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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

2021-001050

The Retreat at Charleston National Country Club Home Owners Association, Inc., and The Retreat at Charleston National Country Club Horizontal Property Regime..... Plaintiffs,

v.

Winston Carlyle Charleston National, LLC; Colin R. Campbell Construction, Inc.; Colin Campbell, individually; Builders FirstSource-Southeast Group, LLC; Builders FirstSource, Inc.; Americo Roofing Concepts, Inc.; DVS, Inc.; Advanced Building Connection, LLC; Guy C. Lee Building Materials, LLC; WS Contractors, LLC; Dino Schwartz, Individually; Charleston Exteriors, LLC; ECC Contracting, LLC; Hurley Services, LLC; McDaniel Construction Co., LLC; AC Construction Corp.; AC Construction, Inc.; L&G Construction Group, LLC; Liollio Architecture; JC Contractors, LLC; Soto & Vasquez Construction, LLC; Costa De Oliveira Construction, LLC; Solesmar Jesus De Oliveria; Wilson Lucas Sales d/b/a Miracle Siding; Miracle Siding, LLC; Royal Homes of SC, Inc.; Collen Batissa; Christopher Batissa; Norma Ferreira Bruno; Mendez Construction, LLC; Juan Garza Ramos, individually; Juan Garza Ramos d/b/a Juan Constructors; Jessica Marroquin, individually; Jessica Marroquin d/b/a Marroquin Construction; Carlos Marroquin, individually; Carlos Marroquin Construction; Carlos and Jessica Marroquin d/b/a Marroquin Construction; Feliciano Cruz Silva; Garcia Roofing, LLC; Givair De Caris; and Mario Salgado..... Defendants,

Builders FirstSource-Southeast Group, LLC.....Third-Party Plaintiff, Appellant,

v.

Pohlman Quality Contractors; Pohlman Quality Exteriors; Palmetto Trim and Renovation; Edward Bruce Witham; and East Coast Carpentry.....Third-Party Defendants,

Of which Palmetto Trim and Renovation; Hurley Services, LLC; ECC Contracting, LLC; East Coast Carpentry; AC Construction, Inc.; WS Contractors, LLC; Pohlman

Quality Exteriors, Inc.; and L&G Construction Group, LLC are the .....Respondents.

RECORD ON APPEAL
VOLUME III

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ELECTRONICALLY FILED - 2020 Oct 22 12:30 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003783

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

The Retreat At Charleston National Country Club Home Owners Association, Inc. And The Retreat At Charleston National Country Club Horizontal Property Regime,

Plaintiffs,

v.

Winston Carlyle Charleston National, LLC; Colin R. Campbell Construction, Inc.; Colin Campbell, Individually, C.R. Campbell Construction Co., Inc., Colin Campbell Construction, LLC, Builders Firstsource-Southeast Group, LLC; Builders FirstSource, Inc., Americo Roofing Concepts, Inc.; DVS, Inc.; Advanced Building Connection, LLC; Guy C. Lee Building Materials, LLC; WS Contractors, LLC; Dino Schwartz, Individually, ECC Contracting, LLC, Hurley Services, LLC, McDaniel Construction Co., LLC, AC Construction Corp., AC Construction, Inc., L&G Construction Group, LLC, Liollio Architecture, JC Construction d/b/a JC Construction, LLC a/k/a JC Contractors a/k/a JC Contractors, LLC, Soto & Vasquez Construction, LLC a/k/a Costa De Oliveira Construction, LLC, Solesmar Jesus De Oliveira, Wilson Lucas Sales d/b/a Miracle Siding, Miracle Siding, LLC, Royal Hornes of SC, Inc., Colleen Batissa, Christopher Batissa, Norma Ferreira Bruno, Mendez Construction, LLC, Juan Garza Ramos, Juan Garza Ramos d/b/a Juan Constructors, Jessica Marroquin, Jessica Marroquin d/b/a Marroquin Construction, Carlos Marroquin, Carlos Marroquin and Jessica Marroquin d/b/a Marroquin Construction, Feliciano Cruz Silva, Garcia Roofing, LLC, Givair De Caris, and Mario Salgado,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 2016-CP-10-03783

PALMETTO TRIM AND RENOVATION'S AMENDED MOTION FOR SUMMARY JUDGMENT ADOPTING THE POSITIONS OF EAST COAST CARPENTRY

ELECTRONICALLY FILED - 2020 Oct 22 12:30 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003783

Builders FirstSource-Southeast Group, LLC,

Third-Party Plaintiff,

v.

Pohlman Quality Contractors; and Pohlman Quality Exteriors, Inc.; Palmetto Trim and Renovation; Edward Bruce Witham; and East Coast Carpentry,

Third-Party Defendants.

TO: BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC, BUIDERS FIRSTSOURCE, INC. AND STEPHEN P. HUGHES AND WILLIAM H. COX, ESQ. THEIR ATTORNEY

Third-Party Defendant Palmetto Trim and Renovations, ("PTR") by and through the undersigned counsel, pursuant to Rule 10(c) of the SCRCP permitting statements in a pleading to be adopted by reference in another pleading or any motion, hereby amends its Motion for Summary Judgment as to Builders FirstSource-Southeast Group, LLC's and Builders FristSource, Inc.'s ("BFS") third-party claims, filed December 20, 2019, to adopt and add the positions taken by Co-Third-Party Defendant East Coast Carpentry's Amended Motion for Summary Judgment filed October 15, 2020.

RICHARDSON PLOWDEN & ROBINSON, P.A.

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October 22, 2020
Mount Pleasant, South Carolina

ELECTRONICALLY FILED - 2020 Jan 07 5:53 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003783

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON The Retreat At Charleston National Country Club Home Owners Association, Inc. And The Retreat At Charleston National Country Club Horizontal Property Regime, Plaintiffs, v. Builders Firstsource-Southeast Group, LLC; et al., Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2016-CP-10-03783 **DEFENDANT EAST COAST CARPENTRY'S NOTICE OF MOTION FOR SUMMARY JUDGMENT AGAINST THE CLAIMS OF BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC AND BUILDERS FIRSTSOURCE, INC.**
Builders FirstSource-Southeast Group, LLC, Third-Party Plaintiff, v. Palmetto Trim and Renovations, LLC, et. al., Third-Party Defendants.	

TO: BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC AND BUILDERS FIRSTSOURCE, INC. AND STEPHEN HUGHES THEIR ATTORNEY

You will please take notice that the undersigned, as counsel for the Third-Party Defendant East Coast Carpentry, ("East Coast") by and through the undersigned counsel, and moves for an Order Dismissing Builders FirstSource-Southeast Group, LLC and Builders FirstSource, Inc.'s (collectively as "BFS") claims against East Coast pursuant to Rule 12 of the South Carolina Rules of Civil Procedure. The grounds for the Motion are as follows:

1. All of BFS's claims are barred by the applicable Statute of Limitations, SC. Code § 15-3-530 et seq.;

2. BFS's claims for breach of contract, breach of express and implied warranty, and negligence are " merely disguised ... claims for equitable indemnity" and fail as a matter of law pursuant

to *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders FirstSource-Se. Grp.*, 413 S.C. 630, 634, (Ct. App. 2015); and

3. BFS's claims for contractual indemnity are based on contractual provisions that are neither clear nor unequivocal and thus they fail as a matter of law. *Concord and Cumberland HPR v. Concord and Cumberland, LLC,* 2018 WL 3748616 (S.C. Ct. App. 2018),

WHEREFORE for the foregoing reasons, East Coast Carpentry respectfully requests this Court enter an Order dismissing, Third-Party Plaintiff's claims. This Motion will be supported by a Memorandum of Law. East Coast reserves the right to supplement this motion and present additional arguments.

RICHARDSON PLOWDEN & ROBINSON, P.A.

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January 7, 2020
Mt. Pleasant, South Carolina

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ELECTRONICALLY FILED - 2020 Oct 15 3:14 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003783

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON The Retreat At Charleston National Country Club Home Owners Association, Inc. And The Retreat At Charleston National Country Club Horizontal Property Regime, Plaintiffs, v. Builders Firstsource-Southeast Group, LLC; et al., Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2016-CP-10-03783 **DEFENDANT EAST COAST CARPENTRY'S AMENDED MOTION FOR SUMMARY JUDGMENT AGAINST THE CLAIMS OF BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC AND BUILDERS FIRSTSOURCE, INC.**
Builders FirstSource-Southeast Group, LLC, Third-Party Plaintiff, v. Palmetto Trim and Renovations, LLC, et. al., Third-Party Defendants.	

TO: BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC AND BUILDERS FIRSTSOURCE, INC. AND STEPHEN HUGHES THEIR ATTORNEY

You will please take notice that the undersigned, as counsel for the Third-Party Defendant East Coast Carpentry, ("East Coast") by and through the undersigned counsel, hereby amends its motion of December 20, 2019 for an Order Dismissing Builders FirstSource-Southeast Group, LLC and Builders FirstSource, Inc.'s (collectively as "BFS") claims against ECC pursuant to Rule 12 of the South Carolina Rules of Civil Procedure. The amended grounds for the Motion are as follows:

1. All of BFS's claims are barred by the applicable Statute of Repose, SC. Code § 15-3-530 et seq.;

2. BFS's claims for breach of contract, breach of express and implied warranty, and negligence are " merely disguised ... claims for equitable indemnity" and fail as a matter

of law pursuant to *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders FirstSource-Se. Grp.*, 413 S.C. 630, 634, (Ct. App. 2015);

3. BFS's claims for contractual indemnity are based on contractual provisions that are neither clear nor unequivocal and thus they fail as a matter of law. *Concord and Cumberland HPR v. Concord and Cumberland, LLC,* 2018 WL 3748616 (S.C. Ct. App. 2018);

4. BFS's contracts violate the SC anti-indemnity statute and are illegal and unenforceable; BFS's claims in equity are barred by its unclean hands; and

5. BFS's claims are barred by the doctrine of collateral estoppel.

WHEREFORE for the foregoing reasons, East Coast respectfully requests this Court enter an Order dismissing, BFS' claims. This Motion will be supported by a Memorandum of Law. East Coast reserves the right to supplement this motion and present additional arguments.

RICHARDSON PLOWDEN & ROBINSON, P.A.

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October 15, 2020
Mt. Pleasant, South Carolina

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ELECTRONICALLY FILED - 2020 Oct 30 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003783

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON The Retreat at Charleston National Country Club Home Owners Association, Inc. and The Retreat at Charleston National Country Club Horizontal Property Regime, Plaintiffs, vs. Builders FirstSource-Southeast Group, LLC; et al., Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT C/A No.: 2016-CP-10-03783 **EAST COAST CARPENTRY/EAST COAST CARPENTRY COMPANY'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

TO: STEPHEN P. HUGHES, COUNSEL OF RECORD FOR DEFENDANT BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC

You will please take notice that the undersigned, as counsel for the Third-Party Defendant East Coast Carpentry/East Coast Carpentry Company, ("East Coast") submits the following in support for its Motion for Summary Judgment: against Co-Defendant Builders FirstSource-Southeast Group, LLC ("BFS"):

For the sake of brevity East Coast, adopts the arguments of ECC Contracting, LLC ("ECC") (and the other movants) as if set forth herein. East Coast submits the following to the extent its position differs from the other moving parties:

FACTUAL/PROCEDURAL BACKGROUND SPECIFIC TO EAST COAST[1]

BFS filed third-party claims against East Coast on November 11, 2019. BFS Amended Answer to Fourth Amend. Compl. BFS asserted claims against East Coast for contractual and equitable indemnity, breach of express and implied warranties, breach of contract, and negligence. *Id*. BFS's cross-claims allege that BFS is entitled to be indemnified in the amount

[1] Please see memo of ECC and other parties for general/procedural background.

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which BFS "may pay in satisfaction" of Plaintiffs' claim "plus [BFS's] costs for defense, inclusive of attorneys' fees", without regard to the fault of either ECC or BFS. *See* BFS Amend. Answer to Fourth Amend. Compl., ¶¶ 138, 147, 151, 155.

According to BFS, East Coast executed a BFS "Master Subcontractor Agreement" dated October 21, 2005 (hereafter "Master Agreement"). Exhibit 1 – 2005 Contract between BFS and East Coast. The Master Agreement at issue here is a BFS contract form bearing "Version – 4/20/05." BFS seeks to recover from East Coast in indemnity under the terms of the applicable BFS Master Agreement.

LEGAL STANDARD

The legal standards articulated in ECC's Memo in Support of its Motion for Summary Judgment are incorporated here by reference.

ARGUMENT

For the sake of brevity. East Coast adopts the arguments set forth in ECC's Memo in Support of its Motion for Summary Judgment which are incorporated here by reference.

1. BFS' claims against East Coast are barred by the statute of repose.

"A statute of repose creates a substantive right in those protected to be free from liability after a legislatively determined period of time." *Capco of Summerville, Inc. v. J.H. Gayle Constr. Co.,* 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006) (citing *Langley v. Pierce,* 313 S.C. 401, 403–04, 438 S.E.2d 242, 243 (1993)). "A statute of repose is typically an *absolute time limit* beyond which liability no longer exists and is not tolled for any reason because to do so would upset the economic balance struck by the legislative body." *Id.* (emphasis added) (citing *Langley,* 313 S.C. at 404, 438 S.E.2d at 243). SC Code Ann. § 15-3-640 sets the period of repose actions based upon defective or unsafe condition of improvement to real property at 8 years. In this case, East

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Coast's work was all done in the 2006 – 2007 timeframe. See Exhibit 2 Screenshots of East Coast's alleged work.[2] BFS did no sue East Coast until 2019 – more than 12 years after the work was completed and long after the statute of repose had expired. Plaintiffs filed this lawsuit on July 22, 2016, so even measured against the initiation of this litigation the Statute of Repose ran against all claims related to East Coast's work. *See* Plaintiffs Complaint.

In explaining and juxta positioning the differences of the Medmal and Construction Statutes of Repose, the Supreme Court stated, "[w]e agree with Providence Hospital that the language of the construction statute of repose demonstrates that the General Assembly *can* expressly include indemnity claims in a statute of repose, yet the General Assembly is free to structure a statute of repose as it sees fit." *Columbia/CSA-HS Greater Columbia Healthcare Sys., LP v. S.C. Med. Malpractice Liab. Joint Underwriting Ass'n*, 411 S.C. 557, 559, 769 S.E.2d 847, 848 (2015). In that case the victim of the alleged medical malpractice filed suit against Providence Hospital within the Statute of Repose and the original lawsuit was resolved after the statute of repose had run. *Id.* Providence Hospital filed claims for indemnity against the independent contractor ER Physician responsible for the incident after the resolution the original lawsuit and the expiration of the Statute of Repose. *Id.* The Court ruled these claims were barred. *Id.*

The same rationale governs here. Plaintiffs' and BFS' claims were filed after the expiration of the Statute of Repose. As such, BFS' claims are barred and should be dismissed.

[2] BFS has not produced invoices or purchase orders for all of the work at issue in this case. However they have produced screenshots of Gemini records – Gemini is a software system BFS used during the early phase of the project to manage its work and the assignment of work to subcontractors.

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2. BFS' claims for contractual indemnity are based on indemnity provisions which violate S.C. Code Ann. § 32-2-10 and are thus illegal and unenforceable.

The contract between BFS and East Coast contains multiple indemnity provision including those which require ECC to indemnify BFS for damages incurred as a result of BFS' sole negligence in violation of S.C. Code Ann. § 32-2-10. The relevant indemnity provision, which is provided in Section 6 of the contract between BFS and ECC, states:

> Release and Indemnity,
>
> (1) Subcontractor hereby agrees to release, indemnify, defend, and hold harmless Contractor and Owner and their affiliates and employees, directors, officers, agents, and invitees (each an "Indemnitee"), to the fullest extent permitted by law from any costs, expenses, demands, causes of action, claims, damage, liability, loss, or costs ("Claims") (together with attorneys' fees) arising out of, resulting from, or connected with the death of or any injury to, or any damage to the property of, Subcontractor or its employees, agents, or subcontractors or any of their respective subcontractors, employees, officers, agents, or invitees.
> (2) For all Claims not covered by (1) above and to the fullest extent permitted by law, Subcontractor agrees to release, indemnity, defend, and hold harmless the Indemnitees for, and to save them harmless against, any and all Claims (together with reasonable attorneys' fees), to the extent of liability resulting from Subcontractor's negligence or willful misconduct incurred by the Indemnitees which arise out of or relate to (i) any alleged personal injury, death, or property damage arising from or connected with the Work; (ii) any alleged defect or malfunction in any of the services or materials provided in connection with the Work; or **(iii) omissions resulting from Indemnitee's failure to supervise Subcontractor's operations**.

Exhibit 1 pp. 5-6 §6(b) Release and Indemnity (*emphasis added*)

Section 6 explicitly calls for East Coast to unconditionally defend and indemnify BFS in subsection (1) and then calls for East Coast to indemnify BFS for BFS' failure to supervise in subsection (2). *Id.* . These provisions explicitly violation of SC Code Ann. §32-2-10 as they require East Coast to indemnify BFS for BFS' sole negligence.

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As BFS should well know, indemnification provisions calling for the Indemnitor to indemnify the Indemnitee "for damages caused by its [the Indemnitee's] negligence or the negligence of its subcontractors" are void as against public policy. *D.R. Horton, Inc. v. Builders FirstSource-Se. Grp., LLC*, 422 S.C. 144, 152, 810 S.E.2d 41, 45-6 (Ct. App. 2018). Further, our Court of Appeals has held that "[A]n illegal contract is unenforceable." *Id*. (*citing Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 64, 566 S.E.2d 863, 866-867 (Ct. App. 2002)). In *D.R. Horton*, this Court held that the indemnification agreement "purports to require BFS to indemnify D.R. Horton for its own negligence in violation of section 32-2-10" and went on to conclude that "[b]ecause the agreement violates the statute, we cannot require BFS to pay for damages caused by D.R. Horton." *Id*. This case is no different.

Because the indemnity provisions of the contracts between BFS and ECC require ECC to indemnify BFS for BFS' sole negligence, BFS' contracts are illegal, and thus unenforceable and ECC is entitled to summary judgment.

a. South Carolina's legal contract construction rules support striking the BFS Master Agreement's indemnification clauses in their entirety.

East Coast's arguments are duplicative of the arguments made by ECC in its Memo in support of its Motion for Summary Judgment which are incorporated here by reference.

3. BFS' claims for contractual Indemnity are barred by the *Concord and Cumberland* holding.

Under South Carolina law, courts will refuse to enforce contractual indemnity provisions that fail to meet the standard of being clear and unequivocal when seeking to recover for an indemnitee's concurrent negligence; indemnification clauses that do not meet this standard are against public policy. *See Concord and Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC*, 424 S.C. 639, 643-644, 819 S.E.2d 166, 168-169 (Ct. App. 2018), reh'g

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denied (Oct. 18, 2018) (affirming trial court's grant of summary judgment in favor of subcontractor dismissing contractual indemnity cross-claims of contractor based on application of the clear and unequivocal standard). The provision relevant to this argument section is set forth in full above. The key phrase, for our purposes is "to the extent of liability resulting from Subcontractor's negligence or willful misconduct". Though the wording is slightly different in our case, the key language is substantially the same.

The South Carolina Court of Appeals issued an opinion in *Concord & Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC* that is directly on point to this case. That appeal dealt almost exclusively with the interpretation of contractual indemnity provisions. The Court of Appeals noted that the standard for upholding a Contractual Indemnity provision is "clear and unequivocal." In that case in the underlying Circuit Court Opinion, Judge Newman held that:

> In order for Superior and C&C to defeat Muhler's and Weather Shield's motions for summary judgment on the contractual indemnity issue, they have to meet the very high standard of eliminating any possibility that the contract language on which they rely can be read to limit indemnification to the indemnitor's own negligence. In other words, in order to prevail on their contract claims, Superior and C&C must demonstrate that the contract language can only be interpreted to reach the result that the parties intended to indemnify the indemnitee for the indemnitee's own negligence. If any other interpretation of the contract language is reasonably possible, they cannot prevail on their contract claims as a matter of law.

Concord and Cumberland Horizontal Property Regime v Concord & Concord & Cumberland, LLC, No. 2010-CP-10-3026, 2014 WL 12783397, at *3 (S.C. Com. Pl. Oct. 06, 2014).

One of the two indemnity provisions interpreted by the Court was based on the AIA provision we are dealing with (the underlined provisions are identical to the AIA A201 Indemnity Provision):

> 12.1 SUBCONTRACTOR'S PERFORMANCE. To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, the Architect, the Contractor (including its affiliates, parents and subsidiaries) and

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> other contractors and subcontractors and all of their agents and employees from and against all claims, damages, loss and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Subcontractor's Work provided that
>
> (a) any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Subcontractor's Work itself) including the loss of use resulting there from, **to the extent caused or alleged to be caused in whole or in any part by any negligent act or omission of the Subcontractor** or anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, regardless of whether it is caused in part by a party indemnified hereunder.
>
> (b) [omitted].

Concord and Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC, 424 S.C. 639, 643-644, 819 S.E.2d 166, 168-169 (Ct. App. 2018), reh'g denied (Oct. 18, 2018).

Because BFS has admitted that it was responsible for supervising all of the work performed by East Coast and BFS' other subcontractors, it is impossible for BFS not to be at least partially responsible for any deficient work of ECC. *See* Unclean Hands argument section *infra*. Thus, any and all deficiencies in ECC's work are concurrent negligence, which our courts have ruled multiple times is not covered under this indemnity provision. Thus, BFS' claims for contractual indemnity fail as a matter of law.

4. BFS' Non-Indemnity claims are barred by the *Stoneledge* holding.

East Coast's arguments are duplicative of the arguments made by ECC in its Memo in support of its Motion for Summary Judgment which are incorporated here by reference.

5. BFS has unclean hands and may not recover in equity.

a. BFS is a joint tortfeasor with its subcontractors.
b. BFS is at least partially at fault because of its supervisory role.
c. BFS has admitted at least partial fault by admitting that repairs to its work are necessary.

East Coast's arguments for the above subsections of section 4 are duplicative of the arguments made by ECC in its Memo in support of its Motion for Summary Judgment which are incorporated here by reference.

d. BFS is statutorily liable for the work of many of its subcontractors.

It is undisputed that BFS holds an unlimited commercial general contractor's license (License No. 112969). SC Code Ann. § 40-11-270 allows licensed contractors to use unlicensed subcontractors to perform their work. However, it also requires the licensed contractor, here BFS, to be provide supervision and it says that the contractor is "fully responsible" for the actions of the unlicensed subcontractor. In this case, nine of the thirteen subcontractors, including East Coast, sued by BFS are not licensed. BFS is 'fully responsible' for its unlicensed subcontractors, thus it cannot be adjudged without fault and cannot succeed on its claims in indemnity.

WHEREFORE for the foregoing reasons, East Coast respectfully requests this Court enter an Order granting summary judgment in East Coast's favor. East Coast adopts and incorporates by reference any additional arguments presented by other co-defendants and parties moving for summary judgment, as if fully set forth herein. East Coast reserves the right to supplement this motion and present additional arguments and evidence at the hearing before the Court.

[SIGNATURE PAGE TO FOLLOW]

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RICHARDSON PLOWDEN & ROBINSON, P.A.

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Attorneys for Respondent East Coast Carpentry/East Coast Carpentry Company

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Builders FirstSource

BUILDERS FIRSTSOURCE – SOUTHEAST GROUP, LLC
MASTER SUBCONTRACTOR AGREEMENT

THIS MASTER SUBCONTRACTOR AGREEMENT (this "Agreement") is entered into effective as of OCT 21, 2005, between **Builders FirstSource – Southeast Group, LLC**, a Delaware limited liability company, address: 111 Lumber Lane, Goose Creek, SC, 29445, telephone: 843.553.5252, fax: 843.572.9567, Contact: Billy F. Crabtree Jr, e-mail: bill.crabtree@buildersfirstsource.com ("Contractor"), and EAST COAST CARPENTRY CO, a FLORIDA for co, telephone: (843) 478 8230, fax: (843) 216 2701, Contact: Rodrigo Assis, e-mail: EASTCOASTCARPENTRYCO@YAHOO.COM ("Subcontractor").

SECTION 1. Introduction.

a. **Work.** This Agreement contains the basic terms and conditions under which Subcontractor agrees to provide materials and/or to perform services (the "Work") from time to time for Contractor on any project ("Project"). TIME IS OF THE ESSENCE. It will apply to and govern all Work requested by Contractor from Subcontractor at any time following the date of this Agreement, unless other terms and conditions are specifically agreed to in writing by Contractor with respect to particular items of Work or until this Agreement is terminated as hereinafter provided. In accordance with the terms and conditions contained in this Agreement, Subcontractor will perform and finish in a good and workmanlike manner, and will furnish all required materials, labor, equipment, supplies and tools for, the Work described from time to time for Contractor on any Project. The Work will be performed in accordance with plans, specifications, drawings and schedules for the Work, and any supplemental terms and conditions to this Agreement, all of which are, or will be, on file at the office of the Contractor ("Contract Documents") and incorporated into the Agreement by this reference as if fully set forth. Contractor will have the right at any time to supplement the plans and specifications for the Work with additional or replacement drawings and schedules or other documents and upon so doing such drawings and schedules will immediately become part of the Contract Documents. The Contract Documents, including any time schedules, may be amended and/or supplemented from time to time by giving Subcontractor written notice thereof. Subcontractor's only remedy in the event an amendment or supplement to the Contractor Documents materially increases the cost or difficulty of performance by the Subcontractor is to terminate this Agreement by written notice to Contractor within 24 hours after Contractor delivers such amendment or supplement to Subcontractor.

b. **Work Orders.** It is contemplated under this Agreement that Subcontractor may perform Work on multiple projects at multiple locations. The description, completion date, special conditions and cost of Work to be performed on a Project will be set forth in the written purchase order or work order (together, "Work Order") delivered by Contractor to Subcontractor relating to that Project. Such

Subcontractor

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Work Order(s) are incorporated herein by reference as if fully set forth. The Work described in Work Orders must be performed under the terms of this Agreement.

c. **Term.** This Agreement shall continue in full force and effect until terminated as provided herein or until written notice of termination is delivered by one party to the other. Termination of this Agreement shall also terminate all Work Orders. If Contractor terminates this Agreement, Contractor will pay to Subcontractor sums due for the Work performed to the date of termination, as provided in Section 8.

SECTION 2. **Materials and Workmanship.** Subcontractor agrees to commence Work on Projects upon request by Contractor. Subcontractor agrees to provide all labor, services, equipment, and tools necessary to complete the Work.

a. **Scope of Work; Knowledge of Site; Plans and Specifications.** Subcontractor shall take all action necessary to familiarize itself and its employees, agents, and subcontractors with the scope and requirements of the Work, the existing site conditions, and any work to be performed by others that may affect the performance of the Work. Subcontractor shall confirm that the Contract Documents are correct and immediately notify Contractor of any errors and omissions.

b. **Change Orders.** Contractor may make any changes to the nature or scope of the Work; provided, however, that any changes resulting in a change in price must be agreed to in writing by Subcontractor and Contractor prior to the Work being performed. Subcontractor shall be notified of changes by written change order. Subcontractor shall not perform any extra work without written authorization by Contractor.

c. **Protection of Work.** Subcontractor shall bear all risk of loss or damage to the Work resulting from any cause whatsoever until Subcontractor has completed its Work on the Project and such work has been accepted by Contractor and Owner. Subcontractor shall at all times, and at its expense, protect all of its labor, materials (regardless of who supplied such materials), supplies, tools, and equipment (and those of its employees, agents, and subcontractors) against any damage, injury, destruction, theft, or loss. Subcontractor shall, at its expense, promptly repair or replace damage to the Work or damage to any other components of the Project resulting from the activities of Subcontractor or its employees, agents, or subcontractors.

d. **Safety**

(1) **Compliance with Laws.** Subcontractor will carefully check the drawings, plans and specifications for conformity with all local, state and federal laws, codes, rules, and regulations bearing on the Work (the "Law") before commencing the Work. Unless Contractor or Owner otherwise agrees in writing, before commencement of the Work Subcontractor will obtain at its sole cost and expense all permits necessary for the Work. Subcontractor will comply with product manufacturer's specifications and will give all notices and comply with all Law bearing on the Work, including by way of enumerations and not limitation, safety and health rules and regulations established by or pursuant to the Federal Occupational Safety and Health Act of 1970, and Subcontractor at all times will furnish to its agents and employees a safe place of employment. If Subcontractor observes any violation of Law, it will immediately report such violation to Contractor in writing. Subcontractor will be responsible for any fines, charges or penalties related to the Work, including, without limitation, fines, charges and/or penalties related to the operation of equipment, the Subcontractor's performance of the Work, the handling

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of materials or any other function that is in violation of the Law. All workmanship and materials will conform to Law, and, if the Subcontractor performs or permits the performance of any Work not in compliance with Law, it will immediately cause such Work to be redone and bear all costs in connection therewith. The Work, as performed, will meet with the approval of, and pass any inspection of, any governmental authority having jurisdiction thereof. If the Work is being constructed under specifications of the Federal Housing Administration or the Veterans Administration, the Work will meet the requirements of these governmental agencies. No Work will be deemed complete until final inspection is made and approval is received from every governmental authority whose approval is required.

(2) The Occupational Safety and Health Administration ("OSHA") has promulgated regulations ("Regulations") which are entitled the OSHA Hazard Communication Standard. Among other things, the Regulations require all contractors and subcontractors to exchange Material Safety Data Sheets ("MSDS") and share information about precautionary measures necessary to protect all workers on a building project.

Subcontractors agrees as follows:

(A) Subcontractor will fully comply with the Regulations and will cooperate with Contractor and/or Owner and all subcontractors of Owner in order to assure compliance with the Regulations.

(B) Subcontractor hereby accepts full responsibility and liability for the training of its employees as to all precautionary measures necessary to protect such employees during both routine and emergency situations on the Project.

(C) Subcontractor will indemnify, defend and hold Contractor and Owner harmless of and from all Claims, damages, liabilities, and causes of action that arise from the failure of Subcontractor to comply with the Regulations, even if Contractor itself has failed to comply with the Regulations or has been negligent.

(D) Subcontractor will assist Contractor in complying with the Regulations.

(E) Subcontractor will not use any chemicals in its performance of the Work for Contractor or incorporate any chemicals into materials or products supplied to Contractor or to the Project unless Subcontractor has given Contractor prior written notice of the existence and the possible exposure to such chemical, has delivered an MSDS to Contractor, and has received a written consent of Contractor to use such chemicals.

(3) Subcontractor's safety program must specifically address, among other safety issues, scaffolding, fall hazards, trenching, and shoring, as may be applicable. For "hard hat" jobs, approved safety helmets and hard soled shoes must be worn at the Project at all times. Safety glasses must be worn when power equipment is used. Subcontractor shall erect and maintain all reasonable safeguards for safety and protection, including, but not limited to, necessary signage and other warnings against hazards, and protective barriers. Subcontractor shall furnish all flagmen, barricades, and other items required for public safety and right-of-way maintenance required by the installation of the Work. Safety vests shall be worn in the public right-of-way.

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(4) **Default.** If Subcontractor fails to immediately comply with safety requirements after verbal or written notice from Contractor, Contractor may correct the violation and deduct the cost from any Partial Payment or final payment in addition to all other remedies available to Contractor, including, without limitation, consequential damages. Subcontractor shall pay any fines assessed to Owner or Contractor due to the acts, omissions, or negligence of Subcontractor. If construction at the Project in whole or in part is delayed or halted by any governmental authority as a result of Subcontractor's Work, Subcontractor shall pay to Contractor as liquidated damages, and not as a penalty, the amount of $100 per hour until construction at the Project can be safely resumed.

SECTION 3. Warranty and Service. All Work shall be unconditionally guaranteed by Subcontractor for a period of two years, or such longer period as may be required by law or for which Owner requires Contractor to warrant such Work, from the date following Owner's acceptance of the Work. Subcontractor shall correct at its own expense all defects that appear during such period, and all damage (whether to the Work or other components of the Project) arising out of, caused by or in any way related to said defects or repair, within twenty-four (24) hours after written notice or within the time agreed to in writing by Contractor (Saturdays and Sundays excluded). The determination as to what constitutes a defect will be within the sole discretion of Contractor and Owner. If Subcontractor fails to promptly commence and complete the correction of defects, Contractor or Owner may do so. In such event, Subcontractor shall promptly reimburse Contractor for the cost of such work, plus a sum of fifteen percent (15%) thereof (for supervision and overhead). Contractor may, at its option, elect to charge such amounts against the next Partial Payment (defined in Section 8) or the final payment. Subcontractor will maintain a published phone number or an answering service during normal working hours.

SECTION 4. Independent Subcontractor Status. Subcontractor agrees that it and its employees, agents, and subcontractors (and their employees, agents and subcontractors) will perform the Work as independent contractors, and not as employees or agents of Contractor. Contractor has no authority to direct, supervise, or control the means, manner, or method of construction of the Work.

SECTION 5. Insurance. At all times while performing the Work, and for a period of two (2) years thereafter, Subcontractor will maintain for the benefit of itself and Contractor (and Owner, when requested), the following minimum insurance coverage:

a. WORKERS' COMPENSATION INSURANCE - statutory limits in the state where each property is located.

b. EMPLOYER'S LIABILITY INSURANCE - $500,000 or such other higher limits imposed in accordance with the requirement, if any, of the laws of the states where Subcontractor is engaged in business.

c. COMPREHENSIVE GENERAL LIABILITY - $1,000,000 per occurrence, $1,000,000 products, completed operations aggregate, $1,000,000 general aggregate, and broad form contractual liability coverage to cover the indemnity obligations undertaken herein.

d. BUSINESS AUTO LIABILITY, including hired and non-owned auto coverage - $500,000 Combined Single Limit.

Insurance policies shall be (a) issued by companies with a "Best's Rating" and a "Financial Size Category" acceptable to Contractor, (b) on an "occurrence" form (c) list Contractor and if requested, Owner, as

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additional insureds on the General Liability and Automobile Liability Policies. Such Additional Insured Status shall apply: (i) to all liability arising out of or resulting from bodily injury to or sickness, disease or death of any agent, employee or representative of Subcontractor or any of Subcontractor's subcontractors regardless of whether such claim, damage, loss or expense is caused or is alleged to be caused, in whole or in part by the negligence of any additional insured (it being the expressed intent of Contractor and Subcontractor that in such event Subcontractor is to provide coverage hereunder to insure the additional insured(s) from the consequences of their own negligence, whether it is alleged to be the sole or concurring cause of the bodily injury, sickness, disease or death of Subcontractor's agent, representative, or employee or the employees of any of Subcontractor's subcontractors); (ii) in all cases except (i), to the extent of liability resulting from Subcontractor's negligence or willful misconduct; and (iii) to omissions resulting from the additional insured's failure to supervise Subcontractor's operations.

The reference to "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon the company, its agents or representatives" in the cancellation notification portion of the certificate and/or endorsement must be deleted. To the fullest extent permitted by law, any provision on the face of any Certificate of Insurance provided by Subcontractor that states anything to the effect that the Certificate of Insurance does not confer rights to insurance upon Contractor is hereby deemed deleted from such Certificate of Insurance. Subcontractor will provide to Contractor certificates of insurance or other satisfactory evidence of compliance with the provisions of this Section 5 promptly after the date of this Agreement and 30 days before the expiration date of each policy or at any time upon request of Contractor. If such evidence is not furnished, Contractor will have the immediate right, but not the obligation, to procure at Subcontractor's expense (which Contractor may offset such costs against any Partial Payment or final payment), the required insurance on behalf of Subcontractor. The insurance provided herein by Subcontractor shall be primary and non-contributory to any other insurance available to the additional insureds. Waivers of subrogation shall be provided in favor of Contractor and Owner on all policies carried by Subcontractor. Subcontractor hereby releases Contractor and Owner from all claims and causes of action resulting from or related to any loss covered or that should have been covered by insurance required to be maintained by Subcontractor, including the deductible and any uninsured portion. Additionally, Subcontractor shall comply with any additional insurance requirements set forth in any other Contract Documents.

SECTION 6. Waiver, Release, and Indemnification. Subcontractor agrees that Subcontractor, and not Contractor, shall be responsible for all injuries, losses, or damages to Subcontractor, its employees, agents, and subcontractors and to any other parties arising from or relating in any way to the performance of the Work or the actions or inactions of Subcontractor or its agents, employees, and subcontractors. Subcontractor will indemnify, defend and hold Contractor harmless against any such injuries and claims. Accordingly:

a. **Waiver.** Subcontractor expressly waives any provision of any applicable workers' compensation act that might prevent its being joined as a defendant or enable it to avoid liability to Contractor or Owner or any other third party for damages, contribution, or indemnity where Subcontractor or any employee, agent, or subcontractor of Subcontractor, or any of their respective employees, officers, agents, or invitees, makes any claim for damages against Contractor or commences any civil action.

b. **Release and Indemnity.**

(1) Subcontractor hereby agrees to release, indemnify, defend, and hold harmless Contractor and Owner and their affiliates and employees, directors, officers, agents, and invitees (each an "Indemnitee"), to the fullest extent permitted by law from any costs, expenses, demands, causes of action, claims, damage, liability, loss, or costs ("Claims") (together with attorneys' fees)

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arising out of, resulting from, or connected with the death of or any injury to, or any damage to the property of, Subcontractor or its employees, agents, or subcontractors or any of their respective subcontractors, employees, officers, agents, or invitees.

(2) For all Claims not covered by (1) above and to the fullest extent permitted by law, Subcontractor agrees to release, indemnify, defend, and hold harmless the Indemnitees for, and to save them harmless against, any and all Claims (together with reasonable attorneys' fees), to the extent of liability resulting from Subcontractor's negligence or willful misconduct incurred by the Indemnitees which arise out of or relate to (i) any alleged personal injury, death, or property damage arising from or connected with the Work; (ii) any alleged defect or malfunction in any of the services or materials provided in connection with the Work; or (iii) omissions resulting from Indemnitee's failure to supervise Subcontractor's operations.

SECTION 7. Default and Damages.

a. Subcontractor's Default. The following acts on the part of Subcontractor will, at Contractor' option, result in the immediate termination of this Agreement and all Work Orders, and dismissal of Subcontractor from each site.

(1) Any delays of the Work caused by Subcontractor's failure or refusal to supply enough skilled labor or materials to meet Contractor' schedule.

(2) Subcontractor's failure to promptly pay any labor, material suppliers, or lien claimants with respect to any Work.

(3) Adjudication of Subcontractor to be bankrupt or insolvent either by Contractor or any court or governmental entity.

(4) If Subcontractor or any of its employees, subcontractors, or agents (or employees, subcontractors, or agents of any subcontractor retained by Subcontractor to perform Work) consume, use, or are under the influence of alcohol or illegal drugs while on the site. (Subcontractor agrees to strictly enforce rules to this effect and to inform all employees, agents, and subcontractors that such rules will be strictly enforced.)

(5) Failure of Subcontractor or its agents, subcontractors, or employees to (a) operate motorized vehicles or equipment in a safe and orderly manner, (b) comply with safe labor and material installation practices designated by Contractor or Owner or otherwise accepted by the industry, or (c) leave the Project site in a safe condition (as determined by Contractor in its sole discretion) during or after construction.

(6) Subcontractor's failure to comply with the provisions of this Agreement regarding assignment or subcontracting.

(7) Any other violations of the Contract Documents including without limitation this Agreement.

b. Damages.

(1) No Damages for Delay. Notwithstanding anything to the contrary in this Agreement, and to the fullest extent permitted by law, Contractor will not be liable for any loss, claim, cost, liability, or damage incurred by Subcontractor, whether direct or indirect or whether related to efforts by

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Contractor to accelerate the Work, on an account of any delay, disruption, hindrance, or any other impediment whatsoever, no matter by what, or by whom caused. Rather, the Cost of Work (defined in Section 8) is understood and agreed to include and cover all expenses and costs due to delays, disruptions, hindrances, or any other impediments regardless of their cause. Subcontractor agrees not to make, and hereby waives, any such claim for damages.

(2) **Subcontractor's Liability to Contractor upon Termination.** If this Agreement is terminated at Contractor's option as provided in this Section 7, Subcontractor will be liable to Contractor for all costs and damages incurred by Contractor due to Subcontractor's failure to perform under this Agreement or other Contract Documents (including without limitation the amount by which the cost to complete the Project exceeds the cost of the Work), Subcontractor's failure to keep up the progress of the Work as required, or Subcontractor's failure to execute the Work as directed by Contractor. In addition to all costs and damages incurred by Contractor, Subcontractor shall be liable to Contractor for an additional amount equal to 25% of all costs and damages for Contractor's additional overhead and related costs.

c. **Reimbursement for Fines.** Subcontractor shall promptly reimburse to Contractor and shall indemnify, defend, and hold Contractor harmless regarding any fines or penalties incurred by Contractor or Owner as a result of the actions or inaction of Subcontractor or its employees, agents, or subcontractors, relating to performance of Work or otherwise, including without limitation their failure to abide by the requirements of Section 2(d).

SECTION 8. Payment to Subcontractor.

a. **Payment by Owner is Condition Precedent.** Subcontractor agrees and acknowledges that Contractor shall seek payment from Owner for the price of the Work ("Cost of Work") performed pursuant to Work Orders and that Contractor has no duty or obligation to pay Subcontractor for any Work until Contractor has been paid by Owner. Therefore, all obligations of Contractor to make Partial Payments and final payment are subject to the express conditions precedent that Owner accept Subcontractor's Work and Contractor receive payments from Owner for all payments to Subcontractor. It is expressly agreed that any basis for non-payment by Owner, including the bankruptcy or insolvency of Owner, will not excuse this condition precedent and Subcontractor expressly assumes the risk of delayed payment or non-payment by Owner.

b. **Partial Payments.** Partial payments ("Partial Payments") for portions of the Work that have been completed will be made by Contractor to Subcontractor as the Work progresses, but not more often than in accordance with Contractor's regular payment procedures. As a condition precedent to Partial Payments, Subcontractor must submit written applications that provide a description of the portion of the Work that has been completed during the payment period (including without limitation materials and supplies used therein if provided by Subcontractor), an estimate of the percentage of completion of the Work, a copy of each change order for the payment period, Safety Meeting Sheets for the period of time since the last submission for payment, sheets indicating the number of hours worked by any employees of Subcontractor or any of its subcontractors ("Employee Time Sheets") for the period of time since the last submission for payment, evidence of payment, waivers (including without limitation lien waivers), and supplier affidavits in form satisfactory to Owner and Contractor, for itself, its sub-subcontractors and material suppliers, and all other information Contractor is required to provide to Owner as a condition to Contractor's right to receive payment. Contractor reserves the right to modify such estimates in its sole and exclusive discretion and such modifications will bind Subcontractor for

Subcontractor

Contractor

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the purpose of Partial Payments. Partial Payments will be made to Subcontractor on or about the thirtieth day following approval of the Application for Payment by Contractor and receipt of payment by Contractor from Owner.

c. **Retainage.** Contractor will retain at least ten percent (10%) of each Partial Payment (the "Retainage Amount") or any greater amount Contractor chooses to retain in its sole discretion. Contractor may, in its sole discretion, waive its right to retain any Retainage Amount from any Partial Payment.

d. **Grounds for Withholding Payments.** Contractor may withhold any Partial Payment or the final payment in whole or in part upon the occurrence of any breach of this Agreement by Subcontractor until a cure satisfactory to Contractor has been completed.

e. **Work Covered by Partial Payments.** All the completed Work covered by Partial Payments made to Subcontractor will thereupon become the sole property of Contractor, but this provision will not be construed as relieving Subcontractor from the sole responsibility for all Work upon which Partial Payments have been made, for the restoration of any damaged Work, for the correction of defective Work, or as a waiver of Contractor' right to require fulfillment of all of the terms of this Agreement. Payment to Subcontractor is specifically agreed not to imply acceptance by Contractor or Owner of any portion of the Work that fails to comply with the Contract Documents.

f. **Final Payment.** Final payment constitutes the entire unpaid balance of the Cost of Work minus any amounts retained. Final payment will be made by Contractor to Subcontractor upon satisfaction of the following conditions:

(1) the Work is fully performed in accordance with the requirements of the Contract Documents, and Subcontractor is not in default under this Agreement or the Contract Documents;

(2) Subcontractor has submitted satisfactory evidence of payments to, waivers by and releases from all claims by Subcontractor and any persons, firms or corporations having performed work, labor, or services or furnished materials, equipment, tools, or supplies to Subcontractor for the Work (including without limitation lien waivers) if requested by Contractor;

(3) Subcontractor has delivered to Contractor all as-built drawings, certifications, maintenance manuals, operating instructions, written guaranties, and warranties and bonds;

(4) Subcontractor has provided Safety Meeting Sheets and Employee Time Sheets for the period of time since the last submission for payment;

(5) Owner, any general contractor, any lender, any architect and Contractor have accepted the Work; and

(6) Contractor has received payment from Owner.

g. **Release of Retainage.** Contractor will release any Retainage Amount thirty (30) days after all conditions precedent to Subcontractor's receipt of the final payment are met.

h. **Subcontractor's Agreement to Pay.** Subcontractor will promptly pay when due all charges owed by it for labor, services, materials, equipment, tools, and supplies furnished under this Agreement and will keep the Work and the Project free from any mechanics' and materialmen's liens. Subcontractor shall not acquire any materials, supplies, or equipment subject to any security interest or conditional sale or

Subcontractor

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other agreement where any interest is retained by or granted to a seller, supplier, or lender. Contractor, where appropriate, may make payments due Subcontractor directly to other parties owed by Subcontractor, unless Subcontractor provides written notification of any dispute between Subcontractor and its creditors. Contractor shall be entitled to and Subcontractor shall provide acceptable security insuring against claims by Subcontractor's creditors.

i. **Indemnification.** Subcontractor hereby agrees to indemnify, defend, and save Contractor and Owner harmless from and against any mechanics' and materialmen's liens upon the Project, attorneys' fees and expenses, amounts paid in settlement, and amounts paid to discharge judgments arising out of the services, labor, equipment, or materials furnished by Subcontractor or its employees, suppliers, or subcontractors. If Subcontractor fails to do so, Contractor may deduct from sums then or thereafter due to Subcontractor such amounts as Contractor deems appropriate in its sole discretion to indemnify Contractor and Owner from liens, claims, and encumbrances. Contractor may, in its sole discretion, cure any liens or satisfy any demands, and recover its costs related directly or indirectly thereto from Subcontractor. Subcontractor hereby waives, releases, and forever discharges Contractor and Owner from all costs, expenses, claims, demands, damages, losses, causes of action, or liabilities that Subcontractor may have against Contractor or Owner that arise directly or indirectly from curing any such liens, claims, encumbrances, or demands.

SECTION 9. Miscellaneous.

a. **Assignment and Successors.** Subcontractor may not assign or subcontract any portion of the Work or its other obligations or rights hereunder without the prior written consent of Contractor and unless permitted by the Contract Documents. If Subcontractor assigns or subcontracts any portion of the Work (with the prior written consent of Contractor), Subcontractor will require each such assignee or sub-tier subcontractor to comply with the Contract Documents, including without limitation and the pertinent provisions of this Agreement (including without limitation Section 5 hereof) by written agreement, a copy of which must be provided to Contractor. Subcontractor hereby unconditionally guarantees the compliance of each such assignee or sub-tier subcontractor with this Agreement. Subject to the preceding provisions of this Section 9, this Agreement will be binding on and will inure to the benefit of the parties and their respective heirs, administrators, executors, successors, and permitted assigns.

b. **Acts of Affiliates.** For the purpose of this Agreement, any action of any agent, employee, subcontractor, director, officer, or invitee of Subcontractor or any of their agents, employees, subcontractors, officers, or invitees shall be deemed an act of Subcontractor. For the purposes hereof, any obligation or liability imposed on Subcontractor with regard to its employees or agents shall also be deemed an obligation or liability of Subcontractor with regard to employees or agents of its subcontractors. Subcontractors of Subcontractor shall include any suppliers of Subcontractor other than Contractor.

c. **Offset.** In addition to any other right provided hereunder, Contractor shall be entitled to offset any amount owed to it by Subcontractor hereunder against any Partial Payment or final payment under this Agreement or any other agreement.

d. **Clean up.** Subcontractor will at all times keep the Project safe and free from the accumulation of waste materials or rubbish caused by its operations or related to the Work. Upon completion of the Work and each portion thereof, Subcontractor will remove all rubbish and waste produced by its operations or Work hereunder from the Project as well as all of its tools, equipment, machinery and surplus materials

Subcontractor

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no longer needed and leave the Project in a "broom clean" or equivalent condition and safe for Subcontractor's employees and subsequent contractors to perform their work, unless otherwise specified in writing. If Subcontractor fails to clean up, Contractor may do so after written notice to Subcontractor and the cost thereof will be charged to Subcontractor.

e. Lien waiver. Subcontractor hereby waives and relinquishes any right, whether granted by statute or not, to file or claim any lien for Work performed hereunder.

f. Other. This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. No delay or failure by Contractor to exercise any right or remedy hereunder, and no partial or single exercise of such right or remedy, will constitute a waiver of that or any other right or remedy. The duties and obligations imposed by this Agreement and rights and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. The prevailing party to any dispute shall have a right to collect its reasonable attorney's fees and expenses. This Agreement shall be governed by the laws of the State of Texas, without regard to the conflicts of law provisions thereof. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof. It is the intent of the parties that any invalid provision hereof be reformed to the extent necessary to make it enforceable to the maximum extent of the law.

EXECUTED to be effective as of the date first above written.

SUBCONTRACTOR:

By: _____
Name: Rodrigo Assis
Title: Owner

935-77259
Subcontractor Social Security No. or Federal I.D. No.

BUILDERS FIRSTSOURCE – SOUTHEAST GROUP, LLC

By: _____
Name: Billy F. Crabtree
Title: Market Installed Mgr.

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EXHIBIT 2

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Job View - Ref#: 147152 Job Type: Window Template: Window Install
Desc: Builder: C R Campbell Subd: Charleston National Lot: 6 Unit: 603 Super: ☑ Job Colors?

Task Status: ☑ Active ☑ Waiting ☑ Completed ☐ Inactive | Priority: ☑ High ☑ Normal ☑ Low

Due From: To: *Search*: = ☐ Milestones Only?

Job Type: Task: *Search*: =

– Checked Item action – Go/Refresh Ref#: 147152 1 - 11 of 11

☑	More Job Info			Task	Assigned	☑	Due	Completed
☐			100%	Order Entry	Bill.Crabtree	☑	Mon 02/27/06	Mon 04/03/06
☐			100%	Create Labor POs	clidyard	☑	Tue 02/28/06	Wed 04/26/06
☐			100%	Pre Walk	rrogers	☑	Wed 03/15/06	Tue 03/21/06
☐			100%	Confirm Delivery	rrogers	☑	Thu 03/16/06	Tue 03/21/06
☐			100%	Window Install	East Coast Carpentry	☑	Fri 03/17/06	Wed 04/26/06
☐			100%	Post Walk	rrogers	☑	Mon 03/20/06	Wed 04/26/06
☐			100%	Punch Complete	rrogers	☑	Tue 03/21/06	Wed 04/26/06
☐			100%	Sub Pay	rrogers	☑	Wed 03/22/06	Wed 04/26/06
☐			100%	Customer Invoice	Tracy.Norwood	☑	Thu 03/23/06	Thu 05/25/06
☐			100%	Customer	C R Campbell	☑	Thu 05/18/06	Thu 05/25/06
☐			100%	Screen Install	ccarroll	☑	Wed 07/04/07	Wed 12/27/06

ELECTRONICALLY FILED - 2020 Oct 30 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003783

Job View - Ref#: 147150 Job Type: Window Template: Window Install
Desc: Builder: C R Campbell Subd: Charleston National Lot: 6 Unit: 602 Super: ☑ Job Colors?

Task Status: ☑ Active ☑ Waiting ☑ Completed ☐ Inactive | Priority: ! ☑ High ☑ Normal ↓ ☑ Low

Due From: To: *Search*: = ☐ Milestones Only?

Job Type: Task: *Search*: =

-- Checked item action -- Go/Refresh Ref#: 147150 1 - 11 of 11

☑	More Job Info		%	Task	Assigned		Due	Completed
☐			100%	Order Entry	Bill.Crabtree	☑	Mon 02/27/06	Mon 04/03/06
☐			100%	Create Labor POs	clidyard	☑	Tue 02/28/06	Wed 04/26/06
☐			100%	Pre Walk	rrogers	☑	Wed 03/15/06	Tue 03/14/06
☐			100%	Confirm Delivery	rrogers	☑	Thu 03/16/06	Tue 03/21/06
☐			100%	Window Install	East Coast Carpentry	☑	Fri 03/17/06	Wed 04/05/06
☐			100%	Post Walk	rrogers	☑	Mon 03/20/06	Wed 04/19/06
☐			100%	Punch Complete	rrogers	☑	Tue 03/21/06	Wed 04/26/06
☐			100%	Sub Pay	clidyard	☑	Wed 03/22/06	Wed 04/26/06
☐			100%	Customer Invoice	Tracy.Norwood	☑	Thu 03/23/06	Thu 05/25/06
☐			100%	Customer	C R Campbell	☑	Thu 05/18/06	Thu 05/25/06
☐			100%	Screen Install	ccarroll	☑	Wed 07/04/07	Wed 12/27/06

ELECTRONICALLY FILED - 2020 Oct 30 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003783

Job View - Ref#: 147149 Job Type: Window Template: Window Install
Desc: Builder: C R Campbell Subd: Charleston National Lot: 6 Unit: 601 Super: ☑ Job Colors?

Task Status: ☑ Active ☑ Waiting ☑ Completed ☐ Inactive | Priority: ☑ High ☑ Normal ☑ Low

Due From: To: *Search*: = ☐ Milestones Only?

Job Type: Task: *Search*: =

-- Checked item action -- Go/Refresh Ref#: 147149 1 - 11 of 11

☑	More Job Info		%	Task	Assigned	☑	Due	Completed
☐			100%	Order Entry	Bill.Crabtree	☑	Mon 02/27/06	Mon 04/03/06
☐			100%	Create Labor POs	clidyard	☑	Tue 02/28/06	Wed 04/05/06
☐			100%	Pre Walk	rrogers	☑	Wed 03/15/06	Tue 03/21/06
☐			100%	Confirm Delivery	rrogers	☑	Thu 03/16/06	Tue 03/21/06
☐			100%	Window Install	East Coast Carpentry	☑	Fri 03/17/06	Wed 04/05/06
☐			100%	Post Walk	rrogers	☑	Mon 03/20/06	Wed 04/05/06
☐			100%	Punch Complete	rrogers	☑	Tue 03/21/06	Wed 04/05/06
☐			100%	Sub Pay	rrogers	☑	Wed 03/22/06	Wed 04/05/06
☐			100%	Customer Invoice	Tracy.Norwood	☑	Thu 03/23/06	Thu 05/25/06
☐			100%	Customer	C R Campbell	☑	Thu 05/18/06	Thu 05/25/06
☐			100%	Screen Install	ccarroll	☑	Wed 07/04/07	Wed 12/21/06

ELECTRONICALLY FILED - 2020 Oct 30 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP0303783

Job View - Ref#: 147147 Job Type: Window Template: Window Install
Desc: Builder: C R Campbell Subd: Charleston National Lot: 6 Unit: 600 Super: ☑ Job Colors?

Task Status: ☑ Active ☑ Waiting ☑ Completed ☐ Inactive | Priority: ! ☑ High ☑ Normal ↓ ☑ Low

Due From: To: *Search*: = ☐ Milestones Only?

Job Type: Task: *Search*: =

– Checked Item action – Go/Refresh Ref#: 147147 1 - 11 of 11

☑	More Job Info			Task		Assigned		Due	Completed
☐			100%	☐	Order Entry	clidyard	☑	Mon 02/27/06	Wed 04/26/06
☐			100%	☐	Create Labor POs	clidyard	☑	Tue 02/28/06	Wed 04/26/06
☐			100%	☐	Pre Walk	rrogers	☑	Wed 03/15/06	Tue 03/21/06
☐			100%	☐	Confirm Delivery	rrogers	☑	Thu 03/16/06	Tue 03/21/06
☐			100%	☐	Window Install	East Coast Carpentry	☑	Fri 03/17/06	Wed 04/26/06
☐			100%	☐	Post Walk	rrogers	☑	Mon 03/20/06	Wed 04/26/06
☐			100%	☐	Punch Complete	rrogers	☑	Tue 03/21/06	Wed 04/26/06
☐			100%	☐	Sub Pay	rrogers	☑	Wed 03/22/06	Wed 04/26/06
☐			100%	☐	Customer Invoice	Tracy.Norwood	☑	Thu 03/23/06	Thu 05/25/06
☐			100%	☐	Customer	C R Campbell	☑	Mon 05/15/06	Thu 05/25/06
☐			100%	☐	Screen Install	ccarroll	☑	Wed 07/04/07	Wed 12/26/06

ELECTRONICALLY FILED - 2020 Oct 30 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003383

Job View - Ref#: 151456 Job Type: Window Template: Window Install
Desc: Builder: C R Campbell Subd: Charleston National Lot: 8 Unit: 800 Super: ☑ Job Colors?

Task Status: ☑ Active ☑ Waiting ☑ Completed ☐ Inactive | Priority: ☑ High ☑ Normal ☑ Low

Due From: To: *Search*: = ☐ Milestones Only?

Job Type: Task: *Search*: =

– Checked item action – Go/Refresh Ref#: 151456 1 - 11 of 11

☑	More Job Info			Task	Assigned		Due	Completed
☐			100%	Order Entry	Bill.Crabtree	☑	Wed 02/15/06	Wed 02/15/06
☐			100%	Create Labor POs	clidyard	☑	Mon 02/20/06	Wed 04/26/06
☐			100%	Pre Walk	rrogers	☑	Mon 04/03/06	Wed 04/26/06
☐			100%	Confirm Delivery	rrogers	☑	Tue 04/04/06	Wed 04/26/06
☐			100%	Window Install	East Coast Carpentry	☑	Wed 04/05/06	Wed 04/26/06
☐			100%	Post Walk	rrogers	☑	Thu 04/06/06	Wed 04/26/06
☐			100%	Punch Complete	rrogers	☑	Fri 04/07/06	Wed 04/26/06
☐			100%	Sub Pay	rrogers	☑	Mon 04/10/06	Wed 04/26/06
☐			100%	Customer Invoice	Tracy.Norwood	☑	Tue 04/11/06	Thu 05/25/06
☐			100%	Customer	C R Campbell	☑	Thu 05/18/06	Thu 05/25/06
☐			100%	Screen Install	ccarroll	☑	Thu 11/23/06	Mon 12/04/06

ELECTRONICALLY FILED - 2020 Oct 30 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1003383

Job View - Ref#: 151449 Job Type: Window Template: Window Install
Desc: Builder: C R Campbell Subd: Charleston National Lot: 8 Unit: 804 Super: ☑ Job Colors?

Task Status: ☑ Active ☑ Waiting ☑ Completed ☐ Inactive | Priority: ☑ High ☑ Normal ☑ Low

Due From: To: *Search*: = ☐ Milestones Only?

Job Type: Task: *Search*: =

-- Checked item action -- Go/Refresh Ref#: 151449 1 - 11 of

☑	More Job Info			Task		Assigned		Due	Completed
☐			100%	☐	Order Entry	Bill.Crabtree	☑	Fri 02/03/06	Wed 02/15/06
☐			100%	☐	Create Labor POs	clidyard	☑	Mon 02/20/06	Wed 04/26/06
☐			100%	☐	Pre Walk	rrogers	☑	Mon 04/03/06	Wed 04/26/06
☐			100%	☐	Confirm Delivery	rrogers	☑	Tue 04/04/06	Wed 04/26/06
☐			100%	☐	Window Install	East Coast Carpentry	☑	Wed 04/05/06	Wed 04/26/06
☐			100%	☐	Post Walk	rrogers	☑	Thu 04/06/06	Wed 04/26/06
☐			100%	☐	Punch Complete	rrogers	☑	Fri 04/07/06	Wed 04/26/06
☐			100%	☐	Sub Pay	rrogers	☑	Mon 04/10/06	Wed 04/26/06
☐			100%	☐	Customer Invoice	Tracy.Norwood	☑	Tue 04/11/06	Thu 05/25/06
☐			100%	☐	Customer	C R Campbell	☑	Thu 05/18/06	Thu 05/25/06
☐			100%	☐	Screen Install	ccarroll	☑	Thu 11/23/06	Mon 12/04/06

ELECTRONICALLY FILED - 2020 Oct 30 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003083

Job View - Ref#: 149992 Job Type: Window Template: Window Install
Desc: Builder: C R Campbell Subd: Charleston National Lot: 8 Unit: 803 Super: ☑ Job Colors?

Task Status: ☑ Active ☑ Waiting ☑ Completed ☐ Inactive | Priority: ☑ High ☑ Normal ☑ Low

Due From: To: *Search*: = ☐ Milestones Only?

Job Type: Task: *Search*: =

-- Checked item action -- Go/Refresh Ref#: 149992 1 - 11 of 11

☑	More Job Info		%	Task	Assigned	☑	Due	Completed
☐			100%	Order Entry	Bill.Crabtree	☑	Wed 03/01/06	Sun 02/05/06
☐			100%	Create Labor POs	Bill.Crabtree	☑	Thu 03/02/06	Sun 02/05/06
☐			100%	Pre Walk	rrogers	☑	Fri 03/03/06	Wed 04/26/06
☐			100%	Confirm Delivery	rrogers	☑	Mon 03/06/06	Wed 04/26/06
☐			100%	Window Install	East Coast Carpentry	☑	Tue 03/07/06	Wed 04/26/06
☐			100%	Post Walk	rrogers	☑	Wed 03/08/06	Wed 04/26/06
☐			100%	Punch Complete	rrogers	☑	Thu 03/09/06	Wed 04/26/06
☐			100%	Sub Pay	rrogers	☑	Fri 03/10/06	Wed 04/26/06
☐			100%	Customer Invoice	Tracy.Norwood	☑	Mon 03/13/06	Thu 05/25/06
☐			100%	Customer	C R Campbell	☑	Thu 05/18/06	Thu 05/25/06
☐			100%	Screen Install	ccarroll	☑	Thu 11/23/06	Mon 12/04/06

ELECTRONICALLY FILED - 2020 Oct 30 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP0303183

Job View - Ref#: 149991 Job Type: Window Template: Window Install
Desc: Builder: C R Campbell Subd: Charleston National Lot: 8 Unit: 801 Super: ☑ Job Colors?

Task Status: ☑ Active ☑ Waiting ☑ Completed ☐ Inactive | Priority: ☑ High ☑ Normal ☑ Low

Due From: To: *Search*: = ☐ Milestones Only?

Job Type: Task: *Search*: =

– Checked item action – Go/Refresh Ref#: 149991 1 - 11 of

☑	More Job Info		Task	Assigned		Due	Completed
☐		100%	Order Entry	Bill.Crabtree	☑	Wed 03/01/06	Sun 02/0[illegible]/06
☐		100%	Create Labor POs	Bill.Crabtree	☑	Thu 03/02/06	Sun 02/0[illegible]/06
☐		100%	Pre Walk	rrogers	☑	Fri 03/03/06	Wed 04/26/06
☐		100%	Confirm Delivery	rrogers	☑	Mon 03/06/06	Wed 04/26/06
☐		100%	Window Install	East Coast Carpentry	☑	Tue 03/07/06	Wed 04/26/06
☐		100%	Post Walk	rrogers	☑	Wed 03/08/06	Wed 04/26/06
☐		100%	Punch Complete	rrogers	☑	Thu 03/09/06	Wed 04/26/06
☐		100%	Sub Pay	rrogers	☑	Fri 03/10/06	Wed 04/26/06
☐		100%	Customer Invoice	Tracy.Norwood	☑	Mon 03/13/06	Thu 05/25/06
☐		100%	Customer	C R Campbell	☑	Thu 05/18/06	Thu 05/25/06
☐		100%	Screen Install	ccarroll	☑	Thu 11/23/06	Mon 12/04/06

ELECTRONICALLY FILED - 2020 Oct 30 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003183

Job View - Ref#: 149990 Job Type: Window Template: Window Install
Desc: Builder: C R Campbell Subd: Charleston National Lot: 8 Unit: 802 Super: Job Colors?

Task Status: Active Waiting Completed Inactive Priority: High Normal Low

Due From: To: *Search*: = Milestones Only?

Job Type: Task: *Search*: =

-- Checked item action -- Go/Refresh Ref#: 149990 1 - 11 of

More Job Info		Task	Assigned		Due	Completed
	100%	Order Entry	Bill.Crabtree	☑	Wed 03/01/06	Sun 02/0[illegible]06
	100%	Create Labor POs	Bill.Crabtree	☑	Thu 03/02/06	Sun 02/0[illegible]06
	100%	Pre Walk	rrogers	☑	Fri 03/03/06	Tue 04/1[illegible]06
	100%	Confirm Delivery	rrogers	☑	Mon 03/06/06	Tue 04/1[illegible]06
	100%	Window Install	East Coast Carpentry	☑	Tue 03/07/06	Wed 04/2[illegible]06
	100%	Post Walk	rrogers	☑	Wed 03/08/06	Wed 04/2[illegible]06
	100%	Punch Complete	rrogers	☑	Thu 03/09/06	Wed 04/2[illegible]06
	100%	Sub Pay	rrogers	☑	Fri 03/10/06	Wed 04/2[illegible]06
	100%	Customer Invoice	Tracy.Norwood	☑	Mon 03/13/06	Thu 05/2[illegible]06
	100%	Customer	C R Campbell	☑	Thu 05/18/06	Thu 05/2[illegible]06
	100%	Screen Install	ccarroll	☑	Thu 11/23/06	Mon 12/0[illegible]06

ELECTRONICALLY FILED - 2020 Oct 30 1:38 PM - CHARLESTON COMMON PLEAS - CASE #2015CP1003783

Job View - Ref#: 153341 Job Type: Framing Template: Framing Install
Desc: Builder: C R Campbell Subd: Charleston National Lot: 9 Unit: Super: Job Colors?

Task Status: Active Waiting Completed Inactive Priority: High Normal Low

Due From: To: *Search*: = Milestones Only?

Job Type: Task: *Search*: =

-- Checked item action -- Go/Refresh Ref#: 153341 1 - 16 of 16

More Job Info	%	Task	Assigned	Due	Completed
	100%	Deliver 1st Level Floor Framing	rthomason	Wed 01/18/06	Wed 03/01/06
	100%	Deliver First Level Loose Fill	rthomason	Wed 01/18/06	Wed 03/01/06
	100%	Deliver First Level Wall Package	rthomason	Fri 01/20/06	Wed 03/01/06
	100%	Deliver First Level Shaft Wall Liner	rthomason	Mon 01/23/06	Wed 03/01/06
	100%	Deliver Second Level Floor Package	rthomason	Tue 01/24/06	Wed 03/01/06
	100%	Deliver Second Level Loose Fill	rthomason	Tue 01/24/06	Wed 03/01/06
	100%	Deliver Second Level Wall Package	rthomason	Thu 01/26/06	Wed 03/01/06
	100%	Deliver Second Level Shaft Wall Liner	rthomason	Fri 01/27/06	Wed 03/01/06
	100%	Deliver Roof Package	rthomason	Mon 01/30/06	Wed 03/01/06
	100%	Deliver Roof Loose Fill	rthomason	Mon 01/30/06	Wed 03/01/06
	100%	Inspection Passed	rthomason	Mon 03/27/06	Thu 05/11/06
	100%	Base House Invoiced	Tracy.Norwood	Thu 03/30/06	Fri 03/24/06
	100%	VPO List Generated	rthomason	Mon 08/21/06	Tue 08/22/06
	100%	VPO Request To Builder	Bill.Crabtree	Tue 11/07/06	Tue 12/26/06
	100%	VPO Invoiced	Bill.Crabtree	Thu 11/09/06	Tue 12/26/06
	100%	Customer	C R Campbell	Fri 11/10/06	Tue 12/26/06

ELECTRONICALLY FILED - 2020 Oct 30 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003783

Job View - Ref#: 146414 Job Type: Window Template: Window Install
Desc: Builder: C R Campbell Subd: Charleston National Lot: 9 Unit: 904 Super:Jim Gallagher ☑ Job Colors?

Task Status: ☑ Active ☑ Waiting ☑ Completed ☐ Inactive Priority: ☑ High ☑ Normal ☑ Low

Due From: To: *Search*: = ☐ Milestones Only?

Job Type: Task: *Search*: =

-- Checked item action -- Go/Refresh Ref#: 146414 1 - 11 of

☑	More Job Info			Task	Assigned		Due	Completed
☐			100%	Pre Walk	rrogers	☑	Wed 02/22/06	Fri 02/24/06
☐			100%	Order Entry	Bill.Crabtree	☑	Mon 02/27/06	Tue 02/28/06
☐			100%	Create Labor POs	clidyard	☑	Tue 02/28/06	Tue 03/07/06
☐			100%	Confirm Delivery	rrogers	☑	Thu 03/02/06	Wed 03/29/06
☐			100%	Window Install	East Coast Carpentry	☑	Fri 03/03/06	Wed 03/29/06
☐			100%	Post Walk	rrogers	☑	Mon 03/06/06	Wed 03/29/06
☐			100%	Punch Complete	rrogers	☑	Tue 03/07/06	Wed 03/29/06
☐			100%	Sub Pay	clidyard	☑	Wed 03/08/06	Wed 03/29/06
☐			100%	Customer Invoice	Tracy.Norwood	☑	Thu 03/09/06	Mon 05/22/06
☐			100%	Customer	C R Campbell	☑	Thu 05/18/06	Mon 05/29/06
☐			100%	Screen Install	ccarroll	☑	Wed 07/04/07	Wed 12/27/06

ELECTRONICALLY FILED - 2020 Oct 30 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP003183

Job View - Ref#: 146413 Job Type: Window Template: Window Install
Desc: Builder: C R Campbell Subd: Charleston National Lot: 9 Unit: 903 Super:Jim Gallagher Job Colors?

Task Status: Active Waiting Completed Inactive | Priority: High Normal Low

Due From: To: *Search*: = Milestones Only?

Job Type: Task: *Search*: =

– Checked item action – Go/Refresh Ref#: 146413 1 - 11 of 11

More Job Info		Task	Assigned		Due	Completed
	100%	Pre Walk	rrogers	☑	Wed 02/22/06	Fri 02/24/06
	100%	Order Entry	Bill.Crabtree	☑	Mon 02/27/06	Tue 02/28/06
	100%	Create Labor POs	clidyard	☑	Tue 02/28/06	Tue 03/07/06
	100%	Confirm Delivery	rrogers	☑	Thu 03/02/06	Tue 03/07/06
	100%	Window Install	East Coast Carpentry	☑	Fri 03/03/06	Tue 03/07/06
	100%	Post Walk	rrogers	☑	Mon 03/06/06	Tue 03/07/06
	100%	Punch Complete	rrogers	☑	Tue 03/07/06	Tue 03/07/06
	100%	Sub Pay	clidyard	☑	Wed 03/08/06	Tue 03/07/06
	100%	Customer Invoice	Tracy.Norwood	☑	Thu 03/09/06	Mon 05/22/06
	100%	Customer	C R Campbell	☑	Thu 05/18/06	Mon 05/22/06
	100%	Screen Install	ccarroll	☑	Wed 07/04/07	Wed 12/27/06

ELECTRONICALLY FILED - 2020 Oct 30 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1003783

Job View - Ref#: 146411 Job Type: Window Template: Window Install
Desc: Builder: C R Campbell Subd: Charleston National Lot: 9 Unit: 902 Super:Jim Gallagher Job Colors?

Task Status: Active Waiting Completed Inactive Priority: High Normal Low

Due From: To: *Search*: = Milestones Only?

Job Type: Task: *Search*: =

– Checked item action – Go/Refresh Ref#: 146411 1 - 11 of

More Job Info		Task	Assigned		Due	Completed
	100%	Pre Walk	rrogers		Wed 02/22/06	Fri 02/24/06
	100%	Order Entry	Bill.Crabtree		Mon 02/27/06	Tue 02/28/06
	100%	Create Labor POs	clidyard		Tue 02/28/06	Tue 03/07/06
	100%	Confirm Delivery	rrogers		Thu 03/02/06	Tue 03/07/06
	100%	Window Install	East Coast Carpentry		Fri 03/03/06	Wed 03/29/06
	100%	Post Walk	rrogers		Mon 03/06/06	Tue 03/07/06
	100%	Punch Complete	rrogers		Tue 03/07/06	Wed 03/29/06
	100%	Sub Pay	clidyard		Wed 03/08/06	Wed 03/29/06
	100%	Customer Invoice	Tracy.Norwood		Thu 03/09/06	Mon 05/22/06
	100%	Customer	C R Campbell		Thu 05/18/06	Mon 05/29/06
	100%	Screen Install	ccarroll		Wed 07/04/07	Wed 12/27/06

ELECTRONICALLY FILED - 2020 Oct 30 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP0303

Job View - Ref#: 146407 Job Type: Window Template: Window Install
Desc: Builder: C R Campbell Subd: Charleston National Lot: 9 Unit: 901 Super:Jim Gallagher Job Colors?

Task Status: Active Waiting Completed Inactive Priority: High Normal Low

Due From: To: *Search*: = Milestones Only?

Job Type: Task: *Search*: =

– Checked item action – Go/Refresh Ref#: 146407 1 - 11 of

More Job Info		Task	Assigned		Due	Completed
	100%	Pre Walk	rrogers		Wed 02/22/06	Fri 02/24/06
	100%	Order Entry	Bill.Crabtree		Mon 02/27/06	Tue 02/28/06
	100%	Create Labor POs	clidyard		Tue 02/28/06	Tue 03/07/06
	100%	Confirm Delivery	rrogers		Thu 03/02/06	Tue 03/07/06
	100%	Window Install	East Coast Carpentry		Fri 03/03/06	Wed 03/22/06
	100%	Post Walk	rrogers		Mon 03/06/06	Tue 03/07/06
	100%	Punch Complete	rrogers		Tue 03/07/06	Wed 03/22/06
	100%	Sub Pay	clidyard		Wed 03/08/06	Wed 03/29/06
	100%	Customer Invoice	Tracy.Norwood		Thu 03/09/06	Mon 05/22/06
	100%	Customer	C R Campbell		Thu 05/18/06	Mon 05/22/06
	100%	Screen Install	ccarroll		Wed 07/04/07	Wed 12/27/06

ELECTRONICALLY FILED - 2020 Oct 30 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003783

Job View - Ref#: 146406 Job Type: Window Template: Window Install
Desc: Builder: C R Campbell Subd: Charleston National Lot: 9 Unit: 900 Super:Jim Gallagher Job Colors?

Task Status: Active Waiting Completed Inactive Priority: High Normal Low

Due From: To: *Search*: = Milestones Only?

Job Type: Task: *Search*: =

-- Checked item action -- Go/Refresh Ref#: 146406 1 - 11 of 11

More Job Info		Task	Assigned		Due	Completed
	100%	Pre Walk	rrogers		Wed 02/22/06	Fri 02/24/06
	100%	Order Entry	Bill.Crabtree		Mon 02/27/06	Tue 02/28/06
	100%	Create Labor POs	clidyard		Tue 02/28/06	Tue 03/07/06
	100%	Confirm Delivery	rrogers		Thu 03/02/06	Tue 03/07/06
	100%	Window Install	East Coast Carpentry		Fri 03/03/06	Wed 03/29/06
	100%	Post Walk	rrogers		Mon 03/06/06	Tue 03/07/06
	100%	Punch Complete	rrogers		Tue 03/07/06	Wed 03/29/06
	100%	Sub Pay	clidyard		Wed 03/08/06	Wed 03/29/06
	100%	Customer Invoice	Tracy.Norwood		Thu 03/09/06	Mon 05/22/06
	100%	Customer	C R Campbell		Thu 05/18/06	Mon 05/22/06
	100%	Screen Install	ccarroll		Wed 07/04/07	Wed 12/27/06

ELECTRONICALLY FILED - 2020 Oct 30 1:38 PM - CHARLESTON - COMMON PLEAS CASE#2016CP1003703

Job View - Ref#: 153195 Job Type: Window Template: Window Install
Desc: Builder: C R Campbell Subd: Charleston National Lot: 12 Unit: 1200 Super: ☑ Job Colors?

Task Status: ☑ Active ☑ Waiting ☑ Completed ☐ Inactive | Priority: ! ☑ High ☑ Normal ↓ ☑ Low

Due From: To: *Search*: = ☐ Milestones Only?

Job Type: Task: *Search*: =

-- Checked item action -- Go/Refresh Ref#: 153195 1 - 12 of 12

☑	More Job Info			Task	Assigned		Due	Completed
☐			100%	Order Entry	Bill.Crabtree	☑	Mon 02/27/06	Fri 04/28/06
☐			100%	Create Labor POs	clidyard	☑	Tue 02/28/06	Thu 05/04/06
☐			100%	Pre Walk	rrogers	☑	Wed 04/19/06	Fri 04/28/06
☐			100%	Confirm Delivery	rrogers	☑	Thu 04/27/06	Fri 04/28/06
☐			100%	Window Install	East Coast Carpentry	☑	Fri 04/28/06	Thu 05/04/06
☐			100%	Post Walk	rrogers	☑	Mon 05/01/06	Thu 05/04/06
☐			100%	Punch Complete	rrogers	☑	Tue 05/02/06	Tue 08/07/07
☐			100%	Sub Pay	rrogers	☑	Wed 05/03/06	Thu 05/04/06
☐			100%	Customer Invoice	Tracy.Norwood	☑	Thu 05/04/06	Wed 05/31/06
☐			100%	Customer	C R Campbell	☑	Mon 06/12/06	Wed 05/31/06
☐			100%	Confirm new transom sash on order	Drew.Stritch	☑	Thu 08/23/07	Mon 08/27/07
☐			100%	Screen Install	ccarroll	☑	Fri 11/23/07	Tue 05/01/07

ELECTRONICALLY FILED - 2020 Oct 30 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003783

Job View - Ref#: 163391 Job Type: Window Template: Window Install
Desc: Builder: C R Campbell Subd: charleston national Lot: 12 Unit: 1201 Super: ☑ Job Colors?

Task Status: ☑ Active ☑ Waiting ☑ Completed ☐ Inactive Priority: ☑ High ☑ Normal ☑ Low

Due From: To: *Search*: = ☐ Milestones Only?

Job Type: Task: *Search*: =

– Checked item action – Go/Refresh Ref#: 163391 1 - 11 of

☑	More Job Info	!	%	Task	Assigned	☑	Due	Completed
☐			100%	Order Entry	clidyard	☑	Thu 05/04/06	Thu 05/04/06
☐			100%	Create Labor POs	clidyard	☑	Fri 05/05/06	Thu 05/04/06
☐			100%	Pre Walk	rrogers	☑	Mon 05/08/06	Thu 05/04/06
☐			100%	Confirm Delivery	rrogers	☑	Tue 05/09/06	Thu 05/04/06
☐			100%	Window Install	East Coast Carpentry	☑	Wed 05/10/06	Thu 05/04/06
☐			100%	Post Walk	rrogers	☑	Thu 05/11/06	Thu 05/04/06
☐			100%	Punch Complete	rrogers	☑	Fri 05/12/06	Thu 05/04/06
☐			100%	Sub Pay	clidyard	☑	Mon 05/15/06	Thu 05/04/06
☐			100%	Customer Invoice	Tracy.Norwood	☑	Tue 05/16/06	Wed 05/31/06
☐			100%	Customer	C R Campbell	☑	Thu 06/22/06	Wed 05/31/06
☐			100%	Screen Install	ccarroll	☑	Fri 11/23/07	Tue 05/01/07

ELECTRONICALLY FILED - 2020 Oct 30 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003783

Job View - Ref#: 163393 Job Type: Window Template: Window Install
Desc: Builder: C R Campbell Subd: CHARLESTON NATIONAL Lot: 12 Unit: 1203 Super: ☑ Job Colors?

Task Status: ☑ Active ☑ Waiting ☑ Completed ☐ Inactive | Priority: ☑ High ☑ Normal ☑ Low

Due From: To: *Search*: = ☐ Milestones Only?

Job Type: Task: *Search*: =

– Checked item action – Go/Refresh Ref#: 163393 1 - 12 of 12

☑	More Job Info			Task	Assigned	☑	Due	Completed
☐			100%	Order Entry	clidyard	☑	Thu 05/04/06	Thu 05/04/06
☐			100%	Create Labor POs	clidyard	☑	Fri 05/05/06	Thu 05/04/06
☐			100%	Pre Walk	rrogers	☑	Mon 05/08/06	Thu 05/04/06
☐			100%	Confirm Delivery	rrogers	☑	Tue 05/09/06	Thu 05/04/06
☐			100%	Window Install	East Coast Carpentry	☑	Wed 05/10/06	Thu 05/04/06
☐			100%	Post Walk	rrogers	☑	Thu 05/11/06	Thu 05/04/06
☐			100%	Punch Complete	rrogers	☑	Fri 05/12/06	Thu 05/04/06
☐			100%	Sub Pay	clidyard	☑	Mon 05/15/06	Thu 05/04/06
☐			100%	Customer Invoice	Tracy.Norwood	☑	Tue 05/16/06	Wed 05/04/06
☐			100%	Customer	C R Campbell	☑	Thu 06/22/06	Wed 05/31/06
☐			100%	Screen Install	ccarroll	☑	Fri 08/10/07	Tue 08/07/07
☐			100%	follow up on screens	Drew.Stritch	☑	Thu 08/23/07	Mon 08/20/07

ELECTRONICALLY FILED - 2020 Oct 30 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP0033

Job View - Ref#: 163394 Job Type: Window Template: Window Install
Desc: Builder: C R Campbell Subd: CHARLESTON NATIONAL Lot: 12 Unit: 1204 Super: ☑ Job Colors?

Task Status: ☑ Active ☑ Waiting ☑ Completed ☐ Inactive Priority: ☑ High ☑ Normal ☑ Low

Due From: To: *Search*: = ☐ Milestones Only?

Job Type: Task: *Search*: =

-- Checked item action -- Go/Refresh Ref#: 163394 1 - 11 of

☑	More Job Info			Task	Assigned		Due	Completed
☐			100%	Order Entry	clidyard	☑	Thu 05/04/06	Thu 05/04/06
☐			100%	Create Labor POs	clidyard	☑	Fri 05/05/06	Thu 05/04/06
☐			100%	Pre Walk	rrogers	☑	Mon 05/08/06	Thu 05/04/06
☐			100%	Confirm Delivery	rrogers	☑	Tue 05/09/06	Thu 05/04/06
☐			100%	Window Install	East Coast Carpentry	☑	Wed 05/10/06	Thu 05/11/06
☐			100%	Post Walk	rrogers	☑	Thu 05/11/06	Thu 05/04/06
☐			100%	Punch Complete	East Coast Carpentry	☑	Fri 05/12/06	Thu 05/11/06
☐			100%	Sub Pay	rrogers	☑	Mon 05/15/06	Thu 05/11/06
☐			100%	Customer Invoice	Tracy.Norwood	☑	Tue 05/16/06	Wed 05/31/06
☐			100%	Customer	C R Campbell	☑	Thu 06/22/06	Wed 05/31/06
☐			100%	Screen Install	ccarroll	☑	Fri 11/23/07	Tue 05/01/07

ELECTRONICALLY FILED - 2020 Oct 30 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP0033

Job View - Ref#: 163412 Job Type: Window Template: Window Install
Desc: Builder: C R Campbell Subd: CHARLESTON NATIONAL Lot: 13 Unit: 1302 Super: ☑ Job Colors?

Task Status: ☑ Active ☑ Waiting ☑ Completed ☐ Inactive | Priority: ☑ High ☑ Normal ☑ Low

Due From: To: *Search*: = ☐ Milestones Only?

Job Type: Task: *Search*: =

– Checked item action – Go/Refresh Ref#: 163412 1 - 11 of

☑	More Job Info			Task		Assigned		Due	Completed
☐			100%	☐	Order Entry	clidyard	☑	Thu 05/04/06	Thu 05/04/06
☐			100%	☐	Create Labor POs	clidyard	☑	Fri 05/05/06	Thu 05/04/06
☐			100%	☐	Pre Walk	rrogers	☑	Mon 05/08/06	Tue 05/16/06
☐			100%	☐	Confirm Delivery	rrogers	☑	Tue 05/09/06	Tue 05/16/06
☐			100%	☐	Window Install	East Coast Carpentry	☑	Fri 05/26/06	Wed 05/24/06
☐			100%	☐	Post Walk	aahl	☑	Mon 05/29/06	Wed 05/31/06
☐			100%	☐	Punch Complete	aahl	☑	Tue 05/30/06	Wed 05/31/06
☐			100%	☐	Sub Pay	aahl	☑	Wed 05/31/06	Wed 05/31/06
☐			100%	☐	Customer Invoice	Tracy.Norwood	☑	Thu 06/01/06	Fri 06/30/06
☐			100%	☐	Customer	C R Campbell	☑	Mon 07/10/06	Fri 06/30/06
☐			100%	☐	Screen Install	ccarroll	☑	Wed 07/04/07	Tue 05/01/07

ELECTRONICALLY FILED - 2020 Oct 30 1:38 PM - CHARLESTON - COMMON PLEAS - CASE #20CP1003783

Job View - Ref#: 163413 Job Type: Window Template: Window Install
Desc: Builder: C R Campbell Subd: CHARLESTON NATIONAL Lot: 13 Unit: 1303 Super: ☑ Job Colors?

Task Status: ☑ Active ☑ Waiting ☑ Completed ☐ Inactive | Priority: ☑ High ☑ Normal ☑ Low

Due From: To: *Search*: = ☐ Milestones Only?

Job Type: Task: *Search*: =

– Checked Item action – Go/Refresh Ref#: 163413 1 - 11 of 11

☑	More Job Info			Task	Assigned	☑	Due	Completed
☐			100%	Order Entry	clidyard	☑	Thu 05/04/06	Thu 05/04/06
☐			100%	Create Labor POs	clidyard	☑	Fri 05/05/06	Thu 05/04/06
☐			100%	Pre Walk	rrogers	☑	Mon 05/08/06	Tue 05/16/06
☐			100%	Confirm Delivery	rrogers	☑	Tue 05/09/06	Tue 05/16/06
☐			100%	Window Install	East Coast Carpentry	☑	Fri 05/26/06	Wed 05/31/06
☐			100%	Post Walk	aahl	☑	Mon 05/29/06	Wed 05/31/06
☐			100%	Punch Complete	aahl	☑	Tue 05/30/06	Wed 05/31/06
☐			100%	Sub Pay	aahl	☑	Wed 05/31/06	Wed 05/31/06
☐			100%	Customer Invoice	Tracy.Norwood	☑	Thu 06/01/06	Fri 06/30/06
☐			100%	Customer	C R Campbell	☑	Mon 07/10/06	Fri 06/30/06
☐			100%	Screen Install	ccarroll	☑	Wed 07/04/07	Tue 05/01/07

ELECTRONICALLY FILED - 2020 Oct 30 1:38 PM - CHARLESTON - COMMON PLEAS - CASE #2016CP1003783

Job View - Ref#: 163414 Job Type: Window Template: Window Install
Desc: Builder: C R Campbell Subd: CHARLESTON NATIONAL Lot: 13 Unit: 1304 Super: ☑ Job Colors?

Task Status: ☑ Active ☑ Waiting ☑ Completed ☐ Inactive | Priority: ☑ High ☑ Normal ☑ Low

Due From: To: *Search*: = ☐ Milestones Only?

Job Type: Task: *Search*: =

– Checked Item action – Go/Refresh Ref#: 163414 1 - 11 of 11

☑	More Job Info			Task		Assigned	☑	Due	Completed
☐			100%	☐	Order Entry	clidyard	☑	Thu 05/04/06	Thu 05/04/06
☐			100%	☐	Create Labor POs	clidyard	☑	Fri 05/05/06	Thu 05/04/06
☐			100%	☐	Pre Walk	rrogers	☑	Mon 05/08/06	Tue 05/16/06
☐			100%	☐	Confirm Delivery	rrogers	☑	Tue 05/09/06	Tue 05/16/06
☐			100%	☐	Window Install	East Coast Carpentry	☑	Fri 05/26/06	Mon 06/26/06
☐			100%	☐	Post Walk	aahl	☑	Mon 05/29/06	Mon 06/26/06
☐			100%	☐	Punch Complete	Edward Witham	☑	Tue 05/30/06	Mon 06/26/06
☐			100%	☐	Sub Pay	aahl	☑	Wed 05/31/06	Mon 06/26/06
☐			100%	☐	Customer Invoice	Tracy.Norwood	☑	Thu 06/01/06	Fri 06/30/06
☐			100%	☐	Customer	C R Campbell	☑	Mon 07/10/06	Fri 06/30/06
☐			100%	☐	Screen Install	ccarroll	☑	Wed 07/04/07	Tue 05/01/07

ELECTRONICALLY FILED - 2020 Oct 30 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP0033

Job View - Ref#: 163405 Job Type: Window Template: Window Install
Desc: Builder: C R Campbell Subd: CHARLESTON NATIONAL Lot: 14 Unit: 1401 Super: ☑ Job Colors?

Task Status: ☑ Active ☑ Waiting ☑ Completed ☐ Inactive Priority: ☑ High ☑ Normal ☑ Low

Due From: To: *Search*: = ☐ Milestones Only?

Job Type: Task: *Search*: =

– Checked item action – Go/Refresh Ref#: 163405 1 - 11 of

☑	More Job Info			Task	Assigned		Due	Completed
☐			100%	Order Entry	clidyard	☑	Thu 05/04/06	Thu 05/04/06
☐			100%	Create Labor POs	clidyard	☑	Fri 05/05/06	Thu 05/04/06
☐			100%	Pre Walk	rrogers	☑	Mon 05/08/06	Tue 05/16/06
☐			100%	Confirm Delivery	rrogers	☑	Tue 05/09/06	Tue 05/16/06
☐			100%	Window Install	East Coast Carpentry	☑	Wed 05/10/06	Tue 05/16/06
☐			100%	Post Walk	rrogers	☑	Thu 05/11/06	Tue 05/16/06
☐			100%	Punch Complete	rrogers	☑	Fri 05/12/06	Tue 05/16/06
☐			100%	Sub Pay	rrogers	☑	Mon 05/15/06	Tue 05/16/06
☐			100%	Customer Invoice	Tracy.Norwood	☑	Tue 05/16/06	Fri 06/23/06
☐			100%	Screen Install	ccarroll	☑	Sat 07/15/06	Fri 06/23/06
☐			100%	Customer	C R Campbell	☑	Mon 07/17/06	Fri 06/23/06

ELECTRONICALLY FILED - 2020 Oct 30 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003713

Job View - Ref#: 163405 Job Type: Window Template: Window Install
Desc: Builder: C R Campbell Subd: CHARLESTON NATIONAL Lot: 14 Unit: 1401 Super: ☑ Job Colors?

Task Status: ☑ Active ☑ Waiting ☑ Completed ☐ Inactive | Priority: ☑ High ☑ Normal ☑ Low

Due From: To: *Search*: = ☐ Milestones Only?

Job Type: Task: *Search*: =

– Checked item action – Go/Refresh Ref#: 163405 1 - 11 of 11

☑	More Job Info			Task		Assigned		Due	Completed
☐			100%	☐	Order Entry	clidyard	☑	Thu 05/04/06	Thu 05/04/06
☐			100%	☐	Create Labor POs	clidyard	☑	Fri 05/05/06	Thu 05/04/06
☐			100%	☐	Pre Walk	rrogers	☑	Mon 05/08/06	Tue 05/16/06
☐			100%	☐	Confirm Delivery	rrogers	☑	Tue 05/09/06	Tue 05/16/06
☐			100%	☐	Window Install	East Coast Carpentry	☑	Wed 05/10/06	Tue 05/16/06
☐			100%	☐	Post Walk	rrogers	☑	Thu 05/11/06	Tue 05/16/06
☐			100%	☐	Punch Complete	rrogers	☑	Fri 05/12/06	Tue 05/16/06
☐			100%	☐	Sub Pay	rrogers	☑	Mon 05/15/06	Tue 05/16/06
☐			100%	☐	Customer Invoice	Tracy.Norwood	☑	Tue 05/16/06	Fri 06/23/06
☐			100%	☐	Screen Install	ccarroll	☑	Sat 07/15/06	Fri 06/23/06
☐			100%	☐	Customer	C R Campbell	☑	Mon 07/17/06	Fri 06/23/06

ELECTRONICALLY FILED - 2020 Oct 30 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2006CP1003723

Job View - Ref#: 158580 Job Type: Window Template: Window Install
Desc: Builder: C R Campbell Subd: Charleston National Lot: 16 Unit: Super: Job Colors?

Task Status: Active Waiting Completed Inactive Priority: High Normal Low

Due From: To: *Search*: = Milestones Only?

Job Type: Task: *Search*: =

– Checked Item action – Go/Refresh Ref#: 158580 1 - 11 of

More Job Info		Task	Assigned		Due	Completed
	100%	Create Labor POs	clidyard	☑	Mon 05/08/06	Wed 05/10/06
	100%	Order Entry	clidyard	☑	Wed 05/31/06	Sat 05/06/06
	100%	Pre Walk	aahl	☑	Sat 06/24/06	Wed 06/28/06
	100%	Confirm Delivery	aahl	☑	Mon 06/26/06	Wed 06/28/06
	100%	Window Install	Edward Witham	☑	Tue 06/27/06	Tue 08/29/06
	100%	Post Walk	aahl	☑	Thu 08/10/06	Tue 08/29/06
	100%	Punch Complete	East Coast Carpentry	☑	Fri 08/11/06	Tue 08/29/06
	100%	Sub Pay	aahl	☑	Mon 08/14/06	Tue 08/29/06
	100%	Customer Invoice	Tracy.Norwood	☑	Tue 08/15/06	Wed 08/30/06
	100%	Customer	C R Campbell	☑	Thu 09/21/06	Wed 08/30/06
	100%	Screen Install	ccarroll	☑	Wed 07/04/07	Tue 05/08/07

ELECTRONICALLY FILED - 2020 Oct 30 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP0103

Job View - Ref#: 158581 Job Type: Window Template: Window Install
Desc: Builder: C R Campbell Subd: Charleston National Lot: 17 Unit: Super: Job Colors?

Task Status: Active Waiting Completed Inactive Priority: High Normal Low

Due From: To: *Search*: = Milestones Only?

Job Type: Task: *Search*: =

– Checked item action – Go/Refresh Ref#: 158581 1 - 11 of

More Job Info		Task	Assigned		Due	Completed
	100%	Order Entry	Bill.Crabtree		Mon 05/08/06	Sun 05/07/06
	100%	Create Labor POs	clidyard		Mon 05/08/06	Wed 05/10/06
	100%	Pre Walk	aahl		Fri 06/30/06	Fri 07/14/06
	100%	Confirm Delivery	aahl		Mon 07/03/06	Fri 07/14/06
	100%	Window Install	aahl		Mon 08/28/06	Thu 08/1[illegible]/06
	100%	Post Walk	aahl		Tue 08/29/06	Thu 08/1[illegible]/06
	100%	Punch Complete	East Coast Carpentry		Wed 08/30/06	Thu 08/1[illegible]/06
	100%	Sub Pay	aahl		Thu 08/31/06	Thu 08/1[illegible]/06
	100%	Customer Invoice	Tracy.Norwood		Fri 09/01/06	Tue 08/2[illegible]/06
	100%	Customer	C R Campbell		Tue 10/10/06	Tue 08/22/06
	100%	Screen Install	ccarroll		Wed 07/04/07	Tue 05/0[illegible]/07

ELECTRONICALLY FILED - 2020 Oct 30 1:38 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1003713

Job View - Ref#: 165612 Job Type: Window Template: Window Install
Desc: Builder: C R Campbell Subd: Charleston National Lot: 18 Unit: Super:Jim Gallagher Job Colors?

Task Status: Active Waiting Completed Inactive Priority: High Normal Low

Due From: To: *Search*: = Milestones Only?

Job Type: Task: *Search*: =

– Checked Item action – Go/Refresh Ref#: 165612 1 - 11 of 11

More Job Info		Task	Assigned		Due	Completed
	100%	Order Entry	mscantland		Mon 06/26/06	Thu 08/17/06
	100%	Create Labor POs	mscantland		Tue 06/27/06	Thu 08/17/06
	100%	Pre Walk	aahl		Thu 09/14/06	Tue 09/12/06
	100%	Confirm Delivery	aahl		Thu 09/14/06	Tue 09/12/06
	100%	Window Install	AC Construction		Wed 09/27/06	Thu 10/5/06
	100%	Post Walk	aahl		Thu 09/28/06	Thu 10/12/06
	100%	Punch Complete	East Coast Carpentry		Fri 09/29/06	Thu 10/19/06
	100%	Sub Pay	aahl		Mon 10/02/06	Thu 10/12/06
	100%	Customer Invoice	Tracy.Norwood		Tue 10/03/06	Mon 10/16/06
	100%	Customer	C R Campbell		Thu 11/09/06	Mon 10/16/06
	100%	Screen Install	ccarroll		Wed 07/04/07	Tue 05/01/07

ELECTRONICALLY FILED - 2020 Oct 30 1:38 PM - CHARLESTON - COMMON PLEAS - CASE #2016CP1003713

Job View - Ref#: 165613 Job Type: Window Template: Window Install
Desc: Builder: C R Campbell Subd: Charleston National Lot: 19 Unit: Super:Jim Gallagher ☑ Job Colors?

Task Status: ☑ Active ☑ Waiting ☑ Completed ☐ Inactive | Priority: ☑ High ☑ Normal ☑ Low

Due From: To: *Search*: = ☐ Milestones Only?

Job Type: Task: *Search*: =

– Checked Item action – Go/Refresh Ref#: 165613 1 - 11 of 11

☑	More Job Info		%	Task	Assigned	☑	Due	Completed
☐			100%	Order Entry	mscantland	☑	Mon 07/24/06	Mon 08/14/06
☐			100%	Create Labor POs	mscantland	☑	Tue 07/25/06	Wed 09/06/06
☐			100%	Pre Walk	aahl	☑	Tue 09/12/06	Tue 09/12/06
☐			100%	Confirm Delivery	aahl	☑	Tue 09/12/06	Tue 09/12/06
☐			100%	Window Install	East Coast Carpentry	☑	Tue 09/19/06	Tue 10/17/06
☐			100%	Post Walk	aahl	☑	Fri 10/13/06	Tue 10/17/06
☐			100%	Punch Complete	aahl	☑	Mon 10/16/06	Tue 10/17/06
☐			100%	Sub Pay	aahl	☑	Tue 10/17/06	Tue 10/17/06
☐			100%	Customer Invoice	Tracy.Norwood	☑	Wed 10/18/06	Tue 10/17/06
☐			100%	Customer	C R Campbell	☑	Fri 11/24/06	Tue 10/17/06
☐			100%	Screen Install	ccarroll	☑	Fri 11/23/07	Tue 05/01/07

ELECTRONICALLY FILED - 2019 Dec 20 4:11 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003783

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON The Retreat At Charleston National Country Club Home Owners Association, Inc. And The Retreat At Charleston National Country Club Horizontal Property Regime, Plaintiffs, v. Builders Firstsource-Southeast Group, LLC; et al., Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2016-CP-10-03783 **DEFENDANT ECC CONTRACTING, LLC'S NOTICE OF MOTION FOR SUMMARY JUDGMENT AGAINST THE CLAIMS OF BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC AND BUILDERS FIRSTSOURCE, INC.**
Builders FirstSource-Southeast Group, LLC, Third-Party Plaintiff, v. Palmetto Trim and Renovations, LLC, et. al., Third-Party Defendants.	

TO: BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC AND BUILDERS FIRSTSOURCE, INC. AND STEPHEN HUGHES THEIR ATTORNEY

You will please take notice that the undersigned, as counsel for the Defendant ECC Contracting, LLC, ("ECC") by and through the undersigned counsel, and moves for an Order Dismissing Builders FirstSource-Southeast Group, LLC and Builders FirstSource, Inc.'s (collectively as "BFS") claims against ECC pursuant to Rule 12 of the South Carolina Rules of Civil Procedure. The grounds for the Motion are as follows:

1. All of BFS's claims are barred by the applicable Statute of Limitations, SC. Code § 15-3-530 et seq.;

2. BFS's claims for breach of contract, breach of express and implied warranty, and negligence are " merely disguised ... claims for equitable indemnity" and fail as a matter

of law pursuant to *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders FirstSource-Se. Grp.*, 413 S.C. 630, 634, (Ct. App. 2015);

3. BFS's claims for contractual indemnity are based on contractual provisions that are neither clear nor unequivocal and thus they fail as a matter of law. *Concord and Cumberland HPR v. Concord and Cumberland, LLC,* 2018 WL 3748616 (S.C. Ct. App. 2018), and

4. BFS's claims are barred by the doctrine of collateral estoppel.

WHEREFORE for the foregoing reasons, ECC respectfully requests this Court enter an Order dismissing, BFS' claims. This Motion will be supported by a Memorandum of Law. ECC reserves the right to supplement this motion and present additional arguments.

RICHARDSON PLOWDEN & ROBINSON, P.A.

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-AND-

BEST HONEYCUTT, PA

By: s/L. Dean Best
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P.O. Box 13466 (29422)
Charleston, SC 29412
Phone: 843-793-4744
dean@besthonecutt.com

ATTORNEYS FOR DEFENDANT, ECC CONTRACTING, LLC

December 20, 2019
Mt. Pleasant, South Carolina

ELECTRONICALLY FILED - 2019 Dec 20 4:11 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003783

ELECTRONICALLY FILED - 2020 Oct 15 3:06 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003783

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON The Retreat At Charleston National Country Club Home Owners Association, Inc. And The Retreat At Charleston National Country Club Horizontal Property Regime, Plaintiffs, v. Builders Firstsource-Southeast Group, LLC; et al., Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2016-CP-10-03783 **DEFENDANT ECC CONTRACTING, LLC'S AMENDED MOTION FOR SUMMARY JUDGMENT AGAINST THE CLAIMS OF BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC AND BUILDERS FIRSTSOURCE, INC.**
Builders FirstSource-Southeast Group, LLC, Third-Party Plaintiff, v. Palmetto Trim and Renovations, LLC, et. al., Third-Party Defendants.	

TO: BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC AND BUILDERS FIRSTSOURCE, INC. AND STEPHEN HUGHES THEIR ATTORNEY

You will please take notice that the undersigned, as counsel for the Defendant ECC Contracting, LLC, ("ECC") by and through the undersigned counsel, hereby amends its motion of December 20, 2019 for an Order Dismissing Builders FirstSource-Southeast Group, LLC and Builders FirstSource, Inc.'s (collectively as "BFS") claims against ECC pursuant to Rule 12 of the South Carolina Rules of Civil Procedure. The amended grounds for the Motion are as follows:

1. All of BFS's claims are barred by the applicable Statute of Repose, SC. Code § 15-3-530 et seq.;

2. BFS's claims for breach of contract, breach of express and implied warranty, and negligence are " merely disguised ... claims for equitable indemnity" and fail as a matter

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of law pursuant to *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders FirstSource-Se. Grp.*, 413 S.C. 630, 634, (Ct. App. 2015);

3. BFS's claims for contractual indemnity are based on contractual provisions that are neither clear nor unequivocal and thus they fail as a matter of law. *Concord and Cumberland HPR v. Concord and Cumberland, LLC,* 2018 WL 3748616 (S.C. Ct. App. 2018);

4. BFS's contracts violate the SC anti-indemnity statute and are illegal and unenforceable; BFS's claims in equity are barred by its unclean hands; and

5. BFS's claims are barred by the doctrine of collateral estoppel.

WHEREFORE for the foregoing reasons, ECC respectfully requests this Court enter an Order dismissing, BFS' claims. This Motion will be supported by a Memorandum of Law. ECC reserves the right to supplement this motion and present additional arguments.

RICHARDSON PLOWDEN & ROBINSON, P.A.

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ATTORNEYS FOR DEFENDANT, ECC CONTRACTING, LLC

October 15, 2020
Mt. Pleasant, South Carolina

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON The Retreat at Charleston National Country Club Home Owners Association, Inc. and The Retreat at Charleston National Country Club Horizontal Property Regime, Plaintiffs, vs. Builders FirstSource-Southeast Group, LLC; et al., Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT C/A No.: 2016-CP-10-03783 **ECC CONTRACTING, LLC'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

TO: STEPHEN P. HUGHES, COUNSEL OF RECORD FOR DEFENDANT BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC

You will please take notice that the undersigned, as counsel for the Defendant ECC Contracting, LLC, ("ECC") submits the following in support for its Motion for Summary Judgment: against Co-Defendant Builders FirstSource-Southeast Group, LLC ("BFS").

FACTUAL/PROCEDURAL BACKGROUND

This litigation arises out of alleged construction defects at Retreat at Charleston National Country Club, a thirty-one building townhome community in Mount Pleasant, SC ("the Retreat Project" or "the Project"). BFS is a Delaware limited liability company that furnishes building supplies and turn-key contracting services as a licensed general contractor. BFS Answer to Fourth Amend. Compl., ¶ 3; Exhibit 1 - 30(b)(6) Deposition of BFS, p. 18:11-16; Exhibit 2 - BFS License Statement. It is undisputed that BFS holds an unlimited commercial general contractor's license (License No. 112969) with the South Carolina Labor Licensing & Regulation ("SC-LLR"), and Terry Rosamond is BFS's representative that serves as the "qualifying party" for such licensure in

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this state. *Id.* Defendant BFS supplied lumber, provided framing services, and installed house-wrap, windows, and doors as a subcontractor of Colin Campbell Construction for various buildings at the Project. Exhibit 1, p. 30:10 – 17. ECC served as a subcontractor of BFS and in that capacity performed deck repair work pursuant to Purchase Order 14923785, dated 2.1.12, on Unit 2001[1], as well as window installation window installation on Units A1 & A2[2] pursuant to Purchase Orders 15022475 and 15022498, respectively, dated April 16, 2012[3]. Exhibit 3 – BFS Invoices to ECC. It is undisputed that BFS furnished the framing lumber, house-wrap, windows, doors, related flashings, and caulk and that BFS provided superintendents to oversee and inspect the installation of such materials for the buildings at the Project on Buildings 5-21, 2200, 2300, 2500, 2600, 2700, 2800, and 2900[4].

BFS filed third-party claims against ECC on June 30, 2017. BFS Answer to Amend. Compl. Subsequently, ECC was made a direct defendant by Plaintiffs and BFS then asserted cross-claims against ECC for contractual and equitable indemnity, breach of express and implied warranties, breach of contract, and negligence. Plaintiffs' Second Amend. Compl.; BFS's Answer to Second Amend. Compl. BFS's operative cross-claims are now contained in BFS's Amended Answer, Cross-claims, and Third-Party Complaint that was filed in response to Plaintiffs' Fourth Amended Complaint on November 13, 2019. BFS's cross-claims allege that BFS is entitled to be indemnified in the amount which BFS "may pay in satisfaction" of Plaintiffs' claim "plus [BFS's] costs for defense, inclusive of attorneys' fees", without regard to the fault of either ECC or BFS. *See* BFS Amend. Answer to Fourth Amend. Compl., ¶¶ 138, 147, 151, 155.

[1] No deficiencies have been documented by Plaintiffs at Unit 2001.
[2] A1 & A2 correspond to Units 2200 & 2201 located at 3036 Fraserburg and 3038 Fraserburg Way, Mt. Pleasant SC.
[3] There is a fourth Purchase order included in Exhibit 3 which is for a short payment on Purchase Order 15022475 it does not reflect additional work.
[4] The building numbering system changed during the project.

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According to BFS, ECC executed a BFS "Master Subcontractor Agreement" dated February 26, 2008 (hereafter "Master Agreement"). Exhibit 4 – 2008 Contract between BFS and ECC. The Master Agreement at issue here is a BFS contract form bearing "Version – 5/17/06."[5] BFS seeks to recover from ECC and BFS's subcontractors in indemnity under the terms of the applicable BFS Master Agreement.

LEGAL STANDARD

Summary judgment is appropriate if the circuit court finds "there is no genuine issue as to any material fact . . . ." Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, "the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 329–30, 673 S.E.2d 801, 802 (2009). The purpose of summary judgment is to obviate delay where there is no material issue of fact involved. *Manley v. Manley*, 291 S.C. 325, 329, 353 S.E.2d 312, 314 (Ct. App. 1987). "[S]ummary judgment is [used] to expedite disposition of cases [that] do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

Once the moving party has met the initial burden of demonstrating the absence of a genuine issue of material fact, the nonmoving party cannot simply rest on the mere allegations or denials contained in the pleadings, but rather must come forward with specific facts showing that there is a genuine issue for trial. *Boone v. Sunbelt Newspapers, Inc.*, 347 S.C. 571, 556 S.E.2d 732 (Ct. App. 2001). Summary judgment should be granted when there is a failure of the nonmoving party to make a showing sufficient to establish the existence of an essential element of that party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

[5] This version of the Master Agreement is also the same version at issue in Defendant ECC's motion for summary judgment.

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Argument

1. The doctrine of collateral estoppel bars all of BFS's claims.

In two recently decided cases, *Builders FirstSource-Southeast Group, LLC v. MI Windows and Doors, Inc. et al.* case number 2018-CP-08-02547, filed in the Berkeley County Court of Common Pleas, and *Six Fifty Six Owners Association, Inc., et. al. v. Winsor South, LLC, et al.* Case No. 2016-CP-10-03455, filed in Charleston County Court of Common Pleas, BFS brought cross-claims against its subcontractors, including ECC in the former and Hurley Services in both, identical to those asserted in this case (contractual and equitable indemnity, breach of express and implied warranties, breach of contract, and negligence).[6] *See* Exhibit 5 - BFS Operative Cross-claim Complaints in Other Cases.

In both cases BFS's subcontractors moved for summary judgment and prevailed. *See* Exhibit 6 and Exhibit 8 identified below. In both cases, as in this one, BFS' subcontractors based their motions, in part, on the *Stoneledge at Lake Keowee Owners' Ass'n v. Builders FirstSource-Southeast Grp.,* 413 S.C. 630, 776 S.E.2d 434 (Ct. App. 2015) and *Concord and Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC*, 424 S.C. 639, 819 S.E.2d 166 (Ct. App. 2018), reh'g denied (Oct. 18, 2018) holdings. *Id*. and *see infra.*

a. The Honorable Judge Clifton Newman order granting ECC Contracting, LLC summary judgment bars BFS's crossclaims for breach of contract, contractual indemnity, breach of warranty, and negligence in this case.

Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same. *Judy v. Judy*, 383 S.C. 1, 7, 677 S.E.2d 213, 217 (Ct. App. 2009). The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit

[6] In the former case BFS also brought claims for contribution against the subcontractors. Hurley was not party to the motion in the former case

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was (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment. *Beall v. Doe*, 281 S.C. 363, 369 n. 1, 315 S.E.2d 186, 189–90 n. 1 (Ct. App. 1984).

Here, the *Stoneledge* argument against BFS's claims for breach of express and implied warranties, breach of contract, and negligence ("Non-Indemnity claims") and the *Concord and Cumberland* argument[7] against BFS's contractual indemnity claims are identical to those previously raised and ruled upon in a prior action: *Builders FirstSource-Southeast Group, LLC v. MI Windows and Doors, Inc. et al.*, case number 2018-CP-08-02547, filed in the Berkeley County Court of Common Pleas (the "Prior Action"). *See* Exhibit 6 – Amended Order Granting Charleston Exteriors, LLC and ECC Contracting, LLC's Motions for Summary Judgment in the matter of *Builders FirstSource-Southeast Group, LLC v. MI Windows & Doors, Inc.*, Case No. 2018-CP-08-02547 (S.C. Com. Pl. Feb. 3, 2020) (the "Newman Order"). In that case, the issues were actually litigated, directly determined, and necessary to support the judgment. *Id*. In striking down BFS's Master Agreement's indemnity clauses, Judge Newman determined that the indemnification provisions "are confusing at best and deceptive at worst." *Id.* at 6. In ruling that BFS's Non-Indemnity claims are barred by the *Stoneledge* holding, Judge Newman noted, "it is evident that the Plaintiff's Non-Indemnity claims do not exist outside of the derivative Damico lawsuit[8]. They must, therefore, fail." *Id*. at 5-6.

The Master Agreement and indemnity provisions that BFS now wishes to use to support its claims against ECC involve the same agreement and indemnity provisions that were at issue in the Prior Action. BFS has already litigated the issue of the enforceability of its indemnification

[7] The *Stoneledge* and *Concord and Cumberland* defenses are argued *infra*.
[8] The prior action is something of a procedural rarity. It is derivative of another lawsuit which has been upon appeal for several years.

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provisions, so it should not be permitted to now relitigate the same exact issue on the same exact form contract.

Where the "illegality of the contract has been actually litigated and directly determined in the prior action and that issue was essential to the judgment," the application of collateral estoppel is appropriate. *South Carolina Property Cas. Ins. Guar. Ass'n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 213, 403 S.E.2d 625, 627 (1991).

Furthermore, in asking Judge Newman to reconsider the court's grant of summary judgment, BFS admitted in the motion papers that it signed and filed with the court that Judge Newman correctly found that the Master Agreements do not comply with the clear and unequivocal standard imposed by South Carolina law. *See* Exhibit 7 – BFS Motion to Reconsider. Under South Carolina law, a party is bound by an admission contained in a court filing prepared and signed by his attorney. *See Youn v. Martin*, 254 S.C. 50, 58, 173 S.E.2d 361, 365 (1970) (finding that judicial admissions by counsel for a party apply to matters of law, as well as factual issues, and where such a mixed question is admitted by a party's attorney the conclusion of law has been waived). Thus, BFS is barred from arguing contrary to this admission.

Because Judge Newman has already ruled on the issues of the *Concord and Cumberland* and *Stoneledge* defenses, summary judgment should be granted in ECC's favor.

b. The Honorable Judge Roger Young also recently granted summary judgment to co-defendant Hurley Services, LLC on the same grounds and ruling that BFS was collaterally estopped by the Newman Order.

Judge Roger Young recently ruled, in the matter of *Six Fifty Six Owners Association, Inc., et. al. v. Winsor South, LLC, et al.*, Case No. 2016-CP-10-03455 (S.C. Com. Pl. April. 29, 2020), that Judge Newman's Amended Order constitutes a prior final judgment that determined BFS's Master Agreement was unenforceable as a matter of law, that *Stoneledge* bars the Non-Indemnity

Claims, and that the Newman Order precludes BFS from relitigating those issues. *See* Exhibit 8 - Order Granting Motions for Summary Judgment in the matter of *Six Fifty Six Owners Association, Inc., et. al. v. Winsor South, LLC, et al.*, Case No. 2016-CP-10-03455 (S.C. Com. Pl. April. 29, 2020), p. 3 (the "Young Order").

To invoke collateral estoppel, a party need not have also been a party in the prior action; the law only requires that the party *against* whom estoppel is applied have been a party to that action and had a full and fair opportunity to litigate the issue in the prior action. *South Carolina Property Cas. Ins. Guar. Ass'n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 213, 403 S.E.2d 625, 627 (1991). Thus, not only is BFS collaterally estopped by the Newman Order and the Young Order, but it is also collaterally estopped from arguing that the Newman Order does not support a finding of collateral estoppel in this matter.

c. BFS's pending appeals do not bar this court from applying the doctrine of collateral estoppel

Neither BFS's appeal of the Newman Order nor BFS's appeal the Young Order undermine each Order's status as a final judgment as the law is well settled that the pendency of an appeal has no effect on the finality or binding effect of a trial court's judgment, and thus, will not be a barrier to applying collateral estoppel. *See Huron Holding Corporation v. Lincoln Mine Operating Co.*, 312 U.S. 183, 189, 61 S. Ct. 513, 515, 85 L. Ed. 725 (1941) (finding finality of a court's judgment is not lost because appeal is pending until and unless reversed); *see also* Finality not lost because appeal is pending, 6 Annotated Patent Digest § 38:36.

A final judgment is one that "finally determines the rights' of the parties." *First Union Nat'l Bank v. Hitman, Inc.*, 306 S.C. 327, 330, 411 S.E.2d 681, 683 (Ct. App. 1991), affirmed 308 S.C. 421, 418 S.E.2d 545 (1992). Rule 201(a) SCACR, provides that an: "[a]ppeal may be taken, as provided by law, from any final judgment or appealable order." The status of both Judge

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Newman's Amended Order and Judge Young's Order as a final judgment is what makes the orders appealable in the first instance.

Accordingly, there is no reason BFS can provide this Court which supports a finding that Summary Judgment is not warranted based on collateral estoppel.

2. BFS's claims for contractual indemnity are based on indemnity provisions which violate S.C. Code Ann. § 32-2-10 and are thus illegal and unenforceable.

The contract between BFS and ECC contains multiple indemnity provision including those which require ECC to indemnify BFS for damages incurred as a result of BFS' sole negligence in violation of S.C. Code Ann. § 32-2-10. The relevant indemnity provision, which is provided in Section 5 of the contract between BFS and ECC, states (all caps omitted for ease of reading):

> To the fullest extent permitted by Law, the subcontractor shall indemnify, defendant and hold harmless the contractor, the owner, and all of their officers, directors, agents, and employees from and **against any and all claims**, suits, losses, causes of action, damages, liabilities, fines, penalties, and expenses of any kind whatsoever, including, but not limited to, arbitration or court costs and attorney's fees (such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this paragraph) arising out of or resulting from bodily injury or death of any person, or property damage, including loss of use of property, arising or alleged to arise out of or in any way related to this agreement or the subcontractor's performance of the work or other activities of the subcontractor, **but only to the extent caused in whole or in part by any negligent act or omission of the subcontractor** or anyone for whose acts the subcontractor may be liable. The Contractor's insurance requirements are separate and distinct from the requirement of indemnification hereunder.
>
> **Notwithstanding the foregoing**, to the fullest extent permitted by law, the Subcontractor shall indemnify, defend, and hold harmless, the contractor, the Owner, and all of their officers, directors, agents, and employees (the "indemnitees"), from and against any and all claims, damages, losses, and expenses, including, but not limited to, Attorney's Fees (such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this paragraph) **arising out of or resulting from bodily injury to, or sickness, disease or death** of, the subcontractor, any agent, employee, or representative of

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the subcontractor, or any of its subcontractors, **regardless of whether such claim, damage, loss, or expense is caused or is alleged to be caused in whole or in party, by the negligence of any of the Indemnitees**, it being the expressed intent of the contractor and the subcontractor that in such event the subcontractor is to indemnify, defend, and hold harmless the Indemnitees from the consequences of their own negligence, whether it is or is alleged to be the sole or concurrent cause of the bodily injury, sickness, disease, or death of the subcontractor, subcontractor's agent, employee, or representative, or the agent, employee, or representative of any of its subcontractors, the indemnification obligations under this paragraph shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable by or for Subcontractor under Workers Compensation acts, Disability Benefits Acts, or other employee Benefit acts, the subcontractor shall procure liability insurance covering its obligations under this Section 5.

The duty to defend under this Section 5 is independent and separate from the Duty to indemnify, and **the duty to defend exists regardless of any ultimate liability or negligence of the contractor, the owner, or any of their officers, directors, agents and employees**. The duty to defend arises immediately upon presentation of a claim by any party indemnified hereunder and written notice of such claim being provided to subcontractor. **Subcontractor's obligation to indemnify, defend, and hold harmless under this Section 5 will survive the expiration or earlier termination of this agreement until it is finally determined by a Court of competent jurisdiction or arbitration panel that a claim against the contractor, the owner, and any of their officers, directors, agents, and employees for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations**.

The Defense and indemnification obligations under this agreement are not intended to and shall not require the subcontractor or others to indemnify or hold harmless a Registered Architect, Licensed Engineer, or an agent, Servant, or Employee of a Registered Architect or licensed Engineer from Liability for damage that is (1) caused by or results from: (a) defects in Plans, Designs, or Specifications prepared, approved, or used by the Architect or Engineer; or (b) the Negligence of the Architect or Engineer in the Rendition or conduct of Professional duties called for or arising out of the construction contract and the plans, designs, or specifications that are a part of the construction contract, and (2) arises from personal injury or death, property injury, or any other expense that arises from personal injury, death, or property injury.

Exhibit 4 - 2008 Contract between BFS and ECC, pp. 6-7 "§5 INDEMNITY" (*emphasis added*, all caps in the original)

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There is nothing in South Carolina law that separates a subcontractor's duty to defend from its duty to indemnify its upstream contractor in the context of a contractual indemnification agreement. Indeed, the Anti-Indemnity Statute, S.C. Code Ann. § 32-2-10 speaks solely of "damages" while limiting the ability of the Indemnitor to indemnify the Indemnitee. The Anti-Indemnity statute bars indemnity agreements wherein the Indemnitee seeks to be indemnified from "…damages arising out of bodily injury or property damage…" proximately caused by the indemnitee's soles negligence. SC Code Ann. §32-2-10. Further, BFS claims its attorney's costs and fees as damages in its complaint. BFS Answer to Fourth Amend. Compl., ¶¶ 138, 147, 151, 155.

Section 5 explicitly calls for ECC to pay BFS's attorney's fees "regardless of any ultimate liability or negligence of the contractor, the owner, or any of their officers, directors, agents and employees." Exhibit 4 - 2008 Contract between BFS and ECC, pp. 6-7 "§5 INDEMNITY" (*emphasis added*, all caps in the original). This is an explicit violation of SC Code Ann. §32-2-10 as it requires ECC to indemnify BFS for BFS's sole negligence. The fact that it limits the claimed damages to attorney's fees, as opposed to a judgment cost, is immaterial. Under South Carolina law, recoverable damages may include attorneys' fees when so provided by contract or statute. *See Rimer v. State Farm Mut. Auto. Ins. Co.*, 248 S.C. 18, 27, 148 S.E.2d 742, 746 (1966). However, when recovery of attorneys' fee is by contract, the contractual terms providing for indemnification of such damages must still comply with South Carolina law and, here, the BFS Master Agreement fails to do so.

Additionally, the middle paragraph calls for the Subcontractors to "indemnify, defend, and hold harmless" BFS "…regardless of whether such claim, damage, loss, or expense is caused or is

alleged to be caused in whole or in party, by the negligence of any of the Indemnitees." This provision also obviously violates SC Code Ann. §32-2-10.

As BFS should well know, indemnification provisions calling for the Indemnitor to indemnify the Indemnitee "for damages caused by its [the Indemnitee's] negligence or the negligence of its subcontractors" are void as against public policy. *D.R. Horton, Inc. v. Builders FirstSource-Se. Grp., LLC*, 422 S.C. 144, 152, 810 S.E.2d 41, 45-6 (Ct. App. 2018). Further, our Court of Appeals has held that "[A]n illegal contract is unenforceable." *Id*. (*citing Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 64, 566 S.E.2d 863, 866-867 (Ct. App. 2002)). In *D.R. Horton*, this Court held that the indemnification agreement "purports to require BFS to indemnify D.R. Horton for its own negligence in violation of section 32-2-10" and went on to conclude that "[b]ecause the agreement violates the statute, we cannot require BFS to pay for damages caused by D.R. Horton." *Id*. This case is no different.

Because the indemnity provisions of the contracts between BFS and ECC require ECC to indemnify BFS for BFS's sole negligence, BFS's contracts are illegal, and thus unenforceable and ECC is entitled to summary judgment.

a. South Carolina's legal contract construction rules support striking the BFS Master Agreement's indemnification clauses in their entirety.

"[F]or a contract to be valid and enforceable, the parties must have a meeting of the minds as to all essential and material terms of the agreement." *Davis v. Greenwood Sch. Dist.*, 365 S.C. 629, 634, 620 S.E.2d 65, 67 (2005). "A contract is read as a whole document…." *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009). The intention of the parties to a contract is gathered primarily from the contents of the writing itself, or, as otherwise stated, "from the four corners of the instrument" alone. *McPherson v. J.E. Sirrine & Co.*, 206 S.C. 183, 204, 33 S.E.2d 501, 509 (1945). Any uncertainty as to the meaning of any term "should be resolved against the

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party who prepared the contract", which here, is BFS. *Plantation A.D., LLC v. Gerald Builders of Conway, Inc.*, 687 S.E.2d 714, 718 (S.C. Ct. App. 2009). "[W]ords cannot be read into a contract which import an intent wholly unexpressed when the contract was executed." *Id.; see also ERIE Ins. Co. v. Winter Constr. Co.*, 393 S.C. 455, 460, 713 S.E.2d 318, 321 (Ct. App. 2011) ("It is not the function of the court to rewrite contracts for parties."). Accordingly, South Carolina courts will not "blue pencil" an agreement and rewrite a contract's terms to make it comply with the law. *Poynter Invs., Inc. v. Cent. Builders,* 387 S.C. 583, 587-588, 694 S.E.2d 15, 18 (2010). Under South Carolina law, contracts "must stand or fall on their own terms." *Id.* If part of the contract's covenant fails, the agreement is unenforceable. *Id.*

In this case, the indemnification clauses set forth in the BFS Master Agreement must fail altogether. Because at least one of the indemnification clauses fails, they all must fail. And the Court cannot rewrite the contract to save the legally defective indemnity clauses. The Master Agreement's indemnification clauses are unenforceable as a matter of law. Thus, the Court should grant ECC's Motion for Summary Judgment.

3. BFS's claims for contractual Indemnity are barred by the *Concord and Cumberland* holding.

Under South Carolina law, courts will refuse to enforce contractual indemnity provisions that fail to meet the standard of being clear and unequivocal when seeking to recover for an indemnitee's concurrent negligence; indemnification clauses that do not meet this standard are against public policy. *See Concord and Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC*, 424 S.C. 639, 643-644, 819 S.E.2d 166, 168-169 (Ct. App. 2018), reh'g denied (Oct. 18, 2018) (affirming trial court's grant of summary judgment in favor of subcontractor dismissing contractual indemnity cross-claims of contractor based on application of the clear and unequivocal standard). There are two 'master agreements' between BFS and ECC one from 2008,

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and another from 2015. However, it is immaterial because the relevant indemnity provision is identical in all three contracts. The Section 5 indemnity provisions of the contract are copied in full above. The provision relevant to this argument section states:

> To the fullest extent permitted by Law, the subcontractor shall indemnify, defendant and hold harmless the contractor, the owner, and all of their officers, directors, agents, and employees from and against any and all claims, suits, losses, causes of action, damages, liabilities, fines, penalties, and expenses of any kind whatsoever, including, but not limited to, arbitration or curt costs and attorney's fees (such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this paragraph) arising out of or resulting from bodily injury or death of any person, or property damage, including loss of use of property, arising or alleged to arise out of or in any way related to this agreement or the subcontractor's performance of the work or other activities of the subcontractor, **but only to the extent caused in whole or in part by any negligent act or omission of the subcontractor** or anyone for whose acts the subcontractor may be liable. The Contractor's insurance requirements are separate and distinct from the requirement of indemnification hereunder.

This language is based on the AIA form indemnification language and the key phrase, for our purposes is "but only to the extent caused in whole or in part by any negligent act or omission of the subcontractor".

The South Carolina Court of Appeals issued an opinion in *Concord & Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC* that is directly on point to this case. That appeal dealt almost exclusively with the interpretation of contractual indemnity provisions. The Court of Appeals noted that the standard for upholding a Contractual Indemnity provision is "clear and unequivocal." In that case in the underlying Circuit Court Opinion, Judge Newman held that:

> In order for Superior and C&C to defeat Muhler's and Weather Shield's motions for summary judgment on the contractual indemnity issue, they have to meet the very high standard of eliminating any possibility that the contract language on which they rely can be read to limit indemnification to the indemnitor's own negligence. In other words, in order to prevail on their contract claims, Superior and C&C must demonstrate that the contract language can only be interpreted to reach the result that the parties intended to indemnify the indemnitee for the indemnitee's own

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> negligence. If any other interpretation of the contract language is reasonably possible, they cannot prevail on their contract claims as a matter of law.

Concord and Cumberland Horizontal Property Regime v Concord & Concord & Cumberland, LLC, No. 2010-CP-10-3026, 2014 WL 12783397, at *3 (S.C. Com. Pl. Oct. 06, 2014).

One of the two indemnity provisions interpreted by the Court was based on the AIA provision we are dealing with (the underlined provisions are identical to the AIA A201 Indemnity Provision):

> 12.1 SUBCONTRACTOR'S PERFORMANCE. To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, the Architect, the Contractor (including its affiliates, parents and subsidiaries) and other contractors and subcontractors and all of their agents and employees from and against all claims, damages, loss and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Subcontractor's Work provided that
>
> (a) any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Subcontractor's Work itself) including the loss of use resulting there from, **to the extent caused or alleged to be caused in whole or in any part by any negligent act or omission of the Subcontractor** or anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable, regardless of whether it is caused in part by a party indemnified hereunder.
>
> (b) [omitted].

Concord and Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC, 424 S.C. 639, 643-644, 819 S.E.2d 166, 168-169 (Ct. App. 2018), reh'g denied (Oct. 18, 2018).

Because BFS has admitted that it was responsible for supervising all of the work performed by ECC and BFS's other subcontractors, it is impossible for BFS not to be at least partially responsible for any deficient work of ECC. *See* Unclean Hands argument section *infra*. Thus, any and all deficiencies in ECC's work are concurrent negligence, which our courts have ruled multiple times is not covered under this indemnity provision. Thus, BFS's claims for contractual indemnity fail as a matter of law.

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4. BFS's Non-Indemnity claims are barred by the *Stoneledge* holding.

BFS has only alleged cross-claims against ECC and BFS's other subcontractors as a result of the claims filed against it by the Plaintiffs for alleged construction deficiencies at the Project. *See* BFS's Amended Answer to Fourth Amended Complaint ¶ 142, 146. Claims conditioned on liability to third parties are considered claims for indemnity "in disguise." *See Stoneledge at Lake Keowee Owners' Ass'n v. Builders FirstSource-Southeast Grp.,* 413 S.C. 630, 635-639, 776 S.E.2d 434, 437-439 (Ct. App. 2015) (holding that, where general contractor did not "suffer their own damages independent of their obligation to defend themselves in the underlying lawsuit," trial court "properly granted summary judgment on [general contractor's] breach of contract and breach of warranty cross-claims because they are not independent causes of action from [the general contractor's] equitable indemnity claim"). *See also Holland v. Hucks Pool Co., Inc.*, No. 4:15-cv-00141-RBH, 2016 WL 6157491 (D.S.C. Oct. 24, 2016) ("[The contractor's] breach of contract/warranty crossclaim is not viable as a cause of action separate from its equitable indemnity crossclaim…. [The contractor's] allegations indicate it did not sustain its own damages as a result of any breach of contract or warranty by [the subcontractor]…. Accordingly, the Court will grant [the subcontractor's] motion for summary judgment as to [the contractor's] breach of contract/warranty crossclaim…."). Thus, BFS's Non-Indemnity cross-claims should be dismissed and ECC's Motion for Summary Judgment should be granted.

5. BFS has unclean hands and may not recover in equity.

"Equitable indemnity cases involve a fact pattern in which the first party is at fault, but the second party is not." *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 63, 518 S.E.2d 301, 307 (Ct. App. 1999) (*citation omitted*). "If the second party is also at fault, he comes to court without equity and has no right to indemnity." *Id*. In *Vermeer*, the Court went on

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to note "if Vermeer and Wood/Chuck are joint tortfeasors, there is no right of indemnity." *Id*. "Joint tortfeasor" refers to "[t]hose who act together in committing wrong, or whose acts if independent of each other, unite in causing single injury"; "two or more persons jointly or severally liable in tort for the same injury to person or property." *Id*. (*citing* Black's Law Dictionary 839 (6th ed. 1990)).

a. BFS is a joint tortfeasor with its subcontractors.

In this case, BFS is alleged to be a joint tortfeasor with its subcontractors by the Plaintiffs, and as a practical matter is necessarily a joint tortfeasor with its subcontractors. Indeed, BFS testified that it subcontracted out 100% of the work it was responsible for on the project. *See* Exhibit 1 – 30(b)(6) Deposition of BFS, p. 50:12-14 (Q. "And BFS, for all the work that we've talked about that BFS was responsible for, you subbed out all that work?" A. "Correct."). To the extent that there are deficiencies in the work of BFS, BFS and its subcontractors are by definition joint tortfeasors. Thus, BFS may not recover in equity.

b. BFS is at least partially at fault because of its supervisory role.

According to well established South Carolina case law, a party can only recover from equitable indemnity if the party is without fault, which is also known as the doctrine of unclean hands. *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. IMK Dev't Co., LLC*, No. 2009CP3700652, 2012 WL 10862130, at *3 (S.C. Com. Pl. Sep. 24, 2012). The crucial requirement for supporting equitable indemnity is that "the party seeking to be indemnified is adjudged without fault and the indemnifying party is the one at fault." *Vermeer*, 336 S.C. at 63, 518 S.E.2d at 307.

BFS has admitted that its field superintendents supervised and inspected the work of ECC (and the other subcontractors). *See* Exhibit 1 – 30(b)(6) Deposition of BFS, p. 61:9-23 (Q. "Is it

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the field superintendent that would inspect the work of the sub before he would get authorized payment? In other words, in this case we think that the subcontractors were issuing invoices to be paid, correct?" A. "Correct."). BFS testified that Rooster Cannon was BFS's field supervisor for this project. *Id*.

Mr. Cannon testified that he was responsible for supervising and inspecting the work of the subcontractors. Exhibit 9 – Deposition of Rhames "Rooster" Cannon, pp. 92:25-93:3 (Q. "But BFS would have had the responsibility to supervise the work of its subs. Do you agree with that?" A. "**Yeah, that's what I was there for**.")(emphasis added), p. 174:11-19 (Q. "Builders FirstSource is checking behind the work of its subcontractors to make sure that it's done right and that its customer is getting a good quality product, correct?" A. "That is correct"), and pp. 181-182. BFS testified that it trained its superintendents to inspect the subs work and notify the subs if their work is not done correctly. *See* Exhibit 1 – 30(b)(6) Deposition of BFS, p. 175:21-24. Indeed, even BFS's forensic expert, Alan Campbell testified that BFS has "very stringent and specific installation instructions that their guys follow." Exhibit 10 - Deposition of Alan Campbell, PE, p. 182:7-10. Going on to explain, "…when they work with their field subs, they provide very specific instructions on how the work is to be done." *Id*. at p. 183:2-10.

ECC was responsible for the installation of windows. Mr. Cannon testified that he would have inspected before the windows were installed in order to ensure that the building was ready for the installation of the windows, and again after the windows were installed to ensure it was done correctly. Exhibit 9 – Deposition of Rhames "Rooster" Cannon, pp. 161-163, 169-170. Rod Assis, the 30(b)(6) Deponent for ECC, testified that he had never installed a window before he began performing window installations for BFS and that BFS employees trained him how to install windows. Exhibit 10 – 30(b)(6) Deposition of ECC Contracting, LLC, pp. 17:11-19:8. Mr. Assis

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also testified that Mr. Cannon would inspect his work "to make sure everything was up to his standards" prior to processing payment to ECC. *Id*. at pp. 50:21-51:9.

Vermeer v. Wood/Chuck Chipper Corporation is particularly instructive here. In that case Elbert Causey purchased a wood chipper and suffered horrible injuries do to its malfunction. *Vermeer*, 336 S.C. at 57, 518 S.E.2d at 304. Vermeer, the retailer, settled the case and filed a subsequent lawsuit against Wood/Chuck Chipper Corporation, the manufacturer, for indemnity and contribution. In determining whether Vermeer's claim for equitable indemnity was viable the Court of Appeals looked at the mechanics of the claims at issue noting, "[a]bsent a contractual provision whereby the upstream manufacturer agreed to indemnify the downstream retailer, the retailer cannot escape liability and, at the same time, prove the manufacturer negligently designed or manufactured a product." *Id*. at 67, 518 S.E.2d at 309. The same is true here BFS cannot escape liability and prove that the subcontractor it trained, hired and supervised to do the work negligently performed its work. Particularly not, when BFS's superintendent who supervised the work of ECC testified that he had no complaints about ECC's work on this project. Exhibit 9 – Deposition of Rhames "Rooster" Cannon, pp. 200:4-6.

There is no question of fact. BFS is a joint tortfeasor with its subcontractors and it has unclean hands – thus its claims in equity fail as a matter of law.

c. BFS has admitted at least partial fault by admitting that repairs to its work are necessary.

BFS has admitted that it is at least partially at fault by admitting that repairs are necessary to its work. BFS retained Alan Campbell of ABS to serve as its Forensic Expert. *See* Exhibit 12 – BFS Expert Disclosure. BFS has admitted repairs are necessary to its work by virtue of the expert disclosure which admits that the window installation method does not uniformly meet the building code requirements for wind-load and fastener withdrawal. *See* Exhibit 12 – BFS Expert

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Disclosure, ¶¶ 3, 4. The disclosure also admits that the WRB is not continuous on all knee walls and finally states "[w]here certain defects do exist they are limited, can be corrected in a cost efficient manner, and will not require wholesale removal and replacement of building components." *Id*. at ¶¶ 8, 13.

The designation is signed by Counsel of record for BFS. Furthermore, it is clarified by the ABS scope of repair which explicitly calls for the repair of BFS's work and the Beaufort Construction cost of repair estimates, which contend that $250 - $275,000 worth of repairs are necessary at the project. Exhibit 13 BFS Expert Reports. BFS has disclosed experts whose professional opinion is that there are defects which require repair and that it will cost at least $250,000.00 to effectuate the repairs. There is no witness for either BFS or Plaintiffs who will testify that zero repairs are necessary to BFS's work. There is no question of fact. There are defects in BFS's work and BFS is at least partially at fault, thus it cannot recover in equity.

d. BFS is statutorily liable for the work of many of its subcontractors.

It is undisputed that BFS holds an unlimited commercial general contractor's license (License No. 112969). SC Code Ann. § 40-11-270 allows licensed contractors to use unlicensed subcontractors to perform their work. However, it also requires the licensed contractor, here BFS, to be provide supervision and it says that the contractor is "fully responsible" for the actions of the unlicensed subcontractor. In this case, nine of the thirteen subcontractors sued by BFS are not licensed. BFS is 'fully responsible' for its unlicensed subcontractors, thus it cannot be adjudged without fault and cannot succeed on its claims in indemnity.

6. BFS's alleged contract does support its claims for contractual indemnity in this litigation.

As discussed above ECC only performed work on this project pursuant to three purchase orders (and one $15 adjustment order). BFS testified that the work Purchase Order 14923785,

dated 2.1.12, on Unit 2001 was "some little framing repair or something." Exhibit 1 - 30(b)(6) Deposition of BFS, pp. 92:21-93:10. Mr. Assis testified that he did not recollect what this purchase order was for. Exhibit 10 – 30(b)(6) Deposition of ECC Contracting, LLC, pp. 61:10-25. There is no evidence of any defect or deficiency in stemming from this work and, after approximately 4 years of discovery, there is no further evidence of what ECC did on Unit 2001 for $375. As such, BFS cannot prove that this work is at issue in this case and cannot prove that it is entitled to indemnity from ECC as a result of this work.

The other two purchase orders, 15022475 and 15022498, are both dated April 16, 2012. The purchase orders were for the installation of windows and exterior doors, which generally is at issue in this case. No one has discovered any evidence at this point that these specific windows installed by ECC pursuant to these purchase orders are deficient and the only issue identified with the doors installed by ECC was repaired in October 2018. However, ECC's alleged contract with BFS, executed February 27, 2008, had a three-year term with a one year automatic renewal. *See* Exhibit 4 - 2008 Contract between BFS and ECC, p. 2, §1(c). Thus, the contract expired on February 27, 2012. The work that ECC performed subsequent to the expiration of the contract is not governed by the contract. Thus, this work cannot support BFS's claims for contractual indemnity. As a result, BFS's claims for contractual indemnity should be dismissed.

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WHEREFORE for the foregoing reasons, ECC respectfully requests this Court enter an Order dismissing BFS's cross-claims and granting summary judgment in ECC's favor. ECC adopts and incorporates by reference any additional arguments presented by other co-defendants and parties moving for summary judgment, as if fully set forth herein. ECC reserves the right to supplement this motion and present additional arguments and evidence at the hearing before the Court.

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IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF TERRY ROSAMOND
30(b)(6) BFS, LLC

THE RETREAT AT CHARLESTON NATIONAL COUNTRY CLUB HOMEOWNERS ASSOCIATION, INC. AND THE RETREAT AT CHARLESTON NATIONAL COUNTRY CLUB HORIZONTAL PROPERTY REGIME,

Plaintiffs,

vs. CASE NO. 2016-CP-10-3783

WINSTON CARLYLE CHARLESTON NATIONAL, LLC; COLIN R. CAMPBELL CONSTRUCTION, INC.; COLIN CAMPBELL, INDIVIDUALLY, BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC; AMERICO ROOFING CONCEPTS, INC.; DVS, INC.; ADVANCED BUILDING CONNECTION, LLC; GUY C. LEE BUILDING MATERIALS, LLC; WS CONTRACTORS, LLC; DINO SCHWARTZ, INDIVIDUALLY,

Defendants.

BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC,

Third-Party Plaintiffs,

vs.

CHARLESTON EXTERIORS, LLC; ECC CONTRACTING, LLC; HURLEY SERVICES, LLC; AC CONSTRUCTION CORP.; L&G CONSTRUCTION GROUP, LLC; POHLMAN QUALITY CONTRACTORS; AND POHLMAN QUALITY EXTERIORS, INC.,

Third-Party Defendants.

DEPONENT: TERRY ROSAMOND

DATE: MAY 3, 2018

TIME: 10:10 A.M.

LOCATION: MULLEN WYLIE
CHARLESTON, SC

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Q. And then the Goose Creek store was within what area region?
A. It was within the Charleston market. We had Goose Creek, James Island, Edisto, Arco Lane. We had five facilities.
Q. And who was the VP for that region?
A. During the time, I'm not sure whether it was Greg Turnage or Bob Lanier. I'm not positive.
Q. And regardless of which one it was, both of them would have been answering to Mr. Tolly?
A. Correct.
Q. And let me take them all the way up, is Mr. Tolly, was he -- well, let me take you first. Are you an employee of Builders FirstSource or Builders FirstSource-Southeast?
A. Builders FirstSource. I'm a corporate employee.
Q. Okay. And Mr. Tolly, would he have been an employee of Builders FirstSource or Builders FirstSource-Southeast?
A. I would say he was an employee of Builders FirstSource.
Q. And then Mr. Tressler, the general manager of the store, would he have been an employee of Builders FirstSource or Builders

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FirstSource-Southeast?
A. It's kind of confusing because we're all employees of Builders FirstSource, but then we're in these different groups.
Q. So are all of these people employees of Builders FirstSource?
A. Yes.
Q. Does Builders FirstSource-Southeast have any employees?
A. I don't think so. I think that's just a legal entity, that Southeast Group, LLC.
Q. Okay. Again, I'm going to try to sort of do this from what we talked about before, but if I get it wrong and I misunderstood something, please, I'm looking for you to clarify.
As I understood it, the way you all were working things is you would have agreements with subcontractors before a specific job was bid on and accepted for Builders FirstSource to do work at; is that correct?
A. Repeat that one more time.
Q. In other words, before you had a specific project in mind, you had agreements with specific subcontractors that you might call on to work on a specific project.

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A. We would have subcontractors already signed up under what we call a master subcontract agreement.
Q. And then once you -- for instance, let's take the project in question, The Retreat. Once a project would come into I guess in this case it was the Goose Creek store?
A. Right.
Q. Somebody there would go out and decide whether it was something they wanted to do. And once they got the job, then they would go to the subs you already have. What'd you call them, master subcontractor agreements?
A. Correct.
Q. And you would contact them and ask them if they were interested in working on those jobs?
A. Correct. We would -- say we were awarded a job similar to Charleston National. We would have a subcontractor possibly in mind of who we were going to use to do certain scopes of work. Based on how much work they currently had, we would make a decision whether we felt like they could handle it or whether we needed to use one of our other subs because we would have multiple subcontractors that could do the same scopes.

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Q. And once you decided on a subcontractor for a specific project, would you have another contract with them or what would be the paperwork that would be created for that subcontractor to work on a specific project?
A. In most cases, it would be what we call a work order agreement or possibly a purchase order that we would issue to them. You know, they would be approved subcontractors. And then assume we decided we were going to use them on this project, then we would set down with them, go through the scope good, make sure they all understood everything, and get a final price out of them, and then we would issue them a sub -- a work order or either a purchase order.
Q. And would that purchase order or work order be for a building or a specific task or, I mean, I've seen a bunch of purchase orders in this case and it seems like they run the gamut from a building to just a specific line item. Is that common?
A. It's common. We could possibly have a purchase order just for the guy to do the framing portion. We could have a separate purchase order for someone to install the windows and doors.

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complaints against Builders FirstSource or Builders FirstSource-Southeast similar to those that have been made in this case, other lawsuits or things where BFS has had to come out and look at things or fix them or that kind of thing?

A. Yes, it's kind of common nature in the construction industry.

Q. Is it too many for you to list here today?

A. Yes, and I don't know all of them. I don't get involved with all of them.

Q. But even the ones you are involved with, they'd be too many for you to remember today?

A. Correct.

Q. Is it something that if you had the time to do it, you could research and list?

A. I think our legal counsel would have to do it because, like I said, I don't get involved in all of them. I mean, I previously did Beach Villas with you, so...

Q. Right. But have you been asked to be a deponent on behalf of Builders FirstSource in cases like this other than Beach Villas?

A. Yes, I have.

Q. How many times have you testified in cases like this?

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A. 25 or 30.

Q. Okay. When were you first contacted to testify in this case?

A. I don't remember exactly when I was contacted.

Q. Was it in the last 30 days or was it six months ago?

A. I would think it was further back than 30 days. I'm sure it was.

Q. Okay. What did BFS do at The Retreat?

A. It's my understanding from the documents and talking with Bill and Rooster, we did framing on several of the buildings, turnkey framing, installed windows, doors, exterior doors. We did -- some documents I see we did some interior trim installation. And I think those are all the scopes that I remember that we were involved in.

Q. How about siding?

A. I have not seen any documentation where we did any siding and they said we didn't do siding.

Q. How about roofing?

A. No, sir.

Q. You did frame the roofs? I saw some documentation for roof trusses and that kind of thing.

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A. Yes. I mean, I'm calling that part of the framing.

Q. Right. How about installing a weather resistive barrier, Tyvek?

A. Yes, we did install some of the house wrap.

Q. The framing, was the framer also responsible for the house wrap?

A. In some of the contracts, the framer did that. In some of them, the window installer did it. I saw different purchase orders where our window installer was paid to install house wrap. Then I've seen some where it was included in the framer's subcontract.

Q. And the installation of windows and doors would have included whatever flashing was required?

A. For the installation of them, correct.

Q. And would both head flashing and sill flashing have been required for the windows and doors?

A. When we talk about head flashing, there was no metal flashing as part of our scope. We would have done the peel-and-stick type flashing, which normally do your sides and the head and then you have a sill pan that you create.

Q. Take me through that. How would the window

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be installed with peel and stick?

A. In most cases, and it's changed some over the years, but kind of the standard is you have your house wrap over -- that covers the entire opening. You do what they call a modified high cut.

Q. Take me through that.

A. Where you take and you cut across the top at the head of the window, then you cut down the middle of the window and you fold the sides in. And the top, you would put a 45-degree angle so you could fold that top up.

Then you would install your window with calking around three sides, not doing any calking in the bottom to allow if any water gets in, that it can weep out.

After your window's in place, you would tape your two sides, and then you would tape your head so that goes over the top of those side tapes. So you do a shingling effect, and then you would fold that flap down on the top.

Q. When you say tape, you're talking about the peel and stick?

A. Peel and stick, correct.

Q. So the two sides would go in, and then the

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building should be covered by it?
A. Yes, sir.
Q. And then lapped so that the upper part is going over top of the lower part?
A. Correct, it should be done in a shingle manner.
Q. It looks like out there at some point that Tyvek was used on a number of the buildings and that at some point it looks like there was a woven type of fabric. Did BFS ever use, do you know what I'm talking about, a WRB that's instead of like a sheet like Tyvek is, it's sort of a woven plastic?
A. I think I know what you're talking about. I mean, they're both water resistant barriers. There's just some different brands.
Q. Right.
A. Tyvek is a brand name. So there could have been -- and I don't know the -- this particular brand. I haven't looked to see what we have supplied, but there's some that are -- you can see more of a woven pattern in it than some of the other brands.
Q. I guess my question is the woven type, was that something that BFS might have provided?
A. It's possible, yes.

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Q. Did BFS do any of the cladding around the columns? There are some columns that have metal cladding. Anything like that that you're aware of?
A. To my understanding, we did not do any of the column wraps or anything.
Q. How about handrails or any of the associated attachments for that?
A. There again, I haven't seen anything and with talking with our guys, they said we didn't do any of the railing.
Q. And BFS, for all the work that we've talked about that BFS was responsible for, you subbed out all that work?
A. Correct.
Q. Is it possible, as we sit here today, to go through the buildings and for you to testify which subcontractors were used on the different buildings?
A. The only ones I could do would be when we converted to our online system. That's -- that's the documents that I'm talking about. After we get all those pulled, then I could tell you who worked on every building.
Q. Well, is it possible for you to tell me who worked on any of the buildings today?

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A. By looking at the purchase orders, yes, sir.
Q. But do you have that listed somewhere or do we have to go through all the purchase orders? I mean, have you done the work to go through the purchase orders and determine for each building which subs did the work for BFS on those buildings?
A. No, I have not compiled a summary.
Q. So if I went -- if I just went to Building 5 and said for that building, can you testify who the framer was, you're not in a position to do that today?
A. No, sir. I mean, like I said, I could -- you all have copies of those purchase orders. I could look at that purchase order and it should say AC Construction or whoever did the framing.
Q. Okay.
A. But I haven't put them in a summary sheet.
Q. Do you know the names of the subs sitting here without going through every purchase order that worked on the buildings even if you can't tell me specifically which buildings they worked on? In other words, can you name the framers that worked for BFS at The Retreat?
A. I can't name all of them. I know AC Construction did the bulk of the framing work.

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There was also a WS.
Q. Contractors?
A. Contractors, and I'm going off of memory by just what I'd seen in purchase orders. Hurley did a lot of windows. There was East Coast Carpentry did a little bit. I've seen some things where they had purchase orders for some small amount of framing and also some window installs, but I couldn't honestly sit here and name every one of them.
Q. Okay. Did BFS, as part of their contracting with the subs, require the subs to carry commercial general liability insurance?
A. Yes, sir.
Q. And that insurance would have covered the kinds of claims that are being made in this case?
A. Correct.
Q. In other words, they would have had completed operations?
A. Correct.
Q. And that would have been part of the vetting process that BFS corporate would have done when the master subcontractor agreement was signed?
A. That's correct.
Q. Do you know who did the site work by any

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A. I have not seen any of the sub invoices.
(Discussion off the record.)
Q. And so once the invoices are sent, who pays them? Does the general -- the store pay them, or is that check -- are those checks coming from corporate?
A. It comes from corporate, from accounts payable.
Q. Is it the field superintendent that would inspect the work of the sub before he would get authorized payment? In other words, in this case we think that the subcontractors were issuing invoices to be paid, correct?
A. Correct.
Q. When that invoice is generated and sent in, is there some process within the BFS for the field supervisor to sort of check off that that work has been inspected and completed and he authorizes them to be paid?
A. Yes, that's the normal process.
Q. And in this case, that would have been, for the most part, Mr. Cannon?
A. Correct.
Q. And how often is Mr. Cannon on the site?
A. In the case of this job, he was there a lot

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because we had a lot of buildings going. But he could be currently handling ten different small residential jobs and he may get by there every other day. Sometimes he may get by there every day. It just depends on his workload and how spread out they are within the Charleston area.
Q. And same question for Mr. Crabtree, would he have been on site at all?
A. Bill would probably go out there periodically. He normally would probably be the one that would be generating invoices to Campbell or Carlyle.
Q. When it was time for BFS to be paid?
A. Yes, so he would go out and see what work's completed and kind of do a check. And then normally they're requesting a billing once a month.
Q. Do you know whether BFS sent invoices for their work to the developer and/or the general contractor?
A. It would be very unlikely to send them to the developer. Normally it would go to the general contractor.
Q. And generally you're sending that to whoever you think is going to issue a check?
A. Correct.

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Q. Were the plans available to the subcontractors?
A. Yes, sir.
Q. And should the subcontractors have followed whatever instructions were in the plans as far as installation of materials?
A. They should.
Q. As a general statement, would you agree they should also be following the installation instructions from the manufacturer of any given product?
A. Yes, sir.
Q. Are you aware of any -- as far as I know, I know you said earlier that the buildings sort of were different, but it's my understanding that really the difference is in the number of units in the buildings. The buildings themselves are pretty similar from beginning to end. Would you agree with that?
A. Yes, sir.
Q. So the same exterior, same roofs, same look, same building materials were pretty much used for all the buildings, but the buildings range in, I think, anything from two units to six units or something like that?

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A. That's correct.
Q. Do you know whether BFS's scope ever changed dramatically from when it was first hired?
A. I'm not aware of any big change.
Q. So for the buildings that it was hired to work on, it basically did the framing, which may or may not have -- it included the framing, the WRB, the installation of windows and doors and then interior trim?
A. That's the best of my knowledge.
Q. Were there any problems with the work where BFS or its subs had to go out and make a repair that you're aware of?
A. I am not aware of anything during the construction. I was told they did do several service calls later on after the project was done, like on some window calls, couple things on adjusting some doors, things like that.
Q. Did the -- did BFS do any of the screened-in porches or the glassed-in porches?
A. I'm not aware of any that we did.
MR. LADY: Tell you what, I'm going to get into some -- let's go off the record.
(Discussion off the record.)
(Lunch recess held.)

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ECC Contracting was?
A. I do not. I think I saw a purchase order where they did some miscellaneous framing and I think I also saw where they did some window installs.
(Exhibit No. 26 marked for identification.)
Q. Exhibit 26 is another contract between Builders FirstSource and ECC Contracting. And it looks like at some point in time the version that we've been dealing with, which is the May 17, 2006, was replaced by this version of the master subcontractor agreement. Do you know that to be the case?
A. I know we have updated the versions. I don't know the exact dates because Deryl Ward and all them do all that at our legal department.
Q. Fair enough. But this one is dated looks like 1 July 2015?
A. Correct.
Q. And you'll note the previous ones have been 2012 or earlier.
A. Yes, sir.
Q. And all the previous ones have used the May 17th, 2006 version, correct?

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A. Correct.
Q. And I will -- I've been through this. I can't promise you I caught everything, but I think I did. It looks like to me that the only differences -- that everything's identical except if you look at section or paragraph 7.
A. What page?
Q. It's page 8. It's certification of compliance with equal opportunity provisions.
A. Okay.
Q. That paragraph did not exist in the previous -- I don't know that it really -- I don't know that it has any applicability to what we're dealing with today, but I'm just trying to get you to focus on what I believe the differences are and tell me whether you agree with me or not. And then --
MR. FREEMAN: I'm sorry to interrupt just because I don't have what you're looking at. Are you saying that section 7, certification of compliance with equal opportunity --
MR. LADY: Is added.
MR. FREEMAN: -- is added. Thank you.
MR. LADY: Right. It didn't exist in the earlier version. And I will just state, I

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believe everything is identical from the earlier version except for these two things that changed, and that was one of the changes is they added that.
Q. The other change, that I saw anyway, if you look at paragraph 10, is a miscellaneous section. And, again, I'm not sure that it has any applicability.
A. That's on which page?
Q. 12, page 12, section 10.
A. Okay.
Q. Other than that, and I'm happy for you to compare the two, do you know of any changes between the two versions?
A. I'm not familiar with the changes, I am not.
Q. Okay. To the extent the verbiage that we went over for the earlier version is identical to the verbiage that is used in this version, your testimony would be the same about the applicability to the -- what the -- what BFS would require of its subcontractors when they did work.
A. That would be correct.
Q. So all of the insurance provisions, indemnity, all of the things we discussed earlier, if that same language is in this contract, then your testimony would be the same about the

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applicability of that language.
A. That would be correct.
Q. And, again, this is signed on page 14. This time it's got Rod Assis for ECC Contracting, correct?
A. Yes, sir.
Q. And then in this case, it's got Grant Carson for Builders FirstSource?
A. Correct.
Q. Do you know who he is?
A. Yes. Grant, as we have gotten busier and larger, he works for Deryl, and he is, like, the senior attorney now responsible for contracts and Deryl is dealing with other issues now.
Q. But like Mr. Ward, he would have had the authority to sign on behalf of Builders FirstSource.
A. Correct.
(Exhibit No. 27 marked for identification.)
Q. Exhibit 27 is a purchase order. And, again, all the things you said for the earlier one are equally true for this purchase order as far as how to read it, correct?
A. Correct.

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Q. In this case, this has for ECC Contracting frame labor unit 2001, correct?
A. Correct.
Q. So is that -- at some point they -- instead of doing buildings, did they start doing individual unit purchase orders?
A. This appears that, just by looking at the dollar amount, he did some little framing repair or something.
Q. I gotcha. So it may not be framing the --
A. It's not the whole unit because you can see it's only $375 versus 18,000.
Q. I didn't notice that.
A. So it appears he went in and did some miscellaneous --
Q. Let me ask you this --
A. -- work.
Q. It doesn't make sense to me that there would be more than one framer for a building. Do you agree with me that if a framer did a unit, they likely did the entire building that that unit exists in?
A. That would be correct. Normally they would do the whole building.
Q. And I ask that just if we end up getting

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individual units, then I want to be able -- it would be fair for me to assume that whatever building that unit lies is that he was also the framer for all of the entire building.
A. That would be correct.
Q. In he's doing some partial repair or fixing something on this particular unit, how likely is it that he was also the framer for that building?
A. I would say probably very unlikely.
Q. Unlikely?
A. Unlikely.
Q. Why is that?
A. I would imagine this might be some kind of punch or the building is done and they went in and found out, Oh, we've got the door opening frame wrong or something. Instead of pulling off a big crew to come back and do that, they just issued a thing, said, go down and take care of this, what'll you charge me.
(Exhibit No. 28 marked for identification.)
Q. Gotcha. And Exhibit 28, another purchase order for ECC Contracting. This has Building A1. And, again, we don't really know where that lies, but -- and it has -- is that CGLWDW labor single

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window labor?
A. Correct.
Q. And then DBLWDW is double window labor?
A. Correct.
Q. And then SGLDR, is that sliding glass door?
A. Yes, sir.
Q. And in these units I think there are French doors. Is it likely that they used sliding glass door even though it was a French door?
A. It said, correct, it's sliding. It could be the same as a single door.
Q. Oh, I gotcha.
A. Just a unit.
Q. Okay. And then this is an invoice for really installing the windows and doors on a specific building.
A. Yes, sir, that's what it looks like.
Q. And that would be 26 single windows, 6 double windows and 2 single doors.
A. Yes, sir.
Q. And that's consistent with what you thought ECC --
A. Yes.
Q. -- did was install windows.
A. Yes, I have seen some where they did some

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window installation.
(Exhibit No. 29 marked for identification.)
Q. Exhibit 29 is another contract. This contract's with Hurley Services. It's dated May 14, 2012, correct?
A. Correct.
Q. And it used -- it's version May 17, 2006?
A. Correct.
Q. So, again, all of the testimony you gave previously about this version of the contract would be equally applicable to this one?
A. Yes, sir.
Q. And it has contact Giovanni, I think, N. Mendes. Do you know that person?
A. I don't know him.
Q. Do you know what Hurley Services did?
A. My understanding they did quite a bit, the majority of the window installs.
Q. Okay. And then if you go to page 12, Giovanni Mendes signed for Hurley Services?
A. Correct.
Q. And Deryl Ward signed on behalf of Builders FirstSource.
A. Correct.

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install decking stringers, which would be your stair stringers, on all four units, $3600.
Q. Okay. And are these porches? Are these those entry decks that span across some of the floors on the front side? Do you know which decks these are talking about?
A. I do not. I'm not sure if these are the stringers inside the building coming from the garage level up or if they're the actual ones out on the front porch.
Q. And stringers are stair stringers?
A. Yes.
Q. Okay. So this would be, okay, installing decking stringers on all four units. These are the stairways up to the units?
A. Yes, sir, that's what I interpret it as.
Q. Okay. And then is there another -- that's for Building 2500, correct?
A. Yes, sir, and I think there's one also --
Q. There's another one for Building 2600 and another one for Building 2700?
A. I see one for 26. I don't see the 2700.
Q. Maybe I'm...
A. Yes, I'm sorry, there is, 27, 26 and 25.
Q. Deck stringer labor, there's two for 1800

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and one for 3600, of the last three pages of this exhibit.
A. Yes, sir.
Q. Okay. These don't involve installation of any waterproofing components or anything like that.
A. No, sir.
Q. What type of field superintendents would -- of Builders FirstSource would you have that would go out to the project each day and just check on the progress of the work and see that the subcontractors are installing the work in accordance with the plans and specifications?
A. One of them that was involved in this was Rooster Cannon, who's been in the industry probably 30 years, done framing, supervised framing, window installs, so he's accustomed to the construction industry.
Q. You personally know Rooster?
A. Yes.
Q. You know Rooster to be a good and qualified field superintendent?
A. Yes.
Q. And you're confident that Rooster would go out there and check on the work regularly as needed to ensure that it's being done right?

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A. Yes, sir.
Q. And if he saw something being done wrong, he would tell the subcontractor to fix it?
A. Correct.
Q. And that if he was not confident that the subcontractor had, you know, framed the buildings properly or installed the windows and doors properly or the house wrap wasn't on right, he would not approve their work to be paid?
A. Correct.
Q. And Builders FirstSource has the right under its master agreement to withhold payment if a subcontractor does not do their work properly?
A. Correct.
Q. And are you aware of instances, I'm not talking about this project specifically, but just in general as a matter of business practice, will Builders FirstSource withhold payment if in fact the subcontractors don't do their job right?
A. Yes, sir.
Q. And superintendents, Rooster included, are trained to inspect the work and, you know, notify the sub if it's not done correctly?
A. That's correct.
Q. And BFS superintendents, including Rooster,

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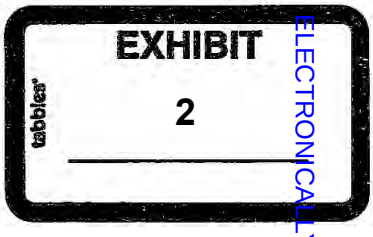
are, as a matter of practice, trained not to approve the subcontractor's pay applications if they inspect the work and find that it's not done right.
A. That would be correct.
Q. And so Builders FirstSource has appropriate checks and balances in place to make sure that the building is built properly before such time as they release payment and they sign off on the work and invoice the owner or the developer or the GC or whoever BFS is working for.
A. That would be correct.
Q. Subject to -- as to the building numbers we looked at for my client on Exhibit 70, to the extent we identified, like, Building No. 2300, do you have personal knowledge as to what phase of the project that fell in?
A. I do not.
Q. Or what street Building 2300 is on?
A. No, sir.
Q. Okay. You're gathering up or you have gathered up and provided new documents to the attorneys in the case Builders FirstSource recently found?
A. Yes, sir.



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Print this page

Board: Commercial Contractors

BUILDERS FIRSTSOURCE-SOUTHEAST GROUP LLC
2001 BRYAN STREET STE 1600
DALLAS, TX 75201
(214)880-3500

License number: 112969
License type: GENERAL CONTRACTOR
Status: ACTIVE
Expiration: 10/31/2020
First Issuance Date: 01/05/2007
Classification: BD5
Qualified By: Financial Statement
President / Owner: MORRIS TOLLY

Click here for Classification definitions and licensee's contract dollar limit

Supervised By
ROSAMOND TERRY (CQG)

File a Complaint against this licensee

Board Public Action History:

View Orders | View Other License for this Person

No Orders Found

PURCHASE ORDER

Builders FirstSource

Bill To: 2001 BRYAN STREET SUITE 1600
DALLAS, TX 75201

THIS ORDER NUMBER BELOW MUST APPEAR ON ALL PAPER AND PACKAGES THAT ARE RELATIVE TO THIS ORDER

PO NUMBER
14923785

INSTALLATION

REPRINT PG# 1

VENDOR
42779
ECC CONTRACTING
2305 AUDUBON DRIVE
HANAHAN, SC 29410

SHIP TO
SGCSYD
GOOSE CREEK,SC (GCS#72)
BUILDERS FIRSTSOURCE
111 LUMBER LANE
GOOSE CREEK, SC 29445 (843) 553-5252

DATE	SHIP VIA	CONFIRMING	TERMS	DATE REQUIRED	VENDOR PHONE NO.
02-01-12	N/A	CONFIRMING ONLY	NET12	02-01-12	843-478-8230

ITEM NUMBER	QUANTITY ORDERED	QUANTITY RECEIVED	U/M	DESCRIPTION	UNIT COST	PER	AMOUNT
		PRICED BY: 20583029		UNIT 2001 CHAS NATIIONAL DECK WINSTON CARLYLE CHARLES NAT (R			
14923785.10	1		EA	FRAME LABOR	375.0000 375.0000	EA W/FRT	375.00

EXHIBIT
3

CLERK
Drew Stritch

Railcar:

Total:
Landed Total: 375.00

EEO CLAUSE: This purchase order incorporates by reference the requirement of 41 C.F.R 60-1.4, 60-250, 60-300.5(a) and 60-741 to the extent applicable.

PURCHASING AGENT

ECC 0039

ELECTRONICALLY FILED - 2020 Oct 23 6:43 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003783

PURCHASE ORDER

Builders FirstSource

Bill To: 2001 BRYAN STREET SUITE 1600
DALLAS, TX 75201

THIS ORDER NUMBER BELOW MUST APPEAR ON ALL PAPER AND PACKAGES THAT ARE RELATIVE TO THIS ORDER

PO NUMBER
15022475

INSTALLATION

REPRINT PG# 1

VENDOR
42779
ECC CONTRACTING
2305 AUDUBON DRIVE
HANAHAN, SC 29410

SHIP TO
SGCSYD
GOOSE CREEK,SC (GCS#72)
BUILDERS FIRSTSOURCE
111 LUMBER LANE
GOOSE CREEK, SC 29445 (843) 553-5252

DATE	SHIP VIA	CONFIRMING	TERMS	DATE REQUIRED	VENDOR PHONE NO.
04-16-12	N/A		NET12	04-16-12	843-478-8230

ITEM NUMBER	QUANTITY ORDERED	QUANTITY RECEIVED	U/M	DESCRIPTION	UNIT COST	PER	AMOUNT
		PRICED BY:		BLDG A1 CHARLESTON NATIONAL			
	20864213			WINSTON CARLYLE CHARLES NAT (R			
15022475.10			EA	SGL WDW LABOR	12.0000	EA	
	26				12.0000	W/FRT	312.00
15022475.20			EA	DBL WDW LABOR	15.0000	EA	
	6				15.0000	W/FRT	90.00
15022475.30			EA	SGL DR LABOR	25.0000	EA	
	2				25.0000	W/FRT	50.00

CLERK
Drew Stritch

Railcar:

Total:
Landed Total: 452.00

EEO CLAUSE: This purchase order incorporates by reference the requirement of 41 C.F.R 60-1.4, 60-250, 60-300.5(a) and 60-741 to the extent applicable.

PURCHASING AGENT

ECC 0040

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PURCHASE ORDER

Builders FirstSource

Bill To: 2001 BRYAN STREET SUITE 1600
DALLAS, TX 75201

THIS ORDER NUMBER BELOW MUST APPEAR ON ALL PAPER AND PACKAGES THAT ARE RELATIVE TO THIS ORDER

PO NUMBER
15022498

INSTALLATION

REPRINT PG# 1

VENDOR
42779
ECC CONTRACTING
2305 AUDUBON DRIVE
HANAHAN, SC 29410

SHIP TO
SGCSYD
GOOSE CREEK,SC (GCS#72)
BUILDERS FIRSTSOURCE
111 LUMBER LANE
GOOSE CREEK, SC 29445 (843) 553-5252

DATE	SHIP VIA	CONFIRMING	TERMS	DATE REQUIRED	VENDOR PHONE NO.
04-16-12	N/A	CONFIRMING ONLY	NET12	04-16-12	843-478-8230

ITEM NUMBER	QUANTITY ORDERED	QUANTITY RECEIVED	U/M	DESCRIPTION	UNIT COST	PER	AMOUNT
		PRICED BY:		BLDG A2 CHARLESTON NATIONAL			
	20864275			WINSTON CARLYLE CHARLES NAT (R			
15022498.10			EA	SGL WDW LABOR	12.0000	EA	
	32				12.0000	W/FRT	384.00
15022498.20			EA	DBLE DR LABOR	40.0000	EA	
	3				40.0000	W/FRT	120.00
15022498.30			EA	SGL DR LABOR	25.0000	EA	
	2				25.0000	W/FRT	50.00
15022498.40			EA	SLIDER LABOR	35.0000	EA	
	1				35.0000	W/FRT	35.00

CLERK
Drew Stritch

Railcar:

Total:
Landed Total: 589.00

EEO CLAUSE: This purchase order incorporates by reference the requirement of 41 C.F.R 60-1.4, 60-250, 60-300.5(a) and 60-741 to the extent applicable.

PURCHASING AGENT

ECC 0041

ELECTRONICALLY FILED - 2020 Oct 23 6:43 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003783

PURCHASE ORDER

Builders FirstSource

Bill To: 2001 BRYAN STREET SUITE 1600
DALLAS, TX 75201

THIS ORDER NUMBER BELOW MUST APPEAR ON ALL PAPER AND PACKAGES THAT ARE RELATIVE TO THIS ORDER

PO NUMBER
15023610

INSTALLATION

REPRINT PG# 1

VENDOR
42779
ECC CONTRACTING
2305 AUDUBON DRIVE
HANAHAN, SC 29410

SHIP TO
SGCSYD
GOOSE CREEK,SC (GCS#72)
BUILDERS FIRSTSOURCE
111 LUMBER LANE
GOOSE CREEK, SC 29445 (843) 553-5252

DATE	SHIP VIA	CONFIRMING	TERMS	DATE REQUIRED	VENDOR PHONE NO.
04-17-12	N/A		NET12	04-17-12	843-478-8230

ITEM NUMBER	QUANTITY ORDERED	QUANTITY RECEIVED	U/M	DESCRIPTION	UNIT COST	PER	AMOUNT
		PRICED BY: 20867411		BLDG A1 CHAS NATIONAL WINSTON CARLYLE CHARLES NAT (R			
15023610.10	1		EA	DOUBLE DR LABOR $15 * 6 - SHORT PAID ON PO 15022475	90.0000 90.0000	EA W/FRT	90.00

CLERK
Drew Stritch

Railcar:

Total:
Landed Total: 90.00

EEO CLAUSE: This purchase order incorporates by reference the requirement of 41 C.F.R 60-1.4, 60-250, 60-300.5(a) and 60-741 to the extent applicable.

PURCHASING AGENT

ECC 0042

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FEB 2 7 2008

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Builders FirstSource

BUILDERS FIRSTSOURCE – SOUTHEAST GROUP, LLC
MASTER SUBCONTRACTOR AGREEMENT

THIS MASTER SUBCONTRACTOR AGREEMENT (this "**Agreement**") is entered into effective as of Feb. 26, 200 8, between **Builders FirstSource – Southeast Group, LLC**, a Delaware limited liability company, address: 111 Lumber Lane, GooseCreek, SC 29445, telephone: 843-553-5252, fax: 843-797-1710, Contact: Bill Crabtree, e-mail: bill.crabtree@bldr.com ("**Contractor**"), and ECC CONTRACTING, address: 2905 AUDUBON DR HANAHAN - SC, telephone (843) 4788230, fax: 2255397, Contact: ROD ASSIS, e-mail: ECCCOMT@YAHOO.COM ("**Subcontractor**").

SECTION 1. Introduction.

a. Work. This Agreement contains the basic terms and conditions under which Subcontractor agrees to provide materials and/or to perform services (the "**Work**") from time to time for Contractor on any project (the "**Project**"). TIME IS OF THE ESSENCE. It will apply to and govern all Work requested by Contractor from Subcontractor at any time following the date of this Agreement, unless other terms and conditions are specifically agreed to in writing by Contractor with respect to particular items of Work or until this Agreement is terminated as hereinafter provided. In accordance with the terms and conditions contained in this Agreement, Subcontractor will perform and finish in a good and workmanlike manner, and will furnish all required materials, labor, equipment, supplies and tools for, the Work described from time to time for Contractor on any Project. Projects may or may not be owned or controlled by Contractor's customer (the "**Owner**"). The Work will be performed in accordance with plans, specifications, drawings and schedules for the Work, and any supplemental terms and conditions to this Agreement, all of which are, or will be, on file at the office of the Contractor (the "**Contract Documents**") and incorporated into the Agreement by reference as if fully set forth. Contractor will have the right at any time to supplement the plans and specifications for the Work with additional or replacement drawings and schedules or other documents and upon so doing such drawings and schedules will immediately become part of the Contract Documents. The Contract Documents, including any time schedules, may be amended and/or supplemented from time to time by giving Subcontractor written notice thereof. Subcontractor's only remedy in the event an amendment or supplement to the Contractor Documents materially increases the cost or difficulty of performance by the Subcontractor is to terminate this Agreement by written notice to Contractor within 24 hours after Contractor delivers such amendment or supplement to Subcontractor.

b. Work Orders. It is contemplated under this Agreement that Subcontractor may perform Work on multiple projects at multiple locations. The description, completion date, special conditions, and cost of Work to be performed on a Project will be set forth in the written purchase order or work order (together, "**Work Order**") delivered by Contractor to Subcontractor relating to that Project. Such Work Order(s) are incorporated herein by reference as if fully set forth. The Work described in Work Orders must be performed under the terms of this Agreement.

Subcontractor

Contractor

FEB 27 2008

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c. **Term.** This Agreement shall be for an initial term of three (3) years. Upon the expiration of such initial term or any renewal term, this Agreement shall automatically renew for subsequent one (1) year periods unless either party gives written notice to the other party that it is electing to terminate this Agreement at the end of the then current term. Such written notice of intent to terminate must be given at least sixty (60), but not more than one hundred twenty (120), days prior to the end of the then current term. The provisions of **Sections 3, 4, and 5** shall survive termination of this Agreement. If Contractor terminates this Agreement, Contractor will pay to Subcontractor sums due for the Work performed to the date of termination, as provided in **Section 8**.

d. **Notice.** Any notice or communication hereunder or in any agreement entered into in connection with the transactions contemplated hereby must be in writing and given by depositing the same in the United States mail, addressed to the party to be notified, postage prepaid, and registered or certified with return receipt requested, or by delivering the same in person or by facsimile transmission. Such notice shall be deemed received on the date on which it is hand-delivered or received by facsimile transmission or on the third business day following the date on which it is so mailed. For purposes of notice, the addresses of the parties shall be as set forth on the front page of this Agreement. Any party may change its address for notice by written notice given to the other parties in accordance with this Section

SECTION 2. Materials and Workmanship.
Subcontractor agrees to commence Work on Projects upon request by Contractor. Subcontractor agrees to provide all labor, services, equipment, and tools necessary to complete the Work.

a. **Scope of Work; Knowledge of Site; Plans and Specifications.** Subcontractor shall take all action necessary to familiarize itself and its employees, agents, and subcontractors with the scope and requirements of the Work, the existing site conditions, and any work to be performed by others that may affect the performance of the Work. Subcontractor shall confirm that the Contract Documents are correct and immediately notify Contractor of any errors and/or omissions.

b. **Change Orders.** Contractor may make any changes to the nature or scope of the Work; provided, however, that any changes resulting in a change in price must be agreed to in writing by Subcontractor and Contractor prior to the Work being performed. Subcontractor shall be notified of changes by written change order. Subcontractor shall not perform any extra work without written authorization by Contractor.

c. **Protection of Work.** Subcontractor shall bear all risk of loss or damage to the Work resulting from any cause whatsoever until Subcontractor has completed its Work on the Project and such work has been accepted by Contractor and Owner. Subcontractor shall at all times, and at its expense, protect all of its labor, materials (regardless of who supplied such materials), supplies, tools, and equipment (and those of its employees, agents, and subcontractors) against any damage, injury, destruction, theft, or loss. Subcontractor shall, at its expense, promptly repair or replace damage to the Work or damage to any other components of the Project resulting from the activities of Subcontractor or its employees, agents, or subcontractors.

d. **Safety and Environmental.**

(1) **Compliance with Laws.** Subcontractor will carefully check the drawings, plans, and specifications for conformity with all local, state, and Federal laws, codes, rules, and regulations bearing on the Work (the "**Law**") before commencing the Work. Unless Contractor or Owner otherwise agrees in writing, before commencement of the Work Subcontractor will obtain at its sole

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cost and expense all permits necessary for the Work. Subcontractor will comply with product manufacturer's specifications and will give all notices and comply with all Law bearing on the Work, including by way of enumerations and not limitation, safety, health, and environmental rules and regulations established by or pursuant to Federal, state, and local safety and environmental laws. Subcontractor at all times will furnish to its agents and employees a safe place of employment. If Subcontractor observes any violation of Law, it will immediately report such violation to Contractor in writing. Subcontractor will be responsible for any fines, charges, in-kind training or supplies, or penalties related to the Work, including, without limitation, fines, charges, and/or penalties related to the operation of equipment, the Subcontractor's performance of the Work, the handling of materials, or any other function that is in violation of the Law. All workmanship and materials will conform to Law and, if the Subcontractor performs or permits the performance of any Work not in compliance with Law, it will immediately cause such Work to be redone and bear all costs in connection therewith. The Work, as performed, will meet with the approval of, and pass any inspection of, any governmental authority having jurisdiction thereof. If the Work is being constructed under specifications of the Federal Housing Administration or the Veterans Administration, the Work will meet the requirements of these governmental agencies. No Work will be deemed complete until final inspection is made and approval is received from every governmental authority whose approval is required.

(2) **The Occupational Safety and Health Administration ("OSHA") and the Environmental Protection Agency ("EPA").** Regulations have been promulgated by OSHA and EPA ("**Regulations**") that require all contractors and subcontractors to exchange Material Safety Data Sheets ("**MSDS**") and share information about precautionary measures necessary to protect all workers on a building project.

Subcontractor agrees as follows:

(A) Subcontractor will fully comply with the Regulations and will cooperate with Contractor and/or Owner and all subcontractors of Owner in order to assure compliance with the Regulations.

(B) Subcontractor hereby accepts full responsibility and liability for the training of its employees as to all precautionary measures necessary to protect such employees during both routine and emergency situations on the Project.

(C) TO THE FULLEST EXTENT PERMITTED BY LAW, SUBCONTRACTOR WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM ALL CLAIMS, DAMAGES, LIABILITIES, AND CAUSES OF ACTION THAT ARISE FROM THE FAILURE OF SUBCONTRACTOR TO COMPLY WITH THE REGULATIONS.

(D) Subcontractor will assist Contractor in complying with the Regulations.

(E) Subcontractor will not use any chemicals in its performance of the Work for Contractor or incorporate any chemicals into materials or products supplied to Contractor or to the Project unless Subcontractor has given Contractor prior written notice of the existence and the possible exposure to such chemical, has delivered an MSDS to Contractor, and has received a written consent of Contractor to use such chemicals.

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(3) **Subcontractor's Safety Program.** Subcontractor's safety program must specifically address, among other safety issues, scaffolding, fall hazards, trenching, and shoring, as may be applicable. For "hard hat" jobs, approved safety helmets and hard soled shoes must be worn at the Project at all times. Safety glasses must be worn when power equipment is used. Subcontractor shall erect and maintain all reasonable safeguards for safety and protection, including, but not limited to, necessary signage, protective barriers, and other warnings against hazards. Subcontractor shall furnish all flagmen, barricades, and other items required for public safety and right-of-way maintenance required by the installation of the Work. Safety vests shall be worn in the public right-of-way.

(4) **Default.** If Subcontractor fails to immediately comply with safety and environmental requirements after verbal or written notice from Contractor, Contractor may correct the violation and deduct the cost from any Partial Payment or final payment in addition to all other remedies available to Contractor, including, without limitation, consequential damages. Subcontractor shall pay any fines assessed to Owner or Contractor due to the acts, omissions, or negligence of Subcontractor. If construction at the Project in whole or in part is delayed or halted by any governmental authority as a result of Subcontractor's Work, Subcontractor shall pay to Contractor as liquidated damages, and not as a penalty, the amount of $200 per hour for a minimum ten (10) hour day until construction at the Project can be safely resumed.

SECTION 3. Warranty.

In addition to any other warranty or guarantee expressly made by Subcontractor or implied by Law, Subcontractor unconditionally warrants and guarantees the Work will conform to any specifications provided by Contractor and comply with all Law and Subcontractor guarantees the Work against defects in design, workmanship, and materials for the benefit of Contractor and its successors and assigns, Owner, as well as the ultimate owner of any structure into which the Work is incorporated. This guarantee will commence upon the Subcontractor's completion of the Work and will continue for a minimum of (a) three (3) years for all Work except, (b) ten (10) years for all Work consisting of any structural applications of any home, building, or other structure. Notwithstanding the foregoing, this warranty will continue until such time as all express and implied warranties granted or deemed granted by Contractor and all other obligations of Contractor related to the Work are terminated or expired as a matter of Law. If demand is made upon Subcontractor to perform under this warranty, Subcontractor at its sole cost and expense will expeditiously repair or replace, at Contractor's sole option, any defective or nonconforming Work and indemnify Contractor and any other party for any costs incurred by any party relating to such demand. This warranty shall extend to all consequential damages resulting from such faults and/or defects of design, material, and workmanship described in this Section, including, without limitation, property damage to the homes or properties into which the Work is incorporated, property damage to the personal property of the ultimate owners of such homes or structures, and personal injury damages to persons residing at or visiting the properties into which the Work is incorporated. If Subcontractor fails to perform under this warranty, the party entitled to performance or Contractor will have the right to hire other persons to correct or replace the defective Work and hold Subcontractor liable for the costs thereof including costs, disbursements, and attorneys' fees incurred in the enforcement of this provision. This warranty is independent from all other obligations of Subcontractor under this Agreement, including, without limitation, all indemnification provisions, and will apply whether or not required by any other provision of this Agreement. Owner and any ultimate owner of any structure into which the Work is incorporated shall be intended non-incidental third party beneficiaries of this Agreement and shall have the power to enforce this Agreement. Subcontractor will maintain a published phone number or answering service during normal working hours.

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SECTION 4. Insurance.
At all times while performing the Work, and continuing thereafter until the expiration of the applicable statute of limitations for any claims, Subcontractor will maintain for the benefit of itself and Contractor (and Owner, when requested), the following minimum insurance coverage:

a. **Workers' Compensation Insurance** - statutory limits in the state where each Project is located.

b. **Employer's Liability Insurance** - $1,000,000 or such other higher limits imposed in accordance with the requirement, if any, of the laws of the states where Subcontractor is engaged in business.

c. **Commercial General Liability** - $1,000,000 per occurrence, $1,000,000 products-completed operations aggregate, $1,000,000 general aggregate, and broad form contractual liability coverage to cover the indemnity obligations undertaken herein.

d. **Business Auto Liability**, including hired and non-owned auto coverage - $500,000 combined single limit.

Insurance policies shall (a) be issued by companies with a "Best's Rating A" and a "Financial Size Category of VIII", (b) be on an "occurrence" form, and (c) list Contractor and if requested, Owner, as additional insureds per Form CG 20 10 edition 11/85 or its equivalent on the General Liability and Automobile Liability Policies. For purposes of this additional insured requirement, the term "equivalent" means coverage for liability arising out of Subcontractor's Work performed for Contractor and includes both ongoing and products-completed operations coverage. The Workers' Compensation Policy shall include an Alternate Employer's Endorsement naming the Contractor. If Subcontractor utilizes any leased employees, Contractor must also be listed on an Alternate Employer's Endorsement on the Workers' Compensation Policy covering the leased employees.

Subcontractor will provide to Contractor certificates of insurance or other satisfactory evidence of compliance with the provisions of this Section promptly after the date of this Agreement and thirty (30) days before the expiration date of each policy or at any time upon request of Contractor. A copy of the actual additional insured endorsement and Alternate Employer's Endorsement must be supplied with the certificate of insurance. If such evidence is not furnished, Contractor will have the immediate right, but not the obligation, to procure at Subcontractor's expense (which Contractor may offset such costs against any Partial Payment or final payment), the required insurance on behalf of Subcontractor. The reference to "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon the company, its agents or representatives" in the cancellation notification portion of the certificate and/or endorsement to the policy must be deleted. To the fullest extent permitted by law, any provision on the face of any certificate of insurance provided by Subcontractor that states anything to the effect that the certificate of insurance does not confer rights to insurance upon Contractor is hereby deemed deleted from such certificate of insurance. The insurance provided herein by Subcontractor shall be primary and non-contributory to any other insurance available to the additional insureds. Waivers of subrogation shall be provided in favor of Contractor and Owner on all insurance policies carried by Subcontractor. Subcontractor hereby releases Contractor and Owner from all claims and causes of action resulting from or related to any loss covered or that should have been covered by insurance required to be maintained by Subcontractor including the deductible and any uninsured portion. Additionally, Subcontractor shall comply with any additional insurance requirements set forth in any other Contract Documents.

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SECTION 5. INDEMNITY.

TO THE FULLEST EXTENT PERMITTED BY LAW, THE SUBCONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, LOSSES, CAUSES OF ACTION, DAMAGES, LIABILITIES, FINES, PENALTIES, AND EXPENSES OF ANY KIND WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ARBITRATION OR COURT COSTS AND ATTORNEY'S FEES (SUCH LEGAL EXPENSES TO INCLUDE COSTS INCURRED IN ESTABLISHING THE INDEMNIFICATION AND OTHER RIGHTS AGREED TO IN THIS PARAGRAPH) ARISING OUT OF OR RESULTING FROM BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY, ARISING OR ALLEGED TO ARISE OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE SUBCONTRACTOR'S PERFORMANCE OF THE WORK OR OTHER ACTIVITIES OF THE SUBCONTRACTOR, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF THE SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE SUBCONTRACTOR OR ANYONE FOR WHOSE ACTS THE SUBCONTRACTOR MAY BE LIABLE. THE CONTRACTOR'S INSURANCE REQUIREMENTS WHICH SUBCONTRACTOR IS SUBJECT TO UNDER THIS AGREEMENT ARE SEPARATE AND DISTINCT FROM THE REQUIREMENT OF INDEMNIFICATION HEREUNDER.

NOTWITHSTANDING THE FOREGOING, TO THE FULLEST EXTENT PERMITTED BY LAW, THE SUBCONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES (THE "INDEMNITEES"), FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES (SUCH LEGAL EXPENSES TO INCLUDE COSTS INCURRED IN ESTABLISHING THE INDEMNIFICATION AND OTHER RIGHTS AGREED TO IN THIS PARAGRAPH) ARISING OUT OF OR RESULTING FROM BODILY INJURY TO, OR SICKNESS, DISEASE, OR DEATH OF, THE SUBCONTRACTOR, ANY AGENT, EMPLOYEE, OR REPRESENTATIVE OF THE SUBCONTRACTOR, OR ANY OF ITS SUBCONTRACTORS, REGARDLESS OF WHETHER SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED, OR IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OF ANY OF THE INDEMNITEES, IT BEING THE EXPRESSED INTENT OF THE CONTRACTOR AND THE SUBCONTRACTOR THAT IN SUCH EVENT THE SUBCONTRACTOR IS TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, WHETHER IT IS OR IS ALLEGED TO BE THE SOLE OR CONCURRENT CAUSE OF THE BODILY INJURY, SICKNESS, DISEASE, OR DEATH OF THE SUBCONTRACTOR, SUBCONTRACTOR'S AGENT, EMPLOYEE, OR REPRESENTATIVE, OR THE AGENT, EMPLOYEE, OR REPRESENTATIVE OF ANY OF ITS SUBCONTRACTORS. THE INDEMNIFICATION

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OBLIGATIONS UNDER THIS PARAGRAPH SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR SUBCONTRACTOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS. THE SUBCONTRACTOR SHALL PROCURE LIABILITY INSURANCE COVERING ITS OBLIGATIONS UNDER THIS SECTION 5.

THE DUTY TO DEFEND UNDER THIS SECTION 5 IS INDEPENDENT AND SEPARATE FROM THE DUTY TO INDEMNIFY, AND THE DUTY TO DEFEND EXISTS REGARDLESS OF ANY ULTIMATE LIABILITY OR NEGLIGENCE OF THE CONTRACTOR, THE OWNER, OR ANY OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES. THE DUTY TO DEFEND ARISES IMMEDIATELY UPON PRESENTATION OF A CLAIM BY ANY PARTY INDEMNIFIED HEREUNDER AND WRITTEN NOTICE OF SUCH CLAIM BEING PROVIDED TO SUBCONTRACTOR. SUBCONTRACTOR'S OBLIGATION TO INDEMNIFY, DEFEND, AND HOLD HARMLESS UNDER THIS SECTION 5 WILL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT UNTIL IT IS FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION OR ARBITRATION PANEL THAT A CLAIM AGAINST THE CONTRACTOR, THE OWNER, AND ANY OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FOR THE MATTER INDEMNIFIED HEREUNDER IS FULLY AND FINALLY BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS.

THE DEFENSE AND INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT ARE NOT INTENDED TO AND SHALL NOT REQUIRE THE SUBCONTRACTOR OR OTHERS TO INDEMNIFY OR HOLD HARMLESS A REGISTERED ARCHITECT, LICENSED ENGINEER, OR AN AGENT, SERVANT, OR EMPLOYEE OF A REGISTERED ARCHITECT OR LICENSED ENGINEER FROM LIABILITY FOR DAMAGE THAT IS (a) CAUSED BY OR RESULTS FROM: (1) DEFECTS IN PLANS, DESIGNS, OR SPECIFICATIONS PREPARED, APPROVED, OR USED BY THE ARCHITECT OR ENGINEER; OR (2) THE NEGLIGENCE OF THE ARCHITECT OR ENGINEER IN THE RENDITION OR CONDUCT OF PROFESSIONAL DUTIES CALLED FOR OR ARISING OUT OF THE CONSTRUCTION CONTRACT AND THE PLANS, DESIGNS, OR SPECIFICATIONS THAT ARE A PART OF THE CONSTRUCTION CONTRACT; AND (b) ARISES FROM PERSONAL INJURY OR DEATH, PROPERTY INJURY, OR ANY OTHER EXPENSE THAT ARISES FROM PERSONAL INJURY, DEATH OR PROPERTY INJURY.

SECTION 6. Independent Subcontractor Status and Warranty to be Lawfully Entitled to Work in the United States of America.

Subcontractor agrees that it and its employees, agents, and subcontractors (and their employees, agents, and subcontractors) will perform the Work as independent contractors, and not as employees or agents of Contractor. Contractor has no authority to direct, supervise, or control the means, manner, or method of construction of the Work. Further, Subcontractor warrants and agrees it will independently verify that it and

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its employees, agents, and subcontractors (and their employees, agents, and subcontractors) shall be lawfully entitled to work under the laws of the United States of America.

SECTION 7. Default and Damages.

a. **Subcontractor's Default.** The following acts on the part of Subcontractor will, at Contractor's option, result in the immediate termination of this Agreement and all Work Orders, and dismissal of Subcontractor from each site.

(1) Any delays of the Work caused by Subcontractor's failure or refusal to supply enough skilled labor or materials to meet Contractor's schedule.

(2) Subcontractor's failure to promptly pay any labor, material suppliers, or lien claimants with respect to any Work.

(3) Adjudication of Subcontractor to be bankrupt or insolvent either by Contractor or any court or governmental entity.

(4) If Subcontractor or any of its employees, subcontractors, or agents (or employees, subcontractors, or agents of any subcontractor retained by Subcontractor to perform Work) consume, use, or are under the influence of alcohol or illegal drugs while on the site. (Subcontractor agrees to strictly enforce rules to this effect and to inform all employees, agents, and subcontractors that such rules will be strictly enforced.)

(5) Failure of Subcontractor or its agents, subcontractors, or employees to (a) operate motorized vehicles or equipment in a safe and orderly manner, (b) comply with safe labor and material installation practices designated by Contractor or Owner or otherwise accepted by the industry, or (c) leave the Project site in a safe condition (as determined by Contractor in its sole discretion) during or after construction.

(6) Subcontractor's failure to comply with the provisions of this Agreement regarding assignment or subcontracting.

(7) Any other violations of the Contract Documents including, without limitation, this Agreement.

b. **Damages.**

(1) **No Damages for Delay.** Notwithstanding anything to the contrary in this Agreement and to the fullest extent permitted by law, Contractor will not be liable for any loss, claim, cost, liability, or damage incurred by Subcontractor, whether direct or indirect or whether related to efforts by Contractor to accelerate the Work, on account of any delay, disruption, hindrance, or any other impediment whatsoever, no matter by what, or by whom caused. Rather, the Cost of Work (**defined in Section 8**) is understood and agreed to include and cover all expenses and costs due to delays, disruptions, hindrances, or any other impediments regardless of their cause. Subcontractor agrees not to make, and hereby waives, any such claim for damages.

(2) **Subcontractor's Liability to Contractor upon Termination.** If this Agreement is terminated at Contractor's option as provided in this **Section 7**, Subcontractor will be liable to Contractor for all costs and damages incurred by Contractor due to Subcontractor's failure to perform under this Agreement or other Contract Documents (including, without limitation, the

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amount by which the cost to complete the Project exceeds the cost of the Work), Subcontractor's failure to keep up the progress of the Work as required, or Subcontractor's failure to execute the Work as directed by Contractor. In addition to all costs and damages incurred by Contractor, Subcontractor shall be liable to Contractor for an additional amount equal to 25% of all costs and damages for Contractor's additional overhead and related costs.

c. **Reimbursement for Fines.** Subcontractor shall promptly reimburse to Contractor and shall indemnify, defend, and hold harmless Contractor regarding any fines or penalties incurred by Contractor or Owner as a result of the actions or inaction of Subcontractor or its employees, agents, or subcontractors, relating to performance of Work or otherwise, including, without limitation, their failure to abide by the requirements of **Section 2(d)**.

SECTION 8. Payment to Subcontractor.

a. **Payment by Owner is Condition Precedent.** Subcontractor agrees and acknowledges that Contractor shall seek payment from Owner for the price of the Work ("**Cost of Work**") performed pursuant to Work Orders and that Contractor has no duty or obligation to pay Subcontractor for any Work until Contractor has been paid by Owner. Therefore, all obligations of Contractor to make Partial Payments and final payment are subject to the express conditions precedent that Owner accepts Subcontractor's Work and Contractor receives payments from Owner for all payments to Subcontractor. It is expressly agreed that any basis for non-payment by Owner, including, without limitation, the bankruptcy or insolvency of Owner, will not excuse this condition precedent and Subcontractor expressly assumes the risk of delayed payment or non-payment by Owner.

b. **Partial Payments.** Partial payments ("**Partial Payments**") for portions of the Work that have been completed will be made by Contractor to Subcontractor as the Work progresses, but not more often than in accordance with Contractor's regular payment procedures. As a condition precedent to Partial Payments, Subcontractor must submit written applications that provide a description of the portion of the Work that has been completed during the payment period (including, without limitation, materials and supplies used therein if provided by Subcontractor), an estimate of the percentage of completion of the Work, a copy of each change order for the payment period, safety meeting sheets for the period of time since the last submission for payment, sheets indicating the number of hours worked by any employees of Subcontractor or any of its subcontractors ("**Employee Time Sheets**") for the period of time since the last submission for payment, evidence of payment, waivers (including, without limitation, lien waivers), and supplier affidavits in form satisfactory to Owner and Contractor, for itself, its subcontractors and material suppliers, and all other information Contractor is required to provide to Owner as a condition to Contractor's right to receive payment. Contractor reserves the right to modify such estimates in its sole and exclusive discretion and such modifications will bind Subcontractor for the purpose of Partial Payments. Partial Payments will be made to Subcontractor on or about the thirtieth day following approval of the application for payment by Contractor and receipt of payment by Contractor from Owner.

c. **Retainage.** Contractor will retain at least ten percent (10%) of each Partial Payment (the "**Retainage Amount**") or any greater amount Contractor chooses to retain in its sole discretion. Contractor may, in its sole discretion, waive its right to retain any Retainage Amount from any Partial Payments or final payment.

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d. Grounds for Withholding Payments. Contractor may withhold any Partial Payments or the final payment in whole or in part upon the occurrence of any breach of this Agreement by Subcontractor until a cure satisfactory to Contractor has been completed.

e. Work Covered by Partial Payments. All the completed Work covered by Partial Payments or final payment made to Subcontractor will thereupon become the sole property of Contractor, but this provision will not be construed as relieving Subcontractor from the sole responsibility for all Work upon which Partial Payments have been made, for the restoration of any damaged Work, for the correction of defective Work, or as a waiver of Contractor's right to require fulfillment of all of the terms of this Agreement. Payment to Subcontractor is specifically agreed not to imply acceptance by Contractor or Owner of any portion of the Work that fails to comply with the Contract Documents.

f. Final Payment. Final payment constitutes the entire unpaid balance of the Cost of Work minus any amounts retained. Final payment will be made by Contractor to Subcontractor upon satisfaction of the following conditions:

(1) The Work is fully performed in accordance with the requirements of the Contract Documents, and Subcontractor is not in default under this Agreement or the Contract Documents;

(2) Subcontractor has submitted satisfactory evidence of payments to, waivers by, and releases from all claims by, Subcontractor and any persons, firms, or corporations having performed work, labor, or services or furnished materials, equipment, tools, or supplies to Subcontractor for the Work (including, without limitation, lien waivers) if requested by Contractor;

(3) Subcontractor has delivered to Contractor all as-built drawings, certifications, maintenance manuals, operating instructions, written guaranties, warranties, and bonds;

(4) Subcontractor has provided safety meeting sheets and Employee Time Sheets for the period of time since the last submission for payment;

(5) Owner, any general contractor, any lender, any architect, and Contractor have accepted the Work; and

(6) Contractor has received payment from Owner.

g. Release of Retainage. Contractor will release any Retainage Amount thirty (30) days after all conditions precedent to Subcontractor's receipt of the final payment are met.

h. Subcontractor's Agreement to Pay. Subcontractor will promptly pay when due all charges owed by it for labor, services, materials, equipment, tools, and supplies furnished under this Agreement and will keep the Work and the Project free from any mechanics' and materialmen's liens. Subcontractor shall not acquire any materials, supplies, or equipment subject to any security interest or conditional sale or other agreement where any interest is retained by or granted to a seller, supplier, or lender. If Contractor reasonably believes that Subcontractor has failed to pay when due all charges owed by Subcontractor for its labor, services, materials, equipment, tools, and supplies, Contractor may issue joint checks made payable to Subcontractor and other parties owed by Subcontractor or directly to those parties owed by Subcontractor in Contractor's sole discretion. Contractor shall be entitled to and Subcontractor shall provide acceptable security insuring against claims by Subcontractor's creditors.

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i. INDEMNIFICATION FOR LIENS. TO THE FULLEST EXTENT PERMITTED BY LAW, SUBCONTRACTOR HEREBY AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY MECHANICS' AND MATERIALMEN'S LIENS UPON THE PROJECT, ATTORNEYS' FEES AND EXPENSES, AMOUNTS PAID IN SETTLEMENT, AND AMOUNTS PAID TO DISCHARGE JUDGMENTS ARISING OUT OF THE SERVICES, LABOR, EQUIPMENT, OR MATERIALS FURNISHED BY SUBCONTRACTOR, OR ITS EMPLOYEES, SUPPLIERS, OR SUBCONTRACTORS. IF SUBCONTRACTOR FAILS TO DO SO, CONTRACTOR MAY DEDUCT FROM SUMS THEN OR THEREAFTER DUE TO SUBCONTRACTOR SUCH AMOUNTS AS CONTRACTOR DEEMS APPROPRIATE IN ITS SOLE DISCRETION TO INDEMNIFY THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM SUCH LIENS, CLAIMS, AND ENCUMBRANCES. CONTRACTOR MAY, IN ITS SOLE DISCRETION, CURE ANY LIENS OR SATISFY ANY DEMANDS, AND RECOVER ITS COSTS RELATED DIRECTLY OR INDIRECTLY THERETO FROM SUBCONTRACTOR. SUBCONTRACTOR HEREBY WAIVES, RELEASES, AND FOREVER DISCHARGES THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM ALL COSTS, EXPENSES, CLAIMS, DEMANDS, DAMAGES, LOSSES, CAUSES OF ACTION, OR LIABILITIES THAT SUBCONTRACTOR MAY HAVE AGAINST THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES THAT ARISE DIRECTLY OR INDIRECTLY FROM CURING ANY SUCH LIENS, CLAIMS, ENCUMBRANCES, OR DEMANDS.

SECTION 9. Miscellaneous.

a. Assignment and Successors. Subcontractor may not assign or subcontract any portion of the Work or its other obligations or rights hereunder without the prior written consent of Contractor. If Subcontractor assigns or subcontracts any portion of the Work (with the prior written consent of Contractor), Subcontractor will require each such assignee or sub-tier subcontractor to comply with the Contract Documents, including, without limitation, the pertinent provisions of this Agreement (including, without limitation, Section 5) by written agreement, a copy of which must be provided to Contractor. Subcontractor hereby unconditionally guarantees the compliance of each such assignee or sub-tier subcontractor with this Agreement. Subject to the preceding provisions of this Section, this Agreement will be binding on and will inure to the benefit of the parties and their respective heirs, administrators, executors, successors, and permitted assigns.

b. Acts of Affiliates. For the purpose of this Agreement, any action of any agent, employee, subcontractor, director, officer, or invitee of Subcontractor or any of their agents, employees, subcontractors, officers, or invitees shall be deemed an act of Subcontractor. For the purposes hereof, any obligation or liability imposed on Subcontractor with regard to its employees or agents shall also be deemed an obligation or liability of Subcontractor with regard to employees or agents of its subcontractors. Subcontractors of Subcontractor shall include any suppliers of Subcontractor other than Contractor.

Subcontractor

Contractor

FEB 27 2008

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c. **Offset.** In addition to any other right provided hereunder, Contractor shall be entitled to offset any amount owed to it by Subcontractor hereunder against any Partial Payments or final payment under this Agreement or any other agreement.

d. **Clean up.** Subcontractor will at all times keep the Project safe and free from the accumulation of waste materials or rubbish caused by its operations or related to the Work. Upon completion of the Work and each portion thereof, Subcontractor will remove all rubbish and waste produced by its operations or Work hereunder from the Project as well as all of its tools, equipment, machinery, and surplus materials no longer needed and leave the Project in a "broom clean" or equivalent condition and safe for Subcontractor's employees and subsequent contractors to perform their work, unless otherwise specified in writing. If Subcontractor fails to clean up, Contractor may do so after written notice to Subcontractor and the cost thereof will be charged to Subcontractor.

e. **Lien waiver.** Subcontractor hereby waives and relinquishes any right, whether granted by statute or not, to file or claim any lien for Work performed hereunder.

f. **Other.** This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. No delay or failure by Contractor to exercise any right or remedy hereunder, and no partial or single exercise of such right or remedy, will constitute a waiver of that or any other right or remedy. The duties and obligations imposed by this Agreement and rights and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by Law. The prevailing party to any dispute shall have a right to collect its reasonable attorney's fees and expenses. This Agreement shall be governed by the laws of the State of Texas, without regard to the conflicts of law provisions thereof. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof. It is the intent of the parties that any invalid provision hereof be reformed to the extent necessary to make it enforceable to the maximum extent of the law.

EXECUTED to be effective as of the date first above written.

SUBCONTRACTOR:

ECC CONTRACTING

By: _____

Name: RODRIGO ASSIS

Title: Owner

26-1548017

Subcontractor Social Security No. or Federal I.D. No.

BUILDERS FIRSTSOURCE – SOUTHEAST GROUP, LLC

By: _____

Name: Deryl Ward

Title: Associate General Counsel

Subcontractor _____

Contractor _____

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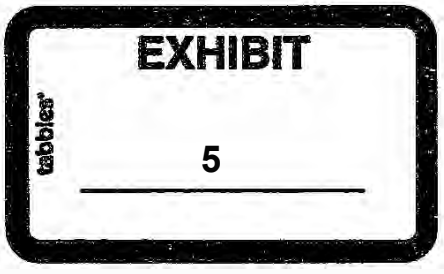
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	CIVIL ACTION NO: 2018-CP-

Builders FirstSource-Southeast Group, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	SUMMONS
	)	
MI Windows and Doors, Inc., ECC Contracting, LLC, Hurley Services, LLC, and Charleston Exteriors, LLC	)	
	)	
Defendants.	)	

To: MI Windows and Doors, Inc. ECC Contracting, LLC Hurley Services, LLC and Charleston Exteriors, LLC

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the subscriber hereto at his office at 25 Rue Du Bois, Lady's Island, P.O. Box 40, Beaufort, South Carolina, 29901-0040, within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.



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HOWELL, GIBSON & HUGHES, P.A.

By: s/Stephen P. Hughes
Stephen P. Hughes
Post Office Box 40
Beaufort, SC 29901-0040
(843) 522-2400
Attorney for BuildersFirstSource-
Southeast Group, LLC

Beaufort, South Carolina

December 21, 2018

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	CIVIL ACTION NO: 2018-CP-08-

Builders FirstSource-Southeast Group, LLC Plaintiff, vs. MI Windows and Doors, Inc, ECC Contracting, LLC, Hurley Services, LLC, Charleston Exteriors, LLC Defendants.	)	COMPLAINT

The Plaintiffs, Builders First Source-Southeast Group, LLC, complaining of the Defendants, MI Windows and Doors, Inc., Hurley Services, LLC, Charleston Exteriors, LLC, and ECC Contracting, LLC, would respectfully allege unto this Honorable Court:

1. That the Plaintiff Builders FirstSource-Southeast Group, LLC (hereinafter sometimes "BFS"), is informed and believes that MI Windows and Doors, Inc. (hereinafter sometimes "MI"), is a corporation organized under and existing pursuant to the laws of one of the states of the United States, which corporation was, at all times relevant hereto, engaged in the business of designing, engineering, manufacturing, distributing, selling, and/or delivering its products, including windows and doors, for use in

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commercial and/or residential construction, including such transactions in Berkeley County, South Carolina, and/or that the said MI Windows anticipated the use of its products in Berkeley County, South Carolina; that BFS would further show that MI Windows' products were used in construction of the subject residences at The Abbey at Spring Grove Plantation, located in Berkley Court, South Carolina.

2. That BFS is informed and believes that ECC CONTRACTING, LLC, CHARLESTON EXTERIORS, LLC, AND HURLEY SERVICES, LLC are limited liability companies organized under and existing pursuant to the laws of one of the states of the United States, which companies, at all times referenced herein, conducted business, in whole or in part, in Berkeley County, South Carolina. That BFS is further informed and believes that the aforesaid ECC Contracting, LLC (hereinafter sometimes "ECC"), Charleston Exteriors, LLC, and Hurley Services, LLC provided materials and/or services in connection with window and/or door installation, during original construction of the subject residences.

3. That Plaintiffs, Patricia Damico, by, litigation commenced designated by Civil Action Number 2014-CP-08-224, (hereinafter sometimes "the underlying action") in the Court of Common Pleas for Berkeley County, South Carolina, seeking recovery of damages allegedly occasioned by deficiencies in design, development, construction, and/or component materials of the subject residences within The Abbey at Spring Grove Plantation. The specific allegations by the Plaintiffs in the underlying

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action are more particularly set forth in that certain Amended Complaint of the Plaintiffs, dated and filed November 23, 2015, and designated in the Court of Common Pleas for Berkeley County, South Carolina by the aforesaid Civil Action Number, the contents of which (subject to the allegations set forth in the Amended Answer and Fourth Party Complaint), as filed therein by Builders FirstSource are hereby fully incorporated by reference.

4. That, Lennar Carolinas, LLC, by its responsive pleadings to the Plaintiffs' Amended Complaint, in the underlying action has also asserted third party claims, including such claims against the Plaintiff herein, BFS.

5. That BFS has thus been subject to suit, as a third party defendant, in the underlying action, by Lennar Carolinas, LLC, seeking recovery of damages alleged within the underlying Amended Complaint of the Plaintiffs. The specific allegations of the Lennar Carolinas, LLC are set forth within that certain Answer to the Amended Complaint, and Third Party Complaint, dated November 25, 2015, and filed on behalf of Lennar Carolinas, LLC in the underlying action in the Court of Common Pleas for Berkeley County, South Carolina, the contents of which (subject to the allegations set forth in the instant Amended Answer and Fourth Party Complaint), are hereby fully incorporated herein by reference.

6. That BFS has denied the material allegations as asserted against it in the Third Party Complaint of Lennar Carolinas, LLC in the underlying action.

FOR A FIRST CAUSE OF ACTION AGAINST
MI WINDOWS AND DOORS, INC.

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7. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

8. That Defendant MI Windows and Doors, Inc., was responsible for the development, manufacture, and sale of materials and/or services, including windows and doors, for proper quality control, and for compliance with the contract documents, industry standards, and requirements of the relevant building codes, in connection with original construction of the subject residences at The Abbey At Spring Grove Plantation. In the event that the Plaintiffs and/or Lennar Carolinas, LLC in the underlying action, establishes that windows and/or doors, provided to BFS, for installation at the subject structures, were not in compliance with the relevant contract documents, industry standards, and/or building code requirements, then and in that event MI has failed properly to execute its duties, which failure has allegedly caused those damages asserted by the Plaintiffs and/or Lennar Carolinas, LLC in the underlying action.

9. That the subcontract agreements between Builders FirstSource-Southeast Group, LLC, and Defendant, MI Windows and Doors, Inc., provide for contractual indemnification in favor of BFS.

10. The circumstances as set forth herein give rise to a special relationship between Builders FirstSource and MI Windows and Doors.

11. That to the extent, if any, that BFS may be held liable to the Plaintiffs, and/or to Lennar Carolinas, LLC, and/or to others in the underlying action, such liability would be a direct and proximate result of the wrongful acts,

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omissions, negligence, and/or representations of MI, which have damages BFS, as BFS has been subjected to liability and has incurred consequential damages in having to expend attorneys fees and costs in defending against the referenced claims.

12. That BFS is entitled to full contractual and/or common law indemnification from MI Windows and Doors, Inc., for and against any liability which BFS is found to have to the Plaintiffs and/or to Lennar Carolinas, LLC, or to others in the underlying action, and BFS is also entitled to damages for any negligence, as aforesaid, on the part of MI, entitling BFS to recover from MI its attorneys fees, costs, and other expenses incurred in defending the underlying action, and further entitling BFS to recover from MI any sums which Builders FirstSource may be held liable, or may pay in settlement, to the Plaintiffs, to Lennar Carolinas, LLC, and/or to others in the underlying action.

FOR A SECOND CAUSE OF ACTION AGAINST
MI WINDOWS AND DOORS, INC.

13. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

14. That to the extent that the allegations in the Plaintiffs' Amended Complaint and/or the Third Party Complaint of Lennar Carolinas, LLC, in the underlying action may be established, then and in that event MI was negligent, careless, and reckless in the design, manufacture, supervision, engineering, inspection, sale and/or supplying of services and/or products outlined above and incorporated in the project.

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15. That as a direct and proximate result of such negligence, careless, and reckless, BFS has been damaged in the amount of any monies it is adjudged to owe Plaintiff, the Third Party Plaintiff, or others in the underlying action, or which it pays the Plaintiff, the Third Party Plaintiff, or others in settlement of the Plaintiffs' or other's claims in the underlying action, plus the costs of investigation and defense of such action, including, but not limited to, attorney's fees.

16. Upon information and belief, BFS is entitled to judgment for actual damages against MI in the amount of any monies BFS is adjudged to owe Plaintiff, the Third Party Plaintiff, or others in the underlying action, or which BFS pays Plaintiffs or others in settlement of the Plaintiffs', the Third Party Plaintiff's, or other's claims in the underlying action, as well as fees and costs incurred in investigation, defense, and/or settlement of such claim, including, but not limited to, attorney's fees.

FOR A THIRD CAUSE OF ACTION AGAINST
MI WINDOWS AND DOORS, INC.

17. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

18. That MI, expressly or impliedly warranted that its products used in construction of the subject residences at The Abbey at Spring Grove Plantation would be of the highest quality and in conformance with generally accepted standards of the building components, architecture, and/or construction industries, and that the materials, specifications, instructions, etc. would comply with generally accepted principles in the

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industries. MI expressly and/or impliedly warranted that the windows were merchantable, suitable and fit for use in construction the subject residence, and that such materials would be free of defects. To the extent that the allegations of the Complaint or the Third Party Complaint in the underlying action may be established, Defendant, MI, breached its implied and/or express warranties.

19. That as a result of the aforesaid breaches of warranties, BFS has incurred damages in the amount of any monies it is adjudged to owe the Plaintiff or others, or which it pays Plaintiff or others in settlement of the Plaintiff's or other's claims in the underlying action, plus the costs of investigation and the defense of such claim, including attorney's fees.

20. That upon information and belief, BFS is entitled to judgment against MI in the amount of any monies it is adjudged to owe Plaintiffs, the Third Party Plaintiff, or others in the underlying action, or which it pays Plaintiff or others in settlement of the Plaintiff's or other's claims in such action, as well as costs and fees incurred in the investigation, defense, and/or settlement of such claim.

FOR A FOURTH CAUSE OF ACTION AGAINST
MI WINDOWS AND DOORS, INC.

21. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

22. That the Plaintiff, BFS, is informed and believes, that if it is found to be liable to the Plaintiffs, Third-Party Plaintiff, or others in the underlying action, then and in that event MI is a joint tortfeasor and BFS is entitled to

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contribution from MI, jointly or severally, pursuant to the provisions of the South Carolina Uniform Contribution Among Joint Tort Feasors Act, Sections 15-38-10, et seq, South Carolina Code of Laws 1976, as amended.

FOR A FIFTH CAUSE OF ACTION AGAINST
MI WINDOWS AND DOORS, INC.

23. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

24. That, upon information and belief, heretofore, BFS entered into an agreement with MI whereby MI agreed, in consideration of payment by BFS, to provide various windows and/or doors to be used in conjunction with construction of the subject residences at The Abbey at Spring Grove Plantation, which materials would be in accordance with relevant plans and specifications, industry standards, code requirements, and otherwise suitable for use in conjunction with the contemplated construction.

25. That BFS paid to MI the consideration required under the aforesaid contract.

26. That in the event that the allegations of the Plaintiffs' Amended Complaint, or the Third Party Complaint in the underlying action, are established, then the materials provided by MI pursuant to the aforesaid contract with BFS were not in accordance with the requirements of said contract, rendering the Fourth Party Defendant, MI, in material breach of its contract with BFS.

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27. That as a result of the aforesaid breach and/or breaches of warranty, BFS has incurred damages in the amount of any monies it is adjudged to owe to the Plaintiffs, Third Party Plaintiffs, and/or others in the underlying action, or which it pays to the Plaintiff and/or others in settlement of the claims of Plaintiffs or others in such action, plus the cost of investigation and the cost of defense of such claim, including attorney's fees.

28. That upon information and belief, BFS is entitled to judgment against the Defendant, MI, in the amount of any monies it is adjudged to owe to the Plaintiff and/or others in the underlying action, and/or which it pays to Plaintiff and/or others in settlement of the claims of the Plaintiff and/or others in the underlying action, as well as costs and fees incurred in the investigation, defense, and/or settlement of such claim, including attorneys fees.

FOR A FIRST CUASE OF ACTION AGAINST
ECC CONTRACTING, LLC, CHARLESTON EXTERIORS, LLC, AND HURLEY SERVICES, LLC

29. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

30. That the Defendants, ECC Contracting, LLC, Charleston Exteriors, LLC, and Hurley Services, LLC were responsible for provision of materials and/or services in connection with the installation of the windows and doors of the subject structures at The Abbey at Spring Grove Plantation, for proper quality control, and for compliance with the contract documents, industry standards, and requirements of relevant building codes. In the

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event that the Plaintiff and/or the Lennar Carolinas, LLC in the underlying action establishes that the materials and/or services provided by the BFS were not in compliance with the relevant contract documents, industry standards, and/or building code requirements, then and in that event ECC Contracting, LLC, Charleston Exteriors, LLC and Hurley Services, LLC has failed properly to execute its duties, which have allegedly caused the damages alleged by Plaintiffs and/or Lennar Carolinas, LLC in the underlying action.

31. That the respective subcontracts between Builders FirstSource-Southeast Group, LLC and (a) ECC Contracting, LLC, (b) Charleston Exteriors, LLC, and (c) Hurley Services, LLC provide for contractual indemnification in favor of BFS.

32. That the circumstances herein give rise to a special relationship between Builders FirstSource and ECC Contracting, LLC, Charleston Exteriors, LLC and Hurley Services, LLC.

33. That to the extent, if any, that BFS may be held liable to the Plaintiffs and/or Lennar Carolinas, LLC, and/or to others in the underlying action, such liability would be a direct and proximate result of the wrongful acts, omissions, negligence, and/or representations of ECC Contracting, LLC, Charleston Exteriors, LLC and Hurley Services, LLC which have damaged BFS, as Builders FirstSource-Southeast Group, LLC, has been subjected to liability and has incurred consequential damages in having to expend

attorneys fees and costs in defending against the claims of Plaintiffs and/or Lennar Carolinas, LLC in the underlying action.

34. That BFS is entitled to full contractual and common law indemnification from the ECC Contracting, LLC, for and against any liability which the BFS is found to have to the Plaintiffs, Lennar Carolinas, LLC, and/or to others in the underlying action, and BFS is also entitled to damages for any negligence, as aforesaid, on the part of ECC Contracting, LLC, Charleston Exteriors, LLC and Hurley Services, LLC entitling BFS to recover from ECC Contracting, LLC, Charleston Exteriors, LLC and Hurley Services, LLC its attorneys fees, costs, and other expenses incurred in defending the underlying action, and further entitling BFS to recover from the ECC any sums for which BFS may be held liable to the Plaintiffs, to Lennar Carolinas, LLC, and/or to others in such action.

FOR A SECOND CAUSE OF ACTION AGAINST
ECC CONTRACTING, LLC, CHARLESTON EXTERIORS, LLC, AND
HURLEY SERVICES, LLC

35. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

36. That ECC Contracting, Charleston Exteriors, LLC and Hurley Services, LLC made express warranties that materials, services, and/or workmanship provided in conjunction with their services at the subject complex would be as required by and in accordance with the contract documents, applicable building codes, and industry standards.

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37. That the respective subcontract agreements between BFS and (a) ECC Contracting, LLC, (b) Charleston Exteriors, LCC, and (c) Hurley Services, LLC include provisions by which ECC, Charleston Exteriors, and Hurley Services expressly undertook to provide materials and services in accordance with the contract documents.

38. That in the event that the Plaintiffs and/or Lennar Carolinas, LLC in the underlying action prove that the materials or services provided by BFS were not in accordance with the requirements of the contract documents, industry standards, or relevant building requirements, then and in that event ECC Contracting, Charleston Exteriors, and Hurley Services has materially breached their express warranties.

39. That BFS is entitled to judgment against ECC Contracting, Charleston Exteriors, and Hurley Services in the amount of any judgment which the Plaintiffs, Lennar Carolinas, LLC, and/or others may obtain against BFS, in the underlying action for breach of any expressed warranties on the part of BFS, plus the BFS's costs for defense, inclusive of attorneys' fees.

FOR A THIRD CAUSE OF ACTION AGAINST
ECC CONTRACTING, LLC, CHARLESTON EXTERIORS LLC AND
HURLEY SERVICES, LLC

40. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

41. That ECC Contracting, Charleston Exteriors, and Hurley Services made implied warranties of workmanlike service in connection with their services in construction of the subject complex.

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42. That in the event that the Plaintiffs and/or Lennar Carolinas, LLC in the underlying action prove that the services of BFS were deficient, then and in that event ECC Contracting, Charleston Exteriors, and Hurley Services have materially breached their respective implied warranties.

43. That BFS is entitled to judgment against ECC Contracting, Charleston Exteriors, and Hurley Services in the event, and to the extent, that the Plaintiffs and/or Lennar Carolinas, LLC in the underlying action may obtain judgment against BFS for breach of implied warranties of workmanlike service.

FOR A FOURTH CAUSE OF ACTION AGAINST
ECC CONTRACTING, LLC, CHARLESTON EXTERIORS, LLC AND
HURLEY SERVICES, LLC

44. That each and every allegation set forth in the preceding paragraphs thereof is hereby re-alleged and reiterated as fully as if set forth herein.

45. That ECC Contracting, LLC, Charleston Exteriors, LLC and Hurley Services, LLC owed a duty of care in providing services and materials in connection with construction of the subject complex.

46. That in the event that the Plaintiffs and/or Lennar Carolinas, LLC in the underlying action prove that due care was not exercised in the provision of materials and/or services by ECC Contracting, LLC and Charleston Exteriors, LLC and/or Hurley Services, LLC and/or BFS, then and in that event ECC, Charleston Exteriors, and Hurley Services have breached their duties of due care.

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47. That in the event that the Plaintiff and/or Lennar Carolinas, LLC obtain judgment against BFS in the underlying action as a direct, foreseeable, and proximate result of the negligence of ECC, Charleston Exteriors, and Hurley Services then and in that event BFS is entitled to judgment against ECC, Charleston Exteriors, and Hurley Services for the amount of any such judgment, plus costs of defense, inclusive of attorneys fees.

FOR A FIFTH CAUSE OF ACTION AGAINST
ECC CONTRACTING, LLC, CHARLESTON EXTERIORS, LLC, AND
HURLEY SERVICES, LLC

48. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

49. That ECC Contracting, LLC, Charleston Exteriors LLC, and Hurley Services, LLC were contractually responsible for provision of adequate materials and services in connection with their respective undertakings regarding construction of the subject complex.

50. That in the event that the Plaintiffs and/or Lennar Carolinas, LLC in the underlying action prove that the contract of BFS was breached due to improper or adequate materials and/or services provided by the ECC Contracting, Charleston Exteriors and/or Hurley Services, then and in that event ECC, Charleston Exteriors, and/or Hurley Services have materially breached their respective subcontracts, by failing properly and adequately to provide materials and services in connection with construction of the subject complex.

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51. That in such an event, BFS is entitled to judgment against ECC Contracting, Charleston Exteriors, LLC and/or Hurley Services, LLC for the amount of any such judgment, plus costs of defense, inclusive of attorneys' fees.

FOR A SIXTH CAUSE OF ACTION AGAINST
ECC CONTRACTING, LLC, CHARLESTON EXTERIORS, LLC AND
HURLEY SERVICES, LLC

52. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

53. That the Plaintiff, BFS, is informed and believes, that if it is found to be liable to the Plaintiffs, Third-Party Plaintiff, or others in the underlying action, then and in that event ECC Contracting, LLC, Charleston Exteriors, LLC and/or Hurley Services, LLC are a joint tort feasor and BFS is entitled to contribution from ECC Contracting, LLC, Charleston Exteriors, LLC and/or Hurley Services, LLC jointly or severally, pursuant to the provisions of the South Carolina Uniform Contribution Among Joint Tort Feasors Act, Sections 15-38-10, et seq, South Carolina Code of Laws 1976, as amended.

WHEREFORE, Builders FirstSource-Southeast Group, LLC having set forth its Complaint, prays as follows:

a. That this Plaintiff be granted judgment on its claims against MI Windows and Doors, Inc., ECC Contracting, LLC, Charleston Exteriors, LLC and Hurley Services, LLC;

b. That this Plaintiff be granted a jury trial on all matters so triable;

c. That this Plaintiff be granted such other and further relief as this Court may deem just and proper.

HOWELL, GIBSON & HUGHES, P.A.

By:s/Stephen P. Hughes
Stephen P. Hughes
Post Office Box 40
Beaufort, SC 29901-0040
(843) 522-2400
Attorney for Builders FirstSource-Southeast Group, LLC
Bar No: 2805

Beaufort, South Carolina

December 21, 2018

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CIVIL ACTION NO: 2016-CP-10-03455

Six Fifty Six Owners Association, Inc. and Robert John Nutley, individually, and on behalf of others similarly situated, Plaintiffs, vs. Winsor South, LLC and Jeffrey M. Thomas, individually, and on behalf of a class of construction defendants; Southeastern Recapitalization Group, LLC; WCM Construction, LLC; Jonathan J. Thomas; AC Heating and Air Conditioning Service, Inc.; ACME Doors, Inc.; Alpha Omega Construction Group, Inc.; Atlantic Construction Services, Inc.; Buck Lumber and Building Supply, Inc.; Builders FirstSource, Inc.; Builders FirstSource-Atlantic Group, LLC, Builders FirstSource-Florida, LLC a/k/a Builders FirstSource-Florida Design Center, LLC; Builders FirstSource-Southeast Group, LLC; Charlotte Flooring, Inc.; Diria Tawi Painting, Inc.; East Coast Wall Systems, Inc.; Fogel Services, Inc.; G&S Home Remodeling, LLC; Guaranteed Framing, LLC; J. Mora Brick & Black Mason, LLC; Land/Site Services, Inc.; Landmark Construction Company, Inc.; Lutzen Construction, Inc.; New Horizon Shutters, Inc. a/k/a New Horizon Shutters International, LLC; PJ Sanchez Masonry, LLC; Screens Plus, Inc., Simons Construction Company, LLC; Stucco by Design, LLC; Fine Builders, LLC; Speedtruss, Inc.; Argentino Jose Campos d/b/a as Construction; Javier Morales Merino; Novac Construction, Inc.; MJG Construction, Inc.; Advance Plumbing, Heating & Air, Inc.; Cahill Contracting, LLC; Cohen's Drywall, Inc.; Bob Porter d/b/a Custom Interior Construction; RB's Trim, Inc.; Sharon's Painting, LLC; David Tile;	)	BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC, BUILDERS FIRSTSOURCE, INC., BUILDERS FIRSTSOURCE-ATLANTIC GROUP, LLC, BUILDERS FIRSTSOURCE-FLORIDA, LLC A/K/A BUILDERS FIRSTSOURCE-FLORIDA DESIGN CENTER, LLC'S ANSWER TO PLAINTIFF'S THIRD AMENDED COMPLAINT AND THE CROSSCLAIMS OF BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC AGAINST HURLEY SERVICES, LLC, AND CHARLESTON EXTERIORS, LLC

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JULIE J. ARMSTRONG
CLERK OF COURT
BY

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Timothy Mitchell; Electrical Design & Construction, Inc.; Hurley Services, LLC; Charleston Exteriors LLC; Jorge Diaz aka Jorge Louis Paz; San Luis Construction, Inc. nka Roofing America Metal Fabrications, LLC; Rogerio Dos Santos dba Rogerio Santos Construction; Fabio Oliviera dba Four Season Siding; Sunrise Siding; Garcia Roofing, LLC; Espino Roofing, LLC; Migual Painting, LLC; Horacio Jasso; Standard Precast Walls, LLC; Alfonso Rodriguez Vasquez aka Alfonso Rodriguez, Sr.; and John Does 55-75	)
Defendants.	)

The Defendants, identified within the Third Amended Summons and Third Amended Complaint as Builders FirstSource, Inc., Builders FirstSource-Atlantic Group, LLC, Builders FirstSource-Florida, LLC a/k/a Builders FirstSource-Florida Design Center, LLC, and Builders FirstSource-Southeast Group, LLC (hereinafter sometimes collectively "Builders FirstSource Defendants" and/or "these Defendants"), reserving all rights under any and/or all pending and/or hereinafter filed motions, answering the Third Amended Complaint of the Plaintiffs (sometimes "Complaint" or "Amended Complaint"), and asserting the crossclaims of Builders FirstSource-Southeast Group, LLC (hereinafter sometimes "BFS" and/or "this Defendant/Crossclaim Plaintiff"), would respectfully allege unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. That each and every allegation set forth within the Third Amended Complaint (hereinafter sometimes "Third Amended Complaint" and/or

"Amended Complaint" and/or "Complaint"), not hereinafter specifically admitted, is denied, and strict proof demanded thereof.

2. That these Defendants are without knowledge or information sufficient to form an opinion or belief as to the truth of the allegations set forth in Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Third Amended Complaint, and therefore deny the same, and demand strict proof thereof.

3. That these Defendants deny the allegations set forth in Paragraph 13 of the Third Amended Complaint.

4. That these Defendants are without knowledge or information sufficient to form an opinion or belief as to the truth of the allegations set forth in Paragraphs 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25 of the Third Amended Complaint, and therefore deny the same, and demand strict proof thereof.

5. That these Defendants would show that the allegations of Paragraphs 21, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, and 56 of the Third Amended Complaint relate to parties other than these Defendants, and require no response by these Defendants; to the extent that the allegations of said paragraphs may be deemed to require a response by these Defendants, such allegations are hereby specifically denied.

6. That these Defendants deny the allegations set forth in Paragraphs 57, 58, and 59 of the Third Amended Complaint, and demand strict proof thereof.

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7. That these Defendants admit only so much of Paragraph 60 of the Third Amended Complaint alleges that Builders FirstSource-Southeast Group, LLC is a company organized and existing pursuant to the laws of the State of Delaware. These defendants admit only so much of the remaining allegations of Paragraph 60 as may be established by reference relevant records. These defendants deny the remaining allegations of Paragraph 60.

8. That these Defendants would show that the allegations of Paragraph 61, 62, 63, 64, 65, 66, and 67, and of Paragraph 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, and 80 of the Third Amended Complaint relate to parties other than these Defendants, and require no response by these Defendants; to the extent that the allegations of said paragraphs may be deemed to require a response by these Defendants, such allegations are hereby specifically denied.

9. That these Defendants admit only some of the allegations of Paragraphs 68 and 69 of the Third Amended Complaint as may be established by reference to relevant records, and deny the remaining allegations of Paragraphs 68 and 69.

10. That these Defendants admit only so much of Paragraph 81 of the Third Amended Complaint, as alleges, or may be construed to allege, that the instant litigation relates to the design, development, construction, repair, and/or sale of the Six Fifty Six townhomes, but deny so much thereof as alleges defects and/or deficiencies in such design, development,

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construction, repair, and/or sale, and further specifically deny so much thereof as alleges, or may be construed to allege, any liability and/or responsibility of these Defendants for any claims asserted within the Third Amended Complaint.

11. That these Defendants deny the allegations set forth in Paragraphs 82, 83, 84, 85, 86, 87, 88, 89, and 90 of the Third Amended Complaint.

12. That these Defendants deny the allegations set forth in Paragraph 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, and 102 of the Third Amended Complaint.

13. That these Defendants deny the allegations set forth in Paragraphs 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, and 116 of the Third Amended Complaint.

14. That these Defendants, in responding to Paragraph 117 of the Third Amended Complaint, would re-allege and reiterate each and every allegation set forth in the preceding paragraphs hereof.

15. That these Defendants would show that the allegations of Paragraph 118 of the Third Amended Complaint set forth conclusions of law, which these Defendants need neither admit nor deny; to the extent that the allegations of said paragraph may be deemed to require a response by these Defendants, such allegations are hereby specifically denied.

16. That these Defendants deny the allegations set forth in Paragraphs 119, 120, and 121 of the Third Amended Complaint.

17. That these Defendants, in responding to Paragraphs 122 of the Third Amended Complaint, would re-allege and reiterate each and every allegation set forth in the preceding paragraphs hereof.

18. That these Defendants would show that the allegations of Paragraph 123, and 124 of the Third Amended Complaint set forth conclusions of law, which these Defendants need neither admit nor deny; to the extent that the allegations of said paragraphs may be deemed to require a response by these Defendants, such allegations are hereby specifically denied.

19. That these Defendants deny the allegations set forth in Paragraphs 125 and 126 of the Third Amended Complaint.

20. That these Defendants, in responding to Paragraphs 127 of the Third Amended Complaint, would re-allege and reiterate each and every allegation set forth in the preceding paragraphs hereof.

21. That these Defendants deny the allegations set forth in Paragraphs 128, 129, 130, 131, 132, 133, 134, and 135 of the Third Amended Complaint.

FOR AN AFFIRMATIVE DEFENSE
(Merger)

22. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

23. That these Defendants would show that, if any representations were made to the Plaintiffs during the course of negotiations between the parties, which representations are hereby specifically denied, then all representations merged into the contract between the parties.

FOR AN AFFIRMATIVE DEFENSE

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(Statutes of Limitations)

24. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

25. That these Defendants would show that all claims asserted by the Plaintiffs are barred by the applicable statute and/or statutes of limitations.

FOR AN AFFIRMATIVE DEFENSE
(Notice)

26. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

27. That these Defendants would show that the Plaintiffs had constructive knowledge and/or actual knowledge of those conditions of which are alleged in the Amended Complaint, and nonetheless proceeded to purchase the subject property. Such circumstances constitute a complete bar to the Plaintiffs' claims.

FOR AN AFFIRMATIVE DEFENSE
(Insufficient Facts to Constitute Cause of Action)

28. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

29. That these Defendants would show that the allegations of the Amended Complaint fail to state facts sufficient to constitute a cause of action and/or causes of action against these Defendants.

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FOR AN AFFIRMATIVE DEFENSE

30. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

31. That these Defendants would show that the Plaintiffs had no right or entitlement to rely upon any representations allegedly made by the Defendants, which representations are hereby specifically denied.

FOR AN AFFIRMATIVE DEFENSE
(Superseding Negligence)

32. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

33. That these Defendants would show that the damages alleged by the Amended Complaint, which damages are hereby specifically denied, were the sole and proximate result of the intervening and/or superseding negligence and/or intervening and/or superseding willful acts and/or recklessness of third persons or parties, which intervening and/or superseding negligence and/or willful acts and/or other actions are a bar to the causes of action asserted against these Defendants.

FOR AN AFFIRMATIVE DEFENSE
(Contributory Negligence)

34. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

35. That these Defendants would show that the damages alleged by the Plaintiffs, which damages are hereby specifically denied, were due to and caused by the reckless, willful, wanton, negligent, careless and grossly

negligent acts and conduct of the Plaintiffs, which actions combined and concurred with any negligence on the part of these Defendants, which negligence is hereby specifically denied, to produce such damages, without which the same would not have occurred.

FOR AN AFFIRMATIVE DEFENSE
(Comparative Negligence)

36. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

37. That these Defendants would show that the injuries and/or damages alleged by the Plaintiffs, which injuries and damages are hereby specifically denied, were due to and caused by the reckless, willful, wanton, negligent, careless and grossly negligent acts and conduct of the Plaintiffs, which acts were greater than any acts of negligence on the part of these Defendants, which acts on the part of these Defendants are hereby specifically denied, to produce such injury and/or damages, and without which the same would not have occurred.

FOR AN AFFIRMATIVE DEFENSE
(Doctrine of Laches)

38. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

39. That these Defendants would show that the claims of the Plaintiffs are barred by the doctrine of laches.

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FOR AN AFFIRMATIVE DEFENSE
(Assumption of the Risk)

40. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

41. That these Defendants would show that the Plaintiffs, by and through their actions and/or inactions with regard to the subject alleged in the Amended Complaint, have assumed the risk and/or accepted all portions of any damages alleged by the Plaintiffs and such assumption of risk and/or acceptance is a bar to claims against these Defendants.

FOR AN AFFIRMATIVE DEFENSE
(Failure to Mitigate)

42. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

43. That these Defendants would show that the injuries and/or damages alleged by the Plaintiffs, which injuries and/or damages are hereby specifically denied, were due to and caused by the Plaintiffs' failure to mitigate, which failure is a complete bar to recovery by the Plaintiffs.

FOR AN AFFIRMATIVE DEFENSE
(Doctrine of Estoppel)

44. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

45. That these Defendants would show that the Plaintiffs are barred by the doctrine of estoppel from asserting claims against these Defendants.

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FOR AN AFFIRMATIVE DEFENSE
(Doctrine of Waiver)

46. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

47. That these Defendants would show that the claims of the Plaintiffs are barred by the doctrine of waiver.

FOR AN AFFIRMATIVE DEFENSE
(Economic Loss Rule)

48. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

49. That these Defendants would show that the claims of the Plaintiffs are barred by the economic loss rule.

FOR AN AFFIRMATIVE DEFENSE
(Sole Negligence of Third Parties)

50. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

51. That these Defendants would show that the injuries and/or damages alleged by the Plaintiffs, which injuries and/or damages are hereby specifically denied, were due to and were the proximate result of the sole negligence and/or recklessness of third persons or parties, for whose conduct these Defendants are not liable.

FOR AN AFFIRMATIVE DEFENSE

52. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

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53. That to the extent punitive damages are claimed, this Defendant demands a bifurcated jury trial pursuant to South Carolina Code Annotated §15-32-520, and demands that said damages, if any, be limited to three (3) times the amount of any compensatory damages, or the sum of $500,000.00, whichever is greater, if any.

FOR AN AFFIRMATIVE DEFENSE
(Exclusion of Warranty)

54. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

55. That these Defendants would show that any and/or all applicable warranties have been properly and effectively excluded by these Defendants.

FOR AN AFFIRMATIVE DEFENSE
(Modification of Warranties)

56. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

57. That these Defendants would show that any and/or all applicable warranties have been properly and effectively modified by these Defendants.

FOR AN AFFIRMATIVE DEFENSE
(Limitation of Warranties)

58. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

59. That these Defendants would show that any and all applicable warranties have been properly and effectively limited by these Defendants.

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FOR AN AFFIRMATIVE DEFENSE
(Expiration of Warranties)

60. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

61. That these Defendants would show that any relevant warranties have expired.

FOR AN AFFIRMATIVE DEFENSE
(Excluded Remedies)

62. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

63. That these Defendants would show that the available remedies have been properly and effectively excluded by these Defendants.

FOR AN AFFIRMATIVE DEFENSE
(Modification of Remedies)

64. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

65. That these Defendants would show that all applicable remedies have been properly and effectively modified by these Defendants.

FOR AN AFFIRMATIVE DEFENSE
(Limitation of Remedies)

66. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

67. That these Defendants would show that all available remedies have been properly and effectively limited by these Defendants.

FOR AN AFFIRMATIVE DEFENSE
(Disclaimer of Warranties)

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68. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

69. That these Defendants would show that any and all applicable warranties have been properly and effectively disclaimed by these Defendants.

FOR AN AFFIRMATIVE DEFENSE
(Disclaimer of Remedies)

70. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

71. That these Defendants would show that any and all available remedies have been properly and effectively disclaimed by these Defendants.

FOR AN AFFIRMATIVE DEFENSE
(Resolution by Arbitration)

72. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

73. That these Defendants would show that, to the extent that the claims against these Defendants are subject to resolution by arbitration, the instant action against these Defendants should be dismissed.

FOR AN AFFIRMATIVE DEFENSE
(Failure to Comply with Contractual Conditions Precedent)

74. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

75. That these Defendants would show that the Plaintiffs have failed properly to comply with contractual conditions precedent to the assertion of those

claims set forth in the Amended Complaint, which failure is a bar to all claims against these Defendants.

FOR AN AFFIRMATIVE DEFENSE
(Failure to comply with Statutory Conditions Precedent)

76. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

77. That these Defendants would show that the Plaintiffs have failed to comply with the statutory conditions precedent to the assertion of claims set forth in the Amended Complaint.

FOR AN AFFIRMATIVE DEFENSE
(Failure to give notice of breach of warranty)

78. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

79. That these Defendants would show that the Plaintiffs have failed to give reasonable notice of any alleged breach of any applicable warranty, which breach of warranty or warranties is hereby specifically denied.

FOR AN AFFIRMATIVE DEFENSE
(Reservation and Non-Waiver)

80. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

81. That these Defendants do not waive, and hereby specifically reserves, any additional and/or further defenses, the propriety of which may be indicated by additional information which may be acquired by these Defendants or its/their counsel during the course of discovery or otherwise.

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FOR AN AFFIRMATIVE DEFENSE
(Joint Tort Feasors Act)

82. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

83. That these Defendants would show that, in the event of a verdict rendered jointly against these Defendants and the remaining Defendants, these Defendants are entitled to contribution from said remaining Defendants, pursuant to the provisions of the South Carolina Uniform Contribution Among Joint Tort Feasors Act and/or other provisions of law.

FOR AN AFFIRMATIVE DEFENSE

84. That each and every allegation set forth in preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

85. That these Defendant would allege that any recovery against this Defendant must be set off or reduced or abated or apportioned to the extent that any other party's actions caused or contributed to any damages, if any, or as otherwise provided pursuant to relevant sections of the South Carolina Contribution Among Joint Tort Feasors Act, Section 15-38-10, et seq. SC Code Amended.

FOR AN AFFIRMATIVE DEFENSE

86. That each and every allegation set forth in preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

87. That these Defendant would show that the design and materials used in the construction of subject property in question were developed, selected, and/or approved by other defendants, thereby reliving these Defendant of

any liability or responsibility for damages resulting from design deficiencies or materials which may not have been suitable for incorporation into the subject property.

FOR AN AFFIRMATIVE DEFENSE
(Protections under Constitution(s))

88. That each and every allegation set forth in preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

89. That these Defendants would show that the imposition of punitive damages is violative of protections afforded by the 5th, 8th, and 14th and/or other amendments to the United States and/or South Carolina constitutions.

FOR AN AFFIRMATIVE DEFENSE
(Statutes of Repose)

90. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

91. That these Defendants would show that the Plaintiffs' claims are barred by the applicable statute and/or statutes of repose.

FOR AN AFFIRMATIVE DEFENSE
(Statute of Frauds)

92. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

93. That these Defendants would show that the claims of the Plaintiffs are barred by the Statute of Frauds.

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FOR AN AFFIRMATIVE DEFENSE
(Spoliation of Evidence)

94. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

95. Without admitting that its products were installed on the subject structure, these Defendants submit that repairs may have been made to the subject structure and further, that the alleged defective products may have been destroyed. To the extent that these Defendants have not been afforded the opportunity to inspect and examine the alleged defective products and/or their components, these Defendants plead the Spoliation of Evidence Doctrine as a complete defense to this action.

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FOR AN AFFIRMATIVE DEFENSE

96. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

97. That any products designed, manufactured, and/or distributed by these Defendants are found to be the cause of damages suffered by Plaintiffs, which these Defendants hereby specifically denies, the Plaintiffs cannot recover against these Defendants if and to the extent that the use of such products was under circumstances constituting an alteration or modification of the products as provided in South Carolina Code Section 15-73-10, and/or otherwise.

FOR AN AFFIRMATIVE DEFENSE

98. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

99. In the event that the products designed, manufactured, and/or distributed by these Defendants are found to be the cause of damages suffered by Plaintiffs, which this Defendant specifically hereby denies, Plaintiffs cannot recover against these Defendants if and to the extent that the use of the products was under circumstances constituting a lack of reasonable or diligent care, and/or was an unreasonable use as defined in South Carolina Code Section 15-73-10, and/or otherwise.

FOR AN AFFIRMATIVE DEFENSE

100. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

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101. Products manufactured by these Defendants conformed to the current state of the art at all relevant times and such products were reasonably designed. Upon information and belief, Plaintiffs claims of alleged defects in the products, which claims are hereby specifically denied, are based upon an inherent characteristic of such products, that cannot be eliminated without substantially compromising the products usefulness or desirability, which is recognized by the ordinary person with the ordinary knowledge, and to the community, such that Plaintiffs cannot recover anything from these Defendants, as provided in South Carolina Code Section 15-73-20, and/or otherwise.

FOR AN AFFIRMATIVE DEFENSE

102. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

103. To the extent that any petition in bankruptcy has been filed by or on behalf of this Defendant, this Defendant would pled discharge in bankruptcy as a complete defense to any and all claims.

FOR AN AFFIRMATIVE DEFENSE

104. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

105. That these Defendants would show that the Plaintiff lacks sufficient legal privity with these Defendants to permit imposition of liability.

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FOR AN AFFIRMATIVE DEFENSE

106. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

107. That these Defendants would show that it has made no representations of warranties inducing the purchase for use of its products by Plaintiff or others, except such warranties which may be express and in writing, and such express warranties are the only and best evidence of their content and legal effect, and include lawful disclaimers of implied warranties of merchantability and fitness for a particular purpose, and include limitations and responsibility to this Defendant. These Defendants are not responsible for any warranties or representations of purchases and resellers of its products.

FOR AN AFFIRMATIVE DEFENSE

108. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

109. That the Plaintiffs are without standing to assert those claims set forth within the relevant Amended Complaint, and the Plaintiffs' claims should therefore be dismissed.

FOR AN AFFIRMATIVE DEFENSE

110. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

111. That these Defendants would show that the Plaintiffs have failed to comply with those conditions precedent to litigation, as set forth within the relevant

Master Deed, By Law, and/or other governing documents, and the Plaintiffs' Amended Complaint, and all causes of action set forth therein, should therefore be dismissed.

FOR AN AFFIRMATIVE DEFENSE

112. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

113. That these Defendants are informed and believes that the Plaintiffs have failed to comply with the provisions of Sections 40-59-10 et seq., and/or Section 40-11-10 et seq., South Carolina Code of Laws (1976), as amended, and the Plaintiffs' Amended Complaint should, therefore, be stayed and/or dismissed.

FOR AN AFFIRMATIVE DEFENSE

114. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

115. That, to the extent that the Plaintiff has failed to comply with the requirements of the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act (Section 40-59-810 through 40-59-860), and/or Sections 40-11-500 through 40-11-570, South Carolina Codes of Laws (1976), including the provision of the required notice to the Defendant, and the provision to these Defendants of an opportunity to cure, the Plaintiff's action must be stayed and/or otherwise barred.

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FOR A FURTHER DEFENSE AND BY WAY OF CROSSCLAIMS BY BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC, AGAINST HURLEY SERVICES, LLC, AND CHARLESTON EXTERIORS, LLC

116. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

117. That this Defendant is informed and believes that Hurley Services, LLC, is a limited liability corporation organized under and existing pursuant to the laws of the State of South Carolina, which corporation was, at all times relevant hereto, conducting business in Charleston County, South Carolina; this Defendant is further informed and believes that Hurley Services, LLC provided materials and services, including the installation of windows, doors, and/or other components, during original construction of the subject structures within the Six Fifty Six Coleman townhome complex.

118. That this Defendant is informed and believes that Charleston Exteriors, LLC, is a limited liability corporation organized under and existing pursuant to the laws of the State of South Carolina, which corporation was, at all times relevant hereto, conducting business in Charleston County, South Carolina; this Defendant is further informed and believes that Charleston Exteriors, LLC provided materials and services, including the installation of windows, doors, and/or other components, during original construction of the subject structures within the Six Fifty Six Coleman townhome complex.

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FOR A FIRST CAUSE AS TO HURLEY SERVICES, LLC AND CHARLESTON EXTERIORS, LLC

119. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

120. That the Plaintiffs, Six Fifty Six Owners Association, Inc. and Robert John Nutley, individually and on behalf of others similarly situated have sued Builders FirstSource-Southeast Group, LLC (hereinafter sometimes "BFS"), asserting damages allegedly caused, inter alia, by deficiencies in materials and/or installation of windows, doors, and related components, during original construction of the subject structures.

121. That BFS has denied the material allegations asserted against BFS in the Plaintiffs' Second Amended Complaint.

122. That the Third-Party Defendants, Hurley Services, LLC, and Charleston Exteriors, LLC (hereinafter sometimes ""CrossClaim Defendants") were responsible for provision of materials and services in connection with the installation of the aforesaid components of construction, for proper quality control, and for compliance with the contract documents, industry standards, and requirements of relevant building codes. In the event that the Plaintiffs establish that the materials and/or services of the CrossClaim Defendants were not in compliance with the relevant contract documents, industry standards, and/or building code requirements, then and in that event the CrossClaim Defendants have failed properly to execute their duties, which failure has allegedly caused the Plaintiffs' damages.

123. That the respective subcontracts between this Defendant and the CrossClaim Defendants, provide for contractual indemnification in favor of BFS.

124. That the CrossClaim Defendants served as subcontractors to BFS in connection with their services at the subject structures. Regardless, therefore, of any specific contractual obligation to indemnify, there exists a special relationship between this Defendant, and the CrossClaim Defendants, sufficient to impose obligations of indemnity against the aforesaid CrossClaim Defendants, in favor of BFS.

125. That to the extent, if any, that BFS may be held liable to the Plaintiffs, or to others in this action, such liability would be a direct and proximate result of the wrongful acts, omissions, negligence, and/or representations of the CrossClaim Defendants, which have damaged BFS, as BFS has been subjected to liability and has incurred consequential damages in having to expend attorneys' fees and costs in defending against the Plaintiffs' claims.

126. That BFS is entitled to full contractual and common law indemnification from the CrossClaim Defendants, for any liability BFS is found to have to the Plaintiffs or to others in this action, and BFS is also entitled to damages for any negligence, as aforesaid, on the part of the CrossClaim Defendants, entitling BFS to recover from the Third-Party Defendants, its attorneys' fees, costs, and other expenses incurred in defending this action, and further entitling BFS to recover from the CrossClaim

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Defendants any sums for which BFS may be held liable to the Plaintiffs or to others, or which Builders FirstSource-Southeast Group, LLC may pay in satisfaction of such claims.

FOR A SECOND CAUSE OF ACTION AGAINST HURLEY SERVICES, LLC, AND CHARLESTON EXTERIORS, LLC

127. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

128. That the CrossClaim Defendants made express warranties that materials, services, and/or workmanship provided in conjunction with their services at the subject structures, would be as required by and in accordance with the contract documents, applicable building codes, and industry standards.

129. That the respective sub-contract agreements between BFS and the CrossClaim Defendants include provisions, by which the CrossClaim Defendants expressly undertook to provide materials and services in accordance with the contract documents.

130. That in the event that the Plaintiffs prove that the materials and/or services provided by the CrossClaim Defendants are not in accordance with the requirements of the contract documents, industry standards, or relevant building requirements, then and in that event the CrossClaim Defendants have materially breached their express warranties.

131. That BFS is entitled to judgment against the Third-Party Defendants in the amount of any judgment which the Plaintiffs may obtain against BFS, or which Builders FirstSource-Southeast Group, LLC may pay in satisfaction

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of such claims, for breach of any express warranties on the part of the CrossClaim Defendants, plus BFS costs for defense, inclusive of attorneys' fees.

FOR A THIRD CAUSE OF ACTION HURLEY SERVICES, LLC, AND CHARLESTON EXTERIORS, LLC

132. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

133. That the CrossClaim Defendants made implied warranties of workmanlike services, merchantability, and fitness for particular purpose, in connection with its services in renovation, repair, and/or construction at the subject residence.

134. That in the event that the Plaintiffs prove that the services of the respective CrossClaim Defendants were deficient, then and in that event the CrossClaim Defendants have materially breached their implied warranties.

135. That BFS is entitled to judgment against the CrossClaim Defendants in the event, and to the extent that the Plaintiffs may obtain judgment against BFS, or which Builders FirstSource-Southeast Group, LLC may pay in satisfaction of such claims, for breach of implied warranties, including such warranty of workmanlike service.

FOR A FOURTH CAUSE OF ACTION AGAINST HURLEY SERVICES, LLC, AND CHARLESTON EXTERIORS, LLC

136. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

137. That CrossClaim Defendants owed a duty of due care in providing services and materials in connection with construction and/or repair of the subject structures.

138. In the event that the Plaintiffs prove that due care was not exercised in the provision of materials and services by the CrossClaim Defendants, then and in that event the CrossClaim Defendants have breached their duties of due care.

139. In the event that the Plaintiffs obtain judgment against BFS as a direct, foreseeable and proximate result of the negligence of the CrossClaim Defendants, then and in that event BFS is entitled to judgment against the CrossClaim Defendants for the amount of any such judgment, or any amount Builders FirstSource-Southeast Group, LLC may pay in satisfaction of claims, plus costs of defense, inclusive of attorneys' fees.

FOR A FIFTH CAUSE OF ACTION AGAINST HURLEY SERVICES, LLC, AND CHARLESTON EXTERIORS, LLC

140. That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

141. That the CrossClaim Defendants were contractually responsible for provision of adequate materials and services in connection with their respective undertakings regarding construction of the subject structures.

142. That in the event that the Plaintiffs prove that the BFS contract was breached due to improper or inadequate materials and/or services provided by the respective CrossClaim Defendants, then and in that event the CrossClaim Defendants have materially breached their sub-contract,

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by failing properly and adequately to provide materials and services in connection with construction of the subject structures.

143. That BFS is entitled to judgment against the CrossClaim Defendants in the event, and to the extent that the Plaintiffs may obtain judgment against BFS for breach of contract, or for any amount Builders FirstSource-Southeast Group, LLC may pay in satisfaction of claims, and BFS is further entitled to recover the costs of defense, inclusive of attorneys' fees.

WHEREFORE, having fully answered the Second Amended Complaint of the Plaintiffs, and having set forth its CrossClaim of Builders FirstSource-Southeast Group, LLC, these Defendants pray as follows:

a. That the Plaintiff's Second Amended Complaint be dismissed, as to these Defendants, with costs to this Defendants;

b. That Builders FirstSource-Southeast Group, LLC be granted judgment on its CrossClaims against Third Party Defendants Hurley Services, LLC, and Charleston Exteriors, LLC;

c. That these Defendant have jury trial on all matters so triable;

d. That these Defendants be granted such other and further relief as this Court may deem just and proper.

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HOWELL, GIBSON & HUGHES, P.A.

By: _____
Stephen P. Hughes
Post Office Box 40
Beaufort, SC 29901-0040
(843) 522-2400
Attorney for Builders FirstSource, Inc., Builders FirstSource-Atlantic Group, LLC, Builders FirstSource-Florida, LLC a/k/a Builders FirstSource-Florida Design Center, LLC, and Builders FirstSource-Southeast Group, LLC

Beaufort, South Carolina

January 22, 2019

CERTIFICATE OF SERVICE

I certify that I served the foregoing Answer to Plaintiffs' Third Amended Complaint and Builders FirstSource-Southeast Group, LLC's upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service and by email addressed to counsels' last known address on January 22 2019.

By: _____
Stephen P. Hughes

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STATE OF SOUTH CAROLINA COUNTY OF BERKELEY Builders Firstsource-Southeast Group, LLC Plaintiff, V MI Windows And Doors, INC.; ECC Contracting, LLC; Hurley Services, LLC; and Charleston Exteriors, LLC, Defendant,	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL CASE NO. 2018-CP-08-02547 **AMENDED ORDER GRANTING CHARLESTON EXTERIORS, LLC'S AND ECC CONTRACTING, LLC'S MOTION FOR SUMMARY JUDGMENT**

This matter came before the Court on Friday, October 18th on the Motion for Summary Judgment of the Defendant Charleston Exteriors, LLC seeking dismissal of the Plaintiff's causes of action for breach of contract, negligence, breach of warranties, and indemnity. Present and participating in the argument were the movants counsel, C. Clay Olson, Esquire of Harper Little, PLLC and the Plaintiff was represented by Witt Cox, Esquire of Howell Gibson & Hughes.

ECC Contracting filed a similar, if not identical motion which was also heard. Counsel for ECC, Heyward Grimball, Esquire of Richardson Plowden was in attendance to advocate and advance the arguments of ECC Contracting. The ECC Motion for Summary Judgment was heard concurrently with the Charleston Exteriors motion. The Court hereby rules on both Charleston Exteriors, LLC's Motion for Summary Judgment as well as ECC's Motion for Summary Judgment.

BACKGROUND

The Plaintiff, Builders First Source Southeast Group, Inc. ("BFS") is a supplier of building materials and components, as well as a provider of construction services for new construction and remodeling projects. BFS provided materials and services at a construction

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project known as the "Abbey at Spring Grove" which is located in Moncks Corner, South Carolina.

The Abbey at Spring Grove (the "Abbey") is a 69-home residential community situated in Berkeley County, South Carolina. The Abbey was developed by Lennar Carolinas[1]. To be precise, the Abbey is a portion, or phase, of the larger Spring Grove Plantation development.

A lawsuit was filed in 2014 by Patricia Damico on behalf of herself and other owners within the Abbey at Spring Grove. *See Patricia Damico and Lenna Lucas, individually and behalf of all other similarly situated v. Lennar Carolinas, LLC, et al., Case No. 2014-CP-08-02424 (the "Underlying Class Action").* The underlying matter was amended on more than one occasion as the Plaintiff asserted exterior window claims on November 23rd, 2015.

On November 25th, 2015, Lennar Carolinas answered the Amended Complaint and asserted Third-Party claims against several of its contractors and suppliers. Among these Third-Party Defendants was Builders First Source who signed its responsive pleading on December 15th, 2015 and filed it on December 21st, 2015.

The case before the Court was filed on December 21st, 2018 in Berkeley County, South Carolina. The allegations made against Charleston Exteriors, LLC are derived from allegations made by the Plaintiff Damico and Lennar in the underlying lawsuit. Specifically, the Plaintiff and Lennar Carolinas have alleged that BFS was negligent in the installation of windows at the Abbey; that BFS breached its subcontract agreement with Lennar by virtue of the allegations made by the Plaintiff against Lennar; that BFS breached express and implied warranties as alleged in the underlying lawsuit; that Lennar is entitled to both contractual indemnification or, alternatively, equitable indemnification from BFS due to the claims made in the underlying

[1] Lennar Carolinas is not a party to this litigation. Lennar is a Defendant in the matter styled Damico v. Lennar Carolinas, LLC.

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lawsuit. As a consequence of these claims made in the underlying lawsuit, BFS has brought this lawsuit alleging that Charleston Exteriors and ECC breached their subcontract with BFS, that Charleston Exteriors and ECC breached certain implied and/or express warranties with BFS; that BFS is entitled to contractual/equitable indemnification from Charleston Exteriors and ECC; and that Charleston Exteriors and ECC were negligent in the installation of the windows at the Project.

FINDINGS OF FACT

1. Builders First Source "BFS" was on actual notice of potential claims against Charleston Exteriors, LLC on December 15, 2015. There can be no other conclusion with regard to this issue upon reviewing the Answer of Builders First Source dated December 15th, 2015. See Exhibit "A"

2. BFS has not submitted a Memorandum of Law to rebut Charleston Exteriors argument that BFS was on notice of a potential claim against Charleston Exteriors on or before December 15th, 2015.

3. Uncontroverted testimony from the hearing, coupled with a review of the D'amico record shows that at no time did BFS attempt to amend its pleadings in the underlying suit against Charleston Exteriors, LLC.

4. BFS began defending the underlying lawsuit on or before December 15, 2015.

5. BFS began incurring costs and attorneys fees when it began to defend this case on or before December 15, 2015.

6. The Subcontract Agreements entered into by ECC and Charleston Exteriors with BFS contain language concerning indemnity and the prospect of these Defendants being forced to indemnify BFS for the negligence of BFS.

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7. The contractual indemnification language referenced in Paragraph 6 is both confusing and contradictory at times. The language fails to clearly and unequivocally explain that these Defendants are obligated to indemnify BFS for BFS's negligence.

8. BFS failed to present any evidence suggesting that this lawsuit seeks damages for any acts or omissions which are separate or distinct from the underlying lawsuit. The Court concludes that the claims made in this lawsuit are wholly derivative of those brought in the Damico litigation.

9. BFS entered into a Master Subcontractor Agreement with Charleston Exteriors on October 17th, 2012.

LEGAL STANDARD APPLICABLE TO RULE 56 MOTIONS

A trial court should grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP; see Wells v. City of Lynchburg, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct. App. 1998) (quoting Tupper v. Dorchester Cnty., 326 S.C. 318, 487 S.E.2d 187 (1997)). "Once the moving party meets the initial burden of showing the absence of evidentiary support for the opponent's case, the opponent may not simply rest on the mere allegations contained in the pleadings." Grant v. Mount Vernon Mills, 370 S.C. 138, 150, 634 S.E.2d 15, 17 (Ct. App. 2006). "Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." Id. at 151. Unsupported allegations or denials that simply create an inference are insufficient to withstand summary judgment. Main v. Corley, 281 S.C. 525, 316 S.E.2d 406 (1984). "[W]hen plain, palpable, and

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indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Hedgepath v. AT&T, 348 S.C. 340, 354, 559 S.E.2d 327 (Ct. App. 2001).

A. THE CLAIMS OF THE PLAINTIFF FOR NEGLIGENCE, BREACH OF CONTRACT, AND BREACH OF WARRANTIES ARE TIME BARRED

South Carolina recognizes the "discovery rule" when considering an action to be time barred. Under the discovery rule, the statutory period of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto. *Burgess v. American Cancer Society*, 300 S.C. 182, 386 S.E.2d 798 (Ct. App. 1989). Also, Abba Equip., Inc. v. Thomason, 335 S.C. 477, 485, 517 S.E.2d 235, 239 (Ct. App. 1999) The statute of limitations for negligence, breach of contract, and breach of warranties is three years. Compelling portions of the record in the underlying matter were presented by the Defendants which illustrates that the Plaintiff was on direct and actual notice of its potential claims against Charleston Exteriors and ECC on December 15th, 2015. Subsequently, more than three years went by before this lawsuit was filed on December 21st, 2018. These causes of action fail for being untimely.

B. DISGUISED INDEMNITY CLAIMS

Although the Court has already determined that claims of BFS for negligence, breach of contract, breach of warranties ("Non-Indemnity Claims) are each barred by the three-year statute of limitations, the Court will consider the Defendants' additional argument. The Defendants have alleged that the Non-Indemnity claims must fail pursuant to the "Stoneledge Defense" which bars claims that are disguised indemnification claims cloaked within separate

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causes of action.[2] Upon hearing the oral arguments and reviewing memoranda presented to the Court, it is evident that the Plaintiff's Non-Indemnity claims do not exist outside of the derivative Damico lawsuit. They must, therefore, fail.

The allegations in this case make no separate or unique contention(s) which are in addition to the allegations made by Lennar and the Plaintiff in the *Damico* matter. Builders First Source has failed to provide any admissible record evidence that it sustained any separate or independent damages outside the scope of the Damico lawsuit. *See Stoneledge at Lake Keowee Owners' Ass'n v. Builders FirstSource-Southeast Grp., 776 S.E.2d 434, 439 (S.C. Ct. App. 2015) (holding that, where general contractor did not "suffer their own damages independent of their obligation to defend themselves in the underlying lawsuit," trial court "properly granted summary judgment on [general contractor's] breach of contract and breach of warranty cross- claims because they are not independent causes of action from [the general contractor's] equitable indemnity claim");*

C. MASTER SUBCONTRACT AGREEMENT INDEMNITY PROVISIONS ARE NEITHER CLEAR NOR EQUIVOCAL

The Defendants seek Summary Judgment as to Builders First Source's contractual indemnification claim on the ground that it violates South Carolina rules of contract construction. Section 5 of the Master Subcontract Agreement is confusing at best and deceptive at worst.

Section 5 contains two Paragraphs. The first paragraph seems to suggest that BFS may only seek indemnification for damages…….

ONLY TO THE EXTENT CAUSED.IN WHOLE OR-IN PART BY ANY NEGLIGENT ACT OR OMISSION OF THE SUBCONTRACTOR OR ANYONE DIRECTLY OR

[2] Counsel for ECC and Charleston Exteriors presented memoranda and oral arguments consistent with the reasoning in a recent S.C. appellate case which is known as "Stoneledge" and is specifically cited as *Stoneledge at Lake Keowee Owners' Ass'n v. Builders FirstSource-Southeast Grp., 776 S.E.2d 434, 439 (S.C. Ct. App. 2015)*

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INDIRECTLY EMPLOYED BY THE SUBCONTRACTOR OR ANYONE FOR WHOSE ACTS THE SUBCONTRACTOR MAY BE LIABLE.

Below this lengthy paragraph is an almost identically constructed paragraph which is slightly altered to indicate that BFS may seek indemnification from Charleston Exteriors for damages caused by the negligence of any person or entity. Specifically, the second paragraph suggests a duty to indemnify BFS…..

REGARDLESS OF WHETHER SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED, OR IS ALLEGED TO BE CAUSED, IN WHOLE ORIN PART, BY THE NEGLIGENCE OF ANY OF THE INDEMNITEES.

The Court can only conclude that the Master Subcontract Agreement is not what our courts had in mind when setting precedent regarding "anti-indemnity" clauses in contracts. Typically, courts will construe an indemnification contract *"in accordance with the rules for the construction of contracts generally." Campbell, 313 S.C. at 453, 438 S.E.2d at 272. However, when an indemnity clause purports "to relieve an indemnitee from the consequences of its own negligence," our case law requires strict construction of the clause. Laurens, 355 S.C. at 111, 584 S.E.2d at 378-79. "Indeed, most courts agree with the basic rule that a contract of indemnity will not be construed to indemnify the indemnitee against losses resulting from its own negligent acts unless such intention is expressed in clear and unequivocal terms." Fed. Pac. Elec. v. Carolina Prod. Enters., 298 S.C. 23, 26, 378 S.E.2d 56, 57 (Ct. App. 1989). See Concord & Cumberland Horizontal Prop. Regime v. Concord & Cumberland, LLC, 424 S.C. 639, 647, 819 S.E.2d 166, 170-71 (Ct. App. 2018) see also Murray v. Texas Co., 172 S.C. 399, 402, 174 S.E.231, 234 (1934)(finding "broad and comprehensive" language was insufficient to prove the contract relieved a party from its own negligence).*

BFS has failed to persuade the Court that its indemnity clause(s) in either subcontract meet the elevated standard of being a clear and unequivocal statement which leaves no question

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as to BFS seeking indemnification for its own negligent acts or omissions. BFS has failed to demonstrate that the contract language can only be interpreted to reach the result that the parties intended to indemnify the indemnitee for the indemnitee's own negligence. If any other interpretation of the contract language is reasonably possible, they cannot prevail on their contractual indemnity claims.

As South Carolina precedent requires that the party seeking to be indemnified bear the burden of proving that the indemnity language be clear and unequivocal when seeking to be indemnified for its own negligence, the Court rules that the specific language from the Master Subcontractor Agreement is confusing, conflicting, and neither unclear or unequivocal. The Defendants' Motions for Summary Judgment as to the contractual indemnity claims is hereby granted.

D. BUILDERS FIRST SOURCE'S CONTRACTUAL INDEMNIFICATION CLAIM IS ALSO BARRED PURSUANT TO THE RELEVANT STATUTE OF LIMITATIONS

The contractual indemnity claim(s) made by Builders First Source against ECC and Charleston Exteriors have also been challenged pursuant to the statute of limitations. As to indemnity, the statute of limitations generally runs from the time judgment is entered against the defendant. *Choate v. United States, 233 F. Supp. 463 (D.C. Okla. 1964) First Gen. Servs. v. Miller, 314 S.C. 439, 444, 445 S.E.2d 446, 449 (1994).* Our courts, however, have recognized two types of indemnity contracts: (1) a contract for indemnity against liability and (2) a contract for indemnity against loss. *See Piper v. Am. Fid. & Cas. Co.*, 157 S.C. 106, 112 (1930). In a contract for indemnity against liability, the obligation to indemnify arises when the liability is incurred, whereas in a contract for indemnity against loss, the indemnitee must have made some form of payment before he can assert a breach of the contract. *Jones v. Builders Inv. Grp.*, LLC, 415 S.C. 321, 330 (Ct. App. 2015). In this case, BFS has pled that it is "entitled to full

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contractual and common law indemnification for and against Liability". *See Complaint, Paragraph 34.*

The Court draws further distinction in this case because the relief prayed for in the BFS complaint seeks consequential damages for attorney's fees. Specifically, the Complaint against ECC and Charleston Exteriors states that, "….BFS has been subjected to liability and has incurred consequential damages in having to expend attorney's fees and costs in defending against the claims of the Plaintiffs and/or Lennar Carolinas, LLC in the underlying action." *See Complaint, Paragraph 33; See also Paragraph 34* ("…entitling BFS to recover from ECC Contracting, LLC, Charleston Exteriors, LLC and Hurley Services, LLC its attorney's fees, costs, and other expenses incurred in defending the underlying action…")

BFS began to incur liability for attorney's costs and fees – damages it seeks in this litigation when its Answer was drafted and served. BFS's Answer was executed and served more than three years prior to the filing of the present action. Thus BFS's claims for "contractual and common law indemnification against Liability" are barred by the three year statute of limitations. SC. Code § 15-3-530 et seq.

The facts before the Court are distinguishable from the *First General Services* case in that BFS is seeking indemnification for damages which have begun to accrue more than three years prior to filing and, as a result, the Court is inclined to agree with the Defendants that consequential damages, as defined by the Complaint, began to accrue prior to December 15th, 2015 and, therefore, these damages cannot be recovered as Builders First Source discovered them more than three years prior to the filing of its lawsuit against Charleston Exteriors and ECC.

IT IS ORDERED that the Defendants Charleston Exteriors, LLC and ECC Contracting,

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LLC's Motion for Summary Judgment is granted as to the following causes of action only:

a. Negligence

b. Breach of Contract

c. Breach of Warranties

d. Contractual Indemnity

IT IS ORDERED that these causes of action are hereby dismissed with prejudice and this ruling should serve precedent in the Damico matter as well.

THIS COURT FINDS THAT two claims remains which are subject to the Motion to Consolidate brought simultaneously by Builders First Source. The claims are for equitable indemnification and contribution. The Court finds that these claims are subject to consolidation with the related D'Amico matter which remain stayed until further notice or order.

IT IS FURTHER ORDERED that the cause of action for equitable indemnification involves a question for the jury and the Motion for Summary judgment is, therefore, denied as to that cause of action. The Plaintiff's Contribution claim survives as it was not before me as part of this motion for summary judgment.

AND IT IS SO ORDERED this_____day of_, 2020, at_____, South Carolina.

_____
Clifton B. Newman Presiding Judge

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Berkeley Common Pleas

Case Caption: Builders Firstsource-Southeast Group, Llc VS Mi Windows And Doors, Inc. , defendant, et al

Case Number: 2018CP0802547

Type: Order/Summary Judgment

So Ordered

s/ Clifton B. Newman, 2127

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	CIVIL ACTION NO: 2018-CP-08-02547
Builders FirstSource-Southeast Group, LLC,	)	
	)	
Plaintiff,	)	
	)	MOTION FOR RECONSIDERATION
vs.	)	
	)	
MI Windows and Doors, Inc., ECC Contracting, LLC, Hurley Services, LLC, and Charleston Exteriors, LLC	)	
	)	
Defendants.	)	

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, Builders FirstSource-Southeast Group, LLC, by and through the undersigned counsel, Howell, Gibson and Hughes, P.A., will appear before the Presiding Judge, Berkeley County Court of Common Pleas, on the tenth (10th) day after service hereof, or at such other time and place as may be directed by the Court, and then and there move for reconsideration and appropriate alteration and/or amendment of the Court's Order of December 6, 2019.

The within motion, made pursuant to the provisions of the statutory and common law of the State of South Carolina and Rules 52 and 59, South Carolina Rules of Civil Procedure, is premised upon the following considerations:

a. The Court, in denying claims seeking contractual indemnity for the Defendants' own negligence, misconstrued relevant law as set forth by the Court of Appeals in the matter of

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Concord and Cumberland;

b. The Court improperly determined that the relevant statute of limitations barred the Plaintiff's claims, notwithstanding the absence of any prior judgment in favor of the Plaintiff.

ARGUMENT

A. The Court, in granting summary judgment to the defendants, misconstrued the ruling of the Court of Appeals in *Concord and Cumberland*, which clearly authorized contractual indemnity claims for defendant's own negligence.

As confirmed during oral argument upon the Defendants' motions, the contracts at issue in this case contain indemnity provisions virtually identical to the indemnity provisions considered by the Court of Appeals in the matter of *Concord and Cumberland*, 424 S.C. 639, 645, 819 S.E.2d 166, 169–70 (Ct. App. 2018), *reh'g denied* (Oct. 18, 2018). Moreover, the parties to the instant action have agreed that the *Concord and Cumberland* ruling governs the Plaintiff's claims for contractual indemnity in this matter. Appropriate application of the *Concord and Cumberland* standards, to the contractual provisions at issue in the instant proceeding, clearly authorizes pursuit of contractual indemnity for damages caused by the **Defendants' own negligence** (as opposed to damages occasioned by the sole or current negligence of the Plaintiff), and, equally clearly, precludes summary judgement in favor of the Defendants.

This Court's December 6, 2019 Order correctly finds that the indemnity language at issue does not meet the elevated standard of being clear and unequivocal and thus the Plaintiff cannot maintain indemnification claims for Plaintiff's negligence. Nevertheless, pursuant to *Concord and Cumberland*, the

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Plaintiff still has valid indemnification claims for Defendants' negligence. See *Concord and Cumberland*, 424 S.C. at 645, where the Honorable Clifton Newman found the subcontract's language did not clearly and unequivocally require Muhler to indemnify Superior for Superior's own negligence and limited indemnification to damages resulting from the work Muhler performed. Thus, the December 6, 2019 Order must be altered and amended accordingly such that the Plaintiff's claims for indemnification are limited to only those damages resulting from the work Defendants' performed. Therefore, the Defendants' motions for summary judgment with respect to the Plaintiff's claims for indemnification for the Defendants' negligence are denied.

B. The South Carolina Supreme Court has made it clear that claims for indemnification do not accrue until a judgment is entered.

The December 6, 2019 Order correctly finds that the *First General Services* ruling governs this matter with respect to the statute of limitations for indemnification claims. The South Carolina Supreme Court has made it clear that claims for indemnification do not accrue until a judgment is entered. See *First General Services* at 314 S.C. 439, 444, 445 S.E.2d 446, 449 (1994). Because no judgement has been entered, the statute of limitations has not even begun, much less expired, on Plaintiff's indemnification claims, and thus the Defendants' motions for summary judgment must be denied. This Court's December 6, 2019 Order, determining that the statute of limitations had expired, notwithstanding the absence of any entry of judgment, is clearly contrary to authoritative Supreme Court ruling, and requires amendment of said order.

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More importantly, the December 6, 2019 Order includes an omission of material fact with respect to the Plaintiffs' contractual indemnification claims. This omission of material fact serves as the only basis for the Court's "sharp distinction" from the *First General Services* case, and the sole basis for this courts' finding that the statute of limitations barred Plaintiff's indemnification claims for consequential damages. The December 6, 2019 Order states:

> Specifically, the Complaint against ECC and Charleston Exteriors states that, "…BFS has been subjected to liability and has incurred consequential damages in having to expend attorney's fees and costs in defending against the claims of the Plaintiffs and/or Lennar Carolina, LLC in the underlying action." *See Complaint, Paragraph 33.*

December 6, 2019 Order p.7

The Court found that the above cited section from Paragraph 33 distinguishes this case from *First General Services* in that Plaintiff is seeking indemnification for consequential damages which began to accrue more than three years prior to filing the action. As a result, the Court ruled that the consequential damages cannot be recovered.

The December 6, 2019 Order is incorrect because Paragraph 33 of the Plaintiff's Complaint actually includes a qualifying statement to the Plaintiff's indemnification claims and is exactly on point with *First General Services*. As opposed to what the December 6, 2019 Order states, Paragraph 33 actually reads:

> 33. That to the extent, if any, that BFS may be held liable to the Plaintiffs and/or Lennar Carolinas, LLC, and/or to others in the underlying action, such liability would be a direct and proximate result of the wrongful acts,

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> omissions, negligence, and/or representations of ECC Contracting, LLC, Charleston Exteriors, LLC and Hurley Services, LLC which have damaged BFS, as Builders FirstSource-Southeast Group, LLC, has been subjected to liability and has incurred consequential damages in having to expend attorneys fees and costs in defending against the claims of Plaintiffs and/or Lennar Carolinas, LLC in the underlying action.

Plaintiff's Complaint pp.10, 11

It is critical that the allegation in Paragraph 33 be read in its entirety versus material words being omitted therein. The Plaintiff specifically includes the qualifying language "That to the extent, if any, that BFS may be held liable to the Plaintiffs and/or Lennar Carolinas, LLC, and/or to others in the underlying action,…" because that is what the parties agreed to under the contracts and that is what is allowed under the case law in South Carolina. Thus, the Plaintiff's indemnification claims are not distinguishable from those in *First General Services* and the December 6, 2019 Order must be altered and amended accordingly such that the statute of limitations does not bar the Plaintiff's consequential damages.

In brief summary, the December 6, 2019 Order, precluding contractual indemnity claims based upon the **Defendants' negligence,** is contrary to the specific ruling, addressing virtually identical contractual provisions, in the *Concord and Cumberland* matter. The Order also erroneously determined that the plaintiffs' claims were barred by the relevant statute of limitations, notwithstanding the absence of any prior judgment in favor of the Plaintiff. Both of the aforesaid considerations mandate denial of the Defendants' motions for summary judgment.

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CONCLUSION

In conclusion, the December 6, 2019 Order must be altered and amended such that the Defendants' motions for summary judgment are denied with respect to Plaintiff's claims for indemnification for Defendants' negligence.

HOWELL, GIBSON & HUGHES, P.A.

By:s/William H.Cox,III
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Beaufort, South Carolina

December 16, 2019

CERTIFICATE OF SERVICE

I certify that I served the foregoing Answer upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 16th day of December, 2019.

By: s/William H. Cox, III
William H. Cox, III

ELECTRONICALLY FILED - 2020 Apr 29 6:45 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003455

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Six Fifty Six Owners Association, Inc., et al., Plaintiffs, vs. Winsor South, LLC, et al., Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2016-CP-10-3455 **ORDER GRANTING DEFENDANTS HURLEY SERVICES, LLC AND CHARLESTON EXTERIORS' MOTION FOR SUMMARY JUDGMENT AGAINST THE CLAIMS OF BUILDERS FIRST SOURCE-SOUTHEAST GROUP, LLC**

This matter came before the Court on March 5, 2020 on Defendants Hurley Services, LLC and Charleston Exteriors' Motion for Summary Judgment against the claims of Builders First Source-Southeast Group, LLC.

FACTUAL BACKGROUND

This litigation arises out of alleged construction defects at Six Fifty Six Coleman Boulevard, a twelve-building townhome community in Mount Pleasant, SC ("the Project"). Builders First-Source is a Delaware limited liability company that furnishes building supplies and turn-key contracting services as a licensed general contractor. It is undisputed that Builders First-Source holds an unlimited commercial general contractor's license (License No. 112969) with the South Carolina Labor Licensing & Regulation ("SC-LLR"), and Terry Rosamond is Builders First-Source's representative that serves as the "qualifying party" for such licensure in this state. Defendant supplied and installed windows and doors as a subcontractor of the Ryland Group for only the "Ryland Phase" buildings at the Project, which consists of nine (9) buildings that were constructed in 2013 and 2014. It is undisputed that Builders First-Source furnished the windows, related flashings, and caulk and provided superintendents to oversee such installation for the Ryland Phase buildings at the Project.

Builders First-Source filed a third-party complaint in the present litigation on May 9, 2017 asserting third-party claims against Hurley for contractual indemnity, breach of express and implied

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warranties, breach of contract, and negligence. Hurley was ultimately made a direct defendant by Plaintiffs and Builders First-Source then asserted cross-claims against Hurley in lieu of it previously asserted third-party claims, but on all the same causes of action and grounds. Builders First-Source's operative cross-claims are contained in Builders First-Source's Answer to Plaintiffs' Third Amended Complaint filed on January 24, 2019. Builders First-Source's cross-claims allege that they are entitled to be indemnified in the amount which Builders First-Source "may pay in satisfaction" of Plaintiffs' claim "plus Builders First-Source [sic] costs for defense, inclusive of attorneys' fees, without regard for the fault of either Hurley or Builders First-Source.

Defendant Hurley Services, LLC is now before the Court on their Motion for Summary Judgment against the claims of Builders First-Source. Charleston Exteriors joins the Motion.

STANDARD OF REVIEW

"Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Singleton v. Sherer,* 377 S.C. 185, 197, 659 S.E.2d 196, 202 (Ct. App. 2008). A party's "response to the motion must set forth specific facts, *admissible in evidence*, showing there is a genuine issue for trial. If he does not so respond, summary judgment should be entered against him." *Moody v. McLellan*, 295 S.C. 157, 163, 367 S.E.2d 449, 453 (Ct. App. 1988) (emphasis added). Summary judgment "is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." *Nelson v. Piggly Wiggly Central, Inc.,* 390 S.C. 382, 388, 701 S.E.2d 776, 779 (2010).

DECISION

Based on the submitted Motions and Oral Arguments the Court hereby finds:

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(1) There exists no genuine issue as to any material fact and Hurley Services and Charleston Exteriors are entitled to judgment dismissing all cross-claims against it as a matter of law;

(2) Builders First Source-Southeast Group, LLC's cross-claims are barred by the doctrine of collateral estoppel because of Judge Clifton Newman's order filed on February 3, 2020 in the case of Builders Firstsource-Southeast Group, LLC v. MI Windows and Doors, Inc., et al, Case No. 2018-CP-08-2547. Specifically, the Court references and adopts the court's analysis in Paragraphs B and C therein.

(3) Builders First Source-Southeast Group, LLC's cross-claims for breach of contract, breach of express and implied warranty, and negligence are "merely disguised . . . claims for equitable indemnity" and fail as a matter of law. *See Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders FirstSource-Se. Grp.*, 413 S.C. 630, 634, (Ct. App. 2015);

(4) Builders First Source-Southeast Group, LLC's cross-claims for contractual indemnity are based on contractual provisions that are neither clear nor unequivocal, are against public policy and the laws of South Carolina, and thus, fail as a matter of law. *See Concord and Cumberland HPR v. Concord and Cumberland, LLC*, 2018 WL 3748616 (S.C. Ct. App. 2018).

CONCLUSION

Therefore, it is ordered that Defendants Hurley Services, LLC and Charleston Exterior's Motion for Summary Judgment against the claims of Builders First Source-Southeast Group, LLC is GRANTED.

And it is SO ORDERED.

Charleston, South Carolina

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Charleston Common Pleas

Case Caption:	Six Fifty Six Owners Association Inc , plaintiff, et al VS Winsor South Llc , defendant, et al
Case Number:	2016CP1003455
Type:	Order/Summary Judgment

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

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IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF RHAME "ROOSTER" CANNON

JULY 10, 2019

THE RETREAT AT CHARLESTON NATIONAL COUNTRY CLUB HOMEOWNERS ASSOCIATION INC. AND THE RETREAT AT CHARLESTON NATIONAL COUNTRY CLUB HORIZONTAL PROPERTY REGIME,

Plaintiffs,

vs. CASE NO. 2016-CP-10-3783

WINSTON CARLYLE CHARLESTON NATIONAL, LLC; COLIN R. CAMPBELL CONSTRUCTION, INC.; and COLIN CAMPBELL, INDIVIDUALLY, BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC; AMERICO ROOFING CONCEPTS, INC.; DVS, INC.; ADVANCED BUILDING CONNECTION, LLC; GUY C. LEE BUILDING MATERIALS, LLC; WS CONTRACTORS, LLC; DINO SCHWARTZ, INDIVIDUALLY,

Defendants.

TIME: 10:17 AM

LOCATION: MULLEN WYLIE
CHARLESTON, SOUTH CAROLINA

REPORTED BY: TERI L. KENNELLY
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CHARLESTON, SC 29415
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Q. I mean, I'm talking about only BFS's scope, so not --
A. Right. They would have -- the masons would have been in there. The slab would have been poured.
Q. But had nothing to do with BFS?
A. Had nothing to do with them. Electricians would have been there to put the ground services in to feed to the building. All of that goes prior to framing commencing.
Q. So the first thing BFS is going to do on any of these buildings is frame them?
A. That would be correct.
Q. And then the next thing that would happen would be the wrap of the exterior walls of the building?
A. Once framing was complete, yes, sir.
Q. Would the wrap and the felt generally be done at the same time?
A. Possibly.
Q. And then the next thing and really the final thing BFS was responsible for would be the installation of the windows and doors?
A. Yes, sir.
Q. So -- and then that building would be,

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as we talked about this morning, dried in.
A. Right.
Q. And your -- BFS's scope would be pretty much complete.
A. That would be correct.
Q. And you-all were obviously out there doing multiple buildings and, you know, moving on. Do you know sequencing about who the next contractor was that would come on the building after you-all had dried in the building?
A. The insulators would come in and put the insulation in.
Q. The --
A. Well, I'm sorry. Once the building is dried in, then he'll turn on either the electricians or plumbers. Any of the infrastructure that's inside of the facility itself would come in, and they may be in different -- HVAC people, not necessarily in any specific order. But if the plumbers are in there working, he may have the electricians over in the next unit over, not the next building but the next unit --
Q. Right.
A. -- and work back and forth throughout

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that entire building. Once all that is done and the framing inspection is performed -- and that was where I was thinking you were talking about was the framing inspection and everything had already been completed, which would mean all that infrastructure had already been put inside the units.
Q. And then after that, is that when the siding would be -- when would the siding and trim be done?
A. Shortly thereafter.
Q. But the framing inspection would have to be completed before the siding?
A. That's -- not necessarily.
Q. How could they --
A. Because there could be issues on the inside that has nothing to do with the siding.
Q. Well, I take --
A. We've even had some framing issues, and the inspector would come to do the framing inspection, say, You need to fix this and this and this, but it's okay to insulate because he can come back when he does his insulation inspection and verify that those particular items that he pointed out had been corrected, and he

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would allow you to continue on with the building process.
Q. I guess where I was going is, in order to inspect the exterior framing of the building, the siding couldn't be in place for that inspection to take place.
A. That's correct.
Q. So if the framing inspection wasn't complete, at least the initial exterior framing inspection would have to have been done --
A. You get a sheathing inspection on the exterior of the building prior to the framing inspection. There are penetrations made in the facilities or buildings or the units, however you want to look at it, that will penetrate that exterior wall.
Q. Do you have any recollection of whether the siding or the waterproofing or roofs were done in some sequence in general?
A. Not really.
Q. No recollection of that?
A. Some got their shingles put on the roofs before others did. I mean, it's just the availability of the buildings and the people.
Q. But BFS would have had the

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responsibility to supervise the work of its subs. Do you agree with that?
A. Yeah, that's what I was there for.
Q. And BFS would also have been responsible for sequencing the work of its subs, deciding who's going to do what when?
A. That would be correct.
Q. And BFS was responsible for creating the scope for each of its subs?
A. Yes, sir.
Q. Let me go through your Exhibit 241. And to the extent you recall, let me just ask you who your point of contact was for each sub. So for -- is it AC Construction?
A. Uh-huh.
Q. Who is -- do you recall who you would have dealt with?
A. Individual crew leaders.
Q. Yeah.
A. But whenever I had any particular issue, I would call to their office and talk to the owner, Cley.
Q. Who was the owner?
A. Cley.
Q. Cley who?

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A. I could not tell you. I know him as Cley.
Q. Do you know where --
A. I think it's actually Cleyber or Cleyburn or something like that, but he goes by Cley.
Q. Do you know where anybody from ACC is -- AC Construction is today? Have you-all used them recently?
A. That were involved in these buildings? No. I know some of the framers, Babon (phonetic), I know he's gone back to Brazil, and a lot of them have gone back because they stayed here long enough to accomplish what they came here to accomplish.
Q. But as far as AC Construction, the subcontractor, the framer, have you-all had any business with them or -- I don't think we've been able to find them is the reason I'm asking. Have you done anything with them recently?
A. Not here in the past year or so, but they're still around, and they are under the name Novac Construction.
Q. And it's the same ownership?
A. Uh-huh.

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Q. N-O-V-A-K [sic]?
A. I think that's --
Q. And it's --
A. Their office is the same office building.
Q. And you've got an address or something for them?
A. It's on 78, Highway 78 in Summerville.
Q. If you could -- I know Mr. Hughes is as interested in this as I am. Can you provide that address to him and whatever contact information you have for them?
A. I'll have to go by there and look at it, or I can call them. I talked to Cley yesterday, in fact.
MR. FREEMAN: Cley who?
THE WITNESS: I don't know his last name.
Q. Well, if you could provide phone numbers, addresses, whatever you have for them --
MR. McNAIR: Jim, you've taken his deposition.
MR. LADY: Oh, I thought we hadn't found him. Okay. I apologize. If we found him, I don't need it.

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Q. How about Palmetto?
A. (Witness shook head.)
Q. Don't remember a contact or --
A. No, sir.
Q. ECC?
A. ECC, Rod Assis.
Q. Pullman?
A. No, sir.
Q. Is it Witham?
A. Witham, no, sir, I do not know how to get in touch with any of those people.
Q. Do you know -- my first question is, do you know who you -- the name of the person you had contact with?
A. No, sir, other than ECC. He was our main source. We still do business with ECC. I'm not aware of us doing anything -- WS, which is Wilson, I see him around a good bit. We've not done any work with him in quite some time. I think the last thing I did for him was his personal house.
Q. And the ECC point of contact, who was that?
A. Rod Assis.
Q. And LG, is that Miguel Loarca?

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Q. First of all, the window that you're -- the actual sale and installation job of the window gets created in the system by somebody, correct?
A. I don't know what you mean by the sale of the window but --
MR. GRIMBALL: Apparently the phone cut out.
(Off-the-record discussion.)
Q. Well, and I don't mean to get into the weeds here, but what I'm -- basically, this screenshot here -- the window job, it gets opened in the records, correct?
A. Yes, sir.
Q. And then we have, job precheck window, do you see that?
A. Uh-huh.
Q. And that's assigned to Rooster Cannon. What does that mean?
A. That it's ready for the windows to be installed.
Q. And --
A. I would typically go around and measure the rough openings and verify that if I hadn't already done that, to make sure that -- but with

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wall panels, they're typically correct because they know what the windows are. It's built on a table. It's in a controlled environment.
I may do a spot check on the precheck, but it's also to make sure that the sheathing inspection and everything has passed and --
Q. At this point in the stage of the construction, the building's framed, right?
A. Right.
Q. The Tyvek or Barricade house wrap is on.
A. Right.
Q. It's been cut and pulled into the rough opening, the sides and the sill, correct?
A. Correct.
Q. Has the -- at least the sill tape been put in place at the sills and corners?
A. Prior to that?
Q. Yes.
A. That will be done at the time of install.
Q. Okay. Got you. But the building's framed. The house wrap is on. It's been cut. You're checking to make sure the rough openings are square and the right --

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A. It's ready for the windows to be installed.
Q. Great. Then the next one on the list, it says, Material delivery, window. The windows get delivered to the project, right?
A. Right.
Q. Somebody checks the box that that occurs?
A. Right.
Q. And so when you do that job precheck, Rooster Cannon, who's assigned that task, when you come back to the office, you check into the system that you've done that, right?
A. Right. I go right there to that block, checking that block, and go up here and click on check item action, or I can just click on 100 percent.
Q. Okay.
A. In some cases -- like just say for instance this is a door and window job, and using this as an example. If this is a door and window job and the windows got delivered, the doors did not get delivered, I would come in here and check those off, and I would mark it 75 percent complete, just a number that I would choose to

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use. And then I would put a note in AppWright, which is what this little cloud is, that said windows not installed -- or doors not available at the time of the install.
You can click on this paperclip -- and obviously, I can't do it on yours; let me go back to mine. And you can click on this little paperclip, and it will give you, Create document. Well, this is just for an audit check, okay. But you click on this little dropdown, and it has a whole string of different type of documents that you can create and attach to that job.
Q. Inspection forms and the like?
A. That is correct.
Q. And this is all -- what we're seeing here is all part of the layers of quality control that Builders FirstSource has to make sure the job gets done right?
A. That is correct. Like what -- and let's just use this job here as an example. What I would do is I'd come in here and click on, Exterior door/window package completion form. Hit that and say, Create document, and go right there -- let's see if it -- and now it's creating that document.

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for years?
A. Yes, sir. And I'm doing a lot of inspections, not necessarily -- well, it is to verify that what they have done is correct, but also to make sure that somebody hasn't broken a sash or -- I'm documenting that the windows are 100 percent intact and everything else.
So in three days when a window sash is broken and the guy calls me on the phone because this is the first time he's been back to the house since the window is installed, he says, Hey, man, I've got a broken window. Said, Well, you need to send me a PO to replace the window because I've got a picture where it was a post-walk, and the window was intact at the time of the post-walk. So it's a defense mechanism for us to protect us as well as the installer.
Q. Well, I'm glad you mentioned post-walk because I wanted to -- looking again at the AppWright screenshot, you have the materials delivered. There's a start date for the windows. There's a completion date for the windows. And then you have a job post-walk. And again, it shows that's assigned to Rooster Cannon.
And so after -- for this building

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2900, after ECC installs the windows, you come back out and do a post-walk to check to make sure it's done properly, a sash didn't get busted, that kind of thing.
MR. LADY: Object to the form.
Q. Correct?
A. Yes, sir.
Q. Then there's a closeout job windows, Rooster Cannon. What's the difference between the post-walk and the closeout?
A. That's when I authorize the labor to be paid.
Q. And so if you found that they did do something wrong, they didn't properly tape a window or they left the tape off up at the top corners or something, you would have them -- you would have whatever subcontractor was assigned the job go back out and fix that before you authorized Builders FirstSource to pay that subcontractor?
A. Not necessarily. I may go ahead and pay him.
Q. But you'd still tell him to come back out and fix it?
A. Oh, yeah. And if he doesn't, I still

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have other jobs that he's got coming up that I can get my money back if I have to get someone else to go do that work. But I don't ever have a problem.
Q. And if you have to get somebody else to go do that work, you can backcharge the contractor that was initially assigned the job?
A. It just may not be backcharged to that particular job that he was paid on, but it will be on a job that he's got coming forward.
Q. Okay.
A. Because the dollar amounts we're talking on a window install versus a framing job are huge numbers, as you can well imagine.
Q. But you've got -- with respect to the closeout, you have the authority and the ability to withhold money from a subcontractor in order to encourage them to go -- force them to go fix anything that you found to be lacking in their work?
A. Yes, sir.
Q. And then there's an audit check, dash, window, and that's assigned to Drew Stritch.
A. Stritch.
Q. Who is that, and what is that task?

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A. I'm not sure exactly what that task is. Drew Stritch is no longer employed with BFS. He works for Sable Homes now. But that's just basically, as far as I can tell you -- we can even -- let's see -- I don't even know how -- I don't know that I've ever even opened up an audit checklist to see what it says an audit checklist is.
Q. Who was Drew Stritch?
A. Drew, he was a coordinator that worked for Builders FirstSource in the install department.
Q. Would he have been above you in the hierarchy?
A. Not really. He would be in the -- I would venture to say -- and see, it's not very much to it. Did we make money on the job. So he's checking to see that we made enough money on the job. Was the pick ticket verified. Purchase order, verification and completion. You know, so it's a very simple line item as --
Q. It's more on the administrative front?
A. That would be correct.
Q. So in terms of boots on the ground inspection of the work for Builders FirstSource,

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you're --
A. That would be me.
Q. -- the person assigned to that task?
A. Yes, sir.
Q. And then Builders FirstSource wasn't the general contractor on this project, were they?
A. No, sir.
Q. Colin Campbell was the general contractor.
A. That is correct.
Q. And then I think I heard you reference that Mr. Campbell had another partner. Who was that?
A. Jim Gallagher.
Q. And were Mr. Campbell and Mr. Gallagher on site?
A. One if not both were there every day.
Q. And would they also be going around and checking on the quality of the work?
A. Yes, sir.
Q. And if Mr. Gallagher or Mr. Campbell found anything to be lacking in any respect, would they bring it to your attention?
A. Absolutely.
Q. And they would ask Builders FirstSource

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to get it corrected or have their sub correct it?
A. They would ask me to get it corrected, Builders FirstSource, yes, sir.
Q. Now, what we've just looked at on this AppWright sheet with regard to window installation, even though this is for building 2900 relative to ECC, a similar process would occur for the windows installed in each building, correct?
A. Yes, sir.
Q. And you also have these same sort of checks and balances for framing installation on each building.
A. Yes, sir.
Q. Builders FirstSource is checking behind the work of its subcontractors to make sure that it's done right and that its customer is getting a good quality product, correct?
A. That is correct.
Q. And if the subcontractor doesn't do a good job and doesn't provide good quality product, you can withhold payment or backcharge them, correct?
A. That is correct.
Q. So with respect to WS Contractors, are

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you, as you sit here today -- and you said that you've reviewed documents and tested your recollection of the project. Do you recall any problems whatsoever with the work of WS Contractors at The Retreat project?
A. I do not recall any problems. With the exception of LG Construction in the fabrication of buildings 25 and 26, I didn't have any problems with anybody that performed work out at Charleston National.
Q. And I think you said L & G Construction, they were let go.
A. That is correct.
Q. And following the completion of the work, did Mr. Campbell or Mr. Gallagher ever report to you that they were having any problems at The Retreat project?
A. Not that I can recall.
Q. Prior to the initiation of this lawsuit that we're here about today, do you recall anybody at the homeowners association regime or anyone at any time ever bringing to your attention any problems at The Retreat project?
A. No, sir, I do not.
Q. The screenshots that we were just

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looking at there, those are screenshots of the AppWright program?
A. Yes, sir.
Q. And if a receipt indeed indicates that somebody else got paid, even though there may be a purchase order for one entity, if a receipt ultimately shows that another entity got paid to do the work, that would indicate that the purchase order was in error? The receipt controls; who got paid to do the work is the controlling document?
A. I would think that it would be, yes, sir.
Q. Can you tell us what you were looking at with respect to building 30 -- if I need to come back over there, I will. Let me see if I can find it. Just curious what you were looking at relative to building 30 that indicated to you that WS Contractors did the framing.
A. I would venture to say it was probably the AppWright program, or we had -- I had a thumb drive with all that information on it and was looking at it.
And I also pretty much recall WS framing that building. I can remember going up,

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checking out stuff. So, yeah, anytime I'm there, I'm working towards the post-walk.

And then the job closeout again is something that I may go and mark off as 25 percent, 50 percent, do it in stages, because I'm making partial payments to them. So when I make that final payment, I can mark it off as 100 percent. But that's typically the way it's done.

Q. And the -- with respect to these major milestones, like framing, window and door installations, that type of thing, you're checking on behalf of Builders FirstSource, right?

A. That's right.

Q. Mr. Campbell and Mr. Gallagher are checking on behalf of Campbell Construction.

A. Yes, sir.

Q. Mr. Parker is out there checking on behalf of Winston Carlyle, correct?

A. Periodically.

Q. Yeah, periodically. The building inspector is there checking as the code official to determine that the work complies with the building code.

A. Right.

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Q. And those inspections are happening along these major milestones, such as framing, window install, door install, that type of thing, to make sure the work gets done correctly.

A. That is correct.

Q. And I gather from your experience that you wound up being proud of the results of the work out there.

A. Sure.

Q. It was a good project without problems.

MR. LADY: Object to the form.

Q. Correct?

A. Well --

Q. As far as you knew.

A. Yes, sir.

Q. And until this lawsuit was filed, problems were not reported to Builders FirstSource about this project that you're aware of?

A. And as far as I'm aware of, there still are no problems that involve Builders FirstSource.

MR. FREEMAN: Okay. Thank you. I might have a follow-up or two, but I'm going to go ahead and pass you along. Thank you, sir.

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(A recess was taken.)

EXAMINATION

BY MR. ADAMS:

Q. All right. Mr. Cannon, my name is Chris Adams. I've got a couple questions. Won't be too long. I represent a client Soto & Vazquez. Are you familiar with them, that entity?

A. No, sir.

Q. So it's fair to say, Soto & Vazquez would not have been a direct sub of Builders FirstSource on this project?

A. That would be correct.

Q. In looking at your Exhibits 241 and 244, Builders FirstSource, you didn't have anything to do with building 31; is that correct?

A. That is correct.

Q. And based on these documents you had -- just so I have this right, building 23, you had WS doing the framing and the window installation, and then you had W -- you have ACC now doing the framing on 29, and ECC doing windows on 29, correct?

A. That's -- that is correct.

Q. To your knowledge, did WS -- did they self-perform work, or did they have different

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crews they subbed things out to?

A. I really could not answer that.

Q. So you didn't know one way or the other?

A. That is correct.

May I ask what your people did, what type of work?

Q. Yeah, I'll represent they did some framing. There's -- well, we believe it's just maybe building 31, which you wouldn't have been involved in.

So like Lucius Vazquez, does that name ring a bell?

A. No.

Q. So I know you didn't -- you said you didn't know of any particular subcontractors. Was there anything that precluded WS from using different crews or subcontractors to do their work?

A. I had nothing to do with building 31.

Q. Well, just any -- well, for example, building 30 or 23, you have WS down. If they used subcontractors to do any of that work, you have no idea?

A. No, sir.

Q. Regardless of who framed, say, building

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BFS at Retreat; is that right?
A. As I recall, yeah.
Q. So based on the evidence that we have as to what WS was paid to do on building 2900, can you think of anything that ECC could have actually done on building 2900?
A. Not really. In fact, I was not certain that ECC did until he presented me with that documentation.
Q. So at this point, do you think that ECC worked on 2900, WS worked on 2900, or are you just sort of confused?
A. No. I think I actually in my heart believe that Wilson's crew did the stuff at 2900.
MR. GRIMBALL: Well, then can we change that exhibit back?
MR. FREEMAN: You can mark it again and mark another one.
MR. LADY: You can just use the original one.
A. I would venture to say that I would probably be more comfortable with the evidence that's been provided to me today that I would put a slash on it and not line anybody or eliminate either one.

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Q. Well, how about this --
A. It's a four-unit building. Something could have happened. I do not recall. I don't think anything did. I felt like WS did it.
Q. Okay.
A. But he showed me that documentation that said ECC. And I said, well, yeah, I could have made an error.
Q. And what he showed you, that was POs?
A. I think it was receipts, was it not?
MR. FREEMAN: What are we talking about? Am I being sworn?
We were looking at the AppWright program as to --
THE WITNESS: Not receipts? Weren't there some receipts that you showed me?
MR. FREEMAN: Let's see.
MR. HUGHES: Ian, you showed him what were labeled purchase receipts.
What's the date on that one?
THE WITNESS: 11/8/12, same time frame.
Q. (BY MR. GRIMBALL) And I think what Mr. Freeman showed you was dated in October of '12.

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A. Yeah, seemed like it was October the 4th and October the 25th, something like that.
Q. Could it be that a payment was issued in error? You discussed how --
A. That could have happened had there been multiple POs created in error.
MR. HUGHES: Off the record.
(Off-the-record discussion.)
Q. So back on the record, Mr. Cannon. We went off the record to try and resolve this confusion in a more efficient manner. And based on our discussion, you had thought that ECC worked on building 2900 because of the AppWright; is that correct?
A. Yes, sir.
Q. And now that you are looking at a purchase receipt, your belief is that WS installed the windows and doors on building 2900?
A. That is correct, and that was my initial reason for having WS down there.
Q. General question. You know ECC, obviously?
A. Yeah. I've been working with Rod, David for a number of years.
Q. And Rodias [sic] is his first name. Did

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I say that correctly?
A. I just show know him as Rod. And if you ask Siri, it's Rod Assis.
Q. And have you got any complaints about ECC's work on this project or in general?
A. No, sir.
Q. How long -- is ECC still one of your subcontractors?
A. Oh, yeah.
Q. How long have you been working with ECC?
A. Heck, as long as I can remember.
Q. Do you recall having to call them back out to redo any of the work at --
A. No. I very seldom have to call them back on any project that they perform work on as well as most of my other installers, if not all of my installers. Occasionally, there will be something wrong.
And it's always -- not necessarily always their fault. They just made a poor decision in installing a window in an effort to complete a job that the framing was a little bit off, and they tried to fudge it as much as they could, but then the framing stopped it from getting it 100 percent square, level, and plumb.

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IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF ALAN CAMPBELL, P.E.

THE RETREAT AT CHARLESTON NATIONAL COUNTRY CLUB HOMEOWNERS ASSOCIATION, INC. AND THE RETREAT AT CHARLESTON NATIONAL COUNTRY CLUB HORIZONTAL PROPERTY REGIME,

Plaintiffs,

vs. CASE NO. 2016-CP-10-3783

WINSTON CARLYLE CHARLESTON NATIONAL, LLC; COLIN R. CAMPBELL CONSTRUCTION, INC.; COLIN CAMPBELL, INDIVIDUALLY, BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC; AMERICO ROOFING CONCEPTS, INC.; DVS, INC.; ADVANCED BUILDING CONNECTION, LLC; GUY C. LEE BUILDING MATERIALS, LLC; WS CONTRACTORS, LLC; DINO SCHWARTZ, INDIVIDUALLY,

Defendants.

DEPONENT: ALAN CAMPBELL, P.E.

DATE: AUGUST 7, 2019

TIME: 10:06 A.M.

LOCATION: MULLEN WYLIE
CHARLESTON, SC

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prompted that Series 1500 discussion.
Q. Did you get any similar documentation for the 1000?
A. I have not seen it. I mean, we have the -- the Ply Gem documents that we looked at and the Twin Seal documents.
Q. And do you know whether these installation instructions are the same regardless of the type of window for Ply Gem windows?
A. I don't know, but I think -- I think what's significant here is that these are addressed as a generic document and, you know, modifications may be required based on the project and locations.
Q. But if you were the installer of the window, wouldn't you be following the manufacturer's instructions?
A. I may follow them to a certain extent, but if something needed to be done differently, then I would.
Q. Right, but you wouldn't on your own, if you're the installer of a window, do anything but do it the way the window manufacturer told you to do it, would you?
A. I mean if I read note No. 4 I would. I mean, it says the installation details described

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herein are generic and may not reflect actual conditions for specific site conditions.
Q. Right. So if you're the window installer, you would just ignore the window manufacturer's instructions, do it however you want to because it's a generic instruction?
A. I don't think anybody's ignored them, and I would not ignore them, but if something -- and I know that BFS has very stringent and specific installation instructions that their guys follow.
Q. How do you know that?
A. Because we've had that discussion.
Q. Okay. Who had that discussion? Where did that come from?
A. From Terry Roseman. I mean, Terry Roseman's very active with the field guys, and I think they have a very detailed procedure, and they specify it, and their guys put together their bids accordingly, and they pay them to do it in accordance with those instructions.
Q. Because when I deposed him, he basically said that he had very little knowledge, in fact he said no knowledge of this project because he was never on it, so he didn't know who did what or how they did it and that I should depend on Bill

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Crabtree or Rooster Cannon.
A. And that may be the case, but from talking to those guys in the past, when they work with their field subs, they provide very specific instructions on how the work is to be done. And it could be that Terry Roseman didn't have the controlling authority over this project, but in other projects he's very detailed. So maybe Bill -- Bill Crabtree is the guy that provided those instructions.
Q. Well, if -- I haven't deposed him yet, but if Mr. Cannon said he would have expected for their subs to follow the manufacturer's installation instructions for any materials that they were installing --
MR. HUGHES: Object to the form.
Q. -- on a building, would you think that they should be following the Ply Gem installation instructions?
A. Well, I mean, some of these instructions they're not even going to be -- they're not even going to be able to understand. I imagine probably 99 percent of those guys in the field have no idea what a specific gravity of .55 is. Their requirements are to use No. 8 wood screws, but

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there's nothing wrong with using nails as long as the nails give you the proper withdrawal capacity and the right spacing and the right location.
Q. But the sub's not going to know any of that, so if he sees an installation instruction tells him to use wood screws and he doesn't do it, that's improper.
MR. HUGHES: Object to the form.
THE WITNESS: That's not necessarily improper.
Q. Why wouldn't it be?
A. Because it's very common -- you very seldom see carpenters installing windows with screws. They almost always install with nails.
Q. So --
A. They go out there with a nail gun, and they pop in the nails. It's just so much more economical and faster.
Q. And it's not consistent with what Ply Gem is telling them to do.
MR. HUGHES: Object to form.
THE WITNESS: And this is also not a governing proprietary document. This is a very -- it's a generic document, and if they still meet the industry standards meeting the structural capacity,

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IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF ROD ASSIS,
as 30(b)(6) representative of
ECC CONTRACTING

JULY 16, 2019

THE RETREAT AT CHARLESTON NATIONAL COUNTRY CLUB HOMEOWNERS ASSOCIATION INC. AND THE RETREAT AT CHARLESTON NATIONAL COUNTRY CLUB HORIZONTAL PROPERTY REGIME,

Plaintiffs,

vs. CASE NO. 2016-CP-10-3783

WINSTON CARLYLE CHARLESTON NATIONAL, LLC; COLIN R. CAMPBELL CONSTRUCTION, INC.; and COLIN CAMPBELL, INDIVIDUALLY, BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC; AMERICO ROOFING CONCEPTS, INC.; DVS, INC.; ADVANCED BUILDING CONNECTION, LLC; GUY C. LEE BUILDING MATERIALS, LLC; WS CONTRACTORS, LLC; DINO SCHWARTZ, INDIVIDUALLY,

Defendants.

TIME: 10:03 AM

LOCATION: RICHARDSON, PLOWDEN & ROBINSON
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A. I don't know. I don't know. I sincerely do not know. I might have started before under East Coast Carpentry. I can't remember.
Q. But initially, you were doing interior trim, and then somebody offered you --
A. Yeah. Incorporated -- yeah, Bill Crabtree from Builders FirstSource offered me the window install, and that's when I started doing that.
Q. Up until that point, had you-all -- ECC Contracting or East Coast Carpentry been doing work for Builders FirstSource?
A. Yes.
Q. And up until that point of being offered the window install, all you were doing for them was interior trim work?
A. I believe so. At the beginning, all we did was interior trim.
Q. And the first thing they offered outside of interior trim was to install some windows and doors?
A. Yes, sir.
Q. Do you know why -- how did the conversation come up about offering you that?

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Had you shown some interest in doing it, or did they --
A. No, I didn't really think about it. He approached me saying that they were starting to do that, to install, and they asked me if I was interested, and I said yes.
Q. So you had not installed windows and doors prior to that?
A. No.
Q. Did you go to any kind of training with Builders FirstSource or the manufacturer or anybody else about how to do it?
A. No.
Q. How did you -- who taught you how to do it, to install windows and doors?
A. The day we started, I believe we had a little meeting, and they presented ways of doing it.
Q. Who was at that meeting?
A. I couldn't tell you.
Q. So you can't remember who would have instructed you at Builders FirstSource?
A. No.
Q. But that was a meeting where somebody from Builders FirstSource attempted to sort of

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take you through --
A. As far as I --
Q. Let me finish, because she can't do both at the same time.
At that meeting, it was employees of Builders FirstSource that tried to sort of train you on how to install windows and doors?
A. As far as I remember, yes.
Q. You don't remember what project that was on?
A. No.
Q. Was it before your work at The Retreat? In other words, had you installed any windows and doors before?
A. Oh, yes.
Q. And do you recall how many projects you had installed windows and doors before The Retreat?
A. No.
Q. Had you been doing it for a long time prior to The Retreat?
A. Yes, a long time.
Q. Can you give me any approximation? A couple years or 10 years or 20 years?
A. No.

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Q. You can't give me one of those?
A. No.
Q. You don't know whether you have been installing windows and doors between two years and 20 years when you did the work at The Retreat?
A. I don't want to tell you a name that might compromise me -- a number that might compromise me because I really do not recall.
Q. Okay.
A. It's been a few years. That's all I can say.
Q. But it was clearly after 2007? That's when East Coast -- ECC Contracting --
A. I was installing windows before 2007.
Q. Would it have been after 2004 when East Coast Carpentry was started?
A. Probably.
Q. Did you start -- install windows and doors for anybody other than Builders FirstSource?
A. Yes.
Q. Who else?
A. 84 Lumber, Stock Builder Supply. That was about it. That's it.

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Q. But I think you said if you -- in general terms, if you were hired to do the windows, you would have also installed whatever doors were on the building?
A. If they were on site and the rough openings were framed, right.
Q. Have anything to do with installing the siding or any of the trim on the exterior of the building?
A. No, sir.
Q. Once you were -- you did a certain amount of work or -- how did you get paid? What was the process by which ECC would get paid at The Retreat?
A. I would get a fax with a list of the projects that I had completed on the past week or past weeks, and that money would be deposited into my account.
Q. And who sent you that fax? Where did it come from?
A. Builders FirstSource in Dallas.
Q. From Dallas, Texas?
A. Yes, sir.
Q. So there was some internal process at BFS that tracked how much work ECC was doing?

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A. Yes, sir.
Q. And then every week or two, they would send you a document by fax that listed what work they thought you were entitled to be paid for.
A. Yes.
Q. And then you had a direct deposit for that.
A. Yes.
Q. And if you disagreed that you thought there were projects that weren't listed that should have been, what would you do? How would you deal with that situation?
A. You never got paid for everything you did. You always had stuff -- projects that were unpaid. You always had a balance with them, so --
Q. Who initially would verify that you had done some work for BFS that needed to go on that sheet of paper? Was that Mr. Cannon or --
A. I believe it was Mr. Cannon.
Q. Is that -- was there some process by which he would come to you or you would go to him to look at the work to make sure that you-all were in agreement that the windows were installed correctly or whatever you had done was completed

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to his satisfaction so that he could, in turn, put you in line to get paid?
A. We had situations that, when he showed up, I was at the job site, and so we both post-walked the project to make sure everything was up to his standards. But the majority of the time, he post-walks it and e-mails or gives us a call, let us know if there are any issues, that he wants us to go back.
Q. If there was some work that ECC had done that it didn't look like you were getting paid for or hadn't been recognized, who would the point person have been at BFS for you to go talk to?
A. Normally, Bill Crabtree at that time, if I'm not mistaken. I would e-mail him or just bring him old invoices: Here it is, help me out, please, get those through.
Q. And is that how you -- did you generate invoices for the work you did for BFS?
A. Yes.
Q. So, initially, when you thought you were -- you had done some work that you needed to be paid for, that ECC would create some kind of invoice to give to BFS to be put in line to be

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paid for that work?
A. Exactly.
Q. Who did -- where did that go to? Mr. Crabtree or --
A. One of the girls that handled the payment processing, sometimes Rooster Cannon, and whoever would be the project manager from Builders FirstSource.
Q. Did you go to an office, or is that something that you did in the field or --
A. I would fax, or I would bring it to the office.
Q. And where was that? Was that the --
A. In Goose Creek.
Q. The Goose Creek BFS?
A. Yes.
Q. Builders FirstSource store?
A. Yes.
Q. And was that where Mr. Crabtree was located?
A. Yes.
Q. Does Builders FirstSource create any kind of document -- short of this final tally, this fax, as work was -- you were hired to do work, did they create individual purchase orders

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these contracts and these limited number of purchase orders. Do you know where they came from?
A. This came from Builders FirstSource.
Q. I know originally, but did you not produce some documents in this case?
A. No, sir.
MR. LADY: Off the record.
(Off-the-record discussion.)
Q. The first -- what we marked as 248 is a purchase order from Builders FirstSource, and the date all the way at the left is February 1st, 2012, and it's got, Frame labor, unit 2001, and it's got ECC Contracting. It's only for $375. Do you think this may be sort of one of those examples of Mr. Cannon asking you to do something on a building that was done by somebody else?
A. Yes, sir.
Q. Because this clearly isn't for a full framing job. That would be in the 10s of thousands; you agree with me?
A. Agree.
Q. Do you have any recollection about what this was for?
A. No, sir.

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(Exhibit No. 249 was marked for identification.)
Q. Exhibit 249 --
A. And can I just say something about this before we move on?
Q. Absolutely.
A. The fact that it says frame here doesn't necessarily mean something related to framing was done. The person that requests the job to be done is one, and the person that types these is somebody else. He can say frame labor, he can say interior trim labor, he can say window and door labor. He can say anything in it.
And we had situations that -- this doesn't mean a whole lot in my world. Doesn't mean that I did any framing.
Q. The description that's in the purchase order maybe incryptic and not necessarily as detailed and specific about what you actually did?
A. Right. Whoever called -- Drew Stritch, I guess, created this -- I mean, I see his name here -- might have said, Go ahead and create a $375 purchase order to ECC Contracting for X and Y.

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That person might have sat on it for a day or two and then created this purchase order, couldn't think of what it was, you know, at the moment he was creating it, typing it in. He could have named framing. He could have named interior trim. Again, it does not necessarily mean that I had anything to do with the framing.
Q. I hear what you're saying. But you agree with me, it is an attempt by Builders FirstSource to give a description of the work you're being paid for?
A. Any work.
Q. Okay. 249, this is a purchase order dated April 16th, 2012, and it has building A1, Charleston National, and it has single -- 26 single window labor, six double window, two single door. Is that the kind of purchase order you were talking about that would be generated for a specific building and a specific scope of work?
A. Yes, sir.
Q. And I don't know what -- building A1 I think is a type of building. Is there any way that you know from looking -- I know this isn't your document -- to determine what building this

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is for?
A. No.
Q. You agree with me, building A1 is just one of the types of buildings that was being built at The Retreat?
A. I don't know.
Q. You don't even know whether this was a two-unit or a five-unit or what it is?
A. Have no idea, sir.
Q. But it does look like your -- this is for an installation of windows, purchase order?
A. Yes.
(Exhibit No. 250 was marked for identification.)
Q. Exhibit 250, and this is similarly another purchase order. It's dated same date, April 16th, 2012, and this time for building A2, and it's also got a -- it's got, Single window labor, double -- drop door, I think -- is "DR" door? Do you think that's right?
A. Yes, sir.
Q. And then single door labor and slider labor. And this again is a purchase order for that description of work on a specific building.
A. Yes.

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July 3, 2019

To All Counsel of Record

Re: The Retreat at Charleston National Country Club Home Owners Association, Inc., et al vs. Winston Carlyle Charleston National, LLC, Builders FirstSource-Southeast Group, LLC, etc.
Civil Action No.: 2016-CP-10-03783
Our File No.: 11981 SPH

Dear Counsel:

I enclose herewith, in service upon you, a copy of the Builders FirstSource "Supplemental Disclosure and Designation of Experts".

Should you have any question or comment, please feel free to contact me.

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.

s/Stephen P. Hughes

Stephen P. Hughes

SPH/mi

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CIVIL ACTION NO: 2016-CP-10-03783

The Retheat at Charleston National Country Club Home Owners Association, Inc. and The Retreat at Charleston National Country Club Horizontal Property Regime, Plaintiffs, vs. Winston Carlyle Charleston National, LLC; Colin R. Campbell Construction, Inc.; Colin Campbell, individually; Builders FirstSource-Southeast Group, LLC; Builders FirstSource, Inc.; Americo Roofing Concepts, Inc.; DVS, Inc.; Advanced Building Connection, LLC; Guy C., Lee Building Materials, LLC; WS Contractors, LLC; Dino Schwartz, Individually; Charleston Exteriors, LLC; ECC Contracting LLC; Hurley Services, LLC; McDaniel Construction Co., LLC; AC Construction Corp.; AC Construction Inc.; L&G Construction Group, LLC; Liollio Architecture, JC Contractors, LLC; Soto & Vasquez Construction LLC; Costa De Oliveria Contruction, LLC; and Solesmar Jesus De Oliveria, Defendants.	)	Supplemental Disclosure and Designation of Experts by Defendants Builders FirstSource-Southeast Group, LLC , and Builders FirstSource Inc.
Builders FirstSource-Southeast Group, LLC, Third Party Plaintiff, vs. WS Contractors; ECC Contracting, LLC; Hurley Services, LLC; McDaniel	)	

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Construction Co., LLC; AC Construction Corp.; and L&G Construction Group, LLC Pohlman Quality Contractors, and Pohlman Quality Exteriors, Inc.

Third Party Defendants.

TO: All Counsel of Record

The defendants, Builders FirstSource-Southeast Group, LLC, and Builders FirstSource, Inc., by and through their undersigned counsel, hereby submit their supplemental disclosure and designation of the following as expert witness, who may called to testify during any trial of the captioned matter:

1. Alan O. Campbell, PE, RRC, and/or other personnel of Applied Building Sciences Inc,
   2308 Crosgrove Avenue, North Charleston SC 29405

Mr. Campbell and/or other personnel of Applied Building Sciences Inc. are expected to offer testimony concerning: findings upon inspection, evaluation, and/or analyses of the subject structures and/or their component materials; alleged deficiencies in design, development, construction, and/or component materials; deficiencies in maintenance and/or repair; appropriate scopes of remediation; costs potentially associated with any appropriate remediation efforts; attribution of fault as to the aforementioned matters; rebuttal of certain opinions, and bases allegedly supporting the same, proffered by plaintiffs' designated experts, including Gary Freeman, AIA, and Justin McCormick, including but not limited to opinions concerning claimed damages and/or defects in construction and/or component materials, purported costs, necessary scope or scopes of remediation, and estimated costs thereof.

The opinions to be offered by Mr. Campbell are inclusive of the following:

1. Multiple opinions have been provided by the plaintiff's expert, Gary Freeman, through his written report and deposition testimony. Many of these opinions are either incorrect, unsubstantiated, or do not apply to the work performed by BFS.

2. It has been alleged that the windows have been installed in a defective manner and the method of installation does not comply with industry standards and applicable building codes. Mr. Freeman has not performed calculations to determine the adequacy of the window installation and he has not discussed the method of installation with the window

manufacturer. The installation of the windows using nails meets the intent of the applicable building code and satisfies the manufacturer's installation requirements.

3. Engineering calculations revealed that in most circumstances the method of installation of the windows meets the applicable building code requirements for windload and fastener withdrawal.

4. In those circumstances where the window installation may have minor deficiencies, the corrective measures should be relatively simple and economical. The windows can be repaired by removing the trim, installing additional fasteners into the nailing fins, and re-installing the self-adhered membrane and trim to match existing. Removal and replacement of the windows or removal of the siding is not required.

5. Mr. Freeman has alleged that the windows do not meet the required design pressure (DP) rating. The DP rating of the windows was certified by the general contractor and also approved by the Town of Mt. Pleasant with a DP rating of 50. Photographs provided by Liollio Architects (Liollio) also show windows with labels from the manufacturer that indicate a DP rating of 50 or greater.

6. Mr. Freeman has alleged deficiencies in the framing. These conditions were not observed and to the extent they do exist, they are minimal.

7. Mr. Freeman has alleged the slope of the deck framing for the waterproof decks is inadequate. During the course of my investigation I measured the deck slope to be 1/8 inch per foot or greater as indicated by the drawings.

8. Mr. Freeman has alleged the weather resistive barrier may not have been properly installed including the absence of the tape or button cap fasteners. Button cap fasteners serve the purpose of only temporarily securing the WRB until the siding or cladding is installed. I did observe that the WRB was not continuous on all the knee walls. Installation deficiencies related to the WRB have caused only minor damage to the sheathing that can be easily repaired. Additional alleged deficiencies such as the absence of tape on the laps would be inconsequential.

9. The seal failure within the insulated glass panel of a single sash is a warranty issue and not a construction or installation defect.

10. Mr. Freeman identified deficiencies related to installation of the vinyl rail system. In those locations where excessive spacing of a baluster may exist, it can be easily repaired by adding additional balusters as required to correct the deficiencies. If grab rails for the stairs are missing they can be easily added.

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11. Mr. Freeman has alleged that the exterior stair violates requirements for uniformity of rise and run. These conditions cannot be verified due to the dimensional instability of the wood framing due to expansion, shrinkage, cracking, settlement, and related variables.

12. Damage to the French doors was only observed at the location previously identified by Mr. Freeman. Other door locations were observed to have no visible damage. The exposed sheathing was not deteriorated, and the locking pins did not appear to penetrate the flashing. Further investigation to verify the condition of the French doors will be performed in the near future.

13. The opinions provided by Mr. Freeman that are related to work performed by BFS are extreme and primarily unsupported. There is also no evidence that these allegations represent systemic conditions. Where certain defects do exist they are limited, can be corrected in a cost efficient manner, and will not require wholesale removal and replacement of building components.

14. Mr. Freeman has addressed additional deficiencies related to various areas of work not performed by BFS. To the extent that damages may have occurred as a result of water intrusion through these building or cladding components, it is the result of work performed by other trades not related to BFS. Some of these conditions are listed below:

    a. Roofing
    b. Vinyl siding
    c. Kick-out flashing
    d. Waterproofing
    e. Deck flashing
    f. Sealants
    g. Trim deficiencies
    h. Screen porches

The opinions of Mr. Campbell are based upon information available at this time. Mr. Campbell has not had an opportunity to review transcripts of the comprehensive deposition testimony offered by Mr. Freeman, which was completed on June 25, 2019, or to review the exhibits which accompanied such deposition transcripts. Moreover, Mr. Campbell has not yet had an opportunity to review the reports or the disclosures of the experts designated by the remaining parties to the action. The investigation, discovery, and evaluation by Mr. Campbell in this action are ongoing, and Mr. Campbell, and the defendants, Builders FirstSource-Southeast Group, LLC and Builders FirstSource Inc., hereby reserve the right to supplement, revise, and/or amend any and/or all findings, opinions, and supporting bases offered by Mr. Campbell, should

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additional information come available which may effect his findings, opinions and supportive bases.

2. Leith Webb
Beaufort Construction Company 2734 Depot Road, Beaufort, South Carolina 29902

Mr. Webb and/or other personnel of Beaufort Construction Company are expected to offer testimony concerning:

> Anticipated costs for implementation of repairs at the subject complex, in accordance with the scope and/or scopes of repair as developed by Alan Campbell and/or other personnel of Applied Building Sciences; anticipated costs for implementation of repairs at the subject complex in accordance with the scope and/or scopes or repairs as have been or may be developed on behalf of the plaintiff and/or any other party to the instant litigation.

Mr. Webb has not yet had an opportunity to review any scope and/or scopes of repair as may be developed by Alan Campbell on behalf of the Builders FirstSource entities, or any such scope or scopes as may be developed on behalf of the remaining defendants to this litigation, as any such scope or scopes have not yet been completed or provided. Additionally, Mr. Webb has not yet had an opportunity to review the reports or disclosures of experts for the remaining respective parties to this action. Mr. Webb's investigation, discovery, and evaluation in this action are ongoing, and Mr. Webb reserves the right to supplement and/or amend his findings, opinions, and supporting bases.

It is expected that Mr. Webb, and/or other personnel of Beaufort Construction Company, will rely upon their knowledge, education, skill, and training, their findings upon inspection and/or inspections of the subject structures and/or component materials thereof, review of relevant documents and/or other materials, as well as the personnel and professional experience.

These defendants further reserve the right to designate and/or utilize as an expert witness, or as expert witness, any persons designated and/or otherwise identified in the designations or discovery responses of any other party to the instant action, or otherwise identified during the course of discovery, or who may be qualified, by background, training, education, and/or experience, to offer testimony as an expert.

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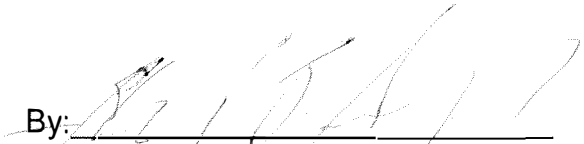
HOWELL, GIBSON & HUGHES, P.A.



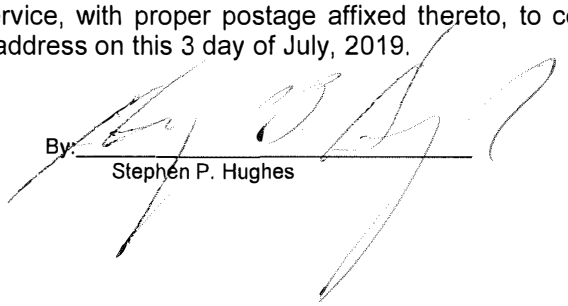
By: _____
Stephen P. Hughes
Post Office Box 40
Beaufort, SC 29901-0040
(843) 522-2400
Attorney for

Beaufort, South Carolina

July 3, 2019

CERTIFICATE OF SERVICE

I certify that I served the foregoing upon all counsel of record, in this proceeding, via electronic mail, and/or via United States Postal Service, with proper postage affixed thereto, to counsels' last known email address and/or mailing address on this 3 day of July, 2019.



By: _____
Stephen P. Hughes

ELECTRONICALLY FILED - 2020 Jan 22 1:14 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003783

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No.: 2016-CP-10-03783
The Retreat at Charleston National Country Club Home Owners Association, Inc. and The Retreat at Charleston National Country Club Horizontal Property Regime, Plaintiffs, vs. Builders FirstSource-Southeast Group, LLC; et al., Defendants.	)	**DEFENDANT WS CONTRACTORS, LLC'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT AGAINST THE CLAIMS OF BUILDERS FIRST SOURCE-SOUTHEAST GROUP, LLC**
Builders FirstSource-Southeast Group, LLC, Third-Party Plaintiff, v. Palmetto Trim and Renovations, LLC, et. al., Third-Party Defendants.	)	

TO: STEPHEN P. HUGHES, ESQ. AND THE LAW FIRM OF HOWELL, GIBSON & HUGHES, PA, COUNSEL OF RECORD FOR DEFENDANT BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC

PLEASE TAKE NOTICE that Defendant WS Contractors, LLC ("WS Contractors"), by and through its undersigned counsel, will move before this Honorable Court, ten (10) days after the service of this notice of motion and motion or as soon thereafter as counsel may be heard, for an order granting summary judgment in favor of WS Contractors, LLC and against Builders FirstSource-Southeast Group, LLC (hereafter "BFS") pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. The grounds for this Motion are as follows:

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1) There exists no genuine issue as to any material fact and WS Contractors is entitled to judgment dismissing all cross-claims against it as a matter of law;

2) BFS's cross-claims for breach of contract, breach of express and implied warranty, and negligence are "merely disguised ... claims for equitable indemnity" and fail as a matter of law. *See Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders FirstSource-Se. Grp.*, 413 S.C. 630, 634, (Ct. App. 2015);

3) BFS's cross-claims for contractual indemnity are based on contractual provisions that are neither clear nor unequivocal, are against public policy and the laws of South Carolina, and, thus, fail as a matter of law. See *Concord and Cumberland HPR v. Concord and Cumberland, LLC*, 2018 WL 3748616 (S.C. Ct. App. 2018); and

4) BFS's cross-claims are barred by the doctrine of collateral estoppel.

In support of this motion, Defendant WS Contractors craves reference to Builders FirstSource-Southeast Group, LLC Master Subcontractor Agreement dated September 24, 2012, and Builders FirstSource-Southeast Group, LLC Master Subcontractor Agreement dated December 31, 2014 (hereto attached as Exhibit A and Exhibit B, respectively), its memorandum of law in support of this motion, pertinent deposition testimony and evidence presented at or before the hearing, the pleadings on file with the Court, and applicable South Carolina law.

Respectfully submitted,

s/ Ian W. Freeman
Ian W. Freeman (SC Bar #72736)
Direct: 843.727.2242
E-mail: Freeman@wgfllaw.com

Jennifer S. Ivey (SC Bar #102533)
Direct: 843.727.2216
Email: Ivey@wgfllaw.com

WALKER GRESSETTE FREEMAN & LINTON, LLC
Mailing: P.O. Box 22167, Charleston, SC 29413
Office: 66 Hasell St., Charleston, SC 29401
Telephone: 843.227.2200

ATTORNEYS FOR WS CONTRACTORS, LLC

Charleston, South Carolina
January 22, 2020

ELECTRONICALLY FILED - 2020 Jan 22 1:14 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003783

Builders FirstSource

BUILDERS FIRSTSOURCE – SOUTHEAST GROUP, LLC
MASTER SUBCONTRACTOR AGREEMENT

THIS MASTER SUBCONTRACTOR AGREEMENT (this "Agreement") is entered into effective as of December 31, 2014 between **Builders FirstSource – Southeast Group, LLC**, a Delaware limited liability company, address: 2001 Bryan Street, Suite 1600, Dallas, TX 75201, telephone: (843) 480 6262, fax: _____, Contact: Darren Nichols, e-mail: darren.nichols@bldr.com ("**Contractor**"), and WS contractors, address: 2010 Bearclaw dr Goose creek SC 29445, telephone: 8434806262, fax: ---, Contact: Wilson Sales, e-mail: WS contractors LLC@hotmail.com ("**Subcontractor**").

SECTION 1. Introduction.

a. **Work.** This Agreement contains the basic terms and conditions under which Subcontractor agrees to provide materials and/or to perform services (the "**Work**") from time to time for Contractor on any project (the "**Project**"). TIME IS OF THE ESSENCE. It will apply to and govern all Work requested by Contractor from Subcontractor at any time following the date of this Agreement, unless other terms and conditions are specifically agreed to in writing by Contractor with respect to particular items of Work or until this Agreement is terminated as hereinafter provided. In accordance with the terms and conditions contained in this Agreement, Subcontractor will perform and finish in a good and workmanlike manner, and will furnish all required materials, labor, equipment, supplies and tools for, the Work described from time to time for Contractor on any Project. Projects may or may not be owned or controlled by Contractor's customer (the "**Owner**"). The Work will be performed in accordance with plans, specifications, drawings and schedules for the Work, and any supplemental terms and conditions to this Agreement, all of which are, or will be, on file at the office of the Contractor (the "**Contract Documents**") and incorporated into the Agreement by reference as if fully set forth. Contractor will have the right at any time to supplement the plans and specifications for the Work with additional or replacement drawings and schedules or other documents and upon so doing such drawings and schedules will immediately become part of the Contract Documents. The Contract Documents, including any time schedules, may be amended and/or supplemented from time to time by giving Subcontractor written notice thereof. Subcontractor's only remedy in the event an amendment or supplement to the Contractor Documents materially increases the cost or difficulty of performance by the Subcontractor is to terminate this Agreement by written notice to Contractor within 24 hours after Contractor delivers such amendment or supplement to Subcontractor.

b. **Work Orders.** It is contemplated under this Agreement that Subcontractor may perform Work on multiple projects at multiple locations. The description, completion date, special conditions, and cost of Work to be performed on a Project will be set forth in the written purchase order or work order (together, "**Work Order**") delivered by Contractor to Subcontractor relating to that Project. Such Work Order(s)

WS
Subcontractor

Contractor

are incorporated herein by reference as if fully set forth. The Work described in Work Orders must be performed under the terms of this Agreement.

e. **Term.** This Agreement shall be for an initial term of three (3) years. Upon the expiration of such initial term or any renewal term, this Agreement shall automatically renew for subsequent one (1) year periods unless either party gives written notice to the other party that it is electing to terminate this Agreement at the end of the then current term. Such written notice of intent to terminate must be given at least sixty (60), but not more than one hundred twenty (120), days prior to the end of the then current term. The provisions of Sections 3, 4, and 5 shall survive termination of this Agreement. If Contractor terminates this Agreement, Contractor will pay to Subcontractor sums due for the Work performed to the date of termination, as provided in Section 8.

d. **Notice.** Any notice or communication hereunder or in any agreement entered into in connection with the transactions contemplated hereby must be in writing and given by depositing the same in the United States mail, addressed to the party to be notified, postage prepaid, and registered or certified with return receipt requested, or by delivering the same in person or by facsimile transmission. Such notice shall be deemed received on the date on which it is hand-delivered or received by facsimile transmission or on the third business day following the date on which it is so mailed. For purposes of notice, the addresses of the parties shall be as set forth on the front page of this Agreement. Any party may change its address for notice by written notice given to the other parties in accordance with this Section.

SECTION 2. Materials and Workmanship.
Subcontractor agrees to commence Work on Projects upon request by Contractor. Subcontractor agrees to provide all labor, services, equipment, and tools necessary to complete the Work.

a. **Scope of Work; Knowledge of Site; Plans and Specifications.** Subcontractor shall take all action necessary to familiarize itself and its employees, agents, and subcontractors with the scope and requirements of the Work, the existing site conditions, and any work to be performed by others that may affect the performance of the Work. Subcontractor shall confirm that the Contract Documents are correct and immediately notify Contractor of any errors and/or omissions.

b. **Change Orders.** Contractor may make any changes to the nature or scope of the Work; provided, however, that any changes resulting in a change in price must be agreed to in writing by Subcontractor and Contractor prior to the Work being performed. Subcontractor shall be notified of changes by written change order. Subcontractor shall not perform any extra work without written authorization by Contractor.

c. **Protection of Work.** Subcontractor shall bear all risk of loss or damage to the Work resulting from any cause whatsoever until Subcontractor has completed its Work on the Project and such work has been accepted by Contractor and Owner. Subcontractor shall at all times, and at its expense, protect all of its labor, materials (regardless of who supplied such materials), supplies, tools, and equipment (and those of its employees, agents, and subcontractors) against any damage, injury, destruction, theft, or loss. Subcontractor shall, at its expense, promptly repair or replace damage to the Work or damage to any other components of the Project resulting from the activities of Subcontractor or its employees, agents, or subcontractors.

WPS
Subcontractor

Contractor

BFS 003017

d. Safety and Environmental.

(1) Compliance with Laws. Subcontractor will carefully check the drawings, plans, and specifications for conformity with all local, state, and Federal laws, codes, rules, and regulations bearing on the Work (the "Law") before commencing the Work. Unless Contractor or Owner otherwise agrees in writing, before commencement of the Work Subcontractor will obtain at its sole cost and expense all permits necessary for the Work. Subcontractor will comply with product manufacturer's specifications and will give all notices and comply with all Law bearing on the Work, including by way of enumerations and not limitation, safety, health, and environmental rules and regulations established by or pursuant to Federal, state, and local safety and environmental laws. Subcontractor at all times will furnish to its agents and employees a safe place of employment. If Subcontractor observes any violation of Law, it will immediately report such violation to Contractor in writing. Subcontractor will be responsible for any fines, charges, in-kind training or supplies, or penalties related to the Work, including, without limitation, fines, charges, and/or penalties related to the operation of equipment, the Subcontractor's performance of the Work, the handling of materials, or any other function that is in violation of the Law. All workmanship and materials will conform to Law and, if the Subcontractor performs or permits the performance of any Work not in compliance with Law, it will immediately cause such Work to be redone and bear all costs in connection therewith. The Work, as performed, will meet with the approval of, and pass any inspection of, any governmental authority having jurisdiction thereof. If the Work is being constructed under specifications of the Federal Housing Administration or the Veterans Administration, the Work will meet the requirements of these governmental agencies. No Work will be deemed complete until final inspection is made and approval is received from every governmental authority whose approval is required.

(2) The Occupational Safety and Health Administration ("OSHA") and the Environmental Protection Agency ("EPA"). Regulations have been promulgated by OSHA and EPA ("Regulations") that require all contractors and subcontractors to exchange Material Safety Data Sheets ("MSDS") and share information about precautionary measures necessary to protect all workers on a building project.

Subcontractor agrees as follows:

(A) Subcontractor will fully comply with the Regulations and will cooperate with Contractor and/or Owner and all subcontractors of Owner in order to assure compliance with the Regulations.

(B) Subcontractor hereby accepts full responsibility and liability for the training of its employees as to all precautionary measures necessary to protect such employees during both routine and emergency situations on the Project.

(C) TO THE FULLEST EXTENT PERMITTED BY LAW, SUBCONTRACTOR WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM ALL CLAIMS, DAMAGES, LIABILITIES, AND CAUSES OF ACTION THAT ARISE FROM THE FAILURE OF SUBCONTRACTOR TO COMPLY

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WITH THE REGULATIONS.

(D) Subcontractor will assist Contractor in complying with the Regulations.

(E) Subcontractor will not use any chemicals in its performance of the Work for Contractor or incorporate any chemicals into materials or products supplied to Contractor or to the Project unless Subcontractor has given Contractor prior written notice of the existence and the possible exposure to such chemical, has delivered an MSDS to Contractor, and has received a written consent of Contractor to use such chemicals.

(3) **Subcontractor's Safety Program.** Subcontractor's safety program must specifically address, among other safety issues, scaffolding, fall hazards, trenching, and shoring, as may be applicable. For "hard hat" jobs, approved safety helmets and hard soled shoes must be worn at the Project at all times. Safety glasses must be worn when power equipment is used. Subcontractor shall erect and maintain all reasonable safeguards for safety and protection, including, but not limited to, necessary signage, protective barriers, and other warnings against hazards. Subcontractor shall furnish all flagmen, barricades, and other items required for public safety and right-of-way maintenance required by the installation of the Work. Safety vests shall be worn in the public right-of-way.

(4) **Default.** If Subcontractor fails to immediately comply with safety and environmental requirements after verbal or written notice from Contractor, Contractor may correct the violation and deduct the cost from any Partial Payment or final payment in addition to all other remedies available to Contractor, including, without limitation, consequential damages. Subcontractor shall pay any fines assessed to Owner or Contractor due to the acts, omissions, or negligence of Subcontractor. If construction at the Project in whole or in part is delayed or halted by any governmental authority as a result of Subcontractor's Work, Subcontractor shall pay to Contractor as liquidated damages, and not as a penalty, the amount of $200 per hour for a minimum ten (10) hour day until construction at the Project can be safely resumed.

SECTION 3. Warranty.
In addition to any other warranty or guarantee expressly made by Subcontractor or implied by Law, Subcontractor unconditionally warrants and guarantees the Work will conform to any specifications provided by Contractor and comply with all Law and Subcontractor guarantees the Work against defects in design, workmanship, and materials for the benefit of Contractor and its successors and assigns, Owner, as well as the ultimate owner of any structure into which the Work is incorporated. This guarantee will commence upon the Subcontractor's completion of the Work and will continue for a minimum of (a) three (3) years for all Work except, (b) ten (10) years for all Work consisting of any structural applications of any home, building, or other structure. Notwithstanding the foregoing, this warranty will continue until such time as all express and implied warranties granted or deemed granted by Contractor and all other obligations of Contractor related to the Work are terminated or expired as a matter of Law. If demand is made upon Subcontractor to perform under this warranty, Subcontractor at its sole cost and expense will expeditiously repair or replace, at Contractor's sole option, any defective or nonconforming Work and indemnify Contractor and any other party for any costs incurred by any party relating to such demand. This warranty shall extend to all consequential damages resulting from such faults and/or defects of design, material, and workmanship described in this Section, including, without limitation, property damage to the homes or properties into which the Work is incorporated, property damage to the personal property of the ultimate owners of such homes or structures, and personal injury damages to persons residing at or visiting the properties into which the Work is incorporated. If

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Subcontractor fails to perform under this warranty, the party entitled to performance or Contractor will have the right to hire other persons to correct or replace the defective Work and hold Subcontractor liable for the costs thereof including costs, disbursements, and attorneys' fees incurred in the enforcement of this provision. This warranty is independent from all other obligations of Subcontractor under this Agreement, including, without limitation, all indemnification provisions, and will apply whether or not required by any other provision of this Agreement. Owner and any ultimate owner of any structure into which the Work is incorporated shall be intended non-incidental third party beneficiaries of this Agreement and shall have the power to enforce this Agreement. Subcontractor will maintain a published phone number or answering service during normal working hours.

SECTION 4. Insurance.

At all times while performing the Work, and continuing thereafter until the expiration of the applicable statute of limitations for any claims, Subcontractor will maintain for the benefit of itself and Contractor (and Owner, when requested), the following minimum insurance coverage:

a. Workers' Compensation Insurance - statutory limits in the state where each Project is located.

b. Employer's Liability Insurance - $1,000,000 or such other higher limits imposed in accordance with the requirement, if any, of the laws of the states where Subcontractor is engaged in business.

c. Commercial General Liability - $1,000,000 per occurrence, $1,000,000 products-completed operations aggregate, $1,000,000 general aggregate, and broad form contractual liability coverage to cover the indemnity obligations undertaken herein.

d. Business Auto Liability, including hired and non-owned auto coverage - $500,000 combined single limit.

Insurance policies shall (a) be issued by companies with a "Best's Rating A" and a "Financial Size Category of VIII", (b) be on an "occurrence" form, and (c) list Contractor and if requested, Owner, as additional insureds per Form CG 20 10 edition 11/85 or its equivalent on the General Liability and Automobile Liability Policies. For purposes of this additional insured requirement, the term "equivalent" means coverage for liability arising out of Subcontractor's Work performed for Contractor and includes both ongoing and products-completed operations coverage. The Workers' Compensation Policy shall include an Alternate Employer's Endorsement naming the Contractor. If Subcontractor utilizes any leased employees, Contractor must also be listed on an Alternate Employer's endorsement on the Workers' Compensation Policy covering the leased employees.

Subcontractor will provide to Contractor certificates of insurance or other satisfactory evidence of compliance with the provisions of this Section promptly after the date of this Agreement and thirty (30) days before the expiration date of each policy or at any time upon request of Contractor. A copy of the actual additional insured endorsement and alternate employer's endorsement must be supplied with the certificate of insurance. If such evidence is not furnished, Contractor will have the immediate right, but not the obligation, to procure at Subcontractor's expense (which Contractor may offset such costs against any Partial Payment or final payment), the required insurance on behalf of Subcontractor. The reference to "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon the company, its agents or representatives" in the cancellation notification portion of the certificate and/or endorsement to the policy must be deleted. To the fullest extent permitted by law, any provision on the face of any certificate of insurance provided by Subcontractor that states anything to the effect that the certificate of insurance does not confer rights to insurance upon Contractor is hereby deemed deleted from such certificate of insurance. The insurance

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provided herein by Subcontractor shall be primary and non-contributory to any other insurance available to the additional insureds. Waivers of subrogation shall be provided in favor of Contractor and Owner on all insurance policies carried by Subcontractor. Subcontractor hereby releases Contractor and Owner from all claims and causes of action resulting from or related to any loss covered or that should have been covered by insurance required to be maintained by Subcontractor including the deductible and any uninsured portion. Additionally, Subcontractor shall comply with any additional insurance requirements set forth in any other Contract Documents.

SECTION 5. INDEMNITY.
TO THE FULLEST EXTENT PERMITTED BY LAW, THE SUBCONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, LOSSES, CAUSES OF ACTION, DAMAGES, LIABILITIES, FINES, PENALTIES, AND EXPENSES OF ANY KIND WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ARBITRATION OR COURT COSTS AND ATTORNEY'S FEES (SUCH LEGAL EXPENSES TO INCLUDE COSTS INCURRED IN ESTABLISHING THE INDEMNIFICATION AND OTHER RIGHTS AGREED TO IN THIS PARAGRAPH) ARISING OUT OF OR RESULTING FROM BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY, ARISING OR ALLEGED TO ARISE OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE SUBCONTRACTOR'S PERFORMANCE OF THE WORK OR OTHER ACTIVITIES OF THE SUBCONTRACTOR, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF THE SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE SUBCONTRACTOR OR ANYONE FOR WHOSE ACTS THE SUBCONTRACTOR MAY BE LIABLE. THE CONTRACTOR'S INSURANCE REQUIREMENTS WHICH SUBCONTRACTOR IS SUBJECT TO UNDER THIS AGREEMENT ARE SEPARATE AND DISTINCT FROM THE REQUIREMENT OF INDEMNIFICATION HEREUNDER.

NOTWITHSTANDING THE FOREGOING, TO THE FULLEST EXTENT PERMITTED BY LAW, THE SUBCONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES (THE "INDEMNITEES"), FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES (SUCH LEGAL EXPENSES TO INCLUDE COSTS INCURRED IN ESTABLISHING THE INDEMNIFICATION AND OTHER RIGHTS AGREED TO IN THIS PARAGRAPH) ARISING OUT OF OR RESULTING FROM BODILY INJURY TO, OR SICKNESS, DISEASE, OR DEATH OF, THE SUBCONTRACTOR, ANY AGENT, EMPLOYEE, OR REPRESENTATIVE OF THE SUBCONTRACTOR, OR ANY OF ITS SUBCONTRACTORS, REGARDLESS OF WHETHER SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED, OR IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OF ANY

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OF THE INDEMNITEES, IT BEING THE EXPRESSED INTENT OF THE CONTRACTOR AND THE SUBCONTRACTOR THAT IN SUCH EVENT THE SUBCONTRACTOR IS TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, WHETHER IT IS OR IS ALLEGED TO BE THE SOLE OR CONCURRENT CAUSE OF THE BODILY INJURY, SICKNESS, DISEASE, OR DEATH OF THE SUBCONTRACTOR, SUBCONTRACTOR'S AGENT, EMPLOYEE, OR REPRESENTATIVE, OR THE AGENT, EMPLOYEE, OR REPRESENTATIVE OF ANY OF ITS SUBCONTRACTORS. THE INDEMNIFICATION OBLIGATIONS UNDER THIS PARAGRAPH SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR SUBCONTRACTOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS. THE SUBCONTRACTOR SHALL PROCURE LIABILITY INSURANCE COVERING ITS OBLIGATIONS UNDER THIS SECTION 5.

THE DUTY TO DEFEND UNDER THIS SECTION 5 IS INDEPENDENT AND SEPARATE FROM THE DUTY TO INDEMNIFY, AND THE DUTY TO DEFEND EXISTS REGARDLESS OF ANY ULTIMATE LIABILITY OR NEGLIGENCE OF THE CONTRACTOR, THE OWNER, OR ANY OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES. THE DUTY TO DEFEND ARISES IMMEDIATELY UPON PRESENTATION OF A CLAIM BY ANY PARTY INDEMNIFIED HEREUNDER AND WRITTEN NOTICE OF SUCH CLAIM BEING PROVIDED TO SUBCONTRACTOR. SUBCONTRACTOR'S OBLIGATION TO INDEMNIFY, DEFEND, AND HOLD HARMLESS UNDER THIS SECTION 5 WILL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT UNTIL IT IS FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION OR ARBITRATION PANEL THAT A CLAIM AGAINST THE CONTRACTOR, THE OWNER, AND ANY OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FOR THE MATTER INDEMNIFIED HEREUNDER IS FULLY AND FINALLY BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS.

THE DEFENSE AND INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT ARE NOT INTENDED TO AND SHALL NOT REQUIRE THE SUBCONTRACTOR OR OTHERS TO INDEMNIFY OR HOLD HARMLESS A REGISTERED ARCHITECT, LICENSED ENGINEER, OR AN AGENT, SERVANT, OR EMPLOYEE OF A REGISTERED ARCHITECT OR LICENSED ENGINEER FROM LIABILITY FOR DAMAGE THAT IS (1) CAUSED BY OR RESULTS FROM: (A) DEFECTS IN PLANS, DESIGNS, OR SPECIFICATIONS PREPARED, APPROVED, OR USED BY THE ARCHITECT OR ENGINEER; OR (B) THE NEGLIGENCE OF THE ARCHITECT OR ENGINEER IN THE RENDITION OR CONDUCT OF PROFESSIONAL DUTIES CALLED FOR OR ARISING OUT OF THE CONSTRUCTION CONTRACT AND THE PLANS,

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DESIGNS, OR SPECIFICATIONS THAT ARE A PART OF THE CONSTRUCTION CONTRACT; AND (2) ARISES FROM PERSONAL INJURY OR DEATH, PROPERTY INJURY, OR ANY OTHER EXPENSE THAT ARISES FROM PERSONAL INJURY, DEATH OR PROPERTY INJURY.

SECTION 6. Independent Subcontractor Status and Warranty to be Lawfully Entitled to Work in the United States of America.
Subcontractor agrees that it and its employees, agents, and subcontractors (and their employees, agents, and subcontractors) will perform the Work as independent contractors, and not as employees or agents of Contractor. Contractor has no authority to direct, supervise, or control the means, manner, or method of construction of the Work. Further, Subcontractor warrants and agrees it will independently verify that it and its employees, agents, and subcontractors (and their employees, agents, and subcontractors) shall be lawfully entitled to work under the laws of the United States of America.

SECTION 7. Certification of Compliance with Equal Employment Opportunity Provisions
If the Project contracted for herein is subject to or becomes subject to 41 CFR 60-741.5(a), then the Subcontractor and Contractor certify that they shall abide by the requirements of 41 CFR 60-741.5(a), such requirements being incorporated by reference herein. This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

If the Project contracted for herein is subject to, or becomes subject to, 41 CFR 60-300.5(a), then the Subcontractor and Contractor certify that they shall abide by the requirements of 41 CFR 60-300.5(a), such requirements being incorporated by reference herein. This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

Subcontractor further certifies that it has read and familiarized itself with the requirements contained in 41 CFR 60-741.5(a) and 41 CFR 60-300.5(a) and shall incorporate the above language into its purchase orders and subcontracts.

TO THE FULLEST EXTENT PERMITTED BY LAW, THE SUBCONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, LOSSES, CAUSES OF ACTION, DAMAGES, LIABILITIES, FINES, PENALTIES, AND EXPENSES OF ANY KIND WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ARBITRATION OR COURT COSTS AND ATTORNEY'S FEES (SUCH LEGAL EXPENSES TO INCLUDE COSTS INCURRED IN ESTABLISHING THE INDEMNIFICATION AND OTHER RIGHTS AGREED TO IN THIS PARAGRAPH)

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ARISING OUT OF, RESULTING FROM OR RELATED TO SUBCONTRACTOR'S BREACH OF THE OBLIGATIONS SET FORTH IN THIS SECTION 7.

SECTION 8. Default and Damages.

a. Subcontractor's Default. The following acts on the part of Subcontractor will, at Contractor's option, result in the immediate termination of this Agreement and all Work Orders, and dismissal of Subcontractor from each site.

(1) Any delays of the Work caused by Subcontractor's failure or refusal to supply enough skilled labor or materials to meet Contractor's schedule.

(2) Subcontractor's failure to promptly pay any labor, material suppliers, or lien claimants with respect to any Work.

(3) Adjudication of Subcontractor to be bankrupt or insolvent either by Contractor or any court or governmental entity.

(4) If Subcontractor or any of its employees, subcontractors, or agents (or employees, subcontractors, or agents of any subcontractor retained by Subcontractor to perform Work) consume, use, or are under the influence of alcohol or illegal drugs while on the site. (Subcontractor agrees to strictly enforce rules to this effect and to inform all employees, agents, and subcontractors that such rules will be strictly enforced.)

(5) Failure of Subcontractor or its agents, subcontractors, or employees to (a) operate motorized vehicles or equipment in a safe and orderly manner, (b) comply with safe labor and material installation practices designated by Contractor or Owner or otherwise accepted by the industry, or (c) leave the Project site in a safe condition (as determined by Contractor in its sole discretion) during or after construction.

(6) Subcontractor's failure to comply with the provisions of this Agreement regarding assignment or subcontracting.

(7) Any other violations of the Contract Documents including, without limitation, this Agreement.

b. Damages.

(1) No Damages for Delay. Notwithstanding anything to the contrary in this Agreement and to the fullest extent permitted by law, Contractor will not be liable for any loss, claim, cost, liability, or damage incurred by Subcontractor, whether direct or indirect or whether related to efforts by Contractor to accelerate the Work, on account of any delay, disruption, hindrance, or any other impediment whatsoever, no matter by what, or by whom caused. Rather, the Cost of Work (defined in Section 8) is understood and agreed to include and cover all expenses and costs due to delays, disruptions, hindrances, or any other impediments regardless of their cause. Subcontractor agrees not to make, and hereby waives, any such claim for damages.

(2) Subcontractor's Liability to Contractor upon Termination. If this Agreement is terminated at Contractor's option as provided in this Section 7, Subcontractor will be liable to

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Contractor for all costs and damages incurred by Contractor due to Subcontractor's failure to perform under this Agreement or other Contract Documents (including, without limitation, the amount by which the cost to complete the Project exceeds the cost of the Work), Subcontractor's failure to keep up the progress of the Work as required, or Subcontractor's failure to execute the Work as directed by Contractor. In addition to all costs and damages incurred by Contractor, Subcontractor shall be liable to Contractor for an additional amount equal to 25% of all costs and damages for Contractor's additional overhead and related costs.

e. Reimbursement for Fines. Subcontractor shall promptly reimburse to Contractor and shall indemnify, defend, and hold harmless Contractor regarding any fines or penalties incurred by Contractor or Owner as a result of the actions or inaction of Subcontractor or its employees, agents, or subcontractors, relating to performance of Work or otherwise, including, without limitation, their failure to abide by the requirements of Section 2(d).

SECTION 9. Payment to Subcontractor.

a. Payment by Owner is Condition Precedent. Subcontractor agrees and acknowledges that Contractor shall seek payment from Owner for the price of the Work ("Cost of Work") performed pursuant to Work Orders and that Contractor has no duty or obligation to pay Subcontractor for any Work until Contractor has been paid by Owner. Therefore, all obligations of Contractor to make Partial Payments and final payment are subject to the express conditions precedent that Owner accepts Subcontractor's Work and Contractor receives payments from Owner for all payments to Subcontractor. It is expressly agreed that any basis for non-payment by Owner, including, without limitation, the bankruptcy or insolvency of Owner, will not excuse this condition precedent and Subcontractor expressly assumes the risk of delayed payment or non-payment by Owner.

b. Partial Payments. Partial payments ("Partial Payments") for portions of the Work that have been completed will be made by Contractor to Subcontractor as the Work progresses, but not more often than in accordance with Contractor's regular payment procedures. As a condition precedent to Partial Payments, Subcontractor must submit written applications that provide a description of the portion of the Work that has been completed during the payment period (including, without limitation, materials and supplies used therein if provided by Subcontractor), an estimate of the percentage of completion of the Work, a copy of each change order for the payment period, safety meeting sheets for the period of time since the last submission for payment, sheets indicating the number of hours worked by any employees of Subcontractor or any of its subcontractors ("Employee Time Sheets") for the period of time since the last submission for payment, evidence of payment, waivers (including, without limitation, lien waivers), and supplier affidavits in form satisfactory to Owner and Contractor, for itself, its subcontractors and material suppliers, and all other information Contractor is required to provide to Owner as a condition to Contractor's right to receive payment. Contractor reserves the right to modify such estimates in its sole and exclusive discretion and such modifications will bind Subcontractor for the purpose of Partial Payments. Partial Payments will be made to Subcontractor on or about the thirtieth day following approval of the application for payment by Contractor and receipt of payment by Contractor from Owner.

c. Retainage. Contractor will retain at least ten percent (10%) of each Partial Payment (the "Retainage Amount") or any greater amount Contractor chooses to retain in its sole discretion.

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Contractor may, in its sole discretion, waive its right to retain any Retainage Amount from any Partial Payments or final payment.

d. **Grounds for Withholding Payments.** Contractor may withhold any Partial Payments or the final payment in whole or in part upon the occurrence of any breach of this Agreement by Subcontractor until a cure satisfactory to Contractor has been completed.

e. **Work Covered by Partial Payments.** All the completed Work covered by Partial Payments or final payment made to Subcontractor will thereupon become the sole property of Contractor, but this provision will not be construed as relieving Subcontractor from the sole responsibility for all Work upon which Partial Payments have been made, for the restoration of any damaged Work, for the correction of defective Work, or as a waiver of Contractor's right to require fulfillment of all of the terms of this Agreement. Payment to Subcontractor is specifically agreed not to imply acceptance by Contractor or Owner of any portion of the Work that fails to comply with the Contract Documents.

f. **Final Payment.** Final payment constitutes the entire unpaid balance of the Cost of Work minus any amounts retained. Final payment will be made by Contractor to Subcontractor upon satisfaction of the following conditions:

(1) The Work is fully performed in accordance with the requirements of the Contract Documents, and Subcontractor is not in default under this Agreement or the Contract Documents;

(2) Subcontractor has submitted satisfactory evidence of payments to, waivers by, and releases from all claims by, Subcontractor and any persons, firms, or corporations having performed work, labor, or services or furnished materials, equipment, tools, or supplies to Subcontractor for the Work (including, without limitation, lien waivers) if requested by Contractor;

(3) Subcontractor has delivered to Contractor all as-built drawings, certifications, maintenance manuals, operating instructions, written guarantees, warranties, and bonds;

(4) Subcontractor has provided safety meeting sheets and Employee Time Sheets for the period of time since the last submission for payment;

(5) Owner, any general contractor, any lender, any architect, and Contractor have accepted the Work; and

(6) Contractor has received payment from Owner.

g. **Release of Retainage.** Contractor will release any Retainage Amount thirty (30) days after all conditions precedent to Subcontractor's receipt of the final payment are met.

h. **Subcontractor's Agreement to Pay.** Subcontractor will promptly pay when due all charges owed by it for labor, services, materials, equipment, tools, and supplies furnished under this Agreement and will keep the Work and the Project free from any mechanics' and materialmen's liens. Subcontractor shall not acquire any materials, supplies, or equipment subject to any security interest or conditional sale or other agreement where any interest is retained by or granted to a seller, supplier, or lender. If Contractor reasonably believes that Subcontractor has failed to pay when due all charges owed by Subcontractor for its labor, services, materials, equipment, tools, and supplies, Contractor may issue

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Joint checks made payable to Subcontractor and other parties owed by Subcontractor or directly to those parties owed by Subcontractor in Contractor's sole discretion. Contractor shall be entitled to and Subcontractor shall provide acceptable security insuring against claims by Subcontractor's creditors.

l. INDEMNIFICATION FOR LIENS. TO THE FULLEST EXTENT PERMITTED BY LAW, SUBCONTRACTOR HEREBY AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY MECHANICS' AND MATERIALMEN'S LIENS UPON THE PROJECT, ATTORNEYS' FEES AND EXPENSES, AMOUNTS PAID IN SETTLEMENT, AND AMOUNTS PAID TO DISCHARGE JUDGMENTS ARISING OUT OF THE SERVICES, LABOR, EQUIPMENT, OR MATERIALS FURNISHED BY SUBCONTRACTOR, OR ITS EMPLOYEES, SUPPLIERS, OR SUBCONTRACTORS. IF SUBCONTRACTOR FAILS TO DO SO, CONTRACTOR MAY DEDUCT FROM SUMS THEN OR THEREAFTER DUE TO SUBCONTRACTOR SUCH AMOUNTS AS CONTRACTOR DEEMS APPROPRIATE IN ITS SOLE DISCRETION TO INDEMNIFY THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM SUCH LIENS, CLAIMS, AND ENCUMBRANCES. CONTRACTOR MAY, IN ITS SOLE DISCRETION, CURE ANY LIENS OR SATISFY ANY DEMANDS, AND RECOVER ITS COSTS RELATED DIRECTLY OR INDIRECTLY THERETO FROM SUBCONTRACTOR. SUBCONTRACTOR HEREBY WAIVES, RELEASES, AND FOREVER DISCHARGES THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM ALL COSTS, EXPENSES, CLAIMS, DEMANDS, DAMAGES, LOSSES, CAUSES OF ACTION, OR LIABILITIES THAT SUBCONTRACTOR MAY HAVE AGAINST THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES THAT ARISE DIRECTLY OR INDIRECTLY FROM CURING ANY SUCH LIENS, CLAIMS, ENCUMBRANCES, OR DEMANDS.

SECTION 10. Miscellaneous.

a. Assignment and Successors. Subcontractor may not assign or subcontract any portion of the Work or its other obligations or rights hereunder without the prior written consent of Contractor. If Subcontractor assigns or subcontracts any portion of the Work (with the prior written consent of Contractor), Subcontractor will require each such assignee or sub-tier subcontractor to comply with the Contract Documents, including, without limitation, the pertinent provisions of this Agreement (including, without limitation, Section 5) by written agreement, a copy of which must be provided to Contractor. Subcontractor hereby unconditionally guarantees the compliance of each such assignee or sub-tier subcontractor with this Agreement. Subject to the preceding provisions of this Section, this Agreement will be binding on and will inure to the benefit of the parties and their respective heirs, administrators, executors, successors, and permitted assigns.

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b. Acts of Affiliates. For the purpose of this Agreement, any action of any agent, employee, subcontractor, director, officer, or invitee of Subcontractor or any of their agents, employees, subcontractors, officers, or invitees shall be deemed an act of Subcontractor. For the purposes hereof, any obligation or liability imposed on Subcontractor with regard to its employees or agents shall also be deemed an obligation or liability of Subcontractor with regard to employees or agents of its subcontractors. Subcontractors of Subcontractor shall include any suppliers of Subcontractor other than Contractor.

c. Offset. In addition to any other right provided hereunder, Contractor shall be entitled to offset any amount owed to it by Subcontractor hereunder against any Partial Payments or final payment under this Agreement or any other agreement.

d. Clean up. Subcontractor will at all times keep the Project safe and free from the accumulation of waste materials or rubbish caused by its operations or related to the Work. Upon completion of the Work and each portion thereof, Subcontractor will remove all rubbish and waste produced by its operations or Work hereunder from the Project as well as all of its tools, equipment, machinery, and surplus materials no longer needed and leave the Project in a "broom clean" or equivalent condition and safe for Subcontractor's employees and subsequent contractors to perform their work, unless otherwise specified in writing. If Subcontractor fails to clean up, Contractor may do so after written notice to Subcontractor and the cost thereof will be charged to Subcontractor.

e. Lien waiver. Subcontractor hereby waives and relinquishes any right, whether granted by statute or not, to file or claim any lien for Work performed hereunder.

f. Release. Subcontractor hereby waives, releases, and forever discharges the Contractor, the Owner, and all of their officers, directors, agents, and employees from all costs, expenses, claims, demands, damages, losses, causes of action, or liabilities that Subcontractor may have against the Contractor, the Owner, and all of their officers, directors, agents, and employees. Specifically, Subcontractor agrees that Subcontractor shall not file, or cause to be filed, any demand, claim, suit or cause of action against Contractor and all of its officers, directors, agents, and employees hereunder.

g. Other. This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. No delay or failure by Contractor to exercise any right or remedy hereunder, and no partial or single exercise of such right or remedy, will constitute a waiver of that or any other right or remedy. The duties and obligations imposed by this Agreement and rights and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by Law. The prevailing party to any dispute shall have a right to collect its reasonable attorney's fees and expenses. This Agreement shall be governed by the laws of the State of Texas, without regard to the conflicts of law provisions thereof. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof. It is the intent of the parties that any invalid provision hereof be reformed to the extent necessary to make it enforceable to the maximum extent of the law.

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Subcontractor

Contractor

EXECUTED to be effective as of the date first above written.

SUBCONTRACTOR:
WS contractors LLC

By: _____

Name: Willames Rubens da Silva

Title: Owner

Subcontractor Social Security No. or
Federal I.D. No.

BUILDERS FIRSTSOURCE
SOUTHEAST GROUP, LLC

By: _____

Name: Deryl Ward

Title: Vice President

Subcontractor

Contractor

Builders FirstSource

BUILDERS FIRSTSOURCE – SOUTHEAST GROUP, LLC
MASTER SUBCONTRACTOR AGREEMENT

THIS MASTER SUBCONTRACTOR AGREEMENT (this "**Agreement**") is entered into effective as of 9/24, 2012 between **Builders FirstSource – Southeast Group, LLC**, a Delaware limited liability company, address: 2001 Bryan Street, Suite 1600, Dallas, Texas 75201, telephone: _____, fax: _____, Contact: _____, e-mail: _____@bldr.com ("**Contractor**"), and WS contractors LLC address: 205 Laurel ave, Goose Creek SC 29445, telephone: (843) 480 6262, fax: _____, Contact: Wilson or Willames, e-mail: WScontractorsLLC@hotmail.com ("**Subcontractor**").

SECTION 1. Introduction.

a. Work. This Agreement contains the basic terms and conditions under which Subcontractor agrees to provide materials and/or to perform services (the "**Work**") from time to time for Contractor on any project (the "**Project**"). TIME IS OF THE ESSENCE. It will apply to and govern all Work requested by Contractor from Subcontractor at any time following the date of this Agreement, unless other terms and conditions are specifically agreed to in writing by Contractor with respect to particular items of Work or until this Agreement is terminated as hereinafter provided. In accordance with the terms and conditions contained in this Agreement, Subcontractor will perform and finish in a good and workmanlike manner, and will furnish all required materials, labor, equipment, supplies and tools for, the Work described from time to time for Contractor on any Project. Projects may or may not be owned or controlled by Contractor's customer (the "**Owner**"). The Work will be performed in accordance with plans, specifications, drawings and schedules for the Work, and any supplemental terms and conditions to this Agreement, all of which are, or will be, on file at the office of the Contractor (the "**Contract Documents**") and incorporated into the Agreement by reference as if fully set forth. Contractor will have the right at any time to supplement the plans and specifications for the Work with additional or replacement drawings and schedules or other documents and upon so doing such drawings and schedules will immediately become part of the Contract Documents. The Contract Documents, including any time schedules, may be amended and/or supplemented from time to time by giving Subcontractor written notice thereof. Subcontractor's only remedy in the event an amendment or supplement to the Contractor Documents materially increases the cost or difficulty of performance by the Subcontractor is to terminate this Agreement by written notice to Contractor within 24 hours after Contractor delivers such amendment or supplement to Subcontractor.

b. Work Orders. It is contemplated under this Agreement that Subcontractor may perform Work on multiple projects at multiple locations. The description, completion date, special conditions, and cost of Work to be performed on a Project will be set forth in the written purchase order or work order (together, "**Work Order**") delivered by Contractor to Subcontractor relating to that Project. Such Work Order(s)

Subcontractor

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are incorporated herein by reference as if fully set forth. The Work described in Work Orders must be performed under the terms of this Agreement.

c. **Term.** This Agreement shall be for an initial term of three (3) years. Upon the expiration of such initial term or any renewal term, this Agreement shall automatically renew for subsequent one (1) year periods unless either party gives written notice to the other party that it is electing to terminate this Agreement at the end of the then current term. Such written notice of intent to terminate must be given at least sixty (60), but not more than one hundred twenty (120), days prior to the end of the then current term. The provisions of **Sections 3, 4, and 5** shall survive termination of this Agreement. If Contractor terminates this Agreement, Contractor will pay to Subcontractor sums due for the Work performed to the date of termination, as provided in **Section 8**.

d. **Notice.** Any notice or communication hereunder or in any agreement entered into in connection with the transactions contemplated hereby must be in writing and given by depositing the same in the United States mail, addressed to the party to be notified, postage prepaid, and registered or certified with return receipt requested, or by delivering the same in person or by facsimile transmission. Such notice shall be deemed received on the date on which it is hand-delivered or received by facsimile transmission or on the third business day following the date on which it is so mailed. For purposes of notice, the addresses of the parties shall be as set forth on the front page of this Agreement. Any party may change its address for notice by written notice given to the other parties in accordance with this Section.

SECTION 2. Materials and Workmanship.
Subcontractor agrees to commence Work on Projects upon request by Contractor. Subcontractor agrees to provide all labor, services, equipment, and tools necessary to complete the Work.

a. **Scope of Work; Knowledge of Site; Plans and Specifications.** Subcontractor shall take all action necessary to familiarize itself and its employees, agents, and subcontractors with the scope and requirements of the Work, the existing site conditions, and any work to be performed by others that may affect the performance of the Work. Subcontractor shall confirm that the Contract Documents are correct and immediately notify Contractor of any errors and/or omissions.

b. **Change Orders.** Contractor may make any changes to the nature or scope of the Work; provided, however, that any changes resulting in a change in price must be agreed to in writing by Subcontractor and Contractor prior to the Work being performed. Subcontractor shall be notified of changes by written change order. Subcontractor shall not perform any extra work without written authorization by Contractor.

c. **Protection of Work.** Subcontractor shall bear all risk of loss or damage to the Work resulting from any cause whatsoever until Subcontractor has completed its Work on the Project and such work has been accepted by Contractor and Owner. Subcontractor shall at all times, and at its expense, protect all of its labor, materials (regardless of who supplied such materials), supplies, tools, and equipment (and those of its employees, agents, and subcontractors) against any damage, injury, destruction, theft, or loss. Subcontractor shall, at its expense, promptly repair or replace damage to the Work or damage to any other components of the Project resulting from the activities of Subcontractor or its employees, agents, or subcontractors.

d. **Safety and Environmental.**

Subcontractor

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(1) **Compliance with Laws.** Subcontractor will carefully check the drawings, plans, and specifications for conformity with all local, state, and Federal laws, codes, rules, and regulations bearing on the Work (the "Law") before commencing the Work. Unless Contractor or Owner otherwise agrees in writing, before commencement of the Work Subcontractor will obtain at its sole cost and expense all permits necessary for the Work. Subcontractor will comply with product manufacturer's specifications and will give all notices and comply with all Law bearing on the Work, including by way of enumerations and not limitation, safety, health, and environmental rules and regulations established by or pursuant to Federal, state, and local safety and environmental laws. Subcontractor at all times will furnish to its agents and employees a safe place of employment. If Subcontractor observes any violation of Law, it will immediately report such violation to Contractor in writing. Subcontractor will be responsible for any fines, charges, in-kind training or supplies, or penalties related to the Work, including, without limitation, fines, charges, and/or penalties related to the operation of equipment, the Subcontractor's performance of the Work, the handling of materials, or any other function that is in violation of the Law. All workmanship and materials will conform to Law and, if the Subcontractor performs or permits the performance of any Work not in compliance with Law, it will immediately cause such Work to be redone and bear all costs in connection therewith. The Work, as performed, will meet with the approval of, and pass any inspection of, any governmental authority having jurisdiction thereof. If the Work is being constructed under specifications of the Federal Housing Administration or the Veterans Administration, the Work will meet the requirements of these governmental agencies. No Work will be deemed complete until final inspection is made and approval is received from every governmental authority whose approval is required.

(2) **The Occupational Safety and Health Administration ("OSHA") and the Environmental Protection Agency ("EPA").** Regulations have been promulgated by OSHA and EPA ("Regulations") that require all contractors and subcontractors to exchange Material Safety Data Sheets ("MSDS") and share information about precautionary measures necessary to protect all workers on a building project.

Subcontractor agrees as follows:

(A) Subcontractor will fully comply with the Regulations and will cooperate with Contractor and/or Owner and all subcontractors of Owner in order to assure compliance with the Regulations.

(B) Subcontractor hereby accepts full responsibility and liability for the training of its employees as to all precautionary measures necessary to protect such employees during both routine and emergency situations on the Project.

(C) TO THE FULLEST EXTENT PERMITTED BY LAW, SUBCONTRACTOR WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM ALL CLAIMS, DAMAGES, LIABILITIES, AND CAUSES OF ACTION THAT ARISE FROM THE FAILURE OF SUBCONTRACTOR TO COMPLY WITH THE REGULATIONS.

(D) Subcontractor will assist Contractor in complying with the Regulations.

(E) Subcontractor will not use any chemicals in its performance of the Work for

Subcontractor

Contractor

Contractor or incorporate any chemicals into materials or products supplied to Contractor or to the Project unless Subcontractor has given Contractor prior written notice of the existence and the possible exposure to such chemical, has delivered an MSDS to Contractor, and has received a written consent of Contractor to use such chemicals.

(3) **Subcontractor's Safety Program.** Subcontractor's safety program must specifically address, among other safety issues, scaffolding, fall hazards, trenching, and shoring, as may be applicable. For "hard hat" jobs, approved safety helmets and hard soled shoes must be worn at the Project at all times. Safety glasses must be worn when power equipment is used. Subcontractor shall erect and maintain all reasonable safeguards for safety and protection, including, but not limited to, necessary signage, protective barriers, and other warnings against hazards. Subcontractor shall furnish all flagmen, barricades, and other items required for public safety and right-of-way maintenance required by the installation of the Work. Safety vests shall be worn in the public right-of-way.

(4) **Default.** If Subcontractor fails to immediately comply with safety and environmental requirements after verbal or written notice from Contractor, Contractor may correct the violation and deduct the cost from any Partial Payment or final payment in addition to all other remedies available to Contractor, including, without limitation, consequential damages. Subcontractor shall pay any fines assessed to Owner or Contractor due to the acts, omissions, or negligence of Subcontractor. If construction at the Project in whole or in part is delayed or halted by any governmental authority as a result of Subcontractor's Work, Subcontractor shall pay to Contractor as liquidated damages, and not as a penalty, the amount of $200 per hour for a minimum ten (10) hour day until construction at the Project can be safely resumed.

SECTION 3. Warranty.

In addition to any other warranty or guarantee expressly made by Subcontractor or implied by Law, Subcontractor unconditionally warrants and guarantees the Work will conform to any specifications provided by Contractor and comply with all Law and Subcontractor guarantees the Work against defects in design, workmanship, and materials for the benefit of Contractor and its successors and assigns, Owner, as well as the ultimate owner of any structure into which the Work is incorporated. This guarantee will commence upon the Subcontractor's completion of the Work and will continue for a minimum of (a) three (3) years for all Work except, (b) ten (10) years for all Work consisting of any structural applications of any home, building, or other structure. Notwithstanding the foregoing, this warranty will continue until such time as all express and implied warranties granted or deemed granted by Contractor and all other obligations of Contractor related to the Work are terminated or expired as a matter of Law. If demand is made upon Subcontractor to perform under this warranty, Subcontractor at its sole cost and expense will expeditiously repair or replace, at Contractor's sole option, any defective or nonconforming Work and indemnify Contractor and any other party for any costs incurred by any party relating to such demand. This warranty shall extend to all consequential damages resulting from such faults and/or defects of design, material, and workmanship described in this Section, including, without limitation, property damage to the homes or properties into which the Work is incorporated, property damage to the personal property of the ultimate owners of such homes or structures, and personal injury damages to persons residing at or visiting the properties into which the Work is incorporated. If Subcontractor fails to perform under this warranty, the party entitled to performance or Contractor will have the right to hire other persons to correct or replace the defective Work and hold Subcontractor liable for the costs thereof including costs, disbursements, and attorneys' fees incurred in the enforcement of this provision. This warranty is independent from all other obligations of Subcontractor under this Agreement, including, without limitation, all indemnification provisions, and will apply whether or not required by any other provision of this Agreement. Owner and any ultimate owner of any structure into which the Work is incorporated shall be

Subcontractor

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intended non-incidental third party beneficiaries of this Agreement and shall have the power to enforce this Agreement. Subcontractor will maintain a published phone number or answering service during normal working hours.

SECTION 4. Insurance.
At all times while performing the Work, and continuing thereafter until the expiration of the applicable statute of limitations for any claims, Subcontractor will maintain for the benefit of itself and Contractor (and Owner, when requested), the following minimum insurance coverage:

a. **Workers' Compensation Insurance** - statutory limits in the state where each Project is located.

b. **Employer's Liability Insurance** - $1,000,000 or such other higher limits imposed in accordance with the requirement, if any, of the laws of the states where Subcontractor is engaged in business.

c. **Commercial General Liability** - $1,000,000 per occurrence, $1,000,000 products-completed operations aggregate, $1,000,000 general aggregate, and broad form contractual liability coverage to cover the indemnity obligations undertaken herein.

d. **Business Auto Liability**, including hired and non-owned auto coverage - $500,000 combined single limit.

Insurance policies shall (a) be issued by companies with a "Best's Rating A" and a "Financial Size Category of VIII", (b) be on an "occurrence" form, and (c) list Contractor and if requested, Owner, as additional insureds per Form CG 20 10 edition 11/85 or its equivalent on the General Liability and Automobile Liability Policies. For purposes of this additional insured requirement, the term "equivalent" means coverage for liability arising out of Subcontractor's Work performed for Contractor and includes both ongoing and products-completed operations coverage. The Workers' Compensation Policy shall include an Alternate Employer's Endorsement naming the Contractor. If Subcontractor utilizes any leased employees, Contractor must also be listed on an Alternate Employer's Endorsement on the Workers' Compensation Policy covering the leased employees.

Subcontractor will provide to Contractor certificates of insurance or other satisfactory evidence of compliance with the provisions of this Section promptly after the date of this Agreement and thirty (30) days before the expiration date of each policy or at any time upon request of Contractor. A copy of the actual additional insured endorsement and Alternate Employer's Endorsement must be supplied with the certificate of insurance. If such evidence is not furnished, Contractor will have the immediate right, but not the obligation, to procure at Subcontractor's expense (which Contractor may offset such costs against any Partial Payment or final payment), the required insurance on behalf of Subcontractor. The reference to "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon the company, its agents or representatives" in the cancellation notification portion of the certificate and/or endorsement to the policy must be deleted. To the fullest extent permitted by law, any provision on the face of any certificate of insurance provided by Subcontractor that states anything to the effect that the certificate of insurance does not confer rights to insurance upon Contractor is hereby deemed deleted from such certificate of insurance. The insurance provided herein by Subcontractor shall be primary and non-contributory to any other insurance available to the additional insureds. Waivers of subrogation shall be provided in favor of Contractor and Owner on all insurance policies carried by Subcontractor. Subcontractor hereby releases Contractor and Owner from all claims and causes of action resulting from or related to any loss covered or that should have been covered by insurance required to be maintained by Subcontractor including the deductible and any uninsured portion. Additionally, Subcontractor shall comply with any additional insurance requirements set forth in any other Contract Documents.

Subcontractor

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SECTION 5. INDEMNITY.

TO THE FULLEST EXTENT PERMITTED BY LAW, THE SUBCONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, LOSSES, CAUSES OF ACTION, DAMAGES, LIABILITIES, FINES, PENALTIES, AND EXPENSES OF ANY KIND WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ARBITRATION OR COURT COSTS AND ATTORNEY'S FEES (SUCH LEGAL EXPENSES TO INCLUDE COSTS INCURRED IN ESTABLISHING THE INDEMNIFICATION AND OTHER RIGHTS AGREED TO IN THIS PARAGRAPH) ARISING OUT OF OR RESULTING FROM BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY, ARISING OR ALLEGED TO ARISE OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE SUBCONTRACTOR'S PERFORMANCE OF THE WORK OR OTHER ACTIVITIES OF THE SUBCONTRACTOR, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF THE SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE SUBCONTRACTOR OR ANYONE FOR WHOSE ACTS THE SUBCONTRACTOR MAY BE LIABLE. THE CONTRACTOR'S INSURANCE REQUIREMENTS WHICH SUBCONTRACTOR IS SUBJECT TO UNDER THIS AGREEMENT ARE SEPARATE AND DISTINCT FROM THE REQUIREMENT OF INDEMNIFICATION HEREUNDER.

NOTWITHSTANDING THE FOREGOING, TO THE FULLEST EXTENT PERMITTED BY LAW, THE SUBCONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES (THE "INDEMNITEES"), FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES (SUCH LEGAL EXPENSES TO INCLUDE COSTS INCURRED IN ESTABLISHING THE INDEMNIFICATION AND OTHER RIGHTS AGREED TO IN THIS PARAGRAPH) ARISING OUT OF OR RESULTING FROM BODILY INJURY TO, OR SICKNESS, DISEASE, OR DEATH OF, THE SUBCONTRACTOR, ANY AGENT, EMPLOYEE, OR REPRESENTATIVE OF THE SUBCONTRACTOR, OR ANY OF ITS SUBCONTRACTORS, REGARDLESS OF WHETHER SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED, OR IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OF ANY OF THE INDEMNITEES, IT BEING THE EXPRESSED INTENT OF THE CONTRACTOR AND THE SUBCONTRACTOR THAT IN SUCH EVENT THE SUBCONTRACTOR IS TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, WHETHER IT IS OR IS ALLEGED TO BE THE SOLE OR CONCURRENT CAUSE OF THE BODILY INJURY, SICKNESS, DISEASE, OR DEATH OF THE SUBCONTRACTOR, SUBCONTRACTOR'S AGENT, EMPLOYEE, OR REPRESENTATIVE, OR THE AGENT, EMPLOYEE, OR REPRESENTATIVE OF ANY OF ITS SUBCONTRACTORS. THE INDEMNIFICATION

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OBLIGATIONS UNDER THIS PARAGRAPH SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR SUBCONTRACTOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS. THE SUBCONTRACTOR SHALL PROCURE LIABILITY INSURANCE COVERING ITS OBLIGATIONS UNDER THIS SECTION 5.

THE DUTY TO DEFEND UNDER THIS SECTION 5 IS INDEPENDENT AND SEPARATE FROM THE DUTY TO INDEMNIFY, AND THE DUTY TO DEFEND EXISTS REGARDLESS OF ANY ULTIMATE LIABILITY OR NEGLIGENCE OF THE CONTRACTOR, THE OWNER, OR ANY OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES. THE DUTY TO DEFEND ARISES IMMEDIATELY UPON PRESENTATION OF A CLAIM BY ANY PARTY INDEMNIFIED HEREUNDER AND WRITTEN NOTICE OF SUCH CLAIM BEING PROVIDED TO SUBCONTRACTOR. SUBCONTRACTOR'S OBLIGATION TO INDEMNIFY, DEFEND, AND HOLD HARMLESS UNDER THIS SECTION 5 WILL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT UNTIL IT IS FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION OR ARBITRATION PANEL THAT A CLAIM AGAINST THE CONTRACTOR, THE OWNER, AND ANY OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FOR THE MATTER INDEMNIFIED HEREUNDER IS FULLY AND FINALLY BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS.

THE DEFENSE AND INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT ARE NOT INTENDED TO AND SHALL NOT REQUIRE THE SUBCONTRACTOR OR OTHERS TO INDEMNIFY OR HOLD HARMLESS A REGISTERED ARCHITECT, LICENSED ENGINEER, OR AN AGENT, SERVANT, OR EMPLOYEE OF A REGISTERED ARCHITECT OR LICENSED ENGINEER FROM LIABILITY FOR DAMAGE THAT IS (a) CAUSED BY OR RESULTS FROM: (1) DEFECTS IN PLANS, DESIGNS, OR SPECIFICATIONS PREPARED, APPROVED, OR USED BY THE ARCHITECT OR ENGINEER; OR (2) THE NEGLIGENCE OF THE ARCHITECT OR ENGINEER IN THE RENDITION OR CONDUCT OF PROFESSIONAL DUTIES CALLED FOR OR ARISING OUT OF THE CONSTRUCTION CONTRACT AND THE PLANS, DESIGNS, OR SPECIFICATIONS THAT ARE A PART OF THE CONSTRUCTION CONTRACT; AND (b) ARISES FROM PERSONAL INJURY OR DEATH, PROPERTY INJURY, OR ANY OTHER EXPENSE THAT ARISES FROM PERSONAL INJURY, DEATH OR PROPERTY INJURY.

SECTION 6. Independent Subcontractor Status and Warranty to be Lawfully Entitled to Work in the United States of America.

Subcontractor agrees that it and its employees, agents, and subcontractors (and their employees, agents, and subcontractors) will perform the Work as independent contractors, and not as employees or agents of Contractor. Contractor has no authority to direct, supervise, or control the means, manner, or method of

Subcontractor

Contractor

construction of the Work. Further, Subcontractor warrants and agrees it will independently verify that it and its employees, agents, and subcontractors (and their employees, agents, and subcontractors) shall be lawfully entitled to work under the laws of the United States of America.

SECTION 7. Default and Damages.

a. **Subcontractor's Default.** The following acts on the part of Subcontractor will, at Contractor's option, result in the immediate termination of this Agreement and all Work Orders, and dismissal of Subcontractor from each site.

(1) Any delays of the Work caused by Subcontractor's failure or refusal to supply enough skilled labor or materials to meet Contractor's schedule.

(2) Subcontractor's failure to promptly pay any labor, material suppliers, or lien claimants with respect to any Work.

(3) Adjudication of Subcontractor to be bankrupt or insolvent either by Contractor or any court or governmental entity.

(4) If Subcontractor or any of its employees, subcontractors, or agents (or employees, subcontractors, or agents of any subcontractor retained by Subcontractor to perform Work) consume, use, or are under the influence of alcohol or illegal drugs while on the site. (Subcontractor agrees to strictly enforce rules to this effect and to inform all employees, agents, and subcontractors that such rules will be strictly enforced.)

(5) Failure of Subcontractor or its agents, subcontractors, or employees to (a) operate motorized vehicles or equipment in a safe and orderly manner, (b) comply with safe labor and material installation practices designated by Contractor or Owner or otherwise accepted by the industry, or (c) leave the Project site in a safe condition (as determined by Contractor in its sole discretion) during or after construction.

(6) Subcontractor's failure to comply with the provisions of this Agreement regarding assignment or subcontracting.

(7) Any other violations of the Contract Documents including, without limitation, this Agreement.

b. **Damages.**

(1) **No Damages for Delay.** Notwithstanding anything to the contrary in this Agreement and to the fullest extent permitted by law, Contractor will not be liable for any loss, claim, cost, liability, or damage incurred by Subcontractor, whether direct or indirect or whether related to efforts by Contractor to accelerate the Work, on account of any delay, disruption, hindrance, or any other impediment whatsoever, no matter by what, or by whom caused. Rather, the Cost of Work (**defined in Section 8**) is understood and agreed to include and cover all expenses and costs due to delays, disruptions, hindrances, or any other impediments regardless of their cause. Subcontractor agrees not to make, and hereby waives, any such claim for damages.

(2) **Subcontractor's Liability to Contractor upon Termination.** If this Agreement is terminated at Contractor's option as provided in this Section 7, Subcontractor will be liable to Contractor for all costs and damages incurred by Contractor due to Subcontractor's failure to

Subcontractor

Contractor

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perform under this Agreement or other Contract Documents (including, without limitation, the amount by which the cost to complete the Project exceeds the cost of the Work), Subcontractor's failure to keep up the progress of the Work as required, or Subcontractor's failure to execute the Work as directed by Contractor. In addition to all costs and damages incurred by Contractor, Subcontractor shall be liable to Contractor for an additional amount equal to 25% of all costs and damages for Contractor's additional overhead and related costs.

c. **Reimbursement for Fines.** Subcontractor shall promptly reimburse to Contractor and shall indemnify, defend, and hold harmless Contractor regarding any fines or penalties incurred by Contractor or Owner as a result of the actions or inaction of Subcontractor or its employees, agents, or subcontractors, relating to performance of Work or otherwise, including, without limitation, their failure to abide by the requirements of **Section 2(d)**.

SECTION 8. Payment to Subcontractor.

a. **Payment by Owner is Condition Precedent.** Subcontractor agrees and acknowledges that Contractor shall seek payment from Owner for the price of the Work ("**Cost of Work**") performed pursuant to Work Orders and that Contractor has no duty or obligation to pay Subcontractor for any Work until Contractor has been paid by Owner. Therefore, all obligations of Contractor to make Partial Payments and final payment are subject to the express conditions precedent that Owner accepts Subcontractor's Work and Contractor receives payments from Owner for all payments to Subcontractor. It is expressly agreed that any basis for non-payment by Owner, including, without limitation, the bankruptcy or insolvency of Owner, will not excuse this condition precedent and Subcontractor expressly assumes the risk of delayed payment or non-payment by Owner.

b. **Partial Payments.** Partial payments ("**Partial Payments**") for portions of the Work that have been completed will be made by Contractor to Subcontractor as the Work progresses, but not more often than in accordance with Contractor's regular payment procedures. As a condition precedent to Partial Payments, Subcontractor must submit written applications that provide a description of the portion of the Work that has been completed during the payment period (including, without limitation, materials and supplies used therein if provided by Subcontractor), an estimate of the percentage of completion of the Work, a copy of each change order for the payment period, safety meeting sheets for the period of time since the last submission for payment, sheets indicating the number of hours worked by any employees of Subcontractor or any of its subcontractors ("**Employee Time Sheets**") for the period of time since the last submission for payment, evidence of payment, waivers (including, without limitation, lien waivers), and supplier affidavits in form satisfactory to Owner and Contractor, for itself, its subcontractors and material suppliers, and all other information Contractor is required to provide to Owner as a condition to Contractor's right to receive payment. Contractor reserves the right to modify such estimates in its sole and exclusive discretion and such modifications will bind Subcontractor for the purpose of Partial Payments. Partial Payments will be made to Subcontractor on or about the thirtieth day following approval of the application for payment by Contractor and receipt of payment by Contractor from Owner.

c. **Retainage.** Contractor will retain at least ten percent (10%) of each Partial Payment (the "**Retainage Amount**") or any greater amount Contractor chooses to retain in its sole discretion. Contractor may, in its sole discretion, waive its right to retain any Retainage Amount from any Partial Payments or final payment.

Subcontractor

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d. Grounds for Withholding Payments. Contractor may withhold any Partial Payments or the final payment in whole or in part upon the occurrence of any breach of this Agreement by Subcontractor until a cure satisfactory to Contractor has been completed.

e. Work Covered by Partial Payments. All the completed Work covered by Partial Payments or final payment made to Subcontractor will thereupon become the sole property of Contractor, but this provision will not be construed as relieving Subcontractor from the sole responsibility for all Work upon which Partial Payments have been made, for the restoration of any damaged Work, for the correction of defective Work, or as a waiver of Contractor's right to require fulfillment of all of the terms of this Agreement. Payment to Subcontractor is specifically agreed not to imply acceptance by Contractor or Owner of any portion of the Work that fails to comply with the Contract Documents.

f. Final Payment. Final payment constitutes the entire unpaid balance of the Cost of Work minus any amounts retained. Final payment will be made by Contractor to Subcontractor upon satisfaction of the following conditions:

(1) The Work is fully performed in accordance with the requirements of the Contract Documents, and Subcontractor is not in default under this Agreement or the Contract Documents;

(2) Subcontractor has submitted satisfactory evidence of payments to, waivers by, and releases from all claims by, Subcontractor and any persons, firms, or corporations having performed work, labor, or services or furnished materials, equipment, tools, or supplies to Subcontractor for the Work (including, without limitation, lien waivers) if requested by Contractor;

(3) Subcontractor has delivered to Contractor all as-built drawings, certifications, maintenance manuals, operating instructions, written guaranties, warranties, and bonds;

(4) Subcontractor has provided safety meeting sheets and Employee Time Sheets for the period of time since the last submission for payment;

(5) Owner, any general contractor, any lender, any architect, and Contractor have accepted the Work; and

(6) Contractor has received payment from Owner.

g. Release of Retainage. Contractor will release any Retainage Amount thirty (30) days after all conditions precedent to Subcontractor's receipt of the final payment are met.

h. Subcontractor's Agreement to Pay. Subcontractor will promptly pay when due all charges owed by it for labor, services, materials, equipment, tools, and supplies furnished under this Agreement and will keep the Work and the Project free from any mechanics' and materialmen's liens. Subcontractor shall not acquire any materials, supplies, or equipment subject to any security interest or conditional sale or other agreement where any interest is retained by or granted to a seller, supplier, or lender. If Contractor reasonably believes that Subcontractor has failed to pay when due all charges owed by Subcontractor for its labor, services, materials, equipment, tools, and supplies, Contractor may issue joint checks made payable to Subcontractor and other parties owed by Subcontractor or directly to those parties owed by Subcontractor in Contractor's sole discretion. Contractor shall be entitled to and Subcontractor shall provide acceptable security insuring against claims by Subcontractor's creditors.

Subcontractor

Contractor

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i. INDEMNIFICATION FOR LIENS. TO THE FULLEST EXTENT PERMITTED BY LAW, SUBCONTRACTOR HEREBY AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY MECHANICS' AND MATERIALMEN'S LIENS UPON THE PROJECT, ATTORNEYS' FEES AND EXPENSES, AMOUNTS PAID IN SETTLEMENT, AND AMOUNTS PAID TO DISCHARGE JUDGMENTS ARISING OUT OF THE SERVICES, LABOR, EQUIPMENT, OR MATERIALS FURNISHED BY SUBCONTRACTOR, OR ITS EMPLOYEES, SUPPLIERS, OR SUBCONTRACTORS. IF SUBCONTRACTOR FAILS TO DO SO, CONTRACTOR MAY DEDUCT FROM SUMS THEN OR THEREAFTER DUE TO SUBCONTRACTOR SUCH AMOUNTS AS CONTRACTOR DEEMS APPROPRIATE IN ITS SOLE DISCRETION TO INDEMNIFY THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM SUCH LIENS, CLAIMS, AND ENCUMBRANCES. CONTRACTOR MAY, IN ITS SOLE DISCRETION, CURE ANY LIENS OR SATISFY ANY DEMANDS, AND RECOVER ITS COSTS RELATED DIRECTLY OR INDIRECTLY THERETO FROM SUBCONTRACTOR. SUBCONTRACTOR HEREBY WAIVES, RELEASES, AND FOREVER DISCHARGES THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM ALL COSTS, EXPENSES, CLAIMS, DEMANDS, DAMAGES, LOSSES, CAUSES OF ACTION, OR LIABILITIES THAT SUBCONTRACTOR MAY HAVE AGAINST THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES THAT ARISE DIRECTLY OR INDIRECTLY FROM CURING ANY SUCH LIENS, CLAIMS, ENCUMBRANCES, OR DEMANDS.

SECTION 9. Miscellaneous.

a. Assignment and Successors. Subcontractor may not assign or subcontract any portion of the Work or its other obligations or rights hereunder without the prior written consent of Contractor. If Subcontractor assigns or subcontracts any portion of the Work (with the prior written consent of Contractor), Subcontractor will require each such assignee or sub-tier subcontractor to comply with the Contract Documents, including, without limitation, the pertinent provisions of this Agreement (including, without limitation, Section 5) by written agreement, a copy of which must be provided to Contractor. Subcontractor hereby unconditionally guarantees the compliance of each such assignee or sub-tier subcontractor with this Agreement. Subject to the preceding provisions of this Section, this Agreement will be binding on and will inure to the benefit of the parties and their respective heirs, administrators, executors, successors, and permitted assigns.

b. Acts of Affiliates. For the purpose of this Agreement, any action of any agent, employee, subcontractor, director, officer, or invitee of Subcontractor or any of their agents, employees, subcontractors, officers, or invitees shall be deemed an act of Subcontractor. For the purposes hereof, any obligation or liability imposed on Subcontractor with regard to its employees or agents shall also be deemed an obligation or liability of Subcontractor with regard to employees or agents of its

Subcontractor

Contractor

subcontractors. Subcontractors of Subcontractor shall include any suppliers of Subcontractor other than Contractor.

c. Offset. In addition to any other right provided hereunder, Contractor shall be entitled to offset any amount owed to it by Subcontractor hereunder against any Partial Payments or final payment under this Agreement or any other agreement.

d. Clean up. Subcontractor will at all times keep the Project safe and free from the accumulation of waste materials or rubbish caused by its operations or related to the Work. Upon completion of the Work and each portion thereof, Subcontractor will remove all rubbish and waste produced by its operations or Work hereunder from the Project as well as all of its tools, equipment, machinery, and surplus materials no longer needed and leave the Project in a "broom clean" or equivalent condition and safe for Subcontractor's employees and subsequent contractors to perform their work, unless otherwise specified in writing. If Subcontractor fails to clean up, Contractor may do so after written notice to Subcontractor and the cost thereof will be charged to Subcontractor.

e. Lien waiver. Subcontractor hereby waives and relinquishes any right, whether granted by statute or not, to file or claim any lien for Work performed hereunder.

f. Other. This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. No delay or failure by Contractor to exercise any right or remedy hereunder, and no partial or single exercise of such right or remedy, will constitute a waiver of that or any other right or remedy. The duties and obligations imposed by this Agreement and rights and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by Law. The prevailing party to any dispute shall have a right to collect its reasonable attorney's fees and expenses. This Agreement shall be governed by the laws of the State of Texas, without regard to the conflicts of law provisions thereof. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof. It is the intent of the parties that any invalid provision hereof be reformed to the extent necessary to make it enforceable to the maximum extent of the law.

EXECUTED to be effective as of the date first above written.

SUBCONTRACTOR:

WS Contractors LLC

By: Williams R. de Silva

Name: Williams R. de Silva Sr.

Title: Owner

27-1964669

Subcontractor Social Security No. or Federal I.D. No.

BUILDERS FIRSTSOURCE – SOUTHEAST GROUP, LLC

By: _____

Name: Deryl Ward

Title: Vice President

Subcontractor

Contractor

[Version – 5/17/06]

BFS 003041

ELECTRONICALLY FILED - 2020 Jan 23 11:01 AM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003783

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	C/A No.: 2016-CP-10-03783
The Retreat at Charleston National Country Club Home Owners Association, Inc. and The Retreat at Charleston National Country Club Horizontal Property Regime, Plaintiffs, vs. Builders FirstSource-Southeast Group, LLC; et al., Defendants.	)	**DEFENDANT WS CONTRACTORS, LLC'S AMENDED NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT AGAINST THE CLAIMS OF BUILDERS FIRST SOURCE-SOUTHEAST GROUP, LLC**
Builders FirstSource-Southeast Group, LLC, Third-Party Plaintiff, v. Palmetto Trim and Renovations, LLC, et. al., Third-Party Defendants.	)	

TO: STEPHEN P. HUGHES, ESQ. AND THE LAW FIRM OF HOWELL, GIBSON & HUGHES, PA, COUNSEL OF RECORD FOR DEFENDANT BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, LLC

PLEASE TAKE NOTICE that Defendant WS Contractors, LLC ("WS Contractors"), by and through its undersigned counsel, will move before this Honorable Court, ten (10) days after the service of this amended notice of motion and motion or as soon thereafter as counsel may be heard, for an order granting summary judgment in favor of WS Contractors, LLC and against Builders FirstSource-Southeast Group, LLC (hereafter "BFS") pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. The grounds for this Motion are as follows:

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1) There exists no genuine issue as to any material fact and WS Contractors is entitled to judgment dismissing all cross-claims against it as a matter of law;

2) BFS's cross-claims for breach of contract, breach of express and implied warranty, and negligence are "merely disguised ... claims for equitable indemnity" and fail as a matter of law. *See Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders FirstSource-Se. Grp.*, 413 S.C. 630, 634, (Ct. App. 2015);

3) BFS's cross-claims for contractual indemnity are based on contractual provisions that are neither clear nor unequivocal, are against public policy and the laws of South Carolina, and, thus, fail as a matter of law. *See Concord and Cumberland Horizontal Prop. Regime v. Concord & Cumberland,* LLC, 819 S.E.2d 166, 172 (S.C. App. 2018), reh'g denied (Oct. 18, 2018) (affirming trial court's grant of summary judgment in favor of subcontractor dismissing contractual indemnity cross-claims of contractor based on application of the clear and unequivocal standard).

4) BFS's cross-claims are barred by the doctrine of collateral estoppel.

5) WS Contractors has settled and resolved all claims of Plaintiffs in this action and, in doing so, procured an issue release in favor of Defendant BFS with respect to the entire scope of work of WS Contractors and its subcontractors at the subject Retreat at Charleston National Country Club project. Accordingly, any remaining cross-claims of BFS are necessarily predicated on the sole negligence of BFS, and, therefore, fail as a matter of law under applicable South Carolina law concerning equitable indemnity and express contractual indemnity, including, without limitation, the South Carolina Anti-Indemnity Statute, S.C. Code Ann. § 32-2-10.

In support of this motion, as amended, Defendant WS Contractors craves reference to Builders FirstSource-Southeast Group, LLC Master Subcontractor Agreement dated September 24,

2012, and Builders FirstSource-Southeast Group, LLC Master Subcontractor Agreement dated December 31, 2014 (attached hereto as **Exhibit A** and **Exhibit B**, respectively), the Settlement Agreement, General Release, and Issue Release dated November 26, 2019 (attached hereto as **Exhibit C**), its memorandum of law in support of this motion, pertinent deposition testimony and evidence presented at or before the hearing, the pleadings on file with the Court, and applicable South Carolina law.

Respectfully submitted,

s/ Ian W. Freeman

Ian W. Freeman (SC Bar #72736)
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WALKER GRESSETTE FREEMAN & LINTON, LLC
Mailing: P.O. Box 22167, Charleston, SC 29413
Office: 66 Hasell St., Charleston, SC 29401
Telephone: 843.227.2200

ATTORNEYS FOR WS CONTRACTORS, LLC

Charleston, South Carolina
January 23, 2020

ELECTRONICALLY FILED - 2020 Jan 23 11:01 AM - CHARLESTON - COMMON PLEAS - CASE#2016CP1003783

EXHIBIT A

Builders FirstSource

BUILDERS FIRSTSOURCE – SOUTHEAST GROUP, LLC
MASTER SUBCONTRACTOR AGREEMENT

THIS MASTER SUBCONTRACTOR AGREEMENT (this "Agreement") is entered into effective as of December 31, 2014 between **Builders FirstSource – Southeast Group, LLC**, a Delaware limited liability company, address: 2001 Bryan Street, Suite 1600, Dallas, TX 75201, telephone: (813) 480 6262, fax: _____, Contact: Darren Nichols, e-mail: darren.nichols@bldr.com ("**Contractor**"), and WS contractors, address: 2010 Bearclaw dr Goose creek SC 29445, telephone: 843 480 6262, fax: ---, Contact: Wilson Sales, e-mail: WS contractors LLC@hotmail.com ("**Subcontractor**").

SECTION 1. Introduction.

a. **Work.** This Agreement contains the basic terms and conditions under which Subcontractor agrees to provide materials and/or to perform services (the "**Work**") from time to time for Contractor on any project (the "**Project**"). TIME IS OF THE ESSENCE. It will apply to and govern all Work requested by Contractor from Subcontractor at any time following the date of this Agreement, unless other terms and conditions are specifically agreed to in writing by Contractor with respect to particular items of Work or until this Agreement is terminated as hereinafter provided. In accordance with the terms and conditions contained in this Agreement, Subcontractor will perform and finish in a good and workmanlike manner, and will furnish all required materials, labor, equipment, supplies and tools for, the Work described from time to time for Contractor on any Project. Projects may or may not be owned or controlled by Contractor's customer (the "**Owner**"). The Work will be performed in accordance with plans, specifications, drawings and schedules for the Work, and any supplemental terms and conditions to this Agreement, all of which are, or will be, on file at the office of the Contractor (the "**Contract Documents**") and incorporated into the Agreement by reference as if fully set forth. Contractor will have the right at any time to supplement the plans and specifications for the Work with additional or replacement drawings and schedules or other documents and upon so doing such drawings and schedules will immediately become part of the Contract Documents. The Contract Documents, including any time schedules, may be amended and/or supplemented from time to time by giving Subcontractor written notice thereof. Subcontractor's only remedy in the event an amendment or supplement to the Contractor Documents materially increases the cost or difficulty of performance by the Subcontractor is to terminate this Agreement by written notice to Contractor within 24 hours after Contractor delivers such amendment or supplement to Subcontractor.

b. **Work Orders.** It is contemplated under this Agreement that Subcontractor may perform Work on multiple projects at multiple locations. The description, completion date, special conditions, and cost of Work to be performed on a Project will be set forth in the written purchase order or work order (together, "**Work Order**") delivered by Contractor to Subcontractor relating to that Project. Such Work Order(s)

WS
Subcontractor

Contractor

are incorporated herein by reference as if fully set forth. The Work described in Work Orders must be performed under the terms of this Agreement.

e. **Term.** This Agreement shall be for an initial term of three (3) years. Upon the expiration of such initial term or any renewal term, this Agreement shall automatically renew for subsequent one (1) year periods unless either party gives written notice to the other party that it is electing to terminate this Agreement at the end of the then current term. Such written notice of intent to terminate must be given at least sixty (60), but not more than one hundred twenty (120), days prior to the end of the then current term. The provisions of Sections 3, 4, and 5 shall survive termination of this Agreement. If Contractor terminates this Agreement, Contractor will pay to Subcontractor sums due for the Work performed to the date of termination, as provided in Section 8.

d. **Notice.** Any notice or communication hereunder or in any agreement entered into in connection with the transactions contemplated hereby must be in writing and given by depositing the same in the United States mail, addressed to the party to be notified, postage prepaid, and registered or certified with return receipt requested, or by delivering the same in person or by facsimile transmission. Such notice shall be deemed received on the date on which it is hand-delivered or received by facsimile transmission or on the third business day following the date on which it is so mailed. For purposes of notice, the addresses of the parties shall be as set forth on the front page of this Agreement. Any party may change its address for notice by written notice given to the other parties in accordance with this Section.

SECTION 2. Materials and Workmanship.
Subcontractor agrees to commence Work on Projects upon request by Contractor. Subcontractor agrees to provide all labor, services, equipment, and tools necessary to complete the Work.

a. **Scope of Work; Knowledge of Site; Plans and Specifications.** Subcontractor shall take all action necessary to familiarize itself and its employees, agents, and subcontractors with the scope and requirements of the Work, the existing site conditions, and any work to be performed by others that may affect the performance of the Work. Subcontractor shall confirm that the Contract Documents are correct and immediately notify Contractor of any errors and/or omissions.

b. **Change Orders.** Contractor may make any changes to the nature or scope of the Work; provided, however, that any changes resulting in a change in price must be agreed to in writing by Subcontractor and Contractor prior to the Work being performed. Subcontractor shall be notified of changes by written change order. Subcontractor shall not perform any extra work without written authorization by Contractor.

c. **Protection of Work.** Subcontractor shall bear all risk of loss or damage to the Work resulting from any cause whatsoever until Subcontractor has completed its Work on the Project and such work has been accepted by Contractor and Owner. Subcontractor shall at all times, and at its expense, protect all of its labor, materials (regardless of who supplied such materials), supplies, tools, and equipment (and those of its employees, agents, and subcontractors) against any damage, injury, destruction, theft, or loss. Subcontractor shall, at its expense, promptly repair or replace damage to the Work or damage to any other components of the Project resulting from the activities of Subcontractor or its employees, agents, or subcontractors.

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Subcontractor

Contractor

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d. Safety and Environmental.

(1) Compliance with Laws. Subcontractor will carefully check the drawings, plans, and specifications for conformity with all local, state, and Federal laws, codes, rules, and regulations bearing on the Work (the "Law") before commencing the Work. Unless Contractor or Owner otherwise agrees in writing, before commencement of the Work Subcontractor will obtain at its sole cost and expense all permits necessary for the Work. Subcontractor will comply with product manufacturer's specifications and will give all notices and comply with all Law bearing on the Work, including by way of enumerations and not limitation, safety, health, and environmental rules and regulations established by or pursuant to Federal, state, and local safety and environmental laws. Subcontractor at all times will furnish to its agents and employees a safe place of employment. If Subcontractor observes any violation of Law, it will immediately report such violation to Contractor in writing. Subcontractor will be responsible for any fines, charges, in-kind training or supplies, or penalties related to the Work, including, without limitation, fines, charges, and/or penalties related to the operation of equipment, the Subcontractor's performance of the Work, the handling of materials, or any other function that is in violation of the Law. All workmanship and materials will conform to Law and, if the Subcontractor performs or permits the performance of any Work not in compliance with Law, it will immediately cause such Work to be redone and bear all costs in connection therewith. The Work, as performed, will meet with the approval of, and pass any inspection of, any governmental authority having jurisdiction thereof. If the Work is being constructed under specifications of the Federal Housing Administration or the Veterans Administration, the Work will meet the requirements of these governmental agencies. No Work will be deemed complete until final inspection is made and approval is received from every governmental authority whose approval is required.

(2) The Occupational Safety and Health Administration ("OSHA") and the Environmental Protection Agency ("EPA"). Regulations have been promulgated by OSHA and EPA ("Regulations") that require all contractors and subcontractors to exchange Material Safety Data Sheets ("MSDS") and share information about precautionary measures necessary to protect all workers on a building project.

Subcontractor agrees as follows:

(A) Subcontractor will fully comply with the Regulations and will cooperate with Contractor and/or Owner and all subcontractors of Owner in order to assure compliance with the Regulations.

(B) Subcontractor hereby accepts full responsibility and liability for the training of its employees as to all precautionary measures necessary to protect such employees during both routine and emergency situations on the Project.

(C) TO THE FULLEST EXTENT PERMITTED BY LAW, SUBCONTRACTOR WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM ALL CLAIMS, DAMAGES, LIABILITIES, AND CAUSES OF ACTION THAT ARISE FROM THE FAILURE OF SUBCONTRACTOR TO COMPLY

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WITH THE REGULATIONS.

(D) Subcontractor will assist Contractor in complying with the Regulations.

(E) Subcontractor will not use any chemicals in its performance of the Work for Contractor or incorporate any chemicals into materials or products supplied to Contractor or to the Project unless Subcontractor has given Contractor prior written notice of the existence and the possible exposure to such chemical, has delivered an MSDS to Contractor, and has received a written consent of Contractor to use such chemicals.

(3) Subcontractor's Safety Program. Subcontractor's safety program must specifically address, among other safety issues, scaffolding, fall hazards, trenching, and shoring, as may be applicable. For "hard hat" jobs, approved safety helmets and hard soled shoes must be worn at the Project at all times. Safety glasses must be worn when power equipment is used. Subcontractor shall erect and maintain all reasonable safeguards for safety and protection, including, but not limited to, necessary signage, protective barriers, and other warnings against hazards. Subcontractor shall furnish all flagmen, barricades, and other items required for public safety and right-of-way maintenance required by the installation of the Work. Safety vests shall be worn in the public right-of-way.

(4) Default. If Subcontractor fails to immediately comply with safety and environmental requirements after verbal or written notice from Contractor, Contractor may correct the violation and deduct the cost from any Partial Payment or final payment in addition to all other remedies available to Contractor, including, without limitation, consequential damages. Subcontractor shall pay any fines assessed to Owner or Contractor due to the acts, omissions, or negligence of Subcontractor. If construction at the Project in whole or in part is delayed or halted by any governmental authority as a result of Subcontractor's Work, Subcontractor shall pay to Contractor as liquidated damages, and not as a penalty, the amount of $200 per hour for a minimum ten (10) hour day until construction at the Project can be safely resumed.

SECTION 3. Warranty.
In addition to any other warranty or guarantee expressly made by Subcontractor or implied by Law, Subcontractor unconditionally warrants and guarantees the Work will conform to any specifications provided by Contractor and comply with all Law and Subcontractor guarantees the Work against defects in design, workmanship, and materials for the benefit of Contractor and its successors and assigns, Owner, as well as the ultimate owner of any structure into which the Work is incorporated. This guarantee will commence upon the Subcontractor's completion of the Work and will continue for a minimum of (a) three (3) years for all Work except, (b) ten (10) years for all Work consisting of any structural applications of any home, building, or other structure. Notwithstanding the foregoing, this warranty will continue until such time as all express and implied warranties granted or deemed granted by Contractor and all other obligations of Contractor related to the Work are terminated or expired as a matter of Law. If demand is made upon Subcontractor to perform under this warranty, Subcontractor at its sole cost and expense will expeditiously repair or replace, at Contractor's sole option, any defective or nonconforming Work and indemnify Contractor and any other party for any costs incurred by any party relating to such demand. This warranty shall extend to all consequential damages resulting from such faults and/or defects of design, material, and workmanship described in this Section, including, without limitation, property damage to the homes or properties into which the Work is incorporated, property damage to the personal property of the ultimate owners of such homes or structures, and personal injury damages to persons residing at or visiting the properties into which the Work is incorporated. If

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Subcontractor fails to perform under this warranty, the party entitled to performance or Contractor will have the right to hire other persons to correct or replace the defective Work and hold Subcontractor liable for the costs thereof including costs, disbursements, and attorneys' fees incurred in the enforcement of this provision. This warranty is independent from all other obligations of Subcontractor under this Agreement, including, without limitation, all indemnification provisions, and will apply whether or not required by any other provision of this Agreement. Owner and any ultimate owner of any structure into which the Work is incorporated shall be intended non-incidental third party beneficiaries of this Agreement and shall have the power to enforce this Agreement. Subcontractor will maintain a published phone number or answering service during normal working hours.

SECTION 4. Insurance.

At all times while performing the Work, and continuing thereafter until the expiration of the applicable statute of limitations for any claims, Subcontractor will maintain for the benefit of itself and Contractor (and Owner, when requested), the following minimum insurance coverage:

a. Workers' Compensation Insurance - statutory limits in the state where each Project is located.

b. Employer's Liability Insurance - $1,000,000 or such other higher limits imposed in accordance with the requirement, if any, of the laws of the states where Subcontractor is engaged in business.

c. Commercial General Liability - $1,000,000 per occurrence, $1,000,000 products-completed operations aggregate, $1,000,000 general aggregate, and broad form contractual liability coverage to cover the indemnity obligations undertaken herein.

d. Business Auto Liability, including hired and non-owned auto coverage - $500,000 combined single limit.

Insurance policies shall (a) be issued by companies with a "Best's Rating A" and a "Financial Size Category of VIII", (b) be on an "occurrence" form, and (c) list Contractor and if requested, Owner, as additional insureds per Form CG 20 10 edition 11/85 or its equivalent on the General Liability and Automobile Liability Policies. For purposes of this additional insured requirement, the term "equivalent" means coverage for liability arising out of Subcontractor's Work performed for Contractor and includes both ongoing and products-completed operations coverage. The Workers' Compensation Policy shall include an Alternate Employer's Endorsement naming the Contractor. If Subcontractor utilizes any leased employees, Contractor must also be listed on an Alternate Employer's endorsement on the Workers' Compensation Policy covering the leased employees.

Subcontractor will provide to Contractor certificates of insurance or other satisfactory evidence of compliance with the provisions of this Section promptly after the date of this Agreement and thirty (30) days before the expiration date of each policy or at any time upon request of Contractor. A copy of the actual additional insured endorsement and alternate employer's endorsement must be supplied with the certificate of insurance. If such evidence is not furnished, Contractor will have the immediate right, but not the obligation, to procure at Subcontractor's expense (which Contractor may offset such costs against any Partial Payment or final payment) the required insurance on behalf of Subcontractor. The reference to "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon the company, its agents or representatives" in the cancellation notification portion of the certificate and/or endorsement to the policy must be deleted. To the fullest extent permitted by law, any provision on the face of any certificate of insurance provided by Subcontractor that states anything to the effect that the certificate of insurance does not confer rights to insurance upon Contractor is hereby deemed deleted from such certificate of insurance. The insurance

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provided herein by Subcontractor shall be primary and non-contributory to any other insurance available to the additional insureds. Waivers of subrogation shall be provided in favor of Contractor and Owner on all insurance policies carried by Subcontractor. Subcontractor hereby releases Contractor and Owner from all claims and causes of action resulting from or related to any loss covered or that should have been covered by insurance required to be maintained by Subcontractor including the deductible and any uninsured portion. Additionally, Subcontractor shall comply with any additional insurance requirements set forth in any other Contract Documents.

SECTION 5. INDEMNITY.
TO THE FULLEST EXTENT PERMITTED BY LAW, THE SUBCONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, LOSSES, CAUSES OF ACTION, DAMAGES, LIABILITIES, FINES, PENALTIES, AND EXPENSES OF ANY KIND WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ARBITRATION OR COURT COSTS AND ATTORNEY'S FEES (SUCH LEGAL EXPENSES TO INCLUDE COSTS INCURRED IN ESTABLISHING THE INDEMNIFICATION AND OTHER RIGHTS AGREED TO IN THIS PARAGRAPH) ARISING OUT OF OR RESULTING FROM BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY, ARISING OR ALLEGED TO ARISE OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE SUBCONTRACTOR'S PERFORMANCE OF THE WORK OR OTHER ACTIVITIES OF THE SUBCONTRACTOR, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF THE SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE SUBCONTRACTOR OR ANYONE FOR WHOSE ACTS THE SUBCONTRACTOR MAY BE LIABLE. THE CONTRACTOR'S INSURANCE REQUIREMENTS WHICH SUBCONTRACTOR IS SUBJECT TO UNDER THIS AGREEMENT ARE SEPARATE AND DISTINCT FROM THE REQUIREMENT OF INDEMNIFICATION HEREUNDER.

NOTWITHSTANDING THE FOREGOING, TO THE FULLEST EXTENT PERMITTED BY LAW, THE SUBCONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES (THE "INDEMNITEES"), FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES (SUCH LEGAL EXPENSES TO INCLUDE COSTS INCURRED IN ESTABLISHING THE INDEMNIFICATION AND OTHER RIGHTS AGREED TO IN THIS PARAGRAPH) ARISING OUT OF OR RESULTING FROM BODILY INJURY TO, OR SICKNESS, DISEASE, OR DEATH OF, THE SUBCONTRACTOR, ANY AGENT, EMPLOYEE, OR REPRESENTATIVE OF THE SUBCONTRACTOR, OR ANY OF ITS SUBCONTRACTORS, REGARDLESS OF WHETHER SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED, OR IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OF ANY

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OF THE INDEMNITEES, IT BEING THE EXPRESSED INTENT OF THE CONTRACTOR AND THE SUBCONTRACTOR THAT IN SUCH EVENT THE SUBCONTRACTOR IS TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, WHETHER IT IS OR IS ALLEGED TO BE THE SOLE OR CONCURRENT CAUSE OF THE BODILY INJURY, SICKNESS, DISEASE, OR DEATH OF THE SUBCONTRACTOR, SUBCONTRACTOR'S AGENT, EMPLOYEE, OR REPRESENTATIVE, OR THE AGENT, EMPLOYEE, OR REPRESENTATIVE OF ANY OF ITS SUBCONTRACTORS. THE INDEMNIFICATION OBLIGATIONS UNDER THIS PARAGRAPH SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR SUBCONTRACTOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS. THE SUBCONTRACTOR SHALL PROCURE LIABILITY INSURANCE COVERING ITS OBLIGATIONS UNDER THIS SECTION 5.

THE DUTY TO DEFEND UNDER THIS SECTION 5 IS INDEPENDENT AND SEPARATE FROM THE DUTY TO INDEMNIFY, AND THE DUTY TO DEFEND EXISTS REGARDLESS OF ANY ULTIMATE LIABILITY OR NEGLIGENCE OF THE CONTRACTOR, THE OWNER, OR ANY OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES. THE DUTY TO DEFEND ARISES IMMEDIATELY UPON PRESENTATION OF A CLAIM BY ANY PARTY INDEMNIFIED HEREUNDER AND WRITTEN NOTICE OF SUCH CLAIM BEING PROVIDED TO SUBCONTRACTOR. SUBCONTRACTOR'S OBLIGATION TO INDEMNIFY, DEFEND, AND HOLD HARMLESS UNDER THIS SECTION 5 WILL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT UNTIL IT IS FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION OR ARBITRATION PANEL THAT A CLAIM AGAINST THE CONTRACTOR, THE OWNER, AND ANY OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FOR THE MATTER INDEMNIFIED HEREUNDER IS FULLY AND FINALLY BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS.

THE DEFENSE AND INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT ARE NOT INTENDED TO AND SHALL NOT REQUIRE THE SUBCONTRACTOR OR OTHERS TO INDEMNIFY OR HOLD HARMLESS A REGISTERED ARCHITECT, LICENSED ENGINEER, OR AN AGENT, SERVANT, OR EMPLOYEE OF A REGISTERED ARCHITECT OR LICENSED ENGINEER FROM LIABILITY FOR DAMAGE THAT IS (1) CAUSED BY OR RESULTS FROM: (A) DEFECTS IN PLANS, DESIGNS, OR SPECIFICATIONS PREPARED, APPROVED, OR USED BY THE ARCHITECT OR ENGINEER; OR (B) THE NEGLIGENCE OF THE ARCHITECT OR ENGINEER IN THE RENDITION OR CONDUCT OF PROFESSIONAL DUTIES CALLED FOR OR ARISING OUT OF THE CONSTRUCTION CONTRACT AND THE PLANS,

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DESIGNS, OR SPECIFICATIONS THAT ARE A PART OF THE CONSTRUCTION CONTRACT; AND (2) ARISES FROM PERSONAL INJURY OR DEATH, PROPERTY INJURY, OR ANY OTHER EXPENSE THAT ARISES FROM PERSONAL INJURY, DEATH OR PROPERTY INJURY.

SECTION 6. Independent Subcontractor Status and Warranty to be Lawfully Entitled to Work in the United States of America.
Subcontractor agrees that it and its employees, agents, and subcontractors (and their employees, agents, and subcontractors) will perform the Work as independent contractors, and not as employees or agents of Contractor. Contractor has no authority to direct, supervise, or control the means, manner, or method of construction of the Work. Further, Subcontractor warrants and agrees it will independently verify that it and its employees, agents, and subcontractors (and their employees, agents, and subcontractors) shall be lawfully entitled to work under the laws of the United States of America.

SECTION 7. Certification of Compliance with Equal Employment Opportunity Provisions
If the Project contracted for herein is subject to or becomes subject to 41 CFR 60-741.5(a), then the Subcontractor and Contractor certify that they shall abide by the requirements of 41 CFR 60-741.5(a), such requirements being incorporated by reference herein. This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

If the Project contracted for herein is subject to, or becomes subject to, 41 CFR 60-300.5(a), then the Subcontractor and Contractor certify that they shall abide by the requirements of 41 CFR 60-300.5(a), such requirements being incorporated by reference herein. This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

Subcontractor further certifies that it has read and familiarized itself with the requirements contained in 41 CFR 60-741.5(a) and 41 CFR 60-300.5(a) and shall incorporate the above language into its purchase orders and subcontracts.

TO THE FULLEST EXTENT PERMITTED BY LAW, THE SUBCONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, LOSSES, CAUSES OF ACTION, DAMAGES, LIABILITIES, FINES, PENALTIES, AND EXPENSES OF ANY KIND WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ARBITRATION OR COURT COSTS AND ATTORNEY'S FEES (SUCH LEGAL EXPENSES TO INCLUDE COSTS INCURRED IN ESTABLISHING THE INDEMNIFICATION AND OTHER RIGHTS AGREED TO IN THIS PARAGRAPH)

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ARISING OUT OF, RESULTING FROM OR RELATED TO SUBCONTRACTOR'S BREACH OF THE OBLIGATIONS SET FORTH IN THIS SECTION 7.

SECTION 8. Default and Damages.

a. Subcontractor's Default. The following acts on the part of Subcontractor will, at Contractor's option, result in the immediate termination of this Agreement and all Work Orders, and dismissal of Subcontractor from each site.

(1) Any delays of the Work caused by Subcontractor's failure or refusal to supply enough skilled labor or materials to meet Contractor's schedule.

(2) Subcontractor's failure to promptly pay any labor, material suppliers, or lien claimants with respect to any Work.

(3) Adjudication of Subcontractor to be bankrupt or insolvent either by Contractor or any court or governmental entity.

(4) If Subcontractor or any of its employees, subcontractors, or agents (or employees, subcontractors, or agents of any subcontractor retained by Subcontractor to perform Work) consume, use, or are under the influence of alcohol or illegal drugs while on the site. (Subcontractor agrees to strictly enforce rules to this effect and to inform all employees, agents, and subcontractors that such rules will be strictly enforced.)

(5) Failure of Subcontractor or its agents, subcontractors, or employees to (a) operate motorized vehicles or equipment in a safe and orderly manner, (b) comply with safe labor and material installation practices designated by Contractor or Owner or otherwise accepted by the industry, or (c) leave the Project site in a safe condition (as determined by Contractor in its sole discretion) during or after construction.

(6) Subcontractor's failure to comply with the provisions of this Agreement regarding assignment or subcontracting.

(7) Any other violations of the Contract Documents including, without limitation, this Agreement.

b. Damages.

(1) No Damages for Delay. Notwithstanding anything to the contrary in this Agreement and to the fullest extent permitted by law, Contractor will not be liable for any loss, claim, cost, liability, or damage incurred by Subcontractor, whether direct or indirect or whether related to efforts by Contractor to accelerate the Work, on account of any delay, disruption, hindrance, or any other impediment whatsoever, no matter by what, or by whom caused. Rather, the Cost of Work (defined in Section 8) is understood and agreed to include and cover all expenses and costs due to delays, disruptions, hindrances, or any other impediments regardless of their cause. Subcontractor agrees not to make, and hereby waives, any such claim for damages.

(2) Subcontractor's Liability to Contractor upon Termination. If this Agreement is terminated at Contractor's option as provided in this Section 7, Subcontractor will be liable to

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Subcontractor

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Contractor for all costs and damages incurred by Contractor due to Subcontractor's failure to perform under this Agreement or other Contract Documents (including, without limitation, the amount by which the cost to complete the Project exceeds the cost of the Work), Subcontractor's failure to keep up the progress of the Work as required, or Subcontractor's failure to execute the Work as directed by Contractor. In addition to all costs and damages incurred by Contractor, Subcontractor shall be liable to Contractor for an additional amount equal to 25% of all costs and damages for Contractor's additional overhead and related costs.

c. Reimbursement for Fines. Subcontractor shall promptly reimburse to Contractor and shall indemnify, defend, and hold harmless Contractor regarding any fines or penalties incurred by Contractor or Owner as a result of the actions or inaction of Subcontractor or its employees, agents, or subcontractors, relating to performance of Work or otherwise, including, without limitation, their failure to abide by the requirements of Section 2(d).

SECTION 9. Payment to Subcontractor.

a. Payment by Owner is Condition Precedent. Subcontractor agrees and acknowledges that Contractor shall seek payment from Owner for the price of the Work ("Cost of Work") performed pursuant to Work Orders and that Contractor has no duty or obligation to pay Subcontractor for any Work until Contractor has been paid by Owner. Therefore, all obligations of Contractor to make Partial Payments and final payment are subject to the express conditions precedent that Owner accepts Subcontractor's Work and Contractor receives payments from Owner for all payments to Subcontractor. It is expressly agreed that any basis for non-payment by Owner, including, without limitation, the bankruptcy or insolvency of Owner, will not excuse this condition precedent and Subcontractor expressly assumes the risk of delayed payment or non-payment by Owner.

b. Partial Payments. Partial payments ("Partial Payments") for portions of the Work that have been completed will be made by Contractor to Subcontractor as the Work progresses, but not more often than in accordance with Contractor's regular payment procedures. As a condition precedent to Partial Payments, Subcontractor must submit written applications that provide a description of the portion of the Work that has been completed during the payment period (including, without limitation, materials and supplies used therein if provided by Subcontractor), an estimate of the percentage of completion of the Work, a copy of each change order for the payment period, safety meeting sheets for the period of time since the last submission for payment, sheets indicating the number of hours worked by any employees of Subcontractor or any of its subcontractors ("Employee Time Sheets") for the period of time since the last submission for payment, evidence of payment, waivers (including, without limitation, lien waivers), and supplier affidavits in form satisfactory to Owner and Contractor, for itself, its subcontractors and material suppliers, and all other information Contractor is required to provide to Owner as a condition to Contractor's right to receive payment. Contractor reserves the right to modify such estimates in its sole and exclusive discretion and such modifications will bind Subcontractor for the purpose of Partial Payments. Partial Payments will be made to Subcontractor on or about the thirtieth day following approval of the application for payment by Contractor and receipt of payment by Contractor from Owner.

c. Retainage. Contractor will retain at least ten percent (10%) of each Partial Payment (the "Retainage Amount") or any greater amount Contractor chooses to retain in its sole discretion.

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Subcontractor
Contractor

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Contractor may, in its sole discretion, waive its right to retain any Retainage Amount from any Partial Payments or final payment.

d. **Grounds for Withholding Payments.** Contractor may withhold any Partial Payments or the final payment in whole or in part upon the occurrence of any breach of this Agreement by Subcontractor until a cure satisfactory to Contractor has been completed.

e. **Work Covered by Partial Payments.** All the completed Work covered by Partial Payments or final payment made to Subcontractor will thereupon become the sole property of Contractor, but this provision will not be construed as relieving Subcontractor from the sole responsibility for all Work upon which Partial Payments have been made, for the restoration of any damaged Work, for the correction of defective Work, or as a waiver of Contractor's right to require fulfillment of all of the terms of this Agreement. Payment to Subcontractor is specifically agreed not to imply acceptance by Contractor or Owner of any portion of the Work that fails to comply with the Contract Documents.

f. **Final Payment.** Final payment constitutes the entire unpaid balance of the Cost of Work minus any amounts retained. Final payment will be made by Contractor to Subcontractor upon satisfaction of the following conditions:

(1) The Work is fully performed in accordance with the requirements of the Contract Documents, and Subcontractor is not in default under this Agreement or the Contract Documents;

(2) Subcontractor has submitted satisfactory evidence of payments to, waivers by, and releases from all claims by, Subcontractor and any persons, firms, or corporations having performed work, labor, or services or furnished materials, equipment, tools, or supplies to Subcontractor for the Work (including, without limitation, lien waivers) if requested by Contractor;

(3) Subcontractor has delivered to Contractor all as-built drawings, certifications, maintenance manuals, operating instructions, written guarantees, warranties, and bonds;

(4) Subcontractor has provided safety meeting sheets and Employee Time Sheets for the period of time since the last submission for payment;

(5) Owner, any general contractor, any lender, any architect, and Contractor have accepted the Work; and

(6) Contractor has received payment from Owner.

g. **Release of Retainage.** Contractor will release any Retainage Amount thirty (30) days after all conditions precedent to Subcontractor's receipt of the final payment are met.

h. **Subcontractor's Agreement to Pay.** Subcontractor will promptly pay when due all charges owed by it for labor, services, materials, equipment, tools, and supplies furnished under this Agreement and will keep the Work and the Project free from any mechanics' and materialmen's liens. Subcontractor shall not acquire any materials, supplies, or equipment subject to any security interest or conditional sale or other agreement where any interest is retained by or granted to a seller, supplier, or lender. If Contractor reasonably believes that Subcontractor has failed to pay when due all charges owed by Subcontractor for its labor, services, materials, equipment, tools, and supplies, Contractor may issue

Subcontractor

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joint checks made payable to Subcontractor and other parties owed by Subcontractor or directly to those parties owed by Subcontractor in Contractor's sole discretion. Contractor shall be entitled to and Subcontractor shall provide acceptable security insuring against claims by Subcontractor's creditors.

l. INDEMNIFICATION FOR LIENS. TO THE FULLEST EXTENT PERMITTED BY LAW, SUBCONTRACTOR HEREBY AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY MECHANICS' AND MATERIALMEN'S LIENS UPON THE PROJECT, ATTORNEYS' FEES AND EXPENSES, AMOUNTS PAID IN SETTLEMENT, AND AMOUNTS PAID TO DISCHARGE JUDGMENTS ARISING OUT OF THE SERVICES, LABOR, EQUIPMENT, OR MATERIALS FURNISHED BY SUBCONTRACTOR, OR ITS EMPLOYEES, SUPPLIERS, OR SUBCONTRACTORS. IF SUBCONTRACTOR FAILS TO DO SO, CONTRACTOR MAY DEDUCT FROM SUMS THEN OR THEREAFTER DUE TO SUBCONTRACTOR SUCH AMOUNTS AS CONTRACTOR DEEMS APPROPRIATE IN ITS SOLE DISCRETION TO INDEMNIFY THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM SUCH LIENS, CLAIMS, AND ENCUMBRANCES. CONTRACTOR MAY, IN ITS SOLE DISCRETION, CURE ANY LIENS OR SATISFY ANY DEMANDS, AND RECOVER ITS COSTS RELATED DIRECTLY OR INDIRECTLY THERETO FROM SUBCONTRACTOR. SUBCONTRACTOR HEREBY WAIVES, RELEASES, AND FOREVER DISCHARGES THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM ALL COSTS, EXPENSES, CLAIMS, DEMANDS, DAMAGES, LOSSES, CAUSES OF ACTION, OR LIABILITIES THAT SUBCONTRACTOR MAY HAVE AGAINST THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES THAT ARISE DIRECTLY OR INDIRECTLY FROM CURING ANY SUCH LIENS, CLAIMS, ENCUMBRANCES, OR DEMANDS.

SECTION 10. Miscellaneous.

a. Assignment and Successors. Subcontractor may not assign or subcontract any portion of the Work or its other obligations or rights hereunder without the prior written consent of Contractor. If Subcontractor assigns or subcontracts any portion of the Work (with the prior written consent of Contractor), Subcontractor will require each such assignee or sub-tier subcontractor to comply with the Contract Documents, including, without limitation, the pertinent provisions of this Agreement (including, without limitation, Section 5) by written agreement, a copy of which must be provided to Contractor. Subcontractor hereby unconditionally guarantees the compliance of each such assignee or sub-tier subcontractor with this Agreement. Subject to the preceding provisions of this Section, this Agreement will be binding on and will inure to the benefit of the parties and their respective heirs, administrators, executors, successors, and permitted assigns.

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b. Acts of Affiliates. For the purpose of this Agreement, any action of any agent, employee, subcontractor, director, officer, or invitee of Subcontractor or any of their agents, employees, subcontractors, officers, or invitees shall be deemed an act of Subcontractor. For the purposes hereof, any obligation or liability imposed on Subcontractor with regard to its employees or agents shall also be deemed an obligation or liability of Subcontractor with regard to employees or agents of its subcontractors. Subcontractors of Subcontractor shall include any suppliers of Subcontractor other than Contractor.

c. Offset. In addition to any other right provided hereunder, Contractor shall be entitled to offset any amount owed to it by Subcontractor hereunder against any Partial Payments or final payment under this Agreement or any other agreement.

d. Clean up. Subcontractor will at all times keep the Project safe and free from the accumulation of waste materials or rubbish caused by its operations or related to the Work. Upon completion of the Work and each portion thereof, Subcontractor will remove all rubbish and waste produced by its operations or Work hereunder from the Project as well as all of its tools, equipment, machinery, and surplus materials no longer needed and leave the Project in a "broom clean" or equivalent condition and safe for Subcontractor's employees and subsequent contractors to perform their work, unless otherwise specified in writing. If Subcontractor fails to clean up, Contractor may do so after written notice to Subcontractor and the cost thereof will be charged to Subcontractor.

e. Lien waiver. Subcontractor hereby waives and relinquishes any right, whether granted by statute or not, to file or claim any lien for Work performed hereunder.

f. Release. Subcontractor hereby waives, releases, and forever discharges the Contractor, the Owner, and all of their officers, directors, agents, and employees from all costs, expenses, claims, demands, damages, losses, causes of action, or liabilities that Subcontractor may have against the Contractor, the Owner, and all of their officers, directors, agents, and employees. Specifically, Subcontractor agrees that Subcontractor shall not file, or cause to be filed, any demand, claim, suit or cause of action against Contractor and all of its officers, directors, agents, and employees hereunder.

g. Other. This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. No delay or failure by Contractor to exercise any right or remedy hereunder, and no partial or single exercise of such right or remedy, will constitute a waiver of that or any other right or remedy. The duties and obligations imposed by this Agreement and rights and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by Law. The prevailing party to any dispute shall have a right to collect its reasonable attorney's fees and expenses. This Agreement shall be governed by the laws of the State of Texas, without regard to the conflicts of law provisions thereof. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof. It is the intent of the parties that any invalid provision hereof be reformed to the extent necessary to make it enforceable to the maximum extent of the law.

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Subcontractor

Contractor

EXECUTED to be effective as of the date first above written.

SUBCONTRACTOR:
WS contractors LLC

By: _____

Name: Willames Rubens da Silva

Title: Owner

_____
Subcontractor Social Security No. or
Federal I.D. No.

BUILDERS FIRSTSOURCE
SOUTHEAST GROUP, LLC

By: _____

Name: Deryl Ward

Title: Vice President

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Subcontractor

Contractor

EXHIBIT B

Builders FirstSource

BUILDERS FIRSTSOURCE – SOUTHEAST GROUP, LLC
MASTER SUBCONTRACTOR AGREEMENT

THIS MASTER SUBCONTRACTOR AGREEMENT (this "**Agreement**") is entered into effective as of 9/24, 2012 between **Builders FirstSource – Southeast Group, LLC**, a Delaware limited liability company, address: 2001 Bryan Street, Suite 1600, Dallas, Texas 75201, telephone: _____, fax: _____, Contact: _____, e-mail: _____@bldr.com ("**Contractor**"), and WS contractors LLC address: 205 Laurel ave, Goose Creek SC 29445, telephone: (843) 480 6262, fax: _____, Contact: Wilson or Willames, e-mail: WScontractorsLLC@hotmail.com ("**Subcontractor**").

SECTION 1. Introduction.

a. Work. This Agreement contains the basic terms and conditions under which Subcontractor agrees to provide materials and/or to perform services (the "**Work**") from time to time for Contractor on any project (the "**Project**"). TIME IS OF THE ESSENCE. It will apply to and govern all Work requested by Contractor from Subcontractor at any time following the date of this Agreement, unless other terms and conditions are specifically agreed to in writing by Contractor with respect to particular items of Work or until this Agreement is terminated as hereinafter provided. In accordance with the terms and conditions contained in this Agreement, Subcontractor will perform and finish in a good and workmanlike manner, and will furnish all required materials, labor, equipment, supplies and tools for, the Work described from time to time for Contractor on any Project. Projects may or may not be owned or controlled by Contractor's customer (the "**Owner**"). The Work will be performed in accordance with plans, specifications, drawings and schedules for the Work, and any supplemental terms and conditions to this Agreement, all of which are, or will be, on file at the office of the Contractor (the "**Contract Documents**") and incorporated into the Agreement by reference as if fully set forth. Contractor will have the right at any time to supplement the plans and specifications for the Work with additional or replacement drawings and schedules or other documents and upon so doing such drawings and schedules will immediately become part of the Contract Documents. The Contract Documents, including any time schedules, may be amended and/or supplemented from time to time by giving Subcontractor written notice thereof. Subcontractor's only remedy in the event an amendment or supplement to the Contractor Documents materially increases the cost or difficulty of performance by the Subcontractor is to terminate this Agreement by written notice to Contractor within 24 hours after Contractor delivers such amendment or supplement to Subcontractor.

b. Work Orders. It is contemplated under this Agreement that Subcontractor may perform Work on multiple projects at multiple locations. The description, completion date, special conditions, and cost of Work to be performed on a Project will be set forth in the written purchase order or work order (together, "**Work Order**") delivered by Contractor to Subcontractor relating to that Project. Such Work Order(s)

Subcontractor

Contractor

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are incorporated herein by reference as if fully set forth. The Work described in Work Orders must be performed under the terms of this Agreement.

c. **Term.** This Agreement shall be for an initial term of three (3) years. Upon the expiration of such initial term or any renewal term, this Agreement shall automatically renew for subsequent one (1) year periods unless either party gives written notice to the other party that it is electing to terminate this Agreement at the end of the then current term. Such written notice of intent to terminate must be given at least sixty (60), but not more than one hundred twenty (120), days prior to the end of the then current term. The provisions of **Sections 3, 4, and 5** shall survive termination of this Agreement. If Contractor terminates this Agreement, Contractor will pay to Subcontractor sums due for the Work performed to the date of termination, as provided in **Section 8**.

d. **Notice.** Any notice or communication hereunder or in any agreement entered into in connection with the transactions contemplated hereby must be in writing and given by depositing the same in the United States mail, addressed to the party to be notified, postage prepaid, and registered or certified with return receipt requested, or by delivering the same in person or by facsimile transmission. Such notice shall be deemed received on the date on which it is hand-delivered or received by facsimile transmission or on the third business day following the date on which it is so mailed. For purposes of notice, the addresses of the parties shall be as set forth on the front page of this Agreement. Any party may change its address for notice by written notice given to the other parties in accordance with this Section.

SECTION 2. Materials and Workmanship.
Subcontractor agrees to commence Work on Projects upon request by Contractor. Subcontractor agrees to provide all labor, services, equipment, and tools necessary to complete the Work.

a. **Scope of Work; Knowledge of Site; Plans and Specifications.** Subcontractor shall take all action necessary to familiarize itself and its employees, agents, and subcontractors with the scope and requirements of the Work, the existing site conditions, and any work to be performed by others that may affect the performance of the Work. Subcontractor shall confirm that the Contract Documents are correct and immediately notify Contractor of any errors and/or omissions.

b. **Change Orders.** Contractor may make any changes to the nature or scope of the Work; provided, however, that any changes resulting in a change in price must be agreed to in writing by Subcontractor and Contractor prior to the Work being performed. Subcontractor shall be notified of changes by written change order. Subcontractor shall not perform any extra work without written authorization by Contractor.

c. **Protection of Work.** Subcontractor shall bear all risk of loss or damage to the Work resulting from any cause whatsoever until Subcontractor has completed its Work on the Project and such work has been accepted by Contractor and Owner. Subcontractor shall at all times, and at its expense, protect all of its labor, materials (regardless of who supplied such materials), supplies, tools, and equipment (and those of its employees, agents, and subcontractors) against any damage, injury, destruction, theft, or loss. Subcontractor shall, at its expense, promptly repair or replace damage to the Work or damage to any other components of the Project resulting from the activities of Subcontractor or its employees, agents, or subcontractors.

d. **Safety and Environmental.**

Subcontractor

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(1) **Compliance with Laws.** Subcontractor will carefully check the drawings, plans, and specifications for conformity with all local, state, and Federal laws, codes, rules, and regulations bearing on the Work (the "Law") before commencing the Work. Unless Contractor or Owner otherwise agrees in writing, before commencement of the Work Subcontractor will obtain at its sole cost and expense all permits necessary for the Work. Subcontractor will comply with product manufacturer's specifications and will give all notices and comply with all Law bearing on the Work, including by way of enumerations and not limitation, safety, health, and environmental rules and regulations established by or pursuant to Federal, state, and local safety and environmental laws. Subcontractor at all times will furnish to its agents and employees a safe place of employment. If Subcontractor observes any violation of Law, it will immediately report such violation to Contractor in writing. Subcontractor will be responsible for any fines, charges, in-kind training or supplies, or penalties related to the Work, including, without limitation, fines, charges, and/or penalties related to the operation of equipment, the Subcontractor's performance of the Work, the handling of materials, or any other function that is in violation of the Law. All workmanship and materials will conform to Law and, if the Subcontractor performs or permits the performance of any Work not in compliance with Law, it will immediately cause such Work to be redone and bear all costs in connection therewith. The Work, as performed, will meet with the approval of, and pass any inspection of, any governmental authority having jurisdiction thereof. If the Work is being constructed under specifications of the Federal Housing Administration or the Veterans Administration, the Work will meet the requirements of these governmental agencies. No Work will be deemed complete until final inspection is made and approval is received from every governmental authority whose approval is required.

(2) **The Occupational Safety and Health Administration ("OSHA") and the Environmental Protection Agency ("EPA").** Regulations have been promulgated by OSHA and EPA ("Regulations") that require all contractors and subcontractors to exchange Material Safety Data Sheets ("MSDS") and share information about precautionary measures necessary to protect all workers on a building project.

Subcontractor agrees as follows:

(A) Subcontractor will fully comply with the Regulations and will cooperate with Contractor and/or Owner and all subcontractors of Owner in order to assure compliance with the Regulations.

(B) Subcontractor hereby accepts full responsibility and liability for the training of its employees as to all precautionary measures necessary to protect such employees during both routine and emergency situations on the Project.

(C) TO THE FULLEST EXTENT PERMITTED BY LAW, SUBCONTRACTOR WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM ALL CLAIMS, DAMAGES, LIABILITIES, AND CAUSES OF ACTION THAT ARISE FROM THE FAILURE OF SUBCONTRACTOR TO COMPLY WITH THE REGULATIONS.

(D) Subcontractor will assist Contractor in complying with the Regulations.

(E) Subcontractor will not use any chemicals in its performance of the Work for

Subcontractor

Contractor

Contractor or incorporate any chemicals into materials or products supplied to Contractor or to the Project unless Subcontractor has given Contractor prior written notice of the existence and the possible exposure to such chemical, has delivered an MSDS to Contractor, and has received a written consent of Contractor to use such chemicals.

(3) **Subcontractor's Safety Program.** Subcontractor's safety program must specifically address, among other safety issues, scaffolding, fall hazards, trenching, and shoring, as may be applicable. For "hard hat" jobs, approved safety helmets and hard soled shoes must be worn at the Project at all times. Safety glasses must be worn when power equipment is used. Subcontractor shall erect and maintain all reasonable safeguards for safety and protection, including, but not limited to, necessary signage, protective barriers, and other warnings against hazards. Subcontractor shall furnish all flagmen, barricades, and other items required for public safety and right-of-way maintenance required by the installation of the Work. Safety vests shall be worn in the public right-of-way.

(4) **Default.** If Subcontractor fails to immediately comply with safety and environmental requirements after verbal or written notice from Contractor, Contractor may correct the violation and deduct the cost from any Partial Payment or final payment in addition to all other remedies available to Contractor, including, without limitation, consequential damages. Subcontractor shall pay any fines assessed to Owner or Contractor due to the acts, omissions, or negligence of Subcontractor. If construction at the Project in whole or in part is delayed or halted by any governmental authority as a result of Subcontractor's Work, Subcontractor shall pay to Contractor as liquidated damages, and not as a penalty, the amount of $200 per hour for a minimum ten (10) hour day until construction at the Project can be safely resumed.

SECTION 3. Warranty.

In addition to any other warranty or guarantee expressly made by Subcontractor or implied by Law, Subcontractor unconditionally warrants and guarantees the Work will conform to any specifications provided by Contractor and comply with all Law and Subcontractor guarantees the Work against defects in design, workmanship, and materials for the benefit of Contractor and its successors and assigns, Owner, as well as the ultimate owner of any structure into which the Work is incorporated. This guarantee will commence upon the Subcontractor's completion of the Work and will continue for a minimum of (a) three (3) years for all Work except, (b) ten (10) years for all Work consisting of any structural applications of any home, building, or other structure. Notwithstanding the foregoing, this warranty will continue until such time as all express and implied warranties granted or deemed granted by Contractor and all other obligations of Contractor related to the Work are terminated or expired as a matter of Law. If demand is made upon Subcontractor to perform under this warranty, Subcontractor at its sole cost and expense will expeditiously repair or replace, at Contractor's sole option, any defective or nonconforming Work and indemnify Contractor and any other party for any costs incurred by any party relating to such demand. This warranty shall extend to all consequential damages resulting from such faults and/or defects of design, material, and workmanship described in this Section, including, without limitation, property damage to the homes or properties into which the Work is incorporated, property damage to the personal property of the ultimate owners of such homes or structures, and personal injury damages to persons residing at or visiting the properties into which the Work is incorporated. If Subcontractor fails to perform under this warranty, the party entitled to performance or Contractor will have the right to hire other persons to correct or replace the defective Work and hold Subcontractor liable for the costs thereof including costs, disbursements, and attorneys' fees incurred in the enforcement of this provision. This warranty is independent from all other obligations of Subcontractor under this Agreement, including, without limitation, all indemnification provisions, and will apply whether or not required by any other provision of this Agreement. Owner and any ultimate owner of any structure into which the Work is incorporated shall be

Subcontractor

Contractor

intended non-incidental third party beneficiaries of this Agreement and shall have the power to enforce this Agreement. Subcontractor will maintain a published phone number or answering service during normal working hours.

SECTION 4. Insurance.
At all times while performing the Work, and continuing thereafter until the expiration of the applicable statute of limitations for any claims, Subcontractor will maintain for the benefit of itself and Contractor (and Owner, when requested), the following minimum insurance coverage:

a. **Workers' Compensation Insurance** - statutory limits in the state where each Project is located.

b. **Employer's Liability Insurance** - $1,000,000 or such other higher limits imposed in accordance with the requirement, if any, of the laws of the states where Subcontractor is engaged in business.

c. **Commercial General Liability** - $1,000,000 per occurrence, $1,000,000 products-completed operations aggregate, $1,000,000 general aggregate, and broad form contractual liability coverage to cover the indemnity obligations undertaken herein.

d. **Business Auto Liability**, including hired and non-owned auto coverage - $500,000 combined single limit.

Insurance policies shall (a) be issued by companies with a "Best's Rating A" and a "Financial Size Category of VIII", (b) be on an "occurrence" form, and (c) list Contractor and if requested, Owner, as additional insureds per Form CG 20 10 edition 11/85 or its equivalent on the General Liability and Automobile Liability Policies. For purposes of this additional insured requirement, the term "equivalent" means coverage for liability arising out of Subcontractor's Work performed for Contractor and includes both ongoing and products-completed operations coverage. The Workers' Compensation Policy shall include an Alternate Employer's Endorsement naming the Contractor. If Subcontractor utilizes any leased employees, Contractor must also be listed on an Alternate Employer's Endorsement on the Workers' Compensation Policy covering the leased employees.

Subcontractor will provide to Contractor certificates of insurance or other satisfactory evidence of compliance with the provisions of this Section promptly after the date of this Agreement and thirty (30) days before the expiration date of each policy or at any time upon request of Contractor. A copy of the actual additional insured endorsement and Alternate Employer's Endorsement must be supplied with the certificate of insurance. If such evidence is not furnished, Contractor will have the immediate right, but not the obligation, to procure at Subcontractor's expense (which Contractor may offset such costs against any Partial Payment or final payment), the required insurance on behalf of Subcontractor. The reference to "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon the company, its agents or representatives" in the cancellation notification portion of the certificate and/or endorsement to the policy must be deleted. To the fullest extent permitted by law, any provision on the face of any certificate of insurance provided by Subcontractor that states anything to the effect that the certificate of insurance does not confer rights to insurance upon Contractor is hereby deemed deleted from such certificate of insurance. The insurance provided herein by Subcontractor shall be primary and non-contributory to any other insurance available to the additional insureds. Waivers of subrogation shall be provided in favor of Contractor and Owner on all insurance policies carried by Subcontractor. Subcontractor hereby releases Contractor and Owner from all claims and causes of action resulting from or related to any loss covered or that should have been covered by insurance required to be maintained by Subcontractor including the deductible and any uninsured portion. Additionally, Subcontractor shall comply with any additional insurance requirements set forth in any other Contract Documents.

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SECTION 5. INDEMNITY.

TO THE FULLEST EXTENT PERMITTED BY LAW, THE SUBCONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, LOSSES, CAUSES OF ACTION, DAMAGES, LIABILITIES, FINES, PENALTIES, AND EXPENSES OF ANY KIND WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, ARBITRATION OR COURT COSTS AND ATTORNEY'S FEES (SUCH LEGAL EXPENSES TO INCLUDE COSTS INCURRED IN ESTABLISHING THE INDEMNIFICATION AND OTHER RIGHTS AGREED TO IN THIS PARAGRAPH) ARISING OUT OF OR RESULTING FROM BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY, ARISING OR ALLEGED TO ARISE OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE SUBCONTRACTOR'S PERFORMANCE OF THE WORK OR OTHER ACTIVITIES OF THE SUBCONTRACTOR, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF THE SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE SUBCONTRACTOR OR ANYONE FOR WHOSE ACTS THE SUBCONTRACTOR MAY BE LIABLE. THE CONTRACTOR'S INSURANCE REQUIREMENTS WHICH SUBCONTRACTOR IS SUBJECT TO UNDER THIS AGREEMENT ARE SEPARATE AND DISTINCT FROM THE REQUIREMENT OF INDEMNIFICATION HEREUNDER.

NOTWITHSTANDING THE FOREGOING, TO THE FULLEST EXTENT PERMITTED BY LAW, THE SUBCONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES (THE "INDEMNITEES"), FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES (SUCH LEGAL EXPENSES TO INCLUDE COSTS INCURRED IN ESTABLISHING THE INDEMNIFICATION AND OTHER RIGHTS AGREED TO IN THIS PARAGRAPH) ARISING OUT OF OR RESULTING FROM BODILY INJURY TO, OR SICKNESS, DISEASE, OR DEATH OF, THE SUBCONTRACTOR, ANY AGENT, EMPLOYEE, OR REPRESENTATIVE OF THE SUBCONTRACTOR, OR ANY OF ITS SUBCONTRACTORS, REGARDLESS OF WHETHER SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED, OR IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OF ANY OF THE INDEMNITEES, IT BEING THE EXPRESSED INTENT OF THE CONTRACTOR AND THE SUBCONTRACTOR THAT IN SUCH EVENT THE SUBCONTRACTOR IS TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, WHETHER IT IS OR IS ALLEGED TO BE THE SOLE OR CONCURRENT CAUSE OF THE BODILY INJURY, SICKNESS, DISEASE, OR DEATH OF THE SUBCONTRACTOR, SUBCONTRACTOR'S AGENT, EMPLOYEE, OR REPRESENTATIVE, OR THE AGENT, EMPLOYEE, OR REPRESENTATIVE OF ANY OF ITS SUBCONTRACTORS. THE INDEMNIFICATION

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OBLIGATIONS UNDER THIS PARAGRAPH SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR SUBCONTRACTOR UNDER WORKERS COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS. THE SUBCONTRACTOR SHALL PROCURE LIABILITY INSURANCE COVERING ITS OBLIGATIONS UNDER THIS SECTION 5.

THE DUTY TO DEFEND UNDER THIS SECTION 5 IS INDEPENDENT AND SEPARATE FROM THE DUTY TO INDEMNIFY, AND THE DUTY TO DEFEND EXISTS REGARDLESS OF ANY ULTIMATE LIABILITY OR NEGLIGENCE OF THE CONTRACTOR, THE OWNER, OR ANY OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES. THE DUTY TO DEFEND ARISES IMMEDIATELY UPON PRESENTATION OF A CLAIM BY ANY PARTY INDEMNIFIED HEREUNDER AND WRITTEN NOTICE OF SUCH CLAIM BEING PROVIDED TO SUBCONTRACTOR. SUBCONTRACTOR'S OBLIGATION TO INDEMNIFY, DEFEND, AND HOLD HARMLESS UNDER THIS SECTION 5 WILL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT UNTIL IT IS FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION OR ARBITRATION PANEL THAT A CLAIM AGAINST THE CONTRACTOR, THE OWNER, AND ANY OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FOR THE MATTER INDEMNIFIED HEREUNDER IS FULLY AND FINALLY BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS.

THE DEFENSE AND INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT ARE NOT INTENDED TO AND SHALL NOT REQUIRE THE SUBCONTRACTOR OR OTHERS TO INDEMNIFY OR HOLD HARMLESS A REGISTERED ARCHITECT, LICENSED ENGINEER, OR AN AGENT, SERVANT, OR EMPLOYEE OF A REGISTERED ARCHITECT OR LICENSED ENGINEER FROM LIABILITY FOR DAMAGE THAT IS (a) CAUSED BY OR RESULTS FROM: (1) DEFECTS IN PLANS, DESIGNS, OR SPECIFICATIONS PREPARED, APPROVED, OR USED BY THE ARCHITECT OR ENGINEER; OR (2) THE NEGLIGENCE OF THE ARCHITECT OR ENGINEER IN THE RENDITION OR CONDUCT OF PROFESSIONAL DUTIES CALLED FOR OR ARISING OUT OF THE CONSTRUCTION CONTRACT AND THE PLANS, DESIGNS, OR SPECIFICATIONS THAT ARE A PART OF THE CONSTRUCTION CONTRACT; AND (b) ARISES FROM PERSONAL INJURY OR DEATH, PROPERTY INJURY, OR ANY OTHER EXPENSE THAT ARISES FROM PERSONAL INJURY, DEATH OR PROPERTY INJURY.

SECTION 6. Independent Subcontractor Status and Warranty to be Lawfully Entitled to Work in the United States of America.

Subcontractor agrees that it and its employees, agents, and subcontractors (and their employees, agents, and subcontractors) will perform the Work as independent contractors, and not as employees or agents of Contractor. Contractor has no authority to direct, supervise, or control the means, manner, or method of

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construction of the Work. Further, Subcontractor warrants and agrees it will independently verify that it and its employees, agents, and subcontractors (and their employees, agents, and subcontractors) shall be lawfully entitled to work under the laws of the United States of America.

SECTION 7. Default and Damages.

a. **Subcontractor's Default.** The following acts on the part of Subcontractor will, at Contractor's option, result in the immediate termination of this Agreement and all Work Orders, and dismissal of Subcontractor from each site.

(1) Any delays of the Work caused by Subcontractor's failure or refusal to supply enough skilled labor or materials to meet Contractor's schedule.

(2) Subcontractor's failure to promptly pay any labor, material suppliers, or lien claimants with respect to any Work.

(3) Adjudication of Subcontractor to be bankrupt or insolvent either by Contractor or any court or governmental entity.

(4) If Subcontractor or any of its employees, subcontractors, or agents (or employees, subcontractors, or agents of any subcontractor retained by Subcontractor to perform Work) consume, use, or are under the influence of alcohol or illegal drugs while on the site. (Subcontractor agrees to strictly enforce rules to this effect and to inform all employees, agents, and subcontractors that such rules will be strictly enforced.)

(5) Failure of Subcontractor or its agents, subcontractors, or employees to (a) operate motorized vehicles or equipment in a safe and orderly manner, (b) comply with safe labor and material installation practices designated by Contractor or Owner or otherwise accepted by the industry, or (c) leave the Project site in a safe condition (as determined by Contractor in its sole discretion) during or after construction.

(6) Subcontractor's failure to comply with the provisions of this Agreement regarding assignment or subcontracting.

(7) Any other violations of the Contract Documents including, without limitation, this Agreement.

b. **Damages.**

(1) **No Damages for Delay.** Notwithstanding anything to the contrary in this Agreement and to the fullest extent permitted by law, Contractor will not be liable for any loss, claim, cost, liability, or damage incurred by Subcontractor, whether direct or indirect or whether related to efforts by Contractor to accelerate the Work, on account of any delay, disruption, hindrance, or any other impediment whatsoever, no matter by what, or by whom caused. Rather, the Cost of Work (**defined in Section 8**) is understood and agreed to include and cover all expenses and costs due to delays, disruptions, hindrances, or any other impediments regardless of their cause. Subcontractor agrees not to make, and hereby waives, any such claim for damages.

(2) **Subcontractor's Liability to Contractor upon Termination.** If this Agreement is terminated at Contractor's option as provided in this Section 7, Subcontractor will be liable to Contractor for all costs and damages incurred by Contractor due to Subcontractor's failure to

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perform under this Agreement or other Contract Documents (including, without limitation, the amount by which the cost to complete the Project exceeds the cost of the Work), Subcontractor's failure to keep up the progress of the Work as required, or Subcontractor's failure to execute the Work as directed by Contractor. In addition to all costs and damages incurred by Contractor, Subcontractor shall be liable to Contractor for an additional amount equal to 25% of all costs and damages for Contractor's additional overhead and related costs.

c. **Reimbursement for Fines.** Subcontractor shall promptly reimburse to Contractor and shall indemnify, defend, and hold harmless Contractor regarding any fines or penalties incurred by Contractor or Owner as a result of the actions or inaction of Subcontractor or its employees, agents, or subcontractors, relating to performance of Work or otherwise, including, without limitation, their failure to abide by the requirements of **Section 2(d)**.

SECTION 8. Payment to Subcontractor.

a. **Payment by Owner is Condition Precedent.** Subcontractor agrees and acknowledges that Contractor shall seek payment from Owner for the price of the Work ("**Cost of Work**") performed pursuant to Work Orders and that Contractor has no duty or obligation to pay Subcontractor for any Work until Contractor has been paid by Owner. Therefore, all obligations of Contractor to make Partial Payments and final payment are subject to the express conditions precedent that Owner accepts Subcontractor's Work and Contractor receives payments from Owner for all payments to Subcontractor. It is expressly agreed that any basis for non-payment by Owner, including, without limitation, the bankruptcy or insolvency of Owner, will not excuse this condition precedent and Subcontractor expressly assumes the risk of delayed payment or non-payment by Owner.

b. **Partial Payments.** Partial payments ("**Partial Payments**") for portions of the Work that have been completed will be made by Contractor to Subcontractor as the Work progresses, but not more often than in accordance with Contractor's regular payment procedures. As a condition precedent to Partial Payments, Subcontractor must submit written applications that provide a description of the portion of the Work that has been completed during the payment period (including, without limitation, materials and supplies used therein if provided by Subcontractor), an estimate of the percentage of completion of the Work, a copy of each change order for the payment period, safety meeting sheets for the period of time since the last submission for payment, sheets indicating the number of hours worked by any employees of Subcontractor or any of its subcontractors ("**Employee Time Sheets**") for the period of time since the last submission for payment, evidence of payment, waivers (including, without limitation, lien waivers), and supplier affidavits in form satisfactory to Owner and Contractor, for itself, its subcontractors and material suppliers, and all other information Contractor is required to provide to Owner as a condition to Contractor's right to receive payment. Contractor reserves the right to modify such estimates in its sole and exclusive discretion and such modifications will bind Subcontractor for the purpose of Partial Payments. Partial Payments will be made to Subcontractor on or about the thirtieth day following approval of the application for payment by Contractor and receipt of payment by Contractor from Owner.

c. **Retainage.** Contractor will retain at least ten percent (10%) of each Partial Payment (the "**Retainage Amount**") or any greater amount Contractor chooses to retain in its sole discretion. Contractor may, in its sole discretion, waive its right to retain any Retainage Amount from any Partial Payments or final payment.

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d. Grounds for Withholding Payments. Contractor may withhold any Partial Payments or the final payment in whole or in part upon the occurrence of any breach of this Agreement by Subcontractor until a cure satisfactory to Contractor has been completed.

e. Work Covered by Partial Payments. All the completed Work covered by Partial Payments or final payment made to Subcontractor will thereupon become the sole property of Contractor, but this provision will not be construed as relieving Subcontractor from the sole responsibility for all Work upon which Partial Payments have been made, for the restoration of any damaged Work, for the correction of defective Work, or as a waiver of Contractor's right to require fulfillment of all of the terms of this Agreement. Payment to Subcontractor is specifically agreed not to imply acceptance by Contractor or Owner of any portion of the Work that fails to comply with the Contract Documents.

f. Final Payment. Final payment constitutes the entire unpaid balance of the Cost of Work minus any amounts retained. Final payment will be made by Contractor to Subcontractor upon satisfaction of the following conditions:

(1) The Work is fully performed in accordance with the requirements of the Contract Documents, and Subcontractor is not in default under this Agreement or the Contract Documents;

(2) Subcontractor has submitted satisfactory evidence of payments to, waivers by, and releases from all claims by, Subcontractor and any persons, firms, or corporations having performed work, labor, or services or furnished materials, equipment, tools, or supplies to Subcontractor for the Work (including, without limitation, lien waivers) if requested by Contractor;

(3) Subcontractor has delivered to Contractor all as-built drawings, certifications, maintenance manuals, operating instructions, written guaranties, warranties, and bonds;

(4) Subcontractor has provided safety meeting sheets and Employee Time Sheets for the period of time since the last submission for payment;

(5) Owner, any general contractor, any lender, any architect, and Contractor have accepted the Work; and

(6) Contractor has received payment from Owner.

g. Release of Retainage. Contractor will release any Retainage Amount thirty (30) days after all conditions precedent to Subcontractor's receipt of the final payment are met.

h. Subcontractor's Agreement to Pay. Subcontractor will promptly pay when due all charges owed by it for labor, services, materials, equipment, tools, and supplies furnished under this Agreement and will keep the Work and the Project free from any mechanics' and materialmen's liens. Subcontractor shall not acquire any materials, supplies, or equipment subject to any security interest or conditional sale or other agreement where any interest is retained by or granted to a seller, supplier, or lender. If Contractor reasonably believes that Subcontractor has failed to pay when due all charges owed by Subcontractor for its labor, services, materials, equipment, tools, and supplies, Contractor may issue joint checks made payable to Subcontractor and other parties owed by Subcontractor or directly to those parties owed by Subcontractor in Contractor's sole discretion. Contractor shall be entitled to and Subcontractor shall provide acceptable security insuring against claims by Subcontractor's creditors.

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i. INDEMNIFICATION FOR LIENS. TO THE FULLEST EXTENT PERMITTED BY LAW, SUBCONTRACTOR HEREBY AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY MECHANICS' AND MATERIALMEN'S LIENS UPON THE PROJECT, ATTORNEYS' FEES AND EXPENSES, AMOUNTS PAID IN SETTLEMENT, AND AMOUNTS PAID TO DISCHARGE JUDGMENTS ARISING OUT OF THE SERVICES, LABOR, EQUIPMENT, OR MATERIALS FURNISHED BY SUBCONTRACTOR, OR ITS EMPLOYEES, SUPPLIERS, OR SUBCONTRACTORS. IF SUBCONTRACTOR FAILS TO DO SO, CONTRACTOR MAY DEDUCT FROM SUMS THEN OR THEREAFTER DUE TO SUBCONTRACTOR SUCH AMOUNTS AS CONTRACTOR DEEMS APPROPRIATE IN ITS SOLE DISCRETION TO INDEMNIFY THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM SUCH LIENS, CLAIMS, AND ENCUMBRANCES. CONTRACTOR MAY, IN ITS SOLE DISCRETION, CURE ANY LIENS OR SATISFY ANY DEMANDS, AND RECOVER ITS COSTS RELATED DIRECTLY OR INDIRECTLY THERETO FROM SUBCONTRACTOR. SUBCONTRACTOR HEREBY WAIVES, RELEASES, AND FOREVER DISCHARGES THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM ALL COSTS, EXPENSES, CLAIMS, DEMANDS, DAMAGES, LOSSES, CAUSES OF ACTION, OR LIABILITIES THAT SUBCONTRACTOR MAY HAVE AGAINST THE CONTRACTOR, THE OWNER, AND ALL OF THEIR OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES THAT ARISE DIRECTLY OR INDIRECTLY FROM CURING ANY SUCH LIENS, CLAIMS, ENCUMBRANCES, OR DEMANDS.

SECTION 9. Miscellaneous.

a. Assignment and Successors. Subcontractor may not assign or subcontract any portion of the Work or its other obligations or rights hereunder without the prior written consent of Contractor. If Subcontractor assigns or subcontracts any portion of the Work (with the prior written consent of Contractor), Subcontractor will require each such assignee or sub-tier subcontractor to comply with the Contract Documents, including, without limitation, the pertinent provisions of this Agreement (including, without limitation, Section 5) by written agreement, a copy of which must be provided to Contractor. Subcontractor hereby unconditionally guarantees the compliance of each such assignee or sub-tier subcontractor with this Agreement. Subject to the preceding provisions of this Section, this Agreement will be binding on and will inure to the benefit of the parties and their respective heirs, administrators, executors, successors, and permitted assigns.

b. Acts of Affiliates. For the purpose of this Agreement, any action of any agent, employee, subcontractor, director, officer, or invitee of Subcontractor or any of their agents, employees, subcontractors, officers, or invitees shall be deemed an act of Subcontractor. For the purposes hereof, any obligation or liability imposed on Subcontractor with regard to its employees or agents shall also be deemed an obligation or liability of Subcontractor with regard to employees or agents of its

Subcontractor

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subcontractors. Subcontractors of Subcontractor shall include any suppliers of Subcontractor other than Contractor.

c. **Offset.** In addition to any other right provided hereunder, Contractor shall be entitled to offset any amount owed to it by Subcontractor hereunder against any Partial Payments or final payment under this Agreement or any other agreement.

d. **Clean up.** Subcontractor will at all times keep the Project safe and free from the accumulation of waste materials or rubbish caused by its operations or related to the Work. Upon completion of the Work and each portion thereof, Subcontractor will remove all rubbish and waste produced by its operations or Work hereunder from the Project as well as all of its tools, equipment, machinery, and surplus materials no longer needed and leave the Project in a "broom clean" or equivalent condition and safe for Subcontractor's employees and subsequent contractors to perform their work, unless otherwise specified in writing. If Subcontractor fails to clean up, Contractor may do so after written notice to Subcontractor and the cost thereof will be charged to Subcontractor.

e. **Lien waiver.** Subcontractor hereby waives and relinquishes any right, whether granted by statute or not, to file or claim any lien for Work performed hereunder.

f. **Other.** This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. No delay or failure by Contractor to exercise any right or remedy hereunder, and no partial or single exercise of such right or remedy, will constitute a waiver of that or any other right or remedy. The duties and obligations imposed by this Agreement and rights and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by Law. The prevailing party to any dispute shall have a right to collect its reasonable attorney's fees and expenses. This Agreement shall be governed by the laws of the State of Texas, without regard to the conflicts of law provisions thereof. The provisions of this Agreement shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof. It is the intent of the parties that any invalid provision hereof be reformed to the extent necessary to make it enforceable to the maximum extent of the law.

EXECUTED to be effective as of the date first above written.

SUBCONTRACTOR:

WS Contractors LLC

By: Willames R. de Silva

Name: Willames R. de Silva Sobr.

Title: Owner

27-1964669

Subcontractor Social Security No. or Federal I.D. No.

BUILDERS FIRSTSOURCE – SOUTHEAST GROUP, LLC

By: _____

Name: Deryl Ward

Title: Vice President

Subcontractor

Contractor

[Version – 5/17/06]

BFS 003041

EXHIBIT C

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

SETTLEMENT AGREEMENT, GENERAL RELEASE, AND ISSUE RELEASE

This Settlement Agreement, General Release, and Issue Release (hereinafter "Agreement") is entered into by and between The Retreat at Charleston National Country Club Home Owners Association, Inc. and The Retreat at Charleston National Country Club Horizontal Property Regime, on their own behalves and as the assignees of certain rights and claims from their respective members (hereinafter collectively "Releasors") and WS Contractors, LLC; JC Contractors, JC Contractors, LLC, JC Construction, JC Construction, LLC, Jimmy Carvalho; Soto and Vazquez Construction, LLC; and Costa de Oliveira Construction, LLC (hereinafter collectively "Settling Defendants") as of the dates set forth next to their respective signatures.

WITNESSETH

WHEREAS, Releasors are the Property Owners Association and Horizontal Regime responsible for the maintenance and repair of the exterior elements of the Retreat at Charleston National Country Club townhome neighborhood and is comprised of all the owners of the townhome units contained within the Retreat at Charleston National located in Mount Pleasant, South Carolina containing approximately thirty-one (31) buildings (hereinafter referred to as the "Project"), as well as individual owners owning units within the Project who have assigned their respective rights and claims to the Property Owners Association and Horizontal Regime; and

WHEREAS, the Releasors instituted suit in the Court of Common Pleas for Charleston County against the Settling Defendants and numerous other parties alleging, among other things, deficiencies in the construction of the Project, which action bears Case Number 2016-CP-10-03783 (hereinafter referred to as the "Lawsuit"); and

WHEREAS, the Settling Defendants have denied the existence or extent of the claimed deficiencies in the construction of the Project and have vigorously denied responsibility and liability for any deficiencies or conditions which may exist, or that there has been or will be any damage sustained by the Releasors or individual unit owners; and

WHEREAS, the Releasors and the Settling Defendants desire to finally, fully, and forever settle any and all claims in any way arising out of, related to, or in any manner connected with any act or omission, known or unknown, from the time of the original design and construction of the Project until to the end of time, which have been or could have been asserted in the Lawsuit, according to the terms and conditions herein set forth; and

NOW, THEREFORE, know all men by these presents that in consideration of the foregoing and of the mutual promises and covenants set forth hereinafter, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The undersigned Settling Defendants shall pay to or cause to be paid to the Releasors the following amounts:

   WS Contractors, LLC: $500,000.00

   JC Contractors: $275,000.00

   Soto and Vazquez Construction, LLC: $60,000.00

   Costa de Oliveira Construction, LLC: $165,000.00

   The total of the aforesaid sums amounts to $1,000,000.00 (hereinafter the "Settlement Amount"), which shall be paid by check(s) submitted to counsel for Releasors within thirty (30) days.

2. Upon receipt by the Releasors' counsel of each payment set forth herein, the Releasors hereby release, acquit, and forever discharge the Settling Defendants, and their respective owners, parents, subsidiaries, directors, officers, shareholders, members, managers, principals, employees, agents, heirs, assigns, insurers (with respect to insurance policies issued to the Settling Defendants), subcontractors, and any related or affiliated persons and entities of any type or kind (hereinafter collectively "Releasee(s)"), of any and all past, present or future, known or unknown, existing or not yet existing claims, demands, damages (including, but not limited to compensatory, special, consequential, treble and exemplary damages), actions, causes of action or claims for relief of whatsoever kind or nature for or because of any matter or thing done, omitted or suffered to be done by the said Settling Defendants and Releasee(s) arising out of or in any way related to the Project, including, without limitation, the construction, repair, design or sale of any property at the Project known as The Retreat at Charleston National Country Club, including all claims arising out of tort, contract, statute, law or equity, breach of express or implied warranty, contribution or indemnification, additional insured status or reimbursement, or otherwise or any relationship between or among the Releasors and the Settling Defendants and Releasee(s), including any matter or claim which was a part of or could have been a part of or made in the aforesaid Lawsuit filed in the Court of Common Pleas for Charleston County bearing Case Number 2016-CP-10-03783. The releases contained in this Paragraph are specific to Settling Defendants and Releasee(s) named above, and in no way limit the rights of Releasors with respect to claims against any other parties, and do not release any respective insurers with respect to claims against any other parties, and do not release any party except as specifically set forth herein.

3. To the extent, if any, that the members and the individual townhome unit owners at The Retreat at Charleston National Country Club, have assigned to the Releasors any claims against the Settling Defendants, Releasee(s) and their insurers relative to the Project, all such assigned claims (if any) are also fully and finally released herein on the same terms as set forth in Paragraph 2. Releasors hereby agree to indemnify, defend, and hold

harmless the Settling Defendants and Releasee(s) for any and all loss, cost, expense, claim, demand, damage, or liability brought or alleged by any townhome unit owner or member of the homeowners association or regime against the Settling Defendants or Releasee(s) relative to the Project. The foregoing defense and indemnity obligations of Releasors in this Paragraph are not subject to any monetary limitation or cap and shall apply regardless of whether or not the claims were assigned to Releasors.

4. Settling Defendants' contribution to the Settlement Amount referenced in Paragraph 1 shall be paid by check(s) made payable to the order of "Mullen Wylie as attorneys for the Plaintiffs" within thirty (30) days from the date of execution of this Agreement and shall be held in trust until a document has been filed with the Court dismissing the claims against the Settling Defendants.

5. Releasors acknowledge and agree that Mr. Wilson Sales is included as a Releasee in Paragraph 2, but only to the extent of Wilson Sales' acts, omissions, involvement or work for WS Contractors, LLC at the Project and not to the extent of his acts, omissions, involvement or work at the Project for Miracle Siding, LLC or anything pre-dating the formation of WS Contractors, LLC on or about February 23, 2010 by the filing of articles of organization with the Office of the South Carolina Secretary of State. The Parties hereto acknowledge and agree that Wilson Sales shall remain a direct defendant in the Lawsuit relative to his alleged acts, omissions, involvement and work at the Project that pre-date the formation of WS Contractors, LLC with the State of South Carolina.

6. In consideration of the receipt of the Settlement Amount, Releasors hereby release, acquit, and forever discharge Builders FirstSource, Inc., Builders FirstSource Southeast Group, Winston Carlyle Charleston National, LLC, Colin R. Campbell Construction, Inc., C.R. Campbell Construction Co., Inc., Colin Campbell Construction, LLC, and their respective owners, parents, subsidiaries, directors, officers, shareholders, members, managers, principals, employees, agents, heirs, assigns, and Colin Campbell, individually (hereinafter collectively "Issue Releasees") relating to or arising from (a) the scope of work for the Project identified in **Exhibit A** attached hereto involving Building Numbers 22 through 31, inclusive, and made a part hereof, including, without limitation, the acts, omissions, labor, materials, work, and involvement of Issue Releasees with respect to the scope of work for the Project identified in Exhibit A, and (b) the acts, omissions, labor, materials, work, or involvement of the Settling Defendants and Releasee(s) identified in Paragraph 2 at the Project known as The Retreat at Charleston National Country Club. The foregoing Issue Releasees are not discharged or released for anything other than the scope of work attached as Exhibit A and the acts, omissions, labor, materials, work, or involvement of anyone other than the Settling Defendants and Releasee(s) identified in Paragraph 2. The releases contained in this Paragraph are specific to Issue Releasees named above, and in no way limit the rights of Releasors with respect to claims against any other parties, and do not release any respective insurers with respect to claims against any other parties, and do not release any party except as specifically set forth herein.

7. For the consideration set forth above, Releasors covenant to not either a) seek to impose or b) to impose liability upon the Issue Releasees at trial of the Lawsuit for the scope of work identified in Exhibit A, including the Issue Releasees' involvement in such scope of work, and the acts, omissions, labor, materials, work, or involvement of the Settling Defendants and Releasee(s) at or for the Project. Releasors also agree that at trial of this Lawsuit, Releasors shall be precluded from raising or presenting against the Issue Releasees any testimony, documents, evidence, opinions, and arguments concerning alleged defects, deficiencies, non-conformities, breaches, non-performance, repairs, and resulting damages relating to the scope of work attached hereto at Exhibit A or the acts, omissions, labor, materials, work, or involvement of the Settling Defendants and Releasee(s) at or for the Project. The legal elements of collateral estoppel are not required for such issue preclusion to apply and to act as a bar in the Lawsuit or any other proceeding. The Court of Common Pleas of South Carolina, Charleston County, shall retain jurisdiction to enforce this Agreement in all respects. Releasors agree and consent to entry by the Court of an order in limine to exclude all testimony, documents, opinions, and evidence concerning the foregoing issues at trial or any other proceeding against the Issue Releasees. This issue release is a material element of this Settlement Agreement. Any breach of the terms of this issue release or such an order entered by the Court shall be deemed harmful and prejudicial to the Settling Defendants, and shall constitute a material breach of this Agreement.

8. In consideration of the payment of the Settlement Amount and the mutual covenants herein, the Settling Defendants mutually and reciprocally release, acquit, and forever discharge each other, and their respective owners, parents, subsidiaries, directors, officers, shareholders, members, managers, principals, employees, agents, heirs, assigns, insurance companies (with respect to insurance policies issued to the Settling Defendants), subcontractors, and any related or affiliated persons and entities of any type or kind of any and all past, present or future, known or unknown, existing or not yet existing claims, demands, damages (including, but not limited to compensatory, special, consequential, treble and exemplary damages), actions, causes of action or claims for relief of whatsoever kind or nature for or because of any matter or thing done, omitted or suffered to be done by any of them arising out of or in any way related to the Project, including, without limitation, the construction, repair, design or sale of any property at the Project known as The Retreat at Charleston National Country Club, including all claims arising out of tort, contract, statute, law or equity, breach of express or implied warranty, contribution or indemnification, additional insured status or reimbursement, or otherwise or any relationship between or among the Settling Defendants, including any matter or claim which was a part of or could have been a part of or made in the aforesaid Lawsuit filed in the Court of Common Pleas for Charleston County bearing Case Number 2016-CP-10-03783. This mutual release in this Paragraph is specific to the Settling Defendants identified herein, and WS Contractors, LLC does not release and hereby reserves its rights, claims, and causes of action against any other person or entity serving as a subcontractor of WS Contractors, LLC for the Project and their respective insurers, including, without limitation, the third-party defendant subcontractors added to the

Lawsuit, including claims for contribution and indemnification for amounts paid herein. Such claims of WS Contractors, LLC and its insurers against other subcontractors (excepting the Settling Defendants) survive this release, as WS Contractors, LLC has paid these other subcontractors' share of the settlement herein, which as agreed is equal to half or more of the total amount paid by WS Contractors, LLC, and it has thereby obtained the release of claims of the Releasors as set forth herein against the other subcontractors of WS Contractors, LLC, including All State Installers, Inc., ASN Construction, LLC, Sixto Melchor Ayala, Yesenia Alvarez Penaloza, and Solesmar Jesus De Oliveira.

9. This Agreement is a result of a compromised settlement of disputed claims among the parties. The Releasors agree that this Agreement is not, and shall not be construed as, any admission of or concession of liability, non-liability, responsibility or wrongdoing by any Settling Defendant. Further, all Settling Defendants expressly deny any and all liability.

10. The Releasors and Settling Defendants agree that this Agreement may be pled as a complete bar and defense to any and all issues and claims released herein as well as any action or other proceeding, in any forum, which may be brought or instigated arising out of the claims, demands, actions and causes of action recited above, and further that this Agreement may be pled as a complete bar and defense to any action or other proceeding to set aside or vacate this instrument because of a mistake in fact or otherwise.

11. This Agreement is intended by all parties to cover and include, and does cover and include, any and all future damages and/or damages related to the Project not now known to the Releasors, but which may later develop or be discovered, the possibility of which is specifically recognized and acknowledged by Releasors, including the effects and consequences thereof, and including all causes of action therefor.

12. Releasors hereby agree to indemnify, defend, and hold harmless the Settling Defendants and Releasee(s) for any and all loss, cost, expense, claim, demand, damage, or liability brought or alleged by any of the Issue Releasees relative to the Project against the Settling Defendants or Releasee(s) up to the specific amount paid by each individual Settling Defending as set forth in Paragraph 1 of this Agreement; provided however, Releasors are not and shall not be obligated to defend or indemnify the Settling Defendants or Releasee(s) against any claim or action by the Issue Releasees to extent involving the alleged obligation to pay attorneys' fees, costs, or expenses, or provide additional insured status or additional insured reimbursement, including, without limitation, within the Lawsuit or the separate declaratory judgment action filed by Builders FirstSource – Southeast Group, LLC in the Court of Common Pleas for Charleston County, bearing Case Number 2019-CP10-4725.

13. This Agreement shall be binding on all Releasors' and Settling Defendants' successors in interest, heirs, devisees, purchasers, insurers and assignees, including but not limited to, subsequent purchasers of individual townhome units. It is the express intent of the

parties that this agreement shall touch, concern, attach, and run with the land/real property of The Retreat at Charleston National Country Club.

14. The Releasors hereby authorize their legal counsel to execute such documents as are necessary to effectuate this settlement and to dismiss the Settling Defendants from the above-captioned Lawsuit, with prejudice, and without attorneys' fees or costs.

15. The Settling Defendants hereby authorize their legal counsel to execute such documents as are necessary to effectuate this settlement and have any cross-claims asserted between them in the above-captioned actions dismissed, with prejudice, and without attorneys' fees or costs. Notwithstanding the foregoing, the cross-claims and third-party claims of WS Contractors, LLC against persons and entities other than the Settling Parties identified herein shall not be released or dismissed and all such claims and causes of action are hereby preserved and shall survive.

16. The provisions of this Agreement are severable, and if any part of it is found to be unenforceable, the other provisions and Paragraphs shall remain fully valid and enforceable.

17. The interpretation of this document in any dispute in any way related to this document or the underlying settlement should be governed by the laws of the state of South Carolina.

18. The undersigned understand and agree that this Agreement affects their legal rights and they have executed the same on advice of counsel; they understand and appreciate the consequences attendant to the execution of this Agreement; that they have full and complete authority to execute this Agreement on behalf of and bind the entity or entities they purport to represent; that this Agreement is a compromise of highly disputed claims; that this Agreement is contractual in nature and not a mere recital; that this Agreement is an accord and satisfaction as among the Releasors and the Settling Defendants; and that this Agreement was drafted with input from counsel for all parties and shall not be construed against or in favor of any party.

19. This Agreement may be signed in counterparts and, when each Party has signed one counterpart hereof, it shall be a binding and enforceable agreement. Facsimile signatures and scanned or .pdf file copies of signatures shall be as valid and effective as original signatures.

[Signatures on following pages.]

IN WITNESS WHEREOF, the undersigned have set their hand in seal on the dates set forth below.

The Retreat at Charleston National Country Club Home Owners Association, Inc.

By: _____ By: _____

Its: PRESIDENT Its: Counsel

Date: 11/26/19 Date: 11/26/19

The Retreat at Charleston National Country Club Horizontal Property Regime

By: _____ By: _____

Its: PRESIDENT Its: Counsel

Date: 11/26/19 Date: 11/26/19

SETTLEMENT AGREEMENT, GENERAL RELEASE, AND ISSUE RELEASE

Case No. 2016-CP-10-03783

WS Contractors, LLC

By: _____

Its: Manager

Date: 12/11/19

By: _____

Its: Counsel @ WALKER GRESSETTE FREEMAN & LINTON

Date: 12/11/2019

JC Contractors, LLC d/b/a JC Construction, LLC

By: _____

Its: _____

Date: _____

By: _____

Its: Counsel

Date: 12-4-19

Jimmy Carvalho

_____
Jimmy Carvalho

Date: _____

By: _____

Its: Counsel

Date: 12-4-19

Soto and Vazquez Construction, LLC

By: _____

Its: _____

Date: _____

By: _____

Its: Counsel

Date: _____

SETTLEMENT AGREEMENT, GENERAL RELEASE, AND ISSUE RELEASE

Case No. 2016-CP-10-03783

WS Contractors, LLC

By: _____ By: _____

Its: _____ Its: Counsel

Date: _____ Date: _____

JC Contractors, LLC d/b/a JC Construction, LLC

By: _____ By: _____

Its: _____ Its: Counsel

Date: _____ Date: 12/12/19

Jimmy Carvalho

_____ By: _____

Jimmy Carvalho Its: Counsel

Date: _____ Date: _____

Soto and Vazquez Construction, LLC

By: _____ By: _____

Its: _____ Its: Counsel

Date: _____ Date: _____

SETTLEMENT AGREEMENT, GENERAL RELEASE, AND ISSUE RELEASE

Case No. 2016-CP-10-03783

WS Contractors, LLC

By: _____ By: _____

Its: _____ Its: Counsel

Date: _____ Date: _____

JC Contractors, LLC d/b/a JC Construction, LLC

By: _____ By: _____

Its: _____ Its: Counsel

Date: _____ Date: _____

Jimmy Carvalho

_____ By: _____

Jimmy Carvalho Its: Counsel

Date: _____ Date: _____

Soto and Vazquez Construction, LLC

By: [signature] w/ permission By: [signature]

Its: Attorney Its: Counsel

Date: 12/6/19 Date: 12/6/19

SETTLEMENT AGREEMENT, GENERAL RELEASE, AND ISSUE RELEASE

Case No. 2016-CP-10-03783

Costa de Oliveira Construction, LLC

By: _____

Its: _____

Date: _____

By: Sarah Wetmore Bottle

Its: Counsel

Date: 12/6/19

EXHIBIT A

Building	Framing	Windows/Doors	Siding/Trim/Other
22 Type A 3038 and 3036 Fraserburgh			WS Contractors and its Subs installed all vinyl siding and trim components, including handrails/guardrails, cement trim, band boards, aluminum columns, aluminum coil stock, including flashings, soffit and fascia, screens, and painted any cement fiber trim.
23 Type F 3022, 3024, 3026, 3028 Fraserburgh	WS Contractors and its Subs installed the framing, including house-wrap and roof felt.	WS Contractors and its Subs installed the windows and doors including all flashings.	WS Contractors and its Subs installed all vinyl siding and trim components, including handrails/guardrails, cement trim, band boards, aluminum columns, aluminum coil stock, including flashings, soffit and fascia, screens, and painted any cement fiber trim.
24 Type D 3008, 3010, 3012, 3014 Fraserburg			WS Contractors and its Subs installed all vinyl siding and trim components, including handrails/guardrails, cement trim, band boards, aluminum columns, aluminum coil stock, including flashings, soffit and fascia, screens, and painted any cement fiber trim.
25 Type E 1530, 1532, 1534, 1536			WS Contractors and its Subs installed all vinyl siding and trim components, including handrails/guardrails, cement trim, band

Strathene			boards, aluminum columns, aluminum coil stock, including flashings, soffit and fascia, screens, and painted any cement fiber trim; Installed exterior decking & stair stringers and treads.
26 Type D 1550, 1552, 1554, 1556, 1558, 1560 Strathene			WS Contractors and its Subs installed all vinyl siding and trim components, including handrails/guardrails, cement trim, band boards, aluminum columns, aluminum coil stock, including flashings, soffit and fascia, screens, and painted any cement fiber trim; Installed exterior decking & stair stringers and treads.
27 Type A 1570, 1572 Strathene			WS Contractors and its Subs installed all vinyl siding and trim components, including handrails/guardrails, cement trim, band boards, aluminum columns, aluminum coil stock, including flashings, soffit and fascia, screens, and painted any cement fiber trim; Installed exterior decking & stair stringers and treads.
28			WS Contractors and its Subs installed all vinyl

EXHIBIT A

Type A 3029, 3031 Fraserburgh			siding and trim components, including handrails/guardrails, cement trim, band boards, aluminum columns, aluminum coil stock, including flashings, soffit and fascia, screens, and painted any cement fiber trim.
29 Type E 3015, 3017, 3019, 3021 Fraserburgh	WS Contractors and its Subs installed the framing, including house-wrap and roof felt.	WS Contractors and its Subs installed the windows and doors including all flashings.	WS Contractors and its Subs installed all vinyl siding and trim components, including handrails/guardrails, cement trim, band boards, aluminum columns, aluminum coil stock, including flashings, soffit and fascia, screens, and painted any cement fiber trim.
30 Type G 3001, 3003, 3005, 3007 Fraserburgh	WS Contractors and its Subs installed the framing, including house-wrap and roof felt.		WS Contractors and its Subs installed all vinyl siding and trim components, including handrails/guardrails, cement trim, band boards, aluminum columns, aluminum coil stock, including flashings, soffit and fascia, screens, and painted any cement fiber trim.
31 Type G 1500, 1502, 1504, 1506, 1508, 1510 Strathene	WS Contractors and its Subs installed the framing, including house-wrap and roof felt.	WS Contractors and its Subs installed the windows and doors including all flashings.	WS Contractors and its Subs installed all vinyl siding and trim components, including handrails/guardrails, cement trim, band boards, aluminum columns, aluminum coil stock, including

EXHIBIT A

Note: BFS was not involved with this Building.			flashings, soffit and fascia, screens, and painted any cement fiber trim; Installed exterior decking & stair stringers and treads.

BFS = Builders FirstSource Defendants