

DISTRICT COURT, COUNTY OF SUMMIT, STATE OF COLORADO 501 North Park Avenue Breckenridge, CO 80424 (970) 453-2272	▲ COURT USE ONLY ▲ Case No.: 2021CV30036 Div.: K
<p>Plaintiff: DILLON BAY IN CORINTHIAN HILL CONDOMINIUM OWNERS ASSOCIATION, INC., a Colorado nonprofit corporation,</p> <p>v.</p> <p>Defendants: BLACK DIAMOND CONSTRUCTION, a Colorado corporation; and PATRICK T. EAGAN, an individual.</p>	
Attorneys for Plaintiff: ORTEN CAVANAGH HOLMES & HUNT, LLC Jonah G. Hunt, No. 34379 Joseph A. Bucceri, No. 41211 Address: 1445 Market Street, Suite 350 Denver, CO 80202 Phone Number: (720) 221-9780 Fax Number: (720) 221-9781 Email: jhunt@ochhoalaw.com	
PLAINTIFF’S COMBINED DISCOVERY REQUESTS TO DEFENDANTS PURSUANT TO C.R.C.P. 33, 34 AND 36	

Plaintiff Dillon Bay in Corinthian Hill Condominium Owners Association, Inc. (“Plaintiff” or “Association”), by and through its attorneys Orten Cavanagh Holmes & Hunt, LLC, pursuant to C.R.C.P. 33, 34 and 36, hereby propounds the following Combined Discovery Requests upon the Defendants Black Diamond Construction (“Black Diamond”) and Patrick T. Eagan. (“Mr. Eagan”; Collectively “BD”), as follows:

INSTRUCTIONS

The following instructions and definitions apply to each individual interrogatory, request for production of documents and request for admission (“Discovery Requests”) contained herein:

1. These are general instructions. For time limitations, requirements for service on other parties and other details, *see* C.R.C.P. 16(b)(1)(IV), 26, 33, 34, 121 § 1-12 and the cases construing those Rules.

2. These Discovery Requests do not change existing law relating to interrogatories, requests for production or requests for admissions, nor do they affect the answering party's right to assert any privilege or objection.

3. These Discovery Requests are addressed to BD and should be answered and responded to by an authorized representative of BD.

4. Pursuant to C.R.C.P. 33, 34 and 36, BD is hereby requested to answer, separately and fully, in writing under oath, each of the following interrogatories, request for production and request for admission. BD is required to serve a copy of its answers and objections, if any, to these Discovery Requests on counsel for the Association within 35 days after service. In BD's answers to these Discovery Requests, please restate the text of each interrogatory, request for production and request for admission so that it precedes the response thereto.

5. In answering the interrogatories, please furnish all information available to BD, including information in the possession of BD's attorneys, its investigators, and all persons acting on BD's behalf, not merely information based on BD's knowledge. If BD cannot answer an interrogatory in full after exercising due diligence to secure the information, so state in BD's answer, and answer to the extent possible, stating whatever information or knowledge BD has and what efforts BD made to obtain the information necessary to answer the interrogatory.

6. BD should produce all documents in its possession, custody or control for inspection and copying in accordance with C.R.C.P. 34. Documents are to be produced at the offices of Orten Cavanagh Holmes & Hunt, LLC, or at such other time and location as agreed to by counsel.

7. If BD objects to an interrogatory, a request for production or request for admission, specifically identify the objection and the portion of the interrogatory or request to which it is directed. If BD objects to a portion of an interrogatory or request for production, please respond to the remainder.

8. If BD asserts that any part of any Discovery Request set forth below is unclear or vague in any manner, please state with precision and in detail the manner in which BD claims the Discovery Request is vague or unclear with reference to the word(s) or phrase(s) in the Discovery Request about which BD complains.

9. When answering each interrogatory, please identify with specificity all documents expressly referred to in BD's answer, and all documents reviewed in preparing BD's answer.

10. When answering each interrogatory, if the answer would refer only to Mr. Eagan individually and not to Black Diamond, please clearly indicate so in the answer.

11. If you assert that any part of any Discovery Request set forth below is objectionable because it is overly broad or unduly burdensome, please state with precision and in detail the reason(s) that BD objects on these grounds with reference to the best estimate of the resources and time that would be needed to respond to it.

12. If any document identified in an answer to an interrogatory or a response to a request for production was, but no longer is, in BD's possession or subject to BD's custody or control, or was known to BD but is no longer in existence, please describe fully what became of that document.

13. If any requested document cannot be produced in full, please produce it to the extent possible, specifying each reason for BD's inability to produce the remainder and stating whatever information, knowledge or belief BD has concerning the non-produced portion.

14. If any information or document responsive to any interrogatory or request for production is withheld based on any claim or privilege or otherwise, please state the following in a privilege log produced at the same time as BD's responses to requests for production:

- a. date of the document;
- b. author of the document;
- c. addressee of the document;
- d. type of document;
- e. nature of privilege claimed;
- f. identity of the person or entity asserting the privilege;
- g. identity of all persons who have had access to or received copies of the document; and
- h. the specific interrogatory or request for production to which such document would be responsive.

15. Pursuant to C.R.C.P. 26(e), these Discovery Requests are continuing in nature and require supplemental answers if BD obtains further information between the time answers are served and the time of final judgment. Please include in such supplemental responses the date and manner in which further or different information came to BD's attention.

DEFINITIONS

Words in **BOLDFACE CAPITALS** in these Discovery Requests are defined as follows:

1. “**YOU**” and “**YOUR**” mean Black Diamond Construction and/or Mr. Eagan, including but not limited to, its agents and employees and anyone else acting on **YOUR** behalf. To the extent any response involves differing accounts from Black Diamond Construction and Mr. Eagan, state responses for both, identifying which response is attributable to each Defendant.

2. “**YOU OR ANYONE ACTING ON YOUR BEHALF**” includes **YOU**, **YOUR** agents, **YOUR** insurance companies (including their agents and their employees), **YOUR**

attorneys, **YOUR** accountants, **YOUR** investigators, **YOUR** management companies (including their agents and their employees) and anyone else acting on **YOUR** behalf.

3. “**PERSON**” or “**PERSONS**” includes a natural person, firm, association, organization, partnership, business, trust, corporation or public entity.

4. “**LAW FIRM**” means Orten Cavanagh Holmes & Hunt, LLC, having offices at 1445 Market Street, Suite 350, Denver, CO 80202.

5. “**DOCUMENT**” or “**DOCUMENTS**” is defined to be synonymous in meaning and equal in scope to the usage of the term in C.R.C.P. 34(a) and the definitions of "writings and recordings" "photographs" "original" and "duplicate" contained in C.R.E. 1001 and are meant to include, without limiting their generality, the original (or a copy when the original is not available) and non-identical copy (including those which are non-identical by reason of notations or markings) of any employment records or files, sign, books, pamphlet, periodical, letter, report, memorandum, handwritten note, notation, message, telegram, facsimile, table, record, draft, diary, study, analysis, summary, magazine, booklet, circular, bulletin, instructions, minutes, photographs, purchase order, bill, check, tabulation, questionnaire, survey, drawing, sketch, working paper, chart, graph, study, index, tape, computer program (including input and output), correspondence, records of purchase or sale, authority for expenditure, contracts, agreements, leases, invoices, expense records, trip reports, releases, appraisals, analysis, valuations, estimates, options, financial statements, accounting records, income statements, electronic or other transcription or taping of telephone or personal conversations or conferences, or and **ALL** other written, printed, typed, punched, taped, filmed, or graphic matter, or tangible things, of whatever description, however produced or reproduced (including computer stored or generated data, together with instructions and programs necessary to search or retrieve such data), or other documentation or anything pertaining, describing, referring or relating, directly or indirectly, in whole or in part, the matter requested and shall include **ALL** attachments and enclosures.

6. The term “**COMMUNICATION**” or “**COMMUNICATIONS**” shall mean any communication or transmittal of information whatsoever, whether written, oral, electronic, or otherwise between or among any persons.

7. The term “**RELATES**”, “**RELATED**”, “**RELATING**”, “**REGARDS**”, “**REGARDING**” means containing, constituting, concerning, showing, mentioning, reflecting or pertaining or referring in any way, directly or indirectly, to the referenced subject.

8. “**ALL**” includes the word “**ANY**” and vice-versa.

9. “**ADDRESS**” means the street address, including the city, state, and zip code.

10. “**IDENTIFY**” when used in reference to a natural **PERSON**, means to state that person’s name, title, **ADDRESS** and phone number, present or last known business **ADDRESS** and phone number, present or last known position, title, job description, and business affiliation,

and position, title, job description, and business affiliation at the time in question with respect to the particular interrogatory or request for production of documents involved.

11. “**IDENTIFY**” when used in reference to an entity other than a natural **PERSON** or individual, means to state its full name, present or last known **ADDRESS** and phone number, and the identity of the natural **PERSON** or individual who has the best knowledge of the matter with respect to which the entity has been identified.

12. “**IDENTIFY**” when used in reference to a **DOCUMENT**, means to state its title, type (e.g. letter, memorandum, etc.), date, author(s), or originator(s), addressee(s), or recipient(s), subject matter, any file numbers that may be used in locating the **DOCUMENT**, including, but not limited to, any bates numbering system, the name, present or last known **ADDRESS** and phone number of all persons having possession, custody, or control of such **DOCUMENT** and its disposition if no one presently has possession, custody, or control of the **DOCUMENT**.

13. “**IDENTIFY**” when used in reference to a fact, means to state all known facts within **YOUR** care, custody of control or that should be available to **YOU** based upon reasonable inquiry.

14. “**INCIDENT**” includes the circumstances and events surrounding the alleged accident, injury, or other occurrence or breach of contract giving rise to this action or proceeding.

15. “**PROJECT**” shall mean the construction of exterior decks, patios, ramps, walkways, rails and stairs/staircases at the Dillon Bay condominium complex located at 32-72 Corinthian Circle, Dillon, CO 80435 in Summit County, Colorado which is the subject of this action.

PATTERN INTERROGATORIES

1. (1.1) State the name, **ADDRESS**, telephone number and relationship to **YOU** of each **PERSON** who prepared or assisted in the preparation of the responses to these interrogatories. (Do not identify anyone who simply typed or reproduced the responses).

2. (3.1) Are **YOU** an entity? If so, state:

- a. the type of entity you are;
- b. the date and place where you were formed;
- c. your current name;
- d. all names under which you have operated within the last ten years, and the dates each name was used;
- e. the **ADDRESS** of your principal place of business

3. (3.4) State the name, **ADDRESS**, and the job title of the manager or managers most responsible for overseeing the **INCIDENT** or events leading to the **INCIDENT**.

4. (12.2) Have **YOU OR ANYONE ACTING ON YOUR BEHALF** interviewed any individual concerning the **INCIDENT**? If so, for each individual state:

- a. The name, **ADDRESS** and telephone number of the individual interviewed;
- b. The date of the interview; and
- c. The name, **ADDRESS** and telephone number of the person who conducted the interview.

*[Be sure to include all interviews conducted by or on behalf of **YOUR** insurers.]*

5. (12.3) Have **YOU OR ANYONE ACTING ON YOUR BEHALF** obtained a written or recorded statement from any individual concerning the **INCIDENT**? If so, for each statement state:

- a. The name, **ADDRESS** and telephone number of the individual from whom the statement was obtained;
- b. The name, **ADDRESS** and telephone number of the individual who obtained the statement;
- c. The date the statement was obtained;
- d. The name, **ADDRESS** and telephone number of each **PERSON** who has the original statement or a copy.

*[Be sure to include all statements obtained by or on behalf of **YOUR** insurers.]*

6. (12.7) Have **YOU OR ANYONE ACTING ON YOUR BEHALF** inspected the scene of the **INCIDENT**? If so, for each inspection state:

- a. The **ADDRESS** and telephone number of the individual making the inspection (except for expert witnesses covered by C.R.C.P. 26(a)(2) and (b)(4));
- b. The date of the inspection.

7. (15.1) Identify each denial of a material allegation and each affirmative defense in **YOUR** pleadings and for each:

- a. State all facts upon which **YOU** base the denial or affirmative defense;
- b. State the names, **ADDRESSES** and telephone numbers of all **PERSONS** who have knowledge of those facts;
- c. Identify all **DOCUMENTS** and other tangible things which support **YOUR** denial or affirmative defense, and state the name, **ADDRESS** and telephone number of the **PERSON** who has each document.

8. (50.1) For each agreement alleged in the pleadings:
- a. identify all **DOCUMENTS** that are part of the agreement and, if you do not have copies of all documents, for each document you do not have, state the name, **ADDRESS**, and telephone number of each **PERSON OR ENTITY** who has the **DOCUMENT**;
 - b. state each part of the agreement not in writing, the name, **ADDRESS**, and telephone number of each **PERSON OR ENTITY** agreeing to that provision, and the date that part of the agreement was made;
 - c. identify all **DOCUMENTS** that evidence each part of the agreement not in writing and, if you do not have copies of all documents, for each document you do not have, state the name, **ADDRESS**, and telephone number of each **PERSON OR ENTITY** who has the **DOCUMENT**;
 - d. identify all **DOCUMENTS** that are part of each modification to the agreement, and, if you do not have copies of all documents, for each document you do not have, state the name, **ADDRESS**, and telephone number of each **PERSON OR ENTITY** who has the **DOCUMENT**;
 - e. state each modification not in writing, the date, and the name, **ADDRESS**, and telephone number of each **PERSON OR ENTITY** agreeing to the modification, and the date the modification was made;
 - f. identify all **DOCUMENTS** that evidence each modification of the agreement not in writing and, if you do not have copies of all documents, for each document you do not have, state the name, **ADDRESS**, and telephone number of each **PERSON OR ENTITY** who has the **DOCUMENT**.

9. (50.3) If performance of any agreement alleged in the pleadings was excused, identify each agreement excused and state why performance was excused.

10. (50.4) If any agreement alleged in the pleadings was terminated by mutual agreement, release, accord and satisfaction, or novation, identify each agreement terminated and state why it was terminated including dates.

NON-PATTERN INTERROGATORIES

1. **IDENTIFY** and describe the involvement of all principals, officers, directors, supervisors, superintendents, project managers and/or subcontractors employed by **YOU** (whether as an employee, agent or independent contractor) and all **PERSONS** who substantially performed all or any part of the design, construction, and/or repair of the **PROJECT**. For each **PERSON**, please **IDENTIFY** their official title and the specific work they performed on the **PROJECT**.

2. Please **IDENTIFY** all items of corporate property (including bank accounts, etc.) that are or were used by Mr. Eagan for personal use.

3. Please **IDENTIFY** all actions by **YOU** that have failed to adequately respect the corporate entity as separate from Mr. Eagan.

4. Please **IDENTIFY** all inspections pertaining to the **PROJECT** performed by **YOU** or any other **PERSON** at **YOUR** direction or request.

5. Please **IDENTIFY** the manufacturer(s) of the products or components of the exterior decks, patios, walkways and staircases installed at the **PROJECT** and all identifying information regarding the specific products used.

6. Please **IDENTIFY** the manufacturer of the siding, trim, or any and all other materials used and/or products installed on the exterior of the **PROJECT** and any identifying information regarding the specific products used.

7. **IDENTIFY** each subcontractor who performed work on the **PROJECT**.

8. **IDENTIFY** any subcontractors on the **PROJECT** who **YOU** contend may be liable for the construction defects alleged in the Plaintiff's Complaint and explain the basis for such contention.

9. For each **PERSON** identified in response to Interrogatory No. 7, **IDENTIFY** and describe any written or verbal agreement, contract or conversation between **YOU** and that **PERSON** relating to the scope of their work on the **PROJECT**.

10. Please state the cost to **YOU** of the constructed improvements of the **PROJECT**.

11. Please **IDENTIFY** all repairs and/or warranty work, performed by **YOU** or any subcontractor at the direction of **YOU** or at **YOUR** request, at the **PROJECT**, including but not limited to, punch-lists, service requests, work orders, purchase orders and invoices. Please describe, with specificity, the repair or other work performed, the date the work was performed, and **IDENTIFY** the person who performed the work.

12. If **YOU** claim that another person performed work with **YOU** or altered **YOUR** work on the **PROJECT**, identify that **PERSON**, provide the reason for this contribution or alteration and identify all persons that can testify to the contribution or alteration and all documents relating to the contribution or alteration.

13. Please **IDENTIFY** those portions of the **PROJECT** that **YOU** claim had the proper permit(s) subject to the appropriate governmental regulation(s), and **IDENTIFY** any parts of the **PROJECT** that did not have the required permits.

14. Please **IDENTIFY** the current location of the \$17,000 provided for the purchase of iron railings, including the location of those funds since **YOU** came into possession of said

funds, and **IDENTIFY** the **PERSON** who owns and/or controls the account where said funds have been located since **YOU** received them.

15. Please **IDENTIFY** the **PERSON** or **PERSONS** that **YOU** contracted or communicated with regarding the manufacturing and purchase of the iron railings.

16. Please **IDENTIFY** any materials that have been purchased by **YOU** or at **YOUR** request that is intended for use in the **PROJECT**, but not yet installed. Please include the date of purchase for each.

17. Please **IDENTIFY** all locations of all materials listed in **YOUR** answer to interrogatory 16 since the purchase of said items, and all **PERSONS** who have access to those materials.

18. **ADMIT** that **YOU** have not returned the funds for the iron railings to the Association.

19. Please **IDENTIFY** when **YOU** became aware that the work at the **PROJECT** was not done in a workmanlike manner and/or not completed with a reasonable professional standard of care.

20. Please **IDENTIFY** when **YOU** became aware that the Association claimed the work on the **PROJECT** was substandard.

21. At the time of the **INCIDENT**, was there in effect any policy of insurance through which **YOU** were or might be insured in any manner (for example, primary, pro rata, or excess liability coverage or medical expense coverage) for the damages, claims, or actions that have arisen out of the **INCIDENT**? If so, for each policy state:

- a. The kind of coverage;
- b. The name and **ADDRESS** of the insurance company;
- c. The name, **ADDRESS** and telephone number of each named insured;
- d. The policy number;
- e. The limits of coverage for each type of coverage contained in the policy;
- f. Whether any reservation of rights or controversy or coverage dispute exists between **YOU** and the insurance company;
- g. The name, **ADDRESS** and telephone number of the custodian of the policy.

REQUESTS FOR PRODUCTION

1. Produce complete copies of all insurance policies in which any of the parties or potentially liable non-parties designated by any of the parties to date are identified or designated as insureds or additional insureds, including but not limited to, all liability (underlying, excess or umbrella), property, errors and omissions, director, officer or other insurance policies, from the

date the **PROJECT** was built, through to the present, including but not limited to, the declarations pages, the entire policy, and any endorsements thereto.

2. Produce all **DOCUMENTS** pertaining to the corporate governance of Black Diamond, including articles of incorporation, bylaws, meeting minutes, corporate resolutions, consents to action, etc.

3. Produce all **DOCUMENTS** pertaining to the initial capitalization of Black Diamond.

4. Produce all **DOCUMENTS** pertaining to financial accounts held by Black Diamond from December 2018 through September 2020, and any **DOCUMENTS** related to who has access and/or control of said accounts. Account nos. may be redacted.

5. Produce all correspondence between **YOU** and any of **YOUR** insurers relating to the insurer's reservation of its right to deny coverage in whole or in part under any insurance policy which in any way may provide coverage or apply to the claims at issue in this lawsuit.

6. Produce copies of all **DOCUMENTS** pertaining to the architectural and structural design of the **PROJECT**, including but not limited to, any memoranda, requests for information, architect's supplemental instructions, letters, reports, drawings, plans, specifications and project manuals.

7. Produce all subcontracts for the **PROJECT**.

8. Produce all **COMMUNICATIONS** between you and all subcontractors regarding the **PROJECT**.

9. Produce all invoices for the purchase of, and/or for the installation of, any products installed at, or intended for use in, the **PROJECT**.

10. Produce installation instructions for any products installed at the **PROJECT**, including but not limited to, sealant and/or balcony/deck membrane system elements.

11. Produce all daily logs, notes or meeting minutes for the **PROJECT**, including but not limited to, all notebooks, diaries, day timers, or other similar **DOCUMENTS** pertaining to the **PROJECT**.

12. Produce copies of all warranty agreements provided to **YOU** by subcontractors or manufacturers.

13. Produce all **DOCUMENTS** relating to claims regarding the work on the **PROJECT** being substandard or that does not conform to the specifications of the contract, including any responses to said claims.

14. Produce any and all copies of **DOCUMENTS** relating to repair and/or warranty work pertaining to the **PROJECT**, including but not limited to, punch-lists, service requests, work orders, purchase orders and invoices.

15. Produce all e-mails relating to the **PROJECT**. If any e-mails relating to the **PROJECT** have been erased, deleted or otherwise disposed of, please describe when they were erased and **IDENTIFY** the make, location and owner of the computer from which they were erased, deleted or otherwise disposed of. If **YOU** contend that any e-mails relating to the **PROJECT** are no longer in **YOUR** possession or control and **YOU** are no longer able to access such emails, please **IDENTIFY** the make, location and owner of the computer or server on which they are stored and the reason, if any, that **YOU** are no longer able to access such emails.

16. Produce all **DOCUMENTS** referred to in any of **YOUR** interrogatory responses.

Dated: July 30, 2021.

ORTEN CAVANAGH HOLMES & HUNT, LLC

By: /s/ Jonah G Hunt
Jonah G. Hunt, No. 34379

*Counsel for Plaintiff Dillon Bay at Corinthian Hills
Condominium Owners Association, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of July, 2021, a true and correct copy of the foregoing was electronically served via email addressed to:

All counsel of record.

/s/ Heather Cline
Heather Cline, paralegal