

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

SIX FIFTY SIX OWNERS ASSOCIATION, INC. and ROBERT JOHN NUTLEY, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

WINSOR SOUTH, LLC AND JEFFREY M. THOMAS, individually, and on behalf of a class of construction defendants; SOUTHEASTERN RECAPITALIZATION GROUP, LLC; WCM CONSTRUCTION, LLC; JONATHAN J. THOMAS; AC HEATING AND AIR CONDITIONING SERVICE, INC.; ACME DOORS, INC.; ALPHA OMEGA CONSTRUCTION GROUP, INC.; ATLANTIC CONSTRUCTION SERVICES, INC.; BUCK LUMBER AND BUILDING SUPPLY, INC.; BUILDERS FIRSTSOURCE, INC.; BUILDERS FIRSTSOURCE-ATLANTIC GROUP, LLC; BUILDERS FIRSTSOURCE-FLORIDA, LLC A/K/A BUILDERS FIRSTSOURCE-FLORIDA DESIGN CENTER, LLC; BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC; CHARLOTTE FLOORING, INC.; DIRIA TAWI PAINTING, INC.; EAST COAST WALL SYSTEMS, INC.; FOGEL SERVICES, INC.; G&S HOME REMODELING, LLC; GUARANTEED FRAMING, LLC; J. MORA BRICK & BLOCK MASON, LLC; LAND/SITE SERVICES, INC.; LANDMARK CONSTRUCTION COMPANY, INC.; LUTZEN CONSTRUCTION, INC.; NEW HORIZON SHUTTERS, INC. A/K/A NEW HORIZON SHUTTERS INTERNATIONAL, LLC; PJ SANCHEZ MASONRY, LLC; SCREENS PLUS, INC.; SIMONS CONSTRUCTION COMPANY, LLC; STUCCO BY DESIGN, LLC; FINE BUILDERS, LLC;

IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2016-CP-10-3455

SECOND AMENDED SUMMONS (Defective Construction) (Class Action) (Jury Trial Demanded)

2017 APR 27 PM 12:00 JULIE J. ARMSTRONG CLERK OF COURT

FILED

**SPEEDTRUSS, INC.; AS )**  
**CONSTRUCTION; JAVIER MORALES )**  
**MERINO; NOVAC CONSTRUCTION, )**  
**INC.; MJG CONSTRUCTION, INC.; )**  
**ADVANCE PLUMBING, HEATING & AIR, )**  
**INC.; ASHLEY STEEL, INC.; CAHILL )**  
**CONTRACTING, LLC; COHEN'S )**  
**DRYWALL, INC.; BOB PORTER D/B/A )**  
**CUSTOM INTERIOR CONSTRUCTION; )**  
**RB'S TRIM, INC.; SHARON'S PAINTING )**  
**AND CONSTRUCTION A/K/A SHARON'S )**  
**PAINTING, LLC; DAVIS TILE; TIMOTHY )**  
**MITCHELL; ELECTRICAL DESIGN & )**  
**CONSTRUCTION, INC.; AND JOHN DOE )**  
**41-75, )**  
  
**Defendants. )**

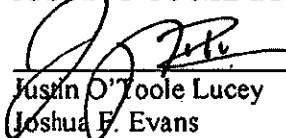
---

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint herein, a copy of which is served upon you, and to serve a copy of your answer to said Complaint upon the subscriber at his office at 415 Mill Street, Mt. Pleasant, South Carolina 29464 within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer within the prescribed time, a judgment by default will be rendered against you for the remedy requested in the attached Complaint plus interest and costs.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

By:

  
 Justin O'Toole Lucey  
 Joshua F. Evans  
 James L. Floyd, III ("Lee")  
 415 Mill Street  
 Post Office Box 806  
 Mount Pleasant, SC 29465-0806  
 (843) 849-8400 phone

JVF  
April 25  
~~February~~, 2017  
Charleston, South Carolina

(843) 849-8406 fax  
[jlucey@lucey-law.com](mailto:jlucey@lucey-law.com)  
[jevans@lucey-law.com](mailto:jevans@lucey-law.com)  
[lfloyd@lucey-law.com](mailto:lfloyd@lucey-law.com)

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
SIX FIFTY SIX OWNERS ASSOCIATION, )  
INC. and ROBERT JOHN NUTLEY, )  
individually, and on behalf of all others )  
similarly situated, )  
 )  
Plaintiffs, )

vs. )

WINSOR SOUTH, LLC AND JEFFREY M. )  
THOMAS, individually, and on behalf of a class )  
of construction defendants; SOUTHEASTERN )  
RECAPITALIZATION GROUP, LLC; WCM )  
CONSTRUCTION, LLC; JONATHAN J. )  
THOMAS; AC HEATING AND AIR )  
CONDITIONING SERVICE, INC.; ACME )  
DOORS, INC.; ALPHA OMEGA )  
CONSTRUCTION GROUP, INC.; ATLANTIC )  
CONSTRUCTION SERVICES, INC.; BUCK )  
LUMBER AND BUILDING SUPPLY, INC.; )  
BUILDERS FIRSTSOURCE, INC.; )  
BUILDERS FIRSTSOURCE-ATLANTIC )  
GROUP, LLC; BUILDERS FIRSTSOURCE- )  
FLORIDA, LLC A/K/A BUILDERS )  
FIRSTSOURCE-FLORIDA DESIGN )  
CENTER, LLC; BUILDERS FIRSTSOURCE- )  
SOUTHEAST GROUP, LLC; CHARLOTTE )  
FLOORING, INC.; DIRIA TAWI PAINTING, )  
INC.; EAST COAST WALL SYSTEMS, INC.; )  
FOGEL SERVICES, INC.; G&S HOME )  
REMODELING, LLC; GUARANTEED )  
FRAMING, LLC; J. MORA BRICK & BLOCK )  
MASON, LLC; LAND/SITE SERVICES, INC.; )  
LANDMARK CONSTRUCTION COMPANY, )  
INC.; LUTZEN CONSTRUCTION, INC.; NEW )  
HORIZON SHUTTERS, INC. A/K/A NEW )  
HORIZON SHUTTERS INTERNATIONAL, )  
LLC; PJ SANCHEZ MASONRY, LLC; )  
SCREENS PLUS, INC.; SIMONS )  
CONSTRUCTION COMPANY, LLC; STUCCO )  
BY DESIGN, LLC; FINE BUILDERS, LLC; )

IN THE COURT OF COMMON PLEAS )  
FOR THE NINTH JUDICIAL CIRCUIT )  
CASE NO. 2016-CP-10-3455 )

**SECOND AMENDED COMPLAINT**  
(Defective Construction)  
(Class Action)  
(Jury Trial Demanded)

FILED  
2017 APR 27 PM 12:01  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

**SPEEDTRUSS, INC.; AS )**  
**CONSTRUCTION; JAVIER MORALES )**  
**MERINO; NOVAC CONSTRUCTION, )**  
**INC.; MJG CONSTRUCTION, INC.; )**  
**ADVANCE PLUMBING, HEATING & AIR, )**  
**INC.; ASHLEY STEEL, INC.; CAHILL )**  
**CONTRACTING, LLC; COHEN'S )**  
**DRYWALL, INC.; BOB PORTER D/B/A )**  
**CUSTOM INTERIOR CONSTRUCTION; )**  
**RB'S TRIM, INC.; SHARON'S PAINTING )**  
**AND CONSTRUCTION A/K/A SHARON'S )**  
**PAINTING, LLC; DAVIS TILE; TIMOTHY )**  
**MITCHELL; ELECTRICAL DESIGN & )**  
**CONSTRUCTION, INC.; AND JOHN DOE )**  
**41-75, )**  
**)**  
**)**  
**Defendants. )**  
**)**

---

The Plaintiffs, Six Fifty Six Owners Association, Inc. and Robert John Nutley, individually, and on behalf of all others similarly situated, complaining of the Defendants named herein, would respectfully allege and show the Court as follows:

**PARTIES AND JURISDICTIONAL STATEMENT**

1. Plaintiff Six Fifty Six Owners Association, Inc. (hereinafter "Association") is a non-profit corporation organized and existing under the laws of the State of South Carolina.

2. The Association is the property owners' association for Six Fifty Six Horizontal Property Regime.

3. The Six Fifty Six Horizontal Property Regime (hereinafter "656 Coleman Townhomes") is a Horizontal Property Regime which exists by virtue of a Master Deed dated March 19, 2007 and recorded on March 20, 2007 in the RMC Office of Charleston County, SC in Book E619, Page 738.

4. 656 Coleman Townhomes consists of fifty-two (52) townhomes in twelve (12) buildings and related common elements. Construction began in 2006 or 2007; and the final

Certificate of Occupancy was issued on June 18, 2014. The Developers turned over control of the Association to the homeowners in March 2016.

5. By virtue of governing documents and the South Carolina Horizontal Property Regime Act, S.C. Code § 27-31-10, *et. seq.*, the Association is charged with certain duties, powers, rights and authority in connection with 656 Coleman Townhomes.

6. By virtue of the Master Deed and/or Bylaws, The Association is charged with, *inter alia*, the management and administration of 656 Coleman Townhomes, the investigation, maintenance and repair of 656 Coleman Townhomes' Common Elements and Areas of Responsibility, and has the right and authority to bring this action on behalf of the Association and its members.

7. The Association duly noticed and convened a Meeting of the Association wherein members of the Association overwhelmingly approved the Association's commencement of this litigation.

8. Plaintiff Robert John Nutley (hereinafter "Plaintiff Nutley") is a citizen of Charleston County, South Carolina, and is an owner of a townhome within 656 Coleman, more particularly described as 656 Coleman Blvd., Unit 204, Mount Pleasant, South Carolina, 29464.

9. Plaintiff Nutley entered into a contract to purchase the above-described real property on or about March 14, 2014.

10. By virtue of his property ownership in 656 Coleman, Plaintiff Nutley brings this action on behalf of himself and a Proposed Class of other similarly situated property owners. In addition to his common ownership interest, Plaintiff Nutley and the Proposed Class are also members of the Association. Consequently, Plaintiff Nutley fairly and adequately represents the interests of the entire Association membership - as a member of the Association, Plaintiff Nutley

shares common interests with other Association members regarding the resolution of this matter and Plaintiff Nutley is able and committed to prosecuting these common interests.

11. Defendant Winsor South, LLC is a limited liability company organized under the laws of the State of South Carolina. At all times, relevant to this action, Winsor South, LLC was engaged in the business of developing, designing, constructing, repairing and/or selling townhomes in Charleston County, South Carolina.

12. Upon information and belief, Defendant Jeffrey M. Thomas is an individual residing in Charleston, South Carolina. At all times, relevant to this action, Jeffrey M. Thomas was engaged in the business of developing, designing, constructing, repairing and/or selling townhomes in Charleston County, South Carolina.

13. Defendants Winsor South, LLC and Jeffrey M. Thomas were the initial builders of the 656 Coleman Townhomes.

14. Defendant Southeastern Recapitalization Group, LLC is a limited liability company organized and existing under the laws of the State of South Carolina.

15. Defendant Southeastern Recapitalization purchased one or more of the 656 Coleman Townhomes from the original Developer, WCB, LLC, pursuant to a Limited Warranty Deed executed on December 31, 2008 and filed with the Charleston County Register of Deeds on December 31, 2008, at Book 0027, Page 504.

16. Upon information and belief, Defendant Southeastern Recapitalization finished the design and construction of one or more of the original buildings and placed new townhouses into the stream of commerce and began the design and construction of additional buildings at the 656 Coleman Townhomes.

17. Defendant WCM Construction, LLC is a limited liability company organized under the laws of the State of South Carolina. At all times, relevant to this action, WCM Construction,

LLC was engaged in the business of developing, designing, constructing, repairing and/or selling townhomes in Charleston County, South Carolina.

18. Upon information and belief, Defendant Jonathan J. Thomas is an individual residing in Charleston, South Carolina. At all times, relevant to this action, Jonathan J. Thomas was engaged in the business of developing, designing, constructing, repairing, and/or selling townhomes in Charleston County, South Carolina

19. Defendants WCM Construction, LLC and Jonathan J. Thomas were the second builders of the 656 Coleman Townhomes.

20. Jeffrey M. Thomas and Jonathan J. Thomas owned and/or controlled Winsor South, LLC and WCM Construction, LLC. Additionally, Jeffrey M. Thomas and Jonathan J. Thomas owned and/or controlled the first two (2) developers of the 656 Coleman Townhouses.

21. Defendant AC Heating and Air Conditioning Service, Inc., formerly identified as John Doe #1, (hereinafter "AC Heating and Air") is a corporation organized and existing under the laws of the State of South Carolina. Upon information and belief, at all times relevant to this action, AC Heating and Air performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to the supply and installation of the HVAC systems and associated components in some or all of the homes.

22. Defendant Acme Doors, Inc., formerly identified as John Doe #2, (hereinafter "Acme Doors") is a corporation organized and existing under the laws of the State of South Carolina. Upon information and belief, at all times relevant to this action, Acme Doors performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to the supply and installation of the garage doors in some or all of the homes.



23. Defendant Alpha Omega Construction Group, Inc., formerly identified as John Doe #3, (hereinafter “Alpha Omega”) is a corporation organized and existing under the laws of the State of North Carolina. At all times relevant to this action, Alpha Omega performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to the installation of the roofing and related waterproofing, flashing, and other associated components on some or all of the homes.

24. Defendant Atlantic Construction Services, Inc., formerly identified as John Doe #4, (hereinafter “Atlantic Construction”) is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Atlantic Construction performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to the supply and installation of the framing members, windows, doors, and related components on some or all of the homes.

25. Defendant Buck Lumber and Building Supply, Inc., formerly identified as John Doe #5, (hereinafter “Buck Lumber”) is a corporation organized and existing under the laws of the State of South Carolina. At all times, relevant to this action, Buck Lumber performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to the supply and installation of the framing members, windows, doors, and related components on some or all of the homes.

26. Defendant Builders FirstSource, Inc., formerly identified as John Doe #6, (hereinafter “Builders FirstSource”) is a corporation organized and existing under the laws of the State of Delaware. At all times, relevant to this action, Builders FirstSource performed certain

work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to the supply and installation of the windows and related waterproofing, flashing, and other associated components on some or all of the homes.

27. Defendant Builders FirstSource-Atlantic Group, LLC, formerly identified as John Doe #7, (hereinafter “Builders FirstSource-Atlantic”) is a company organized and existing under the laws of the State of Delaware. At all times, relevant to this action, Builders FirstSource-Atlantic performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to the supply and installation of the windows and related waterproofing, flashing, and other associated components on some or all of the homes.

28. Defendant Builders FirstSource-Florida, LLC a/k/a Builders FirstSource-Florida Design Center, LLC, formerly identified as John Doe #8, (hereinafter “Builders FirstSource-Florida”) is a company organized and existing under the laws of a State other than South Carolina. At all times, relevant to this action, Builders FirstSource-Florida performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to the supply and installation of the windows and related waterproofing, flashing, and other associated components on some or all of the homes.

29. Defendant Builders FirstSource-Southeast Group, LLC, formerly identified as John Doe #9, (hereinafter “Builders FirstSource-Southeast”) is a company organized and existing under the laws of the State of Delaware. At all times, relevant to this action, Builders FirstSource-Southeast performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but

not limited to the supply and installation of the windows and related waterproofing, flashing, and other associated components on some or all of the homes.

30. Defendant Charlotte Flooring, Inc., formerly identified as John Doe #10, (hereinafter “Charlotte Flooring”) is a company organized and existing under the laws of the State of North Carolina. At all times, relevant to this action, Charlotte Flooring performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to the supply and installation of the ceramic tile and other associated components on some or all of the homes.

31. Defendant Diria Tawi Painting, Inc., formerly identified as John Doe #11, (hereinafter “Diria Tawi”) is a company organized and existing under the laws of the State of South Carolina. At all times, relevant to this action, Diria Tawi performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to the supply and installation of the paint, caulking, and related waterproofing, flashing, and other associated components on some or all of the homes.

32. Defendant East Coast Wall Systems, Inc., formerly identified as John Doe #12, (hereinafter “East Coast Wall Systems”) is a company organized and existing under the laws of the State of North Carolina. At all times, relevant to this action, East Coast Wall Systems performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to the supply and installation of the drywall, painting, and related waterproofing, flashing, and other associated components on some or all of the homes.

33. Defendant Fogel Services, Inc., formerly identified as John Doe #13, (hereinafter “Fogel Services”) is a company organized and existing under the laws of the State of South

Carolina. At all times, relevant to this action, Fogel Services performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes including but not limited to the supply and installation of the HVAC systems and associated components in some or all of the homes.

34. Defendant G&S Home Remodeling, LLC, formerly identified as John Doe #14, (hereinafter "G&S Home") is a company organized and existing under the laws of the State of South Carolina. At all times, relevant to this action, G&S Home performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to the supply and installation of the gutters and associated components on some or all of the homes.

35. Defendant Guaranteed Framing, LLC, formerly identified as John Doe #15, (hereinafter "Guaranteed Framing") is a company organized and existing under the laws of the State of South Carolina. At all times, relevant to this action, Guaranteed Framing performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to the supply and installation of the framing members, windows, doors, and related components in some or all of the homes.

36. Defendant J. Mora Brick & Block Mason, LLC, formerly identified as John Doe #16, (hereinafter "J. Mora Brick") is a company organized and existing under the laws of the State of South Carolina. At all times relevant to this action, J. Mora Brick performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to the supply and installation of the masonry veneer, masonry columns, concrete footings, masonry foundations, and related components in some or all of the homes.

37. Defendant Land/Site Services, Inc., formerly identified as John Doe #17, (hereinafter “Land/Site Services”) is a company organized and existing under the laws of the State of South Carolina. At all times, relevant to this action, Land/Site Services performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to performing the site work and related components in the construction of the homes.

38. Defendant Landmark Construction Company, Inc., formerly identified as John Doe #18, (hereinafter “Landmark Construction”) is a company organized and existing under the laws of the State of South Carolina. At all times, relevant to this action, Landmark Construction performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to performing the site work and related components in the construction of the homes.

39. Defendant Lutzen Construction, Inc., formerly identified as John Doe #19, (hereinafter “Lutzen Construction”) is a company organized and existing under the laws of the State of South Carolina. At all times, relevant to this action, Lutzen Construction performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to the supply and installation of the foundations, concrete slabs, and other related components in the construction of the homes.

40. Defendant New Horizon Shutters, Inc. a/k/a New Horizon Shutters International, LLC, formerly identified as John Doe #20, (hereinafter “New Horizon”) is a company organized and existing under the laws of the State of South Carolina. At all times, relevant to this action, New Horizon performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or

supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to the supply and installation of the shutters on some or all of the homes.

41. Defendant PJ Sanchez Masonry, LLC, formerly identified as John Doe #21, (hereinafter “PJ Sanchez Masonry”) is a company organized and existing under the laws of the State of South Carolina. At all times, relevant to this action, PJ Sanchez Masonry performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to the supply and installation of the masonry veneer, masonry columns, concrete footings, masonry foundations, and related components in some or all of the homes.

42. Defendant Screens Plus, Inc., formerly identified as John Doe #22, (hereinafter “Screens Plus”) is a company organized and existing under the laws of the State of South Carolina. At all times, relevant to this action, Screens Plus performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to the supply and installation of the screens and related components in some or all of the homes.

43. Defendant Simons Construction Company, LLC, formerly identified as John Doe #23, (hereinafter “Simons Construction”) is a company organized and existing under the laws of the State of South Carolina. At all times, relevant to this action, Simons Construction performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to the supply and installation of the exterior cladding, siding, exterior trim, and related components on some or all of the homes.

44. Defendant Stucco By Design, LLC, formerly identified as John Doe #24, (hereinafter “Stucco By Design”) is a company organized and existing under the laws of the State

of South Carolina. At all times, relevant to this action, Stucco By Design performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to the supply and installation of the stucco, insulation, caulking, sealant, and related components on some or all of the homes.

45. **Defendant Fine Builders, LLC, formerly identified as John Doe #25, (hereinafter “Fine Builders”) is a company organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Fine Builders performed certain work and/or repairs as a sub-subcontractor of Atlantic Construction at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to the supply and installation of the framing, related components, and other work on some or all of the homes.**

46. **Defendant Speedtruss, Inc., formerly identified as John Doe #26, (hereinafter “Speedtruss”) is a company organized and existing under the laws of the State of New Jersey. At all times relevant to this action, Speedtruss performed certain work and/or repairs as a sub-subcontractor of Defendant Atlantic Construction at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes including but not limited to the supply and installation of the framing, related components, and other work on some or all of the homes.**

47. **Plaintiffs are informed and believe that Defendant AS Construction, formerly identified as John Doe #27, is an entity organized and existing under the laws of the State of South Carolina. At all times relevant to this action, AS Construction performed certain work and/or repairs as a sub-subcontractor of Defendant Atlantic Construction at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656**

**Townhomes, including but not limited to the supply and installation of the framing, related components, and other work on some or all of the homes.**

**48. Upon Information and belief, Defendant Javier Morales Merino, formerly identified as John Doe #28, is a citizen and resident of the State of South Carolina. At all times relevant to this action, Defendant Merino installed certain stucco cladding and provided other materials and/or performed other work on some or all of the 656 Townhomes.**

**49. Defendant Novac Construction, Inc. formerly identified as John Doe #29, (hereinafter “Novac Construction”) is a corporation organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Novac Construction performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to the supply and installation of the framing members, windows, doors, and related components and performed other work on some or all of the homes.**

**50. Upon information and belief, Defendant MJG Construction, Inc., formerly identified as John Doe #30 (hereinafter “MJG”), is an entity organized and existing under the laws of the State of Texas. At all times relevant to this action, Defendant MJG performed certain concrete work and/or repairs on some or all of the 656 Townhomes.**

**51. Defendant Advance Plumbing, Heating & Air, Inc., formerly identified as John Doe #31 (hereinafter “Advance Plumbing”), is an entity organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Advance Plumbing performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to plumbing work.**



52. Defendant Ashley Steel, Inc., formerly identified as John Doe #32 (hereinafter "Ashley Steel"), is an entity organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Ashley Steel performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to brick lintels and steel members, among other work.

53. Defendant Cahill Contracting, LLC, formerly identified as John Doe #33 (hereinafter "Cahill"), is an entity organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Cahill performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to roofing work, among other work.

54. Defendant Cohen's Drywall, Inc., formerly identified as John Doe #34 (hereinafter "Cohen's"), is an entity organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Cohen's performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to insulation work, among other work.

55. Defendant Bob Porter d/b/a Custom Interior Construction, formerly identified as John Doe #35 (hereinafter "Custom Interior"), is an citizen and resident of the State of South Carolina. At all times relevant to this action, Custom Interior performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to interior trim work, among other work.

56. Defendant RB's Trim, Inc., formerly identified as John Doe #36 (hereinafter "RB's Trim"), is an entity organized and existing under the laws of the State of South Carolina. At all times relevant to this action, RB's Trim performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to interior trim work, among other work.

57. Defendant Sharon's Painting and Construction a/k/a Sharon's Painting, LLC, formerly identified as John Doe #37 (hereinafter "Sharon's Painting"), is an entity organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Sharon's Painting performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to paint work, among other work.

58. Defendant Davis Tile, formerly identified as John Doe #38, is an entity organized and existing under the laws of the State of South Carolina. At all times relevant to this action, Davis Tile performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to tile work, among other work.

59. Defendant Timothy Mitchell, formerly identified as John Doe #39 (hereinafter "Mitchell"), is a citizen and resident of South Carolina. At all times relevant to this action, Mitchell performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to foundation work, among other work.

60. Defendant Electrical Design & Construction, Inc., formerly identified as John Doe #40 (hereinafter "Electrical Design"), is an entity organized and existing under the laws

of the State of South Carolina. At all times relevant to this action, Electrical Design performed certain work and/or repairs as a subcontractor at the 656 Townhomes and/or supplied certain materials/products used in the construction of the 656 Townhomes, including but not limited to electrical work, among other work.

61. John Doe Defendants 41-75 are the designers, subcontractors, suppliers and/or other entities involved in the design, construction, material manufacturing and/or supplying and/or repair of the 656 Coleman Townhomes, whose identity and location are unknown at this time.

#### FACTUAL ALLEGATIONS

62. This matter arises out of the design, development, construction, repair and sale of the 656 Coleman Townhomes.

63. At the time the Certificates of Occupancy were issued, the 656 Coleman Townhomes contained latent building defects.

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

65. A preliminary inspection of 656 Coleman Townhomes evidences failure of one or more components of the exterior building envelopes; water intrusion into and through the exterior building envelope; and resulting consequential damage to non-defective building components. Inspection also reveals failure of other various and sundry building components, with consequential damages resulting there from.

66. Defendants had a duty to design, develop, construct, and repair 656 Coleman Townhomes in a workmanlike manner with suitable materials and free from all defects.

67. The aforementioned deficiencies and consequential damages evidence that Defendants breached their duties to Plaintiff.

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

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

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

71. Upon information and belief, the water intrusion and resulting consequential damages commenced shortly after completion and have occurred and have been occurring in each and every year since commencement and constitute "occurrences" and "property damage" under the standard and/or typical commercial general liability policies.

#### **PLAINTIFFS CLASS ACTION ALLEGATIONS**

72. Pursuant to the common law of South Carolina and Rule 23 of the South Carolina Rules of Civil Procedure ("SCRCP"), Plaintiff Nutley brings this action both individually and as a proposed class action against Defendants on behalf of himself and all other similarly situated persons and entities, who own, per the class definition, a townhome within 656 Coleman Townhomes (hereinafter collectively referred to as the "Class"). The Class is particularly defined as follows:

All persons and entities that own a condominium within 656 Coleman Townhomes located in the Town of Mt. Pleasant, Charleston County, South Carolina.

Excluded from the Class are: (a) any Judge presiding over this action

and members of their families; (b) Defendants and any entity in which Defendants have a controlling interest or which have a controlling interest in Defendants and their legal representatives, assigns and successors of Defendants and Defendants' current or former employees, investors, members, or officers; and (c) all persons who properly execute and file a timely request for exclusion from the Class.

73. *Numerosity:* The Class is composed of in excess of fifty (50) persons geographically dispersed throughout the State of South Carolina, the joinder of whom in one action is impractical.

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

- (a) Whether Defendants negligently designed, developed constructed and/or repaired 656 Coleman Townhomes;
- (b) Whether the construction and/or repair of 656 Coleman Townhomes was defective;
- (c) Whether Defendants knew or should have known of the original defects;
- (d) Whether Defendants know or should have known their repairs were defective;
- (e) Whether Defendants failed to disclose to purchasers and/or homeowners the defects and/or unsuccessful repairs;
- (f) Whether Defendants have acted or refused to act on grounds generally applicable to the Class;
- (g) Whether Defendants' expertise and superiority and financial interest in sales transactions gave rise to a duty to disclose the material facts which were concealed; thereby, giving rise to a claim for fraudulent concealment;
- (h) Whether Plaintiff and the Class are entitled to compensatory damages, including, among other things: (i) compensation for all out-of-pocket monies expended by other members of the Class for repair of their townhomes as well as repair/replacement of other property damage; (ii) temporary repairs and (iii) compensation for loss of use; and,
- (i) Whether the Plaintiff and the Class are entitled to prejudgment interest, attorneys' fees and costs from Defendants.

75. *Typicality:* Plaintiff's claims are typical of the claims of the members of the Class, as all such claims arise out of Defendants' wrongful conduct in designing, developing, constructing, repairing, and selling 656 Coleman Townhomes, Defendants' conduct in concealing the defective condition of 656 Coleman Townhomes, and Plaintiff's and Class Members'

purchasing homes containing building defects.

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

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

78. Further, class certification is necessary because of the co-ownership of many of the building components require that Plaintiffs' claims be prosecuted together.

79. Defendants have acted on grounds generally applicable to the Class. Class certification is appropriate under South Carolina law because Defendants engaged in a uniform and common practice. All Class Members have the same legal right to and interest in redress for damages associated with the defective conditions existing within 656 Coleman Townhomes.

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

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

82. The relationship of the class claims with each other and with the Association claims makes piece meal litigation and individual claims difficult.

### **DEFENDANT CLASS ACTION ALLEGATIONS**

83. Pursuant to the common law of South Carolina and Rule 23 of the South Carolina Rules of Civil Procedure ("SCRCP"), Plaintiffs bring this action against Winsor South, LLC and Jeffrey M. Thomas, both individually and on behalf of a proposed class of construction Defendants involved in the construction of the 656 Coleman Townhomes (hereinafter collectively referred to as "Defendant Class"). The Defendant Class is particularly defined as follows:

All persons and entities involved in the design, construction, material manufacture and/or supply, and/or repair of the 656 Coleman Townhomes located in the Town of Mt. Pleasant, Charleston County, South Carolina.

Excluded from the Class are: (a) any Judge presiding over this action and members of their families; and (b) Plaintiffs.

84. *Numerosity*: The Defendant Class is composed of an unknown number of persons and/or entities geographically dispersed throughout the State of South Carolina or other States, the joinder of whom in one action is impractical.

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

- (a) Whether Defendant Class negligently designed, developed constructed and/or repaired 656 Coleman Townhomes;
- (b) Whether the construction and/or repair of 656 Coleman Townhomes was defective;

- (c) Whether Defendant Class knew or should have known of the original defects;
- (d) Whether Defendant Class knew or should have known their repairs were defective;
- (e) Whether Defendant Class failed to disclose to purchasers and/or homeowners the defects and/or unsuccessful repairs; and
- (f) Whether Defendant Class have acted or refused to act on grounds generally applicable to the Defendant Class.

86. *Typicality*: Plaintiff's claims against Defendant Winsor South, LLC are typical of the claims against the Defendant Class, as all such claims arise out of Defendant Class' wrongful conduct in designing, developing, constructing, and repairing 656 Coleman Townhomes, Defendants Class' conduct in concealing the defective condition of 656 Coleman Townhomes, and Plaintiff's and Plaintiff Class Members' purchasing homes containing building defects.

87. *Predominance and Superiority*: This class action is appropriate for certification because questions of law and fact common to the members of the Defendant Class predominate over questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Defendant Class is impracticable. This class action presents few management difficulties while providing unitary adjudication, economies of scale, and comprehensive supervision by a single Court.

88. Class certification is appropriate under South Carolina law because Defendant Class engaged in a uniform and common practice.

**ESTOPPEL FROM PLEADING AND TOLLING OF  
APPLICABLE STATUTES OF LIMITATIONS**

89. Defendants are estopped from relying on any statutes of limitation or repose by virtue of their acts. Upon information and belief, Defendants should have known 656 Coleman Townhomes was defectively constructed and failed to alert the Plaintiffs of 656 Coleman Townhomes' defective condition.

90. Defendants had a duty to inform Plaintiffs of the defects described herein, which



they should have known. Notwithstanding their duty, Defendants never disclosed the defects to Plaintiffs.

91. Despite exercising reasonable diligence, Plaintiffs could not have discovered the defective condition of 656 Coleman Townhomes due to their latency.

92. Given Defendants' failure to disclose this non-public information about the defective nature of 656 Coleman Townhomes – information over which they had exclusive control – and because Plaintiffs could not reasonably have known of 656 Coleman Townhomes' defective nature, Defendants are estopped from relying on any statutes of limitations or repose that might otherwise be applicable to the claims asserted herein.

**ESTOPPEL FROM PLEADING WARRANTY OBLIGATION**

93. Defendants are also estopped from relying on any warranty obligation as a defense to Plaintiffs' claims.

94. By virtue of Defendants' acts, the work performed and/or materials supplied at 656 Coleman Townhomes have not lived up to Defendants' warranties and representations, and given the defective condition of 656 Coleman Townhomes and the premature deterioration of the life expectancy of 656 Coleman Townhomes' building components that require unexpected maintenance, wear and/or replacement, the building components have not proven to be of value when compared to other building components.

95. Defendants, in the exercise of required diligence, which negligently failed to occur, should have known that 656 Coleman Townhomes was defective in design, construction and/or repair, and its building components were not fit for their ordinary and intended use, were not merchantable, and failed to perform in accordance with the advertisements, marketing materials and warranties disseminated by Defendants or with the reasonable expectations of ordinary consumers such as Plaintiff and the Class. In fact, Defendants have previously seen other similar

failures at other projects they have constructed.

96. Accordingly, any warranty provided by Defendants fails its essential purpose because its purports to warrant that 656 Coleman Townhomes and/or its building components will be free from defects for a limited period of time when in fact 656 Coleman Townhomes and/or its building components fail far short of the expected life cycle of the townhomes.

97. Moreover, Defendants' warranties are woefully inadequate to repair and replace failed building components, let alone reimburse for any damage suffered to the underlying structure. The remedies available under Defendants' warranties are limited to such an extent that they do not provide a minimum adequate remedy.

98. Moreover, given the comparative posture, resources, sophistication, and knowledge of the parties, the warranty limitations are procedurally unconscionable; and given Defendants knew or should have known that the defects existed at the time they issued the warranty, the limitations are substantively unconscionable.

99. As a result, any limitations on the remedies encompassed within Defendants' warranties are unconscionable and unenforceable, and therefore, Defendants are estopped from relying on the same.

**ESTOPPEL FOR PLEADING NOTICE OF OPPORTUNITY TO CURE**

100. The Defendants are further estopped from relying on the Notice of Opportunity to Cure Act to stay the progression of Plaintiffs' claims.

101. Upon information and belief, one or more of the Defendants were put on sufficient notice of 656 Coleman Townhomes' defective condition within any statutory period prescribed by the Act.

102. Therefore, the Defendants were provided an opportunity to cure 656 Coleman Townhomes' defective condition previously, but failed to adequately perform.

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

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

104. At all times relevant hereto, the Defendants, their agents, servants, employees, and subcontractors undertook and had a duty to Plaintiffs to exercise and use due care in the design, construction and repair of 656 Coleman Townhomes in a good workmanlike manner and with suitable materials, in accordance with the applicable building codes, state law, good design, and in conformance with the prevailing industry standards.

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

- (a) In failing to construct 656 Coleman Townhomes in accordance with building code, the plans and specifications, and good workmanship;
- (b) In failing to properly supervise the work and construction of 656 Coleman Townhomes;
- (c) In failing to properly coordinate the subcontractors;
- (d) In failing to construct an adequate exterior building envelope;
- (e) In failing to act as a reasonable person would in the circumstances then and there prevailing;
- (f) In covering up their own defective work and the defective work of others;
- (g) In failing to make proper repairs; and
- (h) Such other failures to be proven at trial.

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

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

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

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

109. The design, construction, sale, and repair of 656 Coleman Townhomes came with express and implied warranties that the work would be performed in a careful, diligent and workmanlike manner and that 656 Coleman Townhomes would be constructed with suitable materials and components and free from all defects and be of superior quality befitting of an upscale condominium complex.

110. The design, construction, sale and/or repair of 656 Coleman Townhomes, and the components used therein, came with implied warranties of fitness, merchantability and workmanship and with a warranty of habitability.

111. Defendants have breached their warranties by constructing and/or repairing 656 Coleman Townhomes in a defective manner as set forth above.

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

**FOR A THIRD CAUSE OF ACTION**  
**(Strict Liability in Tort: *S.C. Code Ann. § 15-73-10 et seq.* as to all of the Defendants and John Doe Defendants who manufactured and/or supplied components used in the construction of the 656 Coleman Townhomes)**

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

114. In manufacturing and supplying products for the construction of the 656 Coleman Townhomes, the manufacturer and supplier Defendants and John Doe Defendants, placed products into the stream of commerce.

115. By introducing their products into the stream of commerce, the manufacturers and suppliers, these Defendants and the John Doe Defendants, represented said products were safe and suitable for their foreseeable use.

116. In the manufacture and supply of products to the 656 Coleman Townhomes, the manufacturer and supplier Defendants and John Doe Defendants, anticipated and expected that their products would breach the public in substantially the same condition in which they were designed, developed, constructed, and sold.

117. The manufacturer and supplier Defendants and John Doe Defendants, have supplied and manufactured their products in a defective manner unreasonably dangerous to persons or property other than the products themselves, which has resulted in repeated water intrusion into and damage to the 656 Coleman townhomes and other building deficiencies.

118. Plaintiffs could not have discovered the product defects through the exercise of reasonable care.

119. The cost of altering the design, construction, and/or repair of the products supplied to the 656 Coleman Townhomes was substantially less than the resulting damage, cost, and injury suffered by the Plaintiffs.

120. The design and manufacture of the products supplied to the 656 Coleman Townhomes was inherently defective as sold was a direct and proximate cause of the damages suffered by Plaintiffs.

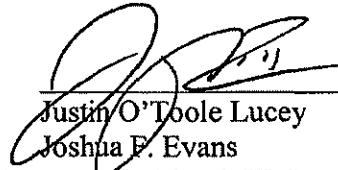
121. The manufacturer and supplier Defendants and John Doe Defendants, are therefore liable to Plaintiffs under the doctrine of strict liability in an amount to be determined by the trier of fact.

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

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

By:



Justin O'Toole Lucey  
Joshua F. Evans  
James L. Floyd, III ("Lee")  
415 Mill Street  
Post Office Box 806  
Mount Pleasant, SC 29465-0806  
(843) 849-8400 phone  
(843) 849-8406 fax  
[jlucey@lucey-law.com](mailto:jlucey@lucey-law.com)  
[jevans@lucey-law.com](mailto:jevans@lucey-law.com)  
[lfloyd@lucey-law.com](mailto:lfloyd@lucey-law.com)

April 25, 2017  
Charleston, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 SIX FIFTY SIX OWNERS ASSOCIATION, )  
 INC. and ROBERT JOHN NUTLEY, )  
 individually, and on behalf of all others )  
 similarly situated, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 WINSOR SOUTH, LLC AND JEFFREY M. )  
 THOMAS, individually, and on behalf of a class )  
 of construction defendants; SOUTHEASTERN )  
 RECAPITALIZATION GROUP, LLC; WCM )  
 CONSTRUCTION, LLC; JONATHAN J. )  
 THOMAS; AND JOHN DOE 1-50 )  
 )  
 Defendants. )

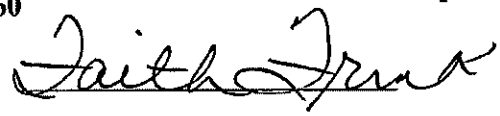
IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT  
 CASE NO. 2016-CP-10-3455

AFFIDAVIT OF SERVICE ON WCM  
 CONSTRUCTION, LLC

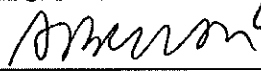
FILED  
 2016 AUG 30 AM 11:17  
 J. J. ARMSTRONG  
 CLERK OF COURT

PERSONALLY APPEARED BEFORE ME, the undersigned affiant, who being duly sworn, says that she served Defendant WCM, LLC a true copy of the **Summons and Complaint and Plaintiffs' Initial Discovery Requests to All Defendants** by certified mail, restricted delivery, return receipt requested (receipt attached) in the United States Mail with proper postage attached on August 12, 2016 addressed as follows:

WCM Construction, LLC  
 c/o Curt McBride, Registered Agent  
 144 Sylvan Drive  
 N. Augusta, SC 29860



Subscribed and sworn to before me by the affiant  
 this 28<sup>th</sup> day of August, 2016

  
 Notary Public for South Carolina  
 My Commission Expires: 12/13/2021