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| DISTRICT COURT, ADAMS COUNTY, STATE OF COLORADO1100 Judicial Center Dr., Brighton, CO 80601 | DATE FILED: March 31, 2017 4FILING ID: 8CAA195E5FB55 CASE NUMBER: 2016CV30706 |
| Plaintiff: JJLC, LLC d/b/a CITY INN |  |
| v. |  |
| Defendants: W. M. Brown Construction Corp.; Mary Anderson; Michael Brown; Pouw & Associates, Inc.; Stanley Pouw; Wesley Pouw; A Door Source, Inc.; Creative Arts Design Center llc; Di Franco Masonry, Inc.; Fire Defense, Inc.; Front Range Stucco, Inc.; LeBlanc Construction, also known as LeBlanc Construction, Inc. or LeBlanc Construction LLP or both, and each of them; Mile High Stucco, Inc.; Reeves Specialty Services, Inc.; Robert Daniel d/b/a RMD Construction; Roberts Electrical Contracting, Inc.; Sulzer Development, LLC; St. Vrain Block Co.;J.O.B. Concrete, Inc.; Alan Urban Plumbing, LLC; Berns Hausen Structural Consulting, LLC; Todd Bernshausen; RG Engineering Consultants, Inc.; Walter Rabinovich; Michael L. Stahl, Inc.; Michael Stahl; 5280Engineering; Roger Blank |  **▲ COURT USE ONLY ▲** Case No.: 2016CV030706Div: C Ctrm.: |
| Attorneys for Plaintiff: HAMILTON FAATZ, PCClyde A. Faatz, Jr., #378 Refugio Perez, #47459 Frank J. Morroni, #465455105 DTC Parkway, Suite 475 Greenwood Village, CO 80111 303-830-0500rperez@hamiltonfaatz.com |  |
| **FIRST AMENDED COMPLAINT** |

:58 PM

Plaintiff JJLC, LLC d/b/a City Inn (“City Inn”), by and through its counsel, Hamilton Faatz, PC, for its First Amended Complaint against W. M. Brown Construction Corp.; Mary Anderson; Michael Brown; Stanley Pouw; Wesley Pouw; Pouw & Associates, Inc.; A Door Source, Inc.; Creative Arts Design Center llc; Di Franco Masonry, Inc.; Fire Defense, Inc.; Front Range Stucco, Inc.; LeBlanc Construction, also known as LeBlanc Construction, Inc. or LeBlanc Construction LLP or both, and each of them; Mile High Stucco, Inc.; Reeves Specialty Services, Inc.; Robert Daniel d/b/a RMD Construction; Roberts Electrical Contracting, Inc.; Sulzer Development, LLC; St. Vrain Block Co.; J.O.B. Concrete, Inc.; Alan Urban Plumbing, LLC; Berns Hausen Structural Consulting, LLC; Todd Bernshausen; RG Engineering Consultants; Walter Rabinovich; 5280Engineering; and Roger Blank, states and alleges as follows:

# PARTIES, JURISDICTION, AND VENUE

1. Plaintiff JJLC, LLC d/b/a CITY INN (“City Inn”), is a Colorado limited liability company, with its principal place of business at 7151 Federal Boulevard, Westminster, Colorado 80030.
2. Defendant W. M. Brown Construction Corp. (“Brown Construction”) is a Colorado corporation with its principal place of business at 3440 W. 71st Place, Westminster, Colorado 80030.
3. Defendant Mary Anderson is an individual and a resident of the State of Colorado.
4. Defendant Michael Brown is an individual and a resident of the State of Colorado.
5. Defendant Pouw & Associates, Inc. is a Colorado corporation with its principal place of business at 7417 Grandview Avenue, Arvada, Colorado 80002.
6. Defendant Stanley Pouw is an individual and a resident of the State of Colorado.
7. Defendant Wesley Pouw is an individual and a resident of the State of Colorado.
8. Defendant A Door Source, Inc. is a Colorado corporation with its principal place of business at 5970 N. Broadway, Denver, Colorado 80216.
9. Defendant Creative Arts Design Center llc is a Colorado limited liability company with its principal place of business at 4980 Kipling Street, Suite A-9, Wheat Ridge, Colorado 80033.
10. Defendant Di Franco Masonry, Inc. is a Colorado corporation with its principal place of business at 4655 W. 112th Court, Westminster, CO 80031.
11. Defendant Fire Defense, Inc. is a Colorado corporation with delinquent status with the Colorado Secretary of State’s office and a principal place of business at 3764 Eureka Way, #5, Frederick, CO 80516.
12. Defendant Front Range Stucco, Inc. is a Colorado corporation with delinquent status with the Colorado Secretary of State’s office and a principal place of business at 5625 N. McKinley Avenue, Loveland, CO 80538.
13. Defendant LeBlanc Construction, also known as LeBlanc Construction, Inc. or LeBlanc Construction LLP or both, and each of them (hereinafter collectively referred to as “LeBlanc Construction”) is either a Colorado corporation or a Colorado registered limited liability partnership with its principal place of business at 7134 Dexter Street, Commerce City, CO 80022.
14. Defendant Mile High Stucco, Inc. is a Colorado corporation with its principal place of business at 815 39th Street, Evans, CO 80602.
15. Defendant Reeves Specialty Services, Inc. is a Colorado corporation with its principal place of business at 17240 E. Ohio Dr., Aurora, CO 80017.
16. Defendant Robert Daniel d/b/a RMD Construction is an individual and a resident of the State of Colorado.
17. Defendant Roberts Electrical Contracting, Inc. is a Colorado corporation with its principal place of business at 26604 E. Canyon Avenue, Aurora, CO 80016.
18. Defendant Sulzer Development, LLC is an Arizona limited liability company, registered with the Colorado Secretary of State to do business in Colorado but listed as delinquent with the Colorado Secretary of State, with its Colorado registered agent at 4470 Peoria, Denver, CO 80239.
19. Defendant St. Vrain Block Co. is a Colorado corporation with its principal place of business at 5150 Grand View Boulevard, Dacono, CO 80514.
20. Defendant J.O.B. Concrete, Inc. is a Colorado corporation with its principal place of business at 13595 Stuart Ct., Broomfield, CO 80020.
21. Defendant Alan Urban Plumbing, LLC is listed with the Colorado Secretary of State as a delinquent Colorado limited liability partnership with its principal place of business at 7212 Bradburn Blvd., Westminster, CO 80030.
22. Defendant Berns Hausen Structural Consulting, LLC is a Colorado limited liability company with its principal place of business at 18151 E. Adriatic Place, Aurora, Colorado 80013.
23. Defendant Todd Bernshausen is an individual and a resident of the State of Colorado.
24. Defendant RG Engineering Consultants, Inc. is a Colorado corporation with its principal place of business at 2555 Walnut Street, Suite B, Denver, Colorado 80205.
25. Defendant Walter Rabinovich is an individual and a resident of the State of Colorado.
26. Defendants Michael L. Stahl, Inc., and Michael Stahl have been dismissed, without prejudice, from this action by Stipulation filed July 11, 2016 and Order entered July 12, 2016.
27. Defendant 5280Engineering is a Colorado corporation with its principal place of business at 29376 Squaw Pass Road, Evergreen, Colorado 80439.
28. Defendant Roger Blank is an individual and a resident of the State of Colorado.
29. Jurisdiction is proper in the State of Colorado pursuant to C.R.S. § 13-1-124.
30. Venue is proper under C.R.C.P. 98(a) and 98(c).

# GENERAL ALLEGATIONS

1. Brown Construction is engaged in the business of general contracting, building, and constructing improvements upon real property.
2. Mary Anderson is a Project Manager, officer, and shareholder of Brown Construction.
3. Upon information and belief, Michael Brown is an officer, manager, and/or shareholder of Brown Construction.
4. At all times relevant to this Complaint, Brown Construction was a licensed general contractor by the City of Westminster.
5. Pouw & Associates, Inc. is engaged in the business of providing architectural design services for commercial construction.
6. At all times relevant to this Complaint, Stanley Pouw held an active Colorado architect’s license, but his license appears to now be inactive.
7. Wesley Pouw is a licensed architect.
8. City Inn and Defendant Brown Construction entered into a contract which was prepared by Brown Construction (“Original Contract”) on October 24, 2012 for Brown

Construction to construct a three-story wood framed motel on a concrete foundation at 7151 Federal Boulevard, Westminster, Colorado (“the Project”), which would connect by a walkway to an existing three-story motel of similar construction (“the Original Motel”).

1. City Inn hired Brown Construction with the understanding that Brown Construction would build the structure in compliance with local building codes and the plans prepared by Pouw & Associates, Inc., Stanley Pouw and Wesley Pouw.
2. A Door Source, Inc. was hired by Brown Construction to install doors and door frames at the Project.
3. A Door Source, Inc. installed defective doors and door frames at the Project.
4. The foregoing allegation is based on information produced by Brown Construction in conjunction with naming A Door Source, Inc. as a non-party at fault in this action pursuant to C.R.S. §13-21-111.5 on August 24, 2016.
5. Creative Arts Design Center llc was hired by Brown Construction to install cabinets at the Project.
6. Creative Arts Design Center llc installed defective cabinets at the Project.
7. The foregoing allegation is based on information produced by Brown Construction in conjunction with naming Creative Arts Design Center llc as a non-party at fault in this action pursuant to C.R.S. §13-21-111.5 on August 24, 2016.
8. Di Franco Masonry, Inc. was hired by Brown Construction to provide masonry services at the Project.
9. Di Franco Masonry, Inc. installed defective masonry components at the Project.
10. The foregoing allegation is based on information produced by Brown Construction in conjunction with naming DiFranco Masonry, Inc. as a non-party at fault in this action pursuant to C.R.S. §13-21-111.5 on August 24, 2016.
11. Fire Defense, Inc. was hired by Brown Construction to install fire sprinklers at the Project.
12. The fire sprinkler system installed by Fire Defense, Inc. was defectively installed and burst, causing significant damage.
13. The foregoing allegation is based on information produced by Brown Construction in conjunction with naming Fire Defense, Inc. as a non-party at fault in this action pursuant to C.R.S. §13-21-111.5 on August 24, 2016.
14. Front Range Stucco, Inc. was hired by Brown Construction to install stucco exterior walls at the Project.
15. There are numerous instances of defective stucco work installed by Front Range Stucco, Inc. at the Project, including but not limited to, where the stucco walls meet the second and third floor elevated walkways.
16. The foregoing allegation is based on information produced by Brown Construction in conjunction with naming Front Range Stucco, Inc. as a non-party at fault in this matter pursuant to C.R.S. §13-21-111.5 on August 24, 2016.
17. LeBlanc Construction was hired by Brown Construction to perform landscape drainage grading at the Project.
18. The landscape drainage grading work performed by LeBlanc Construction is defective.
19. The foregoing allegation is based on information produced by Brown Construction in conjunction with naming LeBlanc Construction as a non-party at fault in this action pursuant to C.R.S. §13-21-111.5 on August 24, 2016.
20. Mile High Stucco, Inc. was hired by Brown Construction to install stucco exterior walls at the Project.
21. There are numerous instances of defective stucco work installed by Mile High Stucco, Inc. at the Project, including but not limited to, where the stucco walls meet the second and third floor elevated walkways.
22. The foregoing allegation is based on information produced by Brown Construction in conjunction with naming Mile High Stucco, Inc. as a non-party at fault in this action pursuant to C.R.S. §13-21-111.5 on August 24, 2016.
23. Brown Construction hired Reeves Specialty Services, Inc. to install air conditioning units at the Project.
24. The air conditioning units installed at the Project do not conform with the Project

design.

1. The foregoing allegation is based on information produced by Brown Construction

in conjunction with naming Reeves Specialty Services, Inc. as a non-party at fault in this action pursuant to C.R.S. §13-21-111.5 on August 24, 2016.

1. Brown Construction hired Robert Daniel d/b/a RMD Construction to provide, supervise and manage earthworks engineering services for and at the Project.
2. The earthworks engineering services provided by Robert Daniel d/b/a RMD Construction at the Project has created or exacerbated problems with the exterior and interior components at the Project.
3. The foregoing allegation is based on information produced by Brown Construction in conjunction with naming RMD Construction as a non-party at fault in this action pursuant to

C.R.S. §13-21-111.5 on August 24, 2016, and upon information from Brown Construction’s attorney that the correct characterization of this defendant is Robert Daniel d/b/a RMD Construction.

1. Brown Construction hired Roberts Electrical Contracting, Inc. to install a fire alarm system at the Project.
2. The fire alarm system installed by Roberts Electrical Contracting, Inc. at the Project is defective.
3. The foregoing allegation is based on information produced by Brown Construction in conjunction with naming Roberts Electrical Contracting, Inc. as a non-party at fault in this action pursuant to C.R.S. §13-21-111.5 on August 24, 2016.
4. Brown Construction hired Sulzer Development, LLC to perform wood framing services at the Project.
5. There are instances of defective wood framing performed by Sulzer Development, LLC at the Project.
6. The foregoing allegation is based on information produced by Brown Construction in conjunction with naming Sulzer Development, LLC as a non-party at fault in this action pursuant to C.R.S. §13-21-111.5 on August 24, 2016.
7. Brown Construction hired J.O.B. Concrete, Inc. to perform concrete flatwork services at the Project.
8. There is differential movement of the concrete flatwork installed at the Project by

J.O.B. Concrete, Inc., and said concrete flatwork is defective.

1. The foregoing allegation is based on information produced by Brown Construction in conjunction with naming J.O.B. Concrete, Inc. as a non-party at fault in this action pursuant to C.R.S. §13-21-111.5 on August 24, 2016.
2. Brown Construction hired Alan Urban Plumbing, LLC to install plumbing at the Project.
3. The plumbing installed by Alan Urban Plumbing, LLC at the Project is defective, resulting in frequent drain backups and plumbing malfunctions.
4. The foregoing allegation is based on information produced by Brown Construction in conjunction with naming Alan Urban Plumbing, LLC as a non-party at fault in this action pursuant to C.R.S. §13-21-111.5 on August 24, 2016.
5. Plaintiff City Inn hired Defendants Pouw & Associates, Inc. and Stanley Pouw and Wesley Pouw (collectively, “Pouw”) to prepare building plans for the Project in compliance with governing building codes and to match as closely as practicable the design and look of the existing motel building.
6. Berns Hausen Structural Consulting, LLC provided structural engineering consulting services on the Project. Todd Bernshausen approved plans prepared by Berns Hausen Structural Consulting LLC for the Project. Todd Bernshausen is a licensed professional engineer (collectively, “Berns Hausen”).
7. RG Engineering Consultants, Inc. provided mechanical, electrical, and plumbing engineering services on the Project. Walter Rabinovich approved plans prepared by RG Engineering Consultants, Inc. for the project. Walter Rabinovich is a licensed professional engineer (collectively, RG Engineering”).
8. 5280Engineering provided mechanical engineering design services on the Project. Roger Blank approved plans prepared by 5280Engineering for the Project. Roger Blank is a licensed professional engineer (collectively, “5280Engineering”).
9. The Original Contract required City Inn to pay to Brown Construction one million one hundred and ten thousand dollars ($1,110,000.00). The Original Contract calls for Brown Construction to invoice City Inn at certain intervals based on project progress.
10. City Inn timely made all payments invoiced by Brown Construction.
11. Despite timely payments, the Project suffered from long delays, and was eventually completed 8 months behind schedule.
12. Brown Construction provided no explanation for the delays.
13. Brown Construction exposed City Inn to significant liability for an injury suffered by a Brown Construction employee or contractor resulting from that person falling from the Project roof.
14. Brown Construction employees and/or contractors frequently failed to observe construction safety protocols, including hard hats and proper tethering and anchoring when working from the roof at the Project.
15. Following substantial completion of the Project in June of 2014, numerous instances of defective and substandard construction work surfaced at the Project.
16. City Inn notified Brown Construction of the instances of the defective and substandard work, and in some cases Brown Construction implemented low-quality “quick- fixes” in an attempt to remedy the defects.
17. Defects continued to manifest at the Project in a way that suggested structural and design deficiencies existed which would require more thorough and aggressive remedies.
18. City Inn hired SBSA, Inc. (“SBSA”), a construction and engineering firm to inspect the defects at the Project. Mr. Michael Fiebig, a licensed architect, member of the American Institute of Architects, a certified fire protection specialist, and a certified expert in forensic architecture, conducted the SBSA investigation.
19. SBSA’s inspection of the Project found numerous instances of defective and substandard work, which SBSA categorized as structural; civil; building envelope; mechanical; and miscellaneous. A list of the defects includes, without limitation:

# Structural

* + Non-Compliant Attachment at Pedestrian Bridge Post
	+ Exposed Anchor Bolts
	+ Non-compliant Crawlspace Ventilation
	+ Unsealed Vapor Retarder
	+ Missing Pump at Sump Pit

# Civil

* + Non-Compliant Grading at Building Perimeter
	+ Non-Compliant Management of Concentrated Flows
	+ Non-Compliant Sidewalk Chase
	+ Differential Movement of Concrete Flatwork
	+ Non-Compliant Drainage at Retaining Wall

# Building Envelope

* + Buried Brick Weeps at Grade
	+ Non-Compliant Weep Mechanism at Brick Door/Window/Heads
	+ Non-Compliant Slope at Brick Rowlocks
	+ Non-Compliant Clearance to Hard Surfaces
	+ Non-Compliant Fastener Attachment
	+ Untreated Cut Ends
	+ Non-Compliant Clearance to Hard Surfaces
	+ Non-Compliant Clearance to Roofing
	+ Missing Weep Mechanism at Horizontal Terminations
	+ Non-Compliant Weep Mechanism at Brick Water Table
	+ Non-Compliant Isolation Joints at Dissimilar Materials
	+ Non-Compliant Flashing Installation at Door/Window Heads
	+ Non-Compliant Unit Entry Door Installation
	+ Non-Compliant Slope at Elevated Walkways
	+ Non-Compliant Curb & Flashing at Elevated Walkway Edges

# Mechanical

* + Improper Heating and Cooling Units Installed
	+ Non-Compliant plumbing resulting in toilet backups

# Miscellaneous

* + Unsatisfactory Interior Finishes
	+ Unsatisfactory Exterior Finishes
	+ Missing Kitchenette Casework
	+ Non-Compliant Electrical Connection at Exterior Sump
	+ Burst Sprinkler Pipe in Storage Room
1. Based on SBSA’s investigations, and pursuant to the Colorado Construction Defect Action Reform Act, C.R.S. §13-20-801, *et seq*. (“CDARA”) and Brown Construction’s one year contractual warranty, City Inn sent a Notice of Claim (“CDARA Notice”) on June 19, 2015 to all entities and persons known at that time which City Inn believed provided construction services on the Project, including all Defendants named in the original Complaint except Michael Brown, who was unknown to City Inn at the time.
2. Only Brown Construction and Pouw responded to City Inn’s CDARA Notice.
3. In response to the CDARA Notice, Brown Construction inspected the Project with the owners and then undertook several steps to remedy defects, some of which have been successful.
4. However, many significant defects at the Project remain unrepaired and Brown Construction has abandoned repairs.
5. Pouw, through counsel, disclaimed any responsibility for any of the defects or non- compliance with the Westminster Building Code.
6. City Inn has fully complied with the notice requirements of CDARA relating to all Defendants named in the original Complaint.
7. Due to insufficient insulation, a water pipe at the Project burst, leading to significant water damage.
8. City Inn’s property insurance premiums doubled as a result of the water damage from said pipe bursting.
9. The mold risk is exacerbated by defective sealing of the exterior of the Project which prevents the structure from breathing adequately.
10. The Project’s crawlspace lacks proper ventilation, which increases mold growth and endangers the foundation of the structure.
11. Brown Construction installed different air conditioning units at the Project than those specified by the Original Contract. The contract called for units identical to those in the Original Motel.
12. The new units require service calls from a different repair contractor than those in the Original Motel.
13. Many of the guestroom doors are not square to the door frame and are inadequately weather-stripped.
14. In addition to the above, many doors have significant, un-weatherized gaps between the bottom of the door and the threshold.
15. Numerous room fixtures, such as toilets and towel bars, are improperly installed.
16. In reliance on designs for the Project, City Inn paid $50,000 for an additional water tap for sinks that were never installed.
17. During a follow up inspection on November 13, 2015, which was attended by Brown Construction, Mary Anderson, Michael Brown, and a representative for Pouw, SBSA conducted limited intrusive testing on the second floor elevated walkway, which revealed water penetration into the Project’s wood frame under the stucco.
18. SBSA identified the water penetration as a result of a failure to include a gap between the walkway deck and the stucco wall. This also constitutes a violation of Chapter 14 of the 2009 International Building Code as in effect in Westminster.
19. The decks on the second and third floors do not slope away from the building, resulting in water pooling against the exterior wall of the building rather than draining away from it.
20. Additionally, a 2x6 plank on the exterior edges of the second and third floor decks, which was installed to raise a non-code compliant guard rail, traps water and dirt on the deck, making it impossible for the deck to drain or be cleaned properly. This also constitutes a violation of Chapter 14 of the 2009 International Building Code as in effect in Westminster.
21. While attempting to remediate the issue on the second floor deck, Brown Construction installed unsightly and uneven flashing at the exterior deck edge.
22. After unsuccessful attempts to bring the second floor walkway to code, Brown Construction abandoned all efforts to remediate the slope of the second and third floor decks.
23. Michael Brown and Mary Anderson, who were present during SBSA’s inspection, made an oral promise to repair the defect that caused the water penetration and the resulting damage.
24. In reliance on that promise, City Inn did not rent a number of its rooms for weeks in anticipation of remedial work commencing on the walkway.
25. Subsequent to Michael Brown’s and Mary Anderson’s promise and City Inn’s reliance on it, Brown Construction refused to undertake any repairs relating to defects in both design and construction of the elevated decks on the second and third floors.
26. City Inn’s manager, Leslie Kim, was unable to travel to Korea to attend the funeral of her mother because she was working with Brown Construction to correct the defects, despite Mary Anderson’s assurances that the project was “almost done.”
27. After that, Leslie Kim did travel to Korea to attend the funeral of her father in reliance on Mary Anderson’s promise that the work would be done upon her return. It was not.
28. As a result of Defendants’ wrongful acts and/or admissions, City Inn has sustained and will continue to sustain damages, including but not limited to direct costs related to the use of certain parts of the Project; loss of use of the Project; maintenance and remediation costs; increased insurance costs; diminution in value of the Project; and aggravation, inconvenience, annoyance and discomfort.

# FIRST CLAIM FOR RELIEF

**(Breach of Contract against Brown Construction and Pouw)**

1. City Inn incorporates all of the previous allegations herein.
2. City Inn entered into the Original Contract, as amended by the promises of Mary Anderson and Michael Brown to repair the defects, with Brown Construction to construct the Project in a good and workmanlike manner and in accordance with Westminster’s building code.
3. City Inn entered into a contract with Pouw to design the project in compliance with Westminster’s building code.
4. City Inn fully performed its obligations by paying in full for the services of Brown Construction and Pouw and all other conditions precedent have been performed or have occurred.
5. Brown Construction breached the Original Contract when it failed to construct the Project in a good and workmanlike manner as set forth above and in accordance with Westminster’s building code, including, but not limited to, the water seepage issues relating to the faulty construction of the upper level decking, the failure to insulate the pipe that burst, the shoddy installation of in-room fixtures, many of which were of lower quality than the fixtures contracted for, and ventilation issues in the crawlspace resulting in significant mold risk.
6. Brown Construction’s breach of the contract has caused damage to City Inn in an amount to be proven at trial.
7. Pouw breached the contract made with City Inn when it failed to design the Project in accordance with Westminster’s building code, including, but not limited to, the items set forth above and the design of the upper level walkways and the ventilation issues in the crawlspace.
8. Pouw’s breach of the contract they made with City Inn has caused damage to City Inn in an amount to be proven at trial.

# SECOND CLAIM FOR RELIEF

**(Promissory Estoppel against Michael Brown and Mary Anderson)**

1. City Inn incorporates all of the previous allegations herein.
2. Michael Brown and Mary Anderson promised City Inn that the defect relating to the elevated walkway and other defects at the Project would be repaired.
3. City Inn relied on those promises to its detriment by not renting rooms at the Project in anticipation of the repair.
4. Michael Brown and Mary Anderson failed to honor their promises to repair the defects.
5. Michael Brown’s and Mary Anderson’s failure to honor those promises has caused damage to City Inn in an amount to be proven at trial.

# THIRD CLAIM FOR RELIEF

**(Promissory Estoppel against Brown Construction)**

1. City Inn incorporates all previous allegations herein.
2. Michael Brown and Mary Anderson, acting as agents of Brown Construction, promised City Inn that the defect relating to the elevated walkway and other defects at the Project would be repaired.
3. City Inn relied on those promises to its detriment by not renting rooms at the Project in anticipation of the repair.
4. Brown Construction failed to honor its promises made through Michael Brown and Mary Anderson to repair the defects.
5. Brown Construction’s failure to honor those promises has caused damage to City Inn in an amount to be proven at trial.

# FOURTH CLAIM FOR RELIEF

**(Breach of Implied Warranty of Workmanlike Construction against Brown Construction)**

1. City Inn incorporates all of the preceding allegations herein.
2. City Inn entered into the Original Contract with Brown Construction, as amended by the promises of Mary Anderson and Michael Brown, to construct the Project in a good and workmanlike manner.
3. Brown Construction impliedly warranted that the Project, including without limitation the elevated walkways, would be properly constructed and would not retain water.
4. Brown Construction impliedly warranted that the crawlspace would be properly ventilated as constructed.
5. Brown Construction breached this implied warranty.
6. As a result of Brown Construction’s breach, City Inn has suffered damages in an amount to be proven at trial.

# FIFTH CLAIM FOR RELIEF

**(Negligence Against A Door Source, Inc.; Creative Arts Design Center llc; Di Franco Masonry, Inc.; Fire Defense, Inc.; Front Range Stucco, Inc.; LeBlanc Construction; Mile High Stucco, Inc.; Reeves Specialty Services, Inc.; Robert Daniel d/b/a RMD Construction; Roberts Electrical Contracting, Inc.; Sulzer Development, LLC; St. Vrain Block Co.;**

**J.O.B. Concrete, Inc.; and Alan Urban Plumbing, LLC)**

1. City Inn incorporates all of the preceding allegations herein.
2. The Defendants identified in this Fifth Claim for Relief owed City Inn a duty to perform their respective construction services free from material defects.
3. The Defendants identified in this Fifth Claim for Relief breached their duty to City Inn by performing their respective construction services in a substantially defective manner including as identified in paragraphs 40-77 of this First Amended Complaint.
4. The breaches of duty by the Defendants identified in this Fifth Claim for Relief caused damages to City Inn in an amount to be proven at trial.

# SIXTH CLAIM FOR RELIEF

**(Professional Negligence against All Defendants Except Mary Anderson, Michael Brown, and those Identified in the Fifth Claim for Relief)**

1. City Inn incorporates all of the preceding allegations herein.
2. City Inn contracted with Brown Construction to construct the Project in a good and workmanlike manner and in compliance with the Westminster building code based upon architectural plans prepared by Pouw, Stanley Pouw, and Wesley Pouw.
3. Brown Construction owed a duty to City Inn to construct the Project in a good and workmanlike manner and in compliance with the Westminster building code, which it negligently failed to do.
4. Brown Construction used architectural plans prepared by Pouw, Stanley Pouw, and Wesley Pouw to construct the Project.
5. Berns Hausen Structural Consulting, LLC and Todd Bernshausen approved plans prepared by Pouw.
6. Berns Hausen Structural Consulting, LLC and Todd Bernshausen prepared plans relating to the foundation and framing of the Project.
7. RG Engineering Consultants, Inc. and Walter Rabinovich approved plans prepared by Pouw.
8. RG Engineering Consultants, Inc. and Walter Rabinovich prepared plans relating to the site electrical design of the Project.
9. 5280Engineering and Roger Blank approved plans prepared by Pouw.
10. 5280Engineering and Roger Blank prepared plans relating to the mechanical engineering design of the Project.
11. These Defendants owed City Inn a duty to design and construct the Project in a manner and quality that would be done by reasonable architects, engineers and/or construction professionals of average skill and intelligence which they negligently breached.
12. Defendants failed to act as reasonably careful architects, engineers, and/or landscape architects would do when compared to an architect, engineer, and/or landscape architect having and using that knowledge and skill of an architect, engineer, and/or landscape architect practicing architecture, engineering, and/or landscape architecture at the same time and in the same area.
13. At the time they designed and constructed the Project, Defendants knew or should have known that the design and quality of the Project was poor and substandard and violated the Westminster building code.
14. Defendants breached their duty to City Inn when they failed to use reasonable care in construction of the Project.
15. As a direct and proximate result of Defendants’ breach of duty, City Inn suffered damages in an amount to be proven at trial.

# SEVENTH CLAIM FOR RELIEF

**(Negligence *Per Se* against All Defendants Except Mary Anderson and Michael Brown)**

1. City Inn incorporates all of the preceding allegations herein.
2. At all times relevant to this Complaint, the 2009 International Building Code was in effect in the City of Westminster, State of Colorado.
3. Defects at the Project, including but not limited to defects relating to the second and third floor walkways, constitute violations of the Westminster building code.
4. The defects in violation of the code were included in the designs prepared by Pouw and Associates; Stanley Pouw; Wesley Pouw; RG Engineering Consultants, Inc.; Walter Rabinovich; Todd Bernhausen; Berns Hausen Structural Consulting, LLC; 5280Engineering; and Roger Blank; and were built defectively by Brown Construction and/or the subcontractors hired by Brown Construction.
5. A violation of the Westminster building code constitutes negligence *per se*.
6. The defects in violation of the Westminster building code resulted in injuries to City Inn, a member of the class of persons the Westminster building code is enacted to protect.
7. The injuries to City Inn resulted in damages in an amount to be proven at trial.

WHEREFORE, Plaintiff City Inn prays for relief against all Defendants jointly and severally as follows:

* + 1. Money judgment in an amount to be determined at trial, including for all direct, consequential, and incidental damages;
		2. Damages for City Inn’s inconvenience as contemplated by C.R.S. §13-20-806(4) and

*Hildebrand v. New Vista Homes II, LLC*, 252 P.3d 1159 (Colo. App. 2010);

* + 1. Costs of litigation, including expert witness fees; pre and post-judgment interest, moratory interest, and attorneys fees; and
		2. Such other relief as the Court may deem proper and equitable.

# JURY DEMAND

**Plaintiff demands and has demanded a trial by jury on all issues so triable in this**

**action.**

Respectfully submitted this 31st day of March 2017.

HAMILTON FAATZ, PC

*s/ Clyde A. Faatz, Jr.*

Clyde A. Faatz, Jr., #378 Refugio Perez, #47459 Frank J. Morroni, #46545

Plaintiff’s Address:

7151 Federal Boulevard

Westminster, Colorado 80030

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of March 2017 a true copy of the foregoing FIRST AMENDED COMPLAINT was forwarded to Colorado Courts E-Filing System for e-service upon the following:

Philip B. Cardi, Esq.

Cardi, Schulte & Ford, LLC

7400 E. Crestline Circle, Suite 210 Greenwood Village, CO 80111

*Counsel for Defendants 5280Engineering and Roger Blank*

Henry Keith Jarvis, Esq. Markusson, Green & Jarvis 1660 Lincoln Street, Suite 2950

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