

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

IN THE MATTER OF

THYSSENKRUPP ACCESS CORP.

Respondent.

CPSC DOCKET NO.: 21-1

RESPONDENT'S ANSWER TO COMPLAINT

Respondent TK Access Solutions Corp., formerly known as thyssenkrupp Access Corp. (“the Company”), by and through its undersigned counsel, hereby files this Answer to the CPSC Complaint. The Company: (i) denies all titles, headings, and subheadings contained in the Complaint; and (ii) denies, unless expressly admitted, all terms of art contained or defined in the Complaint. The Company further states as follows:

1. The Company denies the definition of the term “Elevators” contained in Paragraph 1 of the Complaint. Specifically, while the Company admits that it manufactured and/or distributed elevator components (“Components”) for on-site installation in homes by professionals in the building trades that are the subject of this Complaint, it denies that the Consumer Product Safety Act (“CPSA”), codified as amended at 15 U.S.C. §§ 2051-89, including Section 15 of the CPSA, 15 U.S.C. § 2064, applies to an installed elevator or to the Components. The Company denies the definition of the term of art “Elevator” contained in Paragraph 1 of the Complaint as the Company objects, *inter alia*, both to the implied assertion that installed elevators containing the Components are subject to the CPSA and to the allegation that these installed elevators or Components, even if they were within the reach of the CPSA, present a substantial risk of injury that entitles Complaint Counsel to the relief requested or requires any measures beyond those the Company has already undertaken and continues to

undertake. The remaining allegations contained in Paragraph 1 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, the Company denies the remaining allegations contained in Paragraph 1 of the Complaint.

2. The Company admits the allegations contained in Paragraph 2 of the Complaint.

3. The allegations contained in Paragraph 3 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, the Company denies the allegations contained in Paragraph 3 of the Complaint.

4. The Company admits the allegations contained in Paragraph 4 of the Complaint.

5. The Company admits that TK Access Solutions Corp., formerly known as thyssenkrupp Access Corp., is a Delaware Corporation with registered offices in the name of the Company located at P.O. Box 545, Clinton, Missouri 64735.

6. The Company admits the allegations contained in Paragraph 6 of the Complaint to the extent it agrees Access Industries, Inc., was acquired in or about 1999. The Company reiterates its denial of the term "Elevators" reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies the remaining allegations contained in Paragraph 6 of the Complaint.

7. The Company admits the allegations contained in Paragraph 7 of the Complaint to the extent it agrees that National Wheel-O-Vator was acquired in or about 2008. The Company reiterates its denial of the term "Elevators" reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies the remaining allegations contained in Paragraph 7 of the Complaint.

8. The Company admits the allegations contained in Paragraph 8 of the Complaint to the extent it agrees thyssenkrupp Access Manufacturing, LLC, was merged into the Company on

or about January 31, 2013. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies the remaining allegations contained in Paragraph 8 of the Complaint.

9. The allegations contained in Paragraph 9 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, the Company denies that it is a “manufacturer” or “distributor” of a “consumer product” as defined in the Consumer Product Safety Act (“CPSA”), 15 U.S.C. § 2052(a)(5), and denies all remaining allegations contained in Paragraph 9 of the Complaint.

10. The Company admits the allegations contained in Paragraph 10 of the Complaint only to the extent it agrees that the Company manufactured and/or distributed Components until 2012 for on-site residential installation by learned, professional, non-consumer installers. Site-specific selection of these Components and other features needed to complete the installation, such as hoistway materials and finishes, hoistway doors or certain elevator components, not furnished by the Company (“Non-TK Products”), were under the direction and control of learned-intermediary, non-consumer third parties, including, but not limited to, architects, builders, remodelers, and contractors (collectively referred to hereinafter as “the Trade Professionals”). The Company denies that it manufactured and/or distributed Components for direct sale to or installation by consumers, or that installation information was intended for or directed to consumers. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The remaining allegations contained in Paragraph 10 of the Complaint are legal conclusions to

which no response is required. To the extent a response is required, the Company denies all remaining allegations contained in Paragraph 10 of the Complaint.

11. The Company admits the allegations contained in Paragraph 11 of the Complaint only to the extent it agrees the Company manufactured and/or distributed Components to the Trade Professionals under the following model names: Chaparral, Destiny, LEV, LEV II, LEV II Builder, Rise, Volant, Windsor, Independence, and Flexi-Lift. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 11 of the Complaint.

12. The Company admits the allegations contained in Paragraph 12 of the Complaint only to the extent it agrees the Company manufactured and/or distributed Components to the Trade Professionals at their selection or direction through Access Industries, Inc., formerly of Missouri; Thyssenkrupp Access Manufacturing, LLC, and National Wheel-O-Vator Company, Inc., both formerly of Roanoke, Illinois; and the Company. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 12 of the Complaint.

13. The Company admits the allegations contained in Paragraph 13 of the Complaint only to the extent it agrees the Company manufactured and/or distributed Components to the Trade Professionals at their selection or direction. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company is without sufficient knowledge or information to admit or deny all remaining allegations contained in Paragraph 13 of the Complaint.

14. The Company admits the allegations contained in Paragraph 14 to the extent it agrees the Company manufactured and/or distributed an unknown number of Components to the Trade Professionals at their selection or direction. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 14 of the Complaint.

15. The Company admits the allegations contained in Paragraph 15 of the Complaint only to the extent it provided Trade Professionals responsible for installing the Components with instructions for their on-site installation of the Components as improvements to realty. These included instructions to comply with all applicable voluntary or mandatory standards, such as the then-applicable version of the American Society of Mechanical Engineers’ (“ASME”) A17.1, *Safety Code for Elevators and Escalators*, which included provisions, not mentioned in the Complaint, that limited the space between the hoistway door and the edge of the landing (“landing sill”) to three inches and the space between the hoistway door and the car gate to not more than five inches (the “3-Inch/5-Inch Rule”). *See* ASME A17.1-2007 § 5.3.1.7.2. These also included instructions to comply with all applicable state and local building codes, many of which adopted one or more versions A17.1 in whole or in part and with or without amendments at different times. The Company is without sufficient knowledge or information to admit or deny the extent of reliance on its materials by third-party installers or Trade Professionals, but, upon information and belief, Trade Professionals were responsible for installing the Components in accordance with applicable state and local building codes and were constructively knowledgeable regarding applicable requirements. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial

as if set forth fully herein. The Company denies all remaining allegations Contained in Paragraph 15 of the Complaint.

16. The Company incorporates by reference its response to Paragraph 15 of the Complaint. The Company denies the term of art “Installation Materials” contained in Paragraph 16 of the Complaint as the Company objects, *inter alia*, to that term’s failure to include other materials within the knowledge of the Trade Professionals at the time of installation, including, but not limited to, the then-current versions of ASME A17.1 and state and local building, fire, and electrical codes. The Company denies all remaining allegations contained in Paragraph 16 of the Complaint.

17. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. As the actual cost of any installation depended on factors unique to the occupancy for which each site-specific subset of the Components was selected and installed by the Trade Professionals, and, in part because of the separate costs for the labor to install the Components and to purchase and install External Materials, dealer costs for the purchase of elevator components are estimated to be one-third to one-half less than the installed cost to homeowners. The Company is without sufficient knowledge or information to admit or deny the remaining allegations contained in Paragraph 17 of the Complaint.

18. The Company admits the allegations contained in Paragraph 18 of the Complaint to the extent that an installed elevator includes a passenger car that moves between floors in a shaft or hoistway built by a Trade Professional. The Company denies that it, rather than the Trade Professionals, was responsible for the design, materials, or construction of hoistways or the selection or installation of hoistway doors. The Company reiterates its denial of the term

“Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 18 of the Complaint.

19. The Company admits that an on-site installation of a residential elevator typically includes installation of a lockable hoistway door that allows the homeowner to restrict access to the elevator by locking the hoistway door. The Company further admits the allegations contained in Paragraph 19 of the Complaint to the extent that, upon information and belief, except as noted below, it agrees that the hoistway or hallway door, which was not sold, selected, or installed by the Company but by third-party Trade Professionals, is generally an ordinary residential interior door produced and sold by an independent door manufacturer. The Company denies that it intended or directed that the Trade Professionals install the Flexi-Lift model adjacent to any swinging hoistway door, as the Flexi-Lift model included an integrated, four-panel, center-sliding hoistway door mounted approximately 1.25 inches from the car gate. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 19 of the Complaint.

20. The Company admits the allegations contained in Paragraph 20 of the Complaint to the extent it agrees the installed Components do not automatically lock a hoistway door when the car is parked at the floor containing that hoistway door. The Company is without sufficient knowledge or information to admit or deny the extent to which homeowners or occupants may independently lock the hoistway door to prevent unauthorized access. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and

incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 20 of the Complaint.

21. The Company admits the allegations contained in Paragraph 21 of the Complaint to the extent it agrees the car contains an interior gate, which is often an accordion gate or scissor gate. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 21 of the Complaint.

22. The Company admits the allegations contained in Paragraph 22 of the Complaint to the extent it agrees that, by design, accordion gates have peaks and valleys when opened that flatten considerably as the gate is pulled closed, depending on the width of the entry and size of the accordion gate. The Company further admits that the accordion-type design allows the gate to open and retract to one side of the car entry and allows passengers to enter and exit the car. The Company denies all remaining allegations contained in Paragraph 22 of the Complaint.

23. To the extent Paragraph 23 pertains to accordion gates installed in elevator cars, the Company to the extent it agrees that, by design, accordion gates have peaks and valleys when opened that flatten considerably as the gate is pulled closed to a degree that depends on the width of the entry and size of the accordion gate. The Company denies all remaining allegations contained in Paragraph 23 of the Complaint.

24. The Company admits the allegations contained in Paragraph 24 of the Complaint to the extent it agrees scissor gates are designed with metal grates or lattice and open or retract to one side of the car entry to allow passengers to enter and exit the elevator. The Company denies all remaining allegations contained in Paragraph 24 of the Complaint.

25. The Company admits the allegations contained in Paragraph 25 of the Complaint to the extent it agrees that both accordion gates and scissor gates allow for some degree of deflection. The Company denies that all accordion gates and scissor gates allow for equal degrees of deflection. The Company denies all remaining allegations contained in Paragraph 25 of the Complaint.

26. The Company admits the allegations contained in Paragraph 26 of the Complaint to the extent it agrees deflection toward the interior of the car, if any, may create additional space between the car gate and the hoistway door. The Company denies all remaining allegations contained in Paragraph 26 of the Complaint.

27. The Company denies the allegations contained in Paragraph 27 as worded. The Company admits only that a minority of the smallest children older than two years can have head breadths less than five inches, so such children can fit in a space larger than four inches between a hoistway door and the elevator car gate, which would depend on the actual size of that space not specified in Paragraph 27 of the Complaint and other details not specified therein. The Company admits the allegations contained in Paragraph 27 of the Complaint to the extent it agrees the version of the voluntary standard applicable to the installation of new residential elevators, ASME A17.1, adopted in 2016, formally reduced the recommended distance from the hoistway door to the interior car gate from five inches to four inches (a one inch or 20 percent reduction), and reduced the recommended distance from the hoistway door to the sill from 3 inches to $\frac{3}{4}$ inches (a reduction of $2\frac{1}{4}$ inches or 75 percent), but denies that this standard applied at the time the Components were installed. The Company denies all remaining allegations contained in Paragraph 27 of the Complaint.

28. Upon information and belief, the Company admits the allegations contained in Paragraph 28 to the extent it agrees the residences for which the Trade Professionals selected the Components could include homes, vacation rentals, and other premises and that children may be present in any home. The Company is without sufficient knowledge or information to admit or deny how “common” installation in any specific category of residence may have been. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 28 of the Complaint.

29. The Company is without sufficient information to admit or deny the allegation that children are “likely” to use a residential elevator. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 29 of the Complaint.

30. The Company is without sufficient information to admit or deny the allegation that children are “likely to play in or around” an installed residential elevator. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 30 of the Complaint.

31. The Company admits the allegations contained in Paragraph 31 of the Complaint to the extent it agrees a child may enter an unlocked hoistway door and occupy the space between the hoistway door and sill and the hoistway door and elevator car gate (collectively the “Gap Space”) if Trade Professionals failed to adhere to specifications, applicable building codes, and voluntary and mandatory standards (collectively referred to hereinafter as “Specifications”)

at the time of the installation. The Company denies that, at the time of the manufacture of the Components, the Gap Space between the hoistway door and the interior gate was limited to four inches pursuant to the then-in-force version of the applicable voluntary standard, ASME A17.1, or that the hoistway to interior gate limit was the sole relevant requirement for Trade Professionals to follow when building hoistways, installing hoistway doors, and installing the Components in a residence. The Company admits that, subsequent to its exiting the U.S. residential elevator market in 2012, it has recommended that homeowners reduce the Gap Space if the hoistway-to-sill measurement exceeds $\frac{3}{4}$ inches or the hoistway-to-gate measurement exceeds four inches because these measurements add an additional margin of safety to the already-protective 3-Inch/5-Inch Rule, but denies that the version of the applicable voluntary standard that established the current Gap Space provision, ASME A17.1-2016, was or is applicable or may be applied to the Company Components, which were produced prior to November, 2012, years before that revision's 2016 adoption. The Company denies the Complaint's defined term of art, "Hazardous Space," as this definition relies on the Gap Space measurements reflected in ASME A17.1-2016, which did not and do not apply to any of the Components manufactured by the Company or to installations of those Components prior to the effective date of any local adoption of ASME A17.1-2016 (as applicable to any particular installation), except as otherwise mandated by locally adopted codes and requirements at the time of such installation. The Company denies all remaining allegations contained in Paragraph 31 of the Complaint.

32. The Company reiterates its denial of the term "Hazardous Space" reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully

herein. The Company denies all remaining allegations contained in Paragraph 32 of the Complaint.

33. The Company admits that, where a hoistway door is left unlocked an unsupervised child, may be able to open the hoistway door, enter the Gap Space, and close the door behind them if the Gap Space is too large. The Company reiterates its denial of the term “Hazardous Space” reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 33 of the Complaint.

34. The Company admits the allegations contained in Paragraph 34 of the Complaint to the extent it agrees the hoistway door, which is selected and installed by a third party, whether a Trade Professional or the property owner, is locked when the car is in operation as a safety feature to prevent any person from gaining access to and falling into an empty hoistway. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company reiterates its denial of the term “Hazardous Space” reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 34 of the Complaint.

35. The Company admits the allegations contained in Paragraph 35 of the Complaint to the extent it agrees an unsupervised child who opens an unlocked hoistway door and enters a Gap Space created by a Trade Professional’s improper selection and installation of a hoistway door which failed to adhere to the Specifications, including the then-in-force ASME A17.1 3-Inch/5-Inch Rule, may be unable to open the hoistway door if, before the child re-opens the hoistway door, the car is called to another floor. On information, knowledge, and belief, the

Company denies that it is aware that any child has been trapped in a Gap Space where on-site installation by Trade Professionals adhered to the Specifications, including the 3-Inch/5-Inch Rule in effect at the time the Company's Components were installed. The Company reiterates its denial of the term "Hazardous Space" reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 35 of the Complaint.

36. Subject to its response to Paragraph 35 of the Complaint, the Company admits the allegations contained in Paragraph 36 of the Complaint.

37. Subject to its responses to Paragraphs 35 and 36 of the Complaint, the Company admits the allegations contained in Paragraph 37 of the Complaint.

38. Subject to its responses to Paragraphs 35, 36 and 37 of the Complaint, the Company admits the allegations contained in Paragraph 38 of the Complaint to the extent that it agrees that an unsupervised child who opens an unlocked hoistway door and enters an excessive Gap Space created by improper third-party selection and installation of the hoistway door by Trade Professionals which failed to adhere to the Specifications, including the 3-Inch/5-Inch Rule, may suffer serious injury or death if the elevator car is called to another floor before the child re-opens the hoistway door and exits the Gap Space. The Company reiterates its denial of the term "Hazardous Space" reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 38 of the Complaint.

39. The Company reiterates its denial of the term "Hazardous Space" reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully

herein. The Company is without sufficient information to admit or deny the remaining allegations contained in Paragraph 39 of the Complaint.

40. The Company denies that the interpretive rule at 16 C.F.R. § 1115.4 is applicable to the Components manufactured by the Company, selected by the Trade Professionals, and installed on-site as improvements to realty. The Company denies that the examples found in 16 C.F.R. § 1115.4 regarding purported defects in instructions, which relate to instructions provided to consumers, are relevant to providing Specifications, including recommendations to comply with all applicable building codes and voluntary and mandatory standards applicable to a specific installation, to non-consumer Trade Professionals. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company reiterates its denial of the term “Installation Materials” reflected in its response to Paragraph 16 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 40 of the Complaint.

41. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company reiterates its denial of the term “Installation Materials” reflected in its response to Paragraph 16 of the Complaint and incorporates that denial as if set forth fully herein. The Company reiterates its denial of the term “Hazardous Space” reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 41 of the Complaint.

42. The Company admits the allegations contained in Paragraph 42 of the Complaint to the extent it agrees the head breadths of children can vary and that, because of this variance,

the Company has, subsequent to its exiting the U.S. residential elevator market in 2012, recommended that homeowners reduce the Gap Space if the hoistway-to-sill measurement exceeds $\frac{3}{4}$ inches or the hoistway-to-gate measurement exceeds four inches as these measurements are incrementally less likely to permit the presence in that space of persons or objects larger than four inches while both the hoistway door and car gate are fully closed when compared to the 3-Inch/5-Inch Rule provided in the versions of ASME A17.1 then-in-force at the time the Components were manufactured and installed, as adopted by the relevant authority having jurisdiction for each installation. The Company denies all remaining allegations contained in Paragraph 42 of the Complaint.

43. The allegations contained in Paragraph 43 of the Complaint are too vague and non-specific to be understood or to permit the Company to respond, so the Company denies all allegations contained in Paragraph 43 of the Complaint while admitting that, where one or more of the Trade Professionals failed to adhere to the Specifications, including the 3-Inch/5-Inch Rule, and selected and/or installed the hoistway door in a manner that created an excessive Gap Space, children may become enclosed in that excessive Gap Space, and that, since 2016, ASME A17.1 recommended that the Gap Space should not exceed $\frac{3}{4}$ inches from the hoistway door to the sill or four inches from the hoistway door to the back of the interior car gate.

44. The Company reiterates its denial of the term “Installation Materials” reflected in its response to Paragraph 16 of the Complaint and incorporates that denial as if set forth fully herein. The allegations contained in Paragraph 44 of the Complaint are too vague and non-specific to be understood or to permit the Company to respond, so the Company denies all remaining allegations contained in Paragraph 44 of the Complaint.

45. The allegations contained in Paragraph 45 of the Complaint are too vague and non-specific to be understood or to permit the Company to respond, so the Company denies all allegations contained in Paragraph 45 of the Complaint while admitting that Trade Professionals' failure to adhere to the Specifications, including but not limited to the 3-Inch/5-Inch Rule, may have created an excessive Gap Space.

46. The Company reiterates its denial of the term "Elevators" reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company reiterates its denial of the term "Installation Materials" reflected in its response to Paragraph 16 of the Complaint and incorporates that denial as if set forth fully herein. The Company reiterates its denial of the term "Hazardous Space" reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 46 of the Complaint.

47. The Company denies that the version of the applicable voluntary standard that established the current four-inch limitation, ASME A17.1-2016, was or is applicable or may be applied to installation by Trade Professionals of Non-TK Products or the Company's Components, which were produced no later than 2012, prior to that revision's 2016 adoption. The Company denies that any of the Components it manufactured and/or distributed to Trade Professionals at their selection or direction failed to conform with the then-applicable version of ASME A17.1. The Company reiterates its denial of the term "Installation Materials" reflected in its response to Paragraph 16 of the Complaint and incorporates that denial as if set forth fully herein. The Company reiterates its denial of the term "Hazardous Space" reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 47 of the Complaint.

48. The Company reiterates its denial of the term “Installation Materials” reflected in its response to Paragraph 16 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 48 of the Complaint.

49. The Company denies that the version of the applicable voluntary standard that established the current ¾-inch and four-inch limitations, ASME A17.1-2016, was or is applicable or may be applied to the Company Components, which were manufactured no later than 2012, prior to that revision’s 2016 adoption, or to installation of such Components and Non-TK Products prior to the date the standard was adopted. The Company reiterates its denial of the term “Hazardous Space” reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 49 of the Complaint.

50. The Company reiterates its denial of the term “Installation Materials” reflected in its response to Paragraph 16 of the Complaint and incorporates that denial as if set forth fully herein. The Company reiterates its denial of the term “Hazardous Space” reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies that Gap Space measurements are more critical to the safe installation and use of home elevators than the myriad other safety-critical elements of the Specifications intended for Trade Professionals who install the Components, owners of the home in which the elevator is installed, and users of the installed home elevator. The Company denies all remaining allegations contained in Paragraph 50 of the Complaint.

51. The Company incorporates by reference its response to Paragraph 50 of the Complaint. The Company admits the allegations contained in Paragraph 51 of the Complaint to

the extent that it agrees that the Specifications provided for use in the on-site installation of the Components and Non-TK Products contained many specific measurements and directions regarding such topics as, but not limited to, Gap Space standards set forth in ASME A17.1, proper wiring, hoistway construction, and proper personal protective equipment to be used by the professional installer, each of which could be considered a critical safety element for the protection of the installer, an elevator user, or the ultimate homeowner. The Company reiterates its denial of the term “Installation Materials” reflected in its response to Paragraph 16 of the Complaint and incorporates that denial as if set forth fully herein. The Company reiterates its denial of the term “Hazardous Space” reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 51 of the Complaint.

52. The Company incorporates by reference its responses to Paragraphs 50 and 51 of the Complaint. The Company reiterates its denial of the term “Installation Materials” reflected in its response to Paragraph 16 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies that any special or unique “measurement tool” was or is necessary to measure the distance between the hoistway door and the sill, and/or the distance between the hoistway door and the interior car gate, and further denies that, to the extent any such tool may have been called for, the Company was or is required to furnish such a tool. The Company denies all remaining allegations contained in Paragraph 52 of the Complaint.

53. The Company reiterates its denial of the term “Hazardous Space” reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company incorporates by reference its responses to Paragraphs 50-52 of the Complaint and denies all remaining the allegations contained in Paragraph 53 of the Complaint.

54. The Company incorporates by reference its response to Paragraphs 50-53 of the Complaint and denies all remaining allegations contained in Paragraph 54 of the Complaint.

55. The Company reiterates its denial of the term “Hazardous Space” reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company incorporates by reference its response to Paragraphs 50-54 of the Complaint and denies all remaining allegations contained in Paragraph 55 of the Complaint.

56. The Company denies that any version of the applicable voluntary standard, ASME A17.1, contained an interior car gate rigidity requirement at the time of the manufacture and installation of the Components. The Company denies that the interior gates selected and installed by the Trade Professionals were in all instances provided by the Company. The Company reiterates its denial of the term “Installation Materials” reflected in its response to Paragraph 16 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 56 of the Complaint.

57. The Company reiterates its denial of the term “Hazardous Space” reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company incorporates by reference its response to Paragraphs 25 and 26 of the Complaint and denies the allegations contained in Paragraph 57 of the Complaint. The remaining allegations contained in Paragraph 57 of the Complaint are too vague and non-specific to be understood or to permit the Company to respond, so the Company denies all allegations contained in Paragraph 57 of the Complaint.

58. The Company reiterates its denial of the term “Hazardous Space” reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company incorporates by reference its response to Paragraphs 56 and 57 of the

Complaint and denies the allegations contained in Paragraph 58 of the Complaint. The remaining allegations contained in Paragraph 58 of the Complaint are too vague and non-specific to be understood or to permit the Company to respond, so the Company denies all allegations contained in Paragraph 58 of the Complaint.

59. The Company denies that any safety features are necessary or required where the Trade Professionals' on-site installations adhered to the Specifications, including but not limited to the then-in-force 3-Inch/5-Inch Rule. The Company reiterates its denial of the term "Elevators" reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 59 of the Complaint.

60. The Company incorporates by reference its response to Paragraph 59 of the Complaint and denies all remaining allegations contained in Paragraph 60 of the Complaint.

61. The Company incorporates by reference its response to Paragraphs 59 and 60 of the Complaint. The Company reiterates its denial of the term "Elevators" reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company reiterates its denial of the term "Hazardous Space" reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 61 of the Complaint.

62. The Company denies that the design of the Components was defective or failed to meet applicable requirements of the then-in-force version of ASME A17.1. The Company admits the allegations contained Paragraph 62 of the Complaint to the extent it agrees selection and on-site installation of a hoistway door by a Trade Professional in a manner that created an excessive Gap Space that failed to comply with the then-in-force 3-Inch/5-Inch Rule may allow the car to

operate while a person is present in the excessive Gap Space, which may create a risk of serious injury or death. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company reiterates its denial of the term “Hazardous Space” reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 62 of the Complaint.

63. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company reiterates its denial of the term “Hazardous Space” reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 63 of the Complaint.

64. The Company admits the allegations contained in Paragraph 64 of the Complaint to the extent it agrees a Trade Professional could install any hoistway door in conjunction with any elevator installation in a manner that creates excessive Gap Space. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company reiterates its denial of the term “Hazardous Space” reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 64 of the Complaint.

65. The Company admits the allegations contained in Paragraph 65 of the Complaint to the extent it agrees the potential for enclosure exists where an excessive Gap Space exists in any improper installation of any hoistway door by a Trade Professional that failed to adhere to then-applicable Gap Space requirements. The Company reiterates its denial of the term

“Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company reiterates its denial of the term “Hazardous Space” reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 65 of the Complaint.

66. The Company is aware of three incidents resulting in treatment and release in one instance, permanent injuries in another instance, and death in a third instance that were associated with hoistway doors improperly installed by Trade Professionals who failed to adhere to the Specifications, including the then-in-force 3-Inch/5-Inch Rule, and thus created excessive Gap Space. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 66 of the Complaint.

67. The Company is aware that, on or about December 24, 2010, a three-year-old boy became enclosed in the excessive Gap Space created by an improper on-site installation by one or more Trade Professionals of a hoistway door adjacent to a Destiny-brand Component. The Company reiterates its denial of the term “Hazardous Space” reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 67 of the Complaint.

68. The Company admits the allegations contained in Paragraph 68 of the Complaint but denies that the elevator cab and/or interior car gate was a Component provided by the Company or any part of such a Component. The Company denies all remaining allegations contained in Paragraph 68 of the Complaint.

69. The Company admits the allegations contained in Paragraph 69 of the Complaint to the extent, upon information and belief, it understands the child suffered severe brain injury and is permanently disabled. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 69 of the Complaint.

70. The Company admits the allegations contained in Paragraph 70 of the Complaint to the extent, upon information and belief, it understands the child will require ongoing care.

71. The Company admits the hoistway door and elevator components and hoistway door were installed on-site into a new-construction residence on or about September 28, 2007, by one or more Trade Professionals, but denies that the interior car gate was among the Components provided by the Company for this installation. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 71 of the Complaint.

72. Upon information and belief, the Company admits the allegations contained in Paragraph 72 of the Complaint to the extent it agrees the facts stated are accurate approximations, but the Company is without sufficient knowledge or information to admit or deny that they are precisely accurate and demands proof thereof. The Company further admits the installation failed to comply with the 3-Inch/5-Inch Rule provision of the then-applicable version of ASME A17.1 as there were between 4.875 inches and 7.5 inches between the non-TK Product hoistway door and the non-TK Product car gate and that there were 3.875 inches

between the non-TK Product hoistway door and the edge of the hoistway landing sill installed by the Trade Professionals.

73. The Company denies that the Specifications advised the Trade Professionals to measure “to the ‘outside’ or peak” as alleged in Paragraph 73 of the Complaint. The Company further denies that the Specifications failed to advise Trade Professionals to conform with the 3-Inch/5-Inch Rule reflected in then-applicable version of the elevator safety code for new installations and local codes and standards adopted by applicable local authorities having jurisdiction over the installation. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company reiterates its denial of the term “Installation Materials” reflected in its response to Paragraph 16 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 73 of the Complaint.

74. The Company is aware that, on or about February 1, 2017, a two-year-old boy became enclosed in the excessive Gap Space created by improper on-site installation of a hoistway door adjacent to LEV-brand Components by one or more Trade Professionals and subsequently died when the elevator car moved while he was under the elevator platform. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company reiterates its denial of the term “Hazardous Space” reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 74 of the Complaint.

75. The Company admits the Components and the non-TK Product hoistway door were installed on-site on or about January 6, 2010, by one or more Trade Professionals. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 75 of the Complaint.

76. The Company is aware that, on or about November 28, 2019, a four-year-old boy at the basement level of a home entered the Gap Space between installed Destiny-brand Components and installed Non-TK Products. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company reiterates its denial of the term “Hazardous Space” reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 76 of the Complaint.

77. Upon information and belief, the Company denies the allegations contained in Paragraph 77 of the Complaint. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company reiterates its denial of the term “Hazardous Space” reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 77 of the Complaint.

78. The Company admits the Components and the non-TK Product hoistway door were installed by one or more Trade Professionals on or about May 4, 2000. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the

Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 78 of the Complaint.

79. Upon information and belief, the Company admits the allegations contained in Paragraph 79 of the Complaint to the extent it agrees the space between the hoistway door and sill was in excess of five inches and did not meet the three-inch requirement of the then-in-force version of ASME A.17.1. The Company denies all remaining allegations contained in Paragraph 79 of the Complaint.

80. The Company is aware that the child was admitted for treatment and released the next day and did not suffer permanent injury. The Company denies all remaining allegations contained in Paragraph 79 of the Complaint.

81. The Company admits the allegations contained in Paragraph 81 of the Complaint to the extent it agrees that, if a hoistway door adjacent to any residential elevator manufactured by any manufacturer is improperly selected and installed by Trade Professionals in a manner that fails to comply with the then-in-force applicable building codes and voluntary and mandatory standards at the time of installation, an excessive Gap Space may be created. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company reiterates its denial of the term “Hazardous Space” reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 81 of the Complaint.

82. The Company admits National Wheel-O-Vator received the communication identified in Paragraph 82 of the Complaint. The Company denies all remaining allegations contained in Paragraph 82 of the Complaint.

83. The Company admits the communication identified in Paragraph 83 of the Complaint included information about the potential hazards associated with excessive Gap Space in both commercial and residential elevator installations and recommended installation of space guards to reduce excessive Gap Spaces. The Company denies that this communication recommended a four-inch Gap Space for residential elevator installations. The Company reiterates its denial of the term “Hazardous Space” reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 83 of the Complaint.

84. The Company admits the allegations contained in Paragraph 84 of the Complaint.

85. The Company admits the committee that oversees the residential elevator provisions of the ASME A17.1 *Safety Code for Elevators and Escalators* has discussed a variety of issues associated with the design and installation of elevators, including the appropriate size of the Gap Space, and admits that the Gap Space requirements were revised in the 2016 version of ASME A17.1 to specify that the distance from the hoistway door to the elevator sill be reduced from 3 inches to $\frac{3}{4}$ inches and the distance from the hoistway door to the back of the interior car gate be reduced from 5 inches to 4 inches. The Company denies all remaining allegations contained in Paragraph 85 of the Complaint.

86. The Company incorporates by reference its response to Paragraph 85 of the Complaint. The remaining allegations contained in Paragraph 86 of the Complaint are too vague and non-specific to be understood or to permit the Company to respond, so the Company denies all allegations contained in Paragraph 86 of the Complaint.

87. The Company incorporates by reference its response to Paragraph 85 of the Complaint. The Company denies all remaining allegations contained in Paragraph 87 of the Complaint.

88. The Company incorporates by reference its response to Paragraph 85 of the Complaint. The Company denies all remaining allegations contained in Paragraph 88 of the Complaint.

89. The Company incorporates by reference its response to Paragraph 85 of the Complaint. The Company denies all remaining allegations contained in Paragraph 89 of the Complaint.

90. The Company incorporates by reference its response to Paragraph 85 of the Complaint. The Company admits the allegations contained in Paragraph 90 of the Complaint to the extent it agrees that, throughout the period it produced Components, the Company manufactured Components in accordance with the then-in-force version of ASME A17.1 and directed Trade Professionals responsible for the selection and on-site installation of hoistway doors and Components to adhere to the then-current version of the applicable voluntary safety standard, ASME A17.1 (as adopted by the local authority having jurisdiction), state and local building codes, and voluntary and mandatory standards. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company reiterates its denial of the term “Installation Materials” reflected in its response to Paragraph 16 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 90 of the Complaint.

91. The Company admits the allegations contained in Paragraph 91 of the Complaint.

92. The Company admits the allegations contained in Paragraph 92 of the Complaint to the extent it agrees it offered space guards to owners of homes with installed Components and non-TK Product hoistway doors at subsidized rates. The Company denies that it manufactured, distributed, or sold any of the Components to “consumers” within the meaning of the CPSA or that installed elevators containing the Components were or are “consumer products” within the meaning of the CPSA. The Company denies all remaining allegations contained in Paragraph 92 of the Complaint.

93. The Company admits the allegations contained in Paragraph 93 of the Complaint to the extent it agrees it offered space guards to owners of homes with installed Components and non-TK Product hoistway doors at subsidized rates. The Company denies that it manufactured, distributed, or sold any of the Components to “consumers” within the meaning of the CPSA or that installed elevators containing the Components were or are “consumer products” within the meaning of the CPSA. The Company denies all remaining allegations contained in Paragraph 93 of the Complaint.

94. The Company admits it subsidized the purchase of space guards for owners of homes with Components and non-TK Product hoistway doors installed as improvements to realty such that each space guard cost approximately \$75 or less for such homeowners, but it is without sufficient knowledge or information to admit or deny the average total cost of such purchase. The Company denies that it manufactured, distributed, or sold any of the Components to “consumers” within the meaning of the CPSA or that installed elevators containing the Components were or are “consumer products” within the meaning of the CPSA. The Company denies all remaining allegations contained in Paragraph 94 of the Complaint.

95. The Company admits the allegations contained in Paragraph 95 of the Complaint.

96. The Company admits the allegations contained in Paragraph 96 of the Complaint to the extent it agrees that, prior to the adoption of ASME A17.1-2016 and subsequent to its exiting the residential elevator market, the Company voluntarily recommended limiting Gap Spaces to $\frac{3}{4}$ inches from the hoistway door to the sill and four inches from the hoistway door to the back of the interior car gate. The Company denies all remaining allegations contained in Paragraph 96 of the Complaint.

97. The Company admits installations by the Trade Professionals that fully met the Gap Space requirements of the then-in-force version of ASME A17.1 may not meet Gap Space standards of later-adopted codes. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company reiterates its denial of the term “Installation Materials” reflected in its response to Paragraph 16 of the Complaint and incorporates that denial as if set forth fully herein and further denies that the Specifications or any materials within the Complaint’s “Installation Materials” term failed to comply with the then-in-force requirements of ASME A17.1, contained a defect, or presented a substantial product hazard. The Company reiterates its denial of the term “Hazardous Space” reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 97 of the Complaint.

98. The Company admits the allegations contained in Paragraph 98 of the Complaint.

99. The Company denies that any defect was or is present in the Components or any accompanying materials, including but not limited to the Specifications. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company reiterates its denial of the term

“Installation Materials” reflected in its response to Paragraph 16 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 99 of the Complaint.

100. The Company denies that the Company has been inactive in addressing the potential hazards associated with excessive Gap Space created by Trade Professionals’ improper selection and on-site installation of hoistway doors and elevator components. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 100 of the Complaint.

101. The Company admits that one incident occurred in 2017 and one occurred in 2019. The Company denies all remaining allegations contained in Paragraph 101 of the Complaint.

102. The Company is aware that children have suffered non-serious injuries, serious injuries, or death after occupying the excessive Gap Space created by improper on-site installation of hoistway doors by Trade Professionals. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company reiterates its denial of the term “Hazardous Space” reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 102 of the Complaint.

103. Upon information and belief, the Company admits that an unsupervised child of sufficient height, dexterity, and maturity may access an elevator if the hoistway door is unlocked. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1

of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 103 of the Complaint.

104. The Company denies the allegations contained in Paragraph 104 of the Complaint.

105. The Company admits that, where an unsupervised child accesses an elevator through an unlocked hoistway door and enters an excessive Gap Space created by improper on-site installation by a Trade Professional outside the requirements of then-applicable codes and requirements at the time of installation, the child may be unable to exit the Gap Space if the elevator car is called to another floor before the child re-opens the hoistway door. The Company reiterates its denial of the term “Hazardous Space” reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 105 of the Complaint.

106. The Company admits, where improper installation by a Trade Professional creates an excessive Gap Space outside the requirements of then-applicable codes and requirements at the time of installation, a child may suffer non-serious injuries, serious injuries, or death. The Company reiterates its denial of the term “Hazardous Space” reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 106 of the Complaint.

107. The Company incorporates by reference its response to Paragraph 106 of the Complaint. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 107 of the Complaint.

108. The Company incorporates by reference its responses to Paragraph 106 and Paragraph 107 of the Complaint. The Company reiterates its denial of the term “Hazardous Space” reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company admits that the hypothetical scenario this allegation describes, which the Company does not know to have occurred in association with any of the Components, may be plausible to the extent a child is enclosed in an excessive Gap Space at an upper-floor landing when the car moves to a still higher floor. The Company denies all remaining allegations contained in Paragraph 108 of the Complaint.

109. The Company admits it is aware of three incidents in which children have been enclosed in excessive Gap Spaces created by improper on-site installation of the Components by Trade Professionals outside the requirements of then-applicable codes and requirements at the time of installation that created excessive Gap Spaces and failed to meet the 3-Inch/5-Inch Rule. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company reiterates its denial of the term “Hazardous Space” reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 109 of the Complaint.

110. The Company denies that the Components it manufactured and/or distributed to Trade Professionals for their on-site installation contain any defect or failed to comply with the then-in-force provisions of ASME A17.1. The Company denies that it was or is responsible for the selection or installation of hoistway doors or Components for a particular installation and denies that all installations exclusively used Components available from the Company. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of

the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 110 of the Complaint.

111. The Company admits that, where a Trade Professional improperly installed any residential elevator manufactured by any manufacturer in a manner that created an excessive Gap Space outside the requirements of then-applicable codes and requirements at the time of installation, a risk of enclosure exists. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company reiterates its denial of the term “Hazardous Space” reflected in its response to Paragraph 31 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 111 of the Complaint.

112. The allegations contained in Paragraph 112 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, the Company denies the allegations contained in Paragraph 112 of the Complaint.

113. The allegations contained in Paragraph 113 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, the Company denies the allegations contained in Paragraph 113 of the Complaint.

114. The Company denies that the interpretive rule at 16 C.F.R. § 1115.4 is applicable to the Components manufactured by the Company and selected and installed on-site by the Trade Professionals as improvements to realty. The Company denies the examples found in 16 C.F.R. § 1115.4 regarding purported defects in instructions, which relate to instructions provided to consumers, are relevant to the Specifications provided to non-consumer Trade Professionals. The remaining allegations contained in Paragraph 114 of the Complaint are legal conclusions to

which no response is required. To the extent a response is required, the Company denies the remaining allegations contained in Paragraph 114 of the Complaint.

115. The allegations contained in Paragraph 115 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, the Company denies the allegations contained in Paragraph 115 of the Complaint.

116. The Company denies that the examples found in 16 C.F.R. § 1115.4 regarding purported defects in instructions, which relate to instructions provided to consumers, are relevant to the Specifications provided to learned, non-consumer Trade Professionals. The remaining allegations contained in Paragraph 116 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, the Company denies the remaining allegations contained in Paragraph 116 of the Complaint.

117. Paragraphs 1 through 116 of this Answer are incorporated by reference as if fully set forth herein.

118. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 118 of the Complaint.

119. For each allegation contained in Paragraph 119 of the Complaint, including each subparagraph or further subdivision, the Company reiterates its denial of the terms “Elevators,” reflected in its response to Paragraph 1 of the Complaint, reiterates its denial of the term “Installation Materials,” reflected in its response to Paragraph 16 of the Complaint, and reiterates its denial of the term “Hazardous Space” reflected in its response to Paragraph 31 of the Complaint. The Company incorporates each of these denials as if set forth fully herein. The Company denies the allegation in Subparagraph 119a that the Specifications were defective and

further denies the allegation in Subparagraph 119b of the Complaint that the Components were defective. The Company denies all remaining allegations contained in Paragraph 119 of the Complaint, including each allegation contained in each subparagraph or further subdivision.

120. The Company denies the allegations contained in Paragraph 120 of the Complaint.

121. The Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein. The Company denies all remaining allegations contained in Paragraph 121 of the Complaint.

For each prayer contained in the “Relief Sought,” including any portion set forth in Paragraphs A through D of the Complaint, inclusive of all subparts, the Company reiterates its denial of the term “Elevators” reflected in its response to Paragraph 1 of the Complaint and incorporates that denial as if set forth fully herein; denies that installed elevators or the Components are “consumer products” within the meaning of the CPSA; denies that the Components were defective; and denies that CPSC is entitled to any relief, including any portion of the “Relief Sought” set forth in Paragraphs A through D of the Complaint, inclusive of all subparts.

ADDITIONAL DEFENSES

FIRST ADDITIONAL DEFENSE

Neither installed elevators nor the Components are “consumer products” within the meaning of 15 U.S.C. § 2052(a)(5), and Non-TK Products, such as hoistways and hoistway

doors, that were and are essential to installation and use of the Components installed as an improvement to realty in a residence were not furnished by the Company.

SECOND ADDITIONAL DEFENSE

Even if the Components were “consumer products,” this action is moot in that CPSC closed a prior investigation of the same purported hazard associated with the same Components in 2014, impliedly determining that neither the Components nor the Specifications contained a defect that presented a substantial product hazard within the meaning of 15 U.S.C. § 2064, and subsequently reiterated those determinations as to the residential elevator industry generally when it denied a petition to adopt ASME A17.1-2016’s Gap Space provision as a mandatory standard governing elevator installations in 2017. In its closure, CPSC expressly stated that the hazard stemmed from “elevators [that] were installed out of specification” and expressly “acknowledge[d]” the Company’s voluntary homeSAFE campaign, through which the Company: 1) informed owners of residential elevators of the hazards associated with excessive Gap Spaces created by improper installations of hoistway doors and elevator components by Trade Professionals; and 2) subsidized the purchase of space guards to reduce these excessive Gap Spaces for owners of installed Company elevators. Subsequently, in 2017, CPSC staff rejected a petition filed in 2014 to adopt a mandatory elevator standard for residences, and specifically stated it was unable to identify a “defect” in the elevators. As such, CPSC has already determined that any hazard arises from the actions of parties other than the Company and that the Company’s voluntary efforts to reduce that hazard, if any, are adequate.

THIRD ADDITIONAL DEFENSE

This action is moot as, even if the Components were consumer products and contained a defect that presented a substantial product hazard within the meaning of the CPSA, the

Company, under the homeSAFE campaign noted in the Second Additional Defense, and under its present “Home Elevator Safety Program,” took and is presently taking actions that meet or exceed those elements of the “Relief Sought” that 15 U.S.C. § 2064(c) and (d) authorize the Commission to order, and thus the Commission is entitled to no additional relief to address any purported inadequacy in the 2014 campaign.

FOURTH ADDITIONAL DEFENSE

Among the “Relief Sought,” the Complaint “requests that the Commission . . . order Respondent to . . . reimburse [homeowners] for . . . previous purchases of space guards or other safety devices, and all costs associated with those purchases, whether or not they were part of the homeSAFE campaign.” Complaint at C(3). The Commission has no authority to order such reimbursement, as 15 U.S.C. § 2064(e)(1), to which the Complaint cites, authorizes the Commission to order reimbursement of expenses a consumer incurs in order to “avail himself” of a Commission order of repair, replacement, or refund. No consumer can have incurred any expense to “avail himself” of a Commission order that has not been issued, and the subsidized space guard campaign was expressly approved by CPSC.

FIFTH ADDITIONAL DEFENSE

Even if the elevators were consumer products within the meaning of the CPSA, the hazards described in the Complaint pertain to the Gap Space. The Gap Space is a function of the construction of the hoistway, selection and on-site installation of the hoistway door and installation of the Components by Trade Professionals outside the requirements of then-applicable codes and requirements at the time of installation and is not a function of the Components manufactured by the Company.

SIXTH ADDITIONAL DEFENSE

The Fifth Additional Defense is incorporated herein by reference. As such, any excessive Gap Space associated with any of the Components installed outside the requirements of then-applicable codes and requirements at the time of installation was created by acts or omissions of third parties or entities over whom the Company had no control and involves a hoistway and hoistway door furnished by another third party.

SEVENTH ADDITIONAL DEFENSE

The Fifth and Sixth Additional Defenses are incorporated herein by reference. As such, the alleged injuries were caused by acts or omissions of third parties or entities over whom the Company had no control.

EIGHTH ADDITIONAL DEFENSE

The Complaint is barred under the Administrative Procedure Act (“APA”), 5 U.S.C. § 706, as a consequence of CPSC’s closure of a prior investigation of the same purported hazard associated with the same Components in 2014 and CPSC’s rejection of a petition seeking recalls of and mandatory standards for residential elevator through the Commission’s 2017 adoption, without amendment, of a staff recommendation that included: “CPSC has not recalled any elevators related to the entrapment hazard identified by the petitioners. CPSC staff could not identify any specific elevator models or manufacturers whose installations revealed design defects or installation defects that caused a substantial product hazard resulting from an excess space gap between the car door and hoistway.” That closure and the denial of the petition represented final agency action. Namely, the closure referenced in the Second Additional Defense of this Answer represented an agency determination that the Company’s Components, including the materials the Complaint now alleges were defective, did not contain a defect that presented a substantial product hazard, and that the hazard is created by installations that failed

to conform with the then-in-force ASME A.17.1 3-Inch/5-Inch Rule. Engineering drawings, design specifications, installation instructions and other materials have not changed since CPSC issued the closing letter, as the Company exited the residential elevator business in 2012, so there is no basis for CPSC to reopen its prior determination. Specifically, the Complaint's departure, without explanation, from the determinations underlying CPSC's 2014 closure decision and letter as well as its express position in 2017 that it found no defects in any specific elevators or manufacturers, including, necessarily, the Company is, *inter alia*: (i) arbitrary, capricious, an abuse of discretion, or otherwise not accordance with law; (ii) in excess of statutory jurisdiction, authority or limitations or short of statutory right; (iii) a failure to observe procedures required by law; (iv) contrary to constitutional right; or (v) unsupported by substantial evidence or unwarranted by established facts.

NINTH ADDITIONAL DEFENSE

The Complaint fails to identify a "defect" within the meaning of 15 U.S.C. § 2064(a)(2) and (b)(3) and 16 C.F.R. § 1115.4.

TENTH ADDITIONAL DEFENSE

The Company instructed the Trade Professionals responsible for the selection and on-site installation of hoistway doors and the Components to ensure a maximum Gap Space of five inches between the hoistway door and interior car gate and a maximum space of three inches between the hoistway door and the edge of the sill or landing, consistent with the 3-Inch/5-Inch Rule reflected in ASME A17.1 *Safety Code for Elevators and Escalators* and to adhere to applicable state and local building codes in effect at the time of on-site installation, which were not revised until 2016. Therefore, neither the Company's Specifications nor the Components

contain a defect or present a substantial product hazard, even if the Components were consumer products.

ELEVENTH ADDITIONAL DEFENSE

The Complaint's theory of "defect" is premised on the four-inch Gap Space provision of the applicable voluntary standard, ASME A17.1-2016 *Safety Code for Elevators and Escalators*. To the extent that the Complaint seeks to adopt this voluntary standard as a mandatory rule, the CPSA provides two lawful means by which the Commission may effect such adoption. *See* 15 U.S.C. § 2058(b); 15 U.S.C. § 2064(j). The CPSA does not give the Commission authority to adopt any voluntary standard as a mandatory rule by any other means, including adjudication.

TWELFTH ADDITIONAL DEFENSE

The Complaint's theory of "defect" is premised on the 2016 adoption of the four-inch Gap Space provision of the applicable voluntary standard, ASME A17.1-2016 *Safety Code for Elevators and Escalators*, which was adopted years after the Company ceased manufacturing and/or distributing the Components to Trade Professionals in the United States. Even if adjudication were a means by which the Commission could lawfully adopt a voluntary standard as a mandatory rule, the CPSA prohibits such adoption from having any retroactive effect on products manufactured prior to such a rule's adoption. 15 U.S.C. § 2058(g)(1).

THIRTEENTH ADDITIONAL DEFENSE

The Complaint's theory of "defect" is premised on the 2016 adoption of the four-inch Gap Space provision of the applicable voluntary standard, ASME A17.1-2016 *Safety Code for Elevators and Escalators*, which was adopted years after the Company ceased manufacturing and/or distributing the Components to Trade Professionals in the United States. To the extent that the Complaint seeks not to adopt (by rule or otherwise) but to apply this voluntary standard

retrospectively to the Company and all others in the industry, such application violates the principles of fair notice and due process that are reflected in both the general presumption against retroactive application of laws, rules, or standards and the CPSA's specific prohibition against retroactive mandatory rules, 15 U.S.C. § 2058(g)(1), and are otherwise required by law.

FOURTEENTH ADDITIONAL DEFENSE

This action is moot as, in 2017, the Commission rejected a 2014 petition seeking the promulgation of a mandatory rule that would have limited the Gap Space to four inches from the hoistway door to the interior car gate and $\frac{3}{4}$ inches from the hoistway door to the sill. As discussed in the Eighth, Twelfth and Thirteenth Affirmative Defenses and incorporated herein by reference, the Commission has no authority to retroactively promulgate such a Gap Space limitation, whether through this action or through rulemaking.

FIFTEENTH ADDITIONAL DEFENSE

The Complaint's theory of "defect" is premised on the 2016 adoption of the four-inch Gap Space provision of the applicable voluntary standard, ASME A17.1-2016 *Safety Code for Elevators and Escalators*, which was adopted years after the Company ceased manufacturing and/or distributing the Components to Trade Professionals in the United States. To the extent that the Complaint seeks not to adopt or apply ASME A17.1-2016 but to introduce its provisions or the Company's advocating, through its homeSAFE campaign and current Home Elevator Safety Program, a hoistway-to-sill measurement of $\frac{3}{4}$ inches and a hoistway-to-gate measurement of four inches, as evidence of defect in the Components or the Specifications, such introduction is prohibited by Rule 407 of the Federal Rules of Evidence ("FRE"), which bars introduction of evidence of subsequent remedial measures to prove either a defect or a need for a warning or instruction. The FREs are expressly incorporated into the Commission's Rules of

Practice for Adjudicative Proceedings “unless otherwise provided by statute or these rules,” 16 C.F.R. § 1025.43(a), and no provision of statute or the Commission’s rules purports to set aside or relax FRE 407.

SIXTEENTH ADDITIONAL DEFENSE

The Complaint violates the Company’s right to due process in that, even if the Commission had the authority to apply retroactively the ¾ inch/four-inch Gap Space provision reflected in the 2016 version of ASME A17.1, to the Components the Company manufactured and/or distributed to Trade Professionals through 2012, the Commission provided no fair notice prior to the issuance of the Complaint that it would, through adjudication, pursue such application. In fact, the Commission’s 2017 rejection of the 2014 petition that sought the promulgation of a mandatory rule on Gap Space measurements and statement in the Briefing Package that staff had not sought the recall of any elevators because it “could not identify any specific elevator models or manufacturers whose installations revealed design defects or installation defects that caused a substantial product hazard resulting from an excess space gap between the car door and hoistway” provided notice to the Company that the Commission would not seek to apply such provision even prospectively much less retroactively through an action such as this.

SEVENTEENTH ADDITIONAL DEFENSE

The Complaint fails to identify a “substantial product hazard” within the meaning of 15 U.S.C. § 2064(a)(2) and (b)(3) and 16 C.F.R. § 1115.4.

EIGHTEENTH ADDITIONAL DEFENSE

The Complaint fails to identify a “substantial risk of injury to the public” within the meaning of 15 U.S.C. § 2064(a)(2) and (b)(3).

NINETEENTH ADDITIONAL DEFENSE

The Complaint fails to state a claim upon which relief can be granted, or upon which relief can be granted against the Company

TWENTIETH ADDITIONAL DEFENSE

The alleged injuries were caused by or contributed to, directly and proximately, in whole or in part, by misuse, unauthorized use, unintended use, unforeseeable use, and/or improper use of the installed elevators.

TWENTY-FIRST ADDITIONAL DEFENSE

The Complaint may be barred by the doctrines of estoppel, waiver, and/or laches and/or the applicable Statute of Limitations, including, but not limited to, due to CPSC's 2014 closure letter referenced in the Second Additional Defense and the 2017 Briefing Package conclusion that staff found no defects in the design or installation of elevators referenced in the Second and Eighth Additional Defense.

TWENTY-SECOND ADDITIONAL DEFENSE

The Complaint may be barred by the Commission's lack of personal or subject-matter jurisdiction over the Company, the Components, or the installation of elevators containing the Components.

TWENTY-THIRD ADDITIONAL DEFENSE

The Company reserves the right to amend this Answer to add additional defenses if they become apparent from further discovery.

WHEREFORE, Respondent, the Company, respectfully requests the entry of an Order:

- A. Dismissing this case;

- B. Awarding to the Company its costs and expenses, including attorneys' fees; and
- C. Granting to the Company such other and further relief as may be justified.

July 27, 2021

Respectfully submitted,



Sheila A. Millar (DC Bar 339341)
202-434-4143 (direct dial)
millar@khlaw.com

Eric P. Gotting (MD Bar 9612170350/DC
Bar 456406)
202-434-4269 (direct dial)
gotting@khlaw.com

S. Michael Gentine (MD Bar
1212110311/DC Bar 1644540)
202-434-4164 (direct dial)
gentine@khlaw.com

KELLER AND HECKMAN LLP
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
(202) 434-4100
(202) 434-4646 (fax)

Attorneys for Respondent,
TK Access Solutions Corp.

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2021, true and correct copies of the foregoing
RESPONDENT'S ANSWER TO COMPLAINT were served via U.S. Mail and/or electronic
mail on the Secretary of the U.S. Consumer Product Safety Commission and all parties and
participants of record in these proceedings in the following manner:

Original and three copies by U.S. Mail, first-class and postage prepaid, and one copy by
electronic mail, to the Secretary of the U.S. Consumer Product Safety Commission, Alberta
Mills:

Alberta Mills
Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
amills@cpsc.gov

As no Presiding Officer has been appointed as of this date, one copy by U.S. Mail, first-
class and postage-prepaid, to the Presiding Officer in the care of the Secretary of the U.S.
Consumer Product Safety Commission, Alberta Mills, at the above address.

One copy by electronic mail to:

Robert Kaye
Assistant Executive Director
Office of Compliance and Field Operations
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
rkaye@cpsc.gov

One copy by electronic mail to Complaint Counsel:

Mary B. Murphy
Complaint Counsel
Director
Division of Enforcement and Litigation

Office of Compliance and Field Operations
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
mmurphy@cpsc.gov

Gregory M. Reyes, Trial Attorney
Michael J. Rogal, Trial Attorney
Complaint Counsel
Division of Enforcement and Litigation
Office of Compliance and Field Operations
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
greyes@cpsc.gov
mrogal@cpsc.gov



Sheila A. Millar