

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24 CVS 035492-590

ONITA RAYNETTE SHERRILL, as)
Administrator and on Behalf of the)
ESTATE OF DEMONTE TYREE)
SHERILL, Deceased; and VITICHA L.)
DELEON, as Administrator of the Estate)
of REUBEN LYDELL HOLMES,)
Deceased,)

Plaintiffs,)

v.)

SOUTHPARK CHARLOTTE)
APARTMENTS, LP, MCRT CAROLINAS)
CONSTRUCTION LLC, and KENTUCKY)
OVERHEAD DOOR, INC. d/b/a BAKER)
INSULATION,)

Defendants.)

SOUTHPARK CHARLOTTE)
APARTMENTS, LP and MCRT)
CAROLINAS CONSTRUCTION, LLC,)

Third-Party Plaintiffs)

v.)

SPRAY EQUIPMENT AND COATINGS,)
INC.)

Third-Party Defendant.)

v.)

PRESTIGE WINDOWS & DOOR)
INSTALLATION, LLC)

Decedents' Employer.)

**DEFENDANT SOUTHPARK
CHARLOTTE APARTMENTS LP AND
MCRT CAROLINAS CONSTRUCTION
LLC'S ANSWER TO PLAINTIFFS'
COMPLAINT, CROSSCLAIMS, NOTICE
OF CLAIM FOR SETOFF PURSUANT TO
N.C.G.S. §97-10.2 AND THIRD-PARTY
COMPLAINT AGAINST SPRAY
EQUIPMENT AND COATINGS, INC.**

COMES NOW, Defendants SOUTHPARK CHARLOTTE APARTMENTS LP (hereinafter “SouthPark”) and MCRT CAROLINAS CONSTRUCTION LLC (hereinafter “MCRT Carolinas”) responding to the allegations contained in Plaintiffs’ Complaint, and alleges and says as follows:

FIRST DEFENSE
ANSWER

As to the unnumbered introductory paragraph of Plaintiff’s Complaint, the allegations/contentions/representations in same are denied. Specially, the named Defendants responding herein are SOUTHPARK CHARLOTTE APARTMENTS LP and MCRT CAROLINAS CONSTRUCTION LLC and the responses are provided on behalf of such named entities, which do not include their “owners, members, partners, subsidiaries, affiliates, agents, servants, and/or employees” and are not collectively referred to as “Defendants” or “Collective Defendants”.

As to the individually numbered allegations contained in the Complaint, Defendants allege and say as follows:

1. As to the allegations contained in Paragraph 1 of the Complaint, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

2. As to the allegations contained in Paragraph 2 of the Complaint, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

3. As to the allegations contained in Paragraph 3 of the Complaint, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

4. As to the allegations contained in Paragraph 4 of the Complaint, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

5. As to the allegations contained in Paragraph 5 of the Complaint, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

6. As to the allegations contained in Paragraph 6 of the Complaint, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

7. The allegations contained in Paragraph 7 of the Complaint are admitted.

8. As to the allegations contained in Paragraph 8 of the Complaint, it is admitted that SouthPark Charlotte Apartments LP was primarily and substantially engaged in the business of owning and developing the Modera South Park Apartments. Except as herein admitted, denied.

9. The allegations contained in Paragraph 9 of the Complaint are admitted.

10. As to the allegations contained in Paragraph 10 of the Complaint, it is admitted that MCRT Carolinas Construction LLC was and still is a limited liability company organized and existing by virtue of the laws of the State of Delaware, identified by the North Carolina Secretary of State as maintaining an office at: 101 W. Worthington Avenue, Suite 210, Charlotte, NC 28203; its current mailing address at: 5910 N. Central Expressway, Suite 1100, Dallas, Texas, 75206; and as having designated as its registered agent for service: CT Corporation System, registered address, 160 Mine Lake Court, Suite 200, Raleigh, North Carolina 27615. Except as herein admitted, denied.

11. As to the allegations contained in Paragraph 11 of the Complaint, it is admitted that MCRT Carolinas Construction LLC was primarily and substantially engaged in the business of general contracting. Except as herein admitted, denied.

12. The allegations contained in Paragraph 12 of the Complaint are admitted.

13. As to the allegations contained in Paragraph 13 of the Complaint, MCR Trust is not identified with any specificity. Answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

14. As to the allegations contained in Paragraph 14 of the Complaint, it is denied that the Defendant companies are to be jointly referred to as the "MILL CREEK DEFENDANTS". It is further denied that MCRT Carolinas Construction LLC was involved in the acquisition of land, the ownership, financing, and development of the Modera South Park Apartments Project at 7740/7741 Liberty Row Drive, Charlotte, NC 28210.

15. The allegations contained in Paragraph 15 of the Complaint are admitted.

16. The allegations contained in Paragraph 16 of the Complaint are admitted.

17. As to the allegations contained in Paragraph 17 of the Complaint, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

18. As to the allegations contained in Paragraph 18 of the Complaint, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

19. The allegations contained in Paragraph 19 of the Complaint are denied.

20. The allegations contained in Paragraph 20 of the Complaint are denied.

21. As to the allegations contained in Paragraph 21 of the Complaint, it is admitted that answering Defendants contracted for the construction of the Project and the contracts speak for itself and is the best evidence of its contents. Except as herein admitted, denied.

22. As to the allegations contained in Paragraph 22 of the Complaint, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

23. To the extent the allegations contained in Paragraph 23 of the Complaint are directed at these answering Defendants, the allegations are denied.

24. To the extent the allegations contained in Paragraph 24 of the Complaint are directed at these answering Defendants, the allegations are denied.

25. To the extent the allegations contained in Paragraph 25 of the Complaint are directed at these answering Defendants, the allegations are denied.

26. The allegations contained in Paragraph 26 of the Complaint assert legal conclusions to which no response is required. To the extent a response is deemed necessary and to the extent these allegations are directed at these answering Defendants, the allegations contained in Paragraph 26 of the Complaint are denied.

27. The allegations contained in Paragraph 27 of the Complaint are denied.

28. The allegations contained in Paragraph 28 of the Complaint assert legal conclusions to which no response is required.

29. The allegations contained in Paragraph 29 of the Complaint assert legal conclusions to which no response is required.

30. The allegations contained in Paragraph 30 of the Complaint assert legal conclusions to which no response is required.

31. The allegations contained in Paragraph 31 of the Complaint assert legal conclusions to which no response is required.

32. As to the allegations contained in Paragraph 32 of the Complaint, it is admitted that SouthPark Charlotte Apartments LP acquired property at 7740 and 7741 Liberty Row Drive, Charlotte, North Carolina 28210, upon which to construct residential apartments to be known as Modera South Park. Except as herein admitted, denied.

33. As to the allegations contained in Paragraph 33 of the Complaint, it is admitted that a building permit was obtained for the project reflecting SouthPark as the owner of the project and MCRT Carolinas as the general contractor. Except as herein admitted, denied.

34. The allegations contained in Paragraph 34 of the Complaint assert legal conclusions to which no response is required. To the extent that a response is deemed necessary, denied as phrased.

35. As to the allegations contained in Paragraph 35 of the Complaint, it is admitted that in furtherance of the Project that MCRT Carolinas began construction of Modera South Park and construction activities took place at 7740 and 7741 Liberty Row Drive, Charlotte, North Carolina 28210. Except as herein admitted, denied.

36. The allegations contained in Paragraph 36 of the Complaint are admitted.

37. The allegations contained in Paragraph 37 of the Complaint are admitted.

38. As to the allegations contained in Paragraph 38 of the Complaint, it is admitted that, among other construction components, that wood framed construction

consists of dimensional lumber and engineered wood that is regularly spaced and fastened together with nails to create floor, wall, stair, and roof assemblies. Except as herein admitted, denied.

39. The allegations contained in Paragraph 39 of the Complaint assert legal conclusions to which no response is required.

40. As to the allegations contained in Paragraph 40 of the Complaint, it is admitted that SouthPark and MCRT Carolinas were familiar with podium style apartment buildings. Except as herein admitted, denied.

41. As to the allegations contained in Paragraph 41 of the Complaint, it is admitted that SouthPark and MCRT Carolinas were familiar with podium style apartment buildings. Except as herein admitted, denied.

42. The allegations contained in Paragraph 42 of the Complaint are denied as phrased.

43. The allegations contained in Paragraph 43 of the Complaint are denied as phrased.

44. The allegations contained in Paragraph 44 of the Complaint are denied as phrased.

45. As to the allegations contained in Paragraph 45 of the Complaint, it is admitted that Southpark was and is aware of the existence of Fire Codes. It is further admitted that MCRT Carolinas was aware of all applicable Fire Codes and the need to adhere to those codes. Except as admitted, denied.

46. As to the allegations contained in Paragraph 46 of the Complaint, it is admitted that Southpark was and is aware of the existence of fire codes. It is further

admitted that MCRT Carolinas was aware of all applicable fire codes and the need to adhere to those codes. Except as admitted, denied.

47. The allegations contained in Paragraph 47 of the Complaint are denied.

48. To the extent the allegations contained in Paragraph 48 of the Complaint are directed at these answering Defendants, the allegations are denied.

49. To the extent the allegations contained in Paragraph 49 of the Complaint are directed at these answering Defendants, the allegations are denied.

50. To the extent the allegations contained in Paragraph 50 of the Complaint are directed at these answering Defendants, the allegations are denied.

51. As to the allegations contained in Paragraph 51 of the Complaint, including subparagraphs (a) – (b), it is admitted that these answering Defendants contracted for the construction of the Project and the contract speaks for itself and is the best evidence of its contents. Additionally, it is admitted that the applicable fire code is in writing and is the best evidence of its contents. To the extent that the allegations contained in Paragraph 51 of the Complaint are inconsistent with such documents, the allegations are denied.

52. As to the allegations contained in Paragraph 52 of the Complaint it is admitted that these answering Defendants contracted for the construction of the Project and the contract speaks for itself and is the best evidence of its contents. Additionally, it is admitted that the applicable fire code is in writing and is the best evidence of its contents. To the extent that the allegations contained in Paragraph 52 of the Complaint are inconsistent with such documents, the allegations are denied.

53. As to the allegations contained in Paragraph 53 of the Complaint it is admitted that these answering Defendants contracted for the construction of the Project

and the contract speaks for itself and is the best evidence of its contents. Additionally, it is admitted that the applicable fire code is in writing and is the best evidence of its contents. To the extent that the allegations contained in Paragraph 53 of the Complaint are inconsistent with such documents, the allegations are denied.

54. As to the allegations contained in Paragraph 54 of the Complaint it is admitted that these answering Defendants contracted for the construction of the Project and the contract speaks for itself and is the best evidence of its contents. Additionally, it is admitted that the applicable fire code is in writing and is the best evidence of its contents. To the extent that the allegations contained in Paragraph 54 of the Complaint are inconsistent with such documents, the allegations are denied.

55. The allegations contained in Paragraph 55 of the Complaint refer to a document which speaks for itself and is the best evidence of its contents. To the extent that the allegations contained in Paragraph 55 of the Complaint are inconsistent with such document, the allegations are denied.

56. As to the allegations contained in Paragraph 56 of the Complaint, it is admitted that answering Defendants contracted for the construction of the Project and the contracts speaks for itself and is the best evidence of its contents. Additionally, the allegations contained in Paragraph 56 of the Complaint refer to a document which speaks for itself and is the best evidence of its contents. To the extent that the allegations contained in Paragraph 56 of the Complaint are inconsistent with such document, the allegations are denied.

57. The allegations contained in Paragraph 57 of the Complaint refer to a document which speaks for itself and is the best evidence of its contents. To the extent

that the allegations contained in Paragraph 57 of the Complaint are inconsistent with such document, the allegations are denied.

58. The allegations contained in Paragraph 58 of the Complaint refer to a document which speaks for itself and is the best evidence of its contents. To the extent that the allegations contained in Paragraph 58 of the Complaint are inconsistent with such document, the allegations are denied.

59. The allegations contained in Paragraph 59 of the Complaint are denied.

60. The allegations contained in Paragraph 60 of the Complaint refer to a document which speaks for itself and is the best evidence of its contents. To the extent that the allegations contained in Paragraph 60 of the Complaint are inconsistent with such document, the allegations are denied.

61. The allegations contained in Paragraph 61 of the Complaint are denied.

62. The allegations contained in Paragraph 62 of the Complaint are denied.

63. The allegations contained in Paragraph 63 of the Complaint refer to a document which speaks for itself and is the best evidence of its contents. To the extent that the allegations contained in Paragraph 63 of the Complaint are inconsistent with such document, the allegations are denied.

64. The allegations contained in Paragraph 64 of the Complaint refer to a document which speaks for itself and is the best evidence of its contents. To the extent that the allegations contained in Paragraph 64 of the Complaint are inconsistent with such document, the allegations are denied.

65. The allegations contained in Paragraph 65 of the Complaint are denied.

66. The allegations contained in Paragraph 66 of the Complaint refer to a document which speaks for itself and is the best evidence of its contents. To the extent that the allegations contained in Paragraph 66 of the Complaint are inconsistent with such document, the allegations are denied.

67. The allegations contained in Paragraph 67 of the Complaint are denied.

68. The allegations contained in Paragraph 68 of the Complaint are denied as phrased.

69. The allegations contained in Paragraph 69 of the Complaint are denied as phrased.

70. The allegations contained in Paragraph 70 of the Complaint are denied.

71. The allegations contained in Paragraph 71 of the Complaint are denied.

72. The allegations contained in Paragraph 72 of the Complaint are denied.

73. As to the allegations contained in Paragraph 73 of the Complaint, it is admitted that Building B had a staircase at the end of the building in compliance with the applicable fire code. Except as admitted, denied.

74. The allegations contained in Paragraph 74 of the Complaint are denied.

75. The allegations contained in Paragraph 75 of the Complaint refer to a document which speaks for itself and is the best evidence of its contents. To the extent that the allegations contained in Paragraph 75 of the Complaint are inconsistent with such document, the allegations are denied.

76. The allegations contained in Paragraph 76 of the Complaint are denied.

77. As to the allegations contained in Paragraph 77 of the Complaint, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

78. As to the allegations contained in Paragraph 78 of the Complaint, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

79. The allegations contained in Paragraph 79 of the Complaint are denied.

80. The allegations contained in Paragraph 80 of the Complaint call for a legal conclusion to which no response is necessary. To the extent a response is necessary, it is admitted that these answering Defendants have varying responsibilities, along with others, for fire safety and maintenance of the project. Except as herein admitted, denied.

81. The allegations contained in Paragraph 81 of the Complaint are denied.

82. The allegations contained in Paragraph 82 of the Complaint call for a legal conclusion to which no response is necessary. To the extent a response is necessary, it is admitted that these answering Defendants have varying responsibilities, along with others, for fire safety and maintenance of the project. Except as herein admitted, denied.

83. The allegations contained in Paragraph 83 of the Complaint are denied.

84. The allegations contained in Paragraph 84 of the Complaint are denied.

85. The allegations contained in Paragraph 85 of the Complaint are denied.

86. The allegations contained in Paragraph 86 of the Complaint are denied.

87. The allegations contained in Paragraph 87 of the Complaint refer to a document which speaks for itself and is the best evidence of its contents. To the extent

that the allegations contained in Paragraph 87 of the Complaint are inconsistent with such document, the allegations are denied.

88. The allegations contained in Paragraph 88 of the Complaint refer to a document which speaks for itself and is the best evidence of its contents. To the extent that the allegations contained in Paragraph 88 of the Complaint are inconsistent with such document, the allegations are denied.

89. The allegations contained in Paragraph 89 of the Complaint are denied as phrased.

90. The allegations contained in Paragraph 90 of the Complaint are denied as phrased.

91. As to the allegations contained in Paragraph 91 of the Complaint, it is admitted that MCRT Carolinas was and is familiar with applicable building and fire codes. It is further admitted that MCRT Carolinas was and is familiar with standpipe systems and their uses. Except as admitted, denied.

92. As to the allegations contained in Paragraph 92 of the Complaint, it is admitted that MCRT Carolinas was and is familiar with applicable building and fire codes. It is further admitted that MCRT Carolinas was and is familiar with standpipe systems and their uses. Except as admitted, denied.

93. As to the allegations contained in Paragraph 93 of the Complaint, it is admitted that MCRT Carolinas was and is familiar with applicable building and fire codes. It is further admitted that MCRT Carolinas was and is familiar with standpipe systems and their uses. Except as admitted, denied.

94. As to the allegations contained in Paragraph 94 of the Complaint, it is admitted that MCRT Carolinas was and is familiar with applicable building and fire codes. It is further admitted that MCRT Carolinas was and is familiar with standpipe systems and their uses. Except as admitted, denied.

95. As to the allegations contained in Paragraph 95 of the Complaint, it is admitted that MCRT Carolinas was and is familiar with applicable building and fire codes. It is further admitted that MCRT Carolinas was and is familiar with standpipe systems and their uses. Except as admitted, denied.

96. The allegations contained in Paragraph 96 of the Complaint refer to a document which speaks for itself and is the best evidence of its contents. To the extent that the allegations contained in Paragraph 96 of the Complaint are inconsistent with such document, the allegations are denied.

97. The allegations contained in Paragraph 97 of the Complaint refer to a document which speaks for itself and is the best evidence of its contents. To the extent that the allegations contained in Paragraph 97 of the Complaint are inconsistent with such document, the allegations are denied.

98. As to the allegations contained in Paragraph 98 of the Complaint, it is admitted that a standpipe was in place. The remaining allegations contained in Paragraph 98 of the Complaints calls for legal conclusions to which no response is required.

99. As to the allegations contained in Paragraph 99 of the Complaint, it is admitted that a standpipe was in place. The remaining allegations contained in Paragraph 98 of the Complaints calls for legal conclusions to which no response is required.

100. The allegations contained in Paragraph 100 of the Complaint are denied.

101. The allegations contained in Paragraph 101 of the Complaint appear to call for legal conclusions to which no response is required. To the extent a response is required, denied.

102. The allegations contained in Paragraph 102 of the Complaint refer to a document which speaks for itself and is the best evidence of its contents. To the extent that the allegations contained in Paragraph 102 of the Complaint are inconsistent with such document, the allegations are denied.

103. As to the allegations contained in Paragraph 103 of the Complaint, it is admitted that at the time of the fire the highest point on Building B exceeded 40 feet. The remaining allegations contained in Paragraph 103 of the Complaint call for legal conclusions to which no response is required.

104. The allegations contained in Paragraph 104 of the Complaint refer to a document which speaks for itself and is the best evidence of its contents. To the extent that the allegations contained in Paragraph 104 of the Complaint are inconsistent with such document, the allegations are denied.

105. As to the allegations contained in Paragraph 105 of the Complaint, it is admitted that a standpipe and usable stairway were present in Building B. The remaining allegations contained in Paragraph 105 of the Complaint are denied.

106. As to the allegations contained in Paragraph 106 of the Complaint, it is admitted that a standpipe and usable stairway were present in Building B. The remaining allegations contained in Paragraph 106 of the Complaint are denied.

107. The allegations contained in Paragraph 107 of the Complaint are denied.

108. As to the allegations contained in Paragraph 108 of the Complaint, it is denied that there is any causal connection between these allegations and the incident. To the extent a further response is deemed required, denied as phrased.

109. As to the allegations contained in Paragraph 109 of the Complaint, it is denied that there is any causal connection between these allegations and the incident. To the extent a further response is deemed required, denied as phrased.

110. The allegations contained in Paragraph 110 of the Complaint are denied.

111. The allegations contained in Paragraph 111 of the Complaint are denied.

112. The allegations contained in Paragraph 112 of the Complaint are denied.

113. The allegations contained in Paragraph 113 of the Complaint are denied.

114. The allegations contained in Paragraph 114 of the Complaint are denied.

115. The allegations contained in Paragraph 115 of the Complaint are denied.

116. The allegations contained in Paragraph 116 of the Complaint refer to a document which speaks for itself and is the best evidence of its contents. To the extent that the allegations contained in Paragraph 116 of the Complaint are inconsistent with such document, the allegations are denied.

117. As to the allegations contained in Paragraph 117 of the Complaint, it is admitted that Defendant Baker provided spray foam services in the parking garage of Building B pursuant to their contract and Defendant Baker's recommendations. Except as herein admitted, denied.

118. As to the allegations contained in Paragraph 118 of the Complaint, it is admitted that Defendant Baker operated a Genset in application of spray foam insulation. Except as herein admitted, answering Defendants lack sufficient information or

knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

119. The allegations contained in Paragraph 119 of the Complaint refer to a document which speaks for itself and is the best evidence of its contents. To the extent that the allegations contained in Paragraph 119 of the Complaint are inconsistent with such document, the allegations are denied.

120. The allegations contained in Paragraph 120 of the Complaint are denied.

121. The allegations contained in Paragraph 121 of the Complaint do not appear to be directed toward these answering Defendants and do not appear to require a response by these answering Defendants.

122. The allegations contained in Paragraph 122 of the Complaint are denied.

123. The allegations contained in Paragraph 123 of the Complaint are denied.

124. As to the allegations contained in Paragraph 124 of the Complaint, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

125. As to the allegations contained in Paragraph 125 of the Complaint, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

126. As to the allegations contained in Paragraph 126 of the Complaint, it is admitted that when the Trailer caught fire, employees of MCRT Carolinas Construction, LLC could not put on the fire, reported the fire to emergency services, and the fire spread. Except are herein admitted, denied.

127. The allegations contained in Paragraph 127 of the Complaint refer to a document which speaks for itself and is the best evidence of its contents. To the extent that the allegations contained in Paragraph 127 of the Complaint are inconsistent with such document, the allegations are denied.

128. The allegations contained in Paragraph 128 of the Complaint do not appear to be directed toward these answering Defendants and do not appear to require a response by these answering Defendants.

129. The allegations contained in Paragraph 129 of the Complaint do not appear to be directed toward these answering Defendants and do not appear to require a response by these answering Defendants.

130. The allegations contained in Paragraph 130 of the Complaint are denied.

131. The allegations contained in Paragraph 131 of the Complaint are denied.

132. As to the allegations contained in Paragraph 132 of the Complaint, it is admitted that MCRT Carolinas was and is familiar with applicable building and fire codes. It is further admitted that MCRT Carolinas provided notification and evacuation plans and provided safety training. Except as admitted, denied.

133. As to the allegations contained in Paragraph 133 of the Complaint, it is admitted that MCRT Carolinas was and is familiar with applicable building and fire codes. It is further admitted that MCRT Carolinas provided notification and evacuation plans and provided safety training. Except as admitted, denied.

134. The allegations contained in Paragraph 134 of the Complaint are denied.

135. The allegations contained in Paragraph 135 of the Complaint refer to a document which speaks for itself and is the best evidence of its contents. To the extent

that the allegations contained in Paragraph 135 of the Complaint are inconsistent with such document, the allegations are denied.

136. The allegations contained in Paragraph 136 of the Complaint refer to a document which speaks for itself and is the best evidence of its contents. To the extent that the allegations contained in Paragraph 136 of the Complaint are inconsistent with such document, the allegations are denied.

137. The allegations contained in Paragraph 137 of the Complaint refer to a document which speaks for itself and is the best evidence of its contents. To the extent that the allegations contained in Paragraph 137 of the Complaint are inconsistent with such document, the allegations are denied.

138. The allegations contained in Paragraph 138 of the Complaint refer to a document which speaks for itself and is the best evidence of its contents. To the extent that the allegations contained in Paragraph 138 of the Complaint are inconsistent with such document, the allegations are denied.

139. The allegations contained in Paragraph 139 of the Complaint are denied.

140. The allegations contained in Paragraph 140 of the Complaint are denied.

141. The allegations contained in Paragraph 141 of the Complaint are denied.

142. The allegations contained in Paragraph 142 of the Complaint refer to a document which speaks for itself and is the best evidence of its contents. To the extent that the allegations contained in Paragraph 142 of the Complaint are inconsistent with such document, the allegations are denied.

143. As to the allegations contained in Paragraph 143 of the Complaint, it is admitted that MCRT Carolinas was and is familiar with applicable building and fire codes.

It is further admitted that MCRT Carolinas provided notification and evacuation plans and provided safety training. Except as admitted, denied.

144. The allegations contained in Paragraph 144 of the Complaint are denied.

145. The allegations contained in Paragraph 145 of the Complaint are denied.

146. The allegations contained in Paragraph 146 of the Complaint are denied.

147. As to the allegations contained in Paragraph 147 of the Complaint, it is admitted that on or about May 18, 2023, a five-alarm structural fire occurred at the Project. Except as herein admitted, denied.

148. As to the allegations contained in Paragraph 148 of the Complaint, it is admitted that Demonte Sherrill and Reuben Holmes were working on the Project and suffered fatal injuries. Except as herein admitted, denied.

149. As to the allegations contained in Paragraph 149 of the Complaint, it is admitted that an Audible Throughout Alarm System was established and utilized. Except as admitted, denied.

150. As to the allegations contained in Paragraph 150 of the Complaint, it is admitted that MCRT Carolinas was and is familiar with applicable building and fire codes. It is further admitted that these answering Defendants were aware of the need to comply with applicable building and fire codes. Except as admitted, denied.

151. As to the allegations contained in Paragraph 151 of the Complaint, it is admitted that MCRT Carolinas was and is familiar with applicable building and fire codes. It is further admitted that these answering Defendants were aware of the need to comply with applicable building and fire codes. Except as admitted, denied.

152. As to the allegations contained in Paragraph 152 of the Complaint, it is admitted that MCRT Carolinas was and is familiar with applicable building and fire codes. It is further admitted that these answering Defendants were aware of the need to comply with applicable building and fire codes. Except as admitted, denied.

153. As to the allegations contained in Paragraph 153 of the Complaint, it is admitted that MCRT Carolina was aware that the applicable building and fire codes would require a standpipe system in both Buildings A and B. Except as admitted, denied.

154. The allegations contained in Paragraph 154 of the Complaint are denied.

155. The allegations contained in Paragraph 155 of the Complaint are denied.

156. As to the allegations contained in Paragraph 156 of the Complaint, it is admitted that these answering Defendants were aware that fires could occur during construction. It is further admitted that these answering Defendants were aware of the need to comply with applicable building and fire codes. Except as admitted, denied.

157. As to the allegations contained in Paragraph 157 of the Complaint it is specifically admitted that Building B had a standpipe. The remaining allegations contained in Paragraph 157 of the Complaint are denied based upon a lack of sufficient information or knowledge to form an opinion as to the truth of such allegations.

158. The allegations contained in Paragraph 158 of the Complaint are denied based upon a lack of sufficient information or knowledge to form an opinion as to the truth of such allegations.

159. The allegations contained in Paragraph 159 of the Complaint are denied.

160. As to the allegations contained in Paragraph 160 of the Complaint, it is admitted that MCRT Carolinas was and is familiar with applicable building and fire codes.

It is further admitted that these answering Defendants were aware of the need to comply with applicable building and fire codes. Except as admitted, denied.

161. The allegations contained in Paragraph 161 of the Complaint refer to a document which speaks for itself and is the best evidence of its contents. To the extent that the allegations contained in Paragraph 161 of the Complaint are inconsistent with such document, the allegations are denied.

162. The allegations contained in Paragraph 162 of the Complaint are denied.

163. The allegations contained in Paragraph 163 of the Complaint refer to a document which speaks for itself and is the best evidence of its contents. To the extent that the allegations contained in Paragraph 163 of the Complaint are inconsistent with such document, the allegations are denied.

164. To the extent the allegations contained in Paragraph 164 of the Complaint are directed at these answering Defendants, the allegations are denied.

165. To the extent the allegations contained in Paragraph 164 of the Complaint are directed at these answering Defendants, the allegations are denied.

166. As to the allegations contained in Paragraph 166 of the Complaint, it is admitted that Defendant Baker and its employees provided spray foam services in the parking garage of Building B pursuant to their contract and Defendant Baker's recommendations. Except as herein admitted, denied.

167. As to the allegations contained in Paragraph 160 of the Complaint, it is admitted that MCRT Carolinas was and is familiar with OSHA regulations. It is further admitted that these answering Defendants were aware of the need to comply with applicable OSHA regulations. Except as admitted, denied.

168. The allegations contained in Paragraph 168 of the Complaint are denied.

169. The allegations contained in Paragraph 169 of the Complaint are denied.

170. The allegations contained in Paragraph 170 of the Complaint are denied.

171. The allegations contained in Paragraph 171 of the Complaint are denied.

172. As to the allegations contained in Paragraph 172 of the Complaint, it is admitted that the Project had in place fire prevention and fire safety measures. Except as admitted, denied.

173. The allegations contained in Paragraph 173 of the Complaint are denied.

174. As to the allegations contained in Paragraph 174 of the Complaint, it is admitted that MCRT Carolinas was and is familiar with OSHA regulations. It is further admitted that these answering Defendants were aware of the need to comply with applicable OSHA regulations. Except as admitted, denied.

175. As to the allegations contained in Paragraph 175 of the Complaint, it is admitted that MCRT Carolinas was and is familiar with building design plans for the Project. It is further admitted that these answering Defendants were aware of the need to comply with applicable building design plans. Except as admitted, denied.

176. As to the allegations contained in Paragraph 176 of the Complaint, it is admitted that MCRT Carolinas was and is familiar with building design plans for the Project. It is further admitted that these answering Defendants were aware of the need to comply with applicable building design plans. Except as admitted, denied.

177. The allegations contained in Paragraph 177 of the Complaint refer to a document which speaks for itself and is the best evidence of its contents. To the extent

that the allegations contained in Paragraph 177 of the Complaint are inconsistent with such document, the allegations are denied.

178. The allegations contained in Paragraph 178 of the Complaint refer to a document which speaks for itself and is the best evidence of its contents. To the extent that the allegations contained in Paragraph 178 of the Complaint are inconsistent with such document, the allegations are denied.

179. As to the allegations in Paragraph 179 of the Complaint, it is admitted that at some point during active construction that a temporary staircase was removed in order to install permanent stairs to continue construction activities. Except as herein admitted, denied.

180. The allegations contained in Paragraph 180 of the Complaint are denied.

181. The allegations contained in Paragraph 181 of the Complaint are denied.

182. The allegations contained in Paragraph 182 of the Complaint are denied as phrased.

183. As to the allegations contained in Paragraph 183 of the Complaint, it is admitted that MCRT Carolinas was and is familiar with applicable fire codes. It is further admitted that these answering Defendants were aware of the need to comply with applicable fire codes. Except as admitted, denied.

184. As to the allegations contained in Paragraph 184 of the Complaint, it is admitted that MCRT Carolinas was and is familiar with applicable fire codes. It is further admitted that these answering Defendants were aware of the need to comply with applicable fire codes. Except as admitted, denied.

185. The allegations contained in Paragraph 185 of the Complaint call for a legal conclusion to which no response is necessary. To the extent a response is required, these answering Defendants admit they owed those duties required by law in the State of North Carolina. Except as admitted, denied.

186. The allegations contained in Paragraph 186 of the Complaint call for a legal conclusion to which no response is necessary. To the extent a response is required, these answering Defendants admit they owed those duties required by law in the State of North Carolina. Except as admitted, denied.

187. As to the allegations contained in Paragraph 187 of the Complaint, it is admitted that MCRT Carolinas was and is familiar with applicable construction, fire and safety codes. It is further admitted that these answering Defendants were aware of the need to comply with applicable construction, fire and safety codes. Except as admitted, denied.

188. As to the allegations contained in Paragraph 188 of the Complaint, it is admitted that MCRT Carolinas was and is familiar with applicable construction, fire and safety codes. It is further admitted that these answering Defendants were aware of the need to comply with applicable construction, fire and safety codes. Except as admitted, denied.

189. As to the allegations contained in Paragraph 189 of the Complaint, it is admitted that MCRT Carolinas was and is familiar with applicable construction, fire and safety codes. It is further admitted that these answering Defendants were aware of the need to comply with applicable construction, fire and safety codes. Except as admitted, denied.

190. As to the allegations contained in Paragraph 190 of the Complaint, it is admitted that MCRT Carolinas was and is familiar with applicable construction, fire and safety codes. It is further admitted that these answering Defendants were aware of the need to comply with applicable construction, fire and safety codes. Except as admitted, denied.

191. As to the allegations contained in Paragraph 191 of the Complaint, it is admitted that MCRT Carolinas was and is familiar with applicable construction, fire and safety codes. It is further admitted that these answering Defendants were aware of the need to comply with applicable construction, fire and safety codes. Except as admitted, denied.

192. The allegations contained in Paragraph 192 of the Complaint are denied.

193. The allegations contained in Paragraph 193 of the Complaint are denied.

194. As to the allegations contained in Paragraph 194 of the Complaint, it is admitted that there was an adequate number of stairways for evacuation purposes. Except as admitted, denied.

195. As to the allegations contained in Paragraph 195 of the Complaint, it is admitted that there was an adequate number of stairways for evacuation purposes. Except as admitted, denied.

196. As to the allegations in Paragraph 196 of the Complaint, it is admitted that at some point before the fire that an interior, temporary stairway in Building B had been removed for a permanent stairway to be constructed. Except as herein admitted, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

197. The allegations contained in Paragraph 197 of the Complaint are denied as phrased.

198. The allegations contained in Paragraph 198 of the Complaint are denied as phrased.

199. As to the allegations contained in Paragraph 199 of the Complaint, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

200. The allegations contained in Paragraph 200 of the Complaint are denied.

201. As to the allegations contained in Paragraph 201 of the Complaint, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

202. As to the allegations contained in Paragraph 202 of the Complaint, it is admitted that at various phases of the construction Defendant MCRT Carolinas engaged numerous subcontractors to perform construction activities at the Project, including but not limited to, subcontractors to provide and install spray foam insulations in Buildings A and B in accordance with their contracts and experience. Except as herein admitted, denied.

203. As to the allegations contained in Paragraph 203 of the Complaint, it is admitted that Defendant MCRT Carolinas contracted with Diversified Insulation, LLC to provide and install spray foam insulation in Buildings A and B during construction in accordance with their contracts and experience. Except as herein admitted, denied.

204. As to the allegations contained in Paragraph 204 of the Complaint, it is admitted that Diversified subcontracted its contract with Defendant MCRT Carolinas by

engaging Defendant Baker to provide and install spray foam insulation in Buildings A and B. Except as herein admitted, denied.

205. As to the allegations contained in Paragraph 205 of the Complaint, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

206. As to the allegations contained in Paragraph 206 of the Complaint, it is admitted that answering Defendants contracted for the construction of the Project and the contracts speaks for itself and is the best evidence of its contents. Additionally, the allegations contained in Paragraph 206 of the Complaint refer to a document which speaks for itself and is the best evidence of its contents. To the extent that the allegations contained in Paragraph 206 of the Complaint are inconsistent with such document, the allegations are denied.

207. The allegations contained in Paragraph 207 of the Complaint are denied.

208. As to the allegations contained in Paragraph 208 of the Complaint, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

209. As to the allegations contained in Paragraph 209 of the Complaint, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

210. As to the allegations contained in Paragraph 210 of the Complaint, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

211. As to the allegations contained in Paragraph 211 of the Complaint, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

212. As to the allegations contained in Paragraph 212 of the Complaint, it is admitted that Defendant MCRT Carolinas was generally aware of products delivered to the Project needed to be used by subcontractors for their immediate work with same. Except as herein admitted, denied.

213. As to the allegations contained in Paragraph 213 of the Complaint, it is admitted that an employee of Defendant MCRT Carolinas discussed with Defendant Baker's employees their insulation services to be provided and Defendant Baker's employees' recommendations for completing such work and relied on Defendant Baker's experience in performing their contracted services. Except as herein admitted, denied.

214. The allegations contained in Paragraph 214 of the Complaint are denied.

215. The allegations contained in Paragraph 215 of the Complaint are denied.

216. The allegations contained in Paragraph 216 of the Complaint do not appear to be directed toward these answering Defendants and do not appear to require a response by these answering Defendants.

217. The allegations contained in Paragraph 217 of the Complaint do not appear to be directed toward these answering Defendants and do not appear to require a response by these answering Defendants.

218. The allegations contained in Paragraph 218 of the Complaint are denied.

219. The allegations contained in Paragraph 219 of the Complaint are denied.

220. As to the allegations contained in Paragraph 220 of the Complaint, it is admitted that Defendant MCRT Carolinas contracted with Diversified Insulation, LLC to provide and install spray foam insulation in Buildings A and B during construction in accordance with their contracts and experience. Except as herein admitted, denied.

221. The allegations contained in Paragraph 221 of the Complaint are denied.

222. The allegations contained in Paragraph 222 of the Complaint do not appear to be directed toward these answering Defendants and do not appear to require a response by these answering Defendants.

223. The allegations contained in Paragraph 223 of the Complaint do not appear to be directed toward these answering Defendants and do not appear to require a response by these answering Defendants.

224. The allegations contained in Paragraph 224 of the Complaint do not appear to be directed toward these answering Defendants and do not appear to require a response by these answering Defendants.

225. The allegations contained in Paragraph 225 of the Complaint do not appear to be directed toward these answering Defendants and do not appear to require a response by these answering Defendants.

226. The allegations contained in Paragraph 226 of the Complaint do not appear to be directed toward these answering Defendants and do not appear to require a response by these answering Defendants.

227. The allegations contained in Paragraph 227 of the Complaint are denied.

228. As to the allegations contained in Paragraph 228 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

229. As to the allegations contained in Paragraph 229 of the Complaint, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

230. As to the allegations contained in Paragraph 230 of the Complaint, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

231. The allegations contained in Paragraph 231 of the Complaint do not appear to be directed toward these answering Defendants and do not appear to require a response by these answering Defendants.

232. As to the allegations contained in Paragraph 232 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

233. As to the allegations contained in Paragraph 233 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

234. As to the allegations contained in Paragraph 234 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

235. As to the allegations contained in Paragraph 235 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

236. The allegations contained in Paragraph 236 of the Complaint are denied.

237. The allegations contained in Paragraph 237 of the Complaint are denied.

238. The allegations contained in Paragraph 238 of the Complaint do not appear to be directed toward these answering Defendants and do not appear to require a response by these answering Defendants.

239. The allegations contained in Paragraph 239 of the Complaint do not appear to be directed toward these answering Defendants and do not appear to require a response by these answering Defendants.

240. The allegations contained in Paragraph 240 of the Complaint do not appear to be directed toward these answering Defendants and do not appear to require a response by these answering Defendants.

241. The allegations contained in Paragraph 241 of the Complaint are denied.

242. The allegations contained in Paragraph 242 of the Complaint are denied.

243. As to the allegations contained in Paragraph 243 of the Complaint, it is admitted that on May 18, 2023, Building B of the Project had all five (5) stories of wood framing completed above its two (2) story concrete parking deck below, while Building A has all but the top story wood framing completed, and its remaining story was partially complete. Except as herein admitted, denied.

244. As to the allegations contained in Paragraph 244 of the Complaint, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

245. As to the allegations contained in Paragraph 245 of the Complaint, it is admitted that an employee of Defendant MCRT Carolinas discussed with Defendant Baker's employees their insulation services to be provided and Defendant Baker's employees' recommendations for completing such work and relied on Defendant Baker's experience in performing their contracted services. Except as herein admitted, denied.

246. As to the allegations contained in Paragraph 246 of the Complaint, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

247. As to the allegations contained in Paragraph 247 of the Complaint, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

248. The allegations contained in Paragraph 248 of the Complaint are denied.

249. The allegations contained in Paragraph 249 of the Complaint, including subparagraphs (a) through (c) are denied.

250. As to the allegations contained in Paragraph 250 of the Complaint, it is admitted that at the time of the fire the Baker trailer was in the parking deck and was not attached to a truck. Except as admitted, denied.

251. The allegations contained in Paragraph 251 of the Complaint do not appear to be directed toward these answering Defendants and do not appear to require a response by these answering Defendants. To the extent a response is necessary, these answering Defendants lack sufficient information or knowledge at this time to form an opinion as to the truth of said allegations, and the same are therefore denied.

252. The allegations contained in Paragraph 252 of the Complaint do not appear to be directed toward these answering Defendants and do not appear to require a response by these answering Defendants. To the extent a response is necessary, these answering Defendants lack sufficient information or knowledge at this time to form an opinion as to the truth of said allegations, and the same are therefore denied.

253. The allegations contained in Paragraph 253 of the Complaint do not appear to be directed toward these answering Defendants and do not appear to require a response by these answering Defendants. To the extent a response is necessary, these answering Defendants lack sufficient information or knowledge at this time to form an opinion as to the truth of said allegations, and the same are therefore denied.

254. The allegations contained in Paragraph 254 of the Complaint do not appear to be directed toward these answering Defendants and do not appear to require a response by these answering Defendants. To the extent a response is necessary, these answering Defendants lack sufficient information or knowledge at this time to form an opinion as to the truth of said allegations, and the same are therefore denied.

255. The allegations contained in Paragraph 255 of the Complaint do not appear to be directed toward these answering Defendants and do not appear to require a response by these answering Defendants. To the extent a response is necessary, these answering Defendants lack sufficient information or knowledge at this time to form an opinion as to the truth of said allegations, and the same are therefore denied.

256. The allegations contained in Paragraph 256 of the Complaint do not appear to be directed toward these answering Defendants and do not appear to require a response by these answering Defendants. To the extent a response is necessary, these answering Defendants lack sufficient information or knowledge at this time to form an opinion as to the truth of said allegations, and the same are therefore denied.

257. The allegations contained in Paragraph 257 of the Complaint do not appear to be directed toward these answering Defendants and do not appear to require a response by these answering Defendants. To the extent a response is necessary, these

answering Defendants lack sufficient information or knowledge at this time to form an opinion as to the truth of said allegations, and the same are therefore denied.

258. The allegations contained in Paragraph 258 of the Complaint do not appear to be directed toward these answering Defendants and do not appear to require a response by these answering Defendants. To the extent a response is necessary, these answering Defendants lack sufficient information or knowledge at this time to form an opinion as to the truth of said allegations, and the same are therefore denied.

259. As to the allegations contained in Paragraph 259 of the Complaint, it is admitted that Defendant MCRT Carolinas employees became aware of the fire and tried unsuccessfully to put it out with fire extinguishers. Except as herein admitted, denied.

260. As to the allegations contained in Paragraph 260 of the Complaint, it is admitted that after Defendant MCRT Carolinas employees were unsuccessful in putting out the fire, a Defendant MCRT Carolinas employee called 911 to report the fire. Except as herein admitted, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

261. The allegations contained in Paragraph 261 of the Complaint are denied.

262. The allegations contained in Paragraph 262 of the Complaint are denied.

263. As to the allegations contained in Paragraph 263 of the Complaint, it is admitted that at some point after the fire was discovered that Defendant MCRT Carolinas employees entered Building B in an attempt to alert workers in Building B of the fire, by yelling as they traveled each floor to the roof, and on the way back down. Except as herein admitted, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

264.-315. The allegations contained in Paragraphs 264 through 315 of the Complaint appear to reference specific times and alleged representations from the Charlotte Fire Department and would be documents that speak for themselves and is the best evidence of its contents. Additionally, these answering Defendants do not admit or concede to the accuracy and/or truthfulness of the same. Except as herein admitted, denied based upon lack of sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

316. As to the allegations contained in Paragraph 316 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

317. As to the allegations contained in Paragraph 317 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

318. As to the allegations contained in Paragraph 318 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

319. As to the allegations contained in Paragraph 319 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

320. The allegations contained in Paragraph 320 of the Complaint are denied.

321. As to the allegations contained in Paragraph 321 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

322. The allegations contained in Paragraph 322 of the Complaint are denied.

323. The allegations contained in Paragraph 323 of the Complaint are denied.

324. The allegations contained in Paragraph 324 of the Complaint are denied.

325. As to the allegations contained in Paragraph 325 of the Complaint, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

326. Answering Defendants hereby repeat and re-allege their responses set forth in Paragraphs 1 through 325 and incorporates them by reference as though fully set forth herein.

327. The allegations contained in Paragraph 327 of the Complaint call for legal conclusions to which no response is required. To the extent a response may be deemed required, it is admitted that Defendant SouthPark owed duties as recognized by its contracts and North Carolina law. Except as herein admitted, denied as phrased.

328. The allegations contained in Paragraph 328 of the Complaint call for legal conclusions to which no response is required. To the extent a response may be deemed required, it is admitted that Defendant MCRT Carolinas owed duties as recognized by its contracts and North Carolina law. Except as herein admitted, denied as phrased.

329. The allegations contained in Paragraph 329 of the Complaint are denied.

330. As to the allegations contained in Paragraph 330 of the Complaint, answering Defendants lack sufficient information or knowledge to form an opinion as to the truth of said allegations, and the same are therefore denied.

331. The allegations contained in Paragraph 331 of the Complaint call for legal conclusions to which no response is required. To the extent a response may be deemed required, it is admitted that these answering Defendants owed duties as recognized by its contracts and North Carolina law. Except as herein admitted, denied as phrased.

332. The allegations contained in Paragraph 328 of the Complaint call for legal conclusions to which no response is required. To the extent a response may be deemed required, it is admitted that these answering Defendants owed duties as recognized by its contracts and North Carolina law. Except as herein admitted, denied as phrased.

333. The allegations contained in Paragraph 328 of the Complaint call for legal conclusions to which no response is required. To the extent a response may be deemed required, it is admitted that these answering Defendants owed duties as recognized by its contracts and North Carolina law. Except as herein admitted, denied as phrased.

334. The allegations contained in Paragraph 334 of the Complaint, including subparagraphs (a) through (e) are denied.

335. The allegations contained in Paragraph 335 of the Complaint are denied.

336. The allegations contained in Paragraph 336 of the Complaint are denied.

337. The allegations contained in Paragraph 337 of the Complaint are denied.

338. The allegations contained in Paragraph 338 of the Complaint are denied.

339. The allegations contained in Paragraph 339 of the Complaint are denied.

340. The allegations contained in Paragraph 340 of the Complaint are denied.

341. The allegations contained in Paragraph 341 of the Complaint are denied.

342. The allegations contained in Paragraph 342 of the Complaint are denied.

343. The allegations contained in Paragraph 343 of the Complaint are denied.

344. The allegations contained in Paragraph 344 of the Complaint are denied.

345. The allegations contained in Paragraph 345 of the Complaint call for legal conclusions to which no response is required. To the extent a response may be deemed

required, it is admitted that these answering Defendants owed duties as recognized by its contracts and North Carolina law. Except as herein admitted, denied as phrased.

346. The allegations contained in Paragraph 346 of the Complaint call for legal conclusions to which no response is required. To the extent a response may be deemed required, it is admitted that these answering Defendants owed duties as recognized by its contracts and North Carolina law. Except as herein admitted, denied as phrased.

347. The allegations contained in Paragraph 347 of the Complaint are denied.

348. The allegations contained in Paragraph 348 of the Complaint are denied.

349. The allegations contained in Paragraph 349 of the Complaint are denied.

350. The allegations contained in Paragraph 350 of the Complaint are denied.

351. The allegations contained in Paragraph 351 of the Complaint are denied.

352. The allegations contained in Paragraph 352 of the Complaint are denied.

353. The allegations contained in Paragraph 353 of the Complaint, including subparagraphs (1) through (5) are denied.

354. The allegations contained in Paragraph 354 of the Complaint are denied.

355. The allegations contained in Paragraph 355 of the Complaint are denied.

356. As to the allegations contained in Paragraph 356 of the Complaint, it is admitted that answering Defendants contracted for the construction of the Project and the contracts speaks for itself and is the best evidence of its contents. Additionally, the allegations contained in Paragraph 356 of the Complaint refer to a document which speaks for itself and is the best evidence of its contents. To the extent that the allegations contained in Paragraph 356 of the Complaint are inconsistent with such document, the allegations are denied. Except as admitted herein, denied.

357. The allegations contained in Paragraph 357 of the Complaint are denied.
358. The allegations contained in Paragraph 358 of the Complaint are denied.
359. The allegations contained in Paragraph 359 of the Complaint are denied.
360. The allegations contained in Paragraph 360 of the Complaint are denied.
361. The allegations contained in Paragraph 361 of the Complaint are denied.
362. The allegations contained in Paragraph 362 of the Complaint are denied.
363. The allegations contained in Paragraph 363 of the Complaint are denied.
364. The allegations contained in Paragraph 364 of the Complaint are denied.
365. The allegations contained in Paragraph 365 of the Complaint are denied.
366. The allegations contained in Paragraph 366 of the Complaint are denied.
367. The allegations contained in Paragraph 367 of the Complaint are denied.
368. The allegations contained in Paragraph 368 of the Complaint are denied.
369. The allegations contained in Paragraph 369 of the Complaint are denied.
370. The allegations contained in Paragraph 370 of the Complaint, including subparagraphs (a.) through (i.) are denied.
371. The allegations contained in Paragraph 371 of the Complaint are denied.
372. The allegations contained in Paragraph 372 of the Complaint are denied.
373. The allegations contained in Paragraph 373 of the Complaint are denied.
374. The allegations contained in Paragraph 374 of the Complaint are denied.
375. The allegations contained in Paragraph 375 of the Complaint are denied.
376. The allegations contained in Paragraph 376 of the Complaint are denied.
377. The allegations contained in Paragraph 377 of the Complaint are denied.
378. The allegations contained in Paragraph 378 of the Complaint are denied.

379. The allegations contained in Paragraph 379 of the Complaint are denied.

380. The allegations contained in Paragraph 380 of the Complaint are denied.

381. The allegations contained in Paragraph 381 of the Complaint are denied.

382. The allegations contained in Paragraph 382 of the Complaint are denied.

383. Answering Defendants hereby repeat and re-allege their responses set forth in Paragraphs 1 through 382 and incorporates them by reference as though fully set forth herein.

384-399. The allegations contained in Paragraph 384 through 399 of the Complaint do not appear to be directed toward these answering Defendants and do not appear to require a response by these answering Defendants. To the extent the allegations are directed at these answering Defendants, denied.

400. Answering Defendants hereby repeat and re-allege their responses set forth in Paragraphs 1 through 399 and incorporates them by reference as though fully set forth herein.

401. The allegations contained in Paragraph 401 of the Complaint are denied.

402. The allegations contained in Paragraph 402 of the Complaint are denied.

403. The allegations contained in Paragraph 403 of the Complaint are denied.

404. The allegations contained in Paragraph 404 of the Complaint are denied.

405. The allegations contained in Paragraph 405 of the Complaint are denied.

406. The allegations contained in Paragraph 406 of the Complaint are denied.

407. The allegations contained in Paragraph 407 of the Complaint, including subparagraphs (i.) through (v.) are denied.

408. The allegations contained in Paragraph 408 of the Complaint are denied.

409. The allegations contained in Paragraph 409 of the Complaint are denied.
410. The allegations contained in Paragraph 410 of the Complaint are denied.
411. The allegations contained in Paragraph 411 of the Complaint are denied.
412. The allegations contained in Paragraph 412 of the Complaint are denied.
413. The allegations contained in Paragraph 413 of the Complaint are denied.
414. The allegations contained in Paragraph 414 of the Complaint are denied.
415. The allegations contained in Paragraph 415 of the Complaint are denied.
416. The allegations contained in Paragraph 416 of the Complaint are denied.
417. The allegations contained in Paragraph 417 of the Complaint are denied.
418. The allegations contained in Paragraph 418 of the Complaint are denied.
419. The allegations contained in Paragraph 419 of the Complaint are denied.
420. The allegations contained in Paragraph 420 of the Complaint are denied.
421. The allegations contained in Paragraph 421 of the Complaint are denied.
422. The allegations contained in Paragraph 422 of the Complaint are denied.
423. The allegations contained in Paragraph 423 of the Complaint are denied.
424. The allegations contained in Paragraph 424 of the Complaint are denied.
425. The allegations contained in Paragraph 425 of the Complaint are denied.
426. The allegations contained in Paragraph 426 of the Complaint are denied.
427. The allegations contained in Paragraph 427 of the Complaint are denied.
428. The allegations contained in Paragraph 428 of the Complaint are denied.
429. The allegations contained in Paragraph 429 of the Complaint are denied.
430. The allegations contained in Paragraph 430 of the Complaint are denied.
431. The allegations contained in Paragraph 431 of the Complaint are denied.

432. The allegations contained in Paragraph 432 of the Complaint are denied.

433. The allegations contained in Paragraph 433 of the Complaint are denied.

434. Answering Defendants hereby repeat and re-allege their responses set forth in Paragraphs 1 through 433 and incorporates them by reference as though fully set forth herein.

435-448. The allegations contained in Paragraph 435 through 448 of the Complaint do not appear to be directed toward these answering Defendants and do not appear to require a response by these answering Defendants. To the extent the allegations are directed at these answering Defendants, denied.

449. Answering Defendants hereby repeat and re-allege their responses set forth in Paragraphs 1 through 448 and incorporates them by reference as though fully set forth herein.

450. The allegations contained in Paragraph 450 of the Complaint are denied.

451. The allegations contained in Paragraph 451 of the Complaint do not appear to be directed toward these answering Defendants and do not appear to require a response by these answering Defendants. To the extent the allegations are directed at these answering Defendants, denied.

452. The allegations contained in Paragraph 452 of the Complaint are denied.

453. As to the allegations contained in Paragraph 453 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

454. As to the allegations contained in Paragraph 454 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

455. Answering Defendants hereby repeat and re-allege their responses set forth in Paragraphs 1 through 454 and incorporates them by reference as though fully set forth herein.

456. The allegations contained in Paragraph 456 of the Complaint are denied.

457. The allegations contained in Paragraph 457 of the Complaint are denied.

458. The allegations contained in Paragraph 458 of the Complaint are denied.

459. The allegations contained in Paragraph 459 of the Complaint are denied.

460. The allegations contained in Paragraph 460 of the Complaint are denied.

461. As to the allegations contained in Paragraph 461 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

462. As to the allegations contained in Paragraph 462 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

463. As to the allegations contained in Paragraph 463 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

464. As to the allegations contained in Paragraph 464 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

465. As to the allegations contained in Paragraph 465 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

466. As to the allegations contained in Paragraph 466 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

467. As to the allegations contained in Paragraph 467 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

468. Answering Defendants hereby repeat and re-allege their responses set forth in Paragraphs 1 through 467 and incorporates them by reference as though fully set forth herein.

469. As to the allegations contained in Paragraph 469 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

470. The allegations contained in Paragraph 470 of the Complaint are denied.

471. The allegations contained in Paragraph 471 of the Complaint are denied.

472. The allegations contained in Paragraph 472 of the Complaint are denied.

473. The allegations contained in Paragraph 473 of the Complaint are denied.

474. The allegations contained in Paragraph 474 of the Complaint are denied.

475. The allegations contained in Paragraph 475 of the Complaint are denied.

476. The allegations contained in Paragraph 476 of the Complaint are denied.

477. The allegations contained in Paragraph 477 of the Complaint are denied.

478. The allegations contained in Paragraph 478 of the Complaint are denied.

479. The allegations contained in Paragraph 479 of the Complaint are denied.

480. The allegations contained in Paragraph 480 of the Complaint are denied.

481. The allegations contained in Paragraph 481 of the Complaint are denied.

482. The allegations contained in Paragraph 482 of the Complaint are denied.

483. The allegations contained in Paragraph 483 of the Complaint are denied.

484. The allegations contained in Paragraph 484 of the Complaint are denied.

485. The allegations contained in Paragraph 485 of the Complaint are denied.

486. The allegations contained in Paragraph 486 of the Complaint are denied.

487. The allegations contained in Paragraph 487 of the Complaint are denied.

488. The allegations contained in Paragraph 488 of the Complaint are denied.

489. The allegations contained in Paragraph 489 of the Complaint are denied.

490. The allegations contained in Paragraph 490 of the Complaint are denied.

491. The allegations contained in Paragraph 491 of the Complaint are denied.

492. The allegations contained in Paragraph 492 of the Complaint are denied.

493. The allegations contained in Paragraph 493 of the Complaint are denied.

494. The allegations contained in Paragraph 494 of the Complaint are denied.

495. The allegations contained in Paragraph 495 of the Complaint are denied.

496. The allegations contained in Paragraph 496 of the Complaint are denied.

497. The allegations contained in Paragraph 497 of the Complaint are denied.

498. The allegations contained in Paragraph 498 of the Complaint are denied.

499. The allegations contained in Paragraph 499 of the Complaint are denied.

500. The allegations contained in Paragraph 500 of the Complaint are denied.

501. The allegations contained in Paragraph 501 of the Complaint are denied.

502. The allegations contained in Paragraph 502 of the Complaint are denied.

503. The allegations contained in Paragraph 503 of the Complaint are denied.

504. The allegations contained in Paragraph 504 of the Complaint are denied.

505. The allegations contained in Paragraph 505 of the Complaint are denied.

506. The allegations contained in Paragraph 506 of the Complaint are denied.

507. The allegations contained in Paragraph 507 of the Complaint are denied.

508. The allegations contained in Paragraph 508 of the Complaint are denied.

509. The allegations contained in Paragraph 509 of the Complaint do not appear

to be directed toward these answering Defendants and do not appear to require a

response by these answering Defendants. To the extent the allegations are directed at these answering Defendants, denied.

510. As to the allegations contained in Paragraph 510 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

511. The allegations contained in Paragraph 511 of the Complaint are denied.

512. The allegations contained in Paragraph 512 of the Complaint do not appear to be directed toward these answering Defendants and do not appear to require a response by these answering Defendants. To the extent the allegations are directed at these answering Defendants, denied.

513. The allegations contained in Paragraph 513 of the Complaint do not appear to be directed toward these answering Defendants and do not appear to require a response by these answering Defendants. To the extent the allegations are directed at these answering Defendants, denied.

514. The allegations contained in Paragraph 514 of the Complaint do not appear to be directed toward these answering Defendants and do not appear to require a response by these answering Defendants. To the extent the allegations are directed at these answering Defendants, denied.

515. The allegations contained in Paragraph 515 of the Complaint do not appear to be directed toward these answering Defendants and do not appear to require a response by these answering Defendants. To the extent the allegations are directed at these answering Defendants, denied.

516. As to the allegations contained in Paragraph 516 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

517. As to the allegations contained in Paragraph 517 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

518. As to the allegations contained in Paragraph 518 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

519. The allegations contained in Paragraph 519 of the Complaint are denied.

520. As to the allegations contained in Paragraph 520 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

521. As to the allegations contained in Paragraph 521 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

522. As to the allegations contained in Paragraph 522 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

523. As to the allegations contained in Paragraph 523 of the Complaint, including subparagraphs (a.) through (e.), to the extent the allegations are directed at these answering Defendants, denied.

524. As to the allegations contained in Paragraph 524 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

525. As to the allegations contained in Paragraph 525 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

526. As to the allegations contained in Paragraph 526 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

527. As to the allegations contained in Paragraph 527 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

528. As to the allegations contained in Paragraph 528 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

529. Answering Defendants hereby repeat and re-allege their responses set forth in Paragraphs 1 through 528 and incorporates them by reference as though fully set forth herein.

530. As to the allegations contained in Paragraph 530 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

531. As to the allegations contained in Paragraph 531 of the Complaint, to the extent the allegations are directed at these answering Defendants, denied.

532. EACH AND EVERY OTHER ALLEGATION, NOT SPECIFICALLY ADMITTED HEREIN, IS DENIED.

SECOND DEFENSE

The damages and injuries being alleged by the Plaintiffs in this matter were caused by persons or entities for whom these answering Defendants were not responsible and answering Defendants hereby pleads such facts as a complete bar to any recovery.

THIRD DEFENSE

As an additional defense, it is alleged in the alternative, that if these answering Defendants were negligent, which is again denied, any injuries or damages sustained by Plaintiffs were caused by the negligence on the part of others whom these answering Defendants had no control, including but not limited to other defendants as alleged by Plaintiffs in the Complaint and Plaintiff's employer. Such conduct on the part of others was the proximate and sole proximate cause of any damages and injuries the Plaintiffs

allegedly sustained. Accordingly, the intervening and superseding acts of others bars any recovery against these answering Defendants.

FOURTH DEFENSE

As an additional defense, it is alleged in the alternative, that if any of Plaintiffs' claims have merit, which is again expressly denied, any damages sustained by Plaintiffs was caused by negligence on the part of others whom these answering Defendants had no control, including but not limited to other defendants as alleged by Plaintiffs in the Complaint and Plaintiffs' employer. Such conduct on the part of these others were a proximate cause and the sole proximate cause of any damages or injuries Plaintiffs allegedly sustained. If it is determined that these answering Defendants were negligent in any manner and that such manner was a proximate cause of Plaintiffs' damages, which is expressly denied, the intervening negligence of others supersedes these answering Defendants' alleged negligence, and insulates these answering Defendants from liability in this action. Accordingly, the Doctrine of Insulating Negligence is hereby plead in bar of any right of recovery asserted by Plaintiffs.

FIFTH DEFENSE

These answering Defendants raise all applicable defenses asserted by the co-defendants in response to Plaintiffs' Complaint.

SIXTH DEFENSE

These answering Defendants deny that any act or omission by answering Defendants was a proximate cause of any injury or damage to Plaintiffs, and these answering Defendants rely on this lack of proximate cause as a bar to any claim by Plaintiff.

SEVENTH DEFENSE and NOTICE PURSUANT TO N.C. GEN. 97-10.2

In the event these answering Defendants are found to have been negligent and that its negligence was a proximate cause of Plaintiffs' injuries and damages, which negligence is expressly denied, that actionable negligence of Plaintiffs' employer, Prestige Windows & Doors Installation, LLC, did join and concur with the negligence of these answering Defendants, if any, in producing injury to the Plaintiffs. Specifically, Prestige Windows & Doors Installation, LLC was upon information and belief negligent in failing to provide adequate training and instruction to Decedents regarding fire safety; failing to adequately supervise Decedents; failing to adequately communicate with Decedents; and in other ways to be revealed in discover and proven at trial. Prestige Windows & Doors Installation, LLC's own negligence was a joint cause of Plaintiffs' injuries and damages and is therefore a complete bar to Prestige Windows & Doors Installation, LLC's recovery on its Workers Compensation subrogation lien, or any damages awarded by the jury against these answering Defendants shall be reduced by the amount of Prestige Windows & Doors Installation, LLC's Worker's Compensation subrogation lien pursuant to N.C.G.S. §97-10.2(e).

Pursuant to the provisions of N.C. Gen. Stat. §97-10.2(e), these answering Defendants are entitled to have submitted to the jury an issue as to whether or not the negligence of Prestige Windows & Doors Installation, LLC joined and concurred with the alleged, but denied, negligence of these answering Defendants in producing the incident in question and the alleged subsequent injury to Plaintiffs. If such an issue should be answered in the affirmative, these answering Defendants are entitled to all benefits provided to any alleged pursuant to N.C.G.S. §97-10.2(e).

EIGHTH DEFENSE

If it should be determined that these answering Defendants were negligent and that such negligence was a proximate cause of any injury or damage sustained by the Plaintiffs, which is again specifically denied, then it is alleged that, on the occasion complained of, Decedents were negligent and/or grossly negligent in that they failed to follow safety provisions, failed to follow evacuation warnings and instructions, and failed to use due care for their own safety. Specifically, and inexplicitly, it is alleged that all other workers in the building, including those on higher floors and on the same floor as Decedents, were able to hear, head and follow evacuation warnings and instruction. Unfortunately, Decedents did not evacuate the building and said contributory negligence being a direct and proximate cause of any injury or damage alleged by Plaintiffs, which is specifically plead in bar of any right which Plaintiffs may otherwise have to recover herein.

NINTH DEFENSE

These answering Defendants allege that the North Carolina punitive damages statute may be unconstitutional as applied, in that, among other things, it is void for vagueness, violative of equal protection, violative of due process, an undue burden on interstate commerce, and violative of freedom of contract.

TENTH DEFENSE

These answering Defendants deny that it has been guilty of any conduct that warrants the issue of punitive damages being submitted to a jury.

ELEVENTH DEFENSE

Any award of punitive damages to Plaintiffs in this case would be in violation of the constitutional safeguards provided to these Answering Defendants under the Constitution of the State of North Carolina and the Constitution of the United States of America.

TWELFTH DEFENSE

Answering Defendants request bifurcation of the issues of liability and damages pursuant to Rule 42 of the North Carolina Rules of Civil Procedure.

THIRTEENTH DEFENSE

Plaintiffs are not entitled to recover attorneys' fees or costs of this litigation as there is not a statutory or other basis for such recovery stated in Plaintiffs' Complaint.

FOURTEENTH DEFENSE

Plaintiffs' Complaint fails to state a claim against answering Defendants upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure.

FIFTEENTH DEFENSE

These answering Defendants and its undersigned counsel represent that an investigation into the allegations asserted in Plaintiffs' Complaint is still ongoing and these answering Defendants thereby reserve the right to assert additional affirmative defenses based upon the discovery of new information or facts and to assert claims against Plaintiffs or any other persons who are real parties in interest.

CROSSCLAIMS

NOW COME, Defendants SOUTHPARK CHARLOTTE APARTMENTS LP and MCRT CAROLINAS CONSTRUCTION LLC, by and through its undersigned counsel, and

pursuant to Rule 13 of the North Carolina Rules of Civil Procedure, and assert Crossclaims against Defendant KENTUCKY OVERHEAD DOOR, INC. d/b/a BAKER INSULATION and say as follows:

1. Defendant SOUTHPARK CHARLOTTE APARTMENTS LP was and still is a limited partnership organized and existing by virtue of the laws of the State of Delaware and is the owner of the Modera South Park Apartments under construction at 7740/7741 Liberty Row Drive, Charlotte, NC 28210 ("Project") that serves as the basis for Plaintiff's Complaint.

2. Defendant MCRT CAROLINAS CONSTRUCTION LLC was and still is a limited liability company organized and existing by virtue of the laws of the State of Delaware and is the general contractor for the Project that serves as the basis for Plaintiffs' Complaint.

3. Defendant KENTUCKY OVERHEAD DOOR, INC. d/b/a BAKER INSULATION was and still is a corporation existing by virtue of the laws of Kentucky and was a spray foam installation subcontractor that was contracted to perform spray foam and construction services on the Project that serves as the basis for Plaintiffs' Complaint.

4. This Court has jurisdiction over the Crossclaim Defendants and venue is proper in this Court.

5. Defendants SOUTHPARK CHARLOTTE APARTMENTS LP and MCRT CAROLINAS CONSTRUCTION LLC have complied with all conditions precedent to the prosecution of this action including, but not limited to, compliance with applicable statutes of limitations and repose.

6. On or about May 1, 2023, Diversified Insulation, pursuant to its contract with Defendant MCRT CAROLINAS CONSTRUCTION LLC entered into a subcontract with Defendant KENTUCY OVERHEAD DOOR, INC. d/b/a BAKER INSULATION (Ex. A.) in which Defendant KENTUCKY OVERHEAD DOOR, INC. d/b/a BAKER INSULATION agreed and contracted to provide spray foam and construction services on the Project.

7. Pursuant to its subcontract, KENTUCKY OVERHEAD DOOR, INC. d/b/a BAKER INSULATION was obligated and owed a duty to exercise ordinary and reasonable care in providing spray foam and construction services to the Project and in accordance with the North Carolina State Building Code, North Carolina Fire Code, as well as applicable building ordinances, rules, codes and laws.

8. Plaintiffs have alleged in their Complaint that Defendants SOUTHPARK CHARLOTTE APARTMENTS LP, MCRT CAROLINAS CONSTRUCTION LLC, and KENTUCKY OVERHEAD DOOR, INC. d/b/a BAKER INSULATION were negligent, grossly negligent, and engaged in willful and wanton conduct in performing their work on the Project and that their alleged negligent, grossly negligent, and willful and wanton conduct and work was the actual and proximate cause of the wrongful death of Plaintiffs. Such allegations in Plaintiffs' Complaint are incorporated by reference herein.

9. Plaintiffs have alleged that Defendant KENTUCKY OVERHEAD DOOR, INC. d/b/a BAKER INSULATION's negligence, gross negligence, and willful and wanton conduct, included, but was not limited to:

- (a.) the failure to properly service, operate and maintain the generator;
- (b.) the failure to properly train its employees on the maintenance and operation of its Trailer, including its Genset and the Genset's engine;

- (c.) operating a source of ignition near flammable and combustible materials and liquids just below fire floors of wood construction;
- (d.) failure to train its employees on prohibited areas of operation of a combustion engine site and construction site; and
- (e.) operating the Genset, internal-combustion-powered construction equipment, in a prohibited manner and location.

10. Plaintiffs' have alleged that their injuries and damages were the direct and proximate result of the actions and/or inactions and/or omissions of Defendant KENTUCKY OVERHEAD DOOR, INC. d/b/a BAKER INSULATION in performing their work on the Project pursuant to their subcontract.

11. Pursuant to its subcontract, KENTUCKY OVERHEAD DOOR, INC. d/b/a BAKER INSULATION agreed and contracted that they "shall indemnify, defend, and hold harmless the Contractor, Owner and their respective officers, directors, employees and agents ("Indemnified Parties") from and against all claims, damages, demands, losses, expenses, fines, causes of action, suits or other liabilities, (including all costs reasonable attorneys' fees, consequential damages, and punitive damages), arising out of or resulting from, or alleged to arise out of or arise from, the performance of Subcontractor's Work under the Subcontract, and any Work Order whether such claim, damage, demand, loss or expense is attributable to bodily injury, personal injury, sickness or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom; but only to the extent attributable to the negligence of the Subcontractor or any entity for which it is legally responsible or vicariously liable".

12. Pursuant to its subcontract, KENTUCKY OVERHEAD DOOR, INC. d/b/a BAKER INSULATION agreed and contracted that “Contractor and Owner, along with their respective officers, agents and employees, shall be named as additional insureds for Ongoing Operations and Products/Completed Operations on the Subcontractor’s and any Sub-Subcontractor’s Commercial General Liability Policy and Excess or Umbrella Policy, all of which must be primary and noncontributory with respect to these additional insureds”.

13. Pursuant to its subcontract, KENTUCKY OVERHEAD DOOR, INC. d/b/a BAKER INSULATION agreed and contracted that “Subcontractor shall, at its own expense, preserve and protect from injury its employees engaged in the performance of the Work and all property and persons which may be affected by its operations in performing the Work”.

14. Pursuant to its subcontract, KENTUCKY OVERHEAD DOOR, INC. d/b/a BAKER INSULATION agreed and contracted that the “prevention of accidents and/or exposure of workers and others to hazardous materials is the responsibility of Subcontractor and Subcontractor shall comply with all safety measures initiated by Contractor and all federal, state, labor and local laws, regulations, and codes concerning safety as shall be applicable to the Work and to the safety standards established by Contractor during the progress of the Work”.

15. If it should be determined that Defendants SOUTHPARK CHARLOTTE APARTMENTS LP and/or MCRT CAROLINAS CONSTRUCTION LLC were negligent and/or grossly negligent in any respect, which is expressly denied, then it is alleged that Defendant KENTUCKY OVERHEAD DOOR, INC. d/b/a BAKER INSULATION was

negligent and/or grossly negligent as provided in the responses in this Answer; was negligent and/or grossly negligent in failing to properly perform all work for which it was hired and was responsible for as a subcontractor on the Project; was negligent and/or grossly negligent in failing to coordinate, direct, control and supervise work by its employees, agents and/or workers on the Project in which it was responsible; and was negligent and/or grossly negligent as further alleged in Plaintiffs' Complaint, which is incorporated and restated herein by reference, and such negligence or gross negligence of Defendant KENTUCKY OVERHEAD DOOR, INC. d/b/a BAKER INSULATION was the direct and proximate cause of any injury or damage sustained by the Plaintiffs and if Defendants SOUTHPARK CHARLOTTE APARTMENTS LP and/or MCRT CAROLINAS CONSTRUCTION LLC are found liable to the Plaintiffs in any respect, then Defendants SOUTHPARK CHARLOTTE APARTMENTS LP and MCRT CAROLINAS CONSTRUCTION LLC are entitled to contribution from Defendant KENTUCKY OVERHEAD DOOR, INC. d/b/a BAKER INSULATION in accordance with the provisions of Chapter 1B of the North Carolina General Statutes.

16. If Defendants SOUTHPARK CHARLOTTE APARTMENTS LP and/or MCRT CAROLINAS CONSTRUCTION LLC are found to be liable to the Plaintiffs in any respect as alleged, which is specifically denied, then it is alleged that Defendant KENTUCKY OVERHEAD DOOR, INC. d/b/a BAKER INSULATION was negligent and/or grossly negligent as provided in the responses in this Answer; was negligent and/or grossly negligent in failing to properly perform all work for which it was hired and was responsible for as a subcontractor on the Project; was negligent and/or grossly negligent in failing to coordinate, direct, control and supervise work by its employees, agents and/or

workers on the Project in which it was responsible; and was negligent and/or grossly negligent as further alleged in Plaintiffs' Complaint, which is incorporated and restated herein by reference, and such negligence or gross negligence of Defendant KENTUCKY OVERHEAD DOOR, INC. d/b/a BAKER INSULATION was the active, proximate and sole producing cause of any injury or damages sustained by Plaintiffs, and as such, Defendants SOUTHPARK CHARLOTTE APARTMENTS LP and MCRT CAROLINAS CONSTRUCTION LLC are entitled to indemnity, both contractual and equitable, from Defendant KENTUCKY OVERHEAD DOOR, INC. d/b/a BAKER INSULATION.

17. In addition, as a result of the aforementioned negligence, gross negligence and/or willful and wanton conduct of Defendant KENTUCKY OVERHEAD DOOR INC. d/b/a BAKER INSULATION, Defendants SOUTHPARK CHARLOTTE APARTMENTS LP and MCRT CAROLINAS CONSTRUCTION LLC have incurred and will incur expenses in repair of the Project, associated damages and destruction to other buildings and property, and loss of use resulting therefrom in an amount in excess of \$25,000.00, the precise amount to be proven at trial, for costs, damages and expenses incurred by Defendants SOUTHPARK CHARLOTTE APARTMENTS LP and MCRT CAROLINAS CONSTRUCTION LLC as a proximate cause of Defendant KENTUCKY OVERHEAD DOOR INC. d/b/a BAKER INSULATION's negligence, gross negligence and/or willful and wanton conduct.

18. In addition, as a direct and proximate result of the actions and/or inactions and/or omissions of Defendant KENTUCKY OVERHEAD DOOR, INC. d/b/a BAKER INSULATION in performing their work on the Project pursuant to their subcontract as alleged above and in Plaintiffs' Complaint, Defendant KENTUCKY OVERHEAD DOOR

INC. d/b/a BAKER INSULATION has breached its subcontract with Defendants SOUTHPARK CHARLOTTE APARTMENTS LP and MCRT CAROLINAS CONSTRUCTION LLC and Defendants SOUTHPARK CHARLOTTE APARTMENTS LP and MCRT CAROLINAS CONSTRUCTION LLC have incurred and will incur expenses in repair of the Project, associated damages to other buildings and property, and loss of use resulting therefrom in an amount in excess of \$25,000.00, the precise amount to be proven at trial, for costs, damages and expenses incurred by Defendants SOUTHPARK CHARLOTTE APARTMENTS LP and MCRT CAROLINAS CONSTRUCTION LLC.

THIRD PARTY COMPLAINT

Third-party Plaintiffs, complaining of the acts of Third-party Defendant, allege and state that:

1. Third-party Plaintiff SOUTHPARK CHARLOTTE APARTMENTS LP is a limited partnership organized and existing by virtue of the laws in the State of Delaware, with its principal place of business located at 101 W. Worthington Ave., Suite 210 Charlotte, NC 28203. Defendant SouthPark conducts business in the State of North Carolina, providing CT Corporation System as their Registered Agent, with its registered office located at 160 Mine Lake Ct, Suite 200, Raleigh, NC 27615.

2. Third-party Plaintiff MCRT CAROLINAS CONSTRUCTION LLC is a limited liability company organized and existing by virtue of the laws in the State of Delaware, with its principal place of business located at 101 W. Worthington Ave., Suite 210 Charlotte, NC 28203. Defendant MCRT Carolinas conducts business in the State of North Carolina, providing CT Corporation System as their Registered Agent, with its registered office located at 160 Mine Lake Ct, Suite 200, Raleigh, NC 27615.

3. Third-party Plaintiffs are “claimants” as that term is defined in N.C.G.S. § 99B-1.

4. Third-party Plaintiffs are informed and believe and therefore allege that Defendant SPRAY EQUIPMENT AND COATINGS INC. (“Spray”) is a corporation organized and existing under and by virtue of the laws of the State of Florida with its principal place of business in Yulee, Nassau County, Florida.

5. Spray is a “manufacturer” as that term is defined in N.C.G.S. § 99B-1.

6. Upon information and belief, Spray is the manufacturer of spray foam insulation equipment and material, including fully assembled insulation foam spray rigs which are contained within trailers.

7. Spray sells its manufactured products in North Carolina.

8. This court has personal and subject-matter jurisdiction over the parties to this action.

9. This action is filed within the proper venue.

10. KENTUCKY OVERHEAD DOOR, INC., d/b/a BAKER INSULATION (“Baker”) purchased spray foam insulation equipment and material from Spray.

11. Baker purchased a trailer manufactured by Spray for use in the spraying of insulation foam.

12. This trailer contained, among other equipment, a generator and the chemicals necessary for spraying of insulation foam.

13. The trailer was designed and advertised to contain the working generator and chemicals needed for the spraying of insulation foam.

14. Baker utilized this trailer for Baker's work on the Modera SouthPark Apartments in Charlotte, North Carolina.

15. Baker utilized the trailer on May 18, 2023, for its work on Building B of the Modera SouthPark Apartments in Charlotte, North Carolina.

16. On May 18, 2023, a fire started in the trailer owned and being operated by Baker that was designed, manufactured, assembled and sold by Spray. That fire spread and contributed to the death of Decedents, as well as damaged third-party plaintiffs' property and damaged other adjacent buildings and property.

**First Claim for Relief:
Negligence, Gross Negligence and/or Willful Wanton Conduct of Third-party
Defendant Spray**

17. Third-party Plaintiffs reiterate and restate the allegations of all previous paragraphs as if set forth here.

18. Spray had a duty to produce and provide its goods in a safe and workman-like manner and to appropriately provide same to its customers.

19. Spray was negligent and/or grossly negligent in that:

- a. Spray produced, designed, manufactured, advertised, distributed, and otherwise introduced into the stream of commerce a trailer which was unsuitable for the ordinary uses for which it was intended;
- b. Spray manufactured, designed, produced, advertised, distributed, sold, and otherwise introduced into the stream of commerce a trailer which by its defective and negligent construction was unreasonably dangerous under ordinary use;

- c. Spray unreasonably failed to adopt a safer, practical, feasible, and otherwise reasonable alternative design that could then have been reasonably adopted, and that would have prevented or substantially reduced the risk of harm without substantially impairing the usefulness, practicality, or desirability of the trailer;
- d. Spray designed the trailer, in that, at the time the trailer left Spray's control, the design of the trailer was so unreasonable that a reasonable person, aware of the relevant facts, would not have used a product of such design;
- e. Spray inspected the trailer so that it permitted to be introduced into the stream of commerce a trailer which was unreasonably dangerous under ordinary use;
- f. Spray failed to exercise due care in the manufacture, design, and supply of the trailer in that it was reasonably foreseeable that the product would create a risk to human life;
- g. Spray advertised trailers the same or similar to the trailer which is the subject of this third-party complaint as being safe under ordinary use;
- h. Spray failed to recall trailers the same or similar to the trailer which is the subject of this third-party complaint when due care and concern for human life imposed a duty upon Spray to recall such trailer; and
- i. In such other ways to be revealed during discovery and/or trial.

20. As a direct and proximate result of the negligence and/or gross negligence of Spray, Third-party Plaintiffs suffered extreme property loss, incurred expenses

associated with repair of the Project, associated damages and destruction to other buildings and property, and loss of use; Third-party Plaintiffs are entitled to recover an amount from Spray in excess of \$25,000.00.

21. As a direct and proximate result of the negligence and/or gross negligence of Spray, a fire occurred which contributed to the Decedents' passing.

**Second Claim for Relief:
Breach of the Implied Warranty of Merchantability by Spray**

22. Third-party Plaintiffs reiterate and restate the allegations of all previous paragraphs as if set forth here.

23. Spray impliedly warranted and represented that the trailer was of merchantable quality and was reasonably fit for the purposes for which the trailer was intended.

24. Third-party plaintiffs, by and through their sub-contractor, reasonably relied upon Spray's implied warranty of merchantability.

25. The trailer was not of merchantable quality, but instead was defective in design, manufacture, assembly and ways that will be proven at trial.

26. This defective condition constituted a breach of the implied warranty of merchantability. Spray also breached its implied warranty by its failure to provide proper and adequate warnings.

27. As a direct and proximate result of the breach of the implied warranty of merchantability, Third-party plaintiffs suffered property damage and are entitled to recover damages in an amount in excess of \$25,000.

**Third Claim for Relief:
Breach of Express Warranty by Spray**

28. Third-party Plaintiffs reiterate and restate the allegations of all previous paragraphs as if set forth here.

29. Upon information and belief, Spray made certain express warranties to Baker, and through Baker to third-party plaintiffs, concerning the safety of the previously described trailer.

30. Upon information and belief, Baker relied on these representations, and such reliance was reasonable.

31. Third-party Plaintiffs are intended beneficiaries of such representations.

32. The trailer, in fact, was defective.

33. These defects breached the express warranties which Spray made to third-party plaintiffs by way of Baker.

34. As a direct and proximate result of such breach of express warranties, third-party plaintiffs suffered property damage and are entitled to recover damages in an amount in excess of \$25,000.

**Fourth Claim for Relief:
Contribution and Indemnification**

35. Third-party Plaintiffs reiterate and restate the allegations of all previous paragraphs as if set forth here.

36. If it should be determined that Third-Party Plaintiffs were negligent and/or grossly negligent in any respect, which is expressly denied, then it is alleged that Spray was negligent, grossly negligent, and/or willful and wanton as alleged above and such negligent, grossly negligent, and/or willful and wanton conduct of Spray was the direct

and proximate cause of any injury or damage sustained by the Plaintiffs and if Third-Party Plaintiffs are found liable to the Plaintiffs in any respect, then Third-Party Plaintiffs are entitled to contribution from Spray in accordance with the provisions of Chapter 1B of the North Carolina General Statutes.

37. If Third-Party Plaintiffs are found to be liable to the Plaintiffs in any respect as alleged, which is specifically denied, then it is alleged that Spray was negligent, grossly negligent, and/or willful and wanton as alleged above and such negligent, grossly negligent, and/or willful and wanton conduct of Spray was the active, proximate and sole producing cause of any injury or damages sustained by Plaintiffs, and as such, Third-Party Plaintiffs are entitled to indemnity, both contractual and equitable, from Spray.

38. In addition, as a result of the aforementioned negligence, gross negligence and/or willful and wanton conduct of Spray, Third-Party Plaintiffs have incurred and will incur expenses in repair of the Project, associated damages and destruction to other buildings and property, and loss of use resulting therefrom in an amount in excess of \$25,000.00, the precise amount to be proven at trial, for costs, damages and expenses incurred by Third-Party Plaintiffs as a proximate cause of Sprays' negligence, gross negligence and/or willful and wanton conduct.

39. Due to Spray's actions, omissions, breaches, and negligence a fire occurred. A fire in which Decedents passed. Third-party plaintiffs have been forced to incur expenses in responding to this litigation surrounding individuals who lost their lives in the fire that originated from and because of Spray's trailer. In addition, third-party plaintiffs are exposed to additional expenses and damages due to Spray's actions, omissions, breaches, and negligence.

40. As a result of the foregoing, Spray is liable to Third-party Plaintiffs under theories of both contribution and indemnification, in an amount to be established at trial.

WHEREFORE, having fully answered each and every allegation contained in the Complaint and asserting Crossclaims and Third-Party Complaint, the following prayer for relief is made by these answering Defendants:

1. That Plaintiffs have and recover nothing from these answering Defendants;
2. That these answering Defendants' affirmative defenses be found to be a complete bar to Plaintiffs' recovery against these answering Defendants;
3. That Prestige Windows & Doors Installation, LLC's own negligence be found to be a complete bar to Prestige Windows & Doors Installation, LLC's recovery on its Workers Compensation subrogation lien, and any damages awarded by the jury against these answering Defendants shall be reduced by the amount of Prestige Windows & Doors Installation, LLC's Worker's Compensation subrogation lien pursuant to N.C.G.S. §97-10.2(e).
4. That any liability found against these answering Defendants be indemnified by KENTUCKY OVERHEAD DOOR, INC. d/b/a BAKER INSULATION as identified above;
5. That if any liability is found against these answering Defendants that these answering Defendants recover from KENTUCKY OVERHEAD DOOR, INC. d/b/a BAKER INSULATION by reason of joint and concurrent negligence and/or by way of joint tortfeasor under the provisions of Chapter 1B of the North Carolina General Statutes;

6. That these answering Defendants recover from KENTUCKY OVERHEAD DOOR, INC. d/b/a BAKER INSULATION for costs and expenses in repair of the Project, associated damages and destruction to other buildings and property, and loss of use resulting therefrom in an amount in excess of \$25,000.00, the precise amount to be proven at trial;
7. That any liability found against these answering Defendants be indemnified by SPRAY EQUIPMENT AND COATINGS, INC. as identified above;
8. That if any liability is found against these answering Defendants that these answering Defendants recover from SPRAY EQUIPMENT AND COATINGS, INC. by reason of joint and concurrent negligence and/or by way of joint tortfeasor under the provisions of Chapter 1B of the North Carolina General Statutes;
9. That these answering Defendants recover from SPRAY EQUIPMENT AND COATINGS, INC. for costs and expenses in repair of the Project, associated damages and destruction to other buildings and property, and loss of use resulting therefrom in an amount in excess of \$25,000.00, the precise amount to be proven at trial;
10. That a trial by jury be had on all issues so triable; and
11. That these answering Defendants have such other and further relief as the Court deems just and proper.

This 4th day of October, 2024.

BY: */s/ Christopher J. Derrenbacher*

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*Attorney for Defendants/Third Party Plaintiffs,
SouthPark Charlotte Apartments LP and
MCRT Carolinas Construction LLC*

CERTIFICATE OF SERVICE

This is to certify that the undersigned counsel has this day served **DEFENDANT SOUTHPARK CHARLOTTE APARTMENTS LP and MCRT CAROLINAS CONSTRUCTION LLC'S ANSWER TO PLAINTIFFS' COMPLAINT, CROSSCLAIMS, NOTICE OF CLAIM FOR SETOFF PURSUANT TO N.C.G.S. §97-10.2 and THIRD-PARTY COMPLAINT AGAINST SPRAY EQUIPMENT AND COATINGS, INC.** in the above-captioned action on all parties to this cause via E-mail and/or US Postal Service certified mail, return receipt requested to the following:

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Spray Equipment and Coatings, Inc.
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Prestige Windows & Doors Installation, LLC
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This 4th day of October, 2024.

BY: */s/ Christopher J. Derrenbacher*

CHRISTOPHER J. DERRENBACHER

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ERIC G. SAULS

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