

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON )

NINTH JUDICIAL CIRCUIT  
2009-CP-10-6776

THE BEACH COMPANY; LONG GROVE AT SEASIDE FARMS, LLC; GULF STREAM CONSTRUCTION COMPANY, INC.;

Plaintiffs, )

**DEFENDANT LONG GROVE PROPERTY OWNERS' ASSOCIATION'S ANSWER, COUNTERCLAIM, CROSSCLAIM AND THIRD-PARTY COMPLAINT**

vs. )

**JURY TRIAL DEMANDED**

LONG GROVE PROPERTY OWNERS' ASSOCIATION, INC.; VISTA REALTY PARTNERS, LLC; LONG GROVE VISTA, LLC;

Defendants. )

LONG GROVE PROPERTY OWNERS' ASSOCIATION, INC. )

Third-Party Plaintiffs, )

vs. )

James, Harwick & Partners, Inc. n/k/a JHP Architecture/Urban Design, P.C.; Sam Mayo d/b/a SCM Construction, Inc.; Essex Engineering Corporation )

Third-Party Defendants )

The Defendant, Long Grove Property Owners' Association, Inc., answering the Complaint of the Plaintiffs, would respectfully allege and show unto this Honorable Court as follows.

## FIRST DEFENSE

1. It admits only so much of Paragraph 1 as alleges that there are design, development, and construction defects and denies that this action does not address these issues. The remaining allegations of said paragraph allege matters of law not requiring an answer.
2. On information and belief it admits the allegations of paragraphs 2, 3, and 4.
3. It admits paragraph 5.
4. On information and belief it admits the allegations of paragraph 6 concerning the legal status of Vista Realty Partners, LLC and Long Grove Vista, LLC and it denies the remaining allegations of said paragraph.
5. Paragraph 7 alleges matters of the law not requiring an answer.
6. It admits paragraph 8 as stated except that the lawsuit concerns other matters as stated herein.
7. Answering paragraph 9 it craves reference to the Master Deed and to the Statutes of the State of South Carolina and it denies so much of said paragraph as in any way attempts to change the Master Deed and the Statutes.
8. On information and belief it admits paragraph 10.
9. Paragraph 11 alleges matters of the law not requiring an answer.
10. It admits only so much of paragraph 12 as alleges that Long Grove Apartments were operated as a rental apartment complex with the units being leased to tenants; it has no knowledge or information sufficient to form a belief as to the remaining allegations of said paragraph.
11. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 13.

12. It denies paragraph 14 except that it has no knowledge or information sufficient to form a belief as to the allegations concerning any negotiations between Vista Realty Partners, LLC and the Plaintiffs.
13. Answering paragraphs 15, 16 and 17 it craves reference to the documents referred to in those paragraphs and it denies that the documents release these Plaintiffs from any claims by the Long Grove Property Owners Association, Inc., Long Grove Horizontal Property Regime, or the owners of the units.
14. Answering paragraphs 18,19, and 20 it craves reference to the documents cited therein and denies that the documents release the Plaintiffs from any claims by the Long Grove Property Owner's Association, Inc., Long Grove Horizontal Property Regime or the Owners.
15. It admits only so much of Paragraph 21 as alleges that Long Grove Vista, LLC converted the apartments into condominiums and conveyed the condominium units to third-party buyers and it denies that in so doing the Plaintiffs were released from any claims by the Long Grove Property Association, Inc., Long Grove Horizontal Property Regime, or the Owners. Any remaining allegations of Paragraph 21 are denied.
16. It admits only so much of Paragraph 22 as alleges that Long Grove Vista, LLC converted the apartments into condominiums; it has no knowledge or information sufficient to form a belief as to the process by which that was done; it denies that Long Grove Vista, LLC was the only developer and it denies that the documents and transactions release plaintiffs from any claims by the Long Grove Property Association, Inc. Long Grove Horizontal Property Regime, or the Owners. Any remaining allegations of Paragraph 22 are denied.
17. It has no knowledge or information sufficient to form a belief as to the allegations of paragraph 23.

18. Answering Paragraph 24, it craves reference to the documents cited therein but denies that the documents release Plaintiffs from any claims by the Long Grove Property Owners Association, Inc., Long Grove Horizontal Property Regime, or by the Owners.
19. Answering Paragraph 25 it craves reference to the documents cited therein but denies that the documents release Plaintiffs from any claims by the Long Grove Property Owners Association or by the Owners. Any remaining allegations are denied.
20. On information and belief, it admits only so much of paragraph 26 as alleges that Long Grove Vista, LLC converted the apartments into condominiums and hired an architect or engineer to inspect the condition of the buildings and prepare a report, but it denies that said report complies with the requirements of S.C. Code Annotated § 27-31-430 and denies that in so doing Long Grove Vista, LLC released Plaintiffs from any claims by the Long Grove Property Owners Association, Inc., Long Grove Horizontal Property Regime, or the Owners.
21. On information and belief it admits only so much of Paragraph 27 as alleges that Long Grove Vista, LLC sold the condominiums to individual condominium unit buyers but denies that in so doing Long Grove Vista, LLC through the documents released the Plaintiffs from any claims by the Long Grove Property Owners Association, Inc., Long Grove Horizontal Property Regime, or the Owners and denies that Long Grove Vista, LLC complied with the statutory requirements for the conversion of the units to condominiums. Any remaining allegations are denied.
22. On information and belief it admits only so much of Paragraph 28 as alleges that there were conveyances of condominium units by means of deeds but denies that the deeds or Master Deed release Plaintiffs from any claims by the Long Grove Property Owners Association,

Inc., Long Grove Horizontal Property Regime, or by the Owners. Any remaining allegations are denied.

23. Except so much of said paragraphs as alleges matters of law not requiring an answer it denies the allegations of paragraphs 29, 30, 31, 32, 33, 34 and 35 and denies that the documents cited therein release the Plaintiffs from any claims by the Long Grove Property Owners Association, Long Grove Horizontal Property Regime, or by the Owners.
24. Answering paragraphs 36 and 37, it craves reference to the Notice letters cited therein which were sent to comply with certain statutory requirements and it denies so much of said paragraphs as in any way attempts to change the content of those letters.
25. It admits only so much of Paragraph 38 as alleges that the Plaintiffs responded to the notice letters from the Long Grove Property Owners Association and it denies the accuracy of the content of those response letters. Any remaining allegations are denied.
26. Answering Paragraph 39 it craves reference to the letter of September 14, 2009, and denies so much of said paragraph as in any way attempts to change the content of that letter. In that letter Plaintiffs were asked to provide the legal basis for their position. Plaintiffs never responded to that letter.
27. Answering Paragraph 40 it repeats and realleges as if stated herein its responses to paragraphs 1-39 of the Summons and Complaint.
28. It admits Paragraph 41.
29. Paragraph 42 alleges matters of the law not requiring an answer.
30. It admits only so much of Paragraph 43 that alleges that there are defects in the development, design, and construction of the Long Grove Condominiums f/k/a Long Grove Apartments. The remaining allegations concern matters of the law not requiring an answer.

31. It denies paragraph 44.

32. It denies paragraph 45, except so much of said paragraph as alleges matters of the law not requiring an answer.

33. It denies paragraph 46.

34. It denies each and every allegation of the Complaint not hereinabove specifically admitted.

**FOR A SECOND DEFENSE**  
**AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO**

35. The alleged disclaimers and releases are not conspicuous, not known to the buyers and not specifically bargained for and therefore are not valid.

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

36. Plaintiffs' claims may be barred by the doctrines of waiver, estoppel and/or laches.

**FOR A FOURTH DEFENSE**  
**AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO**

37. Plaintiffs' lack legal privity with Defendants to permit enforcement of the alleged disclaimers and releases.

**FOR A FIFTH DEFENSE**  
**AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO**

38. Plaintiffs were aware of the defects at the time they attempted to create the alleged disclaimers and releases.

**FOR A SIXTH DEFENSE**  
**AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO**

39. All conditions precedent necessary to the enforcement of the alleged disclaimers and releases were not met.

**FOR A SEVENTH DEFENSE**  
**AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO**

**(Failure to State a Claim)**

40. Plaintiffs' have failed to state facts sufficient to constitute a cause of action against these Defendants pursuant to Rule 12(b)(6), SCRCP, and Plaintiffs' claim should be dismissed.

**FOR AN EIGHTH DEFENSE  
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO  
(Failure to Join a Necessary Party)**

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

**FOR A NINTH DEFENSE  
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO**

42. The alleged disclaimers and releases did not involve the exchange of any consideration.

**FOR A TENTH DEFENSE  
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO**

43. Plaintiffs, knowing of the purpose of the purchase of the Long Grove Apartments, failed to make proper disclosures concerning the physical condition of the property at conversion of the property from apartments to condominiums.

**FOR AN ELEVENTH DEFENSE  
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO**

44. That all claims asserted by Plaintiffs are barred by the doctrine of unclean hands.

**FOR A TWELTH DEFENSE  
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO**

45. That the Plaintiffs claims are barred by the doctrine of unjust enrichment.

**FOR A THIRTEENTH DEFENSE AND FOR A COUNTER-CLAIM, CROSS-CLAIM AND THIRD-PARTY CLAIM**

The Long Grove Property Owners Association, Inc. (Long Grove POA), complaining of the Defendants and Third-Party Defendants above named, would respectfully allege and show unto this Honorable Court as follows:

46. Long Grove Property Owners' Association, Inc. is a non-profit corporation organized and existing pursuant to the laws of the State of South Carolina which has its principle place of business in Charleston County. Long Grove Property Owners' Association, Inc. was formed pursuant to the "Declaration of Covenants, Conditions and Restrictions for Long Grove" to carry out the responsibilities of the Property Owners' Association including, but not limited to, the maintenance and repair of common elements of the Long Grove Condominium project f/k/a Long Grove Apartments ("the project").
47. The Beach Company is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina which was, at all times relevant hereto, conducting business within Charleston County, South Carolina.
48. Long Grove at Seaside Farms, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of Delaware per their complaint which was, at all times relevant hereto, conducting business within Charleston County, South Carolina.
49. The Beach Company and/or Long Grove at Seaside Farms, LLC held legal title to certain real estate in Charleston County, South Carolina, and developed and constructed the Project on that real estate.
50. Gulf Stream Construction Company, Inc. (hereinafter "General Contractor"), is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina which was, at all times relevant hereto, conducting business within Charleston County, South Carolina. Gulf Stream acted as the general contractor for the original construction of the Long Grove Project.



51. Long Grove Vista, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of a state other than the State of South Carolina which conducted business in Charleston County, South Carolina. Upon information and belief, Long Grove Vista, LLC developed, constructed, and converted the Project to condominiums on that real estate and then marketed and sold the units to the general public.
52. Vista Realty Partners, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of a state other than the State of South Carolina which conducted business in Charleston County, South Carolina. Upon information and belief, Vista Realty Partners, LLC developed, constructed and converted the Project on that real estate and then sold the units to the general public.
53. Third-Party Defendant James, Harwick & Partners, Inc. n/k/a JHP Architecture / Urban Design, P.C. (hereinafter "Architect") is, upon information and belief, a corporation organized and existing pursuant to the laws of a state other than the State of South Carolina which was, at all times relevant hereto, conducting business in Charleston County, South Carolina. Upon information and belief, said Architect was responsible for the schematic design, design development, construction documents, bidding and negotiations, construction supervision and acceptance of work at the Project.
54. Third-Party Defendant Sam Mayo d/b/a SCM Construction, Inc. (hereinafter referred to as SCM Construction) is, upon information and belief, a corporation organized and existing pursuant to the laws of a state other than the State of South Carolina which was, at all times relevant hereto, conducting business within Charleston County, South Carolina. Defendant SCM Construction acted as the general contractor for the conversion to condominiums of the Project.

55. Third-Party Defendant Essex Engineering Corporation (hereinafter referred to as Essex) is, upon information and belief, a corporation organized and existing pursuant to the laws of a state other than the State of South Carolina which was, at all times relevant hereto, conducting business within Charleston County, South Carolina. Upon information and belief, Essex inspected the Long Grove Project as part of the conversion process and issued a report as to the condition of the property for prospective purchasers.
56. The actions, conduct and agreements of the above named Parties (The Beach Company, Long Grove at Seaside Farms, LLC, Gulf Stream Construction Company, Long Grove Vista, LLC, Vista Realty Partners, LLC, JHP Architecture, SCM Construction and Essex) at all times contemplated the sale of the condominium units at the Project to individual purchasers and the formation of a Regime to be charged with the responsibility for maintenance and repairs of the general and limited common elements.
57. The Parties did design, develop, construct and sell the Project which became known as Long Grove. Developers, as grantors of the Project, caused to be prepared and filed at the RMC Office for Charleston County, South Carolina, the Master Deed and By-Laws for the Long Grove Horizontal Property Regime, thereby committing the real estate with improvements thereon into a horizontal property regime.
58. Since completion of the Project, problems with water infiltration into the interior of the buildings at the Project have occurred. An inspection of the Project site and the buildings located at the Project has resulted in the discovery of numerous construction defects impacting upon the structural integrity and safety of the Project. Upon information and belief, the problems or defects in the Project are a result of defective design and/or construction and/or defective products.

59. The defects in construction and/or design complained of include, but are not limited to, the following:

- a. Failure of balcony waterproofing;
- b. Lack of proper waterproofing system at balconies;
- c. Lack of proper window flashing;
- d. Lack of proper chimney flashing;
- e. Lack of proper roof flashing;
- f. Improper repairs and failure of repairs to balconies;
- g. Lack of proper fire protection at the HVAC system;
- h. Leaks at windows;
- i. Leaks at balconies;
- j. Leaks at chimneys;
- k. Decay of structural building components;
- l. Mold infestation;
- m. Improper brick installation;
- n. Lack of code compliant fire protection;
- o. Defects causing decay of building components.

60. As a direct and proximate result and consequence of the numerous construction and/or design defects and problems at the Project, the Project has suffered substantial water intrusion, rot and deterioration and Long Grove POA has spent and will continue to spend substantial sums of money for the extraordinary repairs and reconstruction of major portions of the Project.

**FOR A FIRST CAUSE OF ACTION**

**(Developer Negligence as to The Beach Co., Long Grove at Seaside Farms, LLC, Long Grove Vista, LLC and Vista Realty Construction, LLC)**

61. The Long Grove POA incorporates into this cause of action the allegations in Paragraphs 46-60 above as fully as if repeated verbatim herein.
62. The Beach Co., Long Grove at Seaside Farms, LLC, Long Grove Vista, LLC, and Vista Realty Construction, LLC (hereinafter referred to collectively as "Developers"), were developers of the original project and the conversion from apartments to condominiums.
63. Developers, owed a duty to the Long Grove POA to exercise that degree of skill necessary to select an architect, engineer and contractor and to oversee the Project and otherwise deliver the Project free of construction defects and designed and built in conformity with the customary and ordinary standards of the building and construction industry.
64. The deficiencies and defects which exist at the Project are the proximate and direct result of the negligence and/or gross negligence of Developers in one or more of the following particulars:
- a. in failing to properly select an architect and contractor so that the Project would be designed and built by methods of construction and design conforming with accepted industry standards;
  - b. in allowing and/or accepting non-conforming or defective work;
  - c. in failing to properly oversee the Project in order to ensure that all work proceeded in accordance with the plans and specifications and also in conformity with the customary and ordinary standards of the construction industry;
  - d. in failing to inform the architect, engineer and contractor of any defects found in the Project; and
  - e. In failing to properly convert the Project from apartments to condominiums.
65. As a direct and proximate result and consequence of the negligence and/or gross

negligence of Developers, the Long Grove POA has suffered injuries and damages in the amount equal to the extraordinary repair, maintenance and reconstruction cost required and to be required over the expected life of the structure, loss of use, depreciation in value and such punitive damages as may be appropriate.

**FOR A SECOND CAUSE OF ACTION**

**(Developer Breach of Express Warranty as to Defendants The Beach Co., Long Grove at Seaside Farms, LLC, Long Grove Vista, LLC and Vista Realty Construction, LLC)**

66. The Long Grove POA incorporates into this cause of action the allegations in Paragraphs 46-65 above as fully as if repeated verbatim herein.

67. Developers represented and warranted that the Project, including the project units and the general common elements, were of the highest quality. Those representations and warranties were made in connection with the sale of the units and formation of the Long Grove Property Owners' Association.

68. Developers breached their express warranty by producing, selling and turning over to the Long Grove POA, an inferior and rapidly deteriorating project, plagued with extensive and severe construction defects and problems.

69. As a direct and proximate result and consequence of Developers' breach of their express warranties, the Long Grove POA has suffered injuries and damages in the amount equal to the extraordinary repair, maintenance and reconstruction cost required and to be required over the expected life of the structure, loss of use and depreciation in value and such punitive damages as may be appropriate.

**FOR A THIRD CAUSE OF ACTION**

**(Developer Breach of Implied Warranty as to The Beach Co., Long Grove at Seaside Farms, LLC, Long Grove Vista, LLC and Vista Realty Construction, LLC)**

70. The Long Grove POA incorporates into this cause of action the allegations in Paragraphs 46-69 above as fully as if repeated verbatim herein.
71. Developers, as sellers, grantors and developers, made implied warranties of habitability and fitness for intended use.
72. Developers have breached their implied warranties by producing, selling and turning over to the Long Grove POA an inferior and rapidly deteriorating project plagued with extensive and severe construction defects and problems.
73. As a direct and proximate result and consequence of Developers' breach of their implied warranties, the Long Grove POA has suffered injuries and damages in an amount equal to the extraordinary repairs, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use and depreciation in value.

**FOR A FOURTH CAUSE OF ACTION**  
**(Developer Breach of Fiduciary Duty as to Long Grove Vista, LLC and Vista Realty Construction, LLC)**

74. The Long Grove POA incorporates into this cause of action the allegations in Paragraphs 46-73 above as fully as if repeated verbatim herein.
75. Upon information and belief, from its inception, and for a period of time afterwards, Developer Long Grove Vista, LLC and/or Vista Realty Construction, LLC controlled the Long Grove Property Owners' Association.
76. Developer Long Grove Vista, LLC and/or Vista Realty Construction, LLC, as a controlling entity, owed a fiduciary duty to the Long Grove Property Owners Association to inform it of any deficiencies in the construction of the Long Grove project.

77. Developer Long Grove Vista, LLC and/or Vista Realty Construction, LLC, as a controlling entity, also owed a fiduciary duty to the Long Grove Property Owners Association to disclose any defects in design of the Long Grove project.
78. Developer Long Grove Vista, LLC and/or Vista Realty Construction, LLC breached its fiduciary duty to the Long Grove Property Owners Association by failing to disclose design and/or construction defects to the Plaintiff prior to relinquishing control of the Board of Directors to the owners.
79. Developer Long Grove Vista, LLC and/or Vista Realty Construction, LLC owed a fiduciary duty to Long Grove POA to turn over the common elements of the Regime to Long Grove Property Owners Association in good condition, or to provide funds to Plaintiff to remedy any defects in the common areas.
80. Developer Long Grove Vista, LLC and/or Vista Realty Construction, LLC breached its fiduciary duty to Plaintiff by turning over to Long Grove Property Owners Association a deteriorating and defective townhome project without providing Long Grove Property Owners Association with any funds to effectuate necessary repairs.
81. As a direct and proximate result and consequence of Developers' Long Grove Vista, LLC and/or Vista Realty Construction, LLC breach of fiduciary duty, the Long Grove Property Owners Association has suffered injuries and damages in an amount equal to the extraordinary repairs, maintenance and reconstruction cost required and to be required over the expected life of the structure, loss of use, and depreciation in value, and such punitive damages as may be appropriate.

**FOR A FIFTH CAUSE OF ACTION**  
**(Negligence as to Gulf Stream Construction)**

82. The Long Grove Property Owners Association incorporates into this cause of action the allegations in Paragraphs 46-81 above as fully as if repeated verbatim herein.
83. Gulf Stream as the original general contractor owed a duty to the Long Grove Property Owners Association to exercise that degree of skill necessary to construct, supervise and review the design and otherwise deliver the Project free of construction defects and to ensure that the Project was designed and built in conformity with the customary and ordinary standards of the building and construction industry.
84. The deficiencies and defects which exist at the Project are the proximate and direct result of the negligence and/or gross negligence of Gulf Stream in more of the following particulars:
- a. in failing to properly construct the Project by deviating from the plans and specifications and by failing to employ practices and methods of construction conforming with accepted industry standards; and/or using defective materials; and/or installing materials not in accordance with the plans and specifications, or in violation of the manufacturer's instructions;
  - b. in using and supplying defective material;
  - c. by installing materials not in accordance with the plans and specifications;
  - d. by installing materials in violation of manufacturer's instructions;
  - e. in failing to properly supervise the subcontractors and/or other trades in order to ensure that all work proceeded in accordance with the plans and specifications and in conformity with the customary and ordinary standards of the construction industry;
  - f. in accepting non-conforming or defective material or labor;
  - g. in accepting and performing deficient and/or defective workmanship and/or materials without proper inspection to ensure that the work was correct and in conformity with



industry standards and in accordance with the plans and specifications and the manufacturer's instructions;

- h. in constructing the Project in violation of the applicable building codes;
- i. in failing to adequately construct a waterproofing system on the exterior of the building thereby allowing water to infiltrate the interior of the building;
- j. in failing to inform the architect and/or developer of the defects in the plans and specifications; and
- k. In failing to act as a reasonable and prudent contractor would act under the circumstances then and there existing.

85. As a direct and proximate result and consequence of the negligence and/or gross negligence of Gulf Stream, The Long Grove Property Owners Association has suffered injuries and damages in an amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use, depreciation in value and such punitive damages as may be appropriate.

**FOR A SIXTH CAUSE OF ACTION**  
**(Breach of Express and Implied Warranty as to Gulf Stream Construction)**

86. The Long Grove Property Owners Association incorporates into this cause of action the allegations in Paragraphs 46-85 above as fully as if repeated verbatim herein.

87. Upon information and belief, Gulf Stream made express warranties in connection with contracting to build the Project to the effect that the building would be free from construction defects.

88. Gulf Stream also impliedly warranted that the Project would be constructed in a careful, diligent and workmanlike manner, free of construction deficiencies.

89. Gulf Stream breached its express and implied warranties in the following particulars:

- a. in failing to properly construct the Project by deviating from the plans and specifications and/or failing to employ practices and methods of construction conforming to the customary and ordinary standards of the construction industry;
- b. in using and supplying defective material;
- c. by installing materials not in accordance with the plans and specifications;
- d. by installing materials in violation of manufacturer's instructions;
- e. in performing work which violated applicable building codes;
- f. in failing to properly supervise employees, agents and subcontractors to ensure that all work proceeded in accordance with the plans and specifications and in conformity with industry standards;
- g. in accepting defective and/or non-conforming materials and labor;
- h. in providing deficient and/or defective workmanship and/or materials, without proper inspections to ensure that the work was correct and in conformity with customary industry standards and in accordance with the plans and specifications and the manufacturer's instructions;
- i. in failing to adequately construct a waterproofing system on the exterior of the building thereby allowing water to infiltrate the interior of the building; and
- j. in failing to inform the architect and/or developer of the defects in the plans and specifications.

90. As a direct and proximate result and consequence of Gulf Stream's breach of its expressed and implied warranties, the Long Grove Property Owners Association has suffered injuries and damages in an amount equal to the extraordinary repair, maintenance and reconstruction

costs required and to be required over the expected life of the structure, loss of use and depreciation in value.

**FOR A SEVENTH CAUSE OF ACTION**  
**(Negligence as to Third-Party Defendant SCM Construction)**

91. The Long Grove Property Owners Association incorporates into this cause of action the allegations in Paragraphs 46-90 above as fully as if repeated verbatim herein.
92. Third-Party Defendant SCM Construction as the general contractor for the conversion and construction of the Project owed a duty to the Long Grove Property Owners Association to exercise that degree of skill necessary to construct, supervise and review the design and otherwise deliver the Project free of construction defects and to ensure that the Project was designed and built in conformity with the customary and ordinary standards of the building and construction industry.
93. The deficiencies and defects which exist at the Project are the proximate and direct result of the negligence and/or gross negligence of Third-Party Defendant SCM Construction in more of the following particulars:
  - a. in failing to properly construct the Project by deviating from the plans and specifications and by failing to employ practices and methods of construction conforming with accepted industry standards; and/or using defective materials; and/or installing materials not in accordance with the plans and specifications, or in violation of the manufacturer's instructions;
  - b. by installing materials not in accordance with the plans and specifications;
  - c. by installing materials in violation of manufacturer's instructions;

- d. in failing to properly supervise the subcontractors and/or other trades in order to ensure that all work proceeded in accordance with the plans and specifications and in conformity with the customary and ordinary standards of the construction industry;
- e. in accepting non-conforming or defective material or labor;
- f. in accepting and performing deficient and/or defective workmanship and/or materials without proper inspection to ensure that the work was correct and in conformity with industry standards and in accordance with the plans and specifications and the manufacturer's instructions;
- g. in constructing and converting the Project in violation of the applicable building codes;
- h. in failing to adequately construct a waterproofing system on the exterior of the building thereby allowing water to infiltrate the interior of the building;
- i. in failing to inform the architect and/or developer of the defects in the plans and specifications; and
- j. In failing to act as a reasonable and prudent contractor would act under the circumstances then and there existing.

94. As a direct and proximate result and consequence of the negligence and/or gross negligence of Third-Party Defendant SCM Construction, The Long Grove Property Owners Association has suffered injuries and damages in an amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use, depreciation in value and such punitive damages as may be appropriate.

**FOR AN EIGHTH CAUSE OF ACTION**  
**(Breach of Express and Implied Warranty as to Third-Party Defendant SCM Construction)**

95. The Long Grove Property Owners Association incorporates into this cause of action the allegations in Paragraphs 46-94 above as fully as if repeated verbatim herein.
96. Upon information and belief, Third-Party Defendant SCM Construction made express warranties in connection with contracting to build and convert the Project to the effect that the building would be free from construction defects.
97. Third-Party Defendant SCM Construction also impliedly warranted that the Project would be converted in a careful, diligent and workmanlike manner, free of construction deficiencies.
98. Third Party Defendant SCM Construction breached its express and implied warranties in the following particulars:
- a. in failing to properly construct and convert the Project by deviating from the plans and specifications and/or failing to employ practices and methods of construction conforming to the customary and ordinary standards of the construction industry;
  - b. in using and supplying defective material;
  - c. by installing materials not in accordance with the plans and specifications;
  - d. by installing materials in violation of manufacturer's instructions;
  - e. in performing work which violated applicable building codes;
  - f. in failing to properly supervise employees, agents and subcontractors to ensure that all work proceeded in accordance with the plans and specifications and in conformity with industry standards;
  - g. in accepting defective and/or non-conforming materials and labor;
  - h. in providing deficient and/or defective workmanship and/or materials, without proper inspections to ensure that the work was correct and in conformity with customary

industry standards and in accordance with the plans and specifications and the manufacturer's instructions;

- i. in failing to adequately construct a waterproofing system on the exterior of the building thereby allowing water to infiltrate the interior of the building; and
- j. in failing to inform the architect and/or developer of the defects in the plans and specifications.

99. As a direct and proximate result and consequence of Third-Party Defendant SCM Construction's breach of its expressed and implied warranties, the Long Grove POA has suffered injuries and damages in an amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use and depreciation in value.

**FOR A NINTH CAUSE OF ACTION**

**(Negligence as to Third-Party Defendant Architect James, Harwick & Partners)**

100. The Long Grove Property Owners Association incorporates into this cause of action the allegations in Paragraphs 46 thru 99 above as fully as if repeated verbatim herein.

101. Third-Party Defendant Architect owed a duty to the Long Grove Property Owners Association to exercise that degree of skill necessary in design and inspection of the Project so that the Project would be delivered free of construction defects and would be designed and built in conformity with the customary and ordinary standards of the building and construction industry and the applicable building codes..

102. Third-Party Defendant Architect was negligent, and/or grossly negligent in its design and inspection of the Project in one or more of the following particulars:

- a. Improper design of details at balconies and doors;
- b. Lack of proper details at balconies;

- c. Lack of proper details at roof;
- d. Lack of proper details at chimneys;
- e. Lack of proper details at attics;
- f. Lack of proper details for brick system;
- g. Lack of proper details for windows;
- h. Lack of proper flashing details;
- i. Failure to adequately design and the defects in the plans have caused water intrusion and decay of building components;
- j. Inadequate inspection and acceptance of defective or non-conforming construction work;
- k. Failure to design and insure construction in compliance with applicable building codes and acceptable building practices; and
- l. In failing to act as a reasonable and prudent architect would act under the circumstances then and there existing.

See the affidavit of Peter E. Sherratt attached hereto as Exhibit 1.

103. As a direct and proximate result and consequence of the negligence and gross negligence of Defendant Architect, The Long Grove Property Owners Association has suffered injuries and damages in an amount equal to the extraordinary repairs, maintenance and reconstruction costs required and to be required over the expected life of the structures, loss of use, depreciation in value and such punitive damages as may be appropriate.

**FOR A TENTH CAUSE OF ACTION**  
**(Breach of Express and Implied Warranty as to**  
**Third –Party Defendant Architect James, Harwick & Partners)**

104. The Long Grove Property Owners Association incorporates into this cause of action the allegations in Paragraphs 46-103 above as fully as if repeated verbatim herein.
105. Architect expressly and impliedly warranted that its design of the Project would be of the highest quality and in conformance with the generally accepted standards of the architectural and construction industry, and further, that the specifications of materials and procedures would comply with the generally accepted principals in the industry.
106. Architect further expressly and impliedly warranted that the plans and specifications prepared for the Project were suitable and fit for use in constructing the Project, and that the building, when complete, would be free of design defects.
107. The plans and specifications as provided by the Architect were not suitable or appropriate for their intended purpose (Exhibit 1), and as a result of the Architect's breach of warranties by designing the Project with severe structural and water intrusion problems, the Long Grove Property Owners Association is entitled to such actual and consequential damages as this Court may deem appropriate, including but not limited to the amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use and depreciation in value.

**FOR AN ELEVENTH CAUSE OF ACTION**  
**(Negligence as to Third-Party Defendant Essex Engineering)**

108. The Long Grove Property Owners Association incorporates into this cause of action the allegations in Paragraphs 46-107 above as fully as if repeated verbatim herein.
109. Essex owed a duty to the Long Grove Property Owners Association to exercise that degree of skill necessary in design and inspection of the Project so that the Project would be delivered free of construction defects and would be designed and built in conformity



with the customary and ordinary standards of the building and construction industry and the applicable building codes.

110. Essex was negligent, and/or grossly negligent in its inspection of the Project and failed to report or to observe the construction and architectural defects at the Project. Exhibit 1
111. As a direct and proximate result and consequence of the negligence and gross negligence of Essex, the Long Grove Property Owners Association has suffered injuries and damages in an amount equal to the extraordinary repairs, maintenance and reconstruction costs required and to be required over the expected life of the structures, loss of use, depreciation in value and such punitive damages as may be appropriate.

**FOR A TWELFTH CAUSE OF ACTION**  
**(Breach of Warranty as to Essex Engineering**

112. The Long Grove Property Owners Association incorporates into this cause of action the allegations in Paragraphs 45-108 above as fully as if repeated verbatim herein.
113. Essex expressly and impliedly warranted that its inspection of the Project would be of the highest quality and in conformance with the generally accepted standards of the engineering and construction industry, and further, that the construction of the project complied with the generally accepted principals in the industry.
114. Essex further expressly and impliedly warranted that the inspection report prepared for the Project was suitable and fit for use in the conversion of the Project, and that the building, when as completed and converted, would be free of design and construction defects.
115. The inspection report provided by Essex was not suitable or appropriate for its intended purpose, and as a result of Essex's breach of warranties by failing to find the severe structural and water intrusion problems at the Project, the Long Grove Property Owners

Association is entitled to such actual and consequential damages as this Court may deem appropriate, including but not limited to and amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use and depreciation in value.

WHEREFORE, the Long Grove Property Owners Association, Inc. prays for judgment against the Plaintiffs, Co-Defendants, and Third-Party Defendants for such actual, consequential and punitive damages as this Court deems appropriate and for such other and further relief as is just and proper, including costs, pre-judgment interest and attorney's fees.

**MULLEN WYLIE, LLC**

By:

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December\_\_\_\_, 2009  
Charleston, South Carolina