Fill in this information to identify the case:

Debtor 1 Fieldstone A&E, LLC

Debtor 2 (Spouse, if filing) _____

United States Bankruptcy Court for the: Eastern District of Michigan

Case number 26-48494

Official Form 410

Proof of Claim

04/25

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

Boyette Park Homeowners Association, Inc.
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?** Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?

Boyette Park Homeowners Association, Inc.
Name

BallJanik LLP, Attn. Patrick J. Button
Number Street

201 E. Pine St., #600
City State ZIP Code

Contact phone 407-404-6718

Contact email pbutton@balljanik.com

Where should payments to the creditor be sent? (if different)

_____
Name

_____
Number Street

_____
City State ZIP Code

Contact phone _____

Contact email _____

Uniform claim identifier (if you use one):

_ _

4. **Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ ____ ____ ____

7. **How much is the claim?** $ 14,622,920.00 . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   Defect Litigation

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature of property:
   - ☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim.*
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

   Amount necessary to cure any default as of the date of the petition: $_____

   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check one:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,800* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $17,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/28 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(3) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.
☑ I am the creditor's attorney or authorized agent.
☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 11/06/2026
MM / DD / YYYY

/s/ Jason P. Smalarz
Signature

Print the name of the person who is completing and signing this claim:

Name: Jason P. Smalarz
First name | Middle name | Last name

Title: Attorney

Company: Gold, Lange, Majoros & Smalarz, P.C.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 24901 Northwestern Hwy., Ste. 444
Number Street

Southfield, MI 48075
City | State | ZIP Code

Contact phone: 248-350-8220 Email: jsmalarz@glmpc.com

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

BOYETTE PARK HOMEOWNERS ASSOCIATION, INC., a Florida not-for-profit corporation,

Plaintiff,

v.

MATTAMY TAMPA/SARASOTA LLC, a Foreign Limited Liability Company; MATTAMY HOMES CORPORATION, a Foreign Profit Corporation; MATTAMY FLORIDA LLC d/b/a MATTAMY HOMES, a Foreign Limited Liability Company; FIELDSTONE A&E, LLC, Foreign Limited Liability Company; ROBERT W. GIBBONS, individually; BRIAN C. FRESONKE, individually; KENT A. GOFF, individually; AQUILA INSPECTION SERVICES, LLC, a Florida Limited Liability Company; JERRY M. WEINTRAUB, individually; WEINTRAUB ENGINEERING AND INSPECTIONS, INC., a Florida Profit Corporation; BRAD MCDONALD ROOFING & CONSTRUCTION, INC., a Florida Profit Corporation; AYALA'S CONSTRUCTION GROUP, LLC, a Florida Limited Liability Company; BUILDERS FIRSTSOURCE – FLORIDA, LLC, a Foreign Limited Liability Company; ROLANDS PAINTING SERVICES, INC., a Florida Profit Corporation; LEOLA CONSTRUCTION, L.L.C., a Florida Limited Liability Company; RIPA & ASSOCIATES, L.L.C., a Florida Limited Liability Company; CUTTING EDGE GRADING, LLC, a Florida Limited Liability Company; GREENBRIAR LANDSCAPE, INC. a Florida Corporation; WINDWARD BUILDING GROUP, INC. a Florida Corporation; and ASSOCIATED CONSTRUCTION PRODUCTS, INC. a Florida Corporation;

Defendants.
_____/

Case No.: 2025-CA-004145
BUSINESS COURT

PLAINTIFF'S AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

PLAINTIFF'S AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, BOYETTE PARK HOMEOWNERS ASSOCIATION, INC. (the "ASSOCIATION"), by and through undersigned counsel, hereby sues Defendants, MATTAMY TAMPA/SARASOTA LLC; MATTAMY HOMES CORPORATION; MATTAMY FLORIDA LLC d/b/a MATTAMY HOMES; ROBERT W. GIBBONS, FIELDSTONE A&E, LLC; BRIAN C. FRESONKE; KENT A. GOFF; AQUILA INSPECTION SERVICES LLC; WEINTRAUB ENGINEERING AND INSPECTIONS, INC.; JERRY WEINTRAUB; BRAD MCDONALD ROOFING & CONSTRUCTION, INC.; AYALA'S CONSTRUCTION GROUP, LLC; BUILDERS FIRSTSOURCE – FLORIDA, LLC; ROLANDS PAINTING SERVICES, INC.; LEOLA CONSTRUCTION, L.L.C.; RIPA & ASSOCIATES, L.L.C.; CUTTING EDGE GRADING, LLC; GREENBRIAR LANDSCAPE, INC.; WINDWARD BUILDING GROUP, INC.; and ASSOCIATED CONSTRUCTION PRODUCTS, INC.; and alleges as follows:

NATURE OF THE CASE

1. This is an action for damages arising from the defective construction of the individual units and common areas of Boyette Park Townhomes (the "Townhomes" or "Subject Property") caused by the defendants who were responsible for the development, design, and construction of the Townhomes.

2. The Subject Property consists of 228 residential units, and associated roadways, sidewalks, and common areas.

3. The ASSOCIATION maintains and operates the Townhomes for its members.

JURISDICTION AND VENUE

4. This is an action for monetary damages in excess of $50,000.00, exclusive of interest, costs, and attorneys' fees, and this Court otherwise has jurisdiction over the subject matter hereof.

5. The Subject Property is located in Hillsborough County, Florida.

6. The ASSOCIATION has an office for the transaction of its usual and customary business in Hillsborough County, Florida.

7. At all times material, Defendants resided or conducted business in Hillsborough County, Florida, including for the construction of the Subject Property.

8. The acts and/or omissions giving rise to this complaint took place in Hillsborough County, and each cause of action occurred in Hillsborough County, Florida. Therefore, jurisdiction and venue are proper in this County. Further, this action is properly filed in Hillsborough County, Florida under Ch. 47, Fla. Stat., because the cause of action sued upon herein accrued in Hillsborough County, Florida.

9. All conditions precedent to bringing this action have occurred or have been waived, including, but not limited to, the requirements of Ch. 558, Fla. Stat., and Ch. 720, Fla. Stat.

PARTIES

10. The ASSOCIATION is organized and exists under Ch. 720 of the Florida Statutes to provide a corporate entity pursuant to §720.302, Fla. Stat., for the operation of the Boyette Park Townhomes.

11. The ASSOCIATION brings this action in its own right and as a lawful representative for its members who own the Townhomes that Defendants designed and built, and which suffer from defects and damages affecting the exterior walls, window penetrations, roofing systems, drywall, siding, paint, sheathing, framing, lath, and other common elements affecting the ASSOCIATION and its members as a matter of common interest.

12. Pursuant to §720.303(1), Fla. Stat., and Fla. R. Civ. P. 1.221, the ASSOCIATION is the lawful, adequate, and appropriate class representative of the townhome owners and all common areas, improvements, and appurtenances incident thereto.

13. MATTAMY FLORIDA LLC d/b/a MATTAMY HOMES, is a Florida Limited Liability Company with its principal place of business located at 4901 Vineland Road, Suite 450, Orlando, Florida 32811.

14. MATTAMY HOMES CORPORATION, is a Foreign Profit Corporation with its principal address located in 4901 Vineland Road, Suite 450, Orlando, Florida 32811.

15. MATTAMY TAMPA/SARASOTA, LLC, is a Foreign Limited Liability Company with its principal address located at 4901 Vineland Road, Suite 450, Orlando, Florida 32811.

16. MATTAMY FLORIDA LLC d/b/a MATTAMY HOMES; MATTAMY HOMES CORPORATION; and MATTAMY TAMPA/SARASOTA, LLC, herein will be collectively referred to as "MATTAMY."

17. MATTAMY was the builder and licensed "general contractor" for the design, development, and construction of the Subject Property, as that term is defined in §489.105(3)(a), Fla. Stat.

18. As the general contractor for the Subject Property, MATTAMY was responsible for the development, design and construction of the Subject Property, including, but not limited to, retaining, hiring, supervising, directing and coordinating the SUBCONTRACTORS and PROFESSIONAL CONSULTANTS.

19. As the general contractor for the Subject Property, MATTAMY owed statutory duties to the ASSOCIATION, and its members, pursuant to the applicable building codes and §553.84, Florida Statutes, to perform its scope of work in compliance with the applicable building codes, and a common-law duty to construct the Subject Property in accordance with standard industry practices so as to prevent harm and damage to the ASSOCIATION and its members.

20. MATTAMY also had non-delegable duties as general contractor to ensure construction complied with the building code. *See Mastrandrea v. J. Mann, Inc.*, 128 So. 2d 146

(Fla. 3d DCA 1961); *Bialkowicz v. Pan Am. Condominium No. 3, Inc.*, 215 So. 2d 767 (Fla. 3d DCA 1974).

21. Throughout the time the Subject Property was under construction Fla. Stat. § 553.79 stated that: "The named contractor to whom the building permit is issued shall have the responsibility for supervision, direction, management, and control of the construction activities on the project for which the building permit was issued." *See* Fla. Stat. § 553.79(8) (2006-2020); see also Fla. Stat. § 553.79(10)(2021-2024).

22. Accordingly, MATTAMY owed a statutory duty to supervise, direct, manage, and control the construction activities on the Subject Property.

23. MATTAMY also a common-law duty to construct the Subject Property in accordance with standard industry practices so as to prevent harm and damage to the ASSOCIATION.

24. ROBERT W. GIBBONS ("GIBBONS") is a licensed Certified General Contractor in the state of Florida.

25. GIBBONS is the license holder and general contractor for MATTAMY that pulled each of the building permits to construct the Subject Property using his license.

26. GIBBONS was responsible for the development and construction of buildings at the Subject Property, including, but not limited to, retaining, hiring, supervising, directing, and coordinating the subcontractors.

27. Throughout the time the Subject Property was under construction, Fla. Stat. §553.79 stated that: "The named contractor to whom the building permit is issued shall have the responsibility for supervision, direction, management, and control of the construction activities on the project for which the building permit was issued." *See* Fla. Stat. §553.79(8) (2006-2020); see also Fla. Stat. §553.79(10)(2021-2024).

28. Accordingly, GIBBONS owed a statutory duty to supervise, direct, manage, and control the construction activities on the Subject Property, under §553.79, Fla. Stat.

29. GIBBONS is a licensed certified general contractor in the State of Florida and served as the primary qualifying agent on behalf of MATTAMY. As the licensed general contractor in the State of Florida, pursuant to the applicable codes, property permits, and §553.79, Florida Statutes, GIBBONS was responsible for the entire scope of work on the Subject Property, supervising all work performed on the Subject Property, hiring and managing the various subcontractors performing work on the Subject Property, and ensuring that the Subject Property was built in accordance with all appliable building codes and standards. GIBBONS also owed a common-law duty to the ASSOCIATION and its members to use reasonable care; to perform his scope of work with due care so as not to cause harm, and to follow all applicable codes, industry standards, and the Subject Property's permitted plans and specifications.

30. BRIAN C. FRESONKE ("FRESONKE") served as engineer of the Subject Property, provided professional engineering and design services for the Subject Property, and was responsible for designing, inspecting, and approving the Townhomes' design and construction.

31. Throughout the design, construction, inspection, and approval of the Subject Property, FRESONKE was under a professional duty to the ASSOCIATION and its members to use reasonable care and to ensure the design and construction of the Subject Property complied with all applicable building codes, plans and specifications, and applicable design and construction standards.

32. FRESONKE owed a duty to the ASSOCIATION and its members to use reasonable care and to perform its scope of work with due care so as not to cause harm, and to follow all applicable building codes, applicable design and construction standards.

33. KENT A. GOFF ("GOFF") served as architect of the Subject Property, provided

professional architecture and design services for the Subject Property, and was responsible for designing, inspecting, and approving the Townhomes' design and construction.

34. Throughout the design, construction, inspection, and approval of the Subject Property, GOFF was under a professional duty to the ASSOCIATION and its members to use reasonable care and to ensure the design and construction of the Subject Property complied with all applicable building codes, plans and specifications, and applicable design and construction standards.

35. GOFF owed a duty to the ASSOCIATION and its members to use reasonable care and to perform its scope of work with due care so as not to cause harm, and to follow all applicable building codes, applicable design and construction standards.

36. Upon information and belief, FIELDSTONE A&E, LLC ("FIELDSTONE"), Foreign Limited Liability Company, who at all times material hereto, was conducting business in Hillsborough County, Florida, including for the Subject Property, and was responsible for its entire scope of work at the Subject Property.

37. FIELDSTONE served as architect of the Subject Property, provided professional engineering and architectural services for the Subject Property, and was responsible for designing, inspecting, and approving the Townhomes' design and construction.

38. Throughout the design, construction, inspection, and approval of the Subject Property, FIELDSTONE was under a professional duty to the ASSOCIATION and its members to use reasonable care and to ensure the design and construction of the Subject Property complied with all applicable building codes and applicable design and construction standards.

39. FIELDSTONE owed a duty to the ASSOCIATION and its members to use reasonable care and to perform its scope of work with due care so as not to cause harm, and to follow all applicable building codes, industry standards, and the Subject Property's permitted plans

and specifications.

40. WEINTRAUB ENGINEERING AND INSPECTIONS, INC. ("WEI"), is a Florida Profit Corporation and also served as a consultant and private provider retained by MATTAMY to provide building code inspection services for the construction of the Subject Property, in accordance with § 553.791, Florida Statutes, and thus had responsibility for reviewing the plans, and supervising, inspecting, and approving of construction at the Subject Property.

41. Throughout the design, inspection, and approval of construction of the Subject Property, WEI was under a professional duty to the ASSOCIATION and its members to use reasonable care and to ensure the design and construction of Subject Property complied with all applicable building codes, plans and specifications, and applicable design and construction standards.

42. JERRY WEINTRAUB ("WEINTRAUB") is a licensed architect in the state of Florida and served as a licensed private provider working on behalf of WEI to provide building code inspection services for the construction of the Subject Property, in accordance with § 553.791, Florida Statutes, and thus had responsibility for reviewing the plans, and supervising, inspecting, and approving of construction at the Subject Property.

43. Throughout the design, inspection, and approval of the Subject Property, WEINTRAUB was under a professional duty to the ASSOCIATION and its members to use reasonable care and to ensure the design and construction of Subject Property complied with all applicable building codes, plans and specifications, and applicable design and construction standards.

44. AQUILA INSPECTION SERVICES LLC ("AQUILA"), is a Florida Profit Corporation and also served as a consultant and private provider retained by MATTAMY to provide building code inspection services for the construction of the Subject Property, in

accordance with § 553.791, Florida Statutes, and thus had responsibility for reviewing the plans, and supervising, inspecting, and approving of construction at the Subject Property.

45. Throughout the design, inspection, and approval of construction of the Subject Property, AQUILA was under a professional duty to the ASSOCIATION and its members to use reasonable care and to ensure the design and construction of Subject Property complied with all applicable building codes, plans and specifications, and applicable design and construction standards.

46. BRAD MCDONALD ROOFING & CONSTRUCTION, INC. ("BMRC"), a Florida Profit Corporation, who at all times material hereto, was conducting business in Florida, including for the Subject Property, and was responsible for its entire scope of work at the Subject Property, including but not limited to, furnishing and installing the roofing system, roof flashing, and related accessories and components.

47. BMRC owed a statutory duty to the ASSOCIATION and its members, pursuant to the applicable building codes and §553.84, Florida Statutes, to perform his work in compliance with the applicable building codes, and a common-law duty to construct the Subject Property in accordance with standard industry practices, so as to prevent harm and damage to the ASSOCIATION.

48. AYALA'S CONSTRUCTION GROUP, LLC ("AYALA"), a Florida Limited Liability Company; who at all times material hereto, was conducting business in Florida, including for the Subject Property, and was responsible for its entire scope of work at the Subject Property, including but not limited to, furnishing and installing exterior fiber cement siding, siding, housewrap, stucco, and related accessories and components.

49. AYALA owed a statutory duty to the ASSOCIATION and its members, pursuant to the applicable building codes and §553.84, Florida Statutes, to perform his work in compliance

with the applicable building codes, and a common-law duty to construct the Subject Property in accordance with standard industry practices, so as to prevent harm and damage to the ASSOCIATION.

50. BUILDERS FIRSTSOURCE – FLORIDA, LLC ("BFS"); a Foreign Limited Liability Company, who at all times material hereto, was conducting business in Florida, including for the Subject Property, and was responsible for its entire scope of work at the Subject Property, furnishing and installing windows, and related accessories.

51. BFS owed a statutory duty to the ASSOCIATION and its members, pursuant to the applicable building codes and §553.84, Florida Statutes, to perform his work in compliance with the applicable building codes, and a common-law duty to construct the Subject Property in accordance with standard industry practices, so as to prevent harm and damage to the ASSOCIATION.

52. ROLANDS PAINTING SERVICES, INC. ("ROLANDS"), a Florida Profit Corporation, who at all times material hereto, was conducting business in Florida, including for the Subject Property, and was responsible for its entire scope of work at the Subject Property, including but not limited to, furnishing and installing exterior caulk and sealant, paint, and related components.

53. ROLANDS owed a statutory duty to the ASSOCIATION and its members, pursuant to the applicable building codes and §553.84, Florida Statutes, to perform his work in compliance with the applicable building codes, and a common-law duty to construct the Subject Property in accordance with standard industry practices, so as to prevent harm and damage to the ASSOCIATION

54. LEOLA CONSTRUCTION, L.L.C. ("LEOLA"), a Florida Limited Liability Company, who at all times material hereto, was conducting business in Florida, including for the

Subject Property, and was responsible for its entire scope of work at the Subject Property, including but not limited to, furnishing and installing framing, and related components.

55. LEOLA owed a statutory duty to the ASSOCIATION and its members, pursuant to the applicable building codes and §553.84, Florida Statutes, to perform his work in compliance with the applicable building codes, and a common-law duty to construct the Subject Property in accordance with standard industry practices, so as to prevent harm and damage to the ASSOCIATION

56. RIPA & ASSOCIATES, L.L.C.; ("RIPA"), a Florida Limited Liability Company, who at all times material hereto, was conducting business in Florida, including for the Subject Property, and was responsible for its entire scope of work at the Subject Property, including but not limited to, furnishing and installing sitework and infrastructure related components.

57. RIPA owed a statutory duty to the ASSOCIATION and its members, pursuant to the applicable building codes and §553.84, Florida Statutes, to perform his work in compliance with the applicable building codes, and a common-law duty to construct the Subject Property in accordance with standard industry practices, so as to prevent harm and damage to the ASSOCIATION

58. CUTTING EDGE GRADING, LLC ("CUTTING EDGE"), a Florida Limited Liability Company, who at all times material hereto, was conducting business in Florida, including for the Subject Property, and was responsible for its entire scope of work at the Subject Property, including but not limited to, furnishing and installing grading and concrete work, and related components.

59. CUTTING EDGE owed a statutory duty to the ASSOCIATION and its members, pursuant to the applicable building codes and §553.84, Florida Statutes, to perform his work in compliance with the applicable building codes, and a common-law duty to construct the Subject

Property in accordance with standard industry practices, so as to prevent harm and damage to the ASSOCIATION

60. GREENBRIAR LANDSCAPE, INC. ("GREENBRIAR"), a Florida Corporation, who at all times material hereto, was conducting business in Florida, including for the Subject Property, and was responsible for its entire scope of work at the Subject Property, including but not limited to, furnishing and installing landscaping and irrigation, and related components.

61. GREENBRIAR owed a statutory duty to the ASSOCIATION and its members, pursuant to the applicable building codes and §553.84, Florida Statutes, to perform his work in compliance with the applicable building codes, and a common-law duty to construct the Subject Property in accordance with standard industry practices, so as to prevent harm and damage to the ASSOCIATION

62. WINDWARD BUILDING GROUP, INC. ("WINDWARD"), a Florida Corporation, who at all times material hereto, was conducting business in Florida, including for the Subject Property, and was responsible for its entire scope of work at the Subject Property, including but not limited to, furnishing and installing hardscapes and pool pavers, and related components.

63. WINDWARD owed a statutory duty to the ASSOCIATION and its members, pursuant to the applicable building codes and §553.84, Florida Statutes, to perform his work in compliance with the applicable building codes, and a common-law duty to construct the Subject Property in accordance with standard industry practices, so as to prevent harm and damage to the ASSOCIATION

64. ASSOCIATED CONSTRUCTION PRODUCTS, INC. ("ACP"), a Florida Corporation, who at all times material hereto, was conducting business in Florida, including for the Subject Property, and was responsible for its entire scope of work at the Subject Property,

including but not limited to, furnishing and installing Modular block, retaining walls, and pavers and related components.

65. ACP owed a statutory duty to the ASSOCIATION and its members, pursuant to the applicable building codes and §553.84, Florida Statutes, to perform his work in compliance with the applicable building codes, and a common-law duty to construct the Subject Property in accordance with standard industry practices, so as to prevent harm and damage to the ASSOCIATION

66. The defendant identified in ¶¶ 30-39 are collectively referred to herein as the "DESIGN PROFESSIONALS"

67. The defendants identified in ¶¶ 40-45 are collectively referred to herein as the "PROFESSIONAL CONSULTANTS."

68. The defendants identified in ¶¶ 46-65 are collectively referred to herein as the "SUBCONTRACTORS."

69. The defendants identified in ¶¶ 13-65 are collectively referred to herein as the "Defendants."

70. As a result of the forgoing Defendants' conduct, the ASSOCIATION has been required to retain the services of the undersigned counsel to represent its interests in this action and is obligated to pay a reasonable fee for their services.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

71. The ASSOCIATION has the responsibility to maintain the common areas and exterior of the Townhomes, including, but not limited to, the building exteriors, exterior windows, and roofs.

72. The ASSOCIATION also has the duty to maintain the Subject Property by making all proper expenditures, where possible, for the Subject Property's upkeep and management.

73. Upon information and belief, MATTAMY controlled the ASSOCIATION until legal "turnover" of the Association to the owners of the Townhomes.

74. The causes of action alleged herein concern matters of common interest to the Townhomes and the ASSOCIATION'S members.

75. The Defendants collectively undertook to plan, design, develop, construct, mass-produce, and market the Townhomes for sale to, and use of, the general public, including the ASSOCIATION, its members, and their predecessors in interest.

76. The Florida Building Code ("FBC") is a law regulation construction in the jurisdiction.

77. In so doing, Defendants failed to reasonably and adequately plan, develop, design, or construct the Townhomes.

78. As a direct result of the Defendants' collective and individual failures, the ASSOCIATION and its members have suffered, and continue to suffer, damages proximately caused by defects and deficiencies in the construction of the Townhomes and amenity center, including, but not limited to, the following defects and deficiencies caused by improper construction or design:

Roofs

A. Asphalt Shingles

(1) The roof shingles do not overhang the roof edge or were not installed flush with the edge flashing per CertainTeed's installation instructions. This has allowed water to penetrate and has contributed to roof sheathing damage.

(2) The roof shingles were not properly placed per CertainTeed's installation instructions. This does not properly anchor the roof shingles.

(3) The starter strip was fastened with an insufficient number of fasteners and the fasteners were not properly placed per CertainTeed's installation instructions. This does not properly anchor the starter strip.
(4) The underlayment was cut, torn, or folded. This has allowed water to penetrate and has contributed to roof sheathing damage.
(5) The underlayment was not fully extended up the wall. This is not per CertainTeed's installation instructions, allowed water to penetrate, and has contributed to roof sheathing damage.
(6) The shingle fasteners were exposed and unsealed, overdriven and underdriven. This does not properly anchor the shingle, has allowed water to penetrate and has contributed to roof sheathing damage.

B. Flashing

(1) The "cut-and-fold" roof diverter lap was unsealed. This has allowed water to penetrate and has contributed to roof sheathing damage.
(2) The "L" flashing was not set on a bed of roofing cement. This has allowed water to penetrate and has contributed to roof sheathing damage.
(3) Detail 11/AD-4 calls for two sets of "L" flashing, but not set on a bed of sealant.
(4) The "L" flashing lap was not sealed with roofing cement. This has allowed water to penetrate and has contributed to roof sheathing damage.

C. Roof Vents/Plumbing Stacks

(1) The roof vent/plumbing vent was not set on a bed of sealant. This allows water to penetrate and contributes to roof sheathing damage.
(2) No roof vent details on approved construction documents.
(3) The lead flashing was improperly folded into the vent, reducing the vent diameter. This restricts airflow and contributes to toilet backups and foul odors inside the units.

Fenestrations

D. Using the AAMA 511 sill track test per ASTM E2128 Section 10.3.2.3, the windows allowed water to leak into the interiors. Window product leaks have contributed to interior damage.
E. Using the AAMA 501.2 spray wand per ASTM E2128 Section 10.3.2.2, the window/wall assembly allowed water to leak into the interiors. Window/wall leaks have contributed to interior damage.
F. No sealant was installed behind the sill fin. This is not per Detail 4/AD-2, or per MI Windows or FortiFiber installation instructions, has allowed water to penetrate, and has contributed to interior damage.
G. The window glazing seals have failed. This has allowed moist air to condensate between the glass panes and reduces the window's R-value.

H. The window bucks were not pressure treated. This is not per Woods and Plastics Note E, Sheet AGNO-2 or Wood Framing, Note #2, Sheet S0.1.S, and has contributed to interior and buck damage.

I. The windows were not fastened with corrosion-resistant fasteners. This is not per MI Windows and Doors installation instructions and does not properly anchor the windows.

J. The window nail fin was damaged at the corners. This indicates a lack of care in the installation of the window, damages the window, allows water to penetrate, and contributes to interior damage.

K. The window frames were installed out of level. This allows water to penetrate and contributes to interior damage.

Walls

L. Stucco Over Wood Frame

(1) The unsealed edge of stucco backing is butted up under the window frame. This is not per Detail 4/AD-2, has allowed water to penetrate, and has contributed to wall sheathing damage.

(2) Detail 4/AD-2 appears to show a 6" wide self-adhered membrane over the stucco backing and sill fin.

(3) The sealant around the window perimeter was improperly installed, sometimes too thick, sometimes too thin, sometimes missing. This has caused premature failure of the sealant, allowed bulk water to penetrate, and has contributed to wall sheathing damage.

(a) Details 4 and 5/AD-2 do not show a separation between the stucco and window frame or a perimeter sealant.

(4) The scratch coat was not applied with sufficient pressure to embed the lath into the plaster. The lath also does not meet the ICC ES ACI 191 criteria for embedment. This does not protect the lath from rusting, which causes cracking of the stucco. This allows bulk water to penetrate and contributes to wall sheathing damage.

(5) The brown and scratch stucco layers were de-bonded. This causes cracking of the stucco, which allows bulk water to penetrate, and contributes to wall sheathing damage.

(6) The stucco plaster was applied in only two coats. This has allowed base layer cracking of the stucco to be exposed on the surface, allows bulk water to penetrate, and contributes to wall sheathing damage.

(7) The control joint flanges were not fastened to the substrate and not fully sealed to the floor line and weep accessory. This does not allow expansion/contraction of stucco, results in uncontrolled stucco cracking, allows water to penetrate, and contributes to wall sheathing damage.

(a) No detail provided on construction documents for this issue.

(8) The floor line accessory at the CMU transition was sealed with paint. This does not allow water to be redirected to the exterior, allows water to penetrate, and contributes to wall sheathing damage.

(9) No weep accessory was installed, or the weep accessory was blocked at the base of the cantilevered wall. This does not allow water to be redirected to the exterior, allows water to penetrate, and contributes to wall sheathing

damage.

(a) No detail provided on construction documents for this issue.

(10) The window flashing was not fully adhered. This allows water to penetrate and contributes to interior damage. The pan flashing does not fully cover the subsill.

(11) No flashing was applied over the vent accessory flanges. This allows water to penetrate and contributes to wall sheathing damage.

(a) No detail provided on construction documents for this issue.

(12) No sealant was applied at the interface between the stucco and vent penetration. This allows water to penetrate and contributes to wall sheathing damage.

(a) No detail provided on construction documents for this issue.

(13) Unsealed lath fasteners were driven through the window fins. This creates a path for water intrusion and contributes to interior damage.

(14) The decorative band casing beads were installed over the stucco lath. This prevents embedment of the lath into the plaster and does not protect the lath from rusting and expanding. This in turn causes cracking of the stucco, allows water to penetrate, and contributes to stucco and wall sheathing damage.

(a) Detail 4/AD-2 does not show a decorative band installation.

(15) The casing beads were installed over the stucco lath. This prevents embedment of the lath into the plaster and does not protect the lath from rusting and expanding. This in turn causes cracking of the stucco, allows water to penetrate, and contributes to stucco and wall sheathing damage.

(a) No detail provided on construction documents for this issue.

(16) The wall termination accessory was installed on top of the building wrap. This allows water to travel behind the wall termination accessory and contributes to wall sheathing damage. Detail3/AD-3 correctly shows the building wrap over the wall termination accessory.

(17) The weather protective barrier was not sealed to the diverter/roof flashing. This has allowed water to penetrate and has contributed to wall sheathing damage.

(a) No detail provided on construction documents for this issue.

(18) Excessive bulk moisture was observed behind the stucco backing. This confirms penetration of bulk moisture and has contributed to wall sheathing damage.

(19) The building wrap was not fastened in a 16" x 18" pattern. This is not per Tyvek's installation instructions, does not properly anchor the building wrap and damages the building wrap, allows water to penetrate, and contributes to wall sheathing damage.

(20) The intersection between the stucco and the roof eave/diverter flashing was unsealed. This has allowed water to penetrate and has contributed to wall sheathing damage.

(a) No detail provided on construction documents for this issue.

M. Stucco Over Concrete Block

(1) The lack of separation between the stucco and window frame prevents the proper application of sealant around the window perimeter. This has allowed water to penetrate and has contributed to stucco and masonry damage.
   (a) Details 1 and 2/AD-2 do not show a separation between the stucco and window frame. Detail 1/AD-2 shows a fillet sealant application.

(2) The stucco was not fully bonded with the concrete masonry. This has allowed water to penetrate and has contributed to stucco and masonry damage.

(3) The stucco was not bonded to the window precast sill, and no bonding agent was observed. This has allowed the water to penetrate and has contributed to stucco and masonry damage.
   (a) Detail 1/AD-2 does not call for bonding agent. It calls for a waterproofing membrane, which would prevent the plaster from bonding.

(4) Control joints were missing in the masonry/stucco. This does not allow expansion/contraction of the masonry/stucco, has caused cracking of the stucco, has allowed water to penetrate has contributed to stucco and masonry damage.
   (a) No masonry wall control joints shown on construction documents.

(5) The mortar joints had gaps and voids. This allows water to penetrate and contributes to masonry and stucco damage.

N. Cement Fiber Board Siding

(1) The insufficient gap between the siding trim and the window frame/door has caused the perimeter sealant to prematurely fail. This allows water to penetrate and contributes to wall sheathing damage.
   (a) Details 7 and 8/Ad-2 do not show a gap between the trim and window frame.

(2) No sealant was applied at the interface between the siding panels and the roof diverter/fascia. This allows water to penetrate and contributes to wall sheathing damage.
   (a) No detail provided on construction documents for this issue.

Slabs

O. Uncontrolled cracking of concrete slabs.

P. Damaged driveway concrete.

Framing

Q. Untreated floor trusses are in direct contact with the concrete masonry unit walls. This is not per Woods and Plastics Note E, Sheet AGNO-2, or Wood Framing, Note #2, Sheet S0.1.S. Long term contact with residual moisture in the block walls damages the floor trusses.

R. The window sub-sill framing was sloped to the interior. This prevents the pan flashing from evacuating water to the exterior and contributes to wall framing and interior damage.

S. The wall sheathing edge was fastened with less nails than required by the approved construction documents (Detail W01/S4.2). The smaller number of nails results in a weaker structure that will not resist damage as well as if constructed per the approved plans.

T. The sill plate nails were not engaged with the solid blocking or the floor truss. This is not per Detail FL2/S4.3. The missing/smaller number nails results in a weaker structure that will not resist damage as well as if constructed per the approved plans.

U. The floor sheathing boundary nailing was completely missing. The missing nails result in a weaker structure that will not resist damage as well as if constructed per the approved plans.

Sitework

V. Landscaping/Drainage

(1) Large trees were planted too close to the buildings. This causes damage to the buildings and enables the introduction of vermin.

(2) Landscaping areas were damaged as the result of poor drainage.

W. Pavers

(1) Walkway pavers have settled in the pool deck area. This creates a trip hazard.

79. At all times material hereto, all of the defects, deficiencies, and building code violations were or should have been known to the Defendants.

80. The defects and deficiencies were not readily discoverable by the ASSOCIATION or its members through reasonable inspection at the time of purchase, and the ASSOCIATION and its members became aware of the defects and deficiencies only after recent inspections performed by expert consultants.

81. The aggregate effect of the defects set forth above has caused, and will continue to cause, community-wide water-intrusion damage to other components of the roofs, walls and structural framing, and other components of the building including, but not limited to, the building exteriors, building framing, building lath, weather resistive barrier, building sheathing and framing, interior and exterior finishes, drywall, paint, insulation, and other components of the Subject Property and common areas; damages to other property; damage to work of other trades;

and undue risk of future damages throughout the Subject Property. Moreover, the defects alleged herein have caused, and will continue to cause, loss of use to the Association and its members.

82. In compliance with §558.004, Fla. Stat., the ASSOCIATION has served upon Defendants written notice (the "558 Notice") including statements that the notice was being given to satisfy the requirements of Ch. 558, Fla. Stat., and specifying in reasonable detail the common defects and damages and injuries to the units, common areas, and appurtenances that are the subject of the claims, and describing in reasonable detail the common causes of the common defects to the extent known, the nature and extent of the damages and injuries resulting from the defects to the extent known, and the location of each defect to the units, common areas, and appurtenances to the extent known.

83. Additionally, upon information and belief, MATTAMY provided secondary downstream notices to the subcontractors, as provided for in §558.004(3).

84. The ASSOCIATION has complied with all requirements of §558, *et seq.*, Fla. Stat., or such requirements have been waived by the parties.

COUNT I - VIOLATION OF BUILDING CODE
(Against MATTAMY FLORIDA LLC d/b/a MATTAMY HOMES, MATTAMY HOMES CORPORATION, and MATTAMY TAMPA/SARASOTA, LLC)

85. The ASSOCIATION reasserts, re-alleges, and incorporates by reference all the allegations in ¶¶ 1-84 above.

86. Pursuant to Florida Statutes §553.84, on behalf of its members, the ASSOCIATION has a private right of action for any damages resulting from a building-code violation.

87. MATTAMY owed a statutory and non-delegable duty to the ASSOCIATION and its members pursuant to the FBC, §553.79, and §553.84, Florida Statutes, to develop, design, and construct all the common elements and units of the Townhomes in compliance with the FBC. *See* Fla. Stat. §553.79; *Mills v. Krauss*, 114 So. 2d 817 (Fla. 2d DCA 1959) (a general contractor owes

a non-delegable duty of care subjecting it to liability for a subcontractor's negligence.); *CC-Aventura, Inc. v. Weitz Co., LLC*, 2009 WL 2136527, *2 (S.D. Fla. July 13, 2009) (citing *Mills*, 114 So. 2d 817) *Mastrandrea v. J. Mann, Inc.*, 128 So.2d 146 (Fla. 3d DCA 1961); *Bialkowicz v. Pan Am. Condominium No. 3, Inc.*, 215 So.2d 767 (Fla. 3d DCA 1974).

88. Further, to the extent MATTAMY utilized subcontractors and consultants to plan, design, and construct the Subject Property, MATTAMY as the licensed general contractors, had a non-delegable duty to supervise their work. As a result, MATTAMY are vicariously responsible for the negligent acts of their subcontractors and consultants, including, but not limited to, the negligent acts of the subcontractors or consultants so utilized.

89. The operative construction set of approved plans for the Subject Property were stamped and permitted by the building department as approved under the applicable FBC, and these approved plans were therefore incorporated by reference into the operative codes for construction of the Subject Property.

90. MATTAMY's material violations of the FBC include, but are not limited to, the defects described in ¶ 78 above.

91. The aggregate effect of the defects set forth above has caused and will continue to cause damage, including, community-wide water-intrusion damage to other components of the roofs, walls and structural framing, and other components of the building including, but not limited to the building exteriors, building framing, building lath, weather resistive barrier, building sheathing and framing, interior and exterior finishes, drywall, paint, insulation, and other components of the Subject Property and common areas; damages to other property; damage to work of other trades; and undue risk of future damages throughout the Subject Property. Moreover, the defects alleged herein have caused, and will continue to cause, loss of use to the ASSOCIATION and its members.

92. MATTAMY knew or should have known that all the violations alleged and described above existed.

93. As a result of the foregoing FBC material violations, the ASSOCIATION and its members have been damaged and injured. Damages, in an amount to be determined at trial, are in excess of $50,000.00 and continuing, and include, but are not limited to, the following:

a. All costs to investigate the Subject Property and develop a scope and plans to repair the Subject Property;

b. All costs to repair, and oversee the repairs of, the defects and the resulting damages to the Subject Property;

c. All costs to repair defects that may cause future resulting damages;

d. Loss of use, storage, and temporary housing costs caused by the defects and required during repairs;

e. Diminution in value damages;

f. Costs of temporary repairs;

g. Incidental and consequential damages caused by the defects alleged herein;

h. All costs incurred to prosecute this lawsuit; and,

i. Prejudgment interest.

94. The foregoing FBC material violations were both the legal and factual cause of the aforementioned damages.

95. As a result of the conduct of MATTAMY, in violation of applicable building and construction codes and ordinances, the ASSOCIATION has been compelled to retain the services of legal counsel to comply with statutory requirements and to institute and prosecute these proceedings, and to retain expert consultants and witnesses as reasonably necessary to prove its case and is obligated to pay a reasonable fee for such services.

WHEREFORE the ASSOCIATION demands judgment against MATTAMY FLORIDA LLC d/b/a MATTAMY HOMES, MATTAMY HOMES CORPORATION, and MATTAMY TAMPA/SARASOTA, LLC, for damages including, but not limited to, those pursuant to Fla. Stat. §553.84, the cost of repairing the building code violations, the resulting damages from the building code violations, incidental and consequential damages caused thereby, including, but not limited to, loss of use and temporary replacement housing during repairs, temporary repair costs, diminution in value damages, costs incurred in the prosecution of this lawsuit, pre-judgment interest, trial by jury, and any other relief the Court deems just and proper.

COUNT II – NEGLIGENT SUPERVISION
(Against MATTAMY FLORIDA LLC d/b/a MATTAMY HOMES, MATTAMY HOMES CORPORATION, and MATTAMY TAMPA/SARASOTA, LLC)

96. The ASSOCIATION reasserts, re-alleges, and incorporates by reference all the allegations in ¶¶ 1-84, and 86-95 above.

97. At all times material hereto, MATTAMY was responsible for overseeing and supervising the SUBCONTRACTORS in the construction of the Subject Property.

98. MATTAMY had a non-delegable duty to the ASSOCIATION and its members to use reasonable care during their activities throughout construction of the Subject Property.

99. MATTAMY had a duty to use reasonable care to properly supervise the work of the SUBCONTRACTORS, and to ensure that the SUBCONTRACTORS constructed the Subject Property to at least the minimum requirements of the applicable building codes, standards, plans and specifications, contract documents, manufacturers' recommendations, and standards in the industry.

100. MATTAMY breached its duties by negligently failing to ensure proper procedures were in place during construction of the Subject Property, and by failing to provide proper oversight and supervision of the SUBCONTRACTORS.

101. MATTAMY's negligent failures to oversee and supervise the SUBCONTRACTORS was a breach of its duties to the ASSOCIATION and its members.

102. By failing to properly supervise the SUBCONTRACTORS, MATTAMY negligently failed to ensure that the construction of the Subject Property was in compliance with at least the minimum requirements of the applicable codes and standards, the approved plans and specifications, contract documents, and manufacturers' recommendations for the Subject Property, thereby resulting in damages including, but not limited to, water damage, property damage, and damages to the work and property of other persons or entities, necessitating the need for repairs.

103. MATTAMY's actions have caused and will continue to cause, damage to the Subject Property, including, but not limited to, water damage, property damage, and damages to the work and property of other persons or entities, necessitating the need for repairs. Moreover, the defects alleged here in have caused, and will continue to cause, loss of use to the Association and its members.

104. MATTAMY's acts and omissions were a direct, proximate, and legal cause of the damages suffered by the ASSOCIATION.

105. As a direct and proximate result of MATTAMY's negligence, the ASSOCIATION has been and will be required to expend significant sums of money to remedy the defects and deficiencies, the resulting damages from the construction deficiencies, and the incidental and consequential damages in an amount to be determined at trial, are in excess of $50,000.00 and include, but are not limited to the damages alleged in ¶ 93 above.

WHEREFORE the ASSOCIATION demands judgment against MATTAMY FLORIDA LLC d/b/a MATTAMY HOMES, MATTAMY HOMES CORPORATION, and MATTAMY TAMPA/SARASOTA, LLC, for damages including, but not limited to, the cost of repairing the construction deficiencies, the resulting damages from the construction deficiencies, the incidental

and consequential damages, including, but not limited to, loss of use, moving, and temporary replacement housing costs during repairs, costs incurred in the prosecution of this lawsuit, pre- and post-judgment interest, trial by jury, and any other relief the Court deems just and proper.

COUNT III – NEGLIGENT HIRING AND RETENTION
(Against MATTAMY FLORIDA LLC d/b/a MATTAMY HOMES, MATTAMY HOMES CORPORATION, and MATTAMY TAMPA/SARASOTA, LLC,)

106. The ASSOCIATION reasserts, re-alleges, and incorporates by reference all the allegations in ¶¶ 1-84, 86-95 and 96-105.

107. At all times material hereto, MATTAMY was responsible for hiring and retaining the SUBCONTRACTORS in the construction of the Subject Property.

108. MATTAMY had a non-delegable duty to the ASSOCIATION and its members to use reasonable care during its and its SUBCONTRACTORS' activities throughout construction of the Subject Property.

109. MATTAMY had a duty to use reasonable care to hire subcontractors qualified and capable of constructing the Subject Property to at least the minimum requirements of the applicable building codes, standards, plans and specifications, contract documents, manufacturers' recommendations, and standards in the industry.

110. MATTAMY breached its duties by negligently hiring and retaining the SUBCONTRACTORS, thus breaching MATTAMY's duties to the ASSOCIATION and its members.

111. By hiring and retaining the SUBCONTRACTORS, MATTAMY negligently failed to ensure that the construction of the Subject Property was in compliance with at least the minimum requirements of the applicable codes and standards, the approved plans and specifications, contract documents, and manufacturers' recommendations for the Subject Property, thereby resulting in damages including, but not limited to, water damage, property damage, and damages to the work

and property of other persons or entities, necessitating the need for repairs.

112. MATTAMY's actions and omissions have caused and will continue to cause, damage to the Subject Property, including, but not limited to, water damage, property damage, and damages to the work and property of other persons or entities, necessitating the need for repairs. Moreover, the defects alleged here in have caused, and will continue to cause, loss of use to the Association and its members.

113. MATTAMY's acts and omissions were a direct, proximate, and legal cause of the damages suffered by the ASSOCIATION.

114. As a direct and proximate result of MATTAMY's negligence, the ASSOCIATION has been and will be required to expend significant sums of money to remedy the defects and deficiencies, the resulting damages from the construction deficiencies, and the incidental and consequential damages in an amount to be determined at trial, are in excess of $50,000.00 and include, but are not limited to the damages alleged in ¶ 93 above.

WHEREFORE the ASSOCIATION demands judgment against MATTAMY FLORIDA LLC d/b/a MATTAMY HOMES, MATTAMY HOMES CORPORATION, and MATTAMY TAMPA/SARASOTA, LLC, for damages including, but not limited to, the cost of repairing the construction deficiencies, the resulting damages from the construction deficiencies, the incidental and consequential damages, including, but not limited to, loss of use, moving, and temporary replacement housing costs during repairs, costs incurred in the prosecution of this lawsuit, pre- and post-judgment interest, trial by jury, and any other relief the Court deems just and proper.

COUNT IV – NEGLIGENCE, VICARIOUS LIABILITY, AND DERIVATIVE LIABILITY
(Against MATTAMY FLORIDA LLC d/b/a MATTAMY HOMES, MATTAMY HOMES CORPORATION, and MATTAMY TAMPA/SARASOTA, LLC,)

115. The ASSOCIATION reasserts, re-alleges, and incorporates by reference all the allegations in ¶¶ 1-84, 86-95, 96-105, and 106-114 above.

116. At all times material hereto, MATTAMY individually and through its agents, servants, and employees, planned, designed, and constructed the Subject Property.

117. MATTAMY had a non-delegable duty to the ASSOCIATION and its members to use reasonable care when designing and constructing the Subject Property, including, but not limited to, designing, and constructing the Subject Property to at least the minimum requirements of the applicable building codes, standards, plans and specifications, contract documents, manufacturers' recommendations, and standards in the industry. *See* Fla. Stat. §553.79; *Mills v. Krauss*, 114 So. 2d 817 (Fla. 2d DCA 1959) (a general contractor owes a non-delegable duty of care subjecting it to liability for a subcontractor's negligence.); *CC-Aventura, Inc. v. Weitz Co., LLC*, 2009 WL 2136527, *2 (S.D. Fla. July 13, 2009) (citing *Mills*, 114 So. 2d 817) *Mastrandrea v. J. Mann, Inc.*, 128 So.2d 146 (Fla. 3d DCA 1961); *Bialkowicz v. Pan Am. Condominium No. 3, Inc.*, 215 So.2d 767 (Fla. 3d DCA 1974).

118. MATTAMY breached their duty by negligently developing, designing, constructing, and selling the Subject Property, which has caused, and will continue to cause, damage to the Subject Property, including, but not limited to, water damage, property damage, and damages to the work and property of other persons or entities, necessitating the need for repairs. Moreover, the defects alleged herein have caused, and will continue to cause, loss of use to the Association and its members.

119. MATTAMY further breached their duties by failing to comply with at least the minimum requirements of the applicable codes and standards, and by failing to construct the Subject Property in accordance with the approved plans and specifications, contract documents, and manufacturers' recommendations for the Subject Property, thereby resulting in damages

including, but not limited to, water damage, property damage, and damages to the work and property of other persons or entities, necessitating the need for repairs.

120. Further, to the extent MATTAMY utilized subcontractors and consultants to construct, plan, and design the Subject Property, MATTAMY, as the developer and licensed general contractor had a non-delegable duty to oversee their work. As a result, MATTAMY is vicariously or derivatively responsible for the negligent acts of their Subcontractors and consultants, including, but not limited to, the negligent acts of the Subcontractors or consultants so utilized.

121. MATTAMY's acts and omissions were a direct, proximate, and legal cause of the damages suffered by the ASSOCIATION.

122. As a direct and proximate result of MATTAMY's negligence, the ASSOCIATION has been and will be required to expend significant sums of money to remedy the defects and deficiencies, the resulting damages from the construction deficiencies, and the incidental and consequential damages in an amount to be determined at trial, are in excess of $50,000.00 and include, but are not limited to, the damages alleged in ¶ 93 above.

WHEREFORE the ASSOCIATION demands judgment against MATTAMY FLORIDA LLC d/b/a MATTAMY HOMES, MATTAMY HOMES CORPORATION, and MATTAMY TAMPA/SARASOTA, LLC, for damages including but not limited to the cost of repairing the construction deficiencies, the resulting damages from the construction deficiencies, the incidental and consequential damages, including but not limited to loss of use and temporary replacement housing during repairs, temporary repair costs, diminution in value damages, costs incurred in the prosecution of this lawsuit, pre-judgment interest, trial by jury, and any other relief the Court deems just and proper.

COUNT V - VIOLATION OF BUILDING CODE
(Against ROBERT W. GIBBONS)

123. The ASSOCIATION reasserts, re-alleges, and incorporates by reference all the allegations in ¶¶ 1-84 above.

124. Pursuant to Florida Statutes §553.84, on behalf of its members, the ASSOCIATION has a private right of action for any damages resulting from a building-code violation.

125. At all times material hereto, GIBBONS individually, planned, designed, and constructed the Townhomes.

126. GIBBONS owed a statutory and non-delegable duty to the ASSOCIATION and its members pursuant to the FBC and §553.84, Florida Statutes, to develop, design, and construct all the common elements and units of the Townhomes in compliance with the FBC.

127. The FBC is a law regulation construction in the jurisdiction.

128. Further, to the extent GIBBONS utilized subcontractors and consultants to plan, design, and construct the Subject Property, GIBBONS, as the licensed general contractor, had a non-delegable duty to supervise their work. As a result, GIBBONS is vicariously responsible for the negligent acts of their subcontractors and consultants, including, but not limited to, the negligent acts of the subcontractors or consultants so utilized.

129. The operative construction set of approved plans for the Subject Property were stamped and permitted by the building department as approved under the applicable FBC, and these approved plans were therefore incorporated by reference into the operative codes for construction of the Subject Property.

130. GIBBONS's material violations of the FBC include, but are not limited to, the defects described in ¶ 78 above. [1]

131. The aggregate effect of the defects set forth above has caused and will continue to cause damage, including, community-wide water-intrusion damage to other components of the roofs, walls and structural framing, and other components of the building including, but not limited to the building exteriors, building framing, building lath, weather resistive barrier, building sheathing and framing, interior and exterior finishes, drywall, paint, insulation, and other components of the Subject Property and common areas; damages to other property; damage to work of other trades; and undue risk of future damages throughout the Subject Property. Moreover, the defects alleged herein have caused, and will continue to cause, loss of use to the Association and its members.

132. GIBBONS knew or should have known that all the violations alleged and described above existed.

133. As a result of the foregoing FBC material violations, the ASSOCIATION and its members have been damaged and injured. Damages, in an amount to be determined at trial, are in excess of $50,000.00 and continuing, and include, but are not limited to, the defects and

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[1] Fla. Stat. § 558.002(5)(" (5) "Construction defect" means a deficiency in, or a deficiency arising out of, the design, specifications, surveying, planning, **supervision, observation of construction, or construction**, repair, alteration, or remodeling of real property resulting from:
(a) Defective material, products, or components used in the construction or remodeling;
(b) A violation of the applicable codes in effect at the time of construction or remodeling which gives rise to a cause of action pursuant to s. 553.84;
(c) A failure of the design of real property to meet the applicable professional standards of care at the time of governmental approval; or
(d) A failure to construct or remodel real property in accordance with accepted trade standards for good and workmanlike construction at the time of construction. (emphasis added). This statutory definition did not exist in 1994 when *Murthy v. N. Sinha Corp.*, 644 So. 2d 983, 986–87 (Fla. 1994) was decided, and only existed from 2003 to present.

deficiencies, the resulting damages from the construction deficiencies, and the incidental and consequential damages as alleged in ¶ 93.

134. The foregoing FBC material violations were both the legal and factual cause of the aforementioned damages.

135. As a result of the conduct of GIBBONS, in violation of applicable building and construction codes and ordinances, the ASSOCIATION has been compelled to retain the services of legal counsel to comply with statutory requirements and to institute and prosecute these proceedings, and to retain expert consultants and witnesses as reasonably necessary to prove its case and is obligated to pay a reasonable fee for such services.

WHEREFORE the ASSOCIATION demands judgment against ROBERT W. GIBBONS for damages including, but not limited to, those pursuant to Fla. Stat. §553.84, the cost of repairing the building code violations, the resulting damages from the building code violations, incidental and consequential damages caused thereby, including, but not limited to, loss of use and temporary replacement housing during repairs, temporary repair costs, diminution in value damages, costs incurred in the prosecution of this lawsuit, pre-judgment interest, trial by jury, and any other relief the Court deems just and proper.

COUNT VI – COMMON LAW NEGLIGENCE[2]
(Against ROBERT W. GIBBONS)

136. The ASSOCIATION reasserts, re-alleges, and incorporates by reference all the allegations in ¶¶ 1-84 and 124-135 above.

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[2] *Murthy v. N. Sinha Corp.*, 644 So. 2d 983, 986–87 (Fla. 1994)("We agree that an owner may recover from a negligent qualifying agent, but only under a common law theory of negligence or through the administrative remedies available pursuant to chapter 489.").

137. At all times material hereto, GIBBONS individually, planned, designed, and constructed the Townhomes.

138. The FBC is a law regulation construction in the jurisdiction.

139. GIBBONS had a non-delegable duty to the ASSOCIATION and its members to use reasonable care when designing and constructing the Townhomes, including, but not limited to, designing, and constructing the Townhomes to at least the minimum requirements of the applicable building codes, standards, plans and specifications, contract documents, manufacturers' recommendations, and standards in the industry.

140. GIBBONS breached his duty by negligently developing, designing, constructing, and selling the Townhomes, which has caused, and will continue to cause, damage to the Townhomes, including, but not limited to, water damage, property damage, and damages to the work and property of other persons or entities, necessitating the need for repairs. Moreover, the defects alleged herein have caused, and will continue to cause, loss of use to the Association and its members.

141. GIBBONS further breached his duties by failing to comply with at least the minimum requirements of the applicable codes and standards, and by failing to construct the Townhomes in accordance with the approved plans and specifications, contract documents, and manufacturers' recommendations for the Townhomes, thereby resulting in damages including, but not limited to, water damage, property damage, and damages to the work and property of other persons or entities, necessitating the need for repairs.

142. GIBBONS designed, specified, surveyed, planned, supervised, observed, constructed, repaired, or altered the Subject Property, resulting in Construction Defects. [3]

143. Further, to the extent GIBBONS utilized subcontractors and consultants to construct, plan, and design the Subject Property, GIBBONS, as the licensed general contractor had a non-delegable duty to oversee their work. As a result, GIBBONS is vicariously responsible for the negligent acts of their subcontractors and consultants, including, but not limited to, the negligent acts of the subcontractors or consultants so utilized.

144. GIBBONS's acts and omissions were a direct, proximate, and legal cause of the damages suffered by the ASSOCIATION.

145. As a direct and proximate result of GIBBONS's negligence, the ASSOCIATION has been and will be required to expend significant sums of money to remedy the defects and deficiencies, the resulting damages from the construction deficiencies, and the incidental and consequential damages in an amount to be determined at trial, are in excess of $50,000.00 and include, but are not limited to, the damages alleged in ¶ 93 above.

WHEREFORE the ASSOCIATION demands judgment against ROBERT W. GIBBONS for damages including but not limited to the cost of repairing the construction deficiencies, the resulting damages from the construction deficiencies, the incidental and consequential damages, including but not limited to loss of use and temporary replacement housing during repairs,

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[3] Fla. Stat. § 558.002(5)(" (5) "Construction defect" means a deficiency in, or a deficiency arising out of, the design, specifications, surveying, planning, **supervision, observation of construction, or construction**, repair, alteration, or remodeling of real property resulting from:
(a) Defective material, products, or components used in the construction or remodeling;
(b) A violation of the applicable codes in effect at the time of construction or remodeling which gives rise to a cause of action pursuant to s. 553.84;
(c) A failure of the design of real property to meet the applicable professional standards of care at the time of governmental approval; or
(d) A failure to construct or remodel real property in accordance with accepted trade standards for good and workmanlike construction at the time of construction. (emphasis added).

temporary repair costs, diminution in value damages, costs incurred in the prosecution of this lawsuit, pre-judgment interest, trial by jury, and any other relief the Court deems just and proper.

COUNT VII - VIOLATION OF BUILDING CODE
(Against the SUBCONTRACTORS)

146. The ASSOCIATION reasserts, re-alleges, and incorporates by reference all the allegations in ¶¶ 1-84 above.

147. Pursuant to Florida Statutes §553.84, on behalf of its members, the ASSOCIATION has a private right of action for any damages resulting from a building-code violation.

148. Each of the SUBCONTRACTORS owed a statutory duty to the ASSOCIATION and its members pursuant to the FBC and §553.84, Florida Statutes, to construct all the common elements and units of the Townhomes in compliance with the FBC.

149. The operative construction set of approved plans for the Subject Property were stamped and permitted by the building department as approved under the applicable FBC, and these approved plans were therefore incorporated by reference into the operative codes for construction of the Subject Property.

150. The SUBCONTRACTORS collectively and individually violated the FBC by improper performing their scope of work for the Townhomes and failing to properly integrate their work with the work of other trades.

151. The SUBCONTRACTORS' material violations of the FBC caused the defects and deficiencies described in ¶ 78 above.

152. SUBCONTRACTORS' negligence in performing its scope of work has caused, and will continue to cause, damage to the Townhomes, including, but not limited to, water-intrusion damages to components of the building including, but not limited to, the building exteriors, building framing, building sheathing, building lath, drywall, paint, interior and exterior finishes,

and other components of the Townhomes, and undue risk of future damages throughout the Townhomes; damage to other property; and damages to the work of other trades, persons, or entities, necessitating the need for repairs. Moreover, the defects alleged herein have caused, and will continue to cause, loss of use to the ASSOCIATION and its members.

153. The SUBCONTRACTORS knew or should have known that the violations alleged and described above existed.

154. As a result of the foregoing FBC material violations, the ASSOCIATION and its members have been damaged and injured as alleged in ¶ 93 and elsewhere herein. Damages, in an amount to be determined at trial, are in excess of $50,000.00.

155. The foregoing FBC material violations were both the legal and factual cause of the aforementioned damages.

156. As a result of the conduct of the SUBCONTRACTORS, in violation of applicable building and construction codes and ordinances, the ASSOCIATION has been compelled to retain the services of legal counsel to comply with statutory requirements and to institute and prosecute these proceedings, and to retain expert consultants and witnesses as reasonably necessary to prove its case.

WHEREFORE the ASSOCIATION demands judgment against the SUBCONTRACTORS for damages, including, but not limited to, those pursuant to Fla. Stat. §553.84, the cost of repairing the building code violations, the resulting damages from the building code violations, incidental and consequential damages caused thereby, including, but not limited to, loss of use and temporary replacement housing during repairs, temporary repair costs, diminution in value damages, costs incurred in the prosecution of this lawsuit, pre-judgment interest, trial by jury, and any other relief the court deems just and proper.

COUNT VIII - NEGLIGENCE
(Against the SUBCONTRACTORS)

157. The ASSOCIATION reasserts, re-alleges, and incorporates by reference all the allegations in ¶¶ 1-84 and 147-156 above.

158. At all times material hereto, each of the SUBCONTRACTORS, through its agents, servants, and employees, constructed the Townhomes and were responsible for their scope of work as identified above.

159. SUBCONTRACTORS each had duty to the ASSOCIATION and its members to use reasonable care when constructing the Townhomes, including, but not limited to, performing its scope of work to at least the minimum requirements of the applicable building codes, standards, plans and specifications, contract documents, manufacturers' recommendations, and standards in the industry.

160. SUBCONTRACTORS breached their duties by failing to comply with at least the minimum requirements of the applicable codes and standards, and by failing to construct the Townhomes in accordance with the approved plans and specifications, industry standards, contract documents, and manufacturers' recommendations for the Townhomes, including, but not limited to, those defects and deficiencies identified in ¶ 78 above.

161. SUBCONTRACTORS' negligence in performing their scopes of work has caused, and will continue to cause, damage to the Townhomes, including, but not limited to, water-intrusion damages to components of the building including, but not limited to, the building exteriors, building framing, building sheathing, building lath, drywall, paint, interior and exterior finishes, and other components of the Townhomes, and undue risk of future damages throughout the Townhomes; damage to other property; and damages to the work of other trades, persons, or

entities, necessitating the need for repairs. Moreover, the defects alleged herein have caused, and will continue to cause, loss of use to the ASSOCIATION and its members.

162. SUBCONTRACTORS' acts and omissions were a direct, proximate, and legal cause of the damages suffered by the ASSOCIATION.

163. As a direct and proximate result of the SUBCONTRACTORS' negligence, the ASSOCIATION has been and will be required to expend significant sums of money to remedy the defects and deficiencies, the resulting damages from the construction deficiencies, and the incidental and consequential damages as alleged in ¶ 93 and elsewhere herein, in an amount in excess of $50,000.00 to be proven at trial.

WHEREFORE the ASSOCIATION demands judgment against the SUBCONTRACTORS the resulting damages from the construction deficiencies, the incidental and consequential damages, including, but not limited to, loss of use and temporary replacement housing during repairs, temporary repair costs, diminution in value damages, costs incurred in the prosecution of this lawsuit, pre-judgment interest, trial by jury, and any other relief the Court deems just and proper.

COUNT IX - VIOLATION OF BUILDING CODE
(Against PROFESSIONAL CONSULTANTS)

164. The ASSOCIATION reasserts, re-alleges, and incorporates by reference all the allegations in ¶¶ 1-84 above.

165. Pursuant to Florida Statutes §553.84, on behalf of its members, the ASSOCIATION has a private right of action for any damages resulting from a building-code material violation.

166. PROFESSIONAL CONSULTANTS owed statutory duties to the ASSOCIATION and its members, pursuant to the Florida Building Code and §553.84 and §553.791, Florida Statutes, to supervise, inspect, and approve of the design and construction of Subject Property to

ensure compliance with the FBC.

167. PROFESSIONAL CONSULTANTS breached their duties by inadequately and improperly approving of design plans with details violating the FBC, and by failing to properly inspect and supervise the construction work at the Subject Property, which works PROFESSIONAL CONSULTANTS knew of should have known violated the FBC and resulted in the presence of the code violations and construction deficiencies listed in ¶ 78 above.

168. The aggregate effect of the defects set forth above has caused, and will continue to cause damage, including, community-wide water-intrusion damage to other components of the roofs, walls and structural framing, and other components of the building including, but not limited to the building exteriors, balconies, lap siding, building framing, building lath, house wrap, building sheathing and framing, interior and exterior finishes, drywall, paint, insulation, and other components of the Subject Property and common areas, damages to other property, damage to work of other trades, and undue risk of future damages throughout the Subject Property . Moreover, the defects alleged here in have caused, and will continue to cause, loss of use to the ASSOCIATION and its members.

169. PROFESSIONAL CONSULTANTS knew or should have known that the violations alleged and described above existed. As a result of the foregoing FBC material violations, the ASSOCIATION and its members have been damaged and injured. Damages, in the amount to be determined at trial, are in excess of $50,000 and accumulating, and include, but are not limited to, the damages alleged in ¶ 93.

170. The foregoing FBC material violations were a direct, proximate, and legal cause of the aforementioned damages.

171. As a result of PROFESSIONAL CONSULTANTS' conduct in violation of the applicable building and construction codes and ordinances, the ASSOCIATION has been

compelled to retain the services of legal counsel to comply with statutory requirements and to institute and prosecute these proceedings, and to retain expert consultants and witnesses as reasonably necessary to prove its case.

WHEREFORE the ASSOCIATION demands judgment against PROFESSIONAL CONSULTANTS for damages including, but not limited to, those pursuant to Fla. Stat. §553.84, the cost of repairing the building code violations, the resulting damages from the building code violations, incidental and consequential damages caused thereby, including, but not limited to, loss of use and temporary replacement housing during repairs, temporary repair costs, diminution in value damages, costs incurred in the prosecution of this lawsuit, pre-judgment interest, trial by jury, and any other relief the Court deems just and proper.

COUNT X – PROFESSIONAL NEGLIGENCE
(Against PROFESSIONAL CONSULTANTS)

172. The ASSOCIATION reasserts, re-alleges, and incorporates by reference all the allegations in ¶¶ 1-84 and 165-171 above.

173. PROFESSIONAL CONSULTANTS served as professional consultants, engineers, and private providers retained by MATTAMY to provide building code inspection services for the construction of the Subject Property, in accordance with § 553.791.

174. PROFESSIONAL CONSULTANTS owed a duty to the ASSOCIATION to provide its inspection services in accordance with the standard of care used by similar professionals in the community under similar circumstances. By performing such construction administration duties, PROFESSIONAL CONSULTANTS were responsible to ensure that the work identified in the plans and drawings was performed in accordance with the permitted plans and specifications, and in accordance with the applicable building codes, manufacturers' recommendations, and standards at the time of construction.

175. PROFESSIONAL CONSULTANTS breached the above-mentioned duties during construction of the Subject Property in that they approved of design plans and construction that were not in accordance with the applicable building codes, manufacturers' recommendations, and standards at the time of construction.

176. As a direct and proximate result of PROFESSIONAL CONSULTANTS' professional negligence, the ASSOCIATION has been and will be required to expend significant sums of money to remedy the defects and deficiencies, the resulting damages from the construction deficiencies, and the incidental and consequential damages in the amount to be determined at trial, are in excess of $50,000 and include, but are not limited to, the damages alleged in ¶ 93 above.

WHEREFORE the ASSOCIATION respectfully request judgment against PROFESSIONAL CONSULTANTS for damages including but not limited to the cost of repairing the construction deficiencies, the resulting damages from the construction deficiencies, the incidental and consequential damages, including but not limited to loss of use and temporary replacement housing during repairs, temporary repair costs, diminution in value damages, costs incurred in the prosecution of this lawsuit, pre-judgment interest, trial by jury, and any other relief the Court deems just and proper.

COUNT XI - VIOLATION OF BUILDING CODE (Against DESIGN PROFESSIONALS)

177. The ASSOCIATION reasserts, re-alleges, and incorporates by reference all the allegations in ¶¶ 1-84 above.

178. Pursuant to Florida Statutes §553.84, on behalf of its members, the ASSOCIATION has a private right of action for any damages resulting from a building-code violation.

179. .DESIGN PROFESSIONALS were the design professionals for the Townhomes and provided professional design services for the Townhomes and, as such, designed, inspected, and approved the Subject Property and its related improvements.

180. Throughout the design, inspection, and approval of the Townhomes, DESIGN PROFESSIONALS were under a professional duty to the ASSOCIATION to use reasonable care and to ensure that the design and construction of the Townhomes complied with all applicable building codes, and that the design drawings were detailed to a sufficiently high standard and clearly and accurately indicated or illustrating all essential parts of the work.

181. DESIGN PROFESSIONALS breached their duties by failing to design the Townhomes with details to a sufficiently high standard and clearly and accurately indicating or illustrating all essential parts of the work, causing the Townhomes to be built with essential elements not in compliance with the FBC and with the defects alleged in ¶ 78.

182. As the design professionals for the Subject Property, DESIGN PROFESSIONALS knew or should have known that building code violations existed.

183. As a result of the foregoing FBC material violations, the ASSOCIATION and its members have been damaged and injured. Damages, in the amount to be determined at trial, are in excess of $50,000 and accumulating, and include, but are not limited to, the damages alleged in ¶ 93.

184. The foregoing FBC material violations were a direct, proximate, and legal cause of the aforementioned damages.

185. As a result of DESIGN PROFESSIONALS' conduct in violation of the applicable building and construction codes and ordinances, the ASSOCIATION has been compelled to retain the services of legal counsel to comply with statutory requirements and to institute and prosecute

these proceedings, and to retain expert consultants and witnesses as reasonably necessary to prove its case.

WHEREFORE the ASSOCIATION demands judgment against DESIGN PROFESSIONALS for damages including, but not limited to, those pursuant to Fla. Stat. §553.84, the cost of repairing the building code violations, the resulting damages from the building code violations, incidental and consequential damages caused thereby, including, but not limited to, loss of use and temporary replacement housing during repairs, temporary repair costs, diminution in value damages, costs incurred in the prosecution of this lawsuit, pre-judgment interest, post-judgment interest, and any other relief the Court deems just and proper.

COUNT XII – PROFESSIONAL NEGLIGENCE
(Against DESIGN PROFESSIONALS)

186. The ASSOCIATION reasserts, re-alleges, and incorporates by reference all the allegations in ¶¶ 1-84 and 174-185 above.

187. DESIGN PROFESSIONALS were the designers for the Townhomes and provided professional design services for the Townhomes and, as such, designed, inspected, and approved the Subject Property and its related improvements.

188. DESIGN PROFESSIONALS owed a duty to the ASSOCIATION and its members to provide its professional design services in accordance with the standard of care used by similar professionals in the community under similar circumstances, including without limitation: providing final drawings of a sufficiently high standard that clearly and accurately indicate or illustrate all essential parts of the work to be completed, and performing construction administration duties such as inspecting that the work identified in its drawings was performed in accordance with the permit plans and specifications, and in accordance with the applicable

building codes, manufacturers' recommendations, and industry standards in effect at the time of construction.

189. DESIGN PROFESSIONALS breached the above-mentioned duties during the design and construction of the Subject Property in that DESIGN PROFESSIONALS' performance of their design services were not within the standard of care used by similar professionals under similar circumstances; the drawing were not of a sufficiently high standard to clearly and accurately indicate or illustrate all essential parts of the work; and its construction administration services were not within the standard of care used by similar professionals under similar circumstances.

190. As a direct and proximate result of DESIGN PROFESSIONALS' professional negligence, the ASSOCIATION has been and will be required to expend significant sums of money to remedy the defects and deficiencies, the resulting damages from the construction deficiencies, and the incidental and consequential damages in the amount to be determined at trial, are in excess of $50,000 and include, but are not limited to, the damages alleged in ¶ 93 above.

WHEREFORE the ASSOCIATION respectfully request judgment against DESIGN PROFESSIONALS for damages including but not limited to the cost of repairing the construction deficiencies, the resulting damages from the construction deficiencies, the incidental and consequential damages, including but not limited to loss of use and temporary replacement housing during repairs, temporary repair costs, diminution in value damages, costs incurred in the prosecution of this lawsuit, pre-judgment interest, post-judgment interest, and any other relief the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff requests that this matter be tried before a panel of competent jurors on all matters so triable.

Dated: May 23, 2025.

BALL JANIK LLP

By: */s/ Greg K. Demers*

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