

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

William A. McKinnon, Circuit Court Judge

Case No. 2020-CP-46-03592

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SC Court of Appeals

Summerlake Townhomes Homeowners' Association, Inc., and Susan Hagy and Karin Fuentes, individually and on behalf of all other similarly situated,

Respondents,

v.

True Homes, LLC; Carolina Development Services, LLC; Summerlake Properties, LLC; RJB Legacy Company f/k/a Barefoot & Company; BMC East, LLC, Airtron, Inc.; MPK Grading and Erosion Control, LLC; Southend Exteriors, LLC; McGee Brothers Company, Inc.; Alpha Omega Construction Group, Inc.; Pender-Pettus Insulating, Inc.; Charlotte Lanehart Electric Company, Inc.; C&C Plumbing, Inc.; Associated Materials, LLC a/k/a Alside, Inc.; T&A Excavating, LLC; Callahan Excavating, LLC a/k/a Callahan Grading & Hauling, Inc. a/k/a Callahan Grading, LLC; AHR Construction, Inc., JJS Commercial Construction, Inc.; CDJ Construction, Inc.; Jimenez Contractors, LLC; J. Cov Roofing, LLC; Ayalas Window Installations, LLC; Atlanta Flooring Design Centers, Inc.; Pedro DeJesus Lopez d/b/a PJP Construction; and Pedro Villareal-Conception d/b/a CVP Construction, Defendants,

of which True Homes, LLC is the Appellant.

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

SUMMERLAKE TOWNHOMES
HOMEOWNERS' ASSOCIATION, INC.
and SUSAN HAGY and KARIN FUENTES,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

TRUE HOMES, LLC; CAROLINA
DEVELOPMENT SERVICES, LLC;
SUMMERLAKE PROPERTIES, LLC; RJB
LEGACY COMPANY f/k/a Barefoot &
Company; BMC EAST, LLC; AIRTRON,
INC.; MPK GRADING AND EROSION
CONTROL, LLC; SOUTHEND
EXTERIORS, LLC; MCGEE BROTHERS
COMPANY, INC.; ALPHA OMEGA
CONSTRUCTION GROUP, INC.;
PENDER-PETTUS INSULATING, INC.;
CHARLOTTE LANEHART ELECTRIC
COMPANY, INC.; C&C PLUMBING, INC.;
ASSOCIATED MATERIALS, LLC a/k/a
Alside, Inc.; T&A EXCAVATING, LLC;
CALLAHAN EXCAVATING, LLC a/k/a
Callahan Grading & Hauling, Inc. a/k/a
Callahan Grading, LLC; AHR
CONSTRUCTION, INC.; JJS
COMMERCIAL CONSTRUCTION, INC.;
CDJ CONSTRUCTION, INC.; JIMENEZ
CONTRACTORS, LLC; J. COV ROOFING,
LLC; AYALAS WINDOW
INSTALLATIONS, LLC; ATLANTA
FLOORING DESIGN CENTERS, INC.;
PEDRO DEJESUS LOPEZ d/b/a PJJ
CONSTRUCTION; and PEDRO
VILLAREAL-CONCEPCION d/b/a CVP
CONSTRUCTION,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2020-CP-46-03592

**ORDER DENYING DEFENDANT TRUE
HOMES, LLC'S MOTION TO STAY
AND COMPEL ARBITRATION**

This matter came before the Court for a hearing on May 17, 2022, on a Motion to Stay and Compel Arbitration (the “Motion”) filed by Defendant True Homes, LLC (“True Homes”) seeking to compel the claims of Plaintiffs Susan Hagy (“Hagy”) and Karin Fuentes (“Fuentes”) into arbitration. At the hearing, Elliotte Quinn with The Steinberg Law Firm, LLC appeared on behalf of Plaintiffs, and Joshua Hinson with Wolfe, Campbell, Gunst & Hinson, PLLC appeared on behalf of True Homes. Having reviewed the parties’ submissions, heard oral arguments, and conducted a rigorous analysis of the arbitration provisions at issue, this Court finds that the arbitration provisions are unenforceable and the Motion is denied.

BACKGROUND

This action is a construction defect action arising from the construction of a residential development in Fort Mill known as “Summerlake Townhomes” and which contains 101 townhomes (“Summerlake”). Plaintiffs allege that True Homes was the general contractor for the construction of the 101 townhomes and sold the townhomes to the original purchasers. On November 25, 2020, Plaintiffs Summerlake Townhomes Homeowners’ Association, Inc. (the “Association”), Hagy, and Fuentes filed this action asserting claims against True Homes, its subcontractors, two developer entities, and the two developer entities’ subcontractors for alleged negligence, breach of the implied warranties of habitability and workmanship, breach of fiduciary duty, and violations of the South Carolina Unfair Trade Practices Act (“UTPA”).

The Association is the homeowners association for Summerlake, and as set out in the Declaration of Covenants, Conditions and Restrictions for Summerlake Townhomes (“Covenants”), the Association owns and is responsible for the maintenance, repair, and replacement of the common elements. The Covenants also provide that while each townhome and the lot on which it is located is owned by the individual townhome owners, the Association is

responsible for the maintenance, repair, and replacement of certain exterior components of the townhomes.

Plaintiffs Fuentes and Hagy own townhomes in Summerlake with Fuentes having purchased his townhome directly from True Homes, whereas Hagy is a subsequent purchaser of her townhome with a former owner of her townhome having purchased it from True Homes. Fuentes and Hagy assert claims in this action both individually and on behalf of a putative class of all owners of townhomes in Summerlake.

On February 15, 2022, True Homes filed the Motion seeking to compel Fuentes' and Hagy's claims into arbitration. True Homes did not move to compel any claim asserted by the Association into arbitration. True Homes moved to compel Fuentes' and Hagy's claims into arbitration based on arbitration provisions in the purchase agreement for the townhomes entered into between True Homes and Fuentes and between True Homes and the original purchaser of Hagy's townhome. Plaintiffs assert the arbitration provisions are unenforceable for numerous reasons, including because arbitration provisions generally are not enforceable against subsequent purchasers and no exception to that general rule exists here and because the Federal Arbitration Act ("FAA") does not apply to the arbitration provisions because the provisions are contained in an agreement involving intrastate commerce and the provisions are unenforceable under the South Carolina Uniform Arbitration Act ("SCUAA") because the purchase agreements do not contain the statutorily required notice of arbitration.

ANALYSIS

I. The Arbitration Provision is Unenforceable Because Non-Signatories Generally Cannot be Compelled into Arbitration, and the Direct Benefits Estoppel Exception is Not Applicable Here.

The Court finds the arbitration provision in the purchase agreement between True Homes and the original purchaser of Hagy's townhome does not permit True Homes to compel Hagy's claims into arbitration because Hagy is not a party to that agreement. South Carolina law recognizes that a nonsignatory to an arbitration agreement generally cannot be compelled to arbitrate claims, and the narrow exception to that general rule is where there are unusual facts present that satisfy one of the special theories under which a nonsignatory can be compelled to arbitrate claims. *See, e.g., Int'l. Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 416 (4th Cir. 2000); *Wilson v. Willis*, 426 S.C. 326, 338–39, 827 S.E.2d 167, 173–74 (2019). True Homes does not contest the general rule that nonsignatories cannot be compelled into arbitration but contends the facts of this case meet the requirements for compelling a non-signatory to arbitrate under the direct benefits estoppel theory. True Homes contends that “Plaintiffs have brought claims sounding in contract” and that *Damico v. Lennar Carolinas, LLC*, 430 S.C. 188, 844 S.E.2d 66 (Ct. App. 2020) provides that subsequent purchasers “may still be compelled to arbitration where the homeowner seeks to enforce rights pursuant to the contract.” (Mot. ¶12.)

As an initial matter, the *Damico* decision does not support True Homes' argument for compelling a subsequent purchaser into arbitration. While True Homes cites *Damico* as “noting a successor homeowner, who did not sign an arbitration agreement may still be compelled to arbitration where the homeowner seeks to enforce rights pursuant to the contract,” (Mot. ¶12), the *Damico* opinion expresses no holding on that point. The only reference to a subsequent purchaser in the *Damico* opinion is a factual statement that one of the plaintiffs there was “the second owner

of a home, but in her amended complaint, she alleges a breach of contract cause of action based upon the [purchase agreement]" between her and the defendant. *Damico*, 430 S.C. at 70, 844 S.E.2d at 195. The *Damico* opinion contains no further discussion of the subsequent purchaser plaintiff. Moreover, even were the *Damico* opinion instructive as to when a subsequent purchaser may be compelled into arbitration, at most it would indicate that a subsequent purchaser may be compelled to arbitrate where the subsequent purchaser "alleges a breach of contract cause of action based upon the [purchase agreement]." *Id.* Unlike the subsequent purchaser plaintiff in *Damico*, here Plaintiffs do not assert a breach of contract cause of action, much less a breach of contract cause of action based on True Homes' purchase agreement. Therefore, the Court finds *Damico* does not support the expansive reading given it by True Homes and does not provide a basis independent of the direct benefits estoppel theory for compelling a nonsignatory into arbitration. The Court finds that because Plaintiffs do not assert a breach of contract claim under True Homes' purchase agreement, *Damico* does not provide any basis for compelling Hagy's claims into arbitration.

Dispensing with True Homes' contention that the *Damico* opinion provides an independent basis for compelling Hagy's claims as a subsequent purchaser into arbitration, the Court turns to whether the direct benefits estoppel theory for compelling nonsignatories' claims into arbitration is applicable here. The direct benefits estoppel theory provides that a non-signatory can be compelled into arbitration when the non-signatory "receives a direct benefit from a contract containing an arbitration clause." *Wilson v. Willis*, 426 S.C. 326, 340, 827 S.E.2d 167, 175 (2019) (internal quotation omitted). The direct benefit to the nonsignatory required for direct benefits estoppel to apply exists where the nonsignatory "has consistently maintained that other provisions of the same contract should be enforced to benefit him" or "knowingly exploits the benefits of an

agreement containing an arbitration clause, and receives benefits flowing directly from the agreement.” *Id.* at 340–41, 827 S.E.2d at 175 (internal quotations and emphasis omitted). The direct benefit required for direct benefits estoppel does not exist “simply because a claim relates to or would not have arisen ‘but for’ a contract’s existence.” *Id.* at 343, 827 S.E.2d at 176. Rather, “any benefit derived from an agreement is indirect where the nonsignatory exploits the contractual relationship of the parties, but does not exploit (and thereby assume) the agreement itself.” *Id.*

Here, Hagy does not assert a claim based on True Homes’ purchase agreement with the original purchaser of her townhome and does not seek to enforce any rights pursuant to that purchase agreement. Plaintiffs’ First Amended Complaint does not even allege the existence of True Homes’ purchase agreement or any other contract between True Homes and any homeowner. Moreover, contrary to True Homes’ assertions, none of Hagy’s claims arise from or sound in contract. Therefore, the direct benefits estoppel theory is inapplicable here, True Homes has shown no basis for setting aside the general rule that subsequent purchasers are not subject to arbitration, and Hagy’s claims are not subject to arbitration.

II. The Arbitration Provision is Unenforceable Because the FAA Does Not Apply and the Agreement Does Not Meet the Requirements for Enforceability Under the South Carolina Uniform Arbitration Act.

The Court finds the Federal Arbitration Act (“FAA”) does not apply because True Homes’ purchase agreement at issue here is a transaction involving intrastate, rather than interstate, commerce as required for the FAA to apply. Because the FAA does not apply to True Homes’ purchase agreement, the arbitration provision therein is only enforceable if the agreement meets the requirements of the South Carolina Uniform Arbitration Act (“SCUAA”). The agreement does not meet the notice of arbitration requirements of the SCUAA, and therefore, the arbitration provision is unenforceable.

The FAA, 9 U.S.C. §§ 1, *et seq.*, only applies to an arbitration provision in a contract for interstate commerce or in a contract providing that the FAA applies. *See* 9 U.S.C. § 2; *Allied-Bruce Terminix Companies, Inc. v. Dobson*, 513 U.S. 265, 273–77 (1995); *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 539, 542 S.E.2d 360, 363–64 (2001). Here, True Homes’ purchase agreement does not mention the FAA. Therefore, the FAA only applies to True Homes’ purchase agreement if the agreement was for a transaction involving interstate commerce.

The purchase of a parcel of real property is an intrastate transaction, and therefore, the FAA does not apply to a contract for the purchase of real property.¹ *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 458, 730 S.E.2d 312, 318 (2012). A contract for the purchase of real property concerns “a commodity—the land—which is firmly planted in one particular state.” *Id.* at 457, 730 S.E.2d at 317 (quoting *Saneii v. Robards*, 289 F. Supp. 2d 855, 858 (W.D. Ky. 2003)).

True Homes’ purchase agreement is a contract for the purchase of real property. True Homes acknowledges as much in the Motion, stating that “True Homes *sells homes* to members of the public using a *standard purchase agreement*.” (Mot. ¶1 (emphasis added).) The Motion proceeds to refer to each purchase agreement as for the sale of a home. (Mot. ¶¶1 & 4.) True Homes’ purchase agreement also indicates it is a contract for the purchase of real property, rather

¹ True Homes misconstrues the Court of Appeals’ opinion in *Damico v. Lennar Carolinas, LLC*, as holding that a contract for the purchase of real property involves interstate commerce so long as the construction of that real property involved interstate commerce. Contrary to True Homes’ contentions, the *Damico* opinion found the FAA applied to the contract at issue there because the contract specifically provided for the application of the FAA. *Damico*, 430 S.C. at 196, 844 S.E.2d at 70. The *Damico* opinion went on to state that the contract at issue there was for both the construction and sale of a residence, unlike a contract for the sale of real property which is an intrastate transaction. *Id.* 196, 844 S.E.2d at 71 (“In general, the development and sale of residential real estate is an intrastate activity that does not implicate the FAA, but here the transaction also involved the construction of residential homes.”).

than a contract for the construction of a home, by True Homes entitling the document "HOME PURCHASE AGREEMENT."

Additionally, on May 27, 2014, York County issued the building permit for the construction of a townhome on what is now Fuentes' property, three months prior to when Fuentes signed the purchase agreement with True Homes. Plaintiffs submitted an affidavit from Fuentes in opposition to the Motion in which Fuentes attests that at the time he signed the purchase agreement, True Homes had already completed the construction of a townhome on the property. True Homes questions the veracity of Fuentes' attestation as to the completion of the townhome on the basis that York County issued the certificate of occupancy for the townhome after Fuentes signed the purchase agreement. Regardless of whether the construction of the townhome was completed when Fuentes signed the purchase agreement, True Homes does not contest that construction of Fuentes' townhome was underway prior to Fuentes signing the purchase agreement, and that fact alone is sufficient to establish that the purchase agreement was a contract for the purchase of real property, not a contract for the construction of a home. True Homes was constructing the townhome regardless of whether Fuentes signed the purchase agreement. If True Homes was already constructing the townhome and was going to continue with that construction regardless of whether Fuentes signed the purchase agreement, the purchase agreement cannot have been a contract for construction.

The same analysis applies to the purchase agreement entered into between True Homes and the original purchaser of Hagy's townhome. That purchase agreement incorporated a "Closing Expectation Addendum" providing that at the time the original purchaser signed the purchase agreement, the townhome was "currently under construction." Again, True Homes was constructing the townhome regardless of whether that original purchaser signed the purchase

agreement, and therefore, the purchase agreement cannot have been a contract for the construction of a townhome.

The determinative consideration when analyzing whether a contract involved interstate or intrastate commerce in relation to a structure is what obligations the parties were contractually agreeing to undertake. As the South Carolina Supreme Court instructed in *Bradley v. Brentwood Homes, Inc.*, a court is to examine the “essential character” of the contract containing an arbitration provision at issue. 398 S.C. at 459, 730 S.E.2d at 318. In a contract for construction, one party agrees to construct a specified structure for the other party in exchange for consideration. *See, e.g.*, Black’s Law Dictionary 343 (8th ed. 2004) (defining “construction contract” as “A contract setting forth the specifications for a building project’s construction.”). In a contract for the sale of real property, one party agrees to transfer ownership of the real property, typically including the improvements on the property, to the other party in exchange for consideration. *See, e.g.*, 42 C.J.S. *Improvements* § 4 (“[I]mprovements to realty are considered part of the real property and ownership of the improvements follows title to the land.”). In a contract for construction of a structure and the sale of property, a party agrees to construct a specified structure on the property and to then transfer ownership of the property to the other party. The fact that a contract for the sale of real property includes completed or soon to be completed improvements does not change the nature of that contract into a contract for construction.

True Homes contends the foregoing analysis is immaterial because the purchase agreement provided a warranty to townhome purchasers. True Homes contends that it is a non-South Carolina entity, the warranty company is a non-South Carolina entity, True Homes’ employees located outside South Carolina were used to perform warranty work, and in other ways the provision and performance of the warranty involved interstate commerce thereby making the purchase agreement

a transaction involving interstate commerce and subject to the FAA. However, in *Bradley v. Brentwood Homes, Inc.*, the South Carolina Supreme Court rejected that argument, holding that “ancillary factors” like a national warranty and out-of-state financing do not result in a transaction involving interstate commerce where the plaintiff does not assert claims under the national warranty. *Id.* at 459, 730 S.E.2d at 318.

Having concluded True Homes’ purchase agreement arises from a transaction involving intrastate commerce, and the FAA therefore does not apply, the arbitration provision in True Homes’ purchase agreement is enforceable only if it meets the requirements of the SCUAA, S.C. Code Ann. §§ 15-48-10, *et seq.* The SCUAA provides that an arbitration provision is enforceable only if the first page of the contract contains a notice “typed in underlined capital letters” that the contract “is subject to arbitration pursuant to [the SCUAA].” S.C. Code Ann. § 15-48-10. An arbitration provision in a contract that does not precisely conform to that notice requirement is not enforceable under the SCUAA. *See id.* (“[U]nless such notice is displayed thereon the contract shall not be subject to arbitration.”); *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 589, 553 S.E.2d 110, 114 (2001) (“No other variation is acceptable.”). True Homes’ purchase agreement does not contain any notice of arbitration pursuant to the SCUAA on the first page or any other page, and therefore, the arbitration provision in the purchase agreement is not enforceable under the SCUAA. With the FAA not applicable to True Homes’ purchase agreement and the agreement unenforceable under the SCUAA, the arbitration provision in True Homes’ purchase agreement is not enforceable against Fuentes or Hagy.

III. The Court Does Not Address Plaintiffs’ Remaining Arguments as to the Enforceability of the Arbitration Provision.

Having found the arbitration provision in True Homes’ purchase agreement is unenforceable against Hagy because she is a subsequent purchaser of her townhome who did not

enter into any agreement with True Homes and unenforceable against both Fuentes and Hagy because the FAA does not apply and the agreement does not meet the requirements for enforcing the arbitration provision under the SCUAA, the Court need not address Plaintiffs' remaining arguments regarding the enforceability of the arbitration provision. *See, e.g., Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 597 (1999) ("In light of our disposition of the case, it is not necessary to address Futch's remaining issues.").

CONCLUSION

Having found that the arbitration provision in True Homes' purchase agreement is unenforceable against Fuentes and Hagy, this Court **DENIES** True Homes' Motion to Stay and Compel Arbitration.

AND IT IS SO ORDERED.

The Honorable William A. McKinnon
Circuit Court Judge for the Sixteenth Circuit

York, South Carolina
_____, 2022



York Common Pleas

Case Caption: Summerlake Townhomes Homeowners Association Inc , plaintiff, et al
VS True Homes Llc , defendant, et al

Case Number: 2020CP4603592

Type: Order/Other

So Ordered

/s William A. McKinnon, #2761, Circuit Judge

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

CASE NO.: 2020-CP-46-03592

SUMMERLAKE TOWNHOMES
HOMEOWNERS' ASSOCIATION, INC.
and SUSAN HAGY and KARIN FUENTES,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

TRUE HOMES, LLC; CAROLINA
DEVELOPMENT SERVICES, LLC;
SUMMERLAKE PROPERTIES, LLC; RJB
LEGACY COMPANY f/k/a Barefoot &
Company, LLC; BMC STOCK HOLDINGS,
INC. a/k/a Barefoot & Company, LLC;
AIRTRON, INC.; and MPK GRADING
AND EROSION CONTROL, LLC,

Defendants.

ORDER

This matter came before the Court on June 23, 2021. The Court orders that this case is hereby stayed until October 1, 2021. Defendant True Homes, LLC's Motion to Dismiss and in the Alternative Defendant True Homes, LLC's Motion to Stay remains pending. All pending motions in this matter shall be continued until October 1, 2021.

AND IT IS SO ORDERED.

The Honorable Daniel D. Hall
Circuit Court Judge for the Sixteenth Circuit

York County, South Carolina
_____, 2021



York Common Pleas

Case Caption: Summerlake Townhomes Homeowners Association Inc , plaintiff, et al
VS True Homes Llc , defendant, et al
Case Number: 2020CP4603592
Type: Order/Stay

So Ordered

s/Daniel D. Hall 2753

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

CASE NO.: 2020-CP-46-03592

SUMMERLAKE TOWNHOMES
HOMEOWNERS' ASSOCIATION, INC.
and SUSAN HAGY and KARIN FUENTES,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

TRUE HOMES, LLC; CAROLINA
DEVELOPMENT SERVICES, LLC;
SUMMERLAKE PROPERTIES, LLC; RJB
LEGACY COMPANY f/k/a Barefoot &
Company, LLC; BMC STOCK HOLDINGS,
INC. a/k/a Barefoot & Company, LLC;
AIRTRON, INC.; and MPK GRADING
AND EROSION CONTROL, LLC,

Defendants.

CONSENT ORDER

This matter comes before the Court upon the consent of all parties who have appeared in this action and with the consent of Alpha Omega Construction Group, Inc. and C&C Plumbing, Inc. who were served with a written notice of construction defects pursuant to the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §§ 40-59-810, *et seq.*, (the "Act"), but have not yet been named as defendants in this action. Additional contractors and subcontractors were served by certified mail to their last known addresses with written notice of the alleged defects pursuant to the Act, but those additional contractors have not contacted Plaintiffs as provided in Sections 40-59-840 and 40-59-850 of the Act. Hereinafter, those individuals and entities alleged to have performed the construction of the dwellings at issue in this action are referred to as the "Contractors."

In this construction defect case, Plaintiffs allege a putative class action of townhome

owners, and the parties dispute whether and to what extent the Act requires or permits inspections of the absent putative class members' townhomes. To avoid the expense and delay of further motions to address the application of the Act, parties sought a negotiated resolution of the issue. Defendants proposed inspecting a randomly selected sample of twenty-five townhomes in the Summerlake Townhomes development, and Plaintiffs negotiated the plan set forth herein for completing the Act's requirements through the inspection of twenty-five randomly selected townhomes. Finding the proposed compromise is legally acceptable under the Act and is a reasonable resolution of the dispute over the application of the Act in this case and pursuant to the Court's inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible, *Robinson v. Estate of Harris*, 389 S.C. 360, 371, 698 S.E.2d 801, 807 (2010), the Court hereby orders as follows:

1. The Contractors will randomly select thirty-five townhomes with Plaintiffs afforded the opportunity to be present for and observe the selection process.
2. Plaintiffs will contact the owners of those thirty-five townhomes in the order of their selection to schedule inspections of twenty-five townhomes.
3. If Plaintiffs are unable to schedule the inspection of one of the selected townhomes, Plaintiffs will communicate that to the other parties with an explanation that the townhome owner's schedule does not allow them to be present during the time scheduled for the inspections, that the townhome owner did not respond to Plaintiffs' communications, or such other reason as the townhome owner provides.
4. If Plaintiffs are unable to schedule twenty-five townhomes for inspections from the randomly selected thirty-five townhomes, the parties will repeat the procedures set forth in the preceding paragraphs until twenty-five townhomes are scheduled for inspections.

5. The Contractors will inspect, pursuant to the Act, the interior and exterior of the twenty-five townhomes on September 21, 22, and 23, 2021, or such other dates as mutually agreed upon among Plaintiffs and the Contractors.
6. The completion of the process set forth herein shall constitute full and final completion of the Act's requirements in this case, and upon completion of the process set forth herein, no further inspections under the Act shall be permitted or required in this case. This Order does not limit or expand any right to conduct other inspections to the extent such right exists independent of the Act.
7. This case shall remain stayed until October 18, 2021. All hearings scheduled in this case shall be continued until on or after October 18, 2021.

AND IT IS SO ORDERED.



2761

The Honorable William M. McKinnon
Chief Administrative Judge for the Sixteenth Circuit

York County, South Carolina

~~XXXXXX~~ 2021

September 20, 2021

WE CONSENT:

s/Elliottte Quinn

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York Common Pleas

Case Caption: Summerlake Townhomes Homeowners Association Inc , plaintiff, et al
VS True Homes Llc , defendant, et al
Case Number: 2020CP4603592
Type: Order/Consent Order

So Ordered

/s William A. McKinnon, Chief Judge for
Administrative Purposes, 16th Cir., #2761

Electronically signed on 2021-09-20 11:48:11 page 6 of 6

STATE OF SOUTH CAROLINA

COUNTY OF YORK

SUMMERLAKE TOWNHOMES
HOMEOWNERS' ASSOCIATION, INC.
and SUSAN HAGY and KARIN FUENTES,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

TRUE HOMES, LLC; CAROLINA
DEVELOPMENT SERVICES, LLC;
SUMMERLAKE PROPERTIES, LLC; RJB
LEGACY COMPANY f/k/a Barefoot &
Company; BMC EAST, LLC; AIRTRON,
INC.; MPK GRADING AND EROSION
CONTROL, LLC; SOUTHEND
EXTERIORS, LLC; MCGEE BROTHERS
COMPANY, INC.; ALPHA OMEGA
CONSTRUCTION GROUP, INC.;
PENDER-PETTUS INSULATING, INC.;
CHARLOTTE LANEHART ELECTRIC
COMPANY, INC.; C&C PLUMBING, INC.;
ASSOCIATED MATERIALS, LLC a/k/a
Alside, Inc.; T&A EXCAVATING, LLC;
CALLAHAN EXCAVATING, LLC a/k/a
Callahan Grading & Hauling, Inc. a/k/a
Callahan Grading, LLC; AHR
CONSTRUCTION, INC.; JJS
COMMERCIAL CONSTRUCTION, INC.;
CDJ CONSTRUCTION, INC.; JIMENEZ
CONTRACTORS, LLC; J. COV ROOFING,
LLC; AYALAS WINDOW
INSTALLATIONS, LLC; ATLANTA
FLOORING DESIGN CENTERS, INC.;
PEDRO DEJESUS LOPEZ d/b/a PJJ
CONSTRUCTION; and PEDRO
VILLAREAL-CONCEPCION d/b/a CVP
CONSTRUCTION,

IN THE COURT OF COMMON PLEAS

CASE NO.: 2020-CP-46-03592

**ORDER TO AMEND
FIRST AMENDED COMPLAINT**

Defendants.

This matter came before the Court for a hearing on Thursday, June 9, 2022, on Plaintiffs' Motion to Amend the First Amended Complaint (the "Motion") pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure. The Court finds the applicable legal standard has been met, and Plaintiffs are permitted to file the proposed Second Amended Complaint attached as **Exhibit A** to the Motion.

IT IS SO ORDERED

The Honorable Daniel Dewitt Hall
Chief Administrative Judge, York County

_____, 2022
York County, South Carolina



York Common Pleas

Case Caption: Summerlake Townhomes Homeowners Association Inc , plaintiff, et al
VS True Homes Llc , defendant, et al
Case Number: 2020CP4603592
Type: Order/Amend

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2022-06-14 16:26:53 page 3 of 3

ELECTRONICALLY FILED - 2022 Jun 14 4:36 PM - YORK - COMMON PLEAS - CASE#2020CP4603592

STATE OF SOUTH CAROLINA
COUNTY OF York
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP4603592

Summerlake Townhomes Homeowners Association Inc et al
PLAINTIFF(S)

True Homes Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.



DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
Other

ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
Other

STAYED DUE TO BANKRUPTCY

DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

Affirmed; Reversed; Remanded;
Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Defendant's Motion to Reconsider this Court's June 20, 2022 order is DENIED.

ORDER INFORMATION

This order ends ☒ does not end the case.

See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/01/2022 .

Ovp Construction
Pedro Villareal Concepcion
Pjt Construction
Pedro Dejesus Lopez
Ayala Window Installations Llc
T&A Excavating Llc
Alside Inc
Salloun Contractors Inc
Associated Materials Llc
Anthony Jarrett Callahan
Anthony Jarrett Callahan
Carolina Development Solutions Llc
Advanced Framing Llc
Charlotte Plastering Inc
Lisa Sher
Robin Daniel
Square Construction
E&B Carpentry
E&B Mother Of Construction, Llc
Jose Santos Escobar Bonilla
Richard Chaves
Maria C Leon

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2022 Aug 01 12:29 PM - YORK - COMMON PLEAS - CASE#2020CP4603592



York Common Pleas

Case Caption: Summerlake Townhomes Homeowners Association Inc , plaintiff, et al
VS True Homes Llc , defendant, et al
Case Number: 2020CP4603592
Type: Order/Electronic Form 4

So Ordered

/s William A. McKinnon, #2761, Circuit Judge

Electronically signed on 2022-08-01 11:57:47 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

CASE NO.: 2020-CP-46-__

SUMMERLAKE TOWNHOMES
HOMEOWNERS' ASSOCIATION, INC.
and SUSAN HAGY and KARIN
FUENTES, individually and on behalf of
all others similarly situated,

Plaintiffs,

SUMMONS

v.

TRUE HOMES, LLC; CAROLINA
DEVELOPMENT SERVICES, LLC;
SUMMERLAKE PROPERTIES, LLC;
RJB LEGACY COMPANY f/k/a Barefoot
& Company, LLC; BMC STOCK
HOLDINGS, INC. a/k/a Barefoot &
Company, LLC; AIRTRON, INC.; and
MPK GRADING AND EROSION
CONTROL, LLC,

Defendants.

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is hereby served upon you, to file a copy of your Answer with the Clerk of Court, and to serve a copy of your Answer upon the Plaintiffs through their attorney, Elliotte Quinn, at his office at P.O. Box 2670, Summerville, SC 29484, within thirty days after the 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.

DATED at Summerville, South Carolina, this 25th day of November, 2020.

THE STEINBERG LAW FIRM, L.L.P.
P.O. Box 2670
Summerville, SC 29484
(843) 871-6522 - office
(843) 871-8565 - facsimile

By: s/Elliotte Quinn
F. Elliotte Quinn IV
SC Bar No.: 100450
equinn@steinberglawfirm.com

Attorney for Plaintiffs

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

CASE NO.: 2020-CP-46-___

SUMMERLAKE TOWNHOMES
HOMEOWNERS' ASSOCIATION, INC.
and SUSAN HAGY and KARIN
FUENTES, individually and on behalf of
all others similarly situated,

Plaintiffs,

COMPLAINT

v.

TRUE HOMES, LLC; CAROLINA
DEVELOPMENT SERVICES, LLC;
SUMMERLAKE PROPERTIES, LLC;
RJB LEGACY COMPANY f/k/a Barefoot
& Company, LLC; BMC STOCK
HOLDINGS, INC. a/k/a Barefoot &
Company, LLC; AIRTRON, INC.; and
MPK GRADING AND EROSION
CONTROL, LLC,

Defendants.

Plaintiffs Summerlake Townhomes Owners' Association, Inc. ("Association") and Susan Hagy ("Hagy"), on behalf of herself and all others similarly situated, (together, "Plaintiffs"), by and through their undersigned counsel, complain of Defendant True Homes, LLC ("True Homes"); Carolina Development Services, LLC ("Carolina Development"); Summerlake Properties, LLC ("SL Properties"); RJB Legacy Company, formerly known as Barefoot & Company, LLC ("RJB Legacy"); BMC Stock Holdings, Inc., also known as Barefoot & Company, LLC ("BMC Stock"); Airtron, Inc. ("Airtron"); and MPK Grading and Erosion Control, LLC ("MPK"), (all together "Defendants"; True Homes, Carolina Development, and Summerlake Properties together "Developer Defendants";

and RJB Legacy, BMC Stock, Airtron, and MPK together "Subcontractor Defendants"), as follows:

PARTIES, JURISDICTION, AND VENUE

1. Association is a non-profit corporation organized and existing under the laws of the State of South Carolina.

2. Association is the Summerlake Townhomes owners association for the Summerlake Townhomes.

3. The Summerlake Townhomes is a townhome development subject to restrictive covenants which exists by virtue of and is defined in the Declaration of Covenants, Conditions and Restrictions for Summerlake Townhomes ("Covenants") dated September 30, 2013, and recorded with the York County Register of Deeds on October 7, 2013, at Book 13752 and Page 8.

4. Summerlake Townhomes consists of 101 townhomes in 20 buildings and associated common elements located in York County, South Carolina.

5. Pursuant to the Covenants and applicable law, the Association has certain rights, powers, duties, and obligations with respect to the townhomes, the common elements, and the members.

6. Pursuant to the Covenants, the Association is responsible for maintaining, repairing, replacing, and caring for the roofs, exterior walls, and other exterior components of the townhomes as well as being responsible for the common elements.

7. The Association has the right and authority to bring the claims asserted in this action on behalf of the Association and its members.

8. Plaintiff Hagy resides at and is the owner of the townhome located at 923

Summerlake Drive in Fort Mill, South Carolina, which is a townhome in the Summerlake Townhomes.

9. Plaintiff Fuentes resides at and is the owner of the townhome located at 2006 Firefly Lane in Fort Mill, South Carolina, which is a townhome in the Summerlake Townhomes.

10. As owners of townhomes in the Summerlake Townhomes and members of the Association, Hagy and Fuentes bring this action on behalf of themselves and a class of all owners of townhomes in the Summerlake Townhomes. In addition to their common interests as owners of townhomes in the Summerlake Townhomes, Hagy, Fuentes, and the other owners comprise the members of the Association.

11. Developer Defendants developed the Summerlake Townhomes, constructed and sold the townhomes in Summerlake Townhomes, created and controlled the Association, and turned over the Association to the owners of the townhomes in Summerlake Townhomes.

12. Subcontractor Defendants constructed the townhomes and common elements of Summerlake Townhomes.

13. The claims in this action arise from and relate to the development of, sale of, construction of, and work at the Summerlake Townhomes and the creation, control, and turnover of the Association.

14. At all relevant times, Defendants conducted business in York County, South Carolina.

FACTUAL BACKGROUND

15. Defendant True Homes constructed and was the general contractor for the

construction of the Summerlake Townhomes.

16. Developer Defendants developed, sold, and transferred the Summerlake Townhomes to the townhome owners and the Association.

17. Defendant Carolina Development was the declarant and controlled the Association from the creation of the Association until Carolina Development assigned its declarant rights to SL Properties by way of the Assignment of Declarant Rights dated July 29, 2014, and recorded with the York County Register of Deeds at Book 14275 and Page 294 on July 31, 2014.

18. SL Properties was the declarant and controlled the Association from when it was assigned the declarant rights by Carolina Development until the Association was turned over to the townhome owner members.

19. Developer Defendants shared ownership and limited liability company managers.

20. Developer Defendants operated using the employees, offices, and assets of one another.

21. Developer Defendants are or were each an instrumentality or alter ego of the others.

22. Developer Defendants functioned as one and the same.

23. Developer Defendants were amalgamated such that the actions, obligations, and liabilities of one apply to the others.

24. Injustice and fundamental unfairness would exist were the corporate forms of and legal distinctions between Developer Defendants not set aside.

25. RJB Legacy performed the installation of exterior doors and related

components at Summerlake Townhomes.

26. In January of 2019, BMC Stock acquired RJB Legacy, then known as Barefoot & Company, LLC, and carried on the business of RJB Legacy as a continuation of and successor to RJB Legacy using the name, website, assets, employees, and goodwill of RJB Legacy.

27. As the continuation of and successor to RJB Legacy, BMC Stock is liable for the pre-acquisition acts and omissions of RJB Legacy.

28. After the acquisition of Barefoot & Company, LLC by BMC Stock, BMC Stock performed work at the Summerlake Townhomes to address water intrusion occurring at doors installed by the pre-acquisition Barefoot & Company, LLC.

29. Airtron installed heating, ventilation, and air conditioning ("HVAC") systems and related ductwork in the townhomes of Summerlake Townhomes.

30. MPK performed grading and drainage work in the construction of the Summerlake Townhomes.

31. Defendants owed duties to Plaintiffs to complete the work free from defects, in a good and workmanlike manner, and in accordance with all applicable laws, building codes, industry standards, manufacturer's installation instructions, and standard of care.

32. Defendants failed to properly perform the work at the Summerlake Townhomes.

33. Plaintiffs discovered the Summerlake Townhomes have been extensively damaged with the damage being the proximate result of the improper work performed by Defendants and their employees, agents, servants, and/or subcontractors.

34. As a direct and proximate result of the improper and defective work by

Defendants and their employees, agents, servants, and/or subcontractors, Plaintiffs spent and/or will be required to spend substantial sums of money to repair the Summerlake Townhomes.

35. The Summerlake Townhomes suffered a loss of value as a direct and proximate result of the improper and defective work by Defendants and their employees, agents, servants, and/or subcontractors.

36. Plaintiffs suffered and will suffer the loss of use and enjoyment of the Summerlake Townhomes as a direct and proximate result of the improper and defective work by Defendants and their employees, agents, servants, and/or subcontractors.

37. As a direct and proximate result of the improper and defective work by Defendants and their employees, agents, servants, and/or subcontractors, Plaintiffs will be required to spend substantial sums to investigate the deficiencies, develop and design repairs, and undertake the repairs, in addition to other damages.

38. The improper and defective work performed by Defendants and their employees, agents, servants, and/or subcontractors resulted in substantial consequential and resulting damage to non-defective components of the Summerlake Townhomes.

39. The construction defects set forth herein caused occurrences which are not readily apparent to one examining the exposed portions of the Summerlake Townhomes.

40. The latent design and construction defects resulted in continual exposure to the same generally harmful conditions over time in the form of repeated injurious events that occurred each and every year since construction and constitute "occurrences" and compensable damage. The latent construction defects resulted in repeated water intrusion and other damages.

CLASS ACTION

41. Plaintiffs reallege the allegations in the preceding paragraphs as if fully set forth herein.

42. Pursuant to South Carolina common law and Rule 23 of the South Carolina Rules of Civil Procedure, Plaintiffs Hagy and Fuentes bring this action both individually and on behalf of all other similarly situated persons (the "Class").

43. The Class is defined as: All owners of townhomes in the Summerlake Townhomes. Excluded from the Class are: (a) any Judge presiding over this action and members of their families, (b) Defendants' shareholders, members, or officers, and (c) all persons who properly execute and file a timely request for exclusion from the Class in accordance with the South Carolina Rules of Civil Procedure and South Carolina law.

44. The Summerlake Townhomes is composed of 101 townhomes, and therefore, the class consists of at least 101 persons or entities.

45. The joinder of all of the members of the Class would be impractical.

46. Questions of law and fact common to the Class exist as to all members of the Class and predominate over any questions affecting only individual members of the Class. The common legal and factual issues include:

- a. Whether there are defects in the Summerlake Townhomes;
- b. Whether Defendants negligently constructed the Summerlake Townhomes;
- c. Whether Developer Defendants breached the warranty of habitability;
- d. Whether Defendants breached the implied warranty of workmanship;
- e. Whether Defendants' negligence caused damage to the Summerlake

Townhomes;

- f. Whether Defendants' breaches of implied warranties caused damage to the Summerlake Townhomes;
- g. Whether Plaintiffs Hagy and Fuentes and the class members are entitled to compensatory damages, including, among other things:
 - i. The cost to repair the Summerlake Townhomes and remedy the defects;
 - ii. Diminution in value of the Summerlake Townhomes;
 - iii. Increased regular expenditures related to ownership of the Summerlake Townhomes
 - iv. Existing loss of use and enjoyment of the Summerlake Townhomes resulting from the defects;
 - v. Future loss of use and enjoyment of the Summerlake Townhomes resulting from repairs necessary to remedy the defects; and
- h. Whether Plaintiffs Hagy and Fuentes and the class members are entitled to an award of punitive damages.

47. Defendants engaged in uniform and common practices in relation to Plaintiffs Hagy and Fuentes and the class members.

48. The townhomes of the Summerlake Townhomes have repeated, common components and defects.

49. The townhomes have suffered the same or substantially the same damages to the same or substantially the same building components.

50. Plaintiff Hagy's and Plaintiff Fuentes' claims are typical of the claims of the members of the Class, as all such claims arise out of Plaintiff Hagy's and Plaintiff Fuentes' status as an owner of a townhome in Summerlake Townhomes and member of the Association and Defendants' defective work in constructing the Summerlake Townhomes.

51. Plaintiffs Hagy and Fuentes will fairly and adequately protect the interests of the members of the Class and have no interests antagonistic to those of the Class.

52. Plaintiffs' counsel is experienced in litigating construction defect claims, class actions, and complex litigation.

53. Each Class member has an interest in excess of \$100.00.

54. This class action is appropriate for certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members and because a class action is superior to any other available method for the resolution of this controversy, since individual joinder of all members of the Class is impracticable. Should individual Class members be required to bring separate actions, this Court would be subjected to a multiplicity of lawsuits which would burden the Court and create the risk of inconsistent rulings and contradictory judgments and which would not offer any improvement in the fairness or efficiency of the adjudication of this controversy. In contrast to proceeding on a case-by-case basis with individual plaintiffs, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale, and comprehensive supervision by a single Court.

**ESTOPPEL FROM PLEADING AND TOLLING OF APPLICABLE STATUTES OF
LIMITATION AND STATUTES OF REPOSE**

55. Plaintiffs reallege the allegations in the preceding paragraphs as if fully set forth herein.

56. Defendants are estopped from relying on any statutes of limitation or statutes of repose by virtue of their acts.

57. Defendants knew or reasonably should have known the Summerlake Townhomes was defectively constructed and failed to inform Plaintiffs of the defective condition of the Summerlake Townhomes.

58. Defendants had a duty to inform Plaintiffs of the defects described herein.

59. Despite exercising reasonable diligence, Plaintiffs could not have earlier discovered the defective condition of the Summerlake Townhomes due to the hidden or latent nature of the defects.

60. Given Defendants' failure to disclose this private information about the nature of the Summerlake Townhomes and because Plaintiffs could not have reasonably known of the defective nature of the Summerlake Townhomes, Defendants are estopped from relying on any statutes of limitation or statutes of repose that might otherwise be applicable to the claims asserted herein.

ESTOPPEL FROM PLEADING WARRANTY OBLIGATION

61. Plaintiffs reallege the allegations in the preceding paragraphs as if fully set forth herein.

62. Defendants are estopped from relying on any warranty obligations as a defense to Plaintiffs' claims.

63. By virtue of Defendants' acts and omissions, the work performed and materials supplied at the Summerlake Townhomes have not fulfilled any express warranties and representations made by Defendants.

64. Due to the improper construction, improper maintenance and repair, premature deterioration, and reduced life expectancy of the Summerlake Townhomes and the resulting unexpected repairs required, the Summerlake Townhomes' components have not proven to be of value when compared to other building components.

65. In the exercise of required diligence, which Defendants negligently failed to perform, Defendants should have known that the Summerlake Townhomes was defectively constructed, maintained, and repaired, the components of the Summerlake Townhomes were not fit for their ordinary and intended use, and the components of the Summerlake Townhomes were not in accordance with any warranties.

66. Any express warranty provided to Plaintiffs by Defendants fails its essential purpose.

67. Any express warranty provided to Plaintiffs by Defendants fails its essential purpose and is unconscionable and unenforceable because the remedies provided by the warranties are limited to such an extent that they do not provide even a minimally adequate remedy.

68. Any express warranty provided to Plaintiffs by Defendants is unconscionable and unenforceable given the relative bargaining power, resources, sophistication, and knowledge of the parties.

69. Any express warranty provided to Plaintiffs by Defendants is unenforceable

and of no effect because Defendants failed to perform any warranty obligations.

ESTOPPEL FROM PLEADING WAIVER OF WARRANTY PROVISIONS

70. Plaintiffs reallege the allegations in the preceding paragraphs as if fully set forth herein.

71. Defendants are estopped from relying on any provision purporting to waive implied warranties.

72. Any provision purporting to waive implied warranties is void and of no effect pursuant to public policy and South Carolina law.

73. Any provision purporting to waive implied warranties is adhesive, one-sided, and oppressive and therefore unconscionable and unenforceable.

ESTOPPEL FROM PLEADING NOTICE AND OPPORTUNITY TO CURE

74. Plaintiffs reallege the allegations in the preceding paragraphs as if fully set forth herein.

75. Defendants are estopped from relying on the Notice and Opportunity to Cure Act to stay the litigation of Plaintiffs' claims.

76. Defendants were put on sufficient notice of the defective condition of the Summerlake Townhomes within any statutory period prescribed by the Act.

ESTOPPEL FROM PLEADING ANTI-SUIT PROVISIONS

77. Plaintiffs reallege the allegations in the preceding paragraphs as if fully set forth herein.

78. Defendants are estopped from relying on any anti-suit provisions contained in the Covenants or other governing documents or contracts because such provisions are void pursuant to public policy and the Horizontal Property Regime Act.

79. Defendants are estopped from relying on any anti-suit provisions contained in the Covenants or other governing documents or contracts because such provisions are voidable as a breach of the Defendants' fiduciary duty to Plaintiffs.

80. Defendants are estopped from relying on any anti-suit provisions contained in the Covenants or other governing documents or contracts because such provisions are adhesive, one-sided, and oppressive and therefore unconscionable, void, and unenforceable.

81. Defendants lack standing to rely on any anti-suit provisions contained in the Covenants or other governing documents.

FOR A FIRST CAUSE OF ACTION
Negligence/Gross Negligence
As to Developer Defendants and Subcontractor Defendants

82. Plaintiffs reallege the allegations in the preceding paragraphs as if fully set forth herein.

83. Defendants through their own employees, agents, or servants, through the use of subcontractors, or through both, performed work at the Summerlake Townhomes.

84. Having undertaken the performance of construction work at Summerlake Townhomes, Defendants owed a duty to Plaintiffs to exercise due care in the performance of the work, owed a duty to Plaintiffs to perform the work in accordance with all applicable building codes, industry standards, plans, specifications, and manufacturers' installation instructions, and owed a duty to Plaintiffs to perform the work in a good and workmanlike manner.

85. Defendants and their employees, agents, servants, and/or subcontractors were negligent, careless, reckless, and grossly negligent in failing to exercise due care in

the performance of the construction work, in failing to construct Summerlake Townhomes in a good and workmanlike manner, and in failing to construct Summerlake Townhomes in accordance with all applicable building codes, industry standards, plans, specifications, and manufacturers' installation instructions, including, but not limited to, the following:

- a. In failing to construct Summerlake Townhomes so as to make the building envelopes water tight;
 - b. In failing to properly install the exterior cladding, doors, windows, flashings, vinyl siding, stone veneer, masonry, roofing, MDF trim, HVAC systems and ductwork, grading, paving, drainage, and related components;
 - c. In failing to properly investigate employees, agents, servants, and/or subcontractors to determine if they were competent and capable of performing their work with due care, in a good and workmanlike manner, and in compliance with all applicable building codes, industry standards, plans, and specifications;
 - d. In failing to properly supervise employees, agents, servants, and/or subcontractors;
 - e. In failing to properly inspect and investigate the work of employees, agents, servants, and/or subcontractors;
 - f. In failing to discover defects in the work of employees, agents, servants, and/or subcontractors;
 - g. In failing to investigate and correct defective work;
 - h. In failing to act as a reasonably prudent developer, general contractor, subcontractor, and/or construction professional would in similar circumstances;
- and

i. In such other failures as will be shown through discovery and trial in this action.

86. As a direct, foreseeable, and proximate result of the negligence and gross negligence of Defendants and their employees, agents, servants, and/or subcontractors, Plaintiffs suffered significant physical damage to the Summerlake Townhomes including portions of the Summerlake Townhomes on which Defendants and their employees, agents, servants, and/or subcontractors did not perform work.

87. As a direct, foreseeable, and proximate result of the negligence and gross negligence of Defendants and their employees, agents, servants, and/or subcontractors, Plaintiffs suffered and/or will suffer diminution in the value of the Summerlake Townhomes, increased regular expenditures related to ownership of the Summerlake Townhomes, and loss of the use and enjoyment of the Summerlake Townhomes.

88. As a direct, foreseeable, and proximate result of the negligence and gross negligence of Defendants and their employees, agents, servants, and/or subcontractors, Plaintiffs were damaged in that they spent or will be required to spend substantial sums to determine the extent of the damage to the Summerlake Townhomes, to develop and design repairs for the Summerlake Townhomes, and to repair the Summerlake Townhomes.

89. The violation of the applicable building codes by Defendants and their employees, agents, servants, and/or subcontractors constitutes negligence *per se*.

90. The acts and omissions of Defendants and their employees, agents, servants, and/or subcontractors constitute gross negligence.

91. Plaintiffs are entitled to an award of punitive damages.

FOR A SECOND CAUSE OF ACTION
Breach of Implied Warranties
As to Developer Defendants and Subcontractor Defendants

92. Plaintiffs reallege the allegations in the preceding paragraphs as if fully set forth herein.

93. By operation of law, Defendants warranted that the work would be performed using the utmost skill and attention and in a good and workmanlike manner and free from defects.

94. Defendants breached the implied warranties by performing defective work as set forth herein.

95. In selling the Summerlake Townhomes or otherwise placing the Summerlake Townhomes into the stream of commerce, Developer Defendants, by operation of law, impliedly warranted the townhomes and common elements in the Summerlake Townhomes were fit for their intended use as dwellings and common elements in a residential development, were constructed in a workmanlike manner, are free of latent defects, and are reasonably suitable for habitation.

96. Developer Defendants breached the implied warranty by constructing and placing into the stream of commerce the defective residences and associated common elements.

97. As a direct, foreseeable, and proximate result of the breach of the implied warranties by Defendants, Plaintiffs suffered significant physical damage to the Summerlake Townhomes including portions of the Summerlake Townhomes on which Defendants and their employees, agents, servants, and/or subcontractors did not perform work.

98. As a direct, foreseeable, and proximate result of the breach of implied warranties by Defendants, Plaintiffs suffered and/or will suffer diminution in the value of the Summerlake Townhomes, increased regular expenditures related to ownership of the Summerlake Townhomes, and loss of the use and enjoyment of the Summerlake Townhomes.

99. As a direct, foreseeable, and proximate result of the breach of implied warranties by Defendants, Plaintiffs were damaged in that they spent or will be required to spend substantial sums to determine the extent of the damage to the Summerlake Townhomes, to develop and design repairs for the Summerlake Townhomes, and to repair the Summerlake Townhomes.

FOR A THIRD CAUSE OF ACTION
Unfair Trade Practices Act, S.C. Code §§ 39-5-10, *et seq.*
As to Developer Defendants

100. Plaintiffs reallege the allegations in the preceding paragraphs as if fully set forth herein.

101. Developer Defendants engaged in unfair and deceptive acts and practices in violation of the South Carolina Unfair Trade Practices Act, S.C. Code §§ 39-5-10, *et seq.*

102. The unfair and deceptive acts and practices of Developer Defendants include, but are not limited to:

- a. Failing to construct the Summerlake Townhomes in accordance with the applicable building code;
- b. Failing to construct the Summerlake Townhomes in a good and workmanlike manner;

- c. Failing to make disclosures in warranty advertising;
- d. Failing to perform the advertised construction and quality assurance;
- e. Failing to fully and promptly perform warranty obligations;
- f. Transferring control of the Association to the owner members despite knowing or having should have known of defects in the Summerlake Townhomes and the absence of sufficient reserves to remedy those defects; and
- g. Misrepresenting the nature and cause of construction defect damage to the townhomes.

103. Developer Defendants' violations of the Unfair Trade Practices Act affect the public interest.

104. Developer Defendants construct and sell residences to the general public.

105. Developer Defendants' violations of the Unfair Trade Practices Act were repeated and/or there is the potential for repetition.

106. Developer Defendants engaged in a pattern of unfair and deceptive acts and practices.

107. Developer Defendants engaged in and continue to engage in substantially similar transactions with consumers.

108. Plaintiffs suffered damages as a result of Developer Defendants' unfair and deceptive acts and practices including, but not limited to, physical damage to the Summerlake Townhomes, diminution in the value of the Summerlake Townhomes, loss of use and enjoyment of the Summerlake Townhomes, and the substantial sums Plaintiffs have been or will be required to spend to determine the extent of the damage to the

Summerlake Townhomes, to develop and design repairs for the Summerlake Townhomes, and to repair the Summerlake Townhomes.

109. Developer Defendants' unfair and deceptive acts and practices proximately caused Plaintiffs' damages.

110. Developer Defendants knew, reasonably should have known, and/or could have ascertained through the exercise of reasonable efforts that the unfair and deceptive acts and practices violated the Unfair Trade Practices Act.

111. Developer Defendants' violations of the Unfair Trade Practices Act were knowing or willful.

112. Plaintiffs are entitled to an award of treble damages.

113. Plaintiffs are entitled to an award of attorneys' fees, expert fees, costs, and expenses.

FOR A FOURTH CAUSE OF ACTION
Breach of Fiduciary Duty
As to Developer Defendants

114. Plaintiffs reallege the allegations in the preceding paragraphs as if set forth herein.

115. As the developer and declarant for the Association, Developer Defendants owed fiduciary duties to the Association and its members.

116. Developer Defendants breached the fiduciary duties they owed to the Association and its members by:

- a. Failing to investigate defective conditions prior to turning over the Summerlake Townhomes and the association to the Association and the property owners;

- b. Failing to disclose defective conditions in the Summerlake Townhomes;
- c. Failing to repair defective conditions in the Summerlake Townhomes prior to turning over the Summerlake Townhomes and the association to the Association and the property owners;
- d. Failing to repair and maintain the Summerlake Townhomes;
- e. Turning over the Summerlake Townhomes and the association to the Association and the property owners without depositing sufficient funds to the Association's account to bring the Summerlake Townhomes up to reasonable repair;
- f. Failing to act in the best interests of the Association and the property owner members;
- g. Failing to exercise the care an ordinarily prudent person would as a director of the Association in maintaining and repairing the Summerlake Townhomes; and
- h. Failing to properly develop and manage the Association's accounts.

117. As a direct and proximate result of Developer Defendants' breaches of fiduciary duties, Plaintiffs have been damaged as set forth herein.

WHEREFORE, Plaintiffs demand a jury trial and pray for judgment against Defendants for actual, punitive, and treble damages, attorney's fees, costs and expenses, and for such other and further relief as this Court deems just and proper.

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Attorney for Plaintiffs

November 25, 2020

Summerville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

CASE NO.: 2020-CP-46-03592

SUMMERLAKE TOWNHOMES
HOMEOWNERS' ASSOCIATION, INC.
and SUSAN HAGY and KARIN FUENTES,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

TRUE HOMES, LLC; CAROLINA
DEVELOPMENT SERVICES, LLC;
SUMMERLAKE PROPERTIES, LLC; RJB
LEGACY COMPANY f/k/a Barefoot &
Company; BMC EAST, LLC; AIRTRON,
INC.; MPK GRADING AND EROSION
CONTROL, LLC; SOUTHEND
EXTERIORS, LLC; MCGEE BROTHERS
COMPANY, INC.; ALPHA OMEGA
CONSTRUCTION GROUP, INC.;
PENDER-PETTUS INSULATING, INC.;
CHARLOTTE LANEHART ELECTRIC
COMPANY, INC.; C&C PLUMBING, INC.;
ASSOCIATED MATERIALS, LLC a/k/a
Alside, Inc.; T&A EXCAVATING, LLC;
CALLAHAN EXCAVATING, LLC a/k/a
Callahan Grading & Hauling, Inc. a/k/a
Callahan Grading, LLC; AHR
CONSTRUCTION, INC.; JJS
COMMERCIAL CONSTRUCTION, INC.;
CDJ CONSTRUCTION, INC.; JIMENEZ
CONTRACTORS, LLC; J. COV ROOFING,
LLC; AYALAS WINDOW
INSTALLATIONS, LLC; ATLANTA
FLOORING DESIGN CENTERS, INC.;
PEDRO DEJESUS LOPEZ d/b/a PJJ
CONSTRUCTION; and PEDRO
VILLAREAL-CONCEPCION d/b/a CVP
CONSTRUCTION,

Defendants.

FIRST AMENDED SUMMONS

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to Answer the First Amended Complaint in this action, a copy of which is hereby served upon you, to file a copy of your Answer with the Clerk of Court, and to serve a copy of your Answer upon the Plaintiffs through their attorney, Elliott Quinn, at his office at P.O. Box 2670, Summerville, SC 29484, within thirty days after the service hereof, exclusive of the day of such service; and if you fail to Answer the First Amended Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the First Amended Complaint.

DATED at Summerville, South Carolina, this 31st day of January, 2022.

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

CASE NO.: 2020-CP-46-03592

SUMMERLAKE TOWNHOMES
HOMEOWNERS' ASSOCIATION, INC.
and SUSAN HAGY and KARIN FUENTES,
individually and on behalf of all others
similarly situated,

Plaintiffs,

FIRST AMENDED COMPLAINT

v.

TRUE HOMES, LLC; CAROLINA
DEVELOPMENT SERVICES, LLC;
SUMMERLAKE PROPERTIES, LLC; RJB
LEGACY COMPANY f/k/a Barefoot &
Company; BMC EAST, LLC; AIRTRON,
INC.; MPK GRADING AND EROSION
CONTROL, LLC; SOUTHEND
EXTERIORS, LLC; MCGEE BROTHERS
COMPANY, INC.; ALPHA OMEGA
CONSTRUCTION GROUP, INC.;
PENDER-PETTUS INSULATING, INC.;
CHARLOTTE LANEHART ELECTRIC
COMPANY, INC.; C&C PLUMBING, INC.;
ASSOCIATED MATERIALS, LLC a/k/a
Alside, Inc.; T&A EXCAVATING, LLC;
CALLAHAN EXCAVATING, LLC a/k/a
Callahan Grading & Hauling, Inc. a/k/a
Callahan Grading, LLC; AHR
CONSTRUCTION, INC.; JJS
COMMERCIAL CONSTRUCTION, INC.;
CDJ CONSTRUCTION, INC.; JIMENEZ
CONTRACTORS, LLC; J. COV ROOFING,
LLC; AYALAS WINDOW
INSTALLATIONS, LLC; ATLANTA
FLOORING DESIGN CENTERS, INC.;
PEDRO DEJESUS LOPEZ d/b/a PJJ
CONSTRUCTION; and PEDRO
VILLAREAL-CONCEPCION d/b/a CVP
CONSTRUCTION,

Defendants.

Plaintiffs Summerlake Townhomes Owners' Association, Inc. ("Association") and Susan Hagy ("Hagy"), on behalf of herself and all others similarly situated, (together, "Plaintiffs"), by and through their undersigned counsel, complain of Defendant True Homes, LLC ("True Homes"); Carolina Development Services, LLC ("Carolina Development"); Summerlake Properties, LLC ("SL Properties"); RJB Legacy Company, formerly known as Barefoot & Company ("RJB Legacy"); BMC East, LLC ("BMC East"); Airtron, Inc. ("Airtron"); MPK Grading and Erosion Control, LLC ("MPK"); Southend Exteriors, LLC ("Southend Exteriors"); McGee Brothers Company, Inc. ("McGee Brothers"); Alpha Omega Construction Group, Inc. ("Alpha Omega"); Pender-Pettus Insulating, Inc. ("Pender-Pettus"); Charlotte Lanehart Electric Company, Inc. ("Lanehart"); C&C Plumbing, Inc. ("C&C Plumbing"); Associated Materials, LLC a/k/a Alside, Inc. ("Alside"); T&A Excavating, LLC ("T&A Excavating"); Callahan Excavating, LLC a/k/a Callahan Grading & Hauling, Inc. a/k/a Callahan Grading, LLC ("Callahan Excavating"); AHR Construction, Inc. ("AHR Construction"); JJS Commercial Construction, Inc. ("JJS Construction"); CDJ Construction, Inc. ("CDJ Construction"); Jimenez Contractors, LLC ("Jimenez Contractors"); J. Cov Roofing, LLC ("Cov Roofing"); Ayalas Window Installations, LLC ("Ayalas Installations"); Atlanta Flooring Design Centers, Inc. ("Atlanta Flooring"); Pedro DeJesus Lopez d/b/a PJP Construction ("PJP Construction"); and Pedro Villareal-Concepcion d/b/a CVP Construction ("CVP Construction") (all together "Defendants"; with True Homes, Carolina Development, and Summerlake Properties together "Developer Defendants"; and with RJB Legacy, BMC East, Airtron, MPK, Southend Exteriors, McGee Brothers, Alpha Omega, Pender-Pettus, Lanehart, C&C Plumbing, Alside, T&A Excavating, Callahan Excavating, AHR Construction, JJS Construction, CDJ Construction, Jimenez Contractors, Cov Roofing, Ayalas

Installations, Atlanta Flooring, PJJ Construction, and CVP Construction together "Subcontractor Defendants"), as follows:

PARTIES, JURISDICTION, AND VENUE

1. Association is a non-profit corporation organized and existing under the laws of the State of South Carolina.

2. Association is the Summerlake Townhomes owners association for the Summerlake Townhomes.

3. The Summerlake Townhomes is a townhome development subject to restrictive covenants which exists by virtue of and is defined in the Declaration of Covenants, Conditions and Restrictions for Summerlake Townhomes ("Covenants") dated September 30, 2013, and recorded with the York County Register of Deeds on October 7, 2013, at Book 13752 and Page 8.

4. Summerlake Townhomes consists of 101 townhomes in 20 buildings and associated common elements located in York County, South Carolina.

5. Pursuant to the Covenants and applicable law, the Association has certain rights, powers, duties, and obligations with respect to the townhomes, the common elements, and the members.

6. Pursuant to the Covenants, the Association is responsible for maintaining, repairing, replacing, and caring for the roofs, exterior walls, and other exterior components of the townhomes as well as being responsible for the common elements.

7. The Association has the right and authority to bring the claims asserted in this action on behalf of the Association and its members.

8. Plaintiff Hagy resides at and is the owner of the townhome located at 923 Summerlake Drive in Fort Mill, South Carolina, which is a townhome in the Summerlake

Townhomes.

9. Plaintiff Fuentes resides at and is the owner of the townhome located at 2006 Firefly Lane in Fort Mill, South Carolina, which is a townhome in the Summerlake Townhomes.

10. As owners of townhomes in the Summerlake Townhomes and members of the Association, Hagy and Fuentes bring this action on behalf of themselves and a class of all owners of townhomes in the Summerlake Townhomes. In addition to their common interests as owners of townhomes in the Summerlake Townhomes, Hagy, Fuentes, and the other owners comprise the members of the Association.

11. Developer Defendants developed the Summerlake Townhomes, constructed and sold the townhomes in Summerlake Townhomes, created and controlled the Association, and turned over the Association to the owners of the townhomes in Summerlake Townhomes.

12. Subcontractor Defendants performed construction work for the original construction or repair of the townhomes and common elements of Summerlake Townhomes.

13. The claims in this action arise from and relate to the development of, sale of, construction of, repair of, and work at the Summerlake Townhomes and the creation, control, and turnover of the Association.

14. At all relevant times, Defendants conducted business in York County, South Carolina.

FACTUAL BACKGROUND

15. Defendant True Homes constructed and was the general contractor for the construction of the Summerlake Townhomes.

16. Developer Defendants developed, sold, and transferred the Summerlake Townhomes to the townhome owners and the Association.

17. Defendant Carolina Development was the declarant and controlled the Association from the creation of the Association until Carolina Development assigned its declarant rights to SL Properties by way of the Assignment of Declarant Rights dated July 29, 2014, and recorded with the York County Register of Deeds at Book 14275 and Page 294 on July 31, 2014.

18. SL Properties was the declarant and controlled the Association from when it was assigned the declarant rights by Carolina Development until the Association was turned over to the townhome owner members.

19. Developer Defendants shared ownership and limited liability company managers.

20. Developer Defendants operated using the employees, offices, and assets of one another.

21. Developer Defendants are or were each an instrumentality or alter ego of the others.

22. Developer Defendants functioned as one and the same.

23. Developer Defendants were amalgamated such that the actions, obligations, and liabilities of one apply to the others.

24. Injustice and fundamental unfairness would exist were the corporate forms of and legal distinctions between Developer Defendants not set aside.

25. Defendants RJB Legacy, BMC East, Airtron, Southend Exteriors, McGee Brothers, Alpha Omega, Pender-Pettus, Lanehart, C&C Plumbing, and Alside constructed the Summerlake Townhomes as subcontractors to True Homes.

26. Defendants T&A Excavating and Callahan Excavating constructed the Summerlake Townhomes as subcontractors to Carolina Development.

27. RJB Legacy performed the installation of exterior doors and related components at Summerlake Townhomes.

28. In January of 2019, BMC East acquired RJB Legacy, then known as Barefoot & Company.

29. After the acquisition of Barefoot & Company by BMC East, BMC East performed repair work at the Summerlake Townhomes to address water intrusion occurring at doors installed by the pre-acquisition Barefoot & Company.

30. Airtron installed heating, ventilation, and air conditioning ("HVAC") systems and related ductwork in the townhomes of Summerlake Townhomes.

31. MPK performed grading and drainage work in the construction of the Summerlake Townhomes.

32. Southend Exteriors constructed portions of the Summerlake Townhomes.

33. McGee Brothers constructed portions of the Summerlake Townhomes.

34. Alpha Omega performed roofing construction work as part of the construction of the Summerlake Townhomes, including the installation of shingles, underlayment, drip edge, and associated flashing and components.

35. Pender-Pettus installed insulation and performed other construction work during the construction of the Summerlake Townhomes.

36. Lanehart performed electrical construction work as part of the construction of the Summerlake Townhomes.

37. C&C Plumbing performed plumbing construction work as part of the construction of the Summerlake Townhomes.

38. Alside constructed portions of the Summerlake Townhomes.

39. T&A Excavating performed grading, drainage, and other sitework as part of the construction of the Summerlake Townhomes.

40. Callahan Excavating performed grading, drainage, and other sitework as part of the construction of the Summerlake Townhomes.

41. AHR Construction performed roofing construction work as part of the construction of the Summerlake Townhomes, including the installation of shingles, underlayment, drip edge, and associated flashing and components.

42. JJS Construction performed roofing construction work as part of the construction of the Summerlake Townhomes, including the installation of shingles, underlayment, drip edge, and associated flashing and components.

43. CDJ Construction performed roofing construction work as part of the construction of the Summerlake Townhomes, including the installation of shingles, underlayment, drip edge, and associated flashing and components.

44. Jimenez Contractors performed roofing construction work as part of the construction of the Summerlake Townhomes, including the installation of shingles, underlayment, drip edge, and associated flashing and components.

45. Cov Roofing performed roofing construction work as part of the construction of the Summerlake Townhomes, including the installation of shingles, underlayment, drip edge, and associated flashing and components.

46. Ayalas Installations installed windows and doors as part of the construction of the Summerlake Townhomes, including the installation of flashing and associated components.

47. Atlanta Flooring performed flooring design and installation as part of the construction of the Summerlake Townhomes.

48. PJJ Construction performed roofing construction work as part of the construction of the Summerlake Townhomes, including the installation of shingles, underlayment, drip edge,

and associated flashing and components.

49. CVP Construction performed roofing construction work as part of the construction of the Summerlake Townhomes, including the installation of shingles, underlayment, drip edge, and associated flashing and components.

50. Defendants owed duties to Plaintiffs to complete the work free from defects, in a good and workmanlike manner, and in accordance with all applicable laws, building codes, industry standards, manufacturer's installation instructions, and standard of care.

51. Defendants failed to properly perform the work at the Summerlake Townhomes.

52. Plaintiffs discovered the Summerlake Townhomes have been extensively damaged with the damage being the proximate result of the improper work performed by Defendants and their employees, agents, servants, and subcontractors.

53. As a direct and proximate result of the improper and defective work by Defendants and their employees, agents, servants, and subcontractors, Plaintiffs spent and will be required to spend substantial sums of money to repair the Summerlake Townhomes.

54. The Summerlake Townhomes suffered a loss of value as a direct and proximate result of the improper and defective work by Defendants and their employees, agents, servants, and subcontractors.

55. Plaintiffs suffered and will suffer the loss of use and enjoyment of the Summerlake Townhomes as a direct and proximate result of the improper and defective work by Defendants and their employees, agents, servants, and subcontractors.

56. As a direct and proximate result of the improper and defective work by Defendants and their employees, agents, servants, and subcontractors, Plaintiffs will be required to spend substantial sums to investigate the deficiencies, develop and design repairs, and undertake the

repairs, in addition to other damages.

57. The improper and defective work performed by Defendants and their employees, agents, servants, and subcontractors resulted in substantial consequential and resulting damage to non-defective components of the Summerlake Townhomes.

58. The construction defects set forth herein caused occurrences which are not readily apparent to one examining the exposed portions of the Summerlake Townhomes.

59. The latent design and construction defects resulted in continual exposure to the same generally harmful conditions over time in the form of repeated injurious events that occurred each and every year since construction and constitute "occurrences" and compensable damage. The latent construction defects resulted in repeated water intrusion and other damages.

CLASS ACTION

60. Plaintiffs reallege the allegations in the preceding paragraphs as if fully set forth herein.

61. Pursuant to South Carolina common law and Rule 23 of the South Carolina Rules of Civil Procedure, Plaintiffs Hagy and Fuentes bring this action both individually and on behalf of all other similarly situated persons (the "Class").

62. The Class is defined as: All owners of townhomes in the Summerlake Townhomes. Excluded from the Class are: (a) any Judge presiding over this action and members of their families, (b) Defendants' shareholders, members, or officers, and (c) all persons who properly execute and file a timely request for exclusion from the Class in accordance with the South Carolina Rules of Civil Procedure and South Carolina law.

63. The Summerlake Townhomes is composed of 101 townhomes, and therefore, the class consists of at least 101 persons or entities.

64. The joinder of all of the members of the Class would be impractical.

65. Questions of law and fact common to the Class exist as to all members of the Class and predominate over any questions affecting only individual members of the Class. The common legal and factual issues include:

- a. Whether there are defects in the Summerlake Townhomes;
- b. Whether Defendants negligently constructed the Summerlake Townhomes;
- c. Whether Developer Defendants breached the warranty of habitability;
- d. Whether Defendants breached the implied warranty of workmanship;
- e. Whether Defendants' negligence caused damage to the Summerlake Townhomes;
- f. Whether Defendants' breaches of implied warranties caused damage to the Summerlake Townhomes;
- g. Whether Plaintiffs Hagy and Fuentes and the class members are entitled to compensatory damages, including, among other things:
 - i. The cost to repair the Summerlake Townhomes and remedy the defects;
 - ii. Diminution in value of the Summerlake Townhomes;
 - iii. Increased regular expenditures related to ownership of the Summerlake Townhomes
 - iv. Existing loss of use and enjoyment of the Summerlake Townhomes resulting from the defects;
 - v. Future loss of use and enjoyment of the Summerlake Townhomes resulting from repairs necessary to remedy the defects; and
- h. Whether Plaintiffs Hagy and Fuentes and the class members are entitled to an

award of punitive damages.

66. Defendants engaged in uniform and common practices in relation to Plaintiffs Hagy and Fuentes and the class members.

67. The townhomes of the Summerlake Townhomes have repeated, common components and defects.

68. The townhomes have suffered the same or substantially the same damages to the same or substantially the same building components.

69. Plaintiff Hagy's and Plaintiff Fuentes' claims are typical of the claims of the members of the Class, as all such claims arise out of Plaintiff Hagy's and Plaintiff Fuentes' status as an owner of a townhome in Summerlake Townhomes and member of the Association and Defendants' defective work in constructing the Summerlake Townhomes.

70. Plaintiffs Hagy and Fuentes will fairly and adequately protect the interests of the members of the Class and have no interests antagonistic to those of the Class.

71. Plaintiffs' counsel is experienced in litigating construction defect claims, class actions, and complex litigation.

72. Each Class member has an interest in excess of \$100.00.

73. This class action is appropriate for certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members and because a class action is superior to any other available method for the resolution of this controversy, since individual joinder of all members of the Class is impracticable. Should individual Class members be required to bring separate actions, this Court would be subjected to a multiplicity of lawsuits which would burden the Court and create the risk of inconsistent rulings and contradictory judgments and which would not offer any improvement in the fairness or

efficiency of the adjudication of this controversy. In contrast to proceeding on a case-by-case basis with individual plaintiffs, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale, and comprehensive supervision by a single Court.

**ESTOPPEL FROM PLEADING AND TOLLING OF APPLICABLE STATUTES OF
LIMITATION AND STATUTES OF REPOSE**

74. Plaintiffs reallege the allegations in the preceding paragraphs as if fully set forth herein.

75. Defendants are estopped from relying on any statutes of limitation or statutes of repose by virtue of their acts.

76. Defendants knew or reasonably should have known the Summerlake Townhomes was defectively constructed and failed to inform Plaintiffs of the defective condition of the Summerlake Townhomes.

77. Defendants had a duty to inform Plaintiffs of the defects described herein.

78. Despite exercising reasonable diligence, Plaintiffs could not have earlier discovered the defective condition of the Summerlake Townhomes due to the hidden or latent nature of the defects.

79. Given Defendants' failure to disclose this private information about the nature of the Summerlake Townhomes and because Plaintiffs could not have reasonably known of the defective nature of the Summerlake Townhomes, Defendants are estopped from relying on any statutes of limitation or statutes of repose that might otherwise be applicable to the claims asserted herein.

ESTOPPEL FROM PLEADING WARRANTY OBLIGATION

80. Plaintiffs reallege the allegations in the preceding paragraphs as if fully set forth

herein.

81. Defendants are estopped from relying on any warranty obligations as a defense to Plaintiffs' claims.

82. By virtue of Defendants' acts and omissions, the work performed and materials supplied at the Summerlake Townhomes have not fulfilled any express warranties and representations made by Defendants.

83. Due to the improper construction, improper maintenance and repair, premature deterioration, and reduced life expectancy of the Summerlake Townhomes and the resulting unexpected repairs required, the Summerlake Townhomes' components have not proven to be of value when compared to other building components.

84. In the exercise of required diligence, which Defendants negligently failed to perform, Defendants should have known that the Summerlake Townhomes was defectively constructed, maintained, and repaired, the components of the Summerlake Townhomes were not fit for their ordinary and intended use, and the components of the Summerlake Townhomes were not in accordance with any warranties.

85. Any express warranty provided to Plaintiffs by Defendants fails its essential purpose.

86. Any express warranty provided to Plaintiffs by Defendants fails its essential purpose and is unconscionable and unenforceable because the remedies provided by the warranties are limited to such an extent that they do not provide even a minimally adequate remedy.

87. Any express warranty provided to Plaintiffs by Defendants is unconscionable and unenforceable given the relative bargaining power, resources, sophistication, and knowledge of the parties.

88. Any express warranty provided to Plaintiffs by Defendants is unenforceable and of no effect because Defendants failed to perform any warranty obligations.

ESTOPPEL FROM PLEADING WAIVER OF WARRANTY PROVISIONS

89. Plaintiffs reallege the allegations in the preceding paragraphs as if fully set forth herein.

90. Defendants are estopped from relying on any provision purporting to waive implied warranties.

91. Any provision purporting to waive implied warranties is void and of no effect pursuant to public policy and South Carolina law.

92. Any provision purporting to waive implied warranties is adhesive, one-sided, and oppressive and therefore unconscionable and unenforceable.

ESTOPPEL FROM PLEADING NOTICE AND OPPORTUNITY TO CURE

93. Plaintiffs reallege the allegations in the preceding paragraphs as if fully set forth herein.

94. Defendants are estopped from relying on the Notice and Opportunity to Cure Act to stay the litigation of Plaintiffs' claims.

95. Defendants were put on sufficient notice of the defective condition of the Summerlake Townhomes within any statutory period prescribed by the Act.

ESTOPPEL FROM PLEADING ANTI-SUIT PROVISIONS

96. Plaintiffs reallege the allegations in the preceding paragraphs as if fully set forth herein.

97. Defendants are estopped from relying on any anti-suit provisions contained in the Covenants or other governing documents or contracts because such provisions are void pursuant

to public policy and the Horizontal Property Regime Act.

98. Defendants are estopped from relying on any anti-suit provisions contained in the Covenants or other governing documents or contracts because such provisions are voidable as a breach of the Defendants' fiduciary duty to Plaintiffs.

99. Defendants are estopped from relying on any anti-suit provisions contained in the Covenants or other governing documents or contracts because such provisions are adhesive, one-sided, and oppressive and therefore unconscionable, void, and unenforceable.

100. Defendants lack standing to rely on any anti-suit provisions contained in the Covenants or other governing documents.

FOR A FIRST CAUSE OF ACTION

Negligence/Gross Negligence

As to Developer Defendants and Subcontractor Defendants

101. Plaintiffs reallege the allegations in the preceding paragraphs as if fully set forth herein.

102. Defendants through their own employees, agents, or servants, through the use of subcontractors, or through both, performed work at the Summerlake Townhomes.

103. Having undertaken the performance of construction work at Summerlake Townhomes, Defendants owed a duty to Plaintiffs to exercise due care in the performance of the work, owed a duty to Plaintiffs to perform the work in accordance with all applicable building codes, industry standards, plans, specifications, and manufacturers' installation instructions, and owed a duty to Plaintiffs to perform the work in a good and workmanlike manner.

104. Defendants and their employees, agents, servants, and subcontractors were negligent, careless, reckless, and grossly negligent in failing to exercise due care in the performance of the construction work during original construction and the subsequent repair work,

in failing to construct Summerlake Townhomes in a good and workmanlike manner, and in failing to construct Summerlake Townhomes in accordance with all applicable building codes, industry standards, plans, specifications, and manufacturers' installation instructions, including, but not limited to, the following:

- a. In failing to construct or repair Summerlake Townhomes so as to make the building envelopes water tight;
- b. In failing to properly install the exterior cladding, doors, windows, flashings, vinyl siding, stone veneer, masonry, roofing, MDF trim, HVAC systems and ductwork, grading, paving, drainage, and related components;
- c. In failing to properly investigate employees, agents, servants, and subcontractors to determine if they were competent and capable of performing their work with due care, in a good and workmanlike manner, and in compliance with all applicable building codes, industry standards, plans, and specifications;
- d. In failing to properly supervise employees, agents, servants, and subcontractors;
- e. In failing to properly inspect and investigate the work of employees, agents, servants, and subcontractors;
- f. In failing to discover defects in the work of employees, agents, servants, and subcontractors;
- g. In failing to investigate and correct defective work;
- h. In failing to act as a reasonably prudent developer, general contractor, subcontractor, and construction professional would in similar circumstances; and
- i. In such other failures as will be shown through discovery and trial in this action.

105. As a direct, foreseeable, and proximate result of the negligence and gross

negligence of Defendants and their employees, agents, servants, and subcontractors, Plaintiffs suffered significant physical damage to the Summerlake Townhomes including portions of the Summerlake Townhomes on which Defendants and their employees, agents, servants, and subcontractors did not perform work.

106. As a direct, foreseeable, and proximate result of the negligence and gross negligence of Defendants and their employees, agents, servants, and subcontractors, Plaintiffs suffered and will suffer diminution in the value of the Summerlake Townhomes, increased regular expenditures related to ownership of the Summerlake Townhomes, and loss of the use and enjoyment of the Summerlake Townhomes.

107. As a direct, foreseeable, and proximate result of the negligence and gross negligence of Defendants and their employees, agents, servants, and subcontractors, Plaintiffs were damaged in that they spent or will be required to spend substantial sums to determine the extent of the damage to the Summerlake Townhomes, to develop and design repairs for the Summerlake Townhomes, and to repair the Summerlake Townhomes.

108. The violation of the applicable building codes by Defendants and their employees, agents, servants, and subcontractors constitutes negligence *per se*.

109. The acts and omissions of Defendants and their employees, agents, servants, and subcontractors constitute gross negligence.

110. Plaintiffs are entitled to an award of punitive damages.

FOR A SECOND CAUSE OF ACTION

Breach of Implied Warranties

As to Developer Defendants and Subcontractor Defendants

111. Plaintiffs reallege the allegations in the preceding paragraphs as if fully set forth herein.

112. By operation of law, Defendants warranted that the work would be performed using the utmost skill and attention and in a good and workmanlike manner and free from defects.

113. Defendants breached the implied warranties by performing defective work as set forth herein.

114. In selling the Summerlake Townhomes or otherwise placing the Summerlake Townhomes into the stream of commerce, Developer Defendants, by operation of law, impliedly warranted the townhomes and common elements in the Summerlake Townhomes were fit for their intended use as dwellings and common elements in a residential development, were constructed in a workmanlike manner, are free of latent defects, and are reasonably suitable for habitation.

115. Developer Defendants breached the implied warranty by constructing and placing into the stream of commerce the defective residences and associated common elements.

116. As a direct, foreseeable, and proximate result of the breach of the implied warranties by Defendants, Plaintiffs suffered significant physical damage to the Summerlake Townhomes including portions of the Summerlake Townhomes on which Defendants and their employees, agents, servants, and subcontractors did not perform work.

117. As a direct, foreseeable, and proximate result of the breach of implied warranties by Defendants, Plaintiffs suffered and will suffer diminution in the value of the Summerlake Townhomes, increased regular expenditures related to ownership of the Summerlake Townhomes, and loss of the use and enjoyment of the Summerlake Townhomes.

118. As a direct, foreseeable, and proximate result of the breach of implied warranties by Defendants, Plaintiffs were damaged in that they spent or will be required to spend substantial sums to determine the extent of the damage to the Summerlake Townhomes, to develop and design repairs for the Summerlake Townhomes, and to repair the Summerlake Townhomes.

FOR A THIRD CAUSE OF ACTION
Unfair Trade Practices Act, S.C. Code §§ 39-5-10, *et seq.*
As to Developer Defendants

119. Plaintiffs reallege the allegations in the preceding paragraphs as if fully set forth herein.

120. Developer Defendants engaged in unfair and deceptive acts and practices in violation of the South Carolina Unfair Trade Practices Act, S.C. Code §§ 39-5-10, *et seq.*

121. The unfair and deceptive acts and practices of Developer Defendants include, but are not limited to:

- a. Failing to construct and repair the Summerlake Townhomes in accordance with the applicable building code;
- b. Failing to construct and repair the Summerlake Townhomes in a good and workmanlike manner;
- c. Failing to make disclosures in warranty advertising;
- d. Failing to perform the advertised construction and quality assurance;
- e. Failing to fully and promptly perform warranty obligations;
- f. Transferring control of the Association to the owner members despite knowing or having should have known of defects in the Summerlake Townhomes and the absence of sufficient reserves to remedy those defects; and
- g. Misrepresenting the nature and cause of construction defect damage to the townhomes.

122. Developer Defendants' violations of the Unfair Trade Practices Act affect the public interest.

123. Developer Defendants construct and sell residences to the general public.

124. Developer Defendants' violations of the Unfair Trade Practices Act were repeated

or there is the potential for repetition.

125. Developer Defendants engaged in a pattern of unfair and deceptive acts and practices.

126. Developer Defendants engaged in and continue to engage in substantially similar transactions with consumers.

127. Plaintiffs suffered damages as a result of Developer Defendants' unfair and deceptive acts and practices including, but not limited to, physical damage to the Summerlake Townhomes, diminution in the value of the Summerlake Townhomes, loss of use and enjoyment of the Summerlake Townhomes, and the substantial sums Plaintiffs have been or will be required to spend to determine the extent of the damage to the Summerlake Townhomes, to develop and design repairs for the Summerlake Townhomes, and to repair the Summerlake Townhomes.

128. Developer Defendants' unfair and deceptive acts and practices proximately caused Plaintiffs' damages.

129. Developer Defendants knew, reasonably should have known, or could have ascertained through the exercise of reasonable efforts that the unfair and deceptive acts and practices violated the Unfair Trade Practices Act.

130. Developer Defendants' violations of the Unfair Trade Practices Act were knowing or willful.

131. Plaintiffs are entitled to an award of treble damages.

132. Plaintiffs are entitled to an award of attorneys' fees, expert fees, costs, and expenses.

FOR A FOURTH CAUSE OF ACTION
Breach of Fiduciary Duty
As to Developer Defendants

133. Plaintiffs reallege the allegations in the preceding paragraphs as if set forth herein.

134. As the developer and declarant for the Association, Developer Defendants owed fiduciary duties to the Association and its members.

135. Developer Defendants breached the fiduciary duties they owed to the Association and its members by:

- a. Failing to investigate defective conditions prior to turning over the Summerlake Townhomes and the association to the Association and the property owners;
- b. Failing to disclose defective conditions in the Summerlake Townhomes;
- c. Failing to repair defective conditions in the Summerlake Townhomes prior to turning over the Summerlake Townhomes and the association to the Association and the property owners;
- d. Failing to repair and maintain the Summerlake Townhomes;
- e. Turning over the Summerlake Townhomes and the association to the Association and the property owners without depositing sufficient funds to the Association's account to bring the Summerlake Townhomes up to reasonable repair;
- f. Failing to act in the best interests of the Association and the property owner members;
- g. Failing to exercise the care an ordinarily prudent person would as a director of the Association in maintaining and repairing the Summerlake Townhomes; and
- h. Failing to properly develop and manage the Association's accounts.

136. As a direct and proximate result of Developer Defendants' breaches of fiduciary duties, Plaintiffs have been damaged as set forth herein.

WHEREFORE, Plaintiffs demand a jury trial and pray for judgment against Defendants

for actual, punitive, and treble damages, attorney's fees, costs and expenses, and for such other and further relief as this Court deems just and proper.

THE STEINBERG LAW FIRM, L.L.P.
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Attorneys for Plaintiffs

January 22, 2022

Summerville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

CASE NO.: 2020-CP-46-03592

SUMMERLAKE TOWNHOMES
HOMEOWNERS' ASSOCIATION, INC.
and KARIN FUENTES, ROBIN DANIEL,
and LISA SHER individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

SECOND AMENDED SUMMONS

TRUE HOMES, LLC; CAROLINA
DEVELOPMENT SERVICES, LLC;
SUMMERLAKE PROPERTIES, LLC; RJB
LEGACY COMPANY f/k/a Barefoot &
Company; BMC EAST, LLC; AIRTRON,
INC.; MPK GRADING AND EROSION
CONTROL, LLC; SOUTHEND
EXTERIORS, LLC; MCGEE BROTHERS
COMPANY, INC.; ALPHA OMEGA
CONSTRUCTION GROUP, INC.;
PENDER-PETTUS INSULATING, INC.;
CHARLOTTE LANEHART ELECTRIC
COMPANY, INC.; C&C PLUMBING, INC.;
ASSOCIATED MATERIALS, LLC a/k/a
Alside, Inc.; T&A EXCAVATING, LLC;
AHR CONSTRUCTION, INC.; JJS
COMMERCIAL CONSTRUCTION, INC.;
CDJ CONSTRUCTION, INC.; JIMENEZ
CONTRACTORS, LLC; J. COV ROOFING,
LLC; AYALAS WINDOW
INSTALLATIONS, LLC; ATLANTA
FLOORING DESIGN CENTERS, INC.;
PEDRO DEJESUS LOPEZ d/b/a PJJ
CONSTRUCTION; PEDRO VILLAREAL-
CONCEPCION d/b/a CVP
CONSTRUCTION; JLF CONSTRUCTION
COMPANY, INC.; ORION WINDOWS
AND DOORS, LLC; ED CLEAR VIEW,
LLC; CHARLOTTE PLASTERING, INC.;
ADVANCED FRAMING, LLC;
AMERICAN EXTERIOR SOLUTIONS,
INC.; AYM CONSTRUCTION, INC.;

DAVID CRIBILLERO-CAMACHO d/b/a
DC Exteriors; JOSE SANTOS ESCOBAR
BONILLA; RICHARD CHAVES; MARIA
C. LEON d/b/a Square Construction;
EDGARD BADILLO a/k/a E&B Carpentry
a/k/a E&B Mother of Construction, LLC;
CALLAHAN GRADING, LLC;
CALLAHAN GRADING & HAULING,
INC.; CAROLINA DEVELOPMENT
SOLUTIONS, LLC; and ANTHONY
JARRETT CALLAHAN,

Defendants.

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to Answer the Second Amended Complaint in this action, a copy of which is hereby served upon you, to file a copy of your Answer with the Clerk of Court, and to serve a copy of your Answer upon the Plaintiffs through their attorney, Elliotte Quinn, at his office at P.O. Box 2670, Summerville, SC 29484, within thirty days after the service hereof, exclusive of the day of such service; and if you fail to Answer the Second Amended Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Second Amended Complaint.

DATED at Summerville, South Carolina, this 15th day of June, 2022.

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Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

CASE NO.: 2020-CP-46-03592

SUMMERLAKE TOWNHOMES
HOMEOWNERS' ASSOCIATION, INC.
and KARIN FUENTES, ROBIN DANIEL,
and LISA SHER individually and on behalf
of all others similarly situated,

Plaintiffs,

SECOND AMENDED COMPLAINT

v.

TRUE HOMES, LLC; CAROLINA
DEVELOPMENT SERVICES, LLC;
SUMMERLAKE PROPERTIES, LLC; RJB
LEGACY COMPANY f/k/a Barefoot &
Company; BMC EAST, LLC; AIRTRON,
INC.; MPK GRADING AND EROSION
CONTROL, LLC; SOUTHEND
EXTERIORS, LLC; MCGEE BROTHERS
COMPANY, INC.; ALPHA OMEGA
CONSTRUCTION GROUP, INC.;
PENDER-PETTUS INSULATING, INC.;
CHARLOTTE LANEHART ELECTRIC
COMPANY, INC.; C&C PLUMBING, INC.;
ASSOCIATED MATERIALS, LLC a/k/a
Alside, Inc.; T&A EXCAVATING, LLC;
AHR CONSTRUCTION, INC.; JJS
COMMERCIAL CONSTRUCTION, INC.;
CDJ CONSTRUCTION, INC.; JIMENEZ
CONTRACTORS, LLC; J. COV ROOFING,
LLC; AYALAS WINDOW
INSTALLATIONS, LLC; ATLANTA
FLOORING DESIGN CENTERS, INC.;
PEDRO DEJESUS LOPEZ d/b/a PJJ
CONSTRUCTION; PEDRO VILLAREAL-
CONCEPCION d/b/a CVP
CONSTRUCTION; JLF CONSTRUCTION
COMPANY, INC.; ORION WINDOWS
AND DOORS, LLC; ED CLEAR VIEW,
LLC; CHARLOTTE PLASTERING, INC.;
ADVANCED FRAMING, LLC;
AMERICAN EXTERIOR SOLUTIONS,
INC.; AYM CONSTRUCTION, INC.;

DAVID CRIBILLERO-CAMACHO d/b/a DC Exteriors; JOSE SANTOS ESCOBAR BONILLA; RICHARD CHAVES; MARIA C. LEON d/b/a Square Construction; EDGARD BADILLO a/k/a E&B Carpentry a/k/a E&B Mother of Construction, LLC; CALLAHAN GRADING, LLC; CALLAHAN GRADING & HAULING, INC.; CAROLINA DEVELOPMENT SOLUTIONS, LLC; and ANTHONY JARRETT CALLAHAN,

Defendants.

Plaintiffs Summerlake Townhomes Owners' Association, Inc. ("Association"), Karin Fuentes ("Fuentes"), Robin Daniel ("Daniel"), and Lisa Sher ("Sher") (all together, "Plaintiffs"), with Fuentes, Daniel, and Sher asserting claims on their own behalf and on behalf of all others similarly situated, by and through their undersigned counsel, complain of Defendant True Homes, LLC ("True Homes"); Carolina Development Services, LLC ("Carolina Development"); Summerlake Properties, LLC ("SL Properties"); RJB Legacy Company, formerly known as Barefoot & Company ("RJB Legacy"); BMC East, LLC ("BMC East"); Airtron, Inc. ("Airtron"); ~~MPK Grading and Erosion Control, LLC ("MPK"); Southend Exteriors, Inc. ("Southend Exteriors");~~ McGee Brothers Company, Inc. ("McGee Brothers"); Alpha Omega Construction Group, Inc. ("Alpha Omega"); Pender-Pettus Insulating, Inc. ("Pender-Pettus"); Charlotte Lanehart Electric Company, Inc. ("Lanehart"); C&C Plumbing, Inc. ("C&C Plumbing"); Associated Materials, LLC a/k/a Alside, Inc. ("Alside"); T&A Excavating, LLC ("T&A Excavating"); AHR Construction, Inc. ("AHR Construction"); JJS Commercial Construction, Inc. ("JJS Construction"); CDJ Construction, Inc. ("CDJ Construction"); Jimenez Contractors, LLC ("Jimenez Contractors"); J. Cov Roofing, LLC ("Cov Roofing"); Ayalas Window Installations, LLC ("Ayalas Installations"); Atlanta Flooring Design Centers, Inc. ("Atlanta Flooring"); Pedro

DeJesus Lopez d/b/a PJJ Construction (“PJJ Construction”); Pedro Villareal-Concepcion d/b/a CVP Construction (“CVP Construction”); JLF Construction Company, Inc. (“JLF Construction”); Orion Windows and Doors, LLC (“Orion”); ED Clear View, LLC (“Clear View”); Charlotte Plastering, Inc. (“Charlotte Plastering”); Advanced Framing, LLC (“Advanced Framing”); American Exterior Solutions, Inc. (“American Exterior”); AYM Construction, Inc. (“AYM Construction”); David Cribillero-Camacho d/b/a DC Exteriors (“Cribillero-Camacho”); Jose Santos Escobar Bonilla (“Bonilla”); Richard Chaves (“Chaves”); Maria C. Leon d/b/a Square Construction (“Leon”); Edgar Badillo a/k/a E&B Carpentry a/k/a E&B Mother of Construction, LLC (“Badillo”); Callahan Grading, LLC (“Callahan Grading”); Callahan Grading & Hauling, Inc. (“Callahan Hauling”); Carolina Development Solutions, LLC (“Development Solutions”); and Anthony Jarrett Callahan (“Callahan”), (all together “Defendants”; with True Homes, Carolina Development, and Summerlake Properties together “Developer Defendants”; and with RJB Legacy, BMC East, Airtron, MPK, Southend Exteriors, McGee Brothers, Alpha Omega, Pender-Pettus, Lanehart, C&C Plumbing, Alside, T&A Excavating, AHR Construction, JJS Construction, CDJ Construction, Jimenez Contractors, Cov Roofing, Ayalas Installations, Atlanta Flooring, PJJ Construction, CVP Construction, JLF Construction, Orion, Clear View, Charlotte Plastering, Advanced Framing, American Exterior, AYM Construction, Cribillero-Camacho, Bonilla, Chaves, Leon, Badillo, Callahan Grading, Callahan Hauling, Development Solutions, and Callahan, together “Subcontractor Defendants”), as follows:

PARTIES, JURISDICTION, AND VENUE

1. Association is a non-profit corporation organized and existing under the laws of the State of South Carolina.
2. Association is the Summerlake Townhomes owners association for the

Summerlake Townhomes.

3. The Summerlake Townhomes is a townhome development subject to restrictive covenants which exists by virtue of and is defined in the Declaration of Covenants, Conditions and Restrictions for Summerlake Townhomes ("Covenants") dated September 30, 2013, and recorded with the York County Register of Deeds on October 7, 2013, at Book 13752 and Page 8.

4. Summerlake Townhomes consists of 101 townhomes in 20 buildings and associated common elements located in York County, South Carolina.

5. Pursuant to the Covenants and applicable law, the Association has certain rights, powers, duties, and obligations with respect to the townhomes, the common elements, and the members.

6. Pursuant to the Covenants, the Association is responsible for maintaining, repairing, replacing, and caring for the roofs, exterior walls, and other exterior components of the townhomes as well as being responsible for the common elements.

7. The Association has the right and authority to bring the claims asserted in this action on behalf of the Association and its members.

8. Plaintiff Fuentes resides at and is the owner of the townhome located at 2006 Firefly Lane in Fort Mill, South Carolina, which is a townhome in the Summerlake Townhomes.

9. Plaintiff Daniel resides at and is the owner of the townhome located at 2008 Firefly Lane in Fort Mill, South Carolina, which is a townhome in the Summerlake Townhomes.

10. Plaintiff Sher resides at and is the owner of the townhome located at 922 Summerlake Drive in Fort Mill, South Carolina, which is a townhome in the Summerlake Townhomes.

11. As owners of townhomes in the Summerlake Townhomes and members of the

Association, Fuentes, Daniel, and Sher bring this action on behalf of themselves and a class of all owners of townhomes in the Summerlake Townhomes. In addition to their common interests as owners of townhomes in the Summerlake Townhomes, Fuentes, Daniel, Sher, and the other owners comprise the members of the Association.

12. Developer Defendants developed the Summerlake Townhomes, constructed and sold the townhomes in Summerlake Townhomes, created and controlled the Association, and turned over the Association to the owners of the townhomes in Summerlake Townhomes.

13. Subcontractor Defendants performed construction work for the original construction or repair of the townhomes and common elements of Summerlake Townhomes.

14. The claims in this action arise from and relate to the development of, sale of, construction of, repair of, and work at the Summerlake Townhomes and the creation, control, and turnover of the Association.

15. At all relevant times, Defendants conducted business in York County, South Carolina.

FACTUAL BACKGROUND

16. Defendant True Homes constructed and was the general contractor for the construction of the Summerlake Townhomes.

17. Developer Defendants developed, sold, and transferred the Summerlake Townhomes to the townhome owners and the Association.

18. Defendant Carolina Development was the declarant and controlled the Association from the creation of the Association until Carolina Development assigned its declarant rights to SL Properties by way of the Assignment of Declarant Rights dated July 29, 2014, and recorded with the York County Register of Deeds at Book 14275 and Page 294 on July 31, 2014.

19. SL Properties was the declarant and controlled the Association from when it was assigned the declarant rights by Carolina Development until the Association was turned over to the townhome owner members.

20. Developer Defendants shared ownership and limited liability company managers.

21. Developer Defendants operated using the employees, offices, and assets of one another.

22. Developer Defendants are or were each an instrumentality or alter ego of the others.

23. Developer Defendants functioned as one and the same.

24. Developer Defendants were amalgamated such that the actions, obligations, and liabilities of one apply to the others.

25. Injustice and fundamental unfairness would exist were the corporate forms of and legal distinctions between Developer Defendants not set aside.

26. Defendants RJB Legacy, BMC East, Airtron, Southend Exteriors, McGee Brothers, Alpha Omega, Pender-Pettus, Lanehart, C&C Plumbing, Alside, Charlotte Plastering, Advanced Framing, and JLF Construction constructed the Summerlake Townhomes as subcontractors to True Homes.

27. Defendants T&A Excavating, Callahan Grading, Callahan Hauling, Development Solutions, and Callahan constructed the Summerlake Townhomes as subcontractors to Carolina Development and SL Properties.

28. Callahan and his family members operated Callahan Grading, Callahan Hauling, and Development Solutions as their alter egos.

29. Callahan and his family members disregarded the corporate forms of Callahan Grading, Callahan Hauling, and Development Solutions.

30. Callahan and his family members operated Callahan Grading, Callahan Hauling, and Development Solutions in a manner that disregarded the interests of and distinctions between the entities, which were contrary to the interests of the entities, and which were intended solely to benefit Callahan and his family members' personal interests.

31. Callahan Grading, Callahan Hauling, and Development Solutions were intertwined and were each an instrumentality and alter ego of the others.

32. Callahan Grading, Callahan Hauling, Development Solutions, and Callahan functioned as one and the same.

33. Callahan Grading, Callahan Hauling, and Development Solutions were amalgamated such that the actions, obligations, and liabilities of one apply to the others.

34. Callahan Grading, Callahan Hauling, and Development Solutions shared ownership with the entities owned entirely by Callahan and his parents.

35. Callahan owned and was the limited liability company manager for Callahan Grading and Development Solutions.

36. Callahan Grading and Callahan Hauling were engaged in similar grading and hauling business.

37. Assets were transferred between Callahan Grading and Callahan Hauling.

38. Callahan Hauling provided Callahan Grading with the equipment needed for Callahan Grading to begin its operations and provided the equipment for no consideration or for consideration substantially below fair market value.

39. Callahan Grading made payments to Harry J. Callahan, Jr., Callahan's father, despite Harry Callahan not being an owner, employee, or contractor of Callahan Grading.

40. Callahan Grading and Development Solutions operated from the same office

location.

41. Equipment owned by Callahan Grading was kept at real property owned by Callahan personally.

42. Callahan used Callahan Grading to pay the debts of another entity owned by Callahan with Callahan Grading receiving no benefit or consideration for paying the debt of the other entity.

43. Callahan caused another entity owned by Callahan to mortgage that entity's property for the benefit of Callahan Grading with the other entity receiving no benefit or consideration for the mortgage.

44. Callahan caused the property of Callahan Grading to be used as collateral to obtain funds for the benefit of another entity owned by Callahan, caused the property of another entity to be used as collateral to obtain funds for the benefit of Callahan Grading, and each pledge of collateral did not benefit the entity which owned the collateral.

45. Injustice and fundamental unfairness would exist were the corporate forms of and legal distinctions between Callahan Grading, Callahan Hauling, Development Solutions, and Callahan not set aside.

46. Callahan Grading, Callahan Hauling, and Development Solutions are each liable for the actions, omissions, and obligations of the others.

47. The actions of Callahan result in piercing the corporate veil of Callahan Grading, Callahan Hauling, and Development solutions such that Callahan is liable for the actions, omissions, and obligations of Callahan Grading, Callahan Hauling, and Development Solutions.

48. RJB Legacy performed the installation of exterior doors and related components at Summerlake Townhomes.

49. In January of 2019, BMC East acquired RJB Legacy, then known as Barefoot & Company.

50. After the acquisition of Barefoot & Company by BMC East, BMC East performed repair work at the Summerlake Townhomes to address water intrusion occurring at doors installed by the pre-acquisition Barefoot & Company.

51. Airtron installed heating, ventilation, and air conditioning ("HVAC") systems and related ductwork in the townhomes of Summerlake Townhomes.

52. MPK performed grading and drainage work in the construction of the Summerlake Townhomes.

53. Southend Exteriors constructed portions of the Summerlake Townhomes.

54. McGee Brothers constructed portions of the Summerlake Townhomes.

55. Alpha Omega performed roofing construction work as part of the construction of the Summerlake Townhomes, including the installation of shingles, underlayment, drip edge, and associated flashing and components.

56. Pender-Pettus installed insulation and performed other construction work during the construction of the Summerlake Townhomes.

57. Lanehart performed electrical construction work as part of the construction of the Summerlake Townhomes.

58. C&C Plumbing performed plumbing construction work as part of the construction of the Summerlake Townhomes.

59. Alside constructed portions of the Summerlake Townhomes.

60. T&A Excavating performed grading, drainage, and other sitework as part of the construction of the Summerlake Townhomes.

61. Callahan Grading, Callahan Hauling, Development Solutions, and Callahan performed grading, drainage, and other sitework as part of the construction of the Summerlake Townhomes.

62. AHR Construction performed roofing construction work as part of the construction of the Summerlake Townhomes, including the installation of shingles, underlayment, drip edge, and associated flashing and components.

63. JJS Construction performed roofing construction work as part of the construction of the Summerlake Townhomes, including the installation of shingles, underlayment, drip edge, and associated flashing and components.

64. CDJ Construction performed roofing construction work as part of the construction of the Summerlake Townhomes, including the installation of shingles, underlayment, drip edge, and associated flashing and components.

65. Jimenez Contractors performed roofing construction work as part of the construction of the Summerlake Townhomes, including the installation of shingles, underlayment, drip edge, and associated flashing and components.

66. Cov Roofing performed roofing construction work as part of the construction of the Summerlake Townhomes, including the installation of shingles, underlayment, drip edge, and associated flashing and components.

67. Ayalas Installations installed windows and doors as part of the construction of the Summerlake Townhomes, including the installation of flashing and associated components.

68. Atlanta Flooring performed flooring design and installation as part of the construction of the Summerlake Townhomes.

69. PJJ Construction performed roofing construction work as part of the construction

of the Summerlake Townhomes, including the installation of shingles, underlayment, drip edge, and associated flashing and components.

70. CVP Construction performed roofing construction work as part of the construction of the Summerlake Townhomes, including the installation of shingles, underlayment, drip edge, and associated flashing and components.

71. JLF Construction performed interior carpentry and trim work to the exterior doors and related components at Summerlake Townhomes.

72. Orion installed, repaired, or performed work on exteriors doors at the Summerlake Townhomes, including work on door flashing and associated components.

73. Clear View installed, repaired, or performed work on exteriors doors at the Summerlake Townhomes, including work on door flashing and associated components.

74. Charlotte Plastering installed adhered concrete masonry veneer and related weather barrier material, flashing, lathe, mortar, and associated components as part of the construction of the Summerlake Townhomes.

75. Advanced Framing performed framing work as part of the construction of the Summerlake Townhomes, including installing the weather resistive barrier.

76. American Exterior performed vinyl siding construction work as part of the construction of the Summerlake Townhomes, including the installation of vinyl siding, vinyl trim and accessory components, flashings, and related components.

77. AYM Construction performed vinyl siding construction work as part of the construction of the Summerlake Townhomes, including the installation of vinyl siding, vinyl trim and accessory components, flashings, and related components.

78. Cribillero-Camacho performed vinyl siding construction work as part of the

construction of the Summerlake Townhomes, including the installation of vinyl siding, vinyl trim and accessory components, flashings, and related components.

79. Bonilla performed vinyl siding construction work as part of the construction of the Summerlake Townhomes, including the installation of vinyl siding, vinyl trim and accessory components, flashings, and related components.

80. Chaves performed vinyl siding construction work as part of the construction of the Summerlake Townhomes, including the installation of vinyl siding, vinyl trim and accessory components, flashings, and related components.

81. Leon performed vinyl siding construction work as part of the construction of the Summerlake Townhomes, including the installation of vinyl siding, vinyl trim and accessory components, flashings, and related components.

82. Badillo performed vinyl siding construction work as part of the construction of the Summerlake Townhomes, including the installation of vinyl siding, vinyl trim and accessory components, flashings, and related components.

83. Defendants owed duties to Plaintiffs to complete the work free from defects, in a good and workmanlike manner, and in accordance with all applicable laws, building codes, industry standards, manufacturer's installation instructions, and standard of care.

84. Defendants failed to properly perform the work at the Summerlake Townhomes.

85. Plaintiffs discovered the Summerlake Townhomes have been extensively damaged with the damage being the proximate result of the improper work performed by Defendants and their employees, agents, servants, and subcontractors.

86. As a direct and proximate result of the improper and defective work by Defendants and their employees, agents, servants, and subcontractors, Plaintiffs spent and will be required to

spend substantial sums of money to repair the Summerlake Townhomes.

87. The Summerlake Townhomes suffered a loss of value as a direct and proximate result of the improper and defective work by Defendants and their employees, agents, servants, and subcontractors.

88. Plaintiffs suffered and will suffer the loss of use and enjoyment of the Summerlake Townhomes as a direct and proximate result of the improper and defective work by Defendants and their employees, agents, servants, and subcontractors.

89. As a direct and proximate result of the improper and defective work by Defendants and their employees, agents, servants, and subcontractors, Plaintiffs will be required to spend substantial sums to investigate the deficiencies, develop and design repairs, and undertake the repairs, in addition to other damages.

90. The improper and defective work performed by Defendants and their employees, agents, servants, and subcontractors resulted in substantial consequential and resulting damage to non-defective components of the Summerlake Townhomes.

91. The construction defects set forth herein caused occurrences which are not readily apparent to one examining the exposed portions of the Summerlake Townhomes.

92. The latent design and construction defects resulted in continual exposure to the same generally harmful conditions over time in the form of repeated injurious events that occurred each and every year since construction and constitute "occurrences" and compensable damage. The latent construction defects resulted in repeated water intrusion and other damages.

CLASS ACTION

93. Plaintiffs reallege the allegations in the preceding paragraphs as if fully set forth herein.

94. Pursuant to South Carolina common law and Rule 23 of the South Carolina Rules of Civil Procedure, Plaintiffs Fuentes, Daniel, and Sher bring this action both individually and on behalf of all other similarly situated persons (the "Class").

95. The Class is defined as: All owners of townhomes in the Summerlake Townhomes. Excluded from the Class are: (a) any Judge presiding over this action and members of their families, (b) Defendants' shareholders, members, or officers, and (c) all persons who properly execute and file a timely request for exclusion from the Class in accordance with the South Carolina Rules of Civil Procedure and South Carolina law.

96. The Summerlake Townhomes is composed of 101 townhomes, and therefore, the class consists of at least 101 persons or entities.

97. The joinder of all of the members of the Class would be impractical.

98. Questions of law and fact common to the Class exist as to all members of the Class and predominate over any questions affecting only individual members of the Class. The common legal and factual issues include:

- a. Whether there are defects in the Summerlake Townhomes;
- b. Whether Defendants negligently constructed the Summerlake Townhomes;
- c. Whether Developer Defendants breached the warranty of habitability;
- d. Whether Defendants breached the implied warranty of workmanship;
- e. Whether Defendants' negligence caused damage to the Summerlake Townhomes;
- f. Whether Defendants' breaches of implied warranties caused damage to the Summerlake Townhomes;
- g. Whether Plaintiffs Fuentes, Daniel, and Sher and the class members are entitled

to compensatory damages, including, among other things:

- i. The cost to repair the Summerlake Townhomes and remedy the defects;
- ii. Diminution in value of the Summerlake Townhomes;
- iii. Increased regular expenditures related to ownership of the Summerlake Townhomes
- iv. Existing loss of use and enjoyment of the Summerlake Townhomes resulting from the defects;
- v. Future loss of use and enjoyment of the Summerlake Townhomes resulting from repairs necessary to remedy the defects; and
- h. Whether Plaintiffs Fuentes, Daniel, and Sher and the class members are entitled to an award of punitive damages.

99. Defendants engaged in uniform and common practices in relation to Plaintiffs Fuentes, Daniel, and Sher and the class members.

100. The townhomes of the Summerlake Townhomes have repeated, common components and defects.

101. The townhomes have suffered the same or substantially the same damages to the same or substantially the same building components.

102. The claims of Plaintiffs Fuentes, Daniel, and Sher are typical of the claims of the members of the Class, as all such claims arise out of the status of Plaintiffs Fuentes, Daniel, and Sher as owners of a townhome in Summerlake Townhomes and members of the Association and Defendants' defective work in constructing the Summerlake Townhomes.

103. Plaintiffs Fuentes, Daniel, and Sher will fairly and adequately protect the interests of the members of the Class and have no interests antagonistic to those of the Class.

104. Plaintiffs' counsel is experienced in litigating construction defect claims, class actions, and complex litigation.

105. Each Class member has an interest in excess of \$100.00.

106. This class action is appropriate for certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members and because a class action is superior to any other available method for the resolution of this controversy, since individual joinder of all members of the Class is impracticable. Should individual Class members be required to bring separate actions, this Court would be subjected to a multiplicity of lawsuits which would burden the Court and create the risk of inconsistent rulings and contradictory judgments and which would not offer any improvement in the fairness or efficiency of the adjudication of this controversy. In contrast to proceeding on a case-by-case basis with individual plaintiffs, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale, and comprehensive supervision by a single Court.

**ESTOPPEL FROM PLEADING AND TOLLING OF APPLICABLE STATUTES OF
LIMITATION AND STATUTES OF REPOSE**

107. Plaintiffs reallege the allegations in the preceding paragraphs as if fully set forth herein.

108. Defendants are estopped from relying on any statutes of limitation or statutes of repose by virtue of their acts.

109. Defendants knew or reasonably should have known the Summerlake Townhomes was defectively constructed and failed to inform Plaintiffs of the defective condition of the Summerlake Townhomes.

110. Defendants had a duty to inform Plaintiffs of the defects described herein.

111. Despite exercising reasonable diligence, Plaintiffs could not have earlier discovered the defective condition of the Summerlake Townhomes due to the hidden or latent nature of the defects.

112. Given Defendants' failure to disclose this private information about the nature of the Summerlake Townhomes and because Plaintiffs could not have reasonably known of the defective nature of the Summerlake Townhomes, Defendants are estopped from relying on any statutes of limitation or statutes of repose that might otherwise be applicable to the claims asserted herein.

ESTOPPEL FROM PLEADING WARRANTY OBLIGATION

113. Plaintiffs reallege the allegations in the preceding paragraphs as if fully set forth herein.

114. Defendants are estopped from relying on any warranty obligations as a defense to Plaintiffs' claims.

115. By virtue of Defendants' acts and omissions, the work performed and materials supplied at the Summerlake Townhomes have not fulfilled any express warranties and representations made by Defendants.

116. Due to the improper construction, improper maintenance and repair, premature deterioration, and reduced life expectancy of the Summerlake Townhomes and the resulting unexpected repairs required, the Summerlake Townhomes' components have not proven to be of value when compared to other building components.

117. In the exercise of required diligence, which Defendants negligently failed to perform, Defendants should have known that the Summerlake Townhomes was defectively constructed, maintained, and repaired, the components of the Summerlake Townhomes were not

fit for their ordinary and intended use, and the components of the Summerlake Townhomes were not in accordance with any warranties.

118. Any express warranty provided to Plaintiffs by Defendants fails its essential purpose.

119. Any express warranty provided to Plaintiffs by Defendants fails its essential purpose and is unconscionable and unenforceable because the remedies provided by the warranties are limited to such an extent that they do not provide even a minimally adequate remedy.

120. Any express warranty provided to Plaintiffs by Defendants is unconscionable and unenforceable given the relative bargaining power, resources, sophistication, and knowledge of the parties.

121. Any express warranty provided to Plaintiffs by Defendants is unenforceable and of no effect because Defendants failed to perform any warranty obligations.

ESTOPPEL FROM PLEADING WAIVER OF WARRANTY PROVISIONS

122. Plaintiffs reallege the allegations in the preceding paragraphs as if fully set forth herein.

123. Defendants are estopped from relying on any provision purporting to waive implied warranties.

124. Any provision purporting to waive implied warranties is void and of no effect pursuant to public policy and South Carolina law.

125. Any provision purporting to waive implied warranties is adhesive, one-sided, and oppressive and therefore unconscionable and unenforceable.

ESTOPPEL FROM PLEADING NOTICE AND OPPORTUNITY TO CURE

126. Plaintiffs reallege the allegations in the preceding paragraphs as if fully set forth

herein.

127. Defendants are estopped from relying on the Notice and Opportunity to Cure Act to stay the litigation of Plaintiffs' claims.

128. Defendants were put on sufficient notice of the defective condition of the Summerlake Townhomes within any statutory period prescribed by the Act.

ESTOPPEL FROM PLEADING ANTI-SUIT PROVISIONS

129. Plaintiffs reallege the allegations in the preceding paragraphs as if fully set forth herein.

130. Defendants are estopped from relying on any anti-suit provisions contained in the Covenants or other governing documents or contracts because such provisions are void pursuant to public policy and the Horizontal Property Regime Act.

131. Defendants are estopped from relying on any anti-suit provisions contained in the Covenants or other governing documents or contracts because such provisions are voidable as a breach of the Defendants' fiduciary duty to Plaintiffs.

132. Defendants are estopped from relying on any anti-suit provisions contained in the Covenants or other governing documents or contracts because such provisions are adhesive, one-sided, and oppressive and therefore unconscionable, void, and unenforceable.

133. Defendants lack standing to rely on any anti-suit provisions contained in the Covenants or other governing documents.

FOR A FIRST CAUSE OF ACTION

Negligence/Gross Negligence

As to Developer Defendants and Subcontractor Defendants

134. Plaintiffs reallege the allegations in the preceding paragraphs as if fully set forth herein.

135. Defendants through their own employees, agents, or servants, through the use of subcontractors, or through both, performed work at the Summerlake Townhomes.

136. Having undertaken the performance of construction work at Summerlake Townhomes, Defendants owed a duty to Plaintiffs to exercise due care in the performance of the work, owed a duty to Plaintiffs to perform the work in accordance with all applicable building codes, industry standards, plans, specifications, and manufacturers' installation instructions, and owed a duty to Plaintiffs to perform the work in a good and workmanlike manner.

137. Defendants and their employees, agents, servants, and subcontractors were negligent, careless, reckless, and grossly negligent in failing to exercise due care in the performance of the construction work during original construction and the subsequent repair work, in failing to construct Summerlake Townhomes in a good and workmanlike manner, and in failing to construct Summerlake Townhomes in accordance with all applicable building codes, industry standards, plans, specifications, and manufacturers' installation instructions, including, but not limited to, the following:

- a. In failing to construct or repair Summerlake Townhomes so as to make the building envelopes water tight;
- b. In failing to properly install the exterior cladding, doors, windows, flashings, vinyl siding, stone veneer, masonry, roofing, MDF trim, HVAC systems and ductwork, grading, paving, drainage, and related components;
- c. In failing to properly investigate employees, agents, servants, and subcontractors to determine if they were competent and capable of performing their work with due care, in a good and workmanlike manner, and in compliance with all applicable building codes, industry standards, plans, and specifications;

- d. In failing to properly supervise employees, agents, servants, and subcontractors;
- e. In failing to properly inspect and investigate the work of employees, agents, servants, and subcontractors;
- f. In failing to discover defects in the work of employees, agents, servants, and subcontractors;
- g. In failing to investigate and correct defective work;
- h. In failing to act as a reasonably prudent developer, general contractor, subcontractor, and construction professional would in similar circumstances; and
- i. In such other failures as will be shown through discovery and trial in this action.

138. As a direct, foreseeable, and proximate result of the negligence and gross negligence of Defendants and their employees, agents, servants, and subcontractors, Plaintiffs suffered significant physical damage to the Summerlake Townhomes including portions of the Summerlake Townhomes on which Defendants and their employees, agents, servants, and subcontractors did not perform work.

139. As a direct, foreseeable, and proximate result of the negligence and gross negligence of Defendants and their employees, agents, servants, and subcontractors, Plaintiffs suffered and will suffer diminution in the value of the Summerlake Townhomes, increased regular expenditures related to ownership of the Summerlake Townhomes, and loss of the use and enjoyment of the Summerlake Townhomes.

140. As a direct, foreseeable, and proximate result of the negligence and gross negligence of Defendants and their employees, agents, servants, and subcontractors, Plaintiffs were damaged in that they spent or will be required to spend substantial sums to determine the extent of the damage to the Summerlake Townhomes, to develop and design repairs for the

Summerlake Townhomes, and to repair the Summerlake Townhomes.

141. The violation of the applicable building codes by Defendants and their employees, agents, servants, and subcontractors constitutes negligence *per se*.

142. The acts and omissions of Defendants and their employees, agents, servants, and subcontractors constitute gross negligence.

143. Plaintiffs are entitled to an award of punitive damages.

FOR A SECOND CAUSE OF ACTION
Breach of Implied Warranties
As to Developer Defendants and Subcontractor Defendants

144. Plaintiffs reallege the allegations in the preceding paragraphs as if fully set forth herein.

145. By operation of law, Defendants warranted that the work would be performed using the utmost skill and attention and in a good and workmanlike manner and free from defects.

146. Defendants breached the implied warranties by performing defective work as set forth herein.

147. In selling the Summerlake Townhomes or otherwise placing the Summerlake Townhomes into the stream of commerce, Developer Defendants, by operation of law, impliedly warranted the townhomes and common elements in the Summerlake Townhomes were fit for their intended use as dwellings and common elements in a residential development, were constructed in a workmanlike manner, are free of latent defects, and are reasonably suitable for habitation.

148. Developer Defendants breached the implied warranty by constructing and placing into the stream of commerce the defective residences and associated common elements.

149. As a direct, foreseeable, and proximate result of the breach of the implied warranties by Defendants, Plaintiffs suffered significant physical damage to the Summerlake

Townhomes including portions of the Summerlake Townhomes on which Defendants and their employees, agents, servants, and subcontractors did not perform work.

150. As a direct, foreseeable, and proximate result of the breach of implied warranties by Defendants, Plaintiffs suffered and will suffer diminution in the value of the Summerlake Townhomes, increased regular expenditures related to ownership of the Summerlake Townhomes, and loss of the use and enjoyment of the Summerlake Townhomes.

151. As a direct, foreseeable, and proximate result of the breach of implied warranties by Defendants, Plaintiffs were damaged in that they spent or will be required to spend substantial sums to determine the extent of the damage to the Summerlake Townhomes, to develop and design repairs for the Summerlake Townhomes, and to repair the Summerlake Townhomes.

FOR A THIRD CAUSE OF ACTION
Unfair Trade Practices Act, S.C. Code §§ 39-5-10, *et seq.*
As to Developer Defendants

152. Plaintiffs reallege the allegations in the preceding paragraphs as if fully set forth herein.

153. Developer Defendants engaged in unfair and deceptive acts and practices in violation of the South Carolina Unfair Trade Practices Act, S.C. Code §§ 39-5-10, *et seq.*

154. The unfair and deceptive acts and practices of Developer Defendants include, but are not limited to:

- a. Failing to construct and repair the Summerlake Townhomes in accordance with the applicable building code;
- b. Failing to construct and repair the Summerlake Townhomes in a good and workmanlike manner;
- c. Failing to make disclosures in warranty advertising;
- d. Failing to perform the advertised construction and quality assurance;

- e. Failing to fully and promptly perform warranty obligations;
- f. Transferring control of the Association to the owner members despite knowing or having should have known of defects in the Summerlake Townhomes and the absence of sufficient reserves to remedy those defects; and
- g. Misrepresenting the nature and cause of construction defect damage to the townhomes.

155. Developer Defendants' violations of the Unfair Trade Practices Act affect the public interest.

156. Developer Defendants construct and sell residences to the general public.

157. Developer Defendants' violations of the Unfair Trade Practices Act were repeated or there is the potential for repetition.

158. Developer Defendants engaged in a pattern of unfair and deceptive acts and practices.

159. Developer Defendants engaged in and continue to engage in substantially similar transactions with consumers.

160. Plaintiffs suffered damages as a result of Developer Defendants' unfair and deceptive acts and practices including, but not limited to, physical damage to the Summerlake Townhomes, diminution in the value of the Summerlake Townhomes, loss of use and enjoyment of the Summerlake Townhomes, and the substantial sums Plaintiffs have been or will be required to spend to determine the extent of the damage to the Summerlake Townhomes, to develop and design repairs for the Summerlake Townhomes, and to repair the Summerlake Townhomes.

161. Developer Defendants' unfair and deceptive acts and practices proximately caused Plaintiffs' damages.

162. Developer Defendants knew, reasonably should have known, or could have ascertained through the exercise of reasonable efforts that the unfair and deceptive acts and practices violated the Unfair Trade Practices Act.

163. Developer Defendants' violations of the Unfair Trade Practices Act were knowing or willful.

164. Plaintiffs are entitled to an award of treble damages.

165. Plaintiffs are entitled to an award of attorneys' fees, expert fees, costs, and expenses.

FOR A FOURTH CAUSE OF ACTION
Breach of Fiduciary Duty
As to Developer Defendants

166. Plaintiffs reallege the allegations in the preceding paragraphs as if set forth herein.

167. As the developer and declarant for the Association, Developer Defendants owed fiduciary duties to the Association and its members.

168. Developer Defendants breached the fiduciary duties they owed to the Association and its members by:

- a. Failing to investigate defective conditions prior to turning over the Summerlake Townhomes and the association to the Association and the property owners;
- b. Failing to disclose defective conditions in the Summerlake Townhomes;
- c. Failing to repair defective conditions in the Summerlake Townhomes prior to turning over the Summerlake Townhomes and the association to the Association and the property owners;
- d. Failing to repair and maintain the Summerlake Townhomes;
- e. Turning over the Summerlake Townhomes and the association to the Association and the property owners without depositing sufficient funds to the

Association's account to bring the Summerlake Townhomes up to reasonable repair;

- f. Failing to act in the best interests of the Association and the property owner members;
- g. Failing to exercise the care an ordinarily prudent person would as a director of the Association in maintaining and repairing the Summerlake Townhomes; and
- h. Failing to properly develop and manage the Association's accounts.

169. As a direct and proximate result of Developer Defendants' breaches of fiduciary duties, Plaintiffs have been damaged as set forth herein.

WHEREFORE, Plaintiffs demand a jury trial and pray for judgment against Defendants for actual, punitive, and treble damages, attorney's fees, costs and expenses, and for such other and further relief as this Court deems just and proper.

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Attorneys for Plaintiffs

June 15, 2022

Summerville, South Carolina

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF YORK) COURT OF COMMON PLEAS NONJURY

3 SUMMERLAKE TOWNHOMES HOMEOWNERS'
 4 ASSOCIATION, INC. AND SUSAN HAGY)
 5 AND KARIN FUENTES, INDIVIDUALLY AND)
 6 ON BEHALF OF ALL OTHERS SIMILARLY)
 7 SITUATED,)

8 PLAINTIFFS,)

9 vs.)

10 TRUE HOMES, LLC; CAROLINA DEVELOPMENT)
 11 SERVICES, LLC; SUMMERLAKE PROPERTIES,)
 12 LLC; RJB LEGACY COMPANY F/K/A BAREFOOT)
 13 & COMPANY, LLC; BMC STOCK HOLDINGS,)
 14 INC. A/K/A BAREFOOT & COMPANY, LLC;)
 15 AIRTRON, INC.; AND MPK GRADING AND)
 16 EROSION CONTROL, LLC,)

17 DEFENDANTS.)

TRANSCRIPT
 OF
 RECORD

2020-CP-16-3592

May 17th, 2022

BEFORE:

THE HONORABLE WILLIAM A. MCKINNON, Judge.

APPEARANCES:

ELLIOTTE QUINN
 ESQ.
 Attorney for the Plaintiffs

JOSHUA R. HINSON
 ESQ.
 Attorney for the Defendants

Transcribed by Pamela E. Green, from
 DCRP, Digital Courtroom Recorder Project

I N D E X

(WHEREUPON, there were no exhibits marked or testimony
taken during this hearing.)

P R O C E E D I N G S

THE COURT: All right. That brings us to the final matter on the roster, which it seems like everyone is here for. So this is Summerlake Townhomes Association versus True Homes.

MR. QUINN: Good afternoon, Your Honor. Elliotte Quinn for the plaintiffs.

Your Honor, we had three motions on your roster. One of---

(WHEREUPON, Mr. Quinn's audio was lost at this time.)

THE COURT: Mr. Quinn, you've dropped your voice -- your audio's dropped out. You -- the last thing I heard you say were they're three motions.

(Pause.)

~~THE COURT: Mr. Quinn -- I think we've lost Mr. Quinn.~~

Okay. Mr. Lonadier, can you hear me okay?

MR. LONADIER: I can.

THE COURT: Okay. Mr. Quinn, can you hear me?

(WHEREUPON, there was no audible response.)

THE COURT: Mr. Hinson, can you hear me?

MR. HINSON: Yes, sir, judge.

THE COURT: All right. Mr. Quinn -- I think, Mr. Quinn, you're having an, an issue with your computer there.

1 MR. HINSON: Technology's a wonderful thing until it
2 doesn't work, isn't it, judge?

3 THE COURT: That's exactly right.

4 (Pause.)

5 MR. HINSON: Judge, if I may, Josh Hinson on behalf of
6 True Homes. I believe what Mr. Quinn is gonna tell you is
7 that were three motions on the roster.

8 THE COURT: Hold on. Let's, let's wait till Mr. Quinn
9 gets back on if you don't mind.

10 MR. HINSON: Yes, sir.

11 THE COURT: I think he's, he's dropped off.

12 (Pause.)

13 THE COURT: All right. Mr. Quinn, can you hear me?

14 MR. QUINN: I can hear you.

15 Can you hear me?

16 THE COURT: I can hear you.

17 MR. QUINN: Okay.

18 THE COURT: Much better.

19 Okay. The last---

20 MR. QUINN: (Indiscernible).

21 THE COURT: When -- when you dropped out, you were
22 telling me, you said I had three motions but and then that
23 was the end of it.

24 MR. QUINN: Okay. We -- Your Honor, we had three
25 motions on your roster.

1 (WHEREUPON, Mr. Quinn's audio was lost at this time.)

2 THE COURT: Mr. Quinn, I've lost you again.

3 Mr. Quinn, my, my suggestion is that you call in with a
4 telephone. I think you're having Internet issues at your
5 firm.

6 Mr. Quinn, I can't hear you.

7 (Pause.)

8 MR. QUINN: Your Honor, can you hear me now?

9 THE COURT: Yes, sir, I can.

10 MR. QUINN: Okay. Wow. All this time and that's the
11 Court time -- first time, first time that's happened to me.

12 Your Honor, I was saying that we had three motions on
13 your roster. I believe one of them has been resolved, which
14 would be plaintiff's motion to compel discovery responses
15 from True Homes.

16 THE COURT: Okay.

17 MR. QUINN: We've submitted a -- since -- I'm sorry. I
18 apologize.

19 Your Honor, I couldn't understand if you said
20 something?

21 THE COURT: I, I did not.

22 MR. QUINN: Oh, okay.

23 So, I was indicating that I believe that motion's been
24 resolved through a consent order that we've submitted for
25 your consideration. That would leave two motions remaining.

1 The first of which will be plaintiff's motion for rule
2 to show cause and I'm ready to proceed on that if Your Honor
3 would like.

4 THE COURT: And, and I'll tell you, that is, that is
5 the only motion I have on my roster.

6 What is the other one?

7 MR. QUINN: The other motion -- so that is -- rule to
8 show cause is Number 24. The, the motion that was resolved
9 was 26 and then there's also 25, which is True Homes motion
10 to compel arbitration.

11 THE COURT: You must be looking at a different roster
12 than I do. I, I don't -- I don't have a motion to compel
13 arbitration.

14 Ms. Strait, are you on?

15 THE CLERK: Yes, sir. On the docket that you have,
16 Number 29 is the rule to show cause and Number 30 is True
17 Homes it says motion to compel.

18 THE COURT: Oh, okay, 30. Okay. Got it. Okay.

19 THE CLERK: Yes, sir.

20 THE COURT: But the motion to compel is -- okay.
21 The -- hold on.

22 (Pause.)

23 THE COURT: All right. Yes, sir.

24 MR. QUINN: Your Honor, on the motion for rule to show
25 cause, plaintiff submitted a or served a subpoena on an

1 entity, Veritas Land PC, formerly known as SUMMIT Land
2 Services, PC on November 4th, 2021. To date, we have yet
3 to receive any responses from Veritas.

4 We did receive a telephone call in which the principal
5 indicated that he would search through his records and
6 provide any. We never heard back from him and we have
7 followed up since asking him to provide his responses. We
8 served this motion on Veritas and then, yesterday, we served
9 notice of this hearing on Veritas. We've yet to receive any
10 response from them and ask that they be placed in contempt
11 for failing to respond.

12 THE COURT: Okay. Do they have counsel here today?

13 MR. QUINN: Your Honor, I don't see anyone here for
14 them. I mean we've provided them with notice about this
15 hearing and, and how to access it but I don't know of anyone
16 here.

17 I've never heard from any counsel for them. I've never
18 had any communication from them other than the phonecall to
19 my paralegal indicating they would look for and produce any
20 documents they have.

21 THE COURT: All right. They're a lot of documents in
22 this case and I apologize. I'm trying to tell -- where is
23 your motion for rule to show cause?

24 MR. QUINN: Motion for rule to show cause was filed
25 January 25th, 2022.

1 THE COURT: Okay. Hold on.

2 (Pause.)

3 THE COURT: Okay. How, how did you serve Veritas Land?

4 MR. QUINN: Your Honor, we included it in Exhibit A.

5 We served them through the York County Sheriff's Office.

6 Personal service on Mark Fisher who's the registered agent
7 for that entity.

8 THE COURT: And you served -- but -- and, and they got
9 notice of the hearing yesterday?

10 MR. QUINN: Yes, Your Honor. We had a, a process
11 server serve them with notice of the hearing yesterday. We
12 filed, this afternoon, the affidavit of service from the
13 process server.

14 THE COURT: Is that an entity registered with the South
15 Carolina Secretary of State?

16 MR. QUINN: To my recollection, Your Honor, it is.
17 I'm, I'm almost certain that it is cause that's how we
18 figured out the, the name change from SUMMIT to Veritas.

19 THE COURT: I, I, I will tell you, it concerns me that
20 you -- they basically had less than 24 hours notice of a
21 hearing.

22 I mean they're a, they're a nonparty, correct?

23 MR. QUINN: That's correct, Your Honor.

24 THE COURT: I --.

25 MR. QUINN: Your Honor, I'm, I'm, I'm happy to, if, if

1 that concerns you, I'm happy to continue the hearing and
2 provide them with more advanced notice of a future hearing
3 date.

4 THE COURT: I, I think we need to do that. I mean
5 they're, they're -- you're asking me to hold a nonparty in
6 contempt and they're not present in front of me. I mean
7 that, that gives me significant concern.

8 MR. QUINN: I understand, Your Honor. I, I was
9 concerned as to whether the Clerk of Court would of notified
10 them because they've never made any type of appearance. So,
11 I went ahead, just to cover our bases, and had the process
12 server give them notice of the hearing. But I absolutely
13 understand and am more than happy to, you know, give them
14 10, 15, however many days, of notice of a hearing if we
15 continued the hearing.

16 THE COURT: Let's, let's do that. Let's, let's just --
17 let's continue this hearing to the next term of Common Pleas
18 Court and Ms. Strait will give you -- can tell you when that
19 will be and you can -- and then, and then you -- we can get
20 notice to them and let --.

21 MR. QUINN: That would resolve my motion and then
22 your -- the other motion in front of you, Your Honor, would
23 be Mr. Hinson's motion.

24 THE COURT: All right. Mr. Hinson.

25 MR. HINSON: Your Honor, may it please the Court.

1 Josh Hinson here on behalf of True Homes.

2 Your Honor, we have filed a motion to compel
3 arbitration. This case involves claims by the Summerlake
4 Town homers -- Homeowners' Association as well as two named
5 plaintiffs on behalf of a putative class against True Homes
6 and several of its subcontractors.

7 Essentially what we have is True Homes has, in its
8 purchase agreements, an arbitration provision and we're
9 seeking to enforce that arbitration provision with respect
10 to the independent homeowner claims against these two
11 plaintiffs. One of those plaintiffs is a -- an original
12 purchaser and one of those plaintiffs is a subsequent
13 purchaser.

14 Under the case law, we believe both should be compelled
15 to arbitration based on the fact that -- for the first
16 purchaser, obviously she signed or he signed. It's my
17 understanding that it's Mr. Fuentes I, I believe I've
18 mistaken that in my briefing, but Mr. Fuentes has actually
19 signed the arbitration agreement. We believe that agreement
20 is enforceable and we believe that those claims should be
21 sent to arbitration for that reason.

22 We also believe that the subsequent purchasers should
23 not have more rights than the original purchasers, and
24 because the implied warranties arise from the contract, they
25 should have to deal with the responsibilities of that

1 contract if they want the benefits of that contract.

2 I, I realize that Mr. Quinn has made seven arguments in
3 his briefing. I, I don't know if Your Honor has had
4 chance -- a chance to read his 42 page memo. But I'm happy
5 to address those now or I'm happy to let Mr. Quinn make his
6 arguments and then we can move forward however the Court
7 desires.

8 THE COURT: Okay. Well, why, why don't we start -- I
9 would tell you I am, I am skeptical that you're gonna be
10 able to convince me a subsequent purchaser that did not sign
11 the arbitration agreement is somehow bound by it. But talk
12 to me about that. That's, that's an argument I -- I'm
13 curious about.

14 MR. HINSON: Sure.

15 Your Honor, I mostly focused on the fact that the
16 ~~Fourth Circuit has said, that if you are attempting to~~
17 enforce a benefit of the contract, and the contract has an
18 arbitration provision, your do not get to enforce the
19 benefit of that contract while also being able to sidestep
20 the arbitration. I, I think that Smith v. Breedlove
21 obviously tells us that the warranty of workman like service
22 arises out of the construction contract and that is one of
23 the claims that's asserted in this case.

24 I, I realize, as, as Mr. Quinn has noted, there is no
25 straight breach of contract claim, which I think the case

1 law would, would suggest is allowed for subsequent
2 purchasers. They have chosen not to do that I think, in
3 part, in order to keep out of this argument.

4 But the case law also indicates that that implied
5 warranty, which they are seeking to enforce, arises from the
6 contract, and, because of that, we, we assert, if you're
7 trying to enforce part of the contract, you have to live
8 with all of it.

9 THE COURT: What does it mean -- I'm looking at Smith
10 v. Breedlove now.

11 What do you mean when you say the right arises from the
12 contract?

13 MR. HINSON: Well, Your Honor, I think the, the -- what
14 the case law's essentially saying is, inherent in that
15 contract, is this implied warranty. And so, without the
16 contract, there would not be an implied warranty.

17 THE COURT: Okay. I mean I -- I just -- the language,
18 the language that you're look -- I'm, I'm reading from
19 Breedlove now. A builder who contracts to construct a
20 dwelling impliedly warrants the work undertaken will be
21 performed in a careful, diligent, and workmanlike manner.

22 Is that what you're relying on?

23 MR. HINSON: Yes, sir.

24 THE COURT: Okay. But that's not the same thing as
25 relying on a contract, is it?

1 MR. HINSON: Well, it, it is relying on the contract
2 because, without the contract, the, the, you know, warranty
3 doesn't exist.

4 THE COURT: Well, but it's implied. That's the whole
5 point. It's not an expressed warranty that's in the
6 contract.

7 MR. HINSON: Understood.

8 But the, the, the point still remains that the contract
9 itself, right, the parties agreed to arbitrate issues
10 arising from that contract. They are now seeking to file a
11 cause of action that originated from that contract and the
12 arbitration provision is included in that contract.

13 THE COURT: Do you have any law from the Fourth Circuit
14 or from South Carolina on this point that, that you can
15 enforce arbitration provision against the subsequent
16 purchaser who makes an implied warranty claim? ---

17 MR. HINSON: So, if you'll look at -- and, and I -- to
18 answer your question directly, Your Honor, not exactly on
19 all fours. I will tell you that, if you take a look at
20 Damico v. Lennar Carolinas---

21 THE COURT: Is that D'A-M-I-C-O.

22 MR. HINSON: No apostrophe, Your Honor.

23 THE COURT: Okay. I'm looking at it.

24 MR. HINSON: It's 430 S.C. 188.

25 THE COURT: 430 -- 430 S.C. 188.

1 All right. I'm there.

2 MR. HINSON: And if you look at -- under Section 1 of
3 the, of the opinion, they note that a, a subsequent
4 purchaser was bound to the contract.

5 Now, let me explain. The -- she was bound to the
6 contract they said in part because she asserted a breach of
7 contract claim, and I -- you know, to be frank with Your
8 Honor, I don't, I don't know that that was a huge issue in
9 the case or, or argued. But I can tell -- show, show you
10 where the Court has noted that subsequent purchasers, who
11 have not signed the contract, under an estoppel theory of
12 direct benefit can be compelled to arbitration.

13 THE COURT: All right. Let's, let's, let's move on.

14 Do you want to let me hear from the, the plaintiff
15 first?

16 Why don't we, why don't we do that?

17 And then -- on, on the issue of the, the other
18 purchaser.

19 MR. HINSON: Yes, sir.

20 THE COURT: Yes, sir.

21 MR. QUINN: And just to make sure I understand your
22 argument, Your Honor, would you like for me to respond to
23 the subsequent purchaser first or the original purchaser?

24 THE COURT: I, I think I've got a pretty good handle on
25 that. Give, give me 60 seconds on that issue but then

1 switch to, to, to your, your client then actually signed the
2 arbitration agreement if you don't mind.

3 MR. QUINN: Okay. Your Honor, my 60 seconds on the
4 subsequent purchaser, Your Honor, we are not attempting to
5 enforce any benefit of a contract.

6 Your Honor, in the Damico case, the plaintiff there
7 actually asserted a breach of contract cause of action
8 despite being the subsequent purchaser. And, Your Honor,
9 South Carolina law is, I, I think, clear that an implied
10 warranty of habitability or workmanlike services claim does
11 not arise from a contract.

12 Your Honor, South Carolina law provides that the tort
13 contract distinction, it depends on where the duty arises
14 from. Implied warranty is a duty imposed by law, and then,
15 Your Honor, the Kennedy v. Columbia Lumber and the Tommy
16 Griffin Plumbing cases indicate that privity of contract,
17 therefore a contract, is not required for an implied
18 warranty of habitability or workmanlike services exist.

19 If a contract isn't required, then there can't be a
20 contract claim and then finally, Your Honor, the Wilson v.
21 Willis, our Court made clear that this direct benefits
22 argument, direct benefits estoppel, does not exist simply
23 because a plaintiff asserts a claim that relates to or even
24 a claim that would not have arisen but for a contract
25 existence. It requires something more than that.

1 THE COURT: well, that's (indiscernible).

2 MR. QUINN: Your Honor, turning to, turning to the
3 original purchaser -- well, let me, let me take a step back,
4 Your Honor, in, in setting up the original purchaser.

5 In this case, we have 101 townhomes. We have an
6 association. The association owns all the common elements,
7 is responsible for the roads, but is also, despite the fact
8 that the townhomes are owned by the owners, the association
9 is responsible for maintaining and repairing the exteriors
10 of the townhomes and the owners are responsible for
11 everything interior of those exteriors.

12 Here we have a number of different construction defects
13 that are causing damage to these townhomes, leaking front
14 and rear doors, roof leaks, improperly constructed roads,
15 HVAC systems that aren't cooling or heating certain rooms in
16 the home, and there's water intrusion related to some of
17 these damages as well.

18 So, it's not like everything is exactly in the
19 associations' bucket or everything is exactly in the
20 individual owner's bucket. Some of the damages are caused
21 by defects on the exterior but they're causing damages on
22 the interior. Some of the repairs to the exterior will
23 require work on the interior.

24 So, to cover all that ownership, we brought claims on
25 behalf of the association and then two individual owners on

1 behalf of a class of all of the townhomes owners.

2 And, Your Honor, as Mr. Hinson indicated, True Homes
3 has not moved to compel the associations' claims into
4 arbitration. So, this case will continue in this Court
5 regardless of the outcome of this motion. This motion is
6 not an attempt to achieve any type of efficiency or economy
7 that arbitration purportedly provides.

8 To the contrary, this motion is an attempt to
9 complicate, make more expensive, and slow the resolution of
10 these claims, and, and True Homes is moving to compel
11 arbitration of the individual homeowner's claims solely to
12 defeat their ability to pursue a class action. Were True
13 Homes successful, the result would be filing of numerous
14 additional cases by homeowners in Summerlake, then numerous
15 motions by True Homes to compel arbitration, and then
16 potentially additional cases continuing in Court, and
17 additional arbitration and a complicated mess.

18 Your Honor, as indicated in my memo, there are eight
19 different reasons that we assert that this motion should be
20 denied. We just discussed two of them are related to the
21 subsequent purchaser.

22 To the others, first, under the merger doctrine, the
23 purchase agreement is no longer of any effect because it
24 merged into the deed. South Carolina law provides that
25 where there's a contract for the purchase of property, and

1 then there's a deed executed, that deed essentially is the
2 agreement between the parties now and replaces the previous
3 contract. So, here, this contract merged into the deed.
4 The deed does not provide for arbitration. The deed does
5 not mention the purchase agreement. So, the deed wiped out
6 the arbitration provision. The arbitration provision is no
7 longer enforceable.

8 Your Honor, the, the second would be, for arbitration
9 to be enforceable, for an arbitration provision to be
10 enforceable, it has to be enforceable either under the
11 Federal Arbitration Act or the South Carolina Uniform
12 Arbitration Act.

13 For the Federal Arbitration Act to apply, the contract
14 has to be for a transaction involving interstate commerce.
15 Here, this contract is a contract for the sale of real
16 property. Under the Bradley v. Brentwood Homes decision,
17 our Court has made clear that a contract for the sale of
18 real property deals solely with land, which is something
19 that is located in South Carolina and can't be moved out of
20 South Carolina. So, it's in trust nature rather than
21 interstate.

22 True Homes wants to assert that, because the
23 construction of the townhomes involved subcontractors from
24 out-of-state, involved True Homes employees from out of
25 state, that somehow that makes it interstate commerce. Your

1 Honor, that is incorrect because here the contract is just
2 for the purchase of a townhome. Not for the construction of
3 the townhome.

4 You may hear from Mr. Hinson about the Damico decision.
5 Your Honor, I, I argued the Damico decision for Lennar at
6 the Trial Court level. The argument there was that it was a
7 contract for both construction and purchase of property and,
8 if you read the Damico decision, it makes that clear. It
9 restates the Bradley v. Brentwood law and says when it's
10 just for the purchase of real property it's intrastate. But
11 here the contract, here Damico, the contract was also for
12 construction of homes.

13 So, Your Honor, the contract is, therefore, only
14 intrastate, and for it to be enforceable, it has to meet the
15 requirements of the South Carolina Uniform Arbitration Act.
16 Under that Act, there has to be a notice on the first page
17 that is in capitalized, underlined texts, that the agreement
18 is subject to arbitration under the FCUAA. These purchase
19 agreements don't have that notice.

20 So, therefore, because it's not enforceable under the
21 FAA, it's not enforceable under the FCUAA. It's not
22 enforceable.

23 THE COURT: Let me stop you.

24 So the -- this argument -- I mean so the, the, the home
25 was fully constructed when your client signed the contract

1 to purchase it?

2 MR. QUINN: Your Honor, what -- my -- the original
3 purchaser client, Mr. Fuentes, submitted an affidavit
4 stating that, when he signed the contract, it was his
5 understanding that the construction of the home was
6 completed. He had walked through the home and believed that
7 construction was completed. I understand that True Homes
8 takes issue with that and says my client is incorrect.

9 As I mentioned in my memo, even if my client were
10 incorrect, which, of course, we don't agree, we believe the
11 home was completed. Even if my client was incorrect, I
12 think it's undisputed that the townhome was already under
13 construction. If True Homes was building it regardless of
14 whether Mr. Fuentes was gonna sign the purchase agreement,
15 then the purchase agreement can't be an agreement for the
16 construction of a townhome. They were already building this
17 thing on it.

18 And then, Your Honor, I would point to their motion
19 where they refer to this agreement as the agreement for the
20 sale of a home. They never refer to it as an agreement for
21 construction. And if you look at the agreement, it says at
22 the top home purchase agreement inventory home indicating
23 that this is something they're already building. It's in
24 their inventory. They're just looking to sell it.

25 THE COURT: Let me hear from Mr. Hinson on that

1 point -- on that.

2 MR. HINSON: Yes, sir, Your Honor.

3 THE COURT: Yeah.

4 MR. HINSON: They're -- there are two things that I
5 think are important to, to recognize here.

6 This is a Delaware company with it's principal place of
7 business in Monroe, North Carolina that's selling property
8 in South Carolina. Furthermore, it provides warranty
9 services through its North Carolina office and affiliates
10 throughout the country. Mr., Mr. Fuentes used -- utilized
11 those warranty services quite regularly in the first few
12 years that he owned this home.

13 And so, to say that, you know, none of it is, is
14 interstate, to say that it's all intrastate, when all of the
15 subcontractors, all of my, my, my client's employees, the
16 salespeople are all North Carolinians that are doing this,
17 I, I think is a bit wrong headed. I also point that the
18 certificate of occupancy was issued I, I believe two months
19 after the contract for sale was signed.

20 I understand Mr. Elliotte argues that there could have
21 been a two month delay in York County for a CO. That, that
22 may be the case. I don't know. I wasn't there in 2014 when
23 this contract was signed. But that is evidence that the,
24 the townhouse was not built completely at that time. And
25 I'll tell, you know, my client doesn't make money sitting

1 around for two months with a completely constructed townhome
2 before they sell it.

3 THE COURT: All right. Mr. Quinn, I'll -- I'll give
4 you a few more minutes, what, whatever, whatever bases you
5 want.

6 MR. QUINN: Okay. Do -- Your Honor, if I may add one
7 item to that issue, Mr. Hinson mentions that Mr. Fuentes has
8 made warranty claims. I would point out that there is no
9 evidence in the record provided by True Homes to show that
10 Mr. Fuentes made any warranty claims.

11 Additionally, Your Honor, to the extent that there were
12 any warranty claims, the sole purported warranty documents
13 that True Homes has provided is a sample warranty. But it
14 is with a third party, a professional services warranty
15 corporation or professional warranty services. That entity
16 is not a party to this case.

17 So, those -- they're no claims related to it. So that,
18 I think, is immaterial to this issue.

19 Your Honor, then turning to the, the next item, Your
20 Honor, the warranty itself refers to missing terms -- I mean
21 the purchase agreement refers to missing terms related to
22 the arbitration procedure. Therefore, there can not have
23 been a meeting of minds which is required to have an
24 enforceable arbitration agreement. The arbitration
25 agreement would not be enforceable.

1 Specifically, what I'm referring to is the purchase
2 agreement, in Paragraph 23, says that the purchaser has to
3 participate in arbitration pursuant to the procedures in the
4 warranty booklet. But as set out in Mr. Fuentes affidavit,
5 he did not receive any warranty booklet at anytime prior to
6 closing, which is obviously much later than entering into
7 the purchase and sale agreement. And if you look at
8 Paragraph 23, it provides -- so, if he didn't even receive a
9 sample warranty booklet, but it provides that someone would
10 receive a sample warranty booklet and then would receive the
11 final warranty at closing in substantially the same terms.

12 So, Your Honor, he would not know, he could not have
13 agreed to what the terms were for this arbitration. There
14 could not have been any meetings of the minds on it and,
15 therefore, it would not be enforceable.

16 ~~Your Honor, the, the next would be that the purchase~~
17 agreement arbitration provisions are unconscionable.

18 Your Honor, unconscionability exists where two elements
19 are present. First would be a lack of meaningful choice.
20 The second would be oppressive one sided terms.

21 Here, the lack of meaningful choice of it was an
22 adhesion contract. Mr. Fuentes avares (phonetic) that it
23 was offered to him on a take it or leave it basis as True
24 Homes form contract. He was never offered or told he had
25 any opportunity to negotiate any provisions. It is a form

1 contract which is apparent from the fact that True Homes
2 logo is at the top of each page, that it has True Homes name
3 written in and they're just blanks to input the purchaser
4 name, the lot information, and the purchase price. And then
5 the signature page had a buyer's signature blocked but then
6 has a true adviser's signature block indicating that this is
7 where the True Homes employee signed.

8 Also it is a contract for a necessity, housing, which
9 under the Simpson MSA case where they indicated that that
10 relates to whether it's an adhesion contract with a lack of
11 meaningful choice, there it was an automobile, they said it
12 was a necessity. Here it's housing, which is a necessity.

13 Also, from the Kennedy v. Columbia Lumber case, there's
14 a legal presumption that a purchaser of housing is in an
15 unequal bargaining position compared to a developer or
16 seller. And then the fact that True Homes is a substantial
17 business concern of building houses, attached to Mr. Fuentes
18 affidavit are pages from True Homes website where it says
19 that it is one of Carolinas largest home builders.

20 And then, Your Honor, the relevant terms are relatively
21 inconspicuous. If you look at the page in which these terms
22 are contained, the text is pretty miniscule and difficult to
23 read and there is no heading or anything else to call out
24 that there is an arbitration provision contained for the
25 purported impact of that paragraph.

1 Your Honor, that I believe establishes the adhesion
2 contract, the lack of meaningful choice component of
3 unconscionability.

4 Turning to the oppressive terms component, again, as I
5 mentioned before with the, the lack of a meeting of the
6 minds, here this agreement purports to bind a purchaser to
7 arbitration pursuant to a procedure not disclosed to the
8 purchaser. I can't imagine something that would be more
9 oppressive than to try to bind somebody to a secret
10 procedure and I can't imagine something that would be more
11 conducive to a business writing something in their own
12 interest than allowing a secret procedure to be enforceable.

13 It also purports to limit True Homes liability to the
14 terms of a limited warranty. Again, this is a limited
15 warranty that was not provided to the purchaser. The
16 ~~arbitration provisions in the agreement are intertwined with~~
17 the express warranty and the limitation of liability
18 provisions essentially providing that you are to arbitrate
19 in accordance with the limited warranty. Essentially
20 without that limited warranty, there would be no
21 arbitration.

22 And then, Your Honor, the agreements has disclaimer of
23 implied warranty and exclusion of monetary damages
24 provisions essentially identical to those that were found
25 unconscionable in the Smith v. D.R. Horton decision. The

1 pur -- True Homes purchase agreement provides that the
2 limited warranty replaces any other express or implied
3 warranty and then purports to limit True Homes liability to
4 its obligations under the limited warranty which just
5 requires them to fix things and as far as any monetary
6 damages.

7 Your Honor, I believe that establishes
8 unconscionability and the agreement would, therefore, not be
9 enforceable on that basis.

10 The next would be that the Fuentes purchase
11 agreement---

12 THE COURT: Mr., Mr. Quinn, I got to, I got to cut -- I
13 got to say you get 30 more seconds, whatever you want to
14 talk about, but we got to, we got to cut it off here.

15 MR. QUINN: Okay. Well then, Your Honor, I think
16 there's only one more which is that the Fuentes purchase
17 agreement specifically provides that it only covers warranty
18 disputes. That is a capitalized term that the agreement
19 makes clear are claims under that express warranty.

20 Mr. Fuentes does not assert any claims under that
21 express warranty, and then, therefore, because he's not
22 asserting any claims under it, that arbitration provision
23 does not cover his claims.

24 Thank you, Your Honor.

25 THE COURT: Okay. Mr., Mr. Hinson, I, I wanted to ask

1 you something but I've got Bradley versus Brentwood Homes.
2 I'm looking at it right now. And, in that case, the Court
3 says the facts are a national warranty company was used to
4 provide a structural warranty. The residence was
5 constructed using materials, subcontractors, and suppliers
6 from outside of the state, and the home was furnished -- was
7 financed with that -- a lender from outside the state.
8 Nevertheless, they found the FAA did not apply.

9 So how do you distinguish the Bradley case?

10 MR. HINSON: Because, Your Honor, I think that a main
11 focus of this contract is the warranty provision that True
12 Homes provides. True Homes is the one who has a call center
13 in North Carolina. This -- my client, the one who sold it,
14 has a call center. They ask people to call them. They
15 direct subcontractors to go do work for the warranty
16 repairs.

17 I mean there -- the, the evidence is that that duty and
18 that portion of my, my client's business is all operated out
19 of North Carolina. This is not just somebody else -- sure,
20 PWSC has the, the ability to arbitrate or, or serve as the
21 arbitrator for this. But my client and their service people
22 are the ones who are actually doing the work and sending the
23 same service -- the same subcontractors out to do repairs.

24 THE COURT: What difference does that make under
25 Brentwood?

1 MR. HINSON: Well, Brentwood -- I think Brentwood had a
2 tangential relationship to the warranty. Brentwood was
3 talking about sending this off to somebody else.

4 There's a myriad of evidence -- I will -- I -- I'll
5 submit to you and I'm happy to provide an, an attachment.
6 375 pages worth of work orders where subcontractors for
7 Mr. Fuentes came out and did work at his property.

8 They were sent out there. My subcontractors, again, my
9 subcontractors from, from North Carolina, North Carolina
10 subcontractors, came out and did repair work on this house,
11 this townhouse.

12 THE COURT: I, I -- counsel, I think I've heard enough.
13 I'm, I'm -- I'm gonna rule for the plaintiff on this. I'm
14 gonna -- on the Bradley versus Brentwood issue on this case
15 on this issue, and then I'm also gonna rule for the
16 plaintiffs on the, on the issue of with regarded -- with
17 regard to the, the plaintiffs who did not themselves sign
18 the purchase agreement on the basis that, that those are not
19 contractual claims. Those are implied claims. So, there's
20 no estoppel argument.

21 So, Mr. Quinn, will you prepare on order?

22 MR. QUINN: Yes, Your Honor.

23 THE COURT: All right.

24 MR. QUINN: On those two points, Your Honor.

25 THE COURT: Thank you.

1 MR. HINSON: Thank you, judge.

2 THE COURT: Thank you, counsel.

3 MR. QUINN: Thank you, judge.

4

5 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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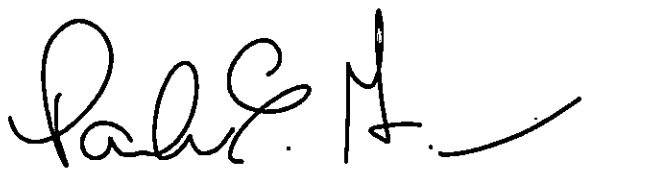
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for York County, South Carolina, on the 17th day of May, 2022.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

August 16th, 2022

A handwritten signature in cursive script, appearing to read 'Pamela E. Green', is written over a horizontal line.

PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
CASE NO.: 2020-CP-46-03592

SUMMERLAKE TOWNHOMES)
HOMEOWNER'S ASSOCIATION,)
INC. and SUSAN HAGY and KARIN)
FUENTES, individually and on behalf of)
all others similarly situated,)

Plaintiffs,)

vs.)

TRUE HOMES, LLC; CAROLINA)
DEVELOPMENT SERVICES, LLC;)
SUMMERLAKE PROPERTIES, LLC;)
RJB LEGACY COMPANY f/k/a)
BAREFOOT & COMPANY, LLC; BMC)
STOCK HOLDINGS, INC. a/k/a)
BAREFOOT & COMPANY, LLC;)
AIRTRON, INC.; and MPK GRADING)
AND EROSION CONTROL, LLC,)

Defendants.)

**DEFENDANT TRUE HOMES, LLC'S
MOTION TO DISMISS AND IN THE
ALTERNATIVE DEFENDANT TRUE
HOMES, LLC'S MOTION TO STAY**

NOW COMES Defendant True Homes, LLC ("True Homes"), by and through

undersigned counsel, and moves for a dismissal of all claims pending in the above-captioned action pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure on the grounds that Plaintiff has failed to satisfy the requirements of the South Carolina Notice and Opportunity to Cure Construction Defects Act ("the Act") set forth in S.C. Code Ann. § 40-59-810 *et seq.* The Act requires written notice to be served upon True Homes no later than ninety (90) days before filing an action. *See* S.C. Code Ann. § 40-59-840. The written notice must assert a construction defect, describe the claim in reasonable detail, and describe the results of the alleged defect. *Id.* Plaintiff has failed to comply with the Act. Instead, Plaintiff has alleged, without factual and legal

support, that the doctrine of estoppel should be implemented to allow the action to move forward while circumventing the requirements of the Act. Such an argument undermines the plain language of the Act and would further undermine the spirit of the Act. Accordingly, Plaintiff's Complaint should be dismissed for a failure to state any claim upon which relief can be granted since Plaintiff has failed to allege that it followed the requirements of the Act. Alternatively, True Homes moves to stay this action pursuant to S.C. Code Ann. § 40-59-830 until after Plaintiff has complied with all requirements imposed by the Act. True Homes reserves the right to submit additional memoranda, additional authorities, and/or affidavits in support of its motions. Wherefore, True Homes seeks an order either dismissing this action pursuant to Rule 12(b)(6) or staying this action in accordance with the Act.

This the 20th day of May, 2021.

/s/ Brian E. Wolfe

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HOMEOWNER'S ASSOCIATION,)
INC. and SUSAN HAGY and KARIN)
FUENTES, individually and on behalf of)
all others similarly situated,)

Plaintiffs,)

vs.)

**DEFENDANT TRUE HOMES, LLC'S
MOTION TO STAY AND COMPEL
ARBITRATION**

TRUE HOMES, LLC; CAROLINA)
DEVELOPMENT SERVICES, LLC;)
SUMMERLAKE PROPERTIES, LLC;)
RJB LEGACY COMPANY f/k/a)
BAREFOOT & COMPANY, LLC; BMC)
EAST, LLC; AIRTRON, INC.; MPK)
GRADING AND EROSION)
CONTROL, LLC; SOUTHEND)
EXTERIORS, LLC; MCGEE)
BROTHERS COMPANY, INC.;)
ALPHA OMEGA CONSTRUCTION)
GROUP, INC.; PENDER-PETTUS)
INSULATION, INC; CHARLOTTE)
LANEHART-ELECTRIC COMPANY,)
INC.; C&C PLUMBING, INC.;)
ASSOCIATED MATERIALS, LLC a/k/a)
ALSIDE, INC.; T&A EXCAVATING,)
LLC; CALLAHAN EXCAVATING,)
LLC a/k/a CALLAHAN GRADING &)
HAULING, INC. a/k/a CALLAHAN)
GRADING, LLC; AHR)
CONSTRUCTION, INC.; JJS)
COMMERCIAL CONSTRUCTION,)
INC.; CDJ CONSTRUCTION, INC.;)
JIMENEZ CONTRACTORS, LLC; J.)
COV ROOFING, LLC; AYALAS)
WINDOW INSTALLATIONS, LLC;)
ATLANTA FLORRING DESIGN)
CENTERS, INC.; PEDRO DEJESUS)
LOPEZ d/b/a PJJ CONSTRUCTION;)
and PEDRO VILLAREAL-)

CONCEPCION d/b/a CVP
CONSTRUCTION,
Defendants.)
)
)
)

TO: PLAINTIFFS AND THEIR ATTORNEYS, ELLIOTTE QUINN, ESQ. AND RACHEL IGDAL, ESQ.

PLEASE TAKE NOTICE that Defendant True Homes, LLC ("True Homes") will, on the tenth day after service hereof, move the Court, Pursuant to 9 U.S.C. § 3, for an Order staying "the trial of this action until . . . arbitration has been had in accordance with the terms of the agreement" between Susan Hagy and Karin Fuentes ("Plaintiffs") and True Homes. In support of this Motion, True Homes would show the following:

1. True Homes sells homes to members of the public using a standard purchase agreement.
2. The following notice appeared on the agreement signed by Karin Fuentes, in all capital letters when her home, now known as 2006 Firefly Lane, was sold:

SELLER AND BUYER KNOWINGLY AND VOLUNTARILY
AGREE TO SUBMIT ANY WARRANTY DISPUTES FOR
RESOLUTION IN ACCORDANCE WITH THE PROCESS
DESCRIBED IN THE LIMITED WARRANTY BOOKLET,
INCLUDING WITHOUT LIMITATION, BINDING
ARBITRATION, AND, AS TO SUCH DISPUTES, BUYER AND
SELLER WAIVES THEIR RESPECTIVE RIGHT TO TRIAL
BEFORE A JUDGE OR JURY.

3. The contract between True Homes and Karin Fuentes is attached as Exhibit A.
4. True Homes sold lot 88, now known as 923 Summerlake Drive to Alex Fresco by contract dated October 16, 2015.
5. That contract contains a similar provision, indicating:

SELLER AND BUYER KNOWINGLY AND VOLUNTARILY AGREE TO SUBMIT ANY AND ALL DISPUTES WHATSOEVER TO BINDING ARBITRATION, INCLUDING WITHOUT LIMITATION, DISPUTES ARISING FROM THE WARRANTY, THE HOME PURCHASE AGREEMENT, THE HOME, OR THE RELATIONSHIP BETWEEN THE PARTIES. AS TO SUCH DISPUTES, BUYER AND SELLER EACH WAIVES THEIR RESPECTIVE RIGHT TO TRIAL BEFORE A JUDGE OR JURY.

6. The Fresco contract is attached as Exhibit B.

7. Alex Fresco transferred his interests in the property to Opendoor Property C LLC by deed dated November 6, 2018. Exhibit C.

8. Opendoor Property C LLC transferred its interests in the property to Susan Tourigny Hagy by deed dated April 9, 2019. Exhibit D.

9. These contracts and their arbitration provisions are enforceable.

10. The construction and sale of Plaintiffs' homes affected interstate commerce such that the agreement is governed by the Federal Arbitration Act (FAA).

11. Plaintiffs have brought claims sounding in contract against True Homes for alleged construction defects.

12. True Homes is entitled to have those claims compelled to arbitration pursuant to the contract. *See Damico v. Lennar Carolinas, LLC*, 430 S.C. 188, 195, 844 S.E.2d 66, 70 (Ct. App. 2020) (noting a successor homeowner, who did not sign an arbitration agreement, may still be compelled to arbitration where the homeowner seeks to enforce rights pursuant to the contract).

13. True Homes may file a memorandum of law in support of its motion to compel arbitration as provided in the South Carolina Rules of Civil Procedure.

WHEREFORE, True Homes respectfully requests that the Court grant its Motion to Stay and Compel Arbitration with respect to claims brought by Plaintiffs to provide each party the benefit of its bargain.

WOLFE, CAMPBELL, GUNST & HINSON, PLLC

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Attorneys for Defendant True Homes, LLC

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
CASE NO.: 2020-CP-46-03592

SUMMERLAKE TOWNHOMES)
HOMEOWNER'S ASSOCIATION,)
INC. and SUSAN HAGY and KARIN)
FUENTES, individually and on behalf of)
all others similarly situated,)

Plaintiffs,)

vs.)

TRUE HOMES, LLC; CAROLINA)
DEVELOPMENT SERVICES, LLC;)
SUMMERLAKE PROPERTIES, LLC;)
RJB LEGACY COMPANY f/k/a)
BAREFOOT & COMPANY, LLC; BMC)
EAST, LLC; AIRTRON, INC.; MPK)
GRADING AND EROSION)
CONTROL, LLC; SOUTHEN)
EXTERIORS, LLC; MCGEE)
BROTHER COMPANY, INC.; ALPHA)
OMEGA CONSTRUCTION GROUP,)
INC.; PENDER-PETTUS INSULATIN,)
INC.; CHARLOTTE LANEHART)
ELECTRIC COMPANY, INC.; C&C)
PLUMBING, INC.; ASSOCIATED)
MATERIALS, LLC a/k/a ALSIDE,)
INC.; T&A EXCAVATING, LLC;)
CALLAHAN EXCAVATING, LLC)
a/k/a CALLAHAN GRADING &)
HAULING, INC. a/k/a CALLAHAN)
GRADING, LLC; AHR)
CONSTRUCTION, INC.; JJS)
COMMERCIAL CONSTRUCTION,)
INC.; CDJ CONSTRUCTION, INC.;)
JIMENEZ CONTRACTORS, LLC; J.)
COV ROOFING, LLC; AYALAS)
WINDOW INSTALLATIONS, LLC;)
ATLANTA FLOORING DESIGN)
CENTERS, INC.; PEDRO DEJESUS)
d/b/a PJJ CONSTRUCTION; and)

**MEMORANDUM OF LAW IN
SUPPORT OF DEFENDANT TRUE
HOMES, LLC'S MOTION TO STAY
AND COMPEL ARBITRATION**

PEDRO VILLAREAL-CONCEPCION)
s/b/a CVP CONSTRUCTION)
)
 Defendants.)

Defendant True Home, LLC (“True Homes”) submits this Memorandum of Law in Support of its Motion to Stay and Compel Arbitration of claims brought by Plaintiffs Susan Hagy and Karin Fuentes (collectively “Plaintiffs”) concerning alleged construction defects at their homes in the Summerlake Townhomes community. For the reasons stated herein, True Homes’ motion should be granted.

True Homes is a residential homebuilder serving communities in North and South Carolina. Ex. A (Bacon Affidavit) at para. 5. True Homes is a Delaware corporation, with its principal place of business in Monroe, North Carolina. Id. at para. 4. Beginning in June 2013, True Homes began purchasing lots and constructing townhomes in a project now known as Summerlake Townhomes (“the Project”). Id. at para. 8. By 2016, True Homes completed 101 units at the Project using several different subcontractors to complete the construction. Id. at para. 8. Many of those subcontractors are incorporated and do business outside of South Carolina. Id. at paras. 9-17. Additionally, True Homes supervised its subcontractors using employees from its office in Monroe and provided additional support from that office during and after construction, including providing warranty support to its customers. Id. at paras. 18-19.

True Homes is a successful builder, in part because of the quality of its construction. However, True Homes relies upon its ability to resolve any rare disputes with its customers in a cost-efficient manner when it prices its homes. Id. at para. 24. Purchasers of townhomes in the Project agreed to a cost-efficient alternative dispute process, namely arbitration, when they

purchased their respective townhomes. Plaintiff Fuentes signed an agreement which includes the following applicable provisions:

1. "This agreement is a negotiated document and shall be deemed to have been drafted jointly by the parties, and no rule of construction or interpretation shall apply against any particular party." Exhibit B (Fuentes Contract) at para. 22.
2. "Buyer acknowledges receipt of the sample Warranty Policy provided at the point of contract." Id. at para. 23.
3. "The parties agree to abide by the Mediation and Arbitration provisions contained in the Warranty Policy." Id.
4. "SELLER AND BUYER KNOWINGLY AND VOLUNTARILY AGREE TO SUBMIT ANY WARRANTY DISPUTES FOR RESOLUTION IN ACCORDANCE WITH THE PROCESS DESCRIBED IN THE LIMITED WARRANTY BOOKLET, INCLUDING WITHOUT LIMITATION, BINDING ARBITRATION, AND, AS TO SUCH DISPUTES, BUYER AND SELLER EACH WAIVES THEIR RESPECTIVE RIGHT TO TRIAL BEFORE A JUDGE OR JURY." Id.

The townhome currently owned by Ms. Hagy was first purchased by Alex Fresco. Exhibit C (Fresco Contract). The Fresco contract includes the following applicable provisions:

1. "This agreement is a negotiated document and shall be deemed to have been drafted jointly by the parties, and no rule of construction or interpretation shall apply against any particular party." Exhibit B (Fuentes Contract) at para. 14.
2. "Buyer acknowledges receipt of the sample Warranty Policy provided at the point of contract." Id. at para. 15.
3. "The parties agree to abide by the Mediation and Arbitration provisions contained in the Warranty Policy." Id.
4. **SELLER AND BUYER KNOWINGLY AND VOLUNTARILY AGREE TO SUBMIT ANY AND ALL DISPUTES WHATSOEVER TO BINDING ARBITRATION, INCLUDING, BUT NOT LIMITED TO, DISPUTES ARISING FROM THE WARRANTY, THE HOME PURCHASE AGREEMENT, THE HOME OR THE RELATIONSHIP BETWEEN THE PARTIES. AS TO SUCH DISPUTES, BUYER AND SELLER EACH WAVIES THEIR RESPECTIVE RIGHT TO TRIAL BEFORE A JUDGE OR JURY.**

Fresco sold the property to Opendoor Property C LLC on November 6, 2018. Exhibit D (Opendoor Deed). Ms. Hagy purchased the property from Opendoor on April 30, 2019. Exhibit E (Hagy Deed).

Additionally, Fuentes and Fresco signed an application on October 24, 2014 and September 24, 2015, respectively, with Professional Warranty Service Corporation. That application included a provision indicating

I/we acknowledge and agree all disputes under and relating to the Builder's Limited Warranty (including disputes on which issues shall be submitted to arbitration; alleged breach of the Builder's Limited Warranty; and alleged violations of statutes or regulations relating to consumer protection or unfair trade practices) shall be submitted to binding arbitration before an independent third party arbitration organization. I/we agree the decision of the arbitrator(s) shall be binding on all parties. Any such binding arbitration(s) shall be conducted in accordance with the rules and procedures applicable to the arbitration organization hearing the dispute or, where those rules are silent, the United States Arbitration Act (9 U.S.C. § et seq.). See Exhibits F (Fuentes Application) and G (Fresco Application).¹

Plaintiffs are the two current named plaintiffs asserting these construction defect claims on behalf of a putative class of all townhome owners in Summerlake. It is True Homes' understanding that the claims asserted by Ms. Fuentes and Ms. Hagy are solely the claims asserted for damage to elements owned by each of the townhome owners, individually. The Summerlake Townhomes Owners Association is also asserting claims against True Homes and others for damage to common elements at the Project. True Homes denies these allegations and has asserted various defenses to them.

True Homes now seeks the benefit of its bargain with Plaintiffs by asking this court to compel Plaintiffs' individual claims to arbitration. Plaintiffs seek to enforce rights which arise from the contract itself—they should not be allowed to circumvent portions of the contract with which they no longer agree.

¹ True Homes acknowledges Fresco did not sign both lines of the arbitration provision in the application; however, True Homes asserts it is clear Fresco agreed to the provisions.

LAW/ANALYSIS

“The policy of the United States and South Carolina is to favor arbitration of disputes.” *Zabinsky v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001). The Federal Arbitration Act “makes arbitration agreements ‘valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.’” *Kindred Nursing Ctrs. Ltd. P’ship v. Clark*, 137 S.Ct. 1421, 1426 (2017) (quoting 9 U.S.C.A. § 2). “That statutory provision establishes an equal-treatment principle: A court may invalidate an arbitration agreement based on ‘generally applicable contract defenses’ like fraud or unconscionability, but not on legal rules that ‘apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue.’” *Id.* (quoting *AT&T Mobility, LLC v. Concepcion*, 563 U.S. 333, 339 (2011)). “[T]he decision to enter into an arbitration agreement primarily concerns the signatory’s decision to waive his or her right of access to the courts and right to a trial by jury.” *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 566-67, 813 S.E.2d 292, 304 (Ct. App. 2018).

Additionally, “[a] nonsignatory is estopped from refusing to comply with an arbitration clause ‘when it receives a “direct benefit” from a contract containing an arbitration clause.’” *Int’l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 417 (4th Cir. 2000). In June 2020, our court of appeals agreed that when a homeowner seeks to recover against a builder pursuant to duties imposed by a contract which contains an arbitration clause, the plaintiff is bound to that arbitration agreement. *See Damico v. Lennar Carolinas, LLC*, 430 S.C. 188, 195, 844 S.E.2d 66, 70 (Ct. App. 2020), *cert granted*.

1. The arbitration agreements are valid and enforceable pursuant to the Federal Arbitration Act.²

“Due to the strong South Carolina and federal policy favoring arbitration, arbitration agreements are presumed valid.” *Id.* “Because an arbitration provision is often one of many provisions in a contract, the first task of a court is to separate the arbitration provision from the rest of the contract.” *Id.* 197, 844 S.E.2d at 71. “If the arbitration agreement is valid, any issues as to the validity of other parts of the contract go to the arbitrator, not the court.” *Id.* at 198, 844 S.E.2d at 71. “Accordingly, a party cannot duck arbitration unless it makes a specific, pinpoint (and successful) challenge to the validity of the arbitration provision itself; attacking the validity of the contract as a whole is not enough.” *Id.*

Plaintiffs have not asserted any pinpoint argument regarding the validity of the arbitration agreements contained in the respective contracts. Rather, it appears, based on the filed affidavit of Karin Fuentes, that Plaintiffs are asserting they were not provided with the terms of the arbitration agreement and the contracts signed were contracts of adhesion.³ See Fuentes Affidavit. However, as noted previously, Ms. Fuentes agreed in her contract she was provided a sample of the Warranty Policy. Ms. Fuentes also does not assert she was not allowed to modify the contract.

² The validity of this arbitration provision is judged against the requirements of the Federal Arbitration Act. *See Damico*, 430 S.C. at 196-97, 844 S.E.2d at 71. The Court in *Damico* noted “[i]n general, the development and sale of residential real estate is an intrastate activity that does not implicate the FAA,” but found the FAA applied because the construction involved interstate commerce, “specifically the use of out-of-state contractors and materials and equipment manufactured outside South Carolina.” *Id.* at 196, 844 S.E.2d at 71. As noted in Mr. Bacon’s affidavit, True Homes utilizes numerous subcontractors which operate in states other than South Carolina and some of the materials and equipment used for construction of these townhomes is manufactured outside of South Carolina. See Exhibit A at paras. 9-19.

³ It also appears from Ms. Fuentes’ affidavit that she asserts her unit was completed as of the date of her contract and, thus, interstate commerce is not implicated. However, the court can take judicial notice that the certificate of occupancy was not issued until October 22, 2014, two months after Ms. Fuentes signed her contract. See Exhibit H (Certificate of Occupancy).

See Fuentes Aff. at para. 8 (“I was not *offered an opportunity* to change or negotiate any of the term of the Purchase Agreement, *nor was I informed* that I could change or negotiate any of the terms of the Purchase Agreement.” (emphasis added)).

Even assuming the contract is one of adhesion, which True Homes denies, an arbitration agreement contained within a contract of adhesion is not per se invalid. *See Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 27, 644 S.E.2d 663, 669 (2007). Rather, the court needs to review the arbitration provision for any oppressive and one-sided terms. *Id.* Plaintiffs have identified none. Rather, this arbitration agreement simply requires *both parties* to submit *any dispute* to arbitration. True Homes is as bound to this provision as the Plaintiffs.

2. Non-Signatories should be bound to these agreements.

With respect to the claims asserted by Ms. Hagy, True Homes bargained for an enforceable arbitration agreement when it sold the house to Fresco. True Homes priced its homes in reliance on mitigating its risk of extensive litigation by providing a cost-efficient dispute resolution with its customers. Said differently, out of the bundle of rights a property owner receives when it purchases real estate, Fresco gave up the right to litigate claims arising out of the sale of that property against True Homes in favor of arbitration and was able to secure a lower price for the home in exchange. When Fresco sold them home, he could not convey more property rights than he had originally.

Additionally, were the court to find the terms of the contract do not apply to subsequent purchasers, it would follow that the ten-year warranty would also not transfer to subsequent purchasers. Otherwise, the court would allow subsequent purchasers the benefits of the contract, without imposing the burdens of the contract. Either of these holdings would have enormous effects on the residential construction industry, both for the customers and the builders.

Accordingly, subsequent purchasers of Fresco's home cannot revive a right to litigate claims which Fresco agreed would be arbitrated. Because Ms. Hagy seeks to enforce warranties arising out of the sale of this home by True Homes, she should not be allowed to resurrect a right her predecessors in title already waived. *See Smith v. Breedlove*, 377 S.C. 415, 422, 661 S.E.2d 67, 71 (2008) (noting the warranty of workmanlike service arises out of the construction contract).

3. The claims Plaintiffs assert against True Homes fall within the scope of the Arbitration Agreement.

The arbitration process detailed in the contract and the warranty documentation details the following disputes are subject to the arbitration agreement:

- A. **WE** do not agree with **YOU** that a **DEFICIENCY or DEFINED STRUCTURAL ELEMENT FAILURE** is covered by this **BUILDER'S LIMITED WARRANTY**;
- B. **WE** do not correct a **DEFICIENCY or DEFINED STRUCTURAL ELEMENT FAILURE** to **YOUR** satisfaction or in a matter that **YOU** believe this **BUILDER'S LIMITED WARRANTY** requires;
- C. **WE** fail to respond to **YOUR** written notice of a **DEFICIENCY or DEFINED STRUCTURAL ELEMENT FAILURE**;
- D. Disputes related to **COMMON ELEMENTS**;
- E. Alleged breach of this **BUILDER'S LIMITED WARRANTY**;
- F. Alleged violations of consumer protection, unfair trade practice, or other statutes;
- G. Disputes concerning the issues that should be submitted to binding arbitration;
- H. Disputes concerning the timeliness of binding arbitration requests.

See Exhibit I (Builder's Limited Warranty) at 6-7. Plaintiffs allege improper installation of exterior cladding, doors, windows, flashings, vinyl siding, stone veneer, masonry, roofing, MDF trim, HVAC systems and ductwork, grading, paving, and drainage. Plaintiffs' claims, if true, are covered

by the Builder's Limited Warranty. Accordingly, all Plaintiffs' individual claims should be compelled to arbitration.

Additionally, as the parties have agreed "Disputes concerning the issues that should be submitted to binding arbitration" are within the scope of the arbitration agreement and this court should enforce that provision.⁴ See *Damico*, 430 S.C. at 199, 844 S.E.2d at 72 ("Whether the disputes alleged in this lawsuit are covered by the PA's arbitration provision is therefore a question the parties clearly and unmistakably delegated to the arbitrator."); *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 530 (2019) ("Just as a court may not decide a merits question that the parties have delegated to an arbitrator, a court may not decide an arbitrability question that the parties have delegated to an arbitrator.").

CONCLUSION

Based on the foregoing, it is clear the parties agreed to arbitrate disputes arising from the contract for the sale of Plaintiffs' home. It is also clear Plaintiffs claims for construction defects associated with their homes ultimately arise from the respective contracts. Accordingly, this court should provide the parties the benefit of their bargain, stay the pending claims against True Homes, and compel Plaintiffs' claims to arbitration.

This the 16th day of May, 2022.

[SIGNATURE PAGE TO FOLLOW]

⁴ See also Exhibits F and G (noting "all disputes under and relating to the Builder's Limited Warranty (including disputes on which issues shall be submitted to arbitration)").

WOLFE, CAMPBELL, GUNST & HINSON, PLLC

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Attorneys for Defendant True Homes, LLC

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
CASE NO.: 2020-CP-46-03592

SUMMERLAKE TOWNHOMES)
HOMEOWNER'S ASSOCIATION,)
INC. and SUSAN HAGY and KARIN)
FUENTES, individually and on behalf of)
all others similarly situated,)

Plaintiffs,)

vs.)

AFFIDAVIT OF NICK BACON, ESQ.

TRUE HOMES, LLC; CAROLINA)
DEVELOPMENT SERVICES, LLC;)
SUMMERLAKE PROPERTIES, LLC;)
RJB LEGACY COMPANY f/k/a)
BAREFOOT & COMPANY, LLC; BMC)
EAST, LLC; AIRTRON, INC.; MPK)
GRADING AND EROSION)
CONTROL, LLC; SOUTHEN)
EXTERIORS, LLC; MCGEE)
BROTHER COMPANY, INC.; ALPHA)
OMEGA CONSTRUCTION GROUP,)
INC.; PENDER-PETTUS INSULATIN,)
INC.; CHARLOTTE LANEHART)
ELECTRIC COMPANY, INC.; C&C)
PLUMBING, INC.; ASSOCIATED)
MATERIALS, LLC a/k/a ALSIDE,)
INC.; T&A EXCAVATING, LLC;)
CALLAHAN EXCAVATING, LLC)
a/k/a CALLAHAN GRADING &)
HAULING, INC. a/k/a CALLAHAN)
GRADING, LLC; AHR)
CONSTRUCTION, INC.; JJS)
COMMERCIAL CONSTRUCTION,)
INC.; CDJ CONSTRUCTION, INC.;)
JIMENEZ CONTRACTORS, LLC; J.)
COV ROOFING, LLC; AYALAS)
WINDOW INSTALLATIONS, LLC;)
ATLANTA FLOORING DESIGN)
CENTERS, INC.; PEDRO DEJESUS)
d/b/a PJJ CONSTRUCTION; and)

PEDRO VILLAREAL-CONCEPCION)
s/b/a CVP CONSTRUCTION)
Defendants.)

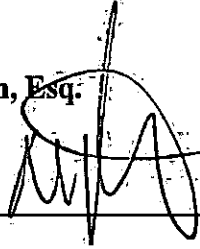
NOW COMES, Nick Bacon, Esq., the affiant, stating and saying as follows:

1. I am an adult who is over the age of eighteen (18) years of age, legally competent, not under any duress or other undue influence and I am making this Affidavit of my own free will.
2. I have personal knowledge of all the statements set forth in this Affidavit and all the statements contained herein are true and accurate to the best of my recollection and as to those statements that I indicate are upon information and belief, they are to my best ability and knowledge that I have obtained personally about the facts and things stated herein.
3. I am the in-house general counsel for True Homes, LLC.
4. True Homes, LLC is a Delaware corporation with its principal place of business in Monroe, North Carolina.
5. True Homes is a residential homebuilder, focusing its work in North and South Carolina.
6. True Homes acts as the general contractor for construction of its projects in both Carolinas.
7. True Homes does not self-perform any construction work; rather, True Homes employs subcontractors to complete the various scopes of work necessary to build each project.
8. Between June 2013 and May 2016, True Homes purchased lots and built town homes in a development in Fort Mill, South Carolina, now known as Summerlake Townhomes.
9. Among others, True Homes employed the following contractors to complete the necessary work to build the townhomes at Summerlake: Barefoot and Company, Airtron, Inc., Southern Exteriors, LLC, McGee Brothers Company, Inc., Alpha Omega Construction Group, Inc., Pender-Pettus Insulating, Inc., Charlotte Lanehart Electric Company, Inc., and C&C Plumbing, Inc.
10. According to the North Carolina Secretary of State, RJB Legacy Company, f/k/a Barefoot and Company, is a North Carolina Corporation with its principal place of business in Waxhaw, North Carolina.
11. According to the North Carolina Secretary of State, Airtron, Inc, is a Delaware Corporation with its principal place of business in Princeton, New Jersey.

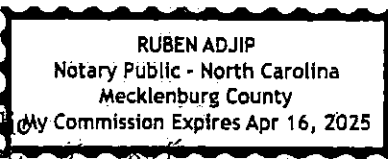
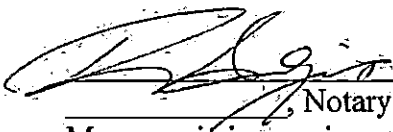
12. According to the North Carolina Secretary of State, Southern Exteriors, LLC is a North Carolina Corporation with its principal place of business in Winston-Salem, North Carolina.
 13. According to the North Carolina Secretary of State, McGee Brothers Company, Inc., is a North Carolina Corporation with its principal place of business in Monroe, North Carolina.
 14. According to the North Carolina Secretary of State, Alpha Omega Construction Group, Inc. is a North Carolina Corporation with its principal place of business in Indian Trail, North Carolina.
 15. According to the North Carolina Secretary of State, Pender-Pettus Insulating, Inc., is a North Carolina Corporation with its principal place of business in Taylor, Michigan.
 16. According to the North Carolina Secretary of State, Charlotte Lanehart Electric Company, Inc., is a Texas Corporation with its principal place of business in Fort Mill, Texas
 17. According to the North Carolina Secretary of State, C&C Plumbing, Inc. is a North Carolina Corporation with its principal place of business in Mathews, North Carolina.
 18. Additionally, True Homes purchased various supplies for the Summerlake project from vendors throughout both Carolinas.
 19. True Homes employees in North Carolina supported the Summerlake project by providing design services, accounting services, legal services, and warranty services.
 20. Upon information and belief, many of the subcontractors lived in North Carolina and drove to the Summerlake project each day.
-
21. As part of the purchase agreements with True Homes, customers sign an agreement to arbitrate any claims they may have.
 22. Plaintiff Karin Fuentes signed the arbitration agreement with True Homes. A true and accurate copy of her contract is attached hereto as Exhibit A.
 23. Alex Fresco, the original purchaser of 923 Summerlake Drive, now owned by Susan Hagy, also signed an arbitration agreement with True Homes. A true and accurate copy of his contract is attached hereto as Exhibit B.
 24. True Homes relies upon its ability to resolve any rare disputes with its customers in a cost-efficient manner when it prices its homes.
 25. As True Homes' activities span multiple areas throughout the Carolinas, True Homes employs numerous subcontractors outside of South Carolina, and True Homes utilizes other vendors from outside of South Carolina, True Homes' activities affect interstate commerce.

Further affiant sayeth naught.

Nick Bacon, Esq.



SWORN TO SUBSCRIBED before me
This, the 13th day of MAY, 2022



Notary Public
My commission expires April 16, 2025

TrueHomes

WE SA, L, INC. 11/11/11

HOME PURCHASE AGREEMENT Inventory Home

TRUE HOMES, LLC, a Delaware Limited Liability Company located in Charlotte, North Carolina ("Seller") and Karin Josue Fuentes (jointly and severally known as "Buyer") currently residing at 8417 Riverbriar Drive Apt. 304 Charlotte, NC 28210 ("Existing Home") enter this agreement on the date below. This document (including the Terms and Conditions on page 2), the Warranty Document, Seller Paid Closing Cost Incentive Addendum (if applicable), and such other addenda signed by and between the parties and incorporated by reference herein (collectively the "Agreement").

- 1. SALE AND PURCHASE.** Seller agrees to sell and Buyer agrees to purchase the home(s) below subject to all restrictions, covenants and easements (the "Home(s)") and all buildings or improvements to be constructed or installed thereon according to this Agreement (the "Residence") (the Home(s) and the Residence will be referred to collectively as the "Home"). The Residence will be built on the Home(s) consistent with the plot plan.
- 2. CONSTRUCTION.** Seller will build or has built a home for Buyer according to this Agreement and Seller's standard procedures. Model homes have custom features, many of which may be added to the Home for additional cost as Custom Features. The Home will be described as follows:

Community: SML Lot: 71 Home Address: 2005 Firefly Lane Fort Mill, SC 29715
Plan Name: The Dublin Plan #: Elevation:

3. FOUNDATION TYPE:

MONO SLAB: This is a formed concrete slab placed directly on the compacted ground. The plumbing is placed in the foundation before the plumbing is poured, and once set, the foundation, plumbing and electrical line placement is permanent. With Mono Slab the footing, foundation perimeter and the interior slab are formed and poured all at the same time. Most homes built in this area have a mono-slab foundation as the base home foundation type. Since the foundation is at ground level, the home will include a 3x3 concrete stoop at the rear door.

- 4. PURCHASE PRICE.** The purchase price for the Home will be the aggregate of the Home, Home(s), Elevation, Foundation, Structural Options, (each as applicable and as determined herein) plus any additional amounts payable pursuant to the Custom Features Addendum for showroom options (collectively the "Purchase Price"). Option prices will be determined at the time of contract, so long as the Buyer completes the selections appointment within 60 days.

PURCHASE PRICE		DEPOSIT	
Purchase Price:	\$186,650	Initial Deposit:	
		Preferred Lender Initial Deposit:	\$500
		Standard Initial Deposit:	\$2,000

Additional deposit paid at the Showroom equal to any increase to the Purchase Price in approved changes or additional selections ("Additional Deposit").

- 5. DEPOSIT.** Collectively the Initial Deposit, the Additional Deposit, and any other amounts paid by Buyer prior to Closing will be the "Deposit". Upon Closing (defined below), Buyer will pay the balance of the Purchase Price after deducting the Deposit. Deposit will be a working capital, will not be subject to any escrow, and Seller will have the right to use the Deposit for any purpose. Deposit will be non-refundable following completion of the Custom Features Addendum (if applicable) receipt of Loan Prequalification, or commencement of any changes to the Home. Failure to pay any deposit when due is an event of default and may result in Seller's Termination of the Purchase Agreement.

- 6. LOAN APPLICATION AND PREQUALIFICATION.** Buyer must submit a written application for financing to a Preferred or Non-Preferred Lender (Collectively "Lender", each as defined below) within 3 days of the contract date. Within 7 days of the Effective Date, Buyer will provide Seller sufficient documentation, that Buyer can pay the Purchase Price ("Prequalification"). Prequalification may include written approval of a mortgage or other financing of the Purchase Price by (i) one of Seller's preferred lenders, as determined from time to time in the Seller's discretion ("Preferred Lender") or (ii) a licensed lender, mortgage company or bank ("Non-Preferred Lender") so long as the Non-Preferred Lender completes any and all documentation required by Seller in its sole discretion. Buyer authorizes Seller and Lender to communicate completely about Buyer's financial condition, including Buyer's credit report, credit score and any other relevant information, for Seller to completely evaluate Buyer's initial and continual ability to purchase a home. Buyer authorizes Lender to provide Seller, or any third-party involved in the financing of the Home(s) or Home, with any and all information and documents including a copy of the completed Prequalification form, and appraisal (as described below). Regardless of Prequalification, after construction changes begin, all Deposits are non-refundable and any financing contingencies are satisfied. Failure to provide Prequalification is an event of default, and may result in Seller's Termination of the Purchase Agreement and/or Buyer's forfeiture of the Deposit.

- 7. FINAL APPROVAL AND APPRAISAL.** At least 3 days prior to the scheduled Closing, Buyer will obtain final loan approval subject only to final verification of employment, updated bank statements and paystubs, and a final credit check. After receipt of the Prequalification, Seller will rely on Buyer's ability to finance the Home, notwithstanding any change in loan program terms, interest rates, or other financing terms or conditions. Buyer will obtain an acceptable appraisal in excess of the Purchase Price ("Appraisal"), pay cash at closing to make up any shortfall, or reduce selections by the Home to meet the Purchase Price. The Appraisal is not contingent upon, nor is the Purchase Price reduced by, the Appraisal value. In the event of a low appraisal, Buyer agrees to remove selections to lower the Purchase Price (where possible); provide additional non-refundable deposit in the amount of the appraisal shortfall, or reduce other incentives. Failure to provide Seller with Prequalification or Appraisal is an event of default, and may result in Seller's Termination of the Purchase Agreement.

- 8. ESTIMATED COMPLETION DATE.** Seller is unable to provide an estimated completion date more than 21 days prior to scheduled completion of the Home, but both parties agree that for a completed Home, Closing must occur in less than 60 days after the point of contract, unless subsequently extended by agreement of the parties. Before any agreed upon changes to the Home can be made, Buyer must (a) Sign Agreement and all related documents; (b) Pay total Deposit; (c) Provide Prequalification and Appraisal; and (d) Satisfy all contingencies. Finally, completion of the Home may be delayed for many reasons, including: product availability, labor shortages, acts of God, and weather. Seller assumes no liability for any delay in the Closing of the Home, including without limitation, any increased living expenses, moving costs, financing rates or costs associated with an expired interest rate lock.

- 9. CLOSING AND RISK OF LOSS.** While Buyer retains the right to retain any legal counsel to review documents and provide Buyer with legal advice, the closing documents will be prepared by the Attorney designated by Seller ("Closing Attorney") and the closing will occur at Closing Attorney's office. Seller will provide Buyer approximately 10 days advance written notice of the name and address of this Attorney, and the date and location for Buyer to pay Seller the Purchase Price and Seller to transfer title of the Home to Buyer ("Closing"). Seller may permit an extension of the Closing for up to 10 days upon the payment of a \$75.00 per day Closing extension fee. For a completed home, Buyer agrees to Close within twenty one (21) days after the Effective Date unless an extended closing is negotiated at the point of contract and documented on the Closing Expectation Addendum. Buyer assumes all risk of loss at Closing, and will obtain sufficient insurance coverage for the Home. Buyer is responsible for owners title insurance, private mortgage insurance, government recording and transfer fees including revenue stamps, mortgage insurance premium, survey costs, FHA or VA fees, and any other closing costs attributable to the purchase and sale of the Home.

IN WITNESS WHEREOF, the parties have signed this Agreement on the dates written below. The document will not become effective until ratified by an authorized representative of the Seller ("Effective Date"). BUYER HAS READ, UNDERSTANDS, AND VOLUNTARILY AGREES TO THIS AGREEMENT. NO REPRESENTATIVE OF SELLER HAS MADE ANY REPRESENTATION OTHER THAN THOSE CONTAINED IN THIS AGREEMENT, WHICH HAVE CREATED EXPECTATIONS IN BUYER OR ARE BEING RELIED ON BY BUYER TO SIGN THIS AGREEMENT.


Buyer Signature

Karin Josue Fuentes
Buyer Printed Name

Buyer Signature

Buyer Printed Name

8/27/14
Date


Sales Counselor Signature

Sales Counselor Printed Name

Operations Partner Signature

Operations Partner Printed Name

8-27-14
Date

8/28/14
Date

Operations Partner
Credit/Closings/

Revised: 8/15/2014

TERMS AND CONDITIONS

10. **Homeowner Association Dues.** Upon Closing, Buyer will become a member of any homeowner's association applicable for the community (the "Association") and will abide by the Association's declaration of covenants and restrictions. Buyer agrees to pay when due, all charges, assessments, capital contributions, transfer fees, or other amount determined by the Association ("Dues") and agrees to pay at Closing its share of such Dues for the calendar year in which the Closing occurs, prorated on a daily basis.
11. **Real Estate Commission.** Seller will pay only one commission to a Buyer's agent. Seller will pay the Buyer's agent associated with the Buyer at the earliest point of contact with Seller, and only where that agent is also listed in an attached Real Estate Commission Addendum. Buyer would be responsible to pay any other real estate agents retained by Buyer.
12. **Changes.** Buyer can make no changes to the Home other than as agreed on the Effective Date ("Late Changes"). If Seller permits a Late Change, there would be a fee (in addition to the cost of the Late Changes). Buyer is responsible to communicate any increase in Purchase Price to Lender and pay the new Purchase Price regardless of any limits on financing. Seller may make changes to the Home as necessary to comply with State or Local law, to satisfy zoning commitments, correct an error, improve design, or to maintain competitive pricing. Final home handing is always determined by site conditions and is subject to change. Buyer agrees to accept any change to the Home specifications that does not materially impact the Home's value.
13. **Real Estate Taxes.** All taxes assessed for any prior calendar year and remaining unpaid will be paid by Seller. In addition, as a final settlement between Buyer and Seller, Seller will provide a credit to Buyer for property tax assessed against the Home for the current calendar year on a calendar-year basis, as of the day prior to the Closing. Seller's pro-rated share of the property tax will be based on the land value of the Home unless the property has already been assessed as improved property prior to Closing.
14. **Possession of the Home.** Until Closing, Buyer will have no right to possess or use the Home. Buyer may not enter the Home without Seller's agent and Buyer will not perform or direct any work or install any materials at the Home prior to Closing. Any materials placed in the Home prior to Closing will become the property of Seller. At Closing, Buyer will change into Buyer's name all utility and other service accounts related to the Home, and Seller will terminate all such service in Seller's name.
15. **Inspection and Incomplete Items.** Prior to Closing, Seller and Buyer will inspect the Home using Seller's standard procedures and complete the home to a finish similar to Seller's model. Buyer may hire a third-party inspector to provide an inspection prior to Closing, but the Closing will not be delayed to accommodate the same. Seller will create a list to be completed in the Home ("Incomplete Items"). Incomplete items may be completed at Seller's expense post-Closing if necessary, so long as the Home is materially complete, as evidenced by the certificate of occupancy and availability of power, gas, and water.
16. **Site Conditions.** Final characteristics of your homestead may differ from those observed at the time of contract, including but not limited to whether any slopes will remain or be created, pad width or depth, driveway handling, driveway slope (positive or negative), location or existence of drainage swales, removal of trees or vegetation, location of utilities, street lights, utilities, easements, adjacent lot characteristics, home handling, or any other aesthetic issue with the homestead or surrounding homesteads. One or more easements may exist on the property. Easements are generally recorded for the benefit of a local government municipality, a utility provider or the homeowner association. Potential easements could include: sanitary sewer lines, drainage and utility easements, or such other recorded easement that limits the property. Seller makes no representation regarding the suitability of the homestead for a pool, deck, or patio.
17. **Entire Agreement.** This Agreement constitutes the final expression of the parties' agreement and is a complete and exclusive statement of the terms of that agreement. All prior oral or written agreements of the parties are superseded by this Agreement. Seller's sales representatives are not authorized to modify any term of this Agreement, or to make any representation, which is not expressly provided in this Agreement. The terms of this Agreement will survive the Closing.
18. **Buyer Cooperation.** Buyer will fully cooperate to give effect to this Agreement and allow for completion of the Home without delay. Buyer will attend each scheduled appointment, and comply with all requested timelines, as more specifically provided in Seller's "Construction Expectations" document signed contemporaneously herewith. Buyer agrees that he will not interfere in any way with Seller's performance, or Seller's business, before or after Closing. Time is of the essence regarding Buyer's obligations herein. Buyer and Seller both agree to cooperate in good faith to correct any material error made in good faith, including any mistake in pricing.
19. **Default.** Any of the following will be a "Default": (a) Buyer's failure to cooperate in full with Seller during the construction process; (b) Buyer's failure to timely close the Home; (c) Buyer's failure to pay the Deposit when due; (d) Buyer's inability to secure or maintain Prequalification, including Buyer's failure to timely satisfy or maintain any condition thereon; or (f) any breach of the Agreement.
20. **Liquidated Damages.** Buyer has voluntarily agreed to the terms and conditions of this Agreement. If Buyer Defaults on the Agreement, Seller will suffer significant damage in an amount that cannot easily be calculated. The Parties agree that the greater of \$5,000 or the Deposit would reasonably compensate Seller for this loss ("Liquidated Damages"). Buyer expressly agrees that the Liquidated Damages amounts are reasonable computations of Seller's anticipated loss, and are not punitive in nature.
21. **Seller's Remedies in a Default.** In a Default, Seller may do any or all of the followings: (a) proceed with construction of the proposed Home; (b) terminate this Agreement with no further obligation or liability of Buyer; (c) seek any action under law, including the sale of the Home to another person, and collect from the Buyer the difference between that sale and this Agreement; (d) collect the Liquidated Damages; (e) retain any Deposit.
22. **Miscellaneous.** This Agreement will be governed by the laws of the State where the Home exists. This Agreement is subordinate to the mortgage on the real estate, if any, of any financial institution providing mortgage funds to Seller, and will not be recorded. This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the parties, and no rule of construction or interpretation shall apply against any particular party. This Agreement shall be construed and interpreted in a neutral manner. Headings are for convenience only. If a court finds any sentence or term of this Agreement to be unenforceable, the validity of the remaining terms will not be affected. No waiver of any term of this Agreement will constitute a waiver of any other provision or right hereof (whether or not similar) or a continuing waiver. Seller may not own the real estate on the Effective Date or during construction, and may refund the Deposit and terminate the Agreement without liability if Seller is unable to purchase the homestead before closing. At Seller's sole and absolute discretion, Seller may refund the Deposit, terminate this Agreement, and both parties will be released from any further obligation. Seller will retain all rights to use the homestead of the Home in any marketing material or media post-closing, and retains all legal rights to any intellectual property, including copyrights associated with the plans. This Agreement may not be modified, amended, or waived except in writing signed by Buyer and Builder. In the event of a breach of the Agreement, the losing party will pay all costs and expenses, including the winning party's attorney fees incurred as a result of a breach of this Agreement. Buyer will provide Seller a valid e-mail address and agrees to accept formal notice via electronic transmission. The address for each party, until changed in writing, will be: For Buyer: The Existing Home or the E-mail address provided by Buyer to Seller. For Seller: the Seller's registered address with the governing State's office of the Secretary of State.
23. **Warranty Policy and Dispute Resolution.** Seller will purchase shortly following Closing, and provide to Buyer, the Warranty Policy in substantially the same form as the sample booklet provided herewith ("Warranty Policy"). All capitalized terms used in this document that are not defined in the Purchase and Sale Agreement shall refer to the defined term in the Warranty Policy. Buyer acknowledges a receipt of the sample Warranty Policy provided at the point of contract. In the absence of any applicable repair standard in the Warranty Policy, the related industry standard provided by the National Association of Homebuilders ("NAHB Standards") will be used as a guide. At the Closing, Buyer will receive the benefit from any applicable manufacturers' or suppliers' warranties but Builder assumes no liability related to the same. Builder may remove any existing trees that could interfere with Builder's ability to build the Home and will not be liable for damage caused to existing trees during construction of the Home. The parties agree to abide by the Mediation and Arbitration provisions contained in the Warranty Policy. Buyer's landscaping, appliances, and any installed septic or well water system are specifically excluded from Seller's warranty. For homes with a well, Seller provides no warranty regarding the quality, quantity or continued availability of water beyond the ability of Seller to obtain a certificate of occupancy prior to closing. SELLER AND BUYER KNOWINGLY AND VOLUNTARILY AGREE TO SUBMIT ANY WARRANTY DISPUTES FOR RESOLUTION IN ACCORDANCE WITH THE PROCESS DESCRIBED IN THE LIMITED WARRANTY BOOKLET, INCLUDING WITHOUT LIMITATION, BINDING ARBITRATION, AND, AS TO SUCH DISPUTES, BUYER AND SELLER EACH WAIVES THEIR RESPECTIVE RIGHT TO TRIAL BEFORE A JUDGE OR JURY.
24. **Warranty Term.** Beginning on the Effective Date of the Warranty, for one (1) year, the Home will be free from Defects caused by faulty workmanship or defective materials. For two (2) years, the Home will be free from Defects caused by faulty installation of plumbing, electrical, heating, cooling, or ventilating systems, exclusive of fixtures, major appliances, or home equipment. For ten (10) years, the Home will be free from Structural Defects as defined in the Warranty Policy. If an item is not defined as a Defect in the Warranty Policy, it is not defective, and Seller has no obligation to address the issue. Seller's only obligation under the Warranty is to correct the Defect as provided by the Warranty Policy, and has no liability for any consequential or incidental damage resulting therefrom. Homes require continued maintenance, and Seller's Warranty excludes any Defect caused by a failure to provide appropriate periodic maintenance. If Seller determines in its sole discretion to address an item that is not defective ("Customer Service"), Seller may apply any another objective standard from the Warranty Policy or the NAHB Standards, and offer to provide the voluntary service to maintain good customer relations only. Customer Service will not operate as a waiver of any provision of the Warranty Policy or this Agreement. Failure to object in writing to Seller's repair work within 10 days of the work will reflect Buyer's acceptance of Seller's performance.
25. **Notice and Disclaimer.** At various times, the U.S. Environmental Protection Agency has expressed concern over the presence of radon gas, mold and other air pollutants ("Pollutants"). Prolonged exposure to high levels of Pollutants may have adverse health effects. Seller will not make any investigation to determine whether there are any Pollutants in the Home or affecting the premises, although such conditions may exist. At the time of closing, Seller will have made no analysis or verification of the extent of the environmental or health hazard, if any, that may affect the Home, premises or residents. As such, Seller makes no representation or warranty and has no liability in connection with the presence of any Pollutants, including radon or mold.
26. **Disclaimer of Implied Warranties.** THE LIMITED WARRANTY PROVIDED IN THE Warranty Policy IS ACCEPTED BY THE BUYER IN LIEU OF ALL OTHER WARRANTIES EXPRESSED AND/OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF WORKMANLIKE CONSTRUCTION, IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, THE IMPLIED WARRANTY OF HABITABILITY AND ALL WARRANTIES THAT COULD BE CONSTRUED TO COVER THE PRESENCE OF RADON OR OTHER ENVIRONMENTAL POLLUTANTS. ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, ARE WAIVED BY REASON OF THE PROMISES AND AGREEMENTS HEREIN CONTAINED. Buyer also waives the right to recover from seller of consequential, incidental, punitive, or exemplary damage, including emotional distress, pain and suffering, lost profits, depreciation or other statutory damages. The only warranties seller provides to the Buyer are those contained in the Warranty Policy. Buyer recognizes that by accepting the express seller's warranties and the Seller's insurance covering those warranties for the periods of time provided in the contract that Buyer is waiving the right to any claim for implied warranties which may be greater than the express warranties. Seller has no liability for any consequential damages, including without limitation, lost wages or opportunity, lost or damaged household items, housing or medical expense.

Buyer Initials

[Handwritten Signature]



HOME PURCHASE AGREEMENT ADDITIONAL TERMS AND CONDITIONS

TRUE HOMES, LLC, a Delaware Limited Liability Company located in Charlotte, NC ("Seller") and Buyer(s) listed below have entered a Home Purchase Agreement. The parties acknowledge these Additional Terms and Conditions to the Home Purchase Agreement.

Buyer(s): **Alex Fresco**

Home: **SML 88**

- 1. Loan Application and Prequalification.** Buyer must submit a written application for financing to a Preferred or Non-Preferred Lender (Collectively "Lender", each as defined below) within 3 days of the contract date. Within 14 days of the Effective Date, Buyer will provide Seller sufficient documentation that Buyer can pay the Purchase Price ("Prequalification"). Prequalification may include written approval of a mortgage or other financing of the Purchase Price by (i) one of Seller's preferred lenders, as determined from time to time in the Seller's discretion ("Preferred Lender") or (ii) a licensed lender, mortgage company or bank ("Non-Preferred Lender") so long as the Non-Preferred Lender completes any and all documentation required by Seller in its sole discretion. Buyer authorizes Seller and Lender to communicate completely about Buyer's financial condition, including Buyer's credit report, credit score and any other relevant information, for Seller to completely evaluate Buyer's initial and continual ability to purchase a home. Buyer authorizes Lender to provide Seller, or any third-party involved in the financing of the Homesite or Home, with any and all information and documents including a copy of the completed Prequalification form, Form A, and Appraisal. Regardless of Prequalification, after construction begins, all Deposits are non-refundable and any financing contingencies are satisfied. Failure to timely provide Prequalification is an event of default, and may result in Seller's Termination of the Purchase Agreement, and Buyer's loss of Deposit.
- 2. Final Approval and Appraisal.** Within 14 days after selections, Buyer will obtain final loan approval subject only to final verification of employment, updated bank statements and paystubs, and a final credit check ("Form A"). After receipt of the Form A, Seller will rely on Buyer's ability to finance the Home, notwithstanding any change in loan program terms, interest rates, or other financing terms or conditions. Buyer will obtain an acceptable appraisal in excess of the Purchase Price ("Appraisal"), pay cash at closing to make up any shortfall, or reduce selections in the Home to meet the Purchase Price. The Appraisal is an opinion of value used by a lender to determine whether sufficient collateral exists to provide a mortgage loan. While the Appraisal may limit Buyer's mortgage amount, the Agreement is not contingent upon, nor is the Purchase Price reduced by, the Appraisal value. In the event of a low appraisal, Buyer agrees to remove selections to lower the Purchase Price, provide additional non-refundable deposit in the amount of the appraisal shortfall, or reduce other incentives. Failure to provide Seller with Form A or Appraisal is an event of default, and may result in Seller's Termination of the Purchase Agreement, and Buyer's loss of Deposit.
- 3. Frame Start and Estimated Completion Date.** Seller is unable to provide an estimated completion date prior to construction, but both parties agree that Closing must occur in less than 24 months after Effective Date, unless subsequently extended by agreement of the parties. Before any construction can begin, Buyer must (a) Sign Agreement and all related documents; (b) Pay Deposit; (c) Provide Form A, Appraisal and Proof of Funds (if applicable); (d) Satisfy all contingencies; and (e) Complete all selections. Buyer's initial frame start date is determined following receipt of Buyer's Form A, Appraisal, completion of selections, receipt of the Deposit, removal of any contingencies, and receipt of any and all permits and governmental approvals necessary to build the Home. Seller reserves the sole and absolute discretion to build the Home, and determine the number and order of homes framed. Finally, completion of the Home may be delayed for many reasons, including: product availability, labor shortages, acts of God, and weather. Seller assumes no liability for any delay in the Closing of the Home, including without limitation, any increased living expenses, moving costs, financing rates or costs associated with an expired interest rate lock.
- 4. Closing Costs and Risk of Loss.** While Buyer retains the right to retain any legal counsel to review documents and provide Buyer with legal advice, the closing documents will be prepared by the Attorney designated by Seller ("Closing Attorney") and the closing will occur at Closing Attorney's office. Seller will provide Buyer approximately 14 days advance written notice of the name and address of the Closing Attorney, and an approximate date for Buyer to pay Seller the Purchase Price and Seller to transfer title of the Home to Buyer ("Closing"). Seller may permit an extension of the Closing for up to 10 days upon the payment of a \$75.00 per day Closing extension fee. For a completed home, Buyer agrees to Close within twenty one (21) days where possible, and in no event more than thirty (30) days after the Effective Date. Buyer assumes all risk of loss at Closing, and will obtain sufficient insurance coverage for the Home. Seller will pay the cost of document preparation necessary to transfer title, and any additional costs indicated above. Buyer is responsible for owners title insurance, private mortgage insurance, government recording and transfer fees including revenue stamps, mortgage insurance premium, survey costs, FHA or VA fees, and any other closing costs attributable to the purchase and sale of the Home.
- 5. Homeowner Association Dues.** Upon Closing, Buyer will become a member of any homeowner's association applicable for the community (the "Association") and will abide by the Association's declaration of covenants and restrictions. Buyer agrees to pay when due, all charges, assessments capital contributions, transfer fees, or other amount determined by the Association ("Dues") and agrees to pay at Closing its share of such Dues for the calendar year in which the Closing occurs, prorated on a daily basis.
- 6. Real Estate Commissions.** Seller will pay only one commission to a Buyer's agent. Seller will pay the Buyer's agent associated with the Buyer at the earliest point of contact with Seller, and only where that agent is also listed in an attached Real Estate Commission Addendum. Buyer represents that no other agents have been engaged to assist them to find a home. Buyer would be responsible to pay any other agents retained by Buyer.
- 7. Changes.** Changes to the Home after contract, or following completion of selections ("Late Changes"), may result in a delay and additional cost and may not always be possible. However, if Seller can accommodate the Late Change, there would be a change fee in addition to the cost of the Late Changes as more fully described on the Change Fee Schedule provided herewith. Buyer acknowledges receipt of the Change Fee Schedule, and agrees to communicate any change in the Purchase Price to Lender and pay the new Purchase Price regardless of any limits on financing. Seller may make changes to the Home as necessary to comply with State or Local law, to satisfy zoning commitments, correct an error, improve design, or to maintain competitive pricing. Final home handing cannot be changed by Buyer preference, will be determined by site conditions, and is subject to change after field verification. Buyer agrees to accept any change to the Home specifications that does not materially impact the Home's value, and understands that the final Home may differ from marketing collateral.

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HOME PURCHASE AGREEMENT
ADDITIONAL TERMS AND CONDITIONS

8. **Real Estate Taxes.** All taxes assessed for any prior calendar year and remaining unpaid will be paid by Seller. In addition, as a final settlement between Buyer and Seller, Seller will provide a credit to Buyer for property tax assessed against the Home for the current calendar year on a calendar-year basis, as of the day prior to the Closing. Seller's pro-rated share of the property tax will be based on the land value of the Home unless the property has already been assessed as improved property prior to Closing.
9. **Possession of and Access to the Home.** Until Closing, Buyer will have no right to possess or use the Home. Buyer may not enter the Home without Seller's agent and Buyer will not perform or direct any work or install any materials at the Home prior to Closing. Buyer waives any claims arising from unauthorized access to the Home prior to Closing, and agrees to defend and indemnify Seller for any claims or allegations related thereto. Any materials placed in the Home prior to Closing will become the property of Seller. At Closing, Buyer will change into Buyer's name all utility and other service accounts related to the Home, and Seller will terminate all such service in Seller's name.
10. **Inspection and Incomplete Items.** Prior to Closing, Seller and Buyer will inspect the Home using Seller's standard procedures and complete the home to a finish similar to Seller's models. Buyer may hire a third-party inspector to provide an inspection prior to Closing, but the Closing will not be delayed to accommodate the same. Buyer represents that Inspector is licensed and fully insured and agrees to defend and indemnify Seller for any claims arising from inspector's access to the Home. Seller will create a list to be completed in the Home ("Incomplete Items"). Incomplete Items will be completed at Seller's expense post-Closing if necessary.
11. **Site Conditions.** Final characteristics of your homesite may differ from those observed at the time of contract, including but not limited to whether any slopes will remain or be created, pad width or depth, driveway handing, driveway slope (positive or negative), location or existence of drainage swales, removal of trees or vegetation, location of utilities, street lights, utilities, easements, adjacent lot characteristics, home handing, or any other aesthetic issue with the homesite or surrounding homesites. One or more easements may exist on this property. Easements are generally recorded for the benefit of a local government municipality, a utility provider or the homeowner association. Potential easements could include: sanitary sewer lines, drainage and utility easements, or other recorded easements on the property. Seller will provide the final grade on the homesite shortly before closing, and will grade the lot such that no rocks will protrude greater than 1-inch above the surface. Rocks occur naturally, and will be present at or below the surface of the yard. Unless specifically provided on the Custom Features Addendum, Seller makes no representation regarding the suitability of the homesite for a pool, deck, patio or any other landscaped features.
12. **Entire Agreement.** This Agreement constitutes the final expression of the parties' agreement and is a complete and exclusive statement of the terms of that agreement. All prior oral or written agreements of the parties are superseded by this Agreement. Seller's sales representatives are not authorized to modify any term of this Agreement, or to make any representation, which is not expressly provided in this Agreement. The terms of this Agreement will survive the Closing.
13. **Buyer Cooperation.** Buyer will fully cooperate to give effect to this Agreement and allow for construction of the Home without delay. Buyer will attend each scheduled appointment, and comply with all requested time lines, as more specifically provided in Seller's "Construction Expectations" document signed contemporaneously herewith. Buyer agrees that he will not interfere in any way with Seller's performance, or Seller's business, before or after Closing. Time is of the essence regarding Buyer's obligations herein. Buyer and Seller both agree to cooperate in good faith to correct any material error made in good faith, including any mistake in pricing.
14. **Miscellaneous.** This Agreement will be governed by the laws of the State where the Home exists. This Agreement is subordinate to the mortgage on the real estate, if any, of any financial institution providing mortgage funds to Seller, and will not be recorded. This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the parties, and no rule of construction or interpretation shall apply against any particular party. This Agreement shall be construed and interpreted in a neutral manner. Headings are for convenience only. If a court finds any sentence or term of this Agreement to be unenforceable, the validity of the remaining terms will not be affected. No waiver of any term of this Agreement will constitute a waiver of any other provision or right hereof (whether or not similar) or a continuing waiver. Seller may not own the real estate on the Effective Date or during construction, and may refund the Deposit and terminate the Agreement without liability if Seller is unable to purchase the homesite before closing. At Seller's sole and absolute discretion, Seller may refund the Deposit, terminate this Agreement, and both parties will be released from any further obligation. Seller will have all rights to use the likeness of the Home in any marketing material or media. This Agreement may not be modified, amended, or waived except in writing signed by Buyer and Builder. In the event of a breach of the Agreement, the losing party will pay all costs and expenses, including the winning party's attorney fees incurred as a result of a breach of this Agreement. Buyer will provide Seller a valid e-mail address and agrees to accept formal notice via electronic transmission. The address for each party, until changed in writing, will be: For Buyer: The Existing Home or the E-mail address provided by Buyer to Seller. For Seller: the Seller's registered address with the governing State's office of the Secretary of State.
15. **Warranty Policy.** Seller will purchase shortly following Closing, and provide to Buyer, the Warranty Policy in materially the same form as the sample booklet provided herewith ("Warranty Policy"). All capitalized terms used in this document that are not defined in the Purchase and Sale Agreement shall refer to the defined term in the Warranty Policy. Buyer acknowledges a receipt of the sample Warranty Policy provided at the point of contract. In the absence of any applicable repair standard in the Warranty Policy, the related industry standard provided by the National Association of Homebuilders ("NAHB Standards") will be used as a guide. At the Closing, Buyer will receive the benefit from any applicable manufacturers' or suppliers' warranties but Builder assumes no liability related to the same. Builder may remove any existing trees that could interfere with Builder's ability to build the Home and will not be liable for damage caused to existing trees during construction of the Home. The parties agree to abide by the Mediation and Arbitration provisions contained in the Warranty Policy. Buyer's landscaping, appliances, and any installed septic or well water system are specifically excluded from Seller's warranty. For homes with a well, Seller provides no warranty regarding the quality, quantity or continued availability of water beyond the ability of Seller to obtain a certificate of occupancy prior to closing.
16. **Warranty Term.** Beginning on the Effective Date of the Warranty, for one (1) year, the Home will be free from Deficiencies caused by faulty workmanship or defective materials as demonstrated by conformance to the Standards of Performance for first year coverage provided in the Warranty Policy. For two (2) years, the Home will be free from Deficiencies caused by faulty installation of plumbing, electrical, heating, cooling, or ventilating systems, exclusive

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HOME PURCHASE AGREEMENT ADDITIONAL TERMS AND CONDITIONS

of fixtures, major appliances, or items of equipment, as demonstrated by conformance to the Standards of Performance for second year coverage provided in the Warranty Policy. For ten (10) years, the Home will conform to the warranty tolerances for Defined Structural Elemental Failures as defined in the Warranty Policy. If an item is not defined as a Deficiency in the Warranty Policy, it is not defective, and Seller has no obligation to address the issue. Seller's only obligation under the Warranty is to repair or replace an item giving rise to the Deficiency as provided by the Standards of Performance or warranty tolerances provided in the Warranty Policy, and has no liability for any consequential or incidental damage resulting therefrom. Homes require continued maintenance, and Seller's Warranty excludes any Deficiency caused by a failure to provide appropriate periodic maintenance. If Seller determines in its sole discretion to address an item that is not defective ("Customer Service"), Seller may apply any another objective standard from the Warranty Policy or the NAHB Standards, and offer to provide the voluntary service to maintain good customer relations only. Customer Service will not operate as a waiver of any provision of the Warranty Policy or this Agreement. Failure to object in writing to Seller's repair work within 10 days of the work will reflect Buyer's acceptance of Seller's performance.

17. **Default.** Any of the following will be a "Default": (a) Buyer's failure to cooperate in full with Seller during the construction or preconstruction process; (b) Buyer's failure to timely close the Home; (c) Buyer's failure to pay the Deposit when due; (d) Buyer's inability to secure or maintain financing approval after prequalification; (e) Buyer's failure to timely satisfy or maintain any condition on the Loan Prequalification; or (f) any breach of the Agreement.
18. **Liquidated Damages.** If Buyer Defaults on the Agreement, Seller will suffer significant damage in an amount that cannot easily be calculated. The Parties agree that \$2,500 would reasonably compensate Seller for this loss if no building permit has been obtained; \$5,000 would reasonably compensate Seller for this loss if Seller has purchased building permits; and the greater of the Deposit or \$2,500 would reasonably compensate Seller for this loss if Seller has started construction of the Home ("Liquidated Damages"). Buyer expressly agrees that the Liquidated Damage amounts are reasonable computations of Seller's anticipated loss, and are not punitive in nature.
19. **Seller's Remedies in a Default.** In a Default, Seller may do any or all of the following: (a) proceed with construction of the proposed Home; (b) terminate this Agreement with no further obligation or liability of Seller; (c) seek any action under law, including the sale of the Home to another person, and collect from the Buyer the difference between that sale and this sale.
20. **Environmental Notice and Disclaimer.** The U.S. Environmental Protection Agency has expressed concern over the presence of radon gas, mold and other air pollutants ("Pollutants"). Prolonged exposure to high levels of Pollutants may have adverse health effects. Seller will not make any investigation to determine whether there are any Pollutants in the Home or affecting the premises, although such conditions may exist. At the time of closing, Seller will have made no analysis or verification of the extent of the environmental or health hazard, if any, that may affect the Home, premises or residents. As such, Seller makes no representation or warranty and has no liability in connection with the presence of any Pollutants, including radon or mold.
21. **Waiver of Trial by Jury and Waiver of Consequential Damages.** SELLER AND BUYER KNOWINGLY AND VOLUNTARILY AGREE TO SUBMIT ANY AND ALL DISPUTES WHATSOEVER TO BINDING ARBITRATION, INCLUDING WITHOUT LIMITATION, DISPUTES ARISING FROM THE WARRANTY, THE HOME PURCHASE AGREEMENT, THE HOME, OR THE RELATIONSHIP BETWEEN THE PARTIES. AS TO SUCH DISPUTES, BUYER AND SELLER EACH WAIVES THEIR RESPECTIVE RIGHT TO TRIAL BEFORE A JUDGE OR JURY. In addition, Buyer expressly waives any right to collect consequential damages, including without limitation, lost wages or opportunity, lost or damaged household items, housing or medical expense.
22. **Disclaimer of Implied Warranties.** THE LIMITED WARRANTY PROVIDED IN THE WARRANTY POLICY IS ACCEPTED BY THE BUYER IN LIEU OF ALL OTHER WARRANTIES EXPRESSED AND/OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF WORKMANLIKE CONSTRUCTION, IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, THE IMPLIED WARRANTY OF HABITABILITY AND ALL WARRANTIES THAT COULD BE CONSTRUED TO COVER THE PRESENCE OF RADON OR OTHER ENVIRONMENTAL POLLUTANTS. ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, ARE WAIVED BY REASON OF THE PROMISES AND AGREEMENTS HEREIN CONTAINED. Buyer also waives the right to recover from seller all consequential, incidental, punitive, or exemplary damage, including emotional distress, pain and suffering, lost profits, depreciation or other statutory damages. The only warranties seller provides to the Buyer are contained in the Warranty Policy. Buyer accepts the Warranty Policy as the exclusive warranty and is affirmatively waiving the right to any claim for implied warranties which may be greater than the express warranties.


Buyer Signature
Alex Fresco

10-11-15
Date


True Advisor Signature
Chad Poteat

10-11-15
Date

CoBuyer Signature

Date


Nick Bacon
Operations Partner
Operations Partner Signature

10/16/15
Date

Credit / Closings / Legal

☐ AF ☐

YORK COUNTY, SC	
2018047660	DEED
RECORDING FEES	\$10.00
STATE TAX	\$627.90
COUNTY TAX	\$265.65
11-06-2018	10:53:39 AM
BK:RB 17266	PG:261-264

YORK COUNTY ASSESSOR

Tax Map:

729-07-01-096

Date: 11/06/2018

E H

Prepared By:

**Hankin & Pack, PLLC
2820 Selwyn Avenue, Suite 425
Charlotte, NC 28209**

STATE OF SOUTH CAROLINA

COUNTY OF YORK

GENERAL WARRANTY DEED

The designation Grantor and Grantee as used herein shall include the named parties and their heirs, successors and assigns and shall include singular, plural, masculine, feminine or neuter as required by context.

KNOW ALL MEN BY THESE PRESENTS, that Alex Fresco, in the State aforesaid, for and in consideration of the sum of TWO HUNDRED FORTY-ONE THOUSAND TWO HUNDRED AND NO/100 DOLLARS (\$241,200.00), the receipt and sufficiency of which is here acknowledged, has granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said:

Opendoor Property C LLC, a Delaware limited liability company

All Grantor's right, title and equitable or legal interest in and to:

All that certain piece parcel or tract of land lying, being and situate in the County of York, State of South Carolina, and being shown and designated as all of Lot 88 on that certain plat entitled, "Revision of Summerlake Townhomes Lots 87-92 Phase 3" recorded in Plat Book E357 at Page 10 a revision of that certain plat entitled "Summerlake, Phases 2 and 3" recorded in Plat Book E256, Page 3 in the Office of the Clerk of Court for York County, South Carolina, which referenced is hereby made for a more particular description.

DERIVATION: Being a portion of property conveyed to Alex Fresco by True Homes, LLC recorded on November 25, 2015 in Deed Book 15299, Page 83.

York County Tax Map No.: 729-07-01-096

Common Address: 923 Summerlake Dr, FT Mill, SC 29715

Grantee Address: 405 Howard Street, Suite 550, San Francisco, CA 94105

This conveyance is made SUBJECT TO:

There is excepted from these warranties all easements, conditions, rights of way and restrictions as may appear on public record; and the lien of ad valorem taxes for the current year which taxes have been prorated as to the date of closing between the Grantor and Grantee.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said Grantee, and Grantee's heirs and assigns forever.

AND GRANTOR DOES hereby promise, for themselves and Grantor's heirs, successors, assigns, and representatives, to warrant and forever defend the above premises unto the Grantee, Grantee's heirs and assigns, against the Grantor and Grantor's heirs, successors, assigns, and representatives and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY

WITNESS the Hand and Seal of Alex Fresco this 5th day of November, 2018.

Signed, Sealed and Delivered
in the presence of:

Stephanie Bern
Witness No. 1

[Signature]
Witness No. 2 (NOTARY)

[Signature]
Alex Fresco

STATE OF NORTH CAROLINA

ACKNOWLEDGEMENT
SC CODE 30-5-30

COUNTY OF MECKLENBURG

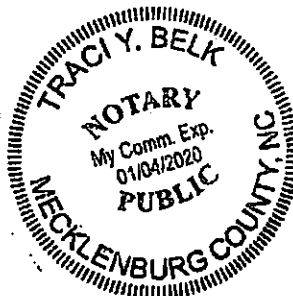
I, Traci Y. Belk, a Notary Public for the County and State hereinabove, do hereby certify that Alex Fresco, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the 5th of November, 2018.

[Signature]
Notary Public

My Commission Expires: 1.4.2020

(SEAL)



STATE OF SOUTH CAROLINA

COUNTY OF YORKAFFIDAVIT FOR TAXABLE OR
EXEMPT TRANSFERS

PERSONALLY, appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property is being transferred is located at 923 Summerlake Dr, FT Mill, SC 29715 bearing York County Tax Map Number 729-07-01-096, was transferred by Alex Fresco to Opendoor Property C LLC, a Delaware limited liability company on 11/5/18
3. Check one of the following: The DEED is:
 - a. ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - b. ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or a distribution to a trust beneficiary.
 - c. ☐ EXEMPT from the deed recording fee because (see information section of affidavit): _____
(If exempt, please skip items 4-7 and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty?

Check Yes ☐ or No ☒

4. Check one of the following if either item 3(a) or item 3(b) above has been checked. (See Information section of this affidavit):
 - a. ☒ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$241,200.00.
 - b. ☐ The fee is computed on the fair market value of the realty which is \$ _____.
 - c. ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____.
5. Check YES ☐ or NO ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If YES, the amount of the outstanding encumbrance is \$ _____.
6. The deed recording fee is computed as follows:

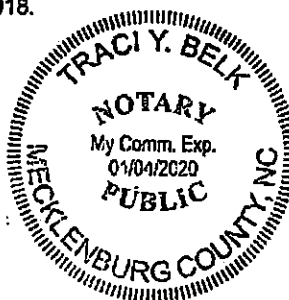
a. Place the amount listed in item 4 above here:	\$	241,200.00
b. Place the amount listed in item 5 above here:	\$	0.00
(If no amount is listed, place zero here.)		
c. Subtract Line 6(b) from Line 6(a) and place the result here:	\$	241,200.00
7. The deed recording fee is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$893.55.
8. As required by Code Section '12-24-70, I state that I am a responsible person who was connected with the transaction as: GRANTOR
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Alex Fresco
Responsible Person Connected with the Transaction

ALEX FRESCO
Print or Type Name Here

Subscribed and sworn to before me this 5th day of November, 2018.

[Signature]
Notary Public



YORK COUNTY, SC	
2019016376	DEED
RECORDING FEES	\$10.00
STATE TAX	\$631.80
COUNTY TAX	\$267.30
04-29-2019	04:01:03 PM
BK:RB 17516	PG:37-39

YORK COUNTY ASSESSOR

Tax Map:

729-07-01-096

Date: 04/30/2019

Prepared By:

E H

**Hankin & Pack, PLLC
2820 Selwyn Ave, Suite 425
Charlotte, NC 28209**

STATE OF SOUTH CAROLINA

COUNTY OF YORK

GENERAL WARRANTY DEED

The designation Grantor and Grantee as used herein shall include the named parties and their heirs, successors and assigns and shall include singular, plural, masculine, feminine or neuter as required by context.

KNOW ALL MEN BY THESE PRESENTS, that **OPENDOOR PROPERTY C LLC**, a Delaware limited liability company, in the State aforesaid, for and in consideration of the sum of **TWO HUNDRED FORTY THREE THOUSAND AND NO/100 DOLLARS (\$243,000.00)**, the receipt and sufficiency of which is here acknowledged, has granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said:

Susan Tourigny Hagy

All Grantor's right, title and equitable or legal interest in and to:

All that certain piece parcel or tract of land lying, being and situate in the County of York, State of South Carolina, and being shown and designated as all of Lot 88 on that certain plat entitled, "Revision of Summerlake Townhomes Lots 87-92 Phase 3" recorded in Plat Book E357 at Page 10 a revision of that certain plat entitled "Summerlake, Phases 2 and 3" recorded in Plat Book E256, Page 3 in the Office of the Clerk of Court for York County, South Carolina, which referenced is hereby made for a more particular description.

DERIVATION: Being in all respects the property conveyed by deed from Alex Fresco to **OPENDOOR PROPERTY C LLC**, a Delaware limited liability company as recorded on November 6, 2018 in Deed Book 17266, Page 261 in the Office of the Clerk of Court for York County, South Carolina.

York County Tax Map No.: 729-07-01-096

Property Address: 923 Summerlake Drive, Fort Mill, SC 29715

Grantee Address: 923 Summerlake Drive, Fort Mill, SC 29715

This conveyance is made SUBJECT TO:

There is excepted from these warranties all easements, conditions, rights of way and restrictions as may appear on public record; and the lien of ad valorem taxes for the current year which taxes have been prorated as to the date of closing between the Grantor and Grantee.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said Grantee, and Grantee's heirs and assigns forever.

AND GRANTOR DOES hereby promise, for themselves and Grantor's heirs, successors, assigns, and representatives, to warrant and forever defend the above premises unto the Grantee, Grantee's heirs and assigns, against the Grantor and Grantor's heirs, successors, assigns, and representatives and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

*****The Remainder of this page left intentionally blank*****

WITNESS the Hand and Seal of Opendoor Property C LLC, a Delaware limited liability company by its authorized signor this 9th day of April, 2019.

Signed, Sealed and Delivered
in the presence of:

[Signature]
Witness No. 1

Opendoor Property C LLC, a Delaware limited liability company

[Signature]
Witness No. 2 (NOTARY)

By: Opendoor Property Holdco C LLC, a Delaware limited liability company, its sole Member

By: OD Intermediate Holdco C LLC, a Delaware limited liability company, its sole member

By: Opendoor Labs Inc., a Delaware Corporation, its sole member

By: [Signature]
Print Name: Karisha Cobb
Its: Authorized Signer

STATE OF Georgia

COUNTY OF Clayton

On the 9th day of April, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared Karisha Cobb, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that (s)he executed the same in his/her capacity as Authorized Signer of Opendoor Labs Inc., a Delaware Corporation, the sole member of OD Intermediate Holdco C LLC, a Delaware limited liability company, the sole Member of Opendoor Property Holdco C LLC, a Delaware limited liability company, the sole member of Opendoor Property C LLC, a Delaware limited liability company and that by his/her signature on the instrument, the person upon behalf of which the individual acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand affixed my office seal the day and year in this certificate first above written.

My Commission Expires: 11/29/2022

[Signature]
Notary Public
Marie Desir
Notary's Printed or Typed Name



RECEIVED OCT 31 2014

PROFESSIONAL WARRANTY SERVICE CORPORATION (PWC)

PWC APPROVAL NUMBER:

0 5 0 1 8 2 0 - 5

TEN YEAR NEW HOME WARRANTY PLAN

Ph: 1-800-850-2799 Fax: 1-800-851-2799

APPLICATION FOR BUILDER'S LIMITED WARRANTY ISSUANCE

Instructions and PWC Mailing Address on Reverse Side

1. BUILDER #: 002-122A		2. NAME OF BUILDER: True Homes LLC	
3. ADDRESS OF HOME TO BE ENROLLED: 2006 Firefly Lane		4. UNIT NO.: SML	LOT 71
5. CITY: Fort Mill, SC 29715		6. COUNTY: York	
7. ENTER THE DATE THE WARRANTY PERIOD WILL BEGIN (TITLE TRANSFER OR FIRST OCCUPANCY, WHICHEVER OCCURS FIRST) MO. 09 DAY 26 YEAR 2014			
8. WHICH OCCURRED FIRST? ☐ FIRST OCCUPANCY ☒ LOSING (TITLE TRANSFER)		9. TYPE OF FINANCING: ☐ VA ☐ FHA ☒ USDA ☐ OTHER	
10. VA or FHA CASE NUMBER (REQUIRED BY VA/FHA)		NOTE: Effective Date of Warranty for FHA homes is the "Settlement Date".	
11. ENTER THE SALES PRICE OF THIS HOME: \$ 186,650.00			

12. ADMINISTRATION/PWC FEES	INSURANCE PREMIUM	SURPLUS LINES TAX	ENROLLMENT FEE DUE
\$	\$	\$	\$ 249.27

13. WAS A STATEMENT SIGNED BY THE HOME BUYER IDENTIFYING MATERIALS OR ITEMS OF WORK TO BE EXCLUDED FROM WARRANTY COVERAGE BECAUSE THEY WERE NOT PROVIDED BY THE BUILDER? ☐ YES ☒ NO

14. NAME OF INITIAL PURCHASER(S) OF HOME: (LAST NAME, FIRST NAME) Karin Fuentes	14a. EMAIL ADDRESS: kj13569@gmail.com	14b. PHONE #:

16. MAILING ADDRESS (IF DIFFERENT FROM ABOVE NUMBER AND STREET - LINE 3) Same	15. HOME TYPE (CHECK ONE) A. SINGLE FAMILY ATTACHED: ☒ B. SINGLE FAMILY DETACHED: ☐

17. CITY	STATE	ZIP

18. IF FULL OR PARTIAL BASEMENT, IS BASEMENT FINISHED LIVING SPACE? ☐ YES ☐ NO	19. IS HOME SERVICED BY AN INDIVIDUAL WELL? ☐ YES ☒ NO

20. IS HOME SERVICED BY AN INDIVIDUAL SEPTIC SYSTEM? ☐ YES ☒ NO	21. DOES HOME HAVE AN ATTACHED CARPORT OR GARAGE? ☒ YES ☐ NO

22. FOUNDATION TYPE (CHECK ONE) A. ☐ FULL BASEMENT B. ☐ PARTIAL BASEMENT C. ☐ CRAWL SPACE D. ☐ SLAB ON GRADE E. ☐ PIER AND BEAM	23. FOUNDATION CONSTRUCTION A: ☒ POURED CONCRETE ☐ WOOD C. ☐ BLOCK I. ☐ OTHER	24. INSPECTION TYPE ☒ MUNICIPAL/GOVERNMENTAL ☐ PRIVATE ☐ SPECIAL

BUILDER: I certify that the home is ready for occupancy and has been constructed in accordance with all required building standards, that any required inspections have been performed, and that all statements in this Application are true and complete.

25. Signature of Builder or Builder's Authorized Agent:	Date: 08/28/2014

HOME BUYER ACKNOWLEDGEMENT (LINES 25 & 27) - The undersigned hereby acknowledges and agrees as follows:

I/we acknowledge that I/we have received, reviewed and understand the Builder's Limited Warranty document (PWC # 107). I/we acknowledge that the builder cannot make representations as to its Builder's Limited Warranty that contradict or are inconsistent with the terms and conditions stated in its Builder's Limited Warranty.

26. Signature of Home Buyer(s):	Date: 10/24/14

(THIS SECTION, LINE 27, DOES NOT APPLY TO HOMES WITH ORIGINAL FHA or VA - MORTGAGES)

I/we acknowledge and agree all disputes under and relating to the Builder's Limited Warranty (including disputes on which issues shall be submitted to arbitration; alleged breach of the Builder's Limited Warranty; and alleged violations of statutes or regulations relating to consumer protection or unfair trade practices) shall be submitted to binding arbitration before an independent third party arbitration organization. I/we agree the decision of the arbitrator(s) shall be binding on all parties. Any such binding arbitration(s) shall be conducted in accordance with the rules and procedures applicable to the arbitration organization hearing the dispute or, where those rules are silent, the United States Arbitration Act (9 U.S.C. § et. seq.).

27. Signature of Home Buyer(s):	Date: 10/24/14

28. CERTIFICATION: I contacted PWC on this date _____ for an approval number, and have above is a participant in good standing of the Professional Warranty Program as of this date and eligible to enroll

© Professional Warranty Service Corporation PWC-953 ©11
Original-PWC Century-Builder Pink-FHA/VA Ability

Signature:

Closing Of



05018205

id 2

ELECTRONICALLY FILED - 2022 May 16 4:21 PM YORK COMMON PLEAS CASE#20220014603602

HINDSON FAULK PA

REAL ESTATE TRUST ACCOUNT

30509

**** REAL ESTATE CLOSING ****

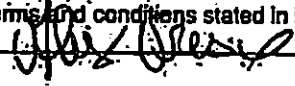
Buyer/Borrower: Fuentes
Seller: True Homes, LLC
Lender: Branch Banking and Trust Company
Property: 2006 Firefly Lane/Fort Mill SC 29715 /
Settlement Date: October 24, 2014
Disbursement Date: October 27, 2014
Check Amount: \$ 249.27
Pay To: Professional Warranty Service Corporation
For:
Home Warranty 0501820-5

6617584768

RECEIVED OCT 31 2014

RECEIVED DEC 07 2015

ELECTRONICALLY FILED - 2022 May 16 4:21 PM - YORK - COMMON PLEAS - CASE#2020CP4603592

PROFESSIONAL WARRANTY SERVICE CORPORATION (PWC)			PWC APPROVAL NUMBER:		
TEN YEAR NEW HOME WARRANTY PLAN Ph: 1-800/850-2798 Fax: 1-800/851-2799			0, 5, 3, 9, 5, 2, 5 - 5		
APPLICATION FOR BUILDER'S LIMITED WARRANTY ISSUANCE					
1. BUILDER ID #: 002-122A		2. NAME OF BUILDER: True Homes LLC			
3. ADDRESS OF HOME TO BE EMPLOYED: 932 Summerlake Drive			4. UNIT NO.: SML	LOT: 88	BLDG#:
5. CITY: Fort Mill, SC 29715 STATE: ZIP:			6. COUNTY: York		
7. ENTER THE DATE THE WARRANTY PERIOD WILL BEGIN (TITLE TRANSFER OR FIRST OCCUPANCY, WHICHEVER OCCURS FIRST) MO. 11 DAY 24 YEAR 2015					
8. WHICH OCCURRED FIRST? ☐ FIRST OCCUPANCY ☒ LOSING (TITLE TRANSFER)			9. TYPE OF FINANCING: ☐ VA ☐ FHA ☐ USDA ☐ OTHER		
10. VA or FHA CASE NUMBER (REQUIRED BY VA/FHA)			NOTE: Effective Date of Warranty for FHA homes is the "Settlement Date".		
11. ENTER THE SALES PRICE OF THIS HOME: \$ 212,900.00					
12. ADMINISTRATION/PWC FEES		INSURANCE PREMIUM		SURPLUS LINES TAX	
\$		\$		\$	
ENROLLMENT FEE DUE \$ 241.33					
13. WAS A STATEMENT SIGNED BY THE HOME BUYER IDENTIFYING MATERIALS OR ITEMS OF WORK TO BE EXCLUDED FROM WARRANTY COVERAGE BECAUSE THEY WERE NOT PROVIDED BY THE BUILDER? ☐ YES ☒ NO (YES, ATTACH FORM #954)					
14. NAME OF INITIAL PURCHASER(S) OF HOME: (LAST NAME, FIRST NAME)		14a. EMAIL ADDRESS:		14b. PHONE #:	
Alex Fresco		alx.fresh@gmail.com			
16. MAILING ADDRESS (IF DIFFERENT FROM ABOVE NUMBER AND STREET - LINE 3)			15. HOME TYPE (CHECK ONE)		
Same			A. SINGLE FAMILY ATTACHED: ☒		
17. CITY: STATE: ZIP:			B. SINGLE FAMILY DETACHED: ☐		
18. IF FULL OR PARTIAL BASEMENT, IS BASEMENT FINISHED LIVING SPACE? ☐ YES ☒ NO			19. IS HOME SERVICED BY AN INDIVIDUAL WELL? ☐ YES ☒ NO		
20. IS HOME SERVICED BY AN INDIVIDUAL SEPTIC SYSTEM? ☐ YES ☒ NO			21. DOES HOME HAVE AN ATTACHED GARPORT OR GARAGE? ☒ YES ☐ NO		
22. FOUNDATION TYPE (CHECK ONE) A. ☐ FULL BASEMENT B. ☐ PARTIAL BASEMENT C. ☐ CRAWL SPACE D. ☐ SLAB ON GRADE E. ☐ PIER AND BEAM			23. FOUNDATION CONSTRUCTION A. ☒ POURED CONCRETE B. ☐ WOOD C. ☐ BLOCK D. ☐ OTHER		
24. INSPECTION TYPE ☒ MUNICIPAL/GOVERNMENTAL ☐ PRIVATE ☐ SPECIAL					
BUILDER: I certify that the home is ready for occupancy and has been constructed in accordance with all required building standards, that any required inspections have been performed, and that all statements in this Application are true and complete.					
25. Signature of Builder or Builder's Authorized Agent: 			Date: 09/24/2015		
HOME BUYER ACKNOWLEDGEMENT (LINES 26 & 27): The undersigned hereby acknowledge and agree as follows:					
I/we acknowledge that I/we have received, reviewed and understand the Builder's Limited Warranty document (PWC #.107). I/we acknowledge that the builder cannot make representations as to its Builder's Limited Warranty that contradict or are inconsistent with the terms and conditions stated in its Builder's Limited Warranty.					
26. Signature of Home Buyer(s): 			Date: _____		
(THIS SECTION, LINE 27, DOES NOT APPLY TO HOMES WITH ORIGINAL FHA or VA - MORTGAGE)					
I/we acknowledge and agree all disputes under and relating to the Builder's Limited Warranty (including disputes on which issues shall be submitted to arbitration; alleged breach of the Builder's Limited Warranty; and alleged violations of statutes or regulations relating to consumer protection or unfair trade practices) shall be submitted to binding arbitration before an independent third party arbitration organization. I/we agree the decision of the arbitrator(s) shall be binding on all parties. Any such binding arbitration(s) shall be conducted in accordance with the rules and procedures applicable to the arbitration organization hearing the dispute or, where those rules are silent, the United States Arbitration Act (9 U.S.C. § et. seq.).					
27. Signature of Home Buyer(s): _____			Date: _____		
28. CERTIFICATION: I contacted PWC on this date _____ for an approval number, and have been informed by PWC that the builder identified on lines 1 and 2 above is a participant in good standing of the Professional Warranty Program as of this date and eligible to enroll the home in the Professional Warranty Program.					
© Professional Warranty Service Corporation PWC-653 0/11 Original-PWC Copy-Buyer Pink-FHWA/ALB/3/14			Signature: _____ Closing On: _____		



HINSON FAULK PA

REAL ESTATE TRUST ACCOUNT

49347

**** REAL ESTATE CLOSING ****

Buyer/Borrower: Fresco

Seller: True Homes, LLC

Lender: Movement Mortgage, LLC

Property: 923 Summerlake Drive/Fort Mill SC 29715 /

1993772

Settlement Date: November 24, 2015

Closer/Responsible Party: Kim

Disbursement Date: November 25, 2015

Check Amount: \$ 241.33

Pay To: Professional Warranty Service Corporation

For:

Home Warranty (S)

Home Warranty (S) - (H.09) \$ 241.33

RECEIVED DEC 07 2015

CHECK
STREET NUMBER?
923 OR 932?

ELECTRONICALLY FILED - 2022 May 16 4:21 PM - YORK - COMMON

BUILDER'S LIMITED WARRANTY

Administered by Professional Warranty Service Corporation



To the Home Buyer

Approximately 6 weeks after closing, you should receive a Builder's Limited Warranty Coverage Validation Form and the **BUILDER'S LIMITED WARRANTY** from the warranty program administrator. If you have not received these items by that time, first contact the **BUILDER** to verify that the application and fees were sent to the administrator. You do not have a valid warranty without the issuance of a Builder's Limited Warranty Coverage Validation Form and **BUILDER'S LIMITED WARRANTY**.

Enclosed with this **BUILDER'S LIMITED WARRANTY**, is a Builder's Limited Warranty Coverage Validation Form. The Builder's Limited Warranty Coverage Validation Form provides the dates on which the specific warranty coverage periods begin and expire. It is important that this form is retained with the **BUILDER'S LIMITED WARRANTY**.

This **BUILDER'S LIMITED WARRANTY** does not cover **CONSEQUENTIAL DAMAGES** or incidental damages. Liability under this **BUILDER'S LIMITED WARRANTY** is limited to the amount shown on the Builder's Limited Warranty Coverage Validation Form.

WE make no housing merchant implied warranty of habitability or any other warranties, express or implied, in connection with the sales contract or the warranted **HOME**, and all such warranties are excluded, except as expressly provided in this **BUILDER'S LIMITED WARRANTY**. There are no warranties which extend beyond the face of this **BUILDER'S LIMITED WARRANTY**.

Some States prohibit the exclusion or limitation of **CONSEQUENTIAL DAMAGES** or incidental damages by the **BUILDER**, so all the limitations or exclusions may not apply to **YOU**.

I. Coverage Limit

The amount shown on the Builder's Limited Warranty Coverage Validation Form is **OUR** limit of liability. It is the most **WE** will pay or expend for all covered **DEFICIENCIES** or **DEFINED STRUCTURAL ELEMENT FAILURES** regardless of the number of claims made during the warranty period. Once **OUR** limit of liability has been paid, no further claims can be made against this **BUILDER'S LIMITED WARRANTY**.

II. Warranty Coverage

Coverage under this **BUILDER'S LIMITED WARRANTY** changes over the course of the ten year term. Section A refers to coverage provided during the first year; Section B refers to coverage provided during the second year; and Section C refers to coverage provided during the third through tenth year.

Section A Coverage

Beginning on the **WARRANTY DATE-HOME** and **WARRANTY DATE-COMMON ELEMENTS**, **WE** warrant for one year that the construction of **YOUR HOME** (including **COMMON ELEMENTS** related thereto) will conform to the **STANDARDS OF PERFORMANCE** for first year coverage and warranty tolerances for **DEFINED STRUCTURAL ELEMENT FAILURE(S)**. Coverage under Section A expires one year after the **WARRANTY DATE-HOME** and/or **WARRANTY DATE-COMMON ELEMENTS**. To be eligible for coverage **WE** must receive written notice of the **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE** within thirty (30) days after the expiration date of the coverage.

Section B Coverage

During the second year following the **WARRANTY DATE-HOME** or **WARRANTY DATE-COMMON ELEMENTS**, **WE** warrant that **SYSTEMS** (including the **COMMON ELEMENTS** related thereto) will conform to the **STANDARDS OF PERFORMANCE** for second year coverage and warranty tolerances for **DEFINED STRUCTURAL ELEMENT FAILURE(S)**. Coverage under Section B expires two years after the **WARRANTY DATE-HOME** or **WARRANTY DATE-COMMON ELEMENTS**. To be eligible for coverage **WE** must receive written notice of the **SYSTEMS DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE** within thirty (30) days after the expiration date of the coverage.

Section C Coverage

During the third through tenth years following the **WARRANTY DATE-HOME** or **WARRANTY DATE-COMMON ELEMENTS**, **WE** warrant the construction of **YOUR HOME** (including **COMMON ELEMENTS** related thereto) will conform to the warranty tolerances for **DEFINED STRUCTURAL ELEMENT FAILURE(S)**. Coverage under Section C expires 10 years after the **WARRANTY DATE-HOME** or **WARRANTY DATE-COMMON ELEMENTS**. To be eligible for coverage **WE** must receive written notice of the **DEFINED STRUCTURAL ELEMENT FAILURE** within thirty (30) days after the expiration of the coverage.

III. OUR Coverage Obligations

All notices of **DEFICIENCIES**, **DEFINED STRUCTURAL ELEMENT FAILURES**, and complaints under this **BUILDER'S LIMITED WARRANTY** must be made by **YOU** in writing. Telephonic or face-to-face discussion will not protect **YOUR** rights under this **BUILDER'S LIMITED WARRANTY**.

WE will have been considered to have breached this **BUILDER'S LIMITED WARRANTY** only if **WE** fail to correct a **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE** in accordance with the terms and conditions of this **BUILDER'S LIMITED WARRANTY**.

DEFICIENCIES

In the event a **DEFICIENCY** occurs during the applicable coverage period, **WE** will, upon receiving written notice from **YOU**, test or inspect the **DEFICIENCY** to confirm coverage for the **DEFICIENCY** within a reasonable time after **WE** receive **YOUR** notice. Upon confirmation of a **DEFICIENCY**, **WE**, **OUR** insurer, or another third party designated by **US** will repair, replace or pay **YOU** the actual cost of repairing or replacing the **DEFICIENCY**. The decision to repair, replace, or to make payment to **YOU** is at **OUR** or **OUR** insurer's sole option.

DEFINED STRUCTURAL ELEMENT FAILURE

In the event a **DEFINED STRUCTURAL ELEMENT FAILURE** occurs during the applicable coverage period, **WE**, **OUR** insurer, or another third party designated by **US** will, upon receiving written notice from **YOU**, test or inspect the **DEFINED STRUCTURAL ELEMENT FAILURE** to confirm coverage for the **DEFINED STRUCTURAL ELEMENT FAILURE** within a reasonable time after **WE** receive **YOUR** notice. Upon confirmation of a **DEFINED STRUCTURAL ELEMENT FAILURE**, **WE**, **OUR** insurer, or another third party designated by **US** will repair, replace or pay **YOU** the actual cost of repairing or replacing the **DEFINED STRUCTURAL ELEMENT FAILURE**. The decision to repair, replace, or to make payment to **YOU** is at **OUR** or **OUR** insurer's sole option.

IV. Coverage Limitations

When **WE** repair a **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE**, the repair will include the correction or replacement of only those surfaces, finishes and coverings that were damaged by the **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE** that were part of the **HOME** when title was first transferred by **US**.

WE will repair and replace surfaces, finishes and coverings that require removal or replacement in order for **US** to repair or replace **DEFICIENCIES** and **DEFINED STRUCTURAL ELEMENT FAILURE(S)**. The extent of **OUR** repair and replacement of these surfaces, finishes or coverings will be to approximately the same condition they were in prior to the **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE**, but not necessarily to a like new condition.

WE will only refinish those surfaces that were damaged by a **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE**.

When **WE** undertake repair on surfaces, finishes and coverings, **OUR** repair will attempt to achieve as close a match

with the original surrounding areas as is reasonably possible, but WE cannot guarantee an exact match due to such factors as fading, aging and unavailability of the same materials.

V. Exclusions

A. This BUILDER'S LIMITED WARRANTY does not cover:

1. Any **DEFICIENCIES** or **DEFINED STRUCTURAL ELEMENT FAILURE(S)** resulting, either directly or indirectly, from the following causes or occurring in the following situations:
 - a. Fire;
 - b. Lightning;
 - c. Acts of God;
 - d. Explosion;
 - e. Riot and Civil Commotion;
 - f. Smoke;
 - g. Hail;
 - h. Aircraft;
 - i. Falling Objects;
 - j. Vehicles;
 - k. Floods;
 - l. Wind Driven Water;
 - m. Earth Movement including but not limited to:
 - (i). Earthquake, landslide or mudslide;
 - (ii). Mine subsidence, sinkholes or changes in the underground water table not reasonably foreseeable at the time of construction;
 - (iii). Volcanic eruption; explosion or effusion;
 - n. Wind including but not limited to:
 - (i). Gale force winds;
 - (ii). Hurricanes;
 - (iii). Tropical storms;
 - (iv). Tornadoes;
 - o. Insects, animals or vermin;
 - p. Rot, moisture, corrosion, rust or mildew;
 - q. Changes of the grading of the ground by anyone other than US or OUR agents, or subcontractors;
 - r. Changes, additions, or alterations made to the **HOME** by anyone after the **WARRANTY DATE-HOME** or **WARRANTY DATE-COMMON ELEMENTS**, except those made or authorized by US;
 - s. Any defect in material or workmanship supplied by anyone other than US or OUR agents, or subcontractors;
 - t. Improper maintenance, negligence or improper use of the **HOME** by **YOU** or anyone else;
 - u. Dampness or condensation due to **YOUR** failure to provide adequate ventilation;
 - v. Abnormal loading on floors which exceeds design loads;
2. Any costs arising from, or any **DEFICIENCIES** or **DEFINED STRUCTURAL ELEMENT FAILURE(S)** resulting from the actual, alleged or threatened discharge, dispersal, release or escape of **POLLUTANTS**. WE will not cover costs or expenses arising from the uninhabitability or health risk due to the proximity of **POLLUTANTS**. WE will not cover costs, or expenses resulting from the direction of any governmental entity to test, clean-up, remove, treat, contain or monitor **POLLUTANTS** ;
3. Any costs arising from, or any **DEFICIENCIES** or **DEFINED STRUCTURAL ELEMENT FAILURE(S)** resulting from the effects of electromagnetic fields (EMF's) or radiation;

4. Any damage to personal property;
 5. Any **CONSEQUENTIAL DAMAGES** ;
 6. Any damage to **CONSUMER PRODUCTS** ;
 7. Any **DEFICIENCIES** or **DEFINED STRUCTURAL ELEMENT FAILURES**:
 - a. that **YOU** become aware of after the **HOME** is not being used primarily as a residence;
 - b. which **YOU** have not taken timely and reasonable steps to protect and minimize damage after **WE** have provided **YOU** with written authorization to prevent further damage;
 8. Any **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE** that is covered by any other express warranty or insurance coverage **YOU** may have; and
 9. Any non-conformity with local building codes, regulations or requirements that has not resulted in a **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE**. While **WE** acknowledge **OUR** responsibility to build in accordance with applicable building codes, this **BUILDER'S LIMITED WARRANTY** does not cover building code violations in the absence of a **DEFICIENCY** or a **DEFINED STRUCTURAL ELEMENT FAILURE**. In such instance, **YOUR** recourse is under the building code and other applicable laws and not under this **BUILDER'S LIMITED WARRANTY**. This exclusion in no way mitigates or relieves **US** of **OUR** obligation to build in accordance with applicable building codes.
- B. **OUR BUILDER'S LIMITED WARRANTY** does not cover any loss or damage as a result of any **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE** which would not have occurred in the absence of one or more of the events or conditions listed in Exclusions, Section A.1, A.2 or A.3, above. **OUR BUILDER'S LIMITED WARRANTY** does not cover any such loss or damage regardless of:
1. the cause of the excluded event or condition; or
 2. other causes of the loss or damage; or
 3. whether other causes acted concurrently or in any sequence with the excluded event or condition to produce the loss or damage.

VI. Procedure to Request US To Perform Under This **BUILDER'S LIMITED WARRANTY**

If **YOU** become aware of a **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE** that **YOU** believe is covered under this **BUILDER'S LIMITED WARRANTY**, **YOU** have the following responsibilities:

A. Notification

Notify **US** in writing as soon as it is reasonably possible, but in no event may **YOUR** written notice be received by **US** or postmarked later than thirty (30) days after the warranty for the **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE** expires.

If the written notice is postmarked or received by **US** more than thirty (30) days beyond the warranty expiration date,

WE shall have no obligation to repair or replace the **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE**.

If the **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE** involves a **COMMON ELEMENT** written notice must be made by a designated representative of the condominium association.

B. Cooperate With US

YOU must give **US**, **OUR** employees, agents, subcontractors or insurers reasonable help in investigating, monitoring or correcting **DEFICIENCIES** or **DEFINED STRUCTURAL ELEMENT FAILURES**. Help includes, but is not limited to, granting **US** reasonable access to **YOUR HOME**.

If **YOU** fail to help **US**, **WE** will have no obligation to repair, replace or pay **YOU** for **DEFICIENCIES** or **DEFINED STRUCTURAL ELEMENT FAILURES**.

C. Do Not Make Voluntary Payments

YOU agree not to make any voluntary payments or assume any obligations or incur any expenses for the remedy of a condition **YOU** believe is a **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE** without **OUR** prior written approval. **WE** will not reimburse **YOU** for costs incurred where **YOU** did not obtain **OUR** prior written approval.

However, **YOU** may incur reasonable expenses in making repairs in an **EMERGENCY CONDITION** without **OUR** prior written approval, provided the repairs are solely for the protection of the **HOME** from further damage, and provided **YOU** notify **US** as soon as possible, but in no event later than 5 days after the repairs were undertaken. To obtain reimbursement for repairs made during an **EMERGENCY CONDITION**, **YOU** must provide **US** with an accurate written record of the repair costs.

D. Sign A Release

When **WE** have completed repairing, replacing or paying **YOU** the cost of repairing or replacing, **DEFICIENCIES** or **DEFINED STRUCTURAL ELEMENT FAILURES**, **YOU** must sign a full release of **OUR** obligation for the **DEFICIENCIES** or **DEFINED STRUCTURAL ELEMENT FAILURES** **WE** corrected.

E. If YOU Disagree With US

Binding Arbitration will be the sole remedy for resolving disputes between **YOU** and **US** that arise from or relate to this **BUILDER'S LIMITED WARRANTY**. The binding arbitration procedure is described in the following section.

VII. Binding Arbitration Procedure

Any disputes between **YOU** and **US** or **OUR** insurer related to or arising from this **BUILDER'S LIMITED WARRANTY** will be resolved by binding arbitration. Disputes subject to binding arbitration include but are not limited to:

- A. **WE** do not agree with **YOU** that a **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE** is covered by this **BUILDER'S LIMITED WARRANTY**;
- B. **WE** do not correct a **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE** to **YOUR** satisfaction or in a manner that **YOU** believe this **BUILDER'S LIMITED WARRANTY** requires;

- C. **WE** fail to respond to **YOUR** written notice of a **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE**;
- D. Disputes related to **COMMON ELEMENTS**;
- E. Alleged breach of this **BUILDER'S LIMITED WARRANTY**;
- F. Alleged violations of consumer protection, unfair trade practice, or other statutes;
- G. Disputes concerning the issues that should be submitted to binding arbitration;
- H. Disputes concerning the timeliness of binding arbitration requests.

Any binding arbitration proceeding will be conducted by an independent arbitration organization designated by **PWC** or **OUR** insurer. The rules and procedures followed will be those of the designated arbitration organization. A copy of the applicable rules and procedures will be delivered to **YOU** upon request.

The arbitration will determine **YOUR** and **OUR** or **OUR** insurer's rights and obligations under this **BUILDER'S LIMITED WARRANTY**. These rights and obligations include but are not limited to those provided to **YOU** or **US** by local, state or federal statutes in connection with this **BUILDER'S LIMITED WARRANTY**.

The award of the arbitrator will be final, binding and enforceable as to both **YOU** and **US** or **OUR** insurer, except as modified, or vacated in accordance with applicable rules and procedures of the designated arbitration organization, or, in their absence, the United States Arbitration Act (9 U.S.C. § 1 et seq.).

Binding arbitration shall be the sole remedy for resolving disputes for **YOU** and **US** and **OUR** insurer. The costs and expenses for the arbitration will be paid by **US** or **OUR** insurer except for the Eighty Dollar (\$80.00) arbitration filing fee which will be paid by the party requesting arbitration. If **YOU** request arbitration and **YOU** prevail on any claimed **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE** under dispute, the Eighty Dollar (\$80.00) arbitration filing fee will be refunded to **YOU**.

The process for **YOU** to initiate arbitration is described below. **WE** will use the same process if **WE** initiate arbitration.

Step 1 **YOU** complete a Binding Arbitration Request Form and mail it together with an Eighty Dollar (\$80.00) arbitration filing fee to **PWC**. A Binding Arbitration Request Form is attached to this **BUILDER'S LIMITED WARRANTY**. **YOUR** Binding Arbitration Request Form must be received no later than 90 days after the coverage for the disputed item expires. Please Note that while **YOU** have 90 days to file for arbitration, this time period does not extend the warranty coverage period for **DEFICIENCIES** or **DEFINED STRUCTURAL ELEMENT FAILURES**. **YOU** must still notify **US** of an alleged **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE** no later than 30 days after coverage for that item expires.

Step 2 **PWC** Will Arrange the Arbitration Proceeding. The Arbitrator or arbitration organization will notify **YOU** of the time, date and location of the arbitration hearing. Most often the hearing will be conducted at **YOUR HOME** or some other location that is agreeable to all the parties of the dispute. In scheduling the hearing the arbitrator will set a time and date that is reasonably convenient to all the parties.

- Step 3** The Arbitration Hearing. The parties at the arbitration hearing will include the arbitrator, **YOU, US** and/or **OUR** insurer.

After evidence is presented by **YOU, US** or **OUR** insurer, an award will be rendered by the arbitrator. The award is final and binding on **YOU, US** and **OUR** insurer. The award will include a ruling on the existence of any claimed or alleged **DEFICIENCIES** or **DEFINED STRUCTURAL ELEMENT FAILURES** as well as any other disputed matters or issues related to this **BUILDER'S LIMITED WARRANTY**.

- Step 4** OUR Arbitration Performance Obligations. **WE** will comply with the arbitrator's award no later than 60 days from the date of the award. However, delays caused by circumstances beyond **OUR** or **OUR** insurer's control shall be excused.

- Step 5** If WE Fail To Comply With The Award. **YOU** should contact **PWC** at its mailing address specified in this **BUILDER'S LIMITED WARRANTY** if the arbitrator's award is not complied with in a timely manner. **PWC** will then be responsible for contacting the arbitration organization. **PWC** will establish an appropriate process to enforce compliance of the award as provided in the original binding arbitration proceeding.

VIII. General Conditions

- A. Separation of This BUILDER'S LIMITED WARRANTY From The Contract Of Sale**

This **BUILDER'S LIMITED WARRANTY** is separate and independent of the contract between **YOU** and **US** for the construction and/or sale of **YOUR HOME**. The provisions of this **BUILDER'S LIMITED WARRANTY** shall in no way be restricted by anything contained in the construction and/or sales contract between **YOU** and **US**.

- B. Transfer to Subsequent HOMEOWNERS**

YOU may transfer this **BUILDER'S LIMITED WARRANTY** to new owner's of the **HOME** for the remainder of the warranty coverage period provided that **YOU** or the new owners notify **PWC** in writing, utilizing the Subsequent Home Buyer Acknowledgement and Assignment form attached to this **BUILDER'S LIMITED WARRANTY** after ownership is transferred. **OUR** duties under this **BUILDER'S LIMITED WARRANTY** to the new **HOMEOWNER** will not exceed the limit of liability then remaining, if any.

- C. Transfer of Manufacturer's Warranties**

WE assign to **YOU** all the manufacturer's warranties on all the appliances and equipment that **WE** installed in **YOUR HOME**. Should an appliance or item of equipment malfunction **YOU** must follow the procedures set forth in that manufacturer's warranty to correct the problem. **OUR** obligation under this **BUILDER'S LIMITED WARRANTY** is limited to the workmanlike installation of such appliances and equipment. **WE** have no obligation for appliances and equipment defined as **CONSUMER PRODUCTS**.

- D. Recovery Rights**

If **WE** repair, replace or pay **YOU** the cost to repair or replace a **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE**, or other related damage to **YOUR HOME** covered by this **BUILDER'S LIMITED WARRANTY**, **WE** are entitled, to the extent of **OUR** payment, to take over **YOUR** related rights of recovery from other people and organizations, including but not limited to, other

warranties and insurance. **YOU** have an obligation not to make it harder for **US** to enforce these rights. **YOU** agree to sign any papers, deliver them to **US**, and do anything else that is necessary to help **US** exercise **OUR** rights.

E. General Provisions

1. If any of the terms or provisions of this **BUILDER'S LIMITED WARRANTY** conflict with the statutes of the state in which this **BUILDER'S LIMITED WARRANTY** is issued the warranty is amended to conform to such statute, except insofar as the terms and provisions are governed by the United States Arbitration Act.
2. If a court of competent jurisdiction deems any provision of this **BUILDER'S LIMITED WARRANTY** unenforceable, that determination will not effect the remaining provisions.
3. This **BUILDER'S LIMITED WARRANTY** is to be binding on **YOU** and **US** and, as respects the arbitration process, on **OUR** insurer. It is also binding on **YOUR** and **OUR** heirs, executors, administrators, successors, and assigns, subject to paragraph B of the **General Conditions**.
4. As may be appropriate, the use of the plural in this **BUILDER'S LIMITED WARRANTY** includes the singular, and the use of one gender includes all genders.

IX. Definitions

BUILDER means the individual, partnership, corporation or other entity which participates in the Warranty Program administered by the Professional Warranty Service Corporation and provides **YOU** with this **BUILDER'S LIMITED WARRANTY**. Throughout this document the **BUILDER** is also referred to as "**WE**", "**US**" and "**OUR**".

BUILDER'S LIMITED WARRANTY means only this express warranty document provided to **YOU** by **US**.

COMMON ELEMENTS means the structure, components of enclosure, and any part of the **HOME**, as specified in the condominium documents as a **COMMON ELEMENT**. This may include, but is not limited to, corridors, lobbies, vertical transportation elements, rooms, balconies or other spaces that are for the common use of the residents of the **HOME**. **SYSTEMS** serving two or more **HOMES**, and the outbuildings that contain parts of such **SYSTEMS** are also included in this definition.

CONSEQUENTIAL DAMAGES means a loss or injury other than the cost to correct a **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE**. This definition includes, but is not limited to, costs of shelter, food, transportation; moving and storage; any other expenses related to inconvenience or relocation during repairs to the **HOME**. **CONSEQUENTIAL DAMAGES** also refers to diminished market value of the **HOME**.

CONSUMER PRODUCT means any item of equipment, appliance or other item defined as a **CONSUMER PRODUCT** in the Magnuson-Moss Warranty Act (15 U.S.C. §. 2301, et seq.) Examples of Consumer Products include, but are not limited to, dishwasher, garbage disposal, gas or electric cooktop, range, range hood, refrigerator or refrigerator/freezer combination, gas oven, electric oven, microwave oven, trash compactor, garage door opener, clothes washer and dryer, hot water heater and thermostat.

DEFICIENCY (IES) means defects in materials or workmanship used in constructing the **HOME**. The defects must fail to conform with the standards and tolerances described in the **STANDARDS OF PERFORMANCE** section of this **BUILDER'S LIMITED WARRANTY**. **OUR** failure to complete the **HOME** or any portion of the **HOME** does not constitute a **DEFICIENCY**.

DEFINED STRUCTURAL ELEMENT FAILURE means that one or more of the structural elements identified below contains a flaw of such a magnitude that the warranty tolerance is exceeded. The only structural elements **WE** cover and their respective tolerances are as follows:

Defined Structural Element	Warranty Tolerance
A. Arches	
1. Masonry	Crack of 1/4 inch in width in arch, or settlement in span of arch of 1/2 inch.
B. Floor Systems	
1. Structural Concrete	Crack of 1/4 inch in width and 1/4 inch vertical displacement.
2. Joists	DEFLECTION of 1 inch in 15 feet.
3. Trusses	DEFLECTION of 1 inch in 10 feet.
C. Foundation	
1. Concrete Beams	Crack of 1/8 inch in width, or DEFLECTION of 1/4 inch in 30 inches.
2. Wood Beams: Built-up, Laminated or Solid	DEFLECTION of 1 inch in 10 feet.
3. Steel Beams	DEFLECTION of 1/2 inch in 8 feet.
4. Footings	Crack of 1/2 inch in width.
5. Concrete Walls	Crack of 1/4 inch in width and 1/4 inch vertical displacement, or out-of-plumb 1/4 inch in 12 inches measured from base of wall.
6. Masonry Walls	Crack of 3/8 inch in width, or out-of-plumb 1/4 inch in 12 inches measured from base of wall.

7. Concrete Columns

Bow of 1/2 inch in 8 feet, or out-of-plumb 1/4 inch in 12 inches measured from base of column.

8. Masonry Columns

Out-of-plumb 1/8 inch in 12 inches measured from base of column.

9. Steel Columns

Bow of 1 inch in 8 feet, or out-of-plumb 1/4 inch in 12 inches measured from base of column.

10. Wood Columns

Bow of 1 inch in 8 feet, or out-of-plumb 1/4 inch in 12 inches measured from base of column.

D. Lintels and Headers

1. Concrete,
Masonry,
Steel, or
Wood

DEFLECTION of 1 inch in 4 feet.

E.

Roof Framing

1. Ridge Beam

DEFLECTION of 1 inch in 10 feet.

2. Rafters
Common, Jack, or Valley/HIP

DEFLECTION or bow of 1 inch in 10 feet.

3. Ceiling Joists

DEFLECTION of 3/4 inch in 10 feet.

4. Trusses

DEFLECTION of 1 inch in 10 feet.

F. Structural Beams and Girders

1. Steel

DEFLECTION of 1/2 inch in 8 feet.

2. Wood
Solid,
Built-up, or Laminated

DEFLECTION of 1 inch in 10 feet.

G. Structural Columns

1. Concrete	Bow of 1/2 inch in 8 feet, or out-of-plumb 1/4 inch in 12 inches measured from base of column.
2. Masonry	Out-of-plumb 1/8 inch in 12 inches measured from base of column.
3. Steel	Bow of 1 inch in 8 feet, or out-of-plumb 1/4 inch in 12 inches measured from base of column.
4. Wood	Bow of 1 inch in 8 feet, or out-of-plumb 1/4 inch in 12 inches measured from base of column.

H. Load Bearing Walls and Partitions

1. Studs	Bow or cup of 1 inch in 8 feet.

DEFLECTION means the difference in elevation of high and low points along a diagonal, horizontal, or vertical plane caused by stress induced deformation of a load bearing member. **DEFLECTION** is measured from any two end points and a third reference point. The reference point may be located at any distance between the two end points.

EMERGENCY CONDITION means an event or situation that creates the imminent threat of damage to the **HOME** or the **COMMON ELEMENTS** related thereto, or results in an unsafe living condition due to **DEFICIENCIES** or **DEFINED STRUCTURAL ELEMENT FAILURES** that **YOU** become aware of at a point in time other than **OUR** normal business hours and **YOU** were unable to obtain **OUR** prior written approval to initiate repairs to stabilize the condition or prevent further damage.

HOME means a single family residence either attached or detached or a condominium or cooperative unit in a multi-unit residential structure covered by this **BUILDER'S LIMITED WARRANTY**. **HOME** does not include, without limitation, the following: detached garages, detached carports, outbuildings (except outbuildings that contain electrical, plumbing, heating, cooling or ventilation **SYSTEMS** used by the **HOME**); swimming pools and other recreational facilities, driveways, walkways, decks, patios, porch steps, stoops, boundary walls, retaining walls, bulkheads, fences, landscaping (including but not limited to sodding, seeding, shrubs, trees, plants), off-site improvements, or any other improvements that are not part of the **HOME**.

HOMEOWNER means the first person to whom a **HOME** (or unit in a multi-unit residential structure) is sold, or for whom such **HOME** is constructed, for occupancy by such person or such person's family, and such person's successors in title to the **HOME** and/or mortgagee in possession provided a Subsequent Home Buyer Acknowledgement and Assignment form (PWC Form 302) is signed by the subsequent **HOMEOWNER**.

POLLUTANTS means all solid, liquid, or gaseous irritants or contaminants. The term includes, but is not limited to, petroleum products, smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, radon gas, and waste materials, including materials to be recycled.

PWC means Professional Warranty Service Corporation which administers the warranty program in which **WE** participate. As such, **PWC** assumes no other liabilities in connection with this **BUILDER'S LIMITED WARRANTY**. The **PWC** mailing address is:

Professional Warranty Service Corporation
P.O. Box 800
Annandale, VA 22003-0800

STANDARDS OF PERFORMANCE means the standards and tolerances for materials and workmanship that are used in this **BUILDER'S LIMITED WARRANTY** to determine **OUR** responsibility for repairing **DEFICIENCIES** as identified on pages 14 through 35 of this document.

SYSTEMS means the following:

- (a) Plumbing system - gas supply lines and fittings; water supply, waste and vent pipes and their fittings; septic tanks and their drain fields; and water, gas and sewer services piping and their extensions to the tie-in of a public utility connection or on-site well and sewage disposal system.
- (b) Electrical system - all wiring, electrical boxes, switches, outlets, and connections up to the public utility connection.
- (c) Heating, Cooling, and Ventilation system - all duct-work; steam, water and refrigerant lines; and registers, connectors, radiation elements and dampers.

WARRANTY DATE-COMMON ELEMENTS means the Warranty Date for the first **HOME** to transfer title or be used for residential purposes in a multi-unit residential building. The **WARRANTY DATE-COMMON ELEMENTS** may be different from the **WARRANTY DATE-HOME** of **YOUR HOME**. Contact **YOUR** condominium association to determine the date when coverage began on **YOUR COMMON ELEMENTS**.

WARRANTY DATE-HOME means the date the title for the **HOME** is transferred by **US** to the first **HOMEOWNER** or the date the **HOME** is first used for residential purposes, whichever occurs first.

WE, US, OUR means the **BUILDER**.

YOU, YOUR means the **HOMEOWNER**.

X. STANDARDS OF PERFORMANCE

The **STANDARDS OF PERFORMANCE** listed in the following pages are intended to provide **YOU** with an understanding of **OUR** obligations under this **BUILDER'S LIMITED WARRANTY**. If a **DEFICIENCY** occurs to **YOUR HOME** that results in actual physical damage, the **STANDARDS OF PERFORMANCE** will be used to determine **OUR** responsibility under this **BUILDER'S LIMITED WARRANTY**.

Please note that damage that **YOU** cause or **YOU** made worse by **YOUR** negligence, improper maintenance or improper operation is excluded by this **BUILDER'S LIMITED WARRANTY**.

The choice as to the scope of repair, the repair technique, or replacement versus the cost of repair, or replacement is **OURS** alone. When **WE** do undertake to repair or replace, **WE** try to match colors, dyes, patterns, materials, finishes, etc. However, fading, changes in color lots or discontinued patterns may prevent **US** from providing an exact match.

Type of Material or area of YOUR HOME	Specific item or work	DEFICIENCY or Condition	Years Covered	OUR responsibility	YOUR Responsibility
A. Site Work	1. Site Grading	a. settling of ground around foundation, utility trenches or other filled areas does not allow water to drain away from home	1	WE will fill excessively settled areas which affect the proper drainage. WE will do this only during the first year.	Remove and replace shrubs, sod or other landscaping affected by the placement of the fill.
	2. Site Drainage	a. improper drainage of the site	1	WE will establish the proper grades and swales (sloped low areas) for water to properly drain away from the HOME . Where lot lines permit, the protective slope will be 6 inches in 10 feet around the foundation. Water will not stand or pond in crawl spaces. Water will not stand or pond within 10 feet of the HOME for extended periods after a rain (usually not more than 24 hours). For swales which drain other areas or where sump pumps discharge, a longer time is not unusual (48 hours). It is normal for water to stand after a heavy rainfall. WE will not make grading or ponding determinations while there is frost or snow on the ground, or while the ground is saturated or frozen.	Maintain the grades and swales after they have been properly established by US. Insure established drainage patterns are not impeded by landscaping, decking, patios, pools, driveways, walls, etc. which YOU install. Do not change the grade of the soil away from the foundation by building planters, raised beds, or other blocking construction. Damage caused by changes in drainage and grading is not covered. Where a sump pit has been installed by US but the sump pump was not contracted for or installed by US, YOU must first install a properly sized pump to determine whether this will correct the condition.

Type of Material or area of YOUR HOME	Specific item or work	DEFICIENCY or Condition	Years Covered	OUR responsibility	YOUR Responsibility
B. Concrete	1. "Poured" concrete	a. cracks in basement or foundation walls	1	Shrinkage cracks are common in concrete foundation walls. WE will repair all cracks more than 1/8" wide.	
		b. cracks in basement floor	1	Minor cracks in basement floors are normal. WE will repair cracks more than 3/16" wide or 1/8" in vertical displacement.	
		c. cracks in slab in attached garage	1	WE will repair cracks in garage slabs more than 1/4" wide or 1/4" in vertical displacement.	
		d. uneven concrete floors or slabs	1	Concrete floors in rooms designed for habitability (as living space) will not have pits, depressions, or raised surfaces greater than 1/4" in 30". WE will repair these defects.	
		e. cracks in concrete slab-on-grade floors under finished flooring	1	WE will repair cracks which rupture the finished flooring material so the cracks are not readily apparent when the finished flooring material is in place. (See also Standard G, "Finishes.")	
		f. pitting, scaling or spalling (flaking, chipping) of concrete surfaces covered by the warranty	1	It is normal for some minor chipping of the surface to occur. Concrete surfaces should not disintegrate so that the aggregate is exposed and loosened under normal use and weather conditions. WE will repair concrete surfaces. WE are not responsible for deterioration caused by salt, chemicals, mechanical implements or other factors beyond OUR control.	Avoid damaging concrete with salt, chemicals, mechanical equipment, etc.

Type of Material or area of YOUR HOME	Specific item or work	DEFICIENCY or Condition	Years Covered	OUR responsibility	YOUR Responsibility

B. Concrete

1. "Poured"
concreteg. settling, heaving or
separating of stoops,
steps or garage floors

1

Stoops, steps or garage floors will not settle, heave or separate more than 1" from the HOME. WE will repair these DEFICIENCIES.

h. standing water on
stoops

1

Water shall drain from outdoor stoops and steps. However, it is normal for small amounts of water to stand on stoops for short periods after it rains. WE will correct any improper drainage.

C. Masonry

1. Unit Masonry

a. cracks in masonry
basement or foundation
walls

1

Cracks up to 1/8" wide are not unusual in mortar joints of masonry foundation walls. WE will repair cracks more than 1/8" wide.

b. cracks in masonry or
veneer walls

1

Cracks up to 3/8" wide due to shrinkage are common in mortar joints in masonry construction. WE will repair cracks more than 3/8" wide. WE will not be responsible for any difference in the color of the old and new mortar.

D. Wood & Plastic

1. Rough carpentry

a. squeaking floors or
subfloors that appear
loose

1

These conditions are often temporary in new homes. WE will correct these conditions only if they are caused by underlying defects in construction. A squeak proof floor cannot be guaranteed.

b. uneven wood floors

1

WE will repair any floors that have more than 1/4" ridge or depression within any 30" measurement when measured in any direction to the joists.

Type of Material or area of YOUR HOME	Specific item or work	DEFICIENCY or Condition	Years Covered	OUR responsibility	YOUR Responsibility
D. Wood & Plastic	1. Rough carpentry	c. bowed walls or other interior exposed surfaces	1	All interior and exterior walls have slight variances on their finished surfaces. Bowing of walls will not detract from or blemish the wall's finished surface. WE will repair any walls which bow more than 3/8" out of line within any 30" horizontal or vertical measurement taken a minimum of 16" from any sheetrock corner or opening.	
		d. out-of-plumb walls	1	WE will repair any walls that are more than 1/4" out-of-plumb for any 30" vertical measurement.	
	2. Kitchen cabinets	a. warped kitchen cabinets	1	WE will repair any doors or drawer fronts that are warped more than 1/4". This condition is measured by closing the drawer or door and measuring from the face frame to the point of furthest warpage. WE are not responsible for matching cabinet finishes.	
		b. gaps between the cabinets, or between the cabinets, ceiling, or walls	1	WE will correct any gap that is more than 1/4" wide.	Do not overload cabinets.
		c. split in panels of a cabinet door	1	If light is visible through the split in a panel, WE will repair the panel.	
	3. Countertops	a. Separation from wall	1	WE will repair the crack. Caulking is acceptable. WE will repair only once after closing or first occupancy, whichever occurs first.	

Type of Material or area of YOUR HOME	Specific item or work	DEFICIENCY or Condition	Years Covered	OUR responsibility	YOUR Responsibility
D. Wood & Plastic	4. Interior finish carpentry (trim inside the HOME)	a. Trim/molding has open joints between moldings and the surface areas to which the moldings are attached	1	WE will repair open joints in moldings or between moldings and surfaces if the gaps are more than 3/16" wide. Caulking is acceptable.	
	5. Exterior finish carpentry (wood siding, or masonry trim on the outside of the HOME)	a. Trim has open joints between pieces of trim, including siding and masonry	1	WE will repair any open joints that are more than 3/8" wide or which do not keep out the elements. Caulking is acceptable.	Maintain exterior finish by caulking and painting.
	6. Exterior siding	a. inadequate clearance between exterior siding and finished grade	1	WE will insure there is a 6" clearance between siding and finished grade at the time of closing or first occupancy whichever occurs first.	Maintain a 6" clearance between siding and finished grade.
E. Thermal and moisture protecting materials	1. Waterproofing	a. leaks in basement	1	Dampness on the walls or floors in the basement is not a defect. However, if water is actually trickling into the basement, WE will repair the leaks.	Maintain proper grades and drainage around the home and landscape properly to avoid water problems in the HOME.
	2. Insulation	a. insufficient insulation	1	WE will insulate the HOME as required to meet local energy and building requirements or, as applicable, FHA or VA requirements. Insulation does not render a wall or room soundproof.	
	3. Louvers and vents	a. rain or snow leaks into the attic through louvers and vents	0	HOMES must have louvers and vents for proper ventilation. Rain or snow will sometimes come through these openings.	

Type of Material or area of YOUR HOME	Specific item or work	DEFICIENCY or Condition	Years Covered	OUR responsibility	YOUR Responsibility
E. Thermal and moisture protecting materials	4. Roofing & siding	a. ice build-up on roof	0	During prolonged cold spells, ice is likely to build up on the eaves of the roof. This build-up will occur when snow and ice accumulate and gutters and downspouts freeze up.	
		b. leaks in roof or flashing	1	WE will repair roof or flashing leaks. Leaks caused by ice build-up are not OUR responsibility.	Clean leaves from valleys, gutters and downspouts.
		c. standing water on a flat roof	1	It is not unusual for minor ponding to occur on a flat roof for up to 24 hours after a rainfall. However, if water is not draining properly, WE will correct the drainage. WE are not responsible if the roof was specifically designed to retain water.	
		d. delamination of veneer siding or joint separation	1	All siding will be installed so that it meets the manufacturer's standards and industry standards and is sufficiently painted or protected. WE will repair or replace any siding that delaminates or separates. WE will only paint new materials as part of the repair. The paint may not be an exact match to the original colors.	Protect the siding from damage, such as leaning heavy objects against siding, ball dents and water from sprinklers striking the siding. Annually, seal or recaulk siding.
		e. wood siding	0	Gaps on end and side edge may occur due to normal expansion and contraction. WE cannot control wood expansion and contraction.	

Type of Material or area of YOUR HOME	Specific item or work	DEFICIENCY or Condition	Years Covered	OUR responsibility	YOUR Responsibility
E. Thermal and moisture protecting materials	5. Sheet metal	a. leaks in gutters and/or down-spouts	1	Gutters and downspouts might overflow during heavy rains. They should not leak at connections. WE will repair leaks.	Keep leaves and debris out of gutters to allow water to flow properly. Do not lean ladders against gutters and downspouts.
		b. standing water in gutters	1	It is common practice to install gutters approximately level, resulting in small amounts of water standing in a gutter after a rain. If the water is more than 1" deep in a gutter and the gutter is not clogged with debris. WE will repair the gutter so that water can drain properly.	Keep leaves and debris out of gutters to allow water to flow properly.
	6. Sealants	a. leaks in exterior (outside) walls because caulking is inadequate	1	If water enters the HOME, WE will repair leaking joints or cracks in the exterior wall surface, around openings and flashings.	Properly installed caulking may shrink. YOU must maintain caulking during the life of the home.
F. Doors and windows	1. Wood and plastic doors	a. outside doors are warped	1	WE will repair any doors that warp to the extent that they satisfy one of the following: • they no longer work; • they are no longer weather resistant; or • they warp more than 1/4", measured diagonally from corner to corner. WE will refinish any new doors to match other doors as closely as possible.	If YOU paint outside doors, doors must be properly prepared.

Type of Material or area of YOUR HOME	Specific item or work	DEFICIENCY or Condition	Years Covered	OUR responsibility	YOUR Responsibility
F. Doors and windows	1. Wood and plastic doors	b. inside doors or closet doors are warped	1	WE will repair any doors that warp more than 1/4", measured diagonally from corner to corner. In the event WE install a new door, WE will finish new doors to match other doors as closely as possible.	
		c. panels in doors shrink so that raw wood edges show	0	It is normal for panels to shrink.	
		d. split in panels of a door	1	If light is visible through the split in a panel, WE will repair the panel. WE will make this repair only once after closing or first occupancy, whichever occurs first.	
		a. garage doors do not operate properly	1	If garage doors do not operate properly under normal use, WE will adjust or correct them. If YOU install a garage door opener, WE are no longer responsible for the operation of the garage door.	Keep all movable parts lubricated.
	2. Garage doors on garages that are attached to the HOME	b. rain or snow leaks through garage doors	1	Garage doors will be installed in accordance with manufacturer's specifications. WE will repair leaks resulting from a failure to properly install the garage doors. During severe weather conditions, some leakage may be normal.	

Type of Material or area of YOUR HOME	Specific item or work	DEFICIENCY or Condition	Years Covered	OUR responsibility	YOUR Responsibility
F. Doors and windows	3. Wood, plastic, and metal windows	a. windows do not function properly	1	WE will correct the windows so that they are relatively easy to operate.	Keep tracks and rollers cleaned, lubricated and adjusted.
		b. condensation and/or frost on inside surfaces of windows	0	Condensation may occur on the interior window surfaces with extremes in temperature and humidity. Individual living habits can impact humidity levels. These conditions are beyond OUR control and WE have no responsibility.	If a humidifier is installed, YOU must follow the manufacturer's recommendations for proper setting of the humidistat.
	4. Weather stripping and seals	a. air leaks in around doors and windows	1	Doors and windows will be installed in accordance with the manufacturer's standards. If air comes in because doors, windows, or weatherstripping were fitted poorly, WE will repair the improperly fitted doors, windows, or weatherstripping.	If YOU live in an area with high winds, storm doors and windows may be installed.
	5. Sliding doors	a. sliding doors do not operate properly	1	Sliding doors will be installed in accordance with the manufacturer's specifications. WE will repair inoperative sliding doors.	Keep tracks and rollers cleaned, lubricated, and adjusted.
	6. Glass	a. broken glass	0	WE will repair broken glass reported to US prior to closing or at first occupancy, whichever occurs first.	Report to US all broken glass prior to closing or at first occupancy, whichever occurs first.
	7. Hardware	a. locks on doors or windows do not operate properly	1	WE will repair any hardware which does not meet manufacturer's standards.	

Type of Material or area of YOUR HOME	Specific item or work	DEFICIENCY or Condition	Years Covered	OUR responsibility	YOUR Responsibility
G. Finishes	1. Lath and plaster	a. cracks in inside walls and ceilings	1	Cracks in inside walls and ceilings are not unusual. WE will repair all cracks that are more than 1/8" wide. WE will repair these cracks only once after closing or first occupancy, whichever occurs first.	
	2. Gypsum wallboard	a. nail pops, blisters in tape and other blemishes on inside walls and ceilings	1	WE will correct these imperfections only once after closing or first occupancy, whichever occurs first.	
		b. cracks	1	If the wallboard has cracks that are more than 1/8" wide, WE will repair.	
	3. Ceramic tile	a. chips or cracks in floor, counter or wall tile	10	WE will replace cracked or chipped tiles reported to US prior to closing or at first occupancy. WE will not be responsible to match the tile patterns or color between the old and the new tile and grout.	Report to US all cracked or chipped tiles prior to closing or at first occupancy, whichever occurs first.
		b. loose floor, counter or wall tile	1	WE will resecure loose tiles.	
		c. cracks in grouting of ceramic tile joints or at junctions between tiles and other materials (e.g., between tiles and bathtub)	1	Cracks in grouting of ceramic tile joints are commonly caused by normal shrinking of the grouting. WE will repair cracked grouting only once after closing or first occupancy. WE will not be responsible for discontinued grout or for differences in color between the old and the new grout.	RegROUT cracks during the lifetime of the HOME.

Type of Material or area of YOUR HOME	Specific item or work	DEFICIENCY or Condition	Years Covered	OUR responsibility	YOUR Responsibility
G. Finishes	4. Finished wood floors	a. cracks between the floor boards	1	WE will repair all cracks that are more than 3/16" wide.	
	5. Resilient flooring or floor covering	a. nail pops on surface of resilient floor covering	1	WE will repair any nail pops that break the surface of the flooring.	
		b. depressions or ridges in resilient flooring because the subfloor is irregular		WE will repair any ridges or depressions which are readily apparent and which are more than 1/8" high or deep. The ridge or depression measurement is the gap created at one end of a 6" straight-edge placed over the depression or ridge with 3" of the straightedge on one side of the defect, held tightly to the floor. WE will not be responsible to match the old and the new flooring.	
		c. resilient flooring lifts, bubbles, or becomes unglued	1	WE will repair these defects.	
		d. visible seams or shrinkage gaps at joints of resilient flooring	1	If the gaps are more than 1/8" wide between pieces of resilient flooring, WE will repair them. If the gaps between flooring and other materials are more than 1/8" wide, WE will repair the affected area only.	
		e. cuts and gouges	0	WE will repair cuts and gouges reported to US prior to closing or at first occupancy, whichever occurs first.	Report to US prior to closing or at first occupancy, whichever occurs first.

Type of Material or area of YOUR HOME	Specific item or work	DEFICIENCY or Condition	Years Covered	OUR responsibility	YOUR Responsibility
G. Finishes	6. Paint, stain, or varnish	a. deteriorating, fading, or peeling of outside paint	1	Fading of a paint or stain is normal and not considered a defect. The amount of fading will depend on the climate where the HOME is located. WE will repair paint, stain or varnish which peels or deteriorates. WE will properly prepare and refinish any areas that are affected.	
		b. painting made necessary by other repair work		If painting is required because of other repair work, WE will paint to match surrounding areas as closely as possible.	
		c. deteriorating varnish or lacquer finish on outside woodwork	0	Varnish or lacquer on outside woodwork deteriorates quickly and is not covered.	
		d. deteriorating varnish or lacquer finish on inside woodwork	1	WE will retouch areas of the woodwork where the finish has deteriorated. WE will make this repair only once after closing or first occupancy, whichever occurs first.	
		e. mildew or fungus on painted surfaces	0	WE will remove mildew or fungus reported to US prior to closing or first occupancy. Mildew or fungus may form on painted surfaces over time because of warmth and moisture.	Report to US prior to closing or at first occupancy, whichever occurs first. Clean mildew or fungus regularly from exterior or interior surfaces.

Type of Material or area of YOUR HOME	Specific item or work	DEFICIENCY or Condition	Years Covered	OUR responsibility	YOUR Responsibility
G. Finishes	6. Paint, stain, or varnish	f. deteriorating, fading, or peeling of interior paint	1	Interior painted surface should not deteriorate, fade, or peel. WE will touch-up only the affected areas one time after closing or first occupancy, whichever occurs first.	Maintain interior paint per manufacturer's specifications.
	7. Wall coverings	a. peeling wall covering	1	WE will repair wall covering which peels within the first year.	
		b. mismatched edges of wall covering, pattern mismatch, and open seams	0	WE will repair these conditions when reported to US prior to closing or at first occupancy, whichever occurs first.	
	8. Carpeting	a. open seams in carpeting	1	Visible carpet seams are not a defect. WE will repair any openings or gaps in the seams.	
		b. wall-to-wall carpeting comes up, is loose or stretched	1	If WE originally installed wall-to-wall carpeting as a primary floor covering, WE will re-attach or restretch any of the carpeting that has loosened from the material to which it was attached.	
		c. spots or minor fading on carpet	0	Spots and/or minor fading can occur naturally when a carpet is exposed to light. WE have no responsibility for this condition.	

Type of Material or area of YOUR HOME	Specific item or work	DEFICIENCY or Condition	Years Covered	OUR responsibility	YOUR Responsibility
G. Finishes	9. Stucco	a. cracks in outside stucco walls	1	Cracks are not unusual in the surfaces of outside stucco walls. WE will repair within the first year period, any cracks that are more than 1/8" wide.	
	10. Marble, real or synthetic, plastic laminate, porcelain, and fiberglass	a. blemishes, scratches, nicks, or chips	0	WE will repair blemishes, scratches, nicks, or chips reported to US prior to closing or at first occupancy, whichever occurs first. WE are not responsible for discontinued patterns or for differences in color between old and new.	Report to US prior to closing or at first occupancy, whichever occurs first.
H. Louvers, vents, and fireplaces	1. Louvers and vents	a. inadequate ventilation of crawl spaces	1	WE will repair the louvers and vents so that they provide proper ventilation. WE will not be responsible for problems caused by changes made to the original ventilation system.	
	2. Fireplaces and chimneys	a. improper drawing of fireplace or chimney	1	A number of items can cause temporary negative draft situations in a fireplace or chimney. These include high winds, obstructions such as large branches or trees too close to the chimney, or tight insulation and weatherproofing throughout the house. WE will not be responsible for these problems. If the draft problem is caused by improper installation, WE will repair the problem.	Insure there is sufficient fresh air make-up for the flue to draw properly. Before the beginning of the season that YOU will use the fireplace, look for any obstructions and clear prior to use.

Type of Material or area of YOUR HOME	Specific item or work	DEFICIENCY or Condition	Years Covered	OUR responsibility	YOUR Responsibility
H. Louvers, vents, and fireplaces	2. Fireplaces and chimneys	b. separation of chimney from the structure to which it is attached	1	It is not unusual for a new chimney to separate slightly from the structure to which it is attached. WE will repair any chimney that has separated from the HOME more than 1/2" in any 10 feet vertical measurement.	
		c. firebox (area where combustion takes place) paint has changed	0	The heat from a fire can naturally change any finish on the firebox. This condition is not covered.	
		d. cracks in firebrick (brick that lines the fireplace) and mortar joints	0	Roaring fires can naturally cause this cracking. This condition is not a DEFICIENCY.	
I. Mechanical systems	1. Plumbing, water supply, and septic systems	a. plumbing pipes have frozen and burst	1	Drain, waste, vent, and water pipes will be adequately protected to prevent freezing as required by the applicable plumbing requirements for normally anticipated cold weather and in accordance with the design temperatures established by the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE). WE will repair any pipes not meeting the ASHRAE standards.	Drain water pipes and outside faucets when they are exposed to freezing temperatures.
		b. leaks in faucets or valves	1	WE will repair or replace any faucets or valves that leak due to DEFICIENCIES in workmanship or materials.	

Type of Material or area of YOUR HOME	Specific item or work	DEFICIENCY or Condition	Years Covered	OUR responsibility	YOUR Responsibility
1. Mechanical systems	1. Plumbing, water supply, and septic systems	c. DEFICIENCIES in plumbing fixtures, appliances, or trim fittings	1	WE will repair any fixture, appliance, or fitting which does not meet the manufacturer's standards.	
		d. noisy water pipes	1	Some noise in the water pipes is natural and comes from the flow of water and from the pipes expanding. If there is a pounding noise from improperly anchored pipes, WE will repair.	
		e. leaks in pipes	1 & 2	WE will repair any leaks in the drain, waste, vent or water pipes. Condensation on pipes is not the same as a leak, and is not a DEFICIENCY.	
		f. stopped up sewers, fixtures, and drains	1 & 2	WE will repair all sewers, fixtures, and drains that are clogged because of defects in construction. WE are not responsible for any DEFICIENCY which is not construction related, including any failure of municipal systems.	If sewers, fixtures, and drains are clogged because of YOUR actions, then YOU will pay the cost of repairing them.

Type of Material or area of YOUR HOME	Specific item or work	DEFICIENCY or Condition	Years Covered	OUR responsibility	YOUR Responsibility
1. Mechanical systems	1. Plumbing, water supply, and septic systems	g. water supply system does not deliver water	1 & 2	WE are responsible for connecting all on-site service to municipal water mains and to private water supplies. WE are also responsible for making sure that an individual well on-site is installed to comply with all building and plumbing requirements. WE will repair problems caused by DEFICIENCIES in workmanship and materials. WE are not responsible for water quality. WE are not responsible for problems caused by conditions beyond OUR control.	
		h. septic tank, distribution box and pump do not meet state, county or local requirements	1 & 2	Septic tank will meet state, county, or local requirements. WE will repair any septic system that cannot properly handle the normal flow of household waste because of defects in workmanship or materials. WE are not responsible for conditions beyond OUR control, such as freezing, saturated soil, an increase in the elevation of the water table, excessive use of the system, or limitations established by the local governing agency.	Properly maintain the septic tank system to include proper grades, landscaping, and protection from vehicular traffic or excessive weight which would result in soil compaction. Tanks may need to be pumped during periods of excessive use or extended rainfall.

Type of Material or area of YOUR HOME	Specific item or work	DEFICIENCY or Condition	Years Covered	OUR responsibility	YOUR Responsibility
1. Mechanical systems	1. Plumbing, water supply, and septic systems	i. septic drain fields	1 & 2	Septic drain fields will meet state, county, or local requirements. WE will repair any septic drain fields that cannot properly handle the normal flow of household waste because of defects in workmanship or materials. WE are not responsible for conditions beyond OUR control, such as freezing, saturated soils, increase in elevation of the water table, excessive use of the system, or limitations established by the local governing agency.	
	2. Heating system	a. inadequate heating	1	Heating system is designed to maintain an indoor temperature of 70° F. The temperature is measured in the center of each room at a height of 5 feet above the floor (under local outdoor winter design conditions as specified in the ASHRAE handbook). Federal, state, or local energy requirements take precedence. WE will repair the heating system so that it provides the required temperature.	Balance dampers and registers and make other minor adjustments for change of seasons. Maintain unit per manufacturer's specifications.
		b. leaks in refrigerant lines	1 & 2	WE will repair all leaking refrigerant lines and will recharge the unit, unless YOU caused the damage.	

Type of Material or area of YOUR HOME	Specific item or work	DEFICIENCY or Condition	Years Covered	OUR responsibility	YOUR Responsibility
1. Mechanical systems	3. Refrigeration	a. inadequate air conditioning	1	Cooling system is designed to maintain an indoor temperature of 78° F. The temperature is measured in the center of each room at a height of 5 feet above the floor (under local out-door summer design conditions as specified in ASHRAE handbook). If the temperature outside is above 95° F, cooling system must be able to maintain an inside temperature that is 15° below the outside temperature. Federal, state, or local energy requirements take precedence. WE will repair the cooling system so that it provides the required temperature.	Balance dampers and registers and make other minor adjustments for change of seasons and maintain proper window treatment to optimize cooling capabilities. Maintain unit per manufacturer's specifications.
	4. Condensation drain lines	a. clogged con- densation drain lines	0	WE will provide clear condensation drain lines at closing or first occupancy, whichever occurs first. After this, YOU are responsible for keeping the condensation drain lines clear.	Condensation drain lines may clog, under normal use. YOU should keep these clear. Prior to using the cooling system each season, check condensation lines to ensure the drain lines are clear.
	5. Evaporative cooling system	a. mechanical part of the evaporative cooling system does not operate properly	1	WE will correct or adjust the blower and the water system so that it functions properly.	
	6. Air distribution system	a. ductwork makes ticking and crackling noises	0	The ductwork may make ticking and crackling noises when the metal in it expands from the heat and contracts from the cold. This condition is natural and is not a DEFICIENCY.	

Type of Material or area of YOUR HOME	Specific item or work	DEFICIENCY or Condition	Years Covered	OUR responsibility	YOUR Responsibility
1. Mechanical systems	6. Air distribution system	b. ductwork makes a booming noise	1	This booming is called "oilcanning." WE will repair the ductwork.	
		c. separated or unattached ductwork	1&2	WE will re-attach or re-secure all ductwork that has become separated or unattached.	YOU should not walk on, place heavy objects against or otherwise subject ductwork to unusual loads.
J. Electrical system	1. Electrical conductors, fuses, and circuit breakers	a. fuses blow or circuit breakers (excluding ground fault interrupters) "kick out"	1	WE will check the wiring circuits and make sure that they conform with approved local electrical requirements.	Do not overload circuits.
	2. Outlets, switches, and fixtures	a. air leaks around electrical outlets	1	Cold air can be drawn through an outlet on an exterior wall into a room. WE will repair one time after closing or first occupancy, whichever comes first.	
		b. malfunction in electrical outlets, switches, and fixtures	1	WE will repair or replace all defective outlets, switches, or fixtures.	
	3. Service and distribution	a. ground fault interrupters frequently trip (these are sensitive safety devices that are installed into the electrical system to protect from electrical shock)	1	Ground fault interrupters are sensitive and can be easily tripped. Normally, this is not indicative of a construction defect. WE will install ground fault interrupters to meet the electrical requirement. WE will correct the interrupters if the tripping is due to a defect in installation.	A tripped ground fault interrupter usually indicates an overloaded circuit or the connected appliance contains a faulty ground.

Type of Material or area of YOUR HOME	Specific item or work	DEFICIENCY or Condition	Years Covered	OUR responsibility	YOUR Responsibility

J. Electrical
System

3. Service and
distribution

b. electrical wiring does
not carry its designed
load for normal
residential use

1 & 2

WE will repair any wiring that does not
conform with approved local electrical
requirements. WE are responsible for original
installation only. WE are not responsible for
problems caused by conditions beyond OUR
control.

SAMPLE

BINDING ARBITRATION REQUEST FORM**Dear Homeowner:**

Prior to requesting Professional Warranty Service Corporation (PWC) to begin a binding arbitration procedure for your claimed Builder's Limited Warranty deficiencies, you should have sent your builder a clear and specific written request to correct those deficiencies. If you have already requested your builder in writing to correct a deficiency that you think is covered by the Builder's Limited Warranty, and believe the builder has not properly responded, fill out this form and send it to PWC. Be sure to attach a copy of the written complaint that you previously sent to the builder.

The information you need to fill out this form can be found on the Builder's Limited Warranty Coverage Validation Form. However, if you do not know the answers to any questions, write "Don't Know." Please do not leave any item blank.

Your name: _____

Address: _____
City State Zip

Home Phone: _____ Business Phone: _____

Builder's Limited Warranty : _____ Warranty Date-Home: _____

Builder I.D. Number: _____ - _____ If applicable, FHA/VA Case: _____

Named Builder Insured: _____

Address: _____

Describe the deficiencies which you think are covered by the Builder's Limited Warranty. Include when the deficiency first occurred or when you first noticed the deficiency. (Use additional sheets, if necessary).

I/we are hereby requesting PWC to initiate an arbitration to determine the builder's obligations with respect to the existence of alleged deficiencies under the Builder's Limited Warranty and under applicable federal, state, and local law regarding the Builder's Limited Warranty. I/we understand that the arbitration award shall be final and binding on all parties and shall limit our ability to initiate a lawsuit against the builder and/ or PWC or the Builder's Limited Warranty insurer.

signature

Date

INSTRUCTIONS: Send this Binding Arbitration Request Form along with the required eighty dollar (\$80.00) arbitration filing fee to:

PROFESSIONAL WARRANTY SERVICE CORPORATION
P. O. BOX 800
ANNANDALE, VIRGINIA 22003-0800

PWC Form No. 301
12/94

SUBSEQUENT HOME BUYER ACKNOWLEDGEMENT AND ASSIGNMENT

Upon execution of this form any coverage remaining under the BUILDER'S LIMITED WARRANTY applicable to the home as specified on the Builder's Limited Warranty Coverage Validation Form is transferred to the subsequent homeowner. Any obligations under the BUILDER'S LIMITED WARRANTY to any subsequent homeowner shall not exceed the limit of liability remaining at the time of transfer, if any.

The undersigned home buyer(s) hereby acknowledges and agrees:

- I/we acknowledge that I/we have reviewed and understand the BUILDER'S LIMITED WARRANTY document (PWC 107).
- I/we understand and acknowledge that Professional Warranty Service Corporation ("PWC") is not the warrantor of the BUILDER'S LIMITED WARRANTY.
- I/we understand that I/we am responsible for the maintenance of the home including maintenance of the grade of the land surrounding the home, and that the builder shall not be responsible for any damage to the home which is the result of my/our failure to maintain the home.
- I/we acknowledge and agree all disputes under and relating to the BUILDER'S LIMITED WARRANTY (including disputes on which issues shall be submitted to arbitration; alleged breach of the BUILDER'S LIMITED WARRANTY; and alleged violations of statutes or regulations relating to consumer protection or unfair trade practices) shall be submitted to binding arbitration before an independent third party arbitration organization. I/we agree the decision of the arbitrator(s) shall be binding on all parties to the arbitration. Any such binding arbitration(s) shall be conducted in accordance with the rules and procedures applicable to the arbitration organization hearing the dispute or, where those rules are silent, the United States Arbitration Act (9 U.S.C. § 1 *et. seq.*).

Signature of subsequent Home Buyer(s): _____

Date: _____

Print name: _____

Signature: _____

Date: _____

Print name: _____

Address of Home: _____

Builder's Limited Warranty Coverage Validation Number: _____

INSTRUCTIONS: Sign, fill in Limited Warranty # in the space provided (this number is provided on the Builder's Limited Warranty Coverage Validation Form), and provide a telephone number where you can be reached.

Mail this form and a photocopy of the settlement/closing documents indicating transfer of title to:

PROFESSIONAL WARRANTY SERVICE CORPORATION
P.O. BOX 800
ANNANDALE, VA 22003-0800



York County Building and Codes Certificate of Occupancy

Planning and Development
1070 Heckle Boulevard, Suite 107
Rock Hill, SC 29732
(803) 909-7200 Phone
(803) 909-7227 Fax

Permit Number:	201401498	Permit Type	Townhome
Site Address:	2006 FIREFLY LN	Tax Map ID #:	7290701012
Owner:	CAROLINA DEVELOPMENT SERVICES LL	Subdivision / Lot:	SUMMERLAKE TWH 71
Owner Address:	4289 INDIAN TRAIL FAIRVIEW RD	Contractor:	True Homes
Code Edition:	2012	Contractor Address:	2649 Brekonridge Center Dr, Monroe, NC 2811
Construction Type:	V-B	Occupancy Class:	R-2
Permit Description:	Townhouse Lot 71	Final Inspection Date:	9/24/2014

Conditions:

This certificate issued pursuant to the requirements of the International Codes certifying that at the time of issuance this structure was in compliance with the various ordinances of York County regulating building construction or use. For the following:

10/22/2014

Issue Date

Larry Harrison

Building Inspector

(Post in a conspicuous place)

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

CASE NO.: 2020-CP-46-03592

SUMMERLAKE TOWNHOMES
HOMEOWNERS' ASSOCIATION, INC.
and SUSAN HAGY and KARIN FUENTES,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

**PLAINTIFFS' MOTION TO AMEND
FIRST AMENDED COMPLAINT AND
PROPOSED SECOND AMENDED
COMPLAINT**

TRUE HOMES, LLC; CAROLINA
DEVELOPMENT SERVICES, LLC;
SUMMERLAKE PROPERTIES, LLC; RJB
LEGACY COMPANY f/k/a Barefoot &
Company; BMC EAST, LLC; AIRTRON,
INC.; MPK GRADING AND EROSION
CONTROL, LLC; SOUTHEND
EXTERIORS, LLC; MCGEE BROTHERS
COMPANY, INC.; ALPHA OMEGA
CONSTRUCTION GROUP, INC.;
PENDER-PETTUS INSULATING, INC.;
CHARLOTTE LANEHART ELECTRIC
COMPANY, INC.; C&C PLUMBING, INC.;
ASSOCIATED MATERIALS, LLC a/k/a
Alside, Inc.; T&A EXCAVATING, LLC;
CALLAHAN EXCAVATING, LLC a/k/a
Callahan Grading & Hauling, Inc. a/k/a
Callahan Grading, LLC; AHR
CONSTRUCTION, INC.; JJS
COMMERCIAL CONSTRUCTION, INC.;
CDJ CONSTRUCTION, INC.; JIMENEZ
CONTRACTORS, LLC; J. COV ROOFING,
LLC; AYALAS WINDOW
INSTALLATIONS, LLC; ATLANTA
FLOORING DESIGN CENTERS, INC.;
PEDRO DEJESUS LOPEZ d/b/a PJJ
CONSTRUCTION; and PEDRO
VILLAREAL-CONCEPCION d/b/a CVP
CONSTRUCTION,

Defendants.

Plaintiffs, by and through their undersigned counsel, hereby move this Court for an Order granting leave to file a Second Amended Complaint in the above-captioned matter to add additional parties and claims, and to conform Plaintiffs' allegations to the evidence deduced thus far. Plaintiffs' proposed Second Amended Complaint is attached hereto as **Exhibit A**.

Rule 15, SCRCP, provides that plaintiffs may amend a complaint with leave of the Court which "leave shall be freely given when justice so requires and does not prejudice any other party." The addition of a claim against a party does not constitute prejudice and is not a basis for denying leave to amend. *See Patton v. Miller*, 420 S.C. 471, 491, 804 S.E.2d 252, 262–63 (2017) ("The prejudice contemplated in Rule 15 is not that the non-moving party is forced to defend the merits of a valid claim. Rule 15 prejudice is some result flowing from the amendment that puts the non-moving party at a disadvantage in defending the merits, which disadvantage the party would not have faced if the amended claim had been included in the original pleading or a timely motion to amend."); *Staubes v. City of Folly Beach*, 339 S.C. 406, 413, 529 S.E.2d 543, 546 (2000) ("The prejudice envisioned by Rule 15 is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it."). Plaintiffs submit that given the fact that this case remains in the discovery phase without a mediation or trial date yet set and the fact that Plaintiffs timely seek to add these claims and parties upon learning of their relationship to the facts of the case, there can be no disadvantage to defendants that they would not have faced if the claims and parties had been present in the suit earlier.

Plaintiffs' counsel unsuccessfully attempted in good faith to resolve the matter contained in this motion through communications with opposing counsel.

Plaintiffs respectfully request an Order granting leave to file the attached Second Amended

Complaint.

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Attorneys for Plaintiff

May 10, 2022
Summerville, South Carolina

ELECTRONICALLY FILED - 2022 May 10 11:45 AM - YORK - COMMON PLEAS - CASE#2020CP4603592

STATE OF SOUTH CAROLINA

COUNTY OF YORK

SUMMERLAKE TOWNHOMES
HOMEOWNERS' ASSOCIATION, INC.
and SUSAN HAGY and KARIN FUENTES,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

TRUE HOMES, LLC; CAROLINA
DEVELOPMENT SERVICES, LLC;
SUMMERLAKE PROPERTIES, LLC; RJB
LEGACY COMPANY f/k/a Barefoot &
Company; BMC EAST, LLC; AIRTRON,
INC.; MPK GRADING AND EROSION
CONTROL, LLC; SOUTHEND
EXTERIORS, LLC; MCGEE BROTHERS
COMPANY, INC.; ALPHA OMEGA
CONSTRUCTION GROUP, INC.;
PENDER-PETTUS INSULATING, INC.;
CHARLOTTE LANEHART ELECTRIC
COMPANY, INC.; C&C PLUMBING, INC.;
ASSOCIATED MATERIALS, LLC a/k/a
Alside, Inc.; T&A EXCAVATING, LLC;
CALLAHAN EXCAVATING, LLC a/k/a
Callahan Grading & Hauling, Inc. a/k/a
Callahan Grading, LLC; AHR
CONSTRUCTION, INC.; JJS
COMMERCIAL CONSTRUCTION, INC.;
CDJ CONSTRUCTION, INC.; JIMENEZ
CONTRACTORS, LLC; J. COV ROOFING,
LLC; AYALAS WINDOW
INSTALLATIONS, LLC; ATLANTA
FLOORING DESIGN CENTERS, INC.;
PEDRO DEJESUS LOPEZ d/b/a PJJ
CONSTRUCTION; and PEDRO
VILLAREAL-CONCEPCION d/b/a CVP

IN THE COURT OF COMMON PLEAS

CASE NO.: 2020-CP-46-03592

**PLAINTIFFS' MEMORANDUM IN
OPPOSITION TO DEFENDANT TRUE
HOMES, LLC'S MOTION TO STAY
AND COMPEL ARBITRATION**

CONSTRUCTION,

Defendants.

Plaintiffs Summerlake Townhomes Homeowners' Association, Inc. ("Association"), Susan Hagy ("Hagy"), and Karin Fuentes ("Fuentes"), (together, "Plaintiffs"),¹ by and through their undersigned counsel, hereby submit this Memorandum in Opposition to the Motion to Stay and Compel Arbitration ("Motion") of Defendant True Homes, LLC ("True Homes").

SUMMARY OF ARGUMENT

In this construction defect action arising from the defective construction of 101 townhomes in Fort Mill, the homeowners association for the development, the Association, is responsible for the repair of the exterior of the buildings, and the townhome owners are responsible for everything inward from the exterior components. True Homes and its subcontractors defectively constructed the townhomes and then sold them to homeowners including Plaintiff Fuentes and others. Plaintiff Hagy did not purchase her townhome from True Homes, and instead, she is a subsequent purchaser of her townhome.

The defective construction resulted in damage to both the exteriors and interiors of the

¹ On May 10, 2022, Plaintiffs filed their Motion to Amend First Amended Complaint and Proposed Second Amended Complaint which would remove Susan Hagy as a named plaintiff and add Robin Daniel and Lisa Sher as named plaintiffs asserting claims individually and on behalf of a class of the other owners of townhomes in the Summerlake Townhomes development. Plaintiffs also circulated a proposed stipulation of dismissal for Hagy and requested consent from all parties. Because Daniel and Sher are not yet plaintiffs in this action and Hagy remains a plaintiff, this Memorandum discusses why True Homes cannot compel Hagy's claims into arbitration. However, Daniel and Sher did not purchase their townhomes from True Homes and are both subsequent purchasers like Hagy (Ex. A & Ex. B), and the reasons set forth herein as to why Hagy cannot be compelled into arbitration are also applicable to Daniel and Sher.

townhomes and the repairs will require the individual homeowners to lose the use of some or all their townhomes while the repairs are completed. Accordingly, the homeowners association brought claims for the components it is responsible for repairing, and Fuentes and Hagy brought claims individually and on behalf of a class of all other townhome owners in the development for the damages to the interiors of the townhomes and the loss of use and enjoyment that has resulted and will result from the defects and repairs.

Attempting to bar Fuentes and Hagy from pursuing claims on behalf of a class, True Homes moved to compel arbitration of Fuentes' and Hagy's claims.² True Homes contends that an arbitration provision in its purchase agreements with Fuentes and Alex Fresco, the former owner of Hagy's townhome (generally, the "Purchase Agreement," and specifically, the "Fuentes Purchase Agreement" and the "Fresco Purchase Agreement"), requires the Court to compel arbitration. True Homes' Motion should be denied for the following eight reasons:

1. Under the doctrine of merger, the Purchase Agreement containing the arbitration provision merged into the deed transferring ownership of the townhomes to the purchasers, and therefore, the Purchase Agreement and its arbitration provision are no longer enforceable.
2. The Purchase Agreement is an agreement for the purchase of real property, and therefore does not involve interstate commerce and is not subject to the Federal Arbitration Act. To be

² True Homes did not move to compel into arbitration the claims asserted by Association. Therefore, even were the Court to conclude that Fuentes' and Hagy's claims must be compelled into arbitration, which would be erroneous for the reasons set forth herein, the Association's claims would continue in this action. Additionally, True Homes is the only defendant to have moved to compel any claims into arbitration. Therefore, even were the Court to conclude that Fuentes' and Hagy's claims must be compelled into arbitration, which would be erroneous for the reasons set forth herein, Fuentes' and Hagy's claims against the remaining defendants would continue in this action.

enforceable, the purchase agreement would therefore need to comply with the South Carolina Uniform Arbitration Act, but the agreement lacks the notice of arbitration required by the Act and is therefore unenforceable.

3. The Purchase Agreement refers to missing terms governing the arbitration procedure, and purchasers did not know of or agree to those terms. Accordingly, there was no meeting of the minds as to the terms of the arbitration provision, and the provision is unenforceable.
4. The Purchase Agreement is an adhesion contract containing oppressive, one-sided terms requiring purchasers to arbitrate in accordance with an undisclosed procedure and providing that True Homes' obligations and liabilities are limited to warranty repairs. The Purchase Agreement is therefore unconscionable and unenforceable.
5. The arbitration provisions in the Purchase Agreement between True Homes and Fuentes does not apply to the claims in this action because the language of the provision explicitly limits its application to "Warranty Disputes" under True Homes' express warranty, and Fuentes does not assert any claims under True Homes' express warranty. The arbitration provision also does not apply to Fuentes' claims in this action because the Fuentes Purchase Agreement does not provide that any particular claims are subject to arbitration, rather the Fuentes Purchase Agreement merely states that the parties must resolve disputes in accordance with the procedure set out in a warranty booklet. True Homes failed to provide the Court or the parties with the warranty booklet, and therefore, True Homes failed to establish that the terms of that warranty booklet require the arbitration of the claims asserted in this action.
6. True Homes misstates South Carolina caselaw on when a subsequent purchaser of property can be compelled into arbitration pursuant to a contract between the developer/homebuilder

and the original purchaser of the property. Moreover, even were True Homes correct as to the applicable law, Plaintiffs do not assert any breach of contract claim or even any claim sounding in contract, and therefore, there would be no basis for compelling any subsequent purchaser into arbitration.

7. An agreement to arbitrate in a contract does not bind future owners of real property.
8. True Homes waived its right to compel arbitration by delaying nearly a year between when it was served and when it moved to compel arbitration and by repeatedly availing itself of this Court and the judicial process over the course of that year by filing a motion to stay, entering into a consent order to resolve issues as to the inspections of putative class members' townhomes, inspecting twenty-five putative class members' townhomes in addition to Fuentes' and Hagy's townhomes, and serving a subpoena on the community manager for the Summerlake Townhomes development.

FACTUAL AND PROCEDURAL BACKGROUND

The Summerlake development is a 101-townhome development in Fort Mill with the townhomes all constructed and sold to individual homeowners by True Homes. (First Am. Compl. ¶¶4, 11, 15, & 16.) The Association is the homeowners association for the Summerlake development. Per the Declaration of Covenants, Conditions and Restrictions for Summerlake Townhomes ("Covenants"), the individual townhome owners own in fee simple their townhome and the land below it with the property line passing through the middle of the party wall between each townhome. (Ex. C, Sections 3.1 & 4.3(c)i.) The Association is responsible for maintaining, repairing, replacing, and caring for the roofs, exteriors, and other exterior improvements of the townhomes, as well as the common elements in the community, with the relevant Covenant

provisions stating:

Section 4.3 General Duties of the Secondary Association. The Secondary Association^[3] is hereby authorized to act and shall act on behalf of, and in the name, place, and stead of, the individual Owners in all matters pertaining to the maintenance, repair, and replacement, of the Common Areas, the maintenance of the exterior of the townhome buildings and party walls

(a) *Common Area Maintenance by Secondary Association.* The Secondary Association shall maintain and keep in good repair the Common Areas. The maintenance shall include, but need not be limited to, maintenance, repair and replacement of all . . . private streets situated upon the Common Areas, . . . and such portions of any other real property included within the Common Areas

(b) *Exterior Maintenance of Attached Dwelling Units.* In addition to maintenance of the Common Area, the Secondary Association shall provide exterior maintenance upon each attached Dwelling Unit which is subject to assessment hereunder, as follows: paint and/or stain the exterior of the buildings and townhouses, repair, replace and care for roofs, exterior building surfaces (including but not limited to siding, trim, and windows), . . . and other exterior improvements.

(Ex. C, Section 4.3.)

Plaintiff Fuentes owns the townhome located at 2006 Firefly Lane in the Summerlake Development. (Compl. ¶9; Ex. O at ¶5.) Fuentes purchased the townhome directly from True Homes. ~~(Mot., Ex. 1.)~~ Plaintiff Hagy owns the townhome located at 923 Summerlake Drive in the Summerlake Development. (Compl. ¶10; Mot., Ex. 4.) Hagy is a subsequent purchaser of her property, having purchased it from Opendoor Property C, LLC, who previously purchased it from Alex Fresco, who previously purchased it from True Homes. (Mot., Ex. 3 & Ex. 4.)

³ The "Secondary Association" is the Summerlake Townhomes Homeowners' Association, Inc. referred to herein as the "Association." The Covenants refer to that entity as the "Secondary Association" because the Summerlake development is one part of a larger development known as Regal Manor which is subject to a master association, the Regal Manor Homeowners' Association, Inc. (Ex. C at 2-5.)

After experiencing numerous problems resulting from defective construction throughout the development—including water intrusion and damage at front and rear townhome doors, roof leaks, HVAC systems that would not heat or cool certain rooms, and ponding water and potholes on roads—and after True Homes and the other responsible parties refused to repair the problems or refused to properly repair the problems, the Association and townhome owners Fuentes and Hagy investigated the defects and filed this lawsuit. The architect expert retained to evaluate the construction of the townhomes concludes there are construction deficiencies that are “common across the buildings and have allowed water to penetrate the building envelope, resulting in damage to the wood framing, sheathing, and interior finishes.” (Ex. D at 2.) In addition to numerous defects on the exteriors of the townhomes, the architect found defective construction on the exterior that resulted in damage to townhome interiors, such as:

- “Improper termination and flashing of [adhered concrete masonry veneer] at base of walls and trim/claddings”;
- “Inadequate through-wall flashing at brick veneer”;
- “Incomplete coverage and damage of weather-resistive barrier (WRB) and reverse laps with flashings”;
- “Inadequate coverage and sealing of the roof fasteners”; and
- “Defective sill flashing at door openings.”

(Ex. D at 2.) The architect also found the insulation at the interior of windows and doors—the air seal around windows and doors—which is arguably the townhome owners’ responsibility, rather than the Associations’ responsibility, was installed incorrectly. (Ex. D at 2.) Regardless of whether the window and door insulation is an Association responsibility or townhome owner responsibility, the repair of that issue will require contractors to access the interior of the

townhomes and remove interior components to complete the repairs.

The mechanical engineer expert retained to evaluate the mechanical systems in the townhomes found the HVAC ductwork, electrical disconnects, condensate drains, refrigerant lines, returns, and water heaters were installed in violation of applicable building codes and industry standards. (Ex. E at 1–2.) The mechanical engineer concludes the defects are present in Fuentes’ and Hagy’s townhomes and “are common across the other properties [he] inspected.” (Ex. E at 1). He also concludes the defects “resulted in higher energy bills (i.e., higher power bills), additional maintenance for HVAC systems, reduced service life of the HVAC systems, [and] hot (or cold) areas in the residence.” (Ex. E at 2.) The mechanical defects fall within the townhome owners’ responsibility and the repairs of these components will require contractors to perform work in and to the interiors of the townhomes.

The civil engineer expert retained to evaluate the roads, drainage, and other site elements in the Summerlake development found numerous defects in those components the Association is responsible for repairing, but he also found “non-traffic rated sewer cleanouts” in townhome driveways “resulting in traffic damage to cleanouts and standing water” and “improper installation of trench drains in driveways resulting in driveway failure and improper drainage.” (Ex. F at 1.) The townhomes’ driveways are arguably the Association’s responsibility, but the repair of those defects will require the townhome owners to forego the use of their driveways for some period while the repairs are performed.

In short, all three experts retained to evaluate the construction of the development found defects in the portions of the development that the townhome owners are responsible for repairing, in addition to defects in the portions the Association is responsible for repairing. Additionally,

all three experts found defects that will require contractors to access and alter the interiors of the townhomes to complete the repairs. Given the exterior and interior defects and repairs, this action includes claims by the Association and claims by two individual townhome owners—Fuentes and Hagy—on behalf of a class of all the townhome owners. The Association, Fuentes, and Hagy assert claims against True Homes, its subcontractors, two developer entities, and the two developer entities' subcontractors for negligence, breach of implied warranties, breach of fiduciary duty, and violations of the South Carolina Unfair Trade Practices Act ("UTPA").

On March 25, 2021, Plaintiffs served True Homes in this action. (Aff. of Service on True Homes, filed April 1, 2021.) True Homes requested an extension to answer, and Plaintiffs agreed to the requested extension. (Ex. G.) On May 20, 2021, True Homes moved to dismiss or stay the case pursuant to the South Carolina Notice and Opportunity to Cure Construction Dwellings Defects Act, S.C. Code Ann. §§ 40-59-810, *et seq.* (the "Act"). (True Homes' Motion to Dismiss, filed May 20, 2021.) True Homes contended that to satisfy the Act and be permitted to proceed with this suit, Plaintiffs were required to provide Fuentes' and Hagy's townhomes for inspection as well as all the putative class members' townhomes. On June 23, 2021, the Honorable Daniel D. Hall held a hearing on True Homes' motion to dismiss or stay, and Judge Hall stayed the case until October 1, 2021, to provide the parties with the opportunity to conduct inspections and resolve their dispute regarding the application of the Act. (June 24, 2021 Order.)

Plaintiffs, True Homes, and the other defendants negotiated a resolution of the stay and inspection issue for both the named plaintiffs and the absent putative class member townhome owners. On September 20, 2021, the Court entered the parties' proposed consent order providing that the inspection of twenty-five randomly selected townhomes would fully and finally satisfy the

requirements of the Act in this case. (Sept. 20, 2021 Order.) Pursuant to the Consent Order, on September 21, 22, and 23, 2021, True Homes and the other defendants inspected twenty-seven townhomes in the Summerlake Development—Fuentes’ and Hagy’s townhomes and twenty-five randomly selected townhomes. (Ex. G & Ex. H.)

On November 17, 2021, True Homes served a subpoena on the community manager for the Summerlake Townhomes development, Superior Association Management, LLC, and subsequently received 1,552 pages of documents in response to the subpoena. (Ex. I, Ex. J, & Ex. K.)

On March 25, 2021, which is 327 days after being served in this action, True Homes filed this Motion.

ARGUMENT

I. The Arbitration Provision is Unenforceable Under the Merger Doctrine.

The Court should deny the Motion because it relies solely on arbitration provisions in purchase agreements which were not incorporated into the deeds transferring ownership of the townhomes to the homeowner plaintiffs. Under the merger doctrine, the purchase agreements merged into the deeds, and the purchase agreements are no longer of any effect.

The merger doctrine provides that “[a] deed executed subsequent to the making of an executory contract for the sale of land supersedes that contract.” *Charleston W. Carolina Ry. Co. v. Joyce*, 231 S.C. 493, 505, 99 S.E.2d 187, 193 (1957); *see also Wilson v. Landstrom*, 281 S.C. 260, 264–65, 315 S.E.2d 130, 132–33 (Ct. App. 1984) (applying merger doctrine to hold that mortgage executed after contract for sale of land contained the entire agreement between the parties and rendered the contract of no further effect). “The execution, delivery, and acceptance

of a deed varying from the terms of the antecedent contract indicates an amendment of the original contract, and generally the rights of the parties are fixed by their expressions as contained in the deed.” *Charleston W. Carolina Ry.*, 231 at 504, 99 S.E.2d at 193. “[T]he party denying merger has the burden of proving by clear and convincing evidence that merger was not intended.” *Hughes v. Greenville Country Club*, 283 S.C. 448, 451, 322 S.E.2d 827, 828 (Ct. App. 1984).

South Carolina courts routinely hold the merger doctrine bars a defendant’s motion to compel arbitration based on an arbitration provision in a home purchase agreement where the deed transferring the home to the purchaser does not contain the arbitration provision. *See, e.g., Smith v. D.R. Horton, Inc.*, No. 2010-CP-18-641, 2011 WL 12565687 (S.C. Com. Pl., April 7, 2011) (Dickson, J.), (denying motion to compel arbitration under the merger doctrine where the contract contained an arbitration provision but the subsequent deed did not contain an arbitration provision), *aff’d on other grounds*, 417 S.C. 42, 790 S.E.2d 1 (2016), (attached as Exhibit P).

Here, the deed from True Homes to Fuentes does not mention arbitration and does not mention the purchase agreement, much less incorporate the terms of the purchase agreement. (Ex. L.) To the contrary, the deed provides that True Homes transfers ownership of the property to Fuentes with “all the rights, members, hereditaments and appurtenances whatsoever to the said premises” and only subject to “the rights, conditions and restrictions that constitute covenants running with the land which are set forth or referred to herein or which may otherwise appear of record.” In other words, True Homes conveyed the property to Fuentes with all rights, including the right to pursue legal claims in court related to the construction of the residential improvement on the property, and the only limits on Fuentes’ rights in relation to the property are the covenants previously recorded. True Homes has not identified any covenant purportedly requiring Fuentes

to arbitrate any claim related to the property.⁴

The deed transferring the townhome now owned by Hagy from True Homes to the original purchaser contains the same language as the deed to Fuentes. (Ex. M.) The deed does not mention arbitration, does not mention the purchase agreement, and provides that the original purchaser has all rights related to the property except those limited by any recorded covenants. Again, True Homes has not identified any covenant purportedly requiring arbitration of claims related to the property.

Therefore, because the deeds supersede and replace the purchase agreements pursuant to the merger doctrine, and the deeds do not contain any reference to arbitration, there is no arbitration agreement between True Homes and Fuentes or Hagy. Due to the lack of an arbitration agreement between True Homes and Fuentes or Hagy, the Motion must be denied.

II. The Purchase Agreement Does Not Involve Interstate Commerce, the Federal Arbitration Act Therefore Does Not Apply, and the Agreement Does Not Meet the Requirements for Enforceability Under the South Carolina Uniform Arbitration Act.

Even were the arbitration provision in the Purchase Agreement not eliminated by the deed, the arbitration provision would not be valid and enforceable because the Federal Arbitration Act does not apply, and the purchase agreement does not meet the requirements of the South Carolina Uniform Arbitration Act. The Federal Arbitration Act, 9 U.S.C. §§ 1, *et seq.* ("FAA"), only applies to an arbitration agreement contained in a contract for interstate commerce or in a contract providing that the FAA applies. *See* 9 U.S.C. § 2; *Allied-Bruce Terminix Companies, Inc. v.*

⁴ While not aware of any such covenant, Plaintiffs do not concede the validity or enforceability of any arbitration provision in a covenant and rather, expressly retain the right to contest the validity and enforceability of any such provision.

Dobson, 513 U.S. 265, 273–77 (1995) (holding that the FAA applies to any contract involving interstate commerce); *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 539, 542 S.E.2d 360, 363–64 (2001) (“Here, the arbitration agreement . . . provides it shall be governed by the FAA. Arbitration agreements, like other contracts, are enforceable in accordance with their terms.”).

Here, the Purchase Agreement does not mention the FAA, much less provide that the FAA applies. Therefore, the FAA does not apply to the arbitration provision in the Purchase Agreement unless the Purchase Agreement was a transaction involving interstate commerce. True Homes makes the conclusory assertion that the Purchase Agreement is for a transaction involving interstate commerce (Mot. ¶10), but that conclusory assertion does not satisfy True Homes’ burden of proof as the party moving to compel arbitration.⁵ See *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 458, 730 S.E.2d 312, 317–18 (2012) (holding party moving to compel arbitration failed to satisfy burden of proving the transaction involved interstate commerce); *Dawkins v. Fields*, 354 S.C. 58, 67–68, 580 S.E.2d 433, 437–38 (2003) (holding that conclusory assertions were insufficient to satisfy the party’s burden); *Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 151–52, 723 S.E.2d 835, 839–40 (Ct. App. 2012) (affirming trial court’s rejection

⁵ The Affidavit of Nick Bacon submitted by True Homes should not be considered by the Court because it does not meet the requirements of Rule 6(d) of the South Carolina Rules of Civil Procedure, having been served two days prior to the hearing on the Motion rather than the ten days in advance required by Rule 6(d). However, even had the affidavit been timely served, the affidavit does not change the fact that *the Purchase Agreement* was not a transaction involving interstate commerce. As explained in detail *infra*, the relevant analysis is whether the contract at issue, here the Purchase Agreement, involved interstate commerce. As explained *infra*, the Purchase Agreement was a contract for the purchase of real property, not a contract for the construction of a home. The Affidavit of Nick Bacon asserts that the construction of the townhomes involved interstate commerce, but that is not the issue before this Court. The issue before this Court is whether the Purchase Agreement is a contract involving interstate commerce.

of conclusory assertions as insufficient to satisfy a party's burden of proof).

While the federal interstate commerce power is broad, it is not without limits. *See, e.g., United States v. Lopez*, 514 U.S. 549 (1995) (holding the possession of a gun in a school zone was not within Congress' interstate commerce powers to regulate). The purchase of a parcel of real property is an intrastate—not interstate—transaction, and therefore, the FAA does not apply to a contract for the purchase of real property. *See Bradley*, 398 S.C. at 318, 730 S.E.2d at 458 (holding the FAA did not apply to a home purchase agreement due to the “intrastate nature of the sale and purchase of residential real estate”). A contract for the purchase of real property concerns “a commodity—the land—which is firmly planted in one particular state.” *Id.* at 317, 730 S.E.2d at 457 (quoting *Saneii v. Robards*, 289 F. Supp. 2d 855, 858 (W.D. Ky. 2003)).

True Homes misconstrues the Court of Appeals' opinion in *Damico v. Lennar Carolinas, LLC*, 430 S.C. 188, 844 S.E.2d 66 (Ct. App. 2020), as holding that a contract for the purchase of real property involves interstate commerce so long as the construction of that real property involved interstate commerce. (Mem. in Support at 6 n.2 (“The Court in *Damico* . . . found the FAA applied because the construction involved interstate commerce . . .”).) The Court made no such holding in *Damico*. Rather, in *Damico*, the Court of Appeals found the contract specifically provided for the application of the FAA. *Damico*, 430 S.C. at 196, 844 S.E.2d at 70. Albeit dicta because not necessary to resolve the issue given the Court's holding that the contract provided the FAA governed, the Court of Appeals went on to state the transaction at issue in *Damico* was for both the construction and the sale of a residence, rather than just the sale of real property at issue here. *Id.* at 196, 844 S.E.2d at 71 (“In general, the development and sale of residential real estate is an intrastate activity that does not implicate the FAA, but here the transaction also involved the

construction of residential homes.” (internal citation omitted)).

The Purchase Agreement at issue here is a contract for the purchase of real property. True Homes acknowledges as much in its Motion, stating that “True Homes *sells homes* to members of the public using a standard *purchase agreement*.” (Mot. ¶1 (emphasis added).) True Homes goes on to refer to each Purchase Agreement as for the sale of a home. (Mot. ¶¶ 1 & 4.) The Purchase Agreement also establishes it is a contract for the purchase of property, rather than a contract for the construction of a home, by True Homes entitling the document “HOME PURCHASE AGREEMENT.”

Additionally, on May 27, 2014, York County issued the building permit for the construction of a townhome on what is now Fuentes’ property, three months prior to when Fuentes signed the Purchase Agreement. (Ex. N.) Fuentes attests that at the time he signed the Purchase Agreement, True Homes had already completed the construction of a townhome on the property. (Ex. O at ¶10.) Because True Homes had already completed the construction of the townhome prior to Fuentes signing the Purchase Agreement, the Purchase Agreement cannot be a contract for construction. Therefore, the Purchase Agreement was for the purchase of real property with an improvement located on that property which is an intrastate transaction to which the FAA does not apply.

True Homes contends that the issuance of the certificate of occupancy after Fuentes signed the Purchase Agreement means the construction was not completed at the time Fuentes signed the Purchase Agreement. (Mem. in Support at 6 n.3.) True Homes provides no factual basis or explanation for its position that the issuance of the certificate of occupancy indicates construction work continued after Fuentes signed the Purchase Agreement. Therefore, the Court taking

judicial cognizance of the date on which the certificate of occupancy was issued does not change the analysis. A certificate of occupancy is issued after a builder requests the local building authority inspect a structure and the local building authority completes that inspection. In other words, when a certificate of occupancy is issued reflects when a builder requests an inspection and when the local authority is able to complete the inspection. True Homes may have been completing other townhomes in the row of townhomes in Fuentes' building before requesting an inspection of all the townhomes in that building.

Furthermore, even if True Homes still had some construction work to complete on Fuentes' property after Fuentes signed the Purchase Agreement, that fact would not change the conclusion that the Purchase Agreement was a contract for the purchase of real property and intrastate in character. True Homes does not appear to contest the fact that construction of Fuentes' townhome was underway prior to Fuentes signing the Purchase Agreement. Therefore, True Homes was constructing the townhome regardless of whether Fuentes signed the Purchase Agreement. If True Homes was already constructing the townhome and was going to continue with that construction regardless of whether Fuentes signed the agreement, the Purchase Agreement cannot have been a contract for construction.

While Hagy's status as a subsequent purchaser and the lack of any contract between True Homes and Hagy results in the absence of any legal basis for compelling Hagy's claims into arbitration as discussed in sections VI and VII *infra*, the same analysis renders the arbitration provision in the Fresco Purchase Agreement unenforceable. The Fresco Purchase Agreement, the agreement entered into between the original purchaser of Hagy's townhome and True Homes, contains a "Closing Expectation Addendum" that provides that at the time the original purchaser

signed the Purchase Agreement, the townhome was “currently under construction.” (Mot., Ex. 2 at 1.) Therefore, True Homes was constructing the townhome regardless of whether that original purchaser signed the Purchase Agreement. The Fresco Purchase Agreement was a contract for the purchase of real property that at the time of transfer of ownership was to have a townhome located on it. As a contract for the purchase of real property, the contract involved only intrastate commerce, and the FAA does not apply to the Fresco Purchase Agreement.

Because the FAA does not apply to the Purchase Agreement, the arbitration provision in the Purchase Agreement can only be enforceable if the Purchase Agreement complies with the requirements of the South Carolina Uniform Arbitration Act, S.C. Code §§ 15-48-10, *et seq.* (“SCUAA”). The SCUAA provides that an arbitration provision is only enforceable if the first page of the contract contains a notice “typed in underlined capital letters” that the contract “is subject to arbitration pursuant to [the SCUAA].” S.C. Code § 15-48-10. An arbitration provision in a contract that does not precisely conform to those requirements is not enforceable under the SCUAA. *See id.* (“[U]nless such notice is displayed thereon the contract shall not be subject to arbitration.”); *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 589, 553 S.E.2d 110, 114 (2001) (“No other variation is acceptable.”). The Purchase Agreement does not contain any notice of arbitration pursuant to the SCUAA on the first page or any other page, and therefore, the arbitration provision in the Purchase Agreement is not enforceable under the SCUAA.

In conclusion, the arbitration provisions at issue are not enforceable under the FAA because the transaction at issue was a transaction in intrastate commerce, and therefore, the FAA does not apply. The arbitration provisions are not enforceable under the SCUAA because the Purchase Agreement does not contain the notice on the first page required for an arbitration provision to be

enforceable under the SCUAA. Accordingly, True Homes cannot compel arbitration under either the FAA or the SCUAA, and the arbitration provisions are unenforceable.

III. The Arbitration Provision in the Purchase Agreement Lacks a Meeting of the Minds on the Terms and Therefore is Unenforceable.

In determining whether an arbitration provision is enforceable, “trial courts consider ‘general contract defenses’ to ensure a meeting of the minds to arbitrate existed, and that such an agreement was not the result of ‘fraud, duress, [or] unconscionability.’” *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 78, 749 S.E.2d 139, 145 (Ct. App. 2013) (quoting *Zabinski*, 346 S.C. at 593, 553 S.E.2d at 116). For a valid and enforceable agreement to exist, “there must be a meeting of the minds between the parties with regard to *all* essential and material terms of the agreement.” *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 893 (1989).

Here, True Homes seeks to enforce an arbitration provision in the Fuentes Purchase Agreement requiring arbitration in accordance with “the process described in the limited warranty booklet.” (Mot., Ex. 1 at ¶23 (changed to lower case text).) However, Fuentes did not receive any “warranty booklet” prior to or at the time of entering into the Purchase Agreement. (Ex. O at ¶11-13.)⁶ There cannot have been a meeting of the minds on terms of a contract where one of the parties to the contract did not know of those terms. A party cannot have agreed to something he did not know. Therefore, Fuentes did not know and could not have agreed to the terms of the arbitration process, there was no meeting of the minds as to those terms, and the arbitration provision is not enforceable.

⁶ The Affidavit of Karin Fuentes was previously filed on May 13, 2022, in compliance with Rule 6(e) of the South Carolina Rules of Civil Procedure and is attached an exhibit here for ease of reference.

While Hagy's status as a subsequent purchaser and the lack of any contract between True Homes and Hagy results in the absence of any legal basis for compelling Hagy's claims into arbitration as discussed in sections VI and VII *infra*, even were there some basis for subjecting Hagy to the arbitration provision in the Fresco Purchase Agreement, True Homes fails to establish that the Fresco Purchase Agreement reflects a meeting of the minds and is enforceable. Part of the arbitration agreement in the Fresco Purchase Agreement differs from the Fuentes Purchase Agreement, providing: "Seller and Buyer knowingly and voluntarily agree to submit any and all disputes whatsoever to binding arbitration, including without limitation, disputes arising from the warranty, the home purchase agreement, the home, or the relationship between the parties." (Mot., Ex. 2 at ¶21 (changed to lower case text).) However, the other relevant terms in the Fresco Purchase Agreement are identical to those in the Fuentes Purchase Agreement. The Fresco Purchase Agreement provides: "The parties agree to abide by the Mediation and Arbitration Provisions contained in the Warranty Policy." (Mot., Ex. 2 at ¶15.) The agreement provides that the "Warranty Policy" is an express limited warranty contained in a booklet that would be provided to the purchaser at closing and which would be similar to the sample booklet to be provided at the time the purchaser signed the agreement. (Mot., Ex. 2 at ¶15.) True Homes has not provided the Court with the warranty booklet, much less shown that the original purchaser received the warranty booklet prior to signing the Fresco Purchase Agreement. As the party seeking to compel arbitration, True Homes bears the burden of proving the existence of a valid and enforceable arbitration agreement, and True Homes' failure to provide the warranty booklet and to establish that the original purchaser received the warranty booklet result in True Homes failing to meet its burden of proof.

IV. The Arbitration Provision in the Purchase Agreement is Unconscionable and Therefore Unenforceable.

The arbitration provision in the Fuentes Purchase Agreement is also unenforceable because it is unconscionable. An agreement is unconscionable under South Carolina law where a party lacked a meaningful choice in entering into the agreement and the agreement contains oppressive, one-sided provisions. *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24–25, 644 S.E.2d 663, 668–69 (2007). Here, both a lack of meaningful choice and oppressive, one-sided terms are present, and therefore, the arbitration agreement is unconscionable and unenforceable.

First, the determination of whether a party lacked a meaningful choice requires consideration of “the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties’ bargaining power; the parties’ relative sophistication; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause.” *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669. The fact that a contract is an adhesion contract entered into by a consumer and is for a necessity both weigh in favor of finding a lack of meaningful choice and result in such a contract being reviewed with “considerable skepticism.” *Id.* at 26–27, 644 S.E.2d 669 (quoting *Williams v. Aetna Fin. Co.*, 700 N.E.2d 859, 866 (Ohio 1998)).

Here, the contract at issue is an adhesion contract. As set forth in Fuentes’ Affidavit, Fuentes was presented the Purchase Agreement on a take-it-or-leave-it basis with no opportunity to negotiate or modify the contract terms. (Ex. O at ¶7–9.) On its face the Purchase Agreement is, and True Homes has presented no evidence otherwise, a form contract created by True Homes with True Homes’ logo at the top left of the first page, a label at the bottom left of each page stating

“INVENTORY HOME CONTRACT,” and True Homes’ name typed in the agreement with blank spaces only for the purchasing party’s name and the details of the lot and purchase price to be entered into the agreement. *See Munoz*, 343 S.C. at 541, 542 S.E.2d at 365 (identifying an “adhesion contract” as a “standard form contract”).

The Purchase Agreement also is a contract for a necessity—a residence. In addition to food, clothing, medical care, and transportation, shelter is one of the items necessary for life in modern society. *See Simpson*, 373 S.C. at 27, 644 S.E.2d at 670 (recognizing that an automobile is “critically important in modern day society” and a contract to purchase an automobile is a contract for a necessity).

The injuries suffered by Fuentes are substantial. He purchased a townhome from True Homes for more than \$186,000 (Mot., Ex. 1 at 2), and the townhome now has water damaged components and needs substantial repairs due to improper construction by the defendants. (Compl. ¶¶52–57, 104–07, & 116–18; Ex. D; Ex. E; Ex. F.)

Fuentes also was in an unequal bargaining position in relation to True Homes. As previously discussed, the Purchase Agreement was for the purchase of a necessity by an ordinary consumer. The South Carolina Supreme Court took “judicial cognizance of the fact that a modern buyer of new residential housing is normally in an unequal bargaining position as against a seller,” and there is nothing to indicate that presumption is not applicable here. *Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 343, 384 S.E.2d 730, 735–36 (1989); *see also Smith*, 417 S.C. at 50, 790 S.E.2d at 4–5 (applying the *Kennedy* presumption of unequal bargaining power to find a home purchaser lacked a meaningful choice in entering into an arbitration agreement). Fuentes is not a substantial business concern; he is an individual, ordinary consumer. (Ex. O at 3–4.)

Fuentes does not have any relevant sophistication. He has no education, training, or professional experience in law, real estate, or construction. (Ex. O at ¶4.) On the other hand, True Homes is a substantial business concern. As touted on True Homes' website, True Homes is "one of the Carolina's largest homebuilders" and has "more than 60 great new home communities in the Carolinas." (Ex. O at ¶16 & Ex. B.)

Additionally, the arbitration provision and the related limited warranty and waiver of liability provisions that make the Purchase Agreement unconscionable are inconspicuous. The only references to arbitration in the Purchase Agreement are two statements buried in paragraph 23 which bears the heading "Warranty Policy and Dispute Resolution." (Mot, Ex.1 at 3.) There is nothing in the heading or elsewhere to indicate that paragraph 23 contains a purported waiver of a party's right to have disputes heard by a judge and decided by a jury. Paragraph 23 is buried at the bottom of the second page of the Purchase Agreement, whereas the purchaser signs on the first page of the Purchase Agreement. Paragraph 23, and all the other contract terms on the second page of the Purchase Agreement, are written in miniscule text that is difficult to read. Paragraph 23 appears identical to all the other paragraphs on the second page of the Purchase Agreement except that some of the other paragraphs have their headings underlined—paragraphs 20 and 21—thereby calling more attention to those paragraphs than to paragraph 23. (Mot., Ex. 1 at 3.) The same inconspicuousness is present for paragraphs 24 and 26 which purport to limit True Homes' warranty obligations and liability. (Mot., Ex. 1 at 3.) The relevant text of paragraphs 23, 24, and 26 is also inconspicuous. Some of the relevant text is in all capitals, but the text is not underlined, is not bolded, and is in a miniscule font size. In short, Fuentes would have no reason to notice those provisions in paragraphs 23, 24, and 26, much less the serious implications those provisions

purport to have. Therefore, all the elements the Court must consider in determining whether the arbitration provision is the result of Fuentes lacking a meaningful choice point to the conclusion that the Purchase Agreement was the result of such a lack of choice.

Second, the Purchase Agreement contains oppressive, one-sided terms because the agreement purports to bind Fuentes to arbitration pursuant to a procedure not disclosed to Fuentes. As discussed previously, the Purchase Agreement purports to require Fuentes to arbitrate disputes “in accordance with the process described in the limited warranty booklet” (Mot., Ex. 1 at ¶23), but Fuentes was never provided a copy of the limited warranty booklet until closing on the property (Ex. O at ¶11–13). Not providing a party with the terms of the arbitration process and requiring a party to arbitrate disputes in accordance with a secret arbitration process constitutes an oppressive, one-sided term. No reasonable consumer would knowingly agree to a dispute resolution process where the details of the process were not disclosed. Were the law to permit such provisions by a seller, the seller could and would have every incentive to provide for a process favoring the seller and unfair to the purchaser. Additionally, the Fuentes Purchase Agreement purports to limit True Homes’ obligations and liability to repairing any item that is a “defect” under the terms of the limited warranty (Mot., Ex. 1 at 3, ¶24), but True Homes did not provide Fuentes with the limited warranty. Therefore, True Homes attempted to limit its liability to the terms of a written warranty that was not provided, and again, were the law to permit such provisions by a seller, the seller could and would have every incentive to provide unfairly narrow warranty terms to the benefit of the seller.

Third, even were secret arbitration procedures and warranty terms not oppressive, True Homes has not provided the Court with the limited warranty booklet, and True Homes has not

produced the limited warranty booklet in its document production.⁷ Having failed to provide the limited warranty booklet, True Homes cannot establish that the dispute resolution terms in the booklet are not one-sided and oppressive, and as the party seeking to compel arbitration, True Homes bears the burden of proving there is a valid, enforceable arbitration agreement that covers the claims in this action. Moreover, as discussed in further detail below, because True Homes has not provided the limited warranty booklet, True Homes cannot even establish that the dispute resolution process set out in the limited warranty booklet requires the arbitration of Fuentes' claims in this action.

Fourth, even had True Homes provided Fuentes with the limited warranty booklet prior to Fuentes signing the Purchase Agreement and even if the warranty booklet requires arbitration of Fuentes' claims through a fair procedure, the Purchase Agreement's arbitration provision contains oppressive, one-sided terms and is therefore unconscionable and unenforceable. The arbitration provision in paragraph 23 provides for arbitration intertwined with the express warranty provided for in the Purchase Agreement, stating that the purchaser agrees to "abide by the Mediation and Arbitration provisions contained in the Warranty Policy" and agrees "to submit any warranty disputes for resolution in accordance with the process described in the limited warranty booklet, including without limitation, binding arbitration." (Mot., Ex. 1 at 3, ¶23.) In other words, without the limited warranty, there would be no arbitration provided for in the Purchase Agreement.

⁷ True Homes provided a warranty booklet as Exhibit I to its Memorandum in Support, but that warranty booklet has "SAMPLE" in a watermark across each page, and True Homes has not provided any evidence or even made any assertion that the warranty booklet provided as Exhibit I to its Memorandum in Support is the actual warranty booklet for Fuentes or Hagy.

The other provisions in the Purchase Agreement setting forth the details of the limited warranty contain oppressive, one-sided terms substantially similar to the terms found to render a home purchase agreement unconscionable in the *Smith v. D.R. Horton* decision. There, an arbitration agreement contained a disclaimer of implied warranties and a limitation of liability provision that barred any monetary damages. *Smith*, 417 S.C. at 2, 790 S.E.2d at 45. The Court found those provisions rendered the arbitration agreement unconscionable and unenforceable. *Id.* at 5, 790 S.E.2d at 50.

The Fuentes Purchase Agreement has essentially identical oppressive, one-sided provisions intertwined with the arbitration provision as those present in *Smith*. First, like the waiver of implied warranties found oppressive in *Smith*, the Fuentes Purchase Agreement attempts to disclaim all implied warranties, providing in paragraph 26:

THE LIMITED WARRANTY PROVIDED IN THE Warranty Policy IS ACCEPTED BY BUYER IN LIEU OF ALL OTHER WARRANTIES EXPRESSED AND/OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF WORKMANLIKE CONSTRUCTION, IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, THE IMPLIED WARRANTY OF HABITABILITY, AND ALL WARRANTIES THAT COULD BE CONSTRUED TO COVER THE PRESENCE OF RADON OR OTHER ENVIRONMENTAL POLLUTANTS.

(Mot., Ex. 1 at 3.) Also, like the limitations on liability and bar on monetary damages against the seller found oppressive in the *Smith* decision, here the Fuentes Purchase Agreement attempts to limit True Homes' obligations and liability to the terms of the limited warranty and to bar any monetary damages against True Homes, providing:

- "Seller's only obligation under the Warranty is to correct the Defect as provided by the Warranty Policy, and has no liability for any consequential or incidental damage resulting therefrom." (Mot., Ex. 1 at 3, ¶24.)

- “Buyer also waives the right to recover from seller all consequential, incidental, punitive, or exemplary damages, including emotional distress, pain and suffering, lost profits, depreciation or other statutory damages. . . . Seller has no liability for any consequential damages, including without limitation, lost wages or opportunity, lost or damaged household items, housing or medical expense.” (Mot., Ex. 1 at 3, ¶26.)

As found oppressive and one-sided in *Smith*, the limitation on liability and bar on monetary damages would result in Fuentes having no remedy for monetary damages or other damages from the improper construction of his townhome other than any repairs provided at the whim of True Homes under its limited warranty, even where the repairs are inadequate. For example and as expected here, repairing a defect could require Fuentes to forego using all or a portion of the townhome for days or weeks, but under the Purchase Agreement, Fuentes would not be entitled to any monetary damages for that loss of use.

Again, while Hagy’s status as a subsequent purchaser and the lack of any contract between True Homes and Hagy results in the absence of any legal basis for compelling Hagy’s claims into arbitration as discussed in sections VI and VII *infra*, even were there some basis for subjecting Hagy to the arbitration provision in the Fresco Purchase Agreement, that agreement is unconscionable and unenforceable for the same reasons as the Fuentes Purchase Agreement. The Fresco Purchase Agreement is an adhesion form contract as indicated by the presence of the True Homes logo at the top of each page, the inclusion of “True Homes, LLC” in the text with boxes for the insertion of the purchaser’s name and property details, and the indication at the bottom left of each page of a revision date. (Mot., Ex. 2.) Additionally, Hagy suffered substantial damages in the same manner as Fuentes, the same presumption of an unequal bargaining position between the original purchaser and True Homes acknowledged in *Simpson* applies, and True Homes is a substantial business concern as discussed previously. The relevant terms in the Fresco Purchase

Agreement are also inconspicuous. Again, the terms are in miniscule text which is difficult to read. The language stating the parties “agree to submit any and all disputes whatsoever to binding arbitration” is in all capitals and bolded, but it is in a paragraph entitled “Waiver of Trial by Jury and Waiver of Consequential Damages” which would not call attention to the arbitration language therein. Moreover, the language stating that the parties “agree to abide by the Mediation and Arbitration provisions in the Warranty Policy” is in a different paragraph on the previous page and is in normal, lower-case text, not bolded, and not underlined. (Mot., Ex. 2 at 4, ¶15.) That paragraph bears the heading “Warranty Policy” which would not alert a purchaser to the arbitration language therein. The inconspicuous nature of these terms stands in contrast to the terms on the first page of the agreement which True Homes clearly intended to draw to the purchaser’s attention by highlighting them in yellow. A purchaser also would have to understand the interplay between the arbitration language in paragraph 21 and paragraph 15 to understand the nature of the arbitration the purchaser was purportedly agreeing to, which further results in the arbitration terms being inconspicuous.

The Fresco Purchase Agreement also contains the oppressive, one-sided terms present in the Fuentes Purchase Agreement as well as additional oppressive, one-sided terms. The Fresco Purchase Agreement provides in paragraph 21 for the resolution of disputes through arbitration. Paragraph 15 provides that the arbitration is to be in accordance with the “Mediation and Arbitration provisions contained in the Warranty Policy.” Like the Fuentes Purchase Agreement, True Homes has not provided that warranty booklet, and True Homes has also not shown that the original purchaser received that warranty booklet at any time prior to signing the Fresco Purchase Agreement. The Fresco Purchase Agreement then provides that the limited warranty is the sole

warranty provided by True Homes (Mot., Ex. 2 at ¶¶16 & 22), True Homes has no obligation other than to repair an item deemed a defect under the terms of the limited warranty (Mot., Ex. 2 at ¶16), and True Homes is not liable for any consequential, incidental, punitive, exemplary, or statutory damages (Mot., Ex. 2 at ¶¶16 & 22).

V. The Arbitration Provision in the Fuentes Purchase Agreement Does Not Apply to the Claims in this Action.

Even were the arbitration provision in the Fuentes Purchase Agreement enforceable, which it is not for the reasons discussed, that arbitration provision does not apply to the claims in this action. Because the claims in this action are not covered by the arbitration provision in the Fuentes Purchase Agreement, Fuentes' claims in this action could not be compelled into arbitration even were the arbitration provision enforceable.

"[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960). Therefore, a threshold issue a court must resolve before compelling a claim into arbitration is whether the claim falls within the scope of the arbitration agreement. ~~*See Hooters of Am., Inc. v. Phillips*, 173 F.3d 933, 938 (4th Cir. 1999).~~

First, the arbitration provision in the Fuentes Purchase Agreement only applies to "WARRANTY DISPUTES," providing: "SELLER AND BUYER KNOWINGLY AND VOLUNTARILY AGREE TO SUBMIT ANY *WARRANTY DISPUTES* FOR RESOLUTION IN ACCORDANCE WITH THE PROCESS DESCRIBED IN THE LIMITED WARRANTY BOOKLET" (Mot., Ex. 1 at ¶ 23 (emphasis added).) The reference in that sentence to the "limited warranty booklet" and the preceding sentences in paragraph 23 of the Purchase

Agreement establish that the “warranty” referred to is an express warranty provided in a “limited warranty booklet.” A preceding sentence in paragraph 23 provides: “The parties agree to abide by the Mediation and Arbitration provisions contained in the Warranty Policy.” Additionally, paragraph 26 of the Purchase Agreement provides: “THE LIMITED WARRANTY PROVIDED IN THE Warranty Policy IS ACCEPTED BY BUYER IN LIEU OF ALL OTHER WARRANTIES EXPRESSED AND/OR IMPLIED” Therefore, the “warranty disputes” subject to the arbitration provision in the Fuentes Purchase Agreement are disputes under the express “Warranty Policy” provided by True Homes.

Fuentes does not assert any claims in this action under any express warranty provided by True Homes. Fuentes’ claims are limited to claims for negligence, breach of the implied warranties of habitability and workmanship, breach of fiduciary duty, and violations of the South Carolina Unfair Trade Practices Act. Because those claims are not “Warranty Disputes” under the express warranty provided by True Homes, those claims are not subject to being compelled into arbitration even were the arbitration provision in the Fuentes Purchase Agreement enforceable.

Second, as the party seeking to compel arbitration, True Homes bears the burden of proving the arbitration provision in the Purchase Agreement covers Fuentes’ claims. True Homes failed to satisfy that burden because True Homes failed to provide the limited warranty booklet referenced in the arbitration provision.⁸ The Purchase Agreement itself does not specify that any

⁸ True Homes provided a warranty booklet as Exhibit I to its Memorandum in Support, but that warranty booklet has “SAMPLE” watermarked on each page, and True Homes does not present any evidence or even make any assertion that the warranty booklet provided as Exhibit I is the actual warranty booklet for Fuentes or Hagy.

particular claim is subject to arbitration. Rather, the Purchase Agreement provides that True Homes and Fuentes “agree to abide by the Mediation and Arbitration provisions contained in the Warranty Policy” and that they “agree to submit any warranty disputes for resolution in accordance with the process described in the limited warranty booklet, including without limitation, binding arbitration.” (Mot., Ex. 1 at 3, ¶23 (changed to lower-case text).) Those terms indicate only that disputes are to be resolved in accordance with the limited warranty, not that any particular claim is required to be resolved through arbitration.

Moreover, even assuming the “SAMPLE” warranty booklet that True Homes provided as Exhibit I to its Memorandum in Support was the actual warranty booklet for Fuentes, the terms of that sample warranty establish that it does not cover Fuentes’ claims. The sample warranty provides for the arbitration of disputes between Fuentes and Professional Warranty Services Corporation, not disputes between Fuentes and True Homes. (Mem. in Support, Ex. I at 6 (“Any disputes between YOU and US . . . will be resolved by binding arbitration.”).) Additionally, even were the sample warranty to provide for the arbitration of disputes between Fuentes and True Homes, the disputes the sample warranty provides for arbitration of do not include the claims asserted by Fuentes in this action. The sample warranty covers disputes over the performance of the limited warranty obligations, not construction defect claims independent of the limited warranty. Therefore, even were the sample warranty applicable to Fuentes, it does not cover Fuentes’ claims.

VI. The *Damico* Opinion True Homes Relies on Does Not Provide a Legal Basis for Compelling Subsequent Purchasers of Property into Arbitration, and Even if the *Damico* Opinion did Provide Such a Basis, Plaintiffs Do Not Assert Any Contractual Claims.

True Homes concedes that it does not have a contract with and thus, does not have an arbitration agreement with subsequent purchasers of the townhomes like Hagy. South Carolina law generally recognizes that a nonsignatory to an arbitration agreement cannot be compelled to arbitrate claims unless there are unique facts present that satisfy one of the special theories under which a nonsignatory can be compelled to arbitrate claims. *See, e.g., Intl. Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 416 (4th Cir. 2000); *Wilson v. Willis*, 426 S.C. 326, 338–39, 827 S.E.2d 167, 173–74 (2019). True Homes claims that despite her status as a subsequent purchaser, Hagy must be compelled to resolve her claims in arbitration because “Plaintiffs have brought claims sounding in contract” and the *Damico v. Lennar Carolinas, LLC* decision provides that subsequent purchasers “may still be compelled to arbitration where the homeowner seeks to enforce rights pursuant to the contract.” (Mot. ¶12.) In other words, True Homes appears to assert a direct benefits estoppel theory as the basis for its claim that Hagy is subject to arbitration. *See Wilson*, 426 S.C. at 340–46, 827 S.E.2d at 175–78 (explaining the requirements for compelling arbitration of a nonsignatory under a direct benefits estoppel theory).

True Homes’ argument fails for multiple reasons.

First, True Homes mischaracterizes the *Damico* opinion. While True Homes cites the *Damico* opinion as “noting a successor homeowner, who did not sign an arbitration agreement may still be compelled to arbitration where the homeowner seeks to enforce rights pursuant to the contract,” (Mot. ¶12), the *Damico* opinion expresses no holding on that point. The only reference

to a subsequent purchaser in the *Damico* opinion is the following:

All of the Respondent homeowners, except Lenna Lucas, purchased new homes to be constructed in the development. As part of the transaction, they signed a ten page Purchase and Sales Agreement (PA) containing an arbitration section. Lucas is the second owner of a home, but in her amended complaint, she alleges a breach of contract cause of action based upon the PA.

Damico, 430 S.C. at 70, 844 S.E.2d at 195. The *Damico* opinion contains no further discussion of the subsequent purchaser plaintiff, much less a holding that the subsequent purchaser plaintiff asserting a breach of contract action is sufficient to require that plaintiff to resolve her claims through arbitration per the contract between the builder and the original developer.

True Homes also mischaracterizes *Damico* by stating it provides for compelling the claims of a subsequent purchaser into arbitration “where the homeowner seeks to enforce rights pursuant to the contract.” (Mot. ¶12.) That mischaracterization is a stealth attempt to expand *Damico* beyond anything even arguably implied by the opinion, much less actually held by the Court of Appeals, and beyond anything provided for in South Carolina law. The *Damico* opinion states that the subsequent purchaser “allege[d] a breach of contract cause of action,” not that the subsequent purchaser merely sought to enforce a right pursuant to a contract as True Homes claims.

Damico, 430 S.C. at 70, 844 S.E.2d at 195. South Carolina’s courts have expressly rejected the expansive interpretation True Homes seeks to give the *Damico* opinion, with our Supreme Court stating in *Wilson v. Willis*, that “direct benefits estoppel is not implicated simply because a claim relates to or would not have arisen ‘but for’ a contract’s existence.” *Wilson*, 426 S.C. at 343, 827 S.E.2d at 167.

Second, unlike the subsequent purchaser plaintiff in the *Damico* case, Hagy does not assert a breach of contract claim. Hagy asserts only negligence, breach of implied warranties, South

Carolina Unfair Trade Practices Act, and breach of fiduciary duty claims.

Third, even were True Homes' misreading of *Damico* correct and a homeowner seeking to enforce rights pursuant to a contract was sufficient, Hagy does not seek to enforce any rights pursuant to the Purchase Agreement. The First Amended Complaint does not even allege the existence of the Purchase Agreement or any other contract between True Homes and any homeowner, much less seek to enforce a right pursuant to such a contract or assert a claim sounding in contract.

The claims Hagy asserts and the rights she seeks to enforce are all either common law tort claims and rights (negligence, implied warranties, and fiduciary duty) or statutory claims and rights (South Carolina Unfair Trade Practices Act). Both tort and contract claims require the existence of a duty between two parties, and the distinction between tort and contract claims turns on the source of that duty. *See, e.g., Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 55, 463 S.E.2d 85, 88 (1995) ("A breach of a duty which arises under the provisions of a contract between the parties must be redressed under contract, and a tort action will not lie. A breach of a duty arising independently of any contract duties between the parties, however, may support a tort action."). Where a duty arises solely by virtue of an agreement between the parties, the breach of that duty only results in a contract claim. *See id.*; *Kennedy v. Columbia Lumber & Mfg. Co., Inc.*, 299 S.C. 335, 345–46, 384 S.E.2d 730, 737 (1989) ("If a builder performs construction in such a way that he violates a contractual duty *only*, then his liability is only contractual."). Where a duty is imposed by law, the breach of that duty results in a tort claim. *See Tommy L. Griffin Plumbing*, 320 S.C. at 55–56, 463 S.E.2d at 89; *Kennedy*, 299 S.C. at 346, 384 S.E.2d at 737 (holding that a builder is liable in tort for losses resulting from the

violation of a building code, the violation of an industry standard, or construction which the builder knew or should have known would pose a serious risk of physical harm). Where duties are imposed both by law and by a contract between the parties, both a tort claim and a contract claim exist. *Kennedy*, 299 S.C. at 345–46, 384 S.E.2d at 737 (“If a builder performs construction in such a way that he violates a contractual duty *only*, then his liability is only contractual. If he acts in a way as to violate a legal duty, however, his liability is both in contract and in tort.”). Our Courts acknowledged as much in the arbitration context, stating that “when the substance of the claim arises from general obligations imposed by state law, including statutes, torts, and other common law duties or federal law, direct-benefits estoppel is not implicated even if the claim refers to or relates to the contract” *Wilson*, 426 S.C. at 343, 827 S.E.2d at 176 (quoting *Jody James Farms, JV v. Altman Grp., Inc.*, 547 S.W.3d 624, 637 (Tex. 2018)).

A negligence claim is by definition a claim for a breach of a duty imposed by law and is the quintessential tort claim. *See, e.g., Shaw v. Psychmedics Corp.*, 426 S.C. 194, 197, 826 S.E.2d 281, 282 (2019) (“An essential element in a negligence action is the existence of a legal duty of care owed by the defendant to the plaintiff. The court must determine, as a matter of law, whether the law recognizes a particular duty.” (internal citations and quotations omitted)); *Black’s Law Dictionary* 1061 (8th ed. 2004) (defining “negligence” as “a tort”). Therefore, Hagy’s negligence claim is a tort claim and is not a claim based on or seeking to enforce any contract right.

The breach of implied warranty claims asserted by Plaintiffs are also tort claims because the duty arises independent of any contract between the parties and exists even where there is no contract between the parties. Regardless of any contract terms, South Carolina law imposes a duty on a builder to construct a “home fit for its intended use as a dwelling, . . . in a workmanlike

manner, and . . . free of latent defects.” *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 561, 658 S.E.2d 80, 88–89 (2008). The law imposes that duty on a builder regardless of any contract terms except where the contract contains a disclaimer of the implied warranty which is conspicuous, known to the purchaser, and specifically bargained for. *Kirkman v. Parex, Inc.*, 369 S.C. 477, 485, 632 S.E.2d 854, 858 (2006). The law imposes that duty regardless of whether a contract exists between the parties. *See Kennedy*, 299 S.C. at 344, 384 S.E.2d at 736 (“We have been steadfast in holding that privity of contract as a defense to an implied warranty action is abolished in this state. . . . Hence, a purchaser may sue a builder on his implied warranty of service, despite the purchaser’s lack of contractual privity.”). Accordingly, an implied warranty of habitability or implied warranty of workmanlike services claim is a tort claim—or at a minimum is something other than a contract claim—because it arises from a duty imposed by law which exists even when there is no contract between the parties and even where a contract exists that purports to eliminate the duty.

Relatedly, Plaintiffs’ implied warranty claims in this action certainly are not contract claims because True Home’s contract, the Purchase Agreement, purports to eliminate any implied warranty claim a purchaser may have against True Homes. True Homes cannot present an adhesion contract to purchasers providing that all implied warranties are disclaimed and a purchaser’s sole remedy is the express limited warranty provided by True Homes, and then turn around and claim that an implied warranty claim by a purchaser is a claim based on that contract.

A breach of fiduciary duty claim is a claim for the breach of a duty imposed by law, and therefore, is an equitable claim or a tort claim. In *Hendricks v. Clemson University*, our Supreme Court stated that “[w]hether there is a fiduciary relationship between two people is an equitable

issue.” 353 S.C. 449, 458, 578 S.E.2d 711, 715 (2003). The *Hendricks* decision then stated that courts have “recognized certain relationships are by nature fiduciary” and “whether [a fiduciary relationship] should be imposed between two classes of people is a question for the court.” *Id.* at 459–60, 578 S.E.2d at 715. The existence of a fiduciary relationship, and thereby a fiduciary duty, requires only that “one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence.” *O’Shea v. Lesser*, 308 S.C. 10, 15, 416 S.E.2d 629, 631 (1992). There is no requirement that a contractual relationship exist between two parties for a fiduciary relationship to exist. Therefore, because a breach of fiduciary duty claim arises from a duty imposed by law, a breach of fiduciary duty claim is an equitable claim or tort claim and is not a contract claim. Moreover, even were the Court to find that a breach of fiduciary duty claim does not neatly fall into the tort category, at a minimum, a breach of fiduciary duty claim is not a contractual claim because it exists independent of any contract.

The tort nature of the breach of fiduciary duty claim is particularly clear here where Plaintiffs’ breach of fiduciary duty claim is based solely on the relevant defendants’ status “[a]s the developer and declarant for the Association.” (Compl. ¶134.) South Carolina courts have not indicated that a developer’s fiduciary duty arising from the creation of a homeowners association and the transfer of common elements to that association requires or arises from any contractual relationship. See *Concerned Dunes West Residents, Inc. v. Georgia-Pacific Corp.*, 349 S.C. 251, 256, 562 S.E.2d 633, 636 (2002).

Finally, a UTPA claim is a statutory claim that exists independent of any contract between the parties. See S.C. Code Ann. §§ 39-5-10, *et seq.* To prevail on a UTPA claim, a plaintiff only

must show that he suffered damages caused by an unfair or deceptive method, act, or practice of the defendant and the unfair or deceptive method, act, or practice impacts the public interest. See S.C. Code Ann. § 39-5-140; *York v. Conway Ford, Inc.*, 325 S.C. 170, 173, 480 S.E.2d 726, 728 (1997). A UTPA claim does not require the existence of a contract between the plaintiff and the defendant. See *Colleton Preparatory Academy, Inc. v. Hoover Universal, Inc.*, 379 S.C. 181, 194–96, 666 S.E.2d 247, 254–55 (2008) (holding contractual privity is not required for a UTPA claim), *overruled on other grounds by Sapp v. Ford Motor Co.*, 386 S.C. 143, 687 S.E.2d 47 (2009). Therefore, because liability under the UTPA arises independent of any contractual duty and does not require the existence of a contract, a UTPA claim is either a statutory claim or a tort claim but is not a contract claim. See *Harrell v. BMW of North America, LLC*, 517 F. Supp. 3d 527, 541 (D.S.C. 2021) (discussing South Carolina cases treating UTPA claims as torts and cases treating UTPA claims as a statutory claim distinct from torts).

In conclusion, True Homes' argument that *Damico* permits the Court to compel Hagy's claims as a subsequent purchaser into arbitration fails because *Damico* does not contain any holding on a subsequent purchaser being compelled into arbitration. Moreover, even could *Damico* be read as holding that a subsequent purchaser can be compelled into arbitration, that holding would be limited to where a subsequent purchaser asserts a breach of contract claim. Here, Hagy does not assert a breach of contract claim. Finally, even could *Damico* be read as holding that subsequent purchasers can be compelled into arbitration whenever a subsequent purchaser asserts a claim seeking to enforce a contractual right as True Homes suggests, because negligence, implied warranty of habitability and workmanlike services, fiduciary duty, and UTPA claims are all non-contract claims founded on non-contract rights, Plaintiffs do not assert any

contract claims, and *Damico* would not be a basis for compelling Hagy's claims into arbitration.

VII. True Homes' Argument that the Arbitration Agreement with the Original Purchaser of Hagy's Townhome Flows Down to Hagy with the Transfer of the Property is a Conclusory Assertion Not Supported by South Carolina Law.

True Homes contends that because the original purchaser of the Hagy's townhome agreed to arbitrate claims with True Homes, that all subsequent purchasers are legally bound to arbitrate any claims with True Homes. As an initial matter, True Homes identifies no law supporting this assertion, and the argument is therefore a conclusory argument that should be summarily disregarded. *See, e.g., Mulherin-Howell v. Cobb*, 362 S.C. 588, 600, 608 S.E.2d 587, 593–94 (Ct. App. 2005) (holding a position advanced without any supporting authority was a conclusory assertion to be deemed abandoned).

Even were the argument not conclusory, the argument is not supported by South Carolina law. True Homes acknowledges that it seeks to compel Hagy's claims into arbitration based solely on a contract it entered into the with former owner of Hagy's property. (Mem. in Support at 7–8.) Binding future owners of property requires something more than just a contract, like a covenant running with the land. *See, e.g., Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 361, 628 S.E.2d 902, 913 (Ct. App. 2006) ("Restrictive covenants differ from contracts in that they 'run with the land,' meaning that they are enforceable by and against later grantees."). Therefore, True Homes' position that a simple contract containing an arbitration provision binds future owners of real property contradicts established South Carolina law on what is required to bind future owners.

VIII. True Homes Waived its Right to Compel Arbitration.

Even were there a valid, enforceable agreement to arbitrate that applied to Fuentes' and

Hagy's claims—which does not exist for the reasons stated previously—True Homes waived any right to compel arbitration through delay and availing itself of the judicial process.

A party can waive its right to enforce a contractual arbitration clause. *See, e.g., Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 387, 759 S.E.2d 727, 736 (2014); *Toler's Cove Homeowners Ass'n, Inc. v. Trident Const. Co., Inc.*, 355 S.C. 605, 612, 586 S.E.2d 581, 585 (2003). To establish waiver, “a party must show prejudice through an undue burden caused by delay in demanding arbitration.” *Toler's Cove*, 355 S.C. at 612, 586 S.E.2d at 585. While there is no set rule as to the amount of delay that constitutes a waiver of the right to compel arbitration and whether waiver occurred depends on the facts of each case, *Hyload, Inc. v. Pre-Engineered Prods., Inc.*, 308 S.C. 277, 280, 417 S.E.2d 622, 624 (Ct. App. 1992), our courts generally consider the following factors: “(1) whether a substantial length of time transpired between the commencement of the action and the commencement of the motion to compel arbitration; (2) whether the party requesting arbitration engaged in extensive discovery before moving to compel arbitration; and (3) whether the non-moving party was prejudiced by the delay in seeking arbitration.” *Rhodes v. Benson Chrysler-Plymouth, Inc.*, 374 S.C. 122, 126, 647 S.E.2d 249, 251 (Ct. App. 2007). Less than a year delay in moving to compel arbitration can be sufficient to constitute a waiver. *See Rhodes*, 374 S.C. at 128, 647 S.E.2d at 252. The prejudice determination considers whether the party opposing arbitration incurred “unnecessary litigation expenses” including consideration of the discovery conduct and appearances before the court due to the delay in seeking arbitration. *Johnson v. Heritage Healthcare of Estill, LLC*, 416 S.C. 508 514, 788 S.E.2d 216, 219 (2016).

Here, True Homes engaged in substantial delay in moving to compel arbitration. True

Homes was served in this action on March 25, 2021. True Homes did not move to compel arbitration until nearly a year later on February 15, 2022—327 days after being served.

Even more significant than the near year delay in moving to compel arbitration are all of the instances over the course of that year in which True Homes availed itself of the powers of this Court and undertook actions that would not be available to it in arbitration, including the following:

- On May 20, 2021, True Homes moved to dismiss or stay this action pursuant to the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §§ 40-59-810, *et seq.* (True Homes’ Motion to Dismiss, filed May 20, 2021.)
- On June 23, 2021, the Court heard True Homes’ motion to dismiss or stay under the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, and counsel for Fuentes and Hagy traveled to the York County Courthouse and argued the motion. (June 24, 2021 Order.)
- True Homes entered into a consent order resolving the issue of inspections under the Notice and Opportunity to Cure Construction Dwelling Defects Act for not only Plaintiffs Fuentes and Hagy, but also for all putative class member townhome owners. On September 20, 2021, the Court entered the consent order providing that the inspection of twenty-five randomly selected townhomes pursuant to the procedure set forth in the consent order “shall constitute full and final completion of the Act’s requirements in this case.” (Sept 20, 2021 Order.)
- On September 21, 22, and 23 of 2021, True Homes inspected twenty-seven townhomes in the Summerlake development—Fuentes’ and Hagy’s townhomes and twenty-five randomly selected townhomes. True Homes was able to inspect the twenty-five randomly

selected townhomes only because True Homes availed itself of the powers of this Court and because Plaintiffs' counsel understood that True Homes entering into the consent order meant the claims would be resolved in this action rather than in arbitration.

- On November 17, 2021, True Homes availed itself of this Court by serving a subpoena on Superior Association Management, LLC. (Ex. I.) True Homes has since received over 1,500 pages of documents in response to that subpoena. (Ex. K.) Plaintiffs' counsel expended significant time coordinating, reviewing, and producing the documents responsive to the subpoena. (Ex. J.)

True Homes therefore repeatedly availed itself of this Court and the judicial process and engaged in discovery that it would not be entitled to in arbitration. Moreover, Plaintiffs' counsel would not have agreed to the inspections and subpoena response had True Homes timely indicated its intent to compel claims into arbitration. Most notably, True Homes used the powers of this Court to inspect twenty-five townhomes, in addition to Fuentes' and Hagy's townhomes, that True Homes would not have been entitled to inspect in arbitration. Plaintiffs' counsel had to coordinate the inspections with townhome owners and defendants' counsel, travel to Fort Mill, stay in a hotel for two nights, and have Plaintiffs' experts attend the inspections, all requiring significant expenditures of time and money. Additionally, Plaintiffs suffered the prejudice of a hearing on True Homes' motion to stay that could have been resolved in arbitration and the review and production of documents possessed by the community manager. Combined, True Homes' nearly one-year delay in moving to compel arbitration and the repeated availing itself of the powers of this Court at the expense of Plaintiffs result in a waiver of any right to arbitration.

CONCLUSION

For the reasons set forth herein, the Court should deny the Motion.

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
CASE NO.: 2020-CP-46-03592

SUMMERLAKE TOWNHOMES)
HOMEOWNERS' ASSOCIATION,)
INC. and KARIN FUENTES, ROBIN)
DANIEL, and LISA SHER, individually)
and on behalf of all others similarly)
situated,)

Plaintiffs,)

v.)

TRUE HOMES, LLC; CAROLINA)
DEVELOPMENT SERVICES, LLC;)
SUMMERLAKE PROPERTIES, LLC;)
RJB LEGACY COMPANY f/k/a)
Barefoot & Company; BMC EAST,)
LLC; AIRTRON, INC.; MPK)
GRADING AND EROSION)
CONTROL, LLC; SOUTHEND)
EXTERIORS, LLC; MCGEE)
BROTHERS COMPANY, INC.;)
ALPHA OMEGA CONSTRUCTION)
GROUP, INC.; PENDER-PETTUS)
INSULATING, INC.; CHARLOTTE)
LANEHART ELECTRIC COMPANY,)
INC.; C&C PLUMBING, INC.;)
ASSOCIATED MATERIALS, LLC a/k/a)
Alside, Inc.; T&A EXCAVATING, LLC;)
CALLAHAN EXCAVATING, LLC)
a/k/a Callahan Grading & Hauling, Inc.)
a/k/a Callahan Grading, LLC; AHR)
CONSTRUCTION, INC.; JJS)
COMMERCIAL CONSTRUCTION,)
INC.; CDJ CONSTRUCTION, INC.;)
JIMENEZ CONTRACTORS, LLC; J.)
COV ROOFING, LLC; AYALAS)
WINDOW INSTALLATIONS, LLC;)
ATLANTA FLOORING DESIGN)
CENTERS, INC.; PEDRO DEJESUS)
LOPEZ d/b/a PJJ CONSTRUCTION;)
PEDRO VILLAREAL-CONCEPCION)

**TRUE HOMES' MOTION TO
RECONSIDER THIS COURT'S JUNE
20, 2022 ORDER**

d/b/a CVP CONSTRUCTION; JLF
CONSTRUCTION COMPANY, INC.;
ORION WINDOWS AND DOORS,
LLC; ED CLEAR VIEW, LLC;
CHARLOTTE PLASTERING, INC.;
ADVANCED FRAMING, LLC;
AMERICAN EXTERIOR SOLUTIONS,
INC.; AYM CONSTRUCTION, INC;
DAVID CRIBILLERO-CAMACHO
d/b/a DC Exteriors; JOSE SANTOS
ESCOBAR BONILLA; RICHARD
CHAVES; MARIA C. LEON a/k/a E&B
Mother of Construction, LLC;
CALLAHAN GRADING, LLC;
CALLAHAN GRADING & HAULING,
INC.; CAROLINA DEVELOPMENT
SOLUTIONS, LLC; and ANTHONY
JARRETT CALLAHAN,

Defendants

and

SOUTHEND EXTERIORS, INC.,

Third-Party Plaintiff,

v.

AMERICAN EXTERIOR SOLUTIONS,
INC.; AYM CONSTRUCTION, INC.;
DAVID CRIBILLERO-CAMACHO
d/b/a DC Exteriors; JOSE SANTOS
ESCOBAR BONILLA; RICHARD
CHAVES; MARIA C. LEON d/b/a
Square Construction; and EDGAR
BONILLA a/k/a E&B Carpentry a/k/a
E&B Mother of Construction, LLC,

Third-Party Defendant.

and

TRUE HOMES, LLC

Third-Party Plaintiff,

v.)
)
 S. SALLOUM CONTRACTORS, INC.)
 d/b/a SALOMON & ASSOCIATES,)
)
 Third-Party Defendant.)

TO: PLAINTIFFS AND THEIR ATTORNEYS, ELLIOTTE QUINN, ESQ. AND RACHEL IGDAL, ESQ.

PLEASE TAKE NOTICE that Defendant True Homes, LLC (“True Homes”) will, on the tenth day after service hereof, move the Court, pursuant to Rule 59 of the South Carolina Rules of Civil Procedure for an order reconsidering this Court’s Order Denying Defendant True Homes, LLC’s Motion to Stay and Compel Arbitration filed on June 20, 2022 (the “Order”). In support of this Motion, True Homes would show the following:

(1) True Homes and Mr. Fuentes agreed the Federal Arbitration Act applies to their contractual relationship;

(2) the True Homes Purchase Agreement (“PA”) anticipates Mr. Fuentes’ townhome was not constructed at the time of contracting;

(3) the only facts provided to this Court demonstrate Mr. Fuentes’ entered into the initial agreement with True Homes prior to True Homes completing construction of his townhome;

(4) Mr. Fuentes communicated with True Homes’ representatives in North Carolina and requested warranty work by North Carolina subcontractors; and

(5) The Court’s holding in *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 730 S.E.2d 312 (2012) is no longer supported by the nature of the housing industry in South Carolina, where regional home builders are providing an extensive supply of inventory homes using out-of-state suppliers and contractors.

In support of this motion, True Homes relies upon the pleadings, the evidence on the record

in this case, the South Carolina Rules of Civil Procedure, the law of South Carolina, a memorandum in support of the motion filed contemporaneously herewith, any memoranda submitted by the parties, and any oral arguments the Court shall hear.

This the 30th day of June, 2022.

WOLFE, CAMPBELL, GUNST & HINSON, PLLC

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
CASE NO.: 2020-CP-46-03592

SUMMERLAKE TOWNHOMES)
HOMEOWNERS' ASSOCIATION,)
INC. and KARIN FUENTES, ROBIN)
DANIEL, and LISA SHER, individually)
and on behalf of all others similarly)
situated,)

Plaintiffs,)

v.)

TRUE HOMES, LLC; CAROLINA)
DEVELOPMENT SERVICES, LLC;)
SUMMERLAKE PROPERTIES, LLC;)
RJB LEGACY COMPANY f/k/a)
Barefoot & Company; BMC EAST,)
LLC; AIRTRON, INC.; MPK)
GRADING AND EROSION)
CONTROL, LLC; SOUTHEND)
EXTERIORS, LLC; MCGEE)
BROTHERS COMPANY, INC.;)
ALPHA OMEGA CONSTRUCTION)
GROUP, INC.; PENDER-PETTUS)
INSULATING, INC.; CHARLOTTE)
LANEHART ELECTRIC COMPANY,)
INC.; C&C PLUMBING, INC.;)
ASSOCIATED MATERIALS, LLC a/k/a)
Alside, Inc.; T&A EXCAVATING, LLC;)
CALLAHAN EXCAVATING, LLC)
a/k/a Callahan Grading & Hauling, Inc.)
a/k/a Callahan Grading, LLC; AHR)
CONSTRUCTION, INC.; JJS)
COMMERCIAL CONSTRUCTION,)
INC.; CDJ CONSTRUCTION, INC.;)
JIMENEZ CONTRACTORS, LLC; J.)
COV ROOFING, LLC; AYALAS)
WINDOW INSTALLATIONS, LLC;)
ATLANTA FLOORING DESIGN)
CENTERS, INC.; PEDRO DEJESUS)
LOPEZ d/b/a PJI CONSTRUCTION;)
PEDRO VILLAREAL-CONCEPCION)

**MEMORANDUM IN SUPPORT OF
TRUE HOMES' MOTION TO
RECONSIDER**

d/b/a CVP CONSTRUCTION; JLF
CONSTRUCTION COMPANY, INC.;
ORION WINDOWS AND DOORS,
LLC; ED CLEAR VIEW, LLC;
CHARLOTTE PLASTERING, INC.;
ADVANCED FRAMING, LLC;
AMERICAN EXTERIOR SOLUTIONS,
INC.; AYM CONSTRUCTION, INC;
DAVID CRIBILLERO-CAMACHO
d/b/a DC Exteriors; JOSE SANTOS
ESCOBAR BONILLA; RICHARD
CHAVES; MARIA C. LEON a/k/a E&B
Mother of Construction, LLC;
CALLAHAN GRADING, LLC;
CALLAHAN GRADING & HAULING,
INC.; CAROLINA DEVELOPMENT
SOLUTIONS, LLC; and ANTHONY
JARRETT CALLAHAN,

Defendants

and

SOUTHEND EXTERIORS, INC.,

Third-Party Plaintiff,

v.

AMERICAN EXTERIOR SOLUTIONS,
INC.; AYM CONSTRUCTION, INC.;
DAVID CRIBILLERO-CAMACHO
d/b/a DC Exteriors; JOSE SANTOS
ESCOBAR BONILLA; RICHARD
CHAVES; MARIA C. LEON d/b/a
Square Construction; and EDGAR
BONILLA a/k/a E&B Carpentry a/k/a
E&B Mother of Construction, LLC,

Third-Party Defendant.

and

TRUE HOMES, LLC

Third-Party Plaintiff,

v.)
)
 S. SALLOUM CONTRACTORS, INC.)
 d/b/a SALOMON & ASSOCIATES,)
)
 Third-Party Defendant.)

Defendant True Home, LLC (“True Homes”) submits this Memorandum of Law in Support of its Motion to Alter or Amend this Court’s Order Denying Defendant True Homes, LLC’s Motion to Stay and Compel Arbitration pursuant to Rule 59 of the South Carolina Rules of Civil Procedure. For the reasons stated herein, True Homes respectfully requests this Court grant the Motion to Alter or Amend, reconsider its previous order, and grant True Homes’ Motion to Stay and Compel Arbitration.

LAW/ANALYSIS

In the Order, this Court found “The Federal Arbitration Act (“FAA”) does not apply because True Homes’ purchase agreement at issue here is a transaction involving intrastate, rather than interstate, commerce as required for the FAA to apply.” Order at 6. This Court focused its analysis on our state’s decision in *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 730 S.E.2d 312 (2012). True Homes respectfully asserts this Court’s reliance upon *Bradley* is misplaced for four reasons: (1) True Homes and Mr. Fuentes agreed the Federal Arbitration Act applies to their contractual relationship; (2) the True Homes Purchase Agreement (“PA”) anticipates Mr. Fuentes’ townhome was not constructed at the time of contracting; (3) the only facts provided to this Court demonstrate Mr. Fuentes entered into the initial agreement with True Homes prior to True Homes completing construction of his townhome; and (4) Mr. Fuentes communicated with True Homes’ representatives in North Carolina and requested warranty work, which was provided by North Carolina subcontractors. Additionally, the Court’s holding in *Bradley* is no longer supported by

the nature of the housing industry in South Carolina, where regional home builders are providing an extensive supply of homes using out-of-state suppliers and contractors.¹ Accordingly, True Homes' Purchase Agreement involves interstate commerce, and the FAA applies.

1. The Parties Agreed the FAA Would Apply.

In its motion to compel arbitration, True Homes asserted the South Carolina Court of Appeals decision in *Damico v. Lennar Carolinas, LLC* supports its motion to compel arbitration. 430 S.C. 188, 844 S.E. 2d 66 (Ct. App. 2020). A great deal of the briefing to this Court prior to the hearing on True Homes' motion dealt with how True Homes' construction and sales activities effect interstate commerce; however, it is important to note that the *Damico* Court had two bases for its decision: (1) out-of-state contractors and suppliers were involved in the construction of the home; and (2) the parties "specifically agree[d] that [the] transaction involves interstate commerce." *Damico*, 430 S.C. at 196, 844 S.E. 2d at 70. Similarly, the Order analyzes whether the contract is for the construction of a home but fails to recognize the arbitration agreement Mr. Fuentes signed specifically references the FAA. In fact, the Order indicates, "[h]ere, True Homes' purchase agreement does not mention the FAA." Order at 7.

In signing the PA, Mr. Fuentes "acknowledge[d] a receipt of the sample Warranty Policy provided at the point of contract." Exhibit A (Purchase Agreement Section 23).² He further agreed "to abide by the Mediation and Arbitration provisions contained in the warranty policy." *Id.* In

¹ True Homes recognizes this Court is bound to existing precedent. While True Homes believes this case is distinguishable from *Bradley*, True Homes includes this argument to preserve the issue.

² In his brief in opposition to the motion to compel, Mr. Fuentes asserted the purchase agreement merged into the deed and is no longer enforceable. Mr. Fuentes ignores Section 17 of the PA, where the parties agreed "The terms of this Agreement will survive the Closing." *See Carlson v. S.C. State Plastering, LLC*, 404 S.C. 250, 743 S.E.2d 868 (Ct. App. 2013) ("Pursuant to the clear and unambiguous terms of the purchase agreement, clear and convincing evidence supports a finding that the parties did not intend for the arbitration clause to be merged into the deed at closing.")

two separate places, that warranty policy notes the applicability of the FAA.

First, in signing the warranty application on the day he closed on his new townhome, Mr. Fuentes agreed

I/we acknowledge and agree that all disputes under and relating to the Builder's Limited Warranty (including disputes on which issues shall be submitted to arbitration; alleged breach of the Builder's Limited Warranty; and alleged violations of statutes or regulations relating to consumer protection or unfair trade practices) shall be submitted to binding arbitration before an independent third party arbitration organization. I/we agree the decision of the arbitrator(s) shall be binding on all parties. *Any such binding arbitration(s) shall be conducted in accordance with the rules and procedures applicable to the arbitration hearing the dispute or, where those rules are silent, the United States Arbitration Act (9 U.S.C. § et seq.)*. (emphasis added)

Exhibit B (Warranty Application). Similarly, in the Builder's Limited Warranty booklet he received at the point of contract, he agreed, "[t]he award of the arbitrator will be final, binding and enforceable as to both YOU and US or OUR insurer, except as modified, or vacated in accordance with the applicable rules and procedures of the designated arbitration organization, or, in their absence, the United States Arbitration Act (9 U.S.C. § 1 et seq.)." Exhibit C (Builders' Limited Warranty at 7).

Based on the language in this agreement, the parties both intended the rules and procedures of the FAA would apply. That contractual term should be honored.

The *Damico* court's analysis supports True Homes' position. Prior to evaluating the actual effects on interstate commerce, the *Damico* court held the parties had already agreed the FAA would apply and found "[w]e must enforce this agreement like any other contract term." *Damico*, 430 S.C. at 196, 844 S.E. 2d at 70. The contractual term in *Damico* included the following: "[t]he parties to this Agreement specifically agree that this transaction involves interstate commerce and that any Dispute . . . shall first be submitted to mediation and, if not settled during mediation, shall

thereafter be submitted to binding arbitration as provide by the Federal Arbitration Act” *Id.* at 195, 844 S.E. 2d at 70. Mr. Fuentes and True Homes specifically incorporated the FAA into their agreement. Now, True Homes seeks the benefit of that bargain. Just as in *Damico*, this court should reconsider its previous ruling and compel arbitration of this dispute.

2. The plain language of the Purchase Agreement (PA) assumes the townhome was not completed.

The Court’s order also finds that the PA focuses on the sale of a home, which forecloses the applicability of the FAA to this transaction. The Order focuses on one term from the PA to support its conclusion—that the document is entitled “HOME PURCHASE AGREEMENT.” Reliance upon this one term to find the contract is one for the sale of real estate, rather than the construction and sale of a home, ignores the remainder of the document, which specifically contemplates the home may not be constructed at the time of contracting. *Buice v. WMA Securities, Inc.*, 380 S.C. 149, 157, 668 S.E.2d 430, 434 (Ct. App. 2008) (“[I]n determining the intent of the contracting parties, the court should construe the contract as a whole, and read together different provisions dealing with the same subject matter.”).

For example, the PA’s first section provides “Seller agrees to Sell and Buyer agrees to purchase the homesite below subject to all restrictions, covenants and easements (the “Homesite”) and all buildings or improvements *to be constructed or installed* thereon according to this Agreement.” (emphasis added). Exhibit A (Section 1). Under the heading “**Construction**” True Homes agreed it “will build or has built a home for Buyer according to this Agreement and Seller’s standard procedure” Exhibit A (Section 2) and even contemplates a delayed closing because of construction issues Exhibit A (Section 8). The PA noted Mr. Fuentes had the right to inspect the home with True Homes employees prior to closing and may employ a third-party inspector to provide an inspection. Exhibit A (Section 15). Finally, the PA anticipates there may be requested

punch work up to and following closing. “Incomplete items may be completed at Seller’s expense post-Closing if necessary, so long as the Home is materially complete, as evidenced by the certificate of occupancy and availability of power, gas, and water.” Exhibit A (Section 15). Although “showroom changes” were not available, Mr. Fuentes could choose to add blinds, add appliances, or add a garage door opener if he wished to do so. Exhibit A at 6.

The Order does not analyze this language in its discussion of the character of the contract. Instead, the Order concludes, based on the title of the agreement and the fact that the home was under construction when the PA was signed is conclusive evidence that the essential character of the PA was strictly for the sale of real estate rather than the construction of an improvement to real property. No case in South Carolina can be found to stand for that proposition. However, as noted above, the PA contemplates that a home would need to be constructed in order for it to be sold. This document is not a standard residential purchase agreement for a pre-existing structure. This PA, by its plain terms, includes both the construction and sale of a home.

The Order, however, indicates the court’s decision in *Bradley v. Brentwood Homes, Inc.*, 398 SC. 730 S.E.2d supports a finding that “‘ancillary factors’ like a national warranty and out-of-state financing do not result in a transaction involving interstate commerce where the plaintiff does not assert claims under the national warranty.” Order at 10. The Court’s analysis, respectfully, is misguided when put in context of the facts of this case. The Order itself reflects some of the ways this case differs from *Bradley*. “True Homes contends that it is a non-South Carolina entity, True Homes’ employees located outside South Carolina were used to perform warranty work, and in other ways the provision and performance of the warranty involved interstate commerce.” Order at 9. It is not simply the provision of a warranty document which is important here. Mr. Fuentes availed himself of the warranty process following closing.

Additionally, the entity seeking to enforce the arbitration agreement in *Bradley* acted solely as the seller, not the contractor. It is self-evident that a contract to sell real estate, entered into with an entity which did not construct the home, was not involved in any repairs to the home, and did not communicate with the homeowner regarding warranty requests, does not affect interstate commerce. However, these are simply not the facts before this Court.

The United States District Court for the District of South Carolina has analyzed *Bradley* and found a contract similar to True Homes' PA affects interstate commerce. *See Bernstein v. Pulte Home Company, LLC*, c/a 0:19-cv-02805-JFA (D.S.C. December 23, 2019) provided herewith as Exhibit D. The plaintiffs in *Pulte* made the same arguments advanced here and adopted in the Order—"the essential character of the Purchase Agreement is that of a real estate transaction because the agreement was titled 'Home Purchase Agreement' and included statements such as: "Seller agrees to sell and Buyer agrees to purchase a single family home (the 'Home') located on the lot described below (the 'Lot'). *Id.* at 8. Additionally, the *Pulte* plaintiffs asserted "the Limited Warranty is likewise not subject to the FAA because it merely offers for repairs to be provided by Pulte to South Carolina homes and thus does not affect interstate commerce." *Id.*

Judge Anderson distinguished *Bradley* and compelled the plaintiffs to arbitrate their dispute with Pulte. Judge Anderson noted several provisions of the purchase agreement which support finding an effect on interstate commerce, including: (1) the purchase agreement "clearly states '[t]he Home will be constructed by Pulte Home Corporation;" (2) "[Pulte] would be pleased to show Buyer homes under construction in the community;" (3) the Plaintiffs could "select options and upgrades." These contract terms were sufficient to call into doubt whether the essential character of the Pulte agreement was solely for the purchase of an already complete home. *Id.*

Judge Anderson then noted the overwhelming evidence that the actual construction of the

home did involve interstate commerce through the use of out-of-state suppliers and contractors. *Id.* at 9. Further, the *Pulte* Court noted there was “further, albeit unnecessary, support [for finding an effect on interstate commerce] . . . when considering that all homeowners are from states different than *Pulte*; mortgage funding came from out-of-state lenders; and title agents and realtors were located outside of South Carolina.” *Id.* Based on these facts, Judge Anderson compelled arbitration.

The facts here are similar. As noted above, the contract language demonstrates the homes were sold prior to their completion. Mr. Fuentes had the opportunity to tour his home during construction and have a third-party inspection prior to closing. Mr. Fuentes made requests for repairs and those repairs were performed by out-of-state contractors. Exhibits E (Email Dated October 14, 2016), F (Email Dated October 27, 2016), G (Work Order for 2006 Firefly Lane). Mr. Fuentes used an out-of-state attorney to close his loan and financing was provided from out-of-state lenders. Exhibit H (Fuentes Deed), Exhibit I (Fuentes Mortgage). True Homes is a North Carolina corporation and used contractors and suppliers from outside of South Carolina. Exhibit J (Bacon Affidavit). Accordingly, the purchase agreements at issue here are not “strictly for the purchase of a completed residential dwelling” and the FAA should apply.

3. The Undisputed Facts Show Mr. Fuentes actually entered into the initial agreement with True Homes prior to completion of his townhome.

The Order indicates that, based solely on the fact that True Homes had begun constructing Mr. Fuentes’ home prior to Mr. Fuentes signing an agreement to purchase the home, the essential character of the PA must have been for the sale of the home, not the construction of the home. This analysis drastically extends the Court’s holding in *Bradley* and is unsupported by any South Carolina case law.

Initially, it is important to note the contract Mr. Fuentes signed to purchase lot 71 at the

Project, was not the only contract he signed to purchase a home in Summerlake. In fact, one month prior to signing the contract for Lot 71, Mr. Fuentes signed a contract for the purchase of Lot 7. Exhibit K (Lot 7 Contract). When Mr. Fuentes signed that first contract on July 19, 2014, the townhome he eventually purchased had not yet passed inspections for Rough Framing, Rough Electrical, Rough Plumbing, Rough Mechanical, House Wrap, Insulation, or any Final Inspections. Exhibit L (Inspection Records). It is unlikely a customer would mistake a home which had no siding on it for a completed structure.

This evidence demonstrates Mr. Fuentes knew or should have known he was signing a contract for a home not yet built. The Order indicates, "True Homes was constructing the townhome regardless of whether that original purchaser signed the purchase agreement, and therefore, the purchase agreement cannot have been a contract for the construction of a townhome." Order at 8-9. There is no evidence to support this conclusory statement and it makes no difference. The question is whether the agreement was "strictly for the purchase of a completed residential dwelling." *Bradley*, 398 S.C. at 459, 730 S.E.2d at 318. Based on these facts, it was not.

4. Mr. Fuentes took advantage of warranty services performed by out-of-state contractors.

The Order focuses its attention on the discussion in *Bradley* wherein the court noted the provision of a warranty managed by an out-of-state provider was not sufficient to affect interstate commerce and trigger the FAA. However, as noted during the hearing on True Homes' motion to compel arbitration, Mr. Fuentes has a history of availing himself of the warranty provision within his agreement, utilizing the North Carolina call center True Homes has established to handle warranty requests and several out-of-state repair contractors to evaluate and fix various issues.

In 2016, Mr. Fuentes began contacting True Homes employees in North Carolina seeking assistance with warranty items. See generally Exhibits E and F. Mr. Fuentes reported issues relating to his bathroom plumbing, a lack of caulk around the exterior HVAC exhaust vent, water issues leaks at the front elevation of the home, and repair of drywall and molding. These complaints resulted in several meetings at his home with out-of-state contractors and work orders to fix various items. See Exhibit G.

Mr. Fuentes' use of the warranty process takes this matter outside the Brentwood context. True Homes did not simply provide Mr. Fuentes with a home warranty—True Homes serviced that warranty and provided repairs. Mr. Fuentes' requests and True Homes' responses clearly affect interstate commerce and are sufficient to trigger the FAA.

5. The court's reasoning in *Bradley* is no longer supported by the obvious affects regional homebuilders have on interstate commerce.

The *Bradley* court pronounced that generally, “the development and sale of residential real estate is an intrastate activity that does not implicate the FAA” in 2012. While a decade is a short time in the history of our state, the increase in home construction by regional and national homebuilders in the last ten years calls into question the continued validity of the court's holding.

As the *Damico* court recognized, “[t]he FAA applies “to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction.” *Damico*, 430 S.C. at 196, 188 S.E.2d at 70. “In deciding whether a transaction involves ‘commerce in fact’ sufficient to trigger the FAA, [the court] examine[s] the agreement, the complaint, and the surrounding facts.” *Towles v. United HealthCare Corp.*, 338 S.C. 29, 36, 524 S.E.2d 839, 843 (Ct. App. 1999). “The phrase ‘involving commerce’ as used in the FAA is ‘he functional equivalent of the more familiar term ‘affecting commerce’—words of art that ordinarily signal the broadest permissible exercise of Congress’

Commerce Clause power.” *Id.* (quoting *Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 56, 123 S.Ct. 2037, 156 L.Ed.2d 46 (2003)). “The Commerce Clause grants Congress the power to regulate (1) the use of channels of interstate commerce, (2) instrumentalities of interstate commerce or persons or things in interstate commerce, and (3) activities having a substantial relation to interstate commerce.” *Id.* (quoting *United States v. Morrison*, 529 U.S. 598, 609, 120 S.Ct. 1740, 146 L.Ed.2d 658 (2000)).

In creating a categorical rule that the sale of real estate, no matter the facts, does not affect interstate commerce, the *Bradley* decision creates a different treatment for arbitration provisions within these contracts. That disparate treatment has been specifically prohibited by both the South Carolina Supreme Court and the United States Supreme Court. *See Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 498 S.E.2d 898 (1998) (quoting *Doctor’s Assocs., Inc. v. Casarotto*, 517 U.S. 681 (1996)) (“In construing an arbitration clause, the Supreme Court has also made it clear that states may not treat arbitration clauses differently from other contract provisions. ‘Congress precluded States from singling out arbitration provisions for suspect status, requiring instead that such provisions be placed ‘upon the same footing as other contracts.’”)

The home at issue here would not have been built but for the use of out-of-state partners and suppliers. The warranties provided would not have been available for Mr. Fuentes to use if not for out-of-state repair contractors and the North Carolina warranty center. These facts demonstrate the construction and sale of this home, mere miles away from the North Carolina border, affects interstate commerce. To hold otherwise is to subject this arbitration provision to a much stricter standard than other contractual provisions.

CONCLUSION

Based on the foregoing, True Homes requests this Court reconsider its order denying True Homes' motion to compel arbitration.

This the 30th day of June, 2022.

WOLFE, CAMPBELL, GUNST & HINSON, PLLC

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Robert C. Gunst, Jr. (SC State Bar No. 102957)
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Attorneys for Defendant True Homes, LLC

TrueHomes
WE VALUE WHAT YOU VALUE

CLOSING EXPECTATION
ADDENDUM

Buyer(s): Karin Josue Fuentes
Community: SML
Homesite: 71

Buyer agrees to close the Home as follows:

- ☐ **CLOSING TO OCCUR ON OR BEFORE:** 9/17/2014
Buyer will finance the Home with FHA or conventional financing, or pay cash for the Home.
- ☒ **CLOSING TO OCCUR ON OR BEFORE:** 9/26/2014
Buyer will require this additional time to secure underwritten approval and finance the Home.
- ☐ **CLOSING TO OCCUR ON OR BEFORE:** 10/11/2014
Buyer will use NC USDA, BOND, LIFT Program, or other down payment assistance to finance the Home.
- ☐ **DELAYED CLOSING:** Buyer will close on or before _____ regardless of financing type.
Note: A DELAYED CLOSING BEYOND 9/26/2014 REQUIRES EXECUTIVE APPROVAL PRIOR TO CONTRACT.
- ☐ **HOME IS NOT YET COMPLETE.** Home is currently under construction and will not complete within 30 days.
Closing to occur immediately following Home Completion as provided in the Agreement
- ☐ **EXISTING HOME CLOSING.** Buyer must close on an Existing Home prior to Closing, and has signed a Home to Close Contingency Addendum.

Seller will provide Buyer approximately 10 days advance written notice of the name and address of this Attorney, and the date and location for Buyer to pay Seller the Purchase Price and Seller to transfer title of the Home to Buyer ("Closing"). While Buyer is responsible to secure financing in anticipation of the Closing, Seller may permit an extension of the Closing for up to 10 days upon the payment of a \$75.00 per day Closing extension fee. This Closing Expectation Addendum will ONLY modify the Purchase Agreement where approved below by Seller's Operations Partner.

☒ Karin Josue Fuentes
Karin Josue Fuentes

8/22/14
Date

Chad Bacon
Chad Bacon

8-27-14
Date

Operations Partner
Seller Operations Partner
Credit/Closings/Legal

8/20/14
Date

Contract (SPEC) (081814)

EXHIBIT
A

TrueHomes

HOME PURCHASE AGREEMENT
Inventory Home

TRUE HOMES, LLC, a Delaware Limited Liability Company located in Charlotte, North Carolina ("Seller") and
Karin Josue Fuentes (jointly and severally known as "Buyer") currently residing at
8417 Riverbush Drive Apt. 304 Charlotte, NC 28210 ("Existing Home") enter this agreement on the
 date below. This document (including the Terms and Conditions on page 2), the Warranty Document, Seller Paid Closing Cost Incentive Addendum (if applicable), and such other addenda signed
 by and between the parties and incorporated by reference herein (collectively the "Agreement").

1. **SALE AND PURCHASE.** Seller agrees to sell and Buyer agrees to purchase the home(s) below subject to all restrictions, covenants and easements (the "Home(s)") and all buildings or
 improvements to be constructed or installed thereon according to this Agreement (the "Residence") (the Home(s) and the Residence will be referred to collectively as the "Home"). The Residence
 will be built on the Home(s) consistent with the plot plan.
2. **CONSTRUCTION.** Seller will build or has built a home for Buyer according to this Agreement and Seller's standard procedures. Model homes have custom features, many of which may be
 added to the Home for additional cost as Custom Features. The Home will be described as follows:

Community: **SNL** Lot: **71** Home Address: **2095 Frofly Lane Fort Mill, SC 29715**
 Plan Name: **The Dublin** Plan #: **Elevation:**

3. **FOUNDATION TYPE:**

MONO SLAB: This is a formed concrete slab placed directly on the compacted ground. The plumbing is placed in the foundation before the plumbing is poured, and once set, the foundation,
 plumbing and electrical line placement is permanent. With Mono Slab the footing, foundation perimeter and the interior slab are formed and poured all at the same time. Most homes built in this
 area have a mono-slab foundation as the base home foundation type. Since the foundation is at ground level, the home will include a 2x8 concrete stoop at the rear door.

4. **PURCHASE PRICE.** The purchase price for the Home will be the aggregate of the Home, Home(s), Elevation, Foundation, Structural Options, (each as applicable and as determined herein)
 plus any additional amounts payable pursuant to the Custom Features Addendum for showroom options (collectively the "Purchase Price"). Option prices will be determined at the time of contract,
 so long as the Buyer complete the selection appointment within 60 days.

PURCHASE PRICE		DEPOSIT	
Purchase Price:	\$188,850	Initial Deposit:	
		Preferred Lender Initial Deposit:	\$500
		Standard Initial Deposit:	\$2,000

Additional deposit paid at the Showroom equal to any increase in the Purchase Price in approved changes or additional selections ("Additional Deposit").

5. **DEPOSIT.** Collectively the Initial Deposit, the Additional Deposit, and any other amounts paid by Buyer prior to Closing will be the "Deposit". Upon Closing (defined below), Buyer will pay the
 balance of the Purchase Price after deducting the Deposit. Deposit will be a working capital, will not be subject to any escrow, and Seller will have the right to use the Deposit for any purpose.
 Deposit will be non-refundable following completion of the Custom Features Addendum (if applicable) receipt of Loan Prequalification, or commencement of any changes to the Home. Failure to pay
 any deposit when due is an event of default and may result in Seller's Termination of the Purchase Agreement.

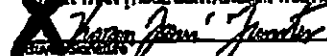
6. **LOAN APPLICATION AND PREQUALIFICATION.** Buyer must submit a written application for financing to a Preferred or Non-Preferred Lender (collectively "Lender", each as defined below)
 within 3 days of the contract date. Within 7 days of the Effective Date, Buyer will provide Seller sufficient documentation, that Buyer can pay the Purchase Price ("Prequalification"). Prequalification
 may include written approval of a mortgage or other financing of the Purchase Price by (i) one of Seller's preferred lenders, as determined from time to time in the Seller's discretion ("Preferred
 Lender") or (ii) a licensed lender, mortgage company or bank ("Non-Preferred Lender") so long as the Non-Preferred Lender completes any and all documentation required by Seller in its sole
 discretion. Buyer authorizes Seller and Lender to communicate completely about Buyer's financial condition, including Buyer's credit report, credit score and any other relevant information, for Seller
 to completely evaluate Buyer's initial and continual ability to purchase a home. Buyer authorizes Lender to provide Seller, or any third-party involved in the financing of the Home(s) or Home, with
 any and all information and documents including a copy of the completed Prequalification form, and appraisal (as described below). Regardless of Prequalification, after construction changes begin,
 all Deposits are non-refundable and any financing contingencies are waived. Failure to provide Prequalification is an event of default, and may result in Seller's Termination of the
 Purchase Agreement and/or Buyer's forfeiture of the Deposit.

7. **FINAL APPROVAL AND APPRAISAL.** At least 3 days prior to the scheduled Closing, Buyer will obtain final loan approval subject only to final verification of employment, updated bank
 statements and paystubs, and a final credit check. After receipt of the Prequalification, Seller will rely on Buyer's ability to finance the Home, notwithstanding any change in loan program terms,
 interest rates, or other financing terms or conditions. Buyer will obtain an acceptable appraisal in excess of the Purchase Price ("Appraisal"), pay cash at closing to make up any shortfall, or reduce
 selections in the Home to meet the Purchase Price. The Appraisal is an opinion of value used by a lender to determine whether sufficient collateral exists to provide a mortgage loan. While the
 Appraisal may limit Buyer's mortgage amount, the Agreement is not contingent upon, nor is the Purchase Price reduced by the Appraised value. In the event of a low appraisal, Buyer agrees to
 remove selections to lower the Purchase Price (where possible), provide additional non-refundable deposit in the amount of the appraisal shortfall, or reduce other hardships. Failure to provide
 Seller with Prequalification or Appraisal is an event of default, and may result in Seller's Termination of the Purchase Agreement.

8. **ESTIMATED COMPLETION DATE.** Seller is unable to provide an estimated completion date more than 21 days prior to scheduled completion of the Home, but both parties agree that for a
 completed Home, Closing must occur in less than 60 days after the point of contract, unless subsequently extended by agreement of the parties. Before any agreed upon changes to the Home can
 be made, Buyer must (a) Sign Agreement and all related documents; (b) Pay total Deposit; (c) Provide Prequalification and Appraisal; and (d) Satisfy all contingencies. Finally, completion of the
 Home may be delayed for many reasons, including: product availability, labor shortages, acts of God, and weather. Seller assumes no liability for any delay in the Closing of the Home, including
 without limitation, any increased living expenses, moving costs, financing rates or costs associated with an expired interest rate lock.

9. **CLOSING AND RISK OF LOSS.** While Buyer retains the right to retain any legal counsel to review documents and provide Buyer with legal advice, the closing documents will be prepared by the
 Attorney designated by Seller ("Closing Attorney") and the closing will occur at Closing Attorney's office. Seller will provide Buyer approximately 10 days advance written notice of the name and
 address of the Attorney, and the date and location for Buyer to pay Seller the Purchase Price and Seller to transfer title of the Home to Buyer ("Closing"). Seller may permit an extension of the
 Closing for up to 10 days upon the payment of a \$75.00 per day Closing extension fee. For a completed home, Buyer agrees to Close within twenty one (21) days after the Effective Date unless an
 extended closing is negotiated at the point of contract and documented on the Closing Expectation Addendum. Buyer assumes all risk of loss at Closing, and will obtain sufficient insurance coverage
 for the Home. Buyer is responsible for owners title insurance, private mortgage insurance, government recording and transfer fees including revenue stamps, mortgage insurance premium, BUYER
 costs, FHA or VA fees, and any other closing costs attributable to the purchase and sale of the Home.

IN WITNESS WHEREOF, the parties have signed this Agreement on the dates written below. The document will not become effective until ratified by an authorized representative of the Seller
 ("Effective Date"). BUYER HAS READ, UNDERSTANDS, AND VOLUNTARILY AGREES TO THIS AGREEMENT. NO REPRESENTATIVE OF SELLER HAS MADE ANY REPRESENTATION
 OTHER THAN THOSE CONTAINED IN THIS AGREEMENT, WHICH HAVE CREATED EXPECTATIONS IN BUYER OR ARE BEING RELIED ON BY BUYER TO SIGN THIS AGREEMENT.


 Karin Josue Fuentes

Buyer Printed Name

Buyer Signature

Buyer Printed Name


 8/27/14
 Date

Date


 Nick Bacon

Seller Printed Name

Seller Signature

Seller Printed Name

Operations Partner
 Credit/Closings


 8/27/14
 Date


 8/28/14
 Date

Revised: 8/15/2014

TERMS AND CONDITIONS

10. **Homeowner Association Dues.** Upon Closing, Buyer will become a member of any homeowner's association applicable for the community (the "Association") and will abide by the Association's declaration of covenants and restrictions. Buyer agrees to pay when due, all charges, assessments capital contributions, transfer fees, or other amount determined by the Association ("Dues") and agree to pay at Closing its share of such Dues for the calendar year in which the Closing occurs, prorated on a daily basis.
11. **Real Estate Commissions.** Seller will pay only one commission to a Buyer's agent. Seller will pay the Buyer's agent associated with the Buyer at the earliest point of contact with Seller, and only where that agent is also listed in an attached Real Estate Commission Addendum. Buyer would be responsible to pay any other real estate agents retained by Buyer.
12. **Changes.** Buyer can make no changes to the Home other than as agreed on the Effective Date ("Late Changes"). If Seller permits a Late Change, there would be a fee in addition to the cost of the Late Changes. Buyer is responsible to communicate any increase in Purchase Price to Lender and pay the new Purchase Price regardless of any limits on financing. Seller may make changes to the Home as necessary to comply with State or Local law, to satisfy zoning commitments, correct an error, improve design, or to maintain competitive pricing. Final home handing is always determined by the conditions and is subject to change. Buyer agrees to accept any change to the Home specifications that does not materially impact the Home's value.
13. **Real Estate Taxes.** All taxes assessed for any prior calendar year and remaining unpaid will be paid by Seller. In addition, as a final settlement between Buyer and Seller, Seller will provide a credit to Buyer for property tax assessed against the Home for the current calendar year on a calendar-year basis, as of the day prior to the Closing. Seller's pro-rated share of the property tax will be based on the land value of the Home unless the property has already been assessed as improved property prior to Closing.
14. **Possession of the Home.** Until Closing, Buyer will have no right to possess or use the Home. Buyer may not enter the Home without Seller's agent and Buyer will not perform or direct any work or install any materials at the Home prior to Closing. Any materials placed in the Home prior to Closing will become the property of Seller. At Closing, Buyer will change into Buyer's name all utility and other service accounts related to the Home, and Seller will terminate all such service in Seller's name.
15. **Inspection and Incomplete Items.** Prior to Closing, Seller and Buyer will inspect the Home using Seller's standard procedures and complete the home to a finish similar to Seller's models. Buyer may hire a third-party inspector to provide an inspection prior to Closing, but the Closing will not be delayed to accommodate the same. Seller will create a list to be completed in the Home ("Incomplete Items"). Incomplete items may be completed at Seller's expense post-Closing if necessary, so long as the Home is materially complete, as evidenced by the certificate of occupancy and availability of power, gas, and water.
16. **Site Conditions.** Final characteristics of your home site may differ from those observed at the time of contract, including but not limited to whether any slopes will remain or be created, pad width or depth, driveway handling, driveway slope (positive or negative), location or existence of drainage swales, removal of trees or vegetation, location of utilities, street lights, utilities, easements, adjacent lot characteristics, home handing, or any other aesthetic issue with the home site or surrounding home site. One or more easements may exist on this property. Easements are generally recorded for the benefit of a local government municipality, a utility provider or the homeowner association. Potential easements could include: sanitary sewer lines, drainage and utility easements, or such other recorded easement that binds the property. Seller makes no representation regarding the suitability of the home site for a pool, deck, or patio.
17. **Entire Agreement.** This Agreement constitutes the final expression of the parties' agreement and is a complete and exclusive statement of the terms of that agreement. All prior oral or written agreements of the parties are superseded by this Agreement. Seller's sales representatives are not authorized to modify any term of this Agreement, or to make any representation, which is not expressly provided in this Agreement. The terms of this Agreement will survive the Closing.
18. **Buyer Cooperation.** Buyer will fully cooperate to give effect to this Agreement and allow for completion of the Home without delay. Buyer will attend each scheduled appointment, and comply with all requested timelines, as more specifically provided in Seller's "Construction Expectations" document signed contemporaneously herewith. Buyer agrees that he will not interfere in any way with Seller's performance, or Seller's business, before or after Closing. This is of the essence regarding Buyer's obligations herein. Buyer and Seller both agree to cooperate in good faith to correct any material error made in good faith, including any mistake in pricing.
19. **Default.** Any of the following will be a "Default": (a) Buyer's failure to cooperate in full with Seller during the construction process; (b) Buyer's failure to timely close the Home; (c) Buyer's failure to pay the Deposit when due; (d) Buyer's inability to secure or maintain Possession; (e) Buyer's failure to timely satisfy or maintain any condition thereon; or (f) any breach of the Agreement.
20. **Liquidated Damages.** Buyer has voluntarily agreed to the terms and conditions of this Agreement. If Buyer Defaults on the Agreement, Seller will suffer significant damage in an amount that cannot easily be calculated. The Parties agree that the greater of \$50,000 or the Deposit would reasonably compensate Seller for this loss ("Liquidated Damages"). Buyer expressly agrees that the Liquidated Damages amounts are reasonable representations of Seller's anticipated loss, and are not punitive in nature.
21. **Seller's Remedies in a Default.** In a Default, Seller may do any or all of the following: (a) proceed with construction of the proposed Home; (b) terminate this Agreement with no further obligation or liability of Seller; (c) seek any action under law, including the sale of the Home to another person, and collect from the Buyer the difference between that sale and this Agreement; (d) collect the Liquidated Damages; (e) retain any Deposit.
22. **Waiver.** This Agreement will be governed by the laws of the State where the Home exists. This Agreement is subordinate to the mortgage on the real estate, if any, of any financial institution providing mortgage funds to Seller, and will not be recorded. This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the parties, and no rule of construction or interpretation shall apply against any particular party. This Agreement shall be construed and interpreted in a neutral manner. Headings are for convenience only. If a court finds any sentence or term of this Agreement to be unenforceable, the validity of the remaining terms will not be affected. No waiver of any term of this Agreement will constitute a waiver of any other provision or right hereof (whether or not similar) or a continuing waiver. Seller may not own the real estate on the Effective Date or during construction, and may refund the Deposit and terminate the Agreement without liability if Seller is unable to purchase the home site before closing. At Seller's sole and absolute discretion, Seller may refund the Deposit, terminate this Agreement, and both parties will be released from any further obligation. Seller will retain all rights to use the likeness of the Home in any marketing material or made post-closing, and retains all legal rights to any intellectual property, including copyrights associated with the plans. This Agreement may not be modified, amended, or waived except in writing signed by Buyer and Seller. In the event of a breach of this Agreement, the losing party will pay all costs and expenses, including the winning party's attorney fees incurred as a result of a breach of this Agreement. Buyer will provide Seller a valid e-mail address and agrees to accept formal notice via electronic transmission. The address for each party, until changed in writing, will be: For Buyer: The Existing Home or the E-mail address provided by Buyer to Seller. For Seller: the Seller's registered address with the governing State's office of the Secretary of State.
23. **Warranty Policy and Dispute Resolution.** Seller will purchase shortly following Closing, and provide to Buyer, the Warranty Policy in materially the same form as the sample booklet provided herewith ("Warranty Policy"). All capitalized terms used in this document that are not defined in the Purchase and Sale Agreement shall refer to the defined term in the Warranty Policy. Buyer acknowledges a receipt of the sample Warranty Policy provided at the point of contract. In the absence of any applicable repair standard in the Warranty Policy, the related industry standard provided by the National Association of Homebuilders ("NAHB Standards") will be used as a guide. At the Closing, Buyer will receive the benefit from any applicable manufacturer's or supplier's warranties but Seller assumes no liability related to the same. Seller may remove any existing trees that could interfere with Builder's ability to build the Home and will not be liable for damage caused to existing trees during construction of the Home. The parties agree to abide by the Mediation and Arbitration provisions contained in the Warranty Policy. Buyer's landscaping, appliances, and any installed septic or well water systems are specifically excluded from Seller's warranty. For homes with a well, Seller provides no warranty regarding the quality, quantity or continued availability of water beyond the ability of Seller to obtain a certificate of occupancy prior to closing. SELLER AND BUYER KNOWINGLY AND VOLUNTARILY AGREE TO SUBMIT ANY WARRANTY DISPUTES FOR RESOLUTION IN ACCORDANCE WITH THE PROCESS DESCRIBED IN THE LIMITED WARRANTY BOOKLET, INCLUDING WITHOUT LIMITATION, BINDING ARBITRATION, AND, AS TO SUCH DISPUTES, BUYER AND SELLER EACH WAIVES THEIR RESPECTIVE RIGHT TO TRIAL BEFORE A JUDGE OR JURY.
24. **Warranty Term.** Beginning on the Effective Date of the Warranty, for one (1) year, the Home will be free from Defects caused by faulty workmanship or defective materials. For two (2) years, the Home will be free from Defects caused by faulty installation of plumbing, electrical, heating, cooling, or ventilating systems, exclusive of fixtures, major appliances, or home of equipment. For ten (10) years, the Home will be free from Structural Defects as defined in the Warranty Policy. If an item is not defined as a Defect in the Warranty Policy, it is not a Defect, and Seller has no obligation to address the issue. Seller's only obligation under the Warranty is to correct the Defect as provided by the Warranty Policy, and has no liability for any consequential or incidental damage resulting therefrom. Homes require continued maintenance, and Seller's Warranty excludes any Defect caused by a failure to provide appropriate periodic maintenance. If Gator determines in its sole discretion to address an item that is not defective ("Customer Service"), Seller may apply any another objective standard from the Warranty Policy or the NAHB Standards, and offer to provide the voluntary service to maintain good customer relations only. Customer Service will not operate as a waiver of any provision of the Warranty Policy or this Agreement. Failure to object in writing to Seller's repair work within 10 days of the work will reflect Buyer's acceptance of Seller's performance.
25. **Notice and Disclaimer.** At various times, the U.S. Environmental Protection Agency has expressed concern over the presence of radon gas, mold and other air pollutants ("Pollutants"). Prolonged exposure to high levels of Pollutants may have adverse health effects. Seller will not cause any investigation to determine whether there are any Pollutants in the Home or affecting the premises, although such conditions may exist. At the time of closing, Seller will have made no analysis or verification of the extent of the environmental or health hazard, if any, that may affect the Home, premises or residents. As such, Seller makes no representation or warranty and has no liability in connection with the presence of any Pollutants, including radon or mold.
26. **Disclaimer of Implied Warranties.** THE LIMITED WARRANTY PROVIDED IN THE Warranty Policy IS ACCEPTED BY THE BUYER IN LIEU OF ALL OTHER WARRANTIES EXPRESSED AND/OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF WORKMANLIKE CONSTRUCTION, IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, THE IMPLIED WARRANTY OF HABITABILITY AND ALL WARRANTIES THAT COULD BE CONSTRUED TO COVER THE PRESENCE OF RADON OR OTHER ENVIRONMENTAL POLLUTANTS. ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, ARE WAIVED BY REASON OF THE PROMISES AND AGREEMENTS HEREIN CONTAINED. Buyer also waives the right to recover from seller all consequential, incidental, punitive, or exemplary damage, including emotional distress, pain and suffering, lost profits, depreciation or other statutory damages. The only warranties seller provides to the Buyer are those contained in the Warranty Policy. Buyer recognizes that by accepting the express seller's warranties and the Seller's insurance covering those warranties for the periods of time provided in the contract that Buyer is waiving the right to any claim for implied warranties which may be greater than the express warranties. Seller has no liability for any consequential damages, including without limitation, lost wages or opportunity, lost or damaged household items, housing or medical expense.

Buyer Initials
X **Y**

DEPOSIT ON FILE
TrueHomes
Rewrite from SML-7

Customer Deposit Receipt

Date: 12/9/2013 Community: SML Lot 71 CLT

Buyer(s) Name(s): Karin Josue Fuentes

Property Address: 820 Summerlake Drive Fort Mill, SC 29715

LO: Kristi Hooks Lender: Bank of NC
Phone: (704)488-2765 Email: Khooks@bankofnc.com

Description of Transaction

Initial Deposit Received Date: 7/19/2014 Amount: \$500

2nd Deposit Received Date: _____ Amount: _____

3rd Deposit Received Date: _____ Amount: _____

Type: DIRT Total Initial Deposit: \$500

Stage: New Construction Total Deposit Due: _____

Form of Payment

SASHA FLEMING
KARIN JOSUE FUENTES
1020 TARA LN APT 3
CHARLOTTE, NC 28213-8059

1214

86-21/530 10480
6709600271

Pay to the Order of TRUE HOMES \$ 500.00
FIVE HUNDRED Dollars



Wells Fargo Bank, N.A.
North Carolina
wellsfargo.com

For DEPOSIT LOT 7 Karin Josue Fuentes

⑆053000219⑆ 6709600271⑆ 01214

Sales Counselor Signature:

Chad Potat
Chad Potat

Date: 7/19/2014

Revision Date:
7/12/2014

TrueHomes

WE VALUE WHAT IS VALUED

SELLER PAID CLOSING COST CONTRIBUTIONBuyer: Karin Josue FuentesCommunity: SMLHome site: 71**INCENTIVE CLOSING COSTS**

1. True Homes has an alliance with four Preferred Lenders (Bank of North Carolina, SunTrust Mortgage, Movement Mortgage and Wells Fargo). For Buyers who finance their homes with a Designated Loan officer for one of these Preferred Lenders True Homes and the Preferred Lender will pay a combined closing cost contribution* \$1,500

Additionally, for Cash Buyers, True Homes will pay a closing cost contribution up to: \$1,000

For all other Buyers, specifically non-cash Buyers who finance their purchase with a lender other than the designated loan officer of a Preferred Lender, True Homes will pay an incentive closing cost contribution up to: \$0

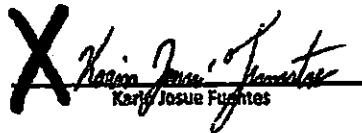
2. The True Home Closing Cost incentive will be applied only to the following charges: *Appraisal fee, Credit Report Fee, Commitment Fee, Flood Certification Fee, Tax Service Fee, Document Preparation Fee, Attorney Fee, Title Insurance, Recording Fee, City/County Tax Stamp, Survey Fee*. Incentive Closing Costs will not be applied towards loan origination fees, pre-paid expenses, discount points or any amount paid to the lender to reduce Buyer's Mortgage rate. Unless captured by the Financing Costs described below, any of these expenses related to the closing of the home would be paid by the Buyer at Closing.

FINANCE COSTS

In addition to the Incentive Closing Cost provided above, Buyer and Seller have negotiated the payment of additional Seller Paid Closing Costs that could be applied towards any of Buyer's expense at closing. These costs may include loan origination fees, pre-paid expenses, discount points or any other amount paid to the lender to reduce Buyer's Mortgage rate. Buyer and Seller have agreed that Seller will pay the following additional Seller Paid Closing Cost on Buyer's behalf towards these Finance Costs:

\$3,750

Buyer:


Karin Josue Fuentes

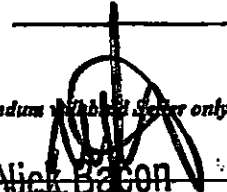
Date

8/27/14

Buyer:

Date

This Addendum is valid only upon Authorized Operations Partner Signature below:


Nick Bacon
Operations Partner

Date

8/28/14

* The combined closing cost contribution includes a contribution from the Preferred Lender's designated loan officer of \$500. The lender's contribution will show on the settlement statement as a reduced or waived lender fee. True Homes' portion of the combined closing cost contribution will show on the settlement statement as \$500 less than the combined amount above.

Revised: 8/18/2014

Fuentes SML-71

TrueHomes

W/VALE W/A/1 11/14/14

Construction Stage at Contract

**INTEGRITY/ELEMENTS/TRIBUTE
INVENTORY HOME CHANGE ADDENDUM**

This Addendum is incorporated by reference into a Purchase and Sales Agreement signed between Buyer and Seller regarding the Purchase and Sale of the Home. ("Agreement").

(Addendum & GCO's must be submitted with Purchase Agreement)

Buyer(s): Karin Josue Fuentes

Contract Date: 8/27/2014

Community: SML

Homesite: 71

Frame Slot Date:

Buyer Showroom Expectation: NO SHOWROOM - NO CHANGES

In addition to the terms and conditions in the Agreement the parties agree as follows:

1. The Home is sold as an inventory home with existing structural, color and style selections. Changes to this Home may only be made per the terms described below, and could delay completion of the home.
2. If Changes are permitted, Buyer will pay an additional deposit at the time of selections in the amount equal to any increase in Purchase Price. The deposit is nonrefundable, but apply to the Purchase Price at closing.
3. Buyer acknowledges that Seller must verify Prequalification prior to processing any changes or scheduling showroom. Prequalification must be received no less than 4 days prior to Deadline for Showroom date below.
4. If Seller is unable to verify Buyer's Prequalification, or Buyer does not complete Selections by the stated deadline, Buyer forfeits the opportunity to make changes. Seller reserves the right to release the Home as originally selected prior to Buyer's contract.

☐	HOME HAS ALREADY FRAME STARTED. Changes available: Appliances, Garage Door Openers, and Window Blinds. True Advisor has reviewed all selections with Buyer, and Buyer is accepting the home as selected other than the addition of appliances, garage door openers and/or window blinds. These additions must be included in the Agreement, and also submitted on a Gold Change Order (GCO). Buyer will not complete Selections in the Showroom. Buyer will only pay an additional deposit if the addition of these items increased the Purchase Price.
☐	FOUNDATION HAS ALREADY STARTED. Changes available: Limited Color and Style Selections only. Buyer has reviewed and accepts all structural selections of the Home. To make any limited changes to color and style, Buyer must provide acceptable Prequalification, and complete Selections by the Showroom Deadline date below. If Buyer is unable to timely obtain a Prequalification or complete selections, or if the Showroom Deadline reflects "Not Available", Buyer no longer has the opportunity to make changes and accepts the Home as selected. Showroom Deadline: <u>Showroom Not Available</u>
☐	FOUNDATION HAS NOT YET STARTED. Changes available: Color, Style and structural changes that do not change square footage of the home. The scope of Buyer's changes will be determined by the date of the selection appointment, so any delay in Prequalification or the selections appointment would limit changes available. Buyer will provide acceptable Prequalification, and complete Selections by the Showroom Deadline below. Buyer understands home will continue with pre-start processing. If Buyer is unable to timely obtain a Prequalification or complete selections, or if the Showroom Deadline reflects "Not Available", Buyer no longer has the opportunity to make changes and accepts the Home as selected. Showroom Deadline: <u>Showroom Not Available</u>

I/we understand that if Seller is unable to verify Buyer's Prequalification, or I/we do not complete Selections by the stated deadline, or pay any of the required deposits when due, I/we will forfeit the opportunity to make changes and Seller may release the Home as originally selected prior to Buyer's contract.

Buyer:

Karin Josue Fuentes

Date:

8/27/14

Co-Buyer:

Chad

Date:

8-27-14

True Advisor:

Chad

Date:

8/28/14

Seller Operations Partner:

Operations Partner
Credit/Closings/Legal

Revision date: 6/18/14

Contract (SPEC) (081814)

Company. *As a disclosed dual agent, the Company and its associated licensees cannot advocate on behalf of one client over the other, and cannot disclose confidential client information concerning the price negotiations, terms, or factors motivating the buyer/client to buy or the seller/client to sell.* Each Dual Agency Agreement contains the names of both the seller client(s) and the buyer client(s) and identifies the property.

Designated Agency

In designated agency, a broker-in-charge may designate individual associated licensees to act solely on behalf of each client. Designated agents are not limited by the Company's agency relationship with the other client, but instead have a duty to promote the best interest of their clients, including negotiating a price. The broker-in-charge remains a disclosed dual agent for both clients, and ensures the assigned agents fulfill their duties to their respective clients.

At the time you sign an agency agreement, you may be asked to acknowledge whether you would consider giving written consent allowing the Company to designate a representative for you and one for the other client in a designated agency.

Each Designated Agency Agreement contains the names of both the seller client(s) and the buyer client(s) and identifies the property.

What to Look For in Any Agreement

When you choose client-level service, your written Agency Agreement or your agent should answer these questions:

- Can I work with other Companies during the time of the Agreement?
- What will happen if I buy or sell on my own without the agent?
- When will this agreement expire?
- How will the Company be paid for its services?

- Does this Company represent both buyers and sellers as clients?
- If so, what are the choices if two clients become involved in one transaction?
- What duties will the Company continue to provide me after the transaction is completed?

If you plan to become a client of a Company, the licensee will explain the agreement to you fully and will answer questions you may have about the agreement. Remember, however, that until you enter into a representation agreement with the Company, you are considered a customer and the Company cannot be your advocate, cannot advise you on price or terms, and cannot keep your confidence.

It's Your Choice

As a real estate consumer in South Carolina, it is your choice as to the type and nature of services you receive.

- You can choose to remain a customer and represent yourself while the Company represents the other party.
- You can choose to hire the Company for representation through a written agreement.
- If represented by the Company, you can decide whether to go forward under the shared services of dual agency or designated agency or to remain in single agency.

The choice of services belongs to you—the South Carolina real estate consumer.

This brochure has been approved by the S.C. Real Estate Commission for use in explaining representation issues in real estate transactions and consumers rights as a buyer or seller. Reprinting without permission is permitted provided no changes or modifications are made.

Agency Disclosure Brochure

Agency Relationships in Real Estate



South Carolina Department of
Labor, Licensing and
Regulation

South Carolina Real Estate
Commission

PO Box 11647
Synergy Business Park, Kingstree Building
110 Centerview Dr., Suite 201
Columbia, SC 29210

Telephone: (803) 896-4400
Fax: (803) 896-4404

www.llr.state.sc.us/Pd/RealEstateCommission/

(Rev. 1/05)

Agency Relationships in South Carolina

The SC Real Estate License Law, in Section 40-57-139 (A) (1) and (2), requires a real estate licensee to provide you this brochure and a meaningful explanation of agency relationships offered by the licensee's Company. This must be done at the first practical opportunity when you and the licensee have substantive contact.

Before you begin to work with a real estate licensee, it is important for you to know the difference between a broker-in-charge and associated licensees. The broker-in-charge is the person in charge of a real estate Company. Associated licensees may work only through a broker-in-charge. In other words, when you choose to work with any real estate licensee, your business relationship is legally with the Company and not with the associated licensee.

A real estate Company and its associated licensees can provide buyers and sellers valuable real estate services, whether in the form of basic customer services, or through client-level agency representation. The services you can expect will depend upon the legal relationship you establish with the Company. It is important for you to discuss the following information with the real estate licensee and agree on whether in your business relationship you will be a customer or a client.

Now You Are a Customer of the Company

South Carolina license law defines customers as buyers or sellers who choose **NOT** to establish an agency relationship. The law requires real estate licensees to perform the following *basic duties* when dealing with any real estate buyer or seller as customers:

- Present all offers in a timely manner
- Account for money or other property received on your behalf
- Provide an explanation of the scope of services to be provided
- Be fair and honest and provide accurate information
- Disclose "adverse material facts" about the property or the transaction which are within the licensee's knowledge

Unless or until you enter into a written agreement with the Company for agency representation, you are considered a "Customer" of the Company, and the Company will not act as your agent. As a Customer, you should not expect the Company or its licensees to promote your best interest, or to keep your bargaining information confidential.

Customer service does not require a written agreement; therefore, you are not committed to the Company in any way.

You Can Become a Client

Clients receive more services than customers. If client status is offered by the real estate Company, you can become a client by entering into a written agency agreement requiring the Company and its associated licensees to act as an agent on your behalf and promote your best interests. If you choose to become a client, you will be asked to confirm in your written representation agreement that you received this brochure in a timely manner.

A seller becomes a client of a real estate company by signing a formal listing agreement with the Company. For a seller to become a client, this agreement must be in writing and must clearly establish the terms of the agreement and the obligations of both the seller and the Company which becomes the agent for the seller.

A buyer becomes a client of a real estate Company by signing a formal buyer agency agreement with the Company. For a buyer to become a client, this agreement must be in writing and must clearly establish the terms of the agreement and the obligations of both the buyer and the Company which becomes the agent for the buyer.

If you enter into a written agency agreement, as a Client, you can expect the real estate Company to provide the following client-level services:

- Obedience
- Loyalty
- Disclosure
- Confidentiality
- Accounting
- Reasonable care and skill

Client-level services also include advice, counsel and assistance in negotiations.

Single Agency

When the Company represents only one client in the same transaction (the seller or the buyer), it is called single agency.

Dual Agency

Dual Agency exists when the real estate Company has two clients in one transaction – a seller client and a buyer client.

At the time you sign an agency agreement, you may be asked to acknowledge whether you would consider giving written consent allowing the Company to represent both you and the other client in a disclosed dual agency relationship.

Disclosed Dual Agency

In a disclosed dual agency, the Company's representation duties are limited because a buyer and seller have recognized conflicts of interest. Both clients' interests are represented by the

THE LONDON COLLECTION



Summerlake - Lot 70
2004 Firefly Ln Fort Mill, 29715
The London - End Unit
3 Bed 2.5 Bath
\$195,900

Summerlake - Lot 71
2006 Firefly Ln Fort Mill, 29715
The Dublin - Interior Unit
3 Bed 2.5 Bath
\$185,900

Summerlake - Lot 72
2008 Firefly Ln Fort Mill, 29715
The London - Interior Unit
3 Bed 2.5 Bath
\$190,900

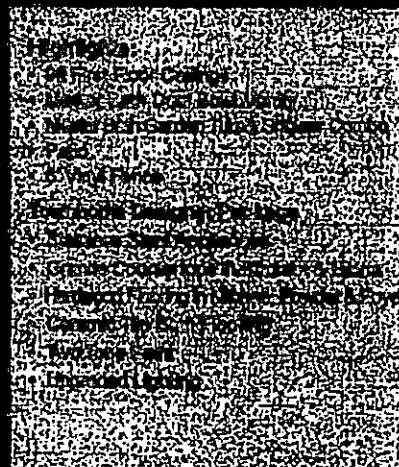
Summerlake - Lot 73
2010 Firefly Ln Fort Mill, 29715
The Dublin - Interior Unit
3 Bed 2.5 Bath
\$185,900

Summerlake - Lot 74
2012 Firefly Ln Fort Mill, 29715
The Dublin - Interior Unit
3 Bed 2.5 Bath
\$185,900

Summerlake - Lot 75
2014 Firefly Ln Fort Mill, 29715
The London - End Unit
3 Bed 2.5 Bath
\$195,900

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- #1 School District in South Carolina.
- Only New Home Choice under \$200k in Ft. Mill
- Less than 5 minutes from Carolina Place Mall for Shopping and Dining.
- 40% More Energy Efficient than a typical used home.
- Homeowners are automatic members to the Regal Manor Swim Club.
- Maintenance free lifestyle.



TrueHomes
TrueHomesUSA.com

SUMMERLAKE
COMMON INTEREST AND COMMUNITY INFORMATION DISCLOSURE

PURPOSE OF THIS DOCUMENT: The Common Interest and Community Information Disclosure document is provided to each homebuyer at the time of contract to communicate and disclose information regarding the community.

PROJECT SUMMARY: Summerlake has been platted as a single family townhome community in York County, South Carolina in a PD zoning district.

FUTURE CONSTRUCTION: In order to meet changes in market demand, True Homes reserves the right to change price range, size and design of future homes in the subdivision, subject to zoning restrictions.

ZONING OF ADJACENT PROPERTY: The property to the North, South, East, and West is zoned for residential use.

FIRE & POLICE PROTECTION: Fire protection, Police protection and Emergency Services will be provided by York County.

PUBLIC SCHOOLS: Per the information provided to True Homes, the school assignments are as follows:

High School:	Nation Ford High School
Middle School:	Fort Mill Middle School
Elementary School:	Sugar Creek Elementary School

The school assignments are determined by exact address and will not be determined until residence has been established. Important, this information is subject to change at any point in time.

POSTAL ADDRESS: Summerlake is located in York County, South Carolina with a postal address of Fort Mill, SC 29715. True Homes recommends waiting to order checks, mailing labels, providing change of address notices, etc. until the building permit for the home has been obtained and the house has started construction. Occasionally, street numbers or street names will change at the time of permitting.

WASTE COLLECTION: Each homeowner is responsible for arranging waste collection through the appropriate waste disposal company. The Homeowners Association is not responsible for waste collection.

UTILITIES: Utility companies which serve the community are as follows:

Wastewater Service:	York County
Water Service:	York County
Electric Service:	Duke Energy
Natural Gas:	N/A
Telephone Service:	Comporium
Cable Television:	Comporium

3/15/2014

EASEMENTS: There are various easements within the community and on particular lots which have been granted to the city, county, utility companies or other parties requiring easements. The use of these easements include but is not limited to drainage/storm water, sanitary sewer, phone, electric, cable, gas, landscaping, signs, walls, earth mounds. The easements are shown on the recorded plat and will be listed on the homeowner's title insurance commitment at closing. These easements have been created and are reserved for the use of the city, county, utility companies, developer, builder or homeowners association for access to and installation, maintenance, repair and replacement of the above listed improvements. Except as installed by the city, county, utility companies, developer, builder or homeowners association, no improvements or permanent structures, including without limitation, fences, patios, decks, driveways, and walkways, shall be erected or maintained in or upon said easements. Upon closing on the homes, the homeowner will own the lot including the easement area on the lot shown on the recorded plat and closing survey and will be able to use the easement area in such a manner that does not infringe upon the intended use as stated above.

DITCHES OR SWALES: Each homeowner who has any party of an open drainage ditch or swale on his lot has the responsibility to keep such continuously unobstructed and in good condition, including regular mowing. These swales are planted with grass seed for erosion control during development and will not be graded as part of home construction. Homeowners will need to over-seed the rear yard and drainage swale with lawn seed to establish residential standard grass cover. Any soil erosion that occurs within a drainage swale due to not establishing grass cover will be the responsibility of the homeowner to have the swale resorted to ensure proper drainage.

EXISTING TREES AND VEGETATION: True Homes does not guarantee the number of trees or amount of vegetation that will exist on any lot after the land development and house construction. Furthermore, True Homes does not guarantee the continued life of any vegetation after said development and construction.

FENCE ROWS AND PERIMETER LOTS: Existing wooded areas and fence rows that will remain after the lots are developed that include trees, shrubs and brush will not be cleaned out, graded or seeded; they will be left natural or in "as-is" condition.

TREE PROTECTION AREA: There may be tree protection areas within common areas or on individual lots within the community. These areas have been required by the city or county and are designated on the recorded plat as tree protection areas or easements. The purpose of these areas is to preserve the natural characteristics of the areas including topography, trees, brush, etc. True Homes does not guarantee the continued life of any tree protection area or vegetation after land development and house construction.

SLOPES AND LAKE BANKS: Slopes and lake banks within the common areas are mowed or maintained by the Association; however, slopes and lake banks that exist within the boundaries of a Lot are to be mowed or maintained by the Lot owner. Please review your plot plan to determine the boundaries of your lot and its relationship to the slopes or lake banks.

SUBDIVISION STREETS DISCLOSURE STATEMENT: Developer shall construct all roadways shown on the approved subdivision plat(s) in accordance with the standards for subdivision streets adopted by the North Carolina Department of Transportation for acceptance into the State-maintained highway system. The rights-of-way and design of the streets on the approved subdivision plat(s) have been approved by the Division of Highways prior to Developers conveyance of title to any lot fronting thereon. Following

3/15/2014

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all construction of the streets by Developer, the streets will be maintained but the Homeowner's Association until such time as the Department of Transportation requirements have been met for acceptance of maintenance of the streets. Once such requirements have been met, Developer will take all measures necessary to have the streets accepted for maintenance by the Department of Transportation.

BASINS: Temporary sediment basins are constructed to control sediment and erosion resulting from construction within the community. Basins will continue to exist once homes are built and occupied on other lots. The lots adjacent to the basins have stockpiles of soil that will be used to fill sand basins at some time in the future. The city or county dictates when the basins can be closed. The developer (not True Homes) is responsible for maintenance and closure of said basins.

IMPERVIOUS AREAS: There may be an Impervious Area Restriction as required by Municipal Watershed Regulations. Impervious Area Restrictions for every lot will be recorded before any lot is conveyed to a buyer and shall be binding on future owners of said lot. All Owners of lots shall not alter or add any structure or ground cover to a lot which prevents the absorption of surface water into the soil of the lot. This shall include, but is limited to, any structure or ground cover consisting of asphalt, concrete, stone brick, terrazzo, roofing, ceramic or masonry tile or any other natural or man made material that prevents the absorption of surface water into the soil of a lot.

HANDICAP RAMPS: True Homes makes every attempt to avoid the placement of handicap ramps within driveways. The municipalities determine the location of these ramps, and there are some instances where placement within a driveway cannot be avoided, such as T-intersections. Please review your plot plan to determine the location of a handicap ramp if applicable.

STREET STUBS: There may be street stubs planned within the community. These street stubs are required by the municipalities and are intended to be extended into the adjoining properties when those properties develop. The homeowner should review the subdivision map to review the location of possible street stubs

STREET LIGHTS: If streetlights are installed, they will be maintained and paid for by the homeowners association. The placement of streetlights will be determined by the electric company and will be installed per municipal requirements.

HOMEOWNERS ASSOCIATION INFORMATION

ASSOCIATION & DECLARATION: Purchase of your home will automatically include you in the governing body of a Homeowner's Association, if the entity is formed for this community. The Association owns and maintains all common areas or common improvements such as ponds, amenity areas, landscaping and entryways that are present within the community. The Association also collects an annual service fee (See Association Dues information below) from all homeowners and disburses funds related to the maintenance and ownership of these areas. Your rights and remedies as a member of the Association are fully described in the Declaration, By-Laws, and Articles of Incorporation. The trash collection is provided through the HOA.

RESPONSIBILITIES: The information provided below defines responsibilities (if any) related to the Homeowner's Association.

3/15/2014

Declarant: Carolina Development Services

The entity responsible with the authority to make decisions for the Association (i.e. establish budget and approve exterior improvements). The Declarant has the right to hire a management company to assist in completion of necessary responsibilities for an Association.

HOA Management Company: Kuester Management Group 888-600-5044

The company is hired by the Declarant to provide management services for the operation of a Homeowner's Association. The Management Company assigns a property manager to a Community/Association to assist homeowners and to manage required responsibilities/activities of that Association.

Builder: True Homes 704-238-1229

The Builder is responsible to fulfill any commercial obligations set forth in the purchase agreement between the Builder and Developer. Builder is not responsible for management services with regard to the Homeowner's Association.

USE RESTRICTIONS: Use restrictions are included within the Declaration of Covenants, Conditions, and Restrictions, a copy of which is provided in the sales process. Use restrictions provide details for what is permitted as an exterior improvement within the community. Please refer to the Declaration for this information and contact Declarant/HOA Management Company with any questions.

GOVERNING MUNICIPAL ORDINANCES: The County and/or City ordinances may affect any proposed change to your home. There may be instances where a change is approved through the Homeowner's Association but may not be allowed through county and/or city. The homeowner must check with the county and/or city and obtain any permits or approvals that may be required.

HOMEOWNERS ASSOCIATION DUES: When applicable, the Assessments levied by the Association shall be used exclusively for the purpose of preserving the values of the Lots within the community and for the Association's obligations relating to the improvement, repairing, operating, and maintaining the Common Areas.

The current assessments are \$105.00 per month for the townhomes association. In addition there is \$150.00 per quarter due to the master association. Please note that the HOA assessment amount is subject to change from fiscal year to fiscal year. A copy of the HOA budget is available by contacting the Association Management Company as provided below.

CAPITAL CONTRIBUTIONS: This fee may be required to be collected per the Declaration of Covenants, Conditions, and Restrictions. This fee can be a one-time fee paid at the time of closing on a home whether new construction or re-sale of a home. The capital contribution for this community is \$250.00. There is also a transfer fee of \$125.00. Please refer to the Declaration for specific information regarding this fee if it is applicable.

3/15/2014

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APPROVAL FOR EXTERIOR IMPROVEMENTS: Any proposed exterior change or improvement to your home must receive prior approval of the Architectural Control Committee of the homeowners association through filing the appropriate application.

ELECTRONICALLY FILED - 2022 Jun 30 4:09 PM - YORK - COMMON PLEAS - CASE#2020CP4603592

3/15/2014

76.0

WHEREAS, the within Declaration is being re-recorded to correct a reference to previously recorded Book and Page numbers of plats for Baden Village Subdivision, Phase 1, referenced in Exhibit "A", page 46 of the Declaration:

FILED FOR RECORD 05/17/2006
AT 01:25:26PM BOOK 03040 PAGE 00072
David Hamilton - Clerk of Court
York County Courthouse
Instrument Number: 000293285.

**DECLARATION OF COVENANTS, RESTRICTIONS AND PROVISIONS
FOR MEMBERSHIP IN
REGAL MANOR HOMEOWNERS' ASSOCIATION, INC.**

THIS DECLARATION, is made this 15th day of May, 2006, by COULSTON ENTERPRISES, INC. (hereinafter referred to as "Declarant") of ^{Revised} ~~York County, South Carolina~~ ^{York County, South Carolina}.

FILED FOR RECORD 05/17/2006
AT 04:22:06PM BOOK 08118 PAGE 00139
David Hamilton - Clerk of Court
York County Courthouse
Instrument Number: 000297732

WITNESSETH:

WHEREAS, COULSTON ENTERPRISES, INC., a corporation organized and existing under the laws of the State of South Carolina, is the owner of certain lands (hereinafter referred to as the "Property") described in Article II of this Declaration; and

WHEREAS, Declarant desires to develop its properties in a coordinated manner, with provisions for certain common areas, common access ways and common regulations and cost sharing, all as more particularly set forth herein; and

WHEREAS, Declarant finds that private controls over the use of the land are an effective means of establishing, preserving, maintaining and, in some instances, enhancing, the economic or intangible values pertaining to the use and enjoyment of the Property and, to this end, Declarant desires to establish on the Property certain private land use controls, conditions, restrictions, equitable servitudes, encumbrances, affirmative obligations, burdens, benefits, reservations, easements, assessments, charges and liens (hereinafter referred to as the "Declaration" or these "Covenants"); and

WHEREAS, Declarant deems it desirable to provide a mechanism for the proper administration of these Covenants, including, but not limited to, the ownership, operation and maintenance of common facilities on the Property, the performance of acts of maintenance, administration, assessment, enforcement and other activities set forth in these Covenants and other mandated and discretionary functions consistent with the purpose of these Covenants which benefit the Property; and

Regal Manor Declaration of Covenants
Page 1

BK 08040 PG 0072

SUMMERLAKE TOWNHOMES

HOA INFORMATION SHEET

Management Company: Kuester Management Group
130 Ben Casey Drive
Ft. Mill, SC 29708
803.802.0004

Sub- Association Dues: \$105.00 monthly
Master Dues: \$150.00 Quarterly Dues
Capital Contribution: \$250.00
Master Contribution: \$100.00
Transfer Fee: \$125.00

Master Insurance policy: Gill-Holler Insurance
888-661-3938

KJF

June 20, 2013



**Summerlake, TOA-Sub Association
Regal Manor-Master Association**

Welcome New Owner,

Congratulations on the purchase of your new home. You are a member of two great communities. Summerlake Townhomes, is your primary association, and Regal Manor is the Master Association. Below are details of your membership for both Associations.

SUMMERLAKE, TOA

Management Community: Kuester Management Group

Mailing Address: PO Box 3340, Fort Mill, SC 29708

Community Manager: Taylor Nugent

Main Office: (803)802-0004

Email Address: support@kuester.com or taylor@kuester.com.

Monthly Fees: \$105 per month

Association Paid Services

- 1. Master Insurance Policy**
- 2. Exterior Maintenance (After Warranty Period)**
- 3. Irrigation**
- 4. Landscape Maintenance**
- 5. Trash Removal Service (Morning Star Trash-(803)324-2966**

REGAL MANOR, HOA

Management Community: Kuester Management Group

Mailing Address: PO Box 3340, Fort Mill, SC 29708

Community Manager: Rita Barrett

Main Office: (803)802-0004

Email Address: support@kuester.com or rita@kuester.com

Quarterly Fee: \$150 per quarter

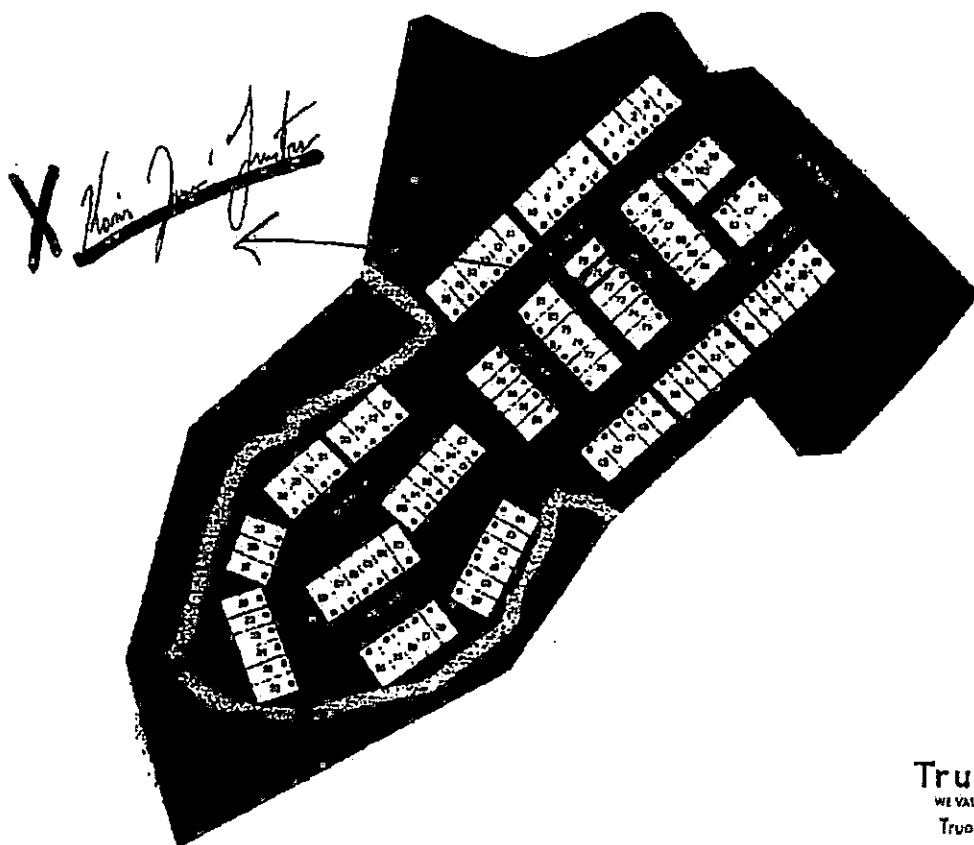
Association Paid Services

- 1. Pool**
- 2. Clubhouse (Usage Fee Applicable)**
- 3. Social Events**

YJF

www.kuester.com
1-800-802-0004
Kuester Companies

Summerlake
a TrueHome



TrueHomes
WE VALUE WHAT YOU VALUE
TrueHomesUSA.com

TrueHomes

WE VALUE WHAT YOU VALUE

Buyer Contact and True Connect

Community: SML Type (Dir/Spec): SPEC

Lot: 71 Source: Walk-in (no Realtor)
(R,W,Perp,Ref,HBC,O)

Buyer: Karin Josue Fuentes CoBuyer: _____

Home Phone: (704)491-9468 Cell Phone Number: _____

Buyer's Current Address: 8417 Riverbirch Drive Apt. 304 Charlotte, NC 28210

Realtor: _____ Office: _____
Phone: _____ Email: _____

Loan Officer: Cliff Walts Lender: BB&T
Phone: 513-310-1630 Email: cwalts@bbandt.com

WHAT IS TRUE CONNECT?

We know that one of the keys to *your* satisfaction is our ability to timely and accurately communicate with you. We would like to send you a series of automated e-mail messages to keep you informed of our progress.

YOUR E-MAIL ADDRESS?

Please confirm your *primary* e-mail address or addresses below:

Buyer: kj13569@gmail.com

Co-Buyer: _____

I/we authorize True Homes and its affiliates and partners to use this e-mail address to communicate important information about my/our home before, during and after construction. I/we will be notified of important dates and times through e-mail. I/we will notify True Homes if this address changes. I/we agree to accept any notices required by the contract to be sent via True Connect.

X Karin Josue Fuentes
Karin Josue Fuentes
Buyer

8/27/14
Date

Chad Potest
Chad Potest
True Advisor

8-27-14
Date

Revised: 8/15/2014

Contract (SPEC) (091814)

RECEIVED OCT 31 2014

PROFESSIONAL WARRANTY SERVICE CORPORATION (PWC)

PWC APPROVAL NUMBER:

TEN YEAR NEW HOME WARRANTY PLAN

Ph: 1-800/850-2799 Fax: 1-800/851-2799

0 5 0 1 8 2 0 - 5

APPLICATION FOR BUILDER'S LIMITED WARRANTY ISSUANCE

Instructions and PWC Mailing Address on Reverse Side

1. BUILDER ID #: 002-122A		2. NAME OF BUILDER: True Homes LLC	
3. ADDRESS OF HOME TO BE ENROLLED: 2006 Firefly Lane		4. LOT NO.: SML	LOT 71
5. CITY: Fort Mill, SC 29715		6. COUNTY: York	
7. ENTER THE DATE THE WARRANTY PERIOD WILL BEGIN (TITLE TRANSFER OR FIRST OCCUPANCY, WHICHEVER OCCURS FIRST) MO. 09 DAY 26 YEAR 2014			
8. WHICH OCCURRED FIRST? ☐ FIRST OCCUPANCY ☒ LOSING (TITLE TRANSFER)		9. TYPE OF FINANCING: ☐ VA ☐ FHA ☒ USDA ☐ OTHER	
10. VA or FHA CASE NUMBER (REQUIRED BY VA/FHA)		NOTE: Effective Date of Warranty for FHA homes is the "Settlement Date".	
11. ENTER THE SALES PRICE OF THIS HOME: \$ 186,650.00			

12. ADMINISTRATION/PWC FEES	INSURANCE PREMIUM	SURPLUS LINES TAX	ENROLLMENT FEE DUE
\$	\$	\$	\$ 249.27

13. WAS A STATEMENT SIGNED BY THE HOME BUYER IDENTIFYING MATERIALS OR ITEMS OF WORK TO BE EXCLUDED FROM WARRANTY COVERAGE BECAUSE THEY WERE NOT PROVIDED BY THE BUILDER?	☐ YES ☒ NO
IF YES, ATTACH FORM PWS4	

14. NAME OF INITIAL PURCHASER(S) OF HOME: (LAST NAME, FIRST NAME) Karin Fuentes	14a. EMAIL ADDRESS: kj13569@gmail.com	14b. PHONE #:

16. MAILING ADDRESS (IF DIFFERENT FROM ABOVE NUMBER AND STREET - LINE 3) Same	15. HOME TYPE (CHECK ONE) A. SINGLE FAMILY ATTACHED: ☒

17. CITY	STATE	ZIP	B. SINGLE FAMILY DETACHED: ☐

18. IF FULL OR PARTIAL BASEMENT, IS BASEMENT FINISHED LIVING SPACE? ☐ YES ☐ NO	19. IS HOME SERVICED BY AN INDIVIDUAL WELL? ☐ YES ☒ NO

20. IS HOME SERVICED BY AN INDIVIDUAL SEPTIC SYSTEM? ☐ YES ☒ NO	21. DOES HOME HAVE AN ATTACHED CARPORT OR GARAGE? ☒ YES ☐ NO

22. FOUNDATION TYPE (CHECK ONE) A. ☐ FULL BASEMENT B. ☐ PARTIAL BASEMENT C. ☐ CRAWL SPACE D. ☐ SLAB ON GRADE E. ☐ PIER AND BEAM	23. FOUNDATION CONSTRUCTION A: ☒ POURED CONCRETE ☐ WOOD C. ☐ BLOCK ☐ OTHER

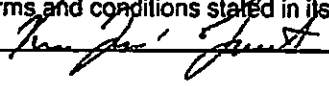
24. INSPECTION TYPE ☒ MUNICIPAL/GOVERNMENTAL ☐ PRIVATE ☐ SPECIAL

BUILDER: I certify that the home is ready for occupancy and has been constructed in accordance with all required building standards, that any required inspections have been performed, and that all statements in this Application are true and complete.

25. Signature of Builder or Builder's Authorized Agent: 	Date: 08/28/2014

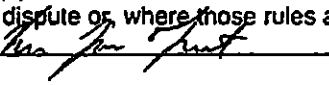
HOME BUYER ACKNOWLEDGEMENT (LINES 26 & 27) - The undersigned hereby acknowledges and agrees as follows:

I/we acknowledge that I/we have received, reviewed and understand the Builder's Limited Warranty document (PWC # 107). I/we acknowledge that the builder cannot make representations as to its Builder's Limited Warranty that contradict or are inconsistent with the terms and conditions stated in its Builder's Limited Warranty.

26. Signature of Home Buyer(s): 	Date: 10/24/14

(THIS SECTION, LINE 27, DOES NOT APPLY TO HOMES WITH ORIGINAL FHA OR VA - MORTGAGES)

I/we acknowledge and agree all disputes under and relating to the Builder's Limited Warranty (including disputes on which issues shall be submitted to arbitration; alleged breach of the Builder's Limited Warranty; and alleged violations of statutes or regulations relating to consumer protection or unfair trade practices) shall be submitted to binding arbitration before an independent third party arbitration organization. I/we agree the decision of the arbitrator(s) shall be binding on all parties. Any such binding arbitration(s) shall be conducted in accordance with the rules and procedures applicable to the arbitration organization hearing the dispute or, where those rules are silent, the United States Arbitration Act (9 U.S.C. § et seq.).

27. Signature of Home Buyer(s): 	Date: 10/24/14

28. CERTIFICATION: I contacted PWC on this date _____ for an approval number, and has above is a participant in good standing of the Professional Warranty Program as of this date and eligible to enroll

© Professional Warranty Service Corporation PWC-993 8/11
Original-PWC Canopy-Builder Pink-FHA/VA Utility

Signature:

Closing Ct



05018205

id 2

EXHIBIT
B

BUILDER'S LIMITED WARRANTY

Administered by Professional Warranty Service Corporation



To the Home Buyer

Approximately 6 weeks after closing, you should receive a Builder's Limited Warranty Coverage Validation Form and the **BUILDER'S LIMITED WARRANTY** from the warranty program administrator. If you have not received these items by that time, first contact the **BUILDER** to verify that the application and fees were sent to the administrator. You do not have a valid warranty without the issuance of a Builder's Limited Warranty Coverage Validation Form and **BUILDER'S LIMITED WARRANTY**.

Enclosed with this **BUILDER'S LIMITED WARRANTY**, is a Builder's Limited Warranty Coverage Validation Form. The Builder's Limited Warranty Coverage Validation Form provides the dates on which the specific warranty coverage periods begin and expire. It is important that this form is retained with the **BUILDER'S LIMITED WARRANTY**.

This **BUILDER'S LIMITED WARRANTY** does not cover **CONSEQUENTIAL DAMAGES** or incidental damages. Liability under this **BUILDER'S LIMITED WARRANTY** is limited to the amount shown on the Builder's Limited Warranty Coverage Validation Form.

WE make no housing merchant implied warranty of habitability or any other warranties, express or implied, in connection with the sales contract or the warranted **HOME**, and all such warranties are excluded, except as expressly provided in this **BUILDER'S LIMITED WARRANTY**. There are no warranties which extend beyond the face of this **BUILDER'S LIMITED WARRANTY**.

Some States prohibit the exclusion or limitation of **CONSEQUENTIAL DAMAGES** or incidental damages by the **BUILDER**, so all the limitations or exclusions may not apply to **YOU**.

I. Coverage Limit

The amount shown on the Builder's Limited Warranty Coverage Validation Form is **OUR** limit of liability. It is the most **WE** will pay or expend for all covered **DEFICIENCIES** or **DEFINED STRUCTURAL ELEMENT FAILURES** regardless of the number of claims made during the warranty period. Once **OUR** limit of liability has been paid, no further claims can be made against this **BUILDER'S LIMITED WARRANTY**.

II. Warranty Coverage

Coverage under this **BUILDER'S LIMITED WARRANTY** changes over the course of the ten year term. Section A refers to coverage provided during the first year; Section B refers to coverage provided during the second year; and Section C refers to coverage provided during the third through tenth year.

Section A Coverage

Beginning on the **WARRANTY DATE-HOME** and **WARRANTY DATE-COMMON ELEMENTS**, **WE** warrant for one year that the construction of **YOUR HOME** (including **COMMON ELEMENTS** related thereto) will conform to the **STANDARDS OF PERFORMANCE** for first year coverage and warranty tolerances for **DEFINED STRUCTURAL ELEMENT FAILURE(S)**. Coverage under Section A expires one year after the **WARRANTY DATE-HOME** and/or **WARRANTY DATE-COMMON ELEMENTS**. To be eligible for coverage **WE** must receive written notice of the **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE** within thirty (30) days after the expiration date of the coverage.

Section B Coverage

During the second year following the **WARRANTY DATE-HOME** or **WARRANTY DATE-COMMON ELEMENTS**, **WE** warrant that **SYSTEMS** (including the **COMMON ELEMENTS** related thereto) will conform to the **STANDARDS OF PERFORMANCE** for second year coverage and warranty tolerances for **DEFINED STRUCTURAL ELEMENT FAILURE(S)**. Coverage under Section B expires two years after the **WARRANTY DATE-HOME** or **WARRANTY DATE-COMMON ELEMENTS**. To be eligible for coverage **WE** must receive written notice of the **SYSTEMS DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE** within thirty (30) days after the expiration date of the coverage.

Section C Coverage

During the third through tenth years following the **WARRANTY DATE-HOME** or **WARRANTY DATE-COMMON ELEMENTS**, **WE** warrant the construction of **YOUR HOME** (including **COMMON ELEMENTS** related thereto) will conform to the warranty tolerances for **DEFINED STRUCTURAL ELEMENT FAILURE(S)**. Coverage under Section C expires 10 years after the **WARRANTY DATE-HOME** or **WARRANTY DATE-COMMON ELEMENTS**. To be eligible for coverage **WE** must receive written notice of the **DEFINED STRUCTURAL ELEMENT FAILURE** within thirty (30) days after the expiration of the coverage.

III. OUR Coverage Obligations

All notices of **DEFICIENCIES**, **DEFINED STRUCTURAL ELEMENT FAILURES**, and complaints under this **BUILDER'S LIMITED WARRANTY** must be made by **YOU** in writing. Telephonic or face-to-face discussion will not protect **YOUR** rights under this **BUILDER'S LIMITED WARRANTY**.

WE will have been considered to have breached this **BUILDER'S LIMITED WARRANTY** only if **WE** fail to correct a **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE** in accordance with the terms and conditions of this **BUILDER'S LIMITED WARRANTY**.

DEFICIENCIES

In the event a **DEFICIENCY** occurs during the applicable coverage period, **WE** will, upon receiving written notice from **YOU**, test or inspect the **DEFICIENCY** to confirm coverage for the **DEFICIENCY** within a reasonable time after **WE** receive **YOUR** notice. Upon confirmation of a **DEFICIENCY**, **WE**, **OUR** insurer, or another third party designated by **US** will repair, replace or pay **YOU** the actual cost of repairing or replacing the **DEFICIENCY**. The decision to repair, replace, or to make payment to **YOU** is at **OUR** or **OUR** insurer's sole option.

DEFINED STRUCTURAL ELEMENT FAILURE

In the event a **DEFINED STRUCTURAL ELEMENT FAILURE** occurs during the applicable coverage period, **WE**, **OUR** insurer, or another third party designated by **US** will, upon receiving written notice from **YOU**, test or inspect the **DEFINED STRUCTURAL ELEMENT FAILURE** to confirm coverage for the **DEFINED STRUCTURAL ELEMENT FAILURE** within a reasonable time after **WE** receive **YOUR** notice. Upon confirmation of a **DEFINED STRUCTURAL ELEMENT FAILURE**, **WE**, **OUR** insurer, or another third party designated by **US** will repair, replace or pay **YOU** the actual cost of repairing or replacing the **DEFINED STRUCTURAL ELEMENT FAILURE**. The decision to repair, replace, or to make payment to **YOU** is at **OUR** or **OUR** insurer's sole option.

IV. Coverage Limitations

When **WE** repair a **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE**, the repair will include the correction or replacement of only those surfaces, finishes and coverings that were damaged by the **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE** that were part of the **HOME** when title was first transferred by **US**.

WE will repair and replace surfaces, finishes and coverings that require removal or replacement in order for **US** to repair or replace **DEFICIENCIES** and **DEFINED STRUCTURAL ELEMENT FAILURE(S)**. The extent of **OUR** repair and replacement of these surfaces, finishes or coverings will be to approximately the same condition they were in prior to the **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE**, but not necessarily to a like new condition.

WE will only refinish those surfaces that were damaged by a **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE**.

When **WE** undertake repair on surfaces, finishes and coverings, **OUR** repair will attempt to achieve as close a match

with the original surrounding areas as is reasonably possible, but **WE** cannot guarantee an exact match due to such factors as fading, aging and unavailability of the same materials.

V. Exclusions

A. This **BUILDER'S LIMITED WARRANTY** does not cover:

1. Any **DEFICIENCIES** or **DEFINED STRUCTURAL ELEMENT FAILURE(S)** resulting, either directly or indirectly, from the following causes or occurring in the following situations:
 - a. Fire;
 - b. Lightning;
 - c. Acts of God;
 - d. Explosion;
 - e. Riot and Civil Commotion;
 - f. Smoke;
 - g. Hail;
 - h. Aircraft;
 - i. Falling Objects;
 - j. Vehicles;
 - k. Floods;
 - l. Wind Driven Water;
 - m. Earth Movement including but not limited to:
 - (i). Earthquake, landslide or mudslide;
 - (ii). Mine subsidence, sinkholes or changes in the underground water table not reasonably foreseeable at the time of construction;
 - (iii). Volcanic eruption; explosion or effusion;
 - n. Wind including but not limited to:
 - (i). Gale force winds;
 - (ii). Hurricanes;
 - (iii). Tropical storms;
 - (iv). Tornadoes;
 - o. Insects, animals or vermin;
 - p. Rot, moisture, corrosion, rust or mildew;
 - q. Changes of the grading of the ground by anyone other than **US** or **OUR** agents, or subcontractors;
 - r. Changes, additions, or alterations made to the **HOME** by anyone after the **WARRANTY DATE-HOME** or **WARRANTY DATE-COMMON ELEMENTS**, except those made or authorized by **US**;
 - s. Any defect in material or workmanship supplied by anyone other than **US** or **OUR** agents, or subcontractors;
 - t. Improper maintenance, negligence or improper use of the **HOME** by **YOU** or anyone else;
 - u. Dampness or condensation due to **YOUR** failure to provide adequate ventilation;
 - v. Abnormal loading on floors which exceeds design loads;
2. Any costs arising from, or any **DEFICIENCIES** or **DEFINED STRUCTURAL ELEMENT FAILURE(S)** resulting from the actual, alleged or threatened discharge, dispersal, release or escape of **POLLUTANTS**. **WE** will not cover costs or expenses arising from the uninhabitability or health risk due to the proximity of **POLLUTANTS**. **WE** will not cover costs, or expenses resulting from the direction of any governmental entity to test, clean-up, remove, treat, contain or monitor **POLLUTANTS** ;
3. Any costs arising from, or any **DEFICIENCIES** or **DEFINED STRUCTURAL ELEMENT FAILURE(S)** resulting from the effects of electromagnetic fields (EMF's) or radiation;

4. Any damage to personal property;
 5. Any **CONSEQUENTIAL DAMAGES** ;
 6. Any damage to **CONSUMER PRODUCTS** ;
 7. Any **DEFICIENCIES** or **DEFINED STRUCTURAL ELEMENT FAILURES**:
 - a. that **YOU** become aware of after the **HOME** is not being used primarily as a residence;
 - b. which **YOU** have not taken timely and reasonable steps to protect and minimize damage after **WE** have provided **YOU** with written authorization to prevent further damage;
 8. Any **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE** that is covered by any other express warranty or insurance coverage **YOU** may have; and
 9. Any non-conformity with local building codes, regulations or requirements that has not resulted in a **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE**. While **WE** acknowledge **OUR** responsibility to build in accordance with applicable building codes, this **BUILDER'S LIMITED WARRANTY** does not cover building code violations in the absence of a **DEFICIENCY** or a **DEFINED STRUCTURAL ELEMENT FAILURE**. In such instance, **YOUR** recourse is under the building code and other applicable laws and not under this **BUILDER'S LIMITED WARRANTY**. This exclusion in no way mitigates or relieves **US** of **OUR** obligation to build in accordance with applicable building codes.
- B. **OUR BUILDER'S LIMITED WARRANTY** does not cover any loss or damage as a result of any **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE** which would not have occurred in the absence of one or more of the events or conditions listed in Exclusions, Section A.1, A.2 or A.3. above. **OUR BUILDER'S LIMITED WARRANTY** does not cover any such loss or damage regardless of:
1. the cause of the excluded event or condition; or
 2. other causes of the loss or damage; or
-
3. whether other causes acted concurrently or in any sequence with the excluded event or condition to produce the loss or damage.

VI. Procedure to Request US To Perform Under This **BUILDER'S LIMITED WARRANTY**

If **YOU** become aware of a **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE** that **YOU** believe is covered under this **BUILDER'S LIMITED WARRANTY**, **YOU** have the following responsibilities:

A. Notification

Notify **US** in writing as soon as it is reasonably possible, but in no event may **YOUR** written notice be received by **US** or postmarked later than thirty (30) days after the warranty for the **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE** expires.

If the written notice is postmarked or received by **US** more than thirty (30) days beyond the warranty expiration date,

WE shall have no obligation to repair or replace the **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE**.

If the **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE** involves a **COMMON ELEMENT** written notice must be made by a designated representative of the condominium association.

B. Cooperate With US

YOU must give **US**, **OUR** employees, agents, subcontractors or insurers reasonable help in investigating, monitoring or correcting **DEFICIENCIES** or **DEFINED STRUCTURAL ELEMENT FAILURES**. Help includes, but is not limited to, granting **US** reasonable access to **YOUR HOME**.

If **YOU** fail to help **US**, **WE** will have no obligation to repair, replace or pay **YOU** for **DEFICIENCIES** or **DEFINED STRUCTURAL ELEMENT FAILURES**.

C. Do Not Make Voluntary Payments

YOU agree not to make any voluntary payments or assume any obligations or incur any expenses for the remedy of a condition **YOU** believe is a **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE** without **OUR** prior written approval. **WE** will not reimburse **YOU** for costs incurred where **YOU** did not obtain **OUR** prior written approval.

However, **YOU** may incur reasonable expenses in making repairs in an **EMERGENCY CONDITION** without **OUR** prior written approval, provided the repairs are solely for the protection of the **HOME** from further damage, and provided **YOU** notify **US** as soon as possible, but in no event later than 5 days after the repairs were undertaken. To obtain reimbursement for repairs made during an **EMERGENCY CONDITION**, **YOU** must provide **US** with an accurate written record of the repair costs.

D. Sign A Release

When **WE** have completed repairing, replacing or paying **YOU** the cost of repairing or replacing, **DEFICIENCIES** or **DEFINED STRUCTURAL ELEMENT FAILURES**, **YOU** must sign a full release of **OUR** obligation for the **DEFICIENCIES** or **DEFINED STRUCTURAL ELEMENT FAILURES** **WE** corrected.

E. If YOU Disagree With US

Binding Arbitration will be the sole remedy for resolving disputes between **YOU** and **US** that arise from or relate to this **BUILDER'S LIMITED WARRANTY**. The binding arbitration procedure is described in the following section.

VII. Binding Arbitration Procedure

Any disputes between **YOU** and **US** or **OUR** insurer related to or arising from this **BUILDER'S LIMITED WARRANTY** will be resolved by binding arbitration. Disputes subject to binding arbitration include but are not limited to:

- A. **WE** do not agree with **YOU** that a **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE** is covered by this **BUILDER'S LIMITED WARRANTY**;
- B. **WE** do not correct a **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE** to **YOUR** satisfaction or in a manner that **YOU** believe this **BUILDER'S LIMITED WARRANTY** requires;

- C. **WE** fail to respond to **YOUR** written notice of a **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE**;
- D. Disputes related to **COMMON ELEMENTS**;
- E. Alleged breach of this **BUILDER'S LIMITED WARRANTY**;
- F. Alleged violations of consumer protection, unfair trade practice, or other statutes;
- G. Disputes concerning the issues that should be submitted to binding arbitration;
- H. Disputes concerning the timeliness of binding arbitration requests.

Any binding arbitration proceeding will be conducted by an independent arbitration organization designated by **PWC** or **OUR** insurer. The rules and procedures followed will be those of the designated arbitration organization. A copy of the applicable rules and procedures will be delivered to **YOU** upon request.

The arbitration will determine **YOUR** and **OUR** or **OUR** insurer's rights and obligations under this **BUILDER'S LIMITED WARRANTY**. These rights and obligations include but are not limited to those provided to **YOU** or **US** by local, state or federal statutes in connection with this **BUILDER'S LIMITED WARRANTY**.

The award of the arbitrator will be final, binding and enforceable as to both **YOU** and **US** or **OUR** insurer, except as modified, or vacated in accordance with applicable rules and procedures of the designated arbitration organization, or, in their absence, the United States Arbitration Act (9 U.S.C. § 1 *et seq.*)

Binding arbitration shall be the sole remedy for resolving disputes for **YOU** and **US** and **OUR** insurer. The costs and expenses for the arbitration will be paid by **US** or **OUR** insurer except for the Eighty Dollar (\$80.00) arbitration filing fee which will be paid by the party requesting arbitration. If **YOU** request arbitration and **YOU** prevail on any claimed **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE** under dispute, the Eighty Dollar (\$80.00) arbitration filing fee will be refunded to **YOU**.

The process for **YOU** to initiate arbitration is described below. **WE** will use the same process if **WE** initiate arbitration.

Step 1 **YOU** complete a Binding Arbitration Request Form and mail it together with an Eighty Dollar (\$80.00) arbitration filing fee to **PWC**. A Binding Arbitration Request Form is attached to this **BUILDER'S LIMITED WARRANTY**. **YOUR** Binding Arbitration Request Form must be received no later than 90 days after the coverage for the disputed item expires. Please Note that while **YOU** have 90 days to file for arbitration, this time period does not extend the warranty coverage period for **DEFICIENCIES** or **DEFINED STRUCTURAL ELEMENT FAILURES**. **YOU** must still notify **US** of an alleged **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE** no later than 30 days after coverage for that item expires.

Step 2 **PWC** Will Arrange the Arbitration Proceeding. The Arbitrator or arbitration organization will notify **YOU** of the time, date and location of the arbitration hearing. Most often the hearing will be conducted at **YOUR HOME** or some other location that is agreeable to all the parties of the dispute. In scheduling the hearing the arbitrator will set a time and date that is reasonably convenient to all the parties.

- Step 3** **The Arbitration Hearing.** The parties at the arbitration hearing will include the arbitrator, **YOU, US** and/or **OUR** insurer.

After evidence is presented by **YOU, US** or **OUR** insurer, an award will be rendered by the arbitrator. The award is final and binding on **YOU, US** and **OUR** insurer. The award will include a ruling on the existence of any claimed or alleged **DEFICIENCIES** or **DEFINED STRUCTURAL ELEMENT FAILURES** as well as any other disputed matters or issues related to this **BUILDER'S LIMITED WARRANTY**.

- Step 4** **OUR Arbitration Performance Obligations.** **WE** will comply with the arbitrator's award no later than 60 days from the date of the award. However, delays caused by circumstances beyond **OUR** or **OUR** insurer's control shall be excused.

- Step 5** **If WE Fail To Comply With The Award.** **YOU** should contact **PWC** at its mailing address specified in this **BUILDER'S LIMITED WARRANTY** if the arbitrator's award is not complied with in a timely manner. **PWC** will then be responsible for contacting the arbitration organization. **PWC** will establish an appropriate process to enforce compliance of the award as provided in the original binding arbitration proceeding.

VIII. General Conditions

- A. Separation of This BUILDER'S LIMITED WARRANTY From The Contract Of Sale**

This **BUILDER'S LIMITED WARRANTY** is separate and independent of the contract between **YOU** and **US** for the construction and/or sale of **YOUR HOME**. The provisions of this **BUILDER'S LIMITED WARRANTY** shall in no way be restricted by anything contained in the construction and/or sales contract between **YOU** and **US**.

- B. Transfer to Subsequent HOMEOWNERS**

YOU may transfer this **BUILDER'S LIMITED WARRANTY** to new owner's of the **HOME** for the remainder of the warranty coverage period provided that **YOU** or the new owners notify **PWC** in writing, utilizing the Subsequent Home Buyer Acknowledgement and Assignment form attached to this **BUILDER'S LIMITED WARRANTY** after ownership is transferred. **OUR** duties under this **BUILDER'S LIMITED WARRANTY** to the new **HOMEOWNER** will not exceed the limit of liability then remaining, if any.

- C. Transfer of Manufacturer's Warranties**

WE assign to **YOU** all the manufacturer's warranties on all the appliances and equipment that **WE** installed in **YOUR HOME**. Should an appliance or item of equipment malfunction **YOU** must follow the procedures set forth in that manufacturer's warranty to correct the problem. **OUR** obligation under this **BUILDER'S LIMITED WARRANTY** is limited to the workmanlike installation of such appliances and equipment. **WE** have no obligation for appliances and equipment defined as **CONSUMER PRODUCTS**.

- D. Recovery Rights**

If **WE** repair, replace or pay **YOU** the cost to repair or replace a **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE**, or other related damage to **YOUR HOME** covered by this **BUILDER'S LIMITED WARRANTY**, **WE** are entitled, to the extent of **OUR** payment, to take over **YOUR** related rights of recovery from other people and organizations, including but not limited to, other

warranties and insurance. **YOU** have an obligation not to make it harder for **US** to enforce these rights. **YOU** agree to sign any papers, deliver them to **US**, and do anything else that is necessary to help **US** exercise **OUR** rights.

E. General Provisions

1. If any of the terms or provisions of this **BUILDER'S LIMITED WARRANTY** conflict with the statutes of the state in which this **BUILDER'S LIMITED WARRANTY** is issued the warranty is amended to conform to such statute, except insofar as the terms and provisions are governed by the United States Arbitration Act.
2. If a court of competent jurisdiction deems any provision of this **BUILDER'S LIMITED WARRANTY** unenforceable, that determination will not effect the remaining provisions.
3. This **BUILDER'S LIMITED WARRANTY** is to be binding on **YOU** and **US** and, as respects the arbitration process, on **OUR** insurer. It is also binding on **YOUR** and **OUR** heirs, executors, administrators, successors, and assigns, subject to paragraph B of the **General Conditions**.
4. As may be appropriate, the use of the plural in this **BUILDER'S LIMITED WARRANTY** includes the singular, and the use of one gender includes all genders.

IX. Definitions

BUILDER means the individual, partnership, corporation or other entity which participates in the Warranty Program administered by the Professional Warranty Service Corporation and provides **YOU** with this **BUILDER'S LIMITED WARRANTY**. Throughout this document the **BUILDER** is also referred to as "**WE**", "**US**" and "**OUR**".

BUILDER'S LIMITED WARRANTY means only this express warranty document provided to **YOU** by **US**.

COMMON ELEMENTS means the structure, components of enclosure, and any part of the **HOME**, as specified in the condominium documents as a **COMMON ELEMENT**. This may include, but is not limited to, corridors, lobbies, vertical transportation elements, rooms, balconies or other spaces that are for the common use of the residents of the **HOME**. **SYSTEMS** serving two or more **HOMES**, and the outbuildings that contain parts of such **SYSTEMS** are also included in this definition.

CONSEQUENTIAL DAMAGES means a loss or injury other than the cost to correct a **DEFICIENCY** or **DEFINED STRUCTURAL ELEMENT FAILURE**. This definition includes, but is not limited to, costs of shelter, food, transportation; moving and storage; any other expenses related to inconvenience or relocation during repairs to the **HOME**. **CONSEQUENTIAL DAMAGES** also refers to diminished market value of the **HOME**.

CONSUMER PRODUCT means any item of equipment, appliance or other item defined as a **CONSUMER PRODUCT** in the Magnuson-Moss Warranty Act (15 U.S.C. §. 2301, et seq.) Examples of Consumer Products include, but are not limited to, dishwasher, garbage disposal, gas or electric cooktop, range, range hood, refrigerator or refrigerator/freezer combination, gas oven, electric oven, microwave oven, trash compactor, garage door opener, clothes washer and dryer, hot water heater and thermostat.

DEFICIENCY (IES) means defects in materials or workmanship used in constructing the **HOME**. The defects must fail to conform with the standards and tolerances described in the **STANDARDS OF PERFORMANCE** section of this **BUILDER'S LIMITED WARRANTY**. **OUR** failure to complete the **HOME** or any portion of the **HOME** does not constitute a **DEFICIENCY**.

DEFINED STRUCTURAL ELEMENT FAILURE means that one or more of the structural elements identified below contains a flaw of such a magnitude that the warranty tolerance is exceeded. The only structural elements **WE** cover and their respective tolerances are as follows:

Defined Structural Element	Warranty Tolerance
A. Arches	
1. Masonry	Crack of 1/4 inch in width in arch, or settlement in span of arch of 1/2 inch.
B. Floor Systems	
1. Structural Concrete	Crack of 1/4 inch in width and 1/4 inch vertical displacement.
2. Joists	DEFLECTION of 1 inch in 15 feet.
3. Trusses	DEFLECTION of 1 inch in 10 feet.
C. Foundation	
1. Concrete Beams	Crack of 1/8 inch in width, or DEFLECTION of 1/4 inch in 30 inches.
2. Wood Beams: Built-up, Laminated or Solid	DEFLECTION of 1 inch in 10 feet.
3. Steel Beams	DEFLECTION of 1/2 inch in 8 feet.
4. Footings	Crack of 1/2 inch in width.
5. Concrete Walls	Crack of 1/4 inch in width and 1/4 inch vertical displacement, or out-of-plumb 1/4 inch in 12 inches measured from base of wall.
6. Masonry Walls	Crack of 3/8 inch in width, or out-of-plumb 1/4 inch in 12 inches measured from base of wall.

	7. Concrete Columns	Bow of 1/2 inch in 8 feet, or out-of-plumb 1/4 inch in 12 inches measured from base of column.
	8. Masonry Columns	Out-of-plumb 1/8 inch in 12 inches measured from base of column.
	9. Steel Columns	Bow of 1 inch in 8 feet, or out-of-plumb 1/4 inch in 12 inches measured from base of column.
	10. Wood Columns	Bow of 1 inch in 8 feet, or out-of-plumb 1/4 inch in 12 inches measured from base of column.
D.	Lintels and Headers	
	1. Concrete, Masonry, Steel, or Wood	DEFLECTION of 1 inch in 4 feet.
E.	Roof Framing	
	1. Ridge Beam	DEFLECTION of 1 inch in 10 feet.
	2. Rafters Common, Jack, or Valley/HIP	DEFLECTION or bow of 1 inch in 10 feet.
	3. Ceiling Joists	DEFLECTION of 3/4 inch in 10 feet.
	4. Trusses	DEFLECTION of 1 inch in 10 feet.
F.	Structural Beams and Girders	
	1. Steel	DEFLECTION of 1/2 inch in 8 feet.
	2. Wood Solid, Built-up, or Laminated	DEFLECTION of 1 inch in 10 feet.

G. Structural Columns

1. Concrete	Bow of 1/2 inch in 8 feet, or out-of-plumb 1/4 inch in 12 inches measured from base of column.
2. Masonry	Out-of-plumb 1/8 inch in 12 inches measured from base of column.
3. Steel	Bow of 1 inch in 8 feet, or out-of-plumb 1/4 inch in 12 inches measured from base of column.
4. Wood	Bow of 1 inch in 8 feet, or out-of-plumb 1/4 inch in 12 inches measured from base of column.

H. Load Bearing Walls and Partitions

1. Studs	Bow or cup of 1 inch in 8 feet.

DEFLECTION means the difference in elevation of high and low points along a diagonal, horizontal, or vertical plane caused by stress induced deformation of a load bearing member. **DEFLECTION** is measured from any two end points and a third reference point. The reference point may be located at any distance between the two end points.

EMERGENCY CONDITION means an event or situation that creates the imminent threat of damage to the **HOME** or the **COMMON ELEMENTS** related thereto, or results in an unsafe living condition due to **DEFICIENCIES** or **DEFINED STRUCTURAL ELEMENT FAILURES** that **YOU** become aware of at a point in time other than **OUR** normal business hours and **YOU** were unable to obtain **OUR** prior written approval to initiate repairs to stabilize the condition or prevent further damage.

HOME means a single family residence either attached or detached or a condominium or cooperative unit in a multi-unit residential structure covered by this **BUILDER'S LIMITED WARRANTY**. **HOME** does not include, without limitation, the following: detached garages, detached carports, outbuildings (except outbuildings that contain electrical, plumbing, heating, cooling or ventilation **SYSTEMS** used by the **HOME**); swimming pools and other recreational facilities, driveways, walkways, decks, patios, porch steps, stoops, boundary walls, retaining walls, bulkheads, fences, landscaping (including but not limited to sodding, seeding, shrubs, trees, plants), off-site improvements, or any other improvements that are not part of the **HOME**.

HOMEOWNER means the first person to whom a **HOME** (or unit in a multi-unit residential structure) is sold, or for whom such **HOME** is constructed, for occupancy by such person or such person's family, and such person's successors in title to the **HOME** and/or mortgagee in possession provided a Subsequent Home Buyer Acknowledgement and Assignment form (PWC Form 302) is signed by the subsequent **HOMEOWNER**.

POLLUTANTS means all solid, liquid, or gaseous irritants or contaminants. The term includes, but is not limited to, petroleum products, smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, radon gas, and waste materials, including materials to be recycled.

PWC means Professional Warranty Service Corporation which administers the warranty program in which **WE** participate. As such, **PWC** assumes no other liabilities in connection with this **BUILDER'S LIMITED WARRANTY**. The **PWC** mailing address is:

Professional Warranty Service Corporation
P.O. Box 800
Annandale, VA 22003-0800

STANDARDS OF PERFORMANCE means the standards and tolerances for materials and workmanship that are used in this **BUILDER'S LIMITED WARRANTY** to determine **OUR** responsibility for repairing **DEFICIENCIES** as identified on pages 14 through 35 of this document.

SYSTEMS means the following:

- (a) Plumbing system - gas supply lines and fittings; water supply, waste and vent pipes and their fittings; septic tanks and their drain fields; and water, gas and sewer services piping and their extensions to the tie-in of a public utility connection or on-site well and sewage disposal system.
- (b) Electrical system - all wiring, electrical boxes, switches, outlets, and connections up to the public utility connection.
- (c) Heating, Cooling, and Ventilation system - all duct-work; steam, water and refrigerant lines; and registers, connectors, radiation elements and dampers.

WARRANTY DATE-COMMON ELEMENTS means the Warranty Date for the first **HOME** to transfer title or be used for residential purposes in a multi-unit residential building. The **WARRANTY DATE-COMMON ELEMENTS** may be different from the **WARRANTY DATE-HOME** of **YOUR HOME**. Contact **YOUR** condominium association to determine the date when coverage began on **YOUR COMMON ELEMENTS**.

WARRANTY DATE-HOME means the date the title for the **HOME** is transferred by **US** to the first **HOMEOWNER** or the date the **HOME** is first used for residential purposes, whichever occurs first.

WE, US, OUR means the **BUILDER**.

YOU, YOUR means the **HOMEOWNER**.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

PETER A. BERNSTEIN and ELIZABETH G. BERNSTEIN Individually and as Class Representatives, RICHARD W. BRESCOLL and CAROLINE BRESCOLL Individually and as Class Representative, WARREN COTTINGHAM Individually and as Class Representative, JANICE O. HAYWOOD and BILLY M. HAYWOOD II Individually and as Class Representatives, GERALD NIEL and ANNA E. NIEL Individually and as Class Representatives, RONALD J. RENDINO and NILDA RENDINO Individually and as Class Representatives, JAY E. REYNOLDS Individually and as Class Representative, STEVEN SCHECHT and CAROLYN SCHECHT Individually and as Class Representatives, SUSAN M. SHELTON Individually and as Class Representative, LAURA WELLS STRONG, TRUSTEE OF THE "LAURA WELLS STRONG REVOCABLE TRUST" DATED MARCH 18, 2016 and DAVID ALLEN STRONG, TRUSTEE OF THE "DAVID ALLEN STRONG REVOCABLE TRUST" DATED MARCH 18, 2016 Individually and as Class Representatives,

Plaintiffs,

vs.

PULTE HOME COMPANY, LLC f/k/a
PULTE HOME CORPORATION d/b/a DEL
WEBB,

Defendants.

C/A No. 0:19-cv-02805-JFA

ORDER

**EXHIBIT
D**

This matter is currently before the court on Defendant Pulte Home Company, LLC f/k/a Pulte Home Corporation d/b/a Del Webb's ("Pulte") Motion to Compel Arbitration (ECF No. 11) and Motion to Stay (ECF No. 12).

I. FACTUAL AND PROCEDURAL BACKGROUND

This case arises out of the numerous Plaintiffs' construction defect claims against contractor Pulte. Plaintiffs, all of whom are homeowners in the Sun City Carolina Lakes development in South Carolina, filed this putative class action against Pulte claiming defects in the construction of their foundation slabs and in the grading and site work of the land underneath. Eight of the ten homes identified in the complaint are owned by Plaintiffs who purchased directly from Pulte ("Original Purchaser Plaintiffs"). As a condition to their purchases, each agreed in their written purchase agreements ("Purchase Agreements") that all disputes would be resolved by binding arbitration. Additionally, all homeowners, including the subsequent purchasers of two of the ten homes ("Subsequent Purchaser Plaintiffs"), are entitled to warranty coverage during the duration of their home's limited warranty period provided for in the 2010 new home limited warranty agreements ("Limited Warranties"). The parties do not dispute that the Limited Warranty applies to all Plaintiffs' homes. That Limited Warranty independently provides for arbitration of disputes. All parties agree that the Subsequent Purchaser Plaintiffs have claims unrelated to the limited warranty which are therefore not subject to arbitration. All claims brought by the Original Purchaser Plaintiffs, however, are subject to arbitration if the arbitration provisions within the Purchase Agreements are held to be valid and enforceable.

Defendant asserted a motion to compel arbitration of (1) all Original Purchaser Plaintiffs' claims, and (2) all Subsequent Purchasers' warranty-based claims. (ECF No. 11). Moreover, Pulte has requested a stay pursuant to 9 U.S.C. § 3 pending arbitration if the motion to compel is granted. Pulte has also separately moved to stay all other non-arbitrable claims due to Plaintiffs' failure to comply with the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code § 40-59-830. (ECF No. 12).

Each Purchase Agreement contains the following provision:

ARBITRATION. BY ENTERING INTO THIS AGREEMENT, BUYER AND SELLER AGREE THAT ANY CONTROVERSY, CLAIM OR DISPUTE, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR BUYER'S PURCHASE OF THE PROPERTY OR ANY RIGHTS AND OBLIGATIONS BETWEEN THE PARTIES WILL BE RESOLVED BY BINDING ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT (TITLE 9 OF THE UNITED STATES CODE). THE ARBITRATION SHALL BE CONDUCTED IN ACCORDANCE WITH THE CONSTRUCTION INDUSTRY ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA") AND THE TERMS OF THIS AGREEMENT. ANY AWARD RENDERED BY THE ARBITRATOR MAY BE CONFIRMED, ENTERED AND ENFORCED, IN ANY COURT HAVING JURISDICTION. THIS ARBITRATION SHALL APPLY TO ALL CLAIMS BETWEEN BUYER AND SELLER, INCLUDING THOSE FOR DEATH, PERSONAL INJURY, PROPERTY DAMAGE, DEFECTIVE DESIGN OR CONSTRUCTION, MISREPRESENTATION OR FRAUD.

See e.g., Brescoll Purchase Agreement, (ECF No. 11-2).

In addition to contract claims, the Original Purchaser Plaintiffs also agreed to arbitrate statutory claims, like Plaintiffs' claims under the South Carolina Unfair Trade Practices Act, S.C. Code § 39-5-10, *et seq.* The separate arbitration provision in Section 7 of the Limited Warranty states that "either party must submit any unresolved claim or

dispute concerning your home or this Warranty, whether based on statute, in tort, contract, or other applicable law...to binding arbitration.” (ECF No. 11-10).

Shortly after removing this action, Pulte filed its answer along with the instant motion to compel and motion to stay on November 13, 2019. Both motions have been fully briefed and thus this matter is ripe for review. In accordance with Local Civ Rule 7.08 (D.S.C.), a hearing is unnecessary to determine this motion.

II. LEGAL STANDARD

Section 4 of the Federal Arbitration Act (“FAA”) allows a party to an arbitration agreement to “petition any United States district court for an order directing that such arbitration proceed in the manner provided for in such agreement.” 9 U.S.C. § 4. The United States Supreme Court has long recognized a “liberal federal policy favoring arbitration.” *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24–25 (1983). Accordingly, any doubts concerning the scope of arbitrable issues are resolved in favor of arbitration. *Hill v. PeopleSoft USA, Inc.*, 412 F.3d 540, 543 (4th Cir. 2005).

In deciding a motion to compel arbitration, a court must first determine whether the parties’ agreement is governed by the FAA. A party can compel arbitration under the FAA by establishing (1) a dispute between the parties; (2) a written agreement that includes an arbitration provision purporting to cover that dispute; (3) the relationship of the transaction, which is evidenced by the agreement, to interstate or foreign commerce; and (4) the failure, neglect or refusal of the opposing party to arbitrate the dispute. *See Am. Gen. Life & Accident Ins. Co. v. Wood*, 429 F.3d 83, 87 (4th Cir. 2005). Unless the parties have contracted to the contrary, the FAA applies to any arbitration agreement regarding a

transaction that in fact involves interstate commerce, regardless of whether the parties contemplated an interstate transaction. *Allied-Bruce Terminix Companies, Inc. v. Dobson*, 513 U.S. 265, 281 (1995).

III. ANALYSIS

a. Motion to Compel

Here, Plaintiffs acknowledge the existence of an arbitration agreement in the Purchase Agreements and Limited Warranties but nonetheless argue they are invalid and unenforceable because they (1) do not comply with the strict requirements of the South Carolina Uniform Arbitration Act (“SCUAA”); and (2) are not subject to the FAA.

It appears from the briefs that Pulte does not contest that the arbitration provisions in both the Purchase Agreements and Limited Warranties fail to comply with the requirements set forth in the SCUAA.¹ However, Pulte contends that the Plaintiffs’ claims are still subject to arbitration because the FAA preempts any state law, such as the SCUAA, when such an agreement accompanies an underlying transaction that involves interstate commerce. *See Episcopal Hous. Corp. v. Fed. Ins. Co.*, 269 S.C. 631, 637, 239 S.E.2d 647, 650 (1977) (“[T]he Federal Arbitration Act, if applicable, will supersede the common law of South Carolina”).

¹ S.C. Code Ann. 15-48-10(a) requires that that “[n]otice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration.” Here, the arbitration provisions were not placed on the front page of the contracts.

As stated above, the arbitration provisions within the Purchase Agreements and Limited Warranties are enforceable under the FAA if the claims at issue include (1) a dispute between the parties; (2) a written agreement that includes an arbitration provision purporting to cover that dispute; (3) the relationship of the transaction, which is evidenced by the agreement, to interstate or foreign commerce; and (4) the failure, neglect or refusal of the opposing party to arbitrate the dispute.

Here, the filing of this lawsuit and Plaintiffs' opposition to the motion to compel clearly indicate that a dispute exists, and that Plaintiffs have refused to arbitrate that dispute. Moreover, the parties appear to concede that all claims other than the Subsequent Purchasers' non-warranty-based claims are covered by the arbitration provisions within the written agreements. Consequently, the only remaining issue is whether the agreements evidence a transaction related to interstate or foreign commerce.

The FAA "embodies Congress' intent to provide for the enforcement of arbitration agreements within the full reach of the Commerce Clause." *Perry v. Thomas*, 482 U.S. 483, 490 (1987). The FAA "requires only that the transaction in fact involved interstate commerce, not that the parties contemplated it as such at the time of the agreement." *Rota McLarty v. Santander Consumer USA, Inc.*, 700 F.3d 690, 697 (4th Cir. 2012).

Pulte, a Michigan company, alleges that it contracted with several North Carolina subcontractors to build Plaintiffs' homes in South Carolina, using building materials sourced nationally. ² (See ECF No. 11-11 & 11-12). Moreover, as evidenced in the

² Pulte relies upon an affidavit from the Procurement Manager of its Charlotte Division for this information. (ECF No. 11-11). "[I]n determining whether a contract evidences a transaction

Purchase Agreements, several of the Original Purchasers were out-of-state purchasers that contracted with an out-of-state entity for the purchase of a South Carolina home constructed by out-of-state trades.

Despite these assertions, Plaintiffs allege this court must look to the “essential character” of the contract when applying the FAA. *See Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 455, 730 S.E.2d 312, 316 (2012). Furthermore, Plaintiffs claim the essential character of the Purchase Agreements are solely the sale of real estate which does not involve interstate commerce.

In *Bradley*, the South Carolina Supreme Court analyzed the contents of a purchase agreement to determine whether the “essential character” of that contract was a real estate transaction (which would not involve interstate commerce) or that of a construction contract (which would involve interstate commerce). *Id.* There, the court held that the plaintiff “agreed to purchase a completed dwelling rather than contract for the construction of a dwelling.” *Id.* at 458, 730 S.E.2d at 318. The court noted that provisions in the agreement providing for “New Construction,” “House Plan,” “Options,” and “Color Selection” were eliminated from the agreement and not endorsed by the plaintiff. *Id.* However, the court went on to emphasize that “had the Agreement actually encompassed the construction of the residence, it would have been subject to the FAA as our appellate

involving commerce, the court is not limited to considering only those transactions expressly authorized on the face of the contract but may also look to affidavits.” *Circle S. Enterprises, Inc. v. Stanley Smith & Sons*, 288 S.C. 428, 431 (Ct. App. 1986).

courts have consistently recognized that contracts for construction are governed by the FAA.” *Id.* at n.8 (citations omitted).

Accordingly, Plaintiffs here argue that the essential character of the Purchase Agreement is that of a real estate transaction because the agreement was titled “Home Purchase Agreement” and included statements such as: “Seller agrees to sell and Buyer agrees to purchase a single family home (the ‘Home’) located on the lot described below (the ‘Lot’).” Plaintiffs also argue that the Limited Warranty is likewise not subject to the FAA because it merely offers for repairs to be provided by Pulte to South Carolina homes and thus does not affect interstate commerce.

However, Plaintiffs do admit that the Purchase Agreement does reference construction of the homes. Additionally, Pulte asserts that the parties contemplated a contract for construction because the Purchase Agreements indicate the homes had not been completed at the time of execution but would be constructed according to Pulte’s construction schedule and plans for specification. Moreover, unlike the contract at issue in *Bradley*, the Purchase Agreements here included an “Important Dates Acknowledgement” addendum with deadlines for the buyer to attend a “Design Appointment” with Pulte to “select options ... for a new build.” (ECF No. 20-1).

Another notable fact is that the defendant in *Bradley* acted solely as the seller of the home rather than a contractor. *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 450, 730 S.E.2d 312, 313 (2012). Here, the Purchase Agreement clearly states that “[t]he Home will be constructed by Pulte Home Corporation.” (ECF No. 20-1 § 7.1). Additionally, the Purchase Agreement states that Plaintiffs were free to view the construction of their homes

and that “[Pulte] would be pleased to show Buyer homes under construction in the Community.” (ECF No. 20-1 § 7.8). Moreover, unlike the agreement in *Bradley*, the Purchase Agreements here include a provision allowing Plaintiffs to “select options and upgrades.” (ECF No. 20-1 § 5.1). Accordingly, this Court is not persuaded that the “essential character” of these agreements was “strictly for the purchase of a completed residential dwelling and not the construction” of a new home as was the case in *Bradley*.

This supposition, combined with the fact that the homes at issue were in fact constructed with North Carolina based contractors using materials sourced from outside South Carolina, support the contention that these agreements involve interstate commerce. *See Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 595, 553 S.E.2d 110, 117–18 (2001) (“The development of land within South Carolina’s borders is the quintessential example of a purely intrastate activity. However, the transaction involved interstate commerce as contemplated by the FAA because the partnership utilized out-of-state materials, contractors, and investors.”).

Pulte offers further, albeit unnecessary, support by indicating that interstate commerce is affected when considering that all homeowners are from states different than Pulte; mortgage funding came from out-of-state lenders; and title agents and realtors were located outside of South Carolina. Accordingly, both the Purchase Agreements and Limited Warranties relate to the construction of new homes and therefore involve interstate commerce. Thus, the arbitration provisions are enforceable pursuant to the FAA.

Plaintiffs have requested, in the alternative to a denial of the motion to compel, that they be allowed to conduct limited discovery on the issue of whether the Purchase Agreements and Limited Warranties are involved in interstate commerce. However, the Court is not persuaded that any such discovery is necessary in light of the above analysis. Accordingly, the Court will have to respectfully deny this request.

Because the above claims are subject to arbitration, all further proceedings as to these claims are stayed pursuant to 9 U.S.C. § 3³ pending arbitration.

b. Motion to Stay

As to Pulte's separate motion to stay all non-arbitrable claims (ECF No. 12), Plaintiffs have indicated that they are not opposed to a stay and that they intend to comply with the South Carolina Notice and Opportunity to Cure Dwelling Defects Act. Plaintiffs also stated that "[s]hould this Court grant Pulte's Motion to Compel Arbitration, Plaintiffs will likely incorporate the subsequent purchaser Plaintiffs' non-express warranty claims into any subsequent demand for arbitration." (ECF No. 16). For that reason, the Court finds it prudent to stay all non-arbitrable claims in addition to those arbitrable claims stayed above. Thus, all non-arbitrable claims are stayed to allow Plaintiffs time to comply with the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act and also to request that the non-express warranty claims be incorporated into the demand for arbitration should the Plaintiffs so choose. This stay should also provide Plaintiffs' counsel

³ 9 U.S.C. §3 provides that "upon being satisfied that issue involved in such suit or proceeding is referable to arbitration" the court shall "stay the trial of the action until such arbitration has been had."

sufficient time to inform putative class members that the claims are subject to arbitration and also allow time to file and brief motions to amend the complaint to add potential plaintiffs as requested.

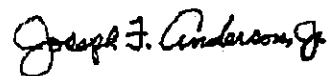
IV. CONCLUSION

For the foregoing reasons, Pulte's motion to compel arbitration (ECF No. 11) is granted and Pulte's motion to stay (ECF No. 12) is granted. All proceedings in this action are stayed pending arbitration.

The parties are required to file a joint status report no later than April 30, 2020, informing the Court as to the status of these claims and the scheduling of arbitration.

IT IS SO ORDERED.

December 23, 2019
Columbia, South Carolina



Joseph F. Anderson, Jr.
United States District Judge

ELECTRONICALLY FILED - 2022 Jun 30 4:09 PM - YORK - COMMON PLEAS - CASE#2020CP460355

Don Brzozowski[dbrzozowski@truehomesusa.com]; Amanda Courtney[acourtney@truehomesusa.com]; Lisa
Dionisio[ldionisio@truehomesusa.com]
From: Denise Surber[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP
FYDIBOHF23SPDLT/CN=RECIPIENTS/CN=6094C45ECF014D81BACA72B8FC54C1F9-DENISE SURB]
Sent: Fri 10/14/2016 8:55:41 PM (UTC)
Subject: FW: Water damage

I think the irrigation is causing a leak in this clients home- a constant spray of water because the head is not adjusted properly. They are looking to us for repair. Do you think it is appropriate for the HOA to help us out with this?

Denise C. Surber
Client Services Manager
True Homes & Tribute Homes
980-313-3325

From: Don Brzozowski
Sent: Friday, October 14, 2016 1:30 PM
To: Denise Surber <dsurber@truehomesusa.com>
Amanda Courtney <ACourtney@truehomesusa.com>; Lisa Dionisio <ldionisio@truehomesusa.com>
Subject: FW: Water damage

Summer lake 71 closed in 10/24/16. I spoke to Amanda about this house back in August, was told to fix the sill pan and look for the source of the leak. I met with Stone company and South end Supervisors to determine where the leak at the front of the home was coming from. We could not simulate the leak with a hose. They put up new flashing by the stone veneer and also recaulked around the area. I spoke to her boyfriend or some guy that lived there and explained to him that we all suggested to make sure the sprinkler isn't shooting water up in that area, since there is a sprinkler right there a few feet from the home. I should of never went to this lot. I checked plm for a leak in this area and there is nothing. I'm not going to respond to her because I feel we had gone above and beyond for her, and she is out of warranty.

From: Karin Fuentes [mailto:kj13569@gmail.com]
Sent: Friday, October 14, 2016 1:12 PM
To: Don Brzozowski <dbrzozowski@truehomesusa.com>
Lisa Dionisio <ldionisio@truehomesusa.com>
Subject: Re: Water damage

Maybe you don't fully understand. I reported this along with the hole in the roof that was "taken care of" by Tom. I told him to take a look at that and he brushed it off with "I'll get someone to look at this". I don't know if he put that in whatever history you are looking for but talk to him about it.

This needs to be taken care of ASAP by True Homes before I proceed with external help from anyone else. This is a structural issue that is not good for myself or my neighbor. This should not be happening at this point in time. This will reflect on True Homes and your trade partners. Water is coming through the siding, drywall and base board to my carpet. Closed 2 years ago and you think it is acceptable for me to be dealing with this?

Please do all you can to fix this, not have someone look at it and make guesses on what they think might/is happening. They need to look in the walls and seal the outside from the inside. I never thought when I was buying a new home from you all that I would have to argue about a problem I have never faced renting not even a full year into purchasing. This is ridiculous and ludicrous I am even having to bring it up a 3rd time just to get told about some warranty period.

On Fri, Oct 14, 2016 at 11:32 AM, Don Brzozowski <dbrzozowski@truehomesusa.com> wrote:
I checked your files, there is no previous history of a water leak in that area. You were out of warranty and we changed out the rear floors by the rear door and replaced your sill pan, you will have to call your homeowners insurance and file a claim.

From: Karin Fuentes [mailto:kj13569@gmail.com]
Sent: Friday, October 14, 2016 11:22 AM

EXHIBIT
E

On Fri, Oct 14, 2016 at 10:45 AM, Don Brzozowski <dbrzozowski@truehomesusa.com> wrote:

Subject: Re: Water damage

I'm not sure who you think you're talking to but I am the only homeowner and I do not have a husband. This is not from the sprinkler and even if it was water should not be coming into any parts of my home. This was reported within that warranty period and just brushed off with no fix, this happens when it rains and it needs to be sealed properly by the trades who failed to do their jobs the first time.

On Fri, Oct 14, 2016 at 10:45 AM, Don Brzozowski <dbrzozowski@truehomesusa.com> wrote:

I mentioned to your husband that he needs to make sure the sprinkler is not shooting water on the front part of the home. We had supervisors from the siding company and the stone company come out last time. We did this as a customer service gesture since you are out of warranty. You will need to call your homeowners insurance to file a claim.

From: Karin Fuentes [mailto:kj13569@gmail.com]

Sent: Friday, October 14, 2016 9:04 AM

To: Don Brzozowski <dbrzozowski@truehomesusa.com>

Subject: Re: Water damage

Don,

There is moisture still coming into the same spot that has discoloration. The wood is now beginning to swell, I'm not an expert but you need to come and look at this sir. Thanks

On Mon, Aug 1, 2016 at 5:10 PM, Don Brzozowski <dbrzozowski@truehomesusa.com> wrote:

Will Wednesday the 17th work for you to have a crew come out and fix the rear door, wood, seal hvac pipe in attic and to meet

With the siding company, stone company and drywall company to find the source of the leak? It will be all day even if it rains. Thank you.

2006 Firefly Lane, Fort Mill, SC 29715 lot 71

ELECTRONICALLY FILED - 2022 Jun 30 4:09 PM - YORK - COMMON PLEAS - CASE#2020CP4603592

Don Brzozowski[dbrzozowski@truehomesusa.com]; Amanda Courtney[acourtney@truehomesusa.com]; Lisa
 Dionisio[lidionisio@truehomesusa.com]
From: Denise Surber[O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP
 (EXCHANGELABS)/CN=RECIPIENTS/CN=6094C45ECF014D81BACA72B8FC54C1F9-DENISE SURB]
Date: Fri 10/14/2016 8:55:41 PM (UTC)
Subject: FW: Water damage

I think the irrigation is causing a leak in this clients home- a constant spray of water because the head is not adjusted properly. They are looking to us for repair. Do you think it is appropriate for the HOA to help us out with this?

Denise C. Surber
Client Services Manager
True Homes & Tribute Homes
980-313-3325

From: Don Brzozowski
Sent: Friday, October 14, 2016 1:30 PM
To: Denise Surber <dsurber@truehomesusa.com>
 Amanda Courtney <ACourtney@truehomesusa.com>; Lisa Dionisio <lidionisio@truehomesusa.com>
Subject: FW: Water damage

Summer lake 71 closed in 10/24/16. I spoke to Amanda about this house back in August, was told to fix the sill pan and look for the source of the leak. I met with Stone company and South end Supervisors to determine where the leak at the front of the home was coming from. We could not simulate the leak with a hose. They put up new flashing by the stone veneer and also recaulked around the area. I spoke to her boyfriend or some guy that lived there and explained to him that we all suggested to make sure the sprinkler isn't shooting water up in that area, since there is a sprinkler right there a few feet from the home. I should of never sent him to this lot. I checked plm for a leak in this area and there is nothing. I'm not going to respond to her because I feel we had gone above and beyond for her, and she is out of warranty.

From: Karin Fuentes [mailto:kj13569@gmail.com]
Sent: Friday, October 14, 2016 1:12 PM
To: Don Brzozowski <dbrzozowski@truehomesusa.com>
 Lisa Dionisio <lidionisio@truehomesusa.com>
Subject: Re: Water damage

Maybe you don't fully understand. I reported this along with the hole in the roof that was "taken care of" by Tom. I told him to take a look at that and he brushed it off with "I'll get someone to look at this". I don't know if he put that in whatever history you are looking for but talk to him about it.

This needs to be taken care of ASAP by True Homes before I proceed with external help from anyone else. This is a structural issue that is not good for myself or my neighbor. This should not be happening at this point in time. This will reflect on True Homes and your trade partners. Water is coming through the siding, drywall and base board to my carpet. I closed 2 years ago and you think it is acceptable for me to be dealing with this?

Please do all you can to fix this, not have someone look at it and make guesses on what they think might/is happening. They need to look in the walls and seal the outside from the inside. I never thought when I was buying a new home from you all that I would have to argue about a problem I have never faced renting not even a full year into purchasing. This is ridiculous and ludicrous I am even having to bring it up a 3rd time just to get told about some warranty period.

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From: Karin Fuentes [mailto:kj13569@gmail.com]
Sent: Friday, October 14, 2016 11:22 AM
To: Don Brzozowski <dbrzozowski@truehomesusa.com>

Subject: Re: Water damage

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From: Karin Fuentes [mailto:ki13569@gmail.com]

Sent: Friday, October 14, 2016 9:04 AM

To: Don Brzozowski <dbrzozowski@truehomesusa.com>

Subject: Re: Water damage

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With the siding company, stone company and drywall company to find the source of the leak? It will be all day event. Thank you.

2006 Firefly Lane, Fort Mill, SC 29715 lot 71

ELECTRONICALLY FILED - 2022 Jun 30 4:09 PM - YORK - COMMON PLEAS - CASE#2020CP4603592

Don Brzozowski [mailto:donbrzozowski@truehomesusa.com], Timothy Timmer [mailto:timtimmer@truehomesusa.com]
 From: Rae MacTaggart [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7E09CB81970C4FC5907463C39F3E0AB2-RAE MCTAGGA]
 Sent: Fri 1/4/2019 11:41:15 PM (UTC)
 Subject: Fwd: Water leak

ent to you from my autocorrecting and often misspelling iPhone

For a complete list of Quick Move in Homes: <http://www.truehomesusa.com/quick-move-in-homes>

Warm Regards,
Rae MacTaggart
True Homes Partner
"Specializing in South Carolina, South Charlotte & Union County"
704-607-3910 cell
Rmactaggart@truehomesusa.com

Begin forwarded message:

From: "KJ Fuentes" <kj13569@gmail.com>
To: "Rae MacTaggart" <rmactaggart@truehomesusa.com>
Subject: Re: Water leak

Hey Rae,
 Here is the email trail and new pictures. I was working with Don and Lisa and they helped me out quite a bit. I know this is a long shot but let's see what they say. Thanks again for doing all you can with these issues.

Thanks!
 -KJ

On Thu, Oct 27, 2016 at 3:34 PM Karin Fuentes <kj13569@gmail.com> wrote:

I do not, but I also would like to point out that looking at that picture, you can also tell it's coming from underneath and not from the wall.
 Thanks

On Thu, Oct 27, 2016 at 9:01 AM, Don Brzozowski <dbrzozowski@truehomesusa.com> wrote:

I hear you, send me pics when you have a chance. I just have to cover all the bases as you know. Do you happen to know who your landscaper is since the hoa changed? Thank you.

From: Karin Fuentes [mailto:kj13569@gmail.com]
Sent: Thursday, October 27, 2016 8:58 AM
To: Don Brzozowski <dbrzozowski@truehomesusa.com>
Cc: Lisa Dionisio <ldionisio@truehomesusa.com>
Subject: Re: Water leak

Don,

From: Rae MacTaggart [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7E09CB81970C4FC5907463C39F3E0AB2-RAE MCTAGGA]
 Sent: Fri 1/4/2019 11:41:15 PM (UTC)
 Subject: Fwd: Water leak

sent to you from my autocorrecting and often misspelling iPhone

For a complete list of Quick Move in Homes: <http://www.truehomesusa.com/quick-move-in-homes>

Warm Regards,
 Rae MacTaggart
 True Homes Partner
"Specializing in South Carolina, South Charlotte & Union County"
 704-607-3910 cell
Rmactaggart@truehomesusa.com

Begin forwarded message:

From: "KJ Fuentes" <kj13569@gmail.com>
 To: "Rae MacTaggart" <rmactaggart@truehomesusa.com>
 Subject: Re: Water leak

Hey Rae,
 Here is the email trail and new pictures. I was working with Don and Lisa and they helped me out quite a bit. I know this is a long shot but let's see what they say. Thanks again for doing all you can with these issues.

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 -KJ

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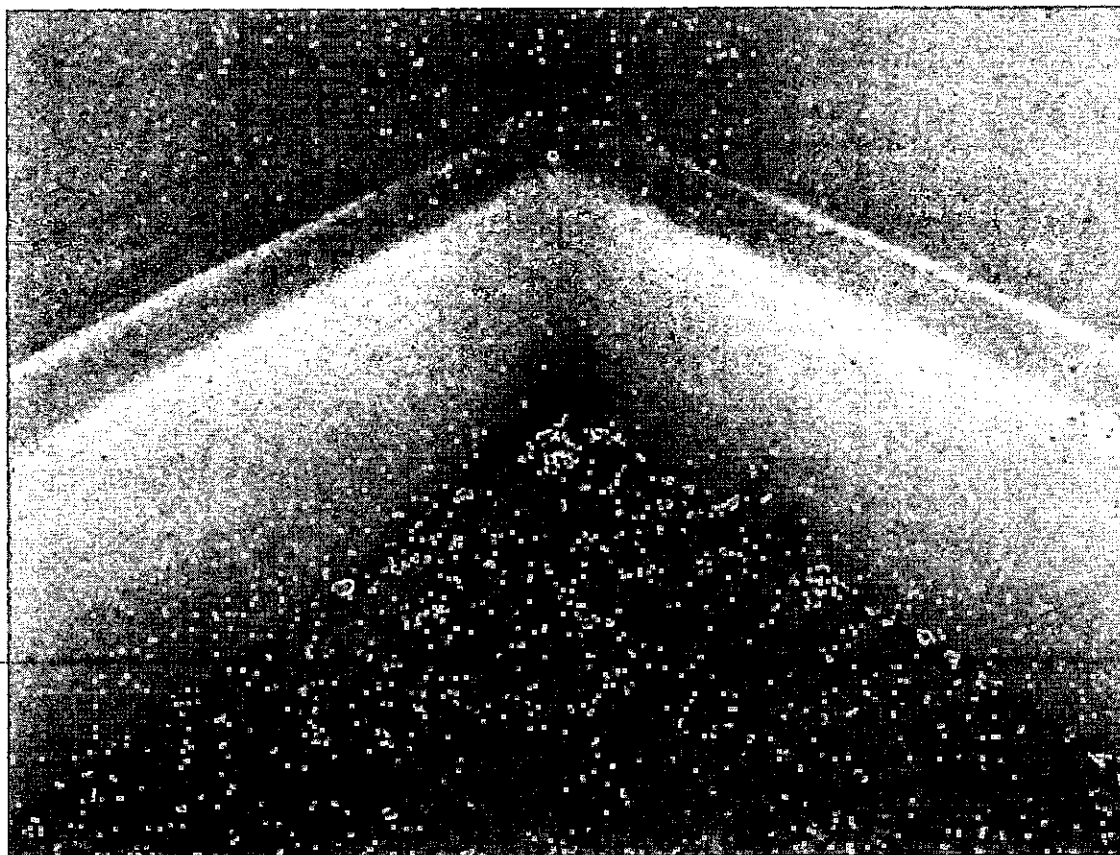
From: Karin Fuentes [mailto:kj13569@gmail.com]
 Sent: Thursday, October 27, 2016 8:58 AM
 To: Don Brzozowski <dbrzozowski@truehomesusa.com>
 Cc: Lisa Dionisio <ldionisio@truehomesusa.com>
 Subject: Re: Water leak

Don,

The water is coming from outside, from the rain. It is not wet right this very moment. If it was a sprinkler then it would be wet all the time and it is not.

When it rains it becomes moist to the touch so there is water coming from somewhere outside. The wood is swelling (I will take pictures later) this is what is looked like back on July 11th.

I really do appreciate your willingness to assist. Thank you very much sir.



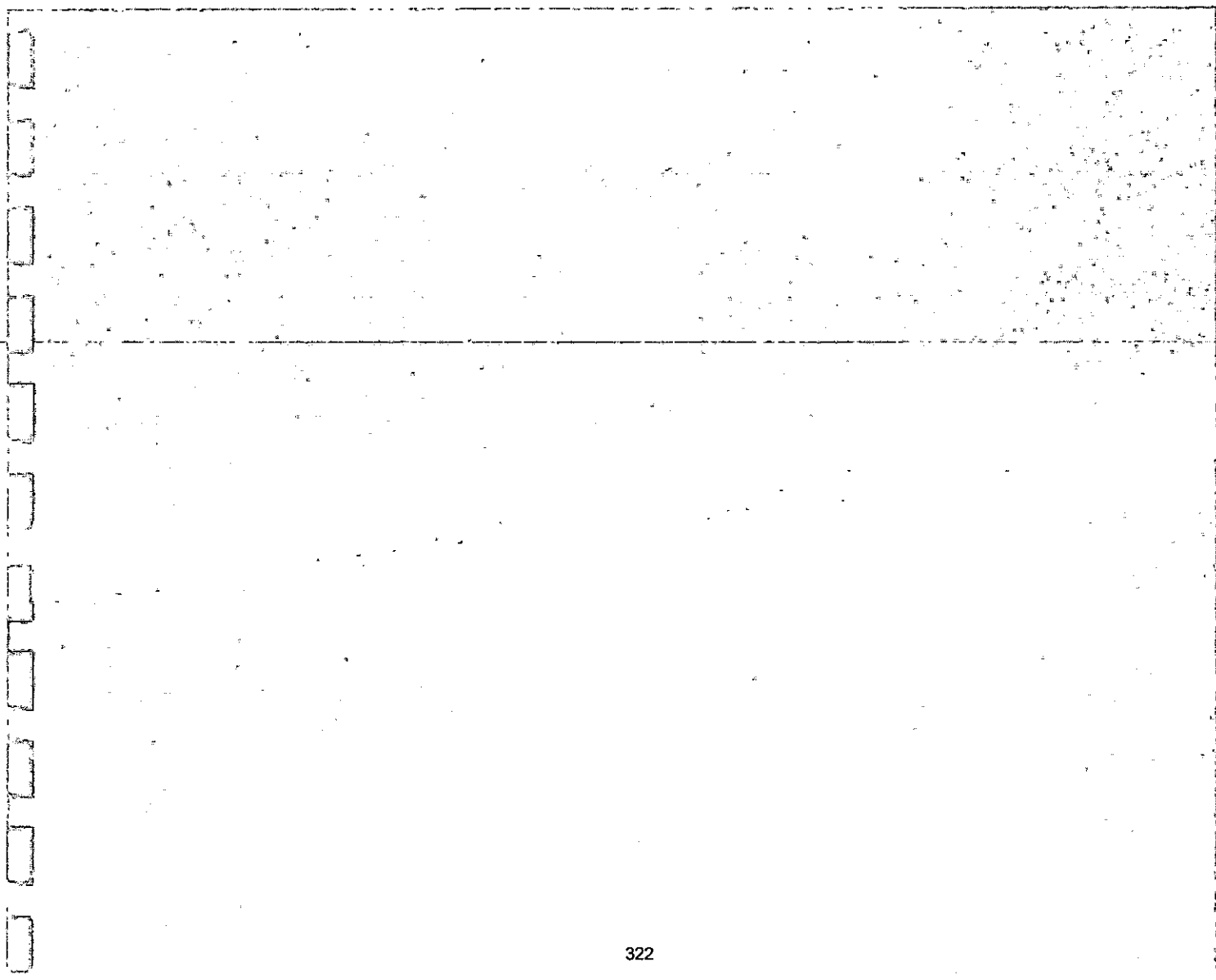
If we look at this picture here it looks like it's coming in from the front and it is drying, but still moist on the inside of that side wall...

On Wed, Oct 26, 2016 at 4:34 PM, Don Brzozowski <dbrzozowski@truhomesusa.com> wrote:

Karin, I'm going to meet with the landscaper for your community just to double check. I will then communicate with you and see if we need to take another

Approach on where the water is coming from. I just want to get this resolved for you. We will figure this out.





True Homes
2649 Brekonridge Center Drive
Monroe, NC 28110
Office: (704) 238-1229 ext. 120 FAX: (704) 631-4747
warranty@truehomesusa.com

List Summary

12/03/2020

Coordinator: Lisa Dionisio	Community: Summerlake	
Advocate: Don Brzozowski	Lot: 0071	Home ID: 0225-01-0071
Warranty 10/24/2015	Address: 2006 Firefly Lane, Fort Mill, SC 29715	
Expires:	H/O (primary): Karin Fuentes	(secondary):
List: Warranty Request	Phone 1: (704) 491-9468	Phone 1:
Open: 06/28/2016	Phone 2:	Phone 2:
Closed: 06/27/2016	Phone 3:	Phone 3:
	Email: kj13569@gmail.com	Email:

IF YOU HAVE ANY QUESTIONS REGARDING THIS WORK ORDER, PLEASE CONTACT CUSTOMER SERVICE ADVOCATE LISTED

** You do not need to call the homeowner** Please arrived as scheduled and complete the tasks prior to the end of your work window **Please do not park in driveway ** Please wear protective shoe coverings and clean up your mess when you are finished. ** If you cannot complete work on time, please call the Customer Service Advocate Listed.

W/NW	Order #	Trade Partner	Area	Category/Sub Category	Review	Repair	Due	Completed	Service Requested
☐	☐	THS19899-001 C & C Plumbing	INTERIOR	PLUMBING - Tub		06/27/2016 10:00 PM - 10:00 PM	06/30/2016	06/27/2016	[Lisa Dionisio] 06/28/2016 08:20 AM (Eastern Daylight) client called emergency line. The plumbers are coming out because he stated his tub water will not stop running

Trade Partner	DATE SIGNATURE REQUIRED	CustSvcAdvocate	DATE SIGNATURE REQUIRED	Home Owner	DATE SIGNATURE REQUIRED

Your signature will acknowledge the above repair was completed to your satisfaction, no other damage has occurred, and the repaired area was left in clean condition. If you have any questions, please contact your Warranty Representative.

Arrival Time: _____ Departure Time: _____

Please return Work Order with home owners signature by fax: (704) 631-4747
or email: warranty@truehomesusa.com

All invoices must be submitted to AP@truehomesusa.com with a copy of this Work Order
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323

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Office: (704) 238-1229 ext. 120 FAX: (704) 631-4747
warranty@truehomesusa.com

List Summary

12/03/2020

Coordinator: Lisa Dionisio	Community: Summerlake	
Advocate: Don Brzozowski	Lot: 0071	Home ID: 0225-01-0071
Warranty 10/24/2015	Address: 2006 Firefly Lane, Fort Mill, SC 29715	
Expires:	H/O (primary): Karin Fuentes	(secondary):
List: Warranty Request	Phone 1: (704) 491-9468	Phone 1:
Open: 08/02/2016	Phone 2:	Phone 2:
Closed: 08/19/2016	Phone 3:	Phone 3:
	Email: kj13569@gmail.com	Email:

IF YOU HAVE ANY QUESTIONS REGARDING THIS WORK ORDER, PLEASE CONTACT CUSTOMER SERVICE ADVOCATE LISTED

** You do not need to call the homeowner** Please arrived as scheduled and complete the tasks prior to the end of your work window **Please do not park in driveway ** Please wear protective shoe coverings and clean up your mess when you are finished. ** If you cannot complete work on time, please call the Customer Service Advocate Listed.

W/NW	Order#	Trade Partner	Area	Category/Sub Category	Review	Repair	Due	Completed	Service Requested
☐	☐	THS20020-001	Airtron RSG of Charlotte, Inc	INTERIOR	HVAC - Exterior Exhaust Vent	08/17/2016 8:00 AM - 12:00 PM	08/19/2016	08/17/2016	8/17/16 8-12 1. In the attic you can see daylight around where exhaust vent is, please caulk or silicone.
☐	☐	THS20020-002	BAREFOOT & CO	INTERIOR	Exterior Doors - Exterior	08/17/2016 8:00 AM - 12:00 PM	08/19/2016	08/17/2016	8/17/16 8-12 1. Please repair damaged sill pan

Trade Partner	DATE SIGNATURE REQUIRED	CustSvcAdvocate	DATE SIGNATURE REQUIRED	Home Owner	DATE SIGNATURE REQUIRED	Page 3 of 324

Your signature will acknowledge the above repair was completed to your satisfaction, no other damage has occurred, and the repaired area was left in clean condition. If you have any questions, please contact your Warranty Representative.

Arrival Time: _____ Departure Time: _____

Please return Work Order with home owners signature by fax: (704) 631-4747
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Thank you for choosing True Homes

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warranty@truehomesusa.com

☐	☐	THS20020-003	Atlanta Flooring Design INTERIOR	WOOD FLOORS - Damaged by Others	08/17/2016 8:00 AM - 12:00 PM	08/19/2016	08/19/2016	8/17/16 8-12 Homeowner has hardwoods, replace 10 pieces at the rear door from sill pan leaking.
☐	☐	THS20020-004	SouthEnd Exteriors (Charlotte)	Exterior Siding & Soffit -	08/17/2016 8:00 AM - 12:00 PM	08/19/2016	08/17/2016	[Don Brzozowski] 08/17/2016 08:34 AM (Eastern Daylight) [Don Brzozowski] 08/17/2016 08:30 AM (Eastern Daylight) [Don Brzozowski] 08/17/2016 08:24 AM (Eastern Daylight) Both supervisors for Southend and Charlotte plastering said it may be from sprinklers hitting home, going to Silicone area 8/17/16 8-12 1. Homeowner has a leak at the front left window, please meet me at 8:00 and stone guy to find out where the leak is.
☐	☐	THS20020-005	Charlotte Plastering Inc Exterior	BRICK OR STONE VENEER -	08/17/2016 8:00 AM - 12:00 PM	08/19/2016	08/17/2016	[Don Brzozowski] 08/17/2016 09:15 AM (Eastern Daylight) 8/17/16 8-12 Homeowner has a leak at the front left window, please meet me at 8:00 and siding crew to determine where leak is.

Trade Partner DATE CustSvcAdvocate DATE Home Owner DATE Page 4 of 324
SIGNATURE REQUIRED SIGNATURE REQUIRED SIGNATURE REQUIRED

Your signature will acknowledge the above repair was completed to your satisfaction, no other damage has occurred, and the repaired area was left in clean condition. If you have any questions, please contact your Warranty Representative.

Arrival Time: Departure Time: Please return Work Order with home owners signature by fax: (704) 631-4747
or email: warranty@truehomesusa.com

All invoices must be submitted to AP@truehomesusa.com with a copy of this Work Order

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warranty@truehomesusa.com

☐	☐	THS20020-006	Paul Kowalski Builders, INTERIOR LLC	DRYWALL - Quality Issue	08/19/2016 8:00 AM - 12:00 PM	08/19/2016 08/19/2016	[Don Brzozowski] 08/17/2016 09:08 AM (Eastern Daylight) 8/19/16 8-12 1. install baseboard and paint and caulk soj white 2. Install rear door trim and shoe molding. [Don Brzozowski] 08/16/2016 02:01 PM (Eastern Daylight) 8/17/16 8-12 1. Demo drywall in front to search for a water leak. I will meet you onsite. 2. See if we can secure his microwave that is hanging down.
☐	☐	THS20020-007	The Building Center, INTERIOR Inc	TRIM - Delivery	08/18/2016 8:00 AM - 12:00 PM	08/20/2016 08/19/2016	8/18/16 8-12 1. Deliver 2 pieces of 1x2 mdf interior door trim and 1 piece of 1x4 mdf base molding. 2. Deliver one piece of shoe molding You may have to knock on the door kind of hard if you get there early in the morning.

Trade Partner DATE / / SIGNATURE REQUIRED CustSvcAdvocate DATE / / SIGNATURE REQUIRED Home Owner DATE / / SIGNATURE REQUIRED Page 5 of 324

Your signature will acknowledge the above repair was completed to your satisfaction, no other damage has occurred, and the repaired area was left in clean condition. If you have any questions, please contact your Warranty Representative.

Arrival Time: Departure Time:

Please return Work Order with home owners signature by fax: (704) 631-4747
or email: warranty@truehomesusa.com

All invoices must be submitted to AP@truehomesusa.com with a copy of this Work Order

Thank you for choosing True Homes

True Homes
2649 Brekonridge Center Drive
Monroe, NC 28110
Office: (704) 238-1229 ext. 120 FAX: (704) 631-4747
warranty@truehomesusa.com

List Summary

12/03/2020

Coordinator: Lisa Dionisio	Community: Summerlake	
Advocate: Don Brzozowski	Lot: 0071	Home ID: 0225-01-0071
Warranty: 10/24/2015	Address: 2006 Firefly Lane, Fort Mill, SC 29715	
Expires:	H/O (primary): Karin Fuentes	(secondary):
List: Builder Error	Phone 1: (704) 491-9468	Phone 1:
Open: 10/31/2016	Phone 2:	Phone 2:
Closed: 11/15/2016	Phone 3:	Phone 3:
	Email: kj13569@gmail.com	Email:

IF YOU HAVE ANY QUESTIONS REGARDING THIS WORK ORDER, PLEASE CONTACT CUSTOMER SERVICE ADVOCATE LISTED

** You do not need to call the homeowner** Please arrived as scheduled and complete the tasks prior to the end of your work window **Please do not park in driveway ** Please wear protective shoe coverings and clean up your mess when you are finished. ** If you cannot complete work on time, please call the Customer Service Advocate Listed.

W/NW	Order #	Trade Partner	Area	Category/Sub Category	Review	Repair	Due	Completed	Service Requested

Trade Partner	DATE SIGNATURE REQUIRED	CustSvcAdvocate	DATE SIGNATURE REQUIRED	Home Owner	DATE SIGNATURE REQUIRED	Page 6 of 324

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Arrival Time: _____ Departure Time: _____

Please return Work Order with home owners signature by fax: (704) 631-4747
or email: warranty@truehomesusa.com

All invoices must be submitted to AP@truehomesusa.com with a copy of this Work Order
Thank you for choosing True Homes

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 Monroe, NC 28110
 Office: (704) 238-1229 ext. 120 FAX: (704) 631-4747
 warranty@truehomesusa.com

☐	☐	THS20281-001 Paul Kowalski Builders, INTERIOR LLC	DRYWALL - Quality Issue	11/15/2016 1:00 PM - 5:00 PM	11/16/2016 11/15/2016	[Don Brzozowski] 11/15/2016 03:21 PM (Eastern Standard Stopped by this home this is done. [Don Brzozowski] 11/08/2016 02:03 PM (Eastern Standard) 11/15/16 1-5 repair drywall and install trim soji white. 11/8/16 1:00 David, please meet me and the builder at this home at 1:00. We fixed a leak 2 months ago but the leak has returned in the same area inside the home. Will have to open wall up etc..

Trade Partner DATE / / SIGNATURE REQUIRED CustSvcAdvocate DATE / / SIGNATURE REQUIRED Home Owner DATE / / SIGNATURE REQUIRED Page 7 of 324

Your signature will acknowledge the above repair was completed to your satisfaction, no other damage has occurred, and the repaired area was left in clean condition. If you have any questions, please contact your Warranty Representative.

Arrival Time: Departure Time:

Please return Work Order with home owners signature by fax: (704) 631-4747
 or email: warranty@truehomesusa.com

All invoices must be submitted to AP@truehomesusa.com with a copy of this Work Order

Thank you for choosing True Homes

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 warranty@truehomesusa.com

☐	☐	THS20281-002	SouthEnd Exteriors (Charlotte)	Exterior	Siding & Soffit -	11/15/2016 8:00 AM - 12:00 PM	11/17/2016	11/15/2016	[Don Brzozowski] 11/15/2016 01:33 PM (Eastern Standard) Drove by this has been completed [Don Brzozowski] 11/09/2016 01:37 PM (Eastern Standard) 11/15/16 8-12 please repair the flashing at the right window at two locations so water runs away from the home. [Don Brzozowski] 10/31/2016 09:49 AM (Eastern Daylight) 11/8/16 1:00 Please have a tech meet the builder and I at 1:00 to find out where water is coming in at. Southend supervisor was out at this lot two months ago and we recaulked and put new flashing up and the leak has returned.
☐	☐	THS20281-003	Charlotte Plastering Inc	Exterior	BRICK OR STONE VENEER -	11/09/2016 1:00 PM - 1:00 PM	11/10/2016	11/08/2016	11/8/16 1:00 Please meet the builder and I at 1:00 along with siding crew again to determine where the leak is. We were all out two months ago and re-caulked and flashed the area but the water intrusion has returned.

Page 8 of 324

Trade Partner _____ DATE SIGNATURE REQUIRED	CustSvcAdvocate _____ DATE SIGNATURE REQUIRED	Home Owner _____ DATE SIGNATURE REQUIRED

Your signature will acknowledge the above repair was completed to your satisfaction, no other damage has occurred, and the repaired area was left in clean condition. If you have any questions, please contact your Warranty Representative.

Arrival Time: _____ Departure Time: _____

Please return Work Order with home owners signature by fax: (704) 631-4747
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Thank you for choosing True Homes

True Homes
2649 Brekonridge Center Drive
Monroe, NC 28110
Office: (704) 238-1229 ext. 120 FAX: (704) 631-4747
warranty@truehomesusa.com

☐	☐	THS20281-004	The Building Center, Inc	INTERIOR	TRIM - Base/Shoe	11/14/2016 8:00 AM - 12:00 PM	11/15/2016	11/15/2016	{Don Brzozowski} 11/08/2016 02:18 PM (Eastern Standard) 11/14/16 8-12 please deliver 1 piece of 1x4 mdf base molding.

ELECTRONICALLY FILED - 2022 Jun 30 4:09 PM - YORK - COMMON PLEAS - CASE#2020CP4603592

Trade Partner	DATE SIGNATURE REQUIRED	CustSvcAdvocate	DATE SIGNATURE REQUIRED	Home Owner	DATE SIGNATURE REQUIRED	Page 9 of 324
Your signature will acknowledge the above repair was completed to your satisfaction, no other damage has occurred, and the repaired area was left in clean condition. If you have any questions, please contact your Warranty Representative.						
Arrival Time: _____ Departure Time: _____						
Please return Work Order with home owners signature by fax: (704) 631-4747 or email: warranty@truehomesusa.com						
All invoices must be submitted to AP@truehomesusa.com with a copy of this Work Order						
Thank you for choosing True Homes						

201400275451
Electronic Filing
From: Hinson Faulk, P.A.
Thru: SIMPLIFILE

RECORDED
YORK COUNTY
TAX ASSESSOR'S OFFICE
DATE 10/27/2014
TAX MAP NO. 729-07-01-012
INITIALS TSimmmons

Instrument	VOL	PAGE
201400275451 OR	14461	205
201400275451		
Filed for Record in		
YORK COUNTY, SC		
DAVID HAMILTON		
10-27-2014 At 04:11 pm.		
DEED		10.00
State Tax		486.20
County Tax		205.70

STATE OF SOUTH CAROLINA)
) TITLE TO REAL ESTATE
COUNTY OF YORK) GENERAL WARRANTY DEED

KNOW ALL MEN BY THIS DEED, that True Homes, LLC (hereinafter called "Grantor"), a Delaware Limited Liability Company, for and in consideration of One Hundred Eighty Six Thousand Six Hundred Fifty and 00/100 Dollars (\$186,650.00), to it in hand paid at and before the sealing of this deed by Karin Josue Fuentes, (hereinafter called "Grantee"), the receipt of which is hereby acknowledged, has granted, bargained, sold, and released, and by this Deed does grant, bargain, sell and release unto the said Grantee and his heirs, successors and assigns the following described property:

All that certain piece parcel or tract of land lying, being and situate in the County of York, State of South Carolina, and being shown and designated as all of Lot 71 on that certain plat entitled "Summerlake, Phase 1" and recorded in Plat Book E215 at Page 8 in the Office of the Clerk of Court for York County, South Carolina, which referenced is hereby made for a more particular description.

DERIVATION: Being a portion of property conveyed to True Homes, LLC by Deed from Carolina recorded on June 6, 2014 in Book 14168, Page 146 of the York Registry.

GRANTEE'S MAILING ADDRESS: 2006 Firefly Lane
Fort Mill, SC 29715

Tax Map #: 729-07-01-012

This conveyance is made subject to easements and restrictions of record and otherwise affecting the property.

TOGETHER with all the rights, members, hereditaments and appurtenances whatsoever to the said premises belonging, or in any way incident or appertaining to them.

TO HAVE AND TO HOLD all and singular the above-mentioned premises unto the said Grantee its heirs, executors, administrators, successors, and assigns forever. Subject, however, to the rights, conditions and restrictions that constitute covenants running with the land which are set forth or referred to herein or which may otherwise appear of record.

And the Grantor does hereby bind itself and its successors or assigns to warrant and forever defend all and singular the premises unto the said Grantee, his heirs, executors, administrators, successors, and assigns, against me and my heirs, executors, administrators, successors, and assigns, and all other persons whomsoever lawfully claiming the premises or any part thereof.

DRAWN BY AND MAIL TO:
HINSON FAULK P.A.
309 POST OFFICE DRIVE
INDIAN TRAIL, NC 28079

File No. 2014094466

EXHIBIT
H

ANY REFERENCE in this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the Grantee.

IN WITNESS WHEREOF, the Grantor has caused this deed to be executed in its name by its duly authorized officer this 24 day of October, 2014.

SIGNED AND DELIVERED
IN THE PRESENCE OF:

TRUE HOMES, LLC

[Signature]
Witness

By: [Signature] (seal)
Mark W. Boyce, Manager

[Signature]
Witness

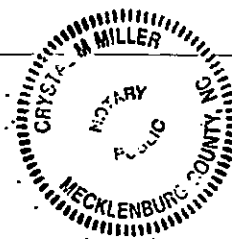
ACKNOWLEDGEMENT

STATE OF NORTH CAROLINA)
COUNTY OF UNION)

I, [Signature], a Notary Public in and for the state above referenced do hereby certify that the foregoing instrument was acknowledged before me by Mark W. Boyce as Manager of TRUE HOMES, LLC, a Delaware Limited Liability Company, on behalf of the corporation.

Sworn to before me this 24 day of October, 2014.

[Signature]
Notary Public for North Carolina
My Commission Expires: 6/4/2017



Return To:

Return to:
Hinson Faulk, P.A.
309 Post Office Drive
Indian Trail, NC 28079

File No. 201409444-64

201400275452
Filed for Record in
YORK COUNTY, SC
DAVID HAMILTON
10-27-2014 At 04:11 pm.
MORTGAGE 19.00
State Tax .00
County Tax .00

201400275452
Electronic Filing
From: Hinson Faulk, P.A.
Thru: SIMPLIFILE

Prepared By:

Clifford Watts
BBT

[Space Above This Line For Recording Data]

State of South Carolina

MORTGAGE

FHA Case No.

MIN 100159966175847689

THIS MORTGAGE ("Security Instrument") is given on October 24, 2014
The Mortgagor is Karin Josue Fuentes, Unmarried

("Borrower"). This Security Instrument is given to Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns), as mortgagee. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS. Branch Banking and Trust Company Lic. 399803

("Lender") is organized and existing under the laws of NORTH CAROLINA, and has an address of 223 West Nash Street, Wilson, NC 27893

Borrower owes Lender the principal sum of
One Hundred Ninety Thousand Four Hundred Fifty Nine And Zero/100

Dollars (U.S. \$ 190,459.00).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on November 01, 2044

This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and

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FHA South Carolina Mortgage with MERS - 4/96

Wolters Kluwer Financial Services

VMP®-4N(SC) (1302)

Amended 2/01

Page 1 of 9

Initials: KIF

KIF
EXHIBIT

assigns), and to the successors and assigns of MERS the following described property located in YORK County, South Carolina:

See Exhibit A attached hereto and incorporated herein by reference.

Parcel ID Number: 729-07-01-012

which has the address of 2006 FIREFLY LN

Fort Mill

[City], South Carolina 29715

[Street]

[Zip Code]

("Property Address");

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns), and to the successors and assigns of MERS, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument; but, if necessary to comply with law or custom, MERS, (as nominee for Lender and Lender's successors and assigns), has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing or canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

Borrower and Lender covenant and agree as follows:

UNIFORM COVENANTS.

1. **Payment of Principal, Interest and Late Charge.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. **Monthly Payment of Taxes, Insurance and Other Charges.** Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures 6617584768

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Act of 1974, 12 U.S.C. Section 2601 *et seq.* and implementing regulations, 12 C.F.R. Part 1024, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

3. Application of Payments. All payments under paragraphs 1 and 2 shall be applied by Lender as follows:

First, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

Second, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

Third, to interest due under the Note;

Fourth, to amortization of the principal of the Note; and

Fifth, to late charges due under the Note.

4. Fire, Flood and Other Hazard Insurance. Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

5. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant 6617584768

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or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

6. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

7. Charges to Borrower and Protection of Lender's Rights in the Property. Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in paragraph 2.

Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement, at the Note rate, and at the option of Lender, shall be immediately due and payable.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

8. Fees. Lender may collect fees and charges authorized by the Secretary.

9. Grounds for Acceleration of Debt.

(a) **Default.** Lender may, except as limited by regulations issued by the Secretary, in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

- (i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or
- (ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

(b) **Sale Without Credit Approval.** Lender shall, if permitted by applicable law (including Section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C. 1701j-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

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- (i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and
- (ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property but his or her credit has not been approved in accordance with the requirements of the Secretary.

(c) **No Waiver.** If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

(d) **Regulations of HUD Secretary.** In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

(e) **Mortgage Not Insured.** Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within 60 days from the date hereof, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to 60 days from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

10. Reinstatement. Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

11. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successor in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. Successors and Assigns Bound; Joint and Several Liability; Co-Signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

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13. Notices. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

14. Governing Law; Severability. This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

15. Borrower's Copy. Borrower shall be given one conformed copy of the Note and of this Security Instrument.

16. Hazardous Substances. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

17. Assignment of Rents. Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph 17.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

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18. Foreclosure Procedure. If Lender requires immediate payment in full under paragraph 9, Lender may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 *et seq.*) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 18 or applicable law.

19. Release. Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

20. Waivers. Borrower waives all rights of homestead exemption in the Property.

21. Future Advances. The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to one hundred fifty percent (150%) of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

22. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)].

☐ Condominium Rider	☐ Growing Equity Rider	☐ Other [specify]
☐ Planned Unit Development Rider	☐ Graduated Payment Rider	

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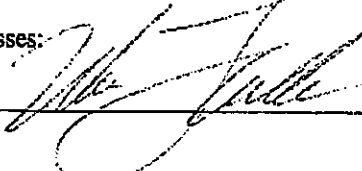
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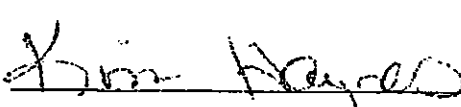
7002142405
Initials: KIF

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:




_____ (Seal)
Karin Josue Fuentes -Borrower



_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

ELECTRONICALLY FILED - 2022 Jun 30 4:09 PM - YORK - COMMON PLEAS - CASE#20220CP4603592

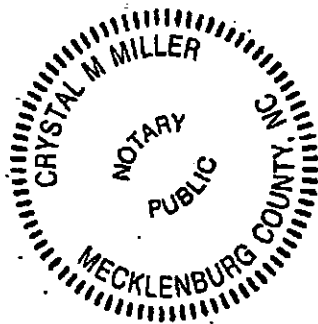
North Carolina
STATE OF SOUTH CAROLINA,
I, *Crystal M Miller*
Karin Josue Fuentes

Union County ss:
do hereby certify that

personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 24

day of October, 2014



Crystal M Miller
Notary Public for South Carolina

My Commission Expires: *6/6/2017*

Loan origination organization Branch Banking and Trust Company
NMLS ID 399803
Loan originator Clifford Walts
NMLS ID 646534

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 24th day of October, 2014, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to Branch Banking and Trust Company Lic. 399803

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at: 2006 FIREFLY LN, Fort Mill, SC 29715

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in The Deed, The Declaration of Covenants, Conditions and Restrictions.

(the "Declaration"). The Property is a part of a planned unit development known as

Summerlake

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

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MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3150 1/01

Wolters Kluwer Financial Services
VMP®-7R (0811)

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Initials: KJF

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

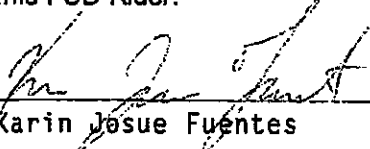
F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

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MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this PUD Rider.

 _____ (Seal)
Karin Josue Fuentes -Borrower _____ (Seal)
-Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

_____ (Seal) _____ (Seal)
-Borrower -Borrower

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MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
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All that certain piece parcel or tract of land lying, being and situate in the County of York, State of South Carolina, and being shown and designated as all of Lot 71 on that certain plat entitled "Summerlake, Phase 1" and recorded in Plat Book E215 at Page 8 in the Office of the Clerk of Court for York County, South Carolina, which referenced is hereby made for a more particular description.

Being the same property conveyed to the Borrower(s) herein by Deed recorded contemporaneously herewith.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
CASE NO.: 2020-CP-46-03592

SUMMERLAKE TOWNHOMES
HOMEOWNER'S ASSOCIATION,
INC. and SUSAN HAGY and KARIN
FUENTES, individually and on behalf of
all others similarly situated,

Plaintiffs,

vs.

AFFIDAVIT OF NICK BACON, ESQ.

TRUE HOMES, LLC; CAROLINA
DEVELOPMENT SERVICES, LLC;
SUMMERLAKE PROPERTIES, LLC;
RJB LEGACY COMPANY f/k/a
BAREFOOT & COMPANY, LLC; BMC
EAST, LLC; AIRTRON, INC.; MPK
GRADING AND EROSION
CONTROL, LLC; SOUTHEN
EXTERIORS, LLC; MCGEE
BROTHER COMPANY, INC.; ALPHA
OMEGA CONSTRUCTION GROUP,
INC.; PENDER-PETTUS INSULATING,
INC.; CHARLOTTE LANEHART
ELECTRIC COMPANY, INC.; C&C
PLUMBING, INC.; ASSOCIATED
MATERIALS, LLC a/k/a ALSIDE,
INC.; T&A EXCAVATING, LLC;
CALLAHAN EXCAVATING, LLC
a/k/a CALLAHAN GRADING &
HAULING, INC. a/k/a CALLAHAN
GRADING, LLC; AHR
CONSTRUCTION, INC.; JJS
COMMERCIAL CONSTRUCTION,
INC.; CDJ CONSTRUCTION, INC.;
JIMENEZ CONTRACTORS, LLC; J.
COV ROOFING, LLC; AYALAS
WINDOW INSTALLATIONS, LLC;
ATLANTA FLOORING DESIGN
CENTERS, INC.; PEDRO DEJESUS
d/b/a PJI CONSTRUCTION; and

EXHIBIT
J

PEDRO VILLAREAL-CONCEPCION)
s/b/a CVP CONSTRUCTION)
Defendants.)

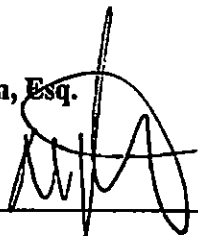
NOW COMES, Nick Bacon, Esq., the affiant, stating and saying as follows:

1. I am an adult who is over the age of eighteen (18) years of age, legally competent, not under any duress or other undue influence and I am making this Affidavit of my own free will.
2. I have personal knowledge of all the statements set forth in this Affidavit and all the statements contained herein are true and accurate to the best of my recollection and as to those statements that I indicate are upon information and belief, they are to my best ability and knowledge that I have obtained personally about the facts and things stated herein.
3. I am the in-house general counsel for True Homes, LLC.
4. True Homes, LLC is a Delaware corporation with its principal place of business in Monroe, North Carolina.
5. True Homes is a residential homebuilder, focusing its work in North and South Carolina.
6. True Homes acts as the general contractor for construction of its projects in both Carolinas.
7. True Homes does not self-perform any construction work; rather, True Homes employs subcontractors to complete the various scopes of work necessary to build each project.
8. Between June 2013 and May 2016, True Homes purchased lots and built town homes in a development in Fort Mill, South Carolina, now known as Summerlake Townhomes.
9. Among others, True Homes employed the following contractors to complete the necessary work to build the townhomes at Summerlake: Barefoot and Company, Airtron, Inc., Southern Exteriors, LLC, McGee Brothers Company, Inc., Alpha Omega Construction Group, Inc., Pender-Pettus Insulating, Inc., Charlotte Lanehart Electric Company, Inc., and C&C Plumbing, Inc.
10. According to the North Carolina Secretary of State, RJB Legacy Company, f/k/a Barefoot and Company, is a North Carolina Corporation with its principal place of business in Waxhaw, North Carolina.
11. According to the North Carolina Secretary of State, Airtron, Inc, is a Delaware Corporation with its principal place of business in Princeton, New Jersey.

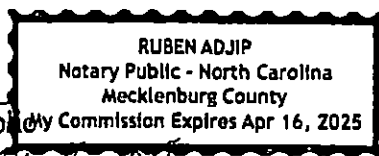
12. According to the North Carolina Secretary of State, Southern Exteriors, LLC is a North Carolina Corporation with its principal place of business in Winston-Salem, North Carolina.
 13. According to the North Carolina Secretary of State, McGee Brothers Company, Inc., is a North Carolina Corporation with its principal place of business in Monroe, North Carolina.
 14. According to the North Carolina Secretary of State, Alpha Omega Construction Group, Inc. is a North Carolina Corporation with its principal place of business in Indian Trail, North Carolina.
 15. According to the North Carolina Secretary of State, Pender-Pettus Insulating, Inc., is a North Carolina Corporation with its principal place of business in Taylor, Michigan.
 16. According to the North Carolina Secretary of State, Charlotte Lanehart Electric Company, Inc., is a Texas Corporation with its principal place of business in Fort Mill, Texas
 17. According to the North Carolina Secretary of State, C&C Plumbing, Inc. is a North Carolina Corporation with its principal place of business in Mathews, North Carolina.
 18. Additionally, True Homes purchased various supplies for the Summerlake project from vendors throughout both Carolinas.
 19. True Homes employees in North Carolina supported the Summerlake project by providing design services, accounting services, legal services, and warranty services.
 20. Upon information and belief, many of the subcontractors lived in North Carolina and drove to the Summerlake project each day.
-
21. As part of the purchase agreements with True Homes, customers sign an agreement to arbitrate any claims they may have.
 22. Plaintiff Karin Fuentes signed the arbitration agreement with True Homes. A true and accurate copy of her contract is attached hereto as Exhibit A.
 23. Alex Fresco, the original purchaser of 923 Summerlake Drive, now owned by Susan Hagy, also signed an arbitration agreement with True Homes. A true and accurate copy of his contract is attached hereto as Exhibit B.
 24. True Homes relies upon its ability to resolve any rare disputes with its customers in a cost-efficient manner when it prices its homes.
 25. As True Homes' activities span multiple areas throughout the Carolinas, True Homes employs numerous subcontractors outside of South Carolina, and True Homes utilizes other vendors from outside of South Carolina, True Homes' activities affect interstate commerce.

Further affiant sayeth naught.

Nick Bacon, Esq.



SWORN TO SUBSCRIBED before me
This, the 13th day of MAY, 2022



Notary Public
My commission expires April 16, 2025

HOME PURCHASE AGREEMENT
Inventory Home

TRUE HOMES, LLC, a Delaware Limited Liability Company located in Charlotte, North Carolina ("Seller") and
Karin Josue Fuentes (jointly and severally known as "Buyer") currently residing at
8417 Riverbriar Drive Apt. 304 Charlotte, NC 28210 ("Existing Home") enter this agreement on the

date below. This document (including the Terms and Conditions on page 2), the Warranty Document, Seller Paid Closing Cost Incentive Addendum (if applicable), and such other addenda signed by and between the parties and incorporated by reference herein (collectively the "Agreement").

1. **SALE AND PURCHASE.** Seller agrees to sell and Buyer agrees to purchase the homesite below subject to all restrictions, covenants and easements (the "Homesite") and all buildings or improvements to be constructed or installed thereon according to this Agreement (the "Residence") (the Homesite and the Residence will be referred to collectively as the "Home"). The Residence will be built on the Homesite consistent with the plot plan.

2. **CONSTRUCTION.** Seller will build or has built a home for Buyer according to this Agreement and Seller's standard procedures. Model homes have custom features, many of which may be added to the Home for additional cost as Custom Features. The Home will be described as follows:

Community: **SNL** Lot: **7** Home Address: **820 Summerlake Drive Fort Mill, SC 29715**
 Plan Name: **The Dublin** Plan #: _____ Elevation: _____

3. **FOUNDATION TYPE:**

MONO SLAB: This is a formed concrete slab placed directly on the compacted ground. The plumbing is placed in the foundation before the plumbing is poured, and once set, the foundation, plumbing and electrical line placement is permanent. With Mono Slabs the footing, foundation perimeter and the interior slab are formed and poured all at the same time. Most homes built in this area have a mono-slab foundation as the base home foundation type. Since the foundation is at ground level, the home will include a 3x3 concrete stoop at the rear door.

4. **PURCHASE PRICE.** The purchase price for the Home will be the aggregate of the Home, Homesite, Elevation, Foundation, Structural Options, (each as applicable and as determined herein) plus any additional amounts payable pursuant to the Custom Features Addendum for showroom options (collectively the "Purchase Price"). Option prices will be determined at the time of contract, so long as the Buyer completes the selections appointment within 30 days.

PURCHASE PRICE		DEPOSIT	
Purchase Price:	\$182,900	Initial Deposit:	
		Preferred Lender Initial Deposit:	\$500
		Standard Initial Deposit:	\$2,000
Additional deposit paid at the Showroom equal to any increase to the Purchase Price in approved changes or additional selections ("Additional Deposit").			

5. **DEPOSIT.** Collectively the Initial Deposit, the Additional Deposit, and any other amounts paid by Buyer prior to Closing will be the "Deposit". Upon Closing (defined below), Buyer will pay the balance of the Purchase Price after deducting the Deposit. Deposit will be a working capital, will not be subject to any escrow, and Seller will have the right to use the Deposit for any purpose. Deposit will be non-refundable following completion of the Custom Features Addendum (if applicable) receipt of Loan Prequalification, or commencement of any changes to the Home. Failure to pay any deposit when due is an event of default and may result in Seller's Termination of the Purchase Agreement.

6. **LOAN APPLICATION AND PREQUALIFICATION.** Buyer must submit a written application for financing to a Preferred or Non-Preferred Lender (Collectively "Lender", each as defined below) within 5 days of the contract date. Within 7 days of the Effective Date, Buyer will provide Seller sufficient documentation, that Buyer can pay the Purchase Price ("Prequalification"). Prequalification may include written approval of a mortgage or other financing of the Purchase Price by (i) one of Seller's preferred lenders, as determined from time to time in the Seller's discretion ("Preferred Lender") or (ii) a licensed lender, mortgage company or bank ("Non-Preferred Lender") so long as the Non-Preferred Lender completes any and all documentation required by Seller in its sole discretion. Buyer authorizes Seller and Lender to communicate completely about Buyer's financial condition, including Buyer's credit report, credit score and any other relevant information, for Seller to completely evaluate Buyer's initial and continual ability to purchase a home. Buyer authorizes Lender to provide Seller, or any third-party involved in the financing of the Homesite or Home, with any and all information and documents including a copy of the completed Prequalification form, and appraisal (as described below). Regardless of Prequalification, after construction changes begin, all Deposits are non-refundable and any financing contingencies are satisfied. Failure to provide Prequalification is an event of default, and may result in Seller's Termination of the Purchase Agreement and/or Buyer's forfeiture of the Deposit.

7. **FINAL APPROVAL AND APPRAISAL.** At least 3 days prior to the scheduled Closing, Buyer will obtain final loan approval subject only to final verification of employment, updated bank statements and paystubs, and a final credit check. After receipt of the Prequalification, Seller will rely on Buyer's ability to finance the Home, notwithstanding any change in loan program terms, interest rates, or other financing terms or conditions. Buyer will obtain an acceptable appraisal in excess of the Purchase Price ("Appraisal"), pay cash at closing to make up any shortfall, or reduce selections in the Home to meet the Purchase Price. The Appraisal is an opinion of value used by a lender to determine whether sufficient collateral exists to provide a mortgage loan. While the Appraisal may limit Buyer's mortgage amount, the Agreement is not contingent upon, nor is the Purchase Price reduced by, the Appraised value. In the event of a low appraisal, Buyer agrees to remove selections to lower the Purchase Price (where possible), provide additional non-refundable deposit in the amount of the appraisal shortfall, or reduce other incentives. Failure to provide Seller with Prequalification or Appraisal is an event of default, and may result in Seller's Termination of the Purchase Agreement.

8. **ESTIMATED COMPLETION DATE.** Seller is unable to provide an estimated completion date more than 21 days prior to scheduled completion of the Home, but both parties agree that Closing must occur in less than 60 days after the point of contract, unless subsequently extended by agreement of the parties. Before any agreed upon changes to the Home can be made, Buyer must (a) Sign Agreement and all related documents; (b) Pay total Deposit; (c) Provide Prequalification and Appraisal; and (d) Satisfy all contingencies. Finally, completion of the Home may be delayed for many reasons, including: product availability, labor shortages, acts of God, and weather. Seller assumes no liability for any delay in the Closing of the Home, including without limitation, any increased with an expired interest rate lock.

9. **CLOSING AND RISK OF LOSS.** While Buyer retains the right to retain any legal counsel to review documents and provide Buyer with legal advice, the closing documents will be prepared by the Attorney designated by Seller ("Closing Attorney") and the closing will occur at Closing Attorney's office. Seller will provide Buyer approximately 10 days advance written notice of the name and address of this Attorney, and the date and location for Buyer to pay Seller the Purchase Price and Seller to transfer title of the Home to Buyer ("Closing"). Seller may permit an extension of the Closing for up to 10 days upon the payment of a \$75.00 per day Closing extension fee. For a completed home, Buyer agrees to Close within twenty one (21) days where possible, and in no event more than thirty (30) days after the Effective Date. Buyer assumes all risk of loss at Closing, and will obtain sufficient insurance coverage for the Home. Buyer is responsible for owners title insurance, private mortgage insurance, government recording and transfer fees including revenue stamps, mortgage insurance premium, survey costs, FHA or VA fees, and any other closing costs attributable to the purchase and sale of the Home.

IN WITNESS WHEREOF, the parties have signed this Agreement on the dates written below. The document will not become effective until ratified by an authorized representative of the Seller ("Effective Date"). BUYER HAS READ, UNDERSTANDS, AND VOLUNTARILY AGREES TO THIS AGREEMENT. NO REPRESENTATIVE OF SELLER HAS MADE ANY REPRESENTATION OTHER THAN THOSE CONTAINED IN THIS AGREEMENT, WHICH HAVE CREATED EXPECTATIONS IN BUYER OR ARE BEING RELIED ON BY BUYER TO SIGN THIS AGREEMENT.

Buyer Signature

Karin Josue Fuentes

Buyer Printed Name

Buyer Signature

Buyer Printed Name

Sales Counselor Signature

Chal Pickett

Sales Counselor Printed Name

Operations Partner Signature

Matthew Bacon

Operations Partner Printed Name

Credit/Closings/Legal

Revised: 7/11/2014

TERMS AND CONDITIONS

10. **Homeowner Association Dues.** Upon Closing, Buyer will become a member of any homeowner's association applicable for the community (the "Association") and will abide by the Association's declaration of covenants and restrictions. Buyer agrees to pay when due, all charges, assessments, capital contributions, transfer fees, or other amount determined by the Association ("Dues") and agrees to pay at Closing its share of such Dues for the calendar year in which the Closing occurs, prorated on a daily basis.
11. **Real Estate Commissions.** Seller will pay only one commission to a Buyer's agent. Seller will pay the Buyer's agent associated with the Buyer at the earliest point of contact with Seller, and only where that agent is also listed in an attached Real Estate Commission Addendum. Buyer would be responsible to pay any other real estate agents retained by Buyer.
12. **Changes.** Buyer can make no changes to the Home other than as agreed on the Effective Date ("Late Changes"). If Seller permits a Late Change, there would be a fee in addition to the cost of the Late Changes. Buyer is responsible to communicate any increase in Purchase Price to Lender and pay the new Purchase Price regardless of any limits on financing. Seller may make changes to the Home as necessary to comply with State or Local law, to satisfy zoning commitments, correct an error, improve design, or to maintain competitive pricing. Final home handling is always determined by site conditions and is subject to change. Buyer agrees to accept any change to the Home specifications that does not materially impact the Home's value.
13. **Real Estate Taxes.** All taxes assessed for any prior calendar year and remaining unpaid will be paid by Seller. In addition, as a final settlement between Buyer and Seller, Seller will provide a credit to Buyer for property tax assessed against the Home for the current calendar year on a calendar-year basis, as of the day prior to the Closing. Seller's pro-rated share of the property tax will be based on the land value of the Home unless the property has already been assessed as improved property prior to Closing.
14. **Possession of the Home, Until Closing.** Buyer will have no right to possess or use the Home. Buyer may not enter the Home without Seller's agent and Buyer will not perform or direct any work or install any materials at the Home prior to Closing. Any materials placed in the Home prior to Closing will become the property of Seller. At Closing, Buyer will change into Buyer's name all utility and other service accounts related to the Home, and Seller will terminate all such service in Seller's name.
15. **Inspection and Incomplete Items.** Prior to Closing, Seller and Buyer will inspect the Home using Seller's standard procedures and complete the home to a finish similar to Seller's models. Buyer may hire a third-party inspector to provide an inspection prior to Closing, but the Closing will not be delayed to accommodate the same. Seller will create a list to be completed in the Home ("Incomplete Items"). Incomplete items may be completed at Seller's expense post-Closing if necessary, so long as the Home is materially complete, as evidenced by the certificate of occupancy and availability of power, gas, and water.
16. **Site Conditions.** Final characteristics of your homestead may differ from those observed at the time of contract, including but not limited to whether any slopes will remain or be created, ped width or depth, driveway handling, driveway slope (positive or negative), location or existence of drainage swales, removal of trees or vegetation, location of utilities, street lights, utilities, easements, adjacent lot characteristics, home handling, or any other aesthetic issue with the homestead or surrounding homesteads. One or more easements may exist on this property. Easements are generally recorded for the benefit of a local government municipality, a utility provider or the homeowner association. Potential easements could include: sanitary sewer lines, drainage and utility easements, or such other recorded easement that binds the property. Seller makes no representation regarding the suitability of the homestead for a pool, dock, or patio.
17. **Entire Agreement.** This Agreement constitutes the final expression of the parties' agreement and is a complete and exclusive statement of the terms of that agreement. All prior oral or written agreements of the parties are superseded by this Agreement. Seller's sales representatives are not authorized to modify any term of this Agreement, or to make any representation, which is not expressly provided in this Agreement. The terms of this Agreement will survive the Closing.
18. **Buyer Cooperation.** Buyer will fully cooperate to give effect to this Agreement and allow for completion of the Home without delay. Buyer will attend each scheduled appointment, and comply with all requested timelines, as more specifically provided in Seller's "Construction Expectations" document signed contemporaneously herewith. Buyer agrees that he will not interfere in any way with Seller's performance, or Seller's business, before or after Closing. Time is of the essence regarding Buyer's obligations herein. Buyer and Seller both agree to cooperate in good faith to correct any material error made in good faith, including any mistake in pricing.
19. **Default.** Any of the following will be a "Default": (a) Buyer's failure to cooperate in full with Seller during the construction process; (b) Buyer's failure to timely close the Home; (c) Buyer's failure to pay the Deposit when due; (d) Buyer's inability to secure or maintain Prequalification, including Buyer's failure to timely satisfy or maintain any condition thereon; or (f) any breach of the Agreement.
20. **Liquidated Damages.** Buyer has voluntarily agreed to the terms and conditions of this Agreement. If Buyer Defaults on the Agreement, Seller will suffer significant damage in an amount that cannot easily be calculated. The Parties agree that the greater of \$5,000 or the Deposit would reasonably compensate Seller for this loss ("Liquidated Damages"). Buyer expressly agrees that the Liquidated Damages amounts are reasonable computations of Seller's anticipated loss, and are not punitive in nature.
21. **Seller's Remedies in a Default.** In a Default, Seller may do any or all of the following: (a) proceed with construction of the proposed Home; (b) terminate this Agreement with no further obligation or liability of Seller; (c) seek any action under law, including the sale of the Home to another person, and collect from the Buyer the difference between that sale and this Agreement; (d) collect the Liquidated Damages; (e) retain any Deposit.
22. **Miscellaneous.** This Agreement will be governed by the laws of the State where the Home exists. This Agreement is subordinate to the mortgage on the real estate, if any, of any financial institution providing mortgage funds to Seller, and will not be recorded. This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the parties, and no rule of construction or interpretation shall apply against any particular party. This Agreement shall be construed and interpreted in a neutral manner. Headings are for convenience only. If a court finds any sentence or term of this Agreement to be unenforceable, the validity of the remaining terms will not be affected. No waiver of any term of this Agreement will constitute a waiver of any other provision or right hereof (whether or not similar) or a continuing waiver. Seller may not own the real estate on the Effective Date or during construction, and may refund the Deposit and terminate the Agreement without liability if Seller is unable to purchase the homestead before closing. At Seller's sole and absolute discretion, Seller may refund the Deposit, terminate this Agreement, and both parties will be released from any further obligation. Seller will retain all rights to use the likeness of the Home in any marketing material or media post-closing, and retains all legal rights to any intellectual property, including copyrights associated with the plans. This Agreement may not be modified, amended, or waived except in writing signed by Buyer and Builder. In the event of a breach of the Agreement, the losing party will pay all costs and expenses, including the winning party's attorney fees incurred as a result of a breach of this Agreement. Buyer will provide Seller a valid e-mail address and agrees to accept formal notice via electronic transmission. The address for each party, until changed in writing, will be: For Buyer: The Existing Home or the E-mail address provided by Buyer to Seller. For Seller: the Seller's registered address with the governing State's office of the Secretary of State.
23. **Warranty Policy and Dispute Resolution.** Seller will purchase shortly following Closing, and provide to Buyer, the Warranty Policy in materially the same form as the sample booklet provided herewith ("Warranty Policy"). All capitalized terms used in this document that are not defined in the Purchase and Sale Agreement shall refer to the defined term in the Warranty Policy. Buyer acknowledges a receipt of the sample Warranty Policy provided at the point of contract. In the absence of any applicable repair standard in the Warranty Policy, the related industry standard provided by the National Association of Homebuilders ("NAHB Standards") will be used as a guide. At the Closing, Buyer will receive the benefit from any applicable manufacturers' or suppliers' warranties but Builder assumes no liability related to the same. Builder may remove any existing trees that could interfere with Builder's ability to build the Home and will not be liable for damage caused to existing trees during construction of the Home. The parties agree to abide by the Mediation and Arbitration provisions contained in the Warranty Policy. Buyer's landscaping, appliances, and any installed septic or well water system are specifically excluded from Seller's warranty. For homes with a well, Seller provides no warranty regarding the quality, quantity or continued availability of water beyond the ability of Seller to obtain a certificate of occupancy prior to closing. SELLER AND BUYER KNOWINGLY AND VOLUNTARILY AGREE TO SUBMIT ANY WARRANTY DISPUTES FOR RESOLUTION IN ACCORDANCE WITH THE PROCESS DESCRIBED IN THE LIMITED WARRANTY BOOKLET, INCLUDING WITHOUT LIMITATION, BINDING ARBITRATION, AND, AS TO SUCH DISPUTES, BUYER AND SELLER EACH WAIVES THEIR RESPECTIVE RIGHT TO TRIAL BEFORE A JUDGE OR JURY.
24. **Warranty Term.** Beginning on the Effective Date of the Warranty, for one (1) year, the Home will be free from Defects caused by faulty workmanship or defective materials. For two (2) years, the Home will be free from Defects caused by faulty installation of plumbing, electrical, heating, cooling, or ventilating systems, exclusive of fixtures, major appliances, or items of equipment. For ten (10) years, the Home will be free from Structural Defects as defined in the Warranty Policy. If an item is not defined as a Defect in the Warranty Policy, it is not defective, and Seller has no obligation to address the issue. Seller's only obligation under the Warranty is to correct the Defect as provided by the Warranty Policy, and has no liability for any consequential or incidental damage resulting therefrom. Homes require continued maintenance, and Seller's Warranty excludes any Defect caused by a failure to provide appropriate periodic maintenance. If Seller determines in its sole discretion to address an item that is not defective ("Customer Service"), Seller may apply any another objective standard from the Warranty Policy or the NAHB Standards, and offer to provide the voluntary service to maintain good customer relations only. Customer Service will not operate as a waiver of any provision of the Warranty Policy or this Agreement. Failure to object in writing to Seller's repair work within 10 days of the work will reflect Buyer's acceptance of Seller's performance.
25. **Notice and Disclaimer.** At various times, the U.S. Environmental Protection Agency has expressed concern over the presence of radon gas, mold and other air pollutants ("Pollutants"). Prolonged exposure to high levels of Pollutants may have adverse health effects. Seller will not make any investigation to determine whether there are any Pollutants in the Home or affecting the premises, although such conditions may exist. At the time of closing, Seller will have made no analysis or verification of the extent of the environmental or health hazard, if any, that may affect the Home, premises or residents. As such, Seller makes no representation or warranty and has no liability in connection with the presence of any Pollutants, including radon or mold.
26. **Disclaimer of Implied Warranties.** THE LIMITED WARRANTY PROVIDED IN THE WARRANTY POLICY IS ACCEPTED BY THE BUYER IN LIEU OF ALL OTHER WARRANTIES EXPRESSED AND/OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF WORKMANLIKE CONSTRUCTION, IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, THE IMPLIED WARRANTY OF HABITABILITY AND ALL WARRANTIES THAT COULD BE CONSTRUED TO COVER THE PRESENCE OF RADON OR OTHER ENVIRONMENTAL POLLUTANTS. ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, ARE WAIVED BY REASON OF THE PROMISES AND AGREEMENTS HEREIN CONTAINED. Buyer also waives the right to recover from seller all consequential, incidental, punitive, or exemplary damages, including emotional distress, pain and suffering, lost profits, depreciation or other statutory damages. The only warranties seller provides to the Buyer are those contained in the Warranty Policy. Buyer recognizes that by accepting the express seller's warranties and the Seller's insurance covering those warranties for the periods of time provided in the contract that Buyer is waiving the right to any claim for implied warranties which may be greater than the express warranties. Seller has no liability for any consequential damages, including without limitation, lost wages or opportunity, lost or damaged household items, housing or medical expense.

Buyer Initials

KL	

TrueHomes

Customer Deposit Receipt

Date: 12/9/2013 Community: SML Lot 7 CLTBuyer(s) Name(s): Karin Josue FuentesProperty Address: 820 Summerlake Drive Fort Mill, SC 29715LO: Kristi Hooks Lender: Bank of NCPhone: (704)488-2765 Email: Khooks@bankofnc.com

Description of Transaction

Initial Deposit Received Date: 7/19/2014 Amount: \$500

2nd Deposit Received Date: _____ Amount: _____

3rd Deposit Received Date: _____ Amount: _____

Total Initial Deposit: \$500Type: DIRTStage: New Construction

Total Deposit Due: _____

Form of Payment

SASHA FLEMING
KARIN JOSUE FUENTES
1020 TARA LN APT 3
CHARLOTTE, NC 28213-8059

1214

66-21/530 10480
67096002717/19/14Pay to the
Order of TRUE HOMESFIVE HUNDRED\$ 500.00

Dollars

Security
Features
Include on
BackWell Fargo Bank, N.A.
North Carolina
wellsfargo.comFor DEPOSIT LOT 7Karin Josue Fuentes

⑆053000214⑆ 6709600271⑆ 01214

Sales Counselor Signature: Chad Poteat

Chad Poteat

Date: 7/19/2014Revision Date:
7/11/2014

Contract (SPEC) (071114)

TrueHomes

WE VALUE YOUR BUSINESS

SELLER PAID CLOSING COST CONTRIBUTIONBuyer: Karin Josue FuentesCommunity: SMLHome site: 7**INCENTIVE CLOSING COSTS**

1. True Homes has an alliance with four Preferred Lenders (Bank of North Carolina, SunTrust Mortgage, Movement Mortgage and Wells Fargo). For Buyers who finance their homes with a Designated Loan officer for one of these Preferred Lenders True Homes and the Preferred Lender will pay a combined closing cost contribution* \$1,500

Additionally, for Cash Buyers, True Homes will pay a closing cost contribution up to: \$1,000

For all other Buyers, specifically non-cash Buyers who finance their purchase with a lender other than the designated loan officer of a Preferred Lender, True Homes will pay an incentive closing cost contribution up to: \$0

2. The True Home Closing Cost incentive will be applied only to the following charges: *Appraisal fee, Credit Report Fee, Commitment Fee, Flood Certification Fee, Tax Service Fee, Document Preparation Fee, Attorney Fee, Title Insurance, Recording Fee, City/County Tax Stamps, Survey Fee*. Incentive Closing Costs will not be applied towards loan origination fees, pre-paid expenses, discount points or any amount paid to the lender to reduce Buyer's Mortgage rate. Unless captured by the Financing Costs described below, any of these expenses related to the closing of the home would be paid by the Buyer at Closing.

FINANCE COSTS

In addition to the Incentive Closing Cost provided above, Buyer and Seller have negotiated the payment of additional Seller Paid Closing Costs that could be applied towards any of Buyer's expense at closing. These costs may include loan origination fees, pre-paid expenses, discount points or any other amount paid to the lender to reduce Buyer's Mortgage rate. Buyer and Seller have agreed that Seller will pay the following additional Seller Paid Closing Cost on Buyer's behalf towards these Finance Costs:

\$3,000Buyer: Karin Josue FuentesDate: 7/19/14

Buyer: _____

Date: _____

This Addendum will bind Seller only upon Authorized Operations Partner Signature below:

Nick Bacon
Operations Partner
Credit/Closings/Legal

Date: 7/21/14

* The combined closing cost contribution includes a contribution from the Preferred Lender's designated loan officer of \$500. The lender contribution may show on your closing settlement statement as a reduced or waived lender fee. True Homes' portion of the combined closing cost contribution will show on the settlement statement as \$500 less than the combined amount above.

Revised: 7/11/2014

Contract (SPEC) (071114)

TrueHomes

AN EQUAL OPPORTUNITY VALUE

Construction Stage at Contract

INTEGRITY/ELEMENTS/TRIBUTE
INVENTORY HOME CHANGE ADDENDUM

This Addendum is incorporated by reference into a Purchase and Sales Agreement signed between Buyer and Seller regarding the Purchase and Sale of the Home. ("Agreement").

(Addendum & GCO's must be submitted with Purchase Agreement)

Buyer(s): Karin Josue Fuentes

Contract Date: 7/19/2014

Community: SML

Homesite: 7

Frame Slot Date:

Buyer Showroom Expectation: NO SHOWROOM - NO CHANGES

In addition to the terms and conditions in the Agreement the parties agree as follows:

1. The Home is sold as an inventory home with existing structural, color and style selections. Changes to this Home may only be made per the terms described below, and could delay completion of the home.
2. If Changes are permitted, Buyer will pay an additional deposit at the time of selections in the amount equal to any increase in Purchase Price. The deposit is nonrefundable, but apply to the Purchase Price at closing.
3. Buyer acknowledges that Seller must verify Prequalification prior to processing any changes or scheduling showroom. Prequalification must be received no less than 4 days prior to Deadline for Showroom date below.
4. If Seller is unable to verify Buyer's Prequalification, or Buyer does not complete Selections by the stated deadline, Buyer forfeits the opportunity to make changes. Seller reserves the right to release the Home as originally selected prior to Buyer's contract.

☐	HOME HAS ALREADY FRAME STARTED. Changes available: <u>Appliances, Garage Door Openers, and Window Blinds.</u> True Advisor has reviewed all selections with Buyer, and Buyer is accepting the home as selected other than the addition of appliances, garage door openers and/or window blinds. These additions must be included in the Agreement, and also submitted on a Gold Change Order (GCO). Buyer will not complete Selections in the Showroom. Buyer will only pay an additional deposit if the addition of these items increased the Purchase Price.
☐	FOUNDATION HAS ALREADY STARTED. Changes available: <u>Limited Color and Style Selections only.</u> Buyer has reviewed and accepts all structural selections of the Home. To make any limited changes to color and style, Buyer must provide acceptable Prequalification, and complete Selections by the Showroom Deadline date below. If Buyer is unable to timely obtain a Prequalification or complete selections, or if the Showroom Deadline reflects "Not Available", Buyer no longer has the opportunity to make changes and accepts the Home as selected. Showroom Deadline: <u>Showroom Not Available</u>
☐	FOUNDATION HAS NOT YET STARTED. Changes available: <u>Color, Style and structural changes that do not change square footage of the home.</u> The scope of Buyer's changes will be determined by the date of the selection appointment, so any delay in Prequalification or the selections appointment would limit changes available. Buyer will provide acceptable Prequalification, and complete Selections by the Showroom Deadline below. Buyer understands home will continue with pre-start processing. If Buyer is unable to timely obtain a Prequalification or complete selections, or if the Showroom Deadline reflects "Not Available", Buyer no longer has the opportunity to make changes and accepts the Home as selected. Showroom Deadline: <u>Showroom Not Available</u>

I/we understand that if Seller is unable to verify Buyer's Prequalification, or I/we do not complete Selections by the stated deadline, or pay any of the required deposits when due, I/we will forfeit the opportunity to make changes and Seller may release the Home as originally selected prior to Buyer's contract.

Buyer: Karin Josue Fuentes

Date: 7/19/14

Co-Buyer:

Date:

True Advisor: Chad Pagan

Date: 7-19-14

Seller Operations Partner: Nick Bacon

Date: 7/21/14

Operations Partner
Credit/Closings/Legal

Revision date: 7/11/14

Contract (SPEC) (071114)

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Company. As a disclosed dual agent, the Company and its associated licensees cannot advocate on behalf of one client over the other, and cannot disclose confidential client information concerning the price negotiations, terms, or factors motivating the buyer/client to buy or the seller/client to sell. Each Dual Agency Agreement contains the names of both the seller client(s) and the buyer client(s) and identifies the property.

Designated Agency

In designated agency, a broker-in-charge may designate individual associated licensees to act solely on behalf of each client. Designated agents are not limited by the Company's agency relationship with the other client, but instead have a duty to promote the best interest of their clients, including negotiating a price. The broker-in-charge remains a disclosed dual agent for both clients, and ensures the assigned agents fulfill their duties to their respective clients.

At the time you sign an agency agreement, you may be asked to acknowledge whether you would consider giving written consent allowing the Company to designate a representative for you and one for the other client in a designated agency.

Each Designated Agency Agreement contains the names of both the seller client(s) and the buyer client(s) and identifies the property.

What to Look For In Any Agreement

When you choose client-level service, your written Agency Agreement or your agent should answer these questions:

- Can I work with other Companies during the time of the Agreement?
- What will happen if I buy or sell on my own without the agent?
- When will this agreement expire?
- How will the Company be paid for its services?

- Does this Company represent both buyers and sellers as clients?
- If so, what are the choices if two clients become involved in one transaction?
- What duties will the Company continue to provide me after the transaction is completed?

If you plan to become a client of a Company, the licensee will explain the agreement to you fully and will answer questions you may have about the agreement. Remember, however, that until you enter into a representation agreement with the Company, you are considered a customer and the Company cannot be your advocate, cannot advise you on price or terms, and cannot keep your confidences.

It's Your Choice

As a real estate consumer in South Carolina, it is your choice as to the type and nature of services you receive.

- You can choose to remain a customer and represent yourself while the Company represents the other party.
- You can choose to hire the Company for representation through a written agreement.
- If represented by the Company, you can decide whether to go forward under the shared services of dual agency or designated agency or to remain in single agency.

The choice of services belongs to you—the South Carolina real estate consumer.

This brochure has been approved by the S.C. Real Estate Commission for use in explaining representation issues in real estate transactions and consumers' rights as a buyer or seller. Reprinting without permission is permitted provided no changes or modifications are made.

Agency Disclosure Brochure

Agency Relationships In Real Estate



South Carolina Department of Labor, Licensing and Regulation

South Carolina Real Estate Commission

PO Box 11847
Synergy Business Park, Kingstree Building
110 Centerville Dr., Suite 201
Columbia, SC 29210

Telephone: (803) 896-4400
Fax: (803) 896-4404

www.llr.state.sc.us/Pol/RealEstateCommission/

(Rev. 1/05)

Agency Relationships In South Carolina

The SC Real Estate License Law, in Section 40-57-139 (A) (1) and (2), requires a real estate licensee to provide you this brochure and a meaningful explanation of agency relationships offered by the licensee's Company. This must be done at the first practical opportunity when you and the licensee have substantive contact.

Before you begin to work with a real estate licensee, it is important for you to know the difference between a broker-in-charge and associated licensees. The broker-in-charge is the person in charge of a real estate Company. Associated licensees may work only through a broker-in-charge. In other words, when you choose to work with any real estate licensee, your business relationship is legally with the Company and not with the associated licensee.

A real estate Company and its associated licensees can provide buyers and sellers valuable real estate services, whether in the form of basic customer services, or through client-level agency representation. The services you can expect will depend upon the legal relationship you establish with the Company. It is important for you to discuss the following information with the real estate licensee and agree on whether in your business relationship you will be a customer or a client.

Now You Are a Customer of the Company

South Carolina license law defines customers as buyers or sellers who choose **NOT** to establish an agency relationship. The law requires real estate licensees to perform the following *basic duties* when dealing with any real estate buyer or seller as customers:

- Present all offers in a timely manner
- Account for money or other property received on your behalf
- Provide an explanation of the scope of services to be provided
- Be fair and honest and provide accurate information
- Disclose "adverse material facts" about the property or the transaction which are within the licensee's knowledge

Unless or until you enter into a written agreement with the Company for agency representation, you are considered a "Customer" of the Company, and the Company will not act as your agent. As a Customer, you should not expect the Company or its licensees to promote your best interest, or to keep your bargaining information confidential.

Customer service does not require a written agreement; therefore, you are not committed to the Company in any way.

You Can Become a Client

Clients receive more services than customers. If client status is offered by the real estate Company, you can become a client by entering into a written agency agreement requiring the Company and its associated licensees to act as an agent on your behalf and promote your best interests. If you choose to become a client, you will be asked to confirm in your written representation agreement that you received this brochure in a timely manner.

A seller becomes a client of a real estate company by signing a formal listing agreement with the Company. For a seller to become a client, this agreement must be in writing and must clearly establish the terms of the agreement and the obligations of both the seller and the Company which becomes the agent for the seller.

A buyer becomes a client of a real estate Company by signing a formal buyer agency agreement with the Company. For a buyer to become a client, this agreement must be in writing and must clearly establish the terms of the agreement and the obligations of both the buyer and the Company which becomes the agent for the buyer.

If you enter into a written agency agreement, as a Client, you can expect the real estate Company to provide the following client-level services:

- Obedience
- Loyalty
- Disclosure
- Confidentiality
- Accounting
- Reasonable care and skill

Client-level services also include advice, counsel and assistance in negotiations.

Single Agency

When the Company represents only one client in the same transaction (the seller or the buyer), it is called single agency.

Dual Agency

Dual Agency exists when the real estate Company has two clients in one transaction — a seller client and a buyer client.

At the time you sign an agency agreement, you may be asked to acknowledge whether you would consider giving written consent allowing the Company to represent both you and the other client in a disclosed dual agency relationship.

Disclosed Dual Agency

In a disclosed dual agency, the Company's representation duties are limited because a buyer and seller have recognized conflicts of interest. Both clients' interests are represented by the

ELEMENTS
COLLECTION



SOLD
Summerlake - Lot 6
818 Summerlake Drive Fort Mill, 29715
The London - Interior Unit
2,143 sq. ft. / 3 Bed 2.5 Bath
\$182,900

Summerlake - Lot 7
820 Summerlake Drive Fort Mill, 29715
The Dublin - Interior Unit
2,117 sq. ft. / 3 Bed 2.5 Bath
\$182,900

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SOLD
Summerlake - Lot 8
822 Summerlake Drive Fort Mill, 29715
The London - Interior Unit
2,148 sq. ft. / 3 Bed 2.5 Bath
\$182,900

SOLD
Summerlake - Lot 9
824 Summerlake Drive Fort Mill, 29715
The Dublin - Interior Unit
2,117 sq. ft. / 3 Bed 2.5 Bath
\$182,900

SOLD
Summerlake - Lot 10
826 Summerlake Drive Fort Mill, 29715
The London - Interior Unit
2,143 sq. ft. / 3 Bed 2.5 Bath
\$182,900

- #1 School District in South Carolina
- Only New Home Choice under \$200k in Ft. Mill.
- Less than 5 minutes from Carolina Place Mall for Shopping and Dining.
- 40% More Energy Efficient than a typical used home.
- Homeowners are automatic members to the Regal Manor Swim Club.
- Maintenance free lifestyle.

Highlights:

- 9ft First Floor Ceilings
- Master Bath Dual Bowl Vanity
- Master Bath Garden Tub & Shower Combo
- Patio
- 6' Vinyl Fence
- Townhome Designer Package
 - Stainless Steel Appliances
 - Granite Countertops in Kitchen & Baths
 - Hardwood Flooring in Kitchen, Powder & Foyer
 - Ceramic Tile Bath Flooring
 - Two Tone Paint
 - Upgraded Lighting

For More Information Please Contact:

Rae MacTaggart 704.607.3910 rmacclaggart@truehomesusa.com
Aitssa McDonald 704.993.3933 amcdonald@truehomesusa.com
Chad Poleat 704.522.9393 cpoleat@truehomesusa.com

REV. DATE: 6/26/14



TrueHomes
TrueHomesUSA.com

7600
WHEREAS, the within Declaration is being re-recorded to correct a reference to previously recorded Book and Page numbers of plats for Baden Village Subdivision, Phase 1, referenced in Exhibit "A", page 46 of the Declaration:

FILED FOR RECORD 05/17/2006
AT 01:23:34PM BOOK 08040 PAGE 09072
David Hamilton - Clerk of Court
York County Courthouse
Instrument Number: 000293285

**DECLARATION OF COVENANTS, RESTRICTIONS AND PROVISIONS
FOR MEMBERSHIP IN
REGAL MANOR HOMEOWNERS' ASSOCIATION, INC.**

THIS DECLARATION, is made this 15th day of May, 2006, by COULSTON ENTERPRISES, INC. (hereinafter referred to as "Declarant") of Fort Mill Township, York County, South Carolina. *Revised*

FILED FOR RECORD 05/17/2006
AT 04:32:06PM BOOK 08118 PAGE 00139
David Hamilton - Clerk of Court
York County Courthouse
Instrument Number: 000297732

WITNESSETH: Instrument Number: 000297732

WHEREAS, COULSTON ENTERPRISES, INC., a corporation organized and existing under the laws of the State of South Carolina, is the owner of certain lands (hereinafter referred to as the "Property") described in Article II of this Declaration; and

WHEREAS, Declarant desires to develop its properties in a coordinated manner, with provisions for certain common areas, common access ways and common regulations and cost sharing, all as more particularly set forth herein; and

WHEREAS, Declarant finds that private controls over the use of the land are an effective means of establishing, preserving, maintaining and, in some instances, enhancing, the economic or intangible values pertaining to the use and enjoyment of the Property and, to this end, Declarant desires to establish on the Property certain private land use controls, conditions, restrictions, equitable servitudes, encumbrances, affirmative obligations, burdens, benefits, reservations, easements, assessments, charges and liens (hereinafter referred to as the "Declaration" or these "Covenants"); and

WHEREAS, Declarant deems it desirable to provide a mechanism for the proper administration of these Covenants, including, but not limited to, the ownership, operation and maintenance of common facilities on the Property, the performance of acts of maintenance, administration, assessment, enforcement and other activities set forth in these Covenants and other mandated and discretionary functions consistent with the purpose of these Covenants which benefit the Property; and

Regal Manor Declaration of Covenants
Page 1

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BK08040P60072

**SUMMERLAKE TOWNHOMES
HOA INFORMATION SHEET**

Management Company:	Kuester Management Group 130 Ben Casey Drive Ft. Mill, SC 29708 803.802.0004
Sub- Association Dues:	\$105.00 monthly
Master Dues:	\$150.00 Quarterly Dues
Capital Contribution:	\$250.00
Master Contribution:	\$100.00
Transfer Fee:	\$125.00
Master Insurance policy:	Gill-Holler Insurance 888-661-3938

12F

June 20, 2013



**Summerville, TOA-Sub Association
Regal Manor-Master Association**

Welcome New Owner,

Congratulations on the purchase of your new home. You are a member of two great communities. Summerville Townhomes, is your primary association, and Regal Manor is the Master Association. Below are details of your membership for both Associations.

SUMMERLAKE, TOA

Management Community: Kuester Management Group

Mailing Address: PO Box 3340, Fort Mill, SC 29708

Community Manager: Taylor Nugent

Main Office: (803)802-0004

Email Address: support@kuester.com or taylor@kuester.com.

Monthly Fees: \$105 per month

Association Paid Services

- 1. Master Insurance Policy**
- 2. Exterior Maintenance (After Warranty Period)**
- 3. Irrigation**
- 4. Landscape Maintenance**
- 5. Trash Removal Service (Morning Star Trash-(803)324-2966)**

REGAL MANOR, HOA

Management Community: Kuester Management Group

Mailing Address: PO Box 3340, Fort Mill, SC 29708

Community Manager: Rita Barrett

Main Office: (803)802-0004

Email Address: support@kuester.com or rita@kuester.com

Quarterly Fee: \$150 per quarter

Association Paid Services

- 1. Pool**
- 2. Clubhouse (Usage Fee Applicable)**
- 3. Social Events**

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SUMMERLAKE
COMMON INTEREST AND COMMUNITY INFORMATION DISCLOSURE

PURPOSE OF THIS DOCUMENT: The Common Interest and Community Information Disclosure document is provided to each homebuyer at the time of contract to communicate and disclose information regarding the community.

PROJECT SUMMARY: Summerlake has been platted as a single family townhome community in York County, South Carolina in a PD zoning district.

FUTURE CONSTRUCTION: In order to meet changes in market demand, True Homes reserves the right to change price range, size and design of future homes in the subdivision, subject to zoning restrictions.

ZONING OF ADJACENT PROPERTY: The property to the North, South, East, and West is zoned for residential use.

FIRE & POLICE PROTECTION: Fire protection, Police protection and Emergency Services will be provided by York County.

PUBLIC SCHOOLS: Per the information provided to True Homes, the school assignments are as follows:

High School:	Nation Ford High School
Middle School:	Fort Mill Middle School
Elementary School:	Sugar Creek Elementary School

The school assignments are determined by exact address and will not be determined until residence has been established. Important, this information is subject to change at any point in time.

POSTAL ADDRESS: Summerlake is located in York County, South Carolina with a postal address of Fort Mill, SC 29715. True Homes recommends waiting to order checks, mailing labels, providing change of address notices, etc. until the building permit for the home has been obtained and the house has started construction. Occasionally, street numbers or street names will change at the time of permitting.

WASTE COLLECTION: Each homeowner is responsible for arranging waste collection through the appropriate waste disposal company. The Homeowners Association is not responsible for waste collection.

UTILITIES: Utility companies which serve the community are as follows:

Wastewater Service:	York County
Water Service:	York County
Electric Service:	Duke Energy
Natural Gas:	N/A
Telephone Service:	Comporium
Cable Television:	Comporium

3/15/2014

EASEMENTS: There are various easements within the community and on particular lots which have been granted to the city, county, utility companies or other parties requiring easements. The use of these easements include but is not limited to drainage/storm water, sanitary sewer, phone, electric, cable, gas, landscaping, signs, walls, earth mounds. The easements are shown on the recorded plat and will be listed on the homeowner's title insurance commitment at closing. These easements have been created and are reserved for the use of the city, county, utility companies, developer, builder or homeowners association for access to and installation, maintenance, repair and replacement of the above listed improvements. Except as installed by the city, county, utility companies, developer, builder or homeowners association, no improvements or permanent structures, including without limitation, fences, patios, decks, driveways, and walkways, shall be erected or maintained in or upon said easements. Upon closing on the homes, the homeowner will own the lot including the easement area on the lot shown on the recorded plat and closing survey and will be able to use the easement area in such a manner that does not infringe upon the intended use as stated above.

DITCHES OR SWALES: Each homeowner who has any party of an open drainage ditch or swale on his lot has the responsibility to keep such continuously unobstructed and in good condition, including regular mowing. These swales are planted with grass seed for erosion control during development and will not be graded as part of home construction. Homeowners will need to over-seed the rear yard and drainage swale with lawn seed to establish residential standard grass cover. Any soil erosion that occurs within a drainage swale due to not establishing grass cover will be the responsibility of the homeowner to have the swale resorted to ensure proper drainage.

EXISTING TREES AND VEGETATION: True Homes does not guarantee the number of trees or amount of vegetation that will exist on any lot after the land development and house construction. Furthermore, True Homes does not guarantee the continued life of any vegetation after said development and construction.

FENCE ROWS AND PERIMETER LOTS: Existing wooded areas and fence rows that will remain after the lots are developed that include trees, shrubs and brush will not be cleaned out, graded or seeded; they will be left natural or in "as-is" condition.

TREE PROTECTION AREA: There may be tree protection areas within common areas or on individual lots within the community. These areas have been required by the city or county and are designated on the recorded plat as tree protection areas or easements. The purpose of these areas is to preserve the natural characteristics of the areas including topography, trees, brush, etc. True Homes does not guarantee the continued life of any tree protection area or vegetation after land development and house construction.

SLOPES AND LAKE BANKS: Slopes and lake banks within the common areas are mowed or maintained by the Association; however, slopes and lake banks that exist within the boundaries of a Lot are to be mowed or maintained by the Lot owner. Please review your plot plan to determine the boundaries of your lot and its relationship to the slopes or lake banks.

SUBDIVISION STREETS DISCLOSURE STATEMENT: Developer shall construct all roadways shown on the approved subdivision plat(s) in accordance with the standards for subdivision streets adopted by the North Carolina Department of Transportation for acceptance into the State-maintained highway system. The rights-of-way and design of the streets on the approved subdivision plat(s) have been approved by the Division of Highways prior to Developers conveyance of title to any lot fronting thereon. Following

3/15/2014

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all construction of the streets by Developer, the streets will be maintained but the Homeowner's Association until such time as the Department of Transportation requirements have been met for acceptance of maintenance of the streets. Once such requirements have been met, Developer will take all measures necessary to have the streets accepted for maintenance by the Department of Transportation.

BASINS: Temporary sediment basins are constructed to control sediment and erosion resulting from construction within the community. Basins will continue to exist once homes are built and occupied on other lots. The lots adjacent to the basins have stockpiles of soil that will be used to fill sand basins at some time in the future. The city or county dictates when the basins can be closed. The developer (not True Homes) is responsible for maintenance and closure of said basins.

IMPERVIOUS AREAS: There may be an Impervious Area Restriction as required by Municipal Watershed Regulations. Impervious Area Restrictions for every lot will be recorded before any lot is conveyed to a buyer and shall be binding on future owners of said lot. All Owners of lots shall not alter or add any structure or ground cover to a lot which prevents the absorption of surface water into the soil of the lot. This shall include, but is limited to, any structure or ground cover consisting of asphalt, concrete, stone brick, terrazzo, roofing, ceramic or masonry tile or any other natural or man made material that prevents the absorption of surface water into the soil of a lot.

HANDICAP RAMPS: True Homes makes every attempt to avoid the placement of handicap ramps within driveways. The municipalities determine the location of these ramps, and there are some instances where placement within a driveway cannot be avoided, such as T-intersections. Please review your plot plan to determine the location of a handicap ramp if applicable.

STREET STUBS: There may be street stubs planned within the community. These street stubs are required by the municipalities and are intended to be extended into the adjoining properties when those properties develop. The homeowner should review the subdivision map to review the location of possible street stubs

STREET LIGHTS: If streetlights are installed, they will be maintained and paid for by the homeowners association. The placement of streetlights will be determined by the electric company and will be installed per municipal requirements.

HOMEOWNERS ASSOCIATION INFORMATION

ASSOCIATION & DECLARATION: Purchase of your home will automatically include you in the governing body of a Homeowner's Association, if the entity is formed for this community. The Association owns and maintains all common areas or common improvements such as ponds, amenity areas, landscaping and entryways that are present within the community. The Association also collects an annual service fee (See Association Dues information below) from all homeowners and disburses funds related to the maintenance and ownership of these areas. Your rights and remedies as a member of the Association are fully described in the Declaration, By-Laws, and Articles of Incorporation. The trash collection is provided through the HOA.

RESPONSIBILITIES: The information provided below defines responsibilities (if any) related to the Homeowner's Association.

3/15/2014

Declarant: Carolina Development Services

The entity responsible with the authority to make decisions for the Association (i.e. establish budget and approve exterior improvements). The Declarant has the right to hire a management company to assist in completion of necessary responsibilities for an Association.

HOA Management Company: Kuester Management Group 888-600-5044

The company is hired by the Declarant to provide management services for the operation of a Homeowner's Association. The Management Company assigns a property manager to a Community/Association to assist homeowners and to manage required responsibilities/activities of that Association.

Builder: True Homes 704-238-1229

The Builder is responsible to fulfill any commercial obligations set forth in the purchase agreement between the Builder and Developer. Builder is not responsible for management services with regard to the Homeowner's Association.

USE RESTRICTIONS: Use restrictions are included within the Declaration of Covenants, Conditions, and Restrictions, a copy of which is provided in the sales process. Use restrictions provide details for what is permitted as an exterior improvement within the community. Please refer to the Declaration for this information and contact Declarant/HOA Management Company with any questions.

GOVERNING MUNICIPAL ORDINANCES: The County and/or City ordinances may affect any proposed change to your home. There may be instances where a change is approved through the Homeowner's Association but may not be allowed through county and/or city. The homeowner must check with the county and/or city and obtain any permits or approvals that may be required.

HOMEOWNERS ASSOCIATION DUES: When applicable, the Assessments levied by the Association shall be used exclusively for the purpose of preserving the values of the Lots within the community and for the Association's obligations relating to the improvement, repairing, operating, and maintaining the Common Areas.

The current assessments are \$105.00 per month for the townhomes association. In addition there is \$150.00 per quarter due to the master association. Please note that the HOA assessment amount is subject to change from fiscal year to fiscal year. A copy of the HOA budget is available by contacting the Association Management Company as provided below.

CAPITAL CONTRIBUTIONS: This fee may be required to be collected per the Declaration of Covenants, Conditions, and Restrictions. This fee can be a one-time fee paid at the time of closing on a home whether new construction or re-sale of a home. The capital contribution for this community is \$250.00. There is also a transfer fee of \$125.00. Please refer to the Declaration for specific information regarding this fee if it is applicable.

3/15/2014

KJF

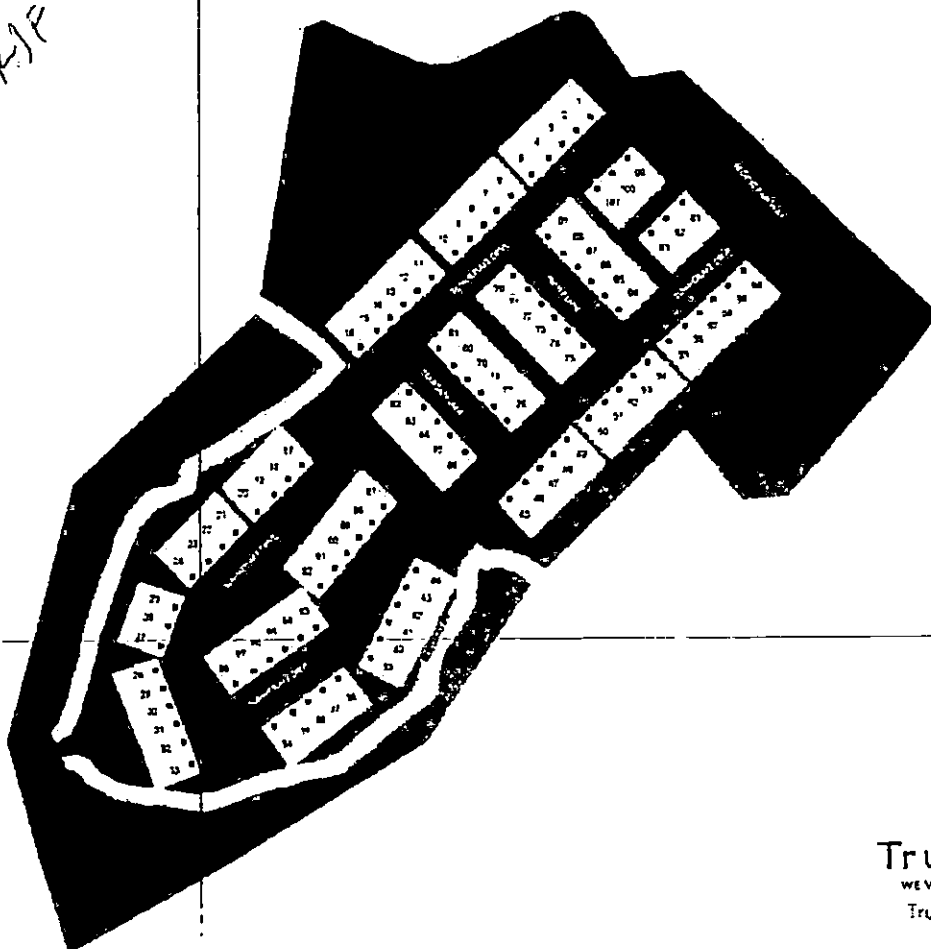
APPROVAL FOR EXTERIOR IMPROVEMENTS: Any proposed exterior change or improvement to your home must receive prior approval of the Architectural Control Committee of the homeowners association through filing the appropriate application.

3/15/2014

Summerlake
Community Group

MENTAL
CONNECTION

KJP



TrueHomes

WE VALUE WHAT YOU VALUE

TrueHomesUSA.com

TrueHomes

WE VALUE WHAT YOU VALUE

Buyer Contact and True Connect

Community: SML Type (Dirt/Spec): SPEC
Lot: 7 Source: Walk-in (no Realtor
(R,W,P,Ref,HBC,O)
Buyer: Karin Josue Fuentes CoBuyer: _____
Home Phone: (704)491-9468 Cell Phone Number: _____
Buyer's Current Address: 8417 Riverbirch Drive Apt. 304 Charlotte, NC 28210
Realtor: _____ Office: _____
Phone: _____ Email: _____
Loan Officer: Kristi Hooks Lender: Bank of NC
Phone: (704)488-2765 Email: Khooks@bankofnc.com

WHAT IS TRUE CONNECT?

We know that one of the keys to *your* satisfaction is our ability to timely and accurately communicate with you. We would like to send you a series of automated e-mail messages to keep you informed of our progress.

YOUR E-MAIL ADDRESS?

Please confirm your *primary* e-mail address or addresses below:

Buyer: KJ13569@gmail.com

Co-Buyer: _____

I/we authorize True Homes and its affiliates and partners to use this e-mail address to communicate important information about my/our home before, during and after construction. I/we will be notified of important dates and times through e-mail. I/we will notify True Homes if this address changes. I/we agree to accept any notices required by the contract to the sent via True Connect.

Karin Josue Fuentes
Karin Josue Fuentes
Buyer

7/19/14
Date

Chad Poteat
Chad Poteat
True Advisor

7-19-14
Date

Revised: 7/11/2014

Contract (SPEC) (071114)

ELECTRONICALLY FILED - 2022 Jun 30 4:09 PM - YORK - COMMON PLEAS - CASE#2020CP4603592

Residential Building Permit
102 - Single Family Houses Attached



Permit Number: 201401498

Date Issued: 05/27/2014

Site Address	2006 FIREFLY LN	Tax Map ID	7290701012
Owner Name	CAROLINA DEVELOPMENT SERVICES LLC	Subdivision	SUMMERLAKE TWH
Contractor	James Mathew A Hood	Lot Number	71
Company	True Homes		
Permit Description	Townhouse Lot 71		

<u>Date</u>	<u>Name</u>	<u>Status</u>	<u>Inspector</u>	<u>Comment</u>
06/09/2014	Plumbing Under Slab	Approved	Danny Scoggins	
06/17/2014	Slab	Not Approved	Danny Scoggins	cancel \$0 Fee Charged
06/17/2014	Garage Slab	Not Approved	Danny Scoggins	cancel \$0 Fee Charged
06/17/2014	Footing	Not Approved	Danny Scoggins	cancel \$0 Fee Charged
06/18/2014	Footing	Not Approved	Danny Scoggins	cancel \$0 Fee Charged
06/18/2014	Slab	Not Approved	Danny Scoggins	cancel \$0 Fee Charged
06/18/2014	Garage Slab	Not Approved	Danny Scoggins	cancel \$0 Fee Charged
06/19/2014	Footing	Approved	Danny Scoggins	
06/19/2014	Garage Slab	Approved	Danny Scoggins	
06/19/2014	Slab	Approved	Danny Scoggins	
07/24/2014	Rough Framing	Approved	Larry Harrison	
07/24/2014	Rough Electrical	Approved	Larry Harrison	
07/24/2014	Rough Plumbing	Approved	Larry Harrison	
07/24/2014	Rough Mechanical	Approved	Larry Harrison	
07/24/2014	House Wrap	Approved	Larry Harrison	
07/29/2014	Insulation	Approved	Larry Harrison	
08/27/2014	Temporary Power	Approved	Larry Harrison	
09/23/2014	Final Stormwater	Approved	Christine Taylor	Per JF
09/23/2014	Final Zoning	Approved	Zoning Inspections	
09/23/2014	Final	Approved	Larry Harrison	

EXHIBIT

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09/24/2014	Final Utility	Approved	Util Inspections
09/24/2014	Final Transportation	Approved	Trans Inspections

AFFIDAVIT OF SERVICE

Case: 2020-CP-46-03592	Court: In the Court of Common Pleas	County: York, SC	Job: 5500249 (True Homes)
Plaintiff / Petitioner: SUMMERLAKE TOWNHOMES HOMEOWNERS' ASSOCIATION, INC. and SUSAN HAGY and KARIN FUENTES, individually and on behalf of all others similarly situated		Defendant / Respondent: TRUE HOMES, LLC; CAROLINA DEVELOPMENT SERVICES, LLC; SUMMERLAKE PROPERTIES, LLC; RJB LEGACY COMPANY f/k/a Barefoot & Company, LLC; BMC STOCK HOLDINGS, INC. a/k/a Barefoot & Company, LLC; AIRTRON, INC.; and MPK GRADING AND EROSION CONTROL, LLC	
Received by: Whitesell Investigative Services Inc		For: Steinberg Law Firm, LLP	
To be served upon: Wesley Hinson as Registered Agent for True Homes		Court Date:	

I, Cedric Caldwell, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

Recipient Name / Address: D. Hope Bergamini for True Homes, 2649 Brekonridge Centre Dr, Monroe, NC 28110

Manner of Service: Corporation, Mar 25, 2021, 4:01 pm EDT

Documents: Summons and Complaint (Received Mar 25, 2021 at 2:17pm EDT)

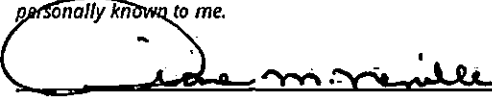
Additional Comments:

1) Successful Attempt: Mar 25, 2021, 4:01 pm EDT at 2649 Brekonridge Centre Dr, Monroe, NC 28110 received by D. Hope Bergamini for True Homes. Age: 46; Ethnicity: Caucasian; Gender: Female; Weight: 150; Height: 5'6"; Hair: Brown; Eyes: Brown; Other: No glasses ; Attempted service at the address provided. Made contact with D. Hope Bergamini, in Land Development, who stated she is authorized to accept documents. She accepted service without incident.

 3-26-21
Cedric Caldwell Date

Whitesell Process Service
PO Box 2511
Rock Hill, SC 29732
803-327-6974, ext 2

Subscribed and sworn to before me by the affiant who is
personally known to me.


Notary Public

3-26-21 3-4-24
Date Commission Expires

DIANE M. NEVILLE
Notary Public, State of South Carolina
MY COMMISSION EXPIRES MARCH 4, 2024

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

WOLFE, CAMPBELL, GUNST & HINSON, PLLC

/s/ Joshua R. Hinson

Brian E. Wolfe (SC State Bar No. 77463)

Robert C. Gunst, Jr. (SC State Bar No. 102957)

Joshua R. Hinson (SC State Bar No. 102270)

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Attorneys for Appellant True Homes, LLC