

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

In re:

CCA CONSTRUCTION, INC.,

Case No.: 24-22548-CMG  
Chapter 11

Debtor.

\_\_\_\_\_ /

**PLAZA CONSTRUCTION GROUP FLORIDA, LLC’S MOTION FOR RELIEF FROM  
AUTOMATIC STAY TO CONTINUE STATE COURT LITIGATION  
UNRELATED TO CLAIMS AGAINST THE DEBTOR**

Plaza Construction Group Florida, LLC (“Plaza”) respectfully submits this Motion seeking entry of an Order modifying the automatic stay pursuant to 11 U.S.C. § 362(d) to permit Plaza and other parties to proceed with pending litigation on claims that are not directed to CCA Construction, Inc. (“CCA” or the “Debtor”) in the Circuit Court of the Thirteenth Judicial Circuit, in and for Hillsborough County, Florida bearing Case No. 2023-CA-015847 (the “State Court Action”) through the entry of final judgment.

**I. STATEMENT OF FACTS<sup>1</sup>**

Marina Pointe East Developer, LLC (“Marina Pointe”) signed a design services contract with Baker Barrios Architects, Inc. (“Baker”) in 2018 and a construction contract with Plaza in 2020 to build a mixed-use project in Tampa, Florida (“Project”). Various problems were encountered on the Project, so Marina Pointe filed a complaint against Plaza for breach of contract/delay damages and against Baker for breach of contract in the State Court Action on

<sup>1</sup> The Statement of Facts is based on the Affidavit of attorney Heather M. Jonczak and pleadings from the State Court Action, attached hereto.



October 25, 2023. Plaza filed a counterclaim against Marina Pointe seeking breach of contract, delay damages, unjust enrichment and lien foreclosure. Plaza filed a cross claim against Baker for professional negligence and a third-party claim against United State Fire Insurance Company (“U.S. Fire”) for foreclosure of the lien transfer bond.

On or about March 28, 2024, Marina Pointe filed an amended complaint adding CCA to the State Court Action and alleged claims of fraudulent and negligent misrepresentation against CCA. CCA was not party to the contracts between Marina Pointe and Plaza or Marina Pointe and Baker.

Marina Pointe alleged that CCA misrepresented Plaza’s ability and capacity to complete the project and induced Marina Pointe not to terminate the construction contract. No claims were asserted by CCA in the State Court Action. A copy of Marina Pointe’s first amended verified complaint against CCA is attached as Exhibit A.

On December 22, 2024, CCA filed a voluntary chapter 11 bankruptcy case with this Court. As a result, the State Court Action has been automatically stayed as to CCA pursuant to 11 U.S.C. § 362(a)(1). The stay should not apply to the pending claims between Marina Pointe and Plaza; Marina Pointe and Baker; Plaza and U.S. Fire; or Plaza and Baker in the State Court Action. CCA is a non-essential party to the resolution of the State Court Action. Marina Pointe’s claims against CCA may be stayed while the remaining claims are resolved in the State Court Action. Since the Petition Date, CCA has continued to operate its business and management affairs as a debtor and debtor in possession pursuant to Section 1107 and 1108 of the Code.

Plaza seeks to modify the automatic stay to continue the State Court Action against Marina Pointe, Baker and U.S. Fire and permit Marina Pointe to pursue its claims against Plaza and Baker and proceed to final judgment on the issue of liability and damages. No action will be pursued

against CCA or property of the bankruptcy estate. Rather, Plaza and Marina Pointe will seek to limit their recoveries against each other, U.S. Fire and Baker.

Marina Pointe, Baker and U.S. Fire have not agreed or disagreed to this motion, despite request from Plaza.

## II. ARGUMENT

### A. The Automatic Stay Provision Should Not Apply To Non-Debtor Claims In The State Court.

Section 362 of the Bankruptcy Code provides in relevant part:

“[A] petition filed... under this title... operates as a stay applicable to all entities, of –

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding *against the debtor* that was or could have been commenced before the commencement of the case under this title, or to recover a claim *against the debtor* that arose before the commencement of the case under this title...” 11 U.S.C. §362(a)(1) (1993).

As this Court explained in *In re Mid-Atlantic Handling Sys. v. Mitsubishi Caterpillar Forklift America, Inc. et al*, 304 B.R. 111 (U.S. Bnk Ct. D. New Jersey 2003), “although the scope of the automatic stay is broad, the explicit language of §362(a) indicates that it stays only proceedings *against* a ‘debtor’ – the term used by the statute itself” quoting *Assoc. of St. Croix Condo., Owners v. St. Croix Hotel Corp*, 682 F.2d 226, 448 (3d Cir. 1082). “Further, all proceedings in a single case are not lumped together for purposes of automatic stay analysis. That is, ‘within a single case, some actions may be stayed, others not.’” *Mid-Atlantic* at 128.

Absent certain unusual circumstances, an automatic stay of state court proceedings should not apply to non-debtor parties. “The automatic stay is generally not available to non-bankrupt co-defendants of a debtor even if they are in a similar legal or factual nexus with the debtor” absent “unusual circumstances.” Unusual circumstances warranting an extension of the stay to non-

debtor parties are limited to two specific situations: (i) where there is such identity between the debtor and the non-debtor co-defendant that the debtor may be said to be the real party defendant and that a judgment against the non-debtor co-defendant will in effect be a judgment or finding against the debtor; and (ii) where stay protection is essential to the debtor's efforts of reorganization pursuant to the general equitable powers contained in 11 U.S.C. § 105(a) to non-debtor third parties. *Mid-Atlantic* at 128-129.

In the case at bar, there is no identity of interest between Plaza and CCA and the stay protection is not essential to CCA's reorganization. CCA was not a party to the contract between Plaza and Marina Pointe and did not perform any construction work on the Project. CCA allegedly misrepresented certain facts about Plaza's ability to complete work on the Project but is not liable for any defective work or delays on the Project. CCA's efforts at reorganization have no bearing on any defective work performed by Plaza or delays on the Project.

**B. The Totality of the Circumstances in this Case Weigh in Favor of Modifying the Stay to Allow Plaza and Other Parties to Proceed to Judgment on Claims Not Involving CCA.**

Section 362(b)(1) of the Bankruptcy Code authorizes a court to terminate, annul, modify or condition the automatic stay for "cause." The Bankruptcy Code does not define "cause" and courts determine what constitutes cause on a case by case basis. The burden is placed on the moving party to make an initial *prima facie* showing of "cause" sufficient to support relief from stay. If the moving party satisfies its burden, the ultimate burden then shifts to the non-moving party to show a lack of cause to grant stay relief. *In re Sonnax Industries, Inc.*, 907 F.2d 1280, 1285 (2nd Cir. 1990); *In re Wrecclesham Grange, Inc.*, 221 B.R. 978, 980 (Bankr. M.D. Fla. 1997) (citing *Sonnax*); B. Russell, *Bankruptcy Evidence Manual* (2011-2012 Ed.) Rule 301, §301:44 pp. 275-76)).

In determining whether to permit pending litigation involving the debtor to continue in a non-bankruptcy forum in a particular case, courts conduct a case-by-case inquiry and employ a totality of the circumstances test. *Beane v. United States (In re Beane)*, 404 B.R. 942, 948 (Bankr. M.D. Fla. 2008); *In re Aloisi*, 261 B.R. 504, 508 (Bankr. M.D. Fla. 2001). In evaluating the issue, courts have adopted a balancing test, focusing on: (a) whether any great prejudice to the debtor or debtor's estate would result if the stay were modified; and (b) whether the hardship to be borne by the debtor by stay modification outweighs the hardship that would be caused to the plaintiff if stay relief were denied.

The balance of the hardships and totality of the circumstances heavily weigh in favor of lifting the stay to allow Plaza and other parties to proceed to judgment on the issue of liability and damages against each other (not CCA) and conclude the State Court Action.

**1. The State Court Action is Not Connected To and Will Not Interfere With the Bankruptcy Case.**

Allowing Plaza and other parties to proceed to judgment in the State Court Action (not against the Debtor) is warranted as the State Court Action is not connected to, and will not interfere with, the Debtor's bankruptcy case. The State Court Action does not involve bankruptcy law or require the expertise of the bankruptcy court, and, further, leaving adjudication of the issue of liability and damages to the State Court will allow this Court to devote its resources to the bankruptcy proceeding. Indeed, as the State Court Action solely involves issues of Florida law, it is the forum with the greatest knowledge and expertise to adjudicate same. *See In re Patriot*, 2006 Bankr. LEXIS at \*9 (finding the fact that the non-bankruptcy forum was more familiar with the issues in the case than the bankruptcy court to support granting stay relief).

**2. Judicial Economy and the Advanced Nature of the State Court Litigation.**

Judicial economy and the stage to which the litigation has progressed are critical elements in the court's decision of whether to lift the stay and, where litigation has already progressed pre-petition, the courts have recognized that stay relief is particularly warranted. “It is well settled that a basis for granting relief from the automatic stay for 'cause' exists when it is necessary to permit litigation to be concluded in another forum, particularly if the non-bankruptcy suit involves multiple non-debtor parties or is ready for trial. *In re Patriot Contracting Corp.*, 2006 Bankr. LEXIS 4133, \*6 (Bankr. N.J. 2006) (citing *Maintainco, Inc. v. Mitsubishi Caterpillar Forklift Am., Inc. (In re Mid-Atlantic Handling Sys. LLC)*, 304 B.R. Ill, 130 (Bankr. D.N.J. 2004); *In re Telegroup, Inc.* 237 B.R. 87, 91 (Bankr. D.N.J. 1999)); *see also In re S. Kemble*, 116 F.2d 802 (9th Cir. 1985) (affirming lower court's decision to lift stay for reason of judicial economy and noting that “the decision to lift the stay could be upheld on this ground alone”); *In re Chan*, 355 B.R. 494, 501 (Bankr. E.D. Pa. 2006) (noting the appropriateness of granting stay relief if the non-bankruptcy proceeding has been pending for a substantial period and is ready for trial and the court's ability to restrain execution upon judgment to prevent prejudice to the estate); *In re Aquarius Disk Services, Inc.*, 254 B.R. 253, 260 (Bankr. N.D. Ca. 2000) (lifting stay to allow a creditor to proceeding with pending litigation on ground, in part, that the creditor's state law claim needed to be liquidated regardless and judicial economy militated in favor of allowing same to proceed in the state court rather than expending bankruptcy court resources). The State Court Action is not ready for trial but has been pending since October 2023. Amendments of pleadings have been made and motions to dismiss have been resolved. Substantial document discovery has been conducted.

As emphasized by the Third Circuit in *In re Wilson*, 116 F.3d 87, 91 (3d Cir. 1997), the legislative history to section 362(d)(1) indeed expressly states that “it will often be more appropriate to permit proceedings to continue in their place of origin, where no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from duties that may be handled elsewhere.”

As noted in *In re Chan*, 355 B.R. 494, 501 (Bankr. E.D. Pa. 2006) (citing *In re Glunk*, 342 B.R. 717, 742 & n.38 (Bankr. E.D. Pa. 2006):

[I]f the proceedings have been pending in the nonbankruptcy forum for a substantial period and are ready for trial in the non-bankruptcy forum, it may be appropriate to grant relief from the automatic stay to permit the litigation in the non-bankruptcy forum to be concluded. Similarly, when there are multiple parties involved in the non-bankruptcy litigation, considerations of judicial economy may support the return of the litigation to the non-bankruptcy forum. In both of these situations, the bankruptcy court may exercise its discretion to grant relief from the automatic stay while simultaneously imposing appropriate conditions to prevent prejudice to the bankruptcy estate or the debtor until the remaining bankruptcy issues are resolved by the bankruptcy court.

Allowing Plaza and other parties to proceed to judgment in the State Court Action is clearly in the interest of judicial economy. This is not a case in which litigation has not yet been commenced or is in its early stages. Rather, Marina Pointe commenced the State Court Action more than one year and one-half ago. A mediation has been unsuccessfully conducted and a substantial number of documents have been exchanged pursuant to various Requests for Production.

Allowing the State Court Action to proceed to conclusion clearly allows for the most expeditious resolution of Plaza’s and Marina Pointe’s claims and promotes the interest of judicial economy, warranting the granting of stay relief in these circumstances. *Compare In re Fischer*, 202 B.R. 341, 355 (E.D.N.Y. 1996) (granting stay relief to allow civil RICO claims to proceed

where discovery was near completion); *In re Rexene*, 141 B.R. 574 (Bankr. D. Del. 1992) (granting stay relief where document discovery had been completed and only a handful of depositions remained); and *Maintainco*, 304 B.R. at 130-131 (finding that the time and effort expended by the parties and state court compelled granting stay relief for reasons of judicial economy where litigation remained in the discovery stages but voluminous paper discovery had been exchanged and various discovery motions filed) *with Sonnax*, 907 F.2d 1280 (denying stay relief where litigation had not progressed even to discovery stage and state court and bankruptcy court proceeding were inextricably intertwined); *In re Chan*, 355 B.R. 494 (denying stay relief where non-bankruptcy proceeding was filed only three weeks prior to debtor's bankruptcy filing and debtor was sole defendant therein);, and *In re Telegroup*, 237 B.R. 87 (denying stay relief where creditors sought to initiate lawsuit against debtor for post-petition infringement).

**3. Lack of Prejudice to the Debtor and Creditors if Stay Relief Granted vs. Prejudice to Movant if Stay Relief is Denied.**

Allowing Plaza and other parties to proceed to judgment on liability and damages against each other (not the Debtor) in the State Court Action will not prejudice the interests of other creditors or interfere with the bankruptcy case as Plaza seeks only a determination of liability and damages against Marina Pointe, Baker and U.S. Fire, and does not seek stay relief to pursue any claims against the Debtor. *See, e.g., Maintainco*, 304 B.R. at 130-131 (finding that permitting state court action to proceed would not prejudice the debtor's creditors as “resolution of the issues before the state court must be addressed and damages, if any, fixed so that the extent of creditors' claims are known”). For the same reason, there will be no great prejudice to the Debtor or the estate if the litigation is allowed to proceed to conclusion. Nor is the purpose of the automatic stay violated if the requested relief is granted as the effect of judgment would merely be to quantify Plaza’s claims and would not result in any dissipation of the Debtor's assets.

In contrast, if stay relief to Plaza is denied, Plaza would be severely handicapped in being denied the opportunity to litigate its claim against Marina Pointe, Baker and U.S. Fire to conclusion after well more than a year and one-half of effort and expense in its chosen and appropriate forum. The courts have recognized that the opportunity to litigate is a significant right belonging to a plaintiff which cannot be set aside, despite the existence of a bankruptcy proceeding. *In re Bock*, 37 B.R. at 566. “[T]he mere filing of a petition in bankruptcy cannot, in and of itself, erase a plaintiff’s claim, their opportunity to litigate, or the fact that a debtor may be liable to the plaintiff in some amount.” *Id.* at 567.

### III. CONCLUSION

For all of the foregoing reasons, Plaza respectfully requests that the Court enter an order modifying the automatic stay so as to permit Plaza and other parties to proceed to Final judgment against each other (and not the Debtor) in the State Court Action and granting such other and further relief as the Court may deem just and proper.

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on January 31, 2025 electronically through the Court’s CM/ECF system upon all parties and counsel of record registered to receive CM/ECF electronic notifications from the Bankruptcy Court in this case.

Respectfully submitted,

By: /s/ Michael T. Hensley

Michael T. Hensley

New Jersey Bar No. 031952001

**CARLTON FIELDS, P.A.**

180 Park Avenue

Suite 106

Florham Park, New Jersey 07932-1054

Telephone: (973) 828-2600

Facsimile: (973) 828-2601

mhensley@carltonfields.com  
aaugenstein@carltonfields.com  
*Counsel for Defendant, Plaza Construction  
Group Florida, LLC*

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

In re:

CCA CONSTRUCTION, INC.,

Case No.: 24-22548-CMG  
Chapter 11

Debtor.

\_\_\_\_\_ /

**AFFIDAVIT OF HEATHER M. JONCZAK, ESQ.**

STATE OF FLORIDA                    )  
  ) SS:  
COUNTY OF MIAMI-DADE         )

HEATHER M. JONCZAK, an attorney in the Miami office of the law firm of Carlton Fields, P.A., being duly sworn, deposes and says:

1. I am *sui juris* and over the age of 18 years, licensed to practice law in the State of Florida since 2011, and authorized to practice before the highest court of the State of Florida, and before the Bar of the United States District Courts in and for the Middle and Southern Districts of Florida and the United States Courts of Appeal for the Third Circuit. I have concentrated my practice in commercial litigation and construction law.

2. I make this Affidavit based on my personal knowledge of this case and a review of pleadings and documents produced in discovery.

3. I serve as counsel to Plaza Construction Group Florida, LLC (“Plaza”) and CCA Construction, Inc. (“CCA”) in various litigation matters.

4. Marina Pointe East Developer, LLC (Marina Pointe”) signed a design services contract with Baker Barrios Architects, Inc. (“Baker”) in 2018 and a construction contract with Plaza in 2020 to build a mixed use project in Tampa, Florida.

5. Various problems were encountered on the project and Marina Pointe filed a complaint against Plaza for breach of contract and breach of warranties and against Baker for breach of contract in the Thirteenth Judicial Circuit Court of Florida on October 25, 2023, Case No. 2023-CA-015847 (“Florida Lawsuit”). Plaza filed a counterclaim against Marina Pointe for breach of contract, delay damages, unjust enrichment and lien foreclosure. Plaza filed a cross claim against Baker for professional negligence and a third party claim against United State Fire Insurance Company (“U.S. Fire”) for foreclosure of a lien transfer bond.

6. On March 28, 2024, Marina Pointe filed an amended complaint adding CCA to the Florida Lawsuit and alleged claims of fraudulent and negligent misrepresentation against CCA. CCA was not party to the contracts between Marina Pointe and Plaza or Marina Pointe and Baker.

7. Marina Pointe alleged that CCA misrepresented Plaza’s ability and financial capacity to complete the project and induced Marina Pointe not to terminate the construction contract. No claims were asserted by CCA in the Florida Lawsuit. A copy of Marina Pointe’s first amended verified complaint against CCA is attached as Exhibit A.

8. On December 22, 2024, CCA filed a voluntary chapter 11 bankruptcy case with this Court. As a result, the Florida Lawsuit has been automatically stayed as to CCA pursuant to 11 U.S.C. § 362(a)(1).

9. Plaza has filed a motion for relief under the automatic stay to permit the continued pursuit of the pending claims between Marina Pointe and Plaza; Marina Pointe and Baker; Plaza and U.S. Fire; or Plaza and Baker in the Florida Lawsuit. Plaza has not asserted any claim against CCA and is not seeking relief from the stay of Marina Pointe’s claim against CCA. On

information and belief, CCA has continued to operate its business and management affairs as a debtor and debtor in possession pursuant to Section 1107 and 1108 of the Code.

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
Heather M. Jonczak

SWORN TO AND SUBSCRIBED before me this 30<sup>th</sup> day of January 2025.

  
\_\_\_\_\_  
Notary Public, State of Florida at Large

My Commission expires:



# **Exhibit A**

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
CIVIL DIVISION

MARINA POINTE EAST DEVELOPER, LLC,

Plaintiff,

v.

CASE NO.: 2023-CA-015847

PLAZA CONSTRUCTION GROUP  
FLORIDA, LLC, BAKER BARRIOS  
ARCHITECTS, INC., and  
CCA CONSTRUCTION, INC.,

Defendants.

**FIRST AMENDED VERIFIED COMPLAINT**

Marina Pointe East Developer, LLC, through counsel, files this First Amended Verified Complaint and sues Defendants, Plaza Construction Group Florida, LLC, Baker Barrios Architects, Inc., and CCA Construction, Inc., and alleges:

**JURISDICTION, PARTIES, AND VENUE**

1. This is an action for damages of more than Fifty Thousand Dollars (\$50,000.00).
2. Marina Pointe East Developer, LLC (“Owner”) is a Delaware limited liability company with principal offices located in Stamford, Connecticut.
3. Plaza Construction Group Florida, LLC (“Plaza”) is a Delaware limited liability company with principal offices located in New York, New York, that at all times material hereto was authorized to and engaged in business in Florida.
4. Baker Barrios Architects, Inc. (“BBA”), is a Florida corporation with principal offices located in Orlando, Florida.

5. CCA Construction, Inc., formerly known as China Construction America, Inc. (“CCA”), is a Delaware corporation with principal offices in Jersey City, New Jersey. CCA is the U.S. subsidiary of China State Construction Engineering Corp. Ltd. (“CSCEC”), which purports to be “one of the world’s largest investment and construction groups . . . .”<sup>1</sup>

6. CCA engages in systematic and continuous business contacts in Florida. CCA’s website publicizes its “Geographic Footprint”<sup>2</sup> and a partial listing of projects throughout Florida, including: One Ocean Condominium, located in Miami Beach, Florida (“One Ocean”);<sup>3</sup> Marea Miami Beach, located in Miami, Florida (“Marea”);<sup>4</sup> Icon Bay Waterfront Condominium, located in Miami, Florida;<sup>5</sup> 1100 Millecento Residences, located in Miami, Florida (“1100 Millecento”);<sup>6</sup> 1000 Museum, located in Miami, Florida (“One Thousand Museum”);<sup>7</sup> W South Beach Hotel and Residences, located in Miami, Florida (“W South Beach”);<sup>8</sup> AC Hotel by Marriott, located in Miami, Florida;<sup>9</sup> and Harbour’s Edge Senior Housing, located in Delray Beach, Florida.<sup>10</sup>

7. This Court has personal jurisdiction over CCA pursuant to, *inter alia*, section 48.193(1)(a)(1), (2), and/or (6), Florida Statutes, because: CCA, directly or through an agent, conducts, engages in, or carries on a business or business venture in Florida; some of the actions

---

<sup>1</sup> See <https://www.chinaconstruction.us/about-us/overview/> (last accessed Feb. 21, 2024).

<sup>2</sup> See <https://www.chinaconstruction.us/about-us/overview/> (last accessed Feb. 21, 2024).

<sup>3</sup> See <https://www.chinaconstruction.us/project/one-ocean-south-beach/> (last accessed Feb. 21, 2024).

<sup>4</sup> See <https://www.chinaconstruction.us/project/marea-miami-beach/> (last accessed Feb. 21, 2024).

<sup>5</sup> See <https://www.chinaconstruction.us/project/icon-bay-waterfront-condominium/> (last accessed Feb. 21, 2024).

<sup>6</sup> See <https://www.chinaconstruction.us/project/1100-millecento-residences/> (last accessed Feb. 21, 2024).

<sup>7</sup> See <https://www.chinaconstruction.us/project/1000-museum/> (last accessed Feb. 21, 2024).

<sup>8</sup> See <https://www.chinaconstruction.us/project/w-south-beach-hotel-and-residences/> (last accessed Feb. 21, 2024).

<sup>9</sup> See <https://www.chinaconstruction.us/project/ac-hotel-by-marriott/> (last accessed Feb. 21, 2024).

<sup>10</sup> See <https://www.chinaconstruction.us/project/harbours-edge-senior-housing/> (last accessed Feb. 21, 2024).

giving rise to the claims herein took place in Florida; some of the claims arise out of CCA, directly or through an agent, operating, conducting, engaging in, or carrying on a business or business venture in Florida, committing a tortious act or acts in this state, and/or causing injury to property in Florida arising out of CCA's actions, failures, and/or omissions outside Florida, and at or about the time of such injuries CCA was engaged in solicitation or service activities within Florida; and/or CCA, directly or through an agent, derived substantial revenue from its activities within Florida.

8. Jurisdiction and venue are proper in this Court because, among other things, the causes of action accrued and/or the project at issue is in Hillsborough County, Florida.

## FACTS

### The Project and Architect Contract

9. This lawsuit concerns the design and construction of a mixed-use project known as Marina Pointe, located in Tampa, Florida (the "Project"). The Project features a 16-story tower with 118 condominiums (the "Tower"), seven townhome units (the "Townhomes"), and a parking garage.

10. On or about December 17, 2018, New Port Tampa CDD Holdings, LLC ("New Port") entered into an Architectural Services Agreement with BBA ("Architect Contract"), where BBA undertook to serve as the architect of record on the Project. A true and correct copy of the Architect Contract is attached hereto and incorporated herein as **Exhibit A**.

11. Under the Architect Contract, BBA agreed to "exercise its skill and judgment in furthering Owner's interests," and to perform the Services<sup>11</sup> thereunder "in a competent and

---

<sup>11</sup> Unless otherwise specified herein, capitalized terms shall have the meaning given to them in the Architect Contract or Construction Contract, defined below, as the case may be.

professional manner, in accordance with the standard of care used by reputable architects that regularly perform services similar to the Services on projects of a similar nature, quality, complexity, and scope, in the same locality . . . .”

12. BBA also agreed, among other things, to provide designs and specifications that complied with all Laws.

13. BBA further agreed to perform all Services “diligently and promptly so as not to delay Owner, any Separate Professionals, or contractors,” promptly advise Owner of “problems that come to Architect’s attention that could reasonably cause a delay in the progress or completion of the Services” or the Project, and promptly notify Owner in writing of, among other things, defects, inconsistencies, or omissions in the Architect’s design, specifications, or other documents.

14. Finally, BBA agreed to indemnify the Owner-Group Members from all claims, damages, liabilities, losses, and expenses, including attorneys’ fees, caused by the Architect’s breach of the Architect Contract or other negligent acts, errors, omissions, or willful misconduct.

15. In an Assignment of Agreement dated April 28, 2020, New Port assigned all rights in the Architect Contract to Owner. A copy of the Assignment of Agreement is attached hereto and incorporated herein as **Exhibit B**.

#### **The Construction Contract**

16. On or about August 7, 2020, Owner and Plaza entered an AIA Document A102-2017 Standard Form of Agreement Between Owner and Contractor (the “Construction Contract”), where Plaza agreed to construct the Project. The Construction Contract included various Contract Documents identified therein, including a modified AIA Document A201-2017 General Conditions of the Contract for Construction (the “General Conditions”). A true and correct copy of the Construction Contract is attached hereto and incorporated herein as **Exhibit C**.

17. Under the Construction Contract, Plaza accepted the relationship of trust and confidence established therein and agreed to exercise its skill and judgment in furthering and performing the Work in an expeditious and economical manner consistent with the Owner's interests.

18. Plaza agreed, among other things, that time was of the essence with respect to time limits stated therein, including with respect to Substantial Completion, and that "the Contract Time is a reasonable period for performing the Work."

19. Plaza was to "proceed expeditiously with adequate forces" and to "achieve Substantial Completion within the Contract Time."

20. Plaza agreed that if the achievement of Substantial Completion was ever in jeopardy, Plaza would, at its own expense, "assign more labor or materials, require overtime or weekend work," and otherwise "undertake whatever other lawful means are required to progress the Work to the stage of completion that is needed for [Plaza] to achieve Substantial Completion by the date required in the Contract."

21. Plaza also agreed, upon the Owner's request, to present a recovery plan for the Owner's approval detailing the measures it would take to recover from the delay, and to revise such plan in response to any of the Owner's comments.

22. Plaza warranted "that the Work will conform to the requirements of the Contract Documents and will be free from defects . . . . [and the] Work, materials, or equipment not conforming to these requirements may be considered defective."

23. Finally, Plaza is to indemnify Owner from and against "claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from performance of the Work[.]"

**BBA's and Plaza's Breaches**

24. Among other things, BBA failed to properly design and/or specify wall and door classifications on the Project in accordance with the Florida Building Code and/or other Laws.

25. As a result of BBA's negligent actions, inactions, failures, errors, and/or omissions, Owner was forced to demolish and reconstruct the floors, ceilings, walls, and openings in the Tower at a time when floors 2 through 15 were nearing completion.

26. Likewise, BBA failed to properly design and/or specify the proper fire rating for most of the corridors on the Project.

27. As a result of BBA's negligent actions, inactions, failures, errors, and/or omissions, Owner was forced to, among other things, remove and replace all nonconforming doors with doors meeting the Florida Building Code's requirements.

28. Plaza, for its part, consistently failed to properly staff the Project with adequate forces and otherwise perform the Work in a timely manner as required under the Construction Contract.

29. Plaza also failed to manage its internal operations appropriately, resulting in non-permitted, significant, and persistent turnover of its staff and leadership on the Project, including, among others, Brad Meltzer, Plaza's President.

30. Ultimately, Plaza failed, among other things, to timely achieve Substantial Completion of the Work. It also failed to perform its Work in accordance with the Contract Documents and refused to correct its nonconforming Work.

**CCA's Fraudulent Conduct**

31. Before Owner engaged Plaza, and continuing throughout the course of the Project, CCA represented to Owner that it would devote CCA's independent financial strength and other resources to ensure Plaza's completion of the Project in a timely manner.

32. CCA's officers, in particular Ning Yuan, Chairman and President of CCA, and Dawei ("David") Wang, Vice President of CCA and Executive Vice President of Plaza Construction, regularly communicated with Owner and otherwise assumed reporting responsibilities to Owner regarding the status of the Project and efforts CCA was taking and would take to rectify Plaza's actions, failures, and omissions, including, among other things, the turnover of Plaza's staff and leadership on the Project.

33. By way of example, on March 17, 2020, Brad Meltzer, President of Plaza Construction,<sup>12</sup> represented to Owner that "the vertical integration of the CCA family of companies" would create "great synergies" with respect to Owner's projects, including the Project. A true and correct copy of Mr. Meltzer's March 17 email is attached hereto and incorporated herein as **Exhibit D**.

34. Shortly thereafter, on April 2, 2020, in the course and scope of Owner's request for information to aid in evaluating whether to contract with Plaza for the Project, Jorge Moros, Vice President & Director of Business Development for Plaza Construction, provided Owner a "Firm Overview" represented to be a "complete brochure including project tear sheets." A true and correct copy of Mr. Moros' April 2 email, along with the attachment, is attached hereto and incorporated herein as **Exhibit E**.

35. The "Firm Overview" touts Plaza Construction as "one of the nation's foremost construction management and general contracting firms" that has, since its formation, "become a

---

<sup>12</sup> Plaza is wholly owned by Plaza Construction, which is wholly owned by CCA.

multi-faceted firm with national presence in the industry with headquarters in New York, and regional offices in Miami, Tampa, Orlando, Los Angeles, and Washington DC.” Firm Overview, pg. 3.

36. The “Firm Overview” also highlights CSCEC’s ranking as “one of the world’s largest construction companies,” number 1 ranking “among ENR’s [Engineering News-Record] Top 250 Global Contractors,” as well as its “significant investment in Plaza through its U.S. subsidiary, China Construction America,” as marking “dynamic growth opportunities for our company, providing greater financial strength and bonding capabilities.” Firm Overview, pg. 3.

37. “Sustained by a high-performance team of visionary executives and seasoned professionals in all business functions,” the “Firm Overview” characterizes “CCA and its subsidiary, Plaza Construction,” as “leading investment and construction companies.”

38. Finally, the “Firm Overview” includes several “Residential Project Highlights” throughout Florida that Plaza Construction has developed, including the One Ocean, Marea, 1100 Millecento, One Thousand Museum, and W South Beach projects listed on CCA’s website.

39. On January 25, 2022, Linsen Zhang, Vice President & CFO of CCA, emailed Noah Breakstone, among others, following a call the previous day between representatives of Owner, CCA, and Plaza. Mr. Zhang expressed his hope that he had “addressed some of your concerns and you feel more comfortable now,” and confirmed that Mr. Ning would meet with Owner’s representatives in person that Thursday, January 27, 2022. Mr. Zhang expressed his belief that Owner would have “100% confidence” after the January 27th meeting.

40. On January 27, 2022, representatives of CCA (including Mr. Ning and Mr. Wang), Plaza, and Owner, met in person in Tampa to discuss the Project and Plaza’s impending default. During the meeting, CCA once again pledged its support and commitment to backstop Plaza’s

obligations under the Construction Contract, including by issuing “stay bonuses” to Plaza’s team as a financial incentive to stem the pervasive turnover of Plaza’s personnel that had already caused, and threatened to further cause, delays on the Project. CCA made such representations and commitments in exchange for, among other things, Owner’s forbearance from declaring Plaza in default under the Construction Contract and/or Performance Bond that Plaza furnished on the Project for Owner’s benefit and terminating Plaza for cause.

41. On that same day, and following the meeting, Mr. Mays sent an email to Mr. Ning, among others, and asked to be kept informed as to “how the stay bonus conversations are going with your team, as we discussed, keeping the team intact is critical.” A true and correct copy of Mr. Mays’ January 27 email chain is attached hereto and incorporated herein as **Exhibit F**.

42. In response, Mr. Yuan represented that “CCA [would] fully back up Plaza, as always,” and conveyed that they had “started to execute the incentive program with [sic] project team. To push this exciting project to the finish line is our common goal.” *Id.*

43. Mr. Breakstone, for his part, responded and promised to “provide . . . a draft letter in the next couple of days about backstopping all contractual obligations of Plaza Florida with CCA.” A true and correct copy of Mr. Breakstone’s January 27 email is attached hereto and incorporated herein as **Exhibit G**.

44. The next day, on January 28, 2022, Mr. Wang emailed Mr. Mays, among others, and expressed his appreciation for being “chosen as the CM for this icon project,” as well as his belief that the “project will be successfully delivered through the joint efforts and the current temporary difficulties will be overcome soon.” Mr. Wang promised to update Owner “periodically about the plan and progress to be made about the team building and sustainability.”

45. Days later, on February 4, 2022, Mr. Mays emailed Mr. Yuan as a further follow-up to the parties' January 27 meeting. Mr. Mays again conveyed Owner's appreciation for CCA "sharing [its] commitment to complete Marina Pointe per our agreement with Plaza . . . ." As Mr. Breakstone had promised days before, Mr. Mays also forwarded a letter signed by Mr. Breakstone regarding the meeting, and asked Mr. Yuan to sign and return same to Owner (the "CCA Commitment Letter"). A true and correct copy of Mr. Mays' February 4 email, along with the CCA Commitment Letter, is attached as hereto and incorporated herein as **Exhibit H**.

46. In the CCA Commitment Letter, Owner memorialized the concerns regarding Plaza that expressed during the parties' meeting "that threaten to lead to a default." Owner also recounted CCA's expressed commitment during the meeting to "stand behind Plaza and ensure that Plaza staffs the job adequately with competent personnel, finishes the work without default, and honors its warranty obligations thereafter," as well as CCA's willingness to "document these commitments formally and in writing." As such, Owner requested CCA execute the letter as confirmation of its commitments, which would serve to reassure Owner, "in the short-term, and alleviate the perceived need to pursue other options."

47. Owner also conveyed that CCA's execution of the CCA Commitment Letter would "constitute further evidence of CCA's commitment to negotiate with [Owner] in good faith with respect to [a] forthcoming separate letter agreement and guarantee," which would "sketch out in more detail the arrangements that will permit [Owner] to continue with Plaza and to agree to not pursue other options," including a "guarantee by CCA in favor of [Owner] and the CDD entity."

48. On February 10, Mr. Yuan responded that they would "make a minor change and get back to you."

49. Notwithstanding Mr. Yuan's response, Owner did not receive any change to the CCA Commitment Letter – minor or otherwise, nor did Mr. Yuan or anyone else on CCA's behalf repudiate CCA's commitments expressed during the parties' January 27 meeting, which Owner memorialized in the CCA Commitment Letter.

50. Nonetheless, CCA entirely failed and/or refused to perform or honor its unrepudiated commitments to Owner as Plaza continued, over the coming months, to fall behind schedule and perform work on the Project that failed to comply with its obligations under the Construction Contract.

51. On February 23, 2023, Mr. Breakstone emailed Mr. Yuan following a site visit and expressed his continued and deep concern about the "lack of progress and the lack of quality" with respect to Plaza's work on the Project. Mr. Breakstone noted, among other things, the inadequacy of workers and lack of quality control, and requested Mr. Yuan "let [Owner] know how the Plaza team plans to proceed and finish this job in the manner that was contemplated at the time we signed the agreement, and that CCA assured me at the meeting we had in Tampa several months ago."

52. During that conversation, Mr. Breakstone again voiced Owner's appreciation for Mr. Yuan's "direct involvement with the CCA team ever since Brad Meltzer was removed," and his belief that "with your continued participation . . . we will be able to pick up the pace of the work and get this job done for all of our benefit."

53. On March 9, 2023, Mr. Breakstone sent another email to Mr. Yuan following a tour of several units and the 5th floor amenity deck at the Project. Mr. Breakstone expressed that "it is hard to believe that we are still understaffed and under manned by the subcontractors to complete the building," and that "[t]iming is critical and the current situation is costing us several million dollars in carrying costs, renewal insurance costs, renewal bond costs, and the possible termination

rights of many of owners.” A true and correct copy of Mr. Breakstone’s March 9 email chain is attached hereto and incorporated herein as **Exhibit I**.

**The Pervasive Nonconformities at the Project**

54. Plaza failed to perform its Work in accordance with the Contract Documents.

Without limitation, it failed to:

- a. provide a “category 3 finish” for the exterior concrete work at the balconies’ slab edges, which have visible irregularities in the finished quality of the concrete’s surface;
- b. perform concrete “flatwork” in accordance with the Contract Documents;
- c. install concrete expansion joints in accordance with the Contract Documents;
- d. furnish the amenity deck fence in accordance with the Contract Documents;
- e. perform and/or complete punchlist and incomplete Work throughout the Project;
- f. honor warranty requests;
- g. install elevators in accordance with the Contract Documents;
- h. remove and reinstall scratched glass throughout the Project;
- i. painting in accordance with the Contract Documents;
- j. install the drywall and finishes in accordance with the Contract Documents;
- k. install in-wall nail guards. Without them, Plaza’s baseboard installer punctured the pressurized HVAC pipe, which caused substantial water intrusion and damage to property, including property of unit owners. During the emergency response, Owner discovered that Plaza failed to install shut-off valves at the high-pressure HVAC pipe;

- l. install the HVAC system, roofing system, stucco, glazing, and waterproofing at the Townhomes in accordance with the Contract Documents, allowing substantial water intrusion and condensation into the Townhomes, which has caused damage to property, including property of Townhome owners;
- m. perform the Townhome patio Work so that water could properly sloped to drain. Without the proper slope, allowing substantial water intrusion into the Townhomes, which has caused damage to property, including property of Townhome owners; and
- n. waterproof the Townhome patio stair connections, allowing substantial water intrusion into the Townhomes, which has caused damage to property, including property of Townhome owners.

(collectively, the “Nonconformities”).

55. Plaza failed to correct the Nonconformities, despite Plaza’s obligation to “proceed diligently with the performance of the Contract” pending the resolution of any Claim, and Owner’s repeated request that Plaza correct the Nonconformities.

56. Plaza also failed to indemnify Owner on account of the Nonconformities.

57. Plaza’s refusal to correct the Nonconformities and/or indemnify Owner has forced it to complete Plaza’s Work at significant expense.

58. As a result of Plaza’s, BBA’s, and/or CCA’s breaches, actions, inactions, failures, errors, and/or omissions, Owner was forced to retain attorneys to represent it in this action and pay the reasonable attorneys’ fees incurred for the services rendered.

59. All conditions precedent to bringing this action have been performed or, in the alternative, have occurred or been waived.

**COUNT I**  
**BREACH OF ARCHITECT CONTRACT**  
**(Against BBA)**

60. Owner realleges and incorporates its allegations in paragraphs 1 through 59, inclusive, above as if fully set forth herein.

61. Owner fully and/or performed all of its obligations under the Architect Contract or was excused from doing so.

62. BBA materially breached the Architect Contract by, among other things, failing to:

- a. exercise its skill and judgment in furthering Owner's interests;
- b. perform the Services under the Architect Contract in a competent and professional manner and/or in accordance with the applicable standard of care;
- c. provide designs and specifications that complied with all Laws;
- d. perform all Services diligently and promptly so as not to delay Owner, any Separate Professionals, or contractors;
- e. promptly advise Owner of problems that could cause a delay in the progress or completion of the Services or the Project;
- f. promptly notify Owner in writing of defects, inconsistencies, and/or omissions in the Architect's design, specifications, or other documents; and/or
- g. indemnify the Owner-Group Members from all claims, damages, liabilities, losses, and expenses, including attorneys' fees, caused by the Architect's breach of the Architect Contract and/or other negligent acts, errors, omissions, or willful misconduct.

63. As a direct and proximate result of BBA's breaches and negligence, Owner has suffered, and will continue to suffer, damages.

64. Owner is entitled to recover its reasonable attorneys' fees and costs from BBA pursuant to section 4.4 of the Architect Contract.

WHEREFORE, Owner respectfully requests this Honorable Court enter judgment in Owner's favor and against BBA for damages, attorneys' fees, costs, interest, and such further and other relief as this Honorable Court deems just and proper.

**COUNT II**  
**BREACH OF CONSTRUCTION CONTRACT**  
**(Against Plaza)**

65. Owner realleges and incorporates its allegations in paragraphs 1 through 59, inclusive, above as if fully set forth herein.

66. Owner fully and/or performed all of its obligations under the Construction Contract or was excused from doing so.

67. Plaza materially breached the Construction Contract by, among other things, failing to:

- a. proceed expeditiously with adequate forces to timely achieve Substantial Completion;
- b. assign additional labor, require overtime or weekend work, and/or undertake other lawful means as required to timely achieve Substantial Completion;
- c. present to Owner a recovery plan detailing the measures it would take to recover from its delay on the Project;
- d. perform its work in workmanlike matter and in accordance with the Contract Documents;
- e. satisfy its warranty obligations;

- f. ensure its Work met all the Contract's requirements, including those regarding the Project schedule and quality requirements;
- g. correct the Nonconformities despite the existence of a dispute between Owner and Plaza; and
- h. indemnify Owner as required by the Contract.

68. As a direct and proximate result of Plaza's breaches, Owner has suffered, and will continue to suffer, damages including, without limitation, liquidated delay damages; the costs to correct the Nonconformities; the costs to complete the Work; and the cost to perform Plaza's warranty obligations.

69. Owner is entitled to recover its reasonable attorneys' fees and costs from Plaza pursuant to section 13.7 of the General Conditions.

WHEREFORE, Owner respectfully requests this Honorable Court enter judgment in Owner's favor and against Plaza for damages, attorneys' fees, costs, interest, and such further and other relief as this Honorable Court deems just and proper.

**COUNT II – BREACH OF EXPRESS WARRANTY**  
**(Against Plaza)**

70. Owner realleges and incorporates its allegations in paragraphs 1 through 59, inclusive, above as if fully set forth herein.

71. Pursuant to section 3.5.1 of the General Conditions, Plaza furnished Owner with an express warranty as follows:

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or

equipment not conforming to these requirements may be considered defective.

72. Owner relied on Plaza to provide labor, materials, and services to the Project.

73. Plaza breached the express warranties as the Work performed was not in a workmanlike manner in accordance with applicable construction standards and the Contract Documents.

74. As a direct and proximate result of Plaza's breach of the express warranties, Owner suffered, and will continue to suffer damages, including without limitation, the cost to complete warranty repairs.

WHEREFORE, Owner respectfully requests this Honorable Court enter judgment in Owner's favor and against Plaza for damages, attorneys' fees, costs, interest, and such further and other relief as this Honorable Court deems just and proper.

**COUNT III – BREACH OF STATUTORY WARRANTY**  
**(Against Plaza)**

75. Owner realleges and incorporates its allegations in paragraphs 1 through 59, inclusive, above as if fully set forth herein.

76. Pursuant to section 718.203(3), Florida Statutes, Plaza, granted an implied warranty of fitness as to the Work performed and materials supplied, including a warranty as to the roof and structural components of the Project, as to the mechanical and plumbing elements serving the Project, and as to all other improvements to and materials incorporated into the Project.

77. Owner relied on Plaza to provide labor, materials, and services to the Project.

78. Plaza breached the statutory warranty as the work performed by Plaza and its subcontractors at the Project was not performed in a workmanlike manner in accordance with applicable construction standards.

79. As a direct and proximate result of Plaza's breach of the statutory warranty, Owner suffered, and will continue to suffer, direct and consequential damages including without limitation, the cost to complete warranty repairs.

WHEREFORE, Owner respectfully requests this Honorable Court enter judgment in Owner's favor and against Plaza for damages, costs, interest, and such further and other relief as this Honorable Court deems just and proper.

**COUNT IV- BREACH OF IMPLIED WARRANTY**  
**(Against Plaza)**

80. Owner realleges and incorporates its allegations in paragraphs 1 through 59, inclusive, above as if fully set forth herein.

81. Plaza impliedly warranted to Owner that its Work would be performed in a workmanlike manner in accordance with applicable construction standards.

82. Owner relied on Plaza to provide labor, material, and services to the Project.

83. Plaza breached the implied warranty as the work performed was not in a workmanlike manner in accordance with applicable standards and free from defects.

84. As a direct and proximate result of Plaza's breach of the implied warranty, Owner suffered, and will continue to suffer, damages including without limitation, the cost to complete the warranty repairs.

WHEREFORE, Owner respectfully requests this Honorable Court enter judgment in Owner's favor and against Plaza for damages, costs, interest, and such further and other relief as this Honorable Court deems just and proper.

**COUNT IV - FRAUDULENT MISREPRESENTATION**  
**(Against CCA)**

85. Owner realleges and incorporates its allegations in paragraphs 1 through 59, inclusive, above as if fully set forth herein.

86. CCA made numerous false and fraudulent statements of material fact to Owner as set forth above, including, without limitation:

- a. representations regarding the vertical integration of the CCA family of companies, including Plaza, which would create “great synergies” with respect to Owner’s projects, including the Project;
- b. representations touting several residential projects, including the One Ocean, Marea, 1100 Millecento, One Thousand Museum, and W South Beach projects listed on CCA’s website, as the collective accomplishment of CCA’s integrated family of companies, including Plaza; and/or
- c. pledging CCA’s financial strength and resources, as one of the world’s largest investment and construction companies, to support, backstop, and fulfill Plaza’s obligations under the Construction Contract to timely complete the Project without default, and honor warranty obligations thereafter.

87. CCA intended for Owner to rely on its misrepresentations of material fact and/or omissions of material fact, and knew that Owner would rely on these false misrepresentations and omissions by taking certain actions that it thought were needed to move the Project forward (including, without limitation, assigning additional Owner personnel to the Project), and/or forbearing from taking certain actions or exercising certain rights and remedies against Plaza otherwise available to it pursuant to, *inter alia*, the Construction Contract and/or Performance Bond that Plaza furnished for Owner’s benefit (including, without limitation, declaring Plaza in

default and material breach of the Construction Contract and Performance Bond, and terminating Plaza for cause).

88. Unbeknownst to Owner, at the time of CCA's material representations, CCA never intended to honor or perform its verbal and/or written representations, guarantees, and commitments.

89. Owner, as a result, reasonably relied on the truth of CCA's material misrepresentations and/or omissions of material fact in taking certain actions and/or forbearing from taking certain actions and exercising certain rights and/or remedies against Plaza, and did so to its detriment insofar as, among other things, the Project experienced significant and costly delays and failed to timely achieve Substantial Completion, and otherwise suffers from pervasive defects and nonconformities.

90. As a direct and proximate result of its reliance on the misrepresentations and/or omissions, Owner has suffered damages including, but not limited to, in excess of several million dollars in carrying costs, renewal insurance costs, and/or renewal bond costs.

WHEREFORE, Owner respectfully requests this Honorable Court enter judgment in Owner's favor and against CCA for damages, special damages which pursuant to the wrongful act doctrine include Owner's attorneys' fees and costs incurred herein, plus costs, interest, and such further and other relief as this Honorable Court deems just and proper.

**COUNT V - NEGLIGENT MISREPRESENTATION**  
**(Against CCA – In the Alternative to Count III)**

91. Owner realleges and incorporates its allegations in paragraphs 1 through 59, inclusive, above as if fully set forth herein.

92. CCA made numerous false statements of material fact to Owner as set forth above, including, without limitation:

- a. representations regarding the vertical integration of the CCA family of companies, including Plaza, which would create “great synergies” with respect to Owner’s projects, including the Project;
- b. representations touting several residential projects, including the One Ocean, Marea, 1100 Millecento, One Thousand Museum, and W South Beach projects listed on CCA’s website, as the collective accomplishment of CCA’s integrated family of companies, including Plaza; and/or
- c. pledging CCA’s financial strength and resources, as one of the world’s largest investment and construction companies, to support, backstop, and fulfill Plaza’s obligations under the Construction Contract to timely complete the Project without default, and honor warranty obligations thereafter.

93. CCA was negligent in making the above misrepresentations because it knew or should have known such representations were false and that it could not or would not honor or perform its verbal and/or written representations, guarantees, and commitments.

94. CCA intended for Owner to rely on its misrepresentations of material fact and/or omissions of material fact, and knew that Owner would rely on these false misrepresentations and omissions by taking certain actions that it thought were needed to move the Project forward (including, without limitation, assigning additional Owner personnel to the Project), and/or forbearing from taking certain actions or exercising certain rights and remedies against Plaza otherwise available to it pursuant to, *inter alia*, the Construction Contract and/or Performance Bond that Plaza furnished for Owner’s benefit (including, without limitation, declaring Plaza in default and material breach of the Construction Contract and Performance Bond, and terminating Plaza for cause).

95. Owner, as a result, reasonably relied on the truth of CCA's material misrepresentations and/or omissions of material fact in taking certain actions and/or forbearing from taking certain actions and exercising certain rights and/or remedies against Plaza, and did so to its detriment insofar as, among other things, the Project experienced significant and costly delays and failed to timely achieve Substantial Completion, and otherwise suffers from pervasive defects and nonconformities.

96. As a direct and proximate result of its reliance on the misrepresentations and/or omissions, Owner has suffered damages including, but not limited to, in excess of several million dollars in carrying costs, renewal insurance costs, and/or renewal bond costs.

WHEREFORE, Owner respectfully requests this Honorable Court enter judgment in Owner's favor and against CCA for damages, special damages which pursuant to the wrongful act doctrine include Owner's attorneys' fees and costs incurred herein, plus costs, interest, and such further and other relief as this Honorable Court deems just and proper.

**VERIFICATION**

I, Noah Breakstone, hereby declare under penalty of perjury under the laws of the United States that the information contained in the foregoing First Amended Verified Complaint is true and correct, provided that this declaration does not extend to paragraphs that contain analysis of federal, state, procedural, and/or substantive law, Florida statutory and/or case law, and/or legal opinions and argument governing the merits of the foregoing, about which I am unqualified to opine because I am not a member of The Florida Bar.

Executed on March 28/3, 2024.

  
\_\_\_\_\_  
Noah Breakstone

PASKERT DIVERS THOMPSON

/s/ Ty G. Thompson

TY G. THOMPSON, ESQ.

Florida Bar No. 0585041

Email: [tthompson@pdtlegal.com](mailto:tthompson@pdtlegal.com)

Secondary: [mlewis@pdtlegal.com](mailto:mlewis@pdtlegal.com)

ROBERT C. GRAHAM, JR., ESQ.

Florida Bar No. 105951

Email: [rgraham@pdtlegal.com](mailto:rgraham@pdtlegal.com)

Secondary: [mlewis@pdtlegal.com](mailto:mlewis@pdtlegal.com)

100 North Tampa Street, Suite 3700

Tampa, Florida 33602

Telephone: (813) 229-3500

*Attorneys for Marina Pointe*

*East Developer, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 28, 2024, pursuant to Rule 2.516 of the Florida Rules of Judicial Administration, a true and correct copy of the foregoing has been electronically filed via the Florida E-Filing Portal, which will cause an electronic copy to be delivered to all counsel of record.

/s/ Ty G. Thompson

Attorney