THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC 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 II

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RECORD ON APPEAL
INDEX

VOLUME I

ORDERS

Order of the Honorable L. Casey Manning Dismissing Certain Settling Defendants filed March 5, 2015.....1

Proposed Order Granting Defendants' Motion for Non-Jury Trial and to Strike Plaintiffs' Class Action Allegations and Jury Trial Demand and Transmittal Letter to the Honorable G. Thomas Cooper, Jr. dated June 19, 2014.....20

Order of the Honorable G. Thomas Cooper, Jr., Denying Dinerstein and OCIP Defendants' Motion for Non-Jury Trial and to Strike Plaintiffs' Class Action Allegations and Jury Trial Demand filed July 18, 2014.....34

Order of the Honorable G. Thomas Cooper, Jr., Denying Defendants' Motion to Reconsider filed January 22, 2015.....51

PLEADINGS

Complaint filed December 26, 2012.....55

Defendant DDC Construction, Inc.'s Answer to Plaintiffs' Complaint filed March 7, 2013.....71

Amended Complaint filed May 15, 2013.....79

Defendant DDC Construction, Inc.'s Answer to Plaintiffs' Amended Complaint filed July 5, 2013.....98

Defendant DDC Construction, Inc.'s Amended Answer to Plaintiffs' Amended Complaint filed August 5, 2013.....108

Defendant Columbia Condos, LP's Answer to Plaintiffs' Amended Complaint filed August 5, 2013.....118

Defendant DC Developers – Columbia Condos, Inc.'s Answer to Plaintiffs' Amended Complaint filed August 5, 2013.....127

Defendant DMC Builders Co., Inc., Individually and d/b/a The Dinerstein Companies' Answer to Plaintiffs' Amended Complaint filed August 5, 2013.....137

Defendant DMC Consolidated, Inc.'s Answer to Plaintiffs' Amended Complaint filed August 5, 2013.....148

Defendant DMC Developers I, Ltd.'s Answer to Plaintiffs' Amended Complaint filed August 5, 2013.....159

Defendant Associated Concrete Contractors, Inc.'s Answer to Plaintiffs' Amended Complaint filed August 15, 2013.....169

Defendant Bailey Electric Company, LLC's Answer to Plaintiffs' Amended Complaint filed August 15, 2013.....180

Defendant C&B Utilities, LP's Answer to Plaintiffs' Amended Complaint filed August 15, 2013.....191

Defendant Carolina Floor Systems, Inc.'s Answer to Plaintiffs' Amended Complaint filed August 15, 2013.....202

Defendant Cherokee Inc.'s Answer to Plaintiffs' Amended Complaint filed August 15, 2013.....213

Defendant Coronado Stucco, LP's Answer to Plaintiffs' Amended Complaint filed August 15, 2013.....224

Defendant Cross Plains Custom Tile, Inc.'s Answer to Plaintiffs' Amended Complaint filed August 15, 2013.....235

Defendant Lowry Construction & Framing Inc.'s Answer to Plaintiffs' Amended Complaint filed August 15, 2013.....246

Defendant Martin Morales Jr. Painting & Drywall, LLC's Answer to Plaintiffs' Amended Complaint filed August 15, 2013.....258

Defendant Metal Construction Materials, Inc's Answer to Plaintiffs' Amended Complaint filed August 15, 2013.....270

Defendant Wyman Acoustics LLC's Answer to Plaintiffs' Amended Complaint filed August 15, 2013.....281

Defendant LTB Construction, Inc.'s Answer to Plaintiffs' Amended Complaint filed August 15, 2013.....292

Second Amended Complaint filed February 19, 2014.....304

Defendant Bailey Electric Company, LLC's Answer to Plaintiffs' Second Amended Complaint filed March 13, 2014.....325

Defendant LTB Construction, Inc.'s Answer to Plaintiffs' Second Amended Complaint filed March 21, 2014.....335

Defendant Associated Concrete Contractors, Inc.'s Answer to Plaintiffs' Second Amended Complaint filed March 21, 2014.....348

Defendant C&B Utilities, LP's Answer to Plaintiffs' Second Amended Complaint filed March 21, 2014.....360

Defendant Century Fire Protection, LLC's Answer to Plaintiffs' Second Amended Complaint filed March 21, 2014.....372

Defendant Cherokee, Inc.'s Answer to Plaintiffs' Second Amended Complaint filed March 21, 2014.....385

Defendant Columbia Condos, Inc.'s Answer to Plaintiffs' Second Amended Complaint and Cross-Claims filed March 21, 2014.....397

Defendant Coronado Stucco, LP's Answer to Plaintiffs' Second Amended Complaint filed March 21, 2014.....411

Defendant Cross Plains Custom Tile, Inc.'s Answer to Plaintiffs' Second Amended Complaint filed March 21, 2014.....423

Defendant DC Developers – Columbia Condos, Inc.'s Answer to Second Amended Complaint filed March 21, 2014.....435

Defendant DDC Construction, Inc.'s Answer to Plaintiffs' Second Amended Complaint and Cross-Claims filed March 21, 2014.....447

Defendant DMC Consolidated, Inc.'s Answer to Plaintiffs' Second Amended Complaint filed March 21, 2014.....460

Defendant DMC Developers I, Ltd's Answer to Plaintiffs' Second Amended Complaint filed March 21, 2014.....473

Defendant Highway One Construction, Inc.'s Answer to Plaintiffs' Second Amended Complaint filed March 21, 2014.....486

VOLUME II

Defendant Lowry Construction & Framing, Inc's Answer to Plaintiffs' Second Amended Complaint filed March 21, 2014.....499

Defendant Martin Morales, Jr. Painting & Drywall's Answer to Plaintiffs' Second Amended Complaint filed March 21, 2014.....512

Defendant Metal Construction Materials, Inc.'s Answer to Plaintiffs' Second Amended Complaint filed March 21, 2014.....525

Defendant Wyman Acoustics, LLC's Answer to Plaintiffs' Second Amended Complaint filed March 21, 2014.....538

Defendant DMC Builders Co., Inc.'s Answer to Plaintiffs' Second Amended Complaint filed March 21, 2014.....550

Defendant Carolina Floor Systems, Inc.'s Answer to Plaintiffs' Second Amended Complaint filed March 24, 2014.....563

Third Amended Complaint filed August 7, 2014.....576

Defendant Bailey Electric Company's Answer to Plaintiffs' Third Amended Complaint filed September 2, 2014.....598

Defendant Bailey Electric Company's Amended Answer to Plaintiffs' Third Amended Complaint filed September 2, 2014.....609

Defendant Associated Concrete Contractors, Inc.'s Answer to Plaintiffs' Third Amended Complaint filed September 5, 2014.....622

Defendant C&B Utilities, LP's Answer to Plaintiffs' Third Amended Complaint and Cross-Claims filed September 5, 2014.....636

Defendant Carolina Floor Systems, Inc.'s Answer to Plaintiffs' Third Amended Complaint and Cross-Claims filed September 5, 2014.....650

Defendant Century Fire Protection, LLC's Answer to Plaintiffs' Third Amended Complaint filed September 5, 2014.....664

Defendant Columbia Condos, Inc's Answer to Plaintiffs' Third Amended Complaint and Cross-Claims filed September 5, 2014.....677

Defendant Coronado Stucco's LP's Answer to Plaintiffs' Third Amended Complaint and Cross-Claims filed September 5, 2014.....691

Defendant DC Developers – Columbia Condos, Inc's Answer to Plaintiffs' Third Amended Complaint filed September 5, 2014.....705

Defendant DDC Construction, Inc.'s Answer to Plaintiffs' Third Amended Complaint and Cross-Claims filed September 5, 2014.....719

Defendant DMC Builders Co., Inc.'s Answer to Plaintiffs' Third Amended Complaint filed September 5, 2014.....734

Defendant DMC Developers I, Ltd.'s Answer to Plaintiffs' Third Amended Complaint filed September 5, 2014.....748

Defendant DMC Consolidated, Inc.'s Answer to Plaintiffs' Third Amended Complaint filed September 5, 2014.....762

Defendant Highway One Construction, Inc.'s Answer to Plaintiffs' Third Amended Complaint filed September 5, 2014.....776

Defendant Lowry Construction & Framing, Inc.'s Answer to Plaintiffs' Third Amended Complaint filed September 5, 2014.....790

Defendant LTB Construction, Inc.'s Answer to Plaintiffs' Third Amended Complaint filed September 5, 2014.....804

Defendant Metal Construction Materials, Inc.'s Answer to Plaintiffs' Third Amended Complaint filed September 5, 2014.....818

Defendant Martin Morales, Jr. Painting & Drywall's Answer to Plaintiffs' Third Amended Complaint filed September 5, 2014.....831

Defendant Cherokee, Inc.'s Answer to Plaintiffs' Third Amended Complaint filed September 5, 2014.....844

Defendant Cross Plains Custom Tile, Inc.'s Answer to Plaintiffs' Third Amended Complaint filed September 5, 2014.....857

Defendant Wyman Acoustics, LLC's Answer to Plaintiffs' Third Amended Complaint filed September 5, 2014.....870

Defendant Century Fire Protection, LLC's Answer to Amended Complaint.....884

VOLUME III

MOTIONS

Appellants' Motion for Non-Jury Trial and to Strike Plaintiffs' Class Action Allegations and Jury Trial Demand filed March 24, 2014, with Exhibits.....900

Master Deed of the Gates at Williams-Brice Horizontal Property Regime.....908

Respondents' Memorandum in Opposition to Appellants' Motion for Non-Jury Trial and to Strike Plaintiffs' Class Action Allegations and Jury Trial Demand filed June 9, 2014.....1047

Appellants' Supplement to Record in Further Support of Motion for Non-Jury Trial and to Strike Plaintiffs' Class Action Allegations and Jury Trial Demand filed June 19, 2014 with Exhibits.....1073

Bylaws of the Gates at Williams Brice-Homeowners Association.....1077

Deed of Title for Katharine Swinson, which is an exemplar of a Deed of Title for a Gates condominium unit.....1099

Purchase Contract of William Yarborough, which is an exemplar of a purchase contract for a Gates condominium unit.....1102

Relevant excerpts of deposition testimony for Katharine Swinson, named class representative, and William Yarborough, the Association board chair.....1115

Master Deed of the Gates at Williams-Brice Horizontal Property Regime.....1123

Second Amendment to the Master Deed of the Gates at Williams-Brice Horizontal Property Regime.....1261

Appellants' Motion to Reconsider filed August 1, 2014.....1268

VOLUME IV

TRANSCRIPTS

Transcript of Hearing of June 9, 2014.....1289

Relevant Excerpts of Transcript of Deposition of Katharine Swinson dated March 4, 2014.....1333

Relevant Excerpts of Transcript of Deposition of William Yarborough dated March 5, 2014.....1340

MISCELLANEOUS

Notice of Appeal filed January 29, 2015.....1347

Amended Notice of Appeal filed February 3, 2015.....1373

Plaintiffs' Deposition Exhibits: 9, 11, 13, and 14.....1400

William Yarborough's Deposition Exhibits: 1, 29 and 30.....1411

The Gates at Williams-Brice Condominium Assoc., et al. v. DDC Construction, Inc., et al., Case No.: 2012-CP-40-8512, Docket as of July 29, 2015 (excerpt).....1413

Certificate of Counsel

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;

LOWRY CONSTRUCTION & FRAMING, 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 Lowry Construction & Framing Inc. ("Lowry" 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 30 and 32 through 55 and therefore denies same and demands strict proof thereof.

9. Defendant admits only so much of Paragraph 31 as alleges Defendant is a corporation organized and existing under the laws of the State of Florida. 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 denies 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 80 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 Lowry 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 Lowry denies the allegations of these Paragraphs and demands strict proof thereof.

23. 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)

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 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 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. 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 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

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 Lowry 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. 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

43. 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 NINTEENTH 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 AN TWENTIETH 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 DC Condos is, or should be considered, amalgamated with any other Defendant in this matter.

FOR A TWENTY-FIRST DEFENSE

46. 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 TWENTY-SECOND 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 A TWENTY-THIRD DEFENSE

48. Plaintiffs have waived their right to a jury trial.

FOR A TWENTY-FOURTH DEFENSE

49. Plaintiffs and all putative class members have waived their right to proceed the class action mode of trial.

FOR A TWENTY-FIFTH DEFENSE

50. 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-SIX DEFENSE

51. 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 Lowry Construction & Framing 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, Lowry Construction & Framing, Inc., do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified:

Document(s):

Lowry Construction & Framing, 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;

MARTIN MORALES, JR. PAINTING & DRYWALL'S ANSWER TO SECOND AMENDED COMPLAINT

FILED
RICHLAND COUNTY
2014 MAR 21 PM 3:22
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 Martin Morales Jr. Painting & Drywall, LLC ("Morales" 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 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 sufficient to admit or deny the allegations in Paragraphs 7 through 9 and therefore denies same and demands strict proof thereof.

8. Defendant is without information or knowledge sufficient to admit or deny the allegations in Paragraphs 10 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 10 through 20 by reference.

9. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 21 through 32 and 34 through 55 and therefore denies same and demands strict proof thereof.

10. Defendant denies the allegations of Paragraph 33.

11. The allegations of Paragraphs 56 through 58 require no response. To the extent a response is required, the allegations are denied.

12. In answering Paragraph 59, Defendant denies that it is subject to the jurisdiction of the Court and 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)

13. Defendant admits the allegations in Paragraph 60 on information and belief.

14. 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.

15. 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.

16. 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)

17. Defendant denies the allegations in Paragraphs 71 through 80 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)

18. 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)

19. Answering Paragraph 86, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

20. The allegations in Paragraph 87 call for a legal conclusion to which no response is required. However, in the utmost caution Morales denies the allegations of Paragraph 87 as

they relate to it and demands strict proof thereof.

21. 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)

22. Answering Paragraph 91, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

23. Paragraphs 92 and 93 contain legal conclusions which require no response. However, in the utmost caution Morales denies the allegations of these Paragraphs and demands strict proof thereof.

24. 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)

25. Answering Paragraph 97, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

26. 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 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 98 through 110 are denied.

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

FOR A SECOND DEFENSE

28. 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

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 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

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 Defendant 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 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

40. 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

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 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

43. 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 EIGHTEENTH DEFENSE

44. Plaintiffs have waived their right to a jury trial.

FOR AN NINTEETH DEFENSE

45. Plaintiffs and all putative class members have waived their right to proceed the class action mode of trial.

FOR A TWENTIETH DEFENSE

46. 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 TWENTIETH-FIRST DEFENSE

47. 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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Columbia, South Carolina

March 21, 2014.

NELSON MULLINS RILEY & SCARBOROUGH LLP

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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, Martin Morales, Jr. Painting & Drywall, do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified:

Document(s):

Martin Morales, Jr. Painting & Drywall'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;

METAL CONSTRUCTION MATERIALS, INC.'S ANSWER TO SECOND AMENDED COMPLAINT

RICHLAND COUNTY
FILED
2014 MAR 21 PM 3:23
RENEETTE KAISER
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 Metal Construction Materials, Inc. ("MCM" 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 33 and 35 through 55 and therefore denies same and demands strict proof thereof.

8. Defendant admits only so much of Paragraph 34 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 34 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 MCM 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 MCM 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 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 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 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 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

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 MCM 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. 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.

SIGNATURE PAGE ATTACHED

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Attorneys for Metal Construction Materials, 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, Metal Construction Materials, Inc., do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified:

Document(s):

Metal Construction Materials, Inc.'s Answer to Second Amended Complaint

2014 MAR 21 PM 3:23
RICHLAND COUNTY
FILED
JEAN H. TOAL
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;

WYMAN ACOUSTICS, LLC'S ANSWER TO SECOND AMENDED COMPLAINT

RICHLAND COUNTY
FILED
2014 MAR 21 PM 3:21
JEANNETTE 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 Wyman Acoustics, LLC ("Wyman Acoustics" 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 38 and 40 through 55 and therefore denies same and demands strict proof thereof.

8. Defendant admits only so much of Paragraph 39 as alleges Defendant performed certain trash rooms drywall and steel studs work at The Gates. Answering further, Defendant admits it is a Limited Liability Company organized and existing under the laws of the State of South Carolina. All other allegations contained in Paragraph 39 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 Wyman Acoustics 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 Wyman Acoustics 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 trash rooms drywall and steel studs 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 trash rooms drywall and steel studs 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. 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

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).

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37. 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

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.

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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 Wyman Acoustics 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, Wyman Acoustics, LLC, do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified:

Document(s):

Wyman Acoustics, 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 3:31
JEANETTE WALKER
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BERKELEY COUNTY
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March 21, 2014

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COUNTY OF RICHLAND

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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;

DMC BUILDERS CO., INC.'S ANSWER TO SECOND AMENDED COMPLAINT

RICHLAND COUNTY
FILED
2014 MAR 21 PM 3:22
JEANETTE W. WALKER
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.

DMC Builders Co., Inc., improperly identified as DMC Builders Co. Inc. individually and d/b/a The Dinerstein Companies, ("DMC Builders" 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 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 DMC Builders Co., 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 Builders Co., 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 Builders Co., Inc.'s Answer to Second Amended Complaint

RICHLAND COUNTY FILED
2014 MAR 21 PM 3:22
JEANETTE WALDROP 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;

CAROLINA FLOOR SYSTEMS, INC.'S ANSWER TO SECOND AMENDED COMPLAINT

RICHLAND COUNTY
FILED
2014 MAR 21 PM 3:22
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 Carolina Floor Systems, Inc. ("Carolina" 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 25 and 27 through 55 and therefore denies same and demands strict proof thereof.

8. Defendant admits only so much of Paragraph 26 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 26 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 Defendant 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 Defendant 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 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 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 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 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

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 Defendant 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. 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.

SIGNATURE PAGE ATTACHED

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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(803) 799-2000

Attorneys for Defendant Carolina Floor Systems, 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, Carolina Floor Systems, Inc., do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified:

Document(s):

Carolina Floor Systems, 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 3:22
JEANETTE W. GRAHAM
RICHLAND COUNTY
FILED

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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; Dietrich Industries, Inc., a/k/a Dietrich

THIRD AMENDED SUMMONS

RICHLAND COUNTY
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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.	)

YOU ARE HEREBY SUMMONED and required to answer the Third 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 Third 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

August 6, 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

THIRD AMENDED COMPLAINT
(Defective Construction)

(Jury Trial Demanded)

RICHLAND COUNTY
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C.C.P. & G.S.

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.	)

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 all equipment, tools, labor and supervision necessary to pour and finish the cast-in-place pour strips, as shown on Tindall's garage erection drawings, in a timely and workmanlike manner. The work included providing and placing reinforcement, furnishing and placing 4000psi concrete, providing all control joints as shown on Tindall's erection drawings, and providing a light broom finish, among other work, at The Gates.

50. Defendant Economy Watcrproofing, 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 HCM Utah, LLC, (hereinafter "HCM") is a corporation organized and existing under the laws of the State of Utah, which 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. Defendant Labrador Electric Services, Inc. (hereinafter "Labrador") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Labrador provided and/or installed communication and/or cable services, among other work, at The Gates.

57. Defendant AAA Accurate Plumbing, Heating & Air, LLC f/k/a AAA Accurate Plumbing Solutions, Division of AAA Accurate Backflow Testing & Repair, LLC (hereinafter "AAA") is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, AAA provided and/or installed plumbing, among other work, at The Gates.

58. Defendant Time Warner Cable Southeast, LLC (hereinafter "Time Warner") is a corporation organized and existing under the laws of the State of Delaware. At all times relevant to this action, Time Warner provided and/or installed communication and/or cable services, among other work, at The Gates.

59. Defendant Southern Equipment Company, Inc., d/b/a Ready Mixed Concrete Company (hereinafter "Ready Mixed") is a corporation organized and existing under the laws of the State of North Carolina. At all times relevant to this action, Ready Mixed supplied concrete products with excessive air entrainment, which lead to increased water demand, drying shrinkage and subsequent cracking, among other products, at The Gates.

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

61. 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.

62. 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, , HCM Utah, LLC, Headwaters, Inc. d/b/a Best Masonry; Southern Equipment Company, Inc., D/B/A Ready Mixed Concrete Company; and John Doe #1 are hereinafter referred to collectively as the "Manufacturing and/or Supplier Defendants"

63. 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

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

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

66. 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.

67. 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.

68. 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.

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

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

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

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

73. 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.

74. 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

75. 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.

76. *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.

77. *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.

78. *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.

79. *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.

80. *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.

81. 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.

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

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

84. 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

85. 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.

86. 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.

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

88. 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.

89. 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)

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

91. 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.

92. 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.

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

94. 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)

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

96. The design, 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.

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

98. Defendants have breached their warranties by designing, constructing, and/or repairing The Gates in a defective manner as set forth above.

99. Additionally, the Dinerstein Defendants owed Plaintiffs a warranty of habitability.

100. 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)

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

102. 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.

103. 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.

104. 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.

105. 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.

106. 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.

107. 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.

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

109. 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.

110. 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.

111. 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.

112. The products are defective and unreasonably dangerous, causing Plaintiff to have

suffered damage.

113. 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.

114. 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
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Mount Pleasant, SC 29465-0806
(843) 849-8400 phone
(843) 849-8406 fax

August 6, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND 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 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	IN THE COURT OF COMMON PLEAS C/A No: 2012-CP-40-8512 ANSWER TO THIRD AMENDED COMPLAINT

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.J. Windows, LLC, Dietrich Industries, Inc., a/k/a Dietrich 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 and John Doe #1-10	)
Defendants.	)

The Defendant, Bailey Electric Company, LLC answering the Plaintiffs' Third 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' Third Amended Complaint not herein specifically admitted.

2. Paragraphs 1 and 2 are admitted.

3. As to paragraphs 3 through 23, this Defendant lacks sufficient knowledge to form an opinion as to the allegations of paragraphs 3 through 23 and therefore denies the same and demands strict proof thereof.

4. As to paragraph 24, this Defendant admits that it did install some electrical and heating and air conditioning equipment at The Gates but denies the remaining allegations of paragraph 24 and demands strict proof thereof.

5. As to paragraphs 25 through 62, this Defendant lacks sufficient knowledge to form an opinion as to the allegations of paragraphs 25 through 62 and therefore denies the same and demands strict proof thereof.

6. Paragraph 63 is admitted.

7. As to paragraph 64, this Defendant repeats and reiterates the defenses raised in paragraphs 1 through 63 above as fully as if set forth verbatim herein.

8. Paragraph 65 is denied.

9. As to paragraphs 66 through 68, this Defendant lacks sufficient knowledge to form an opinion as to the allegations of paragraphs 66 through 68 and therefore denies the same and demands strict proof thereof.

10. Paragraphs 69 through 73 are denied.

11. As to Paragraph 74, this Defendant lacks sufficient knowledge to form an opinion as to the allegations of paragraph 74 and therefore denies the same and demands strict proof thereof.

12. Paragraphs 75 through 84 are denied.

13. Paragraphs 85 through 89 are denied.

14. As to paragraph 90, this Defendant repeats and reiterates the defenses raised in paragraphs 1 through 89 above as fully as if set forth verbatim herein.

15. As to paragraph 91, this Defendant lacks sufficient knowledge to form an opinion as to the allegations of paragraph 91 and therefore denies the same and demands strict proof thereof.

16. Paragraphs 92 through 94 are denied.

17. As to paragraph 95, this Defendant repeats and reiterates the defenses raised in paragraphs 1 through 94 above as fully as if set forth verbatim herein.

18. Paragraphs 96 through 100 are denied.

19. As to paragraph 101, this Defendant repeats and reiterates the defenses raised in paragraphs 1 through 100 above as fully as if set forth verbatim herein.

20. Paragraphs 102 through 114 are denied.

FOR A SECOND DEFENSE
(Subject Matter Jurisdiction)

21. 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)

22. 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)

23. 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)

24. 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)

25. This Defendant pleads the applicable Statute of Limitations as a complete bar to the Plaintiffs' claim.

FOR A SEVENTH DEFENSE
(Failure to Mitigate Damages)

26. 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)

27. This Defendant would show that all non-contractual claims by the Plaintiffs are barred by the Economic Loss Doctrine.

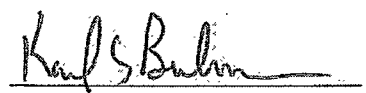
FOR A NINTH DEFENSE
(Punitive Damages)

28. 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: 

Karl S. Brehmer
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Columbia, South Carolina 29202
(803) 771-6600
Attorneys for Bailey Electric Company, LLC

August 29, 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., 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, 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 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 Plaintiff's counsel by depositing same in the United States Postal Service with the proper amount of first-class postage duly affixed and all other parties have been served via electronic mail:

Pleadings: Answer to Third Amended Complaint

Served On:

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Christle Turner

Columbia, South Carolina
~~August 29, 2014~~
September 2, 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;

BAILEY ELECTRIC COMPANY, LLC'S AMENDED ANSWER TO THIRD AMENDED COMPLAINT

(Non-Jury Trial Demanded)

RICHLAND COUNTY
FILED
2014 SEP -5 PM 3:56
JEANNETTE W. McBRIDE
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; Labrador Electric Company, Inc.; 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 Jolin Doe #1-10.	)
Defendants.	)

Defendant Bailey Electric Company, LLC ("Bailey" or "Defendant") answers the Third 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' Third 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 23 and 25 through 59 and therefore denies same and demands strict proof thereof.

8. Defendant admits only so much of Paragraph 24 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 24 are denied.

9. The allegations of Paragraphs 60 through 62 require no response. To the extent a response is required, the allegations are denied.

10. In answering Paragraph 63, 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 64 on information and belief.

12. Defendant denies the allegations in Paragraphs 65 through 68, 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 69 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 70 through 74. Answering further, elements of Paragraphs 70 through 74 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 75 through 84 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 85 through 89 and opposes all relief sought therein.

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

17. Answering Paragraph 90, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

18. The allegations in Paragraph 91 call for a legal conclusion to which no response is required. However, in the utmost caution Bailey denies the allegations of Paragraph 91 as

they relate to it and demands strict proof thereof.

19. Defendant denies the allegations in Paragraphs 92 through 94, 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 95, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

21. Paragraphs 96 and 97 contain legal conclusions which require no response. However, in the utmost caution Bailey denies the allegations of these Paragraphs and demands strict proof thereof.

22. Defendant denies the allegations in Paragraphs 98 and 100 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 101, 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 102 through 114 to the extent they relate to other Manufacturer and/or Supplier Defendants as that term is defined in the Third 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 102 through 114 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' Third Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Third 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.

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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 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

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 Bailey 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 Third 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 waived their right to a jury trial.

FOR A NINETEENTH DEFENSE

43. Plaintiffs and all putative class members have waived their right to proceed under a class action mode of trial.

FOR A TWENTIETH 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-FIRST 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 Third Amended Complaint of the Plaintiffs, Defendant prays that the Third Amended Complaint be dismissed as to it with prejudice and for such other and further relief as this Honorable Court may deem just and proper.

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September 5th, 2014

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified:

Document(s):

Bailey Electric's Answer to Third Amended Complaint

FILED
2014 SEP -5 PM 3:56
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Lisa S. Shumpert

September 5, 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 THIRD AMENDED COMPLAINT

(Non-Jury Trial Demanded)

RICHLAND COUNTY
FILED
2014 SEP -5 PM 3:56
JEANETTE W. WOOBRIDGE
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; Labrador Electric Company, Inc.; 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.	)

Defendant Associated Concrete Contractors, Inc. ("Associated Concrete" or "Defendant") answers the Third 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' Third 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 and 22 and 24 through 59 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 60 through 62 require no response. To the extent a response is required, the allegations are denied.

10. In answering Paragraph 63, 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 64 on information and belief.

12. Defendant denies the allegations in Paragraphs 65 through 68, 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 69 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 70 through 74. Answering further, elements of Paragraphs 70 through 74 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 75 through 84 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 85 through 89 and opposes all relief sought therein.

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

17. Answering Paragraph 90, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

18. The allegations in Paragraph 91 call for a legal conclusion to which no response is required. However, in the utmost caution Associated Concrete denies the allegations of Paragraph 91 as they relate to it and demands strict proof thereof.

19. Defendant denies the allegations in Paragraphs 92 through 94, 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 95, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

21. Paragraphs 96 and 97 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 98 and 100 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 101, 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 102 through 114 to the extent they relate to other Manufacturer and/or Supplier Defendants as that term is defined in the Third 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 102 through 114 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' Third Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Third 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.

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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;
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- to the extent an award of punitive damages is excessive, such award violates due process guarantees;
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WHEREFORE, having fully answered the Third Amended Complaint of the Plaintiffs, Defendant prays that the Third Amended Complaint be dismissed as to it 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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September 5, 2014

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified:

Document(s):

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(Attorneys for Cherokee, Inc.)

Lisa S. Shumpert

September 5, 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 THIRD AMENDED COMPLAINT AND CROSS-CLAIMS

(Non-Jury Trial Demanded)

RICHLAND COUNTY
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2014 SEP -5 PM 3:58
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P.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; Labrador Electric Company, Inc.; 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.

Defendant C&B Utilities, LP ("C&B" or "Defendant") answers the Third 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' Third 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 in 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 sufficient to admit or deny the allegations in Paragraphs 7 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 7 through 20 by reference.

7. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 21 through 24 and 26 through 59 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 60 through 62 require no response. To the extent a response is required, the allegations are denied.

10. In answering Paragraph 63, 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 64 on information and belief.

12. Defendant denies the allegations in Paragraphs 65 through 68, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts.

13. The allegations of Paragraph 69 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 70 through 74. Answering further, elements of Paragraphs 70 through 74 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 75 through 84 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 85 through 89 and opposes all relief sought therein.

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

17. Answering Paragraph 90, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

18. The allegations in Paragraph 91 call for a legal conclusion to which no response is required. However, in the utmost caution C&B denies the allegations of Paragraph 91 and demands strict proof thereof.

19. Defendant denies the allegations in Paragraphs 92 through 94, 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 95, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

21. Paragraphs 96 and 97 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 98 through 100 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 101, 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 102 through 114 to the extent they relate to other Manufacturer and/or Supplier Defendants as that term is defined in the Third 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 102 through 114 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' Third Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Third 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 Third 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 waived their right to a jury trial.

FOR A NINETEENTH DEFENSE

43. Plaintiffs and all putative class members have waived their right to proceed under a class action mode of trial.

FOR A TWENTIETH 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-FIRST DEFENSE

45. 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-SECOND DEFENSE AND FIRST CROSS-CLAIM
(Equitable and/or Contractual Indemnification against AAA Accurate Plumbing, Heating & Air, LLC, f/k/a AAA Accurate Plumbing Solutions Division of AAA Accurate Backflow Testing & Repair, LLC)

45. Plaintiff has alleged problems with virtually every aspect of the design, engineering, work and materials at the condominiums at issue.

46. Defendant has denied Plaintiffs' allegations in this regard and believes that all design, engineering, work, and materials on the Project were performed adequately and consistent with industry standards.

47. However, to the extent Plaintiff is proven correct that the Cross-Claim Defendant identified above acted wrongfully in some manner with regard to its scope of work or professional services for the condominiums at issue, and the wrongful acts caused damage to the Defendant C&B Utilities 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 Defendant AAA Accurate Plumbing, Heating & Air, LLC, f/k/a AAA Accurate Plumbing Solutions Division of AAA Accurate Backflow Testing & Repair, LLC.

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

Alternatively, this Defendant prays that it be awarded damages commensurate to those caused by the Cross-Claim Defendant herein including reasonable attorney's fees and costs and for such other and further relief as this Honorable Court may deem just and proper.

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By: _____

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September 5, 2014

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, 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 Third Amended Complaint and Cross-Claims

RICHLAND COUNTY FILED
2014 SEP -5 PM 3:56
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(Attorneys for Cherokee, Inc.)

Lisa S. Shumpert

September 5, 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 Metal Framing, Inc., n/k/a Clarkwestern Dietrich

CAROLINA FLOOR SYSTEMS, INC.'S ANSWER TO THIRD AMENDED COMPLAINT AND CROSS-CLAIMS

(Non-Jury Trial Demanded)

RICHLAND COUNTY
FILED
2014 SEP -5 PM 3:59

Building Systems LLC; Best Masonry and its successor in interest, OldCastleAPG; Headwaters, Inc. d/b/a Best Masonry; Labrador Electric Company, Inc.; 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.	)

Defendant Carolina Floor Systems, Inc. ("Carolina" or "Defendant") answers the Third 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' Third 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 25 and 27 through 59 and therefore denies same and demands strict proof thereof.

8. Defendant admits only so much of Paragraph 26 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 26 are denied.

9. The allegations of Paragraphs 60 through 62 require no response. To the extent a response is required, the allegations are denied.

10. In answering Paragraph 63, 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 64 on information and belief.

12. Defendant denies the allegations in Paragraphs 65 through 68, 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 69 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 70 through 74. Answering further, elements of Paragraphs 70 through 74 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 75 through 84 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 85 through 89 and opposes all relief sought therein.

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

17. Answering Paragraph 90, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

18. The allegations in Paragraph 91 call for a legal conclusion to which no response is required. However, in the utmost caution Defendant denies the allegations of Paragraph 91 as they relate to it and demands strict proof thereof.

19. Defendant denies the allegations in Paragraphs 92 through 94, 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 95, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

21. Paragraphs 96 and 97 contain legal conclusions which require no response. However, in the utmost caution Defendant denies the allegations of these Paragraphs and demands strict proof thereof.

22. Defendant denies the allegations in Paragraphs 98 through 100 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 101, 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 102 through 114 to the extent they relate to other Manufacturer and/or Supplier Defendants as that term is defined in the Third 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 102 through 114 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' Third Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Third 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 Carolina Floor nor is there any typicality or commonality as related to the action or acts of Carolina Floor, and thus, Carolina Floor 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 Carolina Floor 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 Third 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 waived their right to a jury trial.

FOR A NINETEENTH DEFENSE

43. Plaintiffs and all putative class members have waived their right to proceed under a class action mode of trial.

FOR A TWENTIETH 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-FIRST DEFENSE

45. 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-SECOND DEFENSE AND FIRST CROSS-CLAIM
(Equitable and/or Contractual Indemnification against The Clerkley/Watkins Group, LP and Southern Equipment Company, Inc., d/b/a Ready Mixed Concrete Company)

46. Plaintiff has alleged problems with virtually every aspect of the design, engineering, work and materials at the condominiums at issue.

47. Defendant has denied Plaintiffs' allegations in this regard and believes that all design, engineering, work, and materials on the Project were performed adequately and consistent with industry standards.

48. However, to the extent Plaintiff is proven correct that the Cross-Claim Defendants identified above acted wrongfully in some manner with regard to their scope of work or professional services for the condominiums at issue, and that the wrongful acts caused damage or a loss to the Defendant Carolina Floors 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 Cross-Claim Defendants.

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

Alternatively, this Defendant prays that it be awarded damages commensurate to those caused by the Cross-Claim Defendants herein including reasonable attorney's fees and costs and for such other and further relief as this Honorable Court may deem just and proper.

SIGNATURE PAGE ATTACHED

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September 5, 2014

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified:

Document(s):

Carolina Floor Systems' Answer to Third Amended Complaint and Cross-Claims

2014 SEP -5 PM 3:59
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Lisa S. Shumpert

September 8, 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 Metal Framing, Inc., n/k/a Clarkwestern Dietrich

CENTURY FIRE PROTECTION, LLC'S ANSWER TO THIRD AMENDED COMPLAINT

(Non-Jury Trial Demanded)

RICHLAND COUNTY
FILED
2014 SEP -5 PM 3:57
JEANNETTE W. McBRIDE
C.C.P. & G.S.

Building Systems LLC; Best Masonry and its successor in interest, OldCastleAPG; Headwaters, Inc. d/b/a Best Masonry; Labrador Electric Company, Inc.; 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.	)

Defendant Century Fire Protection, LLC ("Century Fire" or "Defendant") answers the Third 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' Third 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 59 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 Fire 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 Fire 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. The allegations of Paragraphs 60 through 62 require no response. To the extent a response is required, the allegations are denied.

10. In answering Paragraph 63, 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 64 on information and belief.

12. Defendant denies the allegations in Paragraphs 65 through 68, 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 69 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 70 through 74. Answering further, elements of Paragraphs 70 through 74 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 75 through 84 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 85 through 89 and opposes all relief sought therein.

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

17. Answering Paragraph 90, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

18. The allegations in Paragraph 91 call for a legal conclusion to which no response is required. However, in the utmost caution Century Fire denies the allegations of Paragraph 91 as they relate to it and demands strict proof thereof.

19. Defendant denies the allegations in Paragraphs 92 through 94, 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 95, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

21. Paragraphs 96 and 97 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.

22. Defendant denies the allegations in Paragraphs 99 through 100 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 101, 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 102 through 114 to the extent they relate to other Manufacturer and/or Supplier Defendants as that term is defined in the Third 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 102 through 114 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' Third Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Third 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.

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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;
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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.

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FOR A THIRTEENTH DEFENSE

37. 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.

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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 Third 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 waived their right to a jury trial.

FOR A NINETEENTH DEFENSE

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FOR A TWENTY-FIRST DEFENSE

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

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September 5, 2014

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, 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's Answer to Third Amended Complaint

2014 SEP -5 PM 3:57
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Lisa S. Shumpert

September 5, 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 THIRD AMENDED COMPLAINT AND CROSS-CLAIMS
(Non-Jury Trial Demanded)

RICHLAND COUNTY
FILED
2014 SEP -5 PM 3:57
JEANNETTE W. WALKER
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; Labrador Electric Company, Inc.; 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.

Defendant Columbia Condos, LP ("Columbia Condos" or "Defendant") answers the Third 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' Third 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 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 59 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 60 and 61 and denies the same.

15. The allegations of Paragraph 62 require no response. To the extent a response is required, the allegations are denied.

16. In answering Paragraph 63, 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 64 on information and belief.

18. Defendant denies the allegations in Paragraphs 65 through 68, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts.

19. The allegations of Paragraph 69 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 70 through 74. Answering further, elements of Paragraphs 70 through 74 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 75 through 84 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 85 through 89 and opposes all relief sought therein.

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

23. Answering Paragraph 90, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

24. The allegations in Paragraph 91 call for a legal conclusion to which no response

is required. However, in the utmost caution Defendant denies the allegations of Paragraph 91 and demands strict proof thereof.

25. Defendant denies the allegations in Paragraphs 92 through 94, 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 95, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

27. Paragraphs 96 and 97 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 98 through 100 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 101, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

30. The allegations in Paragraphs 102 through 114 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' Third Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Third 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 Third 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 Defendant 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 under 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, Labrador Electric Company, Inc., AAA Accurate Plumbing, Heating & Air, LLC, f/k/a AAA Accurate Backflow Testing & Repair, LLC, Time Warner Cable Southeast, LLC, Southern Equipment Company, Inc., d/b/a Ready Mixed Concrete Company)

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 Plaintiffs' 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 Third Amended Complaint of the Plaintiffs, Defendant prays that the Third 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 Columbia Condos, LP

Columbia, South Carolina
September 9, 2014

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, 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 Third Amended Complaint

RICHLAND COUNTY FILED
2014 SEP -5 PM 2:57
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(Attorneys for Cherokee, Inc.)

Lisa S. Shumpert

September 5, 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 Metal Framing, Inc., n/k/a Clarkwestern Dietrich

CORONADO STUCCO, LP'S ANSWER TO THIRD AMENDED COMPLAINT AND CROSS-CLAIMS

(Non-Jury Trial Demanded)

RICHLAND COUNTY
FILED
2014 SEP -5 PM 3:58
JEANNETTE W. WALKER
CLERK OF COURT

Building Systems LLC; Best Masonry and its successor in interest, OldCastleAPG; Headwaters, Inc. d/b/a Best Masonry; Labrador Electric Company, Inc.; 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.	)

Defendant Coronado Stucco, LP ("Coronado" or "Defendant") answers the Third 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' Third 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 59 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 60 through 62 require no response. To the extent a response is required, the allegations are denied.

10. In answering Paragraph 63, 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 64 on information and belief.

12. Defendant denies the allegations in Paragraphs 65 through 68, 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 69 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 70 through 74. Answering further, elements of Paragraphs 70 through 74 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 75 through 84 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 85 through 89 and opposes all relief sought therein.

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

17. Answering Paragraph 90, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

18. The allegations in Paragraph 91 call for a legal conclusion to which no response is required. However, in the utmost caution Coronado denies the allegations of Paragraph 91 as they relate to it and demands strict proof thereof.

19. Defendant denies the allegations in Paragraphs 92 through 94, 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 95, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

21. Paragraphs 96 and 97 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 98 through 100 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 101, 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 102 through 114 to the extent they relate to other Manufacturer and/or Supplier Defendants as that term is defined in the Third 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 102 through 114 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' Third Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Third 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 Third 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 waived their right to a jury trial.

FOR A NINETEENTH DEFENSE

43. Plaintiffs and all putative class members have waived their right to proceed under a class action mode of trial.

FOR A TWENTIETH 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-FIRST DEFENSE

46. 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-SECOND DEFENSE AND FIRST CROSS-CLAIM
(Equitable and/or Contractual Indemnification against Southwest Ironworks, Inc.; The Clerkley/Watkins Group, LP; 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 and Headwaters, Inc. d/b/a Best Masonry)

45. Plaintiff has alleged problems with virtually every aspect of the design, engineering, work and materials at the condominiums at issue.

46. Defendant has denied Plaintiffs' allegations in this regard and believes that all design, engineering, work, and materials on the Project were performed adequately and consistent with industry standards.

47. However, to the extent Plaintiff is proven correct that the Cross-Claim Defendants identified above acted wrongfully in some manner with regard to their scope of work or professional services for the condominiums at issue and the wrongful acts caused damage to this Defendant Coronado Stucco 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 Cross-Claim Defendants.

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

Alternatively, this Defendant prays that it be awarded damages commensurate to those caused by the Cross-Claim Defendants herein including reasonable attorney's fees and costs and for such other and further relief as this Honorable Court may deem just and proper.

SIGNATURE PAGE ATTACHED

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Columbia, South Carolina

September 5, 2014

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, 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 Third Amended Complaint and Cross-Claims

2014 SEP -5 PM 2:58
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CLERK OF COURT
RICHLAND COUNTY
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(Attorneys for Cherokee, Inc.)

Lisa S. Shumpert

September 5, 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 THIRD AMENDED COMPLAINT
(Non-Jury Trial Demanded)

RICHLAND COUNTY
2014 SEP -5 PM 3:57

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; Labrador Electric Company, Inc.; 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.	)

Defendant DC Developers – Columbia Condos, Inc. ("DC Condos" or "Defendant") answers the Third 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' Third 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 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 59 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 60 and 61 and denies the same.

14. The allegations of Paragraph 62 require no response. To the extent a response is required, the allegations are denied.

15. In answering Paragraph 63, 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 64 on information and belief.

17. Defendant denies the allegations in Paragraphs 65 through 68 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 69 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 70 through 74. Answering further, elements of Paragraphs 70 through 74 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 75 through 84 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 85 through 89 and opposes all relief sought therein.

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

22. Answering Paragraph 90, Defendant incorporates by reference the preceding

Paragraphs of its Answer as if repeated verbatim herein.

23. The allegations in Paragraph 91 call for a legal conclusion to which no response is required. However, in the utmost caution Defendant denies the allegations of Paragraph 91 and demands strict proof thereof.

24. Defendant denies the allegations in Paragraphs 92 through 94 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 95, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

26. Paragraphs 96 and 97 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 98 through 100 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 101, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

29. The allegations in Paragraphs 102 through 114 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' Third Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and therefore the Third 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 Defendant 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 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

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 Third 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 Defendant 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.

FOR A TWENTIETH DEFENSE

49. 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

50. Plaintiffs have waived their right to a jury trial.

FOR A TWENTY-SECOND DEFENSE

51. Plaintiffs and all putative class members have waived their right to proceed under the class action mode of trial.

FOR A TWENTY-THIRD DEFENSE

52. 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

53. 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 Third Amended Complaint of the Plaintiffs, Defendant prays that the Third 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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Columbia, South Carolina
September 5, 2014.

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, 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 Third Amended Complaint

RICHLAND COUNTY
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Lisa S. Shumpert

September 5, 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;

DDC CONSTRUCTION, INC.'S ANSWER TO THIRD AMENDED COMPLAINT AND CROSS-CLAIMS
(Non-Jury Trial Demanded)

RICHLAND COUNTY FILED
2014 SEP -5 PM 3:58
JEANNETTE W. WOOTEN 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; Labrador Electric Company, Inc.; 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.	)

Defendant DDC Construction, Inc. ("DDC" or "Defendant") answers the Third 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' Third 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 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 59 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 60 and 61 and denies the same.

15. The allegations of Paragraph 62 require no response. To the extent a response is required, the allegations are denied.

16. In answering Paragraph 63, 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 64 upon information and belief.

18. Defendant denies the allegations in Paragraphs 65 through 68, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts.

19. The allegations of Paragraph 69 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 70 through 74. Answering further, elements of Paragraphs 70 through 74 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 75 through 84 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 85 through 89 and opposes all relief sought therein.

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

23. Answering Paragraph 90, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

24. The allegations in Paragraph 91 call for a legal conclusion to which no response is required. However, in the utmost caution DDC denies the allegations of Paragraph 91 and demands strict proof thereof.

25. Defendant denies the allegations in Paragraphs 92 through 94, 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 95, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

27. Paragraphs 96 and 97 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 98 through 100 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 101, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

30. The allegations in Paragraphs 102 through 114 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' Third 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 Americd 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 Third 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 DDC 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

(Equitable and/or Contractual 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); Labrador Electric Company, Inc.; 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)

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 Plaintiffs' 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 Third Amended Complaint of the Plaintiffs, Defendant prays that the Third 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 DDC Construction, Inc.

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September 5, 2014.

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified:

RICHLAND COUNTY
FILED
2014 SEP -5 PM 3:59
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C.C.P., G.S.

Document(s):

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Lisa S. Shumpert

September 5, 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 BUILDERS CO., INC.'S ANSWER TO THIRD AMENDED COMPLAINT
(Non-Jury Trial Demanded)

RICHLAND COUNTY
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JEANNETTE W. MCBRIDE
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; Labrador Electric Company, Inc.; 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.	)

DMC Builders Co., Inc., improperly identified as DMC Builders Co. Inc. individually and d/b/a The Dinerstein Companies, ("DMC Builders" or "Defendant") answers the Third 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' Third 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 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)

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 59 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 60 and 61 and denies the same.

15. The allegations of Paragraph 62 require no response. To the extent a response is required, the allegations are denied.

16. In answering Paragraph 63, 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 64 on information and belief.

18. Defendant denies the allegations in Paragraphs 65 through 68 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 69 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 70 through 74. Answering further, elements of Paragraphs 70 through 74 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 75 through 84 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 85 through 89 and opposes all relief sought therein.

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

23. Answering Paragraph 90, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

24. The allegations in Paragraph 91 call for a legal conclusion to which no response is required. However, in the utmost caution Defendant denies the allegations of Paragraph 91 and demands strict proof thereof.

25. Defendant denies the allegations in Paragraphs 92 through 94 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 95, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

27. Paragraphs 96 and 97 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 98 through 100 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 101, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

30. The allegations in Paragraphs 102 through 114 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' Third Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and therefore the Third 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 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

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 Third 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. 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 Defendant 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 under 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 Third Amended Complaint of the Plaintiffs, Defendant prays that the Third 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 DMC Builders Co., Inc.

Columbia, South Carolina
September 5, 2014.

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified:

Document(s):

DMC Builders Co., Inc.'s Answer to Third Amended Complaint

RICHLAND COUNTY
FILED
2014 SEP -5 PM 3:58
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(Attorneys for Cherokee, Inc.)

Lisa S. Shumpert

Lisa S. Shumpert

September 5, 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 THIRD AMENDED COMPLAINT

(Non-Jury Trial Demanded)

RICHLAND COUNTY
FILED
2013 SEP -5 PM 5:00
JEAN H. TOAL
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; Labrador Electric Company, Inc.; 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.	)

DMC Developers I, Ltd. ("DMC Developers" or "Defendant") answers the Third 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' Third 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 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)

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.

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12. Defendant denies the allegations of Paragraphs 16 through 20.

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(As to Class Action Allegations)

21. Defendant denies the allegations in Paragraphs 75 through 84 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.

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

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28. Defendant denies that it issued any warranty on The Gates, express or implied, and therefore denies the allegations in Paragraphs 98 through 100 and opposes all relief sought therein.

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

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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.

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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 under a 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.

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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 Third Amended Complaint of the Plaintiffs, Defendant prays that the Third 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
September 5, 2014.

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, 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 Third Amended Complaint

2014 SEP -5 PM 4:00
RICHLAND COUNTY
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Lisa S. Shumpert

September _____, 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 THIRD AMENDED COMPLAINT
(Non-Jury Trial Demanded)

RICHLAND COUNTY
FILED
2014 SEP -5 PM 3:58
JEANNETTE W. HOOKS
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; Labrador Electric Company, Inc.; 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.	)

DMC Consolidated, Inc. ("DMC Consolidated" or "Defendant") answers the Third 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' Third 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 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)

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 Paragraph 10.

8. Defendant admits the allegations in Paragraph 11 but denies that DMC Builders, Co., Inc. did business as the Dinerstein Companies.

9. 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.

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

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

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

13. Defendant denies the allegations of Paragraphs 16 through 20.

14. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 21 through 59 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.

15. Defendant is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraphs 60 and 61 and denies the same.

16. The allegations of Paragraph 62 require no response. To the extent a response is required, the allegations are denied.

17. In answering Paragraph 63, 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)

18. Defendant admits the allegations in Paragraph 64 on information and belief.

19. Defendant denies the allegations in Paragraphs 65 through 68 as they relate to it, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts.

20. The allegations of Paragraphs 69 call for a legal conclusion to which no response is required. However, in the utmost caution, Defendant specifically denies the allegations set forth therein.

21. Defendant denies the allegations in Paragraphs 70 through 74. Answering further, elements of Paragraphs 70 through 74 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)

22. Defendant denies the allegations in Paragraphs 75 through 84 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)

23. Defendant denies the allegations in Paragraphs 85 through 89 and opposes all relief sought therein.

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

24. Answering Paragraph 90, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

25. The allegations in Paragraph 91 call for a legal conclusion to which no response is required. However, in the utmost caution Defendant denies the allegations of Paragraph 91 and demands strict proof thereof.

26. Defendant denies the allegations in Paragraphs 92 through 94 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)

27. Answering Paragraph 95, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

28. Paragraphs 96 and 97 contain legal conclusions which require no response. However, in the utmost caution Defendant denies the allegations of these Paragraphs and demands strict proof thereof.

29. Defendant denies that it issued any warranty on The Gates, express or implied, and therefore denies the allegations in Paragraphs 98 through 100 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)

30. Answering Paragraph 101, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

31. The allegations in Paragraphs 102 through 114 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.

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

FOR A SECOND DEFENSE

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

FOR A THIRD DEFENSE

34. 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

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

FOR A FIFTH DEFENSE

36. 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

37. 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

38. 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

39. 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

40. 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

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

FOR AN ELEVENTH DEFENSE

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

FOR A TWELFTH DEFENSE

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

FOR A THIRTEENTH DEFENSE

44. 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

45. 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

46. 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

47. 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 Third 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

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 EIGHTEENTH 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 Defendant is, or should

be considered, amalgamated with any other Defendant in this matter.

FOR A NINETEENTH DEFENSE

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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;

HIGHWAY ONE CONSTRUCTION, INC.'S ANSWER TO THIRD AMENDED COMPLAINT

(Non-Jury Trial Demanded)

RICHLAND COUNTY
FILED
2014 SEP -5 PM 3:57
JANNETTE W. HOGGINS
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.

Highway One Construction, Inc. ("Highway One" or "Defendant") answers the Third 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' Third Amended Complaint not specifically admitted herein is expressly denied.

3. 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)

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 admits the allegations of Paragraph 16.

13. Defendant denies the allegations of Paragraphs 17, 18, 19 and 20.

14. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 21 through 59 and therefore denies same and demands strict proof thereof.

15. Defendant is without knowledge sufficient to form a belief as to the truth of the allegations of Paragraphs 60 and 61 and denies the same.

16. The allegations of Paragraphs 62 require no response. To the extent a response is required, the allegations are denied.

17. In answering Paragraph 63, 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)

18. Defendant admits the allegations in Paragraph 64 on information and belief.

19. Defendant denies the allegations in Paragraphs 65 through 68, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts.

20. The allegations of Paragraphs 69 call for a legal conclusion to which no response is required. However, in the utmost caution, Defendant specifically denies the allegations set forth therein.

21. Defendant denies the allegations in Paragraphs 70 through 74. Answering further, elements of Paragraphs 70 through 74 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)

22. Defendant denies the allegations in Paragraphs 75 through 84 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)

23. Defendant denies the allegations in Paragraphs 85 through 89 and opposes all relief sought therein.

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

24. Answering Paragraph 90, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

25. The allegations in Paragraph 91 call for a legal conclusion to which no response is required. However, in the utmost caution Defendant denies the allegations of Paragraph 91 and demands strict proof thereof.

26. Defendant denies the allegations in Paragraphs 92 through 94 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)

27. Answering Paragraph 95, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

28. Paragraphs 96 and 97 contain legal conclusions which require no response. However, in the utmost caution Defendant denies the allegations of these Paragraphs and demands strict proof thereof.

29. Defendant denies that it issued any warranty on The Gates, express or implied, and therefore denies the allegations in Paragraphs 98 through 100 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)

30. Answering Paragraph 101, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

31. The allegations in Paragraphs 102 through 114 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.

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

FOR A SECOND DEFENSE

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

FOR A THIRD DEFENSE

34. 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

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

FOR A FIFTH DEFENSE

36. 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

37. 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

38. 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

39. 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

40. 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

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

FOR AN ELEVENTH DEFENSE

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

FOR A TWELFTH DEFENSE

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

FOR A THIRTEENTH DEFENSE

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

FOR A FOURTEENTH DEFENSE

45. 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

46. 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

47. 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 Third 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

48. Defendant would show that it did not take part in the construction of this Project and therefore is not liable for any alleged deficiencies in the construction.

FOR AN EIGHTEENTH 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 Defendant is, or should be considered, amalgamated with any other Defendant in this matter.

FOR A NINETEENTH DEFENSE

50. 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

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.

FOR A TWENTY-FIRST DEFENSE

52. Plaintiffs have waived their right to a jury trial.

FOR A TWENTY-SECOND DEFENSE

53. Plaintiffs and all putative class members have waived their right to proceed the class action mode of trial.

FOR A TWENTY-THIRD DEFENSE

54. 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 Third Amended Complaint of the Plaintiffs, Defendant prays that the Third 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.

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September 5, 2014

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, 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's Answer to Third Amended Complaint

RICHLAND COUNTY
FILED
2014 SEP -5 PM 3:57
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Lisa S. Shumpert

September 5, 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;

LOWRY CONSTRUCTION & FRAMING, INC'S ANSWER TO THIRD AMENDED COMPLAINT

(Non-Jury Trial Demanded)

RICHLAND COUNTY
FILED
2015 OCT -5 PM 3:56
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; Labrador Electric Company, Inc.; 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.	)

Defendant Lowry Construction & Framing Inc. ("Lowry" or "Defendant") answers the Third 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' Third 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 30 and 32 through 59 and therefore denies same and demands strict proof thereof.

9. Defendant admits only so much of Paragraph 31 as alleges Defendant is a corporation organized and existing under the laws of the State of Florida. All other allegations contained in Paragraph 31 are denied.

10. The allegations of Paragraphs 60 through 62 require no response. To the extent a response is required, the allegations are denied.

11. In answering Paragraph 63, Defendant denies 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 64 on information and belief.

13. Defendant denies the allegations in Paragraphs 65 through 68, 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 69 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 70 through 74. Answering further, elements of Paragraphs 70 through 74 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 75 through 84 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 85 through 89 and opposes all relief sought therein.

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

18. Answering Paragraph 90, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

19. The allegations in Paragraph 91 call for a legal conclusion to which no response is required. However, in the utmost caution Lowry denies the allegations of Paragraph 91 as they relate to it and demands strict proof thereof.

20. Defendant denies the allegations in Paragraphs 92 through 94, 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 95, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

22. Paragraphs 96 and 97 contain legal conclusions which require no response. However, in the utmost caution Lowry denies the allegations of these Paragraphs and demands strict proof thereof.

23. Defendant denies the allegations in Paragraphs 98 through 100 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 101, 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 102 through 114 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 102 through 114 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' Third Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Third 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. 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 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

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 Lowry 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 Third 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. 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

43. 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 NINTEENTH DEFENSE

44. Plaintiffs have waived their right to a jury trial.

FOR A TWENTIETH DEFENSE

45. Plaintiffs and all putative class members have waived their right to proceed under a class action mode of trial.

FOR A TWENTY-FIRST DEFENSE

46. 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

47. 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 Third Amended Complaint of the Plaintiffs, Defendant prays that the Third Amended Complaint be dismissed as to it with prejudice and for such other and further relief as this Honorable Court may deem just and proper.

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September 5, 2014

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified:

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Lowry Construction's Answer to Third Amended Complaint

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2014 SEP -5 PM 3:59
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(Attorneys for Cherokee, Inc.)

Lisa S. Shumpert

September 5, 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 THIRD AMENDED COMPLAINT

(Non-Jury Trial Demanded)

RICHLAND COUNTY
FILED
2014 SEP -5 PM 4:00
JEANNETTE W. WALTERS
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; Labrador Electric Company, Inc.; 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.	)

Defendant LTB Construction, Inc. ("LTB" or "Defendant") answers the Third 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' Third 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 59 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 60 through 62 require no response. To the extent a response is required, the allegations are denied.

11. In answering Paragraph 63, 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 64 on information and belief.

13. Defendant denies the allegations in Paragraphs 65 through 68, 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 69 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 70 through 74. Answering further, elements of Paragraphs 70 through 74 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 75 through 84 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 85 through 89 and opposes all relief sought therein.

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

18. Answering Paragraph 90, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

19. The allegations in Paragraph 91 call for a legal conclusion to which no response is required. However, in the utmost caution Defendant denies the allegations of Paragraph 91 as they relate to it and demands strict proof thereof.

20. Defendant denies the allegations in Paragraphs 92 through 94, 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 95, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

22. Paragraphs 96 and 97 contain legal conclusions which require no response. However, in the utmost caution Defendant denies the allegations of these Paragraphs and demands strict proof thereof.

23. Defendant denies the allegations in Paragraphs 98 through 100 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 101, 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 102 through 114 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 102 through 114 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' Third Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Third 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.

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

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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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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.

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

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2011 SEP -5 PM 4:00
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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; Dietrich Industries, Inc., a/k/a Dietrich Metal

METAL CONSTRUCTION MATERIALS, INC.'S ANSWER TO THIRD AMENDED COMPLAINT

(Non-Jury Trial Demanded)

RICHLAND COUNTY
FILED
2013 SEP -5 PM 3:57
JEANETTE W. WALDEN
CLERK OF COURT

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; Labrador Electric Company, Inc.; 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.	)

Defendant Metal Construction Materials, Inc. ("MCM" or "Defendant") answers the Third 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' Third 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 33 and 35 through 59 and therefore denies same and demands strict proof thereof.

8. Defendant admits only so much of Paragraph 34 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 34 are denied.

9. The allegations of Paragraphs 60 through 62 require no response. To the extent a response is required, the allegations are denied.

10. In answering Paragraph 63, 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 64 on information and belief.

12. Defendant denies the allegations in Paragraphs 65 through 68, 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 69 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 70 through 74. Answering further, elements of Paragraphs 70 through 74 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 75 through 84 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 85 through 89 and opposes all relief sought therein.

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

17. Answering Paragraph 90, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

18. The allegations in Paragraph 91 call for a legal conclusion to which no response is required. However, in the utmost caution MCM denies the allegations of Paragraph 91 as they relate to it and demands strict proof thereof.

19. Defendant denies the allegations in Paragraphs 92 through 94, 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 95, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

21. Paragraphs 96 and 97 contain legal conclusions which require no response. However, in the utmost caution MCM denies the allegations of these Paragraphs and demands strict proof thereof.

22. Defendant denies the allegations in Paragraphs 98 through 100 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 101, 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 102 through 114 to the extent they relate to other Manufacturer and/or Supplier Defendants as that term is defined in the Third 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 102 through 114 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' Third Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Third 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 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

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 MCM 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 Third 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 waived their right to a jury trial.

FOR A NINETEENTH DEFENSE

43. Plaintiffs and all putative class members have waived their right to proceed under a class action mode of trial.

FOR A TWENTIETH 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-FIRST 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 Third Amended Complaint of the Plaintiffs, Defendant prays that the Third Amended Complaint be dismissed as to it 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 Metal Construction Materials, Inc.

Columbia, South Carolina

September 5, 2014

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified:

RICHLAND COUNTY
FILED
2014 SEP -5 PM 3:57
JEANNETTE W. WALKER
C.C.P. & G.S.

Document(s):

MCM's Answer to Third Amended Complaint

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Lisa S. Shumpert

September 3, 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 Metal

MARTIN MORALES, JR. PAINTING & DRYWALL'S ANSWER TO THIRD AMENDED COMPLAINT

(Non-Jury Trial Demanded)

RICHLAND COUNTY
FILED
2011 SEP -5 PM 3:58
JEANNETTE W. WALKER
CLERK OF COURT

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; Labrador Electric Company, Inc.; 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.	)

Defendant Martin Morales Jr. Painting & Drywall, LLC ("Morales" or "Defendant") answers the Third 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' Third Amended Complaint not specifically admitted herein is expressly denied.

3. 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)

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 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 32 and 34 through 59 and therefore denies same and demands strict proof thereof.

9. Defendant denies the allegations of Paragraph 33.

10. The allegations of Paragraphs 60 through 62 require no response. To the extent a response is required, the allegations are denied.

11. In answering Paragraph 63, Defendant denies that it is subject to the jurisdiction of the Court and 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 64 on information and belief.

13. Defendant denies the allegations in Paragraphs 65 through 68, 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 69 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 70 through 74. Answering further, elements of Paragraphs 70 through 74 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 75 through 84 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)

17. Defendant denies the allegations in Paragraphs 85 through 89 and opposes all relief sought therein.

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

18. Answering Paragraph 90, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

19. The allegations in Paragraph 91 call for a legal conclusion to which no response is required. However, in the utmost caution Morales denies the allegations of Paragraph 91 as they relate to it and demands strict proof thereof.

20. Defendant denies the allegations in Paragraphs 92 through 94, 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 95, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

22. Paragraphs 96 and 97 contain legal conclusions which require no response. However, in the utmost caution Morales denies the allegations of these Paragraphs and demands strict proof thereof.

23. Defendant denies the allegations in Paragraphs 98 through 100 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 101, 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 102 through 114 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 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 102 through 114 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' Third Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Third 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 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

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 Morales 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 Third 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. Plaintiffs have waived their right to a jury trial.

FOR A NINTEETH DEFENSE

44. Plaintiffs and all putative class members have waived their right to proceed the class action mode of trial.

FOR A TWENTIETH 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 TWENTIETH-FIRST 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 Third Amended Complaint of the Plaintiffs, Defendant prays that the Third Amended Complaint be dismissed as to it with prejudice and for such other and further relief as this Honorable Court may deem just and proper.

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Columbia, South Carolina

September 5, 2014

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified:

Document(s):

Martin Morales, Jr., Painting and Drywall's Answer to Third Amended Complaint

2014 SEP -5 PM 2:53
RICHLAND COUNTY
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(Attorneys for Cherokee, Inc.)

Lisa S. Shumpert

September 5, 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 THIRD AMENDED COMPLAINT

(Non-Jury Trial Demanded)

RICHLAND COUNTY
FILED
2014 SEP -5 PM 4:00
JEANNETTE W. WALTERS
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; Labrador Electric Company, Inc.; 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.	)

Defendant Cherokee Inc. ("Cherokee" or "Defendant") answers the Third 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' Third 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 59 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 60 through 62 require no response. To the extent a response is required, the allegations are denied.

10. In answering Paragraph 63, 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 64 on information and belief.

12. Defendant denies the allegations in Paragraphs 65 through 68, 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 69 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 70 through 74. Answering further, elements of Paragraphs 70 through 74 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 75 through 84 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 85 through 89 and opposes all relief sought therein.

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

17. Answering Paragraph 90, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

18. The allegations in Paragraph 91 call for a legal conclusion to which no response is required. However, in the utmost caution Cherokee denies the allegations of Paragraph 91 as they relate to it and demands strict proof thereof.

19. Defendant denies the allegations in Paragraphs 91 through 94, 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 95, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

21. Paragraphs 96 and 97 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 98 and 100 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 101, 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 102 through 114 to the extent they relate to other Manufacturer and/or Supplier Defendants as that term is defined in the Third 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 102 through 114 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' Third Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Third 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

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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.

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42. Plaintiffs have waived their right to a jury trial.

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43. Plaintiffs and all putative class members have waived their right to proceed under a class action mode of trial.

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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.

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

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Attorneys for Cherokee Inc.

Columbia, South Carolina

September 5, 2014

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified:

Document(s):

Cherokee's Answer to Third Amended Complaint

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September 9, 2014

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COUNTY OF RICHLAND

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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; Dietrich Industries, Inc., a/k/a Dietrich Metal

CROSS PLAINS CUSTOM TILE, INC.'S ANSWER TO THIRD AMENDED COMPLAINT

(Non-Jury Trial Demanded)

RICHLAND COUNTY
FILED
2014 SEP -5 PM 3:59
JEANNETTE W. MOORE
C.C.P. & G.S.

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; Labrador Electric Company, Inc.; 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.

Defendant Cross Plains Custom Tile, Inc. ("Cross Plains" or "Defendant") answers the Third 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' Third 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 sufficient to admit or deny the allegations in Paragraphs 7 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 7 through 20 by reference.

7. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 21 through 29 and 31 through 59 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 60 through 62 require no response. To the extent a response is required, the allegations are denied.

10. In answering Paragraph 63, 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 64 on information and belief.

12. Defendant denies the allegations in Paragraphs 65 through 68, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts.

13. The allegations of Paragraph 69 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 70 through 74. Answering further, elements of Paragraphs 70 through 74 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 75 through 84 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 85 through 89 and opposes all relief sought therein.

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

17. Answering Paragraph 90, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

18. The allegations in Paragraph 91 call for a legal conclusion to which no response is required. However, in the utmost caution Cross Plains denies the allegations of Paragraph 91 and demands strict proof thereof.

19. Defendant denies the allegations in Paragraphs 92 through 94, 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 95, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim hercin.

21. Paragraphs 96 and 97 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 98 through 100 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 101, 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 102 through 114 to the extent they relate to other Manufacturer and/or Supplier Defendants as that term is defined in the Third 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 102 through 114 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' Third Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Third 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 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 Third 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 waived their right to a jury trial.

FOR A NINETEENTH DEFENSE

43. Plaintiffs and all putative class members have waived their right to proceed under a class action mode of trial.

FOR A TWENTIETH 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-FIRST 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 Third Amended Complaint of the Plaintiffs, Defendant prays that the Third Amended Complaint be dismissed as to it with prejudice and for such other and further relief as this Honorable Court may deem just and proper.

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By: _____

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Columbia, South Carolina

September 5, 2014

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified:

RICHLAND COUNTY
FILED
2011 SEP -5 PM 3:59
JEANETTE W. McBRIDE
C.C.P. & G.S.

Document(s):

Cross Plains Custom Tile's Answer to Third Amended Complaint

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Lisa S. Shumpert

September _____, 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 Metal

WYMAN ACOUSTICS, LLC'S ANSWER TO THIRD AMENDED COMPLAINT

(Non-Jury Trial Demanded)

2014 SEP -5 PM 2:59
RICHLAND COUNTY
FILED

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; Labrador Electric Company, Inc.; 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.	)

Defendant Wyman Acoustics, LLC ("Wyman Acoustics" or "Defendant") answers the Third 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' Third 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 demand strict proof thereof.

4. Defendant admits the allegations in 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 sufficient to admit or deny the allegations in Paragraphs 7 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 7 through 20 by reference.

7. Defendant is without information sufficient to admit or deny the allegations in Paragraphs 21 through 38 and 40 through 59 and therefore denies same and demands strict proof thereof.

8. Defendant admits only so much of Paragraph 39 as alleges Defendant performed certain trash rooms' drywall and steel studs work at The Gates. Answering further, Defendant admits it is a Limited Liability Company organized and existing under the laws of the State of South Carolina. All other allegations contained in Paragraph 39 are denied.

9. The allegations of Paragraphs 60 through 62 require no response. To the extent a response is required, the allegations are denied.

10. In answering Paragraph 63, 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 64 on information and belief.

12. Defendant denies the allegations in Paragraphs 65 through 68, and specifically denies the existence of and responsibility for any alleged deficiencies and/or failed repair attempts.

13. The allegations of Paragraph 69 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 70 through 74. Answering further, elements of Paragraphs 70 through 74 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 75 through 84 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 85 through 89 and opposes all relief sought therein.

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

17. Answering Paragraph 90, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

18. The allegations in Paragraph 91 call for a legal conclusion to which no response is required. However, in the utmost caution Wyman Acoustics denies the allegations of Paragraph 91 and demands strict proof thereof.

19. Defendant denies the allegations in Paragraphs 92 through 94, 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 95, Defendant incorporates by reference the preceding Paragraphs of its Answer as if repeated verbatim herein.

21. Paragraphs 96 and 97 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.

22. Defendant denies the allegations in Paragraphs 98 and 100 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 101, 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 102 through 114 to the extent they relate to other Manufacturer and/or Supplier Defendants as that term is defined in the Third Amended Complaint and therefore denies any such allegations and demands strict proof thereof. Answering further, Defendant states that it provided only limited trash rooms drywall and steel studs 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 trash rooms drywall and steel studs work at The Gates. All remaining allegations of Paragraphs 102 through 114 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' Third Amended Complaint fails to state a claim against Defendant upon which relief may be granted, and, therefore, the Third 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. 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

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 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

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 Third 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 waived their right to a jury trial.

FOR A NINETEENTH DEFENSE

43. Plaintiffs and all putative class members have waived their right to proceed under a class action mode of trial.

FOR A TWENTIETH 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-FIRST 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 Third Amended Complaint of the Plaintiffs, Defendant prays that the Third Amended Complaint be dismissed as to it 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 Wyman Acoustics LLC

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September 5, 2014

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant, DDC Construction, do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified:

Document(s):

Wyman Acoustics' Answer to Third Am. Complaint

RICHLAND COUNTY
FILED
2014 SEP 15 PM 3:56
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(Attorneys for Cherokee, Inc.)

Lisa S. Shumpert

September 5, 2014

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

THE GATES AT WILLIAMS-BRICE CONDOMINIUM ASSOCIATION AND KATHERINE SWINSON, INDIVIDUALLY, AND ON BEHALF OF 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.; HE CONSULTING, INC.; MAINTENANCE BUILDERS SUPPLY,

Civil Action No. 2012-CP-40-8512

Century Fire Protection, LLC's Answer to Amended Complaint (Jury Trial Demanded)

2013 JUN 27 PM 12:09

LTD.; SCA ENGINEERS, INC.;
SINCLAIR & ASSOCIATES, INC.;
FAULTLESS HARDWARE;
INDIVIDUALLY AND D/B/A PAMEX
INC. AND JOHN DOE #1-10,

Defendants.

TO: JUSTIN O. LUCEY, ESQUIRE AND STEPHANIE DRAWDY, ESQUIRE, ATTORNEYS FOR PLAINTIFFS:

Defendant, Century Fire Protection, LLC (referred to hereinafter as "Century" or "Defendant"), by and through its undersigned attorneys, hereby answers Plaintiffs' Amended Complaint filed on May 15, 2013, as follows:

FOR A FIRST DEFENSE
(General Denial)

1. All allegations of the Complaint not hereinafter admitted, denied, or otherwise modified are denied and strict proof is demanded thereof.

2. Paragraph 1 of the Complaint is not directed at Century and therefore, no response is required from Century. To the extent a response is required, Century denies the allegations contained in this paragraph and demands strict proof thereof.

3. The allegations of Paragraphs 2 through 4 of the Complaint are not directed at Century and therefore, no response is required from Century. To the extent a response is required, Century craves reference to the Master Deed and other documents referenced therein, and denies any allegations inconsistent therewith. Century denies the remaining allegations contained in these paragraphs and demands strict proof thereof.

4. The allegations contained in Paragraphs 5 and 6 call for and/or state a legal conclusion and do not require a response Century. To the extent a response is required, Century denies the allegations contained in these paragraphs and demands strict proof thereof.

5. The allegations of Paragraphs 7 through 9 of the Complaint are not directed at Century and/or call for or state a legal conclusion. Therefore, no response is required from Century with regard to these paragraphs. To the extent a response is required; Century craves reference to the documents referenced therein, and denies any allegations inconsistent therewith. Century denies the remaining allegations contained in these paragraphs and demands strict proof thereof.

6. The allegations of Paragraphs 10 through 25 of the Complaint are not directed at Century and/or call for or state a legal conclusion. Therefore, no response is required from Century with regard to these paragraphs. To the extent further response is necessary, Century lacks sufficient knowledge to admit the allegations of these paragraphs and therefore, Century denies the remaining allegations contained in these paragraphs and demands strict proof thereof.

7. In response to the allegations of Paragraph 26, Century admits that it is a corporation organized and existing pursuant to the laws of the State of Delaware. Century also admits that it provided firesafing and/or firestopping for the project. Century denies the remaining allegations contained in this paragraph and demands strict proof thereof.

8. The allegations of Paragraphs 27 through 48 of the Complaint are not directed at Century and/or call for or state a legal conclusion. Therefore, no response is required from Century with regard to these paragraphs. To the extent further response is necessary, Century lacks sufficient knowledge to admit the allegations of these paragraphs and therefore, Century denies the remaining allegations contained in these paragraphs and demands strict proof thereof.

9. The allegations of Paragraph 49 do not require a response from Century. To the extent a response is required; Century denies the allegations contained in this paragraph and demands strict proof thereof.

10. The allegations contained in Paragraph 50 call for and/or state a legal conclusion and do not require a response Century. To the extent a response is required, Century denies the allegations contained in this paragraph and demands strict proof thereof.

11. The allegations of Paragraph 51 do not require a response from Century. To the extent a response is required; Century denies the allegations contained in this paragraph and demands strict proof thereof.

12. Century denies any allegations in Paragraph 52 directed at Century and demands strict proof thereof. To the extent further response is necessary, Century lacks sufficient knowledge to admit the remaining allegations of this paragraph and therefore, Century denies the same and demands strict proof thereof.

13. Paragraph 53 of the Complaint is not directed at Century and therefore, no response is required from Century. To the extent further response is necessary, Century lacks sufficient knowledge to admit the allegations of this paragraph and therefore, Century denies the same and demands strict proof thereof.

14. Century denies any allegations in Paragraphs 54 and 55 directed at Century and demands strict proof thereof. To the extent further response is necessary, Century lacks sufficient knowledge to admit the remaining allegations of this paragraph and therefore, Century denies the same and demands strict proof thereof.

15. The allegations contained in Paragraph 56 call for and/or state a legal conclusion and do not require a response Century. To the extent a response is required, Century denies the allegations contained in this paragraph and demands strict proof thereof.

16. Century denies the allegations contained in Paragraphs 57 through 60 and demands strict proof thereof.

17. To the extent the allegations contained in Paragraph 61 call for and/or state a legal conclusion, the allegations do not require a response Century. To the extent a response is

required to these allegations, Century denies the allegations contained in this paragraph and demands strict proof thereof. Century denies the remaining allegations of this paragraph and demands strict proof thereof.

18. The allegations contained in Paragraphs 62 through 68 call for and/or state a legal conclusion and do not require a response Century. To the extent a response is required, Century denies the allegations contained in these paragraphs and demands strict proof thereof.

19. Paragraph 69 of the Complaint is not directed at Century and therefore, no response is required from Century. To the extent a response is required, Century denies the allegations contained in this paragraph and demands strict proof thereof.

20. Century denies any allegations in Paragraph 70 directed at Century and demands strict proof thereof. To the extent the allegations in this paragraph are not directed at Century, no response is required from Century. To the extent further response is necessary, Century lacks sufficient knowledge to admit the remaining allegations of this paragraph and therefore, Century denies the remaining allegations contained in this paragraph and demands strict proof thereof.

21. The allegations contained in Paragraph 71 call for and/or state a legal conclusion and do not require a response Century. To the extent a response is required, Century denies the allegations contained in this paragraph and demands strict proof thereof.

22. Century denies the allegations contained in Paragraph 72 and demands strict proof thereof.

23. To the extent the allegations contained in Paragraph 73 call for and/or state a legal conclusion, the allegations do not require a response Century. To the extent a response is required to these allegations, Century denies the allegations contained in this paragraph and demands strict proof thereof.

24. Century denies the allegations contained in Paragraphs 74 through 76 and demands strict proof thereof.

25. The allegations of Paragraph 77 of the Complaint do not require a response from Century. To the extent a response is required; Century repeats and re-alleges the foregoing paragraphs as if stated herein verbatim.

26. To the extent the allegations contained in Paragraph 78 call for and/or state a legal conclusion, the allegations do not require a response Century. To the extent a response is required to these allegations, Century denies the allegations contained in this paragraph and demands strict proof thereof.

27. Century denies the allegations contained in Paragraphs 79 through 81, including and any all subparts, and demands strict proof thereof.

28. The allegations of Paragraph 82 of the Complaint do not require a response from Century. To the extent a response is required; Century repeats and re-alleges the foregoing paragraphs as if stated herein verbatim.

29. Century denies the allegations contained in Paragraph 83 and demands strict proof thereof.

30. To the extent the allegations contained in Paragraph 84 call for and/or state a legal conclusion, the allegations do not require a response Century. To the extent a response is required to these allegations, Century denies the allegations contained in this paragraph and demands strict proof thereof.

31. Century denies the allegations contained in Paragraphs 85 through 86, including and any all subparts, and demands strict proof thereof.

32. The allegations of Paragraph 87 of the Complaint do not require a response from Century. To the extent a response is required; Century repeats and re-alleges the foregoing paragraphs as if stated herein verbatim.

33. Century denies any allegations in Paragraphs 88 through 93 directed at Century and demands strict proof thereof. To the extent the allegations in these paragraphs are not

directed at Century, no response is required from Century. To the extent further response is necessary, Century lacks sufficient knowledge to admit the remaining allegations of these paragraphs not directed at Century and therefore, Century denies the remaining allegations contained in these paragraphs and demands strict proof thereof.

34. Century denies the allegations contained in Paragraphs 94 through 100, including and any all subparts, and demands strict proof thereof.

35. Defendant denies the remaining allegations of the Complaint including the Plaintiffs' prayer for relief.

Further Answering The Complaint and As An Affirmative Defense Thereto (Rule 12(b)(6))

36. Plaintiffs have failed to state facts sufficient to constitute a cause of action against Century and the Complaint should be dismissed pursuant to Rule 12(b)(6), *SCRCP*.

Further Answering The Complaint and As An Affirmative Defense Thereto (Statute of Limitations)

37. Plaintiffs' Complaint is not timely and is barred by the Statute of Limitations.

Further Answering The Complaint and As An Affirmative Defense Thereto (Statute of Frauds)

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

Further Answering The Complaint and As An Affirmative Defense Thereto (Arbitration)

39. To the extent there is an agreement/contract between the parties to this litigation wherein arbitration was previously agreed upon as a means of settling disputes, the contractual agreement to arbitrate any disputes constitutes an affirmative defense to this proceeding. Said litigation should be dismissed or stayed pending the conclusion of binding arbitration.

Further Answering The Complaint and As An Affirmative Defense Thereto (Unclean Hands)

40. The equitable relief requested by Plaintiffs should be denied because the Plaintiffs do not come to court with clean hands.

Further Answering The Complaint and As An Affirmative Defense Thereto (Negligence of Third Parties)

41. Century is informed and believes that any damages incurred by Plaintiffs, if any, were the direct and proximate result of the negligence, gross negligence, recklessness, willfulness and/or wantonness of a third party or parties over whom Century had no control and whose acts or omissions were not reasonably foreseeable to Century.

42. Century is informed and believes that the superseding and intervening negligence, gross negligence, willfulness, recklessness and wantonness of the third party or parties completely bars any recovery against Century.

Further Answering The Complaint and As An Affirmative Defense Thereto (Fault of Plaintiffs or Plaintiffs' Representatives)

43. Plaintiffs' claims are barred, in whole or in part, because they are the result of the negligence of the Plaintiffs or are caused in whole or in part, by the conduct and actions of the Plaintiffs and/or Plaintiffs' representatives.

Further Answering The Complaint and As An Affirmative Defense Thereto (Failure to Mitigate)

44. Plaintiffs have failed to mitigate their damages, if any, and therefore, should be denied in whole or in part the relief sought in their Complaint.

Further Answering The Complaint and As An Affirmative Defense Thereto (Acceptance)

45. Plaintiffs accepted the work of Century, after inspecting it, and are now barred from asserting claims based upon that work.

Further Answering The Complaint and As An Affirmative Defense Thereto (Waiver)

46. Plaintiffs' claims are barred by the doctrine of Waiver.

Further Answering The Complaint and As An Affirmative Defense Thereto (Laches)

47. Plaintiffs' claims are barred by the doctrine of Laches.

Further Answering The Complaint and As An Affirmative Defense Thereto (Accord and Satisfaction)

48. Plaintiffs' claims are barred by the defense of accord and satisfaction.

Further Answering The Complaint and As An Affirmative Defense Thereto (Intervening and Superseding Negligence)

49. Plaintiffs' damages, if any, are the direct and proximate result of intervening and superseding acts of parties not affiliated with Century and not under Century's domain or control.

Further Answering The Complaint and As An Affirmative Defense Thereto (Failure to Maintain)

50. Plaintiffs were obligated to maintain the project against normal wear, tear and deterioration due to age and the elements and failed to do so and such is the direct and proximate cause of the damages suffered and, therefore, constitutes a complete defense to all claims.

Further Answering The Complaint and As An Affirmative Defense Thereto (Economic Loss Rule)

51. Plaintiffs' claims are barred, in whole or in part, by the economic loss rule.

Further Answering The Complaint and As An Affirmative Defense Thereto (Beneficial Use)

52. The damages claimed must be reduced by the proportionate value of the beneficial use provided by the work or services of Century.

Further Answering The Complaint and As An Affirmative Defense Thereto (Notice to Plaintiffs)

53. Plaintiffs' claims are barred to the extent that Plaintiffs' members and agents discovered, or should have discovered, or were aware of any defects and nevertheless unreasonably proceeded to make use of the work of Century.

Further Answering The Complaint and As An Affirmative Defense Thereto (Failure to Join a Necessary Party)

54. Plaintiffs have failed to join a party necessary to this litigation as required by Rule 19, SCRCP, and the Complaint should be dismissed pursuant to Rule 12(b)(7), SCRCP.

Further Answering The Complaint and As An Affirmative Defense Thereto (Contributory/Comparative Negligence)

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

Further Answering The Complaint and As An Affirmative Defense Thereto (Sole Negligence)

56. That the injury or damage sustained by Plaintiffs, if any, was due to, caused by and was the direct and proximate result of the sole negligence, recklessness, willfulness and

wantonness of Plaintiffs or of others over whom Century had no control in the following particulars, including, but not limited to:

a. In failing to maintain the property against normal wear, tear and deterioration due to age and the elements;

b. In failing to take prompt and reasonable action under the circumstances to mitigate damages;

c. In the particulars alleged in the Plaintiffs' Complaint as to others;

d. In otherwise failing to act with due and reasonable care, caution and prudence under the circumstances then and there prevailing in such further particulars as shall be determined through discovery;

and such constitutes a complete defense to any claims for negligence.

Further Answering The Complaint and As An Affirmative Defense Thereto (Alteration/Modification)

57. The subject Project has been substantially altered or modified by persons other than Century after Century completed work, and the Plaintiffs' claims against Century may be barred.

Further Answering The Complaint and As An Affirmative Defense Thereto (Incomplete and Improper Work)

58. Century is informed and believes that Plaintiffs' work at the Project, is not complete or was done improperly.

Further Answering The Complaint and As An Affirmative Defense Thereto (Open and Obvious)

59. Plaintiffs either knew or should have known of any alleged deficiencies at the Project and approved and accepted same with such knowledge. As a result, Plaintiffs' recovery should be barred.

Further Answering The Complaint and As An Affirmative Defense Thereto (Expiration of Warranty)

60. Any express warranty allegedly provided by Century has expired.

Further Answering The Complaint and As An Affirmative Defense Thereto (Failure to Comply with Terms of Contract)

61. Plaintiffs' claims should be barred in whole or in part for Plaintiffs' failure to comply with the terms of its agreement with Century, if any.

Further Answering The Complaint and As An Affirmative Defense Thereto (Statute of Repose)

62. That Plaintiffs have failed to commence this action within the time required by the applicable Statute of Repose, and the failure to timely commence the action constitutes a bar and complete defense to all claims.

Further Answering The Complaint and As An Affirmative Defense Thereto (Estoppel by Conduct)

63. That Plaintiffs by actions, conduct, words, or silence which amounts to a representation or other concealment of material facts, has caused Century to alter its position to its prejudice or injury and should, therefore, be estopped from bringing the within claims by the foregoing conduct and such constitutes a complete defense to all claims.

Further Answering The Complaint and As An Affirmative Defense Thereto (No Duty Under Trade Usage and Standard Industry Practice)

64. That the duties and obligations alleged to exist were not obligations imposed upon Century within the usage of the trade at the time of construction and were not imposed upon it under the usual and customary practices of the industry at the time of construction, and such constitutes a complete defense to all claims for negligence.

Further Answering The Complaint and As An Affirmative Defense Thereto
(Duties Alleged Beyond Scope of Services)

65. That the duties and obligations alleged are not within the scope of services which were provided by Century, and such duties and obligations lie beyond the scope of services provided and such constitutes a complete defense to all claims for negligence.

Further Answering The Complaint and As An Affirmative Defense Thereto
(Express Assumption of Risk)

66. That Plaintiffs previously expressly agreed in advance either in writing or verbally that Century was relieved of their legal duty with regard to the issues of which Plaintiffs now complain, and therefore no legal duty is owed with regard to the subject of this claim and such constitutes a complete and absolute defense to all claims for negligence.

Further Answering The Complaint and As An Affirmative Defense Thereto
(Contractual Responsibility Limited by Scope of Agreement)

67. That the conditions and deficiencies alleged to exist are not within the scope of services which were requested of Century, whose responsibility is limited only to those conditions and deficiencies, if any, which are within the scope of services described in the agreement; and such constitutes a complete defense to all claims.

Further Answering The Complaint and As An Affirmative Defense Thereto
(Disclaimer)

68. All Warranties and Liability was specifically disclaimed, which bars Plaintiffs' claims in whole or in part.

Further Answering The Complaint and As An Affirmative Defense Thereto
(Product Misuse)

69. Defendant alleges that any injuries sustained by Plaintiffs were caused by the misuse, misapplication, or abuse of the product and said misuse, misapplication, or abuse of the product is a complete bar to recovery against Defendant.

Further Answering The Complaint and As An Affirmative Defense Thereto
(Substantial Change / Alteration)

70. Defendant would show the subject product had been abused, altered and/or modified such that it was not in the same condition as it was when it left the care, custody or control of Defendant. The changed condition caused or contributed to the injuries alleged in the Complaint. As a result, Plaintiffs may not recover against Defendant.

Further Answering The Complaint and As An Affirmative Defense Thereto
(S.C. Code § 15-73-20)

71. Defendant would show that the even if the product was defective and unreasonably dangerous as alleged by Plaintiffs and expressly denied by this Defendant, the Plaintiffs were aware or should have been aware of the danger and is, therefore, barred from recovery pursuant to S.C. Code § 15-73-20.

Further Answering The Complaint and As An Affirmative Defense Thereto
(State of the Art)

72. Defendant would show the subject project and/or product complied with industry and governmental standards and was the state of the art at the time of design and manufacture of such products. Therefore, Plaintiffs cannot recover against Defendant.

Further Answering The Complaint and As An Affirmative Defense Thereto
(Punitive Damages Impermissible)

73. The Defendant would show the claim for punitive damages cannot be had because punitive damages are impermissible under applicable law and any award of punitive damages would violate the Defendant's equal protection and due process rights as guaranteed by the United States and South Carolina Constitutions.

RESERVATION AND NON-WAIVER

74. Century reasserts and realleges the foregoing paragraphs as if fully set forth herein verbatim.

75. Century reserves the right to assert, and does not waive, any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

WHEREFORE, having fully answered the Amended Complaint Defendant, Century Fire Protection, LLC, prays that the Complaint be dismissed with the costs of defending this action being awarded to Century, and for such other and further relief as the Court and jury deem just and proper.

MCANGUS GOUDELOCK & COURIE, L.L.C.

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ATTORNEYS FOR DEFENDANT, CENTURY FIRE PROTECTION, LLC

June 24, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of June, 2013 served a copy of the foregoing **Century Fire Protection, LLC's Answer to Amended Complaint** (Jury Trial Demanded) by emailing copies of same as follows:

2013 JUN 27 PM 12:09

Justin O. Lucey, Esquire Justin O'Toole Lucey, PA Post Office Box 806 Mount Pleasant, South Carolina 29465-0806 jlucey@lucey-law.com ***Attorney for The Gates at Williams-Brice Condominium Association***	Howard A. VanDine, III, Esquire Nelson, Mullins, Riley & Scarborough, LLP Post Office Box 11070 Columbia, South Carolina 29211 howard.vandine@nelsonmullins.com ***Attorney for Co-Defendant DDC Construction, Inc.***
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