COMES NOW, defendant CELL-CRETE CORPORATION, and pursuant to the California Code of Civil Procedure respond to the interrogatories propounded as follows:

Defendant and its attorneys have not completed their discovery or preparation for trial, nor have they completed their analysis or review of the investigation and other trial preparation matters. These responses, therefore, state the present information and analysis of defendants and their attorneys as acquired and reviewed to date, without prejudice to
defendants' right to present additional facts, contentions or theories at the trial based upon the
information, evidence or analysis hereinafter obtained or evaluated. The following responses
state the information, facts, evidence and contentions presently known to and evaluated by
defendants and their attorneys.

DEFINITIONS:

1. "YOU and YOUR" means Defendant, CELL CRETE CORPORATION, and
   includes its agents, employees, representatives, insurance companies, attorneys, accountants,
   investigators, anyone else acting on its behalf.

2. "CILKER" means Plaintiff, CILKER APARTMENTS, LLC, and its agents,
   partners, representatives, employees, insurance companies, their agents, officers, directors,
   partners, representatives, or employees, attorneys, accounts, investigators, and
   anyone else acting on its behalf.

3. "WESTERN" means Defendant and Cross-Complainant, WESTERN
   NATIONAL CONSTRUCTION, and its agents, partners, representatives, employees,
   insurance companies, their agents, officers, directors, partners, representatives, or employees,
   employees, attorneys, accountants, investigators, and anyone else acting on its behalf.

4. "SUBJECT PROEPRTY" means and includes the real property and
   improvements commonly known as One Pearl Place Apartments which is the subject of this
   litigation, located at 5210 Terner Way, 5220 Terner Way and 5230 Terner Way, San Jose,
   California.

5. "COMPLAINT" means the subject Complaint for damages in this action
   filed by Plaintiff, CILKER APARTMENTS, LLC, on December 26, 2013.

6. "DOCUMENT" and/or "DOCUMENTS" means a writing, as defined in
   Evidence Code § 250, and includes the original or copy of handwriting, typewriting, printing,
   photostatic, photographic, and every other means of recording upon any tangible thing and
   form of communication or representation, including letters, words, pictures, sounds or
   symbols, or combinations of them.

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7. “IDENTIFY” includes stating with specificity the author(s), recipient(s),
date(s) of creation and/or delivery, description of the subject matter, and any alpha-numeric or
other type of production designation.

8. “WORK” means and includes the YOUR supply of materials, products,
services, labor, and/or supervision in connection with the design, development, construction,
repair and/or management of the SUBJECT PROPERTY.

SPECIAL INTERROGATORY NO. 1:

Please state all facts in support of YOUR contention that Plaintiff CILKER’S
COMPLAINT against YOU is barred by the 10 year statute of repose set forth in CCP 337.15.

RESPONSE TO SPECIAL INTERROGATORY NO. 1:

CELL-CRETE installed Gyp-Crete gypsum floor underlayment in the carpeted
areas of units on the second and third levels, installed concrete at the second and third floor
walkways and private balconies, and installed Acousti-Mat II at the PROJECT. With all
change orders, the total value of CELL-CRETE’s work was $247,085.00.

CELL-CRETE completed its work in November of 2003. In its invoice dated
November 17, 2003, CELL-CRETE requested a progress payment of $16,729.20. (Exh. 82,
WNC 84898.) That amount represented the remainder of the sums due on the contract, minus
the 10% retention. The amount of the retention stated on the invoice was $24,708.50, equaling
10% of the contract amount. CELL-CRETE’s work was 100% complete at that time, and was
represented as such in the invoice. WESTERN NATIONAL CONSTRUCTION did not
dispute that CELL-CRETE’s work was 100% complete on November 17, 2003. Western
National Construction paid that invoice for progress payment by check in the amount of
$16,729.20 and dated January 7, 2004. (See CCC 00011.)

In an invoice dated January 14, 2004, CELL-CRETE requested payment of the
retention amount, $24,708.50. CELL-CRETE then received correspondence from Western
National Construction dated January 21, 2004 requesting warranty information, and stating:
“Please be advised that no retention shall be released until all documents are received.”
(Exhibit 44, PLT 033156.) Because Western National Construction would not pay Cell-
Crete’s retention until after it received the guarantee form. Cell-Crete signed the form on January 26, 2004, and sent it by facsimile to Western National Construction on January 27, 2004. (Exh. 44, PLT 033154.) Western National Construction paid Cell-Crete’s retention by a check in the amount of $24,708.50 and dated May 21, 2004. (Exh. 89, CCC 00001.)

Cell-Crete was called out to the project in January or February 2004 and may have performed some deck retrofits and changes. This may have included removing and replacing some concrete, and grinding some concrete, to achieve additional slope to scuppers that were being added to the decks. Cell-Crete’s letter to Western National Construction dated February 13, 2004 shows Cell-Crete intended to perform retrofits and changes at the property. (Exh. 45, WNC 026197.) These were retrofits and changes, not originally contracted work. Originally contracted work was completed in November 2003.

A subcontractor affidavit was signed on January 14, 2004 by Patrick J. Brennan who was then a controller with Cell-Crete. Mr. Brennan is no longer employed by Cell-Crete. The subcontractor affidavit states that during the period January 1, 2004 through January 31, 2004, persons who were employed by Cell-Crete and who worked on the project were paid. The affidavit does not state that those employees worked at the project during that time period, or that Cell-Crete was paid by Western National Construction for any work they did, if performed during that time period. (Exh. 88, CCC 00008.)

With regards to invoicing, the procedure employed was as follows: The Subcontractor submits a Schedule of Values to the General Contractor and Owner at the outset of the project, then submits monthly reports and invoices that document its progress on the project by indicating the percentage of work completed at the time the report and invoice are generated. The Subcontractor requests payment for the percentage of work completed that month, less retention. Together the General Contractor and Owner scrutinize Subcontractor’s progress for the month and reach an agreement on the amount of progress by the Subcontractor. If the General Contractor and Owner agree with the Subcontractor’s percentage of work completed, the Subcontractor’s invoice gets paid. If there is a disagreement, the Subcontractor must resubmit another amount to be approved.
Investigation and discovery are continuing.

SPECIAL INTERROGATORY NO. 2:

Please IDENTIFY all DOCUMENTS which support your contention that Plaintiff CILKER’S COMPLAINT against YOU is barred by the 10 year statute of repose set forth in CCP 337.15.

RESPONSE TO SPECIAL INTERROGATORY NO. 2:

See the documents identified in response to interrogatory number 1. See all documents attached as exhibits to the Declaration of Joseph M. Barclay in support of defendant Cell-Crete Corporation’s motion for summary judgment. See also the billing records produced by Cell-Crete.

SPECIAL INTERROGATORY NO. 3:

Please IDENTIFY each person that YOU believe has knowledge of facts which support YOUR contention that Plaintiff CILKER’S COMPLAINT against YOU is barred by the 10 year statute of repose set forth in CCP 337.15.

RESPONSE TO SPECIAL INTERROGATORY NO. 3:

Affiliated with Cell-Crete: Joseph M. Barclay (VP operations), Patrick J. Barclay (VP), Nicole H. Lam (accountant), Patrick J. Brennan (former controller), Cecil Lopez (former superintendent), Becky Lettner (receivables), Mina Kaleikau, Louis Fisher, Jr., Louis Fisher, Sr.

Affiliated with Western National Construction: Brian Winley (Director Operations), Keyston Smith (project engineer), Gary Wright, Gary Love, Rosemary Davis (accounts payable), Scott Buerger (superintendent).

SPECIAL INTERROGATORY NO. 4:

On or about January 26, 2004, did YOU deliver to WESTERN the “Guarantee Form” and related documents attached as Exhibit “A” to this Set of Interrogatories?

RESPONSE TO SPECIAL INTERROGATORY NO. 4:

Yes.
SPECIAL INTERROGATORY NO. 5:

If your response to Interrogatory No. 4 is anything other than an unqualified “yes”, please state all facts in support of your denial or partial denial.

RESPONSE TO SPECIAL INTERROGATORY NO. 5:

Not applicable.

SPECIAL INTERROGATORY NO. 6:

If your response to Interrogatory No. 4 is anything other than an unqualified “yes”, please IDENTIFY all DOCUMENTS in support of your denial or partial denial.

RESPONSE TO SPECIAL INTERROGATORY NO. 6:

Not applicable.

SPECIAL INTERROGATORY NO. 7:

Were YOU required by YOUR subcontract with WESTERN to deliver to WESTERN the “Guarantee Form” attached as part of Exhibit “A” to this Set of Interrogatories?

RESPONSE TO SPECIAL INTERROGATORY NO. 7:

Objections. This interrogatory is vague, ambiguous, overbroad, and calls for a legal conclusion. Without waiving said objections, and subject thereto, responding party responds: No.

SPECIAL INTERROGATORY NO. 8:

If your response to Interrogatory No. 7 is anything other than an unqualified “yes”, please state all facts in support of your denial or partial denial.

RESPONSE TO SPECIAL INTERROGATORY NO. 8:

Objections. This interrogatory is vague, ambiguous, overbroad, is unduly burdensome, and calls for a legal conclusion. Without waiving said objections, and subject thereto, responding party responds: Section B.5.(c) of the STANDARD SUBCONTRACT AGREEMENT provides that the contrary may withhold progress payments for subcontractors “failure to deliver written guarantees or warranties.” (See PLT033215.) Investigation and discovery are continuing.
SPECIAL INTERROGATORY NO. 9:

If your response to Interrogatory No. 7 is anything other than an unqualified “yes”, please IDENTIFY all DOCUMENTS in support of your denial or partial denial.

RESPONSE TO SPECIAL INTERROGATORY NO. 9:

Objections. This interrogatory is vague, ambiguous, overbroad, and calls for a legal conclusion. Without waiving said objections, and subject thereto, responding party responds: See Section B.5.(c) of the subcontract between CELL-CRETE and WESTERN NATIONAL CONSTRUCTION, for example, at PLT033215.

SPECIAL INTERROGATORY NO. 10:

Describe in detail all construction, warranty or other physical WORK YOU performed at the SUBJECT PROPERTY on or after December 27, 2003.

RESPONSE TO SPECIAL INTERROGATORY NO. 10:

In or about February 2004, Cell-Crete may have performed deck retrofits and changes at F-units, consisting of removing and replacing concrete and/or grinding and smoothing concrete, to provide additional slope to scuppers that were to be added by others. No one currently at Cell-Crete was on site for this work. Investigation and discovery are continuing.

SPECIAL INTERROGATORY NO. 11:

If YOU contend that YOUR WORK at the SUBJECT PROPERTY was substantially complete prior to December 27, 2003, please state all facts upon which YOU base this contention.

RESPONSE TO SPECIAL INTERROGATORY NO. 11:

Please see response to interrogatory number 1.

SPECIAL INTERROGATORY NO. 12:

If YOU contend that YOUR WORK at the SUBJECT PROPERTY was substantially complete prior to December 27, 2003, please IDENTIFY all DOCUMENTS that YOU believe contain information concerning this contention.

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RESPONSE TO SPECIAL INTERROGATORY NO. 12:

Please see response to interrogatory numbers 1 and 2.

SPECIAL INTERROGATORY NO. 13:

If YOU contend that YOUR WORK at the SUBJECT PROPERTY was substantially complete prior to December 27, 2003, please IDENTIFY all persons that YOU believe have knowledge of information supporting this contention.

RESPONSE TO SPECIAL INTERROGATORY NO. 13:

Please see response to interrogatory number 3.

SPECIAL INTERROGATORY NO. 14:

Were YOU contractually obligated to “defend, indemnify, and save Plaintiff [CILKER] harmless to the fullest extent possible under the law from and against any and all loss, damages, liability, claims, demands, costs, and expenses of any kind, including attorneys’ fees and expert fees, arising out of or in any manner directly or indirectly connected with the PROJECT” as alleged in Plaintiff CILKER’s First Amended Complaint at paragraph 9 on pages 3-4?

RESPONSE TO SPECIAL INTERROGATORY NO. 14:

Objections. This interrogatory is vague, ambiguous, overbroad, calls for legal conclusion. Without waiving said objections, and subject thereto, responding party responds: No. Investigation and discovery are continuing.

SPECIAL INTERROGATORY NO. 15:

If your response to Interrogatory No. 14 was anything other than an unqualified “yes”, please state all facts upon which YOU support YOUR response.

RESPONSE TO SPECIAL INTERROGATORY NO. 15:

Objections. This interrogatory is vague, ambiguous, overbroad, and calls for legal conclusion. Without waiving said objections, and subject thereto, responding party responds: Cell-Crete was furnished with plans that were defective in design. Under Civil Code sections 2782(a) and 2784, there can be no indemnity for defects in design when the construction is in substantial conformance with the design. Here, the design called for slope of 1/8 inch per foot,
an insufficient amount of slope given standard construction tolerances. The design also did not permit sufficient elevation from the inboard edges of the catwalks and balconies to the outboard edges of catwalks and balconies to achieve sufficient slopes. In addition, the provision appears to call for the defense and indemnity of plaintiff against claims by third parties against plaintiff, which is not the case here.

**SPECIAL INTERROGATORY NO. 16:**

If your response to Interrogatory No. 14 was anything other than an unqualified “yes”, please IDENTIFY all DOCUMENTS upon which YOU support YOUR response.

**RESPONSE TO SPECIAL INTERROGATORY NO. 16:**

See plans for construction including, but not limited to, WNC 112017 – 112233. See also Cell-Crete’s letter to Western National Construction dated February 13, 2004. (Exh. 45, WNC 026197.) Investigation and discovery are continuing.

**SPECIAL INTERROGATORY NO. 17:**

If your response to Interrogatory No. 14 was anything other than an unqualified “yes”, please IDENTIFY all persons that YOU believe have knowledge or information supporting YOUR response.

**RESPONSE TO SPECIAL INTERROGATORY NO. 17:**

Joseph M. Barclay, Gary Penman. Investigation and discovery are continuing.

**SPECIAL INTERROGATORY NO. 18:**

Were all surfaces of YOUR concrete installed at the SUBJECT PROPERTY sloped a minimum one quarter inch (1/4”) per lineal foot (1’) as called for in the project plan and specifications?

**RESPONSE TO SPECIAL INTERROGATORY NO. 18:**

Objections. This interrogatory is vague, ambiguous, overbroad, assumes facts not in evidence, and calls for legal conclusion. Without waiving said objections, and subject thereto, responding party responds:

The project plans call for slope of catwalks to be one eighth inch (1/8”) per lineal foot (1’). Investigation and discovery are continuing.
SPECIAL INTERROGATORY NO. 19:

If your response to Interrogatory No. 18 was anything other than an unqualified "yes", please state all facts upon which YOU support YOUR response.

RESPONSE TO SPECIAL INTERROGATORY NO. 19:

Objections. This interrogatory is vague, ambiguous, overbroad, assumes facts not in evidence, and calls for legal conclusion. Without waiving said objections, and subject thereto, responding party responds:

The project plans call for slope of catwalks to be one eighth inch (1/8") per lineal foot (1'). Investigation and discovery are continuing.

SPECIAL INTERROGATORY NO. 20:

If your response to Interrogatory No. 18 was anything other than an unqualified "yes", please IDENTIFY all persons that YOU believe have knowledge or information supporting YOUR response.

RESPONSE TO SPECIAL INTERROGATORY NO. 20:

Affiliated with McLarand, Vasquez & Partners, Inc.: Gary Penman.

Affiliated with Cell-Crete: Joseph M. Barclay (VP operations), Patrick J. Barclay (VP), Patrick J. Brennan (former controller), Cecil Lopez (former superintendent).

Affiliated with Western National Construction: Brian Winley (Director Operations), Keyston Smith (project engineer), Gary Wright, Gary Love, Rosemary Davis (accounts payable), Scott Buerger (superintendent).

Investigation and discovery are continuing.

SPECIAL INTERROGATORY NO. 21:

If your response to Interrogatory No. 18 was anything other than an unqualified "yes", please IDENTIFY all DOCUMENTS upon which YOU support YOUR response.

RESPONSE TO SPECIAL INTERROGATORY NO. 21:

See project plans, for example, Sheet AA1-2.2 (WNC 112028).
SPECIAL INTERROGATORY NO. 22:

If your response to Interrogatory No. 18 was anything other than an unqualified “yes,” please IDENTIFY all persons that YOU believe have knowledge or information supporting YOUR response.

RESPONSE TO SPECIAL INTERROGATORY NO. 22:

This interrogatory is duplicative of interrogatory no 20.

Dated: August 26, 2015

RYAN & LIFTER
A Professional Corporation

By /s/ JILL J. LIFTER
GARY A. BERTICEVICH
Attorney for Defendant & Cross-Defendant
CELL-CRETE CORPORATION
VERIFICATION

I, the undersigned, certify and declare that I have read the foregoing CELL-CRETE CORPORATION'S RESPONSES TO PLAINTIFF CILKER APARTMENTS, LLC's SPECIAL INTERROGATORIES, SET ONE and know its contents. The statement following the box checked is applicable.

[ ] I am a party to this action. The matters stated in the document described above are true of my own knowledge and belief except as to those matters stated on information and belief, and as to those matters I believe them to be true.

[ ] I am an officer [ ] a partner [ ] a __________________________ of CELL-CRETE CORPORATION, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the document described above are true.

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

Executed on August 24, 2015, at Hayward, California.

[Signature]

JOSEPH BARCLAY
PROOF OF ELECTRONIC SERVICE

CASE NAME: Cilker Apartments, LLC v. Western National Construction, et al.

CASE NUMBER: 113CV258281

DATE OF SERVICE: August 26, 2015

DESCRIPTION OF DOCUMENTS SERVED:

CELL-CRETE CORPORATION's RESPONSE TO PLAINTIFF CILKER APARTMENTS LLC'S SPECIAL INTERROGATORIES, SET ONE

I am over the age of 18 years and not a party to or interested in the above-named case. I am an employee of Ryan & Lifter, A Professional Corporation, and my business address is 2010 Crow Canyon Place, Suite 330, San Ramon, California. On August 26, 2015, I served a true copy of the document(s) described above by E-Mail or Electronic Transmission: Based on the Court’s Order in this case, I electronically served the above document(s) through SCEFILING website on the interested parties to this action, as follows:

X By email or electronic transmission. The document(s) were transmitted via internet to www.scefiling.org, for electronic service on the attorney(s) of record and/or parties pro per or interested parties in the above-entitled action, by selecting all party recipients listed on the on-line database for this action. Upon completion of the transmission, a receipt is issued to the sending party certifying and acknowledging receipt and reporting the transmission as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 26, 2015 at San Ramon, California.

Candi C. Earle

ELECTRONIC PROOF OF SERVICE
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