is impractical. When spouses and co-owners are considered, the Class is expected to be in excess of two hundred members.

73. *Commonality:* Questions of law and fact common to the Class exist as to all members of the Class and predominate over any questions affecting only individual members of the Class. These common legal and factual issues include the following:

(a) Whether the construction and/or repair of The Gates was defective;

(b) Whether Defendants knew or should have known of the defects;

(c) Whether Defendants negligently constructed The Gates;

(d) Whether Defendants have acted or refused to act on grounds generally applicable to the Class;

(e) Whether Defendants are financially responsible to pay the full costs and expenses of repair of said defective conditions;

(f) Whether Plaintiffs and the Class are entitled to compensatory damages, including, among other things: (i) compensation for all out-of-pocket monies expended by other members of the Class for repair of their condominiums as well as repair/replacement of other property damage; (ii) temporary repairs; and (iii) compensation for loss of use.

(g) Whether the Plaintiffs are entitled to prejudgment interest, attorneys' fees and costs from Defendants.

74. *Typicality*: Plaintiffs' claims are typical of the claims of the members of the Class, as all such claims arise out of Defendants' wrongful conduct in constructing The Gates.

75. *Adequate Representation*: Plaintiff Swinson will fairly and adequately protect the interests of the members of the Class and has no interests antagonistic to those of the Class. Plaintiff Swinson has retained counsel experienced in the prosecution of construction defect claims and complex litigation, including consumer class actions involving product liability and product design defects.

76. *Predominance and Superiority*: This class action is appropriate for certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members, and a Class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable. Should individual Class Members be required to bring

separate actions, this Court would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single Court.

77. Defendants have acted on grounds generally applicable to the Class. Class certification is appropriate under South Carolina law because Defendants engaged in a uniform and common practice. All Class Members have the same legal right to and interest in redress for damages associated with the defective conditions existing within The Gates.

78. Plaintiff Swinson and the Class envision no unusual difficulty in the management of this action as a class action.

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

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

ESTOPPEL FROM PLEADING AND TOLLING OF APPLICABLE STATUTES OF LIMITATIONS

81. Defendants are estopped from relying on any statutes of limitation or repose by virtue of its acts. Upon information and belief, Defendants were in a position of superior knowledge and should have known The Gates was defectively constructed and failed to alert the Plaintiffs of The Gates' defective condition.

82. Defendants had a duty to inform Plaintiffs of the defects described herein, which it should have known. Notwithstanding its duty, Defendants never disclosed the defects to Plaintiffs.

83. Despite exercising reasonable diligence, Plaintiffs could not have discovered the defective condition of The Gates.

84. Given Defendants' failure to disclose this non-public information about the defective nature of The Gates - information over which it had exclusive control – and because Plaintiffs could not reasonably have known of The Gates's defective nature, Defendants are estopped from relying on any statutes of limitations or repose that might otherwise be applicable to the claims asserted herein.

85. Defendants are further estopped from relying upon any statute of limitations as they have repeatedly represented to Plaintiffs that they are only responsible for correcting work for a period of one year after sale.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

86. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

87. At all times relevant hereto, the Defendants, their agents, servants, employees, and subcontractors undertook and had a duty to Plaintiffs to exercise and use due care in the construction and repair of The Gates in a good, workmanlike manner and with suitable materials, in accordance with the applicable building codes, state law, and in conformance with the prevailing industry standards.

88. Defendants breached their duties to Plaintiffs and the Class in a manner that was negligent, careless, reckless, willful, and wanton in the following particulars:

(a) In failing to construct The Gates in accordance with due care and in accordance with standard building practices;

(b) In failing to construct The Gates in accordance with building code;

(c) In failing to properly supervise the work and construction of The Gates;

(d) In failing to properly coordinate the subcontractors;

(e) In failing to select proper building materials;

(f) In failing to construct The Gates with an adequate exterior building envelope;

(g) In failing to act as a reasonable person would in the circumstances then and there prevailing;

(h) In covering up their own defective work and/or the defective work of others;

(i) In failing to make repairs; and

(j) Such other failures to be proven at trial.

89. Plaintiffs have been damaged as a direct and proximate result of the negligence, carelessness, recklessness, willfulness, and wantonness of the Defendants.

90. If it is shown that said failures were committed with gross negligence and/or reckless disregard for the rights of others, and/or constituted negligence per se, Plaintiffs are entitled to an award of punitive damages against the Defendants.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

91. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

92. The construction, sale, and repair of The Gates came with express and implied warranties that the work would be performed in a careful, diligent and workmanlike manner and

that The Gates would be constructed with suitable materials and components and free from all defects and be of superior quality befitting an upscale condominium complex.

93. The construction, sale and/or repair of The Gates, and the components used therein, came with implied warranties of fitness, merchantability, and workmanship.

94. Defendants have breached their warranties by constructing The Gates in a defective manner as set forth above.

95. Additionally, the Dinerstein Defendants owed Plaintiffs a warranty of habitability.

96. As a direct and proximate result of the Defendants' breach of the implied warranty, Plaintiffs have suffered actual and consequential damages.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: *S.C. Code Ann.* § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

97. Plaintiffs repeat and re-allege the allegations contained in the above paragraphs as if fully set forth herein.

98. The Manufacturing and/or Supplier Defendants engaged in the business of manufacturing and/or supplying construction products, e.g. stucco, siding, window and door packages, parking garage system, tile, hand rails, stair systems, concrete, etc.

99. In manufacturing and/or supplying products for the construction of The Gates, the Manufacturing and/or Supplier Defendants placed products into the stream of commerce.

100. By introducing their products into the stream of commerce, the Manufacturing and/or Supplier Defendants represented said products were safe and suitable for their foreseeable use.

101. In the manufacture and/or supply of products to The Gates, the Manufacturing and/or Supplier Defendants anticipate and expect that their products will reach the public in substantially the same condition in which they were designed, developed, constructed, and sold.

102. The Manufacturing and/or Supplier Defendants have manufactured and/or supplied their products in a defective manner that has resulted in repeated water and/or air intrusion into and damage of the building components at The Gates.

103. The Manufacturing and/or Supplier Defendants have marketed and/or sold their products for use as components in structures such as The Gates. The components are in substantially the same condition as at the time the Manufacturing and/or Supplier Defendants sold them.

104. These products were unreasonably designed and manufactured and were defective at the time of sale.

105. The Plaintiff could not have discovered the product defects in the Buildings nor perceived their defective and/or dangerous condition through the exercise of reasonable care.

106. Because of the intended use involved, the likelihood and potential for serious injury to person and/or property is great. The defective nature of the products is dangerous to an extent beyond the ordinary knowledge common to the community and consuming public.

107. The cost of altering the design, construction and/or repair of the products supplied to The Gates to make them safe was substantially less than the resulting damage, cost, and injury suffered by the Plaintiff.

108. The products are defective and unreasonably dangerous, causing Plaintiff to have suffered damage.

109. The design and manufacture of the products supplied to the Gates were inherently defective as sold and are a direct and proximate cause of the damages suffered by Plaintiffs.

110. The Manufacturing and/or Supplier Defendants are therefore liable to Plaintiffs under the doctrine of strict liability in an amount to be determined by the trier of fact.

WHEREFORE, Plaintiffs demand a trial by jury and pray actual and consequential damages; statutory or punitive damages; reasonable attorneys' fees; costs of suit; prejudgment interest; and granting such further relief as the Court deems just and proper.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

By: _____

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February 11, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	
	C/A No: 2012-CP-40-8512
The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually and on behalf of all others similarly situated	ANSWER TO SECOND AMENDED COMPLAINT
Plaintiffs,	
vs.	
DDC Construction, Inc., Kapasi Glass Mart, Inc., DMC Consolidated Inc., DMC Builders, Co., Inc., Individually and d/b/a The Dinerstein Companies, DC Developers – Columbia Condos, Inc., Columbia Condos, LP, DMC Developers I, Ltd, 31-W Insulation Company, Inc., Associated Concrete Contractors, Inc., Bailey Electric Company, LLC, C&B Utilities, LP, Carolina Floor Systems Inc., Century Fire Protection, LLC, Cherokee Inc., Coronado Stucco, LP, Cross Plains Custom Tile, Inc. Lowry Construction and Framing, Inc., LTB Construction, Inc., Martin Morales Jr. Painting & Drywall, LLC, Metal Construction Materials, Inc., Southwest Ironworks, Inc., The Clerkley/ Watkins Group, LP, Tindall Corporation, Triad Pest Control, Inc., Wyman Acoustics LLC, Alenco Inc. d/b/a Ply Gem Window Group, Crosby Window, Inc., f/k/a Action WinDoor Technology, Inc., Geo-Systems Design & Testing, Inc., HGE Consulting, Inc., Maintenance Builders Supply, Ltd., SCA	

Engineers, Inc., Sinclair & Associates, Inc., Faultless Hardware, individually and d/b/a Pamex Inc. and John Doe #1-10,

Defendants.

The Defendant, Bailey Electric Company, LLC answering the Plaintiffs' Second Amended Complaint herein would respectfully show unto the court the following:

FOR A FIRST DEFENSE
(General Denial)

1. This Defendant denies each and every allegation of the Plaintiffs' Second Amended Complaint not herein specifically admitted.

2. Paragraphs 1 through 5 are admitted.

3. As to paragraph 6, this Defendant craves reference to the contract between the parties and denies each and every allegation inconsistent therewith.

4. Paragraphs 7 through 9 are admitted.

5. As to paragraphs 10 through 23, this Defendant lacks sufficient knowledge to form an opinion as to the allegations of paragraphs 10 through 23 and therefore denies the same and demands strict proof thereof.

6. As to paragraph 24, this Defendant craves reference to the contract between the parties and denies each and every allegation inconsistent therewith.

7. As to paragraphs 25 through 58, this Defendant lacks sufficient knowledge to form an opinion as to the allegations of paragraphs 25 through 58 and therefore denies the same and demands strict proof thereof.

8. Paragraphs 50 and 60 are admitted.

9. Paragraph 61 is denied.

10. As to paragraphs 62 through 64, this Defendant lacks sufficient knowledge to form an opinion as to the allegations of paragraphs 62 through 64 and therefore denies the same and demands strict proof thereof.

11. As to paragraph 65, this Defendant craves reference to the contract between the parties and denies each and every allegation inconsistent therewith.

12. Paragraphs 66 through 71 are denied.

13. As to paragraphs 72 through 76, this Defendant lacks sufficient knowledge to form an opinion as to the allegations of paragraphs 72 through 76 and therefore denies the same and demands strict proof thereof.

14. Paragraphs 77 and 78 are denied.

15. As to paragraph 79, this Defendant lacks sufficient knowledge to form an opinion as to the allegations of paragraph 79 and therefore denies the same and demands strict proof thereof.

16. Paragraph 80 is denied.

17. Paragraphs 81 through 85 are denied.

18. As to paragraph 86, this Defendant repeats and reiterates the defenses raised in paragraphs 1 through 85 above as fully as if set forth verbatim herein.

19. As to paragraph 87, this Defendant craves reference to the contract between the parties and denies each and every allegation inconsistent therewith.

20. Paragraphs 88 through 90 are denied.

21. As to paragraph 91, this Defendant repeats and reiterates the defenses raised in paragraphs 1 through 90 above as fully as if set forth verbatim herein.

22. Paragraphs 92 through 96 are denied.

23. As to paragraph 97, this Defendant repeats and reiterates the defenses raised in paragraphs 1 through 96 above as fully as if set forth verbatim herein.

24. Paragraphs 98 through 110 are denied.

FOR A SECOND DEFENSE
(Subject Matter Jurisdiction)

25. This court lacks jurisdiction over the subject matter of the Plaintiffs' Second Amended Complaint, the case therefore should be dismissed pursuant to South Carolina Rule of Civil Procedure 12(b)(1).

FOR A THIRD DEFENSE
(Waiver of Class Action Status)

26. The Plaintiffs have waived their right to bring a class action per the terms of the Master Deed for the project.

FOR A FOURTH DEFENSE
(Comparative Negligence)

27. If the Plaintiffs were at fault for causing the injuries for which the Plaintiffs complain, the Plaintiffs fault is pled as a complete defense to the Plaintiffs' claim or in the alternative, in proportionate reduction of the Plaintiffs' claim.

FOR A FIFTH DEFENSE
(Sole, Superseding or Intervening Negligence of Others)

28. This Defendant would show, upon information and belief that any claims against Bailey Electric Company, LLC are barred by the concurring, intervening or superseding fault of others over whom this Defendant had no control.

FOR A SIXTH DEFENSE
(Statute of Limitations)

29. This Defendant pleads the applicable Statute of Limitations as a complete bar to the Plaintiffs' claim.

FOR A SEVENTH DEFENSE
(Failure to Mitigate Damages)

30. This Defendant would show, upon information and belief that the Plaintiffs have failed to mitigate their damages and that any failure to mitigate the damages should act as a complete bar or in the alternative, a reduction of any damage award due to the Plaintiffs.

FOR AN EIGHTH DEFENSE
(Economic Loss Doctrine)

31. This Defendant would show that all non-contractual claims by the Plaintiffs are barred by the Economic Loss Doctrine.

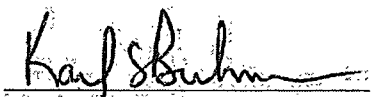
FOR A NINTH DEFENSE
(Punitive Damages)

32. This Defendant would show, upon information and belief, that the Plaintiffs' claim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double jeopardy clause in that this Defendant could be subjected to multiple awards of punitive damages for the same set of facts, the self-incrimination clause is being violated because this Defendant can be compelled to give testimony against itself in a penalty situation such as punitive damages, the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature, Plaintiffs' claim for punitive damages violates this Defendant's right to access to the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award

of punitive damages chills this Defendant's exercise of that right, the Plaintiffs' claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, and the Plaintiffs' claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards and, therefore, the Plaintiffs' claim for punitive damages should be dismissed.

WHEREFORE, having fully answered, this Defendant prays that the Plaintiffs' Second Amended Complaint be dismissed with costs.

BROWN & BREHMER

By: 

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(803) 771-6600
Attorneys for Bailey Electric Company, LLC

March 13, 2014

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	
)	
)	C/A No: 2012-CP-40-8512
The Gates at Williams-Brice)	
Condominium Association and)	
Katharine Swinson, individually)	
and on behalf of all others)	
similarly situated)	CERTIFICATE OF MAILING
)	
Plaintiffs,)	
)	
vs.)	
)	
DDC Construction, Inc., Kapasi)	
Glass Mart, Inc., DMC Consolidated)	
Inc., DMC Builders, Co., Inc.,)	
Individually and d/b/a The)	
Dinerstein Companies, DC)	
Developers – Columbia Condos,)	
Inc., Columbia Condos, LP, DMC)	
Developers I, Ltd, 31-W Insulation)	
Company, Inc., Associated)	
Concrete Contractors, Inc., Bailey)	
Electric Company, LLC, C&B)	
Utilities, LP, Carolina Floor Systems)	
Inc., Century Fire Protection, LLC,)	
Cherokee Inc., Coronado Stucco,)	
LP, Cross Plains Custom Tile, Inc.)	
Lowry Construction and Framing,)	
Inc., LTB Construction, Inc.,)	
Martin Morales Jr. Painting &)	
Drywall, LLC, Metal Construction)	
Materials, Inc., Southwest)	
Ironworks, Inc., The Clerkley/)	
Watkins Group, LP, Tindall)	
Corporation, Triad Pest Control,)	
Inc., Wyman Acoustics LLC,)	
Alenco Inc. d/b/a Ply Gem)	
Window Group, Crosby Window,)	
Inc., f/k/a Action WinDoor)	
Technology, Inc., Geo-Systems)	
Design & Testing, Inc., HGE)	
Consulting, Inc., Maintenance)	
Builders Supply, Ltd., SCA)	

Engineers, Inc., Sinclair & Associates, Inc., Faultless Hardware, individually and d/b/a Pamex Inc. and John Doe #1-10,

Defendants.

I, the undersigned employee of Brown & Brehmer, hereby certify that copies of the following documents have been served on the following individual(s) by depositing same in the United States Postal Service with the proper amount of first-class postage duly affixed:

Pleadings: Answer to Second Amended Complaint

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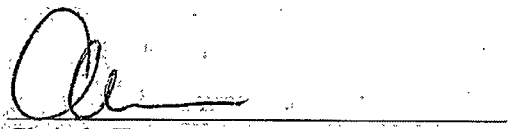
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Christle Turner

Columbia, South Carolina
March 13, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-8512

The Gates At Williams-Brice Condominium Association And Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co. Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Holding Corporation, Alenco Window GA, LLC, New Alenco Window, Ltd.; AWC Holding Company; Crosby Window, Inc., f/k/a/ Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc.; T & M Concrete, Inc.; Loveless Commercial Contracting, Inc.; Economy Waterproofing, Inc.; BMC West Corporation; Highway One Construction, Inc.; J.I. Windows LLC;

LTB CONSTRUCTION, INC.'S ANSWER TO SECOND AMENDED COMPLAINT

FILED
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Dietrich Industries, Inc., a/k/a Dietrich Metal Framing, Inc., n/k/a Clarkwestern Dietrich Building Systems LLC; Best Masonry and its successor in interest, OldCastleAPG; Headwaters, Inc. d/b/a Best Masonry; and John Doe #1-10.	)
Defendants.	)

Defendant LTB Construction, Inc. ("LTB" or "Defendant") answers the Second Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Defendant is not subject to jurisdiction of this Court and expressly reserves and refuses to waive any arguments related to lack of jurisdiction and proper service. Plaintiffs' claims against Defendant therefore should be dismissed pursuant to S.C. R. Civ. P. 12(b)(2), 12(b)(4) and 12(b)(5), and further responses below are made solely out of an abundance of caution, expressly reserving and refusing to waive any defenses as to jurisdiction or service.

2. Each and every allegation of the Plaintiffs' Second Amended Complaint not specifically admitted herein is expressly denied.

3. Defendant denies that Plaintiffs are entitled to a jury trial.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

4. Defendant is without sufficient information or knowledge to admit the allegations in Paragraphs 1, 2 and 3 and demands strict proof thereof.

5. Defendant admits the allegations of Paragraph 4 on information and belief.

6. Paragraphs 5 and 6 contain legal conclusions which do not require a response.

To the extent a response is required, the allegations are denied.

7. Defendant is without information or knowledge sufficient to admit or deny the allegations in Paragraphs 7 through 20 relative to the corporate status and/or operations of the entities designated therein and therefore denies same and demands strict proof thereof. Defendant admits only so much of Paragraphs 10 through 20 as allege that DDC Construction, Inc. was the general contractor of the project and that Columbia Condos, LP was the owner/developer of the project. Further, Defendant incorporates the responses of the entities identified in Paragraphs 7 through 20 by reference.

8. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 21 through 31 and 33 through 55 and therefore denies same and demands strict proof thereof.

9. Defendant admits only so much of Paragraph 32 as alleges Defendant is a corporation organized and existing under the laws of the State of Texas. All other allegations contained in Paragraph 32 are denied.

10. The allegations of Paragraphs 56 through 58 require no response. To the extent a response is required, the allegations are denied.

11. In answering Paragraph 59, Defendant admits it is subject to the jurisdiction of the Court but is without sufficient knowledge or information to admit or deny whether the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

12. Defendant admits the allegations in Paragraph 60 on information and belief.

13. Defendant denies the allegations in Paragraphs 61 through 64, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair

attempts. Answering further, Defendant is without knowledge or information sufficient to form a belief as to any contact with, or the knowledge of, the Dinerstein Defendants regarding alleged problems and therefore denies the same.

14. The allegations of Paragraph 65 calls for a legal conclusion to which no response is required. However, in the utmost caution, Defendant denies the allegations set forth therein.

15. Defendant denies the allegations in Paragraphs 66 through 70. Answering further, elements of Paragraphs 66 through 70 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

16. Defendant denies the allegations in Paragraphs 71 through 80 and opposes the certification of a class in this matter. Answering further, Defendant asserts that Plaintiffs and all putative class members have waived any right they may have had to proceed as a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

17. Defendant denies the allegations in Paragraphs 81 through 85 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

18. Answering Paragraph 86, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

19. The allegations in Paragraph 87 call for a legal conclusion to which no response is required. However, in the utmost caution LTB denies the allegations of Paragraph 87 as

they relate to it and demands strict proof thereof.

20. Defendant denies the allegations in Paragraphs 88 through 90, including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

21. Answering Paragraph 91, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

22. Paragraphs 92 and 93 contain legal conclusions which require no response. However, in the utmost caution LTB denies the allegations of these Paragraphs and demands strict proof thereof.

23. Defendant denies the allegations in Paragraphs 94 through 96 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

24. Answering Paragraph 97, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

25. Defendant is without sufficient information or belief to admit or deny the allegations in Paragraphs 98 through 110 to the extent they relate to other Manufacturer and/or Supplier Defendants as that term is defined in the Amended Complaint and therefore denies any such allegations and demands strict proof thereof. Answering further, Defendant states that it provided only limited drywall and texture work at The Gates, and has no knowledge of and is not liable for work performed by or supplies provided by any other entity on the project. Defendant further denies any allegations related to defects in or damages resulting from its

drywall and texture work at The Gates. All remaining allegations of Paragraphs 98 through 110 are denied.

26. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE

27. Plaintiffs' Second Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Second Amended Complaint should be dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

28. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

29. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

30. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

31. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute

of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

32. Plaintiffs are not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;
- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;
- 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;
- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and
- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

33. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S.

408 (2003).

FOR A NINTH DEFENSE

34. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can Defendant be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

35. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

36. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

37. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

38. Defendant would show that the alleged class members did not have any relationship with LTB nor is there any typicality or commonality as related to the action or acts of LTB, and thus, LTB is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

39. Defendant would show that to the extent damages are sought for work performed by others or damage resulting from the acts of others, it is not liable for these damages and LTB demands an apportionment and/or allocation of damages to properly reflect its responsibility.

FOR A FIFTEENTH DEFENSE

40. Plaintiffs' claims should be dismissed because of disclaimers and other defenses specifically provided in the Master Deed.

FOR A SIXTEENTH DEFENSE

41. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations. Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Second Amended Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

FOR A SEVENTEENTH DEFENSE

42. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

FOR AN EIGHTEENTH DEFENSE

43. Defendant would show that its interests are diverse from, and dissimilar to, the interests of the alleged developer, designer and contractor and denies DC Condos is, or should be considered, amalgamated with any other Defendant in this matter.

FOR A NINETEENTH DEFENSE

44. Defendant denies it has ever done business as "The Dinerstein Companies" and

as such any such reference should be dismissed as to it.

FOR A TWENTIETH DEFENSE

45. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

FOR A TWENTY-FIRST DEFENSE

46. Plaintiffs have waived their right to a jury trial.

FOR A TWENTY-SECOND DEFENSE

47. Plaintiffs and all putative class members have waived their right to proceed the class action mode of trial.

FOR A TWENTY-THIRD DEFENSE

48. Defendant is entitled to a set-off for any amounts recovered related to the alleged construction defects at issue from any other source by Plaintiffs.

FOR A TWENTY-FOURTH DEFENSE

49. Defendant is entitled to an allocation of fault as to each cause of action and each element of damage claimed by Plaintiffs.

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

SIGNATURE PAGE ATTACHED

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Attorneys for LTB Construction, Inc.

Columbia, South Carolina
March 21, 2014.

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, LTB Construction, Inc., do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified:

Document(s):

LTB Construction, Inc.'s Answer to Second Amended Complaint

Counsel Served *(via email and US Mail to Counsel for Plaintiffs and email only to all other counsel)*

2014 MAR 21 PM 2:20
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Debra C. Hair

March 21, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-8512

The Gates At Williams-Brice Condominium Association And Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co. Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Holding Corporation, Alenco Window GA, LLC, New Alenco Window, Ltd.; AWC Holding Company; Crosby Window, Inc., f/k/a/ Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc.; T & M Concrete, Inc.; Loveless Commercial Contracting, Inc.; Economy Waterproofing, Inc.; BMC West Corporation; Highway One Construction, Inc.; J.I. Windows LLC;

ASSOCIATED CONCRETE CONTRACTORS, INC.'S ANSWER TO SECOND AMENDED COMPLAINT

RICHLAND COUNTY
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JEANETTE W. WALKER
CLERK OF COURT

Dietrich Industries, Inc., a/k/a Dietrich Metal Framing, Inc., n/k/a Clarkwestern Dietrich Building Systems LLC; Best Masonry and its successor in interest, OldCastleAPG; Headwaters, Inc. d/b/a Best Masonry; and John Doe #1-10.	)
Defendants.	)

Defendant Associated Concrete Contractors, Inc. ("Associated Concrete" or "Defendant") answers the Second Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Each and every allegation of the Plaintiffs' Second Amended Complaint not specifically admitted herein is expressly denied.

2. Defendant denies that Plaintiff is entitled to a jury trial and demands a bench trial.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

3. Defendant is without sufficient information or knowledge to admit the allegations in Paragraphs 1, 2 and 3 and demands strict proof thereof.

4. Defendant admits the allegations of Paragraph 4 on information and belief.

5. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

6. Defendant is without information or knowledge sufficient to admit or deny the allegations in Paragraphs 7 through 20 relative to the corporate status and/or operations of the entities designated therein and therefore denies same and demands strict proof thereof.

Defendant admits only so much of Paragraphs 10 through 20 as allege that DDC Construction, Inc. was the general contractor of the project and that Columbia Condos, LP was the owner/developer of the project. Further, Defendant incorporates the responses of the entities identified in Paragraphs 7 through 20 by reference.

7. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 21 through 22 and 24 through 55 and therefore denies same and demands strict proof thereof.

8. Defendant admits only so much of Paragraph 23 as alleges Defendant is a corporation organized and existing under the laws of one of the states of the United States that provided certain concrete work with slab and garage foundations at The Gates. All other allegations contained in Paragraph 23 are denied.

9. The allegations of Paragraphs 56 through 58 require no response. To the extent a response is required, the allegations are denied.

10. In answering Paragraph 59, Defendant admits it is subject to the jurisdiction of the Court but is without sufficient knowledge or information to admit or deny whether the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

11. Defendant admits the allegations in Paragraph 60 on information and belief.

12. Defendant denies the allegations in Paragraphs 61 through 64, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts. Answering further, Defendant is without knowledge or information sufficient to form a belief as to any contact with, or the knowledge of, the Dinerstein Defendants regarding alleged problems and therefore denies the same.

13. The allegations of Paragraph 65 calls for a legal conclusion to which no response is required. However, in the utmost caution, Defendant denies the allegations set forth therein.

14. Defendant denies the allegations in Paragraphs 66 through 70. Answering further, elements of Paragraphs 66 through 70 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

15. Defendant denies the allegations in Paragraphs 71 through 80 and opposes the certification of a class in this matter. Answering further, Defendant asserts that Plaintiff and all putative class members have waived any right they may have had to proceed as a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

16. Defendant denies the allegations in Paragraphs 81 through 85 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

17. Answering Paragraph 86, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

18. The allegations in Paragraph 87 call for a legal conclusion to which no response is required. However, in the utmost caution Associated Concrete denies the allegations of Paragraph 87 as they relate to it and demands strict proof thereof.

19. Defendant denies the allegations in Paragraphs 88 through 90, including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

20. Answering Paragraph 91, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

21. Paragraphs 92 and 93 contain legal conclusions which require no response. However, in the utmost caution Associated Concrete denies the allegations of these Paragraphs and demands strict proof thereof.

22. Defendant denies the allegations in Paragraphs 94 and 96 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

23. Answering Paragraph 97, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

24. Defendant is without sufficient information or belief to admit or deny the allegations in Paragraphs 98 through 110 to the extent they relate to other Manufacturer and/or Supplier Defendants as that term is defined in the Second Amended Complaint and therefore denies any such allegations and demands strict proof thereof. Answering further, Defendant states that it provided only limited concrete work on the slab and garage foundations at The Gates, and has no knowledge of and is not liable for work performed by or supplies provided by any other entity on the project. Defendant further denies any allegations related to defects in or damages resulting from its slab and garage foundation concrete work at The Gates. All remaining allegations of Paragraphs 98 through 110 are denied.

25. Defendant denies that Plaintiffs are entitled to any of the relief sought in the

WHEREFORE clause against it.

FOR A SECOND DEFENSE

26. Plaintiffs' Second Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Second Amended Complaint should be dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

27. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

28. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

29. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

30. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

31. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;
- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;
- 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;
- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and
- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

32. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

33. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can Defendant be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

34. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

35. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

36. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

37. Defendant would show that the alleged class members did not have any relationship with Associated Concrete nor is there any typicality or commonality as related to the action or acts of Associated Concrete, and thus, Associated Concrete is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

38. Defendant would show that to the extent damages are sought for work performed by others or damage resulting from the acts of others, it is not liable for these damages and Associated Concrete demands an apportionment and/or allocation of damages to properly reflect its responsibility.

FOR A FIFTEENTH DEFENSE

39. Plaintiffs' claims should be dismissed because of disclaimers and other defenses specifically provided in the Master Deed.

FOR A SIXTEENTH DEFENSE

40. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations. Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Second Amended Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

FOR A SEVENTEENTH DEFENSE

41. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

FOR AN EIGHTEENTH DEFENSE

42. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

FOR A NINETEENTH DEFENSE

43. Plaintiffs have waived their right to a jury trial.

FOR A TWENTIETH DEFENSE

44. Plaintiffs and all putative class members have waived their right to proceed the class action mode of trial.

FOR A TWENTY-FIRST DEFENSE

45. Defendant is entitled to a set-off for any amounts recovered related to the alleged construction defects at issue from any other source by Plaintiffs.

FOR A TWENTY-SECOND DEFENSE

46. Defendant is entitled to an allocation of fault as to each cause of action and each element of damage claimed by Plaintiffs.

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

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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Attorneys for Associated Concrete Contractors, Inc.

Columbia, South Carolina
March 21, 2014.

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, Associated Concrete Contractors, Inc., do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified:

Document(s):

Associated Concrete Contractors, Inc.'s Answer to Second Amended Complaint

Counsel Served *(via email and US Mail to Counsel for Plaintiffs and email only to all other counsel)*

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Debra C. Hair

March 21, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-8512

The Gates At Williams-Brice Condominium Association And Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co. Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Holding Corporation, Alenco Window GA, LLC, New Alenco Window, Ltd.; AWC Holding Company; Crosby Window, Inc., f/k/a/ Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc.; T & M Concrete, Inc.; Loveless Commercial Contracting, Inc.; Economy Waterproofing, Inc.; BMC West Corporation; Highway One Construction, Inc.; J.I. Windows LLC;

C&B UTILITIES, LP'S ANSWER TO SECOND AMENDED COMPLAINT

FILED
RICHLAND COUNTY, S.C.
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JEANETTE W. WALDEN
C.C.P. & G.S.

Dietrich Industries, Inc., a/k/a Dietrich Metal Framing, Inc., n/k/a Clarkwestern Dietrich Building Systems LLC; Best Masonry and its successor in interest, OldCastleAPG; Headwaters, Inc. d/b/a Best Masonry; and John Doe #1-10.	)
Defendants.	)

Defendant C&B Utilities, LP ("C&B" or "Defendant") answers the second Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Each and every allegation of the Plaintiffs' Second Amended Complaint not specifically admitted herein is expressly denied.

2. Defendant denies that Plaintiffs are entitled to a jury trial.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

3. Defendant admits the allegations in Paragraphs 1, 2, 3 and 4 on information and belief.

4. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

5. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 7 through 9 and therefore denies same and demands strict proof thereof.

6. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 10 through 20 relative to the corporate status and/or operations of the entities and therefore denies same and demands strict proof thereof. However, Defendant admits only so much of Paragraphs 10 through 20 as allege that DDC Construction, Inc. was the general

contractor of the project and that Columbia Condos, LP was the owner/developer of the project. Further, Defendant incorporates the responses of the entities identified in Paragraphs 10 through 20 by reference.

7. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 21 through 24 and 26 through 55 and therefore denies same and demands strict proof thereof.

8. Defendant admits only so much of Paragraph 25 as alleges Defendant provided certain plumbing work at The Gates. Responding further, Defendant states it is a Limited Partnership organized and existing under the laws of the State of Texas. All other allegations contained in Paragraph 25 are denied.

9. The allegations of Paragraphs 56 through 58 require no response. To the extent a response is required, the allegations are denied.

10. In answering Paragraph 59, Defendant admits it is subject to the jurisdiction of the Court but is without sufficient knowledge or information to admit or deny that the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

11. Defendant admits the allegations in Paragraph 60 on information and belief.

12. Defendant denies the allegations in Paragraphs 61 through 64, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts.

13. The allegations of Paragraph 65 calls for a legal conclusion to which no response is required. However, in the utmost caution, Defendant denies the allegations set forth therein.

14. Defendant denies the allegations in Paragraphs 66 through 70. Answering further, elements of Paragraphs 66 through 70 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

15. Defendant denies the allegations in Paragraphs 71 through 80 and opposes the certification of a class in this matter. Answering further, Defendant asserts that Plaintiff and all putative class members have waived any right they may have had to proceed as a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

16. Defendant denies the allegations in Paragraphs 81 through 85 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

17. Answering Paragraph 86, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

18. The allegations in Paragraph 87 call for a legal conclusion to which no response is required. However, in the utmost caution C&B denies the allegations of Paragraph 87 and demands strict proof thereof.

19. Defendant denies the allegations in Paragraphs 88 through 90, including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

20. Answering Paragraph 91, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

21. Paragraphs 92 and 93 contain legal conclusions which require no response. However, in the utmost caution C&B denies the allegations of these Paragraphs and demands strict proof thereof.

22. Defendant denies the allegations in Paragraphs 94 and 96 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

23. Answering Paragraph 97, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

24. Defendant is without sufficient information or belief to admit or deny the allegations in Paragraphs 98 through 110 to the extent they relate to other Manufacturer and/or Supplier Defendants as that term is defined in the Second Amended Complaint and therefore denies any such allegations and demands strict proof thereof. Answering further, Defendant states that it provided only limited plumbing work at The Gates, and has no knowledge of and is not liable for work performed by or supplies provided by any other entity on the project. Defendant further denies any allegations related to defects in or damages resulting from its plumbing work at The Gates. All remaining allegations of Paragraphs 98 through 110 are denied.

25. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE

26. Plaintiffs' Second Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Second Amended Complaint should be

dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

27. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

28. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

29. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

30. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

31. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;

- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;
- 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;
- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and
- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

32. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

33. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can Defendant be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

34. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

35. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

36. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

37. Defendant would show that the alleged class members did not have any relationship with C&B nor is there any typicality or commonality as related to the action or acts of C&B, and thus, C&B is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

38. Defendant would show that it used competent and qualified entities and individuals to conduct inspections of the construction, and thus, its actions were reasonable and neither negligent nor grossly negligent, and thus, any claim for punitive damages should be denied.

FOR A FIFTEENTH DEFENSE

39. Plaintiffs' claims should be dismissed because of disclaimers and other defenses specifically provided in the Master Deed.

FOR A SIXTEENTH DEFENSE

40. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations.

Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

FOR AN EIGHTEENTH DEFENSE

41. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

FOR A NINETEENTH DEFENSE

42. Plaintiffs have waived their right to a jury trial.

FOR A TWENTIETH DEFENSE

43. Plaintiffs and all putative class members have waived their right to proceed the class action mode of trial.

FOR A TWENTY-FIRST DEFENSE

44. Defendant is entitled to a set-off for any amounts recovered related to the alleged construction defects at issue from any other source by Plaintiffs.

FOR A TWENTY-SECOND DEFENSE

45. Defendant is entitled to an allocation of fault as to each cause of action and each element of damage claimed by Plaintiffs.

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

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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Attorneys for C&B Utilities, LP

Columbia, South Carolina
March 21, 2014.

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, C&B Utilities, LP, do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified:

Document(s):

C&B Utilities, LP's Answer to Second Amended Complaint

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Debra C. Hair

March 21, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-8512

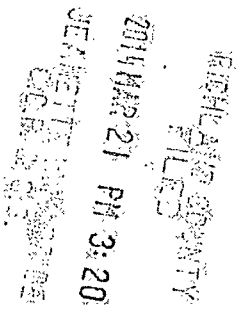
The Gates At Williams-Brice Condominium Association And Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co. Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Holding Corporation, Alenco Window GA, LLC, New Alenco Window, Ltd.; AWC Holding Company; Crosby Window, Inc., f/k/a/ Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc.; T & M Concrete, Inc.; Loveless Commercial Contracting, Inc.; Economy Waterproofing, Inc.; BMC West Corporation; Highway One Construction, Inc.; J.I. Windows LLC;

CENTURY FIRE PROTECTION, LLC'S ANSWER TO SECOND AMENDED COMPLAINT



Dietrich Industries, Inc., a/k/a Dietrich Metal Framing, Inc., n/k/a Clarkwestern Dietrich Building Systems LLC; Best Masonry and its successor in interest, OldCastleAPG; Headwaters, Inc. d/b/a Best Masonry; and John Doe #1-10.	)
Defendants.	)

Defendant Century Fire Protection, LLC ("Century Fire" or "Defendant") answers the Second Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Each and every allegation of the Plaintiffs' Second Amended Complaint not specifically admitted herein is expressly denied.

2. Defendant denies that Plaintiffs are entitled to a jury trial.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

3. Defendant is without sufficient information or knowledge to admit the allegations in Paragraphs 1, 2 and 3 and demands strict proof thereof.

4. Defendant admits the allegations of Paragraph 4 on information and belief.

5. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

6. Defendant is without information or knowledge sufficient to admit or deny the allegations in Paragraphs 7 through 20 relative to the corporate status and/or operations of the entities designated therein and therefore denies same and demands strict proof thereof. Defendant admits only so much of Paragraphs 10 through 20 as allege that DDC Construction,

Inc. was the general contractor of the project and that Columbia Condos, LP was the owner/developer of the project. Further, Defendant incorporates the responses of the entities identified in Paragraphs 7 through 20 by reference.

7. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 21 through 26 and 28 through 55 and therefore denies same and demands strict proof thereof.

8. Defendant admits only so much of Paragraph 27 as alleges Defendant is a corporation organized and existing under the laws of the State of Delaware. Century also admits only that it installed the wet sprinkler system for the project, and expressly denies that it performed any firesafing or firestopping as alleged. In further response to the allegations contained in this Paragraph, Century craves reference to its contract related to the wet sprinkler system for the project and denies any allegations inconsistent therewith. Century denies the remaining allegations contained in this paragraph and demands strict proof thereof.

9. All other allegations contained in Paragraph 31 are denied.

10. The allegations of Paragraphs 56 through 58 require no response. To the extent a response is required, the allegations are denied.

11. In answering Paragraph 59, Defendant admits it is subject to the jurisdiction of the Court but is without sufficient knowledge or information to admit or deny whether the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

12. Defendant admits the allegations in Paragraph 60 on information and belief.

13. Defendant denies the allegations in Paragraphs 61 through 64, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair

attempts. Answering further, Defendant is without knowledge or information sufficient to form a belief as to any contact with, or the knowledge of, the Dinerstein Defendants regarding alleged problems and therefore denies the same.

14. The allegations of Paragraph 65 calls for a legal conclusion to which no response is required. However, in the utmost caution, Defendant denies the allegations set forth therein.

15. Defendant denies the allegations in Paragraphs 66 through 70. Answering further, elements of Paragraphs 66 through 70 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

16. Defendant denies the allegations in Paragraphs 71 through 80 and opposes the certification of a class in this matter. Answering further, Defendant asserts that Plaintiff and all putative class members have waived any right they may have had to proceed as a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

17. Defendant denies the allegations in Paragraphs 81 through 85 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

18. Answering Paragraph 86, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

19. The allegations in Paragraph 87 call for a legal conclusion to which no response is required. However, in the utmost caution Century Fire denies the allegations of Paragraph

87 as they relate to it and demands strict proof thereof.

20. Defendant denies the allegations in Paragraphs 88 through 90, including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

21. Answering Paragraph 91, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

22. Paragraphs 92 and 93 contain legal conclusions which require no response. However, in the utmost caution Century Fire denies the allegations of these Paragraphs and demands strict proof thereof.

23. Defendant denies the allegations in Paragraphs 94 through 96 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

24. Answering Paragraph 97, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

25. Defendant is without sufficient information or belief to admit or deny the allegations in Paragraphs 98 through 110 to the extent they relate to other Manufacturer and/or Supplier Defendants as that term is defined in the Amended Complaint and therefore denies any such allegations and demands strict proof thereof. Answering further, Defendant states that it provided only limited drywall and texture work at The Gates, and has no knowledge of and is not liable for work performed by or supplies provided by any other entity on the project. Defendant further denies any allegations related to defects in or damages resulting from its

drywall and texture work at The Gates. All remaining allegations of Paragraphs 98 through 110 are denied.

26. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE

27. Plaintiffs' Second Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Second Amended Complaint should be dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

28. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

29. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

30. Defendant asserts that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

31. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute

of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

32. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;
- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;
- 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;
- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and
- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

33. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S.

408 (2003).

FOR A NINTH DEFENSE

34. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can Defendant be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

35. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

36. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

37. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

38. Defendant would show that the alleged class members did not have any relationship with Century Fire nor is there any typicality or commonality as related to the action or acts of Century Fire, and thus, Century Fire is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

39. Defendant would show that to the extent damages are sought for work performed by others or damage resulting from the acts of others, it is not liable for these damages and Century Fire demands an apportionment and/or allocation of damages to properly reflect its responsibility.

FOR A FIFTEENTH DEFENSE

40. Plaintiffs' claims should be dismissed because of disclaimers and other defenses specifically provided in the Master Deed.

FOR A SIXTEENTH DEFENSE

41. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations. Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Second Amended Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

FOR A SEVENTEENTH DEFENSE

42. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

FOR AN EIGHTEENTH DEFENSE

43. Defendant would show that its interests are diverse from, and dissimilar to, the interests of the alleged developer, designer and contractor and denies Century Fire is, or should be considered, amalgamated with any other Defendant in this matter.

FOR A NINETEENTH DEFENSE

44. Defendant denies it has ever done business as "The Dinerstein Companies" and

as such any such reference should be dismissed as to it.

FOR A TWENTIETH DEFENSE

45. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

FOR A TWENTY-FIRST DEFENSE

46. Plaintiffs have waived their right to a jury trial.

FOR A TWENTY-SECOND DEFENSE

47. Plaintiffs and all putative class members have waived their right to proceed the class action mode of trial.

FOR A TWENTY-THIRD DEFENSE

48. Defendant is entitled to a set-off for any amounts recovered related to the alleged construction defects at issue from any other source by Plaintiffs.

FOR A TWENTY-FOURTH DEFENSE

49. Defendant is entitled to an allocation of fault as to each cause of action and each element of damage claimed by Plaintiffs.

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

SIGNATURE PAGE ATTACHED

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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Attorneys for Century Fire Protection, LLC

Columbia, South Carolina
March 21, 2014.

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, Century Fire Protection, LLC, do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified:

Document(s):

Century Fire Protection, LLC's Answer to Second Amended Complaint

Counsel Served (*via email and US Mail to Counsel for Plaintiffs and email only to all other counsel*)

2014 MAR 21 PM 3:20

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Debra C. Hair

March 21, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-8512

The Gates At Williams-Brice Condominium Association And Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co. Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Holding Corporation, Alenco Window GA, LLC, New Alenco Window, Ltd.; AWC Holding Company; Crosby Window, Inc., f/k/a/ Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc.; T & M Concrete, Inc.; Loveless Commercial Contracting, Inc.; Economy Waterproofing, Inc.; BMC West Corporation; Highway One Construction, Inc.; J.I. Windows LLC;

CHEROKEE, INC.'S ANSWER TO SECOND AMENDED COMPLAINT

RICHLAND COUNTY
FILED
2014 MAR 21 PM 3:22
JEANETTE W. GRAMS
CLERK OF COURT

Dietrich Industries, Inc., a/k/a Dietrich Metal Framing, Inc., n/k/a Clarkwestern Dietrich Building Systems LLC; Best Masonry and its successor in interest, OldCastleAPG; Headwaters, Inc. d/b/a Best Masonry; and John Doe #1-10.

Defendants.

Defendant Cherokee Inc. ("Cherokee" or "Defendant") answers the Second Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Each and every allegation of the Plaintiffs' Second Amended Complaint not specifically admitted herein is expressly denied.

2. Defendant denies that Plaintiffs are entitled to a jury trial and demands a bench trial.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

3. Defendant is without sufficient information or knowledge to admit the allegations in Paragraphs 1, 2 and 3 and demands strict proof thereof.

4. Defendant admits the allegations of Paragraph 4 on information and belief.

5. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

6. Defendant is without information or knowledge sufficient to admit or deny the allegations in Paragraphs 7 through 20 relative to the corporate status and/or operations of the entities designated therein and therefore denies same and demands strict proof thereof. Defendant admits only so much of Paragraphs 10 through 20 as allege that DDC Construction,

Inc. was the general contractor of the project and that Columbia Condos, LP was the owner/developer of the project. Further, Defendant incorporates the responses of the entities identified in Paragraphs 7 through 20 by reference.

7. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 21 through 27 and 29 through 55 and therefore denies same and demands strict proof thereof.

8. Defendant admits only so much of Paragraph 28 as alleges Defendant is a corporation organized and existing under the laws of the State of Delaware that provided certain site work at The Gates. All other allegations contained in Paragraph 28 are denied.

9. The allegations of Paragraphs 56 through 58 require no response. To the extent a response is required, the allegations are denied.

10. In answering Paragraph 59, Defendant admits it is subject to the jurisdiction of the Court but is without sufficient knowledge or information to admit or deny whether the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

11. Defendant admits the allegations in Paragraph 60 on information and belief.

12. Defendant denies the allegations in Paragraphs 61 through 64, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts. Answering further, Defendant is without knowledge or information sufficient to form a belief as to any contact with, or the knowledge of, the Dinerstein Defendants regarding alleged problems and therefore denies the same.

13. The allegations of Paragraph 65 calls for a legal conclusion to which no response is required. However, in the utmost caution, Defendant denies the allegations set

forth therein.

14. Defendant denies the allegations in Paragraphs 66 through 70. Answering further, elements of Paragraphs 66 through 70 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

15. Defendant denies the allegations in Paragraphs 71 through 80 and opposes the certification of a class in this matter. Moreover, Defendant asserts that Plaintiff and all putative class members have waived any right they may have had to proceed as a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

16. Defendant denies the allegations in Paragraphs 81 through 85 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

17. Answering Paragraph 86, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

18. The allegations in Paragraph 87 call for a legal conclusion to which no response is required. However, in the utmost caution Cherokee denies the allegations of Paragraph 87 as they relate to it and demands strict proof thereof.

19. Defendant denies the allegations in Paragraphs 88 through 90, including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

20. Answering Paragraph 91, Defendant incorporates by reference the preceding

Paragraphs of its Answer as if repeated verbatim herein.

21. Paragraphs 92 and 93 contain legal conclusions which require no response. However, in the utmost caution Cherokee denies the allegations of these Paragraphs and demands strict proof thereof.

22. Defendant denies the allegations in Paragraphs 94 and 96 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

23. Answering Paragraph 97, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

24. Defendant is without sufficient information or belief to admit or deny the allegations in Paragraphs 98 through 110 to the extent they relate to other Manufacturer and/or Supplier Defendants as that term is defined in the Second Amended Complaint and therefore denies any such allegations and demands strict proof thereof. Answering further, Defendant states that it provided only limited site work at The Gates, and has no knowledge of and is not liable for work performed by or supplies provided by any other entity on the project. Defendant further denies any allegations related to defects in or damages resulting from its site work at The Gates. All remaining allegations of Paragraphs 98 through 110 are denied.

25. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE

26. Plaintiffs' Second Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Second Amended Complaint should be

dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

27. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

28. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

29. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

30. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

31. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;

- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;
- 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;
- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and
- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

32. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

33. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can Defendant be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

34. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

35. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

36. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

37. Defendant would show that the alleged class members did not have any relationship with Cherokee nor is there any typicality or commonality as related to the action or acts of Cherokee, and thus, Cherokee is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

38. Defendant would show that to the extent damages are sought for work performed by others or damage resulting from the acts of others, it is not liable for these damages and Cherokee demands an apportionment and/or allocation of damages to properly reflect its responsibility.

FOR A FIFTEENTH DEFENSE

39. Plaintiffs' claims should be dismissed because of disclaimers and other defenses specifically provided in the Master Deed.

FOR A SIXTEENTH DEFENSE

40. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations.

Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Second Amended Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

FOR A SEVENTEENTH DEFENSE

41. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

FOR AN EIGHTEENTH DEFENSE

42. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

FOR A NINETEENTH DEFENSE

43. Plaintiffs have waived their right to a jury trial.

FOR A TWENTIETH DEFENSE

44. Plaintiffs and all putative class members have waived their right to proceed the class action mode of trial.

FOR A TWENTY-FIRST DEFENSE

45. Defendant is entitled to a set-off for any amounts recovered related to the alleged construction defects at issue from any other source by Plaintiffs.

FOR A TWENTY-SECOND DEFENSE

46. Defendant is entitled to an allocation of fault as to each cause of action and each element of damage claimed by Plaintiffs.

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

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ T. Nd

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Attorneys for Cherokee Inc.

Columbia, South Carolina
March 21, 2014

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, Cherokee, Inc., do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified:

Document(s):

Cherokee, Inc.'s Answer to Second Amended Complaint

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Debra C. Hair

March 21, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-8512

The Gates At Williams-Brice Condominium Association And Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co. Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Holding Corporation, Alenco Window GA, LLC, New Alenco Window, Ltd.; AWC Holding Company; Crosby Window, Inc., f/k/a/ Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc.; T & M Concrete, Inc.; Loveless Commercial Contracting, Inc.; Economy Waterproofing, Inc.; BMC West Corporation; Highway One Construction, Inc.; J.I. Windows LLC;

COLUMBIA CONDOS, INC'S ANSWER TO SECOND AMENDED COMPLAINT AND CROSS-CLAIMS

RICHLAND COUNTY
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Dietrich Industries, Inc., a/k/a Dietrich Metal Framing, Inc., n/k/a Clarkwestern Dietrich Building Systems LLC; Best Masonry and its successor in interest, OldCastleAPG; Headwaters, Inc. d/b/a Best Masonry; and John Doe #1-10.	)
Defendants.	)

Defendant Columbia Condos, LP ("Columbia Condos" or "Defendant") answers the Second Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), and asserts cross-claims, as follows:

1. Each and every allegation of the Plaintiffs' Second Amended Complaint not specifically admitted herein is expressly denied.

2. Defendant denies that Plaintiff is entitled to a jury trial and demands a bench trial.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

3. Defendant admits the allegations in Paragraphs 1, 2, 3 and 4 on information and belief.

4. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

5. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 7 through 9 and therefore denies same and demands strict proof thereof.

6. Defendant admits the allegations in Paragraph 10.

7. Defendant admits the allegations of Paragraphs 11 and 12, but denies that DMC

Builders, Co. Inc. did business as the Dinerstein Companies.

8. Answering Paragraph 13, Defendant admits that DC Developers-Columbia Condos, Inc. is a Texas Corporation and the General partner of Columbia Condos, LP.

9. Defendant denies the allegations of Paragraph 14 because Columbia Condos, LP is a limited partnership and not a corporation.

10. Defendant admits the allegations of Paragraph 15.

11. Defendant admits the allegations of Paragraph 16.

12. Defendant denies the allegations of Paragraphs 17, 18, 19 and 20.

13. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 21 through 55 relative to the corporate status of the referenced entities and therefore denies same and demands strict proof thereof. However, Defendant admits some provided labor and/or materials for The Gates Project and were subcontractors or suppliers of Defendant or Defendant's subcontractors.

14. Defendant is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraphs 56 and 57 and denies the same.

15. The allegations of Paragraph 58 require no response. To the extent a response is required, the allegations are denied.

16. In answering Paragraph 59, Defendant admits it is subject to the jurisdiction of the Court but is without sufficient knowledge or information to admit or deny that the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

17. Defendant admits the allegations in Paragraph 60 on information and belief.

18. Defendant denies the allegations in Paragraphs 61 through 64, and specifically

denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts.

19. The allegations of Paragraph 65 call for a legal conclusion to which no response is required. However, in the utmost caution, Defendant denies the allegations set forth therein.

20. Defendant denies the allegations in Paragraphs 66 through 70. Answering further, elements of Paragraphs 66 through 70 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

21. Defendant denies the allegations in Paragraphs 71 through 80 and opposes the certification of a class in this matter. Moreover, Defendant asserts that Plaintiff and all putative class members have waived any right they may have had to proceed as a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

22. Defendant denies the allegations in Paragraphs 81 through 85 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

23. Answering Paragraph 86, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

24. The allegations in Paragraph 87 call for a legal conclusion to which no response is required. However, in the utmost caution Defendant denies the allegations of Paragraph 87 and demands strict proof thereof.

25. Defendant denies the allegations in Paragraphs 88 through 90, including all

subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

26. Answering Paragraph 91, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

27. Paragraphs 92 and 93 contain legal conclusions which require no response. However, in the utmost caution Defendant denies the allegations of these Paragraphs and demands strict proof thereof.

28. Defendant denies the allegations in Paragraphs 94 through 96 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

29. Answering Paragraph 97, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

30. The allegations in Paragraphs 98 through 110 are not directed at this Defendant, and therefore, no response is required. To the extent a response is required, Defendant is without information sufficient to admit or deny the allegations and therefore denies same and demands strict proof thereof.

31. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE
(Failure to State a Claim)

32. Plaintiffs' Second Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Amended Complaint should be

dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

33. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

34. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

35. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

36. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

37. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;

- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;
- 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;
- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and
- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

38. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

39. Defendant would show that the express warranty provided expired as to claims of Plaintiffs and Defendant fulfilled its obligations under the express warranty provided in the Master Deed.

FOR A TENTH DEFENSE

40. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

41. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

42. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

43. Defendant would show that it did not perform any of the construction work alleged and therefore is not responsible for any alleged construction defects.

FOR A FOURTEENTH DEFENSE

44. Defendant would show that it used competent and qualified entities and individuals to conduct inspections of the construction, and thus, its actions were reasonable and neither negligent nor grossly negligent, and thus, any claim for punitive damages should be denied.

FOR A FIFTEENTH DEFENSE

45. Plaintiffs' claims should be dismissed because of disclaimers and other defenses specifically provided in the Master Deed.

FOR A SIXTEENTH DEFENSE

46. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations. Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing

circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Second Amended Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

FOR A SEVENTEENTH DEFENSE

47. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

FOR AN EIGHTEENTH DEFENSE

48. Defendant would show that its interests are diverse from, and dissimilar to, the interests of the alleged developer, designer and contractor and denies DC Condos is, or should be considered, amalgamated with any other Defendant in this matter.

FOR A NINETEENTH DEFENSE

49. Defendant denies it has ever done business as "The Dinerstein Companies" and as such any such reference should be dismissed as to it.

FOR A TWENTIETH DEFENSE

50. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

FOR A TWENTY-FIRST DEFENSE

51. Plaintiffs have waived their right to a jury trial.

FOR A TWENTY-SECOND DEFENSE

52. Plaintiffs and all putative class members have waived their right to proceed the class action mode of trial.

FOR A TWENTY-THIRD DEFENSE

53. Defendant is entitled to a set-off for any amounts recovered related to the alleged construction defects at issue from any other source by Plaintiffs.

FOR A TWENTY-FOURTH DEFENSE

54. Defendant is entitled to an allocation of fault as to each cause of action and each element of damage claimed by Plaintiffs.

FOR A TWENTY-FIFTH DEFENSE AND FIRST CROSS-CLAIM

(Indemnification against Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Alenco Holding Corporation, Alenco Window GA, LLC, New Alenco Window, Ltd.; AWC Holding Company; Crosby Window, Inc., f/k/a/ Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc.; T & M Concrete, Inc.; Loveless Commercial Contracting, Inc.; Economy Waterproofing, Inc.; BMC West Corporation; J.I. Windows LLC; Dietrich Industries, Inc., a/k/a Dietrich Metal Framing, Inc., n/k/a Clarkwestern Dietrich Building Systems LLC; Best Masonry and its successor in interest, OldCastleAPG; Headwaters, Inc. d/b/a Best Masonry)

55. Plaintiff has alleged problems with virtually every aspect of the design, engineering, work and materials at the condominiums at issue.

56. Defendant has denied Plaintiff's allegations in this regard and believes that all design, engineering, work, and materials on the Project were performed adequately and consistent with industry standards.

57. However, to the extent Plaintiff is proven correct that the Defendants identified

above acted wrongfully in some manner with regard to their scope of work or professional services for the condominiums at issue, Defendant is entitled to indemnification, including compensation for attorney's fees and costs incurred, for any amounts attributable to the alleged wrongful acts or omissions by the above-identified Defendants.

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

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ H.V.D.

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March 21, 2014.

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, Columbia Condos, Inc., do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified:

Document(s):

Columbia Condos, Inc.'s Answer to Second Amended Complaint

Counsel Served (*via email and US Mail to Counsel for Plaintiffs and email only to all other counsel*)

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Debra C. Hair

March 21, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-8512

The Gates At Williams-Brice Condominium Association And Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co. Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Holding Corporation, Alenco Window GA, LLC, New Alenco Window, Ltd.; AWC Holding Company; Crosby Window, Inc., f/k/a/ Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc.; T & M Concrete, Inc.; Loveless Commercial Contracting, Inc.; Economy Waterproofing, Inc.; BMC West Corporation; Highway One Construction, Inc.; J.I. Windows LLC;

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CORONADO STUCCO, LP'S ANSWER TO SECOND AMENDED COMPLAINT

Dietrich Industries, Inc., a/k/a Dietrich Metal Framing, Inc., n/k/a Clarkwestern Dietrich Building Systems LLC; Best Masonry and its successor in interest, OldCastleAPG; Headwaters, Inc. d/b/a Best Masonry; and John Doe #1-10.	)
Defendants.	)

Defendant Coronado Stucco, LP ("Coronado" or "Defendant") answers the Second Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Each and every allegation of the Plaintiffs' Second Amended Complaint not specifically admitted herein is expressly denied.

2. Defendant denies that Plaintiffs are entitled to a jury trial.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

3. Defendant is without sufficient information or knowledge to admit the allegations in Paragraphs 1, 2 and 3 and demands strict proof thereof.

4. Defendant admits the allegations of Paragraph 4 on information and belief.

5. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

6. Defendant is without information or knowledge sufficient to admit or deny the allegations in Paragraphs 7 through 20 relative to the corporate status and/or operations of the entities designated therein and therefore denies same and demands strict proof thereof. Defendant admits only so much of Paragraphs 10 through 20 as allege that DDC Construction,

Inc. was the general contractor of the project and that Columbia Condos, LP was the owner/developer of the project. Further, Defendant incorporates the responses of the entities identified in Paragraphs 7 through 20 by reference.

7. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 21 through 28 and 30 through 55 and therefore denies same and demands strict proof thereof.

8. Defendant admits only so much of Paragraph 29 as alleges Defendant provided certain stucco work at The Gates. Coronado denies it was a corporation organized under the laws of the State of Texas. All other allegations contained in Paragraph 29 are denied.

9. The allegations of Paragraphs 56 through 58 require no response. To the extent a response is required, the allegations are denied.

10. In answering Paragraph 59, Defendant admits it is subject to the jurisdiction of the Court but is without sufficient knowledge or information to admit or deny whether the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

11. Defendant admits the allegations in Paragraph 60 on information and belief.

12. Defendant denies the allegations in Paragraphs 61 through 64, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts. Answering further, Defendant is without knowledge or information sufficient to form a belief as to any contact with, or the knowledge of, the Dinerstein Defendants regarding alleged problems and therefore denies the same.

13. The allegations of Paragraph 65 calls for a legal conclusion to which no response is required. However, in the utmost caution, Defendant denies the allegations set

forth therein.

14. Defendant denies the allegations in Paragraphs 66 through 70. Answering further, elements of Paragraphs 66 through 70 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

15. Defendant denies the allegations in Paragraphs 71 through 80 and opposes the certification of a class in this matter. Answering further, Defendant asserts that Plaintiff and all putative class members have waived any right they may have had to proceed as a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

16. Defendant denies the allegations in Paragraphs 81 through 85 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

17. Answering Paragraph 86, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

18. The allegations in Paragraph 87 call for a legal conclusion to which no response is required. However, in the utmost caution Coronado denies the allegations of Paragraph 87 as they relate to it and demands strict proof thereof.

19. Defendant denies the allegations in Paragraphs 88 through 90, including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

20. Answering Paragraph 91, Defendant incorporates by reference the preceding

Paragraphs of its Answer as if repeated verbatim herein.

21. Paragraphs 92 and 93 contain legal conclusions which require no response. However, in the utmost caution Coronado denies the allegations of these Paragraphs and demands strict proof thereof.

22. Defendant denies the allegations in Paragraphs 94 through 96 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

23. Answering Paragraph 97, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

24. Defendant is without sufficient information or belief to admit or deny the allegations in Paragraphs 98 through 110 to the extent they relate to other Manufacturer and/or Supplier Defendants as that term is defined in the Amended Complaint and therefore denies any such allegations and demands strict proof thereof. Answering further, Defendant states that it provided only stucco related work at The Gates, and has no knowledge of and is not liable for work performed by or supplies provided by any other entity on the project. Defendant further denies any allegations related to defects in or damages resulting from its stucco work at The Gates. All remaining allegations of Paragraphs 98 through 110 are denied.

25. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE

26. Plaintiffs' Second Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Second Amended Complaint should be

dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

27. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

28. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

29. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

30. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

31. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;

- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;
- 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;
- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and
- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

32. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

33. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can Defendant be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

34. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

35. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

36. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

37. Defendant would show that the alleged class members did not have any relationship with Coronado nor is there any typicality or commonality as related to the action or acts of Coronado, and thus, Coronado is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

38. Defendant would show that to the extent damages are sought for work performed by others or damage resulting from the acts of others, it is not liable for these damages and Coronado demands an apportionment and/or allocation of damages to properly reflect its responsibility.

FOR A FIFTEENTH DEFENSE

39. Plaintiffs' claims should be dismissed because of disclaimers and other defenses specifically provided in the Master Deed.

FOR A SIXTEENTH DEFENSE

40. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations.

Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Second Amended Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

FOR A SEVENTEENTH DEFENSE

41. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

FOR AN EIGHTEENTH DEFENSE

42. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

FOR A NINETEENTH DEFENSE

43. Plaintiffs have waived their right to a jury trial.

FOR A TWENTIETH DEFENSE

44. Plaintiffs and all putative class members have waived their right to proceed the class action mode of trial.

FOR A TWENTY-FIRST DEFENSE

45. Defendant is entitled to a set-off for any amounts recovered related to the alleged construction defects at issue from any other source by Plaintiffs.

FOR A TWENTY-SECOND DEFENSE

46. Defendant is entitled to an allocation of fault as to each cause of action and each element of damage claimed by Plaintiffs.

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

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By: /s/ T. N.

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Columbia, South Carolina
March 21, 2014.

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, Coronado Stucco, LP, do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified:

Document(s):

Coronado Stucco, LP's Answer to Second Amended Complaint

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Debra C. Hair

March 21, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-8512

The Gates At Williams-Brice Condominium Association And Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co. Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Holding Corporation, Alenco Window GA, LLC, New Alenco Window, Ltd.; AWC Holding Company; Crosby Window, Inc., f/k/a/ Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc.; T & M Concrete, Inc.; Loveless Commercial Contracting, Inc.; Economy Waterproofing, Inc.; BMC West Corporation; Highway One Construction, Inc.; J.I. Windows LLC;

CROSS PLAINS CUSTOM TILE, INC.'S ANSWER TO SECOND AMENDED COMPLAINT

RICHLAND COUNTY
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C.C.P. & G.S.

Dietrich Industries, Inc., a/k/a Dietrich Metal Framing, Inc., n/k/a Clarkwestern Dietrich Building Systems LLC; Best Masonry and its successor in interest, OldCastleAPG; Headwaters, Inc. d/b/a Best Masonry; and John Doe #1-10.

Defendants.

Defendant Cross Plains Custom Tile, Inc. ("Cross Plains" or "Defendant") answers the Second Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Each and every allegation of the Plaintiffs' Second Amended Complaint not specifically admitted herein is expressly denied.

2. Defendant denies that Plaintiffs are entitled to a jury trial.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

3. Defendant admits the allegations in Paragraphs 1, 2, 3 and 4 on information and belief.

4. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

5. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 7 through 9 and therefore denies same and demands strict proof thereof.

6. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 10 through 20 relative to the corporate status and/or operations of the entities and therefore denies same and demands strict proof thereof. However, Defendant admits only so

much of Paragraphs 10 through 20 as allege that DDC Construction, Inc. was the general contractor of the project and that Columbia Condos, LP was the owner/developer of the project. Further, Defendant incorporates the responses of the entities identified in Paragraphs 10 through 20 by reference.

7. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 21 through 29 and 31 through 55 and therefore denies same and demands strict proof thereof.

8. Defendant admits only so much of Paragraph 30 as alleges Defendant is a corporation organized and existing under the laws of the State of Texas that provided certain ceramic tile work at The Gates. All other allegations contained in Paragraph 30 are denied.

9. The allegations of Paragraphs 56 through 58 require no response. To the extent a response is required, the allegations are denied.

10. In answering Paragraph 59, Defendant admits it is subject to the jurisdiction of the Court but is without sufficient knowledge or information to admit or deny that the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

11. Defendant admits the allegations in Paragraph 60 on information and belief.

12. Defendant denies the allegations in Paragraphs 61 through 64, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts.

13. The allegations of Paragraph 65 calls for a legal conclusion to which no response is required. However, in the utmost caution, Defendant denies the allegations set forth therein.

14. Defendant denies the allegations in Paragraphs 66 through 70. Answering further, elements of Paragraphs 66 through 70 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

15. Defendant denies the allegations in Paragraphs 71 through 80 and opposes the certification of a class in this matter. Answering further, Defendant asserts that Plaintiff and all putative class members have waived any right they may have had to proceed as a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

16. Defendant denies the allegations in Paragraphs 81 through 85 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

17. Answering Paragraph 86, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

18. The allegations in Paragraph 87 call for a legal conclusion to which no response is required. However, in the utmost caution Cross Plains denies the allegations of Paragraph 87 and demands strict proof thereof.

19. Defendant denies the allegations in Paragraphs 88 through 90, including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

20. Answering Paragraph 91, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

21. Paragraphs 92 and 93 contain legal conclusions which require no response. However, in the utmost caution Cross Plains denies the allegations of these Paragraphs and demands strict proof thereof.

22. Defendant denies the allegations in Paragraphs 94 through 96 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

23. Answering Paragraph 97, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

24. Defendant is without sufficient information or belief to admit or deny the allegations in Paragraphs 98 through 110 to the extent they relate to other Manufacturer and/or Supplier Defendants as that term is defined in the Second Amended Complaint and therefore denies any such allegations and demands strict proof thereof. Answering further, Defendant states that it provided only limited ceramic tile work at The Gates, and has no knowledge of and is not liable for work performed by or supplies provided by any other entity on the project. Defendant further denies any allegations related to defects in or damages resulting from its ceramic tile work at The Gates. All remaining allegations of Paragraphs 98 through 110 are denied.

25. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE

26. Plaintiffs' Second Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Second Amended Complaint should be

dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

27. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

28. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

29. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

30. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

31. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;

- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;
- 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;
- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and
- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

32. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

33. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can Defendant be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

34. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

35. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

36. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

37. Defendant would show that the alleged class members did not have any relationship with Cross Plains nor is there any typicality or commonality as related to the action or acts of Cross Plains, and thus, Cross Plains is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

38. Defendant would show that it used competent and qualified entities and individuals to conduct inspections of the construction, and thus, its actions were reasonable and neither negligent nor grossly negligent, and thus, any claim for punitive damages should be denied.

FOR A FIFTEENTH DEFENSE

39. Plaintiffs' claims should be dismissed because of disclaimers and other defenses specifically provided in the Master Deed.

FOR A SIXTEENTH DEFENSE

40. Defendant has not had an opportunity to conduct a sufficient investigation or to

engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations. Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Second Amended Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

FOR A SEVENTEENTH DEFENSE

41. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

FOR AN EIGHTEENTH DEFENSE

42. Defendant would show that its interests are diverse from, and dissimilar to, the interests of the alleged developer, designer and contractor and denies DC Condos is, or should be considered, amalgamated with any other Defendant in this matter.

FOR A NINETEENTH DEFENSE

43. Defendant denies it has ever done business as "The Dinerstein Companies" and as such any such reference should be dismissed as to it.

FOR A TWENTIETH DEFENSE

44. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

FOR A TWENTY-FIRST DEFENSE

45. Plaintiffs have waived their right to a jury trial.

FOR A TWENTY-SECOND DEFENSE

46. Plaintiffs and all putative class members have waived their right to proceed the class action mode of trial.

FOR A TWENTY-THIRD DEFENSE

47. Defendant is entitled to a set-off for any amounts recovered related to the alleged construction defects at issue from any other source by Plaintiffs.

FOR A TWENTY-FOURTH DEFENSE

48. Defendant is entitled to an allocation of fault as to each cause of action and each element of damage claimed by Plaintiffs.

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

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Attorneys for Cross Plains Custom Tile, Inc.

Columbia, South Carolina
March 21, 2014.

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, Cross Plains Custom Tile, Inc., do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified:

Document(s):

Cross Plains Custom Tile, Inc.'s Answer to Second Amended Complaint

Counsel Served (*via email and US Mail to Counsel for Plaintiffs and email only to all other counsel*)

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CLERK OF COURT
2011 MAR 21 PM 3:21
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Debra C. Hair

March 21, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-8512

The Gates At Williams-Brice Condominium Association And Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co. Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Holding Corporation, Alenco Window GA, LLC, New Alenco Window, Ltd.; AWC Holding Company; Crosby Window, Inc., f/k/a/ Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc.; T & M Concrete, Inc.; Loveless Commercial Contracting, Inc.; Economy Waterproofing, Inc.; BMC West Corporation; Highway One Construction, Inc.; J.I. Windows LLC;

DC DEVELOPERS – COLUMBIA CONDOS, INC'S ANSWER TO SECOND AMENDED COMPLAINT

RICHLAND COUNTY
2014 NOV 21 PM 3:20
JEANETTE W. WALKER
CLERK OF COURT

Dietrich Industries, Inc., a/k/a Dietrich Metal Framing, Inc., n/k/a Clarkwestern Dietrich Building Systems LLC; Best Masonry and its successor in interest, OldCastleAPG; Headwaters, Inc. d/b/a Best Masonry; and John Doe #1-10.

Defendants.

Defendant DC Developers – Columbia Condos, Inc. ("DC Condos" or "Defendant") answers the Second Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Each and every allegation of the Plaintiffs' Second Amended Complaint not specifically admitted herein is expressly denied.

2. Defendant denies that Plaintiff is entitled to a jury trial and demands a bench trial.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

3. Defendant admits the allegations in Paragraphs 1, 2, 3 and 4.

4. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

5. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 7 through 9 and therefore denies same and demands strict proof thereof.

6. Defendant admits the allegations in Paragraphs 10 and 11.

7. In answering Paragraph 12, Defendant admits only that DMC Builders Co., Inc. is a corporation organized and existing under the laws of Texas. Defendant denies that it does

business as the Dinerstein Companies, as alleged.

8. Answering Paragraph 13, Defendant admits that DC Developers-Columbia Condos, Inc. is a Texas Corporation and the General partner of Columbia Condos, LP.

9. Defendant denies the allegations of Paragraph 14 in that Columbia Condos, LP is a limited partnership and not a corporation.

10. Defendant admits, on information and belief, the allegations of Paragraph 15.

11. Defendant denies the allegations of Paragraphs 16 through 20.

12. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 21 through 55 relative to the corporate status of the referenced entities and therefore denies same and demands strict proof thereof. However, Defendant admits on information and belief that some may have provided labor and/or materials for The Gates Project and were subcontractors or suppliers of DDC Construction, Inc. or its sub-subcontractors.

13. Defendant is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraphs 56 and 57 and denies the same.

14. The allegations of Paragraph 58 require no response. To the extent a response is required, the allegations are denied.

15. In answering Paragraph 59, Defendant admits it is subject to this Court's jurisdiction. Defendant is without sufficient knowledge or information to admit or deny that the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

16. Defendant admits the allegations in Paragraph 60 on information and belief.

17. Defendant denies the allegations in Paragraphs 61 through 64 as they relate to it,

and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts.

18. The allegations of Paragraphs 65 call for a legal conclusion to which no response is required. However, in the utmost caution, Defendant specifically denies the allegations set forth therein.

19. Defendant denies the allegations in Paragraphs 66 through 70. Answering further, elements of Paragraphs 66 through 70 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

20. Defendant denies the allegations in Paragraphs 71 through 80 as they relate to it and opposes the certification of a class in this matter. Answering further, Defendant states that Plaintiffs and all putative class members have waived their right to proceed as a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

21. Defendant denies the allegations in Paragraphs 81 through 85 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

22. Answering Paragraph 86, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

23. The allegations in Paragraph 87 call for a legal conclusion to which no response is required. However, in the utmost caution Defendant denies the allegations of Paragraph 87 and demands strict proof thereof.

24. Defendant denies the allegations in Paragraphs 88 through 90 as they relate to it, including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

25. Answering Paragraph 91, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

26. Paragraphs 92 and 93 contain legal conclusions which require no response. However, in the utmost caution Defendant denies the allegations of these Paragraphs and demands strict proof thereof.

27. Defendant denies that it issued any warranty on The Gates, express or implied, and therefore denies the allegations in Paragraphs 94 through 96 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

28. Answering Paragraph 97, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

29. The allegations in Paragraphs 98 through 110 are not directed at this Defendant, and therefore, no response is required. To the extent a response is required, Defendant is without information sufficient to admit or deny the allegations and therefore denies same and demands strict proof thereof.

30. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE

31. Plaintiffs' Second Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and therefore the Second Amended Complaint should be dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

32. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

33. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

34. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

35. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

36. Plaintiff is not entitled to an award of punitive damages because such damages

violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;
- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;
- 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;
- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and
- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

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38. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can

Defendant be liable for any claims of individual unit owners.

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39. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

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41. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

42. Defendant would show that the alleged class members did not have any relationship with DC Condos nor is there any typicality or commonality as related to the action or acts of Defendant, and thus, DC Condos is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

43. Defendant would show that it was not involved in the design, development, construction or sale of The Gates Project and all claims as to it should be denied.

FOR A FIFTEENTH DEFENSE

44. Plaintiffs' claims should be dismissed because of disclaimers and other defenses specifically provided in the Master Deed or other contractual agreements.

FOR A SIXTEENTH DEFENSE

45. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations. Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing

circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Second Amended Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

FOR A SEVENTEENTH DEFENSE

46. Defendant would show that it did not take part in the construction of this Project nor was it licensed as a builder in the State of South Carolina and therefore is not liable for any alleged deficiencies in the construction.

FOR A EIGHTEENTH DEFENSE

47. Defendant would show that its interests are diverse from, and dissimilar to, the interests of the alleged developer, designer and contractor and denies DC Condos is, or should be considered, amalgamated with any other Defendant in this matter.

FOR A NINETEENTH DEFENSE

48. Defendant denies it has ever done business as "The Dinerstein Companies" and as such any such reference should be dismissed as to it.

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FOR A TWENTY-FIRST DEFENSE

50. Plaintiffs have waived their right to a jury trial.

FOR A TWENTY-SECOND DEFENSE

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

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Attorneys for DC Developers – Columbia Condos, Inc.

Columbia, South Carolina
March 21, 2014.

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DC Developers – Columbia Condos, Inc., do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified:

Document(s):

DC Developers – Columbia Condos, Inc.'s Answer to Second Amended Complaint

Counsel Served (*via email and US Mail to Counsel for Plaintiffs and email only to all other counsel*)

2014 MAR 21 PM 2:20

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Debra C. Hair

March 21, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

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Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co. Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Holding Corporation, Alenco Window GA, LLC, New Alenco Window, Ltd.; AWC Holding Company; Crosby Window, Inc., f/k/a/ Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc.; T & M Concrete, Inc.; Loveless Commercial Contracting, Inc.; Economy Waterproofing, Inc.; BMC West Corporation; Highway One Construction, Inc.; J.I. Windows LLC;

DDC CONSTRUCTION, INC.'S ANSWER TO SECOND AMENDED COMPLAINT AND CROSS-CLAIMS

FILED
RICHLAND COUNTY
2013 MAR 21 PM 3:23

Dietrich Industries, Inc., a/k/a Dietrich Metal Framing, Inc., n/k/a Clarkwestern Dietrich Building Systems LLC; Best Masonry and its successor in interest, OldCastleAPG; Headwaters, Inc. d/b/a Best Masonry; and John Doe #1-10.

Defendants.

Defendant DDC Construction, Inc. ("DDC" or "Defendant") answers the Second Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), and asserts cross-claims, as follows:

1. Each and every allegation of the Plaintiffs' Second Amended Complaint not specifically admitted herein is expressly denied.

2. Defendant denies that Plaintiff is entitled to a jury trial and demands a bench trial.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

3. Defendant admits the allegations in Paragraphs 1, 2, 3 and 4 on information and belief.

4. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

5. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 7 through 9 and therefore denies same and demands strict proof thereof.

6. Defendant admits the allegations in Paragraph 10.

7. Defendant admits the allegations of Paragraphs 11 and 12, but denies that DMC

Builders, Co. Inc. did business as the Dinerstein Companies.

8. Answering Paragraph 13, Defendant admits that DC Developers-Columbia Condos, Inc. is a Texas Corporation and the General partner of Columbia Condos, LP.

9. Defendant denies the allegations of Paragraph 14 because Columbia Condos, LP is a limited partnership and not a corporation.

10. Defendant admits the allegations of Paragraph 15.

11. Defendant admits the allegations of Paragraph 16.

12. Defendant denies the allegations of Paragraphs 17, 18, 19 and 20.

13. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 21 through 55 relative to the corporate status of the referenced entities and therefore denies same and demands strict proof thereof. However, Defendant admits some provided labor and/or materials for The Gates Project and were subcontractors or suppliers of Defendant or Defendant's subcontractors.

14. Defendant is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraphs 56 and 57 and denies the same.

15. The allegations of Paragraph 58 require no response. To the extent a response is required, the allegations are denied.

16. In answering Paragraph 59, Defendant admits it is subject to the jurisdiction of the Court but is without sufficient knowledge or information to admit or deny that the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

17. Defendant admits the allegations in Paragraph 60 on information and belief.

18. Defendant denies the allegations in Paragraphs 61 through 64, and specifically

denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts.

19. The allegations of Paragraph 65 call for a legal conclusion to which no response is required. However, in the utmost caution, Defendant denies the allegations set forth therein.

20. Defendant denies the allegations in Paragraphs 66 through 70. Answering further, elements of Paragraphs 66 through 70 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

21. Defendant denies the allegations in Paragraphs 71 through 80 and opposes the certification of a class in this matter. Answering further, Defendant asserts that Plaintiff and all putative class members have waived any right they may have had to proceed as a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

22. Defendant denies the allegations in Paragraphs 81 through 85 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

23. Answering Paragraph 86, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

24. The allegations in Paragraph 87 call for a legal conclusion to which no response is required. However, in the utmost caution DDC denies the allegations of Paragraph 87 and demands strict proof thereof.

25. Defendant denies the allegations in Paragraphs 88 through 90, including all

subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

26. Answering Paragraph 91, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

27. Paragraphs 92 and 93 contain legal conclusions which require no response. However, in the utmost caution DDC denies the allegations of these Paragraphs and demands strict proof thereof.

28. Defendant denies the allegations in Paragraphs 94 through 96 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

29. Answering Paragraph 97, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

30. The allegations in Paragraphs 98 through 110 are not directed at this Defendant, and therefore, no response is required. To the extent a response is required, Defendant is without information sufficient to admit or deny the allegations and therefore denies same and demands strict proof thereof.

31. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE
(Failure to State a Claim)

32. Plaintiffs' Second Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Amended Complaint should be

dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

33. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

34. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

35. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

36. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

37. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;

- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;
- 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;
- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and
- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

38. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

39. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can DDC be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

40. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

41. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

42. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

43. Defendant would show that the alleged class members did not have any relationship with DDC nor is there any typicality or commonality as related to the action or acts of DDC, and thus, DDC is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

44. Defendant would show that it used competent and qualified entities and individuals to conduct inspections of the construction, and thus, its actions were reasonable and neither negligent nor grossly negligent, and thus, any claim for punitive damages should be denied.

FOR A FIFTEENTH DEFENSE

45. Plaintiffs' claims should be dismissed because of disclaimers and other defenses specifically provided in the Master Deed.

FOR A SIXTEENTH DEFENSE

46. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations.

Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Second Amended Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

FOR A SEVENTEENTH DEFENSE

47. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

FOR AN EIGHTEENTH DEFENSE

48. Defendant would show that its interests are diverse from, and dissimilar to, the interests of the alleged developer, designer and contractor and denies DC Condos is, or should be considered, amalgamated with any other Defendant in this matter.

FOR A NINETEENTH DEFENSE

49. Defendant denies it has ever done business as "The Dinerstein Companies" and as such any such reference should be dismissed as to it.

FOR A TWENTIETH DEFENSE

50. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

FOR A TWENTY-FIRST DEFENSE

51. Plaintiffs have waived their right to a jury trial.

FOR A TWENTY-SECOND DEFENSE

52. Plaintiffs and all putative class members have waived their right to proceed the class action mode of trial.

FOR A TWENTY-THIRD DEFENSE

53. Defendant is entitled to a set-off for any amounts recovered related to the alleged construction defects at issue from any other source by Plaintiffs.

FOR A TWENTY-FOURTH DEFENSE

54. Defendant is entitled to an allocation of fault as to each cause of action and each element of damage claimed by Plaintiffs.

FOR A TWENTY-FIFTH DEFENSE AND FIRST CROSS-CLAIM

(Indemnification against Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Alenco Holding Corporation, Alenco Window GA, LLC, New Alenco Window, Ltd.; AWC Holding Company; Crosby Window, Inc., f/k/a/ Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc.; T & M Concrete, Inc.; Loveless Commercial Contracting, Inc.; Economy Waterproofing, Inc.; BMC West Corporation; J.I. Windows LLC; Dietrich Industries, Inc., a/k/a Dietrich Metal Framing, Inc., n/k/a Clarkwestern Dietrich Building Systems LLC; Best Masonry and its successor in interest, OldCastleAPG; Headwaters, Inc. d/b/a Best Masonry)

55. Plaintiff has alleged problems with virtually every aspect of the design, engineering, work and materials at the condominiums at issue.

56. Defendant has denied Plaintiff's allegations in this regard and believes that all design, engineering, work, and materials on the Project were performed adequately and

consistent with industry standards.

57. However, to the extent Plaintiff is proven correct that the Defendants identified above acted wrongfully in some manner with regard to their scope of work or professional services for the condominiums at issue, Defendant is entitled to indemnification, including compensation for attorney's fees and costs incurred, for any amounts attributable to the alleged wrongful acts or omissions by the above-identified Defendants.

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

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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Attorneys for DDC Construction, Inc.

Columbia, South Carolina
March 21, 2014.

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, Inc., do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified:

Document(s):

DDC Construction, Inc.'s Answer to Second Amended Complaint

Counsel Served *(via email and US Mail to Counsel for Plaintiffs and email only to all other counsel)*

RICHLAND COUNTY FILED
2014 MAR 21 PM 3:28
JEAN HEFFER BLACKWELL CLERK C.C.P. & G.S.

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Debra C. Hair

March 21, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-8512

The Gates At Williams-Brice Condominium Association And Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co. Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Holding Corporation, Alenco Window GA, LLC, New Alenco Window, Ltd.; AWC Holding Company; Crosby Window, Inc., f/k/a/ Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc.; T & M Concrete, Inc.; Loveless Commercial Contracting, Inc.; Economy Waterproofing, Inc.; BMC West Corporation; Highway One Construction, Inc.; J.I. Windows LLC;

DMC CONSOLIDATED, INC.'S ANSWER TO SECOND AMENDED COMPLAINT

FILED
RICHLAND COUNTY
2014 MAR 21 PM 3:22
JEANETTE W. WALTERS
CLERK OF COURT

Dietrich Industries, Inc., a/k/a Dietrich Metal Framing, Inc., n/k/a Clarkwestern Dietrich Building Systems LLC; Best Masonry and its successor in interest, OldCastleAPG; Headwaters, Inc. d/b/a Best Masonry; and John Doe #1-10.	)
Defendants.	)

DMC Consolidated, Inc. ("DMC Consolidated" or "Defendant") answers the Second Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Each and every allegation of the Plaintiffs' Second Amended Complaint not specifically admitted herein is expressly denied.

2. Defendant is not subject to jurisdiction of this Court and expressly reserves and refuses to waive any arguments related to lack of jurisdiction and proper service. Plaintiffs' claims against Defendant therefore should be dismissed pursuant to S.C. R. Civ. P. 12(b)(2), 12(b)(4) and 12(b)(5), and further responses below are made solely out of an abundance of caution, expressly reserving and refusing to waive any defenses as to jurisdiction or service.

3. Defendant denies that Plaintiff is entitled to a jury trial and demands a bench trial.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

4. Defendant admits the allegations in Paragraphs 1, 2, 3 and 4.

5. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

6. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 7 through 9 and therefore denies same and demands strict proof thereof.

7. Defendant admits the allegations in Paragraphs 10 and 11.

8. In answering Paragraph 12, Defendant admits only that DMC Builders Co., Inc. is a corporation organized and existing under the laws of Texas. Defendant denies that it does business as the Dinerstein Companies, as alleged.

9. Answering Paragraph 13, Defendant admits that DC Developers-Columbia Condos, Inc. is a Texas Corporation and the General partner of Columbia Condos, LP.

10. Defendant denies the allegations of Paragraph 14 in that Columbia Condos, LP is a limited partnership and not a corporation.

11. Defendant admits, on information and belief, the allegations of Paragraph 15.

12. Defendant denies the allegations of Paragraphs 16 through 20.

13. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 21 through 55 relative to the corporate status of the referenced entities and therefore denies same and demands strict proof thereof. However, Defendant admits on information and belief that some may have provided labor and/or materials for The Gates Project and were subcontractors or suppliers of DDC Construction, Inc. or its sub-subcontractors.

14. Defendant is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraphs 56 and 57 and denies the same.

15. The allegations of Paragraph 58 require no response. To the extent a response is required, the allegations are denied.

16. In answering Paragraph 59, Defendant denies it is subject to this Court's

jurisdiction. Defendant is without sufficient knowledge or information to admit or deny that the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

17. Defendant admits the allegations in Paragraph 60 on information and belief.

18. Defendant denies the allegations in Paragraphs 61 through 64 as they relate to it, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts.

19. The allegations of Paragraphs 65 call for a legal conclusion to which no response is required. However, in the utmost caution, Defendant specifically denies the allegations set forth therein.

20. Defendant denies the allegations in Paragraphs 66 through 70. Answering further, elements of Paragraphs 66 through 70 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

21. Defendant denies the allegations in Paragraphs 71 through 80 as they relate to it and opposes the certification of a class in this matter. Answering further, Defendant states that Plaintiffs and all putative class members have waived their right to proceed as a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

22. Defendant denies the allegations in Paragraphs 81 through 85 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

23. Answering Paragraph 86, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

24. The allegations in Paragraph 87 call for a legal conclusion to which no response is required. However, in the utmost caution Defendant denies the allegations of Paragraph 87 and demands strict proof thereof.

25. Defendant denies the allegations in Paragraphs 88 through 90 as they relate to it, including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

26. Answering Paragraph 91, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

27. Paragraphs 92 and 93 contain legal conclusions which require no response. However, in the utmost caution Defendant denies the allegations of these Paragraphs and demands strict proof thereof.

28. Defendant denies that it issued any warranty on The Gates, express or implied, and therefore denies the allegations in Paragraphs 94 through 96 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

29. Answering Paragraph 97, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

30. The allegations in Paragraphs 98 through 110 are not directed at this Defendant,

and therefore, no response is required. To the extent a response is required, Defendant is without information sufficient to admit or deny the allegations and therefore denies same and demands strict proof thereof.

31. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE

32. Plaintiffs' Second Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and therefore the Second Amended Complaint should be dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

33. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

34. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

35. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

36. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses

of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

37. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;
- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;
- 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;
- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and
- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

38. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group,*

Inc., 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

39. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can Defendant be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

40. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

41. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

42. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

43. Defendant would show that the alleged class members did not have any relationship with DC Condos nor is there any typicality or commonality as related to the action or acts of Defendant, and thus, DC Condos is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

44. Defendant would show that it was not involved in the design, development, construction or sale of The Gates Project and all claims as to it should be denied.

FOR A FIFTEENTH DEFENSE

45. Plaintiffs' claims should be dismissed because of disclaimers and other defenses

specifically provided in the Master Deed or other contractual agreements.

FOR A SIXTEENTH DEFENSE

46. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations. Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

FOR A SEVENTEENTH DEFENSE

47. Defendant would show that it did not take part in the construction of this Project nor was it licensed as a builder in the State of South Carolina and therefore is not liable for any alleged deficiencies in the construction.

FOR A EIGHTEENTH DEFENSE

48. Defendant would show that its interests are diverse from, and dissimilar to, the interests of the alleged developer, designer and contractor and denies DC Condos is, or should be considered, amalgamated with any other Defendant in this matter.

FOR A NINETEENTH DEFENSE

49. Defendant denies it has ever done business as "The Dinerstein Companies" and as such any such reference should be dismissed as to it.

FOR A TWENTIETH DEFENSE

50. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

FOR A TWENTY-FIRST DEFENSE

51. Plaintiffs have waived their right to a jury trial.

FOR A TWENTY-SECOND DEFENSE

52. Plaintiffs and all putative class members have waived their right to proceed the class action mode of trial.

FOR A TWENTY-THIRD DEFENSE

53. Defendant is entitled to a set-off for any amounts recovered related to the alleged construction defects at issue from any other source by Plaintiffs.

FOR A TWENTY-FOURTH DEFENSE

54. Defendant is entitled to an allocation of fault as to each cause of action and each element of damage claimed by Plaintiffs.

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

SIGNATURE PAGE ATTACHED

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Attorneys for DMC Consolidated, Inc.

Columbia, South Carolina
March 21, 2014.

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DMC Consolidated, Inc., do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified:

Document(s):

DMC Consolidated, Inc.'s Answer to Second Amended Complaint

Counsel Served (*via email and US Mail to Counsel for Plaintiffs and email only to all other counsel*)

2016 MAR 21 PM 3:22
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(Attorneys for Southwest Ironwork, Inc.)

Debra C. Hair

March 21, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-8512

The Gates At Williams-Brice Condominium Association And Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co. Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Holding Corporation, Alenco Window GA, LLC, New Alenco Window, Ltd.; AWC Holding Company; Crosby Window, Inc., f/k/a/ Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc.; T & M Concrete, Inc.; Loveless Commercial Contracting, Inc.; Economy Waterproofing, Inc.; BMC West Corporation; Highway One Construction, Inc.; J.I. Windows LLC;

DMC DEVELOPERS I, LTD.'S ANSWER TO SECOND AMENDED COMPLAINT

RICHLAND COUNTY
FILED
2013 MAR 21 PM 3:22
JEANETTE W. WALDEN
CLERK OF COURT

Dietrich Industries, Inc., a/k/a Dietrich Metal Framing, Inc., n/k/a Clarkwestern Dietrich Building Systems LLC; Best Masonry and its successor in interest, OldCastleAPG; Headwaters, Inc. d/b/a Best Masonry; and John Doe #1-10.	)
Defendants.	)

DMC Developers I, Ltd. ("DMC Developers" or "Defendant") answers the Second Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Each and every allegation of the Plaintiffs' Second Amended Complaint not specifically admitted herein is expressly denied.

2. Defendant is not subject to jurisdiction of this Court and expressly reserves and refuses to waive any arguments related to lack of jurisdiction and proper service. Plaintiffs' claims against Defendant therefore should be dismissed pursuant to S.C. R. Civ. P. 12(b)(2), 12(b)(4) and 12(b)(5), and further responses below are made solely out of an abundance of caution, expressly reserving and refusing to waive any defenses as to jurisdiction or service.

3. Defendant denies that Plaintiff is entitled to a jury trial and demands a bench trial.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

4. Defendant admits the allegations in Paragraphs 1, 2, 3 and 4.

5. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

6. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 7 through 9 and therefore denies same and demands strict proof thereof.

7. Defendant admits the allegations in Paragraphs 10 and 11.

8. In answering Paragraph 12, Defendant admits only that DMC Builders Co., Inc. is a corporation organized and existing under the laws of Texas. Defendant denies that it does business as the Dinerstein Companies, as alleged.

9. Answering Paragraph 13, Defendant admits that DC Developers-Columbia Condos, Inc. is a Texas Corporation and the General partner of Columbia Condos, LP.

10. Defendant denies the allegations of Paragraph 14 in that Columbia Condos, LP is a limited partnership and not a corporation.

11. Defendant admits, on information and belief, the allegations of Paragraph 15.

12. Defendant denies the allegations of Paragraphs 16 through 20.

13. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 21 through 55 relative to the corporate status of the referenced entities and therefore denies same and demands strict proof thereof. However, Defendant admits on information and belief that some may have provided labor and/or materials for The Gates Project and were subcontractors or suppliers of DDC Construction, Inc. or its sub-subcontractors.

14. Defendant is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraphs 56 and 57 and denies the same.

15. The allegations of Paragraph 58 require no response. To the extent a response is required, the allegations are denied.

16. In answering Paragraph 59, Defendant denies it is subject to this Court's

jurisdiction. Defendant is without sufficient knowledge or information to admit or deny that the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

17. Defendant admits the allegations in Paragraph 60 on information and belief.

18. Defendant denies the allegations in Paragraphs 61 through 64 as they relate to it, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts.

19. The allegations of Paragraphs 65 call for a legal conclusion to which no response is required. However, in the utmost caution, Defendant specifically denies the allegations set forth therein.

20. Defendant denies the allegations in Paragraphs 66 through 70. Answering further, elements of Paragraphs 66 through 70 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

21. Defendant denies the allegations in Paragraphs 71 through 80 as they relate to it and opposes the certification of a class in this matter. Answering further, Defendant states that Plaintiffs and all putative class members have waived their right to proceed as a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

22. Defendant denies the allegations in Paragraphs 81 through 85 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

23. Answering Paragraph 86, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

24. The allegations in Paragraph 87 call for a legal conclusion to which no response is required. However, in the utmost caution Defendant denies the allegations of Paragraph 87 and demands strict proof thereof.

25. Defendant denies the allegations in Paragraphs 88 through 90 as they relate to it, including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

26. Answering Paragraph 91, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

27. Paragraphs 92 and 93 contain legal conclusions which require no response. However, in the utmost caution Defendant denies the allegations of these Paragraphs and demands strict proof thereof.

28. Defendant denies that it issued any warranty on The Gates, express or implied, and therefore denies the allegations in Paragraphs 94 through 96 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

29. Answering Paragraph 97, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

30. The allegations in Paragraphs 98 through 110 are not directed at this Defendant,

and therefore, no response is required. To the extent a response is required, Defendant is without information sufficient to admit or deny the allegations and therefore denies same and demands strict proof thereof.

31. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE

32. Plaintiffs' Second Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and therefore the Second Amended Complaint should be dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

33. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

34. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

35. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

36. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses

of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

37. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;
- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;
- 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;
- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and
- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

38. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group,*

Inc., 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

39. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can Defendant be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

40. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

41. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

42. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

43. Defendant would show that the alleged class members did not have any relationship with DC Condos nor is there any typicality or commonality as related to the action or acts of Defendant, and thus, DC Condos is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

44. Defendant would show that it was not involved in the design, development, construction or sale of The Gates Project and all claims as to it should be denied.

FOR A FIFTEENTH DEFENSE

45. Plaintiffs' claims should be dismissed because of disclaimers and other defenses

specifically provided in the Master Deed or other contractual agreements.

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46. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations. Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

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47. Defendant would show that it did not take part in the construction of this Project nor was it licensed as a builder in the State of South Carolina and therefore is not liable for any alleged deficiencies in the construction.

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

SIGNATURE PAGE ATTACHED

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Attorneys for DMC Developers I, Ltd.

Columbia, South Carolina
March 21, 2014.

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DMC Developers I, Ltd., do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified:

Document(s):

DMC Developers I, Ltd.'s Answer to Second Amended Complaint

Counsel Served (*via email and US Mail to Counsel for Plaintiffs and email only to all other counsel*)

RICHLAND COUNTY
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(Attorneys for Southwest Ironwork, Inc.)

Debra C. Hair

March 21, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-40-8512

The Gates At Williams-Brice Condominium Association And Katharine Swinson, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

DDC Construction, Inc.; Kapasi Glass Mart, Inc.; DMC Consolidated, Inc.; DMC Builders, Co. Inc., individually and d/b/a The Dinerstein Companies; DC Developers – Columbia Condos, Inc.; Columbia Condos, LP; DMC Developers I, Ltd.; 31-W Insulation Company, Inc.; Associated Concrete Contractors, Inc.; Bailey Electric Company, LLC; C&B Utilities, LP; Carolina Floor Systems, Inc.; Century Fire Protection, LLC; Cherokee Inc.; Coronado Stucco, LP; Cross Plains Custom Tile, Inc.; Lowry Construction & Framing Inc.; LTB Construction, Inc.; Martin Morales Jr. Painting & Drywall, LLC; Metal Construction Materials, Inc.; Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; Tindall Corporation; Triad Pest Control, Inc.; Wyman Acoustics LLC; Alenco Holding Corporation, Alenco Window GA, LLC, New Alenco Window, Ltd.; AWC Holding Company; Crosby Window, Inc., f/k/a/ Action WinDoor Technology, Inc.; Geo-Systems Design & Testing, Inc.; HGE Consulting, Inc.; Maintenance Builders Supply, Ltd.; SCA Engineers, Inc.; Sinclair & Associates, Inc.; Faultless Hardware, individually and d/b/a Pamex Inc.; T & M Concrete, Inc.; Loveless Commercial Contracting, Inc.; Economy Waterproofing, Inc.; BMC West Corporation; Highway One Construction, Inc.; J.I. Windows LLC;

HIGHWAY ONE CONSTRUCTION, INC.'S ANSWER TO SECOND AMENDED COMPLAINT

RICHLAND COUNTY
FILED
2014 MAR 21 PM 3:23
BEATRICE E. WARNOCK
CLERK OF COURT

Dietrich Industries, Inc., a/k/a Dietrich Metal Framing, Inc., n/k/a Clarkwestern Dietrich Building Systems LLC; Best Masonry and its successor in interest, OldCastleAPG; Headwaters, Inc. d/b/a Best Masonry; and John Doe #1-10.	)
Defendants.	)

Highway One Construction, Inc. ("Highway One" or "Defendant") answers the Second Amended Complaint of Plaintiffs The Gates at Williams-Brice Condominium Association and Katharine Swinson, individually, and on behalf of all others similarly situated ("Plaintiffs"), as follows:

1. Defendant is not subject to jurisdiction of this Court and expressly reserves and refuses to waive any arguments related to lack of jurisdiction and proper service. Plaintiffs' claims against Defendant therefore should be dismissed pursuant to S.C. R. Civ. P. 12(b)(2), 12(b)(4) and 12(b)(5), and further responses below are made solely out of an abundance of caution, expressly reserving and refusing to waive any defenses as to jurisdiction or service.

2. Each and every allegation of the Plaintiffs' Second Amended Complaint not specifically admitted herein is expressly denied.

3. Defendant denies that Plaintiff is entitled to a jury trial and demands a bench trial.

FOR A FIRST DEFENSE AND BY WAY OF ANSWER
(As to Parties and Jurisdictional Statement)

4. Defendant admits the allegations in Paragraphs 1, 2, 3 and 4.

5. Paragraphs 5 and 6 contain legal conclusions which do not require a response. To the extent a response is required, the allegations are denied.

6. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 7 through 9 and therefore denies same and demands strict proof thereof.

7. Defendant admits the allegations in Paragraphs 10 and 11.

8. In answering Paragraph 12, Defendant admits only that DMC Builders Co., Inc. is a corporation organized and existing under the laws of Texas. Defendant denies that it does business as the Dinerstein Companies, as alleged.

9. Answering Paragraph 13, Defendant admits that DC Developers-Columbia Condos, Inc. is a Texas Corporation and the General partner of Columbia Condos, LP.

10. Defendant denies the allegations of Paragraph 14 in that Columbia Condos, LP is a limited partnership and not a corporation.

11. Defendant admits, on information and belief, the allegations of Paragraph 15.

12. Defendant denies the allegations of Paragraphs 16 through 20.

13. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 21 through 55 relative to the corporate status of the referenced entities and therefore denies same and demands strict proof thereof. However, Defendant admits on information and belief that some may have provided labor and/or materials for The Gates Project and were subcontractors or suppliers of DDC Construction, Inc. or its sub-subcontractors.

14. Defendant is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraphs 56 and 57 and denies the same.

15. The allegations of Paragraph 58 require no response. To the extent a response is required, the allegations are denied.

16. In answering Paragraph 59, Defendant denies it is subject to this Court's

jurisdiction. Defendant is without sufficient knowledge or information to admit or deny that the other Defendants are subject to the Court's jurisdiction, and thus, denies the same.

(As to Factual Allegations)

17. Defendant admits the allegations in Paragraph 60 on information and belief.

18. Defendant denies the allegations in Paragraphs 61 through 64 as they relate to it, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts.

19. The allegations of Paragraphs 65 call for a legal conclusion to which no response is required. However, in the utmost caution, Defendant specifically denies the allegations set forth therein.

20. Defendant denies the allegations in Paragraphs 66 through 70. Answering further, elements of Paragraphs 66 through 70 calls for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

(As to Class Action Allegations)

21. Defendant denies the allegations in Paragraphs 71 through 80 as they relate to it and opposes the certification of a class in this matter. Answering further, Defendant states that Plaintiffs and all putative class members have waived their right to proceed as a class in this matter.

(As to Estoppel from Pleading and Tolling of Applicable Statute of Limitations)

22. Defendant denies the allegations in Paragraphs 81 through 85 and opposes all relief sought therein.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence as to All Defendants)

23. Answering Paragraph 86, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

24. The allegations in Paragraph 87 call for a legal conclusion to which no response is required. However, in the utmost caution Defendant denies the allegations of Paragraph 87 and demands strict proof thereof.

25. Defendant denies the allegations in Paragraphs 88 through 90 as they relate to it, including all subparts thereof, and opposes all relief sought therein.

FOR A SECOND CAUSE OF ACTION
(Breach of Warranty as to all Defendants)

26. Answering Paragraph 91, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

27. Paragraphs 92 and 93 contain legal conclusions which require no response. However, in the utmost caution Defendant denies the allegations of these Paragraphs and demands strict proof thereof.

28. Defendant denies that it issued any warranty on The Gates, express or implied, and therefore denies the allegations in Paragraphs 94 through 96 and opposes all relief sought therein.

FOR A THIRD CAUSE OF ACTION
(Strict Liability in Tort: S.C. Code Ann. § 15-73-10 *et seq.* as to Manufacturing and/or Supplier Defendants)

29. Answering Paragraph 97, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

30. The allegations in Paragraphs 98 through 110 are not directed at this Defendant,

and therefore, no response is required. To the extent a response is required, Defendant is without information sufficient to admit or deny the allegations and therefore denies same and demands strict proof thereof.

31. Defendant denies that Plaintiffs are entitled to any of the relief sought in the WHEREFORE clause against it.

FOR A SECOND DEFENSE

32. Plaintiffs' Second Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and therefore the Second Amended Complaint should be dismissed against this Defendant pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

33. Plaintiffs' claims may be barred as a result of their failure to take such reasonable actions as necessary to mitigate their damages as required by South Carolina law.

FOR A FOURTH DEFENSE

34. Plaintiffs' claims against Defendant are barred, in whole or in part, by the doctrine of equitable estoppel.

FOR A FIFTH DEFENSE

35. Defendant assert that Plaintiffs' damages, if any, were not due to or caused by any act or omission on the part of this Defendant, but were rather due to and caused by the contributing, concurring, intervening and/or superseding fault, acts or omissions of a person or persons over whom Defendant had no control. Defendant pleads such conduct of others as a complete defense to all claims in this action.

FOR A SIXTH DEFENSE

36. Defendant asserts that Plaintiffs' claims against it may be barred by the defenses

of laches, mistake, preemption, release, waiver, ratification, estoppel, unclean hands, statute of limitations and/or any other defense that may be available upon discovery of additional information during the pendency of this action.

FOR A SEVENTH DEFENSE

37. Plaintiff is not entitled to an award of punitive damages because such damages violate the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that:

- 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 due process guarantees;
- any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- to the extent an award of punitive damages is excessive, such award violates due process guarantees;
- 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;
- even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and
- the Plaintiffs' claims 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 damage is based upon the wealth and status of Defendant.

FOR AN EIGHTH DEFENSE

38. With respect to Plaintiffs' claim for punitive damages, Defendant incorporates by reference any and all statutes of limitations regarding the determination and/or enforceability of punitive damage awards which arose in the decisions of *BMW of North America v. Gore*, 517 U.S. 559 (1996), *Cooper Industries, Inc. v. Leatherman Tool Group,*

Inc., 532 U.S. 424 (2001), and *State Farm Mutual Automobile Ins. Co. v. Campbell*, 538 U.S. 408 (2003).

FOR A NINTH DEFENSE

39. Defendant would show it was not the seller of the condominium units or the developer of the project and therefore Plaintiffs may not recover on warranty nor can Defendant be liable for any claims of individual unit owners.

FOR A TENTH DEFENSE

40. Plaintiffs' claims should be dismissed for failure to name indispensable parties.

FOR AN ELEVENTH DEFENSE

41. Defendant incorporates by reference any affirmative defense raised by any other Defendant in this action.

FOR A TWELFTH DEFENSE

42. To the extent Plaintiffs' allegations based on contract and warranty are applicable in this case, they bar Plaintiffs' negligence claims.

FOR A THIRTEENTH DEFENSE

43. Defendant would show that the alleged class members did not have any relationship with DC Condos nor is there any typicality or commonality as related to the action or acts of Defendant, and thus, DC Condos is not a proper party in any alleged class action.

FOR A FOURTEENTH DEFENSE

44. Defendant would show that it was not involved in the design, development, construction or sale of The Gates Project and all claims as to it should be denied.

FOR A FIFTEENTH DEFENSE

45. Plaintiffs' claims should be dismissed because of disclaimers and other defenses

specifically provided in the Master Deed or other contractual agreements.

FOR A SIXTEENTH DEFENSE

46. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery touching on the circumstances of the Plaintiffs' allegations. Defendant intends to act promptly to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Complaint and hereby gives notice of its intent to assert any further affirmative defenses that this information-gathering process may indicate is supported by fact and law. Defendant thus expressly asserts each of the defenses required by S.C. R. Civ. P. 8, and reserves its right to amend this Answer to assert further allegations in support of any such defenses as required by the Rules of Civil Procedure.

FOR A SEVENTEENTH DEFENSE

47. Defendant would show that it did not take part in the construction of this Project nor was it licensed as a builder in the State of South Carolina and therefore is not liable for any alleged deficiencies in the construction.

FOR A EIGHTEENTH DEFENSE

48. Defendant would show that its interests are diverse from, and dissimilar to, the interests of the alleged developer, designer and contractor and denies DC Condos is, or should be considered, amalgamated with any other Defendant in this matter.

FOR A NINETEENTH DEFENSE

49. Defendant denies it has ever done business as "The Dinerstein Companies" and as such any such reference should be dismissed as to it.

FOR A TWENTIETH DEFENSE

50. Plaintiffs have failed to comply with the terms and conditions of The South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §40-59-810; therefore, Plaintiffs' claims should be dismissed or are subject to being stayed.

FOR A TWENTY-FIRST DEFENSE

51. Plaintiffs have waived their right to a jury trial.

FOR A TWENTY-SECOND DEFENSE

52. Plaintiffs and all putative class members have waived their right to proceed the class action mode of trial.

FOR A TWENTY-THIRD DEFENSE

53. Defendant is entitled to a set-off for any amounts recovered related to the alleged construction defects at issue from any other source by Plaintiffs.

FOR A TWENTY-FOURTH DEFENSE

54. Defendant is entitled to an allocation of fault as to each cause of action and each element of damage claimed by Plaintiffs.

FOR A TWENTY-FIFTH DEFENSE

55. Plaintiffs' Complaint should be dismissed pursuant to S.C. R. Civ. P. 12(b)(2) because personal jurisdiction over this Defendant does not exist.

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

SIGNATURE PAGE ATTACHED

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Attorneys for Highway One Construction, Inc.

Columbia, South Carolina
March 21, 2014

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, Highway One Construction, Inc., do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified:

Document(s):

Highway One Construction, Inc.'s Answer to Second Amended Complaint

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March 21, 2014