

IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENNESSEE

CITY OF CHATTANOOGA, TENNESSEE)
and CHATTANOOGA DOWNTOWN)
REDEVELOPMENT CORPORATION, a)
non-profit corporation and an instrumentality)
of the CITY OF CHATTANOOGA,)

Plaintiffs,)

vs.)

HARGREAVES ASSOCIATES,)
INCORPORATED, THE RIVERCITY)
COMPANY AND CONTINENTAL)
CONSTRUCTION COMPANY, INC.,)

Defendants.)

No. 09-C-403

DIVISION I

**ANSWER OF CONTINENTAL CONSTRUCTION COMPANY, INC. TO COMPLAINT
AND THIRD-PARTY COMPLAINT OF CONTINENTAL CONSTRUCTION
COMPANY, INC. AGAINST NABCO ELECTRIC COMPANY, MASONRY
SPECIALISTS CORPORATION, VALLEY CREST LANDSCAPE DEVELOPMENT,
INC., HOBBS ARCHITECTURAL FOUNTAINS AND MOFFATT AND NICHOL**

The Defendant, Continental Construction Company, Inc. (hereinafter "Continental"), for answer to the Complaint heretofore filed in this matter avers as follows:

1. Continental admits the allegations contained in Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, and 9.
2. Relative to Paragraphs 10, 11, 12, 13, 14, and 15, Continental is without knowledge or information sufficient to form a belief as to the truth of the averments contained therein and therefore, pursuant to Rule 8.02 of the *Tennessee Rules of Civil Procedure*, same are denied.
3. Relative to Paragraphs 16 and 17, Continental admits that it entered into a contract with Plaintiff CDRC on November 5, 2003 identified as "21st Century Waterfront Package 2, E-03-015."

Continental avers that the contract speaks for itself through all terms and provisions of the contract and that all terms and provisions of the contract should be construed in their totality and not taken individually out of context.

Continental avers that it complied with all terms and provisions of the aforementioned contract and relies upon all terms and provisions thereof in defense and bar of the Plaintiffs' claims.

4. Relative to Paragraph 18, Continental is without knowledge or information sufficient to form a belief as to the truth of the averments contained in the first sentence of Paragraph 18 and therefore same are denied pursuant to Rule 8.02 of the *Tennessee Rules of Civil Procedure*. Relative to the remainder of Paragraph 18, Continental is advised that Plaintiffs employed TWH Architects, Inc.; however, Continental is without knowledge or information sufficient to form a belief as to the exact nature and scope of this employment and therefore the remaining allegations contained in Paragraph 18 are denied pursuant to Rule 8.02 of the *Tennessee Rules of Civil Procedure* except that Continental admits that TWH Architects, Inc. prepared a report known as "The Passage Post-Occupancy Evaluation Final Report." Continental avers that this report speaks for itself in all respects and should be construed in its entirety and no portion thereof should be taken out of context.

5. Relative to Paragraph 19, Continental avers that there were no exhibits attached to the service copy of the Complaint; however, Continental admits that the referenced letters were written on July 18, 2008 to both Continental and to Defendant Hargreaves seeking to initiate mediation. Continental admits that it responded to the mediation request, indicating that it would be willing to mediate. Continental is advised that Hargreaves did not respond to the request for mediation.

Insofar as the remainder of Paragraph 19 may seek to set forth any claims for negligence or breach of contract or any other type of claim or cause of action against Continental, same are denied and strict proof is demanded thereof.

6. Relative to Paragraph 20, Continental avers that the above-mentioned report prepared by TWH Architects, Inc. speaks for itself and should be construed in its entirety.

Insofar as Paragraph 20 seeks to set forth any alleged negligence or breach of contract or any other type of claim or cause of action against Continental, same are denied and strict proof is demanded thereof.

7. Relative to Paragraph 21, Continental avers that there were no exhibits attached to its service copy of the Complaint and therefore is without knowledge or information sufficient to form a belief as to the truth of these averments and therefore same are denied pursuant to Rule 8.02 of the *Tennessee Rules of Civil Procedure*.

Continental avers that there was no final Certificate of Occupancy issued to its knowledge.

8. Relative to Paragraphs 22, 23, 24, 25, and 26, the averments contained therein are denied, insofar as any alleged negligent construction performed by Continental and/or any of its subcontractors, and any averments to the contrary are denied and strict proof is demanded thereof. Continental avers that the construction of the project was done in accordance with the plans and specifications, contract documents and/or modifications during the course of construction agreed upon by all parties to this action.

9. Relative to Count I - Breach of Contract against Hargreaves, and specifically Paragraphs 27 through 32, no answer appears to be required of Continental. However, to the extent

that any of the allegations contained in any of these paragraphs may be construed as allegations against Continental, same are denied and strict proof is demanded thereof.

10. Relative to Count II - Breach of Contract against Rivercity, and specifically Paragraphs 33 through 39, no answer appears to be required by Continental. However, to the extent that any of the allegations contained in any of these paragraphs may be construed as allegations against Continental, same are denied and strict proof is demanded thereof.

11. Relative to Count III - Breach of Contract against Continental, and specifically Paragraph 40, Continental realleges its responses to Paragraphs 1 through 39 as if fully set forth herein.

12. Relative to Paragraphs 41 and 42, Continental admits that it entered into a written contract with the Plaintiff CDRC. Continental avers that the contract referenced above speaks for itself and Continental relies upon all terms and conditions thereof in defense and bar of any claims by the Plaintiffs.

13. Relative to Paragraphs 43 and 44, Continental denies the averments contained therein and demands strict proof thereof.

14. Relative to Paragraph 45, Continental admits that it entered into a written contract with the Plaintiff CDRC, that all provisions of the contract speak for themselves, that Continental complied with the drawings, design, specifications and contract documents provided by Defendant Hargreaves. Continental relies upon all terms, conditions and provisions of its contract in defense and bar of Plaintiffs' claims.

15. Relative to Paragraph 46, the averments contained therein are denied and strict proof is demanded thereof.

16. Relative to Count IV - Negligent Construction, specifically Paragraph 47, Continental adopts its responses to Paragraphs 1 through 46 as if set forth fully herein.

17. Relative to Paragraph 48, Continental denies the allegations contained therein and demands strict proof thereof.

18. Relative to Paragraph 49, Continental avers that it complied with its duty of care and denies any allegations to the contrary.

The remainder of Paragraph 49 is denied by Continental and strict proof is demanded thereof.

19. Relative to Count V - Negligent Design and Supervision, specifically Paragraph 50 thereof, Continental adopts its responses to Paragraphs 1 through 49 as if fully set forth herein.

20. Relative to Paragraphs 51, 52, 53, 54, 55, 56, 57, 58, and 59, no answer appears to be required of Continental. However, to the extent that any averments or allegations contained in these paragraphs may be deemed as allegations against Continental, same are denied and strict proof is demanded thereof.

21. Relative to Count VI - Negligent Development Management, specifically Paragraph 60, Continental adopts its responses to Paragraphs 1 through 59 as if fully set forth herein.

22. Relative to Paragraphs 61, 62, 63, and 64, no answer appears to be required of Continental. However, to the extent that the allegations contained in these paragraphs may be construed as allegations against Continental, same are denied and strict proof is demanded thereof.

23. Relative to Paragraph 65, the allegations contained therein are denied insofar as they may be applicable to Continental and strict proof is demanded thereof.

24. Relative to Paragraph 66, the allegations contained therein are denied insofar as they may be applicable to Continental and strict proof is demanded thereof.

25. Relative to Paragraph 67, Continental is without knowledge or information sufficient to form a belief as to the truth of the averments contained therein and therefore same are denied pursuant to Rule 8.02 of the *Tennessee Rules of Civil Procedure*. It is denied that any of these expenses were incurred as a result of any negligence, breach of contract or any other claim against Continental and strict proof is demanded thereof.

26. Relative to Paragraphs 2, 3, and 4 of the prayers for relief, Continental denies that the Plaintiffs are entitled to recover any amounts from it and strict proof is demanded thereof.

27. Pleading in the alternative, Continental avers that the Plaintiffs have failed to mitigate their damages, have changed the intent and scope of the project and have incurred substantial costs far and above those which would be necessary to repair any alleged deficiencies.

28. Pleading in the alternative, Continental avers that the Plaintiffs' claims are barred by the doctrines of estoppel and waiver inasmuch as all work performed by Continental and its subcontractors were inspected, approved, and paid for by the Plaintiffs and/or Plaintiff's agents with the release of all retainage by Continental by the Plaintiffs and therefore all claims set forth in the Complaint are barred.

29. Pleading in the alternative, Continental avers that the Plaintiffs, acting by and through their agents, servants and employees, were guilty of negligence in bringing about any injuries, losses and damages and therefore the claims of the Plaintiffs are barred or should be reduced in accordance with the principles of comparative fault.

30. Further, pleading in the alternative, Continental avers that should it be shown that any injuries, losses or damages were proximately caused as a result of the work performed by Continental and/or its subcontractors, then any damages to which the Plaintiffs may be entitled, which is specifically denied, should be apportioned between the original Defendants, NABCO Electric Company, Inc. 2800

2nd Street, Chattanooga, TN 37407, Masonry Specialists Corporation, P.O. Box 91496, Chattanooga, TN 37412, Valley Crest Landscape Development, Inc., 24151 Ventura Blvd., Colabasas, CA 91302-1449, Hobbs Architectural Fountains, 3768 DeKalb Technology Parkway, Atlanta, GA 30340, and Moffatt & Nichol, 3780 Kilroy Airport Way, Suite 750, Long Beach, CA 90806, Arcadis G&M, 1210 Premier Drive, Suite 200, Chattanooga, TN 37421, Polis Studio 124 East 10th Street, Suite 200, Chattanooga, TN 37402, LAM Partners, Inc. 84 Sherman Street, Cambridge, MA 02140, Dan Euser Waterarchitecture, Inc. 58 Major Mackenzie Drive West, Richmond Hill, Ontario L4C756, Canada, Chester Glenn Allen, Landscape Architect, 123 Antoinette Avenue, McDonough, GA, pursuant to the principles of comparative fault.

31. All other allegations of the Complaint not heretofore admitted, denied, or otherwise explained are here and now specifically denied as though specifically denied herein.

And now having answered as fully as is required by law, Continental requests dismissal of this case against it with all costs taxed against the Plaintiffs.

**THIRD-PARTY COMPLAINT AGAINST NABCO ELECTRIC COMPANY, INC.
MASONRY SPECIALISTS CORPORATION, VALLEY CREST LANDSCAPE
DEVELOPMENT, INC., HOBBS ARCHITECTURAL FOUNTAINS AND
MOFFATT & NICHOL**

Continental, having heretofore answered the original Complaint in this cause, now assumes the role of Third-Party Plaintiff, and files this Third-Party Complaint pursuant to Rule 14 of the *Tennessee Rules of Civil Procedure* against NABCO Electric Company, Inc., Masonry Specialists Corporation, Valley Crest Landscape Development, Inc., Hobbs Architectural Fountains, and Moffatt & Nichol and avers as follows:

1. Continental has been sued in this cause by the City of Chattanooga, Tennessee and Chattanooga Downtown Redevelopment Corporation (“CDRC”).
2. Continental is a Tennessee corporation doing business in Hamilton County, Tennessee.

3. NABCO Electric Company, Inc. (“NABCO”) is a Tennessee corporation located at 2800 2nd Street, Chattanooga, Tennessee 37403, doing business in Hamilton County, Tennessee, and can be served through its registered agent, Gregory A. Bowman.

4. Masonry Specialists Corporation (“Masonry”) is a Tennessee corporation, located at 1417 Choate Road, East Ridge, Tennessee 37412 and can be served through its registered agent, Michael E. Catlett.

5. Valley Crest Landscape Development, Inc. (“Valley Crest”) is a California corporation located at 24151 Ventura Blvd., Calabrasas, California 91302-1449 and can be served through its registered agent The Prentice-Hall Corp. System, 40 Technology Parkway South, #300, Norcross, Georgia 30092.

6. Hobbs Architectural Fountains (“Hobbs”) is a William Hobbs, Ltd. company located at 3768 DeKalb Technology Parkway, Atlanta, Georgia 30340, doing business in Hamilton County, Tennessee, and can be served through its registered agent, William Hobbs, 386 Sillcook Trail, Clarksville, Georgia 30523-1144.

7. Moffatt & Nichol is a California Corporation (“Moffatt & Nichol”), located at 3780 Kilroy Airport Way, Suite 750, Long Beach, California 90806, doing business in Hamilton County, Tennessee, and can be served through its registered agent, Timothy J. Rellaford.

8. All of the foregoing Third-Party Defendants at all times relevant herein performed work in Chattanooga, Hamilton County, Tennessee on the 21st Century Waterfront Package 2, E-03-015 and are therefore subject to the jurisdiction and venue of this Court.

9. Continental entered into a subcontract with NABCO on the 7th of November, 2003. NABCO is in possession of this subcontract.

Continental relies upon all terms and provisions of the subcontract with NABCO in support of its claims set forth herein.

10. Continental entered into a subcontract with Masonry on the 8th day of December, 2003. Masonry is in possession of this subcontract.

Continental relies upon all terms and provisions of the subcontract with Masonry in support of its claims set forth herein.

11. Continental entered into subcontract with Valley Crest on the 7th day of November, 2003. Valley Crest is in possession of this subcontract.

Continental relies on all terms and provisions of this subcontract in support of its claims set forth herein.

12. Continental entered into a contract with Hobbs on the 15th day of December, 2003. Hobbs is in possession of this subcontract.

Continental relies upon all terms and provisions of this subcontract in support of its claims set forth herein.

13. Moffatt & Nichols is an engineering firm that either directly contracted with the Plaintiffs in this cause and/or was a subcontractor to Hargreaves and Associates, a co-defendant.

Continental is not in possession of the contract or subcontract, however, it is averred that Moffatt & Nichol were responsible for the concrete and structural design of the sidewalks and/or the “amphitheater” as alleged in the original Complaint.

Continental constructed the sidewalks and amphitheater in accordance with the design of Moffatt & Nichol for the 21st Century Waterfront Package, 2, E-03-015.

14. Continental avers that should it be held liable or responsible for any damages to the original Plaintiffs, then NABCO, Masonry, Valley Crest and Hobbs should be required to indemnify Continental for all amounts that Continental may be required to pay to the original Plaintiffs pursuant to the terms and provisions of the aforesaid subcontracts with these Third-Party Defendants.

15. Continental avers that should it be held liable or responsible for any damages to the original Plaintiffs it is entitled to common law indemnity and/or contribution from Moffatt and Nichols for all amounts which may be adjudged against it as a result of any alleged defects in the design and construction of the amphitheater and sidewalks.

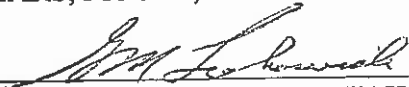
16. Wherefore and for all of which, Continental, seeks contractual indemnification from NABCO, Masonry, Valley Crest and Hobbs, and seeks common law indemnification and/or contribution from Moffatt and Nichol in any and all amounts which may be assessed against Continental in the original action and in favor of the original Plaintiffs.

17. Continental seeks all other further and general relief from this Court as may be just and equitable.

18. Continental demands a jury to try the issues in this Third-Party Complaint.

Respectfully submitted,

SPEARS, MOORE, REBMAN & WILLIAMS

By: 
G. MICHAEL LUHOWIAK, BPR #001019
Attorneys for Continental Construction
Company

801 Broad Street, Sixth Floor
P.O. Box 1749
Chattanooga, TN 37401-1749
Telephone: 423/756-7000
Facsimile: 423/756-4801

LAW OFFICES
SPEARS, MOORE, REBMAN & WILLIAMS
PROFESSIONAL CORPORATION
801 BROAD STREET, SIXTH FLOOR
P. O. BOX 1749
CHATTANOOGA, TENNESSEE 37401-1749
(423) 756-7000—FACSIMILE (423) 756-4801

CERTIFICATE OF SERVICE

I certify that a true and exact copy of this pleading has been served upon the following attorneys by delivering a true and exact copy thereof to the offices of said counsel or by placing a true and exact copy of said pleading in the United States mail addressed to said counsel at his office with sufficient postage thereupon to carry the same to its destination:

Michael A. McMahan, Esq.
City Attorney's Office
801 Broad Street, Suite 400
Chattanooga, TN 37402

Crystal R. Freiberg, Esq.
Valerie L. Malueg, Esq.
City Attorney's Office
801 Broad Street, Suite 400
Chattanooga, TN 37402

Alaric A. Henry Esq.
Luther, Anderson, PLLP
P.O. Box 151
Chattanooga, TN 37401-0151

Marc H. Harwell, Esq.
Leitner,
Williams, Dooley & Napolitan
801 Broad Street, Suite 300
Chattanooga, TN 37402

This 1st day of June, 2009.

SPEARS, MOORE, REBMAN & WILLIAMS, P.C.

By: 

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LAW OFFICES
SPEARS, MOORE, REBMAN & WILLIAMS
PROFESSIONAL CORPORATION
101 BROAD STREET, SIXTH FLOOR
P. O. BOX 1749
CHATTANOOGA, TENNESSEE 37401-1749
(423) 736-7000---FACSIMILE (423) 736-4101

IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENNESSEE

CITY OF CHATTANOOGA, TENNESSEE)
And CHATTANOOGA DOWNTOWN ()
REDEVELOPMENT CORPORATION, a non-)
Profit corporation and an instrumentality of the ()
CITY OF CHATTANOOGA, ()

Plaintiffs, ()

Vs. ()

HARGREAVES ASSOCIATES, INC. ()
THE RIVER CITY COMPANY, and)
CONTINENTAL CONSTRUCTION CO., INC. ()

Defendants. ()

2009 JUN 15 PM 3: 23

PAULA T. THOMPSON, CLERK

Docket No: 09C403

BY _____ DC

Jury Demand

ANSWER

Comes now the Defendant, The RiverCity Company, Inc. (hereinafter referred to as "RiverCity"), by and through counsel, and for answer to the Summons and Complaint filed by the City of Chattanooga and Chattanooga Downtown Development Corporation (hereinafter referred to as "CDRC") avers as follows:

1. The Complaint fails to state a cause of action upon which relief can be granted.
2. The Plaintiffs are guilty of spoliation of evidence by making extensive changes to the construction work which is the subject of the Complaint without giving the Defendants the opportunity to have the disputed work inspected before it was changed. The Plaintiffs knew they were planning to file suit against the Defendants, yet went ahead and implemented changes to "The Passage" without the knowledge, participation, or approval of the Defendants. Defendants were given no opportunity to have the disputed

work independently inspected to verify the truth of the Plaintiffs allegations, and were given no opportunity to design or implement any remedy to any claimed defect in the disputed work. The only appropriate sanction for this intentional conduct is a dismissal with prejudice of the Plaintiff's Complaint, and a granting of Defendant's counterclaim for damages that include, but are limited to, attorneys fees and expenses.

3. Defendant avers the expiration of the statute of limitations and/or statute of repose.

4. Although RiverCity hereby avers that Plaintiffs have no reasonable basis for assertion of any breach of contract or negligence by RiverCity under design and construction contracts to which RiverCity was not a party, RiverCity also asserts that any potential damages for which RiverCity might be held liable are limited pursuant to Section 7.3 of the Development Management Agreement between CDRC and RiverCity, which provides that the maximum limitation of any obligation of RiverCity would be the amount of the development fee paid to RiverCity, totaling \$650,000.

5. The Defendant asserts the defenses of waiver, estoppel and laches with respect to any claim by the Plaintiffs that RiverCity failed to adequately advise the Plaintiffs of its work under the Development Management Agreement or to schedule meetings or to provide updates, since during the period of performance of the Development Management Agreement (covering more than three (3) years) Plaintiffs never made any complaints that RiverCity was failing to perform such duties in a timely and acceptable fashion, or was failing to schedule meetings or to provide updates.

6. The allegations in paragraph 1 of the Complaint are admitted.

7. Upon information and belief the allegations in paragraph 2 of the Complaint are admitted.

8. The allegations of paragraph 3 of the Complaint are admitted.

9. The allegations of paragraph 4 of the Complaint are admitted.

10. Upon information and belief the allegations of paragraph 5 of the Complaint are admitted.

11. The allegations of paragraph 6 of the Complaint are admitted.

12. The allegations of paragraph 7 of the Complaint are admitted.

13. Upon information and belief the allegations of paragraph 8 of the Complaint are admitted.

14. Upon information and belief the allegations of paragraph 9 of the Complaint are admitted.

15. Upon information and belief the allegations of paragraph 10 of the Complaint are admitted.

16. It is admitted that CDRC entered into a Development Management Agreement (the "Development Agreement") with RiverCity as alleged in paragraph 11 of the Complaint.

17. It is acknowledged that part of RiverCity's duties are discussed in the Development Agreement Section 2.2.1 as stated in paragraph 12 of the Complaint. It is acknowledged that Section 2.3 of the Agreement addresses various reporting requirements, and it is averred that RiverCity regularly kept CDRC and the City of Chattanooga and its representatives completely aware and updated regarding the status of construction and substantive changes. RiverCity satisfied, and in many instances

exceeded, all its obligations for reporting on the status of construction. RiverCity continuously and throughout the project always kept CDRC and the City of Chattanooga and its representatives informed of said progress, and the City and its representatives gave direct or indirect approval of any material changes to the project. On no occasion did the City or CDRC advise RiverCity of any claim or concern that RiverCity was not fulfilling its organizational and reporting obligation.

18. Upon information and belief the allegations of paragraph 13 of the Complaint are admitted.

19. Upon information and belief the allegations of paragraph 14 of the Complaint are admitted.

20. Upon information and belief the allegations of paragraph 15 of the Complaint are admitted.

21. Upon information and belief the allegations of paragraph 16 of the Complaint are admitted.

22. Upon information and belief the allegations of paragraph 17 of the Complaint are admitted.

23. Paragraph 18 of the Complaint states no allegations against this Defendant and no response is necessary.

24. Defendant is without sufficient information or knowledge to respond to the allegations in paragraph 19 of the Complaint.

25. Upon information and belief the Plaintiffs have alleged various claimed defects by various contractors or designers; however, this Defendant cannot admit or deny the accuracy of the alleged defects as described in paragraph 20 of the Complaint.

26. The Defendant is without sufficient information or knowledge to respond to the allegations in paragraph 21 of the Complaint.

27. Defendant is without sufficient information or knowledge to respond to the allegations in paragraph 22 of the Complaint.

28. Defendant is without sufficient information or knowledge to respond to the allegations in paragraph 23 of the Complaint.

29. Defendant is without sufficient information or knowledge to respond to the allegations in paragraph 24 of the Complaint.

30. Defendant is without sufficient information or knowledge to respond to the allegations in paragraph 25 of the Complaint.

31. Defendant is without sufficient information or knowledge to respond to the allegations in paragraph 26 of the Complaint.

COUNT ONE – BREACH OF CONTRACT AGAINST HARGREAVES

32. This Defendant has insufficient information or knowledge to admit or deny the allegations in paragraphs 27 through 32 of the Complaint.

COUNT TWO – BREACH OF CONTRACT AGAINST RIVERCITY

33. The Defendant asserts all defenses outlined in paragraphs 1 through 31 of its Answer in response to paragraph 33 of the Complaint.

34. The allegations in paragraph 34 of the Complaint are admitted.

35. Upon information and belief the allegations in paragraph 35 of the Complaint are admitted.

36. The allegations in paragraph 36 of the Complaint are denied.

37. The allegations in paragraph 37 of the Complaint are denied.

38. It is acknowledged that the Development Agreement indicates that RiverCity would provide coordination and support for the development of the project as described in paragraph 38 of the Complaint. However, RiverCity was not hired to build or design this project; CDRC entered into direct contracts with Defendants Hargreaves and Continental for such purposes, and maintained full authority over those parties for the design and construction for the project. RiverCity relied upon these various architects and contractors to design and build the project to all specifications, and remained only in an advisory, consulting, and coordination role on behalf of the City and CDRC

39. RiverCity specifically denies that it has breached the contract in any way, and deems that any alleged breach was the proximate result of any alleged injury, damage, or loss suffered by the CDRC and/or the City of Chattanooga as described in paragraph 39 of the Complaint.

COUNT THREE – BREACH OF CONTRACT AGAINST CONTINENTAL

40. The Defendant asserts all defenses outlined in paragraphs 1 through 39 of its Answer in response to paragraph 40 of the Complaint.

41. This Defendant is without information sufficient to admit or deny the allegations in paragraphs 41 through 46 of the Complaint.

COUNT FOUR – NEGLIGENT CONSTRUCTION

42. The Defendant asserts all defenses outlined in paragraphs 1 through 41 of its Answer in response to paragraph 47 of the Complaint.

43. This Defendant is without information sufficient to admit or deny the allegations in paragraph 48 through 49 of the Complaint.

COUNT FIVE – NEGLIGENT DESIGN AND SUPERVISION

44. The Defendant asserts all defenses outlined in paragraphs 1 through 43 of its Answer in response to paragraph 50 of the Complaint.

45. Defendant is without information sufficient to admit or deny the allegations in paragraphs 51 through 59 of the Complaint.

COUNT SIX – NEGLIGENT DEVELOPMENT MANAGEMENT

46. This Defendant asserts all defenses in paragraph 1 through 45 of its Answer in response to paragraph 60 of the Complaint.

47. The allegations in paragraph 61 of the Complaint are denied.

48. The allegations in paragraph 62 of the Complaint are denied.

49. The allegations in paragraph 63 of the Complaint are denied as stated.

50. The allegations in paragraph 64 of the Complaint are denied as stated.

51. The allegations in paragraph 65 of the Complaint are denied as stated.

52. The allegations in paragraph 66 of the Complaint are denied as stated.

53. The Defendant is without information sufficient to admit or deny the allegations in paragraph 67 of the Complaint and strict proof thereof is demanded.

54. The chartered purpose for The RiverCity Company, and the basis for its existence as a non-profit, is to assist the City of Chattanooga and Hamilton County with economic development initiatives for downtown Chattanooga. RiverCity has pursued those projectives for more than two decades, beginning with the design and construction of the original Riverpark and Fishing Piers at the CB Robinson Bridge, and continuing ever since.

In keeping with this mission, RiverCity accepted the request by the City of Chattanooga to in 2003 to assist the City in accomplishing its vision for the 21st Century Waterfront Plan. RiverCity entered into the Development Management Agreement with CDRC, and under this agreement, RiverCity agreed to assist the City and CDRC with coordination and implementation of the ambitious 21st Century Waterfront construction projects.

It is important to note that RiverCity agreed to assist the City and CDRC; by the express terms of the Development Agreement, CDRC retained all of the obligations for design, construction, and funding of the project. All decisions for what to build; who should build it; how it would be paid for; when it would be scheduled; and what changes might be made to the design after construction commenced remained in the hands of the City and CDRC. While RiverCity agreed to provide extensive assistance with the coordination and implementation of this complex construction project, all final decisions about the project remained with the City and CDRC.

As compared to industry standards, RiverCity was paid a reduced fixed fee for its work, and their fee was fixed in advance. This fee was a stipulated and fixed amount, and thus RiverCity did not partake of or benefit in any way from any changes in the construction cost of the 21st Century Waterfront Project. If construction proved to be more expensive than estimated, RiverCity was not paid any additional sum; similarly, if savings were produced and the project completed for less than budgeted, RiverCity did not earn any additional fee.

55. RiverCity fully and faithfully discharged all of its obligations under the Development Agreement during the entire period from commencement to completion of

construction of the Project. For virtually all of this period, CDRC's designated contact for RiverCity on all construction coordination was Mayor Bob Corker. RiverCity also worked extremely closely with the City's Chief Financial Officer and with the Department of Public Works.

During the entire period of active construction on this project, including both the Corker administration and the succeeding Littlefield administration, the City and CDRC made no complaint whatsoever and gave no notice to RiverCity of any problems with any aspect of RiverCity's performance of the Development Agreement. No notices of default were given by the City or CDRC, and no written complaints of performance were registered. Additionally, the City and CDRC paid RiverCity the full fee earned under the Development Agreement without protest or complaint.

56. To the extent that construction defects did exist in the project, the City failed to follow its own contractual obligations in remedying such defects, and engaged a new architectural firm to undertake a substantial revision and redesign of the Passage area. Because this work involves changes other than remedies to the work originally designed by Hargreaves and Associates and constructed by Continental, these changes constitute a complete alteration of the "Scope of Work" under the design and construction contracts, and the decision by the City and CDRC to implement these design changes removes all of that work out from the responsibilities of any of the Defendants to this litigation.

57. Under the terms of the Development Agreement, the City is obligated to indemnify RiverCity for any losses which RiverCity may suffer as a result of the construction of the 21st Century Waterfront Project, unless such losses are caused by

RiverCity's own negligence. In addition, CDRC is obligated to reimburse RiverCity for the cost of its legal fees in any successful defense of litigation under the contract. RiverCity should thus recover all of its cost incurred in this litigation, including all attorneys' fees and costs for this defense.

58. Upon information and belief, it is averred that CDRC and City of Chattanooga and their agents and/or employees were responsible for the inspection and approval of the project; had such inspections and approvals been done properly, any problems with construction would have been discovered if in fact they exist. As a result, the plaintiffs are barred under the Doctrines of Comparative Fault and the Assumption of the Risk.

59. It is averred upon information and belief that some changes or modifications to the project were done at the direction of inspectors of the City of Chattanooga and other employees or agents of the plaintiffs. As a result, Plaintiffs' Complaint is barred under the Doctrine of Comparative Fault and Expressed & Implied Assumption of the Risk and Intervening Superseding Cause.

60. It is averred upon information and belief that if there are construction or design defects as alleged by the Plaintiffs in the "Passage", then any fault for these alleged damages would rest upon the multiple contractors and entities who were under contract with the City of Chattanooga and CDRC, including the co-defendants Hargreaves Associates, Inc., and Continental Construction Company, under the doctrine of Comparative Fault.

61. If the Plaintiffs are able to prove that the allegations in their Complaint are true, then upon information and belief, any alleged deficiencies, damages, or changes

would be the responsibility of additional contractors pursuant to the doctrine of Comparative Fault, including, but not limited to, Hargreaves Associates, Inc; Continental Construction Company; Hobbs Architectural Fountains, 3786 DeKalb Tech Parkway, Atlanta, GA 30340 relating to the fountain design; NABCO Electric Company, 2800 2nd Avenue, Chattanooga, TN 37407 relating to electrical work; Masonry Specialists, PO Box 91496, Chattanooga, TN 37401 relating to masonry work; Stein Construction, 3611 Amnicola Hwy, PO Box 5246, Chattanooga, TN 37406-0246 regarding construction work; Arcadis, 1210 Premier Drive, Chattanooga, TN 37421 regarding design work; Valley Crest Landscape Development Inc., 24151 Ventura Blvd., Colabadas, CA 91302-1449, Moffatt & Nichol, 3780 Kilroy Airport Way, Suite 750, Long Beach, CA. 90806 regarding design work; Polis Studio 124 East 10th Street, Suite 200, Chattanooga, TN. 37402; Lam Partners, Inc. 84 Sherman St, Cambridge, MA 02140; Dan Euser Waterarchitecture, Inc. 58 Major Mackenzie Drive West, Richmond Hill, Ontario L4c756, Canada; and Chester Glenn Allen, Landscape Architect, 123 Antoinette Ave McDonough, GA. RiverCity is not responsible for any defects in the work of individual contractors.

62. Any and all allegations of the Complaint not heretofore admitted, denied, controverted, placed at issue, or otherwise explained are hereby denied as though specifically denied herein.

COUNTER-CLAIM

Comes now the Defendant RiverCity Company, Inc., pursuant to *Rule 13* of the *Tennessee Rules of Civil Procedure* and now assumes the role of Counter-Plaintiff.

1. The Defendant/Counter-Plaintiff adopts by reference all defenses and responses contained in paragraphs 1 through 62 of its Answer to the Complaint in support of its Counter-claim.

2. Chattanooga Downtown Redevelopment Corporation ("CDRC"), Individually and as an agent and instrumentality of the City of Chattanooga, entered into a Development Management Agreement with RiverCity Company, Inc. under which RiverCity was identified as the "Development Manager". Pursuant to this contract, various claims and damages have been made against RiverCity arising out of negligence of CDRC and the City of Chattanooga. As a result, pursuant to 5.4 of the Development Agreement, the owner CDRC and City of Chattanooga are obligated to "indemnify, defend, and hold harmless Development Manager and its officers, employees, shareholders, and agents from any all suits, proceedings, claims, damages, liabilities, costs and expenses, including reasonable attorney's fees and other defenses costs arising out of owner's negligence." As a direct result of CDRC and City of Chattanooga's choice to sue RiverCity for alleged defects caused by CDRC, City of Chattanooga, and various individual contractors, RiverCity is entitled under this indemnification clause to recover an award of substantial damages against the CDRC and City of Chattanooga.

3. It is averred that CDRC's and the City of Chattanooga's liability to pay substantial damages to RiverCity arising out of their negligent conduct and breach of contract cannot be limited pursuant to the provisions of the Government Tort Liability Act ("GTLA") because the GTLA has no application to CDRC, which is a private nonprofit entity, and further that the CDRC and the City of Chattanooga have

contractually agreed to these indemnity provisions of the contract, thus removing any coverage under the GTLA, since these damages do not arise in tort.

4. It is further averred that RiverCity relied upon representatives and agents of CDRC and City of Chattanooga pertaining to its work, including the method of communication of any possible changes or modifications and the means of which communication would be sufficient. It is also averred that not only were the City of Chattanooga and CDRC fully informed of any changes in the project, but in some instances the changes at issue were made at the direction of City employees.

5. It is averred that RiverCity has been damaged due to the allegations of the Complaint both as to its reputation in the community and further as to actual compensatory damages, including, but not limited to, lost time or productivity devoted to issues relating to the allegations in the Complaint, costs and expenses, including, but not limited to attorney's fees and all damages to which it may be entitled.

6. Defendant/Counter Plaintiff prays for a twelve-person jury to try the issues of this cause and for such other further and general relief to which it may be entitled.

CROSS-CLAIM AGAINST HARGREAVES ASSOCIATES, INC.

Comes now the Defendant RiverCity Company, Inc., pursuant to *Rule 13* of the *Tennessee Rules of Civil Procedure*, and takes the role of Cross-Plaintiff.

1. The Defendant/Counter-Plaintiff adopts by reference all defenses and responses contained in paragraphs 1 through 63 of its Answer to the Complaint in support of its Cross-claim.

2. The Plaintiffs have stated various allegations in its Complaint as to the design work or conduct of Hargreaves Associates, Inc., and the Plaintiffs also claim the identical damages against RiverCity Company, Inc. RiverCity was not a contractor or architect and had no contract with Hargreaves, and RiverCity justifiably relied upon the quality of work and supervision of Hargreaves Associates, Inc. and its various subcontractors.

3. Assuming such allegations regarding design work are proven to be true, and assuming damages are awarded to the Plaintiffs against RiverCity Company, Inc., then RiverCity Company, Inc. is entitled to judgment against Hargreaves Associates, Inc. for any amount that it may be found to be indebted to the Plaintiffs, including, but not limited to any costs, expenses, or attorney's fees to which it had to incur in defending said action arising allegedly out of the negligent conduct of Hargreaves Associates, Inc.

4. The Cross-Plaintiff, RiverCity Company, Inc. asserts that Hargreaves Associates, Inc. is obligated to indemnify and hold harmless RiverCity Company, Inc. in any and all liability pursuant to its contract with the CDRC and the City of Chattanooga. In addition, Hargreaves is obligated to list RiverCity Company, Inc. as an additional insured under its insurance policies, making its insurance company responsible for payment of any and all losses, costs, and litigation expense, incurred with the defense of this suit, along with payment regarding any and all settlement or judgment in this case pursuant to Addendum 1 to the agreement between the owner and architect, AIAB141-1977, (3.B), which states in part:

The following clause shall be added to the architect and subcontractor (if subcontractor is authorized) commercial/comprehensive general liability policies;

The City of Chattanooga, the Chattanooga Downtown Redevelopment Corporation ("CDRC") and the RiverCity Company, their officers, agents, employees, and representatives are added as "additional insured" as requests, respect, operation, and activities performed under contract with the CDRC.

5. If Hargreaves Associates, Inc. has violated the terms of its contract in failing to secure insurance to cover RiverCity Company, Inc. from any and all allegations arising out of work performed on the 21st Century Project, then Hargreaves is liable to any and all damages and expenses including attorney's fees and costs of litigation that its insurance carrier otherwise would have been obligated to pay irrespective of the alleged negligent conduct of any of the parties, including RiverCity Company, Inc.

RiverCity is entitled to dismissal of all allegations of Plaintiffs CDRC and City of Chattanooga and is also entitled to a judgment in its favor against the Plaintiffs and Co-Defendants.

Respectfully submitted,

LUTHER - ANDERSON, PLLP

BY: 

ALARIC A. HENRY, # 14885

Attorneys for Defendant, The River City Co.

1110 Market Street, Suite 500

P. O. Box 151

Chattanooga, Tennessee 37401-0151

(423) 756-5034

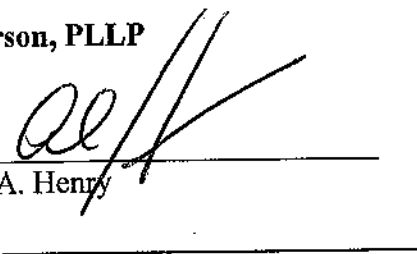
COST BOND

The undersigned, Luther-Anderson, PLLP, acknowledges and hereby binds the undersigned for the payment of all costs in this Court which may at any time be adjudged against The River City Company (hereinafter "Principal") in the event said Principal shall not pay the same if so ordered by this Court.

Luther-Anderson, PLLP

By: _____

Alaric A. Henry

A handwritten signature in black ink, appearing to read 'Alaric A. Henry', is written over a horizontal line. Below this line, there is another horizontal line that is not signed.

CERTIFICATE OF SERVICE

This is to certify that I have this day served the following named persons with a true and exact copy of this pleading by placing same in the United States Mail, addressed to said counsel at his/her offices, with sufficient postage thereupon to carry the same to its destination at the following addresses:

Michael A. McMahan, Esq.
801 Broad Street, Suite 400
Chattanooga, TN 37402

Crystal Freiberg, Esq.
Valerie L. Malueg, Esq.
801 Broad Street, Suite 400
Chattanooga, TN 37402

Marc H. Harwell
Benjamin T. Reese
801 Broad Street
3rd Floor, Pioneer Building
Chattanooga, TN 37402

G. Michael Luhowiak, Esq.
801 Broad Street, 6th Floor
Chattanooga, TN 37402

This 15 day of June, 2009.

LUTHER - ANDERSON, PLLP

BY: _____