

MACCORKLE LAVENDER PLLC

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Please refer to: CINCIN-07946

April 25, 2016

Cathy S. Gatson, Clerk
Circuit Court of Kanawha County
Kanawha County Courthouse
111 Court Street
Charleston, WV 25301

Re: Soaring Eagle Lodge Master Association, Inc., et al., v. Soaring Eagle
Circuit Court of Kanawha County, West Virginia
Civil Action No. 15-C-2202

Dear Ms. Gatson:

Enclosed for filing in this matter is the original **Defendant, Soaring Eagle Development Company, LLC's Answer to Amended Complaint**. A copy of same has been served this date upon counsel of record.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Yours very truly,



John L. MacCorkle

JLM:df
Enclosure

cc: Edgar A. Poe, Esq. (w/enc.)
J. Michael Benninger, Esq. (w/enc.)
Stephen F. Gandee, Esq. (w/enc.)
Shawn P. George, Esq. (w/enc.)

CIVIL CASE INFORMATION SHEET

PLAINTIFFS: Soaring Eagle Lodge Master Association, Inc., et al.
 DEFENDANTS: Soaring Eagle Development Company, LLC, et al.
 CASE NO.: 15-C-22-2

| TORTS | | |
|---|--|---|
| <input type="checkbox"/> ASBESTOS | <input type="checkbox"/> ADOPTION | <input type="checkbox"/> APPEAL FROM MAG. COURT |
| <input type="checkbox"/> PROFESSIONAL MALPRACTICE | <input type="checkbox"/> CONTRACT | <input type="checkbox"/> PETITION FOR MODIFICATION OF MAGISTRATE SENTENCE |
| <input type="checkbox"/> PERSONAL INJURY | <input checked="" type="checkbox"/> REAL PROPERTY | <input type="checkbox"/> MISCELLANEOUS CIVIL |
| <input type="checkbox"/> PRODUCT LIABILITY | <input type="checkbox"/> MENTAL HEALTH | <input type="checkbox"/> OTHER |
| <input type="checkbox"/> OTHER TORT | <input type="checkbox"/> APPEAL OF ADMINISTRATIVE AGENCY | <input type="checkbox"/> |

III. JURY DEMAND: YES NO

CASE WILL BE READY FOR TRIAL BY:

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE?
 YES NO **Unknown**

IF YES, PLEASE SPECIFY:

- Wheelchair accessible hearing room and other facilities
- Interpreter or other auxiliary aid for the hearing impaired
- Reader or other auxiliary aid for the visually impaired
- Spokesperson or other auxiliary aid for the speech impaired
- Other: _____

Attorney Name: John L. MacCorkle
 MacCorkle Lavender PLLC
 Post Office Box 3283
 Charleston, WV, 25332.3283
 (304) 344-5600

Dated: April 25, 2016

Representing:
 Plaintiff **Defendant,**
Soaring Eagle Development
Company, LLC


 Signature

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

**SOARING EAGLE LODGE MASTER
ASSOCIATION, INC., a West Virginia
non-profit corporation; and SOARING EAGLE
LODGE ASSOCIATION, INC. a West
Virginia non-profit corporation,**

Plaintiffs,

v.

**Civil Action No. 15-C-2202
Judge Bloom**

**SOARING EAGLE DEVELOPMENT
COMPANY, LLC, a West Virginia limited
liability company, GBBN ARCHITECTS,
INC., an Ohio corporation; and BRANCH
& ASSOCIATES, INC., a Virginia
corporation,**

Defendants.

**DEFENDANT, SOARING EAGLE DEVELOPMENT COMPANY, LLC'S
ANSWER TO AMENDED COMPLAINT**

COMES NOW the defendant, Soaring Eagle Development Company, LLC, by counsel, John L. MacCorkle and MacCorkle Lavender PLLC, and Shawn P. George and George & Lorenson, P.L.L.C. and for its Answer to the plaintiffs' Amended Complaint, states as follows:

FIRST DEFENSE

The Amended Complaint fails to state a cause of action upon which relief can be granted against these defendants.

SECOND DEFENSE

1. This defendant admits the allegations contained in paragraph 1 of the plaintiffs' Amended Complaint.

2. This defendant admits the allegations contained in paragraph 2 of the plaintiffs' Amended Complaint.

3. This defendant admits the allegations contained in paragraph 3 of the plaintiffs' Amended Complaint.

4. This defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraph 4 of the plaintiffs' Amended Complaint and, therefore, neither admits nor denies same and calls for strict proof thereof.

5. This defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraph 5 of the plaintiffs' Amended Complaint and, therefore, neither admits nor denies same and calls for strict proof thereof.

6. This defendant admits the allegations contained in paragraph 6 of the plaintiffs' Amended Complaint.

7. For answer to paragraph 7 of the Amended Complaint, this defendant admits that it contracted with the defendant, GBBN. To the extent the allegations contained in said paragraph are inconsistent with the terms and conditions of that contract, they are denied.

8. For answer to paragraph 8 of the Amended Complaint, this defendant admits that it contracted with the defendant, Branch & Associates, Inc. To the extent the allegations contained in said are inconsistent with the terms and conditions of that contract, they are denied.

9. This defendant admits the allegations contained in paragraph 9 of the plaintiffs' Amended Complaint.

10. For answer to paragraph 10 of the Amended Complaint, this defendant admits that the defendant, GBBN executed a "Certificate of Completion" on or about November 27, 2006,

and states that said "Certificate of Completion" speaks for itself. To the extent the allegations contained in said paragraph are inconsistent with the Certificate of Completion, they are denied.

11. For answer to paragraph 11 of the plaintiffs' Amended Complaint, this defendant states that it is the Declarant in the Declaration of Covenants, Conditions, Easements and Restrictions establishing the Soaring Eagle Lodge Master Association, and states that said document speaks for itself. To the extent the allegations contained in paragraph 11 of the plaintiffs' Amended Complaint are inconsistent with said declaration, they are denied.

12. For answer to paragraph 12 of the Amended Complaint this defendant admits that it advertised, offered, and sold residential and commercial units in Soaring Eagle Lodge Condominium, but states that it is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in said paragraph and, therefore, neither admits nor denies same and calls for strict proof thereof.

13. This defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraph 13 of the plaintiffs' Amended Complaint and, therefore, neither admits nor denies same and calls for strict proof thereof.

14. This defendant states that matters asserted in paragraph 14 of the plaintiffs' Amended Complaint represent legal conclusions rather than allegations of fact and, therefore, do not require a response by way of admission or denial; however, to the extent any factual allegations are contained therein, they are denied.

15. This defendant states that matters asserted in paragraph 15 of the plaintiffs' Amended Complaint represent legal conclusions rather than allegations of fact and, therefore, do not require a response by way of admission or denial; however, to the extent any factual allegations are contained therein, they are denied.

16. This defendant states that matters asserted in paragraph 16 of the plaintiffs' Amended Complaint represent legal conclusions rather than allegations of fact and, therefore, do not require a response by way of admission or denial; however, to the extent any factual allegations are contained therein, they are denied.

17. This defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations contained in paragraph 17 of the plaintiffs' Amended Complaint and, therefore, neither admits nor denies same and calls for strict proof thereof.

18. This defendant states that matters asserted in paragraph 18 of the plaintiffs' Amended Complaint represent legal conclusions rather than allegations of fact and, therefore, do not require a response by way of admission or denial; however, to the extent any factual allegations are contained therein, they are denied.

19. This defendant denies the allegations contained in paragraph 19 of the plaintiffs' Amended Complaint as they relate to this defendant. For further answer to said paragraph, this defendant states that it is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in said paragraph and, therefore, neither admits or denies same for calls for strict proof thereof.

20. This defendant denies the allegations contained in paragraph 20 of the plaintiffs' Amended Complaint as they relate to this defendant. For further answer to said paragraph, this defendant states that it is without sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in said paragraph and, therefore, neither admits or denies same for calls for strict proof thereof.

21. This defendant denies any and all allegations contained in said Amended Complaint which have not been specifically admitted herein.

THIRD DEFENSE

The defendant, Soaring Eagle Development Company, LLC hereby preserves each and every defense set forth in Rules 8, 9, and 12 of the West Virginia Rules of Civil Procedure, and further reserves the right to raise such additional defenses as become apparent following further discovery and factual development in the case.

FOURTH DEFENSE

The wrongful conduct, if any, was that of another party, individual or entity to this action or not named in this action and not the wrongful conduct of the defendant, Soaring Eagle Development Company, LLC.

FIFTH DEFENSE

To the extent the plaintiffs' damages and injuries, if any, were proximately caused by any act or omission, such act or omission was not that of this defendant but, rather, was by a third-party over whom this defendant exercised no control and for whom control was not the responsibility of this defendant.

SIXTH DEFENSE

The plaintiffs have failed to join a party or parties herein without whom complete relief cannot be accorded.

SEVENTH DEFENSE

Plaintiffs have failed to mitigate their damages and to the extent there has been a failure to mitigate damages, any recovery must be reduced accordingly.

EIGHTH DEFENSE

This defendant asserts that the injuries and damages, if any, of which the plaintiffs complain, were not caused by any act or omission of this defendant, but may have been caused

by intervening acts and/or omissions of other persons or entities over which this defendant had no control and for whom it is not responsible legally.

NINTH DEFENSE

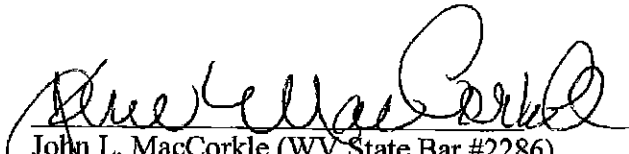
This defendant, Soaring Eagle Development Company, LLC reserves unto itself the right to assert such claims, whether they be counterclaims, cross-claims, third-party claims or otherwise, if a sufficient factual basis is developed through continuing investigation and discovery in this matter.

WHEREFORE, having fully responded to the allegations contained in plaintiffs' Amended Complaint, the defendant, Soaring Eagle Development Company, LLC hereby respectfully request this Court dismiss the plaintiffs' Amended Complaint, with prejudice, and award their reasonable and appropriate attorney fees and costs incurred in the defense of this matter, together with any further relief deemed appropriate by this Honorable Court.

DEFENDANT DEMANDS A JURY TRIAL.

Soaring Eagle Development Company, LLC,

By Counsel



John L. MacCorkle (WV State Bar #2286)
Michael E. Mullins (WV State Bar #12064)

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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

SOARING EAGLE LODGE MASTER ASSOCIATION, INC., a West Virginia non-profit corporation; and SOARING EAGLE LODGE ASSOCIATION, INC. a West Virginia non-profit corporation,

Plaintiffs,

v.

**Civil Action No. 15-C-2202
Judge Bloom**

SOARING EAGLE DEVELOPMENT COMPANY, LLC, a West Virginia limited liability company, GBBN ARCHITECTS, INC., an Ohio corporation; and BRANCH & ASSOCIATES, INC., a Virginia corporation,

Defendants.

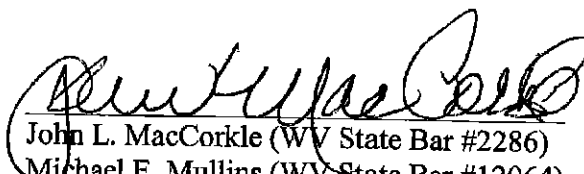
CERTIFICATE OF SERVICE

I, John L. MacCorkle, counsel for Defendant, Soaring Eagle Development Company, LLC, do hereby certify that on April 25, 2016, I served a true and correct copy of the foregoing **DEFENDANT, SOARING EAGLE DEVELOPMENT COMPANY, LLC'S ANSWER TO AMENDED COMPLAINT** upon all counsel/parties of record, by depositing the same in the regular United States mail, postage prepaid, sealed in an envelope, and addressed as follows:

Edgar A. Poe, Esq.
Pullin Fowler Flanatan Brown & Poe, PLLC
901 Quarrier St.
Charleston, WV 25301
Attorney for Defendant
Branch & Associates, Inc.

J. Michael Benninger, Esq.
Benninger Law Professional Limited Liability Company
P. O. Box 623
Morgantown, WV 26507
Attorney for Plaintiffs
Soaring Eagle Lodge Association, Inc. and
Soaring Eagle Lodge Master Association, Inc.

Stephen F. Gandee, Esq.
Robinson & McElwee, PLLC
140 W. Main Street, Ste. 300
Clarksburg, WV 26301
Attorney for Defendant
GBBN Architects, Inc.



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