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SC Court of Appeals

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

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 PJL Construction; and Pedro Villareal-Conception d/b/a CVP Construction, Defendants,

of which True Homes, LLC is the Appellant.

AMENDED RECORD ON APPEAL VOL.I

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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; 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 PJL CONSTRUCTION; and PEDRO VILLAREAL-CONCEPCION d/b/a CVP CONSTRUCTION,

Defendants.

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

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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.

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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

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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

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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.

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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.").

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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

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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

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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/Other

So Ordered

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

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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, LLC; BMC STOCK HOLDINGS, INC. a/k/a Barefoot & Company, LLC; AIRTRON, INC.; and MPK GRADING AND EROSION CONTROL, LLC, Defendants.	IN THE COURT OF COMMON PLEAS CASE NO.: 2020-CP-46-03592 **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

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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/Stay

So Ordered

s/Daniel D. Hall 2753

ELECTRONICALLY FILED - 2021 Sep 20 12:02 PM - 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, LLC; BMC STOCK HOLDINGS, INC. a/k/a Barefoot & Company, LLC; AIRTRON, INC.; and MPK GRADING AND EROSION CONTROL, LLC, Defendants.	IN THE COURT OF COMMON PLEAS CASE NO.: 2020-CP-46-03592 **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.

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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.

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

York County, South Carolina
_____, 2021

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ELECTRONICALLY FILED - 2021 Sep 20 12:02 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/Consent Order

So Ordered

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

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

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 PJL CONSTRUCTION; and PEDRO VILLAREAL-CONCEPCION d/b/a CVP CONSTRUCTION,

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

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

ELECTRONICALLY FILED - 2022 Jun 14 4:36 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/Amend

So Ordered

s/Daniel D. Hall 2753

FORM 4

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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 .

Cvp Construction
Pedro Villareal Concepcion
Pjl Construction
Pedro Dejesus Lopez
Ayalas Window Installations Llc
T&A Excavating Llc
Alside Inc
Salloum 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

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

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.

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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 FILED - 2020 Nov 25 9:16 PM - 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, LLC; BMC STOCK HOLDINGS, INC. a/k/a Barefoot & Company, LLC; AIRTRON, INC.; and MPK GRADING AND EROSION CONTROL, LLC, Defendants.	IN THE COURT OF COMMON PLEAS CASE NO.: 2020-CP-46-___ **SUMMONS**

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

ELECTRONICALLY FILED - 2020 Nov 25 9:16 PM - YORK - COMMON PLEAS - CASE#2020CP4603592

ELECTRONICALLY FILED - 2020 Nov 25 9:16 PM - 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, LLC; BMC STOCK HOLDINGS, INC. a/k/a Barefoot & Company, LLC; AIRTRON, INC.; and MPK GRADING AND EROSION CONTROL, LLC, Defendants.	IN THE COURT OF COMMON PLEAS CASE NO.: 2020-CP-46-___ **COMPLAINT**

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

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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

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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

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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

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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.

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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.

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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.

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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

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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.

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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

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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.

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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.

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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;

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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;

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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

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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; 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 PJL CONSTRUCTION; and PEDRO VILLAREAL-CONCEPCION d/b/a CVP CONSTRUCTION,

Defendants.

FIRST AMENDED SUMMONS

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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, 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 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.

THE STEINBERG LAW FIRM, L.L.P.
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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; 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 PJL CONSTRUCTION; and PEDRO VILLAREAL-CONCEPCION d/b/a CVP CONSTRUCTION,

Defendants.

FIRST AMENDED COMPLAINT

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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 PJL Construction ("PJL 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, PJL 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

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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.

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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.

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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. PJL 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

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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.

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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

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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

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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

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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.

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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

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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,

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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

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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.

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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.

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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

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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.

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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.

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Attorneys for Plaintiffs

January 22, 2022

Summerville, South Carolina

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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 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; 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 PJL 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.;

SECOND AMENDED SUMMONS

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.

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

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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 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; 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 PJL 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.;

SECOND AMENDED COMPLAINT

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

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DeJesus Lopez d/b/a PJL Construction ("PJL 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, PJL 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

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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.

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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.

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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.

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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.

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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. PJL 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

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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.

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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.

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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.

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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

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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.

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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

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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

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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;

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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.

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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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June 15, 2022

Summerville, South Carolina

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

SUMMERLAKE TOWNHOMES HOMEOWNERS' 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.

TRANSCRIPT OF RECORD

2020-CP-16-3592

May 17th, 2022

B E F O R E:

THE HONORABLE WILLIAM A. McKINNON, Judge.

A P P E A R A N C E S:

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.

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

THE COURT: That's exactly right.

(Pause.)

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

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

MR. HINSON: Yes, sir.

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

(Pause.)

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

MR. QUINN: I can hear you.

Can you hear me?

THE COURT: I can hear you.

MR. QUINN: Okay.

THE COURT: Much better.

Okay. The last---

MR. QUINN: (Indiscernible).

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

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

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

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

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

Mr. Quinn, I can't hear you.

(Pause.)

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

THE COURT: Yes, sir, I can.

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

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

THE COURT: Okay.

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

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

THE COURT: I, I did not.

MR. QUINN: Oh, okay.

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

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

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

What is the other one?

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

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

Ms. Strait, are you on?

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

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

THE CLERK: Yes, sir.

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

(Pause.)

THE COURT: All right. Yes, sir.

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

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

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

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

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

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

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

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

THE COURT: Okay. Hold on.

(Pause.)

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

MR. QUINN: Your Honor, we included it in Exhibit A. We served them through the York County Sheriff's Office. Personal service on Mark Fisher who's the registered agent for that entity.

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

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

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

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

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

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

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

THE COURT: I --.

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

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

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

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

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

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

THE COURT: All right. Mr. Hinson.

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

Josh Hinson here on behalf of True Homes.

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

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

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

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

contract if they want the benefits of that contract.

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

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

MR. HINSON: Sure.

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

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

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

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

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

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

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

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

Is that what you're relying on?

MR. HINSON: Yes, sir.

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

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

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

MR. HINSON: Understood.

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

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

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

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

MR. HINSON: No apostrophe, Your Honor.

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

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

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

All right. I'm there.

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

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

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

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

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

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

MR. HINSON: Yes, sir.

THE COURT: Yes, sir.

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

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

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

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

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

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

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

THE COURT: Well, that's (indiscernible).

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

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

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

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

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

behalf of a class of all of the townhomes owners.

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Let me stop you.

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

to purchase it?

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

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

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

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

point -- on that.

MR. HINSON: Yes, sir, Your Honor.

THE COURT: Yeah.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you, Your Honor.

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

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

So how do you distinguish the Bradley case?

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

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

THE COURT: What difference does that make under Brentwood?

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

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

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

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

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

MR. QUINN: Yes, Your Honor.

THE COURT: All right.

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

THE COURT: Thank you.

MR. HINSON: Thank you, judge.

THE COURT: Thank you, counsel.

MR. QUINN: Thank you, judge.

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

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

_____

PAMELA E. GREEN, Court Reporter

ELECTRONICALLY FILED - 2021 May 20 12:51 PM - YORK - COMMON PLEAS - CASE#2020CP4603592

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

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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 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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ELECTRONICALLY FILED - 2022 Feb 15 4:41 PM - YORK - COMMON PLEAS - CASE#2020CP4603592

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; 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 PJL CONSTRUCTION; and PEDRO VILLAREAL-

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

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 LIMITAITON, 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:

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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

/s/ Joshua R. Hinson
Brian E. Wolfe (SC State Bar No. 77463)
Robert C. Gunst, Jr. (SC State Bar No. 102957)
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Attorneys for Defendant True Homes, LLC

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TrueHomes

WE VALUE WHAT [illegible]

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.

X Karin Josue Fuentes — Date 8/27/14

Chad Poteat — Date 8-27-14

Nick Bacon — Date 8/20/14

Seller Operations Partner: Operations Partner
Credit/Closings/Legal

Contract (SPEC) (081814)

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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 Riverbirch 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 Documents; 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: **SML** Lot: **71** Home Address: **2006 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 pluming 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 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 Sellers 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 mortage 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 (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 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, 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.

X Karin Josue Fuentes Buyer Signature	8/27/14 Date	Seller Signature	8-27-14 Date
Karin Josue Fuentes Buyer Printed Name		Sales Counselor Printed Name	
Buyer Signature	Date	Operations Partner Signature	8/28/14 Date
Buyer Printed Name		Operations Partner Printed Name	

Nick Bacon
Operations Partner
Credit/Closings/Loans

Revised: 8/18/2014

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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 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 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 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 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 binds the property. Seller makes no representation regarding the suitability of the homesite 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 Damage 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 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 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 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 KJF

DEPOSIT ON File
Rewrite from SML-7

TrueHomes

[redacted]

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: _____

Total Initial Deposit: $500

Type: DIRT

Stage: 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
6709600271

7/19/14 Date

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 MP

[redacted]

Sales Counselor Signature: Chad K Date: 7/19/2014

Chad Poteat

Revision Date: 7/11/2014

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TrueHomes

WE VALUE WHAT YOU VALUE

SELLER PAID CLOSING COST CONTRIBUTION

Buyer: Karin Josue Fuentes

Community: SML

Home 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 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:

$3,750

Buyer: X Karin Josue Fuentes — Karin Josue Fuentes — Date 8/27/14

Buyer: _____ — Date

This Addendum is binding Seller only upon Authorized Operations Partner Signature below:

Operations Partner: 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 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: 8/18/2014

Fuentes SML-71

TrueHomes

WE VALUE WHAT IS VALUED

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: ***Showroom Not Available***

☐ **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: ***Showroom Not Available***

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: X Karin Josue Fuentes — Karin Josue Fuentes — Date 8/27/14

Co-Buyer: _____ Date _____

True Advisor: _____ — Date 8-27-14

Seller Operations Partner: _____ — Date 8/28/14

Operations Partner
Credit/Closings/Legal

Revision date: 8/18/14

Contract (SPEC) (081814)

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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 Centerview Dr., Suite 201
Columbia, SC 29210

Telephone: (803) 896-4400
Fax: (803) 896-4404

www.llr.state.sc.us/Pol/RealEstateCommission/

(Rev. 1/05)

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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

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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

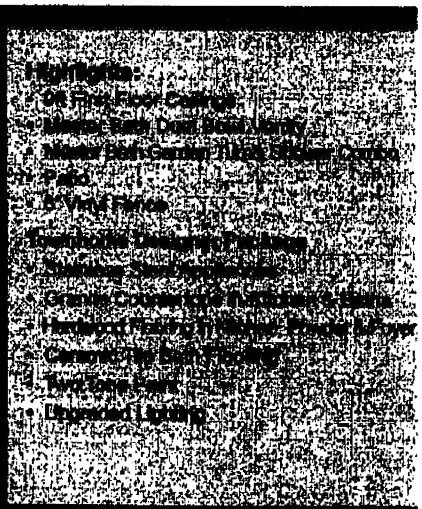
Summerlake - Lot 72
2008 Firefly Ln Fort Mill, 29715
The London - Interior Unit
3 Bed 2.5 Bath
$190,900

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

- #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

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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

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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

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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. You 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.

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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.

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APPROVAL FOR EXTERIOR IMRPOVEMENTS: Any proposed exterior change or improvement to your home must receive prior approval of the Architectural Control Committee of the homeowners association though filing the appropriate application.

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FILED FOR RECORD 05/17/2006
AT 01:25:36PM BOOK 08040 PAGE 00072
David Hamilton - Clerk of Court
York County Courthouse
Instrument Number: 000293285

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:

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 06/14/2006
AT 04:32:06PM 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

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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

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June 20, 2013

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Kuester COMPANIES

Summeralake, 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

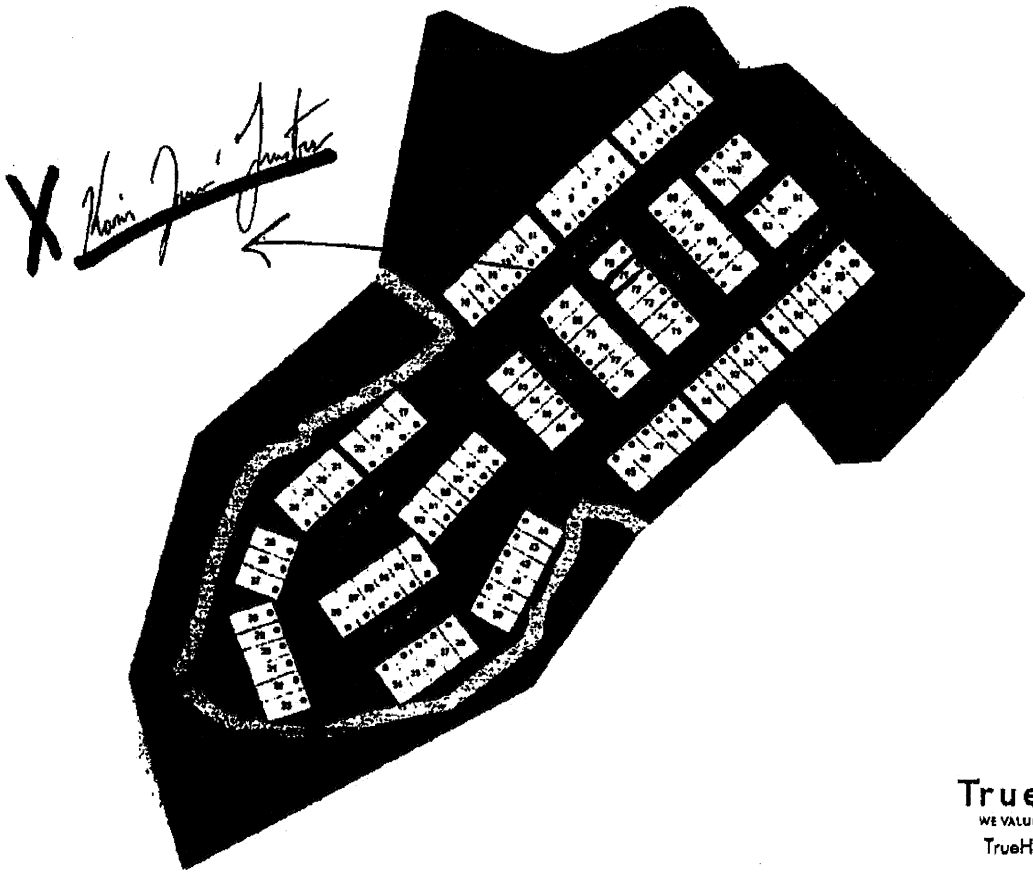
Association Paid Services

1. Pool
2. Clubhouse (Usage Fee Applicable)
3. Social Events

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Summerlake



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TrueHomesUSA.com

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TrueHomes

WE VALUE WHAT YOU VALUE

[redacted]

Buyer Contact and True Connect

Community: SML

Type (Dirt/Spec): SPEC

Lot: 71

Source: Walk-in (no Realtor)
(R,WI,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 the sent via True Connect.

X Karin Josue Fuentes

Karin Josue Fuentes
Buyer

8/27/14
Date

Date

CoBuyer Chad Poteat
Chad Poteat
True Advisor

8-27-14
Date

Revised: 8/18/2014

Contract (SPEC) (081814)

TrueHomes

IT'S ALL ABOUT U

CLOSING EXPECTATION ADDENDUM

Buyer(s): Alex Fresco **Community/Lot:** SML 88 ("Home")

Buyer agrees to close the Home as follows:

HOME IS NOT YET COMPLETE. Home is currently under construction. Closing to occur immediately following Home Completion as provided in the Agreement.

*Buyer agrees to close by the date above so long as the home is ready and available to close by this date. Buyer acknowledges that the Closing may be delayed by unanticipated municipal delays, construction delays, or closing capacity. Seller will provide Buyer approximately 7 days advance written notice of the name and address of the Closing 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.

This Addendum will bind Seller only upon Authorized Operations Partner's Signature below:

Buyer Signature	Date: 10-11-15	True Advisor Signature	Date: 10-11-15
Alex Fresco		Chad Poteat	
CoBuyer Signature	Date	Operations Partner Signature	Date: 10/16/15
		Nick Bagnoli Operations Partner Credit / Closings / Legal	

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TrueHomes

IT'S ALL ABOUT U

HOME PURCHASE AGREEMENT
(Inventory Home)

TRUE HOMES, LLC, a Delaware Limited Liability Company located in Charlotte, NC ("Seller") and

Alex Fresco (jointly and severally known as "Buyer")

currently residing at: **6730 Courtney Park Rd Apt 6303 Charlotte, NC 28217** ("Existing Home")

enter this agreement on the date signed below. This document (including the Additional Terms and Conditions beginning on page 2), the Custom Features Addendum (if applicable); the Warranty Documents; 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 Home will be placed on the lot consistent with the plot plan where possible, but Handing and the final placement of the Home is subject to change and determined by site conditions.
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	Lot	Floor Plan Name	Floor Plan Number
Summerlake	88	Elon	2266

Collection	Elevation	Handing	New Home Address
Integrity		LEFT	923 SUMMERLAKE DR Fort Mill SC 29715

4. **INCLUDED FOUNDATION TYPE**: Mono Slab
5. **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 (collectively the "Purchase Price"). Option pricing will be determined at the time of contract, so long as the Buyer completes the selections appointment within 60 days. For Selections completed more than 60 days after the date of the contract, all option pricing will be determined on the date of Buyer's selection appointment.

INITIAL PURCHASE PRICE

$212,900.00

6. **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, receipt of Loan Prequalification, or the commencement of construction. Failure to pay any deposit when due is an event of default and may result in Seller's Termination of the Purchase Agreement, and Buyer's loss of Deposit.

Initial Deposit	Initial Deposit (Preferred Lender Discount)
$2,000.00	$500.00

7. **ADDITIONAL DEPOSIT**. Buyer agrees to pay the following Additional Deposit at the Showroom upon completion of selections:

Integrity/Elements/Tribute: An additional payment in the Showroom equal to 5% of TOTAL CUSTOM SELECTIONS for financed transactions. For CASH transactions, the Initial Deposit plus the Additional Deposit should equal 10% OF THE TOTAL PURCHASE PRICE.

Buyer Signature — Date: 10-11-15

Alex Fresco

CoBuyer Signature — Date

True Advisor Signature — Date: 10-11-15

Chad Poteat

Nick Bacon

Operations Partner Signature — Date: 10/16/15

Operations Partner

Credit / Closings / Legal

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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 Sellers 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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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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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 **$7,500** 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	10-11-15 Date	True Advisor Signature	10-11-15 Date
Alex Fresco		Chad Poteat	
CoBuyer Signature	Date	Nick Bason Operations Partner Operations Partner Signature	10/16/15 Date
		Credit / Closings / Legal	

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Customer Deposit Receipt

Type: SPEC

Community/Lot: SML 88

Buyer(s) Name(s): Alex Fresco

Property Address: 923 SUMMERLAKE DR Fort Mill SC 29715

Loan Officer: Justin Wells

Lender E-mail: ~~justin.wells@allentate.com~~ Justin.wells@movemt.com

[redacted]

Deposit Amount: $500.00

[redacted]

ALEX FRESCO
6730 COURTNEY PARK RD APT 6303
CHARLOTTE NC 28217-3229

243
66-19/530 NC
41

10/12/2015
Date

Pay to the Order of TRUE HOMES $ 500.00

FIVEHUNDRED DOLLARS 00/100 Dollars

Bank of America

ACH R/T 053000196

For DEPOSIT [redacted] Alex Fresco

Harland Clarke

AMERICA THE BEAUTIFUL

True Advisor Signature: Chad Poteat

Date: 10-11-15

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TOWNHOME INVESTMENT ADDENDUM

Buyer(s): Alex Fresco

Community: Summerlake

Homesite: 88

Buyer affirms and represents the following to the Seller:

☒ Buyer **WILL** use the Home as a Primary Residence for him or herself, or an immediate family member. Buyer will not rent the home during the first twelve (12) months after Closing.

☐ Buyer **WILL NOT** use the Home as a Primary Residence after Closing and intends to purchase the Home as as rental property investment. Buyer plans to rent the home during the first twelve (12) months after Closing.

Alex Fresco — 10-12-15
Date

Date

Date

Nick Bacon — 10/16/15
Seller Operations Partner — Date
Operations Partner
Credit / Closings / Legal

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INVENTORY HOME CHANGE ADDENDUM

(SHOWROOM NOT AVAILABLE)

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): Alex Fresco **Community/Lot:** SML 88 ("Home")

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. Since all of the material has already been ordered, changes may only be made as described below.
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 would apply to the Purchase Price at closing.
3. Buyer specifically consents to Seller's release of the Home as originally selected by Seller, other than with the addition of any changes included in the Purchase Agreement.

NO SHOWROOM CHANGES AVAILABLE. Changes available: Appliances, Garage Door Openers, and/or Window Blinds. Additionally, the Buyer may add Hardwood Flooring to match an existing selection of Hardwoods already scheduled for install in the home, or a wooden deck. The Hardwood or Deck addition will require price verification to determine additional costs of the change by submission of a Gold Change Order (GCO) request, and the payment of an additional deposit equal to the cost of the change. Other than these potential changes, True Advisor has reviewed all selections with Buyer, and Buyer is accepting the home as selected. Any changes or additions must be included in the Agreement, and also submitted on a GCO. Buyer will NOT complete Selections in the Showroom and will pay an additional deposit if the addition of these items increases the Purchase Price, or to add Flooring or a Deck.

Alex Fresco — Buyer Signature — 10-11-15 — Date

Alex Fresco

CoBuyer Signature — Date

True Advisor Signature — 10-11-15 — Date

Chad Poteat

Nick Bacon — Operations Partner — Operations Partner Signature — 10/16/15 — Date

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SELLER PAID CLOSING COST CONTRIBUTION

Buyer(s): Alex Fresco **Community/Lot:** SML 88 **("Home")**

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 would provide you with a closing cost contribution up to: $1,000.00 In addition to the amount paid by True Homes, the Preferred Lender would also provide you with a closing cost credit up to: $500

2. For **Cash Buyers**, True Homes will also pay up to: $1,000.00 However, there is no Lender involved, so there would be no additional Lender contribution.

3. 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

4. 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: $0.00

Buyer Signature	Date	True Advisor Signature	Date
10-11-15		10-11-15	
Alex Fresco		Chad Poteat	
CoBuyer Signature	Date		

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Confirmation of Agency Relationship and Offer of Compensation

THIS DOCUMENT IS NEITHER AN ADDENDUM TO NOR A PART OF ANY OFFER TO PURCHASE AND CONTRACT. IT SHALL NOT BE CONSTRTUED TO AFFECT OR MODIFY ANY LISTING AGREEMENT ENTERED INTO BETWEEN THE LISTING AGENT AND THE SELLER.

Buyer: Alex Fresco **Seller: True Homes, LLC**

Community/Lot: SML 88 **("Home")** **Property:** 923 SUMMERLAKE DR Fort Mill SC 29715

Regarding any negotiations between Buyer and Seller for the Property, Buyer Agent and Listing Agent (or Seller, if the Property is not listed) confirm the following:

1. **Agency Relationship**

   (a) Buyer Agent hereby confirms that Buyer Agent is acting solely as the agent of the Buyer, and in this capacity (I) has not acted as the agent or subagent of the Seller or the Listing Agent; (ii) owes fiduciary duties only of the Buyer in this transaction; and (iii) has not acted as a dual agent for the Seller and Buyer.
   (b) If the Property was listed with a multiple listing service, such listing shall not create any agency relationship between Buyer Agent and either Seller or Listing Agent. Buyer Agent hereby expressly rejects any implied or express offer by Seller or Listing Agent of any agency sub agency relationship unless otherwise disclosed in full.

2. **Fee Arrangement**

   (a) Listing Agent (or Seller, if the Property is no listed) hereby confirms that its offer of compensation to Buyer Agent regarding any sale of the Property to Buyer shall be as follows:
   (b) Agent's entitlements to such compensation will be determined by Agent's performance as the procuring cause of any sale of the Property to Buyer. **The signature of Listing Agents (or Seller, if the Property is not listed) on this document does not constitute the Listing Agent's or Seller's acknowledgment that Buyer Agent is the procuring cause of any such sale.** Payment of said fee to Buyer Agent shall not create any agency of sub agency relationship between Buyer Agent and either Seller or Listing Agent.
   (c) If Buyer Agent has received or is to receive any other fee(s) in connection with the sale of the Property, Buyer Agent hereby confirms that such fee(s) are as follows: 3%

Buyer Agent (Firm):	**Allen Tate Company**	Buyer Agent:	**Cynthia Crisp**
Agent Phone #		Agent E-mail Address	**cindy.crisp@allentate.com**

Buyer Agent Signature — Date — Listing Agent (Firm) (or Seller, if Property is not listed) — Date

ACKNOWLEDGEMENT BY BUYER AND/OR SELLER (Optional—see Guidelines)

Seller and Buyer hereby acknowledges receipt of a copy of this form and consents to the free arrangements set forth herein.

Buyer Signature — 10-11-15 Date — True Advisor Signature — 10-11-15 Date

Alex Fresco — Chad Poteat

CoBuyer Signature — Date — Operations Partner Signature — 10/16/15 Date

Nick Baker
Operations Partner
Credit / Closings / Legal

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EQUAL HOUSING OPPORTUNITY

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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.

AF

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 Centerview Dr., Suite 201
Columbia, SC 29210

Telephone: (803) 896-4400
Fax: (803) 896-4404

www.llr.state.sc.us/Pol/RealEstateCommission/

(Rev. 1/05)

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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.

AF

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.

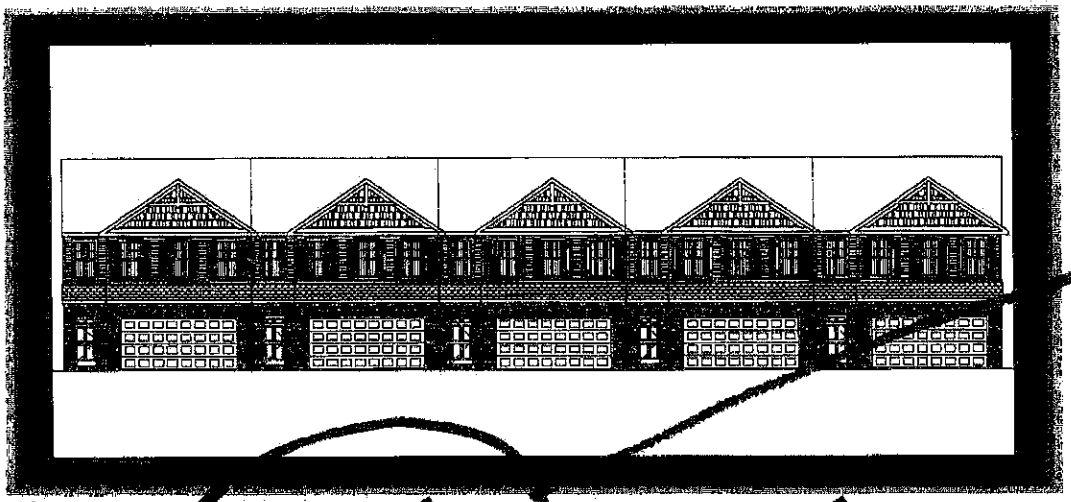
At the time you sign an agency agreement, you may be asked to acknowledge whether you would consider giving written consent allowing the Company to represent both you and the other client in a disclosed dual agency relationship.

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

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ELEMENTS COLLECTION



AF

Summerlake - Lot 87
925 Summerlake Dr. Fort Mill, 29715
The Elm - End Unit
2,240 sq. ft. | 3 Bed 2.5 Bath
$222,900
SOLD

Summerlake - Lot 88
923 Summerlake Dr. Fort Mill, 29715
The Elm - Interior Unit
2,240 sq. ft. | 3 Bed 2.5 Bath
$212,900
SOLD

Summerlake - Lot 89
921 Summerlake Dr. Fort Mill, 29715
The Elm - Interior Unit
2,240 sq. ft. | 3 Bed 2.5 Bath
$212,900
SOLD

Summerlake - Lot 90
919 Summerlake Dr. Fort Mill, 29715
The Elm - Interior Unit
2,240 sq. ft. | 3 Bed 2.5 Bath
$212,900
SOLD

Summerlake - Lot 91
917 Summerlake Dr. Fort Mill, 29715
The Elm - Interior Unit
2,240 sq. ft. | 3 Bed 2.5 Bath
$212,900
SOLD

Summerlake - Lot 92
915 Summerlake Dr. Fort Mill, 29715
The Elm - End Unit
2,240 sq. ft. | 3 Bed 2.5 Bath
$222,900
SOLD

- **BRAND NEW FLOOR PLAN!**
- **2 CAR GARAGES!**
- **#1 School District in South Carolina.**
- **Less than 5 minutes from Carolina Place Mall for Shopping and Dining.**
- **Homeowners are automatic members to the Regal Manor Swim Club.**
- **Maintenance free lifestyle.**

Highlights:
- Master Bath Dual Bowl Vanity
- Master Bath Garden Tub & Shower Combo
- Patio
- Hall Bath Make-Up Vanity
- Hardwoods Entire First Floor

Designer Package Level 1:
- Stainless Steel Appliances
- Granite Countertops in Kitchen & Master Bath
- Ceramic Tile Master Bath Flooring
- Two Tone Paint
- Upgraded Lighting
- First Floor Crown Molding

For More Information Please Contact

Sean Robertson	704.517.2927	srobertson@truehomesusa.com
Rae MacTaggart	704.607.3910	rmactaggart@truehomesusa.com
Jay Hederman	314.814.9830	jhederman@truehomesusa.com
Chad Poteat	704.622.9393	cpoteat@truehomesusa.com

REV. DATE: 9.9.15

TrueHomes
TrueHomesUSA.com

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SUMMERLAKE TOWNHOMES

HOA INFORMATION SHEET

Master Association:
Regal Manor

Management Company:
Cusick Community Management
11111 Carmel Commons Parkway
Ste 410
Charlotte, NC 28226
704-544-7779

Sub Asscociation :

Summerlake

Management Company:
Kuester Management Group
130 Ben Casey Drive
Ft. Mill, SC 29708
803.802.0004

Sub- Association Dues: $105.00 monthly + 56.67

Master Dues: $170.00 per quarter

Sub-Capital Contribution: $250.00

Master Capital Contribution: $113.33

Sub -Transfer Fee: $155.00

Master – Transfer Fee: $100.00

Master Insurance policy: Gill-Holler Insurance
888-661-3938

AF

June 20, 2013

TrueHomes

IT'S ALL ABOUT U

Community Documents Acknowledgment

Buyer(s): Alex Fresco **Community/Lot:** SML 88 ("Home")

HOA Covenants and Restrictions. Most communities have a Homeowner's Association and all residents who purchase a home in that community are bound to the Homeowner's Association ("HOA") Covenants and Restrictions.

I have received a copy of the HOA Covenants and Restrictions for my community. AF

HOA Information Sheet. Most communities have a Homeowner's Association and all residents who purchase a home in that community are subject to HOA fees. Some communities charge an additional Capital Contribution Fee upon purchase. You should review the entire Covenants and Restrictions for more detail about your community, but we have provided a short summary showing you how much we estimate those dues and fees to be. Please note that True Homes is not in control of the HOA, and these dues and fees are subject to change pursuant to the Covenants and Restrictions.

I have received an HOA Information sheet showing estimated Dues and Fees. AF

Common Interest and Community Information. Every Community is different. We provide a Common Interest and Community Information Disclosure form ("CICID") providing information about a variety of Community Issues, such as school district, fire protection, and municipal taxes.

I have received a copy of the CICID for my community. AF

ACKNOWLEDGEMENT

I have read this disclosure form, and acknowledge that I have received the above documents. I understand that True Homes does not control the Homeowner's Association ("HOA") and that each HOA is governed by a recorded set of Covenants and Restrictions. I acknowledge that I am bound by any covenants and restrictions recorded on the property.

Buyer Signature _____ Date _____ Co-Buyer Signature _____ Date _____

Alex Fresco

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TrueHomes

IT'S ALL ABOUT U

TITLE INSURANCE / BORROWERS' PREFERENCE FORM

Buyer(s): Alex Fresco **Community/Lot:** SML 88 ("Home")

Property Address: 6730 Courtney Park Rd Apt 6303 Charlotte, NC 28217

Before closing on a home mortgage, all lenders require a mortgage title insurance policy to protect the lender's interest in the property. Regardless of financing type however, it is highly recommended that you obtain an Owners Title Insurance Policy to protect your investment in the property. There are no annual payments to keep the policy in force, and the cost of Title Insurance is regulated to be consistent across providers. A one-time fee at the real estate closing protects you and your heirs against a wide variety of hidden risks to the title of your property.

True Homes, LLC is committed to providing you the best customer service possible. This includes saving you time and effort during the closing process. You previously signed an Affiliated Business Arrangement Disclosure Statement regarding the relationship between True Homes, LLC and Independence Title Group, LLC and Blue Point Title, LLC. While True Homes has an interest in these companies, you are not required to utilize their services, and your ability to purchase the home is not dependent on you utilizing the services of Independence Title Group, LLC or Blue Point Title, LLC.

Independence Title Group, LLC and Blue Point Title, LLC are pleased to offer you title insurance via licensed title underwriters First American Title Insurance Company and Chicago Title Insurance Company. Their goal is to provide great customer service at a fair cost. The Title Insurance Rates charged by the underwriter are based on the "filed rates" with the appropriate states (depending on the state in which the property is located).

BY SIGNING BELOW, I/WE HEREBY VOLUNTARILY REQUEST THAT MY/OUR TITLE INSURANCE (LENDERS AND OWNERS, IF REQUESTED) BE ISSUED BY INDEPENDENCE TITLE GROUP, LLC OR BLUE POINT TITLE, LLC.

Alex Fresco — Buyer Signature — Date: 10-11-15

Alex Fresco

Chad Poteat — True Advisor Signature — Date: 10-11-15

Chad Poteat

CoBuyer Signature — Date

☐ Check box to **opt out** of this referral service.

ATTENTION CLOSING ATTORNEY / SETTLEMENT AGENT:

The Borrower(s)/Buyer(s) have requested that you obtain title insurance from Independence Title Group, LLC (for NC properties) or Blue Point Title, LLC (for SC properties). The contact information is as follows:

Title Binder Request: Email signed preliminary title opinion to: jdaniels@independencetitlegroup.com

Revisions/Questions: Email to jdaniels@independencetitlegroup.com or call (704) 226-0851

General Contact Information: Independence Title Group, LLC / Blue Point Title, LLC
Attn: Jane Daniels
Phone: (704) 226-0851
Fax: (704) 943-0705

Revised: 06/02/15

TrueHomes

IT'S ALL ABOUT U

CONSENT TO HOMEOWNERS INSURANCE REFERRAL

Buyer(s): Alex Fresco **Community/Lot:** SML 88 ("Home")

New Home Street Address:

923 SUMMERLAKE DR Fort Mill SC 29715

1. If you are financing your home with a mortgage, you will need to provide proof of Homeowners Insurance in advance of closing to your Lender and Closing Attorney. Homeowners insurance is required by all lenders to finance a home.

2. True Homes has an alliance with a long-standing and Carolina-based Insurance Agency who can provide you with the coverage and information you need at a competitive price. This coverage can generally be added seamlessly with no advanced payment, and the verification can be communicated directly to your Closing attorney and lender.

3. As a convenience to you, we can forward this form to the agency below, who will contact you to provide more detailed information. If you purchase Insurance from them, they will coordinate directly with our Closing Attorneys and lenders to provide verification on your behalf.

4. Most Insurance carriers offer "package" products, with Homeowners and Auto Insurance bundled together for a significant discount.

5. If you already have an Insurance Provider, you can obtain proof of coverage later, and provide it directly to the lender and the Closing attorney.

6. The referred Insurance Provider is ***Larry S. Helms and Associated Insurance Services.***

   (704) 226-1788
   teri@larryhelms.com
   Attn: Teri Bunch
   www.larryhelms.com

Yes, please forward my contact information and other details of my Home purchase to the Homeowners Insurance Provider. Please ask them to contact me with a quote and additional information.

☐ **NO, *I do not wish to be contacted. I have a Homeowners Insurance Provider I wish to use and will provide proof of coverage when needed.***

Buyer Phone Number: (704) 421-3577 Buyer E-mail Address: alx.fresh@gmail.com

CoBuyer Phone Number: CoBuyer E-mail Address:

Buyer Signature — Date: 10-11-15

Alex Fresco

True Advisor Signature — Date: 10-11-15

Chad Poteat

CoBuyer Signature — Date

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TrueHomes

IT'S ALL ABOUT U

CLUSTER BOX MAILBOX NOTICE

Buyer(s): Alex Fresco **Community/Lot:** SML 88 ("Home")

1. It is the policy of the U. S. Postal Service that mail delivery to all new developments must use a centralized delivery system known as a cluster box units (CBU). The CBU is a community style cluster mailbox that provides for the delivery and pick up of mail to one (or more) centrally located community mailboxes. This change is a national initiative, and is not an optional program. While the change represents a national change in policy, it will be enforced by each postmaster for each postal service area. The decision is subject to his or her broad discretion, and is not in True Homes' control.
2. Currently, we believe that a Cluster Box Unit **IS REQUIRED** for some or all homes in your community.
3. Unfortunately, we cannot guarantee that this will not change, either before or after your closing. The Postal Service can change the designation of your community from individual home delivery to a CBU, either for the whole community, or for any new sections, without any prior notice.
4. The Postal Service recognizes that the CBU will represent a reduction in convenience for customers, but they advocate the benefits from the use of CBU's and note the following advantages:
   a. Increased Security. Nationally, we have seen a significant increase in Identity Theft over the past few years. The loss of mail placed in unsecured individual mailboxes is known to be a frequent target of identity thieves. The CBU's are all locked, and provide protection against mail and identity theft.
   b. More Efficient Delivery. With a CBU, every neighbor within a community should receive their mail at essentially the same time. The more efficient delivery is expected to translate to more predictable delivery schedules, and result in a reduction in carrier traffic through the entire neighborhood.
   c. More Convenience. Since the mail is delivered to a secure mailbox, the CBU should result in less trips to the Post Office to pick up items that cannot be delivered to an unsecure mailbox. Additionally, for residents who travel, the CBU should reduce the number of times mail delivery would be "stopped". Many times the mail could be delivered as usual, and you can pick up the mail upon your return.

I/We have read this Notice, and understand that True Homes has no control over whether or not I will receive a standard mailbox or a Cluster Box Unit mailbox.

This Addendum will bind Seller only upon Authorized Operations Partner's Signature below:

Buyer Signature	Date	True Advisor Signature	Date
	10-11-15		10-11-15
Alex Fresco		Chad Poteat	
CoBuyer Signature	Date		

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TrueHomes

IT'S ALL ABOUT U

MARKETING SERVICES AGREEMENT DISCLOSURE STATEMENT

Buyer(s): Alex Fresco **Community/Lot:** SML 88 ("Home")

This is to give you notice that TRUE HOMES, LLC ("Company) has a business relationship with multiple mortgage lenders including Bank of North Carolina, SunTrust Bank, Wells Fargo Home Mortgage and Movement Mortgage (collectively "Lenders"). Company has a contractual relationship to provide advertising/marketing services to Lenders in exchange for the payment of advertising/marketing fees.

YOU ARE NOT REQUIRED TO UTILIZE ANY PARTICULAR LENDER AS YOUR MORTGAGE LENDER. THERE ARE FREQUENTLY MANY LENDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE AND IN FACT ENCOURAGED TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND BEST RATE FOR THESE SERVICES.

We strongly encourage you to educate yourself on the lending process before choosing a particular lender or mortgage product including information found at www.consumerfinance.gov/owning-a-home. An Advertising/Marketing Agreement is an opportunity for a Lender to purchase advertising/marketing with Company. **The Real Estate Professionals at True Homes are not paid to refer you to Lenders and LENDERS DO NOT pay True Homes Real Estate Professionals for referral of your business.**

ACKNOWLEDGMENT

I/we have read this disclosure form and understand that Company has a business relationship with Lenders. The Company may receive a financial benefit based on this contractual relationship, and that I/we am **NOT** required to utilize Lenders or any other particular provider as my mortgage lender.

Buyer Signature — Date: 10/11/2015

Alex Fresco

True Advisor Signature — Date: 10-11-15

Chad Poteat

CoBuyer Signature — Date

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TrueHomes

IT'S ALL ABOUT U

Buyer Contact and True Connection

Job ID:	SML 88	Type (Dirt/Spec):	SPEC
Name(s):	Alex Fresco		
Buyer Primary Phone:	(704) 421-3577	Buyer Secondary Phone:	(704) 421-3577
Co-Buyer Primary Phone:		Co-Buyer Primary Phone:	
Buyer's Existing Address:	6730 Courtney Park Rd Apt 6303 Charlotte, NC 28217		

Buyer Broker:	Broker Office:	Broker Phone:	Broker Email:
Cynthia Crisp	Allen Tate Company		cindy.crisp@allentate.com

Is this a CORE Broker? Yes

Loan Officer:	Lender:	Loan Officer Phone:	Loan Officer Email:
Justin Wells	~~Allen Tate Mort.~~ Movement AF		justin.wells@allentate.com Justin.Wellse AF Movement.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 EMAIL ADDRESS?

Please confirm your *primary* email address or addresses below. We will use this address to communicate with you throughout the process:

Buyer: alx.fresh@gmail.com Co-Buyer:

TRUE CONNECT AUTHORIZATION

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 e-mail address changes. I/we agree to accept any notices required by the contract to be sent via True Connect, and agree to accept electronic communication. Finally, I/we acknowledge and agree to the use of electronic signatures by both Buyer and Seller to legally bind the parties as described in the Purchase Agreement.

Buyer Signature _____ Date _____ Co-Buyer Signature _____ Date _____

Alex Fresco

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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

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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

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WITNESS the Hand and Seal of Alex Fresco this 5th day of November, 2018.

Signed, Sealed and Delivered
in the presence of:

Witness No. 1

Alex Fresco

Witness No. 2 (NOTARY)

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.

Notary Public

My Commission Expires: 1.4.2020

(SEAL)

TRACI Y. BELK
NOTARY
My Comm. Exp.
01/04/2020
PUBLIC
MECKLENBURG COUNTY, NC

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STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

AFFIDAVIT 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: (If no amount is listed, place zero here.) $ 0.00
   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.

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.

Notary Public

TRACI Y. BELK NOTARY PUBLIC MECKLENBURG COUNTY, NC My Comm. Exp. 01/04/2020

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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

E H

Prepared By:

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.

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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:

Witness No. 1

Witness No. 2 (NOTARY)

Opendoor Property C LLC, a Delaware limited liability company

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:
Print Name: Kanisha 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 Kanisha 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.

Notary Public

Marie Desir
Notary's Printed or Typed Name

My Commission Expires: 11/29/2022



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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 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 PJL CONSTRUCTION; and

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

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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

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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).

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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.

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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*.

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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).

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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.

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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 & While 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")).

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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 Defendant True Homes, LLC

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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 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 PJL CONSTRUCTION; and

AFFIDAVIT OF NICK BACON, ESQ.

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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.

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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

RUBEN ADJIP
Notary Public - North Carolina
Mecklenburg County
My Commission Expires Apr 16, 2025

_____, Notary Public
My commission expires April 16, 2025

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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 Riverbirch 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 Documents; 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: **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 pluming 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 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 Sellers 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 mortage 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 (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 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, 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	8/27/14 Date	Seller Signature	8-27-14 Date
Karin Josue Fuentes Buyer Printed Name		Sales Counselor Printed Name	
Buyer Signature	Date	Operations Partner Signature	8/28/14 Date
Buyer Printed Name		Operations Partner Printed Name	

Revised: 8/18/2014

Operations Partner
Credit/Closings/

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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 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 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 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 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 binds the property. Seller makes no representation regarding the suitability of the homesite 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 Damage 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 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 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 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 KJF

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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 Sellers 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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TrueHomes

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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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TrueHomes

IT'S ALL ABOUT U

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 $7,500 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	Date: 10-11-15	True Advisor Signature	Date: 10-11-15
Alex Fresco		Chad Poteat	
CoBuyer Signature	Date	Operations Partner Signature (Nick Bacon, Operations Partner)	Date: 10/16/15
		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

ELECTRONICALLY FILED - 2022 May 16 4:21 PM - YORK - COMMON PLEAS - CASE#2020CP4603592

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

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WITNESS the Hand and Seal of Alex Fresco this 5th day of November, 2018.

Signed, Sealed and Delivered
in the presence of:

Witness No. 1

Alex Fresco

Witness No. 2 (NOTARY)

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.

Notary Public

My Commission Expires: 1.4.2020

(SEAL)

TRACI Y. BELK NOTARY PUBLIC MECKLENBURG COUNTY, NC My Comm. Exp. 01/04/2020

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STATE OF SOUTH CAROLINA)
COUNTY OF York)

AFFIDAVIT 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.

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.

Notary Public

TRACI Y. BELK
NOTARY PUBLIC
My Comm. Exp. 01/04/2020
MECKLENBURG COUNTY, NC

ELECTRONICALLY FILED - 2022 May 16 4:21 PM - YORK - COMMON PLEAS - CASE#2020CP4603592

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

E H

Prepared By:

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*****

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ELECTRONICALLY FILED - 2022 May 16 4:21 PM - YORK - COMMON PLEAS - CASE#2020CP4603592

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:

Witness No. 1

Witness No. 2 (NOTARY)

Opendoor Property C LLC, a Delaware limited liability company

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:
Print Name: Kanisha 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 Kanisha 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.

Notary Public

Marie Desir
Notary's Printed or Typed Name

My Commission Expires: 11/29/2022



RECEIVED OCT 31 2014

PROFESSIONAL WARRANTY SERVICE CORPORATION (PWC)

TEN YEAR NEW HOME WARRANTY PLAN Ph: 1-800/850-2799 Fax: 1-800/851-2799

PWC APPROVAL NUMBER: 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. UNIT NO.: SML; LOT: 71; BLOCK:
5. CITY: Fort Mill; STATE: SC; ZIP: 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 [✓] CLOSING (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 #954

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
17. CITY STATE ZIP

15. HOME TYPE (CHECK ONE)
A. SINGLE FAMILY ATTACHED: [✓]
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: [signature] 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): [signature] 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): [signature] Date: 10/24/14

28. CERTIFICATION: I contacted PWC on this date ____/____/____ for an approval number, and hav above is a participant in good standing of the Professional Warranty Program as of this date and eligible to enroll Signature:

Closing Of

05018205

id 2

© Professional Warranty Service Corporation PWC-953 8/11
Original-PWC Canary-Builder Pink-FHA/VA /Utility

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HINSON FAULK PA

REAL ESTATE TRUST ACCOUNT

30509

****** REAL ESTATE CLOSING ******

Buyer/Borrower: Fuentes
Seller: True Homes, LLC
Lender: Branch Banking and Trust Company 6617584768
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

RECEIVED OCT 3 1 2014

RECEIVED DEC 07 2015

PROFESSIONAL WARRANTY SERVICE CORPORATION (PWC)

TEN YEAR NEW HOME WARRANTY PLAN Ph: 1-800/850-2799 Fax: 1-800/851-2799

PWC APPROVAL NUMBER: 0 5 3 9 5 2 5 - 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: 932 Summerlake Drive
4. UNIT NO.: SML | LOT: 88 | BLOCK:
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 ☑ CLOSING (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 (IF YES, ATTACH COPY #954)
14. NAME OF INITIAL PURCHASER(S) OF HOME: (LAST NAME, FIRST NAME) Alex Fresco
14a. EMAIL ADDRESS: alx.fresh@gmail.com
14b. PHONE #:
16. MAILING ADDRESS (IF DIFFERENT FROM ABOVE NUMBER AND STREET - LINE 3) Same
17. CITY STATE ZIP
15. HOME TYPE (CHECK ONE)
A. SINGLE FAMILY ATTACHED: ☑
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: 09/24/2015

HOME BUYER ACKNOWLEDGEMENT (LINES 26 & 27): The undersigned hereby acknowledge 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:

(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:

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.

Signature: Closing Off

© Professional Warranty Service Corporation PWC-653 5/11
Original-PWC Canary-Builder Pink-FHA/VA Utility

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HINSON FAULK PA | REAL ESTATE TRUST ACCOUNT | 49347

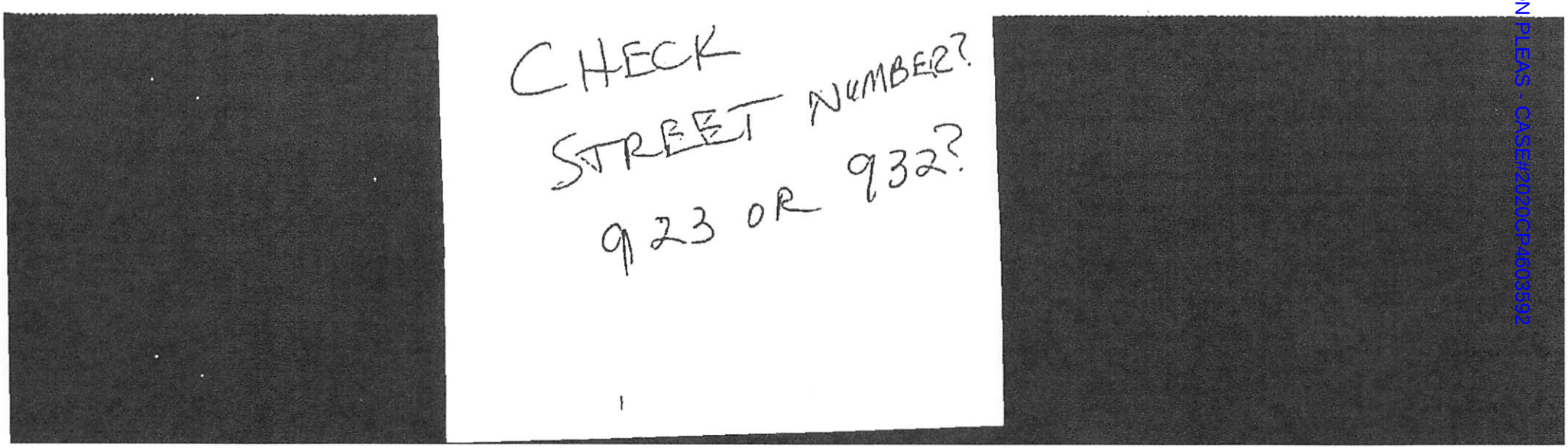
****** REAL ESTATE CLOSING ******

Buyer/Borrower: Fresco
Seller: True Homes, LLC
Lender: Movement Mortgage, LLC
Property: 923 Summerlake Drive/Fort Mill SC 29715 /
Settlement Date: November 24, 2015
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

1993772

Closer/Responsible Party: Kim

RECEIVED DEC 07 2015



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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 warrantied **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.**

© Professional Warranty Service Corporation
PWC Form No. 107 12/94

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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.

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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.

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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;

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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.

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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,

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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;

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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.

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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

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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.

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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.

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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.

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	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.

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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.

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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.

SAMPLE

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.**

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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.

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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.

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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.

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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	g. 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.	

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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 furthermost 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.	

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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.	

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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.	

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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.

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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.	
	2. Garage doors on garages that are attached to the **HOME**	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.
		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.	

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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.	

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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	0	**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**.

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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	1	**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.

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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	1	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.

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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.	

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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.

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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.	

SAMPLE

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Type of Material or area of **YOUR HOME**	Specific item or work	**DEFICIENCY** or Condition	Years Covered	**OUR** responsibility	**YOUR** Responsibility
I. 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.

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Type of Material or area of **YOUR HOME**	Specific item or work	**DEFICIENCY** or Condition	Years Covered	**OUR** responsibility	**YOUR** Responsibility
I. 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.

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Type of Material or area of **YOUR HOME**	Specific item or work	**DEFICIENCY** or Condition	Years Covered	**OUR** responsibility	**YOUR** Responsibility
I. 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.	

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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 condensation 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**.	

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Type of Material or area of **YOUR HOME**	Specific item or work	**DEFICIENCY** or Condition	Years Covered	**OUR** responsibility	**YOUR** Responsibility
I. 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.

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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.	

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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

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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

PWC Form No. 302
12/94

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)

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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; 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 PJL CONSTRUCTION; and PEDRO VILLAREAL-CONCEPCION d/b/a CVP CONSTRUCTION,

Defendants.

PLAINTIFFS' MOTION TO AMEND FIRST AMENDED COMPLAINT AND PROPOSED SECOND AMENDED COMPLAINT

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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.

THE STEINBERG LAW FIRM, L.L.P.
P.O. Box 2670
Summerville, SC 29484
(843) 871–6522 — Office
(843) 871–8565 — Facsimile

By: /s/Rachel Igdal
F. Elliotte Quinn IV
S.C. Bar No.: 100450
equinn@steinberglawfirm.com
Rachel Igdal
SC Bar No.: 102744
rigdal@steinberglawfirm.com

Attorneys for Plaintiff

May 10, 2022
Summerville, South Carolina

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Exhibit A

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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; 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 PJL CONSTRUCTION; PEDRO VILLAREAL-CONCEPCION d/b/a CVP CONSTRUCTION; **JLF CONSTRUCTION**

SECOND AMENDED SUMMONS

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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.; CALLAHAN EXCAVATING, LLC; 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 _____ day of _____, 2022.

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

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

Rachel Igdal
SC Bar No.: 102744
rigdal@steinberglawfirm.com

Attorneys for Plaintiff

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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 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; 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 PJL CONSTRUCTION; PEDRO VILLAREAL-CONCEPCION d/b/a CVP CONSTRUCTION; **JLF CONSTRUCTION COMPANY, INC.; ORION WINDOWS**

SECOND AMENDED COMPLAINT

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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.; CALLAHAN EXCAVATING, LLC; 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

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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 PJL Construction ("PJL 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"); Callahan Excavating, LLC ("Callahan Excavating"); Carolina Development Solutions, LLC ("Development Solutions"); and Anthony Jarrett Callahan ("Callahan")**, (all together "Defendants"; with True Homes, Carolina Development, and Summerlake Properties together

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"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, PJL 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, Callahan Excavating, 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,

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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.

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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

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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, Callahan Excavating, Development Solutions, and Callahan, individually or through an amalgamated or disregarded corporate entity,** constructed the Summerlake Townhomes as subcontractors to Carolina Development **and SL Properties**.

28. Callahan and his family members owned and operated Callahan Grading,

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Callahan Hauling, Callahan Excavating, and Development Solutions as their alter egos.

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

30. Callahan and his family members operated Callahan Grading, Callahan Hauling, Callahan Excavating, 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, Callahan Excavating, and Development Solutions were intertwined and were each an instrumentality and alter ego of the others.

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

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

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

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

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36. Callahan Grading, Callahan Hauling, and Callahan Excavating 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 used other entities he owned to pay the debts of Callahan Excavating.

44. 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.

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

46. Callahan caused Callahan Grading to serve as a guarantor on a loan to Callahan Excavating.

47. **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.**

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

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

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

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

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

53. 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.

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

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

56. Southend Exteriors constructed portions of the Summerlake Townhomes.

57. McGee Brothers constructed portions of the Summerlake Townhomes.

58. 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.

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

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

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

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62. Alside constructed portions of the Summerlake Townhomes.

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

64. **Callahan Grading, Callahan Hauling, Development Solutions, Callahan Excavating, and Callahan, individually or through an amalgamated or disregarded corporate entity,** performed grading, drainage, and other sitework as part of the construction of the Summerlake Townhomes.

65. 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.

66. 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.

67. 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.

68. 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.

69. Cov Roofing performed roofing construction work as part of the construction of the

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

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

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

72. PJL 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.

73. 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.

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

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

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

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

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construction of the Summerlake Townhomes.

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

79. 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.

80. 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.

81. 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.

82. 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.

83. 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.

84. Leon performed vinyl siding construction work as part of the construction of the Summerlake Townhomes, including the installation of vinyl siding, vinyl trim and

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accessory components, flashings, and related components.

85. 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.

86. 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.

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

88. 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.

89. 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.

90. 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.

91. 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.

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92. 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.

93. 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.

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

95. 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

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

97. 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").

98. The Class is defined as: All owners of townhomes in the Summerlake Townhomes.

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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.

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

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

101. 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:

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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.

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

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

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

105. **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.

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106. 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.

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

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

109. 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

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

111. Defendants are estopped from relying on any statutes of limitation or statutes of

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repose by virtue of their acts.

112. 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.

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

114. 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.

115. 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

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

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

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

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representations made by Defendants.

119. 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.

120. 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.

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

122. 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.

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

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

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ESTOPPEL FROM PLEADING WAIVER OF WARRANTY PROVISIONS

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

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

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

128. 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

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

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

131. 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

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

133. Defendants are estopped from relying on any anti-suit provisions contained in the

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Covenants or other governing documents or contracts because such provisions are void pursuant to public policy and the Horizontal Property Regime Act.

134. 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.

135. 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.

136. 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

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

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

139. 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

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owed a duty to Plaintiffs to perform the work in a good and workmanlike manner.

140. 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;

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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.

141. 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.

142. 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.

143. 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

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Summerlake Townhomes, and to repair the Summerlake Townhomes.

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

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

146. 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

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

148. 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.

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

150. 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.

151. Developer Defendants breached the implied warranty by constructing and placing

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into the stream of commerce the defective residences and associated common elements.

152. 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.

153. 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.

154. 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

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

156. 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.*

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

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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.

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

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

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

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

162. Developer Defendants engaged in and continue to engage in substantially similar

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transactions with consumers.

163. 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.

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

165. 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.

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

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

168. 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

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

170. As the developer and declarant for the Association, Developer Defendants owed

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fiduciary duties to the Association and its members.

171. 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.

172. As a direct and proximate result of Developer Defendants' breaches of fiduciary

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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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_____, 2022

Summerville, South Carolina

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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; 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 PJL CONSTRUCTION; and PEDRO VILLAREAL-CONCEPCION d/b/a CVP

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.

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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.

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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

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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

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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.)

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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,

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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

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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

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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

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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.

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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.

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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

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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

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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

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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

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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.

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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.

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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

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"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.)

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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

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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 limits 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

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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.

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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 IMPIED 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.)

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- "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

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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 RESULTION 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

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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.

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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.

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

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Attorneys for Plaintiffs

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Exhibit A

201400282665
Electronic Filing
From: Hinson Faulk, P.A.
Thru: SIMPLIFILE

RECORDED
YORK COUNTY
TAX ASSESSOR'S OFFICE
DATE 12/31/2014
TAX MAP NO. 729-07-01-013
INITIALS TSimmons

Instrument VOL PAGE
201400282665 OR 14594 61

201400282665
Filed for Record in
YORK COUNTY, SC
DAVID HAMILTON
12-31-2014 At 02:53 pm.
DEED
State Tax 497.90
County Tax 210.65

STATE OF SOUTH CAROLINA)
) TITLE TO REAL ESTATE 10.00
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 Ninety One Thousand Three Hundred Seventy and 00/100 Dollars ($191,370.00), to it in hand paid at and before the sealing of this deed by Andrew P. Scheiderer and spouse, Stacy L. Scheiderer (hereinafter called "Grantee"), as Joint Tenants with Full Rights of Survivorship and Not as Tenants in Common, 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 Grantees as Joint Tenants with Full Rights of Survivorship and not as Tenants in Common 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 72 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 Development Services, LLC by Deed recorded on June 6, 2014 in Book 14168, Page 146, York Registry.

GRANTEE'S MAILING ADDRESS: 2008 Firefly Lane
Fort Mill, SC 29715

Tax Parcel: 729-07-01-013

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. 2014104593

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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 31 day of DECEMBER, 20 14.

SIGNED AND DELIVERED IN THE PRESENCE OF:

TRUE HOMES, LLC

Witness

By: _____ (seal)
Mark W. Boyce, Manager

Witness

ACKNOWLEDGEMENT

STATE OF NORTH CAROLINA)
)
COUNTY OF UNION)

I, LEANNE BRUCE, 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 31 day of DECEMBER, 20 14.

LEANNE BRUCE NOTARY PUBLIC UNION COUNTY, NC

Notary Public for North Carolina

My Commission Expires: 8/17/2019

PREPARED BY:

BRIAN C. WILSON, LLC
9351 FOUNDERS STREET
FORT MILL, SC 29708

YORK COUNTY ASSESSOR
Tax Map:
729-07-01-013
Date: 08/11/2017
E H

YORK COUNTY, SC	
2017033413	DEED
RECORDING FEES	$10.00
STATE TAX	$577.20
COUNTY TAX	$244.20
08-11-2017	02:36:38 PM
BK:RB 16532	PG:52-53

SPACE ABOVE THIS LINE RESERVED FOR RECORDING INFORMATION

THE STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, That, we, **Andrew P. Scheiderer and Stacy L. Scheiderer**, herein referred to as the Grantors, for and in consideration of the sum of **Two Hundred Twenty Two Thousand and 00/100 Dollars ($222,000.00)** to us paid by **Robin Peppers Daniel and Charles P. Daniel**, hereinafter Grantees, in the State aforesaid, the receipt and sufficiency whereof are hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Grantees, as joint tenants with the right of survivorship and not as tenants in common, their heirs, successors and assigns forever:

All that certain piece parcel or tract of land lying, being and situate in the County of York, State of South Carolina, being shown and designated as all of Lot 72 on plat entitled "Summerlake, Phase 1" recorded in Plat Book E-215 at Page 8 in the Office of the Clerk of Court for York County, South Carolina; reference to which is hereby made for a more complete description of the premises.

DERIVATION: This being the same property conveyed to Andrew P. Scheiderer and Stacy L. Scheiderer by deed of True Homes, LLC executed December 31, 2014 and recorded on December 31, 2014 in Record Book 14594 at Page 61 in the Office of the Clerk of Court for York County, South Carolina.

TAX MAP NUMBER: **729-07-01-013**

GRANTEE'S ADDRESS: **2008 Firefly Lane**
Fort Mill, South Carolina 29715

This conveyance is made subject to easements, restrictions, covenants, and conditions of record, including matters shown on recorded plats.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in any wise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said Grantees, as joint tenants with the right of survivorship and not as tenants in common, their heirs and assigns forever.

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AND THE GRANTORS do hereby bind Grantors heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Grantees, their heirs and assigns, against the Grantors and the Grantors' heirs and against every person whomsoever lawfully claiming or to claim, the same or any part thereof.

WITNESS our Hands and Seals this **11th** day of **August, 2017.**

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

Witness

Witness

ANDREW P. SCHEIDERER

STACY L. SCHEIDERER

THE STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this **11th day of August, 2017,** by the Grantor(s), **Andrew P. Scheiderer and Stacy L. Scheiderer.**

SWORN to before me this **11th day of August, 2017**

(L.S.)
Notary Public for South Carolina
Commission Expires: 6-3-24

KRISTIE YOUNG BEAM NOTARY PUBLIC SOUTH CAROLINA

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Exhibit B

Exhibits to Plaintiffs' Memorandum in Opposition to Defendant True Homes, LLC's Motion to Stay and Compel Arbitration

Summerlake Townhomes Homeowners' Association, Inc., et al. v. True Homes, LLC, et al.

2020-CP-46-03592

201500316018
Electronic Filing
From: Hinson Faulk, P.A.
Thru: SIMPLIFILE

RECORDED
YORK COUNTY
TAX ASSESSOR'S OFFICE
DATE 10/02/2015
TAX MAP NO. 729-07-01-078
INITIALS TDellinger

201500316018
Filed for Record in
YORK COUNTY, SC
DAVID HAMILTON
10-02-2015 At 12:03 pm.
DEED 10.00
State Tax 585.00
County Tax 247.50

STATE OF SOUTH CAROLINA)
)
COUNTY OF York)

TITLE TO REAL ESTATE

Instrument VOL PAGE
201500316018 OR 15187 52

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 Two Hundred Twenty Four Thousand Nine Hundred and 00/100 Dollars ($224,900.00), to it in hand paid at and before the sealing of this deed by Suzanne Oh and spouse, Paul Oh, (hereinafter called "Grantee"), as Joint Tenants with Full Rights of Survivorship and Not as Tenants in Common, 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 Grantees as Joint Tenants with Full Rights of Survivorship and not as Tenants in Common 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 44 on that certain plat entitled "Summerlake" and recorded in Plat Book E256 at 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 True Homes, LLC by Summerlake Properties, LLC recorded on March 26, 2015 in Deed Book 14755, Page 159.

GRANTEE'S MAILING ADDRESS: 3835 Sweeten Creek Road
Chapel Hill, NC 27514

Tax Parcel: 729-07-01-078

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. 2015086916

ELECTRONICALLY FILED - 2022 May 17 9:02 AM - YORK - COMMON PLEAS - CASE#2020CP4603592

ELECTRONICALLY FILED - 2022 May 17 9:02 AM - YORK - COMMON PLEAS - CASE#2020CP4603592

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 2 day of October, 2015.

SIGNED AND DELIVERED IN THE PRESENCE OF:

TRUE HOMES, LLC

Witness

By: _____ (seal)
Mark W. Boyce, Manager

Witness

ACKNOWLEDGEMENT

STATE OF NORTH CAROLINA)
)
COUNTY OF UNION)

I, Shannon Burgess, 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 2 day of October, 2015.

SHANNON BURGESS NOTARY PUBLIC MECKLENBURG COUNTY, NC MY COMMISSION EXPIRES 3/15/2020

Notary Public for North Carolina

My Commission Expires: 3/15/2020

YORK COUNTY ASSESSOR
Tax Map:
729-07-01-078
Date: 06/04/2018

E H

YORK COUNTY, SC	
2018022906	DEED
RECORDING FEES	$10.00
STATE TAX	$630.50
COUNTY TAX	$266.75
06-01-2018	02:34:26 PM
BK:RB 17004	PG:420-422

Prepared by and please return to:
Julie B. Glenn
11121 Carmel Commons Blvd., Suite 305
Charlotte, NC 28226

Excise Stamps: $897.25

STATE OF SOUTH CAROLINA

TITLE TO REAL ESTATE/

COUNTY OF YORK GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that SUZANNE OH and PAUL OH, in consideration of the sum of Two Hundred Forty Two Thousand Five Hundred Dollars and 00/100 ($242,500.00) to them in hand paid at and before the sealing of these presents by LISA W. SHER, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said LISA W. SHER, whose address is 922 Summerlake Drive, Fort Mill, SC 29715, his/her/their heirs/successors and assigns the following described property to wit:

See Exhibit A attached hereto and incorporated herein by reference.

The within described property is conveyed subject to existing easements and to restrictive covenants, if any, appearing in the chain of title or apparent upon a reasonable inspection of the premises, which said restrictions, if any, are not intended to be reimposed hereby.

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 LISA W. SHER, his/her/their heirs/successors and assigns forever.

And the said SUZANNE OH and PAUL OH do hereby bind themselves and their successors, to warrant and forever defend all and singular the said premises unto the said LISA W. SHER, his/her/their heirs/successors and assigns, against themselves and their successors and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

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IN WITNESS WHEREOF, SUZANNE OH and PAUL OH have caused these presents to be executed in their names this 30 day of May, in the year of our Lord two thousand seventeen (2018) and in the two hundred and forty-second year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

_____(SEAL)
SUZANNE OH

_____(SEAL)
PAUL OH

Witness: _____
(First Witness Signature)

Witness: _____
(Second Witness Signature)

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

PERSONALLY APPEARED before me the undersigned witness, who, in oath, says that (s)he saw the within named SUZANNE OH and PAUL OH, sign, seal and as their act and deed, deliver the within Deed for the uses and purposes therein mentioned, and that (s)he along with _____ (Second Witness Print), witnessed the execution thereof.

_____
First Witness Signature

SWORN to before me
this 30 day of May 2018.

_____
Notary Public for _____
Commission Expires: 11-20-18

JULIE B. GLENN NOTARY PUBLIC MECKLENBURG COUNTY, N.C.

Grantee Address: 922 Summerlake Drive, Fort Mill, SC 29715

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EXHIBIT 'A'

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 as all of Lot 44 as shown on a plat of the property entitled "Summerlake" recorded in Plat Book E 256, Page 3 in the Office of the Clerk of Court for York County, SC, reference to which plat is hereby made for a more complete and accurate description as to the said property.

DERIVATION CLAUSE: Being a portion of that certain property conveyed by Deed from True Homes, LLC to Suzanne Oh and Paul Oh recorded 10/2/15 in Book 15187, Page 52, in the Office of the Clerk of Court for York County, South Carolina.

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Exhibit C

201300235227
Filed for Record in
YORK COUNTY, SC
DAVID HAMILTON, CLERK OF COURTS
10-07-2013 At 08:29 am.
RESTR COVEN 46.00
OR Vol 13752 Page 8 - 47

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SUMMERLAKE TOWNHOMES

DRAWN BY AND MAIL AFTER RECORDING TO:
HINSON FAULK, P.A.
309 Post Office Drive
Indian Trail, NC 28079

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SUMMERLAKE TOWNHOMES

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration"), dated the 30 day of September, 2013 and is made by and between CAROLINA DEVELOPMENT SERVICES, LLC, a North Carolina limited liability company, having its principal place of business in Union County, North Carolina (hereinafter called "Declarant"), TRUE HOMES, LLC, a Delaware limited liability company (hereinafter called "True Homes"); MARGARET MCCRAY ROBERTSON (hereinafter called "Robertson"); PAIGE VESTAL (hereinafter called "Vestal"); and any and all persons, firms or corporations hereafter acquiring any of the within described property.

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in Fort Mill, York County, South Carolina, being more further described in deed to Declarant recorded in Book 13040 at Page 266 in the Office of the Clerk of Court for York County, less the lots described below owned by True Homes, Robertson and Vestal;

WHEREAS, True Homes, Robertson and Vestal are the owners of lots recently conveyed to them by Declarant, which lots are a portion of the property described in the deed to Declarant in Book 13040 at Page 266;

WHEREAS, the property described in Deed Book 13040 at Page 266 is a part of an exclusive, mixed use community known as Regal Manor (hereinafter, "Regal Manor" or the "Property"), as more particularly described in the Master Declaration, as hereinafter described;

WHEREAS, the Property will contain both residential and commercial real estate uses. The different types of real estate uses will each have a separate owner's association that will be a secondary association of a master association known as Regent Manor Homeowners' Association, Inc. (hereinafter, the "Master Association"). The Master Association will coordinate, plan and maintain the common areas and common services which are for the use and benefit of all secondary associations;

WHEREAS, the Declarant has caused a portion of the Property to be subdivided into lots for a residential townhome subdivision known as "SUMMERLAKE" as shown on a plat of Summerlake, Phase 1, recorded in Map Book E-206 at Page 8 in the Office of the Clerk of Court for York County (hereinafter, "Summerlake Townhomes");

WHEREAS, Declarant intends to develop Summerlake Townhomes into a high quality, residential townhome subdivision. All improvements in the subdivision will be constructed from the highest quality materials and with the highest quality of workmanship to create a unique community. The Declarant has or will form a homeowners association known as SUMMERLAKE TOWNHOMES HOMEOWNERS' ASSOCIATION, INC. to enforce and to maintain the high quality of Summerlake Townhomes and to maintain private alleyways and rights of way and certain other amenities, which may include, but Declarant is not required to provide, an

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entranceway, entranceway signage, decorative street lighting, and such other common areas and amenities that the Declarant or the secondary association may provide for the general welfare and recreation of the owners. Summerlake Townhomes Homeowners' Association, Inc. will be a secondary association of the Master Association;

WHEREAS, it is in the best interest of the Declarant, as well as to the benefit, interest and advantage of each and every person or other entity hereafter acquiring any of the said lots, that certain covenants, conditions, easements, assessments, liens and restrictions governing and regulating the use and occupancy of the same be established, fixed, set forth and declared to be covenants running with the land;

WHEREAS, Declarant desires to provide for the preservation of the values and amenities, the desirability and attractiveness of the real property in the development, and the continued maintenance and operation of the common areas as may be provided herein; and

WHEREAS, it is the Declarant's goal to develop SUMMERLAKE TOWNHOMES in such a manner that a high quality neighborhood with houses that will maintain a high resale value and with a neighborhood that will be a desirable place to live is created. To accomplish this goal, all aspects of the development of Summerlake Townhomes must be coordinated such that there will be harmony between the architectural design, the landscaping, signage, lighting and all aspects of the improvements as they fit into the landscape of Summerlake Townhomes. The location, design and exterior appearance of the houses, landscaping and other improvements on a Lot will be made with the intention that the improvements will blend in and accent the image of Summerlake Townhomes. The harmony of the development and the requirement of the highest quality of materials and workmanship for all improvements on the Lots and common areas will benefit all Owners and enhance the value of each Owner's Lot; and

WHEREAS, True Homes, Robertson and Vestal consent to the submission of their lots to the terms of this Declaration.

NOW THEREFORE, in consideration of the premises, the Declarant, True Homes, Robertson and Vestal agree with any and all persons, firms, corporations or other entities hereafter acquiring a lot in Summerlake Townhomes, that the same shall be and is hereby subject to the following restrictions, covenants, conditions, easements, assessments and liens (all hereinafter collectively referred to as the "Use Restrictions" relating to the use and occupancy thereof, said Use Restrictions are to be construed as covenants running with the land, which shall be binding on all parties having or acquiring any right, title or interest in Summerlake Townhomes or any part thereof and which shall inure to the benefit of each owner thereof. Every person or other party hereafter acquiring any of the Lots in Summerlake Townhomes, by acceptance of a deed or contract or other conveyance of any interest in or to Summerlake Townhomes, whether or not it shall be so expressed in any such deed, contract for deed or other conveyance, and regardless of whether the same shall be signed by such person and whether or not such person shall otherwise consent in writing, shall take such property interest subject to this Declaration and to the terms and conditions hereof and shall be deemed to have consented to same.

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ARTICLE I
DEFINITIONS

The following are the definitions of the terms used in this Declaration:

Section 1.1 "Assessment" shall mean the share of the Common Expenses imposed on each Lot or other special assessments, as determined and levied pursuant to the provisions of Article V hereof.

Section 1.2 "Secondary Association" shall mean Summerlake Townhomes Homeowners' Association, Inc., its successors and assigns, which shall be created as a South Carolina nonprofit corporation.

Section 1.3 "Board" shall mean the Board of Directors of the Secondary Association.

Section 1.4 "Builder" shall mean True Homes, LLC, a Delaware limited liability company.

Section 1.5 "Committee" shall mean the Architectural Control Committee, which shall be appointed by the Board and have such duties as provided in Article VI, below.

Section 1.6 "Common Area(s)" shall mean any and all real property subject to this Declaration which is identified as "Common Area", "Common Elements", "Common Open Space," or "Open Space," or other similar wording, if any, on the plats, and shall also include the private rights-of-way identified as Summerlake Drive and Firefly Lane.

Section 1.7 "Common Expenses" shall mean the actual and estimated cost to the Secondary Association of the costs for maintenance, management, operation, repair, improvement and replacement of the Common Areas, and any other cost or expense incurred by the Secondary Association for the benefit of the Common Areas or for the benefit of the Secondary Association.

Section 1.8 "Development Period" shall mean the period of time during which Declarant owns at least one (1) Lot.

Section 1.9 "Dwelling Unit" shall mean and refer to any structure (or portion thereof) designed or intended for use and occupancy as a residence by one (1) family on a Lot located within the Real Estate, irrespective of whether such dwelling is detached or attached to another Dwelling Unit.

Section 1.10 "Easement Area" shall mean any portion of the Real Estate, which is subject to an easement as more particularly described in Article III, below.

Section 1.11 "Lot" or "Lots" shall mean any parcel(s) of the Real Estate (excluding the Common Areas) which are designated and intended for use as a building site, or developed and improved for use as a single family residence identified by number on the Plats, whether attached or detached. No Lot shall be further subdivided for development purposes, except as may be reasonably necessary to adjust for minor side or rear yard encroachments or inconsistencies.

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Section 1.12 "Master Association" shall mean Regal Manor Homeowners' Association, Inc., a nonprofit corporation organized and existing under the laws of the State of South Carolina.

Section 1.13 "Master Declaration" shall mean the Declaration of Covenants, Restrictions and Provisions for Membership in Regal Manor Homeowners' Association, Inc. as re-recorded in Book 8118, Page 139 in the Office of the Clerk of Court for York County, as amended of record, and as may be further amended. The Real Estate shall be subject to both this Declaration and the Master Declaration.

Section 1.14 "Member" shall mean any person or entity holding membership in the Secondary Association.

Section 1.15 "Owner" shall mean the record owner, whether by one or more persons, of the fee simple title to any Lot in the Real Estate, but excluding those persons having such interest merely as security for the performance of an obligation.

Section 1.16 "Plat" or "Plats" shall refer to any recorded subdivision map of the Real Estate, including of any additional property added to the Real Estate pursuant to the provisions of Section 2.4 hereof.

Section 1.17 "Real Estate" shall mean all of the property subjected to this Declaration, known as Summerlake Townhomes, being all of the real property shown on the plat of Summerlake, Phase 1, recorded in Map Book E-206 at Page 8 in the Office of the Clerk of Court for York County.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION AND DEVELOPMENT OF THE REAL ESTATE

Section 2.1 Property Subject to this Declaration. The property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is the Real Estate located in Fort Mill, York County, South Carolina, more particularly described as Summerlake Townhomes, being all of the real property shown on the plat of Summerlake, Phase 1, recorded in Plat Book E-206 at Page 8 in the Office of the Clerk of Court for York County (the "Real Estate").

Section 2.2 Development of the Real Estate. All Lots shall be and hereby are restricted exclusively to residential use and shall be subject to the standards and restrictions set forth in this Declaration. Declarant shall have the right, but not the obligation, during the Development Period, to submit additional real estate to or exclude any portion of the Real Estate from the provisions of this Declaration, and to make and maintain improvements, repairs and changes to any Common Area and all Lots owned by Declarant, including without limitation: (a) installation and maintenance of improvements in and to the Common Areas; (b) changes in the location of the boundaries of any Lots owned by Declarant or of the Common Areas; (c) installation and maintenance of any water, sewer, and other utility systems and facilities; (d) installation of security or refuse systems; and (e) additions or changes to the boundaries of any Common Areas or Easement Areas.

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Section 2.3 Intentionally omitted.

Section 2.4 Development of Additional Property. Declarant hereby reserves the right and option, to be exercised in its sole discretion and without further approval by any party, to submit at any time and from time to time during the Development Period, additional real estate to the provisions of this Declaration, including but not limited to the property described in the deed to Declarant recorded in Book 13040 at Page 266 in the Office of the Clerk of Court for York County. This option may be exercised by Developer in accordance with the following rights, conditions, and limitations:

(a) Additional real estate may be added to the Real Estate at different times, and there are no limitations fixing the boundaries of the portions or regulating the order, sequence, or location in which any of such portions may be added to the Real Estate. No single exercise of Declarant's option to submit additional real estate to the Declaration shall preclude any further exercises of this option thereafter and from time to time as to other real estate.

(b) The option to add additional real estate may be exercised by Declarant by the execution of a Supplemental Declaration or Plat describing such additional real estate, which shall be filed in the public records of the county in which the Declaration was originally recorded, together with a legal description of the additional real estate. The provisions of this Declaration shall then be construed as embracing the real property described in the Supplemental Declaration and such additional real estate so submitted to the terms hereof, together with all improvements located thereon.

Section 2.5 Withdrawal of Property. Declarant hereby reserves the right and option during the Development Period, to be exercised in its sole discretion and without further approval by any party, to withdraw and remove any portion of the Real Estate then owned by Declarant from the control and provisions of this Declaration. Such removal by Declarant shall be carried out generally by the execution and filing of a Supplemental Declaration or other document which shall be filed in the public records of the county in which the Declaration was originally recorded, together with a legal description of the Real Estate being withdrawn.

ARTICLE III
PROPERTY RIGHTS AND EASEMENTS

Section 3.1 General. Each Lot shall for all purposes constitute real property which shall be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred, and encumbered the same as any other real property. The Owners of any Lot subject to this Declaration, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the new Owner acknowledges the rights and powers of Declarant with respect to this Declaration and also for themselves, their heirs, personal representatives, successors and assigns. Each Owner shall be entitled to the exclusive ownership and possession of his Lot subject to the provisions of the Master Declaration and this Declaration, including without limitation, the provisions of this Article III. The ownership of each Lot shall include, and there shall pass with each Lot as an

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appurtenance thereto, whether or not separately described, a non-exclusive right and easement of enjoyment in and to the Common Areas as established hereunder and membership in the Master Association and the Secondary Association. Each Owner shall automatically become a member of the Secondary Association and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Secondary Association shall automatically pass to his successor-in-title. Lots shall not be subdivided by Owners and the boundaries between Lots and between the Real Estate and other neighborhoods shall not be relocated, unless the relocation thereof is made with the approval of the Board and, during the Development Period, of Declarant.

Section 3.2 Owner's Easement of Enjoyment. Every Owner, his family, tenants, and guests shall have a non-exclusive right and easement of use and enjoyment in and to the Common Areas, such easement to be appurtenant to and to pass with title to each Lot, subject to the provisions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board in accordance with the By-Laws and subject to the following provisions:

(a) The Right of the Secondary Association, upon the affirmative vote or written consent, or any combination thereof, of voting Members representing at least eighty percent (80%) of the Members entitled to vote thereon, to mortgage all or any portion of the Common Areas for the purpose of securing a loan of money to be used to manage, repair, maintain, improve, operate, or expand the Common Areas; provided, however that if ingress or egress to any residence constructed on a Lot is through such Common Area, then such encumbrance shall be subject to an easement in favor of such Lot for ingress and egress thereto.

(b) The easements reserved elsewhere in this Declaration, in the Master Declaration, or in any Plat of all or any part of the Real Estate, and the right of the Secondary Association to grant and accept easements as provided in this Article III. The location of any improvements, trees or landscaping within an easement area is done at the Owner's risk and is subject to possible removal by the Secondary Association or the grantee of such easement.

(c) The right of the Secondary Association to dedicate or transfer fee simple title to all or any portion of the Common Areas to any appropriate public agency or authority, public service district, public or private utility, the Master Association, or other person, provided that any such transfer of the fee simple title must be approved (i) during the Development Period, by the Declarant; and (ii) after the Development Period, upon the affirmative vote or written consent, or any combination thereof, of voting Members representing at least eighty percent (80%) of the Members entitled to vote thereon; provided, however that if ingress or egress to any residence constructed on a Lot is through such Common Area, then such dedication or transfer shall be subject to an easement in favor of such Lot for ingress and egress thereto.

(d) The rights of the Master Association, the Secondary Association and Declarant reserved elsewhere in this Declaration or the Master Declaration or as provided in any Plat of all or any part of the Real Estate.

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(e) The rights of the holder of any mortgage which is prior in right or superior to the rights, interests, options, licenses, easements, and privileges herein reserved or established.

Section 3.3 Easements for Declarant.

(a) During the Development Period, Declarant shall have an easement for access to the Real Estate, including any Lot and all Common Areas, for the purpose of constructing structures and other improvements in and to the Lots and Common Areas, and for installing, maintaining, repairing, and replacing such other improvements to the Real Estate (including any portions of the Common Areas) as are contemplated by this Declaration or as Declarant desires, in its sole discretion, including, without limitation, any improvements or changes permitted and described by Article II hereof, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Declarant have the obligation to do any of the foregoing. In addition to the other rights and easements set forth herein and regardless of whether Declarant at that time retains ownership of a Lot, Declarant shall have an alienable, transferable, and perpetual right and easement to have access, ingress and egress to the Common Areas and improvements thereon for such purposes as Declarant deems appropriate, provided that Declarant shall not exercise such right so as to unreasonably interfere with the rights of owners of the Real Estate.

(b) In addition to the easement set forth in Section 3.3 (a), Declarant hereby retains, reserves and is granted an exclusive perpetual easement over, above, across, upon, along, in, through, and under the Utility Easement Areas, as such is defined in Section 3.4, below (i) for the purpose of owning, installing, maintaining, repairing, replacing, relocating, improving, expanding and otherwise servicing any utility or service including, without limitation, electricity, gas, sewer, telephone, television, and computer link by line, wire, cable, main, duct, pipe conduit, pole, microwave, satellite or any other transfer or wireless technology, and any related equipment, facilities and installations of any type bringing such utilities or services to each Lot or Common Area; (ii) to provide access to an ingress and egress to and from the Real Estate for the purposes specified in subsection (i); and (iii) to make improvements to and within the Real Estate to provide for the rendering of public and quasi-public services to the Real Estate. The easements, rights and privileges reserved to Declarant under this Section 3.3(b) shall be transferable by Declarant to any person or entity solely at the option and benefit of the Declarant, its successors and assigns, and without notice to or the consent of the Association, the Owners, or any other person or entity. Declarant may at any time and from time to time grant similar or lesser easements, rights, or privileges to any person or entity. By way of example, but not by limitation, Declarant and others to whom Declarant may grant such similar or lesser easements, rights or privileges, may so use any portion of the Real Estate to supply exclusive telecommunications services to each Lot. The Easements, rights and privileges reserved under this Section shall be for the exclusive benefit of Declarant, its successors and assigns and may not be impaired, limited or transferred, sold or granted to any person or entity by the Secondary Association or any of the Owners.

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Section 3.4 Drainage, Utility and Sewer Easements.

(a) There is hereby reserved for the benefit of Declarant, the Secondary Association, and their respective successors and assigns, the perpetual right and easement, as well as the power, to hereafter grant and accept nonexclusive easements to and from any of the following providers and their respective successors and assigns, upon, over, under, and across (i) all of the Common Areas, specifically including, but not limited to, the Common Areas designated as "50' Private Access and Public Utility Easement" and "24' Private Access and Public Utility Easement"; and (ii) those portions of all Lots designated on the Plat as "Utility Easement", "10' Utility Easement" or otherwise as easements for installing, replacing, repairing, and maintaining utility services (the "Utility Easement Areas"), including but not limited to those described in Section 3.3.

The Declarant, the Secondary Association, and their successors and assigns shall also have the perpetual right and easement, as well as the power, to hereafter grant and accept nonexclusive easements within the Utility Easement Areas to and from any public authority or agency, public service district, public or private utility or other person for the purpose of installing, replacing, repairing, maintaining, and using storm sewers, drainage systems, and retention ponds and facilities for the Real Estate or any portion thereof. Any other grant or acceptance of any easement other than those specified above for any other utility service, including but not limited to, master television antenna and/or cable systems, security and similar systems shall be made by Declarant in accordance with the rights reserved to Declarant under Section 3.3(b), above. To the extent possible, all utility lines and facilities serving the Real Estate and located therein shall be located underground. By virtue of any such easements and facilities, it shall be expressly permissible for the providing utility company or other supplier or service provider, with respect to the portions of the Development so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, (ii) to cut and remove any fences, trees, bushes, or shrubbery, (iii) to grade, excavate, or fill, or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems.

(b) Declarant hereby grants to such governmental authority or agency as shall from time to time have jurisdiction over the Real Estate with respect to law enforcement and fire protection, the perpetual, non-exclusive right and easement upon, over, and across all of the Common Areas for purposes of performing such duties and activities related to law enforcement and fire protection in and upon the Real Estate as shall be required or appropriate from time to time by such governmental authorities under applicable law.

(c) There shall be created sanitary sewer easements and other easements in those areas designated on the Plat, which easements shall run in favor of Declarant and any governmental or private entity needing such access for the purpose of installation and maintenance of the pipes, lines, manholes, pumps and other equipment necessary for utility services

Section 3.5 Drainage Easements. There is hereby reserved an easement for the benefit of Declarant, the Secondary Association, and their respective successors and assigns for access to and installation, repair, or removal of a drainage system, either by surface drainage or appropriate

underground installations, for the Real Estate; provided, however, that the Owner of any Lot subject to a drainage easement shall be required to maintain the portion of said drainage easement on his Lot (as shown on any Plat) in the condition originally provided by Declarant and free from obstructions so that the surface water drainage will be unimpeded. No changes shall be made to said area by the Owner without the written consent of the applicable governmental agency; provided, however, that Declarant, in its sole discretion, may make any changes. No permanent structures shall be erected or maintained upon said drainage easements.

Section 3.6 Intentionally omitted.

Section 3.7 Intentionally omitted.

Section 3.8 Medians and Entry Features: There may be landscaped medians and/or islands located within the Real Estate and within the public right-of-way of the streets which are not otherwise labeled as Common Areas or as Landscape Easements. These areas are created and reserved for installation and maintenance of landscaping and entry features such as but not limited to permanent walls, signs, fences and landscaping material. These landscaped areas and features shall be maintained by the Secondary Association as if such were a Common Area.

Section 3.9 Sales and Construction Offices. Notwithstanding any provisions or restrictions herein to the contrary, during the Development Period, and for a reasonable time thereafter, there is hereby reserved and created for the use of Declarant, and its successors and assigns, and persons constructing improvements within the Real Estate, an easement for access to the Real Estate for the maintenance of signs, sales offices, construction offices, business offices, and model houses, together with such other facilities as in the sole opinion of Declarant may be reasonably required, convenient, or incidental to the completion, improvement and/or sale of Lots and the Common Areas.

Section 3.10 Maintenance Easement. There is hereby reserved and created for the use of Declarant, the Secondary Association and their respective agents, employees, successors and assigns, a maintenance easement to enter upon any Lot for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash, so as to maintain a community-wide standard of health, fire safety, and appearance for and within the Real Estate, provided that such easements shall not impose any duty or obligation upon Declarant or the Secondary Association to perform any such actions.

ARTICLE IV
ORGANIZATION AND DUTIES OF SECONDARY ASSOCIATION

Section 4.1 Organization of Secondary Association. The Secondary Association shall be organized as a nonprofit corporation under the laws of the State of South Carolina, to be operated in accordance with the Articles of Incorporation which have been filed or will be filed by Declarant, and the By-Laws of the Secondary Association.

Section 4.2 Voting Rights. The membership of the Secondary Association shall consist of two (2) classes of membership with the following rights:

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(a) Class A Membership. Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot owned by such Member with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. In the event that any Lot shall be owned by more than one person, partnership, trust, corporation, or other entity, each shall be a Member but they shall be treated collectively as one Member for voting purposes, so that as to any matter being considered by the Class A Members, only one (1) vote is cast for each Lot.

(b) Class B Membership. Class B Members shall be the Declarant and Builder. Each Class B Member shall be entitled to three (3) votes for each Lot of which it is the Owner with respect to each matter submitted to a vote of the Association. The Class B Membership shall cease and terminate upon the first to occur of (i) the date upon which the written resignation of the Class B Members as such is delivered to the Association; or (ii) at such time as the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership.

Notwithstanding anything herein to the contrary, during the Development Period all actions of the Secondary Association shall require the prior written approval of the Declarant.

Section 4.3 General Duties of the Secondary Association. The Secondary Association 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, the determination of Common Expenses, and the collection of annual and special Assessments. The Secondary Association shall also have the right, but not the obligation to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in the Plats. Neither the Secondary Association nor its officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color of authority of this Declaration, or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of willful, intentional, fraudulent, or reckless misconduct.

(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 landscaping and other flora, structures, play equipment, and improvements, including all private streets situated upon the Common Areas, landscaping easements along the primary roads through the Real Estate, medians and rights of ways of streets within the Real Estate, entry features for the Real Estate, outdoor lighting, and such portions of any other real property included within the Common Areas as may be provided in this Declaration. The Secondary Association may enter into contracts or agreements to provide such maintenance with any other person or entity, including the Master Association.

(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), trees

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and shrubs (excluding vegetation planted by an Owner), grass, walks, mailboxes, fences installed by Declarant or the Secondary Association, exterior lights, and other exterior improvements. Further, the Owner of any Lot may, at his or her election, plant flowers in the front and rear beds, if any, established by Declarant in developing the Lot or later established by the Secondary Association, provided that such landscaping or maintenance by the Owner does not hinder the Secondary Association in performing maintenance of the exterior of the building, townhomes and remaining yard spaces. No maintenance by a Lot Owner shall reduce the assessment payable by him to the Secondary Association. The Owner shall not plant any vegetation, excepting only flowers in any front or rear planting beds as may be established by the Declarant or the Secondary Association, except with the prior written approval of the Secondary Association. The Secondary Association may enter into contracts or agreements to provide such maintenance with any other person or entity, including the Master Association.

Due to differing amounts of exposure to the elements and other factors, the exterior of some Dwelling Units may require more maintenance than others. It being in the best interest of the entire Secondary Association that the exterior of all Units be properly maintained, the Secondary Association shall be required to provide the maintenance provided for herein and make a uniform charge without regard to the actual cost of maintenance of each Dwelling Unit or Lot.

In the event that the need for maintenance or repair is caused through the willful or negligent act of an Owner, his family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment for that Owner's Lot.

(c) *Party Walls.*

i. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Dwelling Units upon the Real Estate and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. No alterations may be made to any party wall other than alterations to the interior surfaces within the Dwelling Units.

ii. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

iii. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice however to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

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iv. Weatherproofing. Notwithstanding any other provision of this Article, an owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

v. Right of Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

vi. Arbitration. In the event of any dispute arising concerning a party wall or under the provisions of this Section 4.3(c), each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

(d) *Television, Cable and Internet Service.* The Secondary Association may provide one or more central antennas or satellite receivers for the convenience and use of some or all of the Members and/or supply, contract or otherwise make provision for cable television and internet service to be provided to all of the Lots, and in such event, the cost of these may be included in the Assessments provided for in Article V.

(e) *Maintenance by Owners.* Unless specifically identified herein, each Owner shall maintain and repair the interior and exterior of his or her Lot and Dwelling Unit, and all structures, parking areas, lawns, landscaping, grounds and other improvements comprising the Lot and Dwelling Unit in a manner consistent with all applicable covenants.

(f) *Secondary Association's Remedies if Owner Fails to Maintain Lot.* In the event that Declarant or the Secondary Association determines that: (i) any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, cleaning, repair, or replacement of items which are his responsibility hereunder, or (ii) that the need for maintenance, cleaning, repair, or replacement which is the responsibility of the Secondary Association hereunder is caused through the willful or negligent act of an Owner, his family, tenants, guests, or invitees, and is not covered or paid for by insurance in whole or in part, then in either event, Declarant or the Secondary Association, except in the event of an emergency situation, may give such Owner written notice of Declarant's or the Secondary Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner as the case may be, shall have ten (10) days within which to complete such maintenance, cleaning, repair or replacement in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair or replacement is not capable of completion within said ten (10) day period, to commence said maintenance, cleaning, repair or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provision hereof after such notice, Declarant or the Secondary Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner and said cost (together with the cost of attorneys fees, if any, in the enforcement of the Owner's obligations and collection of the charge to the Owner) shall become a lien against the individual Owner's Lot (with respect to any matter relating to an individual Owner's responsibility) and such cost shall become a part of the costs of the Secondary

Association (until such time as reimbursement is received from the individual Lot Owner). In the event that the Declarant undertakes such maintenance, cleaning, repair or replacement, the Secondary Association shall promptly reimburse the Declarant for the Declarant's costs and expenses, including reasonable attorneys' fees and filing fees.

Section 4.4 Insurance.

(a) Association Coverage. Insurance coverage on the Real Estate shall be governed by the following provisions:

i. Ownership of Policies. All insurance policies upon the Real Estate shall be purchased by the Secondary Association for the benefit of all the Secondary Association and the Owners and their mortgagees as their interest(s) may appear, and provisions shall be made for the issuance of certificates of mortgagee endorsements to the mortgagees of Owners. Owners may, at their option, obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expense and such other coverage as they may desire.

ii. Coverage. All buildings and improvements upon the Real Estate and all personal property of the Secondary Association included in the Common Areas and facilities shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

A. Loss or Damage by fire or other hazards covered by a standard extended coverage endorsement;

B. Such other risks as from time to time shall be customarily covered with respect to buildings on the Real Estate; and

C. Such policies shall contain clauses providing for waiver of subrogation.

iii. Liability. Public liability insurance shall be secured by the Secondary Association with limits of liability of no less than One Million Dollars ($1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner. There shall also be obtained such other insurance coverage as the Secondary Association may determine from time to time to be desirable and necessary.

iv. Premiums. Premiums for insurance policies purchased by the Secondary Association shall be paid by the Secondary Association and shall be included as part of the annual assessment described in Article V below.

v. Proceeds. All insurance policies purchased by the Secondary Association shall be for the benefit of the Secondary Association and the Owners and their

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mortgagees, as their interest may appear, and shall provide that all proceeds thereof shall be payable to the Secondary Association as insurance trustees under this Declaration. The sole duty of the Secondary Association as insurance trustees shall be to receive such proceeds as are paid and to hold the same trust for the purpose stated herein or stated in the Bylaws and for the benefit of the Owners and their mortgagees in the following shares:

A. Proceeds on account of damage to Common Areas and facilities held for the Secondary Association.

B. Proceeds on account of damage to Lots shall be held in undivided shares for the Owners of damaged Lots in proportion to the cost of repairing the damage suffered by each Owner, which cost shall be determined by the Secondary Association.

C. In the event a mortgage endorsement has been issued for any Lot, the share of the Owner shall be held in trust for the mortgagee and the Owner as their interests may appear.

(b) Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:

i. Expense of the Trust. All expenses of the insurance trustees shall be first paid or provisions made therefore.

ii. Reconstruction or Repair. The remaining proceeds shall be paid to defray the cost of repairs. Any proceeds remaining after defraying such cost shall be distributed to the beneficial Owners as above provided.

(c) Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association or those held in trust, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to six (6) months' assessments, plus reserves accumulated.

Section 4.6 Condemnation or Destruction. In the event that any of the Common Areas shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or destroyed by any cause whatsoever, the Secondary Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage, or destruction. Any sums recovered by the Secondary Association shall be applied, first, to the restoration and repair of any Common Areas condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Common Areas or turned over to the Owners in proportion to their Pro-rata Shares (as hereinafter defined), whichever may be determined by a majority vote of the members of the Secondary Association. Each Owner shall be responsible for pursuing his own action for damages to his Lot, either by reason of direct damage thereto or by reason of an impairment of value due to damage to

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the Common Areas. The Secondary Association shall notify all Mortgagees of which it has notice of any condemnation, damage, or destruction of any Common Areas.

Section 4.7 Transfer of Control of Secondary Association. Declarant shall transfer control of the Secondary Association to the Members as soon as is practical upon the termination of the Class B Membership, as described in Section 4.2 above.

Section 4.8 Interim Advisory Committee. Declarant may, in its sole discretion, establish and maintain until such time as Declarant shall transfer control of the Secondary Association pursuant to Section 4.7 hereof, an Interim Advisory Committee (the "Advisory Committee"). If established: (a) The Advisory Committee shall serve as a liaison between the Owners (other than the Declarant) and the Secondary Association, and advise the Secondary Association from time to time during such period; (b) The Advisory Committee shall consist of three (3) members, each of whom must be an Owner (other than Declarant, or an officer, director or employee of Declarant); (c) The members of the Advisory Committee shall serve without compensation. The Advisory Committee shall be elected for a term of one (1) year by the Owners (other than Declarant) at a meeting thereof called for such purpose; and (d) The Owners (other than Declarant) may remove any member of the Advisory Committee with or without cause, and elect a successor at a meeting thereof called for such purpose.

Section 4.9 Mortgagees' Rights. Any mortgagees of any Owners shall have the right, at their option, jointly or severally, to pay taxes or other charges which are in default or which may or have become a charge against the Common Areas and to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Areas, and mortgagees making such payment shall be owed immediate reimbursement therefore from the Secondary Association. In addition, neither the Owners nor the Secondary Association shall materially impair the right of any mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate.

ARTICLE V
ASSESSMENTS

Section 5.1 Purpose of Assessments. The Assessments levied by the Secondary Association shall be used exclusively for the purpose of preserving the values of the Lots within the Real Estate and promoting the health, safety, and welfare of the Owners, users, and occupants of the Real Estate and, in particular, for the Secondary Association's obligations relating to the improvement, repairing, operating, and maintenance of the exterior of the Dwelling Units and the Lots, party walls, and Common Areas, including, but not limited to, the payment of insurance thereon, the payment of taxes on the Common Areas, enforcement of the Restrictions, and for the cost of labor, equipment, material, and management furnished with respect to the Common Areas; provided that the Secondary Association shall not be responsible for the replacement, repair or maintenance of any Common Areas which are or hereafter may be dedicated to the public. Each Owner (except the Declarant and Builder) hereby covenants and agrees to pay to the Secondary Association:

(a) A Pro-rata Share (as hereinafter defined) of the annual Assessment fixed, established, and determined from time to time, as hereinafter provided.

(b) A Pro-rata Share (as hereinafter defined) of any special Assessments fixed, established, and determined from time to time, as hereinafter provided.

Lots owned by Builder shall be assessed in an amount equal to 25% of the Assessments during any period that Builder owns a Lot or Lots. This is reasonable and equitable under the circumstances, as Lot(s) owned by Builder are likely to be vacant, and as such would not generate the same maintenance burden as occupied Lots. No Owner other than Builder shall be entitled to a reduced rate of dues, regardless of whether the Lot owned by that Owner is vacant or not.

Lots owned by the Declarant or its assigns shall not be assessed; however, Declarant or its assigns shall be responsible for any shortfall in HOA revenues.

Section 5.2 Liability for Assessment. Each Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall be a charge on each Lot other than Lots owned by the Declarant and shall constitute a lien from and after the due date thereof in favor of the Secondary Association upon each such Lot. The lien for Assessments shall be subordinate to the lien of any first mortgage on a Lot. An Owner's failure to pay any Assessment shall not, by the terms of this Declaration, constitute a default under a federally insured mortgage on such Lot. Mortgagees shall not be required to collect any Assessment. Each such Assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall also be the personal obligation of the Owner of each such Lot at the time when the Assessment is due. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, nor shall any sale or transfer relieve any Owner of the personal liability hereby imposed. The personal obligation for delinquent Assessments shall not pass to any successor in title unless such obligation is expressly assumed by such successor.

Section 5.3 Pro-rata Share. The Pro-rata Share of each Owner for purposes of this Article V shall be the percentage obtained by dividing one by the total number of Lots shown on the Plats of the Real Estate ("Pro-rata Share").

Section 5.4 Basis of Annual Assessments. The Board shall establish an annual budget prior to the beginning of each fiscal year, setting forth estimates of all Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Secondary Association. A copy of this budget shall be mailed or delivered to each Owner prior to the beginning of each fiscal year of the Secondary Association. Such budget shall serve as the basis for establishing the annual assessments.

Section 5.5 Capital Contributions. Every Owner other than Declarant and Builder shall be responsible for an initial capital contribution in the amount of Two Hundred Fifty Dollars ($250.00), due upon every transfer of the title of a Lot to a new Owner.

Section 5.6 Basis of Special Assessments. Should the Board at any time during the fiscal year determine that the Assessments levied with respect to such year are insufficient to pay the Common Expenses for such year, the Board may, at any time, and from time to time levy such special Assessments as it may deem necessary for meeting the Common Expenses. In addition,

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the Board shall have the right to levy at any time, and from time to time, one or more special Assessments for the purpose of defraying, in whole, or in part, any unanticipated Common Expense not provided for by the annual Assessments.

Section 5.7 Fiscal Year; Date of Commencement of Assessments; Due Dates. The fiscal year of the Secondary Association shall be established by the Secondary Association and may be changed from time to time by action of the Secondary Association. The liability of an Owner, other than Declarant, for Assessments under this Article V shall commence as of the date such Owner acquires his interest in a Lot. The first annual Assessment shall be made for the balance of the Secondary Association's fiscal year in which such Assessment is made and shall become due and payable commencing on any date fixed by the Association. The annual Assessment for each year after the first assessment year shall be due and payable on the first day of each fiscal year of the Secondary Association. Annual Assessments shall be due and payable in full as of the above date, except that the Secondary Association may from time to time by resolution authorize the payment of such Assessments in installments.

Section 5.8 Duties of the Secondary Association Regarding Assessments.

(a) The Board shall keep proper books and records of the levy and collection of each annual and special Assessment, including a roster setting forth the identification of each and every Lot and each Assessment applicable thereto, which books and records shall be kept by the Secondary Association and shall be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) at all reasonable times during regular business hours of the Secondary Association. The Board shall cause written notice of all Assessments levied by the Secondary Association upon the Lots and upon the Owners to be mailed or delivered to the Owners or their designated representatives as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such Assessment or any installment thereof. In the event such notice is mailed or delivered less than thirty (30) days prior to the due date of the Assessment to which such notice pertains, payment of such Assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing or delivery of such notice.

(b) The Secondary Association shall promptly furnish to any Owner or any mortgagee of any Owner upon request a certificate in writing signed by an officer of the Secondary Association, setting forth the extent to which Assessments have been levied and paid with respect to such requesting Owner's or mortgagee's Lot. As to any person relying thereon, such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. The Secondary Association may assess an administrative fee for such certificate, not to exceed the maximum amount permitted by North Carolina law.

(c) The Association shall notify any mortgagee from which it has received a request for notice of any default in the performance by any owner of any obligation under the By-laws or this Declaration which is not cured within sixty (60) days.

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Section 5.9 Non-payment of Assessments; Remedies of Secondary Association.

(a) If any Assessment is not paid on the date when due, then such Assessment shall be deemed delinquent and shall, together with any interest thereon and any cost of collection thereof, including attorneys' fees, become a continuing lien on the Lot against which such Assessment was made, and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Lot as of the date of levy of such Assessment, and shall be enforceable against the interest of such Owner and all future successors and assignees of such Owner in such Lot, and shall be collected in the same manner as the Assessments described in subparagraph (b) hereof; provided, however, that such lien shall be subordinate to any mortgage on such Lot recorded prior to the date on which such Assessment becomes due.

(b) If any Assessment upon any Lot is not paid within thirty (30) days after the due date, such Assessment and all costs of collection thereof, including attorneys' fees, shall bear interest at the rate of eighteen percent (18%) per annum or the maximum amount permitted by North Carolina law until paid in full. In addition to such interest, the Secondary Association shall assess a late fee, as from time to time determined by the Board of Directors of the Secondary Association. The Secondary Association may bring an action in any court having jurisdiction against the delinquent Owner to enforce payment of the same and/or to foreclose the lien against said Owner's Lot, and there shall be added to the amount of such Assessment all costs of such action, including the Secondary Association's attorneys fees, and in the event a judgment is obtained, such judgment shall include such interest, late fees, costs, and attorneys' fees.

Section 5.10 Adjustments. In the event that the amounts actually expended by the Secondary Association for Common Expenses in any fiscal year exceed the amounts budgeted and assessed for Common Expenses for that fiscal year, the amount of such deficit shall be carried over and become an additional basis for Assessments for the following fiscal year. Such deficit may be recouped either by inclusion in the budget for annual Assessments or by the making of one or more special Assessments for such purpose, at the option of the Secondary Association.

Section 5.10 Budget Deficits during Development Period. During the Development Period, Declarant shall advance funds to the Secondary Association sufficient to satisfy the deficit, if any, in any fiscal year between the actual operating expenses of the Association (exclusive of any allocation for capital and other reserves) and the annual and special and specific assessments for such fiscal year.

Section 5.10 Failure to Assess. The failure of the Board to fix the assessment amounts or to deliver to each Owner the assessment notice shall not be deemed a waiver, modification or release of any Owner of the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Secondary Association.

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ARTICLE VI
ARCHITECTURAL STANDARDS AND REQUIREMENTS

Section 6.1 Purpose. In order to preserve the natural setting and beauty of the Real Estate, to establish and preserve a harmonious and aesthetically pleasing design for the Real Estate, and to protect and promote the value of the Real Estate, the Lots and all improvements located therein or thereon shall be subject to the restrictions set forth in this Article VI and in Article VII. Notwithstanding the foregoing, neither this Article nor Article VII shall apply to the activities of the Declarant or Builder during the Development Period, nor to construction or improvements or modifications to the Common Areas by or on behalf of the Secondary Association. The Board shall have the authority and standing, on behalf of the Secondary Association, to enforce in courts of competent jurisdiction decisions of the Committee.

Section 6.2 Architectural Control Committee. The Board shall establish an Architectural Control Committee to consist of three (3) persons, all of whom shall be appointed by and shall serve at the discretion of the Board. Members of the Committee may include persons who are not Members of the Secondary Association. Members of the Committee may or may not be members of the Board. During the Development Period, the Declarant shall have all of the powers and authority of the Committee.

The regular term of office for each member of the Committee shall be one year, coinciding with the fiscal year of the Secondary Association. Any member appointed by the Board may be removed with or without cause by the Board at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member. The Committee shall elect a Chairman and Vice Chairman and he, or in his absence, the Vice-Chairman, shall be presiding officer at its meetings. The Committee shall meet at least once in each calendar month, as well as upon call of the Chairman, and all meetings shall be held at such places as may be designated by the Chairman. A majority of the members shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present in person or by proxy at a meeting of the Committee shall constitute the action of the Committee on any matter before it. The Committee is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Committee in performing its functions set forth herein. Such costs associated with the use of consultants shall be considered a Common Expense, unless the Committee determines that such costs are the responsibility of the applying Owner.

The Committee shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Lots or structures containing Lots and the open space, if any, appurtenant thereto. The Board or the Committee may promulgate guidelines containing additional architectural standards for the Real Estate. In addition to such standards, the following shall apply: plans and specifications showing the nature, kind, shape, color, sizes, materials, and location of such modifications, additions, or alterations shall be submitted to the Committee for approval as to quality of workmanship and design and as to harmony of external design with existing structures and location in relation to surroundings, topography, and finished grade elevation. The Committee shall endeavor to approve or to disapprove such plans or to request additional information within thirty (30) days after submission of completed plans, proposals, specifications or drawings. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his Dwelling Unit, or to paint the interior of his Dwelling Unit any color desired.

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Section 6.3 No Waiver of Future Approvals. The approval by the Committee of any proposals or plans and specification or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

Section 6.4 Architectural Approval. To preserve the architectural and aesthetic appearance of the Real Estate, no construction of improvements of any nature whatsoever with the exception of vegetative landscaping shall be commenced or maintained by an Owner, other than the Declarant or Builder, with respect to the construction or affecting the exterior appearance of any Dwelling Unit or with respect to any other portion of the Real Estate, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, mail boxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, tree houses, playground equipment, or similar structures, awnings, walls, fences, exterior lights, garages, or outbuildings, nor shall any exterior addition to or change or alteration therein be made (excluding repainting in the original color but otherwise including, without limitation, painting or staining of any exterior surface), unless and until two (2) copies of the plans and specifications and related data (including, if required by the Committee, a survey showing the location of trees of six (6) inches in diameter at a height of four (4) feet and other significant vegetation on such Lot) showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Committee, as to the compliance of such plans and specifications with such standards as may be published by the Committee from time to time including the harmony of external design, location, and appearance in relation to surrounding structures and topography. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the Committee, and the other copy shall be returned to the Owner marked "approved", "approved as noted", or "disapproved".

(a) *Power of Disapproval.* The Committee may refuse to grant permission to construct, place or make the requested improvement, when: (i) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvements to be in violation of the restrictions contained in this Declaration; (ii) The design, proposed material or color scheme of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures, including trim, siding, roof and brick colors, or with the Real Estate in general; (iii) The proposed improvement or any part thereof would architecturally, in the reasonable judgment of the Committee, be contrary to the interests, welfare or rights of all or any other Owners; and/or (iv) The Committee is otherwise authorized to disapprove the requested improvement in this Declaration.

(b) *Powers Following Approval.* Following approval of any plans and specifications by the Committee, representatives of the Committee shall have the right during reasonable hours to enter upon and inspect any Lot, or other improvements with respect to which construction is underway to determine whether or not the plans and specifications therefor have been approved and are being complied with. In the event the Committee shall determine that such plans and specification have not been approved or are not being complied with, the Committee shall be entitled to enjoin further construction and to require

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the removal or correction of any work in place which does not comply with approved plans and specifications.

Section 6.5 Non-Vegetative Landscaping Approval. To preserve the aesthetic appearance of the Real Estate, no material modification to the grading, excavation, or filling of any Lot shall be implemented by an Owner, unless and until the plans therefore have been submitted to and approved in writing by the Committee. The provisions hereof regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, etc. shall also be applicable to approvals required under this Section.

Section 6.6 Approval Not a Guarantee. No approval of plans and specifications and no publication of standards shall be construed as representing or implying that such plans, specifications, or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as representing or guaranteeing that any improvement built in accordance therewith will be built in a good and workmanlike manner. Neither the Declarant, the Secondary Association, nor the Committee shall be responsible or liable for: (a) any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this Article VI; (b) loss or damages to any person arising out of the approval or disapproval of any plans or specifications; (c) any loss or damage arising from the noncompliance of such plans and specifications with any governmental ordinances and regulations; nor (d) any defects in construction undertaken pursuant to such plans and specifications.

Section 6.7 Building Restrictions. All improvements shall be constructed in compliance with any and all applicable state, county and municipal zoning and building restrictions. Prior to any such grading, clearing, construction of impervious surface, building, or other construction activity, the Owner of any Lot which is subject to such rules, regulations, guidelines or restriction shall make such filings, and obtain such authorizations and permits as are required thereunder, and further, shall receive the prior written approval of the Committee.

ARTICLE VII
USE RESTRICTIONS

The Secondary Association, acting through its Board, shall have the authority to make and to enforce standards and restrictions governing the use of the Real Estate, in addition to those contained herein, and to impose reasonable user fees for use of Common Areas. Such regulations and use restrictions shall be binding upon all Owners and occupants until and unless overruled, canceled or modified in a regular or special meeting of the Secondary Association by a majority of Members entitled to vote thereon subject to the prior written consent of the Declarant during the Development Period.

Reference is herein made to the Declaration of Covenants, Restrictions and Provisions for Membership in Regal Manor Homeowners' Association, Inc., recorded in Record Volume 8118 at Page 139 in the Clerk of Court's Office for York County, S.C., to which all Property of Summerlake Townhomes shall be subject (hereinafter the "Master Declaration"). Members of the Secondary Association shall also be members of the Master Association for Regal Manor, and therefore subject to the restrictions, provisions, and covenants of the Regal Manor Declaration as well as this Declaration. Notwithstanding the right and authority of the Master Association to enforce any of the provisions of the Regal Manor Declaration, this Declaration shall additionally

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reserve unto the Secondary Association the right, but not the obligation, to enforce, in its discretion, any or all of those certain Land Use Restrictions and Obligations set forth in Article III of the Regal Manor Declaration, and in such event, the Board of Directors of the Secondary Association shall have thereto powers of enforcement being the same as provided for violations of those separate use restrictions set forth in this Article VII.

Section 7.1 Use of Lots. Except as permitted by Sections 7.26 and 7.31 hereof, each Lot shall be used for residential purposes only, and no trade or business of any kind may be carried on therein. The use of a portion of a Dwelling Unit as an office by an Owner or his tenant shall not be considered to be a violation of this covenant if Owner is in compliance with Section 7.26 below. No building or structure shall be located on any Lot outside of the setback lines designated on the Plats or as designated by the county or municipal zoning authorities.

Section 7.2 Awnings and Window Screens. No foil or other reflective material shall be used on any windows for sunscreens, blinds, shades, or other purposes nor shall any window-mounted heating or air conditioning units be permitted. No metal, fiberglass or similar type awnings or patio covers shall be permitted. Permanent clotheslines will not be approved. Clothing, rugs, or other items which are visible to others in the Real Estate shall not be hung on any railing, fence, hedge, or wall.

Section 7.3 Signs. No signs of any kind shall be erected within the Real Estate, or permitted within any windows, without the written consent of the Board, except for such signs as may be required by legal proceedings and except for a single standard real estate "for sale" or "for rent" sign may exist on a Lot if such does not exceed six (6) square feet in area. Declarant or Builder may use such signs as it deems necessary or appropriate during the Development Period. No business signs, flags(except as allowed under Section 7.20), banners or similar items except those placed and used by Declarant advertising or providing directional information shall be erected by any Owner. If permission is granted to any Person to erect a sign, including name and address signs within the Real Estate, the Board reserves the right to determine the size and composition of such sign as it, in its sole discretion, deems appropriate. However, nothing in this Declaration shall regulate or prohibit an Owner from displaying on the Owner's Lot the flag of the United States or North Carolina, so long as the said flag is no greater than four feet by six feet and is displayed in accordance with or in a manner consistent with the patriotic customs set forth in 4 U.S.C. 5-10, as amended, governing the display and use of the flag of the United States. Further, nothing in this Declaration shall regulate or prohibit an owner from displaying on the Owner's Lot a political sign (as defined in N.C.G.S. 47F-121), provided said sign is displayed not more than 45 days before the day of the election or more than seven days after the day of the election.

Section 7.4 Parking and Prohibited Vehicles.

(a) *Parking.* Ownership of each Lot shall entitle the Owner to the use of that respective Dwelling Unit's garage and the appurtenant driveway extending from the street to the garage, together with the right of ingress and egress in and upon said parking areas. The Secondary Association may assign and/or designate any additional vehicle parking spaces on the Property for each Dwelling Unit and/or as visitor or short-term parking. No motor vehicle, whether or not utilized by an Owner, shall be parked on any street or public right-of-way, except in areas specifically designated by the Association for such purposes. Garages shall be used for parking of vehicles and no other use or modification thereof shall

be permitted which would reduce the number of vehicles which may be parked therein below the number for which the garage was originally designed.

No Owners or other occupants of any portion of the Real Estate shall repair or restore any vehicles of any kind upon or within any Lot or within any portion of the Common Areas, except (i) within enclosed garages or workshops, or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

(b) *Prohibited Vehicles.* Commercial vehicles primarily used or designed for commercial purposes, tractors, busses, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Board. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Real Estate except within enclosed garages. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Real Estate during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Areas. Any vehicles parked in violation of this Section or parking rules promulgated by the Board may be towed at the expense of the Owner. Further, "commercial vehicles" shall be defined herein as vehicles weighing more than one (1) ton and having more than two (2) axles.

Section 7.5 Animals and Pets. No farm animals, fowls or domestic animals for commercial purposes shall be kept or permitted on any lot or lots in the Real Estate. All pets shall remain under the control and supervision of an adult Owner, and shall not be permitted off of such Owner's respective Lot unless on a leash or other restraint. The owner of any pet shall be responsible to clean up or repair any waste or damage caused by such pet, and assure that such pet does not create any unreasonable disturbance.

Section 7.6 Quiet Enjoyment. No portion of the Real Estate shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition. No noxious or illegal activity shall be carried on upon any portion of the Real Estate. No hunting of any nature shall be permitted within the Real Estate. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Real Estate. The Declarant or the Secondary Association may order the relocation of any wood piles which are unsightly. No horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for such purposes, shall be located, used or placed within the Real Estate.

Section 7.7 Unsightly or Unkempt Conditions; Lawn Care; Dumping. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on his or her Lot. All lawns and other landscaping materials shall be maintained on a regular basis. In no event shall the grass on any Lot exceed the length of six inches (6"). The pursuit of hobbies or other activities, specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Real Estate. Nothing which would result in a cancellation of any insurance for any portion of the Real Estate, or which would be in violation of any law or governmental code or regulation shall be permitted in the Real Estate. Any Owner, or his family,

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tenants, guests, invitees, servants, or agents, who dumps or places any trash or debris upon any portion of the Real Estate shall be liable to the Secondary Association for the actual costs of removal thereof or the sum of $150.00, whichever is greater, and such sum shall be added to and become a part of that portion of any assessment next becoming due to which such Owner and his Lot are subject.

Section 7.8 Antennas, Aerials and Satellite Dishes.

(a) Intent. It is the intent and desire of Declarant that the Real Estate be developed in an aesthetically pleasant manner, and that the residences constructed on the Lots retain a harmonious and consistent appearance. To this end, it is the goal of the provisions of this Section 7.8 to limit the installation of any satellite dishes, antennas and aerials on the Lots so that such are not visible from the street in front of such Lot.

(b) Permitted Installation and Standards. A "Satellite Dish" or "Antenna," as such terms are defined below, shall be permitted to be installed by an Owner without the approval of the Declarant or the Secondary Association *provided* the location of the Satellite Dish or Antenna, and all related cables and wiring, are installed at the least visible location on such Owner's Lot, as viewed from the street directly in front of such Lot, which will not result in a substantial degradation of reception. Within twenty (20) days from the installation of a Satellite Dish or Antenna, an Owner shall notify the Secondary Association of such installation. Such notice shall indicate the item installed, the approximate location on such Lot, and that such installation meets the standards contained in this subsection (b).

(c) Rights of Secondary Association and Declarant. The Secondary Association and Declarant shall have the right to enter upon a Lot on which a Satellite Dish or Antenna is installed in order to (i) confirm that the Satellite Dish or Antenna, as the case may be, was installed in accordance with the standard specified in Section 7.8(b), above; or (ii) install, at the expense of the Secondary Association or the Declarant, as the case may be, landscaping, fencing, or a combination thereof, so as to shield or otherwise block the view of such Satellite Dish or Antenna from the street in front of such Lot. In the event the installation does not meet the standard specified in Section 7.8(b), above, the Secondary Association may require the relocation of the Satellite Dish or Antenna by the Owner, at the Owner's expense, to another location which meets such standard. In addition, the Secondary Association shall have the right to require the Owner, at the Owner's expense, to paint the Satellite Dish or Antenna (provided that such painting does not impair the reception thereof) to match the background of the installation area.

(d) Definitions of Satellite Dish and Antenna. For purposes of this Section 7.8, the terms "Satellite Dish" and "Antenna" shall mean any satellite dish or antenna that is subject to the Telecommunications Act of 1996, as amended, and any applicable regulations issued thereunder (collectively, the "Telecom Act").

(e) Reception Devices not Governed by the Telecom Act. Any antennas, aerials, satellite dishes, or other apparatus not subject to the Telecom Act shall be permitted on a Lot only if: (i) concealed by landscaping, fencing, or a combination thereof; (ii) installed so as not to be visible from the street in front of such Lot, front elevation street view; and (iii) not constitute a nuisance to any other Owner. All installations under this subsection (e) shall be first approved by the Secondary Association.

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(f) Miscellaneous. No radio or television signals, nor electromagnetic radiation, shall be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals within the Real Estate, provided however that the Declarant and/or the Secondary Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus or master antenna or cable system for the benefit of all or a portion of the Real Estate, should any such master system or systems be utilized by the Secondary Association and require any such exterior apparatus.

Section 7.9 Garbage Cans, Tanks, Etc. No storage tanks of any kind shall be allowed upon a Lot. No rubbish, trash or garbage containers shall be stored or maintained outdoors except those distributed by the entity that collects trash for the Real Estate and such containers must be removed from the curb within 24 hours of the trash pick-up day and stored behind the Dwelling Unit.

Section 7.10 Pools. No swimming pools, spas or hot tubs shall be erected, constructed or installed on any Lot.

Section 7.11 Storage Sheds and Temporary Structures. Except as may be utilized by Declarant or Builder during the Development Period, no tent, shack, trailer, storage shed, mini-barn or other similar detached structure shall be placed upon a Lot or the Common Areas. Notwithstanding the above, party tents or similar temporary structures may be erected for special events with prior written approval of the Committee or the Declarant and children's overnight camping tents will be allowed as long as they are not up longer than forty-eight (48) hours.

Section 7.12 Drainage, Water Wells and Septic Systems.

(a) Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than the Declarant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains.

(b) No private water wells may be drilled or maintained and no septic tanks or similar sewerage facilities may be installed or maintained on any Lot.

Section 7.13 Traffic Regulation and Sight Distance at Intersections. All Lots located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain wherein it would create a traffic or sight problem. All vehicular traffic on the private streets and roads in the Real Estate shall be subject to the provisions of the laws of the State of South Carolina, and any other applicable governmental agency, concerning operation of motor vehicles on public streets. The Secondary Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including modifications of those in force on public streets, within the Real Estate. The Secondary Association shall be entitled to enforce same by establishing such enforcement procedures as it deems necessary, including levying fines for the violation thereof. Only drivers licensed to operate motor vehicles by the State of South Carolina or by any other state in the United States may operate any type of motor vehicle within the Real Estate. All vehicles of any kind and nature which are operated on the streets in the

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Real Estate shall be operated in a careful, prudent, safe and quiet manner and with due consideration for the rights of all residents of the Real Estate.

Section 7.14 Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Real Estate, except for temporary lines as required during construction and high voltage lines if required by law for safety purposes.

Section 7.15 Air Conditioning Units. Except as may be permitted by the Board, no window air conditioning units may be installed in any Lot.

Section 7.16 Mailboxes. Each Owner of a Lot shall maintain the mailbox and structure which was originally installed by Builder, and shall replace same as necessary with a mailbox and structure which is substantially the same in appearance as that which was originally provided to the Dwelling Unit. Nothing may be attached to the mailbox structure which will affect the uniformity thereof with other such structures in the Real Estate. The Committee shall have the discretion to require the replacement of any mailbox within the Real Estate at the expense of the Owner of the Lot served thereby. Mailboxes constructed of brick, stone or other similar masonry shall not be allowed.

Section 7.17 Solar Panels. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot without prior written approval of the Committee. Solar panels visible by a person on the ground shall not be permitted:

(a) On the façade of a structure that faces areas open to common or public access;

(b) On a roof surface that slopes downward toward the same areas open to common or public access that the façade of the structure faces; or

(c) Within the area set off by a line running across the façade of the structure extending to the property boundaries on either side of the façade, and those areas of common or public access faced by the structure.

Section 7.18 Intentionally omitted.

Section 7.19 Intentionally omitted.

Section 7.20 Exterior Flags and Sculpture. Exterior sculptures, fountains, flags, and similar items must be approved by the Committee.

Section 7.21 Intentionally omitted.

Section 7.22 Wetlands, Lakes and Water Bodies. All wetlands, Lakes, ponds, and streams within the Real Estate, if any, shall be aesthetic amenities only, and no other use thereof, including without limitation, fishing, swimming, boating, playing or use of personal flotation devices, shall be permitted. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of wetlands, Lakes, ponds or streams within the Real Estate.

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Section 7.23 Fences. No fencing shall be installed on any Lot without the prior review and approval of the Committee. The Committee shall have approval on all aspects of any proposed fencing, including but not limited to size, location, height and composition. Fencing guidelines are as follows:

(a) General Guidelines: The following guidelines are applicable to all Lots within the Real Estate:

(i) **Approvals.** Any fencing shall be subject to the prior approval of the Committee.

(ii) **Fencing Types and Materials.** All fencing shall be constructed of white vinyl, white picket style, black wrought iron style materials, or wood fencing. For purposes of the Declaration, the terms "picket style" shall mean a 3' to 6' in height vinyl or painted wood fence where there exists between 2" and 3" of space between the vertical slats of such fence. Wood fencing is permitted in most locations; however, the Committee reserves the right to approve certain fence types on perimeter and highly visible lots within the community (See section (d) (ii) below). A brochure showing an example of fencing to be installed must be included with the application to the Committee. Chain link and barbed wire fencing is prohibited.

(iii) **Fencing Colors.** Fencing shall be white, off-white, neutral, or earth toned colors. All wooden fencing must be waterproof, stained and/or painted. Wrought iron must be black. Such stain or paint must be uniform for an entire fence and maintained in good condition.

(iv) **Fencing Height.** Fencing shall not exceed six (6) feet in height; provided that a decorative cap or top (lattice work or other approved decorative detail) may be installed thereon so long as the aggregate height of the entire structure shall not exceed seven (7) feet.

(v) **Use of Professional Installer.** A professional fencing contractor must be hired by the Owner, at such Owner's cost, to install approved fencing for such Owner.

(vi) **Declarant Installed Fencing.** No fencing shall connect to or otherwise interfere with any fencing originally installed by the Declarant. Any fencing installed by Declarant shall not be subject to these standards.

(vii) **Landscape Easements.** Except as installed by Declarant or the Secondary Association, no improvements or permanent structures, including without limitation, fences, shall be erected or maintained in or upon Landscape Easements.

(viii) **Fencing within Easements:** Fencing which is installed within any easement affecting a Lot shall be subject to the risk of removal without notice by the Secondary Association or any other entity or entities which have access rights, if any work or repairs are to be done within the easement area(s). The Owner of such Lot shall be responsible for any and all costs relating to the removal of such fencing and for the subsequent replacement of any approved replacement fencing.

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In addition, fencing must not impede surface drainage and must be installed to be a minimum of three (3) inches off the ground (fence posts must not obstruct any drainage, i.e. rear swale).

(b) Location of Fencing on Conventional Lots: In addition to the guidelines under other subsections herein, the following guidelines are applicable to all Lots within the Real Estate:

(i) Fencing shall not extend forward beyond a point which is ten (10) feet behind the front corner of the residence; and

(ii) Fencing on any corner Lot shall be at least five (5) feet from the sidewalk, if any.

(c) Additional Fencing Guidelines. Fencing for Lots in highly visible locations (such locations to be determined by the Committee in its sole discretion) shall be subject to the following additional restrictions:

(i) ***Perimeter Lots and Highly Visible Lots***: With respect to a Lot where either (A) the rear yards are highly visible from public streets (within the neighborhood or surrounding the neighborhood), or (B) the Lot abuts a Common Area, the Committee may require fencing for such Lot to be consistent in material, height, and style to that of previously approved fencing for any other Lot which is on and along such street or Common Area.

(ii) ***Dog Runs and Similar Enclosures.*** No enclosures, structures or "runs" which are designed primarily for the outside keeping of pets or other animals and which are made in whole or part from chain link fencing material, including but not limited to dog runs, kennels, or other similar enclosures, shall be permitted; provided, however, the Committee shall have the discretion to approve such an enclosure or structure if such is surrounded by a fence which is consistent with the foregoing restrictions and minimizes the visibility of such structure by adjoining property owners.

NOTE: In addition to the above restrictions and standards, the applicable municipality may have restrictions and ordinances that may affect, limit or otherwise restrict or prohibit an improvement to a Lot, including fencing. Approval of any improvement by the Committee does not guarantee that such improvement is not subject to any other governmental approval. There may be instances where a change is approved through the Committee but may not be allowed through the municipality (or vice versa). An Owner must check with the municipality and obtain any permits or approvals that may be required.

Section 7.24 Business Uses. No trade or business may be conducted in or from any Lot, except that an Owner or occupant residing in a Dwelling Unit may conduct business activities within the Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (b) the business activity conforms to all zoning requirements for the Real Estate; (c) the business activity does not involve persons coming onto the Real Estate who do not reside in the Real Estate or door-to-door solicitation of residents of the Real Estate; and (d) the business activity is consistent with the

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residential character of the Real Estate and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Real Estate, as may be determined in the sole discretion of the Board.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involve the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore. Notwithstanding the above, the leasing of a Lot or Dwelling Unit shall not be considered a trade or business within the meaning of this section. This section shall not apply to any commercial property within the Real Estate nor shall it apply to any activity conducted by the Declarant or Builder with respect to its development and sale of the Real Estate or its use of any Lots or Dwelling Units which it owns within the Real Estate.

Section 7.25 Basketball Goals. No basketball goals shall be permitted on any lot without the prior review and approval of the Architectural Control Committee of the Secondary Association. No basketball goals shall be permitted to be used in the front yard, along any curb or in any street of the Community.

Section 7.26 Playground Equipment. No playground equipment shall be installed on any lot without the prior review and approval of the Architectural Control Committee of the Secondary Association. All such equipment shall be located at least ten (10) feet from any adjacent property lines and in the rear yard of a Lot (being the portion of such Lot behind the rear corners of the Dwelling Unit on such Lot). Notwithstanding the foregoing, in the event such Lot is located on a corner, the Committee may, in its discretion, approve a location for such equipment other than a rear yard provided such is not closer than ten (10) feet from any public sidewalk.

Section 7.27 On-Site Fuel Storage. No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Real Estate except that up to five (5) gallons of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Secondary Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

Section 7.28 Contiguous Lots. Whenever two or more contiguous Lots shall be owned by the same Owner, such Owner shall not be permitted to use two or more of said Lots as a site for a single dwelling. Each Lot shall be, and shall remain, improved with a single Dwelling Unit, and each Lot shall be subject to the Assessments.

Section 7.29 Control and Common Areas.

(a) *Control by the Secondary Association.* As part of its general duties, the Secondary Association shall regulate the Common Areas and shall provide for the maintenance thereof in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures in the vicinity thereof and the natural or other vegetation and topography of the Common Areas. No improvements, excavation, changes in grade or other work shall be done upon the Common Areas by any Owner, nor shall the

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lakes or streams, if any, or Common Areas be changed by any Owner from its natural or improved existing state, without the prior written approval of the Committee.

(b) *Restrictions of Use of Common Areas.* The following covenants and restrictions on the use and enjoyment of the Lots and the Common Areas shall be in addition to any other covenants or restrictions contained herein or in the Plats and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Secondary Association. Present or future Owners or the Secondary Association shall be entitled to injunctive relief against any violation or attempted violation of any of such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

(i) No one other than Owners who are Members in good standing with the Secondary Association, or such an Owner's occupant, tenants, guests or invitees, may use the Common Areas.

(ii) No nuisance shall be permitted to exist on any Lot and no waste shall be committed on any Lot which shall or might damage or cause injury to the Common Areas.

(iii) All Owners and members of their families, their guests, or invitees, and all occupants of any Lot or the Properties or other persons entitled to use the same and to use and enjoy the Common Areas, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Areas.

(iv) No Owner shall be allowed to plant trees, landscape or do any gardening in any part of the Common Areas, except with express permission from the Committee.

(v) The Common Areas shall be used and enjoyed only for the purposes for which they are designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.

Section 7.30 Laws and Ordinances. Every Owner and occupant of any Lot or Dwelling Unit, their guests and invitees, shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Real Estate and any violation thereof may be considered a violation of this Declaration; provided, however, the Board shall have no obligation to take action enforce such laws, statutes, ordinances and rules.

Section 7.31 Sales and Construction. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for Builder and the Declarant and its agents, employees, successors, and assigns to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots and Dwelling Units or the developing of Lots, Dwelling Units and

Common Areas, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model houses, all as may be approved by the Declarant from time to time, provided that the location of any construction trailer of any assignees of the Declarant's rights under this Section 7.31 shall be subject to the Declarant's approval. The right to maintain and carry on such facilities and activities shall include specifically the right to use Dwelling Units as model residences, and to use any Dwelling Unit as an office for the sale of Lots and Dwelling Units and for related activities.

Section 7.32 Occupants Bound. All provisions of the Declaration, By-Laws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Lot. Every Owner shall cause all occupants of his or her Lot to comply with the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any violation of the Declaration, By-Laws and rules and regulations adopted pursuant thereto.

Section 7.33 Intentionally omitted.

Section 7.34 Intentionally omitted.

Section 7.35 Garages. Dwelling Units which have garages shall have doors and when not in use, garage doors are to be left in the closed position.

Section 7.36 Doors. All storm doors and screen doors of a Dwelling Unit are subject to architectural review by the Committee.

Section 7.37 Buffer Yard. Any portion of a buffer area that is located within the boundaries of a Lot shall be maintained by the Owner.

Section 7.38 Public/Private Storm Drainage Easements. Each owner of a Lot shall maintain any and all pipe systems and open channels within the public storm drainage easements or private drainage easements located upon such Owner's Lot.

Section 7.39 Impermeable Surface. Prior to beginning any land disturbing activity or erecting any structure upon a Lot, an Owner must contact the municipal or county Zoning Department to ensure that such activity will comply with the ordinance which governs impermeable surfaces.

ARTICLE VIII
RULEMAKING AND REMEDIES FOR ENFORCEMENT

Section 8.1 Rules and Regulations. Subject to the provisions hereof, the Board may establish reasonable rules and regulations concerning the use of Lots and Dwelling Units, and the amendments thereto shall be furnished by the Secondary Association to all Members prior to the effective date upon the Owners, their families, tenants guests, invitees, servants and agents, until and unless any such rule or regulations be specifically overruled, cancelled, or modified by the Board or in a regular or special meeting of the Secondary Association by a majority of the

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Members as set forth in the By-Laws, subject to Declarant's consent during the Development Period.

Section 8.2 Authority and Enforcement.

(a) Upon the violation of this Declaration, the By-Laws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any assessments, the Secondary Association shall have the power, after fifteen (15) days written notice to the Owner or the occupant of said violation, and failure by said Owner or occupant to cure the violation: (i) to cause the Secondary Association to correct the violation at its own cost and expense, which said cost and expense shall constitute a continuing lien upon the Lot of the Owner or the occupant who is guilty of such violation; (ii) to suspend an Owner's right to vote in the Secondary Association; and (iii) to suspend an Owner or occupant's right (and the right of his or her family, guests, and tenants) to use any of the Common Areas.

The Board shall have the power to impose all or any combination of these sanctions. Such sanctions are in addition to the Secondary Association's remedies under Section 4.2, above, relating to maintenance. An Owner or occupant shall be subject to the foregoing sanctions in the event of such a violation by him or her, his or her family, guests, or tenants. Any such suspension of rights may be for the duration of the infraction and or any additional period thereafter, such additional period not to exceed thirty (30) days per violation.

(b) Notwithstanding subsection (a) above, a violation or threatened violation of any of the covenants and restrictions contained in this Declaration and the provisions contained in the Articles of Incorporation and By-Laws of the Secondary Association, or any rules and regulations adopted hereunder, shall be grounds for an action at law or equity instituted by the Declarant, the Secondary Association, or any Owner against any person violating or threatening to violate any such covenant, restriction, rule, or regulation. Available relief in any such action shall include the recovery of damages; injunctive relief, either to restrain the violation or threatened violation or to compel compliance with the covenants, restrictions, rules or regulations; declaratory relief; the enforcement of any lien created by these covenants, restrictions, rules, or regulations; and the recovery of costs and attorneys' fees incurred by any party successfully enforcing such covenants, restrictions, rules, or regulations. Failure by the Declarant, the Secondary Association, or any Owner to enforce any covenant, restriction, rule, or regulation shall in no event be deemed a waiver of the right to do so thereafter; provided, however, that no action shall be brought against either the Declarant or the Secondary Association for failing to enforce or carry out any such covenants, restrictions, rules, or regulations.

ARTICLE IX
GENERAL PROVISIONS

Section 9.1 Term. The covenants and restrictions of this Declaration shall run with and bind the Real Estate, and shall inure to the benefit of and shall be enforceable by the Secondary Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive

periods of ten (10) years, unless an instrument in writing, signed by more than seventy-five percent (75%) of the then Owners has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein. The number of ten (10) year renewal periods shall be unlimited.

Section 9.2 Amendment. Prior to the conveyance of the first Lot to an Owner, the Declarant may unilaterally amend this Declaration. After such conveyance, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is (a) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rules or regulations, or judicial determination, or to otherwise comply with any other governmental order or request; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots and the Dwellings; (c) required by an institutional or governmental agency or lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or the Department of Housing and Urban Development, to enable such lender or purchaser to acquire or purchase mortgage loans on the Lots and the Dwelling Units; (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots; (e) to annex additional real estate to the Real Estate as provided herein; (f) to correct clerical or typographical errors in this Declaration or any exhibit hereto, or any supplement or amendment thereto; provided, however, any amendment permitted under subsections (a) through (f) of this Section 9.2 shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. Additionally, during the Development Period, the Declarant may unilaterally amend this Declaration for any purpose, provided the amendment has no material adverse effect upon any right of the Owner.

Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of voting Members representing at least sixty-seven percent (67%) of the Members entitled to vote thereon. Any amendment to be effective must be recorded in the public records of the County in which this Declaration was recorded.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of the Declarant or the assignee of such right or privilege.

Section 9.3 Indemnification. The Secondary Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made

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by them, in good faith, on behalf of the Secondary Association and the Secondary Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member or former officer, director, or committee member may be entitled. The Secondary Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 9.4 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of the Declarant or the Board will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes, which are less restrictive. The effective date of this Declaration shall be the date of its filing in the public records. The captions of each Article and Section hereof as to the contents of each Article and Sections are inserted only for limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of North Carolina.

Section 9.5 Right of Entry. The Secondary Association, and during the Development Period the Declarant, shall have the right, but not the obligation, to enter onto any Lot for emergency, security, and safety reasons, and to inspect for the purpose of ensuring compliance with this Declaration, the By-Laws, and the Secondary Association rules, which right may be exercised by the Secondary Association's Board, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner or occupant directly affected thereby. This right of entry shall include the right of the Secondary Association to enter a Lot and Dwelling Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after request by the Board.

Section 9.6 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration would be unlawful, void, or voidable for violation of the common law rule against perpetuities, then such provisions shall continue on for the maximum amount of time as allowed by North Carolina law.

Section 9.7 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Secondary Association unless approved by a vote representing at least two-thirds (2/3) of the Members entitled to vote thereon. However, this Section shall not apply to (a) actions brought by the Secondary Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) actions brought for collection of assessments, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Secondary Association in proceedings instituted against it. .

Section 9.8 Intentionally omitted.

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Section 9.9 Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provision hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 9.10 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of the Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

Section 9.11 Rights of Third Parties. This Declaration shall be recorded for the benefit of the Declarant, the Owners and their Mortgagees as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Community, except as provided for herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and subject to the rights of the Declarant and the Mortgagees as herein provided, the Owners shall have the right to extend, modify, amend, or otherwise change the provisions of this Declaration without the consent, permission, or approval of any adjoining owner or third party.

Section 9.12 Assignment. Declarant shall have the right to assign its rights and obligations under this Declaration to any third party.

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IN WITNESS WHEREOF, Carolina Development Services, LLC, has caused this instrument to be executed the day and year first above written by its authorized ~~9-30-2013~~ CFO.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

Witnesses:

Shannon Burgess

Property Owner:

Carolina Development Services, LLC,
a South Carolina limited liability company

By: Catherine R Privette
Catherine R Privette
Its: CFO

STATE OF NORTH CAROLINA)
)
COUNTY OF UNION)

ACKNOWLEDGEMENT
under SC Code '30-5-30(C)

I Crystal M. Miller, do hereby certify that CAROLINA DEVELOPMENT SERVICES, LLC, a North Carolina limited liability company, by ~~Catherine~~ Catherine R. Privette, its CFO, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 30 day of September 2013.

(SEAL)

Crystal M. Miller
Notary Public
Mecklenburg County, NC

Notary Public for North Carolina
My Commission Expires: 6.6.2017

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IN WITNESS WHEREOF, TRUE HOMES, LLC, has caused this instrument to be executed the day and year first above written by its authorized ~~9-30-2013~~ Manager.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

Witnesses:

Sharron Burgess

Property Owner:

TRUE HOMES, LLC,
A Delaware limited liability company

By: Mark W. Boyce

Its: Mark W. Boyce, Manager

STATE OF NORTH CAROLINA)
)
COUNTY OF UNION)

ACKNOWLEDGMENT
under SC Code '30-5-30(C)

I Crystal M Miller, do hereby certify that TRUE HOMES, LLC, a Delaware limited liability company, by Mark W. Boyce, its Manager, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 30 day of September, 2013.

(SEAL)

Crystal M Miller
Notary Public for North Carolina
My Commission Expires: 6.6.2017

Mecklenburg County, NC Crystal M Miller Notary Public

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed the day and year first above written.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

Witnesses:

Property Owner:

~~MARGARET MCCRAY ROBERTSON~~ Paige Pinner Vestal (SEAL)

(SEAL)

STATE OF SC)

COUNTY OF York)

ACKNOWLEDGMENT
under SC Code '30-5-30(C)

I Dawn H Ulery, do hereby certify that Paige Pinner Vestal ~~MARGARET MCCRAY ROBERTSON~~ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 13 day of September, 2013.

(SEAL) DAWN H. ULERY NOTARY PUBLIC SOUTH CAROLINA

Notary Public for SC
My Commission Expires: 10/19/14

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IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed the day and year first above written.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

Witnesses:

Dawn H Ulery

Property Owner:

Margaret McCray Robertson (SEAL)

MARGARET MCCRAY ROBERTSON

_____ (SEAL)

STATE OF SC)

COUNTY OF York)

ACKNOWLEDGMENT
under SC Code '30-5-30(C)

DAWN H. ULERY NOTARY PUBLIC SOUTH CAROLINA

I Dawn H Ulery, do hereby certify that *MARGARET MCCRAY ROBERTSON* personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 30 day of August, 2013.

(SEAL)

Dawn H Ulery

Notary Public for SC

My Commission Expires: 10/19/14

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Exhibit D

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FULLER envelope

Fuller File No. 20268.00
July 1, 2021

Mr. Elliotte Quinn
The Steinberg Law Firm, LLP
103 Grandview Dr, Suite A
Summerville, SC 29484

Re: Preliminary Summary of Site Observations
Summerlake Townhomes
Fort Mill, SC 29715

Dear Mr. Quinn:

Pursuant to your request, Fuller Group, LLC (Fuller) has performed a visual survey of residential buildings located at the above referenced property. The following provides a preliminary summary of our observations and findings.

INTRODUCTION

At Summerlake Townhomes (Summerlake), there are twenty (20) separate residential townhome buildings that are the subject of this letter (see the attached site plan, Figure 1). The subject residential buildings are two-stories and include three (3) to six (6) dwelling units at each building, with a total of 101 residences present at Summerlake. The residences have been constructed using conventional wood framing methods and are supported by concrete slab-on-grade foundations. The exterior cladding consists of a combination of vertical and horizontal lap vinyl siding, brick veneer, and stone veneer (adhered concrete masonry veneer). A majority of the windows are vinyl single-hung windows along with a few fixed windows, while the doors consist of side-hinged entry and patio doors. The roofs are constructed in gable and shed configurations and are covered with asphalt shingles. Various units contain covered porches and/or garage canopies along the front elevations.

OBSERVATIONS AND FINDINGS

Fuller visited Summerlake on October 28, 2020 to become generally familiar with the property and observe conditions related to damaged interior wood flooring at door openings. Fuller additionally visited the property on December 3, 2020 to investigate roof leaks that were reported at Units 830 and 962. Following the initial site visits, Fuller visited the property on February 22 through 26, 2021 to document the existing conditions and perform destructive testing at the exterior and interior of various units.

The destructive testing included close observation of existing conditions related to the exterior claddings, roofing, windows, exterior doors, weather barriers, and flashing. The purpose of the destructive testing was to determine if the residences were constructed in accordance with requirements of the applicable building codes, manufacturers' installation instructions, and accepted

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industry standards. A total of 93 separate test cuts were performed by Fuller, along with reviews of the roof coverings and building interiors (see attached "Destructive Testing Summary").

Based on the findings of our visual survey with destructive testing, it is Fuller's opinion that deficiencies do exist related to the construction of the residences. This letter provides a preliminary summary of the deficiencies observed, which include, but may not be limited to the following:

- Improper attachment of vertical and horizontal lap vinyl siding.
- Improper attachment of vinyl soffits and porch ceilings.
- Improper clearance of vinyl siding at asphalt shingles.
- Inadequate mortar scratch coat/setting bed thickness for adhered concrete masonry veneer (ACMV).
- Improper termination and flashing of ACMV 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.
- Improper installation of flashing and WRB along door heads.
- Inadequate installation and damage of flashing along door sills.
- Improper installation of flashing along window sills at brick veneer.
- Inadequate flashing of exterior wall penetrations.
- Improper and inadequate installation of roof underlayment and metal drip edge.
- Improper and inadequate installation of roof-to-wall flashings.
- Inadequate coverage and sealing of roof fasteners.
- Inadequate protection of exterior trim.
- Inadequate installation of insulation at interior of windows and doors.
- Inadequate protection of vinyl siding from window reflections.

Deficiencies were observed to be common across the buildings and have allowed water to penetrate the building envelope, resulting in damage to the wood framing, sheathing, and interior finishes. The following defects and damages were observed at Units 923 and 2006 and at units throughout Summerlake:

- Defective sill flashing at door openings.
- Water-damaged interior wood flooring, trim, and drywall.
- Inadequate installation of insulation at interior of windows and doors.

Left in an uncorrected condition, the observed deficiencies will subject the residences to further damage.

SUMMARY

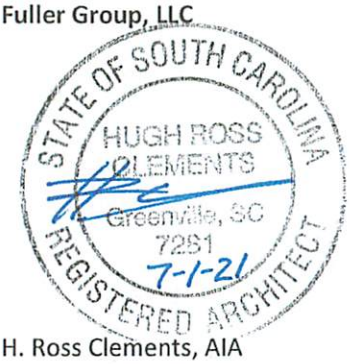
This letter is provided with a reasonable degree of architectural certainty. In the event that additional relevant information becomes available, Fuller reserves the right to respectively amend the opinions

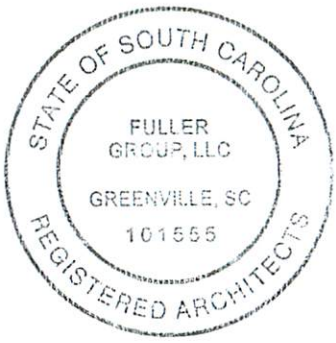
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expressed herein. Should you have any questions or require additional information, please do not hesitate to contact me directly.

Sincerely,

Fuller Group, LLC





H. Ross Clements, AIA
Principal

Encl.: Figure 1 – Site Plan
Destructive Testing Summary

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Figure 1
Site Plan

FULLER envelope

Summerlake Townhomes
Fuller No. 20268
Destructive Testing Summary

Destructive Test Cuts			
Unit	Test Cut	Description	Cladding
806	806-A	Window Sill/Roof Apron	Vinyl
806	806-B	Cladding Transition	Brick/Vinyl
806	806-C	Base of Wall	Brick
806	806-D	Window Sill	Vinyl
806	806-E	Base of Wall	Vinyl
806	806-F	Field of Wall	Vinyl
806	806-G	Window Head	Vinyl
807	807-A	Field of Wall	Vinyl
808	808-A	Window Sill	Brick
809	809-A	Roof Termination at Wall/Roof Eave	Vinyl
811	811-A	Door Interior/Exterior Sill	N/A
811	811-B	Window Interior	N/A
811	811-C	Window Sill	Vinyl
812	812-A	Garage Door Head	Vinyl
818	818-A	Field of Wall	Vinyl
818	818-B	Porch Ceiling	Vinyl
830	830-A	Roof Termination at Wall/Roof Eave	Vinyl
838	838-A	Base of Wall	Stone
838	838-B	Field of Wall	Vinyl
838	838-C	Roof Termination at Wall/Roof Eave	Vinyl
838	838-D	Garage Soffit	Vinyl
840	840-A	Door Interior	N/A
842	842-A	Roof Termination at Wall/Roof Eave	Vinyl
844	844-A	Field of Wall	Vinyl
848	848-A	Field of Wall	Vinyl
852	852-A	Window Sill	Vinyl
852	852-B	Window Head	Vinyl
858	858-A	Field of Wall	Vinyl
858	858-B	Cladding Transition	Stone/Vinyl
864	864-A	Roof Termination at Wall/Roof Eave	Vinyl
870	870-A	Window Sill	Vinyl
880	880-A	Field of Wall	Vinyl
880	880-B	Base of Wall	Stone
880	880-C	Garage Soffit	Vinyl
880	880-D	Window Sill	Vinyl
880	880-E	Window Head	Vinyl
880	880-F	Door Head	Vinyl
904	904-A	Cladding Transition	Brick/Vinyl
904	904-B	Base of Wall	Brick
904	904-C	Window Sill	Brick
904	904-D	Roof Termination at Wall/Roof Eave	Vinyl
909	909-A	Door Head	Brick
909	909-B	Base of Wall	Brick
909	909-C	Garage Door Head	Brick
909	909-D	Base of Wall	Brick
911	911-A	Field of Wall	Vinyl
915	915-A	Garage Soffit	Vinyl
915	915-B	Window Sill/Roof Apron	Vinyl

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FULLER envelope

Summerlake Townhomes
Fuller No. 20268
Destructive Testing Summary

Destructive Test Cuts			
Unit	Test Cut	Description	Cladding
917	917-A	Base of Wall	Stone
917	917-B	Garage Soffit	Vinyl
920	920-A	Door Head	Vinyl
922	922-A	Field of Wall	Vinyl
923	923-A	Door Interior	N/A
925	925-A	Roof Termination at Wall/Roof Eave	Vinyl
938	938-A	Roof Termination at Wall/Roof Eave	Vinyl
944	944-A	Door Interior	N/A
944	944-F	Porch Ceiling	Vinyl
944	944-B	Window Sill	Trim
944	944-C	Roof Apron	Vinyl
944	944-D	Window Head	Trim
944	944-E	Roof Apron	Vinyl
944	944-G	Window Interior	N/A
946	946-A	Door Head	Vinyl
960	960-A	Window Interior	N/A
960	960-B	Window Sill	Vinyl
962	962-B	Door Head	Vinyl
962	962-A	Roof Termination at Wall/Roof Eave	Vinyl
962	962-C	Base of Wall	Brick
962	962-D	Cladding Transition	Brick/Vinyl
962	962-E	Base of Wall	Brick
962	962-F	Window Sill/Roof Apron	Vinyl
962	962-G	Window Sill	Brick
965	965-A	Roof Termination at Wall/Roof Eave	Vinyl
2005	2005-A	Roof Termination at Wall/Roof Eave	Vinyl
2006	2006-A	Window Interior	N/A
2006	2006-B	Window Sill	Vinyl
2006	2006-C	Window Head	Vinyl
2006	2006-D	Door Head	Vinyl
2006	2006-E	Field of Wall	Vinyl
2006	2006-F	Window Sill	Vinyl
2006	2006-G	Cladding Transition	Stone/Vinyl
2006	2006-H	Window Sill/Base of Wall	Stone
3003	3003-A	Window Interior	N/A
3003	3003-B	Window Sill	Vinyl
3003	3003-C	Window Head	Vinyl
3003	3003-D	Field of Wall	Vinyl
3003	3003-E	Roof Termination at Wall/Roof Eave	Vinyl
3003	3003-F	Porch roof side wall	Vinyl/Trim
3005	3005-A	Roof Termination at Wall/Roof Eave	Vinyl
3007	3007-A	Porch roof side wall	Vinyl/Trim
3007	3007-B	Base of Wall	Vinyl
3010	3010-A	Roof Termination at Wall/Roof Eave	Vinyl
3012	3012-A	Window Sill	Vinyl

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Exhibit E

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MADDOX ENGINEERING INC.

July 9, 2021

Steinberg Law Firm
PO Box 2670
Summerville, SC 29484
Attn: Mr. Elliotte Quinn

Re: Summerlake Townhomes HOA
Fort Mill, SC
HVAC Repairs and related items

Elliotte,

I am writing to provide you with general descriptions of the construction defects that we found during our inspections on February 22nd and 23rd of 2021.

The following items are the construction defects that we found at 923 Summerlake Drive and 2006 Firefly Lane. These items are common across the other properties we inspected:

(1) Ductwork;
   a. Improper duct fittings – fittings do not meet the industry standards of ASHRAE, SMACNA and ACCA. (Industry Standard violation)
   b. No balancing dampers – balancing dampers are required to balance the air flow to the air flow shown on the manual 'J' calculations. (Code Violation)
   c. Improper installation of the flexible ductwork – flexible ductwork should be installed per the manufacturer's installation instructions. (Code Violation)
   d. Zone dampers are not accessible – the zone dampers have actuators that have to be serviced (or replaced) and should be accessible via a walkway. (Code Violation)

(2) Electrical Disconnects;
   a. Electrical disconnects are not installed with the code required clearances. (Code Violation)

(3) Condensate Drains;
   a. A majority of secondary drains are not trapped. (Code Violation)
   b. Where secondary drains are trapped, they are tied into the main drain line. (Code Violation)

(4) Refrigerant Lines;
   a. The refrigerant line penetrations through the exterior wall and through the air handler are not sealed properly. (Code Violation)

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(5) Return Air;
   a. The design and installation of the HVAC system does not provide a path for air to return to the return grilles when the bedroom doors are closed. (Code Violation)

(6) Plumbing;
   a. The water heaters are plumbed using PEX piping for the P&T vent lines. The size piping utilized does not meet the code. (Code Violation)
   b. Expansion tanks are installed where PEX piping is utilized and the tanks are not supported properly. (Code Violation)

(7) Water infiltration at the rear doors. Based on past projects and observations, improper flashing is suspected. This should be investigated by an architect or structural engineer.

The above defects have resulted in higher energy bills (i.e., higher power bills), additional maintenance for HVAC systems, reduced service life of the HVAC systems, hot (or cold) areas in the residence and buckling floors and wood rot around doors.

Please call me with any questions.

Sincerely,
MADDOX ENGINEERING, INC.

Warren E. Maddox, P.E.
President
L070921a

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Exhibit F

Stevens Creek Engineering, LLC

31 Cherry Tree Ln.
North Augusta, SC 29860
803-215-3735
aaronkingle@gmail.com

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Elliotte Quinn
Steinberg Law Firm
103 Grandview Dr.
Summerville, SC 29484

June 5, 2021

Reference: Preliminary Summary of Site Observations – Summerlake Subdivision, Fort Mill, SC

Dear Mr. Quinn,

As requested, Stevens Creek Engineering, LLC performed an inspection of the sitework at Summerlake Subdivision in Fort Mill, SC on February 24, 2021. The following provides a preliminary summary of my observations and findings.

Property Description:

Summerlake is a residential development consisting of multi-family townhomes. The site encompasses approximately 17.95 acres consisting of housing areas, roadways, landscaped areas, parking, and easements.

Observations and Findings:

A visual inspection of the site was performed, as well as the extraction of 10 asphalt core samples and 3 aggregate base samples randomly along the development's roadways. From the visual observations and core samples, the following is a preliminary list of observed deficiencies:

- Lack of positive drainage in roadways resulting in premature asphalt failure
- Curb elevation higher than asphalt roadway resulting in premature asphalt failure
- Grate inlet elevation higher than asphalt roadway resulting in premature asphalt failure
- Varying asphalt section thickness (1" to 2.5") resulting in premature asphalt failure
- Lack of cohesion at asphalt joints resulting in premature asphalt failure
- Low backfill at road curb
- Non traffic rated sewer cleanouts located in traffic areas resulting in traffic damage to cleanouts and standing water
- Improper installation of trench drains in driveways resulting in driveway failure and improper drainage
- Lack of positive drainage in greenspace

A site plan identifying the location of these deficiencies and representative photographs are attached.

Stevens Creek Engineering, LLC

31 Cherry Tree Ln.
North Augusta, SC 29860
803-215-3735
aaronkingle@gmail.com

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Summary:

This letter is provided with a reasonable degree of engineering certainty. In the event that additional relevant information becomes available, Stevens Creek Engineering, LLC reserves the right to amend the opinions expressed herein. If you have any specific questions or require additional information, feel free to contact me directly.
Thanks,

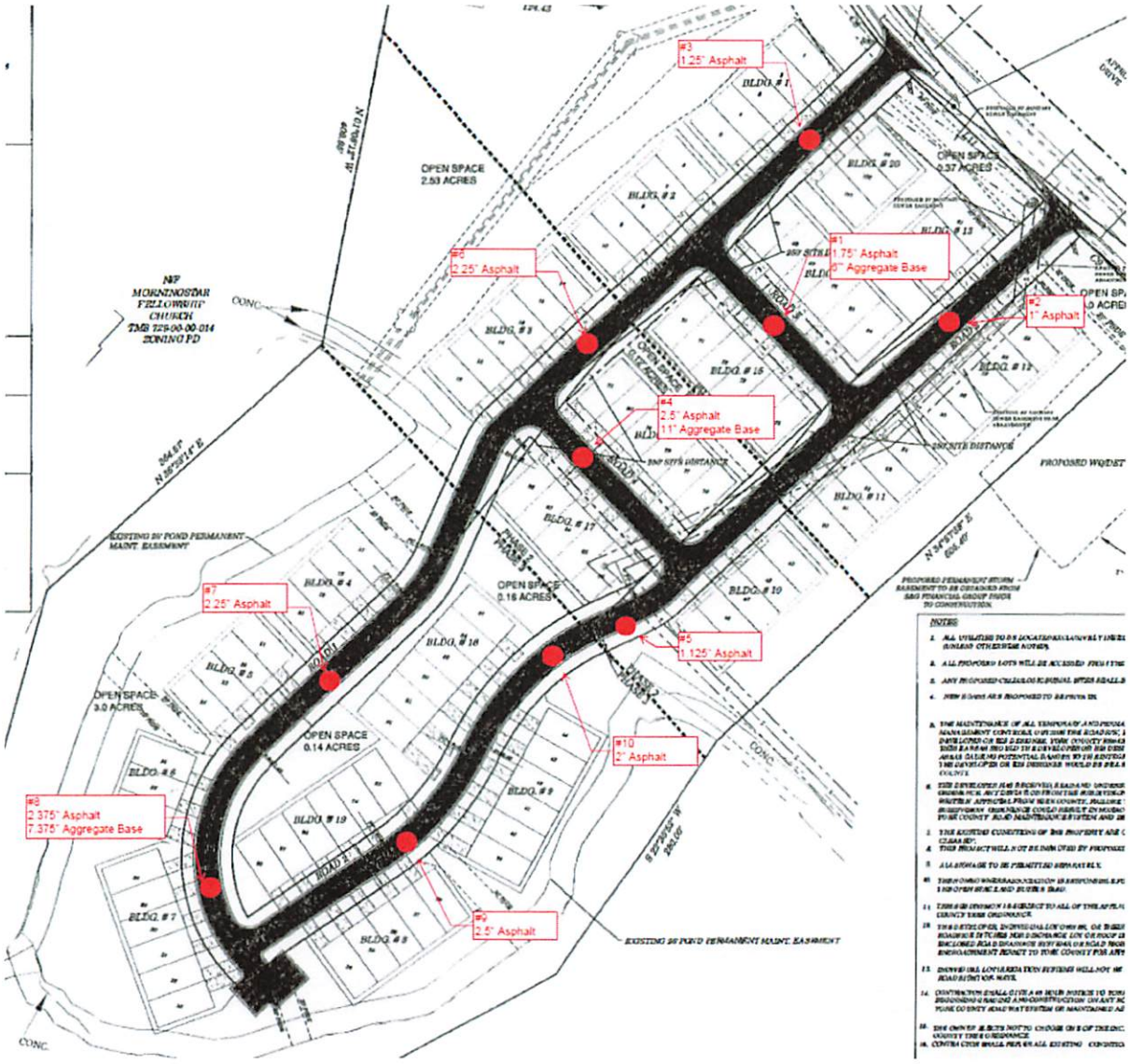
Aaron Ingle, PE
Stevens Creek Engineering, LLC



Stevens Creek Engineering, LLC
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aaronkingle@gmail.com

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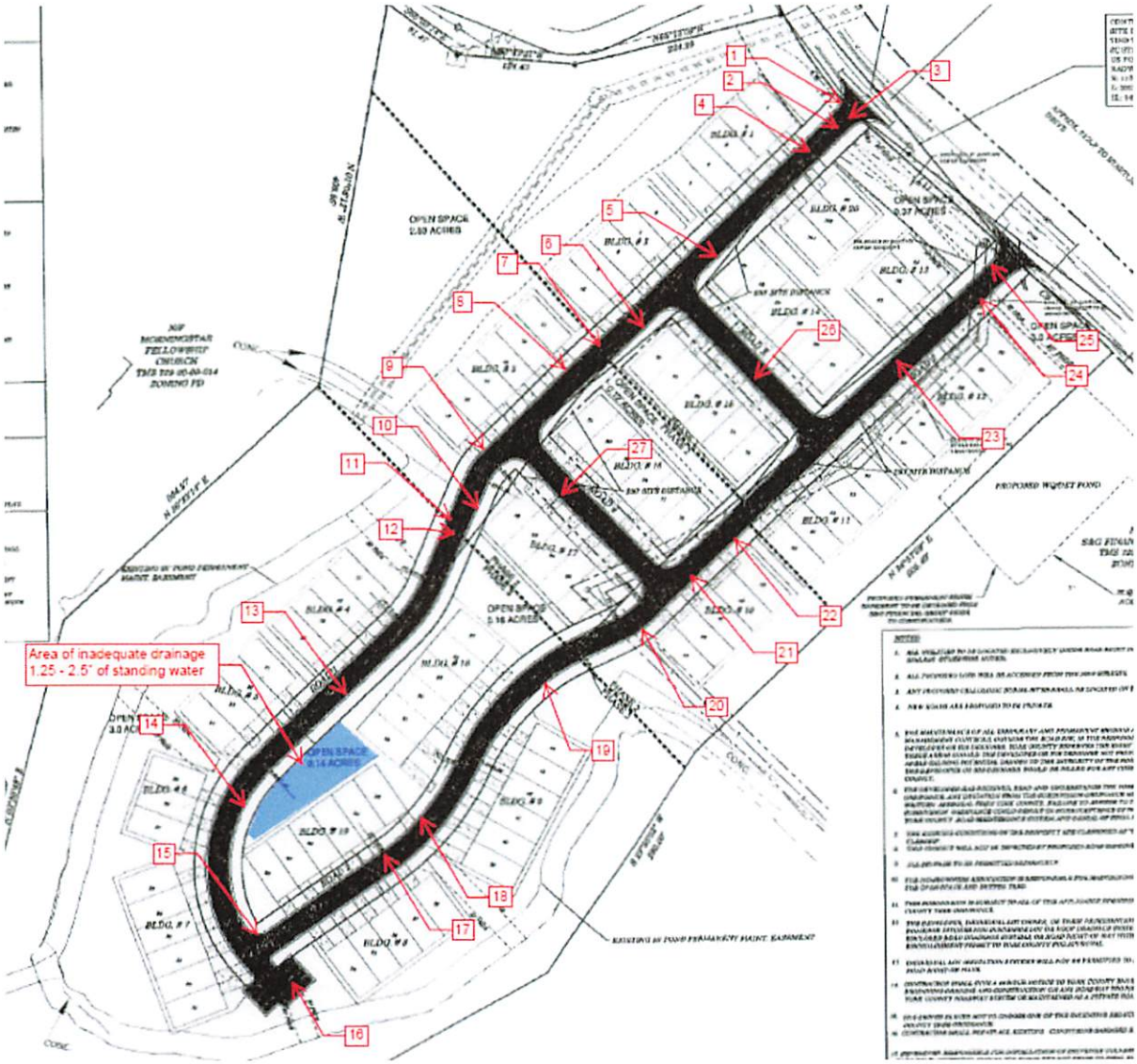
Sketch 1:
Asphalt Core Sample Results



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Sketch 2:
Site Observation Location Map
(corresponding table on next page)



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Table 1:
Site Observations

(corresponds to Sketch 2 locations on previous page)

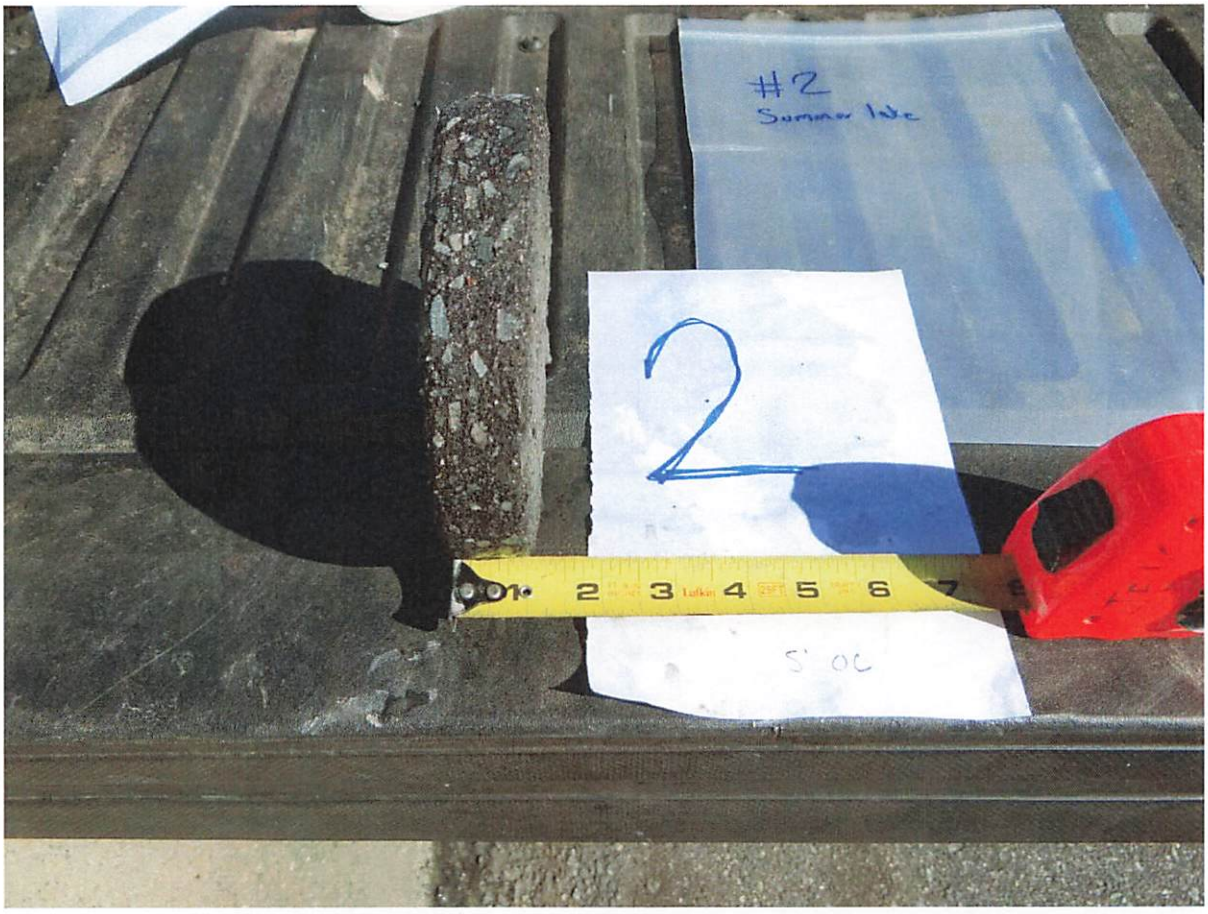
Location	Observation
1	Grate inlet has 1/2" lip (no positive drainage)
2	Manhole 1"+ above asphalt (indicative of no second asphalt lift)
3	Alligator cracking
4	Alligator cracking
5	Asphalt low at curb ~5/8". Water not draining on curb - staying on asphalt. (indicative of no second asphalt lift)
6	Asphalt cracking
7	Phase 1/2 asphalt joint not properly constructed (lack of bonding and raveling)
8	Asphalt low at curb ~1/2". Water not draining on curb - staying on asphalt. (indicative of no second asphalt lift)
9	Bad joint at asphalt road to concrete curb. Sediment accumulation
10	Low backfill behind curb
11	Evidence of birdbath at grate inlet/asphalt failure at near curb
12	Utility roadway crossing asphalt patch is failing
13	Bird bath/standing water on roadway. No positive drainage. Pavement failure
14	Asphalt low at curb ~1". Water not draining on curb - staying on asphalt. (indicative of no second asphalt lift)
15	Bird bath/standing water on roadway. No positive drainage. Pavement failure
16	Asphalt joint without proper adhesion. Evidence of birdbath
17	Asphalt low at curb ~3/8". Water not draining on curb - staying on asphalt. (indicative of no second asphalt lift)
18	Grate inlet above roadway (no positive drainage)
19	Asphalt low at curb ~1". Water not draining on curb - staying on asphalt. (indicative of no second asphalt lift)
20	Asphalt cracking
21	Asphalt cracking
22	Asphalt low at curb ~1 1/4". Water not draining on curb - staying on asphalt. (indicative of no second asphalt lift)
23	Grate inlet above roadway (no positive drainage)
24	Asphalt failure (cracking/beginning of pothole)
25	Grate inlet above roadway (no positive drainage)
26	Asphalt low at curb ~3/4". Water not draining on curb - staying on asphalt. Asphalt failure observed
27	Asphalt low at curb ~3/4". Water not draining on curb - staying on asphalt. Asphalt failure observed

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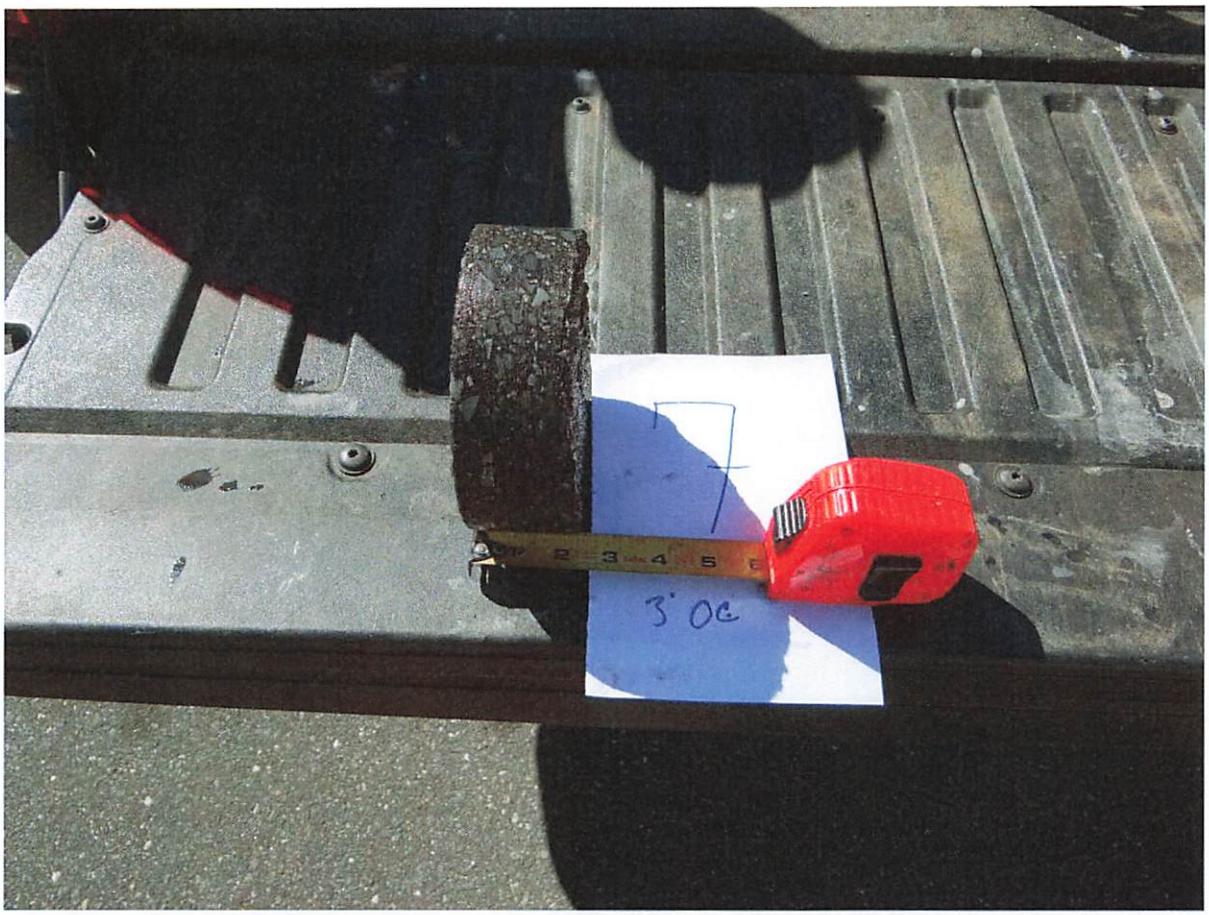
Representative Photographs



Asphalt core sample at location 2. Asphalt thickness = 1"

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Asphalt core sample at location 7. Asphalt thickness = 2.25"

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Observation #1 location - Grate inlet ½" higher than asphalt

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Observation #4 location – Cracking of asphalt indicating pavement failure

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Observation #13 location – Lack of positive drainage, curb higher than asphalt, and asphalt cracking

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Observation #19 location – Curb 1" higher than asphalt

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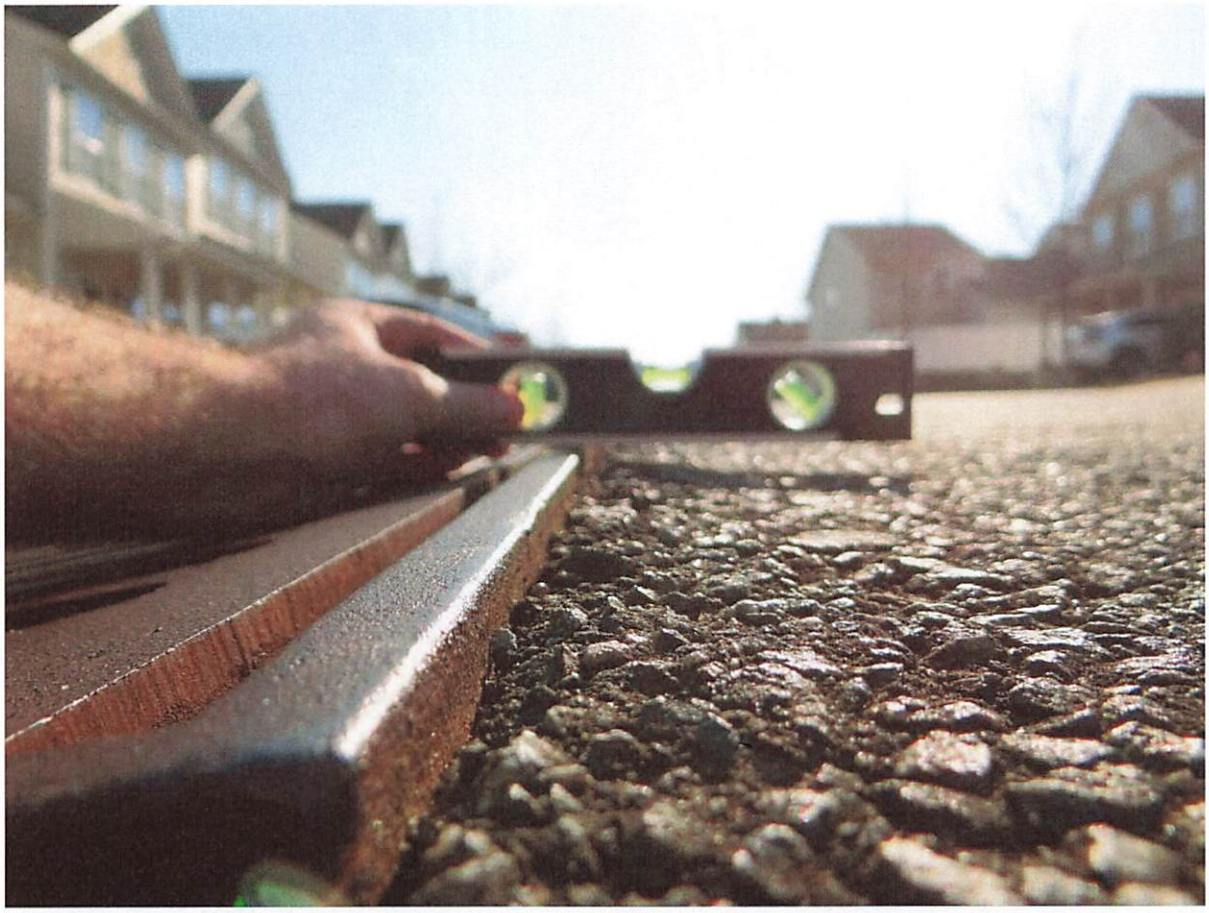
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Observation #24 location – Asphalt cracking and beginnings of a pothole

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Observation #25 location – Grate inlet higher than asphalt

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House 834 driveway – Non traffic rated sewer cleanout failure

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House 3013 driveway – Improperly installed trench drain failure

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Exhibit G

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Elliotte Quinn

From: Monica Correa
Sent: Friday, September 17, 2021 4:13 PM
To: bwolfe@baucomclaytor.com; rgunst@baucomclaytor.com; wfaulk@hinsonfaulk.com; whinson@hinsonfaulk.com; trey.watkins@walltempleton.com; John.Dodds@WallTempleton.com; jjones@gwblawfirm.com; jennafer.groswith@wilsonelser.com; msanford@gwblawfirm.com; dean@besthoneycutt.com; CChase@ycrlaw.com; crowh@ycrlaw.com; jhinson@baucomclaytor.com; construction-paralegal@baucomclaytor.com; slevine@hinsonfaulk.com; Sandra.Schultz@WallTempleton.com; asmith@gwblawfirm.com; ksalazar@gwblawfirm.com; jenkins@besthoneycutt.com; dani@besthoneycutt.com; dconlee@ycrlaw.com; tbates@ycrlaw.com; mmark@ycrlaw.com; Jasmine.felipe@mgclaw.com
Cc: Elliotte Quinn; Rachel Igdal
Subject: Defendants' Inspection | Summerlake Townhomes Homeowners' Assoc., Inc., et al. v. True Homes, LLC, et al. | 20-CP-46-03592
Attachments: Summerlake Townhomes - Defendants' Inspection.pdf

All,

Attached is the schedule for next week's inspection. Below is a list of the addresses we were unable to schedule, and the reason we were not able to schedule those.

936 Summerlake Drive – Homeowners are unavailable due to their work schedules.
2007 Firefly Lane – Could not reach homeowner via email or telephone.
921 Summerlake Drive - Homeowner is unavailable next week.
864 Summerlake Drive - Could not reach homeowner via email or telephone.
870 Summerlake Drive – Homeowner provided us with tenant's contact information, but tenant was unresponsive.
3011 Stargazer Lane – Homeowners are out of town until October.
906 Summerlake Drive – Homeowner out of the country and has not been able to make contact with tenants yet.
2013 Firefly Lane - Could not reach homeowner via email or telephone.
912 Summerlake Drive – Homeowner is out of town next week.
3012 Stargazer Lane - Could not reach homeowner via email or telephone.

Monica Correa
Paralegal to Elliotte Quinn

STEINBERG LAW FIRM
103 Grandview Drive, Suite A
P.O. Box 2670
Summerville, SC 29484
Ph **843-871-6522**
Fx 843-871-8565
www.steinberglawfirm.com
Review us on Google!

CONFIDENTIALITY NOTICE

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Defendants' Inspection 9/21/21 - 9/23/21	
Tuesday, September 21, 2021	
Time	**Address**
8AM	852 Summerlake Drive
9AM	838 Summerlake Drive
10AM	858 Summerlake Drive
11AM	3008 Stargazer Lane
12PM	2014 Firefly Lane
1PM	**Lunch**
2PM	2005 Firefly Lane
3PM	911 Summerlake Drive
4PM	904 Summerlake Drive
5PM	905 Summerlake Drive
6PM	934 Summerlake Drive
Wednesday, September 22, 2021	
Time	**Address**
8AM	811 Summerlake Drive
9AM	842 Summerlake Drive
10AM	907 Summerlake Drive
11AM	932 Summerlake Drive
12PM	908 Summerlake Drive
1PM	**Lunch**
2PM	962 Summerlake Drive
3PM	812 Summerlake Drive
4PM	874 Summerlake Drive
5PM	810 Summerlake Drive
Thursday, September 23, 2021	
Time	**Address**
8AM	960 Summerlake Drive
9AM	923 Summerlake Drive
10AM	846 Summerlake Drive
11AM	2008 Firefly Lane
12PM	2006 Firefly Lane
1PM	**Lunch**
2PM	944 Summerlake Drive
3PM	922 Summerlake Drive

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Exhibit H

Summerlake Townhomes Homeowners' Association, Inc., et al. v. True Homes, LLC, et al.

2020-CP-46-3592

September 21, 22, and 23 Inspections

All persons entering any townhome in Summerlake must wear a mask, be free of COVID symptoms and known exposures, and be vaccinated for COVID. By signing-in below and entering the townhomes for inspections, all persons participating in the inspections are representing that they will wear a mask when entering any townhome, they are free of COVID symptoms, they have not tested positive for COVID within the past 14 days, they have not had close contact within the past 14 days with anyone testing positive for COVID, and they have been vaccinated for COVID.

Name	Company/Firm	Party's Name
Robert Lewis	Rimkus	Airtron
Rick Moore	Moore Hackney	RJB
Trey Watkins	Wall Templeton	RJB
Michael Najaka	RJB, Legacy	RJB
Louis Schweers	GLS Engineering	C&C
Reid Phillips	Elkin Eng	GC
James Hood	True Homes	GC
Josh Hinson	Banner Construction	~~GC~~ True Homes
Jay Rogers	Rogers Construction Eng	True Homes
Dan Funk	True Homes	True Homes
Jay Jones	GWB	Airtron
Bill Gr	Barefoot	Barefoot

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Summerlake Townhomes Homeowners' Association, Inc., et al. v. True Homes, LLC, et al.

2020-CP-46-3592

September 21, 22, and 23 Inspections

All persons entering any townhome in Summerlake must wear a mask, be free of COVID symptoms and known exposures, and be vaccinated for COVID. By signing-in below and entering the townhomes for inspections, all persons participating in the inspections are representing that they will wear a mask when entering any townhome, they are free of COVID symptoms, they have not tested positive for COVID within the past 14 days, they have not had close contact within the past 14 days with anyone testing positive for COVID, and they have been vaccinated for COVID.

Name	Company/Firm	Party's Name
David Puddock	Barefoot & Comf	Barefoot
Bobby Fungik	ABS	BMC/Barefoot
Steve Snyder	HGIS	BMC East
Jenkins Wilson	Belt Honeycutt	Alpha Omega
David Horne	EDT	Alpha Omega
Riley Beaman	MGC	Summerlake Properties
Jeff Sutton	Airtrow	Jeff Sutton
Bob Kehler	True Homes	
GABRIEL MOLINA	ABS	BAREFOOT
John Dodds	WTH	BSB

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Exhibit I

WOLFE CAMPBELL

215 Queens Road
Suite #200
Charlotte, NC 28204
P 704-827-3774
F 252-408-6859

November 17, 2021

Via Certified Mail, Return Receipt Requested
Superior Association Management, LLC
c/o John Holloway, Registered Agent
168 Highway 274, PMB 107
Lake Wylie, SC 29710

RE: Summerlake Townhomes Owners Association, Inc., et al. v. True Homes, LLC, et al.
York Co. CCP No. 2020CP4603592

Dear Mr. Holloway:

This firm represents Defendant True Homes, LLC in the above-referenced action pending in the Common Pleas Court in York County, South Carolina. Enclosed for service upon Superior Association Management, LLC ("SAM") is a subpoena for documents and/or file materials in its possession related to the Summerlake Townhomes Owners' Association, Inc ("TOA"). As noted on the subpoena, the deadline for our office to receive responsive materials via email or other means is **December 8, 2021**. However, it is our understanding that counsel for the TOA, Mr. Elliott Quinn of Steinberg Law Firm, LLP, will be contacting you to coordinate the transmission of responsive materials to his office so they may be reviewed for privileged content prior to being produced.

If you anticipate the costs to produce the requested materials will exceed $100.00, please contact me to discuss prior to production. Please also execute and return the enclosed Affidavit and Attestation along with any documents you produce.

Thank you.

Sincerely,

Joshua R. Hinson
For the Firm

cc: F. Elliotte Quinn IV
Rachel Igdal
John A. "Jay" Jones
Jennafer Groswith
William Wharton Watkins, Jr.
Brent Harris Bayne
Riley Ann Bearden

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WOLFE CAMPBELL

215 Queens Road
Suite #200
Charlotte, NC 28204
P: 704-827-3774
F: 252-408-6859

Stephen P. Hughes
MPK Grading and Erosion Control, LLC
Enclosures

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STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF YORK

SUMMERLAKE TOWNHOMES OWNERS ASSOCIATION, INC., ET AL., Plaintiff

v.

SUBPOENA IN A CIVIL CASE

TRUE HOMES, LLC, ET AL., Defendant

Case Number: 2020CP4603592

Pending in YORK County

TO: Superior Association Management, LLC c/o John Holloway, Reg. Agent, 168 Highway, PMB 107, Lake Wylie, SC 29710

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

SEE EXHIBIT "A", ATTACHED

PLACE	DATE AND TIME
Wolfe Campbell, 215 Queens Road, Charlotte, NC 28204	12/08/2021 5:00 pm

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature	11/17/21 Date	Joshua R. Hinson Print Name

Indicate if Attorney for Plaintiff or Defendant

Attorney's Address and Telephone Number:

215 Queens Road, #200, Charlotte, NC 28204 704-827-3774

Clerk of Court/Issuing Officer's Signature	Date	Print Name

Pro Se Litigant's Name, Address and Telephone Number

SCCA 254 (05/2015)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)

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PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL
	PLACE	☐YES ☐NO AMOUNT $
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on_____

_____
SIGNATURE OF SERVER

_____
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)

(III) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A)A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

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Exhibit A

Instructions

1. The word "document" or "documents" when used herein shall include, without limitation, the original and any non-identical copy of any written, recorded, or graphic matter, however produced or reproduced, including, but not limited to, reports, annual reports, records, minutes, meeting notices, agendas and summaries pertaining to all meetings, formal or informal, handouts, dairies, calendars, summaries, studies, research and reports, lists, computer records, memoranda, notes, correspondence, e-mails, schedules, sound recordings, films, transcripts of telephone conversations or other conversations or conferences, books, pamphlets, letters, personal notes, telegraphic messages, carbon copies, electronic or mechanical transmissions, data sheets, financial statements, canceled and uncanceled checks, drafts, certificates of deposit, invoices, accounting statements, tickets, expense records, vouchers, working papers, drafts of contracts, drafts of letters, charts, printings, airplane tickets, flight plans, income tax returns, phonograph records, maps, plate, microfilms, microfiches, micro prints, photographic negatives, photographic prints or slides, receipts, drawings, deposit slips, banking records, journals, account books, telephone logs, telephone message records, time slips, building plans, architectural plans, engineering plans or any other form of writing or record or any kind.

2. "You" and "Your" means the party subject to this subpoena and any of the party's officers, directors, employees, owners, agents, representatives, and subcontractors.

3. The word "communication" and/or "communications" means correspondence, whether such correspondence be it oral, written, or electronic (e.g., electronic mail and/or text messages), and includes any and all attachments and/or exhibits thereto.

4. "Summerlake" shall refer to Summerlake Townhomes Owners Association, Inc., and any of its officers, directors, employees, owners, agents, representatives, and anyone else acting on its behalf.

5. "Regarding" means relating to, referring to, describing, evidencing or constituting.

Items To Be Produced

1. Any and all budgets, financial statements, bank statements, and reserve studies related to Summerlake.

2. Any and all records of repairs, quotes for repairs, and homeowner complaints indicating the necessity of repairs for any aspect of Summerlake.

3. Any and all communications with any of Summerlake's homeowners regarding any alleged construction defects.

4. Any and all tax returns filed on behalf of Summerlake.

5. Any and all insurance information related to Summerlake.

6. Any and all meeting minutes, resolutions, or records of authorization from Summerlake's homeowners to take any action.

7. Any and all contracts with any service provider(s) related to Summerlake.

8. Any and all communications with any party to the lawsuit captioned Summerlake Townhomes Owners Association, Inc., and Susan Hagy and Karin Fuentes, individually and on behalf of all other similarly situated 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, filed under the York County Court of Common Pleas Docket No. 2020-CP-46-03592.

9. Any and all communications with any government agency regarding permits, inspections, or repairs related to Summerlake.

ELECTRONICALLY FILED - 2022 May 17 9:02 AM - YORK - COMMON PLEAS - CASE#2020CP4603592

RE: SUMMERLAKE TOWNHOMES OWNERS ASSOCIATION, INC., et al. v. TRUE HOMES, LLC, et al.
Case Number: 2020-CP-46-03592

AFFIDAVIT AND ATTESTATION

I, _____, of Superior Association Management, LLC, of the State of _____, County of _____, being first duly sworn; depose and attest as follows:

(1) I have made a careful and diligent search for all records in the custody of Superior Association Management, LLC pertaining to the Summerlake Townhome Owners Association.

(2) I have attached hereto a true, correct, and genuine copy of all such records within Superior Association Management, LLC's custody and control as of the date of this certificate.

DATE: _____

SIGNATURE: _____

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public for said County and State, do hereby certify that _____ personally appeared before me this date and acknowledged the due execution of the foregoing AFFIDAVIT AND ATTESTATION.

WITNESS my hand and notarial seal, this _____ day of _____, 2021.

_____
NOTARY PUBLIC
My Commission Expires: _____

ELECTRONICALLY FILED - 2022 May 17 9:02 AM - YORK - COMMON PLEAS - CASE#2020CP4603592

ELECTRONICALLY FILED - 2022 May 17 9:02 AM - YORK - COMMON PLEAS - CASE#2020CP4603592

CERTIFICATE OF SERVICE

Certified that copies of Defendant True Homes, LLC's Subpoena to Superior Association Management, LLC were served upon each party to this action by electronic mail or by the deposit of a copy thereof in a postpaid, properly addressed envelope in an official depository under the exclusive care and custody of the United States Postal Service for mailing to the following individuals on November 17, 2021:

F. Elliotte Quinn IV
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Attorneys for BMC Stock Holdings, Inc.

MPK Grading and Erosion Control, LLC
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Sharon, SC 29742

Amy Schieber, Paralegal

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Exhibit J

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STEINBERG
LAW FIRM | LLP
Get The Firm Behind You

103 Grandview Drive | P.O. Box 2670 | Summerville | SC | 29483 | (843) 871-6522 | (843) 871-8565 fax | www.steinberglawfirm.com

November 16, 2021

VIA E-MAIL ONLY

Brian Wolfe & Josh Hinson
Wolfe Campbell
215 Queens Road, Suite 200
Charlotte, NC 28204
bwolfe@wolfe-campbell.com
jhinson@wolfe-campbell.com
aschieber@wolfe-campbell.com

Re: *Summerlake Townhomes Homeowners' Assoc., Inc., et al. v. True Homes, LLC, et al.*
York County Court of Common Pleas
2020-CP-46-03592
SLF#: 202019025

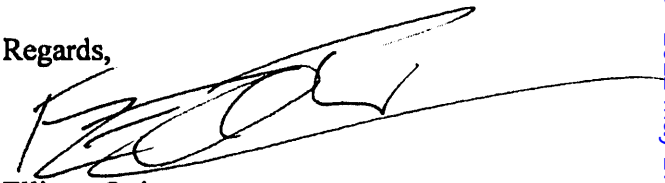
Dear Brian and Josh,

In response to your November 15, 2021 correspondence enclosing a proposed subpoena to Superior Association Management, LLC ("Superior"), Plaintiffs object to the subpoena to the extent it seeks Plaintiffs' privileged communications in Superior's possession. As you know, Superior is the community management company for the Summerlake Townhomes Homeowners' Association, Inc ("Association"). As such, Superior acts as an agent for the Association, and communications between Plaintiffs' counsel and Superior regarding the instant litigation is protected by the attorney-client privilege. *See State v. Thompson*, 329 S.C. 72, 75–76, 495 S.E.2d 437, 438–39 (1998); *State v. Hitopoulus*, 279 S.C. 549, 550–51, 309 S.E.2d 747, 748–49 (1983); Order Limiting the Deposition of Waccamaw Management, LLC, *The River Crossing Condominium Assoc. v. Centex Homes*, 2015-CP-26-00279 (Newman, J., Feb. 5, 2018).

To avoid a motion to quash the subpoena as written and avoid the production of privileged documents, Plaintiffs require that Superior send all documents it deems responsive to the subpoena to Plaintiffs' counsel for review for privileged documents. Plaintiffs' counsel will then produce all documents received from Superior except any privileged documents and will produce a

privilege log for any privileged documents. Please confirm your agreement with this procedure prior to serving the subpoena. If you do not agree to this procedure, I will move to quash the subpoena. By copy of this letter to Superior, Plaintiffs are instructing Superior as the Association's agent to not produce any documents in response to a subpoena in this case until Plaintiffs' counsel has reviewed the responsive documents for any privileged communications.

Regards,



Elliotte Quinn
equinn@steinberglawfirm.com
843-871-6522

Cc:

Superior Association Management, LLC
C/O John Holloway, Registered Agent
168 Highway 274, PMB 107
Lake Wylie, SC 29710

All counsel of record (via e-mail only)

ELECTRONICALLY FILED - 2022 May 17 9:02 AM - YORK - COMMON PLEAS - CASE#2020CP4603592

EFILED IN COMMON PLEAS CASE # 2015CP2600279 - HORRY COUNTY, SOUTH CAROLINA - 2/8/2016 10:12:02 AM

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL DISTRICT

Case No.: 2015-CP-26-00279

The River Crossing Condominium Association, and Vincent J. Tamburro, on behalf of himself and others similarly situated,

Plaintiffs,

vs.

Centex Homes, a Nevada General Partnership; Centex Construction Company, Inc.; Centex Construction, LLC; Centex-Rooney Construction, Co., Inc.; Centex-Rodgers, Inc.; Balfour Beatty Construction, LLC, f/k/a Centex Construction, LLC; Right Way Construction, Inc.; Right Way Group, Inc.; RWG, Inc., RWGR, Inc.; Stock Building Supply, LLC f/k/a Stock Building Supply, Inc., Builders FirstSource – Southeast Group, LLC, Martin Masonry, Inc., Gary Hunnell d/b/a Grand Strand Roofing, Craftmaster Manufacturing, Inc. d/b/a CMI, Roof Doctor of the Carolinas, Inc., Stock Building Supply, LLC f/k/a Carolina Builders Corporation, Orfield Laboratories, Inc., Trebor Industries, Inc., Steven Bosch, d/b/a The Roofer Man, Certainteed Corporation Successor by merger to Exterior Systems, Inc., a/k/a Norandex, Inc., Weather Protection Systems, Inc., Crawford Door Systems, Inc., Cox Millwork & Supply, Inc., AM Jacobs, Inc., Galvin Depompe, Roberta Depompe, Morningstar Consultants, Inc., Jeld-Wen, Inc. as successor to and/or merger with Craftmaster Manufacturing, Inc., d/b/a CMI, and Sign Studio & Graphics, Inc.,

Defendants.

Centex Homes, a Nevada General Partnership,

Third-Party Plaintiff,

vs.

Carolina Drywall and Interiors a/k/a Carolina

ORDER DENYING IN PART AND GRANTING IN PART PLAINTIFFS' MOTION FOR PROTECTIVE ORDER FOR THE DEPOSITION OF VINCENT J. TAMBURRO

Drywall Contractors, Inc., Vance Johnson Plumbing Co., Inc., Bogle Electric, Inc., Pelen, Inc., Jayco, Inc., Sunland Fire Protection, Inc., Dunn Plumbing Company, Inc., Essentials Protective Coatings, Inc., RJM Plumbing, Inc., Myrtle Beach Lighting, Inc. a/k/a R&L Lighting, Inc., Tri-City Insulation and Building Products of Myrtle Beach, Inc., Bond Group, Inc., Intracoastal Service Company, Inc., Sandpiper Heating & Air Conditioning, LLC, American Residential Services, LLC d/b/a American Residential Services of South Carolina, Inc., A.O. Hardee & Son, Inc., Vereen Concrete Co., Inc., Michael Dawson d/b/a Michael Dawson Construction, Inc., Floors, Inc. successor by merger to Rice Planter Carpets, Inc., I.T.P., Inc., Carpets By Kendall, Inc., Rice Planter Carpets, Inc. n/k/a Creative Touch Interiors, Inc., CEMS Engineering, Inc., Chris R. Clark, AIA, Crescent Architects, LLC, Bobby L. Curry, Bobby Curry Engineers, Inc., and Right Way Construction, Inc. a/k/a RWG, Inc. a/k/a Right Way Group, Inc. a/k/a RWGR, Inc.,

Third-Party Defendants.

Cox Millwork & Supply, Inc.,

Fourth-Party Plaintiff,

vs.

Citation Manufacturing, Inc.,

Fourth-Party Defendant.

This matter came before the Court and was heard on December 18, 2017, upon the Motion of Plaintiffs for a protective order limiting the deposition of Plaintiff Vincent J. Tamburro. After careful consideration of the written materials submitted by the parties, the

E E E C T R O N I C A L L Y F I L E D 2 0 0 8 2 F e b 9 1 0 : 1 2 A M - H O R R Y C O M M O N P L E A S C A S E # 0 0 C P 2 6 0 8 2 9

materials on file with the Court, and the arguments of counsel, the Court denies in part and grants in part Plaintiffs' Motion.

FACTUAL BACKGROUND

Plaintiffs seek a protective order for the individual deposition of Plaintiff Vincent J. Tamburro ("Tamburro") arising out of objections and instructions not to answer made by counsel for Plaintiffs during Tamburro's deposition taken on June 12, 2017, by counsel for Defendants Centex Homes, a Nevada General Partnership, Centex Construction Company, Inc., Centex Construction, LLC, Centex-Rooney Construction, Co., Inc., Centex-Rodgers, Inc., Balfour Beatty Construction, LLC f/k/a Centex Construction, LLC (hereinafter collectively referred to as "Centex"). During the deposition, Centex's counsel asked Tamburro the following three questions: (1) "When did you retain Mr. Chakeris and Mr. Segui to serve as your counsel in this suit?"; (2) "Who selected your counsel to represent you in this lawsuit?"; and (3) "Prior to when you and the association retained your counsel in this lawsuit, did your counsel give a presentation to the members of the association?" Plaintiffs' attorney instructed Tamburro not to answer these questions claiming that the matters relating to the same are subject to the attorney-client privilege.

LEGAL STANDARD

The attorney-client privilege "protects against disclosure of confidential communications by a client to his attorney." *State v. Owens*, 309 S.C. 402, 407, 424 S.E.2d 473, 476 (1992). "The privilege is strictly construed to protect only confidences disclosed within the relationship." *State v. Owens*, 309 S.C. 402, 407, 424 S.E.2d 473, 476 (1992). It "must be tailored to protect only confidences disclosed within the relationship." *State v. Doster*, 276 S.C. 647, 651, 284 S.E.2d 218, 219 (1981). "To establish an attorney-client privilege, the person asserting the

EFILED IN COMMON PLEAS COURT - HORRY COUNTY, SOUTH CAROLINA - 2017 JUN 21 10:12 AM - CASE #2008CP2600829

privilege must show that the relationship between the parties was that of attorney and client and that the communications were confidential in nature." *Crawford v. Henderson*, 356 S.C. 389, 395, 589 S.E.2d 204, 207 (Ct. App. 2003).

FINDINGS

The attorney-client privilege protects only communications and must be strictly and narrowly construed because it has substantial costs and obstructs the search for the truth. The South Carolina Supreme Court made this clear in its most recent extensive treatment of the issue in *Tobaccoville USA, Inc. v. McMaster*, 387 S.C. 287, 293, 692 S.E.2d 526, 530 (2010). In *Tobaccovile USA*, the South Carolina Supreme Court stated as follows:

> (1) Where legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) *the communications* relating to that purpose (4) made in confidence (5) by the client, (6) *are at his instance permanently protected* (7) from disclosure by himself or by the legal adviser, (8) except the protection be waived.

Id. at 293, 692 S.E.2d at 530 (emphasis added).

I find that the first two questions posed to Tamburro by Centex's counsel—"When did you retain Mr. Chakeris and Mr. Segui to serve as your counsel in this suit?" and "Who selected your counsel to represent you in this lawsuit?"—did not seek any privileged communication between Plaintiffs and their counsel and, therefore, the attorney-client privilege does not apply. Further, I find that the matters sought in these questions are relevant to the subject matter involved in this action. When Plaintiffs retained counsel is potentially relevant to the application of the statute of limitations because it may be evidence of when Plaintiffs knew they had a claim. Who selected Plaintiffs' counsel may be relevant to Tamburro's adequacy to represent a class of unit owners, which is a consideration in whether this Court should certify Plaintiffs' proposed

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class. Therefore, the Court denies Plaintiffs' Motion with respect to these two deposition questions to Tamburro and permits Centex's counsel to question Tamburro on these matters.

I find that the third question posed to Tamburro by Centex's counsel—"Prior to when you and the association retained your counsel in this lawsuit, did your counsel give a presentation to the members of the association?"—seeks the disclosure of communications between Plaintiffs and their counsel related to the provision of legal advice and, therefore, the attorney-client privilege applies. Therefore, the Court grants Plaintiffs' Motion with respect to this deposition question to Tamburro.

CONCLUSION

After due consideration of the Motion, the applicable law, the memoranda of the parties, and the materials presented by the parties, the Court denies in part and grants in part Plaintiffs' Motion.

The Motion is DENIED IN PART AND GRANTED IN PART.

It is so ORDERED.

_____
The Honorable Clifton B. Newman
Presiding Judge
Fifteenth Judicial Circuit

_____, 2018.
_____, South Carolina

EFILED CHARLESTON COUNTY - 2008 Feb 19 10:12 AM - HY CLERK OF COMMON PLEAS CASE # 2006CP1006829

EEEFILED
2018 Feb 03 10:12 AM - HORRY COMMON PLEAS CASE#2015CP2600279

Horry Common Pleas

Case Caption:	River Crossing Condominium Association , plaintiff, et al VS Centex Homes , defendant, et al
Case Number:	2015CP2600279
Type:	Order/Protection from Discovery

So Ordered

s/ Clifton B. Newman, 2127

ELECTRONICALLY FILED - 2022 May 17 9:02 AM - YORK - COMMON PLEAS - CASE#2020CP4603592

Monica Correa

From: Josh Hinson <jhinson@wolfe-campbell.com>
Sent: Tuesday, November 16, 2021 3:13 PM
To: Monica Correa; Brian Wolfe; Amy Schieber
Cc: Elliotte Quinn; Rachel Igdal
Subject: Re: Ltr to True Homes | Summerlake Townhomes Homeowners' Assoc., Inc., et al. v. True Homes, LLC, et al. | 20-CP-46-03592

Elliotte,

I have no problem with your folks looking at the documents prior to sending them to us; however, I would like to know when you receive them and when you anticipate your review would be complete.

Josh

Josh Hinson
Attorney
Wolfe Campbell Gunst & Hinson, PLLC.

(704) 827-3774
jhinson@wolfe-campbell.com
wolfe-campbell.com
215 Queens Road. #200 Charlotte. NC 28204

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From: Monica Correa <mcorrea@steinberglawfirm.com>
Date: Tuesday, November 16, 2021 at 2:56 PM
To: Brian Wolfe <bwolfe@wolfe-campbell.com>, Josh Hinson <jhinson@wolfe-campbell.com>, Amy Schieber <aschieber@wolfe-campbell.com>
Cc: Elliotte Quinn <equinn@steinberglawfirm.com>, Rachel Igdal <rigdal@steinberglawfirm.com>
Subject: Ltr to True Homes | Summerlake Townhomes Homeowners' Assoc., Inc., et al. v. True Homes, LLC, et al. | 20-CP-46-03592

Please see attached correspondence from Elliotte Quinn.

Monica Correa
Paralegal to Elliotte Quinn

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Review us on Google!

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Monica Correa

From: Elliotte Quinn
Sent: Wednesday, November 17, 2021 10:39 AM
To: Josh Hinson; Monica Correa; Brian Wolfe; Amy Schieber
Cc: Rachel Igdal
Subject: RE: Ltr to True Homes | Summerlake Townhomes Homeowners' Assoc., Inc., et al. v. True Homes, LLC, et al. | 20-CP-46-03592

Josh,

I am communicating with Superior regarding when they anticipate being able to provide the documents to us. I imagine that once we receive them, we will need about a week to review them, pull any privileged documents, and create a privilege log. I have no problem with letting you know once we receive them and giving you an anticipated completion date.

Regards,
Elliotte Quinn

From: Josh Hinson <jhinson@wolfe-campbell.com>
Sent: Tuesday, November 16, 2021 3:13 PM
To: Monica Correa <mcorrea@steinberglawfirm.com>; Brian Wolfe <bwolfe@wolfe-campbell.com>; Amy Schieber <aschieber@wolfe-campbell.com>
Cc: Elliotte Quinn <equinn@steinberglawfirm.com>; Rachel Igdal <rigdal@steinberglawfirm.com>
Subject: Re: Ltr to True Homes | Summerlake Townhomes Homeowners' Assoc., Inc., et al. v. True Homes, LLC, et al. | 20-CP-46-03592

Elliotte,

I have no problem with your folks looking at the documents prior to sending them to us; however, I would like to know when you receive them and when you anticipate your review would be complete.

Josh

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Attorney
Wolfe Campbell Gunst & Hinson, PLLC.

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215 Queens Road #200 Charlotte, NC 28204

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Cc: Elliotte Quinn <equinn@steinberglawfirm.com>, Rachel Igdal <rigdal@steinberglawfirm.com>
Subject: Ltr to True Homes | Summerlake Townhomes Homeowners' Assoc., Inc., et al. v. True Homes, LLC, et al. | 20-CP-46-03592

Please see attached correspondence from Elliotte Quinn.

Monica Correa
Paralegal to Elliotte Quinn

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Exhibit K

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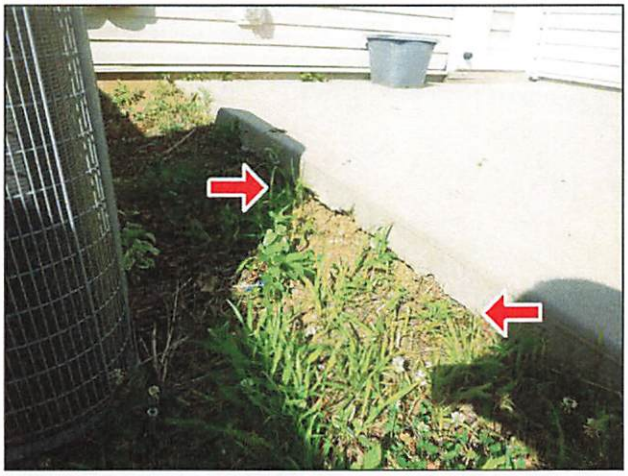
1.0 (Picture 14)

2. EXTERIOR ELEMENTS

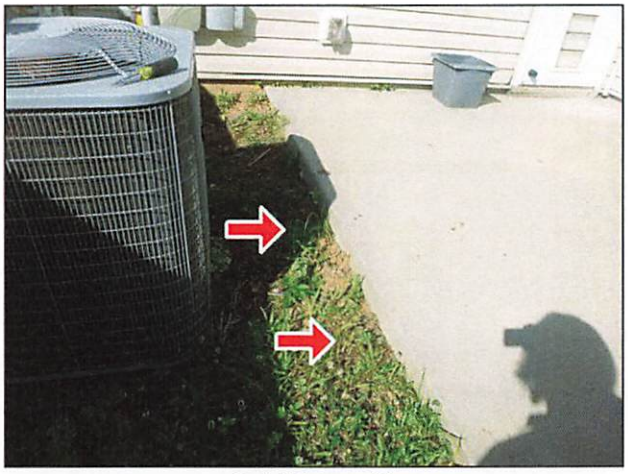
2.5 EXTERIOR PORCH(ES) / PATIOS / DECKS

Poor/Defective

Soil erosion at right side of rear slab. This can lead to damage to porch. Recommend evaluation and correction.



2.5 (Picture 1)



2.5 (Picture 2)

2.7 FOUNDATION SURFACE

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Exhibit L

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 TSimmons

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

ELECTRONICALLY FILED - 2022 May 17 9:02 AM - YORK - COMMON PLEAS - CASE#2020CP4603592

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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:

Witness

Witness

TRUE HOMES, LLC

By: _____ (seal)
Mark W. Boyce, Manager

ACKNOWLEDGEMENT

STATE OF NORTH CAROLINA)
)
COUNTY OF UNION)

I, Crystal M Miller, 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.

CRYSTAL M MILLER NOTARY PUBLIC MECKLENBURG COUNTY, NC

Notary Public for North Carolina

My Commission Expires: 12/4/2017

ELECTRONICALLY FILED - 2022 May 17 9:02 AM - YORK - COMMON PLEAS - CASE#2020CP4603592

Exhibit M

201500322457
Electronic Filing
From: Hinson Faulk, P.A.
Thru: SIMPLIFILE

RECORDED
YORK COUNTY
TAX ASSESSOR'S OFFICE
DATE 11/25/2015
TAX MAP NO. 729-07-01-096
INITIALS JHawkins

201500322457
Filed for Record in
YORK COUNTY, SC
DAVID HAMILTON
11-25-2015 At 08:07 am.
DEED 10.00
State Tax 553.80
County Tax 234.30

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

TITLE TO REAL ESTATE

Instrument VOL PAGE
201500322457 OR 15299 83

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 Two Hundred Twelve Thousand Nine Hundred and 00/100 Dollars ($212,900.00), to it in hand paid at and before the sealing of this deed by Alex Fresco, a married man, (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 its 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 88 on that certain plat entitled, "Summerlake, Phases 2 and 3" and recorded in Plat Book E357 at Page 10 a revision of 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 True Homes, LLC by Summerlake Properties, LLC recorded on December 19, 2014 in Deed Book 14571, Page 47.

GRANTEE'S MAILING ADDRESS: 923 Summerlake Drive
Fort Mill, SC 29715

Tax Parcel: 729-07-01-096

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. 2015117630

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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 November, 20 15.

SIGNED AND DELIVERED IN THE PRESENCE OF:

TRUE HOMES, LLC

Witness

By: _____ (seal)
Mark W. Boyce, Manager

Witness

ACKNOWLEDGEMENT

STATE OF NORTH CAROLINA)
)
COUNTY OF UNION)

I, Shannon Burgess, 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 November, 20 15.

SHANNON BURGESS NOTARY PUBLIC MECKLENBURG COUNTY, NC MY COMMISSION EXPIRES 3/15/2020

Shannon Burgess
Notary Public for North Carolina

My Commission Expires: 3/15/2020

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Exhibit N

Townhome Permit

Report Code: 102 - Single Family Houses Attached
Permit Number: 201401498
Date Issued: 05/27/2014

Planning & Development
1070 Heckle Boulevard, Suite 107
Rock Hill, SC 29732
(803) 909-7200 Phone
(803) 909-7227 Fax
www.yorkcountygov.com

Site Address:	2006 FIREFLY LN	**Tax Map ID:**	7290701012
Zoning:	PD	**Owner Name:**	CAROLINA DEVELOPMENT
Subdivision:	SUMMERLAKE TWH	**Owner Address:**	4289 INDIAN TRAIL FAIRVIEW RD
Lot Number:	71	**Owner Phone:**	

Contractors

General David Kost - True Homes - 704 238 1229
2649 Brekonridge Center Dr Monroe, NC 28110

Description of Work

Townhouse Lot 71

Conditions

Fees

Valuation of project:	$194,355.00	**Fees:**	Permit Fee	745.00
			Plan Review Fee	373.00
Approved By:	Mylynda Love			$1,118.00

NOTICE

Proposed construction shall meet all applicable codes and ordinances adopted by York County, South Carlolina.I understand that this permit is conditional upon the correctness of the information I have supplied and may be revoked upon a finding by the Building Official that any relevant item of information is substantially incorrect. This permit becomes null and void if work or construction authorized is not commenced within 6 months, or if construction or work is suspended or abandoned for a period of 1 year at any time after work has commenced.

I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority or cancel the provisions of any other state or local law regulating construction or the performance of construction.

Issued Permit

Signature of Owner, Agent or Contractor: _____

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Exhibit O

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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; 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.;

AFFIDAVIT OF KARIN J. FUENTES

PEDRO DEJESUS LOPEZ d/b/a PJL CONSTRUCTION; and PEDRO VILLAREAL-CONCEPCION d/b/a CVP CONSTRUCTION,

Defendants.

Personally appeared before me, the undersigned, who being duly sworn, states as follows:

1. I am over eighteen years of age and in all other respects am competent to execute this Affidavit.

2. The matters set forth in this Affidavit are based on my personal knowledge.

3. I am employed as a Senior Network Engineer with CompuCom Systems, Inc.

4. I have no education, training, or professional experience in the areas of law, real estate, or construction.

5. I own the real property located at 2006 Firefly Lane in Fort Mill, South Carolina (the "Property").

6. On August 27, 2014, I signed the "Home Purchase Agreement" attached as Exhibit A for the purchase of the Property ("Purchase Agreement").

7. True Homes, LLC ("True Homes") presented the Purchase Agreement to me as its standard purchase agreement.

8. I was not offered an opportunity to change or negotiate any of the terms of the Purchase Agreement, nor was I informed that I could change or negotiate any of the terms of the Purchase Agreement.

9. True Homes did not negotiate or bargain with me over any of the terms of the

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Purchase Agreement.

10. When I signed the Purchase Agreement on August 27, 2014, I understood that True Homes had completed the construction of a townhome on the Property and that I would not have any opportunity to select or change any of the components of the townhome.

11. I was not provided a sample warranty booklet related to the Property at any time.

12. No one affiliated with True Homes informed me at any time that I was to receive a sample warranty booklet or that I could request a sample warranty booklet.

13. I received a warranty booklet at closing.

14. No one affiliated with True Homes informed me at any time that the Purchase Agreement provided for the arbitration of any claims.

15. No one affiliated with True Homes informed me at any time of the arbitration process for the resolution of any claims.

16. Attached as Exhibit B are screenshots of portions of the True Homes website, www.truehomesusa.com, I viewed and obtained on May 11, 2022.

FURTHER AFFIANT SAYETH NOT.

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Karin J. Fuentes

SWORN to before me this 12th day of May, 2022.

NOTARY PUBLIC FOR ~~SOUTH CAROLINA~~ Pennsylvania

My commission expires: 04-27-2026

Commonwealth Of Pennsylvania - Notary Seal
Stella I. Stoner, Notary Public
Cumberland County
My Commission Expires April 27, 2026
Commission Number 1328694

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Exhibit A to Affidavit of Karin J. Fuentes

Summerlake Townhomes Homeowners' Association, Inc., et al. v. True Homes, LLC, et al.

Case No.: 2020-CP-46-03592

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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 Riverbirch 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 Documents; 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: SML Lot: 71 Home Address: 2006 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 pluming 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 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 Sellers 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 mortage 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 (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 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, 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 BY BUYER OR ARE BEING RELIED ON BY BUYER TO SIGN THIS AGREEMENT.**

X [signature]	8/27/14	[signature]	8-27-14
Karin Josue Fuentes			
Buyer Printed Name		Sales Counselor Printed Name	
Buyer Signature	Date	Operations Partner Signature	Date 8/28/14
Buyer Printed Name		Nick Bacon	
		Operations Partner Printed Name	

Operations Partner
Credit/Closings/Loans

Revised: 8/18/2014

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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 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 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 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 such other recorded easement that binds the property. Seller makes no representation regarding the suitability of the homesite 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 Damage amounts are reasonable compensations 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 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 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 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 expenses.

X KJF

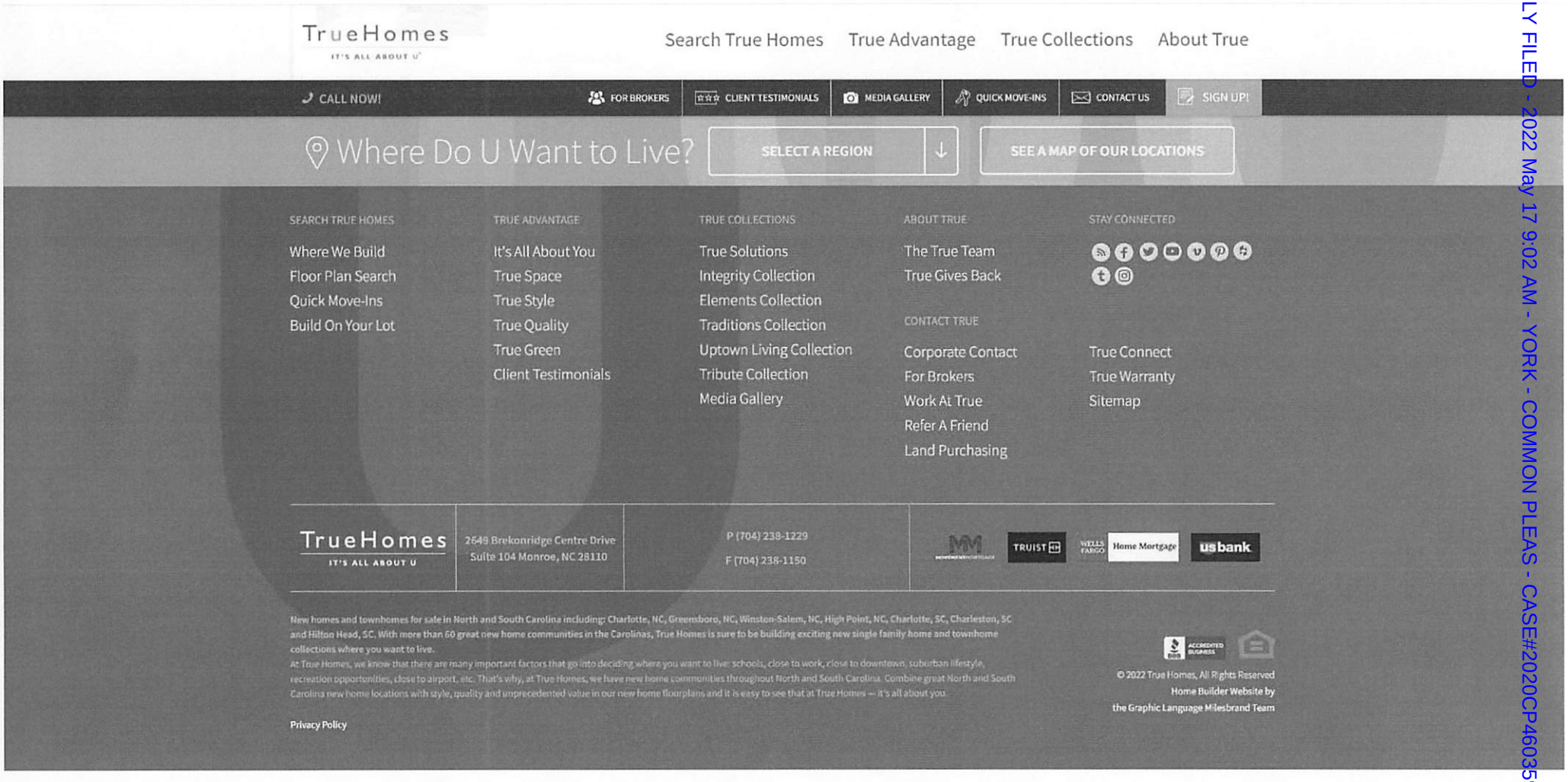
Buyer Initials

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Exhibit B to Affidavit of Karin J. Fuentes

Summerlake Townhomes Homeowners' Association, Inc., et al. v. True Homes, LLC, et al.

Case No.: 2020-CP-46-03592



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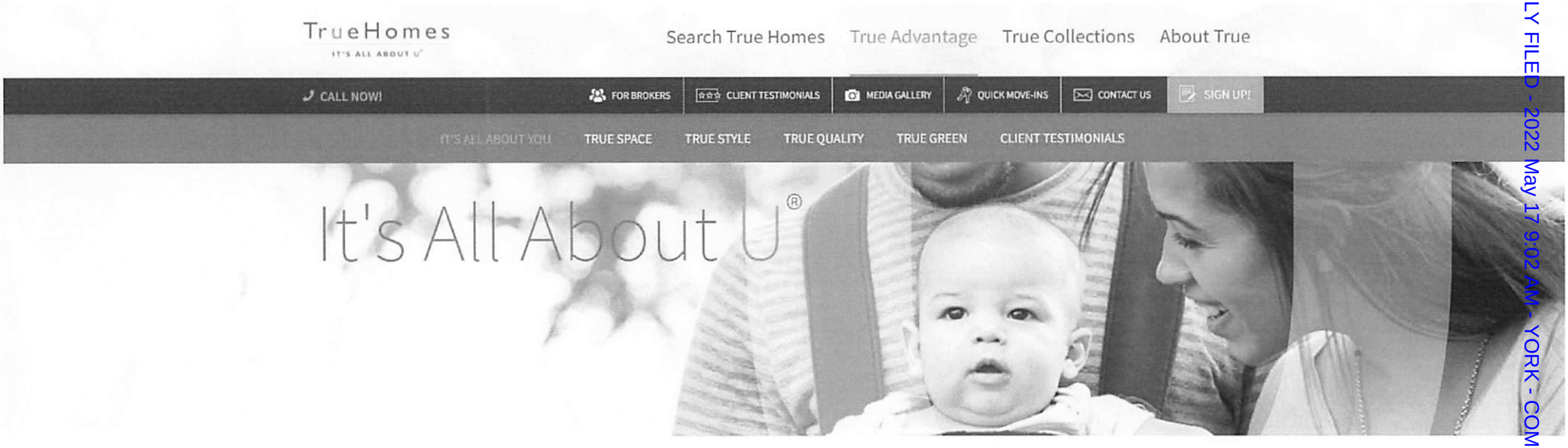
Who is True? True Homes is a local Carolina's based semi-custom home builder dedicated to bringing the best new home designs, new home style and new home value to residential communities throughout North and South Carolina.





Our clients have made us one of the Carolina's largest homebuilders, with stunning homes in North and South Carolina's most popular residential areas. But being big isn't what makes us the best. It's our commitment to being true to all the things that matter most to you: Like offering four different home collections — from sassy townhomes to elegant luxury homes, or building on your lot - so you can find what fits your personality, lifestyle and budget.

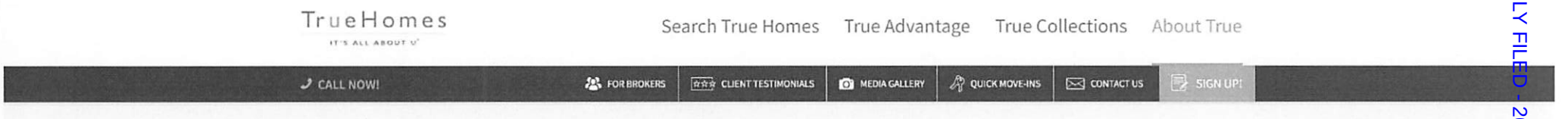
True Custom Homes is a division of True Homes that builds Elements and Traditions Collection homes in select communities and on



At True Homes, we have new home communities throughout North and South Carolina. Combine great North and South Carolina new home locations with style, quality and unprecedented value in our new home floorplans and it is easy to see that at True Homes — It's All About U®.

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Our Philosophies

"We build homes exclusively for family members and friends"

Our clients are the reason we wake up every morning to jobs that we love. And that's why we treat our clients like family. Because of them, we remain a privately held company in an industry filled with corporate giants. Our clients have made us the largest builder in the Carolinas, and for that we are very thankful.

"We are committed to offering service worthy of our signature"

Every True Home is personalized to be as unique as the families that will live there. Our clients personal satisfaction means everything to us, that's why we ask for individual feedback – to make sure we know how each and every client feels about the entire process. We work with the industry leading research firm to hear what our clients have to say. We take it to heart and then we put it to work improving our homes, our process and our people.

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Exhibit P

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2011 WL 12565687 (S.C.Com.Pl.) (Trial Order)
Court of Common Pleas of South Carolina
Dorchester County

Gregory W. SMITH, et al.,

v.

D.R. HORTON, INC., et al.

No. 2010CP18641.
April 7, 2011.

Order Denying Defendant D.R. Horton, Inc.'s Motion to Compel Arbitration and to Stay Proceedings, or, Alternatively, to Dismiss

Edgar Warren Dickson, Judge.

*1 This matter came before the court on September 9, 2010, upon Defendant D.R. Horton, Inc.'s Motion to Compel Arbitration and to Stay Proceedings, or, Alternatively, to Dismiss. Present on behalf of the Plaintiffs was Phillip W. Segui, Jr., Esquire. Present on behalf of Defendant D.R. Horton, Inc. was Michael M. Shetterly, Esquire.

FACTS

This case arises out of alleged construction defects to a single-family home in Summerville, South Carolina. Plaintiffs purchased their home from the Defendant D. R. Horton and have alleged a variety of defects with their home including improperly installed siding, windows, structural framing and concrete slab as well as failure to properly install various flashings so as to prevent moisture intrusion into their home which have led to damage to their home. Plaintiffs believe that the arbitration clauses in the contract for the purchase of the residence at issue and in the RWC Warranty are unconscionable and unenforceable and fail for lack of inclusion in the deed under the Doctrine of Merger.

ARGUMENT

In the contract for the purchase of the residence at issue, in addition to the attempts to disclaim various warranties within the body of the contract, there is within the Warranties and Dispute Resolution in Section 14 beginning on page 7 in which it is referenced that certain disputes are to be resolved by mandatory binding arbitration along with an entire host of attempted waivers of important legal remedies available to the Plaintiffs.

The recent Supreme Court case of *Simpson v. MSA of Myrtle Beach*, 373 S.C. 14 (2007), addressed a very similar set of circumstances in which it held that despite application of the Federal Arbitration Act, that the arbitration clause between the parties was unconscionable and unenforceable in its entirety. In addition to analyzing the lack of conspicuousness of the arbitration provisions which were similar to those at issue in the present case, the Court focused on the other provisions of the contract limiting the recovery and claims available under its terms. Specifically, because the provisions of the contract in the *Simpson* case violated statutory law in that it prevented Simpson from receiving the mandatory statutory remedies to which she may have been entitled in her underlying SCUTPA and Dealers Act claims and that it allowed her to waive statutory remedies which were contrary to the underlying statutes' very purposes of punishing acts that adversely affect the public interest, the Court found that these provisions were oppressive, one-sided, and not geared toward achieving an unbiased decision by a

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neutral decision-maker. In conjunction with Simpson's lack of meaningful choice in agreeing to arbitrate, the Court found that these provisions were an unconscionable waiver of statutory rights, and therefore, unenforceable. Although it was argued in the *Simpson* case that these offending provisions should simply be severed, the Court stated:
In this case, we find the arbitration clause in the adhesion contract between Simpson and Addy wholly unconscionable and unenforceable based on the cumulative effect of a number of oppressive and one-sided provisions contained within the entire clause. While this Court does not ignore South Carolina's policy favoring arbitration, we hold that the intent of the parties is best achieved by severing the arbitration clause in its entirety rather than "rewriting" the contract by severing multiple unenforceable provisions.

***2** The Contract between the parties in the instant case likewise has oppressive and one-sided provisions which our courts have held cannot be disclaimed. Specifically, in *Kirkman v. Parex, Inc.* 369 S.C. 477 (2006), the Court held that where an attempted disclaimer of the implied warranty of habitability is not (1) conspicuous, (2) known to the buyer, and (3) specifically bargained for, that such disclaimer is void. The court went further to state that "this standard is to be applied strictly and will be met only in rare circumstances." Given that such circumstances were not met nor even attempted, any attempts to disclaim these implied warranty claims, like in the *Simpson* case, are unenforceable and unconscionable. Likewise, and perhaps even more stark are the provisions in the Limitations of Liability in sub-section (i) on page 9 in which, in addition to the attempted waiver of various important remedies of the Plaintiffs in violation of the *Kirkman* requirements, the following is set forth in the last sentence:
SELLER SHALL NOT BE LIABLE FOR MONETARY DAMAGES OF ANY KIND, INCLUDING SECONDARY, CONSEQUENTIAL, PUNITIVE, GENERAL, SPECIAL OR INDIRECT DAMAGES.

Clearly, the provisions that the Court in *Simpson* found objectionable enough to require striking the entire arbitration clause pale in comparison to the waivers set forth by Defendant D.R. Horton, Inc. in which every reasonably suitable remedy otherwise available at law is waived.

As an additional matter as to whether the Arbitration Clause is enforceable, Plaintiff asserts that because the only arbitration requirement is found in the contract of sale, and not the Deed (attached), under the Doctrine of Merger, the arbitration clause contained in the contract is null and void. South Carolina Law, like the general rule in other states, is clear that when there is a contract of sale and a subsequent deed, the subsequent deed becomes the contract. Accordingly, the Doctrine of Merger essentially means that the if the language relied upon (In this case the Arbitration Clause) does not exist in the latter contract (the Deed), it is extinguished. As the Court has stated:
"The Doctrine of Merger is founded upon the privilege, which parties always possess, of changing their contract obligations by further agreements prior to performance. The execution delivering 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, (emphasis supplied). *Wilson v. Landstrom*, 281 SC 260, 315 S.E.2d 130 (S.C.Ct App 1984)."

Lastly, because the Defendant and the Plaintiffs are both residents of South Carolina, the construction at issue occurred in South Carolina, and any out-of-state transactional involvement is merely tangential, Plaintiffs contend that the Federal Arbitration Act does not apply and that the South Carolina Uniform Arbitration Act (§ 15-48-10) applies instead such that, for an additional reason beyond those above, the arbitration provisions in this matter further fail for the lack of conspicuousness as required under the South Carolina Act.

CONCLUSION

Given that (1) the relevant arbitration provisions are wholly unconscionable and unenforceable based on the cumulative effect of a number of oppressive and one-sided provisions; (2) that the Deed at issue and which controls the relationship between

the parties does not contain an arbitration provision; and (3) that the arbitration provisions fail to meet the South Carolina Uniform Arbitration Act, it is proper that Defendant's Motion to Compel Arbitration and to Stay Proceedings, or, Alternatively, to Dismiss is DENIED.

AND IT IS SO ORDERED this *7th* day of *April*, 2011 at Orangeburg, South Carolina.

<<signature>>

Honorable Edgar Warren Dickson

Presiding Judge

First Judicial Circuit

End of Document

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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 PJL 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,

ELECTRONICALLY FILED - 2022 Jun 30 3:57 PM - YORK - COMMON PLEAS - CASE#2020CP4603592

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

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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

/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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jhinson@wolfe-campbell.com
Attorneys for Defendant True Homes, LLC

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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 PJL 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,

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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

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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."

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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 ad 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 employee a third-party inspector to provide an inspection. Exhibit A (Section 15). Finally, the PA anticipates there may be requested

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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.

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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

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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.

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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.

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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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TrueHomes

WE VALUE WHAT'S IN IT

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.

X Karin Josue Fuentes
Karin Josue Fuentes

Date 8/27/14

Nick Bacon
Seller Operations Partner
Operations Partner
Credit/Closings/Legal

Date 8-27-14

Date 8/20/14

Contract (SPEC) (081814)

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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 Riverbirch 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 Documents; 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: 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 pluming 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 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 Sellers 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 mortage 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 (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 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, 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.

X Karin Josue Fuentes Buyer Signature	8/27/14 Date	Sales Associate Signature	8-27-14 Date
Karin Josue Fuentes Buyer Printed Name		Sales Counselor Printed Name	
Buyer Signature	Date	Operations Partner Signature	8/28/14 Date
Buyer Printed Name		Operations Partner Printed Name	

Nick Bacon
Operations Partner
Credit/Closings

Revised: 8/18/2014

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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 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 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 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 such other recorded easement that binds the property. Seller makes no representation regarding the suitability of the homesite 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 Damage 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 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 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 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: KJF

DEPOSIT ON File
TrueHomes
Rewrite from SML-7

[redacted]

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: _____

Total Initial Deposit: $500

Type: DIRT

Stage: New Construction Total Deposit Due: _____

Form of Payment

_____

SASHA FLEMING
KARIN JOSUE FUENTES
1020 TARA LN APT 3
CHARLOTTE, NC 28213-8059

1214
56-21/530 10480
6709600271

7/19/14
Date

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

[redacted]

Sales Counselor Signature: Chad Poteat Date: 7/19/2014

Revision Date: 7/11/2014

Contract (SPEC) (071114)

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TrueHomes

WE VALUE WHAT YOU VALUE

SELLER PAID CLOSING COST CONTRIBUTION

Buyer: Karin Josue Fuentes

Community: SML

Home 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 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:

$3,750

Buyer: X Karin Josue Fuentes — Date 8/27/14

Buyer: _____ — Date _____

This Addendum is binding on Seller only upon Authorized Operations Partner Signature below:

Operations Partner: Nick Bacon — Date 8/28/14

Operations Partner

Q:\Title\Closings\Legal

*** The combined closing cost contribution includes a contribution from the Preferred Lender's designated loan officer of $500. The lender contribution typically shows 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: 8/18/2014

Fuentes SML-71

TrueHomes

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: ***Showroom Not Available***

☐ **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: ***Showroom Not Available***

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: X *Karin Josue Fuentes* Date 8/27/14

Co-Buyer: Date

True Advisor: *Cheryl Polat* Date 8-27-14

Seller Operations Partner: Date 8/28/14

Operations Partner
Credit/Closings/Legal

Revision date: 8/18/14

Contract (SPEC) (081814)

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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 Centerview Dr., Suite 201
Columbia, SC 29210

Telephone: (803) 896-4400
Fax: (803) 896-4404

www.llr.state.sc.us/Pol/RealEstateCommission/

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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

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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

X KJF

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

- #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

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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

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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

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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. You 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

ELECTRONICALLY FILED - 2022 Jun 30 4:09 PM - YORK - COMMON PLEAS - CASE#2020CP4603592