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TWENTY -EIGHTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second Amended Complaint is reduced, modified, and/or barred because of the Parol Evidence Rule.

TWENTY-NINTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second Amended Complaint is reduced, modified, and/or barred because of the doctrine of Unjust Enrichment.

THIRTIETH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second Amended Complaint is reduced, modified, and/or barred because Plaintiff failed to fulfill a condition or conditions precedent to the enforcement of each and every oral, implied or other contract alleged herein.

THIRTY-FIRST AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second Amended Complaint is reduced, modified, and/or barred by the Economic Loss Doctrine.

THIRTY-SECOND AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second Amended Complaint is reduced, modified, and/or barred because the subject construction and products incorporated therein were modified, changed, or altered so as to change their character with respect to the defects complained of in the Second Amended Complaint. Any defect in the subject construction and/or product, if any, resulted solely from modification, change, or alteration of the products, and not from any act or omission on the part of this Defendant. Furthermore, the defects created by the aforesaid alteration, change, or modification, if any, were the sole and proximate cause of damages, if any, alleged in the Complaint.

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1 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

2 This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second
3 Amended Complaint is reduced, modified, and/or barred because Plaintiff's claimed damages
4 arising from the incident sued upon herein resulted from misuse of the subject construction and
5 products incorporated therein. If there was any defect in the product or property referred to in the
6 Second Amended Complaint at the time of said damages, such defect did not exist at the time
7 said product or property left the possession or control of this Defendant and was caused by the
8 misuse, abuse, changes, modification, lack of maintenance, improper maintenance, and
9 alterations of others, including Plaintiffs herein, and that said damages were caused by such
10 misuse, abuse, changes, alterations, lack of maintenance, and modifications. The misuse was
11 without the knowledge, approval, or consent of this Defendant and was not reasonably
12 foreseeable to this Defendant either before the time of the sale or construction of the lot or house
13 or at any time prior to the manifestation of the alleged defects, if any.

14 **THIRTY -FOURTH AFFIRMATIVE DEFENSE**

15 This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second
16 Amended Complaint is reduced, modified, and/or barred because Plaintiffs lack privity with this
17 Defendant, lack standing to sue, and/or lack capacity to sue this Defendant.

18 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

19 To the extent that there is any agreement between the parties to utilize Alternative
20 Dispute Resolution ("ADR") procedures to resolve any or all of the issues or disputes raised in
21 Plaintiff's Second Amended Complaint, Centex expressly reserves the right to enforce those
22 ADR provisions and does not waive the right to enforce those ADR provisions by filing this
23 Answer. ADR procedures include, without limitation, arbitration, mediation, and/or a judicial
24 reference.

25 **THIRTY -SIXTH AFFIRMATIVE DEFENSE**

26 Plaintiff's damages, if any, are speculative and/or uncertain and, therefore, are not
27 compensable.

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THIRTY-SEVENTH AFFIRMATIVE DEFENSE

Plaintiff is barred, in whole or in part, from recovering attorney's fees in this matter based on contract, equity, or other exclusions in law or equity.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

Pursuant to N.R.C.P. 11, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available for this Defendant after reasonable inquiry, and therefore, this Defendant reserves the right to amend its Answer to allege additional affirmative defenses, if subsequent investigation so warrants.

WHEREFORE, having fully answered Plaintiff's Second Amended Complaint, SUNRIDGE respectfully requests the following relief:

- A. That Plaintiff takes nothing by the way of the Second Amended Complaint;
- B. That the Second Amended Complaint be dismissed with prejudice and that SUNRIDGE be awarded judgment in this action;
- C. That SUNRIDGE be awarded their costs incurred herein;
- D. That SUNRIDGE be awarded their attorneys' fees; and
- E. For such other and further relief as the Court deems just and proper.

CROSS-CLAIM

Cross-Claimant, SUNRIDGE BUILDERS, INC., a Nevada Corporation (hereinafter "SUNRIDGE"), hereby states its Cross-Claim against BRYANT MASONRY, LLC; 4M CORP. BSH HOME APPLIANCES CORPORATION; CIRCLE S DEVELOPMENT DBA DECK SYSTEMS OF NEVADA; DMK CONCRETE, INC.; GENERAL ELECTRIC COMPANY; GREEN PLANET LANDCAPING, LLC; IVIE MECHANICAL, INC.; J.C.W. CONCRETE, INC.; LIFEGUARD POOL MAINTENANCE DBA LIFEGUARD POOLS; MOUNTAIN WEST ELECTRIC; PYRAMID PLUMBING, INC.; RIVERA FRAMING, INC.; S&L ROOFING, INC.; SPRAY PRODUCT APPLICATIONS, LLC; WINDOW INSTALLATION

1 SPECIALISTS, LLC; and MOES 1 through 100 and ZOE CORPORATIONS 1 through 100,
2 inclusive (hereinafter collectively "Cross-Defendants"), as follows:

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4 **GENERAL ALLEGATIONS**

5 1. At all relevant times herein, SUNRIDGE was a Nevada Corporation formed under
6 the laws of the State of Nevada and authorized to do business in the State of Nevada.

7 2. At all times relevant herein, each of the Cross-Defendants were either Nevada
8 Corporations, Limited Liability Companies or unknown business entities doing business in the
9 State of Nevada, County of Clark.

10 3. Cross Claimant is informed and believes, and thereon alleges, that each of the
11 Cross-Defendants, and each of them, including DOES and ROES, performed architectural
12 services, engineering services, construction related work and/or supplied materials for the
13 construction of or around the home located at 578 Lairmont Place, City of Henderson, County of
14 Clark, State of Nevada (referred to herein as the "Subject Property"), which is the subject of
15 Plaintiff's Second Amended Complaint.

16 4. Cross-Defendant, BRYANT MASONRY, LLC, a Nevada Limited Liability
17 Company, was at all times material hereto, a legal entity doing business in Nevada who
18 designed, engineered and/or performed the work for, construction of, and/or installation of or
19 supplied materials to the Subject Property.

20 5. Cross-Defendant, 4M CORP., a Nevada Corporation, was at all times material
21 hereto, a legal entity doing business in Nevada who designed, engineered and/or performed the
22 work for, construction of, and/or installation of or supplied materials to the Subject Property.

23 6. Cross-Defendant, DMK CONCRETE, INC., A Nevada Corporation, was at all
24 times material hereto, a legal entity doing business in Nevada who designed, engineered and/or
25 performed the work for, construction of, and/or installation of or supplied materials to the
26 Subject Property.

1 7. Cross-Defendant, BSH HOME APPLIANCES CORPORATION., A Delaware
2 Corporation, was at all times material hereto, a legal entity doing business in Nevada who
3 designed, engineered and/or performed the work for, construction of, and/or installation of or
4 supplied materials to the Subject Property.

5 8. Cross-Defendant CIRCLE S DEVELOPMENT DBA DECK SYSTEMS OF
6 NEVADA, a Nevada Corporation, was at all times material hereto, a legal entity doing business
7 in Nevada who designed, engineered and/or performed the work for, construction of, and/or
8 installation of or supplied materials to the Subject Property.

9 9. Cross-Defendant, GREEN PLANET LANDSCAPING, LLC, a Nevada Limited
10 Liability Company, was at all times material hereto, a legal entity doing business in Nevada who
11 designed, engineered and/or performed the work for, construction of, and/or installation of or
12 supplied materials to the Subject Property.

13 10. Cross-Defendant, GENERAL ELECTRIC COMPANY, a Foreign Corporation,
14 was at all times material hereto, a legal entity doing business in Nevada who designed,
15 engineered and/or performed the work for, construction of, and/or installation of or supplied
16 materials to the Subject Property.

17 11. Cross-Defendant, IVIE MECHANICAL, INC., a Nevada Corporation, was at all
18 times material hereto, a legal entity doing business in Nevada who designed, engineered and/or
19 performed the work for, construction of, and/or installation of or supplied materials to the
20 Subject Property.

21 12. Cross-Defendant, J.C.W. CONCRETE, INC., a Nevada Corporation, was at all
22 times material hereto, a legal entity doing business in Nevada who designed, engineered and/or
23 performed the work for, construction of, and/or installation of or supplied materials to the
24 Subject Property.

25 13. Cross-Defendant, LIFEGUARD POOL MAINTENANCE DBA LIFEGUARD
26 POOLS, a Nevada Corporation, was at all times material hereto, a legal entity doing business in
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1 Nevada who designed, engineered and/or performed the work for, construction of, and/or
2 installation of or supplied materials to the Subject Property.

3 14. Cross-Defendant, MOUNTAIN WEST ELECTRIC, a Nevada Corporation, was
4 at all times material hereto, a legal entity doing business in Nevada who designed, engineered
5 and/or performed the work for, construction of, and/or installation of or supplied materials to the
6 Subject Property.

7 15. Cross-Defendant, PYRAMID PLUMBING, INC., a Nevada Corporation, was at
8 all times material hereto, a legal entity doing business in Nevada who designed, engineered
9 and/or performed the work for, construction of, and/or installation of or supplied materials to the
10 Subject Property.

11 16. Cross-Defendant, RIVERA FRAMING, INC., a Nevada Corporation, was at all
12 times material hereto, a legal entity doing business in Nevada who designed, engineered and/or
13 performed the work for, construction of, and/or installation of or supplied materials to the
14 Subject Property.

15 17. Cross-Defendant, S&L ROOFING, INC., a Nevada Corporation, was at all times
16 material hereto, a legal entity doing business in Nevada who designed, engineered and/or
17 performed the work for, construction of, and/or installation of or supplied materials to the
18 Subject Property.

19 18. Cross-Defendant, SPRAY PRODUCT APPLICATIONS, LLC, a Nevada Limited
20 Liability Company, was at all times material hereto, a legal entity doing business in Nevada who
21 designed, engineered and/or performed the work for, construction of, and/or installation of or
22 supplied materials to the Subject Property.

23 19. Cross-Defendant, WINDOW INSTALLATION SPECIALISTS, LLC, A Nevada
24 Limited Liability Company, was at all times material hereto, a legal entity doing business in
25 Nevada who designed, engineered and/or performed the work for, construction of, and/or
26 installation of or supplied materials to the Subject Property.
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20. Cross-Claimant is presently unaware of the true names and capacities and liability of Cross-Defendants named herein as MOES 1 through 100, inclusive, and ZOE CORPORATIONS 1 through 100, inclusive, and Cross-Claimant will seek leave of Court to amend this Cross Claim to allege their true names and capacities after the same have been ascertained.

21. Cross-Claimant is informed and believe, and thereon allege, that each of the Cross-Defendants, including MOES 1 through 100, inclusive, and ZOE CORPORATIONS 1 through 100, inclusive, dispute Cross Claimant's contentions herein and are in some manner legally responsible for the acts and omissions alleged herein, and actually and proximately caused and contributed to the various injuries and damages referred to herein.

22. Cross-Claimant is informed and believe, and thereon allege, that at all times herein mentioned, each of the Cross-Defendants, including MOES and ZOES, was the agent, partner, co-developer, joint venturer and/or employee of each of the remaining Cross-Defendants and MOES and ZOES, and were at all times mentioned acting within the course and scope of such agency and employment.

FIRST CLAIM FOR RELIEF

(Breach of Contract as to All Cross-Defendants)

23. Cross-Claimant repeats, re-alleges and incorporates Paragraphs 1 through 22 of this Cross Claim as though fully set forth herein.

24. Cross-Claimant is informed and believes, and thereon alleges, that pursuant to the terms of written agreements, Cross-Defendants undertook obligations, including but not limited to, maintaining liability policies, naming Cross-Claimant as an additional insured under their respective policies of liability insurance, indemnifying Cross-Claimant, defending Cross-Claimant, and performing their work in a good and workmanlike manner in accordance with the plans and specifications for the construction of the Subject Property.

1 25. Cross-Claimant has fully performed all conditions, covenants and promises
2 required of it in accordance with the terms and conditions of the written agreements.

3 26. Cross-Claimant is informed and believes, and thereon alleges, that Cross-
4 Defendants, and each of them, have breached the written agreements by refusing and failing to
5 comply with their contractual obligations to maintain liability insurance, to name Cross-Claimant
6 as an additional insured under Cross-Defendants' policies of liability insurance, to indemnify
7 Cross-Claimant, to defend Cross-Claimant, and to perform their work in a good and
8 workmanlike manner, without defects, and in accordance with the written agreements.

9 27. Cross-Claimant has provided notice of the breach of contract, or by way of this
10 Third Party Complaint, hereby provides notice of the breach to Cross-Defendants.

11 28. It has been necessary for Cross-Claimant to retain Resnick & Louis, P.C. to
12 defend against the Complaint filed by Plaintiff as well as any subsequent amendments Plaintiff
13 may file in the future. As a result, Cross-Claimant has incurred, and continues to incur, costs and
14 attorneys' fees defending this action and in prosecuting the Third Party Complaint.

15 29. Cross-Claimant is entitled to recover, from the Cross-Defendants, the costs and
16 attorneys' fees Cross-Claimant has incurred in defending this action against the Plaintiff and in
17 persecuting this action against the Cross-Defendants. The amount of the costs and attorneys'
18 fees Cross-Claimant has had to consequently incur will be established according to proof at trial.

19 **SECOND CLAIM FOR RELIEF**

20 **(Express Indemnity as to All Cross-Defendants)**

21 30. Cross-Claimant repeats, re-alleges and incorporates Paragraphs 1 through 29 of
22 this Cross Claim as though fully set forth herein.

23 31. Cross-Claimant is informed and believes, and based thereon alleges, that it
24 entered into written agreements with Cross-Defendants wherein the Cross-Defendants agreed to
25 defend and indemnify Cross-Claimant.
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1 32. Cross-Claimant is informed and believes, and based thereon alleges that the
2 defects and damages asserted by Plaintiff in her Complaint involved alleged defects and alleged
3 damage to the Subject Property.

4 33. Cross-Claimant is informed and believes, and thereon alleges that any damages
5 alleged by Counterclaimant were caused by Cross-Defendants, and each of them, and arise out of
6 the performance of the Cross-Defendants' obligations pursuant to the written agreements
7 referred to herein.

8 34. Cross-Claimant is informed and believes, and based thereon alleges that Cross-
9 Defendants have failed and refused to defend and indemnify Cross-Claimant.

10 35. Cross-Claimant is informed and believes, and based thereon alleges that Cross-
11 Defendants continue to fail and refuse to defend and indemnify Cross-Claimant.

12 36. It has been necessary for Cross-Claimant to retain Resnick & Louis, P.C. to
13 defend against the Complaint filed by the Plaintiff as well as any subsequent amendments
14 Plaintiff may file in the future. As a result, Cross-Claimant has incurred, and continues to incur,
15 costs and attorneys' fees in defending this action and in prosecuting the Cross Claim.

16 37. Cross-Claimant is entitled to express indemnity from the Cross-Defendants and to
17 recover its costs and attorneys' fees according to proof at trial.

18 **THIRD CLAIM FOR RELIEF**

19 **(Breach of Express Warranty as to All Cross-Defendants)**

20 38. Cross-Claimant repeats, re-alleges and incorporates Paragraphs 1 through 37 of
21 this Cross Claim as though fully set forth herein.

22 39. The written agreements between Cross-Claimant and Cross-Defendants provide
23 the descriptions of the work to be performed by Cross-Defendants and the Cross-Defendants'
24 guarantees and warranties of their work.
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40. As set forth in the written agreements between Cross-Claimant and Cross-Defendants, Cross-Defendants agreed and guaranteed to perform their respective scope of work in a good and workmanlike manner and to provide warranties for their work.

41. Cross-Claimant relief upon such warranties and believed in good faith that the Subject Property would comply with the approved plans and specifications and would be free from defective construction or workmanship.

42. Cross-Claimant has fully performed all conditions and promises required on their part to be performed in accordance with the terms and conditions of the underlying written agreements.

FOURTH CLAIM FOR RELIEF

(Declaratory Relief Regarding Duty to Defend as to All Cross-Defendants)

43. Cross-Claimant repeats, re-alleges and incorporates Paragraphs 1 through 42 of this Cross Claim as though fully set forth herein.

44. An actual controversy exists between Cross-Claimant and Cross-Defendants as to their rights and liabilities with respect to any ultimate responsibility to Plaintiff and with respect to the rights of the Cross-Claimant to receive, or duty of the Cross-Defendants to provide, a defense to Cross-Claimant.

45. Cross-Claimant is informed and believes, and thereon alleges, that Cross-Defendants contend to the contrary. Therefore, an actual controversy exists relative to the legal rights and duties of the respective parties pursuant to their written agreements, which controversy Cross-Claimant requests the Court to resolve in the form of Declaratory Judgment.

FIFTH CLAIM FOR RELIEF

(Declaratory Relief Regarding Duty to Indemnify as to All Cross-Defendants)

46. Cross-Claimant repeats, re-alleges and incorporates Paragraphs 1 through 45 of this Cross Claim as though fully set forth herein.

47. An actual controversy exists between Cross-Claimant and Cross-Defendants as to their rights and liabilities with respect to any ultimate responsibility to Plaintiff and with respect to the rights to receive, or duty to provide, indemnification in proportion to their comparative fault, if any.

48. Cross-Claimant is informed and believes, and thereon alleges, that Cross-Defendants contend to the contrary. Therefore, an actual controversy exists relative to the legal rights and duties of the respective parties pursuant to their written agreements, which controversy Cross-Claimant requests the Court to resolve in the form of Declaratory Judgment.

SIXTH CLAIM FOR RELIEF

(Equitable Indemnity as to All Cross-Defendants)

49. Cross-Claimant repeats, re-alleges and incorporates Paragraphs 1 through 48 of this Cross Claim as though fully set forth herein.

50. By reason of the foregoing, if Plaintiff should recover judgment against Cross-Claimant and/or if Cross-Claimant should enter into a settlement or compromise with Plaintiff, then Cross-Claimant will be entitled to judgment in the like amount, or in proportion to fault, for comparative indemnity over and against Cross-Defendants.

SEVENTH CLAIM FOR RELIEF

(Breach of Implied Warranty as to All Cross-Defendants)

51. Cross-Claimant repeats, re-alleges and incorporates Paragraphs 1 through 50 of this Cross Claim as though fully set forth herein.

52. Cross-Claimant is informed and believes, and based thereon alleges that Cross-Defendants impliedly warranted that the Subject Property and/or adjacent improvements were designed and constructed in a reasonably workmanlike manner.

53. Cross-Claimant is informed and believes, and based thereon alleges that Cross-Defendants impliedly warranted that the Subject Property and/or adjacent improvements were of merchantable quality and safe and fit for their foreseeable intended use.

1 54. Cross-Claimant intends this Third Party Complaint to constitute notice to said
2 Cross-Defendants of their breach of implied warranty.

3 **EIGHTH CLAIM FOR RELIEF**

4 **(Contribution as to All Cross-Defendants)**

5 55. Cross-Claimant repeats, re-alleges and incorporates Paragraphs 1 through 54 of
6 this Third Party Complaint as though fully set forth herein.

7 56. Based upon the acts and/or omissions of Cross-Defendants, if judgment is
8 rendered in favor of Plaintiff and against Cross-Claimant, Cross-Claimant is entitled to
9 contribution from the Cross-Defendants.

10 57. Cross-Claimant herein has been required to retain the services of Resnick &
11 Louis, P.C. to prosecute this action, and is entitled to an award of attorneys' fees and costs.

12 **NINTH CLAIM FOR RELIEF**

13 **(Apportionment against All Cross-Defendants)**

14 58. Cross-Claimant repeats, re-alleges and incorporates Paragraphs 1 through 57 of
15 this Third Party Complaint as though fully set forth herein.

16 59. Based upon the acts and/or omissions of Cross-Defendants, if judgment is
17 rendered in favor of Plaintiff and against Cross-Claimant, Cross-Claimant is entitled to an
18 apportionment of liability among the Cross-Defendants.

19 60. Cross-Claimant has been required to retain the services of Resnick & Louis, P.C.
20 to prosecute this action and is entitled to an award of attorneys' fees and costs.

21 **TENTH CLAIM FOR RELIEF**

22 **(Negligence against All Cross-Defendants)**

23 61. Cross-Claimant repeats, re-alleges and incorporates Paragraphs 1 through 60 of
24 this Third Party Complaint as though fully set forth herein.

25 62. Cross-Claimant is informed and believes, and based thereon alleges that Cross-
26 Defendants negligently, carelessly and wrongfully failed to use reasonable care in the design,
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1 development, manufacture, supervision, maintenance, repair, supply of material, installation,
2 inspection and/or construction of the Subject Property that is at issue in the Second Amended
3 Complaint and which is more particularly described therein.

4 63. Cross-Claimant is further informed and believes, and based thereon alleges that
5 Cross-Defendants negligently and carelessly failed to exercise reasonable care and diligence to
6 avoid loss and to minimize and mitigate damages which could have been prevented by
7 reasonable efforts on the part of Cross-Defendants or by expenditures which should have been
8 made in the exercise of due care.

9 64. Cross-Claimant is informed and believes, and based thereon alleges, that the
10 failures and damages alleged by Plaintiff occurred because of the negligence of Cross-
11 Defendants.

12 65. As a direct and proximate result of the negligence of Cross-Defendants, it is
13 herein alleged that Cross-Claimant has incurred and continues to incur costs and expenses
14 including but not limited to litigation costs, contractors' fees, attorneys' fees and consultants'
15 fees to inspect, repair and mitigate damages arising out of the alleged negligent design,
16 construction, repair and maintenance and to defend against Plaintiff's action herein.

17 66. Cross-Claimant has been required to retain the services of Resnick & Louis, P.C.
18 to prosecute this action and is entitled to an award of attorneys' fees and costs.

19 **WHEREFORE**, Cross-Claimant respectfully requests that this Court enter judgment
20 against Cross-Defendants, and each of them as follows:

21 1. A determination that Cross-Defendants, and each of them, contributed in some
22 percentage to the loss, damage and detriment alleged by Plaintiff and for a declaration of
23 percentage by which the conduct of Cross-Defendants, and each of them, contributed to the loss,
24 damage and detriment, if any, of the Plaintiff;

25 2. If the Plaintiff should recover sum or judgment against Cross-Claimant, that the
26 Cross-Claimant should have judgment against Cross-Defendants;
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3. That Cross-Claimant is entitled to a defense from Cross-Defendants;
4. For general and special damages in an amount to be proved at trial;
5. For indemnity of all damages and/or economic losses that Plaintiff recovers against Cross-Claimant by way of judgment, order, settlement, compromise, or trial;
6. For reasonable attorneys' fees, expert fees and costs;
7. For prejudgment and post-judgment interest;
8. For contribution pursuant to NRS 17.225; and
9. For such other and further relief as the Court may deem just, equitable, and proper.

THIRD PARTY COMPLAINT

Third Party Plaintiff, SUNRIDGE BUILDERS, INC., a Nevada Corporation (hereinafter "SUNRIDGE"), hereby states its Third Party Complaint against BRANDON IRON, INC.; EARTHCORE INDUSTRIES, LLC; HARDY CABINETS INC., dba ARTESIA CABINETS; J.C.W. CONCRETE, INC.; JD STAIRS, INC.; PIECE OF THE ROCK; WHITE FEATHER DRYWALL & PAINT; MOES 101 through 150 and ZOE CORPORATIONS 101 through 150, inclusive (hereinafter collectively "Third Party Defendants"), as follows:

GENERAL ALLEGATIONS

1. At all relevant times herein, SUNRIDGE was a Nevada Corporation formed under the laws of the State of Nevada and authorized to do business in the State of Nevada.
2. At all times relevant herein, each of the Third Party Defendants were either Nevada Corporations, Limited Liability Companies or unknown business entities doing business in the State of Nevada, County of Clark.
3. Third Party Plaintiff is informed and believes, and thereon alleges, that each of the Third Party Defendants, and each of them, including MOES and ZOES, performed architectural services, engineering services, construction related work and/or supplied materials

1 for the construction of or around the home located at 578 Lairmont Place, City of Henderson,
2 County of Clark, State of Nevada (referred to herein as the "Subject Property"), which is the
3 subject of Plaintiff's Second Amended Complaint.

4 4. Third Party Defendant, BRANDON IRON, INC., a Nevada Corporation, was at
5 all times material hereto, a legal entity doing business in Nevada who designed, engineered
6 and/or performed the work for, construction of, and/or installation of or supplied materials to the
7 Subject Property.

8 5. Third Party Defendant, EARTHCORE INDUSTRIES, LLC, a Nevada Limited
9 Liability Company, was at all times material hereto, a legal entity doing business in Nevada who
10 designed, engineered and/or performed the work for, construction of, and/or installation of or
11 supplied materials to the Subject Property.

12 6. Third Party Defendant, HARDY CABINETS, INC., dba ARTESIA CABINETS,
13 a Nevada Corporation, was at all times material hereto, a legal entity doing business in Nevada
14 who designed, engineered and/or performed the work for, construction of, and/or installation of
15 or supplied materials to the Subject Property.

16 7. Third Party Defendant, J.C.W. CONCRETE, INC., an Nevada Corporation, was
17 at all times material hereto, a legal entity doing business in Nevada who designed, engineered
18 and/or performed the work for, construction of, and/or installation of or supplied materials to the
19 Subject Property.

20 8. Third Party Defendant, JD STAIRS, INC., a Nevada Corporation, was at all times
21 material hereto, a legal entity doing business in Nevada who designed, engineered and/or
22 performed the work for, construction of, and/or installation of or supplied materials to the
23 Subject Property.

24 9. Third Party Defendant, PIECE OF THE ROCK, a Nevada Corporation, was at all
25 times material hereto, a legal entity doing business in Nevada who designed, engineered and/or
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1 performed the work for, construction of, and/or installation of or supplied materials to the
2 Subject Property.

3 10. Third Party Defendant, WHITE FEATHER DRYWALL & PAINT, an unknown
4 business entity, was at all times material hereto, a legal entity doing business in Nevada who
5 designed, engineered and/or performed the work for, construction of, and/or installation of or
6 supplied materials to the Subject Property.

7 11. Third Party Plaintiff is presently unaware of the true names and capacities and
8 liability of Third Party Defendants named herein as MOES 101 through 150, inclusive, and
9 ZOES 101 through 150, inclusive, and Third Party Plaintiff will seek leave of Court to amend
10 this Third-Party Complaint to allege their true names and capacities after the same have been
11 ascertained.

12 12. Third Party Plaintiff is informed and believe, and thereon allege, that each of the
13 Third Party Defendants, including MOES 101 through 150, inclusive, and ZOES 101 through
14 150, inclusive dispute Third Party Plaintiff's contentions herein and are in some manner legally
15 responsible for the acts and omissions alleged herein, and actually and proximately caused and
16 contributed to the various injuries and damages referred to herein.

17 13. Third Party Plaintiff is informed and believe, and thereon allege, that at all times
18 herein mentioned, each of the Third-Party Defendants, including MOES and ZOES, was the
19 agent, partner, co-developer, joint venturer and/or employee of each of the remaining Third-
20 Party Defendants and MOES and ZOES, and were at all times mentioned acting within the
21 course and scope of such agency and employment.

22 **FIRST CLAIM FOR RELIEF**

23 **(Breach of Contract as to All Third Party Defendants)**

24 14. Third Party Plaintiff repeats, re-alleges and incorporates Paragraphs 1 through 13
25 of this Third Party Complaint as though fully set forth herein.
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1 15. Third Party Plaintiff is informed and believes, and thereon alleges, that pursuant
2 to the terms of written agreements, Third Party Defendants undertook obligations, including but
3 not limited to, maintaining liability policies, naming Third Party Plaintiff as an additional insured
4 under their respective policies of liability insurance, indemnifying Third Party Plaintiff,
5 defending Third Party Plaintiff, and performing their work in a good and workmanlike manner in
6 accordance with the plans and specifications for the construction of the Subject Property.

7 16. Third Party Plaintiff has fully performed all conditions, covenants and promises
8 required of it in accordance with the terms and conditions of the written agreements.

9 17. Third Party Plaintiff is informed and believes, and thereon alleges, that Third
10 Party Defendants, and each of them, have breached the written agreements by refusing and
11 failing to comply with their contractual obligations to maintain liability insurance, to name Third
12 Party Plaintiff as an additional insured under Third Party Defendants' policies of liability
13 insurance, to indemnify Third Party Plaintiff, to defend Third Party Plaintiff, and to perform their
14 work in a good and workmanlike manner, without defects, and in accordance with the written
15 agreements.

16 18. Third Party Plaintiff has provided notice of the breach of contract, or by way of
17 this Third Party Complaint, hereby provides notice of the breach to Third Party Defendants.

18 19. It has been necessary for Third Party Plaintiff to retain Resnick & Louis, P.C. to
19 defend against the Complaint filed by Plaintiff as well as any subsequent amendments Plaintiff
20 may file in the future. As a result, Third Party Plaintiff has incurred, and continues to incur,
21 costs and attorneys' fees defending this action and in prosecuting the Third Party Complaint.

22 20. Third Party Plaintiff is entitled to recover, from the Third Party Defendants, the
23 costs and attorneys' fees Third Party Plaintiff has incurred in defending this action against the
24 Plaintiff and in persecuting this action against the Third Party Defendants. The amount of the
25 costs and attorneys' fees Third Party Plaintiff has had to consequently incur will be established
26 according to proof at trial.
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1 **THIRD CLAIM FOR RELIEF**

2 **(Breach of Express Warranty as to All Third Party Defendants)**

3 29. Third Party Plaintiff repeats, re-alleges and incorporates Paragraphs 1 through 28
4 of this Third Party Complaint as though fully set forth herein.

5 30. The written agreements between Third Party Plaintiff and Third Party Defendants
6 provide the descriptions of the work to be performed by Third Party Defendants and the Third
7 Party Defendants' guarantees and warranties of their work.

8 31. As set forth in the written agreements between Third Party Plaintiff and Third
9 Party Defendants, Third Party Defendants agreed and guaranteed to perform their respective
10 scope of work in a good and workmanlike manner and to provide warranties for their work.

11 32. Third Party Plaintiff relief upon such warranties and believed in good faith that
12 the Subject Property would comply with the approved plans and specifications and would be free
13 from defective construction or workmanship.

14 33. Third Party Plaintiff has fully performed all conditions and promises required on
15 their part to be performed in accordance with the terms and conditions of the underlying written
16 agreements.

17 **FOURTH CLAIM FOR RELIEF**

18 **(Declaratory Relief Regarding Duty to Defend as to All Third Party Defendants)**

19 34. Third Party Plaintiff repeats, re-alleges and incorporates Paragraphs 1 through 33
20 of this Third Party Complaint as though fully set forth herein.

21 35. An actual controversy exists between Third Party Plaintiff and Third Party
22 Defendants as to their rights and liabilities with respect to any ultimate responsibility to Plaintiff
23 and with respect to the rights of the Third Party Plaintiff to receive, or duty of the Third Party
24 Defendants to provide, a defense to Third Party Plaintiff.

25 36. Third Party Plaintiff is informed and believes, and thereon alleges, that Third
26 Party Defendants contend to the contrary. Therefore, an actual controversy exists relative to the
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1 legal rights and duties of the respective parties pursuant to their written agreements, which
2 controversy Third Party Plaintiff requests the Court to resolve in the form of Declaratory
3 Judgment.

4 **FIFTH CLAIM FOR RELIEF**

5 **(Declaratory Relief Regarding Duty to Indemnify as to All Third Party Defendants)**

6 37. Third Party Plaintiff repeats, re-alleges and incorporates Paragraphs 1 through 36
7 of this Third Party Complaint as though fully set forth herein.

8 38. An actual controversy exists between Third Party Plaintiff and Third Party
9 Defendants as to their rights and liabilities with respect to any ultimate responsibility to Plaintiff
10 and with respect to the rights to receive, or duty to provide, indemnification in proportion to their
11 comparative fault, if any.

12 39. Third Party Plaintiff is informed and believes, and thereon alleges, that Third
13 Party Defendants contend to the contrary. Therefore, an actual controversy exists relative to the
14 legal rights and duties of the respective parties pursuant to their written agreements, which
15 controversy Third Party Plaintiff requests the Court to resolve in the form of Declaratory
16 Judgment.

17 **SIXTH CLAIM FOR RELIEF**

18 **(Equitable Indemnity as to All Third Party Defendants)**

19 40. Third Party Plaintiff repeats, re-alleges and incorporates Paragraphs 1 through 39
20 of this Third Party Complaint as though fully set forth herein.

21 41 By reason of the foregoing, if Plaintiff should recover judgment against Third
22 Party Plaintiff and/or if Third Party Plaintiff should enter into a settlement or compromise with
23 Plaintiff, then Third Party Plaintiff will be entitled to judgment in the like amount, or in
24 proportion to fault, for comparative indemnity over and against Third Party Defendants.

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1 **SEVENTH CLAIM FOR RELIEF**

2 **(Breach of Implied Warranty as to All Third Party Defendants)**

3 42. Third Party Plaintiff repeats, re-alleges and incorporates Paragraphs 1 through 41
4 of this Third Party Complaint as though fully set forth herein.

5 43. Third Party Plaintiff is informed and believes, and based thereon alleges that
6 Third Party Defendants impliedly warranted that the Subject Property and/or adjacent
7 improvements were designed and constructed in a reasonably workmanlike manner.

8 44. Third Party Plaintiff is informed and believes, and based thereon alleges that
9 Third Party Defendants impliedly warranted that the Subject Property and/or adjacent
10 improvements were of merchantable quality and safe and fit for their foreseeable intended use.

11 45. Third Party Plaintiff intends this Third Party Complaint to constitute notice to said
12 Third Party Defendants of their breach of implied warranty.

13 **EIGHTH CLAIM FOR RELIEF**

14 **(Contribution as to All Third Party Defendants)**

15 46. Third Party Plaintiff repeats, re-alleges and incorporates Paragraphs 1 through 45
16 of this Third Party Complaint as though fully set forth herein.

17 47. Based upon the acts and/or omissions of Third Party Defendants, if judgment is
18 rendered in favor of Plaintiff and against Third Party Plaintiff, Third Party Plaintiff is entitled to
19 contribution from the Third Party Defendants.

20 48. Third Party Plaintiff herein has been required to retain the services of Resnick &
21 Louis, P.C. to prosecute this action, and is entitled to an award of attorneys' fees and costs.

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1 **NINTH CLAIM FOR RELIEF**

2 **(Apportionment against All Third Party Defendants)**

3 48. Third Party Plaintiff repeats, re-alleges and incorporates Paragraphs 1 through 47
4 of this Third Party Complaint as though fully set forth herein.

5 49. Based upon the acts and/or omissions of Third Party Defendants, if judgment is
6 rendered in favor of Plaintiff and against Third Party Plaintiff, Third Party Plaintiff is entitled to
7 an apportionment of liability among the Third Party Defendants.

8 50. Third Party Plaintiff has been required to retain the services of Resnick & Louis,
9 P.C. to prosecute this action and is entitled to an award of attorneys' fees and costs.

10 **TENTH CLAIM FOR RELIEF**

11 **(Negligence against All Third Party Defendants)**

12 51. Third Party Plaintiff repeats, re-alleges and incorporates Paragraphs 1 through 50
13 of this Third Party Complaint as though fully set forth herein.

14 52. Third Party Plaintiff is informed and believes, and based thereon alleges that
15 Third Party Defendants negligently, carelessly and wrongfully failed to use reasonable care in
16 the design, development, manufacture, supervision, maintenance, repair, supply of material,
17 installation, inspection and/or construction of the Subject Property that is at issue in the Second
18 Amended Complaint and which is more particularly described therein.

19 53. Third Party Plaintiff is further informed and believes, and based thereon alleges
20 that Third Party Defendants negligently and carelessly failed to exercise reasonable care and
21 diligence to avoid loss and to minimize and mitigate damages which could have been prevented
22 by reasonable efforts on the part of Third Party Defendants or by expenditures which should
23 have been made in the exercise of due care.

24 54. Third Party Plaintiff is informed and believes, and based thereon alleges, that the
25 failures and damages alleged by Plaintiff occurred because of the negligence of Third Party
26 Defendants.
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1 55. As a direct and proximate result of the negligence of Third Party Defendants, it is
2 herein alleged that Third Party Plaintiff has incurred and continues to incur costs and expenses
3 including but not limited to litigation costs, contractors' fees, attorneys' fees and consultants'
4 fees to inspect, repair and mitigate damages arising out of the alleged negligent design,
5 construction, repair and maintenance and to defend against Plaintiff's action herein.

6 56. Third Party Plaintiff has been required to retain the services of Resnick & Louis,
7 P.C. to prosecute this action and is entitled to an award of attorneys' fees and costs.
8

9 **WHEREFORE**, Third Party Plaintiff respectfully requests that this Court enter judgment
10 against Third Party Defendants, and each of them as follows:

11 1. A determination that Third Party Defendants, and each of them, contributed in
12 some percentage to the loss, damage and detriment alleged by Plaintiff and for a declaration of
13 percentage by which the conduct of Third Party Defendants, and each of them, contributed to the
14 loss, damage and detriment, if any, of the Plaintiff;

15 2. If the Plaintiff should recover sum or judgment against Third Party Plaintiff, that
16 the Third Party Plaintiff should have judgment against Third Party Defendants;

17 3. That Third Party Plaintiff is entitled to a defense from Third Party Defendants;

18 4. For general and special damages in an amount to be proved at trial;

19 5. For indemnity of all damages and/or economic losses that Plaintiff recovers
20 against Third Party Plaintiff by way of judgment, order, settlement, compromise, or trial;

21 6. For reasonable attorneys' fees, expert fees and costs;

22 7. For prejudgment and post-judgment interest;

23 8. For contribution pursuant to NRS 17.225; and
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9. For such other and further relief as the Court may deem just, equitable, and proper.

DATED this 30 day of March, 2017.

RESNICK & LOUIS, P.C.

A. E. Dalacas

LENA M. LOUIS, ESQ.

Nevada Bar No. 6398

ATHANASIA E. DALACAS, ESQ.

Nevada Bar No. 9390

5940 S. Rainbow Blvd.

Las Vegas, NV 89118

Attorneys for Defendant/Cross-Claimant/

Third Party Plaintiff

Sunridge Builders, Inc.

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that service of the foregoing **DEFENDANT/CROSS-CLAIMANT/ THIRD PARTY PLAINTIFF SUNRIDGE BUILDERS, INC.'S ANSWER TO SECOND AMENDED COMPLAINT AND CROSS CLAIM AND THIRD PARTY COMPLAINT** was served this 31 day of March, 2017, by:

☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada, addressed as set forth below.

☐ **BY FACSIMILE:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document.

☐ **BY PERSONAL SERVICE:** by causing personal delivery by an employee of Resnick & Louis, P.C. of the document(s) listed above to the person(s) at the address(es) set forth below.

☒ **BY ELECTRONIC SERVICE:** by transmitting via the Court's electronic filing services the document(s) listed above to the Counsel set forth on the service list on this date pursuant to EDCR Rule 7.26(c)(4).


An Employee of Resnick & Louis, P.C.

NOTC

TIMOTHY S. MENTER, ESQ.

Nevada Bar No. 7091

MENTER & WITKIN LLP

19900 MacArthur Blvd., Suite 800

Irvine, California 92612

Telephone: (949) 250-9000

Facsimile: (949) 250-9045

E-Mail: *tmenter@menterwitkinlaw.com*

WENDY L. WALKER, ESQ.

Nevada Bar No. 10791

MICHAEL A. ARATA, ESQ.

Nevada Bar No. 11902

SPRINGEL & FINK LLP

10655 Park Run Drive, Suite 275

Las Vegas, Nevada 89144

Telephone: (702) 804-0706

Facsimile: (702) 804-0798

E-Mail: *wwalker@springelfink.com*

marata@springelfink.com

Co-Counsel for Plaintiff and per SCR 42.1(2)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JANETTE BYRNE, as Trustee of the UOFM
TRUST,

Plaintiff,

vs.

SUNRIDGE BUILDERS, INC., a Nevada
Corporation; LANDS WEST BUILDERS, INC., a)
Nevada Corporation; AVANTI PRODUCTS, LLC,)
a Nevada Limited Liability Company; BRYANT)
MASONRY, LLC, a Nevada Limited Liability)
Company; BSH HOME APPLIANCES)
CORPORATION, a Delaware Corporation;)
CIRCLE S DEVELOPMENT DBA DECK)
SYSTEMS NEVADA, a Nevada Corporation;)
DMK CONCRETE, INC., a Nevada Corporation;)
4M CORP., a Nevada Corporation; GENERAL)

) Case No.: A-16-742143-D
) Dept. No.: XVI
)

NOTICE OF INSPECTIONS

ELECTRIC COMPANY, a Nevada Corporation;
GREEN PLANET LANDSCAPING, LLC, a
Nevada Limited Liability Company; IVIE
MECHANICAL INC., a Nevada Corporation;
J.C.W. CONCRETE, INC., a Nevada Corporation;
KARL HENRY LINSENBARDT DBA
SIGNATURE DOOR & TRIM; LIFEGUARD
POOL MAINT. DBA LIFEGUARD POOLS, a
Nevada Corporation; MOUNTAIN WEST
ELECTRIC, a Nevada Corporation;
PRESTIGE ROOFING, INC., a Nevada
Corporation; PYRAMID PLUMBING, a Nevada
Corporation; RIVERA FRAMING INC. DBA
RIVERA FRAMERS, a Nevada Corporation; S&L
ROOFING, INC., a Colorado Corporation; SPRAY
PRODUCT APPLICATIONS, LLC, a Nevada
Limited Liability Company; TRIM TIME LLC
DBA BLITZ CONSTRUCTION, a Nevada
Limited Liability Company; WINDOW
INSTALLATION SPECIALISTS, LLC, a Nevada
Limited Liability Company; DOES 20 through
100; DESIGN PROFESSIONAL DOES 101
through 150, and/or SUPPLIER ROES 2 through
50 inclusive,

Defendants.

SUNRIDGE BUILDERS, INC., a Nevada
Corporation,

Cross-Claimant,

vs.

BRYANT MASONRY. LLC, a Nevada Limited
Liability Company; 4M CORP., a Nevada
Corporation; BSH HOME APPLIANCES
CORPORATION, a Delaware Corporation;
CIRCLE S DEVELOPMENT DBA DECK
SYSTEMS OF NEVADA, a Nevada Corporation;
DMK CONCRETE, INC., a Nevada Corporation;
GENERAL ELECTRIC COMPANY, a Foreign
Corporation; GREEN PLANET LANDSCAPING,
LLC, a Nevada Limited Liability Company; IVIE
MECHANICAL, INC., a Nevada Corporation;

1 J.C.W. CONCRETE, INC., a Nevada corporation;)
2 LIFEGUARD POOL MAINTENANCE DBA)
3 LIFEGUARD POOLS, a Nevada Corporation;)
4 MOUNTAIN WEST ELECTRIC, a Nevada)
5 Corporation; PYRAMID PLUMBING, INC.,)
6 Nevada Corporation; RIVERA FRAMING INC., a)
7 Nevada Corporation; S&L ROOFING, INC., a)
8 Nevada Corporation; SPRAY PRODUCT)
9 APPLICATIONS, LLC, Nevada Limited Liability)
10 Company; WINDOW INSTALLATION)
11 SPECIALISTS, LLC. a Nevada Limited Liability)
12 Company, and MOES 1 through 100 and ZOE)
13 CORPORATIONS 1 through 100, inclusive,)

14 Cross-Defendants.)

15 SUNRIDGE BUILDERS, INC., a Nevada)
16 Corporation,)

17 Third-Party Plaintiff,)

18 vs.)

19 BRANDON IRON, INC., a Nevada Corporation;)
20 EARTHCORE INDUSTRIES, LLC, a Nevada)
21 Limited Liability Company; HARDY CABINETS)
22 INC., dba ARTESIA CABINETS, a Nevada)
23 Corporation; J.C.W. CONCRETE, INC., a Nevada)
24 Corporation; JD STAIRS, INC., a Nevada)
25 Corporation; PIECE OF THE ROCK, a Nevada)
26 Corporation; WHITE FEATHER DRYWALL &)
27 PAINT, an Unknown Business Entity; and MOES)
28 101 through 150 and ZOE CORPORATIONS 101)
through 150, inclusive,)

Third-Party Defendants.)

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YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that Plaintiff JANETTE BYRNE, as Trustee of the UOFM TRUST, by and through her counsel of record, the law firm of Springel & Fink, LLP, will be conducting exterior and interior inspections, limited to water feature only, at the subject property on the **24th day of August, 2017, from 10:00 a.m. to 1:00 p.m.**

Plaintiff JANETTE BYRNE, as Trustee of the UOFM TRUST reserves the right to supplement this notice pursuant to NRCP 34.

SPRINGEL & FINK, LLP

By:

Nevada Bar No. 10791

Nevada Bar No. 11902

Las Vegas, Nevada 89144

Co-Counsel for Plaintiff and per SCR 42.1(2)

CERTIFICATE OF SERVICE
Byrne v. Sunridge Builders, Inc., et al.
Case No. A-16-742143-D

STATE OF NEVADA)
) ss.
CLARK COUNTY)

I, Ella Wilczynski, declare:

I am a resident of and employed in Clark County, Nevada. I am over the age of eighteen years and not a party to the within action. My business address is 10655 Park Run Drive, Suite 275, Las Vegas, Nevada 89144.

On **August 18, 2017**, I served the document described as **Notice of Inspections** on the following parties:

SEE ELECTRONIC SERVICE LIST

VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada. I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would be deposited with the U.S. postal service on that same day with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business

VIA FACSIMILE: by transmitting to a facsimile machine maintained by the person on whom it is served at the facsimile machine telephone number at last given by that person on any document which he/she has filed in the cause and served on the party making the service. The copy of the document served by facsimile transmission bears a notation of the date and place of transmission and the facsimile telephone number to which transmitted. A confirmation of the transmission containing the facsimile telephone numbers to which the document(s) was/were transmitted will be maintained with the document(s) served.

 X
VIA ELECTRONIC SERVICE: by submitting the foregoing to the Court's E-filing System for Electronic Service upon the Court's Service List pursuant to EDCR 8. The copy of the document electronically served bears a notation of the date and time of service. The original document will be maintained with the document(s) served and be made available, upon reasonable notice, for inspection by counsel or the Court.

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

/s/ Ella Wilczynski

An Employee of SPRINGEL & FINK LLP

NOTC

TIMOTHY S. MENTER, ESQ.

Nevada Bar No. 7091

MENTER & WITKIN LLP

19900 MacArthur Blvd., Suite 800

Irvine, California 92612

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Nevada Bar No. 10791

MICHAEL A. ARATA, ESQ.

Nevada Bar No. 11902

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Facsimile: (702) 804-0798

E-Mail: *wwalker@springelfink.com*

marata@springelfink.com

Co-Counsel for Plaintiff and per SCR 42.1(2)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JANETTE BYRNE, as Trustee of the UOFM
TRUST,

Plaintiff,

vs.

) Case No.: A-16-742143-D
) Dept. No.: XVI
)
)
)

NOTICE OF INSPECTIONS

SUNRIDGE BUILDERS, INC., a Nevada
Corporation; LANDS WEST BUILDERS, INC., a
Nevada Corporation; AVANTI PRODUCTS, LLC,
a Nevada Limited Liability Company; BRYANT
MASONRY, LLC, a Nevada Limited Liability
Company; BSH HOME APPLIANCES
CORPORATION, a Delaware Corporation;
CIRCLE S DEVELOPMENT DBA DECK
SYSTEMS NEVADA, a Nevada Corporation;
DMK CONCRETE, INC., a Nevada Corporation;
4M CORP., a Nevada Corporation; GENERAL

1 ELECTRIC COMPANY, a Nevada Corporation;)
2 GREEN PLANET LANDSCAPING, LLC, a)
Nevada Limited Liability Company; IVIE)
3 MECHANICAL INC., a Nevada Corporation;)
J.C.W. CONCRETE, INC., a Nevada Corporation;)
4 KARL HENRY LINSENBARDT DBA)
SIGNATURE DOOR & TRIM; LIFEGUARD)
5 POOL MAINT. DBA LIFEGUARD POOLS, a)
Nevada Corporation; MOUNTAIN WEST)
6 ELECTRIC, a Nevada Corporation;)
PRESTIGE ROOFING, INC., a Nevada)
7 Corporation; PYRAMID PLUMBING, a Nevada)
8 Corporation; RIVERA FRAMING INC. DBA)
9 RIVERA FRAMERS, a Nevada Corporation; S&L)
ROOFING, INC., a Colorado Corporation; SPRAY)
10 PRODUCT APPLICATIONS, LLC, a Nevada)
Limited Liability Company; TRIM TIME LLC)
11 DBA BLITZ CONSTRUCTION, a Nevada)
Limited Liability Company; WINDOW)
12 INSTALLATION SPECIALISTS, LLC, a Nevada)
Limited Liability Company; DOES 20 through)
13 100; DESIGN PROFESSIONAL DOES 101)
14 through 150, and/or SUPPLIER ROES 2 through)
15 50 inclusive,)

16 Defendants.)

17 _____)
18 SUNRIDGE BUILDERS, INC., a Nevada)
Corporation,)

19 Cross-Claimant,)
20)

21 vs.)

22 BRYANT MASONRY. LLC, a Nevada Limited)
Liability Company; 4M CORP., a Nevada)
23 Corporation; BSH HOME APPLIANCES)
CORPORATION, a Delaware Corporation;)
24 CIRCLE S DEVELOPMENT DBA DECK)
SYSTEMS OF NEVADA, a Nevada Corporation;)
25 DMK CONCRETE, INC., a Nevada Corporation;)
26 GENERAL ELECTRIC COMPANY, a Foreign)
Corporation; GREEN PLANET LANDSCAPING,)
27 LLC, a Nevada Limited Liability Company; IVIE)
28 MECHANICAL, INC., a Nevada Corporation;)

1 J.C.W. CONCRETE, INC., a Nevada corporation;)
2 LIFEGUARD POOL MAINTENANCE DBA)
3 LIFEGUARD POOLS, a Nevada Corporation;)
4 MOUNTAIN WEST ELECTRIC, a Nevada)
5 Corporation; PYRAMID PLUMBING, INC.,)
6 Nevada Corporation; RIVERA FRAMING INC., a)
7 Nevada Corporation; S&L ROOFING, INC., a)
8 Nevada Corporation; SPRAY PRODUCT)
9 APPLICATIONS, LLC, Nevada Limited Liability)
10 Company; WINDOW INSTALLATION)
11 SPECIALISTS, LLC. a Nevada Limited Liability)
12 Company, and MOES 1 through 100 and ZOE)
13 CORPORATIONS 1 through 100, inclusive,)

14 Cross-Defendants.)

15 SUNRIDGE BUILDERS, INC., a Nevada)
16 Corporation,)

17 Third-Party Plaintiff,)

18 vs.)

19 BRANDON IRON, INC., a Nevada Corporation;)
20 EARTHCORE INDUSTRIES, LLC, a Nevada)
21 Limited Liability Company; HARDY CABINETS)
22 INC., dba ARTESIA CABINETS, a Nevada)
23 Corporation; J.C.W. CONCRETE, INC., a Nevada)
24 Corporation; JD STAIRS, INC., a Nevada)
25 Corporation; PIECE OF THE ROCK, a Nevada)
26 Corporation; WHITE FEATHER DRYWALL &)
27 PAINT, an Unknown Business Entity; and MOES)
28 101 through 150 and ZOE CORPORATIONS 101)
through 150, inclusive,)

Third-Party Defendants.)

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YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that Plaintiff JANETTE BYRNE, as Trustee of the UOFM TRUST, by and through her counsel of record, the law firm of Springel & Fink, LLP, will be conducting exterior and interior inspections, limited to stone work only, at the subject property on the **14th day of September, 2017, from 10:00 a.m. to 3:00 p.m.**

Plaintiff JANETTE BYRNE, as Trustee of the UOFM TRUST reserves the right to supplement this notice pursuant to NRCP 34.

SPRINGEL & FINK, LLP

By:

Co-Counsel for Plaintiff and per SCR 42.1(2)

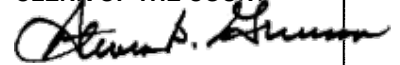
STATE OF NEVADA)
) ss.
CLARK COUNTY)

I am a resident of and employed in Clark County, Nevada. I am over the age of eighteen years and not a party to the within action. My business address is 10655 Park Run Drive, Suite 275, Las Vegas, Nevada 89144.

SEE ELECTRONIC SERVICE LIST

VIA FACSIMILE: by transmitting to a facsimile machine maintained by the person on whom it is served at the facsimile machine telephone number at last given by that person on any document which he/she has filed in the cause and served on the party making the service. The copy of the document served by facsimile transmission bears a notation of the date and place of transmission and the facsimile telephone number to which transmitted. A confirmation of the transmission containing the facsimile telephone numbers to which the document(s) was/were transmitted will be maintained with the document(s) served.

An Employee of SPRINGEL & FINK LLP



MOT
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Nevada Bar No. 9711
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Las Vegas, NV 89118
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llouis@rlattorneys.com
adalacas@rlattorneys.com
Attorneys for Defendant/Cross-Claimant/Third Party Plaintiff
SUNRIDGE BUILDERS, INC.

DISTRICT COURT

CLARK COUNTY, NEVADA

JANETTE BYRNE, as Trustee of the UOFM) CASE NO. A-16-742143-D
TRUST,) DEPT. NO.: II

Plaintiff,

vs.

SUNRIDGE BUILDERS, INC., a Nevada)
Corporation; LANDS WEST BUILDERS, INC., a) **DEFENDANTS LANDS WEST**
Nevada Corporation; AVANTI PRODUCTS, LLC, a) **BUILDERS, INC.'S AND**
Nevada Limited Liability Company; BRYANT) **SUNRIDGE BUILDERS, INC.'S**
MASONRY, LLC, a Nevada Limited Liability) **JOINT MOTION FOR SUMMARY**
Company; BSH HOME APPLIANCES) **JUDGMENT PURSUANT TO NRS**
CORPORATION, a Delaware Corporation; CIRCLE) **11.202(1)**
S DEVELOPMENT dba DECK SYSTEMS)
NEVADA, a Nevada Corporation; DMK)
CONCRETE, INC., a Nevada Corporation; 4M)
CORP., a Nevada Corporation; GENERAL)
ELECTRIC COMPANY, a Nevada Corporation;)
GREEN PLANET LANDSCAPING, LLC, a Nevada)
Limited Liability Company; IVIE MECHANICAL)
INC., a Nevada Corporation; J.C.W. CONCRETE,)
INC., a Nevada Corporation; KARL HENRY)

Hearing Date:
Hearing Time:

1 LINSNBARDT dba SIGNATURE DOOR &)
2 TRIM; LIFEGUARD POOL MAINT. dba)
3 LIFEGUARD POOLS, a Nevada Corporation;)
4 MOUNTAIN WEST ELECTRIC, a Nevada)
5 Corporation; PRESTIGE ROOFING, INC., a Nevada)
6 Corporation; PYRAMID PLUMBING, a Nevada)
7 Corporation; RIVERA FRAMING INC. dba)
8 RIVERA FRAMERS, a Nevada Corporation; S&L)
9 ROOFING, INC., a Colorado Corporation; SPRAY)
10 PRODUCT APPLICATIONS, LLC, a Nevada)
11 Limited Liability Company; TRIM TIME LLC dba)
12 BLITZ CONSTRUCTION, a Nevada Limited)
13 Liability Company; WINDOW INSTALLATION)
14 SPECIALISTS, LLC, a Nevada Limited Liability)
15 Company; DOES 20 through 100; DESIGN)
16 PROFESSIONAL DOES 101 through 150, and/or)
17 SUPPLIER DOES 2 through 50 inclusive,)
18)
19 Defendants.)
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29 SUNRIDGE BUILDERS, INC., a Nevada)
30 Corporation,)
31)
32 Cross-Claimant,)
33)
34 vs.)
35)
36 BRYANT MASONRY, LLC, a Nevada Limited)
37 Liability Company; 4M CORP., a Nevada)
38 Corporation; BSH HOME APPLIANCES)
39 CORPORATION; a Delaware Corporation; CIRCLE)
40 S DEVELOPMENT dba DECK SYSTEMS OF)
41 NEVADA, a Nevada Corporation; DMK)
42 CONCRETE, INC., a Nevada Corporation;)
43 GENERAL ELECTRIC COMPANY, a Foreign)
44 Corporation; GREEN PLANET LANDSCAPING)
45 LLC, a Nevada Limited Liability Company; IVIE)
46 MECHANICAL, INC., a Nevada Corporation;)
47 J.C.W. CONCRETE, INC., a Nevada corporation;)
48 LIFEGUARD POOL MAINTENANCE dba)
49 LIFEGUARD POOLS, a Nevada Corporation;)
50 MOUNTAIN WEST ELECTRIC, a Nevada)
51 Corporation; PYRAMID PLUMBING, INC., Nevada)
52 Corporation; RIVERA FRAMING INC., a Nevada)
53 Corporation; SPRAY PRODUCT APPLICATIONS,)
54 LLC, Nevada Limited Liability Company;)
55 WINDOW INSTALLATION SPECIALISTS, LLC,)
56 a Nevada Limited Liability Company, and MOES 1)
57 through 100 and ZOE CORPORATIONS 1 through)
58 100, inclusive,)
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1 SUNRIDGE BUILDERS, INC., a Nevada Corporation,)

2 Third-Party Plaintiff,)

3 vs.)

4 BRANDON IRON, INC., a Nevada Corporation;)
5 EARTHCORE INDUSTRIES, LLC, a Nevada)
6 Limited Liability Company; HARDY CABINETS)
7 INC., dba ARTESIA CABINETS, a Nevada)
8 Corporation; J.C.W. CONCRETE, INC., a Nevada)
9 Corporation; JD STAIRS, INC., a Nevada)
10 Corporation; PIECE OF THE ROCK, a Nevada)
11 Corporation; WHITE FEATHER DRYWALL &)
12 PAINT, an Unknown Business Entity; and MOES)
13 101 through 150 and ZOE CORPORATIONS 101)
14 through 150 inclusive,)

15 Third-Party Defendants.)

16 **DEFENDANTS LANDS WEST BUILDERS, INC.'S AND SUNRIDGE BUILDERS,**
17 **INC.'S JOINT MOTION FOR SUMMARY JUDGMENT PURSUANT TO NRS 11.202(1)**

18 COMES NOW, Defendant LANDS WEST BUILDERS, INC. ("Lands West"), by and
19 through its attorneys Robert E. Schumacher, Esq. and Brian K. Walters, Esq. of the law firm of
20 GORDON & REES SCULLY MANSUKHANI LLP, and Defendant SUNRIDGE BUILDERS, INC.
21 ("Sunridge") by and through its attorneys, Lena Louis, Esq. and Athanasia Dalacas, Esq. of the
22 law firm of RESNICK & LOUIS, P.C., and submit the instant Joint Motion for Summary Judgment
23 Pursuant to NRS 11.202(1).

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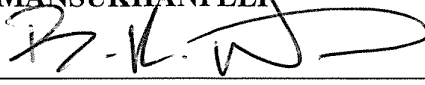
1 This Motion is based on the papers and pleadings on file with this Court, the
2 accompanying Memorandum of Points and Authorities, the exhibits attached thereto, the
3 affidavits David Hardy and Brian K. Walters, Esq. submitted herewith and such other further
4 evidence and oral argument as may be offered at the time of hearing of this Motion.

5 Dated this 11th day of September, 2017

Dated this ____ day of September, 2017.

6 **GORDON & REES SCULLY**
7 **MANSUKHANI LLP**

RESNICK & LOUIS, P.C.

8 
9 ROBERT E. SCHUMACHER, ESQ.
Nevada Bar No. 7504
10 BRIAN K. WALTERS, ESQ.
Nevada Bar No. 9711
300 South Fourth Street, Suite 1550
11 Las Vegas, Nevada 89101
Attorney for Defendant
12 **LANDS WEST BUILDERS, INC.**

LENA M. LOUIS, ESQ.
Nevada Bar No. 6398
ATHANASIA E. DALACAS, ESQ.
Nevada Bar No. 9390
5940 S. Rainbow Blvd.
Las Vegas, NV 89118
Attorneys for Defendant
SUNRIDGE BUILDERS, INC.

Gordon & Rees Scully Mansukhani LLP
300 South Fourth Street, Suite 1550
Las Vegas, NV 89101

1 accompanying Memorandum of Points and Authorities, the exhibits attached thereto, the
2 affidavits David Hardy and Brian K. Walters, Esq. submitted herewith and such other further
3 evidence and oral argument as may be offered at the time of hearing of this Motion.


4 Dated this ____ day of September, 2017

Dated this 11 day of September, 2017.

5 **GORDON & REES SCULLY**
6 **MANSUKHANI LLP**

RESNICK & LOUIS, P.C.

7
8 **ROBERT E. SCHUMACHER, ESQ.**
9 Nevada Bar No. 7504
10 **BRIAN K. WALTERS, ESQ.**
11 Nevada Bar No. 9711
12 300 South Fourth Street, Suite 1550
13 Las Vegas, Nevada 89101
14 *Attorney for Defendant*
15 **LANDS WEST BUILDERS, INC.**


16 **LENA M. LOUIS, ESQ.**
17 Nevada Bar No. 6398
18 **ATHANASIA E. DALACAS, ESQ.**
19 Nevada Bar No. 9390
20 5940 S. Rainbow Blvd.
21 Las Vegas, NV 89118
22 *Attorneys for Defendant*
23 **SUNRIDGE BUILDERS, INC.**

24
25
26
27
28 **NOTICE OF MOTION**

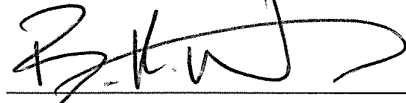
NOTICE OF MOTION

TO: ALL PARTIES IN INTEREST AND THEIR ATTORNEYS OF RECORD:

Please take notice that the undersigned will bring the foregoing motion for hearing on the
18 day of OCTOBER 2017, at the time of 9:00A .m. before Department
II of the Clark County, Nevada District Court, located at 200 Lewis Avenue, Las Vegas, Nevada.

Respectfully by:

**GORDON & REES SCULLY
MANSUKHANI LLP**



ROBERT E. SCHUMACHER, ESQ.

Nevada Bar No. 7504

BRIAN K. WALTERS, ESQ.

Nevada Bar No. 9711

300 South Fourth Street, Suite 1550

Las Vegas, Nevada 89101

Attorney for Defendant

LANDS WEST BUILDERS, INC.

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF ARGUMENT.

Pursuant to NRS 11.202, a construction defect action may not be commenced more than six years after substantial completion of a residence. In this case, substantial completion of the subject residence occurred on May 26, 2009. On December 2, 2015, *more than six and half years after substantial completion*, Plaintiff served NRS Chapter 40 Notices on Lands West and Sunridge. On August 22, 2016, *more than seven years after the substantial completion date*, Plaintiff commenced its action for construction defects. Because Plaintiff's NRS Chapter 40 Notices were served *after* the expiration of the six year repose period, tolling never occurred. Consequently, Plaintiff's action is time barred under NRS 11.202. As a result, Lands West and Sunridge are entitled to summary judgment as to Plaintiff's Complaint, in its entirety.

II. RELEVANT FACTS.

A. The Subject Residence.

This is a single family home construction defect action initiated under NRS 40.600 by Plaintiff JANETTE BYRNE, as Trustee of the UOFM TRUST.¹ The subject residence is located at 578 Lairmont Place in Henderson, Nevada ("Subject Residence"). The Subject Residence is a six bedroom, 11,255 square foot custom home located within McDonald Highlands, a guard-gated golf course community.

Plaintiff is not the original owner of the Subject Residence. In or about early 2007, the original owners, Charles and Erin Catledge, hired TyCorp Development, Inc. to serve as the general contractor for the construction of the Subject Residence. (Affidavit of Dave Hardy in Support of Motion for Summary Judgment, attached hereto as Ex. B). In or about July of 2007, Defendant Sunridge Builders, Inc. replaced TyCorp Development, Inc. as the general contractor. (Ex. B).² Construction of the Subject Residence commenced shortly thereafter.

¹ Adam H. Springel is listed as the purchaser on the purchase documents. (*See* Ex. "H"). It is Defendants' understanding that Mr. Springel is a Trustee of the UOFM TRUST. Mr. Springel is a Nevada licensed attorney who is well-versed in NRS Chapter 40 construction defect litigation.

² Tycorp Development, Inc. did not perform any construction services. (Ex. B).

1 The Subject Residence took less than two years to construct. On April 24, 2009, the City
2 of Henderson Department of Building & Safety issued a Certificate of Occupancy for the Subject
3 Residence. (Certificate of Occupancy dated April 24, 2009, a true and correct copy attached
4 hereto as Ex. C). On May 26, 2009, Sunridge recorded the Notice of Completion for the Subject
5 Residence. (Notice of Completion dated May 26, 2009, a true and correct copy attached hereto as
6 Ex. D). Subsequent to the completion of the Subject Residence, Defendant Sunridge stopped
7 performing construction work. (Ex. B).

8 **B. Plaintiff Purchased the Subject Residence in 2012 Despite Knowledge of**
9 **Alleged Construction Defects for Which Damages are Now Alleged.**

10 On February 28, 2012, Plaintiff purchased the Subject Residence. Prior to the purchase,
11 however, as part of his due diligence, Plaintiff commissioned a "Review of Property Inspection
12 Report" addressing electrical and mechanical issues. (Review of Property Inspection Report, a
13 true and correct copy attached hereto as Ex. "E"). On or about February 19, 2012, (nine days
14 *before* Plaintiff finalized the purchase of the Subject Residence), reports detailing various
15 electrical and mechanical problems were issued to Plaintiff. (Ex. "E").

16 Plaintiff also hired Madsen Kneppers & Associates, Inc. ("MKA") to perform a complete
17 inspection of the Subject Residence. (*See* E-mail from MKA to Adam Springel dated February
18 22, 2012, a true and correct copy attached hereto as Ex. "F"). MKA is a construction forensics
19 consulting firm whose employees are frequently hired as expert witnesses in NRS Chapter 40
20 construction defect cases in Southern Nevada.³

21 On February 22, 2012 (six days *before* Plaintiff finalized the purchase of the Subject
22 Residence), an MKA architect provided Plaintiff with a "photo log summary" describing what
23 MKA characterized as numerous construction and/or design issues that required varying levels of
24 attention. (Ex. "F"). MKA's photo log summary categorized the issues as either "Urgent",
25 "Cosmetic", "Pick Up Item" or "Option to Fix". (Ex. "F").⁴

26 ³ See <https://www.mkainc.com/>

27 ⁴ On June 30, 2017, Plaintiff disclosed its expert reports in this matter. Many of the alleged defects described by
28 Plaintiff's experts were previously identified in pre-purchase inspection reports and known to Plaintiff before it
purchased the Subject Residence on February 28, 2012. For example, the pre-purchase mechanical report
commissioned by Plaintiff identified problems with the "yard river/pond water feature." ("The capacity of the lower

1 Nevertheless, on February 28, 2012, despite specific knowledge of issues identified in the
2 electrical and mechanical reports and what MKA characterized as “urgent” construction-related
3 issues and disclosure from the seller of specific problems with the Subject Residence, Plaintiff
4 proceeded with the sale and acquired title to the Subject Residence.

5 Notably, Plaintiff acquired the Subject Property as a “short sale.” Short sales are
6 typically conveyed to the buyer “as-is.” However, Plaintiff insisted on the following language in
7 an addendum to the Residential Purchase Agreement:

8 Buyer shall accept the property in its current condition subject to
9 the following:

10 The “AS IS” condition shall only run to the Seller, the Seller’s
11 lender, and the Seller’s REALTOR, *and that the “AS IS”*
provision shall not run to the general contractors and
subcontractors that built the home.

12 (Addendum No. 2 to Residential Purchase Agreement dated March 23, 2017 a true and correct
13 copy attached hereto as Ex. “H”). Based on this reservation of rights, it is clear that Plaintiff was
14 at least contemplating an action against “...the general contractors and subcontractors that built
15 the home” prior to the purchase of the Subject Residence in February of 2012.

16 **C. Plaintiff Initiates the NRS Chapter 40 Process and Commences its NRS**
17 **Chapter 40 Lawsuit.**

18 On December 2, 2015, *approximately six years and seven months after Sunridge*
19 *recorded the Notice of Completion for the Subject Residence*, Plaintiff served Notices of
20 Construction Defects pursuant to NRS 40.645 on Lands West, Sunridge and various other
21 parties involved in the development and construction of the Subject Residence. (Chapter 40
22 Notice, a true and correct copy attached hereto as Ex. “I”). On August 22, 2016, *approximately*
23 *seven years and three months after Sunridge recorded the Notice of Completion*, Plaintiff
24

25 basin appears to be insufficient to hold all water in the system.”) (Ex. “E”). On June 30, 2017, Plaintiff’s pool and
26 water feature expert produced a report identifying claims with the “outdoor water feature.” (“When the pump is
27 turned off to the outdoor water feature, the water in transit flows down to the bottom catch basin. The water also
28 flows out from the pumps. This water overflows the bottom catch basin.”). (Springel Residence Water Features
report dated June 14, 2017, a true and correct copy attached hereto as Ex. “G”). There are several other examples of
alleged defects of which Plaintiff had knowledge before purchasing the Subject Residence for which it is now
seeking damages.

commenced the instant action against Sunridge and Lands West. (Plaintiff's Complaint and Demand for Jury Trial dated August 22, 2016, a true and correct copy on file herein).

As demonstrated herein, Plaintiff failed to commence its action for construction defects within the six year repose period set forth in NRS 11.202(1). Since Plaintiff's notices of construction defect were served *after* the six year repose period had already expired, tolling never occurred. Consequently, Plaintiff's action is time barred. Lands West and Sunridge are therefore entitled to summary judgment.

III. STATEMENT OF UNDISPUTED FACTS PURSUANT TO NRCP 56(c).

Pursuant to NRCP 56(c), the following facts are material to the disposition of this Motion and are not genuinely in dispute:

UNDISPUTED FACT	DOCUMENT/ EVIDENCE IN SUPPORT
The Certificate of Occupancy for the Subject Residence was issued on April 24, 2009	Ex. "B" and "C"
The Notice of Completion for the Subject Residence was recorded on May 26, 2009	Ex. "B" and "D"
Substantial Completion of the Subject Residence occurred on May 26, 2009.	Ex. "D". <i>See</i> NRS 11.2055(1).
Plaintiff was aware of potential construction defects affecting the Subject Residence before it was acquired.	Ex. "E" and "F"
Plaintiff's NRS Chapter 40 Notice was served on December 2, 2015.	Ex. "B" and "I"
Plaintiff's NRS Chapter 40 Notice was served more than six years after the Notice of Completion was recorded.	Ex. "B", "D" and "I"
Plaintiff's NRS Chapter 40 Notice was served more than six years after substantial completion of the Subject Residence.	Ex. "B", "D" and "I". <i>See</i> NRS 11.2055(1).
Plaintiff's Complaint was filed on August 22, 2016, more than six years after substantial completion of the Subject Residence.	Ex. "B", "D" and Plaintiff's Complaint and Demand for Jury Trial dated August 22, 2016, a true and correct copy on file herein.
The defective conditions alleged by Plaintiff arose before the enactment of AB 125 on February 24, 2015	Plaintiff's Second Amended Complaint and Demand for Jury Trial dated March 16, 2017, Para. 103, a true and correct copy on file herein.
Plaintiff's initial Complaint was filed on August 22, 2016, more that one year after the February 24, 2015 effective date of AB 125.	Plaintiff's Complaint and Demand for Jury Trial dated August 22, 2016, a true and correct copy on file herein.

IV. TIMELINE OF EVENTS RELEVANT TO STATUTE OF REPOSE ANALYSIS.

DATE	EVENT
April 24, 2009	Certificate of Occupancy Issued for Subject Residence
May 26, 2009	Notice of Completion Recorded for Subject Residence. ("Substantial completion" pursuant to NRS 11.2055)
February 22, 2012	Plaintiff obtained copy of MKA report detailing purported construction defects
February 28, 2012	Plaintiff acquired title to Subject Residence
February 24, 2015	Effective date of AB 125
April 24, 2015	Six years from Certificate of Occupancy for Subject Residence
May 26, 2015	Six years from Substantial Completion
December 2, 2015	Plaintiff's NRS Chapter 40 Notice Served on Lands West and Sunridge
August 22, 2016	Plaintiff's Complaint filed

V. LEGAL ARGUMENT.

A. Applicable Authority

1. Summary judgment standard

NRCP 56 provides, in pertinent part:

Motions for summary judgment and responses thereto shall include a concise statement setting forth each fact material to the disposition of the motion which the party claims is or is not genuinely in issue, citing the particular portions of any pleading, affidavit, deposition, interrogatory, answer, admission, or other evidence upon which the party relies. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

NRCP 56(c).

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

NRCP 56(e).

Summary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031, (2005). While the pleadings and other proof must be construed in a light most favorable to the nonmoving party, that party bears the burden to "do more than simply show that there is some metaphysical doubt" as to the operative facts in order to avoid summary judgment being entered in the moving party's favor. *Id.* at 732, 1031. The nonmoving party "must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him." *Id.* The nonmoving party "is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture." *Id.*

2. NRS 11.202.

The February 24, 2015 enactment of Nevada Assembly Bill 125 ("AB 125") brought about significant changes to the statute of repose in the residential construction defect context. The 2015 Legislature repealed NRS 11.203-11.205, which provided for six-, eight-, and ten-year statutes of repose for construction defect claims, leaving such claims governed by NRS 11.202, which provides for a six-year statute of repose. *Dykema v. Del Webb Cmty., Inc.*, 385 P.3d 977, 978 n.1 (Nev. 2016). The Nevada Legislative Counsel Digest described the changes to NRS 11.202 resulting from the AB 125 amendments as follows:

Existing law generally limits the period in which an action for damages caused by a deficiency in construction of improvements to real property may be commenced after substantial completion of the improvement. These periods of limitation are known as statutes of repose, and the period set forth in each statute of repose during which an action must be commenced is: (1) for a known deficiency, 10 years after substantial completion of the improvement; (2) for a latent deficiency, 8 years after substantial completion of the improvement; and (3) for a patent deficiency, 6 years after substantial completion of the improvement. However, if a deficiency was a result of willful misconduct or was fraudulently

concealed, an action may be commenced at any time after substantial completion of the improvement. (NRS 11.202-11.205) *Sections 17-19 and 22 of this bill provide that the statute of repose for all actions for damages caused by a deficiency in construction of improvement to real property is 6 years after substantial completion of the improvement.*

AB 125, Chapter 2, pgs. 3-4 (Emphasis added).

NRS 11.202(a)(1) as amended by AB 125 provides, in pertinent part:

1. *No action may be commenced* against the owner, occupier or any person performing or furnishing the design, planning, supervision or observation of construction, or the construction of an improvement to real property *more than 6 years after the substantial completion of such an improvement*, for the recovery of damages for:

(a) Any deficiency in the design, planning, supervision or observation of construction or the construction of such an improvement;

(b) Injury to real or personal property caused by any such deficiency...

(Emphasis added).

B. The Six Year Statute of Repose Set Forth in NRS 11.202 as Amended by AB 125 Applies Retroactively to Plaintiff's Action.

1. Substantial completion of the Subject Residence occurred before the enactment of AB 125.

Although Plaintiff's Complaint was filed on August 22, 2016, which was after the February 24, 2015 effective date of AB 125, the Court must apply the changes to NRS 11.202 brought about by AB 125 retroactively. The Legislature specifically expressed its intent for retroactive application under certain circumstances, and those circumstances were met in this case. Section 21, Sub. 5 of AB 125 provides:

[T]he period of limitations on actions set forth in NRS 11.202, as amended by section 17 of this act, *applies retroactively to actions in which the substantial completion of the improvement to the real property occurred before the effective date of this act.*

(Emphasis added).

AB 125 was enacted on February 24, 2015. Substantial completion of the Subject

1 Residence occurred on May 26, 2009. *See* NRS 11.2055; Ex. “A” and “D”. As such, there is no
2 genuine issue of material fact as to the date of substantial completion of the Subject Residence or
3 whether substantial completion of the Subject Residence occurred before the enactment of AB
4 125. Therefore, the specific conditions articulated by the Nevada Legislature for retroactive
5 application have been met. NRS 11.202 and its six year statute of repose must be applied
6 retroactively to Plaintiff’s action herein.

7 2. Plaintiff failed to commence the instant action within one year of the
8 effective date of AB 125.

9 While AB 125 amended the statute of repose set forth in NRS 11.202, it afforded
10 potential claimants a specific, limited, one year grace period in which to pursue their claims
11 under the pre-AB 125 periods of repose. The grace period language provides:

12 The provisions of subsection 5 do not limit an action: (a) that
13 accrued before the effective date, and was commenced within 1
14 year after the effective date of this act...

15 AB 125, Section 21, Subsection 6.

16 In other words, if a claimant’s action accrued before the February 24, 2015 effective date of AB
17 125 (as Plaintiff alleges herein)⁵, said claimant could still bring an action under the previous
18 versions of NRS 11.202-11.205 if its action is commenced within one year of the effective date
19 of AB 125 (February 24, 2015). *See id.*

20 A recent decision by the Nevada Supreme Court illustrates exactly why Plaintiff is not
21 saved by the grace period language in this case and why the six year statute of repose therefore
22 applies. In *Dykema*, two plaintiffs who owned homes with substantial completion dates of
23 December 8, 2004 and December 23, 2004 served notices of constructional defects on December
24 2, 2014 and December 22, 2014 respectively. *Dykema*, 385 P.3d at 978. The plaintiffs filed suit
25 on February 27, 2015, three days after the enactment of AB 125. *Id.*

26 The developer defendant moved to dismiss based on the statute of repose. *Id.* Citing to
27 the grace period language set forth in Section 21 of AB 125, the Nevada Supreme Court found

28 ⁵ “Plaintiff contends that the defective conditions at issue arose before AB125 was enacted.” (Plaintiff’s Second Amended Complaint and Demand for Jury Trial dated March 16, 2017, Para. 103, a true and correct copy on file herein).

1 that plaintiffs' action fell within the Section 21 grace period thereby rendering retroactive
2 application improper because: (1) the plaintiffs' claims accrued before the effective date of AB
3 125; and (2) the plaintiffs' complaint was filed three days after the effective date of AB 125.
4 ("As *the complaint* in this matter was filed three days after the effective date of A.B. 125, it is
5 timely if filed within the repose period specified by NRS 11.203-11.205. Thus, the complaint
6 and this appeal are governed by the pre-repeal versions of the statutes." *Id.* at 978 n.1. *citing*
7 NRS 11.203-11.205. (Emphasis added).

8 Rather than applying the new six year statute of repose, the Supreme Court applied the
9 previous 10 year statute of repose for known defects:

10 ... [B]ecause [plaintiffs] served their Chapter 40 notices within
11 the ten-year repose period, it was tolled for one year and
12 [plaintiffs'] February 27, 2015, complaint against [developer] was
13 timely filed.

14 *Id.* at 980-981

15 The Nevada Supreme Court's interpretation of the Section 21 grace period language in
16 *Dykema* is important to this case for two reasons. First, the Supreme Court *specifically* tied
17 commencement of an action in this context to the filing of the complaint, not service of the
18 Chapter 40 notice. Therefore, to the extent Plaintiff argues that its December 2, 2015 Chapter 40
19 notice constituted commencement, that argument must be rejected.

20 Second, the Supreme Court confirmed that tolling of the statute of repose only occurs if
21 Chapter 40 notice is served within the applicable repose period. In this case, there is no genuine
22 dispute that Plaintiff's Chapter 40 notices (served December 2, 2015) were not served within the
23 six year repose period, which began to run on May 26, 2009 and expired on May 26, 2015. (Ex.
24 "A" and "I"). Therefore, any effort by Plaintiff to rely on NRS 40.695 tolling is a red herring
25 and must be rejected.

26 Since Plaintiff failed to commence its action within one year of the effective date of AB
27 125, the six year statute of repose applies retroactively.

28 ///

///

This Court must grant the instant Motion for Summary Judgment because there are no genuine issues of material fact in dispute as to whether the six year statute of repose set forth in NRS 11.202 expired before Plaintiff's action was commenced in this matter.

There is no genuine issue of material fact as to whether substantial completion of the Subject Residence occurred on May 26, 2009. (*See* Ex. “B” and “D”). NRS 11.2055 defines “substantial completion” in the context of NRS 11.202 as follows:

(a) The final building inspection of the improvement is conducted;

(b) A notice of completion is issued for the improvement; or

(c) A certificate of occupancy is issued for the improvement,

whichever occurs later.

2. Plaintiff's action was not commenced within six years of substantial completion as required by NRS 11.202.

There is no genuine issue of material fact as to whether Plaintiff's action was commenced on August 22, 2016. (*See* Complaint dated August 22, 2016, on file herein). As conclusively demonstrated herein, substantial completion of the Subject Residence occurred on May 26, 2009.

(Ex. “B” and “D”). As such, Plaintiff had until May 26, 2015 to commence an action in accordance within the six year statute of repose. *See* NRS 11.202. However, Plaintiff’s initial Complaint was not filed until August 22, 2016, *approximately seven years and three months after substantial completion of the Subject Residence*. As discussed herein, the statute of repose was never tolled because Chapter 40 Notice was not served within the six year repose period. *See Dykema*, 385 P.3d at 980-981 (Tolling only applies if Chapter 40 Notice is served within the repose period). Therefore, no genuine issue of material fact exists as to whether Plaintiff’s action was filed *after* the six year repose period established by NRS 11.202(1).

3. NRS 40.695 tolling does not apply because the repose period had already expired before Plaintiff served its NRS Chapter 40 notices.

Although discussed throughout this Motion, this point must be emphasized. Since Plaintiff failed to serve its NRS Chapter 40 notices before the expiration of the six year repose period, tolling never occurred. *See Dykema*, 385 P.3d at 980-98. To the extent Plaintiff argues that its December 2, 2015 Chapter 40 Notice tolled the statute of repose pursuant to NRS 40.695, that argument must be rejected because the repose period had already expired before Chapter 40 Notice was served. NRS 40.695 provides, in relevant part:

1. Except as otherwise provided in subsections 2 and 3, statutes of limitation or repose applicable to a claim based on a constructional defect governed by NRS 40.600 to 40.695, inclusive, are tolled from the time notice of the claim is given, until the earlier of:

(a) One year after notice of the claim is given; or

(b) Thirty days after mediation is concluded or waived in writing pursuant to NRS 40.680.

More than six years had already elapsed from the date of substantial completion (May 26, 2009) by the time Plaintiff served its NRS Chapter 40 Notices on December 2, 2015. (Ex. “B”, “D” and “I”).⁶ In other words, there was nothing left to toll when the Notices were served—the

⁶ Because the tolling period had already expired before Plaintiff’s NRS Chapter 40 Notices were served, the Notices were void *ab initio* and of no legal effect. *See Otak Nev., LLC v. Eighth Judicial Dist. Court of Nev.*, 127 Nev. 593, 599, 260 P.3d 408, 412 (2011). (Complaint against design professional without required attorney affidavit and expert report is void *ab initio*). Similarly, a construction defect claimant may not commence an action for

1 repose period had already expired. Since Plaintiff's action was not commenced within six years
2 of substantial completion of the Subject Residence as required by NRS 11.202(1) and because
3 Plaintiff's Notice of Construction Defects was served too late to toll the statute of repose, this
4 Court must enter summary judgment in favor of Lands West and Sunridge. *See* NRS
5 11.202(1)(a) ("No action may be commenced ... more than 6 years after the substantial
6 completion of such an improvement...").

7 **VI. CONCLUSION**

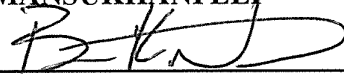
8 Plaintiff was aware of alleged construction defects with the Subject Residence before its
9 purchase in 2012, yet sat on its rights and failed to take advantage of Nevada's residential
10 construction defect statutes. As a result, Plaintiff's action is now time barred. Based on the
11 foregoing, Lands West and Sunridge respectfully request that this Court enter an Order granting
12 the instant Motion for Summary Judgment pursuant to NRCP 56 and NRS 11.202.

13 Dated this 11th day of September, 2017

Dated this ____ day of September, 2017.

14 **GORDON & REES SCULLY**
15 **MANSUKHANI LLP**

RESNICK & LOUIS, P.C.

16 
17 ROBERT E. SCHUMACHER, ESQ.
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20 *Attorney for Defendant*
21 *Lands West Builders, Inc.*

Attorneys for Defendant
Sunridge Builders, Inc.

26 construction defects without serving the contractor with Notice pursuant to NRS 40.645. *See* NRS 40.645 (1)(a)
27 "[B]efore a claimant commences an action or amends a complaint to add a cause of action for a constructional defect
28 against a contractor...the claimant... [m]ust give written notice by certified mail, return receipt requested, to the
contractor.

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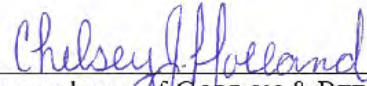
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), Administrative Order 14-2 effective June 1, 2014, and N.E.F.C.R. Rule 9, I certify that I am an employee of GORDON & REES SCULLY MANSUKHANI LLP and that on this 4th day of September, 2017, I did cause a true and correct copy of **DEFENDANTS LANDS WEST BUILDERS, INC.'S AND SUNRIDGE BUILDERS, INC.'S JOINT MOTION FOR SUMMARY JUDGMENT PURSUANT TO NRS 11.202(1)**, to be served via the Court's electronic filing service upon the parties on the Court's service list for the above-referenced case.



An employee of GORDON & REES SCULLY
MANSUKHANI LLP

EXHIBIT A

EXHIBIT A

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AFF

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Attorneys for Defendant

LANDS WEST BUILDERS, INC

DISTRICT COURT

CLARK COUNTY, NEVADA

JANETTE BYRNE, as Trustee of the UOFM TRUST,

Plaintiff,

VS.

SUNRIDGE BUILDERS, INC., a Nevada Corporation; LANDS WEST BUILDERS, INC., a Nevada Corporation; AVANTI PRODUCTS, LLC, a Nevada Limited Liability Company; BRYANT MASONRY, LLC, a Nevada Limited Liability Company; BSH HOME APPLIANCES CORPORATION, a Delaware Corporation; CIRCLE S DEVELOPMENT dba DECK SYSTEMS NEVADA, a Nevada Corporation; DMK CONCRETE, INC., a Nevada Corporation; 4M CORP., a Nevada Corporation; GENERAL ELECTRIC COMPANY, a Nevada Corporation; GREEN PLANET LANDSCAPING, LLC, a Nevada Limited Liability Company; IVIE MECHANICAL INC., a Nevada Corporation; J.C.W. CONCRETE, INC., a Nevada Corporation; KARL HENRY LINSENBARDT dba SIGNATURE DOOR & TRIM; LIFEGUARD POOL MAINT. dba LIFEGUARD POOLS, a Nevada Corporation; MOUNTAIN WEST ELECTRIC, a Nevada Corporation; PRESTIGE ROOFING, INC., a Nevada Corporation; PYRAMID PLUMBING, a Nevada Corporation; RIVERA FRAMING INC. dba RIVERA FRAMERS, a Nevada Corporation; S&L ROOFING, INC., a Colorado Corporation; SPRAY PRODUCT APPLICATIONS, LLC, a Nevada

CASE NO. A-16-742143-D
DEPT. NO.: XVI

**AFFIDAVIT OF BRIAN K.
WALTERS, ESQ. IN SUPPORT OF
DEFENDANTS' LANDS WEST
BUILDERS, INC.'S AND
SUNRIDGE BUILDERS, INC.'S
JOINT MOTION FOR SUMMARY
JUDGMENT PURSUANT TO NRS
11.202**

Limited Liability Company; TRIM TIME LLC dba
BLITZ CONSTRUCTION, a Nevada Limited
Liability Company; WINDOW INSTALLATION
SPECIALISTS, LLC, a Nevada Limited Liability
Company; DOES 20 through 100; DESIGN
PROFESSIONAL DOES 101 through 150, and/or
SUPPLIER ROES 2 through 50 inclusive,

Defendants.

SUNRIDGE BUILDERS, INC., a Nevada
Corporation,

Cross-Claimant,

vs.

BRYANT MASONRY, LLC, a Nevada Limited
Liability Company; 4M CORP., a Nevada
Corporation; BSH HOME APPLIANCES
CORPORATION; a Delaware Corporation; CIRCLE
S DEVELOPMENT dba DECK SYSTEMS OF
NEVADA, a Nevada Corporation; DMK
CONCRETE, INC., a Nevada Corporation;
GENERAL ELECTRIC COMPANY, a Foreign
Corporation; GREEN PLANET LANDSCAPING
LLC, a Nevada Limited Liability Company; IVIE
MECHANICAL, INC., a Nevada Corporation;
J.C.W. CONCRETE, INC., a Nevada corporation;
LIFEGUARD POOL MAINTENANCE dba
LIFEGUARD POOLS, a Nevada Corporation;
MOUNTAIN WEST ELECTRIC, a Nevada
Corporation; PYRAMID PLUMBING, INC., Nevada
Corporation; RIVERA FRAMING INC., a Nevada
Corporation; SPRAY PRODUCT APPLICATIONS,
LLC, Nevada Limited Liability Company;
WINDOW INSTALLATION SPECIALISTS, LLC,
a Nevada Limited Liability Company, and MOES 1
through 100 and ZOE CORPORATIONS 1 through
100, inclusive,

Cross-Defendants.

SUNRIDGE BUILDERS, INC., a Nevada
Corporation,

Third-Party Plaintiff,

vs.

BRANDON IRON, INC., a Nevada Corporation;
EARTHCORE INDUSTRIES, LLC, a Nevada
Limited Liability Company; HARDY CABINETS
INC., dba ARTESIA CABINETS, a Nevada
Corporation; J.C.W. CONCRETE, INC., a Nevada

Corporation; JD STAIRS, INC., a Nevada Corporation; PIECE OF THE ROCK, a Nevada Corporation; WHITE FEATHER DRYWALL & PAINT, an Unknown Business Entity; and MOES 101 through 150 and ZOE CORPORATIONS 101 through 150 inclusive,

Third-Party Defendants.

AFFIDAVIT OF BRIAN K. WALTERS, ESQ. IN SUPPORT OF DEFENDANTS LANDS WEST BUILDERS, INC.'S AND SUNRIDGE BUILDERS, INC.'S JOINT MOTION FOR SUMMARY JUDGMENT PURSUANT TO NRS 11.202

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, BRIAN K. WALTERS, Esq., hereby declare and state under oath as follows:

1. I am over the age of 18 and am competent and have personal knowledge of the facts stated herein.

2. I am Senior Counsel with the law firm of GORDON & REES SCULLY MANSUKHANI LLP, counsel of record for Defendant LANDS WEST BUILDERS, INC. (hereinafter "Lands West").

3. This Affidavit is submitted in support of Lands West's and Sunridge Builders, Inc.'s (hereinafter "Sunridge") Joint Motion for Summary Judgment Pursuant to NRS 11.202 ("Motion").

4. Attached as Exhibit "E" to the Motion is a true and correct copy of a document entitled "Review of Property Inspection Report" (PLTF001271-PLTF001278), disclosed by Plaintiff as part of its First Notice of Compliance with Case Management Order dated April 25, 2017.

5. Attached as Exhibit "F" to the Motion is a true and correct copy of an e-mail from Madsen Kneppers & Associates to Adam Springel with attached "Photo Log Summary"

1 (PLTF001266-PLTF001268), disclosed by Plaintiff as part of its First Notice of Compliance
2 with Case Management Order dated April 25, 2017.

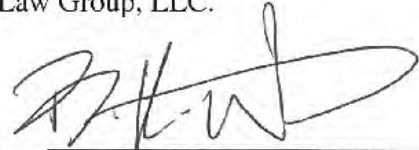
3 6. Attached as Exhibit "G" to the Motion is a true and correct copy of a document
4 entitled "Springel Residence Water Features Report" dated June 14, 2017 (PLTF-LPC00001-
5 PLTF00010), disclosed by Plaintiff as part of its Twelfth Notice of Compliance with Case
6 Management Order dated June 30, 2017.

7 7. Attached as Exhibit "H" to the Motion is a true and correct copy of a document
8 entitled "Addendum Nos. 1 and 2 to Purchase Agreement" dated January 29, 2012
9 (LANDS001618 and LANDS001624), disclosed by Lands West as part of its Eighth Notice of
10 Compliance with Case Management Order dated August 1, 2017.

11 8. Exhibit "H" was included with documents produced by Ivan Sher, Ltd. in
12 response to Lands West's subpoena *duces tecum* dated July 7, 2017.

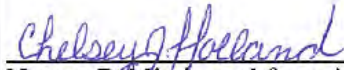
13 9. Attached as Exhibit "T" to the Motion is a true and correct copy of the "Notice to
14 Contractor Pursuant to Nevada Revised Statute 40.645 ET SEQ." served on Lands West and
15 Sunridge by Plaintiff's previous counsel, The Bourassa Law Group, LLC.

16 FURTHER AFFIANT SAYETH NAUGHT.

17 
18

19 BRIAN K. WALTERS

20
21 Subscribed and sworn to before me
22 this 5th day of September, 2017.

23 
24 Notary Public in and for said
25 County and State

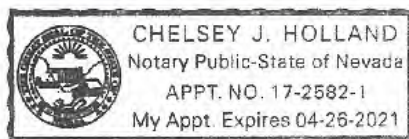


EXHIBIT B

EXHIBIT B

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1 10. On or about December 2, 2015, Sunridge was served with an NRS 40.645 Notice
2 of Construction Defects.

3 FURTHER YOUR AFFIANT SAYETH NAUGHT.

5 DATED this 31 day of August, 2017


DAVID HARDY

Subscribed and sworn before me
this 31st day of August, 2017

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Shonda L. Chuah
NOTARY PUBLIC

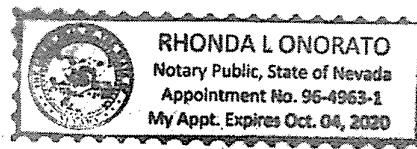


EXHIBIT C

EXHIBIT C

CITY OF HENDERSON
Department of Building & Safety
240 Water Street
Henderson, NV 89015
(702) 267-3620



LANDS0000049

CERTIFICATE OF OCCUPANCY

THIS CERTIFICATE IS ISSUED PER THE BUILDING AND FIRE SAFETY ADMINISTRATIVE CODE

At the time of issuance, this building was deemed to be in substantial compliance with fire, safety and structural provisions of the adopted building codes and based upon periodic inspections of work during construction. This certificate of occupancy should not be relied upon as evidence that the construction is in actual compliance with all applicable building codes or that the construction meets the minimum standards of a specific industry.

578 LAIRMONT PL

Situs Address

BRB3 2008001252

Building Permit Number

April 24, 2009

Date

IRC SFD

Occupancy Group

IRC SP

Construction Type

MP

Zone Code

MASTER DEVELOPMENT PL

Description

Mohammed J. J. J.

Building Official

U O F M TRUST

578 LAIRMONT PL

HENDERSON NV 890120101

POST IN A CONSPICUOUS PLACE

EXHIBIT D

EXHIBIT D

When recorded, mail to: 1631 E. Sunset Rd. Ste. C106, Las Vegas, NV 89119

APN# - 178-28-518-001



20090526-0003108

Fee: \$15.00 RPTT: \$0.00

N/C Fee: \$25.00

05/26/2009 14:46:05

T20090182723

Requestor:

NEVADA TITLE LAS VEGAS

Debbie Conway MJM

Clark County Recorder Pgs: 2

TITLE _____

NOTICE OF COMPLETION _____

RETURN TO:

ADDRESS

NEVADA CONSTRUCTION SERVICES

2500 N BUFFALO SUITE 140

LAS VEGAS NV 89128

LANDS000051

EXHIBIT E

EXHIBIT E

February 19, 2012

Adam Springel Property Purchase: Review of Property Inspection Report (Electrical Issues)

Property: MacDonald Highlands: 578 Lairmont Place, Henderson

Electrical Issues:

1. **"Some of the circuit labels appear to be incorrect. Specifically, in both sub-panels in the right garage there is an AFI breaker labeled "bedroom 2". All sub-panels should also be labeled."**
 - a. Response:
 - i. Circuit breaker labels can be checked and verified easily, either before or after occupancy. Generally requires just selectively turning breakers Off and confirm the areas and devices affected.
 - b. Recommendation & Priority: Minor. Can be corrected easily and with little expense.
2. **"The electrical splices in the electrical service room should be pu in junction boxes (Photo 15). This is a hazard that needs to be corrected."**
 - a. Response:
 - i. Did not receive or review Photo 15. However, if the exposed wiring splices are 120 volts or 240 volts, then this item should be corrected prior to taking possession, or prior to occupancy.
 - ii. If the exposed splices are low voltage (for HVAC, lighting control wiring, landscape lighting, etc.) then there is no necessity to provide junction boxes.
 - b. Recommendation:
 - i. Undetermined: Need to determine the purpose of the wiring.
3. **"The exterior extension cord into the electrical service room should be removed and a proper outlet for the rom equipment provided (Photos 16)."**
 - a. Response: Agree. If the extension cord is being used for permanent equipment connection, it should be removed and replaced with a permanant (code) wiring method. If the cord is being used only for temporary use, it should be disconnected when not in use.

- b. Recommendation:
 - i. Disconnect and remove temporary extension cord. If power is required for permanent use, install code compliant permanent wiring and receptacle device.
 - ii. Priority: High.
- 4. **"The open-ended conductor in one basement sub-panel should have a wire nut installed on it (Photo 17)."**
 - a. Response: Photo not received or reviewed. Agree that an abandoned wire should either have a wire nut installed or cut off any exposed conductor so that the remaining portion is protected by insulation.
 - b. Recommendation: Agree. Minor repair. Minor cost.
 - c. Priority: Low to moderate.
- 5. **"AFCI's in one basement sub-panel and one garage sub-panel are faulty and should be replaced."**
 - a. Response: Odd. It is unusual that multiple AFCI (Arc-Fault Circuit Interrupter) breakers would fail at the same property. No details on the nature of the failure. Is the failure related to 'nuisance tripping', 'failure to trip when tested', or that the breakers do not provide power to the circuits? Need to make sure condition can be repaired by replacing the AFCI breakers (minor) rather than needing to find and replace any faulty wiring which might be causing failures.
 - b. Recommendation:
 - i. Need to request further info on the nature of the multiple AFCI 'failures' and confirm condition will be resolved by replacing AFCI breakers.
 - c. Priority: High. Needs to be resolved.
- 6. **"The master bathroom whirlpool tub is not GFCI protected as required."**
 - a. Response: If the whirlpool tub is part of original construction, then very often, the GFCI protective device is NOT located in the pump motor location (under the tub), but in a more accessible location (such as on the wall in the toilet room) where it can be reset without removing the tub motor access door. If it is confirmed that there is

no remote GFCI device, then the condition can be resolved by replacing the receptacle serving the pump motor with a GFCI receptacle. Should be easily accomplished.

b. Recommendation: Look for remote GFCI device. If not installed, then remove the existing non-GFCI pump motor receptacle and replace with a GFCI device. Should be easy and inexpensive.

c. Priority: High.

7. **"The kitchen countertop outlets under the cabinet next to the cooktop are not GFCI protected as required."**

a. Response:

i. Depending upon year of construction, countertop receptacles further than six feet from the edge of a sink may not have been required to be GFCI. By today's codes, all kitchen countertop receptacles are required to be GFCI. This can be accomplished by replacing existing non-GFCI devices with GFCI receptacles.

b. Recommendations:

i. Install GFCI devices. Remove and replace non-GFCI receptacle with GFCI device. Test. If this device provides protection to the additional devices, then issue resolved. If additional GFCI devices required, remove and replace non-GFCI with GFCI devices as required, until all countertop receptacles are protected.

ii. Because this is an easy and inexpensive item to accomplish, recommend installing GFCI devices at countertop receptacles even if not required by original construction.

c. Priority: High.

8. **"Several exterior outlets are not GFCI protected as required. These include the master deck chimney and at the patio outside the basement bedroom exterior door."**

a. Response: Agree that all exterior receptacles should be GFCI protected.

b. Recommendation: Replace all exterior non-GFCI devices with GFCI devices at each location.

c. Priority: High.

9. **"GFCI at the powder room, basement bar sink, and right garage are faulty and should be replaced."**
- a. Response: Good/No Good condition can be confirmed by pushing "Test" button on each GFCI device. If faulty, agree they should be replaced. Minor cost and effort.
 - b. Recommendation: Test, and replace faulty devices. Cost of each device is less than \$10.00, and labor is usually less than 15 minutes each.
 - c. Priority: High.
10. **"There are several pairs of GFCIs that are on the same circuit. There should only be one GFCI per circuit. The redundant GFCI's should be replaced with standard outlets..."**
- a. Response: Disagree. Put as many GFCI's on a circuit as desired. There is no functional downside, and many times, it is easier to have a local GFCI device trip, rather than to have to go to searching for a single, remote GFCI location to Test or Reset.
 - b. Recommendation: Leave all existing GFCI devices in place, as long as they are accessible for testing and reset. No changes recommended.
11. **"The water softener outlets and circulation pump outlets in both garages are on a GFCI circuit, which is not recommended. Dedicated appliance outlets should be installed."**
- a. Response: Disagree. Unless the equipment does not function because of nuisance GFCI tripping, there is no downside to the presence of the GFCI devices. If there is nuisance tripping, then you can change the GFCI devices to standard; otherwise no need to change.
 - b. Recommendation: If the water softener and circ pumps run, don't make any changes.
12. **"All missing, damaged, and loose covers for junction boxes, outlets and switches should be replaced, including those noted under the cooktop (Photo 18), family room (Photo 19), basement mechanical room (Photo 20), south wing back bedroom (Photo 21), right garage front closet (Photo 22), south wing back attic (Photo 23), and in the electrical service room (Photo 24)."**
- a. Response: Agree with installing cover plates where missing, and replacing broken plates. Not much of an issue. Figure about \$1.00 per cover

plate.

- b. Recommendation: Replace missing or broken cover plates.
 - c. Priority: Moderate.
13. **"The loose outlet in the attic over the master closet should be secured to the wall framing (Photo 25)."**
- a. Response: Agree. Very minor. Cost is probably less than \$5.00.
 - b. Recommendation: Secure box to framing in attic.
 - c. Priority: Low.
14. **"The ceiling fan in the basement exercise room is not operational; apparently due to a faulty or dead remote control. This condition should be further investigated."**
- a. Response: Doesn't sound like a big issue. At worst, a new ceiling fan or new remote control (or batteries) required.
 - b. Recommendation: Check out the remote control batteries; check out the remote control, and contact a dealer or manufacturer if a new remote control is required.
 - c. Priority: Low
15. **"The motion detector controlling the fan and light in the toilet room of the basement 3/4 bathroom should be adjusted."**
- a. Response: Sounds like the motion sensor sensitivity or delay timer is either too sensitive or not sensitive enough. Both should be adjustable by removing the unit cover and adjusting the screw/knobs. No big deal.
 - b. Recommendation: Check and adjust. No cost involved.
16. **"The exterior light outside the basement bedroom door is not operable from the light switch next to the door. This should be investigated further, and repair as needed."**
- a. Response: Could be a burned out light bulb (very minor), a faulty switch (minor), or problem with the fixture or wiring. Should be checked out, but doesn't sound like anything serious.
 - b. Recommendation: Check light bulb, check the wall switch; if not resolved,

open and check fixture. Repair or replace as necessary.

c. Priority: Low.

17. **"Some of the light fixtures were not operational, apparently due to burned out or missing bulbs (Photo 26). We recommend that the light bulbs be replaced, and the fixtures tested."**

a. Response: OK. Most homeowners can figure this one out. Doesn't sound like a "deal killer".

578 Lairmont Place
Henderson, NV 89012

1. Further investigation of gas appliances (furnaces, water heaters, cooktop, gas log fireplaces, patio gas grill, patio fire pit, and pool/spa heater)
No gas during inspection. Probably minor issues worst case.
2. Repair plumbing system
 - a. After the water heaters and circulation pumps are operational, proper hot water flow to the fixtures should be verified. – Doubt there is an issue here.
 - b. Drain pipes should be installed on the water heater drain pans to discharge water to the garage floor or through the exterior wall (Photo6). – Very minor issue. Not a code requirement. \$25.00
 - c. Unused valves under the kitchen sink should be capped (Photo 7). – Minor issue. \$25.00
 - d. There are several ceiling mounted showerheads that are plugged with hard water deposit and leaking (Photos 8, 9, and 10). – Change shower heads. \$400 total.
 - e. There are no water and drain fixtures, and no apparent underground drain piping at the patio sink (Photo 11). – This sounds like an incomplete installation. It could be expensive to complete if you need to run water and drain lines. It seems unlikely that they would provide a fixture and not provide water and drain. It might be there somewhere and just require hookup. Guess \$400.00?
 - f. Two exterior water supply lines require anti-siphon device or backflow preventers to be installed (Photos 12 and 13). – Very minor issue. \$5.00 total
 - g. Not all exposed exterior water piping is properly insulated for freeze protection (Photos 12, 13, and 14). Not an issue.
3. Further investigation of water leaks; repair as needed (Photos 27, 28, and 29)
Roof leaks? Plumbing? Cut open ceiling. Replace drywall. Mold maybe. \$3000.00.
4. Investigate/repair appliances
 - a. The kitchen cooktop was not tested due to the gas being shut off. - Doubt there is an issue here.
 - b. The sink disposal at the side bar sink in the kitchen is noisy. – Replace disposal. \$200.00
 - c. The bar refrigerator in the south wing lounge area was shut off and not tested. - Doubt there is an issue here.
 - d. The icemaker at the basement bar was shut off and not tested. - Doubt there is an issue here.
 - e. The air injection valve is not functional at the air agitated sink in the south wing laundry room. – Air agitated sink? Guess \$200.00?
 - f. The central vacuum systems are not functioning properly. – Probably an electrical issue. Doubt there is a problem with the vacuum system itself they are pretty bullet proof.

PLTF001277

- g. There is no filter installed on the discharge piping of the central vacuum canister in right garage. Furthermore, it is recommended to discharge both central vacuums through the exterior wall. – The canister should have a filter already inside. You don't need another one on the discharge.
- 5. Investigate/repair gas log fireplaces
 - a. The fireplaces in the family room and basement game room are not equipped with a flue pipe to exhaust combustion products to the outside. - **BIG ISSUE IF TRUE**. Installing a flue is very intrusive. Are we sure these are not the new decorative “fake” fireplaces with the electric light inside?
 - b. The gas log at the master bedroom fireplace is incomplete. - Not enough info.
- 6. Further investigation of interior waterfall
 - a. Water flow down the surface of the waterfall is not complete, apparently due to a piping or nozzle blockage (Photo 68). - Clear blockage and replace nozzle. Guess \$400.00
 - b. The water sump automatic fill and leveling device appears to be shut off or not operational. – Fix for another \$300.00
- 7. Further investigation of yard river/pond water feature

The capacity of the lower basin appears insufficient to hold all of the water in the system. Thus, when the pump is turned off and the water drains to the lower basin, it overflows into the courtyard (Photo 69). This should be investigated further, and repaired as needed. – May need a larger basin. Guess \$1000.00
- 8. Further investigation of shower steamer

No gas during inspection. Probably minor issues worst case.
- 9. Further investigation of sauna

No gas during inspection. Probably minor issues worst case.

Other Plumbing Concerns:

Where visible, the plumbing distribution system in this home consists of cross-linked polyethylene (PEX). – I think you already know the PEX story.

HVAC Concerns:

Nothing notable for HVAC.

EXHIBIT F

EXHIBIT F

Message

From: mrobbins@mkainc.com [mrobbins@mkainc.com]
on behalf of Michelle Robbins [mrobbins@mkainc.com]
Sent: 2/22/2012 8:50:33 AM
To: 'Adam Springel' [aspringel@springelfink.com]
CC: 'Irma Escareno' [iescareno@mkainc.com]
Subject: Inspection
Attachments: image003.jpg; Summary 2-22-12.pdf

Attached is our photo log summary for you. We will deliver a CD with all of the photos. If you have any questions, please do not hesitate to call me.

Good Luck!

Thanks,

Michelle (Shelly) J. Robbins, Architect, NCARB | Regional Manager

Madsen, Kneppers & Associates, Inc.

4025 S. El Capitan Way, Las Vegas, NV 89147

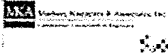
TEL 702.895.7100 | CELL 702.326.3564 | FAX 702.895.7027 | EMAIL: mrobbins@mkainc.com

WARNING/CONFIDENTIALITY NOTICE:

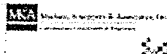
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PLTF001266



Location	Image #'s	Issue	Urgent	Cosmetic	Pick-Up Item	Option fix
South Garage Door & North Garage Door	DSJ 8029 & 8243 - 8244	Loose Trim		X		
South Garage Closet	DSJ 8036	Missing outlet cover in central vac. room			X	
South Garage	DSJ 8039 - 8040	4 small drywall holes south wall			X	
South Garage	DSJ 8048	East most electric panel has a loose/unsecured red wire	X			
Garage (both)	DSJ 8052 - 8053	Water heaters have a pan, an option could be to run a pipe from the pan to a drain location. If the water heater goes out then the garage floor isn't flooded.				X
South Garage	DSJ 8060 - 8061	South wall below e-panels at stem wall there is a drypack void in the concrete showing plastic pipe.				X
South Side Electric Room	DSJ 8072 - 8073	Door handle/knob is missing			X	
South Side Electric Room	DSJ 8074	Missing cover plates.			X	
South Side Electric Room	DSJ 8075 - 8077	Drywall is unfinished on both sides of the E-panels			X	
South Side Electric Room	DSJ 8080	When the door is shut there is a 2" gap between door and header.			X	
South Elevation	DSJ 8081 - 8082	Exposed rebar in ground just outside electrical room			X	
South Elevation	DSJ 8083 - 8085	Corner of rock and concrete edge needs cleaned up.		X		
South Elevation	DSJ 8086 - 8087	Small piece of stucco mesh needs cut.			X	
South Side Yard	DSJ 8088 - 8089	Gate latch is loose, bolt not screwed all the way in.			X	
South Elevation	DSJ 8096	Hose bib is missing and siphon device			X	
South Elevation	DSJ 8098	Pool equipment has overflowed, needs cleaned up.		X		
South Elevation	DSJ 8078-8079 8099- 8102	No power source for pool equipment. Has extension chord ran from electric room	X			
South Elevation	DSJ 8103 - 8104	Metal frame on top of fixed window is loose.	X			
Yard Rear	DSJ 8115 - 8116	Exposed wire behind pool	X			
Yard Rear	DSJ 8117 - 8122	Exposed rebar in the ground needs removed			X	
Pool	DSJ 8123 - 8125	Hairline cracks in concrete at pool surround		X		
Yard Rear	DSJ 8123 - 8125	Exposed footing at CMU wall approx. 4 ft long			X	
Yard Rear	DSJ 8132 - 8133	Fire pit drain is unfinished			X	
Yard Rear	DSJ 8134 - 8136	Hot tub has exposed concrete footing			X	
Patio	DSJ 8170 - 8771 8150 - 8151	Four floor tile are cracked		X		
Rear Elevation	DSJ 8160 - 8163	Retaining wall has hairline stucco cracks				X
Rear Elevation	DSJ 8164 - 8169	Retaining wall drains are unfinished 13 total			X	
Rear Elevation	DSJ 8172 - 8173	Header at the top of door is unfinished has exposed wire mesh	X			
North Side Elevation	DSJ 8180 - 8185	14 total concrete form nails to remove			X	
North Side Elevation	DSJ 8186 - 8192	Pex water pipe to fountain to cover up.		X		
North West Deck	DSJ 8325-8330 8201 - 8202	Confined rake blocked at roof causes water to drain onto rock wall and down to stucco wall below. Is discoloring the walls.	X			
North East Deck	DSJ 8207 - 8208	Stucco crack and broken at deck tie into wall, has exposed framing	X			
North Side Elevation	DSJ 8226 - 8232	Garage wall weep holes are blocked below stone, concrete wall below.			X	
North Side Elevation	DSJ 8233 - 8234	Exposed water proofing on concrete slab			X	
Yard Front	DSJ 8249 - 8250	Unfinished yard light			X	
Yard Front	DSJ 8256 - 8257	Uncovered wire chord in yard		X		
Front Elevation	DSJ 8263 - 8264	Buried weep at front entry wall	X			
Front Elevation	DSJ 8272-8273 8265 - 8267	Potential yard drainage problem at roof drains, no area for water to escape.	X			
Entry Room	DSJ 8285 - 8286	Drywall crack below window			X	
Entry Room	DSJ 8287 - 8291	Window drywall pre-stain and wood separation at sill	X			
Garage North	DSJ 8318 - 8319	Door jamb has door has 2 holes drilled wrong.			X	
Dining Room	DSJ 8331 - 8332	Sliding glass door hardware is bent still functions ok		X		
Flat Roof Area Overall	RDM 2112-2117	Terch down has area that are lifting and curling	X			
Flat Roof Drains	RDM 2118-2119	Need screens installed on drain pipes at five locations			X	
Flat Roof Area Over Elevator	RDM 2120	Shows signs of ponding	X			
Flat Roof at Skylight	RDM 2121-2124	Area over leak next to skylight, Torch down roofing open seam where water has entered and damaged drywall below	X			
Flat Roof Area Over Master Bed Hall	RDM 2125-2126	Shows signs of ponding	X			
Flat Roof	RDM 2127-2128	Torch down has area that are lifting and curling				X
Chimney over Master Bedroom	RDM 2129-2131	Overall - No Repair Required				
Plumbing Vent Pipe	RDM 2132	Overall - No Repair Required				
B-Vent	RDM 2133	Overall - No Repair Required				
Flat Roof	RDM 2134-2135	Shows signs of ponding	X			
Lower Tile Area	RDM 2137-2145	Overall - No Repair Required				
Headwall Tile	RDM 2146-2156	Tile unsecure about 150 tile overall				X
Lower Tile Area	RDM 2157-2158	Overall - No Repair Required				
Basement Bedroom North Side	RDM 2160	Vent installed incorrect it is facing up	X			
North Side Ground Floor Level	RDM 2161-2162	Stucco crack at deck to wall transition, There is about 14 hole look to be drilled in the stucco at the deck, Stone needs to be patch where scaffolding was tied off to the house wire is exposed.				X
Rear Area Con-Rake	RDM 2164-2165	Can-rake pan metal need kick out added to divert water away from wall at four locations				X
Master Bath	RDM 2167	Ceiling looks to have damage over tub could not find any roof area to cause this damage	X			
DGA's Family and Downstairs Bar Area	RDM 2168	DGA's are not vented looks to be design not to use out side venting				
Roof over Guest Wing	RDM 2169-2186	Overall - No Repair Required				
Plumbing Vent Pipe	RDM 2189	Overall - No Repair Required				
T-Top	RDM 2190	Overall - No Repair Required				
B-Vent	RDM 2191	Overall - No Repair Required				



Location	Image #'s	Issue	Urgent	Cosmetic	Pick-Up Item	Option fix
Vent	RDM 2192	Overall - No Repair Required				
Over Guest Master Area	RDM 2193-2194	Roof looks to be out of plan and tile lifted at this location				X
Guest Master Bath P-Vents	RDM 2195-2197	P-vent still had caps installed, Remove caps from vents x2. RDM removed caps from drains, nothing further needed				
Flat Roof Drains	RDM 2198	Drain missing screen at one location over guest master bath area				X
Flat Roof Area	RDM 2199-220C	Overall - No Repair Required				
Deck off Dining	RDM 2201-2202	Per-staining at stone from roof run off				X

EXHIBIT G

EXHIBIT G

Springel Residence Water Features

578 Lairmont Pl Henderson, NV 89012

Court Case No. A-16-742143-D



Prepared for: **Wendy L. Walker**
Springel & Fink LLP
10655 Park Run Drive, Suite 275, Las Vegas, NV 89144
702-804-0706

Prepared by: Derek Downey,
Legalpools.com
PO Box 412, Solana Beach, CA, 92075
derek@legalpools.com

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Pool.....	9
Crack under cantilever coping at swim up bar	9
Figure 7: Efflorescence on wall behind pool from water migration.....	9
Conclusion	9

Description

The Springel residence contains a large pool, spa, and 2 water features; one indoor and one outdoor. They were constructed in late 2008 or early 2009. The outdoor water feature has multiple tiers which flow down to a bottom basin see attached drawing. The indoor water feature has a water wall from the upper floor ceiling down to the floor on lower level with an exposed catch basin on the ground floor. The height of this indoor feature is approximately 30 feet.

Outdoor Water Feature

Overflow Issues

When the pump is turned off to the outdoor water feature, the water in transit flows down to the bottom catch basin. The water also flows out from the pumps. This water overflows the bottom catch basin.

When the pump is turned back on after service, enough water has overflowed from this catch basin that the fountain cannot successfully run, so the pump loses prime. The only way to make the system work again is by running the autofill while the pump is pumping water up to the top of the fountain to regain circulation.

To remedy this issue, a check valve close to the bottom catch basin is recommended. Another solution would be to rebuild the catch basin in the correct size.

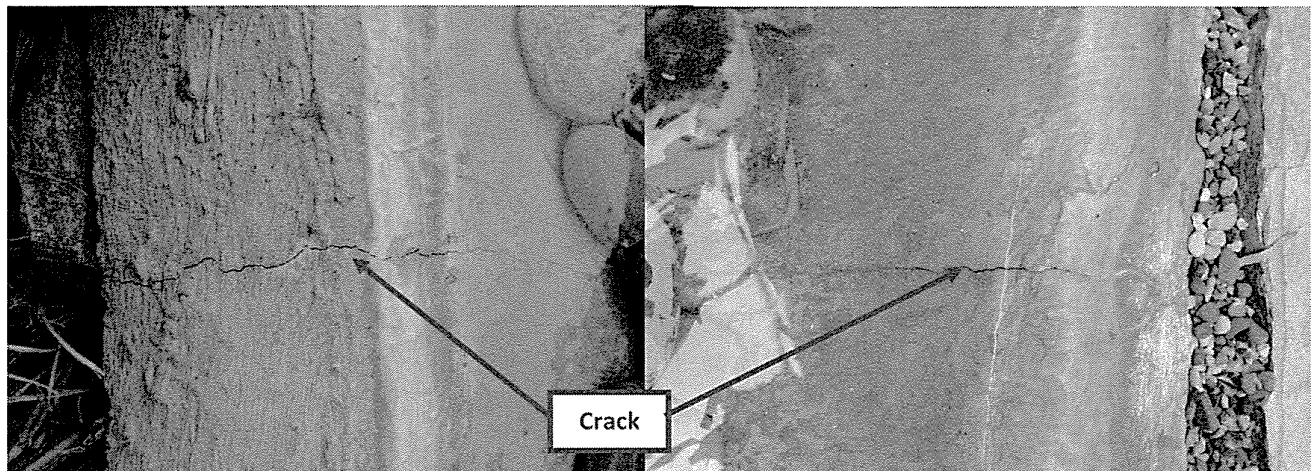


Figure 1: Crack Across middle pond (portion covered by rocks omitted)

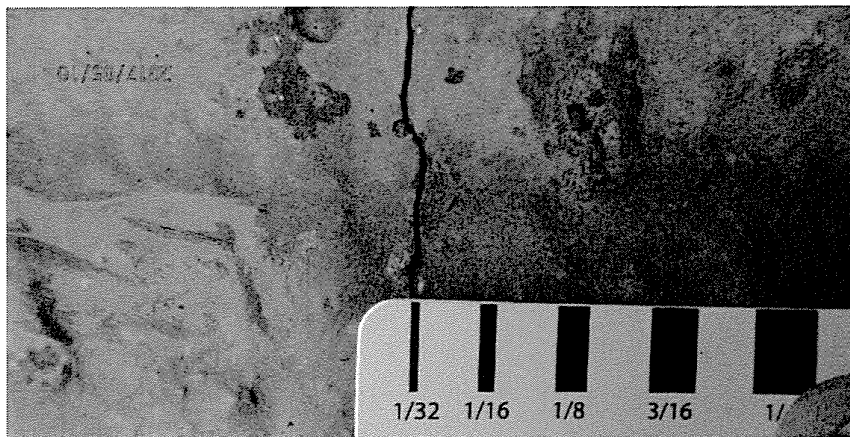


Figure 2: Crack Gauge on Crack

Crack

There is a large structural crack in the middle pond. This crack runs completely across the concrete and will require the entire middle tier to be removed and replaced

Skimmer installation

The skimmer is installed incorrectly without a complete steel schedule and has allowed plant roots to grow between the shotcrete and the plastic skimmer housing, the skimmer needs to be jack hammered out, new steel tied into the existing pond structure and new concrete installed. Re-waterproof the pond structure.

Figure 3: Plants in skimmer



Indoor Water Feature

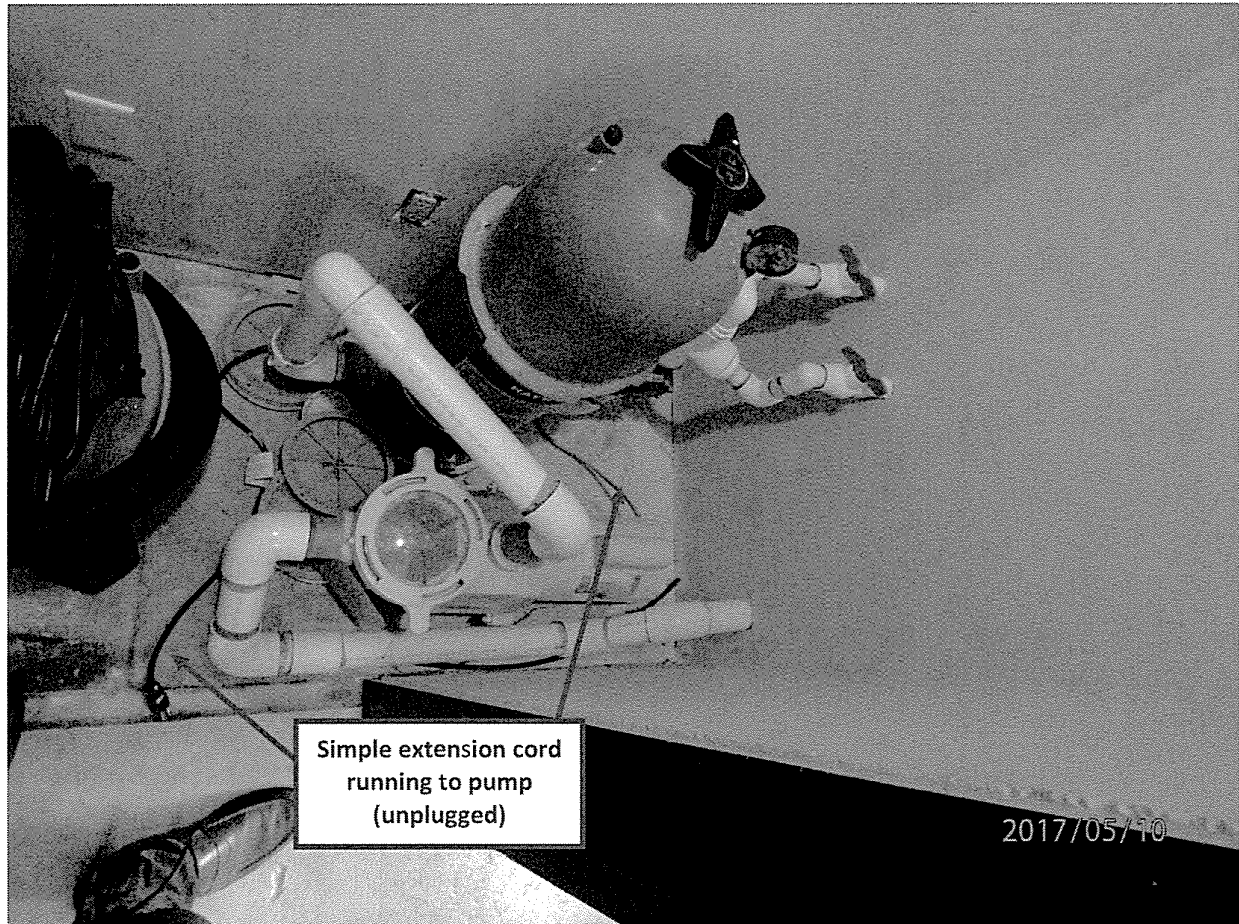
Figure 4: Overview of indoor water feature



Electrical

The wire to the pump is not up to code. Electrical code requires a waterproof conduit and NEC approved junction box to the pump. The pump is currently powered by an extension cord.

Figure 5: Extension cord run to supply pump



Auto fill cover

The cover for the autofill cannot be removed as it has wedged into the stone work, the stone will need to be destroyed and install a ledger to receive the autofill cover with spacing to allow access. The water wall is inoperable without the auto fill as evaporation is greatly accelerated on a water feature such as this. The homeowner has been filling with buckets when they need to use it as intended.

Catch basin

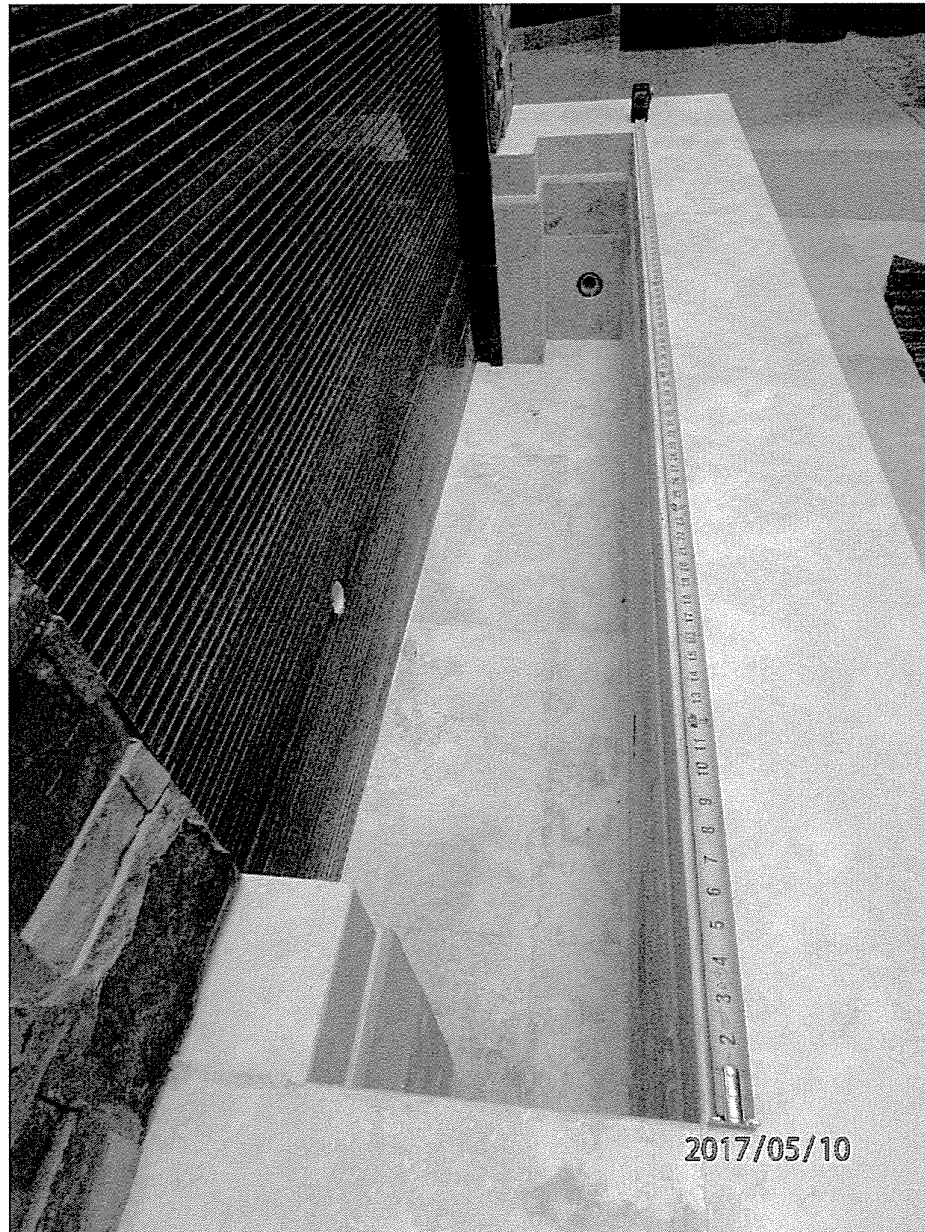
The catch basin is undersized. The maximum capacity of the basin is approximately 100 gallons, from the bottom of the basin to overflowing. To avoid vortexing from the suction line, the minimum water level in the basin is 8" above the suction lines, yet the basin is only 22" deep. This leaves 14" for operating water level changes if the suction lines were at the bottom, or approximately 67 gallons. Filling the pipes running to the top of the fountain requires approximately 30 gallons of water. This only leaves approx. 40 gallons before overflow. The amount of water in transit on the fountain could easily be higher than this number, only further testing can confirm this as the size of the diffuser and basin at the top of the fountain is undetermined. Even if the water feature does not have 37 gallons of water in transit, the margin of error on the remaining space in the catch basin is far too low for an indoor installation. The catch basin needs to be demolished and enlarged with VGB compliant drains installed on the bottom.

While in operation, water spills out from the fountain and splash onto the travertine floor creating a slip and injury hazard. A variable speed pump should be installed to control flow. Additionally, the distribution of this water is uneven, a more efficient diffuser system to more efficiently spread the overflow water at the top and down the granite should be installed. See figure 6.

Suction Lines

The suction lines are exposed and not VGB compliant, a life safety concern. In the rare, but not impossible case that a small child falls or climbs into the fountain. The lack of a drain cover line is a hazard for entrapment onto the suction lines. Suction line covers that comply with the Virginia-Graeme-Baker Act will prevent entrapment of the child onto these suction lines. See figure 6.

Figure 6: Catch Basin



Pool and Deck

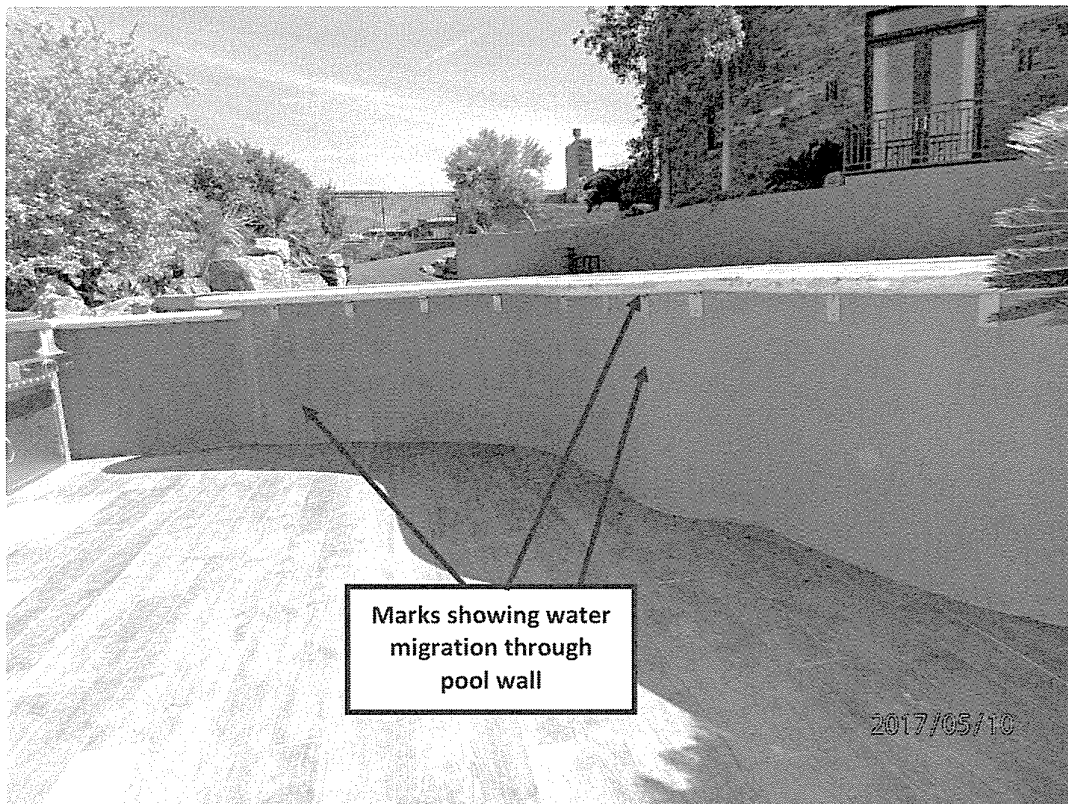
Pool Circular Feature

Tile is coming loose in multiple locations on the circular feature adjacent to the pool.

Crack under cantilever coping at swim up bar

The mortar bed and granite bar has delaminated from the pool structure, allowing water to migrate underneath. Efflorescence is visible on the wall outside of the pool from this water.

Figure 7: Efflorescence on wall behind pool from water migration



Conclusion

The pool, deck, outdoor and indoor water features are not built to a standard of care. Multiple construction concerns are addressed above which will require major construction to correct. See the cost of repair table below.

ITEM	DESCRIPTION	COST
------	-------------	------

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June 14, 2017

9

Consultant | Expert Witness | Energy Cost Reduction | Project Management
760.801.6566 | derek@legalpools.com | P.O. Box 412 | Solana Beach, CA 92075

PLTF-LPC00009

IN THE SUPREME COURT OF THE STATE OF NEVADA

JANETTE BYRNE, as TRUSTEE OF THE UOFM
TRUST,

Appellant,

vs.

SUNRIDGE BUILDERS, INC.; a Nevada Corporation;
LANDS WEST BUILDERS, INC., a Nevada Corporation;
BRYANT MASONRY, LLC, a Nevada Limited Liability
Company; DMK CONCRETE, INC., a Nevada
Corporation; CIRCLE S DEVELOPMENT DBA DECK
SYSTEMS OF NEVADA, a Nevada Corporation; GREEN
PLANET LANDSCAPING, LLC, a Nevada Limited
Liability Company; LIFEGUARD POOL MAINT. dba
LIFEGUARD POOLS, a Nevada Corporation; PRESTIGE
ROOFING, INC., a Nevada Corporation; PYRAMID
PLUMBING, a Nevada Corporation; RIVERA FRAMING
INC. DBA RIVERA FRAMERS, a Nevada Corporation;
S&L ROOFING, INC., a Colorado Corporation,

Respondents.

Electronically Filed
May 21 2019 03:02 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

No. 77668

APPELLANT'S APPENDIX VOLUME 1

Pages 1 through 250

Eighth Judicial District Court
The Honorable Richard Scotti, District Judge
District Court Case A-16-742143-D

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Attorneys for Appellant

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28.	Reply in Support of Joint Motion for Summary Judgment (Lands West and Sunridge)	10/12/17	2	AA446 - AA496
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65.	Transcript Motion for Attorneys Fees Hearing (1-8-18)	03/04/19	5	AA1160- AA1225

I. Party Information <i>(provide both home and mailing addresses if different)</i>	
Plaintiff(s) (name/address/phone): Janette Byrne, as Trustee of the UOFM Trust	Defendant(s) (name/address/phone): Sunridge Builders, Inc.;
	Lands West Builders, Inc.
Attorney (name/address/phone): Mark J. Bourassa, Esq. and Jennifer A. Fornetti, Esq.	Attorney (name/address/phone):
The Bourassa Law Group	
8668 Spring Mountain Road, Suite 101	
Las Vegas, Nevada 89117	

II. Nature of Controversy <i>(please select the one most applicable filing type below)</i>		
Civil Case Filing Types		
Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate <i>(select case type and estate value)</i> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input checked="" type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

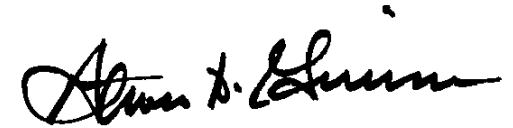
08/22/2016

Date

/s/ Jennifer A. Fornetti

Signature of initiating party or representative

See other side for family-related case filings.



CLERK OF THE COURT

COMPC
MARK J. BOURASSA, ESQ.
Nevada Bar No. 7999
JENNIFER A. FORNETTI, ESQ.
Nevada Bar No. 7644
THE BOURASSA LAW GROUP
8668 Spring Mountain Road, Suite 101
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jfornetti@blgwins.com

Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

JANETTE BYRNE, as Trustee of the UOFM TRUST,	)	Case No.: A- 16 - 742143 - D
	)	Dept. No.: XVI
)	
Plaintiff,	)	COMPLAINT AND DEMAND FOR JURY
vs.	)	TRIAL
)	
SUNRIDGE BUILDERS, INC., a Nevada Corporation; LANDS WEST BUILDERS, INC., a Nevada Corporation; DOES 1 through 100 and/or ROES 1 through 50, inclusive,	)	Arbitration Exempt:
	)	*Damages in Excess of \$50,000.00
	)	*Declaratory Relief Requested
)	
Defendants.)	
)	

COMPLAINT

COMES NOW, PLAINTIFF JANETTE BYRNE, on behalf of UOFM TRUST, (hereinafter "Plaintiff"), by and through her counsel of record, The Bourassa Law Group and hereby submits her Complaint against Defendants, and each of them, and alleges as follows:

I.
PARTIES

1. PLAINTIFF JANETTE BYRNE, as trustee of UOFM TRUST, (hereinafter "Plaintiff") is and was at all times relevant herein an individual residing in Clark County, Nevada.

///

1 2. Plaintiff is, and at all times relevant hereto, was the owner of record for the home located
2 at 578 Lairmont Place in Henderson, Nevada (hereinafter "Subject Property").

3 3. At all times relevant herein, SUNRIDGE BUILDERS, INC. (hereinafter "Sunridge"), a
4 Nevada corporation; LANDS WEST BUILDERS, INC. (hereinafter "Lands West"), a Nevada
5 corporation; DOES 1 through 100; and ROES 1 through 50 inclusive, and each of them, were legal
6 entities or individuals doing business in the State of Nevada and who designed, developed, constructed,
7 improved, manufactured and/or supplied material for the Subject Property.

8 4. Defendants, and each of them, were developers, contractors, subcontractors, suppliers,
9 manufacturers and/or design professionals who designed, developed, constructed, improved, altered,
10 repaired, supplied material, and/or under certain works of improvement upon the Subject Property, for
11 the benefit of Plaintiff.

12 5. Plaintiff is informed and believes, and on that basis, alleges that Defendants are, and at all
13 times relevant were, individuals, sole proprietors, partnerships, corporations or other business entities
14 doing business in Clark County, Nevada.

15 6. At all times relevant herein, Defendants, and each of them, were legal entities or
16 individuals doing business in the State of Nevada. The true names and capacities, whether individual,
17 corporate, associate or otherwise of DOES 1 through 100 and ROES 1 through 50, are unknown to
18 Plaintiff, who therefore, sues said legal entities or individuals by such fictitious names. Plaintiff is
19 informed and believes, and thereon alleges, that each of said legal entities or individuals are responsible
20 in some manner for the events and happenings and proximately caused the injuries and damages herein
21 alleged by Plaintiff in her operative Complaint. Plaintiff will ask leave of this Court to amend her
22 operative Complaint to insert the true names and capacities of DOES 1 through 100 and ROES 1
23 through 50 and state the appropriate charging allegations when that information has been ascertained.

24 7. Defendants, and each of them, were the agents, servants, employees, and/or
25 representatives of each other in doing the things alleged herein and in doing so were acting within the
26 scope of their respective agency.

27 8. Defendants, and each of them, undertook certain works of improvement upon the Subject
28 Property, including all works of development and design for the benefit of the Plaintiff.

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II.
GENERAL ALLEGATIONS

9. Plaintiff incorporates herein by reference, all preceding paragraphs as though fully set forth herein.

10. Defendants were engaged in the business of planning, developing, designing, constructing, manufacturing materials, manufacturing products, supplying materials and/or supplying products for use at residential real property in County of Clark, State of Nevada.

11. Defendants acted as the developer/builder/contractor of the Subject Property and were directly responsible for the construction and/or supervision of the construction of the Subject Property.

12. Defendants, and each of them, undertook certain works of improvement upon the Subject Property, including all works of development, design and construction of the Subject Property, as well as manufacturing products, supplying materials and supplying products for the Subject Property, which were intended to be used as a residential dwelling, which could be sold to and used by members of the general public for the purpose of a residence and said Defendants knew or reasonably should have known that persons who would purchase said units would do so without inspecting for defects set forth herein.

13. Defendants, and each of them, failed to properly and adequately investigate, design, inspect, plan, engineer, supervise, construct, produce, manufacture, develop, prepare, market, distribute, and/or supply the Subject Property and its components in that said Subject Property has experienced, and continues to experience, incomplete work pursuant to the contracts, defects and deficiencies, and damages resulting therefrom.

14. Defendants, and each of them, impliedly warranted that the real property, structures thereon and products and material therein were of merchantable quality and were constructed, supplied and/or manufactured in a reasonable and workmanlike manner.

15. The Subject Property, and its components, in particular, are not of merchantable quality, but, in fact, are defective and fail to meet all applicable building codes and industry standards and have caused damage to the Subject Property.

16. Defendants, and each of them, failed to properly and adequately investigate, design, inspect, plan, engineer, supervise, construct, produce, manufacture, develop, prepare, market, distribute,

1 and/or supply the Subject Property and its components in that said Subject Property has experienced,
2 and continues to experience, incomplete work pursuant to the contracts, defects and deficiencies, and
3 damages resulting therefrom.

4 17. The Subject Property may be defective or deficient in other ways and to other extents not
5 presently known to Plaintiff, and not specified above. Plaintiff reserves the right to amend this
6 Complaint upon discovery of any additional defects or deficiencies not referenced herein and/or to
7 present evidence of the same at the trial of this action.

8 18. Plaintiff has complied with all prefiling requirements of Nevada Revised Statutes
9 §40.600 through §40.695.

10 19. To date, Defendants have not resolved Plaintiff's claims as set forth in Plaintiff's notice
11 as required by NRS §40.6472.

12 20. To date, Defendants, and each of them, have failed and continue to fail to perform all
13 necessary repairs or complete the work necessary to repair all the defective conditions at the Subject
14 Property.

15 21. Prior to placing the Defendants on notice of her claims of construction deficiencies,
16 Plaintiff became aware of facts which thereafter, upon investigation, resulted in Plaintiff being informed
17 that portions of the Subject Property has been incompletely and/or inadequately constructed, developed,
18 designed, supervised or otherwise improved so that the above-described defective conditions existed and
19 do now exist and the works of improvement are defective, not of merchantable quality and not fit for the
20 purpose of permitting persons to reside thereabouts in a proper manner and fashion.

21 22. The damages to the Subject Property known to Plaintiff at this time are progressive and
22 continue to worsen.

23 23. Plaintiff is informed and believes and based thereon alleges that any and all repair
24 attempts by Defendants failed to adequately correct said damages and deficiencies thereby resulting in
25 further property damages caused thereby.

26 24. Plaintiff is informed and believes and thereon alleges that instead of causing the
27 necessary and required reconstruction and repairs of the Subject Property, Defendants have caused
28 cosmetic, temporary or ineffective repairs to be made to various portions of the Subject Property for the

1 purpose of leading Plaintiff to believe that said Defendants were resolving and correcting all
2 deficiencies. By virtue of such conduct, said Defendants are estopped to assert that Plaintiff has not
3 commenced this action in a timely fashion and are further estopped to assert that Plaintiff may not seek
4 the damages herein sought.

5 25. In the event that Plaintiff failed to file suit within the statutorily prescribed time period
6 for any allegations contained herein, Plaintiff alleges that she detrimentally relied upon the conduct and
7 representations of the Defendants, and each of them in making repairs and/or representations to Plaintiff
8 concerning the Subject Property and therefore the statute of limitations and repose are thus tolled.
9 Notwithstanding these actions, this lawsuit is being filed to stop the running of any and all applicable
10 statutes of repose and limitations.

11 26. Plaintiff is informed and believes and thereon alleges that the defects arose out of, were
12 attributable to and are directly and proximately caused by the above-described deficiency in the design,
13 specification, planning, supervision, observation of construction, development and/or improvement and
14 any repairs of the Subject Property and that prior to the time when it was discovered by Plaintiff, as set
15 forth herein, it could not have been discovered by the exercise of reasonable diligence.

16 27. Plaintiff has standing to commence this action against the Defendants and each of them.

17 28. Plaintiff seeks all available damages statutorily codified in NRS §40.655 on behalf of
18 herself and as the homeowner of the Subject Property developed, constructed and designed by the
19 Defendants and all other damages and remedies available by law.

20 **III.**
21 **FIRST CLAIM FOR RELIEF**
22 **(Breach of Implied Warranty Against Defendants)**

23 29. Plaintiff incorporates herein by reference, all preceding paragraphs as though fully set
24 forth herein.

25 30. Defendants impliedly warranted, among other express and/or implied warranties, that the
26 Subject Property was designed and constructed in accordance with applicable law, according to sound
27 standards of construction and engineering, in a commercially reasonable, habitable and workmanlike
28 manner, free from defective materials and fit and safe for human habitation.

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31. Defendants also impliedly warranted, among other express and/or implied warranties, that the Subject Property was of merchantable quality and fit for its intended purposes as a residence without significant defective causes, effects or conditions un-remedied or unrepaired by said Defendants.

32. Plaintiff is informed and believes and thereon alleges that the Subject Property was not constructed in accordance with applicable law or according to the sound standards of engineering and construction, was not constructed in a workmanlike manner, was not free from defective materials, was not of proper durability, reliability, habitability, merchantability, and/or general quality and not fit for its intended use as herein described.

33. Defendants breached their implied warranties and covenants of repair because the Subject Property is in disrepair, unfit and unsafe in violation of the Nevada Revised Statutes and other codes and regulations.

34. Plaintiff is informed and believes and thereon alleges that as a direct and proximate result of the defects set forth herein, Plaintiff has suffered damages in an amount precisely unknown, but believed to be within the jurisdiction of this Court in that it has been and will hereafter be required to perform works of repair, restoration and construction to portions of the structures to prevent further damages and to restore the structures to their proper condition.

35. As a direct result of the foregoing, Plaintiff has suffered costs and out of pocket expenses, in an amount in excess of Ten Thousand Dollars (\$10,000.00), to be shown specifically at the time of trial.

36. As a further direct and proximate result of the Defendants' breach of implied warranties related to the Subject Property, Plaintiff was compelled to retain legal counsel to obtain recovery for the defective conditions. Therefore, pursuant to NRS §40.600 *et seq.*, Defendants are liable for those attorney's fees and costs reasonably and necessarily incurred by Plaintiff in order to obtain compensation in a sum to be determined at trial.

IV.
SECOND CLAIM FOR RELIEF
(Breach of Express Warranty Against Defendants)

37. Plaintiff incorporates herein by reference, all preceding paragraphs as though fully set forth herein.

/ / /

1 38. Plaintiff is informed and believes and based thereon alleges that Defendants expressly
2 warranted, through advertisements and other documentation, that the Subject Property was designed and
3 constructed in accordance with applicable law, according to sound standards of construction and
4 engineering, in a commercially reasonable, habitable and workmanlike manner, free from defective
5 materials and fit and safe for human habitation.

6 39. Plaintiff relied on Defendants' express representation that the Subject property was of
7 merchantable quality suitable for its intended purpose, without major and/or significant defective causes,
8 effects or conditions un-remedied or unrepaired by said Defendants.

9 40. Defendants breached these express warranties in the design, specification, planning,
10 supervision, observation of construction, development and/or improvement and repair.

11 41. As a direct and proximate result of the breach of the express warranties by Defendants,
12 Plaintiff suffered damages stemming from the construction defects at the real property and structures
13 thereon.

14 42. Plaintiff is informed and believes and thereon alleges that, as a direct and proximate
15 result of the defects set forth herein, Plaintiff has suffered damages in an amount precisely unknown, but
16 believed to be within the jurisdiction of this Court in that it has been and will hereafter be required to
17 perform works of repair, restoration and construction to portions of the structures to prevent further
18 damages and to restore the structures to their proper condition.

19 43. As a direct and proximate result of the foregoing violations of codes, negligence,
20 carelessness and unworkmanlike conduct, actions and/or omissions by Defendants, Plaintiff has suffered
21 damages in an amount in excess of Ten Thousand Dollars (\$10,000.00) in order to correct the defective
22 conditions of the Subject Property and to restore it to its proper condition including reasonable expenses
23 of temporary housing reasonably necessary during the repair in an amount to be determined at the time
24 of trial.

25 44. Plaintiff has incurred and will incur expert fees and costs to investigate the defective
26 conditions at the Subject Property to determine the nature, extent, cause of the defects and the
27 reasonable and appropriate repairs.

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45. Plaintiff has suffered loss of other property damaged by the defective conditions; Plaintiff is presently unaware of the precise amount of the damages, but will establish the same at trial, according to proof.

46. As a further direct and proximate result of the defective conditions of the Subject Property, Plaintiff's interests in the Subject Property and the value thereof has been reduced and diminished. All of the above-described damages have occurred in an amount in excess of Ten Thousand Dollars (\$10,000.00) to be established according to proof at the time of trial.

47. As a further direct and proximate result of the incomplete and/or defective conditions of the Subject Property, Plaintiff has lost and will continue to lose the use and enjoyment of the Subject Property, including the use of the Subject Property as a result of the restoration required to repair and restore the defects.

48. Plaintiff is informed and believes, and thereon alleges that as a further direct and proximate result of the breach of express warranties, Plaintiff was compelled to retain legal counsel to obtain recovery for the defective conditions. Therefore, pursuant to NRS §40.600 *et seq.*, Defendants are liable for those attorney's fees and costs reasonably and necessarily incurred by Plaintiff in order to obtain compensation in a sum to be determined at trial.

V.
THIRD CLAIM FOR RELIEF
(Negligence/Negligence Per Se Against Defendants)

49. Plaintiff incorporates herein by reference, all preceding paragraphs as though fully set forth herein.

50. Defendants, and each of them, were builders, contractors, subcontractors, suppliers, material men, architects and/or engineers, or other persons, entities or professionals who participated in the process of developing, designing, engineering and/or construction of the Subject Property and who performed works of labor, supplied materials, equipment and/or services necessary for the building and construction, including supervision of construction of the Subject Property.

51. In their capacity as developer, builder, contractor, subcontractor, supplier, material men, architect, engineer and/or general contractor or otherwise, Defendants, caused the Subject Property to be designed, engineered and/or constructed through their own works of labor, and supplying of materials,

1 equipment and services, and through causing other contractors and subcontractors, including Defendants
2 to perform works of labor, and to supply materials and/or equipment and services in order to properly
3 complete the Subject Property.

4 52. Defendants, and each of them, whether developer, builder, contractor, subcontractor,
5 supplier, material men, architect, engineer or otherwise, performed work, labor and/or services upon the
6 Subject Property.

7 53. Defendants were under a duty to exercise ordinary care as builders, contractors,
8 subcontractors, suppliers, material men, manufacturers, engineers or otherwise to avoid reasonably
9 foreseeable injury to users and purchasers of the Subject Property, and knew or should have foreseen
10 with reasonable certainty that purchasers and/or users would suffer the damages set forth herein if said
11 Defendants, and each of them, failed to perform their duty to cause the Subject Property to be designed,
12 engineered and constructed in a proper workmanlike manner and fashion.

13 54. In performing works of a builder and/or contractor, subcontractor, supplier, material man,
14 engineer or otherwise, Defendants breached their duty to Plaintiff and neglected to perform the work,
15 labor and services properly or adequately in that each said Defendant so negligently, carelessly and in an
16 unworkmanlike manner performed the aforesaid work, labor and/or services such that the Subject
17 Property was designed, engineered and/or constructed improperly and without ordinary care.
18 Defendants failed to perform their duty to cause the Subject Property to be designed, engineered and
19 completed in a proper and workmanlike manner and fashion.

20 55. Despite their duty to act reasonably, Defendants breached their respective duties of care
21 by negligently, recklessly and/or intentionally failing to engineer or construct the Subject Property in a
22 good and workmanlike manner.

23 56. Plaintiff is informed and believes, and thereon alleges, that the Subject Property was not
24 constructed in accordance with applicable law or according to the sound standards of engineering and
25 construction, was not constructed in a workmanlike manner, was not free from defective materials, was
26 not of proper durability, reliability, habitability, merchantability, and/or general quality and not fit for its
27 intended use as herein described.

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1 57. Defendants violated the building codes, municipal codes and regulations of the City of
2 Henderson and/or the Nevada Revised Statutes relating to construction of homes, developments, common
3 interest subdivisions, trade professionals, design professionals, construction and sale of real estate.

4 58. Plaintiff is a member of the class of person for whose protection the aforementioned
5 Codes were adopted.

6 59. Plaintiff has sustained damages that are proximately caused by violations of the Building
7 Codes and regulations of the County of Clark, the Uniform Building Codes and/or the Nevada Revised
8 Statutes by Defendants as alleged above.

9 60. As a direct and proximate result of the foregoing violations of codes, negligence, carelessness
10 and unworkmanlike conduct, actions and/or omissions by Defendants, Plaintiff has suffered damages in an
11 amount in excess of Ten Thousand Dollars (\$10,000.00) in order to correct the defective conditions of the
12 Subject Property and to restore it to its proper condition including reasonable expenses of temporary housing
13 reasonably necessary during the repair in an amount to be determined at the time of trial.

14 61. Plaintiff has incurred and will incur expert fees and costs to investigate the defective
15 conditions at the Subject Property to determine the nature, extent, cause of the defects and the
16 reasonable and appropriate repairs.

17 62. Plaintiff has suffered loss of other property damaged by the defective conditions; Plaintiff
18 is presently unaware of the precise amount of the damages, but will establish the same at trial, according
19 to proof.

20 63. As a further direct and proximate result of the defective conditions of the Subject
21 Property, Plaintiff's interests in the Subject Property and the value thereof has been reduced and
22 diminished. All of the above-described damages have occurred in an amount in excess of Ten Thousand
23 Dollars (\$10,000.00) to be established according to proof at the time of trial.

24 64. As a further direct and proximate result of the incomplete and/or defective conditions of
25 the Subject Property, Plaintiff has lost and will continue to lose the use and enjoyment of the Subject
26 Property, including the use of the Subject Property as a result of the restoration required to repair and
27 restore the defects.

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65. Plaintiff is informed and believes, and thereon alleges that as a further direct and proximate result of the negligence and negligence per se of Defendants for the conditions of the Subject Property, Plaintiff was compelled to retain legal counsel to obtain recovery for the defective conditions. Therefore, pursuant to NRS §40.600 *et seq.*, Defendants are liable for those attorney's fees and costs reasonably and necessarily incurred by Plaintiff in order to obtain compensation in a sum to be determined at trial.

VI.
FOURTH CLAIM FOR RELIEF
(Alter Ego Against Defendant LANDS WEST BUILDERS, INC.)

66. Plaintiff incorporates herein by reference all preceding paragraphs as though fully set forth herein.

67. Plaintiff is informed and believes and thereon alleges that Defendant LANDS WEST BUILDERS, INC. is the owner, parent corporation and/or successor-in-interest to Defendant SUNRIDGE BUILDERS, INC.

68. Plaintiff is informed and believes and thereon alleges the identify of Defendant LANDS WEST BUILDERS, INC. and Defendant SUNRIDGE BUILDERS, INC. are in substance one and the same and that Defendant SUNRIDGE BUILDERS, INC. is but the alter ego of Defendant LANDS WEST BUILDERS, INC.

69. Plaintiff is informed and believes and thereon alleges that Defendant SUNRIDGE BUILDERS, INC. is fully influence and governed by Defendant LANDS WEST BUILDERS, INC.

70. Plaintiff is informed and believes and thereon alleges that there is total unity of interest in ownership between Defendant SUNRIDGE BUILDERS, INC. and Defendant LANDS WEST BUILDERS, INC. such that each entity is inseparable from the other.

71. Plaintiff is informed and believes and thereon alleges that the reason for the difference between Defendant LANDS WEST BUILDERS, INC. and its alter ego Defendant SUNRIDGE BUILDERS, INC. is to cause harm or prejudice to those dealing with it, sanctions fraud and promote injustice. In support, Plaintiff is informed and believes and thereon alleges that at all times relevant herein, Defendant LANDS WEST BUILDERS, INC.: (1) was and is the owner of all or substantially all of the stock of Defendant SUNRIDGE BUILDERS, INC.; (2) was the President of Defendant

1 SUNRIDGE BUILDERS, INC.; (3) was and/or is a member of the board of directors of Defendant
2 SUNRIDGE BUILDERS, INC.; and (4) was and is the controlling influence over all of Defendant
3 SUNRIDGE BUILDERS, INC.'S corporate affairs.

4 72. Plaintiff is informed and believes and thereon alleges that at all times relevant herein
5 Defendant LANDS WEST BUILDERS, INC. ignored and ignores the separate existence of Defendant
6 Corporation SUNRIDGE BUILDERS, INC. in numerous ways, including: (1) failure to conduct regular
7 meetings of shareholders and directors; (2) undercapitalizing Defendant SUNRIDGE BUILDERS, INC.;
8 (3) performing unauthorized diversions of funds from Defendant SUNRIDGE BUILDERS, INC. to
9 Defendant LANDS WEST BUILDERS, INC.; (4) failure to observe corporate formalities between
10 Defendant LANDS WEST BUILDERS, INC. and Defendant SUNRIDGE BUILDERS, INC.; (5)
11 required annual meetings are not held; (6) corporate records are not properly maintained; and (7) there is
12 a failure to maintain separate offices and the existence of Defendant SUNRIDGE BUILDERS, INC. as
13 corporate entities are only facades for the activities of Defendant LANDS WEST BUILDERS, INC.
14 who in fact is the corporate alter ego of Defendant SUNRIDGE BUILDERS, INC.

15 73. Plaintiff is informed and believes and thereon alleges that Defendant SUNRIDGE
16 BUILDERS, INC. is virtually insolvent and has ceased operations and Plaintiff therefore invokes the
17 trust fund doctrine and alleges that Defendant LANDS WEST BUILDERS, INC. is placed in a fiduciary
18 relationship, and owes a fiduciary duty to Plaintiff and to all other creditors.

19 74. Plaintiff is informed and believes and thereon alleges that Defendant LANDS WEST
20 BUILDERS, INC. has been paying all defense attorneys' fees and costs of the defense of Defendant
21 SUNRIDGE BUILDERS, INC. in this matter.

22 VII.

23 **FIFTH CLAIM FOR RELIEF**

24 **(Declaratory and Equitable Relief Regarding NRS 40.600 et seq. Against All Defendants)**

25 75. Plaintiff incorporates herein by reference all previous paragraphs inclusive, as though
26 fully set forth herein.

27 76. A dispute has arisen and an actual controversy now exists between Plaintiff and
28 Defendants, and each of them, with respect to Defendants' obligations under NRS §40.600 *et seq.*
(hereinafter "Chapter 40") and Plaintiff's rights thereunder. Plaintiff contends that the defective

1 conditions at issue arose before AB125 was enacted. Plaintiff is informed and believes that Defendants,
2 and each of them, contend to the contrary. Therefore, an actual controversy exists relative to the legal
3 duties and rights of the respective parties, which Plaintiff requests the Court to resolve.

4 77. All of the rights and obligations of the parties hereto arose out of what is actually one
5 transaction or one series of transactions, happenings or events, all of which can be settled and determined
6 in a judgment in this one action. Plaintiff alleges that an actual controversy exists between the parties
7 under the circumstances alleged. A declaration of rights, responsibilities and obligations of Plaintiff and
8 Defendants, and each of them, is essential to determine their respective obligations in connection with
9 Plaintiff's operative Complaint. Plaintiff has no true and speedy remedy at law of any kind.

10 78. As the determination of the foregoing issue is essential to the administration of justice in
11 this case and therefore, Plaintiff respectfully requests the Court to resolve this issue prior to trial.

12 79. It has been necessary for Plaintiffs to retain the services of The Bourassa Law Group to
13 bring this action. Plaintiffs are entitled to recover their attorney's fees, expert fees and costs incurred
14 herein pursuant Nevada law.

15 **VIII.**
16 **SIXTH CLAIM FOR RELIEF**
17 **(Strict Liability against ROES 1 through 50)**

18 80. Plaintiff incorporates herein by reference all previous paragraphs inclusive, as though
19 fully set forth herein.

20 81. ROES 1 through 50 developed, designed, manufactured, supplied, distributed, marketed,
21 sold, and warranted defective products that were used and/or installed into the Subject Property.

22 82. ROES 1 through 50 knew and/or should have known and expected that their products
23 would be placed in the stream of commerce and on the market, and would reach Plaintiff without
24 substantial change and would be installed in the same defective condition in which they were originally
25 designed, manufactured and sold.

26 83. Plaintiff is informed and believes and thereon alleges that ROES 1 through 50's products
27 are defective by design and/or unsuitable for use. As a direct and proximate result, Plaintiff has been
28 injured, damaged and caused harm. The damages include, but are not limited to the cost to replace the
defective units, which can be calculated based on common methods and proof. Incidental damages also

1 include loss of use and function, damage to other property, economic loses including costs of
2 maintenance and/or repair, and all reasonable fees, costs, interest, and/or expenses associated therewith
3 in an amount in excess of Ten Thousand Dollars (\$10,000.00) to be established according to proof at the
4 time of trial.

5 84. It has been necessary for Plaintiff to retain the services of The Bourassa Law Group to
6 bring this action. Plaintiff is entitled to recover their attorney's fees, expert fees and costs incurred
7 herein pursuant Nevada law.

8 **PRAYER FOR RELIEF**

9 Plaintiff realleges and incorporates by reference all Paragraphs of this Complaint as though fully
10 set forth herein and pray for judgment as against the Defendants as follows:

11 1. General and specific damages in excess of this Court's minimum jurisdiction of
12 \$10,000.00 including but not limited to any costs to identify, mitigate, cure or repair any defects
13 or deficiency in the construction of the SUBJECT PROPERTY and improvements and
14 appurtenances thereto, and any and all damages proximately caused thereby, in a sum to be
15 determined according to proof;

16 2. Incidental and consequential damages proximately caused by any defect or deficiency in
17 the construction of the SUBJECT PROPERTY and improvements and appurtenances thereto,
18 including but not limited to the loss of use, relocation and alternative housing, incidental
19 expenses, diminished value, stigma, lost rents and lost business opportunity, all in sums to be
20 determined according to proof;

21 3. All entitlements as set forth in NRS §40.655;

22 4. Reasonable attorney's fees and costs based on the construction contracts and Nevada
23 Revised Statutes;

24 5. All interest as provided by law, including prejudgment interest; and

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DATED this 22nd day of August, 2016.

By: /s/ Jennifer A. Fornetti
 MARK J. BOURASSA, ESQ.
 Nevada Bar No. 7999
 JENNIFER A. FORNETTI, ESQ.
 Nevada Bar No. 7644
 8668 Spring Mountain Road, Suite 101
 Las Vegas, Nevada 89117

Attorneys for Plaintiff

1 **ACOMP**

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12 *jfornetti@blgwins.com*

13 *Attorneys for Plaintiff*

14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 ***

17 JANETTE BYRNE, as Trustee of the UOFM
18 TRUST,

19 Plaintiff,

20 vs.

21 SUNRIDGE BUILDERS, INC., a Nevada
22 Corporation; LANDS WEST BUILDERS, INC., a
23 Nevada Corporation; DOES 1 through 100 and/or
24 ROES 1 through 50, inclusive,

25 Defendants.

26) **Case No.: A-16-742143-D**

27) **Dept. No.: XVI**

28)

29) **AMENDED COMPLAINT AND DEMAND**

30) **FOR JURY TRIAL**

31)

32) **Arbitration Exempt:**

33) ***Damages in Excess of \$50,000.00**

34) ***Declaratory Relief Requested**

35)

36)

37)

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39)

40 **COMPLAINT**

41 COMES NOW, PLAINTIFF JANETTE BYRNE, on behalf of UOFM TRUST, (hereinafter
42 "Plaintiff"), by and through her counsel of record, The Bourassa Law Group and hereby submits her
43 Amended Complaint against Defendants, and each of them, and alleges as follows:
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I.
PARTIES

1. PLAINTIFF JANETTE BYRNE, as trustee of UOFM TRUST, (hereinafter "Plaintiff") is and was at all times relevant herein an individual residing in Clark County, Nevada.

2. Plaintiff is, and at all times relevant hereto, was the owner of record for the home located at 578 Lairmont Place in Henderson, Nevada (hereinafter "Subject Property").

3. At all times relevant herein, SUNRIDGE BUILDERS, INC. (hereinafter "Sunridge"), a Nevada corporation; LANDS WEST BUILDERS, INC. (hereinafter "Lands West"), a Nevada corporation; DOES 1 through 100; and ROES 1 through 50 inclusive, and each of them, were legal entities or individuals doing business in the State of Nevada and who designed, developed, constructed, improved, manufactured and/or supplied material for the Subject Property.

4. Defendants, and each of them, were developers, contractors, subcontractors, suppliers, manufacturers and/or design professionals who designed, developed, constructed, improved, altered, repaired, supplied material, and/or under certain works of improvement upon the Subject Property, for the benefit of Plaintiff.

5. Plaintiff is informed and believes, and on that basis, alleges that Defendants are, and at all times relevant were, individuals, sole proprietors, partnerships, corporations or other business entities doing business in Clark County, Nevada.

6. At all times relevant herein, Defendants, and each of them, were legal entities or individuals doing business in the State of Nevada. The true names and capacities, whether individual, corporate, associate or otherwise of DOES 1 through 100 and ROES 1 through 50, are unknown to Plaintiff, who therefore, sues said legal entities or individuals by such fictitious names. Plaintiff is informed and believes, and thereon alleges, that each of said legal entities or individuals are responsible in some manner for the events and happenings and proximately caused the injuries and damages herein alleged by Plaintiff in her operative Complaint. Plaintiff will ask leave of this Court to amend her operative Complaint to insert the true names and capacities of DOES 1 through 100 and ROES 1 through 50 and state the appropriate charging allegations when that information has been ascertained.

7. Defendants, and each of them, were the agents, servants, employees, and/or representatives of each other in doing the things alleged herein and in doing so were acting within the scope of their respective agency.

8. Defendants, and each of them, undertook certain works of improvement upon the Subject Property, including all works of development, design and construction for the benefit of all owners of the Subject Property, including Plaintiff.

II. GENERAL ALLEGATIONS

9. Plaintiff incorporates herein by reference, all preceding paragraphs as though fully set forth herein.

10. Defendants were engaged in the business of planning, developing, designing, constructing, manufacturing materials, manufacturing products, supplying materials and/or supplying products for use at residential real property in County of Clark, State of Nevada.

11. Defendants acted as the developer/builder/contractor of the Subject Property and were directly responsible for the construction and/or supervision of the construction of the Subject Property.

12. Defendants, and each of them, undertook certain works of improvement upon the Subject Property, including all works of development, design and construction of the Subject Property, as well as manufacturing products, supplying materials and supplying products for the Subject Property, which were intended to be used as a residential dwelling, which could be sold to and used by members of the general public for the purpose of a residence and said Defendants knew or reasonably should have known that persons who would purchase said units would do so without inspecting for defects set forth herein.

13. Defendants, and each of them, failed to properly and adequately investigate, design, inspect, plan, engineer, supervise, construct, produce, manufacture, develop, prepare, market, distribute, and/or supply the Subject Property and its components in that said Subject Property has experienced, and continues to experience, incomplete work pursuant to the contracts, defects and deficiencies, and damages resulting therefrom.

1 14. Defendants, and each of them, impliedly warranted that the real property, structures
2 thereon and products and material therein were of merchantable quality and were constructed, supplied
3 and/or manufactured in a reasonable and workmanlike manner.

4 15. The Subject Property, and its components, in particular, are not of merchantable quality,
5 but, in fact, are defective and fail to meet all applicable building codes and industry standards and have
6 caused damage to the Subject Property.

7 16. Defendants, and each of them, failed to properly and adequately investigate, design,
8 inspect, plan, engineer, supervise, construct, produce, manufacture, develop, prepare, market, distribute,
9 and/or supply the Subject Property and its components in that said Subject Property has experienced,
10 and continues to experience, incomplete work pursuant to the contracts, defects and deficiencies, and
11 damages resulting therefrom.

12 17. The Subject Property may be defective or deficient in other ways and to other extents not
13 presently known to Plaintiff, and not specified above. Plaintiff reserves the right to amend this
14 Complaint upon discovery of any additional defects or deficiencies not referenced herein and/or to
15 present evidence of the same at the trial of this action.

16 18. Plaintiff has complied with all prefiling requirements of Nevada Revised Statutes
17 §40.600 through §40.695.

18 19. To date, Defendants have not resolved Plaintiff's claims as set forth in Plaintiff's notice
19 as required by NRS §40.6472.

20 20. To date, Defendants, and each of them, have failed and continue to fail to perform all
21 necessary repairs or complete the work necessary to repair all the defective conditions at the Subject
22 Property.

23 21. Prior to placing the Defendants on notice of her claims of construction deficiencies,
24 Plaintiff became aware of facts which thereafter, upon investigation, resulted in Plaintiff being informed
25 that portions of the Subject Property has been incompletely and/or inadequately constructed, developed,
26 designed, supervised or otherwise improved so that the above-described defective conditions existed and
27 do now exist and the works of improvement are defective, not of merchantable quality and not fit for the
28 purpose of permitting persons to reside thereabouts in a proper manner and fashion.

1 22. The damages to the Subject Property known to Plaintiff at this time are progressive and
2 continue to worsen.

3 23. Plaintiff is informed and believes and based thereon alleges that any and all repair
4 attempts by Defendants failed to adequately correct said damages and deficiencies thereby resulting in
5 further property damages caused thereby.

6 24. Plaintiff is informed and believes and thereon alleges that instead of causing the
7 necessary and required reconstruction and repairs of the Subject Property, Defendants have caused
8 cosmetic, temporary or ineffective repairs to be made to various portions of the Subject Property for the
9 purpose of leading Plaintiff to believe that said Defendants were resolving and correcting all
10 deficiencies. By virtue of such conduct, said Defendants are estopped to assert that Plaintiff has not
11 commenced this action in a timely fashion and are further estopped to assert that Plaintiff may not seek
12 the damages herein sought.

13 25. In the event that Plaintiff failed to file suit within the statutorily prescribed time period
14 for any allegations contained herein, Plaintiff alleges that she detrimentally relied upon the conduct and
15 representations of the Defendants, and each of them in making repairs and/or representations to Plaintiff
16 concerning the Subject Property and therefore the statute of limitations and repose are thus tolled.
17 Notwithstanding these actions, this lawsuit is being filed to stop the running of any and all applicable
18 statutes of repose and limitations.

19 26. Plaintiff is informed and believes and thereon alleges that the defects arose out of, were
20 attributable to and are directly and proximately caused by the above-described deficiency in the design,
21 specification, planning, supervision, observation of construction, development and/or improvement and
22 any repairs of the Subject Property and that prior to the time when it was discovered by Plaintiff, as set
23 forth herein, it could not have been discovered by the exercise of reasonable diligence.

24 27. Plaintiff has standing to commence this action against the Defendants and each of them.

25 28. Plaintiff seeks all available damages statutorily codified in NRS §40.655 on behalf of
26 herself and as the homeowner of the Subject Property developed, constructed and designed by the
27 Defendants and all other damages and remedies available by law.

28 ///

III.
FIRST CLAIM FOR RELIEF
(Breach of Implied Warranty Against Defendants)

29. Plaintiff incorporates herein by reference, all preceding paragraphs as though fully set forth herein.

30. Defendants impliedly warranted, among other express and/or implied warranties, that the Subject Property was designed and constructed in accordance with applicable law, according to sound standards of construction and engineering, in a commercially reasonable, habitable and workmanlike manner, free from defective materials and fit and safe for human habitation.

31. Defendants also impliedly warranted, among other express and/or implied warranties, that the Subject Property was of merchantable quality and fit for its intended purposes as a residence without significant defective causes, effects or conditions un-remedied or unrepaired by said Defendants.

32. Plaintiff is informed and believes and thereon alleges that the Subject Property was not constructed in accordance with applicable law or according to the sound standards of engineering and construction, was not constructed in a workmanlike manner, was not free from defective materials, was not of proper durability, reliability, habitability, merchantability, and/or general quality and not fit for its intended use as herein described.

33. Defendants breached their implied warranties and covenants of repair because the Subject Property is in disrepair, unfit and unsafe in violation of the Nevada Revised Statutes and other codes and regulations.

34. Plaintiff is informed and believes and thereon alleges that as a direct and proximate result of the defects set forth herein, Plaintiff has suffered damages in an amount precisely unknown, but believed to be within the jurisdiction of this Court in that it has been and will hereafter be required to perform works of repair, restoration and construction to portions of the structures to prevent further damages and to restore the structures to their proper condition.

35. As a direct result of the foregoing, Plaintiff has suffered costs and out of pocket expenses, in an amount in excess of Ten Thousand Dollars (\$10,000.00), to be shown specifically at the time of trial.

36. As a further direct and proximate result of the Defendants' breach of implied warranties related to the Subject Property, Plaintiff was compelled to retain legal counsel to obtain recovery for the

defective conditions. Therefore, pursuant to NRS §40.600 *et seq.*, Defendants are liable for those attorney's fees and costs reasonably and necessarily incurred by Plaintiff in order to obtain compensation in a sum to be determined at trial.

IV.
SECOND CLAIM FOR RELIEF
(Breach of Express Warranty Against Defendants)

37. Plaintiff incorporates herein by reference, all preceding paragraphs as though fully set forth herein.

38. Plaintiff is informed and believes and based thereon alleges that Defendants expressly warranted, through advertisements and other documentation, that the Subject Property was designed and constructed in accordance with applicable law, according to sound standards of construction and engineering, in a commercially reasonable, habitable and workmanlike manner, free from defective materials and fit and safe for human habitation.

39. Plaintiff relied on Defendants' express representation that the Subject property was of merchantable quality suitable for its intended purpose, without major and/or significant defective causes, effects or conditions un-remedied or unrepaired by said Defendants.

40. Defendants breached these express warranties in the design, specification, planning, supervision, observation of construction, development and/or improvement and repair.

41. As a direct and proximate result of the breach of the express warranties by Defendants, Plaintiff suffered damages stemming from the construction defects at the real property and structures thereon.

42. Plaintiff is informed and believes and thereon alleges that, as a direct and proximate result of the defects set forth herein, Plaintiff has suffered damages in an amount precisely unknown, but believed to be within the jurisdiction of this Court in that it has been and will hereafter be required to perform works of repair, restoration and construction to portions of the structures to prevent further damages and to restore the structures to their proper condition.

43. As a direct and proximate result of the foregoing violations of codes, negligence, carelessness and unworkmanlike conduct, actions and/or omissions by Defendants, Plaintiff has suffered damages in an amount in excess of Ten Thousand Dollars (\$10,000.00) in order to correct the defective

1 conditions of the Subject Property and to restore it to its proper condition including reasonable expenses
2 of temporary housing reasonably necessary during the repair in an amount to be determined at the time
3 of trial.

4 44. Plaintiff has incurred and will incur expert fees and costs to investigate the defective
5 conditions at the Subject Property to determine the nature, extent, cause of the defects and the
6 reasonable and appropriate repairs.

7 45. Plaintiff has suffered loss of other property damaged by the defective conditions; Plaintiff
8 is presently unaware of the precise amount of the damages, but will establish the same at trial, according
9 to proof.

10 46. As a further direct and proximate result of the defective conditions of the Subject
11 Property, Plaintiff's interests in the Subject Property and the value thereof has been reduced and
12 diminished. All of the above-described damages have occurred in an amount in excess of Ten Thousand
13 Dollars (\$10,000.00) to be established according to proof at the time of trial.

14 47. As a further direct and proximate result of the incomplete and/or defective conditions of
15 the Subject Property, Plaintiff has lost and will continue to lose the use and enjoyment of the Subject
16 Property, including the use of the Subject Property as a result of the restoration required to repair and
17 restore the defects.

18 48. Plaintiff is informed and believes, and thereon alleges that as a further direct and
19 proximate result of the breach of express warranties, Plaintiff was compelled to retain legal counsel to
20 obtain recovery for the defective conditions. Therefore, pursuant to NRS §40.600 *et seq.*, Defendants
21 are liable for those attorney's fees and costs reasonably and necessarily incurred by Plaintiff in order to
22 obtain compensation in a sum to be determined at trial.

23 **V.**

24 **THIRD CLAIM FOR RELIEF**

25 **(Negligence/Negligence Per Se Against Defendants)**

26 49. Plaintiff incorporates herein by reference, all preceding paragraphs as though fully set
27 forth herein.

28 50. Defendants, and each of them, were builders, contractors, subcontractors, suppliers,
material men, architects and/or engineers, or other persons, entities or professionals who participated in

1 the process of developing, designing, engineering and/or construction of the Subject Property and who
2 performed works of labor, supplied materials, equipment and/or services necessary for the building and
3 construction, including supervision of construction of the Subject Property.

4 51. In their capacity as developer, builder, contractor, subcontractor, supplier, material men,
5 architect, engineer and/or general contractor or otherwise, Defendants, caused the Subject Property to be
6 designed, engineered and/or constructed through their own works of labor, and supplying of materials,
7 equipment and services, and through causing other contractors and subcontractors, including Defendants
8 to perform works of labor, and to supply materials and/or equipment and services in order to properly
9 complete the Subject Property.

10 52. Defendants, and each of them, whether developer, builder, contractor, subcontractor,
11 supplier, material men, architect, engineer or otherwise, performed work, labor and/or services upon the
12 Subject Property.

13 53. Defendants were under a duty to exercise ordinary care as builders, contractors,
14 subcontractors, suppliers, material men, manufacturers, engineers or otherwise to avoid reasonably
15 foreseeable injury to users and purchasers of the Subject Property, and knew or should have foreseen
16 with reasonable certainty that purchasers and/or users would suffer the damages set forth herein if said
17 Defendants, and each of them, failed to perform their duty to cause the Subject Property to be designed,
18 engineered and constructed in a proper workmanlike manner and fashion.

19 54. In performing works of a builder and/or contractor, subcontractor, supplier, material man,
20 engineer or otherwise, Defendants breached their duty to Plaintiff and neglected to perform the work,
21 labor and services properly or adequately in that each said Defendant so negligently, carelessly and in an
22 unworkmanlike manner performed the aforesaid work, labor and/or services such that the Subject
23 Property was designed, engineered and/or constructed improperly and without ordinary care.
24 Defendants failed to perform their duty to cause the Subject Property to be designed, engineered and
25 completed in a proper and workmanlike manner and fashion.

26 55. Despite their duty to act reasonably, Defendants breached their respective duties of care
27 by negligently, recklessly and/or intentionally failing to engineer or construct the Subject Property in a
28 good and workmanlike manner.

1 56. Plaintiff is informed and believes, and thereon alleges, that the Subject Property was not
2 constructed in accordance with applicable law or according to the sound standards of engineering and
3 construction, was not constructed in a workmanlike manner, was not free from defective materials, was
4 not of proper durability, reliability, habitability, merchantability, and/or general quality and not fit for its
5 intended use as herein described.

6 57. Defendants violated the building codes, municipal codes and regulations of the City of
7 Henderson and/or the Nevada Revised Statutes relating to construction of homes, developments, common
8 interest subdivisions, trade professionals, design professionals, construction and sale of real estate.

9 58. Plaintiff is a member of the class of person for whose protection the aforementioned
10 Codes were adopted.

11 59. Plaintiff has sustained damages that are proximately caused by violations of the Building
12 Codes and regulations of the County of Clark, the Uniform Building Codes and/or the Nevada Revised
13 Statutes by Defendants as alleged above.

14 60. As a direct and proximate result of the foregoing violations of codes, negligence, carelessness
15 and unworkmanlike conduct, actions and/or omissions by Defendants, Plaintiff has suffered damages in an
16 amount in excess of Ten Thousand Dollars (\$10,000.00) in order to correct the defective conditions of the
17 Subject Property and to restore it to its proper condition including reasonable expenses of temporary housing
18 reasonably necessary during the repair in an amount to be determined at the time of trial.

19 61. Plaintiff has incurred and will incur expert fees and costs to investigate the defective
20 conditions at the Subject Property to determine the nature, extent, cause of the defects and the
21 reasonable and appropriate repairs.

22 62. Plaintiff has suffered loss of other property damaged by the defective conditions; Plaintiff
23 is presently unaware of the precise amount of the damages, but will establish the same at trial, according
24 to proof.

25 63. As a further direct and proximate result of the defective conditions of the Subject
26 Property, Plaintiff's interests in the Subject Property and the value thereof has been reduced and
27 diminished. All of the above-described damages have occurred in an amount in excess of Ten Thousand
28 Dollars (\$10,000.00) to be established according to proof at the time of trial.

64. As a further direct and proximate result of the incomplete and/or defective conditions of the Subject Property, Plaintiff has lost and will continue to lose the use and enjoyment of the Subject Property, including the use of the Subject Property as a result of the restoration required to repair and restore the defects.

65. Plaintiff is informed and believes, and thereon alleges that as a further direct and proximate result of the negligence and negligence per se of Defendants for the conditions of the Subject Property, Plaintiff was compelled to retain legal counsel to obtain recovery for the defective conditions. Therefore, pursuant to NRS §40.600 *et seq.*, Defendants are liable for those attorney's fees and costs reasonably and necessarily incurred by Plaintiff in order to obtain compensation in a sum to be determined at trial.

VI.
FOURTH CLAIM FOR RELIEF
(Alter Ego Against Defendant LANDS WEST BUILDERS, INC.)

66. Plaintiff incorporates herein by reference all preceding paragraphs as though fully set forth herein.

67. Plaintiff is informed and believes and thereon alleges that Defendant LANDS WEST BUILDERS, INC. is the owner, parent corporation and/or successor-in-interest to Defendant SUNRIDGE BUILDERS, INC.

68. Plaintiff is informed and believes and thereon alleges the identify of Defendant LANDS WEST BUILDERS, INC. and Defendant SUNRIDGE BUILDERS, INC. are in substance one and the same and that Defendant SUNRIDGE BUILDERS, INC. is but the alter ego of Defendant LANDS WEST BUILDERS, INC.

69. Plaintiff is informed and believes and thereon alleges that Defendant SUNRIDGE BUILDERS, INC. is fully influenced and governed by Defendant LANDS WEST BUILDERS, INC.

70. Plaintiff is informed and believes and thereon alleges that there is total unity of interest in ownership between Defendant SUNRIDGE BUILDERS, INC. and Defendant LANDS WEST BUILDERS, INC. such that each entity is inseparable from the other.

71. Plaintiff is informed and believes and thereon alleges that the reason for the difference between Defendant LANDS WEST BUILDERS, INC. and its alter ego Defendant SUNRIDGE

1 BUILDERS, INC. is to cause harm or prejudice to those dealing with it, sanctions fraud and promote
2 injustice. In support, Plaintiff is informed and believes and thereon alleges that at all times relevant
3 herein, Defendant LANDS WEST BUILDERS, INC.: (1) was and is the owner of all or substantially all
4 of the stock of Defendant SUNRIDGE BUILDERS, INC.; (2) was the President of Defendant
5 SUNRIDGE BUILDERS, INC.; (3) was and/or is a member of the board of directors of Defendant
6 SUNRIDGE BUILDERS, INC.; and (4) was and is the controlling influence over all of Defendant
7 SUNRIDGE BUILDERS, INC.'S corporate affairs.

8 72. Plaintiff is informed and believes and thereon alleges that at all times relevant herein
9 Defendant LANDS WEST BUILDERS, INC. ignored and ignores the separate existence of Defendant
10 Corporation SUNRIDGE BUILDERS, INC. in numerous ways, including: (1) failure to conduct regular
11 meetings of shareholders and directors; (2) undercapitalizing Defendant SUNRIDGE BUILDERS, INC.;
12 (3) performing unauthorized diversions of funds from Defendant SUNRIDGE BUILDERS, INC. to
13 Defendant LANDS WEST BUILDERS, INC.; (4) failure to observe corporate formalities between
14 Defendant LANDS WEST BUILDERS, INC. and Defendant SUNRIDGE BUILDERS, INC.; (5)
15 required annual meetings are not held; (6) corporate records are not properly maintained; and (7) there is
16 a failure to maintain separate offices and the existence of Defendant SUNRIDGE BUILDERS, INC. as
17 corporate entities are only facades for the activities of Defendant LANDS WEST BUILDERS, INC.
18 who in fact is the corporate alter ego of Defendant SUNRIDGE BUILDERS, INC.

19 73. Plaintiff is informed and believes and thereon alleges that Defendant SUNRIDGE
20 BUILDERS, INC. is virtually insolvent and has ceased operations and Plaintiff therefore invokes the
21 trust fund doctrine and alleges that Defendant LANDS WEST BUILDERS, INC. is placed in a fiduciary
22 relationship, and owes a fiduciary duty to Plaintiff and to all other creditors.

23 74. Plaintiff is informed and believes and thereon alleges that Defendant LANDS WEST
24 BUILDERS, INC. has been paying all defense attorneys' fees and costs of the defense of Defendant
25 SUNRIDGE BUILDERS, INC. in this matter.

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VII.

FIFTH CLAIM FOR RELIEF

(Successor Liability Against Defendant LANDS WEST BUILDERS, INC.)

75. Plaintiff incorporates herein by reference all preceding paragraphs as though fully set forth herein.

76. Plaintiff is informed and believes and thereon alleges that Defendant LANDS WEST BUILDERS, INC. is the successor-in-interest to Defendant SUNRIDGE BUILDERS, INC.

77. Plaintiff is informed and believes and thereon alleges that Defendant LANDS WEST BUILDERS, INC. expressly or impliedly agreed to assume the debts of Defendant SUNRIDGE BUILDERS, INC.

78. Plaintiff is informed and believes and thereon alleges that Defendants LANDS WEST BUILDERS, INC. and SUNRIDGE BUILDERS, INC. have consolidated or merged operations.

79. Plaintiff is informed and believes that LANDS WEST BUILDERS, INC. is merely the continuation of SUNRIDGE BUILDERS, INC.

80. Plaintiff is informed and believes and thereon alleges that any transactions between LANDS WEST BUILDERS, INC. and SUNRIDGE BUILDERS, INC. were fraudulently made in order for SUNRIDGE BUILDERS, INC. to escape liability for debts to Plaintiff.

81. Therefore, Defendant LANDS WEST BUILDERS, INC. is liable to Plaintiff to the same extent as Defendant SUNRIDGE BUILDERS, INC.

VIII.

SIXTH CLAIM FOR RELIEF

(Declaratory and Equitable Relief Regarding NRS 40.600 et seq. Against All Defendants)

82. Plaintiff incorporates herein by reference all previous paragraphs inclusive, as though fully set forth herein.

83. A dispute has arisen and an actual controversy now exists between Plaintiff and Defendants, and each of them, with respect to Defendants' obligations under NRS §40.600 *et seq.* (hereinafter "Chapter 40") and Plaintiff's rights thereunder. Plaintiff contends that the defective conditions at issue arose before AB125 was enacted. Plaintiff is informed and believes that Defendants, and each of them, contend to the contrary. Therefore, an actual controversy exists relative to the legal duties and rights of the respective parties, which Plaintiff requests the Court to resolve.

84. All of the rights and obligations of the parties hereto arose out of what is actually one transaction or one series of transactions, happenings or events, all of which can be settled and determined in a judgment in this one action. Plaintiff alleges that an actual controversy exists between the parties under the circumstances alleged. A declaration of rights, responsibilities and obligations of Plaintiff and Defendants, and each of them, is essential to determine their respective obligations in connection with Plaintiff's operative Complaint. Plaintiff has no true and speedy remedy at law of any kind.

85. As the determination of the foregoing issue is essential to the administration of justice in this case and therefore, Plaintiff respectfully requests the Court to resolve this issue prior to trial.

86. It has been necessary for Plaintiffs to retain the services of The Bourassa Law Group to bring this action. Plaintiffs are entitled to recover their attorney's fees, expert fees and costs incurred herein pursuant Nevada law.

IX.
SEVENTH CLAIM FOR RELIEF
(Strict Liability against ROES 1 through 50)

87. Plaintiff incorporates herein by reference all previous paragraphs inclusive, as though fully set forth herein.

88. ROES 1 through 50 developed, designed, manufactured, supplied, distributed, marketed, sold, and warranted defective products that were used and/or installed into the Subject Property.

89. ROES 1 through 50 knew and/or should have known and expected that their products would be placed in the stream of commerce and on the market, and would reach Plaintiff without substantial change and would be installed in the same defective condition in which they were originally designed, manufactured and sold.

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90. Plaintiff is informed and believes and thereon alleges that ROES 1 through 50's products are defective by design and/or unsuitable for use. As a direct and proximate result, Plaintiff has been injured, damaged and caused harm. The damages include, but are not limited to the cost to replace the defective units, which can be calculated based on common methods and proof. Incidental damages also include loss of use and function, damage to other property, economic losses including costs of maintenance and/or repair, and all reasonable fees, costs, interest, and/or expenses associated therewith in an amount in excess of Ten Thousand Dollars (\$10,000.00) to be established according to proof at the time of trial.

91. It has been necessary for Plaintiff to retain the services of The Bourassa Law Group to bring this action. Plaintiff is entitled to recover their attorney's fees, expert fees and costs incurred herein pursuant Nevada law.

PRAYER FOR RELIEF

Plaintiff realleges and incorporates by reference all Paragraphs of this Complaint as though fully set forth herein and pray for judgment as against the Defendants as follows:

1. General and specific damages in excess of this Court's minimum jurisdiction of \$10,000.00 including but not limited to any costs to identify, mitigate, cure or repair any defects or deficiency in the construction of the SUBJECT PROPERTY and improvements and appurtenances thereto, and any and all damages proximately caused thereby, in a sum to be determined according to proof;

2. Incidental and consequential damages proximately caused by any defect or deficiency in the construction of the SUBJECT PROPERTY and improvements and appurtenances thereto, including but not limited to the loss of use, relocation and alternative housing, incidental expenses, diminished value, stigma, lost rents and lost business opportunity, all in sums to be determined according to proof;

3. All entitlements as set forth in NRS §40.655;

4. Reasonable attorney's fees and costs based on the construction contracts and Nevada Revised Statutes;

5. All interest as provided by law, including prejudgment interest; and

1 6. Such other declaratory and equitable relief as the court deems just and proper.

2 DATED this 14th day of October, 2016.

3 THE BOURASSA LAW GROUP

4
5 By: /s/ Jennifer A. Fornetti
6 MARK J. BOURASSA, ESQ.
7 Nevada Bar No. 7999
8 JENNIFER A. FORNETTI, ESQ.
9 Nevada Bar No. 7644
10 8668 Spring Mountain Road, Suite 101
11 Las Vegas, Nevada 89117

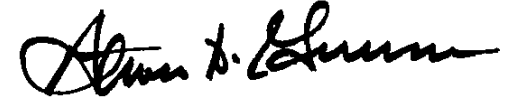
12 *Attorneys for Plaintiff*

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DATED this 14th day of October, 2016.

/s/ Jennifer A. Fornetti
 MARK J. BOURASSA, ESQ.
 Nevada Bar No. 7999
 JENNIFER A. FORNETTI, ESQ.
 Nevada Bar No. 7644
 8668 Spring Mountain Road, Suite 101
 Las Vegas, Nevada 89117

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CLERK OF THE COURT

1 **ANSC**
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10 Facsimile: (702) 997-3800
11 *Attorneys for Defendant,*
12 *Sunridge Builders, Inc.*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 JANETTE BYRNE, as Trustee of the UOFM
16 TRUST,

17 Plaintiffs,

18 v.

19 SUNRIDGE BUILDERS, INC., a Nevada
20 Corporation; LANDS WEST BUILDERS,
21 INC., a Nevada Corporation; DOES I through
22 100 and/or ROES 1 through 50, inclusive,

23 Defendants.

CASE NO.: A-16-742143-D

DEPT: XVI

**DEFENDANT SUNRIDGE BUILDERS,
INC.'S ANSWER TO PLAINTIFF'S
AMENDED COMPLAINT**

24 Defendant, SUNRIDGE BUILDERS, INC., (hereinafter "SUNRIDGE") by and through
25 its counsel of record, ATHANASIA E. DALACAS, ESQ., of the law offices of RESNICK &
26 LOUIS, P.C., hereby answers Plaintiff's Amended Complaint as follows:
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1 I.

2 **PARTIES**

3 1. Answering Paragraphs 1, 2, 4, 5, 6, 7 and 8 of Plaintiff's Amended Complaint,
4 SUNRIDGE lacks sufficient information upon which to admit or deny the allegations made and,
5 on that basis, denies each and every allegation contained therein.

6 2. Answering Paragraph 3 of Plaintiff's Amended Complaint, SUNRIDGE admits the
7 allegations contained therein as to SUNRIDGE, but lacks sufficient information as to the
8 remainder of the Defendants.

9 II.

10 **GENERAL ALLEGATIONS**

11 3. Answering Paragraphs 9, 10, 11 and 14 of Plaintiff's Amended Complaint,
12 SUNRIDGE lacks sufficient information upon which to admit or deny the allegations made and,
13 on that basis, denies each and every allegation contained therein.

14 4. Answering Paragraphs 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28
15 of Plaintiff's Amended Complaint, Defendant specifically and generally deny each and every
16 allegation contained therein.

17 III.

18 **FIRST CLAIM FOR RELIEF**

19 **(Breach of Implied Warranty Against Defendants)**

20 5. Answering Paragraph 29 of Plaintiff's Amended Complaint, SUNRIDGE lacks
21 sufficient information upon which to admit or deny the allegations made and, on that basis,
22 denies each and every allegation contained therein.

23 6. Answering Paragraphs 30, 31, 32, 33, 34, 35 and 36 of Plaintiff's Amended
24 Complaint, Defendant specifically and generally deny each and every allegation contained
25 therein.
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IV.

SECOND CLAIM FOR RELIEF

(Breach of Express Warranty Against Defendants)

7. Answering Paragraph 37 of Plaintiff’s Amended Complaint, SUNRIDGE lacks sufficient information upon which to admit or deny the allegations made and, on that basis, denies each and every allegation contained therein.

8. Answering Paragraphs 38, 39, 40, 41, 42, 43, 44, 45, 46, 47 and 48 of Plaintiff’s Amended Complaint, Defendant specifically and generally deny each and every allegation contained therein.

V.

THIRD CLAIM FOR RELIEF

(Negligence/Negligence Per Se Against Defendants)

9. Answering Paragraph 49 of Plaintiff’s Amended Complaint, SUNRIDGE lacks sufficient information upon which to admit or deny the allegations made and, on that basis, denies each and every allegation contained therein.

10. Answering Paragraphs 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64 and 65 of Plaintiff’s Amended Complaint, Defendant specifically and generally deny each and every allegation contained therein.

VI.

FOURTH CLAIM FOR RELIEF

(Alter Ego Against Defendant LANDS WEST BUILDERS, INC.)

11. Answering Paragraph 66 of Plaintiff’s Amended Complaint, SUNRIDGE lacks sufficient information upon which to admit or deny the allegations made and, on that basis, denies each and every allegation contained therein.

12. Answering Paragraphs 67, 68, 69, 70, 71, 72, 73 and 74 of Plaintiff's Amended Complaint, Defendant specifically and generally deny each and every allegation contained therein.

VII.

FIFTH CLAIM FOR RELIEF

(Successor Liability Against Defendant LANDS WEST BUILDERS, INC.)

13. Answering Paragraph 75 of Plaintiff's Amended Complaint, SUNRIDGE lacks sufficient information upon which to admit or deny the allegations made and, on that basis, denies each and every allegation contained therein.

14. Answering Paragraphs 76, 77, 78, 79, 80 and 81 of Plaintiff's Amended Complaint, Defendant specifically and generally deny each and every allegation contained therein.

VIII.

SIXTH CLAIM FOR RELIEF

(Declaratory and Equitable Relief Regarding NRS 40.600 et seq. Against All Defendants)

15. Answering Paragraph 82 of Plaintiff's Amended Complaint, SUNRIDGE lacks sufficient information upon which to admit or deny the allegations made and, on that basis, denies each and every allegation contained therein.

16. Answering Paragraphs 83, 84, 85 and 86 of Plaintiff's Amended Complaint, Defendant specifically and generally deny each and every allegation contained therein.

IX.

SEVENTH CLAIM FOR RELIEF

(Strict Liability against ROES 1 through 50))

17. Answering Paragraph 87 of Plaintiff's Amended Complaint, SUNRIDGE lacks sufficient information upon which to admit or deny the allegations made and, on that basis, denies each and every allegation contained therein.

1 18. Answering Paragraphs 88, 89, 90 and 91 Plaintiff's Amended Complaint, Defendant
2 specifically and generally deny each and every allegation contained therein.
3

4 **AFFIRMATIVE DEFENSES**

5 **FIRST AFFIRMATIVE DEFENSE**

6 This Defendant denies the allegations of the Amended Complaint, and each cause of
7 action, and each paragraph in each cause of action, and each and every part thereof, including a
8 denial that Plaintiff was damaged in the sum or sums alleged, or to be alleged, or any other sum
9 or sums whatsoever.

10 **SECOND AFFIRMATIVE DEFENSE**

11 This Defendant denies that by reason of any act or omission, fault, conduct or liability on
12 the part of this answering Defendant, whether negligent, careless, unlawful or whether as
13 alleged, or otherwise, Plaintiff was injured or damaged in any of the amounts alleged, or in any
14 other manner or amount whatsoever; this answering Defendant further denies that this answering
15 Defendant was negligent, careless, reckless, wanton, acted unlawfully or are liable, whether in
16 the manner alleged or otherwise.

17 **THIRD AFFIRMATIVE DEFENSE**

18 This Defendant is informed and believes, and thereon alleges, that the Amended
19 Complaint, and each and every cause of action stated therein, fails to state facts sufficient to
20 constitute a cause of action, or any cause of action, as against this answering Defendant.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 This Defendant is informed and believes, and thereon alleges, that Plaintiff's Amended
23 Complaint is barred by issue preclusion and/or the Doctrine of Res Judicata.

24 **FIFTH AFFIRMATIVE DEFENSE**

25 This Defendant is informed and believes, and thereon alleges, that if Plaintiff suffered or
26 sustained any loss, injury, damage or detriment, the same is directly and proximately caused and
27 contributed to, in whole or in part, by the breach of warranty, conduct, acts, omissions, activities,
28

1 carelessness, recklessness, negligence, and/or intentional misconduct of Plaintiff, thereby
2 completely or partially barring Plaintiffs' recovery herein.

3 **SIXTH AFFIRMATIVE DEFENSE**

4 This Defendant is informed and believes, and thereon alleges, that it is not legally
5 responsible in any fashion with respect to the damages and injuries claimed by Plaintiff;
6 however, if this Defendant is subjected to any liability to Plaintiffs, it will be due, in whole or in
7 part, to the breach of warranty, acts, omissions, activities, carelessness, recklessness, and
8 negligence of others; wherefore any recovery obtained by Plaintiff against this Defendant should
9 be reduced in proportion to the respective negligence and fault and legal responsibility of all
10 other parties, persons and entities, their agents, servants and employees who contributed to
11 and/or caused any such injury and/or damages, in accordance with the law of comparative
12 negligence; consequently, this Defendant is informed and believes, and thereon alleges, that the
13 liability of this answering Defendant, if any, is limited in direct proportion to the percentage of
14 fault actually attributed to this answering Defendant.

15 **SEVENTH AFFIRMATIVE DEFENSE**

16 If this Defendant is found responsible in damages to Plaintiff or some other party,
17 whether as alleged or otherwise, then this Defendant is informed and believes, and thereon
18 alleges, that the liability will be predicated upon the active conduct of Plaintiff, whether by
19 negligence, breach of warranty, strict liability in tort or otherwise, which unlawful conduct
20 proximately caused the alleged incident and that Plaintiff's action against this Defendant is
21 barred by that active and affirmative conduct.

22 **EIGHTH AFFIRMATIVE DEFENSE**

23 This Defendant is informed and believes, and thereon alleges, that at the time or place of
24 the incidents alleged in Plaintiff's Amended Complaint, Plaintiffs knowingly, freely, and
25 voluntarily assumed all risk of harm and the consequent injuries and damages, if any, resulting
26 therefrom.
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NINTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that the Amended Complaint, and each and every cause of action contained therein is barred by the applicable Statutes of Repose.

TENTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that as to each alleged cause of action, Plaintiff has failed, refused and neglected to take reasonable steps to mitigate their alleged damages, if any, thus barring or diminishing Plaintiff's recovery herein.

ELEVENTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that the Amended Complaint, and each and every cause of action contained therein, is barred by the applicable Statutes of Limitation.

TWELFTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff unreasonably delayed both the filing of the Complaint and notification of this Defendant to the alleged causes of action, and the basis for the causes of action alleged against this answering Defendant, all of which has unduly and severely prejudiced this Defendant in its defense of the action, thereby barring or diminishing Plaintiff's recovery herein under the Doctrine of Estoppel.

THIRTEENTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff reasonably delayed both filing of the Amended Complaint and notification of this Defendant to the alleged causes of action, and the basis for the causes of action alleged against this answering Defendant, all of which has unduly and severely prejudiced this Defendant in his defense of the action, thereby barring or diminishing Plaintiff's recovery herein under the Doctrine of Waiver.

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FOURTEENTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiffs unreasonably delayed both the filing of the Amended Complaint and notification of this Defendant to the alleged causes of action, and the basis for the causes of action alleged against this answering Defendant, all of which has unduly and severely prejudiced this Defendant in his defense of the action, thereby barring or diminishing Plaintiff's recovery herein under the Doctrine of Laches.

FIFTEENTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff has failed to join all necessary and indispensable parties to this lawsuit.

SIXTEENTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that the injuries and damages of which Plaintiff complains were proximately caused by, or contributed to by, the acts of other Defendants, Cross-Defendants, Third-Party Defendants, persons, and/or other entities, and that said acts were an intervening and superseding cause of the injuries and damages, if any, of which Plaintiff complains, thus barring Plaintiffs from any recovery against this answering Defendant.

SEVENTEENTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Amended Complaint is barred by the Statute of Frauds.

EIGHTEENTH AFFIRMATIVE DEFENSE

It has been necessary for this Defendant to retain the services of an attorney to defend this action, and this Defendant is entitled to a reasonable sum as and for attorney's fees.

NINETEENTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that the claims of Plaintiff is reduced, modified and/or barred by the Doctrine of Unclean Hands.

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TWENTIETH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that any and all events, happenings, injuries and damages alleged by Plaintiff are a direct result of an act of God.

TWENTY-FIRST AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Amended Complaint is reduced, modified, and/or barred because Plaintiff received payment.

TWENTY-SECOND AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Defendant's performance was excused because of Impossibility of Performance.

TWENTY-THIRD AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Amended Complaint is reduced, modified, and/or barred because Plaintiff abandoned the contract(s).

TWENTY-FOURTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Amended Complaint is reduced, modified, and/or barred because Plaintiffs ratified the contract(s).

TWENTY-FIFTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Amended Complaint is reduced, modified, and/or barred because of changed circumstances.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Amended Complaint is reduced, modified, and/or barred because Plaintiffs released their claims.

TWENTY -SEVENTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Amended Complaint is reduced, modified, and/or barred because of the doctrine of Accord and Satisfaction.

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TWENTY -EIGHTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Amended Complaint is reduced, modified, and/or barred because of the Parol Evidence Rule.

TWENTY-NINTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Amended Complaint is reduced, modified, and/or barred because of the doctrine of Unjust Enrichment.

THIRTIETH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Amended Complaint is reduced, modified, and/or barred because Plaintiff failed to fulfill a condition or conditions precedent to the enforcement of each and every oral, implied or other contract alleged herein.

THIRTY-FIRST AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Amended Complaint is reduced, modified, and/or barred by the Economic Loss Doctrine.

THIRTY-SECOND AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Amended Complaint is reduced, modified, and/or barred because the subject construction and products incorporated therein were modified, changed, or altered so as to change their character with respect to the defects complained of in the Amended Complaint. Any defect in the subject construction and/or product, if any, resulted solely from modification, change, or alteration of the products, and not from any act or omission on the part of this Defendant. Furthermore, the defects created by the aforesaid alteration, change, or modification, if any, were the sole and proximate cause of damages, if any, alleged in the Complaint.

THIRTY-THIRD AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Amended Complaint is reduced, modified, and/or barred because Plaintiff's claimed damages arising from the incident sued upon herein resulted from misuse of the subject construction and products

1 incorporated therein. If there was any defect in the product or property referred to in the
2 Amended Complaint at the time of said damages, such defect did not exist at the time said
3 product or property left the possession or control of this Defendant and was caused by the
4 misuse, abuse, changes, modification, lack of maintenance, improper maintenance, and
5 alterations of others, including Plaintiffs herein, and that said damages were caused by such
6 misuse, abuse, changes, alterations, lack of maintenance, and modifications. The misuse was
7 without the knowledge, approval, or consent of this Defendant and was not reasonably
8 foreseeable to this Defendant either before the time of the sale or construction of the lot or house
9 or at any time prior to the manifestation of the alleged defects, if any.

10 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

11 This Defendant is informed and believes, and thereon alleges, that Plaintiff's Amended
12 Complaint is reduced, modified, and/or barred because Plaintiffs lack privity with this
13 Defendant, lack standing to sue, and/or lack capacity to sue this Defendant.

14 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

15 To the extent that there is any agreement between the parties to utilize Alternative
16 Dispute Resolution ("ADR") procedures to resolve any or all of the issues or disputes raised in
17 Plaintiff's Amended Complaint, Centex expressly reserves the right to enforce those ADR
18 provisions and does not waive the right to enforce those ADR provisions by filing this Answer.
19 ADR procedures include, without limitation, arbitration, mediation, and/or a judicial reference.

20 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

21 Plaintiff's damages, if any, are speculative and/or uncertain and, therefore, are not
22 compensable.

23 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

24 Plaintiff is barred, in whole or in part, from recovering attorney's fees in this matter based
25 on contract, equity, or other exclusions in law or equity.
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THIRTY-EIGHTH AFFIRMATIVE DEFENSE

Pursuant to N.R.C.P. 11, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available for this Defendant after reasonable inquiry, and therefore, this Defendant reserves the right to amend its Answer to allege additional affirmative defenses, if subsequent investigation so warrants.

WHEREFORE, having fully answered Plaintiff’s Amended Complaint, SUNRIDGE respectfully requests the following relief:

- A. That Plaintiff takes nothing by the way of the Complaint;
- B. That the Complaint be dismissed with prejudice and that SUNRIDGE be awarded judgment in this action;
- C. That SUNRIDGE be awarded their costs incurred herein;
- D. That SUNRIDGE be awarded their attorneys' fees; and
- E. For such other and further relief as the Court deems just and proper.

DATED this 2nd day of December, 2016.

RESNICK & LOUIS, P.C.

/s/ Athanasia E. Dalacas

By: _____
Lena M. Louis, Esq., SBN: 6398
Athanasia E. Dalacas, Esq. SBN: 9390
5940 S. Rainbow Blvd.
Las Vegas, NV 89118
*Attorneys for Defendant,
Sunridge Builders, Inc.*

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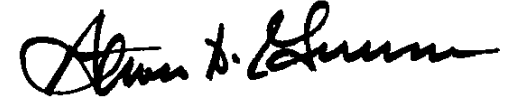
☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada, addressed as set forth below.

☐ **BY FACSIMILE:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document.

☐ **BY PERSONAL SERVICE:** by causing personal delivery by an employee of Resnick & Louis, P.C. of the document(s) listed above to the person(s) at the address(es) set forth below.

☒ **BY ELECTRONIC SERVICE:** by transmitting via the Court's electronic filing services the document(s) listed above to the Counsel set forth on the service list on this date pursuant to EDCR Rule 7.26(c)(4).

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CLERK OF THE COURT

AAC
ROBERT E. SCHUMACHER, ESQ
Nevada Bar No. 7504
BRIAN K. WALTERS, ESQ.
Nevada Bar No. 9711
GORDON & REES LLP
300 South Fourth Street, Suite 1550
Las Vegas, Nevada 89101
Telephone: (702) 577-9300 / Direct Line: (702) 577-9319
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rschumacher@gordonrees.com
bwalters@gordonrees.com

Attorneys for Defendant
LANDS WEST BUILDERS, INC.

DISTRICT COURT

CLARK COUNTY, NEVADA

JANETTE BYRNE, as Trustee of the UOFM Trust,	)	CASE NO. A-16-742143-D
	)	DEPT. NO.: XVI
Plaintiff,)	
)	
vs.)	
)	
SUNRIDGE BUILDERS, INC., a Nevada)	
Corporation; LANDS WEST BUILDERS, INC., a)	
Nevada Corporation; DOES 1 through 100 and/or)	
ROES 1 through 50, inclusive,)	
)	
Defendants.)	

DEFENDANT LANDS WEST BUILDERS, INC.'S
ANSWER TO PLAINTIFF'S AMENDED COMPLAINT

Defendant LANDS WEST BUILDERS, INC. by and through its counsels of record,
Robert E. Schumacher, Esq. and Brian K. Walters, Esq. of the law firm of GORDON & REES
LLP, hereby answers Plaintiff JANETTE BYRNE'S Amended Complaint ("Complaint") as
follows:

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PARTIES

1. Answering Paragraph 1 through 2 of the Amended Complaint, this answering Defendant is without knowledge sufficient as to form a belief as to the truth of the allegations in said paragraph and therefore, denies each and every allegation contained therein.

2. Answering Paragraph 3 of the Amended Complaint, this answering Defendant admits that Land West is, and at all times relevant was, a Nevada Corporation registered in the state of Nevada. This answering Defendant is without knowledge sufficient as to form a belief as to the truth of the remaining allegations in said paragraph and therefore, denies said allegations.

3. Answering Paragraphs 5 through 7 the Amended Complaint, this answering Defendant Admits the allegations contained therein.

4. Answering Paragraph 8 of the Amended Complaint, this answering Defendant is without knowledge sufficient as to form a belief as to the truth of the allegations in said paragraph and therefore, denies each and every allegation contained therein.

GENERAL ALLEGATIONS

5. Answering Paragraph 5 of the Amended Complaint, this answering Defendant repeats and re-alleges responses to all previous Paragraphs as though fully set forth herein.

6. Answering Paragraphs 10 through 28 of the Amended Complaint, this answering Defendant is without knowledge sufficient as to form a belief as to the truth of the allegations in said paragraphs and therefore, denies each and every allegation contained therein.

FIRST CLAIM FOR RELIEF

(Breach of Implied Warranty against Defendants)

7. Answering Paragraph 29 of the Amended Complaint, this answering Defendant repeats and re-alleges responses to all previous Paragraphs as though fully set forth herein.

8. Answering Paragraphs 30 through 35 of the Amended Complaint, this answering Defendant is without knowledge sufficient as to form a belief as to the truth of the allegations in said paragraphs and therefore, denies each and every allegations contained therein.

///

(Breach of Express Warranty against Defendants)

10. Answering Paragraph 37 of the Amended Complaint, this answering Defendant repeats and re-alleges responses to all previous Paragraphs as though fully set forth herein.

9 11. Answering Paragraphs 38 through 47 of the Amended Complaint, this answering
10 Defendant is without knowledge sufficient as to form a belief as to the truth of the allegations in
11 said paragraphs and therefore, denies each and every allegations contained therein.

12 12. Answering Paragraph 48 of the Amended Complaint, this answering Defendant is
13 without knowledge sufficient as to form a belief as to whether Plaintiff was compelled to retain
14 legal counsel and therefore, denies said allegation. This answering Defendant denies any
15 liability for attorney's fees and costs pursuant to NRS 40.600 *et seq.*

(Negligence/Negligence Per Se Against Defendants)

18 13. Answering Paragraph 49 of the Amended Complaint, this answering Defendant
19 repeats and re-alleges responses to all previous Paragraphs as though fully set forth herein.

14. Answering Paragraphs 50 through 64 of the Amended Complaint, this answering Defendant is without knowledge sufficient as to form a belief as to the truth of the allegations in said paragraphs and therefore, denies each and every allegations contained therein.

15. Answering Paragraph 65 of the Amended Complaint, this answering Defendant is without knowledge sufficient as to form a belief as to whether Plaintiff was compelled to retain legal counsel and therefore, denies said allegation. This answering Defendant denies any liability for attorney's fees and costs pursuant to NRS 40.600 *et seq.*

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FOURTH CLAIM FOR RELIEF

(Alter Ego Against Defendant Lands West Builders, Inc.)

16. Answering Paragraph 66 of the Amended Complaint, this answering Defendant repeats and re-alleges responses to all previous Paragraphs as though fully set forth herein

17. Answering Paragraph 67 of the Amended Complaint, this answering Defendant is without knowledge sufficient as to form a belief as to the truth of the allegations in said paragraphs and therefore, denies each and every allegations contained therein.

18. Answering Paragraph 68, this answering Defendant denies the allegations contained therein.

19. Answering Paragraphs 69 through 74 of the Amended Complaint, this answering Defendant is without knowledge sufficient as to form a belief as to the truth of the allegations in said paragraphs and therefore, denies each and every allegation contained therein.

FIFTH CLAIM FOR RELIEF

(Successor Liability Against Defendant Lands West Builders, Inc.)

20. Answering Paragraph 75 of the Amended Complaint, this answering Defendant repeats and re-alleges its responses to all previous Paragraphs as though fully set forth herein

21. Answering Paragraphs 76 through 79 of the Amended Complaint, this answering Defendant is without knowledge sufficient as to form a belief as to the truth of the allegations in said paragraphs and therefore, denies each and every allegation contained therein.

22. Answering Paragraphs 80 and 81, this answering Defendant denies the allegations contained therein.

SIXTH CLAIM FOR RELIEF

(Declaratory and Equitable Relief Regarding NRS 40.600 et seq. Against All Defendants)

23. Answering Paragraph 82 of the Amended Complaint, this answering Defendant repeats and re-alleges its responses to all previous Paragraphs as though fully set forth herein.

24. Answering Paragraphs 83 through 85 of the Amended Complaint, this answering Defendant is without knowledge sufficient as to form a belief as to the truth of the allegations in said paragraphs and therefore, denies each and every allegations contained therein.

25. Answering Paragraph 86 of the Amended Complaint, this answering Defendant is without knowledge sufficient as to form a belief as to whether Plaintiff was compelled to retain legal counsel and therefore, denies said allegation. This answering Defendant denies any liability for attorney's fees and costs pursuant to Nevada law.

SEVENTH CLAIM FOR RELIEF

(Strict Liability against ROES 1 through 50)

26. Answering Paragraph 87 of the Amended Complaint, this answering Defendant repeats and re-alleges its responses to all previous Paragraphs as though fully set forth herein.

27. Answering Paragraphs 88 through 91 of the Amended Complaint, this answering Defendant is without knowledge sufficient as to form a belief as to the truth of the allegations in said paragraphs and therefore, denies each and every allegations contained therein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Defendant denies the allegations of the Complaint, and each cause of action, and each paragraph in each cause of action, and each and every part thereof, including a denial that Plaintiff was damaged in the sum or sums alleged or to be alleged, or any other sum or sums whatsoever.

SECOND AFFIRMATIVE DEFENSE

Defendant denies that by reason of any act or omission, fault, conduct or liability on the part of Defendant, whether negligent, careless, unlawful or whether as alleged, or otherwise, Plaintiff was injured or damaged in any of the amounts alleged, or in any other manner of amount whatsoever. Defendant further denies that Defendant was negligent, careless, reckless, wanton, acted unlawfully or is liable, whether in the manner alleged or otherwise.

THIRD AFFIRMATIVE DEFENSE

Defendant is informed and believes, ant thereon alleges, that the Complaint, and each and every cause of action stated therein, fails to state facts sufficient to constitute a cause of action or any cause of action as against Defendant.

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FOURTH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that Plaintiff's Complaint is barred by issue preclusion and/or the Doctrine of *res judicata*.

FIFTH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that if Plaintiff suffered or sustained any loss, injury, damage or detriment, the same is directly and proximately caused and contributed to, in whole or in part, by the breach of warranty, conducts, acts, omissions, activities, carelessness, recklessness, negligence and/or intentional misconduct of Plaintiff, thereby completely or partially barring Plaintiff's recovery herein.

SIXTH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that they are not legally responsible in any fashion with respect to the damages and injuries claimed by Plaintiff. However, if Defendant is subjected to any liability to Plaintiff, it will be due, in whole or in part to the breach warranty, acts, omissions, activities, carelessness, recklessness and negligence of others, wherefore any recovery obtained by Plaintiff against Defendant should be reduced in proportion to the respective negligence and fault and legal responsibility of all other parties, persons and entities, their agents, servants and employees who contributed to and/or caused any such injury and/or damages, in accordance with the law of comparative negligence pursuant to Nevada Revised Statute 41.141. Consequently, Defendant is informed and believes, and thereon alleges, that the liability of Defendant, if any, is limited in direct proportion to the percentage of fault actually attributed to Defendant.

SEVENTH AFFIRMATIVE DEFENSE

If Defendant is found responsible in damages to Plaintiff or some other party, whether as alleged or otherwise then Defendant is informed and believes, and thereon alleges, that the liability will be predicated upon the active conduct of Plaintiff, whether by negligence, breach of warranty, strict liability in tort or otherwise, which unlawful conduct proximately caused the alleged incident and that Plaintiff's action against Defendant is barred by that active and affirmative conduct.

EIGHTH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon, alleges that at the time or place of the incidents alleged in the Complaint, Plaintiff knew of and fully understood the danger and risk incident to its undertaking, but despite such knowledge, freely and voluntarily assumed and exposed itself to all risk of harm and the consequent injuries and damages, if any, resulting therefrom.

NINTH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that the Plaintiff does not have standing to commence or maintain this lawsuit, including but not limited to lacking standing to bring a claim on behalf of the unit owners pursuant to Nevada Revised Statute 116 and lacking standing to bring any claims for defects that affect only individual units and do not affect the common area.

TENTH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that as to each alleged cause of action, Plaintiff has failed, refused and neglected to take reasonable steps to mitigate its alleged damages, if any, thus barring or diminishing Plaintiff's recovery herein.

ELEVENTH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that the Complaint, and each and every cause of action contained therein, is barred by the applicable Statutes of Limitation.

TWELFTH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that Plaintiff unreasonably delayed both the filing of the Complaint and notification of Defendant to the alleged causes of action, and the bases for the causes of action alleged against Defendant, all of which has unduly and severely prejudiced Defendant in its defense of the action, thereby barring or diminishing Plaintiff's recovery herein under the Doctrine of Estoppel.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that Plaintiff unreasonably delayed both filing of the Complaint and notification of Defendant to the alleged causes of

1 action, and the bases for the causes of action alleged against Defendant, all of which has unduly
2 and severely prejudiced Defendant in its defense of the action, thereby barring or diminishing
3 Plaintiff's recovery herein under the Doctrine of Waiver.

4 **FOURTEENTH AFFIRMATIVE DEFENSE**

5 Defendant is informed and believes, and thereon alleges, that Plaintiff unreasonably
6 delayed both the filing of the Complaint and notification of Defendant to the alleged causes of
7 action, and the bases for the causes of action alleged against Defendant, all of which has unduly
8 and severely prejudiced Defendant in its defense of the action, thereby barring or diminishing
9 Plaintiff's recovery herein under the Doctrine of *Laches*.

10 **FIFTEENTH AFFIRMATIVE DEFENSE**

11 Defendant is informed and believes, and thereon alleges, that Plaintiff failed to join all
12 necessary and indispensable parties to this lawsuit.

13 **SIXTEENTH AFFIRMATIVE DEFENSE**

14 Defendant is informed and believes, and thereon alleges, that the injuries and damages of
15 which Plaintiff complains were proximately caused by or contributed to by the acts of other
16 persons and/or other entities, and that said acts were an intervening and superseding cause of the
17 injuries and damages, if any, of which Plaintiff complains, thus barring Plaintiff from any
18 recovery against Defendant.

19 **SEVENTEENTH AFFIRMATIVE DEFENSE**

20 Defendant is informed and believes, and thereon alleges, that the Complaint is barred by
21 the Statute of Frauds.

22 **EIGHTEENTH AFFIRMATIVE DEFENSE**

23 Defendant is informed and believes, and thereon alleges, that the claims of Plaintiff are
24 reduced, modified and/or barred by the Doctrine of Unclean Hands.

25 **NINETEENTH AFFIRMATIVE DEFENSE**

26 Defendant is informed and believes, and thereon alleges, that any and all events,
27 happenings, injuries and damages alleged by Plaintiff are a direct result of an act of God.

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TWENTIETH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that the Complaint is reduced, modified and/or barred because Plaintiff released and/or waived its claims.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that the Complaint is reduced, modified and/or barred because of the Doctrine of Accord and Satisfaction.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that the Complaint is reduced, modified and/or barred because of the Parol Evidence Rule.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that Plaintiff is not the real party in interest.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that Plaintiff and its predecessors in interest did not fully perform under the Agreement and such non-performance constituted a material breach to excuse further performance by Defendant.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

This answering Defendant is informed and believes, and thereon alleges, that Plaintiff did not comply with N.R.S. 40.600, *et seq.* as amended by A.B. 125 and its specific requirements for commencing construction defect litigation and/or pre-litigation procedures.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

This answering Defendant has not waived the mediation requirements of NRS 40.680 and Plaintiff has failed to offer such mediation; such failure constitutes a bar to prosecution of this action.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

This answering Defendant is informed and believes, and thereon alleges, that it made no implied warranties to Plaintiff.

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TWENTY-EIGHTH AFFIRMATIVE DEFENSE

This answering Defendant contends that Plaintiff claims for breach of warranty, if any, are barred pursuant to the provisions of NRS 104.2607 as Plaintiff failed to give reasonable notice of said breach, if any, to this answering Defendant within a reasonable time following discovery of the breach.

TWENTY-NINTH AFFIRMATIVE DEFENSE

This answering Defendant is informed and believes and thereon alleges that Plaintiff failed to provide this Answering Defendant with written notice of the alleged defects with reasonable specificity, as required by NRS 40.645. Consequently, such failure constitutes a bar to prosecution of this action.

THIRTIETH AFFIRMATIVE DEFENSE

Pursuant to N.R.C.P. 11, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available to Defendant after reasonable inquiry, and therefore, Defendant reserves the right to amend its Answer to allege additional affirmative defenses, if subsequent investigation so warrants.

WHEREFORE, Defendant **LANDS WEST BUILDERS, INC.**, prays for judgment against Plaintiff as follows:

1. That Plaintiff take nothing by way of this action;
2. For the prejudgment interest or costs incurred herein;

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- 3. For cost of suit and attorney’s fees and costs; and
- 4. For such other and further relief as the Court deems just and proper.

DATE: January 6, 2017 **GORDON & REES LLP**

By: /s/ Robert E. Schumacher
ROBERT E. SCHUMACHER, ESQ
State Bar No. 7504
BRIAN K. WALTERS, ESQ.
Nevada Bar No. 9711
300 South Fourth Street, Suite 1550
Las Vegas, Nevada 89101

Attorneys For Defendant:
LANDS WEST BUILDERS, INC.

Gordon & Rees LLP
300 South Fourth Street, Suite 1550
Las Vegas, NV 89101

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), Administrative Order 14-2 effective June 1, 2014, and N.E.F.C.R. Rule 9, I certify that I am an employee of GORDON & REES LLP and that on this 6th day of January, 2017, I did cause a true and correct copy of DEFENDANT LANDS WEST BUILDERS INC.'S ANSWER TO PLAINTIFF'S AMEDED COMPLAINT, to be served via the Court's electronic filing service on all parties listed below (unless indicated otherwise):

Mark J. Bourassa, Esq.
Jennifer A. Fornetti, Esq.
THE BOURASSA LAW GROUP
8668 Spring Mountain Road, Suite 101
Las Vegas, Nevada 89117
Counsel for Plaintiff

Lena M. Louis, Esq.
Athanasia E. Dalacas, Esq.
RESNICK & LOUIS, P.C.
5940 South Rainbow Boulevard
Las Vegas, Nevada 89118
Counsel for Defendant
Sunridge Builders, Inc.

/s/ Claudia A. Morrill
An employee of GORDON & REES LLP

1 **OOJ**

2 ROBERT E. SCHUMACHER, ESQ

3 Nevada Bar No. 7504

4 BRIAN K. WALTERS, ESQ.

5 Nevada Bar No. 9711

6 **GORDON & REES LLP**

7 300 South Fourth Street, Suite 1550

8 Las Vegas, Nevada 89101

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12 *Attorneys for Defendant*

13 **LANDS WEST BUILDERS, INC.**

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 JANETTE BYRNE, as Trustee of the UOFM Trust,

17 Plaintiff,

18 vs.

19 SUNRIDGE BUILDERS, INC., a Nevada
20 Corporation; LANDS WEST BUILDERS, INC., a
21 Nevada Corporation; DOES 1 through 100 and/or
22 ROES 1 through 50, inclusive,

23 Defendants.

CASE NO. A-16-742143-D

DEPT. NO.: XVI

24 **DEFENDANT LANDS WEST BUILDERS, INC.'S OFFER OF JUDGMENT TO**
25 **PLAINTIFF JANETTE BYRNE, AS TRUSTEE OF THE UOFM TRUST**

26 TO: JANETTE BYRNE, as Trustee of the UOFM TRUST, Plaintiff; and

27 TO: MENTER & WITKIN LLP and SPRINGEL & FINK, LLP, Attorneys for Plaintiff;

28 PLEASE TAKE NOTICE that pursuant to NRCP 68, Defendant LANDS WEST BUILDERS, INC. ("Defendant"), by and through its attorneys of record, Robert E. Schumacher, Esq. and Brian K. Walters, Esq. of the law firm of GORDON & REES LLP, hereby offer to allow entry of judgment to be taken against Defendant and in favor of Plaintiff in the total sum of Ten

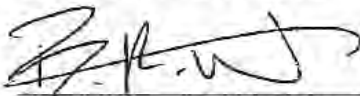
1 Thousand and One Dollars (\$10,001.00). This Offer of Judgment applies to all causes of action,
2 and includes all accrued interest, costs, attorneys' fees, and any other sums that could be claimed
3 by Plaintiff against Defendant in the above-captioned action. Acceptance of this Offer is
4 intended to resolve all disputes between the parties related to and arising out of the above-
5 captioned matter.

6 Pursuant to NRCP 68, this Offer shall be open for a period of ten (10) days from the date
7 of service of this Offer. In the event this Offer is accepted by Plaintiff, Plaintiff may elect to
8 notify Defendant's counsel and Defendant will pay the amount offered herein within a
9 reasonable time in exchange for a dismissal of the claims of Plaintiff against Defendant, as
10 provided by NRCP 68, rather than to allow judgment to be entered against them.

11 This Offer is made solely for the purposes intended by NRCP 68 and is not to be
12 construed as an admission in any form, shape or manner that Defendant is liable for any of the
13 allegations made by Plaintiff in the operative Complaint, nor is it an admission that Plaintiff is
14 entitled to any relief, including, but not limited to, an award of damages, attorneys' fees, costs or
15 interest. By virtue of this Offer, Defendant waives no defenses asserted in its Answer to the
16 operative Complaint. If this Offer is not accepted within ten (10) days after service, it shall be
17 considered rejected and deemed withdrawn.
18
19

20 DATE: March 14, 2017

GORDON & REES LLP

21 By: 
22 ROBERT E. SCHUMACHER, ESQ.
23 State Bar No. 7504
24 BRIAN K. WALTERS, ESQ.
25 Nevada Bar No. 9711
26 300 South Fourth Street, Suite 1550
27 Las Vegas, Nevada 89101

28 *Attorneys For Defendant:*
LANDS WEST BUILDERS, INC.

Gordon & Rees LLP
300 South Fourth Street, Suite 1550
Las Vegas, NV 89101

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the law firm GORDON & REES LLP, and over the age of eighteen years. On this 14th day March, 2017, I caused a true and correct copy of **DEFENDANT LANDS WEST BUILDERS, INC.'S OFFER OF JUDGMENT TO PLAINTIFF JANETTE BYRNE, as Trustee of the UOFM Trust** to be served by U.S. Mail and facsimile addressed as follows:

Mark Bourassa, Esq. Jennifer A. Fornetti, Esq. THE BOURASSA LAW GROUP 8668 Spring Mountain Road, Suite 101 Las Vegas, Nevada 89117 (702) 851-2189 <i>Counsel for Plaintiff</i>	Wendy L. Walker, Esq. Michael Arata, Esq. SPRINGEL & FINK, LLP 10655 Park Run Drive, Suite 275 Las Vegas, NV 89144 (702) 804-0798 <i>Counsel for Plaintiff</i>
Timothy Menter, Esq. MENTER & WITKIN LLP 19900 MacArthur Blvd., Suite 800 Irvine, CA 92612 (949) 250-9045 <i>Counsel for Plaintiff</i>	Lena M. Louis, Esq. Athanasia E. Dalacas, Esq. RESNICK & LOUIS, P.C. 5940 South Rainbow Boulevard Las Vegas, Nevada 89118 (702) 997-3800 <i>Counsel for Defendant Sunridge Builders, Inc.</i>


An employee of GORDON & REES LLP


CLERK OF THE COURT

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Co-Counsel for Plaintiff and per SCR 42.1(2)

DISTRICT COURT
CLARK COUNTY, NEVADA

JANETTE BYRNE, as Trustee of the UOFM	)	Case No.: A-16-742143-D
TRUST,	)	Dept. No.: XVI
)	
Plaintiff,	)	SECOND AMENDED COMPLAINT AND
vs.	)	DEMAND FOR JURY TRIAL
)	
SUNRIDGE BUILDERS, INC., a Nevada	)	Arbitration Exempt:
Corporation; LANDS WEST BUILDERS, INC., a	)	*Damages in Excess of \$50,000.00
Nevada Corporation; AVANTI PRODUCTS, LLC,	)	*Declaratory Relief Requested
a Nevada Limited Liability Company; BRYANT)	
MASONRY, LLC, a Nevada Limited Liability)	
Company; BSH HOME APPLIANCES)	
CORPORATION, a Delaware Corporation;)	
CIRCLE S DEVELOPMENT DBA DECK)	
SYSTEMS NEVADA, a Nevada Corporation;)	
DMK CONCRETE, INC., a Nevada Corporation;)	
4M CORP., a Nevada Corporation; GENERAL)	

1 ELECTRIC COMPANY, a Nevada Corporation;
 2 GREEN PLANET LANDSCAPING, LLC, a)
 Nevada Limited Liability Company; IVIE)
 3 MECHANICAL INC., a Nevada Corporation;)
 J.C.W. CONCRETE, INC., a Nevada Corporation;)
 4 KARL HENRY LINSENBARDT DBA)
 SIGNATURE DOOR & TRIM; LIFEGUARD)
 5 POOL MAINT. DBA LIFEGUARD POOLS, a)
 Nevada Corporation; MOUNTAIN WEST)
 6 ELECTRIC, a Nevada Corporation;)
 PRESTIGE ROOFING, INC., a Nevada)
 7 Corporation; PYRAMID PLUMBING, a Nevada)
 Corporation; RIVERA FRAMING INC. DBA)
 8 RIVERA FRAMERS, a Nevada Corporation; S&L)
 9 ROOFING, INC., a Colorado Corporation; SPRAY)
 10 PRODUCT APPLICATIONS, LLC, a Nevada)
 Limited Liability Company; TRIM TIME LLC)
 11 DBA BLITZ CONSTRUCTION, a Nevada)
 Limited Liability Company; WINDOW)
 12 INSTALLATION SPECIALISTS, LLC, a Nevada)
 Limited Liability Company; DOES 20 through)
 13 100; DESIGN PROFESSIONAL DOES 101)
 14 through 150, and/or SUPPLIER ROES 2 through)
 15 50 inclusive,)
 16 Defendants.)
 17

18 COMES NOW, PLAINTIFF JANETTE BYRNE, on behalf of UOFM TRUST, by and through
 19 its counsel of record, the law firms of Menter & Witken LLP and Springel & Fink LLP, and hereby
 20 submits its Second Amended Complaint against Defendants, and each of them, and alleges as follows:

21 **I.**

22 **PARTIES**

23
 24 1. PLAINTIFF JANETTE BYRNE, as co-trustee of UOFM TRUST, (hereinafter
 25 “Plaintiff”) is and was at all times relevant herein an individual residing in Clark County, Nevada.

26 2. Plaintiff is, and at all times relevant hereto, was the owner of record for the home located
 27 at 578 Lairmont Place in Henderson, Nevada (hereinafter “Subject Property”).
 28

1 3. At all times relevant herein, SUNRIDGE BUILDERS, INC. (hereinafter "SUNRIDGE"),
2 a Nevada corporation, was doing business in Clark County, Nevada.

3 4. At all times relevant herein, LANDS WEST BUILDERS, INC. (hereinafter "LANDS
4 WEST"), a Nevada corporation doing business in the State of Nevada was doing business in Clark
5 County, Nevada.

6 5. At all times relevant herein, AVANTI PRODUCTS, LLC, a Nevada Limited Liability
7 Company, was doing business in Clark County, Nevada.

8 6. At all times relevant herein, BRYANT MASONRY, LLC, a Nevada Limited Liability
9 Company, was doing business in Clark County, Nevada.

10 7. At all times relevant herein, BSH HOME APPLIANCES CORPORATION, a Delaware
11 Corporation, was doing business in Clark County, Nevada.

12 8. At all times relevant herein, CIRCLE S DEVELOPMENT DBA DECK SYSTEMS
13 NEVADA, a Nevada Corporation, was doing business in Clark County, Nevada.

14 9. At all times relevant herein, DMK CONCRETE, INC., a Nevada Corporation, was doing
15 business in Clark County, Nevada.

16 10. At all times relevant herein, 4M CORP., a Nevada Corporation, was doing business in
17 Clark County, Nevada.

18 11. At all times relevant herein, GENERAL ELECTRIC COMPANY, a Nevada Corporation,
19 was doing business in Clark County, Nevada.

20 12. At all times relevant herein, GREEN PLANET LANDSCAPING, LLC, a Nevada
21 Limited Liability Company, was doing business in Clark County, Nevada.

22 13. At all times relevant herein, IVIE MECHANICAL INC., a Nevada Corporation, was
23 doing business in Clark County, Nevada.

24 14. At all times relevant herein, J.C.W. CONCRETE, INC., a Nevada Corporation, was
25 doing business in Clark County, Nevada.

26 15. At all times relevant herein, KARL HENRY LINSENBARDT DBA SIGNATURE
27 DOOR & TRIM, was doing business in Clark County, Nevada.

1 16. At all times relevant herein, LIFEGUARD POOL MAINT. DBA LIFEGUARD POOLS,
2 a Nevada Corporation, was doing business in Clark County, Nevada.

3 17. At all times relevant herein, MOUNTAIN WEST ELECTRIC, a Nevada Corporation,
4 was doing business in Clark County, Nevada.

5 18. At all times relevant herein, PRESTIGE ROOFING, INC., a Nevada Corporation, was
6 doing business in Clark County, Nevada.

7 19. At all times relevant herein, PYRAMID PLUMBING, a Nevada Corporation, was doing
8 business in Clark County, Nevada.

9 20. At all times relevant herein, RIVERA FRAMING INC. DBA RIVERA FRAMERS, a
10 Nevada Corporation, was doing business in Clark County, Nevada.

11 21. At all times relevant herein, S&L ROOFING, INC., a Colorado Corporation, was doing
12 business in Clark County, Nevada.

13 22. At all times relevant herein, SPRAY PRODUCT APPLICATIONS, LLC, a Nevada
14 Limited Liability Company, was doing business in Clark County, Nevada.

15 23. At all times relevant herein, TRIM TIME LLC DBA BLITZ CONSTRUCTION, a
16 Nevada Limited Liability Company, was doing business in Clark County, Nevada.

17 24. At all times relevant herein, WINDOW INSTALLATION SPECIALISTS, LLC, a
18 Nevada Limited Liability Company, was doing business in Clark County, Nevada.

19 25. The true names and capacities, whether individual, corporate, associate or otherwise, of
20 Subcontractor DOES 20 through 100, inclusive, are presently unknown to Plaintiff who therefore sue
21 said Defendants by fictitious names. Plaintiff is informed and believes and thereon alleges that
22 Defendants designated as DOES 20 through 100 were doing business in Clark County, Nevada, and are
23 responsible in some manner as an individual or entity developing, designing, performing construction
24 related activities and/or providing materials for construction of the Subject Property and are responsible
25 for the events and happenings, described in Plaintiff's Second Amended Complaint, which proximately
26 caused damages to Plaintiff as alleged herein. Plaintiff will seek leave of the Court to further amend this
27 Complaint to insert the true names and capacities of DOES 20 through 100 and state appropriate
28 charging allegations when that information has been ascertained.

1 26. The true names and capacities, whether individual, corporate, associate or otherwise, of
2 Design Professional DOES 101 through 150, inclusive, are presently unknown to Plaintiff who therefore
3 sue said Defendants by fictitious names. Plaintiff is informed and believes and thereon alleges that
4 Defendants designated as Design Professional DOES 101 through 150 were doing business in Clark
5 County, Nevada, and are responsible in some manner as an individual or entity engineering, developing
6 and/or designing construction plans and specifications for the Subject Property and are responsible for
7 the events and happenings, described in Plaintiff's Second Amended Complaint, which proximately
8 caused damages to Plaintiff as alleged herein. Plaintiff will seek leave of the Court to further amend this
9 Complaint to insert the true names and capacities of Design Professional DOES 101 through 150 and
10 state appropriate charging allegations when that information has been ascertained.

11 27. The true names and capacities, whether individual, corporate, associate or otherwise, of
12 Supplier/Manufacturer ROES 2 through 100, inclusive, are presently unknown to Plaintiff who therefore
13 sue said Defendants by fictitious names. Plaintiff is informed and believes and thereon alleges that
14 Defendants designated as ROES 2 through 100 were doing business in Clark County, Nevada, and are
15 responsible in some manner as an individual or entity that developed, designed, manufactured, supplied,
16 distributed, marketed, sold, and warranted products for the Subject Property and are responsible for the
17 events and happenings, described in Plaintiff's Second Amended Complaint, which proximately caused
18 damages to Plaintiff as alleged herein. Plaintiff will seek leave of the Court to further amend this
19 Complaint to insert the true names and capacities of ROES 2 through 100 and state appropriate charging
20 allegations when that information has been ascertained.

21 28. Defendants, and each of them, were developers, contractors, subcontractors, suppliers,
22 manufacturers and/or design professionals who designed, developed, constructed, improved, altered,
23 repaired, supplied material, and/or under certain works of improvement upon the Subject Property, for
24 the benefit of Plaintiff.

25 29. Plaintiff is informed and believes, and on that basis, alleges that Defendants are, and at all
26 times relevant were, individuals, sole proprietors, partnerships, corporations or other business entities
27 doing business in Clark County, Nevada.
28

30. Defendants, and each of them, were the agents, servants, employees, and/or representatives of each other in doing the things alleged herein and in doing so were acting within the scope of their respective agency.

31. Defendants, and each of them, undertook certain works of improvement upon the Subject Property, including all works of development, design and construction for the benefit of all owners of the Subject Property, including Plaintiff.

II.

GENERAL ALLEGATIONS

32. Plaintiff incorporates herein by reference, all preceding paragraphs as though fully set forth herein.

33. Defendants were engaged in the business of planning, developing, designing, constructing, manufacturing materials, manufacturing products, supplying materials and/or supplying products for use at residential real property in County of Clark, State of Nevada.

34. Defendants acted as the developer/builder/contractor of the Subject Property and were directly responsible for the construction and/or supervision of the construction of the Subject Property.

35. Defendants, and each of them, undertook certain works of improvement upon the Subject Property, including all works of development, design and construction of the Subject Property, as well as manufacturing products, supplying materials and supplying products for the Subject Property, which were intended to be used as a residential dwelling, which could be sold to and used by members of the general public for the purpose of a residence and said Defendants knew or reasonably should have known that persons who would purchase said units would do so without inspecting for defects set forth herein.

36. Defendants, and each of them, failed to properly and adequately investigate, design, inspect, plan, engineer, supervise, construct, produce, manufacture, develop, prepare, market, distribute, and/or supply the Subject Property and its components in that said Subject Property has experienced, and continues to experience, incomplete work pursuant to the contracts, defects and deficiencies, and damages resulting therefrom.

37. Defendants, and each of them, failed to properly and adequately investigate, design, inspect, plan, engineer, supervise, construct, produce, manufacture, develop, prepare, market, distribute,

1 and/or supply the Subject Property and its components in that said Subject Property has experienced,
2 and continues to experience, incomplete work pursuant to the contracts, defects and deficiencies, and
3 damages resulting therefrom.

4 38. The Subject Property may be defective or deficient in other ways and to other extents not
5 presently known to Plaintiff, and not specified above. Plaintiff reserves the right to amend this
6 Complaint upon discovery of any additional defects or deficiencies not referenced herein and/or to
7 present evidence of the same at the trial of this action.

8 39. Plaintiff has complied with all prefiling requirements of Nevada Revised Statutes
9 §40.600 through §40.695.

10 40. To date, Defendants have not resolved Plaintiff's claims as set forth in Plaintiff's notice
11 as required by NRS §40.6472.

12 41. To date, Defendants, and each of them, have failed and continue to fail to perform all
13 necessary repairs or complete the work necessary to repair all the defective conditions at the Subject
14 Property.

15 42. Prior to placing the Defendants on notice of her claims of construction deficiencies,
16 Plaintiff became aware of facts which thereafter, upon investigation, resulted in Plaintiff being informed
17 that portions of the Subject Property has been incompletely and/or inadequately constructed, developed,
18 designed, supervised or otherwise improved so that the above-described defective conditions existed and
19 do now exist and the works of improvement are defective, not of merchantable quality and not fit for the
20 purpose of permitting persons to reside thereabouts in a proper manner and fashion.

21 43. The damages to the Subject Property known to Plaintiff at this time are progressive and
22 continue to worsen.

23 44. Plaintiff is informed and believes and based thereon alleges that any and all repair
24 attempts by Defendants failed to adequately correct said damages and deficiencies thereby resulting in
25 further property damages caused thereby.

26 45. Plaintiff is informed and believes and thereon alleges that instead of causing the
27 necessary and required reconstruction and repairs of the Subject Property, Defendants have caused
28 cosmetic, temporary or ineffective repairs to be made to various portions of the Subject Property for the

1 purpose of leading Plaintiff to believe that said Defendants were resolving and correcting all
2 deficiencies. By virtue of such conduct, said Defendants are estopped to assert that Plaintiff has not
3 commenced this action in a timely fashion and are further estopped to assert that Plaintiff may not seek
4 the damages herein sought.

5 46. In the event that Plaintiff failed to file suit within the statutorily prescribed time period
6 for any allegations contained herein, Plaintiff alleges that she detrimentally relied upon the conduct and
7 representations of the Defendants, and each of them in making repairs and/or representations to Plaintiff
8 concerning the Subject Property and therefore the statute of limitations and repose are thus tolled.
9 Notwithstanding these actions, this lawsuit is being filed to stop the running of any and all applicable
10 statutes of repose and limitations.

11 47. Plaintiff is informed and believes and thereon alleges that the defects arose out of, were
12 attributable to and are directly and proximately caused by the above-described deficiency in the design,
13 specification, planning, supervision, observation of construction, development and/or improvement and
14 any repairs of the Subject Property and that prior to the time when it was discovered by Plaintiff, as set
15 forth herein, it could not have been discovered by the exercise of reasonable diligence.

16 48. Plaintiff has standing to commence this action against the Defendants and each of them.

17 49. Plaintiff seeks all available damages statutorily codified in NRS §40.655 on behalf of
18 herself and as the homeowner of the Subject Property developed, constructed and designed by the
19 Defendants and all other damages and remedies available by law.

20 **III.**

21 **FIRST CLAIM FOR RELIEF** 22 **(Breach of Implied Warranty Against All Defendants)**

23 50. Plaintiff incorporates herein by reference, all preceding paragraphs as though fully set
24 forth herein.

25 51. Defendants impliedly warranted, among other express and/or implied warranties, that the
26 Subject Property was designed and constructed in accordance with applicable law, according to sound
27 standards of construction and engineering, in a commercially reasonable, habitable and workmanlike
28 manner, free from defective materials and fit and safe for human habitation.

1 52. Defendants SUNRIDGE and LANDS WEST impliedly warranted that the home a \$10
2 million custom home containing “11,000 square feet of luxury,” built by “hillside construction experts”
3 who have been building “quality [custom] homes” since 1989 and that “Both owners [Van Nelson and
4 Dave Hardy] are qualified licensed general contractors with combined experience of over 65 years in the
5 industry.” More specifically, Defendants SUNRIDGE and LANDS WEST impliedly warranted through
6 co-owners Van Nelson and Dave Hardy that:

7 *“Their many years in the field allow them a unique understanding of the building*
8 *process and multi-level coordination required to provide customer satisfaction. Client*
9 *communication is handled directly through Van or Dave from start to finish and they*
10 *personally supervise each project along with a project superintendent. They pride*
11 *themselves on their “hands-on, in the field, personalized” service. Owners are faced*
12 *with a myriad of decisions to ensure that their home is a true reflection of their*
13 *personality. This is why SBI is there to offer input and support to their clients. Van and*
14 *Dave share a commitment to building extraordinary custom homes and solid client*
15 *relationships.”*

16 The Subject Property fails to meet the heightened implied warranty of fitness befitting an 11,000 square
17 foot \$10 million custom home.

18 53. The Subject Property, and its components, in particular, are not of quality befitting a
19 multi-million dollar custom home, let alone a merchantable quality, but, in fact, are defective and fail to
20 meet all applicable building codes and industry standards and have caused damage to the Subject
21 Property.

22 54. Defendants breached their implied warranties and covenants of repair because the Subject
23 Property is in disrepair, unfit and unsafe in violation of the Nevada Revised Statutes and other codes and
24 regulations.

25 55. Plaintiff is informed and believes and thereon alleges that as a direct and proximate result
26 of the defects set forth herein, Plaintiff has suffered damages in an amount precisely unknown, but
27 believed to be within the jurisdiction of this Court in that it has been and will hereafter be required to
28 perform works of repair, restoration and construction to portions of the structures to prevent further
damages and to restore the structures to their proper condition.

 56. As a direct result of the foregoing, Plaintiff has suffered costs and out of pocket expenses,
in an amount in excess of Ten Thousand Dollars (\$10,000.00), to be shown specifically at the time of trial.

57. As a further direct and proximate result of the Defendants' breach of implied warranties related to the Subject Property, Plaintiff was compelled to retain legal counsel to obtain recovery for the defective conditions. Therefore, pursuant to NRS §40.600 *et seq.*, Defendants are liable for those attorney's fees and costs reasonably and necessarily incurred by Plaintiff in order to obtain compensation in a sum to be determined at trial.

IV.

SECOND CLAIM FOR RELIEF
(Breach of Express Warranty Against All Defendants)

58. Plaintiff incorporates herein by reference, all preceding paragraphs as though fully set forth herein.

59. Plaintiff is informed and believes and based thereon alleges that Defendants expressly warranted, through advertisements and other documentation, that the Subject Property was designed and constructed in accordance with applicable law, according to sound standards of construction and engineering, in a commercially reasonable, habitable and workmanlike manner, free from defective materials and fit and safe for human habitation.

60. Plaintiff relied on Defendants' express representation that the Subject property was of merchantable quality suitable for its intended purpose, without major and/or significant defective causes, effects or conditions un-remedied or unrepaired by said Defendants.

61. Defendants breached these express warranties in the design, specification, planning, supervision, observation of construction, development and/or improvement and repair.

62. As a direct and proximate result of the breach of the express warranties by Defendants, Plaintiff suffered damages stemming from the construction defects at the real property and structures thereon.

63. Plaintiff is informed and believes and thereon alleges that, as a direct and proximate result of the defects set forth herein, Plaintiff has suffered damages in an amount precisely unknown, but believed to be within the jurisdiction of this Court in that it has been and will hereafter be required to perform works of repair, restoration and construction to portions of the structures to prevent further damages and to restore the structures to their proper condition.

1 64. As a direct and proximate result of the foregoing violations of codes, negligence,
2 carelessness and unworkmanlike conduct, actions and/or omissions by Defendants, Plaintiff has suffered
3 damages in an amount in excess of Ten Thousand Dollars (\$10,000.00) in order to correct the defective
4 conditions of the Subject Property and to restore it to its proper condition including reasonable expenses
5 of temporary housing reasonably necessary during the repair in an amount to be determined at the time
6 of trial.

7 65. Plaintiff has incurred and will incur expert fees and costs to investigate the defective
8 conditions at the Subject Property to determine the nature, extent, cause of the defects and the
9 reasonable and appropriate repairs.

10 66. Plaintiff has suffered loss of other property damaged by the defective conditions; Plaintiff
11 is presently unaware of the precise amount of the damages, but will establish the same at trial, according
12 to proof.

13 67. As a further direct and proximate result of the defective conditions of the Subject
14 Property, Plaintiff's interests in the Subject Property and the value thereof has been reduced and
15 diminished. All of the above-described damages have occurred in an amount in excess of Ten Thousand
16 Dollars (\$10,000.00) to be established according to proof at the time of trial.

17 68. As a further direct and proximate result of the incomplete and/or defective conditions of
18 the Subject Property, Plaintiff has lost and will continue to lose the use and enjoyment of the Subject
19 Property, including the use of the Subject Property as a result of the restoration required to repair and
20 restore the defects.

21 69. Plaintiff is informed and believes, and thereon alleges that as a further direct and
22 proximate result of the breach of express warranties, Plaintiff was compelled to retain legal counsel to
23 obtain recovery for the defective conditions. Therefore, pursuant to NRS §40.600 *et seq.*, Defendants
24 are liable for those attorney's fees and costs reasonably and necessarily incurred by Plaintiff in order to
25 obtain compensation in a sum to be determined at trial.

26 ///

27 ///

28 ///

V.

THIRD CLAIM FOR RELIEF
(Negligence/Negligence Per Se Against All Defendants)

70. Plaintiff incorporates herein by reference, all preceding paragraphs as though fully set forth herein.

71. Defendants, and each of them, were builders, contractors, subcontractors, suppliers, material men, architects and/or engineers, or other persons, entities or professionals who participated in the process of developing, designing, engineering and/or construction of the Subject Property and who performed works of labor, supplied materials, equipment and/or services necessary for the building and construction, including supervision of construction of the Subject Property.

72. In their capacity as developer, builder, contractor, subcontractor, supplier, material men, architect, engineer and/or general contractor or otherwise, Defendants, caused the Subject Property to be designed, engineered and/or constructed through their own works of labor, and supplying of materials, equipment and services, and through causing other contractors and subcontractors, including Defendants to perform works of labor, and to supply materials and/or equipment and services in order to properly complete the Subject Property.

73. Defendants, and each of them, whether developer, builder, contractor, subcontractor, supplier, material men, architect, engineer or otherwise, performed work, labor and/or services upon the Subject Property.

74. Defendants were under a duty to exercise ordinary care as builders, contractors, subcontractors, suppliers, material men, manufacturers, engineers or otherwise to avoid reasonably foreseeable injury to users and purchasers of the Subject Property, and knew or should have foreseen with reasonable certainty that purchasers and/or users would suffer the damages set forth herein if said Defendants, and each of them, failed to perform their duty to cause the Subject Property to be designed, engineered and constructed in a proper workmanlike manner and fashion.

75. In performing works of a builder and/or contractor, subcontractor, supplier, material man, engineer or otherwise, Defendants breached their duty to Plaintiff and neglected to perform the work, labor and services properly or adequately in that each said Defendant so negligently, carelessly and in an

1 unworkmanlike manner performed the aforesaid work, labor and/or services such that the Subject
2 Property was designed, engineered and/or constructed improperly and without ordinary care.
3 Defendants failed to perform their duty to cause the Subject Property to be designed, engineered and
4 completed in a proper and workmanlike manner and fashion.

5 76. Despite their duty to act reasonably, Defendants breached their respective duties of care
6 by negligently, recklessly and/or intentionally failing to engineer or construct the Subject Property in a
7 good and workmanlike manner.

8 77. Plaintiff is informed and believes, and thereon alleges, that the Subject Property was not
9 constructed in accordance with applicable law or according to the sound standards of engineering and
10 construction, was not constructed in a workmanlike manner, was not free from defective materials, was
11 not of proper durability, reliability, habitability, merchantability, and/or general quality and not fit for its
12 intended use as herein described.

13 78. Defendants violated the building codes, municipal codes and regulations of the City of
14 Henderson and/or the Nevada Revised Statutes relating to construction of homes, developments, common
15 interest subdivisions, trade professionals, design professionals, construction and sale of real estate.

16 79. Plaintiff is a member of the class of person for whose protection the aforementioned
17 Codes were adopted.

18 80. Plaintiff has sustained damages that are proximately caused by violations of the Building
19 Codes and regulations of the County of Clark, the Uniform Building Codes and/or the Nevada Revised
20 Statutes by Defendants as alleged above.

21 81. As a direct and proximate result of the foregoing violations of codes, negligence, carelessness
22 and unworkmanlike conduct, actions and/or omissions by Defendants, Plaintiff has suffered damages in an
23 amount in excess of Ten Thousand Dollars (\$10,000.00) in order to correct the defective conditions of the
24 Subject Property and to restore it to its proper condition including reasonable expenses of temporary housing
25 reasonably necessary during the repair in an amount to be determined at the time of trial.

26 82. Plaintiff has incurred and will incur expert fees and costs to investigate the defective
27 conditions at the Subject Property to determine the nature, extent, cause of the defects and the
28 reasonable and appropriate repairs.

83. Plaintiff has suffered loss of other property damaged by the defective conditions; Plaintiff is presently unaware of the precise amount of the damages, but will establish the same at trial, according to proof.

84. As a further direct and proximate result of the defective conditions of the Subject Property, Plaintiff's interests in the Subject Property and the value thereof has been reduced and diminished. All of the above-described damages have occurred in an amount in excess of Ten Thousand Dollars (\$10,000.00) to be established according to proof at the time of trial.

85. As a further direct and proximate result of the incomplete and/or defective conditions of the Subject Property, Plaintiff has lost and will continue to lose the use and enjoyment of the Subject Property, including the use of the Subject Property as a result of the restoration required to repair and restore the defects.

86. Plaintiff is informed and believes, and thereon alleges that as a further direct and proximate result of the negligence and negligence per se of Defendants for the conditions of the Subject Property, Plaintiff was compelled to retain legal counsel to obtain recovery for the defective conditions. Therefore, pursuant to NRS §40.600 *et seq.*, Defendants are liable for those attorney's fees and costs reasonably and necessarily incurred by Plaintiff in order to obtain compensation in a sum to be determined at trial.

VI.

FOURTH CLAIM FOR RELIEF
(Alter Ego Against Defendants SUNRIDGE and LANDS WEST)

87. Plaintiff incorporates herein by reference all preceding paragraphs as though fully set forth herein.

88. Plaintiff is informed and believes and thereon alleges that Defendant LANDS WEST is the partner, owner, parent corporation and/or successor-in-interest to Defendant SUNRIDGE.

89. Plaintiff is informed and believes and thereon alleges the identify of Defendant LANDS WEST and Defendant SUNRIDGE are in substance one and the same and that Defendant SUNRIDGE is but the alter ego of Defendant LANDS WEST and/or LANDS WEST is the successor-in-interest to

1 SUNRIDGE and as such both companies are jointly and severally liable for their individual or combined
2 actions in causing damage to Plaintiff.

3 90. Plaintiff is informed and believes and thereon alleges that Defendant SUNRIDGE is fully
4 influenced and governed by Defendant LANDS WEST.

5 91. Plaintiff is informed and believes and thereon alleges that there is total unity of interest in
6 ownership between Defendant SUNRIDGE and Defendant LANDS WEST such that each entity is
7 inseparable from the other.

8 92. Plaintiff is informed and believes and thereon alleges that the reason for the difference
9 between Defendant LANDS WEST BUILDERS, INC. and its alter ego Defendant SUNRIDGE is to
10 cause harm or prejudice to those dealing with it, sanctions fraud and promote injustice. In support,
11 Plaintiff is informed and believes and thereon alleges that at all times relevant herein, Defendant
12 LANDS WEST: (1) was and is the owner of all or substantially all of the stock of Defendant
13 SUNRIDGE; (2) was the President of Defendant SUNRIDGE; (3) was and/or is a member of the board
14 of directors of Defendant SUNRIDGE.; and (4) was and is the controlling influence over all of
15 Defendant SUNRIDGE'S corporate affairs.

16 93. Plaintiff is informed and believes and thereon alleges that at all times relevant herein
17 Defendant LANDS WEST ignored and ignores the separate existence of Defendant Corporation
18 SUNRIDGE in numerous ways, including: (1) failure to conduct regular meetings of shareholders and
19 directors; (2) undercapitalizing Defendant SUNRIDGE; (3) performing unauthorized diversions of funds
20 from Defendant SUNRIDGE to Defendant LANDS WEST; (4) failure to observe corporate formalities
21 between Defendant LANDS WEST and Defendant SUNRIDGE; (5) required annual meetings are not
22 held; (6) corporate records are not properly maintained; and (7) there is a failure to maintain separate
23 offices and the existence of Defendant SUNRIDGE as corporate entities are only facades for the
24 activities of Defendant LANDS WEST who in fact is the corporate alter ego of Defendant SUNRIDGE.

25 94. Plaintiff is informed and believes and thereon alleges that Defendant SUNRIDGE is
26 virtually insolvent and has ceased operations and Plaintiff therefore invokes the trust fund doctrine and
27 alleges that Defendant LANDS WEST is placed in a fiduciary relationship, and owes a fiduciary duty to
28 Plaintiff and to all other creditors of SUNRIDGE.

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VII.

FIFTH CLAIM FOR RELIEF
(Successor Liability Against Defendants SUNRIDGE and LANDS WEST)

95. Plaintiff incorporates herein by reference all preceding paragraphs as though fully set forth herein.

96. Plaintiff is informed and believes and thereon alleges that Defendant LANDS WEST is the successor-in-interest to Defendant SUNRIDGE.

97. Plaintiff is informed and believes and thereon alleges that Defendant LANDS WEST expressly or impliedly agreed to assume the debts of Defendant SUNRIDGE.

98. Plaintiff is informed and believes and thereon alleges that Defendants LANDS WEST and SUNRIDGE have consolidated or merged operations.

99. Plaintiff is informed and believes that LANDS WEST is merely the continuation of SUNRIDGE.

100. Plaintiff is informed and believes and thereon alleges that any transactions between LANDS WEST and SUNRIDGE were fraudulently made in order for SUNRIDGE to escape liability for debts to Plaintiff.

101. Because Defendant LANDS WEST is the successor-in-interest to SUNRIDGE, and one is simply the mere continuation of the other, both companies are jointly and severally liable for their individual or combined actions in causing damage to Plaintiff.

VIII.

SIXTH CLAIM FOR RELIEF
(Declaratory and Equitable Relief Regarding NRS 40.600 et seq. Against All Defendants)

102. Plaintiff incorporates herein by reference all previous paragraphs inclusive, as though fully set forth herein.

103. A dispute has arisen and an actual controversy now exists between Plaintiff and Defendants, and each of them, with respect to Defendants' obligations under NRS §40.600 *et seq.* (hereinafter "Chapter 40") and Plaintiff's rights thereunder. Plaintiff contends that the defective conditions at issue arose before AB125 was enacted. Plaintiff is informed and believes that Defendants,

1 and each of them, contend to the contrary. Therefore, an actual controversy exists relative to the legal
2 duties and rights of the respective parties, which Plaintiff requests the Court to resolve.

3 104. All of the rights and obligations of the parties hereto arose out of what is actually one
4 transaction or one series of transactions, happenings or events, all of which can be settled and determined
5 in a judgment in this one action. Plaintiff alleges that an actual controversy exists between the parties
6 under the circumstances alleged. A declaration of rights, responsibilities and obligations of Plaintiff and
7 Defendants, and each of them, is essential to determine their respective obligations in connection with
8 Plaintiff's operative Complaint. Plaintiff has no true and speedy remedy at law of any kind.

9 105. As the determination of the foregoing issue is essential to the administration of justice in
10 this case and therefore, Plaintiff respectfully requests the Court to resolve this issue prior to trial.

11 106. It has been necessary for Plaintiffs to retain the services of legal counsel to bring this
12 action. Plaintiffs are entitled to recover their attorney's fees, expert fees and costs incurred herein
13 pursuant Nevada law.

14 IX.

15 **SEVENTH CLAIM FOR RELIEF**

16 **(Strict Liability against BSH HOME APPLIANCES CORPORATION and ROES 2 through 50)**

17 107. Plaintiff incorporates herein by reference all previous paragraphs inclusive, as though
18 fully set forth herein.

19 108. BSH HOME APPLIANCES CORPORATION and ROES 2 through 50 developed,
20 designed, manufactured, supplied, distributed, marketed, sold, and warranted defective products that
21 were used and/or installed into the Subject Property.

22 109. BSH HOME APPLIANCES CORPORATION and ROES 2 through 50 knew and/or
23 should have known and expected that their products would be placed in the stream of commerce and on
24 the market, and would reach Plaintiff without substantial change and would be installed in the same
25 defective condition in which they were originally designed, manufactured and sold.

26 110. Plaintiff is informed and believes and thereon alleges that BSH HOME APPLIANCES
27 CORPORATION'S and ROES 2 through 50's products are defective by design and/or unsuitable for
28 use. As a direct and proximate result, Plaintiff has been injured, damaged and caused harm. The

1 damages include, but are not limited to the cost to replace the defective units, which can be calculated
2 based on common methods and proof. Incidental damages also include loss of use and function, damage
3 to other property, economic losses including costs of maintenance and/or repair, and all reasonable fees,
4 costs, interest, and/or expenses associated therewith in an amount in excess of Ten Thousand Dollars
5 (\$10,000.00) to be established according to proof at the time of trial.

6 111. It has been necessary for Plaintiff to retain legal counsel to bring this action. Plaintiff is
7 entitled to recover their attorney's fees, expert fees and costs incurred herein pursuant Nevada law.

8 **X.**

9 **EIGHTH CAUSE OF ACTION**
10 **(Professional Negligence Against Design Professionals DOES 101 through 150)**

11 112. Plaintiff incorporates herein by reference all previous paragraphs inclusive, as though
12 fully set forth herein.

13 113. Design Professionals DOES 101 through 150, and each of them, owed a contractual
14 and/or legal duty to Plaintiff to exercise due and reasonable care in the rendering of professional
15 services, design, construction and/or development of the subject property. Design Professionals DOES
16 101 through 150 also had a legal duty to abide by professional standards of care, industry standards,
17 governmental codes and restrictions, manufacturer requirements, Building Codes, product specifications
18 and/or the laws of the State of Nevada.

19 114. If the subject property is defectively designed, developed and/or constructed, Design
20 Professionals DOES 101 through 150, and each of them are responsible for such defects in that they
21 failed to act reasonably in the rendering of professional services, design, development and construction
22 of the subject property, thereby breaching their duty owed to Plaintiff.

23 115. The breach(es) of the aforementioned duties by each Design Professionals DOES 101
24 through 150, as described in herein was and is the actual and proximate cause of damages to Plaintiff in
25 excess of \$10,000.

26 116. It has been necessary for Plaintiff to retain legal counsel to bring this action. Plaintiff is
27 entitled to recover their attorney's fees, expert fees and costs incurred herein pursuant Nevada law.
28

1 **PRAYER FOR RELIEF**

2 Plaintiff realleges and incorporates by reference all Paragraphs of this Complaint as though fully
3 set forth herein and pray for judgment as against the Defendants as follows:

4 1. General and specific damages in excess of this Court's minimum jurisdiction of
5 \$10,000.00 including but not limited to any costs to identify, mitigate, cure or repair any defects or
6 deficiency in the construction of the SUBJECT PROPERTY and improvements and appurtenances
7 thereto, and any and all damages proximately caused thereby, in a sum to be determined according to
8 proof;

9 2. Incidental and consequential damages proximately caused by any defect or deficiency in
10 the construction of the SUBJECT PROPERTY and improvements and appurtenances thereto, including
11 but not limited to the loss of use, relocation and alternative housing, incidental expenses, diminished
12 value, stigma, lost rents and lost business opportunity, all in sums to be determined according to proof;

13 3. All entitlements as set forth in NRS §40.655;

14 4. Reasonable attorney's fees and costs based on the construction contracts and Nevada
15 Revised Statutes;

16 5. All interest as provided by law, including prejudgment interest; and

17 6. Such other declaratory and equitable relief as the court deems just and proper.

18 DATED this 16th day of March, 2017.

19 SPRINGEL & FINK LLP

20
21 By: /s/ Wendy L. Walker

22 WENDY L. WALKER, ESQ.

23 Nevada Bar No. 10791

24 MICHAEL A. ARATA, ESQ.

25 Nevada Bar No. 11902

26 10655 Park Run Drive, Suite 275

27 Las Vegas, Nevada 89144

28 Co-Counsel for Plaintiff and per SCR 42.1(2)

CERTIFICATE OF SERVICE
Byrne v. Sunridge Builders, Inc., et al.
Case No. A-16-742143-D

STATE OF NEVADA)
) ss.
CLARK COUNTY)

I, Lori-Anne Harrison, declare:

I am a resident of and employed in Clark County, Nevada. I am over the age of eighteen years and not a party to the within action. My business address is 10655 Park Run Drive, Suite 275, Las Vegas, Nevada 89144.

On **March 16, 2017**, I served the document described as **SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL** on the following parties:

Lena M. Louis, Esq.
Athanasia E. Dalacas, Esq.
RESNICK & LOUIS, P.C.
5940 S Rainbow Blvd
Las Vegas NV 89118
Attorneys for Defendant
Sunridge Builders, Inc.

Robert Schumacher, Esq.
Brian K. Walters, Esq.
GORDON & REES, LLP
300 South 4th St, Suite 1550
Las Vegas NV 89101
Attorneys for Defendant
Lands West Builders, Inc.

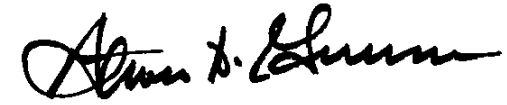
____ VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada. I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would be deposited with the U.S. postal service on that same day with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business

____ VIA FACSIMILE: by transmitting to a facsimile machine maintained by the person on whom it is served at the facsimile machine telephone number at last given by that person on any document which he/she has filed in the cause and served on the party making the service. The copy of the document served by facsimile transmission bears a notation of the date and place of transmission and the facsimile telephone number to which transmitted. A confirmation of the transmission containing the facsimile telephone numbers to which the document(s) was/were transmitted will be maintained with the document(s) served.

 X ***VIA ELECTRONIC SERVICE: by submitting the foregoing to the Court's E-filing System for Electronic Service upon the Court's Service List pursuant to EDCR 8. The copy of the document electronically served bears a notation of the date and time of service. The original document will be maintained with the document(s) served and be made available, upon reasonable notice, for inspection by counsel or the Court.***

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

/s/ Lori-Anne Harrison
An Employee of *SPRINGEL & FINK LLP*



CLERK OF THE COURT

1 **ANS**
2 **RESNICK & LOUIS, P.C.**
3 **LENA M. LOUIS, ESQ.**
4 Nevada Bar No. 6398
5 **ATHANASIA E. DALACAS, ESQ.**
6 Nevada Bar No. 9390
7 llouis@rlattorneys.com
8 adalacas@rlattorneys.com
9 5940 S. Rainbow Blvd.
10 Las Vegas, NV 89118
11 Telephone: (702) 997-3800
12 Facsimile: (702) 997-3800
13 *Attorneys for Defendant/Cross-Claimant/Third Party Plaintiff,*
14 *Sunridge Builders, Inc.*

DISTRICT COURT
CLARK COUNTY, NEVADA

12 JANETTE BYRNE, as Trustee of the UOFM
13 TRUST,

Plaintiffs,

14 v.

15 SUNRIDGE BUILDERS, INC., a Nevada
16 Corporation; LANDS WEST BUILDERS,
17 INC., a Nevada Corporation; AVANTI
18 PRODUCTS, LLC, a Nevada Limited Liability
19 Company; BRYANT MASONRY, LLC, a
20 Nevada Limited Liability Company; BSH
21 HOME APPLIANCES CORPORATION, a
22 Delaware Corporation; CIRCLE S
23 DEVELOPMENT DBA DECK SYSTEMS OF
24 NEVADA, a Nevada Corporation; 4M CORP.,
25 a Nevada Corporation; GENERAL ELECTRIC
26 COMPANY, a Nevada Corporation; GREEN
27 PLANET LANDCAPING, LLC, a Nevada
28 Limited Liability Company; IVIE
MECHANICAL, INC., a Nevada Corporation;
J.C.W. CONCRETE, INC., a Nevada
corporation; KARL HENRY LINSENBARDT
DBA SIGNATURE DOOR AND TRIM;
LIFEGUARD POOL MAINTENANCE DBA
LIFEGUARD POOLS, a Nevada Corporation;
MOUNTAIN WEST ELECTRIC, a Nevada
Corporation; PRESTIGE ROOFING, INC., a
Nevada Corporation; PYRAMID PLUMBING,
INC., Nevada Corporation; RIVERA
FRAMING INC., a Nevada Corporation; S&L

CASE NO.: A-16-742143-D

DEPT: XVI

**DEFENDANT/CROSS-CLAIMANT/
THIRD PARTY PLAINTIFF
SUNRIDGE BUILDERS, INC.'S
ANSWER TO SECOND AMENDED
COMPLAINT AND CROSS CLAIM
AND THIRD PARTY COMPLAINT**

1 ROOFING, INC., a Colorado Corporation;
2 SPRAY PRODUCT APPLICATIONS, LLC,
3 Nevada Limited Liability Company; TRIM
4 TIME LLC DBA BLITZ CONSTRUCTION, a
5 Nevada Limited Liability Company;
6 WINDOW INSTALLATION SPECIALISTS,
7 LLC, a Nevada Limited Liability Company and
8 DOES 20 through 100 DESIGN
9 PROFESSIONAL DOES 101 through 150,
10 and/or SUPPLIER ROES 2 through 50,
11 inclusive,

12 Defendants.

13 SUNRIDGE BUILDERS, INC., a Nevada
14 Corporation,

15 Cross-Claimant,

16 v.

17 BRYANT MASONRY, LLC, a Nevada
18 Limited Liability Company; 4M CORP., a
19 Nevada Corporation; BSH HOME
20 APPLIANCES CORPORATION, a Delaware
21 Corporation; CIRCLE S DEVELOPMENT
22 DBA DECK SYSTEMS OF NEVADA, a
23 Nevada Corporation; DMK CONCRETE,
24 INC., a Nevada Corporation; GENERAL
25 ELECTRIC COMPANY, a Foreign
26 Corporation; GREEN PLANET
27 LANDCAPING, LLC, a Nevada Limited
28 Liability Company; IVIE MECHANICAL,
INC., a Nevada Corporation; J.C.W.
CONCRETE, INC., a Nevada corporation;
LIFEGUARD POOL MAINTENANCE DBA
LIFEGUARD POOLS, a Nevada Corporation;
MOUNTAIN WEST ELECTRIC, a Nevada
Corporation; PYRAMID PLUMBING, INC.,
Nevada Corporation; RIVERA FRAMING
INC., a Nevada Corporation; S&L ROOFING,
INC., a Nevada Corporation; SPRAY
PRODUCT APPLICATIONS, LLC, Nevada
Limited Liability Company; WINDOW
INSTALLATION SPECIALISTS, LLC, a
Nevada Limited Liability Company and MOES
1 through 100 and ZOE CORPORATIONS 1
through 100, inclusive,

29 Cross-Defendants.

30 SUNRIDGE BUILDERS, INC., a Nevada
31 Corporation,

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Third Party Plaintiff,

v.

BRANDON IRON, INC., a Nevada Corporation; EARTHCORE INDUSTRIES, LLC, a Nevada Limited Liability Company; HARDY CABINETS INC., dba ARTESIA CABINETS, a Nevada Corporation; J.C.W. CONCRETE, INC., A Nevada Corporation; JD STAIRS, INC., a Nevada Corporation; PIECE OF THE ROCK, a Nevada Corporation; WHITE FEATHER DRYWALL & PAINT, an Unknown Business Entity; and MOES 101 through 150 and ZOE CORPORATIONS 101 through 150, inclusive,

Third-Party Defendants.

Defendant, SUNRIDGE BUILDERS, INC., (hereinafter “SUNRIDGE”) by and through its counsel of record, ATHANASIA E. DALACAS, ESQ., of the law offices of RESNICK & LOUIS, P.C., hereby answers Plaintiff’s Second Amended Complaint as follows:

I.

PARTIES

1. Answering Paragraphs 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 of Plaintiff’s Second Amended Complaint, SUNRIDGE lacks sufficient information upon which to admit or deny the allegations made and, on that basis, denies each and every allegation contained therein.
2. Answering Paragraph 3 of Plaintiff’s Second Amended Complaint, SUNRIDGE admits the allegations contained therein as to SUNRIDGE, but lacks sufficient information as to the remainder of the Defendants.

II.

GENERAL ALLEGATIONS

3. Answering Paragraphs 32, 38, 39, 40, 48, and 49 of Plaintiff’s Second Amended Complaint, SUNRIDGE lacks sufficient information upon which to admit or deny the allegations made and, on that basis, denies each and every allegation contained therein.

4. Answering Paragraphs 34 of Plaintiff's Second Amended Complaint, SUNRIDGE admits as to SUNRIDGE only. With respect to the allegations as to other Defendants, SUNRIDGE lacks sufficient information upon which to admit or deny the allegations made, and on that basis, denies each and every allegation contained therein.

5. Answering Paragraphs 35, 36, 37, 41, 42, 43, 44, 45, 46, and 47 of Plaintiff's Second Amended Complaint, Defendant specifically and generally deny each and every allegation contained therein.

III

FIRST CLAIM FOR RELIEF

(Breach of Implied Warranty Against Defendants)

6. Answering Paragraph 50 of Plaintiff's Second Amended Complaint, SUNRIDGE lacks sufficient information upon which to admit or deny the allegations made and, on that basis, denies each and every allegation contained therein.

7. Answering Paragraphs 51, 52, 53, 54, 55, 56, and 57 of Plaintiff's Second Amended Complaint, Defendant specifically and generally deny each and every allegation contained therein.

IV.

SECOND CLAIM FOR RELIEF

(Breach of Express Warranty Against Defendants)

8. Answering Paragraph 58 of Plaintiff's Second Amended Complaint, SUNRIDGE lacks sufficient information upon which to admit or deny the allegations made and, on that basis, denies each and every allegation contained therein.

9. Answering Paragraphs 59, 60, 61, 62, 63, 64, 65, 66, 67, 68 and 69 of Plaintiff's Second Amended Complaint, Defendant specifically and generally deny each and every allegation contained therein.

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1 V.

2 **THIRD CLAIM FOR RELIEF**

3 **(Negligence/Negligence Per Se Against Defendants)**

4 10. Answering Paragraphs 70 and 79 of Plaintiff's Second Amended Complaint,
5 SUNRIDGE lacks sufficient information upon which to admit or deny the allegations made and,
6 on that basis, denies each and every allegation contained therein.

7 11. Answering Paragraphs 71, 72, 73, 74, 75, 76, 77, 78, 80, 81, 82, 83, 84, 85 and 86 of
8 Plaintiff's Second Amended Complaint, Defendant specifically and generally deny each and
9 every allegation contained therein.

10 VI.

11 **FOURTH CLAIM FOR RELIEF**

12 **(Alter Ego Against Defendants SUNRIDGE AND LANDS WEST BUILDERS, INC.)**

13 12. Answering Paragraph 87 of Plaintiff's Second Amended Complaint, SUNRIDGE
14 lacks sufficient information upon which to admit or deny the allegations made and, on that basis,
15 denies each and every allegation contained therein.

16 13. Answering Paragraphs 88, 89, 90, 91, 92, 93 and 94 of Plaintiff's Second Amended
17 Complaint, Defendant specifically and generally deny each and every allegation contained
18 therein.

19 VII.

20 **FIFTH CLAIM FOR RELIEF**

21 **(Successor Liability Against Defendants SUNRIDGE AND LANDS WEST BUILDERS,**
22 **INC.)**

23 14. Answering Paragraph 95 of Plaintiff's Second Amended Complaint, SUNRIDGE
24 lacks sufficient information upon which to admit or deny the allegations made and, on that basis,
25 denies each and every allegation contained therein.

15. Answering Paragraphs 96, 97, 98, 99, 100 and 101 of Plaintiff's Second Amended Complaint, Defendant specifically and generally deny each and every allegation contained therein.

VIII.

SIXTH CLAIM FOR RELIEF

(Declaratory and Equitable Relief Regarding NRS 40.600 et seq. Against All Defendants)

16. Answering Paragraph 102 of Plaintiff's Second Amended Complaint, SUNRIDGE lacks sufficient information upon which to admit or deny the allegations made and, on that basis, denies each and every allegation contained therein.

17. Answering Paragraphs 103, 104, 105 and 106 of Plaintiff's Second Amended Complaint, Defendant specifically and generally deny each and every allegation contained therein.

IX.

SEVENTH CLAIM FOR RELIEF

(Strict Liability against BSH HOME APPLIANCES AND ROES 2 through 50))

18. Answering Paragraph 107 of Plaintiff's Second Amended Complaint, SUNRIDGE lacks sufficient information upon which to admit or deny the allegations made and, on that basis, denies each and every allegation contained therein.

19. Answering Paragraphs 108, 109, 110 and 1111 Plaintiff's Second Amended Complaint, Defendant specifically and generally deny each and every allegation contained therein.

X.

EIGHTH CLAIM FOR RELIEF

(Professional Negligence Against Design Professionals DOES 101 through 150)

20. Answering Paragraph 112 of Plaintiff's Second Amended Complaint, SUNRIDGE lacks sufficient information upon which to admit or deny the allegations made and, on that basis, denies each and every allegation contained therein.

21. Answering Paragraphs 113, 114, 115, 116 of Plaintiff's Second Amended Complaint, Defendant specifically and generally deny each and every allegation contained therein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

This Defendant denies the allegations of the Second Amended Complaint, and each cause of action, and each paragraph in each cause of action, and each and every part thereof, including a denial that Plaintiff was damaged in the sum or sums alleged, or to be alleged, or any other sum or sums whatsoever.

SECOND AFFIRMATIVE DEFENSE

This Defendant denies that by reason of any act or omission, fault, conduct or liability on the part of this answering Defendant, whether negligent, careless, unlawful or whether as alleged, or otherwise, Plaintiff was injured or damaged in any of the amounts alleged, or in any other manner or amount whatsoever; this answering Defendant further denies that this answering Defendant was negligent, careless, reckless, wanton, acted unlawfully or are liable, whether in the manner alleged or otherwise.

THIRD AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that the Second Amended Complaint, and each and every cause of action stated therein, fails to state facts sufficient to constitute a cause of action, or any cause of action, as against this answering Defendant.

FOURTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second Amended Complaint is barred by issue preclusion and/or the Doctrine of Res Judicata.

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FIFTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that if Plaintiff suffered or sustained any loss, injury, damage or detriment, the same is directly and proximately caused and contributed to, in whole or in part, by the breach of warranty, conduct, acts, omissions, activities, carelessness, recklessness, negligence, and/or intentional misconduct of Plaintiff, thereby completely or partially barring Plaintiffs' recovery herein.

SIXTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that it is not legally responsible in any fashion with respect to the damages and injuries claimed by Plaintiff; however, if this Defendant is subjected to any liability to Plaintiffs, it will be due, in whole or in part, to the breach of warranty, acts, omissions, activities, carelessness, recklessness, and negligence of others; wherefore any recovery obtained by Plaintiff against this Defendant should be reduced in proportion to the respective negligence and fault and legal responsibility of all other parties, persons and entities, their agents, servants and employees who contributed to and/or caused any such injury and/or damages, in accordance with the law of comparative negligence; consequently, this Defendant is informed and believes, and thereon alleges, that the liability of this answering Defendant, if any, is limited in direct proportion to the percentage of fault actually attributed to this answering Defendant.

SEVENTH AFFIRMATIVE DEFENSE

If this Defendant is found responsible in damages to Plaintiff or some other party, whether as alleged or otherwise, then this Defendant is informed and believes, and thereon alleges, that the liability will be predicated upon the active conduct of Plaintiff, whether by negligence, breach of warranty, strict liability in tort or otherwise, which unlawful conduct proximately caused the alleged incident and that Plaintiff's action against this Defendant is barred by that active and affirmative conduct.

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EIGHTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that at the time or place of the incidents alleged in Plaintiff's Second Amended Complaint, Plaintiffs knowingly, freely, and voluntarily assumed all risk of harm and the consequent injuries and damages, if any, resulting therefrom.

NINTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that the Second Amended Complaint, and each and every cause of action contained therein is barred by the applicable Statutes of Repose.

TENTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that as to each alleged cause of action, Plaintiff has failed, refused and neglected to take reasonable steps to mitigate their alleged damages, if any, thus barring or diminishing Plaintiff's recovery herein.

ELEVENTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that the Second Amended Complaint, and each and every cause of action contained therein, is barred by the applicable Statutes of Limitation.

TWELFTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff unreasonably delayed both the filing of the Complaint and notification of this Defendant to the alleged causes of action, and the basis for the causes of action alleged against this answering Defendant, all of which has unduly and severely prejudiced this Defendant in its defense of the action, thereby barring or diminishing Plaintiff's recovery herein under the Doctrine of Estoppel.

THIRTEENTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff reasonably delayed both filing of the Second Amended Complaint and notification of this Defendant to the alleged causes of action, and the basis for the causes of action alleged against this answering

1 Defendant, all of which has unduly and severely prejudiced this Defendant in his defense of the
2 action, thereby barring or diminishing Plaintiff's recovery herein under the Doctrine of Waiver.

3 **FOURTEENTH AFFIRMATIVE DEFENSE**

4 This Defendant is informed and believes, and thereon alleges, that Plaintiffs unreasonably
5 delayed both the filing of the Second Amended Complaint and notification of this Defendant to
6 the alleged causes of action, and the basis for the causes of action alleged against this answering
7 Defendant, all of which has unduly and severely prejudiced this Defendant in his defense of the
8 action, thereby barring or diminishing Plaintiff's recovery herein under the Doctrine of Laches.

9 **FIFTEENTH AFFIRMATIVE DEFENSE**

10 This Defendant is informed and believes, and thereon alleges, that Plaintiff has failed to
11 join all necessary and indispensable parties to this lawsuit.

12 **SIXTEENTH AFFIRMATIVE DEFENSE**

13 This Defendant is informed and believes, and thereon alleges, that the injuries and
14 damages of which Plaintiff complains were proximately caused by, or contributed to by, the acts
15 of other Defendants, Cross-Defendants, Third-Party Defendants, persons, and/or other entities,
16 and that said acts were an intervening and superseding cause of the injuries and damages, if any,
17 of which Plaintiff complains, thus barring Plaintiffs from any recovery against this answering
18 Defendant.

19 **SEVENTEENTH AFFIRMATIVE DEFENSE**

20 This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second
21 Amended Complaint is barred by the Statute of Frauds.

22 **EIGHTEENTH AFFIRMATIVE DEFENSE**

23 It has been necessary for this Defendant to retain the services of an attorney to defend this
24 action, and this Defendant is entitled to a reasonable sum as and for attorney's fees.

25 **NINETEENTH AFFIRMATIVE DEFENSE**

26 This Defendant is informed and believes, and thereon alleges, that the claims of Plaintiff
27 is reduced, modified and/or barred by the Doctrine of Unclean Hands.

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TWENTIETH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that any and all events, happenings, injuries and damages alleged by Plaintiff are a direct result of an act of God.

TWENTY-FIRST AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second Amended Complaint is reduced, modified, and/or barred because Plaintiff received payment.

TWENTY-SECOND AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Defendant's performance was excused because of Impossibility of Performance.

TWENTY-THIRD AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second Amended Complaint is reduced, modified, and/or barred because Plaintiff abandoned the contract(s).

TWENTY-FOURTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second Amended Complaint is reduced, modified, and/or barred because Plaintiffs ratified the contract(s).

TWENTY-FIFTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second Amended Complaint is reduced, modified, and/or barred because of changed circumstances.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second Amended Complaint is reduced, modified, and/or barred because Plaintiffs released their claims.

TWENTY -SEVENTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second Amended Complaint is reduced, modified, and/or barred because of the doctrine of Accord and Satisfaction.

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TWENTY -EIGHTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second Amended Complaint is reduced, modified, and/or barred because of the Parol Evidence Rule.

TWENTY-NINTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second Amended Complaint is reduced, modified, and/or barred because of the doctrine of Unjust Enrichment.

THIRTIETH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second Amended Complaint is reduced, modified, and/or barred because Plaintiff failed to fulfill a condition or conditions precedent to the enforcement of each and every oral, implied or other contract alleged herein.

THIRTY-FIRST AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second Amended Complaint is reduced, modified, and/or barred by the Economic Loss Doctrine.

THIRTY-SECOND AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second Amended Complaint is reduced, modified, and/or barred because the subject construction and products incorporated therein were modified, changed, or altered so as to change their character with respect to the defects complained of in the Second Amended Complaint. Any defect in the subject construction and/or product, if any, resulted solely from modification, change, or alteration of the products, and not from any act or omission on the part of this Defendant. Furthermore, the defects created by the aforesaid alteration, change, or modification, if any, were the sole and proximate cause of damages, if any, alleged in the Complaint.

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THIRTY-THIRD AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second Amended Complaint is reduced, modified, and/or barred because Plaintiff's claimed damages arising from the incident sued upon herein resulted from misuse of the subject construction and products incorporated therein. If there was any defect in the product or property referred to in the Second Amended Complaint at the time of said damages, such defect did not exist at the time said product or property left the possession or control of this Defendant and was caused by the misuse, abuse, changes, modification, lack of maintenance, improper maintenance, and alterations of others, including Plaintiffs herein, and that said damages were caused by such misuse, abuse, changes, alterations, lack of maintenance, and modifications. The misuse was without the knowledge, approval, or consent of this Defendant and was not reasonably foreseeable to this Defendant either before the time of the sale or construction of the lot or house or at any time prior to the manifestation of the alleged defects, if any.

THIRTY -FOURTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second Amended Complaint is reduced, modified, and/or barred because Plaintiffs lack privity with this Defendant, lack standing to sue, and/or lack capacity to sue this Defendant.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

To the extent that there is any agreement between the parties to utilize Alternative Dispute Resolution ("ADR") procedures to resolve any or all of the issues or disputes raised in Plaintiff's Second Amended Complaint, Centex expressly reserves the right to enforce those ADR provisions and does not waive the right to enforce those ADR provisions by filing this Answer. ADR procedures include, without limitation, arbitration, mediation, and/or a judicial reference.

THIRTY -SIXTH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, are speculative and/or uncertain and, therefore, are not compensable.

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THIRTY-SEVENTH AFFIRMATIVE DEFENSE

Plaintiff is barred, in whole or in part, from recovering attorney's fees in this matter based on contract, equity, or other exclusions in law or equity.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

Pursuant to N.R.C.P. 11, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available for this Defendant after reasonable inquiry, and therefore, this Defendant reserves the right to amend its Answer to allege additional affirmative defenses, if subsequent investigation so warrants.

WHEREFORE, having fully answered Plaintiff's Second Amended Complaint, SUNRIDGE respectfully requests the following relief:

- A. That Plaintiff takes nothing by the way of the Second Amended Complaint;
- B. That the Second Amended Complaint be dismissed with prejudice and that SUNRIDGE be awarded judgment in this action;
- C. That SUNRIDGE be awarded their costs incurred herein;
- D. That SUNRIDGE be awarded their attorneys' fees; and
- E. For such other and further relief as the Court deems just and proper.

CROSS-CLAIM

Cross-Claimant, SUNRIDGE BUILDERS, INC., a Nevada Corporation (hereinafter "SUNRIDGE"), hereby states its Cross-Claim against BRYANT MASONRY, LLC; 4M CORP. BSH HOME APPLIANCES CORPORATION; CIRCLE S DEVELOPMENT DBA DECK SYSTEMS OF NEVADA; DMK CONCRETE, INC.; GENERAL ELECTRIC COMPANY; GREEN PLANET LANDCAPING, LLC; IVIE MECHANICAL, INC.; J.C.W. CONCRETE, INC.; LIFEGUARD POOL MAINTENANCE DBA LIFEGUARD POOLS; MOUNTAIN WEST ELECTRIC; PYRAMID PLUMBING, INC.; RIVERA FRAMING, INC.; S&L ROOFING, INC.; SPRAY PRODUCT APPLICATIONS, LLC; WINDOW INSTALLATION

1 SPECIALISTS, LLC; and MOES 1 through 100 and ZOE CORPORATIONS 1 through 100,
2 inclusive (hereinafter collectively “Cross-Defendants”), as follows:

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4 **GENERAL ALLEGATIONS**

5 1. At all relevant times herein, SUNRIDGE was a Nevada Corporation formed under
6 the laws of the State of Nevada and authorized to do business in the State of Nevada.

7 2. At all times relevant herein, each of the Cross-Defendants were either Nevada
8 Corporations, Limited Liability Companies or unknown business entities doing business in the
9 State of Nevada, County of Clark.

10 3. Cross Claimant is informed and believes, and thereon alleges, that each of the
11 Cross-Defendants, and each of them, including DOES and ROES, performed architectural
12 services, engineering services, construction related work and/or supplied materials for the
13 construction of or around the home located at 578 Lairmont Place, City of Henderson, County of
14 Clark, State of Nevada (referred to herein as the “Subject Property”), which is the subject of
15 Plaintiff’s Second Amended Complaint.

16 4. Cross-Defendant, BRYANT MASONRY, LLC, a Nevada Limited Liability
17 Company, was at all times material hereto, a legal entity doing business in Nevada who
18 designed, engineered and/or performed the work for, construction of, and/or installation of or
19 supplied materials to the Subject Property.

20 5. Cross-Defendant, 4M CORP., a Nevada Corporation, was at all times material
21 hereto, a legal entity doing business in Nevada who designed, engineered and/or performed the
22 work for, construction of, and/or installation of or supplied materials to the Subject Property.

23 6. Cross-Defendant, DMK CONCRETE, INC., A Nevada Corporation, was at all
24 times material hereto, a legal entity doing business in Nevada who designed, engineered and/or
25 performed the work for, construction of, and/or installation of or supplied materials to the
26 Subject Property.

1 7. Cross-Defendant, BSH HOME APPLIANCES CORPORATION., A Delaware
2 Corporation, was at all times material hereto, a legal entity doing business in Nevada who
3 designed, engineered and/or performed the work for, construction of, and/or installation of or
4 supplied materials to the Subject Property.

5 8. Cross-Defendant CIRCLE S DEVELOPMENT DBA DECK SYSTEMS OF
6 NEVADA, a Nevada Corporation, was at all times material hereto, a legal entity doing business
7 in Nevada who designed, engineered and/or performed the work for, construction of, and/or
8 installation of or supplied materials to the Subject Property.

9 9. Cross-Defendant, GREEN PLANET LANDSCAPING, LLC, a Nevada Limited
10 Liability Company, was at all times material hereto, a legal entity doing business in Nevada who
11 designed, engineered and/or performed the work for, construction of, and/or installation of or
12 supplied materials to the Subject Property.

13 10. Cross-Defendant, GENERAL ELECTRIC COMPANY, a Foreign Corporation,
14 was at all times material hereto, a legal entity doing business in Nevada who designed,
15 engineered and/or performed the work for, construction of, and/or installation of or supplied
16 materials to the Subject Property.

17 11. Cross-Defendant, IVIE MECHANICAL, INC., a Nevada Corporation, was at all
18 times material hereto, a legal entity doing business in Nevada who designed, engineered and/or
19 performed the work for, construction of, and/or installation of or supplied materials to the
20 Subject Property.

21 12. Cross-Defendant, J.C.W. CONCRETE, INC., a Nevada Corporation, was at all
22 times material hereto, a legal entity doing business in Nevada who designed, engineered and/or
23 performed the work for, construction of, and/or installation of or supplied materials to the
24 Subject Property.

25 13. Cross-Defendant, LIFEGUARD POOL MAINTENANCE DBA LIFEGUARD
26 POOLS, a Nevada Corporation, was at all times material hereto, a legal entity doing business in
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1 Nevada who designed, engineered and/or performed the work for, construction of, and/or
2 installation of or supplied materials to the Subject Property.

3 14. Cross-Defendant, MOUNTAIN WEST ELECTRIC, a Nevada Corporation, was
4 at all times material hereto, a legal entity doing business in Nevada who designed, engineered
5 and/or performed the work for, construction of, and/or installation of or supplied materials to the
6 Subject Property.

7 15. Cross-Defendant, PYRAMID PLUMBING, INC., a Nevada Corporation, was at
8 all times material hereto, a legal entity doing business in Nevada who designed, engineered
9 and/or performed the work for, construction of, and/or installation of or supplied materials to the
10 Subject Property.

11 16. Cross-Defendant, RIVERA FRAMING, INC., a Nevada Corporation, was at all
12 times material hereto, a legal entity doing business in Nevada who designed, engineered and/or
13 performed the work for, construction of, and/or installation of or supplied materials to the
14 Subject Property.

15 17. Cross-Defendant, S&L ROOFING, INC., a Nevada Corporation, was at all times
16 material hereto, a legal entity doing business in Nevada who designed, engineered and/or
17 performed the work for, construction of, and/or installation of or supplied materials to the
18 Subject Property.

19 18. Cross-Defendant, SPRAY PRODUCT APPLICATIONS, LLC, a Nevada Limited
20 Liability Company, was at all times material hereto, a legal entity doing business in Nevada who
21 designed, engineered and/or performed the work for, construction of, and/or installation of or
22 supplied materials to the Subject Property.

23 19. Cross-Defendant, WINDOW INSTALLATION SPECIALISTS, LLC, A Nevada
24 Limited Liability Company, was at all times material hereto, a legal entity doing business in
25 Nevada who designed, engineered and/or performed the work for, construction of, and/or
26 installation of or supplied materials to the Subject Property.
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20. Cross-Claimant is presently unaware of the true names and capacities and liability of Cross-Defendants named herein as MOES 1 through 100, inclusive, and ZOE CORPORATIONS 1 through 100, inclusive, and Cross-Claimant will seek leave of Court to amend this Cross Claim to allege their true names and capacities after the same have been ascertained.

21. Cross-Claimant is informed and believe, and thereon allege, that each of the Cross-Defendants, including MOES 1 through 100, inclusive, and ZOE CORPORATIONS 1 through 100, inclusive, dispute Cross Claimant's contentions herein and are in some manner legally responsible for the acts and omissions alleged herein, and actually and proximately caused and contributed to the various injuries and damages referred to herein.

22. Cross-Claimant is informed and believe, and thereon allege, that at all times herein mentioned, each of the Cross-Defendants, including MOES and ZOES, was the agent, partner, co-developer, joint venturer and/or employee of each of the remaining Cross-Defendants and MOES and ZOES, and were at all times mentioned acting within the course and scope of such agency and employment.

FIRST CLAIM FOR RELIEF

(Breach of Contract as to All Cross-Defendants)

23. Cross-Claimant repeats, re-alleges and incorporates Paragraphs 1 through 22 of this Cross Claim as though fully set forth herein.

24. Cross-Claimant is informed and believes, and thereon alleges, that pursuant to the terms of written agreements, Cross-Defendants undertook obligations, including but not limited to, maintaining liability policies, naming Cross-Claimant as an additional insured under their respective policies of liability insurance, indemnifying Cross-Claimant, defending Cross-Claimant, and performing their work in a good and workmanlike manner in accordance with the plans and specifications for the construction of the Subject Property.

1 25. Cross-Claimant has fully performed all conditions, covenants and promises
2 required of it in accordance with the terms and conditions of the written agreements.

3 26. Cross-Claimant is informed and believes, and thereon alleges, that Cross-
4 Defendants, and each of them, have breached the written agreements by refusing and failing to
5 comply with their contractual obligations to maintain liability insurance, to name Cross-Claimant
6 as an additional insured under Cross-Defendants' policies of liability insurance, to indemnify
7 Cross-Claimant, to defend Cross-Claimant, and to perform their work in a good and
8 workmanlike manner, without defects, and in accordance with the written agreements.

9 27. Cross-Claimant has provided notice of the breach of contract, or by way of this
10 Third Party Complaint, hereby provides notice of the breach to Cross-Defendants.

11 28. It has been necessary for Cross-Claimant to retain Resnick & Louis, P.C. to
12 defend against the Complaint filed by Plaintiff as well as any subsequent amendments Plaintiff
13 may file in the future. As a result, Cross-Claimant has incurred, and continues to incur, costs and
14 attorneys' fees defending this action and in prosecuting the Third Party Complaint.

15 29. Cross-Claimant is entitled to recover, from the Cross-Defendants, the costs and
16 attorneys' fees Cross-Claimant has incurred in defending this action against the Plaintiff and in
17 persecuting this action against the Cross-Defendants. The amount of the costs and attorneys'
18 fees Cross-Claimant has had to consequently incur will be established according to proof at trial.

19 **SECOND CLAIM FOR RELIEF**

20 **(Express Indemnity as to All Cross-Defendants)**

21 30. Cross-Claimant repeats, re-alleges and incorporates Paragraphs 1 through 29 of
22 this Cross Claim as though fully set forth herein.

23 31. Cross-Claimant is informed and believes, and based thereon alleges, that it
24 entered into written agreements with Cross-Defendants wherein the Cross-Defendants agreed to
25 defend and indemnify Cross-Claimant.
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1 32. Cross-Claimant is informed and believes, and based thereon alleges that the
2 defects and damages asserted by Plaintiff in her Complaint involved alleged defects and alleged
3 damage to the Subject Property.

4 33. Cross-Claimant is informed and believes, and thereon alleges that any damages
5 alleged by Counterclaimant were caused by Cross-Defendants, and each of them, and arise out of
6 the performance of the Cross-Defendants' obligations pursuant to the written agreements
7 referred to herein.

8 34. Cross-Claimant is informed and believes, and based thereon alleges that Cross-
9 Defendants have failed and refused to defend and indemnify Cross-Claimant.

10 35. Cross-Claimant is informed and believes, and based thereon alleges that Cross-
11 Defendants continue to fail and refuse to defend and indemnify Cross-Claimant.

12 36. It has been necessary for Cross-Claimant to retain Resnick & Louis, P.C. to
13 defend against the Complaint filed by the Plaintiff as well as any subsequent amendments
14 Plaintiff may file in the future. As a result, Cross-Claimant has incurred, and continues to incur,
15 costs and attorneys' fees in defending this action and in prosecuting the Cross Claim.

16 37. Cross-Claimant is entitled to express indemnity from the Cross-Defendants and to
17 recover its costs and attorneys' fees according to proof at trial.

18 **THIRD CLAIM FOR RELIEF**

19 **(Breach of Express Warranty as to All Cross-Defendants)**

20 38. Cross-Claimant repeats, re-alleges and incorporates Paragraphs 1 through 37 of
21 this Cross Claim as though fully set forth herein.

22 39. The written agreements between Cross-Claimant and Cross-Defendants provide
23 the descriptions of the work to be performed by Cross-Defendants and the Cross-Defendants'
24 guarantees and warranties of their work.
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40. As set forth in the written agreements between Cross-Claimant and Cross-Defendants, Cross-Defendants agreed and guaranteed to perform their respective scope of work in a good and workmanlike manner and to provide warranties for their work.

41. Cross-Claimant relief upon such warranties and believed in good faith that the Subject Property would comply with the approved plans and specifications and would be free from defective construction or workmanship.

42. Cross-Claimant has fully performed all conditions and promises required on their part to be performed in accordance with the terms and conditions of the underlying written agreements.

FOURTH CLAIM FOR RELIEF

(Declaratory Relief Regarding Duty to Defend as to All Cross-Defendants)

43. Cross-Claimant repeats, re-alleges and incorporates Paragraphs 1 through 42 of this Cross Claim as though fully set forth herein.

44. An actual controversy exists between Cross-Claimant and Cross-Defendants as to their rights and liabilities with respect to any ultimate responsibility to Plaintiff and with respect to the rights of the Cross-Claimant to receive, or duty of the Cross-Defendants to provide, a defense to Cross-Claimant.

45. Cross-Claimant is informed and believes, and thereon alleges, that Cross-Defendants contend to the contrary. Therefore, an actual controversy exists relative to the legal rights and duties of the respective parties pursuant to their written agreements, which controversy Cross-Claimant requests the Court to resolve in the form of Declaratory Judgment.

FIFTH CLAIM FOR RELIEF

(Declaratory Relief Regarding Duty to Indemnify as to All Cross-Defendants)

46. Cross-Claimant repeats, re-alleges and incorporates Paragraphs 1 through 45 of this Cross Claim as though fully set forth herein.

1 47. An actual controversy exists between Cross-Claimant and Cross-Defendants as to
2 their rights and liabilities with respect to any ultimate responsibility to Plaintiff and with respect
3 to the rights to receive, or duty to provide, indemnification in proportion to their comparative
4 fault, if any.

5 48. Cross-Claimant is informed and believes, and thereon alleges, that Cross-
6 Defendants contend to the contrary. Therefore, an actual controversy exists relative to the legal
7 rights and duties of the respective parties pursuant to their written agreements, which controversy
8 Cross-Claimant requests the Court to resolve in the form of Declaratory Judgment.

9 **SIXTH CLAIM FOR RELIEF**

10 **(Equitable Indemnity as to All Cross-Defendants)**

11 49. Cross-Claimant repeats, re-alleges and incorporates Paragraphs 1 through 48 of
12 this Cross Claim as though fully set forth herein.

13 50. By reason of the foregoing, if Plaintiff should recover judgment against Cross-
14 Claimant and/or if Cross-Claimant should enter into a settlement or compromise with Plaintiff,
15 then Cross-Claimant will be entitled to judgment in the like amount, or in proportion to fault, for
16 comparative indemnity over and against Cross-Defendants.

17 **SEVENTH CLAIM FOR RELIEF**

18 **(Breach of Implied Warranty as to All Cross-Defendants)**

19 51. Cross-Claimant repeats, re-alleges and incorporates Paragraphs 1 through 50 of
20 this Cross Claim as though fully set forth herein.

21 52. Cross-Claimant is informed and believes, and based thereon alleges that Cross-
22 Defendants impliedly warranted that the Subject Property and/or adjacent improvements were
23 designed and constructed in a reasonably workmanlike manner.

24 53. Cross-Claimant is informed and believes, and based thereon alleges that Cross-
25 Defendants impliedly warranted that the Subject Property and/or adjacent improvements were of
26 merchantable quality and safe and fit for their foreseeable intended use.
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1 54. Cross-Claimant intends this Third Party Complaint to constitute notice to said
2 Cross-Defendants of their breach of implied warranty.

3 **EIGHTH CLAIM FOR RELIEF**

4 **(Contribution as to All Cross-Defendants)**

5 55. Cross-Claimant repeats, re-alleges and incorporates Paragraphs 1 through 54 of
6 this Third Party Complaint as though fully set forth herein.

7 56. Based upon the acts and/or omissions of Cross-Defendants, if judgment is
8 rendered in favor of Plaintiff and against Cross-Claimant, Cross-Claimant is entitled to
9 contribution from the Cross-Defendants.

10 57. Cross-Claimant herein has been required to retain the services of Resnick &
11 Louis, P.C. to prosecute this action, and is entitled to an award of attorneys' fees and costs.

12 **NINTH CLAIM FOR RELIEF**

13 **(Apportionment against All Cross-Defendants)**

14 58. Cross-Claimant repeats, re-alleges and incorporates Paragraphs 1 through 57 of
15 this Third Party Complaint as though fully set forth herein.

16 59. Based upon the acts and/or omissions of Cross-Defendants, if judgment is
17 rendered in favor of Plaintiff and against Cross-Claimant, Cross-Claimant is entitled to an
18 apportionment of liability among the Cross-Defendants.

19 60. Cross-Claimant has been required to retain the services of Resnick & Louis, P.C.
20 to prosecute this action and is entitled to an award of attorneys' fees and costs.

21 **TENTH CLAIM FOR RELIEF**

22 **(Negligence against All Cross-Defendants)**

23 61. Cross-Claimant repeats, re-alleges and incorporates Paragraphs 1 through 60 of
24 this Third Party Complaint as though fully set forth herein.

25 62. Cross-Claimant is informed and believes, and based thereon alleges that Cross-
26 Defendants negligently, carelessly and wrongfully failed to use reasonable care in the design,
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1 development, manufacture, supervision, maintenance, repair, supply of material, installation,
2 inspection and/or construction of the Subject Property that is at issue in the Second Amended
3 Complaint and which is more particularly described therein.

4 63. Cross-Claimant is further informed and believes, and based thereon alleges that
5 Cross-Defendants negligently and carelessly failed to exercise reasonable care and diligence to
6 avoid loss and to minimize and mitigate damages which could have been prevented by
7 reasonable efforts on the part of Cross-Defendants or by expenditures which should have been
8 made in the exercise of due care.

9 64. Cross-Claimant is informed and believes, and based thereon alleges, that the
10 failures and damages alleged by Plaintiff occurred because of the negligence of Cross-
11 Defendants.

12 65. As a direct and proximate result of the negligence of Cross-Defendants, it is
13 herein alleged that Cross-Claimant has incurred and continues to incur costs and expenses
14 including but not limited to litigation costs, contractors' fees, attorneys' fees and consultants'
15 fees to inspect, repair and mitigate damages arising out of the alleged negligent design,
16 construction, repair and maintenance and to defend against Plaintiff's action herein.

17 66. Cross-Claimant has been required to retain the services of Resnick & Louis, P.C.
18 to prosecute this action and is entitled to an award of attorneys' fees and costs.

19 **WHEREFORE**, Cross-Claimant respectfully requests that this Court enter judgment
20 against Cross-Defendants, and each of them as follows:

21 1. A determination that Cross-Defendants, and each of them, contributed in some
22 percentage to the loss, damage and detriment alleged by Plaintiff and for a declaration of
23 percentage by which the conduct of Cross-Defendants, and each of them, contributed to the loss,
24 damage and detriment, if any, of the Plaintiff;

25 2. If the Plaintiff should recover sum or judgment against Cross-Claimant, that the
26 Cross-Claimant should have judgment against Cross-Defendants;
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3. That Cross-Claimant is entitled to a defense from Cross-Defendants;
4. For general and special damages in an amount to be proved at trial;
5. For indemnity of all damages and/or economic losses that Plaintiff recovers against Cross-Claimant by way of judgment, order, settlement, compromise, or trial;
6. For reasonable attorneys' fees, expert fees and costs;
7. For prejudgment and post-judgment interest;
8. For contribution pursuant to NRS 17.225; and
9. For such other and further relief as the Court may deem just, equitable, and proper.

THIRD PARTY COMPLAINT

Third Party Plaintiff, SUNRIDGE BUILDERS, INC., a Nevada Corporation (hereinafter "SUNRIDGE"), hereby states its Third Party Complaint against BRANDON IRON, INC.; EARTHCORE INDUSTRIES, LLC; HARDY CABINETS INC., dba ARTESIA CABINETS; J.C.W. CONCRETE, INC.; JD STAIRS, INC.; PIECE OF THE ROCK; WHITE FEATHER DRYWALL & PAINT; MOES 101 through 150 and ZOE CORPORATIONS 101 through 150, inclusive (hereinafter collectively "Third Party Defendants"), as follows:

GENERAL ALLEGATIONS

1. At all relevant times herein, SUNRIDGE was a Nevada Corporation formed under the laws of the State of Nevada and authorized to do business in the State of Nevada.
2. At all times relevant herein, each of the Third Party Defendants were either Nevada Corporations, Limited Liability Companies or unknown business entities doing business in the State of Nevada, County of Clark.
3. Third Party Plaintiff is informed and believes, and thereon alleges, that each of the Third Party Defendants, and each of them, including MOES and ZOES, performed architectural services, engineering services, construction related work and/or supplied materials

1 for the construction of or around the home located at 578 Lairmont Place, City of Henderson,
2 County of Clark, State of Nevada (referred to herein as the "Subject Property"), which is the
3 subject of Plaintiff's Second Amended Complaint.

4 4. Third Party Defendant, BRANDON IRON, INC., a Nevada Corporation, was at
5 all times material hereto, a legal entity doing business in Nevada who designed, engineered
6 and/or performed the work for, construction of, and/or installation of or supplied materials to the
7 Subject Property.

8 5. Third Party Defendant, EARTHCORE INDUSTRIES, LLC, a Nevada Limited
9 Liability Company, was at all times material hereto, a legal entity doing business in Nevada who
10 designed, engineered and/or performed the work for, construction of, and/or installation of or
11 supplied materials to the Subject Property.

12 6. Third Party Defendant, HARDY CABINETS, INC., dba ARTESIA CABINETS,
13 a Nevada Corporation, was at all times material hereto, a legal entity doing business in Nevada
14 who designed, engineered and/or performed the work for, construction of, and/or installation of
15 or supplied materials to the Subject Property.

16 7. Third Party Defendant, J.C.W. CONCRETE, INC., an Nevada Corporation, was
17 at all times material hereto, a legal entity doing business in Nevada who designed, engineered
18 and/or performed the work for, construction of, and/or installation of or supplied materials to the
19 Subject Property.

20 8. Third Party Defendant, JD STAIRS, INC., a Nevada Corporation, was at all times
21 material hereto, a legal entity doing business in Nevada who designed, engineered and/or
22 performed the work for, construction of, and/or installation of or supplied materials to the
23 Subject Property.

24 9. Third Party Defendant, PIECE OF THE ROCK, a Nevada Corporation, was at all
25 times material hereto, a legal entity doing business in Nevada who designed, engineered and/or
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1 performed the work for, construction of, and/or installation of or supplied materials to the
2 Subject Property.

3 10. Third Party Defendant, WHITE FEATHER DRYWALL & PAINT, an unknown
4 business entity, was at all times material hereto, a legal entity doing business in Nevada who
5 designed, engineered and/or performed the work for, construction of, and/or installation of or
6 supplied materials to the Subject Property.

7 11. Third Party Plaintiff is presently unaware of the true names and capacities and
8 liability of Third Party Defendants named herein as MOES 101 through 150, inclusive, and
9 ZOES 101 through 150, inclusive, and Third Party Plaintiff will seek leave of Court to amend
10 this Third-Party Complaint to allege their true names and capacities after the same have been
11 ascertained.

12 12. Third Party Plaintiff is informed and believe, and thereon allege, that each of the
13 Third Party Defendants, including MOES 101 through 150, inclusive, and ZOES 101 through
14 150, inclusive dispute Third Party Plaintiff's contentions herein and are in some manner legally
15 responsible for the acts and omissions alleged herein, and actually and proximately caused and
16 contributed to the various injuries and damages referred to herein.

17 13. Third Party Plaintiff is informed and believe, and thereon allege, that at all times
18 herein mentioned, each of the Third-Party Defendants, including MOES and ZOES, was the
19 agent, partner, co-developer, joint venturer and/or employee of each of the remaining Third-
20 Party Defendants and MOES and ZOES, and were at all times mentioned acting within the
21 course and scope of such agency and employment.

22 **FIRST CLAIM FOR RELIEF**

23 **(Breach of Contract as to All Third Party Defendants)**

24 14. Third Party Plaintiff repeats, re-alleges and incorporates Paragraphs 1 through 13
25 of this Third Party Complaint as though fully set forth herein.
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1 15. Third Party Plaintiff is informed and believes, and thereon alleges, that pursuant
2 to the terms of written agreements, Third Party Defendants undertook obligations, including but
3 not limited to, maintaining liability policies, naming Third Party Plaintiff as an additional insured
4 under their respective policies of liability insurance, indemnifying Third Party Plaintiff,
5 defending Third Party Plaintiff, and performing their work in a good and workmanlike manner in
6 accordance with the plans and specifications for the construction of the Subject Property.

7 16. Third Party Plaintiff has fully performed all conditions, covenants and promises
8 required of it in accordance with the terms and conditions of the written agreements.

9 17. Third Party Plaintiff is informed and believes, and thereon alleges, that Third
10 Party Defendants, and each of them, have breached the written agreements by refusing and
11 failing to comply with their contractual obligations to maintain liability insurance, to name Third
12 Party Plaintiff as an additional insured under Third Party Defendants' policies of liability
13 insurance, to indemnify Third Party Plaintiff, to defend Third Party Plaintiff, and to perform their
14 work in a good and workmanlike manner, without defects, and in accordance with the written
15 agreements.

16 18. Third Party Plaintiff has provided notice of the breach of contract, or by way of
17 this Third Party Complaint, hereby provides notice of the breach to Third Party Defendants.

18 19. It has been necessary for Third Party Plaintiff to retain Resnick & Louis, P.C. to
19 defend against the Complaint filed by Plaintiff as well as any subsequent amendments Plaintiff
20 may file in the future. As a result, Third Party Plaintiff has incurred, and continues to incur,
21 costs and attorneys' fees defending this action and in prosecuting the Third Party Complaint.

22 20. Third Party Plaintiff is entitled to recover, from the Third Party Defendants, the
23 costs and attorneys' fees Third Party Plaintiff has incurred in defending this action against the
24 Plaintiff and in persecuting this action against the Third Party Defendants. The amount of the
25 costs and attorneys' fees Third Party Plaintiff has had to consequently incur will be established
26 according to proof at trial.
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1 SECOND CLAIM FOR RELIEF

2 (Express Indemnity as to All Third Party Defendants)

3 21. Third Party Plaintiff repeats, re-alleges and incorporates Paragraphs 1 through 20
4 of this Third Party Complaint as though fully set forth herein.

5 22. Third Party Plaintiff is informed and believes, and based thereon alleges, that it
6 entered into written agreements with Third Party Defendants wherein the Third Party Defendants
7 agreed to defend and indemnify Third Party Plaintiff.

8 23. Third Party Plaintiff is informed and believes, and based thereon alleges that the
9 defects and damages asserted by Plaintiff in her Complaint involved alleged defects and alleged
10 damage to the Subject Property.

11 24. Third Party Plaintiff is informed and believes, and thereon alleges that any
12 damages alleged by Counterclaimant were caused by Third Party Defendants, and each of them,
13 and arise out of the performance of the Third Party Defendants' obligations pursuant to the
14 written agreements referred to herein.

15 25. Third Party Plaintiff is informed and believes, and based thereon alleges that
16 Third Party Defendants have failed and refused to defend and indemnify Third Party Plaintiff.

17 26. Third Party Plaintiff is informed and believes, and based thereon alleges that
18 Third Party Defendants continue to fail and refuse to defend and indemnify Third Party Plaintiff.

19 27. It has been necessary for Third Party Plaintiff to retain Resnick & Louis, P.C. to
20 defend against the Complaint filed by the Plaintiff as well as any subsequent amendments
21 Plaintiff may file in the future. As a result, Third Party Plaintiff has incurred, and continues to
22 incur, costs and attorneys' fees in defending this action and in prosecuting the Third Party
23 Complaint.

24 28. Third Party Plaintiff is entitled to express indemnity from the Third Party
25 Defendants and to recover its costs and attorneys' fees according to proof at trial.

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1 **THIRD CLAIM FOR RELIEF**

2 **(Breach of Express Warranty as to All Third Party Defendants)**

3 29. Third Party Plaintiff repeats, re-alleges and incorporates Paragraphs 1 through 28
4 of this Third Party Complaint as though fully set forth herein.

5 30. The written agreements between Third Party Plaintiff and Third Party Defendants
6 provide the descriptions of the work to be performed by Third Party Defendants and the Third
7 Party Defendants' guarantees and warranties of their work.

8 31. As set forth in the written agreements between Third Party Plaintiff and Third
9 Party Defendants, Third Party Defendants agreed and guaranteed to perform their respective
10 scope of work in a good and workmanlike manner and to provide warranties for their work.

11 32. Third Party Plaintiff relief upon such warranties and believed in good faith that
12 the Subject Property would comply with the approved plans and specifications and would be free
13 from defective construction or workmanship.

14 33. Third Party Plaintiff has fully performed all conditions and promises required on
15 their part to be performed in accordance with the terms and conditions of the underlying written
16 agreements.

17 **FOURTH CLAIM FOR RELIEF**

18 **(Declaratory Relief Regarding Duty to Defend as to All Third Party Defendants)**

19 34. Third Party Plaintiff repeats, re-alleges and incorporates Paragraphs 1 through 33
20 of this Third Party Complaint as though fully set forth herein.

21 35. An actual controversy exists between Third Party Plaintiff and Third Party
22 Defendants as to their rights and liabilities with respect to any ultimate responsibility to Plaintiff
23 and with respect to the rights of the Third Party Plaintiff to receive, or duty of the Third Party
24 Defendants to provide, a defense to Third Party Plaintiff.

25 36. Third Party Plaintiff is informed and believes, and thereon alleges, that Third
26 Party Defendants contend to the contrary. Therefore, an actual controversy exists relative to the
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1 legal rights and duties of the respective parties pursuant to their written agreements, which
2 controversy Third Party Plaintiff requests the Court to resolve in the form of Declaratory
3 Judgment.

4 **FIFTH CLAIM FOR RELIEF**

5 **(Declaratory Relief Regarding Duty to Indemnify as to All Third Party Defendants)**

6 37. Third Party Plaintiff repeats, re-alleges and incorporates Paragraphs 1 through 36
7 of this Third Party Complaint as though fully set forth herein.

8 38. An actual controversy exists between Third Party Plaintiff and Third Party
9 Defendants as to their rights and liabilities with respect to any ultimate responsibility to Plaintiff
10 and with respect to the rights to receive, or duty to provide, indemnification in proportion to their
11 comparative fault, if any.

12 39. Third Party Plaintiff is informed and believes, and thereon alleges, that Third
13 Party Defendants contend to the contrary. Therefore, an actual controversy exists relative to the
14 legal rights and duties of the respective parties pursuant to their written agreements, which
15 controversy Third Party Plaintiff requests the Court to resolve in the form of Declaratory
16 Judgment.

17 **SIXTH CLAIM FOR RELIEF**

18 **(Equitable Indemnity as to All Third Party Defendants)**

19 40. Third Party Plaintiff repeats, re-alleges and incorporates Paragraphs 1 through 39
20 of this Third Party Complaint as though fully set forth herein.

21 41 By reason of the foregoing, if Plaintiff should recover judgment against Third
22 Party Plaintiff and/or if Third Party Plaintiff should enter into a settlement or compromise with
23 Plaintiff, then Third Party Plaintiff will be entitled to judgment in the like amount, or in
24 proportion to fault, for comparative indemnity over and against Third Party Defendants.

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SEVENTH CLAIM FOR RELIEF

(Breach of Implied Warranty as to All Third Party Defendants)

42. Third Party Plaintiff repeats, re-alleges and incorporates Paragraphs 1 through 41 of this Third Party Complaint as though fully set forth herein.

43. Third Party Plaintiff is informed and believes, and based thereon alleges that Third Party Defendants impliedly warranted that the Subject Property and/or adjacent improvements were designed and constructed in a reasonably workmanlike manner.

44. Third Party Plaintiff is informed and believes, and based thereon alleges that Third Party Defendants impliedly warranted that the Subject Property and/or adjacent improvements were of merchantable quality and safe and fit for their foreseeable intended use.

45. Third Party Plaintiff intends this Third Party Complaint to constitute notice to said Third Party Defendants of their breach of implied warranty.

EIGHTH CLAIM FOR RELIEF

(Contribution as to All Third Party Defendants)

46. Third Party Plaintiff repeats, re-alleges and incorporates Paragraphs 1 through 45 of this Third Party Complaint as though fully set forth herein.

47. Based upon the acts and/or omissions of Third Party Defendants, if judgment is rendered in favor of Plaintiff and against Third Party Plaintiff, Third Party Plaintiff is entitled to contribution from the Third Party Defendants.

48. Third Party Plaintiff herein has been required to retain the services of Resnick & Louis, P.C. to prosecute this action, and is entitled to an award of attorneys' fees and costs.

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1 **NINTH CLAIM FOR RELIEF**

2 **(Apportionment against All Third Party Defendants)**

3 48. Third Party Plaintiff repeats, re-alleges and incorporates Paragraphs 1 through 47
4 of this Third Party Complaint as though fully set forth herein.

5 49. Based upon the acts and/or omissions of Third Party Defendants, if judgment is
6 rendered in favor of Plaintiff and against Third Party Plaintiff, Third Party Plaintiff is entitled to
7 an apportionment of liability among the Third Party Defendants.

8 50. Third Party Plaintiff has been required to retain the services of Resnick & Louis,
9 P.C. to prosecute this action and is entitled to an award of attorneys' fees and costs.

10 **TENTH CLAIM FOR RELIEF**

11 **(Negligence against All Third Party Defendants)**

12 51. Third Party Plaintiff repeats, re-alleges and incorporates Paragraphs 1 through 50
13 of this Third Party Complaint as though fully set forth herein.

14 52. Third Party Plaintiff is informed and believes, and based thereon alleges that
15 Third Party Defendants negligently, carelessly and wrongfully failed to use reasonable care in
16 the design, development, manufacture, supervision, maintenance, repair, supply of material,
17 installation, inspection and/or construction of the Subject Property that is at issue in the Second
18 Amended Complaint and which is more particularly described therein.

19 53. Third Party Plaintiff is further informed and believes, and based thereon alleges
20 that Third Party Defendants negligently and carelessly failed to exercise reasonable care and
21 diligence to avoid loss and to minimize and mitigate damages which could have been prevented
22 by reasonable efforts on the part of Third Party Defendants or by expenditures which should
23 have been made in the exercise of due care.

24 54. Third Party Plaintiff is informed and believes, and based thereon alleges, that the
25 failures and damages alleged by Plaintiff occurred because of the negligence of Third Party
26 Defendants.
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55. As a direct and proximate result of the negligence of Third Party Defendants, it is herein alleged that Third Party Plaintiff has incurred and continues to incur costs and expenses including but not limited to litigation costs, contractors' fees, attorneys' fees and consultants' fees to inspect, repair and mitigate damages arising out of the alleged negligent design, construction, repair and maintenance and to defend against Plaintiff's action herein.

56. Third Party Plaintiff has been required to retain the services of Resnick & Louis, P.C. to prosecute this action and is entitled to an award of attorneys' fees and costs.

WHEREFORE, Third Party Plaintiff respectfully requests that this Court enter judgment against Third Party Defendants, and each of them as follows:

1. A determination that Third Party Defendants, and each of them, contributed in some percentage to the loss, damage and detriment alleged by Plaintiff and for a declaration of percentage by which the conduct of Third Party Defendants, and each of them, contributed to the loss, damage and detriment, if any, of the Plaintiff;

2. If the Plaintiff should recover sum or judgment against Third Party Plaintiff, that the Third Party Plaintiff should have judgment against Third Party Defendants;

3. That Third Party Plaintiff is entitled to a defense from Third Party Defendants;

4. For general and special damages in an amount to be proved at trial;

5. For indemnity of all damages and/or economic losses that Plaintiff recovers against Third Party Plaintiff by way of judgment, order, settlement, compromise, or trial;

6. For reasonable attorneys' fees, expert fees and costs;

7. For prejudgment and post-judgment interest;

8. For contribution pursuant to NRS 17.225; and

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/ / /

1 9. For such other and further relief as the Court may deem just, equitable, and
2 proper.

3
4 DATED this 30 day of March, 2017.

5 RESNICK & LOUIS, P.C.

6 

7 LENA M. LOUIS, ESQ.

8 Nevada Bar No. 6398

9 ATHANASIA E. DALACAS, ESQ.

10 Nevada Bar No. 9390

11 5940 S. Rainbow Blvd.

12 Las Vegas, NV 89118

13 Attorneys for Defendant/Cross-Claimant/

14 Third Party Plaintiff

15 Sunridge Builders, Inc.

CERTIFICATE OF SERVICE

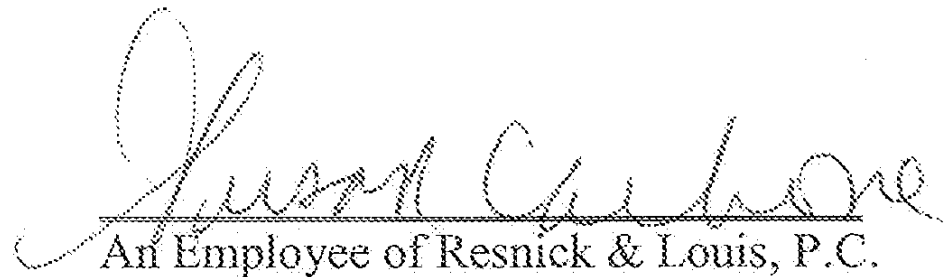
I HEREBY CERTIFY that service of the foregoing DEFENDANT/CROSS-CLAIMANT/ THIRD PARTY PLAINTIFF SUNRIDGE BUILDERS, INC.'S ANSWER TO SECOND AMENDED COMPLAINT AND CROSS CLAIM AND THIRD PARTY COMPLAINT was served this 31 day of March, 2017, by:

☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada, addressed as set forth below.

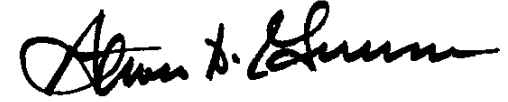
☐ **BY FACSIMILE:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document.

☐ **BY PERSONAL SERVICE:** by causing personal delivery by an employee of Resnick & Louis, P.C. of the document(s) listed above to the person(s) at the address(es) set forth below.

☒ **BY ELECTRONIC SERVICE:** by transmitting via the Court's electronic filing services the document(s) listed above to the Counsel set forth on the service list on this date pursuant to EDCR Rule 7.26(c)(4).


An Employee of Resnick & Louis, P.C.

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CLERK OF THE COURT

NOTA

ROBERT E. SCHUMACHER, ESQ

Nevada Bar No. 7504

BRIAN K. WALTERS, ESQ.

Nevada Bar No. 7504

GORDON & REES LLP

300 South 4th Street Suite 1550

Las Vegas, Nevada 89101

Direct Dial: (702) 577-9319

Telephone: (702) 577-9300

Facsimile: (702) 255-2858

Email: rschumacher@gordonrees.com

bwalters@gordonrees.com

Attorneys For Defendant:

LANDS WEST BUILDERS, INC.

DISTRICT COURT

CLARK COUNTY, NEVADA

JANETTE BYRNE, as Trustee of the UOFM Trust,

Plaintiff.

vs.

SUNRIDGE BUILDERS, INC., a Nevada
Corporation; LANDS WEST BUILDERS, INC., a
Nevada Corporation; DOES 1 through 100 and/or
ROES 1 through 50, inclusive,.

Defendants.

CASE NO. A-16-742143-D

DEPT. NO.: XVI

NOTICE OF APPEARANCE

(LANDS WEST BUILDERS, INC.)

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NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that LANDS WEST BUILDERS, INC. (hereinafter "LANDS WEST") by and through its counsels, Robert E. Schumacher, Esq. and Brian K. Walters, Esq. of the law firm of GORDON & REES LLP, hereby appears in the above-entitled matter and request that all further papers and pleadings herein be served upon LANDS WEST's counsel at the address stated below.

DATE: December 14, 2016.

GORDON & REES LLP

By: /s/ Robert E. Schumacher

ROBERT E. SCHUMACHER, ESQ

State Bar No. 7504

BRIAN K. WALTERS, ESQ.

Nevada Bar No. 7504

300 South 4th Street Suite 1550

Las Vegas, Nevada 89169

Attorneys For Defendant:

LANDS WEST BUILDERS, INC.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), Administrative Order 14-2 effective June 1, 2014, and N.E.F.C.R. Rule 9, I certify that I am an employee of GORDON & REES LLP and that on this **14th day of December, 2016**, I did cause a true and correct copy of **NOTICE OF APPEARANCE** to be served via the Court's electronic filing service on all parties listed below (unless indicated otherwise):

Mark J. Bourassa, Esq.
Jennifer A. Fornetti, Esq.
THE BOURASSA LAW GROUP
8668 Spring Mountain Road, Suite 101
Las Vegas, Nevada 89117
Counsel for Plaintiff

Lena M. Louis, Esq.
Athanasia E. Dalacas, Esq.
RESNICK & LOUIS, P.C.
5940 S. Rainbow Blvd.
Las Vegas, Nevada 89118
Counsels for Defendant
Sunridge Builders, Inc.

/s/ Andrea Montero
An employee of GORDON & REES LLP

IAFD
ROBERT E. SCHUMACHER, ESQ
Nevada Bar No. 7504
BRIAN K. WALTERS, ESQ.
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bwalters@gordonrees.com

Attorneys For Defendant:
LANDS WEST BUILDERS, INC.

DISTRICT COURT

CLARK COUNTY, NEVADA

JANETTE BYRNE, as Trustee of the UOFM Trust,

Plaintiff.

vs.

SUNRIDGE BUILDERS, INC., a Nevada
Corporation; LANDS WEST BUILDERS, INC., a
Nevada Corporation; DOES 1 through 100 and/or
ROES 1 through 50, inclusive,.

Defendants.

CASE NO. A-16-742143-D
DEPT. NO.: XVI

**INITIAL APPEARANCE FEE
DISCLOSURE**

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INITIAL APPEARANCE FEE DISCLOSURE

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for the following party appearing in the above-entitled action:

LANDS WEST BUILDERS, INC. \$473.00

TOTAL REMITTED: \$473.00

DATE: December 14, 2016.

GORDON & REES LLP

By: /s/ Robert E. Schumacher

ROBERT E. SCHUMACHER, ESQ

State Bar No. 7504

BRIAN K. WALTERS, ESQ.

Nevada Bar No. 7504

300 South 4th Street Suite 1550

Las Vegas, Nevada 89169

Attorneys For Defendant:

LANDS WEST BUILDERS, INC.

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CLERK OF THE COURT

1 ANAC
2 ROBERT E. SCHUMACHER, ESQ
3 Nevada Bar No. 7504
4 BRIAN K. WALTERS, ESQ.
5 Nevada Bar No. 9711
6 **GORDON & REES LLP**
7 300 South 4th Street, Suite 1550
8 Las Vegas, Nevada 89101
9 Tel: (702) 577-9319 / Fax: (702) 255-2858
10 rschumacher@gordonrees.com
11 bwalters@gordonrees.com

12 *Attorneys for Defendant*
13 **LANDS WEST BUILDERS, INC.**

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 JANETTE BYRNE, as Trustee of the UOFM Trust,
17
18 Plaintiff,

19 vs.

20 SUNRIDGE BUILDERS, INC., a Nevada
21 Corporation; LANDS WEST BUILDERS, INC., a
22 Nevada Corporation; AVANTI PRODUCTS, LLC, a
23 Nevada Limited Liability Company; BRYANT
24 MASONRY, LLC, a Nevada Limited Liability
25 Company; BSH HOME APPLIANCES
26 CORPORATION, a Delaware Corporation; CIRCLE
27 S DEVELOPMENT DBA DECK SYSTEMS
28 NEVADA, a Nevada Corporation; DMK
CONCRETE, INC., a Nevada Corporation; 4M
CORP., a Nevada Corporation; GENERAL
ELECTRIC COMPANY, a Nevada Corporation;
GREEN PLANET LANDSCAPING, LLC, a Nevada
Limited Liability Company; IVIE MECHANICAL
INC., a Nevada Corporation; J.C.W. CONCRETE,
INC., a Nevada Corporation; KARL HENRY
LINSENBARDT DBA SIGNATURE DOOR &
TRIM; LIFEGUARD POOL MAINT. DBA
LIFEGUARD POOLS, a Nevada Corporation;
MOUNTAIN WEST ELECTRIC, a Nevada
Corporation; PRESTIGE ROOFING, INC., a Nevada
Corporation; PYRAMID PLUMBING, a Nevada

CASE NO. A-16-742143-D
DEPT. NO.: XVI

**DEFENDANT LANDS WEST
BUILDERS, INC.'S ANSWER TO
PLAINTIFF'S SECOND AMENDED
COMPLAINT**

Gordon & Rees LLP
300 South Fourth Street, Suite 1550
Las Vegas, NV 89101

Corporation; RIVERA FRAMING INC. DBA
RIVERA FRAMERS, a Nevada Corporation; S&L
ROOFING, INC., a Colorado Corporation; SPRAY
PRODUCT APPLICATIONS, LLC, a Nevada
Corporation; TRIM TIME LLC DBA BLITZ
CONSTRUCTION, a Nevada Limited Liability
Company; WINDOW INSTALLATION
SPECIALISTS, LLC, a Nevada Limited Liability
Company; DOES 20 through 100; DESIGN
PROFESSIONAL DOES 101 through 150, and/or
SUPPLIER ROES 2 through 50, inclusive,
Defendants.

**DEFENDANT LANDS WEST BUILDERS, INC.'S ANSWER TO PLAINTIFF'S
SECOND AMENDED COMPLAINT**

Defendant LANDS WEST BUILDERS, INC. by and through its counsels of record,
Robert E. Schumacher, Esq. and Brian K. Walters, Esq. of the law firm of GORDON & REES
LLP, hereby answers Plaintiff JANETTE BYRNE's Second Amended Complaint as follows:

PARTIES

1. Answering Paragraph 1 through 3 of the Second Amended Complaint, this
answering Defendant is without knowledge sufficient as to form a belief as to the truth of the
allegations in said paragraph and therefore, denies each and every allegation contained therein.

2. Answering Paragraph 4 of the Second Amended Complaint, this answering
Defendant admits the allegations contained therein.

3. Answering Paragraphs 5 through 27 of the Second Amended Complaint this
answering Defendant is without knowledge sufficient as to form a belief as to the truth of the
allegations in said paragraph and therefore, denies each and every allegation contained therein.

4. Answering Paragraph 28 of the Second Amended Complaint, this answering
Defendant admits that it was and currently is a contractor. This answering Defendant is without
knowledge sufficient as to form a belief as to the truth of the remaining allegations in said
paragraph and therefore, denies the remaining allegations.

1 5. Answering Paragraph 29 of the Second Amended Complaint, this answering
2 Defendant admits that it was and currently is a corporation doing business in Clark County,
3 Nevada. This answering Defendant is without knowledge sufficient as to form a belief as to the
4 truth of the remaining allegations in said paragraph and therefore, denies the remaining
5 allegations.

6 6. Answering Paragraph 30 of the Second Amended Complaint, this answering
7 Defendant is without knowledge sufficient as to form a belief as to the truth of the allegations in
8 said paragraph and therefore, denies each and every allegation contained therein.

9 7. Answering Paragraph 31 of the Second Amended Complaint, this answering
10 Defendant is without knowledge sufficient as to form a belief as to the truth of the allegations in
11 said paragraph and therefore, denies each and every allegation contained therein.

12 **GENERAL ALLEGATIONS**

13 8. Answering Paragraph 32 of the Second Amended Complaint, this answering
14 Defendant repeats and re-alleges its responses to all previous Paragraphs as though fully set forth
15 herein.

16 9. Answering Paragraph 33 of the Second Amended Complaint, this answering
17 Defendant admits that it was and currently is in the business of constructing. This answering
18 Defendant is without knowledge sufficient as to form a belief as to the truth of the remaining
19 allegations in said paragraph and therefore, denies the remaining allegations.

20 10. Answering Paragraphs 34 through 37 of the Second Amended Complaint, this
21 answering Defendant denies the allegations contained therein.

22 11. Answering Paragraphs 38 through 44 of the Second Amended Complaint, this
23 answering Defendant is without knowledge sufficient as to form a belief as to the truth of the
24 allegations in said paragraph and therefore, denies each and every allegation contained therein.

1 12. Answering Paragraphs 45 and 46 of the Second Amended Complaint, this
2 answering Defendant denies the allegations contained therein.

3 13. Answering Paragraphs 47 through 49 of the Second Amended Complaint, this
4 answering Defendant is without knowledge sufficient as to form a belief as to the truth of the
5 allegations in said paragraph and therefore, denies each and every allegation contained therein.
6

7 **FIRST CLAIM FOR RELIEF**

8 **(Breach of Implied Warranty Against Defendants)**

9 14. Answering Paragraph 50 of the Second Amended Complaint, this answering
10 Defendant repeats and re-alleges responses to all previous Paragraphs as though fully set forth
11 herein.

12 15. Answering Paragraphs 51 and 52 of the Second Amended Complaint, this
13 answering Defendant denies the allegations contained therein.

14 16. Answering Paragraph 53 of the Second Amended Complaint, this answering
15 Defendant is without knowledge sufficient as to form a belief as to the truth of the allegations in
16 said paragraph and therefore, denies each and every allegation contained therein.
17

18 17. Answering Paragraph 54 of the Second Amended Complaint, this answering
19 Defendant denies the allegations contained therein.

20 18. Answering Paragraph 55 of the Second Amended Complaint, this answering
21 Defendant is without knowledge sufficient as to form a belief as to the truth of the allegations in
22 said paragraph and therefore, denies each and every allegation contained therein.
23

24 19. Answering Paragraphs 56 and 57 of the Second Amended Complaint, this
25 answering Defendant denies the allegations contained therein.

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SECOND CLAIM FOR RELIEF

(Breach of Express Warranty Against Defendants)

20. Answering Paragraph 58 of the Second Amended Complaint, this answering Defendant repeats and re-alleges responses to all previous Paragraphs as though fully set forth herein.

21. Answering Paragraphs 59 and 61 of the Second Amended Complaint, this answering Defendant denies the allegations contained therein.

22. Answering Paragraphs 62 through 69 of the Amended Complaint, this answering Defendant is without knowledge sufficient as to form a belief as to the truth of the allegations in said paragraphs and therefore, denies each and every allegation contained therein.

THIRD CLAIM FOR RELIEF

(Negligence/Negligence Per Se Against Defendants)

23. Answering Paragraph 70 of the Second Amended Complaint, this answering Defendant repeats and re-alleges responses to all previous Paragraphs as though fully set forth herein.

24. Answering Paragraph 71 of the Second Amended Complaint, this answering Defendant admits that it was and currently is a builder and contractor. This answering Defendant is without knowledge sufficient as to form a belief as to the truth of the remaining allegations in said paragraph and therefore, denies the remaining allegations.

25. Answering Paragraphs 72 through 74 of the Second Amended Complaint, this answering Defendant admits the allegations contained therein.

26. Answering Paragraphs 75 through 79 of the Second Amended Complaint, this answering Defendant denies the allegations contained therein.

1 27. Answering Paragraphs 80 through 83 of the Second Amended Complaint, this
2 answering Defendant is without knowledge sufficient as to form a belief as to the truth of the
3 allegations in said paragraphs and therefore, denies each and every allegation contained therein.

4 28. Answering Paragraph 84 of the Second Amended Complaint, this answering
5 Defendant denies the allegations contained therein.

6 29. Answering Paragraphs 85 and 86 of the Second Amended Complaint, this
7 answering Defendant is without knowledge sufficient as to form a belief as to the truth of the
8 allegations in said paragraphs and therefore, denies each and every allegations contained therein.

9
10 **FOURTH CLAIM FOR RELIEF**

11 **(Alter Ego Against Defendant Lands West Builders, Inc.)**

12 30. Answering Paragraph 87 of the Second Amended Complaint, this answering
13 Defendant repeats and re-alleges responses to all previous Paragraphs as though fully set forth
14 herein

15 31. Answering Paragraph 88 through 93 of the Second Amended Complaint, this
16 answering Defendant denies allegations contained therein.

17 32. Answering Paragraph 94 of the Second Amended Complaint, this answering
18 Defendant is without knowledge sufficient as to form a belief as to the truth of the allegations in
19 said paragraph and therefore, denies each and every allegation contained therein.

20 **FIFTH CLAIM FOR RELIEF**

21 **(Successor Liability Against Defendant Lands West Builders, Inc.)**

22 33. Answering Paragraph 95 of the Second Amended Complaint, this answering
23 Defendant repeats and re-alleges its responses to all previous Paragraphs as though fully set forth
24 herein

25 34. Answering Paragraph 96 through 101 of the Second Amended Complaint, this
26 answering Defendant denies allegations contained therein.

SIXTH CLAIM FOR RELIEF

(Declaratory and Equitable Relief Regarding NRS 40.600 et seq. Against All Defendants)

35. Answering Paragraph 102 of the Amended Complaint, this answering Defendant repeats and re-alleges its responses to all previous Paragraphs as though fully set forth herein.

36. Answering Paragraphs 103 through 106 of the Second Amended Complaint, this answering Defendant is without knowledge sufficient as to form a belief as to the truth of the allegations in said paragraphs and therefore, denies each and every allegation contained therein.

SEVENTH CLAIM FOR RELIEF

(Strict Liability against BSH HOME APPLIANCES CORPORATION and ROES 2 through 50)

37. Answering Paragraph 107 of the Second Amended Complaint, this answering Defendant repeats and re-alleges its responses to all previous Paragraphs as though fully set forth herein.

38. Answering Paragraphs 108 through 111 of the Second Amended Complaint, this cause of action is not alleged against this answering Defendant. To the extent a response to this cause of action is required, this answering Defendant is without knowledge sufficient as to form a belief as to the truth of the allegations in said paragraphs and therefore, denies each and every allegation contained therein.

EIGHTH CLAIM FOR RELIEF

(Professional Negligence Against Design Professionals DOES 101 through 150)

39. Answering Paragraph 112 of the Second Amended Complaint, this answering Defendant repeats and re-alleges its responses to all previous Paragraphs as though fully set forth herein.

40. Answering Paragraphs 113 through 116 of the Second Amended Complaint, this cause of action is not alleged against this answering Defendant. To the extent a response to this

1 cause of action is required, this answering Defendant is without knowledge sufficient as to form
2 a belief as to the truth of the allegations in said paragraphs and therefore, denies each and every
3 allegation contained therein.

4 **PRAYER FOR RELIEF**

5 This answering Defendant denies that it is liable to Plaintiff for general, specific,
6 consequential, incidental or any other category of damages. This answering Defendant further
7 denies that it is liable to Plaintiff for any statutory entitlements, attorney's fees or interest.

8 **AFFIRMATIVE DEFENSES**

9 **FIRST AFFIRMATIVE DEFENSE**

10 Defendant denies the allegations of the Complaint, and each cause of action, and each
11 paragraph in each cause of action, and each and every part thereof, including a denial that
12 Plaintiff was damages in the sum or sums alleged or to be alleged, or any other sum or sums
13 whatsoever.

14 **SECOND AFFIRMATIVE DEFENSE**

15 Defendant denies that by reason of any act or omission, fault, conduct or liability on the
16 part of Defendant, whether negligent, careless, unlawful or whether as alleged, or otherwise,
17 Plaintiff was injured or damaged in any of the amounts alleged, or in any other manner of
18 amount whatsoever. Defendant further denies that Defendant was negligent, careless, reckless,
19 and wanton, acted unlawfully or is liable, whether in the manner alleged or otherwise.

20 **THIRD AFFIRMATIVE DEFENSE**

21 Defendant is informed and believes, ant thereon alleges, that the Complaint, and each and
22 every cause of action stated therein, fails to state facts sufficient to constitute a cause of action or
23 any cause of action as against Defendant.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 Defendant is informed and believes, and thereon alleges, that Plaintiff's Complaint is
26 barred by issue preclusion and/or the Doctrine of *res judicata*.

27 ///

FIFTH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that if Plaintiff suffered or sustained any loss, injury, damage or detriment, the same is directly and proximately caused and contributed to, in whole or in part, by the breach of warranty, conducts, acts, omissions, activities, carelessness, recklessness, negligence and/or intentional misconduct of Plaintiff, thereby completely or partially barring Plaintiff's recovery herein.

SIXTH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that they are not legally responsible in any fashion with respect to the damages and injuries claimed by Plaintiff. However, if Defendant is subjected to any liability to Plaintiff, it will be due, in whole or in part to the breach warranty, acts, omissions, activities, carelessness, recklessness and negligence of others, wherefore any recovery obtained by Plaintiff against Defendant should be reduced in proportion to the respective negligence and fault and legal responsibility of all other parties, persons and entities, their agents, servants and employees who contributed to and/or caused any such injury and/or damages, in accordance with the law of cooperative negligence pursuant to Nevada Revised Statute 41.141. Consequently, Defendant is informed and believes, and thereon alleges, that the liability of Defendant, if any, is limited in direct proportion to the percentage of fault actually attributed to Defendant.

SEVENTH AFFIRMATIVE DEFENSE

If Defendant is found responsible in damages to Plaintiff or some other party, whether as alleged or otherwise then Defendant is informed and believes, and thereon alleges, that the liability will be predicated upon the active conduct of Plaintiff, whether by negligence, breach of warranty, strict liability in tort or otherwise, which unlawful conduct proximately caused the alleged incident and that Plaintiff's action against Defendant is barred by that active and affirmative conduct.

EIGHTH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon, alleges that at the time or place of the incidents alleged in the Complaint, Plaintiff knew of and fully understood the danger and risk

1 incident to its undertaking, but despite such knowledge, freely and voluntarily assumed and
2 exposed itself to all risk of harm and the consequent injuries and damages, if any, resulting
3 therefrom.

4 **NINTH AFFIRMATIVE DEFENSE**

5 Defendant is informed and believes, and thereon alleges, that the Plaintiff does not have
6 standing to commence or maintain this lawsuit, including but not limited to lacking standing to
7 bring a claim on behalf of the unit owners pursuant to Nevada Revised Statute 116 and lacking
8 standing to bring any claims for defects that affect only individual units and do not affect the
9 common area.

10 **TENTH AFFIRMATIVE DEFENSE**

11 Defendant is informed and believes, and thereon alleges, that as to each alleged cause of
12 action, Plaintiff has failed, refused and neglected to take reasonable steps to mitigate its alleged
13 damages, if any, thus barring or diminishing Plaintiff's recovery herein.

14 **ELEVENTH AFFIRMATIVE DEFENSE**

15 Defendant is informed and believes, and thereon alleges, that the Complaint, and each
16 and every cause of action contained therein, is barred by the applicable Statutes of Limitation.

17 **TWELFTH AFFIRMATIVE DEFENSE**

18 Defendant is informed and believes, and thereon alleges, that the Complaint, and each
19 and every cause of action contained therein, is barred by the applicable Statutes of Repose.

20 **THIRTEENTH AFFIRMATIVE DEFENSE**

21 Defendant is informed and believes, and thereon alleges, that Plaintiff unreasonably
22 delayed both the filing of the Complaint and notification of Defendant to the alleged causes of
23 action, and the bases for the causes of action alleged against Defendant, all of which has unduly
24 and severely prejudiced Defendant in its defense of the action, thereby barring or diminishing
25 Plaintiff's recovery herein under the Doctrine of Estoppel.

26 **FOURTEENTH AFFIRMATIVE DEFENSE**

27 Defendant is informed and believes, and thereon alleges, that Plaintiff unreasonably
28 delayed both filing of the Complaint and notification of Defendant to the alleged causes of

1 action, and the bases for the causes of action alleged against Defendant, all of which has unduly
2 and severely prejudiced Defendant in its defense of the action, thereby barring or diminishing
3 Plaintiff's recovery herein under the Doctrine of Waiver.

4 **FIFTEENTH AFFIRMATIVE DEFENSE**

5 Defendant is informed and believes, and thereon alleges, that Plaintiff unreasonably
6 delayed both the filing of the Complaint and notification of Defendant to the alleged causes of
7 action, and the bases for the causes of action alleged against Defendant, all of which has unduly
8 and severely prejudiced Defendant in its defense of the action, thereby barring or diminishing
9 Plaintiff's recovery herein under the Doctrine of Laches.

10 **SIXTEENTH AFFIRMATIVE DEFENSE**

11 Defendant is informed and believes, and thereon alleges, that Plaintiff failed to join all
12 necessary and indispensable parties to this lawsuit.

13 **SEVENTEENTH AFFIRMATIVE DEFENSE**

14 Defendant is informed and believes, and thereon alleges, that the injuries and damages of
15 which Plaintiff complains were proximately caused by or contributed to by the acts of other
16 persons and/or other entities, and that said acts were an intervening and superseding cause of the
17 injuries and damages, if any, of which Plaintiff complains, thus barring Plaintiff from any
18 recovery against Defendant.

19 **EIGHTEENTH AFFIRMATIVE DEFENSE**

20 Defendant is informed and believes, and thereon alleges, that the Complaint is barred by
21 the Statute of Frauds.

22 **NINETEENTH AFFIRMATIVE DEFENSE**

23 Defendant is informed and believes, and thereon alleges, that the claims of Plaintiff are
24 reduced, modified and/or barred by the Doctrine of Unclean Hands.

25 **TWENTIETH AFFIRMATIVE DEFENSE**

26 Defendant is informed and believes, and thereon alleges, that any and all events,
27 happenings, injuries and damages alleged by Plaintiff are a direct result of an act of God.

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TWENTY-FIRST AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that the Complaint is reduced, modified and/or barred because Plaintiff released and/or waived its claims.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that the Complaint is reduced, modified and/or barred because of the Doctrine of Accord and Satisfaction.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that the Complaint is reduced, modified and/or barred because of the Parol Evidence Rule.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that Plaintiff is not the real party in interest.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and thereon alleges, that Plaintiff and its predecessors in interest did not fully perform under the Agreement and such non-performance constituted a material breach to excuse further performance by Defendant.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

This answering Defendant is informed and believes, and thereon alleges, that Plaintiff did not comply with N.R.S. 40.600, *et. seq.* and its specific requirements for commencing construction defect litigation and/or pre-litigation procedures.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

This answering Defendant has not waived the mediation requirements of NRS 40.680 and Plaintiff has failed to offer such mediation; such failure constitutes a bar to prosecution of this action.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

This answering Defendant is informed and believes, and thereon alleges, that it made no implied warranties to Plaintiff.

1 **WHEREFORE**, Defendant **LANDS WEST BUILDERS, INC.** prays for judgment
2 against Plaintiff as follows:

- 3 1. That Plaintiff take nothing by way of this action;
4 2. For the prejudgment interest or costs incurred herein;
5 3. For cost of suit and attorney's fees and costs; and
6 4. For such other and further relief as the Court deems just and proper.

7
8
9 DATE: April 5, 2017.

GORDON & REES LLP

10
11 By: 

ROBERT E. SCHUMACHER, ESQ

Nevada Bar No. 7504

BRIAN K. WALTERS, ESQ.

Nevada Bar No. 7504

300 South 4th Street Suite 1550

Las Vegas, Nevada 89169

Attorneys For Defendant:

LANDS WEST BUILDERS, INC.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), Administrative Order 14-2 effective June 1, 2014, and N.E.F.C.R. Rule 9, I certify that I am an employee of GORDON & REES LLP and that on this 5th day of April, 2017, I did cause a true and correct copy of this **DEFENDANT LANDS WEST BUILDERS, INC.'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT**, to be served via the Court's electronic filing service on all parties listed below (unless indicated otherwise):

Mark Bourassa, Esq. Jennifer A. Fornetti, Esq. THE BOURASSA LAW GROUP 8668 Spring Mountain Road, Suite 101 Las Vegas, Nevada 89117 <i>Counsel for Plaintiff</i>	Wendy L. Walker, Esq. Michael Arata, Esq. SPRINGEL & FINK, LLP 10655 Park Run Drive, Suite 275 Las Vegas, NV 89144 <i>Counsel for Plaintiff</i>
Timothy Menter, Esq. MENTER & WITKIN LLP 19900 MacArthur Blvd., Suite 800 Irvine, CA 92612 <i>Counsel for Plaintiff</i>	Lena M. Louis, Esq. Athanasia E. Dalacas, Esq. RESNICK & LOUIS, P.C. 5940 South Rainbow Boulevard Las Vegas, Nevada 89118 <i>Counsel for Defendant Sunridge Builders, Inc.</i>

/s/ Chelsey Holland
An employee of GORDON & REES LLP

AOS

**DISTRICT COURT , CLARK COUNTY
CLARK COUNTY, NEVADA**

**JANETTE BYRNE, AS TRUSTEE OF
THE UOFM TRUST**

Plaintiff

VS

SUNRIDGE BUILDERS, INC., ET AL

Defendant

CASE NO: A742143

HEARING DATE/TIME:

DEPT NO: VXi

AFFIDAVIT OF SERVICE

Jill Ann Dudley R-088020 being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceedings in which this affidavit is made. That affiant received 1 copy(ies) of the SUMMONS, COMPLAINT, on the 20th day of October, 2016 and served the same on the 26th day of October, 2016, at 14:00 by:

serving the servee LANDS WEST BUILDERS, INC. C/O REGISTERED AGENT FORREST VAN NELSON by personally delivering and leaving a copy at (address) 7561 DEMONA DR, LAS VEGAS NV 89123 with CORY, pursuant to NRS 14,020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.

WHITE MALE IN HIS 20S; APPROXIMATELY 5'10', 155LBS, WITH BROWN HAIR AND BROWN EYES

Pursuant to NRS 53.045

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



EXECUTED this 26 day of Oct, 2016.

Jill Ann Dudley R-088020

Junes Legal Services - 630 South 10th Street - Suite B - Las Vegas NV 89102 - 702.579.8300 - fax 702.259.6249 - Process License #1068

EP124193 BYRNE V SUNRIDGE BUILDERS, ET

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3 JENNIFER A. FORNETTI, ESQ.
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4 **THE BOURASSA LAW GROUP**
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Facsimile: (702) 851-2189
7 Email: *mbourassa@blgwins.com*
8 *jfornetti@blgwins.com*

9 *Attorneys for Plaintiff*

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 JANETTE BYRNE, as Trustee of the UOFM
13 TRUST,

14 Plaintiff,

15 vs.

16 SUNRIDGE BUILDERS, INC., a Nevada
17 Corporation; LANDS WEST BUILDERS, INC., a
18 Nevada Corporation; DOES 1 through 100 and/or
ROES 1 through 50, inclusive,

19 Defendants.

) **Case No.: A-16-742143-D**

) **Dept. No.: XVI**

) **ACCEPTANCE OF SERVICE OF SUMMONS**
) **AND AMENDED COMPLAINT FOR**
) **DEFENDANT SUNRIDGE BUILDERS, INC.**

20
21 I, Athanasia E. Dalacas, Esq., hereby accept service of the Summons and Amended Complaint
22 on behalf of Defendant Sunridge Builders, Inc. in the above-entitled matter on the date set forth below.

23 RESNICK & LOUIS, P.C.

24 By: *A E Dalacas*

Athanasia E. Dalacas, Esq.

25 Date: 10-26-16

1 **OOJ**
2 **RESNICK & LOUIS, P.C.**
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Nevada Bar No. 6398
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7 5940 S. Rainbow Blvd.
Las Vegas, NV 89118
8 Telephone: (702) 997-3800
9 Facsimile: (702) 997-3800
10 *Attorneys for Defendant Sunridge Builders, Inc.*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 JANETTE BYRNE, as Trustee of the UOFM
14 TRUST,

15 Plaintiffs,

16 v.

17 SUNRIDGE BUILDERS, INC., a Nevada
18 Corporation; LANDS WEST BUILDERS,
19 INC., a Nevada Corporation; AVANTI
20 PRODUCTS, LLC, a Nevada Limited Liability
21 Company; BRYANT MASONRY, LLC, a
22 Nevada Limited Liability Company; BSH
23 HOME APPLIANCES CORPORATION, a
24 Delaware Corporation; CIRCLE S
25 DEVELOPMENT DBA DECK SYSTEMS OF
26 NEVADA, a Nevada Corporation; 4M CORP.,
27 a Nevada Corporation; GENERAL ELECTRIC
28 COMPANY, a Nevada Corporation; GREEN
PLANET LANDCAPING, LLC, a Nevada
Limited Liability Company; IVIE
MECHANICAL, INC., a Nevada Corporation;
J.C.W. CONCRETE, INC., a Nevada
corporation; KARL HENRY LINSENBARDT
DBA SIGNATURE DOOR AND TRIM;
LIFEGUARD POOL MAINTENANCE DBA
LIFEGUARD POOLS, a Nevada Corporation;
MOUNTAIN WEST ELECTRIC, a Nevada
Corporation; PRESTIGE ROOFING, INC., a
Nevada Corporation; PYRAMID PLUMBING,
INC., Nevada Corporation; RIVERA
FRAMING INC., a Nevada Corporation; S&L
ROOFING, INC., a Colorado Corporation;

CASE NO.: A-16-742143-D

DEPT: XVI

**DEFENDANT SUNRIDGE BUILDERS
INC.'S OFFER OF JUDGMENT TO
PLAINTIFF JANETTE BYRNE, as
Trustee of the UOFM TRUST**

SPRAY PRODUCT APPLICATIONS, LLC,
Nevada Limited Liability Company; TRIM
TIME LLC DBA BLITZ CONSTRUCTION, a
Nevada Limited Liability Company;
WINDOW INSTALLATION SPECIALISTS,
LLC, a Nevada Limited Liability Company and
DOES 20 through 100 DESIGN
PROFESSIONAL DOES 101 through 150,
and/or SUPPLIER ROES 2 through 50,
inclusive,

Defendants.

SUNRIDGE BUILDERS, INC., a Nevada
Corporation,

Cross-Claimant,

v.

BRYANT MASONRY, LLC, a Nevada
Limited Liability Company; 4M CORP., a
Nevada Corporation; BSH HOME
APPLIANCES CORPORATION, a Delaware
Corporation; CIRCLE S DEVELOPMENT
DBA DECK SYSTEMS OF NEVADA, a
Nevada Corporation; DMK CONCRETE,
INC., a Nevada Corporation; GENERAL
ELECTRIC COMPANY, a Foreign
Corporation; GREEN PLANET
LANDCAPING, LLC, a Nevada Limited
Liability Company; IVIE MECHANICAL,
INC., a Nevada Corporation; J.C.W.
CONCRETE, INC., a Nevada corporation;
LIFEGUARD POOL MAINTENANCE DBA
LIFEGUARD POOLS, a Nevada Corporation;
MOUNTAIN WEST ELECTRIC, a Nevada
Corporation; PYRAMID PLUMBING, INC.,
Nevada Corporation; RIVERA FRAMING
INC., a Nevada Corporation; S&L ROOFING,
INC., a Nevada Corporation; SPRAY
PRODUCT APPLICATIONS, LLC, Nevada
Limited Liability Company; WINDOW
INSTALLATION SPECIALISTS, LLC, a
Nevada Limited Liability Company and MOES
1 through 100 and ZOE CORPORATIONS 1
through 100, inclusive,

Cross-Defendants.

SUNRIDGE BUILDERS, INC., a Nevada
Corporation,

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Third Party Plaintiff,

v.

BRANDON IRON, INC., a Nevada Corporation; EARTHCORE INDUSTRIES, LLC, a Nevada Limited Liability Company; HARDY CABINETS INC., dba ARTESIA CABINETS, a Nevada Corporation; J.C.W. CONCRETE, INC., A Nevada Corporation; JD STAIRS, INC., a Nevada Corporation; PIECE OF THE ROCK, a Nevada Corporation; WHITE FEATHER DRYWALL & PAINT, an Unknown Business Entity; and MOES 101 through 150 and ZOE CORPORATIONS 101 through 150, inclusive,

Third-Party Defendants.

Pursuant to Rule 68 of the Nevada Rules of Civil Procedure, Defendant, SUNRIDGE BUILDERS, INC., hereby offers to allow judgment to be taken against it in this action by Plaintiff JANETTE BYRNE, as Trustee of the UOFM TRUST, in the amount of FIFTY THOUSAND DOLLARS AND NO CENTS (\$50,000.00), inclusive of all costs allowed by NRS 18.005 and prejudgment interest.

This offer is made for the purposes specified in NRCP 68 and is not to be construed as an admission of any kind. This offer does not provide for a separate award of attorney's fees.

DATED this 7th day of July, 2017.

RESNICK & LOUIS, P.C.

/s/ Athanasia E. Dalacas

LENA M. LOUIS, ESQ.
Nevada Bar No. 6398
ATHANASIA E. DALACAS, ESQ.
Nevada Bar No. 9390
5940 S. Rainbow Blvd.
Las Vegas, NV 89118
Attorneys for Defendant Sunridge Builders, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing **SUNRIDGE BUILDERS INC.'S OFFER OF JUDGMENT TO PLAINTIFF JANETTE BYRNE, as Trustee of the UOFM TRUST** was served this 7th day of July, 2017, by:

- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada, addressed as set forth below.
- ☐ **BY FACSIMILE:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document.
- ☐ **BY PERSONAL SERVICE:** by causing personal delivery by an employee of Resnick & Louis, P.C. of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ **BY ELECTRONIC SERVICE:** by transmitting via the Court's electronic filing services the document(s) listed above to the Counsel set forth on the service list on this date pursuant to EDCR Rule 7.26(c)(4).

/s/ Susan Carbone

An Employee of Resnick & Louis, P.C.

NOTC

TIMOTHY S. MENTER, ESQ.

Nevada Bar No. 7091

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Telephone: (702) 804-0706

Facsimile: (702) 804-0798

E-Mail: *wwalker@springelfink.com*

marata@springelfink.com

Co-Counsel for Plaintiff and per SCR 42.1(2)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JANETTE BYRNE, as Trustee of the UOFM
TRUST,

Plaintiff,

vs.

) Case No.: A-16-742143-D
) Dept. No.: XVI
)
)
)

NOTICE OF INSPECTIONS

SUNRIDGE BUILDERS, INC., a Nevada
Corporation; LANDS WEST BUILDERS, INC., a)
Nevada Corporation; AVANTI PRODUCTS, LLC,)
a Nevada Limited Liability Company; BRYANT)
MASONRY, LLC, a Nevada Limited Liability)
Company; BSH HOME APPLIANCES)
CORPORATION, a Delaware Corporation;)
CIRCLE S DEVELOPMENT DBA DECK)
SYSTEMS NEVADA, a Nevada Corporation;)
DMK CONCRETE, INC., a Nevada Corporation;)
4M CORP., a Nevada Corporation; GENERAL)
)

1 ELECTRIC COMPANY, a Nevada Corporation;)
2 GREEN PLANET LANDSCAPING, LLC, a)
Nevada Limited Liability Company; IVIE)
3 MECHANICAL INC., a Nevada Corporation;)
J.C.W. CONCRETE, INC., a Nevada Corporation;)
4 KARL HENRY LINSENBARDT DBA)
SIGNATURE DOOR & TRIM; LIFEGUARD)
5 POOL MAINT. DBA LIFEGUARD POOLS, a)
Nevada Corporation; MOUNTAIN WEST)
6 ELECTRIC, a Nevada Corporation;)
7 PRESTIGE ROOFING, INC., a Nevada)
Corporation; PYRAMID PLUMBING, a Nevada)
8 Corporation; RIVERA FRAMING INC. DBA)
9 RIVERA FRAMERS, a Nevada Corporation; S&L)
ROOFING, INC., a Colorado Corporation; SPRAY)
10 PRODUCT APPLICATIONS, LLC, a Nevada)
Limited Liability Company; TRIM TIME LLC)
11 DBA BLITZ CONSTRUCTION, a Nevada)
Limited Liability Company; WINDOW)
12 INSTALLATION SPECIALISTS, LLC, a Nevada)
Limited Liability Company; DOES 20 through)
13 100; DESIGN PROFESSIONAL DOES 101)
14 through 150, and/or SUPPLIER ROES 2 through)
15 50 inclusive,)
16 Defendants.)
17

18 **NOTICE OF INSPECTIONS**

19 TO: ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORDS:

20 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that Plaintiff JANETTE
21 BYRNE, as Trustee of the UOFM TRUST, by and through her counsel of record, the law firm of
22 Springel & Fink, LLP, will be conducting exterior inspections and interior inspection limited to water
23 feature only, at the subject property on the **10th day of August, 2017, from 1:30 p.m. to 4:30 p.m.**

24 The inspection will be held at 578 Lairmont Place, Henderson, NV 89012. All parties and their
25 respective experts are invited to attend. This home is in a guard gated community. Please provide our
26 office with the name of each person planning to attend no later than August 8, 2017.

27 ///

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1 Plaintiff JANETTE BYRNE, as Trustee of the UOFM TRUST reserves the right to supplement
2 this notice pursuant to NRCP 34.
3

4 DATED this 31st day of July, 2017.

5 SPRINGEL & FINK, LLP

6 /s/ Wendy L. Walker

7 By:

8 WENDY L. WALKER, ESQ.

9 Nevada Bar No. 10791

10 MICHAEL A. ARATA, ESQ.

11 Nevada Bar No. 11902

12 10655 Park Run Drive, Suite 275

13 Las Vegas, Nevada 89144

14 Co-Counsel for Plaintiff and per SCR 42.1(2)
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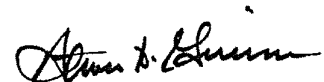
STATE OF NEVADA)
) ss.
CLARK COUNTY)

I am a resident of and employed in Clark County, Nevada. I am over the age of eighteen years and not a party to the within action. My business address is 10655 Park Run Drive, Suite 275, Las Vegas, Nevada 89144.

SEE ELECTRONIC SERVICE LIST

VIA FACSIMILE: by transmitting to a facsimile machine maintained by the person on whom it is served at the facsimile machine telephone number at last given by that person on any document which he/she has filed in the cause and served on the party making the service. The copy of the document served by facsimile transmission bears a notation of the date and place of transmission and the facsimile telephone number to which transmitted. A confirmation of the transmission containing the facsimile telephone numbers to which the document(s) was/were transmitted will be maintained with the document(s) served.

An Employee of SPRINGEL & FINK LLP



CLERK OF THE COURT

1 **ANS**
2 **RESNICK & LOUIS, P.C.**
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11 Telephone: (702) 997-3800
12 Facsimile: (702) 997-3800
13 *Attorneys for Defendant/Cross-Claimant/Third Party Plaintiff,*
14 *Sunridge Builders, Inc.*

9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 JANETTE BYRNE, as Trustee of the UOFM
13 TRUST,

14 Plaintiffs,

15 v.

16 SUNRIDGE BUILDERS, INC., a Nevada
17 Corporation; LANDS WEST BUILDERS,
18 INC., a Nevada Corporation; AVANTI
19 PRODUCTS, LLC, a Nevada Limited Liability
20 Company; BRYANT MASONRY, LLC, a
21 Nevada Limited Liability Company; BSH
22 HOME APPLIANCES CORPORATION, a
23 Delaware Corporation; CIRCLE S
24 DEVELOPMENT DBA DECK SYSTEMS OF
25 NEVADA, a Nevada Corporation; 4M CORP.,
26 a Nevada Corporation; GENERAL ELECTRIC
27 COMPANY, a Nevada Corporation; GREEN
28 PLANET LANDCAPING, LLC, a Nevada
Limited Liability Company; IVIE
MECHANICAL, INC., a Nevada Corporation;
J.C.W. CONCRETE, INC., a Nevada
corporation; KARL HENRY LINSENBARDT
DBA SIGNATURE DOOR AND TRIM;
LIFEGUARD POOL MAINTENANCE DBA
LIFEGUARD POOLS, a Nevada Corporation;
MOUNTAIN WEST ELECTRIC, a Nevada
Corporation; PRESTIGE ROOFING, INC., a
Nevada Corporation; PYRAMID PLUMBING,
INC., Nevada Corporation; RIVERA
FRAMING INC., a Nevada Corporation; S&L

CASE NO.: A-16-742143-D

DEPT: XVI

**DEFENDANT/CROSS-CLAIMANT/
THIRD PARTY PLAINTIFF
SUNRIDGE BUILDERS, INC.'S
ANSWER TO SECOND AMENDED
COMPLAINT AND CROSS CLAIM
AND THIRD PARTY COMPLAINT**

1 ROOFING, INC., a Colorado Corporation;
2 SPRAY PRODUCT APPLICATIONS, LLC,
3 Nevada Limited Liability Company; TRIM
4 TIME LLC DBA BLITZ CONSTRUCTION, a
5 Nevada Limited Liability Company;
6 WINDOW INSTALLATION SPECIALISTS,
7 LLC, a Nevada Limited Liability Company and
8 DOES 20 through 100 DESIGN
9 PROFESSIONAL DOES 101 through 150,
10 and/or SUPPLIER ROES 2 through 50,
11 inclusive,

12 Defendants.

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14 SUNRIDGE BUILDERS, INC., a Nevada
15 Corporation,

16 Cross-Claimant,

17 v.

18 BRYANT MASONRY, LLC, a Nevada
19 Limited Liability Company; 4M CORP., a
20 Nevada Corporation; BSH HOME
21 APPLIANCES CORPORATION, a Delaware
22 Corporation; CIRCLE S DEVELOPMENT
23 DBA DECK SYSTEMS OF NEVADA, a
24 Nevada Corporation; DMK CONCRETE,
25 INC., a Nevada Corporation; GENERAL
26 ELECTRIC COMPANY, a Foreign
27 Corporation; GREEN PLANET
28 LANDCAPING, LLC, a Nevada Limited
Liability Company; IVIE MECHANICAL,
INC., a Nevada Corporation; J.C.W.
CONCRETE, INC., a Nevada corporation;
LIFEGUARD POOL MAINTENANCE DBA
LIFEGUARD POOLS, a Nevada Corporation;
MOUNTAIN WEST ELECTRIC, a Nevada
Corporation; PYRAMID PLUMBING, INC.,
Nevada Corporation; RIVERA FRAMING
INC., a Nevada Corporation; S&L ROOFING,
INC., a Nevada Corporation; SPRAY
PRODUCT APPLICATIONS, LLC, Nevada
Limited Liability Company; WINDOW
INSTALLATION SPECIALISTS, LLC, a
Nevada Limited Liability Company and MOES
1 through 100 and ZOE CORPORATIONS 1
through 100, inclusive,

Cross-Defendants.

SUNRIDGE BUILDERS, INC., a Nevada
Corporation,

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Third Party Plaintiff,

v.

BRANDON IRON, INC., a Nevada Corporation; EARTHCORE INDUSTRIES, LLC, a Nevada Limited Liability Company; HARDY CABINETS INC., dba ARTESIA CABINETS, a Nevada Corporation; J.C.W. CONCRETE, INC., A Nevada Corporation; JD STAIRS, INC., a Nevada Corporation; PIECE OF THE ROCK, a Nevada Corporation; WHITE FEATHER DRYWALL & PAINT, an Unknown Business Entity; and MOES 101 through 150 and ZOE CORPORATIONS 101 through 150, inclusive,

Third-Party Defendants.

Defendant, SUNRIDGE BUILDERS, INC., (hereinafter “SUNRIDGE”) by and through its counsel of record, ATHANASIA E. DALACAS, ESQ., of the law offices of RESNICK & LOUIS, P.C., hereby answers Plaintiff’s Second Amended Complaint as follows:

I.

PARTIES

1. Answering Paragraphs 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 of Plaintiff’s Second Amended Complaint, SUNRIDGE lacks sufficient information upon which to admit or deny the allegations made and, on that basis, denies each and every allegation contained therein.

2. Answering Paragraph 3 of Plaintiff’s Second Amended Complaint, SUNRIDGE admits the allegations contained therein as to SUNRIDGE, but lacks sufficient information as to the remainder of the Defendants.

II.

GENERAL ALLEGATIONS

3. Answering Paragraphs 32, 38, 39, 40, 48, and 49 of Plaintiff’s Second Amended Complaint, SUNRIDGE lacks sufficient information upon which to admit or deny the allegations made and, on that basis, denies each and every allegation contained therein.

4. Answering Paragraphs 34 of Plaintiff's Second Amended Complaint, SUNRIDGE admits as to SUNRIDGE only. With respect to the allegations as to other Defendants, SUNRIDGE lacks sufficient information upon which to admit or deny the allegations made, and on that basis, denies each and every allegation contained therein.

5. Answering Paragraphs 35, 36, 37, 41, 42, 43, 44, 45, 46, and 47 of Plaintiff's Second Amended Complaint, Defendant specifically and generally deny each and every allegation contained therein.

III.

FIRST CLAIM FOR RELIEF

(Breach of Implied Warranty Against Defendants)

6. Answering Paragraph 50 of Plaintiff's Second Amended Complaint, SUNRIDGE lacks sufficient information upon which to admit or deny the allegations made and, on that basis, denies each and every allegation contained therein.

7. Answering Paragraphs 51, 52, 53, 54, 55, 56, and 57 of Plaintiff's Second Amended Complaint, Defendant specifically and generally deny each and every allegation contained therein.

IV.

SECOND CLAIM FOR RELIEF

(Breach of Express Warranty Against Defendants)

8. Answering Paragraph 58 of Plaintiff's Second Amended Complaint, SUNRIDGE lacks sufficient information upon which to admit or deny the allegations made and, on that basis, denies each and every allegation contained therein.

9. Answering Paragraphs 59, 60, 61, 62, 63, 64, 65, 66, 67, 68 and 69 of Plaintiff's Second Amended Complaint, Defendant specifically and generally deny each and every allegation contained therein.

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1 V.

2 **THIRD CLAIM FOR RELIEF**

3 **(Negligence/Negligence Per Se Against Defendants)**

4 10. Answering Paragraphs 70 and 79 of Plaintiff's Second Amended Complaint,
5 SUNRIDGE lacks sufficient information upon which to admit or deny the allegations made and,
6 on that basis, denies each and every allegation contained therein.

7 11. Answering Paragraphs 71, 72, 73, 74, 75, 76, 77, 78, 80, 81, 82, 83, 84, 85 and 86 of
8 Plaintiff's Second Amended Complaint, Defendant specifically and generally deny each and
9 every allegation contained therein.

10 VI.

11 **FOURTH CLAIM FOR RELIEF**

12 **(Alter Ego Against Defendants SUNRIDGE AND LANDS WEST BUILDERS, INC.)**

13 12. Answering Paragraph 87 of Plaintiff's Second Amended Complaint, SUNRIDGE
14 lacks sufficient information upon which to admit or deny the allegations made and, on that basis,
15 denies each and every allegation contained therein.

16 13. Answering Paragraphs 88, 89, 90, 91, 92, 93 and 94 of Plaintiff's Second Amended
17 Complaint, Defendant specifically and generally deny each and every allegation contained
18 therein.

19 VII.

20 **FIFTH CLAIM FOR RELIEF**

21 **(Successor Liability Against Defendants SUNRIDGE AND LANDS WEST BUILDERS,**
22 **INC.)**

23 14. Answering Paragraph 95 of Plaintiff's Second Amended Complaint, SUNRIDGE
24 lacks sufficient information upon which to admit or deny the allegations made and, on that basis,
25 denies each and every allegation contained therein.

15. Answering Paragraphs 96, 97, 98, 99, 100 and 101 of Plaintiff's Second Amended Complaint, Defendant specifically and generally deny each and every allegation contained therein.

VIII.

SIXTH CLAIM FOR RELIEF

(Declaratory and Equitable Relief Regarding NRS 40.600 et seq. Against All Defendants)

16. Answering Paragraph 102 of Plaintiff's Second Amended Complaint, SUNRIDGE lacks sufficient information upon which to admit or deny the allegations made and, on that basis, denies each and every allegation contained therein.

17. Answering Paragraphs 103, 104, 105 and 106 of Plaintiff's Second Amended Complaint, Defendant specifically and generally deny each and every allegation contained therein.

IX.

SEVENTH CLAIM FOR RELIEF

(Strict Liability against BSH HOME APPLIANCES AND ROES 2 through 50))

18. Answering Paragraph 107 of Plaintiff's Second Amended Complaint, SUNRIDGE lacks sufficient information upon which to admit or deny the allegations made and, on that basis, denies each and every allegation contained therein.

19. Answering Paragraphs 108, 109, 110 and 111 Plaintiff's Second Amended Complaint, Defendant specifically and generally deny each and every allegation contained therein.

X.

EIGHTH CLAIM FOR RELIEF

(Professional Negligence Against Design Professionals DOES 101 through 150)

1 20. Answering Paragraph 112 of Plaintiff's Second Amended Complaint, SUNRIDGE
2 lacks sufficient information upon which to admit or deny the allegations made and, on that basis,
3 denies each and every allegation contained therein.

4 21. Answering Paragraphs 113, 114, 115, 116 of Plaintiff's Second Amended Complaint,
5 Defendant specifically and generally deny each and every allegation contained therein.

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7 **AFFIRMATIVE DEFENSES**

8 **FIRST AFFIRMATIVE DEFENSE**

9 This Defendant denies the allegations of the Second Amended Complaint, and each cause
10 of action, and each paragraph in each cause of action, and each and every part thereof, including
11 a denial that Plaintiff was damaged in the sum or sums alleged, or to be alleged, or any other sum
12 or sums whatsoever.

13 **SECOND AFFIRMATIVE DEFENSE**

14 This Defendant denies that by reason of any act or omission, fault, conduct or liability on
15 the part of this answering Defendant, whether negligent, careless, unlawful or whether as
16 alleged, or otherwise, Plaintiff was injured or damaged in any of the amounts alleged, or in any
17 other manner or amount whatsoever; this answering Defendant further denies that this answering
18 Defendant was negligent, careless, reckless, wanton, acted unlawfully or are liable, whether in
19 the manner alleged or otherwise.

20 **THIRD AFFIRMATIVE DEFENSE**

21 This Defendant is informed and believes, and thereon alleges, that the Second Amended
22 Complaint, and each and every cause of action stated therein, fails to state facts sufficient to
23 constitute a cause of action, or any cause of action, as against this answering Defendant.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second
26 Amended Complaint is barred by issue preclusion and/or the Doctrine of Res Judicata.

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FIFTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that if Plaintiff suffered or sustained any loss, injury, damage or detriment, the same is directly and proximately caused and contributed to, in whole or in part, by the breach of warranty, conduct, acts, omissions, activities, carelessness, recklessness, negligence, and/or intentional misconduct of Plaintiff, thereby completely or partially barring Plaintiffs' recovery herein.

SIXTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that it is not legally responsible in any fashion with respect to the damages and injuries claimed by Plaintiff; however, if this Defendant is subjected to any liability to Plaintiffs, it will be due, in whole or in part, to the breach of warranty, acts, omissions, activities, carelessness, recklessness, and negligence of others; wherefore any recovery obtained by Plaintiff against this Defendant should be reduced in proportion to the respective negligence and fault and legal responsibility of all other parties, persons and entities, their agents, servants and employees who contributed to and/or caused any such injury and/or damages, in accordance with the law of comparative negligence; consequently, this Defendant is informed and believes, and thereon alleges, that the liability of this answering Defendant, if any, is limited in direct proportion to the percentage of fault actually attributed to this answering Defendant.

SEVENTH AFFIRMATIVE DEFENSE

If this Defendant is found responsible in damages to Plaintiff or some other party, whether as alleged or otherwise, then this Defendant is informed and believes, and thereon alleges, that the liability will be predicated upon the active conduct of Plaintiff, whether by negligence, breach of warranty, strict liability in tort or otherwise, which unlawful conduct proximately caused the alleged incident and that Plaintiff's action against this Defendant is barred by that active and affirmative conduct.

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EIGHTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that at the time or place of the incidents alleged in Plaintiff's Second Amended Complaint, Plaintiffs knowingly, freely, and voluntarily assumed all risk of harm and the consequent injuries and damages, if any, resulting therefrom.

NINTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that the Second Amended Complaint, and each and every cause of action contained therein is barred by the applicable Statutes of Repose.

TENTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that as to each alleged cause of action, Plaintiff has failed, refused and neglected to take reasonable steps to mitigate their alleged damages, if any, thus barring or diminishing Plaintiff's recovery herein.

ELEVENTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that the Second Amended Complaint, and each and every cause of action contained therein, is barred by the applicable Statutes of Limitation.

TWELFTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff unreasonably delayed both the filing of the Complaint and notification of this Defendant to the alleged causes of action, and the basis for the causes of action alleged against this answering Defendant, all of which has unduly and severely prejudiced this Defendant in its defense of the action, thereby barring or diminishing Plaintiff's recovery herein under the Doctrine of Estoppel.

THIRTEENTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff reasonably delayed both filing of the Second Amended Complaint and notification of this Defendant to the alleged causes of action, and the basis for the causes of action alleged against this answering

1 Defendant, all of which has unduly and severely prejudiced this Defendant in his defense of the
2 action, thereby barring or diminishing Plaintiff's recovery herein under the Doctrine of Waiver.

3 **FOURTEENTH AFFIRMATIVE DEFENSE**

4 This Defendant is informed and believes, and thereon alleges, that Plaintiffs unreasonably
5 delayed both the filing of the Second Amended Complaint and notification of this Defendant to
6 the alleged causes of action, and the basis for the causes of action alleged against this answering
7 Defendant, all of which has unduly and severely prejudiced this Defendant in his defense of the
8 action, thereby barring or diminishing Plaintiff's recovery herein under the Doctrine of Laches.

9 **FIFTEENTH AFFIRMATIVE DEFENSE**

10 This Defendant is informed and believes, and thereon alleges, that Plaintiff has failed to
11 join all necessary and indispensable parties to this lawsuit.

12 **SIXTEENTH AFFIRMATIVE DEFENSE**

13 This Defendant is informed and believes, and thereon alleges, that the injuries and
14 damages of which Plaintiff complains were proximately caused by, or contributed to by, the acts
15 of other Defendants, Cross-Defendants, Third-Party Defendants, persons, and/or other entities,
16 and that said acts were an intervening and superseding cause of the injuries and damages, if any,
17 of which Plaintiff complains, thus barring Plaintiffs from any recovery against this answering
18 Defendant.

19 **SEVENTEENTH AFFIRMATIVE DEFENSE**

20 This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second
21 Amended Complaint is barred by the Statute of Frauds.

22 **EIGHTEENTH AFFIRMATIVE DEFENSE**

23 It has been necessary for this Defendant to retain the services of an attorney to defend this
24 action, and this Defendant is entitled to a reasonable sum as and for attorney's fees.

25 **NINETEENTH AFFIRMATIVE DEFENSE**

26 This Defendant is informed and believes, and thereon alleges, that the claims of Plaintiff
27 is reduced, modified and/or barred by the Doctrine of Unclean Hands.

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TWENTIETH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that any and all events, happenings, injuries and damages alleged by Plaintiff are a direct result of an act of God.

TWENTY-FIRST AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second Amended Complaint is reduced, modified, and/or barred because Plaintiff received payment.

TWENTY-SECOND AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Defendant's performance was excused because of Impossibility of Performance.

TWENTY-THIRD AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second Amended Complaint is reduced, modified, and/or barred because Plaintiff abandoned the contract(s).

TWENTY-FOURTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second Amended Complaint is reduced, modified, and/or barred because Plaintiffs ratified the contract(s).

TWENTY-FIFTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second Amended Complaint is reduced, modified, and/or barred because of changed circumstances.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second Amended Complaint is reduced, modified, and/or barred because Plaintiffs released their claims.

TWENTY -SEVENTH AFFIRMATIVE DEFENSE

This Defendant is informed and believes, and thereon alleges, that Plaintiff's Second Amended Complaint is reduced, modified, and/or barred because of the doctrine of Accord and Satisfaction.